

SENATE BILL NO. 140

INTRODUCED BY MEHRENS, PETERSON, HEALY, HAFFERMAN, LOWE

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

IN THE SENATE

January 17, 1979	Introduced and referred to Committee on Labor and Employment Relations.
January 26, 1979	Committee recommend bill do pass as amended. Report adopted.
January 27, 1979	Printed and placed on members' desks.
January 29, 1979	Second Reading, do pass.
January 30, 1979	Considered correctly engrossed.
January 31, 1979	Third Reading, passed. Transmitted to Second House.

IN THE HOUSE

February 1, 1979	Introduced and referred to Committee on Labor and Employment Relations.
February 12, 1979	Committee recommend bill be concurred in. Report adopted.
February 13, 1979	On motion, postponed until the 46th Legislative Day.
February 27, 1979	Second Reading, concurred in.
February 28, 1979	Third Reading, concurred in.

IN THE SENATE

March 1, 1979

Returned from Second House.
Concurred in.

Sent to enrolling.

Reported correctly enrolled.

1 *Senate* BILL NO. *140*
 2 INTRODUCED BY *Michael Peterson Neal Jaffran*
 3 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY *Low*
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE ROLE OF
 6 THE WORKERS' COMPENSATION JUDGE, DEFINING HIS JURISDICTION
 7 AND THE NATURE OF REMEDIES HE MAY IMPOSE; TO REVISE THE
 8 PROVISIONS RELATING TO RECISSION, ALTERATION, AMENDMENT, OR
 9 COMPROMISE OF ORDERS, DECISIONS, AND AWARDS; AND TO INCREASE
 10 THE ADDITIONAL AWARD FOR UNREASONABLE DELAY OR REFUSAL TO
 11 PAY COMPENSATION; AMENDING SECTIONS 39-71-204, 39-71-611,
 12 39-71-741, 39-71-2905, 39-71-2907, AND 39-71-2909, MCA."

13
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 Section 1. Section 39-71-204, MCA, is amended to read:

16 "39-71-204. Recission, alteration, or amendment by
 17 division of its orders, decisions, or awards -- limitation
 18 -- effect. (1) ~~The~~ Except as provided in subsection (2), the
 19 division shall have continuing jurisdiction over all its
 20 orders, decisions, and awards and may, at any time, upon
 21 notice, and after opportunity to be heard is given to the
 22 parties in interest, rescind, alter, or amend any such
 23 order, decision, or award made by it upon good cause
 24 appearing therefor.

25 (2) The division or the workers' compensation judge

1 shall not have power to rescind, alter, or amend any final
 2 settlement or award of compensation more than 4 years after
 3 the same has been ~~made~~ approved by the division, and--the
 4 Rescinding, altering, or amending a final settlement within
 5 the 4-year period shall be by agreement between the claimant
 6 and the insurer. If the claimant and the insurer cannot
 7 agree, the dispute shall be considered a dispute for which
 8 the workers' compensation judge has jurisdiction to make a
 9 determination. Except as provided in 39-71-2908, the
 10 division or the workers' compensation judge shall not have
 11 the power to rescind, alter, or amend any order approving a
 12 full and final compromise settlement of compensation.

13 (3) Any order, decision, or award rescinding,
 14 altering, or amending a prior order, decision, or award
 15 shall have the same effect as original orders or awards."

16 Section 2. Section 39-71-611, MCA, is amended to read:

17 "39-71-611. Costs and attorneys' fees payable on
 18 denial of claim or termination of benefits later found
 19 compensable. In the event the ~~an~~ insurer denies the
 20 liability for a claim for compensation or terminates
 21 compensation benefits and the claim is later adjudged
 22 compensable by the division workers' compensation judge or
 23 on appeal, the insurer shall pay reasonable costs and
 24 attorneys' fees as established by the division workers'
 25 compensation judge."

1 Section 3. Section 39-71-741, MCA, is amended to read:

2 "39-71-741. Compromise settlements and lump-sum
3 payments -- division approval required. The biweekly
4 payments provided for in this chapter may be converted, in
5 whole or in part, into a lump-sum payment. Such conversion
6 can only be made upon the written application of the injured
7 worker or the worker's beneficiary, with the concurrence of
8 the insurer, and shall rest in the discretion of the
9 division, both as to the amount of such lump-sum payment and
10 the advisability of such conversion. The division is hereby
11 vested with full power, authority, and jurisdiction to allow
12 compromise-claims and to approve compromises of claims under
13 this chapter. All settlements and compromises of
14 compensation provided in this chapter are void without the
15 approval of the division. ~~Any approval~~ Approval of the
16 division must be in writing ~~and set forth specifically the~~
17 ~~reasons for such lump-sum or compromise payment.~~ The
18 division shall directly notify every claimant of any
19 division order approving or denying a claimant's settlement
20 or compromise of a claim. A controversy between a claimant
21 and an insurer regarding the conversion of biweekly payments
22 into a lump sum is considered a dispute for which the
23 workers' compensation judge has jurisdiction to make a
24 determination."

25 Section 4. Section 39-71-2905, MCA, is amended to

1 read:

2 "39-71-2905. Petition to workers' compensation judge.
3 A claimant ~~compensation plan~~ ~~Not~~ ~~an~~ insurer
4 who has a dispute concerning any benefits under chapter 71
5 ~~or~~ ~~72~~ of this title may petition the workers' compensation
6 judge ~~provided for in 2-15-1014~~ for a determination of the
7 dispute. The judge, after a hearing, shall make a ~~final~~
8 determination of the dispute and, in accordance with the law
9 ~~on benefits~~ as set forth in chapter 71 or 72 of this title.
10 If the dispute relates to benefits due a claimant under
11 chapter 71, the judge shall fix and determine any benefits
12 to be paid and specify the manner of payment. The workers'
13 compensation judge has exclusive jurisdiction to make
14 determinations concerning disputes under chapter 71. The
15 penalties and assessments allowed against an insurer under
16 chapter 71 are the exclusive penalties and assessments that
17 can be assessed against an insurer for disputes arising
18 under chapter 71."

19 Section 5. Section 39-71-2907, MCA, is amended to
20 read:

21 "39-71-2907. Increase in award for unreasonable delay
22 or refusal to pay. When payment of compensation has been
23 unreasonably delayed or refused by an insurer, either prior
24 or subsequent to the issuance of an award, ~~the full amount~~
25 ~~of the order, decision, or award may be increased by 10% of~~

1 ~~the weekly award order by the workers' compensation judge~~
 2 ~~granting a claimant compensation benefits, the full amount~~
 3 ~~of the compensation benefits due a claimant, between the~~
 4 ~~time compensation benefits were delayed or refused and the~~
 5 ~~date of the order granting a claimant compensation benefits,~~
 6 ~~may be increased by the workers' compensation judge by 20%.~~
 7 The question of unreasonable delay or refusal shall be
 8 determined by the workers' compensation judge, and such a
 9 finding constitutes good cause to rescind, alter, or amend
 10 any order, decision, or award previously made in the cause
 11 for the purpose of making the increase provided herein."

12 Section 6. Section 39-71-2909, MCA, is amended to
 13 read:

14 "39-71-2909. ~~Continuing jurisdiction Authority~~ to
 15 review, diminish, or increase awards -- limitation. The
 16 judge ~~has continuing jurisdiction of cases in which a~~
 17 ~~petition under 39-71-2985 has been filed and may, upon the~~
 18 ~~application petition of any party a claimant or an insurer~~
 19 ~~that the disability of the claimant has changed, review,~~
 20 diminish, or increase, in accordance with the law on
 21 benefits as set forth in chapter 71 or 72 of this title, any
 22 benefits awarded or previously awarded by the judge or
 23 benefits received by a claimant through settlement
 24 agreements, ~~except for However, the judge may not change~~
 25 any final settlement or award of compensation more than 4

1 years after the settlement has been made ~~and except for~~
 2 approved by the division or any order approving a full and
 3 final compromise settlement of compensation ~~upon the~~
 4 ~~grounds that the disability of the person has changed."~~

-End-

Approved by Committee
on Labor & Employment
Relations

SENATE BILL NO. 140

INTRODUCED BY MEHRENS, PETERSON, HEALY, HAFFERMAN, LOWE
BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE ROLE OF
THE WORKERS' COMPENSATION JUDGE, DEFINING HIS JURISDICTION
AND THE NATURE OF REMEDIES HE MAY IMPOSE; TO REVISE THE
PROVISIONS RELATING TO RECISSION, ALTERATION, AMENDMENT, OR
COMPROMISE OF ORDERS, DECISIONS, AND AWARDS; AND TO INCREASE
THE ADDITIONAL AWARD FOR UNREASONABLE DELAY OR REFUSAL TO
PAY COMPENSATION; AMENDING SECTIONS 39-71-204, 39-71-611,
39-71-741, 39-71-2905, 39-71-2907, AND 39-71-2909, MCA."

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

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orders, decisions, and awards and may, at any time, upon
notice, and after opportunity to be heard is given to the
parties in interest, rescind, alter, or amend any such
order, decision, or award made by it upon good cause
appearing therefor.

(2) The division ~~or the workers' compensation judge~~

shall not have power to rescind, alter, or amend any final
settlement or award of compensation more than 4 years after
the same has been made, ~~approved by the division, and--the~~
~~Rescinding, altering, or amending a final settlement within~~
~~the 4-year period shall be by agreement between the claimant~~
~~and the insurer, if the claimant and the insurer cannot~~
~~agree, the dispute shall be considered a dispute for which~~
~~the workers' compensation judge has jurisdiction to make a~~
~~determination. Except as provided in 39-71-2908, the~~
division ~~or the workers' compensation judge~~ shall not have
the power to rescind, alter, or amend any order approving a
full and final compromise settlement of compensation.

(3) Any order, decision, or award rescinding,
altering, or amending a prior order, decision, or award
shall have the same effect as original orders or awards."

Section 2. Section 39-71-611, MCA, is amended to read:

"39-71-611. Costs and attorneys' fees payable on
denial of claim or termination of benefits later found
compensable. In the event the ~~an~~ insurer denies the
liability ~~for a~~ claim for compensation or terminates
compensation benefits and the claim is later adjudged
compensable by the division ~~workers' compensation judge~~ or
on appeal, the insurer shall pay reasonable costs and
attorneys' fees as established by the division ~~workers'~~
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1 Section 3. Section 39-71-741, MCA, is amended to read:
 2 "39-71-741. Compromise settlements and lump-sum
 3 payments -- division approval required. The biweekly
 4 payments provided for in this chapter may be converted, in
 5 whole or in part, into a lump-sum payment. Such conversion
 6 can only be made upon the written application of the injured
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 8 the insurer, and shall rest in the discretion of the
 9 division, both as to the amount of such lump-sum payment and
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 16 division must be in writing ~~and set forth specifically the~~
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 21 and an insurer regarding the conversion of biweekly payments
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 23 workers' compensation judge has jurisdiction to make a
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25 Section 4. Section 39-71-2905, MCA, is amended to

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2 "39-71-2905. Petition to workers' compensation judge.
 3 A claimant, ~~compensation plan~~ ~~Nov-1-employer,~~ or an insurer
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 5 or 72 of this title may petition the workers' compensation
 6 judge ~~provided for in 2-15-1014~~ for a determination of the
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1 than 4 years after the settlement has been made ~~and except~~
 2 for approved by the division or any order approving a full
 3 and final compromise settlement of compensation ~~upon the~~
 4 grounds that the disability of the person has changed."

-End-

SENATE BILL NO. 140

INTRODUCED BY MEHRENS, PETERSON, HEALY, HAFFERMAN, LOWE
BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE ROLE OF THE WORKERS' COMPENSATION JUDGE, DEFINING HIS JURISDICTION AND THE NATURE OF REMEDIES HE MAY IMPOSE; TO REVISE THE PROVISIONS RELATING TO ~~REVISION~~ RESCISSION, ALTERATION, AMENDMENT, OR COMPROMISE OF ORDERS, DECISIONS, AND AWARDS; AND TO INCREASE THE ADDITIONAL AWARD FOR UNREASONABLE DELAY OR REFUSAL TO PAY COMPENSATION; AMENDING SECTIONS 39-71-204, 39-71-611, 39-71-741, 39-71-2905, 39-71-2907, AND 39-71-2909, MCA."

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

Section 1. Section 39-71-204, MCA, is amended to read:

"39-71-204. ~~Revision~~ RESCISSION, alteration, or amendment by division of its orders, decisions, or awards -- limitation -- effect. (1) ~~The~~ Except as provided in subsection (2), the division shall have continuing jurisdiction over all its orders, decisions, and awards and may, at any time, upon notice, and after opportunity to be heard is given to the parties in interest, rescind, alter, or amend any such order, decision, or award made by it upon good cause appearing therefor.

(2) The division ~~or the workers' compensation judge~~ shall not have power to rescind, alter, or amend any final settlement or award of compensation more than 4 years after the same has been made ~~approved by the division, and the~~ Rescinding, altering, or amending a final settlement within the 4-year period shall be by agreement between the claimant and the insurer. If the claimant and the insurer cannot agree, the dispute shall be considered a dispute for which the workers' compensation judge has jurisdiction to make a determination. Except as provided in 39-71-2908, the division ~~or the workers' compensation judge~~ shall not have the power to rescind, alter, or amend any order approving a full and final compromise settlement of compensation.

(3) Any order, decision, or award rescinding, altering, or amending a prior order, decision, or award shall have the same effect as original orders or awards."

Section 2. Section 39-71-611, MCA, is amended to read:

"39-71-611. Costs and attorneys' fees payable on denial of claim or termination of benefits later found compensable. In the event the ~~an~~ insurer denies the liability for a claim for compensation or terminates compensation benefits and the claim is later adjudged compensable by the ~~division~~ workers' compensation judge or on appeal, the insurer shall pay reasonable costs and attorneys' fees as established by the ~~division~~ workers'

1 compensation judge."

2 Section 3. Section 39-71-741, MCA, is amended to read:

3 "39-71-741. Compromise settlements and lump-sum
4 payments -- division approval required. The biweekly
5 payments provided for in this chapter may be converted, in
6 whole or in part, into a lump-sum payment. Such conversion
7 can only be made upon the written application of the injured
8 worker or the worker's beneficiary, with the concurrence of
9 the insurer, and shall rest in the discretion of the
10 division, both as to the amount of such lump-sum payment and
11 the advisability of such conversion. The division is hereby
12 vested with full power, authority, and jurisdiction to allow
13 compromise-claims and to approve compromises of claims under
14 this chapter. All settlements and compromises of
15 compensation provided in this chapter are void without the
16 approval of the division. Any ~~approval~~ Approval of the
17 division must be in writing ~~and set forth specifically~~ the
18 reasons ~~for such lump-sum or compromise payment.~~ The
19 division shall directly notify every claimant of any
20 division order approving or denying a claimant's settlement
21 or compromise of a claim. A controversy between a claimant
22 and an insurer regarding the conversion of biweekly BIWEEKLY
23 payments into a lump sum is considered a dispute for which
24 the workers' compensation judge has jurisdiction to make a
25 determination."

1 Section 4. Section 39-71-2905, MCA, is amended to
2 read:

3 "39-71-2905. Petition to workers' compensation judge.
4 A claimant, ~~compensation plan~~ ~~or an employer~~ or an insurer
5 who has a dispute concerning any benefits under chapter 71
6 ~~or 72~~ of this title may petition the workers' compensation
7 judge ~~provided for in 2-15-1014~~ for a determination of the
8 dispute. The judge, after a hearing, shall make a final
9 determination of the dispute ~~and~~ in accordance with the law
10 ~~on benefits~~ as set forth in chapter 71 ~~or 72~~ of this title.
11 If the dispute relates to benefits due a claimant under
12 chapter 71, the judge shall fix and determine any benefits
13 to be paid and specify the manner of payment. The workers'
14 compensation judge has exclusive jurisdiction to make
15 determinations concerning disputes under chapter 71. The
16 penalties and assessments allowed against an insurer under
17 chapter 71 are the exclusive penalties and assessments that
18 can be assessed against an insurer for disputes arising
19 under chapter 71."

20 Section 5. Section 39-71-2907, MCA, is amended to
21 read:

22 "39-71-2907. Increase in award for unreasonable delay
23 or refusal to pay. When payment of compensation has been
24 unreasonably delayed or refused by an insurer, either prior
25 or subsequent to the issuance of an award, ~~the full amount~~

1 of--the-order, decision, or award may be increased by 10% of
 2 the weekly award. order by the workers' compensation judge
 3 granting a claimant compensation benefits, the full amount
 4 of the compensation benefits due a claimant, between the
 5 time compensation benefits were delayed or refused and the
 6 date of the order granting a claimant compensation benefits,
 7 may be increased by the workers' compensation judge by 20%.
 8 The question of unreasonable delay or refusal shall be
 9 determined by the workers' compensation judge, and such a
 10 finding constitutes good cause to rescind, alter, or amend
 11 any order, decision, or award previously made in the cause
 12 for the purpose of making the increase provided herein."

13 Section 6. Section 39-71-2909, MCA, is amended to
 14 read:

15 "39-71-2909. Continuing--jurisdiction Authority to
 16 review, diminish, or increase awards -- limitation. The
 17 judge has--continuing--jurisdiction--of--cases--in--which--a
 18 petition--under--39-71-2905--has--been--filed--and may, upon the
 19 application petition of any party a claimant or an insurer
 20 that the disability of the claimant has changed, review,
 21 diminish, or increase, in accordance with the law on
 22 benefits as set forth in chapter 71 or 72 of this title, any
 23 benefits awarded--or previously awarded by the judge or
 24 benefits received by a claimant through settlement
 25 agreements, except--for However, the judge may not change

1 any final settlement or award OR AWARD of compensation more
 2 than 4 years after the settlement has been made--and--except
 3 for approved by the division or any order approving a full
 4 and final compromise settlement of compensation--upon--the
 5 grounds that the disability of the person has changed."

-End-