

HOUSE BILL 157

Introduced by Smith, C., et al.

1/13	Introduced
1/14	Referred to Labor & Employment Relations
1/26	Hearing
2/16	Tabled in Committee

1 HOUSE BILL NO. 157  
2 INTRODUCED BY S. Smith  
3 BY REQUEST OF THE DIVISION OF WORKERS' COMPENSATION  
4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
6 WORKERS' COMPENSATION LAWS RELATING TO PAYMENT OF BENEFITS  
7 TO A VOCATIONALLY HANDICAPPED PERSON WHO IS SUBSEQUENTLY  
8 INJURED; AMENDING SECTIONS 39-71-901 THROUGH 39-71-905,  
9 39-71-907 THROUGH 39-71-910, 39-71-912, AND 39-71-913, MCA;  
10 AND REPEALING SECTIONS 39-71-906 AND 39-71-911, MCA."  
11  
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
13 NEW SECTION. **Section 1.** Certification requirements as  
14 vocationally handicapped. (1) If a person meets the other  
15 requirements of this part, he initially may be certified as  
16 vocationally handicapped only if he is:  
17 (a) unemployed;  
18 (b) off work due to an impairment and has not yet  
19 returned to work; or  
20 (c) (i) participating in an on-the-job-training  
21 program necessitated by a medical restriction due to an  
22 impairment and is under the supervision of a certified  
23 rehabilitation counselor or of his treating physician; and  
24 (ii) providing evidence acceptable to the fund that the  
25 program has specific written objectives and is for an

1 identified period.

2 (2) A certificate may be renewed only if the person is  
3 unemployed.

4 NEW SECTION. **Section 2.** Purpose. The purpose of this  
5 part is to encourage employers to employ vocationally  
6 handicapped persons through implementation of an equitable  
7 and self-administering program that protects employers from  
8 the long-term liability that may result from a subsequent  
9 injury to a vocationally handicapped employee. This part may  
10 not be construed to create, increase, or provide any benefit  
11 for an injured employee or his beneficiaries that is not  
12 otherwise provided by this chapter. An injured employee's  
13 or his beneficiary's entitlement to compensation under this  
14 chapter must be determined without regard to this part. The  
15 provisions of this part apply only to reimbursement from the  
16 fund for benefits paid by an insurer. This part must be  
17 construed in harmony with Title 49, chapter 2.

18 **Section 3.** Section 39-71-901, MCA, is amended to read:  
19 "39-71-901. **Definitions.** As used in this part, the  
20 following definitions apply:

21 (1) "Vocationally handicapped" means a person who has  
22 a medically certifiable permanent impairment which is a  
23 substantial obstacle to obtaining employment or to obtaining  
24 reemployment if ~~the employee~~ he should become unemployed,  
25 considering such factors as the person's age, education,

training, experience, and employment rejection.

(2) "Certificate" means documentation issued by the division of workers' compensation to ~~an individual~~ a person who is vocationally handicapped.

(3) "Fund" means the subsequent injury fund.

(4) "Impairment" means the loss of, loss of use of, or derangement of any body part, system, or function, as established in the Guides to the Evaluation of Permanent Impairment, second edition, published by the American medical association.

(5) "On-the-job training" means training:

(a) provided to an employee in the public or private sector by an employer who has agreed to hire the employee for a job; and

(b) occurring while the employee is engaged in productive work that provides knowledge, skills, or endurance essential to the full and adequate performance of the job.

(6) "Permanent impairment" means impairment that has become static or well established, with or without medical treatment of the impairing condition."

**Section 4.** Section 39-71-902, MCA, is amended to read:

~~"39-71-902. Fund-to-receive-payment-from-insurer-for each-death-under-chapter-----assessment~~ Assessment of insurers. (1) ~~in-every-case-of-the-death-of-an-employee~~

~~under--this--chapter,--the-insurer-shall-pay-to-the-fund-the sum-of-\$1,000;--in-addition,--the~~ The division may assess every insurer an amount not to exceed 5% of the compensation paid in Montana in the preceding fiscal year. The assessment must be transmitted annually to the subsequent injury fund by the ~~employer-or~~ insurer.

(2) When If, in the judgment of the administrator, the amount of money in the subsequent injury fund is such that there is a surplus above and beyond projected liabilities, the administrator may at his discretion suspend or reduce further collection of assessments for a period of time determined by the administrator."

**Section 5.** Section 39-71-903, MCA, is amended to read:

**"39-71-903. Procedure and practice.** When a vocationally handicapped person receives a ~~personal~~ work-related injury, the procedure and practice provided in this chapter applies to all proceedings under this part, except where specifically otherwise provided herein."

**Section 6.** Section 39-71-904, MCA, is amended to read:

**"39-71-904. Rules for-certification.** The administrator of the division shall promulgate rules ~~for-certification-of vocationally-handicapped-persons to carry out the provisions of this part."~~

**Section 7.** Section 39-71-905, MCA, is amended to read:

**"39-71-905. Certification as vocationally handicapped.**

(1) A person who wishes to be certified as vocationally handicapped for purposes of this part shall apply to the division on forms furnished by the division. The division shall conduct an investigation and shall issue a certificate to a person who, in the division's discretion, meets the requirements for vocationally handicapped certification is vocationally handicapped. An employee who is requesting reemployment may be certified as vocationally handicapped. An employee who is not employed at the time of application for certification must be certified as vocationally handicapped before entering new employment in order for the new employer to receive the benefits of this part. The certificate is effective for 5 years.

(2) An employee with an expired certificate is no longer certified. An eligible Montana employer who employs, has employed, or reemploys an employee certified as vocationally handicapped while the certificate is effective may receive reimbursement from the fund."

**Section 8.** Section 39-71-907, MCA, is amended to read:

"39-71-907. Certified vocationally handicapped person to be compensated for injury as provided by chapter -- insurer liability for compensation limited. (1) A person certified as vocationally handicapped who receives a personal work-related injury arising out of and in the course of his employment and resulting in death or

disability must be paid compensation by the insurer in the manner and to the extent provided in this chapter or, in case of his death resulting from such injury, the compensation must be paid to his beneficiaries or dependents. The liability of the insurer for payment of medical and burial benefits as provided in this chapter is limited to those benefits arising from services rendered during the period of 104 weeks after the date of injury. The liability of the insurer for payment of benefits as provided in this chapter is limited to 104 weeks of compensation benefits actually paid. Thereafter, all compensation and the cost of all medical care and burial is the liability of the fund.

(2) If the employer or insurer substantiates that the employee was employed or retained in employment while the employee's certificate was in effect, the fund shall reimburse the insurer for all compensation benefits actually paid in excess of 104 weeks of benefits and all medical and burial benefits, as provided in this chapter, arising from services rendered during the period beginning 104 weeks after the date of injury, subject to the provisions of this part."

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

"39-71-908. Notification of fund of its potential liability under part --- review by fund. (1) Not less than 90

or--more--than--150--days-before-the-expiration-of-104-weeks  
 after-the-date-of-injury,--the--employer,--carrier,--or--the  
 industrial--insurance--fund,--as--the-case-may-be, Within 90  
days of the date of a death resulting from a work-related  
injury and no later than the date by which 94 weeks of  
benefits have been paid for any work-related injury, the  
insurer shall notify the fund whether it is likely that  
compensation may be payable beyond a period of 104 weeks  
after the date of the injury. The--fund-thereafter-may  
review,--at--reasonable--times,--such--information--as--the  
employer,--carrier,--or--industrial--insurance--fund--has  
regarding-the-accident-and-the--nature--and--extent--of--the  
injury--and--disability. The insurer shall furnish any  
additional relevant information required by the fund. If the  
insurer fails to notify the fund in the manner and time  
provided, the insurer is not entitled to receive  
reimbursement under this part.

(2) The fund may deny the insurer reimbursement in  
whole or in part for any settlement of the claim between the  
employee and insurer if the fund determines, in accordance  
with 39-71-741, that the settlement is unreasonable."

**Section 10.** Section 39-71-909, MCA, is amended to  
 read:

"39-71-909. Effect of fund's failure to give  
 notification of its intent to dispute liability --

subsequent notification by fund authorized. If the fund does  
 not notify the insurer of its intent to dispute the payment  
 of compensation, medical, and burial benefits, the insurer  
 shall continue to make payments in accordance with this  
chapter on behalf of the fund and shall must be reimbursed  
by the fund for-all-benefits-paid-in-excess-of-the-insurer's  
liability in accordance with this part. However, at any time  
 subsequent to 104 weeks after the date of injury, the fund  
 may notify the insurer of a dispute as to payment of  
 benefits. The liability of the fund to reimburse the insurer  
 shall must be suspended 30 days thereafter until the  
 controversy is determined."

**Section 11.** Section 39-71-910, MCA, is amended to  
 read:

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

(2) The division, within 5 days of the entry of an  
 order joining the fund as a party defendant, shall give the  
 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 insurer and the date of the alleged injury  
3 or disability. The fund named as a defendant shall have 10  
4 days after the date of notification to file objections to  
5 being named as a party defendant. On the date of the hearing  
6 at 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 insurer  
13 and fund may appear, cross-examine witnesses, give evidence,  
14 and defend both on the issue of liability of the employer  
15 insurer to the employee and on the issue of the liability of  
16 the fund.

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

20 **Section 12.** Section 39-71-912, MCA, is amended to  
21 read:

22 "39-71-912. Reimbursement to be promptly made. After  
23 the right to reimbursement has been established,  
24 reimbursement payment shall for benefits paid in accordance  
25 with the provisions of this chapter must be made promptly on

1 ~~a--proper--showing~~ every 6 months upon proof of continued  
2 eligibility for reimbursement."

3 **Section 13.** Section 39-71-913, MCA, is amended to  
4 read:

5 "39-71-913. Payments by fund directly to persons  
6 entitled injured employee. If the ~~employer, carrier, or the~~  
7 ~~industrial-insurance-fund insurer~~ becomes insolvent and does  
8 not make the payments on behalf of the fund, the fund may  
9 make the payments directly to the ~~persons--entitled--to--the~~  
10 payments injured employee or contract at the fund's expense  
11 with an adjuster to make the payments directly to the  
12 injured employee. However, the insurer is not relieved of  
13 its liability to make payments."

14 **NEW SECTION. Section 14.** Repealer. Sections 39-71-906  
15 and 39-71-911, MCA, are repealed.

16 **NEW SECTION. Section 15.** Extension of authority. Any  
17 existing authority to make rules on the subject of the  
18 provisions of [this act] is extended to the provisions of  
19 [this act].

20 **NEW SECTION. Section 16.** Codification instruction.  
21 [Sections 1 and 2] are intended to be codified as an  
22 integral part of Title 39, chapter 71, part 9, and the  
23 provisions of Title 39, chapter 71, part 9, apply to  
24 [sections 1 and 2].

-End-