

HOUSE BILL 710

Introduced by Driscoll

2/14	Introduced
2/15	Referred to Labor & Employment Relations
2/16	Hearing
2/17	Committee Report--Bill Passed as Amended
2/21	2nd Reading Passed
2/22	3rd Reading Passed

Transmitted to Senate

2/28	Referred to Labor & Employment Relations
3/14	Hearing
3/28	Committee Report--Bill Not Concurred as Amended
3/28	Adverse Committee Report Adopted

1 HOUSE BILL NO. 710  
2 INTRODUCED BY Dravitt  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE WORKERS'  
5 COMPENSATION ACT TO REQUIRE THAT, WHENEVER POSSIBLE,  
6 REHABILITATION SERVICES FOR A DISABLED WORKER MUST RESTORE  
7 THE WORKER'S ABILITY TO EARN THE LEVEL OF WAGES HE WAS  
8 CAPABLE OF EARNING PRIOR TO THE OCCURRENCE OF A WORK-RELATED  
9 INJURY; AND AMENDING SECTIONS 39-71-1011, 39-71-1012,  
10 39-71-1015, AND 39-71-1019, MCA."

11  
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 **Section 1.** Section 39-71-1011, MCA, is amended to  
14 read:

15 "39-71-1011. Definitions. As used in this chapter, the  
16 following definitions apply:

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

22 (2) "Disabled worker" means one who has a medically  
23 determined restriction resulting from a work-related injury  
24 that precludes the worker from returning to the job the  
25 worker held at the time of the injury.

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

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

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

11 (6) "Rehabilitation services" consists of a program of  
12 evaluation, planning, and delivery of goods and services to:

13 (a) assist a disabled worker to return to work; and

14 (b) whenever possible, restore a disabled worker's  
15 ability to earn the level of wages he was capable of earning  
16 prior to the occurrence of a work-related injury.

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

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

(i) a local job is one either in a central city that has within its economically integrated geographical area a population of less than 50,000 or in a city with a population of more than 50,000 as determined by the division; or

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

**Section 2.** Section 39-71-1012, MCA, is amended to read:

"39-71-1012. Rehabilitation goal and options. (1) The goal of rehabilitation services is to:

(a) return a disabled worker to work, ~~with a minimum of retraining as soon as possible after an injury occurs;~~ and

(b) whenever possible, restore a disabled worker's ability to earn the level of wages he was capable of earning prior to the occurrence of a work-related injury.

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

(a) return to the same position;

(b) return to a modified position;

(c) return to a related occupation suited to the claimant's education and marketable skills;

(d) on-the-job training;

(e) short-term retraining program (less than 24

months);

(f) long-term retraining program (48 months maximum);

or

(g) self-employment.

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

(4) Whenever possible, rehabilitation services for a disabled worker must restore the worker's ability to earn the level of wages he was capable of earning prior to the occurrence of a work-related injury."

**Section 3.** Section 39-71-1015, MCA, is amended to read:

"39-71-1015. Designated rehabilitation provider -- evaluation and report. (1) ~~If a disabled worker is capable of returning to work, the~~ The designated rehabilitation provider shall evaluate and determine ~~the return-to-work capabilities of an appropriate option for the disabled worker pursuant to~~ under 39-71-1012(2)(a) through (2)(d).

(2) If an insurer's designated rehabilitation provider has determined that all appropriate services have been provided to the disabled worker under 39-71-1012(2)(a) through (2)(d) and the worker has returned to work, the insurer shall document that determination to the division.

(3) If the worker has not returned to work as provided in subsection (2), the insurer shall notify the division. The division shall then designate a rehabilitation panel as provided in 39-71-1016 and refer the worker to the panel.

(4) If the designated rehabilitation provider determines that the option provided in 39-71-1012(2)(e) or (2)(f) is the appropriate option for a disabled worker, the provider shall document that determination, with findings and recommendations, to the division. The division shall then designate a rehabilitation panel, as provided in 39-71-1016, and refer the worker to the panel."

**Section 4.** Section 39-71-1019, MCA, is amended to read:

**"39-71-1019. Referral to department of social and rehabilitation services for retraining -- benefits -- appeals.** (1) If in its final order of determination the division ~~considers a worker able to return to work in the worker's job pool~~, identifies the option provided in 39-71-1012(2)(a), (2)(b), or (2)(c) as the appropriate option for a disabled worker, the insurer is not liable for rehabilitation benefits, even though the worker independently may pursue a training program of the worker's own choice or seek vocational rehabilitation services from the department of social and rehabilitation services.

(2) If in its final order of determination the

division finds the worker needs retraining, the division shall determine the maximum duration for which funds under 39-71-1003 may be used for rehabilitation services under 39-71-1012(2)(d) through (2)(f) and shall refer the worker to the department of social and rehabilitation services for a determination of vocational handicap.

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

(4) If a disabled worker seeks vocational rehabilitation services from the department of social and rehabilitation services without giving the insurer the opportunity to designate a rehabilitation provider or, subsequently, without giving the division the opportunity to designate a rehabilitation panel to provide a report, the insurer is not liable for rehabilitation benefits. The insurer may terminate rehabilitation and other benefits, if any, being received by the worker by following the procedure set forth in 39-71-1032.

(5) The department of social and rehabilitation services, in providing rehabilitation services to a worker referred to it by the division, shall consider but is not bound by the rehabilitation panel report.

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

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

11       NEW SECTION. **Section 5. Extension of authority.** Any  
12 existing authority to make rules on the subject of the  
13 provisions of [this act] is extended to the provisions of  
14 [this act].

-End-

APPROVED BY COMMITTEE  
ON LABOR & EMPLOYMENT  
RELATIONSHOUSE BILL NO. 710  
INTRODUCED BY DRISCOLL

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE WORKERS' COMPENSATION ACT TO REQUIRE THAT, WHENEVER POSSIBLE, REHABILITATION SERVICES FOR A DISABLED WORKER MUST RESTORE THE WORKER'S ABILITY TO EARN THE LEVEL OF WAGES HE WAS CAPABLE OF EARNING PRIOR TO THE OCCURRENCE OF A WORK-RELATED INJURY; AND AMENDING SECTIONS 39-71-1011, 39-71-1012, 39-71-1015, AND 39-71-1019, MCA."

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

**Section 1.** Section 39-71-1011, MCA, is amended to read:

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

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

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

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

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

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

(6) "Rehabilitation services" consists of a program of evaluation, planning, and delivery of goods and services to:

(a) assist a disabled worker to return to work; and

(b) whenever possible, restore a disabled worker's ability to earn the level of wages he was capable of earning prior to the occurrence of a work-related injury, AS DEMONSTRATED BY PAST EMPLOYMENT HISTORY.

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

(b) A worker's job pool may be either local or

1 statewide, as follows:

2 (i) a local job is one either in a central city that  
3 has within its economically integrated geographical area a  
4 population of less than 50,000 or in a city with a  
5 population of more than 50,000 as determined by the  
6 division; or

7 (ii) a statewide job is one anywhere in the state of  
8 Montana."

9 **Section 2.** Section 39-71-1012, MCA, is amended to  
10 read:

11 "39-71-1012. Rehabilitation goal and options. (1) The  
12 goal of rehabilitation services is to:

13 (a) return a disabled worker to work, ~~with a minimum~~  
14 ~~of retraining, as soon as possible after an injury occurs,~~  
15 and

16 (b) whenever possible, restore a disabled worker's  
17 ability to earn the level of wages he was capable of earning  
18 prior to the occurrence of a work-related injury, AS  
19 DEMONSTRATED BY PAST EMPLOYMENT HISTORY.

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

22 (a) return to the same position;

23 (b) return to a modified position;

24 (c) return to a related occupation suited to the  
25 claimant's education and marketable skills;

1 (d) on-the-job training;

2 (e) short-term retraining program (less than 24  
3 months);

4 (f) long-term retraining program (48 months maximum);

5 or

6 (g) self-employment.

7 (3) Whenever possible, employment in a worker's local  
8 job pool must be considered and selected prior to  
9 consideration of employment in a worker's statewide job  
10 pool.

11 (4) Whenever possible, rehabilitation services for a  
12 disabled worker must restore the worker's ability to earn  
13 the level of wages he was capable of earning prior to the  
14 occurrence of a work-related injury, AS DEMONSTRATED BY PAST  
15 EMPLOYMENT HISTORY."

16 **Section 3.** Section 39-71-1015, MCA, is amended to  
17 read:

18 "39-71-1015. Designated rehabilitation provider --  
19 evaluation and report. (1) ~~If a disabled worker is capable~~  
20 ~~of returning to work, the~~ The designated rehabilitation  
21 provider shall evaluate and determine the return-to-work  
22 capabilities of an appropriate option for the disabled  
23 worker pursuant to under 39-71-1012(2)(a) through (2)(d).

24 (2) If an insurer's designated rehabilitation provider  
25 has determined that all appropriate services have been

provided to the disabled worker under 39-71-1012(2)(a) through (2)(d) and the worker has returned to work, the insurer shall document that determination to the division.

(3) If the worker has not returned to work as provided in subsection (2), the insurer shall notify the division. The division shall then designate a rehabilitation panel as provided in 39-71-1016 and refer the worker to the panel.

(4) If the designated rehabilitation provider determines that the option provided in 39-71-1012(2)(e) or (2)(f) is the appropriate option for a disabled worker, the provider shall document that determination, with findings and recommendations, to the division. The division shall then designate a rehabilitation panel, as provided in 39-71-1016, and refer the worker to the panel.

**Section 4.** Section 39-71-1019, MCA, is amended to read:

"39-71-1019. Referral to department of social and rehabilitation services for retraining -- benefits -- appeals. (1) If in its final order of determination the division ~~considers a worker able to return to work in the worker's job pool~~, identifies the option provided in 39-71-1012(2)(a), (2)(b), or (2)(c) as the appropriate option for a disabled worker, the insurer is not liable for rehabilitation benefits, even though the worker independently may pursue a training program of the worker's

own choice or seek vocational rehabilitation services from the department of social and rehabilitation services.

(2) If in its final order of determination the division finds the worker needs retraining, the division shall determine the maximum duration for which funds under 39-71-1003 may be used for rehabilitation services under 39-71-1012(2)(d) through (2)(f) and shall refer the worker to the department of social and rehabilitation services for a determination of vocational handicap.

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

(4) If a disabled worker seeks vocational rehabilitation services from the department of social and rehabilitation services without giving the insurer the opportunity to designate a rehabilitation provider or, subsequently, without giving the division the opportunity to designate a rehabilitation panel to provide a report, the insurer is not liable for rehabilitation benefits. The insurer may terminate rehabilitation and other benefits, if any, being received by the worker by following the procedure set forth in 39-71-1032.

(5) The department of social and rehabilitation



1 services, in providing rehabilitation services to a worker  
2 referred to it by the division, shall consider but is not  
3 bound by the rehabilitation panel report.

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

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

14 NEW SECTION. **Section 5.** Extension of authority. Any  
15 existing authority to make rules on the subject of the  
16 provisions of [this act] is extended to the provisions of  
17 [this act].

-End-

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2 INTRODUCED BY DRISCOLL

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE WORKERS'  
5 COMPENSATION ACT TO REQUIRE THAT, WHENEVER POSSIBLE,  
6 REHABILITATION SERVICES FOR A DISABLED WORKER MUST RESTORE  
7 THE WORKER'S ABILITY TO EARN THE LEVEL OF WAGES HE WAS  
8 CAPABLE OF EARNING PRIOR TO THE OCCURRENCE OF A WORK-RELATED  
9 INJURY; AND AMENDING SECTIONS 39-71-1011, 39-71-1012,  
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21 practitioners.

22 (2) "Disabled worker" means one who has a medically  
23 determined restriction resulting from a work-related injury  
24 that precludes the worker from returning to the job the  
25 worker held at the time of the injury.

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

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

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

11 (6) "Rehabilitation services" consists of a program of  
12 evaluation, planning, and delivery of goods and services to:  
13 (a) assist a disabled worker to return to work; and  
14 (b) whenever possible, restore a disabled worker's  
15 ability to earn the level of wages he was capable of earning  
16 prior to the occurrence of a work-related injury, AS  
17 DEMONSTRATED BY PAST EMPLOYMENT HISTORY.

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

25 (b) A worker's job pool may be either local or

1 statewide, as follows:

2 (i) a local job is one either in a central city that  
3 has within its economically integrated geographical area a  
4 population of less than 50,000 or in a city with a  
5 population of more than 50,000 as determined by the  
6 division; or

7 (ii) a statewide job is one anywhere in the state of  
8 Montana."

9 **Section 2.** Section 39-71-1012, MCA, is amended to  
10 read:

11 **"39-71-1012. Rehabilitation goal and options.** (1) The  
12 goal of rehabilitation services is to:

13 (a) return a disabled worker to work, with a minimum  
14 of retraining, as soon as possible after an injury occurs;  
15 and

16 (b) whenever possible, restore a disabled worker's  
17 ability to earn the level of wages he was capable of earning  
18 prior to the occurrence of a work-related injury, AS  
19 DEMONSTRATED BY PAST EMPLOYMENT HISTORY.

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

22 (a) return to the same position;

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24 (c) return to a related occupation suited to the  
25 claimant's education and marketable skills;

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2 (e) short-term retraining program (less than 24  
3 months);

4 (f) long-term retraining program (48 months maximum);  
5 or

6 (g) self-employment.

7 (3) Whenever possible, employment in a worker's local  
8 job pool must be considered and selected prior to  
9 consideration of employment in a worker's statewide job  
10 pool.

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12 disabled worker must restore the worker's ability to earn  
13 the level of wages he was capable of earning prior to the  
14 occurrence of a work-related injury, AS DEMONSTRATED BY PAST  
15 EMPLOYMENT HISTORY."

16 **Section 3.** Section 39-71-1015, MCA, is amended to  
17 read:

18 **"39-71-1015. Designated rehabilitation provider --**  
19 **evaluation and report.** (1) ~~if a disabled worker is capable~~  
20 ~~of returning to work, the~~ The designated rehabilitation  
21 provider shall evaluate and determine the return-to-work  
22 capabilities of an appropriate option for the disabled  
23 worker pursuant to under 39-71-1012(2)(a) through (d).

24 (2) If an insurer's designated rehabilitation provider  
25 has determined that all appropriate services have been

provided to the disabled worker under 39-71-1012(2){a} through-{2}{d} and the worker has returned to work, the insurer shall document that determination to the division.

(3) If the worker has not returned to work as provided in subsection (2), the insurer shall notify the division. The division shall then designate a rehabilitation panel as provided in 39-71-1016 and refer the worker to the panel.

(4) If the designated rehabilitation provider determines that the option provided in 39-71-1012(2)(e) or (2)(f) is the appropriate option for a disabled worker, the provider shall document that determination, with findings and recommendations, to the division. The division shall then designate a rehabilitation panel, as provided in 39-71-1016, and refer the worker to the panel."

**Section 4.** Section 39-71-1019, MCA, is amended to read:

"39-71-1019. Referral to department of social and rehabilitation services for retraining -- benefits -- appeals. (1) If in its final order of determination the division ~~considers a worker able to return to work in the worker's job pool~~, identifies the option provided in 39-71-1012(2)(a), (2)(b), or (2)(c) as the appropriate option for a disabled worker, the insurer is not liable for rehabilitation benefits, even though the worker independently may pursue a training program of the worker's

own choice or seek vocational rehabilitation services from the department of social and rehabilitation services.

(2) If in its final order of determination the division finds the worker needs retraining, the division shall determine the maximum duration for which funds under 39-71-1003 may be used for rehabilitation services under 39-71-1012(2)(d) through (2)(f) and shall refer the worker to the department of social and rehabilitation services for a determination of vocational handicap.

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

(4) If a disabled worker seeks vocational rehabilitation services from the department of social and rehabilitation services without giving the insurer the opportunity to designate a rehabilitation provider or, subsequently, without giving the division the opportunity to designate a rehabilitation panel to provide a report, the insurer is not liable for rehabilitation benefits. The insurer may terminate rehabilitation and other benefits, if any, being received by the worker by following the procedure set forth in 39-71-1032.

(5) The department of social and rehabilitation

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1 services, in providing rehabilitation services to a worker  
2 referred to it by the division, shall consider but is not  
3 bound by the rehabilitation panel report.

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

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

14 NEW SECTION. **Section 5. Extension of authority.** Any  
15 existing authority to make rules on the subject of the  
16 provisions of [this act] is extended to the provisions of  
17 [this act].

-End-