

SENATE BILL NO. 141

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 29, 1979	Committee recommend bill do pass as amended. Report adopted.
January 30, 1979	Printed and placed on members' desks.
January 31, 1979	Second reading, do pass.
February 1, 1979	Considered correctly engrossed.
February 2, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 3, 1979	Introduced and referred to Committee on Labor and Employment Relations.
February 12, 1979	Committee recommend bill be concurred in as amended. 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 as amended.

IN THE SENATE

March 1, 1979	Returned from second house. Concurred in as amended.
March 3, 1979	Second reading, pass consideration.
March 5, 1979	Second reading, amendments adopted.
March 6, 1979	Third reading, amendments adopted. Sent to enrolling.  Reported correctly enrolled.

1 *Spack* BILL NO. *141*  
 2 INTRODUCED BY *Richard P. Neely*  
 3 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY *Huffman*  
 4 *four*

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
 6 LAWS RELATING TO WORKERS' COMPENSATION; AMENDING SECTIONS  
 7 39-71-208, 39-71-210, 39-71-304, 39-71-405, 39-71-504,  
 8 39-71-603, 39-71-604, 39-71-609, 39-71-736, 39-71-901,  
 9 39-71-905, 39-71-906, 39-71-2202, 39-71-2301, AND  
 10 39-71-2306, MCA; AND REPEALING SECTIONS 39-71-305,  
 11 39-71-404, 39-71-2309, AND 39-71-2310, MCA."

12  
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 Section 1. Section 39-71-208, MCA, is amended to read:  
 15 "39-71-208. Blank forms, minutes, and records. The  
 16 division shall cause to be printed such blank forms as it  
 17 shall ~~deem requisite~~ considers necessary to facilitate or  
 18 promote the efficient administration of this chapter. It  
 19 shall provide a ~~book in which shall be entered the minutes~~  
 20 ~~of all its proceedings, a book of record in which shall be~~  
 21 ~~recorded~~ record of all awards made by the division, and such  
 22 other books or records as it ~~shall deem requisite~~ considers  
 23 necessary for the purpose and efficient administration of  
 24 this chapter. All such records are to be kept in the office  
 25 of the division."

1 Section 2. Section 39-71-210, MCA, is amended to read:  
 2 "39-71-210. Annual report of division -- copies for  
 3 general distribution. The division shall, ~~not later than~~  
 4 ~~October 1~~ after the end of each fiscal year, make a report  
 5 to the governor covering its entire operations and  
 6 proceedings for the preceding fiscal year, with such  
 7 suggestions or recommendations as it may deem of value for  
 8 public information. A reasonable number of copies of such  
 9 ~~the~~ report shall be printed for general distribution."

10 Section 3. Section 39-71-304, MCA, is amended to read:  
 11 "39-71-304. Books, records, and payrolls to be open to  
 12 inspection -- penalty for refusal. The books, records, and  
 13 payrolls of the an employer pertinent to the administration  
 14 of this chapter shall always be open to inspection by the  
 15 division or any duly authorized employee thereof for the  
 16 purpose of ascertaining the correctness of the payroll, the  
 17 number of ~~men~~ workers employed, and such other information  
 18 as may be necessary for the division and its management  
 19 under this chapter. Refusal on the part of the an employer  
 20 to submit ~~said~~ ~~the~~ books, records, and payrolls for such  
 21 inspection shall subject the offending employer to a penalty  
 22 of ~~\$100~~ \$500 for each offense, to be collected by through a  
 23 civil action in the name of the state and paid into the  
 24 state treasury."

25 Section 4. Section 39-71-405, MCA, is amended to read:

1       "39-71-405. Liability of employer who contracts work  
2 out. (1) Any An employer who contracts ~~with an independent~~  
3 ~~contractor~~ to have work performed of a kind which is a  
4 regular or a recurrent part of the work of the trade,  
5 business, occupation, or profession of such employer shall  
6 be is liable for the payment of compensation benefits under  
7 this chapter to the employees of any ~~subcontractor~~  
8 ~~unless the subcontractor primarily liable for the payment of~~  
9 ~~such compensation has coverage under this chapter~~ the  
10 contractor if the contractor has not properly complied with  
11 the coverage requirements of the Worker's Compensation Act.  
12 Any employers ~~insurer~~ who shall ~~become~~ becomes liable for  
13 such compensation payment of benefits may recover the amount  
14 of benefits paid and to be paid and necessary expenses from  
15 the subcontractor ~~contractor~~ primarily liable therein.

16       (2) Where any an employer procures contracts to have  
17 any work to be done, ~~wholly or in part for him,~~ by a  
18 contractor other than an independent contractor, and the  
19 work so procured contracted to be done is a part or process  
20 in the trade or business of such ~~the~~ employer, then such the  
21 employer shall ~~be~~ is liable to pay all compensation benefits  
22 under this chapter to the same extent as if the work were  
23 done without the intervention of such ~~the~~ contractor, and  
24 the work so procured contracted to be done shall not be  
25 construed to be casual employment. Where any an employer

1       procures contracts work to be done as specified in this  
2 subsection, ~~such the~~ contractor and ~~his the~~ contractor's  
3 employees shall ~~be presumed to have elected to~~ come under  
4 that plan of compensation adopted by the employer ~~unless~~  
5 ~~they shall have otherwise elected as provided herein.~~

6       (3) Where any an employer procures contracts any work  
7 to be done, wholly or in part for ~~him the~~ employer, by a an  
8 independent contractor, where the work so procured  
9 contracted to be done is casual employment as to such  
10 employer, then ~~such the~~ contractor shall become the  
11 employer for the purposes of this chapter.

12       ~~(4) Where an employer procures any work to be done by~~  
13 ~~any contractor or through him by a subcontractor, the~~  
14 ~~payment for which is to be made in property other than money~~  
15 ~~or its equivalent and the value of which property is~~  
16 ~~speculative or intangible, then and in that event the~~  
17 ~~employer shall not be liable for compensation, but such~~  
18 ~~liability shall fall upon the contractor or subcontractor~~  
19 ~~as the case may be."~~

20       Section 5. Section 39-71-504, MCA, is amended to read:  
21       "39-71-504. Funding of fund. The fund shall be funded  
22 in the following manner:

23       (1) The division shall require that the uninsured  
24 employer pay to the fund a penalty of either double the  
25 premium amount the employer would have paid on the payroll

1 of the employer's workers in this state if the employer had  
 2 been enrolled with compensation plan No. 3 or \$500 \$200,  
 3 whichever is greater. In determining the premium amount for  
 4 the calculation of the penalty under this subsection, the  
 5 division shall make an assessment on how much premium would  
 6 have been paid on the employer's past 3-year payroll for  
 7 periods within the 3 years when the employer was uninsured.  
 8 An assessment for payroll paid by the uninsured employer for  
 9 any time prior to July 1, 1977, may not be made.

10 (2) The fund shall receive from an uninsured employer  
 11 an amount equal to all benefits paid or to be paid from the  
 12 fund to an injured employee of the uninsured employer.  
 13 However, the uninsured employer's liability under this  
 14 subsection may not exceed \$30,000.

15 ~~{3}--in-no-event-may-an-uninsured-employer's-combined~~  
 16 ~~liability-under-subsections-(1)-and-(2)-of-this-section~~  
 17 ~~exceed-\$30,000.~~

18 ~~{4}{1}~~ The division may, ~~at the beginning of each~~  
 19 ~~five-year~~ determine that the \$1,000 assessments that are  
 20 charged against an insurer in each case of an industrial  
 21 death under 39-71-902(1) shall be paid to the uninsured  
 22 employers' fund rather than the subsequent injury fund."

23 Section 6. Section 39-71-603, MCA, is amended to read:  
 24 "39-71-603. Notice of ~~claims~~ for injuries other than  
 25 death to be submitted within sixty days ~~---exception---~~

1 ~~actual~~ notice. No ~~claims~~ claim to recover compensation  
 2 ~~benefits~~ under ~~this (act) the Workers' Compensation Act,~~ for  
 3 injuries not resulting in death, shall be ~~maintained~~  
 4 ~~considered compensable~~ unless, within 60 days after the  
 5 occurrence of the accident which is claimed to have caused  
 6 the injury, notice ~~in writing stating the name and address~~  
 7 ~~of the person injured,~~ of the time and place where the  
 8 accident occurred, and the nature of the injury ~~and signed~~  
 9 ~~by the person injured or someone in his behalf shall be~~  
 10 ~~served upon~~ is given to the employer or the employer's  
 11 insurer, by the injured employee or someone on the  
 12 employee's behalf, ~~except as otherwise provided in~~  
 13 ~~39-71-602.~~ ~~However,~~ actual knowledge of such ~~the~~  
 14 accident and injury on the part of such ~~the~~ employer or his  
 15 ~~the employer's~~ managing agent or superintendent in charge of  
 16 the work upon which the injured employee was engaged at the  
 17 time of the injury ~~shall be~~ is equivalent to such ~~service~~  
 18 notice."

19 Section 7. Section 39-71-604, MCA, is amended to read:  
 20 "39-71-604. Application for compensation under ~~plan~~  
 21 ~~three.~~ (1) Where a worker is entitled to compensation  
 22 ~~benefits~~ under compensation ~~plan~~ ~~---No-3~~ this chapter, the  
 23 worker shall file with the division an application therefor,  
 24 together with the certificate of the physician who attended  
 25 him, and it shall be insurer or the division all reasonable

1 information needed by the insurer to determine  
 2 compensability. It is the duty of such the worker's  
 3 attending physician to lend all necessary assistance in  
 4 making application for compensation and such proof of other  
 5 matters as may be required by the rules of the division  
 6 without charge to the workmen worker. The filing of a  
 7 certificate of forms or other documentation by the attending  
 8 physician does not constitute a sworn claim for  
 9 compensation.

10 ~~(2) For a proper compliance with the provisions of~~  
 11 ~~subsection (1) of this section, the physician after~~  
 12 ~~approval by the division, shall be paid out of the~~  
 13 ~~division's administrative moneys in the earmarked revenue~~  
 14 ~~fund, \$250 for each case.~~

15 (3)(2) Where death results from the an injury, the  
 16 parties entitled to compensation under compensation plan Nov  
 17 3 or someone in their behalf shall make application for the  
 18 same to the division file a claim with the insurer or the  
 19 division. The application claim must be accompanied with  
 20 proof of death and proof of relationship, showing the  
 21 parties entitled to compensation, certificate of the  
 22 attending physician, if any, and such other proof as may be  
 23 required by the rules of the division."

24 Section 8. Section 39-71-609, MCA, is amended to read:

25 "39-71-609. Denial of claim after payments made or

1 termination of benefits by insurer -- fifteen ~~fourteen~~ days'  
 2 notice required. If the an insurer determines to deny a  
 3 claim on which payments have been made under 39-71-608  
 4 during a time of further investigation or, after a claim has  
 5 been accepted, terminates biweekly compensation benefits, it  
 6 may do so only after ~~15~~ 14 days' written notice to the  
 7 claimant, the claimant's authorized representative, if any,  
 8 and the division. However, if an insurer has knowledge that  
 9 a claimant has returned to work, compensation benefits may  
 10 be terminated as of the time the claimant returned to work."

11 Section 9. Section 39-71-736, MCA, is amended to read:

12 "39-71-736. Compensation -- from what date paid. When  
 13 ~~an injured employee has a beneficiary who is entitled to~~  
 14 ~~compensation in case of the employee's death, no~~ No  
 15 ~~compensation shall~~ may be paid for the first week of 5  
 16 days loss of wages due to an injury, but ~~if disability~~ if  
 17 loss of wages continues ~~1~~ week for more than 5 days,  
 18 compensation shall be paid from the date of injury.  
 19 However, separate benefits of medical and hospital services  
 20 shall be furnished from the date of injury."

21 Section 10. Section 39-71-901, MCA, is amended to  
 22 read:

23 "39-71-901. Definitions. As used in this part, the  
 24 following definitions apply:

25 (1) "Vocationally handicapped" means a person who has

1 a medically certifiable permanent physical impairment which  
 2 is a substantial obstacle to obtaining employment or to  
 3 obtaining reemployment if ~~the~~ employee should become  
 4 unemployed, considering such factors as the person's age,  
 5 education, training, experience, and employment rejection.

6 ~~(2) "Certifying agency" means the section of~~  
 7 ~~rehabilitation division of workers' compensation.~~

8 ~~(3)(2) "Certificate" means documentation issued by the~~  
 9 ~~certifying agency division of workers' compensation to an~~  
 10 individual who is vocationally handicapped.

11 ~~(4)(3) "Fund" means the subsequent injury fund."~~

12 Section 11. Section 39-71-905, MCA, is amended to  
 13 read:

14 "39-71-905. Certification as vocationally handicapped.  
 15 A person who wishes to be certified as vocationally  
 16 handicapped for purposes of this part may apply to the  
 17 ~~certifying agency division~~ on forms furnished by ~~that agency~~  
 18 ~~the division~~. The ~~certifying agency division~~ shall conduct  
 19 an investigation and shall issue a certificate to a person  
 20 who, ~~in the division's discretion,~~ meets the requirements  
 21 for vocationally handicapped certification. ~~Failure of a~~  
 22 ~~person to be certified before employment precludes the~~  
 23 ~~person's employer or an employer's insurer from benefits~~  
 24 ~~under this part."~~

25 Section 12. Section 39-71-906, MCA, is amended to

1 read:

2 "39-71-906. Employer hiring or retaining certified  
 3 vocationally handicapped person to file information with  
 4 ~~certifying agency division~~ -- effect of failure to file.  
 5 Upon commencement of employment or retention in employment  
 6 of a certified vocationally handicapped person, the employer  
 7 shall submit to the ~~certifying agency division~~, on forms  
 8 furnished by the ~~agency division~~, all pertinent information  
 9 requested by the ~~agency division~~. The ~~certifying agency~~  
 10 ~~division~~ shall acknowledge receipt of the information.  
 11 Failure to file the required information with the ~~certifying~~  
 12 ~~agency division~~ within 60 days after the first day of the  
 13 vocationally handicapped person's employment or retention in  
 14 employment precludes the employer from the protection and  
 15 benefits of this part unless the information is filed before  
 16 an injury for which benefits are payable under this part."

17 Section 13. Section 39-71-2202, MCA, is amended to  
 18 read:

19 "39-71-2202. Policies made subject to chapter. Every  
 20 policy for the insurance of ~~the compensation herein provided~~  
 21 ~~for or against liability therefore~~ written under  
 22 compensation plan No. 2 shall be deemed considered to be  
 23 made subject to the provisions of this chapter. ~~No insurer~~  
 24 ~~shall enter into any such policy of insurance unless its~~  
 25 ~~forms have been approved by the division and as otherwise~~

1 ~~provided-by-law"~~

2 Section 14. Section 39-71-2301, MCA, is amended to  
3 read:

4 "39-71-2301. Intent and purpose of plan. It is the  
5 intent and purpose of compensation plan No. 3 ~~that each~~  
6 ~~industry, trade, occupation, or employment coming under the~~  
7 ~~provisions of the plan shall be liable to pay for injuries~~  
8 ~~happening to its employees coming under the provisions of~~  
9 ~~the Workers' Compensation Act to allow an employer to insure~~  
10 with a state operated workers' compensation insurance  
11 system known as the state compensation insurance fund or  
12 state fund. The state fund shall be administered by the  
13 division of workers' compensation and shall pay all benefits  
14 under this chapter to the employees of an employer who  
15 elects coverage with the state fund."

16 Section 15. Section 39-71-2306, MCA, is amended to  
17 read:

18 "39-71-2306. ~~Rates to be advanced for default State~~  
19 fund authorized to charge interest. Any employer who is in  
20 default in the observance of any order of the division  
21 issued pursuant to the provisions of 39-71-2301 to  
22 39-71-2304, inclusive, shall, in addition to any other  
23 penalty provided by this chapter, be charged an advance of  
24 25% over the established rate and such advanced rate shall  
25 continue and be in force until the employer has ceased to be

1 ~~in default. The state fund may charge interest on any~~  
2 ~~balance that is due and owing the state fund by an employer~~  
3 ~~who has misrepresented the employer's payroll, improperly~~  
4 ~~classified the employer's payroll, or defaulted in premium~~  
5 ~~payments. The interest rate charged shall be set by the~~  
6 ~~state fund at a reasonable rate. In determining what is a~~  
7 ~~reasonable rate, the state fund shall review appropriate~~  
8 ~~interest rates charged by financial institutions in this~~  
9 ~~state."~~

10 Section 16. Repealer. Sections 39-71-305, 39-71-404,  
11 39-71-2309, and 39-71-2310, MCA, are repealed.

-End-



1 a medically certifiable permanent physical impairment which  
 2 is a substantial obstacle to obtaining employment or to  
 3 obtaining reemployment if the employee should become  
 4 unemployed, considering such factors as the person's age,  
 5 education, training, experience, and employment rejection.

6 {2}--"Certifying--agency"---means---the---section---of  
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8 {3}{121} "Certificate" means documentation issued by the  
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 10 individual who is vocationally handicapped.

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 15 A person who wishes to be certified as vocationally  
 16 handicapped for purposes of this part may apply to the  
 17 certifying-agency division on forms furnished by that-agency  
 18 the division. The certifying-agency division shall conduct  
 19 an investigation and shall issue a certificate to a person  
 20 who, in the division's discretion, meets the requirements  
 21 for vocationally handicapped certification. ~~Failure--of--a~~  
 22 ~~person--to--be--certified--before--employment--precludes--the~~  
 23 ~~person's--employer--or--an--employer's--insurer--from--benefits~~  
 24 ~~under--this--part~~ AN EMPLOYEE WHO IS EMPLOYED AT THE TIME OF  
 25 APPLICATION FOR CERTIFICATION MAY BE CERTIFIED AS

1 VOCATIONALLY HANDICAPPED. AN EMPLOYEE WHO IS NOT EMPLOYED AT  
 2 THE TIME OF APPLICATION FOR CERTIFICATION MUST BE CERTIFIED  
 3 AS VOCATIONALLY HANDICAPPED BEFORE ENTERING NEW EMPLOYMENT  
 4 IN ORDER FOR THE NEW EMPLOYER TO RECEIVE THE BENEFITS OF  
 5 THIS PART."

6 Section 12. Section 39-71-906, MCA, is amended to  
 7 read:

8 "39-71-906. Employer hiring or retaining certified  
 9 vocationally handicapped person to file information with  
 10 certifying--agency division -- effect of failure to file.  
 11 Upon commencement of employment or retention in employment  
 12 of a certified vocationally handicapped person, the employer  
 13 shall submit to the certifying-agency division, on forms  
 14 furnished by the agency division, all pertinent information  
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 16 division shall acknowledge receipt of the information.  
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 19 vocationally handicapped person's employment or retention in  
 20 employment precludes the employer from the protection and  
 21 benefits of this part unless the information is filed before  
 22 an injury for which benefits are payable under this part."

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 24 read:

25 "39-71-2202. Policies made subject to chapter. Every

1 policy for the insurance of the compensation herein provided  
 2 for or against liability therefore written under  
 3 compensation plan No. 2 shall be deemed considered to be  
 4 made subject to the provisions of this chapter. No insurer  
 5 shall enter into any such policy of insurance unless its  
 6 forms have been approved by the division and as otherwise  
 7 provided by law"

8 Section 14. Section 39-71-2301, MCA, is amended to  
 9 read:

10 "39-71-2301. Intent and purpose of plan. It is the  
 11 intent and purpose of compensation plan No. 3 that each  
 12 industry, trade, occupation, or employment coming under the  
 13 provisions of the plan shall be liable to pay for injuries  
 14 happening to its employees coming under the provisions of  
 15 the Workers' Compensation Act to allow an employer to insure  
 16 with a state operated workers' compensation insurance  
 17 system, known as the state compensation insurance fund or  
 18 state fund. The state fund shall be administered by the  
 19 division of workers' compensation and shall pay all benefits  
 20 under this chapter to the employees of an employer who  
 21 elects coverage with the state fund."

22 Section 15. Section 39-71-2306, MCA, is amended to  
 23 read:

24 "39-71-2306. Rates to be advanced for default State  
 25 fund authorized to charge interest. Any employer who is in

1 default in the observance of any order of the division  
 2 issued pursuant to the provisions of 39-71-2301 to  
 3 39-71-2304, inclusive, shall, in addition to any other  
 4 penalty provided by this chapter, be charged an advance of  
 5 25% over the established rate and such advanced rate shall  
 6 continue and be in force until the employer has ceased to be  
 7 in default. The state fund may charge interest on any  
 8 balance that is due and owing the state fund by an employer  
 9 who has misrepresented the employer's payroll, improperly  
 10 classified the employer's payroll, or defaulted in premium  
 11 payments. The interest rate charged shall be set by the  
 12 state fund at a reasonable rate. In determining what is a  
 13 reasonable rate, the state fund shall review appropriate  
 14 interest rates charged by financial institutions in this  
 15 state."

16 Section 16. Repealer. Sections 39-71-305, 39-71-404,  
 17 39-71-2309, and 39-71-2310, MCA, are repealed.

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Approved by Committee  
on Labor & Employment  
Relations

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recorded~~ record of all awards made by the division, and such  
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number of men workers employed, and such other information  
as may be necessary for the division and its management  
under this chapter. Refusal on the part of the an employer  
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 4 regular or a recurrent part of the work of the trade,  
 5 business, occupation, or profession of such employer ~~shall~~  
 6 ~~be~~ is liable for the payment of compensation ~~benefits under~~  
 7 ~~this chapter~~ to the employees of any ~~subcontractor~~  
 8 ~~unless the subcontractor primarily liable for the payment of~~  
 9 ~~such compensation has coverage under this chapter~~ ~~the~~  
 10 ~~contractor if the contractor has not properly complied with~~  
 11 ~~the coverage requirements of the Worker's Compensation Act.~~  
 12 Any employers ~~insurer~~ who ~~shall become~~ ~~becomes~~ liable for  
 13 such compensation ~~payment of benefits~~ may recover the amount  
 14 of benefits paid ~~and to be paid~~ and necessary expenses from  
 15 the subcontractor ~~contractor~~ primarily liable therein.

16        (2) Where any ~~an~~ employer procures ~~contracts to have~~  
 17 any work to be done, ~~wholly or in part for him~~, by a  
 18 contractor other than an independent contractor, and the  
 19 work so procured ~~contracted~~ to be done is a part or process  
 20 in the trade or business of ~~such the~~ employer, then ~~such the~~  
 21 employer ~~shall be~~ is liable to pay all compensation ~~benefits~~  
 22 under this chapter to the same extent as if the work were  
 23 done without the intervention of ~~such the~~ contractor, and  
 24 the work so procured ~~contracted~~ to be done shall not be  
 25 construed to be casual employment. Where any ~~an~~ employer

1        procures ~~contracts~~ work to be done as specified in this  
 2 subsection, ~~such the~~ contractor and his ~~the~~ ~~contractor's~~  
 3 employees shall ~~be presumed to have elected to~~ come under  
 4 that plan of compensation adopted by the employer ~~unless~~  
 5 ~~they shall have otherwise elected as provided herein.~~

6        (3) Where any ~~an~~ employer procures ~~contracts~~ any work  
 7 to be done, wholly or in part for ~~him the~~ employer, by a ~~an~~  
 8 independent contractor, where the work so procured  
 9 ~~contracted~~ to be done is casual employment as to such  
 10 employer, then ~~such then the~~ contractor shall become the  
 11 employer for the purposes of this chapter.

12        ~~{+} Where an employer procures any work to be done by~~  
 13 ~~any contractor or through him by a subcontractor, the~~  
 14 ~~payment for which is to be made in property other than money~~  
 15 ~~or its equivalent and the value of which property is~~  
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 17 ~~employer shall not be liable for compensation, but suc~~  
 18 ~~liability shall fall upon the contractor or subcontractor~~  
 19 ~~as the case may be."~~

20        Section 5. Section 39-71-504, MCA, is amended to read:  
 21        \*39-71-504. Funding of fund. The fund shall be funded  
 22 in the following manner:

23        (1) The division shall require that the uninsured  
 24 employer pay to the fund a penalty of either double the  
 25 premium amount the employer would have paid on the payroll

1 of the employer's workers in this state if the employer had  
 2 been enrolled with compensation plan No. 3 or \$500 \$200,  
 3 whichever is greater. In determining the premium amount for  
 4 the calculation of the penalty under this subsection, the  
 5 division shall make an assessment on how much premium would  
 6 have been paid on the employer's past 3-year payroll for  
 7 periods within the 3 years when the employer was uninsured.  
 8 An assessment for payroll paid by the uninsured employer for  
 9 any time prior to July 1, 1977, may not be made.

10 (2) The fund shall receive from an uninsured employer  
 11 an amount equal to all benefits paid or to be paid from the  
 12 fund to an injured employee of the uninsured employer.  
 13 However, the uninsured employer's liability under this  
 14 subsection may not exceed \$30,000.

15 ~~(3) In no event may an uninsured employer's combined~~  
 16 ~~liability under subsections (1) and (2) of this section~~  
 17 ~~exceed \$30,000.~~

18 ~~(4)(3) The division may at the beginning of each~~  
 19 ~~fiscal year determine that the \$1,000 assessments that are~~  
 20 ~~charged against an insurer in each case of an industrial~~  
 21 ~~death under 39-71-902(1) shall be paid to the uninsured~~  
 22 ~~employers' fund rather than the subsequent injury fund."~~

23 Section 6. Section 39-71-603, MCA, is amended to read:

24 "39-71-603. Notice of ~~claims for~~ injuries other than  
 25 death to be submitted within sixty days ~~---exception---~~

1 actual notice. No ~~claims claim~~ to recover compensation  
 2 ~~benefits~~ under ~~this [act] the Workers' Compensation Act,~~ for  
 3 injuries not resulting in death, shall be ~~maintained~~  
 4 ~~considered compensable~~ unless, within 60 days after the  
 5 occurrence of the accident which is claimed to have caused  
 6 the injury, notice ~~in writing stating the name and address~~  
 7 ~~of the person injured,~~ of the time and place where the  
 8 accident occurred, and the nature of the injury ~~and signed~~  
 9 ~~by the person injured or someone in his behalf shall be~~  
 10 ~~served upon~~ is given to the employer or the employer's  
 11 insurer by the injured employee or someone on the  
 12 employee's behalf, ~~except as otherwise provided in~~  
 13 ~~39-71-602.~~ ~~However, actual~~ Actual knowledge of such ~~the~~  
 14 accident and injury on the part of such ~~the~~ employer or his  
 15 ~~the employer's~~ managing agent or superintendent in charge of  
 16 the work upon which the injured employee was engaged at the  
 17 time of the injury shall be is equivalent to such service  
 18 notice."

19 Section 7. Section 39-71-604, MCA, is amended to read:

20 "39-71-604. Application for compensation ~~under pten~~  
 21 ~~three.~~ (1) Where a worker is entitled to compensation  
 22 ~~benefits~~ under compensation ~~pten~~ ~~Nov 3~~ this chapter, the  
 23 worker shall file with the division ~~an application therefor~~  
 24 ~~together with the certificate of the physician who attended~~  
 25 ~~him and it shall be~~ insurer or the division all reasonable

1 information needed by the insurer to determine  
 2 compensability. It is the duty of such the worker's  
 3 attending physician to lend all necessary assistance in  
 4 making application for compensation and such proof of other  
 5 matters as may be required by the rules of the division  
 6 without charge to the workmen worker. The filing of a  
 7 certificate of forms or other documentation by the attending  
 8 physician does not constitute a sworn claim for  
 9 compensation.

10 ~~(2) For a proper compliance with the provisions of~~  
 11 ~~subsection (1) of this section the physician after~~  
 12 ~~approval by the division shall be paid out of the~~  
 13 ~~division's administrative moneys in the earmarked revenue~~  
 14 ~~fund \$1,50 for each case.~~

15 ~~(3) Where death results from the an injury, the~~  
 16 ~~parties entitled to compensation under compensation plan No.~~  
 17 ~~3 or someone in their behalf shall make application for the~~  
 18 ~~same to the division file a claim with the insurer or the~~  
 19 ~~division. The application claim must be accompanied with~~  
 20 ~~proof of death and proof of relationship, showing the~~  
 21 ~~parties entitled to compensation, certificate of the~~  
 22 ~~attending physician, if any, and such other proof as may be~~  
 23 ~~required by the rules of the division."~~

24 Section 8. Section 39-71-609, MCA, is amended to read:  
 25 "39-71-609. Denial of claim after payments made or

1 termination of benefits by insurer -- fifteen ~~fourteen~~ days'  
 2 notice required. If the an insurer determines to deny a  
 3 claim on which payments have been made under 39-71-608  
 4 during a time of further investigation or, after a claim has  
 5 been accepted, terminates biweekly compensation benefits, it  
 6 may do so only after ~~15~~ 14 days' written notice to the  
 7 claimant, the claimant's authorized representative, if any,  
 8 and the division. However, if an insurer has knowledge that  
 9 a claimant has returned to work, compensation benefits may  
 10 be terminated as of the time the claimant returned to work."

11 Section 9. Section 39-71-736, MCA, is amended to read:  
 12 "39-71-736. Compensation -- from what date paid. When  
 13 an injured employee has a beneficiary who is entitled to  
 14 compensation in case of the employee's death no No  
 15 compensation shall ~~may~~ be paid for the first week of any 2  
 16 days loss of wages due to an injury, but if disability If  
 17 loss of wages continues ~~1~~ week for more than 5 days.  
 18 compensation shall be paid from the date of injury.  
 19 However, separate benefits of medical and hospital services  
 20 shall be furnished from the date of injury."

21 Section 10. Section 39-71-901, MCA, is amended to  
 22 read:

23 "39-71-901. Definitions. As used in this part, the  
 24 following definitions apply:

25 (1) "Vocationally handicapped" means a person who has

1 a medically certifiable permanent physical impairment which  
2 is a substantial obstacle to obtaining employment or to  
3 obtaining reemployment if the employee should become  
4 unemployed, considering such factors as the person's age,  
5 education, training, experience, and employment rejection.

6 (2) ~~"Certifying agency" means the section of~~  
7 ~~rehabilitation division of workers' compensation.~~

8 (3) (2) "Certificate" means documentation issued by the  
9 certifying agency division of workers' compensation to an  
10 individual who is vocationally handicapped.

11 (4) (2) "Fund" means the subsequent injury fund."

12 Section 11. Section 39-71-905, MCA, is amended to  
13 read:

14 "39-71-905. Certification as vocationally handicapped.  
15 A person who wishes to be certified as vocationally  
16 handicapped for purposes of this part may apply to the  
17 certifying agency division on forms furnished by that agency  
18 the division. The certifying agency division shall conduct  
19 an investigation and shall issue a certificate to a person  
20 who, in the division's discretion, meets the requirements  
21 for vocationally handicapped certification. ~~Failure of a~~  
22 ~~person to be certified before employment precludes the~~  
23 ~~person's employer or an employer's insurer from benefits~~  
24 ~~under this part.~~ AN EMPLOYEE WHO IS EMPLOYED AT THE TIME OF  
25 APPLICATION FOR CERTIFICATION MAY BE CERTIFIED AS

1 VOCATIONALLY HANDICAPPED. AN EMPLOYEE WHO IS NOT EMPLOYED AT  
2 THE TIME OF APPLICATION FOR CERTIFICATION MUST BE CERTIFIED  
3 AS VOCATIONALLY HANDICAPPED BEFORE ENTERING NEW EMPLOYMENT  
4 IN ORDER FOR THE NEW EMPLOYER TO RECEIVE THE BENEFITS OF  
5 THIS PART."

6 Section 12. Section 39-71-906, MCA, is amended to  
7 read:

8 "39-71-906. Employer hiring or retaining certified  
9 vocationally handicapped person to file information with  
10 certifying agency division -- effect of failure to file.  
11 Upon commencement of employment or retention in employment  
12 of a certified vocationally handicapped person, the employer  
13 shall submit to the certifying agency division, on forms  
14 furnished by the agency division, all pertinent information  
15 requested by the agency division. The certifying agency  
16 division shall acknowledge receipt of the information.  
17 Failure to file the required information with the certifying  
18 agency division within 60 days after the first day of the  
19 vocationally handicapped person's employment or retention in  
20 employment precludes the employer from the protection and  
21 benefits of this part unless the information is filed before  
22 an injury for which benefits are payable under this part."

23 Section 13. Section 39-71-2202, MCA, is amended to  
24 read:

25 "39-71-2202. Policies made subject to chapter. Every

1 policy for the insurance of ~~the compensation herein provided~~  
 2 ~~for or against liability therefore~~ written under  
 3 compensation plan No. 2 shall be deemed considered to be  
 4 made subject to the provisions of this chapter. ~~No insurer~~  
 5 ~~shall enter into any such policy of insurance unless its~~  
 6 ~~forms have been approved by the division and as otherwise~~  
 7 ~~provided by law."~~

8 Section 14. Section 39-71-2301, MCA, is amended to  
 9 read:

10 "39-71-2301. Intent and purpose of plan. It is the  
 11 intent and purpose of compensation plan No. 3 that each  
 12 ~~industry, trade, occupation or employment coming under the~~  
 13 ~~provisions of the plan shall be liable to pay for injuries~~  
 14 ~~happening to its employees coming under the provisions of~~  
 15 ~~the Workers' Compensation Act to allow an employer to insure~~  
 16 ~~with a state operated workers' compensation insurance~~  
 17 ~~system, known as the state compensation insurance fund or~~  
 18 ~~state fund. The state fund shall be administered by the~~  
 19 ~~division of workers' compensation and shall pay all benefits~~  
 20 ~~under this chapter to the employees of an employer who~~  
 21 ~~elects coverage with the state fund."~~

22 Section 15. Section 39-71-2306, MCA, is amended to  
 23 read:

24 "39-71-2306. Rates to be advanced for default State  
 25 fund authorized to charge interest. Any employer who is in

1 ~~default in the observance of any order of the division~~  
 2 ~~issued pursuant to the provisions of 39-71-2301 to~~  
 3 ~~39-71-2304, inclusive, shall in addition to any other~~  
 4 ~~penalty provided by this chapter, be charged an advance of~~  
 5 ~~25% over the established rate and such advanced rate shall~~  
 6 ~~continue and be in force until the employer has ceased to be~~  
 7 ~~in default. The state fund may charge interest on any~~  
 8 ~~balance that is due and owing the state fund by an employer~~  
 9 ~~who has misrepresented the employer's payroll, improperly~~  
 10 ~~classified the employer's payroll, or defaulted in premium~~  
 11 ~~payments. The interest rate charged shall be set by the~~  
 12 ~~state fund at a reasonable rate. In determining what is a~~  
 13 ~~reasonable rate, the state fund shall review appropriate~~  
 14 ~~interest rates charged by financial institutions in this~~  
 15 ~~state."~~

16 Section 16. Repealer. Sections 39-71-305, 39-71-404,  
 17 39-71-2309, and 39-71-2310, MCA, are repealed.

-End-



## SENATE BILL NO. 141

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 GENERALLY REVISE THE  
LAWS RELATING TO WORKERS' COMPENSATION; AMENDING SECTIONS  
39-71-208, 39-71-210, 39-71-304, 39-71-405, 39-71-504,  
39-71-603, 39-71-604, 39-71-609, 39-71-736, 39-71-901,  
39-71-905, 39-71-906, 39-71-2202, 39-71-2301, AND  
39-71-2306, MCA; AND REPEALING SECTIONS 39-71-305,  
39-71-404, 39-71-2309, AND 39-71-2310, MCA."

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

Section 1. Section 39-71-208, MCA, is amended to read:

"39-71-208. Blank forms, minutes, and records. The  
division shall cause to be printed such blank forms as it  
shall--deem--requisite considers necessary to facilitate or  
promote the efficient administration of this chapter. It  
shall provide a ~~book-in-which-shall-be-entered-the-minutes~~  
~~of-its-proceedings, a-book-of-record-in-which-shall-be~~  
recorded record of all awards made by the division, and such  
other books or records as it ~~shall-deem-requisite~~ considers  
necessary for the purpose and efficient administration of  
this chapter. All such records are to be kept in the office  
of the division."

Section 2. Section 39-71-210, MCA, is amended to read:

"39-71-210. Annual report of division -- copies for  
general distribution. The division shall, ~~not later than~~  
~~October 1~~ after the end of each fiscal year, make a report  
to the governor covering its entire operations and  
proceedings for the preceding fiscal year, with such  
suggestions or recommendations as it may deem of value for  
public information. A reasonable number of copies of such  
~~the~~ report shall be printed for general distribution."

Section 3. Section 39-71-304, MCA, is amended to read:

"39-71-304. Books, records, and payrolls to be open to  
inspection -- penalty for refusal. The books, records, and  
payrolls of the an employer pertinent to the administration  
of this chapter shall always be open to inspection by the  
division or any duly authorized employee thereof for the  
purpose of ascertaining the correctness of the payroll, the  
number of men workers employed, and such other information  
as may be necessary for the division and its management  
under this chapter. Refusal on the part of the an employer  
to submit ~~said~~ the books, records, and payrolls for such  
inspection shall subject the offending employer to a penalty  
of NOT EXCEEDING \$100 \$500 for each offense, to be collected  
by through a civil action in the name of the state and paid  
into the state treasury."

Section 4. Section 39-71-405, MCA, is amended to read:

1       "39-71-405. Liability of employer who contracts work  
2 out. (1) Any ~~an~~ employer who contracts with an independent  
3 contractor to have work performed of a kind which is a  
4 regular or a recurrent part of the work of the trade,  
5 business, occupation, or profession of such employer shall  
6 be is liable for the payment of compensation benefits under  
7 this chapter to the employees of any ~~subcontractor~~  
8 ~~unless the subcontractor primarily liable for the payment of~~  
9 ~~such compensation has coverage under this chapter~~ the  
10 contractor if the contractor has not properly complied with  
11 the coverage requirements of the Worker's Compensation Act.  
12 Any employers insurer who shall ~~become~~ become liable for  
13 such compensation payment of benefits may recover the amount  
14 of benefits paid and to be paid and necessary expenses from  
15 the subcontractor contractor primarily liable therein.

16       (2) Where any ~~an~~ employer procures contracts to have  
17 any work to be done, ~~wholly or in part for him~~, by a  
18 contractor other than an independent contractor, and the  
19 work so procured contracted to be done is a part or process  
20 in the trade or business of such the employer, then such the  
21 employer shall be is liable to pay all compensation benefits  
22 under this chapter to the same extent as if the work were  
23 done without the intervention of such the contractor, and  
24 the work so procured contracted to be done shall not be  
25 construed to be casual employment. Where any ~~an~~ employer

1       procures contracts work to be done as specified in this  
2 subsection, such the contractor and ~~his~~ the contractor's  
3 employees shall ~~be presumed to have elected to come under~~  
4 that plan of compensation adopted by the employer unless  
5 ~~they shall have otherwise elected as provided herein.~~

6       (3) Where any ~~an~~ employer procures contracts any work  
7 to be done, wholly or in part for ~~him~~ the employer, by a ~~an~~  
8 independent contractor, where the work so procured  
9 contracted to be done is casual employment as to such  
10 employer, then ~~such then~~ the contractor shall become the  
11 employer for the purposes of this chapter.

12       ~~{+} Where an employer procures any work to be done by~~  
13 ~~any contractor or through him by a subcontractor, the~~  
14 ~~payment for which is to be made in property other than money~~  
15 ~~or its equivalent and the value of which property is~~  
16 ~~speculative or intangible, then and in that event the~~  
17 ~~employer shall not be liable for compensation, but such~~  
18 ~~liability shall fall upon the contractor or subcontractor~~  
19 ~~as the case may be."~~

20       Section 5. Section 39-71-504, MCA, is amended to read:  
21       "39-71-504. Funding of fund. The fund shall be funded  
22 in the following manner:

23       (1) The division shall require that the uninsured  
24 employer pay to the fund a penalty of either double the  
25 premium amount the employer would have paid on the payroll

1 of the employer's workers in this state if the employer had  
 2 been enrolled with compensation plan No. 3 or \$500 ~~\$200~~,  
 3 whichever is greater. In determining the premium amount for  
 4 the calculation of the penalty under this subsection, the  
 5 division shall make an assessment on how much premium would  
 6 have been paid on the employer's past 3-year payroll for  
 7 periods within the 3 years when the employer was uninsured.  
 8 An assessment for payroll paid by the uninsured employer for  
 9 any time prior to July 1, 1977, may not be made.

10 (2) The fund shall receive from an uninsured employer  
 11 an amount equal to all benefits paid or to be paid from the  
 12 fund to an injured employee of the uninsured employer.  
 13 However, the uninsured employer's liability under this  
 14 subsection may not exceed \$30,000.

15 ~~(3) In no event may an uninsured employer's combined~~  
 16 ~~liability under subsections (1) and (2) of this section~~  
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18 ~~(4)(3) The division may at the beginning of each~~  
 19 ~~fiscal year determine that the \$1,000 assessments that are~~  
 20 ~~charged against an insurer in each case of an industrial~~  
 21 ~~death under 39-71-902(1) shall be paid to the uninsured~~  
 22 ~~employers' fund rather than the subsequent injury fund."~~

23 Section 6. Section 39-71-603, MCA, is amended to read:

24 "39-71-603. Notice of ~~claims for~~ injuries other than  
 25 death to be submitted within sixty days ~~exception~~

1 actual notice. No ~~claims claim~~ to recover compensation  
 2 ~~benefits~~ under ~~this fact~~ the Workers' Compensation Act, for  
 3 injuries not resulting in death, shall be ~~maintained~~  
 4 ~~considered compensable~~ unless, within 60 days after the  
 5 occurrence of the accident which is claimed to have caused  
 6 the injury, notice ~~in writing stating the name and address~~  
 7 ~~of the person injured~~ of the time and place where the  
 8 accident occurred, and the nature of the injury ~~and signed~~  
 9 ~~by the person injured or someone in his behalf~~ shall be  
 10 ~~served upon~~ is given to the employer or the employer's  
 11 insurer by the injured employee or someone on the  
 12 employee's behalf, except ~~as otherwise provided in~~  
 13 ~~39-71-602. However, actual~~ Actual knowledge of such ~~the~~  
 14 accident and injury on the part of such ~~the~~ employer or ~~his~~  
 15 ~~the employer's~~ managing agent or superintendent in charge of  
 16 the work upon which the injured employee was engaged at the  
 17 time of the injury shall be is equivalent to such ~~service~~  
 18 ~~notice."~~

19 Section 7. Section 39-71-604, MCA, is amended to read:

20 "39-71-604. Application for compensation ~~under plan~~  
 21 ~~three.~~ (1) Where a worker is entitled to compensation  
 22 ~~benefits~~ under compensation plan ~~Nov-3~~ this chapter, the  
 23 worker shall file with the division ~~an application therefor~~  
 24 ~~together with the certificate of the physician who attended~~  
 25 ~~him and it shall be insurer or the division all reasonable~~

1 ~~information needed by the insurer to determine~~  
 2 ~~compensability. It is~~ the duty of such ~~the~~ worker's  
 3 ~~attending~~ physician to lend all necessary assistance in  
 4 making application for compensation and such proof of other  
 5 matters as may be required by the rules of the division  
 6 without charge to the workmen worker. The filing of a  
 7 ~~certificate of forms or other documentation~~ by the attending  
 8 physician does not constitute a sworn claim for  
 9 compensation.

10 ~~(2) For a proper compliance with the provisions of~~  
 11 ~~subsection (1) of this section the physician after~~  
 12 ~~approval by the division shall be paid out of the~~  
 13 ~~division's administrative moneys in the earmarked revenue~~  
 14 ~~fundy \$1.50 for each case~~

15 ~~(3)(2)~~ Where death results from the ~~an~~ injury, the  
 16 parties entitled to compensation under ~~compensation plan No.~~  
 17 ~~3~~ or someone in their behalf shall ~~make application for the~~  
 18 ~~same to the division~~ file a claim with the insurer or the  
 19 division. The ~~application~~ claim must be accompanied with  
 20 proof of death and proof of relationship, showing the  
 21 parties entitled to compensation, certificate of the  
 22 attending physician, if any, and such other proof as may be  
 23 required by the ~~rules of the division.~~

24 Section 8. Section 39-71-609, MCA, is amended to read:

25 "39-71-609. Denial of claim after payments made or

1 termination of benefits by insurer -- ~~fifteen~~ fourteen days'  
 2 notice required. If the ~~an~~ insurer determines to deny a  
 3 claim on which payments have been made under ~~39-71-608~~  
 4 during a time of further investigation or, after a claim has  
 5 been accepted, terminates biweekly compensation benefits, it  
 6 may do so only after ~~15~~ 14 days' written notice to the  
 7 claimant, the claimant's authorized representative, if any,  
 8 and the division. ~~However, if an insurer has knowledge that~~  
 9 ~~a claimant has returned to work, compensation benefits may~~  
 10 ~~be terminated as of the time the claimant returned to work."~~

11 Section 9. Section 39-71-736, MCA, is amended to read:  
 12 "39-71-736. Compensation -- from what date paid. When  
 13 an ~~injured~~ ~~employee~~ ~~has~~ ~~a~~ ~~beneficiary~~ ~~who~~ ~~is~~ ~~entitled~~ ~~to~~  
 14 ~~compensation~~ ~~in~~ ~~case~~ ~~of~~ ~~the~~ ~~employee's~~ ~~death~~ ~~no~~ ~~no~~  
 15 ~~compensation~~ ~~shall~~ ~~pay~~ be paid for the first week of any 2  
 16 days loss of wages due to an injury, ~~but if disability~~ If  
 17 loss of wages continues 1 week for more than 5 days.  
 18 compensation shall be paid from the date of injury.  
 19 However, separate benefits of medical and hospital services  
 20 shall be furnished from the date of injury."

21 Section 10. Section 39-71-901, MCA, is amended to  
 22 read:

23 "39-71-901. Definitions. As used in this part, the  
 24 following definitions apply:

25 (1) "Vocationally handicapped" means a person who has

## SENATE BILL NO. 141

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 GENERALLY REVISE THE LAWS RELATING TO WORKERS' COMPENSATION; AMENDING SECTIONS 39-71-208, 39-71-210, 39-71-304, 39-71-405, 39-71-504, 39-71-603, 39-71-604, 39-71-609, 39-71-736, 39-71-901, 39-71-905, 39-71-906, 39-71-2202, 39-71-2301, AND 39-71-2306, MCA; AND REPEALING SECTIONS 39-71-305, 39-71-404, 39-71-2309, AND 39-71-2310, MCA."

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

Section 1. Section 39-71-208, MCA, is amended to read:

"39-71-208. Blank forms, minutes, and records. The division shall cause to be printed such blank forms as it shall--deem--deem consider necessary to facilitate or promote the efficient administration of this chapter. It shall provide a book-in-which-shall-be-entered-the-minutes-of-all-its-proceedings,-a-book-of-record-in-which--shall--be-recorded record of all awards made by the division, and such other books or records as it shall--deem--deem consider necessary for the purpose and efficient administration of this chapter. All such records are to be kept in the office of the division."

Section 2. Section 39-71-210, MCA, is amended to read:

"39-71-210. Annual report of division -- copies for general distribution. The division shall, ~~not later than October 1~~ after the end of each fiscal year, make a report to the governor covering its entire operations and proceedings for the preceding fiscal year, with such suggestions or recommendations as it may deem of value for public information. A reasonable number of copies of such ~~the~~ report shall be printed for general distribution."

Section 3. Section 39-71-304, MCA, is amended to read:

"39-71-304. Books, records, and payrolls to be open to inspection -- penalty for refusal. The books, records, and payrolls of the ~~an~~ employer pertinent to the administration of this chapter shall always be open to inspection by the division or any duly authorized employee thereof for the purpose of ascertaining the correctness of the payroll, the number of ~~men~~ workers employed, and such other information as may be necessary for the division and its management under this chapter. Refusal on the part of the ~~an~~ employer to submit ~~said~~ the books, records, and payrolls for such inspection shall subject the offending employer to a penalty of NOT EXCEEDING \$100 \$500 for each offense, to be collected by through a civil action in the name of the state and paid into the state treasury."

Section 4. Section 39-71-405, MCA, is amended to read:

1       "39-71-405. Liability of employer who contracts work  
 2 out. (1) Any ~~an~~ employer who contracts ~~with an independent~~  
 3 ~~contractor~~ to have work performed of a kind which is a  
 4 regular or a recurrent part of the work of the trade,  
 5 business, occupation, or profession of such employer ~~shall~~  
 6 ~~be is~~ liable for the payment of compensation ~~benefits under~~  
 7 ~~this chapter~~ to the employees of any ~~subcontractor~~  
 8 ~~unless the subcontractor primarily liable for the payment of~~  
 9 ~~such compensation has coverage under this chapter~~ ~~the~~  
 10 ~~contractor if the contractor has not properly complied with~~  
 11 ~~the coverage requirements of the Worker's Compensation Act.~~  
 12 Any employers ~~insurer~~ who ~~shall become~~ ~~becomes~~ liable for  
 13 such compensation ~~payment of benefits~~ may recover the amount  
 14 of benefits paid ~~and to be paid~~ and necessary expenses from  
 15 the subcontractor ~~contractor~~ primarily liable therein.

16       (2) Where any ~~an~~ employer procures ~~contracts to have~~  
 17 any work to be done ~~wholly or in part for him~~ by a  
 18 contractor other than an independent contractor, and the  
 19 work so procured ~~contracted~~ to be done is a part or process  
 20 in the trade or business of such ~~the~~ employer, then such ~~the~~  
 21 employer ~~shall be is~~ liable to pay all compensation ~~benefits~~  
 22 under this chapter to the same extent as if the work were  
 23 done without the intervention of such ~~the~~ contractor, and  
 24 the work so procured ~~contracted~~ to be done shall not be  
 25 construed to be casual employment. Where any ~~an~~ employer

1       procures ~~contracts~~ work to be done as specified in this  
 2 subsection, such ~~the~~ contractor and his ~~the~~ ~~contractor's~~  
 3 employees shall ~~be--presumed-to-have-elected-to~~ come under  
 4 that plan of compensation adopted by the employer ~~unless~~  
 5 ~~they shall have otherwise elected as provided herein.~~

6       (3) Where any ~~an~~ employer procures ~~contracts~~ any work  
 7 to be done, wholly or in part for him ~~the employer~~, by a ~~an~~  
 8 ~~independent~~ contractor, where the work so procured  
 9 ~~contracted~~ to be done is casual employment as to such  
 10 employer, then ~~such~~ ~~than~~ ~~the~~ contractor shall become the  
 11 employer for the purposes of this chapter.

12       ~~{4}--Where an employer procures any work to be done by~~  
 13 ~~any contractor or through him by a subcontractor, the~~  
 14 ~~payment for which is to be made in property other than money~~  
 15 ~~or its equivalent and the value of which property is~~  
 16 ~~speculative or intangible, then and in that event the~~  
 17 ~~employer shall not be liable for compensation, but such~~  
 18 ~~liability shall fall upon the contractor or subcontractor~~  
 19 ~~as the case may be"~~

20       Section 5. Section 39-71-504, MCA, is amended to read:  
 21       "39-71-504. Funding of fund. The fund shall be funded  
 22 in the following manner:

23       (1) The division shall require that the uninsured  
 24 employer pay to the fund a penalty of either double the  
 25 premium amount the employer would have paid on the payroll

1 of the employer's workers in this state if the employer had  
 2 been enrolled with compensation plan No. 3 or \$500 \$200,  
 3 whichever is greater. In determining the premium amount for  
 4 the calculation of the penalty under this subsection, the  
 5 division shall make an assessment on how much premium would  
 6 have been paid on the employer's past 3-year payroll for  
 7 periods within the 3 years when the employer was uninsured.  
 8 An assessment for payroll paid by the uninsured employer for  
 9 any time prior to July 1, 1977, may not be made.

10 (2) The fund shall receive from an uninsured employer  
 11 an amount equal to all benefits paid or to be paid from the  
 12 fund to an injured employee of the uninsured employer.  
 13 However, the uninsured employer's liability under this  
 14 subsection may not exceed \$30,000.

15 ~~(3) In no event may an uninsured employer's combined~~  
 16 ~~liability under subsections (1) and (2) of this section~~  
 17 ~~exceed \$30,000.~~

18 ~~(4)(3) The division may, at the beginning of each~~  
 19 ~~fiscal year, determine that the \$1,000 assessments that are~~  
 20 ~~charged against an insurer in each case of an industrial~~  
 21 ~~death under 39-71-902(1) shall be paid to the uninsured~~  
 22 ~~employers' fund rather than the subsequent injury fund."~~

23 Section 6. Section 39-71-603, MCA, is amended to read:

24 "39-71-603. Notice of ~~claims~~ for injuries other than  
 25 death to be submitted within sixty days ~~exception~~

1 ~~actual notice.~~ No ~~claim~~ claim to recover compensation  
 2 benefits under ~~this [act] the Workers' Compensation Act,~~ for  
 3 injuries not resulting in death, shall be ~~maintained~~  
 4 considered compensable unless, within 60 days after the  
 5 occurrence of the accident which is claimed to have caused  
 6 the injury, ~~notice in writing stating the name and address~~  
 7 ~~of the person injured, of the time and place where the~~  
 8 ~~accident occurred, and the nature of the injury and signed~~  
 9 ~~by the person injured or someone in his behalf, shall be~~  
 10 ~~served upon~~ is given to the employer or the employer's  
 11 insurer, by the injured employee or someone on the  
 12 employee's behalf, except as otherwise provided in  
 13 39-71-602. ~~However, actual~~ Actual knowledge of such ~~the~~  
 14 accident and injury on the part of such ~~the~~ employer or ~~his~~  
 15 the employer's managing agent or superintendent in charge of  
 16 the work upon which the injured employee was engaged at the  
 17 time of the injury ~~shall be~~ is equivalent to such ~~service~~  
 18 notice."

19 Section 7. Section 39-71-604, MCA, is amended to read:

20 "39-71-604. Application for compensation under ~~plan~~  
 21 ~~three.~~ (1) Where a worker is entitled to compensation  
 22 benefits under compensation ~~plan No. 3~~ this chapter, the  
 23 worker shall file with the ~~division an application therefor~~  
 24 ~~together with the certificate of the physician who attended~~  
 25 ~~him, and it shall be~~ insurer or the division all reasonable

1 information needed by the insurer to determine  
 2 compensability. It is the duty of such the worker's  
 3 attending physician to lend all necessary assistance in  
 4 making application for compensation and such proof of other  
 5 matters as may be required by the rules of the division  
 6 without charge to the workman worker. The filing of a  
 7 certificate of forms or other documentation by the attending  
 8 physician does not constitute a sworn claim for  
 9 compensation.

10 ~~(2) For a proper compliance with the provisions of~~  
 11 ~~subsection (1) of this section, the physician, after~~  
 12 ~~approval by the division, shall be paid out of the~~  
 13 ~~division's administrative moneys in the earmarked revenue~~  
 14 ~~fund \$150 for each case.~~

15 (3)(2) Where death results from the an injury, the  
 16 parties entitled to compensation under compensation plan No.  
 17 3 or someone in their behalf shall ~~make application for the~~  
 18 ~~same to the division file a claim with the insurer or the~~  
 19 division. The application claim must be accompanied with  
 20 proof of death and proof of relationship, showing the  
 21 parties entitled to compensation, certificate of the  
 22 attending physician, if any, and such other proof as may be  
 23 required by the rules of the division."

24 Section 8. Section 39-71-609, MCA, is amended to read:

25 "39-71-609. Denial of claim after payments made or

1 termination of benefits by insurer -- fifteen fourteen days'  
 2 notice required. If the an insurer determines to deny a  
 3 claim on which payments have been made under 39-71-608  
 4 during a time of further investigation or, after a claim has  
 5 been accepted, terminates biweekly compensation benefits, it  
 6 may do so only after 15 14 days' written notice to the  
 7 claimant, the claimant's authorized representative, if any,  
 8 and the division. However, if an insurer has knowledge that  
 9 a claimant has returned to work, compensation benefits may  
 10 be terminated as of the time the claimant returned to work."

11 Section 9. Section 39-71-736, MCA, is amended to read:

12 "39-71-736. Compensation -- from what date paid. When  
 13 an injured employee has a beneficiary who is entitled to  
 14 compensation in case of the employee's death, no No  
 15 compensation shall may be paid for the first week of any 2  
 16 days loss of wages due to an injury, but if disability If  
 17 loss of wages continues 1 week for more than 5 days,  
 18 compensation shall be paid from the date of injury.  
 19 However, separate benefits of medical and hospital services  
 20 shall be furnished from the date of injury."

21 Section 10. Section 39-71-901, MCA, is amended to  
 22 read:

23 "39-71-901. Definitions. As used in this part, the  
 24 following definitions apply:

25 (1) "Vocationally handicapped" means a person who has



1 a medically certifiable permanent physical impairment which  
 2 is a substantial obstacle to obtaining employment or to  
 3 obtaining reemployment if the employee should become  
 4 unemployed, considering such factors as the person's age,  
 5 education, training, experience, and employment rejection.

6 †2) ~~"Certifying--agency"---means---the---section---of~~  
 7 ~~rehabilitation--division-of-workers-compensation~~

8 †3) (2) "Certificate" means documentation issued by the  
 9 certifying--agency division of workers' compensation to an  
 10 individual who is vocationally handicapped.

11 †4) (3) "Fund" means the subsequent injury fund."

12 Section 11. Section 39-71-905, MCA, is amended to  
 13 read:

14 "39-71-905. Certification as vocationally handicapped.

15 A person who wishes to be certified as vocationally  
 16 handicapped for purposes of this part may apply to the  
 17 certifying--agency division on forms furnished by ~~that~~ agency  
 18 the division. The certifying--agency division shall conduct  
 19 an investigation and shall issue a certificate to a person  
 20 who, in the division's discretion, meets the requirements  
 21 for vocationally handicapped certification. ~~Failure--of--a~~  
 22 ~~person--to--be--certified--before--employment--precludes--the~~  
 23 ~~person's--employer--or--an--employer's--insurer--from--benefits~~  
 24 ~~under--this--part; AN EMPLOYEE WHO IS EMPLOYED AT THE TIME OF~~  
 25 ~~APPLICATION FOR CERTIFICATION REQUESTING REEMPLOYMENT MAY BE~~

1 CERTIFIED AS VOCATIONALLY HANDICAPPED. AN EMPLOYEE WHO IS  
 2 NOT EMPLOYED AT THE TIME OF APPLICATION FOR CERTIFICATION  
 3 MUST BE CERTIFIED AS VOCATIONALLY HANDICAPPED BEFORE  
 4 ENTERING NEW EMPLOYMENT IN ORDER FOR THE NEW EMPLOYER TO  
 5 RECEIVE THE BENEFITS OF THIS PART."

6 Section 12. Section 39-71-906, MCA, is amended to  
 7 read:

8 "39-71-906. Employer hiring or retaining certified  
 9 vocationally handicapped person to file information with  
 10 certifying--agency division -- effect of failure to file.  
 11 Upon commencement of employment or retention in employment  
 12 of a certified vocationally handicapped person, the employer  
 13 shall submit to the certifying--agency division, on forms  
 14 furnished by the agency division, all pertinent information  
 15 requested by the agency division. The certifying--agency  
 16 division shall acknowledge receipt of the information.  
 17 Failure to file the required information with the certifying  
 18 agency division within 60 days after the first day of the  
 19 vocationally handicapped person's employment or retention in  
 20 employment precludes the employer from the protection and  
 21 benefits of this part unless the information is filed before  
 22 an injury for which benefits are payable under this part."

23 Section 13. Section 39-71-2202, MCA, is amended to  
 24 read:

25 "39-71-2202. Policies made subject to chapter. Every

1 policy for the insurance of the compensation herein provided  
 2 for or against liability therefore written under  
 3 compensation plan No. 2 shall be deemed considered to be  
 4 made subject to the provisions of this chapter. No insurer  
 5 shall enter into any such policy of insurance unless its  
 6 forms have been approved by the division and as otherwise  
 7 provided by law"

8 Section 14. Section 39-71-2301, MCA, is amended to  
 9 read:

10 "39-71-2301. Intent and purpose of plan. It is the  
 11 intent and purpose of compensation plan No. 3 that each  
 12 industry, trade, occupation, or employment coming under the  
 13 provisions of the plan shall be liable to pay for injuries  
 14 happening to its employees coming under the provisions of  
 15 the Workers' Compensation Act to allow an employer to insure  
 16 with a state operated workers' compensation insurance  
 17 system, known as the state compensation insurance fund or  
 18 state fund. The state fund shall be administered by the  
 19 division of workers' compensation and shall pay all benefits  
 20 under this chapter to the employees of an employer who  
 21 elects coverage with the state fund."

22 Section 15. Section 39-71-2306, MCA, is amended to  
 23 read:

24 "39-71-2306. Rates to be advanced for default State  
 25 fund authorized to charge interest. Any employer who is in

1 default in the observance of any order of the division  
 2 issued pursuant to the provisions of 39-71-2301 to  
 3 39-71-2304, inclusive, shall in addition to any other  
 4 penalty provided by this chapter be charged in advance of  
 5 25% over the established rate and such advanced rate shall  
 6 continue and be in force until the employer has ceased to be  
 7 in default. The state fund may charge interest on any  
 8 balance that is due and owing the state fund by an employer  
 9 who has misrepresented the employer's payroll, improperly  
 10 classified the employer's payroll, or defaulted in premium  
 11 payments. The interest rate charged shall be set by the  
 12 state fund at a reasonable rate. In determining what is a  
 13 reasonable rate, the state fund shall review appropriate  
 14 interest rates charged by financial institutions in this  
 15 state."

16 Section 16. Repealer. Sections 39-71-305, 39-71-404,  
 17 39-71-2309, and 39-71-2310, MCA, are repealed.

-End-

HOUSE OF REPRESENTATIVES

February 10, 1979

Labor and Employment Relations Committee amendments to Senate Bill 141,  
3rd Reading Copy, as follows:

1. Page 9, line 24.

Following: "IS"

Strike: "EMPLOYED AT THE TIME OF APPLICATION FOR CERTIFICATION"

Insert: "requesting reemployment"

1. Page 9, line 24.

Following: "IS"

Strike: "EMPLOYED AT THE TIME OF APPLICATION FOR CERTIFICATION"

Insert: "requesting reemployment"

AND AS AMENDED, BE CONCURRED IN.