SENATE BILL NO. 440

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INTRODUCED BY B. WILLIAMS, BOYLAN, KOLSTAD, MANNING, RAPP-SVRCEK, HAFFEY, DRISCOLL, GAGE

IN THE SENATE

| February 16, 1985 | Introduced and referred to Committee on Labor and Employment Relations. |
|-------------------|---|
| February 23, 1985 | Committee recommend bill do pass as amended. Report adopted. |
| | Statement of Intent attached. |
| February 25, 1985 | Bill printed and placed on members' desks. |
| February 26, 1985 | Second reading, do pass. |
| | Considered correctly engrossed. |
| February 27, 1985 | Third reading, passed. Ayes, 50; Noes, 0. |
| | Transmitted to House. |
| IN THE H | OUSE |
| March 7, 1985 | Introduced and referred to Committee on Business and Labor. |
| March 28, 1985 | Committee recommend bill be concurred 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 April 2, 1985 Received from House. Sent to enrolling. Reported correctly enrolled.

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LC 1700/01

BILL NO. 44D 1 INTRODUCED BY 1 1/ 2 з 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW EMPLOYERS 5 OPERATE AS SELF-INSURED UNDER THE WORKERS' COMPENSATION ACT 6 BY FORMING GROUPS TO BE CERTIFIED AS SELF-INSURED; AMENDING 7 SECTIONS 39-71-117, 39-71-2103, AND 39-71-2106, MCA." 8 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 10 Section 1. Section 39-71-117, MCA, is amended to read: "39-71-117. Employer defined. "Employer" means: 11 (1) the state and each county, city and county, city 12 13 school district, irrigation district, all other districts established by law, and all public corporations and 14 15 guasi-public corporations and public agencies therein and 16 every person, every prime contractor, and every firm, voluntary association, and private corporation, including 17 any public service corporation and including an independent 18 contractor who has any person in service under any 19 20 appointment or contract of hire, expressed or implied, oral 21 or written, and the legal representative of any deceased 22 employer or the receiver or trustee thereof; and 23 (2) any association, corporation, or organization that

24 seeks permission and meets the requirements set by the 25 division by rule for a group of individual employers to



operate as self-insured under plan No. 1 of this chapter." Section 2. Section 39-71-2103, MCA, is amended to 2 read:

"39-71-2103. Employer permitted to carry on business 4 5 and settle directly with employee -- individual liability. б (1) If such employer making such election shall be found by the division to have the requisite financial ability to pay 7 the compensation and benefits in this chapter provided for, 8 9 then the division shall grant to the employer permission to 10 carry on his business for the fiscal year within which such 11 election is made and such proof filed, or the remaining 12 portion of such fiscal year, and to make such payments 13 directly to his employees as they may become entitled to 14 receive the same.

15 (2) Each individual employer in an association, 16 corporation, or organization of employers given permission by the division to operate as self-insured under plan No. 1 17 18 of this chapter is jointly and severally liable for all 19 obligations incurred by the association, corporation, or 20 organization under this chapter. An association, 21 corporation, or organization of employers given permission to operate as self-insured must maintain excess liability 22 23 coverage in amounts and under such conditions as provided by 24 rules of the division." 25 Section 3. Section 39-71-2106, MCA, is amended to

INTRODUCED BILL -2-

LC 1700/01

l read:

2 "39-71-2106, Requiring security of employer, (1) If 3 the division finds that an employer does not have the financial responsibility for the payment of the compensation 4 herein provided to be paid which might reasonably be 5 6 expected to be chargeable to the employer during the fiscal year to be covered by the permission or that the employer is 7 8 an association, corporation, or organization of individual 9 employers seeking permission to operate under compensation 10 plan No. 1, the division must require the employer, before 11 granting to him permission or before continuing or engaging 12 in such employment subject to the provisions of compensation 13 plan No. 1, to give security for such payment, which 14 security must be in such an amount as the division finds is 15 reasonable and necessary to meet all liabilities of the 16 employer which may reasonably and ordinarily be expected to 17 accrue during the fiscal year.

18 (2) The security must be deposited with the division 19 and may be a certain estimated percent of the employer's 20 last preceding annual payroll or a certain percent of the 21 established amount of his annual payroll for the fiscal year; or the security may be in the form of a bond or 22 23 undertaking executed to the division in the amount to be fixed by it with two or more sufficient sureties, which 24 25 undertaking must be conditioned that the employer will well

and truly pay or cause to be paid all sums and amounts for 1 2 which the employer shall become liable under the terms of 3 this chapter to his employees during the fiscal year; or such security may consist of any state, county, municipal, 4 5 or school district bonds or the bonds or evidence of 6 indebtedness of any individuals or corporations which the 7 division deems solvent; and every such deposit and the 8 character and amount of such securities shall at all times 9 be subject to approval, revision, or change by the division 10 as in its judgment may be required, and upon proof of the 11 final payment of the liability for which such securities are 12 given, such securities or any remaining part thereof shall 13 be returned to the depositor.

14 (3) The division is liable for the value and
15 safekeeping of all such deposits or securities and shall, at
16 any time, upon demand of a bondsman or the depositor,
17 account for the same and the earnings thereof."

18 <u>NEW SECTION.</u> Section 4. Extension of authority. Any 19 existing authority of the division of workers' compensation 20 to make rules on the subject of the provisions of this act 21 is extended to the provisions of this act.

-End-

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LC 1700/01

49th Legislature

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group remain jointly and severally liable;

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SB 0440/si

APPROVED BY COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

| 1 | STATEMENT OF INTENT | . 1 | (4) requirements for and confirmation of excess |
|----|--|-----|--|
| 2 | SENATE BILL 440 | 2 | liability insurance; |
| 3 | Senate Labor and Employment Relations Committee | 3 | (5) requirements for management of the association and |
| 4 | | 4 | annual reports to the division; |
| 5 | A statement of intent is required for this bill because | 5 | (6) requirements for auditing the group self-insurer |
| 6 | it requires the adoption of rules by the workers' | 6 | to determine that it is meeting its obligations under the |
| 7 | compensation division of the department of labor and | 7 | Workers' Compensation Act; |
| 8 | industry. | 8 | (7) provisions for the termination of group |
| 9 | The legislature intends that the division adopt only | 9 | self-insurance by the group on request and for termination |
| 10 | those rules required by section 4 of this bill. | 10 | by the division upon determination that the group no longer |
| 11 | The rules adopted by the division to implement section | 11 | meets the requirements for certification as self-insured and |
| 12 | 4 should require the submission of information regarding the | 12 | for determining responsibility for pending claims. |
| 13 | following: | 13 | The legislature intends that all group self-insured |
| 14 | (1) the requirements for formation and certification | 14 | employers must comply with the provisions of the act and |
| 15 | of an association, corporation, or organization of employers | 15 | rules enacted thereunder. In developing rules, the |
| 16 | to operate as a group self-insured employer, including | 16 | legislature intends that employees of the group self-insurer |
| 17 | provisions for the addition of new members and the | 17 | have as much assurance as reasonably possible of the |
| 18 | withdrawal of existing members; | 18 | benefits to which they are entitled under the act. |
| 19 | (2) requirements for proof of solvency of the group | | |
| 20 | self-insurer and to maintain security to insure payment of | | |
| 21 | obligations under the act; | | |
| 22 | (3) requirements for an indemnity agreement and power | | |
| 23 | of attorney between the individual employers within the | | |
| 24 | group, including the requirement that all members of the | | |



SECOND READING 58440 -2SB 0440/02

| 1 | SENATE BILL NO. 440 |
|----|---|
| 2 | INTRODUCED BY B. WILLIAMS, BOYLAN, KOLSTAD, |
| 3 | MANNING, RAPP-SVRCEK, HAFFEY, DRISCOLL, GAGE |
| 4 | |
| 5 | A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW EMPLOYERS TO |
| 6 | OPERATE AS SELF-INSURED UNDER THE WORKERS' COMPENSATION ACT |
| 7 | BY FORMING GROUPS TO BE CERTIFIED AS SELF-INSURED; AMENDING |
| 8 | SECTIONS 39-71-117, 39-71-2103, AND 39-71-2106, MCA." |
| 9 | |
| 2 | |
| 10 | BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: |
| 11 | Section 1. Section 39-71-117, MCA, is amended to read: |
| 12 | "39-71-117. Employer defined. "Employer" means: |
| 13 | (1) the state and each county, city and county, city |
| 14 | school district, irrigation district, all other districts |
| 15 | established by law, and all public corporations and |
| 16 | quasi-public corporations and public agencies therein and |
| 17 | every person, every prime contractor, and every firm, |
| 18 | voluntary association, and private corporation, including |
| 19 | any public service corporation and including an independent |
| 20 | contractor who has any person in service under any |
| 21 | appointment or contract of hire, expressed or implied, oral |
| 22 | or written, and the legal representative of any deceased |
| 23 | employer or the receiver or trustee thereof.; and |
| 24 | (2) any association, corporation, or organization that |

25 seeks permission and meets the requirements set by the

1 division by rule for a group of individual employers to 2 operate as self-insured under plan No. 1 of this chapter." 3 Section 2. Section 39-71-2103, MCA, is amended to 4 read: 5 "39-71-2103. Employer permitted to carry on business and settle directly with employee -- individual liability. 6 7 (1) If such employer making such election shall be found by the division to have the requisite financial ability to pay 8 9 the compensation and benefits in this chapter provided for, 10 then the division shall grant to the employer permission to 11 carry on his business for the fiscal year within which such 12 election is made and such proof filed, or the remaining 13 portion of such fiscal year, and to make such payments directly to his employees as they may become entitled to 14 receive the same. 15 16 (2) Each individual employer in an association, 17 corporation, or organization of employers given permission

18 by the division to operate as self-insured under plan No. 1
19 of this chapter is jointly and severally liable for all
20 obligations incurred by the association, corporation, or
21 organization under this chapter. An association,
22 corporation, or organization of employers given permission

to operate as self-insured must maintain excess liability
 coverage in amounts and under such conditions as provided by
 rules of the division."

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1 Section 3. Section 39-71-2106, MCA, is amended to
2 read:

"39-71-2106. Requiring security of employer, (1) If 3 the division finds that an employer does--not--have--the 4 financial--responsibility--for--the--payment-of HAS LOST HIS 5 SOLVENCY OR FINANCIAL ABILITY TO PAY the compensation herein 6 7 provided to be paid which might reasonably be expected to be chargeable to the employer during the fiscal year to be 8 covered by the permission or that the employer is an 9 association, corporation, or organization of individual 10 11 employers seeking permission to operate under compensation plan No. 1, the division must require the employer, before 12 granting to him permission or before continuing or engaging 13 14 in such employment subject to the provisions of compensation plan No. 1, to give security for such THE payment OF 15 COMPENSATION, which security must be in such an amount as 16 the division finds is reasonable and necessary to meet all 17 liabilities of the employer which may reasonably and 18 ordinarily be expected to accrue during the fiscal year. 19

(2) The security must be deposited with the division
and may be a certain estimated percent of the employer's
last preceding annual payroll or a certain percent of the
established amount of his annual payroll for the fiscal
year; or the security may be in the form of a bond or
undertaking executed to the division in the amount to be

fixed by it with two or more sufficient sureties, which 1 undertaking must be conditioned that the employer will well 2 and truly pay or cause to be paid all sums and amounts for 3 which the employer shall become liable under the terms of 4 this chapter to his employees during the fiscal year; or 5 such security may consist of any state, county, municipal, 6 or school district bonds or the bonds or evidence of 7 indebtedness of any individuals or corporations which the 8 9 division deems solvent; and every such deposit and the character and amount of such securities shall at all times 10 11 be subject to approval, revision, or change by the division as in its judgment may be required, and upon proof of the 12 final payment of the liability for which such securities are 13 given, such securities or any remaining part thereof shall 14 be returned to the depositor. 15

16 (3) The division is liable for the value and 17 safekeeping of all such deposits or securities and shall, at 18 any time, upon demand of a bondsman or the depositor, 19 account for the same and the earnings thereof."

20 <u>NEW SECTION.</u> Section 4. Extension of authority. Any 21 existing authority of the division of workers' compensation 22 to make rules on the subject of the provisions of this act 23 is extended to the provisions of this act.

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SB 0440/si

1 (4) requirements for and confirmation of excess 1 STATEMENT OF INTENT 2 liability insurance; SENATE BILL 440 2 3 (5) requirements for management of the association and 3 Senate Labor and Employment Relations Committee annual reports to the division; 4 4 (6) requirements for auditing the group self-insurer 5 A statement of intent is required for this bill because 5 to determine that it is meeting its obligations under the 6 it requires the adoption of rules by the workers' 6 Workers' Compensation Act; 7 compensation division of the department of labor and 7 8 (7) provisions for the termination of group 8 industry. self-insurance by the group on request and for termination 9 9 The legislature intends that the division adopt only by the division upon determination that the group no longer 10 those rules required by section 4 of this bill. 10 meets the requirements for certification as self-insured and 11 11 The rules adopted by the division to implement section for determining responsibility for pending claims. 12 4 should require the submission of information regarding the 12 13 The legislature intends that all group self-insured 13 following: employers must comply with the provisions of the act and 14 (1) the requirements for formation and certification 14 rules enacted thereunder. In developing rules, 15 the 15 of an association, corporation, or organization of employers legislature intends that employees of the group self-insurer 16 to operate as a group self-insured employer, including 16 have as much assurance as reasonably possible of the provisions for the addition of new members and 17 17 the benefits to which they are entitled under the act. 18 withdrawal of existing members; 18 19 (2) requirements for proof of solvency of the group 20 self-insurer and to maintain security to insure payment of 21 obligations under the act; (3) requirements for an indemnity agreement and power 22 23 of attorney between the individual employers within the group, including the requirement that all members of the 24 group remain jointly and severally liable; 25 THIRD READING 58440 -2-+

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SB 0440/si

SB 0440/02

SENATE BILL NO. 440 1 INTRODUCED BY B. WILLIAMS, BOYLAN, KOLSTAD, .2 MANNING, RAPP-SVRCEK, HAFFEY, DRISCOLL, GAGE 3 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW EMPLOYERS TO 5 б OPERATE AS SELF-INSURED UNDER THE WORKERS' COMPENSATION ACT BY FORMING GROUPS TO BE CERTIFIED AS SELF-INSURED; AMENDING 7 SECTIONS 39-71-117, 39-71-2103, AND 39-71-2106, MCA." 8 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 10 11 Section 1. Section 39-71-117, MCA, is amended to read: "39-71-117. Employer defined. "Employer" means: 12 (1) the state and each county, city and county, city 13 14 school district, irrigation district, all other districts established by law, and all public corporations and 15 quasi-public corporations and public agencies therein and 16 17 every person, every prime contractor, and every firm. voluntary association, and private corporation, including 18 any public service corporation and including an independent 19 20 contractor who has any person in service under any appointment or contract of hire, expressed or implied, oral 21 or written, and the legal representative of any deceased 22 employer or the receiver or trustee thereof; and 23 (2) any association, corporation, or organization that 24

25 seeks permission and meets the requirements set by the

Montana Legislative Council

division by rule for a group of individual employers to
 operate as self-insured under plan No. 1 of this chapter."
 Section 2. Section 39-71-2103, MCA, is amended to
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"39-71-2103. Employer permitted to carry on business 5 and settle directly with employee -- individual liability. 6 (1) If such employer making such election shall be found by 7 the division to have the requisite financial ability to pay 8 the compensation and benefits in this chapter provided for, 9 10 then the division shall grant to the employer permission to carry on his business for the fiscal year within which such 11 election is made and such proof filed, or the remaining 12 portion of such fiscal year, and to make such payments 13 directly to his employees as they may become entitled to 14 15 receive the same.

16 (2) Each individual employer in an association, corporation, or organization of employers given permission 17 by the division to operate as self-insured under plan No. 1 18 of this chapter is jointly and severally liable for all 19 obligations incurred by the association, corporation, or 20 21 organization under this chapter. An association, corporation, or organization of employers given permission 22 to operate as self-insured must maintain excess liability 23 coverage in amounts and under such conditions as provided by 24 rules of the division." 25

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Section 3. Section 39-71-2106, MCA, is amended to read:

"39-71-2106. Requiring security of employer. (1) If 3 4 the division finds that an employer does--not--have--the financial--responsibility--for--the--payment-of HAS LOST HIS 5 SOLVENCY OR FINANCIAL ABILITY TO PAY the compensation herein 6 provided to be paid which might reasonably be expected to be 7 chargeable to the employer during the fiscal year to be 8 covered by the permission or that the employer is an 9 10 association, corporation, or organization of individual employers seeking permission to operate under compensation 11 plan No. 1, the division must require the employer, before 12 granting to him permission or before continuing or engaging 13 in such employment subject to the provisions of compensation 14 plan No. 1, to give security for such THE payment OF 15 COMPENSATION, which security must be in such an amount as 16 the division finds is reasonable and necessary to meet all 17 liabilities of the employer which may reasonably and 18 ordinarily be expected to accrue during the fiscal year. 19

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16 (3) The division is liable for the value and 17 safekeeping of all such deposits or securities and shall, at 18 any time, upon demand of a bondsman or the depositor, 19 account for the same and the earnings thereof."

20 <u>NEW SECTION.</u> Section 4. Extension of authority. Any 21 existing authority of the division of workers' compensation 22 to make rules on the subject of the provisions of this act 23 is extended to the provisions of this act.

-End-

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-3-

SB 440

49th Legislature

SB 0440/si

| 1 | STATEMENT OF INTENT | 1 | (4) require |
|----|--|----|--------------------|
| 2 | SENATE BILL 440 | 2 | liability insuran |
| 3 | Senate Labor and Employment Relations Committee | 3 | (5) require |
| 4 | | 4 | annual reports to |
| 5 | A statement of intent is required for this bill because | 5 | (6) requirem |
| 6 | it requires the adoption of rules by the workers' | б | to determine that |
| 7 | compensation division of the department of labor and | 7 | Workers' Compensat |
| 8 | industry. | 8 | (7) provisio |
| 9 | The legislature intends that the division adopt only | 9 | self-insurance by |
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| 16 | to operate as a group self-insured employer, including | 16 | legislature intend |
| 17 | provisions for the addition of new members and the | 17 | have as much as |
| 18 | withdrawal of existing members; | 18 | benefits to which |
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| | | | |

20 self-insurer and to maintain security to insure payment of 21 obligations under the act;

(3) requirements for an indemnity agreement and power
of attorney between the individual employers within the
group, including the requirement that all members of the
group remain jointly and severally liable;

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(4) requirements for and confirmation of excess
 2 liability insurance;

3 (5) requirements for management of the association and
4 annual reports to the division;

5 (6) requirements for auditing the group self-insurer
6 to determine that it is meeting its obligations under the
7 Workers' Compensation Act;

8 (7) provisions for the termination of group 9 self-insurance by the group on request and for termination 10 by the division upon determination that the group no longer 11 meets the requirements for certification as self-insured and 12 for determining responsibility for pending claims.

The legislature intends that all group self-insured employers must comply with the provisions of the act and rules enacted thereunder. In developing rules, the legislature intends that employees of the group self-insurer have as much assurance as reasonably possible of the benefits to which they are entitled under the act.

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REFERENCE BILL

| 1 | SENATE BILL NO. 440 |
|-----|---|
| 2 | INTRODUCED BY B. WILLIAMS, BOYLAN, KOLSTAD, |
| 3 | MANNING, RAPP-SVRCEK, HAFFEY, DRISCOLL, GAGE |
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| 15 | established by law, and all public corporations and |
| 16 | guasi-public corporations and public agencies therein and |
| 17 | every person, every prime contractor, and every firm, |
| 18 | voluntary association, and private corporation, including |
| 19 | any public service corporation and including an independent |
| 20 | contractor who has any person in service under any |
| 21 | appointment or contract of hire, expressed or implied, oral |
| 22 | or written, and the legal representative of any deceased |
| 23 | employer or the receiver or trustee thereof 7; and |
| 2.5 | |

24 (2) any association, corporation, or organization that
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1 division by rule for a group of individual employers to 2 operate as self-insured under plan No. 1 of this chapter." 3 Section 2. Section 39-71-2103, MCA, is amended to 4 read:

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(2) Each individual employer in an association, 16 17 corporation, or organization of employers given permission by the division to operate as self-insured under plan No. 1 18 of this chapter is jointly and severally liable for all 19 obligations incurred by the association, corporation, or 20 organization under this chapter. An association, 21 22 corporation, or organization of employers given permission 23 to operate as self-insured must maintain excess liability coverage in amounts and under such conditions as provided by 24 rules of the division." 25

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read: 2 "39-71-2106. Requiring security of employer. (1) If 3 the division finds that an employer does--not--have--the 4 financial--responsibility--for--the--payment-of HAS LOST HIS 5 SOLVENCY OR FINANCIAL ABILITY TO PAY the compensation herein 6 provided to be paid which might reasonably be expected to be 7 chargeable to the employer during the fiscal year to be 8 covered by the permission or that the employer is an 9 association, corporation, or organization of individual 10 employers seeking permission to operate under compensation 11 12 plan No. 1, the division must require the employer, before 13 granting to him permission or before continuing or engaging 14 in such employment subject to the provisions of compensation plan No. 1, to give security for such THE payment OF 15 16 COMPENSATION, which security must be in such an amount as the division finds is reasonable and necessary to meet all 17 18 liabilities of the employer which may reasonably and 19 ordinarily be expected to accrue during the fiscal year.

Section 3. Section 39-71-2106, MCA, is amended to

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(2) The security must be deposited with the division
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fixed by it with two or more sufficient sureties, which 1 2 undertaking must be conditioned that the employer will well 3 and truly pay or cause to be paid all sums and amounts for which the employer shall become liable under the terms of 4 this chapter to his employees during the fiscal year; or 5 such security may consist of any state, county, municipal, 6 or school district bonds or the bonds or evidence of 7 indebtedness of any individuals or corporations which the 8 division deems solvent; and every such deposit and the 9 character and amount of such securities shall at all times 10 be subject to approval, revision, or change by the division 11 as in its judgment may be required, and upon proof of the 12 final payment of the liability for which such securities are 13 given, such securities or any remaining part thereof shall 14 be returned to the depositor. 15

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17 safekeeping of all such deposits or securities and shall, at
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19 account for the same and the earnings thereof."

20 <u>NEW SECTION.</u> Section 4. Extension of authority. Any 21 existing authority of the division of workers' compensation 22 to make rules on the subject of the provisions of this act 23 is extended to the provisions of this act.

~End-

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