

SB 388 INTRODUCED BY BOYLAN, HARP, STORY, ET AL.  
SELL WORKERS' COMPENSATION STATE INSURANCE PLAN

2/20	INTRODUCED		
2/20	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
2/20	FISCAL NOTE REQUESTED		
3/05	FISCAL NOTE RECEIVED		
3/10	HEARING		
3/14	TAKEN FROM COMMITTEE	31	19
3/16	2ND READING PASSED AS AMENDED	27	22
3/17	3RD READING PASSED	27	23

TRANSMITTED TO HOUSE

DIED IN PROCESS

1 ~~SENATE~~ BILL NO. 388  
 2 INTRODUCED BY Boyle HARP Stony Left  
 3 Huich Ramirez Kitschmon SALES

4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE SALE OF  
 5 THE STATE WORKERS' COMPENSATION INSURANCE PLAN AND FUND TO  
 6 THE HIGHEST RESPONSIBLE BIDDER; PROVIDING FOR A SALE  
 7 PROCEDURE; PROVIDING FOR DISPOSITION OF THE PROCEEDS OF THE  
 8 SALE; PROVIDING FOR AN ASSIGNED APPORTIONMENT TO INSURERS OF  
 9 INSURANCE COVERAGE FOR HIGH-RISK EMPLOYERS; AMENDING  
 10 SECTIONS 39-71-102, 39-71-103, 39-71-116, 39-71-201,  
 11 39-71-206, 39-71-308, 39-71-401, 39-71-403, 39-71-410,  
 12 39-71-502, 39-71-504, 39-71-505, 39-71-515, 39-71-908  
 13 THROUGH 39-71-911, 39-71-913, 39-71-1004, 39-71-2201,  
 14 39-71-2206, AND 39-72-310, MCA; REPEALING SECTIONS  
 15 39-71-2301 THROUGH 39-71-2308 AND 39-71-2321 THROUGH  
 16 39-71-2327, MCA; AND PROVIDING EFFECTIVE DATES."

17  
 18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19 NEW SECTION. Section 1. Sale of state workers'  
 20 compensation insurance plan and fund. (1) The governor  
 21 shall, within 180 days after the effective date of this  
 22 section, sell the state workers' compensation insurance plan  
 23 and fund created and provided for in Title 39, chapter 71,  
 24 part 23, and referenced in other provisions of Title 39,  
 25 chapter 71. The governor shall make a request for bids and

1 shall ensure that the request is adequately publicized in  
 2 the press, major financial publications, and the financial  
 3 and insurance industries. All advertisements must be  
 4 published within 60 days after the effective date of this  
 5 section. Interested parties must be allowed 60 days from the  
 6 date the last advertisement is published to submit proposals  
 7 for purchase. The sale must be to the responsible insurance  
 8 or other company submitting the highest bid.

9 (2) Each bid proposal must contain an agreement to  
 10 purchase the plan and fund in cash and be accompanied by  
 11 security in the amount of 2% of the bid. The security must  
 12 be in cash, cashier's check, certified check, bank money  
 13 order, or bank draft and must be drawn on a bank located in  
 14 Montana or consist of a bond or bonds executed by a surety  
 15 authorized to do business in Montana. If a bid is accepted  
 16 and the bidder fails to consummate the sale, the security is  
 17 forfeited to the state and must be deposited in the general  
 18 fund. The security must be returned to bidders whose bids  
 19 are not accepted.

20 (3) The governor shall submit each bid proposal to the  
 21 legislative audit committee upon its receipt. The committee  
 22 shall review the proposals and submit comments to the  
 23 governor on the qualifications of each bidder.

24 (4) A responsible prospective bidder who demonstrates  
 25 the financial ability to purchase the fund and plan is



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1 entitled to fully inspect the public records of the fund and  
 2 plan and of the division of workers' compensation under  
 3 39-71-221 through 39-71-224, including data banks and raw  
 4 data, and shall be given copies of the last four reports  
 5 printed under 39-71-210, any earlier reports requested by  
 6 the bidder, and a copy of each audit of any type performed  
 7 by the legislative audit committee since January 1, 1980,  
 8 relating to either the fund and plan or the division of  
 9 workers' compensation, or both.

10 (5) The successful bidder is entitled to the financial  
 11 assets, future business, and books, records, and papers  
 12 (whether written, typed, computerized, or in any other form)  
 13 of the plan and fund. He is not entitled to the physical  
 14 plant, equipment, furniture, computer facilities, and like  
 15 items. The successful bidder must pay all claims that are  
 16 awarded and unpaid on the date of the sale or that are  
 17 pending on the date of the sale and are awarded after the  
 18 date of the sale.

19 (6) The proceeds of the sale must be deposited in the  
 20 general fund.

21 NEW SECTION. Section 2. Assigned risk plan. (1) The  
 22 division shall promulgate and administer a plan for the  
 23 equitable apportionment among plan No. 2 insurers of  
 24 coverage required by this chapter for employers who were  
 25 unable to procure coverage through ordinary methods.

1 (2) All plan No. 2 insurers shall subscribe to and  
 2 participate in the assigned risk plan.

3 (3) If a plan No. 2 insurer refuses to accept its  
 4 equitable apportionment under the assigned risk plan, the  
 5 commissioner of insurance may suspend or revoke the  
 6 insurer's authority to issue worker's compensation coverage  
 7 contracts in this state.

8 Section 3. Section 39-71-102, MCA, is amended to read:  
 9 "39-71-102. Reference to plans. Whenever compensation  
 10 plan No. 1 or No. 2 ~~or 3~~ is referred to, such reference  
 11 also includes all other sections which are applicable to the  
 12 subject matter of such reference."

13 Section 4. Section 39-71-103, MCA, is amended to read:  
 14 "39-71-103. Compensation provisions. The compensation  
 15 provisions of this chapter, whenever referred to, shall be  
 16 held to include the provisions of compensation plan No. 1 and  
 17 and No. 2 ~~or 3~~ and all other sections of this chapter  
 18 applicable to the same or any part thereof."

19 Section 5. Section 39-71-116, MCA, is amended to read:  
 20 "39-71-116. Definitions. Unless the context otherwise  
 21 requires, words and phrases employed in this chapter have  
 22 the following meanings:

23 (1) "Average weekly wage" means the mean weekly  
 24 earnings of all employees under covered employment, as  
 25 defined and established annually by the Montana department

1 of labor and industry. It is established at the nearest  
2 whole dollar number and must be adopted by the division of  
3 workers' compensation prior to July 1 of each year.

4 (2) "Beneficiary" means:

5 (a) a surviving wife or husband;

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

7 (c) an unmarried child under the age of 25 years who  
8 is a full-time student in an accredited school;

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

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

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

23 (3) "Casual employment" means employment not in the  
24 usual course of trade, business, profession, or occupation  
25 of the employer. Any person hauling or assisting in hauling

1 of sugar beets or grains, in case of emergency, is  
2 considered engaged in casual employment.

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

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

9 (6) "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) "Order" means any decision, rule, direction,  
22 requirement, or standard of the division or any other  
23 determination arrived at or decision made by the division.

24 (11) "Payroll", "annual payroll", or "annual payroll  
25 for the preceding year" means the average annual payroll of

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

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

17 (13) "Permanent total disability" means a condition  
 18 resulting from injury as defined in this chapter that  
 19 results in the loss of actual earnings or earning capability  
 20 that exists after the injured worker is as far restored as  
 21 the permanent character of the injuries will permit and  
 22 which results in the worker having no reasonable prospect of  
 23 finding regular employment of any kind in the normal labor  
 24 market. Disability shall be supported by a preponderance of  
 25 medical evidence.

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

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

8 (16) "Public corporation" means the state or any  
 9 county, municipal corporation, school district, city, city  
 10 under commission form of government or special charter,  
 11 town, or village.

12 (17) "Reasonably safe place to work" means that the  
 13 place of employment has been made as free from danger to the  
 14 life or safety of the employee as the nature of the  
 15 employment will reasonably permit.

16 (18) "Reasonably safe tools and appliances" are such  
 17 tools and appliances as are adapted to and are reasonably  
 18 safe for use for the particular purpose for which they are  
 19 furnished.

20 (19) "Temporary total disability" means a condition  
 21 resulting from an injury as defined in this chapter that  
 22 results in total loss of wages and exists until the injured  
 23 worker is as far restored as the permanent character of the  
 24 injuries will permit. A worker shall be paid temporary total  
 25 disability benefits during a reasonable period of

1 retraining. Disability shall be supported by a preponderance  
2 of medical evidence.

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

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

12 (22) "Year", unless otherwise specified, means calendar  
13 year."

14 Section 6. Section 39-71-201, MCA, is amended to read:

15 "39-71-201. Administration fund. (1) A workers'  
16 compensation administration fund is established out of which  
17 all costs of administering the Workers' Compensation and  
18 Occupational Disease Acts and the various occupational  
19 safety acts the division must administer are to be paid upon  
20 lawful appropriation. The following moneys collected by the  
21 division shall be deposited in the state treasury to the  
22 credit of the workers' compensation administrative fund and  
23 shall be used for the administrative expenses of the  
24 division:

25 (a) all fees and fines provided in 39-71-205 and

1 39-71-304;

2 (b) all fees paid for inspection of boilers and  
3 issuance of licenses to operating engineers as required by  
4 law;

5 (c) all fees paid from an assessment on each plan No.  
6 1 employer, and plan No. 2 insurer, ~~and plan No. 3, the~~  
7 ~~state insurance fund~~. The assessments shall be levied  
8 against the preceding calendar year's gross annual payroll  
9 of the plan No. 1 employers and the gross annual direct  
10 premiums collected in Montana on the policies of the plan  
11 No. 2 insurers, insuring employers covered under the  
12 chapter, during the preceding calendar year. However, no  
13 assessment of the plan No. 1 employer or plan No. 2 insurer  
14 shall be less than \$200. The assessments shall be sufficient  
15 to fund the direct costs identified to the ~~three~~ two plans  
16 and an equitable portion of the indirect costs based on the  
17 ratio of the preceding fiscal year's indirect costs  
18 distributed to the plans using proper accounting and cost  
19 allocation procedures. ~~Plan No. 3 shall be assessed an~~  
20 ~~amount sufficient to fund its direct costs and an equitable~~  
21 ~~portion of the indirect costs as referred to above~~. Other  
22 sources of revenue, including unexpended funds from the  
23 preceding fiscal year, shall be used to reduce the costs  
24 before levying the assessments.

25 (2) The administration fund shall be debited with

1 expenses incurred by the division in the general  
2 administration of the provisions of this chapter, including  
3 the salaries of its members, officers, and employees and the  
4 travel expenses of the members, officers, and employees, as  
5 provided for in 2-18-501 through 2-18-503, as amended,  
6 incurred while on the business of the division either within  
7 or without the state.

8 (3) Disbursements from the administration money shall  
9 be made after being approved by the division upon claim  
10 therefor."

11 Section 7. Section 39-71-206, MCA, is amended to read:

12 "39-71-206. Legal advisers of division. ~~(1)~~ The  
13 attorney general shall be the legal adviser of the division  
14 and shall represent it in all proceedings whenever so  
15 requested by the division or any member thereof.

16 ~~(2) The division may, in the investigation and defense  
17 of cases under plan No. 3 of the Workers' Compensation Act,  
18 employ such other attorney or legal adviser as it deems  
19 necessary and pay for the same out of the industrial  
20 insurance account in the expendable trust fund."~~

21 Section 8. Section 39-71-308, MCA, is amended to read:

22 "39-71-308. Neglect or refusal of public corporation  
23 to file payroll reports -- arbitrary assessment by division.  
24 Whenever any public corporation insured -- by the -- state  
25 compensation -- insurance -- fund neglects or refuses to file

1 prescribed payroll reports of its employees, the division  
2 may levy an arbitrary assessment upon such public  
3 corporation in an amount of \$75 for each such assessment,  
4 which assessments shall be collected in the manner provided  
5 in this chapter for the collection of assessments."

6 Section 9. Section 39-71-401, MCA, is amended to read:

7 "39-71-401. Employments covered and employments  
8 exempted. (1) Except as provided in subsection (2) of this  
9 section, the Workers' Compensation Act applies to all  
10 employers as defined in 39-71-117 and to all employees as  
11 defined in 39-71-118. An employer who has any employee in  
12 service under any appointment or contract of hire, expressed  
13 or implied, oral or written, shall elect to be bound by the  
14 provisions of compensation plan No. 1, or No. 2, or 3. Every  
15 employee whose employer is bound by the Workers'  
16 Compensation Act is subject to and bound by the compensation  
17 plan that has been elected by the employer.

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

- 22 (a) household and domestic employment;  
23 (b) casual employment as defined in 39-71-116(3)  
24 except employment of a volunteer under 67-2-105;  
25 (c) employment of members of an employer's family

1 dwelling in the employer's household;

2 (d) employment of sole proprietors or working members  
3 of a partnership other than those who consider themselves or  
4 hold themselves out as independent contractors and who are  
5 not contracting for agricultural services to be performed on  
6 a farm or ranch, or for broker or salesman services  
7 performed under a license issued by the board of realty  
8 regulation, or for services as a direct seller engaged in  
9 the sale of consumer products to customers primarily in the  
10 home;

11 (e) employment for which a rule of liability for  
12 injury, occupational disease, or death is provided under the  
13 laws of the United States;

14 (f) any person performing services in return for aid  
15 or sustenance only, except employment of a volunteer under  
16 67-2-105;

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

20 (h) 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. 17 or No. 27-er-3, but he may apply  
9 to the division for an exemption from the Workers'  
10 Compensation Act for himself. The application must be made  
11 in accordance with the rules adopted by the division. The  
12 division may deny the application only if it determines that  
13 the applicant is not an independent contractor. When an  
14 application is approved by the division, it is conclusive as  
15 to the status of an independent contractor and precludes the  
16 applicant from obtaining benefits under this chapter.

17 (4) Each employer shall post a sign in the workplace  
18 at the locations where notices to employees are normally  
19 posted, informing employees about the employer's current  
20 provision of compensation insurance. A workplace is any  
21 location where an employee performs any work-related act in  
22 the course of employment, regardless of whether the location  
23 is temporary or permanent, and includes the place of  
24 business or property of a third person while the employer  
25 has access to or control over such place of business or



1 property for the purpose of carrying on his usual trade,  
 2 business, or occupation. The sign will be provided by the  
 3 division, distributed through insurers or directly by the  
 4 division, and posted by employers in accordance with rules  
 5 adopted by the division. An employer who purposely or  
 6 knowingly fails to post a sign as provided in this  
 7 subsection is subject to a \$50 fine for each citation."

8 Section 10. Section 39-71-403, MCA, is amended to  
 9 read:

10 "~~39-71-403. Plan three-exclusive-for-state-agencies---~~  
 11 ~~election Election~~ of plan by other public corporations. ~~{1}~~  
 12 ~~Where-a-state-agency-is-the-employer, the terms, conditions,~~  
 13 ~~and---provisions---of---compensation--plan--No---3---shall--be~~  
 14 ~~exclusive, compulsory, and obligatory upon both employer and~~  
 15 ~~employee.---Any--sums--necessary--to--be--paid---under---the~~  
 16 ~~provisions--of--this--chapter--by--any--state--agency--shall--be~~  
 17 ~~considered-to-be--ordinary--and--necessary--expense--of--the~~  
 18 ~~agency,--and--the--agency--shall--make--appropriation--of--and--pay~~  
 19 ~~such--sums--into--the--state--compensation--insurance--fund--at--the~~  
 20 ~~time--and--in--the--manner--provided--for--in--this--chapter,~~  
 21 ~~notwithstanding--that--the--state--agency--may--have--failed--to~~  
 22 ~~anticipate--such--ordinary--and--necessary--expense--in--any~~  
 23 ~~budget, estimate of expenses, appropriations, ordinances, or~~  
 24 ~~otherwise.~~

25 ~~{2}{1}~~ A public corporation, ~~other--than--a---state~~

1 agency, may elect coverage under compensation plan No. 1  
 2 employer, or plan No. 2, insurer, ~~or--plan--No---3,--state~~  
 3 ~~insurance fund,~~ separately or jointly with any other public  
 4 corporation, other than a state agency. A public corporation  
 5 electing compensation plan No. 1 may purchase reinsurance. A  
 6 public corporation electing compensation plan No. 1 is  
 7 subject to the same provisions as a private employer  
 8 electing compensation plan No. 1.

9 ~~{3}{2}~~ A public corporation, ~~other--than--a---state~~  
 10 ~~agency,~~ that elects plan No. 1 may establish a fund  
 11 sufficient to pay the compensation and benefits provided for  
 12 in this chapter and chapter 72 and to discharge all  
 13 liabilities that reasonably incur during the fiscal year for  
 14 which the election is effective. Proceeds from the fund must  
 15 be used only to pay claims covered by this chapter and  
 16 chapter 72 and for actual and necessary expenses required  
 17 for the efficient administration of the fund.

18 ~~{4}{3}~~ All money in the fund established under  
 19 subsection (2) not needed to meet immediate expenditures  
 20 must be invested by the governing body of the public  
 21 corporation, and all proceeds of the investment shall be  
 22 credited to the fund."

23 Section 11. Section 39-71-410, MCA, is amended to  
 24 read:

25 "39-71-410. Employees bound by plan adopted by

1 employer -- election not to be bound by corporate officers.  
 2 (1) Every employee whose employer is bound by the provisions  
 3 of this chapter is subject to and bound by the provisions of  
 4 that plan of compensation adopted by his employer, except  
 5 that pursuant to such rules as the division shall ~~from--time~~  
 6 ~~to--time~~ promulgate and subject in all cases to the review of  
 7 the division, officers of private corporations may elect not  
 8 to be bound as employees under this chapter by a written  
 9 notice in the form provided by the division, served in the  
 10 following manner:

11 (a) if the employer has elected to be bound by the  
 12 provisions of compensation plan No. 1, by delivering the  
 13 notice to the board of directors of the employer; or

14 (b) if the employer has elected to be bound by the  
 15 provisions of compensation plan No. 2, by delivering the  
 16 notice to the board of directors of the employer or the  
 17 insurer; or

18 ~~(c) if the employer has elected to be bound or is~~  
 19 ~~bound by the provisions of compensation plan No. 3, by~~  
 20 ~~delivering the notice to the division;~~

21 (2) The appointment or election of an officer of a  
 22 corporation for the purpose of excluding an employee from  
 23 coverage under this chapter does not entitle such officer to  
 24 elect not to be bound as an employee under this chapter. In  
 25 any case, the notice must be signed by the officer under

1 oath or equivalent affirmation and is subject to the  
 2 penalties for false swearing.

3 (3) The division shall review any election by officers  
 4 of private corporations not to be bound as an employee to  
 5 assure compliance with this chapter."

6 Section 12. Section 39-71-502, MCA, is amended to  
 7 read:

8 "39-71-502. Creation and purpose of uninsured  
 9 employers' fund. There is created an uninsured employers'  
 10 fund. The purpose of the fund is to pay to an injured  
 11 employee of an uninsured employer the same benefits the  
 12 employee would have received if the employer had been  
 13 properly enrolled under compensation plan No. 1 or No. 2  
 14 or-3."

15 Section 13. Section 39-71-504, MCA, is amended to  
 16 read:

17 "39-71-504. Funding of fund -- option for agreement  
 18 between division and injured employee. The fund shall be  
 19 funded in the following manner:

20 (1) The division shall require that the uninsured  
 21 employer pay to the fund a penalty of either double the  
 22 premium amount the employer would have paid on the payroll  
 23 of the employer's workers in this state ~~if the employer had~~  
 24 ~~been enrolled with compensation plan No. 3, based on the~~  
 25 average of quotes from three workers' compensation insurers

1 operating in the state as determined by the division, or  
 2 \$200, whichever is greater. In determining the premium  
 3 amount for the calculation of the penalty under this  
 4 subsection, the division shall make an assessment on how  
 5 much premium would have been paid on the employer's past  
 6 3-year payroll for periods within the 3 years when the  
 7 employer was uninsured. An assessment for payroll paid by  
 8 the uninsured employer for any time prior to July 1, 1977,  
 9 may not be made.

10 (2) (a) The fund shall receive from an uninsured  
 11 employer an amount equal to all benefits paid or to be paid  
 12 from the fund to an injured employee of the uninsured  
 13 employer. However, the uninsured employer's liability under  
 14 this subsection (2)(a) may not exceed \$50,000.

15 (b) The dollar limitation does not apply to an  
 16 uninsured employer's liability to an injured employee or the  
 17 employee's beneficiaries under 39-71-509 or 39-71-515.

18 (3) The division may determine that the \$1,000  
 19 assessments that are charged against an insurer in each case  
 20 of an industrial death under 39-71-902(1) shall be paid to  
 21 the uninsured employers' fund rather than the subsequent  
 22 injury fund.

23 (4) The division may enter into an agreement with the  
 24 injured employee or the employee's beneficiaries to assign  
 25 to the employee or the beneficiaries all or part of the

1 funds received by the division from the uninsured employer  
 2 pursuant to subsection (2)(a)."

3 Section 14. Section 39-71-505, MCA, is amended to  
 4 read:

5 "39-71-505. Applicability of other provisions of  
 6 chapter to fund. All appropriate provisions in the Workers'  
 7 Compensation Act apply to the fund in the same manner as  
 8 they apply to compensation plans No. 17 and No. 27 ~~and--3~~."

9 Section 15. Section 39-71-515, MCA, is amended to  
 10 read:

11 "39-71-515. Independent cause of action. (1) An  
 12 injured employee or the employee's beneficiaries have an  
 13 independent cause of action against an uninsured employer  
 14 for failure to be enrolled in a compensation plan as  
 15 required by this chapter.

16 (2) In such an action, prima facie liability of the  
 17 uninsured employer exists if the claimant proves, by a  
 18 preponderance of the evidence, that:

19 (a) the employer was required by law to be enrolled  
 20 under compensation plan No. 17 or No. 27 ~~or-3~~ with respect  
 21 to the claimant; and

22 (b) the employer was not so enrolled on the date of  
 23 the injury or death.

24 (3) It is not a defense to such an action that the  
 25 employee had knowledge of or consented to the employer's

1 failure to carry insurance or that the employee was  
2 negligent in permitting such failure to exist.

3 (4) The amount of recoverable damages in such an  
4 action is the amount of compensation that the employee would  
5 have received had the employer been properly enrolled under  
6 compensation plan No. 17 or No. 27-or-9.

7 (5) A plaintiff who prevails in an action brought  
8 under this section is entitled to recover reasonable costs  
9 and attorney fees incurred in the action, in addition to his  
10 damages."

11 Section 16. Section 39-71-908, MCA, is amended to  
12 read:

13 "39-71-908. Notification of fund of its potential  
14 liability under part -- review by fund. Not less than 90 or  
15 more than 150 days before the expiration of 104 weeks after  
16 the date of injury, the employer7 or the carrier7--or--the  
17 ~~industrial--insurance-fund7-as-the-case-may-be7~~ shall notify  
18 the fund whether it is likely that compensation may be  
19 payable beyond a period of 104 weeks after the date of the  
20 injury. The fund thereafter may review, at reasonable  
21 times, such information as the employer7 or the carrier7-or  
22 ~~industrial--insurance-fund~~ has regarding the accident and the  
23 nature and extent of the injury and disability."

24 Section 17. Section 39-71-909, MCA, is amended to  
25 read:

1 "39-71-909. Effect of fund's failure to give  
2 notification of its intent to dispute liability --  
3 subsequent notification by fund authorized. If the fund does  
4 not notify the carrier of its intent to dispute the payment  
5 of compensation, medical, and burial benefits, the employer7  
6 or the carrier7-or-industrial-insurance-fund shall continue  
7 to make payments on behalf of the fund and shall be  
8 reimbursed by the fund for all benefits paid that pertain to  
9 the period beyond 104 weeks after the date of the injury.  
10 However, at any time subsequent to 104 weeks after the date  
11 of injury, the fund may notify the carrier of a dispute as  
12 to payment of benefits. The liability of the fund to  
13 reimburse the employer7 or the carrier7--or--the--industrial  
14 ~~insurance--fund~~ shall be suspended 30 days thereafter until  
15 the controversy is determined."

16 Section 18. Section 39-71-910, MCA, is amended to  
17 read:

18 "39-71-910. Procedure for resolving disputes as to  
19 liability under part. (1) If an employee was employed or  
20 retained in employment under the provisions of this part and  
21 a dispute or controversy arises as to payment of benefits or  
22 the liability therefor, the division shall hold a hearing  
23 and resolve all disputes. On motion made in writing by the  
24 employer7 or the carrier7-or-industrial-insurance-fund, the  
25 administrator shall join the fund as a party defendant.

1 (2) The division, within 5 days of the entry of an  
 2 order joining the fund as a party defendant, shall give the  
 3 fund written notice thereof not less than 20 days before the  
 4 date of hearing and shall include the name of the employee  
 5 and the employer and the date of the alleged injury or  
 6 disability. The fund named as a defendant shall have 10 days  
 7 after the date of notification to file objections to being  
 8 named as a party defendant. On the date of the hearing at  
 9 which the liability of the parties is determined, the  
 10 hearing examiner first shall hear arguments and take  
 11 evidence concerning the joinder as party defendant. If the  
 12 fund has filed timely objection and if argument and evidence  
 13 warrant, the hearing examiner shall grant a motion to  
 14 dismiss.

15 (3) At the time of the hearing, the employer and fund  
 16 may appear, cross-examine witnesses, give evidence, and  
 17 defend both on the issue of liability of the employer to the  
 18 employee and on the issue of the liability of the fund.

19 (4) The hearing examiner shall make findings of fact  
 20 and conclusions of law determining the respective liability  
 21 of the employer and the fund."

22 Section 19. Section 39-71-911, MCA, is amended to  
 23 read:

24 "39-71-911. Obligation to make payments on behalf of  
 25 fund not an independent liability. The obligation imposed by

1 this part on the employer, or the carrier, ~~or industrial~~  
 2 ~~insurance--fund~~ to make payments on behalf of the fund does  
 3 not impose an independent liability on the employer, or the  
 4 ~~carrier--or-industrial-insurance-fund.~~"

5 Section 20. Section 39-71-913, MCA, is amended to  
 6 read:

7 "39-71-913. Payments by fund directly to persons  
 8 entitled. If the employer, or the carrier, ~~or the industrial~~  
 9 ~~insurance--fund~~ does not make the payments on behalf of the  
 10 fund, the fund may make the payments directly to the persons  
 11 entitled to the payments."

12 Section 21. Section 39-71-1004, MCA, is amended to  
 13 read:

14 "39-71-1004. Industrial accident rehabilitation  
 15 account. (1) The payments provided in 39-71-1003 shall be  
 16 made from the industrial accident rehabilitation account in  
 17 the state special revenue fund. Payments to the account  
 18 shall be made on or before July 1 of each year as follows:

19 (a) by each employer operating under the provisions of  
 20 plan No. 1 of the Workers' Compensation Act, an amount to be  
 21 assessed by the division, not exceeding 1% of the  
 22 compensation paid to the employer's injured employees in  
 23 Montana for the preceding fiscal year; and

24 (b) by each insurer insuring employers under the  
 25 provisions of plan No. 2 of the Workers' Compensation Act,

1 an amount to be assessed by the division, not exceeding 1%  
 2 of the compensation paid to injured employees of its insured  
 3 in Montana during the preceding fiscal year;

4 ~~(c) by the division, an amount to be determined by the~~  
 5 ~~division, not exceeding 1% of the compensation paid to~~  
 6 ~~injured employees in Montana from the industrial insurance~~  
 7 ~~expendable trust fund and the occupational disease~~  
 8 ~~expendable trust fund for the preceding fiscal year.~~

9 (2) Separate accounts of the amounts collected and  
 10 disbursements made from the industrial accident  
 11 rehabilitation account in the state special revenue fund  
 12 shall be kept for each of the plans. If in any fiscal year  
 13 the amount collected from the employers under any plan  
 14 exceeds the amount of payments for employees of the  
 15 employers under such plan, the assessment against the  
 16 employers under such plan for the following year shall be  
 17 reduced.

18 (3) The payments herein provided for shall be made to  
 19 the division, which shall credit the sums paid to the  
 20 industrial accident rehabilitation account which shall be in  
 21 the custody of the state treasurer. Disbursements from the  
 22 account shall be made after approval by the department of  
 23 social and rehabilitation services and upon audit and  
 24 approval by the department of administration.

25 (4) No part of the funds allocated or contributed as

1 herein provided and contemplated shall be used in payment of  
 2 administrative expenses of the division or department of  
 3 social and rehabilitation services."

4 Section 22. Section 39-71-2201, MCA, is amended to  
 5 read:

6 "39-71-2201. Election to be bound by plan. (1) Any  
 7 employer ~~except those specified in 39-71-403~~ may, by filing  
 8 his election to become bound by compensation plan No. 2,  
 9 insure his liability to pay the compensation and benefits  
 10 provided by this chapter with any insurance company  
 11 authorized to transact such business in this state.

12 (2) Any employer electing to become bound by  
 13 compensation plan No. 2 shall make his election on the form  
 14 and in the manner prescribed by the division."

15 Section 23. Section 39-71-2206, MCA, is amended to  
 16 read:

17 "39-71-2206. Deposits by insurer with division to  
 18 guarantee payment of liability. (1) Before issuance of any  
 19 policy by an insurer as herein authorized, the insurer must  
 20 deposit with the division bonds of the United States or the  
 21 state of Montana or of any school district, county, city, or  
 22 town in the state of Montana or a corporate surety bond made  
 23 out to and approved by the division in an amount not less  
 24 than \$5,000 or more than ~~\$100,000~~ \$250,000, as the division  
 25 may determine. If any insurer fails to discharge any

1 liability after the amount thereof is determined by the  
 2 division and within the time limited by the division, the  
 3 division shall convert the bonds or such part thereof as is  
 4 necessary into cash and from the proceeds liquidate such  
 5 liability, and thereafter the insurer must make an  
 6 additional deposit to meet any deficiency caused thereby. It  
 7 is intended to give the division the discretion in the  
 8 matter of whether an insurer has failed to discharge any  
 9 liability.

10 (2) Within 30 days of the happening of an accident  
 11 where death or the nature of the injury renders the amount  
 12 of future payments certain or reasonably certain, the  
 13 insurer shall make a deposit, as herein defined, with the  
 14 division for the protection and guarantee of the payment of  
 15 such liability in such sum as the division may direct.  
 16 However, if the division considers the amount on deposit by  
 17 the insurer under the provisions of subsection (1) of this  
 18 section sufficient to cover all liabilities of the insurer,  
 19 then no further deposit may be required.

20 (3) Any deposit made under the provisions of  
 21 compensation plan No. 2 must be held in trust by the  
 22 division as security for the payment of the liability for  
 23 which the deposit was made. Such deposit may be reduced from  
 24 time to time with the permission of the division as the  
 25 payment of the liability of the insurer may reduce the

1 amount required to be on deposit. Such deposit may be  
 2 changed or renewed when desired by the depositor by  
 3 withdrawing the same or any part thereof and substituting  
 4 other deposits therefor. Upon proof of the final payment of  
 5 the liability for which such deposit was made, any deposit  
 6 remaining must be returned to the depositor. All earnings  
 7 made by such deposit must first be applied upon any  
 8 liability of the depositors, and if no such liability  
 9 exists, then such earnings must upon demand be delivered to  
 10 such depositor. The division and its bondsmen are liable for  
 11 the value and safekeeping of such deposit and shall at any  
 12 time, upon demand of a depositor, account for the same and  
 13 the earnings thereof."

14 Section 24. Section 39-72-310, MCA, is amended to  
 15 read:

16 "39-72-310. Occupational disease coverage under  
 17 workers' compensation plans. (1) Every employer enrolled  
 18 under compensation plan No. 1 (Title 39, chapter 71, part  
 19 21) and every insurer writing workers' compensation  
 20 coverage under compensation plan No. 2 (Title 39, chapter  
 21 71, part 22) ~~and the state compensation insurance fund~~  
 22 ~~under compensation plan No. 3 (Title 39, chapter 71, part~~  
 23 ~~23) and all provided for under the Workers' Compensation Act,~~  
 24 are considered to also provide full coverage for claims  
 25 under this chapter. Any policy of insurance for workers'

1 compensation coverage under the Workers' Compensation Act  
 2 written by a private insurance carrier ~~or--the--state~~  
 3 ~~compensation-insurance-fund~~ is considered to provide full  
 4 occupational disease coverage under the provisions of this  
 5 chapter.

6 (2) Except as provided in this chapter, the division  
 7 shall apply the appropriate provisions of Title 39, chapter  
 8 71, parts 217, and 227~~--and-23~~, to the administration of The  
 9 Occupational Disease Act of Montana in the same manner as  
 10 they are applied to the administration of the Workers'  
 11 Compensation Act.

12 ~~{3}--Under--compensation--plan--No--3,--any--premiums--and~~  
 13 ~~other--receipts--held--by--the--division--for--occupational--disease~~  
 14 ~~insurance--coverage--shall--be--transferred--and--become--part--of~~  
 15 ~~the--workers'-compensation--industrial--insurance--account,--and~~  
 16 ~~payments--for--occupational--disease--claims--by--the--state--fund~~  
 17 ~~shall--be--paid--out--of--the--industrial--insurance--account."~~

18 NEW SECTION. Section 25. Repealer. Sections  
 19 39-71-2301 through 39-71-2308 and 39-71-2321 through  
 20 39-71-2327, MCA, are repealed.

21 NEW SECTION. Section 26. Extension of authority. Any  
 22 existing authority of the division of workers' compensation  
 23 to make rules on the subject of the provisions of this act  
 24 is extended to the provisions of this act.

25 NEW SECTION. Section 27. Codification instruction.

1 Section 2 is intended to be codified as an integral part of  
 2 Title 39, chapter 71, and the provisions of Title 39,  
 3 chapter 71, apply to section 2.

4 NEW SECTION. Section 28. Effective dates. (1) Section  
 5 1 and this section are effective on passage and approval.

6 (2) Sections 2 through 27 are effective on the date a  
 7 sale is made under section 1.

-End-



## STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB388, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act requiring the sale of the State Workers' Compensation Insurance plan and fund to the highest responsible bidder; providing for a sale procedure; providing for disposition of the proceeds of the sale; providing for an assigned apportionment to insurers of insurance coverage for high-risk employees.

ASSUMPTIONS:

1. Any prospective bidder must be authorized by the State Insurance Commissioner to write workers' compensation policies in Montana.
2. Since no other state has carried out such a project, and since no other state has a workers' compensation assigned risk plan which spreads rather than pools risk, an original feasibility plan will be needed. Such study would require one year's work after the sale of the Fund.
3. Rating each employer and producing modification factors will require approximately the same expense as currently contracted for.
4. A section approximately the size of the State Fund Policy Services Section would be required to administer an assigned risk plan, beginning in the second year after sale of the Fund.

FISCAL IMPACT:

	FY88			FY89		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Expenditures:						
Personal Services	\$ 408,052	\$ 568,088	\$ 160,036	\$ 408,205	\$ 408,205	\$ 0
Operating Expenses	357,658	389,438	31,780	690,512	690,512	0
Equipment	10,300	10,300	0	39,950	39,950	0
TOTAL	\$ 776,010	\$ 967,826	\$ 191,816	\$ 1,138,667	\$ 1,138,667	\$ 0

Costs would be paid from State Special Revenue Fund. In 1989 cost would shift from State Fund policyholders to Plan I and II insurers.

Revenues:

Since the sale procedure would be through a bidding process and no other state has carried out such a project, revenues can not be determined.

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

1. Public entities may pay increased rates due to competitive rate setting in the private sector -- impossible to quantify.
2. Premium may increase among competing private carriers to absorb new risks.

David L. Hunter DATE 3/3/87  
 DAVID L. HUNTER, BUDGET DIRECTOR  
 Office of Budget and Program Planning

Paul Boylan DATE 5 Mar 87  
 PAUL BOYLAN, PRIMARY SPONSOR

Fiscal Note for SB388, as introduced.

**SB 388**

MOTION TO MOVE FROM  
COMMITTEE ON LABOR & EMPLOYMENT  
RELATIONS TO 2ND READING  
AS AMENDED

SENATE BILL NO. 388

INTRODUCED BY BOYLAN, HARP, STORY, GALT,  
HIRSCH, RAMIREZ, KITSELMAN, SALES

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE SALE OF  
THE STATE WORKERS' COMPENSATION INSURANCE PLAN AND FUND TO  
THE HIGHEST RESPONSIBLE BIDDER; PROVIDING FOR A SALE  
PROCEDURE; PROVIDING FOR DISPOSITION OF THE PROCEEDS OF THE  
SALE; PROVIDING FOR AN ASSIGNED APPORTIONMENT TO INSURERS OF  
INSURANCE COVERAGE FOR HIGH-RISK EMPLOYERS; AMENDING  
SECTIONS 7-32-203, 33-17-502, 33-18-212, 39-71-102,  
39-71-103, 39-71-116, 39-71-201, 39-71-206, 39-71-308,  
39-71-401, 39-71-403, 39-71-410, 39-71-502, 39-71-504,  
39-71-505, 39-71-515, 39-71-704, 39-71-908 THROUGH  
39-71-911, 39-71-913, 39-71-1004, 39-71-2201, 39-71-2206,  
AND 39-72-310, MCA; REPEALING SECTIONS 39-71-2301 THROUGH  
39-71-2308 AND 39-71-2321 THROUGH 39-71-2327, MCA; AND  
PROVIDING EFFECTIVE DATES."

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

NEW SECTION. Section 1. Sale of state workers'  
compensation insurance plan and fund. (1) The governor  
shall, within 180 days after the effective date of this  
section, sell the state workers' compensation insurance plan  
and fund created and provided for in Title 39, chapter 71,

part 23, and referenced in other provisions of Title 39,  
chapter 71. The governor shall make a request for bids and  
shall ensure that the request is adequately publicized in  
the press, major financial publications, and the financial  
and insurance industries. All advertisements must be  
published within 60 days after the effective date of this  
section. Interested parties must be allowed 60 days from the  
date the last advertisement is published to submit proposals  
for purchase. The sale must be to the responsible insurance  
or other company submitting the highest bid.

(2) Each bid proposal must contain an agreement to  
purchase the plan and fund in cash and be accompanied by  
security in the amount of 2% of the bid. The security must  
be in cash, cashier's check, certified check, bank money  
order, or bank draft and must be drawn on a bank located in  
Montana or consist of a bond or bonds executed by a surety  
authorized to do business in Montana. If a bid is accepted  
and the bidder fails to consummate the sale, the security is  
forfeited to the state and must be deposited in the general  
fund. The security must be returned to bidders whose bids  
are not accepted.

(3) The governor shall submit each bid proposal to the  
legislative audit committee upon its receipt. The committee  
shall review the proposals and submit comments to the  
governor on the qualifications of each bidder.



1 (4) A responsible prospective bidder who demonstrates  
 2 the financial ability to purchase the fund and plan is  
 3 entitled to fully inspect the public records of the fund and  
 4 plan and of the division of workers' compensation under  
 5 39-71-221 through 39-71-224, including data banks and raw  
 6 data, and shall be given copies of the last four reports  
 7 printed under 39-71-210, any earlier reports requested by  
 8 the bidder, and a copy of each audit of any type performed  
 9 by the legislative audit committee since January 1, 1980,  
 10 relating to either the fund and plan or the division of  
 11 workers' compensation, or both.

12 (5) The successful bidder is entitled to the financial  
 13 assets, future business, and books, records, and papers  
 14 (whether written, typed, computerized, or in any other form)  
 15 of the plan and fund. He is not entitled to the physical  
 16 plant, equipment, furniture, computer facilities, and like  
 17 items. The successful bidder must pay all claims that are  
 18 awarded and unpaid on the date of the sale or that are  
 19 pending on the date of the sale and are awarded after the  
 20 date of the sale.

21 (6) The proceeds of the sale must be deposited in the  
 22 general fund.

23 NEW SECTION. Section 2. Assigned risk plan. (1) The  
 24 division shall promulgate and administer a plan for the  
 25 equitable apportionment among plan No. 2 insurers of

1 coverage required by this chapter for employers who were  
 2 unable to procure coverage through ordinary methods.

3 (2) All plan No. 2 insurers shall subscribe to and  
 4 participate in the assigned risk plan.

5 (3) If a plan No. 2 insurer refuses to accept its  
 6 equitable apportionment under the assigned risk plan, the  
 7 commissioner of insurance may suspend or revoke the  
 8 insurer's authority to issue worker's compensation coverage  
 9 contracts in this state.

10 SECTION 3. SECTION 7-32-203, MCA, IS AMENDED TO READ:

11 "7-32-203. Provision of workers' compensation  
 12 coverage. (1) Each law enforcement agency that utilizes  
 13 reserve officers shall provide full workers' compensation  
 14 coverage for the officers while they are providing actual  
 15 service for a law enforcement agency. ~~Coverage shall be  
 16 provided through the state compensation insurance fund, and  
 17 the law enforcement agencies shall pay to the state fund an  
 18 appropriate premium, as established by the state fund, to  
 19 cover the insurance risk of providing coverage to the  
 20 officers.~~

21 (2) Each law enforcement agency that utilizes  
 22 auxiliary officers shall provide full workers' compensation  
 23 coverage for the officers while they are providing actual  
 24 service for a law enforcement agency."

25 SECTION 4. SECTION 33-17-502, MCA, IS AMENDED TO READ:

1 "33-17-502. Prohibition on holding out as consultant  
 2 -- receiving fee. (1) Any person not licensed as an  
 3 insurance consultant in this state who identifies or holds  
 4 himself out to be an insurance consultant without having  
 5 been licensed as an insurance consultant under this part or  
 6 any person who uses any other designation or title which is  
 7 likely to mislead the public and holds himself out in any  
 8 manner as having particular insurance qualifications other  
 9 than those for which he may be otherwise licensed or  
 10 otherwise qualified is guilty of a misdemeanor and upon  
 11 conviction shall be fined \$1,500.

12 (2) Any person not licensed as an insurance consultant  
 13 with respect to the relevant kinds of insurance who receives  
 14 any fee for examining, appraising, reviewing, or evaluating  
 15 any insurance policy, annuity or pension contract, plan, or  
 16 program or who shall make recommendations or give advice  
 17 with regard to any of the above without first having been  
 18 licensed by the commissioner as an insurance consultant is  
 19 guilty of a misdemeanor and upon conviction shall be fined  
 20 \$1,500.

21 (3) Nothing in this part applies to:

22 (a) licensed attorneys at law in this state acting in  
 23 their professional capacity; or

24 (b) an actuary or a certified public accountant who  
 25 provides information, recommendations, advice, or services

1 in his professional capacity if neither he nor his employer  
 2 receives any compensation directly or indirectly on account  
 3 of any insurance, bond, annuity or pension contract that  
 4 results in whole or part from that information,  
 5 recommendation, advice, or services; or.

6 ~~(c) -- a -- duly -- licensed -- casualty -- insurance -- agent -- who~~  
 7 ~~accepts a fee from an insured -- for -- placement -- through -- the~~  
 8 ~~state compensation insurance fund as provided in 33-18-212."~~

9 SECTION 5. SECTION 33-18-212, MCA, IS AMENDED TO READ:

10 "33-18-212. Illegal dealing in premiums -- improper  
 11 charges for insurance. (1) No person shall willfully collect  
 12 any sum as premium or charge for insurance, which insurance  
 13 is not then provided or is not in due course to be provided  
 14 (subject to acceptance of the risk by the insurer) by an  
 15 insurance policy issued by an insurer as authorized by this  
 16 code.

17 (2) No person shall willfully collect as premium or  
 18 charge for insurance any sum in excess of or less than the  
 19 premium or charge applicable to such insurance and, as  
 20 specified in the policy, in accordance with the applicable  
 21 classifications and rates as filed with and approved by the  
 22 commissioner; or in cases where classifications, premiums,  
 23 or rates are not required by this code to be so filed and  
 24 approved, such premiums and charges shall not be in excess  
 25 of or less than those specified in the policy and as fixed

1 by the insurer. This provision shall not be deemed to  
 2 prohibit the charging and collection, by surplus line agents  
 3 licensed under chapter 2, part 3, of the amount of  
 4 applicable state and federal taxes in addition to the  
 5 premium required by the insurer. It shall not be deemed to  
 6 prohibit the charging and collection, by a life insurer, of  
 7 amounts actually to be expended for medical examination of  
 8 an applicant for life insurance or for reinstatement of a  
 9 life insurance policy. ~~The provision of this subsection does  
 10 not prohibit the collection from an insured of a placement  
 11 fee, not to exceed 7 1/2% of the annual premium, for  
 12 placement through the state compensation insurance fund by a  
 13 duly licensed casualty insurance agent. This placement fee  
 14 is not a premium as defined in 33-15-102.~~

15 (3) Each violation of this section shall be punishable  
 16 under 33-1-104."

17 Section 6. Section 39-71-102, MCA, is amended to read:

18 "39-71-102. Reference to plans. Whenever compensation  
 19 plan No. 17 or No. 27-or-3 is referred to, such reference  
 20 also includes all other sections which are applicable to the  
 21 subject matter of such reference."

22 Section 7. Section 39-71-103, MCA, is amended to read:

23 "39-71-103. Compensation provisions. The compensation  
 24 provisions of this chapter, whenever referred to, shall be  
 25 held to include the provisions of compensation plan No. 17

1 and No. 27-or-3 and all other sections of this chapter  
 2 applicable to the same or any part thereof."

3 Section 8. Section 39-71-116, MCA, is amended to read:

4 "39-71-116. Definitions. Unless the context otherwise  
 5 requires, words and phrases employed in this chapter have  
 6 the following meanings:

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

13 (2) "Beneficiary" means:

- 14 (a) a surviving wife or husband;  
 15 (b) an unmarried child under the age of 18 years;  
 16 (c) an unmarried child under the age of 25 years who  
 17 is a full-time student in an accredited school;  
 18 (d) an invalid child over the age of 18 years who is  
 19 dependent upon the decedent for support at the time of  
 20 injury;

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

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

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

12 (4) "Child" includes a posthumous child, a dependent  
 13 stepchild, a child legally adopted prior to the injury, and  
 14 an illegitimate child legitimized prior to the injury.

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

18 (6) "Fiscal year" means the period of time between  
 19 July 1 and the succeeding June 30.

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

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

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

3 (9) "Invalid" means one who is physically or mentally  
 4 incapacitated.

5 (10) "Order" means any decision, rule, direction,  
 6 requirement, or standard of the division or any other  
 7 determination arrived at or decision made by the division.

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

19 (12) "Permanent partial disability" means a condition  
 20 resulting from injury as defined in this chapter that  
 21 results in the actual loss of earnings or earning capability  
 22 less than total that exists after the injured worker is as  
 23 far restored as the permanent character of the injuries will  
 24 permit. Disability shall be supported by a preponderance of  
 25 medical evidence.

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

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

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

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

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

25 (18) "Reasonably safe tools and appliances" are such

1 tools and appliances as are adapted to and are reasonably  
 2 safe for use for the particular purpose for which they are  
 3 furnished.

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

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

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

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

23 Section 9. Section 39-71-201, MCA, is amended to read:  
 24 "39-71-201. Administration fund. (1) A workers'  
 25 compensation administration fund is established out of which

1 all costs of administering the Workers' Compensation and  
 2 Occupational Disease Acts and the various occupational  
 3 safety acts the division must administer are to be paid upon  
 4 lawful appropriation. The following moneys collected by the  
 5 division shall be deposited in the state treasury to the  
 6 credit of the workers' compensation administrative fund and  
 7 shall be used for the administrative expenses of the  
 8 division:

9 (a) all fees and fines provided in 39-71-205 and  
 10 39-71-304;

11 (b) all fees paid for inspection of boilers and  
 12 issuance of licenses to operating engineers as required by  
 13 law;

14 (c) all fees paid from an assessment on each plan No.  
 15 1 employer, ~~and~~ plan No. 2 insurer, ~~and plan No. 37 the~~  
 16 ~~state insurance fund~~. The assessments shall be levied  
 17 against the preceding calendar year's gross annual payroll  
 18 of the plan No. 1 employers and the gross annual direct  
 19 premiums collected in Montana on the policies of the plan  
 20 No. 2 insurers, insuring employers covered under the  
 21 chapter, during the preceding calendar year. However, no  
 22 assessment of the plan No. 1 employer or plan No. 2 insurer  
 23 shall be less than \$200. The assessments shall be sufficient  
 24 to fund the direct costs identified to the ~~three~~ two plans  
 25 and an equitable portion of the indirect costs based on the

1 ratio of the preceding fiscal year's indirect costs  
 2 distributed to the plans using proper accounting and cost  
 3 allocation procedures. ~~Plan No. 3 shall be assessed an~~  
 4 ~~amount sufficient to fund its direct costs and an equitable~~  
 5 ~~portion of the indirect costs as referred to above.~~ Other  
 6 sources of revenue, including unexpended funds from the  
 7 preceding fiscal year, shall be used to reduce the costs  
 8 before levying the assessments.

9 (2) The administration fund shall be debited with  
 10 expenses incurred by the division in the general  
 11 administration of the provisions of this chapter, including  
 12 the salaries of its members, officers, and employees and the  
 13 travel expenses of the members, officers, and employees, as  
 14 provided for in 2-18-501 through 2-18-503, as amended,  
 15 incurred while on the business of the division either within  
 16 or without the state.

17 (3) Disbursements from the administration money shall  
 18 be made after being approved by the division upon claim  
 19 therefor."

20 Section 10. Section 39-71-206, MCA, is amended to  
 21 read:

22 "39-71-206. Legal advisers of division. (i) The  
 23 attorney general shall be the legal adviser of the division  
 24 and shall represent it in all proceedings whenever so  
 25 requested by the division or any member thereof.



~~(2) The division may, in the investigation and defense of cases under plan No. 3 of the Workers' Compensation Act, employ such other attorney or legal adviser as it deems necessary and pay for the same out of the industrial insurance account in the expendable trust fund."~~

Section 11. Section 39-71-308, MCA, is amended to read:

"39-71-308. Neglect or refusal of public corporation to file payroll reports -- arbitrary assessment by division. Whenever any public corporation insured--by--the--state compensation--insurance--fund neglects or refuses to file prescribed payroll reports of its employees, the division may levy an arbitrary assessment upon such public corporation in an amount of \$75 for each such assessment, which assessments shall be collected in the manner provided in this chapter for the collection of assessments."

Section 12. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2) of this section, the Workers' Compensation Act applies to all employers as defined in 39-71-117 and to all employees as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the

provisions of compensation plan No. 17 or No. 27 or 3. Every employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

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

(a) household and domestic employment;

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

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

(d) employment of sole proprietors or working members of a partnership other than those who consider themselves or hold themselves out as independent contractors and who are not contracting for agricultural services to be performed on a farm or ranch, or for broker or salesman services performed under a license issued by the board of realty regulation, or for services as a direct seller engaged in the sale of consumer products to customers primarily in the home;

(e) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

1 (f) any person performing services in return for aid  
2 or sustenance only, except employment of a volunteer under  
3 67-2-105;

4 (g) employment with any railroad engaged in interstate  
5 commerce, except that railroad construction work shall be  
6 included in and subject to the provisions of this chapter;

7 (h) employment as an official, including a timer,  
8 referee, or judge, at a school amateur athletic event,  
9 unless the person is otherwise employed by a school  
10 district.

11 (3) A sole proprietor or working member of a  
12 partnership who holds himself out or considers himself an  
13 independent contractor and who is not contracting for  
14 agricultural services to be performed on a farm or ranch, or  
15 for broker or salesman services performed under a license  
16 issued by the board of realty regulation, or for services as  
17 a direct seller engaged in the sale of consumer products to  
18 customers primarily in the home must elect to be bound  
19 personally and individually by the provisions of  
20 compensation plan No. 17 or No. 27-or-3, but he may apply  
21 to the division for an exemption from the Workers'  
22 Compensation Act for himself. The application must be made  
23 in accordance with the rules adopted by the division. The  
24 division may deny the application only if it determines that  
25 the applicant is not an independent contractor. When an

1 application is approved by the division, it is conclusive as  
2 to the status of an independent contractor and precludes the  
3 applicant from obtaining benefits under this chapter.

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

20 Section 13. Section 39-71-403, MCA, is amended to  
21 read:

22 "~~39-71-403. Plan-three-exclusive-for-state-agencies---~~  
23 ~~election Election~~ of plan by other public corporations. ~~(1)~~  
24 ~~Where-a-state-agency-is-the-employer,-the-terms,-conditions,-~~  
25 ~~and--provisions--of--compensation--plan--No---3---shall---be~~

1 exclusive, compulsory, and obligatory upon both employer and  
 2 employee. Any sums necessary to be paid under the  
 3 provisions of this chapter by any state agency shall be  
 4 considered to be ordinary and necessary expense of the  
 5 agency, and the agency shall make appropriation of and pay  
 6 such sums into the state compensation insurance fund at the  
 7 time and in the manner provided for in this chapter,  
 8 notwithstanding that the state agency may have failed to  
 9 anticipate such ordinary and necessary expense in any  
 10 budget estimate of expenses, appropriations, ordinances, or  
 11 otherwise.

12 {2}(1) A public corporation, other than a state  
 13 agency, may elect coverage under compensation plan No. 1,  
 14 employer, or plan No. 2, insurer, or plan No. 3, state  
 15 insurance fund, separately or jointly with any other public  
 16 corporation, other than a state agency. A public corporation  
 17 electing compensation plan No. 1 may purchase reinsurance. A  
 18 public corporation electing compensation plan No. 1 is  
 19 subject to the same provisions as a private employer  
 20 electing compensation plan No. 1.

21 {3}(2) A public corporation, other than a state  
 22 agency, that elects plan No. 1 may establish a fund  
 23 sufficient to pay the compensation and benefits provided for  
 24 in this chapter and chapter 72 and to discharge all  
 25 liabilities that reasonably incur during the fiscal year for

1 which the election is effective. Proceeds from the fund must  
 2 be used only to pay claims covered by this chapter and  
 3 chapter 72 and for actual and necessary expenses required  
 4 for the efficient administration of the fund.

5 {4}(3) All money in the fund established under  
 6 subsection (2) not needed to meet immediate expenditures  
 7 must be invested by the governing body of the public  
 8 corporation, and all proceeds of the investment shall be  
 9 credited to the fund."

10 Section 14. Section 39-71-410, MCA, is amended to  
 11 read:

12 "39-71-410. Employees bound by plan adopted by  
 13 employer -- election not to be bound by corporate officers.  
 14 (1) Every employee whose employer is bound by the provisions  
 15 of this chapter is subject to and bound by the provisions of  
 16 that plan of compensation adopted by his employer, except  
 17 that pursuant to such rules as the division shall from time  
 18 to time promulgate and subject in all cases to the review of  
 19 the division, officers of private corporations may elect not  
 20 to be bound as employees under this chapter by a written  
 21 notice in the form provided by the division, served in the  
 22 following manner:

23 (a) if the employer has elected to be bound by the  
 24 provisions of compensation plan No. 1, by delivering the  
 25 notice to the board of directors of the employer; or

1 (b) if the employer has elected to be bound by the  
 2 provisions of compensation plan No. 2, by delivering the  
 3 notice to the board of directors of the employer or the  
 4 insurer;

5 ~~(c) if the employer has elected to be bound or is~~  
 6 ~~bound by the provisions of compensation plan No. 3, by~~  
 7 ~~delivering the notice to the division.~~

8 (2) The appointment or election of an officer of a  
 9 corporation for the purpose of excluding an employee from  
 10 coverage under this chapter does not entitle such officer to  
 11 elect not to be bound as an employee under this chapter. In  
 12 any case, the notice must be signed by the officer under  
 13 oath or equivalent affirmation and is subject to the  
 14 penalties for false swearing.

15 (3) The division shall review any election by officers  
 16 of private corporations not to be bound as an employee to  
 17 assure compliance with this chapter."

18 Section 15. Section 39-71-502, MCA, is amended to  
 19 read:

20 "39-71-502. Creation and purpose of uninsured  
 21 employers' fund. There is created an uninsured employers'  
 22 fund. The purpose of the fund is to pay to an injured  
 23 employee of an uninsured employer the same benefits the  
 24 employee would have received if the employer had been  
 25 properly enrolled under compensation plan No. 1; or No. 2

1 ~~or 3.~~"

2 Section 16. Section 39-71-504, MCA, is amended to  
 3 read:

4 "39-71-504. Funding of fund -- option for agreement  
 5 between division and injured employee. The fund shall be  
 6 funded in the following manner:

7 (1) The division shall require that the uninsured  
 8 employer pay to the fund a penalty of either double the  
 9 premium amount the employer would have paid on the payroll  
 10 of the employer's workers in this state ~~if the employer had~~  
 11 ~~been enrolled with compensation plan No. 3, based on the~~  
 12 average of quotes from three workers' compensation insurers  
 13 operating in the state as determined by the division, or  
 14 \$200, whichever is greater. In determining the premium  
 15 amount for the calculation of the penalty under this  
 16 subsection, the division shall make an assessment on how  
 17 much premium would have been paid on the employer's past  
 18 3-year payroll for periods within the 3 years when the  
 19 employer was uninsured. An assessment for payroll paid by  
 20 the uninsured employer for any time prior to July 1, 1977,  
 21 may not be made.

22 (2) (a) The fund shall receive from an uninsured  
 23 employer an amount equal to all benefits paid or to be paid  
 24 from the fund to an injured employee of the uninsured  
 25 employer. However, the uninsured employer's liability under

1 this subsection (2)(a) may not exceed \$50,000.

2 (b) The dollar limitation does not apply to an  
3 uninsured employer's liability to an injured employee or the  
4 employee's beneficiaries under 39-71-509 or 39-71-515.

5 (3) The division may determine that the \$1,000  
6 assessments that are charged against an insurer in each case  
7 of an industrial death under 39-71-902(1) shall be paid to  
8 the uninsured employers' fund rather than the subsequent  
9 injury fund.

10 (4) The division may enter into an agreement with the  
11 injured employee or the employee's beneficiaries to assign  
12 to the employee or the beneficiaries all or part of the  
13 funds received by the division from the uninsured employer  
14 pursuant to subsection (2)(a)."

15 Section 17. Section 39-71-505, MCA, is amended to  
16 read:

17 "39-71-505. Applicability of other provisions of  
18 chapter to fund. All appropriate provisions in the Workers'  
19 Compensation Act apply to the fund in the same manner as  
20 they apply to compensation plans No. 17 and No. 27-and-3."

21 Section 18. Section 39-71-515, MCA, is amended to  
22 read:

23 "39-71-515. Independent cause of action. (1) An  
24 injured employee or the employee's beneficiaries have an  
25 independent cause of action against an uninsured employer

1 for failure to be enrolled in a compensation plan as  
2 required by this chapter.

3 (2) In such an action, prima facie liability of the  
4 uninsured employer exists if the claimant proves, by a  
5 preponderance of the evidence, that:

6 (a) the employer was required by law to be enrolled  
7 under compensation plan No. 17 or No. 27-or-3 with respect  
8 to the claimant; and

9 (b) the employer was not so enrolled on the date of  
10 the injury or death.

11 (3) It is not a defense to such an action that the  
12 employee had knowledge of or consented to the employer's  
13 failure to carry insurance or that the employee was  
14 negligent in permitting such failure to exist.

15 (4) The amount of recoverable damages in such an  
16 action is the amount of compensation that the employee would  
17 have received had the employer been properly enrolled under  
18 compensation plan No. 17 or No. 27-or-3.

19 (5) A plaintiff who prevails in an action brought  
20 under this section is entitled to recover reasonable costs  
21 and attorney fees incurred in the action, in addition to his  
22 damages."

23 SECTION 19. SECTION 39-71-704, MCA, IS AMENDED TO  
24 READ:

25 "39-71-704. Payment of medical, hospital, and related

1 services. (1) In addition to the compensation provided by  
 2 this chapter and as an additional benefit separate and apart  
 3 from compensation, the following shall be furnished:

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

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

15 (2) A relative value fee schedule for medical,  
 16 chiropractic, and paramedical services provided for in this  
 17 chapter, excluding hospital services, shall be established  
 18 annually by the workers' compensation division and become  
 19 effective in January of each year. The maximum fee schedule  
 20 must be adopted as a relative value fee schedule of medical,  
 21 chiropractic, and paramedical services, with unit values to  
 22 indicate the relative relationship within each grouping of  
 23 specialties. Medical fees must be based on the median fees  
 24 as billed to the ~~state---compensation---insurance---fund~~  
 25 compensation plan No. 2 insurers during the year preceding

1 the adoption of the schedule. The division shall adopt  
 2 rules establishing relative unit values, groups of  
 3 specialties, the procedures insurers must use to pay for  
 4 services under the schedule, and the method of determining  
 5 the median of billed medical fees. These rules shall be  
 6 modeled on the 1974 revision of the 1969 California Relative  
 7 Value Studies."

8 Section 20. Section 39-71-908, MCA, is amended to  
 9 read:

10 "39-71-908. Notification of fund of its potential  
 11 liability under part -- review by fund. Not less than 90 or  
 12 more than 150 days before the expiration of 104 weeks after  
 13 the date of injury, the employer, or the carrier,~~or the~~  
 14 ~~industrial-insurance-fund, as the case may be,~~ shall notify  
 15 the fund whether it is likely that compensation may be  
 16 payable beyond a period of 104 weeks after the date of the  
 17 injury. The fund thereafter may review, at reasonable  
 18 times, such information as the employer, or the carrier,~~or~~  
 19 ~~industrial-insurance-fund~~ has regarding the accident and the  
 20 nature and extent of the injury and disability."

21 Section 21. Section 39-71-909, MCA, is amended to  
 22 read:

23 "39-71-909. Effect of fund's failure to give  
 24 notification of its intent to dispute liability --  
 25 subsequent notification by fund authorized. If the fund does

1 not notify the carrier of its intent to dispute the payment  
 2 of compensation, medical, and burial benefits, the employer,  
 3 or the carrier, -or- industrial insurance fund shall continue  
 4 to make payments on behalf of the fund and shall be  
 5 reimbursed by the fund for all benefits paid that pertain to  
 6 the period beyond 104 weeks after the date of the injury.  
 7 However, at any time subsequent to 104 weeks after the date  
 8 of injury, the fund may notify the carrier of a dispute as  
 9 to payment of benefits. The liability of the fund to  
 10 reimburse the employer, or the carrier, -or- the industrial  
 11 insurance fund shall be suspended 30 days thereafter until  
 12 the controversy is determined."

13 Section 22. Section 39-71-910, MCA, is amended to  
 14 read:

15 "39-71-910. Procedure for resolving disputes as to  
 16 liability under part. (1) If an employee was employed or  
 17 retained in employment under the provisions of this part and  
 18 a dispute or controversy arises as to payment of benefits or  
 19 the liability therefor, the division shall hold a hearing  
 20 and resolve all disputes. On motion made in writing by the  
 21 employer, or the carrier, -or- industrial insurance fund, the  
 22 administrator shall join the fund as a party defendant.

23 (2) The division, within 5 days of the entry of an  
 24 order joining the fund as a party defendant, shall give the  
 25 fund written notice thereof not less than 20 days before the

1 date of hearing and shall include the name of the employee  
 2 and the employer and the date of the alleged injury or  
 3 disability. The fund named as a defendant shall have 10 days  
 4 after the date of notification to file objections to being  
 5 named as a party defendant. On the date of the hearing at  
 6 which the liability of the parties is determined, the  
 7 hearing examiner first shall hear arguments and take  
 8 evidence concerning the joinder as party defendant. If the  
 9 fund has filed timely objection and if argument and evidence  
 10 warrant, the hearing examiner shall grant a motion to  
 11 dismiss.

12 (3) At the time of the hearing, the employer and fund  
 13 may appear, cross-examine witnesses, give evidence, and  
 14 defend both on the issue of liability of the employer to the  
 15 employee and on the issue of the liability of the fund.

16 (4) The hearing examiner shall make findings of fact  
 17 and conclusions of law determining the respective liability  
 18 of the employer and the fund."

19 Section 23. Section 39-71-911, MCA, is amended to  
 20 read:

21 "39-71-911. Obligation to make payments on behalf of  
 22 fund not an independent liability. The obligation imposed by  
 23 this part on the employer, or the carrier, -or- industrial  
 24 insurance fund to make payments on behalf of the fund does  
 25 not impose an independent liability on the employer, or the

1 ~~carrier, or industrial insurance fund."~~

2 Section 24. Section 39-71-913, MCA, is amended to  
3 read:

4 "39-71-913. Payments by fund directly to persons  
5 entitled. If the employer, or the carrier, or the industrial  
6 ~~insurance fund~~ does not make the payments on behalf of the  
7 fund, the fund may make the payments directly to the persons  
8 entitled to the payments."

9 Section 25. Section 39-71-1004, MCA, is amended to  
10 read:

11 "39-71-1004. Industrial accident rehabilitation  
12 account. (1) The payments provided in 39-71-1003 shall be  
13 made from the industrial accident rehabilitation account in  
14 the state special revenue fund. Payments to the account  
15 shall be made on or before July 1 of each year as follows:

16 (a) by each employer operating under the provisions of  
17 plan No. 1 of the Workers' Compensation Act, an amount to be  
18 assessed by the division, not exceeding 1% of the  
19 compensation paid to the employer's injured employees in  
20 Montana for the preceding fiscal year; and

21 (b) by each insurer insuring employers under the  
22 provisions of plan No. 2 of the Workers' Compensation Act,  
23 an amount to be assessed by the division, not exceeding 1%  
24 of the compensation paid to injured employees of its insured  
25 in Montana during the preceding fiscal year.

1 ~~(c) by the division, an amount to be determined by the~~  
2 ~~division, not exceeding 1% of the compensation paid to~~  
3 ~~injured employees in Montana from the industrial insurance~~  
4 ~~expendable trust fund and the occupational disease~~  
5 ~~expendable trust fund for the preceding fiscal year.~~

6 (2) Separate accounts of the amounts collected and  
7 disbursements made from the industrial accident  
8 rehabilitation account in the state special revenue fund  
9 shall be kept for each of the plans. If in any fiscal year  
10 the amount collected from the employers under any plan  
11 exceeds the amount of payments for employees of the  
12 employers under such plan, the assessment against the  
13 employers under such plan for the following year shall be  
14 reduced.

15 (3) The payments herein provided for shall be made to  
16 the division, which shall credit the sums paid to the  
17 industrial accident rehabilitation account which shall be in  
18 the custody of the state treasurer. Disbursements from the  
19 account shall be made after approval by the department of  
20 social and rehabilitation services and upon audit and  
21 approval by the department of administration.

22 (4) No part of the funds allocated or contributed as  
23 herein provided and contemplated shall be used in payment of  
24 administrative expenses of the division or department of  
25 social and rehabilitation services."



1 Section 26. Section 39-71-2201, MCA, is amended to  
2 read:

3 "39-71-2201. Election to be bound by plan. (1) Any  
4 employer ~~except those specified in 39-71-403~~ may, by filing  
5 his election to become bound by compensation plan No. 2,  
6 insure his liability to pay the compensation and benefits  
7 provided by this chapter with any insurance company  
8 authorized to transact such business in this state.

9 (2) Any employer electing to become bound by  
10 compensation plan No. 2 shall make his election on the form  
11 and in the manner prescribed by the division."

12 Section 27. Section 39-71-2206, MCA, is amended to  
13 read:

14 "39-71-2206. Deposits by insurer with division to  
15 guarantee payment of liability. (1) Before issuance of any  
16 policy by an insurer as herein authorized, the insurer must  
17 deposit with the division bonds of the United States or the  
18 state of Montana or of any school district, county, city, or  
19 town in the state of Montana or a corporate surety bond made  
20 out to and approved by the division in an amount not less  
21 than \$5,000 or more than ~~\$100,000~~ \$250,000, as the division  
22 may determine. If any insurer fails to discharge any  
23 liability after the amount thereof is determined by the  
24 division and within the time limited by the division, the  
25 division shall convert the bonds or such part thereof as is

1 necessary into cash and from the proceeds liquidate such  
2 liability, and thereafter the insurer must make an  
3 additional deposit to meet any deficiency caused thereby. It  
4 is intended to give the division the discretion in the  
5 matter of whether an insurer has failed to discharge any  
6 liability.

7 (2) Within 30 days of the happening of an accident  
8 where death or the nature of the injury renders the amount  
9 of future payments certain or reasonably certain, the  
10 insurer shall make a deposit, as herein defined, with the  
11 division for the protection and guarantee of the payment of  
12 such liability in such sum as the division may direct.  
13 However, if the division considers the amount on deposit by  
14 the insurer under the provisions of subsection (1) of this  
15 section sufficient to cover all liabilities of the insurer,  
16 then no further deposit may be required.

17 (3) Any deposit made under the provisions of  
18 compensation plan No. 2 must be held in trust by the  
19 division as security for the payment of the liability for  
20 which the deposit was made. Such deposit may be reduced from  
21 time to time with the permission of the division as the  
22 payment of the liability of the insurer may reduce the  
23 amount required to be on deposit. Such deposit may be  
24 changed or renewed when desired by the depositor by  
25 withdrawing the same or any part thereof and substituting

1 other deposits therefor. Upon proof of the final payment of  
 2 the liability for which such deposit was made, any deposit  
 3 remaining must be returned to the depositor. All earnings  
 4 made by such deposit must first be applied upon any  
 5 liability of the depositors, and if no such liability  
 6 exists, then such earnings must upon demand be delivered to  
 7 such depositor. The division and its bondsmen are liable for  
 8 the value and safekeeping of such deposit and shall at any  
 9 time, upon demand of a depositor, account for the same and  
 10 the earnings thereof."

11 Section 28. Section 39-72-310, MCA, is amended to  
 12 read:

13 "39-72-310. Occupational disease coverage under  
 14 workers' compensation plans. (1) Every employer enrolled  
 15 under compensation plan No. 1 (Title 39, chapter 71, part  
 16 21) and every insurer writing workers' compensation  
 17 coverage under compensation plan No. 2 (Title 39, chapter  
 18 71, part 22) and the state compensation insurance fund  
 19 under compensation plan No. 3 (Title 39, chapter 71, part  
 20 23) all provided for under the Workers' Compensation Act,  
 21 are considered to also provide full coverage for claims  
 22 under this chapter. Any policy of insurance for workers'  
 23 compensation coverage under the Workers' Compensation Act  
 24 written by a private insurance carrier or the state  
 25 compensation insurance fund is considered to provide full

1 occupational disease coverage under the provisions of this  
 2 chapter.

3 (2) Except as provided in this chapter, the division  
 4 shall apply the appropriate provisions of Title 39, chapter  
 5 71, parts 21, and 22 and 23, to the administration of The  
 6 Occupational Disease Act of Montana in the same manner as  
 7 they are applied to the administration of the Workers'  
 8 Compensation Act.

9 ~~(3) Under compensation plan No. 3, any premiums and~~  
 10 ~~other receipts held by the division for occupational disease~~  
 11 ~~insurance coverage shall be transferred and become part of~~  
 12 ~~the workers' compensation industrial insurance account, and~~  
 13 ~~payments for occupational disease claims by the state fund~~  
 14 ~~shall be paid out of the industrial insurance account."~~

15 NEW SECTION. Section 29. Repealer. Sections  
 16 39-71-2301 through 39-71-2308 and 39-71-2321 through  
 17 39-71-2327, MCA, are repealed.

18 NEW SECTION. Section 30. Extension of authority. Any  
 19 existing authority of the division of workers' compensation  
 20 to make rules on the subject of the provisions of this act  
 21 is extended to the provisions of this act.

22 NEW SECTION. Section 31. Codification instruction.  
 23 Section 2 is intended to be codified as an integral part of  
 24 Title 39, chapter 71, and the provisions of Title 39,  
 25 chapter 71, apply to section 2.

1        NEW SECTION. Section 32. Effective dates. (1) Section  
2        1 and this section are effective on passage and approval.  
3        (2) Sections 2 through ~~27~~ 31 are effective on the date  
4        a sale is made under section 1.

-End-

## SENATE BILL NO. 388

INTRODUCED BY BOYLAN, HARP, STORY, GALT,  
HIRSCH, RAMIREZ, KITSELMAN, SALES

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING ALLOWING THE SALE OF THE STATE WORKERS' COMPENSATION INSURANCE PLAN AND FUND ~~TO THE HIGHEST RESPONSIBLE BIDDER; PROVIDING FOR A SALE PROCEDURE; PROVIDING FOR DISPOSITION OF THE PROCEEDS OF THE SALE; PROVIDING FOR AN ASSIGNED APPORTIONMENT TO INSURERS OF INSURANCE---COVERAGE---FOR---HIGH-RISK---EMPLOYERS; AMENDING SECTIONS 7-32-203, 33-17-502, 33-18-212, 39-71-102, 39-71-103, 39-71-116, 39-71-201, 39-71-206, 39-71-308, 39-71-401, 39-71-403, 39-71-410, 39-71-502, 39-71-504, 39-71-505, 39-71-515, 39-71-704, 39-71-908 THROUGH 39-71-911, 39-71-913, 39-71-1004, 39-71-2201, 39-71-2206, AND 39-72-310, MCA; REPEALING SECTIONS 39-71-2301 THROUGH 39-71-2308 AND 39-71-2321 THROUGH 39-71-2327, MCA; AND PROVIDING EFFECTIVE DATES."~~

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

NEW SECTION. Section 1. Sale of state workers' compensation insurance plan and fund. (1) The governor shall, within 180 days after the effective date of this section, sell the state workers' compensation insurance plan and fund created and provided for in Title 39, chapter 71,

part 23, and referenced in other provisions of Title 39, chapter 71. The governor shall make a request for bids and shall ensure that the request is adequately publicized in the press, major financial publications, and the financial and insurance industries. All advertisements must be published within 60 days after the effective date of this section. Interested parties must be allowed 60 days from the date the last advertisement is published to submit proposals for purchase. The sale must be to the responsible insurance or other company submitting the highest bid.

(2) Each bid proposal must contain an agreement to purchase the plan and fund in cash and be accompanied by security in the amount of 2% of the bid. The security must be in cash, cashier's check, certified check, bank money order, or bank draft and must be drawn on a bank located in Montana or consist of a bond or bonds executed by a surety authorized to do business in Montana. If a bid is accepted and the bidder fails to consummate the sale, the security is forfeited to the state and must be deposited in the general fund. The security must be returned to bidders whose bids are not accepted.

(3) The governor shall submit each bid proposal to the legislative audit committee upon its receipt. The committee shall review the proposals and submit comments to the governor on the qualifications of each bidder.

1 (4)--A-responsible-prospective-bidder-who--demonstrates  
 2 the--financial--ability--to--purchase--the--fund-and-plan-is  
 3 entitled-to-fully-inspect-the-public-records-of-the-fund-and  
 4 plan-and-of-the--division--of--workers'-compensation--under  
 5 39-71-221--through--39-71-224,--including-data-banks-and-raw  
 6 data,--and-shall-be-given-copies-of--the--last--four--reports  
 7 printed--under--39-71-210,--any-earlier-reports-requested-by  
 8 the-bidder,--and-a-copy-of-each-audit-of-any--type--performed  
 9 by--the--legislative--audit-committee-since-January-17-1980,  
 10 relating-to-either-the-fund-and-plan-or--the--division--of  
 11 workers'-compensation,--or-both.

12 (5)--The-successful-bidder-is-entitled-to-the-financial  
 13 assets,--future--business,--and--books,--records,--and--papers  
 14 (whether-written,--typed,--computerized,--or-in-any-other-form)  
 15 of-the-plan-and-fund. He-is-not--entitled--to--the--physical  
 16 plant,--equipment,--furniture,--computer-facilities,--and-like  
 17 items. The-successful-bidder-must-pay-all--claims--that--are  
 18 awarded--and--unpaid--on--the--date--of--the--sale--or--that--are  
 19 pending-on-the-date-of-the-sale-and-are--awarded--after--the  
 20 date-of-the-sale.

21 (6)--The-proceeds-of-the-sale-must-be-deposited-in-the  
 22 general-fund.

23 NEW SECTION--Section-2--Assigned-risk-plan--(1)--The  
 24 division--shall--promulgate--and--administer--a-plan-for-the  
 25 equitable--apportionment--among--plan--No.--2--insurers--of

1 coverage--required--by--this--chapter--for--employers--who--were  
 2 unable-to-procure-coverage-through-ordinary-methods.

3 (2)--All-plan-No.--2--insurers--shall--subscribe--to--and  
 4 participate-in-the-assigned-risk-plan.

5 (3)--If--a--plan--No.--2--insurer-refuses-to-accept-its  
 6 equitable-apportionment-under-the-assigned--risk--plan,--the  
 7 commissioner--of--insurance--may--suspend--or--revoke--the  
 8 insurer's-authority-to-issue-worker's-compensation--coverage  
 9 contracts--in--this-state OFFICE OF THE LEGISLATIVE AUDITOR,  
 10 UNDER THE DIRECTION OF THE LEGISLATIVE AUDIT COMMITTEE,  
 11 SHALL SOLICIT PROPOSALS TO PURCHASE THE STATE WORKERS'  
 12 COMPENSATION INSURANCE PLAN AND FUND. A PURCHASE PROPOSAL  
 13 MUST PROPOSE TO ASSUME ALL THE LIABILITIES AND PURCHASE ALL  
 14 THE ASSETS OF THE FUND, INCLUDING SUCH ASSETS AS EQUIPMENT;  
 15 FURNITURE; OFFICE SUPPLIES; BOOKS AND RECORDS, COMPUTERIZED  
 16 OR OTHERWISE; FUTURE BUSINESS; AND FINANCIAL ASSETS. THE  
 17 PROPOSAL MAY INCLUDE AN OFFER TO PURCHASE OR LEASE THE  
 18 BUILDING HOUSING THE WORKERS' COMPENSATION DIVISION AND  
 19 SITUATED ON THE CORNER OF BROADWAY AND SOUTH LAST CHANCE  
 20 GULCH IN HELENA, MONTANA, AND MAY OFFER TO LEASE ANY PART OF  
 21 THE BUILDING BACK TO THE STATE OF MONTANA. THE PROPOSAL MUST  
 22 AGREE TO INSURE ANY EMPLOYER COVERED BY TITLE 39, CHAPTER 71  
 23 OR 72, REGARDLESS OF THE NATURE OF THE EMPLOYER'S BUSINESS  
 24 OR THE EMPLOYER'S RISK RATING FOR PURPOSES OF INSURANCE, FOR  
 25 AS LONG AS THE EMPLOYER DESIRES INSURANCE.

1       (2) THE OFFICE OF THE LEGISLATIVE AUDITOR SHALL REVIEW  
 2 AND PREPARE COMMENTS AND A RECOMMENDATION REGARDING EACH  
 3 PROPOSAL. THE 51ST LEGISLATURE OF THE STATE OF MONTANA AND  
 4 ANY SPECIAL SESSION OF THE LEGISLATURE MEETING BEFORE THE  
 5 CONVENING OF THE 51ST LEGISLATURE MAY REVIEW THE PROPOSALS  
 6 THAT HAVE BEEN SUBMITTED AND THE COMMENTS AND  
 7 RECOMMENDATIONS OF THE OFFICE OF THE LEGISLATIVE AUDITOR AND  
 8 ORDER THE AUDITOR TO ACCEPT A PROPOSAL AND SELL THE FUND AND  
 9 PLAN.

10       SECTION 2. SECTION 7-32-203, MCA, IS AMENDED TO READ:

11       "7-32-203. Provision of workers' compensation  
 12 coverage. (1) Each law enforcement agency that utilizes  
 13 reserve officers shall provide full workers' compensation  
 14 coverage for the officers while they are providing actual  
 15 service for a law enforcement agency. ~~Coverage shall be~~  
 16 ~~provided through the state compensation insurance fund, and~~  
 17 ~~the law enforcement agencies shall pay to the state fund an~~  
 18 ~~appropriate premium, as established by the state fund, to~~  
 19 ~~cover the insurance risk of providing coverage to the~~  
 20 ~~officers.~~

21       (2) Each law enforcement agency that utilizes  
 22 auxiliary officers shall provide full workers' compensation  
 23 coverage for the officers while they are providing actual  
 24 service for a law enforcement agency."

25       SECTION 3. SECTION 33-17-502, MCA, IS AMENDED TO READ:

1       "33-17-502. Prohibition on holding out as consultant  
 2 -- receiving fee. (1) Any person not licensed as an  
 3 insurance consultant in this state who identifies or holds  
 4 himself out to be an insurance consultant without having  
 5 been licensed as an insurance consultant under this part or  
 6 any person who uses any other designation or title which is  
 7 likely to mislead the public and holds himself out in any  
 8 manner as having particular insurance qualifications other  
 9 than those for which he may be otherwise licensed or  
 10 otherwise qualified is guilty of a misdemeanor and upon  
 11 conviction shall be fined \$1,500.

12       (2) Any person not licensed as an insurance consultant  
 13 with respect to the relevant kinds of insurance who receives  
 14 any fee for examining, appraising, reviewing, or evaluating  
 15 any insurance policy, annuity or pension contract, plan, or  
 16 program or who shall make recommendations or give advice  
 17 with regard to any of the above without first having been  
 18 licensed by the commissioner as an insurance consultant is  
 19 guilty of a misdemeanor and upon conviction shall be fined  
 20 \$1,500.

21       (3) Nothing in this part applies to:

22       (a) licensed attorneys at law in this state acting in  
 23 their professional capacity; or

24       (b) an actuary or a certified public accountant who  
 25 provides information, recommendations, advice, or services

1 in his professional capacity if neither he nor his employer  
2 receives any compensation directly or indirectly on account  
3 of any insurance, bond, annuity or pension contract that  
4 results in whole or part from that information,  
5 recommendation, advice, or services, ~~or.~~

6 ~~(e) -- a -- duly -- licensed -- casualty -- insurance -- agent -- who~~  
7 ~~accepts a fee from an insured for placement through the~~  
8 ~~state compensation insurance fund as provided in 33-18-212.~~"

9 SECTION 4. SECTION 33-18-212, MCA, IS AMENDED TO READ:

10 "33-18-212. Illegal dealing in premiums -- improper  
11 charges for insurance. (1) No person shall willfully collect  
12 any sum as premium or charge for insurance, which insurance  
13 is not then provided or is not in due course to be provided  
14 (subject to acceptance of the risk by the insurer) by an  
15 insurance policy issued by an insurer as authorized by this  
16 code.

17 (2) No person shall willfully collect as premium or  
18 charge for insurance any sum in excess of or less than the  
19 premium or charge applicable to such insurance and, as  
20 specified in the policy, in accordance with the applicable  
21 classifications and rates as filed with and approved by the  
22 commissioner; or in cases where classifications, premiums,  
23 or rates are not required by this code to be so filed and  
24 approved, such premiums and charges shall not be in excess  
25 of or less than those specified in the policy and as fixed

1 by the insurer. This provision shall not be deemed to  
2 prohibit the charging and collection, by surplus line agents  
3 licensed under chapter 2, part 3, of the amount of  
4 applicable state and federal taxes in addition to the  
5 premium required by the insurer. It shall not be deemed to  
6 prohibit the charging and collection, by a life insurer, of  
7 amounts actually to be expended for medical examination of  
8 an applicant for life insurance or for reinstatement of a  
9 life insurance policy. ~~The provision of this subsection does~~  
10 ~~not prohibit the collection from an insured of a placement~~  
11 ~~fee, not to exceed 7 1/2% of the annual premium, for~~  
12 ~~placement through the state compensation insurance fund by a~~  
13 ~~duly licensed casualty insurance agent. This placement fee~~  
14 ~~is not a premium as defined in 33-15-102.~~

15 (3) Each violation of this section shall be punishable  
16 under 33-1-104."

17 Section 5. Section 39-71-102, MCA, is amended to read:  
18 "39-71-102. Reference to plans. Whenever compensation  
19 plan No. 1, or No. 2 ~~or 3~~ is referred to, such reference  
20 also includes all other sections which are applicable to the  
21 subject matter of such reference."

22 Section 6. Section 39-71-103, MCA, is amended to read:  
23 "39-71-103. Compensation provisions. The compensation  
24 provisions of this chapter, whenever referred to, shall be  
25 held to include the provisions of compensation plan No. 1,

1 and No. 27-er-3 and all other sections of this chapter  
2 applicable to the same or any part thereof."

3 Section 7. Section 39-71-116, MCA, is amended to read:  
4 "39-71-116. Definitions. Unless the context otherwise  
5 requires, words and phrases employed in this chapter have  
6 the following meanings:

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

13 (2) "Beneficiary" means:

14 (a) a surviving wife or husband;

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

16 (c) an unmarried child under the age of 25 years who  
17 is a full-time student in an accredited school;

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

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

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

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

12 (4) "Child" includes a posthumous child, a dependent  
13 stepchild, a child legally adopted prior to the injury, and  
14 an illegitimate child legitimized prior to the injury.

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

18 (6) "Fiscal year" means the period of time between  
19 July 1 and the succeeding June 30.

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

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



1 ~~under-compensation-plan-No-37~~, or the uninsured employers'  
2 fund provided for in part 5 of this chapter.

3 (9) "Invalid" means one who is physically or mentally  
4 incapacitated.

5 (10) "Order" means any decision, rule, direction,  
6 requirement, or standard of the division or any other  
7 determination arrived at or decision made by the division.

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

19 (12) "Permanent partial disability" means a condition  
20 resulting from injury as defined in this chapter that  
21 results in the actual loss of earnings or earning capability  
22 less than total that exists after the injured worker is as  
23 far restored as the permanent character of the injuries will  
24 permit. Disability shall be supported by a preponderance of  
25 medical evidence.

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

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

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

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

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

25 (18) "Reasonably safe tools and appliances" are such

1 tools and appliances as are adapted to and are reasonably  
2 safe for use for the particular purpose for which they are  
3 furnished.

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

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

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

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

23 Section 8. Section 39-71-201, MCA, is amended to read:

24 "39-71-201. Administration fund. (1) A workers'  
25 compensation administration fund is established out of which

1 all costs of administering the Workers' Compensation and  
2 Occupational Disease Acts and the various occupational  
3 safety acts the division must administer are to be paid upon  
4 lawful appropriation. The following moneys collected by the  
5 division shall be deposited in the state treasury to the  
6 credit of the workers' compensation administrative fund and  
7 shall be used for the administrative expenses of the  
8 division:

9 (a) all fees and fines provided in 39-71-205 and  
10 39-71-304;

11 (b) all fees paid for inspection of boilers and  
12 issuance of licenses to operating engineers as required by  
13 law;

14 (c) all fees paid from an assessment on each plan No.  
15 1 employer, and plan No. 2 insurer, ~~and plan No. 3, the~~  
16 ~~state insurance--fund~~. The assessments shall be levied  
17 against the preceding calendar year's gross annual payroll  
18 of the plan No. 1 employers and the gross annual direct  
19 premiums collected in Montana on the policies of the plan  
20 No. 2 insurers, insuring employers covered under the  
21 chapter, during the preceding calendar year. However, no  
22 assessment of the plan No. 1 employer or plan No. 2 insurer  
23 shall be less than \$200. The assessments shall be sufficient  
24 to fund the direct costs identified to the three two plans  
25 and an equitable portion of the indirect costs based on the

1 ratio of the preceding fiscal year's indirect costs  
 2 distributed to the plans using proper accounting and cost  
 3 allocation procedures. ~~Plan--No---3--shall--be--assessed--an~~  
 4 ~~amount--sufficient--to--fund--its--direct--costs--and--an--equitable~~  
 5 ~~portion--of--the--indirect--costs--as--referred--to--above.~~ Other  
 6 sources of revenue, including unexpended funds from the  
 7 preceding fiscal year, shall be used to reduce the costs  
 8 before levying the assessments.

9 (2) The administration fund shall be debited with  
 10 expenses incurred by the division in the general  
 11 administration of the provisions of this chapter, including  
 12 the salaries of its members, officers, and employees and the  
 13 travel expenses of the members, officers, and employees, as  
 14 provided for in 2-18-501 through 2-18-503, as amended,  
 15 incurred while on the business of the division either within  
 16 or without the state.

17 (3) Disbursements from the administration money shall  
 18 be made after being approved by the division upon claim  
 19 therefor."

20 Section 9. Section 39-71-206, MCA, is amended to read:

21 "39-71-206. Legal advisers of division. ~~{†}~~ The  
 22 attorney general shall be the legal adviser of the division  
 23 and shall represent it in all proceedings whenever so  
 24 requested by the division or any member thereof.

25 ~~{2}--The--division--may--in--the--investigation--and--defense~~

1 ~~of--cases--under--plan--No--3--of--the--Workers--Compensation--Act,~~  
 2 ~~employ--such--other--attorney--or--legal--adviser--as--it--deems~~  
 3 ~~necessary--and--pay--for--the--same--out--of--the--industrial~~  
 4 ~~insurance--account--in--the--expendable--trust--fund."~~

5 Section 10. Section 39-71-308, MCA, is amended to  
 6 read:

7 "39-71-308. Neglect or refusal of public corporation  
 8 to file payroll reports -- arbitrary assessment by division.  
 9 Whenever any public corporation insured--by--the--state  
 10 compensation-insurance-fund neglects or refuses to file  
 11 prescribed payroll reports of its employees, the division  
 12 may levy an arbitrary assessment upon such public  
 13 corporation in an amount of \$75 for each such assessment,  
 14 which assessments shall be collected in the manner provided  
 15 in this chapter for the collection of assessments."

16 Section 11. Section 39-71-401, MCA, is amended to  
 17 read:

18 "39-71-401. Employments covered and employments  
 19 exempted. (1) Except as provided in subsection (2) of this  
 20 section, the Workers' Compensation Act applies to all  
 21 employers as defined in 39-71-117 and to all employees as  
 22 defined in 39-71-118. An employer who has any employee in  
 23 service under any appointment or contract of hire, expressed  
 24 or implied, oral or written, shall elect to be bound by the  
 25 provisions of compensation plan No. 1, or No. 2 or-3. Every

1 employee whose employer is bound by the Workers'  
2 Compensation Act is subject to and bound by the compensation  
3 plan that has been elected by the employer.

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

8 (a) household and domestic employment;

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

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

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

22 (e) employment for which a rule of liability for  
23 injury, occupational disease, or death is provided under the  
24 laws of the United States;

25 (f) any person performing services in return for aid

1 or sustenance only, except employment of a volunteer under  
2 67-2-105;

3 (g) employment with any railroad engaged in interstate  
4 commerce, except that railroad construction work shall be  
5 included in and subject to the provisions of this chapter;

6 (h) employment as an official, including a timer,  
7 referee, or judge, at a school amateur athletic event,  
8 unless the person is otherwise employed by a school  
9 district.

10 (3) A sole proprietor or working member of a  
11 partnership who holds himself out or considers himself an  
12 independent contractor and who is not contracting for  
13 agricultural services to be performed on a farm or ranch, or  
14 for broker or salesman services performed under a license  
15 issued by the board of realty regulation, or for services as  
16 a direct seller engaged in the sale of consumer products to  
17 customers primarily in the home must elect to be bound  
18 personally and individually by the provisions of  
19 compensation plan No. 17 or No. 27-or-3, but he may apply  
20 to the division for an exemption from the Workers'  
21 Compensation Act for himself. The application must be made  
22 in accordance with the rules adopted by the division. The  
23 division may deny the application only if it determines that  
24 the applicant is not an independent contractor. When an  
25 application is approved by the division, it is conclusive as

1 to the status of an independent contractor and precludes the  
2 applicant from obtaining benefits under this chapter.

3 (4) Each employer shall post a sign in the workplace  
4 at the locations where notices to employees are normally  
5 posted, informing employees about the employer's current  
6 provision of compensation insurance. A workplace is any  
7 location where an employee performs any work-related act in  
8 the course of employment, regardless of whether the location  
9 is temporary or permanent, and includes the place of  
10 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 Section 12. Section 39-71-403, MCA, is amended to  
20 read:

21 "~~39-71-403. Plan three-exclusive-for-state-agencies---~~  
22 ~~election Election~~ of plan by other public corporations. ~~{}~~  
23 ~~Where-a-state-agency-is-the-employer,-the-terms,-conditions,-~~  
24 ~~and--provisions--of--compensation--plan--No--3--shall--be~~  
25 ~~exclusive,-compulsory,-and-obligatory-upon-both-employer-and~~

1 employee. ~~Any sums necessary to be paid under the~~  
2 ~~provisions of this chapter by any state agency shall be~~  
3 ~~considered to be ordinary and necessary expense of the~~  
4 ~~agency, and the agency shall make appropriation of and pay~~  
5 ~~such sums into the state compensation insurance fund at the~~  
6 ~~time and in the manner provided for in this chapter,~~  
7 ~~notwithstanding that the state agency may have failed to~~  
8 ~~anticipate such ordinary and necessary expense in any~~  
9 ~~budget, estimate of expenses, appropriations, ordinances, or~~  
10 ~~otherwise.~~

11 ~~{2}{1}~~ A public corporation, ~~other than a state~~  
12 ~~agency,~~ may elect coverage under compensation plan No. 1,  
13 ~~employer, or plan No. 2, insurer, or plan No. 3, state~~  
14 ~~insurance fund,~~ separately or jointly with any other public  
15 corporation, ~~other than a state agency.~~ A public corporation  
16 electing compensation plan No. 1 may purchase reinsurance. A  
17 public corporation electing compensation plan No. 1 is  
18 subject to the same provisions as a private employer  
19 electing compensation plan No. 1.

20 ~~{3}{2}~~ A public corporation, ~~other than a state~~  
21 ~~agency,~~ that elects plan No. 1 may establish a fund  
22 sufficient to pay the compensation and benefits provided for  
23 in this chapter and chapter 72 and to discharge all  
24 liabilities that reasonably incur during the fiscal year for  
25 which the election is effective. Proceeds from the fund must

1 be used only to pay claims covered by this chapter and  
 2 chapter 72 and for actual and necessary expenses required  
 3 for the efficient administration of the fund.

4 ~~(4)~~(3) All money in the fund established under  
 5 subsection (2) not needed to meet immediate expenditures  
 6 must be invested by the governing body of the public  
 7 corporation, and all proceeds of the investment shall be  
 8 credited to the fund."

9 Section 13. Section 39-71-410, MCA, is amended to  
 10 read:

11 "39-71-410. Employees bound by plan adopted by  
 12 employer -- election not to be bound by corporate officers.

13 (1) Every employee whose employer is bound by the provisions  
 14 of this chapter is subject to and bound by the provisions of  
 15 that plan of compensation adopted by his employer, except  
 16 that pursuant to such rules as the division shall ~~from--time~~  
 17 ~~to--time~~ promulgate and subject in all cases to the review of  
 18 the division, officers of private corporations may elect not  
 19 to be bound as employees under this chapter by a written  
 20 notice in the form provided by the division, served in the  
 21 following manner:

22 (a) if the employer has elected to be bound by the  
 23 provisions of compensation plan No. 1, by delivering the  
 24 notice to the board of directors of the employer; or

25 (b) if the employer has elected to be bound by the

1 provisions of compensation plan No. 2, by delivering the  
 2 notice to the board of directors of the employer or the  
 3 insurer;.

4 ~~(c) --if the employer has elected to be bound or is~~  
 5 ~~bound by the provisions of compensation plan No. 3, by~~  
 6 ~~delivering the notice to the division.~~

7 (2) The appointment or election of an officer of a  
 8 corporation for the purpose of excluding an employee from  
 9 coverage under this chapter does not entitle such officer to  
 10 elect not to be bound as an employee under this chapter. In  
 11 any case, the notice must be signed by the officer under  
 12 oath or equivalent affirmation and is subject to the  
 13 penalties for false swearing.

14 (3) The division shall review any election by officers  
 15 of private corporations not to be bound as an employee to  
 16 assure compliance with this chapter."

17 Section 14. Section 39-71-502, MCA, is amended to  
 18 read:

19 "39-71-502. Creation and purpose of uninsured  
 20 employers' fund. There is created an uninsured employers'  
 21 fund. The purpose of the fund is to pay to an injured  
 22 employee of an uninsured employer the same benefits the  
 23 employee would have received if the employer had been  
 24 properly enrolled under compensation plan No. 1 or No. 2  
 25 or 3."

1 Section 15. Section 39-71-504, MCA, is amended to  
2 read:

3 "39-71-504. Funding of fund -- option for agreement  
4 between division and injured employee. The fund shall be  
5 funded in the following manner:

6 (1) The division shall require that the uninsured  
7 employer pay to the fund a penalty of either double the  
8 premium amount the employer would have paid on the payroll  
9 of the employer's workers in this state ~~if the employer had~~  
10 ~~been enrolled with compensation plan No. --3,~~ based on the  
11 average of quotes from three workers' compensation insurers  
12 operating in the state as determined by the division, or  
13 \$200, whichever is greater. In determining the premium  
14 amount for the calculation of the penalty under this  
15 subsection, the division shall make an assessment on how  
16 much premium would have been paid on the employer's past  
17 3-year payroll for periods within the 3 years when the  
18 employer was uninsured. An assessment for payroll paid by  
19 the uninsured employer for any time prior to July 1, 1977,  
20 may not be made.

21 (2) (a) The fund shall receive from an uninsured  
22 employer an amount equal to all benefits paid or to be paid  
23 from the fund to an injured employee of the uninsured  
24 employer. However, the uninsured employer's liability under  
25 this subsection (2)(a) may not exceed \$50,000.

1 (b) The dollar limitation does not apply to an  
2 uninsured employer's liability to an injured employee or the  
3 employee's beneficiaries under 39-71-509 or 39-71-515.

4 (3) The division may determine that the \$1,000  
5 assessments that are charged against an insurer in each case  
6 of an industrial death under 39-71-902(1) shall be paid to  
7 the uninsured employers' fund rather than the subsequent  
8 injury fund.

9 (4) The division may enter into an agreement with the  
10 injured employee or the employee's beneficiaries to assign  
11 to the employee or the beneficiaries all or part of the  
12 funds received by the division from the uninsured employer  
13 pursuant to subsection (2)(a)."

14 Section 16. Section 39-71-505, MCA, is amended to  
15 read:

16 "39-71-505. Applicability of other provisions of  
17 chapter to fund. All appropriate provisions in the Workers'  
18 Compensation Act apply to the fund in the same manner as  
19 they apply to compensation plans No. 17 and No. 27 and --3."

20 Section 17. Section 39-71-515, MCA, is amended to  
21 read:

22 "39-71-515. Independent cause of action. (1) An  
23 injured employee or the employee's beneficiaries have an  
24 independent cause of action against an uninsured employer  
25 for failure to be enrolled in a compensation plan as

1 required by this chapter.

2 (2) In such an action, prima facie liability of the  
3 uninsured employer exists if the claimant proves, by a  
4 preponderance of the evidence, that:

5 (a) the employer was required by law to be enrolled  
6 under compensation plan No. 17 or No. 27-or-3 with respect  
7 to the claimant; and

8 (b) the employer was not so enrolled on the date of  
9 the injury or death.

10 (3) It is not a defense to such an action that the  
11 employee had knowledge of or consented to the employer's  
12 failure to carry insurance or that the employee was  
13 negligent in permitting such failure to exist.

14 (4) The amount of recoverable damages in such an  
15 action is the amount of compensation that the employee would  
16 have received had the employer been properly enrolled under  
17 compensation plan No. 17 or No. 27-or-3.

18 (5) A plaintiff who prevails in an action brought  
19 under this section is entitled to recover reasonable costs  
20 and attorney fees incurred in the action, in addition to his  
21 damages."

22 SECTION 18. SECTION 39-71-704, MCA, IS AMENDED TO  
23 READ:

24 "39-71-704. Payment of medical, hospital, and related  
25 services. (1) In addition to the compensation provided by

1 this chapter and as an additional benefit separate and apart  
2 from compensation, the following shall be furnished:

3 (a) After the happening of the injury, the insurer  
4 shall furnish, without limitation as to length of time or  
5 dollar amount, reasonable services by a physician or  
6 surgeon, reasonable hospital services and medicines when  
7 needed, and such other treatment as may be approved by the  
8 division for the injuries sustained.

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

14 (2) A relative value fee schedule for medical,  
15 chiropractic, and paramedical services provided for in this  
16 chapter, excluding hospital services, shall be established  
17 annually by the workers' compensation division and become  
18 effective in January of each year. The maximum fee schedule  
19 must be adopted as a relative value fee schedule of medical,  
20 chiropractic, and paramedical services, with unit values to  
21 indicate the relative relationship within each grouping of  
22 specialties. Medical fees must be based on the median fees  
23 as billed to the ~~state--compensation--insurance--fund~~  
24 compensation plan No. 2 insurers during the year preceding  
25 the adoption of the schedule. The division shall adopt



1 rules establishing relative unit values, groups of  
 2 specialties, the procedures insurers must use to pay for  
 3 services under the schedule, and the method of determining  
 4 the median of billed medical fees. These rules shall be  
 5 modeled on the 1974 revision of the 1969 California Relative  
 6 Value Studies."

7 Section 19. Section 39-71-908, MCA, is amended to  
 8 read:

9 "39-71-908. Notification of fund of its potential  
 10 liability under part -- review by fund. Not less than 90 or  
 11 more than 150 days before the expiration of 104 weeks after  
 12 the date of injury, the employer, or the carrier--or--the  
 13 ~~industrial--insurance-fund, as the case may be,~~ shall notify  
 14 the fund whether it is likely that compensation may be  
 15 payable beyond a period of 104 weeks after the date of the  
 16 injury. The fund thereafter may review, at reasonable  
 17 times, such information as the employer, or the carrier--or  
 18 ~~industrial--insurance-fund~~ has regarding the accident and the  
 19 nature and extent of the injury and disability."

20 Section 20. Section 39-71-909, MCA, is amended to  
 21 read:

22 "39-71-909. Effect of fund's failure to give  
 23 notification of its intent to dispute liability --  
 24 subsequent notification by fund authorized. If the fund does  
 25 not notify the carrier of its intent to dispute the payment

1 of compensation, medical, and burial benefits, the employer,  
 2 or the carrier--or--~~industrial--insurance-fund~~ shall continue  
 3 to make payments on behalf of the fund and shall be  
 4 reimbursed by the fund for all benefits paid that pertain to  
 5 the period beyond 104 weeks after the date of the injury.  
 6 However, at any time subsequent to 104 weeks after the date  
 7 of injury, the fund may notify the carrier of a dispute as  
 8 to payment of benefits. The liability of the fund to  
 9 reimburse the employer, or the carrier--or--~~the--industrial~~  
 10 ~~insurance--fund~~ shall be suspended 30 days thereafter until  
 11 the controversy is determined."

12 Section 21. Section 39-71-910, MCA, is amended to  
 13 read:

14 "39-71-910. Procedure for resolving disputes as to  
 15 liability under part. (1) If an employee was employed or  
 16 retained in employment under the provisions of this part and  
 17 a dispute or controversy arises as to payment of benefits or  
 18 the liability therefor, the division shall hold a hearing  
 19 and resolve all disputes. On motion made in writing by the  
 20 employer, or the carrier--or--~~industrial--insurance-fund~~, the  
 21 administrator shall join the fund as a party defendant.

22 (2) The division, within 5 days of the entry of an  
 23 order joining the fund as a party defendant, shall give the  
 24 fund written notice thereof not less than 20 days before the  
 25 date of hearing and shall include the name of the employee

1 and the employer and the date of the alleged injury or  
 2 disability. The fund named as a defendant shall have 10 days  
 3 after the date of notification to file objections to being  
 4 named as a party defendant. On the date of the hearing at  
 5 which the liability of the parties is determined, the  
 6 hearing examiner first shall hear arguments and take  
 7 evidence concerning the joinder as party defendant. If the  
 8 fund has filed timely objection and if argument and evidence  
 9 warrant, the hearing examiner shall grant a motion to  
 10 dismiss.

11 (3) At the time of the hearing, the employer and fund  
 12 may appear, cross-examine witnesses, give evidence, and  
 13 defend both on the issue of liability of the employer to the  
 14 employee and on the issue of the liability of the fund.

15 (4) The hearing examiner shall make findings of fact  
 16 and conclusions of law determining the respective liability  
 17 of the employer and the fund."

18 Section 22. Section 39-71-911, MCA, is amended to  
 19 read:

20 "39-71-911. Obligation to make payments on behalf of  
 21 fund not an independent liability. The obligation imposed by  
 22 this part on the employer, or the carrier, ~~or the industrial~~  
 23 ~~insurance--fund~~ to make payments on behalf of the fund does  
 24 not impose an independent liability on the employer, or the  
 25 ~~carrier--or--industrial--insurance--fund.~~"

1 Section 23. Section 39-71-913, MCA, is amended to  
 2 read:

3 "39-71-913. Payments by fund directly to persons  
 4 entitled. If the employer, or the carrier, ~~or the industrial~~  
 5 ~~insurance--fund~~ does not make the payments on behalf of the  
 6 fund, the fund may make the payments directly to the persons  
 7 entitled to the payments."

8 Section 24. Section 39-71-1004, MCA, is amended to  
 9 read:

10 "39-71-1004. Industrial accident rehabilitation  
 11 account. (1) The payments provided in 39-71-1003 shall be  
 12 made from the industrial accident rehabilitation account in  
 13 the state special revenue fund. Payments to the account  
 14 shall be made on or before July 1 of each year as follows:

15 (a) by each employer operating under the provisions of  
 16 plan No. 1 of the Workers' Compensation Act, an amount to be  
 17 assessed by the division, not exceeding 1% of the  
 18 compensation paid to the employer's injured employees in  
 19 Montana for the preceding fiscal year; and

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

25 ~~(c) by the division, an amount to be determined by the~~

1 division, not exceeding 1% of the compensation paid to  
 2 injured employees in Montana from the industrial insurance  
 3 expendable trust fund and the occupational disease  
 4 expendable trust fund for the preceding fiscal year.

5 (2) Separate accounts of the amounts collected and  
 6 disbursements made from the industrial accident  
 7 rehabilitation account in the state special revenue fund  
 8 shall be kept for each of the plans. If in any fiscal year  
 9 the amount collected from the employers under any plan  
 10 exceeds the amount of payments for employees of the  
 11 employers under such plan, the assessment against the  
 12 employers under such plan for the following year shall be  
 13 reduced.

14 (3) The payments herein provided for shall be made to  
 15 the division, which shall credit the sums paid to the  
 16 industrial accident rehabilitation account which shall be in  
 17 the custody of the state treasurer. Disbursements from the  
 18 account shall be made after approval by the department of  
 19 social and rehabilitation services and upon audit and  
 20 approval by the department of administration.

21 (4) No part of the funds allocated or contributed as  
 22 herein provided and contemplated shall be used in payment of  
 23 administrative expenses of the division or department of  
 24 social and rehabilitation services."

25 Section 25. Section 39-71-2201, MCA, is amended to

1 read:

2 "39-71-2201. Election to be bound by plan. (1) Any  
 3 employer except those specified in 39-71-403 may, by filing  
 4 his election to become bound by compensation plan No. 2,  
 5 insure his liability to pay the compensation and benefits  
 6 provided by this chapter with any insurance company  
 7 authorized to transact such business in this state.

8 (2) Any employer electing to become bound by  
 9 compensation plan No. 2 shall make his election on the form  
 10 and in the manner prescribed by the division."

11 Section 26. Section 39-71-2206, MCA, is amended to  
 12 read:

13 "39-71-2206. Deposits by insurer with division to  
 14 guarantee payment of liability. (1) Before issuance of any  
 15 policy by an insurer as herein authorized, the insurer must  
 16 deposit with the division bonds of the United States or the  
 17 state of Montana or of any school district, county, city, or  
 18 town in the state of Montana or a corporate surety bond made  
 19 out to and approved by the division in an amount not less  
 20 than \$5,000 or more than ~~\$100,000~~ \$250,000, as the division  
 21 may determine. If any insurer fails to discharge any  
 22 liability after the amount thereof is determined by the  
 23 division and within the time limited by the division, the  
 24 division shall convert the bonds or such part thereof as is  
 25 necessary into cash and from the proceeds liquidate such

1 liability, and thereafter the insurer must make an  
2 additional deposit to meet any deficiency caused thereby. It  
3 is intended to give the division the discretion in the  
4 matter of whether an insurer has failed to discharge any  
5 liability.

6 (2) Within 30 days of the happening of an accident  
7 where death or the nature of the injury renders the amount  
8 of future payments certain or reasonably certain, the  
9 insurer shall make a deposit, as herein defined, with the  
10 division for the protection and guarantee of the payment of  
11 such liability in such sum as the division may direct.  
12 However, if the division considers the amount on deposit by  
13 the insurer under the provisions of subsection (1) of this  
14 section sufficient to cover all liabilities of the insurer,  
15 then no further deposit may be required.

16 (3) Any deposit made under the provisions of  
17 compensation plan No. 2 must be held in trust by the  
18 division as security for the payment of the liability for  
19 which the deposit was made. Such deposit may be reduced from  
20 time to time with the permission of the division as the  
21 payment of the liability of the insurer may reduce the  
22 amount required to be on deposit. Such deposit may be  
23 changed or renewed when desired by the depositor by  
24 withdrawing the same or any part thereof and substituting  
25 other deposits therefor. Upon proof of the final payment of

1 the liability for which such deposit was made, any deposit  
2 remaining must be returned to the depositor. All earnings  
3 made by such deposit must first be applied upon any  
4 liability of the depositors, and if no such liability  
5 exists, then such earnings must upon demand be delivered to  
6 such depositor. The division and its bondsmen are liable for  
7 the value and safekeeping of such deposit and shall at any  
8 time, upon demand of a depositor, account for the same and  
9 the earnings thereof."

10 Section 27. Section 39-72-310, MCA, is amended to  
11 read:

12 "39-72-310. Occupational disease coverage under  
13 workers' compensation plans. (1) Every employer enrolled  
14 under compensation plan No. 1 (Title 39, chapter 71, part  
15 21), and every insurer writing workers' compensation  
16 coverage under compensation plan No. 2 (Title 39, chapter  
17 71, part 22) ~~and the state compensation insurance fund~~  
18 ~~under compensation plan No. 3 (Title 39, chapter 71, part~~  
19 ~~23), all provided for under the Workers' Compensation Act,~~  
20 are considered to also provide full coverage for claims  
21 under this chapter. Any policy of insurance for workers'  
22 compensation coverage under the Workers' Compensation Act  
23 written by a private insurance carrier ~~or the state~~  
24 ~~compensation insurance fund~~ is considered to provide full  
25 occupational disease coverage under the provisions of this

1 chapter.

2 (2) Except as provided in this chapter, the division  
3 shall apply the appropriate provisions of Title 39, chapter  
4 71, parts 21, and 22, and ~~23~~, to the administration of The  
5 Occupational Disease Act of Montana in the same manner as  
6 they are applied to the administration of the Workers'  
7 Compensation Act.

8 ~~{3}--Under--compensation--plan--No--37--any--premiums--and  
9 other--receipts--held--by--the--division--for--occupational--disease  
10 insurance--coverage--shall--be--transferred--and--become--part--of  
11 the--workers--compensation--industrial--insurance--account--and  
12 payments--for--occupational--disease--claims--by--the--state--fund  
13 shall--be--paid--out--of--the--industrial--insurance--account--"~~

14 NEW SECTION. Section 28. Repealer. Sections  
15 39-71-2301 through 39-71-2308 and 39-71-2321 through  
16 39-71-2327, MCA, are repealed.

17 NEW SECTION. Section 29. Extension of authority. Any  
18 existing authority of the division of workers' compensation  
19 to make rules on the subject of the provisions of this act  
20 is extended to the provisions of this act.

21 ~~NEW SECTION. Section 31. Codification. Instruction  
22 Section 2 is intended to be codified as an integral part of  
23 Title 39, chapter 71, and the provisions of Title 39,  
24 chapter 71, apply to section 2.~~

25 NEW SECTION. Section 30. Effective dates. (1) Section

1 1 and this section are effective on passage and approval.

2 (2) Sections IF A SALE IS MADE UNDER SECTION 1,  
3 SECTIONS 2 through 27 31 29 are effective on the date a sale  
4 is made under section 1.

-End-