

SENATE BILL NO. 128

INTRODUCED BY NORMAN, ELLIOTT

BY REQUEST OF THE WORKERS' COMPENSATION ADVISORY COUNCIL

IN THE SENATE

January 14, 1981	Introduced and referred to Committee on Labor and Employment Relations.
January 27, 1981	Committee recommend bill do pass. Report adopted.
January 28, 1981	Bill printed and placed on members' desks.
January 29, 1981	Second reading, do pass.
January 30, 1981	Correctly engrossed.
January 31, 1981	Third reading, passed. Transmitted to House.

IN THE HOUSE

February 2, 1981	Introduced and referred to Committee on Labor.
February 19, 1981	Committee recommend bill be concurred in. Report adopted.
February 20, 1981	Motion pass consideration until 46th legislative day.
March 2, 1981	Second reading, concurred in.
March 4, 1981	Third reading, concurred in. Yeas, 93; Nays, 6.

IN THE SENATE

March 5, 1981	Returned from House. Concurred in. Sent to enrolling. Reported correctly enrolled.
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1 *Senate* BILL NO. *128*
2 INTRODUCED BY *Norman Scholtz*

3 BY REQUEST OF THE WORKERS' COMPENSATION ADVISORY COUNCIL
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT A
6 DISABILITY BE SUPPORTED BY A PREPONDERANCE OF MEDICAL
7 EVIDENCE; DEFINING "IMPAIRMENT" AND "DISABILITY"; AMENDING
8 SECTION 39-71-116, MCA."

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

11 Section 1. Section 39-71-116, MCA, is amended to read:
12 "39-71-116. Definitions. Unless the context otherwise
13 requires, words and phrases employed in this chapter have
14 the following meanings:

15 (1) "Average weekly wage" means the mean weekly
16 earnings of all employees under covered employment, as
17 defined and established annually by the division of
18 employment security of the Montana department of labor and
19 industry. It is established at the nearest whole dollar
20 number and must be adopted by the division of workers'
21 compensation prior to July 1 of each year.

22 (2) "Beneficiary" means:
23 (a) a surviving wife or husband;
24 (b) an unmarried child under the age of 18 years;
25 (c) an unmarried child under the age of 25 years who is

1 a full-time student in an accredited school;
2 (d) an invalid child over the age of 18 years who is
3 dependent upon the decedent for support at the time of
4 injury;
5 (e) a parent who is dependent upon the decedent for
6 support at the time of the injury (however, such a parent is
7 a beneficiary only when no beneficiary, as defined in
8 subsections (2)(a) through (2)(d) of this section, exists);
9 and
10 (f) a brother or sister under the age of 18 years if
11 dependent upon the decedent for support at the time of the
12 injury (however, such a brother or sister is a beneficiary
13 only until the age of 18 years and only when no beneficiary,
14 as defined in subsections (2)(a) through (2)(e) of this
15 section, exists).
16 (3) "Casual employment" means employment not in the
17 usual course of trade, business, profession, or occupation
18 of the employer. Any person hauling or assisting in hauling
19 of sugar beets or grains, in case of emergency, is
20 considered engaged in casual employment.
21 (4) "Child" includes a posthumous child, a dependent
22 stepchild, a child legally adopted prior to the injury, and
23 an illegitimate child legitimized prior to the injury.
24 (5) "Division" means the division of workers'
25 compensation of the department of labor and industry

1 provided for in 2-15-1702.

2 (6) "Fiscal year" means the period of time between July
3 1 and the succeeding June 30.

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

7 (8) "Insurer" means an employer bound by compensation
8 plan No. 1, an insurance company transacting business under
9 compensation plan No. 2, the industrial insurance account
10 under compensation plan No. 3, or the uninsured employers'
11 fund provided for in part 5 of this chapter.

12 (9) "Invalid" means one who is physically or mentally
13 incapacitated.

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

17 (11) "Payroll", "annual payroll", or "annual payroll for
18 the preceding year" means the average annual payroll of the
19 employer for the preceding calendar year or, if the employer
20 shall not have operated a sufficient or any length of time
21 during such calendar year, 12 times the average monthly
22 payroll for the current year; provided, that an estimate may
23 be made by the division for any employer starting in
24 business where no average payrolls are available, such
25 estimate to be adjusted by additional payment by the

1 employer or refund by the division, as the case may actually
2 be on December 31 of such current year.

3 (12) "Permanent partial disability" means a condition
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5 results in the actual loss of earnings or earning capability
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7 far restored as the permanent character of the injuries will
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20 either case means one authorized by law to practice his
21 profession in this state.

22 (15) "The plant of the employer" includes the place of
23 business of a third person while the employer has access to
24 or control over such place of business for the purpose of
25 carrying on his usual trade, business, or occupation.

1 (16) "Public corporation" means the state or any county,
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3 commission form of government or special charter, town, or
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5 (17) "Reasonably safe place to work" means that the
6 place of employment has been made as free from danger to the
7 life or safety of the employee as the nature of the
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9 (18) "Reasonably safe tools and appliances" are such
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23 public corporations, as defined by subsection (16) of this
24 section, are considered wages.

25 (21) "Wife" or "widow" means only a wife or widow living

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2 the time of the injury.

3 (22) "Year", unless otherwise specified, means calendar
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5 NEW SECTION. Section 2. Disability defined. A worker
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8 be combined with such factors as the worker's physical
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10 affecting the worker's ability to engage in gainful
11 employment. Disability is not a purely medical condition.
12 Disability may be temporary total, permanent total, or
13 permanent partial as defined in 39-71-116.

14 NEW SECTION. Section 3. Impairment defined. Impairment
15 means any anatomic or functional abnormality or loss of
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19 function after the maximum medical rehabilitation has been
20 achieved. The anatomic or functional abnormality or loss
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Approved by Committee
on Labor & Employment
Relations

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-End-

-6- SB 128

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20 by the employee at the time of the injury for the usual
21 hours of employment in a week, and overtime is not to be
22 considered. Sick leave benefits accrued by employees of
23 public corporations, as defined by subsection (16) of this
24 section, are considered wages.

25 (21) "Wife" or "widow" means only a wife or widow

1 living with or legally entitled to be supported by the
2 deceased at the time of the injury.

3 (22) "Year", unless otherwise specified, means calendar
4 year."

5 NEW SECIION. Section 2. Disability defined. A worker
6 is disabled when his ability to engage in gainful employment
7 is diminished as a result of impairment, which in turn may
8 be combined with such factors as the worker's physical
9 condition, age, education, work history, and other factors
10 affecting the worker's ability to engage in gainful
11 employment. Disability is not a purely medical condition.
12 Disability may be temporary total, permanent total, or
13 permanent partial as defined in 39-71-116.

14 NEW SECTION. Section 3. Impairment defined.
15 Impairment means any anatomic or functional abnormality or
16 loss of bodily function. Impairment refers to functional use
17 of the body and is a purely medical condition. Permanent
18 impairment is any anatomic or functional abnormality or loss
19 of bodily function after the maximum medical rehabilitation
20 has been achieved. The anatomic or functional abnormality or
21 loss must be considered stable by the physician at the time
22 the impairment rating evaluation is made. An impairment
23 rating is purely a medical determination. Impairment may or
24 may not result in disability.

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