

1 *House* BILL NO. *75*
 2 INTRODUCED BY *Kimble McArthur Sawyer Sloan*
 3 *Johnson*

4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS
 5 92-202.1, 92-204.1, 92-435, AND 92-614, R.C.M. 1947;
 6 CREATING AN UNINSURED EMPLOYER'S FUND TO GRANT ALL EMPLOYEES
 7 IN THIS STATE WORKMEN'S COMPENSATION BENEFITS EVEN IF THEIR
 8 EMPLOYERS ARE NOT PROPERLY INSURED; PROVIDING FOR FUNDING OF
 9 THE FUND; GIVING THE DIVISION OF WORKMEN'S COMPENSATION
 10 AUTHORITY TO GRANT, BY RULE, EXEMPTIONS FOR CORPORATE
 11 OFFICERS; REDEFINING THE DEFINITION OF INSURER; AND
 12 REPEALING SECTIONS 92-201, 92-203, 92-205, 92-207.1, 92-208,
 13 92-209, 92-210, 92-211, 92-1102, 92-1110, AND 92-1117,
 14 R.C.M. 1947."

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

17 Section 1. Section 92-202.1, R.C.M. 1947, is amended
 18 to read as follows:

19 "92-202.1. Employments covered and employments
 20 exempted from coverage. ~~This act shall not apply to any of~~
 21 ~~the following employments unless the employer elects~~
 22 ~~coverage under this act:~~ (1) Except as provided in
 23 subsection (2) of this section, the workmen's compensation
 24 act applies to all employers as defined in section 92-410.1
 25 and to all employees as defined in section 92-411. Such

1 employers who have any employee in service under any
 2 appointment or contract of hire, expressed or implied, oral
 3 or written, shall elect to be bound by the provisions of
 4 compensation plan no. 1, 2, or 3. Every employee whose
 5 employer is bound by this act shall become subject to and
 6 bound by that compensation plan that has been elected by the
 7 employer.

8 (2) This act does not apply to any of the following
 9 employments unless the employer elects coverage under this
 10 act:

- 11 (1) (a) Household employment.
- 12 (2) (b) Casual employment.
- 13 (3) (c) Employment of members of an employer's family
 14 dwelling in his household.
- 15 (4) (d) Employment of sole proprietors or working
 16 members of a partnership.
- 17 (5) (e) Employment for which a rule of liability for
 18 injury, occupational disease, or death is provided under the
 19 laws of the United States.
- 20 (6) (f) Any person performing services in return for
 21 aid or sustenance only.
- 22 (g) Officers of private corporations who have, by
 23 rules adopted by the division, been designated exempt under
 24 the workmen's compensation act."

25 Section 2. Section 92-204.1, R.C.M. 1947, is amended

HB 75

1 to read as follows:

2 "92-204.1. Election of employer and employee to come
3 under act--action against third party causing injury--~~right~~
4 ~~to--subrogation. Where--both--the--employer--and--employee--have~~
5 ~~electe--to--come~~ For all employments covered under this act,
6 the provisions of this act ~~shall--be~~ are exclusive, ~~and--such~~
7 ~~election--shall--be--held--to--be--a--surrender--by--such--employer~~
8 ~~and--the--servants--and--employees--of--such--employer--and--such~~
9 ~~employee--as--among--themselves--of--their--right--to--any--other~~
10 ~~method--form--or--kind--of--compensation--or--determination~~
11 ~~thereof--or--to--any--other--compensation--or--kind--of~~
12 ~~determination--thereof--or--cause--of--action--at--law--suit--in~~
13 ~~equity--or--statutory--or--common--law--right--or--remedy--or~~
14 ~~proceeding--whatever--for--or--on--account--of--any--personal~~
15 ~~injury--to--or--death--of--such--employee--except--as--such--rights~~
16 ~~may--be--hereinafter--specifically--granted--and--such--election~~
17 ~~shall--bind~~ Except as provided in section 92-212 for
18 uninsured employers, and except as otherwise provided in the
19 act, an employer is not subject to any liability whatsoever
20 for the death or personal injury to any employees covered by
21 the act. The act binds the employee himself, and in case
22 of death ~~shall--bind~~ binds his personal representative, and
23 all persons having any right or claim to compensation for
24 his injury or death, as well as the employer, and the
25 servants and employees of such employer, and those

1 conducting his business during liquidation, bankruptcy or
2 insolvency. The right to compensation and medical benefits
3 as provided by this act ~~shall~~ is not ~~be~~ affected by the fact
4 that the injury, occupational disease or death is caused by
5 the negligence of a third party other than the employer, or
6 the servants or employees of the employer. Whenever such
7 event ~~shall--occur~~ occurs to an employee while performing the
8 duties of his employment and such event ~~shall--be~~ is caused
9 by the act or omission of some persons or corporations other
10 than his employer, or the servants or employees of his
11 employer, ~~then--such~~ the employee, or in case of his death
12 his heirs or personal representative shall, in addition to
13 the right to receive compensation under this act, have a
14 right to prosecute any cause of action he may have for
15 damages against such persons or corporations. ~~Further~~
16 ~~provided--that--whenever--such~~ However, if an employee ~~shall~~
17 ~~receive~~ receives an injury while performing the duties of
18 his employment and ~~such~~ the injury or injuries, so received
19 by ~~such~~ the employee, are caused by the intentional and
20 malicious act or omission of a servant or employee of his
21 employer, ~~then--such~~ the employee, or in case of his death,
22 his heirs or personal representatives, shall, in addition to
23 the right to receive compensation under the Workmen's
24 Compensation Act, have a right to prosecute any cause of
25 action he may have for damages against ~~such~~ the servants or

1 employees of his employer, causing such the injury.
 2 Provided, that the employer or insurer shall be entitled to
 3 full subrogation for all compensation and benefits paid or
 4 to be paid under this act, except as otherwise provided in
 5 this section. The employer's or insurer's right of
 6 subrogation shall be a first lien on such claim, judgment or
 7 recovery. The employee shall institute such third party
 8 action after giving the employer or insurer reasonable
 9 notice of his intention to institute such third party
 10 action. The employee may request that such insurer pay a
 11 proportionate share of the reasonable cost, including
 12 attorneys' fees, of such third party action. The insurer
 13 may elect not to participate in the cost of the third party
 14 action, but as such election is made the insurer shall be
 15 deemed to have waived fifty percent (50%) of its subrogation
 16 rights granted by the section. Provided, however, that if
 17 an employee refuses or fails to institute such action within
 18 one (1) year from the date of injury, the employer or
 19 insurer may institute such third party action in his name
 20 and for his benefit or that of his personal representative.
 21 If the employee or his personal representative institutes
 22 such third party action, he shall be entitled to at least
 23 one-third (1/3) of the amount recovered by judgment or
 24 compromise settlement less his proportionate share of the
 25 reasonable costs, including attorneys' fees, in the event

1 the amount of recovery is insufficient to provide him with
 2 that amount after payment of subrogation. In the event the
 3 employer or insurer institutes such third party action, he
 4 shall pay to the employee any amount recovered by judgment
 5 or settlement which is in excess of the amounts paid or to
 6 be paid under this act an employer's or insurer's reasonable
 7 costs and attorneys' fees. Nothing contained in this
 8 section shall prevent the employer or insurer, including the
 9 division of workmen's compensation, from entering into
 10 compromise agreements in settlement of subrogation rights
 11 if death results from the injury or occupational disease,
 12 the employer shall have a right of action against the third
 13 party for recovery of any amount paid under this act, and
 14 such right of action shall be in addition to any cause of
 15 action by the heirs or personal representative of the
 16 deceased. In the event that the amount of compensation and
 17 benefits payable under this act shall not have been fully
 18 determined at the time such employee or his heirs or
 19 personal representative, or the employer or insurer, shall
 20 receive settlement of his action, prosecuted as aforesaid,
 21 then the division shall determine what proportion of such
 22 settlement shall be allocated under subrogation and such
 23 determination may be appealed as any other determination of
 24 the division."

25 Section 3. There is a new R.C.M. section numbered

1 92-204.2 that reads as follows:

2 92-204.2. Subrogation. (1) If an action is prosecuted
3 as provided for in section 92-204.1, the insurer is entitled
4 to subrogation for all compensation and benefits paid or to
5 be paid under the workmen's compensation act, except as
6 otherwise provided in this section. The insurer's right of
7 subrogation shall be a first lien on the claim, judgment, or
8 recovery.

9 (2) If the employee is going to institute the third
10 party action, the employee shall give the insurer reasonable
11 notice of the intention to institute the action.

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

15 (b) The insurer may elect not to participate in the
16 cost of the action. If this election is made, the insurer
17 is considered to have waived fifty percent (50%) of its
18 subrogation rights granted by this section.

19 (c) If the employee or the employee's personal
20 representative institutes the action, the employee is
21 entitled to at least one third (1/3) of the amount recovered
22 by judgment or settlement less a proportionate share of
23 reasonable costs including attorneys' fees, if the amount of
24 recovery is insufficient to provide the employee with that
25 amount after payment of subrogation.

1 (3) If an employee refuses or fails to institute the
2 third party action within one (1) year from the date of
3 injury, the insurer may institute the action in the name of
4 the employee and for his benefit or that of his personal
5 representative. If the insurer institutes the action, he
6 shall pay to the employee any amount recovered by judgment
7 or settlement which is in excess of the amounts paid or to
8 be paid under the act after the insurer's reasonable costs
9 including attorneys' fees for prosecuting the action have
10 been deducted from the recovery.

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

13 (5) If death results from the injury or occupational
14 disease, the insurer may sue a third party for recovery of
15 any amount paid under this action, and such an action shall
16 be in addition to any action by the heirs or personal
17 representatives of the deceased.

18 (6) If the amount of compensation and other benefits
19 payable under the act have not been fully determined at the
20 time the employee or his heirs or personal representatives,
21 or the insurer have settled in any manner the action, as
22 provided for in this section, the division shall determine
23 what proportion of the settlement shall be allocated under
24 subrogation. The division's determination may be appealed
25 as any other determination of the division.

1 Section 4. There is a new R.C.M. section numbered
2 92-212 that reads as follows:

3 92-212. Uninsured employer's fund. (1) There is
4 created an uninsured employer's fund. The purpose of this
5 fund is to pay to an injured employee of an uninsured
6 employer, the same benefits such employee would have
7 received if the employer had been properly enrolled under
8 compensation plan no. 1, 2, or 3. The division shall
9 administer the fund and shall pay all proper benefits to
10 injured employees of uninsured employers.

11 (2) The fund shall be funded in the following manner:

12 (a) The division shall require that the uninsured
13 employer pay to the fund a penalty of either double the
14 premium amount the employer would have paid on the payroll
15 of the employer's employees in this state if the employer
16 had been enrolled with compensation plan no. 3 or one
17 thousand dollars (\$1000), whichever is greater. In
18 determining the premium amount for the calculation of the
19 penalty under this subsection, the division shall make an
20 assessment on how much premium would have been paid on the
21 employer's past three year payroll for periods within the
22 three (3) years when the employer was uninsured, but an
23 assessment prior to July 1, 1975, may not be made; and

24 (b) The fund shall receive from an uninsured employer
25 an amount equal to all benefits paid or to be paid to an

1 injured employee of the uninsured employer. If an uninsured
2 employer refuses to make the payments to the fund, upon
3 demand, the sum may be collected for the fund, as provided
4 for in this section, by the division through suit. The
5 division may compromise with an uninsured employer the
6 amount due the fund under this section.

7 (c) The fund shall also be funded from the state
8 general fund for payment of benefits as provided for in this
9 section. However, any amounts collected under subsections
10 (2)(a) or (2)(b) of this section shall be expended before
11 any general fund appropriations are expended.

12 (3) Proper surpluses and reserves shall be kept for
13 the fund. The board of investments shall invest the moneys
14 of the fund. The cost of administration of the fund shall
15 be paid out of the money in the fund.

16 (4) All appropriate provisions in the workmen's
17 compensation act apply to the fund in the same manner as
18 they apply to compensation plans no. 1, 2, or 3.

19 (5) When the division discovers an uninsured employer,
20 the division shall order the employer to cease operations
21 until a proper election has been made by the employer to be
22 bound by a compensation plan. An employer who does not
23 comply with the division's order to cease operations is
24 guilty of a misdemeanor.

25 Section 5. Section 92-435, R.C.M. 1947, is amended to

1 read as follows:

2 "92-435. Insurer defined. "Insurer" means any
3 ~~insurance-company-authorized-to-transact-business-in-this~~
4 ~~state-insuring-any-employer-under-this-act-and-includes~~
5 ~~industrial-insurance-account-created-by-this-act,-known-as~~
6 ~~the-"state-fund-"~~ an employer bound by compensation plan no.
7 1, an insurance company transacting business under
8 compensation plan no. 2, the industrial insurance account
9 under compensation plan no. 3, and includes the uninsured
10 employer's fund provided for in section 92-212."

11 Section 6. Section 92-614, R.C.M. 1947, is amended to
12 read as follows:

13 "92-614. Who liable for injuries under the ~~different~~
14 ~~plans-of~~ act and in what amounts, extraterritorial
15 application and reciprocity. (1) Every employer who shall
16 ~~become-bound-by-and-subject-to-the-provisions-of~~
17 ~~compensation-plan-number-one-(1),-and-every-employer-and~~
18 ~~insurer-who-shall-become-bound-by-and-subject-to-the~~
19 ~~provisions-of-compensation-plan-number-two-(2),-and-the~~
20 ~~industrial-accident-fund-where-the-employer-of-the-injured~~
21 ~~employee-has-become-bound-by-and-subject-to-the-provisions~~
22 ~~of-compensation-plan-No.-3,~~ insurer shall be liable for the
23 payment of compensation in the manner and to the extent
24 hereinafter provided to an employee of an employer it
25 insures who ~~has-elected-to-come-under-this-act,-and-who~~

1 ~~shall-receive~~ receives an injury arising out of and in the
2 course of ~~his~~ employment, or, in the case of ~~his~~ death from
3 such injury, to ~~his~~ the employee's beneficiaries, if any;
4 ~~or,-if-money-to-his-major-dependents,-if-any,-or,-if-money~~
5 ~~to-his-minor-dependents,-if-any.~~

6 (2) If a workman employed in this state who is subject
7 to the provisions of this act temporarily leaves the state
8 incidental to that employment and receives an injury arising
9 out of and in the course of such employment, the provisions
10 of this act shall apply to such workman as though he were
11 injured within this state.

12 (3) If a workman from another state and his employer
13 from another state are temporarily engaged in work within
14 this state, this act shall not apply to them;

15 (a) if the employer and employee are bound by the
16 provisions of the Workmen's Compensation Law or similar law
17 of such other state which applies to them while they are in
18 the state of Montana, and

19 (b) if the Workmen's Compensation Act of this state is
20 recognized and given effect as the exclusive remedy for
21 workmen employed in this state who are injured while
22 temporarily employed in such other state.

23 (4) A certificate from an authorized officer of the
24 workmen's compensation department or similar agency of
25 another state certifying that an employer of such other

1 state is bound by the Workmen's Compensation Act of the
2 state and that its act will be applied to employees of the
3 employer while in the state of Montana shall be prima facie
4 evidence of the application of the Workmen's Compensation
5 Law of the certifying state.

6 (5) The ~~industrial-accident-board-shall-have-authority~~
7 division may, with the approval of the governor, ~~to~~ enter
8 into agreements with workmen's compensation agencies of
9 other states for the purpose of promulgating regulations not
10 inconsistent with the provisions of this act to carry out
11 the extraterritorial application of the workmen's
12 compensation laws of the agreeing states."

13 Section 7. Sections 92-201, 92-203, 92-205, 92-207.1,
14 92-208, 92-209, 92-210, 92-211, 92-1102, 92-1116, and
15 92-1117, R.C.M. 1947, are repealed.

-End-

HB 75

STATE OF MONTANA

REQUEST NO. 142-75

FISCAL NOTE

Form BD-15

In compliance with a written request received Jan. 31, 19 75, there is hereby submitted a Fiscal Note for House Bill 75 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 75 creates an uninsured employer's fund to grant all employees workmen's compensation benefits even if employers are not properly insured; provides funding of the fund, gives the Division of Workmen's Compensation authority to grant, by rule, exemptions for corporate officers, and redefines the definition of insurer.

ASSUMPTIONS:

1. Overhead costs such as Centralized Services, data processing, etc. can be absorbed by the Workmens' Compensation Division.
2. A 10% pay raise for personnel in FY 1977 will occur.
3. Operating expenses will be 39% of salaries, the same ratios as the Workmens' Compensation Compliance Program.
4. There will be 120 compensatory cases per year; the average compensation and medical reserves will be \$9,000 per case. Uninsured employers will reimburse the fund in an estimated 60% of the cases. All 'medical only' cases will be fully reimbursed. (Note: these are rough estimates; since this is a new program no historical data exists upon which to base predictions)

FISCAL IMPACT:

	FY76	FY77
Estimated Increase in Expenditure by Category		
Personal Services	\$ 54,898	\$ 60,390
Operating Expenses	21,410	23,552
Capital Outlay	6,467	0
Benefits (Net of Reimbursements)	432,000	432,000
Estimated total increase in expenditures	<u>\$514,775</u>	<u>\$515,942</u>

CONCLUSIONS:

Enactment of House Bill 75 would result in an estimated \$1,031,000 appropriation required from the General Fund during the next biennium. The required amount will vary depending upon the level of compensations and the reimbursements by uninsured employers.

Michael B. Rollings

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2/5/75

Approved by Committee
on Labor & Employment
Relations

HOUSE BILL NO. 75

INTRODUCED BY KIMBLE, MCKITTRICK, HARPER, SLOAN, JOHNSON

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS 92-202.1, 92-204.1, 92-435, AND 92-614, R.C.M. 1947; CREATING AN UNINSURED EMPLOYER'S FUND TO GRANT ALL EMPLOYEES IN THIS STATE WORKMEN'S COMPENSATION BENEFITS EVEN IF THEIR EMPLOYERS ARE NOT PROPERLY INSURED; PROVIDING FOR FUNDING OF THE FUND; GIVING THE DIVISION OF WORKMEN'S COMPENSATION AUTHORITY TO GRANT, BY RULE, EXEMPTIONS FOR CORPORATE OFFICERS; REDEFINING THE DEFINITION OF INSURER; AND REPEALING SECTIONS 92-201, 92-203, 92-205, 92-207.1, 92-208, 92-209, 92-210, 92-211, 92-1102, 92-1116, AND 92-1117, R.C.M. 1947."

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

Section 1. Section 92-202.1, R.C.M. 1947, is amended to read as follows:

"92-202.1. Employments covered and employments exempted from coverage. This act shall not apply to any of the following employments unless the employer elects coverage under this act: (1) Except as provided in subsection (2) of this section, the Workmen's Compensation Act applies to all employers as defined in section 92-410.1 and to all employees as defined in section 92-411. Such

employers who have any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan no. 1, 2, or 3. Every employee whose employer is bound by this act shall become subject to and bound by that compensation plan that has been elected by the employer.

(2) This act does not apply to any of the following employments unless the employer elects coverage FOR THESE EMPLOYMENTS under this act:

- (1) (a) Household employment.
- (2) (b) Casual employment.
- (3) (c) Employment of members of an employer's family dwelling in his household.
- (4) (d) Employment of sole proprietors or working members of a partnership.
- (5) (e) Employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States.
- (6) (f) Any person performing services in return for aid or sustenance only.
- (g) Officers of private corporations who have, by rules adopted by the division, been designated exempt under the Workmen's Compensation Act."

Section 2. Section 92-204.1, R.C.M. 1947, is amended

1 to read as follows:

2 "92-204.1. Election of employer and employee to come
3 under act--action against third party causing injury--right
4 to--subrogation. Where--both-the-employer-and-employee-have
5 ~~elected-to-come~~ For all employments covered under this act,
6 the provisions of this act ~~shall-be are~~ exclusive, and such
7 ~~election--shall--be--held-to-be-a-surrender-by-such-employer~~
8 ~~and-the-servants, and-employees, of-such--employer--and--such~~
9 ~~employee,--as--among-themselves, of-their-right-to-any-other~~
10 ~~method, form--or--kind--of--compensation,--or--determination~~
11 ~~thereof,--or--to--any--other--compensation,--or--kind--of~~
12 ~~determination--thereof,--or--cause-of-action-at--law,--suit--in~~
13 ~~equity,--or--statutory--or--common-law--right--or--remedy,--or~~
14 ~~proceeding-whatever,--for--or--on--account--of--any--personal~~
15 ~~injury--to--or--death-of-such-employee,--except-as-such-rights~~
16 ~~may-be-hereinafter-specifically-granted,--and--such--election~~
17 ~~shall--bind~~ Except as provided in section 92-212 for
18 uninsured employers, and except as otherwise provided in the
19 act, an employer is not subject to any liability whatsoever
20 for the death or personal injury to any employees covered by
21 the act. The act binds the employee himself, and in case
22 of death shall-bind binds his personal representative, and
23 all persons having any right or claim to compensation for
24 his injury or death, as well as the employer, and the
25 servants and employees of such employer, and those

1 conducting his business during liquidation, bankruptcy or
2 insolvency. The right to compensation and medical benefits
3 as provided by this act ~~shall is~~ is not be affected by the fact
4 that the injury, occupational disease or death is caused by
5 the negligence of a third party other than the employer, or
6 the servants or employees of the employer. Whenever such
7 event ~~shall-occur~~ occurs to an employee while performing the
8 duties of his employment and such event ~~shall-be~~ is caused
9 by the act or omission of some persons or corporations other
10 than his employer, or the servants or employees of his
11 employer, ~~then--such~~ the employee, or in case of his death
12 his heirs or personal representative shall, in addition to
13 the right to receive compensation under this act, have a
14 right to prosecute any cause of action he may have for
15 damages against such persons or corporations. ~~Further~~
16 ~~provided, that-whenver-such~~ However, if an employee ~~shall~~
17 ~~receieve~~ receives an injury while performing the duties of
18 his employment and ~~such~~ the injury or injuries, so received
19 by ~~such~~ the employee, are caused by the intentional and
20 malicious act or omission of a servant or employee of his
21 employer, ~~then--such~~ the employee, or in case of his death,
22 his heirs or personal representatives, shall, in addition to
23 the right to receive compensation under the Workmen's
24 Compensation Act, have a right to prosecute any cause of
25 action he may have for damages against ~~such~~ the servants or

1 employees of his employer, causing such the injury.
 2 ~~Provided, that the employer or insurer shall be entitled to~~
 3 ~~full subrogation for all compensation and benefits paid or~~
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 5 ~~this section. The employer's or insurer's right of~~
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 8 ~~action after giving the employer or insurer reasonable~~
 9 ~~notice of his intention to institute such third party~~
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1 ~~the amount of recovery is insufficient to provide him with~~
 2 ~~that amount after payment of subrogation. In the event the~~
 3 ~~employer or insurer institutes such third party action, he~~
 4 ~~shall pay to the employee any amount recovered by judgment~~
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 6 ~~be paid under this act an employer's or insurer's reasonable~~
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 8 ~~section shall prevent the employer or insurer, including the~~
 9 ~~division of workmen's compensation, from entering into~~
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 13 ~~party for recovery of any amount paid under this act, and~~
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 16 ~~deceased. In the event that the amount of compensation and~~
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 18 ~~determined at the time such employee or his heirs or~~
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 20 ~~receive settlement of his action, prosecuted as aforesaid,~~
 21 ~~then the division shall determine what proportion of such~~
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 23 ~~determination may be appealed as any other determination of~~
 24 ~~the division."~~

25 Section 3. There is a new R.C.M. section numbered

1 92-204.2 that reads as follows:

2 92-204.2. Subrogation. (1) If an action is prosecuted
3 as provided for in section 92-204.1, the insurer is entitled
4 to subrogation for all compensation and benefits paid or to
5 be paid under the Workmen's Compensation Act, except as
6 otherwise provided in this section. The insurer's right of
7 subrogation shall be a first lien on the claim, judgment, or
8 recovery.

9 (2) If the employee is going to institute the third
10 party action, the employee shall give the insurer reasonable
11 notice of the intention to institute the action.

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

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16 cost of the action. If this election is made, the insurer
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18 subrogation rights granted by this section.

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20 representative institutes the action, the employee is
21 entitled to at least one third (1/3) of the amount recovered
22 by judgment or settlement less a proportionate share of
23 reasonable costs including attorneys' fees, if the amount of
24 recovery is insufficient to provide the employee with that
25 amount after payment of subrogation.

1 (3) If an employee refuses or fails to institute the
2 third party action within one (1) year from the date of
3 injury, the insurer may institute the action in the name of
4 the employee and for his benefit or that of his personal
5 representative. If the insurer institutes the action, he
6 shall pay to the employee any amount recovered by judgment
7 or settlement which is in excess of the amounts paid or to
8 be paid under the act after the insurer's reasonable costs
9 including attorneys' fees for prosecuting the action have
10 been deducted from the recovery.

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

13 (5) If death results from the injury or occupational
14 disease, the insurer may sue a third party for recovery of
15 any amount paid under this action, and such an action shall
16 be in addition to any action by the heirs or personal
17 representatives of the deceased.

18 (6) If the amount of compensation and other benefits
19 payable under the act have not been fully determined at the
20 time the employee or his heirs or personal representatives,
21 or the insurer have settled in any manner the action, as
22 provided for in this section, the division shall determine
23 what proportion of the settlement shall be allocated under
24 subrogation. The division's determination may be appealed
25 as any other determination of the division.

1 Section 4. There is a new R.C.M. section numbered
2 92-212 that reads as follows:

3 92-212. Uninsured employer's fund. (1) There is
4 created an uninsured employer's fund. The purpose of this
5 fund is to pay to an injured employee of an uninsured
6 employer, the same benefits such employee would have
7 received if the employer had been properly enrolled under
8 compensation plan no. 1, 2, or 3. FOR THE PURPOSES OF THIS
9 SECTION, THE WORDS "UNINSURED EMPLOYER" SHALL MEAN AN
10 EMPLOYER WHO HAS NOT PROPERLY COMPLIED WITH THE PROVISIONS
11 OF SECTION 92-202.1. The division shall administer the fund
12 and shall pay all proper benefits to injured employees of
13 uninsured employers.

14 (2) The fund shall be funded in the following manner:

15 (a) The division shall require that the uninsured
16 employer pay to the fund a penalty of either double the
17 premium amount the employer would have paid on the payroll
18 of the employer's employees in this state if the employer
19 had been enrolled with compensation plan no. 3 or one
20 thousand dollars (\$1000), whichever is greater. In
21 determining the premium amount for the calculation of the
22 penalty under this subsection, the division shall make an
23 assessment on how much premium would have been paid on the
24 employer's past three year payroll for periods within the
25 three (3) years when the employer was uninsured, but an

1 assessment prior to July 1, 1975, may not be made; and

2 (b) The fund shall receive from an uninsured employer
3 an amount equal to all benefits paid or to be paid to an
4 injured employee of the uninsured employer. If an uninsured
5 employer refuses to make the payments to the fund, upon
6 demand, the sum may be collected for the fund, as provided
7 for in this section, by the division through suit. The
8 division may compromise with an uninsured employer the
9 amount due the fund under this section.

10 (c) The fund shall also be funded from the state
11 general fund for payment of benefits as provided for in this
12 section. However, any amounts collected under subsections
13 (2)(a) or (2)(b) of this section shall be expended before
14 any general fund appropriations are expended.

15 (3) Proper surpluses and reserves shall be kept for
16 the fund. The board of investments shall invest the moneys
17 of the fund. The cost of administration of the fund shall
18 be paid out of the money in the fund.

19 (4) All appropriate provisions in the Workmen's
20 Compensation Act apply to the fund in the same manner as
21 they apply to compensation plans no. 1, 2, or 3.

22 (5) When the division discovers an uninsured employer,
23 the division shall order the employer to cease operations
24 until a proper election has been made by the employer to be
25 bound by a compensation plan. An employer who does not

1 comply with the division's order to cease operations is
 2 guilty of a misdemeanor.

3 Section 5. Section 92-435, R.C.M. 1947, is amended to
 4 read as follows:

5 "92-435. Insurer defined. "Insurer" means any
 6 ~~insurance-company-authorized-to-transact-business-in-this~~
 7 ~~state-insuring-any-employer-under-this-act-and-includes~~
 8 ~~industrial-insurance-account-created-by-this-act-known-as~~
 9 ~~the-"state-fund;"~~ an employer bound by compensation plan no.
 10 1, an insurance company transacting business under
 11 compensation plan no. 2, the industrial insurance account
 12 under compensation plan no. 3, and includes the uninsured
 13 employer's fund provided for in section 92-212."

14 Section 6. Section 92-614, R.C.M. 1947, is amended to
 15 read as follows:

16 "92-614. Who liable for injuries under the ~~different~~
 17 ~~plans---of~~ act and in what amounts, extraterritorial
 18 application and reciprocity. (1) Every employer--who--shall
 19 ~~become---bound---by---and---subject---to---the---provisions---of~~
 20 ~~compensation-plan-number-one-(1),--and--every--employer--and~~
 21 ~~insurer--who--shall--become--bound--by--and--subject--to--the~~
 22 ~~provisions-of-compensation-plan--number--two--(2),--and--the~~
 23 ~~industrial--accident--fund--where--the--employer--of--the--injured~~
 24 ~~employee--has--become--bound--by--and--subject--to--the--provisions~~
 25 ~~of--compensation-plan-No.3,~~ insurer shall be liable for the

1 payment of compensation in the manner and to the extent
 2 hereinafter provided to an employee of an employer it
 3 ~~insures~~ who ~~has-elected-to-come-under--this--act,--and--who~~
 4 ~~shall--receive~~ receives an injury arising out of and in the
 5 course of ~~his~~ employment, or, in the case of ~~his~~ death from
 6 such injury, to ~~his~~ the employee's beneficiaries, if any,
 7 ~~or,--if--none,--to--his--major--dependents,--if--any,--or,--if--none,~~
 8 ~~to--his--minor--dependents,--if--any.~~

9 (2) If a workman employed in this state who is subject
 10 to the provisions of this act temporarily leaves the state
 11 incidental to that employment and receives an injury arising
 12 out of and in the course of such employment, the provisions
 13 of this act shall apply to such workman as though he were
 14 injured within this state.

15 (3) If a workman from another state and his employer
 16 from another state are temporarily engaged in work within
 17 this state, this act shall not apply to them:

18 (a) if the employer and employee are bound by the
 19 provisions of the Workmen's Compensation Law or similar law
 20 of such other state which applies to them while they are in
 21 the state of Montana, and

22 (b) if the Workmen's Compensation Act of this state is
 23 recognized and given effect as the exclusive remedy for
 24 workmen employed in this state who are injured while
 25 temporarily employed in such other state.

1 (4) A certificate from an authorized officer of the
2 workmen's compensation department or similar agency of
3 another state certifying that an employer of such other
4 state is bound by the Workmen's Compensation Act of the
5 state and that its act will be applied to employees of the
6 employer while in the state of Montana shall be prima facie
7 evidence of the application of the Workmen's Compensation
8 Law of the certifying state.

9 (5) The ~~industrial-accident-board-shall-have-authority~~
10 division may, with the approval of the governor, ~~to~~ enter
11 into agreements with workmen's compensation agencies of
12 other states for the purpose of promulgating regulations not
13 inconsistent with the provisions of this act to carry out
14 the extraterritorial application of the workmen's
15 compensation laws of the agreeing states."

16 Section 7. Sections 92-201, 92-203, 92-205, 92-207.1,
17 92-208, 92-209, 92-210, 92-211, 92-1102, 92-1116, and
18 92-1117, R.C.M. 1947, are repealed.

-End-

HOUSE BILL NO. 75

INTRODUCED BY KIMBLE, MCKITTRICK, HARPER, SLOAN, JOHNSON

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS 92-202.1, 92-204.1, 92-435, AND 92-614, R.C.M. 1947; CREATING AN UNINSURED EMPLOYER'S FUND TO GRANT ALL EMPLOYEES IN THIS STATE WORKMEN'S COMPENSATION BENEFITS EVEN IF THEIR EMPLOYERS ARE NOT PROPERLY INSURED; PROVIDING FOR FUNDING OF THE FUND; GIVING THE DIVISION OF WORKMEN'S COMPENSATION AUTHORITY TO GRANT, BY RULE, EXEMPTIONS FOR CORPORATE OFFICERS; REDEFINING THE DEFINITION OF INSURER; AND REPEALING SECTIONS 92-201, 92-203, 92-205, 92-207.1, 92-208, 92-209, 92-210, 92-211, 92-1102, 92-1116, AND 92-1117, R.C.M. 1947."

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

Section 1. Section 92-202.1, R.C.M. 1947, is amended to read as follows:

"92-202.1. Employments covered and employments exempted from coverage. ~~This act shall not apply to any of the following employments unless the employer elects coverage under this act.~~ (1) Except as provided in subsection (2) of this section, the Workmen's Compensation Act applies to all employers as defined in section 92-410.1 and to all employees as defined in section 92-411. Such

employers who have any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan no. 1, 2, or 3. Every employee whose employer is bound by this act shall become subject to and bound by that compensation plan that has been elected by the employer.

(2) This act does not apply to any of the following employments unless the employer elects coverage FOR THESE EMPLOYMENTS under this act:

- ~~1~~ (a) Household employment.
- ~~2~~ (b) Casual employment.
- ~~3~~ (c) Employment of members of an employer's family dwelling in his household.
- ~~4~~ (d) Employment of sole proprietors or working members of a partnership.
- ~~5~~ (e) Employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States.
- ~~6~~ (f) Any person performing services in return for aid or sustenance only.
- ~~7~~ (g) Officers of private corporations who have, by rules adopted by the division, been designated exempt under the Workmen's Compensation Act."

Section 2. Section 92-204.1, R.C.M. 1947, is amended

1 to read as follows:

2 "92-204.1. Election of employer and employee to come
3 under act--action against third party causing injury--right
4 to--subrogation. Where--both-the-employer-and-employee-have
5 ~~elected-to-come~~ For all employments covered under this act,
6 the provisions of this act ~~shall-be~~ are exclusive, ~~and-such~~
7 ~~election--shall-be--held-to-be-a-surrender-by-such-employer~~
8 ~~and-the-servants,-and-employees-of-such--employer--and--such~~
9 ~~employee--as--among-themselves,-of-their-right-to-any-other~~
10 ~~method,-form--or--kind--of--compensation,-or--determination~~
11 ~~thereof,-or---to---any--other--compensation,-or--kind-of~~
12 ~~determination--thereof,-or-cause-of-action-at-law,-suit--in~~
13 ~~equity,-or--statutory--or--common-law--right--or-remedy,-or~~
14 ~~proceeding-whatever,-for--or--on--account--of--any--personal~~
15 ~~injury--to--or-death-of-such-employee,-except-as-such-rights~~
16 ~~may-be-hereinafter-specifically-granted,-and--such--election~~
17 ~~shall---bind~~ Except as provided in section 92-212 for
18 uninsured employers, and except as otherwise provided in the
19 act, an employer is not subject to any liability whatsoever
20 for the death or personal injury to any employees covered by
21 the act. The act binds the employee himself, and in case
22 of death ~~shall-bind~~ binds his personal representative, and
23 all persons having any right or claim to compensation for
24 his injury or death, as well as the employer, and the
25 servants and employees of such employer, and those

1 conducting his business during liquidation, bankruptcy or
2 insolvency. The right to compensation and medical benefits
3 as provided by this act ~~shall is~~ is not be affected by the fact
4 that the injury, occupational disease or death is caused by
5 the negligence of a third party other than the employer, or
6 the servants or employees of the employer. Whenever such
7 event ~~shall-occur~~ occurs to an employee while performing the
8 duties of his employment and such event ~~shall-be~~ is caused
9 by the act or omission of some persons or corporations other
10 than his employer, or the servants or employees of his
11 employer, ~~then--such~~ the employee, or in case of his death
12 his heirs or personal representative shall, in addition to
13 the right to receive compensation under this act, have a
14 right to prosecute any cause of action he may have for
15 damages against such persons or corporations. Further
16 ~~provided,-that-whenver-such~~ However, if an employee ~~shall~~
17 ~~receive~~ receives an injury while performing the duties of
18 his employment and ~~such~~ the injury or injuries, so received
19 by ~~such~~ the employee, are caused by the intentional and
20 malicious act or omission of a servant or employee of his
21 employer, ~~then--such~~ the employee, or in case of his death,
22 his heirs or personal representatives, shall, in addition to
23 the right to receive compensation under the Workmen's
24 Compensation Act, have a right to prosecute any cause of
25 action he may have for damages against ~~such~~ the servants or

1 employees of his employer, causing such the injury.
2 ~~Provided, that the employer or insurer shall be entitled to~~
3 ~~full subrogation for all compensation and benefits paid or~~
4 ~~to be paid under this act, except as otherwise provided in~~
5 ~~this section. The employer's or insurer's right of~~
6 ~~subrogation shall be a first lien on such claim, judgment or~~
7 ~~recovery. The employee shall institute such third party~~
8 ~~action after giving the employer or insurer reasonable~~
9 ~~notice of his intention to institute such third party~~
10 ~~action. The employee may request that such insurer pay a~~
11 ~~proportionate share of the reasonable cost, including~~
12 ~~attorneys' fees, of such third party action. The insurer~~
13 ~~may elect not to participate in the cost of the third party~~
14 ~~action, but as such election is made the insurer shall be~~
15 ~~deemed to have waived fifty percent (50%) of its subrogation~~
16 ~~rights granted by the section. Provided, however, that if~~
17 ~~an employee refuses or fails to institute such action within~~
18 ~~one (1) year from the date of injury, the employer or~~
19 ~~insurer may institute such third party action in his name~~
20 ~~and for his benefit or that of his personal representative,~~
21 ~~if the employee or his personal representative institutes~~
22 ~~such third party action, he shall be entitled to at least~~
23 ~~one third (1/3) of the amount recovered by judgment or~~
24 ~~compromise settlement, less his proportionate share of the~~
25 ~~reasonable costs, including attorneys' fees, in the event~~

1 ~~the amount of recovery is insufficient to provide him with~~
2 ~~that amount after payment of subrogation. In the event the~~
3 ~~employer or insurer institutes such third party action, he~~
4 ~~shall pay to the employee any amount recovered by judgment~~
5 ~~or settlement which is in excess of the amounts paid or to~~
6 ~~be paid under this act an employer's or insurer's reasonable~~
7 ~~costs and attorneys' fees. Nothing contained in this~~
8 ~~section shall prevent the employer or insurer, including the~~
9 ~~division of workmen's compensation, from entering into~~
10 ~~compromise agreements in settlement of subrogation rights.~~
11 ~~If death results from the injury or occupational disease,~~
12 ~~the employer shall have a right of action against the third~~
13 ~~party for recovery of any amount paid under this act, and~~
14 ~~such right of action shall be in addition to any cause of~~
15 ~~action by the heirs or personal representative of the~~
16 ~~deceased. In the event that the amount of compensation and~~
17 ~~benefits payable under this act shall not have been fully~~
18 ~~determined at the time such employee or his heirs or~~
19 ~~personal representative or the employer or insurer, shall~~
20 ~~receive settlement of his action, prosecuted as aforesaid,~~
21 ~~then the division shall determine what proportion of such~~
22 ~~settlement shall be allocated under subrogation and such~~
23 ~~determination may be appealed as any other determination of~~
24 ~~the division."~~

25 Section 3. There is a new R.C.M. section numbered

1 92-204.2 that reads as follows:

2 92-204.2. Subrogation. (1) If an action is prosecuted
3 as provided for in section 92-204.1, the insurer is entitled
4 to subrogation for all compensation and benefits paid or to
5 be paid under the Workmen's Compensation Act, except as
6 otherwise provided in this section. The insurer's right of
7 subrogation shall be a first lien on the claim, judgment, or
8 recovery.

9 (2) If the employee is going to institute the third
10 party action, the employee shall give the insurer reasonable
11 notice of the intention to institute the action.

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

15 (b) The insurer may elect not to participate in the
16 cost of the action. If this election is made, the insurer
17 is considered to have waived fifty percent (50%) of its
18 subrogation rights granted by this section.

19 (c) If the employee or the employee's personal
20 representative institutes the action, the employee is
21 entitled to at least one third (1/3) of the amount recovered
22 by judgment or settlement less a proportionate share of
23 reasonable costs including attorneys' fees, if the amount of
24 recovery is insufficient to provide the employee with that
25 amount after payment of subrogation.

1 (3) If an employee refuses or fails to institute the
2 third party action within one (1) year from the date of
3 injury, the insurer may institute the action in the name of
4 the employee and for his benefit or that of his personal
5 representative. If the insurer institutes the action, he
6 shall pay to the employee any amount recovered by judgment
7 or settlement which is in excess of the amounts paid or to
8 be paid under the act after the insurer's reasonable costs
9 including attorneys' fees for prosecuting the action have
10 been deducted from the recovery.

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

13 (5) If death results from the injury or occupational
14 disease, the insurer may sue a third party for recovery of
15 any amount paid under this action, and such an action shall
16 be in addition to any action by the heirs or personal
17 representatives of the deceased.

18 (6) If the amount of compensation and other benefits
19 payable under the act have not been fully determined at the
20 time the employee or his heirs or personal representatives,
21 or the insurer have settled in any manner the action, as
22 provided for in this section, the division shall determine
23 what proportion of the settlement shall be allocated under
24 subrogation. The division's determination may be appealed
25 as any other determination of the division.

1 Section 4. There is a new R.C.M. section numbered
2 92-212 that reads as follows:

3 92-212. Uninsured employer's fund. (1) There is
4 created an uninsured employer's fund. The purpose of this
5 fund is to pay to an injured employee of an uninsured
6 employer, the same benefits such employee would have
7 received if the employer had been properly enrolled under
8 compensation plan no. 1, 2, or 3. FOR THE PURPOSES OF THIS
9 SECTION, THE WORDS "UNINSURED EMPLOYER" SHALL MEAN AN
10 EMPLOYER WHO HAS NOT PROPERLY COMPLIED WITH THE PROVISIONS
11 OF SECTION 92-202.1. The division shall administer the fund
12 and shall pay all proper benefits to injured employees of
13 uninsured employers.

14 (2) The fund shall be funded in the following manner:

15 (a) The division shall require that the uninsured
16 employer pay to the fund a penalty of either double the
17 premium amount the employer would have paid on the payroll
18 of the employer's employees in this state if the employer
19 had been enrolled with compensation plan no. 3 or one
20 thousand dollars (\$1000), whichever is greater. In
21 determining the premium amount for the calculation of the
22 penalty under this subsection, the division shall make an
23 assessment on how much premium would have been paid on the
24 employer's past three year payroll for periods within the
25 three (3) years when the employer was uninsured, but an

1 assessment prior to July 1, 1975, may not be made; and

2 (b) The fund shall receive from an uninsured employer
3 an amount equal to all benefits paid or to be paid to an
4 injured employee of the uninsured employer. If an uninsured
5 employer refuses to make the payments to the fund, upon
6 demand, the sum may be collected for the fund, as provided
7 for in this section, by the division through suit. The
8 division may compromise with an uninsured employer the
9 amount due the fund under this section.

10 (c) The fund shall also be funded from the state
11 general fund for payment of benefits as provided for in this
12 section. However, any amounts collected under subsections
13 (2)(a) or (2)(b) of this section shall be expended before
14 any general fund appropriations are expended.

15 (3) Proper surpluses and reserves shall be kept for
16 the fund. The board of investments shall invest the moneys
17 of the fund. The cost of administration of the fund shall
18 be paid out of the money in the fund.

19 (4) All appropriate provisions in the Workmen's
20 Compensation Act apply to the fund in the same manner as
21 they apply to compensation plans no. 1, 2, or 3.

22 (5) When the division discovers an uninsured employer,
23 the division shall order the employer to cease operations
24 until a proper election has been made by the employer to be
25 bound by a compensation plan. An employer who does not

1 comply with the division's order to cease operations is
2 guilty of a misdemeanor.

3 Section 5. Section 92-435, R.C.M. 1947, is amended to
4 read as follows:

5 "92-435. Insurer defined. "Insurer" means any
6 ~~insurance--company--authorized--to-transact-business-in-this~~
7 ~~state-insuring-any-employer--under--this-act--and--includes~~
8 ~~industrial--insurance--account-created-by-this-act, known-as~~
9 ~~the-"state-fund;"~~ an employer bound by compensation plan no.
10 1, an insurance company transacting business under
11 compensation plan no. 2, the industrial insurance account
12 under compensation plan no. 3, and includes the uninsured
13 employer's fund provided for in section 92-212."

14 Section 6. Section 92-614, R.C.M. 1947, is amended to
15 read as follows:

16 "92-614. Who liable for injuries under the different
17 ~~plans--of~~ act and in what amounts, extraterritorial
18 application and reciprocity. (1) Every employer--who--shall
19 ~~become--bound--by--and--subject--to--the--provisions--of~~
20 ~~compensation-plan-number-one-(1),--and--every--employer--and~~
21 ~~insurer--who--shall--become--bound--by--and--subject--to--the~~
22 ~~provisions-of-compensation-plan--number--two--(2),--and--the~~
23 ~~industrial--accident--fund-where-the-employer-of-the-injured~~
24 ~~employee-has-become-bound-by-and-subject-to--the--provisions~~
25 ~~of--compensation-plan-No-3,~~ insurer shall be liable for the

1 payment of compensation in the manner and to the extent
2 hereinafter provided to an employee of an employer it
3 ~~insures~~ who ~~has-elected-to-come--under--this-act,--and--who~~
4 ~~shall--receive~~ receives an injury arising out of and in the
5 course of ~~his~~ employment, or, in the case of ~~his~~ death from
6 such injury, to ~~his~~ the employee's beneficiaries, if any,
7 ~~or,--if--none,--to--his--major--dependents,--if--any,--or,--if--none,~~
8 ~~to--his--minor--dependents,--if--any.~~

9 (2) If a workman employed in this state who is subject
10 to the provisions of this act temporarily leaves the state
11 incidental to that employment and receives an injury arising
12 out of and in the course of such employment, the provisions
13 of this act shall apply to such workman as though he were
14 injured within this state.

15 (3) If a workman from another state and his employer
16 from another state are temporarily engaged in work within
17 this state, this act shall not apply to them:

18 (a) if the employer and employee are bound by the
19 provisions of the Workmen's Compensation Law or similar law
20 of such other state which applies to them while they are in
21 the state of Montana, and

22 (b) if the Workmen's Compensation Act of this state is
23 recognized and given effect as the exclusive remedy for
24 workmen employed in this state who are injured while
25 temporarily employed in such other state.

1 (4) A certificate from an authorized officer of the
2 workmen's compensation department or similar agency of
3 another state certifying that an employer of such other
4 state is bound by the Workmen's Compensation Act of the
5 state and that its act will be applied to employees of the
6 employer while in the state of Montana shall be prima facie
7 evidence of the application of the Workmen's Compensation
8 Law of the certifying state.

9 (5) The ~~industrial-accident-board-shall-have-authority~~
10 division may, with the approval of the governor, ~~to~~ enter
11 into agreements with workmen's compensation agencies of
12 other states for the purpose of promulgating regulations not
13 inconsistent with the provisions of this act to carry out
14 the extraterritorial application of the workmen's
15 compensation laws of the agreeing states."

16 Section 7. Sections 92-201, 92-203, 92-205, 92-207.1,
17 92-208, 92-209, 92-210, 92-211, 92-1102, 92-1116, and
18 92-1117, R.C.M. 1947, are repealed.

-End-