

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Chairman Tom Nelson, on March 18, 1993, at
3:00 p.m.

ROLL CALL

Members Present:

Rep. Tom Nelson, Chair (R)
Rep. Gary Feland, Vice Chair (R)
Rep. Steve Benedict (R)
Rep. Vicki Cocchiarella (D)
Rep. Jerry Driscoll (D)
Rep. Alvin Ellis (R)
Rep. Pat Galvin (D)
Rep. Sonny Hanson (R)
Rep. Norm Mills (R)
Rep. Bob Pavlovich (D)
Rep. Carolyn Squires (D)
Rep. Bill Tash (R)
Rep. Rolph Tunby (R)
Rep. Carley Tuss (D)
Rep. Tim Whalen (D)

Members Excused: Rep. Simon

Members Absent: None

Staff Present: Susan Fox, Legislative Council
Cherri Schmaus, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: None
Executive Action: SB 163, HB 453, SB 164, HB 587, HB 622,
HB 361, SB 347, HB 628, SB 394, HB 504,
HB 13, HB 511

EXECUTIVE ACTION ON SB 163

Motion: REP. DRISCOLL MOVED SB 163 DO BE CONCURRED IN.

Discussion: None

Motion/Vote: REP. DRISCOLL MOTIONED FOR SB 163 DO BE CONCURRED IN. The question was called. A voice vote was taken. The motion CARRIED 15 to 1 with REP. WHALEN voting no.

EXECUTIVE ACTION ON HB 453

Motion: REP. BENEDICT MOVED HB 453 DO PASS. REP. BENEDICT MOVED HIS PROPOSED AMENDMENTS (EXHIBIT #1). The question was called on the amendments. The motion to DO PASS the amendments carried unanimously. REP. BENEDICT MOVED HB 453 DO PASS AS AMENDED.

Discussion:

REP. WHALEN stated that the same provision is contained in HB 622, page 31, section 12, line 11-15. He stated that he feels a need to reconcile what is being done. He motioned to strike the new language in subsection 2 and to put coordinating instruction on HB 453 so it reads like HB 622.

REP. BENEDICT resisted the motion and referred to 45-6-301, MCA.

Susan Fox, Legislative Council, stated that it doesn't provide a conflict and the code commissioner will take care of the renumbering; therefore, an amendment is not necessary.

Motion/Vote: REP. BENEDICT MOVED HB 453 DO PASS AS AMENDED. The question was called. A voice vote was taken. The motion CARRIED unanimously.

EXECUTIVE ACTION ON SB 164

Motion: REP. BENEDICT MOVED SB 164 BE CONCURRED IN.

Discussion: None

Motion/Vote: REP. BENEDICT MOVED SB 164 BE CONCURRED IN. The question was called. A voice vote was taken. The motion CARRIED unanimously.

EXECUTIVE ACTION ON HB 587

Motion: REP. BENEDICT MOVED HB 587 DO PASS.

Discussion: None

Motion/Vote: REP. BENEDICT MOTIONED HB 587 DO PASS. The question was called. A voice vote was taken. The motion CARRIED unanimously.

EXECUTIVE ACTION ON HB 622

Motion: REP. FELAND MOVED HB 622 DO PASS. He proposed two sets of amendments.

Discussion: REP. HIBBARD explained the amendments and stated that they are a technical clean-up. These amendments will disallow a lump sum payment.

REP. DRISCOLL stated that workers used to have a lifetime of benefits and now they only get 60 months.

The question was called on the #1 Feland amendment. The motion **CARRIED** unanimously.

The question was called on the #2 Feland amendment. The motion **FAILED** with a vote of 6 to 10.

REP. HANSON proposed an amendment to strike section 10 entirely. REP. HIBBARD explained the amendment.

REP. DRISCOLL stated that all other insurers must meet the requirements.

Don Allen, Coalition, agreed to offer this as another option.

REP. HANSON withdrew the amendment.

REP. HANSON proposed another amendment that allows group purchase of workers compensation insurance. REP. HIBBARD explained that this amendment entitles two or more businesses to qualify for a group savings. This amendment was brought forth by the carriers. REP. HANSON stated that he currently buys his insurance from Washington and he feels that everyone should be able to do this.

REP. BENEDICT stated that he supports the amendment.

Susan Fox, Legislative Council, stated that a statement of intent has not yet been submitted.

REP. SQUIRES asked REP. DRISCOLL if people go inform other groups, will they be independent of the State Fund?

REP. DRISCOLL stated that they would be if they get big enough for a volume discount.

REP. BENEDICT stated that those who feel trapped can go outside the State Fund.

REP. HANSON asked REP. DRISCOLL if they get a rebate is the estimated rate for the group. Those not causing problems get a dividend.

REP. COCCHIARELLA stated that the committee needs a statement of intent or else they are voting on half a concept.

REP. BENEDICT agreed with REP. COCCHIARELLA.

The question was called on the Hanson amendment. The motion CARRIED 10 to 5.

REP. DRISCOLL proposed an amendment. He told the committee if more than one insurance company is involved, the claim is apportioned between them after maximum healing.

REP. BENEDICT told REP. DRISCOLL this applies to injuries that occur outside. He asked if they could amend it to read "preexisting injuries". This would allow it to be apportioned between workers compensation carriers and medical insurers.

REP. DRISCOLL replied that this does not stop 100 percent medical, it just clarifies who pays.

The question was called on the Driscoll amendment.. The motion CARRIED unanimously.

REP. COCCHIARELLA explained her proposed amendment (EXHIBIT #2).

REP. BENEDICT stated that he supports REP. COCCHIARELLA.

The question was called for on the Cocchiarella amendments. The motion CARRIED unanimously.

REP. WHALEN proposed an amendment to strike the new subsection 2, line 10 through 17 entirely. This would provide penalties for lawyers who don't advertise correctly in yellow pages, they can be filed against or charged with fraud.

REP. BENEDICT stated that he is opposed to the amendment.

The question was called on the Whalen amendment. The motion CARRIED 9 to 7.

REP. WHALEN proposed another amendment on page 31, section 12, lines 11 through 15. He wants to clear up the wording because it doesn't apply to good faith.

REP. BENEDICT told REP. WHALEN that this could open it up to subjectivity and determining what is good faith.

REP. WHALEN stated that he doesn't feel this would happen.

Don Allen, without objection of the committee, stated that this amendment will water down the bill.

REP. WHALEN stated that the word "knowing" doesn't relate to the

end result.

REP. ELLIS stated that he is against the amendment because it refers to claims and the word "knowingly" is subject to abuse.

REP. BENEDICT agreed with REP. ELLIS.

The question was called on the #2 Whalen amendment. The motion FAILED 7 to 9.

Motion/Vote: REP. DRISCOLL MOVED HB 622 DO PASS AS AMENDED. The question was called. A voice vote was taken. The motion CARRIED 15 to 1 with REP. WHALEN voting no.

EXECUTIVE ACTION ON HB 361

Motion: REP. BENEDICT MOVED HB 361 DO PASS.

Discussion: REP. COCCHIARELLA moved her proposed amendments. The question was called for on the Cocchiarella amendments (EXHIBIT #3). The motion CARRIED unanimously.

Motion/Vote: REP. BENEDICT MOVED HB 361 DO PASS AS AMENDED. The question was called for. A voice vote was taken. The motion CARRIED 11 to 5 with REP'S COCCHIARELLA, TUSS, PAVLOVICH, SQUIRES AND DRISCOLL voting no.

EXECUTIVE ACTION ON SB 347

Motion: REP. BENEDICT MOVED SB 347 DO BE CONCURRED IN.

Discussion: REP. BENEDICT moved his proposed amendments (EXHIBIT #4). REP. WHALEN asked how this amendment fits in?

REP. BENEDICT replied that it encourages service providers to utilize physical therapy.

REP. ELLIS stated that he supports the amendment.

The question was called on the amendment. The motion CARRIED.

REP. WHALEN proposed an amendment to add the word "reasonably" to page 25, section 10, line 13.

REP. BENEDICT stated that he resists the amendment.

The question was called on the Whalen amendments. The motion FAILED 7 to 9.

REP. DRISCOLL stated that this bill is trying to get medical cost down and passage of SB 347 is a good idea.

Motion/Vote: REP. BENEDICT MOVED SB 347 BE CONCURRED IN AS AMENDED. The question was called for. A voice vote was taken. The motion CARRIED 9 to 7.

EXECUTIVE ACTION ON HB 628

Motion: REP. DRISCOLL MOVED HB 628 DO PASS.

Discussion:

REP. TOOLE explained the amendment that deals with the same subject as SEN. HARP's bill. He stated that it eliminates freedom of choice and doesn't conflict with Harp's bill. His bill deals with the trees in the forest and not the entire forest.

REP. BENEDICT referred to page 2, sub 3, line 2 and wants to strike the word "head" and leave the word "injury". He also wants to strike everything up to the words "10 percent".

CHAIRMAN NELSON stated that this may add costs to a small claim.

REP. DRISCOLL stated that nobody has managed care until their insurer says they have it.

REP. BENEDICT MOVED THE TOOLE AMENDMENTS.

REP. DRISCOLL suggested separating amendment #17.

The question was called on all the amendment but #17. The motion CARRIED unanimously.

REP. DRISCOLL MOVED AMENDMENT #17. He stated that if this amendment is adopted, it will take away freedom of choice.

The question was called on amendment #17. The motion CARRIED 9 to 7.

REP. BENEDICT referred to sub 2 and suggested striking the word "head" and the word "multiple".

The question was called on those proposed amendments. The motion CARRIED unanimously.

Motion/Vote: REP. DRISCOLL MOVED HB 628 DO PASS AS AMENDED. The question was called. The motion CARRIED unanimously.

EXECUTIVE ACTION ON SB 394

Motion: REP. DRISCOLL MOVED SB 394 BE CONCURRED IN.

Discussion: None

Motion/Vote: REP. DRISCOLL MOVED SB 394 BE CONCURRED IN. The question was called. A voice vote was taken. The motion **CARRIED** 12 to 4 with REP's COCCHIARELLA, SQUIRES, TUSS AND WHALEN voting no.

EXECUTIVE ACTION ON HB 504

Motion: REP. BENEDICT MOVED HB 504 DO PASS.

Discussion: REP. BENEDICT proposed an amendment on page 5, line 18 to change "1%" to "5%". The question was called on the Benedict amendment. The motion **CARRIED** unanimously.

The question was called on amendment HB 050401.asf. The motion **CARRIED** unanimously.

George Wood proposed amendment 050403.agp (**EXHIBIT #5**). The question was called on the amendment. The motion **CARRIED** unanimously.

REP. DRISCOLL told the committee that he feels this bill should go to taxation because of the money it involves.

Motion/Vote: REP. BENEDICT MOVE HB 504 DO PASS AS AMENDED. The question was called. A voice vote was taken. The motion **CARRIED** 9 to 7.

EXECUTIVE ACTION ON HB 13

Motion: REP. BENEDICT MOVED HB 13 DO PASS.

Discussion: REP. BENEDICT proposed an amendment that would exempt the State Fund from MAPA. REP. WHALEN suggested separating amendments 2, 10 and 12.

REP. COCCHIARELLA stated that she is frustrated with these amendments. She stated that the committee is undoing all the work that the subcommittee did during the session.

REP. DRISCOLL suggested separating amendment 8 also.

The question was called on all of the amendments besides 2, 8, 10 and 12. The motion **CARRIED** 9 to 7.

The question was called on 2, 10, and 12. The motion **CARRIED** 15 to 1 with REP. COCCHIARELLA voting no.

REP. DRISCOLL suggested changing the amount on amendment 8 from \$400 million to \$300 million.

REP. BENEDICT stated that it is better to have too much money than not enough to take care of unfunded liabilities.

REP. WHALEN stated that he supports the proposed \$300 million figure because it gives the freedom of what manner privatization can be entered into.

REP. COCCHIARELLA stated that bargaining should start from the bottom up not the top down.

REP. HANSON stated that it is standard practice to use an upper cap. He told the committee to give them \$400 million.

The question was called on amendment 8 to change the cap to 300 million. The motion **FAILED** 7 to 9.

The question was called on amendment 8 to leave the cap at \$400 million. The motion **CARRIED** 9 to 7.

REP. COCCHIARELLA proposed an amendment (**EXHIBIT #6**). The question was called on the Cocchiarella amendment. The motion **CARRIED** unanimously.

REP. WHALEN proposed an amendment worded by **REP. MILLS**. The amendment was worded as such "cash or assets in an aggregate amount not to exceed \$400 million" and to strike the words "more than". The question was called on the Whalen/Mills amendment. The motion **CARRIED** unanimously.

REP. BENEDICT proposed amendment hb001306. This amendment is an appropriation for the legislative auditor. The question was called on the Benedict amendment. The motion **CARRIED** 12 to 4 with **REP's TUSS, COCCHIARELLA and SQUIRES** voting no.

Motion/Vote: **REP. BENEDICT MOVED HB 13 DO PASS AS AMENDED.** The question was called. A voice vote was taken. The motion **CARRIED** 9 to 7.

EXECUTIVE ACTION ON HB 511

Motion: **REP. DRISCOLL MOVED HB 511 DO PASS.**


Discussion: None

Motion/Vote: **REP. DRISCOLL MOVED HB 511 DO PASS.** The question was called. A voice vote was taken. The motion **CARRIED** 10 to 6 with **REP's BENEDICT, COCCHIARELLA, WHALEN, MILLS, HANSON AND GALVIN** voting no.

ADJOURNMENT

Adjournment: CHAIRMAN NELSON adjourned the meeting at 6:30.


TOM NELSON, Chair


CHERRI SCHMAUS, Secretary

TN/CS

HOUSE OF REPRESENTATIVES.

LABOR

COMMITTEE

ROLL CALL.

DATE

3/10/93

[illegible]

HOUSE STANDING COMMITTEE REPORT

March 19, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that Senate
Bill 163 (third reading copy -- blue) be concurred in .

Signed: Tom Nelson

Tom Nelson, Chair

Carried by: Rep. Driscoll

Committee Vote:
Yes 15, No 1.

621824SC.Hss

HOUSE STANDING COMMITTEE REPORT

March 19, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that Senate
Bill 164 (third reading copy -- blue) be concurred in.

Signed: Tom Nelson
Tom Nelson, Chair

Carried by: Rep. Driscoll

Committee Vote:

Yes __, No __. *UAAA.*

621826SC.Hss

HOUSE STANDING COMMITTEE REPORT

March 19, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that House Bill 361 (second reading copy -- yellow) do pass as amended .

Signed: Tom Nelson
Tom Nelson, Chair

And, that such amendments read:

1. Title, line 10.

Following: "CLAIMS;"

Insert: "REQUIRING THE INSURER TO NOTIFY CLAIMANTS OF BENEFITS
AND ENTITLEMENTS USING INFORMATION PROVIDED BY THE
DEPARTMENT;"

2. Page 37, line 14.

Following: "receipt"

Insert: "-- notice of benefits and entitlements to claimants"

3. Page 37, line 21.

Following: line 20

Insert: "(2) The department shall make available to insurers for
distribution to claimants sufficient copies of a document
describing current benefits and entitlements available under
Title 39, chapter 71. Upon receipt of a claim, each insurer
shall promptly notify the claimant in writing of potential
benefits and entitlements available by providing the
claimant a copy of the document prepared by the department."

Renumber: subsequent subsections

Committee Vote:
Yes 10, No 6.

621926SC.Hss

HOUSE STANDING COMMITTEE REPORT

March 19, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that House Bill 504 (second reading copy -- yellow) do pass as amended .

Signed: 
Tom Nelson, Chair

And, that such amendments read:

1. Page 5, line 18.

Following: "tax"

Strike: the remainder of line 18 through "of"

Insert: ", as provided in [section 5], on"

2. Page 10, line 1.

Following: the first "FROM"

Insert: "the reserves accumulated from premiums paid to the state fund, based upon wages payable on or after July 1, 1990, and invested by"

3. Page 11, line 11.

Following: "(III)"

Insert: "(A)"

4. Page 11, line 17.

Following: line 16

Insert: "(B) If the debt service account has sufficient funds to pay outstanding bonds or if no bonds are outstanding, the payroll tax may not be imposed after the end of fiscal year 2003."

Committee Vote:
Yes 9, No 7.

621934SC.Hss

38-92
300
120

HOUSE STANDING COMMITTEE REPORT

March 19, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that House
Bill 511 (second reading copy -- yellow) do pass .

Signed: _____

Tom Nelson, Chair

Committee Vote:
Yes 10, No 6.

621939SC.Hss

HOUSE STANDING COMMITTEE REPORT

March 19, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that House Bill 453 (second reading copy -- yellow) do pass as amended .

Signed: Tom Nelson
Tom Nelson, Chair

And, that such amendments read:

1. Page 1, line 22.

Following: "(2)"

Insert: "(a)"

2. Page 2.

Following: line 3

Insert: "(b) As used in subsection (2) (a), "person" includes but is not limited to an employee, employer, or medical service provider."

Committee Vote:

Yes __, No __. *Unan.*

621932SC.Hss

HOUSE STANDING COMMITTEE REPORT

March 19, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that House
Bill 587 (second reading copy -- yellow) do pass .

Signed: Tom Nelson

Tom Nelson, Chair

Committee Vote:

Yes , No . *LOAN.*

621940SC.Hss

HOUSE STANDING COMMITTEE REPORT

March 19, 1993

Page 1 of 3

Mr. Speaker: We, the committee on Labor report that House Bill 628 (second reading copy -- yellow) do pass as amended .

Signed: Tom Nelson

Tom Nelson, Chair

And, that such amendments read:

1. Title, line 6.

Strike: "MANAGED"

Following: "CARE"

Insert: "MANAGEMENT AND BUDGETING"

2. Title, line 8.

Strike: "MEDICAL"

3. Title, lines 9 through 13.

Strike: line 9 through "CATEGORIES;" on line 13

4. Title, line 13.

Strike: "SECTIONS"

Insert: "SECTION"

5. Title, line 14.

Strike: "33-22-111,"

Strike: "AND 39-71-2316,"

6. Page 1, lines 18 through 21.

Following: "1."

Strike: the remainder of line 18 through "Insurers" on line 21

Insert: "Care management and budgeting. (1) The state fund"

Following: "under" on line 21

Strike: through "and" on line 21

Insert: "plan No."

Strike: "are"

Insert: "is"

Renumber: subsequent subsection

7. Page 2, lines 2 and 3.

Following: "In"

Strike: the remainder of line 2 through the first "in" on line 3

Committee Vote:

Yes , No . Y A A N.

621944SC.Hss

8. Page 2, line 5.

Following: "is"

Insert: "more"

Following: "likely"

Insert: "than not"

9. Page 2, line 7.

Strike: "managed"

Following: "care"

Insert: "management and budgeting"

10. Page 2, line 10.

Following: "2."

Strike: "Managed care treatment"

Insert: "Care management"

11. Page 2, line 11.

Strike: "planning"

Strike: "managed"

12. Page 2, line 12.

Following: "care"

Insert: "management and budgeting"

13. Page 2, line 12.

Page 2, line 24.

Page 3, line 3.

Page 3, line 10.

Page 4, line 13.

Page 4, line 19.

Page 5, line 9.

Strike: "medical"

14. Page 2, line 14.

Page 4, line 17.

Strike: "Medical care"

Insert: "Care"

15. Page 2, line 15.

Strike: "managed care is"

Insert: "they are"

16. Page 2, line 16.

Strike: "to be used"

17. Page 3, line 15.

Strike: "Treatment"

Insert: "Care"

18. Page 4, line 16.

Following: "charges"

Insert: "as set forth in diagnostic research groups"

Following: "procedure."

Insert: "These charges may not exceed those currently contained
in the medical fee schedule authorized in 39-71-704."

19. Page 5, line 11 through page 7, line 11.

Strike: section 5 in its entirety

Re-number: subsequent sections

20. Page 7, line 17.

Strike: "managed"

21. Page 7, line 18.

Following: "benefits"

Insert: "under care management and budgeting"

22. Page 7, line 21.

Strike: "Managed care"

Insert: "Care management and budgeting"

23. Page 7, line 23.

Strike: "managed"

Following: "care"

Insert: "management and budgeting"

24. Page 7, line 25 through page 10, line 9.

Strike: section 7 in its entirety


Re-number: subsequent sections

HOUSE STANDING COMMITTEE REPORT

March 19, 1993

Page 1 of 13

Mr. Speaker: We, the committee on Labor report that House Bill 13 (first reading copy -- white) do pass as amended.

Signed: 
Tom Nelson, Chair

And, that such amendments read:

1. Title, line 9.

Following: "~~COMMISSIONER,~~"

Insert: "PERMITTING THE GOVERNOR TO CONTRACT FOR PRIVATE SECTOR INVOLVEMENT TO LIQUIDATE THE UNFUNDED LIABILITY AND TO MANAGE CLAIMS OF THE OLD FUND AND TO MANAGE CLAIMS OF THE NEW FUND OF THE MONTANA STATE COMPENSATION MUTUAL INSURANCE FUND; CLARIFYING THE COMPENSABILITY OF MENTAL STRESS CLAIMS; PROVIDING THAT THE GOVERNOR SHALL APPOINT THE BOARD OF DIRECTORS OF THE STATE FUND; PROVIDING THAT THE MEMBERS OF THE BOARD OF DIRECTORS AND THE EXECUTIVE DIRECTOR OF THE STATE FUND SERVE AT THE PLEASURE OF THE GOVERNOR;"

2. Title, line 12.

Following: "ACT"

Insert: "FOR PURPOSES OTHER THAN RATEMAKING"

3. Title, line 14.

Following: "APPROPRIATION;"

Insert: "PROVIDING AN APPROPRIATION; REQUIRING THE INSURER TO NOTIFY CLAIMANTS OF BENEFITS AND ENTITLEMENTS USING INFORMATION PROVIDED BY THE DEPARTMENT;"

Strike: "2-4-102"

Insert: "2-15-1019"

4. Title, line 15.

Following: "18-8-103,"

Insert: "33-1-102, 39-71-105, 39-71-606, 39-71-721,"

Following: "39-71-2314,"

Insert: " 39-71-2315,"

Following: "39-71-2316,"

Insert: "39-71-2317,"

5. Title, line 16.

Following: "39-71-2323,"

Strike: "AND"

Committee Vote:

Yes 9, No 7.

621852SC.Hss

Insert: "39-71-2351,"
Following: "39-71-2352,"
Insert: "39-71-2354, AND 39-71-2503,"

6. Page 1, line 18.

Insert: "WHEREAS, the Legislature has determined that it is necessary to the public welfare to make workers' compensation insurance available to all employers through the State Fund as the insurer of last resort, and in making this insurance available, the State Fund has incurred an unfunded liability; and

WHEREAS, the unfunded liability has grown each year despite the fact that there have been numerous attempts to solve the problem by legislation and other methods, but those attempts have not resolved the problem; and

WHEREAS, the Legislature separated the payment structure and sources for claims for injuries resulting from accidents that occurred before July 1, 1990 (the "old fund"), from injuries occurring on or after July 1, 1990 (the "new fund"), and provided revenue options and spending limits; and

WHEREAS, this separation has not eliminated the unfunded liability, which is estimated to be in excess of \$400 million; and

WHEREAS, the Joint Select Committee on Workers' Compensation of the 52nd Legislature solicited from private insurance and reinsurance markets proposed solutions to liquidate the old fund unfunded liability; and

WHEREAS, insurance and reinsurance markets responded to the Committee's request for assistance to liquidate the old fund unfunded liability; and

WHEREAS, the Committee reviewed and concurred in a preliminary proposal of one of the insurance and reinsurance markets that the Committee believed provides significant benefits to Montana, including but not limited to:

- (1) risk transfer;
- (2) profit sharing between the reinsurer and the state;
- (3) investment of premiums in Montana financial institutions and investments;
- (4) funding and finance options;
- (5) security to Montana in the event of contract breach or insolvency of the reinsurer;
- (6) industry best claims management and administration; and
- (7) development of clean industry private sector jobs; and

WHEREAS, there may be merit in the proposal, and it may be in the best interests of Montana to proceed with the negotiations with the reinsurer.

THEREFORE, the Legislature finds it appropriate to empower the Governor to fully investigate and negotiate a reinsurance solution.

7. Page 1, line 20 through page 5, line 6

Strike: section 1 in its entirety

Renumber: subsequent sections

8. Page 6, following line 12.

Insert: "NEW SECTION. Section 1. Liquidation of old fund liability. (1) (a) The governor is authorized to negotiate the liquidation of the unfunded liability of the old fund of the state fund, as defined in 39-71-2312, if an agreement can be reached that is in the best interests of Montana. The scope of any negotiated agreement may include but may not exceed all of the rights, privileges, liabilities, and duties of the state fund with respect to all claims arising prior to July 1, 1990.

(b) The governor may not enter into an agreement that pays cash or assets in an aggregate amount that exceeds \$400 million to the other parties to the agreements.

(c) Any contract finalized by the governor must contain a provision that the contract is void unless necessary financing to fund the unfunded liability has been provided by the 1993 legislature.

(d) To be effective, a contract must be finalized by the governor within 120 days of [the effective date of this section].

(e) Any contract finalized by the governor may require reinsurance premium payments by the state to be used to liquidate the old fund liability.

(2) Any entity entering into an agreement with Montana under [section 2] or this section shall submit an annual report to the legislative audit committee. The first report is due 12 months after the agreement is finalized and thereafter may be submitted on a fiscal year basis.

(3) Any negotiations or agreements entered into pursuant to [section 2] and this section are not subject to the competitive bidding requirements of Title 18, chapter 4.

(4) A negotiation or an agreement entered into pursuant to [section 2] is not subject to the privatization plan requirements of Title 2, chapter 8, part 3.

NEW SECTION. Section 2. Claims settlement of new fund claims -- new fund management. As part of the negotiated liquidation of the unfunded liability of the old fund of the state fund, as defined in 39-71-2312, the governor may negotiate for claims settlement of the claims of persons whose benefits have not been determined under a claim based on an injury occurring on or after July 1, 1990, and for services with respect to the new fund of the state fund, including but not limited to claims management services, third-party administration, and medical cost containment agreements if the contracted services are in the best interests of the state. An agreement under this section is valid only if it is part of an agreement that meets

the requirements of [section 1].

NEW SECTION. Section 3. Audit of contracted services and old fund liquidation. Any proposal involving the private sector in liquidation of the unfunded liability of the old fund of the state fund, as defined in 39-71-2312, or in claims settlement and management of the new fund of the state fund must provide for audit and reporting mechanisms in compliance with 39-71-2361.

NEW SECTION. Section 4. Mutually agreeable lump-sum settlements. Beginning July 1, 1993, a workers' compensation claimant and the state fund or a reinsurer may, regardless of the lump-sum law in effect on the date of the injury, mutually agree to a lump-sum settlement of a claim. If a mutual agreement is not reached, the lump-sum law in effect on the date of the injury applies.

Section 5. Section 39-71-721, MCA, is amended to read:

"39-71-721. Compensation for injury causing death -- limitation. Except as provided in [section 4]:

(1) (a) ~~If~~ if an injured employee dies and the injury was the proximate cause of ~~such~~ death, then the beneficiary of the deceased is entitled to the same compensation as though the death occurred immediately following the injury. A beneficiary's eligibility for benefits commences after the date of death, and the benefit level is established as set forth in subsection (2).

(b) ~~The~~ the insurer is entitled to recover any overpayments or compensation paid in a lump sum to a worker prior to death but not yet recouped. The insurer shall recover ~~such~~ the payments from the beneficiary's biweekly payments as provided in 39-71-741(5).

(2) ~~To~~ to beneficiaries as defined in 39-71-116(3) (a) through (3) (d), weekly compensation benefits for an injury causing death are $66 \frac{2}{3}\%$ of the decedent's wages. The maximum weekly compensation benefit may not exceed the state's average weekly wage at the time of injury. The minimum weekly compensation benefit is 50% of the state's average weekly wage, but in no event may it exceed the decedent's actual wages at the time of ~~his~~ death.

(3) ~~To~~ to beneficiaries as defined in 39-71-116(3) (e) and (3) (f), weekly benefits must be paid to the extent of the dependency at the time of the injury, subject to a maximum of $66 \frac{2}{3}\%$ of the decedent's wages. The maximum weekly compensation may not exceed the state's average weekly wage at the time of injury.

(4) ~~If~~ if the decedent leaves no beneficiary as defined in 39-71-116, a lump-sum payment of \$3,000 must be paid to the decedent's surviving parent or parents.

(5) ~~If~~ if any beneficiary of a deceased employee dies, the right of ~~such~~ the beneficiary to compensation under this chapter ceases. Death benefits must be paid to a surviving spouse for 500 weeks subsequent to the date of the deceased employee's death or until the spouse's remarriage, whichever occurs first. After

benefit payments cease to a surviving spouse, death benefits must be paid to beneficiaries, if any, as defined in 39-71-116(3) (b) through (3) (d).

(6) ~~In~~ in all cases, benefits must be paid to beneficiaries, as defined in 39-71-116; and

(7) ~~Benefits~~ benefits paid under this section may not be adjusted for cost of living as provided in 39-71-702.

~~(8) Notwithstanding subsections (2) and (3), beginning July 1, 1987, through June 30, 1991, the maximum weekly compensation benefits for injury causing death may not exceed the state's average weekly wage of \$299 established July 1, 1986. Beginning July 1, 1987, through June 30, 1991, the minimum weekly compensation for injury causing death shall be \$149.50, which is 50% of the state's average weekly wage established July 1, 1986, but in no event may it exceed the decedent's actual wages at the time of death."~~

Section 6. Section 39-71-2315, MCA, is amended to read:

"39-71-2315. Management of state fund -- powers and duties of the board. Except with respect to any agreement established pursuant to [sections 1 and 2] and except as provided in 2-15-1019 or 39-71-2317:

(1) ~~The~~ the management and control of the state fund is vested solely in the board; and

(2) ~~The~~ the board is vested with full power, authority, and jurisdiction over the state fund. The board may perform all acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the state fund, either in the administration of the state fund or in connection with the insurance business to be carried on under the provisions of this part, as fully and completely as the governing body of a private mutual insurance carrier, in order to fulfill the objectives and intent of this part. Bonds may not be issued by the board, the state fund, or the executive director."

Section 7. Section 39-71-2351, MCA, is amended to read:

"39-71-2351. Purpose of separation of state fund liability as of July 1, 1990, and of separate funding of claims before and on or after that date. (1) An unfunded liability exists in the state fund. It has existed since at least the mid-1980s and has grown each year. There have been numerous attempts to solve the problem by legislation and other methods. These attempts have alleviated the problem somewhat, but the problem has not been solved.

(2) The legislature has determined that it is necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability. The legislature has determined that the most cost-effective and efficient way to provide a source of funding for and to ensure payment of the

unfunded liability and the best way to administer the unfunded liability is to:

(a) separate the liability of the state fund on the basis of whether a claim is for an injury resulting from an accident that occurred before July 1, 1990, or an accident that occurs on or after that date;

(b) extend the payroll tax imposed by 39-71-2503 and dedicate the tax money first to the repayment of bonds issued under 39-71-2354 and 39-71-2355 and then to the repayment of loans given under 39-71-2354 and 39-71-2355, to payment of premiums for a negotiated liquidation of the unfunded liability of the old fund of the state fund as provided in [section 1], and the direct payment of the costs of administering and paying claims for injuries from accidents that occurred before July 1, 1990.

~~(3) The legislature further determines that in order to prevent the creation of a new unfunded liability with respect to claims for injuries for accidents that occur on or after July 1, 1990, certain duties of the state fund should be clarified and legislative oversight of the state fund should be increased."~~

Section 8. Section 39-71-2354, MCA, is amended to read:

"39-71-2354. Use of payroll tax proceeds -- loans -- bonds.

(1) Taxes collected under 39-71-2503 may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990, including the cost of repaying bonds issued and loan proceeds given under 39-71-2355 and this section and any premium payments that may be required by an agreement made pursuant to [section 1]. If the state fund determines that, for the next 1 or more years following the date of the determination, the tax revenue, together with funds in the account required by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, will be insufficient to administer and pay those claims, the state fund may, through its board of directors, request the budget director to certify to the board of investments that additional funding is necessary. If the budget director agrees with the state fund's board of directors that additional funding is necessary, the budget director shall certify to the board of investments the amount that the budget director determines is necessary to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Except as provided in subsection (2), the board of investments shall, at times and in amounts it considers necessary or advisable, finance the amount certified by the budget director by giving the state fund the proceeds of a loan or a bond issue to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. ~~Loans must be from reserves accumulated from premiums paid to the state fund based upon wages payable on or after July 1, 1990.~~ In the event that loans are necessary for an agreement

established in accordance with [sections 1 and 2], the governor is authorized to pursue internal and external financing that is in the best interests of the state. The board of investments shall choose the method of financing that is most cost-effective for the state fund. A loan must bear interest at the rate the money would earn in the pooled investment fund required by 17-6-203. The board of investments may also, upon request of the board of directors of the state fund, give the state fund the proceeds of a bond issue, to be used to pay off loans made under 39-71-2355 and this section. Bonds for the state fund must be workers' compensation bonds issued under 39-71-2355.

(2) ~~The~~ Except for any agreement established pursuant to [sections 1 and 2], the total amount of loan proceeds given to the state fund plus workers' compensation bonds issued under 39-71-2355, except bonds issued to repay loans as provided for in subsection (1), may not exceed \$220 million. All loan and bond proceeds given to the state fund must be repaid to the board of investments before July 1, 2020."

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

"39-71-2503. Workers' compensation payroll tax. (1) (a) There is imposed on each employer a workers' compensation payroll tax in an amount equal to 0.28% of the employer's payroll in the preceding calendar quarter for all employments covered under 39-71-401, except that if an employer is subject to 15-30-204(2), the tax is an amount equal to 0.28% of the employer's payroll in the preceding week. This payroll tax must be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990, or for payment of those claims under [section 1]. If one or more loans or bonds are outstanding, the tax must be continued at the 0.28% rate and the legislature may not modify the tax rate, the use of the tax proceeds, or this section in a manner that reduces the security for repayment of the outstanding loans or bonds, except that the legislature may forgive payment of the tax or reduce the tax rate for any 12-month period if the workers' compensation bond repayment account contains on the first day of that period an amount, regardless of the source, that is in excess of the reserve maintained in the account and that is equal to the amount needed to pay and dedicated to the payment of the principal, premium, and interest that must be paid during that period on the outstanding loans or bonds. The legislature may not increase the tax rate except upon a two-thirds vote of each house.

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

(2) All collections of the tax are appropriated to and must be deposited as received in the tax account. The tax is in

addition to any other tax or fee assessed against employers subject to the tax.

(3) (a) On or before the last day of April, July, October, and January, each employer subject to the tax shall file a return in the form and containing the information required by the department and, except as provided in subsection (3) (b), pay the amount of tax required by this section to be paid on the employer's payroll for the preceding calendar quarter.

(b) An employer subject to 15-30-204(2) shall remit to the department a weekly payment with its weekly withholding tax payment in the amount required by subsection (1) (a).

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

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

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

(6) The department of labor and industry and the state fund shall, on July 1, 1991, or as soon after that date as possible, give the department a list of all employers having coverage under any plan administered or regulated by the department of labor and industry and the state fund. After the lists have been given to the department, the department of labor and industry and the state fund shall update the lists weekly. The department of labor and industry and the state fund shall provide the department with access to their computer data bases and paper files and records for the purpose of the department's administration of the tax imposed by this section.

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

Section 10. 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) A person may not 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) The provisions of this code do not 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 the 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 those 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 21 and 23, sections 1 and 2, 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 in which 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 in which the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program."

Section 11. Section 39-71-105, "MCA, is amended to read:

"39-71-105. Declaration of public policy. For the purposes of interpreting and applying Title 39, chapters 71 and 72, the following is the public policy of this state:

(1) It is an objective of the Montana workers' compensation system to provide, without regard to fault, wage supplement and medical benefits to a worker suffering from a work-related injury or disease. Wage-loss benefits are not intended to make an injured worker whole; they are intended to assist a worker at a reasonable cost to the employer. Within that limitation, the wage-loss benefit should bear a reasonable relationship to actual

wages lost as a result of a work-related injury or disease.

(2) A worker's removal from the work force due to a work-related injury or disease has a negative impact on the worker, the worker's family, the employer, and the general public. Therefore, it is an objective of the workers' compensation system to return a worker to work as soon as possible after the worker has suffered a work-related injury or disease.

(3) Montana's workers' compensation and occupational disease insurance systems are intended to be primarily self-administering. Claimants should be able to speedily obtain benefits, and employers should be able to provide coverage at reasonably constant rates. To meet these objectives, the system must be designed to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities.

(4) Title 39, chapters 71 and 72, must be construed according to their terms and not liberally in favor of any party.

(5) It is the intent of the legislature that stress claims, often referred to as "mental-mental claims" and "mental-physical claims", are not compensable under Montana's workers' compensation and occupational disease laws. The legislature recognizes that these claims are difficult to objectively verify and that the claims have a potential to place an economic burden on the workers' compensation and occupational disease system. The legislature also recognizes that there are other states that do not provide compensation for various categories of stress claims and that stress claims have presented economic problems for certain other jurisdictions. In addition, not all injuries are compensable under the present system, as is the case with repetitive injury claims, and it is within the legislature's authority to define the limits of the workers' compensation and occupational disease system."

Section 12. Section 2-15-1019, MCA, is amended to read:

"2-15-1019. Board of directors of the state compensation mutual insurance fund. (1) There is a board of directors of the state compensation mutual insurance fund.

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

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

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

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

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

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

(6) ~~A member is appointed for a term of 4 years~~ serves at the pleasure of the governor. The governor may remove a member at any time and appoint a new member to the office. The terms of board members must be staggered. A member of the board may serve no more than two 4-year terms. A member shall hold office until a successor is appointed and qualified.

(7) The members must be appointed and compensated in the same manner as members of a quasi-judicial board as provided in 2-15-124, except that the requirement that at least one member be an attorney does not apply and except that the members serve at the pleasure of the governor."

Section 13. Section 39-71-2317, MCA, is amended to read:

"39-71-2317. Appointment of executive director -- management staff. (1) The board governor shall, at the beginning of each gubernatorial term, appoint an executive director of the state fund who has general responsibility for the operations of the state fund.

(2) The executive director serves at the pleasure of the governor. The governor may remove the executive director at any time and appoint a new executive director to the office.

(3) The executive director must have executive level experience, with knowledge of the insurance industry. The executive director must receive compensation as set by the board and serve at the pleasure of the board. The executive director may hire the management staff of the state fund, each of whom serves at the pleasure of the executive director."

Renumber: subsequent sections

9. Page 7, line 7.

Following: "~~(1)~~"

Insert: "(1)"

10. Page 7, line 19.

Following: "-"

Insert: "(2) The state fund is subject to laws that generally apply to state agencies, including but not limited to Title 2, chapters 2, 3, 4 (only as provided in 39-71-2316), and 6, and Title 5, chapter 13. The state fund is not exempt from a law that applies to state agencies unless that law specifically exempts the state fund by name and clearly states that it is exempt from that law."

11. Page 8, line 4.

Following: "employer"

Insert: "to cover its administrative costs for coverage of a small employer"

12. Page 8, line 15.

Strike: ";"

Insert: ". Premium rates for classifications may only be adopted and changed using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2, chapter 4, parts 2 through 4. After such rules have been adopted, the state fund need not follow the rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The contested case rights and provisions of Title 2, chapter 4, do not apply to an employer's classification or premium rate."

13. Page 10, lines 1 and 25.

Strike: "(8)"

14. Page 16, line 15.

Following: line 14

Insert: "

NEW SECTION. Section 24. Appropriation. There is an appropriation of \$35,000 for each fiscal year of the biennium beginning July 1, 1993, to the legislative auditor's office for contracted services for the duties required to be performed pursuant to [section 20] to be paid by the state fund from the funds appropriated in [section 22].

Section 25. Section 39-71-606, MCA, is amended to read:

"39-71-606. Insurer to accept or deny claim within thirty days of receipt -- notice of denial -- notice to employer. (1) Every insurer under any plan for the payment of workers' compensation benefits shall, within 30 days of receipt of a claim for compensation, either accept or deny the claim, and if denied shall inform the claimant and the department in writing of such denial.

(2) The department shall make available to insurers for distribution to claimants sufficient copies of a document describing current benefits and entitlements available under Title 39, chapter 71. Upon receipt of a claim, each insurer shall promptly notify the claimant in writing of potential benefits and entitlements available by providing the claimant a copy of the document prepared by the department.

(3) Upon the request of an employer it insures, an insurer shall notify the employer of all compensation benefits that are ongoing and are being charged against that employer's account."

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Renumber: subsequent sections

15. Page 17, following line 2.

Insert: "NEW SECTION. Section 28. Coordination with Occupational Disease Act of Montana. For purposes of [sections 1 through 4] and the administration of Title 39, chapter 72, a reference in [sections 1 through 4] to an injury resulting from an accident shall mean a claim for an injury resulting from an accident which results in a disablement, as defined in 39-72-102(4)."

NEW SECTION. Section 29. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act]."

Renumber: subsequent sections

16. Page 17, line 3.

Following: "instruction."

Insert: "(1) [Sections 1 through 3] are intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [sections 1 through 3]."

(2) [Section 4] is intended to be codified as an integral part of Title 39, chapter 71, part 23, and the provisions of Title 39, chapter 71, part 23, apply to [section 4]. (3)"

17. Page 17, lines 4 and 7.

Strike: "7"

Insert: "19"

Strike: "9"

Insert: "21"

18. Page 17, lines 9 through 13.

Strike: "[SECTION 9" on line 9 through "1993." on line 13

Insert: "[Sections 1 through 3, 10 through 13, 21, and 26 through 30 and this section] are effective on passage and approval."

(2) [Sections 4 through 9] are effective on finalization of an agreement entered into by the governor and the reinsurer, as provided in [section 1].

(3) [Sections 14 through 20 and 22 through 25] are effective July 1, 1993.

(4) [Section 21] applies to the budget for fiscal year 1994."

HOUSE STANDING COMMITTEE REPORT

March 19, 1993

Page 1 of 6

Mr. Speaker: We, the committee on Labor report that House Bill 622 (second reading copy, -- yellow) do pass as amended.

Signed: 

Tom Nelson, Chair

And, that such amendments read:

1. Title, page 1, line 12.

Following: "INFIRMITY;"

Insert: "ALLOWING APPORTIONMENT OF COMPENSATION FOR PREEXISTING CONDITIONS BETWEEN INSURERS;"

2. Title, lines 15 and 16.

Strike: line 15 in its entirety through "DISPUTES;" on line 16

3. Title, page 2, line 4.

Following: "PLAN;"

Insert: "ALLOWING GROUP PURCHASE OF WORKERS' COMPENSATION INSURANCE; REQUIRING THE INSURER TO NOTIFY CLAIMANTS OF BENEFITS AND ENTITLEMENT USING INFORMATION PROVIDED BY THE DEPARTMENT;"

4. Title, page 2, line 7.

Following: "39-71-316,"

Insert: "39-71-407,"

5. Title, page 2, line 7.

Following: "39-71-605,"

Insert: "39-71-606,"

6. Title, page 2, line 8.

Strike: "AND"

Following: "39-72-303,"

Insert: "39-72-706, and 39-72-707,"

7. Page 2, line 11.

Insert: " STATEMENT OF INTENT

A statement of intent is required for this bill because [section 23] requires the department by rule to adopt forms, criteria, and procedures for the issuance of certificates of approval for groups eligible to purchase group insurance. The rules adopted by the department must:

Committee Vote:

Yes 15, No 1.

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(1) be consistent with the provisions of Title 39, chapter 71, and [this act]; and

(2) address who may be in a group, how a member may be removed from the group, the criteria for certification, the apportionment of dividends or discounts, the requirements for a plan of operation, and any reporting requirements that may be necessary."

8. Page 20, line 25 through page 21, line 5.
Strike: subsection (7) in its entirety

9. Page 24, line 13 through page 26, line 8.
Strike: section 8 in its entirety
Renumber: subsequent sections

10. Page 44, line 5.
Strike: "(3)"
Insert: "(2)"

11. Page 45, lines 10 through 17.
Strike: subsection 2 in its entirety
Renumber: subsequent subsection

12. Page 48, line 17.
Following: line 16

Insert: "NEW SECTION. Section 22. Definitions. As used in [section 23], the following definitions apply:

(1) "Business entity" means a business enterprise owned by a single person, corporation, organization, business trust, trust, partnership, joint venture, association, or other business entity.

(2) "Group" means two or more business entities that join together with the approval of the department to purchase individual workers' compensation insurance policies covering each business entity that is part of a group.

NEW SECTION. Section 23. Group purchase of workers' compensation insurance. (1) On receiving approval of the department, two or more business entities may join together to form a group to purchase individual workers' compensation insurance policies covering each member of the group.

(2) To be eligible to join a group, the department shall determine that a business entity is engaged in a business pursuit that is the same as or similar to the business pursuits of the other entities participating in the group.

(3) The department shall establish a certification program for groups organized under this section and shall issue to eligible business entities certificates of approval that authorize formation and maintenance of a group.

(4) The department by rule shall adopt forms, criteria, and procedures for the issuance of certificates of approval to groups under this section.

(5) A group certified under this section may purchase individual workers' compensation insurance policies covering each member of the group from any insurer authorized to write workers' compensation insurance in this state. Under an individual policy, the group is entitled to a premium or volume discount that would be applicable to a policy of the combined premium amount of the individual policies.

(6) A group shall apportion any discount or policyholder dividend received on workers' compensation insurance coverage among the members of the group according to a formula adopted in the plan of operation for the group.

(7) A group shall adopt a plan of operation that must include the composition and selection of a governing board, the methods for administering the group, and guidelines for the workers' compensation insurance coverage obtained by the group, including the payment of premiums, the distribution of discounts, and the method for providing risk management. A group shall file a copy of its plan of operation with the department."

Section 24. Section 39-71-407, MCA, is amended to read:

"39-71-407. Liability of insurers -- limitations -- apportionment. (1) Every insurer is liable for the payment of compensation, in the manner and to the extent ~~hereinafter~~ provided in this section, to an employee of an employer it insures who receives an injury arising out of and in the course of ~~his~~ employment or, in the case of ~~his~~ death from ~~such~~ the injury, to ~~his~~ the employee's beneficiaries, if any.

(2) (a) An insurer is liable for an injury as defined in 39-71-119 if the claimant establishes it is more probable than not that:

(i) a claimed injury has occurred; or

(ii) a claimed injury aggravated a preexisting condition.

(b) Proof that it was medically possible that a claimed injury occurred or that ~~such~~ the claimed injury aggravated a preexisting condition is not sufficient to establish liability.

(3) An employee who suffers an injury or dies while traveling is not covered by this chapter unless:

(a) (i) the employer furnishes the transportation or the employee receives reimbursement from the employer for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment agreement; and

(ii) the travel is necessitated by and on behalf of the employer as an integral part or condition of the employment; or

(b) the travel is required by the employer as part of the employee's job duties.

(4) An employee is not eligible for benefits otherwise

payable under this chapter if the employee's use of alcohol or drugs not prescribed by a physician is the sole and exclusive cause of the injury or death. However, if the employer had knowledge of and failed to attempt to stop the employee's use of alcohol or drugs, this subsection does not apply.

(5) If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to the same part of the body, the workers' compensation insurer is not liable for any compensation or medical benefits caused by the subsequent nonwork-related injury.

(6) If an injury, as defined in 39-71-119, occurs that involves an aggravation of a preexisting condition, the permanent total, permanent partial, and medical benefits payable under this chapter after a worker reaches maximum healing must be apportioned between the insurer or insurers who are liable for coverage for the preexisting condition and the insurers who are liable for coverage for the aggravation injury. The insurer for the injury is responsible only for the portion attributable to the aggravation injury.

(7) If a workers' compensation insurer had a compensable claim for the preexisting condition, the insurer remains liable for the portion attributable to that insurer for permanent total, permanent partial, and medical benefits."

Section 25. Section 39-72-706, MCA, is amended to read:

"39-72-706. Aggravation -- apportionment. (1) If an occupational disease is aggravated by any other disease or infirmity not itself compensable or if disability or death from any other cause not itself compensable is aggravated, prolonged, accelerated, or in any way contributed to by an occupational disease, the compensation payable under this chapter must be ~~reduced and limited to such proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death as such occupational disease as a causative factor bears to all the causes of such disability or death~~ apportioned between the preexisting condition and the liability attributable to the occupational disease after the worker reaches maximum healing.

(2) If a workers' compensation insurer had a compensable claim for the preexisting condition, the insurer remains liable for the portion attributable to that insurer for benefits paid.

~~(2)(3)~~ (3) If compensation is reduced a proportionate amount apportioned as provided in subsection (1) and the worker receives disability social security benefits, the offset entitlement granted to the insurer must be reduced apportioned in the same proportionate amount as the compensation as long as the worker continues to receive disability social security benefits."

Section 26. Section 39-72-707, MCA, is amended to read:

"39-72-707. Silicosis with complications. In cases of disability or death from silicosis complicated with tuberculosis of the lungs, compensation ~~shall~~ must be payable as for disability or death from an uncomplicated silicosis. In case of disability or death from silicosis when complicated with any disease not compensable under this chapter and other than pulmonary tuberculosis, compensation ~~shall be reduced~~ must be apportioned as provided in 39-72-706."

Section 27. Section 39-71-606, MCA, is amended to read:

"39-71-606. Insurer to accept or deny claim within thirty days of receipt -- notice of denial -- notice to employer. (1) Every insurer under any plan for the payment of workers' compensation benefits shall, within 30 days of receipt of a claim for compensation, either accept or deny the claim, and if denied shall inform the claimant and the department in writing of such denial.

(2) The department shall make available to insurers for distribution to claimants sufficient copies of a document describing current benefits and entitlement available under Title 39, chapter 71. Upon receipt of a claim, each insurer shall promptly notify the claimant in writing of potential benefits and entitlement available by providing the claimant a copy of the document prepared by the department.

(3) Upon the request of an employer it insures, an insurer shall notify the employer of all compensation benefits that are ongoing and are being charged against that employer's account." Renumber: subsequent sections

13. Page 48, line 22.

Strike: "[SECTIONS 8 AND 9] ARE"

Insert: "[Section 8] is"

14. Page 48, line 25 through page 49, line 1.

Strike: "[SECTIONS 8 AND 9]"

Insert: "[section 8]"

15. Page 49, line 2.

Page 49, line 5.

Strike: "11"

Insert: "10"

16. Page 49, line 6.

Page 49, line 8.

Strike: "19 AND 20"

Insert: "18 and 19"

17. Page 49, line 9.

Following: line 8

March 19, 1993
Page 6 of 6

Insert: "(4) [Sections 22 and 23] are intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [sections 22 and 23]."

7/18/19

Gary Fedand has
my proxy so, all
votes that I miss in
House held today

Ann S. S.

3-18-93

Please vote me with Rep Nelson
on all bills and amendments
this day Rep. Juan Simon

Amendments to House Bill No. 453
First Reading Copy

Requested by Rep. Benedict
For the House Select Committee on Workers' Compensation

Prepared by Sheri S. Heffelfinger
March 12, 1993

1. Page 1, line 22.

Following: "(2)"

Insert: "(a)"

2. Page 2.

Following: line 3

Insert: "(b) As used in subsection (2) (a), "person" includes
but is not limited to an employee, employer, or medical
service provider."

Amendments to House Bill No. 622
Second Reading Copy

Requested by Rep. Cocchiarella
For the Committee on Labor and Employment Relations

Prepared by Susan B. Fox
March 18, 1993

1. Title, page 2, line 4.

Following: "PLAN;"

Insert: "REQUIRING THE INSURER TO NOTIFY CLAIMANTS OF BENEFITS
AND ENTITLEMENTS USING INFORMATION PROVIDED BY THE
DEPARTMENT;"

2. Title, page 2, line 7.

Following: "39-71-605,"

Insert: "39-71-606,"

3. Page 20, line 25 through page 21, line 5.

Strike: subsection (7) in its entirety

4. Page 48, line 17.

Following: line 16

Insert: "Section 23. Section 39-71-606, MCA, is amended to read:

"39-71-606. Insurer to accept or deny claim within thirty
days of receipt -- notice of denial -- notice to employer. (1)
Every insurer under any plan for the payment of workers'
compensation benefits shall, within 30 days of receipt of a claim
for compensation, either accept or deny the claim, and if denied
shall inform the claimant and the department in writing of such
denial.

(2) The department shall make available to insurers for
distribution to claimants sufficient copies of a document
describing current benefits and entitlements available under
Title 39, chapter 71. Upon receipt of a claim, each insurer
shall promptly notify the claimant in writing of potential
benefits and entitlements available by providing the claimant a
copy of the document prepared by the department.

(3) Upon the request of an employer it insures, an insurer
shall notify the employer of all compensation benefits that are
ongoing and are being charged against that employer's account.""

Renumber: subsequent sections

EXHIBIT #3
DATE 3/10/93
HB WC packay

Amendments to House Bill No. 361
Second Reading Copy

Requested by Rep. Cocchiarella
For the Committee on Labor and Employment Relations

Prepared by Susan B. Fox
March 18, 1993

1. Title, line 10.

Following: "CLAIMS;"

Insert: "REQUIRING THE INSURER TO NOTIFY CLAIMANTS OF BENEFITS
AND ENTITLEMENTS USING INFORMATION PROVIDED BY THE
DEPARTMENT;"

2. Page 37, line 14.

Following: "receipt"

Insert: "-- notice of benefits and entitlements to claimants"

3. Page 37, line 21.

Following: line 20

Insert: "(2) The department shall make available to insurers for
distribution to claimants sufficient copies of a document
describing current benefits and entitlements available under
Title 39, chapter 71. Upon receipt of a claim, each insurer
shall promptly notify the claimant in writing of potential
benefits and entitlements available by providing the
claimant a copy of the document prepared by the department."

Renumber: subsequent subsections

Amendments to Senate Bill No. 347
Third Reading Copy

#4
EXHIBIT

DATE 3/16/93

HB WC Package

Requested by Sen. Harp
For the Committee on Labor and Employment Relations

Prepared by Susan B. Fox
March 18, 1993

1. Page 22, line 3.

Following: "care."

Insert: "When a health care provider, a group of medical service providers, or an entity with a managed care organization is establishing a managed care organization and independent physical therapy practices exist in the community, the managed care organization is encouraged to utilize independent physical therapists as part of the managed care organization if the independent physical therapists agree to abide by all the applicable requirements for a managed care organization set forth in this section, in rules established by the department, and in the provisions of a managed care plan for which certification is being sought."

Amendments to House Bill No. 504
Second Reading Copy

Requested by Representative Benedict
For the Committee on Labor

Prepared by Greg Petesch
March 18, 1993

#5
EXHIBIT

DATE

HB

1. Page 11, line 11.

Following: "(III)"

Insert: "(A)"

2. Page 11, line 17.

Following: line 16

Insert: "(B) If the debt service account has sufficient funds to
pay outstanding bonds or if no bonds are outstanding, the
payroll tax may not be imposed after the end of fiscal year
2003."

EXHIBIT #6
DATE 3/18/93
HB WC policy

Amendments to House Bill No. 13
Second Reading Copy

Requested by Rep. Cocchiarella
For the Committee on Labor and Employment Relations

Prepared by Susan B. Fox
March 18, 1993

1. Title, line 14.

Following: "APPROPRIATION;"

Insert: "REQUIRING THE INSURER TO NOTIFY CLAIMANTS OF BENEFITS
AND ENTITLEMENTS USING INFORMATION PROVIDED BY THE
DEPARTMENT;"

2. Title, line 15.

Following: "18-8-103,"

Insert: "39-71-606,"

3. Page 16, line 15.

Following: line 14

Insert: "Section 12. Section 39-71-606, MCA, is amended to read:

"39-71-606. Insurer to accept or deny claim within thirty
days of receipt -- notice of denial -- notice to employer. (1)
Every insurer under any plan for the payment of workers'
compensation benefits shall, within 30 days of receipt of a claim
for compensation, either accept or deny the claim, and if denied
shall inform the claimant and the department in writing of such
denial.

(2) The department shall make available to insurers for
distribution to claimants sufficient copies of a document
describing current benefits and entitlements available under
Title 39, chapter 71. Upon receipt of a claim, each insurer
shall promptly notify the claimant in writing of potential
benefits and entitlements available by providing the claimant a
copy of the document prepared by the department.

(3) Upon the request of an employer it insures, an insurer
shall notify the employer of all compensation benefits that are
ongoing and are being charged against that employer's account.""

Renumber: subsequent sections

4. Page 17, line 12.

Strike: "14"

Insert: "15"

Amendments to House Bill No. 622
Second Reading Copy

Requested by Rep. Hibbard
For the Committee on Labor and Employment Relations

Prepared by Susan B. Fox
March 16, 1993

1. Title, lines 15 and 16.
Strike: line 15 in its entirety through "DISPUTES;" on line 16
2. Page 24, line 13 through page 26, line 8.
Strike: section 8 in its entirety
Renumber: subsequent sections
3. Page 48, line 22.
Strike: "[SECTIONS 8 AND 9] ARE"
Insert: "[Section 8] is"
4. Page 48, line 25 through page 49, line 1.
Strike: "[SECTIONS 8 AND 9]"
Insert: "[section 8]"
5. Page 49, line 2.
Page 49, line 5.
Strike: "11"
Insert: "10"
6. Page 49, line 6.
Page 49, line 8.
Strike: "19 AND 20"
Insert: "18 and 19"

Amendments to House Bill No. 622
Second Reading Copy

Requested by Rep. Hibbard
For the Committee on Labor and Employment Relations

Prepared by Susan B. Fox
March 16, 1993

1. Title, page 2, line 7.
Strike: "39-71-741,"

2.- Page 15, line 3 through page 18, line 17.
Strike: section 5 in its entirety
Renumber: subsequent sections

3. Page 48, line 22.
Strike: "8 AND 9"
Insert: "7 and 8"

4. Page 48, line 25 through page 49, line 1
Strike: "8 AND 9"
Insert: "7 and 8"

5. Page 49, lines 2 and 5.
Strike: "11"
Insert: "10"

6. Page 49, lines 6 and 8.
Strike: "19 AND 20"
Insert: "18 and 19"

Amendments to House Bill No. 622
Second Reading Copy

Requested by Rep. Hibbard
For the Committee on Labor and Employment Relations

Prepared by Susan B. Fox
March 16, 1993

1. Title, lines 19 and 20.

Following: "HIRING;" on line 19

Strike: the remainder of line 19 through "SELF-INSURE;" on line
20

2. Title, page 2, line 8.

Strike: "39-71-2101,"

3. Page 27, line 24 through page 28, line 19.

Strike: section 10 in its entirety

Renumber: subsequent sections

4. Page 49, line 2.

Page 49, line 5

Strike: "11"

Insert: "10"

5. Page 49, line 6.

Page 49, line 8.

Strike: "19 AND 20"

Insert: "18 and 19"

Amendments to House Bill No. 622
Second Reading Copy

Requested by Rep. Driscoll
For the Committee on Labor and Employment Relations

Prepared by Susan B. Fox
March 18, 1993

1. Title, page 1, line 12.

Following: "INFIRMITY;"

Insert: "ALLOWING APPORTIONMENT OF COMPENSATION FOR PREEXISTING
CONDITIONS BETWEEN INSURERS;"

2. Title, page 2, line 7.

Following: "39-71-316,"

Insert: "39-71-407,"

3. Title, page 2, line 8.

Strike: "AND"

Following: "39-72-303,"

Insert: "39-72-706, and 39-72-707,"

4. Page 48, line 17.

Following: line 16

Insert: "Section 23. Section 39-71-407, MCA, is amended to read:

"39-71-407. Liability of insurers -- limitations --
apportionment. (1) Every insurer is liable for the payment of
compensation, in the manner and to the extent ~~hereinafter~~
provided in this section, to an employee of an employer it
insures who receives an injury arising out of and in the course
of ~~his~~ employment or, in the case of ~~his~~ death from ~~such~~ the
injury, to ~~his~~ the employee's beneficiaries, if any.

(2) (a) An insurer is liable for an injury as defined in
39-71-119 if the claimant establishes it is more probable than
not that:

(i) a claimed injury has occurred; or

(ii) a claimed injury aggravated a preexisting condition.

(b) Proof that it was medically possible that a claimed
injury occurred or that ~~such~~ the claimed injury aggravated a
preexisting condition is not sufficient to establish liability.

(3) An employee who suffers an injury or dies while
traveling is not covered by this chapter unless:

(a) (i) the employer furnishes the transportation or the
employee receives reimbursement from the employer for costs of
travel, gas, oil, or lodging as a part of the employee's benefits
or employment agreement; and

(ii) the travel is necessitated by and on behalf of the
employer as an integral part or condition of the employment; or

(b) the travel is required by the employer as part of the
employee's job duties.

(4) An employee is not eligible for benefits otherwise
payable under this chapter if the employee's use of alcohol or
drugs not prescribed by a physician is the sole and exclusive
cause of the injury or death. However, if the employer had

knowledge of and failed to attempt to stop the employee's use of alcohol or drugs, this subsection does not apply.

(5) If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to the same part of the body, the workers' compensation insurer is not liable for any compensation or medical benefits caused by the subsequent nonwork-related injury.

(6) If an injury, as defined in 39-71-119, occurs that involves an aggravation of a preexisting condition, the permanent total, permanent partial, and medical benefits payable under this chapter after a worker reaches maximum healing must be apportioned between the insurer or insurers who are liable for coverage for the preexisting condition and the insurers who are liable for coverage for the aggravation injury. The insurer for the injury is responsible only for the portion attributable to the aggravation injury.

(7) If a workers' compensation insurer had a compensable claim for the preexisting condition, the insurer remains liable for the portion attributable to that insurer for permanent total, permanent partial, and medical benefits."

Section 24. Section 39-72-706, MCA, is amended to read:

"39-72-706. Aggravation -- apportionment. (1) If an occupational disease is aggravated by any other disease or infirmity not itself compensable or if disability or death from any other cause not itself compensable is aggravated, prolonged, accelerated, or in any way contributed to by an occupational disease, the compensation payable under this chapter must be reduced and limited to such proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death as such occupational disease as a causative factor bears to all the causes of such disability or death apportioned between the liability attributable to the preexisting condition and the liability attributable to the occupational disease after the injured worker reaches maximum healing.

(2) If a workers' compensation insurer had a compensable claim for the preexisting condition, the insurer remains liable for the portion attributable to that insurer for benefits paid.

(2)(3) If compensation is reduced a proportionate amount apportioned as provided in subsection (1) and the worker receives disability social security benefits, the offset entitlement granted to the insurer must be reduced apportioned in the same proportionate amount as the compensation as long as the worker continues to receive disability social security benefits."

Section 25. Section 39-72-707, MCA, is amended to read:

"39-72-707. Silicosis with complications. In cases of disability or death from silicosis complicated with tuberculosis of the lungs, compensation shall must be payable as for disability or death from an uncomplicated silicosis. In case of disability or death from silicosis when complicated with any disease not compensable under this chapter and other than pulmonary tuberculosis, compensation shall be reduced must be apportioned as provided in 39-72-706."

Renumber: subsequent sections

Amendments to House Bill No. 628
Second Reading Copy

Requested by Susan B. Fox
For the Committee on Labor and Employment Relations

Prepared by Susan B. Fox
March 18, 1993

1. Title, line 6.
Strike: "MANAGED"
Following: "CARE"
Insert: "MANAGEMENT AND BUDGETING"
2. Title, line 8.
Strike: "MEDICAL"
3. Title, lines 9 through 13.
Strike: line 9 through "CATEGORIES;" on line 12
4. Title, line 13.
Strike: "SECTIONS"
Insert: "SECTION"
5. Title, line 14.
Strike: "33-22-111,"
Strike: "and 39-71-2316,"
6. Page 1, lines 18 through 21.
Following: "1."
Strike: the remainder of line 18 through "Insurers" on line 21
Insert: "Care management and budgeting. (1) The state fund"
Following: "under" on line 21
Strike: through "and" on line 21
Insert: "plan No."
Strike: "are"
Insert: "is"
Renumber: subsequent subsection
7. Page 2, line 5.
Following: "is"
Insert: "more"
Following: "likely"
Insert: "than not"
8. Page 2, line 7.
Strike: "managed"
Following: "care"
Insert: "management and budgeting"
9. Page 2, line 10.
Following: "2."
Strike: "Managed care treatment"
Insert: "Care management"

10. Page 2, line 11.

Strike: "managed"

11. Page 2, line 12.

Following: "care"

Insert: "management and budgeting"

12. Page 2, line 12.

Page 2, line 24.

Page 3, line 3.

Page 3, line 10.

Page 4, line 13.

Page 4, line 19.

Page 5, line 9.

Strike: "medical"

13. Page 2, line 14.

Page 4, line 17.

Strike: "Medical care"

Insert: "Care"

14. Page 2, line 15.

Strike: "managed care is"

Insert: "they are"

15. Page 2, line 16.

Strike: "to be used"

16. Page 3, line 15.

Strike: "Treatment"

Insert: "Care"

17. Page 5, line 11 through page 7, line 11.

Strike: section 5 in its entirety

Re-number: subsequent sections

18. Page 7, line 17.

Strike: "managed"

19. Page 7, line 18.

Following: "benefits"

Insert: "under care management and budgeting"

20. Page 7, line 21.

Strike: "Managed care"

Insert: "Care management and budgeting"

21. Page 7, line 23.

Strike: "managed"

Following: "care"

Insert: "management and budgeting"

22. Page 7, line 25 through page 10, line 9.

Strike: section 7 in its entirety

Re-number: subsequent sections

Amendments to House Bill No. 13
Second Reading Copy

Requested by Rep. Simon
For the Committee on Labor and Employment Relations

Prepared by Susan B. Fox
March 16, 1993

1. Title, line 14.

Following: "APPROPRIATION;"

Insert: "PROVIDING AN APPROPRIATION;"

2. Page 16, line 15.

Following: line 14

Insert: "NEW SECTION. Section 12. Appropriation. There is an appropriation of \$35,000 for each fiscal year of the biennium beginning July 1, 1993, to the legislative auditor's office for contracted services for the duties required to be performed pursuant to [section 8] to be paid by the state fund from the funds appropriated in [section 10]."

Renumber: subsequent sections

3. Page 17, line 12.

Strike: "14"

Insert: "15"

Amendments to House Bill No. 13
Second Reading Copy

Requested by Representative Benedict
For the Committee on Labor

Prepared by Bart Campbell
March 12, 1993

1. Title, line 9.

Following: "~~COMMISSIONER,~~"

Insert: "PERMITTING THE GOVERNOR TO CONTRACT FOR PRIVATE SECTOR INVOLVEMENT TO LIQUIDATE THE UNFUNDED LIABILITY AND TO MANAGE CLAIMS OF THE OLD FUND AND TO MANAGE CLAIMS OF THE NEW FUND OF THE MONTANA STATE COMPENSATION MUTUAL INSURANCE FUND; CLARIFYING THE COMPENSABILITY OF MENTAL STRESS CLAIMS; PROVIDING THAT THE GOVERNOR SHALL APPOINT THE BOARD OF DIRECTORS OF THE STATE FUND; PROVIDING THAT THE MEMBERS OF THE BOARD OF DIRECTORS AND THE EXECUTIVE DIRECTOR OF THE STATE FUND SERVE AT THE PLEASURE OF THE GOVERNOR;"

2. Title, line 12.

Following: "ACT"

Insert: "FOR PURPOSES OTHER THAN RATEMAKING"

3. Title, line 14.

Strike: "2-4-102"

Insert: "2-15-1019"

4. Title, line 15.

Following: "18-8-103,"

Insert: "33-1-102, 39-71-105, 39-71-721,"

Following: "39-71-2314,"

Insert: " 39-71-2315,"

Following: "39-71-2316,"

Insert: "39-71-2317,"

5. Title, line 16.

Following: "39-71-2323,"

Strike: "AND"

Insert: "39-71-2351,"

Following: "39-71-2352,"

Insert: "39-71-2354, AND 39-71-2503,"

6. Page 1, line 18.

Insert: "WHEREAS, the Legislature has determined that it is necessary to the public welfare to make workers' compensation insurance available to all employers through the State Fund as the insurer of last resort, and in making this insurance available, the State Fund has incurred an unfunded liability; and
WHEREAS, the unfunded liability has grown each year despite the fact that there have been numerous attempts to solve the problem by legislation and other methods, but those attempts have not resolved the problem; and

WHEREAS, the Legislature separated the payment structure and sources for claims for injuries resulting from accidents that occurred before July 1, 1990 (the "old fund"), from injuries occurring on or after July 1, 1990 (the "new fund"), and provided revenue options and spending limits; and

WHEREAS, this separation has not eliminated the unfunded liability, which is estimated to be in excess of \$400 million; and

WHEREAS, the Joint Select Committee on Workers' Compensation of the 52nd Legislature solicited from private insurance and reinsurance markets proposed solutions to liquidate the old fund unfunded liability; and

WHEREAS, insurance and reinsurance markets responded to the Committee's request for assistance to liquidate the old fund unfunded liability; and

WHEREAS, the Committee reviewed and concurred in a preliminary proposal of one of the insurance and reinsurance markets that the Committee believed provides significant benefits to Montana, including but not limited to:

- (1) risk transfer;
- (2) profit sharing between the reinsurer and the state;
- (3) investment of premiums in Montana financial institutions and investments;
- (4) funding and finance options;
- (5) security to Montana in the event of contract breach or insolvency of the reinsurer;
- (6) industry best claims management and administration; and
- (7) development of clean industry private sector jobs; and

WHEREAS, there may be merit in the proposal, and it may be in the best interests of Montana to proceed with the negotiations with the reinsurer.

THEREFORE, the Legislature finds it appropriate to empower the Governor to fully investigate and negotiate a reinsurance solution.

7. Page 1, line 20 through page 5, line 6
Strike: section 1 in its entirety
Re-number: subsequent sections

8. Page 6, following line 12.

Insert: "NEW SECTION. Section 1. Liquidation of old fund

liability. (1) (a) The governor is authorized to negotiate the liquidation of the unfunded liability of the old fund of the state fund, as defined in 39-71-2312, if an agreement can be reached that is in the best interests of Montana. The scope of any negotiated agreement may include but may not exceed all of the rights, privileges, liabilities, and duties of the state fund with respect to all claims arising prior to July 1, 1990.

(b) The governor may not enter into an agreement that pays more than \$400 million to the other party to the agreement.

(c) Any contract finalized by the governor must contain a provision that the contract is void unless necessary financing to fund the unfunded liability has been provided by the 1993 legislature.

(d) To be effective, a contract must be finalized by the governor within 120 days of [the effective date of this section].

(e) Any contract finalized by the governor may require reinsurance premium payments by the state to be used to liquidate the old fund liability.

(2) Any entity entering into an agreement with Montana under [section 2] or this section shall submit an annual report to the legislative audit committee. The first report is due 12 months after the agreement is finalized and thereafter may be submitted on a fiscal year basis.

(3) Any negotiations or agreements entered into pursuant to [section 2] and this section are not subject to the competitive bidding requirements of Title 18, chapter 4.

(4) A negotiation or an agreement entered into pursuant to [section 2] is not subject to the privatization plan requirements of Title 2, chapter 8, part 3.

NEW SECTION. Section 2. **Claims settlement of new fund claims -- new fund management.** As part of the negotiated liquidation of the unfunded liability of the old fund of the state fund, as defined in 39-71-2312, the governor may negotiate for claims settlement of the claims of persons whose benefits have not been determined under a claim based on an injury occurring on or after July 1, 1990, and for services with respect to the new fund of the state fund, including but not limited to claims management services, third-party administration, and medical cost containment agreements if the contracted services are in the best interests of the state. An agreement under this section is valid only if it is part of an agreement that meets the requirements of [section 1].

NEW SECTION. Section 3. **Audit of contracted services and old fund liquidation.** Any proposal involving the private sector in liquidation of the unfunded liability of the old fund of the state fund, as defined in 39-71-2312, or in claims settlement and management of the new fund of the state fund must provide for audit and reporting mechanisms in compliance with 39-71-2361.

NEW SECTION. Section 4. **Mutually agreeable lump-sum settlements.** Beginning July 1, 1993, a workers' compensation claimant and the state fund or a reinsurer may, regardless of the lump-sum law in effect on the date of the injury, mutually agree to a lump-sum settlement of a claim. If a mutual agreement is not reached, the lump-sum law in effect on the date of the injury applies.

Section 5. Section 39-71-721, MCA, is amended to read:

"39-71-721. Compensation for injury causing death -- limitation. Except as provided in [section 4]:

(1) (a) ~~If~~ if an injured employee dies and the injury was the proximate cause of ~~such~~ death, then the beneficiary of the deceased is entitled to the same compensation as though the death occurred immediately following the injury. A beneficiary's eligibility for benefits commences after the date of death, and the benefit level is established as set forth in subsection (2).

(b) ~~The~~ the insurer is entitled to recover any overpayments or compensation paid in a lump sum to a worker prior to death but not yet recouped. The insurer shall recover ~~such~~ the payments from the beneficiary's biweekly payments as provided in 39-71-

741(5).

(2) ~~To~~ to beneficiaries as defined in 39-71-116(3)(a) through (3)(d), weekly compensation benefits for an injury causing death are 66 2/3% of the decedent's wages. The maximum weekly compensation benefit may not exceed the state's average weekly wage at the time of injury. The minimum weekly compensation benefit is 50% of the state's average weekly wage, but in no event may it exceed the decedent's actual wages at the time of ~~his~~ death.

(3) ~~To~~ to beneficiaries as defined in 39-71-116(3)(e) and (3)(f), weekly benefits must be paid to the extent of the dependency at the time of the injury, subject to a maximum of 66 2/3% of the decedent's wages. The maximum weekly compensation may not exceed the state's average weekly wage at the time of injury.

(4) ~~If~~ if the decedent leaves no beneficiary as defined in 39-71-116, a lump-sum payment of \$3,000 must be paid to the decedent's surviving parent or parents-;

(5) ~~If~~ if any beneficiary of a deceased employee dies, the right of ~~such~~ the beneficiary to compensation under this chapter ceases. Death benefits must be paid to a surviving spouse for 500 weeks subsequent to the date of the deceased employee's death or until the spouse's remarriage, whichever occurs first. After benefit payments cease to a surviving spouse, death benefits must be paid to beneficiaries, if any, as defined in 39-71-116(3)(b) through (3)(d).

(6) ~~In~~ in all cases, benefits must be paid to beneficiaries, as defined in 39-71-116-; and

(7) ~~Benefits~~ benefits paid under this section may not be adjusted for cost of living as provided in 39-71-702.

~~(8) Notwithstanding subsections (2) and (3), beginning July 1, 1987, through June 30, 1991, the maximum weekly compensation benefits for injury causing death may not exceed the state's average weekly wage of \$299 established July 1, 1986. Beginning July 1, 1987, through June 30, 1991, the minimum weekly compensation for injury causing death shall be \$149.50, which is 50% of the state's average weekly wage established July 1, 1986, but in no event may it exceed the decedent's actual wages at the time of death."~~

Section 6. Section 39-71-2315, MCA, is amended to read:

"39-71-2315. Management of state fund -- powers and duties of the board. Except with respect to any agreement established pursuant to [sections 1 and 2] and except as provided in 2-15-1019 or 39-71-2317:

(1) ~~The~~ the management and control of the state fund is vested solely in the board-; and

(2) ~~The~~ the board is vested with full power, authority, and jurisdiction over the state fund. The board may perform all acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the state fund, either in the administration of the state fund or in connection with the insurance business to be carried on under the provisions of this part, as fully and completely as the governing body of a private mutual insurance carrier, in order to fulfill the objectives and intent of this part. Bonds may not be issued by the board, the state fund, or the executive director."

Section 7. Section 39-71-2351, MCA, is amended to read:

"39-71-2351. Purpose of separation of state fund liability as of July 1, 1990, and of separate funding of claims before and on or after that date. (1) An unfunded liability exists in the state fund. It has existed since at least the mid-1980s and has grown each year. There have been numerous attempts to solve the problem by legislation and other methods. These attempts have alleviated the problem somewhat, but the problem has not been solved.

(2) The legislature has determined that it is necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability. The legislature has determined that the most cost-effective and efficient way to provide a source of funding for and to ensure payment of the unfunded liability and the best way to administer the unfunded liability is to:

(a) separate the liability of the state fund on the basis of whether a claim is for an injury resulting from an accident that occurred before July 1, 1990, or an accident that occurs on or after that date;

(b) extend the payroll tax imposed by 39-71-2503 and dedicate the tax money first to the repayment of bonds issued under 39-71-2354 and 39-71-2355 and then to the repayment of loans given under 39-71-2354 and 39-71-2355, to payment of premiums for a negotiated liquidation of the unfunded liability of the old fund of the state fund as provided in [section 1], and the direct payment of the costs of administering and paying claims for injuries from accidents that occurred before July 1, 1990.

~~(3) The legislature further determines that in order to prevent the creation of a new unfunded liability with respect to claims for injuries for accidents that occur on or after July 1, 1990, certain duties of the state fund should be clarified and legislative oversight of the state fund should be increased."~~

Section 8. Section 39-71-2354, MCA, is amended to read:

"39-71-2354. Use of payroll tax proceeds -- loans -- bonds.

(1) Taxes collected under 39-71-2503 may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990, including the cost of repaying bonds issued and loan proceeds given under 39-71-2355 and this section and any premium payments that may be required by an agreement made pursuant to [section 1]. If the state fund determines that, for the next 1 or more years following the date of the determination, the tax revenue, together with funds in the account required by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, will be insufficient to administer and pay those claims, the state fund may, through its board of directors, request the budget director to certify to the board of investments that additional funding is necessary. If the budget director agrees with the state fund's board of directors that additional funding is necessary, the budget director shall certify to the board of investments the amount that the budget director determines is necessary to

administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Except as provided in subsection (2), the board of investments shall, at times and in amounts it considers necessary or advisable, finance the amount certified by the budget director by giving the state fund the proceeds of a loan or a bond issue to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. ~~Loans must be from reserves accumulated from premiums paid to the state fund based upon wages payable on or after July 1, 1990.~~ In the event that loans are necessary for an agreement established in accordance with [sections 1 and 2], the governor is authorized to pursue internal and external financing that is in the best interests of the state. The board of investments shall choose the method of financing that is most cost-effective for the state fund. A loan must bear interest at the rate the money would earn in the pooled investment fund required by 17-6-203. The board of investments may also, upon request of the board of directors of the state fund, give the state fund the proceeds of a bond issue, to be used to pay off loans made under 39-71-2355 and this section. Bonds for the state fund must be workers' compensation bonds issued under 39-71-2355.

(2) The Except for any agreement established pursuant to [sections 1 and 2], the total amount of loan proceeds given to the state fund plus workers' compensation bonds issued under 39-71-2355, except bonds issued to repay loans as provided for in subsection (1), may not exceed \$220 million. All loan and bond proceeds given to the state fund must be repaid to the board of investments before July 1, 2020."

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

"39-71-2503. **Workers' compensation payroll tax.** (1) (a) There is imposed on each employer a workers' compensation payroll tax in an amount equal to 0.28% of the employer's payroll in the preceding calendar quarter for all employments covered under 39-71-401, except that if an employer is subject to 15-30-204(2), the tax is an amount equal to 0.28% of the employer's payroll in the preceding week. This payroll tax must be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990, or for payment of those claims under [section 1]. If one or more loans or bonds are outstanding, the tax must be continued at the 0.28% rate and the legislature may not modify the tax rate, the use of the tax proceeds, or this section in a manner that reduces the security for repayment of the outstanding loans or bonds, except that the legislature may forgive payment of the tax or reduce the tax rate for any 12-month period if the workers' compensation bond repayment account contains on the first day of that period an amount, regardless of the source, that is in excess of the reserve maintained in the account and that is equal to the amount needed to pay and dedicated to the payment of the principal, premium, and interest that must be paid during that period on the outstanding loans or bonds. The legislature may not increase the tax rate except upon a two-thirds vote of each house.

(b) Each employer shall maintain the records the department requires concerning the employer's payroll. The records are

subject to inspection by the department and its employees and agents during regular business hours.

(2) All collections of the tax are appropriated to and must be deposited as received in the tax account. The tax is in addition to any other tax or fee assessed against employers subject to the tax.

(3) (a) On or before the last day of April, July, October, and January, each employer subject to the tax shall file a return in the form and containing the information required by the department and, except as provided in subsection (3)(b), pay the amount of tax required by this section to be paid on the employer's payroll for the preceding calendar quarter.

(b) An employer subject to 15-30-204(2) shall remit to the department a weekly payment with its weekly withholding tax payment in the amount required by subsection (1)(a).

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

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

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

(6) The department of labor and industry and the state fund shall, on July 1, 1991, or as soon after that date as possible, give the department a list of all employers having coverage under any plan administered or regulated by the department of labor and industry and the state fund. After the lists have been given to the department, the department of labor and industry and the state fund shall update the lists weekly. The department of labor and industry and the state fund shall provide the department with access to their computer data bases and paper files and records for the purpose of the department's administration of the tax imposed by this section.

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

Section 10. 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) A person may not 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) The provisions of this code do not 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 the 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 those 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 21 and 23, sections 1 and 2, 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 in which 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 in which the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program."

Section 11. Section 39-71-105, "MCA, is amended to read:

"39-71-105. **Declaration of public policy.** For the purposes of interpreting and applying Title 39, chapters 71 and 72, the following is the public policy of this state:

(1) It is an objective of the Montana workers' compensation system to provide, without regard to fault, wage supplement and medical benefits to a worker suffering from a work-related injury or disease. Wage-loss benefits are not intended to make an injured worker whole; they are intended to assist a worker at a reasonable cost to the employer. Within that limitation, the wage-loss benefit should bear a reasonable relationship to actual wages lost as a result of a work-related injury or disease.

(2) A worker's removal from the work force due to a work-related injury or disease has a negative impact on the worker, the worker's family, the employer, and the general public. Therefore, it is an objective of the workers' compensation system to return a worker to work as soon as possible after the worker has suffered a work-related injury or disease.

(3) Montana's workers' compensation and occupational

disease insurance systems are intended to be primarily self-administering. Claimants should be able to speedily obtain benefits, and employers should be able to provide coverage at reasonably constant rates. To meet these objectives, the system must be designed to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities.

(4) Title 39, chapters 71 and 72, must be construed according to their terms and not liberally in favor of any party.

(5) It is the intent of the legislature that stress claims, often referred to as "mental-mental claims" and "mental-physical claims", are not compensable under Montana's workers' compensation and occupational disease laws. The legislature recognizes that these claims are difficult to objectively verify and that the claims have a potential to place an economic burden on the workers' compensation and occupational disease system. The legislature also recognizes that there are other states that do not provide compensation for various categories of stress claims and that stress claims have presented economic problems for certain other jurisdictions. In addition, not all injuries are compensable under the present system, as is the case with repetitive injury claims, and it is within the legislature's authority to define the limits of the workers' compensation and occupational disease system."

{Internal References to 39-71-105: None.}

Section 12. Section 2-15-1019, MCA, is amended to read:

"2-15-1019. Board of directors of the state compensation mutual insurance fund. (1) There is a board of directors of the state compensation mutual insurance fund.

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

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

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

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

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

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

(6) A member is appointed for a term of 4 years serves at the pleasure of the governor. The governor may remove a member at any time and appoint a new member to the office. The terms of board members must be staggered. A member of the board may serve no more than two 4-year terms. A member shall hold office until a successor is appointed and qualified.

(7) The members must be appointed and compensated in the same manner as members of a quasi-judicial board as provided in

2-15-124, except that the requirement that at least one member be an attorney does not apply and except that the members serve at the pleasure of the governor."

{Internal References to 2-15-1019:

39-71-2312}

Section 13. Section 39-71-2317, MCA, is amended to read:

"39-71-2317. Appointment of executive director -- management staff. (1) The board governor shall, at the beginning of each gubernatorial term, appoint an executive director of the state fund who has general responsibility for the operations of the state fund.

(2) The executive director serves at the pleasure of the governor. The governor may remove the executive director at any time and appoint a new executive director to the office.

(3) The executive director must have executive level experience, with knowledge of the insurance industry. The executive director must receive compensation as set by the board and serve at the pleasure of the board. The executive director may hire the management staff of the state fund, each of whom serves at the pleasure of the executive director."

{Internal References to 39-71-2317:

*39-71-431}

Renumber: subsequent sections

9. Page 7, line 7.

Following: "~~(1)~~"

Insert: "(1)"

10. Page 7, line 19.

Following: "-"

Insert: "(2) The state fund is subject to laws that generally apply to state agencies, including but not limited to Title 2, chapters 2, 3, 4 (only as provided in 39-71-2316), and 6, and Title 5, chapter 13. The state fund is not exempt from a law that applies to state agencies unless that law specifically exempts the state fund by name and clearly states that it is exempt from that law."

11. Page 8, line 4.

Following: "~~employer~~"

Insert: "to cover its administrative costs for coverage of a small employer"

12. Page 8, line 15.

Strike: ".i"

Insert: ". Premium rates for classifications may only be adopted and changed using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2, chapter 4, parts 2 through 4. After such rules have been adopted, the state fund need not follow the rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The contested case rights and provisions of Title 2, chapter 4, do not apply to an employer's

classification or premium rate."

13. Page 10, lines 1 and 25.

Strike: "(8)"

14. Page 17, following line 2.

Insert: "NEW SECTION. Section 26. Coordination with Occupational Disease Act of Montana. For purposes of [sections 1 through 4] and the administration of Title 39, chapter 72, a reference in [sections 1 through 4] to an injury resulting from an accident or to a claim for an injury resulting from an accident includes a disablement, as defined in 39-72-102(4)."

NEW SECTION. Section 27. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act]."

Renumber: subsequent sections

15. Page 17, line 3.

Following: "instruction."

Insert: "(1) [Sections 1 through 3] are intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [sections 1 through 3]."

(2) [Section 4] is intended to be codified as an integral part of Title 39, chapter 71, part 23, and the provisions of Title 39, chapter 71, part 23, apply to [section 4]. (3)"

16. Page 17, lines 4 and 7.

Strike: "7"

Insert: "19"

Strike: "9"

Insert: "21"

17. Page 17, lines 9 through 13.

Strike: "[SECTION 9]" on line 9 through "1993." on line 13

Insert: "[Sections 1 through 3, 10 through 13, 21, and 24 through 28 and this section] are effective on passage and approval."

(2) [Sections 4 through 9] are effective on finalization of an agreement entered into by the governor and the reinsurer, as provided in [section 1].

(3) [Sections 14 through 20, 22, and 23] are effective July 1, 1993.

(4) [Section 21] applies to the budget for fiscal year 1994."

Amendments to House Bill No. 504
Second Reading Copy

Requested by Rep. Benedict
For the Committee on Labor and Employment Relations

Prepared by Susan B. Fox
March 16, 1993

1. Page 10, line 1.

Following: the first "FROM"

Insert: "the reserves accumulated from premiums paid to the state
fund, based upon wages payable on or after July 1, 1990, and
invested by"

Amendments to House Bill No. 504
Second Reading Copy

Requested by Rep. Hibbard
For the Committee on Labor and Employment Relations

Prepared by Susan B. Fox
March 16, 1993

1. Page 5, line 18.

Following: "tax"

Strike: the remainder of line 18 through "of"

Insert: ", as provided in [section 5], on"