

HOUSE BILL NO. 13

INTRODUCED BY BENEDICT, DRISCOLL,  
DOLEZAL, H. HANSON, DEVLIN, FRITZ  
BY REQUEST OF THE SELECT COMMITTEE ON  
WORKERS' COMPENSATION

IN THE HOUSE

DECEMBER 23, 1992	INTRODUCED AND REFERRED TO SELECT COMMITTEE ON WORKERS' COMPENSATION.
JANUARY 4, 1993	FIRST READING.
JANUARY 16, 1993	SPONSORS ADDED.
MARCH 11, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.  ON MOTION, REREFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
MARCH 12, 1993	PRINTING REPORT.
MARCH 20, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
MARCH 23, 1993	PRINTING REPORT.
MARCH 25, 1993	SECOND READING, DO PASS AS AMENDED.  RULES SUSPENDED AND BILL PLACED ON THIRD READING THIS LEGISLATIVE DAY.  THIRD READING, PASSED. AYES, 96; NOES, 2.  TRANSMITTED TO SENATE.
MARCH 26, 1993	ENGROSSING REPORT.

IN THE SENATE

MARCH 26, 1993	INTRODUCED AND REFERRED TO SELECT COMMITTEE ON WORKERS' COMPENSATION.  FIRST READING.
APRIL 8, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT

ADOPTED.

APRIL 12, 1993

SECOND READING, CONCURRED IN.

APRIL 13, 1993

THIRD READING, CONCURRED IN.  
AYES, 48; NOES, 1.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 15, 1993

SECOND READING, AMENDMENTS NOT  
CONCURRED IN.

ON MOTION, FREE CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 20, 1993

ON MOTION, FREE CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 22, 1993

SECOND READING, FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

THIRD READING, FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

IN THE SENATE

APRIL 22, 1993

FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 23, 1993

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

## 1 HOUSE BILL NO. 13

2 INTRODUCED BY BENEDICT

3 BY REQUEST OF THE SELECT COMMITTEE ON

4 WORKERS' COMPENSATION

5  
6 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING  
7 WORKERS' COMPENSATION LAW; PLACING THE STATE FUND UNDER THE  
8 AUTHORITY OF THE INSURANCE COMMISSIONER; REVISING THE STATE  
9 FUND'S BUDGET AND FUNDING PROCEDURES; EXEMPTING THE STATE  
10 FUND FROM THE PROVISIONS OF THE MONTANA ADMINISTRATIVE  
11 PROCEDURE ACT; PROVIDING A STATUTORY APPROPRIATION; AMENDING  
12 SECTIONS 2-4-102, 17-7-502, 33-1-401, 39-71-2314,  
13 39-71-2316, 39-71-2321, 39-71-2323, AND 39-71-2352, MCA; AND  
14 PROVIDING AN EFFECTIVE DATE."

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 Section 1. Section 2-4-102, MCA, is amended to read:

18 "2-4-102. Definitions. For purposes of this chapter,  
19 the following definitions apply:20 (1) "Administrative code committee" or "committee"  
21 means the committee provided for in Title 5, chapter 14.22 (2) (a) "Agency" means an agency, as defined in  
23 2-3-102, of the state government, except that the provisions  
24 of this chapter do not apply to the following:

25 (i) the state board of pardons, except that the board

1 is subject to the requirements of 2-4-103, 2-4-201, 2-4-202,  
2 and 2-4-306 and its rules must be published in the  
3 Administrative Rules of Montana and the Montana  
4 Administrative Register;

5 (ii) the supervision and administration of a penal  
6 institution with regard to the institutional supervision,  
7 custody, control, care, or treatment of youths or prisoners;

8 (iii) the board of regents and the Montana university  
9 system;

10 (iv) the financing, construction, and maintenance of  
11 public works; or

12 (v) the state compensation mutual insurance fund and  
13 its board of directors.

14 (b) Agency does not include a school district, unit of  
15 local government, or any other political subdivision of the  
16 state.

17 (3) "ARM" means the Administrative Rules of Montana.

18 (4) "Contested case" means a proceeding before an  
19 agency in which a determination of legal rights, duties, or  
20 privileges of a party is required by law to be made after an  
21 opportunity for hearing. The term includes but is not  
22 restricted to ratemaking, price fixing, and licensing.

23 (5) "License" includes the whole or part of any agency  
24 permit, certificate, approval, registration, charter, or  
25 other form of permission required by law but does not

1 include a license required solely for revenue purposes.

2 (6) "Licensing" includes any agency process respecting  
3 the grant, denial, renewal, revocation, suspension,  
4 annulment, withdrawal, limitation, transfer, or amendment of  
5 a license.

6 (7) "Party" means a person named or admitted as a party  
7 or properly seeking and entitled as of right to be admitted  
8 as a party, but nothing herein in this chapter may be  
9 construed to prevent an agency from admitting any person as  
10 a party for limited purposes.

11 (8) "Person" means an individual, partnership,  
12 corporation, association, governmental subdivision, agency,  
13 or public organization of any character.

14 (9) "Register" means the Montana Administrative  
15 Register.

16 (10) "Rule" means each agency regulation, standard, or  
17 statement of general applicability that implements,  
18 interprets, or prescribes law or policy or describes the  
19 organization, procedures, or practice requirements of an  
20 agency. The term includes the amendment or repeal of a prior  
21 rule but does not include:

22 (a) statements concerning only the internal management  
23 of an agency and not affecting private rights or procedures  
24 available to the public;

25 (b) formal opinions of the attorney general and

1 declaratory rulings issued pursuant to 2-4-501;

2 (c) rules relating to the use of public works,  
3 facilities, streets, and highways when the substance of the  
4 rules is indicated to the public by means of signs or  
5 signals;

6 (d) seasonal rules adopted annually or biennially  
7 relating to hunting, fishing, and trapping when there is a  
8 statutory requirement for the publication of the rules and  
9 rules adopted annually or biennially relating to the  
10 seasonal recreational use of lands and waters owned or  
11 controlled by the state when the substance of the rules is  
12 indicated to the public by means of signs or signals;

13 (e) rules implementing the state personnel  
14 classification plan, the state wage and salary plan, or the  
15 statewide budgeting and accounting system;

16 (f) uniform rules adopted pursuant to interstate  
17 compact, except that the rules must be filed in accordance  
18 with 2-4-306 and must be published in the Administrative  
19 Rules of Montana.

20 (11) "Substantive rules" are either:

21 (a) legislative rules, which if adopted in accordance  
22 with this chapter and under expressly delegated authority to  
23 promulgate rules to implement a statute have the force of  
24 law and when not so adopted are invalid; or

25 (b) adjective or interpretive rules, which may be

1 adopted in accordance with this chapter and under express or  
2 implied authority to codify an interpretation of a statute.  
3 The interpretation lacks the force of law."

4 **Section 2.** Section 33-1-401, MCA, is amended to read:

5 "33-1-401. Examination of insurers and state  
6 compensation mutual insurance fund. (1) The commissioner  
7 shall examine the affairs, transactions, accounts, records,  
8 and assets of each authorized insurer and the state  
9 compensation mutual insurance fund as often as he deems the  
10 commissioner considers advisable. He The commissioner shall  
11 so examine each domestic insurer not less frequently than  
12 every 3 years. The commissioner shall examine the state fund  
13 on a yearly basis beginning no sooner than October 1  
14 following the end of the fiscal year. Examination of an  
15 alien insurer may be limited to its insurance transactions  
16 and affairs in the United States. Examination of a  
17 reciprocal insurer may also include examination of its  
18 attorney-in-fact insofar as the transactions of the  
19 attorney-in-fact relate to the insurer.

20 (2) The commissioner shall in like manner examine each  
21 insurer applying for an initial certificate of authority to  
22 do business in this state.

23 (3) In lieu of making ~~his own~~ an examination, the  
24 commissioner may ~~in his discretion~~ accept a full report of  
25 the last recent examination of a foreign or alien insurer,

1 certified to by the insurance supervisory official of  
2 another state, territory, commonwealth, or district of the  
3 United States.

4 (4) If, after examining the state compensation mutual  
5 insurance fund pursuant to subsection (1), the commissioner  
6 determines that the fund, if it were a private insurer,  
7 would be subject to the provisions of Title 33, chapter 2,  
8 part 13, the commissioner shall report those findings to the  
9 governor and the legislature."

10 **Section 3.** Section 39-71-2314, MCA, is amended to read:

11 "39-71-2314. State fund -- assigned risk plan. (1) If  
12 an assigned risk plan is established and administered  
13 pursuant to 39-71-431, the state fund is subject to the  
14 premium tax liability for insurers as provided in 33-2-705  
15 based on earned premium and paid on revenue from the  
16 previous fiscal year.

17 ~~(2) The state fund is subject to laws that generally~~  
18 ~~apply to state agencies, including but not limited to Title~~  
19 ~~27 chapters 2, 3, 4 (except as provided in 39-71-2316), and~~  
20 ~~67 and Title 5, chapter 13. The state fund is not exempt~~  
21 ~~from a law that applies to state agencies unless that law~~  
22 ~~specifically exempts the state fund by name and clearly~~  
23 ~~states that it is exempt from that law."~~

24 **Section 4.** Section 39-71-2316, MCA, is amended to read:

25 "39-71-2316. Powers of the state fund ----rulemaking.

1 For the purposes of carrying out its functions, the state  
2 fund may:

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

9 (2) sue and be sued;

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

12 (4) (3) except as provided in section 21, Chapter 4,  
13 Special Laws of May 1990, enter into contracts relating to  
14 the administration of the state fund, including claims  
15 management, servicing, and payment;

16 (5) (4) collect and disburse money received;

17 (6) (5) adopt classifications and charge premiums for  
18 the classifications so that the state fund will be neither  
19 more nor less than self-supporting; Premium rates for  
20 classifications may only be adopted and changed using a  
21 process, a procedure, formulas, and factors set forth in  
22 rules adopted under Title 27, chapter 4, parts 2 through 4.  
23 After such rules have been adopted, the state fund need not  
24 follow the rulemaking provisions of Title 27, chapter 4, when  
25 changing classifications and premium rates. The contested

1 case, rights and provisions of Title 27, chapter 4, do not  
2 apply to an employer's classification or premium rate. The  
3 state fund must belong to the national council on  
4 compensation insurance and shall use the classifications of  
5 employment adopted by the national council and corresponding  
6 rates as a basis for setting its own rates.

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

9 (8) (7) hire personnel;

10 (9) (8) declare dividends if there is an excess of  
11 assets over liabilities. However, dividends may not be paid  
12 until adequate actuarially determined reserves are set  
13 aside. If those reserves have been set aside, money that can  
14 be declared as a dividend must be transferred to the account  
15 created by 39-71-2321 for claims for injuries resulting from  
16 accidents that occurred before July 1, 1990, and used for  
17 the purposes of that account. After all claims funded by  
18 that account have been paid, dividends may be declared and  
19 paid to insureds.

20 (10) (9) perform all functions and exercise all powers  
21 of a domestic mutual insurer private insurance carrier that  
22 are necessary, appropriate, or convenient for the  
23 administration of the state fund."

24 **Section 5.** Section 39-71-2323, MCA, is amended to read:

25 "39-71-2323. Surplus in state fund -- payment of

1 dividends. Subject to the provisions of 39-71-2316~~(9)~~(8), if  
 2 at the end of any fiscal year there exists in the state fund  
 3 account created by 39-71-2321 for claims for injuries  
 4 resulting from accidents that occur on or after July 1,  
 5 1990, an excess of assets over liabilities, including  
 6 necessary reserves and a reasonable surplus, and if the  
 7 excess may be refunded safely, then the state fund may  
 8 declare a dividend. The rules of the state fund must  
 9 prescribe the manner of payment to those employers who have  
 10 paid premiums into the state fund in excess of liabilities  
 11 chargeable to them in the fund for that year. In determining  
 12 the amount or proportion of the balance to which the  
 13 employer is entitled as dividends, the state fund shall give  
 14 consideration to the prior paid premiums and accident  
 15 experience of each individual employer during the dividend  
 16 year."

17 **Section 6.** Section 39-71-2352, MCA, is amended to read:

18 "39-71-2352. Separate payment structure and sources for  
 19 claims for injuries resulting from accidents that occurred  
 20 before July 1, 1990, and on or after July 1, 1990 --  
 21 spending limit. (1) Premiums paid to the state fund based  
 22 upon wages payable before July 1, 1990, may be used only to  
 23 administer and pay claims for injuries resulting from  
 24 accidents that occurred before July 1, 1990. Except as  
 25 provided in 39-71-2316~~(9)~~(8) and 39-71-2354, premiums paid

1 to the state fund based upon wages payable on or after July  
 2 1, 1990, may be used only to administer and pay claims for  
 3 injuries resulting from accidents that occur on or after  
 4 July 1, 1990.

5 (2) The state fund shall:

6 (a) determine the cost of administering and paying  
 7 claims for injuries resulting from accidents that occurred  
 8 before July 1, 1990, and separately determine the cost of  
 9 administering and paying claims for injuries resulting from  
 10 accidents that occur on or after July 1, 1990;

11 (b) keep adequate and separate accounts of the costs  
 12 determined under subsection (2)(a); and

13 (c) fund administrative expenses and benefit payments  
 14 for claims for injuries resulting from accidents that  
 15 occurred before July 1, 1990, and claims for injuries  
 16 resulting from accidents that occur on or after July 1,  
 17 1990, separately from the sources provided by law.

18 (3) The state fund may not spend more than \$3 million a  
 19 year to administer claims for injuries resulting from  
 20 accidents that occurred before July 1, 1990."

21 **NEW SECTION. Section 7.** Rate setting. The board has  
 22 the authority to establish the rates to be charged by the  
 23 state fund for insurance. The board shall engage the  
 24 services of an independent actuary who is a member in good  
 25 standing with the American academy of actuaries to develop

and recommend actuarially sound rates. Rates must be set at amounts sufficient, when invested, to carry all claims to maturity, to meet the reasonable expenses of conducting the business of the state fund, and to amass and maintain, by July 1, 2001, a reasonable surplus in accordance with insurance industry standards.

**NEW SECTION. Section 8.** Authority of insurance commissioner with respect to state fund. (1) The insurance commissioner shall review rates established by the board to determine if the rates or any rate changes are excessive, inadequate, or unfairly discriminatory. The insurance commissioner has the same authority over the state fund's rate setting procedures as the insurance commissioner has over the rate setting procedures of a private insurer.

(2) The state fund is subject to the provisions of Title 33, chapter 2, except for 33-2-515 and Title 33, chapter 2, parts 7, 8, and 13.

**NEW SECTION. Section 9.** Agency law -- submission of budget -- annual report. (1) The state fund is subject to state laws applying to state agencies, except that it is exempt from the provisions of The Legislative Finance Act in Title 5, chapter 12.

(2) The executive director shall annually submit to the board for its approval an estimated budget of the entire expense of administering the state fund for the succeeding

fiscal year, with due regard to the business interests and contract obligations of the state fund. The budget approved by the board may not exceed 15% of the annual employer premiums. A copy of the approved budget must be delivered to the governor and the legislature.

(3) The board shall submit an annual reserve report prepared by the state fund's actuary to the governor and to the legislature as provided in 5-11-210, indicating the business done by the state fund during the previous year and containing a statement of the resources and liabilities of the state fund.

**Section 10.** Section 39-71-2321, MCA, is amended to read:

**"39-71-2321. What to be deposited in state fund.** (1)(a) All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the state fund, and securities acquired by or through use of money must be deposited in the state fund. They must be separated into two accounts based upon whether they relate to claims for injuries resulting from accidents that occurred before July 1, 1990, or claims for injuries resulting from accidents that occur on or after that date.

(b) Subject to the requirements of [section 9], the state fund shall set aside up to 15% of annual employer premiums for the expense of administering the state fund for



1 the succeeding fiscal year. The administrative expense funds  
 2 are statutorily appropriated as provided in 17-7-502.

3 (2) The proceeds of bonds issued and loans given to the  
 4 state fund under 39-71-2354 and 39-71-2355 must be deposited  
 5 in the account for claims for injuries resulting from  
 6 accidents that occurred before July 1, 1990."

7 **Section 11.** Section 17-7-502, MCA, is amended to read:

8 "17-7-502. Statutory appropriations -- definition --  
 9 requisites for validity. (1) A statutory appropriation is an  
 10 appropriation made by permanent law that authorizes spending  
 11 by a state agency without the need for a biennial  
 12 legislative appropriation or budget amendment.

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

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

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

21 (3) The following laws are the only laws containing  
 22 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;  
 23 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111;  
 24 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117;  
 25 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;

1 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409;  
 2 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007;  
 3 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513;  
 4 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109;  
 5 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811;  
 6 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631;  
 7 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501;  
 8 39-71-2504; 39-71-2321; 44-12-206; 44-13-102; 53-6-150;  
 9 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507;  
 10 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103;  
 11 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301;  
 12 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

13 (4) There is a statutory appropriation to pay the  
 14 principal, interest, premiums, and costs of issuing, paying,  
 15 and securing all bonds, notes, or other obligations, as due,  
 16 that have been authorized and issued pursuant to the laws of  
 17 Montana. Agencies that have entered into agreements  
 18 authorized by the laws of Montana to pay the state  
 19 treasurer, for deposit in accordance with 17-2-101 through  
 20 17-2-107, as determined by the state treasurer, an amount  
 21 sufficient to pay the principal and interest as due on the  
 22 bonds or notes have statutory appropriation authority for  
 23 the payments. (In subsection (3): pursuant to sec. 7, Ch.  
 24 567, L. 1991, the inclusion of 19-6-709 terminates upon  
 25 death of last recipient eligible for supplemental benefit;

1 and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of  
2 22-3-811 terminates June 30, 1993.)"

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

8 NEW SECTION. **Section 13.** Effective date. [This act] is  
9 effective July 1, 1993.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0013, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

This bill generally revises workers' compensation law, placing the State Fund under the authority of the Insurance Commissioner, revising the State Fund's budget and funding procedures, exempting the State Fund from the provisions of the Montana Administrative Procedure Act, and providing a statutory appropriation.

ASSUMPTIONS:

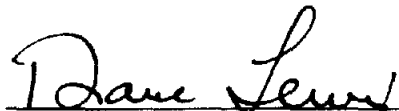
State Auditor:

1. The Montana Insurance Program would contract with outside services for the accounting & actuarial examination in order to maintain current statutory responsibilities.
2. The examination would cover two major areas: Evaluation of the adequacy of workers compensation rates used and the determination of financial conditions (net worth) of the State Fund as of June 30th.
3. FY 1993 will be the first year available for review & will not be reviewed until after Oct. 1, 1993 (FY94).
4. Initial review will include additional steps to ensure base line data.
5. State Fund will be billed for the cost of each evaluation with the proceeds deposited to the general fund.
6. The cost estimate for the contracted review is based on the average of quotations provided by three independent firms who perform similar reviews.

State Compensation Mutual Insurance Fund:

1. The State Fund will not be subject to statutory accounting procedures.
2. The Insurance Commissioner's rate review will include a review of the State Fund's solvency and rate structure. The State Fund will be billed \$55,000 in FY94 and \$40,000 in FY95.
3. The State Fund will generate a surplus of \$66 million over an eight year period requiring a rate increase equivalent to approximately \$12.6 million per year.
4. Subsequent to the interim rate increase approved by the State Fund board for FY93, the unfunded liability at the end of FY93 is projected to be approximately \$38 million.
5. The State Fund's administrative budget would increase to the level approved by the Board of Directors (no more than 10% of earned premium). Increased administrative costs shown below are relative to the executive budget recommendations and include fees paid to the State Auditor. Premiums will increase commensurate with increase in administrative expenses.
5. Premium income for FY93 through FY95 is estimated at \$165 million, \$181.5 million, and \$199.7 million, respectively.

FISCAL IMPACT: (continued)



DAVE LEWIS, BUDGET DIRECTOR

Office of Budget and Program Planning

1-8-93

DATE



STEVE BENEDICT, PRIMARY SPONSOR

1/9/93

DATE

Fiscal Note for HB0013, as introduced

UB 17

Fiscal Note Request: HB0013, as introduced  
Form BD-15 page 2  
(continued)

FISCAL IMPACT:

	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>State Auditor (Insurance Program-03)</u>						
<u>Expenditures:</u>						
FTE	30.00	30.00	0	30.00	30.00	0
Personal Services	935,160	935,160	0	937,323	937,323	0
Operating Expenses	168,578	223,578	55,000	159,266	199,266	40,000
Equipment	<u>3,300</u>	<u>3,300</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total (General Fund)	\$1,107,038	\$1,162,038	\$55,000	\$1,096,589	\$1,136,589	\$40,000
<u>Revenues:</u>						
Ins. License/Permit Fees (01)	\$1,500,000	\$1,555,000	\$55,000	\$1,500,000	\$1,540,000	\$40,000
<u>State Fund</u>						
<u>Expenditures:</u>						
FTE	224.50	242.50	18.00	227.50	263.50	36.00
Personal Services	6,498,681	7,168,298	669,617	6,584,924	7,901,703	1,316,779
Operating Expenses	3,615,187	4,129,598	514,411	3,922,172	3,924,336	2,164
Equipment	310,066	351,501	41,435	236,597	329,086	92,489
Benefits	166,027,953	166,027,953	0	182,948,465	182,948,465	0
Transfers	2,839,300	2,839,300	0	2,716,695	2,716,695	0
Debt Service	<u>134,256</u>	<u>318,000</u>	<u>183,744</u>	<u>221,580</u>	<u>318,000</u>	<u>96,420</u>
Total (Proprietary)	\$179,425,443	\$180,834,650	\$1,409,207	\$196,630,433	\$198,138,285	\$1,507,852
<u>Revenues:</u>						
Premiums (Proprietary)	\$181,500,000	\$195,500,000	\$14,000,000	\$199,650,000	\$213,750,000	\$14,100,000

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Any county or local government insured through the State Fund will have a rate increase.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

A rate increase will remain in effect until an adequate surplus has been established.

HB 13

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0013, second reading.

DESCRIPTION OF PROPOSED LEGISLATION:

This bill generally revises workers' compensation law, permitting the governor to contract for private sector liquidation and management, clarifying compensability of mental stress claims, providing for gubernatorial appointment of the board and executive director at the pleasure of the governor, revising the State Fund's budget and funding procedures, exempting the State Fund from the provisions of the Montana Administrative Procedure Act for purposes other than ratemaking, requiring notification to claimants, and providing statutory and temporary appropriations.

ASSUMPTIONS:

Legislative Auditor:

1. The Legislative Auditor would contract with outside services for actuarial examination of State Fund rates.
2. The State Fund would be billed for the costs of the contracted actuarial examination.

State Compensation Mutual Insurance Fund:

1. The State Fund will not be subject to statutory accounting procedures. If the State Fund were subject to statutory accounting procedures, costs would be incurred for system modifications and staff training.
2. The State Fund will generate a surplus of \$50 million over a ten year period requiring a rate increase equivalent to approximately \$9.2 million per year. The projected rate increase takes into consideration an estimated \$42 million unfunded liability.
3. The State Fund's administrative budget would increase to the level approved by the Board of Directors. The SCMF board has authorized the State Fund to spend no more than 10% of earned premium for administration. The estimated administrative expenditures under the proposed legislation would be 7.4% and 7.2% of earned premium in FY94 and FY95, respectively. Increased administrative costs shown below are relative to the appropriations currently contained in HB2.
4. Rates are estimated by the actuary assuming a reserve for administration of between 8-10% of earned premium. Insofar as the estimated expenditures for administration under the proposed legislation is less than that amount, the increased expenditures for administration is assumed to have no impact on premiums.
5. Premium income for FY93 through FY95 is estimated at \$165 million, \$181.5 million, and \$199.7 million, respectively. Earned premium is estimated to remain constant at approximately \$200 million through FY 2003.

Office of the Governor

1. The terms of any contract the Governor may enter into with a private sector entity to liquidate the claims of the old fund and to manage claims of the new fund cannot be defined until such terms are negotiated. The fiscal impact of such a contract, per se, is therefore outside the scope of this fiscal note.
2. The Governor's Office would require funding in FY93, continuing into FY94, for the costs of contracting for a thorough review and analysis of any proposals received from interested parties.
3. The Governor's Office, or agency designated by the Governor to administer a contract, would require an appropriation for the payment of premium and claims administration costs. The proposed legislation limits this amount to \$400 million. Funding for payment of premium and claims administration costs would be from the workers' compensation payroll account.

(continued)

Dave Lewis 3-24-93  
DAVE LEWIS, BUDGET DIRECTOR DATE  
Office of Budget and Program Planning

Steve Benedict 3-25-93  
STEVE BENEDICT, PRIMARY SPONSOR DATE

Fiscal Note for HB0013, second reading

HB 13 #2

FISCAL IMPACT:

	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Legislative Auditor</u>						
<u>Expenditures:</u>						
Contracted Services	0	35,000	35,000	0	35,000	35,000
(State Special Revenue)						
 <u>State Fund</u>						
<u>Expenditures:</u>						
FTE	221.25	239.25	18.00	224.25	257.25	33.00
Personal Services	6,103,718	6,963,220	859,502	6,185,549	7,545,758	1,360,209
Operating Expenses	3,915,756	3,986,976	71,220	4,042,619	4,151,561	108,942
Equipment	326,100	396,035	69,935	216,955	366,444	149,489
Benefits	153,014,525	153,014,525	0	167,994,354	167,994,354	0
Transfers	2,709,300	2,709,300	0	2,726,695	2,726,695	0
Debt Service	<u>134,256</u>	<u>134,256</u>	<u>0</u>	<u>221,580</u>	<u>221,580</u>	<u>0</u>
Total	166,203,655	167,204,312	1,000,657	181,387,752	183,006,392	1,618,640
 <u>Revenues:</u>						
Premiums (Proprietary)	\$181,500,000	\$190,700,000	\$9,200,000	\$199,650,000	\$208,850,000	\$9,200,000

Office of the Governor (or designated agency)

<u>Expenditures:</u>						
Premium/Claims Administration	0	400,000,000	400,000,000	0	0	0
(State Special Revenue)						

	<u>FY93-94</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Contract Review & Analysis	0	50,000	50,000
(Proprietary Revenue)			

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Any county or local government insured through the State Fund will experience a rate increase.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

A rate increase will remain in effect until a 25% surplus has been established.

HB 13 #2

APPROVED BY COMMITTEE  
ON LABOR & EMPLOYMENT  
RELATIONS

## HOUSE BILL NO. 13

INTRODUCED BY BENEDICT, DRISCOLL,

DOLEZAL, H. HANSON, DEVLIN, FRITZ

BY REQUEST OF THE SELECT COMMITTEE ON

WORKERS' COMPENSATION

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING  
WORKERS' COMPENSATION LAW; ~~PLACING-THE-STATE-FUND-UNDER-THE~~  
~~AUTHORITY-OF-THE-INSURANCE-COMMISSIONER;~~ REVISING THE STATE  
FUND'S BUDGET AND FUNDING PROCEDURES; EXEMPTING THE STATE  
FUND FROM THE PROVISIONS OF THE MONTANA ADMINISTRATIVE  
PROCEDURE ACT; AUTHORIZING THE LEGISLATIVE AUDITOR TO REVIEW  
RATES AND EXAMINE THE STATE FUND EACH YEAR; PROVIDING A  
STATUTORY APPROPRIATION; AMENDING SECTIONS 2-4-102,  
17-7-502, ~~39-1-401~~ 18-8-103, 39-71-2314, 39-71-2316,  
39-71-2321, 39-71-2323, AND 39-71-2352, MCA; AND PROVIDING  
AN EFFECTIVE DATE DATES AND AN APPLICABILITY DATE."

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

**Section 1.** Section 2-4-102, MCA, is amended to read:

"2-4-102. Definitions. For purposes of this chapter,  
the following definitions apply:

(1) "Administrative code committee" or "committee"  
means the committee provided for in Title 5, chapter 14.

(2) (a) "Agency" means an agency, as defined in

2-3-102, of the state government, except that the provisions  
of this chapter do not apply to the following:

(i) the state board of pardons, except that the board  
is subject to the requirements of 2-4-103, 2-4-201, 2-4-202,  
and 2-4-306 and its rules must be published in the  
Administrative Rules of Montana and the Montana  
Administrative Register;

(ii) the supervision and administration of a penal  
institution with regard to the institutional supervision,  
custody, control, care, or treatment of youths or prisoners;

(iii) the board of regents and the Montana university  
system;

(iv) the financing, construction, and maintenance of  
public works; or

(v) the state compensation mutual insurance fund and  
its board of directors.

(b) Agency does not include a school district, unit of  
local government, or any other political subdivision of the  
state.

(3) "ARM" means the Administrative Rules of Montana.

(4) "Contested case" means a proceeding before an  
agency in which a determination of legal rights, duties, or  
privileges of a party is required by law to be made after an  
opportunity for hearing. The term includes but is not  
restricted to ratemaking, price fixing, and licensing.

(5) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes.

(6) "Licensing" includes any agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

(7) "Party" means a person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, but nothing herein in this chapter may be construed to prevent an agency from admitting any person as a party for limited purposes.

(8) "Person" means an individual, partnership, corporation, association, governmental subdivision, agency, or public organization of any character.

(9) "Register" means the Montana Administrative Register.

(10) "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include:

(a) statements concerning only the internal management

of an agency and not affecting private rights or procedures available to the public;

(b) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

(c) rules relating to the use of public works, facilities, streets, and highways when the substance of the rules is indicated to the public by means of signs or signals;

(d) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of the rules and rules adopted annually or biennially relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of the rules is indicated to the public by means of signs or signals;

(e) rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system;

(f) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in accordance with 2-4-306 and must be published in the Administrative Rules of Montana.

(11) "Substantive rules" are either:

(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority to



1 promulgate rules to implement a statute have the force of  
2 law and when not so adopted are invalid; or

3 (b) adjective or interpretive rules, which may be  
4 adopted in accordance with this chapter and under express or  
5 implied authority to codify an interpretation of a statute.  
6 The interpretation lacks the force of law."

7 Section 2. ~~Section 33-1-401, MCA, is amended to read:~~

8 ~~"33-1-401. Examination of insurers and state~~  
9 ~~compensation mutual insurance fund. (1) The commissioner~~  
10 ~~shall examine the affairs, transactions, accounts, records,~~  
11 ~~and assets of each authorized insurer and the state~~  
12 ~~compensation mutual insurance fund as often as he deems the~~  
13 ~~commissioner considers advisable. He The commissioner shall~~  
14 ~~so examine each domestic insurer not less frequently than~~  
15 ~~every 3 years. The commissioner shall examine the state fund~~  
16 ~~on a yearly basis beginning no sooner than October 1~~  
17 ~~following the end of the fiscal year. Examination of an~~  
18 ~~alien insurer may be limited to its insurance transactions~~  
19 ~~and affairs in the United States. Examination of a~~  
20 ~~reciprocal insurer may also include examination of its~~  
21 ~~attorney in fact insofar as the transactions of the~~  
22 ~~attorney in fact relate to the insurer.~~

23 ~~(2) The commissioner shall in like manner examine each~~  
24 ~~insurer applying for an initial certificate of authority to~~  
25 ~~do business in this state.~~

1 ~~(3) In lieu of making his own an examination, the~~  
2 ~~commissioner may, in his discretion, accept a full report of~~  
3 ~~the last recent examination of a foreign or alien insurer,~~  
4 ~~certified to by the insurance supervisory official of~~  
5 ~~another state, territory, commonwealth, or district of the~~  
6 ~~United States.~~

7 ~~(4) If, after examining the state compensation mutual~~  
8 ~~insurance fund pursuant to subsection (1), the commissioner~~  
9 ~~determines that the fund, if it were a private insurer,~~  
10 ~~would be subject to the provisions of Title 33, chapter 2,~~  
11 ~~part 13, the commissioner shall report those findings to the~~  
12 ~~governor and the legislature."~~

13 **SECTION 2. SECTION 18-8-103, MCA, IS AMENDED TO READ:**

14 "18-8-103. Exemptions. This part does not apply to  
15 employment of:

16 (1) registered professional engineers, surveyors, real  
17 estate appraisers, or registered architects;

18 (2) physicians, dentists, or other medical, dental, or  
19 health care providers;

20 (3) expert witnesses hired for use in litigation,  
21 hearings officers hired in rulemaking and contested case  
22 proceedings under the Montana Administrative Procedure Act,  
23 or attorneys as specified by executive order of the  
24 governor;

25 (4) consulting actuaries to the public retirement

boards or the state compensation insurance fund; or

(5) private consultants employed by the student associations of the university system with money raised from student activity fees designated for use by those student associations."

**Section 3.** Section 39-71-2314, MCA, is amended to read:

"39-71-2314. State fund -- assigned risk plan. (1) If an assigned risk plan is established and administered pursuant to 39-71-431, 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.

(2) ~~The state fund is subject to laws that generally apply to state agencies, including but not limited to Title 2, chapters 2, 3, 4 (except as provided in 39-71-2316), and 6, and Title 5, chapter 13. The state fund is not exempt from a law that applies to state agencies unless that law specifically exempts the state fund by name and clearly states that it is exempt from that law.~~

**Section 4.** Section 39-71-2316, MCA, is amended to read:

"39-71-2316. Powers of the state fund ----rulemaking. For the purposes of carrying out its functions, the state fund may:

(1) insure any employer for workers' compensation and occupational disease liability as the coverage is required

by the laws of this state and ~~in connection with the coverage, provide employers' liability insurance.~~ The state fund may charge a minimum yearly premium to ~~cover its administrative costs for coverage of a small employer.~~

(2) sue and be sued;

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

~~(4)~~ (3) except as provided in section 21, Chapter 4, Special Laws of May 1990, enter into contracts relating to the administration of the state fund, including claims management, servicing, and payment;

~~(5)~~ (4) collect and disburse money received;

~~(6)~~ (5) adopt classifications and charge premiums for the classifications so that the state fund will be neither more nor less than self-supporting; Premium rates for classifications may only be adopted and changed using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2, chapter 4, parts 2 through 4. After such rules have been adopted, the state fund need not follow the rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The contested case rights and provisions of Title 2, chapter 4, do not apply to an employer's classification or premium rate. The state fund must belong to the national council on compensation insurance and shall use the classifications of

1 ~~employment-adopted-by-the-national-council-and-corresponding~~  
 2 ~~rates--as--a-basis-for-setting-its-own-rates. THE STATE FUND~~  
 3 ~~MUST BELONG TO THE NATIONAL COUNCIL ON COMPENSATION~~  
 4 ~~INSURANCE AND MAY USE THE CLASSIFICATIONS OF EMPLOYMENT~~  
 5 ~~ADOPTED BY A WORKERS' COMPENSATION RATING ORGANIZATION AND~~  
 6 ~~CORRESPONDING RATES AS A BASIS FOR SETTING ITS OWN RATES.~~

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

9     ~~(8)~~(7) hire personnel;

10     ~~(9)~~(8) declare dividends if there is an excess of  
 11 assets over liabilities. However, dividends may not be paid  
 12 until adequate actuarially determined reserves are set  
 13 aside. If those reserves have been set aside, money that can  
 14 be declared as a dividend must be transferred to the account  
 15 created by 39-71-2321 for claims for injuries resulting from  
 16 accidents that occurred before July 1, 1990, and used for  
 17 the purposes of that account. After all claims funded by  
 18 that account have been paid, dividends may be declared and  
 19 paid to insureds.

20     ~~(10)~~(9) perform all functions and exercise all powers  
 21 of a domestic-mutual-insurer private insurance carrier that  
 22 are necessary, appropriate, or convenient for the  
 23 administration of the state fund."

24     **Section 5.** Section 39-71-2323, MCA, is amended to read:

25     "39-71-2323. Surplus in state fund -- payment of

1 dividends. Subject to the provisions of 39-71-2316~~(9)~~(8), if  
 2 at the end of any fiscal year there exists in the state fund  
 3 account created by 39-71-2321 for claims for injuries  
 4 resulting from accidents that occur on or after July 1,  
 5 1990, an excess of assets over liabilities, including  
 6 necessary reserves and a reasonable surplus, and if the  
 7 excess may be refunded safely, then the state fund may  
 8 declare a dividend. The rules of the state fund must  
 9 prescribe the manner of payment to those employers who have  
 10 paid premiums into the state fund in excess of liabilities  
 11 chargeable to them in the fund for that year. In determining  
 12 the amount or proportion of the balance to which the  
 13 employer is entitled as dividends, the state fund shall give  
 14 consideration to the prior paid premiums and accident  
 15 experience of each individual employer during the dividend  
 16 year."

17     **Section 6.** Section 39-71-2352, MCA, is amended to read:

18     "39-71-2352. Separate payment structure and sources for  
 19 claims for injuries resulting from accidents that occurred  
 20 before July 1, 1990, and on or after July 1, 1990 --  
 21 spending limit. (1) Premiums paid to the state fund based  
 22 upon wages payable before July 1, 1990, may be used only to  
 23 administer and pay claims for injuries resulting from  
 24 accidents that occurred before July 1, 1990. Except as  
 25 provided in 39-71-2316~~(9)~~(8) and 39-71-2354, premiums paid

to the state fund based upon wages payable on or after July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occur on or after July 1, 1990.

(2) The state fund shall:

(a) determine the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, and separately determine the cost of administering and paying claims for injuries resulting from accidents that occur on or after July 1, 1990;

(b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and

(c) fund administrative expenses and benefit payments for claims for injuries resulting from accidents that occurred before July 1, 1990, and claims for injuries resulting from accidents that occur on or after July 1, 1990, separately from the sources provided by law.

(3) The state fund may not spend more than \$3 million a year to administer claims for injuries resulting from accidents that occurred before July 1, 1990."

**NEW SECTION. Section 7. Rate setting.** The board has the authority to establish the rates to be charged by the state fund for insurance. The board shall engage the services of an independent actuary who is a member in good standing with the American academy of actuaries to develop

and recommend actuarially sound rates. Rates must be set at amounts sufficient, when invested, to carry THE ESTIMATED COST OF all claims to maturity, to meet the reasonable expenses of conducting the business of the state fund, and to amass and maintain, by July 1, 2001, ~~a reasonable surplus in accordance with insurance industry standards 2003, A~~ SURPLUS OF 25% OF THE ANNUAL PREMIUM.

**NEW SECTION. Section 8. Authority of Insurance commissioner LEGISLATIVE AUDITOR with respect to state fund.**  
~~{1} The insurance--commissioner~~ LEGISLATIVE AUDITOR shall review rates established by the board to determine if the rates ~~or any rate changes~~ are excessive, inadequate, or unfairly discriminatory. ~~The insurance commissioner has the same authority over the state fund's rate setting procedures as the insurance commissioner has over the rate setting procedures of a private insurer.~~

~~{2} The state fund is subject to the provisions of Title 33, chapter 2, except for 33-2-515 and Title 33, chapter 2, parts 7, 8, and 13~~ EACH YEAR, THE LEGISLATIVE AUDITOR SHALL:

(1) EXAMINE THE STATE FUND BEGINNING NO SOONER THAN OCTOBER 1 FOLLOWING THE END OF THE FISCAL YEAR; AND

(2) REPORT THE FINDINGS OF THE EXAMINATION AND RATE REVIEW TO THE GOVERNOR, THE LEGISLATURE, AND THE BOARD OF DIRECTORS OF THE STATE FUND.

1 NEW SECTION. Section 9. Agency law -- submission of  
 2 budget -- annual report. (1) The state fund is subject to  
 3 state laws applying to state agencies, except that AS  
 4 OTHERWISE PROVIDED BY LAW, AND it is exempt from the  
 5 provisions of The Legislative Finance Act in Title 5,  
 6 chapter 12.

7 (2) The executive director shall annually submit to the  
 8 board for its approval an estimated budget of the entire  
 9 expense of administering the state fund for the succeeding  
 10 fiscal year, with due regard to the business interests and  
 11 contract obligations of the state fund. The budget  
 12 ADMINISTRATIVE EXPENDITURES approved by the board may not  
 13 exceed 15% of the EARNED annual employer-premiums PREMIUM OF  
 14 THE PRIOR FISCAL YEAR. A copy of the approved budget must be  
 15 delivered to the governor and the legislature.

16 (3) The board shall submit an annual reserve FINANCIAL  
 17 report prepared-by-the-state-fund's-actuary to the governor  
 18 and to the legislature as provided in 5-11-210, indicating  
 19 the business done by the state fund during the previous year  
 20 and containing a statement of the resources-and ESTIMATED  
 21 liabilities of the state fund AS DETERMINED BY AN  
 22 INDEPENDENT ACTUARY.

23 **Section 10.** Section 39-71-2321, MCA, is amended to  
 24 read:

25 "39-71-2321. What to be deposited in state fund. (1)(a)

1 All premiums, penalties, recoveries by subrogation, interest  
 2 earned upon money belonging to the state fund, and  
 3 securities acquired by or through use of money must be  
 4 deposited in the state fund. They must be separated into two  
 5 accounts based upon whether they relate to claims for  
 6 injuries resulting from accidents that occurred before July  
 7 1, 1990, or claims for injuries resulting from accidents  
 8 that occur on or after that date.

9 (b) Subject-to-the-requirements--of--{section--9}--the  
 10 state--fund--shall--set--aside--up-to-15%--of--annual-employer  
 11 premiums-for-the-expense-of-administering-the-state-fund-for  
 12 the-succeeding-fiscal-year--The-administrative-expense-funds  
 13 ALL FUNDS DEPOSITED IN THE STATE FUND are statutorily  
 14 appropriated as provided in 17-7-502.

15 (2) The proceeds of bonds issued and loans given to the  
 16 state fund under 39-71-2354 and 39-71-2355 must be deposited  
 17 in the account for claims for injuries resulting from  
 18 accidents that occurred before July 1, 1990."

19 **Section 11.** Section 17-7-502, MCA, is amended to read:

20 "17-7-502. Statutory appropriations -- definition --  
 21 requisites for validity. (1) A statutory appropriation is an  
 22 appropriation made by permanent law that authorizes spending  
 23 by a state agency without the need for a biennial  
 24 legislative appropriation or budget amendment.

25 (2) Except as provided in subsection (4), to be

1 effective, a statutory appropriation must comply with both  
2 of the following provisions:

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

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

8 (3) The following laws are the only laws containing  
9 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;  
10 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111;  
11 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117;  
12 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;  
13 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409;  
14 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007;  
15 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513;  
16 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109;  
17 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811;  
18 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631;  
19 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501;  
20 39-71-2504; 39-71-2321; 44-12-206; 44-13-102; 53-6-150;  
21 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507;  
22 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103;  
23 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301;  
24 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

25 (4) There is a statutory appropriation to pay the

1 principal, interest, premiums, and costs of issuing, paying,  
2 and securing all bonds, notes, or other obligations, as due,  
3 that have been authorized and issued pursuant to the laws of  
4 Montana. Agencies that have entered into agreements  
5 authorized by the laws of Montana to pay the state  
6 treasurer, for deposit in accordance with 17-2-101 through  
7 17-2-107, as determined by the state treasurer, an amount  
8 sufficient to pay the principal and interest as due on the  
9 bonds or notes have statutory appropriation authority for  
10 the payments. (In subsection (3): pursuant to sec. 7, Ch.  
11 567, L. 1991, the inclusion of 19-6-709 terminates upon  
12 death of last recipient eligible for supplemental benefit;  
13 and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of  
14 22-3-811 terminates June 30, 1993.)"

15 NEW SECTION. SECTION 12. NAME CHANGE -- DIRECTIONS TO  
16 CODE COMMISSIONER. WHEREVER THE NAME "STATE COMPENSATION  
17 MUTUAL INSURANCE FUND", MEANING THE FUND ESTABLISHED IN  
18 39-71-2313, APPEARS IN THE MONTANA CODE ANNOTATED OR IN  
19 LEGISLATION ENACTED BY THE 1993 LEGISLATURE, THE CODE  
20 COMMISSIONER IS DIRECTED TO CHANGE THE NAME TO "STATE  
21 COMPENSATION INSURANCE FUND".

22 NEW SECTION. SECTION 13. SEVERABILITY. IF A PART OF  
23 [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE  
24 FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS  
25 ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART

1 REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE  
2 SEVERABLE FROM THE INVALID APPLICATIONS.

3 NEW SECTION. Section 14. Codification instruction.  
4 [Sections 7 through 9] are intended to be codified as an  
5 integral part of Title 39, chapter 71, part 23, and the  
6 provisions of Title 39, chapter 71, part 23, apply to  
7 [sections 7 through 9].

8 NEW SECTION. Section 15. Effective ~~date~~ DATES --  
9 APPLICABILITY. ~~{This--act}--is~~ (1) [SECTION 9 AND THIS  
10 SECTION] ARE EFFECTIVE ON PASSAGE AND APPROVAL, AND [SECTION  
11 9] APPLIES TO THE BUDGET FOR FISCAL YEAR 1994.

12 (2) [SECTIONS 1 THROUGH 8 AND 10 THROUGH 14] ARE  
13 effective July 1, 1993.

-End-

RE-REFERRED AND  
APPROVED BY COMM. ON BUSINESS  
AND ECONOMIC DEVELOPMENT  
AS AMENDED

## HOUSE BILL NO. 13

INTRODUCED BY BENEDICT, DRISCOLL,  
DOLEZAL, H. HANSON, DEVLIN, FRITZ  
BY REQUEST OF THE SELECT COMMITTEE ON  
WORKERS' COMPENSATION

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING  
WORKERS' COMPENSATION LAW; ~~PLACING THE STATE FUND UNDER THE~~  
~~AUTHORITY OF THE INSURANCE COMMISSIONER; PERMITTING THE~~  
GOVERNOR TO CONTRACT FOR PRIVATE SECTOR INVOLVEMENT TO  
LIQUIDATE THE UNFUNDED LIABILITY AND TO MANAGE CLAIMS OF THE  
OLD FUND AND TO MANAGE CLAIMS OF THE NEW FUND OF THE MONTANA  
STATE COMPENSATION MUTUAL INSURANCE FUND; CLARIFYING THE  
COMPENSABILITY OF MENTAL STRESS CLAIMS; PROVIDING THAT THE  
GOVERNOR SHALL APPOINT THE BOARD OF DIRECTORS OF THE STATE  
FUND; PROVIDING THAT THE MEMBERS OF THE BOARD OF DIRECTORS  
AND THE EXECUTIVE DIRECTOR OF THE STATE FUND SERVE AT THE  
PLEASURE OF THE GOVERNOR; REVISING THE STATE FUND'S BUDGET  
AND FUNDING PROCEDURES; EXEMPTING THE STATE FUND FROM THE  
PROVISIONS OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT FOR  
PURPOSES OTHER THAN RATEMAKING; AUTHORIZING THE LEGISLATIVE  
AUDITOR TO REVIEW RATES AND EXAMINE THE STATE FUND EACH  
YEAR; PROVIDING A STATUTORY APPROPRIATION; PROVIDING AN  
APPROPRIATION; REQUIRING THE INSURER TO NOTIFY CLAIMANTS OF  
BENEFITS AND ENTITLEMENTS USING INFORMATION PROVIDED BY THE

DEPARTMENT; AMENDING SECTIONS ~~2-4-102~~ 2-15-1019, 17-7-502,  
~~39-1-401~~ 18-8-103, 33-1-102, 39-71-105, 39-71-606,  
39-71-721, 39-71-2314, 39-71-2315, 39-71-2316, 39-71-2317,  
39-71-2321, 39-71-2323, AND 39-71-2351, 39-71-2352,  
39-71-2354, AND 39-71-2503, MCA; AND PROVIDING AN EFFECTIVE  
DATE DATES AND AN APPLICABILITY DATE."

WHEREAS, THE LEGISLATURE HAS DETERMINED THAT IT IS  
NECESSARY TO THE PUBLIC WELFARE TO MAKE WORKERS'  
COMPENSATION INSURANCE AVAILABLE TO ALL EMPLOYERS THROUGH  
THE STATE FUND AS THE INSURER OF LAST RESORT, AND IN MAKING  
THIS INSURANCE AVAILABLE, THE STATE FUND HAS INCURRED AN  
UNFUNDED LIABILITY; AND

WHEREAS, THE UNFUNDED LIABILITY HAS GROWN EACH YEAR  
DESPITE THE FACT THAT THERE HAVE BEEN NUMEROUS ATTEMPTS TO  
SOLVE THE PROBLEM BY LEGISLATION AND OTHER METHODS, BUT  
THOSE ATTEMPTS HAVE NOT RESOLVED THE PROBLEM; AND

WHEREAS, THE LEGISLATURE SEPARATED THE PAYMENT STRUCTURE  
AND SOURCES FOR CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS  
THAT OCCURRED BEFORE JULY 1, 1990 (THE "OLD FUND"), FROM  
INJURIES OCCURRING ON OR AFTER JULY 1, 1990 (THE "NEW  
FUND"), AND PROVIDED REVENUE OPTIONS AND SPENDING LIMITS;  
AND

WHEREAS, THIS SEPARATION HAS NOT ELIMINATED THE UNFUNDED  
LIABILITY, WHICH IS ESTIMATED TO BE IN EXCESS OF \$400



1 MILLION; AND

2 WHEREAS, THE JOINT SELECT COMMITTEE ON WORKERS'  
3 COMPENSATION OF THE 52ND LEGISLATURE SOLICITED FROM PRIVATE  
4 INSURANCE AND REINSURANCE MARKETS PROPOSED SOLUTIONS TO  
5 LIQUIDATE THE OLD FUND UNFUNDED LIABILITY; AND

6 WHEREAS, INSURANCE AND REINSURANCE MARKETS RESPONDED TO  
7 THE COMMITTEE'S REQUEST FOR ASSISTANCE TO LIQUIDATE THE OLD  
8 FUND UNFUNDED LIABILITY; AND

9 WHEREAS, THE COMMITTEE REVIEWED AND CONCURRED IN A  
10 PRELIMINARY PROPOSAL OF ONE OF THE INSURANCE AND REINSURANCE  
11 MARKETS THAT THE COMMITTEE BELIEVED PROVIDES SIGNIFICANT  
12 BENEFITS TO MONTANA, INCLUDING BUT NOT LIMITED TO:

13 (1) RISK TRANSFER;

14 (2) PROFIT SHARING BETWEEN THE REINSURER AND THE STATE;

15 (3) INVESTMENT OF PREMIUMS IN MONTANA FINANCIAL  
16 INSTITUTIONS AND INVESTMENTS;

17 (4) FUNDING AND FINANCE OPTIONS;

18 (5) SECURITY TO MONTANA IN THE EVENT OF CONTRACT BREACH  
19 OR INSOLVENCY OF THE REINSURER;

20 (6) INDUSTRY BEST CLAIMS MANAGEMENT AND ADMINISTRATION;

21 AND

22 (7) DEVELOPMENT OF CLEAN INDUSTRY PRIVATE SECTOR JOBS;

23 AND

24 WHEREAS, THERE MAY BE MERIT IN THE PROPOSAL, AND IT MAY  
25 BE IN THE BEST INTERESTS OF MONTANA TO PROCEED WITH THE

1 NEGOTIATIONS WITH THE REINSURER.

2 THEREFORE, THE LEGISLATURE FINDS IT APPROPRIATE TO  
3 EMPOWER THE GOVERNOR TO FULLY INVESTIGATE AND NEGOTIATE A  
4 REINSURANCE SOLUTION.

5  
6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

7 Section 1.--Section 2-4-102, MCA, is amended to read:--

8 "2-4-102.--Definitions.--For purposes of this chapter,  
9 the following definitions apply:

10 (i)--"Administrative code committee" or "committee"  
11 means the committee provided for in Title 5, chapter 14;

12 (2)--(a)--"Agency" means an agency, as defined in  
13 2-3-102, of the state government, except that the provisions  
14 of this chapter do not apply to the following:

15 (i)--the state board of pardons, except that the board  
16 is subject to the requirements of 2-4-103, 2-4-201, 2-4-202,  
17 and 2-4-306 and its rules must be published in the  
18 Administrative Rules of Montana and the Montana  
19 Administrative Register;

20 (ii)--the supervision and administration of a penal  
21 institution with regard to the institutional supervision,  
22 custody, control, care, or treatment of youths or prisoners;

23 (iii)--the board of regents and the Montana university  
24 system;

25 (iv)--the financing, construction, and maintenance of

1 public-works, or  
 2 {v}--the--state--compensation mutual insurance fund and  
 3 its board of directors.  
 4 {b}--Agency does not include a school district, unit of  
 5 local government, or any other political subdivision of the  
 6 state.  
 7 {3}--"ARM" means the Administrative Rules of Montana.  
 8 {4}--"Contested case" means a proceeding before an  
 9 agency in which a determination of legal rights, duties, or  
 10 privileges of a party is required by law to be made after an  
 11 opportunity for hearing. The term includes but is not  
 12 restricted to ratemaking, price fixing, and licensing.  
 13 {5}--"License" includes the whole or part of any agency  
 14 permit, certificate, approval, registration, charter, or  
 15 other form of permission required by law but does not  
 16 include a license required solely for revenue purposes.  
 17 {6}--"Licensing" includes any agency process respecting  
 18 the grant, denial, renewal, revocation, suspension,  
 19 annulment, withdrawal, limitation, transfer, or amendment of  
 20 a license.  
 21 {7}--"Party" means a person named or admitted as a party  
 22 or properly seeking and entitled as of right to be admitted  
 23 as a party, but nothing herein in this chapter may be  
 24 construed to prevent an agency from admitting any person as  
 25 a party for limited purposes.

1 {8}--"Person" means an individual, partnership,  
 2 corporation, association, governmental subdivision, agency,  
 3 or public organization of any character.  
 4 {9}--"Register" means the Montana Administrative  
 5 Register.  
 6 {10}--"Rule" means each agency regulation, standard, or  
 7 statement of general applicability that implements,  
 8 interprets, or prescribes law or policy or describes the  
 9 organization, procedures, or practice requirements of an  
 10 agency. The term includes the amendment or repeal of a prior  
 11 rule but does not include:  
 12 {a} statements concerning only the internal management  
 13 of an agency and not affecting private rights or procedures  
 14 available to the public;  
 15 {b} formal opinions of the attorney general and  
 16 declaratory rulings issued pursuant to 2-4-501;  
 17 {c} rules relating to the use of public works,  
 18 facilities, streets, and highways when the substance of the  
 19 rules is indicated to the public by means of signs or  
 20 signals;  
 21 {d} seasonal rules adopted annually or biennially  
 22 relating to hunting, fishing, and trapping when there is a  
 23 statutory requirement for the publication of the rules and  
 24 rules adopted annually or biennially relating to the  
 25 seasonal recreational use of lands and waters owned or

1 controlled--by--the-state-when-the-substance-of-the-rules-is  
 2 indicated-to-the-public-by-means-of-signs-or-signals;  
 3 (e)--rules---implementing---the---state---personnel  
 4 classification--plan; the-state-wage-and-salary-plan; or-the  
 5 statewide-budgeting-and-accounting-system;  
 6 (f)--uniform--rules--adopted--pursuant---to---interstate  
 7 compact;--except--that-the-rules-must-be-filed-in-accordance  
 8 with-2-4-306-and-must-be-published-in-the-Administrative  
 9 Rules-of-Montana;  
 10 (ii)--"Substantive-rules"--are-either:  
 11 (a)--legislative--rules;--which-if-adopted-in-accordance  
 12 with-this-chapter-and-under-expressly-delegated-authority-to  
 13 promulgate-rules-to-implement-a-statute-have--the--force--of  
 14 law-and-when-not-so-adopted-are-invalid; or  
 15 (b)--adjective--or--interpretive--rules;--which--may--be  
 16 adopted-in-accordance-with-this-chapter-and-under-express-or  
 17 implied--authority-to-codify-an-interpretation-of-a-statute.  
 18 The-interpretation-lacks-the-force-of-law."  
 19 Section-2--Section-33-1-401; MCA; is-amended-to-read:  
 20 "33-1-401--Examination--of---insurers and---state  
 21 compensation--mutual--insurance--fund;--(1)--The-commissioner  
 22 shall-examine-the-affairs; transactions; accounts;--records;  
 23 and---assets--of--each--authorized--insurer and--the--state  
 24 compensation-mutual-insurance-fund as-often-as-he-deems the  
 25 commissioner--considers advisable. He The-commissioner shall

1 so-examine-each-domestic-insurer-not--less--frequently--than  
 2 every-3-years. The-commissioner-shall-examine-the-state-fund  
 3 on--a--yearly--basis--beginning--no--sooner--than--October-1  
 4 following-the-end-of-the--fiscal--year. Examination--of--an  
 5 alien--insurer--may-be-limited-to-its-insurance-transactions  
 6 and--affairs--in--the--United--States. Examination--of---a  
 7 reciprocal--insurer--may--also--include--examination--of-its  
 8 attorney-in-fact--insofar--as--the--transactions--of--the  
 9 attorney-in-fact-relate-to-the-insurer;  
 10 (2)--The--commissioner-shall-in-like-manner-examine-each  
 11 insurer-applying-for-an-initial-certificate-of-authority--to  
 12 do-business-in-this-state;  
 13 (3)--In-lieu-of--making--his--own an examination; the  
 14 commissioner-may; in-his-discretion; accept-a-full-report-of  
 15 the-last-recent-examination-of-a-foreign-or--alien--insurer;  
 16 certified--to--by--the--insurance--supervisory--official--of  
 17 another--state;--territory; commonwealth; or-district-of-the  
 18 United-States;  
 19 (4)--If; after-examining-the-state--compensation--mutual  
 20 insurance--fund-pursuant-to-subsection-(1); the-commissioner  
 21 determines-that-the-fund; if--it--were--a--private--insurer;  
 22 would--be--subject-to-the-provisions-of-Title-33; chapter-2;  
 23 part-13; the-commissioner-shall-report-those-findings-to-the  
 24 governor-and-the-legislature."

25 NEW SECTION. SECTION 1. LIQUIDATION OF OLD FUND

1 LIABILITY. (1) (A) THE GOVERNOR IS AUTHORIZED TO NEGOTIATE  
 2 THE LIQUIDATION OF THE UNFUNDED LIABILITY OF THE OLD FUND OF  
 3 THE STATE FUND, AS DEFINED IN 39-71-2312, IF AN AGREEMENT  
 4 CAN BE REACHED THAT IS IN THE BEST INTERESTS OF MONTANA. THE  
 5 SCOPE OF ANY NEGOTIATED AGREEMENT MAY INCLUDE BUT MAY NOT  
 6 EXCEED ALL OF THE RIGHTS, PRIVILEGES, LIABILITIES, AND  
 7 DUTIES OF THE STATE FUND WITH RESPECT TO ALL CLAIMS ARISING  
 8 PRIOR TO JULY 1, 1990.

9 (B) THE GOVERNOR MAY NOT ENTER INTO AN AGREEMENT THAT  
 10 PAYS CASH OR ASSETS IN AN AGGREGATE AMOUNT THAT EXCEEDS \$400  
 11 MILLION TO THE OTHER PARTIES TO THE AGREEMENTS.

12 (C) ANY CONTRACT FINALIZED BY THE GOVERNOR MUST CONTAIN  
 13 A PROVISION THAT THE CONTRACT IS VOID UNLESS NECESSARY  
 14 FINANCING TO FUND THE UNFUNDED LIABILITY HAS BEEN PROVIDED  
 15 BY THE 1993 LEGISLATURE.

16 (D) TO BE EFFECTIVE, A CONTRACT MUST BE FINALIZED BY  
 17 THE GOVERNOR WITHIN 120 DAYS OF [THE EFFECTIVE DATE OF THIS  
 18 SECTION].

19 (E) ANY CONTRACT FINALIZED BY THE GOVERNOR MAY REQUIRE  
 20 REINSURANCE PREMIUM PAYMENTS BY THE STATE TO BE USED TO  
 21 LIQUIDATE THE OLD FUND LIABILITY.

22 (2) ANY ENTITY ENTERING INTO AN AGREEMENT WITH MONTANA  
 23 UNDER [SECTION 2] OR THIS SECTION SHALL SUBMIT AN ANNUAL  
 24 REPORT TO THE LEGISLATIVE AUDIT COMMITTEE. THE FIRST REPORT  
 25 IS DUE 12 MONTHS AFTER THE AGREEMENT IS FINALIZED AND

1 THEREAFTER MAY BE SUBMITTED ON A FISCAL YEAR BASIS.

2 (3) ANY NEGOTIATIONS OR AGREEMENTS ENTERED INTO  
 3 PURSUANT TO [SECTION 2] AND THIS SECTION ARE NOT SUBJECT TO  
 4 THE COMPETITIVE BIDDING REQUIREMENTS OF TITLE 18, CHAPTER 4.

5 (4) A NEGOTIATION OR AN AGREEMENT ENTERED INTO PURSUANT  
 6 TO [SECTION 2] IS NOT SUBJECT TO THE PRIVATIZATION PLAN  
 7 REQUIREMENTS OF TITLE 2, CHAPTER 8, PART 3.

8 NEW SECTION. SECTION 2. CLAIMS SETTLEMENT OF NEW FUND  
 9 CLAIMS -- NEW FUND MANAGEMENT. AS PART OF THE NEGOTIATED  
 10 LIQUIDATION OF THE UNFUNDED LIABILITY OF THE OLD FUND OF THE  
 11 STATE FUND, AS DEFINED IN 39-71-2312, THE GOVERNOR MAY  
 12 NEGOTIATE FOR CLAIMS SETTLEMENT OF THE CLAIMS OF PERSONS  
 13 WHOSE BENEFITS HAVE NOT BEEN DETERMINED UNDER A CLAIM BASED  
 14 ON AN INJURY OCCURRING ON OR AFTER JULY 1, 1990, AND FOR  
 15 SERVICES WITH RESPECT TO THE NEW FUND OF THE STATE FUND,  
 16 INCLUDING BUT NOT LIMITED TO CLAIMS MANAGEMENT SERVICES,  
 17 THIRD-PARTY ADMINISTRATION, AND MEDICAL COST CONTAINMENT  
 18 AGREEMENTS IF THE CONTRACTED SERVICES ARE IN THE BEST  
 19 INTERESTS OF THE STATE. AN AGREEMENT UNDER THIS SECTION IS  
 20 VALID ONLY IF IT IS PART OF AN AGREEMENT THAT MEETS THE  
 21 REQUIREMENTS OF [SECTION 1].

22 NEW SECTION. SECTION 3. AUDIT OF CONTRACTED SERVICES  
 23 AND OLD FUND LIQUIDATION. ANY PROPOSAL INVOLVING THE PRIVATE  
 24 SECTOR IN LIQUIDATION OF THE UNFUNDED LIABILITY OF THE OLD  
 25 FUND OF THE STATE FUND, AS DEFINED IN 39-71-2312, OR IN

CLAIMS SETTLEMENT AND MANAGEMENT OF THE NEW FUND OF THE  
STATE FUND MUST PROVIDE FOR AUDIT AND REPORTING MECHANISMS  
IN COMPLIANCE WITH 39-71-2361.

NEW SECTION. SECTION 4. MUTUALLY AGREEABLE LUMP-SUM  
SETTLEMENTS. BEGINNING JULY 1, 1993, A WORKERS' COMPENSATION  
CLAIMANT AND THE STATE FUND OR A REINSURER MAY, REGARDLESS  
OF THE LUMP-SUM LAW IN EFFECT ON THE DATE OF THE INJURY,  
MUTUALLY AGREE TO A LUMP-SUM SETTLEMENT OF A CLAIM. IF A  
MUTUAL AGREEMENT IS NOT REACHED, THE LUMP-SUM LAW IN EFFECT  
ON THE DATE OF THE INJURY APPLIES.

SECTION 5. SECTION 39-71-721, MCA, IS AMENDED TO READ:

"39-71-721. Compensation for injury causing death --  
limitation. Except as provided in [section 4]:

(1) (a) if if an injured employee dies and the injury  
was the proximate cause of such death, then the beneficiary  
of the deceased is entitled to the same compensation as  
though the death occurred immediately following the injury.  
A beneficiary's eligibility for benefits commences after the  
date of death, and the benefit level is established as set  
forth in subsection (2).

(b) The the insurer is entitled to recover any  
overpayments or compensation paid in a lump sum to a worker  
prior to death but not yet recouped. The insurer shall  
recover such the payments from the beneficiary's biweekly  
payments as provided in 39-71-741(5).

(2) ~~To~~ to beneficiaries as defined in 39-71-116(3)(a)  
through (3)(d), weekly compensation benefits for an injury  
causing death are 66 2/3% of the decedent's wages. The  
maximum weekly compensation benefit may not exceed the  
state's average weekly wage at the time of injury. The  
minimum weekly compensation benefit is 50% of the state's  
average weekly wage, but in no event may it exceed the  
decedent's actual wages at the time of his death.

(3) ~~To~~ to beneficiaries as defined in 39-71-116(3)(e)  
and (3)(f), weekly benefits must be paid to the extent of  
the dependency at the time of the injury, subject to a  
maximum of 66 2/3% of the decedent's wages. The maximum  
weekly compensation may not exceed the state's average  
weekly wage at the time of injury.

(4) ~~if~~ if the decedent leaves no beneficiary as defined  
in 39-71-116, a lump-sum payment of \$3,000 must be paid to  
the decedent's surviving parent or parents;

(5) ~~if~~ if any beneficiary of a deceased employee dies,  
the right of such the beneficiary to compensation under this  
chapter ceases. Death benefits must be paid to a surviving  
spouse for 500 weeks subsequent to the date of the deceased  
employee's death or until the spouse's remarriage, whichever  
occurs first. After benefit payments cease to a surviving  
spouse, death benefits must be paid to beneficiaries, if  
any, as defined in 39-71-116(3)(b) through (3)(d).

(6) In in all cases, benefits must be paid to beneficiaries, as defined in 39-71-116; and

(7) Benefits benefits paid under this section may not be adjusted for cost of living as provided in 39-71-702.

~~(8) Notwithstanding subsections (2) and (3), beginning July 1, 1987, through June 30, 1991, the maximum weekly compensation benefits for injury causing death may not exceed the state's average weekly wage of \$299 established July 1, 1986. Beginning July 1, 1987, through June 30, 1991, the minimum weekly compensation for injury causing death shall be \$149.50, which is 50% of the state's average weekly wage established July 1, 1986, but in no event may it exceed the decedent's actual wages at the time of death.~~

**SECTION 6. SECTION 39-71-2315, MCA, IS AMENDED TO READ:**

"39-71-2315. Management of state fund -- powers and duties of the board. Except with respect to any agreement established pursuant to [sections 1 and 2] and except as provided in 2-15-1019 or 39-71-2317:

(1) The the management and control of the state fund is vested solely in the board; and

(2) The 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 power, authority, or jurisdiction over the state fund, either in the administration of the state fund or in

connection with the insurance business to be carried on under the provisions of this part, as fully and completely as the governing body of a private mutual insurance carrier, in order to fulfill the objectives and intent of this part. Bonds may not be issued by the board, the state fund, or the executive director."

**SECTION 7. SECTION 39-71-2351, MCA, IS AMENDED TO READ:**

"39-71-2351. Purpose of separation of state fund liability as of July 1, 1990, and of separate funding of claims before and on or after that date. (1) An unfunded liability exists in the state fund. It has existed since at least the mid-1980s and has grown each year. There have been numerous attempts to solve the problem by legislation and other methods. These attempts have alleviated the problem somewhat, but the problem has not been solved.

(2) The legislature has determined that it is necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability. The legislature has determined that the most cost-effective and efficient way to provide a source of funding for and to ensure payment of the unfunded liability and the best way to administer the unfunded liability is to:

(a) separate the liability of the state fund on the

basis of whether a claim is for an injury resulting from an accident that occurred before July 1, 1990, or an accident that occurs on or after that date;

(b) extend the payroll tax imposed by 39-71-2503 and dedicate the tax money first to the repayment of bonds issued under 39-71-2354 and 39-71-2355 and then to the repayment of loans given under 39-71-2354 and 39-71-2355, to payment of premiums for a negotiated liquidation of the unfunded liability of the old fund of the state fund as provided in [section 1], and the direct payment of the costs of administering and paying claims for injuries from accidents that occurred before July 1, 1990.

~~{3}--The-legislature-further-determines-that-in-order-to prevent--the--creation--of--a--new--unfunded--liability-with respect-to-claims-for-injuries-for-accidents-that-occur-on or--after--July--1,--1990,--certain-duties-of-the-state-fund should-be-clarified-and-legislative-oversight-of--the--state fund-should-be-increased--"~~

**SECTION 8. SECTION 39-71-2354, MCA, IS AMENDED TO READ:**

"39-71-2354. Use of payroll tax proceeds -- loans -- bonds. (1) Taxes collected under 39-71-2503 may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990, including the cost of repaying bonds issued and loan proceeds given under 39-71-2355 and this section and any premium payments that

may be required by an agreement made pursuant to [section 1]. If the state fund determines that, for the next 1 or more years following the date of the determination, the tax revenue, together with funds in the account required by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, will be insufficient to administer and pay those claims, the state fund may, through its board of directors, request the budget director to certify to the board of investments that additional funding is necessary. If the budget director agrees with the state fund's board of directors that additional funding is necessary, the budget director shall certify to the board of investments the amount that the budget director determines is necessary to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Except as provided in subsection (2), the board of investments shall, at times and in amounts it considers necessary or advisable, finance the amount certified by the budget director by giving the state fund the proceeds of a loan or a bond issue to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. loans--must--be--from--reserves--accumulated--from premiums-paid-to-the-state-fund-based-upon-wages-payable--on or-after-July-1,--1990-- In the event that loans are necessary for an agreement established in accordance with [sections 1

1 and 2], the governor is authorized to pursue internal and  
 2 external financing that is in the best interests of the  
 3 state. The board of investments shall choose the method of  
 4 financing that is most cost-effective for the state fund. A  
 5 loan must bear interest at the rate the money would earn in  
 6 the pooled investment fund required by 17-6-203. The board  
 7 of investments may also, upon request of the board of  
 8 directors of the state fund, give the state fund the  
 9 proceeds of a bond issue, to be used to pay off loans made  
 10 under 39-71-2355 and this section. Bonds for the state fund  
 11 must be workers' compensation bonds issued under 39-71-2355.

12 (2) The Except for any agreement established pursuant  
 13 to [sections 1 and 2], the total amount of loan proceeds  
 14 given to the state fund plus workers' compensation bonds  
 15 issued under 39-71-2355, except bonds issued to repay loans  
 16 as provided for in subsection (1), may not exceed \$220  
 17 million. All loan and bond proceeds given to the state fund  
 18 must be repaid to the board of investments before July 1,  
 19 2020."

20 **SECTION 9. SECTION 39-71-2503, MCA, IS AMENDED TO READ:**

21 "39-71-2503. Workers' compensation payroll tax. (1) (a)  
 22 There is imposed on each employer a workers' compensation  
 23 payroll tax in an amount equal to 0.28% of the employer's  
 24 payroll in the preceding calendar quarter for all  
 25 employments covered under 39-71-401, except that if an

1 employer is subject to 15-30-204(2), the tax is an amount  
 2 equal to 0.28% of the employer's payroll in the preceding  
 3 week. This payroll tax must be used to reduce the unfunded  
 4 liability in the state fund incurred for claims for injuries  
 5 resulting from accidents that occurred before July 1, 1990,  
 6 or for payment of those claims under [section 1]. If one or  
 7 more loans or bonds are outstanding, the tax must be  
 8 continued at the 0.28% rate and the legislature may not  
 9 modify the tax rate, the use of the tax proceeds, or this  
 10 section in a manner that reduces the security for repayment  
 11 of the outstanding loans or bonds, except that the  
 12 legislature may forgive payment of the tax or reduce the tax  
 13 rate for any 12-month period if the workers' compensation  
 14 bond repayment account contains on the first day of that  
 15 period an amount, regardless of the source, that is in  
 16 excess of the reserve maintained in the account and that is  
 17 equal to the amount needed to pay and dedicated to the  
 18 payment of the principal, premium, and interest that must be  
 19 paid during that period on the outstanding loans or bonds.  
 20 The legislature may not increase the tax rate except upon a  
 21 two-thirds vote of each house.

22 (b) Each employer shall maintain the records the  
 23 department requires concerning the employer's payroll. The  
 24 records are subject to inspection by the department and its  
 25 employees and agents during regular business hours.



(2) All collections of the tax are appropriated to and must be deposited as received in the tax account. The tax is in addition to any other tax or fee assessed against employers subject to the tax.

(3) (a) On or before the last day of April, July, October, and January, each employer subject to the tax shall file a return in the form and containing the information required by the department and, except as provided in subsection (3)(b), pay the amount of tax required by this section to be paid on the employer's payroll for the preceding calendar quarter.

(b) An employer subject to 15-30-204(2) shall remit to the department a weekly payment with its weekly withholding tax payment in the amount required by subsection (1)(a).

(c) A tax payment required by subsection (1)(a) must be made with the return filed pursuant to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any remainder to the workers' compensation tax account provided in 39-71-2504.

(4) An employer's officer or employee with the duty to collect, account for, and pay to the department the amounts due under this section who willfully fails to pay an amount is liable to the state for the unpaid amount and any penalty and interest relating to that amount.

(5) Returns and remittances under subsection (3) and

any information obtained by the department during an audit are subject to the provisions of 15-30-303, but the department may disclose the information to the department of labor and industry under circumstances and conditions that ensure the continued confidentiality of the information.

(6) The department of labor and industry and the state fund shall, on July 1, 1991, or as soon after that date as possible, give the department a list of all employers having coverage under any plan administered or regulated by the department of labor and industry and the state fund. After the lists have been given to the department, the department of labor and industry and the state fund shall update the lists weekly. The department of labor and industry and the state fund shall provide the department with access to their computer data bases and paper files and records for the purpose of the department's administration of the tax imposed by this section.

(7) The provisions of Title 15, chapter 30, not in conflict with the provisions of this part regarding administration, remedies, enforcement, collections, hearings, interest, deficiency assessments, credits for overpayment, statute of limitations, penalties, and department rulemaking authority apply to the tax, to employers, and to the department."

**SECTION 10. 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) A person may not 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) The provisions of this code do not 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 the 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 those 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 21 and 23, sections 1 and 2, 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 in which 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 in which the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program."

#### **SECTION 11. SECTION 39-71-105, MCA, IS AMENDED TO READ:**

"39-71-105. Declaration of public policy. For the purposes of interpreting and applying Title 39, chapters 71 and 72, the following is the public policy of this state:

(1) It is an objective of the Montana workers'

1 compensation system to provide, without regard to fault,  
2 wage supplement and medical benefits to a worker suffering  
3 from a work-related injury or disease. Wage-loss benefits  
4 are not intended to make an injured worker whole; they are  
5 intended to assist a worker at a reasonable cost to the  
6 employer. Within that limitation, the wage-loss benefit  
7 should bear a reasonable relationship to actual wages lost  
8 as a result of a work-related injury or disease.

9 (2) A worker's removal from the work force due to a  
10 work-related injury or disease has a negative impact on the  
11 worker, the worker's family, the employer, and the general  
12 public. Therefore, it is an objective of the workers'  
13 compensation system to return a worker to work as soon as  
14 possible after the worker has suffered a work-related injury  
15 or disease.

16 (3) Montana's workers' compensation and occupational  
17 disease insurance systems are intended to be primarily  
18 self-administering. Claimants should be able to speedily  
19 obtain benefits, and employers should be able to provide  
20 coverage at reasonably constant rates. To meet these  
21 objectives, the system must be designed to minimize reliance  
22 upon lawyers and the courts to obtain benefits and interpret  
23 liabilities.

24 (4) Title 39, chapters 71 and 72, must be construed  
25 according to their terms and not liberally in favor of any

1 party.

2 (5) It is the intent of the legislature that stress  
3 claims, often referred to as "mental-mental claims" and  
4 "mental-physical claims", are not compensable under  
5 Montana's workers' compensation and occupational disease  
6 laws. The legislature recognizes that these claims are  
7 difficult to objectively verify and that the claims have a  
8 potential to place an economic burden on the workers'  
9 compensation and occupational disease system. The  
10 legislature also recognizes that there are other states that  
11 do not provide compensation for various categories of stress  
12 claims and that stress claims have presented economic  
13 problems for certain other jurisdictions. In addition, not  
14 all injuries are compensable under the present system, as is  
15 the case with repetitive injury claims, and it is within the  
16 legislature's authority to define the limits of the workers'  
17 compensation and occupational disease system."

18 **SECTION 12. SECTION 2-15-1019, MCA, IS AMENDED TO READ:**

19 "2-15-1019. Board of directors of the state  
20 compensation mutual insurance fund. (1) There is a board of  
21 directors of the state compensation mutual insurance fund.

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

25 (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 serves at the pleasure of the governor. The governor may remove a member at any time and appoint a new member to the office. 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 members must be appointed and compensated in the same manner as members of a quasi-judicial board as provided in 2-15-124, except that the requirement that at least one member be an attorney does not apply and except

that the members serve at the pleasure of the governor."

**SECTION 13.** SECTION 39-71-2317, MCA, IS AMENDED TO READ:

"39-71-2317. Appointment of executive director -- management staff. (1) The board governor shall, at the beginning of each gubernatorial term, appoint an executive director of the state fund who has general responsibility for the operations of the state fund.

(2) The executive director serves at the pleasure of the governor. The governor may remove the executive director at any time and appoint a new executive director to the office.

(3) The executive director must have executive level experience, with knowledge of the insurance industry. The executive director must receive compensation as set by the board and serve at the pleasure of the board. The executive director may hire the management staff of the state fund, each of whom serves at the pleasure of the executive director."

**SECTION 14.** SECTION 18-8-103, MCA, IS AMENDED TO READ:

"18-8-103. Exemptions. This part does not apply to employment of:

(1) registered professional engineers, surveyors, real estate appraisers, or registered architects;

(2) physicians, dentists, or other medical, dental, or

health care providers;

(3) expert witnesses hired for use in litigation, hearings officers hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or attorneys as specified by executive order of the governor;

(4) consulting actuaries to the public retirement boards or the state compensation insurance fund; or

(5) private consultants employed by the student associations of the university system with money raised from student activity fees designated for use by those student associations."

**Section 15.** Section 39-71-2314, MCA, is amended to read:

"39-71-2314. State fund -- assigned risk plan. (1) If an assigned risk plan is established and administered pursuant to 39-71-431, 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.

(2) The state fund is subject to laws that generally apply to state agencies, including but not limited to Title 2, chapters 2, 3, 4 (except as provided in 39-71-2316), and 6, and Title 5, chapter 13. The state fund is not exempt from a law that applies to state agencies unless that law

specifically exempts the state fund by name and clearly states that it is exempt from that law.

(2) THE STATE FUND IS SUBJECT TO LAWS THAT GENERALLY APPLY TO STATE AGENCIES, INCLUDING BUT NOT LIMITED TO TITLE 2, CHAPTERS 2, 3, 4 (ONLY AS PROVIDED IN 39-71-2316), AND 6, AND TITLE 5, CHAPTER 13. THE STATE FUND IS NOT EXEMPT FROM A LAW THAT APPLIES TO STATE AGENCIES UNLESS THAT LAW SPECIFICALLY EXEMPTS THE STATE FUND BY NAME AND CLEARLY STATES THAT IT IS EXEMPT FROM THAT LAW."

**Section 16.** Section 39-71-2316, MCA, is amended to read:

"39-71-2316. Powers of the state fund -- rulemaking. For the purposes of carrying out its functions, the state fund may:

(1) insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state and, in connection with the coverage, provide employers' liability insurance. The state fund may charge a minimum yearly premium to cover its administrative costs for coverage of a small employer TO COVER ITS ADMINISTRATIVE COSTS FOR COVERAGE OF A SMALL EMPLOYER.

(2) sue and be sued;

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

1       ~~†4†(3)~~ except as provided in section 21, Chapter 4,  
2 Special Laws of May 1990, enter into contracts relating to  
3 the administration of the state fund, including claims  
4 management, servicing, and payment;

5       ~~†5†(4)~~ collect and disburse money received;

6       ~~†6†(5)~~ adopt classifications and charge premiums for  
7 the classifications so that the state fund will be neither  
8 more nor less than self-supporting~~†7~~. PREMIUM RATES FOR  
9 CLASSIFICATIONS MAY ONLY BE ADOPTED AND CHANGED USING A  
10 PROCESS, A PROCEDURE, FORMULAS, AND FACTORS SET FORTH IN  
11 RULES ADOPTED UNDER TITLE 2, CHAPTER 4, PARTS 2 THROUGH 4.  
12 AFTER SUCH RULES HAVE BEEN ADOPTED, THE STATE FUND NEED NOT  
13 FOLLOW THE RULEMAKING PROVISIONS OF TITLE 2, CHAPTER 4, WHEN  
14 CHANGING CLASSIFICATIONS AND PREMIUM RATES. THE CONTESTED  
15 CASE RIGHTS AND PROVISIONS OF TITLE 2, CHAPTER 4, DO NOT  
16 APPLY TO AN EMPLOYER'S CLASSIFICATION OR PREMIUM RATE.

17 ~~Premium-rates-for-classifications-may-only-be-adopted-and~~  
18 ~~changed--using-a-process†7-a-procedure†7-formulas†7-and-factors~~  
19 ~~set-forth-in-rules-adopted-under-Title-2†7-chapter-4†7-parts-2~~  
20 ~~through-4†7-After-such-rules-have-been-adopted†7-the-state~~  
21 ~~fund-need-not-follow-the-rulemaking-provisions-of-Title-2†7~~  
22 ~~chapter-4†7-when-changing-classifications-and-premium--rates†7~~  
23 ~~The-contested-case-rights-and-provisions-of-Title-2†7-chapter~~  
24 ~~4†7-do-not-apply-to-an-employer's-classification-or-premium~~  
25 ~~rate†7-The-state-fund-must-belong-to-the-national-council-on~~

1 ~~compensation--insurance-and-shall-use-the-classifications-of~~  
2 ~~employment-adopted-by-the-national-council-and-corresponding~~  
3 ~~rates-as-a-basis-for-setting-its-own-rates†7~~ THE STATE FUND  
4 MUST BELONG TO THE NATIONAL COUNCIL ON COMPENSATION  
5 INSURANCE AND MAY USE THE CLASSIFICATIONS OF EMPLOYMENT  
6 ADOPTED BY A WORKERS' COMPENSATION RATING ORGANIZATION AND  
7 CORRESPONDING RATES AS A BASIS FOR SETTING ITS OWN RATES.

8       ~~†7†(6)~~ pay the amounts determined due under a policy of  
9 insurance issued by the state fund;

10       ~~†8†(7)~~ hire personnel;

11       ~~†9†(8)~~ declare dividends if there is an excess of  
12 assets over liabilities. However, dividends may not be paid  
13 until adequate actuarially determined reserves are set  
14 aside. If those reserves have been set aside, money that can  
15 be declared as a dividend must be transferred to the account  
16 created by 39-71-2321 for claims for injuries resulting from  
17 accidents that occurred before July 1, 1990, and used for  
18 the purposes of that account. After all claims funded by  
19 that account have been paid, dividends may be declared and  
20 paid to insureds.

21       ~~†10†(9)~~ perform all functions and exercise all powers  
22 of a domestic-mutual-insurer private insurance carrier that  
23 are necessary, appropriate, or convenient for the  
24 administration of the state fund."

25       **Section 17.** Section 39-71-2323, MCA, is amended to

1 read:

2 "39-71-2323. Surplus in state fund -- payment of  
3 dividends. Subject to the provisions of 39-71-2316~~(9)~~~~(8)~~, if  
4 at the end of any fiscal year there exists in the state fund  
5 account created by 39-71-2321 for claims for injuries  
6 resulting from accidents that occur on or after July 1,  
7 1990, an excess of assets over liabilities, including  
8 necessary reserves and a reasonable surplus, and if the  
9 excess may be refunded safely, then the state fund may  
10 declare a dividend. The rules of the state fund must  
11 prescribe the manner of payment to those employers who have  
12 paid premiums into the state fund in excess of liabilities  
13 chargeable to them in the fund for that year. In determining  
14 the amount or proportion of the balance to which the  
15 employer is entitled as dividends, the state fund shall give  
16 consideration to the prior paid premiums and accident  
17 experience of each individual employer during the dividend  
18 year."

19 **Section 18.** Section 39-71-2352, MCA, is amended to  
20 read:

21 "39-71-2352. Separate payment structure and sources for  
22 claims for injuries resulting from accidents that occurred  
23 before July 1, 1990, and on or after July 1, 1990 --  
24 apending limit. (1) Premiums paid to the state fund based  
25 upon wages payable before July 1, 1990, may be used only to

1 administer and pay claims for injuries resulting from  
2 accidents that occurred before July 1, 1990. Except as  
3 provided in 39-71-2316~~(9)~~~~(8)~~ and 39-71-2354, premiums paid  
4 to the state fund based upon wages payable on or after July  
5 1, 1990, may be used only to administer and pay claims for  
6 injuries resulting from accidents that occur on or after  
7 July 1, 1990.

8 (2) The state fund shall:

9 (a) determine the cost of administering and paying  
10 claims for injuries resulting from accidents that occurred  
11 before July 1, 1990, and separately determine the cost of  
12 administering and paying claims for injuries resulting from  
13 accidents that occur on or after July 1, 1990;

14 (b) keep adequate and separate accounts of the costs  
15 determined under subsection (2)(a); and

16 (c) fund administrative expenses and benefit payments  
17 for claims for injuries resulting from accidents that  
18 occurred before July 1, 1990, and claims for injuries  
19 resulting from accidents that occur on or after July 1,  
20 1990, separately from the sources provided by law.

21 (3) The state fund may not spend more than \$3 million a  
22 year to administer claims for injuries resulting from  
23 accidents that occurred before July 1, 1990."

24 **NEW SECTION. Section 19.** Rate setting. The board has  
25 the authority to establish the rates to be charged by the

1 state fund for insurance. The board shall engage the  
 2 services of an independent actuary who is a member in good  
 3 standing with the American academy of actuaries to develop  
 4 and recommend actuarially sound rates. Rates must be set at  
 5 amounts sufficient, when invested, to carry THE ESTIMATED  
 6 COST OF all claims to maturity, to meet the reasonable  
 7 expenses of conducting the business of the state fund, and  
 8 to amass and maintain, by July 1, 2001, a reasonable surplus  
 9 in accordance with insurance industry standards 2003, A  
 10 SURPLUS OF 25% OF THE ANNUAL PREMIUM.

11 NEW SECTION. Section 20. Authority of Insurance  
 12 commissioner LEGISLATIVE AUDITOR with respect to state fund.  
 13 (1) The insurance commissioner LEGISLATIVE AUDITOR shall  
 14 review rates established by the board to determine if the  
 15 rates or any rate changes are excessive, inadequate, or  
 16 unfairly discriminatory. The insurance commissioner has the  
 17 same authority over the state fund's rate setting procedures  
 18 as the insurance commissioner has over the rate setting  
 19 procedures of a private insurer.

20 (2) The state fund is subject to the provisions of  
 21 Title 33, chapter 2, except for 33-2-515 and Title 33,  
 22 chapter 2, parts 7, 8, and 13 EACH YEAR, THE LEGISLATIVE  
 23 AUDITOR SHALL:

24 (1) EXAMINE THE STATE FUND BEGINNING NO SOONER THAN  
 25 OCTOBER 1 FOLLOWING THE END OF THE FISCAL YEAR; AND

1 (2) REPORT THE FINDINGS OF THE EXAMINATION AND RATE  
 2 REVIEW TO THE GOVERNOR, THE LEGISLATURE, AND THE BOARD OF  
 3 DIRECTORS OF THE STATE FUND.

4 NEW SECTION. Section 21. Agency law -- submission of  
 5 budget -- annual report. (1) The state fund is subject to  
 6 state laws applying to state agencies, except that AS  
 7 OTHERWISE PROVIDED BY LAW, AND it is exempt from the  
 8 provisions of The Legislative Finance Act in Title 5,  
 9 chapter 12.

10 (2) The executive director shall annually submit to the  
 11 board for its approval an estimated budget of the entire  
 12 expense of administering the state fund for the succeeding  
 13 fiscal year, with due regard to the business interests and  
 14 contract obligations of the state fund. The budget  
 15 ADMINISTRATIVE EXPENDITURES approved by the board may not  
 16 exceed 15% of the EARNED annual employer premiums PREMIUM OF  
 17 THE PRIOR FISCAL YEAR. A copy of the approved budget must be  
 18 delivered to the governor and the legislature.

19 (3) The board shall submit an annual reserve FINANCIAL  
 20 report prepared by the state fund's actuary to the governor  
 21 and to the legislature as provided in 5-11-210, indicating  
 22 the business done by the state fund during the previous year  
 23 and containing a statement of the resources and ESTIMATED  
 24 liabilities of the state fund AS DETERMINED BY AN  
 25 INDEPENDENT ACTUARY.



**Section 22.** Section 39-71-2321, MCA, is amended to read:

"39-71-2321. What to be deposited in state fund.

(1) (a) All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the state fund, and securities acquired by or through use of money must be deposited in the state fund. They must be separated into two accounts based upon whether they relate to claims for injuries resulting from accidents that occurred before July 1, 1990, or claims for injuries resulting from accidents that occur on or after that date.

(b) ~~Subject to the requirements of section 9, the state fund shall set aside up to 15% of annual employer premiums for the expense of administering the state fund for the succeeding fiscal year. The administrative expense funds~~ ALL FUNDS DEPOSITED IN THE STATE FUND are statutorily appropriated as provided in 17-7-502.

(2) The proceeds of bonds issued and loans given to the state fund under 39-71-2354 and 39-71-2355 must be deposited in the account for claims for injuries resulting from accidents that occurred before July 1, 1990."

**Section 23.** Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending

by a state agency without the need for a biennial legislative appropriation or budget amendment.

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

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

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

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501; 39-71-2504; 39-71-2321; 44-12-206; 44-13-102; 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103;

1 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301;  
2 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

3 (4) There is a statutory appropriation to pay the  
4 principal, interest, premiums, and costs of issuing, paying,  
5 and securing all bonds, notes, or other obligations, as due,  
6 that have been authorized and issued pursuant to the laws of  
7 Montana. Agencies that have entered into agreements  
8 authorized by the laws of Montana to pay the state  
9 treasurer, for deposit in accordance with 17-2-101 through  
10 17-2-107, as determined by the state treasurer, an amount  
11 sufficient to pay the principal and interest as due on the  
12 bonds or notes have statutory appropriation authority for  
13 the payments. (In subsection (3): pursuant to sec. 7, Ch.  
14 567, L. 1991, the inclusion of 19-6-709 terminates upon  
15 death of last recipient eligible for supplemental benefit;  
16 and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of  
17 22-3-811 terminates June 30, 1993.)"

18 NEW SECTION. SECTION 24. APPROPRIATION. THERE IS AN  
19 APPROPRIATION OF \$35,000 FOR EACH FISCAL YEAR OF THE  
20 BIENNIUM BEGINNING JULY 1, 1993, TO THE LEGISLATIVE  
21 AUDITOR'S OFFICE FOR CONTRACTED SERVICES FOR THE DUTIES  
22 REQUIRED TO BE PERFORMED PURSUANT TO [SECTION 20] TO BE PAID  
23 BY THE STATE FUND FROM THE FUNDS APPROPRIATED IN [SECTION  
24 22].

25 SECTION 25. SECTION 39-71-606, MCA, IS AMENDED TO READ:

1 "39-71-606. Insurer to accept or deny claim within  
2 thirty days of receipt -- notice of denial -- notice to  
3 employer. (1) Every insurer under any plan for the payment  
4 of workers' compensation benefits shall, within 30 days of  
5 receipt of a claim for compensation, either accept or deny  
6 the claim, and if denied shall inform the claimant and the  
7 department in writing of such denial.

8 (2) The department shall make available to insurers for  
9 distribution to claimants sufficient copies of a document  
10 describing current benefits and entitlements available under  
11 Title 39, chapter 71. Upon receipt of a claim, each insurer  
12 shall promptly notify the claimant in writing of potential  
13 benefits and entitlements available by providing the  
14 claimant a copy of the document prepared by the department.

15 (3) Upon the request of an employer it insures, an  
16 insurer shall notify the employer of all compensation  
17 benefits that are ongoing and are being charged against that  
18 employer's account."

19 NEW SECTION. SECTION 26. NAME CHANGE -- DIRECTIONS TO  
20 CODE COMMISSIONER. WHEREVER THE NAME "STATE COMPENSATION  
21 MUTUAL INSURANCE FUND", MEANING THE FUND ESTABLISHED IN  
22 39-71-2313, APPEARS IN THE MONTANA CODE ANNOTATED OR IN  
23 LEGISLATION ENACTED BY THE 1993 LEGISLATURE, THE CODE  
24 COMMISSIONER IS DIRECTED TO CHANGE THE NAME TO "STATE  
25 COMPENSATION INSURANCE FUND".

1 NEW SECTION. SECTION 27. SEVERABILITY. IF A PART OF  
 2 [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE  
 3 FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS  
 4 ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART  
 5 REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE  
 6 SEVERABLE FROM THE INVALID APPLICATIONS.

7 NEW SECTION. SECTION 28. COORDINATION WITH  
 8 OCCUPATIONAL DISEASE ACT OF MONTANA. FOR PURPOSES OF  
 9 [SECTIONS 1 THROUGH 4] AND THE ADMINISTRATION OF TITLE 39,  
 10 CHAPTER 72, A REFERENCE IN [SECTIONS 1 THROUGH 4] TO AN  
 11 INJURY RESULTING FROM AN ACCIDENT OR TO A CLAIM FOR AN  
 12 INJURY RESULTING FROM AN ACCIDENT INCLUDES A DISABLEMENT, AS  
 13 DEFINED IN 39-72-102(4).

14 NEW SECTION. SECTION 29. SAVING CLAUSE. [THIS ACT]  
 15 DOES NOT AFFECT RIGHTS AND DUTIES THAT MATURED, PENALTIES  
 16 THAT WERE INCURRED, OR PROCEEDINGS THAT WERE BEGUN BEFORE  
 17 [THE EFFECTIVE DATE OF THIS ACT].

18 NEW SECTION. Section 30. Codification instruction. (1)  
 19 [SECTIONS 1 THROUGH 3] ARE INTENDED TO BE CODIFIED AS AN  
 20 INTEGRAL PART OF TITLE 39, CHAPTER 71, AND THE PROVISIONS OF  
 21 TITLE 39, CHAPTER 71, APPLY TO [SECTIONS 1 THROUGH 3].

22 (2) [SECTION 4] IS INTENDED TO BE CODIFIED AS AN  
 23 INTEGRAL PART OF TITLE 39, CHAPTER 71, PART 23, AND THE  
 24 PROVISIONS OF TITLE 39, CHAPTER 71, PART 23, APPLY TO  
 25 [SECTION 4].

1 (3) [Sections 7 19 through 9 21] are intended to be  
 2 codified as an integral part of Title 39, chapter 71, part  
 3 23, and the provisions of Title 39, chapter 71, part 23,  
 4 apply to [sections 7 19 through 9 21].

5 NEW SECTION. Section 31. Effective date DATES --  
 6 APPLICABILITY. ~~{This act} is (1) {SECTION 9 AND THIS~~  
 7 ~~SECTION} ARE EFFECTIVE ON PASSAGE AND APPROVAL AND {SECTION~~  
 8 ~~9} APPLIES TO THE BUDGET FOR FISCAL YEAR 1994.~~

9 ~~{2}--{SECTIONS 1 THROUGH 8 AND 10 THROUGH 14} ARE~~  
 10 ~~effective July 1, 1993. [SECTIONS 1 THROUGH 3, 10 THROUGH~~  
 11 ~~13, 21, AND 26 THROUGH 30 AND THIS SECTION] ARE EFFECTIVE ON~~  
 12 ~~PASSAGE AND APPROVAL.~~

13 (2) [SECTIONS 4 THROUGH 9] ARE EFFECTIVE ON  
 14 FINALIZATION OF AN AGREEMENT ENTERED INTO BY THE GOVERNOR  
 15 AND THE REINSURER, AS PROVIDED IN [SECTION 1].

16 (3) [SECTIONS 14 THROUGH 20 AND 22 THROUGH 25] ARE  
 17 EFFECTIVE JULY 1, 1993.

18 (4) [SECTION 21] APPLIES TO THE BUDGET FOR FISCAL YEAR  
 19 1994.

-End-

HOUSE BILL NO. 13  
 INTRODUCED BY BENEDICT, DRISCOLL,  
 DOLEZAL, H. HANSON, DEVLIN, FRITZ  
 BY REQUEST OF THE SELECT COMMITTEE ON  
 WORKERS' COMPENSATION

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING  
 WORKERS' COMPENSATION LAW; ~~PLACING THE STATE FUND UNDER THE~~  
~~AUTHORITY OF THE INSURANCE COMMISSIONER; PERMITTING THE~~  
~~GOVERNOR TO CONTRACT FOR PRIVATE SECTOR INVOLVEMENT TO~~  
~~LIQUIDATE THE UNFUNDED LIABILITY AND TO MANAGE CLAIMS OF THE~~  
~~OLD FUND AND TO MANAGE CLAIMS OF THE NEW FUND OF THE MONTANA~~  
~~STATE COMPENSATION MUTUAL INSURANCE FUND; CLARIFYING THE~~  
~~COMPENSABILITY OF MENTAL STRESS CLAIMS; PROVIDING THAT THE~~  
~~GOVERNOR SHALL APPOINT THE BOARD OF DIRECTORS OF THE STATE~~  
~~FUND; PROVIDING THAT THE MEMBERS OF THE BOARD OF DIRECTORS~~  
~~AND THE EXECUTIVE DIRECTOR OF THE STATE FUND SERVE AT THE~~  
~~PLEASURE OF THE GOVERNOR; REVISING THE STATE FUND'S BUDGET~~  
~~AND FUNDING PROCEDURES; EXEMPTING THE STATE FUND FROM THE~~  
~~PROVISIONS OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT FOR~~  
~~PURPOSES OTHER THAN RATEMAKING; AUTHORIZING THE LEGISLATIVE~~  
~~AUDITOR TO REVIEW RATES AND EXAMINE THE STATE FUND EACH~~  
~~YEAR; PROVIDING A STATUTORY APPROPRIATION; PROVIDING AN~~  
~~APPROPRIATION; REQUIRING THE INSURER TO NOTIFY CLAIMANTS OF~~  
~~BENEFITS AND ENTITLEMENTS USING INFORMATION PROVIDED BY THE~~

DEPARTMENT; AMENDING SECTIONS ~~2-4-102~~ 2-15-1019, 17-7-502,  
~~33-1-401~~ 18-8-103, ~~33-1-102~~ 39-71-105, 39-71-606,  
~~39-71-721~~ 39-71-2314, ~~39-71-2315~~ 39-71-2316, 39-71-2317,  
~~39-71-2321~~ 39-71-2323, AND ~~39-71-2351~~ AND 39-71-2352,  
~~39-71-2354~~ AND ~~39-71-2503~~ MCA; AND PROVIDING AN EFFECTIVE  
 DATE DATES AND AN APPLICABILITY DATE."

WHEREAS, THE LEGISLATURE HAS DETERMINED THAT IT IS  
NECESSARY TO THE PUBLIC WELFARE TO MAKE WORKERS'  
COMPENSATION INSURANCE AVAILABLE TO ALL EMPLOYERS THROUGH  
THE STATE FUND AS THE INSURER OF LAST RESORT, AND IN MAKING  
THIS INSURANCE AVAILABLE, THE STATE FUND HAS INCURRED AN  
UNFUNDED LIABILITY; AND

WHEREAS, THE UNFUNDED LIABILITY HAS GROWN EACH YEAR  
DESPITE THE FACT THAT THERE HAVE BEEN NUMEROUS ATTEMPTS TO  
SOVE THE PROBLEM BY LEGISLATION AND OTHER METHODS, BUT  
THOSE ATTEMPTS HAVE NOT RESOLVED THE PROBLEM, AND

WHEREAS, THE LEGISLATURE SEPARATED THE PAYMENT STRUCTURE  
AND SOURCES FOR CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS  
THAT OCCURRED BEFORE JULY 17, 1990 (THE "OLD FUND"), FROM  
INJURIES OCCURRING ON OR AFTER JULY 17, 1990 (THE "NEW  
FUND"); AND PROVIDED REVENUE OPTIONS AND SPENDING LIMITS;  
AND

WHEREAS, THIS SEPARATION HAS NOT ELIMINATED THE UNFUNDED  
LIABILITY, WHICH IS ESTIMATED TO BE IN EXCESS OF \$400

1 MILLION, AND

2 WHEREAS, THE JOINT SELECT COMMITTEE ON WORKERS'  
3 COMPENSATION OF THE 52ND LEGISLATURE SOLICITED FROM PRIVATE  
4 INSURANCE AND REINSURANCE MARKETS PROPOSED SOLUTIONS TO  
5 LIQUIDATE THE OLD FUND UNFUNDED LIABILITY, AND

6 WHEREAS, INSURANCE AND REINSURANCE MARKETS RESPONDED TO  
7 THE COMMITTEE'S REQUEST FOR ASSISTANCE TO LIQUIDATE THE OLD  
8 FUND UNFUNDED LIABILITY, AND

9 WHEREAS, THE COMMITTEE REVIEWED AND CONCURRED IN A  
10 PRELIMINARY PROPOSAL OF ONE OF THE INSURANCE AND REINSURANCE  
11 MARKETS THAT THE COMMITTEE BELIEVED PROVIDES SIGNIFICANT  
12 BENEFITS TO MONTANA, INCLUDING BUT NOT LIMITED TO:

13 (1) RISK TRANSFER;

14 (2) PROFIT SHARING BETWEEN THE REINSURER AND THE STATE;

15 (3) INVESTMENT OF PREMIUMS IN MONTANA FINANCIAL

16 INSTITUTIONS AND INVESTMENTS;

17 (4) FUNDING AND FINANCE OPTIONS;

18 (5) SECURITY TO MONTANA IN THE EVENT OF CONTRACT BREACH

19 OR INSOLVENCY OF THE REINSURER;

20 (6) INDUSTRY BEST CLAIMS MANAGEMENT AND ADMINISTRATION;

21 AND

22 (7) DEVELOPMENT OF CLEAN INDUSTRY PRIVATE SECTOR JOBS;

23 AND

24 WHEREAS, THERE MAY BE MERIT IN THE PROPOSAL, AND IT MAY

25 BE IN THE BEST INTERESTS OF MONTANA TO PROCEED WITH THE

1 NEGOTIATIONS WITH THE REINSURER.

2 THEREFORE, THE LEGISLATURE FINDS IT APPROPRIATE TO  
3 EMPOWER THE GOVERNOR TO FULLY INVESTIGATE AND NEGOTIATE A  
4 REINSURANCE SOLUTION.

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

7 Section 1. Section 2-4-102, MCA, is amended to read:--

8 "2-4-102. Definitions. For purposes of this chapter,  
9 the following definitions apply:

10 (1) "Administrative code committee" or "committee"  
11 means the committee provided for in Title 5, chapter 14;

12 (2) (a) "Agency" means an agency, as defined in  
13 2-3-102, of the state government, except that the provisions  
14 of this chapter do not apply to the following:

15 (i) the state board of pardons, except that the board  
16 is subject to the requirements of 2-4-103, 2-4-201, 2-4-202,  
17 and 2-4-306 and its rules must be published in the  
18 Administrative Rules of Montana and the Montana  
19 Administrative Register;

20 (ii) the supervision and administration of a penal  
21 institution with regard to the institutional supervision,  
22 custody, control, care, or treatment of youths or prisoners;

23 (iii) the board of regents and the Montana university  
24 system;

25 (iv) the financing, construction, and maintenance of

1 public-works, or  
 2 (v) the state compensation mutual insurance fund and  
 3 its board of directors.  
 4 (b) Agency does not include a school district, unit of  
 5 local government, or any other political subdivision of the  
 6 state.  
 7 (3) "ARM" means the Administrative Rules of Montana.  
 8 (4) "Contested case" means a proceeding before an  
 9 agency in which a determination of legal rights, duties, or  
 10 privileges of a party is required by law to be made after an  
 11 opportunity for hearing. The term includes but is not  
 12 restricted to ratemaking, price fixing, and licensing.  
 13 (5) "License" includes the whole or part of any agency  
 14 permit, certificate, approval, registration, charter, or  
 15 other form of permission required by law but does not  
 16 include a license required solely for revenue purposes.  
 17 (6) "Licensing" includes any agency process respecting  
 18 the grant, denial, renewal, revocation, suspension,  
 19 annulment, withdrawal, limitation, transfer, or amendment of  
 20 a license.  
 21 (7) "Party" means a person named or admitted as a party  
 22 or properly seeking and entitled as of right to be admitted  
 23 as a party, but nothing herein in this chapter may be  
 24 construed to prevent an agency from admitting any person as  
 25 a party for limited purposes.

1 (8) "Person" means an individual, partnership,  
 2 corporation, association, governmental subdivision, agency,  
 3 or public organization of any character.  
 4 (9) "Register" means the Montana Administrative  
 5 Register.  
 6 (10) "Rule" means each agency regulation, standard, or  
 7 statement of general applicability that implements,  
 8 interprets, or prescribes law or policy or describes the  
 9 organization, procedures, or practice requirements of an  
 10 agency. The term includes the amendment or repeal of a prior  
 11 rule but does not include:  
 12 (a) statements concerning only the internal management  
 13 of an agency and not affecting private rights or procedures  
 14 available to the public;  
 15 (b) formal opinions of the attorney general and  
 16 declaratory rulings issued pursuant to 2-4-501;  
 17 (c) rules relating to the use of public works,  
 18 facilities, streets, and highways when the substance of the  
 19 rules is indicated to the public by means of signs or  
 20 signals;  
 21 (d) seasonal rules adopted annually or biennially  
 22 relating to hunting, fishing, and trapping when there is a  
 23 statutory requirement for the publication of the rules and  
 24 rules adopted annually or biennially relating to the  
 25 seasonal recreational use of lands and waters owned or

controlled by the state when the substance of the rules is indicated to the public by means of signs or signals;

(e) rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system;

(f) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in accordance with 2-4-306 and must be published in the Administrative Rules of Montana;

(1) "Substantive rules" are either:

(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid; or

(b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of law."

Section 2, Section 33-1-401, MCA, is amended to read:

"33-1-401. Examination of insurers and state compensation mutual insurance fund. (1) The commissioner shall examine the affairs, transactions, accounts, records, and assets of each authorized insurer and the state compensation mutual insurance fund as often as he deems the commissioner considers advisable. He The commissioner shall

so examine each domestic insurer not less frequently than every 3 years. The commissioner shall examine the state fund on a yearly basis beginning no sooner than October 1 following the end of the fiscal year. Examination of an alien insurer may be limited to its insurance transactions and affairs in the United States. Examination of a reciprocal insurer may also include examination of its attorney in fact insofar as the transactions of the attorney in fact relate to the insurer.

(2) The commissioner shall in like manner examine each insurer applying for an initial certificate of authority to do business in this state.

(3) In lieu of making his own an examination, the commissioner may, in his discretion, accept a full report of the last recent examination of a foreign or alien insurer, certified to by the insurance supervisory official of another state, territory, commonwealth, or district of the United States.

(4) If, after examining the state compensation mutual insurance fund pursuant to subsection (1), the commissioner determines that the fund, if it were a private insurer, would be subject to the provisions of Title 33, chapter 2, part 13, the commissioner shall report those findings to the governor and the legislature."

~~NEW SECTION. SECTION 1. LIQUIDATION OF OLD FUND~~

1 LIABILITY.-(1)-(A)-THE GOVERNOR IS AUTHORIZED TO NEGOTIATE  
 2 THE LIQUIDATION OF THE UNFUNDED LIABILITY OF THE OLD FUND OF  
 3 THE STATE FUND, AS DEFINED IN 39-71-2312, IF AN AGREEMENT  
 4 CAN BE REACHED THAT IS IN THE BEST INTERESTS OF MONTANA. THE  
 5 SCOPE OF ANY NEGOTIATED AGREEMENT MAY INCLUDE BUT MAY NOT  
 6 EXCEED ALL OF THE RIGHTS, PRIVILEGES, LIABILITIES, AND  
 7 DUTIES OF THE STATE FUND WITH RESPECT TO ALL CLAIMS ARISING  
 8 PRIOR TO JULY 1, 1990.

9 (B)-THE GOVERNOR MAY NOT ENTER INTO AN AGREEMENT THAT  
 10 PAYS CASH OR ASSETS IN AN AGGREGATE AMOUNT THAT EXCEEDS \$400  
 11 MILLION TO THE OTHER PARTIES TO THE AGREEMENTS.

12 (C)-ANY CONTRACT FINALIZED BY THE GOVERNOR MUST CONTAIN  
 13 A PROVISION THAT THE CONTRACT IS VOID UNLESS NECESSARY  
 14 FINANCING TO FUND THE UNFUNDED LIABILITY HAS BEEN PROVIDED  
 15 BY THE 1993 LEGISLATURE.

16 (D)-TO BE EFFECTIVE, A CONTRACT MUST BE FINALIZED BY  
 17 THE GOVERNOR WITHIN 120 DAYS OF THE EFFECTIVE DATE OF THIS  
 18 SECTION.

19 (E)-ANY CONTRACT FINALIZED BY THE GOVERNOR MAY REQUIRE  
 20 REINSURANCE PREMIUM PAYMENTS BY THE STATE TO BE USED TO  
 21 LIQUIDATE THE OLD FUND LIABILITY.

22 (2)-ANY ENTITY ENTERING INTO AN AGREEMENT WITH MONTANA  
 23 UNDER SECTION 2 OR THIS SECTION SHALL SUBMIT AN ANNUAL  
 24 REPORT TO THE LEGISLATIVE AUDIT COMMITTEE. THE FIRST REPORT  
 25 IS DUE 12 MONTHS AFTER THE AGREEMENT IS FINALIZED AND

1 THEREAFTER MAY BE SUBMITTED ON A FISCAL YEAR BASIS.

2 (3)-ANY NEGOTIATIONS OR AGREEMENTS ENTERED INTO  
 3 PURSUANT TO SECTION 2 AND THIS SECTION ARE NOT SUBJECT TO  
 4 THE COMPETITIVE BIDDING REQUIREMENTS OF TITLE 10, CHAPTER 4.

5 (4)-A NEGOTIATION OR AN AGREEMENT ENTERED INTO PURSUANT  
 6 TO SECTION 2 IS NOT SUBJECT TO THE PRIVATIZATION PLAN  
 7 REQUIREMENTS OF TITLE 2, CHAPTER 0, PART 3.

8 NEW SECTION. SECTION 2. CLAIMS SETTLEMENT OF NEW FUND  
 9 CLAIMS NEW FUND MANAGEMENT, AS PART OF THE NEGOTIATED  
 10 LIQUIDATION OF THE UNFUNDED LIABILITY OF THE OLD FUND OF THE  
 11 STATE FUND, AS DEFINED IN 39-71-2312, THE GOVERNOR MAY  
 12 NEGOTIATE FOR CLAIMS SETTLEMENT OF THE CLAIMS OF PERSONS  
 13 WHOSE BENEFITS HAVE NOT BEEN DETERMINED UNDER A CLAIM BASED  
 14 ON AN INJURY OCCURRING ON OR AFTER JULY 1, 1990, AND FOR  
 15 SERVICES WITH RESPECT TO THE NEW FUND OF THE STATE FUND  
 16 INCLUDING BUT NOT LIMITED TO CLAIMS MANAGEMENT SERVICES,  
 17 THIRD PARTY ADMINISTRATION, AND MEDICAL COST CONTAINMENT  
 18 AGREEMENTS IF THE CONTRACTED SERVICES ARE IN THE BEST  
 19 INTERESTS OF THE STATE. AN AGREEMENT UNDER THIS SECTION IS  
 20 VALID ONLY IF IT IS PART OF AN AGREEMENT THAT MEETS THE  
 21 REQUIREMENTS OF SECTION 1.

22 NEW SECTION. SECTION 3. AUDIT OF CONTRACTED SERVICES  
 23 AND OLD FUND LIQUIDATION. ANY PROPOSAL INVOLVING THE PRIVATE  
 24 SECTOR IN LIQUIDATION OF THE UNFUNDED LIABILITY OF THE OLD  
 25 FUND OF THE STATE FUND, AS DEFINED IN 39-71-2312, OR IN



~~CLAIMS SETTLEMENT AND MANAGEMENT OF THE NEW FUND OF THE  
STATE FUND MUST PROVIDE FOR AUDIT AND REPORTING MECHANISMS  
IN COMPLIANCE WITH 39-71-2361.~~

~~NEW SECTION. SECTION 4. MUTUALLY AGREEABLE LUMP SUM  
SETTLEMENTS. BEGINNING JULY 1, 1993, A WORKER'S COMPENSATION  
CLAIMANT AND THE STATE FUND OR A REINSURER MAY, REGARDLESS  
OF THE LUMP SUM LAW IN EFFECT ON THE DATE OF THE INJURY,  
MUTUALLY AGREE TO A LUMP SUM SETTLEMENT OF A CLAIM. IF A  
MUTUAL AGREEMENT IS NOT REACHED, THE LUMP SUM LAW IN EFFECT  
ON THE DATE OF THE INJURY APPLIES.~~

~~SECTION 5. SECTION 39-71-721, MCA, IS AMENDED TO READ:~~

~~"39-71-721. Compensation for injury causing death--  
limitation. Except as provided in {section 4}:~~

~~{1}--(a) If if an injured employee dies and the injury  
was the proximate cause of such death, then the beneficiary  
of the deceased is entitled to the same compensation as  
though the death occurred immediately following the injury.  
A beneficiary's eligibility for benefits commences after the  
date of death and the benefit level is established as set  
forth in subsection {2}:~~

~~{b}--The the insurer is entitled to recover any  
overpayments or compensation paid in a lump sum to a worker  
prior to death but not yet recouped. The insurer shall  
recover such the payments from the beneficiary's biweekly  
payments as provided in 39-71-741{5}:~~

~~{2}--To to beneficiaries as defined in 39-71-116{3}{a}  
through {3}{d}, weekly compensation benefits for an injury  
causing death are 66-2/3% of the decedent's wages. The  
maximum weekly compensation benefit may not exceed the  
state's average weekly wage at the time of injury. The  
minimum weekly compensation benefit is 50% of the state's  
average weekly wage, but in no event may it exceed the  
decedent's actual wages at the time of his death.~~

~~{3}--To to beneficiaries as defined in 39-71-116{3}{c}  
and {3}{f}, weekly benefits must be paid to the extent of  
the dependency at the time of the injury, subject to a  
maximum of 66-2/3% of the decedent's wages. The maximum  
weekly compensation may not exceed the state's average  
weekly wage at the time of injury.~~

~~{4}--If if the decedent leaves no beneficiary as defined  
in 39-71-116, a lump sum payment of \$3,000 must be paid to  
the decedent's surviving parent or parents.~~

~~{5}--If if any beneficiary of a deceased employee dies,  
the right of such the beneficiary to compensation under this  
chapter ceases. Death benefits must be paid to a surviving  
spouse for 500 weeks subsequent to the date of the deceased  
employee's death or until the spouse's remarriage, whichever  
occurs first. After benefit payments cease to a surviving  
spouse, death benefits must be paid to beneficiaries, if  
any, as defined in 39-71-116{3}{b} through {3}{d}:~~

{6}--In---in---all---cases,--benefits--must--be--paid--to  
beneficiaries,--as--defined--in--39-71-116,--and

{7}--Benefits--benefits--paid--under--this--section--may--not  
be--adjusted--for--cost--of--living--as--provided--in--39-71-702.

{8}--Notwithstanding--subsections--(2)--and--(3),--beginning  
July-1,--1987,--through--June--30,--1991,--the--maximum--weekly  
compensation--benefits--for--injury--causing--death--may--not  
exceed--the--state's--average--weekly--wage--of--\$299--established  
July-1,--1986,--Beginning--July-1,--1987,--through--June--30,--1991,  
the--minimum--weekly--compensation--for--injury--causing--death  
shall--be--\$149.50,--which--is--50%--of--the--state's--average--weekly  
wage--established--July-1,--1986,--but--in--no--event--may--it--exceed  
the--decendent's--actual--wages--at--the--time--of--death."

**SECTION 6. -- SECTION 39-71-2315, MCA, IS AMENDED TO READ:**

"39-71-2315. --Management-of-state--fund-----powers--and  
duties--of--the--board: Except-with-respect-to-any-agreement  
established-pursuant-to-(sections-1-and-2)--and--except--as  
provided-in-2-15-1019-or-39-71-2317:

{1}--The--the--management--and--control--of--the--state--fund--is  
vested--solely--in--the--board,--and

{2}--The--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  
power,--authority,--or--jurisdiction--over--the--state--fund,  
either--in--the--administration--of--the--state--fund--or--in

connection--with--the--insurance--business--to--be--carried--on  
under--the--provisions--of--this--part,--as--fully--and--completely  
as--the--governing--body--of--a--private--mutual--insurance--carrier,  
in--order--to--fulfill--the--objectives--and--intent--of--this--part.  
Bonds--may--not--be--issued--by--the--board,--the--state--fund,--or--the  
executive--director."

**SECTION 7. -- SECTION 39-71-2351, MCA, IS AMENDED TO READ:**

"39-71-2351. --Purpose--of--separation--of--state--fund  
liability--as--of--July-1,--1990,--and--of--separate--funding--of  
claims--before--and--on--or--after--that--date:--(1)--An--unfunded  
liability--exists--in--the--state--fund. It--has--existed--since--at  
least--the--mid-1980s--and--has--grown--each--year. There--have--been  
numerous--attempts--to--solve--the--problem--by--legislation--and  
other--methods. These--attempts--have--alleviated--the--problem  
somewhat,--but--the--problem--has--not--been--solved.

{2}--The--legislature--has--determined--that--it--is--necessary  
to--the--public--welfare--to--make--workers'--compensation  
insurance--available--to--all--employers--through--the--state--fund  
as--the--insurer--of--last--resort. In--making--this--insurance  
available,--the--state--fund--has--incurred--the--unfunded  
liability. The--legislature--has--determined--that--the--most  
cost-effective--and--efficient--way--to--provide--a--source--of  
funding--for--and--to--ensure--payment--of--the--unfunded--liability  
and--the--best--way--to--administer--the--unfunded--liability--is--to:

{a}--separate--the--liability--of--the--state--fund--on--the

basis--of-whether-a-claim-is-for-an-injury-resulting-from-an  
 accident-that-occurred-before-July-17-1990, or--an--accident  
 that-occurs-on-or-after-that-date;

(b)--extend--the--payroll--tax-imposed-by-39-71-2503-and  
 dedicate-the-tax-money--first--to--the--repayment--of--bonds  
 issued--under--39-71-2354--and--39-71-2355--and--then-to-the  
 repayment-of-loans-given-under-39-71-2354-and-39-71-2355, to  
payment-of-premiums-for-a-negotiated-liquidation-of-the  
unfunded-liability-of-the-old-fund-of-the-state-fund-as  
provided-in {section-1}, and-the-direct-payment-of-the-costs  
 of--administering--and--paying--claims--for--injuries--from  
 accidents-that-occurred-before-July-17-1990.

(3)--The-legislature-further-determines-that-in-order-to  
 prevent--the--creation--of--a--new--unfunded--liability-with  
 respect-to-claims-for-injuries-for-accidents-that--occur--on  
 or--after--July--17--1990, certain-duties-of-the-state-fund  
 should-be-clarified-and-legislative-oversight-of--the--state  
 fund-should-be-increased."

**SECTION 8. SECTION 39-71-2354, MCA, IS AMENDED TO READ:**

"39-71-2354. Use-of-payroll-tax-proceeds---loans---  
 bonds--(1) Taxes-collected-under-39-71-2503-may-be-used-only  
 to-administer-and-pay-claims--for--injuries--resulting--from  
 accidents--that--occurred-before-July-17-1990, including-the  
 cost-of-repaying-bonds-issued-and-loan-proceeds-given--under  
 39-71-2355--and--this-section-and-any-premium-payments-that

may-be-required-by-an-agreement-made--pursuant--to--{section  
1}, If--the--state--fund-determines-that, for-the-next-1-or  
 more-years-following-the-date-of-the-determination, the--tax  
 revenue,--together--with--funds--in--the-account-required-by  
 39-71-2321-for-claims-for-injuries-resulting-from--accidents  
 that--occurred--before-July-17-1990, will-be-insufficient-to  
 administer-and-pay-those-claims, the-state-fund-may, through  
 its-board-of--directors, request--the--budget--director--to  
 certify--to-the-board-of-investments-that-additional-funding  
 is-necessary. If-the-budget-director-agrees-with--the--state  
 fund's--board-of--directors--that--additional--funding--is  
 necessary, the-budget-director-shall-certify-to-the-board-of  
 investments-the-amount-that-the-budget--director--determines  
 is--necessary--to--administer--and--pay--claims-for-injuries  
 resulting-from-accidents-that-occurred-before-July-17--1990.  
 Except--as--provided--in--subsection--(2), the--board--of  
 investments-shall, at-times--and--in--amounts--it--considers  
 necessary--or--advisable, finance-the-amount-certified-by-the  
 budget-director-by-giving-the-state-fund-the-proceeds--of--a  
 loan--or--a--bond--issue--to--administer--and--pay-claims-for  
 injuries-resulting-from-accidents-that-occurred-before--July  
 17--1990. Loans--must--be--from--reserves--accumulated-from  
 premiums-paid-to-the-state-fund-based-upon-wages-payable--on  
 or-after-July-17-1990. In-the-event-that-loans-are-necessary  
for--an-agreement-established-in-accordance-with {sections-1

1 ~~and-2}-the-governor-is-authorized-to-pursue-internal-and~~  
 2 ~~external-financing-that-is-in-the-best-interests-of-the~~  
 3 ~~state-The-board-of-investments-shall-choose-the-method-of~~  
 4 ~~financing-that-is-most-cost-effective-for-the-state-fund-A~~  
 5 ~~loan-must-bear-interest-at-the-rate-the-money-would-earn-in~~  
 6 ~~the-pooled-investment-fund-required-by-17-6-203-The-board~~  
 7 ~~of-investments-may-also-upon-request-of-the-board-of~~  
 8 ~~directors-of-the-state-fund-give-the-state-fund-the~~  
 9 ~~proceeds-of-a-bond-issue-to-be-used-to-pay-off-loans-made~~  
 10 ~~under-39-71-2355-and-this-section-Bonds-for-the-state-fund~~  
 11 ~~must-be-workers-compensation-bonds-issued-under-39-71-2355-~~  
 12 ~~{2}-The-Except-for-any-agreement-established-pursuant~~  
 13 ~~to-sections-1-and-2-the-total-amount-of-loan-proceeds~~  
 14 ~~given-to-the-state-fund-plus-workers-compensation-bonds~~  
 15 ~~issued-under-39-71-2355-except-bonds-issued-to-repay-loans~~  
 16 ~~as-provided-for-in-subsection-1-may-not-exceed-\$220~~  
 17 ~~million-All-loan-and-bond-proceeds-given-to-the-state-fund~~  
 18 ~~must-be-repaid-to-the-board-of-investments-before-July-17~~  
 19 ~~2020.~~

20 ~~SECTION 9. SECTION 39-71-2503, MCA, IS AMENDED TO READ:~~

21 ~~"39-71-2503. Workers' compensation payroll tax. (a)~~  
 22 ~~There-is-imposed-on-each-employer-a-workers-compensation~~  
 23 ~~payroll-tax-in-an-amount-equal-to-0.28%-of-the-employer's~~  
 24 ~~payroll-in-the-preceding-calendar-quarter-for-all~~  
 25 ~~employments-covered-under-39-71-401-except-that-if-an~~

1 ~~employer-is-subject-to-15-36-204(2)-the-tax-is-an-amount~~  
 2 ~~equal-to-0.28%-of-the-employer's-payroll-in-the-preceding~~  
 3 ~~week-This-payroll-tax-must-be-used-to-reduce-the-unfunded~~  
 4 ~~liability-in-the-state-fund-incurred-for-claims-for-injuries~~  
 5 ~~resulting-from-accidents-that-occurred-before-July-17-1990~~  
 6 ~~or-for-payment-of-those-claims-under-section-1-if-one-or~~  
 7 ~~more-loans-or-bonds-are-outstanding-the-tax-must-be~~  
 8 ~~continued-at-the-0.28%-rate-and-the-legislature-may-not~~  
 9 ~~modify-the-tax-rate-the-use-of-the-tax-proceeds-or-this~~  
 10 ~~section-in-a-manner-that-reduces-the-security-for-repayment~~  
 11 ~~of-the-outstanding-loans-or-bonds-except-that-the~~  
 12 ~~legislature-may-forgive-payment-of-the-tax-or-reduce-the-tax~~  
 13 ~~rate-for-any-12-month-period-if-the-workers-compensation~~  
 14 ~~bond-repayment-account-contains-on-the-first-day-of-that~~  
 15 ~~period-an-amount-regardless-of-the-source-that-is-in~~  
 16 ~~excess-of-the-reserve-maintained-in-the-account-and-that-is~~  
 17 ~~equal-to-the-amount-needed-to-pay-and-dedicated-to-the~~  
 18 ~~payment-of-the-principal-premium-and-interest-that-must-be~~  
 19 ~~paid-during-that-period-on-the-outstanding-loans-or-bonds-~~  
 20 ~~The-legislature-may-not-increase-the-tax-rate-except-upon-a~~  
 21 ~~two-thirds-vote-of-each-house-~~

22 ~~(b)-Each-employer-shall-maintain-the-records-the~~  
 23 ~~department-requires-concerning-the-employer's-payroll-The~~  
 24 ~~records-are-subject-to-inspection-by-the-department-and-its~~  
 25 ~~employees-and-agents-during-regular-business-hours-~~

{2}--All--collections--of--the--tax--are--appropriated--to--and must--be--deposited--as--received--in--the--tax--account. The--tax--is in--addition--to--any--other--tax--or--fee--assessed--against employers--subject--to--the--tax.

{3}--(a)--On--or--before--the--last--day--of--April, July, October, and January, each employer subject to the tax shall file a return in the form and containing the information required by the department and, except as provided in subsection {3}(b), pay the amount of tax required by this section to be paid on the employer's payroll for the preceding calendar quarter.

{b}--An employer subject to 15-30-204(2) shall remit to the department a weekly payment with its weekly withholding tax payment in the amount required by subsection {1}(a).

{c}--A tax payment required by subsection {1}(a) must be made with the return filed pursuant to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any remainder to the workers' compensation tax account provided in 39-71-2504.

{4}--An employer's officer or employee with the duty to collect, account for, and pay to the department the amounts due under this section who willfully fails to pay an amount is liable to the state for the unpaid amount and any penalty and interest relating to that amount.

{5}--Returns and remittances under subsection {3} and

any information obtained by the department during an audit are subject to the provisions of 15-30-303, but the department may disclose the information to the department of labor and industry under circumstances and conditions that ensure the continued confidentiality of the information.

{6}--The department of labor and industry and the state fund shall, on July 1, 1991, or as soon after that date as possible, give the department a list of all employers having coverage under any plan administered or regulated by the department of labor and industry and the state fund. After the lists have been given to the department, the department of labor and industry and the state fund shall update the lists weekly. The department of labor and industry and the state fund shall provide the department with access to their computer data bases and paper files and records for the purpose of the department's administration of the tax imposed by this section.

{7}--The provisions of Title 15, chapter 30, not in conflict with the provisions of this part regarding administration, remedies, enforcement, collections, hearings, interest, deficiency assessments, credits for overpayment, statute of limitations, penalties, and department rulemaking authority apply to the tax, to employers, and to the department.

**SECTION 10. SECTION 33-1-102, MCA, IS AMENDED TO READ:**

1       ~~"33-1-102. Compliance required---exceptions-----health~~  
 2       ~~service--corporations---health-maintenance-organizations---~~  
 3       ~~governmental--insurance--programs--(1)--A--person--may--not~~  
 4       ~~transact-a-business-of-insurance-in-Montana-or-relative-to-a~~  
 5       ~~subject-resident, located, or to be performed in Montana~~  
 6       ~~without--complying--with--the--applicable-provisions-of-this~~  
 7       ~~code.~~  
 8       ~~(2)--The-provisions-of--this--code--do--not--apply--with~~  
 9       ~~respect-to:~~  
 10       ~~(a)--domestic--farm--mutual--insurers--as--identified-in~~  
 11       ~~chapter-4, except-as-stated-in-chapter-4;~~  
 12       ~~(b)--domestic-benevolent-associations-as--identified--in~~  
 13       ~~chapter-6, except-as-stated-in-chapter-6; and~~  
 14       ~~(c)--fraternal--benefit--societies, except-as-stated-in~~  
 15       ~~chapter-7.~~  
 16       ~~(3)--This-code-applies-to-health-service-corporations-as~~  
 17       ~~prescribed-in-33-30-102. The-existence-of--the--corporations~~  
 18       ~~is--governed-by-Title-35, chapter-2, and-related-sections-of~~  
 19       ~~the-Montana-Code-Annotated.~~  
 20       ~~(4)--This-code-does--not--apply--to--health--maintenance~~  
 21       ~~organizations---to---the---extent---that---the---existence---and~~  
 22       ~~operations-of-those-organizations-are-authorized-by--chapter~~  
 23       ~~31.~~  
 24       ~~(5)--This--code--does-not-apply-to-workers'-compensation~~  
 25       ~~insurance-programs-provided-for-in-Title--39,--chapter--71,~~

1       ~~parts-21-and-23, sections-1-and-2, and-related-sections.~~  
 2       ~~(6)--This--code--does--not--apply--to-the-state-employee~~  
 3       ~~group-insurance-program-established-in-Title-2, chapter--10,~~  
 4       ~~part-0.~~  
 5       ~~(7)--This--code--does--not--apply--to--insurance--funded~~  
 6       ~~through--the--state-self-insurance-reserve-fund-provided-for~~  
 7       ~~in-2-9-202.~~  
 8       ~~(8)--(a)--This-code-does-not-apply--to--any--arrangement,~~  
 9       ~~plan, or-interlocal-agreement-between-political-subdivisions~~  
 10       ~~of--this-state-in-which-the-political-subdivisions-undertake~~  
 11       ~~to-separately-or-jointly-indemnify-one-another-by-way--of--a~~  
 12       ~~pooling, joint--retention, deductible, or--self-insurance~~  
 13       ~~plan.~~  
 14       ~~(b)--This--code-does-not-apply-to-any-arrangement, plan,~~  
 15       ~~or-interlocal-agreement-between--political--subdivisions--of~~  
 16       ~~this--state-or-any-arrangement, plan, or-program-of-a-single~~  
 17       ~~political-subdivision-of-this-state-in-which--the--political~~  
 18       ~~subdivision--provides-to-its-officers, elected-officials, or~~  
 19       ~~employees-disability-insurance-or-life-insurance--through--a~~  
 20       ~~self-funded-program."~~

21       **SECTION 1. SECTION 39-71-105, MCA, IS AMENDED TO READ:**

22       ~~"39-71-105. Declaration of public policy. For the~~  
 23       ~~purposes of interpreting and applying Title 39, chapters 71~~  
 24       ~~and 72, the following is the public policy of this state:~~  
 25       ~~(1) It is an objective of the Montana workers'~~

1 compensation system to provide, without regard to fault,  
2 wage supplement and medical benefits to a worker suffering  
3 from a work-related injury or disease. Wage-loss benefits  
4 are not intended to make an injured worker whole; they are  
5 intended to assist a worker at a reasonable cost to the  
6 employer. Within that limitation, the wage-loss benefit  
7 should bear a reasonable relationship to actual wages lost  
8 as a result of a work-related injury or disease.

9 (2) A worker's removal from the work force due to a  
10 work-related injury or disease has a negative impact on the  
11 worker, the worker's family, the employer, and the general  
12 public. Therefore, it is an objective of the workers'  
13 compensation system to return a worker to work as soon as  
14 possible after the worker has suffered a work-related injury  
15 or disease.

16 (3) Montana's workers' compensation and occupational  
17 disease insurance systems are intended to be primarily  
18 self-administering. Claimants should be able to speedily  
19 obtain benefits, and employers should be able to provide  
20 coverage at reasonably constant rates. To meet these  
21 objectives, the system must be designed to minimize reliance  
22 upon lawyers and the courts to obtain benefits and interpret  
23 liabilities.

24 (4) Title 39, chapters 71 and 72, must be construed  
25 according to their terms and not liberally in favor of any

1 party.

2 (5) It is the intent of the legislature that stress  
3 claims, often referred to as "mental-mental claims" and  
4 "mental-physical claims", are not compensable under  
5 Montana's workers' compensation and occupational disease  
6 laws. The legislature recognizes that these claims are  
7 difficult to objectively verify and that the claims have a  
8 potential to place an economic burden on the workers'  
9 compensation and occupational disease system. The  
10 legislature also recognizes that there are other states that  
11 do not provide compensation for various categories of stress  
12 claims and that stress claims have presented economic  
13 problems for certain other jurisdictions. In addition, not  
14 all injuries are compensable under the present system, as is  
15 the case with repetitive injury claims, and it is within the  
16 legislature's authority to define the limits of the workers'  
17 compensation and occupational disease system."

## 18 SECTION 2. SECTION 2-15-1019, MCA, IS AMENDED TO READ:

19 "2-15-1019. Board of directors of the state  
20 compensation mutual insurance fund. (1) There is a board of  
21 directors of the state compensation mutual insurance fund.

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

25 (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 serves at the pleasure of the governor. The governor may remove a member at any time and appoint a new member to the office. 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 members must be appointed and compensated in the same manner as members of a quasi-judicial board as provided in 2-15-124, except that the requirement that at least one member be an attorney does not apply and except

that the members serve at the pleasure of the governor."

### SECTION 3. SECTION 39-71-2317, MCA, IS AMENDED TO READ:

"39-71-2317. Appointment of executive director -- management staff. (1) The board governor shall, at the beginning of each gubernatorial term, appoint an executive director of the state fund who has general responsibility for the operations of the state fund.

(2) The executive director serves at the pleasure of the governor. The governor may remove the executive director at any time and appoint a new executive director to the office.

(3) The executive director must have executive level experience, with knowledge of the insurance industry. The executive director must receive compensation as set by the board and serve at the pleasure of the board. The executive director may hire the management staff of the state fund, each of whom serves at the pleasure of the executive director."

### SECTION 4. SECTION 18-8-103, MCA, IS AMENDED TO READ:

"18-8-103. Exemptions. This part does not apply to employment of:

(1) registered professional engineers, surveyors, real estate appraisers, or registered architects;

(2) physicians, dentists, or other medical, dental, or health care providers;



(3) expert witnesses hired for use in litigation, hearings officers hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or attorneys as specified by executive order of the governor;

(4) consulting actuaries to the public retirement boards or the state compensation insurance fund; or

(5) private consultants employed by the student associations of the university system with money raised from student activity fees designated for use by those student associations."

**Section 5.** Section 39-71-2314, MCA, is amended to read:

"39-71-2314. State fund -- assigned risk plan. ~~(1)~~ (1)

If an assigned risk plan is established and administered pursuant to 39-71-431, 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.

~~(2) The state fund is subject to laws that generally apply to state agencies, including but not limited to Title 2, chapters 2, 3, 4 (except as provided in 39-71-2316), and 6, and Title 5, chapter 13. The state fund is not exempt from a law that applies to state agencies unless that law specifically exempts the state fund by name and clearly states that it is exempt from that law.~~

(2) THE STATE FUND IS SUBJECT TO LAWS THAT GENERALLY APPLY TO STATE AGENCIES, INCLUDING BUT NOT LIMITED TO TITLE 2, CHAPTERS 2, 3, 4 (ONLY AS PROVIDED IN 39-71-2316), AND 6, AND TITLE 5, CHAPTER 13. THE STATE FUND IS NOT EXEMPT FROM A LAW THAT APPLIES TO STATE AGENCIES UNLESS THAT LAW SPECIFICALLY EXEMPTS THE STATE FUND BY NAME AND CLEARLY STATES THAT IT IS EXEMPT FROM THAT LAW."

**Section 6.** Section 39-71-2316, MCA, is amended to read:

"39-71-2316. Powers of the state fund ---rulemaking.

For the purposes of carrying out its functions, the state fund may:

(1) insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state and---in-connection-with-the coverage, provide employers' liability insurance. The state fund may charge a minimum yearly premium to cover its administrative costs for coverage of---a small---employer TO COVER ITS ADMINISTRATIVE COSTS FOR COVERAGE OF A SMALL EMPLOYER.

(2) sue and be sued;

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

~~(4)~~ (3) except as provided in section 21, Chapter 4, Special Laws of May 1990, enter into contracts relating to the administration of the state fund, including claims

1 management, servicing, and payment;

2 {5}(4) collect and disburse money received;

3 {6}(5) adopt classifications and charge premiums for

4 the classifications so that the state fund will be neither

5 more nor less than self-supporting. PREMIUM RATES FOR

6 CLASSIFICATIONS MAY ONLY BE ADOPTED AND CHANGED USING A

7 PROCESS, A PROCEDURE, FORMULAS, AND FACTORS SET FORTH IN

8 RULES ADOPTED UNDER TITLE 2, CHAPTER 4, PARTS 2 THROUGH 4.

9 AFTER SUCH RULES HAVE BEEN ADOPTED, THE STATE FUND NEED NOT

10 FOLLOW THE RULEMAKING PROVISIONS OF TITLE 2, CHAPTER 4, WHEN

11 CHANGING CLASSIFICATIONS AND PREMIUM RATES. THE CONTESTED

12 CASE RIGHTS AND PROVISIONS OF TITLE 2, CHAPTER 4, DO NOT

13 APPLY TO AN EMPLOYER'S CLASSIFICATION OR PREMIUM RATE.

14 ~~Premium-rates-for-classifications-may-only-be-adopted--and~~

15 ~~changed--using-a-process,a-procedure,formulas,and-factors~~

16 ~~set-forth-in-rules-adopted-under-Title-2,chapter-4,parts-2~~

17 ~~through-4--After-such-rules-have--been--adopted,--the--state~~

18 ~~fund--need--not-follow-the-rulemaking-provisions-of-Title-2,~~

19 ~~chapter-4,when-changing-classifications-and-premium-rates.~~

20 ~~The-contested-case-rights-and-provisions-of-Title-2,chapter~~

21 ~~4,--do--not-apply-to-an-employer's-classification-or-premium~~

22 ~~rate.The-state-fund-must-belong-to-the-national-council--on~~

23 ~~compensation--insurance-and-shall-use-the-classifications-of~~

24 ~~employment-adopted-by-the-national-council-and-corresponding~~

25 ~~rates-as-a-basis-for-setting-its-own-rates.~~ THE STATE FUND

1 MUST BELONG TO THE NATIONAL COUNCIL ON COMPENSATION

2 INSURANCE AND MAY USE THE CLASSIFICATIONS OF EMPLOYMENT

3 ADOPTED BY A WORKERS' COMPENSATION RATING ORGANIZATION AND

4 CORRESPONDING RATES AS A BASIS FOR SETTING ITS OWN RATES.

5 {7}(6) pay the amounts determined due under a policy of

6 insurance issued by the state fund;

7 {8}(7) hire personnel;

8 {9}(8) declare dividends if there is an excess of

9 assets over liabilities. However, dividends may not be paid

10 until adequate actuarially determined reserves are set

11 aside. If those reserves have been set aside, money that can

12 be declared as a dividend must be transferred to the account

13 created by 39-71-2321 for claims for injuries resulting from

14 accidents that occurred before July 1, 1990, and used for

15 the purposes of that account. After all claims funded by

16 that account have been paid, dividends may be declared and

17 paid to insureds.

18 {10}(9) perform all functions and exercise all powers

19 of a ~~domestic-mutual-insurer~~ private insurance carrier that

20 are necessary, appropriate, or convenient for the

21 administration of the state fund."

22 **Section 7.** Section 39-71-2323, MCA, is amended to read:

23 "39-71-2323. Surplus in state fund -- payment of

24 dividends. Subject to the provisions of 39-71-2316{9}{8}, if

25 at the end of any fiscal year there exists in the state fund

1 account created by 39-71-2321 for claims for injuries  
 2 resulting from accidents that occur on or after July 1,  
 3 1990, an excess of assets over liabilities, including  
 4 necessary reserves and a reasonable surplus, and if the  
 5 excess may be refunded safely, then the state fund may  
 6 declare a dividend. The rules of the state fund must  
 7 prescribe the manner of payment to those employers who have  
 8 paid premiums into the state fund in excess of liabilities  
 9 chargeable to them in the fund for that year. In determining  
 10 the amount or proportion of the balance to which the  
 11 employer is entitled as dividends, the state fund shall give  
 12 consideration to the prior paid premiums and accident  
 13 experience of each individual employer during the dividend  
 14 year."

15 **Section 8.** Section 39-71-2352, MCA, is amended to read:

16 "39-71-2352. Separate payment structure and sources for  
 17 claims for injuries resulting from accidents that occurred  
 18 before July 1, 1990, and on or after July 1, 1990 --  
 19 spending limit. (1) Premiums paid to the state fund based  
 20 upon wages payable before July 1, 1990, may be used only to  
 21 administer and pay claims for injuries resulting from  
 22 accidents that occurred before July 1, 1990. Except as  
 23 provided in 39-71-2316(9) and 39-71-2354, premiums paid  
 24 to the state fund based upon wages payable on or after July  
 25 1, 1990, may be used only to administer and pay claims for

1 injuries resulting from accidents that occur on or after  
 2 July 1, 1990.

3 (2) The state fund shall:

4 (a) determine the cost of administering and paying  
 5 claims for injuries resulting from accidents that occurred  
 6 before July 1, 1990, and separately determine the cost of  
 7 administering and paying claims for injuries resulting from  
 8 accidents that occur on or after July 1, 1990;

9 (b) keep adequate and separate accounts of the costs  
 10 determined under subsection (2)(a); and

11 (c) fund administrative expenses and benefit payments  
 12 for claims for injuries resulting from accidents that  
 13 occurred before July 1, 1990, and claims for injuries  
 14 resulting from accidents that occur on or after July 1,  
 15 1990, separately from the sources provided by law.

16 (3) The state fund may not spend more than \$3 million a  
 17 year to administer claims for injuries resulting from  
 18 accidents that occurred before July 1, 1990."

19 **NEW SECTION. Section 9.** Rate setting. The board has  
 20 the authority to establish the rates to be charged by the  
 21 state fund for insurance. The board shall engage the  
 22 services of an independent actuary who is a member in good  
 23 standing with the American academy of actuaries to develop  
 24 and recommend actuarially sound rates. Rates must be set at  
 25 amounts sufficient, when invested, to carry THE ESTIMATED

COST OF all claims to maturity, to meet the reasonable expenses of conducting the business of the state fund, and to amass and maintain, by July 1, 2001, a reasonable surplus in accordance with insurance industry standards 2003, A SURPLUS OF 25% OF THE ANNUAL PREMIUM.

NEW SECTION. Section 10. Authority of insurance commissioner LEGISLATIVE AUDITOR with respect to state fund. (1) The insurance commissioner LEGISLATIVE AUDITOR shall review rates established by the board to determine if the rates or any rate changes are excessive, inadequate, or unfairly discriminatory. The insurance commissioner has the same authority over the state fund's rate setting procedures as the insurance commissioner has over the rate setting procedures of a private insurer.

(2) The state fund is subject to the provisions of Title 33, chapter 2, except for 33-2-515 and Title 33, chapter 2, parts 7, 8, and 13 EACH YEAR, THE LEGISLATIVE AUDITOR SHALL:

(1) EXAMINE THE STATE FUND BEGINNING NO SOONER THAN OCTOBER 1 FOLLOWING THE END OF THE FISCAL YEAR; AND

(2) REPORT THE FINDINGS OF THE EXAMINATION AND RATE REVIEW TO THE GOVERNOR, THE LEGISLATURE, AND THE BOARD OF DIRECTORS OF THE STATE FUND.

NEW SECTION. Section 11. Agency law -- submission of budget -- annual report. (1) The state fund is subject to

state laws applying to state agencies, except that AS OTHERWISE PROVIDED BY LAW, AND it is exempt from the provisions of The Legislative Finance Act in Title 5, chapter 12.

(2) The executive director shall annually submit to the board for its approval an estimated budget of the entire expense of administering the state fund for the succeeding fiscal year, with due regard to the business interests and contract obligations of the state fund. The budget ADMINISTRATIVE EXPENDITURES approved by the board may not exceed 15% of the EARNED annual employer premiums PREMIUM OF THE PRIOR FISCAL YEAR. A copy of the approved budget must be delivered to the governor and the legislature.

(3) The board shall submit an annual reserve FINANCIAL report prepared by the state fund's actuary to the governor and to the legislature as provided in 5-11-210, indicating the business done by the state fund during the previous year and containing a statement of the resources and ESTIMATED liabilities of the state fund AS DETERMINED BY AN INDEPENDENT ACTUARY.

Section 12. Section 39-71-2321, MCA, is amended to read:

"39-71-2321. What to be deposited in state fund. (1) (a) All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the state fund, and

securities acquired by or through use of money must be deposited in the state fund. They must be separated into two accounts based upon whether they relate to claims for injuries resulting from accidents that occurred before July 1, 1990, or claims for injuries resulting from accidents that occur on or after that date.

~~(b) Subject to the requirements of section 9, the state fund shall set aside up to 15% of annual employer premiums for the expense of administering the state fund for the succeeding fiscal year. The administrative expense funds~~  
ALL FUNDS DEPOSITED IN THE STATE FUND are statutorily appropriated as provided in 17-7-502.

(2) The proceeds of bonds issued and loans given to the state fund under 39-71-2354 and 39-71-2355 must be deposited in the account for claims for injuries resulting from accidents that occurred before July 1, 1990."

**Section 13.** Section 17-7-502, MCA, is amended to read:

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

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

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

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

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501; 39-71-2504; 39-71-2321; 44-12-206; 44-13-102; 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due,

1 that have been authorized and issued pursuant to the laws of  
 2 Montana. Agencies that have entered into agreements  
 3 authorized by the laws of Montana to pay the state  
 4 treasurer, for deposit in accordance with 17-2-101 through  
 5 17-2-107, as determined by the state treasurer, an amount  
 6 sufficient to pay the principal and interest as due on the  
 7 bonds or notes have statutory appropriation authority for  
 8 the payments. (In subsection (3): pursuant to sec. 7, Ch.  
 9 567, L. 1991, the inclusion of 19-6-709 terminates upon  
 10 death of last recipient eligible for supplemental benefit;  
 11 and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of  
 12 22-3-811 terminates June 30, 1993.)"

13 NEW SECTION. SECTION 14. APPROPRIATION. THERE IS AN  
 14 APPROPRIATION OF \$35,000 FOR EACH FISCAL YEAR OF THE  
 15 BIENNIUM BEGINNING JULY 1, 1993, TO THE LEGISLATIVE  
 16 AUDITOR'S OFFICE FOR CONTRACTED SERVICES FOR THE DUTIES  
 17 REQUIRED TO BE PERFORMED PURSUANT TO [SECTION 22 10] TO BE  
 18 PAID BY THE STATE FUND FROM THE FUNDS APPROPRIATED IN  
 19 [SECTION 22 12].

20 SECTION 15. SECTION 39-71-606, MCA, IS AMENDED TO READ:

21 "39-71-606. Insurer to accept or deny claim within  
 22 thirty days of receipt -- notice of denial -- notice to  
 23 employer. (1) Every insurer under any plan for the payment  
 24 of workers' compensation benefits shall, within 30 days of  
 25 receipt of a claim for compensation, either accept or deny

1 the claim, and if denied shall inform the claimant and the  
 2 department in writing of such denial.

3 (2) The department shall make available to insurers for  
 4 distribution to claimants sufficient copies of a document  
 5 describing current benefits and entitlements available under  
 6 Title 39, chapter 71. Upon receipt of a claim, each insurer  
 7 shall promptly notify the claimant in writing of potential  
 8 benefits and entitlements available by providing the  
 9 claimant a copy of the document prepared by the department.

10 (3) Upon the request of an employer it insures, an  
 11 insurer shall notify the employer of all compensation  
 12 benefits that are ongoing and are being charged against that  
 13 employer's account."

14 NEW SECTION. SECTION 16. NAME CHANGE -- DIRECTIONS TO  
 15 CODE COMMISSIONER. WHEREVER THE NAME "STATE COMPENSATION  
 16 MUTUAL INSURANCE FUND", MEANING THE FUND ESTABLISHED IN  
 17 39-71-2313, APPEARS IN THE MONTANA CODE ANNOTATED OR IN  
 18 LEGISLATION ENACTED BY THE 1993 LEGISLATURE, THE CODE  
 19 COMMISSIONER IS DIRECTED TO CHANGE THE NAME TO "STATE  
 20 COMPENSATION INSURANCE FUND".

21 NEW SECTION. SECTION 17. SEVERABILITY. IF A PART OF  
 22 [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE  
 23 FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS  
 24 ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART  
 25 REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE

1 SEVERABLE FROM THE INVALID APPLICATIONS.

2 NEW SECTION. SECTION 28. COORDINATION-----WITH  
 3 OCCUPATIONAL--DISEASE--ACT--OF--MONTANA--FOR--PURPOSES--OF  
 4 {SECTIONS--1--THROUGH--4}--AND--THE--ADMINISTRATION--OF--TITLE--39,  
 5 CHAPTER--72,--A--REFERENCE--IN--{SECTIONS--1--THROUGH--4}--TO--AN  
 6 INJURY--RESULTING--FROM--AN--ACCIDENT--OR--TO--A--CLAIM--FOR--AN  
 7 INJURY--RESULTING--FROM--AN--ACCIDENT--INCLUDES--A--DISABEMENT,--AS  
 8 DEFINED--IN--39-72-102(4);

9 NEW SECTION. SECTION 18. SAVING CLAUSE. [THIS ACT]  
 10 DOES NOT AFFECT RIGHTS AND DUTIES THAT MATURED, PENALTIES  
 11 THAT WERE INCURRED, OR PROCEEDINGS THAT WERE BEGUN BEFORE  
 12 [THE EFFECTIVE DATE OF THIS ACT].

13 NEW SECTION. Section 19. Codification instruction. [1]  
 14 {SECTIONS--1--THROUGH--3}--ARE--INTENDED--TO--BE--CODIFIED--AS--AN  
 15 INTEGRAL--PART--OF--TITLE--39,--CHAPTER--71,--AND--THE--PROVISIONS--OF  
 16 TITLE--39,--CHAPTER--71,--APPLY--TO--{SECTIONS--1--THROUGH--3};

17 {2}--{SECTION--4}--IS--INTENDED--TO--BE--CODIFIED--AS--AN  
 18 INTEGRAL--PART--OF--TITLE--39,--CHAPTER--71,--PART--23,--AND--THE  
 19 PROVISIONS--OF--TITLE--39,--CHAPTER--71,--PART--23,--APPLY--TO  
 20 {SECTION--4};

21 {3} [Sections 7 19 9 through 9 21 11] are intended to  
 22 be codified as an integral part of Title 39, chapter 71,  
 23 part 23, and the provisions of Title 39, chapter 71, part  
 24 23, apply to [sections 7 19 9 through 9 21 11].

25 NEW SECTION. Section 20. Effective date DATES --

1 APPLICABILITY. {This--act}--is (1) {SECTION--9--AND--THIS  
 2 SECTION}--ARE--EFFECTIVE--ON--PASSAGE--AND--APPROVAL,--AND--{SECTION  
 3 9}--APPLIES--TO--THE--BUDGET--FOR--FISCAL--YEAR--1994;

4 {2}--{SECTIONS--1--THROUGH--8--AND--10--THROUGH--14}--ARE  
 5 effective--July--1,--1993; [SECTIONS 1 THROUGH 3, 10--THROUGH  
 6 13, 21--AND--26--THROUGH--30 11, AND 16 THROUGH 19 AND THIS  
 7 SECTION] ARE EFFECTIVE ON PASSAGE AND APPROVAL.

8 {2}--{SECTIONS--4--THROUGH--9}--ARE--EFFECTIVE--ON  
 9 FINALISATION--OF--AN--AGREEMENT--ENTERED--INTO--BY--THE--GOVERNOR  
 10 AND--THE--REINSURER,--AS--PROVIDED--IN--{SECTION--1};

11 {3}(2) [SECTIONS 14--THROUGH--20--AND--22--THROUGH--25 4  
 12 THROUGH 10 AND 12 THROUGH 15] ARE EFFECTIVE JULY 1, 1993.

13 {4}(3) [SECTION 21 11] APPLIES TO THE BUDGET FOR FISCAL  
 14 YEAR 1994.

-End-

SENATE SELECT COMMITTEE REPORT

Page 1 of 2  
April 7, 1993

Page 2 of 2  
April 7, 1993

MR. PRESIDENT:

We, your select committee on Worker's Compensation having had under consideration House Bill No. 13 (third reading copy -- blue), respectfully report that House Bill No. 13 be amended as follows and as so amended be concurred in.

Signed:   
Senator Thomas E. "Tom" Towe, Chair

That such amendments read:

1. Title, page 1, lines 14 through 18.  
Following: "CLAIMS;"  
Strike: the remainder of line 14 through "GOVERNOR;" on line 18
2. Title, page 2, line 1.  
Strike: "2-15-1019,"
3. Title, page 2, line 3.  
Strike: "39-71-2317,"
4. Page 24, line 18 through page 26, line 18.  
Strike: sections 2 and 3 in their entirety  
Renumber: subsequent sections
5. Page 34, line 4.  
Following: "12"  
Insert: ", and the provisions of Title 17, chapter 7, parts 1 through 4"
6. Page 37, line 17.  
Strike: "10"  
Insert: "8"
7. Page 37, line 19.  
Strike: "12"  
Insert: "10"
8. Page 39, lines 21 and 23.  
Strike: "9"  
Insert: "7"  
Strike: "11"  
Insert: "9"
9. Page 40, line 5.  
Strike: "THROUGH 3"

10. Page 40, line 6.

Strike: "11, AND 16 THROUGH 19"

Insert: "9, and 14 through 17"

11. Page 40, lines 11 and 12.

Strike: "4 THROUGH 10 AND 12 THROUGH 15]"


Insert: "2 through 8 and 10 through 13]"

12. Page 40, line 13.

Strike: "11"

Insert: "9"

-END-

 Amd. Coord.  
Sec. of Senate

  
Senator Carrying Bill

781554SC.San

SENATE

HB 13  
781554SC.San



## HOUSE BILL NO. 13

INTRODUCED BY BENEDICT, DRISCOLL,

DOLEZAL, H. HANSON, DEVLIN, FRITZ

BY REQUEST OF THE SELECT COMMITTEE ON

WORKERS' COMPENSATION

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING WORKERS' COMPENSATION LAW; PLACING THE STATE FUND UNDER THE AUTHORITY OF THE INSURANCE COMMISSIONER; PERMITTING THE GOVERNOR TO CONTRACT FOR PRIVATE SECTOR INVOLVEMENT TO LIQUIDATE THE UNFUNDED LIABILITY AND TO MANAGE CLAIMS OF THE OLD FUND AND TO MANAGE CLAIMS OF THE NEW FUND OF THE MONTANA STATE COMPENSATION MUTUAL INSURANCE FUND; CLARIFYING THE COMPENSABILITY OF MENTAL STRESS CLAIMS; PROVIDING THAT THE GOVERNOR SHALL APPOINT THE BOARD OF DIRECTORS OF THE STATE FUND; PROVIDING THAT THE MEMBERS OF THE BOARD OF DIRECTORS AND THE EXECUTIVE DIRECTOR OF THE STATE FUND SERVE AT THE PLEASURE OF THE GOVERNOR; REVISING THE STATE FUND'S BUDGET AND FUNDING PROCEDURES; EXEMPTING THE STATE FUND FROM THE PROVISIONS OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT FOR PURPOSES OTHER THAN RATEMAKING; AUTHORIZING THE LEGISLATIVE AUDITOR TO REVIEW RATES AND EXAMINE THE STATE FUND EACH YEAR; PROVIDING A STATUTORY APPROPRIATION; PROVIDING AN APPROPRIATION; REQUIRING THE INSURER TO NOTIFY CLAIMANTS OF BENEFITS AND ENTITLEMENTS USING INFORMATION PROVIDED BY THE

DEPARTMENT; AMENDING SECTIONS 2-4-102 2-15-1019, 17-7-502, 33-1-401 18-8-103, 33-1-102, 39-71-105, 39-71-606, 39-71-721, 39-71-2314, 39-71-2315, 39-71-2316, 39-71-2317, 39-71-2321, 39-71-2323, AND 39-71-2351 AND 39-71-2352, 39-71-2354 AND 39-71-2503, MCA; AND PROVIDING AN EFFECTIVE DATE DATES AND AN APPLICABILITY DATE."

WHEREAS, THE LEGISLATURE HAS DETERMINED THAT IT IS NECESSARY TO THE PUBLIC WELFARE TO MAKE WORKERS' COMPENSATION INSURANCE AVAILABLE TO ALL EMPLOYERS THROUGH THE STATE FUND AS THE INSURER OF LAST RESORT, AND IN MAKING THIS INSURANCE AVAILABLE, THE STATE FUND HAS INCURRED AN UNFUNDED LIABILITY, AND

WHEREAS, THE UNFUNDED LIABILITY HAS GROWN EACH YEAR DESPITE THE FACT THAT THERE HAVE BEEN NUMEROUS ATTEMPTS TO SOLVE THE PROBLEM BY LEGISLATION AND OTHER METHODS, BUT THOSE ATTEMPTS HAVE NOT RESOLVED THE PROBLEM, AND

WHEREAS, THE LEGISLATURE SEPARATED THE PAYMENT STRUCTURE AND SOURCES FOR CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT OCCURRED BEFORE JULY 17, 1990 (THE "OLD FUND"), FROM INJURIES OCCURRING ON OR AFTER JULY 17, 1990 (THE "NEW FUND"), AND PROVIDED REVENUE OPTIONS AND SPENDING LIMITS, AND

WHEREAS, THIS SEPARATION HAS NOT ELIMINATED THE UNFUNDED LIABILITY, WHICH IS ESTIMATED TO BE IN EXCESS OF \$400

1 MILLION; AND

2 WHEREAS, THE JOINT SELECT COMMITTEE ON WORKERS'  
3 COMPENSATION OF THE 52ND LEGISLATURE SOLICITED FROM PRIVATE  
4 INSURANCE AND REINSURANCE MARKETS PROPOSED SOLUTIONS TO  
5 LIQUIDATE THE OLD FUND UNFUNDED LIABILITY; AND

6 WHEREAS, INSURANCE AND REINSURANCE MARKETS RESPONDED TO  
7 THE COMMITTEE'S REQUEST FOR ASSISTANCE TO LIQUIDATE THE OLD  
8 FUND UNFUNDED LIABILITY; AND

9 WHEREAS, THE COMMITTEE REVIEWED AND CONCURRED IN A  
10 PRELIMINARY PROPOSAL OF ONE OF THE INSURANCE AND REINSURANCE  
11 MARKETS THAT THE COMMITTEE BELIEVED PROVIDES SIGNIFICANT  
12 BENEFITS TO MONTANA, INCLUDING BUT NOT LIMITED TO:

13 (1) RISK TRANSFER;

14 (2) PROFIT SHARING BETWEEN THE REINSURER AND THE STATE;

15 (3) INVESTMENT OF PREMIUMS IN MONTANA FINANCIAL  
16 INSTITUTIONS AND INVESTMENTS;

17 (4) FUNDING AND FINANCE OPTIONS;

18 (5) SECURITY TO MONTANA IN THE EVENT OF CONTRACT BREACH  
19 OR INSOLVENCY OF THE REINSURER;

20 (6) INDUSTRY BEST CLAIMS MANAGEMENT AND ADMINISTRATION;

21 AND

22 (7) DEVELOPMENT OF CLEAN INDUSTRY PRIVATE SECTOR JOBS;

23 AND

24 WHEREAS, THERE MAY BE MERIT IN THE PROPOSAL, AND IT MAY  
25 BE IN THE BEST INTERESTS OF MONTANA TO PROCEED WITH THE

1 NEGOTIATIONS WITH THE REINSURER;

2 THEREFORE, THE LEGISLATURE FINDS IT APPROPRIATE TO  
3 EMPOWER THE GOVERNOR TO FULLY INVESTIGATE AND NEGOTIATE A  
4 REINSURANCE SOLUTION.

5  
6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

7 **Section 1.** Section 2-4-102, MCA, is amended to read:--

8 "2-4-102. Definitions. For purposes of this chapter,  
9 the following definitions apply:

10 (1) "Administrative code committee" or "committee"  
11 means the committee provided for in Title 5, chapter 14;

12 (2) (a) "Agency" means an agency, as defined in  
13 2-3-102, of the state government, except that the provisions  
14 of this chapter do not apply to the following:

15 (i) the state board of pardons, except that the board  
16 is subject to the requirements of 2-4-103, 2-4-201, 2-4-202,  
17 and 2-4-306 and its rules must be published in the  
18 Administrative Rules of Montana and the Montana  
19 Administrative Register;

20 (ii) the supervision and administration of a penal  
21 institution with regard to the institutional supervision,  
22 custody, control, care, or treatment of youths or prisoners;

23 (iii) the board of regents and the Montana university  
24 system;

25 (iv) the financing, construction, and maintenance of

public-works; or

(v) the state compensation mutual insurance fund and its board of directors;

(b) Agency does not include a school district, unit of local government, or any other political subdivision of the state;

(3) "ARM" means the Administrative Rules of Montana;

(4) "Contested case" means a proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to ratemaking, price fixing, and licensing;

(5) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes;

(6) "Licensing" includes any agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license;

(7) "Party" means a person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, but nothing herein in this chapter may be construed to prevent an agency from admitting any person as a party for limited purposes;

(8) "Person" means an individual, partnership, corporation, association, governmental subdivision, agency, or public organization of any character;

(9) "Register" means the Montana Administrative Register;

(10) "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

(c) rules relating to the use of public works, facilities, streets, and highways when the substance of the rules is indicated to the public by means of signs or signals;

(d) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of the rules and rules adopted annually or biennially relating to the seasonal recreational use of lands and waters owned or

controlled by the state when the substance of the rules is indicated to the public by means of signs or signals;

(e) rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system;

(f) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in accordance with 2-4-306 and must be published in the Administrative Rules of Montana;

(1) "Substantive rules" are either:

(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid; or

(b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of law."

Section 2, Section 33-1-401, MCA, is amended to read:

"33-1-401. Examination of insurers and state compensation mutual insurance fund. (1) The commissioner shall examine the affairs, transactions, accounts, records, and assets of each authorized insurer and the state compensation mutual insurance fund as often as he deems the commissioner considers advisable. He The commissioner shall

so examine each domestic insurer not less frequently than every 3 years. The commissioner shall examine the state fund on a yearly basis beginning no sooner than October 1 following the end of the fiscal year. Examination of an alien insurer may be limited to its insurance transactions and affairs in the United States. Examination of a reciprocal insurer may also include examination of its attorney in fact insofar as the transactions of the attorney in fact relate to the insurer.

(2) The commissioner shall in like manner examine each insurer applying for an initial certificate of authority to do business in this state.

(3) In lieu of making his own an examination, the commissioner may, in his discretion, accept a full report of the last recent examination of a foreign or alien insurer, certified to by the insurance supervisory official of another state, territory, commonwealth, or district of the United States.

(4) If after examining the state compensation mutual insurance fund pursuant to subsection (1), the commissioner determines that the fund, if it were a private insurer, would be subject to the provisions of Title 33, chapter 2, part 13, the commissioner shall report those findings to the governor and the legislature."

NEW SECTION. SECTION 4. LIQUIDATION OF OLD FUND

1 LIABILITY. (1) (A) THE GOVERNOR IS AUTHORIZED TO NEGOTIATE  
 2 THE LIQUIDATION OF THE UNFUNDED LIABILITY OF THE OLD FUND OF  
 3 THE STATE FUND, AS DEFINED IN 39-71-2312, IF AN AGREEMENT  
 4 CAN BE REACHED THAT IS IN THE BEST INTERESTS OF MONTANA. THE  
 5 SCOPE OF ANY NEGOTIATED AGREEMENT MAY INCLUDE BUT MAY NOT  
 6 EXCEED ALL OF THE RIGHTS, PRIVILEGES, LIABILITIES, AND  
 7 DUTIES OF THE STATE FUND WITH RESPECT TO ALL CLAIMS ARISING  
 8 PRIOR TO JULY 17, 1990.

9 (B) THE GOVERNOR MAY NOT ENTER INTO AN AGREEMENT THAT  
 10 PAYS CASH OR ASSETS IN AN AGGREGATE AMOUNT THAT EXCEEDS \$400  
 11 MILLION TO THE OTHER PARTIES TO THE AGREEMENTS.

12 (C) ANY CONTRACT FINALIZED BY THE GOVERNOR MUST CONTAIN  
 13 A PROVISION THAT THE CONTRACT IS VOID UNLESS NECESSARY  
 14 FINANCING TO FUND THE UNFUNDED LIABILITY HAS BEEN PROVIDED  
 15 BY THE 1993 LEGISLATURE.

16 (D) TO BE EFFECTIVE, A CONTRACT MUST BE FINALIZED BY  
 17 THE GOVERNOR WITHIN 120 DAYS OF THE EFFECTIVE DATE OF THIS  
 18 SECTION.

19 (E) ANY CONTRACT FINALIZED BY THE GOVERNOR MAY REQUIRE  
 20 REINSURANCE PREMIUM PAYMENTS BY THE STATE TO BE USED TO  
 21 LIQUIDATE THE OLD FUND LIABILITY.

22 (2) ANY ENTITY ENTERING INTO AN AGREEMENT WITH MONTANA  
 23 UNDER (SECTION 2) OR THIS SECTION SHALL SUBMIT AN ANNUAL  
 24 REPORT TO THE LEGISLATIVE AUDIT COMMITTEE. THE FIRST REPORT  
 25 IS DUE 12 MONTHS AFTER THE AGREEMENT IS FINALIZED AND

1 THEREAFTER MAY BE SUBMITTED ON A FISCAL YEAR BASIS.

2 (3) ANY NEGOTIATIONS OR AGREEMENTS ENTERED INTO  
 3 PURSUANT TO (SECTION 2) AND THIS SECTION ARE NOT SUBJECT TO  
 4 THE COMPETITIVE BIDDING REQUIREMENTS OF TITLE 18, CHAPTER 4.

5 (4) A NEGOTIATION OR AN AGREEMENT ENTERED INTO PURSUANT  
 6 TO (SECTION 2) IS NOT SUBJECT TO THE PRIVATIZATION PLAN  
 7 REQUIREMENTS OF TITLE 2, CHAPTER 8, PART 3.

8 NEW SECTION. SECTION 2. CLAIMS SETTLEMENT OF NEW FUND  
 9 CLAIMS. NEW FUND MANAGEMENT. AS PART OF THE NEGOTIATED  
 10 LIQUIDATION OF THE UNFUNDED LIABILITY OF THE OLD FUND OF THE  
 11 STATE FUND, AS DEFINED IN 39-71-2312, THE GOVERNOR MAY  
 12 NEGOTIATE FOR CLAIMS SETTLEMENT OF THE CLAIMS OF PERSONS  
 13 WHOSE BENEFITS HAVE NOT BEEN DETERMINED UNDER A CLAIM BASED  
 14 ON AN INJURY OCCURRING ON OR AFTER JULY 17, 1990, AND FOR  
 15 SERVICES WITH RESPECT TO THE NEW FUND OF THE STATE FUND,  
 16 INCLUDING BUT NOT LIMITED TO CLAIMS MANAGEMENT SERVICES,  
 17 THIRD PARTY ADMINISTRATION, AND MEDICAL COST CONTAINMENT  
 18 AGREEMENTS IF THE CONTRACTED SERVICES ARE IN THE BEST  
 19 INTERESTS OF THE STATE. AN AGREEMENT UNDER THIS SECTION IS  
 20 VALID ONLY IF IT IS PART OF AN AGREEMENT THAT MEETS THE  
 21 REQUIREMENTS OF (SECTION 1).

22 NEW SECTION. SECTION 3. AUDIT OF CONTRACTED SERVICES  
 23 AND OLD FUND LIQUIDATION. ANY PROPOSAL INVOLVING THE PRIVATE  
 24 SECTOR IN LIQUIDATION OF THE UNFUNDED LIABILITY OF THE OLD  
 25 FUND OF THE STATE FUND, AS DEFINED IN 39-71-2312, OR IN

CLAIMS SETTLEMENT AND MANAGEMENT OF THE NEW FUND OF THE STATE FUND MUST PROVIDE FOR AUDIT AND REPORTING MECHANISMS IN COMPLIANCE WITH 39-71-2361:

NEW SECTION. SECTION 4. MUTUALLY AGREEABLE LUMP SUM SETTLEMENTS. BEGINNING JULY 1, 1993, A WORKER'S COMPENSATION CLAIMANT AND THE STATE FUND OR A REINSURER MAY, REGARDLESS OF THE LUMP SUM LAW IN EFFECT ON THE DATE OF THE INJURY, MUTUALLY AGREE TO A LUMP SUM SETTLEMENT OF A CLAIM. IF A MUTUAL AGREEMENT IS NOT REACHED, THE LUMP SUM LAW IN EFFECT ON THE DATE OF THE INJURY APPLIES.

SECTION 5. SECTION 39-71-721, MCA, IS AMENDED TO READ:

"39-71-721. Compensation for injury causing death-- limitation. Except as provided in {section 4}:

{1}--(a) If if an injured employee dies and the injury was the proximate cause of such death, then the beneficiary of the deceased is entitled to the same compensation as though the death occurred immediately following the injury. A beneficiary's eligibility for benefits commences after the date of death and the benefit level is established as set forth in subsection {2}:

{b}--The the insurer is entitled to recover any overpayments or compensation paid in a lump sum to a worker prior to death but not yet recouped. The insurer shall recover such the payments from the beneficiary's biweekly payments as provided in 39-71-741{5}:

{2}--To to beneficiaries as defined in 39-71-116{3}{a} through {3}{d}, weekly compensation benefits for an injury causing death are 66-2/3% of the decedent's wages. The maximum weekly compensation benefit may not exceed the state's average weekly wage at the time of injury. The minimum weekly compensation benefit is 50% of the state's average weekly wage, but in no event may it exceed the decedent's actual wages at the time of his death.

{3}--To to beneficiaries as defined in 39-71-116{3}{e} and {3}{f}, weekly benefits must be paid to the extent of the dependency at the time of the injury, subject to a maximum of 66-2/3% of the decedent's wages. The maximum weekly compensation may not exceed the state's average weekly wage at the time of injury.

{4}--If if the decedent leaves no beneficiary as defined in 39-71-116, a lump sum payment of \$3,000 must be paid to the decedent's surviving parent or parents.

{5}--If if any beneficiary of a deceased employee dies, the right of such the beneficiary to compensation under this chapter ceases. Death benefits must be paid to a surviving spouse for 500 weeks subsequent to the date of the deceased employee's death or until the spouse's remarriage, whichever occurs first. After benefit payments cease to a surviving spouse, death benefits must be paid to beneficiaries, if any, as defined in 39-71-116{3}{b} through {3}{d}:

(6)--In--in--all--cases,--benefits--must--be--paid--to  
beneficiaries,--as--defined--in--39-71-116,--and

(7)--Benefits--benefits--paid--under--this--section--may--not  
be--adjusted--for--cost--of--living--as--provided--in--39-71-702.

(8)--Notwithstanding--subsections--(2)--and--(3),--beginning  
July-17-1987,--through--June--30,--1991,--the--maximum--weekly  
compensation--benefits--for--injury--causing--death--may--not  
exceed--the--state's--average--weekly--wage--of--\$299--established  
July-17-1986. Beginning--July-17-1987,--through--June--30,--1991,  
the--minimum--weekly--compensation--for--injury--causing--death  
shall--be--\$149.50,--which--is--50%--of--the--state's--average--weekly  
wage--established--July-17-1986,--but--in--no--event--may--it--exceed  
the--decendent's--actual--wages--at--the--time--of--death."

**SECTION 6:--SECTION 39-71-2315, MCA, IS AMENDED TO READ:**

"39-71-2315. Management--of--state--fund-----powers--and  
duties--of--the--board. Except--with--respect--to--any--agreement  
established--pursuant--to--(sections--1--and--2)--and--except--as  
provided--in--2-15-1019--or--39-71-2317:

(1)--The--the--management--and--control--of--the--state--fund--is  
vested--solely--in--the--board,--and

(2)--The--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  
power,--authority,--or--jurisdiction--over--the--state--fund,  
either--in--the--administration--of--the--state--fund--or--in

connection--with--the--insurance--business--to--be--carried--on  
under--the--provisions--of--this--part,--as--fully--and--completely  
as--the--governing--body--of--a--private--mutual--insurance--carrier,  
in--order--to--fulfill--the--objectives--and--intent--of--this--part.  
Bonds--may--not--be--issued--by--the--board,--the--state--fund,--or--the  
executive--director."

**SECTION 7:--SECTION 39-71-2351, MCA, IS AMENDED TO READ:**

"39-71-2351. Purpose--of--separation--of--state--fund  
liability--as--of--July-17-1990,--and--of--separate--funding--of  
claims--before--and--on--or--after--that--date,--(1)--An--unfunded  
liability--exists--in--the--state--fund. It--has--existed--since--at  
least--the--mid-1980s--and--has--grown--each--year. There--have--been  
numerous--attempts--to--solve--the--problem--by--legislation--and  
other--methods. These--attempts--have--alleviated--the--problem  
somewhat,--but--the--problem--has--not--been--solved.

(2)--The--legislature--has--determined--that--it--is--necessary  
to--the--public--welfare--to--make--workers'--compensation  
insurance--available--to--all--employers--through--the--state--fund  
as--the--insurer--of--last--resort. In--making--this--insurance  
available,--the--state--fund--has--incurred--the--unfunded  
liability. The--legislature--has--determined--that--the--most  
cost-effective--and--efficient--way--to--provide--a--source--of  
funding--for--and--to--ensure--payment--of--the--unfunded--liability  
and--the--best--way--to--administer--the--unfunded--liability--is--to:

(a)--separate--the--liability--of--the--state--fund--on--the

1 basis--of-whether-a-claim-is-for-an-injury-resulting-from-an  
2 accident-that-occurred-before-July-17-1990-or-an-accident  
3 that-occurs-on-or-after-that-date;

4 (b)--extend--the--payroll--tax-imposed-by-39-71-2503-and  
5 dedicate-the-tax-money--first--to--the--repayment--of--bonds  
6 issued--under--39-71-2354--and--39-71-2355--and--then-to-the  
7 repayment-of-loans-given-under-39-71-2354-and-39-71-2355, to  
8 payment-of-premiums-for-a-negotiated-liquidation-of-the  
9 unfunded-liability-of-the-old-fund-of-the-state-fund-as  
10 provided-in-section-17 and the direct payment-of-the-costs  
11 of-administering--and--paying--claims--for--injuries--from  
12 accidents-that-occurred-before-July-17-1990;

13 (3)--The-legislature-further-determines-that-in-order-to  
14 prevent--the--creation--of--a--new--unfunded--liability-with  
15 respect-to-claims-for-injuries-for-accidents-that-occur-on  
16 or--after--July-17-1990--certain-duties-of-the-state-fund  
17 should-be-clarified-and-legislative-oversight-of-the-state  
18 fund-should-be-increased;"

19 **SECTION 8. SECTION 39-71-2354, MCA, IS AMENDED TO READ:**

20 "39-71-2354. Use-of-payroll-tax-proceeds---loans---  
21 bonds--(1)--Taxes-collected-under-39-71-2503-may-be-used-only  
22 to-administer-and-pay-claims--for--injuries--resulting--from  
23 accidents--that--occurred-before-July-17-1990--including-the  
24 cost-of-repaying-bonds-issued-and-loan-proceeds-given--under  
25 39-71-2355--and--this--section-and-any-premium-payments-that

1 may-be-required-by-an-agreement-made--pursuant--to--section  
2 17--if--the--state--fund-determines-that, for-the-next-1-or  
3 more-years-following-the-date-of-the-determination, the--tax  
4 revenue--together--with--funds--in--the-account-required-by  
5 39-71-2321-for-claims-for-injuries-resulting-from--accidents  
6 that--occurred--before-July-17-1990, will-be-insufficient-to  
7 administer-and-pay-those-claims, the-state-fund-may, through  
8 its-board-of--directors, request--the--budget--director--to  
9 certify--to-the-board-of-investments-that-additional-funding  
10 is-necessary--if-the-budget-director-agrees-with--the--state  
11 fund's---board--of--directors--that--additional--funding--is  
12 necessary, the-budget-director-shall-certify-to-the-board-of  
13 investments-the-amount-that-the-budget--director--determines  
14 is--necessary--to--administer--and--pay--claims-for-injuries  
15 resulting-from-accidents-that-occurred-before-July-17-1990.  
16 Except---as---provided--in--subsection--(2), the--board--of  
17 investments-shall, at-times--and--in--amounts--it--considers  
18 necessary--or--advisable, finance-the-amount-certified-by-the  
19 budget-director-by-giving-the-state-fund-the-proceeds--of--a  
20 loan--or--a--bond--issue--to--administer--and--pay-claims-for  
21 injuries-resulting-from-accidents-that-occurred-before--July  
22 17-1990--loans--must--be--from--reserves--accumulated-from  
23 premiums-paid-to-the-state-fund-based-upon-wages-payable--on  
24 or-after-July-17-1990--in-the-event-that-loans-are-necessary  
25 for--an-agreement-established-in-accordance-with-sections-1



~~and 2} the governor is authorized to pursue internal and external financing that is in the best interests of the state. The board of investments shall choose the method of financing that is most cost effective for the state fund. A loan must bear interest at the rate the money would earn in the pooled investment fund required by 17-6-203. The board of investments may also, upon request of the board of directors of the state fund, give the state fund the proceeds of a bond issue, to be used to pay off loans made under 39-71-2355 and this section. Bonds for the state fund must be workers' compensation bonds issued under 39-71-2355.~~

~~{2} The Except for any agreement established pursuant to {sections 1 and 2}, the total amount of loan proceeds given to the state fund plus workers' compensation bonds issued under 39-71-2355, except bonds issued to repay loans as provided for in subsection {1}, may not exceed \$220 million. All loan and bond proceeds given to the state fund must be repaid to the board of investments before July 17 2020."~~

**~~SECTION 9. SECTION 39-71-2503, MCA, IS AMENDED TO READ:~~**

~~"39-71-2503. Workers' compensation payroll tax. (1) (a) There is imposed on each employer a workers' compensation payroll tax in an amount equal to 0.28% of the employer's payroll in the preceding calendar quarter for all employments covered under 39-71-401, except that if an~~

~~employer is subject to 15-30-204(2), the tax is an amount equal to 0.20% of the employer's payroll in the preceding week. This payroll tax must be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 17 1990, or for payment of those claims under {section 1}. If one or more loans or bonds are outstanding, the tax must be continued at the 0.28% rate and the legislature may not modify the tax rate, the use of the tax proceeds, or this section in a manner that reduces the security for repayment of the outstanding loans or bonds, except that the legislature may forgive payment of the tax or reduce the tax rate for any 12-month period if the workers' compensation bond repayment account contains on the first day of that period an amount, regardless of the source, that is in excess of the reserve maintained in the account and that is equal to the amount needed to pay and dedicated to the payment of the principal, premium, and interest that must be paid during that period on the outstanding loans or bonds. The legislature may not increase the tax rate except upon a two-thirds vote of each house.~~

~~(b) Each employer shall maintain the records the department requires concerning the employer's payroll. The records are subject to inspection by the department and its employees and agents during regular business hours.~~

{2}--All--collections--of--the--tax--are--appropriated--to--and must--be--deposited--as--received--in--the--tax--account. The--tax--is in--addition--to--any--other--tax--or--fee--assessed--against employers--subject--to--the--tax.

{3}--(a)--On--or--before--the--last--day--of--April, July, October, and January, each employer subject to the tax shall file a return in the form and containing the information required by the department and, except as provided in subsection {3}(b), pay the amount of tax required by this section to be paid on the employer's payroll for the preceding calendar quarter.

{b}--An employer subject to 15-30-204(2) shall remit to the department a weekly payment with its weekly withholding tax payment in the amount required by subsection {1}(a).

{c}--A tax payment required by subsection {1}(a) must be made with the return filed pursuant to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any remainder to the workers' compensation tax account provided in 39-71-2504.

{4}--An employer's officer or employee with the duty to collect, account for, and pay to the department the amounts due under this section who willfully fails to pay an amount is liable to the state for the unpaid amount and any penalty and interest relating to that amount.

{5}--Returns and remittances under subsection {3} and

any information obtained by the department during an audit are subject to the provisions of 15-30-303, but the department may disclose the information to the department of labor and industry under circumstances and conditions that ensure the continued confidentiality of the information.

{6}--The department of labor and industry and the state fund shall, on July 1, 1991, or as soon after that date as possible, give the department a list of all employers having coverage under any plan administered or regulated by the department of labor and industry and the state fund. After the lists have been given to the department, the department of labor and industry and the state fund shall update the lists weekly. The department of labor and industry and the state fund shall provide the department with access to their computer data bases and paper files and records for the purpose of the department's administration of the tax imposed by this section.

{7}--The provisions of Title 15, chapter 30, not in conflict with the provisions of this part regarding administration, remedies, enforcement, collections, hearings, interest, deficiency assessments, credits for overpayment, statute of limitations, penalties and department rulemaking authority apply to the tax, to employers, and to the department.<sup>2</sup>

**SECTION 10: -SECTION 33-1-102, MCA, IS AMENDED TO READ:-**

1 "33-1-102--Compliance-required---exceptions-----health  
 2 service--corporations---health-maintenance-organizations---  
 3 governmental--insurance--programs---(1)--A--person--may--not  
 4 transact-a-business-of-insurance-in-Montana-or-relative-to-a  
 5 subject-resident,--located,--or-to--be--performed--in--Montana  
 6 without--complying--with--the--applicable-provisions-of-this  
 7 code;  
 8 (2)--The-provisions-of--this--code--do--not--apply--with  
 9 respect-to:  
 10 (a)--domestic--farm--mutual--insurers--as--identified-in  
 11 chapter-4,--except-as-stated-in-chapter-4;  
 12 (b)--domestic-benevolent-associations-as--identified--in  
 13 chapter-6,--except-as-stated-in-chapter-6;--and  
 14 (c)--fraternal--benefit--societies,--except-as-stated-in  
 15 chapter-7;  
 16 (3)--This-code-applies-to-health-service-corporations-as  
 17 prescribed-in-33-30-102. The-existence-of--the--corporations  
 18 is--governed-by-Title-35,--chapter-2,--and-related-sections-of  
 19 the-Montana-Code-Annotated;  
 20 (4)--This-code-does--not--apply--to--health-maintenance  
 21 organizations---to---the---extent---that---the---existence---and  
 22 operations-of-these-organizations-are-authorized-by--chapter  
 23 31;  
 24 (5)--This--code--does--not--apply-to-workers'-compensation  
 25 insurance-programs-provided-for-in--Title--39,--chapter--71;

1 parts-21-and-23,-- {sections-1-and-2},--and-related-sections;  
 2 (6)--This--code--does--not--apply--to-the-state-employee  
 3 group-insurance-program-established-in-Title-2,--chapter--18,  
 4 part-8;  
 5 (7)--This--code--does--not--apply--to--insurance--funded  
 6 through--the--state-self-insurance-reserve-fund-provided-for  
 7 in-2-9-202;  
 8 (8)--(a)--This-code-does-not-apply--to--any--arrangement,  
 9 plan,--or-interlocal-agreement-between-political-subdivisions  
 10 of--this-state-in-which-the-political-subdivisions-undertake  
 11 to-separately-or-jointly-indemnify-one-another-by-way--of--a  
 12 pooling,--joint--retention,--deductible,--or--self-insurance  
 13 plan;  
 14 (b)--This--code-does-not-apply-to-any-arrangement,--plan,  
 15 or-interlocal-agreement-between--political--subdivisions--of  
 16 this--state-or-any-arrangement,--plan,--or-program-of-a-single  
 17 political-subdivision-of-this-state-in-which--the--political  
 18 subdivision--provides-to-its-officers,--elected-officials,--or  
 19 employees-disability-insurance-or-life-insurance--through--a  
 20 self-funded-program;"

21 **SECTION 1. SECTION 39-71-105, MCA, IS AMENDED TO READ:**  
 22 "39-71-105. Declaration of public policy. For the  
 23 purposes of interpreting and applying Title 39, chapters 71  
 24 and 72, the following is the public policy of this state:  
 25 (1) It is an objective of the Montana workers'

1 compensation system to provide, without regard to fault,  
2 wage supplement and medical benefits to a worker suffering  
3 from a work-related injury or disease. Wage-loss benefits  
4 are not intended to make an injured worker whole; they are  
5 intended to assist a worker at a reasonable cost to the  
6 employer. Within that limitation, the wage-loss benefit  
7 should bear a reasonable relationship to actual wages lost  
8 as a result of a work-related injury or disease.

9 (2) A worker's removal from the work force due to a  
10 work-related injury or disease has a negative impact on the  
11 worker, the worker's family, the employer, and the general  
12 public. Therefore, it is an objective of the workers'  
13 compensation system to return a worker to work as soon as  
14 possible after the worker has suffered a work-related injury  
15 or disease.

16 (3) Montana's workers' compensation and occupational  
17 disease insurance systems are intended to be primarily  
18 self-administering. Claimants should be able to speedily  
19 obtain benefits, and employers should be able to provide  
20 coverage at reasonably constant rates. To meet these  
21 objectives, the system must be designed to minimize reliance  
22 upon lawyers and the courts to obtain benefits and interpret  
23 liabilities.

24 (4) Title 39, chapters 71 and 72, must be construed  
25 according to their terms and not liberally in favor of any

1 party.

2 (5) It is the intent of the legislature that stress  
3 claims, often referred to as "mental-mental claims" and  
4 "mental-physical claims", are not compensable under  
5 Montana's workers' compensation and occupational disease  
6 laws. The legislature recognizes that these claims are  
7 difficult to objectively verify and that the claims have a  
8 potential to place an economic burden on the workers'  
9 compensation and occupational disease system. The  
10 legislature also recognizes that there are other states that  
11 do not provide compensation for various categories of stress  
12 claims and that stress claims have presented economic  
13 problems for certain other jurisdictions. In addition, not  
14 all injuries are compensable under the present system, as is  
15 the case with repetitive injury claims, and it is within the  
16 legislature's authority to define the limits of the workers'  
17 compensation and occupational disease system."

18 ~~SECTION 2. SECTION 2-15-1019, MCA, IS AMENDED TO READ:~~

19 ~~"2-15-1019. Board of directors of the state~~  
20 ~~compensation mutual insurance fund. (1) There is a board of~~  
21 ~~directors of the state compensation mutual insurance fund.~~

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

25 ~~(3) The board may provide for its own office space and~~

1 the-office-space-of-the-state-fund;

2 {4}--The-board-consists-of-five-members-appointed-by-the

3 governor--The-executive-director-of-the-state-fund-is-an-ex

4 officio-nonvoting-member;

5 {5}--At-least-three-of-the-five-members-shall-represent

6 state-fund-policyholders-and-may-be-employees-of-state-fund

7 policyholders--At-least-three-members-of-the-board-shall

8 represent-private-for-profit-enterprises--A-member-of-the

9 board-may-not:

10 {a}--represent-or-be-an-employee-of-an-insurance-company

11 that-is-licensed-to-transact-workers-compensation-insurance

12 under-compensation-plan-No-2-or

13 {b}--be-an-employee-of-a-self-insured-employer-under

14 compensation-plan-No-1;

15 {6}--A-member-is-appointed-for-a-term-of-4-years serves

16 at-the-pleasure-of-the-governor--The-governor-may-remove-a

17 member-at-any-time-and-appoint-a-new-member-to-the-office--

18 The-terms-of-board-members-must-be-staggered--A-member-of

19 the-board-may-serve-no-more-than-two-4-year-terms--A-member

20 shall-hold-office-until-a-successor-is-appointed-and

21 qualified;

22 {7}--The-members-must-be-appointed-and-compensated-in

23 the-same-manner-as-members-of-a-quasi-judicial-board-as

24 provided-in-2-15-1247-except-that-the-requirement-that-at

25 least-one-member-be-an-attorney-does-not-apply and-except

1 that-the-members-serve-at-the-pleasure-of-the-governor."

2 SECTION 3. SECTION 39-71-2317, MCA, IS AMENDED TO READ:

3 "39-71-2317. Appointment of executive director--

4 management-staff. {1} The-board governor shall-at-the

5 beginning-of-each-gubernatorial-term, appoint-an-executive

6 director-of-the-state-fund-who-has-general-responsibility

7 for-the-operations-of-the-state-fund;

8 {2}--The-executive-director-serves-at-the-pleasure-of

9 the-governor--The-governor-may-remove-the-executive-director

10 at-any-time-and-appoint-a-new-executive-director-to-the

11 officer;

12 {3}--The-executive-director-must-have-executive-level

13 experience-with-knowledge-of-the-insurance-industry--The

14 executive-director-must-receive-compensation-as-set-by-the

15 board-and-serve-at-the-pleasure-of-the-board--The-executive

16 director-may-hire-the-management-staff-of-the-state-fund,

17 each-of-whom-serves-at-the-pleasure-of-the-executive

18 director."

19 SECTION 2. SECTION 18-8-103, MCA, IS AMENDED TO READ:

20 "18-8-103. Exemptions. This part does not apply to

21 employment of:

- 22 (1) registered professional engineers, surveyors, real
- 23 estate appraisers, or registered architects;
- 24 (2) physicians, dentists, or other medical, dental, or
- 25 health care providers;

(3) expert witnesses hired for use in litigation, hearings officers hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or attorneys as specified by executive order of the governor;

(4) consulting actuaries to the public retirement boards or the state compensation insurance fund; or

(5) private consultants employed by the student associations of the university system with money raised from student activity fees designated for use by those student associations."

**Section 3.** Section 39-71-2314, MCA, is amended to read:

"39-71-2314. State fund -- assigned risk plan. ~~(1)~~

If an assigned risk plan is established and administered pursuant to 39-71-431, 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.

~~(2) The state fund is subject to laws that generally apply to state agencies, including but not limited to Title 2, chapters 2, 3, 4 (except as provided in 39-71-2316), and 6, and Title 5, chapter 13. The state fund is not exempt from a law that applies to state agencies unless that law specifically exempts the state fund by name and clearly states that it is exempt from that law.~~

(2) THE STATE FUND IS SUBJECT TO LAWS THAT GENERALLY APPLY TO STATE AGENCIES, INCLUDING BUT NOT LIMITED TO TITLE 2, CHAPTERS 2, 3, 4 (ONLY AS PROVIDED IN 39-71-2316), AND 6, AND TITLE 5, CHAPTER 13. THE STATE FUND IS NOT EXEMPT FROM A LAW THAT APPLIES TO STATE AGENCIES UNLESS THAT LAW SPECIFICALLY EXEMPTS THE STATE FUND BY NAME AND CLEARLY STATES THAT IT IS EXEMPT FROM THAT LAW."

**Section 4.** Section 39-71-2316, MCA, is amended to read:

"39-71-2316. Powers of the state fund ---rulemaking. For the purposes of carrying out its functions, the state fund may:

(1) insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state and, ~~in connection with the coverage, provide employers' liability insurance.~~ The state fund may charge a minimum yearly premium to ~~cover its administrative costs for coverage of a small employer~~ TO COVER ITS ADMINISTRATIVE COSTS FOR COVERAGE OF A SMALL EMPLOYER.

(2) sue and be sued;

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

~~(4)~~ (3) except as provided in section 21, Chapter 4, Special Laws of May 1990, enter into contracts relating to the administration of the state fund, including claims

1 management, servicing, and payment;  
 2 {5}{4} collect and disburse money received;  
 3 {6}{5} adopt classifications and charge premiums for  
 4 the classifications so that the state fund will be neither  
 5 more nor less than self-supporting-7. PREMIUM RATES FOR  
 6 CLASSIFICATIONS MAY ONLY BE ADOPTED AND CHANGED USING A  
 7 PROCESS, A PROCEDURE, FORMULAS, AND FACTORS SET FORTH IN  
 8 RULES ADOPTED UNDER TITLE 2, CHAPTER 4, PARTS 2 THROUGH 4.  
 9 AFTER SUCH RULES HAVE BEEN ADOPTED, THE STATE FUND NEED NOT  
 10 FOLLOW THE RULEMAKING PROVISIONS OF TITLE 2, CHAPTER 4, WHEN  
 11 CHANGING CLASSIFICATIONS AND PREMIUM RATES. THE CONTESTED  
 12 CASE RIGHTS AND PROVISIONS OF TITLE 2, CHAPTER 4, DO NOT  
 13 APPLY TO AN EMPLOYER'S CLASSIFICATION OR PREMIUM RATE.  
 14 ~~Premium-rates-for-classifications-may-only-be-adopted-and~~  
 15 ~~changed--using-a-process,-a-procedure,-formulas,-and-factors~~  
 16 ~~set-forth-in-rules-adopted-under-Title-2,-chapter-4,-parts-2~~  
 17 ~~through-4,-After-such-rules-have-been-adopted,-the--state~~  
 18 ~~fund--need--not-follow-the-rulemaking-provisions-of-Title-2,~~  
 19 ~~chapter-4,-when-changing-classifications-and-premium-rates-~~  
 20 ~~The-contested-case-rights-and-provisions-of-Title-2,-chapter~~  
 21 ~~4,-do--not-apply-to-an-employer's-classification-or-premium~~  
 22 ~~rate,-The-state-fund-must-belong-to-the-national-council-on~~  
 23 ~~compensation---insurance-and-shall-use-the-classifications-of~~  
 24 ~~employment-adopted-by-the-national-council-and-corresponding~~  
 25 ~~rates-as-a-basis-for-setting-its-own-rates.~~ THE STATE FUND

1 MUST BELONG TO THE NATIONAL COUNCIL ON COMPENSATION  
 2 INSURANCE AND MAY USE THE CLASSIFICATIONS OF EMPLOYMENT  
 3 ADOPTED BY A WORKERS' COMPENSATION RATING ORGANIZATION AND  
 4 CORRESPONDING RATES AS A BASIS FOR SETTING ITS OWN RATES.  
 5 {7}{6} pay the amounts determined due under a policy of  
 6 insurance issued by the state fund;  
 7 {8}{7} hire personnel;  
 8 {9}{8} declare dividends if there is an excess of  
 9 assets over liabilities. However, dividends may not be paid  
 10 until adequate actuarially determined reserves are set  
 11 aside. If those reserves have been set aside, money that can  
 12 be declared as a dividend must be transferred to the account  
 13 created by 39-71-2321 for claims for injuries resulting from  
 14 accidents that occurred before July 1, 1990, and used for  
 15 the purposes of that account. After all claims funded by  
 16 that account have been paid, dividends may be declared and  
 17 paid to insureds.  
 18 {10}{9} perform all functions and exercise all powers  
 19 of a ~~domestic-mutual-insurer~~ private insurance carrier that  
 20 are necessary, appropriate, or convenient for the  
 21 administration of the state fund."  
 22 **Section 5.** Section 39-71-2323, MCA, is amended to read:  
 23 "39-71-2323. Surplus in state fund -- payment of  
 24 dividends. Subject to the provisions of 39-71-2316{9}{8}, if  
 25 at the end of any fiscal year there exists in the state fund

account created by 39-71-2321 for claims for injuries resulting from accidents that occur on or after July 1, 1990, an excess of assets over liabilities, including necessary reserves and a reasonable surplus, and if the excess may be refunded safely, then the state fund may declare a dividend. The rules of the state fund must prescribe the manner of payment to those employers who have paid premiums into the 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 state fund shall give consideration to the prior paid premiums and accident experience of each individual employer during the dividend year."

**Section 6.** Section 39-71-2352, MCA, is amended to read:

"39-71-2352. Separate payment structure and sources for claims for injuries resulting from accidents that occurred before July 1, 1990, and on or after July 1, 1990 -- spending limit. (1) Premiums paid to the state fund based upon wages payable before July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Except as provided in 39-71-2316~~(9)~~~~(8)~~ and 39-71-2354, premiums paid to the state fund based upon wages payable on or after July 1, 1990, may be used only to administer and pay claims for

injuries resulting from accidents that occur on or after July 1, 1990.

(2) The state fund shall:

(a) determine the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, and separately determine the cost of administering and paying claims for injuries resulting from accidents that occur on or after July 1, 1990;

(b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and

(c) fund administrative expenses and benefit payments for claims for injuries resulting from accidents that occurred before July 1, 1990, and claims for injuries resulting from accidents that occur on or after July 1, 1990, separately from the sources provided by law.

(3) The state fund may not spend more than \$3 million a year to administer claims for injuries resulting from accidents that occurred before July 1, 1990."

**NEW SECTION. Section 7. Rate setting.** The board has the authority to establish the rates to be charged by the state fund for insurance. The board shall engage the services of an independent actuary who is a member in good standing with the American academy of actuaries to develop and recommend actuarially sound rates. Rates must be set at amounts sufficient, when invested, to carry THE ESTIMATED



COST OF all claims to maturity, to meet the reasonable expenses of conducting the business of the state fund, and to amass and maintain, by July 1, 2001, a reasonable surplus in accordance with insurance industry standards 2003, A SURPLUS OF 25% OF THE ANNUAL PREMIUM.

NEW SECTION. Section 8. Authority of Insurance commissioner LEGISLATIVE AUDITOR with respect to state fund. (1) The insurance commissioner LEGISLATIVE AUDITOR shall review rates established by the board to determine if the rates or any rate changes are excessive, inadequate, or unfairly discriminatory. The insurance commissioner has the same authority over the state fund's rate setting procedures as the insurance commissioner has over the rate setting procedures of a private insurer.

(2) The state fund is subject to the provisions of Title 33, chapter 2, except for 33-2-515 and Title 33, chapter 2, parts 7, 8, and 13 EACH YEAR, THE LEGISLATIVE AUDITOR SHALL:

(1) EXAMINE THE STATE FUND BEGINNING NO SOONER THAN OCTOBER 1 FOLLOWING THE END OF THE FISCAL YEAR; AND

(2) REPORT THE FINDINGS OF THE EXAMINATION AND RATE REVIEW TO THE GOVERNOR, THE LEGISLATURE, AND THE BOARD OF DIRECTORS OF THE STATE FUND.

NEW SECTION. Section 9. Agency law -- submission of budget -- annual report. (1) The state fund is subject to

state laws applying to state agencies, except that AS OTHERWISE PROVIDED BY LAW, AND it is exempt from the provisions of The Legislative Finance Act in Title 5, chapter 12, AND THE PROVISIONS OF TITLE 17, CHAPTER 7, PARTS 1 THROUGH 4.

(2) The executive director shall annually submit to the board for its approval an estimated budget of the entire expense of administering the state fund for the succeeding fiscal year, with due regard to the business interests and contract obligations of the state fund. The budget ADMINISTRATIVE EXPENDITURES approved by the board may not exceed 15% of the EARNED annual employer-premiums PREMIUM OF THE PRIOR FISCAL YEAR. A copy of the approved budget must be delivered to the governor and the legislature.

(3) The board shall submit an annual reserve FINANCIAL report prepared by the state fund's actuary to the governor and to the legislature as provided in 5-11-210, indicating the business done by the state fund during the previous year and containing a statement of the resources and ESTIMATED liabilities of the state fund AS DETERMINED BY AN INDEPENDENT ACTUARY.

**Section 10.** Section 39-71-2321, MCA, is amended to read:

"39-71-2321. What to be deposited in state fund. (1) (a) All premiums, penalties, recoveries by subrogation,

interest earned upon money belonging to the state fund, and securities acquired by or through use of money must be deposited in the state fund. They must be separated into two accounts based upon whether they relate to claims for injuries resulting from accidents that occurred before July 1, 1990, or claims for injuries resulting from accidents that occur on or after that date.

~~(b) Subject to the requirements of section 9, the state fund shall set aside up to 15% of annual employer premiums for the expense of administering the state fund for the succeeding fiscal year. The administrative expense funds~~  
ALL FUNDS DEPOSITED IN THE STATE FUND are statutorily appropriated as provided in 17-7-502.

(2) The proceeds of bonds issued and loans given to the state fund under 39-71-2354 and 39-71-2355 must be deposited in the account for claims for injuries resulting from accidents that occurred before July 1, 1990."

**Section 11.** Section 17-7-502, MCA, is amended to read:

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

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

of the following provisions:

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

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

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501; 39-71-2504; 39-71-2321; 44-12-206; 44-13-102; 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying,

1 and securing all bonds, notes, or other obligations, as due,  
 2 that have been authorized and issued pursuant to the laws of  
 3 Montana. Agencies that have entered into agreements  
 4 authorized by the laws of Montana to pay the state  
 5 treasurer, for deposit in accordance with 17-2-101 through  
 6 17-2-107, as determined by the state treasurer, an amount  
 7 sufficient to pay the principal and interest as due on the  
 8 bonds or notes have statutory appropriation authority for  
 9 the payments. (In subsection (3): pursuant to sec. 7, Ch.  
 10 567, L. 1991, the inclusion of 19-6-709 terminates upon  
 11 death of last recipient eligible for supplemental benefit;  
 12 and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of  
 13 22-3-811 terminates June 30, 1993.)"

14 NEW SECTION. SECTION 12. APPROPRIATION. THERE IS AN  
 15 APPROPRIATION OF \$35,000 FOR EACH FISCAL YEAR OF THE  
 16 BIENNIUM BEGINNING JULY 1, 1993, TO THE LEGISLATIVE  
 17 AUDITOR'S OFFICE FOR CONTRACTED SERVICES FOR THE DUTIES  
 18 REQUIRED TO BE PERFORMED PURSUANT TO [SECTION 20 ± 8] TO BE  
 19 PAID BY THE STATE FUND FROM THE FUNDS APPROPRIATED IN  
 20 [SECTION 22 ± 10].

21 SECTION 13. SECTION 39-71-606, MCA, IS AMENDED TO READ:

22 "39-71-606. Insurer to accept or deny claim within  
 23 thirty days of receipt -- notice of denial -- notice to  
 24 employer. (1) Every insurer under any plan for the payment  
 25 of workers' compensation benefits shall, within 30 days of

1 receipt of a claim for compensation, either accept or deny  
 2 the claim, and if denied shall inform the claimant and the  
 3 department in writing of such denial.

4 (2) The department shall make available to insurers for  
 5 distribution to claimants sufficient copies of a document  
 6 describing current benefits and entitlements available under  
 7 Title 39, chapter 71. Upon receipt of a claim, each insurer  
 8 shall promptly notify the claimant in writing of potential  
 9 benefits and entitlements available by providing the  
 10 claimant a copy of the document prepared by the department.

11 (3) Upon the request of an employer it insures, an  
 12 insurer shall notify the employer of all compensation  
 13 benefits that are ongoing and are being charged against that  
 14 employer's account."

15 NEW SECTION. SECTION 14. NAME CHANGE -- DIRECTIONS TO  
 16 CODE COMMISSIONER. WHEREVER THE NAME "STATE COMPENSATION  
 17 MUTUAL INSURANCE FUND", MEANING THE FUND ESTABLISHED IN  
 18 39-71-2313, APPEARS IN THE MONTANA CODE ANNOTATED OR IN  
 19 LEGISLATION ENACTED BY THE 1993 LEGISLATURE, THE CODE  
 20 COMMISSIONER IS DIRECTED TO CHANGE THE NAME TO "STATE  
 21 COMPENSATION INSURANCE FUND".

22 NEW SECTION. SECTION 15. SEVERABILITY. IF A PART OF  
 23 [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE  
 24 FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS  
 25 ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART

REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

~~NEW SECTION. SECTION 28. COORDINATION WITH OCCUPATIONAL DISEASE ACT OF MONTANA, FOR PURPOSES OF SECTIONS 1 THROUGH 4 AND THE ADMINISTRATION OF TITLE 39, CHAPTER 72, A REFERENCE IN SECTIONS 1 THROUGH 4 TO AN INJURY RESULTING FROM AN ACCIDENT OR TO A CLAIM FOR AN INJURY RESULTING FROM AN ACCIDENT INCLUDES A DISABEMENT, AS DEFINED IN 39-72-102(4).~~

NEW SECTION. SECTION 16. SAVING CLAUSE. (THIS ACT) DOES NOT AFFECT RIGHTS AND DUTIES THAT MATURED, PENALTIES THAT WERE INCURRED, OR PROCEEDINGS THAT WERE BEGUN BEFORE [THE EFFECTIVE DATE OF THIS ACT].

NEW SECTION. Section 17. Codification instruction. (1) SECTIONS 1 THROUGH 3 ARE INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 39, CHAPTER 71, AND THE PROVISIONS OF TITLE 39, CHAPTER 71, APPLY TO SECTIONS 1 THROUGH 3.

(2) SECTION 4 IS 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 SECTION 4.

(3) [Sections 7 19 9 7 through 9 21 11 9] 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 7 19 9 7 through 9 21 11 9].

NEW SECTION. Section 18. Effective date DATES -- APPLICABILITY. (This act) is (1) SECTION 9 AND THIS SECTION ARE EFFECTIVE ON PASSAGE AND APPROVAL, AND SECTION 9 APPLIES TO THE BUDGET FOR FISCAL YEAR 1994.

(2) SECTIONS 1 THROUGH 8 AND 10 THROUGH 14 ARE effective July 1, 1993. [SECTIONS 1 THROUGH 3, 10 THROUGH 13, 21 AND 26 THROUGH 38 11, AND 16 THROUGH 19 9, AND 14 THROUGH 17 AND THIS SECTION] ARE EFFECTIVE ON PASSAGE AND APPROVAL.

(2) SECTIONS 4 THROUGH 9 ARE EFFECTIVE ON FINALIZATION OF AN AGREEMENT ENTERED INTO BY THE GOVERNOR AND THE REINSURER, AS PROVIDED IN SECTION 1.

(3) (2) [SECTIONS 14 THROUGH 20 AND 22 THROUGH 25 4 THROUGH 10 AND 12 THROUGH 15] 2 THROUGH 8 AND 10 THROUGH 13 ARE EFFECTIVE JULY 1, 1993.

(4) (3) [SECTION 21 11 9] APPLIES TO THE BUDGET FOR FISCAL YEAR 1994.

-End-

Free Conference Committee  
on House Bill 13  
Report No. 1, April 21, 1993

Page 1 of 1

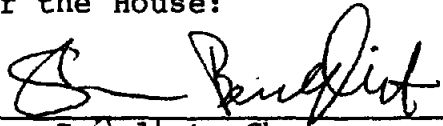
Mr. Speaker and Mr. President:


We, your Free Conference Committee met and considered House Bill 13 and recommend as follows:

1. That the House accede to the Select Worker Compensation Committee amendments on April 7, 1993 in total.

Further, that this Free Conference Committee report be adopted.

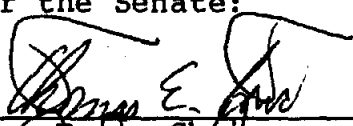
For the House:

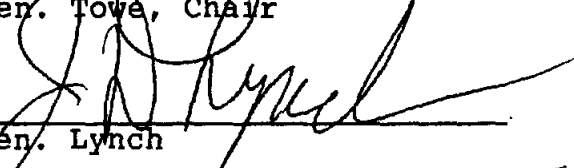
  
Rep. Benedict, Chair

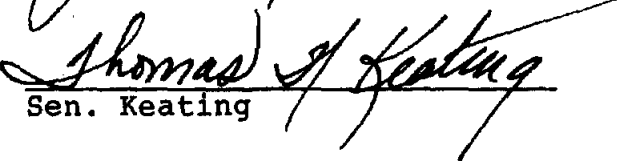
  
Rep. Hibbard

  
Rep. Peck

For the Senate:

  
Sen. Towe, Chair

  
Sen. Lynch

  
Sen. Keating

ADOPT  
  
REJECT

F.C.C.R.#1  
HB 13  
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