

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.

1 *Leaster* BILL NO. 128
 2 INTRODUCED BY Norman Elliott
 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."
 9
 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 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
4 resulting from injury as defined in this chapter that
5 results in the actual loss of earnings or earning capability
6 less than total that exists after the injured worker is as
7 far restored as the permanent character of the injuries will
8 permit. Disability shall be supported by a preponderance of
9 medical evidence.

10 (13) "Permanent total disability" means a condition
11 resulting from injury as defined in this chapter that
12 results in the loss of actual earnings or earning capability
13 that exists after the injured worker is as far restored as
14 the permanent character of the injuries will permit and
15 which results in the worker having no reasonable prospect of
16 finding regular employment of any kind in the normal labor
17 market. Disability shall be supported by a preponderance of
18 medical evidence.

19 (14) The term "physician" includes "surgeon" and in
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,
 2 municipal corporation, school district, city, city under
 3 commission form of government or special charter, town, or
 4 village.

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
 8 employment will reasonably permit.

9 (18) "Reasonably safe tools and appliances" are such
 10 tools and appliances as are adapted to and are reasonably
 11 safe for use for the particular purpose for which they are
 12 furnished.

13 (19) "Temporary total disability" means a condition
 14 resulting from an injury as defined in this chapter that
 15 results in total loss of wages and exists until the injured
 16 worker is as far restored as the permanent character of the
 17 injuries will permit. Disability shall be supported by a
preponderance of medical evidence.

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

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

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

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

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

-End-

SB 128

Approved by Committee
on Labor & Employment
Relations

1 *Senate* BILL NO. 128.
2 INTRODUCED BY Norman Eshet
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."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11
12 Section 1. Section 39-71-116, MCA, is amended to read:
13
14 "39-71-116. Definitions. Unless the context otherwise
15 requires, words and phrases employed in this chapter have
16 the following meanings:
17
18 (1) "Average weekly wage" means the mean weekly
19 earnings of all employees under covered employment, as
20 defined and established annually by the division of
21 employment security of the Montana department of labor and
22 industry. It is established at the nearest whole dollar
23 number and must be adopted by the division of workers'
24 compensation prior to July 1 of each year.
25
26 (2) "Beneficiary" means:
27
28 (a) a surviving wife or husband;
29
30 (b) an unmarried child under the age of 18 years;
31
32 (c) an unmarried child under the age of 25 years who is

1 a full-time student in an accredited school;
2
3 (d) an invalid child over the age of 18 years who is
4 dependent upon the decedent for support at the time of
5 injury;
6
7 (e) a parent who is dependent upon the decedent for
8 support at the time of the injury (however, such a parent is
9 a beneficiary only when no beneficiary, as defined in
10 subsections (2)(a) through (2)(d) of this section, exists);
11 and
12
13 (f) a brother or sister under the age of 18 years if
14 dependent upon the decedent for support at the time of the
15 injury (however, such a brother or sister is a beneficiary
16 only until the age of 18 years and only when no beneficiary,
17 as defined in subsections (2)(a) through (2)(e) of this
18 section, exists).
19
20 (3) "Casual employment" means employment not in the
21 usual course of trade, business, profession, or occupation
22 of the employer. Any person hauling or assisting in hauling
23 of sugar beets or grains, in case of emergency, is
24 considered engaged in casual employment.
25
26 (4) "Child" includes a posthumous child, a dependent
27 stepchild, a child legally adopted prior to the injury, and
28 an illegitimate child legitimized prior to the injury.
29
30 (5) "Division" means the division of workers'
31 compensation of the department of labor and industry

SECOND READING
-2-

SB 128

1 provided for in 2-15-1702.

2 (6) "Fiscal year" means the period of time between July
3 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
4 resulting from injury as defined in this chapter that
5 results in the actual loss of earnings or earning capability
6 less than total that exists after the injured worker is as
7 far restored as the permanent character of the injuries will
8 permit. Disability shall be supported by a preponderance of
9 medical evidence.

10 (13) "Permanent total disability" means a condition
11 resulting from injury as defined in this chapter that
12 results in the loss of actual earnings or earning capability
13 that exists after the injured worker is as far restored as
14 the permanent character of the injuries will permit and
15 which results in the worker having no reasonable prospect of
16 finding regular employment of any kind in the normal labor
17 market. Disability shall be supported by a preponderance of
18 medical evidence.

19 (14) The term "physician" includes "surgeon" and in
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,
 2 municipal corporation, school district, city, city under
 3 commission form of government or special charter, town, or
 4 village.

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
 8 employment will reasonably permit.

9 (18) "Reasonably safe tools and appliances" are such
 10 tools and appliances as are adapted to and are reasonably
 11 safe for use for the particular purpose for which they are
 12 furnished.

13 (19) "Temporary total disability" means a condition
 14 resulting from an injury as defined in this chapter that
 15 results in total loss of wages and exists until the injured
 16 worker is as far restored as the permanent character of the
 17 injuries will permit. Disability shall be supported by a
preponderance of medical evidence.

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

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

1 with or legally entitled to be supported by the deceased at
 2 the time of the injury.
 3 (22) "Year", unless otherwise specified, means calendar
 4 year."

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

-End-

-6-

SB 128

1 *Seante* BILL NO. 128.
2 INTRODUCED BY Norman Elhart
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, R.C.A."

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 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
4 resulting from injury as defined in this chapter that
5 results in the actual loss of earnings or earning capability
6 less than total that exists after the injured worker is as
7 far restored as the permanent character of the injuries will
8 permit. Disability shall be supported by a preponderance of
9 medical evidence.

10 (13) "Permanent total disability" means a condition
11 resulting from injury as defined in this chapter that
12 results in the loss of actual earnings or earning capability
13 that exists after the injured worker is as far restored as
14 the permanent character of the injuries will permit and
15 which results in the worker having no reasonable prospect of
16 finding regular employment of any kind in the normal labor
17 market. Disability shall be supported by a preponderance of
18 medical evidence.

19 (14) The term "physician" includes "surgeon" and in
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,
 2 municipal corporation, school district, city, city under
 3 commission form of government or special charter, town, or
 4 village.

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
 8 employment will reasonably permit.

9 (18) "Reasonably safe tools and appliances" are such
 10 tools and appliances as are adapted to and are reasonably
 11 safe for use for the particular purpose for which they are
 12 furnished.

13 (19) "Temporary total disability" means a condition
 14 resulting from an injury as defined in this chapter that
 15 results in total loss of wages and exists until the injured
 16 worker is as far restored as the permanent character of the
 17 injuries will permit. Disability shall be supported by a
preponderance of medical evidence.

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

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

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

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

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

-End-

-6-

SB 128

SENATE BILL NO. 128
INTRODUCED BY NORMAN, ELLIOTT

BY REQUEST OF THE WORKERS' COMPENSATION ADVISORY COUNCIL

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."

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:

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

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

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

3 (12) "Permanent partial disability" means a condition
4 resulting from injury as defined in this chapter that
5 results in the actual loss of earnings or earning capability
6 less than total that exists after the injured worker is as
7 far restored as the permanent character of the injuries will
8 permit. Disability shall be supported by a preponderance of
9 medical evidence.

10 (13) "Permanent total disability" means a condition
11 resulting from injury as defined in this chapter that
12 results in the loss of actual earnings or earning capability
13 that exists after the injured worker is as far restored as
14 the permanent character of the injuries will permit and
15 which results in the worker having no reasonable prospect of
16 finding regular employment of any kind in the normal labor
17 market. Disability shall be supported by a preponderance of
18 medical evidence.

19 (14) The term "physician" includes "surgeon" and in
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
 2 county, municipal corporation, school district, city, city
 3 under commission form of government or special charter,
 4 town, or village.

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
 8 employment will reasonably permit.

9 (18) "Reasonably safe tools and appliances" are such
 10 tools and appliances as are adapted to and are reasonably
 11 safe for use for the particular purpose for which they are
 12 furnished.

13 (19) "Temporary total disability" means a condition
 14 resulting from an injury as defined in this chapter that
 15 results in total loss of wages and exists until the injured
 16 worker is as far restored as the permanent character of the
 17 injuries will permit. Disability shall be supported by a
preponderance of medical evidence.

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

24 (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 SECTION. 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.

-End-