

1 *State* BILL NO. *234*
 2 INTRODUCED BY *Lee*
 3 BY REQUEST OF THE DEPARTMENT OF LABOR
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SUBSECTIONS
 6 (2), (c), AND (d) OF SECTION 87-108 TO ELIMINATE THE BOARD
 7 OF LABOR APPEALS AS A PARTY DEFENDANT; TO PERMIT THE
 8 EMPLOYMENT SECURITY DIVISION TO APPEAL DECISIONS OF THE
 9 BOARD OF LABOR APPEALS; AND TO PROVIDE TIME FOR APPEAL."

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 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 12 Section 1. Section 87-108, R.C.M. 1947, is amended to
 13 read as follows:

14 "87-108. Procedure and appeals. (a) Procedure. The
 15 manner in which disputed claims shall be presented, the
 16 reports thereon required from the claimant and from
 17 employers, and the conduct of hearings and appeals shall be
 18 in accordance with regulations prescribed by the division ~~or~~
 19 the board of labor appeals for determining the rights of the
 20 parties, whether or not such regulations conform to common
 21 law or statutory rules of evidence and other technical rules
 22 or procedure. A full and complete record shall be kept of
 23 all proceedings in connection with a disputed claim. All
 24 testimony at any hearing upon a disputed claim shall be
 25 recorded, but need not be transcribed unless the disputed

1 claim is further appealed. The division shall have
 2 continuing jurisdiction over all claims filed for benefits
 3 to revise, modify, alter, cancel and amend all orders,
 4 findings and determinations made therein at any time and
 5 shall not lose such jurisdiction unless and until the
 6 jurisdiction of such claim and subject matter thereof has
 7 been taken by a court of competent jurisdiction in a
 8 proceedings filed therein as provided for in subsection (d)
 9 of this section.

10 (b) Witness fees. Witnesses subpoenaed pursuant to
 11 this section shall be allowed fees at a rate fixed by the
 12 division. Such fees shall be deemed a part of the expense of
 13 administering this act.

14 (c) Appeal to courts. Any decision of the board of
 15 labor appeals in the absence of an appeal therefrom as
 16 herein provided shall become final ~~ten 10~~ days after the
 17 date of notification or mailing thereof, except in the case
 18 of the division when such decision becomes final 20 days
 19 following the board's decision, and judicial review thereof
 20 shall be permitted only after any party claiming to be
 21 aggrieved thereby has exhausted his remedies before the
 22 board of labor appeals ~~as provided by this act~~. The division
 23 ~~or board of labor appeals~~ shall be deemed to be a party to
 24 any judicial action involving any such decision, and may be
 25 represented in any such judicial action by ~~any qualified an~~

1 attorney employed by the division ~~or board of labor appeals~~
 2 ~~and has been designated by it for that purpose~~ or at the
 3 division's ~~or board of labor appeals~~ request, by the
 4 attorney general.

5 (d) Court review. Within ~~ten~~ 30 days after the
 6 decision of the board of labor appeals has become final, any
 7 party aggrieved thereby may secure judicial review thereof
 8 by commencing an action in the district court of the county
 9 in which said party resides ~~against the board of labor~~
 10 ~~appeals for the review of its decision~~ and in which action
 11 any other party to the proceeding before the board of labor
 12 appeals shall be made a defendant. In such action, a
 13 petition which need not be verified, but which shall state
 14 the grounds upon which a review is sought, shall be served
 15 upon ~~a member of the board of labor appeals or its designate~~
 16 ~~for service of process~~ the administrator of the division or
 17 the administrator's designee and such service shall be
 18 deemed completed service on all parties, but there shall be
 19 left with the party so served as many copies of the petition
 20 as there are defendants and the ~~board of labor appeals~~
 21 division shall forthwith mail one such copy to each such
 22 defendant. With its answer, the ~~board of labor appeals~~
 23 division shall certify and file with said court all
 24 documents and papers and a transcript of all testimony taken
 25 in the matter, together with its the board of labor appeals'

1 findings of fact and decision therein. The board of labor
 2 appeals may also in its discretion, certify to such court
 3 questions of law involved in any decision by it. ~~Whenever~~
 4 the division seeks review of a decision of the board of
 5 labor appeals, all interested parties shall be served with a
 6 copy of its petition together with all documents filed with
 7 the court. In any judicial proceeding under this section,
 8 the findings of the board of labor appeals as to the facts,
 9 if supported by evidence and in the absence of fraud, shall
 10 be conclusive, and the jurisdiction of said court shall be
 11 confined to questions of law. Such action, and the questions
 12 so certified, shall be heard in a summary manner and shall
 13 be given precedence over all other civil cases except cases
 14 arising under the workmen's compensation law of this state.
 15 An appeal may be taken from the decision of the said
 16 district court to the supreme court of Montana in the same
 17 manner, but not inconsistent with the provisions of this
 18 act, as is provided in civil cases. It shall not be
 19 necessary, in any judicial proceeding under this section, to
 20 enter exceptions to the rulings of the ~~division or~~ board of
 21 labor appeals and no bond shall be required for entering
 22 such appeal. Upon the final determination of such judicial
 23 proceeding, the division shall enter an order in accordance
 24 with such determination. ~~A petition for judicial review~~
 25 ~~shall not act as a supersedeas or stay unless the division~~

1 or-board-of-labor-appeals-shall-so-order" -end-

Approved by Committee
on Labor & Employment
Relations

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15 manner in which disputed claims shall be presented, the
16 reports thereon required from the claimant and from
17 employers, and the conduct of hearings and appeals shall be
18 in accordance with regulations prescribed by the division or
19 the board of labor appeals for determining the rights of the
20 parties, whether or not such regulations conform to common
21 law or statutory rules of evidence and other technical rules
22 or procedure. A full and complete record shall be kept of
23 all proceedings in connection with a disputed claim. All
24 testimony at any hearing upon a disputed claim shall be
25 recorded, but need not be transcribed unless the disputed

1 claim is further appealed. The division shall have
2 continuing jurisdiction over all claims filed for benefits
3 to revise, modify, alter, cancel and amend all orders,
4 findings and determinations made therein at any time and
5 shall not lose such jurisdiction unless and until the
6 jurisdiction of such claim and subject matter thereof has
7 been taken by a court of competent jurisdiction in a
8 proceedings filed therein as provided for in subsection (d)
9 of this section.

10 (b) Witness fees. Witnesses subpoenaed pursuant to
11 this section shall be allowed fees at a rate fixed by the
12 division. Such fees shall be deemed a part of the expense of
13 administering this act.

14 (c) Appeal to courts. Any decision of the board of
15 labor appeals in the absence of an appeal therefrom as
16 herein provided shall become final ~~ten to 30~~ days after the
17 date of notification or mailing thereof, except in the case
18 of the division when such decision becomes final 20 days
19 following the board's decision, and judicial review thereof
20 shall be permitted only after any party claiming to be
21 aggrieved thereby has exhausted his remedies before the
22 board of labor appeals ~~as provided by this act~~. The division
23 ~~or board of labor appeals~~ shall be deemed to be a party to
24 any judicial action involving any such decision, and may be
25 represented in any such judicial action by ~~any qualified an~~

SECOND READING

1 attorney employed by the division ~~or board of labor appeals~~
 2 ~~and has been designated by it for that purpose~~ or at the
 3 division's ~~or board of labor appeals~~ request, by the
 4 attorney general.

5 (d) Court review. Within ~~ten~~ 30 days after the
 6 decision of the board of labor appeals has become final, any
 7 party aggrieved thereby may secure judicial review thereof
 8 by commencing an action in the district court of the county
 9 in which said party resides ~~against the board of labor~~
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 11 any other party to the proceeding before the board of labor
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 13 petition which need not be verified, but which shall state
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 16 ~~for service of process~~ the administrator of the division or
 17 the administrator's designee and such service shall be
 18 deemed completed service on all parties, but there shall be
 19 left with the party so served as many copies of the petition
 20 as there are defendants and the ~~board of labor appeals~~
 21 ~~division~~ shall forthwith mail one such copy to each such
 22 defendant. With its answer, the ~~board of labor appeals~~
 23 ~~division~~ shall certify and file with said court all
 24 documents and papers and a transcript of all testimony taken
 25 in the matter, together with ~~its~~ the board of labor appeals

1 findings of fact and decision therein. The board of labor
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