

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.

IN THE HOUSE

FEBRUARY 21, 1989

INTRODUCED AND REFERRED TO COMMITTEE
ON LABOR & EMPLOYMENT RELATIONS.

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.

1 *Senate* BILL NO. *372*
 2 INTRODUCED BY *NATHAN* *Hayes* *AKLES/AD*
 3 *Smith* BY REQUEST OF THE GOVERNOR *Wick*

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 read:

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

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

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

1 workers' compensation court.

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
 18 if he finds that either party did not comply with this
 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 an
 25 obligation otherwise contained in this chapter."

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

"39-71-2406. Purpose. The purpose of this part is to prevent when possible the filing in the workers' compensation court of actions by claimants or insurers relating to claims under chapter 71 or 72 of this title if an equitable and reasonable resolution of the dispute may be effected at an earlier stage. To achieve this purpose, this part provides for a procedure for mandatory, nonbinding mediation. It is the intent of this part that the mediation process be used to resolve cases on an informal basis at minimal cost to the parties, and to this end, the parties are encouraged to fully present their cases at the mediation level. However, if a cause proceeds to the workers' compensation court, the parties are not precluded from presenting additional evidence before the court."

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

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

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

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

(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 before the workers' compensation court as set forth in 39-71-2411."

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

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

(2) A party may take part in mediation proceedings 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.

(4) The mediator shall request that each party offer argument summarizing the party's position. A party's argument ~~must--include-the-evidence-the-party-would-present-if-the-case-were-being-presented-to-the-worker's-compensation--judge--but~~ should fully present the party's case. The argument is not limited by the rules of evidence.

(5) After the parties have presented all their information and evidence argument to the mediator, he shall recommend a solution to the parties within a reasonable time to be established by rule.

(6) A party shall notify the mediator within 45 days of the mailing of his report whether the party accepts the mediator's recommendation. If either party does not accept the mediator's recommendation, the party may petition the workers' compensation court for resolution of the dispute.

(7) (a) If a mediator determines that either party failed to cooperate in the mediation process, the mediator shall prepare a written report setting forth the determination and the grounds for the determination. The report must be mailed to the parties and to the workers' compensation court. Unless a party disputes the determination as set forth in subsection (7)(c), the parties shall repeat the mediation process, but only one time.

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

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

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

(iii) listen to and review the information and position offered 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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1 court. Upon receipt of a petition, the court shall summon
2 the parties and the mediator to determine by oral discussion
3 whether the mediator's determination of noncooperation is
4 supportable. If the court finds that the mediator's
5 determination is supportable, the court may order the
6 parties to attempt a second time to mediate their dispute."

7 NEW SECTION. **Section 6.** Extension of authority. Any
8 existing authority to make rules on the subject of the
9 provisions of [this act] is extended to the provisions of
10 [this act].

-End-

APPROVED BY COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONS

SENATE BILL NO. 372

INTRODUCED BY NATHE, THAYER, AKLESTAD, SMITH, MARKS

BY REQUEST OF THE GOVERNOR

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

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

Section 1. Section 39-71-2401, MCA, is amended to
read:

"39-71-2401. Disputes -- jurisdiction -- evidence --
settlement requirements -- mediation. (1) A dispute
concerning benefits arising under this chapter or chapter
72, other than the disputes described in subsection (2),
must be brought before a department mediator as provided in
this part. If a dispute still exists after the parties
satisfy the mediation requirements in this part, either
party may petition the workers' compensation court for a
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.

(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
not apply in a case brought to hearing before the division.

(5) Except as otherwise provided in this chapter,
before a party may bring a dispute concerning benefits
before a mediator, the parties shall attempt to settle as
follows:

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

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

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

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

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'
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
12 process be used to resolve cases on an informal basis at
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

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 "39-71-2410. 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 39-71-2401(5)(c) or 39-71-2411(7)(c), mediation 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

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 before the workers'
10 compensation court as set forth in 39-71-2411."

11 **Section 5.** Section 39-71-2411, MCA, is amended to
12 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 proceedings
19 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~~

1 ~~if---the---case---were---being--presented--to--the--worker's~~
2 ~~compensation-judge-but~~ should MUST fully present the party's
3 case. The argument is not limited by the rules of evidence.

4 (5) After the parties have presented all their
5 information and evidence argument to the mediator, he shall
6 recommend a solution to the parties within a reasonable time
7 to be established by rule.

8 (6) A party shall notify the mediator within 45 days
9 of the mailing of his report whether the party accepts the
10 mediator's recommendation. If either party does not accept
11 the mediator's recommendation, the party may petition the
12 workers' compensation court for resolution of the dispute.

13 (7) (a) If a mediator determines that either party
14 failed to cooperate in the mediation process, the mediator
15 shall prepare a written report setting forth the
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
19 determination as set forth in subsection (7)(c), the parties
20 shall repeat the mediation process, but only one time.

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;

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

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

5 (c) If a party disputes a mediator's determination
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."

14 NEW SECTION. **Section 6.** Extension of authority. Any
15 existing authority to make rules on the subject of the
16 provisions of [this act] is extended to the provisions of
17 [this act].

-End-

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BY REQUEST OF THE GOVERNOR

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

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

Section 1. Section 39-71-2401, MCA, is amended to read:

"39-71-2401. Disputes -- jurisdiction -- evidence -- settlement requirements -- mediation. (1) A dispute concerning benefits arising under this chapter or chapter 72, other than the disputes described in subsection (2), must be brought before a department mediator as provided in this part. If a dispute still exists after the parties satisfy the mediation requirements in this part, either party may petition the workers' compensation court for a 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.

(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 not apply in a case brought to hearing before the division.

(5) Except as otherwise provided in this chapter, before a party may bring a dispute concerning benefits before a mediator, the parties shall attempt to settle as follows:

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

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

(c) Upon motion of a party or upon the mediator's own motion, the mediator has the authority to dismiss a petition if he finds that either party did not comply with this subsection~~7~~. but the A decision dismissing a petition under this subsection must be in writing and must state in detail the grounds for dismissal. The mediator's decision may be reviewed by the workers' compensation court upon motion of a party.

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

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'
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
12 process be used to resolve cases on an informal basis at
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. IF A NEW ISSUE IS RAISED AT THE WORKERS'
20 COMPENSATION COURT THAT WAS NOT RAISED AT MEDIATION, THE
21 COURT SHALL REMAND THE ISSUE TO THE MEDIATOR FOR
22 CONSIDERATION."

23 **Section 3.** Section 39-71-2409, MCA, is amended to
24 read:

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

1 assist the parties in negotiating a resolution to their
2 dispute by:

- 3 (1) facilitating an exchange of information between
- 4 the parties;
- 5 (2) assuring that all relevant evidence information is
- 6 brought forth during the mediation process;
- 7 (3) suggesting possible solutions to issues of dispute
- 8 between the parties;
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- 11 dispute."

12 **Section 4.** Section 39-71-2410, MCA, is amended to
13 read:

14 "39-71-2410. Limitations on mediation proceedings. (1)
15 Mediation Except as may be necessary for the workers'
16 compensation court to rule on issues arising under
17 39-71-2401(5)(c) or 39-71-2411(7)(c), mediation proceedings
18 are:

- 19 (a) held in private;
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- 21 (c) confidential.
- 22 (2) All communications, verbal or written, from the
- 23 parties to the mediator and any information and evidence
- 24 presented to the mediator during the proceeding are
- 25 confidential.

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

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

(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 before the workers' compensation court as set forth in 39-71-2411."

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

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

(2) A party may take part in mediation proceedings 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.

(4) The mediator shall request that each party offer argument summarizing the party's position. A party's argument ~~must--include-the-evidence-the-party-would-present if--the--case--were--being---presented---to---the---worker's compensation-judge-but~~ should MUST fully present the party's case. The argument is not limited by the rules of evidence.

(5) After the parties have presented all their information and evidence argument to the mediator, he shall recommend a solution to the parties within a reasonable time to be established by rule.

(6) A party shall notify the mediator within 45 days of the mailing of his report whether the party accepts the mediator's recommendation. If either party does not accept the mediator's recommendation, the party may petition the workers' compensation court for resolution of the dispute.

(7) (a) If a mediator determines that either party failed to cooperate in the mediation process, the mediator shall prepare a written report setting forth the determination and the grounds for the determination. The report must be mailed to the parties and to the workers' compensation court. Unless a party disputes the determination as set forth in subsection (7)(c), the parties shall repeat the mediation process, but only one time.

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

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5 excused by the mediator; or

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7 offered by the opposing party.

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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
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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
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-End-

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

3 BY REQUEST OF THE GOVERNOR

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5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE PURPOSE
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23 concern benefits or a dispute for which a specific provision
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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
12 process be used to resolve cases on an informal basis at
13 minimal cost to the parties, and to this end, the parties
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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
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20 COMPENSATION COURT THAT WAS NOT RAISED AT MEDIATION, THE
21 COURT SHALL REMAND THE ISSUE TO THE MEDIATOR FOR
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23 **Section 3.** Section 39-71-2409, MCA, is amended to
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1 assist the parties in negotiating a resolution to their
2 dispute by:

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12 **Section 4.** Section 39-71-2410, MCA, is amended to
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- 23 parties to the mediator and any information and evidence
- 24 presented to the mediator during the proceeding are
- 25 confidential.

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

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

(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 before the workers' compensation court as set forth in 39-71-2411."

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

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

(2) A party may take part in mediation proceedings 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.

(4) The mediator shall request that each party offer argument summarizing the party's position. A party's argument ~~must--include-the-evidence-the-party-would-present if--the--case--were--being---presented---to---the---worker's compensation-judge-but~~ should MUST fully present the party's case. The argument is not limited by the rules of evidence.

(5) After the parties have presented all their information and evidence argument to the mediator, he shall recommend a solution to the parties within a reasonable time to be established by rule.

(6) A party shall notify the mediator within 45 days of the mailing of his report whether the party accepts the mediator's recommendation. If either party does not accept the mediator's recommendation, the party may petition the workers' compensation court for resolution of the dispute.

(7) (a) If a mediator determines that either party failed to cooperate in the mediation process, the mediator shall prepare a written report setting forth the determination and the grounds for the determination. The report must be mailed to the parties and to the workers' compensation court. Unless a party disputes the determination as set forth in subsection (7)(c), the parties shall repeat the mediation process, but only one time.

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

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 position
7 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-