

SENATE BILL NO. 428

INTRODUCED BY THAYER, NATHE, THOMAS, NOBLE, MEYER,
DRISCOLL, PAVLOVICH, GRADY, MAZUREK, WILLIAMS, SMITH,
SQUIRES, GLASER, RAPP-SVRCEK, RUSSELL, AKLESTAD,
DEVLIN, RASMUSSEN, GRINDE, MARKS

BY REQUEST OF THE GOVERNOR

IN THE SENATE

FEBRUARY 15, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
	FIRST READING.
FEBRUARY 17, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 20, 1989	PRINTING REPORT.
	SECOND READING, DO PASS.
	ENGROSSING REPORT.
FEBRUARY 21, 1989	THIRD READING, PASSED. AYES, 46; NOES, 4.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 21, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
FEBRUARY 28, 1989	FIRST READING.
MARCH 22, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 28, 1989	SECOND READING, CONCURRED IN AS AMENDED.
MARCH 29, 1989	THIRD READING, CONCURRED IN. AYES, 85; NOES, 11.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 4, 1989

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 6, 1989

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *House* BILL NO. *428*
 2 INTRODUCED BY *Mark Mayer* *NATHAN Thome*
 3 BY REQUEST OF THE GOVERNOR *ARKES THOMPSON*
 4 *Richard L. ...*
 5 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE STATE

6 COMPENSATION MUTUAL INSURANCE FUND TO INSURE EMPLOYERS FOR
 7 WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LIABILITY;
 8 PROVIDING FOR A BOARD OF DIRECTORS; ESTABLISHING THE POWERS
 9 AND DUTIES OF THE BOARD AND THE CHIEF EXECUTIVE OFFICER OF
 10 THE STATE COMPENSATION MUTUAL INSURANCE FUND; TRANSFERRING
 11 THE OFFICE OF WORKERS' COMPENSATION JUDGE TO THE DEPARTMENT
 12 OF LABOR; AMENDING SECTIONS 2-15-1014, 2-15-1702, 2-18-103,
 13 33-17-502, 33-18-212, 39-71-116, 39-71-201, 39-71-203,
 14 39-71-206, 39-71-306 THROUGH 39-71-308, 39-71-403,
 15 39-71-421, 39-71-604, 39-71-704, 39-71-901, 39-71-908,
 16 39-71-910, 39-71-911, 39-71-913, 39-71-2303, 39-71-2307,
 17 39-71-2308, 39-71-2321 THROUGH 39-71-2323, 39-71-2325,
 18 39-71-2327, 39-71-2501, 39-72-201, AND 39-72-310, MCA;
 19 REPEALING SECTIONS 39-71-2301, 39-71-2302, 39-71-2304
 20 THROUGH 39-21-2306, AND 39-71-2324, MCA; AND PROVIDING
 21 EFFECTIVE DATES."

22 STATEMENT OF INTENT

23 A statement of intent is required for this bill because
 24 [section 8] grants rulemaking authority to the newly created
 25

1 state fund to adopt or repeal rules or amend existing rules
 2 to implement the new state compensation mutual insurance
 3 fund. The chief purposes of creating the state fund as a
 4 mutual insurer and placing it in a department other than the
 5 department of labor are:

6 (1) to remove the inherent conflict between the
 7 interests of the workers' compensation division in
 8 regulating all workers' compensation insurers in this state,
 9 including the state compensation insurance fund, and the
 10 interests of the state fund as a workers' compensation
 11 insurer; and

12 (2) to ensure the solvency of the new state fund.

13 The legislature recognizes that the fund actuary has
 14 determined that at June 30, 1988, a full funding deficiency
 15 of \$157.3 million existed for the present state compensation
 16 insurance fund. The legislature intends that the new state
 17 compensation mutual insurance fund adopt rules in a manner
 18 that will assure the solvency of the new fund. Rates must be
 19 set on an actuarially sound basis as required by state law.
 20 To further ensure the solvency of the state fund, it is not
 21 the workers' compensation insurer of last resort, as the
 22 state fund presently is. The new state fund would not be
 23 bound to insure all employers who apply to it for workers'
 24 compensation coverage, except for state agencies. It could
 25 refuse to insure an employer it considered a poor risk.

1 As the primary means of ensuring the solvency of the
2 state fund, it must institute safety programs and set rates
3 in a manner that awards employers who provide a safe working
4 environment and penalizes employers who do not.

5 The legislature further intends that the new state fund
6 institute programs to automate the processing of claims and
7 payment of benefits. The state fund may contract out to the
8 private sector certain claims administration and servicing
9 functions if the state fund determines it to be
10 cost-effective.

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

13 NEW SECTION. Section 1. Intent and purpose of plan.

14 It is the intent and purpose of the state fund to allow
15 employers the option to insure their liability for workers'
16 compensation and occupational disease coverage with a
17 nonprofit, independent public corporation. The state fund is
18 a domestic mutual insurer. It is not required to insure any
19 employer in this state requesting coverage, and it may
20 refuse coverage for an employer, except a state agency, that
21 the state fund determines to be a bad risk. The state fund
22 must be neither more nor less than self-supporting. Premium
23 rates must be set at a level sufficient to fund the
24 insurance program, including the costs of administration,
25 benefits, and adequate reserves. For the purpose of keeping

1 the state fund solvent, it must implement safety programs to
2 reward an employer with a good safety record and penalize an
3 employer with a poor safety record.

4 NEW SECTION. Section 2. Definitions. Unless the
5 context requires otherwise, in [sections 1, 2, and 4 through
6 12] the following definitions apply:

7 (1) "Board" means the board of directors of the state
8 compensation mutual insurance fund provided for in [section
9 3].

10 (2) "Department" means the department of
11 administration provided for in 2-15-1001.

12 (3) "Executive director" means the chief executive
13 officer of the state compensation mutual insurance fund.

14 (4) "State fund" means the state compensation mutual
15 insurance fund provided for in [section 4]. It is also known
16 as compensation plan No. 3 or plan No. 3.

17 NEW SECTION. Section 3. Board of directors of the
18 state compensation mutual insurance fund. (1) There is a
19 board of directors of the state compensation mutual
20 insurance fund.

21 (2) The board is allocated to the department for
22 administrative purposes only as prescribed in 2-15-121.
23 However, the board may employ its own staff.

24 (3) The board may provide for its own office space and
25 the office space of the state fund.

1 (4) The board consists of five members appointed by
2 the governor. The executive director of the state fund is an
3 ex officio nonvoting member.

4 (5) At least three of the five members shall represent
5 state fund policyholders and may be employees of state fund
6 policyholders. At least three members of the board shall
7 represent private, for-profit enterprises. A member of the
8 board may not:

9 (a) represent or be an employee of an insurance
10 company that is licensed to transact workers' compensation
11 insurance under compensation plan No. 2; or

12 (b) be an employee of a self-insured employer under
13 compensation plan No. 1.

14 (6) A member is appointed for a term of 4 years. The
15 terms of board members must be staggered. A member of the
16 board may serve no more than two 4-year terms. A member
17 shall hold office until a successor is appointed and
18 qualified.

19 (7) The board is designated as a quasi-judicial board
20 for the purposes of 2-15-124, except that the requirement
21 that at least one member be an attorney does not apply.

22 NEW SECTION. Section 4. State compensation mutual
23 insurance fund created. There is a state compensation mutual
24 insurance fund known as the state fund that is a nonprofit,
25 independent public corporation established for the purpose

1 of allowing an option for employers to insure their
2 liability for workers' compensation and occupational disease
3 coverage under this chapter. The state fund exists as a
4 domestic mutual insurer as defined in 33-3-102.

5 NEW SECTION. Section 5. Management of state fund --
6 powers and duties of the board. (1) The management and
7 control of the state fund is vested solely in the board.

8 (2) The board is vested with full power, authority,
9 and jurisdiction over the state fund. The board may perform
10 all acts necessary or convenient in the exercise of any
11 power, authority, or jurisdiction over the state fund,
12 either in the administration of the state fund or in
13 connection with the insurance business to be carried on
14 under the provisions of [sections 1, 2, and 4 through 12],
15 as fully and completely as the governing body of a private
16 mutual insurance carrier, in order to fulfill the objectives
17 and intent of [sections 1, 2, and 4 through 12].

18 NEW SECTION. Section 6. Personal liability excluded.
19 The members of the board, the executive director, and
20 employees of the state fund are not liable personally,
21 either jointly or severally, for any debt or obligation
22 created or incurred by the state fund.

23 NEW SECTION. Section 7. Appointment of executive
24 director -- management staff. The board shall appoint an
25 executive director of the state fund who has general

1 responsibility for the operations of the state fund. The
 2 executive director must have executive level experience,
 3 with knowledge of the insurance industry. The executive
 4 director must receive compensation as set by the board and
 5 serve at the pleasure of the board. The executive director
 6 may hire the management staff of the state fund, each of
 7 whom serves at the pleasure of the executive director.

8 NEW SECTION. Section 8. Powers of the state fund --
 9 rulemaking. For the purposes of carrying out its functions,
 10 the state fund may:

11 (1) insure any employer for workers' compensation and
 12 occupational disease liability as the coverage is required
 13 by the laws of this state and, in connection with the
 14 coverage, provide employers' liability insurance. The state
 15 fund may charge a minimum yearly premium to cover its
 16 administrative costs for coverage of a small employer.

17 (2) sue and be sued;

18 (3) adopt, amend, and repeal rules relating to the
 19 conduct of its business;

20 (4) enter into contracts relating to the
 21 administration of the state fund, including claims
 22 management, servicing, and payment;

23 (5) collect and disburse money received;

24 (6) adopt classifications and charge premiums for the
 25 classifications so that the state fund will be neither more

1 nor less than self-supporting. The state fund must belong
 2 to the national council on compensation insurance and shall
 3 use the classifications of employment adopted by the
 4 national council.

5 (7) pay the amounts determined due under a policy of
 6 insurance issued by the state fund;

7 (8) hire personnel;

8 (9) declare dividends if there is an excess of assets
 9 over liabilities. However, dividends may not be paid until
 10 the unfunded liability of the state fund is eliminated.

11 (10) perform all functions and exercise all powers of a
 12 domestic mutual insurer that are necessary, appropriate, or
 13 convenient for the administration of the state fund.

14 NEW SECTION. Section 9. Property of the state fund --
 15 investment required. All premiums and other money paid to
 16 the state fund, all property and securities acquired through
 17 the use of money belonging to the state fund, and all
 18 interest and dividends earned upon money belonging to the
 19 state fund are the sole property of the state fund and must
 20 be used exclusively for the operations and obligations of
 21 the state fund. The money collected by the state fund may
 22 not be used for any other purpose. However, state fund money
 23 must be invested by the board of investments provided for in
 24 2-15-1808.

25 NEW SECTION. Section 10. State fund a mutual

1 insurance carrier. (1) The state fund is a domestic mutual
 2 insurer controlled by the laws relating to the regulation of
 3 domestic mutual insurers in this state. However, the
 4 formation, incorporation, bylaws, and bonding requirements
 5 set forth in Title 33, chapter 3, do not apply to the state
 6 fund.

7 (2) The commissioner of insurance may not terminate
 8 the operations of the state fund based on insolvency due to
 9 the unfunded liability that is recognized to exist on the
 10 date of passage of [sections 1, 2, and 4 through 12] and
 11 recognized in [section 12].

12 (3) The state fund is subject to the premium tax
 13 liability for insurers as provided in 33-2-705.

14 NEW SECTION. Section 11. Assets and liabilities of
 15 prior state fund. All assets and funds held by the state
 16 compensation insurance fund established in 39-71-2301
 17 through 39-71-2308 and 39-71-2321 through 39-71-2327 must be
 18 transferred to the state fund, and the state fund shall
 19 assume liability for all outstanding claims and indebtedness
 20 of the previously existing state fund.

21 NEW SECTION. Section 12. Unfunded liability. (1) It
 22 is recognized at the date of creation of the state fund that
 23 there exists an unfunded liability that is being assumed by
 24 the newly created state fund for the prior state
 25 compensation insurance fund's liability for industrial

1 injuries and occupational diseases that occurred prior to
 2 July 1, 1987. To assist the state fund in alleviating the
 3 unfunded liability, the premium taxes collected by the state
 4 from the following sources must be transferred to the newly
 5 created state fund:

6 (a) the state fund;
 7 (b) excess or reinsurance policies on self-insurers
 8 writing coverage on a self-insurer's workers' compensation
 9 program under compensation plan No. 1; and

10 (c) private insurance carriers writing workers'
 11 compensation insurance under compensation plan No. 2.

12 (2) The premium taxes must be transferred to the state
 13 fund for payment of the unfunded liability. The premium tax
 14 payments must continue until the unfunded liability has been
 15 paid, at which time the premium taxes must be paid to the
 16 general fund.

17 NEW SECTION. Section 13. Assigned risk plan. (1) The
 18 commissioner of insurance shall promulgate and administer a
 19 plan to equitably apportion among the state fund, plan
 20 No. 3, and private insurers, plan No. 2, the coverage
 21 required by this chapter for employers who are unable to
 22 procure coverage through ordinary methods.

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

25 (3) If an 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 14. 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 section, exists).

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

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

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

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

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

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

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

6 (10) "Invalid" means one who is physically or mentally
7 incapacitated.

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

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

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

25 (14) "Permanent partial disability" means a condition,

1 after a worker has reached maximum healing, in which a
2 worker:

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

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

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

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

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

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

24 (19) "Reasonably safe place to work" means that the
25 place of employment has been made as free from danger to the

1 life or safety of the employee as the nature of the
2 employment will reasonably permit.

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

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

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

13 **Section 15.** Section 39-71-201, MCA, is amended to
14 read:

15 "39-71-201. Administration fund. (1) A workers'
16 compensation administration fund is established out of which
17 all costs of administering the Workers' Compensation and
18 Occupational Disease Acts and the various occupational
19 safety acts the division must administer are to be paid upon
20 lawful appropriation. The following moneys money collected
21 by the division ~~shall~~ must be deposited in the state
22 treasury to the credit of the workers' compensation
23 administrative fund and ~~shall~~ must be used for the
24 administrative expenses of the division:

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

1 39-71-304;

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

5 (c) all fees paid from an assessment on each plan No.
6 1 employer, plan No. 2 insurer, and plan No. 3, the state
7 insurance fund. The assessments ~~shall~~ must be levied
8 against the preceding calendar year's gross annual payroll
9 of the plan No. 1 employers and the gross annual direct
10 premiums collected in Montana on the policies of the plan
11 No. 2 insurers, insuring employers covered under the
12 chapter, during the preceding calendar year. However, no
13 assessment of the plan No. 1 employer or plan No. 2 insurer
14 ~~shall~~ may be less than \$200. The assessments ~~shall~~ must be
15 sufficient to fund the direct costs identified to the three
16 plans and an equitable portion of the indirect costs based
17 on the ratio of the preceding fiscal year's indirect costs
18 distributed to the plans, using proper accounting and cost
19 allocation procedures. Plan No. 3 ~~shall~~ must be assessed an
20 amount sufficient to fund its direct costs and an equitable
21 portion of the indirect costs as referred to above. Other
22 sources of revenue, including unexpended funds from the
23 preceding fiscal year, ~~shall~~ must be used to reduce the
24 costs before levying the assessments.

25 (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 claim therefor."

Section 16. Section 39-71-203, MCA, is amended to read:

"39-71-203. Powers of division -- rules ---staffing.

(1) The division is hereby vested with full power, authority, and jurisdiction to do and perform any and all things,--whether--herein--specifically--designated---or---in addition--thereto, that are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this chapter.

(2) The division may adopt rules to carry out the provisions of this chapter.

{3}--The division shall employ sufficient personnel--to allow--it--to--meet--the--claims--processing--goals--contained--in 39-71-604--The division shall--implement--staffing--patterns that are supported by indicators of workload.--The open file

is the workload--indicator--for--claims--processing,--and--the number of open claims per claims examiner may not be less than--300.--The--claims--support--staff,--including--the--file, medical pay, and new claims units, may not exceed--two--PTEs per--claims--examiner.--The--administrative--and--underwriting staffing must be based--on--the--number--of--premium--paying policyholders---and--may--not--exceed--1.4--PTEs--per--1,000 policyholders.

{4}--The division administrator shall submit a--revised operation--plan--to--the--budget--office--for--review--and--approval and--to--the--legislative--finance--committee--for--review--whenever increases or decreases of staff are necessary--to--implement the provisions of subsection {3}.

{5}--Funds from the state special revenue fund shall be used to implement subsection {3}."

Section 17. Section 39-71-206, MCA, is amended to read:

"39-71-206. Legal advisers adviser of division and state fund. {1} The attorney general shall be is the legal adviser of the division and the state fund and shall represent it either entity in all proceedings whenever so if requested by the division or state fund any member thereof.

{2}--The division may, in the investigation and defense of cases under plan No. 3 of the Workers' Compensation--Act, employ--such--other--attorney--or--legal adviser as it deems

1 necessary-and-pay-for-the-same-out-of-the-industrial
2 insurance-account-in-the-expendable-trust-fund."

3 **Section 18.** Section 39-71-306, MCA, is amended to
4 read:

5 "39-71-306. Plan-one-employers-and-plan-two-insurers
6 Insurers to file duplicate receipts paid for injuries and
7 statements of medical expenditures. Every employer--coming
8 under--the--provisions--of-compensation-plan-No-1-and-every
9 insurer-coming-under-the-provisions-of-compensation-plan-No-
10 2 insurer shall, on or before the 15th day of each and every
11 month, file with the division:

12 (1) duplicate receipts for all payments made during
13 the previous month to injured workers or their beneficiaries
14 or dependents; and

15 (2) statements showing the amounts expended during the
16 previous month for medical, surgical, and hospital services
17 for injured workers and for the burial of deceased workers."

18 **Section 19.** Section 39-71-307, MCA, is amended to
19 read:

20 "39-71-307. Employers and insurers to file reports of
21 accidents. (1) Every employer of-labor and every insurer is
22 hereby required to file with the division, under such
23 division rules as-the-division-may-from-time-to-time-make, a
24 full and complete report of every accident to an employee
25 arising out of or in the course of his employment and

1 resulting in loss of life or injury to such--person the
2 employee. Such The reports shall must be furnished to the
3 division in such the form and such detail as the division
4 shall--from-time-to-time-prescribe prescribes and shall-make
5 must provide specific answers to all questions required by
6 the division under its rules,--except,--in-case-he However,
7 if an employee is unable to answer any--such--questions,--a
8 good-and-sufficient-reason-shall-be-given-for-such-failure a
9 question, he shall state the reason he is unable to answer.

10 (2) Every insurance---company insurer transacting
11 business under this chapter shall, at the time and in the
12 manner prescribed by the division, make and file with the
13 division such the reports of accidents as the division may
14 require requires."

15 **Section 20.** Section 39-71-308, MCA, is amended to
16 read:

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

1 assessments."

2 **Section 21.** Section 39-71-403, MCA, is amended to
3 read:

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

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

1 the same provisions as a private employer electing
2 compensation plan No. 1.

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

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

17 **Section 22.** Section 39-71-421, MCA, is amended to
18 read:

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

1 program."

2 **Section 23.** Section 39-71-604, MCA, is amended to
3 read:

4 "39-71-604. Application for compensation. (1) Where if
5 a worker is entitled to benefits under this chapter, the
6 worker shall file with the insurer or the division all
7 reasonable information needed by the insurer to determine
8 compensability. It is the duty of the worker's attending
9 physician to lend all necessary assistance in making
10 application for compensation and such proof of other matters
11 as may be required by the rules of the division without
12 charge to the worker. The filing of forms or other
13 documentation by the attending physician does not constitute
14 a claim for compensation.

15 (2) Where if death results from an injury, the parties
16 entitled to compensation or someone in their behalf shall
17 file a claim with the insurer or the division. The claim
18 must be accompanied with proof of death and proof of
19 relationship, showing the parties entitled to compensation,
20 certificate of the attending physician, if any, and such
21 other proof as may be required by the division.

22 ~~{3}--The-goal-of-the-division-is-to-process-all--claims~~
23 ~~for--compensation-within-14-days-after-initial-acceptance-of~~
24 ~~liability-for-a-claim--"~~

25 **Section 24.** Section 39-71-704, MCA, is amended to

1 read:

2 "39-71-704. Payment of medical, hospital, and related
3 services -- fee schedules and hospital rates. (1) In
4 addition to the compensation provided by this chapter and as
5 an additional benefit separate and apart from compensation,
6 the following ~~shall~~ must be furnished:

7 (a) After the happening of the injury, the insurer
8 shall furnish, without limitation as to length of time or
9 dollar amount, reasonable services by a physician or
10 surgeon, reasonable hospital services and medicines when
11 needed, and such other treatment as may be approved by the
12 division for the injuries sustained.

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

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

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

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

16 (4) Notwithstanding subsection (2), beginning January
 17 1, 1988, and ending January 1, 1990, the maximum fees
 18 payable by insurers must be limited to the relative value
 19 fee schedule established in January 1987. Notwithstanding
 20 subsection (3), the hospital rates payable by insurers must
 21 be limited to those set in January 1988, until December 31,
 22 1989."

23 **Section 25.** Section 39-71-901, MCA, is amended to
 24 read:

25 "39-71-901. Definitions. As used in this part, the

1 following definitions apply:

2 (1) "Vocationally handicapped" means a person who has
 3 a medically certifiable permanent impairment which is a
 4 substantial obstacle to obtaining employment or to obtaining
 5 reemployment if the employee should become unemployed,
 6 considering such factors as the person's age, education,
 7 training, experience, and employment rejection.

8 (2) "Certificate" means documentation issued by the
 9 division ~~of workers' compensation~~ to an individual who is
 10 vocationally handicapped.

11 (3) "Fund" means the subsequent injury fund."

12 **Section 26.** Section 39-71-908, MCA, is amended to
 13 read:

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

25 **Section 27.** Section 39-71-910, MCA, is amended to

1 read:

2 "39-71-910. Procedure for resolving disputes as to
3 liability under part. (1) If an employee was employed or
4 retained in employment under the provisions of this part and
5 a dispute or controversy arises as to payment of benefits or
6 the liability therefor, the division shall hold a hearing
7 and resolve all disputes. On motion made in writing by the
8 ~~employer, carrier, or industrial insurance fund~~ insurer, the
9 administrator shall join the fund as a party defendant.

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

24 (3) At the time of the hearing, the employer insurer
25 and fund may appear, ~~cross-examine~~ witnesses, give evidence,

1 and defend both on the issue of liability of the employer
2 insurer to the employee and on the issue of the liability of
3 the fund.

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

7 **Section 28.** Section 39-71-911, MCA, is amended to
8 read:

9 "39-71-911. Obligation to make payments on behalf of
10 fund not an independent liability. The obligation imposed by
11 this part on the ~~employer, carrier, or industrial insurance~~
12 fund insurer to make payments on behalf of the fund does not
13 impose an independent liability on the ~~employer, carrier, or~~
14 industrial insurance fund insurer."

15 **Section 29.** Section 39-71-913, MCA, is amended to
16 read:

17 "39-71-913. Payments by fund directly to persons
18 entitled. If the ~~employer, carrier, or the industrial~~
19 insurance fund insurer does not make the payments on behalf
20 of the fund, the fund may make the payments directly to the
21 persons entitled to the payments."

22 **Section 30.** Section 39-71-2303, MCA, is amended to
23 read:

24 "39-71-2303. Manner of electing -- contract or policy
25 of insurance -- payment of premium. The division state fund

1 shall prescribe the procedure by which ~~employers~~ an employer
 2 may elect to be bound by compensation plan No. 3, the
 3 effective time of ~~such the~~ the election, and the manner in which
 4 ~~such the~~ the election is terminated for reasons other than
 5 default in payment of premiums. Every employer electing to
 6 be bound by compensation plan No. 3 ~~shall~~ must receive from
 7 the division state fund a contract or policy of insurance in
 8 a form approved by the division. The premium ~~thereon--shall~~
 9 must be paid by the employer to the division state fund at
 10 such times as the ~~division--shall--prescribe~~ state fund
 11 prescribes and ~~shall~~ must be paid over by the division state
 12 fund to the state treasurer to the credit of the industrial
 13 insurance-expendable-trust state mutual insurance fund."

14 **Section 31.** Section 39-71-2307, MCA, is amended to
 15 read:

16 "39-71-2307. Cancellation of coverage under plan for
 17 default -- thirty days' notice required. The ~~division--is~~
 18 ~~hereby-authorized-in-its-discretion-to~~ state fund may cancel
 19 an employer's right to operate under plan No. 3 of the
 20 Workers' Compensation Act for failure to pay the premiums
 21 due. When the ~~division-makes-an-order-canceling~~ state fund
 22 cancels an employer's right for failure to pay premiums, the
 23 division it shall notify the employer of its intent to
 24 cancel the employer at least 30 days before the cancellation
 25 becomes effective. After the cancellation date, the employer

1 ~~shall--have~~ has the same status as an employer who is not
 2 enrolled under the Workers' Compensation Act."

3 **Section 32.** Section 39-71-2308, MCA, is amended to
 4 read:

5 "39-71-2308. Collection in case of default. (1) If ~~any~~
 6 ~~an~~ an employer under plan No. 3 ~~shall-default~~ defaults in any
 7 payment to the division state fund, the state fund may
 8 collect the sum due ~~may-be-collected-by-an-action-at-law in~~
 9 a civil action in the name of the state, ~~and-such-right--of~~
 10 ~~action-shall-be~~ The right of action is cumulative.

11 (2) When If an employer's right to operate has been
 12 canceled by the division state fund for failure to pay
 13 premiums and ~~when-the-division-in-its-discretion~~ the state
 14 fund finds that the property and assets of the employer are
 15 not sufficient to pay the premiums, the division state fund
 16 may compromise the claim for premiums and accept a payment
 17 of an amount less than the total amount due."

18 **Section 33.** Section 39-71-2321, MCA, is amended to
 19 read:

20 "39-71-2321. What to be deposited in industrial
 21 insurance expendable trust fund. All premiums, penalties,
 22 recoveries by subrogation, interest earned upon money
 23 belonging to the state fund, and securities acquired by or
 24 through use of money ~~shall~~ must be deposited in the
 25 industrial-insurance-expendable-trust state fund."

Section 34. Section 39-71-2322, MCA, is amended to read:

"39-71-2322. Money in industrial-insurance state fund held in trust -- disposition of funds upon repeal of chapter. The moneys money coming into the industrial insurance--expendable-trust state fund ~~shall~~ must be held in trust for the purpose for which ~~such-moneys-were~~ the money ~~was~~ collected, ~~and--if this chapter shall be hereafter if this chapter is~~ repealed, ~~such-moneys-shall be~~ the money is subject to such the disposition ~~as may be~~ provided by the legislature repealing this chapter. In ~~default of--such the~~ absence of a legislative provision, distribution thereof ~~shall~~ must be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing."

Section 35. Section 39-71-2323, MCA, is amended to read:

"39-71-2323. Surplus in industrial----insurance expendable--trust state fund -- payment of dividends. If at the end of any fiscal year there exists in the industrial insurance--expendable--trust state fund an excess of assets over liabilities and a reasonable surplus, such liabilities to include necessary reserves, which excess may be divided safely, then the division state fund may declare a dividend in such the manner as the rules of the division-may state

fund prescribe to those employers who have paid premiums into the industrial-insurance-expendable-trust state fund in excess of liabilities chargeable to them in the fund for that year. In determining the amount or proportion of the balance to which the employer is entitled as dividends, the division state fund shall give consideration to the prior paid premiums and accident experience of each individual employer during the dividend year."

Section 36. Section 39-71-2325, MCA, is amended to read:

"39-71-2325. Bivision State fund to keep accounts of segregations. The division state fund shall keep an accurate account of all such the segregations of the industrial insurance--expendable-trust state fund and shall divert from the fund any sums necessary to meet monthly payments, pending the conversion into cash of any security, and in such case shall repay the same out of the cash realized from the security."

Section 37. Section 39-71-2327, MCA, is amended to read:

"39-71-2327. Earnings of industrial----insurance expendable-trust state fund to be credited to fund -- improper use a felony. All earnings made by the industrial insurance-expendable-trust state fund by reason of interest paid for the deposit thereof or otherwise ~~shall~~ must be

1 credited to and become a part of the fund, and the making of
 2 profit, either directly or indirectly, by any person out of
 3 the use of the fund ~~shall constitute is a felony, and on~~
 4 ~~conviction thereof shall subject the person making such~~
 5 ~~profit to imprisonment in the state penitentiary for a term~~
 6 ~~not exceeding 2 years or a fine not exceeding \$5,000 or both~~
 7 ~~such fine and imprisonment.~~ A person convicted of an offense
 8 under this section is punishable by imprisonment in the
 9 state prison for a term not to exceed 2 years or a fine of
 10 not more than \$5,000, or both."

11 **Section 38.** Section 39-72-201, MCA, is amended to
 12 read:

13 "39-72-201. Administration of chapter. This chapter
 14 ~~shall be is~~ administered by the division of ~~workers'~~
 15 ~~compensation."~~

16 **Section 39.** Section 39-72-310, MCA, is amended to
 17 read:

18 "39-72-310. Occupational disease coverage under
 19 workers' compensation plans. (1) Every employer enrolled
 20 under compensation plan No. 1 ~~{Title 39, chapter 71, part~~
 21 ~~21}~~, every insurer writing workers' compensation coverage
 22 under compensation plan No. 2 ~~{Title 39, chapter 71, part~~
 23 ~~22}~~, and the state ~~compensation--insurance~~ fund under
 24 compensation plan No. 3 ~~{Title 39, chapter 71, part 23}~~, all
 25 provided for under the Workers' Compensation Act, are

1 considered to also provide full coverage for claims under
 2 this chapter. Any policy of insurance for workers'
 3 compensation coverage under the Workers' Compensation Act
 4 written by a private insurance carrier or the state
 5 ~~compensation--insurance~~ fund is considered to provide full
 6 occupational disease coverage under the provisions of this
 7 chapter.

8 (2) Except as provided in this chapter, the division
 9 shall apply the appropriate provisions of Title 39, chapter
 10 71, parts 21, 22, and 23, to the administration of The
 11 Occupational Disease Act of Montana in the same manner as
 12 they are applied to the administration of the Workers'
 13 Compensation Act.

14 (3) Under compensation plan No. 3, any premiums and
 15 other receipts held by the ~~division~~ state fund for
 16 occupational disease insurance coverage ~~shall~~ must be
 17 transferred ~~and become part of~~ to the workers' compensation
 18 industrial insurance account, and payments for occupational
 19 disease claims by the state fund ~~shall~~ must be paid out of
 20 the industrial insurance account."

21 **Section 40.** Section 2-18-103, MCA, is amended to read:

22 "2-18-103. Officers and employees excepted. Parts 1
 23 and 2 do not apply to the following positions in state
 24 government:

25 (1) elected officials;

- 1 (2) county assessors and their chief deputy;
- 2 (3) officers and employees of the legislative branch;
- 3 (4) judges and employees of the judicial branch;
- 4 (5) members of boards and commissions appointed by the
- 5 governor, appointed by the legislature, or appointed by
- 6 other elected state officials;
- 7 (6) officers or members of the militia;
- 8 (7) agency heads appointed by the governor;
- 9 (8) academic and professional administrative personnel
- 10 with individual contracts under the authority of the board
- 11 of regents of higher education;
- 12 (9) academic and professional administrative personnel
- 13 and live-in houseparents who have entered into individual
- 14 contracts with the state school for the deaf and blind under
- 15 the authority of the state board of public education;
- 16 (10) teachers under the authority of the department of
- 17 institutions;
- 18 (11) investment officer, assistant investment officer,
- 19 executive director, and three professional staff positions
- 20 of the board of investments;
- 21 (12) four professional staff positions under the board
- 22 of oil and gas conservation; and
- 23 (13) assistant director for security of the Montana
- 24 state lottery; and
- 25 (14) executive director and employees of the state

1 compensation mutual insurance fund."

2 **Section 41.** Section 33-17-502, MCA, is amended to
3 read:

4 "33-17-502. Prohibition on holding out as consultant
5 -- receiving fee. (1) Any person not licensed as an
6 insurance consultant in this state who identifies or holds
7 himself out to be an insurance consultant without having
8 been licensed as an insurance consultant under this part or
9 any person who uses any other designation or title which is
10 likely to mislead the public and holds himself out in any
11 manner as having particular insurance qualifications other
12 than those for which he may be otherwise licensed or
13 otherwise qualified is guilty of a misdemeanor and upon
14 conviction shall be fined \$1,500.

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

24 (3) Nothing in this part applies to:

25 (a) licensed attorneys at law in this state acting in

1 their professional capacity;

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

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

13 **Section 42.** 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 premium or charge for
18 insurance, which insurance is not then provided or is not in
19 due course to be provided (subject to acceptance of the risk
20 by the insurer) by an insurance policy issued by an insurer
21 as authorized by this code.

22 (2) No A person ~~shall~~ may not willfully collect as
23 premium or charge for insurance any sum in excess of or less
24 than the premium or charge applicable to such insurance and,
25 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 premiums and charges
5 ~~shall~~ may not be in excess of or less than those specified
6 in the policy and as fixed by the insurer. This provision
7 ~~shall~~ may not be deemed to prohibit the charging and
8 collection, by surplus lines agents licensed under chapter
9 2, part 3, of the amount of applicable state and federal
10 taxes in addition to the premium required by the insurer. It
11 ~~shall~~ may not be deemed considered to prohibit the charging
12 and collection, by a life insurer, of amounts actually to be
13 expended for medical examination of an applicant for life
14 insurance or for reinstatement of a life insurance policy.
15 The provision of this subsection does not prohibit the
16 collection from an insured of a placement fee, not to exceed
17 7 1/2% of the annual premium, for placement through the
18 state compensation mutual insurance fund by a duly licensed
19 casualty insurance agent. This placement fee is not a
20 premium as defined in 33-15-102.

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

23 **Section 43.** Section 2-15-1702, MCA, is amended to
24 read:

25 "2-15-1702. Division of workers' compensation

1 insurance compliance -- head. (1) There is a division of
2 workers' compensation insurance compliance within the
3 department. The division head is an administrator appointed
4 by the governor as are directors in accordance with
5 2-15-111.

6 (2) The division is allocated to the department for
7 administrative purposes only as prescribed in 2-15-121.
8 However, the division may hire its own personnel, and
9 2-15-121(2)(d) does not apply."

10 **Section 4.** Section 2-15-1014, MCA, is amended to
11 read:

12 "2-15-1014. Office of workers' compensation judge --
13 allocation -- appointment -- salary. (1) There is the office
14 of workers' compensation judge. The office is allocated to
15 the department of administration labor for administrative
16 purposes only as prescribed in 2-15-121.

17 (2) The governor shall appoint the workers'
18 compensation judge for a term of 6 years in the same manner
19 provided by Title 3, chapter 1, part 10, for the appointment
20 of supreme or district court judges. A vacancy ~~shall~~ must be
21 filled in the same manner as the original appointment.

22 (3) To be eligible for workers' compensation judge, a
23 person must:

24 (a) have the qualifications necessary for district
25 court judges found in Article VII, section 9, of the Montana

1 constitution;

2 (b) devote full time to the duties of workers'
3 compensation judge and not engage in the private practice of
4 law.

5 (4) The workers' compensation judge is entitled to the
6 same salary and other emoluments as that of a district judge
7 but ~~shall~~ must be accorded retirement benefits under the
8 public employees' retirement system."

9 **Section 45.** Section 39-71-2501, MCA, is amended to
10 read:

11 "**39-71-2501. (Temporary) Definitions.** As used in this
12 part, the following definitions apply:

13 (1) "Board" means the board of examiners created in
14 2-15-1007.

15 (2) "Department" means the department of labor and
16 industry provided for in 2-15-1701.

17 (3) "Employer" has the meaning set forth in 39-71-117.

18 (4) "Payroll" means the payroll of an employer for
19 each of the calendar quarters ending March 31, June 30,
20 September 30, and December 31, for all employments covered
21 under 39-71-401.

22 (5) "State fund" means the state compensation
23 insurance fund ~~referred to in 39-71-2301.~~

24 (6) "Tax" means the workers' compensation payroll tax
25 provided for in 39-71-2503.

(7) "Tax account" means the workers' compensation tax account created by 39-71-2504. (Terminates June 30, 1991--sec. 10, Ch. 664, L. 1987.)"

NEW SECTION. Section 46. Repealer. Sections 39-71-2301, 39-71-2302, 39-71-2304 through 39-71-2306, and 39-71-2324, MCA, are repealed.

NEW SECTION. Section 47. Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

NEW SECTION. Section 48. Codification instruction. (1) [Sections 1, 2, and 4 through 12] are intended to be codified as an integral part of Title 39, chapter 71, part 23, and the provisions of Title 39, chapter 71, part 23, apply to [sections 1, 2, and 4 through 12].

(2) [Section 3] is intended to be codified as an integral part of Title 2, chapter 15, part 10, and the provisions of Title 2, chapter 15, part 10, apply to [section 3].

(3) [Section 13] is intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [section 13].

NEW SECTION. Section 49. Reorganization procedure. The provisions of sections 2-15-131 through 2-15-137 govern the creation of the state compensation mutual insurance fund

and the transfer of the various functions contained in [this act] from the state workers' compensation fund to the state compensation mutual insurance fund.

NEW SECTION. Section 50. Implementation. (1) The governor shall by executive order implement the provisions of [this act].

(2) The governor may by executive order assign to the state compensation mutual insurance fund, in a manner consistent with [this act], functions allocated to the workers' compensation state fund provided for in Title 39, chapter 71, part 23, by the 51st legislature and not transferred by [this act].

NEW SECTION. Section 51. Effective dates. (1) [Sections 3, 7, 50, and this section] are effective on passage and approval.

(2) [Sections 1, 2, 4 through 6, and 8 through 49] are effective upon signing of the executive order under [section 50] or on October 1, 1989, whichever occurs earlier.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Revised Fiscal Note for SB428, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

"An act creating the State Compensation Mutual Insurance Fund to insure employers for Workers Compensation and Occupational Disease liability; providing for a Board of Directors; establishing the powers and duties of the Board and the Chief Executive Officer of the State Compensation Mutual Insurance Fund; transferring the Office of Workers' Compensation Judge to the Department of Labor; amending Sections 2-15-1014, 2-15-1702, 2-18-103, 33-17-502, 33-18-212, 39-71-116, 39-71-201, 39-71-203, 39-71-206, 39-71-306 through 39-71-308, 39-71-403, 39-71-421, 39-71-604, 39-71-704, 39-71-901, 39-71-908, 39-71-910, 39-71-911, 39-71-913, 39-71-2303, 39-71-2307, 39-71-2308, 39-71-2321 through 39-71-2323, 39-71-2325, 39-71-2327, 39-71-2501, 39-72-201, and 39-72-310, MCA; repealing Sections 39-71-2301, 39-71-2302, 39-71-2304 through 39-71-2306, and 39-71-2324, MCA; and providing effective dates."

NOTE: Agencies' assumptions and individual fiscal impact statements follow on subsequent pages.

FISCAL IMPACT:

(Agencies Combined)

GENERAL FUND:

	Current Law	FY90 Proposed Law	Difference	Current Law	FY91 Proposed Law	Difference
Revenue:						
Premium Tax -						
Private Carriers	\$2,170,000	\$ -0-	(\$2,170,000)	\$2,388,000	\$ -0-	(\$2,388,000)
Net Impact:			(\$2,170,000)			(\$2,388,000)

STATE SPECIAL REVENUE:Revenue:


Assessments -						
Workers Comp	\$9,525,912	\$9,716,759	\$ 190,847	\$9,444,727	\$9,595,574	\$ 150,847
Premium Tax -						
Private Carrier	\$ -0-	\$2,170,000	\$2,170,000	\$ -0-	\$2,388,000	\$2,388,000
Premium Tax -						
State Fund	\$ -0-	\$2,987,000	\$2,987,000	\$ -0-	\$3,435,000	\$3,435,000

Expenditures:

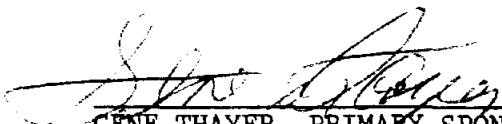
Operating -						
State Fund	\$9,525,912	\$9,716,759	\$ 190,847	\$9,444,727	\$9,595,574	\$ 150,847
Operating -						
State Auditor	\$ -0-	\$ 25,756	\$ 25,756	\$ -0-	\$ 52,926	\$ 52,926

Net Impact:

(Contribution to Unfunded Liability)			\$5,131,244			\$5,770,074
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 RAY SHACKLEFORD, BUDGET DIRECTOR
 OFFICE OF BUDGET AND PROGRAM PLANNING

DATE 3/9/89


 GENE THAYER, PRIMARY SPONSOR

DATE 3/9/89

Revised Fiscal Note for SB428, as introduced

SB 428

DIVISION OF WORKERS' COMPENSATION:
ASSUMPTIONS:

1. Support and safety services for the State Compensation Mutual Insurance Fund (SCMIF) and the Division of Workers' Compensation Insurance Compliance (DWCIC) will continue on the same basis as currently provided.
2. The SCMIF and DWCIC will remain in the same facility, having full use of all equipment presently utilized.
3. The following coordinations will continue to occur between DWCIC and SCMIF:
 - a. Claims management - Continued access to all claims files on demand; continued preparation of settlement summaries and of routine orders (i.e., all word processed documents) as is currently provided; continued access to all computer screens now available to Division staff.
 - b. Files and records management - Continued access to all claims files on demand, avoiding the necessity to complete duplicates of Plan III files.
 - c. Continued processing of all Plan III extraterritorial certificates and corporate officer exemptions, with appropriate notice to DWCIC (could be computer notice).
 - d. Continued access to all Plan III coverages and cancellations as is currently available, including cooperation by SCMIF Policy Services Unit in providing all information currently provided to enable expeditious identification and pursuit of uninsured employers.
 - e. Continued access to all SCMIF medical and hospital information in formats and time frames determined by DWCIC in order to expedite the annual relative value fee schedule and any revised hospital rate regulation methods necessary to implement Section 39-71-704, MCA.
4. The Assigned Risk Pool will be managed entirely by the State Auditor (Insurance Commissioner) without any extra effort by DWCIC.
5. The State Auditor will provide estimates of revenue generated by the premium tax.
6. Public entities will not form new self-insurance groups.
7. Workload for Accident Cataloging and Uninsured Employers' Units will remain constant.
8. Printing costs will increase because of new information materials and new and revised forms.
9. Additional mailings will be required to provide adequate notice of various changes resulting from creation of the SCMIF.
10. There will not be a significant increase in complaints, disputes, and litigation caused by the separation of SCMIF from the Division.
11. Board will meet five days a month in FY90 and one day a month in FY91. Travel and expenses will amount to \$100/day/member.
12. Board will hire a secretary and internal auditor as staff positions, and will contract with an accounting firm to review the financial condition of the fund.
13. Chief Executive Officer will be paid \$80,000 annually.
14. All other staff positions presently employed by the State Compensation Insurance Fund will be retained by the State Compensation Mutual Insurance Fund at their present salaries.
15. Budget shown under current law is that approved by the Human Services Appropriations Sub-Committee.

DIVISION OF WORKERS' COMPENSATION:

FISCAL IMPACT:

	<u>FY90</u>			<u>FY91</u>		
	Current	Proposed		Current	Proposed	
Revenue:	Law	Law	Difference	Law	Law	Difference
Assessments	\$9,525,912	\$9,716,759	\$ 190,847	\$9,444,727	\$9,595,574	\$ 150,847
Expenditures:	\$9,525,912	\$9,716,759	\$ 190,847	\$9,444,727	\$9,595,574	\$ 150,847
<u>Fund Impact:</u>						
State Special						
Revenue	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-

DEPARTMENT OF ADMINISTRATION:

ASSUMPTIONS:

1. Assume the Workers' Compensation Court would move from the Department of Administration to the Department of Labor and Industry. The budget approved to date by the General Government Subcommittee will also move.
2. The Department of Administration cannot calculate the fiscal impact of moving the Board of Directors of the State Compensation Mutual Insurance Fund.

FISCAL IMPACTS:

	<u>FY90</u>			<u>FY91</u>		
	Current	Proposed		Current	Proposed	
Expenditures:	Law	Law	Difference	Law	Law	Difference
Personal Services	\$231,247	\$ -0-	(\$231,247)	\$231,722	\$ -0-	\$ 231,722
Operating Expenses	74,887	-0-	(74,887)	71,214	-0-	(71,214)
FTE level	8.0	0	(8.0)	8.0	0	(8.0)
<u>Fund Impact:</u>						
State Special						
Revenue	\$306,134	\$ -0-	(\$306,134)	\$302,936	\$ -0-	(\$ 302,936)

STATE AUDITORS OFFICE:

ASSUMPTIONS:

1. That one grade 12, step 2 employee in the State Auditor's Office will be required to coordinate the assigned risk pool required under Section 13 of the bill. Annual cost: \$21,400.
2. That the premium tax rate will remain at 2.75%.
3. That workers' compensation premiums written by private insurers in calendar year 1987 were \$57,206,000; that workers' compensation premiums earned by the state fund for FY88 were \$85,865,000.
4. That private insurers' premiums will increase in calendar years 1988, 1989, and 1990 at rates of 20%, 15%, and 10% respectively.
5. That the state fund premiums will increase in FY89, FY90, and FY91 at rates of 10%, 15%, and 15%, respectively.
6. That the general fund will reallocate private insurer premium taxes of \$2,170,000 and \$2,388,000 for FY90 and FY91, respectively, to reduce the state fund deficit.

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7. That totally new premium taxes from the state fund will be \$2,987,000 and \$3,435,000 for FY90 and FY91, respectively, to be used to reduce the state fund deficit. However, these tax monies represent a loss to the general fund.
8. That the state fund currently holds approximately 60% of the market share of workers' compensation insurance; that this bill may cause a significant change in that percentage, but such change is not contemplated in the accompanying calculations.
9. That a triennial examination of the state fund, required by 33-1-401 under this bill and estimated to cost \$30,000, would be conducted in FY91 (contracted services; operating expenses).
10. That the State Auditor's Office will not need to expend contracted services to develop the "Assigned-Risk Plan" mentioned in Section 13 of this bill.

FISCAL IMPACT:

	<u>FY90</u>			<u>FY91</u>		
	<u>Current</u>	<u>Proposed</u>	<u>Difference</u>	<u>Current</u>	<u>Proposed</u>	<u>Difference</u>
<u>Revenue:</u>	<u>Law</u>	<u>Law</u>		<u>Law</u>	<u>Law</u>	
Premium Tax						
State Fund	\$ -0-	\$2,987,000	\$2,987,000	\$ -0-	\$3,435,000	\$3,435,000
General Fund*						
Private Insurers	\$2,170,000	\$ -0-	(\$2,170,000)	\$2,388,000	\$ -0-	(\$2,388,000)
State Special Fund						
Private Insurers	\$ -0-	\$2,170,000	\$2,170,000	\$ -0-	\$2,388,000	\$2,388,000
<u>Expenditures:</u>	\$ -0-	\$ 25,756	\$ 25,756	\$ -0-	\$ 52,926	\$ 52,926
<u>Fund Impact:</u>						
General Fund	\$2,170,000	\$ -0-	(\$2,170,000)	\$2,388,000	\$ -0-	(\$2,388,000)
State Special						
Revenue	\$ -0-	\$5,157,000	\$5,157,000	\$ -0-	\$5,823,000	\$5,823,000

*The Premium Tax collected from private insurers writing workers compensation insurance under plan no. 2 will be transferred from the general fund to the newly created state fund.

APPROVED BY COMM. ON
BUSINESS & INDUSTRY

SENATE BILL NO. 428

INTRODUCED BY THAYER, NATHE, THOMAS, NOBLE, MEYER,
DRISCOLL, PAVLOVICH, GRADY, MAZUREK, WILLIAMS, SMITH,
SQUIRES, GLASER, RAPP-SVRCEK, RUSSELL, AKLESTAD,
DEVLIN, RASMUSSEN, GRINDE, MARKS
BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE STATE
COMPENSATION MUTUAL INSURANCE FUND TO INSURE EMPLOYERS FOR
WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LIABILITY;
PROVIDING FOR A BOARD OF DIRECTORS; ESTABLISHING THE POWERS
AND DUTIES OF THE BOARD AND THE CHIEF EXECUTIVE OFFICER OF
THE STATE COMPENSATION MUTUAL INSURANCE FUND; TRANSFERRING
THE OFFICE OF WORKERS' COMPENSATION JUDGE TO THE DEPARTMENT
OF LABOR AND INDUSTRY; AMENDING SECTIONS 2-15-1014,
~~2-15-1702~~, 2-18-103, 33-2-119, 33-17-502, 33-18-212,
37-72-101, 39-71-116, 39-71-201, 39-71-203, 39-71-206,
39-71-306 THROUGH 39-71-308, 39-71-403, 39-71-421,
39-71-604, 39-71-704, 39-71-901, 39-71-908, 39-71-910,
39-71-911, 39-71-913, 39-71-2303, 39-71-2307, 39-71-2308,
39-71-2321 THROUGH 39-71-2323, 39-71-2325, 39-71-2327,
39-71-2501, 39-72-201, AND 39-72-310, 50-71-102, AND
50-73-102, MCA; REPEALING SECTIONS 2-15-1702, 39-71-2301,
39-71-2302, 39-71-2304 THROUGH 39-21-2306, AND 39-71-2324,
MCA; AND PROVIDING EFFECTIVE DATES."

STATEMENT OF INTENT

A statement of intent is required for this bill because
[section 8] grants rulemaking authority to the newly created
state fund to adopt or repeal rules or amend existing rules
to implement the new state compensation mutual insurance
fund. The chief purposes of creating the state fund as a
mutual insurer and placing it in a department other than the
department of labor are:

(1) to remove the inherent conflict between the
interests of the workers' compensation division in
regulating all workers' compensation insurers in this state,
including the state compensation insurance fund, and the
interests of the state fund as a workers' compensation
insurer; and

(2) to ensure the solvency of the new state fund.

The legislature recognizes that the fund actuary has
determined that at June 30, 1988, a full funding deficiency
of \$157.3 million existed for the present state compensation
insurance fund. The legislature intends that the new state
compensation mutual insurance fund adopt rules in a manner
that will assure the solvency of the new fund. Rates must be
set on an actuarially sound basis as required by state law.
To further ensure the solvency of the state fund, it is not
the workers' compensation insurer of last resort, as the

1 state fund presently is. The new state fund would not be
 2 bound to insure all employers who apply to it for workers'
 3 compensation coverage, except for state agencies. ~~It could~~
 4 ~~refuse to insure an employer it considered a poor risk.~~

5 As the primary means of ensuring the solvency of the
 6 state fund, it must institute safety programs and set rates
 7 in a manner that awards employers who provide a safe working
 8 environment and penalizes employers who do not.

9 The legislature further intends that the new state fund
 10 institute programs to automate the processing of claims and
 11 payment of benefits. The state fund may contract out to the
 12 private sector certain claims administration and servicing
 13 functions if the state fund determines it to be
 14 cost-effective.

15 THE LEGISLATURE INTENDS THAT THE GOVERNOR SHALL
 16 IMPLEMENT STAGGERED TERMS IN NAMING THE INITIAL MEMBERS OF
 17 THE BOARD.

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

20 NEW SECTION. Section 1. Intent and purpose of plan.
 21 It is the intent and purpose of the state fund to allow
 22 employers the option to insure their liability for workers'
 23 compensation and occupational disease coverage with a
 24 nonprofit, independent public corporation. The state fund is
 25 a domestic mutual insurer. It is not required to insure any

1 employer in this state requesting coverage, and it may
 2 refuse coverage for an employer, except a state agency, ~~that~~
 3 ~~the state fund determines to be a bad risk.~~ The state fund
 4 must be neither more nor less than self-supporting. Premium
 5 rates must be set at a level sufficient to fund the
 6 insurance program, including the costs of administration,
 7 benefits, and adequate reserves. For the purpose of keeping
 8 the state fund solvent, it must implement ~~safety programs~~
 9 VARIABLE PRICING LEVELS WITHIN INDIVIDUAL RATE
 10 CLASSIFICATIONS to reward an employer with a good safety
 11 record and penalize an employer with a poor safety record.

12 NEW SECTION. Section 2. Definitions. Unless the
 13 context requires otherwise, in [sections 1, 2, and 4 through
 14 12] the following definitions apply:

15 (1) "Board" means the board of directors of the state
 16 compensation mutual insurance fund provided for in [section
 17 3].

18 (2) "Department" means the department of
 19 administration provided for in 2-15-1001.

20 (3) "Executive director" means the chief executive
 21 officer of the state compensation mutual insurance fund.

22 (4) "State fund" means the state compensation mutual
 23 insurance fund provided for in [section 4]. It is also known
 24 as compensation plan No. 3 or plan No. 3.

25 NEW SECTION. Section 3. Board of directors of the

1 state compensation mutual insurance fund. (1) There is a
2 board of directors of the state compensation mutual
3 insurance fund.

4 (2) The board is allocated to the department for
5 administrative purposes only as prescribed in 2-15-121.
6 However, the board may employ its own staff.

7 (3) The board may provide for its own office space and
8 the office space of the state fund.

9 (4) The board consists of five members appointed by
10 the governor. The executive director of the state fund is an
11 ex officio nonvoting member.

12 (5) At least three of the five members shall represent
13 state fund policyholders and may be employees of state fund
14 policyholders. At least three members of the board shall
15 represent private, for-profit enterprises. A member of the
16 board may not:

17 (a) represent or be an employee of an insurance
18 company that is licensed to transact workers' compensation
19 insurance under compensation plan No. 2; or

20 (b) be an employee of a self-insured employer under
21 compensation plan No. 1.

22 (6) A member is appointed for a term of 4 years. The
23 terms of board members must be staggered. A member of the
24 board may serve no more than two 4-year terms. A member
25 shall hold office until a successor is appointed and

1 qualified.

2 (7) The ~~board--is--designated--as~~ MEMBERS MUST BE
3 APPOINTED AND COMPENSATED IN THE SAME MANNER AS MEMBERS OF a
4 quasi-judicial board ~~for-the--purposes--of~~ AS PROVIDED IN
5 2-15-124, except that the requirement that at least one
6 member be an attorney does not apply.

7 NEW SECTION. Section 4. State compensation mutual
8 insurance fund created. There is a state compensation mutual
9 insurance fund known as the state fund that is a nonprofit,
10 independent public corporation established for the purpose
11 of allowing an option for employers to insure their
12 liability for workers' compensation and occupational disease
13 coverage under this chapter. The state fund exists as a
14 domestic mutual insurer as defined in 33-3-102.

15 NEW SECTION. Section 5. Management of state fund --
16 powers and duties of the board. (1) The management and
17 control of the state fund is vested solely in the board.

18 (2) The board is vested with full power, authority,
19 and jurisdiction over the state fund. The board may perform
20 all acts necessary or convenient in the exercise of any
21 power, authority, or jurisdiction over the state fund,
22 either in the administration of the state fund or in
23 connection with the insurance business to be carried on
24 under the provisions of [sections 1, 2, and 4 through 12],
25 as fully and completely as the governing body of a private

1 mutual insurance carrier, in order to fulfill the objectives
2 and intent of [sections 1, 2, and 4 through 12].

3 NEW SECTION. **Section 6. Personal liability excluded.**

4 The members of the board, the executive director, and
5 employees of the state fund are not liable personally,
6 either jointly or severally, for any debt or obligation
7 created or incurred by the state fund.

8 NEW SECTION. **Section 7. Appointment of executive**

9 director -- management staff. The board shall appoint an
10 executive director of the state fund who has general
11 responsibility for the operations of the state fund. The
12 executive director must have executive level experience,
13 with knowledge of the insurance industry. The executive
14 director must receive compensation as set by the board and
15 serve at the pleasure of the board. The executive director
16 may hire the management staff of the state fund, each of
17 whom serves at the pleasure of the executive director.

18 NEW SECTION. **Section 8. Powers of the state fund --**

19 rulemaking. For the purposes of carrying out its functions,
20 the state fund may:

21 (1) insure any employer for workers' compensation and
22 occupational disease liability as the coverage is required
23 by the laws of this state and, in connection with the
24 coverage, provide employers' liability insurance. The state
25 fund may charge a minimum yearly premium to cover its

1 administrative costs for coverage of a small employer.

2 (2) sue and be sued;

3 (3) adopt, amend, and repeal rules relating to the
4 conduct of its business;

5 (4) enter into contracts relating to the
6 administration of the state fund, including claims
7 management, servicing, and payment;

8 (5) collect and disburse money received;

9 (6) adopt classifications and charge premiums for the
10 classifications so that the state fund will be neither more
11 nor less than self-supporting. The state fund must belong
12 to the national council on compensation insurance and shall
13 use the classifications of employment adopted by the
14 national council AND CORRESPONDING RATES AS A BASIS FOR
15 SETTING ITS OWN RATES.

16 (7) pay the amounts determined due under a policy of
17 insurance issued by the state fund;

18 (8) hire personnel;

19 (9) declare dividends if there is an excess of assets
20 over liabilities. However, dividends may not be paid until
21 the unfunded liability of the state fund is eliminated AND
22 ADEQUATE ACTUARIALLY DETERMINED RESERVES ARE DETERMINED.

23 (10) perform all functions and exercise all powers of a
24 domestic mutual insurer that are necessary, appropriate, or
25 convenient for the administration of the state fund.

1 NEW SECTION. Section 9. Property of the state fund --
 2 investment required. All premiums and other money paid to
 3 the state fund, all property and securities acquired through
 4 the use of money belonging to the state fund, and all
 5 interest and dividends earned upon money belonging to the
 6 state fund are the sole property of the state fund and must
 7 be used exclusively for the operations and obligations of
 8 the state fund. The money collected by the state fund may
 9 not be used for any other purpose. However, state fund money
 10 must be invested by the board of investments provided for in
 11 2-15-1808.

12 NEW SECTION. Section 10. State fund a mutual
 13 insurance carrier. (1) The state fund is a domestic mutual
 14 insurer controlled by the laws relating to the regulation of
 15 domestic mutual insurers in this state. However, the
 16 formation, incorporation, bylaws, and bonding requirements
 17 set forth in Title 33, chapter 3, do not apply to the state
 18 fund.

19 (2) The commissioner of insurance may not terminate
 20 the operations of the state fund based on insolvency due to
 21 the unfunded liability that is recognized to exist on the
 22 date of passage of [sections 1, 2, and 4 through 12] and
 23 recognized in [section 12].

24 (3) The state fund is subject to the premium tax
 25 liability for insurers as provided in 33-2-705 BASED ON

1 EARNED PREMIUM AND PAID ON REVENUE FROM THE PREVIOUS FISCAL
 2 YEAR.

3 NEW SECTION. Section 11. Assets and liabilities of
 4 prior state fund. All assets and funds held by the state
 5 compensation insurance fund established in 39-71-2301
 6 through 39-71-2308 and 39-71-2321 through 39-71-2327 must be
 7 transferred to the state fund, and the state fund shall
 8 assume liability for all outstanding claims and indebtedness
 9 of the previously existing state fund.

10 NEW SECTION. Section 12. Unfunded liability. (1) It
 11 is recognized at the date of creation of the state fund that
 12 there exists an unfunded liability that is being assumed by
 13 the newly created state fund for the prior state
 14 compensation insurance fund's liability for industrial
 15 injuries and occupational diseases that occurred prior to
 16 July 1, 1987. To assist the state fund in alleviating the
 17 unfunded liability, the premium taxes collected by the state
 18 from the following sources must be transferred to the newly
 19 created state fund:

- 20 (a) the state fund;
- 21 (b) excess or reinsurance policies on self-insurers
 22 writing coverage on a self-insurer's workers' compensation
 23 program under compensation plan No. 1; and
- 24 (c) private insurance carriers writing workers'
 25 compensation insurance under compensation plan No. 2.

(2) The premium taxes must be transferred to the state fund for payment of the unfunded liability. The premium tax payments must continue until the unfunded liability has been paid, at which time the premium taxes must be paid to the general fund.

NEW SECTION. Section 13. Assigned risk plan. (1) The commissioner of insurance shall promulgate and administer a plan to equitably apportion among the state fund, plan No. 3, and private insurers, plan No. 2, the coverage required by this chapter for employers who are unable to procure coverage through ordinary methods.

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

(3) If an 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~~ INSURANCE POLICIES in this state.

Section 14. 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 section, exists).

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

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

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

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

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

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

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

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

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

(12) "Order" means any decision, rule, direction,

requirement, or standard of the division or any other determination arrived at or decision made by the division.

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

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

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

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

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

1 all options set forth in 39-71-1012.

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

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

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

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

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

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

25 (22) "Year", unless otherwise specified, means calendar

1 year."

2 **Section 15.** Section 39-71-201, MCA, is amended to
3 read:

4 "39-71-201. Administration fund. (1) A workers'
5 compensation administration fund is established out of which
6 all costs of administering the Workers' Compensation and
7 Occupational Disease Acts and the various occupational
8 safety acts the division must administer are to be paid upon
9 lawful appropriation. The following moneys money collected
10 by the division ~~shall~~ must be deposited in the state
11 treasury to the credit of the workers' compensation
12 administrative fund and ~~shall~~ must be used for the
13 administrative expenses of the division:

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

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

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

Section 16. Section 39-71-203, MCA, is amended to

read:

"39-71-203. Powers of division -- rules ---staffing.

(1) The division is hereby vested with full power, authority, and jurisdiction to do and perform any and all things, ~~whether herein specifically designated or in addition thereto~~, that are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this chapter.

(2) The division may adopt rules to carry out the provisions of this chapter.

~~(3) The division shall employ sufficient personnel to allow it to meet the claims processing goals contained in 39-71-604. The division shall implement staffing patterns that are supported by indicators of workload. The open file is the workload indicator for claims processing, and the number of open claims per claims examiner may not be less than 300. The claims support staff, including the file, medical pay, and new claims units, may not exceed two PTEs per claims examiner. The administrative and underwriting staffing must be based on the number of premium paying policyholders and may not exceed 1:4 PTEs per 1,000 policyholders.~~

~~(4) The division administrator shall submit a revised operation plan to the budget office for review and approval and to the legislative finance committee for review whenever~~

1 ~~increases-or-decreases-of-staff-are-necessary--to--implement~~
2 ~~the-provisions-of-subsection-(3):~~

3 ~~{5}--Funds-from-the-state-special-revenue-fund-shall-be~~
4 ~~used-to-implement-subsection-(3):"~~

5 **Section 17.** Section 39-71-206, MCA, is amended to
6 read:

7 "39-71-206. Legal advisers ~~adviser~~ ADVISERS of
8 division and state fund. ~~{1}~~ The attorney general shall be
9 is the legal adviser of the division and the state fund and
10 shall represent it either entity in all proceedings whenever
11 so if requested by the division or state fund any member
12 thereof. THE DIVISION AND STATE FUND MAY EMPLOY OTHER
13 ATTORNEYS OR LEGAL ADVISERS AS THEY CONSIDER NECESSARY.

14 ~~{2}--The-division-may,-in-the-investigation-and-defense~~
15 ~~of--cases-under-plan-No.-3-of-the-Workers'-Compensation-Act,~~
16 ~~employ-such-other-attorney-or--legal--adviser--as--it--deems~~
17 ~~necessary--and--pay--for--the--same--out--of--the-industrial~~
18 ~~insurance-account-in-the-expendable-trust-fund."~~

19 **Section 18.** Section 39-71-306, MCA, is amended to
20 read:

21 "39-71-306. Plan--one--employers-and-plan-two-insurers
22 Insurers to file ~~duplicate--receipts~~ SUMMARY REPORTS OF
23 BENEFITS paid for injuries and statements of medical
24 expenditures. Every employer coming under the provisions of
25 compensation--plan--No--1-and-every-insurer coming under the

1 ~~provisions-of-compensation-plan-No--2~~ insurer shall, on or
2 before the 15th day of each and every month, file with the
3 division:

4 (1) ~~duplicate-receipts~~ SUMMARY REPORTS OF BENEFITS for
5 all payments made during the previous month to injured
6 workers or their beneficiaries or dependents; and

7 (2) statements showing the amounts expended during the
8 previous month for medical, surgical, and hospital services
9 for injured workers and for the burial of deceased workers."

10 **Section 19.** Section 39-71-307, MCA, is amended to
11 read:

12 "39-71-307. Employers and insurers to file reports of
13 accidents. (1) Every employer ~~of-labor~~ and every insurer is
14 hereby required to file with the division, under such
15 division rules as the division may from time to time make, a
16 full and complete report of every accident to an employee
17 arising out of or in the course of his employment and
18 resulting in loss of life or injury to ~~such--person~~ the
19 employee. ~~Such~~ The reports shall ~~must~~ be furnished to the
20 division in ~~such~~ the form and ~~such~~ detail as the division
21 ~~shall--from-time-to-time-prescribe~~ prescribes and shall make
22 must provide specific answers to all questions required by
23 the division under its rules, ~~except, in case he~~ However,
24 if an employee EMPLOYER is unable to answer any--such
25 questions, ~~a--good-and-sufficient-reason-shall-be-given-for~~

1 ~~such-failure a question, he shall state the reason he is~~
2 ~~unable to answer.~~

3 (2) Every ~~insurance---company~~ insurer transacting
4 business under this chapter shall, at the time and in the
5 manner prescribed by the division, make and file with the
6 division ~~such the~~ reports of accidents as the division may
7 ~~require requires."~~

8 **Section 20.** Section 39-71-308, MCA, is amended to
9 read:

10 "39-71-308. Neglect or refusal of public corporation
11 to file payroll reports -- arbitrary assessment by division.
12 ~~Whenever--any~~ If a public corporation insured by the state
13 ~~compensation-insurance~~ fund neglects or refuses to file
14 prescribed payroll reports of its employees, the division
15 may levy an arbitrary assessment upon ~~such the~~ public
16 corporation in an amount of \$75 for each ~~such assessment,~~
17 ~~which-assessments-shall~~ The assessment must be collected in
18 the manner provided in this chapter for the collection of
19 assessments."

20 **Section 21.** Section 39-71-403, MCA, is amended to
21 read:

22 "39-71-403. Plan three exclusive for state agencies --
23 election of plan by other public corporations. (1) Where If
24 a state agency is the employer, the terms, conditions, and
25 provisions of compensation plan No. 3, state fund, ~~shall-be~~

1 are exclusive, compulsory, and obligatory upon both employer
2 and employee. Any sums necessary to be paid under the
3 provisions of this chapter by any state agency ~~shall-be~~ are
4 considered to be ordinary and necessary expense of the
5 agency, and the agency shall make appropriation of and pay
6 ~~such the~~ sums into the state ~~compensation-insurance~~ fund at
7 the time and in the manner provided for in this chapter,
8 notwithstanding that the state agency may have failed to
9 anticipate such ordinary and necessary expense in any
10 budget, estimate of expenses, appropriations, ordinances, or
11 otherwise.

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

21 (3) A public corporation, other than a state agency,
22 that elects plan No. 1 may establish a fund sufficient to
23 pay the compensation and benefits provided for in this
24 chapter and chapter 72 and to discharge all liabilities that
25 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) All money in the fund established under subsection (3) not needed to meet immediate expenditures must be invested by the governing body of the public corporation, and all proceeds of the investment shall be credited to the fund."

Section 22. 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~~ Private insurers, ~~plan-No.-2,~~ INSURERS may provide financial incentives to an employer who implements a formal safety program. ~~The-insurance-carrier~~ An insurer may provide to an employer a premium discount that reflects the degree of risk diminished by the implemented safety program."

Section 23. Section 39-71-604, MCA, is amended to read:

"39-71-604. Application for compensation. (1) Where If a worker is entitled to benefits under this chapter, the worker shall file with the insurer or the division all reasonable information needed by the insurer to determine

compensability. It is the duty of the worker's attending physician to lend all necessary assistance in making application for compensation and such proof of other matters as may be required by the rules of the division without charge to the worker. The filing of forms or other documentation by the attending physician does not constitute a claim for compensation.

(2) Where If death results from an injury, the parties entitled to compensation or someone in their behalf shall file a claim with the insurer or the division. The claim must be accompanied with proof of death and proof of relationship, showing the parties entitled to compensation, certificate of the attending physician, if any, and such other proof as may be required by the division.

~~{3}--The--goal-of-the-division-is-to-process-all-claims-for-compensation-within-14-days-after-initial-acceptance--of-liability-for-a-claim--"~~

Section 24. Section 39-71-704, MCA, is amended to read:

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

(a) After the happening of the injury, the insurer

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

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

11 (2) A relative value fee schedule for medical,
12 chiropractic, and paramedical services provided for in this
13 chapter, excluding hospital services, shall must be
14 established annually by the workers¹--compensation division
15 and become effective in January of each year. The maximum
16 fee schedule must be adopted as a relative value fee
17 schedule of medical, chiropractic, and paramedical services,
18 with unit values to indicate the relative relationship
19 within each grouping of specialties. Medical fees must be
20 based on the median fees as billed to the state compensation
21 insurance fund during the year preceding the adoption of the
22 schedule. THE STATE FUND SHALL REPORT FEES BILLED IN THE
23 FORM AND AT THE TIMES REQUIRED BY THE DIVISION. The division
24 shall adopt rules establishing relative unit values, groups
25 of specialties, the procedures insurers must use to pay for

1 services under the schedule, and the method of determining
2 the median of billed medical fees. These rules shall must be
3 modeled on the 1974 revision of the 1969 California Relative
4 Value Studies.

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

11 (4) Notwithstanding subsection (2), beginning January
12 1, 1988, and ending January 1, 1990, the maximum fees
13 payable by insurers must be limited to the relative value
14 fee schedule established in January 1987. Notwithstanding
15 subsection (3), the hospital rates payable by insurers must
16 be limited to those set in January 1988, until December 31,
17 1989."

18 **Section 25.** Section 39-71-901, MCA, is amended to
19 read:

20 "39-71-901. Definitions. As used in this part, the
21 following definitions apply:

22 (1) "Vocationally handicapped" means a person who has
23 a medically certifiable permanent impairment which is a
24 substantial obstacle to obtaining employment or to obtaining
25 reemployment if the employee should become unemployed,

1 considering such factors as the person's age, education,
2 training, experience, and employment rejection.

3 (2) "Certificate" means documentation issued by the
4 division of ~~workers' compensation~~ to an individual who is
5 vocationally handicapped.

6 (3) "Fund" means the subsequent injury fund."

7 **Section 26.** Section 39-71-908, MCA, is amended to
8 read:

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

20 **Section 27.** 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, the division shall hold a hearing
2 and resolve all disputes. On motion made in writing by the
3 ~~employer, carrier, or industrial insurance fund~~ insurer, the
4 administrator shall join the fund as a party defendant.

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

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

2 **Section 28.** 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 insurer to make payments on behalf of the fund does not
8 impose an independent liability on the employer, carrier, or
9 industrial insurance fund insurer."

10 **Section 29.** 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 insurer does not make the payments on behalf
15 of the fund, the fund may make the payments directly to the
16 persons entitled to the payments."

17 **Section 30.** Section 39-71-2303, MCA, is amended to
18 read:

19 "39-71-2303. Manner of electing -- contract or policy
20 of insurance -- payment of premium. The division state fund
21 shall prescribe the procedure by which employers an employer
22 may elect to be bound by compensation plan No. 3, the
23 effective time of such the election, and the manner in which
24 such the election is terminated for reasons other than
25 default in payment of premiums. Every employer electing to

1 be bound by compensation plan No. 3 ~~shall~~ must receive from
2 the division state fund a contract or policy of insurance in
3 a form approved by the division. The premium ~~thereon shall~~
4 must be paid by the employer to the division state fund at
5 such times as the ~~division shall prescribe~~ state fund
6 prescribes and ~~shall must~~ be paid over by the division state
7 fund to the state treasurer to the credit of the industrial
8 insurance-expendable-trust state mutual insurance fund."

9 **Section 31.** Section 39-71-2307, MCA, is amended to
10 read:

11 "39-71-2307. Cancellation of coverage under ~~plan for~~
12 ~~default -- thirty days' notice required.~~ The ~~division is~~
13 ~~hereby authorized in its discretion to~~ state fund may cancel
14 an employer's right to operate under plan No. 3 of the
15 Workers' Compensation Act for failure to pay the premiums
16 due OR BECAUSE OF A SIGNIFICANT CHANGE IN LIABILITY
17 EXPOSURE. When the ~~division makes an order canceling state~~
18 fund cancels an employer's ~~right for failure to pay premiums~~
19 COVERAGE, the division it shall notify the employer of its
20 intent to cancel the employer at least 30 days before the
21 cancellation becomes effective. After the cancellation date,
22 the employer ~~shall have~~ has the same status as an employer
23 who is not enrolled under the Workers' Compensation Act."

24 **Section 32.** Section 39-71-2308, MCA, is amended to
25 read:

1 **"39-71-2308. Collection in case of default. (1) If any**
 2 **an employer under plan No. 3 shall-default defaults in any**
 3 **payment to the division state fund, the state fund may**
 4 **collect the sum due may-be-collected-by-an-action-at-law in**
 5 **a civil action in the name of the state, and-such-right-of**
 6 **action-shall-be The right of action is cumulative.**

7 (2) **When If an employer's right to operate has been**
 8 **canceled by the division state fund for failure to pay**
 9 **premiums and when-the-division-in-its-discretion the state**
 10 **fund finds that the property and assets of the employer are**
 11 **not sufficient to pay the premiums, the division state fund**
 12 **may compromise the claim for premiums and accept a payment**
 13 **of an amount less than the total amount due."**

14 **Section 33. Section 39-71-2321, MCA, is amended to**
 15 **read:**

16 **"39-71-2321. What to be deposited in industrial**
 17 **insurance--expendable--trust STATE fund. All premiums,**
 18 **penalties, recoveries by subrogation, interest earned upon**
 19 **money belonging to the state fund, and securities acquired**
 20 **by or through use of money shall must be deposited in the**
 21 **industrial-insurance-expendable-trust state fund."**

22 **Section 34. Section 39-71-2322, MCA, is amended to**
 23 **read:**

24 **"39-71-2322. Money in industrial-insurance state fund**
 25 **held in trust -- disposition of funds upon repeal of**

1 **chapter. The moneys money coming into the industrial**
 2 **insurance-expendable-trust state fund shall must be held in**
 3 **trust for the purpose for which such-moneys-were the money**
 4 **was collected, and-if-this-chapter-shall--be--hereafter If**
 5 **this chapter is repealed, such-moneys-shall-be the money is**
 6 **subject to such the disposition as-may-be provided by the**
 7 **legislature repealing this chapter. In default-of-such the**
 8 **absence of a legislative provision, distribution thereof**
 9 **shall must be in accordance with the justice of the matter,**
 10 **due regard being had to obligations of compensation incurred**
 11 **and existing."**

12 **Section 35. Section 39-71-2323, MCA, is amended to**
 13 **read:**

14 **"39-71-2323. Surplus in industrial---insurance**
 15 **expendable-trust state fund -- payment of dividends. If at**
 16 **the end of any fiscal year there exists in the industrial**
 17 **insurance-expendable-trust state fund an excess of assets**
 18 **over liabilities and a reasonable surplus, such liabilities**
 19 **to include necessary reserves, which excess may be divided**
 20 **safely, then the division state fund may declare a dividend**
 21 **in such the manner as the rules of the division--may state**
 22 **fund prescribe to those employers who have paid premiums**
 23 **into the industrial-insurance-expendable-trust state fund in**
 24 **excess of liabilities chargeable to them in the fund for**
 25 **that year. In determining the amount or proportion of the**

balance to which the employer is entitled as dividends, the division state fund shall give consideration to the prior paid premiums and accident experience of each individual employer during the dividend year."

Section 36. Section 39-71-2325, MCA, is amended to read:

"39-71-2325. Division State fund to keep accounts of segregations. The division state fund shall keep an accurate account of all such the segregations of the ~~industrial insurance-expendable-trust~~ state fund and shall divert from the fund any sums necessary to meet monthly payments, pending the conversion into cash of any security, and in such case shall repay the same out of the cash realized from the security."

Section 37. Section 39-71-2327, MCA, is amended to read:

"39-71-2327. Earnings of ~~industrial---insurance expendable--trust~~ state fund to be credited to fund -- improper use a felony. All earnings made by the ~~industrial insurance--expendable-trust~~ state fund by reason of interest paid for the deposit thereof or otherwise shall must be credited to and become a part of the fund, and the making of profit, either directly or indirectly, by any person out of the use of the fund ~~shall-constitute is~~ a felony, ~~and--on conviction--thereof--shall--subject--the--person-making-such~~

~~profit-to-imprisonment-in-the-state-penitentiary-for-a-term not-exceeding-2-years-or-a-fine-not-exceeding-\$5,000-or-both such-fine-and-imprisonment.~~ A person convicted of an offense under this section is punishable by imprisonment in the state prison for a term not to exceed 2 years or a fine of not more than \$5,000, or both."

Section 38. Section 39-72-201, MCA, is amended to read:

"39-72-201. Administration of chapter. This chapter ~~shall--be is~~ administered by the division ~~of--workers' compensation.~~"

Section 39. 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-39-7-chapter-717-part 21),~~ every insurer ~~writing--workers--compensation--coverage~~ under compensation plan No. 2 ~~(Title-39-7-chapter-717-part 22),~~ and the state ~~compensation--insurance fund~~ under compensation plan No. 3 ~~(Title-39-7-chapter-717-part-23),~~ all provided for under the Workers' Compensation Act, are 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

1 compensation-insurance fund is considered to provide full
2 occupational disease coverage under the provisions of this
3 chapter.

4 (2) Except as provided in this chapter, the division
5 shall apply the appropriate provisions of Title 39, chapter
6 71, parts 21, 22, and 23, to the administration of The
7 Occupational Disease Act of Montana in the same manner as
8 they are applied to the administration of the Workers'
9 Compensation Act.

10 (3) Under compensation plan No. 3, any premiums and
11 other receipts held by the ~~division~~ state fund for
12 occupational disease insurance coverage ~~shall~~ must be
13 transferred ~~and-become-part-of~~ to the workers' compensation
14 industrial insurance account, and payments for occupational
15 disease claims by the state fund ~~shall~~ must be paid out of
16 the industrial insurance account."

17 **Section 40.** Section 2-18-103, MCA, is amended to read:

18 **"2-18-103. Officers and employees excepted.** Parts 1
19 and 2 do not apply to the following positions in state
20 government:

- 21 (1) elected officials;
- 22 (2) county assessors and their chief deputy;
- 23 (3) officers and employees of the legislative branch;
- 24 (4) judges and employees of the judicial branch;
- 25 (5) members of boards and commissions appointed by the

1 governor, appointed by the legislature, or appointed by
2 other elected state officials;

3 (6) officers or members of the militia;

4 (7) agency heads appointed by the governor;

5 (8) academic and professional administrative personnel
6 with individual contracts under the authority of the board
7 of regents of higher education;

8 (9) academic and professional administrative personnel
9 and live-in houseparents who have entered into individual
10 contracts with the state school for the deaf and blind under
11 the authority of the state board of public education;

12 (10) teachers under the authority of the department of
13 institutions;

14 (11) investment officer, assistant investment officer,
15 executive director, and three professional staff positions
16 of the board of investments;

17 (12) four professional staff positions under the board
18 of oil and gas conservation; and

19 (13) assistant director for security of the Montana
20 state lottery; and

21 (14) executive director and employees of the state
22 compensation mutual insurance fund."

23 **Section 41.** Section 33-17-502, MCA, is amended to
24 read:

25 **"33-17-502. Prohibition on holding out as consultant**

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

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

20 (3) Nothing in this part applies to:

21 (a) licensed attorneys at law in this state acting in
 22 their professional capacity;

23 (b) an actuary or a certified public accountant who
 24 provides information, recommendations, advice, or services
 25 in his professional capacity if neither he nor his employer

1 receives any compensation directly or indirectly on account
 2 of any insurance, bond, annuity or pension contract that
 3 results in whole or part from that information,
 4 recommendation, advice, or services; or

5 (c) a duly licensed casualty insurance agent who
 6 accepts a fee from an insured for placement through the
 7 state compensation mutual insurance fund as provided in
 8 33-18-212."

9 **Section 42.** Section 33-18-212, MCA, is amended to
 10 read:

11 "33-18-212. Illegal dealing in premiums -- improper
 12 charges for insurance. (1) No A person shall may not
 13 willfully collect any sum as premium or charge for
 14 insurance, which insurance is not then provided or is not in
 15 due course to be provided (subject to acceptance of the risk
 16 by the insurer) by an insurance policy issued by an insurer
 17 as authorized by this code.

18 (2) No A person shall may not willfully collect as
 19 premium or charge for insurance any sum in excess of or less
 20 than the premium or charge applicable to such insurance and,
 21 as specified in the policy, in accordance with the
 22 applicable classifications and rates as filed with and
 23 approved by the commissioner; or in cases where
 24 classifications, premiums, or rates are not required by this
 25 code to be so filed and approved, such premiums and charges

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

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

19 **Section 43.** ~~Section--2-15-1702,--MCA,--is--amended--to~~
 20 ~~read:~~

21 "2-15-1702,--Division---of---workers'---compensation
 22 insurance compliance ---head:--(1)--There--is--a--division--of
 23 workers'---compensation insurance--compliance within--the
 24 department.--The--division--head--is--an--administrator--appointed
 25 by---the--governor--as--are--directors--in--accordance--with

1 ~~2-15-111.~~

2 ~~(2)--The--division--is--allocated--to--the--department--for~~
 3 ~~administrative--purposes--only--as--prescribed--in--2-15-121.~~
 4 ~~However,--the--division--may--hire--its--own--personnel,--and~~
 5 ~~2-15-121(2)(d)--does--not--apply."~~

6 **Section 43.** Section 2-15-1014, MCA, is amended to
 7 read:

8 "2-15-1014. Office of workers' compensation judge --
 9 allocation -- appointment -- salary. (1) There is the office
 10 of workers' compensation judge. The office is allocated to
 11 the department of administration labor AND INDUSTRY for
 12 administrative purposes only as prescribed in 2-15-121.

13 (2) The governor shall appoint the workers'
 14 compensation judge for a term of 6 years in the same manner
 15 provided by Title 3, chapter 1, part 10, for the appointment
 16 of supreme or district court judges. A vacancy ~~shall~~ must be
 17 filled in the same manner as the original appointment.

18 (3) To be eligible for workers' compensation judge, a
 19 person must:

20 (a) have the qualifications necessary for district
 21 court judges found in Article VII, section 9, of the Montana
 22 constitution;

23 (b) devote full time to the duties of workers'
 24 compensation judge and not engage in the private practice of
 25 law.

(4) The workers' compensation judge is entitled to the same salary and other emoluments as that of a district judge but ~~shall~~ must be accorded retirement benefits under the public employees' retirement system."

Section 44. Section 39-71-2501, MCA, is amended to read:

"39-71-2501. (Temporary) Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of examiners created in 2-15-1007.

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

(3) "Employer" has the meaning set forth in 39-71-117.

(4) "Payroll" means the payroll of an employer for each of the calendar quarters ending March 31, June 30, September 30, and December 31, for all employments covered under 39-71-401.

(5) "State fund" means the state compensation MUTUAL insurance fund ~~referred to in 39-71-2301.~~

(6) "Tax" means the workers' compensation payroll tax provided for in 39-71-2503.

(7) "Tax account" means the workers' compensation tax account created by 39-71-2504. (Terminates June 30, 1991--sec. 10, Ch. 664, L. 1987.)"

NEW SECTION. SECTION 45. STATE FUND TO SUBMIT NOTICE

OF COVERAGE WITHIN THIRTY DAYS -- PENALTY FOR FAILURE. (1) THE STATE FUND SHALL, WITHIN 30 DAYS AFTER THE ISSUANCE OF AN INSURANCE POLICY, SUBMIT TO THE DIVISION THE NOTICE OF COVERAGE STATING THE EFFECTIVE DATE OF THE POLICY INSURING THE EMPLOYER AND OTHER INFORMATION THE DIVISION REQUIRES.

(2) THE DIVISION MAY ASSESS A PENALTY OF NO MORE THAN \$200 AGAINST THE STATE FUND IF, AS A GENERAL BUSINESS PRACTICE, THE STATE FUND DOES NOT COMPLY WITH THE 30-DAY NOTICE REQUIREMENT.

NEW SECTION. SECTION 46. POLICY REMAINS IN EFFECT UNTIL CANCELED OR REPLACED -- TWENTY-DAY NOTIFICATION OF CANCELLATION REQUIRED. THE INSURANCE POLICY REMAINS IN EFFECT UNTIL CANCELED. CANCELLATION MAY TAKE EFFECT ONLY BY WRITTEN NOTICE TO THE NAMED INSURED AND TO THE DIVISION AT LEAST 20 DAYS PRIOR TO THE DATE OF CANCELLATION. HOWEVER, THE POLICY TERMINATES ON THE EFFECTIVE DATE OF A REPLACEMENT OR SUCCEEDING INSURANCE POLICY ISSUED TO THE INSURED. NOTHING IN THIS SECTION PREVENTS THE STATE FUND FROM CANCELING AN INSURANCE POLICY BEFORE A REPLACEMENT POLICY IS ISSUED TO THE INSURED.

SECTION 47. SECTION 33-2-119, MCA, IS AMENDED TO READ:

"33-2-119. Suspension or revocation for violations and special grounds. (1) The commissioner may, in his discretion, suspend or revoke an insurer's certificate of authority if, after a hearing thereon, he finds that the

1 insurer has:

2 (a) violated any lawful order of the commissioner or
3 any provision of this code other than those for which
4 suspension or revocation is mandatory;

5 (b) reinsured more than 90% of its risks resident,
6 located, or to be performed in Montana, in another insurer.
7 In considering suspension or revocation, the commissioner
8 shall consider all relevant factors, including whether:

9 (i) after the reinsurance transaction all parties will
10 be in compliance with Montana law; and

11 (ii) the transaction will substantially reduce
12 protection and service to Montana policyholders;

13 (c) failed to accept an equitable apportionment of
14 assigned coverage as required by [section 13].

15 (2) The commissioner shall, after a hearing thereon,
16 suspend or revoke an insurer's certificate of authority if
17 he finds that the insurer:

18 (a) is in unsound condition or in such condition or
19 using such methods or practices in the conduct of its
20 business as to render its further transaction of insurance
21 in Montana injurious or hazardous to its policyholders or to
22 the public;

23 (b) has refused to be examined or to produce its
24 accounts, records, and files for examination or if any of
25 its officers have refused to give information with respect

1 to its affairs, when required by the commissioner;

2 (c) has failed to pay any final judgment rendered
3 against it in Montana within 30 days after the judgment
4 became final;

5 (d) with such frequency as to indicate its general
6 business practice in Montana, has without just cause refused
7 to pay proper claims arising under its policies, whether any
8 such claim is in favor of an insured or is in favor of a
9 third person with respect to the liability of an insured to
10 such third person, or without just cause compels such
11 insured or claimant to accept less than the amount due them
12 or to employ attorneys or to bring suit against the insurer
13 or such an insured to secure full payment or settlement of
14 such claims;

15 (e) is affiliated with and under the same general
16 management or interlocking directorate or ownership as
17 another insurer which transacts direct insurance in Montana
18 without having a certificate of authority therefor, except
19 as permitted as to a surplus lines insurer under part 3 of
20 this chapter.

21 (3) The commissioner may, in his discretion and
22 without advance notice or a hearing thereon, immediately
23 suspend the certificate of authority of any insurer as to
24 which proceedings for receivership, conservatorship,
25 rehabilitation, or other delinquency proceedings have been

commenced in any state."

SECTION 48. SECTION 37-72-101, MCA, IS AMENDED TO

READ:

"37-72-101. Construction blasting restrictions -- license required -- definitions -- exemptions. (1) No person may engage in the practice of construction blasting unless licensed or under the supervision of a person licensed as a construction blaster by the workers' compensation division.

(2) For the purposes of this chapter:

(a) "construction blaster" means a person who engages in construction blasting;

(b) "construction blasting" means the use of explosives to:

(i) reduce, destroy, or weaken any residential, commercial, or other building; or

(ii) excavate any ditch, trench, cut, or hole or reduce, destroy, weaken, or cause a change in grade of any land formation in the construction of any building, highway, road, pipeline, sewerline, or electric or other utility line;

(c) "division" means the division of workers' compensation division insurance compliance of the department of labor and industry ~~provided for in 2-15-1702~~;

(d) "explosive" has the meaning given in 50-38-101;

(e) "magazine" has the meaning given in 50-38-101.

(3) Nothing in this chapter applies to the private or commercial use of explosives by persons engaged in farming, ranching, logging, geophysical work, drilling or development of water, oil, or gas wells, or mining of any kind or to the private use of explosives in the removal of stumps and rocks from land owned by the person using the explosives, except that the persons exempted from this chapter by this subsection must comply with rules adopted under 37-72-201(1)(c) and the provisions of 37-72-102 apply to a violation of those rules by an exempted person.

(4) This chapter does not apply to persons conducting blasting operations when the persons and operations are subject to rules adopted under and implementing 82-4-231(10)(e)."

SECTION 49. SECTION 50-71-102, MCA, IS AMENDED TO

READ:

"50-71-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Amendment" means such modification or change in a code as shall be intended to be of universal or general application.

(2) "Code" means a standard body of rules for safety formulated, adopted, and issued by the division under the provisions of this chapter.

(3) "Division" means the division of workers'

1 compensation insurance compliance of the department of labor
2 and industry ~~provided-for-in-2-15-1702~~.

3 (4) "Employee" and "worker" are defined as in
4 39-71-118.

5 (5) "Employer" is defined as in 39-71-117.

6 (6) "Variation" means a special, limited modification
7 or change in the code which is applicable only to the
8 particular place of employment of the employer or person
9 petitioning for such modification or change."

10 **SECTION 50.** SECTION 50-73-102, MCA, IS AMENDED TO
11 **READ:**

12 "50-73-102. Definitions. As used in this chapter, the
13 following definitions apply:

14 (1) "Division" means the division of workers'
15 compensation insurance compliance of the department of labor
16 and industry ~~provided--for-in-2-15-1702~~ and the state coal
17 mine inspectors employed by the division.

18 (2) "Excavations" and "workings" mean all parts of a
19 mine excavated or being excavated, including shafts, slopes,
20 tunnels, entries, rooms, and working places, whether
21 abandoned or in use.

22 (3) "Gassy mine" means a mine is considered to be
23 potentially gassy. The division may further define this term
24 in its rules.

25 (4) "Mine" and "coal mine" mean all parts of the

1 property of a mining plant under one management which
2 contribute, directly or indirectly, to the mining or
3 handling of coal.

4 (5) "Mine examiner" means a person charged with the
5 examination of the condition of the mine before the miners
6 are permitted to enter it and who is commonly known as the
7 "fire boss".

8 (6) "Mine foreman" means a person who is charged with
9 the general direction of the underground work or both the
10 underground work and the outside work of a coal mine and who
11 is commonly known and designated as "mine boss".

12 (7) "Operator", as applied to the party in control of
13 a mine under this chapter, means the person, firm, or body
14 corporate which is the immediate proprietor as owner or
15 lessee of the plant and, as such, is responsible for the
16 condition and management thereof.

17 (8) "Shaft" means any vertical opening through the
18 strata which is or may be used for the purpose of
19 ventilation or escape or for hoisting or lowering of men or
20 material in connection with the mining of coal.

21 (9) "Slope" and "drift" mean respectively an incline
22 or horizontal way, opening, or tunnel to a seam of coal to
23 be used for the same purpose as a shaft."

24 **NEW SECTION.** Section 51. Repealer. Sections
25 ~~2-15-1702,~~ 39-71-2301, 39-71-2302, 39-71-2304 through

1 39-71-2306, and 39-71-2324, MCA, are repealed.

2 NEW SECTION. **Section 52.** Extension of authority. Any
3 existing authority to make rules on the subject of the
4 provisions of [this act] is extended to the provisions of
5 [this act].

6 NEW SECTION. **Section 53.** Codification instruction.
7 (1) [Sections 1, 2, and 4 through 12] are intended to be
8 codified as an integral part of Title 39, chapter 71, part
9 23, and the provisions of Title 39, chapter 71, part 23,
10 apply to [sections 1, 2, and 4 through 12].

11 (2) [Section 3] is intended to be codified as an
12 integral part of Title 2, chapter 15, part 10, and the
13 provisions of Title 2, chapter 15, part 10, apply to
14 [section 3].

15 (3) [Section 13] is intended to be codified as an
16 integral part of Title 39, chapter 71, and the provisions of
17 Title 39, chapter 71, apply to [section 13].

18 NEW SECTION. **Section 54.** Reorganization procedure.
19 The provisions of sections 2-15-131 through 2-15-137 govern
20 the creation of the state compensation mutual insurance fund
21 and the transfer of the various functions contained in [this
22 act] from the state ~~workers'~~ compensation INSURANCE fund to
23 the state compensation mutual insurance fund.

24 NEW SECTION. **Section 55.** Implementation. (1) The
25 governor shall by executive order implement the provisions

1 of [this act].

2 (2) The governor may by executive order assign to the
3 state compensation mutual insurance fund, in a manner
4 consistent with [this act], functions allocated to the
5 workers' compensation state fund provided for in Title 39,
6 chapter 71, part 23, by the 51st legislature and not
7 transferred by [this act].

8 NEW SECTION. **Section 56.** Effective dates. (1)
9 [Sections 3, 7, 50 54, 55, and this section] are effective
10 on passage and approval.

11 (2) [Sections 1, 2, 4 through 6, and 8 through 49 53]
12 are effective upon signing of the executive order under
13 [section 50 55] or on October 1, 1989, whichever occurs
14 earlier.

-End-

1 SENATE BILL NO. 428

2 INTRODUCED BY THAYER, NATHE, THOMAS, NOBLE, MEYER,

3 DRISCOLL, PAVLOVICH, GRADY, MAZUREK, WILLIAMS, SMITH,

4 SQUIRES, GLASER, RAPP-SVRCEK, RUSSELL, AKLESTAD,

5 DEVLIN, RASMUSSEN, GRINDE, MARKS

6 BY REQUEST OF THE GOVERNOR

7
8 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE STATE
9 COMPENSATION MUTUAL INSURANCE FUND TO INSURE EMPLOYERS FOR
10 WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LIABILITY;
11 PROVIDING FOR A BOARD OF DIRECTORS; ESTABLISHING THE POWERS
12 AND DUTIES OF THE BOARD AND THE CHIEF EXECUTIVE OFFICER OF
13 THE STATE COMPENSATION MUTUAL INSURANCE FUND; TRANSFERRING
14 THE OFFICE OF WORKERS' COMPENSATION JUDGE TO THE DEPARTMENT
15 OF LABOR AND INDUSTRY; AMENDING SECTIONS 2-15-1014,
16 ~~2-15-1702~~, 2-18-103, 33-2-119, 33-17-502, 33-18-212,
17 37-72-101, 39-71-116, 39-71-201, 39-71-203, 39-71-206,
18 39-71-306 THROUGH 39-71-308, 39-71-403, 39-71-421,
19 39-71-604, 39-71-704, 39-71-901, 39-71-908, 39-71-910,
20 39-71-911, 39-71-913, 39-71-2303, 39-71-2307, 39-71-2308,
21 39-71-2321 THROUGH 39-71-2323, 39-71-2325, 39-71-2327,
22 39-71-2501, 39-72-201, AND 39-72-310, 50-71-102, AND
23 50-73-102, MCA; REPEALING SECTIONS 2-15-1702, 39-71-2301,
24 39-71-2302, 39-71-2304 THROUGH 39-71-2306, AND 39-71-2324,
25 MCA; AND PROVIDING EFFECTIVE DATES."

There is no change on SB 428 and will not
be reprinted. Please refer to second reading
(yellow) for complete text.

STANDING COMMITTEE REPORT

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Mr. Speaker: We, the committee on Labor report that Senate Bill 428 (third reading copy -- blue) be concurred in as amended.

Signed: _____

Angela Russell

Angela Russell, Chairman

[REP. THOMAS WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Title, line 16.
Following: "2-18-103,"
Insert: "19-3-1002, 19-3-1007, 19-3-1202, 19-13-601, 33-1-102,"
Following: "33-2-119,"
Insert: "33-16-1005, 33-16-1011,"
2. Title, line 17.
Following: "37-72-101,"
Insert: "39-1-103,"
Following: "39-71-206,"
Insert: "39-71-207,"
3. Page 2, line 24 through page 3, line 1.
Strike: line 24 through "is." on page 3, line 1
4. Page 3, line 1.
Strike: "not"
5. Page 3, line 3.
Strike: ", except for"
Insert: "and shall insure"
6. Page 3, lines 24 and 25.
Following: "corporation." on line 24
Strike: remainder of line 24 through "not" on line 25
Insert: "The state fund is"
7. Page 4, line 1.
Following: "may"
Insert: "not"
8. Page 4, line 2.
Strike: ", except a state agency"

Insert: "unless an assigned risk plan is established under [section 12] and is in effect"

9. Page 4, line 14.
Strike: "12"
Insert: "11"

10. Page 6, line 24.
Strike: "12"
Insert: "11"

11. Page 7, line 2.
Strike: "12"
Insert: "11"

12. Page 9, line 18.
Following: "fund."
Insert: "The state fund is not a member insurer for the purposes of the insurance guaranty association established pursuant to Title 33, chapter 10, part 1."

13. Page 9, lines 22 and 23.
Strike: "12" on line 22
Insert: "11"
Strike: "and" on line 22 through "12]" on line 23

14. Page 9, line 24.
Following: "(3)"
Strike: "The"
Insert: "If an assigned risk plan is established and administered pursuant to [section 12], the"

15. Page 10, line 10 through page 11, line 5.
Strike: section 12 in its entirety
Renumber: subsequent sections

16. Page 11, lines 6 and 7.
Strike: "The commissioner of insurance shall promulgate"
Insert: "Following the date on which the provisions of [this act] are implemented but no later than December 31, 1990, the commissioner of the department of labor and industry may order the establishment of"

17. Page 11, line 11.
Following: "methods."
Insert: "In determining whether to order an assigned risk plan to be established, the commissioner shall consider the effect a plan would have on the availability of workers' compensation"

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insurance and the need to provide competitive workers' compensation premium rates for employers in this state. If the commissioner orders the establishment of an assigned risk plan, it may not take effect until at least 6 months following the commissioner's order creating the plan."

18. Page 11.

Following: line 18

Insert: "(4) If an assigned risk plan is established and in effect, the state fund, plan No. 3, is not required to insure any employer in this state requesting coverage, and it may refuse coverage for an employer, except for a state agency.

(5) If an assigned risk plan is established and in effect, an employer who is refused the coverage required by this chapter by the state fund, plan No. 3, and by at least two private insurers, plan No. 2, may be assigned coverage by the commissioner under the assigned risk plan pursuant to the procedure established by the commissioner for the equitable apportionment of coverage."

19. Page 12, line 3.

Page 14, lines 1, 2, 9, and 12.

Page 16, lines 8, 10, and 13.

Page 17, lines 15, 20, and 23.

Page 18, lines 2, 3, and 9.

Page 19, lines 8, 9, 11, and 12.

Page 20, lines 3, 14, 15, 20 (two places), and 23.

Page 21, lines 5, 6 (two places), 11, and 14.

Page 23, line 24.

Page 24, lines 4, 10, and 14.

Page 25, lines 5, 14, and 23 (two places).

Page 26, lines 5 and 9.

Page 27, line 4.

Page 28, lines 1 and 5.

Page 30, line 3.

Page 34, line 10.

Page 35, line 4.

Page 42, lines 3, 5, 6, and 14.

Page 46, line 23.

Page 47, lines 17 and 23.

Strike: "division", "division", "division", and "DIVISION"

Insert: "department"

20. Page 13, lines 10 through 12.

Strike: subsection (7) in its entirety

Renumber: subsequent subsections

21. Page 30, lines 16 and 17.

Following: "due" or line 16

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Strike: remainder of line 16 through "EXPOSURE" on line 17

22. Page 37, line 22.

Following: "capacity;"

Insert: "or"

23. Page 38, line 4.

Strike: "; or"

24. Page 38, lines 5 through 8.

Strike: "(c)" on line 5 through "33-18-212" on line 8

25. Page 39, lines 11 through 16.

Strike: lines 11 through 16 in their entirety

26. Page 43, line 14.

Strike: "13"

Insert: "12"

27. Page 45, line 8.

Strike: "workers' compensation division"

Insert: "department"

28. Page 45, lines 21 through 23.

Following: "(c)" on line 21

Strike: remainder of line 21 through line 23

Insert: "department" means the department of labor and industry;"

29. Page 46, line 25 through page 47, line 2.

Following: "(3)" on line 25

Strike: remainder of line 25 through page 47, line 2

Insert: "Department" means the department of labor and industry."

30. Page 47, lines 14 through 16.

Following: "(1)" on line 14

Strike: remainder of line 14 through "industry" on line 16

Following: "2-15-1702"

Insert: "Department" means the department of labor and industry"

31. Page 48.

Following: line 23

Insert: "Section 50. Section 39-1-103, MCA, is amended to read:

"39-1-103. Powers of department. (1) In discharging the duties imposed upon the department, the commissioner or his authorized representatives may administer oaths, examine witnesses under oath, take depositions or cause same to be taken,

deputize any citizen 18 years of age or older to serve subpoenas upon witnesses, and issue subpoenas for the attendance of witnesses before him in the same manner as for attendance before district courts.

(2) The commissioner may likewise cause to be inspected any mine, factory, workshop, smelter, mill, warehouse, elevator, foundry, machine shop, or other industrial establishment.

~~(3) Nothing herein contained shall in any manner confer upon the commissioner the authority to interfere in any manner with the conduct of the matters under the control of the workers' compensation division, nor shall the commissioner be charged with the duty of enforcing any of the laws of the state pertaining to the affairs of the workers' compensation division or with the enforcement of the safety provisions of the Workers' Compensation Act.~~

~~(4)~~ (3) Nothing in this chapter applies to labor violations preempted by federal law or regulation."

Section 51. Section 39-71-207, MCA, is amended to read:

"39-71-207. Merit system. Employees of the ~~division, except the administrator,~~ department are included within the joint merit system if such inclusion is required for the receipt of federal funds by 29 CFR 1902.3(h) or by any other federal law or regulation."

Section 52. Section 33-1-102, MCA, is amended to read:

"33-1-102. Compliance required -- exceptions -- health service corporations -- health maintenance organizations -- governmental insurance programs. (1) No person shall transact a business of insurance in Montana or relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) No provision of this code shall apply with respect to:

- (a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;
- (b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and
- (c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of such corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) This code does not apply to health maintenance organizations to the extent that the existence and operations of such organizations are authorized by chapter 31.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, ~~parts part 21 and 23~~, and related sections.

(6) This code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8.

(7) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(8) (a) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state whereby the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state whereby the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program."

Section 53. Section 33-16-1005, MCA, is amended to read:

"33-16-1005. Membership in rating organization required -- exception -- filings with commissioner. (1) Every insurer, ~~except the division of workers' compensation including the state compensation mutual insurance fund,~~ writing workers' compensation insurance in this state shall be a member of a workers' compensation rating organization. No insurer may, at the same time, belong to more than one rating organization with respect to such insurance.

(2) A rating organization shall file with the insurance commissioner every manual of classifications and rules and every rating plan and advisory manual rates, including every modification of the foregoing. Every such filing shall state the effective date thereof. Any insurer writing pursuant to compensation plan No. 2 shall adhere to the manual rules and classifications and rating plans of the rating organization of which it is a member and may adopt by reference, in whole or in part, the advisory manual rates filed under this section. Nothing in this section, however, requires adherence by any insurer to any rates established or published by any rating organization."

Section 54. Section 33-16-1011, MCA, is amended to read:

"33-16-1011. Classification and rating committee -- membership -- term. (1) There is a classification and rating committee.

(2) The committee is composed of five voting members, consisting of:

(a) three representatives of private insurance carriers writing workers' compensation insurance in Montana. The members must reside in Montana and shall be appointed by the Montana commissioner of insurance.

(b) one licensed independent insurance agent who resides in

Montana, appointed by the Montana commissioner of insurance; and
(c) one representative of the ~~division of workers' compensation~~ state compensation mutual insurance fund who is an employee of the ~~division state fund~~ and who shall be appointed by the ~~administrator of the division~~ executive director of the state fund.

(3) Each member shall hold office for a period of 3 years. Any appointee who fills the vacancy of a member whose term has not expired shall fill only the remaining term and may be reappointed for a full term.

(4) Before appointments are to be made by the commissioner of insurance under subsections (2) (a) and (2) (b) above, established private organizations representing insurance carriers and independent insurance agents may submit names of individuals they recommend for appointments. The commissioner of insurance shall give consideration to such names submitted before appointments are made. However, the commissioner of insurance is not required to appoint any person from the names submitted.

(5) The committee shall be funded from the operations budget of the rating organization. Committee members may, if they request, be paid their actual and necessary travel expenses."

Section 55. Section 19-3-1007, MCA, is amended to read:
"19-3-1007. Allowance for duty-related disability. (1) The annual amount of retirement allowance payable to a member eligible for disability retirement for duty-related reasons and granted prior to July 1, 1977, is 50% of his final compensation. However, the annual amount of retirement allowance is 25% of final compensation for any period during which the member has been awarded ~~compensation by the workers' compensation division~~, whether such compensation is received in periodic payments or in a lump sum. The annual amount of retirement allowance reverts to 50% of final compensation at the end of such period.

(2) Any retired member receiving a retirement allowance on July 1, 1977, who has previously been granted a duty-related disability under provisions in effect on June 30, 1977, will be subject to the provisions of this section after July 1, 1977."

Section 56. Section 19-3-1002, MCA, is amended to read:
"19-3-1002. Eligibility for disability retirement. (1) Except as provided in subsection (2) and 19-3-1004, a member who is not eligible for service or early retirement but has completed 5 years of creditable service and has become disabled while in active service, as defined in 19-3-1001, is eligible for disability retirement.

(2) A member age 60 or older who has completed 5 years of creditable service and has had a duty-related accident forcing him to terminate his employment but who has not received or is ineligible to receive workers' compensation benefits under Title

39, chapter 71, for the duty-related accident may conditionally waive his eligibility for a service retirement to be eligible for disability retirement. The waiver is effective only upon approval by the board of his application for disability retirement. The board shall determine whether a member has become disabled under the provisions of 19-3-1003. The board may request any information on file with the ~~workers' compensation division~~ state compensation mutual insurance fund concerning the duty-related accident. If no information is available, the board may request and the ~~division state fund~~ shall provide an investigative report on the disabling accident."

Section 57. Section 19-3-1202, MCA, is amended to read:
"19-3-1202. Amount of death benefit. The amount of death benefit is the sum of (1), (2), and (3) as follows:

(1) the member's accumulated contributions;
(2) an amount equal to one-twelfth of the compensation received by the member during the last 12 months of such compensation multiplied by the smaller of six or the number of years of his creditable service; provided, however, that this portion of the death benefit is not payable if the board receives a certification from the ~~workers' compensation division of the state of Montana~~ state compensation mutual insurance fund that it is paying compensation because the member's death resulted from injury or disease arising out of or in the course of employment; and

(3) the accumulated interest on the amounts in subsections (1) and (2) of this section to the first day of the month in which the benefit is paid."

Section 58. Section 19-13-601, MCA, is amended to read:
"19-13-601. Deduction remitted to firemen's association -- member's contributions. (1) Each employer shall retain from the monthly compensation of each active member a sum equal to 1% of his monthly compensation for his services as a firefighter and shall remit this amount on a monthly basis to the Montana state firemen's association for the payment of premiums on a group life and accidental death and dismemberment insurance policy for members and to defray expenses incurred by the association when representing members of the plan.

(2) The member's contribution to the retirement system for each active member is 6% of his monthly compensation.

(3) If a member receives compensation under the provisions of the Workers' Compensation Act, Title 39, chapter 71, the amount received must be included as part of his monthly compensation for purposes of determining contributions and service credits under the retirement system. Contributions made under this section, 19-13-604, and 19-13-605 must be based on the total compensation received by the member from his employer and

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from the workers' compensation ~~division~~ during the period of disability.

(4) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code, as amended and applicable on July 1, 1987, shall pick up and pay the contributions which would be payable by the member under subsection (2) for service rendered after June 30, 1987.

(5) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(6) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's monthly compensation as defined in 19-13-104. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

Renumber: subsequent sections

32. Page 49, line 7.
Strike: "and"
Following: "through"
Strike: "12"
Insert: "11, 44, and 45"

33. Page 49, line 10.
Strike: "and"
Following: "through"
Strike: "12"
Insert: "11, 44, and 45"

34. Page 49, line 15.
Strike: "13"
Insert: "12"

35. Page 49, line 17.
Strike: "13"
Insert: "12"

36. Page 49, line 19.
Following: line 18
Insert: "(1)"

37. Page 49, line 24.

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Following: line 23

Insert: "(2) It is intended that current employees of the division of workers' compensation whose functions are transferred to the state compensation mutual insurance fund shall retain employment rights consistent with their positions at the time of transfer."

38. Page 50.

Following: line 7

Insert: "NEW SECTION. Section 64. Name change -- code commissioner instruction. (1) In the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division", meaning the division of workers' compensation, are changed to "department of labor and industry" or "department", meaning the "department of labor and industry".

(2) The code commissioner shall designate, in a manner consistent with [this act], workers' compensation insurance regulatory functions allocated to the division of workers' compensation by the 51st legislature to the department of labor and industry that are not so designated by [this act].

(3) Wherever it appears in 39-71-205, 39-71-222 through 39-71-224, 39-71-613, 39-71-902, 39-71-904, 39-71-910, or in law enacted by the 51st legislature, the code commissioner is directed to change the term "administrator" or "his" to "department", meaning the department of labor and industry."

Renumber: subsequent section

39. Page 50, line 9.
Following: "58"
Strike: "54, 55"
Insert: "39, 60 through 64"

40. Page 50, line 11.
Strike: "and"
Following: "through"
Insert: "38, and 40 through"
Strike: "53"
Insert: "59"

41. Page 50, line 13.
Strike: "55"
Insert: "63"
Strike: "October 1, 1989"
Insert: "January 1, 1990"

COMMITTEE OF THE WHOLE AMENDMENT
SENATE BILL 428
Representative Fred Thomas

March 28, 1989 1:31 pm
Page 1 of 1

Mr. Chairman: I move to amend SENATE BILL 428 (third reading copy -- blue).

Signed: Fred Thomas
Representative Fred Thomas

And, that such amendment to SENATE BILL 428 read as follows:

1. Page 49, line 19.
Strike: "2-15-131"
Insert: "2-15-132"

ADOPT

REJECT

HOUSE
SB 428

SENATE BILL NO. 428

INTRODUCED BY THAYER, NATHE, THOMAS, NOBLE, MEYER,
DRISCOLL, PAVLOVICH, GRADY, MAZUREK, WILLIAMS, SMITH,
SQUIRES, GLASER, RAPP-SVRCEK, RUSSELL, AKLESTAD,
DEVLIN, RASMUSSEN, GRINDE, MARKS
BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE STATE
COMPENSATION MUTUAL INSURANCE FUND TO INSURE EMPLOYERS FOR
WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LIABILITY;
PROVIDING FOR A BOARD OF DIRECTORS; ESTABLISHING THE POWERS
AND DUTIES OF THE BOARD AND THE CHIEF EXECUTIVE OFFICER OF
THE STATE COMPENSATION MUTUAL INSURANCE FUND; TRANSFERRING
THE OFFICE OF WORKERS' COMPENSATION JUDGE TO THE DEPARTMENT
OF LABOR AND INDUSTRY; AMENDING SECTIONS 2-15-1014,
~~2-15-1702~~, 2-18-103, 19-3-1002, 19-3-1007, 19-3-1202,
19-13-601, 33-1-102, 33-2-119, 33-16-1005, 33-16-1011,
33-17-502, 33-18-212, 37-72-101, 39-1-103, 39-71-116,
39-71-201, 39-71-203, 39-71-206, 39-71-207, 39-71-306
THROUGH 39-71-308, 39-71-403, 39-71-421, 39-71-604,
39-71-704, 39-71-901, 39-71-908, 39-71-910, 39-71-911,
39-71-913, 39-71-2303, 39-71-2307, 39-71-2308, 39-71-2321
THROUGH 39-71-2323, 39-71-2325, 39-71-2327, 39-71-2501,
39-72-201, AND 39-72-310, 50-71-102, AND 50-73-102, MCA;
REPEALING SECTIONS 2-15-1702, 39-71-2301, 39-71-2302,

39-71-2304 THROUGH 39-21-2306, AND 39-71-2324, MCA; AND
PROVIDING EFFECTIVE DATES."

STATEMENT OF INTENT

A statement of intent is required for this bill because
[section 8] grants rulemaking authority to the newly created
state fund to adopt or repeal rules or amend existing rules
to implement the new state compensation mutual insurance
fund. The chief purposes of creating the state fund as a
mutual insurer and placing it in a department other than the
department of labor are:

(1) to remove the inherent conflict between the
interests of the workers' compensation division in
regulating all workers' compensation insurers in this state,
including the state compensation insurance fund, and the
interests of the state fund as a workers' compensation
insurer; and

(2) to ensure the solvency of the new state fund.

The legislature recognizes that the fund actuary has
determined that at June 30, 1988, a full funding deficiency
of \$157.3 million existed for the present state compensation
insurance fund. The legislature intends that the new state
compensation mutual insurance fund adopt rules in a manner
that will assure the solvency of the new fund. Rates must be
set on an actuarially sound basis as required by state law.

~~To--further-ensure-the-solvency-of-the-state-fund, it-is-not
the-workers'-compensation-insurer-of--last--resort,--as--the
state--fund--presently--is. The new state fund would not be
bound to insure all employers who apply to it for workers'
compensation coverage,--except--for AND SHALL INSURE state
agencies. It--could--refuse--to--insure--an---employer---it
considered-a-poor-risk.~~

As the primary means of ensuring the solvency of the state fund, it must institute safety programs and set rates in a manner that awards employers who provide a safe working environment and penalizes employers who do not.

The legislature further intends that the new state fund institute programs to automate the processing of claims and payment of benefits. The state fund may contract out to the private sector certain claims administration and servicing functions if the state fund determines it to be cost-effective.

THE LEGISLATURE INTENDS THAT THE GOVERNOR SHALL
IMPLEMENT STAGGERED TERMS IN NAMING THE INITIAL MEMBERS OF
THE BOARD.

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

NEW SECTION. Section 1. Intent and purpose of plan.
It is the intent and purpose of the state fund to allow employers the option to insure their liability for workers'

compensation and occupational disease coverage with a nonprofit, independent public corporation. ~~The-state-fund-is
a--domestic--mutual--insurer,--it--is--not~~ THE STATE FUND IS required to insure any employer in this state requesting coverage, and it may NOT refuse coverage for an employer ~~except-a-state-agency, that the state fund determines to-be
a-bad-risk~~ UNLESS AN ASSIGNED RISK PLAN IS ESTABLISHED UNDER [SECTION 12] AND IS IN EFFECT. The state fund must be neither more nor less than self-supporting. Premium rates must be set at a level sufficient to fund the insurance program, including the costs of administration, benefits, and adequate reserves. For the purpose of keeping the state fund solvent, it must implement ~~safety--programs~~ VARIABLE PRICING LEVELS WITHIN INDIVIDUAL RATE CLASSIFICATIONS to reward an employer with a good safety record and penalize an employer with a poor safety record.

NEW SECTION. Section 2. Definitions. Unless the context requires otherwise, in [sections 1, 2, and 4 through ~~12~~ 11] the following definitions apply:

(1) "Board" means the board of directors of the state compensation mutual insurance fund provided for in [section 3].

(2) "Department" means the department of administration provided for in 2-15-1001.

(3) "Executive director" means the chief executive

officer of the state compensation mutual insurance fund.

(4) "State fund" means the state compensation mutual insurance fund provided for in [section 4]. It is also known as compensation plan No. 3 or plan No. 3.

NEW SECTION. Section 3. Board of directors of the state compensation mutual insurance fund. (1) There is a board of directors of the state compensation mutual insurance fund.

(2) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may employ its own staff.

(3) The board may provide for its own office space and the office space of the state fund.

(4) The board consists of five members appointed by the governor. The executive director of the state fund is an ex officio nonvoting member.

(5) At least three of the five members shall represent state fund policyholders and may be employees of state fund policyholders. At least three members of the board shall represent private, for-profit enterprises. A member of the board may not:

(a) represent or be an employee of an insurance company that is licensed to transact workers' compensation insurance under compensation plan No. 2; or

(b) be an employee of a self-insured employer under

compensation plan No. 1.

(6) A member is appointed for a term of 4 years. The terms of board members must be staggered. A member of the board may serve no more than two 4-year terms. A member shall hold office until a successor is appointed and qualified.

(7) The board--is--designated--as MEMBERS MUST BE APPOINTED AND COMPENSATED IN THE SAME MANNER AS MEMBERS OF a quasi-judicial board for--the--purposes--of AS PROVIDED IN 2-15-124, except that the requirement that at least one member be an attorney does not apply.

NEW SECTION. Section 4. State compensation mutual insurance fund created. There is a state compensation mutual insurance fund known as the state fund that is a nonprofit, independent public corporation established for the purpose of allowing an option for employers to insure their liability for workers' compensation and occupational disease coverage under this chapter. The state fund exists as a domestic mutual insurer as defined in 33-3-102.

NEW SECTION. Section 5. Management of state fund -- powers and duties of the board. (1) The management and control of the state fund is vested solely in the board.

(2) The board is vested with full power, authority, and jurisdiction over the state fund. The board may perform all acts necessary or convenient in the exercise of any

1 power, authority, or jurisdiction over the state fund,
 2 either in the administration of the state fund or in
 3 connection with the insurance business to be carried on
 4 under the provisions of [sections 1, 2, and 4 through §2
 5 11], as fully and completely as the governing body of a
 6 private mutual insurance carrier, in order to fulfill the
 7 objectives and intent of [sections 1, 2, and 4 through §2
 8 11].

9 **NEW SECTION. Section 6. Personal liability excluded.**

10 The members of the board, the executive director, and
 11 employees of the state fund are not liable personally,
 12 either jointly or severally, for any debt or obligation
 13 created or incurred by the state fund.

14 **NEW SECTION. Section 7. Appointment of executive**
 15 **director -- management staff.** The board shall appoint an
 16 executive director of the state fund who has general
 17 responsibility for the operations of the state fund. The
 18 executive director must have executive level experience,
 19 with knowledge of the insurance industry. The executive
 20 director must receive compensation as set by the board and
 21 serve at the pleasure of the board. The executive director
 22 may hire the management staff of the state fund, each of
 23 whom serves at the pleasure of the executive director.

24 **NEW SECTION. Section 8. Powers of the state fund --**
 25 **rulemaking.** For the purposes of carrying out its functions,

1 the state fund may:

2 (1) insure any employer for workers' compensation and
 3 occupational disease liability as the coverage is required
 4 by the laws of this state and, in connection with the
 5 coverage, provide employers' liability insurance. The state
 6 fund may charge a minimum yearly premium to cover its
 7 administrative costs for coverage of a small employer.

8 (2) sue and be sued;

9 (3) adopt, amend, and repeal rules relating to the
 10 conduct of its business;

11 (4) enter into contracts relating to the
 12 administration of the state fund, including claims
 13 management, servicing, and payment;

14 (5) collect and disburse money received;

15 (6) adopt classifications and charge premiums for the
 16 classifications so that the state fund will be neither more
 17 nor less than self-supporting. The state fund must belong
 18 to the national council on compensation insurance and shall
 19 use the classifications of employment adopted by the
 20 national council AND CORRESPONDING RATES AS A BASIS FOR
 21 SETTING ITS OWN RATES.

22 (7) pay the amounts determined due under a policy of
 23 insurance issued by the state fund;

24 (8) hire personnel;

25 (9) declare dividends if there is an excess of assets

over liabilities. However, dividends may not be paid until the unfunded liability of the state fund is eliminated AND ADEQUATE ACTUARIALLY DETERMINED RESERVES ARE DETERMINED.

(10) perform all functions and exercise all powers of a domestic mutual insurer that are necessary, appropriate, or convenient for the administration of the state fund.

NEW SECTION. Section 9. Property of the state fund -- investment required. All premiums and other money paid to the state fund, all property and securities acquired through the use of money belonging to the state fund, and all interest and dividends earned upon money belonging to the state fund are the sole property of the state fund and must be used exclusively for the operations and obligations of the state fund. The money collected by the state fund may not be used for any other purpose. However, state fund money must be invested by the board of investments provided for in 2-15-1808.

NEW SECTION. Section 10. State fund a mutual insurance carrier. (1) The state fund is a domestic mutual insurer controlled by the laws relating to the regulation of domestic mutual insurers in this state. However, the formation, incorporation, bylaws, and bonding requirements set forth in Title 33, chapter 3, do not apply to the state fund. THE STATE FUND IS NOT A MEMBER INSURER FOR THE PURPOSES OF THE INSURANCE GUARANTY ASSOCIATION ESTABLISHED

PURSUANT TO TITLE 33, CHAPTER 10, PART 1.

(2) The commissioner of insurance may not terminate the operations of the state fund based on insolvency due to the unfunded liability that is recognized to exist on the date of passage of [sections 1, 2, and 4 through 12 11] and ~~recognized-in-{section-12}~~.

(3) THE IF AN ASSIGNED RISK PLAN IS ESTABLISHED AND ADMINISTERED PURSUANT TO [SECTION 12], THE state fund is subject to the premium tax liability for insurers as provided in 33-2-705 BASED ON EARNED PREMIUM AND PAID ON REVENUE FROM THE PREVIOUS FISCAL YEAR.

NEW SECTION. Section 11. Assets and liabilities of prior state fund. All assets and funds held by the state compensation insurance fund established in 39-71-2301 through 39-71-2308 and 39-71-2321 through 39-71-2327 must be transferred to the state fund, and the state fund shall assume liability for all outstanding claims and indebtedness of the previously existing state fund.

NEW-SECTION:--Section-12:--Unfunded--liability:--(1)--It is-recognized-at-the-date-of-creation-of-the-state-fund-that there-exists-an-unfunded-liability-that-is-being-assumed--by the---newly---created---state---fund--for--the--prior--state compensation--insurance--fund's--liability--for---industrial injuries--and--occupational--diseases-that-occurred-prior-to July-17-1987--To-assist-the-state-fund--in--alleviating--the

1 unfunded liability, the premium taxes collected by the state
2 from the following sources must be transferred to the newly
3 created state fund:

- 4 (a) the state fund;
 - 5 (b) excess or reinsurance policies on self-insurers
6 writing coverage on a self-insurer's workers' compensation
7 program under compensation plan No. 1; and
 - 8 (c) private insurance carriers writing workers'
9 compensation insurance under compensation plan No. 2.
- 10 (2) The premium taxes must be transferred to the state
11 fund for payment of the unfunded liability. The premium tax
12 payments must continue until the unfunded liability has been
13 paid, at which time the premium taxes must be paid to the
14 general fund.

15 **NEW SECTION. Section 12. Assigned risk plan.** (1) The
16 commissioner of insurance shall promulgate FOLLOWING THE
17 DATE ON WHICH THE PROVISIONS OF [THIS ACT] ARE IMPLEMENTED
18 BUT NO LATER THAN DECEMBER 31, 1990, THE COMMISSIONER OF THE
19 DEPARTMENT OF LABOR AND INDUSTRY MAY ORDER THE ESTABLISHMENT
20 OF and administer a plan to equitably apportion among the
21 state fund, plan No. 3, and private insurers, plan No. 2,
22 the coverage required by this chapter for employers who are
23 unable to procure coverage through ordinary methods. IN
24 DETERMINING WHETHER TO ORDER AN ASSIGNED RISK PLAN TO BE
25 ESTABLISHED, THE COMMISSIONER SHALL CONSIDER THE EFFECT A

1 PLAN WOULD HAVE ON THE AVAILABILITY OF WORKERS' COMPENSATION
2 INSURANCE AND THE NEED TO PROVIDE' COMPETITIVE WORKERS'
3 COMPENSATION PREMIUM RATES FOR EMPLOYERS IN THIS STATE. IF
4 THE COMMISSIONER ORDERS THE ESTABLISHMENT OF AN ASSIGNED
5 RISK PLAN, IT MAY NOT TAKE EFFECT UNTIL AT LEAST 6 MONTHS
6 FOLLOWING THE COMMISSIONER'S ORDER CREATING THE PLAN.

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

9 (3) If an insurer refuses to accept its equitable
10 apportionment under the assigned risk plan, the commissioner
11 of insurance may suspend or revoke the insurer's authority
12 to issue workers' compensation coverage contracts INSURANCE
13 POLICIES in this state.

14 (4) IF AN ASSIGNED RISK PLAN IS ESTABLISHED AND IN
15 EFFECT, THE STATE FUND, PLAN NO. 3, IS NOT REQUIRED TO
16 INSURE ANY EMPLOYER IN THIS STATE REQUESTING COVERAGE, AND
17 IT MAY REFUSE COVERAGE FOR AN EMPLOYER, EXCEPT FOR A STATE
18 AGENCY.

19 (5) IF AN ASSIGNED RISK PLAN IS ESTABLISHED AND IN
20 EFFECT, AN EMPLOYER WHO IS REFUSED THE COVERAGE REQUIRED BY
21 THIS CHAPTER BY THE STATE FUND, PLAN NO. 3, AND BY AT LEAST
22 TWO PRIVATE INSURERS, PLAN NO. 2, MAY BE ASSIGNED COVERAGE
23 BY THE COMMISSIONER UNDER THE ASSIGNED RISK PLAN PURSUANT TO
24 THE PROCEDURE ESTABLISHED BY THE COMMISSIONER FOR THE
25 EQUITABLE APPORTIONMENT OF COVERAGE.

1 **Section 13.** Section 39-71-116, MCA, is amended to
2 read:

3 **"39-71-116. Definitions.** Unless the context otherwise
4 requires, words and phrases employed in this chapter have
5 the following meanings:

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

13 (2) "Beneficiary" means:

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

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

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

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

23 (e) a parent who is dependent upon the decedent for
24 support at the time of the injury (however, such a parent is
25 a beneficiary only when no beneficiary, as defined in

1 subsections (2)(a) through (2)(d) of this section, exists);
2 and

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

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

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

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

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

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

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

23 (9) "Insurer" means an employer bound by
24 compensation plan No. 1, an insurance company transacting
25 business under compensation plan No. 2, the state

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

4 {10}(9) "Invalid" means one who is physically or
5 mentally incapacitated.

6 {11}(10) "Maximum healing" means the status reached
7 when a worker is as far restored medically as the permanent
8 character of the work-related injury will permit.

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

13 {13}(12) "Payroll", "annual payroll", or "annual
14 payroll for the preceding year" means the average annual
15 payroll of the employer for the preceding calendar year or,
16 if the employer shall not have operated a sufficient or any
17 length of time during such calendar year, 12 times the
18 average monthly payroll for the current year; provided, that
19 an estimate may be made by the division DEPARTMENT for any
20 employer starting in business where no average payrolls are
21 available, such estimate to be adjusted by additional
22 payment by the employer or refund by the division
23 DEPARTMENT, as the case may actually be, on December 31 of
24 such current year.

25 {14}(13) "Permanent partial disability" means a

1 condition, after a worker has reached maximum healing, in
2 which a worker:

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

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

8 {15}(14) "Permanent total disability" means a condition
9 resulting from injury as defined in this chapter, after a
10 worker reaches maximum healing, in which a worker is unable
11 to return to work in the worker's job pool after exhausting
12 all options set forth in 39-71-1012.

13 {16}(15) The term "physician" includes "surgeon" and in
14 either case means one authorized by law to practice his
15 profession in this state.

16 {17}(16) The "plant of the employer" includes the place
17 of business of a third person while the employer has access
18 to or control over such place of business for the purpose of
19 carrying on his usual trade, business, or occupation.

20 {18}(17) "Public corporation" means the state or any
21 county, municipal corporation, school district, city, city
22 under commission form of government or special charter,
23 town, or village.

24 {19}(18) "Reasonably safe place to work" means that the
25 place of employment has been made as free from danger to the

1 life or safety of the employee as the nature of the
2 employment will reasonably permit.

3 ~~†20†~~(19) "Reasonably safe tools and appliances" are
4 such tools and appliances as are adapted to and are
5 reasonably safe for use for the particular purpose for which
6 they are furnished.

7 ~~†21†~~(20) "Temporary total disability" means a condition
8 resulting from an injury as defined in this chapter that
9 results in total loss of wages and exists until the injured
10 worker reaches maximum healing.

11 ~~†22†~~(21) "Year", unless otherwise specified, means
12 calendar year."

13 **Section 14.** Section 39-71-201, MCA, is amended to
14 read:

15 **"39-71-201. Administration fund.** (1) A Workers'
16 compensation administration fund is established out of which
17 all costs of administering the Workers' Compensation and
18 Occupational Disease Acts and the various occupational
19 safety acts the ~~division~~ DEPARTMENT must administer are to
20 be paid upon lawful appropriation. The following moneys
21 money collected by the ~~division~~ DEPARTMENT ~~shall~~ must be
22 deposited in the state treasury to the credit of the
23 workers' compensation administrative fund and ~~shall~~ must be
24 used for the administrative expenses of the ~~division~~
25 DEPARTMENT:

1 (a) all fees and penalties provided in 39-71-205 and
2 39-71-304;

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

6 (c) all fees paid from an assessment on each plan No.
7 1 employer, plan No. 2 insurer, and plan No. 3, the state
8 ~~insurance~~ fund. The assessments ~~shall~~ must be levied
9 against the preceding calendar year's gross annual payroll
10 of the plan No. 1 employers and the gross annual direct
11 premiums collected in Montana on the policies of the plan
12 No. 2 insurers, insuring employers covered under the
13 chapter, during the preceding calendar year. However, no
14 assessment of the plan No. 1 employer or plan No. 2 insurer
15 ~~shall~~ may be less than \$200. The assessments ~~shall~~ must be
16 sufficient to fund the direct costs identified to the three
17 plans and an equitable portion of the indirect costs based
18 on the ratio of the preceding fiscal year's indirect costs
19 distributed to the plans, using proper accounting and cost
20 allocation procedures. Plan No. 3 ~~shall~~ must be assessed an
21 amount sufficient to fund its direct costs and an equitable
22 portion of the indirect costs as referred to above. Other
23 sources of revenue, including unexpended funds from the
24 preceding fiscal year, ~~shall~~ must be used to reduce the
25 costs before levying the assessments.

(2) The administration fund ~~shall~~ must be debited with expenses incurred by the division DEPARTMENT 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 DEPARTMENT either within or without the state.

(3) Disbursements from the administration money ~~shall~~ must be made after being approved by the division DEPARTMENT upon claim therefor."

Section 15. Section 39-71-203, MCA, is amended to read:

"39-71-203. Powers of division DEPARTMENT -- rules -- staffing. (1) The division DEPARTMENT is hereby vested with full power, authority, and jurisdiction to do and perform any and all things, ~~whether herein specifically designated or in addition thereto,~~ that are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this chapter.

(2) The division DEPARTMENT may adopt rules to carry out the provisions of this chapter.

~~{3}--The--division--shall--employ--sufficient--personnel--to allow--it--to--meet--the--claims--processing--goals--contained--in 39-71-604--The--division--shall--implement--staffing--patterns~~

~~that--are--supported--by--indicators--of--workload.--The--open--file is--the--workload--indicator--for--claims--processing,--and--the number--of--open--claims--per--claims--examiner--may--not--be--less than--300.--The--claims--support--staff,--including--the--file, medical--pay,--and--new--claims--units,--may--not--exceed--two--PTEs per--claims--examiner.--The--administrative--and--underwriting staffing--must--be--based--on--the--number--of--premium--paying policyholders--and--may--not--exceed--1,4--PTEs--per--1,000 policyholders.~~

~~{4}--The--division--administrator--shall--submit--a--revised operation--plan--to--the--budget--office--for--review--and--approval and--to--the--legislative--finance--committee--for--review--whenever increases--or--decreases--of--staff--are--necessary--to--implement the--provisions--of--subsection--{3}.~~

~~{5}--Funds--from--the--state--special--revenue--fund--shall--be used--to--implement--subsection--{3}."~~

Section 16. Section 39-71-206, MCA, is amended to read:

"39-71-206. Legal advisers adviser ADVISERS of division DEPARTMENT and state fund. ~~{1}~~ The attorney general ~~shall be~~ is the legal adviser of the division DEPARTMENT and the state fund and shall represent it either entity in all proceedings whenever--so if requested by the division DEPARTMENT or state fund any member thereof. THE DIVISION DEPARTMENT AND STATE FUND MAY EMPLOY OTHER ATTORNEYS OR

1 LEGAL ADVISERS AS THEY CONSIDER NECESSARY.

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

7 **Section 17.** Section 39-71-306, MCA, is amended to
8 read:

9 "39-71-306. Plan one employers and plan two insurers
10 Insurers to file duplicate receipts SUMMARY REPORTS OF
11 BENEFITS paid for injuries and statements of medical
12 expenditures. Every employer coming under the provisions of
13 compensation plan No. 1 and every insurer coming under the
14 provisions of compensation plan No. 2 insurer shall, on or
15 before the 15th day of each and every month, file with the
16 division DEPARTMENT:

17 (1) duplicate receipts SUMMARY REPORTS OF BENEFITS for
18 all payments made during the previous month to injured
19 workers or their beneficiaries or dependents; and

20 (2) statements showing the amounts expended during the
21 previous month for medical, surgical, and hospital services
22 for injured workers and for the burial of deceased workers."

23 **Section 18.** Section 39-71-307, MCA, is amended to
24 read:

25 "39-71-307. Employers and insurers to file reports of

1 accidents. (1) Every employer of labor and every insurer is
2 hereby required to file with the division DEPARTMENT, under
3 such division DEPARTMENT rules as the division may from time
4 to time make, a full and complete report of every accident
5 to an employee arising out of or in the course of his
6 employment and resulting in loss of life or injury to such
7 person the employee. Such The reports shall must be
8 furnished to the division DEPARTMENT in such the form and
9 such detail as the division DEPARTMENT shall from time to
10 time prescribe prescribes and shall make must provide
11 specific answers to all questions required by the division
12 DEPARTMENT under its rules, ~~except in case he~~ However, if
13 an employee EMPLOYER is unable to answer any such questions,
14 ~~a good and sufficient reason shall be given for such failure~~
15 a question, he shall state the reason he is unable to
16 answer.

17 (2) Every insurance company insurer transacting
18 business under this chapter shall, at the time and in the
19 manner prescribed by the division DEPARTMENT, make and file
20 with the division DEPARTMENT such the reports of accidents
21 as the division DEPARTMENT may require requires."

22 **Section 19.** Section 39-71-308, MCA, is amended to
23 read:

24 "39-71-308. Neglect or refusal of public corporation
25 to file payroll reports -- arbitrary assessment by division

1 DEPARTMENT. Whenever-any If a public corporation insured by
 2 the state compensation-insurance fund neglects or refuses to
 3 file prescribed payroll reports of its employees, the
 4 division DEPARTMENT may levy an arbitrary assessment upon
 5 such the public corporation in an amount of \$75 for each
 6 such assessment, ~~which--assessments--shall~~ The assessment
 7 must be collected in the manner provided in this chapter for
 8 the collection of assessments."

9 **Section 20.** Section 39-71-403, MCA, is amended to
 10 read:

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

1 (2) A public corporation, other than a state agency,
 2 may elect coverage under compensation plan No. 1, employer;
 3 plan No. 2, insurer; or plan No. 3, state insurance fund;
 4 separately or jointly with any other public corporation,
 5 other than a state agency. A public corporation electing
 6 compensation plan No. 1 may purchase reinsurance. A public
 7 corporation electing compensation plan No. 1 is subject to
 8 the same provisions as a private employer electing
 9 compensation plan No. 1.

10 (3) A public corporation, other than a state agency,
 11 that elects plan No. 1 may establish a fund sufficient to
 12 pay the compensation and benefits provided for in this
 13 chapter and chapter 72 and to discharge all liabilities that
 14 reasonably incur during the fiscal year for which the
 15 election is effective. Proceeds from the fund must be used
 16 only to pay claims covered by this chapter and chapter 72
 17 and for actual and necessary expenses required for the
 18 efficient administration of the fund.

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

24 **Section 21.** Section 39-71-421, MCA, is amended to
 25 read:

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

Section 22. Section 39-71-604, MCA, is amended to read:

"39-71-604. Application for compensation. (1) Where If a worker is entitled to benefits under this chapter, the worker shall file with the insurer or the division DEPARTMENT all reasonable information needed by the insurer to determine compensability. It is the duty of the worker's attending physician to lend all necessary assistance in making application for compensation and such proof of other matters as may be required by the rules of the division DEPARTMENT without charge to the worker. The filing of forms or other documentation by the attending physician does not constitute a claim for compensation.

(2) Where If death results from an injury, the parties entitled to compensation or someone in their behalf shall file a claim with the insurer or the division DEPARTMENT. The claim must be accompanied with proof of death and proof

of relationship, showing the parties entitled to compensation, certificate of the attending physician, if any, and such other proof as may be required by the division DEPARTMENT.

~~(3)--The--goal-of-the-division-is-to-process-all-claims for-compensation-within-14-days-after-initial-acceptance--of liability-for-a-claim--"~~

Section 23. Section 39-71-704, MCA, is amended to read:

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

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

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

(2) A relative value fee schedule for medical, chiropractic, and paramedical services provided for in this chapter, excluding hospital services, ~~shall~~ must be established annually by the ~~workers'--compensation division~~ DEPARTMENT and become effective in January of each year. The maximum fee schedule must be adopted as a relative value fee schedule of medical, chiropractic, and paramedical services, with unit values to indicate the relative relationship within each grouping of specialties. Medical fees must be based on the median fees as billed to the state ~~compensation insurance~~ fund during the year preceding the adoption of the schedule. THE STATE FUND SHALL REPORT FEES BILLED IN THE FORM AND AT THE TIMES REQUIRED BY THE DIVISION DEPARTMENT. The ~~division~~ DEPARTMENT shall adopt rules establishing relative unit values, groups of specialties, the procedures insurers must use to pay for services under the schedule, and the method of determining the median of billed medical fees. These rules ~~shall~~ must be modeled on the 1974 revision of the 1969 California Relative Value Studies.

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

responsibilities.

(4) Notwithstanding subsection (2), beginning January 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 24. Section 39-71-901, MCA, is amended to read:

"39-71-901. Definitions. As used in this part, the following definitions apply:

(1) "Vocationally handicapped" means a person who has a medically certifiable permanent impairment which is a substantial obstacle to obtaining employment or to obtaining reemployment if the employee should become unemployed, considering such factors as the person's age, education, training, experience, and employment rejection.

(2) "Certificate" means documentation issued by the ~~division~~ DEPARTMENT ~~of--workers'--compensation~~ to an individual who is vocationally handicapped.

(3) "Fund" means the subsequent injury fund."

Section 25. Section 39-71-908, MCA, is amended to read:

"39-71-908. Notification of fund of its potential

1 liability under part -- review by fund. Not less than 90 or
 2 more than 150 days before the expiration of 104 weeks after
 3 the date of injury, the ~~employer, carrier, or the industrial~~
 4 ~~insurance fund, as the case may be,~~ insurer shall notify the
 5 fund whether it is likely that compensation may be payable
 6 beyond a period of 104 weeks after the date of the injury.
 7 The fund thereafter may review, at reasonable times, such
 8 information as the ~~employer, carrier, or industrial~~
 9 ~~insurance fund~~ insurer has regarding the accident and the
 10 nature and extent of the injury and disability."

11 **Section 26.** Section 39-71-910, MCA, is amended to
 12 read:

13 "39-71-910. Procedure for resolving disputes as to
 14 liability under part. (1) If an employee was employed or
 15 retained in employment under the provisions of this part and
 16 a dispute or controversy arises as to payment of benefits or
 17 the liability therefor, the division DEPARTMENT shall hold a
 18 hearing and resolve all disputes. On motion made in writing
 19 by the ~~employer, carrier, or industrial insurance fund~~
 20 insurer, the administrator shall join the fund as a party
 21 defendant.

22 (2) The division DEPARTMENT, within 5 days of the
 23 entry of an order joining the fund as a party defendant,
 24 shall give the fund written notice thereof not less than 20
 25 days before the date of hearing and shall include the name

1 names of the employee and the employer insurer and the date
 2 of the alleged injury or disability. The fund named as a
 3 defendant ~~shall have~~ has 10 days after the date of
 4 notification to file objections to being named as a party
 5 defendant. On the date of the hearing at which the liability
 6 of the parties is determined, the hearing examiner first
 7 shall hear arguments and take evidence concerning the
 8 joinder as party defendant. If the fund has filed timely
 9 objection and if argument and evidence warrant, the hearing
 10 examiner shall grant a motion to dismiss.

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

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

19 **Section 27.** Section 39-71-911, MCA, is amended to
 20 read:

21 "39-71-911. Obligation to make payments on behalf of
 22 fund not an independent liability. The obligation imposed by
 23 this part on the ~~employer, carrier, or industrial insurance~~
 24 ~~fund insurer~~ to make payments on behalf of the fund does not
 25 impose an independent liability on the ~~employer, carrier, or~~

1 ~~industrial-insurance-fund insurer.~~"

2 **Section 28.** Section 39-71-913, MCA, is amended to
3 read:

4 "39-71-913. Payments by fund directly to persons
5 entitled. If the employer~~7--carrier7--or--the--industrial~~
6 ~~insurance--fund insurer~~ does not make the payments on behalf
7 of the fund, the fund may make the payments directly to the
8 persons entitled to the payments."

9 **Section 29.** Section 39-71-2303, MCA, is amended to
10 read:

11 "39-71-2303. Manner of electing -- contract or policy
12 of insurance -- payment of premium. The division state fund
13 shall prescribe the procedure by which ~~employers~~ an employer
14 may elect to be bound by compensation plan No. 3, the
15 effective time of ~~such~~ the election, and the manner in which
16 ~~such~~ the election is terminated for reasons other than
17 default in payment of premiums. Every employer electing to
18 be bound by compensation plan No. 3 ~~shall must~~ receive from
19 the ~~division state fund~~ a contract or policy of insurance in
20 a form approved by the ~~division~~ DEPARTMENT. The premium
21 ~~thereon--shall must~~ be paid by the employer to the ~~division~~
22 state fund at such times as the ~~division--shall--prescribe~~
23 state fund prescribes and ~~shall must~~ be paid over by the
24 ~~division state fund~~ to the state treasurer to the credit of
25 the ~~industrial--insurance--expendable--trust~~ state mutual

1 insurance fund."

2 **Section 30.** Section 39-71-2307, MCA, is amended to
3 read:

4 "39-71-2307. Cancellation of coverage under plan for
5 default -- thirty days' notice required. The ~~division--is~~
6 ~~hereby-authorized-in-its-discretion-to~~ state fund may cancel
7 an employer's right to operate under plan No. 3 of the
8 Workers' Compensation Act for failure to pay the premiums
9 due ~~OR--BECAUSE--OF--A--SIGNIFICANT--CHANGE--IN--LIABILITY~~
10 ~~EXPOSURE~~. When the ~~division-makes-an-order-canceling~~ state
11 fund cancels an employer's right-for-failure-to-pay-premiums
12 COVERAGE, the--~~division~~ it shall notify the employer of its
13 intent to cancel the employer at least 30 days before the
14 cancellation becomes effective. After the cancellation date,
15 the employer ~~shall-have~~ has the same status as an employer
16 who is not enrolled under the Workers' Compensation Act."

17 **Section 31.** Section 39-71-2308, MCA, is amended to
18 read:

19 "39-71-2308. Collection in case of default. (1) If ~~any~~
20 ~~an~~ employer under plan No. 3 ~~shall-default~~ defaults in any
21 payment to the ~~division state fund~~, the state fund may
22 collect the sum due may-be-collected-by-an-action-at-law in
23 a civil action in the name of the state, ~~and-such-right-of~~
24 ~~action-shall-be~~ The right of action is cumulative.

25 (2) When If an employer's right to operate has been

canceled by the division state fund for failure to pay premiums and ~~when-the-division-in-its-discretion the state fund~~ finds that the property and assets of the employer are not sufficient to pay the premiums, the division state fund may compromise the claim for premiums and accept a payment of an amount less than the total amount due."

Section 32. Section 39-71-2321, MCA, is amended to read:

"39-71-2321. What to be deposited in ~~industrial insurance---expendable---trust~~ STATE fund. All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the state fund, and securities acquired by or through use of money ~~shall must~~ be deposited in the ~~industrial-insurance-expendable-trust~~ state fund."

Section 33. Section 39-71-2322, MCA, is amended to read:

"39-71-2322. Money in ~~industrial-insurance~~ state fund held in trust -- disposition of funds upon repeal of chapter. The moneys money coming into the ~~industrial insurance---expendable-trust~~ state fund ~~shall must~~ be held in trust for the purpose for which ~~such-moneys-were~~ the money ~~was collected, and if this chapter shall be hereafter If this chapter is repealed, such-moneys-shall-be~~ the money is subject to such the disposition ~~as may be~~ provided by the legislature repealing this chapter. In ~~default-of--such~~ the

absence of a legislative provision, distribution ~~thereof~~ ~~shall must~~ be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing."

Section 34. Section 39-71-2323, MCA, is amended to read:

"39-71-2323. Surplus in ~~industrial-----insurance expendable--trust~~ state fund -- payment of dividends. If at the end of any fiscal year there exists in the ~~industrial insurance---expendable--trust~~ state fund an excess of assets over liabilities and a reasonable surplus, such liabilities to include necessary reserves, which excess may be divided safely, then the ~~division~~ state fund may declare a dividend in such the manner as the rules of the ~~division-may~~ state fund prescribe to those employers who have paid premiums into the ~~industrial-insurance-expendable-trust~~ state fund in excess of liabilities chargeable to them in the fund for that year. In determining the amount or proportion of the balance to which the employer is entitled as dividends, the ~~division~~ state fund shall give consideration to the prior paid premiums and accident experience of each individual employer during the dividend year."

Section 35. Section 39-71-2325, MCA, is amended to read:

"39-71-2325. ~~Division~~ State fund to keep accounts of

1 segregations. The division state fund shall keep an accurate
 2 account of all such the segregations of the industrial
 3 insurance--expendable-trust state fund and shall divert from
 4 the fund any sums necessary to meet monthly payments,
 5 pending the conversion into cash of any security, and in
 6 such case shall repay the same out of the cash realized from
 7 the security."

8 **Section 36.** Section 39-71-2327, MCA, is amended to
 9 read:

10 "39-71-2327. Earnings of industrial---insurance
 11 expendable-trust state fund to be credited to fund --
 12 improper use a felony. All earnings made by the industrial
 13 insurance-expendable-trust state fund by reason of interest
 14 paid for the deposit thereof or otherwise ~~shall~~ must be
 15 credited to and become a part of the fund, and the making of
 16 profit, either directly or indirectly, by any person out of
 17 the use of the fund ~~shall-constitute is~~ is a felony, ~~and-on~~
 18 ~~conviction-thereof-shall--subject--the--person--making--such~~
 19 ~~profit--to-imprisonment-in-the-state-penitentiary-for-a-term~~
 20 ~~not-exceeding-2-years-or-a-fine-not-exceeding-\$5,000-or-both~~
 21 ~~such-fine-and-imprisonment-~~ A person convicted of an offense
 22 under this section is punishable by imprisonment in the
 23 state prison for a term not to exceed 2 years or a fine of
 24 not more than \$5,000, or both."

25 **Section 37.** Section 39-72-201, MCA, is amended to

1 read:

2 "39-72-201. Administration of chapter. This chapter
 3 ~~shall-be is~~ administered by the division DEPARTMENT of
 4 workers--compensation."

5 **Section 38.** Section 39-72-310, MCA, is amended to
 6 read:

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

22 (2) Except as provided in this chapter, the division
 23 DEPARTMENT shall apply the appropriate provisions of Title
 24 39, chapter 71, parts 21, 22, and 23, to the administration
 25 of The Occupational Disease Act of Montana in the same

1 manner as they are applied to the administration of the
2 Workers' Compensation Act.

3 (3) Under compensation plan No. 3, any premiums and
4 other receipts held by the division state fund for
5 occupational disease insurance coverage ~~shall~~ must be
6 transferred ~~and-become-part-of to~~ the workers' compensation
7 industrial insurance account, and payments for occupational
8 disease claims by the state fund ~~shall~~ must be paid out of
9 the industrial insurance account."

10 **Section 39.** Section 2-18-103, MCA, is amended to read:

11 "2-18-103. Officers and employees excepted. Parts 1
12 and 2 do not apply to the following positions in state
13 government:

- 14 (1) elected officials;
- 15 (2) county assessors and their chief deputy;
- 16 (3) officers and employees of the legislative branch;
- 17 (4) judges and employees of the judicial branch;
- 18 (5) members of boards and commissions appointed by the
19 governor, appointed by the legislature, or appointed by
20 other elected state officials;
- 21 (6) officers or members of the militia;
- 22 (7) agency heads appointed by the governor;
- 23 (8) academic and professional administrative personnel
24 with individual contracts under the authority of the board
25 of regents of higher education;

1 (9) academic and professional administrative personnel
2 and live-in houseparents who have entered into individual
3 contracts with the state school for the deaf and blind under
4 the authority of the state board of public education;

5 (10) teachers under the authority of the department of
6 institutions;

7 (11) investment officer, assistant investment officer,
8 executive director, and three professional staff positions
9 of the board of investments;

10 (12) four professional staff positions under the board
11 of oil and gas conservation; and

12 (13) assistant director for security of the Montana
13 state lottery; and

14 (14) executive director and employees of the state
15 compensation mutual insurance fund."

16 **Section 40.** Section 33-17-502, MCA, is amended to
17 read:

18 "33-17-502. Prohibition on holding out as consultant
19 -- receiving fee. (1) Any person not licensed as an
20 insurance consultant in this state who identifies or holds
21 himself out to be an insurance consultant without having
22 been licensed as an insurance consultant under this part or
23 any person who uses any other designation or title which is
24 likely to mislead the public and holds himself out in any
25 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 \$1,500.

(3) Nothing in this part applies to:

(a) licensed attorneys at law in this state acting in their professional capacity; OR

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

~~(c) --a--duily--licensed--casualty--insurance--agent--who accepts--a--fee--from--an--insured--for--placement--through--the state--compensation--mutual--insurance--fund--as--provided--in~~

~~33-18-212."~~

Section 41. Section 33-18-212, MCA, is amended to read:

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

(2) No A person ~~shall~~ may not willfully collect as premium or charge for insurance any sum in excess of or less than the premium or charge applicable to such insurance 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 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 to prohibit the charging and collection, by surplus lines agents licensed under chapter 2, part 3, 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

1 and collection, by a life insurer, of amounts actually to be
 2 expended for medical examination of an applicant for life
 3 insurance or for reinstatement of a life insurance policy.
 4 ~~The provision of this subsection does not prohibit the~~
 5 ~~collection from an insured of a placement fee, not to exceed~~
 6 ~~7-1/2% of the annual premium, for placement through the~~
 7 ~~state compensation mutual insurance fund by a duly licensed~~
 8 ~~casualty insurance agent. This placement fee is not a~~
 9 ~~premium as defined in 33-15-102.~~

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

12 **Section 43.** ~~Section 2-15-1702, MCA, is amended to~~
 13 ~~read:~~

14 "2-15-1702. ~~Division of workers' compensation~~
 15 insurance compliance ~~head. (1) There is a division of~~
 16 workers' compensation insurance compliance ~~within the~~
 17 ~~department. The division head is an administrator appointed~~
 18 ~~by the governor as are directors in accordance with~~
 19 ~~2-15-111.~~

20 ~~(2) The division is allocated to the department for~~
 21 ~~administrative purposes only as prescribed in 2-15-121.~~
 22 ~~However, the division may hire its own personnel, and~~
 23 ~~2-15-121(2)(d) does not apply."~~

24 **Section 42.** Section 2-15-1014, MCA, is amended to
 25 read:

1 "2-15-1014. Office of workers' compensation judge --
 2 allocation -- appointment -- salary. (1) There is the office
 3 of workers' compensation judge. The office is allocated to
 4 the department of administration labor AND INDUSTRY for
 5 administrative purposes only as prescribed in 2-15-121.

6 (2) The governor shall appoint the workers'
 7 compensation judge for a term of 6 years in the same manner
 8 provided by Title 3, chapter 1, part 10, for the appointment
 9 of supreme or district court judges. A vacancy ~~shall~~ must be
 10 filled in the same manner as the original appointment.

11 (3) To be eligible for workers' compensation judge, a
 12 person must:

13 (a) have the qualifications necessary for district
 14 court judges found in Article VII, section 9, of the Montana
 15 constitution;

16 (b) devote full time to the duties of workers'
 17 compensation judge and not engage in the private practice of
 18 law.

19 (4) The workers' compensation judge is entitled to the
 20 same salary and other emoluments as that of a district judge
 21 but ~~shall~~ must be accorded retirement benefits under the
 22 public employees' retirement system."

23 **Section 43.** Section 39-71-2501, MCA, is amended to
 24 read:

25 "39-71-2501. (Temporary) Definitions. As used in this

part, the following definitions apply:

(1) "Board" means the board of examiners created in 2-15-1007.

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

(3) "Employer" has the meaning set forth in 39-71-117.

(4) "Payroll" means the payroll of an employer for each of the calendar quarters ending March 31, June 30, September 30, and December 31, for all employments covered under 39-71-401.

(5) "State fund" means the state compensation MUTUAL insurance fund referred-to-in-39-71-2301.

(6) "Tax" means the workers' compensation payroll tax provided for in 39-71-2503.

(7) "Tax account" means the workers' compensation tax account created by 39-71-2504. (Terminates June 30, 1991--sec. 10, Ch. 664, L. 1987.)"

NEW SECTION. SECTION 44. STATE FUND TO SUBMIT NOTICE OF COVERAGE WITHIN THIRTY DAYS -- PENALTY FOR FAILURE. (1) THE STATE FUND SHALL, WITHIN 30 DAYS AFTER THE ISSUANCE OF AN INSURANCE POLICY, SUBMIT TO THE DIVISION DEPARTMENT THE NOTICE OF COVERAGE STATING THE EFFECTIVE DATE OF THE POLICY INSURING THE EMPLOYER AND OTHER INFORMATION THE DIVISION DEPARTMENT REQUIRES.

(2) THE DIVISION DEPARTMENT MAY ASSESS A PENALTY OF NO

MORE THAN \$200 AGAINST THE STATE FUND IF, AS A GENERAL BUSINESS PRACTICE, THE STATE FUND DOES NOT COMPLY WITH THE 30-DAY NOTICE REQUIREMENT.

NEW SECTION. SECTION 45. POLICY REMAINS IN EFFECT UNTIL CANCELED OR REPLACED -- TWENTY-DAY NOTIFICATION OF CANCELLATION REQUIRED. THE INSURANCE POLICY REMAINS IN EFFECT UNTIL CANCELED. CANCELLATION MAY TAKE EFFECT ONLY BY WRITTEN NOTICE TO THE NAMED INSURED AND TO THE DIVISION DEPARTMENT AT LEAST 20 DAYS PRIOR TO THE DATE OF CANCELLATION. HOWEVER, THE POLICY TERMINATES ON THE EFFECTIVE DATE OF A REPLACEMENT OR SUCCEEDING INSURANCE POLICY ISSUED TO THE INSURED. NOTHING IN THIS SECTION PREVENTS THE STATE FUND FROM CANCELING AN INSURANCE POLICY BEFORE A REPLACEMENT POLICY IS ISSUED TO THE INSURED.

SECTION 46. SECTION 33-2-119, MCA, IS AMENDED TO READ:

"33-2-119. Suspension or revocation for violations and special grounds. (1) The commissioner may, in his discretion, suspend or revoke an insurer's certificate of authority if, after a hearing thereon, he finds that the insurer has:

(a) violated any lawful order of the commissioner or any provision of this code other than those for which suspension or revocation is mandatory;

(b) reinsured more than 90% of its risks resident, located, or to be performed in Montana, in another insurer.

1 In considering suspension or revocation, the commissioner
2 shall consider all relevant factors, including whether:

3 (i) after the reinsurance transaction all parties will
4 be in compliance with Montana law; and

5 (ii) the transaction will substantially reduce
6 protection and service to Montana policyholders;

7 (c) failed to accept an equitable apportionment of
8 assigned coverage as required by [section 13 12].

9 (2) The commissioner shall, after a hearing thereon,
10 suspend or revoke an insurer's certificate of authority if
11 he finds that the insurer:

12 (a) is in unsound condition or in such condition or
13 using such methods or practices in the conduct of its
14 business as to render its further transaction of insurance
15 in Montana injurious or hazardous to its policyholders or to
16 the public;

17 (b) has refused to be examined or to produce its
18 accounts, records, and files for examination or if any of
19 its officers have refused to give information with respect
20 to its affairs, when required by the commissioner;

21 (c) has failed to pay any final judgment rendered
22 against it in Montana within 30 days after the judgment
23 became final;

24 (d) with such frequency as to indicate its general
25 business practice in Montana, has without just cause refused

1 to pay proper claims arising under its policies, whether any
2 such claim is in favor of an insured or is in favor of a
3 third person with respect to the liability of an insured to
4 such third person, or without just cause compels such
5 insured or claimant to accept less than the amount due them
6 or to employ attorneys or to bring suit against the insurer
7 or such an insured to secure full payment or settlement of
8 such claims;

9 (e) is affiliated with and under the same general
10 management or interlocking directorate or ownership as
11 another insurer which transacts direct insurance in Montana
12 without having a certificate of authority therefor, except
13 as permitted as to a surplus lines insurer under part 3 of
14 this chapter.

15 (3) The commissioner may, in his discretion and
16 without advance notice or a hearing thereon, immediately
17 suspend the certificate of authority of any insurer as to
18 which proceedings for receivership, conservatorship,
19 rehabilitation, or other delinquency proceedings have been
20 commenced in any state."

21 **SECTION 47. SECTION 37-72-101, MCA, IS AMENDED TO**
22 **READ:**

23 "37-72-101. Construction blasting restrictions --
24 license required -- definitions -- exemptions. (1) No person
25 may engage in the practice of construction blasting unless

1 licensed or under the supervision of a person licensed as a
2 construction blaster by the workers¹--compensation--division
3 DEPARTMENT.

4 (2) For the purposes of this chapter:

5 (a) "construction blaster" means a person who engages
6 in construction blasting;

7 (b) "construction blasting" means the use of
8 explosives to:

9 (i) reduce, destroy, or weaken any residential,
10 commercial, or other building; or

11 (ii) excavate any ditch, trench, cut, or hole or
12 reduce, destroy, weaken, or cause a change in grade of any
13 land formation in the construction of any building, highway,
14 road, pipeline, sewerline, or electric or other utility
15 line;

16 (c) ~~"division"---means---the---division---of---workers¹~~
17 ~~compensation-division-insurance-compliance-of-the-department~~
18 ~~of-labor-and-industry-provided-for-in-2-15-1702;~~
19 "DEPARTMENT" MEANS THE DEPARTMENT OF LABOR AND INDUSTRY;

20 (d) "explosive" has the meaning given in 50-38-101;

21 (e) "magazine" has the meaning given in 50-38-101.

22 (3) Nothing in this chapter applies to the private or
23 commercial use of explosives by persons engaged in farming,
24 ranching, logging, geophysical work, drilling or development
25 of water, oil, or gas wells, or mining of any kind or to the

1 private use of explosives in the removal of stumps and rocks
2 from land owned by the person using the explosives, except
3 that the persons exempted from this chapter by this
4 subsection must comply with rules adopted under
5 37-72-201(1)(c) and the provisions of 37-72-102 apply to a
6 violation of those rules by an exempted person.

7 (4) This chapter does not apply to persons conducting
8 blasting operations when the persons and operations are
9 subject to rules adopted under and implementing
10 82-4-231(10)(e)."

11 SECTION 48. SECTION 50-71-102, MCA, IS AMENDED TO
12 READ:

13 "50-71-102. Definitions. Unless the context requires
14 otherwise, in this chapter, the following definitions apply:

15 (1) "Amendment" means such modification or change in a
16 code as shall be intended to be of universal or general
17 application.

18 (2) "Code" means a standard body of rules for safety
19 formulated, adopted, and issued by the division DEPARTMENT
20 under the provisions of this chapter.

21 (3) ~~"Division"---means---the---division---of---workers¹~~
22 ~~compensation-insurance-compliance-of-the-department-of-labor~~
23 ~~and-industry-provided-for-in-2-15-1702; "DEPARTMENT" MEANS~~
24 THE DEPARTMENT OF LABOR AND INDUSTRY.

25 (4) "Employee" and "worker" are defined as in

1 39-71-118.

2 (5) "Employer" is defined as in 39-71-117.

3 (6) "Variation" means a special, limited modification
4 or change in the code which is applicable only to the
5 particular place of employment of the employer or person
6 petitioning for such modification or change."

7 **SECTION 49. SECTION 50-73-102, MCA, IS AMENDED TO**
8 **READ:**

9 "50-73-102. Definitions. As used in this chapter, the
10 following definitions apply:

11 (1) ~~"Division"---means---the---division---of---workers'--~~
12 ~~compensation-insurance-compliance-of-the-department-of-labor~~
13 ~~and-industry-provided-for-in--2-15-1702~~ "DEPARTMENT" MEANS
14 THE DEPARTMENT OF LABOR AND INDUSTRY and the state coal mine
15 inspectors employed by the division DEPARTMENT.

16 (2) "Excavations" and "workings" mean all parts of a
17 mine excavated or being excavated, including shafts, slopes,
18 tunnels, entries, rooms, and working places, whether
19 abandoned or in use.

20 (3) "Gassy mine" means a mine is considered to be
21 potentially gassy. The division DEPARTMENT may further
22 define this term in its rules.

23 (4) "Mine" and "coal mine" mean all parts of the
24 property of a mining plant under one management which
25 contribute, directly or indirectly, to the mining or

1 handling of coal.

2 (5) "Mine examiner" means a person charged with the
3 examination of the condition of the mine before the miners
4 are permitted to enter it and who is commonly known as the
5 "fire boss".

6 (6) "Mine foreman" means a person who is charged with
7 the general direction of the underground work or both the
8 underground work and the outside work of a coal mine and who
9 is commonly known and designated as "mine boss".

10 (7) "Operator", as applied to the party in control of
11 a mine under this chapter, means the person, firm, or body
12 corporate which is the immediate proprietor as owner or
13 lessee of the plant and, as such, is responsible for the
14 condition and management thereof.

15 (8) "Shaft" means any vertical opening through the
16 strata which is or may be used for the purpose of
17 ventilation or escape or for hoisting or lowering of men or
18 material in connection with the mining of coal.

19 (9) "Slope" and "drift" mean respectively an incline
20 or horizontal way, opening, or tunnel to a seam of coal to
21 be used for the same purpose as a shaft."

22 **SECTION 50. SECTION 39-1-103, MCA, IS AMENDED TO READ:**

23 "39-1-103. Powers of department. (1) In discharging
24 the duties imposed upon the department, the commissioner or
25 his authorized representatives may administer oaths, examine

1 witnesses under oath, take depositions or cause same to be
2 taken, deputize any citizen 18 years of age or older to
3 serve subpoenas upon witnesses, and issue subpoenas for the
4 attendance of witnesses before him in the same manner as for
5 attendance before district courts.

6 (2) The commissioner may likewise cause to be
7 inspected any mine, factory, workshop, smelter, mill,
8 warehouse, elevator, foundry, machine shop, or other
9 industrial establishment.

10 ~~{3}--Nothing--herein--contained--shall--in--any--manner~~
11 ~~confer--upon--the--commissioner--the--authority--to--interfere--in~~
12 ~~any--manner--with--the--conduct--of--the--matters--under--the--control~~
13 ~~of--the--workers--compensation--division--nor--shall--the~~
14 ~~commissioner--be--charged--with--the--duty--of--enforcing--any--of~~
15 ~~the--laws--of--the--state--pertaining--to--the--affairs--of--the~~
16 ~~workers--compensation--division--or--with--the--enforcement--of~~
17 ~~the--safety--provisions--of--the--Workers--Compensation--Act--~~

18 {4}{3} Nothing in this chapter applies to labor
19 violations preempted by federal law or regulation."

20 **SECTION 51. SECTION 39-71-207, MCA, IS AMENDED TO**
21 **READ:**

22 "39-71-207. Merit system. Employees of the division
23 except the administrator, department are included within the
24 joint merit system if such inclusion is required for the
25 receipt of federal funds by 29 CFR 1902.3(h) or by any other

1 federal law or regulation."

2 **SECTION 52. SECTION 33-1-102, MCA, IS AMENDED TO READ:**

3 "33-1-102. Compliance required -- exceptions -- health
4 service corporations -- health maintenance organizations --
5 governmental insurance programs. (1) No person shall
6 transact a business of insurance in Montana or relative to a
7 subject resident, located, or to be performed in Montana
8 without complying with the applicable provisions of this
9 code.

10 (2) No provision of this code shall apply with respect
11 to:

12 (a) domestic farm mutual insurers as identified in
13 chapter 4, except as stated in chapter 4;

14 (b) domestic benevolent associations as identified in
15 chapter 6, except as stated in chapter 6; and

16 (c) fraternal benefit societies, except as stated in
17 chapter 7.

18 (3) This code applies to health service corporations
19 as prescribed in 33-30-102. The existence of such
20 corporations is governed by Title 35, chapter 2, and related
21 sections of the Montana Code Annotated.

22 (4) This code does not apply to health maintenance
23 organizations to the extent that the existence and
24 operations of such organizations are authorized by chapter
25 31.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, ~~parts part~~ 21 and 23, and related sections.

(6) This code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8.

(7) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(8) (a) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state whereby the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state whereby the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program."

SECTION 53. SECTION 33-16-1005, MCA, IS AMENDED TO

READ:

"33-16-1005. Membership in rating organization

required -- exception -- filings with commissioner. (1) Every insurer, ~~except-the-division-of-workers'--compensation~~ including the state compensation mutual insurance fund, writing workers' compensation insurance in this state shall be a member of a workers' compensation rating organization. No insurer may, at the same time, belong to more than one rating organization with respect to such insurance.

(2) A rating organization shall file with the insurance commissioner every manual of classifications and rules and every rating plan and advisory manual rates, including every modification of the foregoing. Every such filing shall state the effective date thereof. Any insurer writing pursuant to compensation plan No. 2 shall adhere to the manual rules and classifications and rating plans of the rating organization of which it is a member and may adopt by reference, in whole or in part, the advisory manual rates filed under this section. Nothing in this section, however, requires adherence by any insurer to any rates established or published by any rating organization."

SECTION 54. SECTION 33-16-1011, MCA, IS AMENDED TO

READ:

"33-16-1011. Classification and rating committee -- membership -- term. (1) There is a classification and rating committee.

(2) The committee is composed of five voting members,

1 consisting of:

2 (a) three representatives of private insurance
3 carriers writing workers' compensation insurance in Montana.
4 The members must reside in Montana and shall be appointed by
5 the Montana commissioner of insurance.

6 (b) one licensed independent insurance agent who
7 resides in Montana, appointed by the Montana commissioner of
8 insurance; and

9 (c) one representative of the ~~division--of--workers'~~
10 compensation state compensation mutual insurance fund who is
11 an employee of the division state fund and who ~~shall be~~ is
12 appointed by the ~~administrator--of--the--division~~ executive
13 director of the state fund.

14 (3) Each member shall hold office for a period of 3
15 years. Any appointee who fills the vacancy of a member whose
16 term has not expired shall fill only the remaining term and
17 may be reappointed for a full term.

18 (4) Before appointments are to be made by the
19 commissioner of insurance under subsections (2)(a) and
20 (2)(b) above, established private organizations representing
21 insurance carriers and independent insurance agents may
22 submit names of individuals they recommend for appointments.
23 The commissioner of insurance shall give consideration to
24 such names submitted before appointments are made. However,
25 the commissioner of insurance is not required to appoint any

1 person from the names submitted.

2 (5) The committee shall be funded from the operations
3 budget of the rating organization. Committee members may, if
4 they request, be paid their actual and necessary travel
5 expenses."

6 SECTION 55. SECTION 19-3-1007, MCA, IS AMENDED TO
7 READ:

8 "19-3-1007. Allowance for duty-related disability. (1)
9 The annual amount of retirement allowance payable to a
10 member eligible for disability retirement for duty-related
11 reasons and granted prior to July 1, 1977, is 50% of his
12 final compensation. However, the annual amount of retirement
13 allowance is 25% of final compensation for any period during
14 which the member has been awarded ~~compensation--by--the~~
15 workers' compensation division, whether such compensation is
16 received in periodic payments or in a lump sum. The annual
17 amount of retirement allowance reverts to 50% of final
18 compensation at the end of such period.

19 (2) Any retired member receiving a retirement
20 allowance on July 1, 1977, who has previously been granted a
21 duty-related disability under provisions in effect on June
22 30, 1977, will be subject to the provisions of this section
23 after July 1, 1977."

24 SECTION 56. SECTION 19-3-1002, MCA, IS AMENDED TO
25 READ:

1 "19-3-1002. Eligibility for disability retirement. (1)
 2 Except as provided in subsection (2) and 19-3-1004, a member
 3 who is not eligible for service or early retirement but has
 4 completed 5 years of creditable service and has become
 5 disabled while in active service, as defined in 19-3-1001,
 6 is eligible for disability retirement.

7 (2) A member age 60 or older who has completed 5 years
 8 of creditable service and has had a duty-related accident
 9 forcing him to terminate his employment but who has not
 10 received or is ineligible to receive workers' compensation
 11 benefits under Title 39, chapter 71, for the duty-related
 12 accident may conditionally waive his eligibility for a
 13 service retirement to be eligible for disability retirement.
 14 The waiver is effective only upon approval by the board of
 15 his application for disability retirement. The board shall
 16 determine whether a member has become disabled under the
 17 provisions of 19-3-1003. The board may request any
 18 information on file with the workers'-compensation-division
 19 state compensation mutual insurance fund concerning the
 20 duty-related accident. If no information is available, the
 21 board may request and the division state fund shall provide
 22 an investigative report on the disabling accident."

23 **SECTION 57. SECTION 19-3-1202, MCA, IS AMENDED TO**

24 **READ:**

25 "19-3-1202. Amount of death benefit. The amount of

1 death benefit is the sum of (1), (2), and (3) as follows:

2 (1) the member's accumulated contributions;

3 (2) an amount equal to one-twelfth of the compensation
 4 received by the member during the last 12 months of such
 5 compensation multiplied by the smaller of six or the number
 6 of years of his creditable service; provided, however, that
 7 this portion of the death benefit is not payable if the
 8 board receives a certification from the workers'
 9 compensation--division--of--the--state--of--Montana state
 10 compensation mutual insurance fund that it is paying
 11 compensation because the member's death resulted from injury
 12 or disease arising out of or in the course of employment;
 13 and

14 (3) the accumulated interest on the amounts in
 15 subsections (1) and (2) of this section to the first day of
 16 the month in which the benefit is paid."

17 **SECTION 58. SECTION 19-13-601, MCA, IS AMENDED TO**

18 **READ:**

19 "19-13-601. Deduction remitted to firemen's
 20 association -- member's contributions. (1) Each employer
 21 shall retain from the monthly compensation of each active
 22 member a sum equal to 1% of his monthly compensation for his
 23 services as a firefighter and shall remit this amount on a
 24 monthly basis to the Montana state firemen's association for
 25 the payment of premiums on a group life and accidental death

1 and dismemberment insurance policy for members and to defray
2 expenses incurred by the association when representing
3 members of the plan.

4 (2) The member's contribution to the retirement system
5 for each active member is 6% of his monthly compensation.

6 (3) If a member receives compensation under the
7 provisions of the Workers' Compensation Act, Title 39,
8 chapter 71, the amount received must be included as part of
9 his monthly compensation for purposes of determining
10 contributions and service credits under the retirement
11 system. Contributions made under this section, 19-13-604,
12 and 19-13-605 must be based on the total compensation
13 received by the member from his employer and from the
14 workers' compensation division during the period of
15 disability.

16 (4) Each employer, pursuant to section 414(h)(2) of
17 the federal Internal Revenue Code, as amended and applicable
18 on July 1, 1987, shall pick up and pay the contributions
19 which would be payable by the member under subsection (2)
20 for service rendered after June 30, 1987.

21 (5) The member's contributions picked up by the
22 employer must be designated for all purposes of the
23 retirement system as the member's contributions, except for
24 the determination of a tax upon a distribution from the
25 retirement system. These contributions must become part of

1 the member's accumulated contributions but must be accounted
2 for separately from those previously accumulated.

3 (6) The member's contributions picked up by the
4 employer must be payable from the same source as is used to
5 pay compensation to the member and must be included in the
6 member's monthly compensation as defined in 19-13-104. The
7 employer shall deduct from the member's compensation an
8 amount equal to the amount of the member's contributions
9 picked up by the employer and remit the total of the
10 contributions to the board."

11 **NEW SECTION. Section 59. Repealer.** Sections
12 2-15-1702, 39-71-2301, 39-71-2302, 39-71-2304 through
13 39-71-2306, and 39-71-2324, MCA, are repealed.

14 **NEW SECTION. Section 60. 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 61. Codification instruction.**
19 (1) [Sections 1, 2, and 4 through 12 11, 44, AND 45] are
20 intended to be codified as an integral part of Title 39,
21 chapter 71, part 23, and the provisions of Title 39, chapter
22 71, part 23, apply to [sections 1, 2, and 4 through 12 11,
23 44, AND 45].

24 (2) [Section 3] is intended to be codified as an
25 integral part of Title 2, chapter 15, part 10, and the

1 provisions of Title 2, chapter 15, part 10, apply to
2 [section 3].

3 (3) [Section ~~13~~ 12] is intended to be codified as an
4 integral part of Title 39, chapter 71, and the provisions of
5 Title 39, chapter 71, apply to [section ~~13~~ 12].

6 NEW SECTION. Section 62. Reorganization procedure.
7 (1) The provisions of sections ~~2-15-131~~ 2-15-132 through
8 2-15-137 govern the creation of the state compensation
9 mutual insurance fund and the transfer of the various
10 functions contained in [this act] from the state workers'
11 compensation INSURANCE fund to the state compensation mutual
12 insurance fund.

13 (2) IT IS INTENDED THAT CURRENT EMPLOYEES OF THE
14 DIVISION OF WORKERS' COMPENSATION WHOSE FUNCTIONS ARE
15 TRANSFERRED TO THE STATE COMPENSATION MUTUAL INSURANCE FUND
16 SHALL RETAIN EMPLOYMENT RIGHTS CONSISTENT WITH THEIR
17 POSITIONS AT THE TIME OF TRANSFER.

18 NEW SECTION. Section 63. Implementation. (1) The
19 governor shall by executive order implement the provisions
20 of [this act].

21 (2) The governor may by executive order assign to the
22 state compensation mutual insurance fund, in a manner
23 consistent with [this act], functions allocated to the
24 workers' compensation state fund provided for in Title 39,
25 chapter 71, part 23, by the 51st legislature and not

1 transferred by [this act].

2 NEW SECTION. SECTION 64. NAME CHANGE -- CODE
3 COMMISSIONER INSTRUCTION. (1) IN THE PROVISIONS OF THE
4 MONTANA CODE ANNOTATED, THE TERMS "DIVISION OF WORKERS'
5 COMPENSATION", "DIVISION", AND "WORKERS' COMPENSATION
6 DIVISION", MEANING THE DIVISION OF WORKERS' COMPENSATION,
7 ARE CHANGED TO "DEPARTMENT OF LABOR AND INDUSTRY" OR
8 "DEPARTMENT", MEANING THE "DEPARTMENT OF LABOR AND
9 INDUSTRY".

10 (2) THE CODE COMMISSIONER SHALL DESIGNATE, IN A MANNER
11 CONSISTENT WITH [THIS ACT], WORKERS' COMPENSATION INSURANCE
12 REGULATORY FUNCTIONS ALLOCATED TO THE DIVISION OF WORKERS'
13 COMPENSATION BY THE 51ST LEGISLATURE TO THE DEPARTMENT OF
14 LABOR AND INDUSTRY THAT ARE NOT SO DESIGNATED BY [THIS ACT].

15 (3) WHEREVER IT APPEARS IN 39-71-205, 39-71-222
16 THROUGH 39-71-224, 39-71-613, 39-71-902, 39-71-904,
17 39-71-910, OR IN LAW ENACTED BY THE 51ST LEGISLATURE, THE
18 CODE COMMISSIONER IS DIRECTED TO CHANGE THE TERM
19 "ADMINISTRATOR" OR "HIS" TO "DEPARTMENT", MEANING THE
20 DEPARTMENT OF LABOR AND INDUSTRY.

21 NEW SECTION. Section 65. Effective dates. (1)
22 [Sections 3, 7, 58 ~~54~~ 55 39, 60 THROUGH 64, and this
23 section] are effective on passage and approval.

24 (2) [Sections 1, 2, 4 through 6, and 8 through 38, AND
25 40 THROUGH 49 53 59] are effective upon signing of the

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- 1 executive order under [section 50 55 63] or on October--17
- 2 1989 JANUARY 1, 1990, whichever occurs earlier.

-End-