HOUSE BILL NO. 453

INTRODUCED BY BRADLEY

IN THE HOUSE

January 23, 1985 Introduced and referred to Committee on Business and Labor. February 8, 1985 Committee recommend bill do pass as amended. Report adopted. February 9, 1985 Bill printed and placed on members' desks. February 11, 1985 Second reading, do pass. Considered correctly engrossed. February 12, 1985 Third reading, passed. Transmitted to Senate. IN THE SENATE February 13, 1985 Introduced and referred to Committee on Labor and Employment Relations. Committee recommend bill be March 20, 1985 concurred in. Report adopted. March 22, 1985 Second reading, pass consideration. March 23, 1985 Second reading, pass consideration. March 25, 1985 Second reading, concurred in.

March 27, 1985

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Third reading, concurred in. Ayes, 48; Noes, 2.

Returned to House.

IN THE HOUSE

March 27, 1985

Received from Senate.

Sent to enrolling.

Reported correctly enrolled.

Montana Legislative Council

HOUSE BILL NO. 453 1 1 INTRODUCED BY Gradlen 2 2 3 4 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO TOTAL DISABILITY WORKERS' COMPENSATION BENEFITS: AMENDING SECTIONS 5 5 39-71-116, 39-71-737, AND 39-71-1003, MCA." 6 6 7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: в Section 1. Section 39-71-116, MCA, is amended to read: 9 "39-71-116. Definitions. Unless the context otherwise 10 10 11 requires, words and phrases employed in this chapter have 11 the following meanings: 12 12 (1) "Average weekly wage" means the mean weekly 13 earnings of all employees under covered employment, as 14 defined and established annually by the Montana department 15 of labor and industry. It is established at the nearest 16 whole dollar number and must be adopted by the division of 17 18 workers' compensation prior to July 1 of each year. 18 19 (2) "Beneficiary" means: 19 (a) a surviving wife or husband; 20 20 (b) an unmarried child under the age of 18 years; 21 (c) an unmarried child under the age of 25 years who 22 is a full-time student in an accredited school; 23 (d) an invalid child over the age of 18 years who is 24 dependent upon the decedent for support at the time of 25

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injury;

2 (e) a parent who is dependent upon the decedent for 3 support at the time of the injury (however, such a parent is 4 a beneficiary only when no beneficiary, as defined in 5 subsections (2)(a) through (2)(d) of this section, exists); 6 and

7 (f) a brother or sister under the age of 18 years if 8 dependent upon the decedent for support at the time of the 9 injury (however, such a brother or sister is a beneficiary 10 only until the age of 18 years and only when no beneficiary, 11 as defined in subsections (2)(a) through (2)(e) of this 12 section, exists).

(3) "Casual employment" means employment not in the
usual course of trade, business, profession, or occupation
of the employer. Any person hauling or assisting in hauling
of sugar beets or grains, in case of emergency, is
considered engaged in casual employment.

.8 (4) "Child" includes a posthumous child, a dependent .9 stepchild, a child legally adopted prior to the injury, and .0 an illegitimate child legitimized prior to the injury.

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

24 (6) "Fiscal year" means the period of time between25 July 1 and the succeeding June 30.

INTRODUCED BILL -2-HR 453

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

4 (8) "Insurer" means an employer bound by compensation 5 plan No. 1, an insurance company transacting business under 6 compensation plan No. 2, the industrial insurance account. 7 under compensation plan No. 3, or the uninsured employers' 8 fund provided for in part 5 of this chapter.

9 (9) "Invalid" means one who is physically or mentally10 incapacitated.

(10) "Order" means any decision, rule, direction, 11 requirement, or standard of the division or any other 12 determination arrived at or decision made by the division. 13 (11) "Payroll", "annual payroll", or "annual payroll 14 for the preceding year" means the average annual payroll of 15 16 the employer for the preceding calendar year or, if the employer shall not have operated a sufficient or any length 17 18 of time during such calendar year, 12 times the average 19 monthly payroll for the current year; provided, that an estimate may be made by the division for any employer 20 starting in business where no average payrolls are 21 22 available, such estimate to be adjusted by additional 23 payment by the employer or refund by the division, as the case may actually be on December 31 of such current year. 24 (12) "Permanent partial disability" means a condition 25

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

(13) "Permanent total disability" means a condition 7 resulting from injury as defined in this chapter that 8 results in the loss of actual earnings or earning capability 9 that exists after the injured worker is as far restored as 10 the permanent character of the injuries will permit and 11 which results in the worker having no reasonable prospect of 12 finding regular employment of any kind in the normal labor 13 market. Disability shall be supported by a preponderance of 14 15 medical evidence.

16 (14) The term "physician" includes "surgeon" and in
17 either case means one authorized by law to practice his
18 profession in this state.

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

(16) "Public corporation" means the state or any
 county, municipal corporation, school district, city, city
 under commission form of government or special charter,

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1 town, or village.

2 (17) "Reasonably safe place to work" means that the
3 place of employment has been made as free from danger to the
4 life or safety of the employee as the nature of the
5 employment will reasonably permit.

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

10 (19) "Temporary total disability" means a condition 11 resulting from an injury as defined in this chapter that 12 results in total loss of wages and exists until the injured 13 worker is as far restored as the permanent character of the 14 injuries will permit or until a vocational rehabilitation 15 certification is made under 39-71-1002. Disability shall be 16 supported by a preponderance of medical evidence.

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

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

1	(22) "Year", unless otherwise specified, means calendar
2	year."
3	Section 2. Section 39-71-737, MCA, is amended to read:
4	"39-71-737. Compensation to run consecutively
5	exception. Compensation shall run consecutively and not
6	concurrently, and payment shall not be made for two classes
7	of disability over the same period except that indemnity
8	benefits under 39-71-705 through 39-71-708 and total
9	disability benefits must be paid concurrently."
10	Section 3. Section 39-71-1003, MCA, is amended to
11	read:
12	"39-71-1003. Eligibility for benefits under chapter
13	not affected other expenses payable. The eligibility of
	were attracted and and attracted att
14	any injured worker to receive other benefits under the
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	any injured worker to receive other benefits under the
15	any injured worker to receive other benefits under the Workers' Compensation Act is in no way affected by his
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15 16 17 18	any injured worker to receive other benefits under the Workers' Compensation Act is in no way affected by his entrance upon a course of vocational rehabilitation as herein provided7. but-he-may-be-paid7-in A person undergoing vocational rehabilitation must be paid total disability
15 16 17 18 19	any injured worker to receive other benefits under the Workers' Compensation Act is in no way affected by his entrance upon a course of vocational rehabilitation as herein provided ₇ . but-he-may-be-paid ₇ -in <u>A person undergoing</u> vocational rehabilitation must be paid total disability benefits until he is certified under 39-71-1002. In addition

(1) his actual and necessary travel expenses from his
 place of residence to the place of training and return;
 (2) his living expenses while in training in an amount

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1 not in excess of \$50 per week; and

2 (3) his expenses for tuition, books, and necessary3 equipment in training."

<u>NEW SECTION.</u> Section 4. Extension of authority. Any
existing authority of the division of workers' compensation
to make rules on the subject of the provisions of this act
is extended to the provisions of this act.

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49th Legislature

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HB 0453/02 APPROVED BY COMM. ON BUSINESS AND LABOR

1	HOUSE BILL NO. 453	1	injury;
2	INTRODUCED BY BRADLEY	2	(e) a parent who is dependent upon the decedent for
3		3	support at the time of the injury (however, such a parent is
4	A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO TOTAL	4	a beneficiary only when no beneficiary, as defined in
5	DISABILITY WORKERS' COMPENSATION BENEFITS; AMENDING SECTIONS	5	subsections (2)(a) through (2)(d) of this section, exists);
6	39-71-116, 39-71-737, AND 39-71-1003, MCA."	6	and
7		7	(f) a brother or sister under the age of 18 years if
8	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	8	dependent upon the decedent for support at the time of the
. 9	Section 1. Section 39-71-116, MCA, is amended to read:	9	injury (however, such a brother or sister is a beneficiary
10	"39-71-116. Definitions. Unless the context otherwise	10	only until the age of 18 years and only when no beneficiary,
11	requires, words and phrases employed in this chapter have	11	as defined in subsections (2)(a) through (2)(e) of this
12	the following meanings:	12	section, exists).
13	(1) "Average weekly wage" means the mean weekly	13	(3) "Casual employment" means employment not in the
14	earnings of all employees under covered employment, as	14	usual course of trade, business, profession, or occupation
15	defined and established annually by the Montana department	15	of the employer. Any person hauling or assisting in hauling
16	of labor and industry. It is established at the nearest	16	of sugar beets or grains, in case of emergency, is
17	whole dollar number and must be adopted by the division of	17	considered engaged in casual employment.
18	workers' compensation prior to July 1 of each year.	18	(4) "Child" includes a posthumous child, a dependent
19	(2) "Beneficiary" means:	19	stepchild, a child legally adopted prior to the injury, and
20	(a) a surviving wife or husband;	20	an illegitimate child legitimized prior to the injury.
21	(b) an unmarried child under the age of 18 years;	21	(5) "Division" means the division of workers'
22	(c) an unmarried child under the age of 25 years who	22	compensation of the department of labor and industry
23	is a full-time student in an accredited school;	23	provided for in 2-15-1702.
24	(d) an invalid child over the age of 18 years who is	24	(6) "Fiscal year" means the period of time between
25	dependent upon the decedent for support at the time of	25	July 1 and the succeeding June 30.



-2- HB 453 SECOND READING (7) "Husband" or "widower" means only a husband or
 widower living with or legally entitled to be supported by
 the deceased at the time of her injury.

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

9 (9) "Invalid" means one who is physically or mentally10 incapacitated.

11 (10) "Order" means any decision, rule, direction, requirement, or standard of the division or any other 12 13 determination arrived at or decision made by the division. 14 (11) "Payroll", "annual payroll", or "annual payroll 15 for the preceding year" means the average annual payroll of 16 the employer for the preceding calendar year or, if the employer shall not have operated a sufficient or any length 17 of time during such calendar year, 12 times the average 18 19 monthly payroll for the current year; provided, that an estimate may be made by the division for any employer 20 21 starting in business where no average payrolls are 22 available, such estimate to be adjusted by additional 23 payment by the employer or refund by the division, as the case may actually be on December 31 of such current year. 24

25 (12) "Permanent partial disability" means a condition

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1 resulting from injury as defined in this chapter that 2 results in the actual loss of earnings or earning capability 3 less than total that exists after the injured worker is as 4 far restored as the permanent character of the injuries will 5 permit. Disability shall be supported by a preponderance of 6 medical evidence.

(13) "Permanent total disability" means a condition 7 resulting from injury as defined in this chapter that 8 9 results in the loss of actual earnings or earning capability that exists after the injured worker is as far restored as 10 11 the permanent character of the injuries will permit and which results in the worker having no reasonable prospect of 12 finding regular employment of any kind in the normal labor 13 market. Disability shall be supported by a preponderance of 14 medical evidence. 15

16 (14) The term "physician" includes "surgeon" and in
17 either case means one authorized by law to practice his
18 profession in this state.

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

23 (16) "Public corporation" means the state or any
24 county, municipal corporation, school district, city, city
25 under commission form of government or special charter,

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2 (17) "Reasonably safe place to work" means that the 3 place of employment has been made as free from danger to the 4 life or safety of the employee as the nature of the 5 employment will reasonably permit.

6 (18) "Reasonably safe tools and appliances" are such
7 tools and appliances as are adapted to and are reasonably
8 safe for use for the particular purpose for which they are
2 furnished.

(19) "Temporary total disability" means a condition 19 resulting from an injury as defined in this chapter that 11 results in total loss of wages and exists until the injured 12 worker is as far restored as the permanent character of the 13 injuries will permit or-until--a--vocational--rehabilitation 14 certification--is--made--under-39-71-1002, A WORKER SHALL BE 15 PAID TEMPORARY TOTAL DISABILITY BENEFITS DURING A REASONABLE 16 PERIOD OF RETRAINING. Disability shall be supported by a 17 preponderance of medical evidence. 18

19 (20) "Wages" means the average gross earnings received 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

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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." Section 2. Section 39-71-737, MCA, is amended to read: 5 6 "39-71-737. Compensation to run consecutively --7 exception. Compensation shall run consecutively and not concurrently, and payment shall not be made for two classes 8 9 of disability over the same period except that indemnity 10 benefits under 39-71-705 through 39-71-708 and TEMPORARY 11 total disability benefits must MAY be paid concurrently." 12 Section 3. Section 39-71-1003, MCA, is amended to 13 read: 14 "39-71-1003. Eligibility for benefits under chapter not affected -- other expenses payable. The eligibility of 15 16 any injured worker to receive other benefits under the Workers' Compensation Act is in no way affected by his 17 entrance upon a course of vocational rehabilitation as 18 herein provided, but-he-may-be-paid;-in A person undergoing 19 20 vocational rehabilitation must be paid TEMPORARY total 21 disability benefits until-he-is-certified-under--39-71-1002. 22 In addition thereto, he may be paid, upon the certification of the department of social and rehabilitation services from 23 24 funds herein provided:

25 (1) his actual and necessary travel expenses from his

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place of residence to the place of training and return; 1 (2) his living expenses while in training in an amount 2 3 not in excess of \$50 per week; and (3) his expenses for tuition, books, and necessary 4 equipment in training." 5 NEW SECTION. Section 4. Extension of authority. Any 6 7 existing authority of the division of workers' compensation 8 to make rules on the subject of the provisions of this act 9 is extended to the provisions of this act.

-End-

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HOUSE BILL NO. 453 injury; 1 1 2 INTRODUCED BY BRADLEY 2 (e) a parent who is dependent upon the decedent for 3 3 support at the time of the injury (however, such a parent is A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO TOTAL a beneficiary only when no beneficiary, as defined in 4 4 S DISABILITY WORKERS' COMPENSATION BENEFITS; AMENDING SECTIONS 5 subsections (2)(a) through (2)(d) of this section, exists); 39-71-116, 39-71-737, AND 39-71-1003, MCA." 6 6 and 7 7 (f) a brother or sister under the age of 18 years if 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: dependent upon the decedent for support at the time of the 8 9 Section 1. Section 39-71-116, MCA, is amended to read: 9 injury (however, such a brother or sister is a beneficiary 10 "39-71-116. Definitions. Unless the context otherwise 10 only until the age of 18 years and only when no beneficiary, requires, words and phrases employed in this chapter have 11 11 as defined in subsections (2)(a) through (2)(e) of this the following meanings: section, exists). 12 12 13 (1) "Average weekly wage" means the mean weekly 13 (3) "Casual employment" means employment not in the earnings of all employees under covered employment, as 14 usual course of trade, business, profession, or occupation 14 defined and established annually by the Montana department 15 15 of the employer. Any person hauling or assisting in hauling 16 of labor and industry. It is established at the nearest 16 sugar beets or grains, in case of emergency, is of whole dollar number and must be adopted by the division of considered engaged in casual employment. 17 17 workers' compensation prior to July 1 of each year. (4) "Child" includes a posthumous child, a dependent 18 18 19 (2) "Beneficiary" means: stepchild, a child legally adopted prior to the injury, and 19 (a) a surviving wife or husband: an illegitimate child legitimized prior to the injury. 20 20 21 (b) an unmarried child under the age of 18 years: 21 (5) "Division" means the division of workers' 22 (c) an unmarried child under the age of 25 years who 22 compensation of the department of labor and industry 23 is a full-time student in an accredited school: 23 provided for in 2-15-1702. 24 (d) an invalid child over the age of 18 years who is 24 (6) "Fiscal year" means the period of time between 25 dependent upon the decedent for support at the time of 25 July 1 and the succeeding June 30. -2-

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THIRD READING

(7) "Husband" or "widower" means only a husband or
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 the deceased at the time of her injury.

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1 place of residence to the place of training and return;

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3 not in excess of \$50 per week; and

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6 <u>NEW SECTION.</u> Section 4. Extension of authority. Any 7 existing authority of the division of workers' compensation 8 to make rules on the subject of the provisions of this act 9 is extended to the provisions of this act.

-End-

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Montana Legislative Council

1	HOUSE BILL NO. 453	1	injury;
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3		3	support at the time of the injury (however, such a parent is
4	A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO TOTAL	4	a beneficiary only when no beneficiary, as defined in
5	DISABILITY WORKERS' COMPENSATION BENEFITS; AMENDING SECTIONS	· 5	<pre>subsections (2)(a) through (2)(d) of this section, exists);</pre>
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			REFERENCE BIL
	<u>An</u>		-2- HB 453

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1 town, or village.

2 (17) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the 3 life or safety of the employee as the nature of the 4 employment will reasonably permit. 5

(18) "Reasonably safe tools and appliances" are such 6 tools and appliances as are adapted to and are reasonably 7 8 safe for use for the particular purpose for which they are 9 furnished.

(19) "Temporary total disability" means a condition 10 resulting from an injury as defined in this chapter that 11 results in total loss of wages and exists until the injured 12 13 worker is as far restored as the permanent character of the 14 injuries will permit or-until--a--vocational--rehabilitation 15 certification--is--made--under-39-71-1002. A WORKER SHALL BE 16 PAID TEMPORARY TOTAL DISABILITY BENEFITS DURING A REASONABLE 17 PERIOD OF RETRAINING. Disability shall be supported by a 18 preponderance of medical evidence.

19 (20) "Wages" means the average gross earnings received 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 considered. Sick leave benefits accrued by employees of 22 public corporations, as defined by subsection (16) of this 23 24 section, are considered wages.

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

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

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

5	Section 2. Section 39-71-737, MCA, is amended to read:
6	"39-71-737. Compensation to run consecutively
7	exception. Compensation shall run consecutively and not
8	concurrently, and payment shall not be made for two classes
9	of disability over the same period except that indemnity
10	benefits under 39-71-705 through 39-71-708 and TEMPORARY
11	total disability benefits must MAY be paid concurrently."
12	Section 3. Section 39-71-1003, MCA, is amended to

13 read:

14 "39-71-1003. Eligibility for benefits under chapter 15 not affected -- other expenses payable. The eligibility of 16 any injured worker to receive other benefits under the Workers' Compensation Act is in no way affected by his 17 entrance upon a course of vocational rehabilitation as 18 19 herein provided, but-he-may-be-paidy-in A person undergoing 20 vocational rehabilitation must be paid TEMPORARY total 21 disability benefits until-he-is-certified-under--39-71-1002. 22 In addition thereto, he may be paid, upon the certification 23 of the department of social and rehabilitation services from 24 funds herein provided: 25

(1) his actual and necessary travel expenses from his

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1 place of residence to the place of training and return;

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

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

NEW SECTION. Section 4. Extension of authority. Any
existing authority of the division of workers' compensation
to make rules on the subject of the provisions of this act
is extended to the provisions of this act.

-End-