

HOUSE BILL NO. 347

INTRODUCED BY SMITH

BY REQUEST OF THE DIVISION OF WORKERS' COMPENSATION

IN THE HOUSE

JANUARY 21, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR.
JANUARY 23, 1989	FIRST READING.
FEBRUARY 3, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 6, 1989	PRINTING REPORT.
FEBRUARY 7, 1989	SECOND READING, DO PASS.
FEBRUARY 8, 1989	ENGROSSING REPORT.
FEBRUARY 9, 1989	THIRD READING, PASSED. AYES, 100; NOES, 0.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 10, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
MARCH 8, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 9, 1989	SECOND READING, CONCURRED IN.
MARCH 11, 1989	THIRD READING, CONCURRED IN. AYES, 44; NOES, 0.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 13, 1989

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 14, 1989

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 347
2 INTRODUCED BY 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 LAWS RELATING TO WORKERS' COMPENSATION; ALLOWING ASSESSMENT
7 OF A PENALTY FOR FAILURE TO GIVE PROPER NOTICE OF
8 CANCELLATION OF A POLICY; CLARIFYING A WORKER'S JOB POOL
9 AREA; CLARIFYING A WORKER'S ENTITLEMENT TO TOTAL
10 REHABILITATION BENEFITS; ALLOWING REIMBURSEMENT FOR EXPENSES
11 INCURRED IN TRAVEL TO MEDICAL PROVIDERS; CLARIFYING THAT AN
12 INSURER IS NOT REQUIRED TO GIVE NOTICE PRIOR TO REDUCING
13 BIWEEKLY BENEFITS; COORDINATING THE DEFINITIONS OF WAGES,
14 PAYROLL, AND EARNINGS; ALLOWING THE DIVISION TO
15 RETROACTIVELY APPLY EXPERIENCE MODIFICATION FACTORS TO THE
16 EXPERIENCE RATING SYSTEM; PROVIDING FOR PENALTIES; ALLOWING
17 ELECTION OF LEVELS OF COVERAGE BY PARTNERS AND SOLE
18 PROPRIETORS; DEFINING WAGES FOR GOVERNMENT EMPLOYMENTS;
19 ALLOWING DISCLOSURE OF HEALTH CARE INFORMATION BY HEALTH
20 CARE PROVIDERS TO INSURERS; PROVIDING A PENALTY FOR NOT
21 FILING REPORTS OF ACCIDENTS; PROVIDING THAT A WORKERS'
22 COMPENSATION JUDGE MAY BE DISQUALIFIED FROM HEARING A MATTER
23 BEFORE HIM; AMENDING SECTIONS 39-71-116, 39-71-118,
24 39-71-123, 39-71-302, 39-71-307, 39-71-609, 39-71-704,
25 39-71-736, 39-71-1011, 39-71-1017, 39-71-1023, 39-71-2205,

1 39-71-2304, 39-71-2901, 39-71-2903, AND 50-16-527, MCA; AND
2 PROVIDING FOR EFFECTIVE DATES AND RETROACTIVE APPLICABILITY
3 DATES."
4

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

6 **Section 1.** Section 39-71-2205, MCA, is amended to
7 read:

8 "39-71-2205. Policy remains in effect until canceled
9 or replaced -- twenty-day notification of cancellation
10 required -- penalty. (1) The policy remains in effect until
11 canceled, and cancellation may take effect only by written
12 notice to the named insured and to the division at least 20
13 days prior to the date of cancellation. However, the policy
14 terminates on the effective date of a replacement or
15 succeeding workers' compensation insurance policy issued to
16 the insured. Nothing in this section prevents an insurer
17 from canceling a policy of workers' compensation insurance
18 before a replacement policy is issued to the insured.

19 (2) (a) The division may assess a penalty of up to
20 \$200 against an insurer that does not comply with the notice
21 requirement in subsection (1).

22 (b) An insurer may contest the penalty assessment in a
23 hearing conducted according to division rules."

24 **Section 2.** Section 39-71-1011, MCA, is amended to
25 read:

1 **"39-71-1011. Definitions.** As used in this chapter, the
2 following definitions apply:

3 (1) "Board of rehabilitation certification" means the
4 nonprofit, independent, fee-structured organization that is
5 a member of the national commission for health certifying
6 agencies and that is established to certify rehabilitation
7 practitioners.

8 (2) "Disabled worker" means one who has a medically
9 determined restriction resulting from a work-related injury
10 that precludes the worker from returning to the job the
11 worker held at the time of the injury.

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

15 (4) "Rehabilitation benefits" means benefits provided
16 in 39-71-1003 and 39-71-1023 through 39-71-1025.

17 (5) "Rehabilitation provider" means a rehabilitation
18 counselor, other than the department of social and
19 rehabilitation services, certified by the board for
20 rehabilitation certification and designated by the insurer
21 to the division.

22 (6) "Rehabilitation services" consists of a program of
23 evaluation, planning, and delivery of goods and services to
24 assist a disabled worker to return to work.

25 (7) (a) "Worker's job pool" means those jobs typically

1 available for which a worker is qualified, consistent with
2 the worker's age, education, vocational experience and
3 aptitude and compatible with the worker's physical
4 capacities and limitations as the result of the worker's
5 injury. Lack of immediate job openings is not a factor to be
6 considered.

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

9 (i) ~~a local job is one either in a central city that~~
10 ~~has within its economically integrated geographical area a~~
11 ~~population of less than 50,000 or in a city with a~~
12 ~~population of more than 50,000 as determined by the division~~
13 pool is the job service office area that includes the
14 worker's residence; or and

15 (ii) a the statewide job pool is one anywhere in the
16 state of Montana."

17 **Section 3.** Section 39-71-1023, MCA, is amended to
18 read:

19 **"39-71-1023. Total rehabilitation benefits during**
20 **period of rehabilitation services -- limitation --**
21 **termination.** (1) A worker who no longer is temporarily
22 totally disabled but meets the definition of a disabled
23 worker may be eligible for total rehabilitation benefits.

24 (2) Eligibility for total rehabilitation benefits
25 begins on the date of maximum healing or and continues for a

1 period not to exceed 26 weeks after the date notice is given
 2 to the division by the insurer that a rehabilitation
 3 provider has been designated, ~~7-which-ever-is-later.~~

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

11 (4) Total rehabilitation benefits under this section
 12 terminate when:

13 (a) a worker returns to work;

14 (b) a worker is qualified to return to work under the
 15 priorities in 39-71-1012 pursuant to a division order; or

16 (c) an I.W.R.P. is submitted to the division by the
 17 department of social and rehabilitation services.

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

20 **Section 4.** Section 39-71-704, MCA, is amended to read:

21 "39-71-704. Payment of medical, hospital, and related
 22 services -- fee schedules and hospital rates. (1) In
 23 addition to the compensation provided by this chapter and as
 24 an additional benefit separate and apart from compensation,
 25 the following ~~shall~~ must be furnished:

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

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

12 (c) The insurer shall reimburse a worker for
 13 reasonable travel expenses incurred in travel to a medical
 14 provider for treatment of an injury. Reimbursement must be
 15 at the rates allowed for reimbursement of travel by state
 16 employees.

17 (2) A relative value fee schedule for medical,
 18 chiropractic, and paramedical services provided for in this
 19 chapter, excluding hospital services, ~~shall~~ must be
 20 established annually by the workers' compensation division
 21 and become effective in January of each year. The maximum
 22 fee schedule must be adopted as a relative value fee
 23 schedule of medical, chiropractic, and paramedical services,
 24 with unit values to indicate the relative relationship
 25 within each grouping of specialties. Medical fees must be

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

9 (3) Beginning January 1, 1988, the division shall
 10 establish rates for hospital services necessary for the
 11 treatment of injured workers. Approved rates must be in
 12 effect for a period of 12 months from the date of approval.
 13 The division may coordinate this ratesetting function with
 14 other public agencies that have similar responsibilities.

15 (4) Notwithstanding subsection (2), beginning January
 16 1, 1988, and ending January 1, 1990, the maximum fees
 17 payable by insurers must be limited to the relative value
 18 fee schedule established in January 1987. Notwithstanding
 19 subsection (3), the hospital rates payable by insurers must
 20 be limited to those set in January 1988, until December 31,
 21 1989."

22 **Section 5.** Section 39-71-609, MCA, is amended to read:

23 "39-71-609. Denial of claim after payments made or
 24 termination of all benefits by insurer -- fourteen days'
 25 notice required. If an insurer determines to deny a claim on

1 which payments have been made under 39-71-608 during a time
 2 of further investigation or, after a claim has been
 3 accepted, terminates all biweekly compensation benefits, it
 4 may do so only after 14 days' written notice to the
 5 claimant, the claimant's authorized representative, if any,
 6 and the division. However, if an insurer has knowledge that
 7 a claimant has returned to work, compensation benefits may
 8 be terminated as of the time the claimant returned to work."

9 **Section 6.** Section 39-71-736, MCA, is amended to read:

10 "39-71-736. Compensation -- from what date paid.

11 (1) (a) No compensation may be paid for the first 6 days⁺
 12 ~~loss-of-wages~~ consecutive days the claimant is totally
 13 disabled and unable to work due to an injury. A claimant is
 14 eligible for compensation starting with the 7th day ~~of--wage~~
 15 ~~loss~~.

16 (b) However, separate benefits of medical and hospital
 17 services ~~shall~~ must be furnished from the date of injury.

18 (2) For the purpose of this section, an injured worker
 19 is not considered to ~~have--a--wage--loss~~ be entitled to
 20 compensation benefits if the worker is receiving sick leave
 21 benefits, except that each day for which the worker elects
 22 to receive sick leave counts 1 day toward the 6-day waiting
 23 period."

24 **Section 7.** Section 39-71-116, MCA, is amended to read:

25 "39-71-116. Definitions. Unless the context otherwise

1 requires, words and phrases employed in this chapter have
2 the following meanings:

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

9 (2) "Beneficiary" means:

10 (a) a surviving spouse living with or legally entitled
11 to be supported by the deceased at the time of injury;

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

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

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

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

24 (f) a brother or sister under the age of 18 years if
25 dependent upon the decedent for support at the time of the

1 injury (however, such a brother or sister is a beneficiary
2 only until the age of 18 years and only when no beneficiary,
3 as defined in subsections (2)(a) through (2)(e) of this
4 section, exists).

5 (3) "Casual employment" means employment not in the
6 usual course of trade, business, profession, or occupation
7 of the employer.

8 (4) "Child" includes a posthumous child, a dependent
9 stepchild, and a child legally adopted prior to the injury.

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

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

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

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

19 (9) "Insurer" means an employer bound by compensation
20 plan No. 1, an insurance company transacting business under
21 compensation plan No. 2, the state compensation insurance
22 fund under compensation plan No. 3, or the uninsured
23 employers' fund provided for in part 5 of this chapter.

24 (10) "Invalid" means one who is physically or mentally
25 incapacitated.

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

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

(13) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer shall not have operated a sufficient or any length of time during such calendar year, 12 times the average monthly payroll for the current year; ~~provided, that an~~ However, an estimate may be made by the division for any employer starting in business where if no average payrolls are available, such. This estimate is to be adjusted by additional payment by the employer or refund by the division, as the case may actually be, on December 31 of such current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

(14) "Permanent partial disability" means a condition, after a worker has reached maximum healing, in which a worker:

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

(b) is able to return to work in the worker's job pool pursuant to one of the options set forth in 39-71-1012 but suffers impairment or partial wage loss, or both.

(15) "Permanent total disability" means a condition resulting from injury as defined in this chapter, after a worker reaches maximum healing, in which a worker is unable to return to work in the worker's job pool after exhausting all options set forth in 39-71-1012.

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

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

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

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

(20) "Reasonably safe tools and appliances" are such tools and appliances as are adapted to and are reasonably

safe for use for the particular purpose for which they are furnished.

(21) "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured worker reaches maximum healing.

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

Section 8. Section 39-71-302, MCA, is amended to read:

"39-71-302. What included in computing payroll. In computing the payroll, ~~the entire compensation~~ all wages, as defined in 39-71-123, received by every worker employed under this chapter ~~is~~ are included, whether in the form of salary, wage, piecework, or otherwise and whether payable in money, board, or otherwise."

Section 9. Section 39-71-1017, MCA, is amended to read:

"39-71-1017. Rehabilitation panel report. (1) The rehabilitation panel shall:

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

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

(2) The report must:

(a) identify the first appropriate rehabilitation

option by following the priorities set forth in 39-71-1012; and

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

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

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

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

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

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

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

Section 10. Section 39-71-2304, MCA, is amended to read:

"39-71-2304. Determination of rates and

1 classifications by division. (1) The division is hereby
 2 given full power and authority to determine premium rates
 3 and classifications as in its judgment and experience may be
 4 necessary or expedient, provided that no change in the
 5 classification or rates prescribed ~~shall~~ may be effective
 6 until 30 days after the date of the order making such
 7 change.

8 (2) The industrial insurance program ~~shall~~ must be
 9 neither more nor less than self-supporting. Employments
 10 affected by the provisions hereof ~~shall~~ must be divided by
 11 the division into classes, whose rates may be readjusted at
 12 such times as the division may actuarially determine.
 13 Separate accounts ~~shall~~ must be kept of the amounts
 14 collected and expended in each class for actuarially
 15 determining rates, but for payment of compensation and
 16 dividends, the industrial insurance expendable trust fund
 17 ~~shall~~ must be one and indivisible.

18 (3) The division shall determine the hazards of the
 19 different classes of occupations or industries and fix the
 20 premiums therefor at the lowest rate consistent with
 21 maintenance of an actuarially sound industrial insurance
 22 fund and the creation of actuarially sound surplus and
 23 reserves, and for such purpose may adopt a system of
 24 schedule rating in such a manner as to take account of the
 25 peculiar hazard of each risk and shall utilize the

1 experience and information afforded to it.

2 (4) In addition, compensation plan No. 3 ~~shall~~ must
 3 use an experience rating system for employers enrolled under
 4 it. This system ~~shall~~ must reward employers with a better
 5 than average safety record, penalize employers with a worse
 6 than average safety record, and may provide for premium
 7 volume discount. The division may retroactively apply
 8 experience modification factors.

9 (5) The division in fixing rates shall provide for the
 10 expenses of administering the industrial insurance
 11 expendable trust fund allowed by law, the disbursements on
 12 account of injuries and deaths of employees in each class,
 13 an actuarially sound catastrophe reserve, reserves
 14 actuarially determined to meet anticipated and unexpected
 15 losses, and such other reserves and surplus as may be
 16 determined by the division. The amounts of such reserves and
 17 surplus ~~shall~~ must be as determined from time to time by the
 18 division to be adequate but not excessive for the purposes
 19 intended.

20 (6) The division shall charge a minimum annual premium
 21 on each contract and policy of insurance sufficient to cover
 22 the cost of administering the contract or policy.

23 (7) (a) Except in a case of fraud, the division may
 24 not assess an additional quarterly premium later than 3
 25 years after the date on which the quarterly premium became

1 due.

2 (b) An employer may not receive a refund or an
 3 adjustment later than 3 years after the date on which the
 4 quarterly premium became due."

5 **Section 11.** Section 39-71-118, MCA, is amended to
 6 read:

7 **"39-71-118. Employee, worker, and workman defined. (1)**
 8 The terms "employee", "workman", or "worker" mean:

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

24 (b) a recipient of general relief who is performing
 25 work for a county of this state under the provisions of

1 53-3-303 through 53-3-305 and any juvenile performing work
 2 under authorization of a district court judge in a
 3 delinquency prevention or rehabilitation program;

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

13 (d) students enrolled and in attendance in programs of
 14 vocational-technical education at designated
 15 vocational-technical centers; or

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

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

24 (b) In the event of such election, the employer must
 25 serve upon the employer's insurer written notice naming the

partners or sole proprietor to be covered, ~~and no~~ and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (d). A partner or sole proprietor ~~shall be deemed~~ is not considered an employee within this chapter until such notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the ~~insurance carrier shall assume a salary or wage of such electing employee to be~~ electing employer may elect not less than \$900 a month and not more than 1 1/2 times the average weekly wage as defined in this chapter."

Section 12. Section 39-71-123, MCA, is amended to read:

"39-71-123. **Wages defined.** (1) "Wages" means the gross remuneration paid in money, or in a substitute for money, for services rendered by an employee. Wages include but are not limited to:

(a) commissions, bonuses, and remuneration at the

regular hourly rate for overtime work, holidays, vacations, and sickness periods;

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

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

(2) Wages do not include:

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

(b) special rewards for individual invention or discovery;

(c) tips and other gratuities received by the employee in excess of those documented to the employer for tax purposes;

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

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

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

(a) the term of employment for the same employer is less than four pay periods, in which case the employee's

1 wages are the hourly rate times the number of hours in a
2 week for which the employee was hired to work; or

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

7 (4) (a) For the purpose of calculating compensation
8 benefits for an employee working concurrent employments, the
9 average actual earnings must be calculated as provided in
10 subsection (3).

11 (b) The compensation benefits for a covered volunteer
12 must be based on the average actual earnings in his regular
13 employment, except self-employment as a sole proprietor or
14 partner, from which he is disabled by the injury incurred.

15 (c) The compensation benefits for an employee working
16 at two or more concurrent remunerated employments must be
17 based on the aggregate of average actual earnings of all
18 employments, except self-employment as a sole proprietor or
19 partner, from which the employee is disabled by the injury
20 incurred."

21 **Section 13.** Section 50-16-527, MCA, is amended to
22 read:

23 "50-16-527. Patient authorization -- retention --
24 effective period -- exception. (1) A health care provider
25 shall retain each authorization or revocation in conjunction

1 with any health care information from which disclosures are
2 made.

3 (2) Except for authorizations to provide information
4 to third-party health care payors, an authorization may not
5 permit the release of health care information relating to
6 health care that the patient receives more than 6 months
7 after the authorization was signed.

8 (3) An authorization in effect on October 1, 1987,
9 remains valid for 30 months after October 1, 1987, unless an
10 earlier date is specified or it is revoked under 50-16-528.
11 Health care information disclosed under such an
12 authorization is otherwise subject to this part. An
13 authorization written after October 1, 1987, becomes invalid
14 after the expiration date contained in the authorization,
15 which may not exceed 30 months. If the authorization does
16 not contain an expiration date, it expires 6 months after it
17 is signed.

18 (4) Notwithstanding subsections (2) and (3), a signed
19 claim for workers' compensation or occupational disease
20 benefits authorizes disclosure to the workers' compensation
21 insurer, as defined in 39-71-116, by the health care
22 provider. The disclosure authorized by this subsection
23 relates only to information concerning the claimant's
24 condition. This authorization is effective only as long as
25 the claimant is entitled to benefits."

Section 14. Section 39-71-307, MCA, is amended to read:

"39-71-307. Employers and insurers to file reports of accidents -- penalty. (1) Every employer of labor and every insurer is hereby required to file with the division, under such rules as the division may from time to time make, a full and complete report of every accident to an employee arising out of or in the course of his employment and resulting in loss of life or injury to such person. Such reports shall be furnished to the division in such form and such detail as the division shall from time to time prescribe and shall make specific answers to all questions required by the division under its rules; except, in case he is unable to answer any such questions, a good and sufficient reason shall be given for such failure.

(2) Every insurance company transacting business under this chapter shall, at the time and in the manner prescribed by the division, make and file with the division such reports of accidents as the division may require.

(3) An employer, insurer, or adjuster who refuses or neglects to submit to the division reports necessary for the proper review of a claim, as provided in subsection (1), may be assessed a penalty of not less than \$200 or more than \$500 for each offense. The division shall assess and collect the penalty. An insurer may contest a penalty assessment in

a hearing conducted according to division rules."

Section 15. Section 39-71-2901, MCA, is amended to read:

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

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

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

(b) provide for the orderly conduct of proceedings before it and its officers;

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

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

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

(3) The workers' compensation judge is an administrative law judge. The position is created by law, and the powers and duties are limited to those provided by applicable statute."

Section 16. Section 39-71-2903, MCA, is amended to read:

"39-71-2903. Administrative procedure act and rules of evidence applicable -- disqualification of workers'

1 compensation judge. (1) All proceedings and hearings before
 2 the workers' compensation judge shall must be in accordance
 3 with the appropriate provisions of the Montana
 4 Administrative Procedure Act.

5 (2) The workers' compensation judge is bound by common
 6 law and statutory rules of evidence.

7 (3) The workers' compensation judge may be
 8 disqualified from a matter before him in the same manner
 9 that a hearing examiner may be disqualified under 2-4-611.
 10 If a party requests disqualification, the workers'
 11 compensation judge shall promptly refer the issue to a
 12 district court judge, who shall conduct a hearing on the
 13 request. If the district court judge finds that there is
 14 sufficient cause for disqualification of the workers'
 15 compensation judge, the district court judge may hear the
 16 merits of the matter himself or may invite another district
 17 court judge to accept jurisdiction of the matter."

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

22 NEW SECTION. Section 18. Effective dates --
 23 retroactive applicability. (1) [Sections 13 and 15 through
 24 18] are effective on passage and approval.

25 (2) (a) [Section 13] applies retroactively, within the

1 meaning of 1-2-109, to all requests for health care
 2 information in workers' compensation claims.

3 (b) [Sections 15 and 16] apply retroactively, within
 4 the meaning of 1-2-109, to any case pending before the
 5 workers' compensation judge that has not been heard on the
 6 merits.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB347, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill for an act entitled: "An act to generally revise the laws relating to Workers' Compensation; allowing assessment of a penalty for failure to give proper notice of cancellation of a policy; clarifying a worker's job pool area; clarifying a worker's entitlement to total rehabilitation benefits; allowing reimbursement for expenses incurred in travel to medical providers; clarifying that an insurer is not required to give notice prior to reducing biweekly benefits; coordinating the definitions of wages, payroll, and earnings; allowing the division to retroactively apply experience modification factors to the experience rating system; providing for penalties; allowing election of levels of coverage by partners and sole proprietors; defining wages for government employments; allowing disclosure of health care information by health care providers to insurers; providing a penalty for not filing reports of accidents; providing that a Workers' Compensation judge may be disqualified from hearing a matter before him; amending Sections 39-71-116, 39-71-118, 39-71-123, 39-71-302, 39-71-307, 39-71-609, 39-71-704, 39-71-736, 39-71-1011, 39-71-1017, 39-71-1023, 39-71-2205, 39-71-2304, 39-71-2901, 39-71-2903 and 50-16-527, MCA; and providing for effective dates and retroactive applicability dates."

ASSUMPTIONS:

1. The ability to assess a penalty for noncompliance with a requirement for notification would stimulate conformance with the statute. However, funds generated by the maximum \$200 penalty would be negligible.
2. No operational impact. Insurers currently reimburse injured workers for travel costs when required. Amendments only reflect a standard by which all insurers will conform. Negligible trust fund impact.
3. No operational fiscal impact. Trust fund compensation benefit levels could be slightly impacted by the change from six days of wage loss to six consecutive days. Benefit costs primarily for persons who work less than 40 hours would be impacted. The degree is unknown but considered to be minimum.
4. State Fund will require a listing of employers who had estimated wages.
5. Revenue generated by positive experience modification factors will be offset by revenue reductions from negative experience modification factors.
6. State Fund will want to track the elected coverage for partners and sole proprietors.

FISCAL IMPACT:

	Current	FY90	
	Law	Law	Difference
Expenditures:	\$9,525,912	\$9,540,612	\$ 14,700
Revenues:	\$9,525,912	\$9,540,612	\$ 14,700
Fund Impact:			
State Special	\$ -0-	\$ -0-	\$ -0-

This will be a one-time start up cost with no fiscal impact in FY91.

Ray Shackleford

RAY SHACKLEFORD, BUDGET DIRECTOR
OFFICE OF BUDGET AND PROGRAM PLANNING

1/31/89

DATE

Clyde B. Smith

CLYDE B. SMITH, PRIMARY SPONSOR

1-31-89

DATE

Fiscal Note for HB347, as introduced

HB 347

APPROVED BY COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONS

HOUSE BILL NO. 347

INTRODUCED BY SMITH

BY REQUEST OF THE DIVISION OF WORKERS' COMPENSATION

1 HOUSE BILL NO. 347
2 INTRODUCED BY 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 LAWS RELATING TO WORKERS' COMPENSATION; ALLOWING ASSESSMENT
7 OF A PENALTY FOR FAILURE TO GIVE PROPER NOTICE OF
8 CANCELLATION OF A POLICY; CLARIFYING A WORKER'S JOB POOL
9 AREA; CLARIFYING A WORKER'S ENTITLEMENT TO TOTAL
10 REHABILITATION BENEFITS; ALLOWING REIMBURSEMENT FOR EXPENSES
11 INCURRED IN TRAVEL TO MEDICAL PROVIDERS; CLARIFYING THAT AN
12 INSURER IS NOT REQUIRED TO GIVE NOTICE PRIOR TO REDUCING
13 BIWEEKLY BENEFITS; COORDINATING THE DEFINITIONS OF WAGES,
14 PAYROLL, AND EARNINGS; ALLOWING THE DIVISION TO
15 RETROACTIVELY APPLY EXPERIENCE MODIFICATION FACTORS TO THE
16 EXPERIENCE RATING SYSTEM; PROVIDING FOR PENALTIES; ALLOWING
17 ELECTION OF LEVELS OF COVERAGE BY PARTNERS AND SOLE
18 PROPRIETORS; DEFINING WAGES FOR GOVERNMENT EMPLOYMENTS;
19 ALLOWING DISCLOSURE OF HEALTH CARE INFORMATION BY HEALTH
20 CARE PROVIDERS TO INSURERS; PROVIDING A PENALTY FOR NOT
21 FILING REPORTS OF ACCIDENTS; PROVIDING THAT A WORKERS'
22 COMPENSATION JUDGE MAY BE DISQUALIFIED FROM HEARING A MATTER
23 BEFORE HIM; AMENDING SECTIONS 39-71-116, 39-71-118,
24 39-71-123, 39-71-302, 39-71-307, 39-71-609, 39-71-704,
25 39-71-736, 39-71-1011, 39-71-1017, 39-71-1023, 39-71-2205,

1 39-71-2304, 39-71-2901, 39-71-2903, AND 50-16-527, MCA; AND
2 PROVIDING FOR EFFECTIVE DATES AND RETROACTIVE APPLICABILITY
3 DATES."
4

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

6 **Section 1.** Section 39-71-2205, MCA, is amended to
7 read:

8 "39-71-2205. Policy remains in effect until canceled
9 or replaced -- twenty-day notification of cancellation
10 required -- penalty. (1) The policy remains in effect until
11 canceled, and cancellation may take effect only by written
12 notice to the named insured and to the division at least 20
13 days prior to the date of cancellation. However, the policy
14 terminates on the effective date of a replacement or
15 succeeding workers' compensation insurance policy issued to
16 the insured. Nothing in this section prevents an insurer
17 from canceling a policy of workers' compensation insurance
18 before a replacement policy is issued to the insured.

19 (2) (a) The division may assess a penalty of up to
20 \$200 against an insurer that does not comply with the notice
21 requirement in subsection (1).

22 (b) An insurer may contest the penalty assessment in a
23 hearing conducted according to division rules."

24 **Section 2.** Section 39-71-1011, MCA, is amended to
25 read:

1 "39-71-1011. Definitions. As used in this chapter, the
2 following definitions apply:

3 (1) "Board of rehabilitation certification" means the
4 nonprofit, independent, fee-structured organization that is
5 a member of the national commission for health certifying
6 agencies and that is established to certify rehabilitation
7 practitioners.

8 (2) "Disabled worker" means one who has a medically
9 determined restriction resulting from a work-related injury
10 that precludes the worker from returning to the job the
11 worker held at the time of the injury.

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

15 (4) "Rehabilitation benefits" means benefits provided
16 in 39-71-1003 and 39-71-1023 through 39-71-1025.

17 (5) "Rehabilitation provider" means a rehabilitation
18 counselor, other than the department of social and
19 rehabilitation services, certified by the board for
20 rehabilitation certification and designated by the insurer
21 to the division.

22 (6) "Rehabilitation services" consists of a program of
23 evaluation, planning, and delivery of goods and services to
24 assist a disabled worker to return to work.

25 (7) (a) "Worker's job pool" means those jobs typically

1 available for which a worker is qualified, consistent with
2 the worker's age, education, vocational experience and
3 aptitude and compatible with the worker's physical
4 capacities and limitations as the result of the worker's
5 injury. Lack of immediate job openings is not a factor to be
6 considered.

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

9 (i) a local job ~~is one either in a central city that~~
10 ~~has within its economically integrated geographical area a~~
11 ~~population of less than 50,000 or in a city with a~~
12 ~~population of more than 50,000 as determined by the division~~
13 pool is the job service office area that includes the
14 worker's residence; or and

15 (ii) a the statewide job pool is ~~one anywhere in~~ the
16 state of Montana."

17 **Section 3.** Section 39-71-1023, MCA, is amended to
18 read:

19 "39-71-1023. Total rehabilitation benefits during
20 period of rehabilitation services -- limitation --
21 termination. (1) A worker who no longer is temporarily
22 totally disabled but meets the definition of a disabled
23 worker may be eligible for total rehabilitation benefits.

24 (2) Eligibility for total rehabilitation benefits
25 begins on the date of maximum healing or and continues for a

1 period not to exceed 26 weeks after the date notice is given
 2 to the division by the insurer that a rehabilitation
 3 provider has been designated, ~~whichever is later.~~

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

11 (4) Total rehabilitation benefits under this section
 12 terminate when:

13 (a) a worker returns to work;

14 (b) a worker is qualified to return to work under the
 15 priorities in 39-71-1012 pursuant to a division order; or

16 (c) an I.W.R.P. is submitted to the division by the
 17 department of social and rehabilitation services.

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

20 **Section 4.** Section 39-71-704, MCA, is amended to read:

21 "39-71-704. Payment of medical, hospital, and related
 22 services -- fee schedules and hospital rates. (1) In
 23 addition to the compensation provided by this chapter and as
 24 an additional benefit separate and apart from compensation,
 25 the following ~~shall~~ must be furnished:

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

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

12 (c) The insurer shall reimburse a worker for
 13 reasonable travel expenses incurred in travel to a medical
 14 provider for treatment of an injury PURSUANT TO RULES
 15 ADOPTED BY THE DIVISION. Reimbursement must be at the rates
 16 allowed for reimbursement of travel by state employees.

17 (2) A relative value fee schedule for medical,
 18 chiropractic, and paramedical services provided for in this
 19 chapter, excluding hospital services, ~~shall~~ must be
 20 established annually by the workers' compensation division
 21 and become effective in January of each year. The maximum
 22 fee schedule must be adopted as a relative value fee
 23 schedule of medical, chiropractic, and paramedical services,
 24 with unit values to indicate the relative relationship
 25 within each grouping of specialties. Medical fees must be

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

9 (3) Beginning January 1, 1988, the division shall
 10 establish rates for hospital services necessary for the
 11 treatment of injured workers. Approved rates must be in
 12 effect for a period of 12 months from the date of approval.
 13 The division may coordinate this ratesetting function with
 14 other public agencies that have similar responsibilities.

15 (4) Notwithstanding subsection (2), beginning January
 16 1, 1988, and ending January 1, 1990, the maximum fees
 17 payable by insurers must be limited to the relative value
 18 fee schedule established in January 1987. Notwithstanding
 19 subsection (3), the hospital rates payable by insurers must
 20 be limited to those set in January 1988, until December 31,
 21 1989."

22 **Section 5.** Section 39-71-609, MCA, is amended to read:

23 "39-71-609. Denial of claim after payments made or
 24 termination of all benefits OR REDUCTION TO PARTIAL BENEFITS
 25 by insurer -- fourteen days' notice required. If an insurer

1 determines to deny a claim on which payments have been made
 2 under 39-71-608 during a time of further investigation or,
 3 after a claim has been accepted, terminates all biweekly
 4 compensation benefits, it may do so only after 14 days'
 5 written notice to the claimant, the claimant's authorized
 6 representative, if any, and the division. FOR INJURIES
 7 OCCURRING PRIOR TO JULY 1, 1987, AN INSURER MUST GIVE 14
 8 DAYS' WRITTEN NOTICE TO THE CLAIMANT BEFORE REDUCING
 9 BENEFITS FROM TOTAL TO PARTIAL. However, if an insurer has
 10 knowledge that a claimant has returned to work, compensation
 11 benefits may be terminated as of the time the claimant
 12 returned to work."

13 **Section 6.** Section 39-71-736, MCA, is amended to read:

14 "39-71-736. Compensation -- from what date paid.
 15 (1) (a) No compensation may be paid for the first 48 HOURS
 16 OR 6 days'--loss--of--wages consecutive-days DAYS' LOSS OF
 17 WAGES, WHICHEVER IS LESS, THAT the claimant is totally
 18 disabled and unable to work due to an injury. A claimant is
 19 eligible for compensation starting with the 7th day of--wage
 20 loss.

21 (b) However, separate benefits of medical and hospital
 22 services ~~shall~~ must be furnished from the date of injury.

23 (2) For the purpose of this section, an injured worker
 24 is not considered to have--a--wage--loss be entitled to
 25 compensation benefits if the worker is receiving sick leave

1 benefits, except that each day for which the worker elects
2 to receive sick leave counts 1 day toward the 6-day waiting
3 period."

4 **Section 7.** Section 39-71-116, MCA, is amended to read:

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

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

14 (2) "Beneficiary" means:

15 (a) a surviving spouse living with or legally entitled
16 to be supported by the deceased at the time of injury;

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

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

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

24 (e) a parent who is dependent upon the decedent for
25 support at the time of the injury (however, such a parent is

1 a beneficiary only when no beneficiary, as defined in
2 subsections (2)(a) through (2)(d) of this section, exists);
3 and

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

10 (3) "Casual employment" means employment not in the
11 usual course of trade, business, profession, or occupation
12 of the employer.

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

15 (5) "Days" means calendar days, unless otherwise
16 specified.

17 (6) "Department" means the department of labor and
18 industry.

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

22 (8) "Fiscal year" means the period of time between
23 July 1 and the succeeding June 30.

24 (9) "Insurer" means an employer bound by compensation
25 plan No. 1, an insurance company transacting business under

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

4 (10) "Invalid" means one who is physically or mentally
5 incapacitated.

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

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

12 (13) "Payroll", "annual payroll", or "annual payroll
13 for the preceding year" means the average annual payroll of
14 the employer for the preceding calendar year or, if the
15 employer shall not have operated a sufficient or any length
16 of time during such calendar year, 12 times the average
17 monthly payroll for the current year; provided, that an
18 However, an estimate may be made by the division for any
19 employer starting in business where if no average payrolls
20 are available, such. This estimate is to be adjusted by
21 additional payment by the employer or refund by the
22 division, as the case may actually be, on December 31 of
23 such current year. An employer's payroll must be computed by
24 calculating all wages, as defined in 39-71-123, that are
25 paid by an employer.

1 (14) "Permanent partial disability" means a condition,
2 after a worker has reached maximum healing, in which a
3 worker:

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

6 (b) is able to return to work in the worker's job pool
7 pursuant to one of the options set forth in 39-71-1012 but
8 suffers impairment or partial wage loss, or both.

9 (15) "Permanent total disability" means a condition
10 resulting from injury as defined in this chapter, after a
11 worker reaches maximum healing, in which a worker is unable
12 to return to work in the worker's job pool after exhausting
13 all options set forth in 39-71-1012.

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

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

21 (18) "Public corporation" means the state or any
22 county, municipal corporation, school district, city, city
23 under commission form of government or special charter,
24 town, or village.

25 (19) "Reasonably safe place to work" means that the

place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

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

(21) "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured worker reaches maximum healing.

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

Section 8. Section 39-71-302, MCA, is amended to read:

"39-71-302. What included in computing payroll. In computing the payroll, ~~the entire compensation~~ all wages, as defined in 39-71-123, received by every worker employed under this chapter ~~is~~ are included, whether in the form of salary, wage, piecework, or otherwise and whether payable in money, board, or otherwise."

Section 9. Section 39-71-1017, MCA, is amended to read:

"39-71-1017. Rehabilitation panel report. (1) The rehabilitation panel shall:

(a) review all records, statements, and other

pertinent information; and

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

(2) The report must:

(a) identify the first appropriate rehabilitation option by following the priorities set forth in 39-71-1012; and

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

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

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

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

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

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

(4) An insurer or a worker on his own motion may

1 submit information to the panel prior to the time the panel
2 issues its final report."

3 **Section 10.** Section 39-71-2304, MCA, is amended to
4 read:

5 "39-71-2304. Determination of rates and
6 classifications by division. (1) The division is hereby
7 given full power and authority to determine premium rates
8 and classifications as in its judgment and experience may be
9 necessary or expedient, provided that no change in the
10 classification or rates prescribed ~~shall~~ may be effective
11 until 30 days after the date of the order making such
12 change.

13 (2) The industrial insurance program ~~shall~~ must be
14 neither more nor less than self-supporting. Employments
15 affected by the provisions hereof ~~shall~~ must be divided by
16 the division into classes, whose rates may be readjusted at
17 such times as the division may actuarially determine.
18 Separate accounts ~~shall~~ must be kept of the amounts
19 collected and expended in each class for actuarially
20 determining rates, but for payment of compensation and
21 dividends, the industrial insurance expendable trust fund
22 ~~shall~~ must be one and indivisible.

23 (3) The division shall determine the hazards of the
24 different classes of occupations or industries and fix the
25 premiums therefor at the lowest rate consistent with

1 maintenance of an actuarially sound industrial insurance
2 fund and the creation of actuarially sound surplus and
3 reserves, and for such purpose may adopt a system of
4 schedule rating in such a manner as to take account of the
5 peculiar hazard of each risk and shall utilize the
6 experience and information afforded to it.

7 (4) In addition, compensation plan No. 3 ~~shall~~ must
8 use an experience rating system for employers enrolled under
9 it. This system ~~shall~~ must reward employers with a better
10 than average safety record, penalize employers with a worse
11 than average safety record, and may provide for premium
12 volume discount. The division may retroactively apply
13 experience modification factors.

14 (5) The division in fixing rates shall provide for the
15 expenses of administering the industrial insurance
16 expendable trust fund allowed by law, the disbursements on
17 account of injuries and deaths of employees in each class,
18 an actuarially sound catastrophe reserve, reserves
19 actuarially determined to meet anticipated and unexpected
20 losses, and such other reserves and surplus as may be
21 determined by the division. The amounts of such reserves and
22 surplus ~~shall~~ must be as determined from time to time by the
23 division to be adequate but not excessive for the purposes
24 intended.

25 (6) The division shall charge a minimum annual premium

on each contract and policy of insurance sufficient to cover the cost of administering the contract or policy.

(7) (a) Except in a case of fraud, the division may not assess an additional quarterly premium later than 3 years after the date on which the quarterly premium became due.

(b) An employer may not receive a refund or an adjustment later than 3 years after the date on which the quarterly premium became due."

Section 11. Section 39-71-118, MCA, is amended to read:

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

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

the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

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

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

(d) students enrolled and in attendance in programs of vocational-technical education at designated vocational-technical centers; or

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

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

1 such partnership or the owner of the sole proprietorship
2 devoting full time to the partnership or proprietorship
3 business.

4 (b) In the event of such election, the employer must
5 serve upon the employer's insurer written notice naming the
6 partners or sole proprietor to be covered, and no and
7 stating the level of compensation coverage desired by
8 electing the amount of wages to be reported, subject to the
9 limitations in subsection (d). A partner or sole proprietor
10 shall--be--deemed is not considered an employee within this
11 chapter until such notice has been given.

12 (c) A change in elected wages must be in writing and
13 is effective at the start of the next quarter following
14 notification.

15 (d) All weekly compensation benefits must be based on
16 the amount of elected wages, subject to the minimum and
17 maximum limitations of this subsection. For premium
18 ratemaking and for the determination of weekly wage for
19 weekly compensation benefits, the insurance--carrier--shall
20 assume--a--salary--or--wage--of--such--electing--employee--to--be
21 electing employer may elect not less than \$900 a month and
22 not more than 1 1/2 times the average weekly wage as defined
23 in this chapter."

24 **Section 12.** Section 39-71-123, MCA, is amended to
25 read:

1 **"39-71-123. Wages defined.** (1) "Wages" means the gross
2 remuneration paid in money, or in a substitute for money,
3 for services rendered by an employee. Wages include but are
4 not limited to:

5 (a) commissions, bonuses, and remuneration at the
6 regular hourly rate for overtime work, holidays, vacations,
7 and sickness periods;

8 (b) board, lodging, rent, or housing if it constitutes
9 a part of the employee's remuneration and is based on its
10 actual value; and

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

14 (2) Wages do not include:

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

17 (b) special rewards for individual invention or
18 discovery;

19 (c) tips and other gratuities received by the employee
20 in excess of those documented to the employer for tax
21 purposes;

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

24 (e) vacation or sick leave benefits accrued but not
25 paid.

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

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

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

(4) (a) For the purpose of calculating compensation benefits for an employee working concurrent employments, the average actual earnings WAGES must be calculated as provided in subsection (3).

(b) The compensation benefits for a covered volunteer must be based on the average actual earnings WAGES in his regular employment, except self-employment as a sole proprietor or partner WHO ELECTED NOT TO BE COVERED, from which he is disabled by the injury incurred.

(c) The compensation benefits for an employee working at two or more concurrent remunerated employments must be based on the aggregate of average actual earnings WAGES of all employments, except self-employment as a sole proprietor or partner WHO ELECTED NOT TO BE COVERED, from which the

employee is disabled by the injury incurred."

Section 13. Section 50-16-527, MCA, is amended to read:

"50-16-527. Patient authorization -- retention -- effective period -- exception. (1) A health care provider shall retain each authorization or revocation in conjunction with any health care information from which disclosures are made.

(2) Except for authorizations to provide information to third-party health care payors, an authorization may not permit the release of health care information relating to health care that the patient receives more than 6 months after the authorization was signed.

(3) An authorization in effect on October 1, 1987, remains valid for 30 months after October 1, 1987, unless an earlier date is specified or it is revoked under 50-16-528. Health care information disclosed under such an authorization is otherwise subject to this part. An authorization written after October 1, 1987, becomes invalid after the expiration date contained in the authorization, which may not exceed 30 months. If the authorization does not contain an expiration date, it expires 6 months after it is signed.

(4) Notwithstanding subsections (2) and (3), a signed claim for workers' compensation or occupational disease

benefits authorizes disclosure to the workers' compensation insurer, as defined in 39-71-116, by the health care provider. The disclosure authorized by this subsection relates only to information concerning the claimant's condition. This authorization is effective only as long as the claimant is entitled to CLAIMING benefits."

Section 14. Section 39-71-307, MCA, is amended to read:

"39-71-307. Employers and insurers to file reports of accidents -- penalty. (1) Every employer of labor and every insurer is hereby required to file with the division, under such rules as the division may from time to time make, a full and complete report of every accident to an employee arising out of or in the course of his employment and resulting in loss of life or injury to such person. Such reports shall be furnished to the division in such form and such detail as the division shall from time to time prescribe and shall make specific answers to all questions required by the division under its rules; except, in case he is unable to answer any such questions, a good and sufficient reason shall be given for such failure.

(2) Every insurance company transacting business under this chapter shall, at the time and in the manner prescribed by the division, make and file with the division such reports of accidents as the division may require.

(3) An employer, insurer, or adjuster who refuses or neglects to submit to the division reports necessary for the proper review of a claim, as provided in subsection (1), may be assessed a penalty of not less than \$200 or more than \$500 for each offense. The division shall assess and collect the penalty. An insurer may contest a penalty assessment in a hearing conducted according to division rules."

Section 15. ~~Section 39-71-2901, MCA, is amended to read:~~

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

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

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

~~(b) provide for the orderly conduct of proceedings before it and its officers;~~

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

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

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

(3) The workers' compensation judge is an administrative law judge. The position is created by law.

~~and the powers and duties are limited to those provided by applicable statute."~~

Section 16. ~~Section 39-71-2903, MCA, is amended to read:~~

~~"39-71-2903. Administrative procedure act and rules of evidence applicable to disqualification of workers' compensation judge. (1) All proceedings and hearings before the workers' compensation judge shall must be in accordance with the appropriate provisions of the Montana Administrative Procedure Act;~~

~~(2) The workers' compensation judge is bound by common law and statutory rules of evidence;~~

~~(3) The workers' compensation judge may be disqualified from a matter before him in the same manner that a hearing examiner may be disqualified under 2-4-611. If a party requests disqualification, the workers' compensation judge shall promptly refer the issue to a district court judge, who shall conduct a hearing on the request. If the district court judge finds that there is sufficient cause for disqualification of the workers' compensation judge, the district court judge may hear the merits of the matter himself or may invite another district court judge to accept jurisdiction of the matter."~~

NEW SECTION. Section 15. Extension of authority. Any existing authority to make rules on the subject of the

provisions of [this act] is extended to the provisions of [this act].

NEW SECTION. Section 16. Effective dates -- retroactive applicability. (1) [Sections 13 and 15 through 18, 15, AND 16] are effective on passage and approval.

(2) ALL OTHER SECTIONS OF [THIS ACT] ARE EFFECTIVE JULY 1, 1989.

(2)-(a)(3) [Section 13] applies retroactively, within the meaning of 1-2-109, to all requests for health care information in workers' compensation claims.

(b)-(Sections 15 and 16) apply retroactively, within the meaning of 1-2-109, to any case pending before the workers' compensation judge that has not been heard on the merits.

-End-

1 HOUSE BILL NO. 347

2 INTRODUCED BY 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 LAWS RELATING TO WORKERS' COMPENSATION; ALLOWING ASSESSMENT
7 OF A PENALTY FOR FAILURE TO GIVE PROPER NOTICE OF
8 CANCELLATION OF A POLICY; CLARIFYING A WORKER'S JOB POOL
9 AREA; CLARIFYING A WORKER'S ENTITLEMENT TO TOTAL
10 REHABILITATION BENEFITS; ALLOWING REIMBURSEMENT FOR EXPENSES
11 INCURRED IN TRAVEL TO MEDICAL PROVIDERS; CLARIFYING THAT AN
12 INSURER IS NOT REQUIRED TO GIVE NOTICE PRIOR TO REDUCING
13 BIWEEKLY BENEFITS; COORDINATING THE DEFINITIONS OF WAGES,
14 PAYROLL, AND EARNINGS; ALLOWING THE DIVISION TO
15 RETROACTIVELY APPLY EXPERIENCE MODIFICATION FACTORS TO THE
16 EXPERIENCE RATING SYSTEM; PROVIDING FOR PENALTIES; ALLOWING
17 ELECTION OF LEVELS OF COVERAGE BY PARTNERS AND SOLE
18 PROPRIETORS; DEFINING WAGES FOR GOVERNMENT EMPLOYMENTS;
19 ALLOWING DISCLOSURE OF HEALTH CARE INFORMATION BY HEALTH
20 CARE PROVIDERS TO INSURERS; PROVIDING A PENALTY FOR NOT
21 FILING REPORTS OF ACCIDENTS; PROVIDING THAT A WORKERS'
22 COMPENSATION JUDGE MAY BE DISQUALIFIED FROM HEARING A MATTER
23 BEFORE HIM; AMENDING SECTIONS 39-71-116, 39-71-118,
24 39-71-123, 39-71-302, 39-71-307, 39-71-609, 39-71-704,
25 39-71-736, 39-71-1011, 39-71-1017, 39-71-1023, 39-71-2205,

There are no changes in HB 347 and due to length
will not be reprinted. Please refer to second
reading (yellow) copy for complete text.



SENATE STANDING COMMITTEE REPORT

March 7, 1989

MR. PRESIDENT:

We, your committee on Labor and Employment Relations, having had under consideration HB 347 (third reading copy -- blue), respectfully report that HB 347 be amended and as so amended be concurred in:

Sponsor: Smith (Manning)

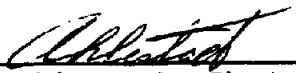
1. Page 16, line 13.

Following: "factors"

Insert: "up to one year. The division may only apply modification factors retroactively when the factor is delayed because the rating bureau has not received sufficient data from previous carriers to calculate a final modification factor"

AND AS AMENDED BE CONCURRED IN

Signed: _____


Gary C. Aklestad, Chairman

SENATE

scrhb347.307

1 HOUSE BILL NO. 347

2 INTRODUCED BY 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 LAWS RELATING TO WORKERS' COMPENSATION; ALLOWING ASSESSMENT
7 OF A PENALTY FOR FAILURE TO GIVE PROPER NOTICE OF
8 CANCELLATION OF A POLICY; CLARIFYING A WORKER'S JOB POOL
9 AREA; CLARIFYING A WORKER'S ENTITLEMENT TO TOTAL
10 REHABILITATION BENEFITS; ALLOWING REIMBURSEMENT FOR EXPENSES
11 INCURRED IN TRAVEL TO MEDICAL PROVIDERS; CLARIFYING THAT AN
12 INSURER IS NOT REQUIRED TO GIVE NOTICE PRIOR TO REDUCING
13 BIWEEKLY BENEFITS; COORDINATING THE DEFINITIONS OF WAGES,
14 PAYROLL, AND EARNINGS; ALLOWING THE DIVISION TO
15 RETROACTIVELY APPLY EXPERIENCE MODIFICATION FACTORS TO THE
16 EXPERIENCE RATING SYSTEM; PROVIDING FOR PENALTIES; ALLOWING
17 ELECTION OF LEVELS OF COVERAGE BY PARTNERS AND SOLE
18 PROPRIETORS; DEFINING WAGES FOR GOVERNMENT EMPLOYMENTS;
19 ALLOWING DISCLOSURE OF HEALTH CARE INFORMATION BY HEALTH
20 CARE PROVIDERS TO INSURERS; PROVIDING A PENALTY FOR NOT
21 FILING REPORTS OF ACCIDENTS; PROVIDING THAT A WORKERS'
22 COMPENSATION JUDGE MAY BE DISQUALIFIED FROM HEARING A MATTER
23 BEFORE HIM; AMENDING SECTIONS 39-71-116, 39-71-118,
24 39-71-123, 39-71-302, 39-71-307, 39-71-609, 39-71-704,
25 39-71-736, 39-71-1011, 39-71-1017, 39-71-1023, 39-71-2205,

1 39-71-2304, 39-71-2901, 39-71-2903, AND 50-16-527, MCA; AND
2 PROVIDING FOR EFFECTIVE DATES AND RETROACTIVE APPLICABILITY
3 DATES."
4

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

6 **Section 1.** Section 39-71-2205, MCA, is amended to
7 read:

8 "39-71-2205. Policy remains in effect until canceled
9 or replaced -- twenty-day notification of cancellation
10 required -- penalty. (1) The policy remains in effect until
11 canceled, and cancellation may take effect only by written
12 notice to the named insured and to the division at least 20
13 days prior to the date of cancellation. However, the policy
14 terminates on the effective date of a replacement or
15 succeeding workers' compensation insurance policy issued to
16 the insured. Nothing in this section prevents an insurer
17 from canceling a policy of workers' compensation insurance
18 before a replacement policy is issued to the insured.

19 (2) (a) The division may assess a penalty of up to
20 \$200 against an insurer that does not comply with the notice
21 requirement in subsection (1).

22 (b) An insurer may contest the penalty assessment in a
23 hearing conducted according to division rules."

24 **Section 2.** Section 39-71-1011, MCA, is amended to
25 read:

1 "39-71-1011. Definitions. As used in this chapter, the
2 following definitions apply:

3 (1) "Board of rehabilitation certification" means the
4 nonprofit, independent, fee-structured organization that is
5 a member of the national commission for health certifying
6 agencies and that is established to certify rehabilitation
7 practitioners.

8 (2) "Disabled worker" means one who has a medically
9 determined restriction resulting from a work-related injury
10 that precludes the worker from returning to the job the
11 worker held at the time of the injury.

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

15 (4) "Rehabilitation benefits" means benefits provided
16 in 39-71-1003 and 39-71-1023 through 39-71-1025.

17 (5) "Rehabilitation provider" means a rehabilitation
18 counselor, other than the department of social and
19 rehabilitation services, certified by the board for
20 rehabilitation certification and designated by the insurer
21 to the division.

22 (6) "Rehabilitation services" consists of a program of
23 evaluation, planning, and delivery of goods and services to
24 assist a disabled worker to return to work.

25 (7) (a) "Worker's job pool" means those jobs typically

1 available for which a worker is qualified, consistent with
2 the worker's age, education, vocational experience and
3 aptitude and compatible with the worker's physical
4 capacities and limitations as the result of the worker's
5 injury. Lack of immediate job openings is not a factor to be
6 considered.

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

9 (i) a local job pool is one either in a central city that
10 has within its economically integrated geographical area a
11 population of less than 50,000 or in a city with a
12 population of more than 50,000 as determined by the division
13 pool is the job service office area that includes the
14 worker's residence; or and

15 (ii) a statewide job pool is one anywhere in the
16 state of Montana."

17 **Section 3.** Section 39-71-1023, MCA, is amended to
18 read:

19 "39-71-1023. Total rehabilitation benefits during
20 period of rehabilitation services -- limitation --
21 termination. (1) A worker who no longer is temporarily
22 totally disabled but meets the definition of a disabled
23 worker may be eligible for total rehabilitation benefits.

24 (2) Eligibility for total rehabilitation benefits
25 begins on the date of maximum healing or and continues for a

1 period not to exceed 26 weeks after the date notice is given
2 to the division by the insurer that a rehabilitation
3 provider has been designated, ~~whichever is later.~~

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

11 (4) Total rehabilitation benefits under this section
12 terminate when:

13 (a) a worker returns to work;

14 (b) a worker is qualified to return to work under the
15 priorities in 39-71-1012 pursuant to a division order; or

16 (c) an I.W.R.P. is submitted to the division by the
17 department of social and rehabilitation services.

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

20 **Section 4.** Section 39-71-704, MCA, is amended to read:

21 "39-71-704. Payment of medical, hospital, and related
22 services -- fee schedules and hospital rates. (1) In
23 addition to the compensation provided by this chapter and as
24 an additional benefit separate and apart from compensation,
25 the following ~~shall~~ must be furnished:

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

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

12 (c) The insurer shall reimburse a worker for
13 reasonable travel expenses incurred in travel to a medical
14 provider for treatment of an injury PURSUANT TO RULES
15 ADOPTED BY THE DIVISION. Reimbursement must be at the rates
16 allowed for reimbursement of travel by state employees.

17 (2) A relative value fee schedule for medical,
18 chiropractic, and paramedical services provided for in this
19 chapter, excluding hospital services, ~~shall~~ must be
20 established annually by the workers' compensation division
21 and become effective in January of each year. The maximum
22 fee schedule must be adopted as a relative value fee
23 schedule of medical, chiropractic, and paramedical services,
24 with unit values to indicate the relative relationship
25 within each grouping of specialties. Medical fees must be

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

9 (3) Beginning January 1, 1988, the division shall
10 establish rates for hospital services necessary for the
11 treatment of injured workers. Approved rates must be in
12 effect for a period of 12 months from the date of approval.
13 The division may coordinate this ratesetting function with
14 other public agencies that have similar responsibilities.

15 (4) Notwithstanding subsection (2), beginning January
16 1, 1988, and ending January 1, 1990, the maximum fees
17 payable by insurers must be limited to the relative value
18 fee schedule established in January 1987. Notwithstanding
19 subsection (3), the hospital rates payable by insurers must
20 be limited to those set in January 1988, until December 31,
21 1989."

22 **Section 5.** Section 39-71-609, MCA, is amended to read:

23 "39-71-609. Denial of claim after payments made or
24 termination of all benefits OR REDUCTION TO PARTIAL BENEFITS
25 by insurer -- fourteen days' notice required. If an insurer

1 determines to deny a claim on which payments have been made
2 under 39-71-608 during a time of further investigation or,
3 after a claim has been accepted, terminates all biweekly
4 compensation benefits, it may do so only after 14 days'
5 written notice to the claimant, the claimant's authorized
6 representative, if any, and the division. FOR INJURIES
7 OCCURRING PRIOR TO JULY 1, 1987, AN INSURER MUST GIVE 14
8 DAYS' WRITTEN NOTICE TO THE CLAIMANT BEFORE REDUCING
9 BENEFITS FROM TOTAL TO PARTIAL. However, if an insurer has
10 knowledge that a claimant has returned to work, compensation
11 benefits may be terminated as of the time the claimant
12 returned to work."

13 **Section 6.** Section 39-71-736, MCA, is amended to read:

14 "39-71-736. Compensation -- from what date paid.

15 (1) (a) No compensation may be paid for the first 48 HOURS
16 OR 6 days'--loss--of--wages consecutive-days DAYS' LOSS OF
17 WAGES, WHICHEVER IS LESS, THAT the claimant is totally
18 disabled and unable to work due to an injury. A claimant is
19 eligible for compensation starting with the 7th day of--wage
20 loss.

21 (b) However, separate benefits of medical and hospital
22 services ~~shall~~ must be furnished from the date of injury.

23 (2) For the purpose of this section, an injured worker
24 is not considered to have--a--wage--loss be entitled to
25 compensation benefits if the worker is receiving sick leave

1 benefits, except that each day for which the worker elects
2 to receive sick leave counts 1 day toward the 6-day waiting
3 period."

4 **Section 7.** Section 39-71-116, MCA, is amended to read:

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

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

14 (2) "Beneficiary" means:

15 (a) a surviving spouse living with or legally entitled
16 to be supported by the deceased at the time of injury;

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

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

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

24 (e) a parent who is dependent upon the decedent for
25 support at the time of the injury (however, such a parent is

1 a beneficiary only when no beneficiary, as defined in
2 subsections (2)(a) through (2)(d) of this section, exists);
3 and

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

10 (3) "Casual employment" means employment not in the
11 usual course of trade, business, profession, or occupation
12 of the employer.

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

15 (5) "Days" means calendar days, unless otherwise
16 specified.

17 (6) "Department" means the department of labor and
18 industry.

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

22 (8) "Fiscal year" means the period of time between
23 July 1 and the succeeding June 30.

24 (9) "Insurer" means an employer bound by compensation
25 plan No. 1, an insurance company transacting business under

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

4 (10) "Invalid" means one who is physically or mentally
5 incapacitated.

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

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

12 (13) "Payroll", "annual payroll", or "annual payroll
13 for the preceding year" means the average annual payroll of
14 the employer for the preceding calendar year or, if the
15 employer shall not have operated a sufficient or any length
16 of time during such calendar year, 12 times the average
17 monthly payroll for the current year, ~~provided, that an~~
18 However, an estimate may be made by the division for any
19 employer starting in business where if no average payrolls
20 are available, such. This estimate is to be adjusted by
21 additional payment by the employer or refund by the
22 division, as the case may actually be, on December 31 of
23 such current year. An employer's payroll must be computed by
24 calculating all wages, as defined in 39-71-123, that are
25 paid by an employer.

1 (14) "Permanent partial disability" means a condition,
2 after a worker has reached maximum healing, in which a
3 worker:

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

6 (b) is able to return to work in the worker's job pool
7 pursuant to one of the options set forth in 39-71-1012 but
8 suffers impairment or partial wage loss, or both.

9 (15) "Permanent total disability" means a condition
10 resulting from injury as defined in this chapter, after a
11 worker reaches maximum healing, in which a worker is unable
12 to return to work in the worker's job pool after exhausting
13 all options set forth in 39-71-1012.

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

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

21 (18) "Public corporation" means the state or any
22 county, municipal corporation, school district, city, city
23 under commission form of government or special charter,
24 town, or village.

25 (19) "Reasonably safe place to work" means that the

1 place of employment has been made as free from danger to the
2 life or safety of the employee as the nature of the
3 employment will reasonably permit.

4 (20) "Reasonably safe tools and appliances" are such
5 tools and appliances as are adapted to and are reasonably
6 safe for use for the particular purpose for which they are
7 furnished.

8 (21) "Temporary total disability" means a condition
9 resulting from an injury as defined in this chapter that
10 results in total loss of wages and exists until the injured
11 worker reaches maximum healing.

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

14 **Section 8.** Section 39-71-302, MCA, is amended to read:

15 "39-71-302. What included in computing payroll. In
16 computing the payroll, ~~the entire compensation~~ all wages, as
17 defined in 39-71-123, received by every worker employed
18 under this chapter ~~is~~ are included, whether in the form of
19 salary, wage, piecework, or otherwise and whether payable in
20 money, board, or otherwise."

21 **Section 9.** Section 39-71-1017, MCA, is amended to
22 read:

23 "39-71-1017. Rehabilitation panel report. (1) The
24 rehabilitation panel shall:

25 (a) review all records, statements, and other

1 pertinent information; and

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

4 (2) The report must:

5 (a) identify the first appropriate rehabilitation
6 option by following the priorities set forth in 39-71-1012;
7 and

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

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

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

14 (b) describe an appropriate on-the-job training
15 program, the worker's anticipated earnings wages, and
16 anticipated insurer's contribution, if any;

17 (c) describe an appropriate retraining program, short-
18 or long-term, the employment opportunities anticipated upon
19 the worker's completion of the program, and the worker's
20 anticipated earnings wages; or

21 (d) describe the worker's potential for specific
22 self-employment, limitations the worker might have in such
23 self-employment and any assistance necessary, and the
24 worker's anticipated earnings wages.

25 (4) An insurer or a worker on his own motion may

1 submit information to the panel prior to the time the panel
2 issues its final report."

3 **Section 10.** Section 39-71-2304, MCA, is amended to
4 read:

5 "39-71-2304. Determination of rates and
6 classifications by division. (1) The division is hereby
7 given full power and authority to determine premium rates
8 and classifications as in its judgment and experience may be
9 necessary or expedient, provided that no change in the
10 classification or rates prescribed shall may be effective
11 until 30 days after the date of the order making such
12 change.

13 (2) The industrial insurance program shall must be
14 neither more nor less than self-supporting. Employments
15 affected by the provisions hereof shall must be divided by
16 the division into classes, whose rates may be readjusted at
17 such times as the division may actuarially determine.
18 Separate accounts shall must be kept of the amounts
19 collected and expended in each class for actuarially
20 determining rates, but for payment of compensation and
21 dividends, the industrial insurance expendable trust fund
22 shall must be one and indivisible.

23 (3) The division shall determine the hazards of the
24 different classes of occupations or industries and fix the
25 premiums therefor at the lowest rate consistent with

1 maintenance of an actuarially sound industrial insurance
2 fund and the creation of actuarially sound surplus and
3 reserves, and for such purpose may adopt a system of
4 schedule rating in such a manner as to take account of the
5 peculiar hazard of each risk and shall utilize the
6 experience and information afforded to it.

7 (4) In addition, compensation plan No. 3 shall must
8 use an experience rating system for employers enrolled under
9 it. This system shall must reward employers with a better
10 than average safety record, penalize employers with a worse
11 than average safety record, and may provide for premium
12 volume discount. The division may retroactively apply
13 experience modification factors UP TO 1 YEAR. THE DIVISION
14 MAY ONLY APPLY MODIFICATION FACTORS RETROACTIVELY WHEN THE
15 FACTOR IS DELAYED BECAUSE THE RATING BUREAU HAS NOT RECEIVED
16 SUFFICIENT DATA FROM PREVIOUS CARRIERS TO CALCULATE A FINAL
17 MODIFICATION FACTOR.

18 (5) The division in fixing rates shall provide for the
19 expenses of administering the industrial insurance
20 expendable trust fund allowed by law, the disbursements on
21 account of injuries and deaths of employees in each class,
22 an actuarially sound catastrophe reserve, reserves
23 actuarially determined to meet anticipated and unexpected
24 losses, and such other reserves and surplus as may be
25 determined by the division. The amounts of such reserves and

1 surplus ~~shall~~ must be as determined from time to time by the
2 division to be adequate but not excessive for the purposes
3 intended.

4 (6) The division shall charge a minimum annual premium
5 on each contract and policy of insurance sufficient to cover
6 the cost of administering the contract or policy.

7 (7) (a) Except in a case of fraud, the division may
8 not assess an additional quarterly premium later than 3
9 years after the date on which the quarterly premium became
10 due.

11 (b) An employer may not receive a refund or an
12 adjustment later than 3 years after the date on which the
13 quarterly premium became due."

14 **Section 11.** Section 39-71-118, MCA, is amended to
15 read:

16 "39-71-118. Employee, worker, and workman defined. (1)
17 The terms "employee", "workman", or "worker" mean:

18 (a) each person in this state, including a contractor
19 other than an independent contractor, who is in the service
20 of an employer, as defined by 39-71-117, under any
21 appointment or contract of hire, expressed or implied, oral
22 or written. The terms include aliens and minors, whether
23 lawfully or unlawfully employed, and all of the elected and
24 appointed paid public officers and officers and members of
25 boards of directors of quasi-public or private corporations

1 while rendering actual service for such corporations for
2 pay. Casual employees as defined by 39-71-116 are included
3 as employees if they are not otherwise covered by workers'
4 compensation and if an employer has elected to be bound by
5 the provisions of the compensation law for these casual
6 employments, as provided in 39-71-401(2). Household or
7 domestic service is excluded.

8 (b) a recipient of general relief who is performing
9 work for a county of this state under the provisions of
10 53-3-303 through 53-3-305 and any juvenile performing work
11 under authorization of a district court judge in a
12 delinquency prevention or rehabilitation program;

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

22 (d) students enrolled and in attendance in programs of
23 vocational-technical education at designated
24 vocational-technical centers; or

25 (e) an airman or other person employed as a volunteer

1 under 67-2-105.

2 (2) (a) If the employer is a partnership or sole
3 proprietorship, such employer may elect to include as an
4 employee within the provisions of this chapter any member of
5 such partnership or the owner of the sole proprietorship
6 devoting full time to the partnership or proprietorship
7 business.

8 (b) In the event of such election, the employer must
9 serve upon the employer's insurer written notice naming the
10 partners or sole proprietor to be covered, ~~and no~~ and
11 stating the level of compensation coverage desired by
12 electing the amount of wages to be reported, subject to the
13 limitations in subsection (d). A partner or sole proprietor
14 shall be deemed is not considered an employee within this
15 chapter until such notice has been given.

16 (c) A change in elected wages must be in writing and
17 is effective at the start of the next quarter following
18 notification.

19 (d) All weekly compensation benefits must be based on
20 the amount of elected wages, subject to the minimum and
21 maximum limitations of this subsection. For premium
22 ratemaking and for the determination of weekly wage for
23 weekly compensation benefits, the ~~insurance carrier shall~~
24 ~~assume a salary or wage of such electing employee to be~~
25 electing employer may elect not less than \$900 a month and

1 not more than 1 1/2 times the average weekly wage as defined
2 in this chapter."

3 **Section 12.** Section 39-71-123, MCA, is amended to
4 read:

5 "39-71-123. Wages defined. (1) "Wages" means the gross
6 remuneration paid in money, or in a substitute for money,
7 for services rendered by an employee. Wages include but are
8 not limited to:

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

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

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

18 (2) Wages do not include:

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

21 (b) special rewards for individual invention or
22 discovery;

23 (c) tips and other gratuities received by the employee
24 in excess of those documented to the employer for tax
25 purposes;

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

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

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

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

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

(4) (a) For the purpose of calculating compensation benefits for an employee working concurrent employments, the average actual earnings WAGES must be calculated as provided in subsection (3).

(b) The compensation benefits for a covered volunteer must be based on the average actual earnings WAGES in his regular employment, except self-employment as a sole proprietor or partner WHO ELECTED NOT TO BE COVERED, from which he is disabled by the injury incurred.

(c) The compensation benefits for an employee working

at two or more concurrent remunerated employments must be based on the aggregate of average actual earnings WAGES of all employments, except self-employment as a sole proprietor or partner WHO ELECTED NOT TO BE COVERED, from which the employee is disabled by the injury incurred."

Section 13. Section 50-16-527, MCA, is amended to read:

"50-16-527. Patient authorization -- retention -- effective period -- exception. (1) A health care provider shall retain each authorization or revocation in conjunction with any health care information from which disclosures are made.

(2) Except for authorizations to provide information to third-party health care payors, an authorization may not permit the release of health care information relating to health care that the patient receives more than 6 months after the authorization was signed.

(3) An authorization in effect on October 1, 1987, remains valid for 30 months after October 1, 1987, unless an earlier date is specified or it is revoked under 50-16-528. Health care information disclosed under such an authorization is otherwise subject to this part. An authorization written after October 1, 1987, becomes invalid after the expiration date contained in the authorization, which may not exceed 30 months. If the authorization does

1 not contain an expiration date, it expires 6 months after it
2 is signed.

3 (4) Notwithstanding subsections (2) and (3), a signed
4 claim for workers' compensation or occupational disease
5 benefits authorizes disclosure to the workers' compensation
6 insurer, as defined in 39-71-116, by the health care
7 provider. The disclosure authorized by this subsection
8 relates only to information concerning the claimant's
9 condition. This authorization is effective only as long as
10 the claimant is entitled to CLAIMING benefits."

11 **Section 14.** Section 39-71-307, MCA, is amended to
12 read:

13 "39-71-307. Employers and insurers to file reports of
14 accidents -- penalty. (1) Every employer of labor and every
15 insurer is hereby required to file with the division, under
16 such rules as the division may from time to time make, a
17 full and complete report of every accident to an employee
18 arising out of or in the course of his employment and
19 resulting in loss of life or injury to such person. Such
20 reports shall be furnished to the division in such form and
21 such detail as the division shall from time to time
22 prescribe and shall make specific answers to all questions
23 required by the division under its rules; except, in case he
24 is unable to answer any such questions, a good and
25 sufficient reason shall be given for such failure.

1 (2) Every insurance company transacting business under
2 this chapter shall, at the time and in the manner prescribed
3 by the division, make and file with the division such
4 reports of accidents as the division may require.

5 (3) An employer, insurer, or adjuster who refuses or
6 neglects to submit to the division reports necessary for the
7 proper review of a claim, as provided in subsection (1), may
8 be assessed a penalty of not less than \$200 or more than
9 \$500 for each offense. The division shall assess and collect
10 the penalty. An insurer may contest a penalty assessment in
11 a hearing conducted according to division rules."

12 **Section 15.** ~~Section 39-71-2901, MCA, is amended to~~
13 ~~read:~~

14 ~~"39-71-2901. Location of office --- court powers. (1)~~
15 ~~The principal office of the workers' compensation judge~~
16 ~~shall be in the city of Helena.~~

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

18 ~~(a) preserve and enforce order in its immediate~~
19 ~~presence;~~

20 ~~(b) provide for the orderly conduct of proceedings~~
21 ~~before it and its officers;~~

22 ~~(c) compel obedience to its judgments, orders, and~~
23 ~~process in the same manner and by the same procedures as in~~
24 ~~civil actions in district court;~~

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

(e) --punish-for-contempt-in-the-same-manner-and-by--the
same-procedures-as-in-district-court;

(3) --The---workers'---compensation---judge---is---an
administrative-law-judge--The-position-is-created-by--law,
and--the-powers-and-duties-are-limited-to-those-provided-by
applicable-statute."

Section 16. --Section 39-71-2903, MCA, is amended to
read:

"39-71-2903. --Administrative-procedure-act-and-rules-of
evidence---applicable-----disqualification---of--workers'
compensation-judge--(1) All-proceedings-and-hearings--before
the--workers'-compensation-judge-shall-must-be-in-accordance
with---the---appropriate---provisions---of---the---Montana
Administrative-Procedure-Act;

(2) --The-workers'-compensation-judge-is-bound-by-common
law-and-statutory-rules-of-evidence;

(3) --The---workers'---compensation---judge---may---be
disqualified-from-a-matter-before-him-in--the--same--manner
that--a--hearing-examiner-may-be-disqualified-under-2-4-611;
if--a--party---requests---disqualification,---the---workers'
compensation--judge--shall-promptly--refer--the--issue-to-a
district-court-judge, who-shall-conduct--a--hearing--on--the
request,--if--the--district--court-judge-finds-that-there-is
sufficient--cause--for--disqualification--of--the---workers'
compensation--judge,--the--district-court-judge-may-hear-the

merits-of-the-matter-himself-or-may-invite-another--district
court-judge-to-accept-jurisdiction-of-the-matter."

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

NEW SECTION. Section 16. Effective dates --
retroactive applicability. (1) [Sections 13 and 15 through
18, 15, AND 16] are effective on passage and approval.

(2) ALL OTHER SECTIONS OF [THIS ACT] ARE EFFECTIVE
JULY 1, 1989.

(2) --(a) (3) [Section 13] applies retroactively, within
the meaning of 1-2-109, to all requests for health care
information in workers' compensation claims.

(b) --(Sections 15 and 16) apply retroactively, within
the--meaning--of--1-2-109,--to--any--case-pending-before-the
workers'-compensation-judge-that-has-not-been-heard-on--the
merits;

-End-