

SB 330 INTRODUCED BY VAN VALKENBURG, DRISCOLL, WHALEN, ET AL.  
GENERALLY REVISE WORKERS' COMPENSATION LAWS

2/11 INTRODUCED  
2/11 REFERRED TO LABOR & EMPLOYMENT RELATIONS  
2/11 FISCAL NOTE REQUESTED  
2/14 HEARING  
2/17 FISCAL NOTE RECEIVED  
DIED IN COMMITTEE

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SENATE BILL NO. 330  
 INTRODUCED BY Richard E. Manning, Oliver Whalen, Stephen J. Lynch, Robert Walker, Steven Blazich, Margie Yelloutan, David Carlisle, Nancy Manning, James  
 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE WORKERS' COMPENSATION LAWS, TO PROVIDE THAT OBTAINING BENEFITS FRAUDULENTLY CONSTITUTES THEFT, AMENDING SECTIONS 2-15-1014, 19-12-401, 39-71-104, 39-71-116, 39-71-118, 39-71-204, 39-71-401, 39-71-407, 39-71-503, 39-71-611, 39-71-612, 39-71-614, 39-71-701 THROUGH 39-71-704, 39-71-708, 39-71-721, 39-71-736, 39-71-737, 39-71-741, 39-71-803, 39-71-1004, 39-71-2102, 39-71-2203, 39-71-2304, 39-71-2901 THROUGH 39-71-2907, 39-71-2909, 39-72-102, 39-72-610, 39-72-613, 39-72-701, 45-6-301, 50-16-311, 53-9-106, AND 53-9-131, MCA; REPEALING SECTIONS 39-71-309, 39-71-410, 39-71-705, 39-71-706, 39-71-709, 39-71-1001 THROUGH 39-71-1003, 39-71-1005, 39-71-2908, 39-72-611, AND 39-72-612, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

Section 1. Section 2-15-1014, MCA, is amended to read:

"2-15-1014. Office of workers' compensation judge court -- allocation -- appointment -- salary. (1) There is ~~the office of a~~ workers' compensation judge court. The office court is allocated to the department of administration for administrative purposes only as

1 prescribed in 2-15-121.  
 2 (2) The governor shall appoint the two workers'  
 3 compensation judge judges, each to serve for a term of 6  
 4 years in the same manner provided by Title 3, chapter 1,  
 5 part 10, for the appointment of supreme or district court  
 6 judges. A vacancy shall be filled in the same manner as the  
 7 original appointment. The second judge, to be appointed  
 8 pursuant to legislative authorization adopted in 1987, shall  
 9 take office effective January 1, 1988. The governor shall  
 10 designate one of the two appointees as chief judge whose  
 11 duties, in addition to those set forth in Title 39, chapters  
 12 71 and 72, include the administration of the office, budget  
 13 preparation, personnel hiring and management, and court  
 14 administration.  
 15 (3) To be eligible for workers' compensation judge, a  
 16 person must:  
 17 (a) have the qualifications necessary for district  
 18 court judges found in Article VII, section 9, of the Montana  
 19 constitution;  
 20 (b) devote full time to the duties of workers'  
 21 compensation judge and not engage in the private practice of  
 22 law.  
 23 (4) The A workers' compensation judge is entitled to  
 24 the same salary and other emoluments as that of a district  
 25 judge but shall be accorded retirement benefits under the



1 public employees' retirement system."

2 Section 2. Section 39-71-104, MCA, is amended to read:

3 "39-71-104. Court to ~~give liberal construction to~~  
4 chapter construe chapter according to terms. Whenever this  
5 chapter or any part or section thereof is interpreted by a  
6 court, it shall be liberally construed by such court. It is  
7 the intent of the legislature that the Workers' Compensation  
8 Act be construed according to its terms. The act may not be  
9 liberally construed in favor of any party."

10 Section 3. Section 39-71-116, MCA, is amended to read:

11 "39-71-116. Definitions. Unless the context otherwise  
12 requires, words and phrases employed in this chapter have  
13 the following meanings:

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

20 (2) "Beneficiary" means:

21 (a) a surviving ~~wife or husband~~ spouse living with or  
22 legally entitled to be supported by the deceased at the time  
23 of injury;

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

25 (c) an unmarried child under the age of 25 22 years

1 who is a full-time student in an accredited school or is  
2 enrolled in an accredited apprenticeship program;

3 (d) an invalid child over the age of 18 years who is  
4 dependent upon the decedent for support at the time of  
5 injury;

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

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

17 (3) "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 for the purpose of  
21 certifying rehabilitation practitioners.

22 ~~(3)(4)~~ (4) "Casual employment" means employment not in the  
23 usual course of trade, business, profession, or occupation  
24 of the employer. ~~Any person hauling or assisting in hauling~~  
25 ~~of sugar beets or grains, in case of emergency, is~~

1 ~~considered-engaged-in-casual-employment.~~

2 ~~†4†(5)~~ "Child" includes a posthumous child, a  
3 dependent stepchild, a child legally adopted prior to the  
4 injury, and an illegitimate child legitimized prior to the  
5 injury.

6 ~~†5†(6)~~ "Division" means the division of workers'  
7 compensation of the department of labor and industry  
8 provided for in 2-15-1702.

9 ~~†6†(7)~~ "Fiscal year" means the period of time between  
10 July 1 and the succeeding June 30.

11 ~~†7†--"Husband"-or-"Widower"-means--only--a--husband--or~~  
12 ~~widower--living--with--or--legally--entitled--to--be--supported--by~~  
13 ~~the-deceased-at-the-time-of-her-injury.~~

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

19 (9) "Invalid" means one who is physically or mentally  
20 incapacitated.

21 (10) (a) "Normal labor market" means the occupations  
22 for which a claimant may be qualified, consistent with the  
23 claimant's age, education, vocational experience, and  
24 aptitude and compatible with the claimant's physical  
25 condition and limitations as a result of the claimant's

1 injuries.

2 (b) As to the geographical area to be considered in  
3 which the normal labor market exists, the area shall be  
4 determined by considering:

5 (i) the claimant's residence;

6 (ii) the location of the claimant's employment at the  
7 time of injury;

8 (iii) the claimant's previous commuting distance to  
9 work; and

10 (iv) a reasonable commuting distance from the place of  
11 residence to the location of the proposed employment.

12 (c) Also considered are the claimant's physical  
13 limitations as a result of the injury, the cost of such  
14 commuting, and the wages of prospective employment.

15 ~~†10†(11)~~ "Order" means any decision, rule, direction,  
16 requirement, or standard of the division or any other  
17 determination arrived at or decision made by the division.

18 ~~†11†(12)~~ "Payroll", "annual payroll", or "annual  
19 payroll for the preceding year" means the average annual  
20 payroll of the employer for the preceding calendar year or,  
21 if the employer shall not have operated a sufficient or any  
22 length of time during such calendar year, 12 times the  
23 average monthly payroll for the current year; provided, that  
24 an estimate may be made by the division for any employer  
25 starting in business where no average payrolls are

1 available, such estimate to be adjusted by additional  
2 payment by the employer or refund by the division, as the  
3 case may actually be on December 31 of such current year.

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

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

20 ~~{14}{13}~~ The term "physician" includes "surgeon" and in  
21 either case means one authorized by law to practice his  
22 profession in this state.

23 ~~{15}{14}~~ "The plant of the employer" includes the place  
24 of business of a third person while the employer has access  
25 to or control over such place of business for the purpose of

1 carrying on his usual trade, business, or occupation.

2 ~~{16}{15}~~ "Public corporation" means the state or any  
3 county, municipal corporation, school district, city, city  
4 under commission form of government or special charter,  
5 town, or village.

6 ~~{17}{16}~~ "Reasonably safe place to work" means that the  
7 place of employment has been made as free from danger to the  
8 life or safety of the employee as the nature of the  
9 employment will reasonably permit.

10 ~~{18}{17}~~ "Reasonably safe tools and appliances" are  
11 such tools and appliances as are adapted to and are  
12 reasonably safe for use for the particular purpose for which  
13 they are furnished.

14 ~~{19}-"Temporary--total--disability"--means--a--condition~~  
15 ~~resulting--from--an--injury--as--defined--in--this--chapter--that~~  
16 ~~results--in--total--loss--of--wages--and--exists--until--the--injured~~  
17 ~~worker--is--as--far--restored--as--the--permanent--character--of--the~~  
18 ~~injuries--will--permit--A--worker--shall--be--paid--temporary--total~~  
19 ~~disability--benefits--during--a--reasonable--period--of~~  
20 ~~retraining--Disability--shall--be--supported--by--a--preponderance~~  
21 ~~of--medical--evidence--~~

22 ~~{20}{18}~~ "Wages" means the average gross earnings  
23 received by the employee at the time of the injury for the  
24 usual hours of employment in a week, and overtime is not to  
25 be considered. ~~Sick-leave-benefits--accrued--by--employees--of~~

1 ~~public corporations, as defined by subsection (16) of this~~  
 2 ~~section, are considered wages. A collective bargaining~~  
 3 ~~agreement is not the sole factor to be considered in~~  
 4 ~~determining 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)(19) "Year", unless otherwise specified, means~~  
 9 ~~calendar year."~~

10 Section 4. Section 39-71-118, MCA, is amended to read:

11 "39-71-118. Employee, worker, and workman defined. (1)  
 12 The terms "employee", "workman", or "worker" mean:

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

1 casual employments, as provided in 39-71-401(2). Household  
 2 or domestic service is excluded.

3 (b) a recipient of general relief who is performing  
 4 work for a county of this state under the provisions of  
 5 53-3-303 through 53-3-305 and any juvenile performing work  
 6 under authorization of a district court judge in a  
 7 delinquency prevention or rehabilitation program;

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

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

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

23 (2) If the employer is a partnership or sole  
 24 proprietorship, such employer may elect to include as an  
 25 employee within the provisions of this chapter any member of

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

13 Section 5. Section 39-71-204, MCA, is amended to read:  
 14 "39-71-204. Rescission, alteration, or amendment by  
 15 division of its orders, decisions, or awards -- limitation  
 16 -- effect. (1) Except as provided in subsection (2), the  
 17 division shall have continuing jurisdiction over all its  
 18 orders, decisions, and awards and may, at any time, upon  
 19 notice, and after opportunity to be heard is given to the  
 20 parties in interest, rescind, alter, or amend any such  
 21 order, decision, or award made by it upon good cause  
 22 appearing therefor.

23 (2) The division or the workers' compensation judge  
 24 court shall not have power to rescind, alter, or amend any  
 25 final settlement or award of compensation more than 4 years

1 after the same has been approved by the division.  
 2 Rescinding, altering, or amending a final settlement within  
 3 the 4-year period shall be by agreement between the claimant  
 4 and the insurer. If the claimant and the insurer cannot  
 5 agree, the dispute shall be considered a dispute for which  
 6 the workers' compensation judge court has jurisdiction to  
 7 make a determination. ~~Except-as-provided-in-39-71-29007-the~~  
 8 The division or the workers' compensation judge court shall  
 9 not have the power to rescind, alter, or amend any order  
 10 approving a full and final compromise settlement of  
 11 compensation.

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

15 NEW SECTION. Section 6. Filing claim -- obtaining  
 16 benefits through deception or other fraudulent means --  
 17 criminal penalty. (1) A person filing a claim under chapter  
 18 71 or 72 of this title, by signing the claim, affirms the  
 19 information filed is correct to the best of that person's  
 20 knowledge.

21 (2) A person may be guilty of theft under 45-6-301 who  
 22 files or assists in the filing of a false claim for benefits  
 23 to which the person is not entitled under chapter 71 or 72  
 24 of this title. A county attorney may initiate criminal  
 25 proceedings against the person.

1 Section 7. Section 39-71-401, MCA, is amended to 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 ~~regulation, or for services as a direct seller engaged in~~  
4 ~~the sale of consumer products to customers primarily in the~~  
5 ~~home;~~

6 (e) a broker or salesman performing under a license  
7 issued by the board of realty regulation;

8 (f) a direct seller engaged in the sale, primarily in  
9 the customer's home, of consumer products;

10 ~~(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 ~~(h)~~ any person performing services in return for  
14 aid or sustenance only, except employment of a volunteer  
15 under 67-2-105;

16 ~~(i)~~ employment with any railroad engaged in  
17 interstate commerce, except that railroad construction work  
18 shall be included in and subject to the provisions of this  
19 chapter;

20 ~~(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 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. is bound personally~~  
 17 and individually by the provisions of compensation plan No.  
 18 1, 2, or 3. However, under rules promulgated by the division  
 19 and subject to division review, he may elect not to be bound  
 20 as an employee under this chapter by delivering a written  
 21 notice to the division and the insurer, if any, on a form  
 22 provided by the division.

23 (4) (a) A private corporation shall provide coverage  
 24 for its officers and other employees under the provisions of  
 25 compensation plan No. 1, 2, or 3. However, subject to

1 division review, an officer of a private corporation may  
 2 elect not to be bound as an employee under this chapter by  
 3 giving a written notice on a form provided by the division.  
 4 The notice must be served in the following manner:

5 (i) if the employer has elected to be bound by the  
 6 provisions of compensation plan No. 1, by delivering the  
 7 notice to the board of directors of the employer and to the  
 8 division;

9 (ii) if the employer has elected to be bound by the  
 10 provisions of compensation plan No. 2 or 3, by delivering  
 11 the notice to the board of directors of the employer, the  
 12 division, and the insurer.

13 (b) If the employer changes plans or insurers, his  
 14 previous election not to be bound is not effective. The  
 15 officer shall again serve notice if he elects not to be  
 16 bound.

17 (c) The appointment or election of an employee to be  
 18 an officer of a corporation in order to exclude the employee  
 19 from coverage under this chapter does not entitle the  
 20 officer to elect not to be bound as an employee under this  
 21 chapter. In any case, the officer must sign the notice under  
 22 oath or affirmation and is subject to the penalties for  
 23 false swearing under 45-7-202.

24 (d) The division shall review an election not to be  
 25 bound as an employee made by an officer of a private

1 corporation to assure that the election complies with this  
 2 chapter.

3 ~~(4)~~(5) Each employer shall post a sign in the  
 4 workplace at the locations where notices to employees are  
 5 normally posted, informing employees about the employer's  
 6 current provision of compensation insurance. A workplace is  
 7 any location where an employee performs any work-related act  
 8 in the course of employment, regardless of whether the  
 9 location is temporary or permanent, and includes the place  
 10 of business or property of a third person while the employer  
 11 has access to or control over such place of business or  
 12 property for the purpose of carrying on his usual trade,  
 13 business, or occupation. The sign will be provided by the  
 14 division, distributed through insurers or directly by the  
 15 division, and posted by employers in accordance with rules  
 16 adopted by the division. An employer who purposely or  
 17 knowingly fails to post a sign as provided in this  
 18 subsection is subject to a \$50 fine for each citation."

19 NEW SECTION. Section 8. Financial incentives to  
 20 institute safety programs. The state compensation insurance  
 21 fund, plan No. 3, and private insurers, plan No. 2, may  
 22 provide financial incentives to an employer who implements  
 23 a formal safety program. The insurance carrier may provide  
 24 to an employer a premium discount that reflects the degree  
 25 of risk diminished by the implemented safety program.

1 Section 9. Section 39-71-407, MCA, is amended to read:

2 "39-71-407. Liability of insurers. (1) Every insurer  
 3 is liable for the payment of compensation, in the manner and  
 4 to the extent hereinafter provided, to an employee of an  
 5 employer it insures who receives an injury arising out of  
 6 and in the course of his employment or, in the case of his  
 7 death from such injury, to his beneficiaries, if any.

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

11 (i) a claimed injury has occurred; or

12 (ii) a claimed injury aggravated a preexisting  
 13 condition.

14 (b) Proof that it was medically possible that a  
 15 claimed injury occurred or that such claimed injury  
 16 aggravated a preexisting condition is not sufficient to  
 17 establish liability.

18 (3) An employee who suffers a compensable injury or  
 19 death while traveling is not covered by this chapter except  
 20 if:

21 (a) the employer furnishes the mode of transportation  
 22 or the employee receives reimbursement from the employer for  
 23 costs of travel, gas, oil, or lodging as a part of the  
 24 employee's benefits or employment agreement; and

25 (b) the travel is necessitated by and on behalf of the

1 employer as an integral part of or condition of the  
2 employment.

3 (4) An employee who is under the influence of  
4 intoxicating beverages or intoxicating drugs and who suffers  
5 an injury or death otherwise compensable under this chapter  
6 is not entitled to benefits if the injury or death is caused  
7 by the intoxication of the employee."

8 Section 10. Section 39-71-503, MCA, is amended to  
9 read:

10 "39-71-503. Administration of fund. (1) The division  
11 shall administer the fund and ~~shall~~ pay all proper benefits  
12 to injured employees of uninsured employers.

13 ~~(2) Proper--surpluses--and--reserves--shall--be--kept--for~~  
14 ~~the fund. Surpluses and reserves may not be kept for the~~  
15 ~~fund. The division shall make payments, as it considers~~  
16 ~~appropriate, as funds become available. The payment of~~  
17 ~~weekly disability benefits takes preference over the payment~~  
18 ~~of medical benefits. No lump-sum payments of future~~  
19 ~~projected benefits may be made from the fund.~~

20 (3) The board of investments shall invest the moneys  
21 of the fund. The cost of administration of the fund shall be  
22 paid out of the money in the fund."

23 Section 11. Section 39-71-611, MCA, is amended to  
24 read:

25 "39-71-611. ~~Costs--and--attorneys'~~ Attorneys' fees

1 payable on denial of claim or termination of benefits later  
2 found compensable. ~~In--the--event~~ If an insurer denies  
3 liability for a claim for compensation or terminates  
4 compensation benefits and the claim is later adjudged  
5 compensable by the workers' compensation judge court or on  
6 appeal and if it is determined by the workers' compensation  
7 court that the actions of the insurer in denying liability  
8 or terminating benefits were unreasonable, the insurer shall  
9 pay reasonable ~~costs-and~~ attorneys' fees as established by  
10 the workers' compensation judge court."

11 Section 12. Section 39-71-612, MCA, is amended to  
12 read:

13 "39-71-612. ~~Costs-and-attorneys'~~ Attorney fees that  
14 may be assessed against an ~~employer-or~~ insurer by workers'  
15 compensation judge court. (1) If an ~~employer-or~~ insurer pays  
16 or ~~tenders~~ submits a written offer of payment of  
17 compensation under chapter 71 or 72 of this title but  
18 controversy relates to the amount of compensation due, the  
19 case is brought before the workers' compensation judge court  
20 for adjudication of the controversy, and the award granted  
21 by the judge court is greater than the amount paid or  
22 ~~tendered~~ offered by the ~~employer-or~~ insurer, a reasonable  
23 attorney's fee as established by the workers' compensation  
24 judge court if the case has gone to a hearing may be awarded  
25 by the judge court in addition to the amount of

1 compensation. However, an award of attorney fees may be made  
2 only if the workers' compensation court determines that the  
3 actions of the insurer were unreasonable. A written offer of  
4 payment made 30 days or more before the date of hearing  
5 before the court is considered a valid offer of payment.

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

13 (2) A finding of unreasonableness against an insurer  
14 made under sections 39-71-611 or 39-71-2907 or this section  
15 does not constitute a finding that the insurer has acted in  
16 bad faith or violated the unfair trade practices provisions  
17 of Title 33, chapter 18."

18 NEW SECTION. Section 13. Costs assessed by the  
19 workers' compensation court. Reasonable costs must be  
20 assessed by the workers' compensation court against an  
21 insurer in proceedings before the court if an insurer:

22 (1) denies liability for a claim for compensation or  
23 terminates compensation benefits and the claim is later  
24 adjudged compensable by the court or on appeal; or

25 (2) pays or submits an offer of payment of

1 compensation but controversy relates to the amount of  
2 compensation due and the court awards an amount greater than  
3 the amount paid or offered by the insurer.

4 Section 14. Section 39-71-614, MCA, is amended to  
5 read:

6 "39-71-614. Calculation of attorney fees. (1) The  
7 amount of an attorney's fee assessed against an employer or  
8 insurer under 39-71-611 or 39-71-612 must be based  
9 exclusively on the time spent by the attorney in  
10 representing the claimant on the issues brought before the  
11 workers' compensation judge court. The attorney must  
12 document the time spent and give the documentation to the  
13 judge. The judge shall determine a reasonable attorney fee  
14 and assess costs. He is not bound by the documentation  
15 submitted to him. The hourly fee the judge applies to the  
16 time spent must be based on the attorney's customary and  
17 current hourly fee for legal work performed in this state.

18 (2) This section does not restrict a claimant and an  
19 attorney from entering into a contingency fee arrangement  
20 under which the attorney receives a percentage of the amount  
21 of compensation payments received by the claimant because of  
22 the efforts of the attorney. However, an amount equal to any  
23 fee and costs assessed against an employer or insurer under  
24 ~~39-71-611 or 39-71-612 and this section and [section 13]~~  
25 must be deducted from the fee an attorney is entitled to

1 from the claimant under a contingency fee arrangement."

2 NEW SECTION. Section 15. Employer may not terminate  
3 employee for filing claim -- preference. (1) An employer may  
4 not terminate an employee solely on the basis that the  
5 employee filed a claim under chapter 72 of this title or  
6 this chapter.

7 (2) If the injured employee is capable of returning to  
8 work within 2 years from the date of injury and has received  
9 a medical release to return to work, the injured employee  
10 must be given preference over new hires for any comparable  
11 position that becomes vacant within the 2-year period if the  
12 position is consistent with the employee's physical  
13 condition and vocational abilities.

14 Section 16. Section 39-71-701, MCA, is amended to  
15 read:

16 "39-71-701. Compensation for injuries producing  
17 resulting in temporary total disability.

18 (1) An injured worker is entitled to temporary total  
19 disability benefits if, after an injury and as a result of  
20 the injury, the worker has a total loss of wages and cannot  
21 return to any kind of regular employment in the normal labor  
22 market. The benefits must be paid until the injured worker  
23 is as far restored as the permanent character of the  
24 injuries will permit. The determination of a temporary total  
25 disability condition must be supported by a preponderance of

1 medical evidence.

2 ~~(1)(2)~~ Weekly compensation benefits for an injury  
3 ~~producing-total~~ resulting in temporary total disability  
4 shall be 66 2/3% of the wages received at the time of the  
5 injury. The maximum weekly compensation benefits ~~shall may~~  
6 not exceed \$110--beginning-July-1,-1973--Beginning-July-1,  
7 1974--the-maximum-weekly--compensation--benefits--shall--not  
8 ~~exceed~~ the state's average weekly wage. The weekly benefit  
9 established for the injured worker at the time of injury may  
10 not be changed by any subsequent adjustment in the state's  
11 average weekly wage for future fiscal years. Total-temporary  
12 Temporary total disability benefits ~~shall must~~ be paid for  
13 the duration of the worker's temporary total disability.

14 ~~(2)(3)~~ In cases where it is determined that periodic  
15 disability benefits granted by the Social Security Act are  
16 payable because of the injury, the weekly benefits payable  
17 under this section are reduced, but not below zero, by an  
18 amount equal, as nearly as practical, to one-half the  
19 federal periodic benefits for such week, which amount is to  
20 be calculated from the date of the disability social  
21 security entitlement."

22 Section 17. Section 39-71-702, MCA, is amended to  
23 read:

24 "39-71-702. Compensation for injuries producing  
25 resulting in continuing total permanent disability. (1) If

1 an injured worker is no longer temporarily totally disabled  
 2 yet continues to have a total loss of wages and has no  
 3 reasonable prospect of finding regular employment of any  
 4 kind in the normal labor market due to the worker's  
 5 injuries, the worker is entitled to continuing total  
 6 disability benefits. The benefits must be paid during the  
 7 duration of the worker's continuing total disability. The  
 8 determination of a continuing total disability entitlement  
 9 must be supported by a preponderance of evidence.

10 ~~{1}(2)~~ Weekly compensation benefits for an injury  
 11 producing--total--permanent resulting in continuing total  
 12 disability shall be 66 2/3% of the wages received at the  
 13 time of the injury. The maximum weekly compensation benefits  
 14 ~~shall~~ may not exceed the state's average weekly wage. ~~Total~~  
 15 ~~permanent-disability-benefits-shall-be-paid-for-the-duration~~  
 16 ~~of-the-worker's-total-permanent-disability.~~

17 ~~{2}(3)~~ In cases where it is determined that periodic  
 18 disability benefits granted by the Social Security Act are  
 19 payable because of the injury, the weekly benefits payable  
 20 under this section are reduced, but not below zero, by an  
 21 amount equal, as nearly as practical, to one-half the  
 22 federal periodic benefits for such week, which amount is to  
 23 be calculated from the date of the disability social  
 24 security entitlement.

25 {4} If an injured worker is entitled to continuing

1 total disability benefits for 104 weeks, a cost-of-living  
 2 adjustment must be made to the worker's weekly benefit  
 3 payments at the next succeeding July 1 after 104 weeks of  
 4 continuing total disability benefits have been paid. A  
 5 cost-of-living adjustment must be made each July 1  
 6 thereafter. However, an injured worker may not receive more  
 7 than 10 cost-of-living adjustments. The cost-of-living  
 8 adjustment is the percentage increase, if any, in the  
 9 increase in the state's average weekly wage over the state's  
 10 average weekly wage of the previous year, or 3%, whichever  
 11 is less."

12 Section 18. Section 39-71-703, MCA, is amended to  
 13 read:

14 "39-71-703. Compensation for injuries causing  
 15 resulting in permanent partial disability. ~~{1}~~--Weekly  
 16 ~~compensation---benefits---for---injury---producing---partial~~  
 17 ~~disability--shall-be-66-2/3%-of-the-actual-diminution-in-the~~  
 18 ~~worker's-earning-capacity-measured-in-dollars,-subject-to--a~~  
 19 ~~maximum--weekly-compensation-of-one-half-the-state's-average~~  
 20 ~~weekly-wage-~~

21 ~~{2}~~--The compensation shall be paid during--the--period  
 22 ~~of-disability,-not-exceeding,-however,-500-weeks-in-cases-of~~  
 23 ~~partial--disability.---However,-compensation--for--partial~~  
 24 ~~disability-resulting-from-the--loss--of--or--injury--to--any~~  
 25 ~~member--shall--not--be-payable-for-a-greater-number-of-weeks~~

~~than is specified in 39-71-705 for the loss of the member.~~

(1) If an injured worker suffers a permanent partial disability as a result of an injury and the worker is no longer entitled to temporary total disability or continuing total disability benefits, the worker is entitled to an award for permanent partial disability.

(2) A permanent partial disability condition is:

(a) a condition for which an initial determination has been established by a physician that the injured worker suffers from a medically determined impairment; or

(b) a permanent physical condition that impairs the injured worker's ability to work.

(3) An impairment rating must be rendered using the Guides to the Evaluation of Permanent Impairment of the American medical association, 2nd edition, copyright 1984. If an impairment rating is rendered, it must be expressed as a percentage of the impairment of the whole person.

(4) An injured worker who is entitled to an award for permanent partial disability must receive a wage loss award or an indemnity award.

(a) The following procedure must be used for a wage loss award:

(i) If an injured worker demonstrates an actual wage loss as a result of an injury or that the worker would have an actual wage loss if the worker had to compete in the

normal labor market, the worker is entitled to an amount based on 66 2/3% of the wage loss, subject to a maximum weekly benefit of 50% of the state's average weekly wage.

(ii) The wage loss benefits must be paid during the duration of the wage loss, subject to a maximum of 350 weeks.

(b) The following procedure must be used for an indemnity award:

(i) If an injured worker who suffers from a medical impairment cannot establish a wage loss or elects not to take wage loss benefits but can establish by a preponderance of the evidence that the worker's ability to engage in gainful employment is diminished or may reasonably be expected to be diminished in the future, the injured worker is entitled to an indemnity award. The award must be based on a percentage of disability. The percentage must be multiplied by 350 weeks to determine the number of weeks granted as an indemnity award.

(ii) Weekly compensation benefits for a permanent partial indemnity award are 66 2/3% of the wages received at the time of injury, subject to a maximum weekly benefit of 50% of the state's average weekly wage.

(iii) The percentage of permanent partial disability caused by any single accident or injury must be computed to cover the permanent partial disability caused by that

1 particular injury only, and benefits for successive injuries  
2 must be adjusted as provided in 39-71-738.

3 (iv) Factors to be considered in determining an  
4 indemnity award include the worker's medical impairment  
5 rating, physical condition, age, education, work history,  
6 continuing pain, actual wage loss, loss of potential future  
7 earnings, and any other relevant factor affecting the  
8 worker's ability to engage in gainful employment. The  
9 granting of a medical impairment rating does not establish  
10 any automatic entitlement to an award based on such rating  
11 or any requirement for payment of an award based on such  
12 rating.

13 (5) The weekly benefit amount established for an  
14 injured worker may not be changed by a subsequent adjustment  
15 in the state's average weekly wage for future fiscal years.

16 (6) An injured worker may receive a wage loss award  
17 and also receive an indemnity award under subsection (4),  
18 but in no case may an injured worker receive more than 360  
19 weeks of permanent partial disability for an injury."

20 Section 19. Section 39-71-704, MCA, is amended to  
21 read:

22 "39-71-704. Payment of medical, hospital, and related  
23 services. (1) In addition to the compensation provided by  
24 this chapter and as an additional benefit separate and apart  
25 from compensation, 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) The division shall establish all rates for  
5 hospital fees and charges necessary for the treatment of an  
6 injured worker. Approved rates are in effect for a period of  
7 12 months from the date of approval. The rates must reflect  
8 the variances in hospital size and available services. The  
9 division shall coordinate this ratesetting function with  
10 other state agencies that have similar responsibility."

11 Section 20. Section 39-71-708, MCA, is amended to  
12 read:

13 "39-71-708. Compensation for disfigurement. (1) The  
14 division may award proper and equitable indemnity benefits  
15 for serious face, head, or neck disfigurement, not to exceed  
16 \$2,500, in addition to any other indemnity benefits payable  
17 under ~~39-71-705, 39-71-706, or~~ 39-71-707.

18 (2) No payment under this section shall be in lieu of  
19 the separate benefit of medical and hospital services and of  
20 any benefits paid under 39-71-701 for temporary total  
21 disability."

22 NEW SECTION. Section 21. Benefits not due while  
23 claimant is incarcerated. A claimant is not entitled to and  
24 may not receive any compensation disability benefits,  
25 including temporary total, permanent partial, or continuing

1 total benefits, while the claimant is incarcerated by any  
2 governmental entity after conviction of a felony.

3 Section 22. Section 39-71-721, MCA, is amended to  
4 read:

5 "39-71-721. Compensation for injury causing death. (1)  
6 If an injured employee dies and the injury was the proximate  
7 cause of such death, then the beneficiary of the deceased,  
8 ~~as the case may be,~~ is entitled to the same compensation as  
9 though the death occurred immediately following the injury,  
10 ~~but the period during which the death benefit is paid shall~~  
11 ~~be reduced by the period during or for which compensation~~  
12 ~~was paid for the injury.~~

13 (2) To beneficiaries as defined in subsections (2)(a)  
14 through (2)(d) of 39-71-116, weekly compensation benefits  
15 for an injury causing death are ~~computed at~~ 66 2/3% of the  
16 decedent's wages. The maximum weekly compensation ~~benefits~~  
17 benefit may not exceed the state's average weekly wage. The  
18 minimum weekly compensation ~~for death benefit~~ is 50% of the  
19 state's average weekly wage, but in no event may it exceed  
20 the decedent's actual wages at the time of his death. The  
21 established weekly benefit may not be changed by a  
22 subsequent adjustment in the state's average weekly wage for  
23 future fiscal years.

24 (3) To beneficiaries as defined in subsections (2)(e)  
25 and (2)(f) of 39-71-116, weekly benefits must be paid to the

1 extent of the dependency at the time of the injury, subject  
 2 to a maximum of  $66 \frac{2}{3}\%$  of the decedent's wages. The maximum  
 3 weekly compensation may not exceed the state's average  
 4 weekly wage. The established weekly benefit may not be  
 5 changed by a subsequent adjustment in the state's average  
 6 weekly wage for future fiscal years.

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

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

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

23 Section 23. Section 39-71-736, MCA, is amended to  
 24 read:

25 "39-71-736. Compensation -- from what date paid. (1)

1 No compensation may be paid for the first 5--days 6 days'  
 2 loss of wages due to an injury. If--loss-of-wages--continues  
 3 for--more--than--5--days,--compensation--shall--be--paid--from--the  
 4 date--of--injury. Compensation must be paid starting with the  
 5 7th day of wage loss. However, separate benefits of medical  
 6 and hospital services shall be furnished from the date of  
 7 injury.

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

13 Section 24. Section 39-71-737, MCA, is amended to  
 14 read:

15 "39-71-737. Compensation to run consecutively --  
 16 exceptions. (1) Compensation shall run consecutively and not  
 17 concurrently, and payment shall not be made for two classes  
 18 of disability over the same period except that indemnity  
 19 benefits under 39-71-705 through 39-71-707 and 39-71-708 and  
 20 temporary total disability benefits may be paid  
 21 concurrently. However, subject to the provisions of  
 22 39-71-741, this section does not prevent:

23 (a) the payment of a lump-sum advance settlement  
 24 against projected future permanent partial indemnity  
 25 benefits while a claimant is receiving temporary total

1 disability benefits; or

2 (b) a settlement of a combination of different classes  
3 of disability benefits into a lump sum or into a combination  
4 of periodic and lump-sum payments.

5 (2) A controversy between a claimant and an insurer  
6 regarding a settlement authorized under this section is a  
7 dispute for which the workers' compensation judge court has  
8 jurisdiction to make a determination."

9 Section 25. Section 39-71-741, MCA, is amended to  
10 read:

11 "39-71-741. Compromise settlements and lump-sum  
12 payments -- division approval required. (1) The biweekly  
13 payments provided for in this chapter may be converted, in  
14 whole or in part, into a lump-sum payment. ~~Regardless of the~~  
15 ~~date--of--the--injury--or--of--a--prior--lump-sum--payment,~~ a  
16 lump-sum conversion of permanent--total--biweekly future  
17 projected continuing total disability payments awarded or  
18 paid after April 15, 1985, must equal the estimated--present  
19 value of the total unpaid permanent total biweekly payments,  
20 assuming--interest--at--7%--per--year,--compounded--annually,  
21 unless the conversion improves the--financial--condition--of  
22 the--worker--or--his--beneficiary, as provided in subsection  
23 (2)(b). If the estimated duration of the compensation period  
24 is the remaining life expectancy--of--the--claimant--or--the  
25 claimant's--beneficiary,--the--remaining--life--expectancy--must

1 be determined by using the most recent table of life  
2 expectancy in years as published by the United States  
3 national center for health statistics; must be discounted  
4 based on the discount figure adopted by the division for the  
5 fiscal year in which the lump sum is awarded or paid. The  
6 discount figure must be adopted by the division, rounded to  
7 the nearest whole number, and based on the average rate for  
8 United States 10-year treasury bills in the previous  
9 calendar year. A conversion of continuing total disability  
10 benefits must be based on the weekly benefit rate  
11 established for the injured worker immediately after the  
12 injury, and may not take into consideration any  
13 cost-of-living adjustments as provided for in 39-71-702. A  
14 lump-sum conversion of permanent partial disability benefits  
15 may not be discounted.

16 (2) The conversion of future biweekly benefits can  
17 only be made upon the written application petition of the  
18 injured worker or the worker's beneficiary, and with the  
19 concurrence of the insurer, ~~and approval of the conversion~~  
20 ~~rests in the discretion of the division as to the amount--of~~  
21 ~~the lump-sum payment and the advisability of the conversion.~~  
22 A conversion must be in the claimant's best interest. It is  
23 presumed that biweekly payments are in the best interests  
24 interest of the worker or his beneficiary. The ~~approval or~~  
25 ~~award of a lump-sum conversion by the--division--or the~~

1 workers' compensation judge must be the exception, not the  
 2 rule, and court may be given granted only if the worker or  
 3 his beneficiary demonstrates that his ability to sustain  
 4 himself financially is more probable with a it is in the  
 5 injured worker's best interest to allow a whole or partial  
 6 lump-sum conversion, than with the biweekly payments and his  
 7 other available resources. The following procedure must be  
 8 used by the division and the workers' compensation judge in  
 9 determining whether a lump-sum conversion of permanent total  
 10 biweekly payments will be approved or awarded: A conversion  
 11 of future benefits into a lump sum is not considered in a  
 12 claimant's best interest unless the claimant is able to  
 13 demonstrate:

14 (a) that the lump sum is reasonably necessary to meet  
 15 the claimant's pressing financial needs;

16 (b) that the lump sum is necessary to fund an approved  
 17 rehabilitation plan if the rehabilitation plan provides a  
 18 reasonable reentry into gainful employment for the claimant;  
 19 or

20 (c) the parties agree to the payment of the lump sum.  
 21 If the parties agree, the division may disapprove the  
 22 lump-sum payment only if it finds that a lump-sum payment  
 23 would clearly be detrimental to the claimant.

24 (a) The difference between the present discounted  
 25 value of a lump sum and the future value of the biweekly

1 payments cannot be the only grounds for approving or  
 2 awarding a lump-sum conversion.

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

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

20 (d) If a business venture is used as grounds for a  
 21 lump-sum conversion, the worker or his beneficiary must  
 22 demonstrate through a business plan that a lump sum for that  
 23 purpose is necessary to sustain himself financially. The  
 24 business plan must at least show the feasibility of the  
 25 business, given the market conditions in the intended market

1 area, and the cash that will be available to him on a  
2 biweekly basis after start-up costs and other business  
3 expenses are considered throughout the expected life of the  
4 venture.

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

13 (4)(3) The division has full power, authority, and  
14 jurisdiction to allow and approve compromises of claims  
15 under this chapter. All settlements and compromises of  
16 compensation provided in this chapter are void without the  
17 approval of the division. However, the division may not  
18 unreasonably withhold approval. Any settlement of a claim  
19 that includes the conversion of future benefits into a lump  
20 sum must meet the requirements of subsection (2). Approval  
21 of the division must be in writing. The division shall  
22 directly notify every claimant of any division order  
23 approving or denying a claimant's settlement or compromise  
24 of a claim. If the division does not act upon a petition for  
25 settlement within 30 days from the date it receives the

1 petition, the petition is considered approved.

2 (5)(4) A controversy between a claimant and an insurer  
3 regarding the conversion of biweekly payments into a lump  
4 sum, is considered a dispute and the rejection by the  
5 division of an agreement between a claimant and an insurer  
6 for a conversion of biweekly payments into a lump sum, are  
7 disputes for which the workers' compensation judge court has  
8 jurisdiction to make a determination."

9 Section 26. 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 provisions of 39-71-703 concerning permanent  
16 partial disability."

17 Section 27. Section 39-71-1004, MCA, is amended to  
18 read:

19 "39-71-1004. Industrial accident rehabilitation  
20 account. (1) The payments provided in 39-71-1003 shall  
21 Payment for the vocational rehabilitation benefits provided  
22 by the department of social and rehabilitation services  
23 under [sections 29 and 30] must be made from the industrial  
24 accident rehabilitation account in the state special revenue  
25 fund. Payments to the account shall be made on or before

1 July 1 of each year as follows:

2 (a) by each employer operating under the provisions of  
3 plan No. 1 of the Workers' Compensation Act, an amount to be  
4 assessed by the division, not exceeding 1% of the  
5 compensation paid to the employer's injured employees in  
6 Montana for the preceding fiscal year;

7 (b) by each insurer insuring employers under the  
8 provisions of plan No. 2 of the Workers' Compensation Act,  
9 an amount to be assessed by the division, not exceeding 1%  
10 of the compensation paid to injured employees of its insured  
11 in Montana during the preceding fiscal year;

12 (c) by the division, an amount to be determined by the  
13 division, not exceeding 1% of the compensation paid to  
14 injured employees in Montana from the industrial insurance  
15 expendable trust fund and the occupational disease  
16 expendable trust fund for the preceding fiscal year.

17 (2) Separate accounts of the amounts collected and  
18 disbursements made from the industrial accident  
19 rehabilitation account in the state special revenue fund  
20 shall be kept for each of the plans. If in any fiscal year  
21 the amount collected from the employers under any plan  
22 exceeds the amount of payments for employees of the  
23 employers under such plan, the assessment against the  
24 employers under such plan for the following year shall be  
25 reduced.

1 (3) The payments herein provided for shall be made to  
2 the division, which shall credit the sums paid to the  
3 industrial accident rehabilitation account which shall be in  
4 the custody of the state treasurer. Disbursements from the  
5 account shall be made after approval by the department of  
6 social and rehabilitation services and upon audit and  
7 approval by the department of administration.

8 (4) No part of the funds allocated or contributed as  
9 herein provided and contemplated shall be used in payment of  
10 administrative expenses of the division or department of  
11 social and rehabilitation services."

12 NEW SECTION. Section 28. Required rehabilitation. (1)  
13 The division may, in accordance with this part, require a  
14 claimant to pursue a rehabilitation program in order to  
15 continue receiving workers' compensation benefits.

16 (2) A rehabilitation program is a prescribed program  
17 of goods and services for the purpose of assisting an  
18 injured worker return to work.

19 (3) The rehabilitation program must allow for the  
20 claimant's limitations and the availability of work within  
21 the normal labor market. Priorities for the return of the  
22 injured worker to work must be determined by selecting the  
23 first appropriate action in the following sequence:

24 (a) a return to the same position of employment;

25 (b) a return to a modified position of employment;

1 (c) employment in a related occupation considered  
2 appropriate and suited to the worker's education and  
3 marketable skill levels;

4 (d) rehabilitation in an on-the-job training program;

5 (e) rehabilitation in a short-term retraining program  
6 (less than 24 months);

7 (f) rehabilitation in a long-term retraining program  
8 (48-month maximum); or

9 (g) self-employment.

10 (4) Once the claimant has been restored to a normal  
11 labor market pursuant to any of these priorities, the  
12 worker's need to engage in a rehabilitation program ceases  
13 and the worker must be awarded benefits, if any, pursuant to  
14 39-71-703.

15 NEW SECTION. Section 29. Referral of disabled workers  
16 for rehabilitation services. (1) Rehabilitation services may  
17 be requested by the injured worker, the insurer, or the  
18 division. The division shall then require the insurer to  
19 designate a rehabilitation provider.

20 (2) The division shall notify the department of social  
21 and rehabilitation services of an injured worker who, in the  
22 opinion of the division, requires vocational rehabilitation  
23 services as provided in Title 53, chapter 7. The department  
24 of social and rehabilitation services, in providing  
25 vocational rehabilitation services to the injured worker,

1 shall consult with the rehabilitation provider designated by  
2 the insurer, if other than the department.

3 (3) Rehabilitation services provided under this part  
4 must be delivered by a rehabilitation counselor certified by  
5 the board for rehabilitation certification, by a vocational  
6 rehabilitation counselor employed by the department of  
7 social and rehabilitation services, or by both.

8 (4) An injured worker served by the department of  
9 social and rehabilitation services shall receive vocational  
10 rehabilitation services in accordance with Title 53, chapter  
11 7, parts 1 and 2, and may receive only the vocational  
12 rehabilitation services authorized in those parts. The  
13 department of social and rehabilitation services shall  
14 process each case in a reasonably timely manner.

15 (5) The appeal process before the board of social and  
16 rehabilitation appeals provided in 53-7-106 is the exclusive  
17 remedy for any person aggrieved in the receipt of services  
18 from the department of social and rehabilitation services  
19 under this part. Appeal may be made to the district court  
20 from a decision of the board under Title 2, chapter 4, part  
21 7.

22 NEW SECTION. Section 30. Documentation of  
23 rehabilitation determination to the division. (1) If an  
24 insurer's designated rehabilitation provider determines that  
25 all appropriate rehabilitation services have been provided

1 to the injured worker in accordance with [section 28(3)],  
 2 the insurer shall document that determination to the  
 3 division.

4 (2) If the department of social and rehabilitation  
 5 services determines that all appropriate rehabilitation  
 6 services have been provided to the injured worker in  
 7 accordance with [section 28(3)], the department shall  
 8 document that determination to the division.

9 NEW SECTION. Section 31. Biweekly benefits under  
 10 rehabilitation plan -- eligibility -- disputes. (1) An  
 11 injured worker referred for rehabilitation by the division  
 12 must be paid temporary total disabil. benefits if the  
 13 injured worker participates:

14 (a) in a rehabilitation program approved in writing by  
 15 the insurer's designated rehabilitation provider; or

16 (b) through the department of social and  
 17 rehabilitation services in vocational rehabilitation  
 18 provided under an individualized written rehabilitation plan  
 19 designed in accordance with [section 28].

20 (2) If a dispute exists concerning the need for or  
 21 sufficiency of a rehabilitation program, the division shall,  
 22 upon request of the injured worker or the insurer, review  
 23 the matter. After consultation with the department of social  
 24 and rehabilitation services and the designated  
 25 rehabilitation provider, the division may direct the

1 claimant to participate in the rehabilitation program or  
 2 direct such other action as the division considers  
 3 appropriate. The determination of the division must be in  
 4 writing and be supported by the division's reasoning and the  
 5 basis for its decision. The division's determination must  
 6 take place within 30 days of the request.

7 (3) If the division determines that a rehabilitation  
 8 program is available and appropriate for a claimant  
 9 receiving workers' compensation benefits, the division shall  
 10 require the claimant to participate in the program. If a  
 11 claimant refuses to participate in the program, the issue  
 12 regarding the availability and appropriateness of the  
 13 program must be brought before the workers' compensation  
 14 court. Weekly benefits must continue pending a decision by  
 15 the court as to the availability and appropriateness of the  
 16 program. If the court determines that the program is  
 17 available and appropriate and if the claimant continues to  
 18 refuse to participate in the program, weekly benefits may be  
 19 terminated.

20 (4) (a) If the court determines that a claimant  
 21 unreasonably refused to participate, the insurer must be  
 22 given credit for all benefits paid against future  
 23 compensation payments during the period when the claimant  
 24 unreasonably refused to participate in the prescribed  
 25 rehabilitation program.



1 (b) If the court finds in favor of the claimant, the  
2 court may award reasonable attorney fees and costs to the  
3 claimant.

4 NEW SECTION. Section 32. Sharing case information.

5 (1) The department of social and rehabilitation services,  
6 the insurer's designated rehabilitation provider, and the  
7 division shall provide to one another case information as  
8 necessary to carry out the purpose of this part.

9 (2) The division shall make an injured worker's  
10 records available to the injured worker and the worker's  
11 insurer upon request.

12 Section 33. Section 39-71-2102, MCA, is amended to  
13 read:

14 "39-71-2102. Proof of solvency to be filed. (1) Every  
15 employer who has elected to be bound by compensation plan  
16 No. 1 shall file proof of his solvency within the time and  
17 in the form as may be prescribed by the rules or orders of  
18 the division.

19 (2) The division shall require an employer who elects  
20 to be bound by compensation plan No. 1 to provide a security  
21 deposit. The security deposit may be a surety bond, a  
22 guaranty of the parent company (self-insured in this state),  
23 or excess insurance. The security deposit must be the  
24 greater of \$250,000 or an average of benefits incurred by  
25 the employer for the past 3 calendar years."

1 Section 34. Section 39-71-2203, MCA, is amended to  
2 read:

3 "39-71-2203. Content of policies -- policies subject  
4 to approval, change, or revision by division. (1) All  
5 policies insuring the payment of compensation under this  
6 chapter must contain a clause to the effect that, as between  
7 the employee and the insurer, the notice to or knowledge of  
8 the occurrence of the injury on the part of the insured  
9 shall be deemed notice or knowledge, as the case may be, on  
10 the part of the insurer; that jurisdiction of the insured  
11 for the purpose of this chapter shall be jurisdiction of the  
12 insurer; and that the insurer shall in all things be bound  
13 by and subject to the awards, orders, judgments, or decrees  
14 rendered against such insured.

15 (2) No such policy shall be issued unless it contains  
16 the agreement of the insurer that it will promptly pay to  
17 the person entitled to compensation all the installments of  
18 compensation or other payments in this chapter provided for  
19 and that the obligation shall not be affected by any default  
20 of the insured after the injury or by any default in the  
21 giving of any notice required by such policy or by this  
22 chapter or otherwise. Such agreement shall be construed to  
23 be a direct promise by the insured to the person entitled to  
24 compensation.

25 (3) (a) Every policy or contract insuring against

1 liability for compensation under compensation plan No. 2  
 2 must contain a clause to the effect that the insurer shall  
 3 be directly and primarily liable to and will pay directly to  
 4 the employee or in case of death to his beneficiaries or  
 5 major or minor dependents, the compensation, if any, for  
 6 which the employer is liable.

7 (b) An employer may make direct benefit payments to an  
 8 injured worker if the worker participates in a deductible  
 9 plan with an insurer.

10 (4) Every such policy shall at all times be subject to  
 11 approval, change, or revision by the division and shall  
 12 contain the clauses, agreements, and promises required by  
 13 this chapter."

14 Section 35. Section 39-71-2304, MCA, is amended to  
 15 read:

16 "39-71-2304. Determination of rates and  
 17 classifications by division. (1) The division is hereby  
 18 given full power and authority to determine premium rates  
 19 and classifications as in its judgment and experience and as  
 20 a member of a rating organization as is otherwise provided  
 21 for in this chapter may be necessary or expedient, provided  
 22 that no change in the classification or rates prescribed  
 23 shall be effective until 30 days after the date of the order  
 24 making such change.

25 (2) The industrial insurance program shall be neither

1 more nor less than self-supporting. Employments affected by  
 2 the provisions hereof shall be divided by the division, as a  
 3 member of a rating organization, into classes, whose rates  
 4 may be readjusted at such times as the division as a member  
 5 of such rating organization may actuarially determine.  
 6 Separate accounts shall be kept of the amounts collected and  
 7 expended in each class for actuarially determining rates,  
 8 but for payment of compensation and dividends, the  
 9 industrial insurance expendable trust fund shall be one and  
 10 indivisible.

11 (3) The division as a member of such rating  
 12 organization shall determine the hazards of the different  
 13 classes of occupations or industries and fix the premiums  
 14 therefor at the lowest rate consistent with maintenance of  
 15 an actuarially sound industrial insurance fund and the  
 16 creation of actuarially sound surplus and reserves, and for  
 17 such purpose may adopt a system of schedule rating in such a  
 18 manner as to take account of the peculiar hazard of each  
 19 risk and shall utilize the experience and information  
 20 afforded to it as a member of such rating organization.

21 (4) In addition, compensation plan No. 3 shall use an  
 22 experience rating system for employers enrolled under it.  
 23 This system shall reward employers with a better than  
 24 average safety record, penalize employers with a worse than  
 25 average safety record, and may provide for premium volume

1 discount.

2 (5) The division in fixing rates shall provide for the  
3 expenses of administering the industrial insurance  
4 expendable trust fund allowed by law, the disbursements on  
5 account of injuries and deaths of employees in each class,  
6 an actuarially sound catastrophe reserve, reserves  
7 actuarially determined to meet anticipated and unexpected  
8 losses, and such other reserves and surplus as may be  
9 determined by the division as a member of such rating  
10 organization. The amounts of such reserves and surplus shall  
11 be as determined from time to time by the division to be  
12 adequate but not excessive for the purposes intended.

13 (6) The division may provide employers with a program  
14 of deductible policies if in the division's discretion a  
15 program is warranted. If a policyholder fails to honor the  
16 provisions of the plan, the division shall assume liability.  
17 The division may determine the composition of the plan  
18 according to the risk assumed for individual policyholders."

19 Section 36. Section 39-71-2901, MCA, is amended to  
20 read:

21 "39-71-2901. Location of office -- general powers. (1)  
22 The principal office of the workers' compensation judge  
23 court shall be in the city of Helena.

24 (2) The chief workers' compensation judge shall  
25 establish procedures for the allocation of the case load

1 between the judges.

2 (3) The workers' compensation court has power to:

3 (a) preserve and enforce order in its immediate  
4 presence;

5 (b) provide for the orderly conduct of proceedings  
6 before it or its officers;

7 (c) compel obedience to its judgments, orders, and  
8 process in the same manner and by the same procedures as in  
9 civil actions in district court;

10 (d) compel the attendance of persons to testify; and

11 (e) punish for contempt in the same manner and by the  
12 same procedures as in district court."

13 Section 37. Section 39-71-2902, MCA, is amended to  
14 read:

15 "39-71-2902. Operating expenses. The workers'  
16 compensation judge court may employ such employees as may be  
17 required to carry out the duties under this part. All  
18 expenditures of the workers' compensation judge court,  
19 including but not limited to salaries, traveling expenses,  
20 office rent, office equipment, and supplies, shall be paid  
21 out of the workers' compensation administration fund."

22 Section 38. Section 39-71-2903, MCA, is amended to  
23 read:

24 "39-71-2903. Administrative procedure act, common law,  
25 and rules of evidence applicable -- judge-not court bound by

1 rules of evidence. All proceedings and hearings before the  
 2 workers' compensation judge court shall be in accordance  
 3 with the appropriate provisions of the Montana  
 4 Administrative Procedure Act. ~~However,--the~~ The workers'  
 5 compensation judge court is not bound by common law and  
 6 statutory rules of evidence."

7 Section 39. Section 39-71-2904, MCA, is amended to  
 8 read:

9 "39-71-2904. Direct appeal to supreme court.  
 10 Notwithstanding 2-4-701 through 2-4-704, an appeal from a  
 11 final decision of the workers' compensation judge court  
 12 shall be filed directly with the supreme court of Montana in  
 13 the manner provided by law for appeals from the district  
 14 court in civil cases."

15 Section 40. Section 39-71-2905, MCA, is amended to  
 16 read:

17 "39-71-2905. Petition to workers' compensation judge  
 18 court. (1) A claimant or an insurer who has a dispute  
 19 concerning any benefits under chapter 71 or 72 of this title  
 20 may, after following the procedure provided in subsection  
 21 (2), petition the workers' compensation judge court for a  
 22 determination of the dispute. Jurisdiction does not extend  
 23 to disputes under [section 10]. The judge court, after a  
 24 hearing, shall make a determination of the dispute in  
 25 accordance with the law as set forth in chapter 71 or 72 of

1 this title. If the dispute relates to benefits due a  
 2 claimant under chapter 71 or 72, the judge court shall fix  
 3 and determine any benefits to be paid and specify the manner  
 4 of payment. The workers' compensation judge court has  
 5 exclusive jurisdiction to make determinations concerning  
 6 disputes under chapter chapters 71 and 72, except as  
 7 provided in 39-71-516 and [subsection (5) of section 29].  
 8 The penalties and assessments allowed against an insurer  
 9 under chapter chapters 71 and 72 are the exclusive penalties  
 10 and assessments that can be assessed against an insurer for  
 11 disputes arising under chapter chapters 71 and 72.

12 (2) (a) Before a claimant or an insurer may petition  
 13 the court for resolution of a dispute, the petitioner shall  
 14 attempt to resolve the dispute by providing the other party  
 15 with a written demand requesting resolution of the dispute.  
 16 The demand must include:

17 (i) a complete explanation of the dispute;  
 18 (ii) copies of documents or other information  
 19 supporting the position taken by the party claiming the  
 20 dispute; and

21 (iii) a suggested resolution of the dispute.

22 (b) The party receiving the demand described in  
 23 subsection (2)(a) has 20 days from the date of receipt to  
 24 propose a resolution. If, within 20 days from the date of  
 25 receipt of the demand, no agreement resolving the dispute is

1 entered into, the party claiming the dispute may file a  
 2 petition with the workers' compensation court.

3 (3) A party may move to dismiss a petition if it  
 4 contends that the petitioner has not complied with  
 5 subsection (2)(a). A ruling on the motion must be based on  
 6 documentary evidence submitted to the court by the parties."

7 Section 41. Section 39-71-2906, MCA, is amended to  
 8 read:

9 "39-71-2906. Nominal disability awards. The judge  
 10 court may grant nominal disability awards in cases where it  
 11 is found that an accident has occurred in the course and  
 12 scope of employment but no disability has resulted  
 13 therefrom."

14 Section 42. Section 39-71-2907, MCA, is amended to  
 15 read:

16 "39-71-2907. Increase in award for unreasonable delay  
 17 or refusal to pay. When payment of compensation has been  
 18 unreasonably delayed or refused by an insurer, either prior  
 19 or subsequent to the issuance of an order by the workers'  
 20 compensation judge court granting a claimant compensation  
 21 benefits, the full amount of the compensation benefits due a  
 22 claimant, between the time compensation benefits were  
 23 delayed or refused and the date of the order granting a  
 24 claimant compensation benefits, may be increased by the  
 25 workers' compensation judge court by 20%. The question of

1 unreasonable delay or refusal shall be determined by the  
 2 workers' compensation judge court, and such a finding  
 3 constitutes good cause to rescind, alter, or amend any  
 4 order, decision, or award previously made in the cause for  
 5 the purpose of making the increase provided herein."

6 Section 43. Section 39-71-2909, MCA, is amended to  
 7 read:

8 "39-71-2909. Authority to review, diminish, or  
 9 increase awards -- limitation. The judge court may, upon the  
 10 petition of a claimant or an insurer that the disability of  
 11 the claimant has changed, review, diminish, or increase, in  
 12 accordance with the law on benefits as set forth in chapter  
 13 71 of this title, any benefits previously awarded by the  
 14 judge court or benefits received by a claimant through  
 15 settlement agreements. However, the judge court may not  
 16 change any final settlement or award of compensation more  
 17 than 4 years after the settlement has been approved by the  
 18 division or any order approving a full and final compromise  
 19 settlement of compensation."

20 NEW SECTION. Section 44. Filing fee. A claimant or an  
 21 insurer who files a petition for hearing under chapter 71 or  
 22 72 shall pay a filing fee of \$25. A party required to file a  
 23 notice of appearance of counsel as provided by court  
 24 procedural rules shall pay an appearance fee of \$25. The  
 25 fees collected under this section must be deposited monthly

1 in the fund collected by the division under 39-71-201. The  
 2 court procedural rules must provide for the method of  
 3 payment. The money collected under this section is a cost  
 4 recoverable under [section 13].

5 NEW SECTION. Section 45. Signing of petitions,  
 6 pleadings, motions, and other papers -- sanctions. (1) Every  
 7 petition, pleading, motion, or other paper of a party  
 8 appearing before the court and represented by an attorney  
 9 must be signed by at least one attorney of record in his  
 10 individual name. The signer's address also must be stated.

11 (2) A party who is not represented by an attorney  
 12 shall sign his petition, pleading, motion, or other paper  
 13 and state his address.

14 (3) The signature of an attorney or party constitutes  
 15 a certificate by him that:

16 (a) he has read the petition, pleading, motion, or  
 17 other paper;

18 (b) to the best of his knowledge, information, and  
 19 belief formed after reasonable inquiry, it is well grounded  
 20 in fact;

21 (c) it is warranted by existing law or a good faith  
 22 argument for the extension, modification, or reversal of  
 23 existing law; and

24 (d) it is not interposed for any improper purpose,  
 25 such as to harass or to cause unnecessary delay or needless

1 increase in the cost of litigation.

2 (4) If a petition, pleading, motion, or other paper is  
 3 not signed, it must be stricken unless it is signed promptly  
 4 after the omission is called to the attention of the  
 5 petitioner, pleader, or movant.

6 (5) If a petition, pleading, motion, or other paper is  
 7 signed in violation of this section, the court, upon motion  
 8 or upon its own initiative, shall impose an appropriate  
 9 sanction upon the person who signed it, a represented party,  
 10 or both. The sanction may include an order to pay to the  
 11 other party or parties the amount of the reasonable expenses  
 12 incurred because of the filing of the petition, pleading,  
 13 motion, or other paper, including reasonable attorney fees.

14 Section 46. Section 45-6-301, MCA, is amended to read:

15 "45-6-301. Theft. (1) A person commits the offense of  
 16 theft when he purposely or knowingly obtains or exerts  
 17 unauthorized control over property of the owner and:

18 (a) has the purpose of depriving the owner of the  
 19 property;

20 (b) purposely or knowingly uses, conceals, or abandons  
 21 the property in such manner as to deprive the owner of the  
 22 property; or

23 (c) uses, conceals, or abandons the property knowing  
 24 such use, concealment, or abandonment probably will deprive  
 25 the owner of the property.

1 (2) A person commits the offense of theft when he  
2 purposely or knowingly obtains by threat or deception  
3 control over property of the owner and:

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

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

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

12 (3) A person commits the offense of theft when he  
13 purposely or knowingly obtains control over stolen property  
14 knowing the property to have been stolen by another 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 (4) A person commits the offense of theft when he  
24 purposely or knowingly obtains or exerts unauthorized  
25 control over any part of any public assistance provided

1 under Title 53 by a state or county agency, regardless of  
2 the original source of assistance, by means of:

3 (a) a knowingly false statement, representation, or  
4 impersonation; or

5 (b) a fraudulent scheme or device.

6 (5) A person commits the offense of theft when he  
7 purposely or knowingly obtains or exerts unauthorized  
8 control over any part of any benefits provided under Title  
9 39, chapters 71 and 72, by means of:

10 (a) a knowingly false statement, representation, or  
11 impersonation; or

12 (b) deception or other fraudulent action.

13 ~~(5)~~(6) A person convicted of the offense of theft of  
14 property not exceeding \$300 in value shall be fined not to  
15 exceed \$500 or be imprisoned in the county jail for any term  
16 not to exceed 6 months, or both. A person convicted of the  
17 offense of theft of property exceeding \$300 in value or  
18 theft of any commonly domesticated hoofed animal shall be  
19 fined not to exceed \$50,000 or be imprisoned in the state  
20 prison for any term not to exceed 10 years, or both.

21 ~~(6)~~(7) Amounts involved in thefts committed pursuant  
22 to a common scheme or the same transaction, whether from the  
23 same person or several persons, may be aggregated in  
24 determining the value of the property."

25 Section 47. Section 39-72-102, MCA, is amended to

1 read:

2 "39-72-102. Definitions. As used in this chapter,  
3 unless the context requires otherwise, the following  
4 definitions apply:

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

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

7 (3) "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 Silicosis, when complicated by active pulmonary  
11 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 disability".

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

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

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

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

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

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

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

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

1 ~~(12)~~(11) "Order" is as defined in 39-71-116(10).

2 ~~(13)~~(12) "Pneumoconiosis" means a chronic dust disease  
3 of the lungs arising out of employment in coal mines and  
4 includes anthracosis, coal workers' pneumoconiosis,  
5 silicosis, or anthracosilicosis arising out of such  
6 employment.

7 ~~(14)~~(13) "Silicosis" means a chronic disease of the  
8 lungs caused by the prolonged inhalation of silicon dioxide  
9 (SiO<sub>2</sub>) and characterized by small discrete nodules of  
10 fibrous tissue similarly disseminated throughout both lungs  
11 causing the characteristic x-ray pattern and by other  
12 variable clinical manifestations.

13 ~~(15)~~(14) "Wages" is as defined in 39-71-116(20).

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

15 ~~(17)~~(15) "Year" is as defined in 39-71-116(6) ~~and~~  
16 ~~39-71-116(22)~~ 39-71-116(7) and (19)."

17 Section 48. 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 court~~, 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 49. Section 39-72-613, MCA, is amended to  
4 read:

5 "39-72-613. Costs and attorney fees. (1) If an insurer  
6 requests that a hearing be held before the division court  
7 and the claim is determined compensable by the division  
8 court after the hearing ~~and the insurer does not appeal the~~  
9 ~~division's decision to the workers' compensation judge,~~  
10 reasonable costs and attorney fees, as determined by the  
11 division court, shall be paid to the claimant's attorney by  
12 the insurer.

13 (2) If an insurer appeals a decision of ~~the division~~  
14 ~~to the workers' compensation judge or from the judge court~~  
15 to the supreme court and the claim is determined  
16 compensable, reasonable costs and attorney fees, as  
17 determined by the workers' compensation judge court, shall  
18 be paid to the claimant's attorney by the insurer for  
19 proceedings before the division, the workers' compensation  
20 judge court, and the supreme court.

21 (3) The fee awarded must be calculated as provided in  
22 39-71-614."

23 Section 50. Section 39-72-701, MCA, is amended to  
24 read:

25 "39-72-701. Compensation for total disability or death

1 due to occupational disease other than pneumoconiosis. (1)  
2 The compensation to which an employee temporarily totally  
3 disabled or permanently continuingly totally disabled by an  
4 occupational disease other than pneumoconiosis, or the  
5 beneficiaries and dependents of the employee in the case of  
6 death caused by an occupational disease other than  
7 pneumoconiosis, are entitled under this chapter shall be the  
8 same payments which are payable to an injured employee, and  
9 such payments shall be made for the same period of time as  
10 is provided in cases of temporary total disability,  
11 permanent continuing total disability, and in cases of  
12 injuries causing death under the Workers' Compensation Act.

13 (2) In cases where it is determined that periodic  
14 disability benefits granted by the Social Security Act are  
15 payable because of the disease, the weekly benefits payable  
16 under this section are reduced, but not below zero, by an  
17 amount equal as nearly as practical to one-half the federal  
18 periodic benefits for such week, which amount is to be  
19 calculated from the date of the disability social security  
20 entitlement."

21 Section 51. Section 19-12-401, MCA, is amended to  
22 read:

23 "19-12-401. Eligibility for pension benefits. In order  
24 to qualify for participation in the volunteer firefighters'  
25 pension plan under 19-12-404, a volunteer firefighter must

1 meet each of the following requirements:

2 (1) (a) To qualify for full participation, he must  
3 have completed a total of at least 20 years' service as an  
4 active volunteer firefighter and as an active member of a  
5 qualified volunteer fire company.

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

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

22 (d) Effective March 1, 1965, the annual period of  
23 service for the purpose of this chapter is the fiscal year.  
24 No fractional part of any year may count toward the service  
25 requirement, and to receive credit for any particular year,

1 a volunteer firefighter must serve with one particular  
2 volunteer fire company throughout that entire fiscal year.

3 (2) (a) Except as provided in subsection (2)(b), he  
4 must have attained the age of 55, but he need not be an  
5 active volunteer firefighter or an active member of any  
6 volunteer fire company when he reaches that age.

7 (b) An active member of a volunteer fire company whose  
8 duty-related injury results in a ~~permanent~~ continuing total  
9 disability as defined in ~~39-71-116(13)~~ 39-71-702 is eligible  
10 to receive a partial pension regardless of his age  
11 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 52. Section 50-16-311, MCA, is amended to  
12 read:

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

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

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

25 (b) to a peer review committee if the information

1 concerns matters within the scope of the licensed  
2 professional practice of the committee members;

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

9 (d) to a health care provider:

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

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

17 (e) to an employer as may be reasonably necessary in  
18 the administration of a group insurance plan or to a  
19 workers' compensation insurer, the division of workers'  
20 compensation, or the workers' compensation judge court, as  
21 is necessary in the administration of Title 39, chapters 71  
22 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 53. 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 court, the judge may grant, in  
2 addition to compensation benefits granted, attorneys' fees  
3 to attorneys for representing claimants before the judge.

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

7 Section 54. Section 53-9-131, MCA, is amended to read:

8 "53-9-131. Appeals. (1) After the division has made  
9 final determination concerning any matter relating to a  
10 claim, if the claimant disputes the division's  
11 determination, he may appeal to the workers' compensation  
12 judge court for review. The judge, after a hearing, shall  
13 make a final determination concerning the dispute and issue  
14 an appropriate order affirming or modifying the division's  
15 determination.

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

21 (3) Notwithstanding Title 2, chapter 4, part 7, an  
22 appeal from a final decision of the workers' compensation  
23 judge court shall be filed directly with the supreme court  
24 of Montana in the manner provided by law for appeals from  
25 the district court in civil cases."

1        NEW SECTION. Section 55. Repealer.                    Sections  
2 39-71-309, 39-71-410, 39-71-705, 39-71-706, 39-71-709,  
3 39-71-1001 through 39-71-1003, 39-71-1005, 39-71-2908,  
4 39-72-611, and 39-72-612, MCA, are repealed.

5        NEW SECTION. Section 56. Extension of authority. Any  
6 existing authority of the division of workers' compensation  
7 to make rules on the subject of the provisions of this act  
8 is extended to the provisions of this act.

9        NEW SECTION. Section 57. Codification instructions.  
10 (1) Sections 6 and 8 are intended to be codified as an  
11 integral part of Title 39, chapter 71, part 3, and the  
12 provisions of Title 39, chapter 71, part 3, apply to  
13 sections 6 and 8.

14        (2) Sections 13, 15, and 21 are intended to be  
15 codified as an integral part of Title 39, chapter 71, part  
16 6, and the provisions of Title 39, chapter 71, part 6, apply  
17 to sections 13, 15, and 21.

18        (3) Sections 28 through 32 are intended to be codified  
19 as an integral part of Title 39, chapter 71, part 10, and  
20 the provisions of Title 39, chapter 71, part 10, apply to  
21 sections 28 through 32.

22        (4) Sections 44 and 45 are intended to be codified as  
23 an integral part of Title 39, chapter 71, part 29, and the  
24 provisions of Title 39, chapter 71, part 29, apply to  
25 sections 44 and 45.

1        NEW SECTION. Section 58. Saving clause. This act does  
2 not affect rights and duties that matured or penalties that  
3 were incurred before the effective date of this act.

4        NEW SECTION. Section 59. Severability. If a part of  
5 this act is invalid, all valid parts that are severable from  
6 the invalid part remain in effect. If a part of this act is  
7 invalid in one or more of its applications, the part remains  
8 in effect in all valid applications that are severable from  
9 the invalid applications.

10        NEW SECTION. Section 60. Applicability. This act  
11 applies to injuries occurring on and after October 1, 1987.

-End-

## STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB330, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to generally revise the Workers' Compensation Laws; to provide that obtaining benefits fraudulently constitutes theft.

Workers' Compensation Court

ASSUMPTIONS: (Operations Impact)

1. Additional judge will be appointed as of 1/1/88.
2. Current hearings officer/attorney position will be eliminated.
3. Operating costs for judge position will be no more than for current hearing officer/attorney.

FISCAL IMPACT: (Operational Costs)Expenditures:

	<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>
FTE	8.00	8.00	-0-	8.00	8.00	-0-
Personal Services	\$224,559	\$222,672	(\$1,887)	\$224,359	\$247,207	\$ 22,848
Operations	119,713	119,713	-0-	110,767	110,767	-0-
Equipment	800	800	-0-	800	800	-0-
TOTAL	\$345,072	\$343,185	(\$1,887)	\$335,926	\$358,774	\$ 22,848

Source of Funding: (Earmarked Revenue)Revenue:

W.C. State Insurance Fund	\$345,072	\$346,959	\$1,887	\$335,926	\$346,274	\$ 10,348
Filing & Appearance Fee						
500/yr @ \$25 each	-0-	12,500	12,500	-0-	12,500	12,500
TOTAL	\$345,072	\$359,459	\$14,387	\$335,926	\$358,774	\$ 22,848

*David L. Hunter*  
 DAVID L. HUNTER

DATE

2/17/87

BUDGET DIRECTOR

Office of Budget and Program Planning

DATE

2/23/87

FRED VAN VALKENBURG, PRIMARY SPONSOR

Fiscal Note for SB330, as introduced.

SB 330

Revision of the Workers' Compensation Laws

ASSUMPTIONS:

A. Trust Fund Impact:

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.
7. Number of average weeks on permanent partial payouts do not exceed 300 weeks, cost savings will vary from 14% to 17%.

B. Uninsured Employers Fund Impact:

1. Benefits will be paid out according to amounts available in the fund.
2. Projections of revenue into fund cannot be made. Therefore, projections of expenditures from the fund cannot be made.

FISCAL IMPACT:

A. State Compensation Insurance Fund

FY 87

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

Range

Low(-----)High

2. Estimated premium required to maintain proposed system. \$ 63,629,000    \$ 65,929,000

Estimated premium reductions (13,033,000)    (10,733,000)  
 % reduction from adequate base. [.1700]    [.1400]

3. Obligations to be Funded

a. Unfunded liability	
\$81 million - annually	\$ 12,344,000
for <u>10</u> years.	
b. Stelling/Buckman decision	
@ \$25 Million - annually	
for <u>10</u> years.	<u>3,800,000</u>
Annual recovery of recognized	<u>\$ 16,144,000</u>
Net Premium Increase	\$ 3,111,000 to \$ 5,411,000

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.

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

TRUST FUND ONLY. 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:

TRUST FUND ONLY. 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.

TECHNICAL OR MECHANICAL DEFECTS IN PROPOSED LEGISLATION OR CONFLICTS WITH EXISTING LEGISLATION:

None.