

SENATE BILL NO. 281

INTRODUCED BY FULLER, C. SMITH, J. BROWN, PETERSON,
ELLISON, JONES, HAYNE, NELSON, HIRSCH, BLAYLOCK,
THAYER, HAGER, B. BROWN, CHRISTIAENS, MAZUREK,
HANSON, HARP, HIMSL, E. SMITH, HARPER, THOMAS

BY REQUEST OF THE DEPARTMENT
OF LABOR AND INDUSTRY

IN THE SENATE

January 30, 1985	Introduced and referred to Committee on Labor and Employment Relations.
January 31, 1985	Fiscal Note requested.
February 5, 1985	Fiscal Note returned. On motion by Chief Sponsor, Representative Thomas added as sponsor.
February 22, 1985	Committee recommend bill do pass as amended. Report adopted.
February 23, 1985	Bill printed and placed on members' desks.
February 25, 1985	Second reading, pass consideration.
February 26, 1985	Second reading, do pass as amended. Correctly engrossed.
February 27, 1985	Third reading, passed. Ayes, 50; Noes, 0. Transmitted to House.

IN THE HOUSE

March 7, 1985	Introduced and referred to Committee on Business and Labor.
March 26, 1985	Committee recommend bill be concurrent in. Report adopted.
March 30, 1985	Second reading, concurred in.
April 1, 1985	Third reading, concurred in. Returned to Senate.

IN THE SENATE

April 1, 1985	Received from House. Sent to enrolling. Reported correctly enrolled.
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1 Senate BILL NO. 281
 2 INTRODUCED BY *Fulker, Smith, Peterson*
 3 *Edlin* BY REQUEST OF THE DEPARTMENT *Jones*
 4 *Nelson* OF LABOR AND INDUSTRY *Harp*
 5 *Blaylock* *Hays* *Christians* *Stinard*
 6 A BILL FOR AN ACT ENTITLED: "AN ACT LIMITING THE AMOUNT OF *E. Smith*
 7 A LUMP-SUM WORKERS' COMPENSATION PAYMENT TO THE PURCHASE *Hays*
 8 PRICE OF AN ANNUITY THAT WOULD YIELD THE BIWEEKLY BENEFITS
 9 PAYABLE OVER THE ESTIMATED DURATION OF THE COMPENSATION
 10 PERIOD; AMENDING SECTION 39-71-741, MCA; AND PROVIDING AN
 11 IMMEDIATE EFFECTIVE DATE."

12
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 14 Section 1. Section 39-71-741, MCA, is amended to read:
 15 "39-71-741. Compromise settlements and lump-sum
 16 payments -- division approval required. (1) The biweekly
 17 payments provided for in this chapter may be converted, in
 18 whole or in part, into a lump-sum payment. Regardless of the
 19 date of the injury or of a prior lump-sum payment, a lump
 20 sum awarded or paid after [the effective date of this act]
 21 may not exceed the purchase price to the insurer of an
 22 annuity that would yield an amount equal to the biweekly
 23 benefits payable over the estimated duration of the
 24 compensation period. If the estimated duration of the
 25 compensation period is the remaining life expectancy of the

1 claimant or the claimant's beneficiary, the remaining life
 2 expectancy must be determined by using the most recent table
 3 of life expectancy in years as published by the United
 4 States national center for health statistics.

5 (2) Such The conversion can only be made upon the
 6 written application of the injured worker or the worker's
 7 beneficiary, with the concurrence of the insurer, and ~~shall~~
 8 rest approval of the conversion rests in the discretion of
 9 the division,--both as to what the purchase price of an
 10 annuity would be, the amount of such the lump-sum payment,
 11 and the advisability of such the conversion.

12 (3) ~~The division is hereby vested with~~ has full power,
 13 authority, and jurisdiction to allow and approve compromises
 14 of claims under this chapter. All settlements and
 15 compromises of compensation provided in this chapter are
 16 void without the approval of the division. Approval of the
 17 division must be in writing. The division shall directly
 18 notify every claimant of any division order approving or
 19 denying a claimant's settlement or compromise of a claim.

20 (4) A controversy between a claimant and an insurer
 21 regarding the conversion of biweekly payments into a lump
 22 sum is considered a dispute for which the workers'
 23 compensation judge has jurisdiction to make a
 24 determination."

25 NEW SECTION. Section 2. Extension of authority. Any



1 existing authority of the division of workers' compensation
2 to make rules on the subject of the provisions of this act
3 is extended to the provisions of this act.

4 NEW SECTION. Section 3. Severability. If a part of
5 this act is invalid, all valid parts that are severable from
6 the invalid part remain in effect. If a part of this act is
7 invalid in one or more of its applications, the part remains
8 in effect in all valid applications that are severable from
9 the invalid applications.

10 NEW SECTION. Section 4. Effective date. This act is
11 effective on passage and approval.

-End-

In compliance with a written request received January 31, 19 85, there is hereby submitted a Fiscal Note for Senate Bill 281 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

"An act limiting the amount of a lump sum workers' compensation payment to the purchase price of an annuity that would yield the bi-weekly benefits payable over the estimated duration of the compensation period; amending Section 39-71-741, MCA; and providing an immediate effective date."

ASSUMPTIONS:

- A. Rates will increase approximately 12% in FY'86 and 12% in FY'87 because of the underlying factors in the system that are independent of the outcome of this bill (loss, experience, decline in interest earnings, etc.). An actuarial determination on rate changes won't be made until two months prior to the beginning of a fiscal period.
- B. Since the State Fund operates as a nonprofit entity revenues will match costs.
- C. In order to take into account contingent liabilities on cases classified as permanent total disabilities, the State Fund will either award or reserve the undiscounted lump sum conversion of future biweekly benefits.
- D. Impact on self insurers and private carriers is not included because the basis upon which to make an estimate is unavailable.
- E. The number of claims classified as permanent total will increase due to the incentive added by the Willis case. The percentage of cases classified as permanent total will increase from 2.14% to 5% of all cases. This increase is 2.34 times the current number of permanent total cases.
- F. The impact of the Willis case will be expressed in terms of rate increases in fiscal years 1986 and 1987, which would then stabilize for future years.
- G. This analysis is based only on State Fund data. The State Fund currently has approximately 50% of the workers' compensation market in Montana.
- H. Fiscal year 1980 will be used as a base year to determine the impact.
- I. The increase in liabilities for cases occurring prior to July 1, 1985, will be recovered over a two-year period.
- J. Total public sector employees are approximately 60,800, of which 14,000 are state employees.

David L. Hunter

BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Feb 5, 1985

FISCAL IMPACT:

Impact On State Fund Premium:

	Premium Paid FY 84	Current Law as Affected By Willis Decision			Proposed Change Affected By SB281		Reduction Of Premium	
		FY 85 Estimated	FY 86 1.384%	FY 87 1.12%	FY 86 1.12%	FY 87 1.12%	FY 86	FY 87
<u>PART A. State Government:</u>								
General Fund	\$ 1,271,239	\$ 1,530,570	\$ 2,206,983	\$ 2,471,820	\$ 1,594,641	\$ 1,785,997	\$ 612,342	\$ 685,820
Special Rev.	1,460,579	1,758,536	2,535,695	2,839,980	1,832,150	2,052,008	703,545	787,970
Enterprise	62,718	75,512	108,833	121,948	78,673	88,113	30,160	33,830
Int. Serv.	154,134	185,577	267,589	299,700	193,345	216,546	74,244	83,150
Pension	7,691	9,259	13,350	14,951	9,646	10,803	3,704	4,140
Exp. Trust	2,074	2,496	3,598	4,030	2,600	2,912	998	1,110
University*	495,941	597,112	860,997	964,315	622,108	696,760	238,889	267,550
TOTAL	\$ 3,454,376	\$ 4,159,062	\$ 5,997,045	\$ 6,716,744	\$ 4,333,163	\$ 4,853,139	(\$ 1,663,882)	(\$1,863,600)

Net General Fund Savings:

(\$ 851,231)(\$ 953,370)

* Due to the nature of the University System budget, these amounts can be considered General Fund.

Part B. All Other Employers Insured With State Fund:

\$ 33,678,294 \$ 44,066,599 \$ 66,529,376 \$ 75,650,063 \$ 48,070,321 \$ 54,660,450 (\$ 18,459,055) (\$ 20,989,600)

Total Estimate

Premium \$ 37,032,670 \$ 48,225,661 \$ 72,526,421 \$ 82,366,807 \$ 52,403,484 \$ 59,513,589 (\$ 20,122,937) (\$ 22,852,200)

LOCAL GOVERNMENT IMPACT:

Local governments would also receive reduced workers' compensation premiums of approximately \$10.2 million over the biennium. This savings would be distributed between cities, counties and school districts in proportion to their payroll and accident history.

IMPACT ON STATE REVENUES:

If Senate Bill 281 does not pass, the premium for all private sector employers will increase by approximately \$74 million over the biennium. Because premiums are deducted as a business expense, Montana corporate and individual income tax receipts will be reduced. The dollar amount cannot be estimated.

APPROVED BY COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONS

SENATE BILL NO. 281

INTRODUCED BY FULLER, C. SMITH, J. BROWN, PETERSON,
ELLISON, JONES, HAYNE, NELSON, HIRSCH, BLAYLOCK,
THAYER, HAGER, B. BROWN, CHRISTIAENS, MAZUREK,
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BY REQUEST OF THE DEPARTMENT
OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT LIMITING THE AMOUNT OF
A PERMANENT TOTAL BENEFITS LUMP-SUM WORKERS' COMPENSATION
PAYMENT TO THE PURCHASE PRICE OF AN ANNUITY THAT WOULD YIELD
THE BIWEEKLY BENEFITS PAYABLE OVER THE ESTIMATED DURATION OF
THE COMPENSATION PERIOD, BY DISCOUNTING IT BY 7 PERCENT,
COMPOUNDED ANNUALLY; PROVIDING A METHOD FOR DETERMINING
WHETHER A LUMP-SUM PAYMENT WILL BE GRANTED; AMENDING SECTION
SECTIONS 39-71-741, 39-71-2109, AND 39-71-2207, MCA; AND
PROVIDING AN APPLICABILITY DATE, RETROACTIVE EFFECT CLAUSE,
AND AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 39-71-741, MCA, is amended to read:

"39-71-741. Compromise settlements and lump-sum
payments -- division approval required. (1) The biweekly
payments provided for in this chapter may be converted, in
whole or in part, into a lump-sum payment. Regardless of the

date of the injury or of a prior lump-sum payment, a lump
sum LUMP-SUM CONVERSION OF PERMANENT TOTAL BIWEEKLY PAYMENTS
awarded or paid after [the effective date of this act] may
not--exceed--the--purchase--price--to--the--insurer--of--an--annuity
that--would--yield--an--amount--equal--to--the--biweekly--benefits
payable--over--the--estimated--duration--of--the--compensation
period; MUST EQUAL THE ESTIMATED PRESENT VALUE OF THE TOTAL
UNPAID PERMANENT TOTAL BIWEEKLY PAYMENTS, ASSUMING INTEREST
AT 7% PER YEAR, COMPOUNDED ANNUALLY, UNLESS THE CONVERSION
IMPROVES THE FINANCIAL CONDITION OF THE WORKER OR HIS
BENEFICIARY, AS PROVIDED IN SUBSECTION (2)(B). If the
estimated duration of the compensation period is the
remaining life expectancy of the claimant or the claimant's
beneficiary, the remaining life expectancy must be
determined by using the most recent table of life expectancy
in years as published by the United States national center
for health statistics.

(2) Such The conversion can only be made upon the
written application of the injured worker or the worker's
beneficiary, with the concurrence of the insurer, and shall
rest approval of the conversion rests in the discretion of
the division;--both as to what the purchase-price-of-an
annuity-would-be-the amount of such the lump-sum payment; and
the advisability of such the conversion. IT IS PRESUMED
THAT BIWEEKLY PAYMENTS ARE IN THE BEST INTERESTS OF THE

1 WORKER OR HIS BENEFICIARY. THE APPROVAL OR AWARD OF A
 2 LUMP-SUM CONVERSION BY THE DIVISION OR THE WORKERS'
 3 COMPENSATION JUDGE MUST BE THE EXCEPTION, NOT THE RULE, AND
 4 MAY BE GIVEN ONLY IF THE WORKER OR HIS BENEFICIARY
 5 DEMONSTRATES THAT HIS ABILITY TO SUSTAIN HIMSELF FINANCIALLY
 6 IS MORE PROBABLE WITH A WHOLE OR PARTIAL LUMP-SUM CONVERSION
 7 THAN WITH THE BIWEEKLY PAYMENTS AND HIS OTHER AVAILABLE
 8 RESOURCES. THE FOLLOWING PROCEDURE MUST BE USED BY THE
 9 DIVISION AND THE WORKERS' COMPENSATION JUDGE IN DETERMINING
 10 WHETHER A LUMP-SUM CONVERSION OF PERMANENT TOTAL BIWEEKLY
 11 PAYMENTS WILL BE APPROVED OR AWARDED:

12 (A) THE DIFFERENCE BETWEEN THE PRESENT DISCOUNTED
 13 VALUE OF A LUMP SUM AND THE FUTURE VALUE OF THE BIWEEKLY
 14 PAYMENTS CANNOT BE THE ONLY GROUNDS FOR APPROVING OR
 15 AWARDING A LUMP-SUM CONVERSION.

16 (B) A LUMP-SUM CONVERSION THAT IMPROVES THE FINANCIAL
 17 CONDITION OF THE WORKER OR HIS BENEFICIARY OVER WHAT WOULD
 18 HAVE BEEN REASONABLY EXPECTED HAD THE WORKER NOT BEEN
 19 INJURED OR DIED CAN BE APPROVED OR AWARDED ONLY IF THE
 20 LUMP-SUM CONVERSION IS LIMITED TO THE PURCHASE PRICE TO THE
 21 INSURER OF AN ANNUITY THAT WOULD YIELD AN AMOUNT EQUAL TO
 22 THE BIWEEKLY BENEFITS PAYABLE OVER THE ESTIMATED DURATION OF
 23 THE COMPENSATION PERIOD. THE WORKER OR HIS BENEFICIARY MUST
 24 DEMONSTRATE THE FINANCIAL CONDITION THAT WOULD HAVE BEEN
 25 REASONABLY EXPECTED, TAKING INTO CONSIDERATION HIS AGE,

1 EDUCATION, WORK EXPERIENCE, AND PROBABLE JOB PROMOTIONS AND
 2 PAY INCREASES.

3 (C) IF THE EXISTING DELINQUENT OR OUTSTANDING DEBTS
 4 ARE USED AS GROUNDS FOR A LUMP-SUM CONVERSION, THE WORKER OR
 5 HIS BENEFICIARY MUST DEMONSTRATE THROUGH A DEBT MANAGEMENT
 6 PLAN THAT A LUMP SUM FOR THAT PURPOSE IS NECESSARY TO
 7 SUSTAIN HIMSELF FINANCIALLY.

8 (D) IF A BUSINESS VENTURE IS USED AS GROUNDS FOR A
 9 LUMP-SUM CONVERSION, THE WORKER OR HIS BENEFICIARY MUST
 10 DEMONSTRATE THROUGH A BUSINESS PLAN THAT A LUMP SUM FOR THAT
 11 PURPOSE IS NECESSARY TO SUSTAIN HIMSELF FINANCIALLY. THE
 12 BUSINESS PLAN MUST AT LEAST SHOW THE FEASIBILITY OF THE
 13 BUSINESS, GIVEN THE MARKET CONDITIONS IN THE INTENDED MARKET
 14 AREA, AND THE CASH THAT WILL BE AVAILABLE TO HIM ON A
 15 BIWEEKLY BASIS AFTER START-UP COSTS AND OTHER BUSINESS
 16 EXPENSES ARE CONSIDERED THROUGHOUT THE EXPECTED LIFE OF THE
 17 VENTURE.

18 (3) IF THE DIVISION OR THE WORKERS' COMPENSATION JUDGE
 19 FINDS THAT AN APPLICATION FOR LUMP-SUM CONVERSION DOES NOT
 20 ADEQUATELY DEMONSTRATE THE ABILITY OF THE WORKER OR HIS
 21 BENEFICIARY TO SUSTAIN HIMSELF FINANCIALLY, THE DIVISION, OR
 22 THE WORKERS' COMPENSATION JUDGE IF THE DIVISION HAS NOT
 23 ALREADY SO ORDERED, MAY ORDER, AT THE INSURER'S EXPENSE,
 24 FINANCIAL, MEDICAL, VOCATIONAL REHABILITATION, EDUCATIONAL,
 25 OR OTHER EVALUATIVE STUDIES TO DETERMINE WHETHER A LUMP-SUM

1 CONVERSION IS IN THE BEST INTEREST OF THE WORKER OR HIS
2 BENEFICIARY.

3 ~~(3)~~(4) The division ~~is--hereby--vested-with~~ has full
4 power, authority, and jurisdiction to allow and approve
5 compromises of claims under this chapter. All settlements
6 and compromises of compensation provided in this chapter are
7 void without the approval of the division. Approval of the
8 division must be in writing. The division shall directly
9 notify every claimant of any division order approving or
10 denying a claimant's settlement or compromise of a claim.

11 ~~(4)~~(5) A controversy between a claimant and an insurer
12 regarding the conversion of biweekly payments into a lump
13 sum is considered a dispute for which the workers'
14 compensation judge has jurisdiction to make a
15 determination."

16 SECTION 2. SECTION 39-71-2109, MCA, IS AMENDED TO
17 READ:

18 "39-71-2109. When employer may be relieved from
19 liability. Any employer bound by compensation plan No. 1
20 against whom liability may exist for compensation for
21 permanent benefits under this chapter may, with the approval
22 of the division, be relieved therefrom by:

23 (1) depositing the present value or the estimated
24 present value of the total unpaid compensation for which
25 such liability exists for permanent total benefits, assuming

1 interest at 5% 7 $\frac{1}{2}$ per annum, compounded annually, with the
2 division; or

3 (2) ~~purchasing--an--annuity--within--the--limitations~~
4 ~~provided-by-law-in-any-insurance-company-granting--annuities~~
5 ~~and--authorized--to-transact-business-in-this-state,-subject~~
6 ~~to-the-approval-of-the-division~~ depositing with the division
7 the sum of the unpaid permanent partial benefits for which
8 such liability exists."

9 SECTION 3. SECTION 39-71-2207, MCA, IS AMENDED TO
10 READ:

11 "39-71-2207. How insurer relieved from liability. Any
12 compensation plan No. 2 insurer against whom liability may
13 exist for compensation for permanent benefits under this
14 chapter may, with the approval of the division, be relieved
15 therefrom by:

16 (1) depositing the present value or the estimated
17 present value of the total unpaid compensation for which
18 such liability exists for permanent total benefits, assuming
19 interest at 5% 7 $\frac{1}{2}$ per annum compounded annually, with the
20 division; or

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24 ~~to-the-approval-of-the-division~~ depositing with the division
25 the sum of the unpaid permanent partial benefits for which

1 such liability exists."

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

6 NEW SECTION. Section 5. Severability. If a part of
7 this act is invalid, all valid parts that are severable from
8 the invalid part remain in effect. If a part of this act is
9 invalid in one or more of its applications, the part remains
10 in effect in all valid applications that are severable from
11 the invalid applications.

12 NEW SECTION. SECTION 6. APPLICABILITY -- RETROACTIVE
13 EFFECT. THIS ACT APPLIES RETROACTIVELY, WITHIN THE MEANING
14 OF 1-2-109, TO INJURIES INCURRED AND LUMP SUMS AWARDED OR
15 PAID PRIOR TO THE EFFECTIVE DATE OF THIS ACT IF A LUMP SUM
16 IS AWARDED OR PAID FOR THE INJURY OR THE AWARD OR SETTLEMENT
17 IS REOPENED AND REDETERMINED AFTER THE EFFECTIVE DATE OF
18 THIS ACT. THE MERE PASSAGE OF THIS ACT IS NOT GROUNDS FOR
19 REOPENING ANY CASE.

20 NEW SECTION. Section 7. Effective date. This act is
21 effective on passage and approval.

-End-

1 SENATE BILL NO. 281

2 INTRODUCED BY FULLER, C. SMITH, J. BROWN, PETERSON,
3 ELLISON, JONES, HAYNE, NELSON, HIRSCH, BLAYLOCK,
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14 COMPOUNDED ANNUALLY; PROVIDING A METHOD FOR DETERMINING
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17 PROVIDING AN APPLICABILITY DATE, RETROACTIVE EFFECT CLAUSE,
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1 date of the injury or of a prior lump-sum payment, a lump
2 sum LUMP-SUM CONVERSION OF PERMANENT TOTAL BIWEEKLY PAYMENTS
3 awarded or paid after [the effective date of this act] may
4 not--exceed--the-purchase-price-to-the-insurer-of-an-annuity
5 that-would-yield-an-amount-equal-to--the--biweekly--benefits
6 payable--over--the--estimated--duration--of--the--compensation
7 period; MUST EQUAL THE ESTIMATED PRESENT VALUE OF THE TOTAL
8 UNPAID PERMANENT TOTAL BIWEEKLY PAYMENTS, ASSUMING INTEREST
9 AT 7% PER YEAR, COMPOUNDED ANNUALLY, UNLESS THE CONVERSION
10 IMPROVES THE FINANCIAL CONDITION OF THE WORKER OR HIS
11 BENEFICIARY, AS PROVIDED IN SUBSECTION (2)(B). If the
12 estimated duration of the compensation period is the
13 remaining life expectancy of the claimant or the claimant's
14 beneficiary, the remaining life expectancy must be
15 determined by using the most recent table of life expectancy
16 in years as published by the United States national center
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 16 EXPENSES ARE CONSIDERED THROUGHOUT THE EXPECTED LIFE OF THE
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18 (3) IF THE DIVISION OR THE WORKERS' COMPENSATION JUDGE
 19 FINDS THAT AN APPLICATION FOR LUMP-SUM CONVERSION DOES NOT
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 21 BENEFICIARY TO SUSTAIN HIMSELF FINANCIALLY, THE DIVISION, OR
 22 THE WORKERS' COMPENSATION JUDGE--IF--THE--DIVISION--HAS--NOT
 23 ALREADY--SO--ORDERED, MAY ORDER, AT THE INSURER'S EXPENSE,
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12 regarding the conversion of biweekly payments into a lump
13 sum is considered a dispute for which the workers'
14 compensation judge has jurisdiction to make a
15 determination."

16 SECTION 2. SECTION 39-71-2109, MCA, IS AMENDED TO

17 READ:

18 "39-71-2109. When employer may be relieved from
19 liability. Any employer bound by compensation plan No. 1
20 against whom liability may exist for compensation for
21 permanent benefits under this chapter may, with the approval
22 of the division, be relieved therefrom by:

23 (1) depositing the present value or the estimated
24 present value of the total unpaid compensation for which
25 such liability exists for permanent total benefits, assuming

1 interest at 5% 7% per annum, compounded annually, with the
2 division; or

3 (2) ~~purchasing an annuity within the limitations~~
4 ~~provided by law in any insurance company granting annuities~~
5 ~~and authorized to transact business in this state, subject~~
6 ~~to the approval of the division~~ depositing with the division
7 the sum of the unpaid permanent partial benefits for which
8 such liability exists."

9 SECTION 3. SECTION 39-71-2207, MCA, IS AMENDED TO

10 READ:

11 "39-71-2207. How insurer relieved from liability. Any
12 compensation plan No. 2 insurer against whom liability may
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16 (1) depositing the present value or the estimated
17 present value of the total unpaid compensation for which
18 such liability exists for permanent total benefits, assuming
19 interest at 5% 7% per annum compounded annually, with the
20 division; or

21 (2) ~~purchasing an annuity within the limitations~~
22 ~~provided by law in any insurance company granting annuities~~
23 ~~and authorized to transact business in this state, subject~~
24 ~~to the approval of the division~~ depositing with the division
25 the sum of the unpaid permanent partial benefits for which

1 such liability exists."

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

6 NEW SECTION. Section 5. Severability. If a part of
7 this act is invalid, all valid parts that are severable from
8 the invalid part remain in effect. If a part of this act is
9 invalid in one or more of its applications, the part remains
10 in effect in all valid applications that are severable from
11 the invalid applications.

12 NEW SECTION. SECTION 6. APPLICABILITY -- RETROACTIVE
13 EFFECT. THIS ACT APPLIES RETROACTIVELY, WITHIN THE MEANING
14 OF 1-2-109, TO INJURIES INCURRED AND LUMP SUMS AWARDED OR
15 PAID PRIOR TO THE EFFECTIVE DATE OF THIS ACT IF A LUMP SUM
16 IS AWARDED OR PAID FOR THE INJURY OR THE AWARD OR SETTLEMENT
17 IS REOPENED AND REDETERMINED AFTER THE EFFECTIVE DATE OF
18 THIS ACT. THE MERE PASSAGE OF THIS ACT IS NOT GROUNDS FOR
19 REOPENING ANY CASE.

20 NEW SECTION. Section 7. Effective date. This act is
21 effective on passage and approval.

-End-

SENATE BILL NO. 281

INTRODUCED BY FULLER, C. SMITH, J. BROWN, PETERSON,
ELLISON, JONES, HAYNE, NELSON, HIRSCH, BLAYLOCK,
THAYER, HAGER, B. BROWN, CHRISTIAENS, MAZUREK,
HANSON, HARP, HIMSL, E. SMITH, HARPER, THOMAS
BY REQUEST OF THE DEPARTMENT
OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT LIMITING THE AMOUNT OF
A PERMANENT TOTAL BENEFITS LUMP-SUM WORKERS' COMPENSATION
PAYMENT TO THE PURCHASE PRICE OF AN ANNUITY THAT WOULD YIELD
THE BIWEEKLY BENEFITS PAYABLE OVER THE ESTIMATED DURATION OF
THE COMPENSATION PERIOD; BY DISCOUNTING IT BY 7 PERCENT,
COMPOUNDED ANNUALLY; PROVIDING A METHOD FOR DETERMINING
WHETHER A LUMP-SUM PAYMENT WILL BE GRANTED; AMENDING SECTION
SECTIONS 39-71-741, 39-71-2109, AND 39-71-2207, MCA; AND
PROVIDING AN APPLICABILITY DATE, RETROACTIVE EFFECT CLAUSE,
AND AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 39-71-741, MCA, is amended to read:

"39-71-741. Compromise settlements and lump-sum
payments -- division approval required. (1) The biweekly
payments provided for in this chapter may be converted, in
whole or in part, into a lump-sum payment. Regardless of the

~~date of the injury or of a prior lump-sum payment, a lump
sum LUMP-SUM CONVERSION OF PERMANENT TOTAL BIWEEKLY PAYMENTS
awarded or paid after [the effective date of this act] may
not exceed the purchase price to the insurer of an annuity
that would yield an amount equal to the biweekly benefits
payable over the estimated duration of the compensation
period. MUST EQUAL THE ESTIMATED PRESENT VALUE OF THE TOTAL
UNPAID PERMANENT TOTAL BIWEEKLY PAYMENTS, ASSUMING INTEREST
AT 7% PER YEAR, COMPOUNDED ANNUALLY, UNLESS THE CONVERSION
IMPROVES THE FINANCIAL CONDITION OF THE WORKER OR HIS
BENEFICIARY, AS PROVIDED IN SUBSECTION (2)(B). If the
estimated duration of the compensation period is the
remaining life expectancy of the claimant or the claimant's
beneficiary, the remaining life expectancy must be
determined by using the most recent table of life expectancy
in years as published by the United States national center
for health statistics.~~

(2) Such The conversion can only be made upon the
written application of the injured worker or the worker's
beneficiary, with the concurrence of the insurer, and shall
rest approval of the conversion rests in the discretion of
the division, both as to what the purchase price of an
annuity would be the amount of such the lump-sum payment,
and the advisability of such the conversion. IT IS PRESUMED
THAT BIWEEKLY PAYMENTS ARE IN THE BEST INTERESTS OF THE



1 WORKER OR HIS BENEFICIARY. THE APPROVAL OR AWARD OF A
 2 LUMP-SUM CONVERSION BY THE DIVISION OR THE WORKERS'
 3 COMPENSATION JUDGE MUST BE THE EXCEPTION, NOT THE RULE, AND
 4 MAY BE GIVEN ONLY IF THE WORKER OR HIS BENEFICIARY
 5 DEMONSTRATES THAT HIS ABILITY TO SUSTAIN HIMSELF FINANCIALLY
 6 IS MORE PROBABLE WITH A WHOLE OR PARTIAL LUMP-SUM CONVERSION
 7 THAN WITH THE BIWEEKLY PAYMENTS AND HIS OTHER AVAILABLE
 8 RESOURCES. THE FOLLOWING PROCEDURE MUST BE USED BY THE
 9 DIVISION AND THE WORKERS' COMPENSATION JUDGE IN DETERMINING
 10 WHETHER A LUMP-SUM CONVERSION OF PERMANENT TOTAL BIWEEKLY
 11 PAYMENTS WILL BE APPROVED OR AWARDED:

12 (A) THE DIFFERENCE BETWEEN THE PRESENT DISCOUNTED
 13 VALUE OF A LUMP SUM AND THE FUTURE VALUE OF THE BIWEEKLY
 14 PAYMENTS CANNOT BE THE ONLY GROUNDS FOR APPROVING OR
 15 AWARDING A LUMP-SUM CONVERSION.

16 (B) A LUMP-SUM CONVERSION THAT IMPROVES THE FINANCIAL
 17 CONDITION OF THE WORKER OR HIS BENEFICIARY OVER WHAT WOULD
 18 HAVE BEEN REASONABLY EXPECTED HAD THE WORKER NOT BEEN
 19 INJURED OR DIED CAN BE APPROVED OR AWARDED ONLY IF THE
 20 LUMP-SUM CONVERSION IS LIMITED TO THE PURCHASE PRICE TO THE
 21 INSURER OF AN ANNUITY THAT WOULD YIELD AN AMOUNT EQUAL TO
 22 THE BIWEEKLY BENEFITS PAYABLE OVER THE ESTIMATED DURATION OF
 23 THE COMPENSATION PERIOD. THE WORKER OR HIS BENEFICIARY MUST
 24 DEMONSTRATE THE FINANCIAL CONDITION THAT WOULD HAVE BEEN
 25 REASONABLY EXPECTED, TAKING INTO CONSIDERATION HIS AGE,

1 EDUCATION, WORK EXPERIENCE, AND PROBABLE JOB PROMOTIONS AND
 2 PAY INCREASES.

3 (C) IF THE EXISTING DELINQUENT OR OUTSTANDING DEBTS
 4 ARE USED AS GROUNDS FOR A LUMP-SUM CONVERSION, THE WORKER OR
 5 HIS BENEFICIARY MUST DEMONSTRATE THROUGH A DEBT MANAGEMENT
 6 PLAN THAT A LUMP SUM FOR THAT PURPOSE IS NECESSARY TO
 7 SUSTAIN HIMSELF FINANCIALLY.

8 (D) IF A BUSINESS VENTURE IS USED AS GROUNDS FOR A
 9 LUMP-SUM CONVERSION, THE WORKER OR HIS BENEFICIARY MUST
 10 DEMONSTRATE THROUGH A BUSINESS PLAN THAT A LUMP SUM FOR THAT
 11 PURPOSE IS NECESSARY TO SUSTAIN HIMSELF FINANCIALLY. THE
 12 BUSINESS PLAN MUST AT LEAST SHOW THE FEASIBILITY OF THE
 13 BUSINESS, GIVEN THE MARKET CONDITIONS IN THE INTENDED MARKET
 14 AREA, AND THE CASH THAT WILL BE AVAILABLE TO HIM ON A
 15 BIWEEKLY BASIS AFTER START-UP COSTS AND OTHER BUSINESS
 16 EXPENSES ARE CONSIDERED THROUGHOUT THE EXPECTED LIFE OF THE
 17 VENTURE.

18 (3) IF THE DIVISION OR THE WORKERS' COMPENSATION JUDGE
 19 FINDS THAT AN APPLICATION FOR LUMP-SUM CONVERSION DOES NOT
 20 ADEQUATELY DEMONSTRATE THE ABILITY OF THE WORKER OR HIS
 21 BENEFICIARY TO SUSTAIN HIMSELF FINANCIALLY, THE DIVISION OR
 22 THE WORKERS' COMPENSATION JUDGE--IF THE DIVISION HAS NOT
 23 ALREADY--SO--ORDERED, MAY ORDER, AT THE INSURER'S EXPENSE,
 24 FINANCIAL, MEDICAL, VOCATIONAL REHABILITATION, EDUCATIONAL,
 25 OR OTHER EVALUATIVE STUDIES TO DETERMINE WHETHER A LUMP-SUM

1 CONVERSION IS IN THE BEST INTEREST OF THE WORKER OR HIS
2 BENEFICIARY.

3 ~~(3)~~(4) The division ~~is--hereby--vested-with~~ has full
4 power, authority, and jurisdiction to allow and approve
5 compromises of claims under this chapter. All settlements
6 and compromises of compensation provided in this chapter are
7 void without the approval of the division. Approval of the
8 division must be in writing. The division shall directly
9 notify every claimant of any division order approving or
10 denying a claimant's settlement or compromise of a claim.

11 ~~(4)~~(5) A controversy between a claimant and an insurer
12 regarding the conversion of biweekly payments into a lump
13 sum is considered a dispute for which the workers'
14 compensation judge has jurisdiction to make a
15 determination."

16 SECTION 2. SECTION 39-71-2109, MCA, IS AMENDED TO

17 READ:

18 "39-71-2109. When employer may be relieved from
19 liability. Any employer bound by compensation plan No. 1
20 against whom liability may exist for compensation for
21 permanent benefits under this chapter may, with the approval
22 of the division, be relieved therefrom by:

23 (1) depositing the present value or the estimated
24 present value of the total unpaid compensation for which
25 such liability exists for permanent total benefits, assuming

1 interest at 5% 7% per annum, compounded annually, with the
2 division; or

3 (2) ~~purchasing---an--annuity--within--the--limitations~~
4 ~~provided-by-law-in-any-insurance-company-granting--annuities~~
5 ~~and--authorized--to-transact-business-in-this-state--subject~~
6 ~~to-the-approval-of-the-division~~ depositing with the division
7 the sum of the unpaid permanent partial benefits for which
8 such liability exists."

9 SECTION 3. SECTION 39-71-2207, MCA, IS AMENDED TO

10 READ:

11 "39-71-2207. How insurer relieved from liability. Any
12 compensation plan No. 2 insurer against whom liability may
13 exist for compensation for permanent benefits under this
14 chapter may, with the approval of the division, be relieved
15 therefrom by:

16 (1) depositing the present value or the estimated
17 present value of the total unpaid compensation for which
18 such liability exists for permanent total benefits, assuming
19 interest at 5% 7% per annum compounded annually, with the
20 division; or

21 (2) ~~purchasing---an--annuity--within--the--limitations~~
22 ~~provided-by-law-in-any-insurance-company-granting--annuities~~
23 ~~and--authorized--to-transact-business-in-this-state--subject~~
24 ~~to-the-approval-of-the-division~~ depositing with the division
25 the sum of the unpaid permanent partial benefits for which

1 such liability exists."

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

6 NEW SECTION. Section 5. Severability. If a part of
7 this act is invalid, all valid parts that are severable from
8 the invalid part remain in effect. If a part of this act is
9 invalid in one or more of its applications, the part remains
10 in effect in all valid applications that are severable from
11 the invalid applications.

12 NEW SECTION. SECTION 6. APPLICABILITY -- RETROACTIVE
13 EFFECT. THIS ACT APPLIES RETROACTIVELY, WITHIN THE MEANING
14 OF 1-2-109, TO INJURIES INCURRED AND LUMP SUMS AWARDED OR
15 PAID PRIOR TO THE EFFECTIVE DATE OF THIS ACT IF A LUMP SUM
16 IS AWARDED OR PAID FOR THE INJURY OR THE AWARD OR SETTLEMENT
17 IS REOPENED AND REDETERMINED AFTER THE EFFECTIVE DATE OF
18 THIS ACT. THE MERE PASSAGE OF THIS ACT IS NOT GROUNDS FOR
19 REOPENING ANY CASE.

20 NEW SECTION. Section 7. Effective date. This act is
21 effective on passage and approval.

-End-