

CHAPTER NO. 397

SENATE BILL NO. 208

INTRODUCED BY HAFFERMAN, LOWE

BY REQUEST OF THE CODE COMMISSIONER

IN THE SENATE

January 23, 1979	Introduced and referred to Committee on Labor and Employment Relations.
February 6, 1979	Committee recommend bill do pass as amended. Report adopted.
February 8, 1979	Printed and placed on members' desks.
February 9, 1979	Motion pass consideration. On motion taken from second reading and rereferred to Committee on Labor and Employment Relations.
February 13, 1979	Committee recommend bill do pass as amended. Report adopted.
February 14, 1979	Printed and placed on members' desks.
February 15, 1979	Second reading, do pass.
February 17, 1979	Considered correctly engrossed.
February 19, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 20, 1979	Introduced and referred to Committee on Labor and Employment Relations.
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March 8, 1979

Committee recommend bill
be concurred in. Report
adopted.

March 12, 1979

Second reading, concurred
in as amended.

March 16, 1979

Third reading, concurred
in as amended.

IN THE SENATE

March 17, 1979

Returned from second house.
Concurred in as amended.

March 19, 1979

Second reading, pass con-
sideration.

March 20, 1979

Second reading, amendments
adopted.

March 21, 1979

Third reading, amendments
adopted. Sent to enrolling.

Reported correctly enrolled.

1 *June* BILL NO. *208*
 2 INTRODUCED BY *Jefferson Lane*
 3 BY REQUEST OF THE CODE COMMISSIONER

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
 6 CLARIFY THE LAWS RELATING TO LABOR; ENACTING SECTION
 7 39-1-101, MCA; AND REPEALING SECTIONS 41-901 THROUGH 41-909,
 8 92-613, AND 92-1340, R.C.M. 1947."

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 NEW SECTION. Section 1. 39-1-101. Definitions. As
 12 used in this chapter, unless the context requires otherwise
 13 the following definitions apply:

14 (1) "Commissioner" means the commissioner of labor and
 15 industry as provided for in 2-15-1701.

16 (2) "Department" means the department of labor and
 17 industry as provided for in 2-15-1701.

18 Section 2. Section 39-1-102, MCA, is amended to read:

19 "39-1-102. Duties of department. The department of
 20 ~~labor and industry shall be charged with the duty of~~
 21 enforcing ~~enforce~~ all the laws of Montana relating to hours
 22 of labor, conditions of labor, prosecution of employers who
 23 default in payment of wages, protection of employees, and
 24 all laws relating to child labor ~~regulating which regulate~~
 25 the employment of children in any manner, and to shall

1 administer the laws of the state relating to free employment
 2 offices, and all other state labor laws enacted---by
 3 legislation."

4 Section 3. Section 39-2-103, MCA, is amended to read:
 5 "39-2-103. Confidential employment. The obligations
 6 peculiar to confidential employments are defined in the
 7 ~~chapter on trusts laws relating to trusts and fiduciary~~
 8 relationships."

9 Section 4. Section 39-2-503, MCA, is amended to read:
 10 "39-2-503. Termination at will. An employment having
 11 no specified term may be terminated at the will of either
 12 party on notice to the other, except where otherwise
 13 provided by this chapter, 28-10-301 through 28-10-303,
 14 28-10-502, and 30-11-601 through 30-11-605, and ~~except--as~~
 15 provided in 39-2-302."

16 Section 5. Section 39-2-703, MCA, is amended to read:
 17 "39-2-703. Liability of railway corporation for
 18 negligence of fellow servants. (1) Every person or
 19 corporation operating a railway or railroad in this state
 20 ~~shall be is~~ liable for all damages sustained by any employee
 21 of such person or corporation in consequence of the neglect
 22 of any other employee ~~or--employees~~ thereof or by the
 23 ~~mismanagement of any other employee or--employees~~ thereof and
 24 in consequence of the willful wrongs, whether of commission
 25 or omission, of any other employee ~~or--employees~~ thereof when

1 such neglect, mismanagement, or wrongs are in any manner
 2 connected with the use and operation of any railway or
 3 railroad on or about which ~~they shall be~~ he is employed,
 4 ~~and no~~ No contract which restricts such liability ~~shall be~~
 5 is legal or binding.

6 (2) In case of the death of any such employee in
 7 consequence of any injury or damage so sustained, the right
 8 of action provided by subsection (1) ~~of this section~~ shall
 9 survive and may be prosecuted and maintained by his heirs or
 10 personal representatives.

11 (3) Every railway corporation doing business in this
 12 state, including electric railway corporations, ~~shall be~~ is
 13 liable for ~~all~~ damages sustained by an employee thereof
 14 within this state ~~without contributing negligence on his~~
 15 ~~part, subject to the provisions of 27-1-702,~~ when such
 16 damages are caused by the negligence of any train
 17 dispatcher, telegraph operator, superintendent, master
 18 mechanic, yardmaster, conductor, engineer, motorman, or of
 19 any other employee who has superintendence of any stationary
 20 or hand signal.

21 (4) No contract of insurance, relief, benefit, or
 22 indemnity in case of injury or death or any other contract
 23 entered into, either before or after the injury, between the
 24 person injured and any of the employers named in subsection
 25 (3) ~~of this section shall constitute any~~ is a bar or defense

1 to any cause of action brought under the provisions of this
 2 ~~section, except as otherwise provided in the Workers'~~
 3 Compensation Act."

4 Section 6. Section 39-2-704, MCA, is amended to read:
 5 "39-2-704. Liability of mining company for negligence
 6 of fellow servants. (1) Every company, corporation, or
 7 individual, operating any mine, smelter, or mill for the
 8 refining of ores, ~~shall be~~ is liable for any damages
 9 sustained by any ~~employees~~ employee thereof within this
 10 state, ~~without contributing negligence on his part,~~ subject
 11 to the provisions of 27-1-702, when such damage is caused by
 12 the negligence of any superintendent, foreman, shift boss,
 13 hoisting or other engineer, or craneman.

14 (2) No contract of insurance, relief, benefit, or
 15 indemnity in case of injury or death or any other contract
 16 entered into before the injury between the person injured
 17 and any of the employers named in this section ~~shall~~
 18 ~~constitute any~~ is a bar or defense to any cause of action
 19 brought under the provisions of this section, ~~except as~~
 20 otherwise provided in the Workers' Compensation Act.

21 (3) In case of the death of any such ~~employees~~
 22 employee in consequence of any injury or damages so
 23 sustained, the right of action ~~shall survive~~ survives and
 24 may be prosecuted and maintained by ~~their~~ his heirs or
 25 personal representatives."

1 Section 7. Section 39-2-803, MCA, is amended to read:

2 "39-2-803. Blacklisting prohibited. If any company or
3 corporation in this state authorizes or allows any of its
4 agents to blacklist or any person does blacklist any
5 discharged employee or attempts by word or writing or any
6 other means whatever to prevent any discharged employee or
7 any employee who may have voluntarily left said ~~the~~
8 company's service from obtaining employment with another
9 person, except as provided for in 39-2-802, such company or
10 corporation or person is liable in punitive damages to such
11 employees ~~employee~~ so prevented from obtaining employment,
12 to be recovered by him in a civil action, and is also
13 punishable as provided in 39-2-804."

14 Section 8. Section 39-3-104, MCA, is amended to read:

15 "39-3-104. Equal pay for women for equivalent service.
16 (1) It ~~shall be~~ is unlawful for any ~~person or firm, the state~~
17 ~~or any county, municipal entity, or school district, public~~
18 ~~or private corporation, person, or firm~~ to employ any ~~women~~
19 or women in any occupation ~~or calling~~ within the state of
20 Montana for ~~seterieve wages or compensation which are less~~
21 than that paid to men for equivalent service or for the same
22 amount or class of work or labor in the same industry,
23 school, establishment, office, or place of employment of any
24 kind or description.

25 (2) ~~Any person or firm, if the state or any county,~~

1 municipal entity, or school district, ~~officers or~~ public or
2 private corporation, ~~violating person, or firm violates~~ any
3 of the provisions of subsection (1) ~~of this section shall be~~
4 ~~deemed it is~~ guilty of a misdemeanor and upon conviction
5 thereof shall be fined not less than \$25 or more than \$500
6 for each offense."

7 Section 9. Section 39-3-202, MCA, is amended to read:

8 "39-3-202. Rulemaking power of commissioner. The
9 commissioner is authorized to issue, amend, and enforce
10 rules for the purpose of carrying out the provisions of the
11 ~~fact] this part.~~"

12 Section 10. Section 39-3-203, MCA, is amended to read:

13 "39-3-203. Employer to notify employee on written
14 demand as to rate of wages and date of paydays. (1) Each
15 employer or an authorized representative of the employer
16 shall, on written demand, prior to the commencing of work,
17 notify each employee as to the rate of wages to be paid,
18 whether by the hour, day, week, month, or yearly basis year,
19 and date of paydays. Such notification ~~shall~~ must be in
20 writing to each employee or ~~the~~ by posting of notice in a
21 conspicuous place.

22 (2) The provisions of this ~~section] and 39-3-204~~
23 ~~shall do~~ not apply in respect to an employer who has entered
24 into a signed collective bargaining agreement, when such
25 agreement contains conditions of employment, wages to be

1 received, and hours to be worked, or to employers engaged in
2 agriculture or stockraising; provided, however, such
3 employers shall conform ~~comply~~ with the provisions of
4 39-3-205."

5 Section 11. Section 39-3-204, MCA, is amended to read:

6 "39-3-204. Payment of wages generally. (1) Every
7 employer of labor in the state of Montana shall pay to each
8 ~~of-his-employees~~ employee the wages earned by such ~~employees~~
9 employee in lawful money of the United States or checks on
10 banks convertible into cash on demand at the full face value
11 thereof, and no person for whom labor has been performed
12 ~~shall may~~ withhold from any employee any wages earned or
13 unpaid for a longer period than 10 business days after the
14 same become are due and payable. However, reasonable
15 deductions may be made for board, room, and other
16 incidentals supplied by the employer, whenever such
17 deductions are a part of the conditions of employment, or
18 other deductions provided for by law.

19 (2) If at such time of payment of wages any employee
20 ~~shall be is~~ absent from the regular place of labor, he ~~shall~~
21 ~~be is~~ entitled to such payment at any time thereafter.

22 (3) Provisions of this ~~[section]~~ and 39-3-203 ~~shall do~~
23 ~~not apply to any professional, supervisory, or technical~~
24 ~~employees~~ employee who by custom receive ~~their~~ receives his
25 wages earned at least once monthly."

1 Section 12. Section 39-3-208, MCA, is amended to read:

2 "39-3-208. Contracts in violation of part void. Any
3 contract or agreement made between any person, partnership,
4 or corporation and any ~~parties party~~ in his ~~or its~~ ~~or~~
5 ~~their employ whose provision shall be in violation, evasion~~
6 the provisions of which violates, evade, or circumvention ~~of~~
7 circumvent this part ~~shall be is~~ unlawful and void, but such
8 employee may sue to recover his wages earned, together with
9 ~~such the~~ 5% penalty specified in 39-3-206 or separately to
10 recover the penalty if the wages have been paid."

11 Section 13. Section 39-3-210, MCA, is amended to read:

12 "39-3-210. Investigative powers of commissioner. (1)
13 The commissioner or his authorized representatives are
14 empowered to enter and inspect such places, question such
15 employees, and investigate such facts, conditions, or
16 matters ~~as~~ which they may deem consider appropriate to
17 determine whether any person has violated any provision of
18 this ~~[act]~~ part or any rule issued hereunder or which ma
19 aid in the enforcement of the provisions of this ~~[act]~~ part.

20 (2) The commissioner or his authorized representatives
21 ~~shall have power to~~ may administer oaths and examine
22 witnesses under oath; issue subpoenas; compel the attendance
23 of witnesses and the production of papers, books, accounts,
24 records, payrolls, documents, and testimony; and take
25 depositions and affidavits in any proceeding before the

1 commissioner."

2 Section 14. Section 39-3-211, MCA, is amended to read:

3 "39-3-211. Commissioner to take wage assignments.

4 Whenever the commissioner determines that one or more
5 employees have claims for unpaid wages, he shall, upon the
6 written request of the employee, take an assignment of the
7 claim in trust for such employee and may maintain any
8 proceeding appropriate to enforce the claim, including
9 liquidated damages pursuant to this ~~part~~ part. With the
10 written consent of the assignor, the commissioner may settle
11 or adjust any claim assigned pursuant to this section."

12 Section 15. Section 39-3-214, MCA, is amended to read:

13 "39-3-214. Court costs and attorneys' fees. (1)

14 Whenever it ~~shall-become~~ is necessary for the employee to
15 enter or maintain a suit at law for the recovery or
16 collection of wages due as provided for by this part, ~~then~~
17 such a resulting judgment ~~shall~~ must include a reasonable
18 attorney's fee in favor of the successful party, to be taxed
19 as part of the costs in the case.

20 (2) Any judgment for the plaintiff in a proceeding
21 pursuant to this ~~part~~ part ~~must~~ include all costs
22 reasonably incurred in connection with the proceeding,
23 including attorneys' fees.

24 (3) If the proceeding is maintained by the
25 commissioner, no court costs or fees ~~shall-be~~ are required

1 of him nor ~~shall-he-be~~ is he required to furnish any bond or
2 other security that might otherwise be required in
3 connection with any phase of the proceeding."

4 Section 16. Section 39-3-501, MCA, is amended to read:

5 "39-3-501. Certain laws extended to certain employers
6 in mineral and oil industry. For the purposes of this part,
7 all the provisions of ~~[41-1301 to 41-1311]~~ shall part 2 of
8 this chapter extend to and govern every person, firm,
9 partnership, or corporation engaged in the business of
10 extracting or of extracting and refining or reducing metals
11 and minerals or mining for coal or drilling for oil, ~~save~~
12 ~~and~~ except such persons, firms, partnerships, or
13 corporations as have a free and unencumbered title to not
14 less than one-half the fee of the property being worked. For
15 this purpose, ~~an~~ outstanding unpaid or unredeemed tax sale
16 certificate ~~shall~~ is not be considered an encumbrance."

17 Section 17. Section 39-3-504, MCA, is amended to read:

18 "39-3-504. Report of violations directly to county
19 attorney by ~~employees~~ employee. Any ~~employees~~ employee may
20 make complaint ~~direct~~ directly to the county attorney
21 relative to any violation of this part ~~39-3-104~~ part 8 of
22 ~~chapter 24~~ or part 2 of this chapter."

23 Section 18. Section 39-3-505, MCA, is amended to read:

24 "39-3-505. County attorney to notify commissioner of
25 violations violation reported directly by employees

1 ~~employee.~~ The county attorney of the county shall promptly
 2 notify the commissioner of labor and industry of any
 3 complaint made by any employee relative to the violation of
 4 any of the provisions of this part ~~39-3-104, part 8 of~~
 5 ~~chapter 2,~~ or part 2 of this chapter and shall in writing
 6 keep ~~the~~ commissioner advised of each step in any
 7 proceeding taken by ~~the~~ county attorney thereunder."

8 Section 19. Section 39-3-506, MCA, is amended to read:

9 "39-3-506. County attorney to file complaint in
 10 district court on belief of violation. If ~~the~~ a county
 11 attorney believes after receiving ~~the~~ information that the
 12 provisions of this part ~~39-3-104, part 8 of chapter 2,~~ or
 13 part 2 of this chapter have been violated and that such
 14 violation ~~or--violations~~ was ~~or--were~~ willful or that the
 15 financial condition of the employer is such as to endanger
 16 employees in receiving prompt payment or collection of
 17 wages, ~~it shall be his duty to~~ he shall file the complaint
 18 ~~aforesaid~~ in ~~the~~ district court. All proceedings upon such
 19 complaint ~~shall~~ must be promptly prosecuted."

20 Section 20. Section 39-3-604, MCA, is amended to read:

21 "39-3-604. Bond to be filed by lessee -- bond
 22 requirements. (1) Every person who leases from another
 23 person premises for the purpose of conducting therein a
 24 business as a restaurant, bar, or tavern is hereby required
 25 to file a bond equal to at least double the amount of the

1 projected semimonthly payroll with the commissioner of labor
 2 and industry. ~~Said~~ This bond ~~shall~~ must at all times be kept
 3 in full force and effect ~~and any cancellation or revocation~~
 4 ~~thereof or withdrawal of the sureties therefrom shall~~
 5 ~~automatically revoke and suspend the certificate issued to~~
 6 ~~the lessee of this part until such time as a new bond of~~
 7 ~~like tenure and effect shall have been filed and approved as~~
 8 ~~herein provided.~~

9 (2) The bond ~~and affidavit~~ required by subsection (1)
 10 of this section ~~shall~~ must be filed with the commissioner of
 11 labor and industry. The state of ~~Montana~~ shall must be
 12 named as the obligee therein, with good and sufficient
 13 sureties to be approved by the attorney general.

14 (3) Such bond ~~shall~~ must be conditioned to assure that
 15 in any lease transaction of the type referred to in 39-3-608
 16 the persons who perform labor or other personal services for
 17 the lessee are guaranteed their wages in the event the
 18 lessee ceases operation of the business for any reason and
 19 is unable to pay the wages due and owing the employees and
 20 to assure payment due the division of employment security as
 21 a result of payroll taxes."

22 Section 21. Section 39-4-102, MCA, is amended to read:

23 "39-4-102. Drivers and attendants of motor buses. (1)
 24 Drivers or attendants of motor buses employed in the state
 25 ~~shall~~ may not be employed for more than 8 hours in the any

1 24-hour period. Drivers or attendants of motor buses shall
 2 ~~must~~ be allowed a rest of at least 12 hours between the
 3 completion of their services in any 24-hour period and the
 4 beginning of their services in the next succeeding 24-hour
 5 period. In computing the number of hours of employment made
 6 by the provisions of this section, evidence may be
 7 introduced showing that part of ~~said~~ such time shall--be is
 8 consumed prior to entry within the state.

9 (2) The provisions of this section shall do not be
 10 effective apply when life is in danger of--destruction or in
 11 case--of--danger--of property is in imminent danger of
 12 destruction; or in case of delay due to accident or
 13 unpassable impassable roads, abnormal road conditions, or
 14 snow blockades; or shall-not-effect-the-delay-of when mails
 15 for ~~said~~ the drivers or attendants are delayed.

16 (3) Attendants "Attendant", for the purpose of this
 17 section, are is defined as any employee engaged for a
 18 portion of the-24-hour-period-in a day driving or repairing
 19 a motor bus and who is required to remain on ~~said~~ the
 20 vehicle as a relief driver or mechanic for time in excess of
 21 the 8-hour period--of for which he shall-be is rightly
 22 employed.

23 (4) Any employer or supervisor in charge of employee
 24 employees who shall-require requires a driver or attendant
 25 as above defined to labor contrary to the provisions of this

1 section shall-be-declared is guilty of a misdemeanor and
 2 upon conviction shall-be-punished is punishable by a fine of
 3 not less than \$100 or more than \$600 or by imprisonment of
 4 not less than 30 days or more than 7 months or both such
 5 fine and imprisonment.

6 (5) All motor bus companies operating lines in this
 7 state shall-be are liable in damage for all injuries to the
 8 person or--persons resulting in from the violation of the
 9 provisions of ~~said~~ this section."

10 Section 22. Section 39-4-103, MCA, is amended to read:

11 "39-4-103. Underground miners and smelters. (1) The
 12 period of employment of workingmen workers in all
 13 underground mines or workings, including railroad or other
 14 tunnels, shall--be is 8 hours per day, except in cases of
 15 emergency where when life and property are in imminent
 16 danger.

17 (2) The period of employment of workingmen workers in
 18 smelters, stamp-mills stamp mills, sampling works,
 19 concentrators, and all other institutions for the reduction
 20 of ores and refining of ores or metals shall-be is 8 hours
 21 per day, except in cases of emergency where life or property
 22 is in imminent danger.

23 (3) Any person-or-persons, body-corporate corporation,
 24 agent, manager, or employer who shall-violate violates any
 25 of the provisions of this section shall-be is guilty of a

1 misdemeanor and upon conviction thereof for each offense be
2 ~~is~~ subject to a fine of not less than \$100 or more than \$600
3 or by imprisonment in the county jail for a period of not
4 less than 1 month or more than 7 months or by both such fine
5 and imprisonment."

6 Section 23. Section 39-4-107, MCA, is amended to read:
7 "39-4-107. State and municipal governments, school
8 districts, mines, mills, and smelters. (1) A period of 8
9 hours ~~shall constitute~~ constitutes a day's work in all works
10 and undertakings carried on or aided by any municipal ~~or~~
11 county government, or the state government, ~~or a~~ first-class
12 school districts ~~district~~, and on all contracts let by them,
13 and for all janitors, [except in courthouses of sixth- and
14 seventh-class counties], engineers, ~~firemen~~ firefighters,
15 caretakers, custodians, and laborers employed in or about
16 any buildings, works, or grounds used or occupied for any
17 purpose by any such municipal, county, or state governments,
18 ~~school--districts--of--first--class--and~~ government or
19 first-class school district. A period of 8 hours constitutes
20 a day's work in mills and smelters for the treatment of
21 ores, in underground mines, and in the washing, reducing,
22 and treatment of coal, ~~except-in~~ In cases of emergency when
23 life or property is in imminent danger this subsection does
24 not apply.

25 (2) For firefighters in cities of the first and second

1 class, a ~~work-week-shall-be-a-period~~ workweek consists of a
2 maximum of 40 hours during a 5-day week.

3 (3) In counties where regular road and bridge
4 departments are maintained, the county commissioners may,
5 with the approval of the employees or their duly constituted
6 representative, establish a 40-hour ~~work--week~~ workweek
7 consisting of 4 consecutive 10-hour days. No employee ~~shall~~
8 ~~may~~ be required to work in excess of 8 hours in any one work
9 ~~day~~ workday if he prefers not to.

10 (4) Every person, corporation, stock company, or
11 association of persons who violates any of the provisions of
12 this section ~~shall--be~~ is guilty of a misdemeanor and upon
13 conviction thereof shall be punished by a fine of not less
14 than \$100 or more than \$600 or by imprisonment in the county
15 jail for not less than 30 days or more than 7 months or by
16 both such fine and imprisonment."

17 Section 24. Section 39-4-108, MCA, is amended to read:
18 "39-4-108. Railway employees. (1) On all lines o
19 railroads or railways operated in whole or in part within
20 this state, the time of labor of locomotive engineers,
21 locomotive firemen, conductors, trainmen, operators, and
22 agents acting as operators employed in running or operating
23 the locomotive engines or trains on or over such railroads
24 or railways in this state ~~shall~~ may not at any time exceed
25 12 consecutive hours or ~~to--be--on-duty-for-more-than~~ an

1 ~~aggregate of~~ 16 hours ~~in the aggregate~~ in any 24-hour
 2 period. At least 8 hours ~~shall~~ must be allowed them off duty
 3 before ~~said~~ engineers, firemen, conductors, trainmen,
 4 operators, and agents acting as operators are again ordered
 5 or required to go on duty.

6 (2) Nothing in this section ~~shall~~ may be construed to
 7 allow any engineer, fireman, conductor, or trainman to
 8 desert his locomotive or train in case of accident, ~~storms~~
 9 ~~storm~~, wrecks ~~wreck~~, washouts ~~washout~~, snow blockade, or any
 10 unavoidable delay arising from like causes or to allow ~~said~~
 11 ~~such~~ engineer, fireman, conductor, or trainman to tie up any
 12 passenger or mail train between terminals.

13 (3) The provisions of this section ~~shall~~ do not apply
 14 to relief or wreck trains.

15 (4) Any railroad company or superintendent, train
 16 dispatcher, trainmaster, master mechanic, or other railroad
 17 or railway official who ~~shall~~ order orders or require
 18 requires any locomotive engineer, locomotive fireman,
 19 conductor, trainman, operator, or agent acting as operator
 20 to labor contrary to the provisions of this section ~~shall~~ be
 21 deemed is guilty of a misdemeanor and on conviction thereof
 22 ~~shall be punished is punishable~~ by a fine of not less than
 23 \$100 or more than \$500 or by imprisonment of not less than
 24 30 days or more than 60 days in the county jail.

25 (5) All railroad or railway corporations operating

1 lines of railroads or railways in whole or in part in this
 2 state ~~shall be~~ are liable in damages for all injuries to any
 3 person ~~or persons~~ resulting from violations of the
 4 provisions of this section."

5 Section 25. Section 39-4-110, MCA, is amended to read:
 6 "39-4-110. Sugar refineries. (1) A period of not to
 7 exceed 8 hours ~~shall constitute~~ constitutes a day's work for
 8 all persons employed in or about sugar refineries, except in
 9 a case of emergency when life and or property ~~are~~ is in
 10 danger.

11 (2) The provisions of this section ~~shall~~ do not apply
 12 to beet receiving station employees or superintendents,
 13 master mechanics, or beet-end, sugar-end, and Steffan house
 14 foremen.

15 (3) Any person, corporation, agent, manager, or
 16 employer who ~~shall violate~~ violates the provisions of this
 17 section ~~shall be~~ is guilty of a misdemeanor and upon
 18 conviction thereof ~~shall be punished is punishable~~ by a fine
 19 of not less than \$50 or more than \$600 or by imprisonment in
 20 the county jail for not less than 30 days or more than 7
 21 months or by both such fine and imprisonment."

22 Section 26. Section 39-5-102, MCA, is amended to read:
 23 "39-5-102. Definitions. Unless a different meaning is
 24 clearly required by the context, the following words and
 25 phrases, as ~~hereinafter~~ used in this chapter, ~~shall~~ have the

1 following meanings:

2 (1) (a) "Employment agency" is synonymous with
3 "agency" and ~~shall mean~~ means any business in which any part
4 of the business's gross or net income is derived from a fee
5 received from applicants and in which any of the following
6 activities are engaged in:

7 (i) the offering, promising, procuring, or attempting
8 to procure employment for applicants; or

9 (ii) the giving of information regarding where and from
10 whom employment may be obtained.

11 (b) In addition, the term "employment agency" ~~shall~~
12 ~~mean~~ means and ~~include~~ includes any person, bureau,
13 organization, or school which for profit, by advertisement
14 or otherwise, offers as one of its main objects or purposes
15 to procure employment for any person who pays for its
16 services or which collects tuition or charges for service of
17 any nature where the main object of the person paying the
18 same is to secure employment.

19 (c) The term "employment agency" ~~shall~~ does not
20 include labor union organizations, temporary service
21 contractors, proprietary schools, or the Montana state
22 employment agency.

23 (2) "Temporary service contractors" ~~shall mean~~ means
24 any person, firm, association, or corporation conducting a
25 business which consists of employing individuals directly

1 for the purpose of furnishing such individuals on a
2 part-time or temporary basis to others.

3 (3) "Employer" means any person, firm, corporation,
4 partnership, or association employing or seeking to enter
5 into an arrangement to employ a person through the medium or
6 service of an employment agency.

7 (4) "Applicant", except when used to describe an
8 applicant for an employment agency license, means any
9 person, whether employed or unemployed, seeking or entering
10 into any arrangement for his employment or change of his
11 employment through the medium or service of an employment
12 agency.

13 (5) "Person" includes an individual, a firm, a
14 corporation, a partnership, or an association.

15 (6) "Director" ~~shall mean~~ means the commissioner of
16 the department of labor and industry."

17 Section 27. Section 39-5-202, MCA, is amended to read:

18 "39-5-202. Application for license or renewal. (1)
19 Every applicant for an employment agency license or a
20 renewal thereof shall file with the director a written
21 application stating the name and address of the applicant,
22 the street and number of the building in which the business
23 of the employment agency is to be conducted, the name of the
24 person who is to have the general management of the office,
25 the name under which the business of the office is to be

1 carried on, and whether or not the applicant is pecuniarily
2 interested in the business to be carried on under the
3 license. ~~she~~ The application must be signed by the
4 applicant and sworn to before a notary public, and ~~she~~
5 must identify anyone holding over 20% interest in the
6 agency.

7 (2) If the applicant is a corporation, the application
8 ~~she~~ must state the names and addresses of the officers and
9 directors of the corporation and ~~she~~ must be signed and
10 sworn to by the president and secretary thereof before a
11 notary public.

12 (3) If the applicant is a partnership, the application
13 ~~she~~ must also state the names and addresses of all
14 partners therein and ~~she~~ must be signed and sworn to by
15 all of them before a notary public.

16 (4) The application ~~she~~ must also state whether or
17 not the applicant ~~is~~ at the time of making the application
18 or has at any previous time has been engaged in or
19 interested in or employed by anyone engaged in the business
20 of an employment agency.

21 (5) All applications for employment agency licenses
22 ~~she~~ must be accompanied by a copy of the form of contract
23 to be used between the agency and the applicant."

24 Section 28. Section 39-5-403, MCA, is amended to read:
25 "39-5-403. Referral of violations to prosecuting

1 attorneys -- restraining actions. The director may refer
2 such evidence as may be available to him concerning
3 violations of this chapter or of any rule adopted hereunder
4 to the attorney general or the prosecuting county attorney
5 of the county wherein the alleged violation arose who may,
6 in his discretion, with or without such a reference, in
7 addition to any other action he might commence, bring an
8 action in the name of the state against any person to
9 restrain and prevent the doing of any act or practice
10 prohibited by this chapter."

11 Section 29. Section 39-5-404, MCA, is amended to read:
12 "39-5-404. Written assurance of discontinuance. In the
13 enforcement of this chapter, the attorney general ~~and/or any~~
14 ~~said-prosecuting or the county~~ attorney may accept an
15 assurance of discontinuance from any person deemed in
16 violation of any provisions of this chapter. Any such
17 assurance shall be in writing and shall be filed with and
18 subject to the approval of the superior district court of
19 the county in which the alleged violator resides or has his
20 principal place of business."

21 Section 30. Section 39-5-405, MCA, is amended to read:
22 "39-5-405. Civil penalty for violating court order.
23 Any person who violates the terms of any court order or
24 temporary or permanent injunction issued pursuant to this
25 chapter shall forfeit and pay a civil penalty of not more

SB 208

1 than \$2,000. For the purpose of this section, the court
 2 issuing any injunction shall retain continuing jurisdiction
 3 and in such cases the attorney general ~~and/or~~ or the
 4 prosecuting county attorney acting in the name of the state
 5 may petition for the recovery of civil penalties."

6 Section 31. Section 39-6-106, MCA, is amended to read:
 7 "39-6-106. Standards for apprenticeship agreements.
 8 Standards for apprenticeship agreements are as follows:

9 (1) a statement of the trade or craft to be taught and
 10 the required hours for completion of apprenticeship, which
 11 ~~shall~~ must be not less than 4,000 hours of reasonably
 12 continuous employment;

13 (2) a statement of the processes in the trade or craft
 14 divisions in which the apprentice is to be taught and the
 15 approximate amount of time to be spent at each process;

16 (3) a statement of the number of hours to be spent by
 17 the apprentice in work and the number of hours to be spent
 18 in related and supplemental instruction, which instruction
 19 ~~shall~~ must be not less than 144 hours per year;

20 (4) a statement that apprentices ~~shall~~ must be not
 21 less than 16 years of age;

22 (5) a statement of the progressively increasing scale
 23 of wages to be paid the apprentice;

24 (6) provision for a period of probation during which
 25 the department of labor and industry ~~when authorized by the~~

1 department, ~~shall be directed to~~ must terminate an
 2 apprenticeship agreement at the request in writing of any
 3 party thereto. After the probationary period, the
 4 department ~~when authorized by the department~~ ~~shall be~~
 5 empowered to may terminate the registration of an apprentice
 6 upon agreement of the parties.

7 (7) provision that the services of the department may
 8 be utilized for consultation regarding the settlement of
 9 differences arising out of the apprenticeship agreement
 10 where such differences cannot be adjusted locally or in
 11 accordance with the established trade procedure;

12 (8) provision that if an employer is unable to fulfill
 13 his obligation under the apprenticeship agreement he may
 14 transfer such obligation to another employer;

15 (9) such additional standards as may be prescribed in
 16 accordance with the provisions of this chapter."

17 Section 32. Section 39-31-103, MCA, is amended to
 18 read:

19 "39-31-103. Definitions. When used in this chapter,
 20 the following definitions apply:

21 (1) "Public employer" means the state of Montana or
 22 any political subdivision thereof, including but not limited
 23 to any town, city, county, district, school board, board of
 24 regents, public and quasi-public corporation, housing
 25 authority or other authority established by law, and any

1 representative or agent designated by the public employer to
2 act in its interest in dealing with public employees.

3 (2) "Public employee" means a person employed by a
4 public employer in any capacity, except ~~an~~ elected ~~officiats~~
5 ~~official~~, ~~persons~~ a person directly appointed by the
6 governor, ~~a~~ supervisory ~~employees~~ employee and management
7 ~~officiats~~ official, as defined in subsections (3) and (4)
8 below, or ~~members-or~~ member of any state board or commission
9 who ~~serve~~ serves the state intermittently, school district
10 ~~clerks~~ clerk and school ~~administrators~~ administrator,
11 registered professional ~~nurses~~ nurse performing service for
12 health care facilities, professional ~~engineers~~ engineer and
13 ~~engineers-in-training~~ engineer-in-training, and includes any
14 individual whose work has ceased as a consequence of or in
15 connection with any unfair labor practice or concerted
16 employee action.

17 (3) "Supervisory employee" means any individual having
18 authority in the interest of the employer to hire, transfer,
19 suspend, lay off, recall, promote, discharge, assign,
20 reward, discipline other employees, having responsibility to
21 direct them, to adjust their grievances, or effectively to
22 recommend such action, if in connection with the foregoing
23 the exercise of such authority is not of a merely routine or
24 clerical nature but requires the use of independent
25 judgment.

1 (4) "Management ~~officiats~~ official" means
2 ~~representatives~~ a representative of management having
3 authority to act for the agency on any matters relating to
4 the implementation of agency policy.

5 (5) "Labor organization" means any organization or
6 association of any kind in which employees participate and
7 which exists for the primary purpose of dealing with
8 employers concerning grievances, labor disputes, wages,
9 rates of pay, hours of employment, fringe benefits, or other
10 conditions of employment.

11 (6) "Exclusive representative" means the labor
12 organization which has been designated by the board as the
13 exclusive representative of employees in an appropriate unit
14 or has been so recognized by the public employer.

15 (7) "Board" means the board of personnel appeals
16 provided for in 2-15-1705.

17 (8) "Person" includes one or more individuals, labor
18 organizations, public employees, associations, corporations,
19 legal representatives, trustees, trustees in bankruptcy, or
20 receivers.

21 (9) "Unfair labor practice" means any unfair labor
22 practice listed in 39-31-401 or 39-31-402.

23 (10) "Labor dispute" includes any controversy
24 concerning terms, tenure, or conditions of employment or
25 concerning the association or representation of persons in

1 negotiating, fixing, maintaining, changing, or seeking to
 2 arrange terms or conditions of employment, regardless of
 3 whether the disputants stand in the proximate relation of
 4 employer and employee.

5 (1) "Appropriate unit" means a group of public
 6 employees banded together for collective bargaining purposes
 7 as designated by the board."

8 Section 33. Section 39-31-208, MCA, is amended to
 9 read:

10 "39-31-208. Representation election at direction of
 11 board. (1) If the board or an agent of the board, in the
 12 hearing provided for in 39-31-207, finds that there is a
 13 question of representation, it shall direct an election by
 14 secret ballot to determine whether and by which labor
 15 organization the employees desire to be represented or
 16 whether they desire to have no labor organization represent
 17 them and shall certify the results thereof.

18 (2) Only those labor organizations which have been
 19 designated by more than 10% of the employees in the unit
 20 found to be appropriate shall be placed on the ballot.

21 (3) The board or an agent of the board shall determine
 22 who is eligible to vote in the election and shall establish
 23 rules governing the election.

24 (4) Unless the majority vote is for no representation
 25 by a labor organization and in any election where none of

1 the choices for a representative on the ballot receives a
 2 majority, a runoff election shall be conducted, the ballot
 3 providing for selection between the two choices receiving
 4 the largest and the second largest number of valid votes
 5 cast in the election.

6 (5) A labor organization which receives the majority
 7 of the votes cast in an election shall be certified by the
 8 board as the exclusive representative."

9 Section 34. Section 39-31-309, MCA, is amended to
 10 read:

11 "39-31-309. Factfinding proceedings. (1) The ~~fact~~
 12 ~~finder~~ factfinder shall immediately establish dates and
 13 place of hearings.

14 (2) The public employer and the exclusive
 15 representative ~~shall--be~~ are the only proper parties to
 16 factfinding proceedings.

17 (3) Upon request of either party of ~~or~~ the ~~fact-finder~~
 18 factfinder, the board shall issue subpoenas for hearings
 19 conducted by the ~~fact--finder~~ factfinder. The ~~fact-finder~~
 20 factfinder may administer oaths.

21 (4) Upon completion of the hearings, but no later than
 22 20 days from the ~~day~~ date of appointment, the ~~fact--finder~~
 23 factfinder shall make written findings of facts and
 24 recommendations for resolution of the dispute and shall
 25 serve such findings on the public employer and the exclusive

1 representative. The ~~fact-finder~~ factfinder may make this
2 report public 5 days after it is submitted to the parties.
3 If the dispute is not resolved 15 days after the report is
4 submitted to the parties, the report ~~shall~~ must be made
5 public.

6 (5) The cost of factfinding proceedings ~~shall~~ must be
7 equally borne by the board and the parties concerned.

8 (6) Nothing in 39-31-307 through 39-31-310 prohibits
9 the ~~fact-finder~~ factfinder from endeavoring to mediate the
10 dispute in which he has been selected or appointed as ~~fact~~
11 ~~finder~~ factfinder."

12 Section 35. Section 39-31-401, MCA, is amended to
13 read:

14 "39-31-401. Unfair labor practices of public employer.
15 It is an unfair labor practice for a public employer to:

16 (1) interfere with, restrain, or coerce employees in
17 the exercise of the rights guaranteed in 39-31-201, ~~and~~
18 39-31-204 through ~~39-31-206, or 39-31-303;~~

19 (2) dominate, interfere, or assist in the formation or
20 administration of any labor organization; ~~However~~ however,
21 subject to rules adopted by the board under 39-31-104, an
22 employer is not prohibited from permitting employees to
23 confer with him during working hours without loss of time or
24 pay;

25 (3) discriminate in regard to hire or tenure of

1 employment or any term or condition of employment in order
2 to encourage or discourage membership in any labor
3 organization; ~~However~~ however, nothing in this chapter or
4 in any other statute of this state precludes a public
5 employer from making an agreement with an exclusive
6 representative to require, as a condition of employment,
7 that an employee who is not or does not become a union
8 member ~~shall--be required, as a condition of employment, to~~
9 must have an amount equal to the union initiation fee and
10 monthly dues deducted from his wages in the same manner as
11 checkoff of union dues;

12 (4) discharge or otherwise discriminate against an
13 employee because he has signed or filed an affidavit,
14 petition, or complaint or given any information or testimony
15 under this chapter; ~~or~~

16 (5) refuse to bargain collectively in good faith with
17 an exclusive representative."

18 Section 36. Section 39-31-403, MCA, is amended to
19 read:

20 "39-31-403. Remedies for unfair labor practices.
21 Violations of the provisions of 39-31-401 or 39-31-402 are
22 unfair labor practices remediable by the board ~~in--the~~
23 following manner pursuant to this part."

24 Section 37. Section 39-51-201, MCA, is amended to
25 read:

1 "39-51-201. General definitions. As used in this
2 chapter, unless the context clearly requires otherwise, the
3 following definitions apply:

4 (1) The word "administrator" refers to a person
5 appointed by the commissioner of labor and industry to
6 direct and administer the unemployment compensation laws and
7 federal laws falling within the administrator's
8 jurisdiction.

9 (2) "Annual payroll" means the total amount of wages
10 paid by an employer, regardless of the time of payment, for
11 employment during a calendar year.

12 (3) "Annual total payroll" means the total of the 4
13 quarters of total payrolls of an employer preceding the
14 computation date as fixed herein.

15 (4) "Base period" means the first four of the last
16 five completed calendar quarters immediately preceding the
17 first day of an individual's benefit year. However, in the
18 case of a combined-wage claim pursuant to the arrangement
19 approved by the secretary of labor of the United States, the
20 base period shall be that applicable under the unemployment
21 law of the paying state.

22 (5) "Benefits" means the money payments payable to an
23 individual, as provided in this chapter, with respect to his
24 unemployment.

25 (6) "Benefit year", with respect to any individual,

1 means the 52 consecutive-week period beginning with the
2 first day of the calendar week in which such individual
3 files a valid claim and thereafter the 52 consecutive-week
4 period beginning with the first day of the calendar week in
5 which such individual files his next valid claim after the
6 termination of his last preceding benefit year. If such
7 filing ~~shall result~~ results in an overlapping of benefit
8 years, the new benefit year ~~shall begin upon~~ begins on the
9 first Sunday following the expiration of his last preceding
10 benefit year. However, in the case of a combined-wage claim
11 pursuant to the arrangement approved by the secretary of
12 labor of the United States, the base period ~~shall be that is~~
13 the period applicable under the unemployment law of the
14 paying state.

15 (7) "Board" means the board of labor appeals provided
16 for in Title 2, chapter 15, part 17.

17 (8) "Calendar quarter" means the period of
18 consecutive calendar months ending on March 31, June 30,
19 September 30, or December 31.

20 (9) "Contributions" means the money payments to the
21 state unemployment compensation fund required by this
22 chapter.

23 (10) "Division" means the employment security division
24 of the department of labor and industry provided for in
25 Title 2, chapter 15, part 17.

1 (11) "Employing unit" means any individual or ~~type of~~
 2 organization, including the state government, any of its
 3 political subdivisions or instrumentalities, any
 4 partnership, association, trust, estate, joint-stock
 5 company, insurance company, or corporation, whether domestic
 6 or foreign, or the receiver, trustee in bankruptcy, trustee
 7 or successor thereof, or the legal representative of a
 8 deceased person which has or subsequent to January 1, 1936,
 9 had in its employ one or more individuals performing
 10 services for it within this state, except as provided under
 11 subsections (8) and (9) of 39-51-203~~v~~~~a~~ and ~~---all~~ All
 12 individuals performing services within this state for any
 13 employing unit which maintains two or more separate
 14 establishments within this state ~~shall--be--deemed~~ are
 15 considered to be employed by a single employing unit for all
 16 the purposes of this chapter. Each individual employed to
 17 perform or assist in performing the work of any agent or
 18 employee of an employing unit ~~shall--be~~ is deemed to be
 19 employed by such employing unit for the purposes of this
 20 chapter, whether such individual was hired or paid directly
 21 by such employing unit or by such agent or employee,
 22 provided the employing unit has actual or constructive
 23 knowledge of the work.

24 (12) "Employment office" means a free public employment
 25 office or branch thereof operated by this state or

1 maintained as a part of a state-controlled system of public
 2 employment offices or such other free public employment
 3 offices operated and maintained by the United States
 4 government or its instrumentalities as the division may
 5 approve.

6 (13) "Fund" means the unemployment compensation fund
 7 established by this chapter to which all contributions and
 8 payments in lieu of contributions are required and from
 9 which all benefits provided under this chapter shall be
 10 paid.

11 (14) "Gross misconduct" means a criminal act, other
 12 than a violation of a motor vehicle traffic law, for which
 13 an individual has been convicted in a criminal court or has
 14 admitted or conduct which demonstrates a flagrant and wanton
 15 disregard of and for the rights or title or interest of a
 16 fellow employee or his employer.

17 (15) "Hospital" means an institution which has been
 18 licensed, certified, or approved by the state as a hospital.

19 (16) (a) "Institution of higher education", for the
 20 purposes of this part, means an education educational
 21 institution which:

22 (i) admits as regular students only individuals having
 23 a certificate of graduation from a high school or the
 24 recognized equivalent of such a certificate;

25 (ii) is legally authorized in this state to provide a

1 program of education beyond high school;

2 (iii) provides an educational program for which it
3 awards a bachelor's or higher degree or provides a program
4 which is acceptable for full credit toward such a degree, a
5 program of ~~post-graduate~~ postgraduate or ~~post-doctoral~~
6 postdoctoral studies, or a program of training to prepare
7 students for gainful employment in a recognized occupation;
8 and

9 (iv) is a public or other nonprofit institution.

10 (b) Notwithstanding any of the foregoing provisions of
11 this subsection, all colleges and universities in this state
12 are institutions of higher education for purposes of this
13 part.

14 (17) "State" includes, in addition to the states of the
15 United States of America, the District of Columbia, Puerto
16 Rico, the Virgin Islands, and the Dominion of Canada.

17 (18) "Unemployment compensation administration fund"
18 means the unemployment compensation administration fund
19 established by this chapter from which administrative
20 expenses under this chapter shall be paid.

21 (19) (a) "Wages" means all remuneration payable for
22 personal services, including commissions and bonuses and the
23 cash value of all remuneration payable in any medium other
24 than cash. The reasonable cash value of remuneration
25 payable in any medium other than cash shall be estimated and

1 determined in accordance with rules prescribed by the
2 division.

3 (b) The term "wages" ~~shall~~ does not include:

4 (i) the amount of any payment made to or on behalf of
5 an employee by an employer on account of:

6 (A) retirement;

7 (B) sickness or accident disability;

8 (C) medical and hospitalization expenses in connection
9 with sickness or accident disability; or

10 (D) death;

11 (ii) remuneration paid by any county welfare office
12 from welfare public assistance funds for services performed
13 at the direction and request of such county welfare office.

14 (20) "Week" means a period of 7 consecutive calendar
15 days ending at midnight on Saturday.

16 (21) An individual's "weekly benefit amount" means the
17 amount of benefits he would be entitled to receive for 1
18 week of total unemployment.

19 ~~(22) The word "division" throughout the unemployment~~
20 ~~statutes refers to a unit of the Montana state department of~~
21 ~~labor and industry.~~

22 ~~(23) The words "board of labor appeals" used in this~~
23 ~~chapter mean three persons appointed by the governor who are~~
24 ~~not public employees but who are attached to the Montana~~
25 ~~state department of labor and industry. The function of~~

~~said board is to act in a quasi-judicial capacity for the hearing of disputes concerning the administration of Montana's unemployment insurance laws"~~

Section 38. Section 39-51-202, MCA, is amended to read:

"39-51-202. Employer defined. "Employer" means:

(1) any employing unit whose total annual payroll within either the current or preceding calendar year exceeds the sum of \$500;

(2) any individual or employing unit which acquired the organization, trade, or business or substantially all of the assets thereof of another which at the time of such acquisition was an employer subject to this chapter;

(3) any individual or employing unit which acquired the organization, trade, or business or substantially all the assets thereof of another employing unit not an employer subject to this chapter and which, if subsequent to such acquisition it were treated as a single unit with such other employing unit, would be an employer under subsection (1) of this section;

(4) any employing unit not an employer by reason of any other subsection of this section for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be

taken for contributions paid into a state unemployment fund or an employing unit which, as a condition for approval of this chapter for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required pursuant to such act to be an employer under this chapter;

(5) any employing unit which, having become an employer under subsection (1), (2), (3), or (4) has not, under 39-51-1101 or ~~39-51-1102~~, ceased to be an employer subject to this chapter; or

(6) for the effective period of its election pursuant to 39-51-1102, any other employing unit which has elected to become fully subject to this chapter."

Section 39. Section 39-51-203, MCA, is amended to read:

"39-51-203. Employment defined. (1) "Employment", subject to other provisions of this section, means service by an individual or by an officer of a corporation, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(2) (a) The term "employment" ~~shall include~~ includes an individual's entire service performed within or both within and without this state if:

(i) the service is localized in this state; or

(ii) the service is not localized in any state but some

1 of the service is performed in this state and:

2 (A) the base of operations or, if there is no base of
3 operations, then the place from which such service is
4 directed or controlled, is in this state; or

5 (B) the base of operations or place from which such
6 service is directed or controlled is not in any state in
7 which some part of the service is performed, but the
8 individual's residence is in this state.

9 (b) Service ~~shall be deemed~~ is considered to be
10 localized within a state if:

11 (i) the service is performed entirely within such
12 state; or

13 (ii) the service is performed both within and without
14 such state, but the service performed without such state is
15 incidental to the individual's service within the state, for
16 example, is temporary or transitory in nature or consists of
17 isolated transactions.

18 (3) Service not covered under subsection (2) of this
19 section and performed entirely without this state with
20 respect to no part of which contributions are required and
21 paid under an unemployment compensation law of any other
22 state or of the federal government ~~shall be deemed~~ is
23 considered to be employment subject to this chapter if the
24 individual performing such services is a resident of this
25 state and the division approves the election of the

1 employing unit for whom such services are performed that the
2 entire service of such individual ~~shall be deemed~~ is
3 considered to be employment subject to this chapter.

4 (4) Services ~~Service~~ performed by an individual for
5 wages ~~shall be deemed~~ is considered to be employment subject
6 to this chapter unless and until it is shown to the
7 satisfaction of the division that:

8 (a) such individual has been and will continue to be
9 free from control or direction over the performance of such
10 services, both under his contract and in fact;

11 (b) such service is either outside the usual course of
12 the business for which such service is performed or that
13 such service is performed outside of all the places of
14 business of the enterprise for which such service is
15 performed; and

16 (c) such individual is customarily engaged in an
17 independently established trade, occupation, profession, or
18 business.

19 (5) The term "employment" ~~shall include~~ includes
20 service performed after December 31, 1971, by an individual
21 in the employ of this state or any of its instrumentalities
22 (or in the employ of this state and one or more other states
23 or their instrumentalities) for a hospital or institution of
24 higher education located in this state. ~~Effective after July~~
25 ~~1, 1975, the~~ The term "employment" shall include includes

1 service performed after July 1, 1975, by all individuals,
2 including without limitations those individuals who work
3 for the state of Montana, its university, any of its
4 colleges, public schools, components or units thereof, or
5 any local government unit and one or more other states or
6 their instrumentalities or political subdivisions whose
7 services are compensated by salary or wages.

8 (6) The term "employment" ~~shall include~~ includes
9 service performed after December 31, 1971, by an individual
10 in the employ of a religious, charitable, scientific,
11 literary, or educational organization.

12 (7) (a) The term "employment" ~~shall include~~ includes
13 the service of an individual who is a citizen of the United
14 States performed outside the United States, except in
15 Canada, after December 31, 1971, in the employ of an
16 American employer, other than service which is ~~deemed~~
17 considered employment under the provisions of subsection (2)
18 of this section or the parallel provisions of another
19 state's law, if:

20 (i) the employer's principal place of business in the
21 United States is located in this state;

22 (ii) the employer has no place of business in the
23 United States, but:

24 (A) the employer is an individual who is a resident of
25 this state;

1 (8) the employer is a corporation which is organized
2 under the laws of this state; or

3 (C) the employer is a partnership or a trust and the
4 number of the partners or trustees who are residents of this
5 state is greater than the number who are residents of any
6 other state; or

7 (iii) none of the criteria of sections (7)(a)(i) and
8 (7)(a)(ii) of this subsection ~~is~~ are met but the employer
9 has elected coverage in this state or, the employer having
10 failed to elect coverage in any state, the individual has
11 filed a claim for benefits based on such service under the
12 law of this state.

13 (b) An "American employer", for purposes of this
14 subsection, means a person who is:

15 (i) an individual who is a resident of the United
16 States;

17 (ii) a partnership if two-thirds or more of the
18 partners are residents of the United States;

19 (iii) a trust if all of the trustees are residents of
20 the United States; or

21 (iv) a corporation organized under the laws of the
22 United States or of any state.

23 (8) Agricultural labor exempted under 39-51-204 ~~shall~~
24 be is considered employment subject to this chapter
25 effective January 1, 1978, whenever the employing unit pays

SB 208

1 ~~\$40,000~~ \$20,000 or more in cash to workers for agricultural
 2 labor in any quarter in the current or preceding calendar
 3 year or employs 20 ~~10~~ or more workers in agricultural labor
 4 on 20 days in 20 different weeks during the current or
 5 preceding calendar year. If an employer is otherwise
 6 subject to the chapter and has agricultural employment, all
 7 employees are covered under the chapter regardless of the
 8 amount of money expended for agricultural purposes.

9 (9) Domestic service exempted under 39-51-204(1)(b)
 10 ~~shall be~~ is considered employment subject to this chapter
 11 effective January 1, 1978, whenever the employing unit pays
 12 \$1,000 or more in cash for domestic service in any quarter
 13 during the current or preceding calendar year. If an
 14 employer is otherwise subject to the chapter and has
 15 domestic employment, all employees are covered under the
 16 chapter regardless of the amount of money expended for
 17 domestic purposes."

18 Section 40. Section 39-51-204, MCA, is amended to
 19 read:

20 "39-51-204. Exclusions from definition of employment.

21 (1) The term "employment" ~~shall~~ does not include:

22 (a) agricultural labor, except as provided in
 23 39-51-203(8);

24 (b) domestic service in a private home, local college
 25 club, or local chapter of a college fraternity or sorority,

1 except as provided in 39-51-203(9);

2 (c) service performed as an officer or member of the
 3 crew of a vessel on the navigable waters of the United
 4 States;

5 (d) service performed by an individual in the employ
 6 of his son, daughter, or spouse and service performed by a
 7 child under the age of 18 in the employ of his father or
 8 mother;

9 (e) service performed in the employ of any other state
 10 or its political subdivisions or of the United States
 11 government or of an instrumentality of any other state or
 12 states or their political subdivisions or of the United
 13 States, except that national banks organized under the
 14 national banking law shall not be entitled to exemption
 15 under this subsection and shall be subject to this chapter
 16 the same as state banks, provided that such service is
 17 excluded from employment as defined in the Federal
 18 Unemployment Tax Act by section 3306(c)(7) of that act;

19 (f) service with respect to which unemployment
 20 compensation is payable under an unemployment compensation
 21 system established by an act of congress, provided that the
 22 division ~~is hereby authorized and directed to~~ must enter
 23 into agreements with the proper agencies under such act of
 24 congress, which agreements shall become effective ~~10 days~~
 25 ~~after publication thereof~~ in the manner prescribed in

1 ~~39-51-302--for--general--rules~~ the Montana Administrative
 2 Procedure Act for the adoption of rules, to provide
 3 reciprocal treatment to individuals who have, after
 4 acquiring potential rights to benefits under this chapter,
 5 acquired rights to unemployment compensation under such act
 6 of congress or who have, after acquiring potential rights to
 7 unemployment compensation under such act of congress,
 8 acquired rights to benefits under this chapter;

9 (g) services performed in the delivery and
 10 distribution of newspapers or shopping news from house to
 11 house and business establishments by an individual under the
 12 age of 18 years, but not including the delivery or
 13 distribution to any point or points for subsequent delivery
 14 or distribution;

15 (h) services performed by real estate, securities, and
 16 insurance salesmen paid solely by commissions and without
 17 guarantee of minimum earnings;

18 (i) service performed in the employ of a school,
 19 college, or university if such service is performed by a
 20 student who is enrolled and is regularly attending classes
 21 at such school, college, or university or by the spouse of
 22 such a student if such spouse is advised, at the time such
 23 spouse commences to perform such service, that the
 24 employment of such spouse to perform such service is
 25 provided under a program to provide financial assistance to

1 such student by such school, college, or university and such
 2 employment will not be covered by any program of
 3 unemployment insurance;

4 (j) service performed by an individual under the age
 5 of 22 who is enrolled at a nonprofit or public educational
 6 institution, which normally maintains a regular faculty and
 7 curriculum and normally has a regularly organized body of
 8 students in attendance at the place where its educational
 9 activities are carried on, as a student in a full-time
 10 program taken for credit at such institution which combines
 11 academic instruction with work experience if such service is
 12 an integral part of such program and such institution has so
 13 certified to the employer, except that this subsection shall
 14 not apply to service performed in a program established for
 15 or on behalf of an employer or group of employers;

16 (k) service performed in the employ of a hospital if
 17 such service is performed by a patient of the hospital.

18 (2) "Employment" ~~shall~~ does not include elected public
 19 officials.

20 (3) For the purposes of 39-51-203(6), the term
 21 "employment" does not apply to service performed:

22 (a) in the employ of a church or convention or
 23 association of churches or an organization which is operated
 24 primarily for religious purposes and which is operated,
 25 supervised, controlled, or principally supported by a church

1 or convention or association of churches;

2 (b) by a duly ordained, commissioned, or licensed
3 minister of a church in the exercise of his ministry or by a
4 member of a religious order in the exercise of duties
5 required by such order;

6 (c) in the employ of a school which is not an
7 institution of higher education, prior to December 31, 1977;

8 (d) in a facility conducted for the purpose of
9 carrying out a program of rehabilitation for individuals
10 whose earning capacity is impaired by age or physical or
11 mental deficiency or injury or providing remunerative work
12 for individuals who, because of their impaired physical or
13 mental capacity, cannot be readily absorbed in the
14 competitive labor market by an individual receiving such
15 rehabilitation or remunerative work;

16 (e) as part of an unemployment work-relief or
17 work-training program assisted or financed in whole or in
18 part by a federal agency or any agency of a state or
19 political subdivision thereof by an individual receiving
20 such work relief or work training; or

21 (f) for a state prison or other state correctional or
22 custodial institution by an inmate of that institution."

23 Section 41. Section 39-51-302, MCA, is amended to
24 read:

25 "39-51-302. ~~Regulations--and-general-and-special-rules~~

1 ~~Adoption of rules. General and special rules may be adopted,~~
2 ~~amended, or rescinded by the division only after public~~
3 ~~hearing or opportunity to be heard thereon, of which proper~~
4 ~~notice has been given. General rules shall become effective~~
5 ~~10 days after filing with the secretary of state and~~
6 ~~publication in one or more newspapers of general circulation~~
7 ~~in this state. Special rules shall become effective 10 days~~
8 ~~after notification to or mailing to the last known address~~
9 ~~of the individuals or concerns affected thereby. Regulations~~
10 ~~Rules may be adopted, amended, or rescinded repealed by the~~
11 ~~division and shall become effective in the manner and at the~~
12 ~~time prescribed by law pursuant to the Montana~~
13 ~~Administrative Procedure Act."~~

14 Section 42. Section 39-51-304, MCA, is amended to
15 read:

16 "39-51-304. Personnel. (1) ~~Subject to other provisions~~
17 ~~of this chapter~~ Except as otherwise provided, the division
18 is authorized to appoint, fix the compensation, and
19 prescribe the duties and powers of such officers,
20 accountants, attorneys, experts, and other persons as may be
21 necessary in the performance of its duties under this
22 chapter. The division may delegate to any such persons such
23 power and authority as it deems considers reasonable and
24 proper for the effective administration of this chapter and
25 may in its discretion bond any person handling money or

1 signing checks hereunder.

2 ~~{2}--The division shall classify positions--under--this~~
 3 ~~chapter--and--shall--establish--salary--schedules--and--minimum~~
 4 ~~personnel--standards--for--the--positions--so--classified--The~~
 5 ~~division--shall--provide--for--the--holding--of--examinations--to~~
 6 ~~determine--the--qualifications--of--applicants--for--the--positions~~
 7 ~~so--classified--and--except--for--temporary--appointments--of--not~~
 8 ~~to--exceed--6--months--in--duration--such--personnel--shall--be~~
 9 ~~appointed--on--the--basis--of--efficiency--and--fitness--as~~
 10 ~~determined--in--such--examinations~~

11 ~~{3}{2}~~ No person who is an officer or committee member
 12 of any political party organization or who holds or is a
 13 candidate for any public office ~~shall~~ may be appointed or
 14 employed under this chapter.

15 ~~{4}{3}~~ The division shall establish and enforce fair
 16 and reasonable regulations for appointments, promotions, and
 17 demotions based upon ratings of efficiency and fitness and
 18 for terminations for cause hire in accordance with merit
 19 system principles adopted by the merit system council."

20 Section 43. Section 39-51-309, MCA, is amended to
 21 read:

22 "39-51-309. Representation of division and state in
 23 court. (1) In any civil action to enforce the provisions of
 24 this chapter the division and the state may be represented
 25 by any qualified attorney who is employed by the division

1 and is designated by it for this purpose or, at the
 2 division's or board's request, by the attorney general.

3 (2) All criminal actions for violation of any
 4 provision of this chapter or of any rules issued pursuant
 5 thereto shall be prosecuted by the attorney general of the
 6 state or, at his request and under his direction, by the
 7 prosecuting county attorney of the county wherein the crime
 8 was committed."

9 Section 44. Section 39-51-401, MCA, is amended to
 10 read:

11 "39-51-401. Unemployment compensation account --
 12 establishment and control. There is hereby established
 13 separate and apart from all public money or funds of this
 14 state an account in the agency fund known as the
 15 unemployment compensation account, which shall be
 16 administered by the division exclusively for the purposes of
 17 this chapter. Any reference to the unemployment compensation
 18 fund in this code shall be taken to mean means the
 19 unemployment compensation account in the agency fund. All
 20 money in the account shall be mingled and undivided. This
 21 account shall consist of:

22 (1) all contributions collected under this chapter
 23 ~~inclusive--of--voluntary--contributions--as--provided--in~~
 24 ~~[87-109(c){4}-R.E.M.-1947]~~ and payments made in lieu of
 25 contributions as provided in 39-51-106 subsections (2) and

1 (3) ~~of 39-51-1106;~~
 2 (2) interest earned upon any money in the account;
 3 (3) any property or securities acquired through the
 4 use of money belonging to the account;
 5 (4) all earnings of such property or securities; and
 6 (5) all money credited to this state's account in the
 7 unemployment trust fund pursuant to section 903 of the
 8 Social Security Act, as amended."

9 Section 45. Section 39-51-402, MCA, is amended to
 10 read:

11 "39-51-402. Unemployment compensation account -- state
 12 treasurer ex officio custodian -- accounts and deposits. (1)
 13 The state treasurer ~~shall be~~ is the ex officio the treasurer
 14 and custodian of the unemployment compensation account and
 15 shall administer such account in accordance with the
 16 directions of the division and shall issue his warrants upon
 17 it in accordance with such regulations as the division shall
 18 prescribe. He shall maintain within the account three
 19 separate accounts:

20 (a) a clearing account;
 21 (b) an unemployment trust fund account; and
 22 (c) a benefit account.

23 (2) All money payable to the unemployment compensation
 24 account, upon receipt thereof by the division, ~~shall~~ must be
 25 forwarded to the treasurer who shall immediately deposit

1 ~~them~~ it in the clearing account. Refunds payable pursuant to
 2 ~~39-51-1104, 39-51-1105, 39-51-1110, 39-51-1301, or~~
 3 ~~39-51-1303 through 39-51-1306~~ may be paid from the clearing
 4 account upon warrants issued by the treasurer under the
 5 direction of the division. After clearance thereof, all
 6 other money in the clearing account ~~shall~~ must be
 7 immediately deposited with the secretary of the treasury of
 8 the United States to the credit of the account of this state
 9 in the unemployment trust fund, established and maintained
 10 pursuant to section 904 of the Social Security Act, as
 11 amended, any provision of law in this state relating to the
 12 deposit, administration, release, or disbursement of money
 13 in the possession or custody of this state to the contrary
 14 notwithstanding.

15 (3) The benefit account ~~shall consist~~ consists of all
 16 money requisitioned for the payment of benefits from this
 17 state's account in the unemployment trust fund.

18 (4) Except as herein otherwise provided, money in the
 19 clearing and benefit accounts may be deposited by the
 20 treasurer, under the direction of the division, in any bank
 21 or public depository in which general funds of the state may
 22 be deposited, but no public deposit insurance charge or
 23 premium ~~shall~~ may be paid out of the unemployment
 24 compensation account.

25 (5) The treasurer shall give a separate bond

1 conditioned upon the faithful performance of his duties as
 2 custodian of the unemployment compensation account in an
 3 amount fixed by the division and in a form prescribed by law
 4 or approved by the attorney general. Premiums for ~~said~~ the
 5 bond shall be paid from the unemployment compensation
 6 administration account."

7 Section 46. Section 39-51-1109, MCA, is amended to
 8 read:

9 "39-51-1109. Contribution appeals. Any person
 10 aggrieved by any decision, determination, or redetermination
 11 of the division involving contribution liability,
 12 contribution rate, application for refund, or the charging
 13 of benefit payments to employers making payment in lieu of
 14 contributions is entitled to a review by the division or its
 15 authorized representative, hereinafter referred to as a
 16 deputy. The decision of the deputy ~~shall be deemed to be~~ is
 17 considered the decision of the division. The division or the
 18 deputy conducting the review may refer the matter to an
 19 appeals referee, may decide the application for review on
 20 the basis of such facts and information as may be obtained,
 21 or may hear argument to secure further facts. After such
 22 review, notice of the decision ~~shall~~ must be given to the
 23 employing unit. Such decision made pursuant to such review
 24 ~~shall be deemed to be~~ is considered the final decision of
 25 the division unless the employing unit or any other such

1 interested party, within 5 calendar days after delivery of
 2 such notification or within 7 calendar days after such
 3 notification was mailed to his ~~test--known~~ last-known
 4 address, files an appeal from this decision. Such appeal
 5 will be referred to an appeals referee who shall make his
 6 decisions with respect thereto in accordance with the
 7 procedure prescribed in ~~{87-187(c)}~~ 39-51-2403."

8 Section 47. Section 39-51-1201, MCA, is amended to
 9 read:

10 "39-51-1201. Experience rating and classification of
 11 employers. (1) The division shall for each calendar year
 12 classify employers in accordance with their actual
 13 contributions and unemployment experience and shall
 14 determine for each employer the experience rate which shall
 15 apply to him throughout the calendar year. The division
 16 shall apply such form of classification or experience rating
 17 system which is best calculated to rate individually and
 18 most equitably the employment for each employer and to
 19 encourage the stabilization of employment.

20 (2) In making such classification, the division shall
 21 take into account each of the following factors relating to
 22 the unemployment hazard shown by each employer on the basis
 23 of:

24 (a) number of years the employer has paid
 25 contributions;

1 (b) average quarterly percentage declines in total
2 payrolls for the last 3 fiscal years ending June 30; and

3 (c) average annual net percentage declines in total
4 payrolls for the last 3 fiscal years ending June 30, the
5 computation date.

6 (3) Wages shall be adjusted in the determination of
7 the annual and quarterly decrease percentages of any
8 employer's payroll in whose establishment there was in any
9 year in the qualifying period of such employer a stoppage of
10 work due to a strike which caused a decrease in such
11 employer's payroll of such magnitude that his actual
12 quarterly and annual payroll caused by such a decrease or
13 decreases when used with other annual and quarterly payroll
14 decreases, if any, in his qualifying period would cause an
15 increase in such employer's contribution rate. An
16 employer's adjusted quarterly payroll for that quarter in
17 which such stoppage of work existed shall be determined by
18 multiplying each such payroll or adjusted payroll for the
19 quarter immediately preceding the quarter in which such
20 stoppage of work existed by the average quarterly variation
21 ratio. The average quarterly variation ratio shall be
22 computed by:

23 (a) dividing the payroll or, if adjusted, the adjusted
24 payroll for that quarter in each of the prior years of an
25 employer's qualifying period which corresponds to the

1 respective quarter in which a stoppage of work due to a
2 strike existed by the payroll or adjusted payroll for the
3 respective quarter immediately preceding such corresponding
4 quarter; and

5 (b) totaling the ratio thus obtained and dividing by
6 the number of such ratios."

7 Section 48. Section 39-51-1303, MCA, is amended to
8 read:

9 "39-51-1303. Collection of unpaid contributions by
10 civil action. (1) If, after due notice, any employer
11 defaults in any payment of contributions or interest
12 thereon, the amount due ~~shall~~ **must** be collected by civil
13 action in the name of the division, Montana department of
14 labor and industry, and the employer adjudged in default
15 shall pay the costs of such action.

16 (2) Civil actions brought under this section to
17 collect contributions or interest thereon from an employer
18 ~~shall~~ **must** be heard by the court at the earliest possible
19 date and ~~shall~~ **must** be entitled to preference upon the
20 calendar of the court over all other civil actions except
21 petitions for judicial review under this chapter and cases
22 arising under the workers' compensation law of this state.

23 (3) Action ~~An~~ **action** for the collection of
24 contributions due ~~shall~~ **must** be brought within 5 years after
25 the due date of such contributions, ~~otherwise-to-be~~ **or be**

1 ~~barred as provided in [93-2684]."~~

2 Section 49. Section 39-51-2104, MCA, is amended to
3 read:

4 "39-51-2104. General benefit eligibility conditions.
5 An unemployed individual ~~shall be~~ is eligible to receive
6 benefits for any week of total unemployment within his
7 benefit year only if the division finds that:

8 (1) he has registered for work at and thereafter has
9 continued to report at an employment office in accordance
10 with such regulation as the division may prescribe, except
11 that the division may, by regulation, prescribe that ~~such~~
12 ~~types of in cases or situations with respect to in~~ which it
13 finds ~~that compliance with~~ such requirements ~~would be~~
14 ~~oppressive or would be~~ inconsistent with the purposes of
15 this chapter, ~~provide for registration an unemployed~~
16 ~~individual may register and reporting report~~ for work by
17 mail or through other governmental agencies;

18 (2) he has made a claim for benefits in accordance
19 with the provisions of 39-51-2401;

20 (3) he is able to work and is available for work and
21 is seeking work; provided, however, that no claimant ~~shall~~
22 ~~be is~~ considered ineligible in any week of unemployment for
23 failure to comply with the provisions of this subsection if
24 such failure is due to an illness or disability which occurs
25 after he has registered for work and no suitable work has

1 been offered to such claimant after the beginning of such
2 illness or disability;

3 (4) prior to any week for which he claims benefits he
4 has been totally unemployed for a waiting period of 1 week.
5 However, if claimant's benefit year expires during a period
6 of compensable unemployment, claimant will continue to
7 receive weekly benefits in a new benefit year, if otherwise
8 eligible, without interruption to serve the waiting week for
9 the new benefit year but will thereafter be required to
10 serve the waiting week before receiving benefits during
11 subsequent unemployment in the new benefit year. No week
12 ~~shall be is~~ counted as a week of total unemployment for the
13 purposes of this subsection:

- 14 (a) if benefits have been paid with respect thereto;
15 (b) unless the individual was eligible for benefits
16 with respect thereto;
17 (c) unless it occurs within the benefit year of the
18 claimant;
19 (d) unless it occurs after benefits first could become
20 payable to any individual under this chapter."

21 Section 50. Section 39-51-2108, MCA, is amended to
22 read:

23 "39-51-2108. Payment of benefits based on service in
24 public, charitable, or educational organizations. Benefits
25 based on service in employment defined in 39-51-203

1 subsections (5) and (6) of ~~39-51-203~~ and ~~39-51-204~~
 2 subsections (2) and (3) ~~and [87-110(d), Rev. Mv-1947] shall~~
 3 ~~be of 39-51-204~~ are payable in the same amount, on the same
 4 terms, and subject to the same conditions as compensation
 5 payable on the basis of other service subject to this
 6 chapter, except that benefits based on service in an
 7 instructional, research, or principal administrative
 8 capacity for an educational institution ~~shall may~~ not be
 9 paid to an individual for any week of unemployment which
 10 begins during the period between 2 successive academic years
 11 or during a similar period between 2 regular terms, whether
 12 or not successive, or during a period of paid sabbatical
 13 leave provided for in the individual's contract if the
 14 individual has a contract to perform services in any such
 15 capacity for any such educational institution for both such
 16 academic years or both such terms."

17 Section 51. Section 39-51-2304, MCA, is amended to
 18 read:

19 "39-51-2304. Disqualification for failure to apply for
 20 or to accept suitable work. (1) Effective April 1, 1977, an
 21 individual ~~shall be~~ is disqualified for benefits if he
 22 ~~failed~~ fails without good cause either to apply for
 23 available and suitable work when so directed by the
 24 employment office or the division or to accept suitable work
 25 offered to him which he is physically able and mentally

1 qualified to perform or to return to his customary
 2 self-employment, if any, when so directed by the division.
 3 Such disqualification ~~shall continue~~ continues for the week
 4 in which such failure occurred occurs and until he ~~the~~
 5 individual has performed services, other than
 6 self-employment, for which remuneration is received equal to
 7 or in excess of his weekly benefit amount in 6 separate
 8 weeks subsequent to the date the act causing the
 9 disqualification occurred, with 6 weeks' reduction in
 10 benefit duration, as determined by the division, provided he
 11 has not left this work under disqualifying circumstances.

12 (2) In determining whether or not any work is suitable
 13 for an individual, the division shall consider the degree of
 14 risk involved to his health, safety, and morals, his
 15 physical fitness and prior training, his experience and
 16 previous earnings, his length of unemployment and prospects
 17 for securing local work in his customary occupation, and the
 18 distance of the available work from his residence.

19 (3) Notwithstanding any other provisions of this
 20 chapter, no work ~~shall may~~ be deemed considered suitable and
 21 benefits ~~shall may~~ not be denied under this chapter to any
 22 otherwise eligible individual for refusing to accept new
 23 work under any of the following conditions:

24 (a) if ~~the~~ position offered is vacant due directly to
 25 a strike, lockout, or other labor dispute;

1 (b) if the wages, hours, or other conditions of the
2 work offered are substantially less favorable to the
3 individual than those prevailing for similar work in the
4 locality;

5 (c) if, as a condition of being employed, the
6 individual would be required to join a company union or to
7 resign from or refrain from joining any bona fide labor
8 organization."

9 Section 52. Section 39-51-3206, MCA, is amended to
10 read:

11 "39-51-3206. Liability for wrongful or improper
12 receipt of benefits. Any person who, by reason of the
13 nondisclosure or misrepresentation by him or by another of a
14 material fact, irrespective of whether such nondisclosure or
15 misrepresentation was known or fraudulent, has received any
16 sum as benefits under this chapter while any conditions for
17 the receipt of benefits imposed by this chapter were not
18 fulfilled in his case or while he was disqualified from
19 receiving benefits shall, in the discretion of the division,
20 either be liable to have such sum deducted from any future
21 benefits payable to him under this chapter or shall be
22 liable to repay to the division for the unemployment
23 compensation fund a sum equal to the amount so received by
24 him, and such sum shall be collectible in the manner
25 provided in this chapter for the collection of past due

1 contributions. ~~Action~~ An action for collection of overpaid
2 benefits ~~shall~~ must be brought within 5 years after the date
3 of such overpayment, ~~otherwise to be or be~~ barred as
4 ~~provided in [93-2604]."~~

5 Section 53. Section 39-71-101, MCA, is amended to
6 read:

7 "39-71-101. Short title. This chapter ~~shall be known~~
8 ~~and may be cited as the Workmen's Compensation Act or the~~
9 ~~Workers' Compensation Act."~~

10 Section 54. Section 39-71-102, MCA, is amended to
11 read:

12 "39-71-102. Reference to plans. Whenever compensation
13 plan No. 1, 2, or 3 ~~or the safety provisions of this chapter~~
14 ~~shall be~~ is referred to, such reference ~~shall also be held~~
15 ~~to include~~ includes all other sections which are applicable
16 to the subject matter of such reference."

17 Section 55. Section 39-71-116, MCA, is amended to
18 read:

19 "39-71-116. Definitions. Unless the context otherwise
20 requires, words and phrases employed in this chapter ~~shall~~
21 have the following meanings hereinafter defined:

22 (1) "Average weekly wage" means the mean weekly
23 earnings of all employees under covered employment, as
24 defined and established annually by the division of
25 employment security of the Montana department of labor and

1 industry. It is established at the nearest whole dollar
2 number and ~~shall~~ **must** be adopted by the division of workers'
3 compensation prior to July 1 of each year.

4 (2) "Beneficiary" means:

5 (a) a surviving wife or husband;

6 (b) an unmarried child under the age of 18 years;

7 (c) an unmarried child under the age of 25 years who
8 is a full-time student in an accredited school;

9 (d) an invalid child over the age of 18 years who is
10 dependant upon the decedent for support at the time of
11 injury;

12 (e) a parent who is dependent upon the decedent for
13 support at the time of the injury (however, such a parent is
14 a beneficiary only when no beneficiary, as defined in
15 subsections (2)(a) through (2)(d) of this section, exists);
16 and

17 (f) a brother or sister under the age of 18 years if
18 dependent upon the decedent for support at the time of the
19 injury. ~~However~~ **however**, such a brother or sister is a
20 beneficiary only until the age of 18 years and only when no
21 beneficiary, as defined in subsections (2)(a) through (2)(e)
22 of this section, exists}.

23 (3) "Casual employment" means employment not in the
24 usual course of trade, business, profession, or occupation
25 of the employer. Any person hauling or assisting in hauling

1 of sugar beets or grains, in case of emergency, ~~shall be~~ **is**
2 considered engaged in casual employment.

3 (4) "Child" ~~shall include~~ **includes** a posthumous child,
4 a dependent stepchild, a child legally adopted prior to the
5 injury, **and** an illegitimate child legitimized prior to the
6 injury.

7 (5) "Division" means the division of workers'
8 compensation of the department of labor and industry
9 provided for in 2-15-1702.

10 (6) "Fiscal year" means the period of time between
11 July 1 and the succeeding June 30.

12 (7) "Husband" or "widower" means only a husband or
13 widower living with or legally entitled to be supported by
14 the deceased at the time of her injury.

15 (8) "Insurer" means an employer bound by compensation
16 plan No. 1, an insurance company transacting business under
17 compensation plan No. 2, the industrial insurance account
18 under compensation plan No. 3, or the uninsured employers
19 fund provided for in ~~39-71-501 through 39-71-507~~ part 5 of
20 this chapter.

21 (9) "Invalid" means one who is physically or mentally
22 incapacitated.

23 (10) "Order" means any decision, rule, direction,
24 requirement, or standard of the division or any other
25 determination arrived at or decision made by the division.

1 (11) "Payroll", "annual payroll", or "annual payroll
2 for the preceding year" means the average annual payroll of
3 the employer for the preceding calendar year or, if the
4 employer shall not have operated a sufficient or any length
5 of time during such calendar year: 12 times the average
6 monthly payroll for the current year; provided, that an
7 estimate may be made by the division for any employer
8 starting in business where no average payrolls are
9 available, such estimate to be adjusted by additional
10 payment by the employer or refund by the division, as the
11 case may actually be on December 31 of such current year.

12 (12) "Permanent partial disability" means a condition
13 resulting from injury as defined in this chapter that
14 results in the actual loss of earnings or earning capability
15 less than total that exists after the injured ~~workmen~~ worker
16 is as far restored as the permanent character of the
17 injuries will permit.

18 (13) "Permanent total disability" means a condition
19 resulting from injury as defined in this chapter that
20 results in the loss of actual earnings or earning capability
21 that exists after the injured ~~workmen~~ worker is as far
22 restored as the permanent character of the injuries will
23 permit and which results in the ~~workmen~~ worker having no
24 reasonable prospect of finding regular employment of any
25 kind in the normal labor market.

1 (14) The term "physician" ~~shall include~~ includes
2 "surgeon" and in either case ~~shall mean~~ means one authorized
3 by law to practice his profession in this state.

4 (15) "The plant of the employer" ~~shall include~~ includes
5 the place of business of a third person while the employer
6 has access to or control over such place of business for the
7 purpose of carrying on his usual trade, business, or
8 occupation.

9 (16) "Public corporation" means the state or any
10 county, municipal corporation, school district, city, city
11 under commission form of government or special charter,
12 town, or village.

13 (17) "Reasonably safe place to work" means that the
14 place of employment has been made as free from danger to the
15 life or safety of the employee as the nature of the
16 employment will reasonably permit.

17 (18) "Reasonably safe tools and appliances" are such
18 tools and appliances as are adapted to and are reasonably
19 safe for use for the particular purpose for which they are
20 furnished ~~and shall embrace all safety devices and~~
21 ~~safeguards provided or prescribed by the safety provisions~~
22 ~~of the chapter for the purpose of mitigating or preventing a~~
23 ~~specific danger.~~

24 (19) "Temporary total disability" means a condition
25 resulting from an injury as defined in this chapter that

1 results in total loss of wages and exists until the injured
2 workmen ~~worker~~ is as far restored as the permanent character
3 of the injuries will permit.

4 (20) "Wages" means the average gross earnings received
5 by the employee at the time of the injury for the usual
6 hours of employment in a week, and overtime is not to be
7 considered. Sick leave benefits accrued by employees of
8 public corporations, as defined by subsection (16) of this
9 section, are considered wages.

10 (21) "Wife" or "widow" means only a wife or widow
11 living with or legally entitled to be supported by the
12 deceased at the time of the injury.

13 (22) "Year", unless otherwise specified, means calendar
14 year."

15 Section 56. Section 39-71-302, MCA, is amended to
16 read:

17 "39-71-302. What included in computing payroll. In
18 computing the payroll, the entire compensation received by
19 every workmen ~~worker~~ employed under this chapter shall be is
20 included, whether ~~it~~ be in the form of salary, wage,
21 piecework, or otherwise and whether payable in money, board,
22 or otherwise."

23 Section 57. Section 39-71-304, MCA, is amended to
24 read:

25 "39-71-304. Books, records, and payrolls to be open to

1 inspection -- penalty for refusal. The books, records, and
2 payrolls of the employer pertinent to the administration of
3 this chapter shall ~~shall~~ **must** always be open to inspection by the
4 division or any duly authorized employee thereof for the
5 purpose of ascertaining the correctness of the payroll, the
6 number of ~~men~~ **persons** employed, and such other information
7 as may be necessary for the division and its management
8 under this chapter. Refusal on the part of the employer to
9 submit said books, records, and payrolls for such inspection
10 shall subject the offending employer to a penalty of \$100
11 for each offense, to be collected by civil action in the
12 name of the state and paid into the state treasury."

13 Section 58. Section 39-71-306, MCA, is amended to
14 read:

15 "39-71-306. Plan one employers and plan two insurers
16 to file duplicate receipts paid for injuries and statements
17 of medical expenditures. Every employer coming under the
18 provisions of compensation plan No. 1 and every insurer
19 coming under the provisions of compensation plan No. 2
20 shall, on or before the 15th day of each and every month,
21 file with the division:

22 (1) duplicate receipts for all payments made during
23 the previous month to injured workers or their beneficiaries
24 or dependents; and

25 (2) statements showing the amounts expended during the

1 previous month for medical, surgical, and hospital services
 2 for injured workers and for the burial of injured deceased
 3 workers."

4 Section 59. Section 39-71-309, MCA, is amended to
 5 read:

6 "39-71-309. Hospitals to submit schedule of fees and
 7 charges -- effective period of schedule -- when to be
 8 submitted. All hospitals must submit to the division a
 9 schedule of fees and charges for treatment of injured
 10 ~~workmen~~ workers to be in effect for at least a 12-month
 11 period unless the division and the hospital agree to interim
 12 amendments of the schedule. The schedule must be submitted
 13 at least 30 days prior to its effective date and ~~shall~~ may
 14 not exceed the charges prevailing in the hospital for
 15 similar treatment of private patients."

16 Section 60. Section 39-71-401, MCA, is amended to
 17 read:

18 "39-71-401. Employments covered and employments
 19 exempted. (1) Except as provided in subsection (2) of this
 20 section, the Workers' Compensation Act applies to all
 21 employers as defined in 39-71-117 and to all employees as
 22 defined in 39-71-118. An employer who has any employee in
 23 service under any appointment or contract of hire, expressed
 24 or implied, oral or written, shall elect to be bound by the
 25 provisions of compensation plan No. 1, 2, or 3. Every

1 employee whose employer is bound by the Workers'
 2 Compensation Act is subject to and bound by the compensation
 3 plan that has been elected by the employer.

4 (2) Unless the employer elects coverage for these
 5 employments under ~~the~~ this chapter and an insurer allows
 6 such an election, the Workers' Compensation Act does not
 7 apply to any of the following employments:

- 8 (a) household and domestic employment;
- 9 (b) casual employment as defined in 39-71-116(3);
- 10 (c) employment of members of an employer's family
 11 dwelling in the employer's household;
- 12 (d) employment of sole proprietors or working members
 13 of a partnership;
- 14 (e) employment for which a rule of liability for
 15 injury, occupational disease, or death is provided under the
 16 laws of the United States;
- 17 (f) any person performing services in return for aid
 18 or sustenance only;
- 19 (g) employment with any railroad engaged in interstate
 20 commerce, except that railroad construction work shall be
 21 included in and subject to the provisions of this chapter."

22 Section 61. Section 39-71-406, MCA, is amended to
 23 read:

24 "39-71-406. Deduction from wages of any part of
 25 premium a misdemeanor -- hospital contributions not

1 prohibited. It ~~shall be~~ is unlawful for the employer to
 2 deduct or obtain any part of any premium required to be paid
 3 by this chapter from the wages or earnings of his ~~workmen or~~
 4 ~~any of them~~ workers, and the making or attempt to make any
 5 such deduction ~~shall be~~ is a misdemeanor, except that
 6 nothing in this section shall be construed as prohibiting
 7 contributions by employees to a hospital fund, as elsewhere
 8 in this chapter provided."

9 Section 62. Section 39-71-410, MCA, is amended to
 10 read:

11 "39-71-410. Employees bound by plan adopted by
 12 employer -- election not to be bound by corporate officers.
 13 (1) Every employee whose employer is bound by the provisions
 14 of this chapter ~~shall become~~ is subject to and be bound by
 15 the provisions of that plan of compensation ~~which shall have~~
 16 ~~been~~ adopted by his employer, except that pursuant to such
 17 rules as the division shall from time to time promulgate and
 18 subject in all cases to the review of the division, officers
 19 of private corporations may elect not to be bound as
 20 employees under the this chapter by a written notice in the
 21 form provided by the division, served in the following
 22 manner:

23 (a) if the employer has elected to be bound by the
 24 provisions of compensation plan No. 1, by delivering ~~said~~
 25 ~~the~~ notice to the board of directors of the employer;

1 (b) if the employer has elected to be bound by the
 2 provisions of compensation plan No. 2, by delivering ~~said~~
 3 ~~the~~ notice to the board of directors of the employer or the
 4 insurer;

5 (c) if the employer has elected to be bound or is
 6 bound by the provisions of compensation plan No. 3, by
 7 delivering ~~said the~~ notice to the division.

8 (2) The appointment or election of an officer of a
 9 corporation for the purpose of excluding an employee from
 10 coverage under the this chapter ~~shall does~~ not entitle such
 11 officer to elect not to be bound as an employee under the
 12 this chapter. In any case, the notice ~~shall must~~ be signed
 13 by the officer under oath or equivalent affirmation and is
 14 subject to the penalties for false swearing.

15 (3) The division shall review any election by officers
 16 of private ~~corporation's election~~ corporations not to be
 17 bound as an employee to assure compliance with this
 18 chapter."

19 Section 63. Section 39-71-411, MCA, is amended to
 20 read:

21 "39-71-411. Provisions of chapter exclusive remedy --
 22 nonliability of insured employer. For all employments
 23 covered under the Workers' Compensation Act or for which an
 24 election has been made for coverage under the this chapter,
 25 the provisions of the this chapter are exclusive. Except as

1 provided in part 5 of this chapter for uninsured employers
 2 and except as otherwise provided in the Workers'
 3 Compensation Act, an employer is not subject to any
 4 liability whatever for the death ~~of~~ or personal injury to
 5 ~~any--employees~~ an employee covered by the Workers'
 6 Compensation Act. The Workers' Compensation Act binds the
 7 employee himself, and in case of death binds his personal
 8 representative and all persons having any right or claim to
 9 compensation for his injury or death, as well as the
 10 employer and the servants and employees of such employer and
 11 those conducting his business during liquidation,
 12 bankruptcy, or insolvency."

13 Section 64. Section 39-71-501, MCA, is amended to
 14 read:

15 "39-71-501. Definition of uninsured employer. For the
 16 purposes of ~~39-71-501 through 39-71-507~~ this part, the words
 17 "uninsured employer" ~~mean~~ means an employer who has not
 18 properly complied with the provisions of 39-71-401."

19 Section 65. Section 39-71-506, MCA, is amended to
 20 read:

21 "39-71-506. Collection of payments from uninsured
 22 employer by suit. If, upon demand of the division, an
 23 uninsured employer refuses to make the payments to the fund
 24 that are provided for in subsections (1) and (2) of
 25 39-71-504, the sums may be collected by the division through

1 suit. The division may settle through compromise with an
 2 uninsured employer the amount due the fund under ~~39-71-501~~
 3 ~~through 39-71-507~~ 39-71-504."

4 Section 66. Section 39-71-510, MCA, is amended to
 5 read:

6 "39-71-510. Limitation on benefit entitlement under
 7 fund. Notwithstanding the provisions of ~~39-71-402,~~
 8 ~~39-71-407, and 39-71-501 through 39-71-507~~ 39-71-502, and
 9 39-71-503, injured employees or an employee's beneficiaries
 10 who elect to receive benefits from the uninsured employers'
 11 fund are not granted an entitlement by this state for full
 12 workers' compensation benefits from the fund. Benefits from
 13 the fund ~~shall~~ must be paid in accordance with the sums in
 14 the fund. If the division determines at any time that the
 15 sums in the fund are not adequate to fully pay all claims,
 16 the division may make appropriate proportionate reductions
 17 in benefits to all claimants. The reductions do not entitle
 18 claimants to retroactive reimbursements in the future."

19 Section 67. Section 39-71-602, MCA, is amended to
 20 read:

21 "39-71-602. Statute of limitation not to apply during
 22 minority or mental incompetency unless guardian appointed.
 23 No limitation of time as provided in 39-71-601 or in this
 24 chapter, known as the Workers' Compensation Act, shall run
 25 as against any injured workmen worker who is mentally

1 incompetent and without a guardian or an injured minor under
 2 18 years of age who may be without a parent or guardian. A
 3 guardian in either case may be appointed by any court of
 4 competent jurisdiction, in which event the period of
 5 limitations as provided for in 39-71-601 shall begin to run
 6 on the date of appointment of such guardian or when such
 7 minor arrives at the age of 18 years of age, whichever date
 8 may be the is earlier."

9 Section 68. Section 39-71-603, MCA, is amended to
 10 read:

11 "39-71-603. Notice of ~~claim~~ claim for injuries other
 12 than death to be submitted within sixty days -- exception --
 13 actual notice. No ~~claim~~ claim to recover compensation under
 14 this ~~act~~ chapter for injuries not resulting in death ~~shall~~
 15 may be maintained unless, within 60 days after the
 16 occurrence of the accident which is claimed to have caused
 17 the injury, notice in writing stating the name and address
 18 of the person injured, the time and place where the accident
 19 occurred, and the nature of the injury and signed by the
 20 person injured or someone in his behalf ~~shall be~~ is served
 21 upon the employer or the insurer, except as otherwise
 22 provided in 39-71-602. However, actual knowledge of such
 23 accident and injury on the part of such employer or his
 24 managing agent or superintendent in charge of the work upon
 25 which the injured employee was engaged at the time of the

1 injury ~~shall be~~ is equivalent to such service."

2 Section 69. Section 39-71-721, MCA, is amended to
 3 read:

4 "39-71-721. Compensation for injury causing death. (1)
 5 If an injured employee dies and the injury was the proximate
 6 cause of such death, then the beneficiary of the deceased,
 7 as the case may be, ~~shall receive~~ is entitled to the same
 8 compensation as though the death occurred immediately
 9 following the injury, but the period during which the death
 10 benefit ~~shall be~~ is paid shall be reduced by the period
 11 during or for which compensation was paid for the injury.

12 (2) To beneficiaries as defined in subsections (2)(a)
 13 through (2)(d) of 39-71-116, weekly compensation benefits
 14 for injury causing death ~~shall be~~ are computed at 66 2/3% of
 15 the decedent's wages. The maximum weekly compensation
 16 benefits ~~shall~~ may not exceed the state's average weekly
 17 wage. The minimum weekly compensation for death ~~shall be~~ is
 18 50% of the state's average weekly wage, but in no event
 19 ~~shall~~ may it exceed the decedent's actual wages at the time
 20 of his death.

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

1 average weekly wage.

2 (4) If the decedent leaves no beneficiary as defined
3 in 39-71-116(2), a lump-sum payment of \$3,000 ~~shall~~ **must** be
4 paid to the decedent's surviving parent or parents.

5 (5) If any beneficiary of a deceased employee dies ~~or~~
6 ~~if--the--widow--or--widower--remarries~~, the right of such
7 beneficiary ~~or--widow--or--widower~~ to compensation under this
8 chapter ~~shall--cease~~ ~~ceases~~. Death benefits ~~shall~~ **must** be
9 paid to a widow or widower for life or until remarriage, and
10 in the event of remarriage, 2 years' benefits ~~shall~~ **must** be
11 paid in a lump sum to the widow or widower.

12 (6) In all cases, benefits ~~shall~~ **must** be paid to
13 beneficiaries, as defined in 39-71-116(2)."

14 Section 70. Section 39-71-738, MCA, is amended to
15 read:

16 "39-71-738. Adjustment of compensation in case of
17 further injuries. Should a further accident occur to a
18 workman ~~worker~~ who is already receiving compensation
19 hereunder or who has been previously the recipient of a
20 payment ~~or--payments~~ under this chapter, his further
21 compensation ~~shall--be~~ **is** adjusted according to the other
22 provisions of this chapter and with regard to his past
23 receipt of compensation."

24 Section 71. Section 39-71-739, MCA, is amended to
25 read:

1 "39-71-739. Compensation in case of changes in degree
2 of injury. If aggravation, diminution, or termination of
3 disability takes place or **is** discovered after the rate of
4 compensation ~~shall--have--been~~ **is** established or compensation
5 **is** terminated in any case where the maximum payments for
6 disabilities as provided in this chapter have ~~are~~ not been
7 reached, adjustments may be made to meet such changed
8 conditions by increasing, diminishing, or terminating
9 compensation payments in accordance with the provisions of
10 this chapter."

11 Section 72. Section 39-71-801, MCA, is amended to
12 read:

13 "39-71-801. Occupational deafness compensated as
14 provided in part. Regardless of other definitions of injury
15 and time limitations imposed by this ~~{ect}~~ ~~chapter~~, there
16 ~~shall--be~~ compensation **is** awarded for occupational deafness
17 as provided in this part."

18 Section 73. Section 39-71-807, MCA, is amended to
19 read:

20 "39-71-807. Compensation for wage loss where employee
21 transferred due to occupational deafness. An employee who
22 because of occupational deafness is transferred by his
23 employer to other employment and thereby sustains actual
24 wage loss ~~shall~~ **must** be compensated at the rate provided in
25 39-71-703, not exceeding \$3,500 in the aggregate from all

1 employers. "Time of injury", "incurred such injury", or
 2 "date of injury" in such case shall be the date of wage
 3 loss."

4 Section 74. Section 39-71-813, MCA, is amended to
 5 read:

6 "39-71-813. Limitation provisions applicable — when
 7 provisions begin to run. The limitation provisions in this
 8 ~~part~~ shall ~~chapter~~ control claims arising under this part.
 9 Such provisions shall run from the first date upon which
 10 claim may be filed or from the date of subsequent death,
 11 provided that no claim shall ~~may~~ accrue to any dependent
 12 unless an award has been issued or liability admitted."

13 Section 75. Section 39-71-901, MCA, is amended to
 14 read:

15 "39-71-901. Definitions. As used in this part, the
 16 following definitions apply:

17 (1) "Vocationally handicapped" means a person who has
 18 a medically certifiable permanent physical impairment which
 19 is a substantial obstacle to obtaining employment or to
 20 obtaining reemployment if the employee should become
 21 unemployed, considering such factors as the person's age,
 22 education, training, experience, and employment rejection.

23 (2) "Certifying agency" means the ~~section---~~of
 24 ~~rehabilitation~~ division of workers' compensation.

25 (3) "Certificate" means documentation issued by the

1 certifying agency to an individual who is vocationally
 2 handicapped.

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

4 Section 76. Section 39-71-902, MCA, is amended to
 5 read:

6 "39-71-902. Fund to receive payment from insurer for
 7 each death under chapter — assessment of insurers. (1) In
 8 every case of the death of an employee under this ~~part~~
 9 ~~chapter~~, the insurer shall pay to the fund the sum of
 10 \$1,000. In addition, the division may assess every insurer
 11 an amount not to exceed 5% of the compensation paid in
 12 Montana in the preceding fiscal year. The assessment shall
 13 ~~must~~ be transmitted annually to the subsequent injury fund
 14 by the employer or insurer.

15 (2) When, in ~~the~~ judgment of the administrator, the
 16 amount of money in the subsequent injury fund is such that
 17 there is a surplus above and beyond projected liabilities,
 18 the administrator may at his discretion suspend or reduce
 19 further collection of assessments for a period of time
 20 determined by the administrator."

21 Section 77. Section 39-71-903, MCA, is amended to
 22 read:

23 "39-71-903. Procedure and practice. When a
 24 vocationally handicapped person receives a personal injury,
 25 the procedure and practice provided in this ~~part~~ ~~chapter~~

1 applies to all proceedings under this part, except where
2 specifically otherwise provided herein."

3 Section 78. Section 39-71-907, MCA, is amended to
4 read:

5 "39-71-907. Certified vocationally handicapped person
6 to be compensated for injury as provided by chapter --
7 employer liability for compensation limited. A person
8 certified as vocationally handicapped who receives a
9 personal injury arising out of and in the course of his
10 employment and resulting in death or disability ~~shall~~ **must**
11 be paid compensation in the manner and to the extent
12 provided in this ~~act~~ **chapter** or, in case of his death
13 resulting from such injury, the compensation ~~shall~~ **must** be
14 paid to his beneficiaries or dependents. The liability of
15 the employer for payment of compensation, for furnished
16 medical care, and burial as provided in this ~~act~~ **chapter** ~~is~~ **is** limited to those benefits occurring during the
17 period of 104 weeks after the date of injury. Thereafter,
18 all compensation and the cost of all medical care and burial
19 ~~shall be~~ **is** the liability of the fund."

21 Section 79. Section 39-71-908, MCA, is amended to
22 read:

23 "39-71-908. Notification of fund of its potential
24 liability under part -- review by fund. Not less than 90 or
25 more than 150 days before the expiration of 104 weeks after

1 the date of injury, the employer, carrier, or the industrial
2 insurance fund, as the case may be, shall notify the fund
3 whether it is likely that compensation may be payable beyond
4 a period of 104 weeks after the date of the injury. The
5 fund thereafter may review, at reasonable times, such
6 information as the employer, carrier, or industrial
7 insurance fund ~~has~~ regarding the accident and the nature
8 and extent of the injury and disability."

9 Section 80. Section 39-71-910, MCA, is amended to
10 read:

11 "39-71-910. Procedure for resolving disputes as to
12 liability under part. (1) If an employee was employed or
13 retained in employment under the provisions of this part and
14 a dispute or controversy arises as to payment of benefits or
15 the liability therefor, the division shall hold a hearing
16 and resolve all disputes. On motion made in writing by the
17 employer, carrier, or industrial insurance fund, the
18 administrator shall join the fund as a party defendant.

19 (2) The division, within 5 days of the entry of an
20 order joining the fund as a party defendant, shall give the
21 fund written notice thereof not less than 20 days before the
22 date of hearing and shall include the name of ~~the~~ **the** employee
23 ~~and the~~ **and the** employer, and the date of the alleged injury or
24 disability. The fund named as a defendant shall have 10 days
25 after the date of notification to file objections to being

1 named as a party defendant. On the date of the hearing at
 2 which the liability of the parties is determined, the
 3 hearing examiner first shall hear arguments and take
 4 evidence concerning the joinder as party defendant. If the
 5 fund has filed timely objection and if argument and evidence
 6 warrant, the hearing examiner shall grant a motion to
 7 dismiss.

8 (3) At the time of the hearing, the employer and fund
 9 may appear, cross-examine witnesses, give evidence, and
 10 defend both on the issue of liability of the employer to the
 11 employee and on ~~the~~ issue of the liability of the fund.

12 (4) The hearing examiner shall make findings of fact
 13 and conclusions of law determining the respective liability
 14 of the employer and the fund."

15 Section 81. Section 39-71-1001, MCA, is amended to
 16 read:

17 "39-71-1001. Referral of disabled workers to
 18 department of social and rehabilitation services for
 19 vocational rehabilitation. The division shall refer to the
 20 department of social and rehabilitation services workers who
 21 have become permanently disabled as the result of injuries
 22 sustained within the scope and course of employment by an
 23 employer enrolled under the Workers' Compensation Act of ~~the~~
 24 ~~state of Montana~~ and who, in the opinion of the division,
 25 can be vocationally rehabilitated. The department of social

1 and rehabilitation services shall provide for the vocational
 2 rehabilitation of the injured workers under the provisions
 3 of ~~[Title 41, Chapter 8, R.C.M., 1947]~~ Title 53, chapter 7,
 4 parts 1 and 2."

5 Section 82. Section 39-71-1003, MCA, is amended to
 6 read:

7 "39-71-1003. Eligibility for benefits under chapter
 8 not affected — other expenses payable. The eligibility of
 9 any injured workmen ~~worker~~ to receive other benefits under
 10 the Workers' Compensation Act ~~shall~~ is in no way be affected
 11 by his entrance upon a course of vocational rehabilitation
 12 as herein provided, but he may be paid, in addition thereto,
 13 upon the certification of the ~~vocational--rehabilitation~~
 14 division department of social and rehabilitation services
 15 from funds herein provided:

16 (1) his actual and necessary travel expenses from his
 17 place of residence to the place of training and return;

18 (2) his living expenses while in training in an amount
 19 not in excess of \$50 per week; and

20 (3) his expenses for tuition, books, and necessary
 21 equipment in training."

22 Section 83. Section 39-71-2101, MCA, is amended to
 23 read:

24 "39-71-2101. General requirements for electing
 25 coverage under plan. An employer may elect to be bound by

1 compensation plan No. 1 upon furnishing satisfactory proof
 2 to the division of his solvency and financial ability to pay
 3 the compensation and benefits in this chapter provided for
 4 and to discharge all liabilities which are reasonably likely
 5 to be incurred by him during the fiscal year for which such
 6 election is effective, ~~and~~ may, by order of the division,
 7 make such payments directly to his employees as they may
 8 become entitled to receive ~~the--some~~ under the terms and
 9 conditions of this chapter."

10 Section 84. Section 39-71-2201, MCA, is amended to
 11 read:

12 "39-71-2201. Election to be bound by plan. (1) Any
 13 employer except those specified in ~~[92-206]~~ ~~39-71-503~~ may,
 14 by filing his election to become bound by compensation plan
 15 No. 2, insure his liability to pay the compensation and
 16 benefits provided by this chapter with any insurance company
 17 authorized to transact such business in this state.

18 (2) Any employer electing to become bound by
 19 compensation plan No. 2 shall make his election on the form
 20 and in the manner prescribed by the division."

21 Section 85. Section 39-71-2206, MCA, is amended to
 22 read:

23 "39-71-2206. Deposits by insurer with division to
 24 guarantee payment of liability. (1) Before issuance of any
 25 policy by an insurer as herein authorized, ~~such~~ ~~the~~ insurer

1 must deposit with the division bonds of the United States or
 2 the state of Montana or of any school district, county,
 3 city, or town in the state of Montana or a corporate surety
 4 bond made out to and approved by the division in an amount
 5 not less than \$5,000 or more than \$100,000, as the division
 6 may determine. If any insurer fails to discharge any
 7 liability after the amount thereof ~~shall be~~ ~~is~~ determined by
 8 the division and within the time limited by the division,
 9 the division shall convert the bonds or such part thereof as
 10 is necessary into cash and from the proceeds liquidate such
 11 liability, and thereafter the insurer must make an
 12 additional deposit to meet any deficiency caused thereby. It
 13 is intended hereby to give the division the discretion in
 14 the matter of whether an insurer has failed to discharge any
 15 liability.

16 (2) Within 30 days of the happening of an accident
 17 where death or the nature of the injury renders the amount
 18 of future payments certain or reasonably certain, the
 19 insurer shall make a deposit, as herein defined, with the
 20 division for the protection and guarantee of the payment of
 21 such liability in such sum as the division may direct.
 22 However, if the division ~~deems~~ ~~considers~~ the amount on
 23 deposit by the insurer under the provisions of subsection
 24 (1) of this section sufficient to cover all liabilities of
 25 the insurer, then no further deposit ~~shall~~ ~~may~~ be required.

1 (3) Any deposit made under the provisions of
 2 compensation plan No. 2 ~~shall~~ **must** be held in trust by the
 3 division as security for the payment of the liability for
 4 which the deposit was made. Such deposit may be reduced from
 5 time to time with the permission of the division as the
 6 payment of the liability of the insurer may reduce the
 7 amount required to be on deposit. Such deposit may be
 8 changed or renewed when desired by the depositor by
 9 withdrawing the same or any part thereof and substituting
 10 other deposits therefor. Upon proof of the final payment of
 11 the liability for which such deposit was made, any deposit
 12 remaining ~~shall~~ **must** be returned to the depositor. All
 13 earnings made by such deposit ~~shall be~~ **must** first ~~be~~ applied
 14 upon any liability of the depositor, and if no such
 15 liability exists, then such earnings ~~shall~~ **must** upon demand
 16 be delivered to such depositor. The division and its
 17 bondsmen ~~shall be~~ **are** liable for the value and safekeeping
 18 of such deposit and shall at any time, upon demand of its
 19 ~~bondsmen--the a depositor--or--the--division,~~ account for the
 20 same and the earnings thereof."

21 Section 86. Section 39-72-101, MCA, is amended to
 22 read:

23 "39-72-101. Short title. This chapter ~~shall be known~~
 24 ~~may be cited~~ as ~~"the the~~ "Occupational Disease Act of
 25 Montana."

1 Section 87. Section 39-72-102, MCA, is amended to
 2 read:

3 "39-72-102. Definitions. As used in this chapter,
 4 unless the context requires otherwise, the following
 5 definitions apply:

- 6 (1) "Beneficiary" is as defined in 39-71-116(2).
 7 (2) "Child" is as defined in 39-71-116(4).
 8 (3) "Disablement" means the event of becoming
 9 physically incapacitated by reason of an occupational
 10 disease from performing any work for remuneration or profit.
 11 Silicosis, when complicated by active pulmonary
 12 tuberculosis, is presumed to be total disablement.
 13 "Disability", "total disability", and "totally disabled" are
 14 synonymous with "disablement", but they have no reference to
 15 "partial permanent disability".
 16 (4) "Division" is as defined in 39-71-116(5).
 17 (5) "Employee" is as defined in 39-71-118.
 18 (6) "Employer" is as defined in 39-71-117.
 19 (7) "Husband" is as defined in 39-71-116(7).
 20 (8) "Independent contractor" is as defined in
 21 39-71-120.
 22 (9) "Insurer" is as defined in 39-71-116(8). The term
 23 includes an employer who is self-insured under compensatio
 24 plan No. 1.
 25 (10) "Invalid" is as defined in 39-71-116(9).

1 (11) ~~The term "occupational~~ Occupational disease" shall
2 mean means all diseases arising out of or contracted from
3 and in the course of employment.

4 (12) "Order" is as defined in 39-71-116(10).

5 (13) "Pneumoconiosis" means a chronic dust disease of
6 the lungs arising out of employment in coal mines and
7 includes anthracosis, coal workers' pneumoconiosis,
8 silicosis, or anthracosilicosis arising out of such
9 employment.

10 (14) "Silicosis" means a chronic disease of the lungs
11 caused by the prolonged inhalation of silicon dioxide
12 (SiO₂) ~~and~~ characterized by small discrete nodules of
13 fibrous tissue similarly disseminated throughout both lungs
14 causing the characteristic x-ray pattern and by other
15 variable clinical manifestations.

16 (15) "Wages" is as defined in 39-71-116(20).

17 (16) "Wife" is as defined in 39-71-116(21).

18 (17) "Year" is as defined in 39-71-116(6) and
19 39-71-116(22)."

20 Section 88. Section 39-72-307, MCA, is amended to
21 read:

22 "39-72-307. Deduction from wages of any part of
23 premium a misdemeanor -- hospital contributions not
24 prohibited. It ~~shall--be~~ is unlawful for the employer to
25 deduct or obtain any part of any premium required to be paid

1 by this chapter from the wages or earnings of his workmen
2 ~~workers,~~ or any of them, and the making or attempt to make
3 any such deduction ~~shall-be~~ is a misdemeanor, except that
4 nothing in this section ~~shall~~ may be construed as
5 prohibiting contributions by employees to a hospital fund,
6 as elsewhere in this chapter provided."

7 Section 89. Section 39-72-508, MCA, is amended to
8 read:

9 "39-72-508. Death due to pneumoconiosis. The claimant
10 must submit the evidence necessary to establish that the
11 miner's death was due to pneumoconiosis and that the
12 pneumoconiosis arose out of employment in coal mines. Death
13 will be found due to a ~~respirable~~ respiratory disease when
14 death is ascribed to a chronic dust disease or to another
15 chronic disease of the lung. Death will not be found due to
16 a ~~respirable~~ respiratory disease in those cases in which the
17 disease reported does not suggest a reasonable possibility
18 that death was in fact due to pneumoconiosis; e.g., cancer
19 of the lung, disease due to trauma, or pulmonary emboli.
20 However, the presumptions established in subsections (2) and
21 (3) of 39-72-501 apply."

22 Section 90. Section 39-72-701, MCA, is amended to
23 read:

24 "39-72-701. Compensation for total disability or death
25 due to occupational disease other than pneumoconiosis. The

1 compensation to which an employee temporarily totally
 2 disabled or permanently totally disabled by an occupational
 3 disease ~~other than pneumoconiosis~~, or the beneficiaries and
 4 dependents of the employee in the case of death caused by an
 5 occupational disease ~~other than pneumoconiosis~~, ~~shall be~~ are
 6 entitled to under this chapter shall be the same payments
 7 which are payable to an injured employee, and such payments
 8 shall be made for the same period of time as is provided in
 9 cases of temporary total disability, permanent total
 10 disability, and in cases of injuries causing death under the
 11 Workers' Compensation Act ~~of the state of Montana.~~"

12 Section 91. Section 39-72-702, MCA, is amended to
 13 read:

14 "39-72-702. Compensation for total disability or death
 15 due to pneumoconiosis. Benefit payments for total disability
 16 or death due to pneumoconiosis shall, for the purpose of
 17 this chapter, be made as follows:

18 (1) In the case of total disability of a miner due to
 19 pneumoconiosis, the disabled miner shall be paid benefits
 20 during the disability at the rate of \$155 per month.

21 (2) In the case of death of a miner due to
 22 pneumoconiosis or of a miner receiving benefits under this
 23 ~~part~~ subsection (1), benefits shall be paid to the miner's
 24 surviving spouse, if any, at the rate the deceased miner
 25 would receive such benefits if totally disabled.

1 (3) In the case of an individual entitled to benefit
 2 payments under subsection (1) or (2) who has one or more
 3 dependents, the benefit payments ~~shall~~ must be increased at
 4 the rate of 50% of such benefit payments if such individual
 5 has one dependent, 75% if such individual has two
 6 dependents, and 100% if such individual has three or more
 7 dependents."

8 Section 92. Section 39-72-708, MCA, is amended to
 9 read:

10 "39-72-708. Prohibiting supplementing of benefits. No
 11 person receiving compensation or benefits under ~~[71-1001 to~~
 12 ~~71-1006, inclusive]~~ shall be chapter 73 of this title is
 13 entitled to compensation or benefits under this chapter."

14 Section 93. Section 39-73-109, MCA, is amended to
 15 read:

16 "39-73-109. Payment of benefits to surviving spouse.
 17 (1) Upon the death of a person receiving payments for
 18 silicosis under 39-73-104 or 39-73-108, the surviving
 19 spouse, as long as such spouse remains unmarried, is
 20 entitled to receive the payments granted the deceased
 21 spouse.

22 (2) A person who otherwise is qualified to receive
 23 payments under subsection (1) of this section but who
 24 spouse died prior to March 14, 1974, is hereby made eligible
 25 to begin receiving one-half of those payments; provided,

1 however, a person is not eligible for these payments if her
2 such spouse's taxable income is \$6,800 or more per year."

3 Section 94. Repealer. Sections 41-901 through 41-909,
4 92-613, and 92-1340, R.C.M. 1947, are repealed.

-End-

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LC 0067

1979 Legislature
Code Commissioner Bill - Summary

Senate Bill No. *208*

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAW RELATING TO LABOR.

(This summary does not include discussion of routine form or grammatical changes.)

Section 1. 39-1-101. This is new language enacted to clarify terminology utilized in the chapter regarding "commissioner" and "department".

Section 2. 39-1-102. Deleted "of labor and industry" for redundancy with 39-1-101; changed "be charged with the duty of enforcing" to "enforce" for clarity and uniform style; added "other" for clarification; and deleted "enacted by legislation" as redundant.

Section 3. 39-2-103. Changed "chapter on trusts" to "laws relating to trusts and fiduciary relationships" to clarify reference to material which is no longer located in a single chapter.

Section 4. 39-2-503. Deleted "except as provided in" as redundant.

Section 5. 39-2-703. In (3), deleted "all" and "without contributing negligence on his part" and added "subject to the provisions of 27-1-702" since Montana no longer has a doctrine of contributory negligence. (See 27-1-702, MCA) In (4), added "except as otherwise provided in the Workers' Compensation Act" to clarify that workers' compensation insurance does relieve an employer of further liability since that coverage is an employee's sole remedy.

Section 6. 39-2-704. In (1), deleted "all" and "without contributing negligence on his part" and added "subject to the provisions of 27-1-702" since Montana no longer has a doctrine of contributory negligence. In (3), added "except as otherwise provided in the Workers' Compensation Act" to clarify that there can be a bar to recovery if the employee has received workers' compensation benefits.

Section 7. 39-2-803. Grammatical changes.

Section 8. 39-3-104. In (1), added "employment of" for clarity.

Section 9. 39-3-202. Changed "the [act]" to "this part" for clarification of legislative intent. Section 1, Ch. 40, L. 1967, states that "any employer. . . who fails to pay any of his employees, as provided in the preceding or following sections, or violates any other provision of this act, shall be guilty of a misdemeanor." Since the legislature made the penalty section applicable to "following sections", subsequent legislation enacted in Title 41, Chapter 13, R.C.M. 1947, is subject to the penalty section.

Section 10. 39-3-203. Changed "[section]" to "section and 39-3-204", the substantive portions of the previous "section" of R.C.M. 1947.

Section 11. 39-3-204. Changed "[section]" to "section and 39-3-203". (See section 10.)

Section 12. 39-3-208. Rearranged sentence structure and changed "such 5% penalty" to "the 5% penalty specified in 39-3-206" for clarification.

Section 13. 39-3-210. In (1), changed "[act]" to "part" for clarification. (See section 9.)

Section 14. 39-3-211. Changed "[act]" to "part" for clarification. (See section 9.)

Section 15. 39-3-214. In (2), changed "[act]" to "part" for clarification. (See section 9.)

Section 16. 39-3-501. Changed "[41-1301 to 41-1311]" to "part 2 of this chapter" since the applicable portions of the reference are only to wage payments. (39-3-104 was part of the former reference but is redundant with 49-2-303; and part 8 of chapter 2 was part of the former reference but is redundant with 49-2-301.)

Section 17. 39-3-504. Deleted ", 39-3-104, part 8 of chapter 2," for clarification of legislative intent. (See section 16.)

Section 18. 39-3-505. Deleted ", 39-3-104, part 8 of chapter 2," for clarification of legislative intent. (See section 16.)

Section 19. 39-3-506. Deleted ", 39-3-104, part 8 of chapter 2," for clarification of legislative intent. (See section 16.)

Section 20. 39-3-604. Deleted language in subsection (1) because a certificate is no longer issued (41-2009, R.C.M. 1947, was repealed in 1974). In (2), deleted "and affidavit" because the 1974 Legislature deleted the affidavit requirement.

Section 21. 39-4-102. Grammatical and sentence structure changes.

Section 22. 39-4-103. Grammatical changes.

Section 23. 39-4-107. Grammatical and sentence structure changes.

Section 24. 39-4-108. Grammatical changes.

Section 25. 39-4-110. Grammatical changes.

Section 26. 39-5-102. Grammatical changes.

Section 27. 39-5-202. In (2) and (3), added "before a notary public" for uniformity and clarification.

Section 28. 39-5-403. Changed "prosecuting" to "county" for uniform terminology.

Section 29. 39-5-404. Changed "prosecuting" to "county" and "superior court" to "district court" for uniform terminology.

Section 30. 39-5-405. Changed "prosecuting" to "county" for uniform terminology.

Section 31. 39-6-106. In (6), deleted "when authorized by the department" because of changes by executive reorganization.

Section 32. 39-31-103. Grammatical changes.

Section 33. 39-31-208. In (1), added "in the hearing provided for in 39-31-207" for clarification.

Section 34. 39-31-309. Grammatical changes.

Section 35. 39-31-401. In (1), deleted "through 39-31-206, or 39-31-303" because the deleted sections do not address employee rights in relation to employers. In (3), rearranged sentence structure.

Section 36. 39-31-403. Changed "in the following manner" to "pursuant to this part" because of rearrangement. This change is proposed by amendment instead of recodification because the procedure in 39-31-409 was not included in the former language but is relevant.

Section 37. 39-51-201. In (19), changed "welfare" to "public" for consistency with MCA Title 53. Deleted (22) and (23) because their language conflicted with 39-51-201(7) and (10).

Section 38. 39-51-202. In (5), deleted "39-51-1102" because it is not applicable. It pertains only to employers not otherwise subject to the chapter who voluntarily elect to be subject, while "subsection (1), (2), (3), or (4)" pertain to employers statutorily subject to chapter 51.

Section 39. 39-51-203. In (8), changed "\$40,000" to "\$20,000" and "20 or more" to "10 or more" to correct figures on improperly enrolled bill (see Report No. 1, April 13, 1977, of the Joint Conference Committee on House Bill No. 245 -- Ch. 523, L. 1977).

Section 40. 39-51-204. In (1)(f), changed "10 days after publication thereof in the manner in 39-51-302 for general rules" to "in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules" because the MAPA was enacted subsequent to the questioned material.

Section 41. 39-51-302. Deleted and changed language as necessary to overcome conflicts with the Montana Administrative Procedure Act which was enacted subsequent to the provisions in this section.

Section 42. 39-51-304. In (1), changed "Subject to other provisions of this chapter" to "Except as otherwise provided" because provisions outside of "this chapter" are applicable, i.e., Title 2, chapter 18, MCA, State Employee Classification, Compensation, and Benefits. Deleted subsection (2) because it conflicts with Title 2, chapter 18, MCA. Renumbered "(3)" to "(2)". In ~~(4)~~ (3), changed language to conform to the provisions of 2-18-105, MCA.

Section 43. 39-51-309. In (2), changed "prosecuting" to "county" attorney for uniformity in terminology.

Section 44. 39-51-401. In (1), deleted "inclusive of voluntary contributions as provided in [87-109(c)(4), R.C.M. 1947]," because that statutory language does not address voluntary contributions (the former language in that reference which did discuss voluntary contributions was repealed by Sec. 1, Ch. 340, L. 1975).

Section 45. 39-51-402. In (2), deleted "39-51-1104, 39-51-1105" and "39-51-1301, or 39-51-1303 through 39-51-1306" because none of these sections address refunds of unemployment compensation contributions.

Section 46. 39-51-1109. Changed "[87-107(c)]" to "39-51-2403". Section 87-109(e), R.C.M. 1947, was added in 1971 by Ch. 117, L. 1971. The language of 87-107(c) referred to in 87-109(e) was that appearing in the parent volume. The parent volume version of 87-107(c) was deleted in 1973 by Ch. 262, L. 1973. Current section 87-107(e) appears to have replaced former 87-107(c) and 87-107(e) is now 39-51-2403, MCA.

Section 47. 39-51-1201. Grammatical changes.

Section 48. 39-51-1303. In (3), deleted "as provided in [93-2604]" because it adds nothing. The language of 93-2604 establishes a 5-year statute of limitations, but the language of 39-51-1303 is sufficient in itself to create a statute of limitations.

Section 49. 39-51-2104. Rearrangement of sentence structure; grammatical changes.

Section 50. 39-51-2108. Deleted "and [87-110(d), R.C.M. 1974]" since that subsection was repealed by Ch. 323, L. 1975.

Section 51. 39-51-2304. Grammatical changes.

Section 52. 39-51-3206. Deleted "as provided in [93-2604]". See section 49 above.

Section 53. 39-71-101. Deleted "the Workmen's Compensation Act or" for uniform terminology.

Section 54. 39-71-102. Deleted "or the safety provisions of this chapter" because the chapter referred to (R.C.M. Title 92, chapter 12, Safety Provisions) was repealed by Sec. 30, Ch. 341, L. 1969.

Section 55. 39-71-116. In (8), changed "39-71-501 through 39-71-507" to "part 5 of this chapter" since the reference is a general one to uninsured employers and is unaffected by inclusion of additional sections within part 5. In (12), (13), and (19), changed "workman" to "worker" for uniform terminology and consistency with the short title of chapter 71. In (18), deleted "and shall embrace all safety devices and safeguards provided or prescribed by the safety provisions of the chapter for the purpose of mitigating or preventing a specific danger" because Title 92, chapter 12 (safety provisions) was repealed by Sec. 30, Ch. 341, L. 1969.

Section 56. 39-71-302. Changed "workman" to "worker" for uniform terminology and consistency with the short title of chapter 71.

Section 57. 39-71-304. Changed "men" to "persons" for uniform style.

Section 58. 39-71-306. In (2), added "for injured workers" and changed "injured" to "deceased" to clarify that expenditures are not encouraged for burial of workers who are injured but not yet deceased.

Section 59. 39-71-309. Changed "workmen" to "workers" for uniform terminology and consistency with the short title of chapter 71.

Section 60. 39-71-401. Grammatical change.

Section 61. 39-71-406. Changed "workmen" to "workers" for uniform terminology and consistency with the short title of chapter 71.

Section 62. 39-71-410. Grammar changes and rearrangement of sentence structure.

Section 63. 39-71-411. Grammar changes.

Section 64. 39-71-501. Changed "39-71-501 through 39-71-507" to "this part". The original reference to "this section" (92-212, R.C.M.) was changed to the present reference. Since 92-213, R.C.M., (now sections 39-71-508 through 39-71-510), cited 92-212 for the definition of "uninsured employer", all the sections of "this part" were clearly intended to be covered by this definition.

Section 65. 39-71-506. Changed "39-71-501 through 39-71-507" to "39-71-504". The internal reference originally cited "this section", which was changed by recodification to the 7 sections into which 92-212, R.C.M. 1947, was divided. Section 29-71-504, however, is the only section which addresses "amount(s) due the fund".

Section 66. 39-71-510. Changed "39-71-402, 39-71-407, and 39-71-501 through 39-71-507" to "39-71-407, 39-71-502, and 39-71-503". The internal reference originally referred to "92-212 and 92-614", which were divided by recodification into the sections presently cited. However, only 39-71-407, 39-71-502, and 39-71-503 address the purpose of the uninsured employers' fund.

Section 67. 39-71-602. Changed "workman" to "worker" for uniform terminology and consistency with the short title of chapter 71.

Section 68. 39-71-603. Changed "[act]" to "chapter". Section 50-75-107 was derived from the "act" in question but does not affect the change to "chapter". Similarly, several sections in Title 92 of R.C.M. 1947 were enacted subsequent to the "act" in question but their inclusion in chapter 71 does not adversely affect the proposed amendment. The legislative intent appears to be to extend application of provisions of "this act" to material enacted subsequent thereto.

Section 69. 39-71-721. In (5), deleted "or if the widow or widower remarries" and "or widow or widower" as redundant with the second sentence of (5).

Section 70. 39-71-738. Changed "workman" to "worker" for uniform terminology and consistency with the short title of chapter 71.

Section 71. 39-71-739. Grammatical changes.

Section 72. 39-71-801. Changed "[act]" to "chapter" (see section 68 explanation).

Section 73. 39-71-807. Grammatical changes.

Section 74. 39-71-813. Changed "[act]" to "chapter" (see section 68 explanation).

Section 75. 39-71-901. In (2), deleted "section of rehabilitation" because the division of workers' compensation is, in fact, the certifying agency according to division personnel.

Section 76. 39-71-902. In (1), changed "[act]" to "chapter" because it appears to be the intent of the Legislature to include this material, enacted in 1973, along with existing material in the "Workers' Compensation Act". Thus the explanation in section 68 above is applicable.

Section 77. 39-71-903. Changed "[act]" to "chapter" (see section 76 explanation).

Section 78. 39-71-907. Changed "[act]" to "chapter" (see section 76 explanation).

Section 79. 39-71-908. Changed "as" to "has" as an obvious typographical error.

Section 80. 39-71-910. Grammatical changes.

Section 81. 39-71-1001. Changed "[Title 41, chapter 8, R.C.M. 1947]" to "Title 53, chapter 7, parts 1 and 2". In recodification, Title 41, chapter 8, R.C.M. 1947, became Title 53, chapter 7, part 2. However, the material presently in Title 53, chapter 7, part 1, was also part of Title 41, chapter 8, R.C.M. 1947 before it was transferred by Ch. 121, L. 1974 to Title 71, chapter 21, R.C.M. 1947. Hence, the former reference was inaccurate, and is here corrected.

Section 82. 39-71-1003. Changed "workman" to "worker" for uniform terminology and consistency with the short title of chapter 71. Changed "vocational rehabilitation division" to "department of social and rehabilitation services" to conform with the intent of Ch. 23, L. 1975, §§83 and 84. Formerly "vocational rehabilitation division" was a division within the former "board of education".

Section 83. 39-71-2101. Grammatical changes.

Section 84. 39-71-2201. Changed "[92-206]" to "39-71-403". Other MCA provisions originally appeared in 92-206 but are inapplicable in the context of this internal reference.

Section 85. 39-71-2206. In (3), changed "upon demand of its bondsman, the depositor, or the division" to "upon demand of a depositor". The present language would have the division or bondsmen demanding an accounting from themselves.

Section 86. 39-72-101. Grammatical changes.

Section 87. 39-72-102. Changed for purpose of uniform terminology.

Section 88. 39-72-307. Grammatical changes.

Section 89. 39-72-508. Grammatical changes.

Section 90. 39-72-701. Added "other than pneumoconiosis" to clarify that benefits are different for total disability or death due to pneumoconiosis, which is covered under 39-72-702.

Section 91. 39-72-702. In (2), changed "[part]" to "subsection (1)" to clarify the distinction made by the legislature between partial disability and total disability benefits.

Section 92. 39-72-708. Changed "[71-1001 to 71-1008, inclusive]" to "chapter 73 of this title". This change is proposed by amendment instead of being done by recodification because material enacted subsequent to those sections cited is also included. However, it appears to be the intent of the legislature to extend application to later enactments. Additionally, former R.C.M. section 71-229 is included in "chapter 73" because it is applicable to silicosis benefits.

Section 93. 39-73-109. In (2), changed "her" to "such spouse's" for consistency in use of gender.

Section 94. Repealer. 41-901 through 41-909, R.C.M. 1947, should be repealed because Section 82A-1010, R.C.M. 1947 (Sec. 1, Ch. 272, L. 1971) abolished the state board of arbitration and conciliation, created in 41-901 through 41-909.

92-613, R.C.M. 1947, should be repealed because it is integrally related to former Section 91-612, R.C.M. 1947, which was repealed by Sec. 88, Ch. 23, L. 1975.

92-1340, R.C.M. 1947, should be repealed. The penalty provision in this section is obsolete since the enforcement procedures in part 5, chapter 71, Title 39, are used in place of 92-1340.

Respectfully report as follows: That.....**Senate**.....Bill No. **208**
introduced bill be amended as follows:

1. Page 6, line 22.
Strike: "and 39-3-204"
2. Page 7, line 22.
Strike: "and 39-3-203"
3. Page 11, line 17.
Following: "file"
Strike: "the"
Insert: "a"
4. Page 23, line 7.
Following: "39-6-106."
Strike: "Standards for apprenticeship"
Insert: "Apprenticeship"
5. Page 23, line 8.
Following: line 7
Strike: "Standards for apprenticeship"
Insert: "Apprenticeship"
6. Page 23, line 8.
Following: "agreements"
Strike: "are as follows"
Insert: "shall contain"
7. Page 24, line 16.
Strike: "the provisions of"

*Amendments for SB 208
Please refer to white copy for entire content.*

8. Page 25, lines 3 through 16.
Strike: lines 3 through 16 in their entirety

9. Page 25.

Following: line 16

Insert: "(2) (a) "Public employee" means:

(i) except as provided in subsection (2) (b) of this section,
a person employed by a public employer in any capacity; and

(ii) an individual whose work has ceased as a consequence of
of in connection with any unfair labor practice or concerted
employee action.

(2) (b) "Public employee" does not mean:

(i) an elected official;

(ii) a person directly appointed by the governor;

(iii) a supervisory employee, as defined in subsection (3)
of this section;

(iv) a management official, as defined in subsection (4)
of this section;

(v) a member of any state board or commission who serves
the state intermittently;

(vi) a school district clerk;

(vii) a school administrator;

(viii) a registered professional nurse performing service
for a health care facility;

(ix) a professional engineer;

or

(x) an engineer-in-training."

10. Page 29, line 17.

Strike: "and"

11. Page 29, line 18.

Strike: "39-31-204"

12. Page 56, line 19.

Following: "~~shall~~"

Strike: "must be"

Insert: "are"

13. Page 56, line 25.

Following: "or"

Strike: "be"

Insert: "It is"

14. Page 62, line 3.

Following: "or"

Strike: "be"

Insert: "It is"

1 SENATE BILL NO. 208

2 INTRODUCED BY HAFFERMAN, LOWE

3 BY REQUEST OF THE CODE COMMISSIONER

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
6 CLARIFY THE LAWS RELATING TO LABOR; ENACTING SECTION
7 39-1-101, MCA; AND REPEALING SECTIONS 41-901 THROUGH 41-909,
8 92-613, AND 92-1340, R.C.M. 1947."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 NEW SECTION. Section 1. 39-1-101. Definitions. As
12 used in this chapter, unless the context requires otherwise
13 the following definitions apply:

14 (1) "Commissioner" means the commissioner of labor and
15 industry as provided for in 2-15-1701.

16 (2) "Department" means the department of labor and
17 industry as provided for in 2-15-1701.

18 Section 2. Section 39-1-102, MCA, is amended to read:

19 "39-1-102. Duties of department. The department of
20 labor and industry shall be charged with the duty of
21 enforcing ~~enforce~~ all the laws of Montana relating to hours
22 of labor, conditions of labor, prosecution of employers who
23 default in payment of wages, protection of employees, and
24 all laws relating to child labor ~~regulating~~ which regulate
25 the employment of children in any manner, and to shall

1 administer the laws of the state relating to free employment
2 offices, and all other state labor laws enacted by
3 legislation."

4 Section 3. Section 39-2-103, MCA, is amended to read:

5 "39-2-103. Confidential employment. The obligations
6 peculiar to confidential employments are defined in the
7 chapter on trusts laws relating to trusts and fiduciary
8 relationships."

9 Section 4. Section 39-2-503, MCA, is amended to read:

10 "39-2-503. Termination at will. An employment having
11 no specified term may be terminated at the will of either
12 party on notice to the other, except where otherwise
13 provided by this chapter, 28-10-301 through 28-10-303,
14 28-10-502, and 30-11-601 through 30-11-605, and ~~except as~~
15 ~~provided in 39-2-302.~~"

16 Section 5. Section 39-2-703, MCA, is amended to read:

17 "39-2-703. Liability of railway corporation for
18 negligence of fellow servants. (1) Every person or
19 corporation operating a railway or railroad in this state
20 ~~shall be~~ is liable for all damages sustained by any employee
21 of such person or corporation in consequence of the neglect
22 of any other employee ~~or employees~~ thereof or by the
23 mismanagement of any other employee ~~or employees~~ thereof and
24 in consequence of the willful wrongs, whether of commission
25 or omission, of any other employee ~~or employees~~ thereof when

1 such neglect, mismanagement, or wrongs are in any manner
 2 connected with the use and operation of any railway or
 3 railroad on or about which they shall be he is employed,
 4 and no No contract which restricts such liability shall be
 5 is legal or binding.

6 (2) In case of the death of any such employee in
 7 consequence of any injury or damage so sustained, the right
 8 of action provided by subsection (1) of this section shall
 9 survive and may be prosecuted and maintained by his heirs or
 10 personal representatives.

11 (3) Every railway corporation doing business in this
 12 state, including electric railway corporations, shall be is
 13 liable for all damages sustained by an employee thereof
 14 within this state without contributing negligence on his
 15 part, subject to the provisions of 27-1-702, when such
 16 damages are caused by the negligence of any train
 17 dispatcher, telegraph operator, superintendent, master
 18 mechanic, yardmaster, conductor, engineer, motorman, or of
 19 any other employee who has superintendence of any stationary
 20 or hand signal.

21 (4) No contract of insurance, relief, benefit, or
 22 indemnity in case of injury or death or any other contract
 23 entered into, either before or after the injury, between the
 24 person injured and any of the employers named in subsection
 25 (3) of this section shall constitute any is a bar or defense

1 to any cause of action brought under the provisions of this
 2 section, except as otherwise provided in the Workers'
 3 Compensation Act."

4 Section 6. Section 39-2-704, MCA, is amended to read:
 5 "39-2-704. Liability of mining company for negligence
 6 of fellow servants. (1) Every company, corporation, or
 7 individual, operating any mine, smelter, or mill for the
 8 refining of ores, shall be is liable for any damages
 9 sustained by any employees employes thereof within this
 10 state, without contributing negligence on his part, subject
 11 to the provisions of 27-1-702, when such damage is caused by
 12 the negligence of any superintendent, foreman, shift boss,
 13 hoisting or other engineer, or crane man.

14 (2) No contract of insurance, relief, benefit, or
 15 indemnity in case of injury or death or any other contract
 16 entered into before the injury between the person injured
 17 and any of the employers named in this section shall
 18 constitute any is a bar or defense to any cause of action
 19 brought under the provisions of this section, except as
 20 otherwise provided in the Workers' Compensation Act.

21 (3) In case of the death of any such employees
 22 employes in consequence of any injury or damages so
 23 sustained, the right of action shall survive survives and
 24 may be prosecuted and maintained by their his heirs or
 25 personal representatives."

1 Section 7. Section 39-2-803, MCA, is amended to read:

2 "39-2-803. Blacklisting prohibited. If any company or
3 corporation in this state authorizes or allows any of its
4 agents to blacklist or any person does blacklist any
5 discharged employee or attempts by word or writing or any
6 other means whatever to prevent any discharged employee or
7 any employee who may have voluntarily left ~~and the~~
8 company's service from obtaining employment with another
9 person, except as provided for in 39-2-802, such company or
10 corporation or person is liable in punitive damages to such
11 employees ~~employee~~ so prevented from obtaining employment,
12 to be recovered by him in a civil action, and is also
13 punishable as provided in 39-2-804."

14 Section 8. Section 39-3-104, MCA, is amended to read:

15 "39-3-104. Equal pay for women for equivalent service.
16 (1) It ~~shall be~~ is unlawful for any-person-or-firm, ~~the~~ the state
17 ~~or any~~ county, municipal entity, or school district, public
18 or private corporation, person, or firm to employ any--women
19 or women in any occupation ~~or calling~~ within the state of
20 Montana for ~~salaries-wages-or~~ compensation which are less
21 than that paid to men for equivalent service or for the same
22 amount or class of work or labor in the same industry,
23 school, establishment, office, or place of employment of any
24 kind or description.

25 (2) Any-person-or-firm if the state or any county,

1 municipal entity, or school district, officers-or public or
2 private corporation, ~~violating person or firm violates~~ any
3 of the provisions of subsection (1) ~~of this section shall be~~
4 ~~deemed it is~~ guilty of a misdemeanor and upon conviction
5 thereof shall be fined not less than \$25 or more than \$500
6 for each offense."

7 Section 9. Section 39-3-202, MCA, is amended to read:

8 "39-3-202. Rulemaking power of commissioner. The
9 commissioner is authorized to issue, amend, and enforce
10 rules for the purpose of carrying out the provisions of the
11 ~~act~~ this part."

12 Section 10. Section 39-3-203, MCA, is amended to read:

13 "39-3-203. Employer to notify employee on written
14 demand as to rate of wages and date of paydays. (1) Each
15 employer or an authorized representative of the employer
16 shall, on written demand, prior to the commencing of work,
17 notify each employee as to the rate of wages to be paid,
18 whether by the hour, day, week, month, or ~~yearly basis~~ year,
19 and date of paydays. Such notification ~~shall~~ must be in
20 writing to each employee or the ~~by~~ posting of notice in a
21 conspicuous place.

22 (2) The provisions of this [section] ~~and--39-3-204~~
23 ~~shall~~ do not apply in-respect to an employer who has entered
24 into a signed collective bargaining agreement, when such
25 agreement contains conditions of employment, wages to be

1 received, and hours to be worked, or to employers engaged in
2 agriculture or stockraising; provided, however, such
3 employers shall conform ~~conform~~ comply with the provisions of
4 39-3-205."

5 Section 11. Section 39-3-204, MCA, is amended to read:

6 "39-3-204. Payment of wages generally. (1) Every
7 employer of labor in the state of Montana shall pay to each
8 ~~of his employees~~ employee the wages earned by such ~~employees~~
9 employee in lawful money of the United States or checks on
10 banks convertible into cash on demand at the full face value
11 thereof, and no person for whom labor has been performed
12 shall ~~may~~ withhold from any employee any wages earned or
13 unpaid for a longer period than 10 business days after the
14 same become ~~are~~ due and payable. However, reasonable
15 deductions may be made for board, room, and other
16 incidentals supplied by the employer, whenever such
17 deductions are a part of the conditions of employment, or
18 other deductions provided for by law.

19 (2) If at such time of payment of wages any employee
20 shall ~~be is~~ absent from the regular place of labor, he shall
21 be is entitled to such payment at any time thereafter.

22 (3) Provisions of this [section] ~~and 39-3-203~~ shall ~~do~~
23 not apply to any professional, supervisory, or technical
24 employees employee who by custom receive ~~their~~ receives his
25 wages earned at least once monthly."

1 Section 12. Section 39-3-208, MCA, is amended to read:
2 "39-3-208. Contracts in violation of part void. Any
3 contract or agreement made between any person, partnership,
4 or corporation and any ~~parties party~~ in his ~~or its~~ or
5 their employ ~~whose provision shall be in violation, evasion~~
6 ~~the provisions of which violates, evades, or circumvention--of~~
7 circumvent this part shall ~~be is~~ unlawful and void, but such
8 employee may sue to recover his wages earned, together with
9 ~~such the~~ 5% penalty ~~specified in 39-3-206~~ or separately to
10 recover the penalty if the wages have been paid."

11 Section 13. Section 39-3-210, MCA, is amended to read:

12 "39-3-210. Investigative powers of commissioner. (1)
13 The commissioner or his authorized representatives are
14 empowered to enter and inspect such places, question such
15 employees, and investigate such facts, conditions, or
16 matters ~~as which~~ they may deem consider appropriate to
17 determine whether any person has violated any provision of
18 this [act] ~~part~~ or any rule issued hereunder or which may
19 aid in the enforcement of the provisions of this [act] ~~part~~.

20 (2) The commissioner or his authorized representatives
21 shall ~~have power to~~ may administer oaths and examine
22 witnesses under oath; issue subpoenas; compel the attendance
23 of witnesses and the production of papers, books, accounts,
24 records, payrolls, documents, and testimony; and take
25 depositions and affidavits in any proceeding before the

1 commissioner."

2 Section 14. Section 39-3-211, MCA, is amended to read:

3 "39-3-211. Commissioner to take wage assignments.
4 Whenever the commissioner determines that one or more
5 employees have claims for unpaid wages, he shall, upon the
6 written request of the employee, take an assignment of the
7 claim in trust for such employee and may maintain any
8 proceeding appropriate to enforce the claim, including
9 liquidated damages pursuant to this [et] part. With the
10 written consent of the assignor, the commissioner may settle
11 or adjust any claim assigned pursuant to this section."

12 Section 15. Section 39-3-214, MCA, is amended to read:

13 "39-3-214. Court costs and attorneys' fees. (1)
14 Whenever it ~~shall-become~~ is necessary for the employee to
15 enter or maintain a suit at law for the recovery or
16 collection of wages due as provided for by this part, ~~then~~
17 such a resulting judgment ~~shall~~ must include a reasonable
18 attorney's fee in favor of the successful party, to be taxed
19 as part of the costs in the case.

20 (2) Any judgment for the plaintiff in a proceeding
21 pursuant to this [et]-~~shall~~ part must include all costs
22 reasonably incurred in connection with the proceeding,
23 including attorneys' fees.

24 (3) If the proceeding is maintained by the
25 commissioner, no court costs or fees ~~shall-be~~ are required

1 of him nor ~~shall-he-be~~ is he required to furnish any bond or
2 other security that might otherwise be required in
3 connection with any phase of the proceeding."

4 Section 16. Section 39-3-501, MCA, is amended to read:

5 "39-3-501. Certain laws extended to certain employers
6 in mineral and oil industry. For the purposes of this part,
7 all the provisions of ~~[41-1301-to-41-1311]-shall~~ part 2 of
8 this chapter extend to and govern every person, firm,
9 partnership, or corporation engaged in the business of
10 extracting or of extracting and refining or reducing metals
11 and minerals or mining for coal or drilling for oil, ~~save~~
12 and except such persons, firms, partnerships, or
13 corporations as have a free and unencumbered title to not
14 less than one-half the fee of the property being worked. For
15 this purpose, an outstanding unpaid or unredeemed tax sale
16 certificate ~~shall~~ is not be considered an encumbrance."

17 Section 17. Section 39-3-504, MCA, is amended to read:

18 "39-3-504. Report of violations directly to county
19 attorney by employees ~~employee~~. Any employees ~~employee~~ may
20 make complaint ~~direct~~ directly to the county attorney
21 relative to any violation of this part-~~39-3-104~~-part-8-of
22 chapter-~~2~~ or part 2 of this chapter."

23 Section 18. Section 39-3-505, MCA, is amended to read:

24 "39-3-505. County attorney to notify commissioner of
25 violations violation reported directly by employees

1 ~~employee.~~ The county attorney of the county shall promptly
 2 notify the commissioner of labor and industry of any
 3 complaint made by any employee relative to the violation of
 4 any of the provisions of this part ~~39-3-104~~ part 8 of
 5 chapter 2 or part 2 of this chapter and shall in writing
 6 keep said ~~the~~ commissioner advised of each step in any
 7 proceeding taken by said ~~the~~ county attorney thereunder."

8 Section 19. Section 39-3-506, MCA, is amended to read:

9 "39-3-506. County attorney to file complaint in
 10 district court on belief of violation. If ~~said~~ a county
 11 attorney believes after receiving said information that the
 12 provisions of this part ~~39-3-104~~ part 8 of chapter 2 or
 13 part 2 of this chapter have been violated and that such
 14 violation ~~or~~ violations was ~~or~~ were willful or that the
 15 financial condition of the employer is such as to endanger
 16 employees in receiving prompt payment or collection of
 17 wages, ~~it shall be his duty to he shall~~ file the ~~a~~ complaint
 18 aforesaid in said district court. All proceedings upon such
 19 complaint shall ~~must~~ be promptly prosecuted."

20 Section 20. Section 39-3-604, MCA, is amended to read:

21 "39-3-604. Bond to be filed by lessee -- bond
 22 requirements. (1) Every person who leases from another
 23 person premises for the purpose of conducting therein a
 24 business as a restaurant, bar, or tavern is hereby required
 25 to file a bond equal to at least double the amount of the

1 projected semi-monthly payroll with the commissioner of labor
 2 and industry. ~~said~~ This bond shall ~~must~~ at all times be kept
 3 in full force and effect ~~and any cancellation or~~ ~~revocation~~
 4 thereof ~~or~~ ~~withdrawal~~ ~~of~~ ~~the~~ ~~sureties~~ ~~therefrom~~ ~~shall~~
 5 automatically revoke and suspend the certificate ~~issued~~ ~~to~~
 6 the ~~lessee~~ ~~of~~ ~~this~~ ~~part~~ ~~until~~ ~~such~~ ~~time~~ ~~as~~ ~~a~~ ~~new~~ ~~bond~~ ~~of~~
 7 like tenure and effect shall have been filed and approved as
 8 herein provided.

9 (2) The bond ~~and~~ affidavit required by subsection (1)
 10 of this section shall ~~must~~ be filed with the commissioner of
 11 labor and industry. The state of Montana shall ~~must~~ be
 12 named as the obligee therein, with good and sufficient
 13 sureties to be approved by the attorney general.

14 (3) Such bond shall ~~must~~ be conditioned to assure that
 15 in any lease transaction of the type referred to in 39-3-608
 16 the persons who perform labor or other personal services for
 17 the lessee are guaranteed their wages in the event the
 18 lessee ceases operation of the business for any reason and
 19 is unable to pay the wages due and owing the employees and
 20 to assure payment due the division of employment security as
 21 a result of payroll taxes."

22 Section 21. Section 39-4-102, MCA, is amended to read:

23 "39-4-102. Drivers and attendants of motor buses. (1)
 24 Drivers or attendants of motor buses employed in the state
 25 shall ~~may~~ not be employed for more than 8 hours in the any

1 24-hour period. Drivers or attendants of motor buses shall
 2 ~~must~~ be allowed a rest of at least 12 hours between the
 3 completion of their services in any 24-hour period and the
 4 beginning of their services in the next succeeding 24-hour
 5 period. In computing the number of hours of employment made
 6 by the provisions of this section, evidence may be
 7 introduced showing that part of ~~said~~ such time shall be is
 8 consumed prior to entry within the state.

9 (2) The provisions of this section shall ~~do~~ not be
 10 effective apply when life is in danger of ~~destruction~~ or ~~in~~
 11 ~~case--of--danger--of~~ property is in imminent danger of
 12 destruction; or in case of delay due to accident or
 13 unpassable impassable roads, abnormal road conditions, or
 14 snow blockades; or shall ~~not affect the delay of~~ when mails
 15 for ~~said~~ the drivers or attendants are delayed.

16 (3) Attendants "Attendant", for the purpose of this
 17 section, ~~are~~ is defined as any employee engaged for a
 18 portion of ~~the 24-hour period in~~ a day driving or repairing
 19 a motor bus and who is required to remain on ~~said~~ the
 20 vehicle as a relief driver or mechanic for time in excess of
 21 the 8-hour period ~~of for~~ which he shall ~~be~~ is rightly
 22 employed.

23 (4) Any employer or supervisor in charge of employee
 24 employees who shall ~~require~~ requires a driver or attendant
 25 as above defined to labor contrary to the provisions of this

1 section shall ~~be~~ declared is guilty of a misdemeanor and
 2 upon conviction shall ~~be punished~~ is punishable by a fine of
 3 not less than \$100 or more than \$600 or by imprisonment of
 4 not less than 30 days or more than 7 months or both such
 5 fine and imprisonment.

6 (5) All motor bus companies operating lines in this
 7 state shall ~~be~~ are liable in damage for all injuries to the
 8 person or persons resulting in ~~from~~ the violation of the
 9 provisions of ~~said~~ this section."

10 Section 22. Section 39-4-103, MCA, is amended to read:

11 "39-4-103. Underground miners and smelters. (1) The
 12 period of employment of workingmen workers in all
 13 underground mines or workings, including railroad or other
 14 tunnels, shall ~~be~~ is 8 hours per day, except in cases of
 15 emergency where when life and property are in imminent
 16 danger.

17 (2) The period of employment of workingmen workers in
 18 smelters, ~~stamp mills~~ stamp mills, sampling works,
 19 concentrators, and all other institutions for the reduction
 20 of ores and refining of ores or metals shall ~~be~~ is 8 hours
 21 per day, except in cases of emergency where life or property
 22 is in imminent danger.

23 (3) Any person ~~or persons~~, body ~~corporate~~ corporation,
 24 agent, manager, or employer who shall ~~violate~~ violates any
 25 of the provisions of this section shall ~~be~~ is guilty of a

1 misdemeanor and upon conviction thereof for each offense be
 2 is subject to a fine of not less than \$100 or more than \$600
 3 or by imprisonment in the county jail for a period of not
 4 less than 1 month or more than 7 months or by both such fine
 5 and imprisonment."

6 Section 23. Section 39-4-107, MCA, is amended to read:

7 "39-4-107. State and municipal governments, school
 8 districts, mines, mills, and smelters. (1) A period of 8
 9 hours ~~shall constitute~~ constitutes a day's work in all works
 10 and undertakings carried on or aided by any municipal ~~or~~
 11 county ~~government~~, or ~~the~~ state government, ~~or~~ a first-class
 12 school ~~districts~~ district, and on all contracts let by them
 13 and for all janitors, ~~except in courthouses of sixth- and~~
 14 seventh-class counties, engineers, firemen firefighters,
 15 caretakers, custodians, and laborers employed in or about
 16 any buildings, works, or grounds used or occupied for any
 17 purpose by any such municipal, county, or state governments,
 18 school ~~districts~~ of first-class, and government or
 19 first-class school district. A period of 8 hours constitutes
 20 a day's work in mills and smelters for the treatment of
 21 ores, in underground mines, and in the washing, reducing,
 22 and treatment of coal, ~~except in~~ In cases of emergency when
 23 life or property is in imminent danger this subsection does
 24 not apply.

25 (2) For firefighters in cities of the first and second

1 class, a work-week ~~shall be a period~~ workweek consists of a
 2 maximum of 40 hours during a 5-day week.

3 (3) In counties where regular road and bridge
 4 departments are maintained, the county commissioners may,
 5 with the approval of the employees or their duly constituted
 6 representative, establish a 40-hour work--week ~~workweek~~
 7 consisting of 4 consecutive 10-hour days. No employee ~~shall~~
 8 may be required to work in excess of 8 hours in any one work
 9 day workday if he prefers not to.

10 (4) Every person, corporation, stock company, or
 11 association of persons who violates any of the provisions of
 12 this section ~~shall be~~ is guilty of a misdemeanor and upon
 13 conviction thereof shall be punished by a fine of not less
 14 than \$100 or more than \$600 or by imprisonment in the county
 15 jail for not less than 30 days or more than 7 months or by
 16 both such fine and imprisonment."

17 Section 24. Section 39-4-108, MCA, is amended to read

18 "39-4-108. Railway employees. (1) On all lines of
 19 railroads or railways operated in whole or in part within
 20 this state, the time of labor of locomotive engineers,
 21 locomotive firemen, conductors, trainmen, operators, and
 22 agents acting as operators employed in running or operating
 23 the locomotive engines or trains on or over such railroads
 24 or railways in this state ~~shall may~~ not at any time exceed
 25 12 consecutive hours or ~~to be on duty for more than~~ an

1 ~~aggregate~~ of 16 hours ~~in the aggregate~~ in any 24-hour
2 period. At least 8 hours ~~shall~~ must be allowed them off duty
3 before said engineers, firemen, conductors, trainmen,
4 operators, and agents acting as operators are again ordered
5 or required to go on duty.

6 (2) Nothing in this section ~~shall~~ may be construed to
7 allow any engineer, fireman, conductor, or trainman to
8 desert his locomotive or train in case of accident, storms
9 ~~storms~~, wrecks ~~wreck~~, washouts ~~washout~~, snow blockade, or any
10 unavoidable delay arising from like causes or to allow said
11 ~~such~~ engineer, fireman, conductor, or trainman to tie up any
12 passenger or mail train between terminals.

13 (3) The provisions of this section ~~shall~~ do not apply
14 to relief or wreck trains.

15 (4) Any railroad company or superintendent, train
16 dispatcher, trainmaster, master mechanic, or other railroad
17 or railway official who ~~shall~~ order ~~orders~~ or require
18 ~~requires~~ any locomotive engineer, locomotive fireman,
19 conductor, trainman, operator, or agent acting as operator
20 to labor contrary to the provisions of this section ~~shall~~ be
21 ~~deemed~~ is guilty of a misdemeanor and on conviction thereof
22 ~~shall~~ be ~~punished~~ is punishable by a fine of not less than
23 \$100 or more than \$500 or by imprisonment of not less than
24 30 days or more than 60 days in the county jail.

25 (5) All railroad or railway corporations operating

1 lines of railroads or railways in whole or in part in this
2 state ~~shall~~ be ~~are~~ liable in damages for all injuries to any
3 person ~~or~~ ~~persons~~ resulting from violations of the
4 provisions of this section."

5 Section 25. Section 39-4-110, MCA, is amended to read:

6 "39-4-110. Sugar refineries. (1) A period of not to
7 exceed 8 hours ~~shall~~ constitute ~~constitutes~~ a day's work for
8 all persons employed in or about sugar refineries, except in
9 a case of emergency when life and ~~or~~ property are is in
10 danger.

11 (2) The provisions of this section ~~shall~~ do not apply
12 to beet receiving station employees or superintendents,
13 master mechanics, ~~or~~ beet-end, sugar-end, and Steffan house
14 foremen.

15 (3) Any person, corporation, agent, manager, or
16 employer who ~~shall~~ violate ~~violates~~ the provisions of this
17 section ~~shall~~ be is guilty of a misdemeanor and upon
18 conviction thereof ~~shall~~ be ~~punished~~ is punishable by a fine
19 of not less than \$50 or more than \$600 or by imprisonment in
20 the county jail for not less than 30 days or more than 7
21 months or by both such fine and imprisonment."

22 Section 26. Section 39-5-102, MCA, is amended to read:

23 "39-5-102. Definitions. Unless a different meaning is
24 clearly required by the context, the following words and
25 phrases, as hereinafter used in this chapter, ~~shall~~ have the

1 following meanings:

2 (1) (a) "Employment agency" is synonymous with
3 "agency" and ~~shall-mean means~~ any business in which any part
4 of the business's gross or net income is derived from a fee
5 received from applicants and in which any of the following
6 activities are engaged in:

7 (i) the offering, promising, procuring, or attempting
8 to procure employment for applicants; or

9 (ii) the giving of information regarding where and from
10 whom employment may be obtained.

11 (b) In addition, the term "employment agency" shall
12 mean ~~means~~ and include ~~includes~~ any person, bureau,
13 organization, or school which for profit, by advertisement
14 or otherwise, offers as one of its main objects or purposes
15 to procure employment for any person who pays for its
16 services or which collects tuition or charges for service of
17 any nature where the main object of the person paying the
18 same is to secure employment.

19 (c) The term "employment agency" shall ~~does~~ not
20 include labor union organizations, temporary service
21 contractors, proprietary schools, or the Montana state
22 employment agency.

23 (2) "Temporary service contractors" shall--~~mean means~~
24 any person, firm, association, or corporation conducting a
25 business which consists of employing individuals directly

1 for the purpose of furnishing such individuals on a
2 part-time or temporary basis to others.

3 (3) "Employer" means any person, firm, corporation,
4 partnership, or association employing or seeking to enter
5 into an arrangement to employ a person through the medium or
6 service of an employment agency.

7 (4) "Applicant", except when used to describe an
8 applicant for an employment agency license, means any
9 person, whether employed or unemployed, seeking or entering
10 into any arrangement for his employment or change of his
11 employment through the medium or service of an employment
12 agency.

13 (5) "Person" includes an individual, a firm, a
14 corporation, a partnership, or an association.

15 (6) "Director" shall-mean ~~means~~ the commissioner of
16 the department of labor and industry."

17 Section 27. Section 39-5-202, MCA, is amended to read:

18 "39-5-202. Application for license or renewal. (1)
19 Every applicant for an employment agency license or a
20 renewal thereof shall file with the director a written
21 application stating the name and address of the applicant,
22 the street and number of the building in which the business
23 of the employment agency is to be conducted, the name of the
24 person who is to have the general management of the office,
25 the name under which the business of the office is to be

1 carried on, and whether or not the applicant is pecuniarily
 2 interested in the business to be carried on under the
 3 license; she~~tt~~ The application must be signed by the
 4 applicant and sworn to before a notary public; and she~~tt~~
 5 must identify anyone holding over 20% interest in the
 6 agency.

7 (2) If the applicant is a corporation, the application
 8 she~~tt~~ must state the names and addresses of the officers and
 9 directors of the corporation and she~~tt~~ must be signed and
 10 sworn to by the president and secretary thereof before a
 11 notary public.

12 (3) If the applicant is a partnership, the application
 13 she~~tt~~ must also state the names and addresses of all
 14 partners therein and she~~tt~~ must be signed and sworn to by
 15 all of them before a notary public.

16 (4) The application she~~tt~~ must also state whether or
 17 not the applicant ~~is~~ at the time of making the application
 18 or has at any previous time, has been engaged in or
 19 interested in or employed by anyone engaged in the business
 20 of an employment agency.

21 (5) All applications for employment agency licenses
 22 she~~tt~~ must be accompanied by a copy of the form of contract
 23 to be used between the agency and the applicant."

24 Section 28. Section 39-5-403, MCA, is amended to read:

25 "39-5-403. Referral of violations to prosecuting

1 attorneys -- restraining actions. The director may refer
 2 such evidence as may be available to him concerning
 3 violations of this chapter or of any rule adopted hereunder
 4 to the attorney general or the prosecuting county attorney
 5 of the county wherein the alleged violation arose who may,
 6 in his discretion, with or without such a reference, in
 7 addition to any other action he might commence, bring an
 8 action in the name of the state against any person to
 9 restrain and prevent the doing of any act or practice
 10 prohibited by this chapter."

11 Section 29. Section 39-5-404, MCA, is amended to read:

12 "39-5-404. Written assurance of discontinuance. In the
 13 enforcement of this chapter, the attorney general and/or any
 14 said--prosecuting or the county attorney may accept an
 15 assurance of discontinuance from any person deemed in
 16 violation of any provisions of this chapter. Any such
 17 assurance shall be in writing and shall be filed with and
 18 subject to the approval of the superior district court of
 19 the county in which the alleged violator resides or has his
 20 principal place of business."

21 Section 30. Section 39-5-405, MCA, is amended to read:

22 "39-5-405. Civil penalty for violating court order.
 23 Any person who violates the terms of any court order or
 24 temporary or permanent injunction issued pursuant to this
 25 chapter shall forfeit and pay a civil penalty of not more

1 than \$2,000. For the purpose of this section, the court
 2 issuing any injunction shall retain continuing jurisdiction
 3 and in such cases the attorney general ~~and/or~~ or the
 4 prosecuting county attorney acting in the name of the state
 5 may petition for the recovery of civil penalties."

6 Section 31. Section 39-6-106, MCA, is amended to read:

7 "39-6-106. ~~Standards-for-apprenticeship~~ APPRENTICESHIP
 8 ~~agreements. Standards--for--apprenticeship~~ APPRENTICESHIP
 9 ~~agreements are-as-follows~~ SHALL CONTAIN:

10 (1) a statement of the trade or craft to be taught and
 11 the required hours for completion of apprenticeship, which
 12 ~~shall~~ must be not less than 4,000 hours of reasonably
 13 continuous employment;

14 (2) a statement of the processes in the trade or craft
 15 divisions in which the apprentice is to be taught and the
 16 approximate amount of time to be spent at each process;

17 (3) a statement of the number of hours to be spent by
 18 the apprentice in work and the number of hours to be spent
 19 in related and supplemental instruction, which instruction
 20 ~~shall~~ must be not less than 144 hours per year;

21 (4) a statement that apprentices ~~shall~~ must be not
 22 less than 16 years of age;

23 (5) a statement of the progressively increasing scale
 24 of wages to be paid the apprentice;

25 (6) provision for a period of probation during which

1 ~~the department of labor and industry, when authorized by the~~
 2 ~~department, shall be directed to~~ must terminate an
 3 apprenticeship agreement at the request in writing of any
 4 party thereto. After the probationary period, the
 5 ~~department, when authorized by the department, shall be~~
 6 ~~empowered to~~ may terminate the registration of an apprentice
 7 upon agreement of the parties.

8 (7) provision that the services of the department may
 9 be utilized for consultation regarding the settlement of
 10 differences arising out of the apprenticeship agreement
 11 where such differences cannot be adjusted locally or in
 12 accordance with the established trade procedure;

13 (8) provision that if an employer is unable to fulfill
 14 his obligation under the apprenticeship agreement he may
 15 transfer such obligation to another employer;

16 (9) such additional standards as may be prescribed in
 17 accordance with ~~the provisions of this chapter."~~

18 Section 32. Section 39-31-103, MCA, is amended to
 19 read:

20 "39-31-103. Definitions. When used in this chapter,
 21 the following definitions apply:

22 (1) "Public employer" means the state of Montana or
 23 any political subdivision thereof, including but not limited
 24 to any town, city, county, district, school board, board of
 25 regents, public and quasi-public corporation, housing

1 authority or other authority established by law, and any
 2 representative or agent designated by the public employer to
 3 act in its interest in dealing with public employees.

4 ~~(2) "Public employee" means a person employed by a~~
 5 ~~public employer in any capacity, except an elected officials~~
 6 ~~officially persons a person directly appointed by the~~
 7 ~~governor a supervisory employees employees and management~~
 8 ~~officials officials as defined in subsections (3) and (4)~~
 9 ~~below or members or member of any state board or commission~~
 10 ~~who serve serves the state intermittently school district~~
 11 ~~clerks clerk and school administrators administrators~~
 12 ~~registered professional nurses nurse performing service for~~
 13 ~~health care facilities professional engineers engineer and~~
 14 ~~engineers in training engineer in training and includes any~~
 15 ~~individual whose work has ceased as a consequence of or in~~
 16 ~~connection with any unfair labor practice or concerted~~
 17 ~~employee actions~~

18 (2) (A) "PUBLIC EMPLOYEE" MEANS:
 19 (I) EXCEPT AS PROVIDED IN SUBSECTION (2)(B) OF THIS
 20 SECTION, A PERSON EMPLOYED BY A PUBLIC EMPLOYER IN ANY
 21 CAPACITY; AND
 22 (II) AN INDIVIDUAL WHOSE WORK HAS CEASED AS A
 23 CONSEQUENCE OF OR IN CONNECTION WITH ANY UNFAIR LABOR
 24 PRACTICE OR CONCERTED EMPLOYEE ACTION.
 25 (B) "PUBLIC EMPLOYEE" DOES NOT MEAN:

1 (I) AN ELECTED OFFICIAL;
 2 (II) A PERSON DIRECTLY APPOINTED BY THE GOVERNOR;
 3 (III) A SUPERVISORY EMPLOYEE, AS DEFINED IN SUBSECTION
 4 (3) OF THIS SECTION;
 5 (IV) A MANAGEMENT OFFICIAL, AS DEFINED IN SUBSECTION
 6 (4) OF THIS SECTION;
 7 (V) A MEMBER OF ANY STATE BOARD OR COMMISSION WHO
 8 SERVES THE STATE INTERMITTENTLY;
 9 (VI) A SCHOOL DISTRICT CLERK;
 10 (VII) A SCHOOL ADMINISTRATOR;
 11 (VIII) A REGISTERED PROFESSIONAL NURSE PERFORMING
 12 SERVICE FOR A HEALTH CARE FACILITY;
 13 (IX) A PROFESSIONAL ENGINEER; OR
 14 (X) AN ENGINEER-IN-TRAINING.

15 (3) "Supervisory employee" means any individual having
 16 authority in the interest of the employer to hire, transfer,
 17 suspend, lay off, recall, promote, discharge, assign,
 18 reward, discipline other employees, having responsibility to
 19 direct them, to adjust their grievances, or effectively to
 20 recommend such action, if in connection with the foregoing
 21 the exercise of such authority is not of a merely routine or
 22 clerical nature but requires the use of independent
 23 judgment.

24 (4) "Management officials official" means
 25 representatives a representative of management having

1 authority to act for the agency on any matters relating to
2 the implementation of agency policy.

3 (5) "Labor organization" means any organization or
4 association of any kind in which employees participate and
5 which exists for the primary purpose of dealing with
6 employers concerning grievances, labor disputes, wages,
7 rates of pay, hours of employment, fringe benefits, or other
8 conditions of employment.

9 (6) "Exclusive representative" means the labor
10 organization which has been designated by the board as the
11 exclusive representative of employees in an appropriate unit
12 or has been so recognized by the public employer.

13 (7) "Board" means the board of personnel appeals
14 provided for in 2-15-1705.

15 (8) "Person" includes one or more individuals, labor
16 organizations, public employees, associations, corporations,
17 legal representatives, trustees, trustees in bankruptcy, or
18 receivers.

19 (9) "Unfair labor practice" means any unfair labor
20 practice listed in 39-31-401 or 39-31-402.

21 (10) "Labor dispute" includes any controversy
22 concerning terms, tenure, or conditions of employment or
23 concerning the association or representation of persons in
24 negotiating, fixing, maintaining, changing, or seeking to
25 arrange terms or conditions of employment, regardless of

1 whether the disputants stand in the proximate relation of
2 employer and employee.

3 (11) "Appropriate unit" means a group of public
4 employees banded together for collective bargaining purposes
5 as designated by the board."

6 Section 33, Section 39-31-208, MCA, is amended to
7 read:

8 "39-31-208. Representation election at direction of
9 board. (1) If the board or an agent of the board, in the
10 hearing provided for in 39-31-207, finds that there is a
11 question of representation, it shall direct an election by
12 secret ballot to determine whether and by which labor
13 organization the employees desire to be represented or
14 whether they desire to have no labor organization represent
15 them and shall certify the results thereof.

16 (2) Only those labor organizations which have been
17 designated by more than 10% of the employees in the unit
18 found to be appropriate shall be placed on the ballot.

19 (3) The board or an agent of the board shall determine
20 who is eligible to vote in the election and shall establish
21 rules governing the election.

22 (4) Unless the majority vote is for no representation
23 by a labor organization and in any election where none of
24 the choices for a representative on the ballot receives a
25 majority, a runoff election shall be conducted, the ballot

1 providing for selection between the two choices receiving
2 the largest and the second largest number of valid votes
3 cast in the election.

4 (5) A labor organization which receives the majority
5 of the votes cast in an election shall be certified by the
6 board as the exclusive representative."

7 Section 34. Section 39-31-309, MCA, is amended to
8 read:

9 "39-31-309. Factfinding proceedings. (1) The fact
10 finder factfinder shall immediately establish dates and
11 place of hearings.

12 (2) The public employer and the exclusive
13 representative ~~shall be~~ are the only proper parties to
14 factfinding proceedings.

15 (3) Upon request of either party of ~~or~~ the fact-finder
16 factfinder, the board shall issue subpoenas for hearings
17 conducted by the fact-finder factfinder. The fact--finder
18 factfinder may administer oaths.

19 (4) Upon completion of the hearings, but no later than
20 20 days from the day date of appointment, the fact-finder
21 factfinder shall make written findings of facts and
22 recommendations for resolution of the dispute and shall
23 serve such findings on the public employer and the exclusive
24 representative. The fact-finder factfinder may make this
25 report public 5 days after it is submitted to the parties.

1 If the dispute is not resolved 15 days after the report is
2 submitted to the parties, the report shall must be made
3 public.

4 (5) The cost of factfinding proceedings shall must be
5 equally borne by the board and the parties concerned.

6 (6) Nothing in 39-31-307 through 39-31-310 prohibits
7 the fact-finder factfinder from endeavoring to mediate the
8 dispute in which he has been selected or appointed as fact
9 finder factfinder."

10 Section 35. Section 39-31-401, MCA, is amended to
11 read:

12 "39-31-401. Unfair labor practices of public employer.
13 It is an unfair labor practice for a public employer to:

14 (1) interfere with, restrain, or coerce employees in
15 the exercise of the rights guaranteed in 39-31-201, and
16 39-31-204 through 39-31-206, or 39-31-303;

17 (2) dominate, interfere, or assist in the formation or
18 administration of any labor organization; ~~However~~ however,
19 subject to rules adopted by the board under 39-31-104, an
20 employer is not prohibited from permitting employees to
21 confer with him during working hours without loss of time or
22 pay;

23 (3) discriminate in regard to hire or tenure of
24 employment or any term or condition of employment in order
25 to encourage or discourage membership in any labor

1 organization; However ~~however~~, nothing in this chapter or
 2 in any other statute of this state precludes a public
 3 employer from making an agreement with an exclusive
 4 representative to require, as a condition of employment,
 5 that an employee who is not or does not become a union
 6 member ~~shall be required, as a condition of employment,~~ to
 7 must have an amount equal to the union initiation fee and
 8 monthly dues deducted from his wages in the same manner as
 9 checkoff of union dues;

10 (4) discharge or otherwise discriminate against an
 11 employee because he has signed or filed an affidavit,
 12 petition, or complaint or given any information or testimony
 13 under this chapter; or

14 (5) refuse to bargain collectively in good faith with
 15 an exclusive representative."

16 Section 36. Section 39-31-403, MCA, is amended to
 17 read:

18 "39-31-403. Remedies for unfair labor practices.
 19 Violations of the provisions of 39-31-401 or 39-31-402 are
 20 unfair labor practices remediable by the board ~~in the~~
 21 following manner pursuant to this part."

22 Section 37. Section 39-51-201, MCA, is amended to
 23 read:

24 "39-51-201. General definitions. As used in this
 25 chapter, unless the context clearly requires otherwise, the

1 following definitions apply:

2 (1) The word "administrator" refers to a person
 3 appointed by the commissioner of labor and industry to
 4 direct and administer the unemployment compensation laws and
 5 federal laws falling within the administrator's
 6 jurisdiction.

7 (2) "Annual payroll" means the total amount of wages
 8 paid by an employer, regardless of the time of payment, for
 9 employment during a calendar year.

10 (3) "Annual total payroll" means the total of the 4
 11 quarters of total payrolls of an employer preceding the
 12 computation date as fixed herein.

13 (4) "Base period" means the first four of the last
 14 five completed calendar quarters immediately preceding the
 15 first day of an individual's benefit year. However, in the
 16 case of a combined-wage claim pursuant to the arrangement
 17 approved by the secretary of labor of the United States, th
 18 base period shall be that applicable under the unemployment
 19 law of the paying state.

20 (5) "Benefits" means the money payments payable to an
 21 individual, as provided in this chapter, with respect to his
 22 unemployment.

23 (6) "Benefit year", with respect to any individual,
 24 means the 52 consecutive-week period beginning with the
 25 first day of the calendar week in which such individual

1 files a valid claim and thereafter the 52 consecutive-week
 2 period beginning with the first day of the calendar week in
 3 which such individual files his next valid claim after the
 4 termination of his last preceding benefit year. If such
 5 filing ~~shall--result~~ results in an overlapping of benefit
 6 years, the new benefit year ~~shall--begin-upon~~ begins on the
 7 first Sunday following the expiration of his ~~last~~ preceding
 8 benefit year. However, in the case of a combined-wage claim
 9 pursuant to the arrangement approved by the secretary of
 10 labor of the United States, the base period ~~shall--be--that~~ is
 11 the period applicable under the unemployment law of the
 12 paying state.

13 (7) "Board" means the board of labor appeals provided
 14 for in Title 2, chapter 15, part 17.

15 (8) "Calendar quarter" means the period of 3
 16 consecutive calendar months ending on March 31, June 30,
 17 September 30, or December 31.

18 (9) "Contributions" means the money payments to the
 19 state unemployment compensation fund required by this
 20 chapter.

21 (10) "Division" means the employment security division
 22 of the department of labor and industry provided for in
 23 Title 2, chapter 15, part 17.

24 (11) "Employing unit" means any individual or ~~type--of~~
 25 organization, including the state government, any of its

1 political subdivisions or instrumentalities, any
 2 partnership, association, trust, estate, joint-stock
 3 company, insurance company, or corporation, whether domestic
 4 or foreign, or the receiver, trustee in bankruptcy, trustee
 5 or successor thereof, or the legal representative of a
 6 deceased person which has or subsequent to January 1, 1936,
 7 had in its employ one or more individuals performing
 8 services for it within this state, except as provided under
 9 subsections (8) and (9) of 39-51-203, ~~end--ett~~ All
 10 individuals performing services within this state for any
 11 employing unit which maintains two or more separate
 12 establishments within this state ~~shall--be--deemed~~ are
 13 considered to be employed by a single employing unit for all
 14 the purposes of this chapter. Each individual employed to
 15 perform or assist in performing the work of any agent or
 16 employee of an employing unit ~~shall--be~~ is deemed to be
 17 employed by such employing unit for the purposes of this
 18 chapter, whether such individual was hired or paid directly
 19 by such employing unit or by such agent or employee,
 20 provided the employing unit has actual or constructive
 21 knowledge of the work.

22 (12) "Employment office" means a free public employment
 23 office or branch thereof operated by this state or
 24 maintained as a part of a state-controlled system of public
 25 employment offices or such other free public employment

1 offices operated and maintained by the United States
2 government or its instrumentalities as the division may
3 approve.

4 (13) "Fund" means the unemployment compensation fund
5 established by this chapter to which all contributions and
6 payments in lieu of contributions are required and from
7 which all benefits provided under this chapter shall be
8 paid.

9 (14) "Gross misconduct" means a criminal act, other
10 than a violation of a motor vehicle traffic law, for which
11 an individual has been convicted in a criminal court or has
12 admitted or conduct which demonstrates a flagrant and wanton
13 disregard of and for the rights or title or interest of a
14 fellow employee or his employer.

15 (15) "Hospital" means an institution which has been
16 licensed, certified, or approved by the state as a hospital.

17 (16) (a) "Institution of higher education", for the
18 purposes of this part, means an education educational
19 institution which:

20 (i) admits as regular students only individuals having
21 a certificate of graduation from a high school or the
22 recognized equivalent of such a certificate;

23 (ii) is legally authorized in this state to provide a
24 program of education beyond high school;

25 (iii) provides an educational program for which it

1 awards a bachelor's or higher degree or provides a program
2 which is acceptable for full credit toward such a degree, a
3 program of post-graduate ~~postgraduate~~ or post-doctoral
4 ~~postdoctoral~~ studies, or a program of training to prepare
5 students for gainful employment in a recognized occupation;
6 and

7 (iv) is a public or other nonprofit institution.

8 (b) Notwithstanding any of the foregoing provisions of
9 this subsection, all colleges and universities in this state
10 are institutions of higher education for purposes of this
11 part.

12 (17) "State" includes, in addition to the states of the
13 United States of America, the District of Columbia, Puerto
14 Rico, the Virgin Islands, and the Dominion of Canada.

15 (18) "Unemployment compensation administration fund"
16 means the unemployment compensation administration fund
17 established by this chapter from which administrative
18 expenses under this chapter shall be paid.

19 (19) (a) "Wages" means all remuneration payable for
20 personal services, including commissions and bonuses and the
21 cash value of all remuneration payable in any medium other
22 than cash. The reasonable cash value of remuneration
23 payable in any medium other than cash shall be estimated and
24 determined in accordance with rules prescribed by the
25 division.

1 (b) The term "wages" shall ~~does~~ not include:

2 (i) the amount of any payment made to or on behalf of

3 an employee by an employer on account of:

4 (A) retirement;

5 (B) sickness or accident disability;

6 (C) medical and hospitalization expenses in connection

7 with sickness or accident disability; or

8 (D) death;

9 (ii) remuneration paid by any county welfare office

10 from welfare public assistance funds for services performed

11 at the direction and request of such county welfare office.

12 (20) "Week" means a period of 7 consecutive calendar

13 days ending at midnight on Saturday.

14 (21) An individual's "weekly benefit amount" means the

15 amount of benefits he would be entitled to receive for 1

16 week of total unemployment.

17 ~~(22) The word "division" throughout the unemployment~~

18 ~~statutes refers to a unit of the Montana state department of~~

19 ~~labor and industry.~~

20 ~~(23) The words "board of labor appeals" used in this~~

21 ~~chapter mean three persons appointed by the governor who are~~

22 ~~not public employees but who are attached to the Montana~~

23 ~~state department of labor and industry. The function of~~

24 ~~said board is to act in a quasi-judicial capacity for the~~

25 ~~hearing of disputes concerning the administration of~~

1 ~~Montana's unemployment insurance laws"~~

2 Section 38. Section 39-51-202, MCA, is amended to

3 read:

4 "39-51-202. Employer defined. "Employer" means:

5 (1) any employing unit whose total annual payroll

6 within either the current or preceding calendar year exceeds

7 the sum of \$500;

8 (2) any individual or employing unit which acquired

9 the organization, trade, or business or substantially all of

10 the assets thereof of another which at the time of such

11 acquisition was an employer subject to this chapter;

12 (3) any individual or employing unit which acquired

13 the organization, trade, or business or substantially all

14 the assets thereof of another employing unit not an employer

15 subject to this chapter and which, if subsequent to such

16 acquisition it were treated as a single unit with such other

17 employing unit, would be an employer under subsection (1) of

18 this section;

19 (4) any employing unit not an employer by reason of

20 any other subsection of this section for which, within

21 either the current or preceding calendar year, service is or

22 was performed with respect to which such employing unit is

23 liable for any federal tax against which credit may be

24 taken for contributions paid into a state unemployment fund

25 or an employing unit which, as a condition for approval of

1 this chapter for full tax credit against the tax imposed by
2 the Federal Unemployment Tax Act, is required pursuant to
3 such act to be an employer under this chapter;

4 (5) any employing unit which, having become an
5 employer under subsection (1), (2), (3), or (4) has not,
6 under 39-51-1101 or ~~39-51-1102~~, ceased to be an employer
7 subject to this chapter; or

8 (6) for the effective period of its election pursuant
9 to 39-51-1102, any other employing unit which has elected to
10 become fully subject to this chapter."

11 Section 39. Section 39-51-203, MCA, is amended to
12 read:

13 "39-51-203. Employment defined. (1) "Employment",
14 subject to other provisions of this section, means service
15 by an individual or by an officer of a corporation,
16 including service in interstate commerce, performed for
17 wages or under any contract of hire, written or oral,
18 express or implied.

19 (2) (a) The term "employment" ~~shall include~~ includes
20 an individual's entire service performed within or both
21 within and without this state if:

22 (i) the service is localized in this state; or

23 (ii) the service is not localized in any state but some
24 of the service is performed in this state and:

25 (A) the base of operations or, if there is no base of

1 operations, then the place from which such service is
2 directed or controlled, is in this state; or

3 (3) the base of operations or place from which such
4 service is directed or controlled is not in any state in
5 which some part of the service is performed, but the
6 individual's residence is in this state.

7 (b) Service ~~shall be deemed~~ is considered to be
8 localized within a state if:

9 (i) the service is performed entirely within such
10 state; or

11 (ii) the service is performed both within and without
12 such state, but the service performed without such state is
13 incidental to the individual's service within the state, for
14 example, is temporary or transitory in nature or consists of
15 isolated transactions.

16 (3) Service not covered under subsection (2) of this
17 section and performed entirely without this state with
18 respect to no part of which contributions are required and
19 paid under an unemployment compensation law of any other
20 state or of the federal government ~~shall be deemed~~ is
21 considered to be employment subject to this chapter if the
22 individual performing such services is a resident of this
23 state and the division approves the election of the
24 employing unit for whom such services are performed that the
25 entire service of such individual ~~shall be deemed~~ is

1 ~~considered~~ to be employment subject to this chapter.

2 (4) Services Service performed by an individual for
 3 wages ~~shall be deemed~~ is considered to be employment subject
 4 to this chapter unless and until it is shown to the
 5 satisfaction of the division that:

6 (a) such individual has been and will continue to be
 7 free from control or direction over the performance of such
 8 services, both under his contract and in fact;

9 (b) such service is either outside the usual course of
 10 the business for which such service is performed or that
 11 such service is performed outside of all the places of
 12 business of the enterprise for which such service is
 13 performed; and

14 (c) such individual is customarily engaged in an
 15 independently established trade, occupation, profession, or
 16 business.

17 (5) The term "employment" ~~shall include~~ includes
 18 service performed after December 31, 1971, by an individual
 19 in the employ of this state or any of its instrumentalities
 20 (or in the employ of this state and one or more other states
 21 or their instrumentalities) for a hospital or institution of
 22 higher education located in this state. ~~Effective after July~~
 23 ~~1, 1975, the~~ The term "employment" shall include includes
 24 service performed after July 1, 1975, by all individuals,
 25 including without limitations those individuals who work

1 for the state of Montana, its university, any of its
 2 colleges, public schools, components or units thereof, or
 3 any local government unit and one or more other states or
 4 their instrumentalities or political subdivisions whose
 5 services are compensated by salary or wages.

6 (6) The term "employment" ~~shall include~~ includes
 7 service performed after December 31, 1971, by an individual
 8 in the employ of a religious, charitable, scientific,
 9 literary, or educational organization.

10 (7) (a) The term "employment" ~~shall include~~ includes
 11 the service of an individual who is a citizen of the United
 12 States performed outside the United States, except in
 13 Canada, after December 31, 1971, in the employ of an
 14 American employer, other than service which is deemed
 15 considered employment under the provisions of subsection (2)
 16 of this section or the parallel provisions of another
 17 state's law, if:

18 (i) the employer's principal place of business in the
 19 United States is located in this state;

20 (ii) the employer has no place of business in the
 21 United States, but:

22 (A) the employer is an individual who is a resident of
 23 this state;

24 (B) the employer is a corporation which is organized
 25 under the laws of this state; or

1 (C) the employer is a partnership or a trust and the
2 number of the partners or trustees who are residents of this
3 state is greater than the number who are residents of any
4 other state; or

5 (iii) none of the criteria of sections (7)(a)(i) and
6 (7)(a)(ii) of this subsection is met but the employer
7 has elected coverage in this state or, the employer having
8 failed to elect coverage in any state, the individual has
9 filed a claim for benefits based on such service under the
10 law of this state.

11 (b) An "American employer", for purposes of this
12 subsection, means a person who is:

13 (i) an individual who is a resident of the United
14 States;

15 (ii) a partnership if two-thirds or more of the
16 partners are residents of the United States;

17 (iii) a trust if all of the trustees are residents of
18 the United States; or

19 (iv) a corporation organized under the laws of the
20 United States or of any state.

21 (B) Agricultural labor exempted under 39-51-204 shall
22 be ~~is~~ considered employment subject to this chapter
23 effective January 1, 1978, whenever the employing unit pays
24 ~~\$40,000~~ \$20,000 or more in cash to workers for agricultural
25 labor in any quarter in the current or preceding calendar

1 year or employs ~~20~~ 10 or more workers in agricultural labor
2 on 20 days in 20 different weeks during the current or
3 preceding calendar year. If an employer is otherwise
4 subject to the chapter and has agricultural employment, all
5 employees are covered under the chapter regardless of the
6 amount of money expended for agricultural purposes.

7 (9) Domestic service exempted under 39-51-204(1)(b)
8 shall ~~be~~ is considered employment subject to this chapter
9 effective January 1, 1978, whenever the employing unit pays
10 \$1,000 or more in cash for domestic service in any quarter
11 during the current or preceding calendar year. If an
12 employer is otherwise subject to the chapter and has
13 domestic employment, all employees are covered under the
14 chapter regardless of the amount of money expended for
15 domestic purposes."

16 Section 40. Section 39-51-204, MCA, is amended to
17 read:

18 "39-51-204. Exclusions from definition of employment.

19 (1) The term "employment" shall ~~does~~ not include:

20 (a) agricultural labor, except as provided in
21 39-51-203(8);

22 (b) domestic service in a private home, local college
23 club, or local chapter of a college fraternity or sorority,
24 except as provided in 39-51-203(9);

25 (c) service performed as an officer or member of the

1 crew of a vessel on the navigable waters of the United
2 States;

3 (d) service performed by an individual in the employ
4 of his son, daughter, or spouse and service performed by a
5 child under the age of 16 in the employ of his father or
6 mother;

7 (e) service performed in the employ of any other state
8 or its political subdivisions or of the United States
9 government or of an instrumentality of any other state or
10 states or their political subdivisions or of the United
11 States, except that national banks organized under the
12 national banking law shall not be entitled to exemption
13 under this subsection and shall be subject to this chapter
14 the same as state banks, provided that such service is
15 excluded from employment as defined in the Federal
16 Unemployment Tax Act by section 3306(c)(7) of that act;

17 (f) service with respect to which unemployment
18 compensation is payable under an unemployment compensation
19 system established by an act of congress, provided that the
20 division ~~is hereby authorized and directed to~~ must enter
21 into agreements with the proper agencies under such act of
22 congress, which agreements shall become effective ~~10 days~~
23 ~~after publication thereof~~ in the manner prescribed in
24 ~~39-51-302 For general rules the Montana Administrative~~
25 ~~Procedure Act for the adoption of rules~~, to provide

1 reciprocal treatment to individuals who have, after
2 acquiring potential rights to benefits under this chapter,
3 acquired rights to unemployment compensation under such act
4 of congress or who have, after acquiring potential rights to
5 unemployment compensation under such act of congress,
6 acquired rights to benefits under this chapter;

7 (g) services performed in the delivery and
8 distribution of newspapers or shopping news from house to
9 house and business establishments by an individual under the
10 age of 18 years, but not including the delivery or
11 distribution to any point or points for subsequent delivery
12 or distribution;

13 (h) services performed by real estate, securities, and
14 insurance salesmen paid solely by commissions and without
15 guarantee of minimum earnings;

16 (i) service performed in the employ of a school,
17 college, or university if such service is performed by a
18 student who is enrolled and is regularly attending classes
19 at such school, college, or university or by the spouse of
20 such a student if such spouse is advised, at the time such
21 spouse commences to perform such service, that the
22 employment of such spouse to perform such service is
23 provided under a program to provide financial assistance to
24 such student by such school, college, or university and such
25 employment will not be covered by any program of

1 unemployment insurance;

2 (j) service performed by an individual under the age
3 of 22 who is enrolled at a nonprofit or public educational
4 institution, which normally maintains a regular faculty and
5 curriculum and normally has a regularly organized body of
6 students in attendance at the place where its educational
7 activities are carried on, as a student in a full-time
8 program taken for credit at such institution which combines
9 academic instruction with work experience if such service is
10 an integral part of such program and such institution has so
11 certified to the employer, except that this subsection shall
12 not apply to service performed in a program established for
13 or on behalf of an employer or group of employers;

14 (k) service performed in the employ of a hospital if
15 such service is performed by a patient of the hospital.

16 (2) "Employment" shall ~~does~~ not include elected public
17 officials.

18 (3) For the purposes of 39-51-203(6), the term
19 "employment" does not apply to service performed:

20 (a) in the employ of a church or convention or
21 association of churches or an organization which is operated
22 primarily for religious purposes and which is operated,
23 supervised, controlled, or principally supported by a church
24 or convention or association of churches;

25 (b) by a duly ordained, commissioned, or licensed

§ minister of a church in the exercise of his ministry or by a
2 member of a religious order in the exercise of duties
3 required by such order;

4 (c) in the employ of a school which is not an
5 institution of higher education, prior to December 31, 1977;

6 (d) in a facility conducted for the purpose of
7 carrying out a program of rehabilitation for individuals
8 whose earning capacity is impaired by age or physical or
9 mental deficiency or injury or providing remunerative work
10 for individuals who, because of their impaired physical or
11 mental capacity, cannot be readily absorbed in the
12 competitive labor market by an individual receiving such
13 rehabilitation or remunerative work;

14 (e) as part of an unemployment work-relief or
15 work-training program assisted or financed in whole or in
16 part by a federal agency or any agency of a state or
17 political subdivision thereof by an individual receiving
18 such work relief or work training; or

19 (f) for a state prison or other state correctional or
20 custodial institution by an inmate of that institution."

21 Section 41. Section 39-51-302, MCA, is amended to
22 read:

23 "~~39-51-302. Regulations--and-general-and-special-rules~~
24 Adoption of rules. General-and-special-rules-may-be-adopted,
25 ~~amended-or-rescinded-by--the--division--only--after--public~~

1 hearing--or-opportunity-to-be-heard-thereon--of-which-proper
 2 notice-has-been-given--General-rules-shall-become-effective
 3 10--days--after--filing--with--the--secretary--of--state-and
 4 publication-in-one-or-more-newspapers-of-general-circulation
 5 in-this-state--Special-rules-shall-become-effective-10--days
 6 after--notification--to-or-mailing-to-the-last-known-address
 7 of-the-individuals-or-concerns-affected-thereby--Regulations
 8 Rules may be adopted, amended, or rescinded ~~repealed~~ by the
 9 division and shall become effective in the manner and at the
 10 time--prescribed--by--law pursuant to the Montana
 11 Administrative Procedure Act."

12 Section 42. Section 39-51-304, MCA, is amended to
 13 read:

14 "39-51-304. Personnel. (1) ~~Subject to other provisions~~
 15 ~~of this chapter~~ Except as otherwise provided, the division
 16 is authorized to appoint, fix the compensation, and
 17 prescribe the duties and powers of such officers,
 18 accountants, attorneys, experts, and other persons as may be
 19 necessary in the performance of its duties under this
 20 chapter. The division may delegate to any such persons such
 21 power and authority as it ~~deems~~ considers reasonable and
 22 proper for the effective administration of this chapter and
 23 may in its discretion bond any person handling money or
 24 signing checks hereunder.

25 ~~(2) The division shall classify positions under this~~

1 chapter--and--shall--establish--salary-schedules-and-minimum
 2 personnel-standards-for-the--positions--so--classified--The
 3 division--shall--provide--for-the-holding-of-examinations-to
 4 determine-the-qualifications-of-applicants-for-the-positions
 5 so-classified-and--except-for-temporary-appointments-of--not
 6 to--exceed--6--months--in--duration--such-personnel-shall-be
 7 appointed--on--the--basis--of--efficiency--and--fitness--as
 8 determined-in-such-examinations.

9 (3)(2) No person who is an officer or committee member
 10 of any political party organization or who holds or is a
 11 candidate for any public office shall ~~may~~ be appointed or
 12 employed under this chapter.

13 (4)(3) ~~The division shall establish and enforce fair~~
 14 ~~and reasonable regulations for appointments, promotions, and~~
 15 ~~demotions based upon ratings of efficiency and fitness and~~
 16 ~~for terminations for cause~~ hire in accordance with merit
 17 system principles adopted by the merit system council."

18 Section 43. Section 39-51-309, MCA, is amended to
 19 read:

20 "39-51-309. Representation of division and state in
 21 courts. (1) In any civil action to enforce the provisions of
 22 this chapter the division and the state may be represented
 23 by any qualified attorney who is employed by the division
 24 and is designated by it for this purpose or, at the
 25 division's or board's request, by the attorney general.

1 (2) All criminal actions for violation of any
 2 provision of this chapter or of any rules issued pursuant
 3 thereto shall be prosecuted by the attorney general of the
 4 state or, at his request and under his direction, by the
 5 prosecuting ~~COUNTY~~ attorney of the county wherein the crime
 6 was committed."

7 Section 44. Section 39-51-401, MCA, is amended to
 8 read:

9 "39-51-401. Unemployment compensation account --
 10 establishment and control. There is hereby established
 11 separate and apart from all public money or funds of this
 12 state an account in the agency fund known as the
 13 unemployment compensation account, which shall be
 14 administered by the division exclusively for the purposes of
 15 this chapter. Any reference to the unemployment compensation
 16 fund in this code shall ~~be taken to mean~~ ~~mean~~ ~~mean~~ the
 17 unemployment compensation account in the agency fund. All
 18 money in the account shall be mingled and undivided. This
 19 account shall consist of:

- 20 (1) all contributions collected under this chapter
 21 ~~inclusive of voluntary contributions as provided in~~
 22 ~~[87-189(e)(4) - Re Enr - 1947]~~ and payments made in lieu of
 23 contributions as provided in ~~39-51-1106~~ subsections (2) and
 24 (3) of 39-51-1106;

25 (2) interest earned upon any money in the account;

1 (3) any property or securities acquired through the
 2 use of money belonging to the account;

3 (4) all earnings of such property or securities; and

4 (5) all money credited to this state's account in the
 5 unemployment trust fund pursuant to section 903 of the
 6 Social Security Act, as amended."

7 Section 45. Section 39-51-402, MCA, is amended to
 8 read:

9 "39-51-402. Unemployment compensation account -- state
 10 treasurer ex officio custodian -- accounts and deposits. (1)
 11 The state treasurer ~~shall be~~ ~~is the~~ ex officio the treasurer
 12 and custodian of the unemployment compensation account and
 13 shall administer such account in accordance with the
 14 directions of the division and shall issue his warrants upon
 15 it in accordance with such regulations as the division shall
 16 prescribe. He shall maintain within the account three
 17 separate accounts:

- 18 (a) a clearing account;
 19 (b) an unemployment trust fund account; and
 20 (c) a benefit account.

21 (2) All money payable to the unemployment compensation
 22 account, upon receipt thereof by the division, shall must be
 23 forwarded to the treasurer who shall immediately deposit
 24 them it in the clearing account. Refunds payable pursuant to
 25 ~~39-51-1104~~ ~~39-51-1105~~ ~~39-51-1110~~ ~~39-51-1106~~ ~~or~~

1 39-51-1303-through-39-51-1306 may be paid from the clearing
 2 account upon warrants issued by the treasurer under the
 3 direction of the division. After clearance thereof, all
 4 other money in the clearing account ~~shall~~ **must** be
 5 immediately deposited with the secretary of the treasury of
 6 the United States to the credit of the account of this state
 7 in the unemployment trust fund, established and maintained
 8 pursuant to section 904 of the Social Security Act, as
 9 amended, any provision of law in this state relating to the
 10 deposit, administration, release, or disbursement of money
 11 in the possession or custody of this state to the contrary
 12 notwithstanding.

13 (3) The benefit account ~~shall consist~~ **consists** of all
 14 money requisitioned for the payment of benefits from this
 15 state's account in the unemployment trust fund.

16 (4) Except as herein otherwise provided, money in the
 17 clearing and benefit accounts may be deposited by the
 18 treasurer, under the direction of the division, in any bank
 19 or public depository in which general funds of the state may
 20 be deposited, but no public deposit insurance charge or
 21 premium ~~shall~~ **may** be paid out of the unemployment
 22 compensation account.

23 (5) The treasurer shall give a separate bond
 24 conditioned upon the faithful performance of his duties as
 25 custodian of the unemployment compensation account in an

1 amount fixed by the division and in a form prescribed by law
 2 or approved by the attorney general. Premiums for ~~said the~~
 3 bond shall be paid from the unemployment compensation
 4 administration account."

5 Section 46. Section 39-51-1109, MCA, is amended to
 6 read:

7 "39-51-1109. Contribution appeals. Any person
 8 aggrieved by any decision, determination, or redetermination
 9 of the division involving contribution liability,
 10 contribution rate, application for refund, or the charging
 11 of benefit payments to employers making payment in lieu of
 12 contributions is entitled to a review by the division or its
 13 authorized representative, hereinafter referred to as a
 14 deputy. The decision of the deputy ~~shall be deemed to be~~ **is**
 15 **considered** the decision of the division. The division or the
 16 deputy conducting the review may refer the matter to an
 17 appeals referee, may decide the application for review on
 18 the basis of such facts and information as may be obtained,
 19 or may hear argument to secure further facts. After such
 20 review, notice of the decision ~~shall~~ **must** be given to the
 21 employing unit. Such decision made pursuant to such review
 22 ~~shall be deemed to be~~ **is considered** the final decision of
 23 the division unless the employing unit or any other such
 24 interested party, within 5 calendar days after delivery of
 25 such notification or within 7 calendar days after such

1 notification was mailed to his ~~test--known~~ last-known
 2 address, files an appeal from this decision. Such appeal
 3 will be referred to an appeals referee who shall make his
 4 decisions with respect thereto in accordance with the
 5 procedure prescribed in ~~{87-107(c)}~~ 39-51-2403."

6 Section 47. Section 39-51-1201, MCA, is amended to
 7 read:

8 "39-51-1201. Experience rating and classification of
 9 employers. (1) The division shall for each calendar year
 10 classify employers in accordance with their actual
 11 contributions and unemployment experience and shall
 12 determine for each employer the experience rate which shall
 13 apply to him throughout the calendar year. The division
 14 shall apply such form of classification or experience rating
 15 system which is best calculated to rate individually and
 16 most equitably the employment for each employer and to
 17 encourage the stabilization of employment.

18 (2) In making such classification, the division shall
 19 take into account each of the following factors relating to
 20 the unemployment hazard shown by each employer on the basis
 21 of:

22 (a) number of years the employer has paid
 23 contributions;

24 (b) average quarterly percentage declines in total
 25 payrolls for the last 3 fiscal years ending June 30; and

1 (c) average annual net percentage declines in total
 2 payrolls for the last 3 fiscal years ending June 30, the
 3 computation date.

4 (3) Wages shall be adjusted in the determination of
 5 the annual and quarterly decrease percentages of any
 6 employer's payroll in whose establishment there was in any
 7 year in the qualifying period of such employer a stoppage of
 8 work due to a strike which caused a decrease in such
 9 employer's payroll of such magnitude that his actual
 10 quarterly and annual payroll caused by such a decrease or
 11 decreases when used with other annual and quarterly payroll
 12 decreases, if any, in his qualifying period would cause an
 13 increase in such employer's contribution rate. An
 14 employer's adjusted quarterly payroll for that quarter in
 15 which such stoppage of work existed shall be determined by
 16 multiplying each such payroll or adjusted payroll for the
 17 quarter immediately preceding the quarter in which such
 18 stoppage of work existed by the average quarterly variation
 19 ratio. The average quarterly variation ratio shall be
 20 computed by:

21 (a) dividing the payroll or, if adjusted, the adjusted
 22 payroll for that quarter in each of the prior years of an
 23 employer's qualifying period which corresponds to the
 24 respective quarter in which a stoppage of work due to a
 25 strike existed by the payroll or adjusted payroll for the

1 respective quarter immediately preceding such corresponding
2 quarter; and

3 (b) totaling the ratio thus obtained and dividing by
4 the number of such ratios."

5 Section 48. Section 39-51-1303, MCA, is amended to
6 read:

7 "39-51-1303. Collection of unpaid contributions by
8 civil action. (1) If, after due notice, any employer
9 defaults in any payment of contributions or interest
10 thereon, the amount due shall ~~must~~ be collected by civil
11 action in the name of the division, Montana department of
12 labor and industry, and the employer adjudged in default
13 shall pay the costs of such action.

14 (2) Civil actions brought under this section to
15 collect contributions or interest thereon from an employer
16 shall ~~must~~ be heard by the court at the earliest possible
17 date and shall ~~must~~ be ~~are~~ entitled to preference upon the
18 calendar of the court over all other civil actions except
19 petitions for judicial review under this chapter and cases
20 arising under the workers' compensation law of this state.

21 (3) ~~Section~~ ~~An action~~ for the collection of
22 contributions due shall ~~must~~ be brought within 5 years after
23 the due date of such contributions, ~~otherwise to be or be it~~
24 ~~is~~ ~~barrred as provided in [93-2604]."~~

25 Section 49. Section 39-51-2104, MCA, is amended to

1 read:

2 "39-51-2104. General benefit eligibility conditions.

3 An unemployed individual shall ~~be~~ is eligible to receive
4 benefits for any week of total unemployment within his
5 benefit year only if the division finds that:

6 (1) he has registered for work at and thereafter has
7 continued to report at an employment office in accordance
8 with such regulation as the division may prescribe, except
9 that the division may, by regulation, prescribe that such
10 types ~~of in cases or situations with respect to in~~ which it
11 finds that ~~compliance with~~ such requirements would ~~be~~
12 oppressive or would ~~be~~ inconsistent with the purposes of
13 this chapter, ~~provide for registration an unemployed~~
14 individual may register and reporting report for work by
15 mail or through other governmental agencies;

16 (2) he has made a claim for benefits in accordance
17 with the provisions of 39-51-2401;

18 (3) he is able to work and is available for work and
19 is seeking work; provided, however, that no claimant shall
20 be is considered ineligible in any week of unemployment for
21 failure to comply with the provisions of this subsection if
22 such failure is due to an illness or disability which occurs
23 after he has registered for work and no suitable work has
24 been offered to such claimant after the beginning of such
25 illness or disability;

1 (4) prior to any week for which he claims benefits he
 2 has been totally unemployed for a waiting period of 1 week.
 3 However, if claimant's benefit year expires during a period
 4 of compensable unemployment, claimant will continue to
 5 receive weekly benefits in a new benefit year, if otherwise
 6 eligible, without interruption to serve the waiting week for
 7 the new benefit year but will thereafter be required to
 8 serve the waiting week before receiving benefits during
 9 subsequent unemployment in the new benefit year. No week
 10 ~~shall--be~~ is counted as a week of total unemployment for the
 11 purposes of this subsection:

12 (a) if benefits have been paid with respect thereto;

13 (b) unless the individual was eligible for benefits
 14 with respect thereto;

15 (c) unless it occurs within the benefit year of the
 16 claimant;

17 (d) unless it occurs after benefits first could become
 18 payable to any individual under this chapter."

19 Section 50. Section 39-51-2108, MCA, is amended to
 20 read:

21 "39-51-2108. Payment of benefits based on service in
 22 public, charitable, or educational organizations. Benefits
 23 based on service in employment defined in 39-51-203
 24 subsections (5) and (6) of 39-51-203 and 39-51-204
 25 subsections (2) and (3) and [07-110(d), R.C.M., 1947]--~~shall~~

1 be of 39-51-204 are payable in the same amount, on the same
 2 terms, and subject to the same conditions as compensation
 3 payable on the basis of other service subject to this
 4 chapter, except that benefits based on service in an
 5 instructional, research, or principal administrative
 6 capacity for an educational institution ~~shall may~~ not be
 7 paid to an individual for any week of unemployment which
 8 begins during the period between 2 successive academic years
 9 or during a similar period between 2 regular terms, whether
 10 or not successive, or during a period of paid sabbatical
 11 leave provided for in the individual's contract if the
 12 individual has a contract to perform services in any such
 13 capacity for any such educational institution for both such
 14 academic years or both such terms."

15 Section 51. Section 39-51-2304, MCA, is amended to
 16 read:

17 "39-51-2304. Disqualification for failure to apply for
 18 or to accept suitable work. (1) Effective April 1, 1977, an
 19 individual ~~shall--be~~ is disqualified for benefits if he
 20 ~~feited fails~~ without good cause either to apply for
 21 available and suitable work when so directed by the
 22 employment office or the division or to accept suitable work
 23 offered to him which he is physically able and mentally
 24 qualified to perform or to return to his customary
 25 self-employment, if any, when so directed by the division.

1 Such disqualification shall ~~continue~~ continues for the week
 2 in which such failure occurred occurs and until he ~~the~~
 3 individual has performed services, other than
 4 self-employment, for which remuneration is received equal to
 5 or in excess of his weekly benefit amount in 6 separate
 6 weeks subsequent to the date the act causing the
 7 disqualification occurred, with 6 weeks' reduction in
 8 benefit duration, as determined by the division, provided he
 9 has not left this work under disqualifying circumstances.

10 (2) In determining whether or not any work is suitable
 11 for an individual, the division shall consider the degree of
 12 risk involved to his health, safety, and morals, his
 13 physical fitness and prior training, his experience and
 14 previous earnings, his length of unemployment and prospects
 15 for securing local work in his customary occupation, and the
 16 distance of the available work from his residence.

17 (3) Notwithstanding any other provisions of this
 18 chapter, no work shall ~~may~~ be deemed ~~considered~~ suitable and
 19 benefits shall ~~may~~ not be denied under this chapter to any
 20 otherwise eligible individual for refusing to accept new
 21 work under any of the following conditions:

22 (a) if ~~the~~ position offered is vacant due directly to
 23 a strike, lockout, or other labor dispute;

24 (b) if the wages, hours, or other conditions of the
 25 work offered are substantially less favorable to the

1 individual than those prevailing for similar work in the
 2 locality;

3 (c) if, as a condition of being employed, the
 4 individual would be required to join a company union or to
 5 resign from or refrain from joining any bona fide labor
 6 organization."

7 Section 52. Section 39-51-3206, MCA, is amended to
 8 read:

9 "39-51-3206. Liability for wrongful or improper
 10 receipt of benefits. Any person who, by reason of the
 11 nondisclosure or misrepresentation by him or by another of a
 12 material fact, irrespective of whether such nondisclosure or
 13 misrepresentation was known or fraudulent, has received any
 14 sum as benefits under this chapter while any conditions for
 15 the receipt of benefits imposed by this chapter were not
 16 fulfilled in his case or while he was disqualified from
 17 receiving benefits shall, in the discretion of the division,
 18 either be liable to have such sum deducted from any future
 19 benefits payable to him under this chapter or shall be
 20 liable to repay to the division for the unemployment
 21 compensation fund a sum equal to the amount so received by
 22 him, and such sum shall be collectible in the manner
 23 provided in this chapter for the collection of past due
 24 contributions. Action ~~an action~~ for collection of overpaid
 25 benefits shall ~~must~~ be brought within 5 years after the date

1 of such overpayment, otherwise to be ~~or be~~ IL IS barred as
2 provided in [93-2684]."

3 Section 53. Section 39-71-101, MCA, is amended to
4 read:

5 "39-71-101. Short title. This chapter ~~shall be known~~
6 and may be cited as the ~~Workmen's Compensation Act or the~~
7 Workers' Compensation Act."

8 Section 54. Section 39-71-102, MCA, is amended to
9 read:

10 "39-71-102. Reference to plans. Whenever compensation
11 plan No. 1, 2, or 3 ~~or the safety provisions of this chapter~~
12 ~~shall be~~ is referred to, such reference shall also be ~~held~~
13 ~~to include~~ includes all other sections which are applicable
14 to the subject matter of such reference."

15 Section 55. Section 39-71-116, MCA, is amended to
16 read:

17 "39-71-116. Definitions. Unless the context otherwise
18 requires, words and phrases employed in this chapter shall
19 have the following meanings hereinafter defined:

20 (1) "Average weekly wage" means the mean weekly
21 earnings of all employees under covered employment, as
22 defined and established annually by the division of
23 employment security of the Montana department of labor and
24 industry. It is established at the nearest whole dollar
25 number and shall ~~must~~ be adopted by the division of workers'

1 compensation prior to July 1 of each year.

2 (2) "Beneficiary" means:

3 (a) a surviving wife or husband;

4 (b) an unmarried child under the age of 18 years;

5 (c) an unmarried child under the age of 25 years who
6 is a full-time student in an accredited school;

7 (d) an invalid child over the age of 18 years who is
8 dependent upon the decedent for support at the time of
9 injury;

10 (e) a parent who is dependent upon the decedent for
11 support at the time of the injury (however, such a parent is
12 a beneficiary only when no beneficiary, as defined in
13 subsections (2)(a) through (2)(d) of this section, exists);
14 and

15 (f) a brother or sister under the age of 18 years if
16 dependent upon the decedent for support at the time of the
17 injury. ~~However~~ however, such a brother or sister is a
18 beneficiary only until the age of 18 years and only when no
19 beneficiary, as defined in subsections (2)(a) through (2)(e)
20 of this section, exists.

21 (3) "Casual employment" means employment not in the
22 usual course of trade, business, profession, or occupation
23 of the employer. Any person hauling or assisting in hauling
24 of sugar beets or grains, in case of emergency, shall be is
25 considered engaged in casual employment.

1 (4) "Child" ~~shall include~~ includes a posthumous child,
2 a dependent stepchild, a child legally adopted prior to the
3 injury, and an illegitimate child legitimized prior to the
4 injury.

5 (5) "Division" means the division of workers'
6 compensation of the department of labor and industry
7 provided for in 2-15-1702.

8 (6) "Fiscal year" means the period of time between
9 July 1 and the succeeding June 30.

10 (7) "Husband" or "widower" means only a husband or
11 widower living with or legally entitled to be supported by
12 the deceased at the time of her injury.

13 (8) "Insurer" means an employer bound by compensation
14 plan No. 1, an insurance company transacting business under
15 compensation plan No. 2, the industrial insurance account
16 under compensation plan No. 3, or the uninsured employers'
17 fund provided for in ~~39-71-501 through 39-71-507~~ part 5 of
18 this chapter.

19 (9) "Invalid" means one who is physically or mentally
20 incapacitated.

21 (10) "Order" means any decision, rule, direction,
22 requirement, or standard of the division or any other
23 determination arrived at or decision made by the division.

24 (11) "Payroll", "annual payroll", or "annual payroll"
25 for the preceding year" means the average annual payroll of

1 the employer for the preceding calendar year or, if the
2 employer shall not have operated a sufficient or any length
3 of time during such calendar year, 12 times the average
4 monthly payroll for the current year; provided, that an
5 estimate may be made by the division for any employer
6 starting in business where no average payrolls are
7 available, such estimate to be adjusted by additional
8 payment by the employer or refund by the division, as the
9 case may actually be on December 31 of such current year.

10 (12) "Permanent partial disability" means a condition
11 resulting from injury as defined in this chapter that
12 results in the actual loss of earnings or earning capability
13 less than total that exists after the injured workmen ~~worker~~
14 is as far restored as the permanent character of the
15 injuries will permit.

16 (13) "Permanent total disability" means a condition
17 resulting from injury as defined in this chapter that
18 results in the loss of actual earnings or earning capability
19 that exists after the injured workmen ~~worker~~ is as far
20 restored as the permanent character of the injuries will
21 permit and which results in the workmen ~~worker~~ having no
22 reasonable prospect of finding regular employment of any
23 kind in the normal labor market.

24 (14) The term "physician" ~~shall include~~ includes
25 "surgeon" and in either case ~~shall mean~~ means one authorized

1 by law to practice his profession in this state.

2 (15) "The plant of the employer" ~~shall include~~ includes
3 the place of business of a third person while the employer
4 has access to or control over such place of business for the
5 purpose of carrying on his usual trade, business, or
6 occupation.

7 (16) "Public corporation" means the state or any
8 county, municipal corporation, school district, city, city
9 under commission form of government or special charter,
10 town, or village.

11 (17) "Reasonably safe place to work" means that the
12 place of employment has been made as free from danger to the
13 life or safety of the employee as the nature of the
14 employment will reasonably permit.

15 (18) "Reasonably safe tools and appliances" are such
16 tools and appliances as are adapted to and are reasonably
17 safe for use for the particular purpose for which they are
18 furnished ~~and shall embrace all safety devices and~~
19 ~~safeguards provided or prescribed by the safety provisions~~
20 ~~of the chapter for the purpose of mitigating or preventing a~~
21 ~~specific danger.~~

22 (19) "Temporary total disability" means a condition
23 resulting from an injury as defined in this chapter that
24 results in total loss of wages and exists until the injured
25 workmen ~~worker~~ is as far restored as the permanent character

1 of the injuries will permit.

2 (20) "Wages" means the average gross earnings received
3 by the employee at the time of the injury for the usual
4 hours of employment in a week, and overtime is not to be
5 considered. Sick leave benefits accrued by employees of
6 public corporations, as defined by subsection (16) of this
7 section, are considered wages.

8 (21) "Wife" or "widow" means only a wife or widow
9 living with or legally entitled to be supported by the
10 deceased at the time of the injury.

11 (22) "Year", unless otherwise specified, means calendar
12 year."

13 Section 56. Section 39-71-302, MCA, is amended to
14 read:

15 "39-71-302. What included in computing payroll. In
16 computing the payroll, the entire compensation received by
17 every workmen ~~worker~~ employed under this chapter shall be is
18 included, whether it be in the form of salary, wage,
19 piecework, or otherwise and whether payable in money, board,
20 or otherwise."

21 Section 57. Section 39-71-304, MCA, is amended to
22 read:

23 "39-71-304. Books, records, and payrolls to be open to
24 inspection -- penalty for refusal. The books, records, and
25 payrolls of the employer pertinent to the administration of

1 this chapter shall ~~must~~ always be open to inspection by the
 2 division or any duly authorized employee thereof for the
 3 purpose of ascertaining the correctness of the payroll, the
 4 number of ~~men~~ persons employed, and such other information
 5 as may be necessary for the division and its management
 6 under this chapter. Refusal on the part of the employer to
 7 submit said books, records, and payrolls for such inspection
 8 shall subject the offending employer to a penalty of \$100
 9 for each offense, to be collected by civil action in the
 10 name of the state and paid into the state treasury."

11 Section 58. Section 39-71-306, MCA, is amended to
 12 read:

13 "39-71-306. Plan one employers and plan two insurers
 14 to file duplicate receipts paid for injuries and statements
 15 of medical expenditures. Every employer coming under the
 16 provisions of compensation plan No. 1 and every insurer
 17 coming under the provisions of compensation plan No. 2
 18 shall, on or before the 15th day of each and every month,
 19 file with the division:

20 (1) duplicate receipts for all payments made during
 21 the previous month to injured workers or their beneficiaries
 22 or dependents; and

23 (2) statements showing the amounts expended during the
 24 previous month for medical, surgical, and hospital services
 25 for injured workers and for the burial of ~~injured~~ deceased

1 workers."

2 Section 59. Section 39-71-309, MCA, is amended to
 3 read:

4 "39-71-309. Hospitals to submit schedule of fees and
 5 charges -- effective period of schedule -- when to be
 6 submitted. All hospitals must submit to the division a
 7 schedule of fees and charges for treatment of injured
 8 ~~workmen~~ workers to be in effect for at least a 12-month
 9 period unless the division and the hospital agree to interim
 10 amendments of the schedule. The schedule must be submitted
 11 at least 30 days prior to its effective date and shall ~~may~~
 12 not exceed the charges prevailing in the hospital for
 13 similar treatment of private patients."

14 Section 60. Section 39-71-401, MCA, is amended to
 15 read:

16 "39-71-401. Employments covered and employments
 17 exempted. (1) Except as provided in subsection (2) of this
 18 section, the Workers' Compensation Act applies to all
 19 employers as defined in 39-71-117 and to all employees as
 20 defined in 39-71-118. An employer who has any employee in
 21 service under any appointment or contract of hire, expressed
 22 or implied, oral or written, shall elect to be bound by the
 23 provisions of compensation plan No. 1, 2, or 3. Every
 24 employee whose employer is bound by the Workers'
 25 Compensation Act is subject to and bound by the compensation

1 plan that has been elected by the employer.

2 (2) Unless the employer elects coverage for these
3 employments under the ~~this~~ chapter and an insurer allows
4 such an election, the Workers' Compensation Act does not
5 apply to any of the following employments:

- 6 (a) household and domestic employment;
- 7 (b) casual employment as defined in 39-71-116(3);
- 8 (c) employment of members of an employer's family
9 dwelling in the employer's household;
- 10 (d) employment of sole proprietors or working members
11 of a partnership;
- 12 (e) employment for which a rule of liability for
13 injury, occupational disease, or death is provided under the
14 laws of the United States;
- 15 (f) any person performing services in return for aid
16 or sustenance only;
- 17 (g) employment with any railroad engaged in interstate
18 commerce, except that railroad construction work shall be
19 included in and subject to the provisions of this chapter."

20 Section 61. Section 39-71-406, MCA, is amended to
21 read:

22 "39-71-406. Deduction from wages of any part of
23 premium a misdemeanor -- hospital contributions not
24 prohibited. It ~~shall--be~~ is unlawful for the employer to
25 deduct or obtain any part of any premium required to be paid

1 by this chapter from the wages or earnings of his workmen-or
2 ~~any-of-them workers~~, and the making or attempt to make any
3 such deduction ~~shall--be~~ is a misdemeanor, except that
4 nothing in this section shall be construed as prohibiting
5 contributions by employees to a hospital fund, as elsewhere
6 in this chapter provided."

7 Section 62. Section 39-71-410, MCA, is amended to
8 read:

9 "39-71-410. Employees bound by plan adopted by
10 employer -- election not to be bound by corporate officers.
11 (1) Every employee whose employer is bound by the provisions
12 of this chapter ~~shall--become~~ is subject to and be bound by
13 the provisions of that plan of compensation which-~~shall--have~~
14 been adopted by his employer, except that pursuant to such
15 rules as the division shall from time to time promulgate and
16 subject in all cases to the review of the division, officers
17 of private corporations may elect not to be bound as
18 employees under the ~~this~~ chapter by a written notice in the
19 form provided by the division, served in the following
20 manner:

21 (a) if the employer has elected to be bound by the
22 provisions of compensation plan No. 1, by delivering ~~and~~
23 ~~the~~ notice to the board of directors of the employer;

24 (b) if the employer has elected to be bound by the
25 provisions of compensation plan No. 2, by delivering ~~and~~

1 ~~the~~ notice to the board of directors of the employer or the
2 insurer;

3 (c) if the employer has elected to be bound or is
4 bound by the provisions of compensation plan No. 3, by
5 delivering said ~~the~~ notice to the division.

6 (2) The appointment or election of an officer of a
7 corporation for the purpose of excluding an employee from
8 coverage under the ~~this~~ chapter shall ~~does~~ not entitle such
9 officer to elect not to be bound as an employee under the
10 ~~this~~ chapter. In any case, the notice shall ~~must~~ be signed
11 by the officer under oath or equivalent affirmation and is
12 subject to the penalties for false swearing.

13 (3) The division shall review any ~~election by~~ officers
14 of private corporations ~~election corporations~~ not to be
15 bound as an employee to assure compliance with this
16 chapter."

17 Section 63. Section 39-71-411, MCA, is amended to
18 read:

19 "39-71-411. Provisions of chapter exclusive remedy --
20 nonliability of insured employer. For all employments
21 covered under the Workers' Compensation Act or for which an
22 election has been made for coverage under the ~~this~~ chapter,
23 the provisions of the ~~this~~ chapter are exclusive. Except as
24 provided in part 5 of this chapter for uninsured employers
25 and except as otherwise provided in the Workers'

1 Compensation Act, an employer is not subject to any
2 liability whatever for the death ~~of~~ or personal injury to
3 any---employees ~~an employee~~ covered by the Workers'
4 Compensation Act. The Workers' Compensation Act binds the
5 employee himself, and in case of death binds his personal
6 representative and all persons having any right or claim to
7 compensation for his injury or death, as well as the
8 employer and the servants and employees of such employer and
9 those conducting his business during liquidation,
10 bankruptcy, or insolvency."

11 Section 64. Section 39-71-501, MCA, is amended to
12 read:

13 "39-71-501. Definition of uninsured employer. For the
14 purposes of 39-71-501 through 39-71-507 ~~this part~~, the words
15 "uninsured employer" ~~mean means~~ an employer who has not
16 properly complied with the provisions of 39-71-401."

17 Section 65. Section 39-71-506, MCA, is amended to
18 read:

19 "39-71-506. Collection of payments from uninsured
20 employer by suit. If, upon demand of the division, an
21 uninsured employer refuses to make the payments to the fund
22 that are provided for in subsections (1) and (2) of
23 39-71-504, the sums may be collected by the division through
24 suit. The division may settle through compromise with an
25 uninsured employer the amount due the fund under 39-71-501

1 through-39-71-507 39-71-504."

2 Section 66. Section 39-71-510, MCA, is amended to
3 read:

4 "39-71-510. Limitation on benefit entitlement under
5 fund. Notwithstanding the provisions of 39-71-402,
6 39-71-407, end-39-71-501-through--39-71-507 39-71-502, and
7 39-71-503, injured employees or an employee's beneficiaries
8 who elect to receive benefits from the uninsured employers'
9 fund are not granted an entitlement by this state for full
10 workers' compensation benefits from the fund. Benefits from
11 the fund shall ~~must~~ be paid in accordance with the sums in
12 the fund. If the division determines at any time that the
13 sums in the fund are not adequate to fully pay all claims,
14 the division may make appropriate proportionate reductions
15 in benefits to all claimants. The reductions do not entitle
16 claimants to retroactive reimbursements in the future."

17 Section 67. Section 39-71-602, MCA, is amended to
18 read:

19 "39-71-602. Statute of limitation not to apply during
20 minority or mental incompetency unless guardian appointed.
21 No limitation of time as provided in 39-71-601 or in this
22 chapter, known as ~~the~~ Workers' Compensation Act, shall run
23 as against any injured workmen ~~workar~~ who is mentally
24 incompetent and without a guardian or an injured minor under
25 18 years of age who may be without a parent or guardian. A

1 guardian in either case may be appointed by any court of
2 competent jurisdiction, in which event the period of
3 limitations as provided for in 39-71-601 shall begin to run
4 on the date of appointment of such guardian or when such
5 minor arrives at the age of 18 years of age, whichever date
6 may be the is earlier."

7 Section 68. Section 39-71-603, MCA, is amended to
8 read:

9 "39-71-603. Notice of ~~claims claim~~ for injuries other
10 than death to be submitted within sixty days -- exception --
11 actual notice. No ~~claims claim~~ to recover compensation under
12 this ~~fact~~ chapter for injuries not resulting in death shall
13 ~~may~~ be maintained unless, within 60 days after the
14 occurrence of the accident which is claimed to have caused
15 the injury, notice in writing stating the name and address
16 of the person injured, the time and place where the accident
17 occurred, and the nature of the injury and signed by the
18 person injured or someone in his behalf shall-be is served
19 upon the employer or the insurer, except as otherwise
20 provided in 39-71-602. However, actual knowledge of such
21 accident and injury on the part of such employer or his
22 managing agent or superintendent in charge of the work upon
23 which the injured employee was engaged at the time of the
24 injury shall-be is equivalent to such service."

25 Section 69. Section 39-71-721, MCA, is amended to

1 read:

2 *39-71-721. Compensation for injury causing death. (1)

3 If an injured employee dies and the injury was the proximate
4 cause of such death, then the beneficiary of the deceased,
5 as the case may be, ~~shall receive~~ is entitled to the same
6 compensation as though the death occurred immediately
7 following the injury, but the period during which the death
8 benefit ~~shall be~~ is paid shall be reduced by the period
9 during or for which compensation was paid for the injury.

10 (2) To beneficiaries as defined in subsections (2)(a)
11 through (2)(d) of 39-71-116, weekly compensation benefits
12 for injury causing death ~~shall be~~ are computed at 66 2/3% of
13 the decedent's wages. The maximum weekly compensation
14 benefits ~~shall~~ may not exceed the state's average weekly
15 wage. The minimum weekly compensation for death ~~shall be~~ is
16 50% of the state's average weekly wage, but in no event
17 ~~shall~~ may it exceed the decedent's actual wages at the time
18 of his death.

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

25 (4) If the decedent leaves no beneficiary as defined

1 in 39-71-116(2), a lump-sum payment of \$3,000 ~~shall~~ must be
2 paid to the decedent's surviving parent or parents.

3 (5) If any beneficiary of a deceased employee dies or
4 ~~if the widow or widower remarries~~, the right of such
5 beneficiary ~~or widow or widower~~ to compensation under this
6 chapter ~~shall cease~~ ceases. Death benefits ~~shall~~ must be
7 paid to a widow or widower for life or until remarriage, and
8 in the event of remarriage, 2 years' benefits ~~shall~~ must be
9 paid in a lump sum to the widow or widower.

10 (6) In all cases, benefits ~~shall~~ must be paid to
11 beneficiaries, as defined in 39-71-116(2)."

12 Section 70. Section 39-71-738, MCA, is amended to
13 read:

14 *39-71-738. Adjustment of compensation in case of
15 further injuries. Should a further accident occur to a
16 workman ~~workman~~ who is already receiving compensation
17 hereunder or who has been previously the recipient of a
18 payment ~~or payments~~ under this chapter, his further
19 compensation ~~shall be~~ is adjusted according to the other
20 provisions of this chapter and with regard to his past
21 receipt of compensation."

22 Section 71. Section 39-71-739, MCA, is amended to
23 read:

24 *39-71-739. Compensation in case of changes in degree
25 of injury. If aggravation, diminution, or termination of

1 disability takes place or be ~~is~~ discovered after the rate of
 2 compensation ~~shall have been~~ is established or compensation
 3 is terminated in any case where the maximum payments for
 4 disabilities as provided in this chapter have ~~are~~ not been
 5 reached, adjustments may be made to meet such changed
 6 conditions by increasing, diminishing, or terminating
 7 compensation payments in accordance with the provisions of
 8 this chapter."

9 Section 72. Section 39-71-801, MCA, is amended to
 10 read:

11 "39-71-801. Occupational deafness compensated as
 12 provided in part. Regardless of other definitions of injury
 13 and time limitations imposed by this ~~part~~ chapter, there
 14 shall be compensation is awarded for occupational deafness
 15 as provided in this part."

16 Section 73. Section 39-71-807, MCA, is amended to
 17 read:

18 "39-71-807. Compensation for wage loss where employee
 19 transferred due to occupational deafness. An employee who
 20 because of occupational deafness is transferred by his
 21 employer to other employment and thereby sustains actual
 22 wage loss shall ~~must~~ be compensated at the rate provided in
 23 39-71-703, not exceeding \$3,500 in the aggregate from all
 24 employers. "Time of injury", "incurred such injury", ~~or~~
 25 "date of injury" in such case shall be is the date of wage

1 loss."

2 Section 74. Section 39-71-813, MCA, is amended to
 3 read:

4 "39-71-813. Limitation provisions applicable -- when
 5 provisions begin to run. The limitation provisions in this
 6 ~~part~~ shall ~~chapter~~ control claims arising under this part.
 7 Such provisions shall run from the first date upon which
 8 claim may be filed or from the date of subsequent death,
 9 provided that no claim shall ~~may~~ accrue to any dependent
 10 unless an award has been issued or liability admitted."

11 Section 75. Section 39-71-901, MCA, is amended to
 12 read:

13 "39-71-901. Definitions. As used in this part, the
 14 following definitions apply:

15 (1) "Vocationally handicapped" means a person who has
 16 a medically certifiable permanent physical impairment which
 17 is a substantial obstacle to obtaining employment or to
 18 obtaining reemployment if ~~the~~ employee should become
 19 unemployed, considering such factors as the person's age,
 20 education, training, experience, and employment rejection.

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

23 (3) "Certificate" means documentation issued by the
 24 certifying agency to an individual who is vocationally
 25 handicapped.

1 (4) "Fund" means the subsequent injury fund."
 2 Section 76. Section 39-71-902, MCA, is amended to
 3 read:

4 "39-71-902. Fund to receive payment from insurer for
 5 each death under chapter -- assessment of insurers. (1) In
 6 every case of the death of an employee under this ~~part~~
 7 ~~chapter~~, the insurer shall pay to the fund the sum of
 8 \$1,000. In addition, the division may assess every insurer
 9 an amount not to exceed 5% of the compensation paid in
 10 Montana in the preceding fiscal year. The assessment shall
 11 ~~must~~ be transmitted annually to the subsequent injury fund
 12 by the employer or insurer.

13 (2) When, in ~~the~~ judgment of the administrator, the
 14 amount of money in the subsequent injury fund is such that
 15 there is a surplus above and beyond projected liabilities,
 16 the administrator may at his discretion suspend or reduce
 17 further collection of assessments for a period of time
 18 determined by the administrator."

19 Section 77. Section 39-71-903, MCA, is amended to
 20 read:

21 "39-71-903. Procedure and practice. When a
 22 vocationally handicapped person receives a personal injury,
 23 the procedure and practice provided in this ~~part~~ ~~chapter~~
 24 applies to all proceedings under this part, except where
 25 specifically otherwise provided herein."

1 Section 78. Section 39-71-907, MCA, is amended to
 2 read:

3 "39-71-907. Certified vocationally handicapped person
 4 to be compensated for injury as provided by chapter --
 5 employer liability for compensation limited. A person
 6 certified as vocationally handicapped who receives a
 7 personal injury arising out of and in the course of his
 8 employment and resulting in death or disability shall ~~must~~
 9 be paid compensation in the manner and to the extent
 10 provided in this ~~part~~ ~~chapter~~ or, in case of his death
 11 resulting from such injury, the compensation shall ~~must~~ be
 12 paid to his beneficiaries or dependents. The liability of
 13 the employer for payment of compensation, for furnished
 14 medical care, and burial as provided in this ~~part~~ ~~chapter~~ ~~is~~ ~~limited~~ ~~to~~ ~~those~~ ~~benefits~~ ~~occurring~~ ~~during~~ ~~the~~
 15 ~~chapter~~ ~~is~~ limited to those benefits occurring during the
 16 period of 104 weeks after the date of injury. Thereafter,
 17 all compensation and the cost of all medical care and burial
 18 shall ~~be~~ ~~is~~ the liability of the fund."

19 Section 79. Section 39-71-908, MCA, is amended to
 20 read:

21 "39-71-908. Notification of fund of its potential
 22 liability under part -- review by fund. Not less than 90 or
 23 more than 150 days before the expiration of 104 weeks after
 24 the date of injury, the employer, carrier, or the industrial
 25 insurance fund, as the case may be, shall notify the fund

1 whether it is likely that compensation may be payable beyond
 2 a period of 104 weeks after the date of the injury. The
 3 fund thereafter may review, at reasonable times, such
 4 information as the employer, carrier, or industrial
 5 insurance fund ~~as has~~ regarding the accident and the nature
 6 and extent of the injury and disability."

7 Section 80. Section 39-71-910, MCA, is amended to
 8 read:

9 "39-71-910. Procedure for resolving disputes as to
 10 liability under part. (1) If an employee was employed or
 11 retained in employment under the provisions of this part and
 12 a dispute or controversy arises as to payment of benefits or
 13 the liability therefor, the division shall hold a hearing
 14 and resolve all disputes. On motion made in writing by the
 15 employer, carrier, or industrial insurance fund, the
 16 administrator shall join the fund as a party defendant.

17 (2) The division, within 5 days of the entry of an
 18 order joining the fund as a party defendant, shall give the
 19 fund written notice thereof not less than 20 days before the
 20 date of hearing and shall include the name of ~~the~~ employee
 21 ~~and the~~ employer, and the date of the alleged injury or
 22 disability. The fund named as a defendant shall have 10 days
 23 after the date of notification to file objections to being
 24 named as a party defendant. On the date of the hearing at
 25 which the liability of the parties is determined, the

1 hearing examiner first shall hear arguments and take
 2 evidence concerning the joinder as party defendant. If the
 3 fund has filed timely objection and if argument and evidence
 4 warrant, the hearing examiner shall grant a motion to
 5 dismiss.

6 (3) At the time of the hearing, the employer and fund
 7 may appear, cross-examine witnesses, give evidence, and
 8 defend both on the issue of liability of the employer to the
 9 employee and on ~~the~~ issue of the liability of the fund.

10 (4) The hearing examiner shall make findings of fact
 11 and conclusions of law determining the respective liability
 12 of the employer and the fund."

13 Section 81. Section 39-71-1001, MCA, is amended to
 14 read:

15 "39-71-1001. Referral of disabled workers to
 16 department of social and rehabilitation services for
 17 vocational rehabilitation. The division shall refer to the
 18 department of social and rehabilitation services workers who
 19 have become permanently disabled as the result of injuries
 20 sustained within the scope and course of employment by an
 21 employer enrolled under the Workers' Compensation Act ~~of the~~
 22 ~~state of~~ Montana and who, in the opinion of the division,
 23 can be vocationally rehabilitated. The department of social
 24 and rehabilitation services shall provide for the vocational
 25 rehabilitation of the injured workers under the provisions

1 of ~~[Title--41--chapter-8--R-6-Me-1947]~~ Title 53, chapter 7,
2 parts 1 and 2."

3 Section 82. Section 39-71-1003, MCA, is amended to
4 read:

5 "39-71-1003. Eligibility for benefits under chapter
6 not affected -- other expenses payable. The eligibility of
7 any injured ~~workmen worker~~ to receive other benefits under
8 the Workers' Compensation Act ~~shall~~ is in no way be affected
9 by his entrance upon a course of vocational rehabilitation
10 as herein provided, but he may be paid, in addition thereto,
11 upon the certification of the ~~vocational-rehabilitation~~
12 division department of social and rehabilitation services
13 from funds herein provided:

14 (1) his actual and necessary travel expenses from his
15 place of residence to the place of training and return;

16 (2) his living expenses while in training in an amount
17 not in excess of \$50 per week; and

18 (3) his expenses for tuition, books, and necessary
19 equipment in training."

20 Section 83. Section 39-71-2101, MCA, is amended to
21 read:

22 "39-71-2101. General requirements for electing
23 coverage under plan. An employer may elect to be bound by
24 compensation plan No. 1 upon furnishing satisfactory proof
25 to the division of his solvency and financial ability to pay

1 the compensation and benefits in this chapter provided for
2 and to discharge all liabilities which are reasonably likely
3 to be incurred by him during the fiscal year for which such
4 election is effective, and may, by order of the division,
5 make such payments directly to his employees as they may
6 become entitled to receive the--same under the terms and
7 conditions of this chapter."

8 Section 84. Section 39-71-2201, MCA, is amended to
9 read:

10 "39-71-2201. Election to be bound by plan. (1) Any
11 employer except those specified in ~~[92-206]~~ 39-71-403 may,
12 by filing his election to become bound by compensation plan
13 No. 2, insure his liability to pay the compensation and
14 benefits provided by this chapter with any insurance company
15 authorized to transact such business in this state.

16 (2) Any employer electing to become bound by
17 compensation plan No. 2 shall make his election on the form
18 and in the manner prescribed by the division."

19 Section 85. Section 39-71-2206, MCA, is amended to
20 read:

21 "39-71-2206. Deposits by insurer with division to
22 guarantee payment of liability. (1) Before issuance of any
23 policy by an insurer as herein authorized, such ~~the~~ insurer
24 must deposit with the division bonds of the United States or
25 the state of Montana or of any school district, county,

1 city, or town in the state of Montana or a corporate surety
 2 bond made out to and approved by the division in an amount
 3 not less than \$5,000 or more than \$100,000, as the division
 4 may determine. If any insurer fails to discharge any
 5 liability after the amount thereof ~~shall be~~ is determined by
 6 the division and within the time limited by the division,
 7 the division shall convert the bonds or such part thereof as
 8 is necessary into cash and from the proceeds liquidate such
 9 liability, and thereafter the insurer must make an
 10 additional deposit to meet any deficiency caused thereby. It
 11 is intended hereby to give the division the discretion in
 12 the matter of whether an insurer has failed to discharge any
 13 liability.

14 (2) Within 30 days of the happening of an accident
 15 where death or the nature of the injury renders the amount
 16 of future payments certain or reasonably certain, the
 17 insurer shall make a deposit, as herein defined, with the
 18 division for the protection and guarantee of the payment of
 19 such liability in such sum as the division may direct.
 20 However, if the division ~~deems~~ considers the amount on
 21 deposit by the insurer under the provisions of subsection
 22 (1) of this section sufficient to cover all liabilities of
 23 the insurer, then no further deposit ~~shall~~ may be required.

24 (3) Any deposit made under the provisions of
 25 compensation plan No. 2 ~~shall~~ must be held in trust by the

1 division as security for the payment of the liability for
 2 which the deposit was made. Such deposit may be reduced from
 3 time to time with the permission of the division as the
 4 payment of the liability of the insurer may reduce the
 5 amount required to be on deposit. Such deposit may be
 6 changed or renewed when desired by the depositor by
 7 withdrawing the same or any part thereof and substituting
 8 other deposits therefor. Upon proof of the final payment of
 9 the liability for which such deposit was made, any deposit
 10 remaining ~~shall~~ must be returned to the depositor. All
 11 earnings made by such deposit ~~shall be~~ must first ~~be~~ applied
 12 upon any liability of the depositors, and if no such
 13 liability exists, then such earnings ~~shall~~ must upon demand
 14 be delivered to such depositor. The division and its
 15 bondsmen ~~shall be~~ are liable for the value and safekeeping
 16 of such deposit and shall at any time, upon demand of its
 17 bondsmen ~~the a depository or the division,~~ account for the
 18 same and the earnings thereof."

19 Section 86. Section 39-72-101, MCA, is amended to
 20 read:

21 "39-72-101. Short title. This chapter ~~shall be~~ known
 22 may be cited as "The the Occupational Disease Act of
 23 Montana."

24 Section 87. Section 39-72-102, MCA, is amended to
 25 read:

1 "39-72-102. Definitions. As used in this chapter,
2 unless the context requires otherwise, the following
3 definitions apply:

- 4 (1) "Beneficiary" is as defined in 39-71-116(2).
5 (2) "Child" is as defined in 39-71-116(4).
6 (3) "Disablement" means the event of becoming
7 physically incapacitated by reason of an occupational
8 disease from performing any work for remuneration or profit.
9 Silicosis, when complicated by active pulmonary
10 tuberculosis, is presumed to be total disablement.
11 "Disability", "total disability", and "totally disabled" are
12 synonymous with "disablement", but they have no reference to
13 "partial permanent disability".
14 (4) "Division" is as defined in 39-71-116(5).
15 (5) "Employee" is as defined in 39-71-118.
16 (6) "Employer" is as defined in 39-71-117.
17 (7) "Husband" is as defined in 39-71-116(7).
18 (8) "Independent contractor" is as defined in
19 39-71-120.
20 (9) "Insurer" is as defined in 39-71-116(8). The term
21 includes an employer who is self-insured under compensation
22 plan No. 1.
23 (10) "Invalid" is as defined in 39-71-116(9).
24 (11) ~~The term "occupational~~ Occupational disease" shall
25 mean ~~mean~~ all diseases arising out of or contracted from

1 and in the course of employment.

2 (12) "Order" is as defined in 39-71-116(10).

3 (13) "Pneumoconiosis" means a chronic dust disease of
4 the lungs arising out of employment in coal mines and
5 includes anthracosis, coal workers' pneumoconiosis,
6 silicosis, or anthracosilicosis arising out of such
7 employment.

8 (14) "Silicosis" means a chronic disease of the lungs
9 caused by the prolonged inhalation of silicon dioxide
10 (SiO₂), and characterized by small discrete nodules of
11 fibrous tissue similarly disseminated throughout both lungs
12 causing the characteristic x-ray pattern and by other
13 variable clinical manifestations.

14 (15) "Wages" is as defined in 39-71-116(20).

15 (16) "Wife" is as defined in 39-71-116(21).

16 (17) "Year" is as defined in 39-71-116(6) and
17 39-71-116(22)."

18 Section 88. Section 39-72-307, MCA, is amended to
19 read:

20 "39-72-307. Deduction from wages of any part of
21 premium a misdemeanor -- hospital contributions not
22 prohibited. It shall be ~~is~~ unlawful for the employer to
23 deduct or obtain any part of any premium required to be paid
24 by this chapter from the wages or earnings of his workmen
25 ~~workers~~, or any of them, and the making or attempt to make

1 any such deduction ~~shall be~~ is a misdemeanor, except that
 2 nothing in this section ~~shall~~ may be construed as
 3 prohibiting contributions by employees to a hospital fund,
 4 as elsewhere in this chapter provided."

5 Section 89. Section 39-72-508, MCA, is amended to
 6 read:

7 "39-72-508. Death due to pneumoconiosis. The claimant
 8 must submit the evidence necessary to establish that the
 9 miner's death was due to pneumoconiosis and that the
 10 pneumoconiosis arose out of employment in coal mines. Death
 11 will be found due to a ~~respirable~~ respiratory disease when
 12 death is ascribed to a chronic dust disease or to another
 13 chronic disease of the lung. Death will not be found due to
 14 a ~~respirable~~ respiratory disease in those cases in which the
 15 disease reported does not suggest a reasonable possibility
 16 that death was in fact due to pneumoconiosis; e.g., cancer
 17 of the lung, disease due to trauma, or pulmonary emboli.
 18 However, the presumptions established in subsections (2) and
 19 (3) of 39-72-501 apply."

20 Section 90. Section 39-72-701, MCA, is amended to
 21 read:

22 "39-72-701. Compensation for total disability or death
 23 due to occupational disease other than pneumoconiosis. The
 24 compensation to which an employee temporarily totally
 25 disabled or permanently totally disabled by an occupational

1 disease ~~other than pneumoconiosis~~, or the beneficiaries and
 2 dependents of the employee in the case of death caused by an
 3 occupational disease ~~other than pneumoconiosis~~, ~~shall be~~ are
 4 entitled to under this chapter shall be the same payments
 5 which are payable to an injured employee, and such payments
 6 shall be made for the same period of time as is provided in
 7 cases of temporary total disability, permanent total
 8 disability, and in cases of injuries causing death under the
 9 Workers' Compensation Act of ~~the state of Montana~~."

10 Section 91. Section 39-72-702, MCA, is amended to
 11 read:

12 "39-72-702. Compensation for total disability or death
 13 due to pneumoconiosis. Benefit payments for total disability
 14 or death due to pneumoconiosis shall, for the purpose of
 15 this chapter, be made as follows:

16 (1) In the case of total disability of a miner due to
 17 pneumoconiosis, the disabled miner shall be paid benefits
 18 during the disability at the rate of \$155 per month.

19 (2) In the case of death of a miner due to
 20 pneumoconiosis or of a miner receiving benefits under this
 21 ~~part~~ subsection (1), benefits shall be paid to the miner's
 22 surviving spouse, if any, at the rate the deceased miner
 23 would receive such benefits if totally disabled.

24 (3) In the case of an individual entitled to benefit
 25 payments under subsection (1) or (2) who has one or more

1 dependents, the benefit payments shall ~~must~~ be increased at
 2 the rate of 50% of such benefit payments if such individual
 3 has one dependent, 75% if such individual has two
 4 dependents, and 100% if such individual has three or more
 5 dependents."

6 Section 92. Section 39-72-708, MCA, is amended to
 7 read:

8 "39-72-708. Prohibiting supplementing of benefits. No
 9 person receiving compensation or benefits under ~~[71-1001 to~~
 10 ~~71-1008, inclusive]~~ shall be chapter 73 of this title is
 11 entitled to compensation or benefits under this chapter."

12 Section 93. Section 39-73-109, MCA, is amended to
 13 read:

14 "39-73-109. Payment of benefits to surviving spouse.
 15 (1) Upon the death of a person receiving payments for
 16 silicosis under 39-73-104 or 39-73-108, the surviving
 17 spouse, as long as such spouse remains unmarried, is
 18 entitled to receive the payments granted the deceased
 19 spouse.

20 (2) A person who otherwise is qualified to receive
 21 payments under subsection (1) of this section but whose
 22 spouse died prior to March 14, 1974, is hereby made eligible
 23 to begin receiving one-half of those payments; provided,
 24 however, a person is not eligible for these payments if her
 25 such spouse's taxable income is \$6,800 or more per year."

1 Section 94. Repealer. Sections 41-901 through 41-909,
 2 92-613, and 92-1340, R.C.M. 1947, are repealed.

-End-

1. Page 48, line 21 through line 11 on page 49.
Strike: Section 41 in its entirety
renumber all subsequent sections

Please refer To Blue Bill - S. B. 208

1 SENATE BILL NO. 208
 2 INTRODUCED BY HAFFERMAN, LOWE
 3 BY REQUEST OF THE CODE COMMISSIONER

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
 6 CLARIFY THE LAWS RELATING TO LABOR; ENACTING SECTION
 7 39-1-101, MCA; AND REPEALING SECTIONS 41-901 THROUGH 41-909,
 8 92-613, AND 92-1340, R.C.M. 1947."

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 NEW SECTION. Section 1. 39-1-101. Definitions. As
 12 used in this chapter, unless the context requires otherwise
 13 the following definitions apply:

14 (1) "Commissioner" means the commissioner of labor and
 15 industry as provided for in 2-15-1701.

16 (2) "Department" means the department of labor and
 17 industry as provided for in 2-15-1701.

18 Section 2. Section 39-1-102, MCA, is amended to read:

19 "39-1-102. Duties of department. The department of
 20 labor and industry shall be charged with the duty of
 21 enforcing enforce all the laws of Montana relating to hours
 22 of labor, conditions of labor, prosecution of employers who
 23 default in payment of wages, protection of employees, and
 24 all laws relating to child labor regulating which regulate
 25 the employment of children in any manner, and to shall

1 administer the laws of the state relating to free employment
 2 offices, and all other state labor laws enacted by
 3 legislation."

4 Section 3. Section 39-2-103, MCA, is amended to read:
 5 "39-2-103. Confidential employment. The obligations
 6 peculiar to confidential employments are defined in the
 7 chapter on trusts laws relating to trusts and fiduciary
 8 relationships."

9 Section 4. Section 39-2-503, MCA, is amended to read:

10 "39-2-503. Termination at will. An employment having
 11 no specified term may be terminated at the will of either
 12 party on notice to the other, except where otherwise
 13 provided by this chapter, 28-10-301 through 28-10-303,
 14 28-10-502, and 30-11-601 through 30-11-605, and except as
 15 provided in 39-2-302."

16 Section 5. Section 39-2-703, MCA, is amended to read:

17 "39-2-703. Liability of railway corporation for
 18 negligence of fellow servants. (1) Every person or
 19 corporation operating a railway or railroad in this state
 20 shall be is liable for all damages sustained by any employee
 21 of such person or corporation in consequence of the neglect
 22 of any other employee or employees thereof or by the
 23 mismanagement of any other employee or employees thereof and
 24 in consequence of the willful wrongs, whether of commission
 25 or omission, of any other employee or employees thereof when

1 such neglect, mismanagement, or wrongs are in any manner
 2 connected with the use and operation of any railway or
 3 railroad on or about which they ~~shall be~~ he is employed,
 4 and ~~no~~ no contract which restricts such liability ~~shall be~~
 5 is legal or binding.

6 (2) In case of the death of any such employee in
 7 consequence of any injury or damage so sustained, the right
 8 of action provided by subsection (1) of ~~this section~~ shall
 9 survive and may be prosecuted and maintained by his heirs or
 10 personal representatives.

11 (3) Every railway corporation doing business in this
 12 state, including electric railway corporations, ~~shall be~~ is
 13 liable for ~~all~~ damages sustained by an employee thereof
 14 within this state ~~without contributing negligence on his~~
 15 ~~part, subject to the provisions of 27-1-702,~~ when such
 16 damages are caused by the negligence of any train
 17 dispatcher, telegraph operator, superintendent, master
 18 mechanic, yardmaster, conductor, engineer, motorman, or of
 19 any other employee who has superintendence of any stationary
 20 or hand signal.

21 (4) No contract of insurance, relief, benefit, or
 22 indemnity in case of injury or death or any other contract
 23 entered into, either before or after the injury, between the
 24 person injured and any of the employers named in subsection
 25 (3) ~~of this section shall constitute any is a~~ bar or defense

1 to any cause of action brought under the provisions of this
 2 section, except as otherwise provided in the Workers'
 3 Compensation Act."

4 Section 6. Section 39-2-704, MCA, is amended to read:
 5 "39-2-704. Liability of mining company for negligence
 6 of fellow servants. (1) Every company, corporation, or
 7 individual, operating any mine, smelter, or mill for the
 8 refining of ores, ~~shall be~~ is liable for any damages
 9 sustained by any ~~employees~~ employee thereof within this
 10 state ~~without contributing negligence on his part, subject~~
 11 ~~to the provisions of 27-1-702,~~ when such damage is caused by
 12 the negligence of any superintendent, foreman, shift boss,
 13 hoisting or other engineer, or cranesman.

14 (2) No contract of insurance, relief, benefit, or
 15 indemnity in case of injury or death or any other contract
 16 entered into before the injury between the person injured
 17 and any of the employers named in this section ~~shall~~
 18 ~~constitute any is a~~ bar or defense to any cause of action
 19 brought under the provisions of this section, except as
 20 otherwise provided in the Workers' Compensation Act.

21 (3) In case of the death of any such ~~employees~~
 22 employee in consequence of any injury or damages so
 23 sustained, the right of action ~~shall survive~~ survives and
 24 may be prosecuted and maintained by ~~their~~ his heirs or
 25 personal representatives."

1 Section 7. Section 39-2-803, MCA, is amended to read:

2 "39-2-803. Blacklisting prohibited. If any company or
3 corporation in this state authorizes or allows any of its
4 agents to blacklist or any person does blacklist any
5 discharged employee or attempts by word or writing or any
6 other means whatever to prevent any discharged employee or
7 any employee who may have voluntarily left ~~and the~~
8 company's service from obtaining employment with another
9 person, except as provided for in 39-2-802, such company or
10 corporation or person is liable in punitive damages to such
11 employees ~~employee~~ so prevented from obtaining employment,
12 to be recovered by him in a civil action, and is also
13 punishable as provided in 39-2-804."

14 Section 8. Section 39-3-104, MCA, is amended to read:

15 "39-3-104. Equal pay for women for equivalent service.

16 (1) It ~~shall be~~ is unlawful for any ~~person or firm~~ the state
17 or any county, municipal ~~entity~~, or school district, public
18 or private corporation, ~~person, or firm~~ to employ any ~~women~~
19 or women in any occupation ~~or setting~~ within the state of
20 Montana for ~~salaries, wages, or compensation which are~~ less
21 than that paid to men for equivalent service or for the same
22 amount or class of work or labor in the same industry,
23 school, establishment, office, or place of ~~employment of~~ any
24 kind or description.

25 (2) Any ~~person or firm~~ if the state or any county,

1 municipal ~~entity~~, or school district, ~~officers or~~ public or
2 private corporation, ~~violating person, or firm~~ violates any
3 of the provisions of subsection (1) ~~of this section shall be~~
4 ~~deemed it is~~ guilty of a misdemeanor and upon conviction
5 thereof shall be fined not less than \$25 or more than \$500
6 for each offense."

7 Section 9. Section 39-3-202, MCA, is amended to read:

8 "39-3-202. Rulemaking power of commissioner. The
9 commissioner is authorized to issue, amend, and enforce
10 rules for the purpose of carrying out the provisions of the
11 ~~[set] this part."~~

12 Section 10. Section 39-3-203, MCA, is amended to read:

13 "39-3-203. Employer to notify employee on written
14 demand as to rate of wages and date of paydays. (1) Each
15 employer or an authorized representative of the employer
16 shall, on written demand, prior to the commencing of work,
17 notify each employee as to the rate of wages to be paid,
18 whether by the hour, day, week, month, or ~~yearly basis~~ year,
19 and date of paydays. Such notification ~~shall~~ must be in
20 writing to each employee or the ~~by~~ posting of notice in a
21 conspicuous place.

22 (2) The provisions of this ~~[section]~~ ~~and 39-3-204~~
23 ~~shall do not~~ apply in respect to an employer who has entered
24 into a signed collective bargaining agreement, when such
25 agreement contains conditions of employment, wages to be

1 received, and hours to be worked, or to employers engaged in
2 agriculture or stockraising; provided, however, such
3 employers shall conform ~~comply~~ with the provisions of
4 39-3-205."

5 Section 11. Section 39-3-204, MCA, is amended to read:

6 "39-3-204. Payment of wages generally. (1) Every
7 employer of labor in the state of Montana shall pay to each
8 ~~of-his-employees~~ ~~employee~~ the wages earned by such ~~employees~~
9 ~~employee~~ in lawful money of the United States or checks on
10 banks convertible into cash on demand at the full face value
11 thereof, and no person for whom labor has been performed
12 ~~shall~~ ~~may~~ withhold from any employee any wages earned or
13 unpaid for a longer period than 10 business days after the
14 same become ~~are~~ due and payable. However, reasonable
15 deductions may be made for board, room, and other
16 incidentals supplied by the employer, whenever such
17 deductions are a part of the conditions of employment, or
18 other deductions provided for by law.

19 (2) If at such time of payment of wages any employee
20 ~~shall-be~~ ~~is~~ absent from the regular place of labor, he ~~shall~~
21 ~~be~~ ~~is~~ entitled to such payment at any time thereafter.

22 (3) Provisions of this ~~[section]~~ ~~and-39-3-205~~ ~~shall~~ ~~do~~
23 not apply to any professional, supervisory, or technical
24 ~~employees~~ ~~employee~~ who by custom receive ~~their~~ ~~receives~~ ~~his~~
25 wages earned at least once monthly."

1 Section 12. Section 39-3-208, MCA, is amended to read:

2 "39-3-208. Contracts in violation of part void. Any
3 contract or agreement made between any person, partnership,
4 or corporation and any parties ~~party~~ in his or its--or
5 their employ whose ~~provision shall be in violation, evasion~~
6 ~~the provisions of which violates, evade,~~ or circumvention--of
7 ~~circumvent~~ this part ~~shall-be~~ ~~is~~ unlawful and void, but such
8 employee may sue to recover his wages earned, together with
9 such ~~the~~ 5% penalty ~~specified in 39-3-206~~ or separately to
10 recover the penalty if the wages have been paid."

11 Section 13. Section 39-3-210, MCA, is amended to read:

12 "39-3-210. Investigative powers of commissioner. (1)
13 The commissioner or his authorized representatives are
14 empowered to enter and inspect such places, question such
15 employees, and investigate such facts, conditions, or
16 matters as ~~which~~ they may deem ~~consider~~ appropriate to
17 determine whether any person has violated any provision of
18 this ~~[act]~~ ~~part~~ or any rule issued hereunder or which may
19 aid in the enforcement of the provisions of this ~~[act]~~ ~~part~~.

20 (2) The commissioner or his authorized representatives
21 ~~shall--have--power--to~~ ~~may~~ administer oaths and examine
22 witnesses under oath; issue subpoenas; compel the attendance
23 of witnesses and the production of papers, books, accounts,
24 records, payrolls, documents, and testimony; and take
25 depositions and affidavits in any proceeding before the

1 commissioner."

2 Section 14. Section 39-3-211, MCA, is amended to read:

3 "39-3-211. Commissioner to take wage assignments.

4 Whenever the commissioner determines that one or more
5 employees have claims for unpaid wages, he shall, upon the
6 written request of the employee, take an assignment of the
7 claim in trust for such employee and may maintain any
8 proceeding appropriate to enforce the claim, including
9 liquidated damages pursuant to this ~~[act]~~ part. With the
10 written consent of the assignor, the commissioner may settle
11 or adjust any claim assigned pursuant to this section."

12 Section 15. Section 39-3-214, MCA, is amended to read:

13 "39-3-214. Court costs and attorneys' fees. (1)

14 Whenever it ~~shall-become~~ is necessary for the employee to
15 enter or maintain a suit at law for the recovery or
16 collection of wages due as provided for by this part, then
17 such a resulting judgment ~~shall~~ must include a reasonable
18 attorney's fee in favor of the successful party, to be taxed
19 as part of the costs in the case.

20 (2) Any judgment for the plaintiff in a proceeding
21 pursuant to this ~~[act]~~ ~~shall~~ part must include all costs
22 reasonably incurred in connection with the proceeding,
23 including attorneys' fees.

24 (3) If the proceeding is maintained by the
25 commissioner, no court costs or fees ~~shall-be~~ are required

1 of him nor ~~shall-he-be~~ is he required to furnish any bond or
2 other security that might otherwise be required in
3 connection with any phase of the proceeding."

4 Section 16. Section 39-3-501, MCA, is amended to read:

5 "39-3-501. Certain laws extended to certain employers
6 in mineral and oil industry. For the purposes of this part,
7 all the provisions of ~~[41-1301-to-41-1311]~~ ~~shall~~ part 2 of
8 this chapter extend to and govern every person, firm,
9 partnership, or corporation engaged in the business of
10 extracting or of extracting and refining or reducing metals
11 and minerals or mining for coal or drilling for oil, save
12 end except such persons, firms, partnerships, or
13 corporations as have a free and unencumbered title to not
14 less than one-half the fee of the property being worked. For
15 this purpose, an outstanding unpaid or unredeemed tax sale
16 certificate ~~shall~~ is not be considered an encumbrance."

17 Section 17. Section 39-3-504, MCA, is amended to read:

18 "39-3-504. Report of violations directly to county
19 attorney by ~~employees~~ employes. Any ~~employees~~ employes may
20 make complaint ~~direct~~ directly to the county attorney
21 relative to any violation of this part ~~39-3-104~~ ~~part 8 of~~
22 ~~chapter 2~~ or part 2 of this chapter."

23 Section 18. Section 39-3-505, MCA, is amended to read:

24 "39-3-505. County attorney to notify commissioner of
25 violations violation reported directly by employees

1 ~~employee.~~ The county attorney of the county shall promptly
 2 notify the commissioner of labor and industry of any
 3 complaint made by any employee relative to the violation of
 4 any of the provisions of this part ~~39-3-104, part 8 of~~
 5 ~~chapter 2,~~ or part 2 of this chapter and shall in writing
 6 keep said ~~the~~ commissioner advised of each step in any
 7 proceeding taken by said ~~the~~ county attorney thereunder."

8 Section 19. Section 39-3-506, MCA, is amended to read:

9 "39-3-506. County attorney to file complaint in
 10 district court on belief of violation. If said a county
 11 attorney believes after receiving said information that the
 12 provisions of this part ~~39-3-104, part 8 of chapter 2,~~ or
 13 part 2 of this chapter have been violated and that such
 14 violation or ~~violations~~ was or ~~were~~ willful or that the
 15 financial condition of the employer is such as to endanger
 16 employees in receiving prompt payment or collection of
 17 wages, ~~it shall be his duty to~~ ~~he~~ shall file the ~~a~~ complaint
 18 ~~afore said~~ in said district court. All proceedings upon such
 19 complaint shall ~~must~~ be promptly prosecuted."

20 Section 20. ~~Section 39-3-604, MCA, is amended to read:~~

21 "39-3-604. ~~Bond~~ ~~to be filed by lessee~~ ~~bond~~
 22 ~~requirements~~ (1) Every person who leases from another
 23 person premises for the purpose of conducting therein a
 24 business as a restaurant, bar, or tavern is hereby required
 25 to file a bond equal to at least double the amount of the

1 projected ~~semi~~ monthly payroll with the commissioner of labor
 2 and industry. Said ~~this~~ bond ~~must~~ at all times be kept in
 3 full force and effect and any cancellation or revocation
 4 thereof or withdrawal of the sureties therefrom shall
 5 automatically revoke and suspend the certificate issued to
 6 the lessee of this part until such time as a new bond of
 7 like tenure and effect shall have been filed and approved as
 8 herein provided.

9 (2) ~~The bond and affidavit required by subsection (1)~~
 10 ~~of this section shall~~ ~~must~~ be filed with the commissioner of
 11 labor and industry. The state of Montana shall ~~must~~ be
 12 named as the obligee therein with good and sufficient
 13 sureties to be approved by the attorney general.

14 (3) ~~Such bond shall~~ ~~must~~ be conditioned to assure that
 15 in any lease transaction of the type referred to in 39-3-608
 16 the persons who perform labor or other personal services for
 17 the lessee are guaranteed their wages in the event the
 18 lessee ceases operation of the business for any reason and
 19 is unable to pay the wages due and owing the employees and
 20 to assure payment due the division of employment security as
 21 a result of payroll taxes."

22 Section 20. Section 39-4-102, MCA, is amended to read:

23 "39-4-102. Drivers and attendants of motor buses. (1)
 24 Drivers or attendants of motor buses employed in the state
 25 shall ~~may~~ not be employed for more than 8 hours in the any

1 24-hour period. Drivers or attendants of motor buses shall
 2 ~~must~~ be allowed a rest of at least 12 hours between the
 3 completion of their services in any 24-hour period and the
 4 beginning of their services in the next succeeding 24-hour
 5 period. In computing the number of hours of employment made
 6 by the provisions of this section, evidence may be
 7 introduced showing that part of said ~~such~~ time shall--be is
 8 consumed prior to entry within the state.

9 (2) The provisions of this section shall ~~do~~ not be
 10 effective ~~apply~~ when life is in danger of--destruction or in
 11 case--of--danger--of property is in imminent danger of
 12 destruction; or in case of delay due to accident or
 13 unpassable ~~impassable~~ roads, abnormal road conditions, or
 14 snow blockades; or shall--not-affect-the-delay-of ~~when~~ mails
 15 for said ~~the~~ drivers or attendants ~~are~~ delayed.

16 (3) Attendants "~~Attendant~~", for the purpose of this
 17 section, are ~~is~~ defined as any employee engaged for a
 18 portion of the--24-hour-period--in a day driving or repairing
 19 a motor bus and who is required to remain on said ~~the~~
 20 vehicle as a relief driver or mechanic for time in excess of
 21 the 8-hour period--of ~~for~~ which he shall--be is rightly
 22 employed.

23 (4) Any employer or supervisor in charge of employee
 24 employees who shall--require requires a driver or attendant
 25 as above defined to labor contrary to the provisions of this

1 section shall--be-declared is guilty of a misdemeanor and
 2 upon conviction shall--be-punished is punishable by a fine of
 3 not less than \$100 or more than \$600 or by imprisonment of
 4 not less than 30 days or more than 7 months or both such
 5 fine and imprisonment.

6 (5) All motor bus companies operating lines in this
 7 state shall--be are liable in damage for all injuries to the
 8 person or--persons resulting in ~~from~~ the violation of the
 9 provisions of said ~~this~~ section."

10 Section 21. Section 39-4-103, MCA, is amended to read:
 11 "39-4-103. Underground miners and smelters. (1) The
 12 period of employment of workingmen ~~workers~~ in all
 13 underground mines or workings, including railroad or other
 14 tunnels, shall--be is 8 hours per day, except in cases of
 15 emergency where ~~when~~ life and property are in imminent
 16 danger.

17 (2) The period of employment of workingmen ~~workers~~ in
 18 smelters, stamp--mills stamp mills, sampling works,
 19 concentrators, and all other institutions for the reduction
 20 of ores and refining of ores or metals shall--be is 8 hours
 21 per day, except in cases of emergency where life or property
 22 is in imminent danger.

23 (3) Any person--or-persons, body--corporate corporation,
 24 agent, manager, or employer who shall--violate violates any
 25 of the provisions of this section shall--be is guilty of a

1 misdemeanor and upon conviction thereof for each offense be
 2 is subject to a fine of not less than \$100 or more than \$600
 3 or by imprisonment in the county jail for a period of not
 4 less than 1 month or more than 7 months or by both such fine
 5 and imprisonment."

6 Section 22. Section 39-4-107, MCA, is amended to read:
 7 "39-4-107. State and municipal governments, school
 8 districts, mines, mills, and smelters. (1) A period of 8
 9 hours ~~shall constitute~~ constitutes a day's work in all works
 10 and undertakings carried on or aided by any municipal ~~or~~
 11 county government, or ~~the~~ state government, ~~or a~~ first-class
 12 school ~~districts~~ district, and on all contracts let by them,
 13 and for all janitors ~~(except in courthouses of sixth- and~~
 14 seventh-class counties), engineers, firemen firefighters,
 15 caretakers, custodians, and laborers employed in or about
 16 any buildings, works, or grounds used or occupied for any
 17 purpose by any such municipal, county, or state government,
 18 ~~school--districts--of--first--class--and~~ government ~~or~~
 19 first-class school district. A period of 8 hours constitutes
 20 a day's work in mills and smelters for the treatment of
 21 ores, in underground mines, and in the washing, reducing,
 22 and treatment of coal, ~~except in~~ in cases of emergency when
 23 life or property is in imminent danger this subsection does
 24 not apply.

25 (2) For firefighters in cities of the first and second

1 class, a work-week ~~shall be a period~~ workweek consists of a
 2 maximum of 40 hours during a 5-day week.

3 (3) In counties where regular road and bridge
 4 departments are maintained, the county commissioners may,
 5 with the approval of the employees or their duly constituted
 6 representative, establish a 40-hour work-week workweek
 7 consisting of 4 consecutive 10-hour days. No employee ~~shall~~
 8 may be required to work in excess of 8 hours in any one work
 9 day workday if he prefers not to.

10 (4) Every person, corporation, stock company, or
 11 association of persons who violates any of the provisions of
 12 this section ~~shall be~~ is guilty of a misdemeanor and upon
 13 conviction thereof shall be punished by a fine of not less
 14 than \$100 or more than \$600 or by imprisonment in the county
 15 jail for not less than 30 days or more than 7 months or by
 16 both such fine and imprisonment."

17 Section 23. Section 39-4-108, MCA, is amended to read:
 18 "39-4-108. Railway employees. (1) On all lines of
 19 railroads or railways operated in whole or in part within
 20 this state, the time of labor of locomotive engineers,
 21 locomotive firemen, conductors, trainmen, operators, and
 22 agents acting as operators employed in running or operating
 23 the locomotive engines or trains on or over such railroads
 24 or railways in this state ~~shall~~ may not at any time exceed
 25 12 consecutive hours or ~~to be on duty for more than an~~

1 aggregate of 16 hours ~~in--the--aggregate~~ in any 24-hour
 2 period. At least 8 hours ~~shall~~ must be allowed them off duty
 3 before ~~said~~ engineers, firemen, conductors, trainmen,
 4 operators, and agents acting as operators are again ordered
 5 or required to go on duty.

6 (2) Nothing in this section ~~shall~~ may be construed to
 7 allow any engineer, fireman, conductor, or trainman to
 8 desert his locomotive or train in case of accident, ~~storms~~
 9 ~~storm~~, wrecks ~~wreck~~, washouts ~~washout~~, snow blockade, or any
 10 unavoidable delay arising from like causes or to allow ~~said~~
 11 ~~such~~ engineer, fireman, conductor, or trainman to tie up any
 12 passenger or mail train between terminals.

13 (3) The provisions of this section ~~shall~~ do not apply
 14 to relief or wreck trains.

15 (4) Any railroad company or superintendent, train
 16 dispatcher, trainmaster, master mechanic, or other railroad
 17 or railway official who ~~shall--order~~ orders or require
 18 requires any locomotive engineer, locomotive fireman,
 19 conductor, trainman, operator, or agent acting as operator
 20 to labor contrary to the provisions of this section ~~shall--be~~
 21 deemed is guilty of a misdemeanor and on conviction thereof
 22 ~~shall--be-punished~~ is punishable by a fine of not less than
 23 \$100 or more than \$500 or by imprisonment of not less than
 24 30 days or more than 60 days in the county jail.

25 (5) All railroad or railway corporations operating

1 lines of railroads or railways in whole or in part in this
 2 state ~~shall--be~~ are liable in damages for all injuries to any
 3 person ~~or--persons~~ resulting from violations of the
 4 provisions of this section."

5 Section 24. Section 39-4-110, MCA, is amended to read:
 6 "39-4-110. Sugar refineries. (1) A period of not to
 7 exceed 8 hours ~~shall--constitute~~ constitutes a day's work for
 8 all persons employed in or about sugar refineries, except in
 9 a case of emergency when life and or property ~~are~~ is in
 10 danger.

11 (2) The provisions of this section ~~shall~~ do not apply
 12 to beet receiving station employees or superintendents,
 13 master mechanics, or beet-end, sugar-end, and Steffan house
 14 foremen.

15 (3) Any person, corporation, agent, manager, or
 16 employer who ~~shall--violate~~ violates the provisions of this
 17 section ~~shall--be~~ is guilty of a misdemeanor and upon
 18 conviction thereof ~~shall--be-punished~~ is punishable by a fine
 19 of not less than \$50 or more than \$600 or by imprisonment in
 20 the county jail for not less than 30 days or more than 7
 21 months or by both such fine and imprisonment."

22 Section 25. Section 39-5-102, MCA, is amended to read:
 23 "39-5-102. Definitions. Unless a different meaning is
 24 clearly required by the context, the following words and
 25 phrases, as hereinafter used in this chapter, ~~shall~~ have the

1 following meanings:

2 (1) (a) "Employment agency" is synonymous with
3 "agency" and ~~shall mean~~ ~~means~~ any business in which any part
4 of the business's gross or net income is derived from a fee
5 received from applicants and in which any of the following
6 activities are engaged in:

7 (i) the offering, promising, procuring, or attempting
8 to procure employment for applicants; or

9 (ii) the giving of information regarding where and from
10 whom employment may be obtained.

11 (b) In addition, the term "employment agency" ~~shall~~
12 ~~mean~~ ~~means~~ and ~~include~~ ~~includes~~ any person, bureau,
13 organization, or school which for profit, by advertisement
14 or otherwise, offers as one of its main objects or purposes
15 to procure employment for any person who pays for its
16 services or which collects tuition or charges for service of
17 any nature where the main object of the person paying the
18 same is to secure employment.

19 (c) The term "employment agency" ~~shall~~ ~~does~~ not
20 include labor union organizations, temporary service
21 contractors, proprietary schools, or the Montana state
22 employment agency.

23 (2) "Temporary service contractors" ~~shall mean~~ ~~means~~
24 any person, firm, association, or corporation conducting a
25 business which consists of employing individuals directly

1 for the purpose of furnishing such individuals on a
2 part-time or temporary basis to others.

3 (3) "Employer" means any person, firm, corporation,
4 partnership, or association employing or seeking to enter
5 into an arrangement to employ a person through the medium or
6 service of an employment agency.

7 (4) "Applicant", except when used to describe an
8 applicant for an employment agency license, means any
9 person, whether employed or unemployed, seeking or entering
10 into any arrangement for his employment or change of his
11 employment through the medium or service of an employment
12 agency.

13 (5) "Person" includes an individual, a firm, a
14 corporation, a partnership, or an association.

15 (6) "Director" ~~shall mean~~ ~~means~~ the commissioner of
16 the department of labor and industry."

17 Section 26. Section 39-5-202, MCA, is amended to read:

18 "39-5-202. Application for license or renewal. (1)
19 Every applicant for an employment agency license or a
20 renewal thereof shall file with the director a written
21 application stating the name and address of the applicant,
22 the street and number of the building in which the business
23 of the employment agency is to be conducted, the name of the
24 person who is to have the general management of the office,
25 the name under which the business of the office is to be

1 carried on, and whether or not the applicant is pecuniarily
 2 interested in the business to be carried on under the
 3 license, ~~she~~ the application must be signed by the
 4 applicant and sworn to before a notary public, and ~~she~~
 5 must identify anyone holding over 20% interest in the
 6 agency.

7 (2) If the applicant is a corporation, the application
 8 ~~she~~ must state the names and addresses of the officers and
 9 directors of the corporation and ~~she~~ must be signed and
 10 sworn to by the president and secretary thereof before a
 11 notary public.

12 (3) If the applicant is a partnership, the application
 13 ~~she~~ must also state the names and addresses of all
 14 partners therein and ~~she~~ must be signed and sworn to by
 15 all of them before a notary public.

16 (4) The application ~~she~~ must also state whether or
 17 not the applicant ~~is~~ at the time of making the application
 18 or has at any previous time, has been engaged in or
 19 interested in or employed by anyone engaged in the business
 20 of an employment agency.

21 (5) All applications for employment agency licenses
 22 ~~she~~ must be accompanied by a copy of the form of contract
 23 to be used between the agency and the applicant."

24 Section 27. Section 39-5-403, MCA, is amended to read:
 25 "39-5-403. Referral of violations to prosecuting

1 attorneys -- restraining actions. The director may refer
 2 such evidence as may be available to him concerning
 3 violations of this chapter or of any rule adopted hereunder
 4 to the attorney general or the prosecuting county attorney
 5 of the county wherein the alleged violation arose who may,
 6 in his discretion, with or without such a reference, in
 7 addition to any other action he might commence, bring an
 8 action in the name of the state against any person to
 9 restrain and prevent the doing of any act or practice
 10 prohibited by this chapter."

11 Section 28. Section 39-5-404, MCA, is amended to read:
 12 "39-5-404. Written assurance of discontinuance. In the
 13 enforcement of this chapter, the attorney general and/or any
 14 ~~said~~ prosecuting or the county attorney may accept an
 15 assurance of discontinuance from any person deemed in
 16 violation of any provisions of this chapter. Any such
 17 assurance shall be in writing and shall be filed with and
 18 subject to the approval of the superior district court of
 19 the county in which the alleged violator resides or has his
 20 principal place of business."

21 Section 29. Section 39-5-405, MCA, is amended to read:
 22 "39-5-405. Civil penalty for violating court order.
 23 Any person who violates the terms of any court order or
 24 temporary or permanent injunction issued pursuant to this
 25 chapter shall forfeit and pay a civil penalty of not more

1 than \$2,000. For the purpose of this section, the court
 2 issuing any injunction shall retain continuing jurisdiction
 3 and in such cases the attorney general and/or ~~or~~ the
 4 prosecuting ~~COUNTY~~ attorney acting in the name of the state
 5 may petition for the recovery of civil penalties."

6 Section 30. Section 39-6-106, MCA, is amended to read:
 7 "39-6-106. Standards-for-apprenticeship APPRENTICESHIP
 8 agreements. Standards--for--apprenticeship APPRENTICESHIP
 9 agreements are-as-follows SHALL CONTAIN:

10 (1) a statement of the trade or craft to be taught and
 11 the required hours for completion of apprenticeship, which
 12 shall must be not less than 4,000 hours of reasonably
 13 continuous employment;

14 (2) a statement of the processes in the trade or craft
 15 divisions in which the apprentice is to be taught and the
 16 approximate amount of time to be spent at each process;

17 (3) a statement of the number of hours to be spent by
 18 the apprentice in work and the number of hours to be spent
 19 in related and supplemental instruction, which instruction
 20 shall must be not less than 144 hours per year;

21 (4) a statement that apprentices shall must be not
 22 less than 16 years of age;

23 (5) a statement of the progressively increasing scale
 24 of wages to be paid the apprentice;

25 (6) provision for a period of probation during which

1 the department of labor and industry--when-authorized-by-the
 2 department--shall--be--directed--to MUST terminate an
 3 apprenticeship agreement at the request in writing of any
 4 party thereto. After the probationary period, the
 5 department--when-authorized-by--the--department--shall-be
 6 empowered-to may terminate the registration of an apprentice
 7 upon agreement of the parties.

8 (7) provision that the services of the department may
 9 be utilized for consultation regarding the settlement of
 10 differences arising out of the apprenticeship agreement
 11 where such differences cannot be adjusted locally or in
 12 accordance with the established trade procedure;

13 (8) provision that if an employer is unable to fulfill
 14 his obligation under the apprenticeship agreement he may
 15 transfer such obligation to another employer;

16 (9) such additional standards as may be prescribed in
 17 accordance with the-provisions-of this chapter."

18 Section 31. Section 39-31-103, MCA, is amended to
 19 read:

20 "39-31-103. Definitions. When used in this chapter,
 21 the following definitions apply:

22 (1) "Public employer" means the state of Montana or
 23 any political subdivision thereof, including but not limited
 24 to any town, city, county, district, school board, board of
 25 regents, public and quasi-public corporation, housing

1 authority or other authority established by law, and any
2 representative or agent designated by the public employer to
3 act in its interest in dealing with public employees.

4 (2) --"Public-employee" means a person employed by a
5 public employer in any capacity, except an elected officials
6 official, a person directly appointed by the
7 governor a supervisory employees employee and management
8 officials official, as defined in subsections (3) and (4)
9 below or members or member of any state board or commission
10 who serve serves the state intermittently, school district
11 clerks clerk and school administrators administrator,
12 registered professional nurses nurse performing service for
13 health care facilities, professional engineers engineer and
14 engineers-in-training engineer-in-training, and includes any
15 individual whose work has ceased as a consequence of or in
16 connection with any unfair labor practice or concerted
17 employee action.

18 (2) (A) "PUBLIC EMPLOYEE" MEANS:

19 (I) EXCEPT AS PROVIDED IN SUBSECTION (2)(B) OF THIS
20 SECTION, A PERSON EMPLOYED BY A PUBLIC EMPLOYER IN ANY
21 CAPACITY; AND

22 (II) AN INDIVIDUAL WHOSE WORK HAS CEASED AS A
23 CONSEQUENCE OF OR IN CONNECTION WITH ANY UNFAIR LABOR
24 PRACTICE OR CONCERNED EMPLOYEE ACTION.

25 (B) "PUBLIC EMPLOYEE" DOES NOT MEAN:

1 (I) AN ELECTED OFFICIAL;

2 (II) A PERSON DIRECTLY APPOINTED BY THE GOVERNOR;

3 (III) A SUPERVISORY EMPLOYEE, AS DEFINED IN SUBSECTION
4 (3) OF THIS SECTION;

5 (IV) A MANAGEMENT OFFICIAL, AS DEFINED IN SUBSECTION
6 (4) OF THIS SECTION;

7 (V) A MEMBER OF ANY STATE BOARD OR COMMISSION WHO
8 SERVES THE STATE INTERMITTENTLY;

9 (VI) A SCHOOL DISTRICT CLERK;

10 (VII) A SCHOOL ADMINISTRATOR;

11 (VIII) A REGISTERED PROFESSIONAL NURSE PERFORMING
12 SERVICE FOR A HEALTH CARE FACILITY;

13 (IX) A PROFESSIONAL ENGINEER; OR

14 (X) AN ENGINEER-IN-TRAINING.

15 (3) "Supervisory employee" means any individual having
16 authority in the interest of the employer to hire, transfer,
17 suspend, lay off, recall, promote, discharge, assign,
18 reward, discipline other employees, having responsibility to
19 direct them, to adjust their grievances, or effectively to
20 recommend such action, if in connection with the foregoing
21 the exercise of such authority is not of a merely routine or
22 clerical nature but requires the use of independent
23 judgment.

24 (4) "Management official" means
25 representatives a representative of management having

1 authority to act for the agency on any matters relating to
2 the implementation of agency policy.

3 (5) "Labor organization" means any organization or
4 association of any kind in which employees participate and
5 which exists for the primary purpose of dealing with
6 employers concerning grievances, labor disputes, wages,
7 rates of pay, hours of employment, fringe benefits, or other
8 conditions of employment.

9 (6) "Exclusive representative" means the labor
10 organization which has been designated by the board as the
11 exclusive representative of employees in an appropriate unit
12 or has been so recognized by the public employer.

13 (7) "Board" means the board of personnel appeals
14 provided for in 2-15-1705.

15 (8) "Person" includes one or more individuals, labor
16 organizations, public employees, associations, corporations,
17 legal representatives, trustees, trustees in bankruptcy, or
18 receivers.

19 (9) "Unfair labor practice" means any unfair labor
20 practice listed in 39-31-401 or 39-31-402.

21 (10) "Labor dispute" includes any controversy
22 concerning terms, tenure, or conditions of employment or
23 concerning the association or representation of persons in
24 negotiating, fixing, maintaining, changing, or seeking to
25 arrange terms or conditions of employment, regardless of

1 whether the disputants stand in the proximate relation of
2 employer and employee.

3 (11) "Appropriate unit" means a group of public
4 employees banded together for collective bargaining purposes
5 as designated by the board."

6 Section 32. Section 39-31-208, MCA, is amended to
7 read:

8 "39-31-208. Representation election at direction of
9 board. (1) If the board or an agent of the board, in the
10 hearing provided for in 39-31-207, finds that there is a
11 question of representation, it shall direct an election by
12 secret ballot to determine whether and by which labor
13 organization the employees desire to be represented or
14 whether they desire to have no labor organization represent
15 them and shall certify the results thereof.

16 (2) Only those labor organizations which have been
17 designated by more than 10% of the employees in the unit
18 found to be appropriate shall be placed on the ballot.

19 (3) The board or an agent of the board shall determine
20 who is eligible to vote in the election and shall establish
21 rules governing the election.

22 (4) Unless the majority vote is for no representation
23 by a labor organization and in any election where none of
24 the choices for a representative on the ballot receives a
25 majority, a runoff election shall be conducted, the ballot

1 providing for selection between the two choices receiving
2 the largest and the second largest number of valid votes
3 cast in the election.

4 (5) A labor organization which receives the majority
5 of the votes cast in an election shall be certified by the
6 board as the exclusive representative."

7 Section 33. Section 39-31-309, MCA, is amended to
8 read:

9 "39-31-309. Factfinding proceedings. (1) The fact
10 finder factfinder shall immediately establish dates and
11 place of hearings.

12 (2) The public employer and the exclusive
13 representative shall--be are the only proper parties to
14 factfinding proceedings.

15 (3) Upon request of either party of or the fact-finder
16 factfinder, the board shall issue subpoenas for hearings
17 conducted by the fact--finder factfinder. The fact-finder
18 factfinder may administer oaths.

19 (4) Upon completion of the hearings, but no later than
20 20 days from the day date of appointment, the fact--finder
21 factfinder shall make written findings of facts and
22 recommendations for resolution of the dispute and shall
23 serve such findings on the public employer and the exclusive
24 representative. The fact--finder factfinder may make this
25 report public 5 days after it is submitted to the parties.

1 If the dispute is not resolved 15 days after the report is
2 submitted to the parties, the report shall must be made
3 public.

4 (5) The cost of factfinding proceedings shall must be
5 equally borne by the board and the parties concerned.

6 (6) Nothing in 39-31-307 through 39-31-310 prohibits
7 the fact--finder factfinder from endeavoring to mediate the
8 dispute in which he has been selected or appointed as fact
9 finder factfinder."

10 Section 34. Section 39-31-401, MCA, is amended to
11 read:

12 "39-31-401. Unfair labor practices of public employer.
13 It is an unfair labor practice for a public employer to:

14 (1) interfere with, restrain, or coerce employees in
15 the exercise of the rights guaranteed in 39-31-201, and
16 39-31-204 through 39-31-206, or 39-31-303;

17 (2) dominate, interfere, or assist in the formation or
18 administration of any labor organization; However however,
19 subject to rules adopted by the board under 39-31-104, an
20 employer is not prohibited from permitting employees to
21 confer with him during working hours without loss of time or
22 pay;

23 (3) discriminate in regard to hire or tenure of
24 employment or any term or condition of employment in order
25 to encourage or discourage membership in any labor

1 organizations; However ~~however~~, nothing in this chapter or
 2 in any other statute of this state precludes a public
 3 employer from making an agreement with an exclusive
 4 representative to require as a condition of employment,
 5 that an employee who is not or does not become a union
 6 member ~~shall be required as a condition of employment~~, to
 7 must have an amount equal to the union initiation fee and
 8 monthly dues deducted from his wages in the same manner as
 9 checkoff of union dues;

10 (4) discharge or otherwise discriminate against an
 11 employee because he has signed, or filed an affidavit,
 12 petition, or complaint or given any information or testimony
 13 under this chapter; or

14 (5) refuse to bargain collectively in good faith with
 15 an exclusive representative."

16 Section 35. Section 39-31-403, MCA, is amended to
 17 read:

18 "39-31-403. Remedies for unfair labor practices.
 19 Violations of the provisions of 39-31-401 or 39-31-402 are
 20 unfair labor practices remediable by the board ~~in--the~~
 21 following-manner pursuant to this part."

22 Section 36. Section 39-51-201, MCA, is amended to
 23 read:

24 "39-51-201. General definitions. As used in this
 25 chapter, unless the context clearly requires otherwise, the

1 following definitions apply:

2 (1) The word "administrator" refers to a person
 3 appointed by the commissioner of labor and industry to
 4 direct and administer the unemployment compensation laws and
 5 federal laws falling within the administrator's
 6 jurisdiction.

7 (2) "Annual payroll" means the total amount of wages
 8 paid by an employer, regardless of the time of payment, for
 9 employment during a calendar year.

10 (3) "Annual total payroll" means the total of the 4
 11 quarters of total payrolls of an employer preceding the
 12 computation date as fixed herein.

13 (4) "Base period" means the first four of the last
 14 five completed calendar quarters immediately preceding the
 15 first day of an individual's benefit year. However, in the
 16 case of a combined-wage claim pursuant to the arrangement
 17 approved by the secretary of labor of the United States, the
 18 base period shall be that applicable under the unemployment
 19 law of the paying state.

20 (5) "Benefits" means the money payments payable to an
 21 individual, as provided in this chapter, with respect to his
 22 unemployment.

23 (6) "Benefit year", with respect to any individual,
 24 means the 52 consecutive-week period beginning with the
 25 first day of the calendar week in which such individual

1 files a valid claim and thereafter the 52 consecutive-week
 2 period beginning with the first day of the calendar week in
 3 which such individual files his next valid claim after the
 4 termination of his last preceding benefit year. If such
 5 filing ~~shall result~~ results in an overlapping of benefit
 6 years, the new benefit year ~~shall begin upon~~ begins on the
 7 first Sunday following the expiration of his ~~last~~ preceding
 8 benefit year. However, in the case of a combined-wage claim
 9 pursuant to the arrangement approved by the secretary of
 10 labor of the United States, the base period ~~shall be that~~ is
 11 the period applicable under the unemployment law of the
 12 paying state.

13 (7) "Board" means the board of labor appeals provided
 14 for in Title 2, chapter 15, part 17.

15 (8) "Calendar quarter" means the period of 3
 16 consecutive calendar months ending on March 31, June 30,
 17 September 30, or December 31.

18 (9) "Contributions" means the money payments to the
 19 state unemployment compensation fund required by this
 20 chapter.

21 (10) "Division" means the employment security division
 22 of the department of labor and industry provided for in
 23 Title 2, chapter 15, part 17.

24 (11) "Employing unit" means any individual or type-of
 25 organization, including the state government, any of its

1 political subdivisions or instrumentalities, any
 2 partnership, association, trust, estate, joint-stock
 3 company, insurance company, or corporation, whether domestic
 4 or foreign, or the receiver, trustee in bankruptcy, trustee
 5 or successor thereof, or the legal representative of a
 6 deceased person which has or subsequent to January 1, 1936,
 7 had in its employ one or more individuals performing
 8 services for it within this state, except as provided under
 9 subsections (8) and (9) of 39-51-203~~v~~a and ~~---at~~ All
 10 individuals performing services within this state for any
 11 employing unit which maintains two or more separate
 12 establishments within this state ~~shall--be--deemed~~ are
 13 considered to be employed by a single employing unit for all
 14 the purposes of this chapter. Each individual employed to
 15 perform or assist in performing the work of any agent or
 16 employee of an employing unit ~~shall--be~~ is deemed to be
 17 employed by such employing unit for the purposes of this
 18 chapter, whether such individual was hired or paid directly
 19 by such employing unit or by such agent or employee,
 20 provided the employing unit has actual or constructive
 21 knowledge of the work.

22 (12) "Employment office" means a free public employment
 23 office or branch thereof operated by this state or
 24 maintained as a part of a state-controlled system of public
 25 employment offices or such other free public employment

1 offices operated and maintained by the United States
2 government or its instrumentalities as the division may
3 approve.

4 (13) "Fund" means the unemployment compensation fund
5 established by this chapter to which all contributions and
6 payments in lieu of contributions are required and from
7 which all benefits provided under this chapter shall be
8 paid.

9 (14) "Gross misconduct" means a criminal act, other
10 than a violation of a motor vehicle traffic law, for which
11 an individual has been convicted in a criminal court or has
12 admitted or conduct which demonstrates a flagrant and wanton
13 disregard of and for the rights or title or interest of a
14 fellow employee or his employer.

15 (15) "Hospital" means an institution which has been
16 licensed, certified, or approved by the state as a hospital.

17 (16) (a) "Institution of higher education", for the
18 purposes of this part, means an education educational
19 institution which:

20 (i) admits as regular students only individuals having
21 a certificate of graduation from a high school or the
22 recognized equivalent of such a certificate;

23 (ii) is legally authorized in this state to provide a
24 program of education beyond high school;

25 (iii) provides an educational program for which it

1 awards a bachelor's or higher degree or provides a program
2 which is acceptable for full credit toward such a degree, a
3 program of post-graduate postgraduate or post-doctoral
4 postdoctoral studies, or a program of training to prepare
5 students for gainful employment in a recognized occupation;
6 and

7 (iv) is a public or other nonprofit institution.

8 (b) Notwithstanding any of the foregoing provisions of
9 this subsection, all colleges and universities in this state
10 are institutions of higher education for purposes of this
11 part.

12 (17) "State" includes, in addition to the states of the
13 United States of America, the District of Columbia, Puerto
14 Rico, the Virgin Islands, and the Dominion of Canada.

15 (18) "Unemployment compensation administration fund"
16 means the unemployment compensation administration fund
17 established by this chapter from which administrative
18 expenses under this chapter shall be paid.

19 (19) (a) "Wages" means all remuneration payable for
20 personal services, including commissions and bonuses and the
21 cash value of all remuneration payable in any medium other
22 than cash. The reasonable cash value of remuneration
23 payable in any medium other than cash shall be estimated and
24 determined in accordance with rules prescribed by the
25 division.

1 (b) The term "wages" ~~shall~~ **does** not include:

2 (i) the amount of any payment made to or on behalf of

3 an employee by an employer on account of:

4 (A) retirement;

5 (B) sickness or accident disability;

6 (C) medical and hospitalization expenses in connection

7 with sickness or accident disability; or

8 (D) death;

9 (ii) remuneration paid by any county welfare office

10 from welfare public assistance funds for services performed

11 at the direction and request of such county welfare office.

12 (20) "Week" means a period of 7 consecutive calendar

13 days ending at midnight on Saturday.

14 (21) An individual's "weekly benefit amount" means the

15 amount of benefits he would be entitled to receive for 1

16 week of total unemployment.

17 ~~{22} The word "division" throughout the unemployment~~

18 ~~statutes refers to a unit of the Montana state department of~~

19 ~~labor and industry~~

20 ~~{23} The words "board of labor appeals" used in this~~

21 ~~chapter mean three persons appointed by the governor who are~~

22 ~~not public employees but who are attached to the Montana~~

23 ~~state department of labor and industry. The function of~~

24 ~~said board is to act in a quasi-judicial capacity for the~~

25 ~~hearing of disputes concerning the administration of~~

1 ~~Montana's unemployment insurance laws~~

2 Section 37. Section 39-51-202, MCA, is amended to

3 read:

4 "39-51-202. Employer defined. "Employer" means:

5 (1) any employing unit whose total annual payroll

6 within either the current or preceding calendar year exceeds

7 the sum of \$500;

8 (2) any individual or employing unit which acquired

9 the organization, trade, or business or substantially all of

10 the assets thereof of another which at the time of such

11 acquisition was an employer subject to this chapter;

12 (3) any individual or employing unit which acquired

13 the organization, trade, or business or substantially all

14 the assets thereof of another employing unit not an employer

15 subject to this chapter and which, if subsequent to such

16 acquisition it were treated as a single unit with such other

17 employing unit, would be an employer under subsection (1) of

18 this section;

19 (4) any employing unit not an employer by reason of

20 any other subsection of this section for which, within

21 either the current or preceding calendar year, service is or

22 was performed with respect to which such employing unit is

23 liable for any federal tax against which credit may be

24 taken for contributions paid into a state unemployment fund

25 or an employing unit which, as a condition for approval of

1 this chapter for full tax credit against the tax imposed by
 2 the Federal Unemployment Tax Act, is required pursuant to
 3 such act to be an employer under this chapter;

4 (5) any employing unit which, having become an
 5 employer under subsection (1), (2), (3), or (4) has not,
 6 under 39-51-1101 ~~or--39-51-1102~~, ceased to be an employer
 7 subject to this chapter; or

8 (6) for the effective period of its election pursuant
 9 to 39-51-1102, any other employing unit which has elected to
 10 become fully subject to this chapter."

11 Section 38. Section 39-51-203, MCA, is amended to
 12 read:

13 "39-51-203. Employment defined. (1) "Employment",
 14 subject to other provisions of this section, means service
 15 by an individual or by an officer of a corporation,
 16 including service in interstate commerce, performed for
 17 wages or under any contract of hire, written or oral,
 18 express or implied.

19 (2) (a) The term "employment" ~~shall include~~ includes
 20 an individual's entire service performed within or both
 21 within and without this state if:

22 (i) the service is localized in this state; or

23 (ii) the service is not localized in any state but some
 24 of the service is performed in this state and:

25 (A) the base of operations or, if there is no base of

1 operations, then the place from which such service is
 2 directed or controlled, is in this state; or

3 (B) the base of operations or place from which such
 4 service is directed or controlled is not in any state in
 5 which some part of the service is performed, but the
 6 individual's residence is in this state.

7 (b) Service ~~shall be deemed~~ is considered to be
 8 localized within a state if:

9 (i) the service is performed entirely within such
 10 state; or

11 (ii) the service is performed both within and without
 12 such state, but the service performed without such state is
 13 incidental to the individual's service within the state, for
 14 example, is temporary or transitory in nature or consists of
 15 isolated transactions.

16 (3) Service not covered under subsection (2) of this
 17 section and performed entirely without this state with
 18 respect to no part of which contributions are required and
 19 paid under an unemployment compensation law of any other
 20 state or of the federal government ~~shall be deemed~~ is
 21 considered to be employment subject to this chapter if the
 22 individual performing such services is a resident of this
 23 state and the division approves the election of the
 24 employing unit for whom such services are performed that the
 25 entire service of such individual ~~shall be deemed~~ is

1 ~~considered~~ to be employment subject to this chapter.

2 (4) Services ~~Service~~ performed by an individual for
3 wages ~~shall-be-deemed is considered~~ to be employment subject
4 to this chapter unless and until it is shown to the
5 satisfaction of the division that:

6 (a) such individual has been and will continue to be
7 free from control or direction over the performance of such
8 services, both under his contract and in fact;

9 (b) such service is either outside the usual course of
10 the business for which such service is performed or that
11 such service is performed outside of all the places of
12 business of the enterprise for which such service is
13 performed; and

14 (c) such individual is customarily engaged in an
15 independently established trade, occupation, profession, or
16 business.

17 (5) The term "employment" ~~shall--include~~ includes
18 service performed after December 31, 1971, by an individual
19 in the employ of this state or any of its instrumentalities
20 (or in the employ of this state and one or more other states
21 or their instrumentalities) for a hospital or institution of
22 higher education located in this state. ~~Effective-after-July~~
23 ~~1-1975,--the~~ The term "employment" shall-include includes
24 service performed after July 1, 1975, by all individuals,
25 including without limitations those individuals who work

1 for the state of Montana, its university, any of its
2 colleges, public schools, components or units thereof, or
3 any local government unit and one or more other states or
4 their instrumentalities or political subdivisions whose
5 services are compensated by salary or wages,

6 (6) The term "employment" ~~shall--include~~ includes
7 service performed after December 31, 1971, by an individual
8 in the employ of a religious, charitable, scientific,
9 literary, or educational organization.

10 (7) (a) The term "employment" ~~shall--include~~ includes
11 the service of an individual who is a citizen of the United
12 States performed outside the United States, except in
13 Canada, after December 31, 1971, in the employ of an
14 American employer, other than service which is deemed
15 considered employment under the provisions of subsection (2)
16 of this section or the parallel provisions of another
17 state's law, if:

18 (i) the employer's principal place of business in the
19 United States is located in this state;

20 (ii) the employer has no place of business in the
21 United States, but:

22 (A) the employer is an individual who is a resident of
23 this state;

24 (B) the employer is a corporation which is organized
25 under the laws of this state; or

1 (C) the employer is a partnership or a trust and the
2 number of the partners or trustees who are residents of this
3 state is greater than the number who are residents of any
4 other state; or

5 (iii) none of the criteria of sections (7)(a)(i) and
6 (7)(a)(ii) of this subsection ~~is~~ are met but the employer
7 has elected coverage in this state or, the employer having
8 failed to elect coverage in any state, the individual has
9 filed a claim for benefits based on such service under the
10 law of this state.

11 (b) An "American employer", for purposes of this
12 subsection, means a person who is:

13 (i) an individual who is a resident of the United
14 States;

15 (ii) a partnership if two-thirds or more of the
16 partners are residents of the United States;

17 (iii) a trust if all of the trustees are residents of
18 the United States; or

19 (iv) a corporation organized under the laws of the
20 United States or of any state.

21 (8) Agricultural labor exempted under 39-51-204 ~~shall~~
22 be is considered employment subject to this chapter
23 effective January 1, 1978, whenever the employing unit pays
24 ~~\$40,000~~ \$20,000 or more in cash to workers for agricultural
25 labor in any quarter in the current or preceding calendar

1 year or employs ~~20~~ 10 or more workers in agricultural labor
2 on 20 days in 20 different weeks during the current or
3 preceding calendar year. If an employer is otherwise
4 subject to the chapter and has agricultural employment, all
5 employees are covered under the chapter regardless of the
6 amount of money expended for agricultural purposes.

7 (9) Domestic service exempted under 39-51-204(1)(b)
8 ~~shall--be is~~ considered employment subject to this chapter
9 effective January 1, 1978, whenever the employing unit pays
10 \$1,000 or more in cash for domestic service in any quarter
11 during the current or preceding calendar year. If an
12 employer is otherwise subject to the chapter and has
13 domestic employment, all employees are covered under the
14 chapter regardless of the amount of money expended for
15 domestic purposes."

16 Section 39. Section 39-51-204, MCA, is amended to
17 read:

18 "39-51-204. Exclusions from definition of employment.
19 (1) The term "employment" ~~shall~~ does not include:

20 (a) agricultural labor, except as provided in
21 39-51-203(8);

22 (b) domestic service in a private home, local college
23 club, or local chapter of a college fraternity or sorority,
24 except as provided in 39-51-203(9);

25 (c) service performed as an officer or member of the

1 crew of a vessel on the navigable waters of the United
2 States;

3 (d) service performed by an individual in the employ
4 of his son, daughter, or spouse and service performed by a
5 child under the age of 18 in the employ of his father or
6 mother;

7 (e) service performed in the employ of any other state
8 or its political subdivisions or of the United States
9 government or of an instrumentality of any other state or
10 states or their political subdivisions or of the United
11 States, except that national banks organized under the
12 national banking law shall not be entitled to exemption
13 under this subsection and shall be subject to this chapter
14 the same as state banks, provided that such service is
15 excluded from employment as defined in the Federal
16 Unemployment Tax Act by section 3306(c)(7) of that act;

17 (f) service with respect to which unemployment
18 compensation is payable under an unemployment compensation
19 system established by an act of congress, provided that the
20 division ~~is hereby authorized and directed to~~ must enter
21 into agreements with the proper agencies under such act of
22 congress, which agreements shall become effective ~~10 days~~
23 ~~after publication thereof~~ in the manner prescribed in
24 ~~39-51-302 for general rules~~ the Montana Administrative
25 Procedure Act for the adoption of rules, to provide

1 reciprocal treatment to individuals who have, after
2 acquiring potential rights to benefits under this chapter,
3 acquired rights to unemployment compensation under such act
4 of congress or who have, after acquiring potential rights to
5 unemployment compensation under such act of congress,
6 acquired rights to benefits under this chapter;

7 (g) services performed in the delivery and
8 distribution of newspapers or shopping news from house to
9 house and business establishments by an individual under the
10 age of 18 years, but not including the delivery or
11 distribution to any point or points for subsequent delivery
12 or distribution;

13 (h) services performed by real estate, securities, and
14 insurance salesmen paid solely by commissions and without
15 guarantee of minimum earnings;

16 (i) service performed in the employ of a school,
17 college, or university if such service is performed by a
18 student who is enrolled and is regularly attending classes
19 at such school, college, or university or by the spouse of
20 such a student if such spouse is advised, at the time such
21 spouse commences to perform such service, that the
22 employment of such spouse to perform such service is
23 provided under a program to provide financial assistance to
24 such student by such school, college, or university and such
25 employment will not be covered by any program of

1 unemployment insurance;

2 (j) service performed by an individual under the age
3 of 22 who is enrolled at a nonprofit or public educational
4 institution, which normally maintains a regular faculty and
5 curriculum and normally has a regularly organized body of
6 students in attendance at the place where its educational
7 activities are carried on, as a student in a full-time
8 program taken for credit at such institution which combines
9 academic instruction with work experience if such service is
10 an integral part of such program and such institution has so
11 certified to the employer, except that this subsection shall
12 not apply to service performed in a program established for
13 or on behalf of an employer or group of employers;

14 (k) service performed in the employ of a hospital if
15 such service is performed by a patient of the hospital.

16 (2) "Employment" shall ~~does~~ not include elected public
17 officials.

18 (3) For the purposes of 39-51-203(6), the term
19 "employment" does not apply to service performed:

20 (a) in the employ of a church or convention or
21 association of churches or an organization which is operated
22 primarily for religious purposes and which is operated,
23 supervised, controlled, or principally supported by a church
24 or convention or association of churches;

25 (b) by a duly ordained, commissioned, or licensed

1 minister of a church in the exercise of his ministry or by a
2 member of a religious order in the exercise of duties
3 required by such order;

4 (c) in the employ of a school which is not an
5 institution of higher education, prior to December 31, 1977;

6 (d) in a facility conducted for the purpose of
7 carrying out a program of rehabilitation for individuals
8 whose earning capacity is impaired by age or physical or
9 mental deficiency or injury or providing remunerative work
10 for individuals who, because of their impaired physical or
11 mental capacity, cannot be readily absorbed in the
12 competitive labor market by an individual receiving such
13 rehabilitation or remunerative work;

14 (e) as part of an unemployment work-relief or
15 work-training program assisted or financed in whole or in
16 part by a federal agency or any agency of a state or
17 political subdivision thereof by an individual receiving
18 such work relief or work training; or

19 (f) for a state prison or other state correctional or
20 custodial institution by an inmate of that institution."

21 ~~Section 41, Section 39-51-302, MCA, is amended to~~
22 ~~read:~~

23 ~~"39-51-302--Regulations--and-general--and--special--rules~~
24 ~~Adoption-of-rules--General--and--special--rules--may--be--adopted,~~
25 ~~amended--or--rescinded--by--the--division--only--after--public~~

1 hearing--or--opportunity--to--be--heard--thereon--of--which--proper
 2 notice--has--been--given--General--rules--shall--become--effective
 3 ~~10--days--after--filing--with--the--secretary--of--state--and~~
 4 ~~publication--in--one--or--more--newspapers--of--general--circulation~~
 5 ~~in--this--state--Special--rules--shall--become--effective--10--days~~
 6 ~~after--notification--to--or--mailing--to--the--last--known--address~~
 7 ~~of--the--individuals--or--concerns--affected--thereby--Regulations~~
 8 ~~Rules--may--be--adopted--amended--or--rescinded--repealed--by--the~~
 9 ~~division--and--shall--become--effective--in--the--manner--and--at--the~~
 10 ~~time--prescribed--by--law--pursuant--to--the--Montana~~
 11 ~~Administrative--Procedure--Act."~~

12 Section 40. Section 39-51-304, MCA, is amended to
 13 read:

14 "39-51-304. Personnel. (1) ~~Subject to other provisions~~
 15 ~~of this chapter~~ Except as otherwise provided, the division
 16 is authorized to appoint, fix the compensation, and
 17 prescribe the duties and powers of such officers,
 18 accountants, attorneys, experts, and other persons as may be
 19 necessary in the performance of its duties under this
 20 chapter. The division may delegate to any such persons such
 21 power and authority as it ~~deems~~ considers reasonable and
 22 proper for the effective administration of this chapter and
 23 may in its discretion bond any person handling money or
 24 signing checks hereunder.

25 ~~{2}--The--division--shall--classify--positions--under--this~~

1 chapter--and--shall--establish--salary--schedules--and--minimum
 2 personnel--standards--for--the--positions--so--classified--The
 3 division--shall--provide--for--the--holding--of--examinations--to
 4 determine--the--qualifications--of--applicants--for--the--positions
 5 so--classified--and--except--for--temporary--appointments--of--not
 6 to--exceed--6--months--in--duration--such--personnel--shall--be
 7 appointed--on--the--basis--of--efficiency--and--fitness--as
 8 determined--in--such--examinations.

9 ~~{3}{21}~~ No person who is an officer or committee member
 10 of any political party organization or who holds or is a
 11 candidate for any public office shall may be appointed or
 12 employed under this chapter.

13 ~~{4}{13}~~ The division shall ~~establish--and--enforce--fair~~
 14 ~~and--reasonable--regulations--for--appointments--promotions--and~~
 15 ~~demotions--based--upon--ratings--of--efficiency--and--fitness--and~~
 16 ~~for--terminations--for--cause~~ hire in accordance with merit
 17 system principles adopted by the merit system council."

18 Section 41. Section 39-51-309, MCA, is amended to
 19 read:

20 "39-51-309. Representation of division and state in
 21 court. (1) In any civil action to enforce the provisions of
 22 this chapter the division and the state may be represented
 23 by any qualified attorney who is employed by the division
 24 and is designated by it for this purpose or, at the
 25 division's or board's request, by the attorney general.

1 (2) All criminal actions for violation of any
 2 provision of this chapter or of any rules issued pursuant
 3 thereto shall be prosecuted by the attorney general of the
 4 state or, at his request and under his direction, by the
 5 prosecuting county attorney of the county wherein the crime
 6 was committed."

7 Section 42. Section 39-51-401, MCA, is amended to
 8 read:

9 "39-51-401. Unemployment compensation account --
 10 establishment and control. There is hereby established
 11 separate and apart from all public money or funds of this
 12 state an account in the agency fund known as the
 13 unemployment compensation account, which shall be
 14 administered by the division exclusively for the purposes of
 15 this chapter. Any reference to the unemployment compensation
 16 fund in this code shall be taken to mean means the
 17 unemployment compensation account in the agency fund. All
 18 money in the account shall be mingled and undivided. This
 19 account shall consist of:

20 (1) all contributions collected under this chapter
 21 inclusive of voluntary contributions as provided in
 22 [87-109(c)(4)-R&M-1947] and payments made in lieu of
 23 contributions as provided in 39-51-1106 subsections (2) and
 24 (3) of 39-51-1106;

25 (2) interest earned upon any money in the account;

1 (3) any property or securities acquired through the
 2 use of money belonging to the account;

3 (4) all earnings of such property or securities; and

4 (5) all money credited to this state's account in the
 5 unemployment trust fund pursuant to section 903 of the
 6 Social Security Act, as amended."

7 Section 43. Section 39-51-402, MCA, is amended to
 8 read:

9 "39-51-402. Unemployment compensation account -- state
 10 treasurer ex officio custodian -- accounts and deposits. (1)
 11 The state treasurer shall be is the ex officio the treasurer
 12 and custodian of the unemployment compensation account and
 13 shall administer such account in accordance with the
 14 directions of the division and shall issue his warrants upon
 15 it in accordance with such regulations as the division shall
 16 prescribe. He shall maintain within the account three
 17 separate accounts:

18 (a) a clearing account;

19 (b) an unemployment trust fund account; and

20 (c) a benefit account.

21 (2) All money payable to the unemployment compensation
 22 account, upon receipt thereof by the division, shall must be
 23 forwarded to the treasurer who shall immediately deposit
 24 them it in the clearing account. Refunds payable pursuant to
 25 39-51-1104, 39-51-1105, 39-51-1110, 39-51-1107, or

1 39-51-1303-through-39-51-1306 may be paid from the clearing
 2 account upon warrants issued by the treasurer under the
 3 direction of the division. After clearance thereof, all
 4 other money in the clearing account ~~shall~~ must be
 5 immediately deposited with the secretary of the treasury of
 6 the United States to the credit of the account of this state
 7 in the unemployment trust fund, established and maintained
 8 pursuant to section 904 of the Social Security Act, as
 9 amended, any provision of law in this state relating to the
 10 deposit, administration, release, or disbursement of money
 11 in the possession or custody of this state to the contrary
 12 notwithstanding.

13 (3) The benefit account ~~shall consist~~ consists of all
 14 money requisitioned for the payment of benefits from this
 15 state's account in the unemployment trust fund.

16 (4) Except as herein otherwise provided, money in the
 17 clearing and benefit accounts may be deposited by the
 18 treasurer, under the direction of the division, in any bank
 19 or public depository in which general funds of the state may
 20 be deposited, but no public deposit insurance charge or
 21 premium ~~shall~~ may be paid out of the unemployment
 22 compensation account.

23 (5) The treasurer shall give a separate bond
 24 conditioned upon the faithful performance of his duties as
 25 custodian of the unemployment compensation account in an

1 amount fixed by the division and in a form prescribed by law
 2 or approved by the attorney general. Premiums for ~~said~~ the
 3 bond shall be paid from the unemployment compensation
 4 administration account."

5 Section 44. Section 39-51-1109, MCA, is amended to
 6 read:

7 "39-51-1109. Contribution appeals. Any person
 8 aggrieved by any decision, determination, or redetermination
 9 of the division involving contribution liability,
 10 contribution rate, application for refund, or the charging
 11 of benefit payments to employers making payment in lieu of
 12 contributions is entitled to a review by the division or its
 13 authorized representative, hereinafter referred to as a
 14 deputy. The decision of the deputy ~~shall be deemed to be~~ is
 15 considered the decision of the division. The division or the
 16 deputy conducting the review may refer the matter to an
 17 appeals referee, may decide the application for review on
 18 the basis of such facts and information as may be obtained,
 19 or may hear argument to secure further facts. After such
 20 review, notice of the decision ~~shall~~ must be given to the
 21 employing unit. Such decision made pursuant to such review
 22 ~~shall be deemed to be~~ is considered the final decision of
 23 the division unless the employing unit or any other such
 24 interested party, within 5 calendar days after delivery of
 25 such notification or within 7 calendar days after such

1 notification was mailed to his ~~test--known~~ last-known
 2 address, files an appeal from this decision. Such appeal
 3 will be referred to an appeals referee who shall make his
 4 decisions with respect thereto in accordance with the
 5 procedure prescribed in ~~[07-107(e)]~~ 39-51-2503."

6 Section 45. Section 39-51-1201, MCA, is amended to
 7 read:

8 "39-51-1201. Experience rating and classification of
 9 employers. (1) The division shall for each calendar year
 10 classify employers in accordance with their actual
 11 contributions and unemployment, experience and shall
 12 determine for each employer the experience rate which shall
 13 apply to him throughout the calendar year. The division
 14 shall apply such form of classification or experience rating
 15 system which is best calculated to rate individually and
 16 most equitably the employment for each employer and to
 17 encourage the stabilization of employment.

18 (2) In making such classification, the division shall
 19 take into account each of the following factors relating to
 20 the unemployment hazard shown by each employer on the basis
 21 of:

22 (a) number of years the employer has paid
 23 contributions;

24 (b) average quarterly percentage declines in total
 25 payrolls for the last 3 fiscal years ending June 30; and

1 (c) average annual net percentage declines in total
 2 payrolls for the last 3 fiscal years ending June 30, the
 3 computation date.

4 (3) Wages shall be adjusted in the determination of
 5 the annual and quarterly decrease percentages of any
 6 employer's payroll in whose establishment there was in any
 7 year in the qualifying period of such employer a stoppage of
 8 work due to a strike which caused a decrease in such
 9 employer's payroll of such magnitude that his actual
 10 quarterly and annual payroll caused by such a decrease or
 11 decreases when used with other annual and quarterly payroll
 12 decreases, if any, in his qualifying period would cause an
 13 increase in such employer's contribution rate. An
 14 employer's adjusted quarterly payroll for that quarter in
 15 which such stoppage of work existed shall be determined by
 16 multiplying each such payroll or adjusted payroll for the
 17 quarter immediately preceding the quarter in which such
 18 stoppage of work existed by the average quarterly variation
 19 ratio. The average quarterly variation ratio shall be
 20 computed by:

21 (a) dividing the payroll or, if adjusted, the adjusted
 22 payroll for that quarter in each of the prior years of an
 23 employer's qualifying period which corresponds to the
 24 respective quarter in which a stoppage of work due to a
 25 strike existed by the payroll or adjusted payroll for the

1 respective quarter immediately preceding such corresponding
2 quarter; and

3 (b) totaling the ratio thus obtained and dividing by
4 the number of such ratios."

5 Section 46. Section 39-51-1303, MCA, is amended to
6 read:

7 "39-51-1303. Collection of unpaid contributions by
8 civil action. (1) If, after due notice, any employer
9 defaults in any payment of contributions or interest
10 thereon, the amount due ~~shall~~ **must** be collected by civil
11 action in the name of the division, Montana department of
12 labor and industry, and the employer adjudged in default
13 shall pay the costs of such action.

14 (2) Civil actions brought under this section to
15 collect contributions or interest thereon from an employer
16 ~~shall~~ **must** be heard by the court at the earliest possible
17 date and ~~shall~~ **must** be **ARE** entitled to preference upon the
18 calendar of the court over all other civil actions except
19 petitions for judicial review under this chapter and cases
20 arising under the workers' compensation law of this state.

21 (3) Action ~~an action~~ for the collection of
22 contributions due ~~shall~~ **must** be brought within 5 years after
23 the due date of such contributions, ~~otherwise-to-be or by II~~
24 ~~is barred as provided in [93-2604]."~~

25 Section 47. Section 39-51-2104, MCA, is amended to

1 read:

2 "39-51-2104. General benefit eligibility conditions.
3 An unemployed individual ~~shall~~ **is** eligible to receive
4 benefits for any week of total unemployment within his
5 benefit year only if the division finds that:

6 (1) he has registered for work at and thereafter has
7 continued to report at an employment office in accordance
8 with such regulation as the division may prescribe, except
9 that the division may, by regulation, prescribe that such
10 ~~types--of in cases or situations with respect to in~~ which it
11 ~~finds that--compliance--with~~ such requirements ~~would--be~~
12 ~~oppressive or would--be~~ inconsistent with the purposes of
13 this chapter. ~~provide--for--registration~~ **an unemployed**
14 **individual may register** and reporting ~~report~~ for work by
15 mail or through other governmental agencies;

16 (2) he has made a claim for benefits in accordance
17 with the provisions of 39-51-2401;

18 (3) he is able to work and is available for work and
19 is seeking work; provided, however, that no claimant ~~shall~~
20 **is** considered ineligible in any week of unemployment for
21 failure to comply with the provisions of this subsection if
22 such failure is due to an illness or disability which occurs
23 after he has registered for work and no suitable work has
24 been offered to such claimant after the beginning of such
25 illness or disability;

1 (4) prior to any week for which he claims benefits he
 2 has been totally unemployed for a waiting period of 1 week.
 3 However, if claimant's benefit year expires during a period
 4 of compensable unemployment, claimant will continue to
 5 receive weekly benefits in a new benefit year, if otherwise
 6 eligible, without interruption to serve the waiting week for
 7 the new benefit year but will thereafter be required to
 8 serve the waiting week before receiving benefits during
 9 subsequent unemployment in the new benefit year. No week
 10 ~~shall--be~~ is counted as a week of total unemployment for the
 11 purposes of this subsection:

12 (a) if benefits have been paid with respect thereto;

13 (b) unless the individual was eligible for benefits
 14 with respect thereto;

15 (c) unless it occurs within the benefit year of the
 16 claimant;

17 (d) unless it occurs after benefits first could become
 18 payable to any individual under this chapter."

19 Section 48. Section 39-51-2108, MCA, is amended to
 20 read:

21 "39-51-2108. Payment of benefits based on service in
 22 public, charitable, or educational organizations. Benefits
 23 based on service in employment defined in 39-51-203
 24 subsections (5) and (6) of 39-51-203 and 39-51-204
 25 subsections (2) and (3) ~~and [07-110(d) v-R v 6 M v-1947]--shall~~

1 ~~be of 39-51-204~~ are payable in the same amount, on the same
 2 terms, and subject to the same conditions as compensation
 3 payable on the basis of other service subject to this
 4 chapter, except that benefits based on service in an
 5 instructional, research, or principal administrative
 6 capacity for an educational institution ~~shall~~ may not be
 7 paid to an individual for any week of unemployment which
 8 begins during the period between 2 successive academic years
 9 or during a similar period between 2 regular terms, whether
 10 or not successive, or during a period of paid sabbatical
 11 leave provided for in the individual's contract if the
 12 individual has a contract to perform services in any such
 13 capacity for any such educational institution for both such
 14 academic years or both such terms."

15 Section 49. Section 39-51-2304, MCA, is amended to
 16 read:

17 "39-51-2304. Disqualification for failure to apply for
 18 or to accept suitable work. (1) Effective April 1, 1977, an
 19 individual ~~shall--be~~ is disqualified for benefits if he
 20 ~~failed~~ fails without good cause either to apply for
 21 available and suitable work when so directed by the
 22 employment office or the division or to accept suitable work
 23 offered to him which he is physically able and mentally
 24 qualified to perform or to return to his customary
 25 self-employment, if any, when so directed by the division.

1 Such disqualification ~~shall continue~~ continues for the week
 2 in which such failure occurred occurs and until he ~~the~~
 3 individual has performed services, other than
 4 self-employment, for which remuneration is received equal to
 5 or in excess of his weekly benefit amount in 6 separate
 6 weeks subsequent to the date the act causing the
 7 disqualification occurred, with 6 weeks' reduction in
 8 benefit duration, as determined by the division, provided he
 9 has not left this work under disqualifying circumstances.

10 (2) In determining whether or not any work is suitable
 11 for an individual, the division shall consider the degree of
 12 risk involved to his health, safety, and morals, his
 13 physical fitness and prior training, his experience and
 14 previous earnings, his length of unemployment and prospects
 15 for securing local work in his customary occupation, and the
 16 distance of the available work from his residence.

17 (3) Notwithstanding any other provisions of this
 18 chapter, no work ~~shall~~ may be deemed considered suitable and
 19 benefits ~~shall~~ may not be denied under this chapter to any
 20 otherwise eligible individual for refusing to accept new
 21 work under any of the following conditions:

22 (a) if ~~the~~ position offered is vacant due directly to
 23 a strike, lockout, or other labor dispute;

24 (b) if the wages, hours, or other conditions of the
 25 work offered are substantially less favorable to the

1 individual than those prevailing for similar work in the
 2 locality;

3 (c) if, as a condition of being employed, the
 4 individual would be required to join a company union or to
 5 resign from or refrain from joining any bona fide labor
 6 organization."

7 Section 50. Section 39-51-3206, MCA, is amended to
 8 read:

9 "39-51-3206. Liability for wrongful or improper
 10 receipt of benefits. Any person who, by reason of the
 11 nondisclosure or misrepresentation by him or by another of a
 12 material fact, irrespective of whether such nondisclosure or
 13 misrepresentation was known or fraudulent, has received any
 14 sum as benefits under this chapter while any conditions for
 15 the receipt of benefits imposed by this chapter were not
 16 fulfilled in his case or while he was disqualified from
 17 receiving benefits shall, in the discretion of the division,
 18 either be liable to have such sum deducted from any future
 19 benefits payable to him under this chapter or shall be
 20 liable to repay to the division for the unemployment
 21 compensation fund a sum equal to the amount so received by
 22 him, and such sum shall be collectible in the manner
 23 provided in this chapter for the collection of past due
 24 contributions. ~~Action~~ An action for collection of overpaid
 25 benefits ~~shall~~ must be brought within 5 years after the date

1 of such overpayment, otherwise to be or ~~be~~ it is barred as
2 provided in ~~{93-2604}~~."

3 Section 51. Section 39-71-101, MCA, is amended to
4 read:

5 "39-71-101. Short title. This chapter ~~shall be known~~
6 and may be cited as the ~~Workmen's Compensation Act or the~~
7 Workers' Compensation Act."

8 Section 52. Section 39-71-102, MCA, is amended to
9 read:

10 "39-71-102. Reference to plans. Whenever compensation
11 plan No. 1, 2, or 3 ~~or the safety provisions of this chapter~~
12 ~~shall be is~~ referred to, such reference shall also be ~~held~~
13 ~~to include~~ includes all other sections which are applicable
14 to the subject matter of such reference."

15 Section 53. Section 39-71-116, MCA, is amended to
16 read:

17 "39-71-116. Definitions. Unless the context otherwise
18 requires, words and phrases employed in this chapter shall
19 have the following meanings hereinafter defined:

20 (1) "Average weekly wage" means the mean weekly
21 earnings of all employees under covered employment, as
22 defined and established annually by the division of
23 employment security of the Montana department of labor and
24 industry. It is established at the nearest whole dollar
25 number and shall must be adopted by the division of workers'

1 compensation prior to July 1 of each year.

2 (2) "Beneficiary" means:

3 (a) a surviving wife or husband;

4 (b) an unmarried child under the age of 18 years;

5 (c) an unmarried child under the age of 25 years who
6 is a full-time student in an accredited school;

7 (d) an invalid child over the age of 18 years who is
8 dependent upon the decedent for support at the time of
9 injury;

10 (e) a parent who is dependent upon the decedent for
11 support at the time of the injury (however, such a parent is
12 a beneficiary only when no beneficiary, as defined in
13 subsections (2)(a) through (2)(d) of this section, exists);
14 and

15 (f) a brother or sister under the age of 18 years if
16 dependent upon the decedent for support at the time of the
17 injury. ~~However~~ however, such a brother or sister is a
18 beneficiary only until the age of 18 years and only when no
19 beneficiary, as defined in subsections (2)(a) through (2)(e)
20 of this section, exists.

21 (3) "Casual employment" means employment not in the
22 usual course of trade, business, profession, or occupation
23 of the employer. Any person hauling or assisting in hauling
24 of sugar beets or grains, in case of emergency, shall be is
25 considered engaged in casual employment.

1 (4) "Child" ~~shall include~~ includes a posthumous child,
2 a dependent stepchild, a child legally adopted prior to the
3 injury, and an illegitimate child legitimized prior to the
4 injury.

5 (5) "Division" means the division of workers'
6 compensation of the department of labor and industry
7 provided for in 2-15-1702.

8 (6) "Fiscal year" means the period of time between
9 July 1 and the succeeding June 30.

10 (7) "Husband" or "widower" means only a husband or
11 widower living with or legally entitled to be supported by
12 the deceased at the time of her injury.

13 (8) "Insurer" means an employer bound by compensation
14 plan No. 1, an insurance company transacting business under
15 compensation plan No. 2, the industrial insurance account
16 under compensation plan No. 3, or the uninsured employers'
17 fund provided for in ~~39-71-501 through 39-71-507~~ part 5 of
18 this chapter.

19 (9) "Invalid" means one who is physically or mentally
20 incapacitated.

21 (10) "Order" means any decision, rule, direction,
22 requirement, or standard of the division or any other
23 determination arrived at or decision made by the division.

24 (11) "Payroll", "annual payroll", or "annual payroll
25 for the preceding year" means the average annual payroll of

1 the employer for the preceding calendar year or, if the
2 employer shall not have operated a sufficient or any length
3 of time during such calendar year, 12 times the average
4 monthly payroll for the current year; provided, that an
5 estimate may be made by the division for any employer
6 starting in business where no average payrolls are
7 available, such estimate to be adjusted by additional
8 payment by the employer or refund by the division, as the
9 case may actually be on December 31 of such current year.

10 (12) "Permanent partial disability" means a condition
11 resulting from injury as defined in this chapter that
12 results in the actual loss of earnings or earning capability
13 less than total that exists after the injured workman ~~worker~~
14 is as far restored as the permanent character of the
15 injuries will permit.

16 (13) "Permanent total disability" means a condition
17 resulting from injury as defined in this chapter that
18 results in the loss of actual earnings or earning capability
19 that exists after the injured workman ~~worker~~ is as far
20 restored as the permanent character of the injuries will
21 permit and which results in the workman ~~worker~~ having no
22 reasonable prospect of finding regular employment of any
23 kind in the normal labor market.

24 (14) The term "physician" ~~shall include~~ includes
25 "surgeon" and in either case ~~shall mean~~ means one authorized

1 by law to practice his profession in this state.

2 (15) "The plant of the employer" ~~shall include~~ **includes**
3 the place of business of a third person while the employer
4 has access to or control over such place of business for the
5 purpose of carrying on his usual trade, business, or
6 occupation.

7 (16) "Public corporation" means the state or any
8 county, municipal corporation, school district, city, city
9 under commission form of government or special charter,
10 town, or village.

11 (17) "Reasonably safe place, to work" means that the
12 place of employment has been made as free from danger to the
13 life or safety of the employee as the nature of the
14 employment will reasonably permit.

15 (18) "Reasonably safe tools and appliances" are such
16 tools and appliances as are adapted to and are reasonably
17 safe for use for the particular purpose for which they are
18 furnished ~~and shall embrace all safety devices and~~
19 ~~safeguards provided or prescribed by the safety provisions~~
20 ~~of the chapter for the purpose of mitigating or preventing a~~
21 ~~specific danger.~~

22 (19) "Temporary total disability" means a condition
23 resulting from an injury as defined in this chapter that
24 results in total loss of wages and exists until the injured
25 workman ~~worker~~ is as far restored as the permanent character

1 of the injuries will permit.

2 (20) "Wages" means the average gross earnings received
3 by the employee at the time of the injury for the usual
4 hours of employment in a week, and overtime is not to be
5 considered. Sick leave benefits accrued by employees of
6 public corporations, as defined by subsection (16) of this
7 section, are considered wages.

8 (21) "Wife" or "widow" means only a wife or widow
9 living with or legally entitled to be supported by the
10 deceased at the time of the injury.

11 (22) "Year", unless otherwise specified, means calendar
12 year."

13 Section 54. Section 39-71-302, MCA, is amended to
14 read:

15 "39-71-302. What included in computing payroll. In
16 computing the payroll, the entire compensation received by
17 every workman ~~worker~~ employed under this chapter ~~shall be~~ **is**
18 included, whether ~~it be~~ in the form of salary, wage,
19 piecework, or otherwise and whether payable in money, board,
20 or otherwise."

21 Section 55. Section 39-71-304, MCA, is amended to
22 read:

23 "39-71-304. Books, records, and payrolls to be open to
24 inspection -- penalty for refusal. The books, records, and
25 payrolls of the employer pertinent to the administration of

1 this chapter shall ~~must~~ always be open to inspection by the
 2 division or any duly authorized employee thereof for the
 3 purpose of ascertaining the correctness of the payroll, the
 4 number of ~~men~~ persons employed, and such other information
 5 as may be necessary for the division and its management
 6 under this chapter. Refusal on the part of the employer to
 7 submit said books, records, and payrolls for such inspection
 8 shall subject the offending employer to a penalty of \$100
 9 for each offense, to be collected by civil action in the
 10 name of the state and paid into the state treasury."

11 Section 56. Section 39-71-306, MCA, is amended to
 12 read:

13 "39-71-306. Plan one employers and plan two insurers
 14 to file duplicate receipts paid for injuries and statements
 15 of medical expenditures. Every employer coming under the
 16 provisions of compensation plan No. 1 and every insurer
 17 coming under the provisions of compensation plan No. 2
 18 shall, on or before the 15th day of each and every month,
 19 file with the division:

20 (1) duplicate receipts for all payments made during
 21 the previous month to injured workers or their beneficiaries
 22 or dependents; and

23 (2) statements showing the amounts expended during the
 24 previous month for medical, surgical, and hospital services
 25 for injured workers and for the burial of injured deceased

1 workers."

2 Section 57. Section 39-71-309, MCA, is amended to
 3 read:

4 "39-71-309. Hospitals to submit schedule of fees and
 5 charges -- effective period of schedule -- when to be
 6 submitted. All hospitals must submit to the division a
 7 schedule of fees and charges for treatment of injured
 8 workmen workers to be in effect for at least a 12-month
 9 period unless the division and the hospital agree to interim
 10 amendments of the schedule. The schedule must be submitted
 11 at least 30 days prior to its effective date and shall ~~may~~
 12 not exceed the charges prevailing in the hospital for
 13 similar treatment of private patients."

14 Section 58. Section 39-71-401, MCA, is amended to
 15 read:

16 "39-71-401. Employments covered and employments
 17 exempted. (1) Except as provided in subsection (2) of this
 18 section, the Workers' Compensation Act applies to all
 19 employers as defined in 39-71-117 and to all employees as
 20 defined in 39-71-118. An employer who has any employee in
 21 service under any appointment or contract of hire, expressed
 22 or implied, oral or written, shall elect to be bound by the
 23 provisions of compensation plan No. 1, 2, or 3. Every
 24 employee whose employer is bound by the Workers'
 25 Compensation Act is subject to and bound by the compensation

1 plan that has been elected by the employer.

2 (2) Unless the employer elects coverage for these
3 employments under the ~~this~~ chapter and an insurer allows
4 such an election, the Workers' Compensation Act does not
5 apply to any of the following employments:

- 6 (a) household and domestic employment;
- 7 (b) casual employment as defined in 39-71-116(3);
- 8 (c) employment of members of an employer's family
9 dwelling in the employer's household;
- 10 (d) employment of sole proprietors or working members
11 of a partnership;
- 12 (e) employment for which a rule of liability for
13 injury, occupational disease, or death is provided under the
14 laws of the United States;
- 15 (f) any person performing services in return for aid
16 or sustenance only;
- 17 (g) employment with any railroad engaged in interstate
18 commerce, except that railroad construction work shall be
19 included in and subject to the provisions of this chapter."

20 Section 59. Section 39-71-406, MCA, is amended to
21 read:

22 "39-71-406. Deduction from wages of any part of
23 premium a misdemeanor -- hospital contributions not
24 prohibited. It ~~shall--be~~ is unlawful for the employer to
25 deduct or obtain any part of any premium required to be paid

1 by this chapter from the wages or earnings of his workmen-or
2 ~~any-of-them~~ workers, and the making or attempt to make any
3 such deduction ~~shall--be~~ is a misdemeanor, except that
4 nothing in this section shall be construed as prohibiting
5 contributions by employees to a hospital fund, as elsewhere
6 in this chapter provided."

7 Section 60. Section 39-71-410, MCA, is amended to
8 read:

9 "39-71-410. Employees bound by plan adopted by
10 employer -- election not to be bound by corporate officers.
11 (1) Every employee whose employer is bound by the provisions
12 of this chapter ~~shall--become~~ is subject to and be bound by
13 the provisions of that plan of compensation ~~which--shall--have~~
14 been adopted by his employer, except that pursuant to such
15 rules as the division shall from time to time promulgate and
16 subject in all cases to the review of the division, officers
17 of private corporations may elect not to be bound as
18 employees under the ~~this~~ chapter by a written notice in the
19 form provided by the division, served in the following
20 manner:

21 (a) if the employer has elected to be bound by the
22 provisions of compensation plan No. 1, by delivering ~~said~~
23 ~~the~~ notice to the board of directors of the employer;

24 (b) if the employer has elected to be bound by the
25 provisions of compensation plan No. 2, by delivering ~~said~~

1 ~~the~~ notice to the board of directors of the employer or the
2 insurer;

3 (c) if the employer has elected to be bound or is
4 bound by the provisions of compensation plan No. 3, by
5 delivering ~~said the~~ notice to the division.

6 (2) The appointment or election of an officer of a
7 corporation for the purpose of excluding an employee from
8 coverage under the ~~this~~ chapter ~~shall does~~ not entitle such
9 officer to elect not to be bound as an employee under the
10 ~~this~~ chapter. In any case, the notice ~~shall must~~ be signed
11 by the officer under oath or equivalent affirmation and is
12 subject to the penalties for false swearing.

13 (3) The division shall review any ~~election by~~ officers
14 of private ~~corporation's--election corporations~~ not to be
15 bound as an employee to assure compliance with this
16 chapter."

17 Section 61. Section 39-71-411, MCA, is amended to
18 read:

19 "39-71-411. Provisions of chapter exclusive remedy --
20 nonliability of insured employer. For all employments
21 covered under the Workers' Compensation Act or for which an
22 election has been made for coverage under the ~~this~~ chapter,
23 the provisions of the ~~this~~ chapter are exclusive. Except as
24 provided in part 5 of this chapter for uninsured employers
25 and except as otherwise provided in the Workers'

1 Compensation Act, an employer is not subject to any
2 liability whatever for the death ~~of~~ or personal injury to
3 ~~any---employees~~ ~~an---employee~~ covered by the Workers'
4 Compensation Act. The Workers' Compensation Act binds the
5 employee himself, and in case of death binds his personal
6 representative and all persons having any right or claim to
7 compensation for his injury or death, as well as the
8 employer and the servants and employees of such employer and
9 those conducting his business during liquidation,
10 bankruptcy, or insolvency."

11 Section 62. Section 39-71-501, MCA, is amended to
12 read:

13 "39-71-501. Definition of uninsured employer. For the
14 purposes of 39-71-501 through 39-71-507 ~~this part~~, the words
15 "uninsured employer" ~~mean means~~ an employer who has not
16 properly complied with the provisions of 39-71-401."

17 Section 63. Section 39-71-506, MCA, is amended to
18 read:

19 "39-71-506. Collection of payments from uninsured
20 employer by suit. If, upon demand of the division, an
21 uninsured employer refuses to make the payments to the fund
22 that are provided for in subsections (1) and (2) of
23 39-71-504, the sums may be collected by the division through
24 suit. The division may settle through compromise with an
25 uninsured employer the amount due the fund under 39-71-501

1 through-39-71-507 ~~39-71-504.~~"

2 Section 64. Section 39-71-510, MCA, is amended to
3 read:

4 "39-71-510. Limitation on benefit entitlement under
5 fund. Notwithstanding the provisions of 39-71-402
6 39-71-407, and-39-71-501-through--39-71-507 ~~39-71-502, and~~
7 ~~39-71-503~~, injured employees or an employee's beneficiaries
8 who elect to receive benefits from the uninsured employers'
9 fund are not granted an entitlement by this state for full
10 workers' compensation benefits from the fund. Benefits from
11 the fund ~~shall~~ ~~must~~ be paid in accordance with the sums in
12 the fund. If the division determines at any time that the
13 sums in the fund are not adequate to fully pay all claims,
14 the division may make appropriate proportionate reductions
15 in benefits to all claimants. The reductions do not entitle
16 claimants to retroactive reimbursements in the future."

17 Section 65. Section 39-71-602, MCA, is amended to
18 read:

19 "39-71-602. Statute of limitation not to apply during
20 minority or mental incompetency unless guardian appointed.
21 No limitation of time as provided in 39-71-601 or in this
22 chapter, known as ~~the~~ Workers' Compensation Act, shall run
23 as against any injured workmen ~~worker~~ who is mentally
24 incompetent and without a guardian or an injured minor under
25 18 years of age who may be without a parent or guardian. A

1 guardian in either case may be appointed by any court of
2 competent jurisdiction, in which event the period of
3 limitations as provided for in 39-71-601 shall begin to run
4 on the date of appointment of such guardian or when such
5 minor arrives at the-age-of 18 years ~~of age~~, whichever date
6 ~~may-be-the~~ ~~is~~ earlier."

7 Section 66. Section 39-71-603, MCA, is amended to
8 read:

9 "39-71-603. Notice of ~~eterna~~ ~~claim~~ claim for injuries other
10 than death to be submitted within sixty days -- exception --
11 actual notice. No ~~eterna~~ ~~claim~~ claim to recover compensation under
12 this ~~[act]~~ ~~chapter~~ for injuries not resulting in death ~~shall~~
13 ~~may~~ be maintained unless, within 60 days after the
14 occurrence of the accident which is claimed to have caused
15 the injury, notice in writing stating the name and address
16 of the person injured, the time and place where the accident
17 occurred, and the nature of the injury and signed by the
18 person injured or someone in his behalf ~~shall-be~~ ~~is~~ served
19 upon the employer or the insurer, except as otherwise
20 provided in 39-71-602. However, actual knowledge of such
21 accident and injury on the part of such employer or his
22 managing agent or superintendent in charge of the work upon
23 which the injured employee was engaged at the time of the
24 injury ~~shall-be~~ ~~is~~ equivalent to such service."

25 Section 67. Section 39-71-721, MCA, is amended to

1 read:

2 "39-71-721. Compensation for injury causing death. (1)
3 If an injured employee dies and the injury was the proximate
4 cause of such death, then the beneficiary of the deceased,
5 as the case may be, ~~shall receive~~ is entitled to the same
6 compensation as though the death occurred immediately
7 following the injury, but the period during which the death
8 benefit ~~shall be~~ is paid shall be reduced by the period
9 during or for which compensation was paid for the injury.

10 (2) To beneficiaries as defined in subsections (2)(a)
11 through (2)(d) of 39-71-116, weekly compensation benefits
12 for injury causing death ~~shall be~~ are computed at 66 2/3% of
13 the decedent's wages. The maximum weekly compensation
14 benefits ~~shall~~ may not exceed the state's average weekly
15 wage. The minimum weekly compensation for death ~~shall be~~ is
16 50% of the state's average weekly wage, but in no event
17 ~~shall~~ may it exceed the decedent's actual wages at the time
18 of his death.

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

25 (4) If the decedent leaves no beneficiary as defined

1 in 39-71-116(2), a lump-sum payment of \$3,000 ~~shall~~ must be
2 paid to the decedent's surviving parent or parents.

3 (5) If any beneficiary of a deceased employee dies or
4 ~~if the widow or widower remarries~~, the right of such
5 beneficiary or ~~widow or widower~~ to compensation under this
6 chapter ~~shall cease~~ ceases. Death benefits ~~shall~~ must be
7 paid to a widow or widower for life or until remarriage, and
8 in the event of remarriage, 2 years' benefits ~~shall~~ must be
9 paid in a lump sum to the widow or widower.

10 (6) In all cases, benefits ~~shall~~ must be paid to
11 beneficiaries, as defined in 39-71-116(2)."

12 Section 68. Section 39-71-738, MCA, is amended to
13 read:

14 "39-71-738. Adjustment of compensation in case of
15 further injuries. Should a further accident occur to a
16 workmen ~~worker~~ who is already receiving compensation
17 hereunder or who has been previously the recipient of a
18 payment or ~~payments~~ under this chapter, his further
19 compensation ~~shall be~~ is adjusted according to the other
20 provisions of this chapter and with regard to his past
21 receipt of compensation."

22 Section 69. Section 39-71-739, MCA, is amended to
23 read:

24 "39-71-739. Compensation in case of changes in degree
25 of injury. If aggravation, diminution, or termination of

1 disability takes place or be ~~is~~ discovered after the rate of
 2 compensation ~~shall have been~~ is established or compensation
 3 is terminated in any case where the maximum payments for
 4 disabilities as provided in this chapter have ~~are~~ not been
 5 reached, adjustments may be made to meet such changed
 6 conditions by increasing, diminishing, or terminating
 7 compensation payments in accordance with the provisions of
 8 this chapter."

9 Section 70. Section 39-71-801, MCA, is amended to
 10 read:

11 "39-71-801. Occupational deafness compensated as
 12 provided in part. Regardless of other definitions of injury
 13 and time limitations imposed by this ~~act~~ ~~chapter~~, there
 14 ~~shall be~~ compensation is awarded for occupational deafness
 15 as provided in this part."

16 Section 71. Section 39-71-807, MCA, is amended to
 17 read:

18 "39-71-807. Compensation for wage loss where employee
 19 transferred due to occupational deafness. An employee who
 20 because of occupational deafness is transferred by his
 21 employer to other employment and thereby sustains actual
 22 wage loss ~~shall~~ must be compensated at the rate provided in
 23 39-71-703, not exceeding \$3,500 in the aggregate from all
 24 employers. "Time of injury", "incurred such injury", or
 25 "date of injury" in such case ~~shall be~~ is the date of wage

1 loss."

2 Section 72. Section 39-71-813, MCA, is amended to
 3 read:

4 "39-71-813. Limitation provisions applicable -- when
 5 provisions begin to run. The limitation provisions in this
 6 ~~act~~ ~~chapter~~ control claims arising under this part.
 7 Such provisions ~~shall~~ run from the first date upon which
 8 claim may be filed or from the date of subsequent death,
 9 provided that no claim ~~shall~~ may accrue to any dependent
 10 unless an award has been issued or liability admitted."

11 Section 73. Section 39-71-901, MCA, is amended to
 12 read:

13 "39-71-901. Definitions. As used in this part, the
 14 following definitions apply:

15 (1) "Vocationally handicapped" means a person who has
 16 a medically certifiable permanent physical impairment which
 17 is a substantial obstacle to obtaining employment or to
 18 obtaining reemployment if ~~the~~ employee should become
 19 unemployed, considering such factors as the person's age,
 20 education, training, experience, and employment rejection.

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

23 (3) "Certificate" means documentation issued by the
 24 certifying agency to an individual who is vocationally
 25 handicapped.

1 (4) "Fund" means the subsequent injury fund."
 2 Section 74. Section 39-71-902, MCA, is amended to
 3 read:

4 "39-71-902. Fund to receive payment from insurer for
 5 each death under chapter -- assessment of insurers. (1) In
 6 every case of the death of an employee under this [ect] ~~chapter~~,
 7 the insurer shall pay to the fund the sum of
 8 \$1,000. In addition, the division may assess every insurer
 9 an amount not to exceed 5% of the compensation paid in
 10 Montana in the preceding fiscal year. The assessment ~~shall~~
 11 ~~must~~ be transmitted annually to the subsequent injury fund
 12 by the employer or insurer.

13 (2) When, in ~~the~~ judgment of the administrator, the
 14 amount of money in the subsequent injury fund is such that
 15 there is a surplus above and beyond projected liabilities,
 16 the administrator may at his discretion suspend or reduce
 17 further collection of assessments for a period of time
 18 determined by the administrator."

19 Section 75. Section 39-71-903, MCA, is amended to
 20 read:

21 "39-71-903. Procedure and practice. When a
 22 vocationally handicapped person receives a personal injury,
 23 the procedure and practice provided in this [ect] ~~chapter~~
 24 applies to all proceedings under this part, except where
 25 specifically otherwise provided herein."

1 Section 76. Section 39-71-907, MCA, is amended to
 2 read:

3 "39-71-907. Certified vocationally handicapped person
 4 to be compensated for injury as provided by chapter --
 5 employer liability for compensation limited. A person
 6 certified as vocationally handicapped who receives a
 7 personal injury arising out of and in the course of his
 8 employment and resulting in death or disability ~~shall~~ ~~must~~
 9 be paid compensation in the manner and to the extent
 10 provided in this [ect] ~~chapter~~ or, in case of his death
 11 resulting from such injury, the compensation ~~shall~~ ~~must~~ be
 12 paid to his beneficiaries or dependents. The liability of
 13 the employer for payment of compensation, for furnished
 14 medical care, and burial as provided in this [ect]--~~shall~~ ~~be~~
 15 ~~chapter~~ ~~is~~ limited to those benefits occurring during the
 16 period of 104 weeks after the date of injury. Thereafter,
 17 all compensation and the cost of all medical care and burial
 18 ~~shall~~ ~~be~~ ~~is~~ the liability of the fund."

19 Section 77. Section 39-71-908, MCA, is amended to
 20 read:

21 "39-71-908. Notification of fund of its potential
 22 liability under part -- review by fund. Not less than 90 or
 23 more than 150 days before the expiration of 104 weeks after
 24 the date of injury, the employer, carrier, or the industrial
 25 insurance fund, as the case may be, shall notify the fund

1 whether it is likely that compensation may be payable beyond
 2 a period of 104 weeks after the date of the injury. The
 3 fund thereafter may review, at reasonable times, such
 4 information as the employer, carrier, or industrial
 5 insurance fund ~~es has~~ regarding the accident and the nature
 6 and extent of the injury and disability."

7 Section 78. Section 39-71-910, MCA, is amended to
 8 read:

9 "39-71-910. Procedure for resolving disputes as to
 10 liability under part. (1) If an employee was employed or
 11 retained in employment under the provisions of this part and
 12 a dispute or controversy arises as to payment of benefits or
 13 the liability therefor, the division shall hold a hearing
 14 and resolve all disputes. On motion made in writing by the
 15 employer, carrier, or industrial insurance fund, the
 16 administrator shall join the fund as a party defendant.

17 (2) The division, within 5 days of the entry of an
 18 order joining the fund as a party defendant, shall give the
 19 fund written notice thereof not less than 20 days before the
 20 date of hearing and shall include the name of ~~the~~ employee
 21 ~~and the~~ employer, and the date of the alleged injury or
 22 disability. The fund named as a defendant shall have 10 days
 23 after the date of notification to file objections to being
 24 named as a party defendant. On the date of the hearing at
 25 which the liability of the parties is determined, the

1 hearing examiner first shall hear arguments and take
 2 evidence concerning the joinder as party defendant. If the
 3 fund has filed timely objection and if argument and evidence
 4 warrant, the hearing examiner shall grant a motion to
 5 dismiss.

6 (3) At the time of the hearing, the employer and fund
 7 may appear, cross-examine witnesses, give evidence, and
 8 defend both on the issue of liability of the employer to the
 9 employee and on ~~the~~ issue of the liability of the fund.

10 (4) The hearing examiner shall make findings of fact
 11 and conclusions of law determining the respective liability
 12 of the employer and the fund."

13 Section 79. Section 39-71-1001, MCA, is amended to
 14 read:

15 "39-71-1001. Referral of disabled workers to
 16 department of social and rehabilitation services for
 17 vocational rehabilitation. The division shall refer to the
 18 department of social and rehabilitation services workers who
 19 have become permanently disabled as the result of injuries
 20 sustained within the scope and course of employment by an
 21 employer enrolled under the Workers' Compensation Act of ~~the~~
 22 ~~state of Montana~~ and who, in the opinion of the division,
 23 can be vocationally rehabilitated. The department of soc
 24 and rehabilitation services shall provide for the vocational
 25 rehabilitation of the injured workers under the provisions

1 of ~~[Title--41--chapter-81-R6M-1947]~~ Title 53, chapter 1,
2 parts 1 and 2."

3 Section 80. Section 39-71-1003, MCA, is amended to
4 read:

5 "39-71-1003. Eligibility for benefits under chapter
6 not affected -- other expenses payable. The eligibility of
7 any injured ~~workman~~ worker to receive other benefits under
8 the Workers' Compensation Act ~~shall is~~ in no way be affected
9 by his entrance upon a course of vocational rehabilitation
10 as herein provided, but he may be paid, in addition thereto,
11 upon the certification of the ~~vocational-rehabilitation~~
12 division department of social and rehabilitation services
13 from funds herein provided:

14 (1) his actual and necessary travel expenses from his
15 place of residence to the place of training and return;

16 (2) his living expenses while in training in an amount
17 not in excess of \$50 per week; and

18 (3) his expenses for tuition, books, and necessary
19 equipment in training."

20 Section 81. Section 39-71-2101, MCA, is amended to
21 read:

22 "39-71-2101. General requirements for electing
23 coverage under plan. An employer may elect to be bound by
24 compensation plan No. 1 upon furnishing satisfactory proof
25 to the division of his solvency and financial ability to pay

1 the compensation and benefits in this chapter provided for
2 and to discharge all liabilities which are reasonably likely
3 to be incurred by him during the fiscal year for which such
4 election is effective, and may, by order of the division,
5 make such payments directly to his employees as they may
6 become entitled to receive ~~the--same~~ under the terms and
7 conditions of this chapter."

8 Section 82. Section 39-71-2201, MCA, is amended to
9 read:

10 "39-71-2201. Election to be bound by plan. (1) Any
11 employer except those specified in ~~[92-206]~~ 39-71-403 may,
12 by filing his election to become bound by compensation plan
13 No. 2, insure his liability to pay the compensation and
14 benefits provided by this chapter with any insurance company
15 authorized to transact such business in this state.

16 (2) Any employer electing to become bound by
17 compensation plan No. 2 shall make his election on the form
18 and in the manner prescribed by the division."

19 Section 83. Section 39-71-2206, MCA, is amended to
20 read:

21 "39-71-2206. Deposits by insurer with division to
22 guarantee payment of liability. (1) Before issuance of any
23 policy by an insurer as herein authorized, ~~such the~~ insurer
24 must deposit with the division bonds of the United States or
25 the state of Montana or of any school district, county,

1 city, or town in the state of Montana or a corporate surety
 2 bond made out to and approved by the division in an amount
 3 not less than \$5,000 or more than \$100,000, as the division
 4 may determine. If any insurer fails to discharge any
 5 liability after the amount thereof ~~shall be~~ is determined by
 6 the division and within the time limited by the division,
 7 the division shall convert the bonds or such part thereof as
 8 is necessary into cash and from the proceeds liquidate such
 9 liability, and thereafter the insurer must make an
 10 additional deposit to meet any deficiency caused thereby. It
 11 is intended hereby to give the division the discretion in
 12 the matter of whether an insurer has failed to discharge any
 13 liability.

14 (2) Within 30 days of the happening of an accident
 15 where death or the nature of the injury renders the amount
 16 of future payments certain or reasonably certain, the
 17 insurer shall make a deposit, as herein defined, with the
 18 division for the protection and guarantee of the payment of
 19 such liability in such sum as the division may direct.
 20 However, if the division ~~deems~~ considers the amount on
 21 deposit by the insurer under the provisions of subsection
 22 (1) of this section sufficient to cover all liabilities of
 23 the insurer, then no further deposit ~~shall~~ may be required.

24 (3) Any deposit made under the provisions of
 25 compensation plan No. 2 ~~shall~~ must be held in trust by the

1 division as security for the payment of the liability for
 2 which the deposit was made. Such deposit may be reduced from
 3 time to time with the permission of the division as the
 4 payment of the liability of the insurer may reduce the
 5 amount required to be on deposit. Such deposit may be
 6 changed or renewed when desired by the depositor by
 7 withdrawing the same or any part thereof and substituting
 8 other deposits therefor. Upon proof of the final payment of
 9 the liability for which such deposit was made, any deposit
 10 remaining ~~shall~~ must be returned to the depositor. All
 11 earnings made by such deposit ~~shall be~~ must first ~~be~~ applied
 12 upon any liability of the depositors, and if no such
 13 liability exists, then such earnings ~~shall~~ must upon demand
 14 be delivered to such depositor. The division and its
 15 bondsmen ~~shall be~~ are liable for the value and safekeeping
 16 of such deposit and shall at any time, upon demand of its
 17 bondsmen, ~~the a depository or the division,~~ account for the
 18 same and the earnings thereof."

19 Section 84. Section 39-72-101, MCA, is amended to
 20 read:

21 "39-72-101. Short title. This chapter ~~shall be~~ known
 22 may be cited as "The the Occupational Disease Act of
 23 Montana."

24 Section 85. Section 39-72-102, MCA, is amended
 25 read:

1 "39-72-102. Definitions. As used in this chapter,
2 unless the context requires otherwise, the following
3 definitions apply:

- 4 (1) "Beneficiary" is as defined in 39-71-116(2).
5 (2) "Child" is as defined in 39-71-116(4).
6 (3) "Disablement" means the event of becoming
7 physically incapacitated by reason of an occupational
8 disease from performing any work for remuneration or profit.
9 Silicosis, when complicated by active pulmonary
10 tuberculosis, is presumed to be total disablement.
11 "Disability", "total disability", and "totally disabled" are
12 synonymous with "disablement", but they have no reference to
13 "partial permanent disability".
14 (4) "Division" is as defined in 39-71-116(5).
15 (5) "Employee" is as defined in 39-71-118.
16 (6) "Employer" is as defined in 39-71-117.
17 (7) "Husband" is as defined in 39-71-116(7).
18 (8) "Independent contractor" is as defined in
19 39-71-120.
20 (9) "Insurer" is as defined in 39-71-116(8). The term
21 includes an employer who is self-insured under compensation
22 plan No. 1.
23 (10) "Invalid" is as defined in 39-71-116(9).
24 (11) The term "~~occupational~~ Occupational disease" shall
25 mean ~~means~~ all diseases arising out of or contracted from

1 and in the course of employment.

- 2 (12) "Order" is as defined in 39-71-116(10).
3 (13) "Pneumoconiosis" means a chronic dust disease of
4 the lungs arising out of employment in coal mines and
5 includes anthracosis, coal workers' pneumoconiosis,
6 silicosis, or anthracosilicosis arising out of such
7 employment.
8 (14) "Silicosis" means a chronic disease of the lungs
9 caused by the prolonged inhalation of silicon dioxide
10 (SiO₂), and characterized by small discrete nodules of
11 fibrous tissue similarly disseminated throughout both lungs
12 causing the characteristic x-ray pattern and by other
13 variable clinical manifestations.
14 (15) "Wages" is as defined in 39-71-116(20).
15 (16) "Wife" is as defined in 39-71-116(21).
16 (17) "Year" is as defined in 39-71-116(6) and
17 39-71-116(22)."
18 Section 86. Section 39-72-307, MCA, is amended to
19 read:
20 "39-72-307. Deduction from wages of any part of
21 premium a misdemeanor -- hospital contributions not
22 prohibited. It shall be ~~is~~ unlawful for the employer to
23 deduct or obtain any part of any premium required to be paid
24 by this chapter from the wages or earnings of his workmen
25 ~~workers~~, or any of them, and the making or attempt to make

1 any such deduction ~~shall be~~ is a misdemeanor, except that
 2 nothing in this section ~~shall~~ may be construed as
 3 prohibiting contributions by employees to a hospital fund,
 4 as elsewhere in this chapter provided."

5 Section 87. Section 39-72-508, MCA, is amended to
 6 read:

7 "39-72-508. Death due to pneumoconiosis. The claimant
 8 must submit the evidence necessary to establish that the
 9 miner's death was due to pneumoconiosis and that the
 10 pneumoconiosis arose out of employment in coal mines. Death
 11 will be found due to a ~~respirable~~ respiratory disease when
 12 death is ascribed to a chronic dust disease or to another
 13 chronic disease of the lung. Death will not be found due to
 14 a ~~respirable~~ respiratory disease in those cases in which the
 15 disease reported does not suggest a reasonable possibility
 16 that death was in fact due to pneumoconiosis; e.g., cancer
 17 of the lung, disease due to trauma, or pulmonary emboli.
 18 However, the presumptions established in subsections (2) and
 19 (3) of 39-72-501 apply."

20 Section 88. Section 39-72-701, MCA, is amended to
 21 read:

22 "39-72-701. Compensation for total disability or death
 23 due to occupational disease other than pneumoconiosis. The
 24 compensation to which an employee temporarily totally
 25 disabled or permanently totally disabled by an occupational

1 disease other than pneumoconiosis, or the beneficiaries and
 2 dependents of the employee in the case of death caused by an
 3 occupational disease other than pneumoconiosis, ~~shall be~~ are
 4 entitled to under this chapter shall be the same payments
 5 which are payable to an injured employee, and such payments
 6 shall be made for the same period of time as is provided in
 7 cases of temporary total disability, permanent total
 8 disability, and in cases of injuries causing death under the
 9 Workers' Compensation Act of ~~the state of Montana.~~"

10 Section 89. Section 39-72-702, MCA, is amended to
 11 read:

12 "39-72-702. Compensation for total disability or death
 13 due to pneumoconiosis. Benefit payments for total disability
 14 or death due to pneumoconiosis shall, for the purpose of
 15 this chapter, be made as follows:

16 (1) In the case of total disability of a miner due to
 17 pneumoconiosis, the disabled miner shall be paid benefits
 18 during the disability at the rate of \$155 per month.

19 (2) In the case of death of a miner due to
 20 pneumoconiosis or of a miner receiving benefits under this
 21 ~~[part] subsection (1)~~, benefits shall be paid to the miner's
 22 surviving spouse, if any, at the rate the deceased miner
 23 would receive such benefits if totally disabled.

24 (3) In the case of an individual entitled to benefit
 25 payments under subsection (1) or (2) who has one or

1 dependents, the benefit payments ~~shall~~ **must** be increased at
 2 the rate of 50% of such benefit payments if such individual
 3 has one dependent, 75% if such individual has two
 4 dependents, and 100% if such individual has three or more
 5 dependents."

6 Section 90. Section 39-72-708, MCA, is amended to
 7 read:

8 "39-72-708. Prohibiting supplementing of benefits. No
 9 person receiving compensation or benefits under ~~§ 71-1001 to~~
 10 ~~71-1008, inclusive, shall be~~ **chapter 73 of this title is**
 11 entitled to compensation or benefits under this chapter."

12 Section 91. Section 39-73-109, MCA, is amended to
 13 read:

14 "39-73-109. Payment of benefits to surviving spouse.

15 (1) Upon the death of a person receiving payments for
 16 silicosis under 39-73-104 or 39-73-108, the surviving
 17 spouse, as long as such spouse remains unmarried, is
 18 entitled to receive the payments granted the deceased
 19 spouse.

20 (2) A person who otherwise is qualified to receive
 21 payments under subsection (1) of this section but whose
 22 spouse died prior to March 14, 1974, is hereby made eligible
 23 to begin receiving one-half of those payments; provided,
 24 however, a person is not eligible for these payments if her
 25 ~~such spouse's~~ taxable income is \$6,800 or more per year."

1 Section 92. Repealer. Sections 41-901 through 41-909,
 2 92-613, and 92-1340, R.C.M. 1947, are repealed.

-End-

HOUSE OF REPRESENTATIVES
March 12, 1979

Committee of the Whole amendments to Senate Bill 208, third reading
copy, as follows:

1. Page 11, line 20 through line 21 on page 12.
Strike: Section 20 in its entirety
Renumber: subsequent sections

AND AS AMENDED,
BE CONCURRED IN