

SENATE BILL NO. 315

INTRODUCED BY B. WILLIAMS, THAYER, C. SMITH, DARKO, CODY,
BARDANOUE, DONALDSON, HIRSCH, M. WILLIAMS, KOLSTAD,
PISTORIA, FARRELL, MERCER, THOMAS, WEEDING, STANG, HARPER,
RASMUSSEN, BRANDEWIE, GALT, LYBECK, NATHE, SPAETH, NORMAN,
J. BROWN, NEUMAN, KITSELMAN, BENGTSON, PECK, GILBERT,
KEATING, HARRINGTON, ABRAMS, GLASER, HAMMOND, VAUGHN,
BECK, JENKINS, GRADY, MARKS, MANUEL, HIMSL, SCHYE,
CORNE', PETERSON, WALLIN, GRINDE, SIMON,
JONES, CONNELLY, HOLLIDAY, ECK

BY REQUEST OF THE GOVERNOR

IN THE SENATE

FEBRUARY 10, 1987 INTRODUCED AND REFERRED TO COMMITTEE
 ON LABOR & EMPLOYMENT RELATIONS.

FEBRUARY 21, 1987 COMMITTEE RECOMMEND BILL
 DO PASS AS AMENDED. REPORT ADOPTED.

 STATEMENT OF INTENT ADOPTED.

FEBRUARY 24, 1987 PRINTING REPORT.

 SECOND READING, DO PASS AS AMENDED.

FEBRUARY 25, 1987 ENGROSSING REPORT.

 THIRD READING, PASSED.
 AYES, 44; NOES, 6.

 TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 3, 1987 INTRODUCED AND REFERRED TO COMMITTEE
 ON BUSINESS & LABOR.

MARCH 27, 1987 COMMITTEE RECOMMEND BILL BE
 CONCURRED IN AS AMENDED. REPORT
 ADOPTED.

MARCH 28, 1987 SECOND READING, CONCURRED IN.

MARCH 30, 1987

THIRD READING, CONCURRED IN.
AYES, 70; NOES, 29.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 2, 1987

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 3, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1 *M. Williams* *Senate* *Bill No. 315* *Cady* *Donaldson*
 2 INTRODUCED BY *B. Williams* *Smith* *Clark* *Kristof*
 3 BY REQUEST OF THE GOVERNOR *B. Williams* *Smith* *Clark* *Kristof*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 5 WORKERS' COMPENSATION LAWS; TO CREATE A BOARD OF INDUSTRIAL
 6 INSURANCE; TO ABOLISH THE WORKERS' COMPENSATION COURT AND
 7 THE BOARD OF LABOR APPEALS; AMENDING SECTIONS 2-15-1014
 8 19-12-401, 39-51-201, 39-51-1304, 39-51-2402, 39-51-2405
 9 THROUGH 39-51-2407, 39-71-116, 39-71-118, 39-71-119,
 10 39-71-203, 39-71-204, 39-71-401, 39-71-407, 39-71-414,
 11 39-71-502, 39-71-503, 39-71-605, 39-71-611 THROUGH
 12 39-71-614, 39-71-701 THROUGH 39-71-704, 39-71-708,
 13 39-71-710, 39-71-721, 39-71-736, 39-71-737, 39-71-741
 14 39-71-803, 39-71-1003, 39-71-2106, 39-71-2902, 39-71-2905,
 15 39-72-102, 39-72-610, 39-72-612, 39-72-613, 45-6-301
 16 50-16-311, 53-9-106, AND 53-9-131, MCA; REPEALING SECTIONS
 17 2-15-1014, 2-15-1704, 39-51-305, 39-51-310, 39-51-2403,
 18 39-51-2404, 39-51-2409, 39-51-2410, 39-71-104, 39-71-121,
 19 39-71-122, 39-71-410, 39-71-705 THROUGH 39-71-707,
 20 39-71-709, 39-71-738, 39-71-914, 39-71-1001, 39-71-1002,
 21 39-71-1005, 39-71-2901 THROUGH 39-71-2909, AND 39-72-104,
 22 MCA; AND PROVIDING APPLICABILITY DATES AND EFFECTIVE DATES."
 23
 24
 25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

1 NEW SECTION. Section 1. Declaration of public policy.
 2 For the purposes of interpreting and applying Title 39,
 3 chapters 71 and 72, the following is the public policy of
 4 this state:
 5 (1) It is an objective of the Montana workers'
 6 compensation system to provide, without regard to fault,
 7 wage replacement and medical benefits to a worker suffering
 8 from a work-related injury or disease. Wage-loss benefits
 9 are not intended to make an injured worker whole; they are
 10 intended to assist a worker at a reasonable cost to the
 11 employer. Within that limitation, the wage-loss benefit
 12 should bear a reasonable relationship to actual wages lost
 13 as a result of a work-related injury or disease.
 14 (2) A worker's removal from the work force due to a
 15 work-related injury or disease has a negative impact on the
 16 worker, the worker's family, the employer, and the general
 17 public. Therefore, it is an objective of the workers'
 18 compensation system to return a worker to work as soon as
 19 possible after the worker has suffered a work-related injury
 20 or disease.
 21 (3) Montana's workers' compensation and occupational
 22 disease insurance systems are intended to be primarily
 23 self-administering. Claimants should be able to speedily
 24 obtain benefits, and employers should be able to provide
 25 coverage at reasonably constant rates. To meet these

1 objectives, the system must be designed to minimize reliance
2 upon lawyers and the courts to obtain benefits and interpret
3 liabilities.

4 (4) Title 39, chapters 71 and 72, must be construed
5 according to their terms and not liberally in favor of any
6 party.

7 NEW SECTION. Section 2. Board of industrial insurance
8 -- allocation -- composition -- quasi-judicial -- salaries
9 -- purpose -- expenses -- rules. (1) There is a board of
10 industrial insurance.

11 (2) The board is allocated to the department of labor
12 and industry for administrative purposes only as provided in
13 2-15-121. However, the board may hire its own personnel.

14 (3) The board is composed of three members appointed
15 by the governor as prescribed in 2-15-124. However, on [the
16 effective date of this section], one member must be
17 appointed to a term ending December 31, 1990, and two
18 members must be appointed to terms ending December 31, 1992.

19 (4) The board is designated a quasi-judicial board for
20 the purposes of 2-15-124. In addition to other benefits
21 provided state employees, each member of the board must
22 receive an annual salary equivalent to 80% of that of the
23 commissioner of labor and industry. While in office, a
24 member of the board shall devote full time to board duties
25 and may not engage in any other profession, occupation, or

1 business.

2 (5) The purpose of the board is to review and decide
3 disputes arising out of the workers' compensation,
4 occupational disease, and unemployment insurance laws of
5 this state as provided in Title 39, chapters 51, 71, and 72.

6 (6) All expenditures of the board, including but not
7 limited to salaries, benefits, travel expenses, rent,
8 equipment, and supplies, must be paid out of the workers'
9 compensation administration fund and the unemployment
10 insurance administration account of the federal special
11 revenue fund.

12 (7) The board has the authority to adopt any rules
13 necessary for the performance of its duties.

14 NEW SECTION. Section 3. Transition schedule -- terms
15 -- prehearing orders -- equipment and supplies. Beginning on
16 [the effective date of this section], the judge of the
17 workers' compensation court, the members of the board of
18 labor appeals, the commissioner of labor and industry, and
19 the members of the board of industrial insurance shall
20 cooperate as follows to assure a smooth transfer of duties,
21 personnel, equipment, and supplies:

22 (1) The board of industrial insurance must be
23 appointed and activated on [the date of passage and approval
24 of this section]. On July 1, 1987, the department and the
25 board of industrial insurance shall acquire jurisdiction

1 over all cases not yet brought to hearing by the workers'
 2 compensation court or board of labor appeals. The terms of
 3 the workers' compensation judge and members of the board of
 4 labor appeals expire when decisions have been written on all
 5 cases brought to hearing prior to July 1, 1987, and any
 6 other necessary business is concluded, except that the terms
 7 expire no later than December 31, 1987. Any decision or
 8 other business not concluded by the court or board of labor
 9 appeals on December 31, 1987, comes under the jurisdiction
 10 of the board of industrial insurance.

11 (2) The workers' compensation court and board of labor
 12 appeals shall accept petitions and continue to conduct
 13 prehearing proceedings through June 30, 1987. When, on July
 14 1, 1987, the board of industrial insurance assumes
 15 jurisdiction over cases that have been filed with but not
 16 heard by the workers' compensation court and board of labor
 17 appeals, the parties to a case in which there have been
 18 prehearing orders, the department, and the board of
 19 industrial insurance are bound by the prehearing orders of
 20 the workers' compensation court or board of labor appeals.

21 (3) On July 1, 1987, all equipment and supplies of the
 22 workers' compensation court and the board of labor appeals
 23 are transferred to the department. The department shall
 24 provide staff, equipment, and supplies as necessary to the
 25 workers' compensation judge and the board of labor appeals

1 during the transition period from July 1, 1987, through
 2 December 31, 1987.

3 NEW SECTION. Section 4. Department to appoint hearing
 4 examiners -- authority -- rules. (1) The department shall
 5 appoint impartial hearing examiners to hear and decide
 6 disputed claims as necessary for the proper administration
 7 of chapters 51, 71, and 72 of this title. A hearing examiner
 8 hearing disputes arising under chapter 51 must be appointed
 9 in accordance with merit system principles.

10 (2) No person may participate on behalf of the
 11 department in any case in which he is an interested party.
 12 The department may designate an alternate to serve in the
 13 absence or disqualification of a hearing examiner.

14 (3) Department hearing examiners may administer oaths
 15 or affirmations, issue subpoenas and compel testimony as
 16 provided in 2-4-104, provide for discovery, regulate the
 17 schedule and course of hearings, and direct parties to take
 18 part in prehearing conferences.

19 (4) The department may adopt such rules as are
 20 necessary to provide for procedures before the hearing
 21 examiners.

22 NEW SECTION. Section 5. Jurisdiction. (1) Department
 23 hearing examiners have jurisdiction over a dispute:

24 (a) arising under chapter 51 of this title after
 25 remedies provided therein have been exhausted; and

1 (b) arising under chapters 71 and 72 of this title
2 concerning benefits, except if a provision in chapter 71 or
3 72 gives the division of workers' compensation original
4 jurisdiction.

5 (2) The division of workers' compensation has
6 jurisdiction over a dispute:

7 (a) arising under chapters 71 and 72 not concerning
8 benefits; or

9 (b) if a specific provision of chapter 71 or 72 gives
10 the division original jurisdiction.

11 (3) An appeal is to the board, whether from an order
12 or determination of the division of workers' compensation or
13 from a decision of a department hearing examiner.

14 (4) (a) The board has continuing jurisdiction over all
15 prior orders of the department hearing examiners and of the
16 board issued under chapters 71 and 72 of this title. It may
17 modify a prior order for good cause and on a showing by the
18 claimant or insurer that the conditions or circumstances of
19 the claimant have changed.

20 (b) Under chapters 71 and 72 of this title the board
21 may, on petition of a claimant or an insurer showing that
22 the claimant's disability has changed, review, diminish, or
23 increase the benefits awarded by the workers' compensation
24 judge prior to January 1, 1988, or received under a
25 settlement agreement entered into prior to July 1, 1987.

1 NEW SECTION. Section 6. Decision of hearing examiner
2 -- appeal -- evidence. (1) (a) In a case arising under
3 chapter 51 of this title regarding unemployment insurance, a
4 hearing examiner, after a hearing, shall promptly make
5 findings of fact and conclusions of law and on the basis
6 thereof affirm, modify, or reverse the determination or
7 redetermination.

8 (b) The hearing examiner shall furnish to each party a
9 copy of the decision and supporting findings of fact and
10 conclusions of law.

11 (c) The decision is final unless a party initiates
12 further review under [section 7] within 10 days after notice
13 of the decision was mailed to the party's last-known
14 address. This period may be extended by the board for good
15 cause.

16 (2) (a) In a case arising under chapter 71 or 72 of
17 this title regarding workers' compensation and occupational
18 disease insurance, the parties may pursue mediation under
19 [section 23] or the hearing examiner may refer the parties
20 for such mediation. If mediation does not occur, the hearing
21 examiner, after a hearing, shall promptly make findings of
22 fact, conclusions of law, and a proposed order that must be
23 furnished to each party.

24 (b) The proposed order is final and binding unless a
25 party initiates further review under [section 7] within 20

1 days after notice is mailed to the last-known address of the
2 party. This period may be extended by the board for good
3 cause.

4 (3) In a hearing before a hearing examiner, the common
5 law and statutory rules of evidence do not apply.

6 (4) (a) In all cases, findings of fact must be based
7 exclusively on the evidence in the record and on matters
8 officially noticed. If findings of fact are set forth in
9 statutory language, they must be accompanied by a concise
10 and explicit statement of the underlying facts supporting
11 the findings.

12 (b) Each conclusion of law must be supported by legal
13 authority, a reasoned opinion, or both.

14 NEW SECTION. Section 7. Appeal to board. (1) (a) An
15 interested party who is dissatisfied with a decision of a
16 hearing examiner, or of the division of workers'
17 compensation if the division has initial jurisdiction, may
18 appeal to the board.

19 (b) The department or division of workers'
20 compensation shall promptly transmit to the board all
21 records pertinent to the appeal.

22 (2) The board must confine its review to the record
23 before the hearing examiner or the division, except that the
24 board may allow a party to present additional evidence if
25 the board finds:

1 (a) the additional evidence is material; and

2 (b) there was a good reason for the party's failure to
3 present the offered evidence to the hearing examiner or the
4 division.

5 (3) The board may remand a case to the department
6 hearing examiner or the division if the board finds that
7 further proceedings at that level are appropriate.

8 (4) The board may reject the conclusions of law and
9 interpretation of administrative rules of the hearing
10 examiner or division but may not reject or modify the
11 findings of fact unless it determines from the review of the
12 record and states with particularity in the order that the:

13 (a) findings were not based on competent substantial
14 evidence; or

15 (b) the proceedings on which the findings were based
16 did not comply with essential requirements of law.

17 (5) When the board renders a decision and furnishes a
18 copy of the decision to each party and to the department or
19 the division, the decision is final unless a party requests
20 a rehearing within 10 days or initiates judicial review
21 within 30 days of the date the final decision was mailed to
22 the party's last-known address.

23 NEW SECTION. Section 8. Finality of board's decision
24 -- judicial review. (1) In the absence of an appeal as
25 provided in [section 7], a decision of the board is final 30

1 days after the date of mailing the decision to the party's
2 last-known address.

3 (2) (a) Within 30 days after the date of mailing of
4 the board's final decision, a party may seek judicial review
5 of the decision by bringing an action in the district court
6 of the county in which the party resides. On its own motion,
7 the department, division of workers' compensation, division
8 of unemployment insurance, or board must be made a party.

9 (b) The petition must be served on the commissioner
10 and all interested parties in the manner provided in the
11 Montana Rules of Civil Procedure, which require under Rule
12 4D(2)(h) that a copy be served on the attorney general.

13 (3) Except as provided in subsection (2), the
14 provisions of Title 2, chapter 4, part 7, apply to a
15 judicial review proceeding.

16 NEW SECTION. Section 9. Witness fee. A witness
17 subpoenaed pursuant to this part is allowed a fee at a rate
18 fixed by the department or board. In the case of a dispute
19 arising under chapter 51 of this title, such fee is a part
20 of the expense of administering that chapter. In the case of
21 a dispute arising under chapter 71 or 72 of this title, the
22 fee must be paid by the party subpoenaing the witness unless
23 costs are awarded to a claimant as provided in those
24 chapters.

25 NEW SECTION. Section 10. Workers' compensation and

1 occupational disease claims -- increase in award for
2 unreasonable delay or unreasonable refusal to pay. (1) If,
3 in the case of a workers' compensation or occupational
4 disease claim, an insurer unreasonably delays or
5 unreasonably refuses payment either prior to or subsequent
6 to the issuance of an order, the hearing examiner, board, or
7 court may increase by a 20% penalty the amount of
8 compensation benefits due a claimant between the time
9 compensation benefits were delayed or refused and the date
10 of the order granting a claimant compensation benefits.
11 This penalty may be imposed only once for the same period.

12 (2) The hearing examiner, board, or court shall
13 determine the issue of unreasonable delay or unreasonable
14 refusal to pay. Such finding may constitute good cause to
15 rescind, alter, or amend an order, decision, or award
16 previously made to add the penalty provided herein.

17 (3) A finding of unreasonableness under this section
18 does not constitute a finding that the insurer acted in bad
19 faith or violated the unfair trade practices provisions of
20 Title 33, chapter 18.

21 Section 11. Section 39-51-201, MCA, is amended to
22 read:

23 "39-51-201. General definitions. As used in this
24 chapter, unless the context clearly requires otherwise, the
25 following definitions apply:

1 (1) "Annual payroll" means the total amount of wages
2 paid by an employer, regardless of the time of payment, for
3 employment during a calendar year.

4 (2) "Base period" means the first four of the last
5 five completed calendar quarters immediately preceding the
6 first day of an individual's benefit year. However, in the
7 case of a combined-wage claim pursuant to the arrangement
8 approved by the secretary of labor of the United States, the
9 base period shall be that applicable under the unemployment
10 law of the paying state. For an individual who fails to
11 meet the qualifications of 39-51-2105 due to a temporary
12 total disability as defined in 39-71-116 or a similar
13 statute of another state or the United States, the base
14 period means the first four quarters of the last five
15 quarters preceding the disability if a claim for
16 unemployment benefits is filed within 24 months of the date
17 on which the individual's disability was incurred.

18 (3) "Benefits" means the money payments payable to an
19 individual, as provided in this chapter, with respect to his
20 unemployment.

21 (4) "Benefit year", with respect to any individual,
22 means the 52 consecutive-week period beginning with the
23 first day of the calendar week in which such individual
24 files a valid claim for benefits, except that the benefit
25 year shall be 53 weeks if filing a new valid claim would

1 result in overlapping any quarter of the base year of a
2 previously filed new claim. A subsequent benefit year may
3 not be established until the expiration of the current
4 benefit year. However, in the case of a combined-wage claim
5 pursuant to the arrangement approved by the secretary of
6 labor of the United States, the base period is the period
7 applicable under the unemployment law of the paying state.

8 (5) "Board" means the board of ~~labor-appeals-provided~~
9 ~~for-in-Title-2, chapter-15, part-17~~ industrial insurance
10 provided for in [section 2].

11 (6) "Calendar quarter" means the period of 3
12 consecutive calendar months ending on March 31, June 30,
13 September 30, or December 31.

14 (7) "Contributions" means the money payments to the
15 state unemployment insurance fund required by this chapter
16 but does not include assessments under 39-51-404(4).

17 (8) "Department" means the department of labor and
18 industry provided for in Title 2, chapter 15, part 17.

19 (9) "Employing unit" means any individual or
20 organization, including the state government, any of its
21 political subdivisions or instrumentalities, any
22 partnership, association, trust, estate, joint-stock
23 company, insurance company, or corporation, whether domestic
24 or foreign, or the receiver, trustee in bankruptcy, trustee
25 or successor thereof, or the legal representative of a

1 deceased person which has or subsequent to January 1, 1936,
 2 had in its employ one or more individuals performing
 3 services for it within this state, except as provided under
 4 subsections (8) and (9) of 39-51-203. All individuals
 5 performing services within this state for any employing unit
 6 which maintains two or more separate establishments within
 7 this state are considered to be employed by a single
 8 employing unit for all the purposes of this chapter. Each
 9 individual employed to perform or assist in performing the
 10 work of any agent or employee of an employing unit is deemed
 11 to be employed by such employing unit for the purposes of
 12 this chapter, whether such individual was hired or paid
 13 directly by such employing unit or by such agent or
 14 employee, provided the employing unit has actual or
 15 constructive knowledge of the work.

16 (10) "Employment office" means a free public employment
 17 office or branch thereof operated by this state or
 18 maintained as a part of a state-controlled system of public
 19 employment offices or such other free public employment
 20 offices operated and maintained by the United States
 21 government or its instrumentalities as the department may
 22 approve.

23 (11) "Fund" means the unemployment insurance fund
 24 established by this chapter to which all contributions and
 25 payments in lieu of contributions are required and from

1 which all benefits provided under this chapter shall be
 2 paid.

3 (12) "Gross misconduct" means a criminal act, other
 4 than a violation of a motor vehicle traffic law, for which
 5 an individual has been convicted in a criminal court or has
 6 admitted or conduct which demonstrates a flagrant and wanton
 7 disregard of and for the rights or title or interest of a
 8 fellow employee or his employer.

9 (13) "Hospital" means an institution which has been
 10 licensed, certified, or approved by the state as a hospital.

11 (14) (a) "Institution of higher education", for the
 12 purposes of this part, means an educational institution
 13 which:

14 (i) admits as regular students only individuals having
 15 a certificate of graduation from a high school or the
 16 recognized equivalent of such a certificate;

17 (ii) is legally authorized in this state to provide a
 18 program of education beyond high school;

19 (iii) provides an educational program for which it
 20 awards a bachelor's or higher degree or provides a program
 21 which is acceptable for full credit toward such a degree, a
 22 program of postgraduate or postdoctoral studies, or a
 23 program of training to prepare students for gainful
 24 employment in a recognized occupation; and

25 (iv) is a public or other nonprofit institution.

1 (b) Notwithstanding any of the foregoing provisions of
2 this subsection, all colleges and universities in this state
3 are institutions of higher education for purposes of this
4 part.

5 (15) "State" includes, in addition to the states of the
6 United States of America, the District of Columbia, Puerto
7 Rico, the Virgin Islands, and the Dominion of Canada.

8 (16) "Unemployment insurance administration fund" means
9 the unemployment insurance administration fund established
10 by this chapter from which administrative expenses under
11 this chapter shall be paid.

12 (17) (a) "Wages" means all remuneration payable for
13 personal services, including commissions and bonuses, the
14 cash value of all remuneration payable in any medium other
15 than cash, and backpay received pursuant to a dispute
16 related to employment. The reasonable cash value of
17 remuneration payable in any medium other than cash shall be
18 estimated and determined in accordance with rules prescribed
19 by the department.

20 (b) The term "wages" does not include:

21 (i) the amount of any payment made to or on behalf of
22 an employee by an employer on account of:

23 (A) retirement;

24 (B) sickness or accident disability;

25 (C) medical and hospitalization expenses in connection

1 with sickness or accident disability; or

2 (D) death;

3 (ii) remuneration paid by any county welfare office
4 from public assistance funds for services performed at the
5 direction and request of such county welfare office.

6 (18) "Week" means a period of 7 consecutive calendar
7 days ending at midnight on Saturday.

8 (19) An individual's "weekly benefit amount" means the
9 amount of benefits he would be entitled to receive for 1
10 week of total unemployment."

11 Section 12. Section 39-51-1304, MCA, is amended to
12 read:

13 "39-51-1304. Lien for payment of unpaid contributions
14 -- levy and execution. Unpaid contributions have the effect
15 of a judgment against the employer, arising at the time the
16 contributions are due. The department may issue a lien
17 setting forth the amount of contributions due and accrued
18 interest and directing the clerk of the district court of
19 any county of the state to enter the certificate as a
20 judgment in the docket pursuant to 25-9-301. After the due
21 process requirements of 39-51-1109 and ~~39-51-2403~~ [section
22 6] have been satisfied, the department may enforce the
23 judgment pursuant to Title 25, chapter 13, except that the
24 department may enforce the judgment at any time within 10
25 years of the creation of the lien."

1 Section 13. Section 39-51-2402, MCA, is amended to
2 read:

3 "39-51-2402. Initial determination -- redetermination
4 ~~-- appeal~~. (1) A representative designated by the department
5 and hereinafter referred to as a deputy shall promptly
6 examine the claim and, on the basis of the facts found by
7 him, shall either determine whether or not such claim is
8 valid and, if valid, the week with respect to which benefits
9 shall commence, the weekly benefit amount payable, and the
10 maximum duration thereof or shall refer such claim or any
11 question involved therein to ~~an appeals referee~~ a hearing
12 examiner who shall make ~~his~~ a decision with respect thereto
13 in accordance with the procedure prescribed in ~~39-51-2403~~
14 [section 6]. The deputy shall promptly notify the claimant
15 and any other interested party of the decision and the
16 reasons therefor.

17 (2) The deputy may for good cause reconsider his
18 decision and shall promptly notify the claimant and such
19 other interested parties of his amended decision and the
20 reasons therefor.

21 (3) No determination or redetermination of an initial
22 or additional claim shall be made under this section unless
23 5 days' notice of the time and place of the claimant's
24 interview for examination of the claim is mailed to each
25 interested party.

1 (4) (a) A determination or redetermination ~~shall be~~
2 ~~deemed is~~ final unless an interested party entitled to
3 notice thereof applies for reconsideration of the
4 determination or appeals therefrom within ~~5--days--after~~
5 ~~delivery-of-such-notification-or-within-7~~ 10 days after such
6 notification was mailed to ~~his~~ the party's last known
7 address, provided that such period may be extended for good
8 cause.

9 (b) Any appeal must be made to a department hearing
10 examiner."

11 Section 14. Section 39-51-2405, MCA, is amended to
12 read:

13 "39-51-2405. Prompt payment of claims. (1)
14 Notwithstanding any provision in 39-51-2402 ~~or--39-51-2404~~,
15 benefits shall be paid promptly in accordance with a
16 determination or redetermination under 39-51-2402 or the
17 decision of ~~an--appeals--referee~~ a hearing examiner, the
18 board, or a reviewing court ~~under--39-51-2404~~ upon the
19 issuance of such determination, redetermination, or decision
20 regardless of the pendency of the period to apply for
21 reconsideration, file an appeal, or petition for judicial
22 review ~~that-is-provided-with-respect-thereto-in-39-51-2404~~,
23 as the case may be, or the pendency of any such application,
24 filing, or petition, unless and until such determination,
25 redetermination, or decision has been modified or reversed

1 by a subsequent redetermination or decision, in which event
 2 benefits shall be paid or denied for weeks of unemployment
 3 thereafter in accordance with such modifying or reversing
 4 redetermination or decision.

5 (2) If a deputy's determination or redetermination
 6 allowing benefits is affirmed in any amount by ~~an--appeals~~
 7 ~~referee~~ a hearing examiner or by the board or if a decision
 8 of ~~an--appeals-referee~~ a hearing examiner allowing benefits
 9 is affirmed in any amount by the board, such benefits shall
 10 be paid promptly regardless of any further appeal or the
 11 disposition of such appeal and no injunction, supersedeas,
 12 stay, or other writ or process suspending the payment of
 13 such benefits shall be issued by the board or any court.
 14 Benefits shall not be paid for any weeks of unemployment
 15 involved in such modification or reversal that begins after
 16 such final decision."

17 Section 15. Section 39-51-2406, MCA, is amended to
 18 read:

19 "39-51-2406. Continuing jurisdiction of department
 20 over claims. The department shall have continuing
 21 jurisdiction over all claims filed for benefits to revise,
 22 modify, alter, cancel, and amend all orders, findings, and
 23 determinations made therein at any time and shall not lose
 24 such jurisdiction unless and until the jurisdiction of such
 25 claim and subject matter thereof has been taken by a court

1 of competent jurisdiction in a proceedings proceeding filed
 2 therein as provided for in ~~subsections-(2)-through-(6)-of~~
 3 ~~39-51-2410~~ [section 8]."

4 Section 16. Section 39-51-2407, MCA, is amended to
 5 read:

6 "39-51-2407. Procedure for disputed claims to be
 7 prescribed by regulation. The manner in which disputed
 8 claims shall be presented, the reports thereon required from
 9 the claimant and from employers, and the conduct of hearings
 10 by and appeals to hearing examiners shall be in accordance
 11 with regulations rules prescribed by the department ~~or--the~~
 12 ~~board~~ for determining the rights of the parties, whether or
 13 not such regulations rules conform to common law or
 14 statutory rules of evidence and other technical rules or
 15 procedure."

16 Section 17. Section 39-71-116, MCA, is amended to
 17 read:

18 "39-71-116. Definitions. Unless the context otherwise
 19 requires, words and phrases employed in this chapter have
 20 the following meanings:

21 (1) "Average weekly wage" means the mean weekly
 22 earnings of all employees under covered employment, as
 23 defined and established annually by the Montana department
 24 of labor and industry. It is established at the nearest
 25 whole dollar number and must be adopted by the division of

1 workers' compensation prior to July 1 of each year.

2 (2) "Beneficiary" means:

3 (a) a surviving ~~wife-or-husband~~ spouse living with or
4 legally entitled to be supported by the deceased at the time
5 of injury;

6 (b) an unmarried child under the age of 18 years;

7 (c) an unmarried child under the age of ~~25~~ 22 years
8 who is a full-time student in an accredited school or is
9 enrolled in an accredited apprenticeship program;

10 (d) an invalid child over the age of 18 years who is
11 dependent upon the decedent for support at the time of
12 injury;

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

18 (f) a brother or sister under the age of 18 years if
19 dependent upon the decedent for support at the time of the
20 injury (however, such a brother or sister is a beneficiary
21 only until the age of 18 years and only when no beneficiary,
22 as defined in subsections (2)(a) through (2)(e) of this
23 section, exists).

24 (3) "Board" means the board of industrial insurance
25 provided for in [section 2].

1 ~~{3}~~(4) "Casual employment" means employment not in the
2 usual course of trade, business, profession, or occupation
3 of the employer. ~~Any person having or assisting in having~~
4 ~~of sugar beets or grains, in case of emergency, is~~
5 ~~considered engaged in casual employment.~~

6 ~~{4}~~(5) "Child" includes a posthumous child, a
7 dependent stepchild, and a child legally adopted prior to
8 the injury, ~~and an illegitimate child legitimized prior to~~
9 ~~the injury.~~

10 (6) "Days" means calendar days, unless otherwise
11 specified.

12 (7) "Department" means the department of labor and
13 industry.

14 ~~{5}~~(8) "Division" means the division of workers'
15 compensation of the department of labor and industry
16 provided for in 2-15-1702.

17 ~~{6}~~(9) "Fiscal year" means the period of time between
18 July 1 and the succeeding June 30.

19 ~~{7}~~ "Husband" or "widower" means ~~only a husband or~~
20 ~~widower living with or legally entitled to be supported by~~
21 ~~the deceased at the time of her injury.~~

22 ~~{8}~~(10) "Insurer" means an employer bound by
23 compensation plan No. 1, an insurance company transacting
24 business under compensation plan No. 2, the industrial
25 insurance--account state compensation insurance fund under

1 compensation plan No. 3, or the uninsured employers' fund
2 provided for in part 5 of this chapter.

3 ~~{9}~~{11} "Invalid" means one who is physically or
4 mentally incapacitated.

5 {12} "Maximum healing" means the status reached when a
6 worker is as far restored medically as the permanent
7 character of the work-related injury will permit.

8 ~~{10}~~{13} "Order" means any decision, rule, direction,
9 requirement, or standard of the division or any other
10 determination arrived at or decision made by the division.

11 ~~{11}~~{14} "Payroll", "annual payroll", or "annual
12 payroll for the preceding year" means the average annual
13 payroll of the employer for the preceding calendar year or,
14 if the employer shall not have operated a sufficient or any
15 length of time during such calendar year, 12 times the
16 average monthly payroll for the current year; provided, that
17 an estimate may be made by the division for any employer
18 starting in business where no average payrolls are
19 available, such estimate to be adjusted by additional
20 payment by the employer or refund by the division, as the
21 case may actually be on December 31 of such current year.

22 ~~{12}~~{15} "Permanent partial disability" means a
23 condition ~~resulting--from-injury-as-defined-in-this-chapter~~
24 ~~that-results-in-the--actual--loss--of--earnings--or--earning~~
25 ~~capability--less--than--total--that-exists-after-the-injured~~

1 ~~worker-is-as-far-restored-as-the-permanent-character-of--the~~
2 ~~injuries--will--permit--Disability--shall-be-supported-by-a~~
3 ~~preponderance-of--medical--evidence-, after a worker has~~
4 ~~reached maximum healing, in which a worker:~~

5 (a) has a medically determined physical restriction as
6 a result of an injury as defined in 39-71-119; and

7 (b) is able to return to work in the worker's job pool
8 pursuant to one of the options set forth in [section 51] but
9 suffers impairment or partial wage loss, or both.

10 ~~{13}~~{16} "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-, after a worker reaches maximum healing,~~
19 ~~in which a worker is unable to return to work in the~~
20 ~~worker's job pool after exhausting all options set forth in~~
21 ~~[section 51].~~

22 ~~{14}~~{17} The term "physician" includes "surgeon" and in
23 either case means one authorized by law to practice his
24 profession in this state.

25 ~~{15}~~{18} "The plant of the employer" includes the place

1 of business of a third person while the employer has access
2 to or control over such place of business for the purpose of
3 carrying on his usual trade, business, or occupation.

4 ~~{16}~~(19) "Public corporation" means the state or any
5 county, municipal corporation, school district, city, city
6 under commission form of government or special charter,
7 town, or village.

8 ~~{17}~~(20) "Reasonably safe place to work" means that the
9 place of employment has been made as free from danger to the
10 life or safety of the employee as the nature of the
11 employment will reasonably permit.

12 ~~{18}~~(21) "Reasonably safe tools and appliances" are
13 such tools and appliances as are adapted to and are
14 reasonably safe for use for the particular purpose for which
15 they are furnished.

16 ~~{19}~~(22) "Temporary total disability" means a condition
17 resulting from an injury as defined in this chapter that
18 results in total loss of wages and exists until the injured
19 worker ~~is as far restored as the permanent character of the~~
20 ~~injuries will permit. A worker shall be paid temporary total~~
21 ~~disability benefits during a reasonable period of~~
22 ~~retraining. Disability shall be supported by a preponderance~~
23 ~~of medical evidence reaches maximum healing.~~

24 ~~{20}~~ "Wages" means the average gross earnings received
25 by the employee at the time of the injury for the usual

1 hours of employment in a week, and overtime is not to be
2 considered. Sick leave benefits accrued by employees of
3 public corporations, as defined by subsection ~~{16}~~ of this
4 section, are considered wages.

5 ~~{21}~~ "Wife" or "widow" means only a wife or widow
6 living with or legally entitled to be supported by the
7 deceased at the time of the injury.

8 ~~{22}~~(23) "Year", unless otherwise specified, means
9 calendar year."

10 Section 18. Section 39-71-119, MCA, is amended to
11 read:

12 "39-71-119. Injury or injured and accident defined.

13 (1) "Injury" or "injured" means:

14 ~~{1}~~ a tangible happening of a traumatic nature from an
15 unexpected cause or unusual strain resulting in either
16 external or internal physical harm and such physical
17 condition as a result thereof and excluding disease not
18 traceable to injury, except as provided in subsection ~~{2}~~ of
19 this section;

20 ~~{2}~~ cardiovascular or pulmonary or respiratory
21 diseases contracted by a paid firefighter employed by a
22 municipality, village, or fire district as a regular member
23 of a lawfully established fire department, which diseases
24 are caused by overexertion in times of stress or danger in
25 the course of his employment by proximate exposure or by

1 ~~cumulative-exposure-over-a-period-of--4--years--or--more--to~~
 2 ~~heat,--smoke,--chemical-fumes,--or--other-toxic-gases,--Nothing~~
 3 ~~herein-shall-be--construed--to--exclude--any--other--working~~
 4 ~~person---who---suffers---a---cardiovascular,--pulmonary,--or~~
 5 ~~respiratory-disease-while-in-the-course--and--scope--of--his~~
 6 ~~employment;~~

7 (a) internal or external physical harm to the body;

8 (b) damage to prosthetic devices or appliances, except
 9 for damage to eyeglasses, contact lenses, dentures, or
 10 hearing aids; or

11 ~~(3)(c) death resulting from injury.~~

12 (2) An injury is caused by an accident. An accident

13 is:

14 (a) an unexpected traumatic incident;

15 (b) identifiable by time and place of occurrence;

16 (c) identifiable by member or part of the body
 17 affected; and

18 (d) caused by a specific event on a single day or
 19 during a single work shift.

20 (3) "Injury" or "injured" does not mean a physical or
 21 mental condition arising from:

22 (a) emotional or mental stress; or

23 (b) a nonphysical stimulus or activity.

24 (4) "Injury" or "injured" does not include a disease
 25 that is not caused by an accident.

1 (5) A cardiovascular, pulmonary, respiratory, or other
 2 disease, cerebrovascular accident, or myocardial infarction
 3 suffered by a worker while in the course and scope of
 4 employment is an injury only if the accident is the primary
 5 cause of the physical harm in relation to other factors
 6 contributing to the physical harm."

7 NEW SECTION. Section 19. Wages defined. (1) "Wages"
 8 means the gross remuneration paid in money, or in a
 9 substitute for money, for services rendered by an employee.
 10 Wages include but are not limited to:

11 (a) commissions, bonuses, and remuneration at the
 12 regular hourly rate for overtime work, holidays, vacations,
 13 and sickness periods;

14 (b) board or lodging if it constitutes a part of the
 15 employee's remuneration, based on the actual value of the
 16 board, lodging, rent, or housing; and

17 (c) payments made to an employee on any basis other
 18 than time worked, including but not limited to piecework, an
 19 incentive plan, or profit-sharing arrangement.

20 (2) Wages do not include:

21 (a) employee travel expense reimbursements or
 22 allowances for meals, lodging, travel, and subsistence;

23 (b) special rewards for individual invention or
 24 discovery;

25 (c) tips and other gratuities received by the employee

1 in excess of those documented to the employer for tax
2 purposes;

3 (d) contributions made by the employer to a group
4 insurance or pension plan; or

5 (e) vacation or sick leave benefits accrued but not
6 paid.

7 (3) For compensation benefit purposes, the average
8 actual earnings for the four pay periods immediately
9 preceding the injury are the employee's wages, except if:

10 (a) the term of employment for the same employer is
11 less than four pay periods, in which case the employee's
12 wages are the hourly rate times the number of hours in a
13 week for which the employee was hired to work; or

14 (b) for good cause shown by the claimant, the use of
15 the four pay periods does not accurately reflect the
16 claimant's employment history with the employer, in which
17 case the insurer may use additional pay periods.

18 Section 20. Section 39-71-203, MCA, is amended to
19 read:

20 "39-71-203. Powers of division -- rules. (1) The
21 division is hereby vested with full power, authority, and
22 jurisdiction to do and perform any and all things, whether
23 herein specifically designated or in addition thereto, which
24 that are necessary or convenient in the exercise of any
25 power, authority, or jurisdiction conferred upon it under

1 this chapter.

2 (2) The division may adopt rules to carry out the
3 provisions of this chapter."

4 Section 21. Section 39-71-204, MCA, is amended to
5 read:

6 "39-71-204. Rescission, alteration, or amendment by
7 division of its orders, decisions, or awards ---~~limitation~~
8 -- effect -- appeal. (1) ~~Except as provided in subsection~~
9 ~~(2), the~~ The division shall have has continuing jurisdiction
10 over all its orders, decisions, and awards and may, at any
11 time, upon notice, and after opportunity to be heard is
12 given to the parties in interest, rescind, alter, or amend
13 any such order, decision, or award made by it upon good
14 cause appearing therefor.

15 ~~(2) The division or the workers' compensation judge~~
16 ~~shall not have power to rescind, alter, or amend any final~~
17 ~~settlement or award of compensation more than 4 years after~~
18 ~~the same has been approved by the division. Rescinding,~~
19 ~~altering, or amending a final settlement within the 4-year~~
20 ~~period shall be by agreement between the claimant and the~~
21 ~~insurer. If the claimant and the insurer cannot agree, the~~
22 ~~dispute shall be considered a dispute for which the workers'~~
23 ~~compensation judge has jurisdiction to make a determination.~~
24 ~~Except as provided in 39-71-2908, the division or the~~
25 ~~workers' compensation judge shall not have the power to~~

1 ~~rescind, alter, or amend any order approving a full and~~
2 ~~final compromise settlement of compensation.~~

3 ~~(3)(2)~~ Any order, decision, or award rescinding,
4 altering, or amending a prior order, decision, or award
5 ~~shall have~~ has the same effect as original orders or awards.

6 (3) If a party is aggrieved by a division order, the
7 party may appeal the dispute to the board under [section
8 7]."

9 NEW SECTION. Section 22. Filing true claim --
10 obtaining benefits through deception or other fraudulent
11 means -- criminal penalty. (1) A person filing a claim under
12 this chapter or chapter 72 of this title, by signing the
13 claim, affirms the information filed is true and correct to
14 the best of that person's knowledge.

15 (2) A person who obtains or assists in obtaining
16 benefits to which the person is not entitled under this
17 chapter or chapter 72 of this title may be guilty of theft
18 under 45-6-301. A county attorney may initiate criminal
19 proceedings against the person.

20 NEW SECTION. Section 23. Disputes -- jurisdiction --
21 evidence -- settlement requirements -- mediation. (1) A
22 dispute concerning benefits arising under this chapter or
23 chapter 72 must be brought before a department hearing
24 examiner as provided in chapter 1 of this title. However, a
25 party may simultaneously request division mediation under

1 subsection (6).

2 (2) A dispute arising under this chapter that does not
3 concern benefits or a dispute for which a specific provision
4 of this chapter gives the division jurisdiction must be
5 brought before the division.

6 (3) An appeal from a decision by a department hearing
7 examiner or from a division order must be to the board under
8 [section 7].

9 (4) The common law and statutory rules of evidence do
10 not apply in a case brought to hearing before the division.

11 (5) Except as otherwise provided in this chapter,
12 before a party may bring a dispute before a hearing
13 examiner, the parties shall attempt to settle as follows:

14 (a) The party making a demand shall present the other
15 party with a specific written demand that contains
16 sufficient explanation and documentary evidence to enable
17 the other party to thoroughly evaluate the demand.

18 (b) The party receiving the demand shall respond in
19 writing within 15 working days of receipt. If the demand is
20 denied in whole or in part, the response shall state the
21 basis of the denial.

22 (c) A party may move to dismiss a petition if it does
23 not comply with this subsection.

24 (d) Nothing in this subsection relieves a party of an
25 obligation otherwise contained in this chapter.

1 (6) (a) Simultaneously with petitioning the department
2 for resolution of a dispute, parties may pursue mediation by
3 the division.

4 (b) If at any time a party objects to mediation, the
5 mediation process must be terminated.

6 (c) Proceedings before a hearing examiner are
7 suspended pending the mediation process.

8 (d) The division and department shall promulgate
9 procedures to ensure prompt communication and coordination
10 between those agencies in a case in which a party or hearing
11 examiner requests mediation.

12 NEW SECTION. Section 24. Financial incentives to
13 institute safety programs. The state compensation insurance
14 fund, plan No. 3, and private insurers, plan No. 2, may
15 provide financial incentives to an employer who implements
16 a formal safety program. The insurance carrier may provide
17 to an employer a premium discount that reflects the degree
18 of risk diminished by the implemented safety program.

19 Section 25. Section 39-71-401, MCA, is amended to
20 read:

21 "39-71-401. Employments covered and employments
22 exempted. (1) Except as provided in subsection (2) of this
23 section, the Workers' Compensation Act applies to all
24 employers as defined in 39-71-117 and to all employees as
25 defined in 39-71-118. An employer who has any employee in

1 service under any appointment or contract of hire, expressed
2 or implied, oral or written, shall elect to be bound by the
3 provisions of compensation plan No. 1, 2, or 3. Every
4 employee whose employer is bound by the Workers'
5 Compensation Act is subject to and bound by the compensation
6 plan that has been elected by the employer.

7 (2) Unless the employer elects coverage for these
8 employments under this chapter and an insurer allows such an
9 election, the Workers' Compensation Act does not apply to
10 any of the following employments:

11 (a) household and domestic employment;

12 (b) casual employment as defined in 39-71-116(3)
13 ~~except-employment-of-a-volunteer-under-67-2-105;~~

14 (c) employment of members of an employer's family
15 dwelling in the employer's household;

16 (d) employment of sole proprietors or working members
17 of a partnership ~~other-than-those-who-consider-themselves-or~~
18 ~~hold--themselves--out-as-independent-contractors-and-who-are~~
19 ~~not-contracting-for-agricultural-services-to-be-performed-on~~
20 ~~a--farm--or--ranch,--or--for--broker--or--salesman--services~~
21 ~~performed--under--a--license--issued--by-the-board-of-realty~~
22 ~~regulation,--or-for-services-as-a-direct--seller--engaged--in~~
23 ~~the--sale-of-consumer-products-to-customers-primarily-in-the~~
24 ~~home, except as provided in subsection (3);~~

25 (e) employment of a broker or salesman performing

1 under a license issued by the board of realty regulation;
 2 (f) employment of a direct seller engaged in the sale
 3 of consumer products, primarily in the customer's home;
 4 (g) employment for which a rule of liability for
 5 injury, occupational disease, or death is provided under the
 6 laws of the United States;
 7 (h) employment of any person performing services in
 8 return for aid or sustenance only, except employment of a
 9 volunteer under 67-2-105;
 10 (i) employment with any railroad engaged in
 11 interstate commerce, except that railroad construction work
 12 shall be is included in and subject to the provisions of
 13 this chapter;
 14 (j) employment as an official, including a timer,
 15 referee, or judge, at a school amateur athletic event,
 16 unless the person is otherwise employed by a school
 17 district.
 18 (3) A sole proprietor, or a working member of a
 19 partnership who holds himself out or considers himself an
 20 independent contractor, ~~and who is not contracting for~~
 21 ~~agricultural services to be performed on a farm or ranch, or~~
 22 ~~for broker or salesman services performed under a license~~
 23 ~~issued by the board of realty regulation, or for services as~~
 24 ~~a direct seller engaged in the sale of consumer products to~~
 25 ~~customers primarily in the home~~ must elect to be bound

1 personally and individually by the provisions of
 2 compensation plan No. 1, 2, or 3, but he may apply to the
 3 division for an exemption from the Workers' Compensation Act
 4 for himself. The application must be made in accordance with
 5 the rules adopted by the division. The division may deny the
 6 application only if it determines that the applicant is not
 7 an independent contractor. When an application is approved
 8 by the division, it is conclusive as to the status of an
 9 independent contractor and precludes the applicant from
 10 obtaining benefits under this chapter.
 11 (4) (a) A private corporation shall provide coverage
 12 for its officers and other employees under the provisions of
 13 compensation plan No. 1, 2, or 3. However, pursuant to such
 14 rules as the division promulgates and subject in all cases
 15 to approval by the division, an officer of a private
 16 corporation may elect not to be bound as an employee under
 17 this chapter by giving a written notice, on a form provided
 18 by the division, served in the following manner:
 19 (i) if the employer has elected to be bound by the
 20 provisions of compensation plan No. 1, by delivering the
 21 notice to the board of directors of the employer and the
 22 division; or
 23 (ii) if the employer has elected to be bound by the
 24 provisions of compensation plan No. 2 or 3, by delivering
 25 the notice to the board of directors of the employer, the

1 division, and the insurer.

2 (b) If the employer changes plans or insurers, the
 3 officer's previous election is not effective and the officer
 4 shall again serve notice as provided if he elects not to be
 5 bound.

6 (c) The appointment or election of an employee as an
 7 officer of a corporation for the purpose of excluding the
 8 employee from coverage under this chapter does not entitle
 9 the officer to elect not to be bound as an employee under
 10 this chapter. In any case, the officer must sign the notice
 11 required by subsection (4)(a) under oath or affirmation, and
 12 he is subject to the penalties for false swearing under
 13 45-7-202 if he falsifies the notice.

14 {4}(5) Each employer shall post a sign in the
 15 workplace at the locations where notices to employees are
 16 normally posted, informing employees about the employer's
 17 current provision of compensation insurance. A workplace is
 18 any location where an employee performs any work-related act
 19 in the course of employment, regardless of whether the
 20 location is temporary or permanent, and includes the place
 21 of business or property of a third person while the employer
 22 has access to or control over such place of business or
 23 property for the purpose of carrying on his usual trade,
 24 business, or occupation. The sign will be provided by the
 25 division, distributed through insurers or directly by the

1 division, and posted by employers in accordance with rules
 2 adopted by the division. An employer who purposely or
 3 knowingly fails to post a sign as provided in this
 4 subsection is subject to a \$50 fine for each citation."

5 Section 26. Section 39-71-407, MCA, is amended to
 6 read:

7 "39-71-407. Liability of insurers -- limitations. (1)
 8 Every insurer is liable for the payment of compensation, in
 9 the manner and to the extent hereinafter provided, to an
 10 employee of an employer it insures who receives an injury
 11 arising out of and in the course of his employment or, in
 12 the case of his death from such injury, to his
 13 beneficiaries, if any.

14 (2) (a) An insurer is liable for an injury as defined
 15 in 39-71-119 if the claimant establishes it is more probable
 16 than not that:

17 (i) a claimed injury has occurred; or

18 (ii) a claimed injury aggravated a preexisting
 19 condition.

20 (b) Proof that it was medically possible that a
 21 claimed injury occurred or that such claimed injury
 22 aggravated a preexisting condition is not sufficient to
 23 establish liability.

24 (3) An employee who suffers an injury or dies while
 25 traveling is not covered by this chapter unless:

1 (a) (i) the employer furnishes the transportation or
 2 the employee receives reimbursement from the employer for
 3 costs of travel, gas, oil, or lodging as a part of the
 4 employee's benefits or employment agreement; and

5 (ii) the travel is necessitated by and on behalf of the
 6 employer as an integral part, or condition, of the
 7 employment; or

8 (b) the travel is required by the employer as part of
 9 the employee's job duties.

10 (4) An employee is not eligible for benefits otherwise
 11 payable under this chapter if the employee's use of alcohol
 12 or drugs not prescribed by a physician contributed to the
 13 cause of the injury or death. However, if the employer had
 14 knowledge of and failed to attempt to stop the employee's
 15 use of alcohol or drugs, this subsection does not apply."

16 Section 27. Section 39-71-414, MCA, is amended to
 17 read:

18 "39-71-414. Subrogation. (1) If an action is
 19 prosecuted as provided for in 39-71-412 or 39-71-413 and
 20 except as otherwise provided in this section, the insurer is
 21 entitled to subrogation for all compensation and benefits
 22 paid or to be paid under the Workers' Compensation Act. The
 23 insurer's right of subrogation is a first lien on the claim,
 24 judgment, or recovery.

25 (2) (a) If the injured employee intends to institute

1 the third party action, he shall give the insurer reasonable
 2 notice of his intention to institute the action.

3 (b) The injured employee may request that the insurer
 4 pay a proportionate share of the reasonable cost of the
 5 action, including attorneys' fees.

6 (c) The insurer may elect not to participate in the
 7 cost of the action. If this election is made, the insurer
 8 waives 50% of its subrogation rights granted by this
 9 section.

10 (d) If the injured employee or the employee's personal
 11 representative institutes the action, the employee is
 12 entitled to at least one-third of the amount recovered by
 13 judgment or settlement less a proportionate share of
 14 reasonable costs, including attorneys' fees, if the amount
 15 of recovery is insufficient to provide the employee with
 16 that amount after payment of subrogation.

17 (3) If an injured employee refuses or fails to
 18 institute the third party action within 1 year from the date
 19 of injury, the insurer may institute the action in the name
 20 of the employee and for the employee's benefit or that of
 21 the employee's personal representative. If the insurer
 22 institutes the action, it shall pay to the employee any
 23 amount received by judgment or settlement which is in excess
 24 of the amounts paid or to be paid under the Workers'
 25 Compensation Act after the insurer's reasonable costs,

1 including attorneys' fees for prosecuting the action, have
2 been deducted from the recovery.

3 (4) An insurer may enter into compromise agreements in
4 settlement of subrogation rights.

5 (5) If the amount of compensation and other benefits
6 payable under the Workers' Compensation Act have not been
7 fully determined at the time the employee, the employee's
8 heirs or personal representatives, or the insurer have
9 settled in any manner the action as provided for in this
10 section, the division shall determine what proportion of the
11 settlement shall be allocated under subrogation. The
12 division's determination may be appealed to the ~~workers'~~
13 ~~compensation-judge board.~~

14 (6) (a) The insurer is entitled to full subrogation
15 rights under this section, even though the claimant is able
16 to demonstrate damages in excess of the workers'
17 compensation benefits and the third-party recovery combined.
18 The insurer may subrogate against the entire settlement or
19 award of a third party claim brought by the claimant or his
20 personal representative, without regard to the nature of the
21 damages.

22 (b) If no survival action exists and the parties reach
23 a settlement of a wrongful death claim without apportionment
24 of damages by a court or jury, the insurer may subrogate
25 against the entire settlement amount, without regard to the

1 parties' apportionment of the damages, unless the insurer is
2 a party to the settlement agreement."

3 Section 28. Section 39-71-502, MCA, is amended to
4 read:

5 "39-71-502. Creation and purpose of uninsured
6 employers' fund. There is created an uninsured employers'
7 fund. The purpose of the fund is to pay to an injured
8 employee of an uninsured employer the same benefits the
9 employee would have received if the employer had been
10 properly enrolled under compensation plan No. 1, 2, or 3,
11 except as provided in 39-71-503(2)."

12 Section 29. Section 39-71-503, MCA, is amended to
13 read:

14 "39-71-503. Administration of fund. (1) The division
15 shall administer the fund and shall pay all proper benefits
16 to injured employees of uninsured employers.

17 ~~(2) Proper--surpluses--and--reserves--shall--be--kept--for~~
18 ~~the--fund-- Surpluses and reserves shall not be kept for the~~
19 ~~fund. The division shall make such payments as it considers~~
20 ~~appropriate as funds become available from time to time. The~~
21 ~~payment of weekly disability benefits takes preference over~~
22 ~~the payment of medical benefits. No lump-sum payments of~~
23 ~~future projected benefits, including impairment awards, may~~
24 ~~be made from the fund. The board of investments shall invest~~
25 the moneys of the fund. The cost of administration of the

1 fund shall be paid out of the money in the fund."

2 Section 30. Section 39-71-605, MCA, is amended to
3 read:

4 "39-71-605. Examination of employee by physician --
5 effect of refusal to submit to examination -- report and
6 testimony of physician -- cost. (1) (a) Whenever in case of
7 injury the right to compensation under this chapter would
8 exist in favor of any employee, he shall, upon the written
9 request of ~~his-employer-or~~ the insurer, submit from time to
10 time to examination by a physician or panel of physicians,
11 who shall be provided and paid for by such ~~employer--or~~
12 insurer, and shall likewise submit to examination from time
13 to time by any physician or panel of physicians selected by
14 the division ~~or-any-member-or-examiner-or-referee-thereof~~.

15 (b) The request or order for such examination shall
16 fix a time and place therefor, due regard being had to the
17 convenience of the employee and his physical condition and
18 ability to attend at the time and place fixed. The employee
19 shall be entitled to have a physician present at any such
20 examination. So long as the employee, after such written
21 request, shall fail or refuse to submit to such examination
22 or shall in any way obstruct the same, his right to
23 compensation shall be suspended. Any physician or panel of
24 physicians employed by ~~the--employer,~~ the insurer, or the
25 division who shall make or be present at any such

1 examination may be required to testify as to the results
2 thereof.

3 (2) In the event of a dispute concerning the physical
4 condition of a claimant or the cause or causes of ~~his the~~
5 injury or disability, if any, the division, at the request
6 of the claimant, ~~employer,~~ or insurer, as the case may be,
7 shall require the claimant to submit to such examination as
8 it may deem desirable by a physician or panel of physicians
9 within the state or elsewhere who have had adequate and
10 substantial experience in the particular field of medicine
11 concerned with the matters presented by the dispute. The
12 physician or panel of physicians making the examination
13 shall file a written report of findings with the division
14 for its use in the determination of the controversy
15 involved. The division shall pay the physician or panel of
16 physicians for the examination and shall be reimbursed by
17 the party who requested it.

18 (3) This section does not apply to impairment
19 evaluations provided for in [section 39]."

20 Section 31. Section 39-71-611, MCA, is amended to
21 read:

22 "39-71-611. Costs and attorneys' fees payable on
23 denial of claim or termination of benefits later found
24 compensable. ~~in-the-event-an-insurer-denies-liability-for--a~~
25 ~~claim--for--compensation-or-terminates-compensation-benefits~~

1 ~~and the claim is later adjudged compensable by the workers'~~
 2 ~~compensation judge or on appeal, the insurer shall pay~~
 3 ~~reasonable costs and attorneys' fees as established by the~~
 4 ~~workers' compensation judge. (1) The insurer shall pay~~
 5 reasonable costs and attorney fees as established by the
 6 hearing examiner, board, or court if:

7 (a) the insurer denies liability for a claim for
 8 compensation or terminates compensation benefits;

9 (b) the claim is later adjudged compensable by the
 10 hearing examiner, board, or court; and

11 (c) the hearing examiner, board, or court determines
 12 that the insurer's actions in denying liability or
 13 terminating benefits were unreasonable.

14 (2) A finding of unreasonableness against an insurer
 15 made under this section does not constitute a finding that
 16 the insurer acted in bad faith or violated the unfair trade
 17 practices provisions of Title 33, chapter 18."

18 Section 32. Section 39-71-612, MCA, is amended to
 19 read:

20 "39-71-612. Costs and attorneys' fees that may be
 21 assessed against an employer or insurer by workers'
 22 compensation judge. (1) If an employer or insurer pays or
 23 tenders submits a written offer of payment of compensation
 24 under chapter 71 or 72 of this title but controversy relates
 25 to the amount of compensation due, the case is brought

1 before the workers' compensation judge hearing examiner,
 2 board, or court for adjudication of the controversy, and the
 3 award granted by the judge is greater than the amount paid
 4 or tendered offered by the employer or insurer, a reasonable
 5 attorney's fee and costs as established by the workers'
 6 compensation judge hearing examiner, board, or court if the
 7 case has gone to a hearing may be awarded by the judge
 8 assessed against the insurer in addition to the amount of
 9 compensation.

10 ~~(2) When an attorney's fee is awarded against an~~
 11 ~~employer or insurer under this section there may be further~~
 12 ~~assessed against the employer or insurer reasonable costs,~~
 13 ~~fees, and mileage for necessary witnesses attending a~~
 14 ~~hearing on the claimant's behalf. Both the necessity for the~~
 15 ~~witness and the reasonableness of the fees must be approved~~
 16 ~~by the workers' compensation judge.~~

17 (2) An award of attorneys' fees and costs under
 18 subsection (1) may only be made if it is determined that the
 19 actions of the insurer were unreasonable. Any written offer
 20 of payment made 30 days or more before the date of hearing
 21 must be considered a valid offer of payment for the purposes
 22 of this section.

23 (3) A finding of unreasonableness against an insurer
 24 made under this section does not constitute a finding that
 25 the insurer acted in bad faith or violated the unfair trade

1 practices provisions of Title 33, chapter 18."

2 Section 33. Section 39-71-613, MCA, is amended to
3 read:

4 "39-71-613. Regulation of attorneys' fees --
5 forfeiture of fee for noncompliance. (1) When an attorney
6 represents or acts on behalf of a claimant or any other
7 party on any workers' compensation claim, the attorney shall
8 submit to the division a contract of employment, on a form
9 provided by the division, stating specifically the terms of
10 the fee arrangement between the attorney and the claimant.

11 (2) The administrator of the division may regulate the
12 amount of the attorney's fee in any workers' compensation
13 case. In regulating the amount of the fee, the administrator
14 shall consider:

15 (a) the benefits the claimant gained due to the
16 efforts of the attorney;

17 (b) the time the attorney was required to spend on the
18 case;

19 (c) the complexity of the case; and

20 (d) any other relevant matter the administrator may
21 consider appropriate.

22 (3) If an attorney violates a provision of this
23 section, a rule adopted under this section, or an order
24 fixing an attorney's fee under this section, he shall
25 forfeit the right to any fee which he may have collected or

1 been entitled to collect."

2 Section 34. Section 39-71-614, MCA, is amended to
3 read:

4 "39-71-614. Calculation of attorney fees --
5 limitation. (1) The amount of an attorney's fee assessed
6 against an ~~employer-or~~ insurer under 39-71-611 or 39-71-612
7 must be based exclusively on the time spent by the attorney
8 in representing the claimant on the issues brought ~~before~~
9 ~~the-workers+--compensation--judge~~ to hearing. The attorney
10 must document the time spent ~~and-give-the--documentation--to~~
11 ~~the--judge, but the hearing examiner, board, or court is not~~
12 bound by the documentation submitted.

13 (2) The judge hearing examiner, board, or court, shall
14 determine a reasonable attorney fee and assess costs. He--is
15 not--bound-by-the-documentation-submitted-to-him. The hourly
16 fee-the-judge-applies rate applied to the time spent must be
17 based on the attorney's customary and current hourly ~~fee~~
18 rate for legal work performed in this state, subject to a
19 maximum established by the division.

20 ~~(2)~~ (3) This section does not restrict a claimant and
21 an attorney from entering into a contingency fee arrangement
22 under which the attorney receives a percentage of the amount
23 of compensation payments received by the claimant because of
24 the efforts of the attorney. However, an amount equal to any
25 fee and costs assessed against an ~~employer-or~~ insurer under

1 39-71-611 or 39-71-612 and this section must be deducted
2 from the fee an attorney is entitled to from the claimant
3 under a contingency fee arrangement."

4 NEW SECTION. Section 35. Employer not to terminate
5 worker for filing claim -- preference -- jurisdiction over
6 dispute. (1) An employer may not use as grounds for
7 terminating a worker the filing of a claim under this
8 chapter or chapter 72 of this title.

9 (2) If an injured worker is capable of returning to
10 work within 2 years from the date of injury and has received
11 a medical release to return to work, the worker must be
12 given a preference over new hires for a comparable position
13 that becomes vacant within such 2-year period if:

14 (a) the position is consistent with the worker's
15 physical condition and vocational abilities; and

16 (b) the worker is substantially equally qualified as
17 other applicants.

18 (3) This preference applies only to employment with
19 the employer for whom the employee was working at the time
20 the injury occurred.

21 (4) The division, department, and board do not have
22 jurisdiction to administer or resolve a dispute under this
23 section. Exclusive jurisdiction is with the district court.

24 Section 36. Section 39-71-701, MCA, is amended to
25 read:

1 "39-71-701. Compensation for injuries producing
2 temporary total disability. (1) Subject to the limitation in
3 39-71-736, a worker is eligible for temporary total
4 disability benefits when the worker suffers a total loss of
5 wages as a result of an injury and until the worker reaches
6 maximum healing.

7 (2) The determination of temporary total disability
8 must be supported by a preponderance of medical evidence.

9 ~~{1}~~(3) Weekly compensation benefits for injury
10 producing ~~total~~ temporary total disability shall be $66 \frac{2}{3}\%$
11 of the wages received at the time of the injury. The maximum
12 weekly compensation benefits shall not exceed ~~\$110--beginning~~
13 ~~July-17-1973--Beginning-July-17--1974,--the--maximum--weekly~~
14 ~~compensation--benefits--shall-not-exceed~~ the state's average
15 weekly wage. ~~Total--temporary~~ Temporary total disability
16 benefits shall be paid for the duration of the worker's
17 temporary disability. The weekly benefit amount may not be
18 adjusted for cost of living as provided in 39-71-702(5).

19 ~~{2}~~(4) In cases where it is determined that periodic
20 disability benefits granted by the Social Security Act are
21 payable because of the injury, the weekly benefits payable
22 under this section are reduced, but not below zero, by an
23 amount equal, as nearly as practical, to one-half the
24 federal periodic benefits for such week, which amount is to
25 be calculated from the date of the disability social

1 security entitlement.

2 (5) Notwithstanding subsection (3), beginning July 1,
 3 1987, through June 30, 1989, weekly compensation benefits
 4 for temporary total disability may not exceed the state's
 5 average weekly wage of \$299 established July 1, 1986."

6 Section 37. Section 39-71-702, MCA, is amended to
 7 read:

8 "39-71-702. Compensation for ~~injuries---~~producing
 9 ~~permanent~~ total permanent disability. (1) If a worker is no
 10 ~~longer temporarily totally disabled and is unable to return~~
 11 ~~to work due to injury, after exhausting all options set~~
 12 ~~forth in [section 51], the worker is eligible for permanent~~
 13 ~~total disability benefits. Such benefits must be paid for~~
 14 ~~the duration of the worker's permanent total disability,~~
 15 ~~subject to 39-71-710 and [section 62].~~

16 (2) The determination of permanent total disability
 17 must be supported by a preponderance of medical evidence.

18 ~~{2}{3} Weekly compensation benefits for an injury~~
 19 ~~producing--total--permanent resulting in permanent total~~
 20 ~~disability shall be 66 2/3% of the wages received at the~~
 21 ~~time of the injury. The maximum weekly compensation benefits~~
 22 ~~shall not exceed the state's average weekly wage. Total~~
 23 ~~permanent-disability-benefits-shall-be-paid-for-the-duration~~
 24 ~~of-the-worker's-total-permanent-disability-~~

25 ~~{2}{4} In cases where it is determined that periodic~~

1 disability benefits granted by the Social Security Act are
 2 payable because of the injury, the weekly benefits payable
 3 under this section are reduced, but not below zero, by an
 4 amount equal, as nearly as practical, to one-half the
 5 federal periodic benefits for such week, which amount is to
 6 be calculated from the date of the disability social
 7 security entitlement.

8 (5) A worker's benefit amount must be adjusted for a
 9 cost-of-living increase on the next July 1 after 104 weeks
 10 of permanent total disability benefits have been paid, and
 11 each succeeding July 1. A worker may not receive more than
 12 10 such adjustments. The adjustment must be the percentage
 13 increase, if any, in the state's average weekly wage as
 14 adopted by the division over the state's average weekly wage
 15 adopted for the previous year, or 3%, whichever is less.

16 (6) Notwithstanding subsection (3), beginning July 1,
 17 1987, through June 30, 1989, the maximum weekly compensation
 18 benefits for permanent total disability may not exceed the
 19 state's average weekly wage of \$299 established July 1,
 20 1986."

21 Section 38. Section 39-71-703, MCA, is amended to
 22 read:

23 "39-71-703. Compensation for injuries causing partial
 24 disability. (1) ~~Weekly--compensation--benefits--for--injury~~
 25 ~~producing--partial-disability-shall-be-66-2/3%-of-the-actual~~

1 ~~diminution in the worker's earning capacity measured in~~
 2 ~~dollars, subject to a maximum weekly compensation of~~
 3 ~~one-half the state's average weekly wage.~~

4 ~~(2) The compensation shall be paid during the period~~
 5 ~~of disability, not exceeding, however, 500 weeks in cases of~~
 6 ~~partial disability. However, compensation for partial~~
 7 ~~disability resulting from the loss of or injury to any~~
 8 ~~member shall not be payable for a greater number of weeks~~
 9 ~~than is specified in 39-71-705 for the loss of the member.~~

10 A worker who has reached maximum healing and is not eligible
 11 for permanent total disability benefits but who has a
 12 medically determined physical restriction as a result of a
 13 work-related injury may be eligible for an impairment award
 14 and wage supplement benefits as follows:

15 (a) The following procedure must be followed for an
 16 impairment award:

17 (i) Each percentage point of impairment is compensated
 18 in an amount equal to 5 weeks times 66 2/3% of the wages
 19 received at the time of the injury, subject to a maximum
 20 compensation rate of one-half of the state's average weekly
 21 wage.

22 (ii) When a worker reaches maximum healing, an
 23 impairment rating is rendered by an impairment evaluator as
 24 provided for in [section 39]. Impairment benefits are
 25 payable beginning the date of maximum healing.

1 (iii) An impairment award may be paid biweekly or in a
 2 lump sum, at the discretion of the worker. Lump sums paid
 3 for impairments are not subject to the requirements set
 4 forth in 39-71-741, except that lump-sum conversions for
 5 benefits not accrued may be recouped by the insurer as set
 6 forth in 39-71-741(3). Benefits not accrued may be reduced
 7 to present value at the rate set forth by the division in
 8 39-71-741(3)(b).

9 (iv) If a worker becomes eligible for permanent total
 10 disability benefits, the insurer may recover any lump-sum
 11 advance paid to a claimant for impairment, as set forth in
 12 39-71-741(3). Such right of recovery does not apply to
 13 lump-sum benefits paid for the period prior to claimant's
 14 eligibility for permanent total disability benefits.

15 (v) If a worker suffers additional injury, an
 16 impairment award payable for the additional injury must be
 17 reduced by the amount of a previous award paid for
 18 impairment to the same part of the body.

19 (b) The following procedure must be followed for a
 20 wage supplement:

21 (i) A worker must be compensated in weekly benefits
 22 equal to 66 2/3% of the difference between the worker's
 23 actual wages received at the time of the injury and the
 24 wages the worker is qualified to earn in the worker's job
 25 pool, subject to a maximum compensation rate of one-half the

1 state's average weekly wage.

2 (ii) Eligibility for wage supplement benefits begins at
 3 maximum healing and terminates at the expiration of 500
 4 weeks minus the number of weeks for which a worker's
 5 impairment award is payable, subject to 39-71-710. A
 6 worker's failure to sustain a wage loss compensable under
 7 subsection (1)(b)(i) does not extend the period of
 8 eligibility. However, if a worker becomes eligible for
 9 temporary total disability, permanent total disability, or
 10 total rehabilitation benefits after reaching maximum
 11 healing, the eligibility period for wage supplement benefits
 12 is extended by any period for which a worker is compensated
 13 by those benefits after reaching maximum healing.

14 (2) The determination of permanent partial disability
 15 must be supported by a preponderance of medical evidence.

16 (3) Notwithstanding subsections (1) and (2), beginning
 17 July 1, 1987, through June 30, 1989, the maximum weekly
 18 compensation benefits for permanent partial disability may
 19 not exceed \$149.50, which is one-half the state's average
 20 weekly wage established July 1, 1986."

21 NEW SECTION. Section 39. Impairment evaluation --
 22 ratings. (1) The division shall appoint impairment
 23 evaluators under division rules that set forth the
 24 qualifications of evaluators and the location of
 25 examinations. An evaluator must be a physician licensed

1 under Title 37, chapter 3. The division may seek nominations
 2 from the board of medical examiners.

3 (2) An impairment rating:

4 (a) is a purely medical determination and must be
 5 rendered by an impairment evaluator after a claimant has
 6 reached maximum healing;

7 (b) must be based on the current edition of the Guides
 8 to Evaluation of Permanent Impairment published by the
 9 American medical association; and

10 (c) must be expressed as a percentage of the whole
 11 person.

12 (3) The procedure for obtaining an impairment rating
 13 is as follows:

14 (a) On request of the claimant, insurer, or treating
 15 physician, the division shall direct a claimant to an
 16 evaluator for a rating. The evaluator shall:

17 (i) evaluate the claimant to determine the degree of
 18 impairment, if any, that exists due to the injury; and

19 (ii) submit a report to the division, the claimant, and
 20 the insurer.

21 (b) (i) Unless the following procedure is followed,
 22 the insurer shall begin paying the impairment award, if any,
 23 within 30 days of the evaluator's mailing of the report.

24 (ii) Either the claimant or the insurer, within 15 days
 25 after the date of mailing of the report by the first

1 evaluator, may request that the claimant be evaluated by a
 2 second evaluator. If a second evaluation is requested, the
 3 division shall direct the claimant to a second evaluator,
 4 who shall determine the degree of impairment, if any, that
 5 exists due to the injury.

6 (iii) The reports of both examinations must be
 7 submitted to a third evaluator, who may also examine the
 8 claimant or seek other consultation. The three evaluators
 9 shall consult with one another and then the third evaluator
 10 shall submit a final report to the division, the claimant,
 11 and the insurer. The final report must state the degree of
 12 impairment, if any, that exists due to the injury.

13 (iv) Unless either party disputes the rating in the
 14 final report as provided in subsection (5), the insurer
 15 shall begin paying the impairment award, if any, within 45
 16 days of the date of mailing of the report by the third
 17 evaluator.

18 (4) The cost of an impairment evaluator is assessed to
 19 a worker's insurer, except that the cost of obtaining the
 20 final report of the second and third evaluator is assessed
 21 to the requesting party.

22 (5) A party may dispute a final impairment rating
 23 rendered under subsection (3)(b)(iii) by filing a petition
 24 with a hearing examiner within 15 days of the evaluator's
 25 mailing of the report.

1 (6) An impairment rating rendered under subsection (3)
 2 is presumed correct. This presumption is rebuttable.

3 Section 40. Section 39-71-704, MCA, is amended to
 4 read:

5 "39-71-704. Payment of medical, hospital, and related
 6 services. (1) In addition to the compensation provided by
 7 this chapter and as an additional benefit separate and apart
 8 from compensation, the following shall be furnished:

9 (a) After the happening of the injury, the insurer
 10 shall furnish, without limitation as to length of time or
 11 dollar amount, reasonable services by a physician or
 12 surgeon, reasonable hospital services and medicines when
 13 needed, and such other treatment as may be approved by the
 14 division for the injuries sustained.

15 (b) The insurer shall replace or repair prescription
 16 eyeglasses, prescription contact lenses, prescription
 17 hearing aids, and dentures that are damaged or lost as a
 18 result of an injury, as defined in 39-71-119, arising out of
 19 and in the course of employment.

20 (2) A relative value fee schedule for medical,
 21 chiropractic, and paramedical services provided for in this
 22 chapter, excluding hospital services, shall be established
 23 annually by the workers' compensation division and become
 24 effective in January of each year. The maximum fee schedule
 25 must be adopted as a relative value fee schedule of medical,

1 chiropractic, and paramedical services, with unit values to
 2 indicate the relative relationship within each grouping of
 3 specialties. Medical fees must be based on the median fees
 4 as billed to the state compensation insurance fund during
 5 the year preceding the adoption of the schedule. The
 6 division shall adopt rules establishing relative unit
 7 values, groups of specialties, the procedures insurers must
 8 use to pay for services under the schedule, and the method
 9 of determining the median of billed medical fees. These
 10 rules shall be modeled on the 1974 revision of the 1969
 11 California Relative Value Studies.

12 (3) Beginning January 1988, the division shall
 13 establish rates for hospital services necessary for the
 14 treatment of injured workers. Approved rates must be in
 15 effect for a period of 12 months from the date of approval.
 16 The division may coordinate this ratesetting function with
 17 other public agencies that have similar responsibilities.

18 (4) Notwithstanding subsection (2), beginning January
 19 1, 1988, and ending January 1990, the maximum fees payable
 20 by insurers must be limited to the relative value fee
 21 schedule established in January 1987. Notwithstanding
 22 subsection (3), the hospital rates payable by insurers must
 23 be limited to those set in January 1988, until December 31,
 24 1989."

25 Section 41. Section 39-71-708, MCA, is amended to

1 read:

2 "39-71-708. Compensation for disfigurement. (1) The
 3 division may award proper and equitable indemnity benefits
 4 for serious face, head, or neck disfigurement, not to exceed
 5 \$2,500, in addition to ~~any other indemnity~~ benefits payable
 6 under ~~39-71-705, 39-71-706, or 39-71-707~~ 39-71-703.

7 (2) No payment under this section shall be in lieu of
 8 the separate benefit of medical and hospital services ~~and or~~
 9 of any benefits paid under 39-71-701 for temporary total
 10 disability."

11 Section 42. Section 39-71-710, MCA, is amended to
 12 read:

13 "39-71-710. Termination of ~~total--disability~~ benefits
 14 upon retirement. (1) If a claimant is receiving ~~total~~
 15 ~~disability or rehabilitation~~ compensation benefits and the
 16 claimant ~~receives--retirement~~ is eligible to receive social
 17 security ~~retirement~~ benefits ~~or disability--social--security~~
 18 ~~benefits--paid--to--the--claimant--are--converted--by--law--to~~
 19 ~~retirement--benefits~~, the claimant is considered to be
 20 retired ~~and--no--longer--in--the--open--labor--market~~. When the
 21 claimant is considered retired, the liability of the insurer
 22 is ended for payment of such wage supplement, permanent
 23 total, and rehabilitation compensation benefits. ~~This~~
 24 ~~section--does--not--apply--to--permanent--partial--disability~~
 25 ~~benefits--Medical--benefits--are--expressly--reserved--to--the~~

1 ~~claimant. However, the insurer remains liable for temporary~~
 2 ~~total disability benefits, any impairment award, and medical~~
 3 ~~benefits.~~

4 (2) If a claimant who is eligible to receive social
 5 security retirement benefits and is gainfully employed
 6 suffers a work-related injury, the insurer retains liability
 7 for temporary total disability benefits, any impairment
 8 award, and medical benefits."

9 NEW SECTION. Section 43. Benefits not due while
 10 claimant is incarcerated. A claimant is not eligible for any
 11 disability or rehabilitation compensation benefits while the
 12 claimant is incarcerated as the result of conviction of a
 13 felony. The insurer remains liable for medical benefits. No
 14 time limit on benefits otherwise provided in this chapter is
 15 extended due to a period of incarceration.

16 Section 44. Section 39-71-721, MCA, is amended to
 17 read:

18 "39-71-721. Compensation for injury causing death --
 19 limitation. (1) (a) If an injured employee dies and the
 20 injury was the proximate cause of such death, then the
 21 beneficiary of the deceased, ~~as the case may be,~~ is entitled
 22 to the same compensation as though the death occurred
 23 immediately following the injury, ~~but the period during~~
 24 ~~which the death benefit is paid shall be reduced by the~~
 25 ~~period during or for which compensation was paid for the~~

1 injury. A beneficiary's eligibility for benefits commences
 2 after the date of death.

3 (b) The insurer is entitled to recover any
 4 overpayments or compensation paid in a lump sum to a worker
 5 prior to death but not yet recouped. The insurer shall
 6 recover such payments from the beneficiary's biweekly
 7 payments as provided in 39-71-741(3).

8 (2) To beneficiaries as defined in subsections--(2)(a)
 9 through--(2)(d)--of--39-71-116 39-71-116(2)(a) through
 10 39-71-116(2)(d), weekly compensation benefits for an injury
 11 causing death are computed--at 66 2/3% of the decedent's
 12 wages. The maximum weekly compensation benefits benefit may
 13 not exceed the state's average weekly wage. The minimum
 14 weekly compensation for death benefit is 50% of the state's
 15 average weekly wage, but in no event may it exceed the
 16 decedent's actual wages at the time of his death.

17 (3) To beneficiaries as defined in subsections--(2)(e)
 18 and--(2)(f)--of--39-71-116 39-71-116(2)(e) and 39-71-116(2)(f),
 19 weekly benefits must be paid to the extent of the dependency
 20 at the time of the injury, subject to a maximum of 66 2/3%
 21 of the decedent's wages. The maximum weekly compensation may
 22 not exceed the state's average weekly wage.

23 (4) If the decedent leaves no beneficiary as defined
 24 in 39-71-116(2), a lump-sum payment of \$3,000 must be paid
 25 to the decedent's surviving parent or parents.

1 (5) If any beneficiary of a deceased employee dies,
 2 the right of such beneficiary to compensation under this
 3 chapter ceases. Death benefits must be paid to a widow--or
 4 widower--for--life--or--until--remarriage,--and--in--the--event--of
 5 remarriage,--2--years--benefits--must--be--paid--in--a--lump--sum--to
 6 the--widow--or--widower, surviving spouse for 500 weeks
 7 subsequent to the date of the deceased employee's death or
 8 until the spouse's remarriage, whichever occurs first. After
 9 benefit payments cease to a surviving spouse, death benefits
 10 must be paid to beneficiaries, if any, as defined in
 11 39-71-116(2)(b) through 39-71-116(2)(d).

12 (6) In all cases, benefits must be paid to
 13 beneficiaries, as defined in 39-71-116(2).

14 (7) Benefits paid under this section may not be
 15 adjusted for cost of living as provided in 39-71-702.

16 (8) Notwithstanding subsections (2) and (3), beginning
 17 July 1, 1987, through June 30, 1989, the maximum weekly
 18 compensation benefits for injury causing death may not
 19 exceed the state's average weekly wage of \$299 established
 20 July 1, 1986. Beginning July 1, 1987, through June 30, 1989,
 21 the minimum weekly compensation for injury causing death
 22 shall be \$149.50, which is 50% of the state's average weekly
 23 wage established July 1, 1986, but in no event may it exceed
 24 the decedent's actual wages at the time of death."

25 Section 45. Section 39-71-736, MCA, is amended to

1 read:

2 "39-71-736. Compensation -- from what date paid. (1)
 3 (a) No compensation may be paid for the first 5 6 days loss
 4 of wages due to an injury. If loss of wages continues for
 5 more than 5 days, compensation shall be paid from the date
 6 of injury. A claimant is eligible for compensation starting
 7 with the 7th day of wage loss.

8 (b) However, separate benefits of medical and hospital
 9 services shall be furnished from the date of injury.

10 (2) For the purpose of this section, an injured worker
 11 is not considered to have a wage loss if the worker is
 12 receiving sick leave benefits, except that each day for
 13 which the worker elects to receive sick leave counts 1 day
 14 toward the 6-day waiting period."

15 Section 46. Section 39-71-737, MCA, is amended to
 16 read:

17 "39-71-737. Compensation to run consecutively --
 18 exceptions. (1) Compensation shall run consecutively and not
 19 concurrently, and payment shall not be made for two classes
 20 of disability over the same period except that indemnity
 21 benefits--under--39-71-705--through--39-71-708--and--temporary
 22 total--disability--benefits--may--be--paid--concurrently.
 23 However,--subject--to--the--provisions--of--39-71-741,--this
 24 section--does--not--prevent:

25 (a) the payment of a lump sum advance settlement

1 against---projected---future---permanent---partial---indemnity
2 benefits---while---a---claimant---is---receiving---temporary---total
3 disability---benefits;---or

4 (b)---a---settlement---of---a---combination---of---different---classes
5 of---disability---benefits---into---a---lump---sum---or---into---a---combination
6 of---periodic---and---lump---sum---payments;

7 (2)---A---controversy---between---a---claimant---and---an---insurer
8 regarding---a---settlement---authorized---under---this---section---is---a
9 dispute---for---which---the---workers'---compensation---judge---has
10 jurisdiction---to---make---a---determination; impairment awards and
11 auxiliary rehabilitation benefits may be paid concurrently
12 with other classes of benefits, and wage supplement and
13 partial rehabilitation benefits may be paid concurrently."

14 Section 47. Section 39-71-741, MCA, is amended to
15 read:

16 "39-71-741. Compromise settlements and lump-sum
17 payments -- division approval required limitation. (1)---The
18 biweekly---payments---provided---for---in---this---chapter---may---be
19 converted;---in---whole---or---in---part;---into---a---lump---sum---payment.
20 Regardless---of---the---date---of---the---injury---or---of---a---prior---lump---sum
21 payment;---a---lump---sum---conversion---of---permanent---total---biweekly
22 payments---awarded---or---paid---after---April---15;---1985;---must---equal
23 the---estimated---present---value---of---the---total---unpaid---permanent
24 total---biweekly---payments;---assuming---interest---at---7%---per---year;
25 compounded---annually;---unless---the---conversion---improves---the

1 financial---condition---of---the---worker---or---his---beneficiary;---as
2 provided---in---subsection---(2)(b);---if---the---estimated---duration---of
3 the---compensation---period---is---the---remaining---life---expectancy---of
4 the---claimant---or---the---claimant's---beneficiary;---the---remaining
5 life---expectancy---must---be---determined---by---using---the---most---recent
6 table---of---life---expectancy---in---years---as---published---by---the---United
7 States---national---center---for---health---statistics;

8 (2)---The---conversion---can---only---be---made---upon---the---written
9 application---of---the---injured---worker---or---the---worker's
10 beneficiary;---with---the---concurrence---of---the---insurer;---and
11 approval---of---the---conversion---rests---in---the---discretion---of---the
12 division---as---to---the---amount---of---the---lump---sum---payment---and---the
13 advisability---of---the---conversion;---it---is---presumed---that---biweekly
14 payments---are---in---the---best---interests---of---the---worker---or---his
15 beneficiary;---The---approval---or---award---of---a---lump---sum---conversion
16 by---the---division---or---the---workers'---compensation---judge---must---be
17 the---exception;---not---the---rule;---and---may---be---given---only---if---the
18 worker---or---his---beneficiary---demonstrates---that---his---ability---to
19 sustain---himself---financially---is---more---probable---with---a---whole---or
20 partial---lump---sum---conversion---than---with---the---biweekly---payments
21 and---his---other---available---resources;---The---following---procedure
22 must---be---used---by---the---division---and---the---workers'---compensation
23 judge---in---determining---whether---a---lump---sum---conversion---of
24 permanent---total---biweekly---payments---will---be---approved---or
25 awarded;

1 (a) The difference between the present discounted
2 value of a lump sum and the future value of the biweekly
3 payments cannot be the only grounds for approving or
4 awarding a lump sum conversion.

5 (b) A lump sum conversion that improves the financial
6 condition of the worker or his beneficiary over what would
7 have been reasonably expected had the worker not been
8 injured or died can be approved or awarded only if the
9 lump sum conversion is limited to the purchase price to the
10 insurer of an annuity that would yield an amount equal to
11 the biweekly benefits payable over the estimated duration of
12 the compensation period. The worker or his beneficiary must
13 demonstrate the financial condition that would have been
14 reasonably expected, taking into consideration his age,
15 education, work experience, and probable job promotions and
16 pay increases.

17 (c) If the existing delinquent or outstanding debts
18 are used as grounds for a lump sum conversion, the worker or
19 his beneficiary must demonstrate through a debt management
20 plan that a lump sum for that purpose is necessary to
21 sustain himself financially.

22 (d) If a business venture is used as grounds for a
23 lump sum conversion, the worker or his beneficiary must
24 demonstrate through a business plan that a lump sum for that
25 purpose is necessary to sustain himself financially. The

1 business plan must at least show the feasibility of the
2 business, given the market conditions in the intended market
3 area, and the cash that will be available to him on a
4 biweekly basis after start-up costs and other business
5 expenses are considered throughout the expected life of the
6 venture.

7 (3) If the division finds that an application for
8 lump sum conversion does not adequately demonstrate the
9 ability of the worker or his beneficiary to sustain himself
10 financially, the division may order, at the insurer's
11 expense, financial, medical, vocational, rehabilitation,
12 educational, or other evaluative studies to determine
13 whether a lump sum conversion is in the best interest of the
14 worker or his beneficiary.

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

23 (5) A controversy between a claimant and an insurer
24 regarding the conversion of biweekly payments into a lump
25 sum is considered a dispute for which the workers'

compensation-judge-has-jurisdiction-to-make-a-determination.

(1) If a claimant and an insurer dispute the compensability of an injury, they may enter into a compromise and release settlement. In such case, the insurer may make payment in a lump sum without meeting the requirements set forth in subsection (2). A compromise and release settlement may not be reopened by the division, department, board, or court. After the insurer's initial acceptance of liability for a claim, a claim may not be compromised and released.

(2) Permanent total disability benefits may be converted to a lump-sum payment. The total of all lump-sum payments to a claimant may not exceed \$20,000. A conversion may only be made upon the written application of the injured worker with the concurrence of the insurer. Approval of the lump-sum payment rests in the discretion of the division. The approval or award of a lump-sum payment by the division, board, or court must be the exception. It may be given only if the worker has demonstrated financial need that:

(a) relates to the necessities of life or a self-employment venture as set forth in [section 62]; and

(b) arises subsequent to the date of accident or arises because of reduced income as a result of the accident.

(3) (a) An insurer may recoup any lump-sum payment amortized at the rate established by the division, prorated

biweekly over the projected duration of the compensation period.

(b) The rate adopted by the division must be based on the average rate for United States 10-year treasury bills in the previous calendar year, rounded to the nearest whole number.

(c) If the projected compensation period is the claimant's lifetime, the life expectancy must be determined by using the most recent table of life expectancy as published by the United States national center for health statistics.

(4) The division has full power, authority, and jurisdiction to allow and approve compromise settlements or lump-sum payments agreed to by workers and insurers. All such compromise settlements and lump-sum payments are void without the approval of the division. Approval by the division must be in writing. The division shall directly notify a claimant of a division order approving or denying a claimant's compromise or lump-sum payment.

(5) Subject to [section 23], a dispute between a claimant and an insurer regarding the conversion of biweekly payments into a lump-sum payment is considered a dispute for which a hearing examiner has jurisdiction to make a determination. If an insurer and a claimant agree to a compromise and release settlement under subsection (1) or to

1 a lump-sum payment under subsection (2) but the division
 2 disapproves, the parties may request the board to review the
 3 division's determination.

4 (6) In addition to providing information to the
 5 division prior to division approval, a worker must agree, as
 6 a condition of receiving a lump-sum payment, to provide any
 7 information regarding the expenditure of the lump-sum
 8 payment as the division may from time to time request."

9 Section 48. Section 39-71-803, MCA, is amended to
 10 read:

11 "39-71-803. Occupational deafness distinguished from
 12 traumatic loss of hearing. Occupational deafness as herein
 13 provided is distinguished from traumatic loss of hearing,
 14 ~~which is governed by the specific loss schedule provided for~~
 15 ~~in 39-71-705~~ may be compensated under parts 7 and 10 of this
 16 chapter."

17 NEW SECTION. Section 49. Definitions. As used in this
 18 chapter, the following definitions apply:

19 (1) "Board of rehabilitation certification" means the
 20 nonprofit, independent, fee-structured organization that is
 21 a member of the national commission for health certifying
 22 agencies and that is established to certify rehabilitation
 23 practitioners.

24 (2) "Disabled worker" means one who has a medically
 25 determined restriction resulting from a work-related injury

1 that precludes the worker from returning to the job the
 2 worker held at the time of the injury.

3 (3) "I.W.R.P." means an individualized, written
 4 rehabilitation program prepared by the department of social
 5 and rehabilitation services.

6 (4) "Rehabilitation benefits" means benefits provided
 7 in [sections 59 through 61] and 39-71-1003.

8 (5) "Rehabilitation provider" means a rehabilitation
 9 counselor, other than the department of social and
 10 rehabilitation services, certified by the board for
 11 rehabilitation certification and designated by the insurer
 12 to the division.

13 (6) "Rehabilitation services" consists of a program of
 14 evaluation, planning, and delivery of goods and services to
 15 assist a disabled worker to return to work.

16 (7) (a) "Worker's job pool" means those jobs typically
 17 available for which a worker is qualified, consistent with
 18 the worker's age, education, vocational experience and
 19 aptitude and compatible with the worker's physical
 20 capacities and limitations as the result of the worker's
 21 injury. Lack of immediate job openings is not a factor to
 22 be considered.

23 (b) A worker's job pool may be either local or
 24 statewide, as follows:

25 (i) a local job is one either in a central city that

1 has within its economically integrated geographical area a
2 population of less than 50,000 or in a city with a
3 population of more than 50,000 as determined by the
4 division; or

5 (ii) a statewide job is one anywhere in the state of
6 Montana.

7 Section 50. Section 39-71-1003, MCA, is amended to
8 read:

9 "39-71-1003. Eligibility for vocational rehabilitation
10 expenses ~~benefits--under--chapter--not--affected-----other~~
11 ~~expenses--payable. The-eligibility-of-any-injured-worker-to~~
12 ~~receive-other-benefits-under-the-Workers'-Compensation-Act~~
13 ~~is--in--no--way--affected--by--his-entrance-upon-a-course-of~~
14 ~~vocational--rehabilitation--as--herein--provided--A--person~~
15 ~~undergoing--vocational-rehabilitation-must-be-paid-temporary~~
16 ~~total-disability-benefits--in-addition-thereto--he--may--be~~
17 ~~paid--upon-the-certification-of-the-department-of-social-and~~
18 ~~rehabilitation-services-from-funds-herein-provided:~~

19 (1) ~~his--actual-and-necessary-travel-expenses-from-his~~
20 ~~place-of-residence-to-the-place-of-training-and-return;~~

21 (2) ~~his-living-expenses-while-in-training-in-an-amount~~
22 ~~not-in-excess-of-\$50-per-week--and~~

23 (3) ~~his-expenses-for--tuition--books--and--necessary~~
24 ~~equipment-in-training.~~

25 Upon certification by the department of social and

1 rehabilitation services, a disabled worker may be paid
2 vocational rehabilitation expenses from funds provided in
3 39-71-1004, in addition to benefits payable under the
4 Workers' Compensation Act."

5 NEW SECTION. Section 51. Rehabilitation goals and
6 options. (1) The goal of rehabilitation services is to
7 return a disabled worker to work, with a minimum of
8 retraining, as soon as possible after an injury occurs.

9 (2) The first appropriate option among the following
10 must be chosen for the worker:

- 11 (a) return to the same position;
12 (b) return to a modified position;
13 (c) return to a related occupation suited to the
14 claimant's education and marketable skills;
15 (d) on-the-job training;
16 (e) short-term retraining program (less than 24
17 months);
18 (f) long-term retraining program (48 months maximum);

19 or
20 (g) self-employment.

21 (3) Whenever possible, employment in a worker's local
22 job pool must be considered and selected prior to
23 consideration of employment in a worker's statewide job
24 pool.

25 NEW SECTION. Section 52. Rehabilitation services --

1 required and provided by insurers and the department of
 2 social and rehabilitation services. (1) Rehabilitation
 3 services are required for disabled workers and may be
 4 initiated by:

5 (a) an insurer by designating a rehabilitation
 6 provider and notifying the division;

7 (b) the division by requiring the insurer to designate
 8 a rehabilitation provider; or

9 (c) a disabled worker through a request to the
 10 division. The division shall then require the insurer to
 11 designate a rehabilitation provider.

12 (2) Rehabilitation services provided under this part
 13 must be delivered:

14 (a) through a rehabilitation counselor certified by
 15 the board of rehabilitation certification;

16 (b) by a vocational rehabilitation counselor employed
 17 by the department of social and rehabilitation services; or

18 (c) by both.

19 (3) A disabled worker served by the department of
 20 social and rehabilitation services may receive only those
 21 vocational rehabilitation services as provided in Title 53,
 22 chapter 7, parts 1 and 2.

23 NEW SECTION. Section 53. Designated rehabilitation
 24 provider -- evaluation and report. (1) If a disabled worker
 25 is capable of returning to work, the designated

1 rehabilitation provider shall evaluate and determine the
 2 return-to-work capabilities of the disabled worker pursuant
 3 to [section 51(2)(a) through 51(2)(d)].

4 (2) If an insurer's designated rehabilitation provider
 5 has determined that all appropriate services have been
 6 provided to the disabled worker under [section 51(2)(a)
 7 through 51(2)(d)] and the worker has returned to work, the
 8 insurer shall document that determination to the division.

9 (3) If the worker has not returned to work as provided
 10 in subsection (2), the insurer shall notify the division.
 11 The division shall then designate a rehabilitation panel as
 12 provided in [section 54] and refer the worker to the panel.

13 NEW SECTION. Section 54. Rehabilitation panels. (1)
 14 The division shall designate and administer rehabilitation
 15 panels. The purpose of a panel is to advise the division on
 16 a worker's eligibility for rehabilitation services. Each
 17 panel shall issue to the division a report as provided in
 18 [section 55].

19 (2) Each panel must be composed of at least:

20 (a) the insurer's designated rehabilitation provider;

21 (b) a representative from the department who has
 22 expertise in job service listings, occupational supply and
 23 demand in Montana, and other Montana career information; and

24 (c) a representative from the division, who shall
 25 chair the panel.

1 (3) (a) The insurer shall pay the cost of the
2 designated rehabilitation provider.

3 (b) The division shall pay the cost of the
4 department's representative and of the division's
5 representative.

6 (4) The insurer shall provide the panel with the
7 worker's medical records, rehabilitation reports, and other
8 pertinent information in its possession.

9 (5) The panel may consult with the worker, insurer,
10 medical and rehabilitation providers, and any other person
11 and may have access to any information it considers
12 pertinent to carry out its responsibility.

13 (6) Information received by the panel is confidential,
14 except that it may be disclosed to the worker, insurer, and
15 division.

16 NEW SECTION. Section 55. Rehabilitation panel report.

17 (1) The rehabilitation panel shall:

18 (a) review all records, statements, and other
19 pertinent information; and

20 (b) prepare a report to the division, with copies to
21 the insurer and worker.

22 (2) The report must:

23 (a) identify the first appropriate rehabilitation
24 option by following the priorities set forth in [section
25 51]; and

1 (b) contain findings of why a higher listed priority,
2 if any, is not appropriate.

3 (3) Depending on which option the panel identifies as
4 appropriate, the report also must contain findings that:

5 (a) identify jobs in the local or statewide job pool
6 and the worker's anticipated earnings from each job;

7 (b) describe an appropriate on-the-job training
8 program, the worker's anticipated earnings, and anticipated
9 insurer's contribution, if any;

10 (c) describe an appropriate retraining program, short-
11 or long-term, the employment opportunities anticipated upon
12 the worker's completion of the program, and the worker's
13 anticipated earnings; or

14 (d) describe the worker's potential for specific
15 self-employment, limitations the worker might have in such
16 self-employment and any assistance necessary, and the
17 worker's anticipated earnings.

18 (4) An insurer or a worker on his own motion may
19 submit information to the panel prior to the time the panel
20 issues its final report.

21 NEW SECTION. Section 56. Division's order of
22 determination -- exception -- hearing. (1) The division
23 shall issue an initial order of determination within 10
24 working days of receipt of a report from a rehabilitation
25 panel. If the initial order of determination differs from

1 the findings and recommendations of the panel, the order
2 must state the reasons for the difference.

3 (2) Within 10 working days from the date the initial
4 order of determination is mailed, a party may submit a
5 written exception to the order. On its own motion or at the
6 request of any party, the division may conduct a hearing.
7 The division shall issue a final order of determination
8 within 20 working days of receipt of a written exception.

9 (3) If no party submits an exception within 10 working
10 days, the initial order of determination becomes the final
11 order of determination and must be issued by the division.

12 (4) Within 10 working days after the date of mailing
13 of the division's final order of determination, an appeal
14 may be taken to the board under the procedures and standards
15 set forth in [section 7].

16 NEW SECTION. Section 57. Referral to department of
17 social and rehabilitation services for retraining --
18 benefits -- appeals.

19 (1) If in its final order of determination the
20 division considers a worker able to return to work in the
21 worker's job pool, the insurer is not liable for
22 rehabilitation benefits, even though the worker
23 independently may pursue a training program of the worker's
24 own choice or seek vocational rehabilitation services from
25 the department of social and rehabilitation services.

1 (2) If in its final order of determination the
2 division finds the worker needs retraining, the division
3 shall determine the maximum duration for which funds under
4 39-71-1003 may be used for rehabilitation services under
5 [section 51(2)(d) through 51(2)(f)] and shall refer the
6 worker to the department of social and rehabilitation
7 services for a determination of vocational handicap.

8 (3) If the department of social and rehabilitation
9 services determines that a disabled worker has a vocational
10 handicap, the worker is eligible for funds under 39-71-1003
11 up to the maximum duration established in the division's
12 final order of determination.

13 (4) If a disabled worker seeks vocational
14 rehabilitation services from the department of social and
15 rehabilitation services without giving the insurer the
16 opportunity to designate a rehabilitation provider or,
17 subsequently, without giving the division the opportunity to
18 designate a rehabilitation panel to provide a report, the
19 insurer is not liable for rehabilitation benefits. The
20 insurer may terminate rehabilitation and other benefits, if
21 any, being received by the worker by following the procedure
22 set forth in [section 64].

23 (5) The department of social and rehabilitation
24 services, in providing rehabilitation services to a worker
25 referred to it by the division, shall consider but is not

1 bound by the rehabilitation panel report.

2 (6) If the department of social and rehabilitation
3 services has determined that all appropriate rehabilitation
4 services have been provided to a disabled worker, the
5 department shall document that determination to the
6 division.

7 (7) The appeal process before the board of social and
8 rehabilitation services provided for in 53-7-106 is the
9 exclusive remedy for a person aggrieved in the receipt of
10 services provided by the department of social and
11 rehabilitation services.

12 NEW SECTION. Section 58. Agreement between worker and
13 insurer regarding option. A worker and an insurer may agree
14 that an option in [section 51] is appropriate without
15 following the procedures provided in this part. Failure to
16 reach agreement is not a dispute under [section 23].

17 NEW SECTION. Section 59. Total rehabilitation
18 benefits during period of rehabilitation services --
19 limitation -- termination. (1) A worker who no longer is
20 temporarily totally disabled but meets the definition of a
21 disabled worker may be eligible for total rehabilitation
22 benefits.

23 (2) Eligibility for total rehabilitation benefits
24 begins on the date of maximum healing or the date notice is
25 given to the division by the insurer that a rehabilitation

1 provider has been designated, whichever is later.

2 (3) Benefits must be paid at the disabled worker's
3 temporary total disability rate for a period not exceeding
4 26 weeks from the date of eligibility, except that the
5 division may extend the period for good cause. The insurer
6 may extend the benefits without division approval but must
7 notify the division of the extension.

8 (4) Total rehabilitation benefits under this section
9 terminate when:

- 10 (a) a worker returns to work;
11 (b) a worker is qualified to return to work under the
12 priorities in [section 51] pursuant to a division order; or
13 (c) an I.W.R.P. is submitted to the division by the
14 department of social and rehabilitation services.

15 (5) The insurer shall provide written notice to the
16 worker and division that benefits have been terminated.

17 NEW SECTION. Section 60. Wage supplement and partial
18 rehabilitation benefits. (1) A worker who is in a
19 rehabilitation program under [section 57] in accordance with
20 and for the maximum duration established by a final order of
21 determination by the division is eligible to receive the
22 following benefits:

23 (a) wage supplement benefits as provided in 39-71-703
24 but with the rate based on 66 2/3% of the worker's actual
25 wages received at the time of injury, subject to a maximum

1 of one-half the state's average weekly wage; and

2 (b) a partial rehabilitation benefit that, together
3 with the wage supplement provided in subsection (1)(a),
4 provides the worker with weekly benefits equal to the
5 worker's temporary total disability rate.

6 (2) After the worker completes the rehabilitation
7 program, the worker's further eligibility, if any, for wage
8 supplement benefits under 39-71-703 is reduced by the number
9 of weeks of wage supplement benefits received under
10 subsection (1)(a).

11 (3) Notwithstanding subsection (1)(a), beginning July
12 1, 1987, through June 30, 1989, the maximum weekly
13 compensation benefit under that subsection may not exceed
14 \$149.50, which is one-half the state's weekly wage
15 established July 1, 1986.

16 NEW SECTION. Section 61. Auxiliary rehabilitation
17 benefits. In addition to benefits otherwise provided in this
18 chapter, separate benefits not exceeding a \$4,000 total may
19 be paid by the insurer for:

- 20 (1) reasonable travel and relocation expenses used to:
21 (a) search for new employment;
22 (b) return to work but in a new location; and
23 (c) implement a rehabilitation program pursuant to a
24 final order of determination by the division; and
25 (2) reasonable participation with an employer in an

1 on-the-job training program.

2 NEW SECTION. Section 62. Self-employment -- criteria.
3 (1) A worker who is eligible for permanent total disability
4 benefits may be eligible for a self-employment venture. A
5 lump sum of \$20,000 or less of permanent total disability
6 benefits may be awarded under 39-71-741 to assist the worker
7 in the self-employment venture. Any previous lump-sum
8 payment made under 39-71-741 must be considered so that the
9 total amount of lump-sum payments of permanent total
10 disability benefits does not exceed \$20,000.

11 (2) In addition to meeting the requirements set forth
12 in 39-71-741, the self-employment venture must be considered
13 feasible under criteria set forth by the division.

14 (3) When the worker begins the self-employment
15 venture, his eligibility for permanent total disability
16 benefits ends and the worker may be eligible for permanent
17 partial disability benefits under 39-71-703.

18 (4) If a worker again becomes eligible for permanent
19 total disability benefits, the insurer may recoup any lump
20 sum of permanent total disability benefits awarded for a
21 self-employment venture, as provided in 39-71-741.

22 NEW SECTION. Section 63. Exchange of information. The
23 department of social and rehabilitation services, the
24 insurer's designated rehabilitation provider, and the
25 division shall provide to one another case information as

1 necessary to carry out the purposes of this part.

2 NEW SECTION. Section 64. Termination of benefits for
3 noncooperation with rehabilitation services -- division
4 hearing and appeal. (1) If an insurer believes a worker is
5 refusing unreasonably to cooperate with the rehabilitation
6 provider, the insurer, with 14 days' notice to the worker
7 and division on a form approved by the division, may
8 terminate any rehabilitation benefits the worker is
9 receiving under this part until the worker cooperates. If
10 the worker is receiving wage supplement benefits, those
11 benefits must continue until the division's determination
12 under subsection (3) is made.

13 (2) The worker may contest the insurer's termination
14 of benefits by filing a written exception to the division
15 within 10 working days after the date of the 14-day notice.
16 The worker or insurer may request a hearing or the division
17 may hold a hearing on its own motion. The division shall
18 issue an order within 30 days of receipt of the written
19 exception.

20 (3) If no exceptions are timely filed or the division
21 determines the worker unreasonably refused to cooperate, the
22 insurer may terminate wage loss supplement benefits the
23 worker is receiving until the worker cooperates with the
24 rehabilitation provider. If the worker prevails at a hearing
25 before the division, it may award attorney fees and costs to

1 the worker under 39-71-612.

2 (4) Within 10 working days after the division mails
3 its order to the party's last-known address, a party may
4 appeal to the board under the procedures and standards set
5 forth in [section 7].

6 NEW SECTION. Section 65. Division jurisdiction over
7 disputes under this part -- appeals. In addition to pursuing
8 the hearing opportunities provided in [sections 56 and 64],
9 a party may bring a dispute arising under the provisions of
10 this part, except for a dispute over which the department of
11 social and rehabilitation services has jurisdiction under
12 [section 57], before the division under the contested case
13 provisions of the Montana Administrative Procedure Act,
14 Title 2, chapter 4, part 6, and any rules promulgated by the
15 division. Within 10 days after mailing of the division's
16 final order, an interested party may appeal to the board
17 under the procedures and standards set forth in [section 7].

18 Section 66. Section 39-71-2106, MCA, is amended to
19 read:

20 "39-71-2106. Requiring security of employer. (1) The
21 division may require any employer who elects to be bound by
22 compensation plan No. 1 to provide a security deposit. Such
23 security deposit may be a surety bond, government bond, or
24 letter of credit approved by the division and must be the
25 greater of:

1 (a) \$250,000; or

2 (b) an average of the workers' compensation
3 liabilities incurred by the employer in Montana for the past
4 3 calendar years.

5 ~~(1)~~(2) If the division finds that an employer has lost
6 his solvency or financial ability to pay the compensation
7 herein provided to be paid which might reasonably be
8 expected to be chargeable to the employer during the fiscal
9 year to be covered by the permission or that the employer is
10 an association, corporation, or organization of individual
11 employers seeking permission to operate under compensation
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
15 plan No. 1, to give security for the payment of
16 compensation, which security must be in such an amount as
17 the division finds is reasonable and necessary to meet all
18 liabilities of the employer which may reasonably and
19 ordinarily be expected to accrue during the fiscal year.

20 ~~(2)~~(3) The security must be deposited with the
21 division and may be a certain estimated percent of the
22 employer's last preceding annual payroll or a certain
23 percent of the established amount of his annual payroll for
24 the fiscal year; or the security may be in the form of a
25 bond or undertaking executed to the division in the amount

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

16 ~~(3)~~(4) 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 Section 67. Section 39-71-2902, MCA, is amended to
21 read:

22 "39-71-2902. Operating expenses. ~~The---workers'~~
23 ~~compensation--judge--may--employ--such--employees--as--may--be~~
24 ~~required-to-carry-out--the--duties--under--this--part.~~ All
25 expenditures of the workers' compensation judge, including

1 but not limited to ~~salaries~~ salary, traveling expenses,
2 office rent, office equipment, and supplies, shall be paid
3 out of the workers' compensation administration fund."

4 Section 68. Section 39-71-2905, MCA, is amended to
5 read:

6 "39-71-2905. ~~Petition~~ Decisions of workers'
7 compensation judge. ~~A claimant or an insurer who has a~~
8 ~~dispute concerning any benefits under chapter 71 of this~~
9 ~~title may petition the workers' compensation judge for a~~
10 ~~determination of the dispute.~~ The judge, after a hearing
11 conducted prior to July 1, 1987, shall make a determination
12 of the dispute in accordance with the law as set forth in
13 chapter 71 of this title. If the dispute relates to benefits
14 due a claimant under chapter 71, the judge shall fix and
15 determine any benefits to be paid and specify the manner of
16 payment. The workers' compensation judge has exclusive
17 jurisdiction to make determinations concerning disputes
18 under chapter 71, except as provided in 39-71-516 and
19 [section 3]. The penalties and assessments allowed against
20 an insurer under chapter 71 are the exclusive penalties and
21 assessments that can be assessed against an insurer for
22 disputes arising under chapter 71."

23 Section 69. Section 39-72-102, MCA, is amended to
24 read:

25 "39-72-102. Definitions. As used in this chapter,

1 unless the context requires otherwise, the following
2 definitions apply:

3 (1) "Beneficiary" is as defined in 39-71-116(2).

4 (2) "Board" means the board of industrial insurance
5 provided for in [section 2].

6 (3) "Child" is as defined in 39-71-116(4).

7 (4) "Disablement" means the event of becoming
8 physically incapacitated by reason of an occupational
9 disease from performing work in the normal labor market
10 worker's job pool. Silicosis, when complicated by active
11 pulmonary tuberculosis, is presumed to be total disablement.
12 "Disability", "total disability", and "totally disabled" are
13 synonymous with "disablement", but they have no reference to
14 "partial permanent partial disability".

15 (5) "Division" is as defined in 39-71-116(5).

16 (6) "Employee" is as defined in 39-71-118.

17 (7) "Employer" is as defined in 39-71-117.

18 (8) "Husband" is as defined in 39-71-116(7).

19 (9) "Independent contractor" is as defined in
20 39-71-120.

21 (10) "Insurer" is as defined in 39-71-116(8).

22 (11) "Invalid" is as defined in 39-71-116(9).

23 (12) "Occupational disease" means all diseases arising
24 out of or contracted from and in the course of employment.

25 (13) "Order" is as defined in 39-71-116(10).

1 (13) "Pneumoconiosis" means a chronic dust disease of
2 the lungs arising out of employment in coal mines and
3 includes anthracosis, coal workers' pneumoconiosis,
4 silicosis, or anthracosilicosis arising out of such
5 employment.

6 (14) "Silicosis" means a chronic disease of the lungs
7 caused by the prolonged inhalation of silicon dioxide (SiO₂)
8 and characterized by small discrete nodules of fibrous
9 tissue similarly disseminated throughout both lungs causing
10 the characteristic x-ray pattern and by other variable
11 clinical manifestations.

12 (15) "Wages" is as defined in 39-71-116(20) [section
13 19].

14 ~~(16) "Wife" is as defined in 39-71-116(21).~~

15 ~~(17)(16) "Year" is as defined in 39-71-116(6)(9) and~~
16 ~~39-71-116(22)(23)."~~

17 Section 70. Section 39-72-610, MCA, is amended to
18 read:

19 "39-72-610. Report of and examinations conducted by
20 medical panel. (1) At a hearing held before the division or
21 the ~~workers' compensation judge board~~, there is a rebuttable
22 presumption that the report of the medical panel and any
23 medical examination reports by members of the medical panel
24 are correct.

25 (2) The claimant or the insurer may present additional

1 medical information in order to rebut the medical
2 examination report of a panel member or a panel report."

3 Section 71. Section 39-72-612, MCA, is amended to
4 read:

5 "39-72-612. Rehearing and appeal to ~~workers'~~
6 ~~compensation--judge board~~. (1) Within 20 days after the
7 division has issued its order of determination as to whether
8 the claimant is entitled to benefits under this chapter, a
9 party may request a rehearing. In order to perfect an appeal
10 to the ~~workers' compensation--judge board~~, the appealing
11 party must request a rehearing before the division. The
12 division may grant a rehearing and, if a rehearing is
13 granted, the division's final determination may not be
14 issued until after the rehearing. If the division does not
15 grant a rehearing, the division's final determination is
16 issued on the date the rehearing is denied.

17 (2) Appeals from a final determination of the division
18 shall be made to the ~~workers' compensation judge board~~
19 within 30 days after the division has issued its final
20 determination. ~~The judge, after a hearing held pursuant to~~
21 ~~39-71-2903 and 39-71-2904, shall make a final determination~~
22 ~~concerning the claimant's claim. The judge may overrule the~~
23 ~~division only on the basis that the division's determination~~
24 ~~is:~~

25 ~~(a) in violation of constitutional or statutory~~

1 provisions;

2 ~~(b) in excess of the statutory authority of the~~

3 ~~agency;~~

4 ~~(c) made upon unlawful procedure;~~

5 ~~(d) affected by other error of law;~~

6 ~~(e) clearly erroneous in view of the reliable,~~

7 ~~probative, and substantial evidence on the whole record; or~~

8 ~~(f) arbitrary or capricious or characterized by abuse~~

9 ~~of discretion or clearly unwarranted exercise of~~

10 ~~discretion."~~

11 Section 72. Section 39-72-613, MCA, is amended to

12 read:

13 "39-72-613. Costs and attorney fees. (1) If an insurer

14 requests that a hearing be held before the division and the

15 claim is determined compensable by the division after the

16 hearing and the insurer does not appeal the division's

17 decision to the ~~workers' compensation judge~~ board,

18 reasonable costs and attorney fees, as determined by the

19 division, ~~shall~~ must be paid to the claimant's attorney by

20 the insurer.

21 (2) If an insurer appeals a decision of the division

22 to the ~~workers' compensation judge or from the judge to the~~

23 ~~supreme court~~ board and the claim is determined compensable,

24 reasonable costs and attorney fees, as determined thereafter

25 by the ~~workers' compensation judge~~ board or court, ~~shall~~

1 must be paid to the claimant's attorney by the insurer for

2 proceedings before the division, the ~~workers' compensation~~

3 ~~judge, and the supreme court~~ board, or court."

4 Section 73. Section 45-6-301, MCA, is amended to read:

5 "45-6-301. Theft. (1) A person commits the offense of

6 theft when he purposely or knowingly obtains or exerts

7 unauthorized control over property of the owner and:

8 (a) has the purpose of depriving the owner of the

9 property;

10 (b) purposely or knowingly uses, conceals, or abandons

11 the property in such manner as to deprive the owner of the

12 property; or

13 (c) uses, conceals, or abandons the property knowing

14 such use, concealment, or abandonment probably will deprive

15 the owner of the property.

16 (2) A person commits the offense of theft when he

17 purposely or knowingly obtains by threat or deception

18 control over property of the owner and:

19 (a) has the purpose of depriving the owner of the

20 property;

21 (b) purposely or knowingly uses, conceals, or abandons

22 the property in such manner as to deprive the owner of the

23 property; or

24 (c) uses, conceals, or abandons the property knowing

25 such use, concealment, or abandonment probably will deprive

1 the owner of the property.

2 (3) A person commits the offense of theft when he
3 purposely or knowingly obtains control over stolen property
4 knowing the property to have been stolen by another and:

5 (a) has the purpose of depriving the owner of the
6 property;

7 (b) purposely or knowingly uses, conceals, or abandons
8 the property in such manner as to deprive the owner of the
9 property; or

10 (c) uses, conceals, or abandons the property knowing
11 such use, concealment, or abandonment probably will deprive
12 the owner of the property.

13 (4) A person commits the offense of theft when he
14 purposely or knowingly obtains or exerts unauthorized
15 control over any part of any public assistance provided
16 under Title 53 by a state or county agency, regardless of
17 the original source of assistance, by means of:

18 (a) a knowingly false statement, representation, or
19 impersonation; or

20 (b) a fraudulent scheme or device.

21 (5) A person commits the offense of theft when he
22 purposely or knowingly obtains or exerts unauthorized
23 control over any part of any benefits provided under Title
24 39, chapters 71 and 72, by means of:

25 (a) a knowingly false statement, representation, or

1 impersonation; or

2 (b) deception or other fraudulent action.

3 ~~†5†~~(6) A person convicted of the offense of theft of
4 property not exceeding \$300 in value shall be fined not to
5 exceed \$500 or be imprisoned in the county jail for any term
6 not to exceed 6 months, or both. A person convicted of the
7 offense of theft of property exceeding \$300 in value or
8 theft of any commonly domesticated hooped animal shall be
9 fined not to exceed \$50,000 or be imprisoned in the state
10 prison for any term not to exceed 10 years, or both.

11 ~~†6†~~(7) Amounts involved in thefts committed pursuant
12 to a common scheme or the same transaction, whether from the
13 same person or several persons, may be aggregated in
14 determining the value of the property."

15 Section 74. Section 2-15-1014, MCA, is amended to
16 read:

17 "2-15-1014. Office of workers' compensation judge --
18 allocation -- appointment -- salary. (1) There is the office
19 of workers' compensation judge. The office is allocated to
20 the department of administration for administrative purposes
21 only as prescribed in 2-15-121 except as provided in
22 [section 3].

23 (2) ~~The~~ On July 1, 1987, the governor shall appoint
24 the workers' compensation judge for a term ~~of 6 years~~ not to
25 exceed 6 months in the same manner provided by Title 3,

1 chapter 1, part 10, for the appointment of supreme or
 2 district court judges. A vacancy ~~shall~~ may be filled in the
 3 same manner as the original appointment, but in any case the
 4 term may not extend beyond December 31, 1987.

5 (3) To be eligible for workers' compensation judge, a
 6 person must:

7 (a) have the qualifications necessary for district
 8 court judges found in Article VII, section 9, of the Montana
 9 constitution;

10 (b) devote full time to the duties of workers'
 11 compensation judge and not engage in the private practice of
 12 law.

13 (4) The workers' compensation judge is entitled to the
 14 same salary and other emoluments as that of a district judge
 15 but shall be accorded retirement benefits under the public
 16 employees' retirement system."

17 Section 75. Section 19-12-401, MCA, is amended to
 18 read:

19 "19-12-401. Eligibility for pension benefits. In order
 20 to qualify for participation in the volunteer firefighters'
 21 pension plan under 19-12-404, a volunteer firefighter must
 22 meet each of the following requirements:

23 (1) (a) To qualify for full participation, he must
 24 have completed a total of at least 20 years' service as an
 25 active volunteer firefighter and as an active member of a

1 qualified volunteer fire company.

2 (b) If a firefighter is prevented from completing at
 3 least 20 years' service by dissolution or discontinuance of
 4 his volunteer fire company, personal relocation due to
 5 transfer or loss of employment, personal disability, or any
 6 other factor beyond his reasonable control, he may qualify
 7 for partial participation if he has completed at least 10
 8 years' service. In that event, he is eligible for only a
 9 proportion of the benefits specified in 19-12-404,
 10 determined by multiplying the benefits by a fraction, the
 11 numerator of which is the number of years of active service
 12 completed and the denominator of which is 20.

13 (c) The years of active service are cumulative and
 14 need not be continuous. The service need not be acquired
 15 with one single fire company but may be a total of separate
 16 periods of active service with different fire companies in
 17 different fire districts.

18 (d) Effective March 1, 1965, the annual period of
 19 service for the purpose of this chapter is the fiscal year.
 20 No fractional part of any year may count toward the service
 21 requirement, and to receive credit for any particular year,
 22 a volunteer firefighter must serve with one particular
 23 volunteer fire company throughout that entire fiscal year.

24 (2) (a) Except as provided in subsection (2)(b), he
 25 must have attained the age of 55, but he need not be an

1 active volunteer firefighter or an active member of any
2 volunteer fire company when he reaches that age.

3 (b) An active member of a volunteer fire company whose
4 duty-related injury results in a permanent, total disability
5 as defined in 39-71-116~~(13)~~ is eligible to receive a partial
6 pension regardless of his age calculated as follows:

7 (i) for a member with less than 10 years of service, a
8 pension calculated as provided in subsection (1)(b) in which
9 the numerator equals 10; or

10 (ii) for a member with 10 years or more of service, a
11 pension calculated as provided in subsection (1)(b).

12 (3) During each of the years for which he claims
13 credit under subsection (1), he must have completed a
14 minimum of 30 hours of instruction in matters pertaining to
15 firefighting under a program formulated and supervised by
16 the chief or foreman of his volunteer fire company.

17 (4) Effective July 1, 1965, no volunteer firefighter
18 may receive credit for any year of membership in a volunteer
19 fire company unless, throughout the year:

20 (a) the company maintained firefighting equipment in
21 serviceable condition of a value of \$2,500 or more; and

22 (b) the company or the fire district served by it was
23 rated in class 5, 6, 7, 8, 9, or 10 by the board of fire
24 underwriters for the purpose of fire insurance premium
25 rates.

1 (5) He must have ceased to be an active member of any
2 volunteer fire company, and if he applies for and receives
3 pension benefits hereunder, he will not thereafter be
4 eligible to become an active member of any volunteer fire
5 company."

6 Section 76. Section 39-71-118, MCA, is amended to
7 read:

8 "39-71-118. Employee, worker, and workman defined. (1)
9 The terms "employee", "workman", or "worker" mean:

10 (a) each person in this state, including a contractor
11 other than an independent contractor, who is in the service
12 of an employer, as defined by 39-71-117, under any
13 appointment or contract of hire, expressed or implied, oral
14 or written. The terms include aliens and minors, whether
15 lawfully or unlawfully employed, and all of the elected and
16 appointed paid public officers and officers and members of
17 boards of directors of quasi-public or private corporations
18 while rendering actual service for such corporations for
19 pay. Casual employees as defined by 39-71-116~~(3)~~ are
20 included as employees if they are not otherwise covered by
21 workers' compensation and if an employer has elected to be
22 bound by the provisions of the compensation law for these
23 casual employments, as provided in 39-71-401(2). Household
24 or domestic service is excluded.

25 (b) a recipient of general relief who is performing

1 work for a county of this state under the provisions of
 2 53-3-303 through 53-3-305 and any juvenile performing work
 3 under authorization of a district court judge in a
 4 delinquency prevention or rehabilitation program;

5 (c) a person receiving on-the-job vocational
 6 rehabilitation training or other on-the-job training under a
 7 state or federal vocational training program, whether or not
 8 under an appointment or contract of hire with an employer as
 9 defined in this chapter and whether or not receiving payment
 10 from a third party. However, this subsection does not apply
 11 to students enrolled in vocational training programs as
 12 outlined above while they are on the premises of a public
 13 school or community college.

14 (d) students enrolled and in attendance in programs of
 15 vocational-technical education approved by the state board
 16 of public education at designated postsecondary
 17 vocational-technical centers; or

18 (e) an airman or other person employed as a volunteer
 19 under 67-2-105.

20 (2) If the employer is a partnership or sole
 21 proprietorship, such employer may elect to include as an
 22 employee within the provisions of this chapter any member of
 23 such partnership or the owner of the sole proprietorship
 24 devoting full time to the partnership or proprietorship
 25 business. In the event of such election, the employer must

1 serve upon the employer's insurer written notice naming the
 2 partners or sole proprietor to be covered, and no partner or
 3 sole proprietor shall be deemed an employee within this
 4 chapter until such notice has been given. For premium
 5 ratemaking and for the determination of weekly wage for
 6 weekly compensation benefits, the insurance carrier shall
 7 assume a salary or wage of such electing employee to be not
 8 less than \$900 a month and not more than 1 1/2 times the
 9 average weekly wage as defined in this chapter."

10 Section 77. Section 50-16-311, MCA, is amended to
 11 read:

12 "50-16-311. When consent is required to release or
 13 transfer confidential health care information. (1) Except as
 14 provided in subsection (2) or as otherwise specifically
 15 provided by law or the Montana Rules of Civil Procedure,
 16 confidential health care information relating to a person
 17 may not be released or transferred without the written
 18 consent of the person or his authorized representative.

19 (2) Consent is not required for release or transfer of
 20 confidential health care information:

21 (a) to a physician, dentist, or other medical person
 22 for diagnosis or treatment of an individual in a medical or
 23 dental emergency;

24 (b) to a peer review committee if the information
 25 concerns matters within the scope of the licensed

1 professional practice of the committee members;

2 (c) to qualified persons for the purpose of conducting
 3 scientific research, management audits, financial audits,
 4 program evaluations, or similar studies. However, qualified
 5 persons may not directly or indirectly identify an
 6 individual patient in a research report, audit, or
 7 evaluation or disclose a patient's identity in any manner.

8 (d) to a health care provider:

9 (i) as may be reasonably necessary to provide health
 10 care services to the individual about whom the information
 11 relates; or

12 (ii) in the administration of the office, practice, or
 13 operation in connection with the providing of health care
 14 services to the individual about whom the information
 15 relates;

16 (e) to an employer as may be reasonably necessary in
 17 the administration of a group insurance plan or to a
 18 workers' compensation insurer, the division of workers'
 19 compensation, ~~or--the--workers'--compensation---~~ judge the
 20 department of labor and industry, or the board of industrial
 21 insurance, as is necessary in the administration of Title
 22 39, chapters 71 and 72;

23 (f) when a person's insurance coverage obligates more
 24 than one insurer with respect to a claim or benefit;

25 (g) to a state insurance department for the purpose of

1 reviewing an insurance claim or complaint made to such
 2 department by an insured or his authorized representative or
 3 by a beneficiary or his authorized representative of a
 4 deceased insured;

5 (h) to a law enforcement officer about the general
 6 physical condition of a person being treated in a health
 7 care facility if such person was injured on a public roadway
 8 or was injured by the possible criminal act of another;

9 (i) to the news media about the general physical
 10 condition of an injured person being treated in a health
 11 care facility, provided the existence of the hospitalization
 12 is publicly known.

13 (3) For the purpose of this section, the term "general
 14 physical condition" is limited to a description of the
 15 condition as "satisfactory", "serious", or "critical".

16 Section 78. Section 53-9-106, MCA, is amended to read:
 17 "53-9-106. Attorneys' fees. (1) The division may grant
 18 attorneys' fees to attorneys for representing claimants
 19 before the division. Any attorney's fee granted by the
 20 division shall be in addition to compensation awarded the
 21 claimant under this part.

22 (2) The division may regulate the amount of the
 23 attorney's fee in any claim under this part when an attorney
 24 is representing a claimant.

25 (3) In cases under this part that go before the

1 ~~workers' compensation judge a district court~~, the judge may
2 grant, in addition to compensation benefits granted,
3 attorneys' fees to attorneys for representing claimants
4 before the judge.

5 (4) In no claim or case may attorney fees in excess of
6 5% of the amount paid to a claimant or on his behalf be paid
7 directly or indirectly to a claimant's attorney."

8 Section 79. Section 53-9-131, MCA, is amended to read:

9 "53-9-131. Appeals. (1) After the division has made
10 final determination concerning any matter relating to a
11 claim, if the claimant disputes the division's
12 determination, he may appeal to the ~~workers' compensation~~
13 ~~judge district court~~ for review. The judge, after a hearing,
14 shall make a final determination concerning the dispute and
15 issue an appropriate order affirming or modifying the
16 division's determination.

17 ~~(2) All proceedings and hearings before the workers'~~
18 ~~compensation judge shall be in accordance with the~~
19 ~~appropriate provisions of the Montana Administrative~~
20 ~~Procedure Act. However, the workers' compensation judge is~~
21 ~~not bound by common law and statutory rules of evidence.~~

22 ~~(3) Notwithstanding Title 27, chapter 4, part 7, an~~
23 ~~appeal from a final decision of the workers' compensation~~
24 ~~judge shall be filed directly with the supreme court of~~
25 ~~Montana in the manner provided by law for appeals from the~~

1 ~~district court in civil cases."~~

2 NEW SECTION. Section 80. Repealer. (1) Sections
3 2-15-1014, 2-15-1704, 39-51-310, and 39-71-2901 through
4 39-71-2907, MCA, are repealed.

5 (2) Sections 39-51-305, 39-51-2403, 39-51-2404,
6 39-51-2409, 39-51-2410, 39-71-104, 39-71-121, 39-71-122,
7 39-71-410, 39-71-705 through 39-71-707, 39-71-709,
8 39-71-738, 39-71-914, 39-71-1001, 39-71-1002, 39-71-1005,
9 39-71-2908, 39-71-2909, and 39-72-104, MCA, are repealed.

10 NEW SECTION. Section 81. Extension of authority. Any
11 existing authority of the department of labor and industry
12 and the division of workers' compensation to make rules on
13 the subject of the provisions of this act is extended to the
14 provisions of this act.

15 NEW SECTION. Section 82. Codification instructions.
16 (1) Sections 1 and 19 are intended to be codified as an
17 integral part of Title 39, chapter 71, part 1, and the
18 provisions of Title 39, chapter 71, part 1, apply to
19 sections 1 and 19.

20 (2) Section 2 is intended to be codified as an
21 integral part of Title 2, chapter 15, part 17, and the
22 provisions of Title 2, chapter 15, part 17, apply to section
23 2.

24 (3) Sections 4 through 10 are intended to be codified
25 as an integral part of Title 39, chapter 1, and the

1 provisions of Title 39, chapter 1, apply to sections 4
2 through 10.

3 (4) Sections 22, 23, and 35 are intended to be
4 codified as an integral part of Title 39, chapter 71, part
5 3, and the provisions of Title 39, chapter 71, part 3, apply
6 to sections 22, 23, and 35.

7 (5) Section 24 is intended to be codified as an
8 integral part of Title 39, chapter 71, part 4, and the
9 provisions of Title 39, chapter 71, part 4, apply to section
10 24.

11 (6) Sections 39 and 43 are intended to be codified as
12 an integral part of Title 39, chapter 71, part 7, and the
13 provisions of Title 39, chapter 71, part 7, apply to
14 sections 39 and 43.

15 (7) Sections 49 and 51 through 65 are intended to be
16 codified as an integral part of Title 39, chapter 71, part
17 10, and the provisions of Title 39, chapter 71, part 10,
18 apply to sections 49 and 51 through 65.

19 NEW SECTION. Section 83. Severability. If a part of
20 this act is invalid, all valid parts that are severable from
21 the invalid part remain in effect. If a part of this act is
22 invalid in one or more of its applications, the part remains
23 in effect in all valid applications that are severable from
24 the invalid applications.

25 NEW SECTION. Section 84. Applicability. (1) The

1 portions of this act moving jurisdiction over disputes
2 arising under Title 39, chapters 71 and 72, from the
3 workers' compensation court to the department of labor and
4 industry and board of industrial insurance apply to all
5 injuries and diseases, regardless of the date of occurrence.

6 (2) Sections 56, 64, and 65, giving the division of
7 workers' compensation jurisdiction over disputes arising
8 under Title 39, chapters 71 and 72, concerning
9 rehabilitation apply only to injuries and diseases occurring
10 after June 30, 1987. Disputes over rehabilitation for
11 injuries and diseases occurring prior to July 1, 1987, may
12 be brought before the department of labor and industry and
13 board of industrial insurance as provided in this act.

14 (3) The portions of this act providing procedures for
15 resolution of disputes arising under Title 39, chapter 51,
16 apply to all disputes, regardless of the date of occurrence
17 of the underlying events.

18 (4) The remaining portions of this act apply only to
19 injuries, diseases, and events occurring after June 30,
20 1987.

21 NEW SECTION. Section 85. Effective dates. (1) Except
22 as provided in subsections (2) and (3), this act is
23 effective July 1, 1987.

24 (2) Sections 2, 3, 4(3), 20, 82, and this section are
25 effective on passage and approval.

LC 1200/01

1 (3) Section 80(1) is effective January 1, 1988.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB315, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to generally revise the Workers' Compensation laws; to create a Board of Industrial Insurance; to abolish the Workers' Compensation Court and the Board of Labor Appeals.

FISCAL IMPACT:

State Compensation costs will be reduced as a result of this bill by (\$16.1m) - (\$17.5m) a percentage decrease of (21%) -(23%).

NOTE:

Annual contribution of \$16.1 million needed to retire unfunded obligations in ten years is not included in the decreases disclosed above.

Uninsured Employers Fund

Benefits will be paid according to the cash available in the Fund.

State Fund: (Administration)

	<u>FY88</u>			<u>FY89</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>FTE</u>	<u>8.00 FTE</u>	<u>22.75 FTE</u>	<u>14.75 FTE</u>	<u>8.00 FTE</u>	<u>22.75 FTE</u>	<u>14.75 FTE</u>
Personal Services	\$237,059	\$700,277	\$463,218	\$236,859	\$631,156	\$394,297
Operations	119,713	106,974	(12,739)	110,767	99,077	(11,690)
Equipment	800	68,100	67,300	800	0	(800)
Total	\$357,572	\$875,351	\$517,779	\$348,426	\$730,233	\$381,807

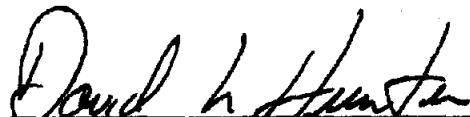
Funding:

Federal Special	\$ 12,500	\$ 12,500	\$ 0	\$ 12,500	\$ 12,500	\$ 0
Earmarked Special	345,072	862,851	517,779	335,926	717,733	381,807
Total	\$357,572	\$875,351	\$517,779	\$348,426	\$730,233	\$381,807

Current law in the table above includes the Workers' Compensation Court and the Board of Labor Appeals. Refer to the Executive Budget for the total current law budget for the Department of Labor and Industry and Workers' Compensation.

Trust Fund: (Benefits)

Incurred Liabilities	\$76,662,000	\$60,562,000	(\$16,100,000)	\$76,662,000	\$60,562,000	(\$16,100,000)
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DATE 2/14/87

DAVID L. HUNTER, BUDGET DIRECTOR

Office of Budget and Program Planning



DATE 2/17/87

BOB WILLIAMS, PRIMARY SPONSOR

Fiscal Note for SB315, as introduced.

SB 315

Fiscal Note Request, SB315, as introduced.

Form BD-15

Page 2

Funding Source:

	<u>Current Law</u>	<u>FY88</u> <u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>FY89</u> <u>Proposed Law</u>	<u>Difference</u>
Trust Funds						
Net Decrease	\$76,662,000	\$60,562,000	\$16,100,000	\$76,662,000	\$60,562,000	\$16,100,000

Transfers and reallocation of overhead in the Department of Labor and Industry will occur upon passage of the bill. If this legislation passes, the appropriation bill will have to reflect the indirect costs.

SB 315

Fiscal Impact

		<u>Operating</u> <u>Budget</u>	<u>Impact On</u> <u>Trust</u> <u>Fund</u>
PART	I. Statement of Intent & Declaration of Public Policy. Section 1. Public Policy	No	Possible
PART	II. Board of Industrial Insurance & Workers' Compensation Court		
	Section 2. Establish Board	Yes	No
	Section 3. Transfer Court	Yes	No
	Section 4. Appoint Hearing Examiner	Yes	No
	Section 5. Jurisdiction	Yes	No
	Section 6. Appeal Process	Yes	No
	Section 7. Appeal to Board	Yes	No
	Section 10. Unreasonable Delays	No	Yes
PART	III. General Provisions		
	Section 17. Definitions	No	Yes
PART	IV. Administrative Provisions		
	Section 23. Disputes to Hearing Examiner	Yes	No
	Section 24. Safety Incentives	No	Yes
PART	V. Coverage, Liability & Subrogation		
	Section 26. Liability Determination	No	Yes
	Section 27. Subrogation	No	Possible
PART	VI. Uninsured Employers		
	Section 29. Cash Basis	No	Yes
PART	VII. Filing for Benefits & Attorney Regulation		
	Section 31. Cost upon Denial	No	Possible
PART	VIII. General Benefit Provisions		
	Section 36. Temporary Total	No	Yes
	Section 37. Permanent Total	No	Yes
	Section 38. Partial Disability	No	Yes
	Section 39. Establish Impairment Panels	Yes	Yes
	Section 40. Medical & Hospital Costs	Yes	Yes
	Section 42. Benefit Terminate/Retire	No	Yes
	Section 44. Death Benefits	No	Yes
	Section 45. Waiting Period	No	Yes
	Section 47. Lump sum Payments	Yes	Yes

PART	IX. Occupational Deafness	No	No
PART	X. Rehabilitation & Reemployment		
	Section 51. Return WK/Priorities	No	Yes
	Section 52. Require Rehabilitative Service	Yes	Yes
	Section 53. Provider to Report	Yes	No
	Section 54. Rehabilitation Panel	Yes	No
	Section 55. Panel Report	Yes	No
	Section 56. DWC to Order	Yes	No
	Section 57. Refer to SRS	Yes	No
	Section 59. Total Rehabilitation Benefits	Yes	Yes
	Section 60. Wage Suplmt. & Rehab. Benefits	No	Yes
	Section 61. Auxiliary Rehab. Benefits	No	Yes
	Section 62. Self Employment	No	Yes
	Section 63. Exchange Information	Yes	No
	Section 64. Benefits Terminated	Yes	No
	Section 65. DWC Jurisdiction	Yes	No
PART	XI. Self Insurer Solvency	No	No
PART	XII. Occupational Disease	No	No
PART	XIII. Rule Making, etc.	No	No

PART I: STATEMENT OF INTENT & DECLARATION OF PUBLIC POLICY

ASSUMPTIONS:

1. Although the change from "construing the Act liberally in favor of the claimant" to "construing the Act according to its terms" would have an impact on court decisions, a foundation upon which to derive a financial estimate does not exist.

FISCAL IMPACT:

Section 1. Impossible to estimate, but the cost of the system should be reduced over time.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

With the removal of vague and imprecise language, courts should find it easier to determine legislative intent.

PART II: BOARD OF INDUSTRIAL INSURANCE & WORKERS' COMPENSATION COURT

ASSUMPTIONS:

1. The workload of Department hearing examiners will be approximately the same as the Workers' Compensation Court for disputed wage benefits. Additional workload would result from new areas proposed in the bill.
2. The workload of the Division will be approximately the same except for new areas proposed elsewhere in the bill adding to Division responsibility.
3. Mediation will be a new cost and will not substantially reduce Division effort elsewhere because Division personnel will need to manage the mediation process.
4. The costs of transmitting records to the Board will be approximately the same as the current transmitted to the Court. Original records will be provided without copying.
5. Areas of new Division workload in hearing disputes and issuing orders and determinations are:
 - a. Disputes over reasonable hospital rates and treatment, since the Division will begin regulating hospital rates. (Sec. 40(3).)
 - b. Hearings on Initial Orders of Determination of Vocational Rehabilitation. (Sec. 56(2).)
6. Areas of new Department hearings workload are:
 - a. Disputes over new definitions of course of employment. (Sec. 26(3).)
 - b. Disputes over impairment ratings. (Sec. 39(5).)
7. Hearing Officers will be responsible for determining and applying findings of fact, generally in field locations.
8. Board may hear arguments on conclusions of law, generally in Helena.
9. Workers' Comp Court will remain in their current location until 12/31/87.
10. Workers' Comp Court will be fully active until 7/1/87.

ASSUMPTIONS: Continued.

11. Workers' Comp Court will need only three staff members including the Judge from 7/1 - 12/31/87.
12. Workers' Comp Court will cease to exist on 1/1/88.
13. Board of Industrial Insurance will commence upon passage of the bill, 4/1/87, and will be able to use unexpended funds appropriated for court operations until 6/30/87.
14. Cases not yet heard by the court on July 1, 1987, come under the jurisdiction of the Board hearing process.
15. Board members will be appointed as of 4/1/87. Three (3) members.
16. Board staff personnel will be hired effective 7/1/87. One (1) attorney, one (1) legal secretary, one (1) clerk.
17. Employment Relations Division will require the following personnel as of 7/1/87: Three (3) hearing officers; one (1) legal secretary, and one (1) clerk.
18. Investigations on lump sum usage can be conducted within the current funding level of the operating budget.

Expenditures:

		<u>FY88</u>	<u>FY89</u>
	<u>A. Board of Industrial Insurance *</u>		
Section 2	Personal Services	\$226,043	\$225,181
	Operating Expenses	26,850	26,850
	Equipment	5,000	0
	TOTAL	<u>\$257,893</u>	<u>\$252,031</u>
	<u>B. DOL Employment Relations</u>		
Section 4	Personal Services	\$130,324	\$129,826
	Operating Expenses	40,833	40,833
	Equipment	4,000	0
	TOTAL	<u>\$175,157</u>	<u>\$170,659</u>
	<u>C. Transition Workers' Comp Court 7/1 - 12/31/87</u>		
Section 3	Personal Services	\$ 66,703	\$
	Operating Expenses	5,147	
	TOTAL	<u>\$ 71,850</u>	<u>\$</u>
	<u>D. Repeal Workers' Comp Court</u>		
Sections 2-4	TOTAL	<u>(\$345,072)</u>	<u>(\$335,926)</u>

*Any part of the Workers' Compensation Court appropriation for FY87 may be used to fund the Board of Industrial Insurance through the end of FY87.

Section 3	E. <u>Repeal Board of Labor Appeals</u>		
	TOTAL	<u>(\$ 12,500)</u>	<u>(\$ 12,500)</u>
Sections	F. <u>DWC Mediation & Lump Sums</u>		
5,6,7,	Personal Services	\$ 98,299	\$ 97,924
23 & 47	Operating Expenses	8,600	8,600
	Equipment	32,800	0
	TOTAL	<u>\$139,699</u>	<u>\$106,524</u>
	INCREASED OPERATIONAL COSTS-Part II	<u>\$287,027</u>	<u>\$180,788</u>
<u>FUNDING SOURCE FOR NET CHANGE:</u>			
	Earmarked Special Revenue	\$287,027	\$180,788
	TOTAL FUNDING	<u>\$287,027</u>	<u>\$180,788</u>

AFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

Local impact should parallel that felt by all employers who are covered by workers' compensation. However, the expenses presented in this part should have no direct affect.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Once the system is established, it will continue unless changed.

PART III: GENERAL PROVISIONS

No Operating Budgets Affected.

PART IV: ADMINISTRATIVE PROVISIONS

Operating budget impact integrated with Part II.

PART V: COVERAGE LIABILITY & SUBROGATION

PART VI: UNINSURED EMPLOYERS

PART VII: FILING FOR BENEFITS & ATTORNEY FEE REGULATIONS

No operating budgets affected for these parts.

PART VIII: GENERAL BENEFIT PROVISIONS

ASSUMPTIONS:

Section 39

1. Impairment evaluators are paid for by the insurer and, if a second evaluation is requested, by the requesting party.
2. The Division's principal function in impairment evaluations will be:
 - a. Rulemaking prior to implementation.
 - b. Appointment of evaluators in several geographic parts of Montana.
 - c. Directing a claimant to evaluators.
 - d. Receiving reports of evaluators and notifying affected parties of ratings.
3. Approximately 950 ratings will be rendered each year.
4. Managing the impairment evaluation system will require one (1) FTE and operating expenses.

Section 40

5. Rate-setting will involve substantial initial development costs.
6. Annual costs for computer support should be approximately the same as setting annual medical fees. However, additional FTE to manage hospital rate setting will be required.

FISCAL IMPACT:

Expenditures:

	<u>FY88</u>	<u>FY89</u>
A. <u>DWC - Establish Impairment Panels</u>		
Section 39 Personal Services	\$ 21,208	\$ 21,126
Operating Expenses	2,953	2,953
Equipment	8,200	0
TOTAL	<u>\$ 32,361</u>	<u>\$ 24,079</u>
B. <u>DWC - Regulate Hospital Costs</u>		
Section 40 Personal Services	\$ 40,803	\$ 40,647
Operating Expenses	9,500	6,750
Equipment	5,600	0
TOTAL	<u>\$ 55,903</u>	<u>\$ 47,397</u>
TOTAL PART VIII	<u>\$ 88,264</u>	<u>\$ 71,476</u>
FUNDING SOURCE: Earmarked Special Revenue Total	<u>\$ 88,264</u>	<u>\$ 71,476</u>

SB 315

PART IX: OCCUPATIONAL DEAFNESS

No operating budgets affected.

PART X: REHABILITATION & RE-EMPLOYMENT

ASSUMPTIONS:

1. There will continue to be about 2,000 workers referred to rehab per year.
2. During FY88-89, 1,500 workers will be referred to rehab panels. Because of new incentives for rehab, the number of panel referrals will decrease to 1,000 in FY90 and 600 in FY91.
3. Each of the three panel members will be financed by their principals.
4. There will be two primary locations for the panels to convene, Helena and Billings.
5. DWC will administer the panel function and assign caseload.
6. Five additional personnel will be required to carry out this function.

FISCAL IMPACT:

Expenditures:

		<u>FY88</u>	<u>FY89</u>
A. <u>DWC - Rehab Panel Support</u>			
Sections	Personal Services	\$ 68,041	\$ 67,782
52-59 &	Operating Expenses	4,000	4,000
63-65	Equipment	7,000	0
	TOTAL	<u>\$ 79,541</u>	<u>\$ 71,782</u>
B. <u>Job Service Panel Participation</u>			
	Personal Services	\$ 48,856	\$ 48,670
	Operating Expenses	9,091	9,091
	Equipment	5,000	0
	TOTAL	<u>\$ 62,947</u>	<u>\$ 57,761</u>
	TOTAL PART X	<u>\$142,488</u>	<u>\$129,543</u>
<u>FUNDING SOURCE:</u>			
	Earmarked Special Revenue	\$142,488	\$129,543
	TOTAL FUNDING	<u>\$142,488</u>	<u>\$129,543</u>

SB315

PART XI: Self-Insurer Solvency

PART XII: Occupational Disease

PART XIII: Rule Making Repealers & Codification Instructions

No operating budgets affected for these parts.

TRUST FUNDS

ASSUMPTIONS:

1. Policyholder mix will remain constant.
2. The State Fund's market share will remain unchanged.
3. The proposed benefit payment system will not create an incentive for current policyholders to seek coverage from private carriers.
4. Demands on benefits, wage compensation and medical expenses, will remain at current levels.
5. Obligation for the unfunded liability will be recovered in 10 years.
6. The obligation for the liability created by the Stelling/Buckman decisions will be recovered in 10 years.

FISCAL IMPACT:

A. <u>State Compensation Insurance Fund</u>	<u>FY87</u>
1. Estimated 1987 Premium income (includes 1/1/87 adjustment).	\$ 64,800,000
Amount required to reach adequate rate base.	<u>\$ 11,862,000</u>
Estimated premium needed to maintain current system.	<u>\$ 76,662,000</u>
	<u>Range</u>
	<u>Low ----- High</u>
2. Estimated premium required to maintain proposed system.	\$59,122,000 \$60,517,000
Estimated Premium Reductions	<u>(\$17,540,000) (\$16,145,000)</u>
% reduction from adequate base.	<u>22.88% 21.06%</u>

SB 315

3. Obligations to be Funded

a. Unfunded Liability	\$ 12,344,000
\$81 Million - Annually	
for <u>10</u> years.	
b. Stelling/Buckman Decision	
@ \$25 Million - Annually	\$ <u>3,800,000</u>
for <u>10</u> years.	
Annual recovery of recognized obligations.	<u>\$ 16,144,000</u>

B. Uninsured Employers Fund

The purpose of the reform is to allow the Division to pay benefits on a cash available basis. Current law requires the Division to maintain surpluses and reserves in the Fund. Funding sources remain the same.

FUNDING SOURCE:

Expendable Trust Funds.

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

Rate reductions will depend on the organization's accident experience and the insurer's ability to offer premium decreases.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The reform should make a significant contribution toward minimizing litigation, providing more emphasis on the most seriously injured worker, and instituting a return-to-work rehabilitation program.

SUMMARY - FISCAL IMPACT

OPERATING BUDGETS

	<u>FY88</u>	<u>FY89</u>
PART I	\$ N/A	\$ N/A
PART II	287,027	180,788
PART III	N/A	N/A
PART IV	N/A	N/A
PART V	N/A	N/A
PART VI	N/A	N/A
PART VII	N/A	N/A
PART VIII	88,264	71,476
PART IX	N/A	N/A
PART X	142,488	129,543
PART XI	N/A	N/A
PART XII	N/A	N/A
PART XIII	<u>N/A</u>	<u>N/A</u>
TOTAL INCREASE OPERATING COSTS	<u>\$517,779</u>	<u>\$381,807</u>

SB 315

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB315, as amended.
 REVISED FISCAL NOTE

DESCRIPTION OF PROPOSED LEGISLATION:

An act to generally revise the Workers' Compensation laws; to create a Board of Industrial Insurance; to abolish the Workers' Compensation Court and the Board of Labor Appeals.

FISCAL IMPACT:

State Compensation costs will be reduced as a result of this bill by (\$16.1m) - (\$17.5m) a percentage decrease of (21%) -(23%).

NOTE:

Annual contribution of \$16.1 million needed to retire unfunded obligations in ten years is not included in the decreases disclosed above.

Uninsured Employers Fund

Benefits will be paid according to the cash available in the Fund.

State Fund: Administration

	FY88			FY89		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>FTE</u>	<u>8.00 FTE</u>	<u>21.75 FTE</u>	<u>13.75 FTE</u>	<u>8.00 FTE</u>	<u>21.75 FTE</u>	<u>13.75 FTE</u>
Personal Services	\$237,059	\$575,929	\$338,870	\$236,859	\$574,435	\$337,576
Operations	119,713	196,326	76,613	110,767	184,630	73,863
Equipment	800	31,100	30,300	800	800	0
Total	\$357,572	\$803,355	\$445,783	\$348,426	\$759,865	\$411,439

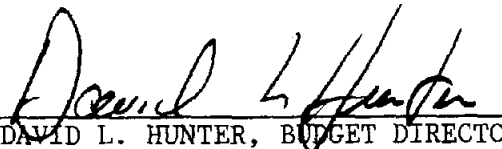
Funding:

Earmarked Special	\$357,572	\$803,355	\$445,783	\$348,426	\$759,865	\$411,439
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Current law in the table above includes the Workers' Compensation Court and the Board of Labor Appeals. Refer to the Executive Budget for the total current law budget for the Department of Labor and Industry and Workers' Compensation.

Trust Fund: (Benefits)

Incurring Liabilities	\$76,662,000	\$60,562,000	(\$16,100,000)	\$76,662,000	\$60,562,000	(\$16,100,000)
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 DATE 2/24/87
 DAVID L. HUNTER, BUDGET DIRECTOR
 Office of Budget and Program Planning

 DATE 2/24/87
 ROBERT WILLIAMS, PRIMARY SPONSOR

Fiscal Note for SB315, as amended.

REVISED FISCAL NOTE SB 315
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Fiscal Note Request, SB315, as amended. REVISED FISCAL NOTE

Form BD-15

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Funding Source:

	<u>Current Law</u>	<u>FY88</u> <u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>FY89</u> <u>Proposed Law</u>	<u>Difference</u>
Trust Funds						
Net Decrease	\$76,662,000	\$60,562,000	\$16,100,000	\$76,662,000	\$60,562,000	\$16,100,000

Transfers and reallocation of overhead in the Department of Labor and Industry will occur upon passage of the bill. If this legislation passes, the appropriation bill will have to reflect the indirect costs.

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#2

Fiscal Impact

		<u>Operating</u> <u>Budget</u>	<u>Impact On</u> <u>Trust</u> <u>Fund</u>
PART	I. Statement of Intent & Declaration of Public Policy. Section 1. Public Policy	No	Possible
PART	II. Employment Relations - Mediation Section 8. Mediation Required		
PART	III. General Provisions Section 2. Definitions	No	Yes
PART	IV. Administrative Provisions Section 8. Disputes to Dept Mediator Section 9. Safety Incentives	Yes No	No Yes
PART	V. Coverage, Liability & Subrogation Section 11. Liability Determination Section 12. Subrogation	No No	Yes Possible
PART	VI. Uninsured Employers Section 13. Cash Basis	No	Yes
PART	VII. Filing for Benefits & Attorney Regulation Section 16. Cost upon Denial	No	Possible
PART	VIII. General Benefit Provisions Section 21. Temporary Total Section 22. Permanent Total Section 23. Partial Disability Section 24. Establish Impairment Panels Section 25. Medical & Hospital Costs Section 27. Benefit Terminate/Retire Section 29. Death Benefits Section 30. Waiting Period Section 32. Lump sum Payments	No No No Yes Yes No No No Yes	Yes Yes Yes Yes Yes Yes Yes Yes Yes

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#2

PART	IX. Occupational Deafness	No	No
PART	X. Rehabilitation & Reemployment		
	Section 36. Return WK/Priorities	No	Yes
	Section 37. Require Rehabilitative Service	Yes	Yes
	Section 38. Provider to Report	Yes	No
	Section 39. Rehabilitation Panel	Yes	No
	Section 40. Panel Report	Yes	No
	Section 41. DWC to Order	Yes	No
	Section 42. Refer to SRS	Yes	No
	Section 44. Total Rehabilitation Benefits	Yes	Yes
	Section 45. Wage Suplmt. & Rehab. Benefits	No	Yes
	Section 46. Auxiliary Rehab. Benefits	No	Yes
	Section 47. Self Employment	No	Yes
	Section 48. Exchange Information	Yes	No
	Section 49. Benefits Terminated	Yes	No
	Section 50. DWC Jurisdiction	Yes	No
PART	XI. Self Insurer Solvency	No	No
PART	XII. Occupational Disease	No	No
PART	XIII. Rule Making, etc.	No	No

PART I: STATEMENT OF INTENT & DECLARATION OF PUBLIC POLICY

ASSUMPTIONS:

1. Although the change from "construing the Act liberally in favor of the claimant" to "construing the Act according to its terms" would have an impact on court decisions, a foundation upon which to derive a financial estimate does not exist.

FISCAL IMPACT:

Section 1. Impossible to estimate, but the cost of the system should be reduced over time.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

With the removal of vague and imprecise language, courts should find it easier to determine legislative intent.

PART II: ADJUDICATION PROCESS

ASSUMPTIONS:

1. The workload of Department mediators will total approximately 600 cases per year. Additional workload may result from new areas proposed in the bill.
2. The workload of the Division will be approximately the same except for new areas proposed elsewhere in the bill adding to Division responsibility.
3. Mediation will be a new cost and will not substantially reduce Division workload.
4. Mediators will be responsible for determining and applying findings of fact, generally in field locations.
5. Employment Relations Division will require the following personnel as of 7/1/87: Four (4) mediators; one (1) legal secretary, and one (1) clerk.

Expenditures:

		<u>FY88</u>	<u>FY89</u>
	<u>DOL Employment Relations - Mediation</u>		
Section 8	Personal Services	\$159,962	\$159,351
	Operating Expenses	51,069	51,069
	Equipment	4,000	0
	TOTAL	<u>\$215,031</u>	<u>\$210,420</u>
	INCREASED OPERATIONAL COSTS-Part II	<u>\$215,031</u>	<u>\$210,420</u>

FUNDING SOURCE FOR NET CHANGE:

	Earmarked Special Revenue	\$215,031	\$210,420
	TOTAL FUNDING	<u>\$215,031</u>	<u>\$210,420</u>

SB 315
#2

AFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

Local impact should parallel that felt by all employers who are covered by workers' compensation. However, the expenses presented in this part should have no direct affect.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Once the system is established, it will continue unless changed.

PART III: GENERAL PROVISIONS

No Operating Budgets Affected.

PART IV: ADMINISTRATIVE PROVISIONS

Operating budget impact integrated with Part II.

PART V: COVERAGE LIABILITY & SUBROGATION

PART VI: UNINSURED EMPLOYERS

PART VII: FILING FOR BENEFITS & ATTORNEY FEE REGULATIONS

No operating budgets affected for these parts.

PART VIII: GENERAL BENEFIT PROVISIONS

ASSUMPTIONS:

Section 24

1. Impairment evaluators are paid for by the insurer and, if a second evaluation is requested, by the requesting party.
2. The Division's principal function in impairment evaluations will be:
 - a. Rulemaking prior to implementation.
 - b. Appointment of evaluators in several geographic parts of Montana.
 - c. Directing a claimant to evaluators.
 - d. Receiving reports of evaluators and notifying affected parties of ratings.
3. Approximately 950 ratings will be rendered each year.
4. Managing the impairment evaluation system will require one (1) FTE and operating expenses.

Section 25

5. Rate-setting will involve substantial initial development costs.
6. Annual costs for computer support should be approximately the same as setting annual medical fees. However, additional FTE to manage hospital rate setting and resolve disputed issues will be required.

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#2

FISCAL IMPACT:

Expenditures:

		<u>FY88</u>	<u>FY89</u>
	A. <u>DWC - Establish Impairment Panels</u>		
Section 24	Personal Services	\$ 21,208	\$ 21,126
	Operating Expenses	2,953	2,953
	Equipment	8,200	0
	TOTAL	<u>\$ 32,361</u>	<u>\$ 24,079</u>
	B. <u>DWC - Regulate Hospital Costs</u>		
Section 25	Personal Services	\$ 40,803	\$ 40,647
	Operating Expenses	9,500	6,750
	Equipment	5,600	0
	TOTAL	<u>\$ 55,903</u>	<u>\$ 47,397</u>
	TOTAL PART VIII	<u>\$ 88,264</u>	<u>\$ 71,476</u>
FUNDING SOURCE:	Earmarked Special Revenue Total	<u>\$ 88,264</u>	<u>\$ 71,476</u>

PART IX: OCCUPATIONAL DEAFNESS

No operating budgets affected.

PART X: REHABILITATION & RE-EMPLOYMENT

ASSUMPTIONS:

1. There will continue to be about 2,000 workers referred to rehab per year.
2. During FY88-89, 1,500 workers will be referred to rehab panels. Because of new incentives for rehab, the number of panel referrals will decrease to 1,000 in FY90 and 600 in FY91.
3. Each of the three panel members will be financed by their principals.
4. There will be two primary locations for the panels to convene, Helena and Billings.
5. DWC will administer the panel function and assign caseload.
6. Five additional personnel will be required to carry out this function.

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Fiscal Note Request, SB315, as amended. REVISED FISCAL NOTE

From BD-15

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FISCAL IMPACT:

Expenditures:

		FY88	FY89
A. <u>DWC - Rehab Panel Support</u>			
Sections	Personal Services	\$ 68,041	\$ 67,782
37-44 &	Operating Expenses	4,000	4,000
48-50	Equipment	7,000	0
	TOTAL	<u>\$ 79,541</u>	<u>\$ 71,782</u>
B. <u>Job Service Panel Participation</u>			
	Personal Services	\$ 48,856	\$ 48,670
	Operating Expenses	9,091	9,091
	Equipment	5,000	0
	TOTAL	<u>\$ 62,947</u>	<u>\$ 57,761</u>
	TOTAL PART X	<u>\$142,488</u>	<u>\$129,543</u>
<u>FUNDING SOURCE:</u>			
	Earmarked Special Revenue	\$142,488	\$129,543
	TOTAL FUNDING	<u>\$142,488</u>	<u>\$129,543</u>

PART XI: Self-Insurer Solvency

PART XII: Occupational Disease

PART XIII: Rule Making Repealers & Codification Instructions

No operating budgets affected for these parts.

TRUST FUNDS

ASSUMPTIONS:

1. Policyholder mix will remain constant.
2. The State Fund's market share will remain unchanged.
3. The proposed benefit payment system will not create an incentive for current policyholders to seek coverage from private carriers.
4. Demands on benefits, wage compensation and medical expenses, will remain at current levels.
5. Obligation for the unfunded liability will be recovered in 10 years.
6. The obligation for the liability created by the Stelling/Buckman decisions will be recovered in 10 years.

SB 315
2

FISCAL IMPACT:

A. State Compensation Insurance Fund

FY87

1. Estimated 1987 Premium income
(includes 1/1/87 adjustment).

\$ 64,800,000

Amount required to reach
adequate rate base.

\$ 11,862,000

Estimated premium needed to
maintain current system.

\$ 76,662,000

<u>Range</u>	
<u>Low</u>	<u>High</u>

2. Estimated premium required to
maintain proposed system.

\$59,122,000	\$60,517,000
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Estimated Premium Reductions
% reduction from adequate base.

<u>(\$17,540,000)</u> 22.88%	<u>(\$16,145,000)</u> 21.06%
---------------------------------	---------------------------------

3. Obligations to be Funded

a. Unfunded Liability
\$81 Million - Annually
for 10 years.

\$ 12,344,000

b. Stelling/Buckman Decision
@ \$25 Million - Annually
for 10 years.

\$ 3,800,000

Annual recovery of recognized
obligations.

\$ 16,144,000

B. Uninsured Employers Fund

The purpose of the reform is to allow the Division to pay benefits on a cash available basis. Current law requires the Division to maintain surpluses and reserves in the Fund. Funding sources remain the same.

SB 315
#2

FUNDING SOURCE:

Expendable Trust Funds.

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

Rate reductions will depend on the organization's accident experience and the insurer's ability to offer premium decreases.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The reform should make a significant contribution toward minimizing litigation, providing more emphasis on the most seriously injured worker, and instituting a return-to-work rehabilitation program.

SB 315
#2

SUMMARY - FISCAL IMPACT

OPERATING BUDGETS

	<u>FY88</u>	<u>FY89</u>
PART I	\$ N/A	\$ N/A
PART II	215,031	210,420
PART III	N/A	N/A
PART IV	N/A	N/A
PART V	N/A	N/A
PART VI	N/A	N/A
PART VII	N/A	N/A
PART VIII	88,264	71,476
PART IX	N/A	N/A
PART X	142,488	129,543
PART XI	N/A	N/A
PART XII	N/A	N/A
PART XIII	<u>N/A</u>	<u>N/A</u>
TOTAL INCREASE OPERATING COSTS	<u>\$445,783</u>	<u>\$411,439</u>

SB315
#2

APPROVED BY COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONS

1 STATEMENT OF INTENT

2 SENATE BILL 315

3 Senate Labor and Employment Relations Committee

4

5 A statement of intent is required for this bill because
6 of the following:

7 The division of workers' compensation needs to adopt
8 rules to efficiently and fairly implement the Workers'
9 Compensation Act. There are numerous references throughout
10 the act to rules, rates, procedures, and forms to be
11 prescribed by the division (e.g., 39-71-208, 39-71-307,
12 39-71-410, 39-71-604, 39-71-2102, 39-71-2303, and
13 39-71-2304). However, there is no explicit statutory grant
14 of rulemaking authority in the chapter.

15 The Montana supreme court, in Garland v. The Anaconda
16 Company, 177 Mont. 240, 581 P.2d 431 (1978), tacitly
17 recognized 39-71-203 as a general grant of rulemaking
18 authority. To preserve the division's rulemaking authority
19 and extend it to the amendments promulgated in this bill,
20 the legislature explicitly grants and extends rulemaking
21 authority to the division to implement the Workers'
22 Compensation Act.

23 The division may adopt rules as necessary to implement
24 the act. The division shall provide the rules, procedures,
25 and forms specifically referred to in sections of the act

1 and implement other sections as necessary and appropriate by
2 providing specific guidelines, policies, and procedures to
3 serve the efficient and fair administration of the act.

APPROVED BY COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONS

SENATE BILL NO. 315

INTRODUCED BY B. WILLIAMS, THAYER, C. SMITH, DARKO, CODY,
BARDANOUE, DONALDSON, HIRSCH, M. WILLIAMS, KOLSTAD,
PISTORIA, FARRELL, MERCER, THOMAS, WEEDING, STANG, HARPER,
RASMUSSEN, BRANDEWIE, GALT, LYBECK, NATHE, SPAETH, NORMAN,
J. BROWN, NEUMAN, KITSELMAN, BENGTSON, PECK, GILBERT,
KEATING, HARRINGTON, ABRAMS, GLASER, HAMMOND, VAUGHN,
BECK, JENKINS, GRADY, MARKS, MANUEL, HIMSL, SCHYE,
CORNE', PETERSON, WALLIN, GRINDE, SIMON,

JONES, CONNELLY, HOLLIDAY, ECK

BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT ~~TO GENERALLY REVISE THE~~
~~WORKERS' COMPENSATION LAWS, TO CREATE A BOARD OF INDUSTRIAL~~
~~INSURANCE, TO ABOLISH THE WORKERS' COMPENSATION COURT AND~~
~~THE BOARD OF LABOR APPEALS, AMENDING SECTIONS 2-15-1014,~~
~~19-12-401, 39-51-201, 39-51-1304, 39-51-2402, 39-51-2405~~
~~THROUGH 39-51-2407, 39-71-116, 39-71-110, 39-71-119,~~
~~39-71-203, 39-71-204, 39-71-401, 39-71-407, 39-71-414,~~
~~39-71-502, 39-71-503, 39-71-605, 39-71-611 THROUGH~~
~~39-71-614, 39-71-701 THROUGH 39-71-704, 39-71-708,~~
~~39-71-710, 39-71-721,~~
~~39-71-736, 39-71-737, 39-71-741, 39-71-803, 39-71-1003,~~
~~39-71-2106, 39-71-2901, 39-71-2903, 39-71-2905, 39-71-2907,~~
~~39-71-2909, 39-72-102, AND 45-6-301, MCA; REPEALING SECTIONS~~
~~39-71-104, 39-71-121, 39-71-122, 39-71-410, 39-71-705~~
~~THROUGH 39-71-707, 39-71-709, 39-71-738, 39-71-914,~~
~~39-71-1001, 39-71-1002, 39-71-1005, 39-71-2906, 39-71-2908,~~
~~AND 39-72-104, MCA; AND PROVIDING APPLICABILITY DATES AND~~
~~EFFECTIVE DATES."~~

~~2-15-1014, 2-15-1704, 39-51-305, 39-51-310, 39-51-2403,~~
~~39-51-2404, 39-51-2409, 39-51-2410, 39-71-104, 39-71-121,~~
~~39-71-122, 39-71-410, 39-71-705 THROUGH 39-71-707,~~
~~39-71-709, 39-71-738, 39-71-914, 39-71-1001, 39-71-1002,~~
~~39-71-1005, 39-71-2901 THROUGH 39-71-2909, AND 39-72-104,~~
~~MCA, AND PROVIDING APPLICABILITY DATES AND EFFECTIVE DATES.~~
~~TO GENERALLY REVISE THE WORKERS' COMPENSATION AND~~
~~OCCUPATIONAL DISEASE LAWS; TO PROVIDE THAT OBTAINING~~
~~BENEFITS FRAUDULENTLY CONSTITUTES THEFT; AMENDING SECTIONS~~
~~19-12-401, 39-71-116, 39-71-118, 39-71-119, 39-71-203,~~
~~39-71-204, 39-71-401, 39-71-407, 39-71-414, 39-71-502,~~
~~39-71-503, 39-71-605, 39-71-611 THROUGH 39-71-614, 39-71-701~~
~~THROUGH 39-71-704, 39-71-708, 39-71-710, 39-71-721,~~
~~39-71-736, 39-71-737, 39-71-741, 39-71-803, 39-71-1003,~~
~~39-71-2106, 39-71-2901, 39-71-2903, 39-71-2905, 39-71-2907,~~
~~39-71-2909, 39-72-102, AND 45-6-301, MCA; REPEALING SECTIONS~~
~~39-71-104, 39-71-121, 39-71-122, 39-71-410, 39-71-705~~
~~THROUGH 39-71-707, 39-71-709, 39-71-738, 39-71-914,~~
~~39-71-1001, 39-71-1002, 39-71-1005, 39-71-2906, 39-71-2908,~~
~~AND 39-72-104, MCA; AND PROVIDING APPLICABILITY DATES AND~~
~~EFFECTIVE DATES."~~

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

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

1 NEW SECTION. Section 1. Declaration of public policy.
 2 For the purposes of interpreting and applying Title 39,
 3 chapters 71 and 72, the following is the public policy of
 4 this state:

5 (1) It is an objective of the Montana workers'
 6 compensation system to provide, without regard to fault,
 7 wage supplement and medical benefits to a worker suffering
 8 from a work-related injury or disease. Wage-loss benefits
 9 are not intended to make an injured worker whole; they are
 10 intended to assist a worker at a reasonable cost to the
 11 employer. Within that limitation, the wage-loss benefit
 12 should bear a reasonable relationship to actual wages lost
 13 as a result of a work-related injury or disease.

14 (2) A worker's removal from the work force due to a
 15 work-related injury or disease has a negative impact on the
 16 worker, the worker's family, the employer, and the general
 17 public. Therefore, it is an objective of the workers'
 18 compensation system to return a worker to work as soon as
 19 possible after the worker has suffered a work-related injury
 20 or disease.

21 (3) Montana's workers' compensation and occupational
 22 disease insurance systems are intended to be primarily
 23 self-administering. Claimants should be able to speedily
 24 obtain benefits, and employers should be able to provide
 25 coverage at reasonably constant rates. To meet these

1 objectives, the system must be designed to minimize reliance
 2 upon lawyers and the courts to obtain benefits and interpret
 3 liabilities.

4 (4) Title 39, chapters 71 and 72, must be construed
 5 according to their terms and not liberally in favor of any
 6 party.

7 Section 2. Section 39-71-116, MCA, is amended to read:
 8 "39-71-116. Definitions. Unless the context otherwise
 9 requires, words and phrases employed in this chapter have
 10 the following meanings:

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

17 (2) "Beneficiary" means:

18 (a) a surviving wife-or-husband spouse living with or
 19 legally entitled to be supported by the deceased at the time
 20 of injury;

21 (b) an unmarried child under the age of 18 years;

22 (c) an unmarried child under the age of 25 22 years
 23 who is a full-time student in an accredited school or is
 24 enrolled in an accredited apprenticeship program;

25 (d) an invalid child over the age of 18 years who is

1 dependent upon the decedent for support at the time of
2 injury;

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

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

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

19 (4) "Child" includes a posthumous child, a dependent
20 stepchild, and a child legally adopted prior to the injury;
21 ~~and an illegitimate child legitimized prior to the injury.~~

22 (5) "Days" means calendar days, unless otherwise
23 specified.

24 (6) "Department" means the department of labor and
25 industry.

1 {5}{7} "Division" means the division of workers'
2 compensation of the department of labor and industry
3 provided for in 2-15-1702.

4 {6}{8} "Fiscal year" means the period of time between
5 July 1 and the succeeding June 30.

6 {7}--"Husband"--or--"widower"--means--only--a--husband--or
7 widower--living--with--or--legally--entitled--to--be--supported--by
8 the--deceased--at--the--time--of--her--injury.

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

15 {9}{10} "Invalid" means one who is physically or
16 mentally incapacitated.

17 (11) "Maximum healing" means the status reached when a
18 worker is as far restored medically as the permanent
19 character of the work-related injury will permit.

20 {10}{12} "Order" means any decision, rule, direction,
21 requirement, or standard of the division or any other
22 determination arrived at or decision made by the division.

23 {11}{13} "Payroll", "annual payroll", or "annual
24 payroll for the preceding year" means the average annual
25 payroll of the employer for the preceding calendar year or,

1 if the employer shall not have operated a sufficient or any
 2 length of time during such calendar year, 12 times the
 3 average monthly payroll for the current year; provided, that
 4 an estimate may be made by the division for any employer
 5 starting in business where no average payrolls are
 6 available, such estimate to be adjusted by additional
 7 payment by the employer or refund by the division, as the
 8 case may actually be on December 31 of such current year.

9 ~~{12}~~(14) "Permanent partial disability" means a
 10 condition ~~resulting from injury as defined in this chapter~~
 11 ~~that results in the actual loss of earnings or earning~~
 12 ~~capability less than total that exists after the injured~~
 13 ~~worker is as far restored as the permanent character of the~~
 14 ~~injuries will permit. Disability shall be supported by a~~
 15 ~~preponderance of medical evidence, after a worker has~~
 16 ~~reached maximum healing, in which a worker:~~

17 (a) has a medically determined physical restriction as
 18 a result of an injury as defined in 39-71-119; and

19 (b) is able to return to work in the worker's job pool
 20 pursuant to one of the options set forth in [section 36] but
 21 suffers impairment or partial wage loss, or both.

22 ~~{13}~~(15) "Permanent total disability" means a condition
 23 resulting from injury as defined in this chapter ~~that~~
 24 ~~results in the loss of actual earnings or earning capability~~
 25 ~~that exists after the injured worker is as far restored as~~

1 ~~the permanent character of the injuries will permit and~~
 2 ~~which results in the worker having no reasonable prospect of~~
 3 ~~finding regular employment of any kind in the normal labor~~
 4 ~~market. Disability shall be supported by a preponderance of~~
 5 ~~medical evidence, after a worker reaches maximum healing,~~
 6 ~~in which a worker is unable to return to work in the~~
 7 ~~worker's job pool after exhausting all options set forth in~~
 8 ~~[section 36].~~

9 ~~{14}~~(16) The term "physician" includes "surgeon" and in
 10 either case means one authorized by law to practice his
 11 profession in this state.

12 ~~{15}~~(17) "The plant of the employer" includes the place
 13 of business of a third person while the employer has access
 14 to or control over such place of business for the purpose of
 15 carrying on his usual trade, business, or occupation.

16 ~~{16}~~(18) "Public corporation" means the state or any
 17 county, municipal corporation, school district, city, city
 18 under commission form of government or special charter,
 19 town, or village.

20 ~~{17}~~(19) "Reasonably safe place to work" means that the
 21 place of employment has been made as free from danger to the
 22 life or safety of the employee as the nature of the
 23 employment will reasonably permit.

24 ~~{18}~~(20) "Reasonably safe tools and appliances" are
 25 such tools and appliances as are adapted to and are

1 reasonably safe for use for the particular purpose for which
2 they are furnished.

3 {19}(21) "Temporary total disability" means a condition
4 resulting from an injury as defined in this chapter that
5 results in total loss of wages and exists until the injured
6 worker is as far restored as the permanent character of the
7 injuries will permit. A worker shall be paid temporary total
8 disability benefits during a reasonable period of
9 retraining. Disability shall be supported by a preponderance
10 of medical evidence reaches maximum healing.

11 {20} "Wages" means the average gross earnings received
12 by the employee at the time of the injury for the usual
13 hours of employment in a week, and overtime is not to be
14 considered. Sick leave benefits accrued by employees of
15 public corporations, as defined by subsection (16) of this
16 section, are considered wages.

17 {21} "Wife" or "widow" means only a wife or widow
18 living with or legally entitled to be supported by the
19 deceased at the time of the injury.

20 (22) "Year", unless otherwise specified, means calendar
21 year."

22 Section 3. Section 39-71-119, MCA, is amended to read:

23 "39-71-119. Injury or injured and accident defined.

24 (1) "Injury" or "injured" means:

25 {1} a tangible happening of a traumatic nature from an

1 unexpected cause or unusual strain resulting in either
2 external or internal physical harm and such physical
3 condition as a result therefrom and excluding disease not
4 traceable to injury, except as provided in subsection (2) of
5 this section;

6 {2} cardiovascular or pulmonary or respiratory
7 diseases contracted by a paid firefighter employed by a
8 municipality, village, or fire district as a regular member
9 of a lawfully established fire department, which diseases
10 are caused by overexertion in times of stress or danger in
11 the course of his employment by proximate exposure or by
12 cumulative exposure over a period of 4 years or more to
13 heat, smoke, chemical fumes, or other toxic gases. Nothing
14 herein shall be construed to exclude any other working
15 person who suffers a cardiovascular, pulmonary, or
16 respiratory disease while in the course and scope of his
17 employment;

18 (a) internal or external physical harm to the body;
19 (b) damage to prosthetic devices or appliances, except
20 for damage to eyeglasses, contact lenses, dentures, or
21 hearing aids; or

22 {3}(c) death resulting from injury.

23 (2) An injury is caused by an accident. An accident
24 is:

25 (a) an unexpected traumatic incident or unusual

1 strain;
 2 (b) identifiable by time and place of occurrence;
 3 (c) identifiable by member or part of the body
 4 affected; and
 5 (d) caused by a specific event on a single day or
 6 during a single work shift.
 7 (3) "Injury" or "injured" does not mean a physical or
 8 mental condition arising from:
 9 (a) emotional or mental stress; or
 10 (b) a nonphysical stimulus or activity.
 11 (4) "Injury" or "injured" does not include a disease
 12 that is not caused by an accident.
 13 (5) A cardiovascular, pulmonary, respiratory, or other
 14 disease, cerebrovascular accident, or myocardial infarction
 15 suffered by a worker is an injury only if the accident is
 16 the primary cause of the physical harm in relation to other
 17 factors contributing to the physical harm."
 18 NEW SECTION. Section 4. Wages defined. (1) "Wages"
 19 means the gross remuneration paid in money, or in a
 20 substitute for money, for services rendered by an employee.
 21 Wages include but are not limited to:
 22 (a) commissions, bonuses, and remuneration at the
 23 regular hourly rate for overtime work, holidays, vacations,
 24 and sickness periods;
 25 (b) board or lodging if it constitutes a part of the

1 employee's remuneration, based on the actual value of the
 2 board, lodging, rent, or housing; and
 3 (c) payments made to an employee on any basis other
 4 than time worked, including but not limited to piecework, an
 5 incentive plan, or profit-sharing arrangement.
 6 (2) Wages do not include:
 7 (a) employee travel expense reimbursements or
 8 allowances for meals, lodging, travel, and subsistence;
 9 (b) special rewards for individual invention or
 10 discovery;
 11 (c) tips and other gratuities received by the employee
 12 in excess of those documented to the employer for tax
 13 purposes;
 14 (d) contributions made by the employer to a group
 15 insurance or pension plan; or
 16 (e) vacation or sick leave benefits accrued but not
 17 paid.
 18 (3) For compensation benefit purposes, the average
 19 actual earnings for the four pay periods immediately
 20 preceding the injury are the employee's wages, except if:
 21 (a) the term of employment for the same employer is
 22 less than four pay periods, in which case the employee's
 23 wages are the hourly rate times the number of hours in a
 24 week for which the employee was hired to work; or
 25 (b) for good cause shown by the claimant, the use of

1 the four pay periods does not accurately reflect the
2 claimant's employment history with the employer, in which
3 case the insurer may use additional pay periods.

4 Section 5. Section 39-71-203, MCA, is amended to read:

5 "39-71-203. Powers of division ~~-- rules.~~ (1) The
6 division is hereby vested with full power, authority, and
7 jurisdiction to do and perform any and all things, whether
8 herein specifically designated or in addition thereto, ~~which~~
9 that are necessary or convenient in the exercise of any
10 power, authority, or jurisdiction conferred upon it under
11 this chapter.

12 (2) The division may adopt rules to carry out the
13 provisions of this chapter."

14 Section 6. Section 39-71-204, MCA, is amended to read:

15 "39-71-204. Rescission, alteration, or amendment by
16 division of its orders, decisions, or awards ~~----limitation~~
17 ~~-- effect -- appeal.~~ (1) ~~Except-as-provided-in-subsection~~
18 ~~{2}--the~~ The division shall have has continuing jurisdiction
19 over all its orders, decisions, and awards and may, at any
20 time, upon notice, and after opportunity to be heard is
21 given to the parties in interest, rescind, alter, or amend
22 any such order, decision, or award made by it upon good
23 cause appearing therefor.

24 ~~{2}--The-division-or-the-workers'-compensation-judge~~
25 ~~shall-not-have-power-to-rescind,alter,or-amend-any-final~~

1 ~~settlement-or-award-of-compensation-more-than-4-years--after~~
2 ~~the--same--has--been--approved--by-the-division,--Rescinding,~~
3 ~~altering,or-amending-a-final-settlement-within--the--4-year~~
4 ~~period--shall--be--by-agreement-between-the-claimant-and-the~~
5 ~~insurer.--if-the-claimant-and-the-insurer-cannot--agree,--the~~
6 ~~dispute-shall-be-considered-a-dispute-for-which-the-workers'~~
7 ~~compensation-judge-has-jurisdiction-to-make-a-determination.~~
8 ~~Except--as--provided--in--39-71-2908,--the--division--or--the~~
9 ~~workers'-compensation-judge-shall--not--have--the--power--to~~
10 ~~rescind,--alter,--or--amend--any--order--approving--a--full--and~~
11 ~~final-compromise-settlement-of-compensation.~~

12 ~~{3}~~(2) Any order, decision, or award rescinding,
13 altering, or amending a prior order, decision, or award
14 shall have has the same effect as original orders or awards.

15 (3) If a party is aggrieved by a division order, the
16 party may appeal the dispute to the workers' compensation
17 judge."

18 NEW SECTION. Section 7. Filing true claim --
19 obtaining benefits through deception or other fraudulent
20 means -- criminal penalty. (1) A person filing a claim under
21 this chapter or chapter 72 of this title, by signing the
22 claim, affirms the information filed is true and correct to
23 the best of that person's knowledge.

24 (2) A person who obtains or assists in obtaining
25 benefits to which the person is not entitled under this

1 chapter or chapter 72 of this title may be guilty of theft
2 under 45-6-301. A county attorney may initiate criminal
3 proceedings against the person.

4 NEW SECTION. Section 8. Disputes -- jurisdiction --
5 evidence -- settlement requirements -- mediation. (1) A
6 dispute concerning benefits arising under this chapter or
7 chapter 72 must be brought before a department mediator as
8 provided in [sections 52 through 57]. If a dispute still
9 exists after the parties satisfy the mediation requirements
10 in [sections 52 through 57], either party may petition the
11 workers' compensation court for a resolution.

12 (2) A dispute arising under this chapter that does not
13 concern benefits or a dispute for which a specific provision
14 of this chapter gives the division jurisdiction must be
15 brought before the division.

16 (3) An appeal from a division order may be made to the
17 workers' compensation court.

18 (4) The common law and statutory rules of evidence do
19 not apply in a case brought to hearing before the division.

20 (5) Except as otherwise provided in this chapter,
21 before a party may bring a dispute concerning benefits
22 before a mediator, the parties shall attempt to settle as
23 follows:

24 (a) The party making a demand shall present the other
25 party with a specific written demand that contains

1 sufficient explanation and documentary evidence to enable
2 the other party to thoroughly evaluate the demand.

3 (b) The party receiving the demand shall respond in
4 writing within 15 working days of receipt. If the demand is
5 denied in whole or in part, the response shall state the
6 basis of the denial.

7 (c) A party may move to dismiss a petition if it does
8 not comply with this subsection. A mediator has the
9 authority to dismiss a petition if he finds that the party
10 did not comply with this subsection, but the mediator's
11 decision may be reviewed by the workers' compensation court
12 upon motion of a party.

13 (6) Nothing in this subsection relieves a party of an
14 obligation otherwise contained in this chapter.

15 NEW SECTION. Section 9. Financial incentives to
16 institute safety programs. The state compensation insurance
17 fund, plan No. 3, and private insurers, plan No. 2, may
18 provide financial incentives to an employer who implements a
19 formal safety program. The insurance carrier may provide to
20 an employer a premium discount that reflects the degree of
21 risk diminished by the implemented safety program.

22 Section 10. Section 39-71-401, MCA, is amended to
23 read:

24 "39-71-401. Employments covered and employments
25 exempted. (1) Except as provided in subsection (2) of this

1 section, the Workers' Compensation Act applies to all
 2 employers as defined in 39-71-117 and to all employees as
 3 defined in 39-71-118. An employer who has any employee in
 4 service under any appointment or contract of hire, expressed
 5 or implied, oral or written, shall elect to be bound by the
 6 provisions of compensation plan No. 1, 2, or 3. Every
 7 employee whose employer is bound by the Workers'
 8 Compensation Act is subject to and bound by the compensation
 9 plan that has been elected by the employer.

10 (2) Unless the employer elects coverage for these
 11 employments under this chapter and an insurer allows such an
 12 election, the Workers' Compensation Act does not apply to
 13 any of the following employments:

- 14 (a) household and domestic employment;
- 15 (b) casual employment as defined in 39-71-116~~(3)~~
 16 ~~except employment of a volunteer under 67-2-105;~~
- 17 (c) employment of members of an employer's family
 18 dwelling in the employer's household;
- 19 (d) employment of sole proprietors or working members
 20 of a partnership ~~other than those who consider themselves or~~
 21 ~~hold themselves out as independent contractors and who are~~
 22 ~~not contracting for agricultural services to be performed on~~
 23 ~~a farm or ranch, or for broker or salesman services~~
 24 ~~performed under a license issued by the board of realty~~
 25 ~~regulation, or for services as a direct seller engaged in~~

1 ~~the sale of consumer products to customers primarily in the~~
 2 ~~home, except as provided in subsection (3);~~

3 (e) employment of a broker or salesman performing
 4 under a license issued by the board of realty regulation;

5 (f) employment of a direct seller engaged in the sale
 6 of consumer products, primarily in the customer's home;

7 ~~(e)(g)~~ employment for which a rule of liability for
 8 injury, occupational disease, or death is provided under the
 9 laws of the United States;

10 ~~(f)(h)~~ employment of any person performing services in
 11 return for aid or sustenance only, except employment of a
 12 volunteer under 67-2-105;

13 ~~(g)(i)~~ employment with any railroad engaged in
 14 interstate commerce, except that railroad construction work
 15 ~~shall be~~ is included in and subject to the provisions of
 16 this chapter;

17 ~~(h)(j)~~ employment as an official, including a timer,
 18 referee, or judge, at a school amateur athletic event,
 19 unless the person is otherwise employed by a school
 20 district.

21 (3) A sole proprietor, or a working member of a
 22 partnership who holds himself out or considers himself an
 23 independent contractor, ~~and who is not contracting for~~
 24 ~~agricultural services to be performed on a farm or ranch, or~~
 25 ~~for broker or salesman services performed under a license~~

1 ~~issued by the board of realty regulation, or for services as~~
 2 ~~a direct seller engaged in the sale of consumer products to~~
 3 ~~customers primarily in the home~~ must elect to be bound
 4 personally and individually by the provisions of
 5 compensation plan No. 1, 2, or 3, but he may apply to the
 6 division for an exemption from the Workers' Compensation Act
 7 for himself. The application must be made in accordance with
 8 the rules adopted by the division. The division may deny the
 9 application only if it determines that the applicant is not
 10 an independent contractor. When an application is approved
 11 by the division, it is conclusive as to the status of an
 12 independent contractor and precludes the applicant from
 13 obtaining benefits under this chapter.

14 (4) (a) A private corporation shall provide coverage
 15 for its officers and other employees under the provisions of
 16 compensation plan No. 1, 2, or 3. However, pursuant to such
 17 rules as the division promulgates and subject in all cases
 18 to approval by the division, an officer of a private
 19 corporation may elect not to be bound as an employee under
 20 this chapter by giving a written notice, on a form provided
 21 by the division, served in the following manner:

22 (i) if the employer has elected to be bound by the
 23 provisions of compensation plan No. 1, by delivering the
 24 notice to the board of directors of the employer and the
 25 division; or

1 (ii) if the employer has elected to be bound by the
 2 provisions of compensation plan No. 2 or 3, by delivering
 3 the notice to the board of directors of the employer, the
 4 division, and the insurer.

5 (b) If the employer changes plans or insurers, the
 6 officer's previous election is not effective and the officer
 7 shall again serve notice as provided if he elects not to be
 8 bound.

9 (c) The appointment or election of an employee as an
 10 officer of a corporation for the purpose of excluding the
 11 employee from coverage under this chapter does not entitle
 12 the officer to elect not to be bound as an employee under
 13 this chapter. In any case, the officer must sign the notice
 14 required by subsection (4)(a) under oath or affirmation, and
 15 he is subject to the penalties for false swearing under
 16 45-7-202 if he falsifies the notice.

17 (4)(5) Each employer shall post a sign in the
 18 workplace at the locations where notices to employees are
 19 normally posted, informing employees about the employer's
 20 current provision of compensation insurance. A workplace is
 21 any location where an employee performs any work-related act
 22 in the course of employment, regardless of whether the
 23 location is temporary or permanent, and includes the place
 24 of business or property of a third person while the employer
 25 has access to or control over such place of business or

1 property for the purpose of carrying on his usual trade,
 2 business, or occupation. The sign will be provided by the
 3 division, distributed through insurers or directly by the
 4 division, and posted by employers in accordance with rules
 5 adopted by the division. An employer who purposely or
 6 knowingly fails to post a sign as provided in this
 7 subsection is subject to a \$50 fine for each citation."

8 Section 11. Section 39-71-407, MCA, is amended to
 9 read:

10 "39-71-407. Liability of insurers -- limitations. (1)
 11 Every insurer is liable for the payment of compensation, in
 12 the manner and to the extent hereinafter provided, to an
 13 employee of an employer it insures who receives an injury
 14 arising out of and in the course of his employment or, in
 15 the case of his death from such injury, to his
 16 beneficiaries, if any.

17 (2) (a) An insurer is liable for an injury as defined
 18 in 39-71-119 if the claimant establishes it is more probable
 19 than not that:

20 (i) a claimed injury has occurred; or
 21 (ii) a claimed injury aggravated a preexisting
 22 condition.

23 (b) Proof that it was medically possible that a
 24 claimed injury occurred or that such claimed injury
 25 aggravated a preexisting condition is not sufficient to

1 establish liability.

2 (3) An employee who suffers an injury or dies while
 3 traveling is not covered by this chapter unless:

4 (a) (i) the employer furnishes the transportation or
 5 the employee receives reimbursement from the employer for
 6 costs of travel, gas, oil, or lodging as a part of the
 7 employee's benefits or employment agreement; and

8 (ii) the travel is necessitated by and on behalf of the
 9 employer as an integral part, or condition, of the
 10 employment; or

11 (b) the travel is required by the employer as part of
 12 the employee's job duties.

13 (4) An employee is not eligible for benefits otherwise
 14 payable under this chapter if the employee's use of alcohol
 15 or drugs not prescribed by a physician is the sole and
 16 exclusive cause of the injury or death. However, if the
 17 employer had knowledge of and failed to attempt to stop the
 18 employee's use of alcohol or drugs, this subsection does not
 19 apply."

20 Section 12. Section 39-71-414, MCA, is amended to
 21 read:

22 "39-71-414. Subrogation. (1) If an action is
 23 prosecuted as provided for in 39-71-412 or 39-71-413 and
 24 except as otherwise provided in this section, the insurer is
 25 entitled to subrogation for all compensation and benefits

1 paid or to be paid under the Workers' Compensation Act. The
 2 insurer's right of subrogation is a first lien on the claim,
 3 judgment, or recovery.

4 (2) (a) If the injured employee intends to institute
 5 the third party action, he shall give the insurer reasonable
 6 notice of his intention to institute the action.

7 (b) The injured employee may request that the insurer
 8 pay a proportionate share of the reasonable cost of the
 9 action, including attorneys' fees.

10 (c) The insurer may elect not to participate in the
 11 cost of the action. If this election is made, the insurer
 12 waives 50% of its subrogation rights granted by this
 13 section.

14 (d) If the injured employee or the employee's personal
 15 representative institutes the action, the employee is
 16 entitled to at least one-third of the amount recovered by
 17 judgment or settlement less a proportionate share of
 18 reasonable costs, including attorneys' fees, if the amount
 19 of recovery is insufficient to provide the employee with
 20 that amount after payment of subrogation.

21 (3) If an injured employee refuses or fails to
 22 institute the third party action within 1 year from the date
 23 of injury, the insurer may institute the action in the name
 24 of the employee and for the employee's benefit or that of
 25 the employee's personal representative. If the insurer

1 institutes the action, it shall pay to the employee any
 2 amount received by judgment or settlement which is in excess
 3 of the amounts paid or to be paid under the Workers'
 4 Compensation Act after the insurer's reasonable costs,
 5 including attorneys' fees for prosecuting the action, have
 6 been deducted from the recovery.

7 (4) An insurer may enter into compromise agreements in
 8 settlement of subrogation rights.

9 (5) If the amount of compensation and other benefits
 10 payable under the Workers' Compensation Act have not been
 11 fully determined at the time the employee, the employee's
 12 heirs or personal representatives, or the insurer have
 13 settled in any manner the action as provided for in this
 14 section, the division shall determine what proportion of the
 15 settlement shall be allocated under subrogation. The
 16 division's determination may be appealed to the workers'
 17 compensation judge.

18 (6) (a) The insurer is entitled to full subrogation
 19 rights under this section, even though the claimant is able
 20 to demonstrate damages in excess of the workers'
 21 compensation benefits and the third-party recovery combined.
 22 The insurer may subrogate against the entire settlement or
 23 award of a third party claim brought by the claimant or his
 24 personal representative, without regard to the nature of the
 25 damages.

1 (b) If no survival action exists and the parties reach
2 a settlement of a wrongful death claim without apportionment
3 of damages by a court or jury, the insurer may subrogate
4 against the entire settlement amount, without regard to the
5 parties' apportionment of the damages, unless the insurer is
6 a party to the settlement agreement."

7 Section 13. Section 39-71-502, MCA, is amended to
8 read:

9 "39-71-502. Creation and purpose of uninsured
10 employers' fund. There is created an uninsured employers'
11 fund. The purpose of the fund is to pay to an injured
12 employee of an uninsured employer the same benefits the
13 employee would have received if the employer had been
14 properly enrolled under compensation plan No. 1, 2, or 3,
15 except as provided in 39-71-503(2)."

16 Section 14. Section 39-71-503, MCA, is amended to
17 read:

18 "39-71-503. Administration of fund. (1) The division
19 shall administer the fund and shall pay all proper benefits
20 to injured employees of uninsured employers.

21 ~~(2) Proper surpluses and reserves shall be kept for~~
22 ~~the fund. Surpluses and reserves shall not be kept for the~~
23 ~~fund. The division shall make such payments as it considers~~
24 ~~appropriate as funds become available from time to time. The~~
25 ~~payment of weekly disability benefits takes preference over~~

1 the payment of medical benefits. No lump-sum payments of
2 future projected benefits, including impairment awards, may
3 be made from the fund. The board of investments shall invest
4 the moneys of the fund. The cost of administration of the
5 fund shall be paid out of the money in the fund."

6 Section 15. Section 39-71-605, MCA, is amended to
7 read:

8 "39-71-605. Examination of employee by physician --
9 effect of refusal to submit to examination -- report and
10 testimony of physician -- cost. (1) (a) Whenever in case of
11 injury the right to compensation under this chapter would
12 exist in favor of any employee, he shall, upon the written
13 request of ~~his employer or~~ the insurer, submit from time to
14 time to examination by a physician or panel of physicians,
15 who shall be provided and paid for by such ~~employer or~~
16 insurer, and shall likewise submit to examination from time
17 to time by any physician or panel of physicians selected by
18 the division ~~or any member or examiner or referee thereof.~~

19 (b) The request or order for such examination shall
20 fix a time and place therefor, due regard being had to the
21 convenience of the employee and his physical condition and
22 ability to attend at the time and place fixed. The employee
23 shall be entitled to have a physician present at any such
24 examination. So long as the employee, after such written
25 request, shall fail or refuse to submit to such examination

1 or shall in any way obstruct the same, his right to
 2 compensation shall be suspended. Any physician or panel of
 3 physicians employed by ~~the--employer,~~ the insurer, or the
 4 division who shall make or be present at any such
 5 examination may be required to testify as to the results
 6 thereof.

7 (2) In the event of a dispute concerning the physical
 8 condition of a claimant or the cause or causes of ~~his~~ the
 9 injury or disability, if any, the division, at the request
 10 of the claimant, ~~employer,~~ or insurer, as the case may be,
 11 shall require the claimant to submit to such examination as
 12 it may deem desirable by a physician or panel of physicians
 13 within the state or elsewhere who have had adequate and
 14 substantial experience in the particular field of medicine
 15 concerned with the matters presented by the dispute. The
 16 physician or panel of physicians making the examination
 17 shall file a written report of findings with the division
 18 for its use in the determination of the controversy
 19 involved. The division shall pay the physician or panel of
 20 physicians for the examination and shall be reimbursed by
 21 the party who requested it.

22 (3) This section does not apply to impairment
 23 evaluations provided for in [section 24]."

24 Section 16. Section 39-71-611, MCA, is amended to
 25 read:

1 "39-71-611. Costs and attorneys' fees payable on
 2 denial of claim or termination of benefits later found
 3 compensable. ~~in-the-event-an-insurer-denies-liability-for--a~~
 4 ~~claim--for--compensation-or-terminates-compensation-benefits~~
 5 ~~and-the-claim-is-later-adjudged-compensable-by-the--workers'~~
 6 ~~compensation--judge--or--on--appeal,~~ ~~the--insurer-shall-pay~~
 7 ~~reasonable-costs-and-attorneys'-fees-as-established-by--the~~
 8 ~~workers'-compensation--judge-~~ (1) The insurer shall pay
 9 reasonable costs and attorney fees as established by the
 10 workers' compensation court if:

11 (a) the insurer denies liability for a claim for
 12 compensation or terminates compensation benefits;

13 (b) the claim is later adjudged compensable by the
 14 workers' compensation court; and

15 (c) in the case of attorneys' fees, the workers'
 16 compensation court determines that the insurer's actions in
 17 denying liability or terminating benefits were unreasonable.

18 (2) A finding of unreasonableness against an insurer
 19 made under this section does not constitute a finding that
 20 the insurer acted in bad faith or violated the unfair trade
 21 practices provisions of Title 33, chapter 18."

22 Section 17. Section 39-71-612, MCA, is amended to
 23 read:

24 "39-71-612. Costs and attorneys' fees that may be
 25 assessed against an employer--or insurer by workers'

1 compensation judge. (1) If an employer-or insurer pays or
 2 tenders submits a written offer of payment of compensation
 3 under chapter 71 or 72 of this title but controversy relates
 4 to the amount of compensation due, the case is brought
 5 before the workers' compensation judge for adjudication of
 6 the controversy, and the award granted by the judge is
 7 greater than the amount paid or tendered offered by the
 8 employer--or insurer, a reasonable attorney's fee and costs
 9 as established by the workers' compensation judge if the
 10 case has gone to a hearing may be awarded by the judge in
 11 addition to the amount of compensation.

12 ~~(2) When an attorney's fee is awarded against an~~
 13 ~~employer--or insurer under this section there may be further~~
 14 ~~assessed against the employer or insurer reasonable costs,~~
 15 ~~fees, and mileage for necessary witnesses attending a~~
 16 ~~hearing on the claimant's behalf. Both the necessity for the~~
 17 ~~witness and the reasonableness of the fees must be approved~~
 18 ~~by the workers' compensation judge.~~

19 (2) An award of attorneys' fees under subsection (1)
 20 may only be made if it is determined that the actions of the
 21 insurer were unreasonable. Any written offer of payment made
 22 30 days or more before the date of hearing must be
 23 considered a valid offer of payment for the purposes of this
 24 section.

25 (3) A finding of unreasonableness against an insurer

1 made under this section does not constitute a finding that
 2 the insurer acted in bad faith or violated the unfair trade
 3 practices provisions of Title 33, chapter 18."

4 Section 18. Section 39-71-613, MCA, is amended to
 5 read:

6 "39-71-613. Regulation of attorneys' fees --
 7 forfeiture of fee for noncompliance. (1) When an attorney
 8 represents or acts on behalf of a claimant or any other
 9 party on any workers' compensation claim, the attorney shall
 10 submit to the division a contract of employment, on a form
 11 provided by the division, stating specifically the terms of
 12 the fee arrangement between the attorney and the claimant.

13 (2) The administrator of the division may regulate the
 14 amount of the attorney's fee in any workers' compensation
 15 case. In regulating the amount of the fee, the
 16 administrator shall consider:

17 (a) the benefits the claimant gained due to the
 18 efforts of the attorney;

19 (b) the time the attorney was required to spend on the
 20 case;

21 (c) the complexity of the case; and

22 (d) any other relevant matter the administrator may
 23 consider appropriate.

24 (3) If an attorney violates a provision of this
 25 section, a rule adopted under this section, or an order

1 fixing an attorney's fee under this section, he shall
 2 forfeit the right to any fee which he may have collected or
 3 been entitled to collect."

4 Section 19. Section 39-71-614, MCA, is amended to
 5 read:

6 "39-71-614. Calculation of attorney fees --
 7 limitation. (1) The amount of an attorney's fee assessed
 8 against an ~~employer-or~~ insurer under 39-71-611 or 39-71-612
 9 must be based exclusively on the time spent by the attorney
 10 in representing the claimant on the issues brought before
 11 ~~the-workers'-compensation-judge~~ to hearing. The attorney
 12 must document the time spent ~~and-give-the--documentation--to~~
 13 ~~the--judge,~~ but the judge is not bound by the documentation
 14 submitted.

15 (2) The judge shall determine a reasonable attorney
 16 fee and assess costs. ~~He-is-not-bound-by-the-documentation~~
 17 ~~submitted-to-him.~~ The hourly ~~fee--the--judge--applies~~ rate
 18 applied to the time spent must be based on the attorney's
 19 customary and current hourly fee rate for legal work
 20 performed in this state, subject to a maximum established by
 21 the division.

22 ~~(2)(3)~~ This section does not restrict a claimant and
 23 an attorney from entering into a contingency fee arrangement
 24 under which the attorney receives a percentage of the amount
 25 of compensation payments received by the claimant because of

1 the efforts of the attorney. However, an amount equal to any
 2 fee and costs assessed against an ~~employer-or~~ insurer under
 3 39-71-61 or 39-71-612 and this section must be deducted from
 4 the fee an attorney is entitled to from the claimant under a
 5 contingency fee arrangement."

6 NEW SECTION. Section 20. Employer not to terminate
 7 worker for filing claim -- preference -- jurisdiction over
 8 dispute. (1) An employer may not use as grounds for
 9 terminating a worker the filing of a claim under this
 10 chapter or chapter 72 of this title.

11 (2) If an injured worker is capable of returning to
 12 work within 2 years from the date of injury and has received
 13 a medical release to return to work, the worker must be
 14 given a preference over new hires for a comparable position
 15 that becomes vacant within such 2-year period if:

16 (a) the position is consistent with the worker's
 17 physical condition and vocational abilities; and

18 (b) the worker is substantially equally qualified as
 19 other applicants.

20 (3) This preference applies only to employment with
 21 the employer for whom the employee was working at the time
 22 the injury occurred.

23 (4) The division, department, and workers'
 24 compensation court do not have jurisdiction to administer or
 25 resolve a dispute under this section. Exclusive jurisdiction

1 is with the district court.

2 Section 21. Section 39-71-701, MCA, is amended to
3 read:

4 "39-71-701. Compensation for injuries producing
5 temporary total disability. (1) Subject to the limitation in
6 39-71-736, a worker is eligible for temporary total
7 disability benefits when the worker suffers a total loss of
8 wages as a result of an injury and until the worker reaches
9 maximum healing.

10 (2) The determination of temporary total disability
11 must be supported by a preponderance of medical evidence.

12 ~~††~~(3) Weekly compensation benefits for injury
13 producing ~~total~~ temporary total disability shall be 66 2/3%
14 of the wages received at the time of the injury. The maximum
15 weekly compensation benefits shall not exceed ~~\$110~~-beginning
16 ~~July 1, 1973~~---Beginning--July 1, 1974, the maximum weekly
17 ~~compensation benefits shall not exceed~~ the state's average
18 weekly wage at the time of injury. Total-temporary Temporary
19 total disability benefits shall be paid for the duration of
20 the worker's temporary disability. The weekly benefit amount
21 may not be adjusted for cost of living as provided in
22 39-71-702(5).

23 ~~††~~(4) In cases where it is determined that periodic
24 disability benefits granted by the Social Security Act are
25 payable because of the injury, the weekly benefits payable

1 under this section are reduced, but not below zero, by an
2 amount equal, as nearly as practical, to one-half the
3 federal periodic benefits for such week, which amount is to
4 be calculated from the date of the disability social
5 security entitlement.

6 (5) Notwithstanding subsection (3), beginning July 1,
7 1987, through June 30, 1989, weekly compensation benefits
8 for temporary total disability may not exceed the state's
9 average weekly wage of \$299 established July 1, 1986."

10 Section 22. Section 39-71-702, MCA, is amended to
11 read:

12 "39-71-702. Compensation for injuries---producing
13 permanent total permanent disability. (1) If a worker is no
14 longer temporarily totally disabled and is unable to return
15 to work due to injury, the worker is eligible for permanent
16 total disability benefits. At an insurer's request, an
17 evaluation of all options under [section 36] must be made
18 before permanent total disability status is determined.
19 Permanent total disability benefits must be paid for the
20 duration of the worker's permanent total disability, subject
21 to 39-71-710 and [section 47].

22 (2) The determination of permanent total disability
23 must be supported by a preponderance of medical evidence.

24 ~~††~~(3) Weekly compensation benefits for an injury
25 producing--total--permanent resulting in permanent total

1 disability shall be 66 2/3% of the wages received at the
 2 time of the injury. The maximum weekly compensation benefits
 3 shall not exceed the state's average weekly wage at the time
 4 of injury. ~~Total permanent disability benefits shall be paid~~
 5 ~~for the duration of the worker's total permanent disability.~~

6 ~~(2)~~(4) In cases where it is determined that periodic
 7 disability benefits granted by the Social Security Act are
 8 payable because of the injury, the weekly benefits payable
 9 under this section are reduced, but not below zero, by an
 10 amount equal, as nearly as practical, to one-half the
 11 federal periodic benefits for such week, which amount is to
 12 be calculated from the date of the disability social
 13 security entitlement.

14 (5) A worker's benefit amount must be adjusted for a
 15 cost-of-living increase on the next July 1 after 104 weeks
 16 of permanent total disability benefits have been paid, and
 17 each succeeding July 1. A worker may not receive more than
 18 10 such adjustments. The adjustment must be the percentage
 19 increase, if any, in the state's average weekly wage as
 20 adopted by the division over the state's average weekly wage
 21 adopted for the previous year, or 3%, whichever is less.

22 (6) Notwithstanding subsection (3), beginning July 1,
 23 1987, through June 30, 1989, the maximum weekly compensation
 24 benefits for permanent total disability may not exceed the
 25 state's average weekly wage of \$299 established July 1,

1 1986."

2 Section 23. Section 39-71-703, MCA, is amended to
 3 read:

4 "39-71-703. Compensation for injuries causing partial
 5 disability. (1) ~~Weekly compensation benefits for injury~~
 6 ~~producing partial disability shall be 66-2/3% of the actual~~
 7 ~~diminution in the worker's earning capacity measured in~~
 8 ~~dollars, subject to a maximum weekly compensation of~~
 9 ~~one-half the state's average weekly wage.~~

10 ~~(2) The compensation shall be paid during the period~~
 11 ~~of disability, not exceeding, however, 500 weeks in cases of~~
 12 ~~partial disability. However, compensation for partial~~
 13 ~~disability resulting from the loss of or injury to any~~
 14 ~~member shall not be payable for a greater number of weeks~~
 15 ~~than is specified in 39-71-705 for the loss of the member.~~
 16 A worker who has reached maximum healing and is not eligible
 17 for permanent total disability benefits but who has a
 18 medically determined physical restriction as a result of a
 19 work-related injury may be eligible for an impairment award
 20 and wage supplement benefits as follows:

21 (a) The following procedure must be followed for an
 22 impairment award:

23 (i) Each percentage point of impairment is compensated
 24 in an amount equal to 5 weeks times 66 2/3% of the wages
 25 received at the time of the injury, subject to a maximum

1 compensation rate of one-half of the state's average weekly
2 wage at the time of injury.

3 (ii) When a worker reaches maximum healing, an
4 impairment rating is rendered by one or more physicians as
5 provided for in [section 24]. Impairment benefits are
6 payable beginning the date of maximum healing.

7 (iii) An impairment award may be paid biweekly or in a
8 lump sum, at the discretion of the worker. Lump sums paid
9 for impairments are not subject to the requirements set
10 forth in 39-71-741, except that lump-sum conversions for
11 benefits not accrued may be reduced to present value at the
12 rate set forth by the division in 39-71-741(5).

13 (iv) If a worker becomes eligible for permanent total
14 disability benefits, the insurer may recover any lump-sum
15 advance paid to a claimant for impairment, as set forth in
16 39-71-741(5). Such right of recovery does not apply to
17 lump-sum benefits paid for the period prior to claimant's
18 eligibility for permanent total disability benefits.

19 (v) If a worker suffers additional injury, an
20 impairment award payable for the additional injury must be
21 reduced by the amount of a previous award paid for
22 impairment to the same site on the body.

23 (b) The following procedure must be followed for a
24 wage supplement:

25 (i) A worker must be compensated in weekly benefits

1 equal to 66 2/3% of the difference between the worker's
2 actual wages received at the time of the injury and the
3 wages the worker is qualified to earn in the worker's job
4 pool, subject to a maximum compensation rate of one-half the
5 state's average weekly wage at the time of injury.

6 (ii) Eligibility for wage supplement benefits begins at
7 maximum healing and terminates at the expiration of 500
8 weeks minus the number of weeks for which a worker's
9 impairment award is payable, subject to 39-71-710. A
10 worker's failure to sustain a wage loss compensable under
11 subsection (1)(b)(i) does not extend the period of
12 eligibility. However, if a worker becomes eligible for
13 temporary total disability, permanent total disability, or
14 total rehabilitation benefits after reaching maximum
15 healing, the eligibility period for wage supplement benefits
16 is extended by any period for which a worker is compensated
17 by those benefits after reaching maximum healing.

18 (2) The determination of permanent partial disability
19 must be supported by a preponderance of medical evidence.

20 (3) Notwithstanding subsections (1) and (2), beginning
21 July 1, 1987, through June 30, 1989, the maximum weekly
22 compensation benefits for permanent partial disability may
23 not exceed \$149.50, which is one-half the state's average
24 weekly wage established July 1, 1986."

25 NEW SECTION. Section 24. Impairment evaluation --

1 ratings. (1) An impairment rating:

2 (a) is a purely medical determination and must be
3 determined by an impairment evaluator after a claimant has
4 reached maximum healing;

5 (b) must be based on the current edition of the Guides
6 to Evaluation of Permanent Impairment published by the
7 American Medical Association; and

8 (c) must be expressed as a percentage of the whole
9 person.

10 (2) A claimant or insurer, or both, may obtain an
11 impairment rating from a physician of the party's choice. If
12 the claimant and insurer cannot agree upon the rating, the
13 procedure in subsection (3) must be followed.

14 (3) (a) Upon request of the claimant or insurer, the
15 division shall direct a claimant to an evaluator for a
16 rating. The evaluator shall:

17 (i) evaluate the claimant to determine the degree of
18 impairment, if any, that exists due to the injury; and

19 (ii) submit a report to the division, the claimant, and
20 the insurer.

21 (b) Unless the following procedure is followed, the
22 insurer shall begin paying the impairment award, if any,
23 within 10 days of the evaluator's mailing of the report:

24 (i) Either the claimant or the insurer, within 15 days
25 after the date of mailing of the report by the first

1 evaluator, may request that the claimant be evaluated by a
2 second evaluator. If a second evaluation is requested, the
3 division shall direct the claimant to a second evaluator,
4 who shall determine the degree of impairment, if any, that
5 exists due to the injury.

6 (ii) The reports of both examinations must be submitted
7 to a third evaluator, who may also examine the claimant or
8 seek other consultation. The three evaluators shall consult
9 with one another, and then the third evaluator shall submit
10 a final report to the division, the claimant, and the
11 insurer. The final report must state the degree of
12 impairment, if any, that exists due to the injury.

13 (iii) Unless either party disputes the rating in the
14 final report as provided in subsection (6), the insurer
15 shall begin paying the impairment award, if any, within 45
16 days of the date of mailing of the report by the third
17 evaluator.

18 (4) The division shall appoint impairment evaluators
19 to render ratings under subsection (1). The division shall
20 adopt rules that set forth the qualifications of evaluators
21 and the locations of examinations. An evaluator must be a
22 physician licensed under Title 37, chapter 3. The division
23 may seek nominations from the board of medical examiners.

24 (5) The cost of impairment evaluations is assessed to
25 a workers' insurer, except that the cost of an evaluation

1 under subsection (3)(b)(ii) or (3)(b)(iii) is assessed to
2 the requesting party.

3 (6) A party may dispute a final impairment rating
4 rendered under subsection (3)(b)(iii) by filing a petition
5 with the workers' compensation court within 15 days of the
6 evaluator's mailing of the report. Disputes over impairment
7 ratings are not subject to 39-71-605 or to mandatory
8 mediation.

9 (7) An impairment rating rendered under subsection (3)
10 is presumed correct. This presumption is rebuttable.

11 Section 25. Section 39-71-704, MCA, is amended to
12 read:

13 "39-71-704. Payment of medical, hospital, and related
14 services. (1) In addition to the compensation provided by
15 this chapter and as an additional benefit separate and apart
16 from compensation, the following shall be furnished:

17 (a) After the happening of the injury, the insurer
18 shall furnish, without limitation as to length of time or
19 dollar amount, reasonable services by a physician or
20 surgeon, reasonable hospital services and medicines when
21 needed, and such other treatment as may be approved by the
22 division for the injuries sustained.

23 (b) The insurer shall replace or repair prescription
24 eyeglasses, prescription contact lenses, prescription
25 hearing aids, and dentures that are damaged or lost as a

1 result of an injury, as defined in 39-71-119, arising out of
2 and in the course of employment.

3 (2) A relative value fee schedule for medical,
4 chiropractic, and paramedical services provided for in this
5 chapter, excluding hospital services, shall be established
6 annually by the workers' compensation division and become
7 effective in January of each year. The maximum fee schedule
8 must be adopted as a relative value fee schedule of medical,
9 chiropractic, and paramedical services, with unit values to
10 indicate the relative relationship within each grouping of
11 specialties. Medical fees must be based on the median fees
12 as billed to the state compensation insurance fund during
13 the year preceding the adoption of the schedule. The
14 division shall adopt rules establishing relative unit
15 values, groups of specialties, the procedures insurers must
16 use to pay for services under the schedule, and the method
17 of determining the median of billed medical fees. These
18 rules shall be modeled on the 1974 revision of the 1969
19 California Relative Value Studies.

20 (3) Beginning January 1988, the division shall
21 establish rates for hospital services necessary for the
22 treatment of injured workers. Approved rates must be in
23 effect for a period of 12 months from the date of approval.
24 The division may coordinate this ratesetting function with
25 other public agencies that have similar responsibilities.

1 (4) Notwithstanding subsection (2), beginning January
 2 1, 1988, and ending January 1990, the maximum fees payable
 3 by insurers must be limited to the relative value fee
 4 schedule established in January 1987. Notwithstanding
 5 subsection (3), the hospital rates payable by insurers must
 6 be limited to those set in January 1988, until December 31,
 7 1989."

8 Section 26. Section 39-71-708, MCA, is amended to
 9 read:

10 "39-71-708. Compensation for disfigurement. (1) The
 11 division may award proper and equitable indemnity benefits
 12 for serious face, head, or neck disfigurement, not to exceed
 13 \$2,500, in addition to ~~any other indemnity~~ benefits payable
 14 under ~~39-71-705, 39-71-706, or 39-71-707~~ 39-71-703.

15 (2) No payment under this section shall be in lieu of
 16 the separate benefit of medical and hospital services and or
 17 of any benefits paid under 39-71-701 for temporary total
 18 disability."

19 Section 27. Section 39-71-710, MCA, is amended to
 20 read:

21 "39-71-710. Termination of ~~total disability~~ benefits
 22 upon retirement. (1) If a claimant is receiving ~~total~~
 23 ~~disability or rehabilitation~~ compensation benefits and the
 24 claimant ~~receives--retirement~~ receives social security
 25 retirement benefits or is eligible to receive full social

1 ~~security retirement benefits or disability--social--security~~
 2 ~~benefits--paid--to--the--claimant--are--converted--by--law--to~~
 3 ~~retirement--benefits~~, the claimant is considered to be
 4 retired ~~and--no--longer--in--the--open--labor--market~~. When the
 5 claimant is considered retired, the liability of the insurer
 6 is ended for payment of such wage supplement, permanent
 7 total, and rehabilitation compensation benefits. ~~This~~
 8 ~~section--does--not--apply--to--permanent--partial--disability~~
 9 ~~benefits--Medical--benefits--are--expressly--reserved--to--the~~
 10 ~~claimant: However, the insurer remains liable for temporary~~
 11 total disability benefits, any impairment award, and medical
 12 benefits.

13 (2) If a claimant who is eligible to receive social
 14 security retirement benefits and is gainfully employed
 15 suffers a work-related injury, the insurer retains liability
 16 for temporary total disability benefits, any impairment
 17 award, and medical benefits."

18 NEW SECTION. Section 28. Benefits not due while
 19 claimant is incarcerated. A claimant is not eligible for any
 20 disability or rehabilitation compensation benefits while the
 21 claimant is incarcerated as the result of conviction of a
 22 felony. The insurer remains liable for medical benefits. No
 23 time limit on benefits otherwise provided in this chapter is
 24 extended due to a period of incarceration.

25 Section 29. Section 39-71-721, MCA, is amended to

1 read:

2 "39-71-721. Compensation for injury causing death --
3 limitation. (1) (a) If an injured employee dies and the
4 injury was the proximate cause of such death, then the
5 beneficiary of the deceased, ~~as the case may be~~, is entitled
6 to the same compensation as though the death occurred
7 immediately following the injury, ~~but the period during~~
8 ~~which the death benefit is paid shall be reduced by the~~
9 ~~period during or for which compensation was paid for the~~
10 injury. A beneficiary's eligibility for benefits commences
11 after the date of death, and the benefit level is
12 established as set forth in subsection (2).

13 (b) The insurer is entitled to recover any
14 overpayments or compensation paid in a lump sum to a worker
15 prior to death but not yet recouped. The insurer shall
16 recover such payments from the beneficiary's biweekly
17 payments as provided in 39-71-741(5).

18 (2) To beneficiaries as defined in ~~subsections (2)(a)~~
19 ~~through (2)(d) of 39-71-116~~ 39-71-116(2)(a) through
20 39-71-116(2)(d), weekly compensation benefits for an injury
21 causing death are computed at 66 2/3% of the decedent's
22 wages. The maximum weekly compensation ~~benefits~~ benefit may
23 not exceed the state's average weekly wage at the time of
24 injury. The minimum weekly compensation for death benefit is
25 50% of the state's average weekly wage, but in no event may

1 it exceed the decedent's actual wages at the time of his
2 death.

3 (3) To beneficiaries as defined in ~~subsections (2)(e)~~
4 ~~and (2)(f) of 39-71-116~~ 39-71-116(2)(e) and 39-71-116(2)(f),
5 weekly benefits must be paid to the extent of the dependency
6 at the time of the injury, subject to a maximum of 66 2/3%
7 of the decedent's wages. The maximum weekly compensation may
8 not exceed the state's average weekly wage.

9 (4) If the decedent leaves no beneficiary as defined
10 in 39-71-116(2), a lump-sum payment of \$3,000 must be paid
11 to the decedent's surviving parent or parents.

12 (5) If any beneficiary of a deceased employee dies,
13 the right of such beneficiary to compensation under this
14 chapter ceases. Death benefits must be paid to a ~~widow or~~
15 ~~widower for life or until remarriage, and in the event of~~
16 ~~remarriage, 2 years' benefits must be paid in a lump sum to~~
17 ~~the widow or widower~~ surviving spouse for 500 weeks
18 subsequent to the date of the deceased employee's death or
19 until the spouse's remarriage, whichever occurs first. After
20 benefit payments cease to a surviving spouse, death benefits
21 must be paid to beneficiaries, if any, as defined in
22 39-71-116(2)(b) through 39-71-116(2)(d).

23 (6) In all cases, benefits must be paid to
24 beneficiaries, as defined in 39-71-116(2).

25 (7) Benefits paid under this section may not be

1 adjusted for cost of living as provided in 39-71-702.
 2 (8) Notwithstanding subsections (2) and (3), beginning
 3 July 1, 1987, through June 30, 1989, the maximum weekly
 4 compensation benefits for injury causing death may not
 5 exceed the state's average weekly wage of \$299 established
 6 July 1, 1986. Beginning July 1, 1987, through June 30, 1989,
 7 the minimum weekly compensation for injury causing death
 8 shall be \$149.50, which is 50% of the state's average weekly
 9 wage established July 1, 1986, but in no event may it exceed
 10 the decedent's actual wages at the time of death."

11 Section 30. Section 39-71-736, MCA, is amended to
 12 read:

13 "39-71-736. Compensation -- from what date paid.
 14 (1) (a) No compensation may be paid for the first 5 6 days
 15 loss of wages due to an injury. If loss of wages continues
 16 for more than 5 days, compensation shall be paid from the
 17 date of injury. A claimant is eligible for compensation
 18 starting with the 7th day of wage loss.

19 (b) However, separate benefits of medical and hospital
 20 services shall be furnished from the date of injury.

21 (2) For the purpose of this section, an injured worker
 22 is not considered to have a wage loss if the worker is
 23 receiving sick leave benefits, except that each day for
 24 which the worker elects to receive sick leave counts 1 day
 25 toward the 6-day waiting period."

1 Section 31. Section 39-71-737, MCA, is amended to
 2 read:

3 "39-71-737. Compensation to run consecutively --
 4 exceptions. ~~{i}~~ Compensation shall run consecutively and not
 5 concurrently, and payment shall not be made for two classes
 6 of disability over the same period except that indemnity
 7 benefits under 39-71-705 through 39-71-708 and temporary
 8 total disability benefits may be paid concurrently. However,
 9 subject to the provisions of 39-71-741, this section does
 10 not prevent:

11 ~~{a} the payment of a lump sum advance settlement~~
 12 ~~against projected future permanent partial indemnity~~
 13 ~~benefits while a claimant is receiving temporary total~~
 14 ~~disability benefits; or~~

15 ~~{b} a settlement of a combination of different classes~~
 16 ~~of disability benefits into a lump sum or into a combination~~
 17 ~~of periodic and lump sum payments.~~

18 ~~{2} A controversy between a claimant and an insurer~~
 19 ~~regarding a settlement authorized under this section is a~~
 20 ~~dispute for which the workers' compensation judge has~~
 21 ~~jurisdiction to make a determination; impairment awards and~~
 22 ~~auxiliary rehabilitation benefits may be paid concurrently~~
 23 ~~with other classes of benefits, and wage supplement and~~
 24 ~~partial rehabilitation benefits may be paid concurrently."~~

25 Section 32. Section 39-71-741, MCA, is amended to

1 read:

2 "39-71-741. Compromise settlements and lump-sum
3 payments ---division-approval-required. (1)-The-biweekly
4 payments-provided-for-in-this-chapter-may-be-converted,--in
5 whole-or-in-part,--into-a-lump-sum-payment.---Regardless-of-the
6 date--of--the--injury--or--of--a--prior--lump-sum-payment,--a
7 lump-sum-conversion-of--permanent--total--biweekly--payments
8 awarded--or--paid--after--April--15,--1985,--must--equal--the
9 estimated-present-value-of-the-total-unpaid-permanent--total
10 biweekly--payments,--assuming--interest--at--7%--per--year,
11 compounded-annually,--unless--the--conversion--improves--the
12 financial--condition--of--the--worker-or-his-beneficiary,--as
13 provided-in-subsection-(2)(b).--If-the-estimated-duration--of
14 the--compensation-period-is-the-remaining-life-expectancy-of
15 the-claimant-or-the-claimant's--beneficiary,--the--remaining
16 life--expectancy-must-be-determined-by-using-the-most-recent
17 table-of-life-expectancy-in-years-as-published-by-the-United
18 States-national-center-for-health-statistics.

19 (2)--The-conversion-can-only-be-made-upon--the--written
20 application---of---the---injured---worker---or---the---worker's
21 beneficiary,--with--the--concurrence--of--the--insurer,--and
22 approval--of--the--conversion-rests-in-the-discretion-of-the
23 division-as-to-the-amount-of-the-lump-sum--payment--and--the
24 advisability-of-the-conversion.---It-is-presumed-that-biweekly
25 payments--are--in--the--best--interests-of-the-worker-or-his

1 beneficiary.---The-approval-or-award-of-a-lump-sum--conversion
2 by--the--division-or-the-workers'-compensation-judge-must-be
3 the-exception,--not-the-rule,--and-may-be-given--only--if--the
4 worker--or--his-beneficiary-demonstrates-that-his-ability-to
5 sustain-himself-financially-is-more-probable-with-a-whole-or
6 partial-lump-sum-conversion-than-with-the-biweekly--payments
7 and--his--other-available-resources.---The-following-procedure
8 must-be-used-by-the-division-and-the--workers'-compensation
9 judge--in--determining--whether--a--lump-sum--conversion--of
10 permanent--total--biweekly--payments--will--be--approved--or
11 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 finds that an application for
19 lump sum conversion does not adequately demonstrate the
20 ability of the worker or his beneficiary to sustain himself
21 financially, the division may order, at the insurer's
22 expense, financial, medical, vocational, rehabilitation,
23 educational, or other evaluative studies to determine
24 whether a lump sum conversion is in the best interest of the
25 worker or his beneficiary.

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

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

13 (1) (a) Benefits may be converted in whole to a lump sum:

14 (i) if a claimant and an insurer dispute the initial
15 compensability of an injury; and

16 (ii) if the claimant and insurer agree.

17 (b) The agreement is subject to division approval. The
18 division may disapprove an agreement under this section only
19 if there is not a reasonable dispute over compensability.

20 (c) Upon approval, the agreement constitutes a
21 compromise and release settlement and may not be reopened by
22 the division or by any court.

23 (d) The parties' failure to reach an agreement is not
24 a dispute over which a mediator or the workers' compensation
25 court has jurisdiction.

1 (2) (a) If an insurer has accepted initial liability
 2 for an injury, permanent total and permanent partial wage
 3 supplement benefits may be converted in whole to a lump-sum
 4 payment.

5 (b) The conversion may be made only upon agreement
 6 between a claimant and an insurer.

7 (c) The agreement is subject to division approval. The
 8 division may approve an agreement if:

9 (i) there is a reasonable dispute concerning the
 10 amount of the insurer's future liability or benefits; or

11 (ii) the amount of the insurer's projected liability is
 12 reasonably certain and the settlement amount is not
 13 substantially less than the present value of the insurer's
 14 liability.

15 (d) The parties' failure to reach agreement is not a
 16 dispute over which a mediator or the worker's compensation
 17 court has jurisdiction.

18 (3) (a) Permanent partial wage supplement benefits may
 19 be converted in part to a lump-sum advance.

20 (b) The conversion may be made only upon agreement
 21 between a claimant and an insurer.

22 (c) The agreement is subject to division approval. The
 23 division may approve an agreement if the parties demonstrate
 24 that the claimant has financial need that:

25 (i) relates to the necessities of life or relates to

1 an accumulation of debt incurred prior to injury; and

2 (ii) arises subsequent to the date of injury or arises
 3 because of reduced income as a result of the injury.

4 (d) The parties' failure to reach an agreement is not
 5 a dispute over which a mediator or the workers' compensation
 6 court has jurisdiction.

7 (4) Permanent total disability benefits may be
 8 converted to a lump-sum advance. The total of all lump-sum
 9 payments to a claimant may not exceed \$20,000. A conversion
 10 may be made only upon the written application of the injured
 11 worker with the concurrence of the insurer. Approval of the
 12 lump-sum payment rests in the discretion of the division.
 13 The approval or award of a lump-sum payment by the division
 14 or court must be the exception. It may be given only if the
 15 worker has demonstrated financial need that:

16 (a) relates to:

17 (i) the necessities of life;

18 (ii) an accumulation of debt incurred prior to the
 19 injury; or

20 (iii) a self-employment venture as set forth in
 21 [section 47]; and

22 (b) arises subsequent to the date of accident or
 23 arises because of reduced income as a result of the
 24 accident.

25 (5) (a) An insurer may recoup any lump-sum advance

1 amortized at the rate established by the division, prorated
 2 biweekly over the projected duration of the compensation
 3 period.

4 (b) The rate adopted by the division must be based on
 5 the average rate for United States 10-year treasury bills in
 6 the previous calendar year, rounded to the nearest whole
 7 number.

8 (c) If the projected compensation period is the
 9 claimant's lifetime, the life expectancy must be determined
 10 by using the most recent table of life expectancy as
 11 published by the United States national center for health
 12 statistics.

13 (6) The division has full power, authority, and
 14 jurisdiction to allow, approve, or condition compromise
 15 settlements or lump-sum advances agreed to by workers and
 16 insurers. All such compromise settlements and lump-sum
 17 payments are void without the approval of the division.
 18 Approval by the division must be in writing. The division
 19 shall directly notify a claimant of a division order
 20 approving or denying a claimant's compromise or lump-sum
 21 payment.

22 (7) Subject to [section 8], a dispute between a
 23 claimant and an insurer regarding the conversion of biweekly
 24 payments into a lump-sum advance under subsection (4) is
 25 considered a dispute, for which a mediator and the workers'

1 compensation court have jurisdiction to make a
 2 determination. If an insurer and a claimant agree to a
 3 compromise and release settlement or a lump-sum advance but
 4 the division disapproves the agreement, the parties may
 5 request the workers' compensation court to review the
 6 division's decision."

7 Section 33. Section 39-71-803, MCA, is amended to
 8 read:

9 "39-71-803. Occupational deafness distinguished from
 10 traumatic loss of hearing. Occupational deafness as herein
 11 provided is distinguished from traumatic loss of hearing,
 12 ~~which is governed by the specific loss schedule provided for~~
 13 ~~in 39-71-705 may be compensated under parts 7 and 10 of this~~
 14 ~~chapter."~~

15 NEW SECTION. Section 34. Definitions. As used in this
 16 chapter, the following definitions apply:

17 (1) "Board of rehabilitation certification" means the
 18 nonprofit, independent, fee-structured organization that is
 19 a member of the national commission for health certifying
 20 agencies and that is established to certify rehabilitation
 21 practitioners.

22 (2) "Disabled worker" means one who has a medically
 23 determined restriction resulting from a work-related injury
 24 that precludes the worker from returning to the job the
 25 worker held at the time of the injury.

1 (3) "I.W.R.P." means an individualized, written
2 rehabilitation program prepared by the department of social
3 and rehabilitation services.

4 (4) "Rehabilitation benefits" means benefits provided
5 in [sections 59 through 61] and 39-71-1003.

6 (5) "Rehabilitation provider" means a rehabilitation
7 counselor, other than the department of social and
8 rehabilitation services, certified by the board for
9 rehabilitation certification and designated by the insurer
10 to the division.

11 (6) "Rehabilitation services" consists of a program of
12 evaluation, planning, and delivery of goods and services to
13 assist a disabled worker to return to work.

14 (7) (a) "Worker's job pool" means those jobs typically
15 available for which a worker is qualified, consistent with
16 the worker's age, education, vocational experience and
17 aptitude and compatible with the worker's physical
18 capacities and limitations as the result of the worker's
19 injury. Lack of immediate job openings is not a factor to be
20 considered.

21 (b) A worker's job pool may be either local or
22 statewide, as follows:

23 (i) a local job is one either in a central city that
24 has within its economically integrated geographical area a
25 population of less than 50,000 or in a city with a

1 population of more than 50,000 as determined by the
2 division; or

3 (ii) a statewide job is one anywhere in the state of
4 Montana.

5 Section 35. Section 39-71-1003, MCA, is amended to
6 read:

7 "39-71-1003. Eligibility for vocational rehabilitation
8 expenses benefits ~~under chapter not affected~~ ~~other~~
9 ~~expenses payable. The eligibility of any injured worker to~~
10 ~~receive other benefits under the Workers' Compensation Act~~
11 ~~is in no way affected by his entrance upon a course of~~
12 ~~vocational rehabilitation as herein provided. A person~~
13 ~~undergoing vocational rehabilitation must be paid temporary~~
14 ~~total disability benefits. In addition thereto, he may be~~
15 ~~paid, upon the certification of the department of social and~~
16 ~~rehabilitation services from funds herein provided:~~

17 {1} ~~his actual and necessary travel expenses from his~~
18 ~~place of residence to the place of training and return;~~

19 {2} ~~his living expenses while in training in an amount~~
20 ~~not in excess of \$50 per week; and~~

21 {3} ~~his expenses for tuition, books, and necessary~~
22 ~~equipment in training; Upon certification by the department~~
23 ~~of social and rehabilitation services, a disabled worker may~~
24 ~~be paid vocational rehabilitation expenses from funds~~
25 ~~provided in 39-71-1004, in addition to benefits payable~~

1 under the Workers' Compensation Act."

2 NEW SECTION. Section 36. Rehabilitation goal and
3 options. (1) The goal of rehabilitation services is to
4 return a disabled worker to work, with a minimum of
5 retraining, as soon as possible after an injury occurs.

6 (2) The first appropriate option among the following
7 must be chosen for the worker:

- 8 (a) return to the same position;
- 9 (b) return to a modified position;
- 10 (c) return to a related occupation suited to the
11 claimant's education and marketable skills;
- 12 (d) on-the-job training;
- 13 (e) short-term retraining program (less than 24
14 months);
- 15 (f) long-term retraining program (48 months maximum);
- 16 or
- 17 (g) self-employment.

18 (3) Whenever possible, employment in a worker's local
19 job pool must be considered and selected prior to
20 consideration of employment in a worker's statewide job
21 pool.

22 NEW SECTION. Section 37. Rehabilitation services --
23 required and provided by insurers and the department of
24 social and rehabilitation services. (1) Rehabilitation
25 services are required for disabled workers and may be

1 initiated by:

2 (a) an insurer by designating a rehabilitation
3 provider and notifying the division;

4 (b) the division by requiring the insurer to designate
5 a rehabilitation provider; or

6 (c) a disabled worker through a request to the
7 division. The division shall then require the insurer to
8 designate a rehabilitation provider.

9 (2) Rehabilitation services provided under this part
10 must be delivered:

11 (a) through a rehabilitation counselor certified by
12 the board of rehabilitation certification;

13 (b) by a vocational rehabilitation counselor employed
14 by the department of social and rehabilitation services; or

15 (c) by both.

16 (3) A disabled worker served by the department of
17 social and rehabilitation services may receive only those
18 vocational rehabilitation services as provided in Title 53,
19 chapter 7, parts 1 and 2.

20 NEW SECTION. Section 38. Designated rehabilitation
21 provider -- evaluation and report. (1) If a disabled worker
22 is capable of returning to work, the designated
23 rehabilitation provider shall evaluate and determine the
24 return-to-work capabilities of the disabled worker pursuant
25 to [section 36(2)(a) through 36(2)(d)].

1 (2) If an insurer's designated rehabilitation provider
 2 has determined that all appropriate services have been
 3 provided to the disabled worker under [section 36(2)(a)
 4 through 362)(d)] and the worker has returned to work, the
 5 insurer shall document that determination to the division.

6 (3) If the worker has not returned to work as provided
 7 in subsection (2), the insurer shall notify the division.
 8 The division shall then designate a rehabilitation panel as
 9 provided in [section 39] and refer the worker to the panel.

10 NEW SECTION. Section 39. Rehabilitation panels. (1)
 11 The division shall designate and administer rehabilitation
 12 panels. The purpose of a panel is to advise the division on
 13 a worker's eligibility for rehabilitation services. Each
 14 panel shall issue to the division a report as provided in
 15 [section 40].

16 (2) Each panel must be composed of at least:

17 (a) a representative of the department of social and
 18 rehabilitation services;

19 (b) a representative from the department who has
 20 expertise in job service listings, occupational supply and
 21 demand in Montana, and other Montana career information; and

22 (c) a representative from the division, who shall
 23 chair the panel.

24 (3) The division shall pay the cost of the panel.

25 (4) The insurer shall provide the panel with the

1 worker's medical records, rehabilitation reports, and other
 2 pertinent information in its possession.

3 (5) The panel may consult with the worker, insurer,
 4 medical and rehabilitation providers, and any other person
 5 and may have access to any information it considers
 6 pertinent to carry out its responsibility.

7 (6) Information received by the panel is confidential,
 8 except that it may be disclosed to the worker, insurer, and
 9 division.

10 NEW SECTION. Section 40. Rehabilitation panel report.

11 (1) The rehabilitation panel shall:

12 (a) review all records, statements, and other
 13 pertinent information; and

14 (b) prepare a report to the division, with copies to
 15 the insurer and worker.

16 (2) The report must:

17 (a) identify the first appropriate rehabilitation
 18 option by following the priorities set forth in [section
 19 36]; and

20 (b) contain findings of why a higher listed priority,
 21 if any, is not appropriate.

22 (3) Depending on which option the panel identifies as
 23 appropriate, the report also must contain findings that:

24 (a) identify jobs in the local or statewide job pool
 25 and the worker's anticipated earnings from each job;

1 (b) describe an appropriate on-the-job training
2 program, the worker's anticipated earnings, and anticipated
3 insurer's contribution, if any;

4 (c) describe an appropriate retraining program, short-
5 or long-term, the employment opportunities anticipated upon
6 the worker's completion of the program, and the worker's
7 anticipated earnings; or

8 (d) describe the worker's potential for specific
9 self-employment, limitations the worker might have in such
10 self-employment and any assistance necessary, and the
11 worker's anticipated earnings.

12 (4) An insurer or a worker on his own motion may
13 submit information to the panel prior to the time the panel
14 issues its final report.

15 NEW SECTION. Section 41. Division's order of
16 determination -- exception -- hearing. (1) The division
17 shall issue an initial order of determination within 10
18 working days of receipt of a report from a rehabilitation
19 panel. If the initial order of determination differs from
20 the findings and recommendations of the panel, the order
21 must state the reasons for the difference.

22 (2) Within 10 working days from the date the initial
23 order of determination is mailed, a party may submit a
24 written exception to the order. On its own motion or at the
25 request of any party, the division shall conduct a hearing.

1 The division shall issue a final order of determination
2 within 20 working days of the hearing.

3 (3) If no party submits an exception within 10 working
4 days, the initial order of determination becomes the final
5 order of determination and must be issued by the division.

6 (4) Within 10 working days after the date of mailing
7 of the division's final order of determination, an appeal
8 may be taken to the workers' compensation court.

9 NEW SECTION. Section 42. Referral to department of
10 social and rehabilitation services for retraining --
11 benefits -- appeals. (1) If in its final order of
12 determination the division considers a worker able to return
13 to work in the worker's job pool, the insurer is not liable
14 for rehabilitation benefits, even though the worker
15 independently may pursue a training program of the worker's
16 own choice or seek vocational rehabilitation services from
17 the department of social and rehabilitation services.

18 (2) If in its final order of determination the
19 division finds the worker needs retraining, the division
20 shall determine the maximum duration for which funds under
21 39-71-1003 may be used for rehabilitation services under
22 [section 36(2)(d) through 36(2)(f)] and shall refer the
23 worker to the department of social and rehabilitation
24 services for a determination of vocational handicap.

25 (3) If the department of social and rehabilitation

1 services determines that a disabled worker has a vocational
2 handicap, the worker is eligible for funds under 39-71-1003
3 up to the maximum duration established in the division's
4 final order of determination.

5 (4) If a disabled worker seeks vocational
6 rehabilitation services from the department of social and
7 rehabilitation services without giving the insurer the
8 opportunity to designate a rehabilitation provider or,
9 subsequently, without giving the division the opportunity to
10 designate a rehabilitation panel to provide a report, the
11 insurer is not liable for rehabilitation benefits. The
12 insurer may terminate rehabilitation and other benefits, if
13 any, being received by the worker by following the procedure
14 set forth in [section 49].

15 (5) The department of social and rehabilitation
16 services, in providing rehabilitation services to a worker
17 referred to it by the division, shall consider but is not
18 bound by the rehabilitation panel report.

19 (6) If the department of social and rehabilitation
20 services has determined that all appropriate rehabilitation
21 services have been provided to a disabled worker, the
22 department shall document that determination to the
23 division.

24 (7) The appeal process before the board of social and
25 rehabilitation services provided for in 53-7-106 is the

1 exclusive remedy for a person aggrieved in the receipt of
2 services provided by the department of social and
3 rehabilitation services.

4 NEW SECTION. Section 43. Agreement between worker and
5 insurer regarding option. A worker and an insurer may agree
6 that an option in [section 36] is appropriate without
7 following the procedures provided in this part. Failure to
8 reach agreement is not a dispute under [section 8].

9 NEW SECTION. Section 44. Total rehabilitation
10 benefits during period of rehabilitation services --
11 limitation -- termination. (1) A worker who no longer is
12 temporarily totally disabled but meets the definition of a
13 disabled worker may be eligible for total rehabilitation
14 benefits.

15 (2) Eligibility for total rehabilitation benefits
16 begins on the date of maximum healing or the date notice is
17 given to the division by the insurer that a rehabilitation
18 provider has been designated, whichever is later.

19 (3) Benefits must be paid at the disabled worker's
20 temporary total disability rate for a period not exceeding
21 26 weeks from the date of eligibility, except that the
22 division may extend the period for good cause. The insurer
23 may extend the benefits without division approval but must
24 notify the division of the extension.

25 (4) Total rehabilitation benefits under this section

1 terminate when:

- 2 (a) a worker returns to work;
- 3 (b) a worker is qualified to return to work under the
- 4 priorities in [section 36] pursuant to a division order; or
- 5 (c) an I.W.R.P. is submitted to the division by the
- 6 department of social and rehabilitation services.
- 7 (5) The insurer shall provide written notice to the
- 8 worker and division that benefits have been terminated.

9 NEW SECTION. Section 45. Wage supplement and partial

10 rehabilitation benefits. (1) A worker who is in a

11 rehabilitation program under [section 42] in accordance with

12 and for the maximum duration established by a final order of

13 determination by the division is eligible to receive the

14 following benefits:

- 15 (a) wage supplement benefits as provided in 39-71-703
- 16 but with the rate based on 66 2/3% of the worker's actual
- 17 wages received at the time of injury, subject to a maximum
- 18 of one-half the state's average weekly wage; and
- 19 (b) a partial rehabilitation benefit that, together
- 20 with the wage supplement provided in subsection (1)(a),
- 21 provides the worker with weekly benefits equal to the
- 22 worker's temporary total disability rate.
- 23 (2) After the worker completes the rehabilitation
- 24 program, the worker's further eligibility, if any, for wage
- 25 supplement benefits under 39-71-703 is reduced by the number

1 of weeks of wage supplement benefits received under

2 subsection (1)(a).

3 (3) Notwithstanding subsection (1)(a), beginning July

4 1, 1987, through June 30, 1989, the maximum weekly

5 compensation benefit under that subsection may not exceed

6 \$149.50, which is one-half the state's weekly wage

7 established July 1, 1986.

8 NEW SECTION. Section 46. Auxiliary rehabilitation

9 benefits. In addition to benefits otherwise provided in this

10 chapter, separate benefits not exceeding a \$4,000 total may

11 be paid by the insurer for:

- 12 (1) reasonable travel and relocation expenses used to:
- 13 (a) search for new employment;
- 14 (b) return to work but in a new location; and
- 15 (c) implement a rehabilitation program pursuant to a
- 16 final order of determination by the division; and
- 17 (2) reasonable participation with an employer in an
- 18 on-the-job training program.

19 NEW SECTION. Section 47. Self-employment -- criteria.

20 (1) A worker who is eligible for permanent total disability

21 benefits may be eligible for a self-employment venture. A

22 lump sum of \$20,000 or less of permanent total disability

23 benefits may be granted under 39-71-741 to assist the worker

24 in the self-employment venture. Any previous lump-sum

25 advance made under 39-71-741(4) must be considered so that

1 the total amount of lump-sum payments of permanent total
2 disability benefits does not exceed \$20,000.

3 (2) In addition to meeting the requirements set forth
4 in 39-71-741, the self-employment venture must be considered
5 feasible under criteria set forth by the division.

6 (3) When the worker begins the self-employment
7 venture, his eligibility for permanent total disability
8 benefits ends and the worker may be eligible for permanent
9 partial disability benefits under 39-71-703.

10 (4) If a worker again becomes eligible for permanent
11 total disability benefits, the insurer may recoup any lump
12 sum of permanent total disability benefits awarded for a
13 self-employment venture, as provided in 39-71-741.

14 NEW SECTION. Section 48. Exchange of information. The
15 department of social and rehabilitation services, the
16 insurer's designated rehabilitation provider, and the
17 division shall provide to one another case information as
18 necessary to carry out the purposes of this part.

19 NEW SECTION. Section 49. Termination of benefits for
20 noncooperation with rehabilitation services -- division
21 hearing and appeal. (1) If an insurer believes a worker is
22 refusing unreasonably to cooperate with the rehabilitation
23 provider, the insurer, with 14 days' notice to the worker
24 and division on a form approved by the division, may
25 terminate any rehabilitation benefits the worker is

1 receiving under this part until the worker cooperates. If
2 the worker is receiving wage supplement benefits, those
3 benefits must continue until the division's determination
4 under subsection (3) is made.

5 (2) The worker may contest the insurer's termination
6 of benefits by filing a written exception to the division
7 within 10 working days after the date of the 14-day notice.
8 The worker or insurer may request a hearing or the division
9 may hold a hearing on its own motion. The division shall
10 issue an order within 30 days of the hearing.

11 (3) If no exceptions are timely filed or the division
12 determines the worker unreasonably refused to cooperate, the
13 insurer may terminate wage loss supplement benefits the
14 worker is receiving until the worker cooperates with the
15 rehabilitation provider. If the worker prevails at a hearing
16 before the division, it may award attorney fees and costs to
17 the worker under 39-71-612.

18 (4) Within 10 working days after the division mails
19 its order to the party's last-known address, a party may
20 appeal to the workers' compensation court.

21 NEW SECTION. Section 50. Division jurisdiction over
22 disputes under this part -- appeals. In addition to pursuing
23 the hearing opportunities provided in [sections 41 and 49],
24 a party may bring a dispute arising under the provisions of
25 this part, except for a dispute over which the department of

1 social and rehabilitation services has jurisdiction under
 2 [section 42], before the division under the contested case
 3 provisions of the Montana Administrative Procedure Act,
 4 Title 2, chapter 4, part 6, and any rules promulgated by the
 5 division. Within 10 days after mailing of the division's
 6 final order, an interested party may appeal to the workers'
 7 compensation court.

8 Section 51. Section 39-71-2106, MCA, is amended to
 9 read:

10 "39-71-2106. Requiring security of employer. (1) The
 11 division may require any employer who elects to be bound by
 12 compensation plan No. 1 to provide a security deposit. Such
 13 security deposit may be a surety bond, government bond, or
 14 letter of credit approved by the division and must be the
 15 greater of:

16 (a) \$250,000; or

17 (b) an average of the workers' compensation
 18 liabilities incurred by the employer in Montana for the past
 19 3 calendar years.

20 ~~(1)~~(2) If the division finds that an employer has lost
 21 his solvency or financial ability to pay the compensation
 22 herein provided to be paid which might reasonably be
 23 expected to be chargeable to the employer during the fiscal
 24 year to be covered by the permission or that the employer is
 25 an association, corporation, or organization of individual

1 employers seeking permission to operate under compensation
 2 plan No. 1, the division must require the employer, before
 3 granting to him permission or before continuing or engaging
 4 in such employment subject to the provisions of compensation
 5 plan No. 1, to give security for the payment of
 6 compensation, which security must be in such an amount as
 7 the division finds is reasonable and necessary to meet all
 8 liabilities of the employer which may reasonably and
 9 ordinarily be expected to accrue during the fiscal year.

10 ~~(2)~~(3) The security must be deposited with the
 11 division and may be a certain estimated percent of the
 12 employer's last preceding annual payroll or a certain
 13 percent of the established amount of his annual payroll for
 14 the fiscal year; or the security may be in the form of a
 15 bond or undertaking executed to the division in the amount
 16 to be fixed by it with two or more sufficient sureties,
 17 which undertaking must be conditioned that the employer will
 18 well and truly pay or cause to be paid all sums and amounts
 19 for which the employer shall become liable under the terms
 20 of this chapter to his employees during the fiscal year; or
 21 such security may consist of any state, county, municipal,
 22 or school district bonds or the bonds or evidence of
 23 indebtedness of any individuals or corporations which the
 24 division deems solvent; and every such deposit and the
 25 character and amount of such securities shall at all times

1 be subject to approval, revision, or change by the division
 2 as in its judgment may be required, and upon proof of the
 3 final payment of the liability for which such securities are
 4 given, such securities or any remaining part thereof shall
 5 be returned to the depositor.

6 ~~(3)~~(4) The division is liable for the value and
 7 safekeeping of all such deposits or securities and shall, at
 8 any time, upon demand of a bondsman or the depositor,
 9 account for the same and the earnings thereof."

10 NEW SECTION. Section 52. Purpose. The purpose of
 11 [sections 52 through 57] is to prevent when possible the
 12 filing in the workers' compensation court of actions by
 13 claimants or insurers relating to claims under chapter 71 or
 14 72 of this title if an equitable and reasonable resolution
 15 of the dispute may be effected at an earlier stage. To
 16 achieve this purpose, [section 52 through 57] provide for a
 17 procedure for mandatory, nonbinding mediation.

18 NEW SECTION. Section 53. Department authority --
 19 rules. (1) The department shall designate mediators and
 20 shall implement the provisions of [sections 52 through 57].

21 (2) The department may adopt the rules necessary to
 22 implement [sections 52 through 57]. The rules may prescribe:

- 23 (a) the qualifications of mediators; and
 24 (b) a procedure for the conduct of mediation
 25 proceedings.

1 (3) The cost to the department of implementing
 2 [sections 52 through 57] must be paid out of the workers'
 3 compensation administration fund.

4 NEW SECTION. Section 54. Mandatory, nonbinding
 5 mediation. (1) Except as otherwise provided, in a dispute
 6 arising under chapter 71 or 72 of this title, the insurer
 7 and claimant shall mediate any issue concerning benefits and
 8 the mediator shall issue a report following the mediation
 9 process recommending a solution to the dispute before either
 10 party may file a petition in the workers' compensation
 11 court.

12 (2) The resolution recommended by the mediator is
 13 without administrative or judicial authority and is not
 14 binding on the parties.

15 NEW SECTION. Section 55. Duties of mediator. A
 16 mediator shall assist the parties in negotiating a
 17 resolution to their dispute by:

- 18 (1) facilitating an exchange of information between
 19 the parties;
 20 (2) assuring that all relevant evidence is brought
 21 forth during the mediation process;
 22 (3) suggesting possible solutions to issues of dispute
 23 between the parties;
 24 (4) recommending a solution; and
 25 (5) assisting the parties to voluntarily resolve their

-1 dispute.

2 NEW SECTION. Section 56. Limitations on mediation
3 proceedings. (1) Mediation proceedings are:

- 4 (a) held in private;
5 (b) informal and held without a verbatim record; and
6 (c) confidential.

7 (2) All communications, verbal or written, from the
8 parties to the mediator and any information and evidence
9 presented to the mediator during the proceeding are
10 confidential.

11 (3) A mediator's files and records are closed to all
12 but the parties.

13 (4) (a) A mediator may not be called to testify in any
14 proceeding concerning the issues discussed in the mediation
15 process.

16 (b) Neither the mediator's report nor any of the
17 information or recommendations contained in it are
18 admissible as evidence in any action subsequently brought in
19 any court of law.

20 (5) Notwithstanding subsections (1) through (4), a
21 mediator may issue a report and the parties and the mediator
22 may be required to attend a conference as set forth in
23 [section 57].

24 NEW SECTION. Section 57. Mediation procedure. (1)
25 Except as otherwise provided, a claimant or an insurer

1 having a dispute relating to benefits under chapter 71 or 72
2 of this title may petition the department for mediation of
3 the dispute.

4 (2) A party may take part in mediation proceedings
5 with or without representation.

6 (3) The mediator shall review the division file for
7 the case and may receive any additional documentation or
8 evidence either party submits.

9 (4) The mediator shall request that each party offer
10 argument summarizing the party's position. A party's
11 argument must include the evidence the party would present
12 if the case were being presented to the worker's
13 compensation judge but is not limited by the rules of
14 evidence.

15 (5) After the parties have presented all their
16 information and evidence to the mediator, he shall recommend
17 a solution to the parties within a reasonable time to be
18 established by rule.

19 (6) A party shall notify the mediator within 45 days
20 of the mailing of his report whether the party accepts the
21 mediator's recommendation. If either party does not accept
22 the mediator's recommendation, the party may petition the
23 workers' compensation court for resolution of the dispute.

24 (7) (a) If a mediator determines that either party
25 failed to cooperate in the mediation process, the mediator

1 shall prepare a written report setting forth the
 2 determination and the grounds for the determination. The
 3 report must be mailed to the parties and to the workers'
 4 compensation court. Unless a party disputes the
 5 determination as set forth in subsection (7)(c), the parties
 6 shall repeat the mediation process, but only one time.

7 (b) A mediator may determine that a party has failed
 8 to cooperate in the mediation process only if the party
 9 failed to:

10 (i) supply information or offer a summary of the
 11 party's position as reasonably requested by the mediator;

12 (ii) attend scheduled mediation conferences unless
 13 excused by the mediator; or

14 (iii) listen to and review the information and position
 15 offered by the opposing party.

16 (c) If a party disputes a mediator's determination
 17 that the party failed to cooperate in the mediation process,
 18 the party may file a petition with the workers' compensation
 19 court. Upon receipt of a petition, the court shall summon
 20 the parties and the mediator to determine by oral discussion
 21 whether the mediator's determination of noncooperation is
 22 supportable. If the court finds that the mediator's
 23 determination is supportable, the court may order the
 24 parties to attempt a second time to mediate their dispute.

25 Section 58. Section 39-71-2901, MCA, is amended to

1 read:

2 "39-71-2901. Location of office -- court powers. (1)
 3 The principal office of the workers' compensation judge
 4 shall be in the city of Helena.

5 (2) The workers' compensation court has power to:

6 (a) preserve and enforce order in its immediate the
 7 presence;

8 (b) provide for the orderly conduct of proceedings
 9 before it and its officers;

10 (c) compel obedience to its judgments, orders, and
 11 process in the same manner and by the same procedures as in
 12 civil actions in district court;

13 (d) compel the attendance of persons to testify; and

14 (e) punish for contempt in the same manner and by the
 15 same procedures as in district court."

16 Section 59. Section 39-71-2903, MCA, is amended to
 17 read:

18 "39-71-2903. Administrative procedure act and rules of
 19 evidence applicable ---judge-not-bound-by-rules-of-evidence.

20 All proceedings and hearings before the workers'
 21 compensation judge shall be in accordance with the
 22 appropriate provisions of the Montana Administrative
 23 Procedure Act. ~~However,~~ the The workers' compensation judge
 24 is not bound by common law and statutory rules of evidence."

25 Section 60. Section 39-71-2905, MCA, is amended to

1 read:

2 "39-71-2905. Petition to workers' compensation judge.
3 A claimant or an insurer who has a dispute concerning any
4 benefits under chapter 71 of this title may petition the
5 workers' compensation judge for a determination of the
6 dispute after satisfying dispute resolution requirements
7 otherwise provided in this chapter. The judge, after a
8 hearing, shall make a determination of the dispute in
9 accordance with the law as set forth in chapter 71 of this
10 title. If the dispute relates to benefits due a claimant
11 under chapter 71, the judge shall fix and determine any
12 benefits to be paid and specify the manner of payment. ~~The~~
13 After parties have satisfied dispute resolution requirements
14 provided elsewhere in this chapter, the workers'
15 compensation judge has exclusive jurisdiction to make
16 determinations concerning disputes under chapter 71, except
17 as provided in 39-71-516 and [section 20]. The penalties and
18 assessments allowed against an insurer under chapter 71 are
19 the exclusive penalties and assessments that can be assessed
20 by the workers' compensation judge against an insurer for
21 disputes arising under chapter 71."

22 Section 61. Section 39-71-2907, MCA, is amended to
23 read:

24 "39-71-2907. Increase in award for unreasonable delay
25 or refusal to pay. (1) When payment of compensation has been

1 unreasonably delayed or refused by an insurer, either prior
2 or subsequent to the issuance of an order by the workers'
3 compensation judge granting a claimant compensation
4 benefits, the full amount of the compensation benefits due a
5 claimant, between the time compensation benefits were
6 delayed or refused and the date of the order granting a
7 claimant compensation benefits, may be increased by the
8 workers' compensation judge by 20%. The question of
9 unreasonable delay or refusal shall be determined by the
10 workers' compensation judge, and such a finding constitutes
11 good cause to rescind, alter, or amend any order, decision,
12 or award previously made in the cause for the purpose of
13 making the increase provided herein.

14 (2) A finding of unreasonableness under this section
15 does not constitute a finding that the insurer acted in bad
16 faith or violated the unfair trade practices provisions of
17 Title 33, chapter 18."

18 Section 62. Section 39-71-2909, MCA, is amended to
19 read:

20 "39-71-2909. Authority to review, diminish, or
21 increase awards -- limitation. The judge may, upon the
22 petition of a claimant or an insurer that the disability of
23 the claimant has changed, review, diminish, or increase, in
24 accordance with the law on benefits as set forth in chapter
25 71 of this title, any benefits previously awarded by the

1 judge or benefits received by a claimant through settlement
 2 agreements. However, the judge may not change any final
 3 settlement or award of compensation more than 4 years after
 4 the settlement has been approved by the division or any
 5 order approving a full and final compromise settlement of
 6 compensation."

7 NEW SECTION. Section 63. Signing of petitions,
 8 pleadings, motions, and other papers -- requirements --
 9 sanctions. (1) Every petition, pleading, motion, or other
 10 paper of a party appearing before the workers' compensation
 11 court and represented by an attorney must be signed by at
 12 least one attorney of record in his individual name. The
 13 signer's address also must be stated.

14 (2) A party who is not represented by an attorney
 15 shall sign his petition, pleading, motion, or other paper
 16 and state his address.

17 (3) The signature of an attorney or party constitutes
 18 a certificate by him that:

19 (a) he has read the petition, pleading, motion, or
 20 other paper;

21 (b) to the best of his knowledge, information, and
 22 belief formed after reasonable inquiry, it is well grounded
 23 in fact;

24 (c) it is warranted by existing law or a good faith
 25 argument for the extension, modification, or reversal of

1 existing law; and

2 (d) it is not interposed for any improper purpose,
 3 such as to harass or to cause unnecessary delay or needless
 4 increase in the cost of litigation.

5 (4) If a petition, pleading, motion, or other paper is
 6 signed in violation of this section, the court, upon motion
 7 or upon its own initiative, shall impose an appropriate
 8 sanction upon the person who signed it, a represented party,
 9 or both. The sanction may include an order to pay to the
 10 other party or parties the amount of the reasonable expense
 11 incurred because of the filing of the petition, pleading,
 12 motion, or other paper, including reasonable attorney fees.

13 Section 64. Section 39-72-102, MCA, is amended to
 14 read:

15 "39-72-102. Definitions. As used in this chapter,
 16 unless the context requires otherwise, the following
 17 definitions apply:

18 (1) "Beneficiary" is as defined in 39-71-116(2).

19 (2) "Child" is as defined in 39-71-116(4).

20 (3) "Disablement" means the event of becoming
 21 physically incapacitated by reason of an occupational
 22 disease from performing work in the normal labor market
 23 worker's job pool. Silicosis, when complicated by active
 24 pulmonary tuberculosis, is presumed to be total disablement.
 25 "Disability", "total disability", and "totally disabled" are

1 synonymous with "disablement", but they have no reference to
2 "~~partia~~ permanent partial disability".

3 (4) "Division" is as defined in 39-71-116(5).

4 (5) "Employee" is as defined in 39-71-118.

5 (6) "Employer" is as defined in 39-71-117.

6 ~~(7) "Husband" is as defined in 39-71-116(7).~~

7 ~~(7)~~ (7) "Independent contractor" is as defined in
8 39-71-120.

9 ~~(8)~~ (8) "Insurer" is as defined in 39-71-116(8).

10 ~~(9)~~ (9) "Invalid" is as defined in 39-71-116(9).

11 ~~(10)~~ (10) "Occupational disease" means ~~all~~ diseases
12 arising out of or contracted from and in the course of
13 employment harm as defined in 39-71-119(1) arising out of or
14 contracted in the course and scope of employment but which
15 is caused by events occurring on more than a single day or
16 work shift. The term does not include a physical or mental
17 condition arising from emotional or mental stress or from a
18 nonphysical stimulus or activity.

19 ~~(11)~~ (11) "Order" is as defined in 39-71-116(11).

20 ~~(12)~~ (12) "Pneumoconiosis" means a chronic dust disease
21 of the lungs arising out of employment in coal mines and
22 includes anthracosis, coal workers' pneumoconiosis,
23 silicosis, or anthracosilicosis arising out of such
24 employment.

25 ~~(13)~~ (13) "Silicosis" means a chronic disease of the

1 lungs caused by the prolonged inhalation of silicon dioxide
2 (SiO₂ SB2 and characterized by small discrete nodules of
3 fibrous tissue similarly disseminated throughout both lungs
4 causing the characteristic x-ray pattern and by other
5 variable clinical manifestations.

6 ~~(14)~~ (14) "Wages" is as defined in 39-71-116(20)
7 [section 4].

8 ~~(15) "Wife" is as defined in 39-71-116(21).~~

9 ~~(16)~~ (15) "Year" is as defined in 39-71-116(6)(8) and
10 39-71-116(22)."

11 Section 65. Section 45-6-301, MCA, is amended to read:

12 "45-6-301. Theft. (1) A person commits the offense of
13 theft when he purposely or knowingly obtains or exerts
14 unauthorized control over property of the owner and:

15 (a) has the purpose of depriving the owner of the
16 property;

17 (b) purposely or knowingly uses, conceals, or abandons
18 the property in such manner as to deprive the owner of the
19 property; or

20 (c) uses, conceals, or abandons the property knowing
21 such use, concealment, or abandonment probably will deprive
22 the owner of the property.

23 (2) A person commits the offense of theft when he
24 purposely or knowingly obtains by threat or deception
25 control over property of the owner and:

1 (a) has the purpose of depriving the owner of the
2 property;

3 (b) purposely or knowingly uses, conceals, or abandons
4 the property in such manner as to deprive the owner of the
5 property; or

6 (c) uses, conceals, or abandons the property knowing
7 such use, concealment, or abandonment probably will deprive
8 the owner of the property.

9 (3) A person commits the offense of theft when he
10 purposely or knowingly obtains control over stolen property
11 knowing the property to have been stolen by another and:

12 (a) has the purpose of depriving the owner of the
13 property;

14 (b) purposely or knowingly uses, conceals, or abandons
15 the property in such manner as to deprive the owner of the
16 property; or

17 (c) uses, conceals, or abandons the property knowing
18 such use, concealment, or abandonment probably will deprive
19 the owner of the property.

20 (4) A person commits the offense of theft when he
21 purposely or knowingly obtains or exerts unauthorized
22 control over any part of any public assistance provided
23 under Title 53 by a state or county agency, regardless of
24 the original source of assistance, by means of:

25 (a) a knowingly false statement, representation, or

1 impersonation; or

2 (b) a fraudulent scheme or device.

3 (5) A person commits the offense of theft when he
4 purposely or knowingly obtains or exerts unauthorized
5 control over any part of any benefits provided under Title
6 39, chapters 71 and 72, by means of:

7 (a) a knowingly false statement, representation, or
8 impersonation; or

9 (b) deception or other fraudulent action.

10 ~~(5)(6)~~ A person convicted of the offense of theft of
11 property not exceeding \$300 in value shall be fined not to
12 exceed \$500 or be imprisoned in the county jail for any term
13 not to exceed 6 months, or both. A person convicted of the
14 offense of theft of property exceeding \$300 in value or
15 theft of any commonly domesticated hoofed animal shall be
16 fined not to exceed \$50,000 or be imprisoned in the state
17 prison for any term not to exceed 10 years, or both.

18 ~~(6)(7)~~ Amounts involved in thefts committed pursuant
19 to a common scheme or the same transaction, whether from the
20 same person or several persons, may be aggregated in
21 determining the value of the property."

22 Section 66. Section 19-12-401, MCA, is amended to
23 read:

24 "19-12-401. Eligibility for pension benefits. In order
25 to qualify for participation in the volunteer firefighters'

1 pension plan under 19-12-404, a volunteer firefighter must
2 meet each of the following requirements:

3 (1) (a) To qualify for full participation, he must
4 have completed a total of at least 20 years' service as an
5 active volunteer firefighter and as an active member of a
6 qualified volunteer fire company.

7 (b) If a firefighter is prevented from completing at
8 least 20 years' service by dissolution or discontinuance of
9 his volunteer fire company, personal relocation due to
10 transfer or loss of employment, personal disability, or any
11 other factor beyond his reasonable control, he may qualify
12 for partial participation if he has completed at least 10
13 years' service. In that event, he is eligible for only a
14 proportion of the benefits specified in 19-12-404,
15 determined by multiplying the benefits by a fraction, the
16 numerator of which is the number of years of active service
17 completed and the denominator of which is 20.

18 (c) The years of active service are cumulative and
19 need not be continuous. The service need not be acquired
20 with one single fire company but may be a total of separate
21 periods of active service with different fire companies in
22 different fire districts.

23 (d) Effective March 1, 1965, the annual period of
24 service for the purpose of this chapter is the fiscal year.
25 No fractional part of any year may count toward the service

1 requirement, and to receive credit for any particular year,
2 a volunteer firefighter must serve with one particular
3 volunteer fire company throughout that entire fiscal year.

4 (2) (a) Except as provided in subsection (2)(b), he
5 must have attained the age of 55, but he need not be an
6 active volunteer firefighter or an active member of any
7 volunteer fire company when he reaches that age.

8 (b) An active member of a volunteer fire company whose
9 duty-related injury results in a permanent, total disability
10 as defined in 39-71-116{+3} is eligible to receive a partial
11 pension regardless of his age calculated as follows:

12 (i) for a member with less than 10 years of service, a
13 pension calculated as provided in subsection (1)(b) in which
14 the numerator equals 10; or

15 (ii) for a member with 10 years or more of service, a
16 pension calculated as provided in subsection (1)(b).

17 (3) During each of the years for which he claims
18 credit under subsection (1), he must have completed a
19 minimum of 30 hours of instruction in matters pertaining to
20 firefighting under a program formulated and supervised by
21 the chief or foreman of his volunteer fire company.

22 (4) Effective July 1, 1965, no volunteer firefighter
23 may receive credit for any year of membership in a volunteer
24 fire company unless, throughout the year:

25 (a) the company maintained firefighting equipment in

1 serviceable condition of a value of \$2,500 or more; and
 2 (b) the company or the fire district served by it was
 3 rated in class 5, 6, 7, 8, 9, or 10 by the board of fire
 4 underwriters for the purpose of fire insurance premium
 5 rates.

6 (5) He must have ceased to be an active member of any
 7 volunteer fire company, and if he applies for and receives
 8 pension benefits hereunder, he will not thereafter be
 9 eligible to become an active member of any volunteer fire
 10 company."

11 Section 67. Section 39-71-118, MCA, is amended to
 12 read:

13 "39-71-118. Employee, worker, and workman defined. (1)
 14 The terms "employee", "workman", or "worker" mean:

15 (a) each person in this state, including a contractor
 16 other than an independent contractor, who is in the service
 17 of an employer, as defined by 39-71-117, under any
 18 appointment or contract of hire, expressed or implied, oral
 19 or written. The terms include aliens and minors, whether
 20 lawfully or unlawfully employed, and all of the elected and
 21 appointed paid public officers and officers and members of
 22 boards of directors of quasi-public or private corporations
 23 while rendering actual service for such corporations for
 24 pay. Casual employees as defined by 39-71-116~~(3)~~ are
 25 included as employees if they are not otherwise covered by

1 workers' compensation and if an employer has elected to be
 2 bound by the provisions of the compensation law for these
 3 casual employments, as provided in 39-71-401(2). Household
 4 or domestic service is excluded.

5 (b) a recipient of general relief who is performing
 6 work for a county of this state under the provisions of
 7 53-3-303 through 53-3-305 and any juvenile performing work
 8 under authorization of a district court judge in a
 9 delinquency prevention or rehabilitation program;

10 (c) a person receiving on-the-job vocational
 11 rehabilitation training or other on-the-job training under a
 12 state or federal vocational training program, whether or not
 13 under an appointment or contract of hire with an employer as
 14 defined in this chapter and whether or not receiving payment
 15 from a third party. However, this subsection does not apply
 16 to students enrolled in vocational training programs as
 17 outlined above while they are on the premises of a public
 18 school or community college.

19 (d) students enrolled and in attendance in programs of
 20 vocational-technical education approved by the state board
 21 of public education at designated postsecondary
 22 vocational-technical centers; or

23 (e) an airman or other person employed as a volunteer
 24 under 67-2-105.

25 (2) If the employer is a partnership or sole

1 proprietorship, such employer may elect to include as an
 2 employee within the provisions of this chapter any member of
 3 such partnership or the owner of the sole proprietorship
 4 devoting full time to the partnership or proprietorship
 5 business. In the event of such election, the employer must
 6 serve upon the employer's insurer written notice naming the
 7 partners or sole proprietor to be covered, and no partner or
 8 sole proprietor shall be deemed an employee within this
 9 chapter until such notice has been given. For premium
 10 ratemaking and for the determination of weekly wage for
 11 weekly compensation benefits, the insurance carrier shall
 12 assume a salary or wage of such electing employee to be not
 13 less than \$900 a month and not more than 1 1/2 times the
 14 average weekly wage as defined in this chapter."

15 NEW SECTION. Section 68. Repealer. Sections
 16 39-71-104, 39-71-121, 39-71-122, 39-71-410, 39-71-705
 17 through 39-71-707, 39-71-709, 39-71-738, 39-71-914,
 18 39-71-1001, 39-71-1002, 39-71-1005, 39-71-2906, 39-71-2908,
 19 and 39-72-104, MCA, are repealed.

20 NEW SECTION. Section 69. Extension of authority. Any
 21 existing authority of the department of labor and industry
 22 and the division of workers' compensation to make rules on
 23 the subject of the provisions of this act is extended to the
 24 provisions of this act.

25 NEW SECTION. Section 70. Codification instructions.

1 (1) Sections 1 and 4 are intended to be codified as an
 2 integral part of Title 39, chapter 71, part 1, and the
 3 provisions of Title 39, chapter 71, part 1, apply to
 4 sections 1 and 4.

5 (2) Sections 7 and 20 are intended to be codified as
 6 an integral part of Title 39, chapter 71, part 3, and the
 7 provisions of Title 39, chapter 71, part 3, apply to
 8 sections 7 and 20.

9 (3) Section 9 is intended to be codified as an
 10 integral part of Title 39, chapter 71, part 4, and the
 11 provisions of Title 39, chapter 71, part 4, apply to section
 12 9.

13 (4) Sections 24 and 28 are intended to be codified as
 14 an integral part of Title 39, chapter 71, part 7, and the
 15 provisions of Title 39, chapter 71, part 7, apply to
 16 sections 24 and 28.

17 (5) Sections 34 and 36 through 50 are intended to be
 18 codified as an integral part of Title 39, chapter 71, part
 19 10, and the provisions of Title 39, chapter 71, part 10,
 20 apply to sections 34 and 36 through 50.

21 (6) Section 63 is intended to be codified as an
 22 integral part of Title 39, chapter 71, part 29, and the
 23 provisions of Title 39, chapter 71, part 29, apply to
 24 section 63.

25 NEW SECTION. Section 71. Severability. If a part of

1 this act is invalid, all valid parts that are severable from
2 the invalid part remain in effect. If a part of this act is
3 invalid in one or more of its applications, the part remains
4 in effect in all valid applications that are severable from
5 the invalid applications.

-End-

6 NEW SECTION. Section 72. Applicability. (1) The
7 portions of this act providing procedures for resolution of
8 disputes apply to all injuries and diseases, regardless of
9 the date of occurrence.

10 (2) Sections 41, 49, and 50, giving the division of
11 workers' compensation jurisdiction over disputes arising
12 under Title 39, chapters 71 and 72, concerning
13 rehabilitation, apply only to injuries and diseases
14 occurring after June 30, 1987. Disputes over rehabilitation
15 for injuries and diseases occurring prior to July 1, 1987,
16 may be brought before a mediator and the workers'
17 compensation court.

18 (3) The remaining portions of this act apply only to
19 injuries, diseases, and events occurring after June 30,
20 1987.

21 NEW SECTION. Section 73. Effective dates. (1) Except
22 as provided in subsection (2), this act is effective July 1,
23 1987.

24 (2) Sections 5, 53, 69, and this section are effective
25 on passage and approval.

SENATE BILL NO. 315

INTRODUCED BY B. WILLIAMS, THAYER, C. SMITH, DARKO, CODY,
 BARDANOUE, DONALDSON, HIRSCH, M. WILLIAMS, KOLSTAD,
 PISTORIA, FARRELL, MERCER, THOMAS, WEEDING, STANG, HARPER,
 RASMUSSEN, BRANDEWIE, GALT, LYBECK, NATHE, SPAETH, NORMAN,
 J. BROWN, NEUMAN, KITSELMAN, BENGTSON, PECK, GILBERT,
 KEATING, HARRINGTON, ABRAMS, GLASER, HAMMOND, VAUGHN,
 BECK, JENKINS, GRADY, MARKS, MANUEL, HIMSL, SCHYE,
 CORNE', PETERSON, WALLIN, GRINDE, SIMON,
 JONES, CONNELLY, HOLLIDAY, ECK
 BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 WORKERS' COMPENSATION LAWS; TO CREATE A BOARD OF INDUSTRIAL
 INSURANCE; TO ABOLISH THE WORKERS' COMPENSATION COURT AND
 THE BOARD OF LABOR APPEALS; AMENDING SECTIONS 2-15-1014,
 19-12-4017, 39-51-2017, 39-51-13047, 39-51-24027, 39-51-2405
 THROUGH 39-51-24077, 39-71-1167, 39-71-1107, 39-71-1197,
 39-71-2037, 39-71-2047, 39-71-4017, 39-71-4077, 39-71-4147,
 39-71-5027, 39-71-5037, 39-71-6057, 39-71-6117 THROUGH
 39-71-6147, 39-71-7017, 39-71-7047, 39-71-7087,
 39-71-7107, 39-71-7217, 39-71-7367, 39-71-7377, 39-71-7417,
 39-71-8037, 39-71-10037, 39-71-21067, 39-71-29027, 39-71-29057,
 39-72-1027, 39-72-6107, 39-72-6127, 39-72-6137, 45-6-3017,
 50-16-3117, 53-9-1067, AND 53-9-1317 MCA; REPEALING SECTIONS

THE CHANGES IN SB 315 ARE ON ATTACHED
 PAGES 53, 57, 61 and 78. PLEASE
 REFER TO SB 315 SECOND READING (YELLOW)
 FOR COMPLETE TEXT.

THIRD READING
 SB-315



1 (2) (a) If an insurer has accepted initial liability
2 for an injury, permanent total and permanent partial wage
3 supplement benefits may be converted in whole to a lump-sum
4 payment.

5 (b) The conversion may be made only upon agreement
6 between a claimant and an insurer.

7 (c) The agreement is subject to division approval. The
8 division may approve an agreement if:

9 (i) there is a reasonable dispute concerning the
10 amount of the insurer's future liability or benefits; or

11 (ii) the amount of the insurer's projected liability is
12 reasonably certain and the settlement amount is not
13 substantially less than the present value of the insurer's
14 liability.

15 (d) The parties' failure to reach agreement is not a
16 dispute over which a mediator or the worker's compensation
17 court has jurisdiction.

18 (E) UPON APPROVAL, THE AGREEMENT CONSTITUTES A
19 COMPROMISE AND RELEASES SETTLEMENT AND MAY NOT BE REOPENED
20 BY THE DIVISION OR BY ANY COURT.

21 (3) (a) Permanent partial wage supplement benefits may
22 be converted in part to a lump-sum advance.

23 (b) The conversion may be made only upon agreement
24 between a claimant and an insurer.

25 (c) The agreement is subject to division approval. The

1 determined restriction resulting from a work-related injury
2 that precludes the worker from returning to the job the
3 worker held at the time of the injury.

4 (3) "I.W.R.P." means an individualized, written
5 rehabilitation program prepared by the department of social
6 and rehabilitation services.

7 (4) "Rehabilitation benefits" means benefits provided
8 in [sections 59-through-61 44 THROUGH 46] and 39-71-1003.

9 (5) "Rehabilitation provider" means a rehabilitation
10 counselor, other than the department of social and
11 rehabilitation services, certified by the board for
12 rehabilitation certification and designated by the insurer
13 to the division.

14 (6) "Rehabilitation services" consists of a program of
15 evaluation, planning, and delivery of goods and services to
16 assist a disabled worker to return to work.

17 (7) (a) "Worker's job pool" means those jobs typically
18 available for which a worker is qualified, consistent with
19 the worker's age, education, vocational experience and
20 aptitude and compatible with the worker's physical
21 capacities and limitations as the result of the worker's
22 injury. Lack of immediate job openings is not a factor to be
23 considered.

24 (b) A worker's job pool may be either local or
25 statewide, as follows:

1 rehabilitation provider shall evaluate and determine the
2 return-to-work capabilities of the disabled worker pursuant
3 to [section 36(2)(a) through 36(2)(d)].

4 (2) If an insurer's designated rehabilitation provider
5 has determined that all appropriate services have been
6 provided to the disabled worker under [section 36(2)(a)
7 through 36(2)(d)] and the worker has returned to work, the
8 insurer shall document that determination to the division.

9 (3) If the worker has not returned to work as provided
10 in subsection (2), the insurer shall notify the division.
11 The division shall then designate a rehabilitation panel as
12 provided in [section 39] and refer the worker to the panel.

13 NEW SECTION. Section 39. Rehabilitation panels. (1)
14 The division shall designate and administer rehabilitation
15 panels. The purpose of a panel is to advise the division on
16 a worker's eligibility for rehabilitation services. Each
17 panel shall issue to the division a report as provided in
18 [section 40].

19 (2) Each panel must be composed of at least:

20 (a) a representative of the department of social and
21 rehabilitation services;

22 (b) a representative from the department who has
23 expertise in job service listings, occupational supply and
24 demand in Montana, and other Montana career information; and

25 (c) a representative from the division, who shall

1 determination is supportable, the court may order the
2 parties to attempt a second time to mediate their dispute.

3 Section 58. Section 39-71-2901, MCA, is amended to
4 read:

5 "39-71-2901. Location of office -- court powers. (1)
6 The principal office of the workers' compensation judge
7 shall be in the city of Helena.

8 (2) The workers' compensation court has power to:

9 (a) preserve and enforce order in its immediate ~~the~~
10 presence;

11 (b) provide for the orderly conduct of proceedings
12 before it and its officers;

13 (c) compel obedience to its judgments, orders, and
14 process in the same manner and by the same procedures as in
15 civil actions in district court;

16 (d) compel the attendance of persons to testify; and

17 (e) punish for contempt in the same manner and by the
18 same procedures as in district court."

19 Section 59. Section 39-71-2903, MCA, is amended to
20 read:

21 "39-71-2903. Administrative procedure act and rules of
22 evidence applicable ~~---judge-not-bound-by-rules-of-evidence.~~

23 All proceedings and hearings before the workers'
24 compensation judge shall be in accordance with the
25 appropriate provisions of the Montana Administrative

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB315, on third reading.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to generally revise the Workers' Compensation laws; to create a Board of Industrial Insurance; to abolish the Workers' Compensation Court and the Board of Labor Appeals.

FISCAL IMPACT:

State Compensation costs will be reduced as a result of this bill by (\$16.1m) - (\$17.5m) a percentage decrease of (21%) -(23%).

NOTE:

Annual contribution of \$16.1 million needed to retire unfunded obligations in ten years is not included in the decreases disclosed above.

Uninsured Employers Fund

Benefits will be paid according to the cash available in the Fund.

State Fund: Administration

<u>FTE</u>	<u>FY88</u>			<u>FY89</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
	<u>8.00 FTE</u>	<u>24.75 FTE</u>	<u>16.25 FTE</u>	<u>8.00 FTE</u>	<u>24.25 FTE</u>	<u>16.25 FTE</u>
Personal Services	\$237,059	\$636,999	\$399,940	\$236,859	\$635,273	\$398,414
Operations	119,713	213,701	93,988	110,767	202,005	91,238
Equipment	800	36,100	35,300	800	800	0
Total	\$357,572	\$886,800	\$529,228	\$348,426	\$838,078	\$489,652

Funding:

Earmarked Special	\$357,572	\$886,800	\$529,228	\$348,426	\$838,078	\$489,652
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Current law in the table above includes the Workers' Compensation Court and the Board of Labor Appeals. Refer to the Executive Budget for the total current law budget for the Department of Labor and Industry and Workers' Compensation.

Trust Fund: (Benefits)

Incurred Liabilities	\$76,662,000	\$60,562,000	(\$16,100,000)	\$76,662,000	\$60,562,000	(\$16,100,000)
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David L. Hunter DATE 3/13/87
 DAVID L. HUNTER, BUDGET DIRECTOR
 Office of Budget and Program Planning

Robert (Bob) Williams DATE 3/14/87
 ROBERT WILLIAMS, PRIMARY SPONSOR

Fiscal Note for SB315, third reading copy

SB 315
#3

Fiscal Note Request, SB315, on third reading.

Form BD-15

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Funding Source:

	<u>Current Law</u>	<u>FY88</u> <u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>FY89</u> <u>Proposed Law</u>	<u>Difference</u>
Trust Funds						
Net Decrease	\$76,662,000	\$60,562,000	\$16,100,000	\$76,662,000	\$60,562,000	\$16,100,000

Transfers and reallocation of overhead in the Department of Labor and Industry will occur upon passage of the bill. If this legislation passes, the appropriation bill will have to reflect the indirect costs.

Fiscal Note Request, SB315, on third reading.

Form BD-15

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PART	IX. Occupational Deafness	No	No
PART	X. Rehabilitation & Reemployment		
	Section 36. Return WK/Priorities	No	Yes
	Section 37. Require Rehabilitative Service	Yes	Yes
	Section 38. Provider to Report	Yes	No
	Section 39. Rehabilitation Panel	Yes	No
	Section 40. Panel Report	Yes	No
	Section 41. DWC to Order	Yes	No
	Section 42. Refer to SRS	Yes	No
	Section 44. Total Rehabilitation Benefits	Yes	Yes
	Section 45. Wage Suplmt. & Rehab. Benefits	No	Yes
	Section 46. Auxiliary Rehab. Benefits	No	Yes
	Section 47. Self Employment	No	Yes
	Section 48. Exchange Information	Yes	No
	Section 49. Benefits Terminated	Yes	No
	Section 50. DWC Jurisdiction	Yes	No
PART	XI. Self Insurer Solvency	No	No
PART	XII. Occupational Disease	No	No
PART	XIII. Rule Making, etc.	No	No

PART I: STATEMENT OF INTENT & DECLARATION OF PUBLIC POLICY

ASSUMPTIONS:

1. Although the change from "construing the Act liberally in favor of the claimant" to "construing the Act according to its terms" would have an impact on court decisions, a foundation upon which to derive a financial estimate does not exist.

FISCAL IMPACT:

Section 1. Impossible to estimate, but the cost of the system should be reduced over time.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

With the removal of vague and imprecise language, courts should find it easier to determine legislative intent.

PART II: ADJUDICATION PROCESS

ASSUMPTIONS:

1. The workload of Department mediators will total approximately 600 cases per year. Additional workload may result from new areas proposed in the bill.
2. The workload of the Division will be approximately the same except for new areas proposed elsewhere in the bill adding to Division responsibility.
3. Mediation will be a new cost and will not substantially reduce Division workload.
4. Mediators will be responsible for determining and applying findings of fact, generally in field locations.
5. Employment Relations Division will require the following personnel as of 7/1/87: Four (4) mediators; one (1) legal secretary, and one (1) clerk.

Expenditures:

		<u>FTE</u>	<u>FY88</u>	<u>FY89</u>
	<u>DOL Employment Relations - Mediation</u>		6.00	6.00
Section 8	Personal Services		\$159,962	\$159,351
	Operating Expenses		51,069	51,069
	Equipment		4,000	0
	TOTAL		<u>\$215,031</u>	<u>\$210,420</u>
	INCREASED OPERATIONAL COSTS-Part II		<u>\$215,031</u>	<u>\$210,420</u>

FUNDING SOURCE FOR NET CHANGE:

	Earmarked Special Revenue	\$215,031	\$210,420
	TOTAL FUNDING	<u>\$215,031</u>	<u>\$210,420</u>

Fiscal Note Request, SB315, on third reading.

Form BD-15

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AFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

Local impact should parallel that felt by all employers who are covered by workers' compensation. However, the expenses presented in this part should have no direct affect.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Once the system is established, it will continue unless changed.

PART III: GENERAL PROVISIONS

No Operating Budgets Affected.

PART IV: ADMINISTRATIVE PROVISIONS

Operating budget impact integrated with Part II.

PART V: COVERAGE LIABILITY & SUBROGATION

PART VI: UNINSURED EMPLOYERS

PART VII: FILING FOR BENEFITS & ATTORNEY FEE REGULATIONS

No operating budgets affected for these parts.

PART VIII: GENERAL BENEFIT PROVISIONS

ASSUMPTIONS:

Section 24

1. Impairment evaluators are paid for by the insurer and, if a second evaluation is requested, by the requesting party.
2. The Division's principal function in impairment evaluations will be:
 - a. Rulemaking prior to implementation.
 - b. Appointment of evaluators in several geographic parts of Montana.
 - c. Directing a claimant to evaluators.
 - d. Receiving reports of evaluators and notifying affected parties of ratings.
3. Approximately 950 ratings will be rendered each year.
4. Managing the impairment evaluation system will require one (1) FTE and operating expenses.

Section 25

5. Rate-setting will involve substantial initial development costs.
6. Annual costs for computer support should be approximately the same as setting annual medical fees. However, additional FTE to manage hospital rate setting and resolve disputed issues will be required.

FISCAL IMPACT:

Expenditures:

			<u>FY88</u>	<u>FY89</u>
	A. <u>DWC - Establish Impairment Panels</u>	FTE	1.00	1.00
Section 24	Personal Services		\$ 21,208	\$ 21,126
	Operating Expenses		2,953	2,953
	Equipment		8,200	0
	TOTAL		<u>\$ 32,361</u>	<u>\$ 24,079</u>
	B. <u>DWC - Regulate Hospital Costs</u>	FTE	1.75	1.75
Section 25	Personal Services		\$ 40,803	\$ 40,647
	Operating Expenses		9,500	6,750
	Equipment		5,600	0
	TOTAL		<u>\$ 55,903</u>	<u>\$ 47,397</u>
	TOTAL PART VIII		<u>\$ 88,264</u>	<u>\$ 71,476</u>
	FUNDING SOURCE: Earmarked Special Revenue Total		<u>\$ 88,264</u>	<u>\$ 71,476</u>

PART IX: OCCUPATIONAL DEAFNESS

No operating budgets affected.

PART X: REHABILITATION & RE-EMPLOYMENT

ASSUMPTIONS:

1. There will continue to be about 2,000 workers referred to rehab per year.
2. During FY88-89, 1,500 workers will be referred to rehab panels. Because of new incentives for rehab, the number of panel referrals will decrease to 1,000 in FY90 and 600 in FY91.
3. Each of the three panel members will be financed by Division of Workers' Compensation.
4. There will be two primary locations for the panels to convene, Helena and Billings.
5. DWC will administer the panel function and assign caseload.
6. Seven and one-half additional personnel will be required to carry out this function.

FISCAL IMPACT:

Expenditures:

			<u>FY88</u>	<u>FY89</u>
	A. <u>DWC - Rehab Panel Support</u>	FTE	3.00	3.00
Sections	Personal Services		\$ 68,041	\$ 67,782
37-44 &	Operating Expenses		4,000	4,000
48-50	Equipment		7,000	0
	TOTAL		<u>\$ 79,541</u>	<u>\$ 71,782</u>
	B. <u>Job Service Panel Participation</u>	FTE	2.00	2.00
	Personal Services		\$ 48,856	\$ 48,670
	Operating Expenses		9,091	9,091
	Equipment		5,000	0
	TOTAL		<u>\$ 62,947</u>	<u>\$ 57,761</u>
	C. <u>SRS Panel Participation</u>	FTE	2.5	2.5
	Personal Services		\$ 61,070	\$ 60,838
	Operating Expenses		17,375	17,375
	Equipment		5,000	0
	TOTAL		<u>\$ 83,445</u>	<u>\$ 78,213</u>
	TOTAL PART X		<u>\$225,933</u>	<u>\$207,756</u>
	<u>FUNDING SOURCE:</u>			
	Earmarked Special Revenue		\$225,933	\$207,756
	TOTAL FUNDING		<u>\$225,933</u>	<u>\$207,756</u>

PART XI: Self-Insurer Solvency

PART XII: Occupational Disease

PART XIII: Rule Making, Repealers & Codification Instructions

No operating budgets affected for these parts.

TRUST FUNDS

ASSUMPTIONS:

1. Policyholder mix will remain constant.
2. The State Fund's market share will remain unchanged.
3. The proposed benefit payment system will not create an incentive for current policyholders to seek coverage from private carriers.
4. Demands on benefits, wage compensation and medical expenses, will remain at current levels.
5. Obligation for the unfunded liability will be recovered in 10 years.
6. The obligation for the liability created by the Stelling/Buckman decisions will be recovered in 10 years.

FISCAL IMPACT:

A. <u>State Compensation Insurance Fund</u>	<u>FY87</u>	
1. Estimated 1987 Premium income (includes 1/1/87 adjustment).	\$ 64,800,000	
Amount required to reach adequate rate base.	<u>\$ 11,862,000</u>	
Estimated premium needed to maintain current system.	<u>\$ 76,662,000</u>	
	<u>Range</u>	
	<u>Low</u>	<u>High</u>
2. Estimated premium required to maintain proposed system.	\$59,122,000	\$60,517,000
Estimated Premium Reductions	<u>(\$17,540,000)</u>	<u>(\$16,145,000)</u>
% reduction from adequate base.	22.88%	21.06%

3. Obligations to be Funded

a. Unfunded Liability	\$ 12,344,000
\$81 Million - Annually	
for <u>10</u> years.	
b. Stelling/Buckman Decision	
@ \$25 Million - Annually	<u>\$ 3,800,000</u>
for <u>10</u> years.	
Annual recovery of recognized obligations.	<u>\$ 16,144,000</u>

B. Uninsured Employers Fund

The purpose of the reform is to allow the Division to pay benefits on a cash available basis. Current law requires the Division to maintain surpluses and reserves in the Fund. Funding sources remain the same.

FUNDING SOURCE:

Expendable Trust Funds.

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

Rate reductions will depend on the organization's accident experience and the insurer's ability to offer premium decreases.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The reform should make a significant contribution toward minimizing litigation, providing more emphasis on the most seriously injured worker, and instituting a return-to-work rehabilitation program.

SUMMARY - FISCAL IMPACT

OPERATING BUDGETS

	<u>FY88</u>	<u>FY89</u>
PART I	\$ N/A	\$ N/A
PART II	215,031	210,420
PART III	N/A	N/A
PART IV	N/A	N/A
PART V	N/A	N/A
PART VI	N/A	N/A
PART VII	N/A	N/A
PART VIII	88,264	71,476
PART IX	N/A	N/A
PART X	225,933	207,756
PART XI	N/A	N/A
PART XII	N/A	N/A
PART XIII	<u>N/A</u>	<u>N/A</u>
TOTAL INCREASE OPERATING COSTS	<u>\$529,228</u>	<u>\$489,652</u>

SB 315
#3

1 STATEMENT OF INTENT

2 SENATE BILL 315

3 Senate Labor and Employment Relations Committee

1 and implement other sections as necessary and appropriate by
2 providing specific guidelines, policies, and procedures to
3 serve the efficient and fair administration of the act.

5 A statement of intent is required for this bill because
6 of the following:

7 The division of workers' compensation needs to adopt
8 rules to efficiently and fairly implement the Workers'
9 Compensation Act. There are numerous references throughout
10 the act to rules, rates, procedures, and forms to be
11 prescribed by the division (e.g., 39-71-208, 39-71-307,
12 39-71-410, 39-71-604, 39-71-2102, 39-71-2303, and
13 39-71-2304). However, there is no explicit statutory grant
14 of rulemaking authority in the chapter.

15 The Montana supreme court, in Garland v. The Anaconda
16 Company, 177 Mont. 240, 581 P.2d 431 (1978), tacitly
17 recognized 39-71-203 as a general grant of rulemaking
18 authority. To preserve the division's rulemaking authority
19 and extend it to the amendments promulgated in this bill,
20 the legislature explicitly grants and extends rulemaking
21 authority to the division to implement the Workers'
22 Compensation Act.

23 The division may adopt rules as necessary to implement
24 the act. The division shall provide the rules, procedures,
25 and forms specifically referred to in sections of the act



SENATE BILL NO. 315

INTRODUCED BY B. WILLIAMS, THAYER, C. SMITH, DARKO, CODY,
BARDANOUE, DONALDSON, HIRSCH, M. WILLIAMS, KOLSTAD,
PISTORIA, FARRELL, MERCER, THOMAS, WEEDING, STANG, HARPER,
RASMUSSEN, BRANDEWIE, GALT, LYBECK, NATHE, SPAETH, NORMAN,
J. BROWN, NEUMAN, KITSELMAN, BENGTSON, PECK, GILBERT,
KEATING, HARRINGTON, ABRAMS, GLASER, HAMMOND, VAUGHN,
BECK, JENKINS, GRADY, MARKS, MANUEL, HIMSL, SCHYE,
CORNE', PETERSON, WALLIN, GRINDE, SIMON,
JONES, CONNELLY, HOLLIDAY, ECK
BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
WORKERS' COMPENSATION LAWS; TO CREATE A BOARD OF INDUSTRIAL
INSURANCE; TO ABOLISH THE WORKERS' COMPENSATION COURT AND
THE BOARD OF LABOR APPEALS; AMENDING SECTIONS 2-15-10147
19-12-4017-39-51-2017-39-51-13047-39-51-24027-39-51-2405
THROUGH--39-51-2407,--39-71-1167,--39-71-1107,--39-71-1197
39-71-2037,--39-71-2047,--39-71-4017,--39-71-4077,--39-71-4147
39-71-5027,--39-71-5037,--39-71-6057,--39-71-6117,--THROUGH
39-71-6147,--39-71-7017,--THROUGH--39-71-7047,--39-71-7087
39-71-7107,--39-71-7217,--39-71-7367,--39-71-7377,--39-71-7417
39-71-8037,--39-71-10037,--39-71-21067,--39-71-29027,--39-71-29057
39-72-1027,--39-72-1077,--39-72-6127,--39-72-6137,--45-6-3017
50-16-3117,--53-9-1067,--AND 53-9-1317, MCA; REPEALING SECTIONS

2-15-10147,--2-15-17047,--39-51-3057,--39-51-3107,--39-51-24037,
39-51-24047,--39-51-24097,--39-51-24107,--39-71-1047,--39-71-1217,
39-71-1227,--39-71-3097,--39-71-4107,--39-71-7057,--THROUGH
39-71-7077,--39-71-7097,--39-71-7387,--39-71-9147,--39-71-10017,
39-71-10027,--39-71-10057,--39-71-29017,--THROUGH--39-71-29097,--AND
39-72-1047,--MCA;--AND--PROVIDING--APPLICABILITY--DATES--AND
EFFECTIVE--DATES, TO GENERALLY REVISE THE WORKERS'
COMPENSATION AND OCCUPATIONAL DISEASE LAWS; TO PROVIDE THAT
OBTAINING BENEFITS FRAUDULENTLY CONSTITUTES THEFT; AMENDING
SECTIONS 19-12-401, 39-71-116, 39-71-118, 39-71-119,
39-71-203, 39-71-204, 39-71-401, 39-71-407, 39-71-414,
39-71-502, 39-71-503, 39-71-605, 39-71-611 THROUGH
39-71-614, 39-71-701 THROUGH 39-71-704, 39-71-708,
39-71-710, 39-71-721, 39-71-736, 39-71-737, 39-71-741,
39-71-803, 39-71-1003, 39-71-2106, 39-71-2901, 39-71-2903,
39-71-2905, 39-71-2907, 39-71-2909, 39-72-102, AND 45-6-301,
MCA; REPEALING SECTIONS 39-71-104, 39-71-121, 39-71-122,
39-71-309, 39-71-410, 39-71-705 THROUGH 39-71-707,
39-71-709, 39-71-738, 39-71-914, 39-71-1001, 39-71-1002,
39-71-1005, 39-71-2906, 39-71-2908, AND 39-72-104, MCA;
MAKING CERTAIN PROVISIONS RETROACTIVE; AND PROVIDING
APPLICABILITY DATES AND EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
(Refer to Introduced Bill)



1 Strike everything after the enacting clause and insert:

2 NEW SECTION. Section 1. Declaration of public policy.

3 For the purposes of interpreting and applying Title 39,
4 chapters 71 and 72, the following is the public policy of
5 this state:

6 (1) It is an objective of the Montana workers'
7 compensation system to provide, without regard to fault,
8 wage supplement and medical benefits to a worker suffering
9 from a work-related injury or disease. Wage-loss benefits
10 are not intended to make an injured worker whole; they are
11 intended to assist a worker at a reasonable cost to the
12 employer. Within that limitation, the wage-loss benefit
13 should bear a reasonable relationship to actual wages lost
14 as a result of a work-related injury or disease.

15 (2) A worker's removal from the work force due to a
16 work-related injury or disease has a negative impact on the
17 worker, the worker's family, the employer, and the general
18 public. Therefore, it is an objective of the workers'
19 compensation system to return a worker to work as soon as
20 possible after the worker has suffered a work-related injury
21 or disease.

22 (3) Montana's workers' compensation and occupational
23 disease insurance systems are intended to be primarily
24 self-administering. Claimants should be able to speedily
25 obtain benefits, and employers should be able to provide

1 coverage at reasonably constant rates. To meet these
2 objectives, the system must be designed to minimize reliance
3 upon lawyers and the courts to obtain benefits and interpret
4 liabilities.

5 (4) Title 39, chapters 71 and 72, must be construed
6 according to their terms and not liberally in favor of any
7 party.

8 Section 2. Section 39-71-116, MCA, is amended to read:

9 "39-71-116. Definitions. Unless the context otherwise
10 requires, words and phrases employed in this chapter have
11 the following meanings:

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 workers' compensation prior to July 1 of each year.

18 (2) "Beneficiary" means:

19 (a) a surviving wife-or-husband spouse living with or
20 legally entitled to be supported by the deceased at the time
21 of injury;

22 (b) an unmarried child under the age of 18 years;

23 (c) an unmarried child under the age of 25 22 years
24 who is a full-time student in an accredited school or is
25 enrolled in an accredited apprenticeship program;

1 (d) an invalid child over the age of 18 years who is
2 dependent upon the decedent for support at the time of
3 injury;

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

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

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

20 (4) "Child" includes a posthumous child, a dependent
21 stepchild, and a child legally adopted prior to the injury,
22 ~~and an illegitimate child legitimized prior to the injury.~~

23 (5) "Days" means calendar days, unless otherwise
24 specified.

25 (6) "Department" means the department of labor and

1 industry.

2 ~~(5)(7)~~ "Division" means the division of workers'
3 compensation of the department of labor and industry
4 provided for in 2-15-1702.

5 ~~(6)(8)~~ "Fiscal year" means the period of time between
6 July 1 and the succeeding June 30.

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

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

16 ~~(9)(10)~~ "Invalid" means one who is physically or
17 mentally incapacitated.

18 (11) "Maximum healing" means the status reached when a
19 worker is as far restored medically as the permanent
20 character of the work-related injury will permit.

21 ~~(10)(12)~~ "Order" means any decision, rule, direction,
22 requirement, or standard of the division or any other
23 determination arrived at or decision made by the division.

24 ~~(11)(13)~~ "Payroll", "annual payroll", or "annual
25 payroll for the preceding year" means the average annual

1 payroll of the employer for the preceding calendar year or,
 2 if the employer shall not have operated a sufficient or any
 3 length of time during such calendar year, 12 times the
 4 average monthly payroll for the current year; provided, that
 5 an estimate may be made by the division for any employer
 6 starting in business where no average payrolls are
 7 available, such estimate to be adjusted by additional
 8 payment by the employer or refund by the division, as the
 9 case may actually be on December 31 of such current year.

10 ~~{12}(14)~~ "Permanent partial disability" means a
 11 condition ~~resulting from injury as defined in this chapter~~
 12 ~~that results in the actual loss of earnings or earning~~
 13 ~~capability less than total that exists after the injured~~
 14 ~~worker is as far restored as the permanent character of the~~
 15 ~~injuries will permit. Disability shall be supported by a~~
 16 ~~preponderance of medical evidence, after a worker has~~
 17 ~~reached maximum healing, in which a worker:~~

18 (a) has a medically determined physical restriction as
 19 a result of an injury as defined in 39-71-119; and

20 (b) is able to return to work in the worker's job pool
 21 pursuant to one of the options set forth in [section 36] but
 22 suffers impairment or partial wage loss, or both.

23 ~~{13}(15)~~ "Permanent total disability" means a condition
 24 resulting from injury as defined in this chapter that
 25 ~~results in the loss of actual earnings or earning capability~~

1 ~~that exists after the injured worker is as far restored as~~
 2 ~~the permanent character of the injuries will permit and~~
 3 ~~which results in the worker having no reasonable prospect of~~
 4 ~~finding regular employment of any kind in the normal labor~~
 5 ~~market. Disability shall be supported by a preponderance of~~
 6 ~~medical evidence, after a worker reaches maximum healing,~~
 7 ~~in which a worker is unable to return to work in the~~
 8 ~~worker's job pool after exhausting all options set forth in~~
 9 ~~[section 36].~~

10 ~~{14}(16)~~ The term "physician" includes "surgeon" and in
 11 either case means one authorized by law to practice his
 12 profession in this state.

13 ~~{15}(17)~~ "The plant of the employer" includes the place
 14 of business of a third person while the employer has access
 15 to or control over such place of business for the purpose of
 16 carrying on his usual trade, business, or occupation.

17 ~~{16}(18)~~ "Public corporation" means the state or any
 18 county, municipal corporation, school district, city, city
 19 under commission form of government or special charter,
 20 town, or village.

21 ~~{17}(19)~~ "Reasonably safe place to work" means that the
 22 place of employment has been made as free from danger to the
 23 life or safety of the employee as the nature of the
 24 employment will reasonably permit.

25 ~~{18}(20)~~ "Reasonably safe tools and appliances" are

1 such tools and appliances as are adapted to and are
2 reasonably safe for use for the particular purpose for which
3 they are furnished.

4 ~~(19)~~(21) "Temporary total disability" means a condition
5 resulting from an injury as defined in this chapter that
6 results in total loss of wages and exists until the injured
7 worker is as far restored as the permanent character of the
8 injuries will permit. A worker shall be paid temporary total
9 disability benefits during a reasonable period of
10 retraining. Disability shall be supported by a preponderance
11 of medical evidence reaches maximum healing.

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

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

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

23 Section 3. Section 39-71-119, MCA, is amended to read:

24 "39-71-119. Injury or injured and accident defined.

25 (1) "Injury" or "injured" means:

1 ~~(1) a tangible happening of a traumatic nature from an~~
2 ~~unexpected cause or unusual strain resulting in either~~
3 ~~external or internal physical harm and such physical~~
4 ~~condition as a result therefrom and excluding disease not~~
5 ~~traceable to injury, except as provided in subsection (2) of~~
6 ~~this section;~~

7 ~~(2) cardiovascular or pulmonary or respiratory~~
8 ~~diseases contracted by a paid firefighter employed by a~~
9 ~~municipality, village, or fire district as a regular member~~
10 ~~of a lawfully established fire department, which diseases~~
11 ~~are caused by overexertion in times of stress or danger in~~
12 ~~the course of his employment by proximate exposure or by~~
13 ~~cumulative exposure over a period of 4 years or more to~~
14 ~~heat, smoke, chemical fumes, or other toxic gases. Nothing~~
15 ~~herein shall be construed to exclude any other working~~
16 ~~person who suffers a cardiovascular, pulmonary, or~~
17 ~~respiratory disease while in the course and scope of his~~
18 ~~employment.~~

19 (a) internal or external physical harm to the body;
20 (b) damage to prosthetic devices or appliances, except
21 for damage to eyeglasses, contact lenses, dentures, or
22 hearing aids; or

23 ~~(3)(c) death resulting from injury.~~

24 (2) An injury is caused by an accident. An accident
25 is:

1 (a) an unexpected traumatic incident or unusual
2 strain;

3 (b) identifiable by time and place of occurrence;

4 (c) identifiable by member or part of the body
5 affected; and

6 (d) caused by a specific event on a single day or
7 during a single work shift.

8 (3) "Injury" or "injured" does not mean a physical or
9 mental condition arising from:

10 (a) emotional or mental stress; or

11 (b) a nonphysical stimulus or activity.

12 (4) "Injury" or "injured" does not include a disease
13 that is not caused by an accident.

14 (5) A cardiovascular, pulmonary, respiratory, or other
15 disease, cerebrovascular accident, or myocardial infarction
16 suffered by a worker is an injury only if the accident is
17 the primary cause of the physical harm in relation to other
18 factors contributing to the physical harm."

19 NEW SECTION. Section 4. Wages defined. (1) "Wages"
20 means the gross remuneration paid in money, or in a
21 substitute for money, for services rendered by an employee.
22 Wages include but are not limited to:

23 (a) commissions, bonuses, and remuneration at the
24 regular hourly rate for overtime work, holidays, vacations,
25 and sickness periods;

1 (b) board or lodging, RENT, OR HOUSING if it
2 constitutes a part of the employee's remuneration, AND IS
3 based on the ITS actual value of-the-board, lodging, rent,
4 or-housing; and

5 (c) payments made to an employee on any basis other
6 than time worked, including but not limited to piecework, an
7 incentive plan, or profit-sharing arrangement.

8 (2) Wages do not include:

9 (a) employee travel expense reimbursements or
10 allowances for meals, lodging, travel, and subsistence;

11 (b) special rewards for individual invention or
12 discovery;

13 (c) tips and other gratuities received by the employee
14 in excess of those documented to the employer for tax
15 purposes;

16 (d) contributions made by the employer to a group
17 insurance or pension plan; or

18 (e) vacation or sick leave benefits accrued but not
19 paid.

20 (3) For compensation benefit purposes, the average
21 actual earnings for the four pay periods immediately
22 preceding the injury are the employee's wages, except if:

23 (a) the term of employment for the same employer is
24 less than four pay periods, in which case the employee's
25 wages are the hourly rate times the number of hours in a

1 week for which the employee was hired to work; or
 2 (b) for good cause shown by the claimant, the use of
 3 the four pay periods does not accurately reflect the
 4 claimant's employment history with the employer, in which
 5 case the insurer may use additional pay periods.

6 Section 5. Section 39-71-203, MCA, is amended to read:
 7 "39-71-203. Powers of division ~~rules~~. (1) The
 8 division is hereby vested with full power, authority, and
 9 jurisdiction to do and perform any and all things, whether
 10 herein specifically designated or in addition thereto, ~~which~~
 11 ~~that~~ are necessary or convenient in the exercise of any
 12 power, authority, or jurisdiction conferred upon it under
 13 this chapter.

14 (2) The division may adopt rules to carry out the
 15 provisions of this chapter."

16 Section 6. Section 39-71-204, MCA, is amended to read:
 17 "39-71-204. Rescission, alteration, or amendment by
 18 division of its orders, decisions, or awards ~~limitation~~
 19 ~~effect~~ ~~appeal~~. (1) ~~Except as provided in subsection~~
 20 ~~(2), the~~ The division shall have has continuing jurisdiction
 21 over all its orders, decisions, and awards and may, at any
 22 time, upon notice, and after opportunity to be heard is
 23 given to the parties in interest, rescind, alter, or amend
 24 any such order, decision, or award made by it upon good
 25 cause appearing therefor.

1 ~~(2) The division or the workers' compensation judge~~
 2 ~~shall not have power to rescind, alter, or amend any final~~
 3 ~~settlement or award of compensation more than 4 years after~~
 4 ~~the same has been approved by the division. Rescinding,~~
 5 ~~altering, or amending a final settlement within the 4-year~~
 6 ~~period shall be by agreement between the claimant and the~~
 7 ~~insurer. If the claimant and the insurer cannot agree, the~~
 8 ~~dispute shall be considered a dispute for which the workers'~~
 9 ~~compensation judge has jurisdiction to make a determination.~~
 10 ~~Except as provided in 39-71-2908, the division or the~~
 11 ~~workers' compensation judge shall not have the power to~~
 12 ~~rescind, alter, or amend any order approving a full and~~
 13 ~~final compromise settlement of compensation.~~

14 (3) (2) Any order, decision, or award rescinding,
 15 altering, or amending a prior order, decision, or award
 16 shall have has the same effect as original orders or awards.

17 (3) If a party is aggrieved by a division order, the
 18 party may appeal the dispute to the workers' compensation
 19 judge."

20 NEW SECTION. Section 7. Filing true claim ~~or~~
 21 obtaining benefits through deception or other fraudulent
 22 means ~~criminal penalty~~. (1) A person filing a claim under
 23 this chapter or chapter 72 of this title, by signing the
 24 claim, affirms the information filed is true and correct to
 25 the best of that person's knowledge.

1 (2) A person who obtains or assists in obtaining
2 benefits to which the person is not entitled under this
3 chapter or chapter 72 of this title may be guilty of theft
4 under 45-6-301. A county attorney may initiate criminal
5 proceedings against the person.

6 NEW SECTION. Section 8. Disputes -- jurisdiction --
7 evidence -- settlement requirements -- mediation. (1) A
8 dispute concerning benefits arising under this chapter or
9 chapter 72, OTHER THAN THE DISPUTES DESCRIBED IN SUBSECTION
10 (2), must be brought before a department mediator as
11 provided in [sections 52 through 57]. If a dispute still
12 exists after the parties satisfy the mediation requirements
13 in [sections 52 through 57], either party may petition the
14 workers' compensation court for a resolution.

15 (2) A dispute arising under this chapter that does not
16 concern benefits or a dispute for which a specific provision
17 of this chapter gives the division jurisdiction must be
18 brought before the division.

19 (3) An appeal from a division order may be made to the
20 workers' compensation court.

21 (4) The common law and statutory rules of evidence do
22 not apply in a case brought to hearing before the division.

23 (5) Except as otherwise provided in this chapter,
24 before a party may bring a dispute concerning benefits
25 before a mediator, the parties shall attempt to settle as

1 follows:

2 (a) The party making a demand shall present the other
3 party with a specific written demand that contains
4 sufficient explanation and documentary evidence to enable
5 the other party to thoroughly evaluate the demand.

6 (b) The party receiving the demand shall respond in
7 writing within 15 working days of receipt. If the demand is
8 denied in whole or in part, the response shall state the
9 basis of the denial.

10 (c) ~~A--party-may-move-to-dismiss-a-petition-if-it-does~~
11 ~~not-comply-with-this-subsection--A~~ UPON MOTION OF A PARTY,
12 THE mediator has the authority to dismiss a petition if he
13 finds that the EITHER party did not comply with this
14 subsection, but the mediator's decision may be reviewed by
15 the workers' compensation court upon motion of a party.

16 ~~(6)(D)~~ Nothing in this subsection relieves a party of
17 an obligation otherwise contained in this chapter.

18 NEW SECTION. Section 9. Financial incentives to
19 institute safety programs. The state compensation insurance
20 fund, plan No. 3, and private insurers, plan No. 2, may
21 provide financial incentives to an employer who implements a
22 formal safety program. The insurance carrier may provide to
23 an employer a premium discount that reflects the degree of
24 risk diminished by the implemented safety program.

25 Section 10. Section 39-71-401, MCA, is amended to

1 read:

2 "39-71-401. Employments covered and employments
3 exempted. (1) Except as provided in subsection (2) of this
4 section, the Workers' Compensation Act applies to all
5 employers as defined in 39-71-117 and to all employees as
6 defined in 39-71-118. An employer who has any employee in
7 service under any appointment or contract of hire, expressed
8 or implied, oral or written, shall elect to be bound by the
9 provisions of compensation plan No. 1, 2, or 3. Every
10 employee whose employer is bound by the Workers'
11 Compensation Act is subject to and bound by the compensation
12 plan that has been elected by the employer.

13 (2) Unless the employer elects coverage for these
14 employments under this chapter and an insurer allows such an
15 election, the Workers' Compensation Act does not apply to
16 any of the following employments:

- 17 (a) household and domestic employment;
18 (b) casual employment as defined in 39-71-116~~(3)~~
19 ~~except employment of a volunteer under 67-2-105;~~
20 (c) employment of members of an employer's family
21 dwelling in the employer's household;
22 (d) employment of sole proprietors or working members
23 of a partnership ~~other than those who consider themselves or~~
24 ~~hold themselves out as independent contractors and who are~~
25 ~~not contracting for agricultural services to be performed on~~

1 ~~a--farm--or--ranch;--or--for--broker--or--salesman--services~~
2 ~~performed--under--a--license--issued--by--the--board--of--realty~~
3 ~~regulatory--or--for--services--as--a--direct--seller--engaged--in~~
4 ~~the--sale--of--consumer--products--to--customers--primarily--in--the~~
5 ~~home, except as provided in subsection (3);~~

6 (e) employment of a broker or salesman performing
7 under a license issued by the board of realty regulation;

8 (f) employment of a direct seller engaged in the sale
9 of consumer products, primarily in the customer's home;

10 ~~(e)(g)~~ employment for which a rule of liability for
11 injury, occupational disease, or death is provided under the
12 laws of the United States;

13 ~~(f)(h)~~ employment of any person performing services in
14 return for aid or sustenance only, except employment of a
15 volunteer under 67-2-105;

16 ~~(g)(i)~~ employment with any railroad engaged in
17 interstate commerce, except that railroad construction work
18 ~~shall be is~~ included in and subject to the provisions of
19 this chapter;

20 ~~(h)(j)~~ employment as an official, including a timer,
21 referee, or judge, at a school amateur athletic event,
22 unless the person is otherwise employed by a school
23 district.

24 (3) A sole proprietor, or a working member of a
25 partnership who holds himself out or considers himself an

1 independent contractor, ~~and who is not contracting for~~
 2 ~~agricultural services to be performed on a farm or ranch, or~~
 3 ~~for broker or salesman services performed under a license~~
 4 ~~issued by the board of realty regulation, or for services as~~
 5 ~~a direct seller engaged in the sale of consumer products to~~
 6 ~~customers primarily in the home~~ must elect to be bound
 7 personally and individually by the provisions of
 8 compensation plan No. 1, 2, or 3, but he may apply to the
 9 division for an exemption from the Workers' Compensation Act
 10 for himself. The application must be made in accordance with
 11 the rules adopted by the division. The division may deny the
 12 application only if it determines that the applicant is not
 13 an independent contractor. When an application is approved
 14 by the division, it is conclusive as to the status of an
 15 independent contractor and precludes the applicant from
 16 obtaining benefits under this chapter.

17 (4) (a) A private corporation shall provide coverage
 18 for its officers and other employees under the provisions of
 19 compensation plan No. 1, 2, or 3. However, pursuant to such
 20 rules as the division promulgates and subject in all cases
 21 to approval by the division, an officer of a private
 22 corporation may elect not to be bound as an employee under
 23 this chapter by giving a written notice, on a form provided
 24 by the division, served in the following manner:

25 (i) if the employer has elected to be bound by the

1 provisions of compensation plan No. 1, by delivering the
 2 notice to the board of directors of the employer and the
 3 division; or

4 (ii) if the employer has elected to be bound by the
 5 provisions of compensation plan No. 2 or 3, by delivering
 6 the notice to the board of directors of the employer, the
 7 division, and the insurer.

8 (b) If the employer changes plans or insurers, the
 9 officer's previous election is not effective and the officer
 10 shall again serve notice as provided if he elects not to be
 11 bound.

12 (c) The appointment or election of an employee as an
 13 officer of a corporation for the purpose of excluding the
 14 employee from coverage under this chapter does not entitle
 15 the officer to elect not to be bound as an employee under
 16 this chapter. In any case, the officer must sign the notice
 17 required by subsection (4)(a) under oath or affirmation, and
 18 he is subject to the penalties for false swearing under
 19 45-7-202 if he falsifies the notice.

20 (4)(5) Each employer shall post a sign in the
 21 workplace at the locations where notices to employees are
 22 normally posted, informing employees about the employer's
 23 current provision of compensation insurance. A workplace is
 24 any location where an employee performs any work-related act
 25 in the course of employment, regardless of whether the

1 location is temporary or permanent, and includes the place
 2 of business or property of a third person while the employer
 3 has access to or control over such place of business or
 4 property for the purpose of carrying on his usual trade,
 5 business, or occupation. The sign will be provided by the
 6 division, distributed through insurers or directly by the
 7 division, and posted by employers in accordance with rules
 8 adopted by the division. An employer who purposely or
 9 knowingly fails to post a sign as provided in this
 10 subsection is subject to a \$50 fine for each citation."

11 Section 11. Section 39-71-407, MCA, is amended to
 12 read:

13 "39-71-407. Liability of insurers -- limitations. (1)
 14 Every insurer is liable for the payment of compensation, in
 15 the manner and to the extent hereinafter provided, to an
 16 employee of an employer it insures who receives an injury
 17 arising out of and in the course of his employment or, in
 18 the case of his death from such injury, to his
 19 beneficiaries, if any.

20 (2) (a) An insurer is liable for an injury as defined
 21 in 39-71-119 if the claimant establishes it is more probable
 22 than not that:

23 (i) a claimed injury has occurred; or
 24 (ii) a claimed injury aggravated a preexisting
 25 condition.

1 (b) Proof that it was medically possible that a
 2 claimed injury occurred or that such claimed injury
 3 aggravated a preexisting condition is not sufficient to
 4 establish liability.

5 (3) An employee who suffers an injury or dies while
 6 traveling is not covered by this chapter unless:

7 (a) (i) the employer furnishes the transportation or
 8 the employee receives reimbursement from the employer for
 9 costs of travel, gas, oil, or lodging as a part of the
 10 employee's benefits or employment agreement; and

11 (ii) the travel is necessitated by and on behalf of the
 12 employer as an integral part, or condition, of the
 13 employment; or

14 (b) the travel is required by the employer as part of
 15 the employee's job duties.

16 (4) An employee is not eligible for benefits otherwise
 17 payable under this chapter if the employee's use of alcohol
 18 or drugs not prescribed by a physician is the sole and
 19 exclusive cause of the injury or death. However, if the
 20 employer had knowledge of and failed to attempt to stop the
 21 employee's use of alcohol or drugs, this subsection does not
 22 apply."

23 Section 12. Section 39-71-414, MCA, is amended to
 24 read:

25 "39-71-414. Subrogation. (1) If an action is

1 prosecuted as provided for in 39-71-412 or 39-71-413 and
 2 except as otherwise provided in this section, the insurer is
 3 entitled to subrogation for all compensation and benefits
 4 paid or to be paid under the Workers' Compensation Act. The
 5 insurer's right of subrogation is a first lien on the claim,
 6 judgment, or recovery.

7 (2) (a) If the injured employee intends to institute
 8 the third party action, he shall give the insurer reasonable
 9 notice of his intention to institute the action.

10 (b) The injured employee may request that the insurer
 11 pay a proportionate share of the reasonable cost of the
 12 action, including attorneys' fees.

13 (c) The insurer may elect not to participate in the
 14 cost of the action. If this election is made, the insurer
 15 waives 50% of its subrogation rights granted by this
 16 section.

17 (d) If the injured employee or the employee's personal
 18 representative institutes the action, the employee is
 19 entitled to at least one-third of the amount recovered by
 20 judgment or settlement less a proportionate share of
 21 reasonable costs, including attorneys' fees, if the amount
 22 of recovery is insufficient to provide the employee with
 23 that amount after payment of subrogation.

24 (3) If an injured employee refuses or fails to
 25 institute the third party action within 1 year from the date

1 of injury, the insurer may institute the action in the name
 2 of the employee and for the employee's benefit or that of
 3 the employee's personal representative. If the insurer
 4 institutes the action, it shall pay to the employee any
 5 amount received by judgment or settlement which is in excess
 6 of the amounts paid or to be paid under the Workers'
 7 Compensation Act after the insurer's reasonable costs,
 8 including attorneys' fees for prosecuting the action, have
 9 been deducted from the recovery.

10 (4) An insurer may enter into compromise agreements in
 11 settlement of subrogation rights.

12 (5) If the amount of compensation and other benefits
 13 payable under the Workers' Compensation Act have not been
 14 fully determined at the time the employee, the employee's
 15 heirs or personal representatives, or the insurer have
 16 settled in any manner the action as provided for in this
 17 section, the division shall determine what proportion of the
 18 settlement shall be allocated under subrogation. The
 19 division's determination may be appealed to the workers'
 20 compensation judge.

21 (6) (a) The insurer is entitled to full subrogation
 22 rights under this section, even though the claimant is able
 23 to demonstrate damages in excess of the workers'
 24 compensation benefits and the third-party recovery combined.
 25 The insurer may subrogate against the entire settlement or

1 award of a third party claim brought by the claimant or his
 2 personal representative, without regard to the nature of the
 3 damages.

4 (b) If no survival action exists and the parties reach
 5 a settlement of a wrongful death claim without apportionment
 6 of damages by a court or jury, the insurer may subrogate
 7 against the entire settlement amount, without regard to the
 8 parties' apportionment of the damages, unless the insurer is
 9 a party to the settlement agreement."

10 Section 13. Section 39-71-502, MCA, is amended to
 11 read:

12 "39-71-502. Creation and purpose of uninsured
 13 employers' fund. There is created an uninsured employers'
 14 fund. The purpose of the fund is to pay to an injured
 15 employee of an uninsured employer the same benefits the
 16 employee would have received if the employer had been
 17 properly enrolled under compensation plan No. 1, 2, or 3,
 18 except as provided in 39-71-503(2)."

19 Section 14. Section 39-71-503, MCA, is amended to
 20 read:

21 "39-71-503. Administration of fund. (1) The division
 22 shall administer the fund and shall pay all proper benefits
 23 to injured employees of uninsured employers.

24 (2) ~~Proper--surpluses--and--reserves--shall--be--kept--for~~
 25 ~~the--fund.~~ Surpluses and reserves shall not be kept for the

1 fund. The division shall make such payments as it considers
 2 appropriate as funds become available from time to time. The
 3 payment of weekly disability benefits takes preference over
 4 the payment of medical benefits. No lump-sum payments of
 5 future projected benefits, including impairment awards, may
 6 be made from the fund. The board of investments shall invest
 7 the moneys of the fund. The cost of administration of the
 8 fund shall be paid out of the money in the fund."

9 Section 15. Section 39-71-605, MCA, is amended to
 10 read:

11 "39-71-605. Examination of employee by physician --
 12 effect of refusal to submit to examination -- report and
 13 testimony of physician -- cost. (1) (a) Whenever in case of
 14 injury the right to compensation under this chapter would
 15 exist in favor of any employee, he shall, upon the written
 16 request of ~~his-employer-or~~ the insurer, submit from time to
 17 time to examination by a physician or panel of physicians,
 18 who shall be provided and paid for by such ~~employer--or~~
 19 insurer, and shall likewise submit to examination from time
 20 to time by any physician or panel of physicians selected by
 21 the division ~~or-any-member-or-examiner-or-referee-thereof.~~

22 (b) The request or order for such examination shall
 23 fix a time and place therefor, due regard being had to the
 24 convenience of the employee and his physical condition and
 25 ability to attend at the time and place fixed. The employee

1 shall be entitled to have a physician present at any such
2 examination. So long as the employee, after such written
3 request, shall fail or refuse to submit to such examination
4 or shall in any way obstruct the same, his right to
5 compensation shall be suspended. Any physician or panel of
6 physicians employed by the--employer, the insurer, or the
7 division who shall make or be present at any such
8 examination may be required to testify as to the results
9 thereof.

10 (2) In the event of a dispute concerning the physical
11 condition of a claimant or the cause or causes of his the
12 injury or disability, if any, the division, at the request
13 of the claimant,--employer, or insurer, as the case may be,
14 shall require the claimant to submit to such examination as
15 it may deem desirable by a physician or panel of physicians
16 within the state or elsewhere who have had adequate and
17 substantial experience in the particular field of medicine
18 concerned with the matters presented by the dispute. The
19 physician or panel of physicians making the examination
20 shall file a written report of findings with the division
21 for its use in the determination of the controversy
22 involved. The division shall pay the physician or panel of
23 physicians for the examination and shall be reimbursed by
24 the party who requested it.

25 (3) This section does not apply to impairment

1 evaluations provided for in [section 24]."

2 Section 16. Section 39-71-611, MCA, is amended to
3 read:

4 "39-71-611. Costs and attorneys' fees payable on
5 denial of claim or termination of benefits later found
6 compensable. ~~In the event an insurer denies liability for a~~
7 ~~claim for compensation or terminates compensation benefits~~
8 ~~and the claim is later adjudged compensable by the workers'~~
9 ~~compensation judge or on appeal, the insurer shall pay~~
10 ~~reasonable costs and attorneys' fees as established by the~~
11 ~~workers' compensation judge. (1) The insurer shall pay~~
12 reasonable costs and attorney fees as established by the
13 workers' compensation court if:

14 (a) the insurer denies liability for a claim for
15 compensation or terminates compensation benefits;

16 (b) the claim is later adjudged compensable by the
17 workers' compensation court; and

18 (c) in the case of attorneys' fees, the workers'
19 compensation court determines that the insurer's actions in
20 denying liability or terminating benefits were unreasonable.

21 (2) A finding of unreasonableness against an insurer
22 made under this section does not constitute a finding that
23 the insurer acted in bad faith or violated the unfair trade
24 practices provisions of Title 33, chapter 18."

25 Section 17. Section 39-71-612, MCA, is amended to

1 read:

2 "39-71-612. Costs and attorneys' fees that may be
3 assessed against an employer--or insurer by workers'
4 compensation judge. (1) If an employer--or insurer pays or
5 tenders submits a written offer of payment of compensation
6 under chapter 71 or 72 of this title but controversy relates
7 to the amount of compensation due, the case is brought
8 before the workers' compensation judge for adjudication of
9 the controversy, and the award granted by the judge is
10 greater than the amount paid or tendered offered by the
11 employer--or insurer, a reasonable attorney's fee and costs
12 as established by the workers' compensation judge if the
13 case has gone to a hearing may be awarded by the judge in
14 addition to the amount of compensation.

15 ~~(2)--When-an--attorney's--fee--is--awarded--against--an~~
16 ~~employer--or--insurer--under--this--section--there--may--be--further~~
17 ~~assessed--against--the--employer--or--insurer--reasonable--costs,~~
18 ~~fees,--and--mileage--for--necessary--witnesses--attending--a~~
19 ~~hearing--on--the--claimant's--behalf.--Both--the--necessity--for--the~~
20 ~~witness--and--the--reasonableness--of--the--fees--must--be--approved~~
21 ~~by--the--workers'-compensation-judge.~~

22 (2) An award of attorneys' fees under subsection (1)
23 may only be made if it is determined that the actions of the
24 insurer were unreasonable. Any written offer of payment made
25 30 days or more before the date of hearing must be

1 considered a valid offer of payment for the purposes of this
2 section.

3 (3) A finding of unreasonableness against an insurer
4 made under this section does not constitute a finding that
5 the insurer acted in bad faith or violated the unfair trade
6 practices provisions of Title 33, chapter 18."

7 Section 18. Section 39-71-613, MCA, is amended to
8 read:

9 "39-71-613. Regulation of attorneys' fees --
10 forfeiture of fee for noncompliance. (1) When an attorney
11 represents or acts on behalf of a claimant or any other
12 party on any workers' compensation claim, the attorney shall
13 submit to the division a contract of employment, on a form
14 provided by the division, stating specifically the terms of
15 the fee arrangement between the attorney and the claimant.

16 (2) The administrator of the division may regulate the
17 amount of the attorney's fee in any workers' compensation
18 case. In regulating the amount of the fee, the
19 administrator shall consider:

20 (a) the benefits the claimant gained due to the
21 efforts of the attorney;

22 (b) the time the attorney was required to spend on the
23 case;

24 (c) the complexity of the case; and

25 (d) any other relevant matter the administrator may

1 consider appropriate.

2 (3) If an attorney violates a provision of this
3 section, a rule adopted under this section, or an order
4 fixing an attorney's fee under this section, he shall
5 forfeit the right to any fee which he may have collected or
6 been entitled to collect."

7 Section 19. Section 39-71-614, MCA, is amended to
8 read:

9 "39-71-614. Calculation of attorney fees --
10 limitation. (1) The amount of an attorney's fee assessed
11 against an ~~employer-or~~ insurer under 39-71-611 or 39-71-612
12 must be based exclusively on the time spent by the attorney
13 in representing the claimant on the issues brought before
14 ~~the-workers'-compensation-judge to hearing.~~ The attorney
15 must document the time spent ~~and-give-the-documentation-to~~
16 ~~the-judge,~~ but the judge is not bound by the documentation
17 submitted.

18 (2) The judge shall determine a reasonable attorney
19 fee and assess costs. ~~He-is-not-bound-by-the-documentation~~
20 ~~submitted-to-him.~~ The hourly ~~fee--the--judge--applies~~ rate
21 applied to the time spent must be based on the attorney's
22 customary and current hourly ~~fee~~ rate for legal work
23 performed in this state, subject to a maximum established by
24 the division.

25 ~~(2)(3)~~ (3) This section does not restrict a claimant and

1 an attorney from entering into a contingency fee arrangement
2 under which the attorney receives a percentage of the amount
3 of compensation payments received by the claimant because of
4 the efforts of the attorney. However, an amount equal to any
5 fee and costs assessed against an ~~employer-or~~ insurer under
6 ~~39-71-61~~ 39-71-611 or 39-71-612 and this section must be
7 deducted from the fee an attorney is entitled to from the
8 claimant under a contingency fee arrangement."

9 NEW SECTION. Section 20. Employer not to terminate
10 worker for filing claim -- preference -- jurisdiction over
11 dispute. (1) An employer may not use as grounds for
12 terminating a worker the filing of a claim under this
13 chapter or chapter 72 of this title.

14 (2) ~~IF~~ WHEN an injured worker is capable of returning
15 to work within 2 years from the date of injury and has
16 received a medical release to return to work, the worker
17 must be given a preference over ~~new-hires~~ OTHER APPLICANTS
18 for a comparable position that becomes vacant ~~within-such~~
19 ~~2-year-period~~ if:

20 (a) the position is consistent with the worker's
21 physical condition and vocational abilities; ~~and~~

22 (b) ~~the-worker-is-substantially-equally-qualified-as~~
23 ~~other-applicants.~~

24 (3) This preference applies only to employment with
25 the employer for whom the employee was working at the time

1 the injury occurred.

2 (4) The division, department, and workers'
3 compensation court do not have jurisdiction to administer or
4 resolve a dispute under this section. Exclusive jurisdiction
5 is with the district court.

6 Section 21. Section 39-71-701, MCA, is amended to
7 read:

8 "39-71-701. Compensation for injuries----producing
9 temporary total disability. (1) Subject to the limitation in
10 39-71-736, a worker is eligible for temporary total
11 disability benefits when the worker suffers a total loss of
12 wages as a result of an injury and until the worker reaches
13 maximum healing.

14 (2) The determination of temporary total disability
15 must be supported by a preponderance of medical evidence.

16 (3) Weekly compensation benefits for injury
17 producing total temporary total disability shall be 66 2/3%
18 of the wages received at the time of the injury. The maximum
19 weekly compensation benefits shall not exceed \$110--beginning
20 July--17--1973;--Beginning--July-17-1974,--the--maximum--weekly
21 compensation--benefits--shall--not--exceed the state's average
22 weekly wage at the time of injury. Total--temporary Temporary
23 total disability benefits shall be paid for the duration of
24 the worker's temporary disability. The weekly benefit amount
25 may not be adjusted for cost of living as provided in

1 39-71-702(5).

2 ~~(2)~~(4) In cases where it is determined that periodic
3 disability benefits granted by the Social Security Act are
4 payable because of the injury, the weekly benefits payable
5 under this section are reduced, but not below zero, by an
6 amount equal, as nearly as practical, to one-half the
7 federal periodic benefits for such week, which amount is to
8 be calculated from the date of the disability social
9 security entitlement.

10 (5) Notwithstanding subsection (3), beginning July 1,
11 1987, through June 30, 1989, weekly compensation benefits
12 for temporary total disability may not exceed the state's
13 average weekly wage of \$299 established July 1, 1986."

14 Section 22. Section 39-71-702, MCA, is amended to
15 read:

16 "39-71-702. Compensation for injuries----producing
17 permanent total permanent disability. (1) If a worker is no
18 longer temporarily totally disabled and is unable to return
19 to work due to injury, the worker is eligible for permanent
20 total disability benefits. At an insurer's request, an
21 evaluation of all options under [section 36] must be made
22 before permanent total disability status is determined.
23 Permanent total disability benefits must be paid for the
24 duration of the worker's permanent total disability, subject
25 to 39-71-710 and [section 47].

1 (2) The determination of permanent total disability
 2 must be supported by a preponderance of medical evidence.

3 ~~{1}{3}~~ Weekly compensation benefits for an injury
 4 producing--total--permanent resulting in permanent total
 5 disability shall be 66 2/3% of the wages received at the
 6 time of the injury. The maximum weekly compensation benefits
 7 shall not exceed the state's average weekly wage at the time
 8 of injury. Total-permanent-disability-benefits-shall-be-paid
 9 for-the-duration-of-the-worker's-total-permanent-disability.

10 ~~{2}{4}~~ In cases where it is determined that periodic
 11 disability benefits granted by the Social Security Act are
 12 payable because of the injury, the weekly benefits payable
 13 under this section are reduced, but not below zero, by an
 14 amount equal, as nearly as practical, to one-half the
 15 federal periodic benefits for such week, which amount is to
 16 be calculated from the date of the disability social
 17 security entitlement.

18 (5) A worker's benefit amount must be adjusted for a
 19 cost-of-living increase on the next July 1 after 104 weeks
 20 of permanent total disability benefits have been paid, and
 21 ON each succeeding July 1. A worker may not receive more
 22 that THAN 10 such adjustments. The adjustment must be the
 23 percentage increase, if any, in the state's average weekly
 24 wage as adopted by the division over the state's average
 25 weekly wage adopted for the previous year, or 3%, whichever

1 is less.

2 (6) Notwithstanding subsection (3), beginning July 1,
 3 1987, through June 30, 1989, the maximum weekly compensation
 4 benefits for permanent total disability may not exceed the
 5 state's average weekly wage of \$299 established July 1,
 6 1986."

7 Section 23. Section 39-71-703, MCA, is amended to
 8 read:

9 "39-71-703. Compensation for injuries---causing
 10 PERMANENT partial disability -- IMPAIRMENT AWARDS AND WAGE
 11 SUPPLEMENTS. (1) Weekly--compensation--benefits-for-injury
 12 producing-partial-disability-shall-be-66-2/3%-of-the--actual
 13 diminution--in--the--worker's--earning--capacity-measured-in
 14 dollars,--subject--to--a--maximum--weekly--compensation---of
 15 one-half-the-state's-average-weekly-wage.

16 ~~{2}~~ The compensation shall be paid during the period
 17 of disability, not exceeding, however, 500 weeks in cases of
 18 partial--disability.---However, compensation---for---partial
 19 disability--resulting--from--the--loss--of--or--injury--to--any
 20 member-shall-not-be-payable-for-a-greater--number--of--weeks
 21 than--is--specified-in-39-71-705-for-the-loss-of-the-member.
 22 THE BENEFITS AVAILABLE FOR PERMANENT PARTIAL DISABILITY ARE
 23 IMPAIRMENT AWARDS AND WAGE SUPPLEMENTS. A worker who has
 24 reached maximum healing and is not eligible for permanent
 25 total disability benefits but who has a medically determined

1 physical restriction as a result of a work-related injury
 2 may be eligible for an impairment award and wage supplement
 3 benefits as follows:

4 (a) The following procedure must be followed for an
 5 impairment award:

6 (i) Each percentage point of impairment is compensated
 7 in an amount equal to 5 weeks times 66 2/3% of the wages
 8 received at the time of the injury, subject to a maximum
 9 compensation rate of one-half of the state's average weekly
 10 wage at the time of injury.

11 (ii) When a worker reaches maximum healing, an
 12 impairment rating is rendered by one or more physicians as
 13 provided for in [section 24]. Impairment benefits are
 14 payable beginning the date of maximum healing.

15 (iii) An impairment award may be paid biweekly or in a
 16 lump sum, at the discretion of the worker. Lump sums paid
 17 for impairments are not subject to the requirements set
 18 forth in 39-71-741, except that lump-sum conversions for
 19 benefits not accrued may be reduced to present value at the
 20 rate set forth by the division in 39-71-741(5).

21 (iv) If a worker becomes eligible for permanent total
 22 disability benefits, the insurer may recover any lump-sum
 23 advance paid to a claimant for impairment, as set forth in
 24 39-71-741(5). Such right of recovery does not apply to
 25 lump-sum benefits paid for the period prior to claimant's

1 eligibility for permanent total disability benefits.

2 (v) If a worker suffers additional injury, an
 3 impairment award payable for the additional injury must be
 4 reduced by the amount of a previous award paid for
 5 impairment to the same site on the body.

6 (b) The following procedure must be followed for a
 7 wage supplement:

8 (i) A worker must be compensated in weekly benefits
 9 equal to 66 2/3% of the difference between the worker's
 10 actual wages received at the time of the injury and the
 11 wages the worker is qualified to earn in the worker's job
 12 pool, subject to a maximum compensation rate of one-half the
 13 state's average weekly wage at the time of injury.

14 (ii) Eligibility for wage supplement benefits begins at
 15 maximum healing and terminates at the expiration of 500
 16 weeks minus the number of weeks for which a worker's
 17 impairment award is payable, subject to 39-71-710. A
 18 worker's failure to sustain a wage loss compensable under
 19 subsection (1)(b)(i) does not extend the period of
 20 eligibility. However, if a worker becomes eligible for
 21 temporary total disability, permanent total disability, or
 22 total rehabilitation benefits after reaching maximum
 23 healing, the eligibility period for wage supplement benefits
 24 is extended by any period for which a worker is compensated
 25 by those benefits after reaching maximum healing.

1 (2) The determination of permanent partial disability
 2 must be supported by a preponderance of medical evidence.

3 (3) Notwithstanding subsections SUBSECTION (1) and
 4 (2), beginning July 1, 1987, through June 30, 1989, the
 5 maximum weekly compensation benefits for permanent partial
 6 disability may not exceed \$149.50, which is one-half the
 7 state's average weekly wage established July 1, 1986."

8 NEW SECTION. Section 24. Impairment evaluation --
 9 ratings. (1) An impairment rating;

10 (a) is a purely medical determination and must be
 11 determined by an impairment evaluator after a claimant has
 12 reached maximum healing;

13 (b) must be based on the current edition of the Guides
 14 to Evaluation of Permanent Impairment published by the
 15 American Medical Association; and

16 (c) must be expressed as a percentage of the whole
 17 person.

18 (2) A claimant or insurer, or both, may obtain an
 19 impairment rating from a physician of the party's choice. If
 20 the claimant and insurer cannot agree upon the rating, the
 21 procedure in subsection (3) must be followed.

22 (3) (a) Upon request of he THE claimant or insurer,
 23 the division shall direct a THE claimant to an evaluator for
 24 a rating. The evaluator shall:

25 (i) evaluate the claimant to determine the degree of

1 impairment, if any, that exists due to the injury; and

2 (ii) submit a report to the division, the claimant, and
 3 the insurer.

4 (b) Unless the following procedure is followed, the
 5 insurer shall begin paying the impairment award, if any,
 6 within ~~10~~ 30 days of the evaluator's mailing of the report:

7 (i) Either the claimant or the insurer, within 15 days
 8 after the date of mailing of the report by the first
 9 evaluator, may request that the claimant be evaluated by a
 10 second evaluator. If a second evaluation is requested, the
 11 division shall direct the claimant to a second evaluator,
 12 who shall determine the degree of impairment, if any, that
 13 exists due to the injury.

14 (ii) The reports of both examinations must be submitted
 15 to a third evaluator, who may also examine the claimant or
 16 seek other consultation. The three evaluators shall consult
 17 with one another, and then the third evaluator shall submit
 18 a final report to the division, the claimant, and the
 19 insurer. The final report must state the degree of
 20 impairment, if any, that exists due to the injury.

21 (iii) Unless either party disputes the rating in the
 22 final report as provided in subsection (6), the insurer
 23 shall begin paying the impairment award, if any, within 45
 24 days of the date of mailing of the report by the third
 25 evaluator.

1 (4) The division shall appoint impairment evaluators
 2 to render ratings under subsection (1). The division shall
 3 adopt rules that set forth the qualifications of evaluators
 4 and the locations of examinations. An evaluator must be a
 5 physician licensed under Title 37, chapter 3. The division
 6 may seek nominations from the board of medical examiners.

7 (5) The cost of impairment evaluations is assessed to
 8 ~~a--workers~~ THE insurer, except that the cost of an
 9 evaluation under subsection ~~(3)(B)(I) OR (3)(b)(ii) or~~
 10 ~~(3)(b)(iii)~~ is assessed to the requesting party.

11 (6) A party may dispute a final impairment rating
 12 rendered under subsection ~~(3)(b)(iii)~~ (3)(B)(II) by filing a
 13 petition with the workers' compensation court within 15 days
 14 of the evaluator's mailing of the report. Disputes over
 15 impairment ratings are not subject to 39-71-605 or to
 16 mandatory mediation.

17 (7) An impairment rating rendered under subsection (3)
 18 is presumed correct. This presumption is rebuttable.

19 Section 25. Section 39-71-704, MCA, is amended to
 20 read:

21 "39-71-704. Payment of medical, hospital, and related
 22 services -- FEE SCHEDULES AND HOSPITAL RATES. (1) In
 23 addition to the compensation provided by this chapter and as
 24 an additional benefit separate and apart from compensation,
 25 the following shall be furnished:

1 (a) After the happening of the injury, the insurer
 2 shall furnish, without limitation as to length of time or
 3 dollar amount, reasonable services by a physician or
 4 surgeon, reasonable hospital services and medicines when
 5 needed, and such other treatment as may be approved by the
 6 division for the injuries sustained.

7 (b) The insurer shall replace or repair prescription
 8 eyeglasses, prescription contact lenses, prescription
 9 hearing aids, and dentures that are damaged or lost as a
 10 result of an injury, as defined in 39-71-119, arising out of
 11 and in the course of employment.

12 (2) A relative value fee schedule for medical,
 13 chiropractic, and paramedical services provided for in this
 14 chapter, excluding hospital services, shall be established
 15 annually by the workers' compensation division and become
 16 effective in January of each year. The maximum fee schedule
 17 must be adopted as a relative value fee schedule of medical,
 18 chiropractic, and paramedical services, with unit values to
 19 indicate the relative relationship within each grouping of
 20 specialties. Medical fees must be based on the median fees
 21 as billed to the state compensation insurance fund during
 22 the year preceding the adoption of the schedule. The
 23 division shall adopt rules establishing relative unit
 24 values, groups of specialties, the procedures insurers must
 25 use to pay for services under the schedule, and the method

1 of determining the median of billed medical fees. These
 2 rules shall be modeled on the 1974 revision of the 1969
 3 California Relative Value Studies.

4 (3) Beginning January 1, 1988, the division shall
 5 establish rates for hospital services necessary for the
 6 treatment of injured workers. Approved rates must be in
 7 effect for a period of 12 months from the date of approval.
 8 The division may coordinate this ratesetting function with
 9 other public agencies that have similar responsibilities.

10 (4) Notwithstanding subsection (2), beginning January
 11 1, 1988, and ending January 1, 1990, the maximum fees
 12 payable by insurers must be limited to the relative value
 13 fee schedule established in January 1987. Notwithstanding
 14 subsection (3), the hospital rates payable by insurers must
 15 be limited to those set in January 1988, until December 31,
 16 1989."

17 Section 26. Section 39-71-708, MCA, is amended to
 18 read:

19 "39-71-708. Compensation for disfigurement. (1) The
 20 division may award proper and equitable ~~indemnity~~ benefits
 21 for serious face, head, or neck disfigurement, not to exceed
 22 \$2,500, in addition to ~~any other indemnity~~ benefits payable
 23 under ~~39-71-7057-39-71-7067, or 39-71-707~~ 39-71-703.

24 (2) No payment under this section shall be in lieu of
 25 the separate benefit of medical and hospital services and or

1 of any benefits paid under 39-71-701 for temporary total
 2 disability."

3 Section 27. Section 39-71-710, MCA, is amended to
 4 read:

5 "39-71-710. Termination of ~~total--disability~~ benefits
 6 upon retirement. (1) If a claimant is receiving ~~total~~
 7 ~~disability or rehabilitation~~ compensation benefits and the
 8 claimant ~~receives---retirement~~ receives social security
 9 retirement benefits or is eligible to receive full social
 10 security retirement benefits or--disability--social--security
 11 benefits--paid--to--the--claimant--are--converted--by--law--to
 12 retirement--benefits, the claimant is considered to be
 13 retired ~~and no longer in the open labor--market~~. When the
 14 claimant is considered retired, the liability of the insurer
 15 is ended for payment of such wage supplement, permanent
 16 total DISABILITY, and rehabilitation compensation benefits.
 17 ~~This--section--does--not--apply--to--permanent--partial--disability~~
 18 ~~benefits--Medical--benefits--are--expressly--reserved--to--the~~
 19 ~~claimant--~~ However, the insurer remains liable for temporary
 20 total disability benefits, any impairment award, and medical
 21 benefits.

22 (2) If a claimant who is eligible to receive social
 23 security retirement benefits and is gainfully employed
 24 suffers a work-related injury, the insurer retains liability
 25 for temporary total disability benefits, any impairment

1 award, and medical benefits."

2 NEW SECTION. Section 28. Benefits not due while
3 claimant is incarcerated. A claimant is not eligible for any
4 disability or rehabilitation compensation benefits while the
5 claimant is incarcerated as the result of conviction of a
6 felony. The insurer remains liable for medical benefits. No
7 time limit on benefits otherwise provided in this chapter is
8 extended due to a period of incarceration.

9 Section 29. Section 39-71-721, MCA, is amended to
10 read:

11 "39-71-721. Compensation for injury causing death --
12 limitation. (1) (a) If an injured employee dies and the
13 injury was the proximate cause of such death, then the
14 beneficiary of the deceased, ~~as the case may be,~~ is entitled
15 to the same compensation as though the death occurred
16 immediately following the injury, ~~but the period during~~
17 ~~which the death benefit is paid shall be reduced by the~~
18 ~~period during or for which compensation was paid for the~~
19 injury. A beneficiary's eligibility for benefits commences
20 after the date of death, and the benefit level is
21 established as set forth in subsection (2).

22 (b) The insurer is entitled to recover any
23 overpayments or compensation paid in a lump sum to a worker
24 prior to death but not yet recouped. The insurer shall
25 recover such payments from the beneficiary's biweekly

1 payments as provided in 39-71-741(5).

2 (2) To beneficiaries as defined in ~~subsections (2)(a)~~
3 ~~through (2)(d) of 39-71-116~~ 39-71-116(2)(a) through
4 39-71-116(2)(d), weekly compensation benefits for an injury
5 causing death are computed ~~at~~ 66 2/3% of the decedent's
6 wages. The maximum weekly compensation benefits benefit may
7 not exceed the state's average weekly wage at the time of
8 injury. The minimum weekly compensation ~~for death~~ benefit is
9 50% of the state's average weekly wage, but in no event may
10 it exceed the decedent's actual wages at the time of his
11 death.

12 (3) To beneficiaries as defined in ~~subsections (2)(e)~~
13 ~~and (2)(f) of 39-71-116~~ 39-71-116(2)(e) and 39-71-116(2)(f),
14 weekly benefits must be paid to the extent of the dependency
15 at the time of the injury, subject to a maximum of 66 2/3%
16 of the decedent's wages. The maximum weekly compensation may
17 not exceed the state's average weekly wage AT THE TIME OF
18 INJURY.

19 (4) If the decedent leaves no beneficiary as defined
20 in 39-71-116(2), a lump-sum payment of \$3,000 must be paid
21 to the decedent's surviving parent or parents.

22 (5) If any beneficiary of a deceased employee dies,
23 the right of such beneficiary to compensation under this
24 chapter ceases. Death benefits must be paid to a ~~widow or~~
25 ~~widower for life or until remarriage, and in the event of~~

1 ~~remarriage, 2 years~~ benefits must be paid in a lump sum to
 2 ~~the widow or widower.~~ surviving spouse for 500 weeks
 3 subsequent to the date of the deceased employee's death or
 4 until the spouse's remarriage, whichever occurs first. After
 5 benefit payments cease to a surviving spouse, death benefits
 6 must be paid to beneficiaries, if any, as defined in
 7 39-71-116(2)(b) through 39-71-116(2)(d).

8 (6) In all cases, benefits must be paid to
 9 beneficiaries, as defined in 39-71-116(2).

10 (7) Benefits paid under this section may not be
 11 adjusted for cost of living as provided in 39-71-702.

12 (8) Notwithstanding subsections (2) and (3), beginning
 13 July 1, 1987, through June 30, 1989, the maximum weekly
 14 compensation benefits for injury causing death may not
 15 exceed the state's average weekly wage of \$299 established
 16 July 1, 1986. Beginning July 1, 1987, through June 30, 1989,
 17 the minimum weekly compensation for injury causing death
 18 shall be \$149.50, which is 50% of the state's average weekly
 19 wage established July 1, 1986, but in no event may it exceed
 20 the decedent's actual wages at the time of death."

21 Section 30. Section 39-71-736, MCA, is amended to
 22 read:

23 "39-71-736. Compensation -- from what date paid.
 24 (1) (a) No compensation may be paid for the first 5 6 days
 25 loss of wages due to an injury. ~~if loss of wages continues~~

1 ~~for more than 5 days, compensation shall be paid from the~~
 2 ~~date of injury.~~ A claimant is eligible for compensation
 3 starting with the 7th day of wage loss.

4 (b) However, separate benefits of medical and hospital
 5 services shall be furnished from the date of injury.

6 (2) For the purpose of this section, an injured worker
 7 is not considered to have a wage loss if the worker is
 8 receiving sick leave benefits, except that each day for
 9 which the worker elects to receive sick leave counts 1 day
 10 toward the 6-day waiting period."

11 Section 31. Section 39-71-737, MCA, is amended to
 12 read:

13 "39-71-737. Compensation to run consecutively --
 14 exceptions. ~~(1)~~ Compensation shall run consecutively and not
 15 concurrently, and payment shall not be made for two classes
 16 of disability over the same period except that ~~indemnity~~
 17 ~~benefits under 39-71-705 through 39-71-708 and temporary~~
 18 ~~total disability benefits may be paid concurrently. However,~~
 19 ~~subject to the provisions of 39-71-741, this section does~~
 20 ~~not prevent:~~

21 (a) ~~the payment of a lump sum advance settlement~~
 22 ~~against projected future permanent partial indemnity~~
 23 ~~benefits while a claimant is receiving temporary total~~
 24 ~~disability benefits, or~~

25 (b) ~~a settlement of a combination of different classes~~

1 of disability benefits into a lump sum or into a combination
2 of periodic and lump sum payments.

3 (2) A controversy between a claimant and an insurer
4 regarding a settlement authorized under this section is a
5 dispute for which the workers' compensation judge has
6 jurisdiction to make a determination. impairment awards and
7 auxiliary rehabilitation benefits may be paid concurrently
8 with other classes of benefits, and wage supplement and
9 partial rehabilitation benefits may be paid concurrently."

10 Section 32. Section 39-71-741, MCA, is amended to
11 read:

12 "39-71-741. Compromise settlements and, lump sum
13 payments, AND LUMP-SUM ADVANCE PAYMENTS ---division approval
14 required. (1) The biweekly payments provided for in this
15 chapter may be converted, in whole or in part, into a
16 lump sum payment. Regardless of the date of the injury or of
17 a prior lump sum payment, a lump sum conversion of permanent
18 total biweekly payments awarded or paid after April 15,
19 1985, must equal the estimated present value of the total
20 unpaid permanent total biweekly payments, assuming interest
21 at 7% per year, compounded annually, unless the conversion
22 improves the financial condition of the worker or his
23 beneficiary, as provided in subsection (2)(b); if the
24 estimated duration of the compensation period is the
25 remaining life expectancy of the claimant or the claimant's

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

5 (2) The conversion can only be made upon the written
6 application of the injured worker or the worker's
7 beneficiary, with the concurrence of the insurer, and
8 approval of the conversion rests in the discretion of the
9 division as to the amount of the lump sum payment and the
10 advisability of the conversion; it is presumed that biweekly
11 payments are in the best interests of the worker or his
12 beneficiary. The approval or award of a lump sum conversion
13 by the division or the workers' compensation judge must be
14 the exception, not the rule, and may be given only if the
15 worker or his beneficiary demonstrates that his ability to
16 sustain himself financially is more probable with a whole or
17 partial lump sum conversion than with the biweekly payments
18 and his other available resources. The following procedure
19 must be used by the division and the workers' compensation
20 judge in determining whether a lump sum conversion of
21 permanent total biweekly payments will be approved or
22 awarded.

23 (a) The difference between the present discounted
24 value of a lump sum and the future value of the biweekly
25 payments cannot be the only grounds for approving or

1 awarding a lump sum conversion;

2 (b) A lump sum conversion that improves the financial

3 condition of the worker or his beneficiary over what would

4 have been reasonably expected had the worker not been

5 injured or died can be approved or awarded only if the

6 lump sum conversion is limited to the purchase price to the

7 insurer of an annuity that would yield an amount equal to

8 the biweekly benefits payable over the estimated duration of

9 the compensation period. The worker or his beneficiary must

10 demonstrate the financial condition that would have been

11 reasonably expected, taking into consideration his age,

12 education, work experience, and probable job promotions and

13 pay increases;

14 (c) If the existing delinquent or outstanding debts

15 are used as grounds for a lump sum conversion, the worker or

16 his beneficiary must demonstrate through a debt management

17 plan that a lump sum for that purpose is necessary to

18 sustain himself financially;

19 (d) If a business venture is used as grounds for a

20 lump sum conversion, the worker or his beneficiary must

21 demonstrate through a business plan that a lump sum for that

22 purpose is necessary to sustain himself financially. The

23 business plan must at least show the feasibility of the

24 business, given the market conditions in the intended market

25 area, and the cash that will be available to him on a

1 biweekly basis after start-up costs and other business

2 expenses are considered throughout the expected life of the

3 venture;

4 (3) If the division finds that an application for

5 lump sum conversion does not adequately demonstrate the

6 ability of the worker or his beneficiary to sustain himself

7 financially, the division may order, at the insurer's

8 expense, financial, medical, vocational, rehabilitation,

9 educational, or other evaluative studies to determine

10 whether a lump sum conversion is in the best interest of the

11 worker or his beneficiary;

12 (4) The division has full power, authority, and

13 jurisdiction to allow and approve compromises of claims

14 under this chapter. All settlements and compromises of

15 compensation provided in this chapter are void without the

16 approval of the division. Approval of the division must be

17 in writing. The division shall directly notify every

18 claimant of any division order approving or denying a

19 claimant's settlement or compromise of a claim;

20 (5) 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 determination;

24 (1) (a) Benefits may be converted in whole to a lump sum:

25 (i) if a claimant and an insurer dispute the initial

1 compensability of an injury; and
 2 (ii) if the claimant and insurer agree TO A SETTLEMENT.
 3 (b) The agreement is subject to division approval. The
 4 division may disapprove an agreement under this section only
 5 if there is not a reasonable dispute over compensability.
 6 (c) Upon approval, the agreement constitutes a
 7 compromise and release settlement and may not be reopened by
 8 the division or by any court.
 9 (d) The parties' failure to reach an agreement is not
 10 a dispute over which a mediator or the workers' compensation
 11 court has jurisdiction.
 12 (2) (a) If an insurer has accepted initial liability
 13 for an injury, permanent total and permanent partial wage
 14 supplement benefits may be converted in whole to a lump-sum
 15 payment.
 16 (b) The conversion may be made only upon agreement
 17 between a claimant and an insurer.
 18 (c) The agreement is subject to division approval. The
 19 division may approve an agreement if:
 20 (i) there is a reasonable dispute concerning the
 21 amount of the insurer's future liability or benefits; or
 22 (ii) the amount of the insurer's projected liability is
 23 reasonably certain and the settlement amount is not
 24 substantially less than the present value of the insurer's
 25 liability.

1 (d) The parties' failure to reach agreement is not a
 2 dispute over which a mediator or the worker's WORKERS'
 3 compensation court has jurisdiction.
 4 (E) UPON APPROVAL, THE AGREEMENT CONSTITUTES A
 5 COMPROMISE AND RELEASES RELEASE SETTLEMENT AND MAY NOT BE
 6 REOPENED BY THE DIVISION OR BY ANY COURT.
 7 (3) (a) Permanent partial wage supplement benefits may
 8 be converted in part to a lump-sum advance.
 9 (b) The conversion may be made only upon agreement
 10 between a claimant and an insurer.
 11 (c) The agreement is subject to division approval. The
 12 division may approve an agreement if the parties demonstrate
 13 that the claimant has financial need that:
 14 (i) relates to the necessities of life or relates to
 15 an accumulation of debt incurred prior to injury; and
 16 (ii) arises subsequent to the date of injury or arises
 17 because of reduced income as a result of the injury.
 18 (d) The parties' failure to reach an agreement is not
 19 a dispute over which a mediator or the workers' compensation
 20 court has jurisdiction.
 21 (4) Permanent total disability benefits may be
 22 converted to a lump-sum advance. The total of all lump-sum
 23 ADVANCE payments to a claimant may not exceed \$20,000. A
 24 conversion may be made only upon the written application of
 25 the injured worker with the concurrence of the insurer.

1 Approval of the lump-sum ADVANCE payment rests in the
 2 discretion of the division. The approval or award of a
 3 lump-sum ADVANCE payment by the division or court must be
 4 the exception. It may be given only if the worker has
 5 demonstrated financial need that:

6 (a) relates to:

7 (i) the necessities of life;

8 (ii) an accumulation of debt incurred prior to the
 9 injury; or

10 (iii) a self-employment venture as set forth in
 11 [section 47]; and

12 (b) arises subsequent to the date of accident INJURY
 13 or arises because of reduced income as a result of the
 14 accident INJURY.

15 (5) (a) An insurer may recoup any lump-sum advance
 16 amortized at the rate established by the division, prorated
 17 biweekly over the projected duration of the compensation
 18 period.

19 (b) The rate adopted by the division must be based on
 20 the average rate for United States 10-year treasury bills in
 21 the previous calendar year, rounded to the nearest whole
 22 number.

23 (c) If the projected compensation period is the
 24 claimant's lifetime, the life expectancy must be determined
 25 by using the most recent table of life expectancy as

1 published by the United States national center for health
 2 statistics.

3 (6) The division has full power, authority, and
 4 jurisdiction to allow, approve, or condition compromise
 5 settlements or lump-sum advances agreed to by workers and
 6 insurers. All such compromise settlements and lump-sum
 7 payments are void without the approval of the division.
 8 Approval by the division must be in writing. The division
 9 shall directly notify a claimant of a division order
 10 approving or denying a claimant's compromise or lump-sum
 11 payment.

12 (7) Subject to [section 8], a dispute between a
 13 claimant and an insurer regarding the conversion of biweekly
 14 payments into a lump-sum advance under subsection (4) is
 15 considered a dispute, for which a mediator and the workers'
 16 compensation court have jurisdiction to make a
 17 determination. If an insurer and a claimant agree to a
 18 compromise and release settlement or a lump-sum advance but
 19 the division disapproves the agreement, the parties may
 20 request the workers' compensation court to review the
 21 division's decision."

22 Section 33. Section 39-71-803, MCA, is amended to
 23 read:

24 "39-71-803. Occupational deafness distinguished from
 25 traumatic loss of hearing. Occupational deafness as herein

1 provided is distinguished from traumatic loss of hearing,
2 which is-governed-by-the-specific-loss-schedule-provided-for
3 in-39-71-705 may be compensated under parts 7 and 10 of this
4 chapter."

5 NEW SECTION. Section 34. Definitions. As used in this
6 chapter, the following definitions apply:

7 (1) "Board of rehabilitation certification" means the
8 nonprofit, independent, fee-structured organization that is
9 a member of the national commission for health certifying
10 agencies and that is established to certify rehabilitation
11 practitioners.

12 (2) "Disabled worker" means one who has a medically
13 determined restriction resulting from a work-related injury
14 that precludes the worker from returning to the job the
15 worker held at the time of the injury.

16 (3) "I.W.R.P." means an individualized, written
17 rehabilitation program prepared by the department of social
18 and rehabilitation services.

19 (4) "Rehabilitation benefits" means benefits provided
20 in [sections 59-through-61 44 THROUGH 46] and 39-71-1003.

21 (5) "Rehabilitation provider" means a rehabilitation
22 counselor, other than the department of social and
23 rehabilitation services, certified by the board for
24 rehabilitation certification and designated by the insurer
25 to the division.

1 (6) "Rehabilitation services" consists of a program of
2 evaluation, planning, and delivery of goods and services to
3 assist a disabled worker to return to work.

4 (7) (a) "Worker's job pool" means those jobs typically
5 available for which a worker is qualified, consistent with
6 the worker's age, education, vocational experience and
7 aptitude and compatible with the worker's physical
8 capacities and limitations as the result of the worker's
9 injury. Lack of immediate job openings is not a factor to be
10 considered.

11 (b) A worker's job pool may be either local or
12 statewide, as follows:

13 (i) a local job is one either in a central city that
14 has within its economically integrated geographical area a
15 population of less than 50,000 or in a city with a
16 population of more than 50,000 as determined by the
17 division; or

18 (ii) a statewide job is one anywhere in the state of
19 Montana.

20 Section 35. Section 39-71-1003, MCA, is amended to
21 read:

22 "39-71-1003. Eligibility for vocational rehabilitation
23 expenses benefits--under--chapter--not--affected-----other
24 expenses-payable. The-eligibility-of-any-injured--worker--to
25 receive--other--benefits-under-the-Workers'-Compensation-Act

1 is-in-no-way-affected-by-his-entrance-upon-a-course-of
 2 vocational-rehabilitation-as-herein-provided. A-person
 3 undergoing-vocational-rehabilitation-must-be-paid-temporary
 4 total-disability-benefits. In-addition-thereto, he-may-be
 5 paid-upon-the-certification-of-the-department-of-social-and
 6 rehabilitation-services-from-funds-herein-provided:

7 (1)--his-actual-and-necessary-travel-expenses-from-his
 8 place-of-residence-to-the-place-of-training-and-return;

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

11 (3)--his-expenses-for-tuition, books, and-necessary
 12 equipment-in-training. Upon certification by the department
 13 of social and rehabilitation services, a disabled worker may
 14 be paid vocational rehabilitation expenses from funds
 15 provided in 39-71-1004, in addition to benefits payable
 16 under the Workers' Compensation Act."

17 NEW SECTION. Section 36. Rehabilitation goal and
 18 options. (1) The goal of rehabilitation services is to
 19 return a disabled worker to work, with a minimum of
 20 retraining, as soon as possible after an injury occurs.

21 (2) The first appropriate option among the following
 22 must be chosen for the worker:

23 (a) return to the same position;

24 (b) return to a modified position;

25 (c) return to a related occupation suited to the

1 claimant's education and marketable skills;

2 (d) on-the-job training;

3 (e) short-term retraining program (less than 24
 4 months);

5 (f) long-term retraining program (48 months maximum);

6 or

7 (g) self-employment.

8 (3) Whenever possible, employment in a worker's local
 9 job pool must be considered and selected prior to
 10 consideration of employment in a worker's statewide job
 11 pool.

12 NEW SECTION. Section 37. Rehabilitation services --
 13 required and provided by insurers and the department of
 14 social and rehabilitation services. (1) Rehabilitation
 15 services are required for disabled workers and may be
 16 initiated by:

17 (a) an insurer by designating a rehabilitation
 18 provider and notifying the division;

19 (b) the division by requiring the insurer to designate
 20 a rehabilitation provider; or

21 (c) a disabled worker through a request to the
 22 division. The division shall then require the insurer to
 23 designate a rehabilitation provider.

24 (2) Rehabilitation services provided under this part
 25 must be delivered:

1 (a) through a rehabilitation counselor certified by
2 the board of rehabilitation certification;

3 (b) by a vocational rehabilitation counselor employed
4 by the department of social and rehabilitation services; or

5 (c) by both.

6 (3) A disabled worker served by the department of
7 social and rehabilitation services may receive only those
8 vocational rehabilitation services as provided in Title 53,
9 chapter 7, parts 1 and 2.

10 NEW SECTION. Section 38. Designated rehabilitation
11 provider -- evaluation and report. (1) If a disabled worker
12 is capable of returning to work, the designated
13 rehabilitation provider shall evaluate and determine the
14 return-to-work capabilities of the disabled worker pursuant
15 to [section 36(2)(a) through 36(2)(d)].

16 (2) If an insurer's designated rehabilitation provider
17 has determined that all appropriate services have been
18 provided to the disabled worker under [section 36(2)(a)
19 through 36(2)(d)] and the worker has returned to work, the
20 insurer shall document that determination to the division.

21 (3) If the worker has not returned to work as provided
22 in subsection (2), the insurer shall notify the division.
23 The division shall then designate a rehabilitation panel as
24 provided in [section 39] and refer the worker to the panel.

25 NEW SECTION. Section 39. Rehabilitation panels. (1)

1 The division shall designate and administer rehabilitation
2 panels. The purpose of a panel is to advise the division on
3 a worker's eligibility for rehabilitation services. Each
4 panel shall issue to the division a report as provided in
5 [section 40].

6 (2) Each panel must be composed of at least:

7 (a) a representative of the department of social and
8 rehabilitation services;

9 (b) a representative from the department who has
10 expertise in job service listings, occupational supply and
11 demand in Montana, and other Montana career information; and

12 (c) a representative from the division, who shall
13 chair the panel.

14 (3) The division shall pay the cost of the panel.

15 (4) The insurer shall provide the panel with the
16 worker's medical records, rehabilitation reports, and other
17 pertinent information in its possession.

18 (5) The panel may consult with the worker, insurer,
19 medical and rehabilitation providers, and any other person
20 and may have access to any information it considers
21 pertinent to carry out its responsibility.

22 (6) Information received by the panel is confidential,
23 except that it may be disclosed to the worker, insurer, and
24 division.

25 NEW SECTION. Section 40. Rehabilitation panel report.

1 (1) The rehabilitation panel shall:

2 (a) review all records, statements, and other
3 pertinent information; and

4 (b) prepare a report to the division, with copies to
5 the insurer and worker.

6 (2) The report must:

7 (a) identify the first appropriate rehabilitation
8 option by following the priorities set forth in [section
9 36]; and

10 (b) contain findings of why a higher listed priority,
11 if any, is not appropriate.

12 (3) Depending on which option the panel identifies as
13 appropriate, the report also must contain findings that:

14 (a) identify jobs in the local or statewide job pool
15 and the worker's anticipated earnings from each job;

16 (b) describe an appropriate on-the-job training
17 program, the worker's anticipated earnings, and anticipated
18 insurer's contribution, if any;

19 (c) describe an appropriate retraining program, short-
20 or long-term, the employment opportunities anticipated upon
21 the worker's completion of the program, and the worker's
22 anticipated earnings; or

23 (d) describe the worker's potential for specific
24 self-employment, limitations the worker might have in such
25 self-employment and any assistance necessary, and the

1 worker's anticipated earnings.

2 (4) An insurer or a worker on his own motion may
3 submit information to the panel prior to the time the panel
4 issues its final report.

5 NEW SECTION. Section 41. Division's order of
6 determination -- exception -- hearing. (1) The division
7 shall issue an initial order of determination within 10
8 working days of receipt of a report from a rehabilitation
9 panel. If the initial order of determination differs from
10 the findings and recommendations of the panel, the order
11 must state the reasons for the difference.

12 (2) Within 10 working days from the date the initial
13 order of determination is mailed, a party may submit a
14 written exception to the order. On its own motion or at the
15 request of any party, the division shall conduct a hearing.
16 The division shall issue a final order of determination
17 within 20 working days of the hearing.

18 (3) If no party submits an exception within 10 working
19 days, the initial order of determination becomes the final
20 order of determination and must be issued by the division.

21 (4) Within 10 working days after the date of mailing
22 of the division's final order of determination, an appeal
23 may be taken to the workers' compensation court.

24 NEW SECTION. Section 42. Referral to department of
25 social and rehabilitation services for retraining --

1 benefits -- appeals. (1) If in its final order of
 2 determination the division considers a worker able to return
 3 to work in the worker's job pool, the insurer is not liable
 4 for rehabilitation benefits, even though the worker
 5 independently may pursue a training program of the worker's
 6 own choice or seek vocational rehabilitation services from
 7 the department of social and rehabilitation services.

8 (2) If in its final order of determination the
 9 division finds the worker needs retraining, the division
 10 shall determine the maximum duration for which funds under
 11 39-71-1003 may be used for rehabilitation services under
 12 [section 36(2)(d) through 36(2)(f)] and shall refer the
 13 worker to the department of social and rehabilitation
 14 services for a determination of vocational handicap.

15 (3) If the department of social and rehabilitation
 16 services determines that a disabled worker has a vocational
 17 handicap, the worker is eligible for funds under 39-71-1003
 18 up to the maximum duration established in the division's
 19 final order of determination.

20 (4) If a disabled worker seeks vocational
 21 rehabilitation services from the department of social and
 22 rehabilitation services without giving the insurer the
 23 opportunity to designate a rehabilitation provider or,
 24 subsequently, without giving the division the opportunity to
 25 designate a rehabilitation panel to provide a report, the

1 insurer is not liable for rehabilitation benefits. The
 2 insurer may terminate rehabilitation and other benefits, if
 3 any, being received by the worker by following the procedure
 4 set forth in [section 49].

5 (5) The department of social and rehabilitation
 6 services, in providing rehabilitation services to a worker
 7 referred to it by the division, shall consider but is not
 8 bound by the rehabilitation panel report.

9 (6) If the department of social and rehabilitation
 10 services has determined that all appropriate rehabilitation
 11 services have been provided to a disabled worker, the
 12 department shall document that determination to the
 13 division.

14 (7) The appeal process before the board of social and
 15 rehabilitation services APPEALS provided for in 53-7-106 is
 16 the exclusive remedy for a person aggrieved in the receipt
 17 of services provided by the department of social and
 18 rehabilitation services.

19 NEW SECTION. Section 43. Agreement between worker and
 20 insurer regarding option. A worker and an insurer may agree
 21 that an option in [section 36] is appropriate without
 22 following the procedures provided in this part. Failure to
 23 reach agreement is not a dispute under [section 8].

24 NEW SECTION. Section 44. Total rehabilitation
 25 benefits during period of rehabilitation services --

1 limitation -- termination. (1) A worker who no longer is
2 temporarily totally disabled but meets the definition of a
3 disabled worker may be eligible for total rehabilitation
4 benefits.

5 (2) Eligibility for total rehabilitation benefits
6 begins on the date of maximum healing or the date notice is
7 given to the division by the insurer that a rehabilitation
8 provider has been designated, whichever is later.

9 (3) Benefits must be paid at the disabled worker's
10 temporary total disability rate for a period not exceeding
11 25 weeks from the date of eligibility, except that the
12 division may extend the period for good cause. The insurer
13 may extend the benefits without division approval but must
14 notify the division of the extension.

15 (4) Total rehabilitation benefits under this section
16 terminate when:

- 17 (a) a worker returns to work;
- 18 (b) a worker is qualified to return to work under the
19 priorities in [section 36] pursuant to a division order; or
- 20 (c) an I.W.R.P. is submitted to the division by the
21 department of social and rehabilitation services.

22 (5) The insurer shall provide written notice to the
23 worker and division that benefits have been terminated.

24 NEW SECTION. Section 45. Wage supplement and partial
25 rehabilitation benefits. (1) A worker who is in a

1 rehabilitation program under [section 42] in accordance with
2 nd AND for the maximum duration established by a final order
3 of determination by the division is eligible to receive the
4 following benefits:

5 (a) wage supplement benefits as provided in 39-71-703
6 but with the rate based on 66 2/3% of the worker's actual
7 wages received at the time of injury, subject to a maximum
8 of one-half the state's average weekly wage; and

9 (b) a partial rehabilitation benefit that, together
10 with the wage supplement provided in subsection (1)(a),
11 provides the worker with weekly benefits equal to the
12 worker's temporary total disability rate.

13 (2) After the worker completes the rehabilitation
14 program, the worker's further eligibility, if any, for wage
15 supplement benefits under 39-71-703 is reduced by the number
16 of weeks of wage supplement benefits received under
17 subsection (1)(a).

18 (3) Notwithstanding subsection (1)(a), beginning July
19 1, 1987, through June 30, 1989, the maximum weekly
20 compensation benefit under that subsection may not exceed
21 \$149.50, which is one-half the state's weekly wage
22 established July 1, 1986.

23 NEW SECTION. Section 46. Auxiliary rehabilitation
24 benefits. In addition to benefits otherwise provided in this
25 chapter, separate benefits not exceeding a TOTAL OF \$4,000

1 total may be paid by the insurer for:

2 (1) reasonable travel and relocation expenses used to:

3 (a) search for new employment;

4 (b) return to work but in a new location; and

5 (c) implement a rehabilitation program pursuant to a
6 final order of determination by the division; and

7 (2) reasonable participation with an employer in an
8 on-the-job training program.

9 NEW SECTION. Section 47. Self-employment -- criteria.

10 (1) A worker who is eligible for permanent total disability
11 benefits may be eligible for a self-employment venture. A
12 lump sum of \$20,000 or less of permanent total disability
13 benefits may be granted under 39-71-741 to assist the worker
14 in the self-employment venture. Any previous lump-sum
15 advance made under 39-71-741(4) must be considered so that
16 the total amount of lump-sum payments of permanent total
17 disability benefits does not exceed \$20,000.

18 (2) In addition to meeting the requirements set forth
19 in 39-71-741, the self-employment venture must be considered
20 feasible under criteria set forth by the division.

21 (3) When the worker begins the self-employment
22 venture, his eligibility for permanent total disability
23 benefits ends and BUT the worker may be eligible for
24 permanent partial disability benefits under 39-71-703.

25 (4) If a worker again becomes eligible for permanent

1 total disability benefits, the insurer may recoup any lump
2 sum of permanent total disability benefits awarded for a
3 self-employment venture, as provided in 39-71-741.

4 NEW SECTION. Section 48. Exchange of information. The
5 department of social and rehabilitation services, the
6 insurer's designated rehabilitation provider, and the
7 division shall provide to one another case information as
8 necessary to carry out the purposes of this part.

9 NEW SECTION. Section 49. Termination of benefits for
10 noncooperation with rehabilitation services PROVIDER OR THE
11 DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES -- division
12 hearing and appeal. (1) If an insurer believes a worker is
13 refusing unreasonably to cooperate with the rehabilitation
14 provider OR THE DEPARTMENT OF SOCIAL AND REHABILITATION
15 SERVICES, the insurer, with 14 days' notice to the worker
16 and division on a form approved by the division, may
17 terminate any rehabilitation benefits the worker is
18 receiving under this part until the worker cooperates. If
19 the worker is receiving wage supplement benefits, those
20 benefits must continue until the division's determination
21 under subsection (3) is made.

22 (2) The worker may contest the insurer's termination
23 of benefits by filing a written exception to the division
24 within 10 working days after the date of the 14-day notice.
25 The worker or insurer may request a hearing or the division

1 may hold a hearing on its own motion. The division shall
2 issue an order within 30 days of the hearing.

3 (3) If no exceptions are timely filed or the division
4 determines the worker unreasonably refused to cooperate, the
5 insurer may terminate wage loss supplement benefits the
6 worker is receiving until the worker cooperates with the
7 rehabilitation provider. If the worker prevails at a hearing
8 before the division, it may award attorney fees and costs to
9 the worker under 39-71-612.

10 (4) Within 10 working days after the division mails
11 its order to the party's last-known address, a party may
12 appeal to the workers' compensation court.

13 NEW SECTION. Section 50. Division jurisdiction over
14 REHABILITATION disputes ~~under--this--part~~ -- appeals. In
15 addition to pursuing the hearing opportunities provided in
16 [sections 41 and 49], a party may bring a dispute arising
17 under the provisions of this part, except for a dispute over
18 which the department of social and rehabilitation services
19 has jurisdiction under [section 42], before the division
20 under the contested case provisions of the Montana
21 Administrative Procedure Act, Title 2, chapter 4, part 6,
22 and any rules promulgated by the division. Within 10 days
23 after mailing of the division's final order, an interested
24 party may appeal to the workers' compensation court.

25 Section 51. Section 39-71-2106, MCA, is amended to

1 read:

2 "39-71-2106. Requiring security of employer. (1) The
3 division may require any employer who elects to be bound by
4 compensation plan No. 1 to provide a security deposit. Such
5 security deposit may be a surety bond, government bond, or
6 letter of credit approved by the division and must be the
7 greater of:

8 (a) \$250,000; or

9 (b) an average of the workers' compensation
10 liabilities incurred by the employer in Montana for the past
11 3 calendar years.

12 ~~(1)~~(2) If the division finds that an employer has lost
13 his solvency or financial ability to pay the compensation
14 herein provided to be paid which might reasonably be
15 expected to be chargeable to the employer during the fiscal
16 year to be covered by the permission or that the employer is
17 an association, corporation, or organization of individual
18 employers seeking permission to operate under compensation
19 plan No. 1, the division must require the employer, before
20 granting to him permission or before continuing or engaging
21 in such employment subject to the provisions of compensation
22 plan No. 1, to give security IN ADDITION TO THE SECURITY
23 DESCRIBED IN SUBSECTION (1) for the payment of compensation,
24 which security must be in such an amount as the division
25 finds is reasonable and necessary to meet all liabilities of

1 the employer which may reasonably and ordinarily be expected
2 to accrue during the fiscal year.

3 ~~(2)~~(3) The security PROVIDED FOR IN SUBSECTION (2)
4 must be deposited with the division and may be a certain
5 estimated percent of the employer's last preceding annual
6 payroll or a certain percent of the established amount of
7 his annual payroll for the fiscal year; or the security may
8 be in the form of a bond or undertaking executed to the
9 division in the amount to be fixed by it with two or more
10 sufficient sureties, which undertaking must be conditioned
11 that the employer will well and truly pay or cause to be
12 paid all sums and amounts for which the employer shall
13 become liable under the terms of this chapter to his
14 employees during the fiscal year; or such security may
15 consist of any state, county, municipal, or school district
16 bonds or the bonds or evidence of indebtedness of any
17 individuals or corporations which the division deems
18 solvent; and every such deposit and the character and amount
19 of such securities shall at all times be subject to
20 approval, revision, or change by the division as in its
21 judgment may be required, and upon proof of the final
22 payment of the liability for which such securities are
23 given, such securities or any remaining part thereof shall
24 be returned to the depositor.

25 ~~(3)~~(4) The division is liable for the value and

1 safekeeping of all such deposits or securities and shall, at
2 any time, upon demand of a bondsman or the depositor,
3 account for the same and the earnings thereof."

4 NEW SECTION. Section 52. Purpose. The purpose of
5 [sections 52 through 57] is to prevent when possible the
6 filing in the workers' compensation court of actions by
7 claimants or insurers relating to claims under chapter 71 or
8 72 of this title if an equitable and reasonable resolution
9 of the dispute may be effected at an earlier stage. To
10 achieve this purpose, [section 52 though 57] provide for a
11 procedure for mandatory, nonbinding mediation.

12 NEW SECTION. Section 53. Department authority --
13 rules. (1) The department shall designate mediators and
14 shall implement the provisions of [sections 52 though 57].

15 (2) The department may adopt the rules necessary to
16 implement [sections 52 through 57]. The rules may prescribe:

17 (a) the qualifications of mediators; and
18 (b) a procedure for the conduct of mediation
19 proceedings.

20 (3) The cost to the department of implementing
21 [sections 52 through 57] must be paid out of the workers'
22 compensation administration fund.

23 NEW SECTION. Section 54. Mandatory, nonbinding
24 mediation. (1) Except as otherwise provided, in a dispute
25 arising under chapter 71 or 72 of this title, the insurer

1 and claimant shall mediate any issue concerning benefits and
 2 the mediator shall issue a report following the mediation
 3 process recommending a solution to the dispute before either
 4 party may file a petition in the workers' compensation
 5 court.

6 (2) The resolution recommended by the mediator is
 7 without administrative or judicial authority and is not
 8 binding on the parties.

9 NEW SECTION. Section 55. Duties of mediator. A
 10 mediator shall assist the parties in negotiating a
 11 resolution to their dispute by:

12 (1) facilitating an exchange of information between
 13 the parties;

14 (2) assuring that all relevant evidence is brought
 15 forth during the mediation process;

16 (3) suggesting possible solutions to issues of dispute
 17 between the parties;

18 (4) recommending a solution; and

19 (5) assisting the parties to voluntarily resolve their
 20 dispute.

21 NEW SECTION. Section 56. Limitations on mediation
 22 proceedings. (1) Mediation proceedings are:

23 (a) held in private;

24 (b) informal and held without a verbatim record; and

25 (c) confidential.

1 (2) All communications, verbal or written, from the
 2 parties to the mediator and any information and evidence
 3 presented to the mediator during the proceeding are
 4 confidential.

5 (3) A mediator's files and records are closed to all
 6 but the parties.

7 (4) (a) A mediator may not be called to testify in any
 8 proceeding concerning the issues discussed in the mediation
 9 process.

10 (b) Neither the mediator's report nor any of the
 11 information or recommendations contained in it are
 12 admissible as evidence in any action subsequently brought in
 13 any court of law.

14 (5) Notwithstanding subsections (1) through (4), a
 15 mediator may issue a report and the parties and the mediator
 16 may be required to attend a conference as set forth in
 17 [section 57].

18 NEW SECTION. Section 57. Mediation procedure. (1)
 19 Except as otherwise provided, a claimant or an insurer
 20 having a dispute relating to benefits under chapter 71 or 72
 21 of this title may petition the department for mediation of
 22 the dispute.

23 (2) A party may take part in mediation proceedings
 24 with or without representation.

25 (3) The mediator shall review the division file for

1 the case and may receive any additional documentation or
2 evidence either party submits.

3 (4) The mediator shall request that each party offer
4 argument summarizing the party's position. A party's
5 argument must include the evidence the party would present
6 if the case were being presented to the worker's
7 compensation judge but is not limited by the rules of
8 evidence.

9 (5) After the parties have presented all their
10 information and evidence to the mediator, he shall recommend
11 a solution to the parties within a reasonable time to be
12 established by rule.

13 (6) A party shall notify the mediator within 45 days
14 of the mailing of his report whether the party accepts the
15 mediator's recommendation. If either party does not accept
16 the mediator's recommendation, the party may petition the
17 workers' compensation court for resolution of the dispute.

18 (7) (a) If a mediator determines that either party
19 failed to cooperate in the mediation process, the mediator
20 shall prepare a written report setting forth the
21 determination and the grounds for the determination. The
22 report must be mailed to the parties and to the workers'
23 compensation court. Unless a party disputes the
24 determination as set forth in subsection (7)(c), the parties
25 shall repeat the mediation process, but only one time.

1 (b) A mediator may determine that a party has failed
2 to cooperate in the mediation process only if the party
3 failed to:

4 (i) supply information or offer a summary of the
5 party's position as reasonably requested by the mediator;

6 (ii) attend scheduled mediation conferences unless
7 excused by the mediator; or

8 (iii) listen to and review the information and position
9 offered by the opposing party.

10 (c) If a party disputes a mediator's determination
11 that the party failed to cooperate in the mediation process,
12 the party may file a petition with the workers' compensation
13 court. Upon receipt of a petition, the court shall summon
14 the parties and the mediator to determine by oral discussion
15 whether the mediator's determination of noncooperation is
16 supportable. If the court finds that the mediator's
17 determination is supportable, the court may order the
18 parties to attempt a second time to mediate their dispute.

19 Section 58. Section 39-71-2901, MCA, is amended to
20 read:

21 "39-71-2901. Location of office -- court powers. (1)
22 The principal office of the workers' compensation judge
23 shall be in the city of Helena.

24 (2) The workers' compensation court has power to:

25 (a) preserve and enforce order in its immediate the

1 presence;

2 (b) provide for the orderly conduct of proceedings
3 before it and its officers;

4 (c) compel obedience to its judgments, orders, and
5 process in the same manner and by the same procedures as in
6 civil actions in district court;

7 (d) compel the attendance of persons to testify; and

8 (e) punish for contempt in the same manner and by the
9 same procedures as in district court."

10 Section 59. Section 39-71-2903, MCA, is amended to
11 read:

12 "39-71-2903. Administrative procedure act and rules of
13 evidence applicable ---~~judge-not-bound-by-rules-of-evidence.~~

14 All proceedings and hearings before the workers'
15 compensation judge shall be in accordance with the
16 appropriate provisions of the Montana Administrative
17 Procedure Act. ~~However, the~~ The workers' compensation judge
18 is ~~not~~ bound by common law and statutory rules of evidence."

19 Section 60. Section 39-71-2905, MCA, is amended to
20 read:

21 "39-71-2905. Petition to workers' compensation judge.
22 A claimant or an insurer who has a dispute concerning any
23 benefits under chapter 71 of this title may petition the
24 workers' compensation judge for a determination of the
25 dispute after satisfying dispute resolution requirements

1 otherwise provided in this chapter. The judge, after a
2 hearing, shall make a determination of the dispute in
3 accordance with the law as set forth in chapter 71 of this
4 title. If the dispute relates to benefits due a claimant
5 under chapter 71, the judge shall fix and determine any
6 benefits to be paid and specify the manner of payment. The
7 After parties have satisfied dispute resolution requirements
8 provided elsewhere in this chapter, the workers'
9 compensation judge has exclusive jurisdiction to make
10 determinations concerning disputes under chapter 71, except
11 as provided in 39-71-516 and [section 20]. The penalties and
12 assessments allowed against an insurer under chapter 71 are
13 the exclusive penalties and assessments that can be assessed
14 by the workers' compensation judge against an insurer for
15 disputes arising under chapter 71."

16 Section 61. Section 39-71-2907, MCA, is amended to
17 read:

18 "39-71-2907. Increase in award for unreasonable delay
19 or refusal to pay. (1) When payment of compensation has been
20 unreasonably delayed or refused by an insurer, either prior
21 or subsequent to the issuance of an order by the workers'
22 compensation judge granting a claimant compensation
23 benefits, the full amount of the compensation benefits due a
24 claimant, between the time compensation benefits were
25 delayed or refused and the date of the order granting a

1 claimant compensation benefits, may be increased by the
 2 workers' compensation judge by 20%. The question of
 3 unreasonable delay or refusal shall be determined by the
 4 workers' compensation judge, and such a finding constitutes
 5 good cause to rescind, alter, or amend any order, decision,
 6 or award previously made in the cause for the purpose of
 7 making the increase provided herein.

8 (2) A finding of unreasonableness under this section
 9 does not constitute a finding that the insurer acted in bad
 10 faith or violated the unfair trade practices provisions of
 11 Title 33, chapter 18."

12 Section 62. Section 39-71-2909, MCA, is amended to
 13 read:

14 "39-71-2909. Authority to review, diminish, or
 15 increase awards ----limitation. The judge may, upon the
 16 petition of a claimant or an insurer that the disability of
 17 the claimant has changed, review, diminish, or increase, in
 18 accordance with the law on benefits as set forth in chapter
 19 71 of this title, any benefits previously awarded by the
 20 judge ~~or benefits received by a claimant through settlement~~
 21 ~~agreements. However, the judge may not change any final~~
 22 ~~settlement or award of compensation more than 4 years after~~
 23 ~~the settlement has been approved by the division or any~~
 24 ~~order approving a full and final compromise settlement of~~
 25 compensation."

1 NEW SECTION. Section 63. Signing of petitions,
 2 pleadings, motions, and other papers -- requirements --
 3 sanctions. (1) Every petition, pleading, motion, or other
 4 paper of a party appearing before the workers' compensation
 5 court and represented by an attorney must be signed by at
 6 least one attorney of record in his individual name. The
 7 signer's address also must be stated.

8 (2) A party who is not represented by an attorney
 9 shall sign his petition, pleading, motion, or other paper
 10 and state his address.

11 (3) The signature of an attorney or party constitutes
 12 a certificate by him that:

13 (a) he has read the petition, pleading, motion, or
 14 other paper;

15 (b) to the best of his knowledge, information, and
 16 belief formed after reasonable inquiry, it is well grounded
 17 in fact;

18 (c) it is warranted by existing law or BY a good faith
 19 argument for the extension, modification, or reversal of
 20 existing law; and

21 (d) it is not interposed for any improper purpose,
 22 such as to harass or to cause unnecessary delay or needless
 23 increase in the cost of litigation.

24 (4) If a petition, pleading, motion, or other paper is
 25 signed in violation of this section, the court, upon motion

1 or upon its own initiative, shall impose an appropriate
2 sanction upon the person who signed it, a represented party,
3 or both. The sanction may include an order to pay to the
4 other party or parties the amount of the reasonable expense
5 incurred because of the filing of the petition, pleading,
6 motion, or other paper, including reasonable attorney fees.

7 Section 64. Section 39-72-102, MCA, is amended to
8 read:

9 "39-72-102. Definitions. As used in this chapter,
10 unless the context requires otherwise, the following
11 definitions apply:

12 (1) "Beneficiary" is as defined in 39-71-116(2).

13 (2) "Child" is as defined in 39-71-116(4).

14 (3) "Disablement" means the event of becoming
15 physically incapacitated by reason of an occupational
16 disease from performing work in the ~~normal labor market~~
17 worker's job pool. Silicosis, when complicated by active
18 pulmonary tuberculosis, is presumed to be total disablement.
19 "Disability", "total disability", and "totally disabled" are
20 synonymous with "disablement", but they have no reference to
21 "~~partial~~ permanent partial disability".

22 (4) "Division" is as defined in 39-71-116(5).

23 (5) "Employee" is as defined in 39-71-118.

24 (6) "Employer" is as defined in 39-71-117.

25 (7) ~~"Husband" is as defined in 39-71-116(7).~~

1 (8) "Independent contractor" is as defined in
2 39-71-120.

3 (9) "Insurer" is as defined in 39-71-116(8).

4 (10) "Invalid" is as defined in 39-71-116(9).

5 (11) "Occupational disease" means ~~all diseases~~
6 ~~arising out of or contracted from and in the course of~~
7 ~~employment harm as defined in, DAMAGE, OR DEATH AS SET FORTH~~
8 IN 39-71-119(1) arising out of or contracted in the course
9 and scope of employment but which AND is caused by events
10 occurring on more than a single day or work shift. The term
11 does not include a physical or mental condition arising from
12 emotional or mental stress or from a nonphysical stimulus or
13 activity.

14 (12) "Order" is as defined in 39-71-116(10).

15 (13) "Pneumoconiosis" means a chronic dust disease
16 of the lungs arising out of employment in coal mines and
17 includes anthracosis, coal workers' pneumoconiosis,
18 silicosis, or anthracosilicosis arising out of such
19 employment.

20 (14) "Silicosis" means a chronic disease of the
21 lungs caused by the prolonged inhalation of silicon dioxide
22 ~~§10-9B2 (SI02)~~ and characterized by small discrete nodules
23 of fibrous tissue similarly disseminated throughout both
24 lungs causing the characteristic x-ray pattern and by other
25 variable clinical manifestations.

1 ~~(15)~~(14) "Wages" is as defined in 39-71-116~~(20)~~
2 [section 4].

3 ~~(16)~~"Wife" is as defined in 39-71-116~~(21)~~;

4 ~~(17)~~(15) "Year" is as defined in 39-71-116~~(6)~~(8) and
5 39-71-116(22)."

6 Section 65. Section 45-6-301, MCA, is amended to read:

7 "45-6-301. Theft. (1) A person commits the offense of
8 theft when he purposely or knowingly obtains or exerts
9 unauthorized control over property of the owner and:

10 (a) has the purpose of depriving the owner of the
11 property;

12 (b) purposely or knowingly uses, conceals, or abandons
13 the property in such manner as to deprive the owner of the
14 property; or

15 (c) uses, conceals, or abandons the property knowing
16 such use, concealment, or abandonment probably will deprive
17 the owner of the property.

18 (2) A person commits the offense of theft when he
19 purposely or knowingly obtains by threat or deception
20 control over property of the owner and:

21 (a) has the purpose of depriving the owner of the
22 property;

23 (b) purposely or knowingly uses, conceals, or abandons
24 the property in such manner as to deprive the owner of the
25 property; or

1 (c) uses, conceals, or abandons the property knowing
2 such use, concealment, or abandonment probably will deprive
3 the owner of the property.

4 (3) A person commits the offense of theft when he
5 purposely or knowingly obtains control over stolen property
6 knowing the property to have been stolen by another and:

7 (a) has the purpose of depriving the owner of the
8 property;

9 (b) purposely or knowingly uses, conceals, or abandons
10 the property in such manner as to deprive the owner of the
11 property; or

12 (c) uses, conceals, or abandons the property knowing
13 such use, concealment, or abandonment probably will deprive
14 the owner of the property.

15 (4) A person commits the offense of theft when he
16 purposely or knowingly obtains or exerts unauthorized
17 control over any part of any public assistance provided
18 under Title 53 by a state or county agency, regardless of
19 the original source of assistance, by means of:

20 (a) a knowingly false statement, representation, or
21 impersonation; or

22 (b) a fraudulent scheme or device.

23 (5) A person commits the offense of theft when he
24 purposely or knowingly obtains or exerts unauthorized
25 control over any part of any benefits provided under Title

1 39, chapters 71 and OR 72, by means of:

2 (a) a knowingly false statement, representation, or
3 impersonation; or

4 (b) deception or other fraudulent action.

5 {5}(6) A person convicted of the offense of theft of
6 property not exceeding \$300 in value shall be fined not to
7 exceed \$500 or be imprisoned in the county jail for any term
8 not to exceed 6 months, or both. A person convicted of the
9 offense of theft of property exceeding \$300 in value or
10 theft of any commonly domesticated hoofed animal shall be
11 fined not to exceed \$50,000 or be imprisoned in the state
12 prison for any term not to exceed 10 years, or both.

13 {6}(7) Amounts involved in thefts committed pursuant
14 to a common scheme or the same transaction, whether from the
15 same person or several persons, may be aggregated in
16 determining the value of the property."

17 Section 66. Section 19-12-401, MCA, is amended to
18 read:

19 "19-12-401. Eligibility for pension benefits. In order
20 to qualify for participation in the volunteer firefighters'
21 pension plan under 19-12-404, a volunteer firefighter must
22 meet each of the following requirements:

23 (1) (a) To qualify for full participation, he must
24 have completed a total of at least 20 years' service as an
25 active volunteer firefighter and as an active member of a

1 qualified volunteer fire company.

2 (b) If a firefighter is prevented from completing at
3 least 20 years' service by dissolution or discontinuance of
4 his volunteer fire company, personal relocation due to
5 transfer or loss of employment, personal disability, or any
6 other factor beyond his reasonable control, he may qualify
7 for partial participation if he has completed at least 10
8 years' service. In that event, he is eligible for only a
9 proportion of the benefits specified in 19-12-404,
10 determined by multiplying the benefits by a fraction, the
11 numerator of which is the number of years of active service
12 completed and the denominator of which is 20.

13 (c) The years of active service are cumulative and
14 need not be continuous. The service need not be acquired
15 with one single fire company but may be a total of separate
16 periods of active service with different fire companies in
17 different fire districts.

18 (d) Effective March 1, 1965, the annual period of
19 service for the purpose of this chapter is the fiscal year.
20 No fractional part of any year may count toward the service
21 requirement, and to receive credit for any particular year,
22 a volunteer firefighter must serve with one particular
23 volunteer fire company throughout that entire fiscal year.

24 (2) (a) Except as provided in subsection (2)(b), he
25 must have attained the age of 55, but he need not be an

1 active volunteer firefighter or an active member of any
2 volunteer fire company when he reaches that age.

3 (b) An active member of a volunteer fire company whose
4 duty-related injury results in a permanent, total disability
5 as defined in 39-71-116~~(13)~~ is eligible to receive a partial
6 pension regardless of his age calculated as follows:

7 (i) for a member with less than 10 years of service, a
8 pension calculated as provided in subsection (1)(b) in which
9 the numerator equals 10; or

10 (ii) for a member with 10 years or more of service, a
11 pension calculated as provided in subsection (1)(b).

12 (3) During each of the years for which he claims
13 credit under subsection (1), he must have completed a
14 minimum of 30 hours of instruction in matters pertaining to
15 firefighting under a program formulated and supervised by
16 the chief or foreman of his volunteer fire company.

17 (4) Effective July 1, 1965, no volunteer firefighter
18 may receive credit for any year of membership in a volunteer
19 fire company unless, throughout the year:

20 (a) the company maintained firefighting equipment in
21 serviceable condition of a value of \$2,500 or more; and

22 (b) the company or the fire district served by it was
23 rated in class 5, 6, 7, 8, 9, or 10 by the board of fire
24 underwriters for the purpose of fire insurance premium
25 rates.

1 (5) He must have ceased to be an active member of any
2 volunteer fire company, and if he applies for and receives
3 pension benefits hereunder, he will not thereafter be
4 eligible to become an active member of any volunteer fire
5 company."

6 Section 67. Section 39-71-118, MCA, is amended to
7 read:

8 "39-71-118. Employee, worker, and workman defined. (1)
9 The terms "employee", "workman", or "worker" mean:

10 (a) each person in this state, including a contractor
11 other than an independent contractor, who is in the service
12 of an employer, as defined by 39-71-117, under any
13 appointment or contract of hire, expressed or implied, oral
14 or written. The terms include aliens and minors, whether
15 lawfully or unlawfully employed, and all of the elected and
16 appointed paid public officers and officers and members of
17 boards of directors of quasi-public or private corporations
18 while rendering actual service for such corporations for
19 pay. Casual employees as defined by 39-71-116~~(3)~~ are
20 included as employees if they are not otherwise covered by
21 workers' compensation and if an employer has elected to be
22 bound by the provisions of the compensation law for these
23 casual employments, as provided in 39-71-401(2). Household
24 or domestic service is excluded.

25 (b) a recipient of general relief who is performing

1 work for a county of this state under the provisions of
 2 53-3-303 through 53-3-305 and any juvenile performing work
 3 under authorization of a district court judge in a
 4 delinquency prevention or rehabilitation program;

5 (c) a person receiving on-the-job vocational
 6 rehabilitation training or other on-the-job training under a
 7 state or federal vocational training program, whether or not
 8 under an appointment or contract of hire with an employer as
 9 defined in this chapter and whether or not receiving payment
 10 from a third party. However, this subsection does not apply
 11 to students enrolled in vocational training programs as
 12 outlined above while they are on the premises of a public
 13 school or community college.

14 (d) students enrolled and in attendance in programs of
 15 vocational-technical education approved by the state board
 16 of public education at designated postsecondary
 17 vocational-technical centers; or

18 (e) an airman or other person employed as a volunteer
 19 under 67-2-105.

20 (2) If the employer is a partnership or sole
 21 proprietorship, such employer may elect to include as an
 22 employee within the provisions of this chapter any member of
 23 such partnership or the owner of the sole proprietorship
 24 devoting full time to the partnership or proprietorship
 25 business. In the event of such election, the employer must

1 serve upon the employer's insurer written notice naming the
 2 partners or sole proprietor to be covered, and no partner or
 3 sole proprietor shall be deemed an employee within this
 4 chapter until such notice has been given. For premium
 5 ratemaking and for the determination of weekly wage for
 6 weekly compensation benefits, the insurance carrier shall
 7 assume a salary or wage of such electing employee to be not
 8 less than \$900 a month and not more than 1 1/2 times the
 9 average weekly wage as defined in this chapter."

10 NEW SECTION. Section 68. Repealer. Sections
 11 39-71-104, 39-71-121, 39-71-122, 39-71-309, 39-71-410,
 12 39-71-705 through 39-71-707, 39-71-709, 39-71-738,
 13 39-71-914, 39-71-1001, 39-71-1002, 39-71-1005, 39-71-2906,
 14 39-71-2908, and 39-72-104, MCA, are repealed.

15 NEW SECTION. Section 69. Extension of authority. Any
 16 existing authority of the department of labor and industry
 17 and the division of workers' compensation to make rules on
 18 the subject of the provisions of this act is extended to the
 19 provisions of this act.

20 NEW SECTION. Section 70. Codification instructions.
 21 (1) Sections 1 and 4 are intended to be codified as an
 22 integral part of Title 39, chapter 71, part 1, and the
 23 provisions of Title 39, chapter 71, part 1, apply to
 24 sections 1 and 4.

25 (2) SECTIONS 8 AND 52 THROUGH 57 ARE INTENDED TO BE

1 CODIFIED AS AN INTEGRAL PART OF TITLE 39, CHAPTER 71, AND
 2 THE PROVISIONS OF TITLE 39, CHAPTER 71, APPLY TO SECTIONS 8
 3 AND 52 THROUGH 57.

4 ~~(2)~~(3) Sections 7 and 20 are intended to be codified
 5 as an integral part of Title 39, chapter 71, part 3, and the
 6 provisions of Title 39, chapter 71, part 3, apply to
 7 sections 7 and 20.

8 ~~(3)~~(4) Section 9 is intended to be codified as an
 9 integral part of Title 39, chapter 71, part 4, and the
 10 provisions of Title 39, chapter 71, part 4, apply to section
 11 9.

12 ~~(4)~~(5) Sections 24 and 28 are intended to be codified
 13 as an integral part of Title 39, chapter 71, part 7, and the
 14 provisions of Title 39, chapter 71, part 7, apply to
 15 sections 24 and 28.

16 ~~(5)~~(6) Sections 34 and 36 through 50 are intended to
 17 be codified as an integral part of Title 39, chapter 71,
 18 part 10, and the provisions of Title 39, chapter 71, part
 19 10, apply to sections 34 and 36 through 50.

20 ~~(6)~~(7) Section 63 is intended to be codified as an
 21 integral part of Title 39, chapter 71, part 29, and the
 22 provisions of Title 39, chapter 71, part 29, apply to
 23 section 63.

24 NEW SECTION. Section 71. Severability. If a part of
 25 this act is invalid, all valid parts that are severable from

1 the invalid part remain in effect. If a part of this act is
 2 invalid in one or more of its applications, the part remains
 3 in effect in all valid applications that are severable from
 4 the invalid applications.

5 NEW SECTION. Section 72. Applicability. (1) The
 6 ~~portions--of-this-act-providing-procedures-for-resolution-of~~
 7 ~~disputes~~ SECTIONS 8 AND 52 THROUGH 57 apply RETROACTIVELY,
 8 WITHIN THE MEANING OF 1-2-109, to all injuries and diseases,
 9 regardless of the date of occurrence. WITH RESPECT TO
 10 REHABILITATION DISPUTES, SECTIONS 8 AND 52 THROUGH 57 APPLY
 11 RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, UNLESS THE
 12 DIVISION HAD JURISDICTION OVER THE DISPUTE UNDER THE LAW IN
 13 EFFECT AT THE TIME OF INJURY.

14 ~~(2)--Sections--417--497--and--507--giving--the--division--of~~
 15 ~~workers'--compensation--jurisdiction--over--disputes--arising~~
 16 ~~under--Title--397--chapters--71--and--727--concerning~~
 17 ~~rehabilitation7--apply--only--to--injuries--and--diseases~~
 18 ~~occurring--after--June--307--19877--Disputes--over--rehabilitation~~
 19 ~~for--injuries--and--diseases--occurring--prior--to--July--17--19877~~
 20 ~~may--be--brought--before--a--mediator--and--the--workers'~~
 21 ~~compensation--court7~~

22 ~~(3)~~(2) The remaining portions of this act apply only
 23 to injuries, diseases, and events occurring after June 30,
 24 1987.

25 NEW SECTION. Section 73. Effective dates. (1) Except

SB 0315/04

1 as provided in subsection (2), this act is effective July 1,
2 1987.

3 (2) Sections 5, 53, 69, and this section are effective
4 on passage and approval.

-End-

STANDING COMMITTEE REPORT

Page 1 of 7

SENATE BILL NO. 315
March 26, 1987
Page 2 of 7

March 26 19 87

Mr. Speaker: We, the committee on BUSINESS AND LABOR
report SENATE BILL NO. 315

do pass be concurred in as amended
 do not pass be not concurred in statement of intent attached

Les Kitzelman
REP. LES KITSELMAN Chairman

1. Title, page 2, line 17.
Following: "39-71-122,"
Insert: "39-71-309,"

2. Title, page 2, line 20.
Following: "MCA,"
Insert: "MAKING CERTAIN PROVISIONS RETROACTIVE;"

3. Page 11, line 25.
Strike: "or"
Insert: ", "
Following: "lodging"
Insert: ", rent, or housing"

4. Page 12, line 1.
Strike: ", "
Insert: "and is"
Following: "on"
Strike: "the"
Insert: "its"
Strike: "of the" on line 1 through "housing" on line 2

5. Page 14, line 20.
Strike: "-- criminal penalty"

6. Page 15, line 7.
Following: "72"
Insert: ", other than the disputes described in subsection (2), "

7. Page 16, lines 7 and 8.
Strike: "A" on line 7 through "A" on line 8
Insert: "Upon motion of a party, the"

8. Page 16, line 9.
Strike: "the"
Insert: "either"

9. Page 16, line 13.
Strike: "(6)"
Insert: "(d)"

10. Page 32, line 3.
Strike: "39-71-61"
Insert: "39-71-611"

11. Page 32, line 11.
Strike: "If"
Insert: "When"

12. Page 32, line 14.
Strike: "new hires"
Insert: "other applicants"

13. Page 32, line 15.
Strike: "within such 2-year period"
Strike: ";

14. Page 32, line 16.
Strike: "(a)"

15. Page 32, lines 17 through 19.
Strike: "; and" on line 17 through "applicants" on line 19

16. Page 33, line 4.
Strike: "injuries producing"

17. Page 35, line 17.
Following: line 16
Insert: "on"

18. Page 35, line 17.
Following: "more"
Strike: "that"
Insert: "than"

19. Page 36, line 4.
Strike: "injuries causing"
Insert: "permanent"

20. Page 36, line 5.
Following: "disability"
Insert: "-- impairment awards and wage supplements"

Rep. Glaser will sponsor

THIRD reading copy (BLUE color)

PK
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21. Page 36, line 16.
Following: line 15
Insert: "The benefits available for permanent partial disability are impairment awards and wage supplements."
22. Page 38, line 20.
Strike: "subsections"
Insert: "subsection"
Strike: "and (2)."
23. Page 39, line 14.
Following: "of"
Strike: "he"
Insert: "the"
24. Page 39, line 15.
Following: "direct"
Strike: "a"
Insert: "the"
25. Page 39, line 23.
Strike: "10"
Insert: "30"
26. Page 40, line 25.
Strike: "a workers"
Insert: "the"
27. Page 41, line 1.
Following: "subsection"
Insert: "(3) (b) (i) or"
Following: "(3) (b) (ii)"
Strike: "or (3) (b) (iii)"
28. Page 41, line 4.
Following: "subsection"
Strike: "(3) (b) (iii)"
Insert: "(3) (b) (ii)"
29. Page 41, line 14.
Following: "services"
Insert: "-- fee schedules and hospital rates"
30. Page 42, line 20.
Following: "January"
Insert: "1,"
31. Page 43, line 2.
Following: "January"
Insert: "1,"
32. Page 44, line 7.
Following: "total"
Insert: "disability"
33. Page 45, line 20.
Strike: "39-71-116"
34. Page 46, line 4.
Following: "and"
Strike: "39-71-116"
35. Page 46, line 8.
Following: "wage"
Insert: "at the time of injury"
36. Page 46, line 22.
Following: "through"
Strike: "39-71-116"
37. Page 49, line 2.
Strike: "and"
Insert: " , "
38. Page 49, line 3.
Following: "payments"
Insert: " , and lump-sum advance payments"
39. Page 52, line 16.
Following: "agree"
Insert: "to a settlement"
40. Page 53, line 16.
Strike: "worker's"
Insert: "workers"
41. Page 53, line 19.
Strike: "RELEASES"
Insert: "RELEASE"
42. Page 54, line 11.
Following: "all lump-sum"
Insert: "advance"

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43. Page 54, line 15.
Following: "lump-sum"
Insert: "advance"

44. Page 54, line 16.
Following: "lump-sum"
Insert: "advance"

45. Page 54, line 25.
Strike: "accident"
Insert: "injury"

46. Page 55, line 2.
Strike: "accident"
Insert: "injury"

47. Page 66, line 3.
Strike: "services"
Insert: "appeals"

48. Page 67, line 15.
Strike: "nd"
Insert: "and"

49. Page 68, line 13.
Following: "a"
Insert: "total of"
Following: "\$4,000"
Strike: "total"

50. Page 69, line 11.
Strike: "and"
Insert: "but"

51. Page 69, line 23.
Strike: "services"
Insert: "provider or the department of social and
rehabilitation services"

52. Page 70, line 1.
Following: "provider"
Insert: "the department of social and rehabilitation
services"

53. Page 70, line 25.
Following: line 24
Insert: "rehabilitation"
Strike: "under this part"

54. Page 72, line 8.
Following: "security"
Insert: "in addition to the security described in
subsection (1)"

55. Page 72, line 13.
Following: "security"
Insert: "provided for in subsection (2)"

56. Page 80, line 24.
Strike: "-- limitation"

57. Page 82, line 2.
Following: "or"
Insert: "by"

58. Page 83, line 16.
Strike: "as defined in"
Insert: ", damage, or death as set forth in"

59. Page 83, line 17.
Strike: "but which"
Insert: "and"

60. Page 83, line 18.
Strike: "is"

61. Page 84, line 5.
Strike: "(SiO SB2"
Insert: "(SiO₂)"

62. Page 86, line 9.
Strike: "and"
Insert: "or"

63. Page 91, line 19.
Following: "39-71-122,"
Insert: "39-71-309,"

64. Page 92, line 8.
Following: line 7
Insert: "(2) Sections 8 and 52 through 57 are intended
to be codified as an integral part of Title 39, chapter
71, and the provisions of Title 39, chapter 71, apply
to sections 8 and 52 through 57."

Renumber: subsequent subsections

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65. Page 93, lines 9 through 11.

Strike: "The" on line 9 through "disputes" on line 11

Insert: "Sections 8 and 52 through 57"

Following: "apply"

Insert: "retroactively, within the meaning of 1-2-109,"

66. Page 93, line 12.

Following: "occurrence."

Insert: "With respect to rehabilitation disputes, sections
8, and 52 through 57 apply retroactively, within the
meaning of 1-2-109, unless the division had
jurisdiction over the dispute under the law in effect
at the time of injury."

67. Page 93, lines 13 through 20.

Strike: subsection (2) in its entirety

Renumber: subsequent subsection

~~REVISIONS~~

LK MS