#### SENATE BILL NO. 372

## INTRODUCED BY NATHE, THAYER, AKLESTAD, SMITH, MARKS

## BY REQUEST OF THE GOVERNOR

## IN THE SENATE

FEBRUARY 8, 1989 INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.

FIRST READING.

- FEBRUARY 16, 1989 COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
- FEBRUARY 17, 1989 PRINTING REPORT.
- FEBRUARY 18, 1989 SECOND READING, DO PASS AS AMENDED.
- FEBRUARY 20, 1989 ENGROSSING REPORT.
- FEBRUARY 21, 1989 THIRD READING, PASSED. AYES, 50; NOES, 0.

TRANSMITTED TO HOUSE.

INTRODUCED AND REFERRED TO COMMITTEE

ON LABOR & EMPLOYMENT RELATIONS.

IN THE HOUSE

FEBRUARY 21, 1989

FIRST READING.

MARCH 20, 1989 COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.

MARCH 27, 1989 SECOND READING, CONCURRED IN.

MARCH 29, 1989 THIRD READING, CONCURRED IN. AYES, 97; NOES, 0.

RETURNED TO SENATE.

IN THE SENATE

MARCH 29, 1989

RECEIVED FROM HOUSE. SENT TO ENROLLING. REPORTED CORRECTLY ENROLLED.

INTRODUCED BY NATH - I Anylog HELESIAD Smith BY REQUEST OF THE GOVERNOR WHELE 1 2 3

5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE PURPOSE 6 OF AND THE PROCEDURE IN THE MEDIATION PROVISIONS OF THE 7 WORKERS' COMPENSATION ACT; AND AMENDING SECTIONS 39-71-2401, 8 39-71-2406, 39-71-2409 THROUGH 39-71-2411, MCA."

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

11 Section 1. Section 39-71-2401, MCA, is amended to read: "39-71-2401. Disputes -- jurisdiction -- evidence --12 settlement requirements -- mediation. (1) A dispute 13 concerning benefits arising under this chapter or chapter 14 72, other than the disputes described in subsection (2), 15 must be brought before a department mediator as provided in 16 this part. If a dispute still exists after the parties 17 18 satisfy the mediation requirements in this part, either party may petition the workers' compensation court for a 19 20 resolution.

(2) A dispute arising under this chapter that does not
concern benefits or a dispute for which a specific provision
of this chapter gives the division jurisdiction must be
brought before the division.

25 (3) An appeal from a division order may be made to the

workers' compensation court.

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2 (4) The common law and statutory rules of evidence do
3 not apply in a case brought to hearing before the division.
4 (5) Except as otherwise provided in this chapter,
5 before a party may bring a dispute concerning benefits
6 before a mediator, the parties shall attempt to settle as
7 follows:

8 (a) The party making a demand shall present the other 9 party with a specific written demand that contains 10 sufficient explanation and documentary evidence to enable 11 the other party to thoroughly evaluate the demand.

12 (b) The party receiving the demand shall respond in 13 writing within 15 working days of receipt. If the demand is 14 denied in whole or in part, the response shall state the 15 basis of the denial.

16 (c) Upon motion of a party or upon the mediator's own 17 motion, the mediator has the authority to dismiss a petition if he finds that either party did not comply with this 18 19 subsection. but-the A decision dismissing a petition under 20 this subsection must be in writing and must state in detail 21 the grounds for dismissal. The mediator's decision may be 22 reviewed by the workers' compensation court upon motion of a 23 party.

24 (d) Nothing in this subsection relieves a party of an25 obligation otherwise contained in this chapter."

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Section 2. Section 39-71-2406, MCA, is amended to read: 1 2 \*39-71-2406. Purpose. The purpose of this part is to 3 prevent when possible the filing in the workers' 4 compensation court of actions by claimants or insurers 5 relating to claims under chapter 71 or 72 of this title if 6 an equitable and reasonable resolution of the dispute may be 7 effected at an earlier stage. To achieve this purpose, this 8 part provides for a procedure for mandatory, nonbinding 9 mediation. It is the intent of this part that the mediation 10 process be used to resolve cases on an informal basis at 11 minimal cost to the parties, and to this end, the parties 12 are encouraged to fully present their cases at the mediation 13 level. However, if a cause proceeds to the workers' 14 compensation court, the parties are not precluded from 15 presenting additional evidence before the court." 16 Section 3. Section 39-71-2409, MCA, is amended to read: 17 \*39-71-2409. Duties of mediator. A mediator shall 18 assist the parties in negotiating a resolution to their 19 dispute by: 20 (1) facilitating an exchange of information between the 21 parties; 22 (2) assuring that all relevant evidence information is 23 brought forth during the mediation process; 24 (3) suggesting possible solutions to issues of dispute

25 between the parties;

(4) recommending a solution; and 1 (5) assisting the parties to voluntarily resolve their 2 3 dispute." Section 4. Section 39-71-2410, MCA, is amended to read: 4 "39-71-2410. Limitations on mediation proceedings. (1) 5 Mediation Except as may be necessary for the workers' 6 7 compensation court to rule on issues arising under я 39-71-2401(5)(c) or 39-71-2411(7)(c), mediation proceedings 9 are: 10 (a) held in private; 11 informal and held without a verbatim record; and (b) 12 (c) confidential. (2) All communications, verbal or written, from the 13 14 parties to the mediator and any information and evidence presented to the mediator during the proceeding are 15 16 confidential. (3) A mediator's files and records are closed to all 17 18 but the parties. 19 (4) (a) A mediator may not be called to testify in any 20 proceeding concerning the issues discussed in the mediation 21 process.

(b) Neither the mediator's report nor any of the
information or recommendations contained in it are
admissible as evidence in any action subsequently brought in
any court of law.

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(5) Notwithstanding subsections (1) through (4), a
 mediator may issue a report and the parties and the mediator
 may be required to attend a conference <u>before the workers'</u>
 compensation court as set forth in 39-71-2411."

5 Section 5. Section 39-71-2411, MCA, is amended to read: 6 "39-71-2411. Mediation procedure. (1) Except as 7 otherwise provided, a claimant or an insurer having a 8 dispute relating to benefits under chapter 71 or 72 of this 9 title may petition the department for mediation of the 10 dispute.

11 (2) A party may take part in mediation proceedings with 12 or without representation.

13 (3) The mediator shall review the division file for the
14 case and may receive any additional documentation or
15 evidence argument either party submits.

16 (4) The mediator shall request that each party offer 17 argument summarizing the party's position. A party's 18 argument must--include-the-evidence-the-party-would-present if--the--case--were--being---presented---to---the---worker's 19 20 compensation--judge--but should fully present the party's case. The argument is not limited by the rules of evidence. 21 22 (5) After the parties have presented all their information and evidence argument to the mediator, he shall 23 recommend a solution to the parties within a reasonable time 24 25 to be established by rule.

1 (6) A party shall notify the mediator within 45 days of 2 the mailing of his report whether the party accepts the 3 mediator's recommendation. If either party does not accept 4 the mediator's recommendation, the party may petition the workers' compensation court for resolution of the dispute. 5 6 (7) (a) If a mediator determines that either party 7 failed to cooperate in the mediation process, the mediator В shall prepare a written report setting forth the determination and the grounds for the determination. The 9 report must be mailed to the parties and to the workers' 10 compensation court. Unless a party disputes 11 the determination as set forth in subsection (7)(c), the parties 12 13 shall repeat the mediation process, but only one time.

14 (b) A mediator may determine that a party has failed to 15 cooperate in the mediation process only if the party failed 16 to:

17 (i) supply information or offer a summary of the18 party's position as reasonably requested by the mediator;

19 (ii) attend scheduled mediation conferences unless20 excused by the mediator; or

(iii) listen to and review the information and positionoffered by the opposing party.

(c) If a party disputes a mediator's determination that
the party failed to cooperate in the mediation process, the
party may file a petition with the workers' compensation

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court. Upon receipt of a petition, the court shall summon 1 2 the parties and the mediator to determine by oral discussion 3 whether the mediator's determination of noncooperation is supportable. If the court finds that the mediator's 4 determination is supportable, the court may order the 5 6 parties to attempt a second time to mediate their dispute." NEW SECTION. Section 6. Extension of authority. Any 7 8 existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of 9 10 [this act].

-End-

51st Legislature

#### SB 0372/02

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APPROVED BY COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

1	SENATE BILL NO. 372
2	INTRODUCED BY NATHE, THAYER, AKLESTAD, SMITH, MARKS
3	BY REQUEST OF THE GOVERNOR
4	
5	A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE PURPOSE
6	OF AND THE PROCEDURE IN THE MEDIATION PROVISIONS OF THE
7	WORKERS' COMPENSATION ACT; AND AMENDING SECTIONS 39-71-2401,
8	39-71-2406, 39-71-2409 THROUGH 39-71-2411, MCA."
9	
10	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11	Section 1. Section 39-71-2401, MCA, is amended to
12	read:
13	<b>39-71-2401.</b> Disputes jurisdiction evidence
14	settlement requirements mediation. (1) A dispute
15	concerning benefits arising under this chapter or chapter
16	72, other than the disputes described in subsection (2),
17	must be brought before a department mediator as provided in
18	this part. If a dispute still exists after the parties
19	satisfy the mediation requirements in this part, either
20	party may petition the workers' compensation court for a
21	resolution.
22	(2) A dispute arising under this chapter that does not

23 concern benefits or a dispute for which a specific provision 24 of this chapter gives the division jurisdiction must be 25 brought before the division.

(3) An appeal from a division order may be made to the workers' compensation court.

(4) The common law and statutory rules of evidence do 3 not apply in a case brought to hearing before the division. 4 5 (5) Except as otherwise provided in this chapter, before a party may bring a dispute concerning benefits 6 7 before a mediator, the parties shall attempt to settle as follows: 8

9 (a) The party making a demand shall present the other 10 party with a specific written demand that contains 11 sufficient explanation and documentary evidence to enable 12 the other party to thoroughly evaluate the demand.

13 (b) The party receiving the demand shall respond in writing within 15 working days of receipt. If the demand is 14 denied in whole or in part, the response shall state the 15 16 basis of the denial.

17 (c) Upon motion of a party or upon the mediator's own 18 motion, the mediator has the authority to dismiss a petition 19 if he finds that either party did not comply with this 20 subsection. but-the A decision dismissing a petition under this subsection must be in writing and must state in detail 21 22 the grounds for dismissal. The mediator's decision may be 23 reviewed by the workers' compensation court upon motion of a 24 party.

(d) Nothing in this subsection relieves a party of an 25

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# SECOND READING

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1 obligation otherwise contained in this chapter."

Section 2. Section 39-71-2406, MCA, is amended to 2 3 read:

4 "39-71-2406. Purpose. The purpose of this part is to 5 prevent when possible the filing in the workers' 6 compensation court of actions by claimants or insurers 7 relating to claims under chapter 71 or 72 of this title if 8 an equitable and reasonable resolution of the dispute may be 9 effected at an earlier stage. To achieve this purpose, this 10 part provides for a procedure for mandatory, nonbinding 11 mediation. It is the intent of this part that the mediation process be used to resolve cases on an informal basis at 12 13 minimal cost to the parties, and to this end, the parties 14 are encouraged REQUIRED to fully present their cases at the 15 mediation level. However, if a cause proceeds to the 16 workers' compensation court, the parties are not precluded 17 from presenting additional evidence before the court BUT 18 THEY ARE PREVENTED FROM RAISING ISSUES THAT WERE NOT 19 MEDIATED."

20 Section 3. Section 39-71-2409, MCA, is amended to 21 read:

22 \*39-71-2409. Duties of mediator. A mediator shall 23 assist the parties in negotiating a resolution to their 24 dispute by:

25 (1) facilitating an exchange of information between

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1	the parties;
2	(2) assuring that all relevant evidence information is
3	brought forth during the mediation process;
4	(3) suggesting possible solutions to issues of dispute
5	between the parties;
6	(4) recommending a solution; and
7	(5) assisting the parties to voluntarily resolve their
8	dispute."
9	Section 4. Section 39-71-2410, MCA, is amended to
10	read:
11	<b>39-71-2410.</b> Limitations on mediation proceedings. (1)
12	Mediation Except as may be necessary for the workers'
13	compensation court to rule on issues arising under
14	<u>39-71-2401(5)(c) or 39-71-2411(7)(c), mediation</u> proceedings
15	are:
16	(a) held in private;
17	(b) informal and held without a verbatim record; and
18	(c) confidential.
19	(2) All communications, verbal or written, from the
20	parties to the mediator and any information and evidence
21	presented to the mediator during the proceeding are
22	confidential.
23	(3) A mediator's files and records are closed to all
24	but the parties.
25	(4) (a) A mediator may not be called to testify in any
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1 proceeding concerning the issues discussed in the mediation
2 process.

3 (b) Neither the mediator's report nor any of the 4 information or recommendations contained in it are 5 admissible as evidence in any action subsequently brought in 6 any court of law.

7 (5) Notwithstanding subsections (1) through (4), a
8 mediator may issue a report and the parties and the mediator
9 may be required to attend a conference <u>before the workers'</u>
10 compensation court as set forth in 39-71-2411."

Section 5. Section 39-71-2411, MCA, is amended to read:

13 "39-71-2411. Mediation procedure. (1) Except as
14 otherwise provided, a claimant or an insurer having a
15 dispute relating to benefits under chapter 71 or 72 of this
16 title may petition the department for mediation of the
17 dispute.

18 (2) A party may take part in mediation proceedings19 with or without representation.

20 (3) The mediator shall review the division file for
21 the case and may receive any additional documentation or
22 evidence argument either party submits.

23 (4) The mediator shall request that each party offer
24 argument summarizing the party's position. A party's
25 argument must-include-the-evidence-the-party--would--present

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if---the---case---were---being--presented--to--the--worker's compensation-judge-but <u>should MUST fully present the party's</u> <u>case. The argument</u> is not limited by the rules of evidence. (5) After the parties have presented all their information and <u>evidence argument</u> to the mediator, he shall recommend a solution to the parties within a reasonable time to be established by rule.

8 (6) A party shall notify the mediator within 45 days of the mailing of his report whether the party accepts the 9 10 mediator's recommendation. If either party does not accept 11 the mediator's recommendation, the party may petition the workers' compensation court for resolution of the dispute. 12 13 (7) (a) If a mediator determines that either party failed to cooperate in the mediation process, the mediator 14 shall prepare a written report setting forth the 15 16 determination and the grounds for the determination. The 17 report must be mailed to the parties and to the workers' 18 compensation court. Unless a party disputes the determination as set forth in subsection (7)(c), the parties 19 shall repeat the mediation process, but only one time. 20

21 (b) A mediator may determine that a party has failed 22 to cooperate in the mediation process only if the party 23 failed to:

24 (i) supply information or offer a summary of the
25 party's position as reasonably requested by the mediator;

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and the second of the

(ii) attend scheduled mediation conferences unless
 excused by the mediator; or

3 (iii) listen to and review the information and position4 offered by the opposing party.

(c) If a party disputes a mediator's determination 5 6 that the party failed to cooperate in the mediation process, 7 the party may file a petition with the workers' compensation 8 court. Upon receipt of a petition, the court shall summon 9 the parties and the mediator to determine by oral discussion 10 whether the mediator's determination of noncooperation is 11 supportable. If the court finds that the mediator's 12 determination is supportable, the court may order the 13 parties to attempt a second time to mediate their dispute." NEW SECTION. Section 6. Extension of authority. Any 14 15 existing authority to make rules on the subject of the 16 provisions of [this act] is extended to the provisions of 17 [this act].

-End-

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25

brought before the division.

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(3) An appeal from a division order may be made to the 1 SENATE BILL NO. 372 1 INTRODUCED BY NATHE, THAYER, AKLESTAD, SMITH, MARKS 2 workers' compensation court. 2 (4) The common law and statutory rules of evidence do BY REQUEST OF THE GOVERNOR 3 3 not apply in a case brought to hearing before the division. 4 4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE PURPOSE (5) Except as otherwise provided in this chapter, 5 5 OF AND THE PROCEDURE IN THE MEDIATION PROVISIONS OF THE before a party may bring a dispute concerning benefits 6 6 WORKERS' COMPENSATION ACT; AND AMENDING SECTIONS 39-71-2401, before a mediator, the parties shall attempt to settle as 7 7 39-71-2406, 39-71-2409 THROUGH 39-71-2411, MCA." 8 8 follows: (a) The party making a demand shall present the other 9 9 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: party with a specific written demand that contains 10 sufficient explanation and documentary evidence to enable Section 1. Section 39-71-2401, MCA, is amended to 11 11 the other party to thoroughly evaluate the demand. 12 12 read: (b) The party receiving the demand shall respond in 13 13 "39-71-2401. Disputes -- jurisdiction -- evidence -writing within 15 working days of receipt. If the demand is 14 settlement requirements -- mediation. (1) A dispute 14 15 denied in whole or in part, the response shall state the 15 concerning benefits arising under this chapter or chapter basis of the denial. 16 16 72, other than the disputes described in subsection (2), (c) Upon motion of a party or upon the mediator's own 17 17 must be brought before a department mediator as provided in motion, the mediator has the authority to dismiss a petition 18 18 this part. If a dispute still exists after the parties if he finds that either party did not comply with this 19 19 satisfy the mediation requirements in this part, either 20 subsection7. but-the A decision dismissing a petition under 20 party may petition the workers' compensation court for a this subsection must be in writing and must state in detail 21 21 resolution. the grounds for dismissal. The mediator's decision may be 22 22 (2) A dispute arising under this chapter that does not reviewed by the workers' compensation court upon motion of a 23 concern benefits or a dispute for which a specific provision 23 of this chapter gives the division jurisdiction must be 24 party. 24

25 (d) Nothing in this subsection relieves a party of an

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#### obligation otherwise contained in this chapter." 1 1 Section 2. Section 39-71-2406, MCA, is amended to 2 2 3 3 read: 4 4 \*39-71-2406. Purpose. The purpose of this part is to 5 prevent when possible the filing in the workers' 5 6 6 compensation court of actions by claimants or insurers 7 relating to claims under chapter 71 or 72 of this title if 7 8 8 an equitable and reasonable resolution of the dispute may be 9 9 effected at an earlier stage. To achieve this purpose, this 10 10 part provides for a procedure for mandatory, nonbinding 11 11 mediation. It is the intent of this part that the mediation 12 12 process be used to resolve cases on an informal basis at 13 minimal cost to the parties, and to this end, the parties 13 14 are encouraged REQUIRED to fully present their cases at the 14 15 mediation level. However, if a cause proceeds to the 15 16 workers' compensation court, the parties are not precluded 16 17 from presenting additional evidence before the court BUT 17 18 THEY--ARE--PREVENTED--PROM--RAISING--ISSUES--THAT--WERE--NOT 18 19 MEDIATED. IF A NEW ISSUE IS RAISED AT THE WORKERS' 19 20 COMPENSATION COURT THAT WAS NOT RAISED AT MEDIATION, THE 20 21 COURT SHALL REMAND THE ISSUE TO THE MEDIATOR 21 FOR 22 CONSIDERATION." 22 23 23 Section 3. Section 39-71-2409, MCA, is amended to 24 read: 24 25 25 "39-71-2409. Duties of mediator. A mediator shall

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assist the parties in negotiating a resolution to their dispute by: (1) facilitating an exchange of information between the parties; (2) assuring that all relevant evidence information is brought forth during the mediation process; (3) suggesting possible solutions to issues of dispute between the parties; (4) recommending a solution; and (5) assisting the parties to voluntarily resolve their dispute." Section 4. Section 39-71-2410, MCA, is amended to read: "39-71-2410. Limitations on mediation proceedings. (1) Mediation Except as may be necessary for the workers' compensation court to rule on issues arising under 39-71-2401(5)(c) or 39-71-2411(7)(c), mediation proceedings are: (a) held in private; (b) informal and held without a verbatim record; and (c) confidential.

(2) All communications, verbal or written, from the
parties to the mediator and any information and evidence
presented to the mediator during the proceeding are
confidential.

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(3) A mediator's files and records are closed to all
 but the parties.

3 (4) (a) A mediator may not be called to testify in any
4 proceeding concerning the issues discussed in the mediation
5 process.

6 (b) Neither the mediator's report nor any of the 7 information or recommendations contained in it are 8 admissible as evidence in any action subsequently brought in 9 any court of law.

10 (5) Notwithstanding subsections (1) through (4), a 11 mediator may issue a report and the parties and the mediator 12 may be required to attend a conference <u>before</u> the workers' 13 <u>compensation court</u> as set forth in 39-71-2411."

14 Section 5. Section 39-71-2411, MCA, is amended to 15 read:

16 "39-71-2411. Mediation procedure. (1) Except as
17 otherwise provided, a claimant or an insurer having a
18 dispute relating to benefits under chapter 71 or 72 of this
19 title may petition the department for mediation of the
20 dispute.

(2) A party may take part in mediation proceedingswith or without representation.

(3) The mediator shall review the division file for
the case and may receive any additional documentation or
evidence argument either party submits.

(4) The mediator shall request that each party offer 1 argument summarizing the party's position. A party's 2 3 argument must--include-the-evidence-the-party-would-present if--the--case--were--being---presented---to---the---worker's 4 compensation-judge-but should MUST fully present the party's 5 6 case. The argument is not limited by the rules of evidence. 7 (5) After the parties have presented all their 8 information and evidence argument to the mediator, he shall 9 recommend a solution to the parties within a reasonable time to be established by rule. 10

11 (6) A party shall notify the mediator within 45 days 12 of the mailing of his report whether the party accepts the mediator's recommendation. If either party does not accept 13 14 the mediator's recommendation, the party may petition the workers' compensation court for resolution of the dispute. 15 16 (7) (a) If a mediator determines that either party 17 failed to cooperate in the mediation process, the mediator 18 shall prepare a written report setting forth the 19 determination and the grounds for the determination. The 20 report must be mailed to the parties and to the workers' compensation court. Unless a party disputes 21 the determination as set forth in subsection (7)(c), the parties 22 23 shall repeat the mediation process, but only one time.

(b) A mediator may determine that a party has failedto cooperate in the mediation process only if the party

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1 failed to:

2 (i) supply information or offer a summary of the
3 party's position as reasonably requested by the mediator;

4 (ii) attend scheduled mediation conferences unless
5 excused by the mediator; or

6 (iii) listen to and review the information and position7 offered by the opposing party.

8 (c) If a party disputes a mediator's determination 9 that the party failed to cooperate in the mediation process, 10 the party may file a petition with the workers' compensation 11 court. Upon receipt of a petition, the court shall summon 12 the parties and the mediator to determine by oral discussion 13 whether the mediator's determination of noncooperation is 14 supportable. If the court finds that the mediator's 15 determination is supportable, the court may order the parties to attempt a second time to mediate their dispute." 16 17 NEW SECTION. Section 6. Extension of authority. Any existing authority to make rules on the subject of the 18 19 provisions of [this act] is extended to the provisions of [this act]. 20

-End-

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1	SENATE BILL NO. 372	1	(3) An appeal from a division
2	INTRODUCED BY NATHE, THAYER, AKLESTAD, SMITH, MARKS	2	workers' compensation court.
3	BY REQUEST OF THE GOVERNOR	3	(4) The common law and statute
4		4	not apply in a case brought to hear
5	A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE PURPOSE	5	(5) Except as otherwise prov
6	OF AND THE PROCEDURE IN THE MEDIATION PROVISIONS OF THE	6	before a party may bring a dis
7	WORKERS' COMPENSATION ACT; AND AMENDING SECTIONS 39-71-2401,	7	before a mediator, the parties shall
8	39-71-2406, 39-71-2409 THROUGH 39-71-2411, MCA."	8	follows:
9		9	(a) The party making a demand
10	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	10	party with a specific written
11	Section 1. Section 39-71-2401, MCA, is amended to	11	sufficient explanation and docum
12	read:	12	the other party to thoroughly evalua
13	"39-71-2401. Disputes jurisdiction evidence	13	(b) The party receiving the de
14	settlement requirements mediation. (1) A dispute	14	writing within 15 working days of
15	concerning benefits arising under this chapter or chapter	15	denied in whole or in part, the re
16	72, other than the disputes described in subsection (2),	16	basis of the denial.
17	must be brought before a department mediator as provided in	17	(c) Upon motion of a party <u>o</u>
18	this part. If a dispute still exists after the parties	18	motion, the mediator has the author
19	satisfy the mediation requirements in this part, either	19	if he finds that either party did
20	party may petition the workers' compensation court for a	20	subsection7. but-the <u>A decision di</u>
21	resolution.	21	this subsection must be in writing
22	(2) A dispute arising under this chapter that does not	22	the grounds for dismissal. The m
23	concern benefits or a dispute for which a specific provision	23	reviewed by the workers' compensati
24	of this chapter gives the division jurisdiction must be	24	party.
25	brought before the division.	25	(d) Nothing in this subsection

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order may be made to the

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d shall present the other demand that contains entary evidence to enable ate the demand.

lemand shall respond in receipt. If the demand is sponse shall state the

or upon the mediator's own ity to dismiss a petition not comply with this ismissing a petition under and must state in detail mediator's decision may be ion court upon motion of a

(d) Nothing in this subsection relieves a party of an

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REFERENCE BILL

Legislative Council

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	1	assist the parties in negotiating a resolution to their
o	2	dispute by:
	3	<ol> <li>facilitating an exchange of information between</li> </ol>
.0	4	the parties;
ı	5	(2) assuring that all relevant evidence information is
S	6	brought forth during the mediation process;
f	7	(3) suggesting possible solutions to issues of dispute
e	8	between the parties;
S	9	(4) recommending a solution; and
ig.	10	(5) assisting the parties to voluntarily resolve their
<u>n</u>	11	dispute."
<u>it</u>	12	Section 4. section 39-71-2410, MCA, is amended to
5	13	read:
<u>ne</u>	14	"39-71-2410. Limitations on mediation proceedings. (1)
<u>ie</u>	15	Mediation Except as may be necessary for the workers'
ed	16	compensation court to rule on issues arising under
<del>}</del> 9	17	<u>39-71-2401(5)(c) or 39-71-2411(7)(c), mediation</u> proceedings
Ŧ	18	are:
<u>3'</u>	19	(a) held in private;
1E	20	(b) informal and held without a verbatim record; and
DR	21	(c) confidential.
	22	(2) All communications, verbal or written, from the
:o	23	parties to the mediator and any information and evidence
	24	presented to the mediator during the proceeding are
11	25	confidential.

1 obligation otherwise contained in this chapter."

2 Section 2. Section 39-71-2406, MCA, is amended to 3 read:

4 \*39-71-2406. Purpose. The purpose of this part is to 5 prevent when possible the filing in the workers compensation court of actions by claimants or insurer. 6 7 relating to claims under chapter 71 or 72 of this title i 8 an equitable and reasonable resolution of the dispute may b 9 effected at an earlier stage. To achieve this purpose, thi 10 part provides for a procedure for mandatory, nonbindin 11 mediation. It is the intent of this part that the mediatio 12 process be used to resolve cases on an informal basis a 13 minimal cost to the parties, and to this end, the partie 14 are encouraged REQUIRED to fully present their cases at th mediation level. However, if a cause proceeds to th 15 16 workers' compensation court, the parties are not preclude 17 from presenting additional evidence before the court BB 18 THEY--ARE--PREVENTED--PROM--RAISING--ISSUES--THAT--WERE--NO 19 MEDIATED. IF A NEW ISSUE IS RAISED AT THE WORKERS 20 COMPENSATION COURT THAT WAS NOT RAISED AT MEDIATION, TH 21 COURT SHALL REMAND THE ISSUE TO THE MEDIATOR FO 22 CONSIDERATION." Section 3. Section 39-71-2409, MCA, is amended t 23 24 read:

25 "39-71-2409. Duties of mediator. A mediator shall

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(3) A mediator's files and records are closed to all
 but the parties.

3 (4) (a) A mediator may not be called to testify in any
4 proceeding concerning the issues discussed in the mediation
5 process.

6 (b) Neither the mediator's report nor any of the 7 information or recommendations contained in it are 8 admissible as evidence in any action subsequently brought in 9 any court of law.

10 (5) Notwithstanding subsections (1) through (4), a 11 mediator may issue a report and the parties and the mediator 12 may be required to attend a conference <u>before the workers'</u> 13 <u>compensation court</u> as set forth in 39-71-2411."

14 Section 5. Section 39-71-2411, MCA, is amended to 15 read:

16 "39-71-2411. Mediation procedure. (1) Except as
17 otherwise provided, a claimant or an insurer having a
18 dispute relating to benefits under chapter 71 or 72 of this
19 title may petition the department for mediation of the
20 dispute.

21 (2) A party may take part in mediation proceedings22 with or without representation.

(3) The mediator shall review the division file for
the case and may receive any additional documentation or
evidence argument either party submits.

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1 (4) The mediator shall request that each party offer argument summarizing the party's position. A party's 2 argument must--include-the-evidence-the-party-would-present 3 if--the--case--were--being---presented---to---the---worker's 4 5 compensation-judge-but should MUST fully present the party's case. The argument is not limited by the rules of evidence. 6 7 (5) After the parties have presented all their information and evidence argument to the mediator, he shall 8 recommend a solution to the parties within a reasonable time 9 to be established by rule. 10

(6) A party shall notify the mediator within 45 days 11 12 of the mailing of his report whether the party accepts the mediator's recommendation. If either party does not accept 13 14 the mediator's recommendation, the party may petition the 15 workers' compensation court for resolution of the dispute. 16 (7) (a) If a mediator determines that either party failed to cooperate in the mediation process, the mediator 17 18 shall prepare a written report setting forth the determination and the grounds for the determination. The 19 report must be mailed to the parties and to the workers' 20 21 compensation court. Unless a party disputes the determination as set forth in subsection (7)(c), the parties 22 shall repeat the mediation process, but only one time. 23

(b) A mediator may determine that a party has failedto cooperate in the mediation process only if the party

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1 failed to:

2 (i) supply information or offer a summary of the
3 party's position as reasonably requested by the mediator;
4 (ii) attend scheduled mediation conferences unless

5 excused by the mediator; or

6 (iii) listen to and review the information and position7 offered by the opposing party.

8 (c) If a party disputes a mediator's determination 9 that the party failed to cooperate in the mediation process, 10 the party may file a petition with the workers' compensation 11 court. Upon receipt of a petition, the court shall summon 12 the parties and the mediator to determine by oral discussion 13 whether the mediator's determination of noncooperation is 14 supportable. If the court finds that the mediator's 15 determination is supportable, the court may order the 16 parties to attempt a second time to mediate their dispute." 17 NEW SECTION. Section 6. Extension of authority. Any 18 existing authority to make rules on the subject of the 19 provisions of [this act] is extended to the provisions of 20 [this act].

-End-

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