

SENATE BILL 186

Introduced by Boylan, et al.

1/18	Introduced
1/18	Referred to Business & Industry
1/19	Fiscal Note Requested
1/25	Hearing
1/26	Fiscal Note Received
1/27	Fiscal Note Printed
2/06	Committee Report--Bill Passed as Amended
2/08	2nd Reading Passed
2/10	3rd Reading Passed

Transmitted to House

2/21	Referred to Labor & Employment Relations
3/07	Hearing
3/14	Tabled in Committee

1 *Senate* BILL NO. *186*
 2 INTRODUCED BY *Boyle HARP Wasson*
 3 *Westlake Patterson*

4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE SALE OF
 5 THE STATE WORKERS' COMPENSATION INSURANCE PLAN AND FUND TO
 6 THE HIGHEST RESPONSIBLE BIDDER; PROVIDING FOR A SALE
 7 PROCEDURE; PROVIDING FOR DISPOSITION OF THE PROCEEDS OF THE
 8 SALE; PROVIDING FOR AN ASSIGNED APPORTIONMENT TO INSURERS OF
 9 INSURANCE COVERAGE FOR HIGH-RISK EMPLOYERS; AMENDING
 10 SECTIONS 17-7-502, 33-17-502, 33-18-212, 39-71-102,
 11 39-71-103, 39-71-116, 39-71-201, 39-71-206, 39-71-308,
 12 39-71-401, 39-71-403, 39-71-421, 39-71-502, 39-71-504,
 13 39-71-505, 39-71-515, 39-71-704, 39-71-908, 39-71-910,
 14 39-71-911, 39-71-913, 39-71-1004, 39-71-2201, 39-72-310, AND
 15 45-7-501, MCA; REPEALING SECTIONS 39-71-2301 THROUGH
 16 39-71-2308, 39-71-2321 THROUGH 39-71-2327, AND 39-71-2501
 17 THROUGH 39-71-2504, MCA; AND PROVIDING EFFECTIVE DATES."

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

20 NEW SECTION. **Section 1.** Sale of state workers'
 21 compensation insurance plan and fund -- procedure. (1)
 22 Within 180 days after [the effective date of this section]
 23 the governor shall sell the state workers' compensation
 24 insurance plan and fund created and provided for in Title
 25 39, chapter 71, part 23, and referenced in other provisions

1 of Title 39, chapter 71, and Title 33, chapters 17 and 18.
 2 The governor shall request bids and ensure that the request
 3 is adequately publicized in the press, major financial
 4 publications, and the financial and insurance industries.
 5 All advertisements must be published within 60 days after
 6 [the effective date of this section]. Interested parties
 7 must be allowed 60 days from the date the last advertisement
 8 is published to submit proposals for purchase. The sale must
 9 be to the responsible insurance or other company submitting
 10 the highest bid.

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

22 (3) Upon receipt of a bid proposal, the governor shall
 23 submit it to the legislative audit committee. The committee
 24 shall review the proposals and submit comments to the
 25 governor on the qualifications of each bidder.

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

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

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

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

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

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

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

Section 3. Section 39-71-102, MCA, is amended to read:

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

Section 4. Section 39-71-103, MCA, is amended to read:

"39-71-103. Compensation provisions. The compensation provisions of this chapter, whenever referred to, shall must be held to include the provisions of compensation plan plans No. 17 and No. 27--or--3 and all other sections of this chapter applicable to the same or any part thereof any part of those plans."

Section 5. Section 39-71-116, MCA, is amended to read:

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

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

7 (2) "Beneficiary" means:

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

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

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

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

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

22 (f) a brother or sister under the age of 18 years if
23 dependent upon the decedent for support at the time of the
24 injury (however, such a brother or sister is a beneficiary
25 only until the age of 18 years and only when no beneficiary,

1 as defined in subsections (2)(a) through (2)(e) of this
2 section, exists).

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

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

8 (5) "Days" means calendar days, unless otherwise
9 specified.

10 (6) "Department" means the department of labor and
11 industry.

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

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

17 (9) "Insurer" means an employer bound by compensation
18 plan No. 1, an insurance company transacting business under
19 compensation plan No. 2, the--state--compensation--insurance
20 fund--under--compensation--plan--No--37, or the uninsured
21 employers' fund provided for in part 5 of this chapter.

22 (10) "Invalid" means one who is physically or mentally
23 incapacitated.

24 (11) "Maximum healing" means the status reached when a
25 worker is as far restored medically as the permanent

1 character of the work-related injury will permit.

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

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

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

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

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

25 (15) "Permanent total disability" means a condition

1 resulting from injury as defined in this chapter, after a
2 worker reaches maximum healing, in which a worker is unable
3 to return to work in the worker's job pool after exhausting
4 all options set forth in 39-71-1012.

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

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

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

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

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

24 (21) "Temporary total disability" means a condition
25 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 6. Section 39-71-201, MCA, is amended to read:

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

(a) all fees and penalties provided in 39-71-205 and 39-71-304;

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

(c) all fees paid from an assessment on each plan No. 1 employer, and plan No. 2 insurer, ~~and plan No. 3, the state insurance fund.~~ The assessments ~~shall~~ must be levied against the preceding calendar year's gross annual payroll of the plan No. 1 employers and the gross annual direct

premiums collected in Montana on the policies of the plan No. 2 insurers, insuring employers covered under the chapter, during the preceding calendar year. However, no assessment of the plan No. 1 employer or plan No. 2 insurer ~~shall~~ may be less than \$200. The assessments ~~shall~~ must be sufficient to fund the direct costs identified to the ~~three~~ two plans and an equitable portion of the indirect costs based on the ratio of the preceding fiscal year's indirect costs distributed to the plans using proper accounting and cost allocation procedures. ~~Plan No. 3 shall be assessed an amount sufficient to fund its direct costs and an equitable portion of the indirect costs as referred to above.~~ Other sources of revenue, including unexpended funds from the preceding fiscal year, ~~shall~~ must be used to reduce the costs before levying the assessments.

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

(3) Disbursements from the administration money ~~shall~~ must be made after being approved by the division upon

1 submission of a claim therefor."

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

3 "39-71-206. Legal advisers of division. (1) The
4 attorney general ~~shall be~~ is the legal adviser of the
5 division and shall represent it in all proceedings whenever
6 so requested by the division or any member thereof of the
7 division.

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

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

14 "39-71-308. Neglect or refusal of public corporation
15 to file payroll reports -- arbitrary assessment by division.
16 Whenever If any public corporation ~~insured by the state~~
17 ~~compensation insurance fund~~ neglects or refuses to file
18 prescribed payroll reports of its employees, the division
19 may levy an arbitrary assessment upon such the public
20 corporation in an amount of \$75 for each such assessment,
21 which The assessments ~~shall~~ must be collected in the manner
22 provided in this chapter for the collection of assessments."

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

24 "39-71-401. Employments covered and employments
25 exempted. (1) Except as provided in subsection (2) ~~of this~~

1 section, the Workers' Compensation Act applies to all
2 employers as defined in 39-71-117 and to all employees as
3 defined in 39-71-118. An employer who has any employee in
4 service under any appointment or contract of hire, expressed
5 or implied, oral or written, shall elect to be bound by the
6 provisions of compensation plan No. 1, or No. 2 ~~or 3~~. Every
7 employee whose employer is bound by the Workers'
8 Compensation Act is subject to and bound by the compensation
9 plan that has been elected by the employer.

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

- 14 (a) household and domestic employment;
- 15 (b) casual employment as defined in 39-71-116;
- 16 (c) employment of members of an employer's family
17 dwelling in the employer's household;
- 18 (d) employment of sole proprietors or working members
19 of a partnership, except as provided in subsection (3);
- 20 (e) employment of a broker or salesman performing
21 under a license issued by the board of realty regulation;
- 22 (f) employment of a direct seller engaged in the sale
23 of consumer products, primarily in the customer's home;
- 24 (g) employment for which a rule of liability for
25 injury, occupational disease, or death is provided under the

1 laws of the United States;

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

5 (i) employment with any railroad engaged in interstate
6 commerce, except that railroad construction work is included
7 in and subject to the provisions of this chapter;

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

12 (k) any person performing services as a newspaper
13 carrier or free-lance correspondent if the person performing
14 the services, or a parent or guardian of the person
15 performing the services in the case of a minor, has
16 acknowledged in writing that the person performing the
17 services and the services are not covered. As used in this
18 subsection "free-lance correspondent" is a person who
19 submits articles or photographs for publication and is paid
20 by the article or by the photograph. As used in this
21 subsection "newspaper carrier":

22 (i) is a person who provides a newspaper with the
23 service of delivering newspapers singly or in bundles; but

24 (ii) does not include an employee of the paper who,
25 incidentally to his main duties, carries or delivers papers.

1 (3) (a) A sole proprietor or a working member of a
2 partnership who holds himself out or considers himself an
3 independent contractor [and who is not contracting] for
4 cosmetologist's services or barber's services as defined in
5 39-51-204(1)(1) must elect to be bound personally and
6 individually by the provisions of compensation plan No. 17
7 or No. 2, or--37 but he may apply to the division for an
8 exemption from the Workers' Compensation Act for himself.

9 (b) The application must be made in accordance with
10 the rules adopted by the division. The division may deny the
11 application only if it determines that the applicant is not
12 an independent contractor.

13 (c) When If an application is approved by the
14 division, it is conclusive as to the status of an
15 independent contractor and precludes the applicant from
16 obtaining benefits under this chapter.

17 (d) When If an election of an exemption is approved by
18 the division, the election remains effective and the
19 independent contractor retains his status as an independent
20 contractor until he notifies the division of any change in
21 his status and provides a description of his present work
22 status.

23 (e) If the division denies the application for
24 exemption, the applicant may contest the denial by
25 petitioning for review of the decision by an appeals referee

1 in the manner provided for in 39-51-1109. An applicant
2 dissatisfied with the decision of the appeals referee may
3 appeal the decision in accordance with the procedure
4 established in 39-51-2403 and 39-51-2404.

5 (4) (a) A private corporation shall provide coverage
6 for its officers and other employees under the provisions of
7 compensation plan No. 1, ~~or No. 2 or 3~~. However, pursuant
8 to such rules as adopted by the division promulgates and
9 subject in all cases to approval by the division, an officer
10 of a private corporation may elect not to be bound as an
11 employee under this chapter by giving a written notice, on a
12 form provided by the division, served in the following
13 manner:

14 (i) if the employer has elected to be bound by the
15 provisions of compensation plan No. 1, by delivering the
16 notice to the board of directors of the employer and the
17 division; or

18 (ii) if the employer has elected to be bound by the
19 provisions of compensation plan No. 2 ~~or 3~~, by delivering
20 the notice to the board of directors of the employer, the
21 division, and the insurer.

22 (b) If the employer changes plans or insurers, the
23 officer's previous election is not effective and the officer
24 shall again serve notice ~~as provided~~ if he elects not to be
25 bound.

1 (c) The appointment or election of an employee as an
2 officer of a corporation for the purpose of excluding the
3 employee from coverage under this chapter does not entitle
4 the officer to elect not to be bound as an employee under
5 this chapter. In any case, the officer must sign the notice
6 required by subsection (4)(a) under oath or affirmation, and
7 he is subject to the penalties for false swearing under
8 45-7-202 if he falsifies the notice.

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

25 **Section 10.** Section 39-71-403, MCA, is amended to

1 read:

2 "39-71-403. ~~Plan three exclusive for state agencies--~~
 3 ~~election Election of plan by other public corporations. (1)~~
 4 ~~Where a state agency is the employer, the terms, conditions,~~
 5 ~~and--provisions--of--compensation plan No. 3--shall--be~~
 6 ~~exclusive, compulsory, and obligatory upon both employer and~~
 7 ~~employee;--Any--sums--necessary--to--be--paid--under--the~~
 8 ~~provisions--of--this--chapter--by--any--state--agency--shall--be~~
 9 ~~considered to be ordinary and necessary expense of the~~
 10 ~~agency;--and--the--agency--shall--make--appropriation--of--and--pay~~
 11 ~~such--sums--into--the--state--compensation--insurance--fund--at--the~~
 12 ~~time--and--in--the--manner--provided--for--in--this--chapter,~~
 13 ~~notwithstanding that the state agency may have failed to~~
 14 ~~anticipate--such--ordinary--and--necessary--expense--in--any~~
 15 ~~budget, estimate of expenses, appropriations, ordinances, or~~
 16 ~~otherwise.~~

17 (2)(1) A public corporation, other than a state
 18 agency, may elect coverage under compensation plan No. 1,
 19 employer, plan or No. 2, insurer, or plan No. 3, state
 20 insurance fund; either separately or jointly with any other
 21 public corporation, other than a state agency. A public
 22 corporation electing compensation plan No. 1 may purchase
 23 reinsurance. A public corporation electing compensation plan
 24 No. 1 is subject to the same provisions as a private
 25 employer electing compensation plan No. 1.

1 (3)(2) A public corporation, other than a state
 2 agency, that elects plan No. 1 may establish a fund
 3 sufficient to pay the compensation and benefits provided for
 4 in this chapter and chapter 72 and to discharge all
 5 liabilities that reasonably incur during the fiscal year for
 6 which the election is effective. Proceeds from the fund must
 7 be used only to pay claims covered by this chapter and
 8 chapter 72 and for actual and necessary expenses required
 9 for the efficient administration of the fund.

10 (4)(3) All money in the fund established under
 11 subsection (3) (2) not needed to meet immediate expenditures
 12 must be invested by the governing body of the public
 13 corporation, and all proceeds of the investment shall must
 14 be credited to the fund."

15 **Section 11.** Section 39-71-421, MCA, is amended to
 16 read:

17 "39-71-421. Financial incentives to institute safety
 18 programs. The state compensation insurance fund, plan No.
 19 3, and private insurers, plan Plan No. 2, insurers may
 20 provide financial incentives to an employer who implements a
 21 formal safety program. The insurance carrier insurer may
 22 provide to an employer a premium discount that reflects the
 23 degree of risk diminished by the implemented safety
 24 program."

25 **Section 12.** Section 39-71-502, MCA, is amended to

1 read:

2 "39-71-502. Creation and purpose of uninsured
3 employers' fund. There is created an uninsured employers'
4 fund. The purpose of the fund is to pay to an injured
5 employee of an uninsured employer the same benefits the
6 employee would have received if the employer had been
7 properly enrolled under compensation plan No. 1 or No. 2,
8 or-3, except as provided in 39-71-503(2)."

9 **Section 13.** Section 39-71-504, MCA, is amended to
10 read:

11 "39-71-504. Funding Financing of fund -- option for
12 agreement between division and injured employee. The fund
13 shall be funded financed in the following manner:

14 (1) (a) The division shall require that the uninsured
15 employer pay to the fund a penalty of-either equal to the
16 greater of:

17 (ii) double the premium amount the employer would have
18 paid on the payroll of the employer's workers in this state
19 if-the-employer-had-been-enrolled-with-compensation-plan-No-
20 3, based on the average of quotes from three workers'
21 compensation insurers operating in the state, as that
22 average is determined by the division; or

23 (ii) \$200; ~~whichever is greater.~~

24 (b) In determining the premium amount for the
25 calculation of the penalty under ~~this~~ subsection (1)(a)(i),

1 the division shall make an assessment on how much premium
2 would have been paid on the employer's past 3-year payroll
3 for periods within the 3 years when the employer was
4 uninsured.

5 (c) An assessment for payroll paid by the uninsured
6 employer for any time prior to July 1, 1977, may not be
7 made.

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

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

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

21 (4) The division may enter into an agreement with the
22 injured employee or the employee's beneficiaries to assign
23 to the employee or the beneficiaries all or part of the
24 funds received by the division from the uninsured employer
25 pursuant to subsection (2)(a)."

1 **Section 14.** Section 39-71-505, MCA, is amended to
2 read:

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

7 **Section 15.** Section 39-71-515, MCA, is amended to
8 read:

9 **"39-71-515. Independent cause of action.** (1) An
10 injured employee or the employee's beneficiaries have an
11 independent cause of action against an uninsured employer
12 for failure to be enrolled in a compensation plan as
13 required by this chapter.

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

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

20 (b) the employer was not ~~so~~ enrolled on the date of
21 the injury or death.

22 (3) It is not a defense to such an action under this
23 section that the employee had knowledge of or consented to
24 the employer's failure to carry insurance or that the
25 employee was negligent in permitting such the failure to

1 exist carry insurance.

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

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

10 **Section 16.** Section 39-71-704, MCA, is amended to
11 read:

12 **"39-71-704. Payment of medical, hospital, and related**
13 **services -- fee schedules and hospital rates.** (1) In
14 addition to the compensation provided by this chapter and as
15 an additional benefit separate and apart from compensation,
16 the following shall be furnished:

17 (a) After ~~the--happening--of~~ the injury, the insurer
18 shall furnish, without limitation as to length of time or
19 dollar amount, reasonable services by a physician or
20 surgeon, reasonable hospital services and medicines when
21 needed, and such other treatment as may be approved by the
22 division for the injuries sustained.

23 (b) The insurer shall replace or repair prescription
24 eyeglasses, prescription contact lenses, prescription
25 hearing aids, and dentures that are damaged or lost as a

1 result of an injury, as defined in 39-71-119, arising out of
2 and in the course of employment.

3 (2) A relative value fee schedule for medical,
4 chiropractic, and paramedical services provided for in this
5 chapter, excluding hospital services, shall be established
6 annually by the workers' compensation division and become
7 effective in January of each year. The maximum fee schedule
8 must be adopted as a relative value fee schedule of medical,
9 chiropractic, and paramedical services, with unit values to
10 indicate the relative relationship within each grouping of
11 specialties. ~~Medical fees must be based on the median fees~~
12 ~~as billed to the state compensation insurance fund during~~
13 ~~the year preceding the adoption of the schedule.~~ The
14 division shall adopt rules establishing relative unit
15 values, groups of specialties, the procedures insurers must
16 use to pay for services under the schedule, and the method
17 of determining the median of billed medical fees. These
18 rules shall be modeled on the 1974 revision of the 1969
19 California Relative Value Studies.

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

1 (4) Notwithstanding subsection (2), beginning January
2 1, 1988, and ending January 1, 1990, the maximum fees
3 payable by insurers must be limited to the relative value
4 fee schedule established in January 1987. Notwithstanding
5 subsection (3), the hospital rates payable by insurers must
6 be limited to those set in January 1988, until December 31,
7 1989."

8 **Section 17.** Section 39-71-908, MCA, is amended to
9 read:

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

22 **Section 18.** Section 39-71-910, MCA, is amended to
23 read:

24 "39-71-910. Procedure for resolving disputes as to
25 liability under part. (1) If an employee was employed or

retained in employment under the provisions of this part and a dispute or controversy arises as to payment of benefits or the liability therefor for benefits, the division shall hold a hearing and resolve all disputes. On motion made in writing by the employer, ~~carrier, or industrial insurance fund~~ or the insurer, the administrator shall join the fund as a party defendant.

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

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

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

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

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

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

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

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

"39-71-1004. **Industrial accident rehabilitation account.** (1) The payments provided in 39-71-1003 ~~shall~~ must be made from the industrial accident rehabilitation account in the state special revenue fund. Payments to the account ~~shall~~ must be made on or before July 1 of each year as

1 follows:

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

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

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

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

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

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

14 **Section 22.** Section 39-71-2201, MCA, is amended to
15 read:

16 "39-71-2201. Election to be bound by plan. (1) Any
17 employer ~~except those specified in 39-71-403~~ may, by filing
18 his election to become bound by compensation plan No. 2,
19 insure his liability to pay the compensation and benefits
20 provided by this chapter with any insurance company
21 authorized to transact such workers' compensation business
22 in this state.

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

Section 23. Section 39-72-310, MCA, is amended to read:

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

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

~~(3) Under compensation plan No. 3, any premiums and other receipts held by the division for occupational disease~~

~~insurance coverage shall be transferred and become part of the workers' compensation industrial insurance account, and payments for occupational disease claims by the state fund shall be paid out of the industrial insurance account."~~

Section 24. Section 33-17-502, MCA, is amended to read:

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

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

1 \$1,500.

2 (3) Nothing in this part applies to:

3 (a) a licensed attorneys attorney at law in this state
4 acting in their his professional capacity; or

5 (b) an actuary or a certified public accountant who
6 provides information, recommendations, advice, or services
7 in his professional capacity if neither he nor his employer
8 receives any compensation directly or indirectly on account
9 of any insurance, bond, annuity or pension contract that
10 results in whole or part from that information,
11 recommendation, advice, or services; or

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

15 **Section 25.** Section 33-18-212, MCA, is amended to
16 read:

17 "33-18-212. Illegal dealing in premiums -- improper
18 charges for insurance. (1) No A person ~~shall~~ may not
19 willfully collect any sum as a premium or charge for
20 insurance, ~~which if the~~ insurance is not then provided or is
21 not in due course to be provided (subject to acceptance of
22 the risk by the insurer) by an insurance policy issued by an
23 insurer as authorized by this code.

24 (2) No A person ~~shall~~ may not willfully collect as a
25 premium or charge for insurance any sum in excess of or less

1 than the premium or charge applicable to ~~such the~~ insurance
2 and, as specified in the policy, in accordance with the
3 applicable classifications and rates ~~as~~ filed with and
4 approved by the commissioner; or in cases where
5 classifications, premiums, or rates are not required by this
6 code to be ~~so~~ filed and approved, ~~such the~~ premiums and
7 charges ~~shall~~ may not be in excess of or less than those
8 specified in the policy and ~~as~~ fixed by the insurer. This
9 provision ~~shall~~ may not be ~~deemed~~ considered to prohibit the
10 charging and collection, by surplus lines agents licensed
11 under Title 33, chapter 2, part 3, of this title, of the
12 amount of applicable state and federal taxes in addition to
13 the premium required by the insurer. It ~~shall~~ may not be
14 ~~deemed~~ considered to prohibit the charging and collection,
15 by a life insurer, of amounts to be actually ~~to be~~ expended
16 for medical examination of an applicant for life insurance
17 or for reinstatement of a life insurance policy. ~~The~~
18 ~~provision -- of -- this -- subsection -- does -- not -- prohibit -- the~~
19 ~~collection -- from -- an -- insured -- of -- a -- placement -- fee -- not -- to -- exceed~~
20 ~~7-1/2% -- of -- the -- annual -- premium -- for -- placement -- through -- the~~
21 ~~state -- compensation -- insurance -- fund -- by -- a -- duly -- licensed~~
22 ~~casualty -- insurance -- agent -- This -- placement -- fee -- is -- not -- a~~
23 ~~premium -- as -- defined -- in -- 33 -- 15 -- 102.~~

24 (3) Each violation of this section ~~shall be~~ is
25 punishable under 33-1-104."

Section 26. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition --
requisites for validity. (1) A statutory appropriation is an
appropriation made by permanent law that authorizes spending
by a state agency without the need for a biennial
legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be
effective, a statutory appropriation must comply with both
of the following provisions:

(a) The law containing the statutory authority must be
listed in subsection (3).

(b) The law or portion of the law making a statutory
appropriation must specifically state that a statutory
appropriation is made as provided in this section.

(3) The following laws are the only laws containing
statutory appropriations: 2-9-202; 2-17-105; 2-18-812;
10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304;
15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101;
16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424;
17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205;
19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606;
19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111;
23-5-610; 23-5-1027; 33-31-212; 33-31-401; 37-51-501;
39-71-2504; 53-6-150; 53-24-206; 67-3-205; 75-1-1101;
75-7-305; 76-12-123; 80-2-103; 80-2-228; 82-11-136;

90-3-301; 90-3-302; 90-3-412; 90-4-215; 90-9-306; 90-15-103;
section 13, House Bill No. 861, Laws of 1985; and section 1,
Chapter 454, Laws of 1987.

(4) There is a statutory appropriation to pay the
principal, interest, premiums, and costs of issuing, paying,
and securing all bonds, notes, or other obligations, as due,
that have been authorized and issued pursuant to the laws of
Montana. Agencies that have entered into agreements
authorized by the laws of Montana to pay the state
treasurer, for deposit in accordance with 17-2-101 through
17-2-107, as determined by the state treasurer, an amount
sufficient to pay the principal and interest as due on the
bonds or notes have statutory appropriation authority for
such payments. (In subsection (3): pursuant to sec. 15, Ch.
607, L. 1987, the inclusion of 15-65-121 terminates June 30,
1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion
of 39-71-2504 terminates June 30, 1991; and pursuant to sec.
6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L.
1987, terminates July 1, 1988.)"

Section 27. Section 45-7-501, MCA, is amended to read:

"45-7-501. Employer misconduct. (1) A person who is an
employer, as defined in 39-71-117, commits the offense of
employer misconduct if he knowingly or purposely:

(a) avoids his responsibility to provide coverage for
his employees as required by 39-71-401;

1 (b) misrepresents or falsifies employment records or
2 information, including but not limited to understating the
3 amount of payroll or the number of his employees; or

4 (c) refuses to pay premiums that he is obligated to
5 pay under compensation plan No. 2, as provided in Title 39,
6 chapter 71, part 22, ~~or compensation plan No. 3, as provided~~
7 ~~in Title 39, chapter 71, part 23.~~

8 (2) A person convicted of the offense of employer
9 misconduct shall be fined an amount not to exceed \$50,000 or
10 imprisoned in the state prison for any term not to exceed 10
11 years, or both."

12 NEW SECTION. Section 28. Repealer. Sections
13 39-71-2301 through 39-71-2308, 39-71-2321 through
14 39-71-2327, and 39-71-2501 through 39-71-2504, MCA, are
15 repealed.

16 NEW SECTION. Section 29. Extension of authority. Any
17 existing authority to make rules on the subject of the
18 provisions of [this act] is extended to the provisions of
19 [this act].

20 NEW SECTION. Section 30. Codification instruction.
21 [Section 2] is intended to be codified as an integral part
22 of Title 39, chapter 71, and the provisions of Title 39,
23 chapter 71, apply to [section 2].

24 NEW SECTION. Section 31. Effective dates. (1)
25 Sections 1, 29, and this section are effective on passage

1 and approval.

2 (2) Sections 2 through 28 and 30 are effective on the
3 date a sale is made under [section 1].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB186, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill for an act entitled: "An act requiring the sale of the state workers' compensation insurance plan and fund to the highest bidder; providing for a sale procedure; providing for disposition of the proceeds of the sale; providing for an assigned apportionment to insurers of the insurance coverage for high-risk employers; and amending sections....."

ASSUMPTIONS:

Division of Workers' Compensation:

1. Division of Workers' Compensation will cooperate with the Department of Administration in planning the sale of the State Insurance Fund.
2. Preparing documents for review by prospective bidders and making sure the state is protected from future liability will require outside legal counsel - \$30,000.
3. The state will need to evaluate proposals presented through the use of a consulting actuary or financial managers to ensure what is presented is feasible - \$25,000.
4. Any routinely produced data will be available to prospective or successful bidders. Any cost of additional data will be borne by the requestor. The successful bidder will bear the cost of formatting data into a usable form.
5. Equipment presently used by the State Insurance Fund will be available for use by the Division.
6. Insurers must report summary billed medical amounts by CPT procedure or some other agreed upon coding structure on a monthly basis.
7. Sale of the State Insurance Fund would result in decreased staff requirements in the Administrative Support Bureau. The following reductions would occur:
 - 1.0 Management Analyst, grade 14
 - 2.0 Data Entry Operators, grade 7
 - .5 Mail Clerk, grade 6
 - 1.0 Supervisor, grade 14
 - 6.5 Accounting staff, one grade 11,
two grade 9, one grade 10, two grade 7,
one-half grade 8
8. The addition of an assigned risk pool would require additional staff in the Administrative Support Bureau as follows:
 - .5 Mail Clerk, grade 6
 - 1.0 Programmer Analyst, grade 14

Ray Shackelford 1/25/89
RAY SHACKLEFORD, BUDGET DIRECTOR DATE
OFFICE OF BUDGET AND PROGRAM PLANNING

Paul F. Boylan 5/3/89
PAUL F. BOYLAN, PRIMARY SPONSOR DATE
Fiscal Note for SB186, as introduced

SB 186

9. Collection of medical payment data from all insurers would require additional staff in the Administrative Support Bureau as follows:
 - 1.0 Data Entry Operator, grade 7
10. The Insurance Compliance Bureau will manage the assigned risk pool, which will require the following additional personnel:
 - 1.0 Program Officer, grade 15 - supervise the assigned risk program and development of the system; act as liaison with Insurance Commissioner's Office.
 - 3.0 Program Specialists, grade 13
 - 1.0 Program Technician, grade 9
 - 1.0 Administrative Aide, grade 8 - these five positions would manage the assigned risk pool, make assignments, maintain liaison between employers and insurers, respond to inquiries, and maintain records.
11. Many of the functions of the Insurance Compliance Bureau are currently coordinated with the State Insurance Fund, including claims examination, records management, and clerical support. With the separation of the State Insurance Fund, the Insurance Compliance Bureau will require the following additional personnel:

Claims Management

- 4.0 Claims Examiners, grade 12 - Currently the Insurance Compliance Bureau relies on the State Insurance Fund claims examiners to provide summaries of claims in process of settlement; however, Insurance compliance Bureau personnel prepare these summaries for Plan I and II insurers. Further, the Insurance Compliance Bureau currently devotes most of its time to responding to inquiries and complaints relating to Plan I and II claims because the State Insurance Fund examiners are more familiar with the law and generally handle their own claims. Insurance Compliance would also need to review files as is currently done to ensure insurers comply with laws.
- 15.0 Administrative Clerks, five grade 8 and ten grade 7 - Files Management staff currently handle Plan I and II files exclusively. Reallocation of Plan III employers will cause a significant increase in the workload of Files Management - approximately five times current workload.

The five grade 8 clerks would be responsible for reviewing all claims and entering pertinent data to the computer. The ten grade 7 clerks would be responsible for maintaining and updating claim files and general filing duties.

Policy Compliance

1.0 Compliance specialist, grade 13 - Larger employers currently insured by Plan II would probably consider the Plan I (self-insured) alternative. Further, more public corporations and state agencies currently insured under Plan III would consider self-insurance individually or as groups.

1.0 Program Technician, grade 9 - The State Insurance Fund currently handles all Plan III extraterritorial certificates and corporate officer exemptions; would increase Insurance Compliance Bureau workload to process and approve these; also insurers would be required to file notice of insured employers with the Division.

Clerical Support

1.0 word processor, grade 7 - The State Insurance Fund currently prepares its own settlement orders. Insurance Compliance will assume this responsibility.

12. Public entities will form self-insurance groups. Administration of these groups will have a cost to the state that is presently undeterminable.
13. Workload for the Accident Cataloging and Uninsured Employers' Units will remain constant.
14. Payroll Tax to reduce the unfunded liability will be repealed.
15. All personnel costs, both current and proposed, are estimated at step two of the appropriate grade. Benefits of 21% are calculated.
16. Computer system development will be required to replace State Fund data currently accessible to the Insurance Compliance Bureau:
 - Identification of uninsured employers for potential assignment to the assigned risk pool - 160 hrs. @ \$49/hr. - \$7,840
 - System to process increased volume of employer coverage initiations and terminations - 400 hrs. @ \$49./hr. - \$19,600
 - System to assign and track the assigned risk pool - 800 hrs. @ \$49/hr. - \$39,200
 - System to accept and track medical billing information for development of fee schedule - 800 hrs. @ \$49/hr. - \$39,200
17. Printing costs will increase because of new informational materials and new and revised forms.
18. Postage increases are due to increased mail between the Division and carriers and interaction with claimants, attorneys, etc., in an increased and more comprehensive manner.
19. Travel will increase due to off-site locations due to movement of State Insurance Fund claims outside the Division.
20. Computer operational costs for the Insurance Compliance Bureau will increase due to an increased number of claims to be handled when Plan III claims become Plan II claims. In addition, costs will increase to process employers to the assigned risk pool - \$150/mo. Additional operational costs to process and store medical data to support the Montana Relative Value Schedule analysis are estimated at \$12,000 each year.

SB 186

Fiscal Note Request SB186 as introduced

Form BD-15

Page 4

Department of Labor and Industry:

1. Eight FTE's can be RIFed by this measure, 7 field auditors and 1 central office clerical.
2. Only those with the lowest seniority will be RIFed; as these are also the lowest paid staff, actual overall personal services cost reductions will not equate to an averaged personal services reduction.
3. Some operating costs, such as supplies and communications, will be reduced by as much as 50%; other operating costs, such as travel, will be reduced by only one-third, because remaining staff will have to cover the same statewide area, and will have to spend more in per diem and motel costs as a result; still other operating costs, such as standard monthly computer access fees, rent and electricity, will not be reduced at all by the proposed legislation.
4. Current law reflects FY89 authorized level.

FISCAL IMPACT:

Division of Workers'		FY90		FY91		
Compensation	Current	Proposed		Current	Proposed	
<u>Expenditures:</u>	<u>Law</u>	<u>Law</u>	<u>Difference</u>	<u>Law</u>	<u>Law</u>	<u>Difference</u>
Administration						
Program	\$2,211,024	\$2,140,474	\$ (70,550)	\$2,144,593	\$1,906,719	\$ (237,874)
State Insurance						
Fund	4,530,741	-0-	(4,530,741)	4,577,491	-0-	(4,577,491)
Insurance						
Compliance	1,809,155	2,376,942	567,787	1,777,837	2,342,022	564,185
Safety Program	974,992	974,992	-0-	944,806	944,806	-0-
<u>Fund Impact:</u>						
State Special	\$9,525,912	\$5,492,408	\$(4,033,504)	\$9,444,727	\$5,193,547	\$(4,251,180)

The impact of this legislation will no doubt decrease the operational costs of the Division of Workers' Compensation. However, the impact on employer premiums with private carriers is undeterminable.

Department of Labor		FY90		FY91		
& Industry:	Current	Proposed		Proposed Law	Difference	
<u>Expenditures:</u>	<u>Law</u>	<u>Law</u>	<u>Difference</u>			
Personal Services	\$639,382	\$450,450	\$ (188,932)	\$450,450	\$(188,932)	
Operating Expenses	223,914	157,359	(66,555)	157,359	(66,555)	
Total Expenditures	\$863,296	\$607,809	\$ (255,487)	\$607,809	\$(255,487)	
<u>Fund Impact:</u>						
State Special			\$ (255,487)		\$(255,487)	

SB 186

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

Division of Workers' Compensation:

Any county or local governmental entity currently insured with the State Insurance Fund could experience a rate change. Those governmental entities which belong to a pool would not be impacted.

TECHNICAL OR MECHANICAL DEFECTS OR CONFLICTS WITH EXISTING LEGISLATION:

Division of Workers' Compensation:

It appears that the debt service payments for the Workers' Compensation Building may be paid from any monies available to the Division. Debt service indenture does not require the use of a specific source of revenue; i.e., assessments against the State Insurance Fund.

SB 186

APPROVED BY COMM. OF
BUSINESS & INDUSTRY

SENATE BILL NO. 186

INTRODUCED BY BOYLAN, HARP, WALLIN,

GIACOMETTO, WESTLAKE, PATTERSON

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING ALLOWING THE SALE OF THE STATE WORKERS' COMPENSATION INSURANCE PLAN AND FUND ~~TO THE HIGHEST RESPONSIBLE BIDDER; PROVIDING FOR A SALE PROCEDURE; PROVIDING FOR DISPOSITION OF THE PROCEEDS OF THE SALE; PROVIDING FOR AN ASSIGNED APPORTIONMENT TO INSURERS OF INSURANCE---COVERAGE---FOR---HIGH-RISK---EMPLOYERS; AMENDING SECTIONS 17-7-502, 33-17-502, 33-18-212, 39-71-102, 39-71-103, 39-71-116, 39-71-201, 39-71-206, 39-71-308, 39-71-401, 39-71-403, 39-71-421, 39-71-502, 39-71-504, 39-71-505, 39-71-515, 39-71-704, 39-71-908, 39-71-910, 39-71-911, 39-71-913, 39-71-1004, 39-71-2201, 39-72-310, AND 45-7-501, MCA; REPEALING SECTIONS 39-71-2301 THROUGH 39-71-2308, 39-71-2321 THROUGH 39-71-2327, AND 39-71-2501 THROUGH 39-71-2504, MCA; AND PROVIDING EFFECTIVE DATES."~~

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

NEW SECTION. Section 1. Sale of state workers' compensation insurance plan and fund -- procedure. (1) Within 180 days after {the effective date of this section} the governor shall sell the state workers' compensation insurance plan and fund created and provided for in Title

39, chapter 71, part 23, and referenced in other provisions of Title 39, chapter 71, and Title 33, chapters 17 and 18. The governor shall request bids and ensure that the request is adequately publicized in the press, major financial publications, and the financial and insurance industries. All advertisements must be published within 60 days after {the effective date of this section}. Interested parties must be allowed 60 days from the date the last advertisement is published to submit proposals for purchase. The sale must be to the responsible insurance or other company submitting the highest bid.

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

{3} Upon receipt of a bid proposal, the governor shall submit it to the legislative audit committee. The committee shall review the proposals and submit comments to the

governor-on-the-qualifications-of-each-bidder.

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

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

(6)--The-proceeds-of-the-sale-must-be-deposited-in--the general-fund. THE DEPARTMENT OF ADMINISTRATION SHALL SOLICIT PROPOSALS TO PURCHASE THE STATE WORKERS' COMPENSATION INSURANCE PLAN AND FUND. A PURCHASE PROPOSAL MUST PROPOSE

TO ASSUME ALL THE LIABILITIES AND PURCHASE ALL THE ASSETS OF THE FUND, INCLUDING THE ASSETS OF EQUIPMENT; FURNITURE; OFFICE SUPPLIES; BOOKS AND RECORDS, COMPUTERIZED OR OTHER; FUTURE BUSINESS; AND FINANCIAL ASSETS. THE PROPOSAL MAY INCLUDE AN OFFER TO PURCHASE OR LEASE THE BUILDING THAT HOUSES THE WORKERS' COMPENSATION DIVISION THAT IS SITUATED ON THE CORNER OF BROADWAY AND SOUTH LAST CHANCE GULCH IN HELENA, MONTANA, AND MAY OFFER TO LEASE ANY PART OF THE BUILDING BACK TO THE STATE OF MONTANA. THE PROPOSAL MUST AGREE TO INSURE ANY EMPLOYER COVERED BY TITLE 39, CHAPTER 71 OR 72, REGARDLESS OF THE NATURE OF THE EMPLOYER'S BUSINESS OR RISK RATING FOR PURPOSES OF INSURANCE, FOR AS LONG AS THE EMPLOYER DESIRES WORKERS' COMPENSATION INSURANCE.

(2) THE DEPARTMENT OF ADMINISTRATION SHALL REVIEW AND PREPARE COMMENTS AND A RECOMMENDATION REGARDING EACH PROPOSAL. THE 52ND LEGISLATURE AND ANY SPECIAL SESSION OF THE LEGISLATURE MEETING BEFORE THE CONVENING OF THE 52ND LEGISLATURE MAY REVIEW THE PROPOSALS THAT HAVE BEEN SUBMITTED AND THE COMMENTS AND RECOMMENDATIONS OF THE DEPARTMENT OF ADMINISTRATION AND ORDER THE DEPARTMENT TO ACCEPT A PROPOSAL AND SELL THE FUND AND PLAN.

NEW-SECTION--Section 2--Assigned-risk-plan--(1)-The division-shall-promulgate-and-administer--a-plan--for--the equitable--apportionment--among--plan-No--2--insurers--of coverage-required-by-this-chapter--for--employers--who--were

unable-to-procure-coverage-through-ordinary-methods;

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

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

Section 2. Section 39-71-102, MCA, is amended to read:

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

Section 3. Section 39-71-103, MCA, is amended to read:

"39-71-103. Compensation provisions. The compensation provisions of this chapter, whenever referred to, ~~shall~~ must be held to include the provisions of compensation plan plans No. 17 and No. 27 or 3 and all other sections of this chapter applicable to the ~~same or any part thereof~~ any part of those plans."

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

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

(1) "Average weekly wage" means the mean weekly

earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the division of workers' compensation prior to July 1 of each year.

(2) "Beneficiary" means:

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

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

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

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

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

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

1 section, exists).

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

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

7 (5) "Days" means calendar days, unless otherwise
8 specified.

9 (6) "Department" means the department of labor and
10 industry.

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

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

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

21 (10) "Invalid" means one who is physically or mentally
22 incapacitated.

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

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

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

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

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

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

24 (15) "Permanent total disability" means a condition
25 resulting from injury as defined in this chapter, after a

1 worker reaches maximum healing, in which a worker is unable
2 to return to work in the worker's job pool after exhausting
3 all options set forth in 39-71-1012.

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

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

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

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

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

23 (21) "Temporary total disability" means a condition
24 resulting from an injury as defined in this chapter that
25 results in total loss of wages and exists until the injured

1 worker reaches maximum healing.

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

4 **Section 5.** Section 39-71-201, MCA, is amended to read:

5 "39-71-201. **Administration fund.** (1) A workers'
6 compensation administration fund is established out of which
7 all costs of administering the Workers' Compensation and
8 Occupational Disease Acts and the various occupational
9 safety acts the division must administer are to be paid upon
10 lawful appropriation. The following ~~moneys~~ money collected
11 by the division ~~shall~~ must be deposited in the state
12 treasury to the credit of the workers' compensation
13 administrative fund and ~~shall~~ must be used for the
14 administrative expenses of the division:

15 (a) all fees and penalties provided in 39-71-205 and
16 39-71-304;

17 (b) all fees paid for inspection of boilers and
18 issuance of licenses to operating engineers as required by
19 law;

20 (c) all fees paid from an assessment on each plan No.
21 1 employer, and plan No. 2 insurer, ~~and plan No. 3, the~~
22 ~~state insurance fund.~~ The assessments ~~shall~~ must be levied
23 against the preceding calendar year's gross annual payroll
24 of the plan No. 1 employers and the gross annual direct
25 premiums collected in Montana on the policies of the plan

1 No. 2 insurers, insuring employers covered under the
 2 chapter, during the preceding calendar year. However, no
 3 assessment of the plan No. 1 employer or plan No. 2 insurer
 4 ~~shall~~ may be less than \$200. The assessments ~~shall~~ must be
 5 sufficient to fund the direct costs identified to the three
 6 two plans and an equitable portion of the indirect costs
 7 based on the ratio of the preceding fiscal year's indirect
 8 costs distributed to the plans using proper accounting and
 9 cost allocation procedures. ~~Plan No. 3 shall be assessed an~~
 10 ~~amount sufficient to fund its direct costs and an equitable~~
 11 ~~portion of the indirect costs as referred to above.~~ Other
 12 sources of revenue, including unexpended funds from the
 13 preceding fiscal year, ~~shall~~ must be used to reduce the
 14 costs before levying the assessments.

15 (2) The administration fund ~~shall~~ must be debited with
 16 expenses incurred by the division in the general
 17 administration of the provisions of this chapter, including
 18 the salaries of its members, officers, and employees and the
 19 travel expenses of the members, officers, and employees, as
 20 provided for in 2-18-501 through 2-18-503, ~~as amended,~~
 21 incurred while on the business of the division either within
 22 or without the state.

23 (3) Disbursements from the administration money ~~shall~~
 24 must be made after being approved by the division upon
 25 submission of a claim therefor."

1 **Section 6.** Section 39-71-206, MCA, is amended to read:

2 "39-71-206. Legal advisers of division. ~~{1}~~ The
 3 attorney general ~~shall--be~~ is the legal adviser of the
 4 division and shall represent it in all proceedings whenever
 5 ~~so~~ requested by the division or any member thereof of the
 6 division.

7 ~~{2}--The division may, in the investigation and defense~~
 8 ~~of cases under plan No. 3 of the Workers' Compensation Act,~~
 9 ~~employ such other attorney or legal adviser as it deems~~
 10 ~~necessary and pay for the same out of the industrial~~
 11 ~~insurance account in the expendable trust fund."~~

12 **Section 7.** Section 39-71-308, MCA, is amended to read:

13 "39-71-308. Neglect or refusal of public corporation
 14 to file payroll reports -- arbitrary assessment by division.
 15 Whenever If any public corporation insured--by--the--state
 16 compensation--insurance--fund neglects or refuses to file
 17 prescribed payroll reports of its employees, the division
 18 may levy an arbitrary assessment upon ~~such~~ the public
 19 corporation in an amount of \$75 for each ~~such~~ assessment,
 20 ~~which~~ The assessments ~~shall~~ must be collected in the manner
 21 provided in this chapter for the collection of assessments,"

22 **Section 8.** Section 39-71-401, MCA, is amended to read:

23 "39-71-401. Employments covered and employments
 24 exempted. (1) Except as provided in subsection (2) ~~of this~~
 25 section, the Workers' Compensation Act applies to all

1 employers as defined in 39-71-117 and to all employees as
 2 defined in 39-71-118. An employer who has any employee in
 3 service under any appointment or contract of hire, expressed
 4 or implied, oral or written, shall elect to be bound by the
 5 provisions of compensation plan No. 17 or No. 27-or-3. Every
 6 employee whose employer is bound by the Workers'
 7 Compensation Act is subject to and bound by the compensation
 8 plan that has been elected by the employer.

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

- 13 (a) household and domestic employment;
- 14 (b) casual employment as defined in 39-71-116;
- 15 (c) employment of members of an employer's family
 16 dwelling in the employer's household;
- 17 (d) employment of sole proprietors or working members
 18 of a partnership, except as provided in subsection (3);
- 19 (e) employment of a broker or salesman performing
 20 under a license issued by the board of realty regulation;
- 21 (f) employment of a direct seller engaged in the sale
 22 of consumer products, primarily in the customer's home;
- 23 (g) employment for which a rule of liability for
 24 injury, occupational disease, or death is provided under the
 25 laws of the United States;

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

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

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

11 (k) any person performing services as a newspaper
 12 carrier or free-lance correspondent if the person performing
 13 the services, or a parent or guardian of the person
 14 performing the services in the case of a minor, has
 15 acknowledged in writing that the person performing the
 16 services and the services are not covered. As used in this
 17 subsection "free-lance correspondent" is a person who
 18 submits articles or photographs for publication and is paid
 19 by the article or by the photograph. As used in this
 20 subsection "newspaper carrier":

21 (i) is a person who provides a newspaper with the
 22 service of delivering newspapers singly or in bundles; but

23 (ii) does not include an employee of the paper who,
 24 incidentally to his main duties, carries or delivers papers.

25 (3) (a) A sole proprietor or a working member of a

1 partnership who holds himself out or considers himself an
 2 independent contractor [and who is not contracting] for
 3 cosmetologist's services or barber's services as defined in
 4 39-51-204(1)(1) must elect to be bound personally and
 5 individually by the provisions of compensation plan No. 1,
 6 or No. 2, or-3, but he may apply to the division for an
 7 exemption from the Workers' Compensation Act for himself.

8 (b) The application must be made in accordance with
 9 the rules adopted by the division. The division may deny the
 10 application only if it determines that the applicant is not
 11 an independent contractor.

12 (c) When If an application is approved by the
 13 division, it is conclusive as to the status of an
 14 independent contractor and precludes the applicant from
 15 obtaining benefits under this chapter.

16 (d) When If an election of an exemption is approved by
 17 the division, the election remains effective and the
 18 independent contractor retains his status as an independent
 19 contractor until he notifies the division of any change in
 20 his status and provides a description of his present work
 21 status.

22 (e) If the division denies the application for
 23 exemption, the applicant may contest the denial by
 24 petitioning for review of the decision by an appeals referee
 25 in the manner provided for in 39-51-1109. An applicant

1 dissatisfied with the decision of the appeals referee may
 2 appeal the decision in accordance with the procedure
 3 established in 39-51-2403 and 39-51-2404.

4 (4) (a) A private corporation shall provide coverage
 5 for its officers and other employees under the provisions of
 6 compensation plan No. 1, or No. 2, or-3. However, pursuant
 7 to such rules as adopted by the division promulgates and
 8 subject in all cases to approval by the division, an officer
 9 of a private corporation may elect not to be bound as an
 10 employee under this chapter by giving a written notice, on a
 11 form provided by the division, served in the following
 12 manner:

13 (i) if the employer has elected to be bound by the
 14 provisions of compensation plan No. 1, by delivering the
 15 notice to the board of directors of the employer and the
 16 division; or

17 (ii) if the employer has elected to be bound by the
 18 provisions of compensation plan No. 2 or--3, by delivering
 19 the notice to the board of directors of the employer, the
 20 division, and the insurer.

21 (b) If the employer changes plans or insurers, the
 22 officer's previous election is not effective and the officer
 23 shall again serve notice as-provided if he elects not to be
 24 bound.

25 (c) The appointment or election of an employee as an

1 officer of a corporation for the purpose of excluding the
 2 employee from coverage under this chapter does not entitle
 3 the officer to elect not to be bound as an employee under
 4 this chapter. In any case, the officer must sign the notice
 5 required by subsection (4)(a) under oath or affirmation, and
 6 he is subject to the penalties for false swearing under
 7 45-7-202 if he falsifies the notice.

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

24 **Section 9.** Section 39-71-403, MCA, is amended to read:
 25 ~~"39-71-403. Plan three-exclusive-for-state-agencies---~~

1 election Election of plan by other public corporations. {1}
 2 ~~Where-a-state-agency-is-the-employer, the terms, conditions,~~
 3 ~~and---provisions---of---compensation--plan--No--3---shall--be~~
 4 ~~exclusive, compulsory, and obligatory upon both employer and~~
 5 ~~employee.---Any---sums---necessary---to---be---paid---under---the~~
 6 ~~provisions---of---this---chapter---by---any-state-agency-shall-be~~
 7 ~~considered-to-be-ordinary-and-necessary-expense-of-the~~
 8 ~~agency,---and---the-agency-shall-make-appropriation-of-and-pay~~
 9 ~~such-sums-into-the-state-compensation-insurance-fund-at-the~~
 10 ~~time--and--in--the--manner--provided--for--in--this-chapter,~~
 11 ~~notwithstanding-that-the-state-agency--may--have--failed--to~~
 12 ~~anticipate--such--ordinary--and--necessary--expense--in--any~~
 13 ~~budget, estimate-of-expenses, appropriations, ordinances, or~~
 14 ~~otherwise.~~

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

24 {3}{2} A public corporation, ~~other--than--a---state~~
 25 ~~agency,~~ that elects plan No. 1 may establish a fund

sufficient to pay the compensation and benefits provided for in this chapter and chapter 72 and to discharge all liabilities that reasonably incur during the fiscal year for which the election is effective. Proceeds from the fund must be used only to pay claims covered by this chapter and chapter 72 and for actual and necessary expenses required for the efficient administration of the fund.

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

Section 10. Section 39-71-421, MCA, is amended to read:

"39-71-421. Financial incentives to institute safety programs. ~~The--state--compensation-insurance-fund--plan-No-~~ ~~37--and--private--insurers--plan~~ Plan No. 27 insurers may provide financial incentives to an employer who implements a formal safety program. The insurance-carrier insurer may provide to an employer a premium discount that reflects the degree of risk diminished by the implemented safety program."

Section 11. Section 39-71-502, MCA, is amended to read:

"39-71-502. Creation and purpose of uninsured

employers' fund. There is created an uninsured employers' fund. The purpose of the fund is to pay to an injured employee of an uninsured employer the same benefits the employee would have received if the employer had been properly enrolled under compensation plan No. 17 or No. 2, or-37 except as provided in 39-71-503(2)."

Section 12. Section 39-71-504, MCA, is amended to read:

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

(1) (a) The division shall require that the uninsured employer pay to the fund a penalty ~~of-either~~ equal to the greater of:

(ii) double the premium amount the employer would have paid on the payroll of the employer's workers in this state ~~if-the-employer-had-been-enrolled-with-compensation-plan-No-~~ 3, based on the average of quotes from three workers' compensation insurers operating in the state, as that average is determined by the division; or

(ii) \$2007-~~whichever-is-greater.~~

(b) In determining the premium amount for the calculation of the penalty under this subsection (1)(a)(i), the division shall make an assessment on how much premium would have been paid on the employer's past 3-year payroll

1 for periods within the 3 years when the employer was
2 uninsured.

3 (c) An assessment for payroll paid by the uninsured
4 employer for any time prior to July 1, 1977, may not be
5 made.

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

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

14 (3) The division may determine that the \$1,000
15 ~~assessments~~ assessment that are is charged against an
16 insurer in each case of an industrial death under
17 39-71-902(1) shall be paid to the uninsured employers' fund
18 rather than the subsequent injury fund.

19 (4) The division may enter into an agreement with the
20 injured employee or the employee's beneficiaries to assign
21 to the employee or the beneficiaries all or part of the
22 funds received by the division from the uninsured employer
23 pursuant to subsection (2)(a)."

24 **Section 13.** Section 39-71-505, MCA, is amended to
25 read:

1 "39-71-505. Applicability of other provisions of
2 chapter to fund. All appropriate provisions in the Workers'
3 Compensation Act apply to the fund in the same manner as
4 they apply to compensation plans No. 17 and No. 27--and--3."

5 **Section 14.** Section 39-71-515, MCA, is amended to
6 read:

7 "39-71-515. Independent cause of action. (1) An
8 injured employee or the employee's beneficiaries have an
9 independent cause of action against an uninsured employer
10 for failure to be enrolled in a compensation plan as
11 required by this chapter.

12 (2) In ~~such-an~~ the action, prima facie liability of
13 the uninsured employer exists if the claimant proves, by a
14 preponderance of the evidence, that:

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

18 (b) the employer was not ~~so~~ enrolled on the date of
19 the injury or death.

20 (3) It is not a defense to ~~such an~~ action under this
21 section that the employee had knowledge of or consented to
22 the employer's failure to carry insurance or that the
23 employee was negligent in permitting ~~such~~ the failure to
24 exist carry insurance.

25 (4) The amount of recoverable damages in ~~such-an~~ the

1 action is the amount of compensation that the employee would
2 have received had the employer been properly enrolled under
3 compensation plan No. 17 or No. 27-or-3.

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

8 **Section 15.** Section 39-71-704, MCA, is amended to
9 read:

10 "39-71-704. Payment of medical, hospital, and related
11 services -- fee schedules and hospital rates. (1) In
12 addition to the compensation provided by this chapter and as
13 an additional benefit separate and apart from compensation,
14 the following shall be furnished:

15 (a) After ~~the--happening--of~~ the injury, the insurer
16 shall furnish, without limitation as to length of time or
17 dollar amount, reasonable services by a physician or
18 surgeon, reasonable hospital services and medicines when
19 needed, and ~~such~~ other treatment as may be approved by the
20 division for the injuries sustained.

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

1 (2) A relative value fee schedule for medical,
2 chiropractic, and paramedical services provided for in this
3 chapter, excluding hospital services, shall be established
4 annually by the workers' compensation division and become
5 effective in January of each year. The maximum fee schedule
6 must be adopted as a relative value fee schedule of medical,
7 chiropractic, and paramedical services, with unit values to
8 indicate the relative relationship within each grouping of
9 specialties. ~~Medical-fees-must-be-based-on-the--median--fees~~
10 ~~as--billed--to--the-state-compensation-insurance-fund-during~~
11 ~~the--year--preceding--the--adoption--of--the--schedule.~~ The
12 division shall adopt rules establishing relative unit
13 values, groups of specialties, the procedures insurers must
14 use to pay for services under the schedule, and the method
15 of determining the median of billed medical fees. These
16 rules shall be modeled on the 1974 revision of the 1969
17 California Relative Value Studies.

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

24 (4) Notwithstanding subsection (2), beginning January
25 1, 1988, and ending January 1, 1990, the maximum fees

payable by insurers must be limited to the relative value fee schedule established in January 1987. Notwithstanding subsection (3), the hospital rates payable by insurers must be limited to those set in January 1988, until December 31, 1989."

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

"39-71-908. Notification of fund of its potential liability under part -- review by fund. Not less than 90 or more than 150 days before the expiration of 104 weeks after the date of injury, the employer~~7-carrier7-or-the-industrial~~~~insurance--fund7--as--the--case--may--be7~~ or the insurer shall notify the fund whether it is likely that compensation may be payable beyond a period of 104 weeks after the date of the injury. The fund ~~thereafter~~ may review, at reasonable times, ~~such~~ the information ~~as the employer7-carrier7-or-industrial-insurance-fund~~ or the insurer has regarding the accident and the nature and extent of the injury and disability."

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

"39-71-910. Procedure for resolving disputes as to liability under part. (1) If an employee was employed or retained in employment under the provisions of this part and a dispute or controversy arises as to payment of benefits or

the liability ~~therefor~~ for benefits, the division shall hold a hearing and resolve all disputes. On motion made in writing by the employer~~7-carrier7--or--industrial--insurance fund~~ or the insurer, the administrator shall join the fund as a party defendant.

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

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

(4) The hearing examiner shall make findings of fact and conclusions of law determining the respective liability

1 of the employer and the fund."

2 **Section 18.** Section 39-71-911, MCA, is amended to
3 read:

4 "39-71-911. Obligation to make payments on behalf of
5 fund not an independent liability. The obligation imposed by
6 this part on the employer, ~~carrier, or industrial insurance~~
7 fund or the insurer to make payments on behalf of the fund
8 does not impose an independent liability on the employer,
9 ~~carrier, or industrial insurance fund or the insurer.~~"

10 **Section 19.** Section 39-71-913, MCA, is amended to
11 read:

12 "39-71-913. Payments by fund directly to persons
13 entitled. If the employer, ~~carrier, or the industrial~~
14 insurance fund or the insurer does not make the payments on
15 behalf of the fund, the fund may make the payments directly
16 to the persons entitled to the payments."

17 **Section 20.** Section 39-71-1004, MCA, is amended to
18 read:

19 "39-71-1004. Industrial accident rehabilitation
20 account. (1) The payments provided in 39-71-1003 ~~shall~~ must
21 be made from the industrial accident rehabilitation account
22 in the state special revenue fund. Payments to the account
23 ~~shall~~ must be made on or before July 1 of each year as
24 follows:

25 (a) by each employer operating under the provisions of

1 plan No. 1 of the Workers' Compensation Act, an amount to be
2 assessed by the division, not exceeding 1% of the
3 compensation paid to the employer's injured employees in
4 Montana for the preceding fiscal year; and

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

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

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

24 (3) The payments herein provided for ~~shall~~ under this
25 section must be made to the division, which The division

1 shall credit the sums paid to the industrial accident
2 rehabilitation account ~~which shall be~~ in the custody of the
3 state treasurer. Disbursements from the account ~~shall~~ must
4 be made after approval by the department of social and
5 rehabilitation services and upon audit and approval by the
6 department of administration.

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

12 **Section 21.** Section 39-71-2201, MCA, is amended to
13 read:

14 "39-71-2201. Election to be bound by plan. (1) Any
15 employer ~~except those specified in 39-71-403~~ may, by filing
16 his election to become bound by compensation plan No. 2,
17 insure his liability to pay the compensation and benefits
18 provided by this chapter with any insurance company
19 authorized to transact ~~such~~ workers' compensation business
20 in this state.

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

24 **Section 22.** Section 39-72-310, MCA, is amended to
25 read:

1 "39-72-310. Occupational disease coverage under
2 workers' compensation plans. (1) Every employer enrolled
3 under compensation plan No. 1 (Title 39, chapter 71, part
4 21), and every insurer writing workers' compensation
5 coverage under compensation plan No. 2 (Title 39, chapter
6 71, part 22) ~~and the state compensation insurance fund~~
7 ~~under compensation plan No. 3 (Title 39, chapter 71, part~~
8 ~~23), all provided for under the Workers' Compensation Act,~~
9 are is considered to also provide full coverage for claims
10 under this chapter. Any policy of insurance for workers'
11 compensation coverage under the Workers' Compensation Act
12 written by a private ~~insurance carrier or the state~~
13 ~~compensation insurance fund~~ insurer is considered to provide
14 full occupational disease coverage under the provisions of
15 this chapter.

16 (2) Except as provided in this chapter, the division
17 shall apply the appropriate provisions of Title 39, chapter
18 71, parts 21, and 22, ~~and 23~~, to the administration of The
19 Occupational Disease Act of Montana in the same manner as
20 they are applied to the administration of the Workers'
21 Compensation Act.

22 ~~{3}--Under compensation plan No. 3, any premiums and~~
23 ~~other receipts held by the division for occupational disease~~
24 ~~insurance coverage shall be transferred and become part of~~
25 ~~the workers' compensation industrial insurance account, and~~

1 ~~payments-for-occupational-disease-claims-by-the--state--fund~~
2 ~~shall-be-paid-out-of-the-industrial-insurance-account."~~

3 **Section 23.** Section 33-17-502, MCA, is amended to
4 read:

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

16 (2) Any person not licensed as an insurance consultant
17 with respect to the relevant kinds of insurance who receives
18 any fee for examining, appraising, reviewing, or evaluating
19 any insurance policy, annuity or pension contract, plan, or
20 program or who shall make recommendations or give advice
21 with regard to any of the above without first having been
22 licensed by the commissioner as an insurance consultant is
23 guilty of a misdemeanor and upon conviction shall be fined
24 \$1,500.

25 (3) Nothing in this part applies to:

1 (a) a licensed attorneys attorney at law in this state
2 acting in ~~their~~ his professional capacity; or

3 (b) an actuary or a certified public accountant who
4 provides information, recommendations, advice, or services
5 in his professional capacity if neither he nor his employer
6 receives any compensation directly or indirectly on account
7 of any insurance, bond, annuity or pension contract that
8 results in whole or part from that information,
9 recommendation, advice, or services; ~~or~~

10 ~~(c)--a-duty--licensed-casualty--insurance--agent--who~~
11 ~~accepts-a-fee-from-an--insured--for--placement--through--the~~
12 ~~state-compensation-insurance-fund-as-provided-in-33-18-212."~~

13 **Section 24.** Section 33-18-212, MCA, is amended to
14 read:

15 "33-18-212. Illegal dealing in premiums -- improper
16 charges for insurance. (1) No A person ~~shall~~ may not
17 willfully collect any sum as a premium or charge for
18 insurance, ~~which if the~~ insurance is not then provided or is
19 not in due course to be provided (subject to acceptance of
20 the risk by the insurer) by an insurance policy issued by an
21 insurer as authorized by this code.

22 (2) No A person ~~shall~~ may not willfully collect as a
23 premium or charge for insurance any sum in excess of or less
24 than the premium or charge applicable to ~~such the~~ insurance
25 and, as specified in the policy, in accordance with the

1 applicable classifications and rates as filed with and
 2 approved by the commissioner; or in cases where
 3 classifications, premiums, or rates are not required by this
 4 code to be so filed and approved, such the premiums and
 5 charges ~~shall~~ may not be in excess of or less than those
 6 specified in the policy and as fixed by the insurer. This
 7 provision ~~shall~~ may not be deemed considered to prohibit the
 8 charging and collection, by surplus lines agents licensed
 9 under Title 33, chapter 2, part 3, of this title, of the
 10 amount of applicable state and federal taxes in addition to
 11 the premium required by the insurer. It ~~shall~~ may not be
 12 deemed considered to prohibit the charging and collection,
 13 by a life insurer, of amounts to be actually to be expended
 14 for medical examination of an applicant for life insurance
 15 or for reinstatement of a life insurance policy. The
 16 ~~provision--of--this--subsection--does--not--prohibit--the~~
 17 ~~collection--from--an--insured--of--a--placement--fee;--not--to--exceed~~
 18 ~~7-1/2%--of--the--annual--premium;--for--placement--through--the~~
 19 ~~state--compensation--insurance--fund--by--a--duly--licensed~~
 20 ~~casualty--insurance--agent.--This--placement--fee--is--not--a~~
 21 ~~premium--as--defined--in--33-15-102.~~

22 (3) Each violation of this section ~~shall--be~~ is
 23 punishable under 33-1-104."

24 **Section 25.** Section 17-7-502, MCA, is amended to read:

25 "17-7-502. Statutory appropriations -- definition --

1 **requisites for validity.** (1) A statutory appropriation is an
 2 appropriation made by permanent law that authorizes spending
 3 by a state agency without the need for a biennial
 4 legislative appropriation or budget amendment.

5 (2) Except as provided in subsection (4), to be
 6 effective, a statutory appropriation must comply with both
 7 of the following provisions:

8 (a) The law containing the statutory authority must be
 9 listed in subsection (3).

10 (b) The law or portion of the law making a statutory
 11 appropriation must specifically state that a statutory
 12 appropriation is made as provided in this section.

13 (3) The following laws are the only laws containing
 14 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;
 15 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304;
 16 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101;
 17 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424;
 18 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205;
 19 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606;
 20 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111;
 21 23-5-610; 23-5-1027; 33-31-212; 33-31-401; 37-51-501;
 22 39-71-2504; 53-6-150; 53-24-206; 67-3-205; 75-1-1101;
 23 75-7-305; 76-12-123; 80-2-103; 80-2-228; 82-11-136;
 24 90-3-301; 90-3-302; 90-3-412; 90-4-215; 90-9-306; 90-15-103;
 25 section 13, House Bill No. 861, Laws of 1985; and section 1,

1 Chapter 454, Laws of 1987.

2 (4) There is a statutory appropriation to pay the
3 principal, interest, premiums, and costs of issuing, paying,
4 and securing all bonds, notes, or other obligations, as due,
5 that have been authorized and issued pursuant to the laws of
6 Montana. Agencies that have entered into agreements
7 authorized by the laws of Montana to pay the state
8 treasurer, for deposit in accordance with 17-2-101 through
9 17-2-107, as determined by the state treasurer, an amount
10 sufficient to pay the principal and interest as due on the
11 bonds or notes have statutory appropriation authority for
12 such payments. (In subsection (3): pursuant to sec. 15, Ch.
13 607, L. 1987, the inclusion of 15-65-121 terminates June 30,
14 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion
15 of 39-71-2504 terminates June 30, 1991; and pursuant to sec.
16 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L.
17 1987, terminates July 1, 1988.)"

18 **Section 26.** Section 45-7-501, MCA, is amended to read:

19 "45-7-501. **Employer misconduct.** (1) A person who is an
20 employer, as defined in 39-71-117, commits the offense of
21 employer misconduct if he knowingly or purposely:

22 (a) avoids his responsibility to provide coverage for
23 his employees as required by 39-71-401;

24 (b) misrepresents or falsifies employment records or
25 information, including but not limited to understating the

1 amount of payroll or the number of his employees; or

2 (c) refuses to pay premiums that he is obligated to
3 pay under compensation plan No. 2, as provided in Title 39,
4 chapter 71, part 227-or-compensation-plan-No-37-as-provided
5 in-Title-397-chapter-717-part-23.

6 (2) A person convicted of the offense of employer
7 misconduct shall be fined an amount not to exceed \$50,000 or
8 imprisoned in the state prison for any term not to exceed 10
9 years, or both."

10 **NEW SECTION. Section 27. Repealer.** Sections
11 39-71-2301 through 39-71-2308, 39-71-2321 through
12 39-71-2327, and 39-71-2501 through 39-71-2504, MCA, are
13 repealed.

14 **NEW SECTION. Section 28. 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].

18 ~~**NEW SECTION. Section 30. Codification--instruction--**~~
19 ~~{Section--2}--is-intended-to-be-codified-as-an-integral-part~~
20 ~~of-Title-397-chapter-717-and-the-provisions-of-Title-397~~
21 ~~chapter-717-apply-to-{section-2}.~~

22 **NEW SECTION. Section 29. Effective dates.** (1)
23 [Sections 1, 29 28, and this section] are effective on
24 passage and approval.

25 (2) Sections IF A SALE IS MADE UNDER [SECTION 1],

SB 0186/02

- 1 [SECTIONS 2 through 28-and-30 27] are effective on the date
- 2 a sale is made under [section 1].

-End-

SENATE BILL NO. 186

INTRODUCED BY BOYLAN, HARP, WALLIN,

GIACOMETTO, WESTLAKE, PATTERSON

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING ALLOWING THE SALE OF THE STATE WORKERS' COMPENSATION INSURANCE PLAN AND FUND ~~TO THE HIGHEST RESPONSIBLE BIDDER; PROVIDING FOR A SALE PROCEDURE; PROVIDING FOR DISPOSITION OF THE PROCEEDS OF THE SALE; PROVIDING FOR AN ASSIGNED APPORTIONMENT TO INSURERS OF INSURANCE--COVERAGE--FOR--HIGH-RISK--EMPLOYERS; AMENDING SECTIONS 17-7-502, 33-17-502, 33-18-212, 39-71-102, 39-71-103, 39-71-116, 39-71-201, 39-71-206, 39-71-308, 39-71-401, 39-71-403, 39-71-421, 39-71-502, 39-71-504, 39-71-505, 39-71-515, 39-71-704, 39-71-908, 39-71-910, 39-71-911, 39-71-913, 39-71-1004, 39-71-2201, 39-72-310, AND 45-7-501, MCA; REPEALING SECTIONS 39-71-2301 THROUGH 39-71-2308, 39-71-2321 THROUGH 39-71-2327, AND 39-71-2501 THROUGH 39-71-2504, MCA; AND PROVIDING EFFECTIVE DATES."~~

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

NEW SECTION. Section 1. Sale of state workers' compensation insurance plan and fund -- procedure. (1) Within ~~180~~ days after {the effective date of--this--section} the--governor--shall--sell--the--state-workers'-compensation insurance plan and fund created and provided--for--in--Title

39--chapter-71--part-23--and-referenced-in-other-provisions of Title 39--chapter-71--and Title 33--chapters-17--and--18. The--governor--shall--request-bids--and--ensure--that--the--request is--adequately--publicized--in--the--press--major--financial publications--and--the--financial--and--insurance--industries. All--advertisements--must--be--published--within--60--days--after {the--effective--date--of--this--section}.--Interested parties must be allowed 60 days from the date the last advertisement is published to submit proposals for purchase. The sale must be to the responsible insurance or other company--submitting the highest bid.

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

{3}--Upon receipt of a bid proposal, the governor shall submit it to the legislative audit committee. The--committee shall--review--the--proposals--and--submit--comments--to--the

1 governor-on-the-qualifications-of-each-bidder:
 2 {4}-A-responsible-prospective-bidder-who--demonstrates
 3 the--financial--ability--to--purchase--the--fund-and-plan-is
 4 entitled-to-fully-inspect-the-public-records-of-the-plan-and
 5 fund-and-of-the--division--of--workers'-compensation--under
 6 39-71-221--through--39-71-224,--including-data-banks-and-raw
 7 data, and-must-be-given--copies--of--the--last--four--annual
 8 reports---printed---under--39-71-210,--any--earlier--reports
 9 requested-by-the-bidder, and-a-copy-of--each--audit--of--any
 10 type--performed--by--the--legislative--audit-committee-since
 11 January-1, 1980, relating-to-either-the-plan-and-fund-or-the
 12 division-of-workers'-compensation, or-both.
 13 {5}-The-successful-bidder-is-entitled-to-the-financial
 14 assets, future-business,--and--books,--records,--and--papers
 15 {whether-written, typed, computerized, or-in-any-other-form}
 16 of--the--plan--and-fund,--He-is-not-entitled-to-the-physical
 17 plant, equipment, furniture, computer-facilities,--and--like
 18 items. The--successful-bidder-must-pay-all-claims-that-are
 19 awarded-and-unpaid-on-the-date-of--the--sale--or--that-are
 20 pending--on--the--date-of-the-sale-and-are-awarded-after-the
 21 date-of-the-sale.
 22 {6}-The-proceeds-of-the-sale-must-be-deposited-in-the
 23 general fund. THE DEPARTMENT OF ADMINISTRATION SHALL SOLICIT
 24 PROPOSALS TO PURCHASE THE STATE WORKERS' COMPENSATION
 25 INSURANCE PLAN AND FUND. A PURCHASE PROPOSAL MUST PROPOSE

1 TO ASSUME ALL THE LIABILITIES AND PURCHASE ALL THE ASSETS OF
 2 THE FUND, INCLUDING THE ASSETS OF EQUIPMENT; FURNITURE;
 3 OFFICE SUPPLIES; BOOKS AND RECORDS, COMPUTERIZED OR OTHER;
 4 FUTURE BUSINESS; AND FINANCIAL ASSETS. THE PROPOSAL MAY
 5 INCLUDE AN OFFER TO PURCHASE OR LEASE THE BUILDING THAT
 6 HOUSES THE WORKERS' COMPENSATION DIVISION THAT IS SITUATED
 7 ON THE CORNER OF BROADWAY AND SOUTH LAST CHANCE GULCH IN
 8 HELENA, MONTANA, AND MAY OFFER TO LEASE ANY PART OF THE
 9 BUILDING BACK TO THE STATE OF MONTANA. THE PROPOSAL MUST
 10 AGREE TO INSURE ANY EMPLOYER COVERED BY TITLE 39, CHAPTER 71
 11 OR 72, REGARDLESS OF THE NATURE OF THE EMPLOYER'S BUSINESS
 12 OR RISK RATING FOR PURPOSES OF INSURANCE, FOR AS LONG AS THE
 13 EMPLOYER DESIRES WORKERS' COMPENSATION INSURANCE.

14 (2) THE DEPARTMENT OF ADMINISTRATION SHALL REVIEW AND
 15 PREPARE COMMENTS AND A RECOMMENDATION REGARDING EACH
 16 PROPOSAL. THE 52ND LEGISLATURE AND ANY SPECIAL SESSION OF
 17 THE LEGISLATURE MEETING BEFORE THE CONVENING OF THE 52ND
 18 LEGISLATURE MAY REVIEW THE PROPOSALS THAT HAVE BEEN
 19 SUBMITTED AND THE COMMENTS AND RECOMMENDATIONS OF THE
 20 DEPARTMENT OF ADMINISTRATION AND ORDER THE DEPARTMENT TO
 21 ACCEPT A PROPOSAL AND SELL THE FUND AND PLAN.

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

1 ~~unable-to-procure-coverage-through-ordinary-methods:~~

2 ~~{2}--All--plan--No.--2--insurers-shall-subscribe-to-and~~
3 ~~participate-in-the-assigned-risk-plan:~~

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

9 **Section 2.** Section 39-71-102, MCA, is amended to read:

10 "39-71-102. Reference to plans. Whenever compensation
11 plan No. 1, or No. 2--or--3 is referred to, such the
12 reference also includes all other sections which that are
13 applicable to the subject matter of such reference."

14 **Section 3.** Section 39-71-103, MCA, is amended to read:

15 "39-71-103. Compensation provisions. The compensation
16 provisions of this chapter, whenever referred to, shall must
17 be held to include the provisions of compensation plan plans
18 No. 1, and No. 2--or--3 and all other sections of this
19 chapter applicable to the-same-or-any-part-thereof any part
20 of those plans."

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

22 "39-71-116. Definitions. Unless the context otherwise
23 requires, words and phrases employed in this chapter have
24 the following meanings:

25 (1) "Average weekly wage" means the mean weekly

1 earnings of all employees under covered employment, as
2 defined and established annually by the Montana department
3 of labor and industry. It is established at the nearest
4 whole dollar number and must be adopted by the division of
5 workers' compensation prior to July 1 of each year.

6 (2) "Beneficiary" means:

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

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

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

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

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

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

1 section, exists).

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

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

7 (5) "Days" means calendar days, unless otherwise
8 specified.

9 (6) "Department" means the department of labor and
10 industry.

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

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

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

21 (10) "Invalid" means one who is physically or mentally
22 incapacitated.

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

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

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

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

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

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

24 (15) "Permanent total disability" means a condition
25 resulting from injury as defined in this chapter, after a

1 worker reaches maximum healing, in which a worker is unable
2 to return to work in the worker's job pool after exhausting
3 all options set forth in 39-71-1012.

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

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

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

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

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

23 (21) "Temporary total disability" means a condition
24 resulting from an injury as defined in this chapter that
25 results in total loss of wages and exists until the injured

1 worker reaches maximum healing.

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

4 **Section 5.** Section 39-71-201, MCA, is amended to read:

5 "39-71-201. Administration fund. (1) A workers'
6 compensation administration fund is established out of which
7 all costs of administering the Workers' Compensation and
8 Occupational Disease Acts and the various occupational
9 safety acts the division must administer are to be paid upon
10 lawful appropriation. The following moneys money collected
11 by the division ~~shall~~ must be deposited in the state
12 treasury to the credit of the workers' compensation
13 administrative fund and ~~shall~~ must be used for the
14 administrative expenses of the division:

15 (a) all fees and penalties provided in 39-71-205 and
16 39-71-304;

17 (b) all fees paid for inspection of boilers and
18 issuance of licenses to operating engineers as required by
19 law;

20 (c) all fees paid from an assessment on each plan No.
21 1 employer, and plan No. 2 insurer, ~~and plan No. 3, the~~
22 ~~state insurance fund.~~ The assessments ~~shall~~ must be levied
23 against the preceding calendar year's gross annual payroll
24 of the plan No. 1 employers and the gross annual direct
25 premiums collected in Montana on the policies of the plan

1 No. 2 insurers, insuring employers covered under the
 2 chapter, during the preceding calendar year. However, no
 3 assessment of the plan No. 1 employer or plan No. 2 insurer
 4 shall may be less than \$200. The assessments shall must be
 5 sufficient to fund the direct costs identified to the three
 6 two plans and an equitable portion of the indirect costs
 7 based on the ratio of the preceding fiscal year's indirect
 8 costs distributed to the plans using proper accounting and
 9 cost allocation procedures. ~~Plan No. 3 shall be assessed an~~
 10 ~~amount sufficient to fund its direct costs and an equitable~~
 11 ~~portion of the indirect costs as referred to above.~~ Other
 12 sources of revenue, including unexpended funds from the
 13 preceding fiscal year, shall must be used to reduce the
 14 costs before levying the assessments.

15 (2) The administration fund shall must be debited with
 16 expenses incurred by the division in the general
 17 administration of the provisions of this chapter, including
 18 the salaries of its members, officers, and employees and the
 19 travel expenses of the members, officers, and employees, as
 20 provided for in 2-18-501 through 2-18-503, ~~as amended,~~
 21 incurred while on the business of the division either within
 22 or without the state.

23 (3) Disbursements from the administration money shall
 24 must be made after being approved by the division upon
 25 submission of a claim therefor.

1 **Section 6.** Section 39-71-206, MCA, is amended to read:
 2 "39-71-206. Legal advisers of division. ~~††~~ The
 3 attorney general shall--be is the legal adviser of the
 4 division and shall represent it in all proceedings whenever
 5 so requested by the division or any member thereof of the
 6 division.

7 ~~{2}--The division may, in the investigation and defense~~
 8 ~~of cases under plan No. 3 of the Workers' Compensation Act,~~
 9 ~~employ such other attorney or legal adviser as it deems~~
 10 ~~necessary and pay for the same out of the industrial~~
 11 ~~insurance account in the expendable trust fund."~~

12 **Section 7.** Section 39-71-308, MCA, is amended to read:
 13 "39-71-308. Neglect or refusal of public corporation
 14 to file payroll reports -- arbitrary assessment by division.
 15 Whenever If any public corporation insured--by--the--state
 16 compensation--insurance--fund neglects or refuses to file
 17 prescribed payroll reports of its employees, the division
 18 may levy an arbitrary assessment upon such the public
 19 corporation in an amount of \$75 for each such assessment,
 20 which The assessments shall must be collected in the manner
 21 provided in this chapter for the collection of assessments."

22 **Section 8.** Section 39-71-401, MCA, is amended to read:
 23 "39-71-401. Employments covered and employments
 24 exempted. (1) Except as provided in subsection (2) ~~of this~~
 25 section, the Workers' Compensation Act applies to all

1 employers as defined in 39-71-117 and to all employees as
 2 defined in 39-71-118. An employer who has any employee in
 3 service under any appointment or contract of hire, expressed
 4 or implied, oral or written, shall elect to be bound by the
 5 provisions of compensation plan No. 17 or No. 27-or-3. Every
 6 employee whose employer is bound by the Workers'
 7 Compensation Act is subject to and bound by the compensation
 8 plan that has been elected by the employer.

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

- 13 (a) household and domestic employment;
- 14 (b) casual employment as defined in 39-71-116;
- 15 (c) employment of members of an employer's family
 16 dwelling in the employer's household;
- 17 (d) employment of sole proprietors or working members
 18 of a partnership, except as provided in subsection (3);
- 19 (e) employment of a broker or salesman performing
 20 under a license issued by the board of realty regulation;
- 21 (f) employment of a direct seller engaged in the sale
 22 of consumer products, primarily in the customer's home;
- 23 (g) employment for which a rule of liability for
 24 injury, occupational disease, or death is provided under the
 25 laws of the United States;

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

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

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

11 (k) any person performing services as a newspaper
 12 carrier or free-lance correspondent if the person performing
 13 the services, or a parent or guardian of the person
 14 performing the services in the case of a minor, has
 15 acknowledged in writing that the person performing the
 16 services and the services are not covered. As used in this
 17 subsection "free-lance correspondent" is a person who
 18 submits articles or photographs for publication and is paid
 19 by the article or by the photograph. As used in this
 20 subsection "newspaper carrier":

21 (i) is a person who provides a newspaper with the
 22 service of delivering newspapers singly or in bundles; but

23 (ii) does not include an employee of the paper who,
 24 incidentally to his main duties, carries or delivers papers.

25 (3) (a) A sole proprietor or a working member of a

1 partnership who holds himself out or considers himself an
 2 independent contractor [and who is not contracting] for
 3 cosmetologist's services or barber's services as defined in
 4 39-51-204(1)(1) must elect to be bound personally and
 5 individually by the provisions of compensation plan No. 17
 6 or No. 2, or-3, but he may apply to the division for an
 7 exemption from the Workers' Compensation Act for himself.

8 (b) The application must be made in accordance with
 9 the rules adopted by the division. The division may deny the
 10 application only if it determines that the applicant is not
 11 an independent contractor.

12 (c) When If an application is approved by the
 13 division, it is conclusive as to the status of an
 14 independent contractor and precludes the applicant from
 15 obtaining benefits under this chapter.

16 (d) When If an election of an exemption is approved by
 17 the division, the election remains effective and the
 18 independent contractor retains his status as an independent
 19 contractor until he notifies the division of any change in
 20 his status and provides a description of his present work
 21 status.

22 (e) If the division denies the application for
 23 exemption, the applicant may contest the denial by
 24 petitioning for review of the decision by an appeals referee
 25 in the manner provided for in 39-51-1109. An applicant

1 dissatisfied with the decision of the appeals referee may
 2 appeal the decision in accordance with the procedure
 3 established in 39-51-2403 and 39-51-2404.

4 (4) (a) A private corporation shall provide coverage
 5 for its officers and other employees under the provisions of
 6 compensation plan No. 17 or No. 27-or-3. However, pursuant
 7 to such rules as adopted by the division promulgates and
 8 subject in all cases to approval by the division, an officer
 9 of a private corporation may elect not to be bound as an
 10 employee under this chapter by giving a written notice, on a
 11 form provided by the division, served in the following
 12 manner:

13 (i) if the employer has elected to be bound by the
 14 provisions of compensation plan No. 1, by delivering the
 15 notice to the board of directors of the employer and the
 16 division; or

17 (ii) if the employer has elected to be bound by the
 18 provisions of compensation plan No. 2 or--3, by delivering
 19 the notice to the board of directors of the employer, the
 20 division, and the insurer.

21 (b) If the employer changes plans or insurers, the
 22 officer's previous election is not effective and the officer
 23 shall again serve notice as-provided if he elects not to be
 24 bound.

25 (c) The appointment or election of an employee as an

officer of a corporation for the purpose of excluding the employee from coverage under this chapter does not entitle the officer to elect not to be bound as an employee under this chapter. In any case, the officer must sign the notice required by subsection (4)(a) under oath or affirmation, and he is subject to the penalties for false swearing under 45-7-202 if he falsifies the notice.

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

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

~~"39-71-403. Plan-three-exclusive-for-state-agencies---~~

~~election Election of plan by other public corporations. {1} Where-a-state-agency-is-the-employer, the-terms, conditions, and---provisions---of--compensation--plan--No.---3---shall--be exclusive, compulsory, and-obligatory-upon-both-employer-and employee,---Any--sums--necessary--to--be--paid---under---the provisions--of--this--chapter--by--any-state-agency-shall-be considered-to-be-ordinary-and-necessary--expense--of--the agency,--and--the-agency-shall-make-appropriation-of-and-pay such-sums-into-the-state-compensation-insurance-fund-at--the time--and--in--the--manner--provided--for--in--this-chapter, notwithstanding-that-the-state-agency--may--have--failed--to anticipate--such--ordinary--and--necessary--expense--in--any budget, estimate-of-expenses, appropriations, ordinances, or otherwise.~~

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

{3}{2} A public corporation,--other--than--a---state agency, that elects plan No. 1 may establish a fund

sufficient to pay the compensation and benefits provided for in this chapter and chapter 72 and to discharge all liabilities that reasonably incur during the fiscal year for which the election is effective. Proceeds from the fund must be used only to pay claims covered by this chapter and chapter 72 and for actual and necessary expenses required for the efficient administration of the fund.

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

Section 10. Section 39-71-421, MCA, is amended to read:

"39-71-421. Financial incentives to institute safety programs. ~~The--state--compensation-insurance-fund--plan-No-3--and-private-insurers--plan~~ Plan No. 2, insurers may provide financial incentives to an employer who implements a formal safety program. The ~~insurance-carrier~~ insurer may provide to an employer a premium discount that reflects the degree of risk diminished by the implemented safety program."

Section 11. Section 39-71-502, MCA, is amended to read:

"39-71-502. Creation and purpose of uninsured

employers' fund. There is created an uninsured employers' fund. The purpose of the fund is to pay to an injured employee of an uninsured employer the same benefits the employee would have received if the employer had been properly enrolled under compensation plan No. 1, or No. 2, or-3, except as provided in 39-71-503(2)."

Section 12. Section 39-71-504, MCA, is amended to read:

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

(1) (a) The division shall require that the uninsured employer pay to the fund a penalty ~~of-either~~ equal to the greater of:

(ii) double the premium amount the employer would have paid on the payroll of the employer's workers in this state ~~if-the-employer-had-been-enrolled-with-compensation-plan-No-3,~~ based on the average of quotes from three workers' compensation insurers operating in the state, as that average is determined by the division; or

(ii) \$200, ~~whichever-is-greater.~~

(b) In determining the premium amount for the calculation of the penalty under this subsection (1)(a)(i), the division shall make an assessment on how much premium would have been paid on the employer's past 3-year payroll

1 for periods within the 3 years when the employer was
2 uninsured.

3 (c) An assessment for payroll paid by the uninsured
4 employer for any time prior to July 1, 1977, may not be
5 made.

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

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

14 (3) The division may determine that the \$1,000
15 ~~assessments~~ assessment that are is charged against an
16 insurer in each case of an industrial death under
17 39-71-902(1) shall be paid to the uninsured employers' fund
18 rather than the subsequent injury fund.

19 (4) The division may enter into an agreement with the
20 injured employee or the employee's beneficiaries to assign
21 to the employee or the beneficiaries all or part of the
22 funds received by the division from the uninsured employer
23 pursuant to subsection (2)(a)."

24 **Section 13.** Section 39-71-505, MCA, is amended to
25 read:

1 "39-71-505. Applicability of other provisions of
2 chapter to fund. All appropriate provisions in the Workers'
3 Compensation Act apply to the fund in the same manner as
4 they apply to compensation plans No. 17 and No. 27--and--3."

5 **Section 14.** Section 39-71-515, MCA, is amended to
6 read:

7 "39-71-515. Independent cause of action. (1) An
8 injured employee or the employee's beneficiaries have an
9 independent cause of action against an uninsured employer
10 for failure to be enrolled in a compensation plan as
11 required by this chapter.

12 (2) In ~~such-an~~ the action, prima facie liability of
13 the uninsured employer exists if the claimant proves, by a
14 preponderance of the evidence, that:

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

18 (b) the employer was not ~~so~~ enrolled on the date of
19 the injury or death.

20 (3) It is not a defense to such an action under this
21 section that the employee had knowledge of or consented to
22 the employer's failure to carry insurance or that the
23 employee was negligent in permitting such the failure to
24 exist carry insurance.

25 (4) The amount of recoverable damages in ~~such-an~~ the

1 action is the amount of compensation that the employee would
2 have received had the employer been properly enrolled under
3 compensation plan No. 17 or No. 27-or-3.

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

8 **Section 15.** Section 39-71-704, MCA, is amended to
9 read:

10 "39-71-704. Payment of medical, hospital, and related
11 services -- fee schedules and hospital rates. (1) In
12 addition to the compensation provided by this chapter and as
13 an additional benefit separate and apart from compensation,
14 the following shall be furnished:

15 (a) After ~~the--happening--of~~ the injury, the insurer
16 shall furnish, without limitation as to length of time or
17 dollar amount, reasonable services by a physician or
18 surgeon, reasonable hospital services and medicines when
19 needed, and such other treatment as may be approved by the
20 division for the injuries sustained.

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

1 (2) A relative value fee schedule for medical,
2 chiropractic, and paramedical services provided for in this
3 chapter, excluding hospital services, shall be established
4 annually by the workers' compensation division and become
5 effective in January of each year. The maximum fee schedule
6 must be adopted as a relative value fee schedule of medical,
7 chiropractic, and paramedical services, with unit values to
8 indicate the relative relationship within each grouping of
9 specialties. ~~Medical-fees-must-be-based-on-the--median--fees~~
10 ~~as--billed--to--the-state-compensation-insurance-fund-during~~
11 ~~the--year--preceding--the--adoption--of--the--schedule.~~ The
12 division shall adopt rules establishing relative unit
13 values, groups of specialties, the procedures insurers must
14 use to pay for services under the schedule, and the method
15 of determining the median of billed medical fees. These
16 rules shall be modeled on the 1974 revision of the 1969
17 California Relative Value Studies.

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

24 (4) Notwithstanding subsection (2), beginning January
25 1, 1988, and ending January 1, 1990, the maximum fees

1 payable by insurers must be limited to the relative value
2 fee schedule established in January 1987. Notwithstanding
3 subsection (3), the hospital rates payable by insurers must
4 be limited to those set in January 1988, until December 31,
5 1989."

6 **Section 16.** Section 39-71-908, MCA, is amended to
7 read:

8 "39-71-908. Notification of fund of its potential
9 liability under part -- review by fund. Not less than 90 or
10 more than 150 days before the expiration of 104 weeks after
11 the date of injury, the employer~~7-carrier7-or-the-industrial~~
12 ~~insurance--fund7--as--the--case--may-be7~~ or the insurer shall
13 notify the fund whether it is likely that compensation may
14 be payable beyond a period of 104 weeks after the date of
15 the injury. The fund thereafter may review, at reasonable
16 times, such the information as the employer~~7-carrier7-or~~
17 ~~industrial-insurance-fund~~ or the insurer has regarding the
18 accident and the nature and extent of the injury and
19 disability."

20 **Section 17.** Section 39-71-910, MCA, is amended to
21 read:

22 "39-71-910. Procedure for resolving disputes as to
23 liability under part. (1) If an employee was employed or
24 retained in employment under the provisions of this part and
25 a dispute or controversy arises as to payment of benefits or

1 the liability ~~therefor~~ for benefits, the division shall hold
2 a hearing and resolve all disputes. On motion made in
3 writing by the employer~~7-carrier7-or--industrial--insurance~~
4 ~~fund~~ or the insurer, the administrator shall join the fund
5 as a party defendant.

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

20 (3) At the time of the hearing, the employer and fund
21 may appear, cross-examine witnesses, give evidence, and
22 defend both on the issue of liability of the employer to the
23 employee and on the issue of the liability of the fund.

24 (4) The hearing examiner shall make findings of fact
25 and conclusions of law determining the respective liability

1 of the employer and the fund."

2 **Section 18.** Section 39-71-911, MCA, is amended to
3 read:

4 "39-71-911. Obligation to make payments on behalf of
5 fund not an independent liability. The obligation imposed by
6 this part on the employer, ~~carrier, or industrial~~ insurance
7 fund or the insurer to make payments on behalf of the fund
8 does not impose an independent liability on the employer,
9 ~~carrier, or industrial insurance fund~~ or the insurer."

10 **Section 19.** Section 39-71-913, MCA, is amended to
11 read:

12 "39-71-913. Payments by fund directly to persons
13 entitled. If the employer, ~~carrier, or the industrial~~
14 ~~insurance fund~~ or the insurer does not make the payments on
15 behalf of the fund, the fund may make the payments directly
16 to the persons entitled to the payments."

17 **Section 20.** Section 39-71-1004, MCA, is amended to
18 read:

19 "39-71-1004. Industrial accident rehabilitation
20 account. (1) The payments provided in 39-71-1003 shall must
21 be made from the industrial accident rehabilitation account
22 in the state special revenue fund. Payments to the account
23 shall must be made on or before July 1 of each year as
24 follows:

25 (a) by each employer operating under the provisions of

1 plan No. 1 of the Workers' Compensation Act, an amount to be
2 assessed by the division, not exceeding 1% of the
3 compensation paid to the employer's injured employees in
4 Montana for the preceding fiscal year; and

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

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

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

24 (3) The payments herein provided for ~~shall~~ under this
25 section must be made to the division, which The division

shall credit the sums paid to the industrial accident rehabilitation account ~~which shall be~~ in the custody of the state treasurer. Disbursements from the account ~~shall~~ must be made after approval by the department of social and rehabilitation services and upon audit and approval by the department of administration.

(4) No part of the funds allocated or contributed as herein provided ~~and contemplated shall in this section may~~ be used in payment of administrative expenses of the division or department of social and rehabilitation services."

Section 21. Section 39-71-2201, MCA, is amended to read:

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

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

Section 22. Section 39-72-310, MCA, is amended to read:

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

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

~~{3} Under compensation plan No. 3, any premiums and other receipts held by the division for occupational disease insurance coverage shall be transferred and become part of the workers' compensation industrial insurance account, and~~

1 ~~payments-for-occupational-disease-claims-by-the--state--fund~~
2 ~~shall-be-paid-out-of-the-industrial-insurance-account."~~

3 **Section 23.** Section 33-17-502, MCA, is amended to
4 read:

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

16 (2) Any person not licensed as an insurance consultant
17 with respect to the relevant kinds of insurance who receives
18 any fee for examining, appraising, reviewing, or evaluating
19 any insurance policy, annuity or pension contract, plan, or
20 program or who shall make recommendations or give advice
21 with regard to any of the above without first having been
22 licensed by the commissioner as an insurance consultant is
23 guilty of a misdemeanor and upon conviction shall be fined
24 \$1,500.

25 (3) Nothing in this part applies to:

1 (a) a licensed ~~attorneys~~ attorney at law in this state
2 acting in their his professional capacity; or

3 (b) an actuary or a certified public accountant who
4 provides information, recommendations, advice, or services
5 in his professional capacity if neither he nor his employer
6 receives any compensation directly or indirectly on account
7 of any insurance, bond, annuity or pension contract that
8 results in whole or part from that information,
9 recommendation, advice, or services; or

10 ~~(c) -- a -- duty -- licensed -- casualty -- insurance -- agent -- who~~
11 ~~accepts a fee from an -- insured -- for -- placement -- through -- the~~
12 ~~state -- compensation -- insurance -- fund -- as -- provided -- in -- 33 -- 18 -- 212."~~

13 **Section 24.** Section 33-18-212, MCA, is amended to
14 read:

15 "33-18-212. Illegal dealing in premiums -- improper
16 charges for insurance. (1) No A person ~~shall~~ may not
17 willfully collect any sum as a premium or charge for
18 insurance, ~~which~~ if the insurance is not then provided or is
19 not in due course to be provided (subject to acceptance of
20 the risk by the insurer) by an insurance policy issued by an
21 insurer as authorized by this code.

22 (2) No A person ~~shall~~ may not willfully collect as a
23 premium or charge for insurance any sum in excess of or less
24 than the premium or charge applicable to such the insurance
25 and, as specified in the policy, in accordance with the

applicable classifications and rates as filed with and approved by the commissioner; or in cases where classifications, premiums, or rates are not required by this code to be so filed and approved, such the premiums and charges shall may not be in excess of or less than those specified in the policy and as fixed by the insurer. This provision shall may not be deemed considered to prohibit the charging and collection, by surplus lines agents licensed under Title 33, chapter 2, part 3, of this title, of the amount of applicable state and federal taxes in addition to the premium required by the insurer. It shall may not be deemed considered to prohibit the charging and collection, by a life insurer, of amounts to be actually to-be expended for medical examination of an applicant for life insurance or for reinstatement of a life insurance policy. The provision--of--this--subsection--does---not---prohibit---the collection--from--an--insured--of--a--placement--fee,--not--to--exceed 7-1/2%--of--the--annual--premium,--for--placement--through--the state--compensation--insurance--fund--by--a--duily---licensed casualty--insurance--agent.---This--placement--fee--is--not--a premium--as--defined--in--33-15-102.

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

Section 25. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition --

requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111; 23-5-610; 23-5-1027; 33-31-212; 33-31-401; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 67-3-205; 75-1-1101; 75-7-305; 76-12-123; 80-2-103; 80-2-228; 82-11-136; 90-3-301; 90-3-302; 90-3-412; 90-4-215; 90-9-306; 90-15-103; section 13, House Bill No. 861, Laws of 1985; and section 1,

1 Chapter 454, Laws of 1987.

2 (4) There is a statutory appropriation to pay the
3 principal, interest, premiums, and costs of issuing, paying,
4 and securing all bonds, notes, or other obligations, as due,
5 that have been authorized and issued pursuant to the laws of
6 Montana. Agencies that have entered into agreements
7 authorized by the laws of Montana to pay the state
8 treasurer, for deposit in accordance with 17-2-101 through
9 17-2-107, as determined by the state treasurer, an amount
10 sufficient to pay the principal and interest as due on the
11 bonds or notes have statutory appropriation authority for
12 such payments. (In subsection (3): pursuant to sec. 15, Ch.
13 607, L. 1987, the inclusion of 15-65-121 terminates June 30,
14 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion
15 of 39-71-2504 terminates June 30, 1991; and pursuant to sec.
16 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L.
17 1987, terminates July 1, 1988.)"

18 **Section 26.** Section 45-7-501, MCA, is amended to read:

19 "45-7-501. **Employer misconduct.** (1) A person who is an
20 employer, as defined in 39-71-117, commits the offense of
21 employer misconduct if he knowingly or purposely:

22 (a) avoids his responsibility to provide coverage for
23 his employees as required by 39-71-401;

24 (b) misrepresents or falsifies employment records or
25 information, including but not limited to understating the

1 amount of payroll or the number of his employees; or

2 (c) refuses to pay premiums that he is obligated to
3 pay under compensation plan No. 2, as provided in Title 39,
4 chapter 71, part 22, ~~or compensation plan No. 3, as provided~~
5 ~~in Title 39, chapter 71, part 23.~~

6 (2) A person convicted of the offense of employer
7 misconduct shall be fined an amount not to exceed \$50,000 or
8 imprisoned in the state prison for any term not to exceed 10
9 years, or both."

10 **NEW SECTION. Section 27. Repealer.** Sections
11 39-71-2301 through 39-71-2308, 39-71-2321 through
12 39-71-2327, and 39-71-2501 through 39-71-2504, MCA, are
13 repealed.

14 **NEW SECTION. Section 28. 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].

18 ~~**NEW SECTION. Section 30. Codification. Instruction.**~~
19 ~~{Section 2} is intended to be codified as an integral part~~
20 ~~of Title 39, chapter 71, and the provisions of Title 39,~~
21 ~~chapter 71, apply to {section 2}.~~

22 **NEW SECTION. Section 29. Effective dates.** (1)
23 [Sections 1, 29, 28, and this section] are effective on
24 passage and approval.

25 (2) Sections IF A SALE IS MADE UNDER [SECTION 1],

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- 1 [SECTIONS 2 through 28-and-30 27] are effective on the date
- 2 a sale is made under [section 1].

-End-