

HOUSE BILL NO. 287

INTRODUCED BY WISEMAN, HIBBARD, BENEDICT,
COCCHIARELLA, SQUIRES
BY REQUEST OF THE DEPARTMENT OF
LABOR AND INDUSTRY

JANUARY 20, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
FEBRUARY 13, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 15, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 16, 1993	ENGROSSING REPORT.
FEBRUARY 17, 1993	THIRD READING, PASSED. AYES, 85; NOES, 13.
FEBRUARY 18, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 20, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
MARCH 22, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 24, 1993	SECOND READING, CONCURRED IN.
MARCH 25, 1993	THIRD READING, CONCURRED IN. AYES, 49; NOES, 0.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 1, 1993	SECOND READING, AMENDMENTS NOT CONCURRED IN.
APRIL 2, 1993	ON MOTION, CONFERENCE COMMITTEE REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 5, 1993

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 17, 1993

SECOND READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

IN THE SENATE

APRIL 17, 1993

CONFERENCE COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 20, 1993

THIRD READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 287
 2 INTRODUCED BY William Allen
 3 Benefit BY REQUEST OF THE DEPARTMENT OF
 4 Cochiaulla LABOR AND INDUSTRY Agreement

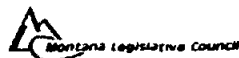
5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
 7 WORKERS' COMPENSATION ACT AND THE OCCUPATIONAL DISEASE ACT
 8 OF MONTANA; DELETING THE UNINSURED EMPLOYERS' FUND FROM THE
 9 DEFINITION OF "INSURER"; CLARIFYING WHO IS SUBJECT TO
 10 ADMINISTRATIVE ASSESSMENT; ALLOWING ISSUANCE OF SUBPOENAS;
 11 EXEMPTING FROM WORKERS' COMPENSATION A PERSON WHO IS
 12 EMPLOYED BY AN ENROLLED TRIBAL MEMBER AND WHO OPERATES
 13 WITHIN THE BOUNDARIES OF A RESERVATION; PROVIDING FOR
 14 STATUTORY APPROPRIATIONS FOR THE UNINSURED EMPLOYERS' FUND
 15 AND THE SUBSEQUENT INJURY FUND; EXCLUDING FROM THE UNINSURED
 16 EMPLOYER PENALTY THE WAGES PAID TO SPOUSES OF SOLE
 17 PROPRIETORS OR SPOUSES OF PARTNERS; HOLDING CORPORATE
 18 OFFICERS PERSONALLY LIABLE FOR THE UNINSURED EMPLOYER
 19 PENALTY IF A CORPORATE REPORT IS NOT FILED; REMOVING COSTS,
 20 ATTORNEY FEES, AND INCREASED AWARDS FROM APPLICATION TO THE
 21 UNINSURED EMPLOYERS' FUND; PROVIDING FOR A LIEN FOR AN
 22 UNPAID UNINSURED EMPLOYER PENALTY; CLARIFYING THE DEPARTMENT
 23 OF LABOR AND INDUSTRY'S ROLE IN COMPENSATION FOR
 24 DISFIGUREMENT; PROVIDING FOR PAYMENT OF ADMINISTRATIVE COSTS
 25 OUT OF THE SUBSEQUENT INJURY FUND; CHANGING THE SELF-INSURED

1 EMPLOYER ANNUAL RENEWAL FROM THE DEPARTMENT'S FISCAL YEAR TO
 2 THE EMPLOYER'S POLICY YEAR; RECOGNIZING THE NATIONAL COUNCIL
 3 ON COMPENSATION INSURANCE AS AN AGENT FOR INSURERS;
 4 PROVIDING FOR BOOK-ENTRY SECURITIES; AUTHORIZING THE
 5 DEPARTMENT TO CONVERT SECURITIES TO CASH AND RELEASE
 6 SECURITIES TO THE MONTANA INSURANCE GUARANTY ASSOCIATION;
 7 CHANGING THE ASSESSMENT PERIOD FOR THE SELF-INSURERS
 8 GUARANTY FUND; CLARIFYING THE DEPARTMENT'S ROLE IN PAYMENT
 9 OF NONDISABLING OCCUPATIONAL DISEASE BENEFITS; PROVIDING FOR
 10 PAYMENT OF EXAMINATION COSTS BY THE REQUESTOR WHEN
 11 OCCUPATIONAL DISEASE CAUSES DEATH; PROVIDING A TIME LIMIT TO
 12 APPEAL AN UNINSURED EMPLOYERS' FUND BENEFIT ISSUE TO
 13 MEDIATION; PROVIDING FOR THE ADMINISTRATION AND
 14 CERTIFICATION OF ADJUSTERS; AMENDING SECTIONS 17-7-502,
 15 39-71-116, 39-71-201, 39-71-304, 39-71-401, 39-71-503,
 16 39-71-504, 39-71-505, 39-71-506, 39-71-708, 39-71-902,
 17 39-71-907, 39-71-2104, 39-71-2106, 39-71-2204, 39-71-2205,
 18 39-71-2206, 39-71-2615, 39-72-405, AND 39-72-608, MCA; AND
 19 REPEALING SECTIONS 39-71-2109 AND 39-71-2207, MCA."

20
 21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

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



1 (1) "Administer and pay" includes all actions by the
2 state fund under the Workers' Compensation Act and the
3 Occupational Disease Act of Montana necessary to:

- 4 (a) the investigation, review, and settlement of
- 5 claims;
- 6 (b) payment of benefits;
- 7 (c) setting of reserves;
- 8 (d) furnishing of services and facilities; and
- 9 (e) utilization of actuarial, audit, accounting,
- 10 vocational rehabilitation, and legal services.

11 (2) "Average weekly wage" means the mean weekly
12 earnings of all employees under covered employment, as
13 defined and established annually by the Montana department
14 of labor and industry. It is established at the nearest
15 whole dollar number and must be adopted by the department
16 prior to July 1 of each year.

17 (3) "Beneficiary" means:

- 18 (a) a surviving spouse living with or legally entitled
- 19 to be supported by the deceased at the time of injury;
- 20 (b) an unmarried child under the age of 18 years;
- 21 (c) an unmarried child under the age of 22 years who is
- 22 a full-time student in an accredited school or is enrolled
- 23 in an accredited apprenticeship program;
- 24 (d) an invalid child over the age of 18 years who is
- 25 dependent upon the decedent for support at the time of

1 injury;

2 (e) a parent who is dependent upon the decedent for
3 support at the time of the injury if no beneficiary, as
4 defined in subsections (3)(a) through (3)(d), exists; and

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

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

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

15 (6) "Construction industry" means the major group of
16 general contractors and operative builders, heavy
17 construction (other than building construction) contractors,
18 and special trade contractors, listed in major groups 15
19 through 17 in the 1987 Standard Industrial Classification
20 Manual. The term does not include office workers, design
21 professionals, salesmen, estimators, or any other related
22 employment that is not directly involved on a regular basis
23 in the provision of physical labor at a construction or
24 renovation site.

25 (7) "Days" means calendar days, unless otherwise

1 specified.

2 (8) "Department" means the department of labor and
3 industry.

4 (9) "Fiscal year" means the period of time between July
5 1 and the succeeding June 30.

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

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

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

16 (13) "Order" means any decision, rule, direction,
17 requirement, or standard of the department or any other
18 determination arrived at or decision made by the department.

19 (14) "Payroll", "annual payroll", or "annual payroll for
20 the preceding year" means the average annual payroll of the
21 employer for the preceding calendar year or, if the employer
22 shall not have operated a sufficient or any length of time
23 during such calendar year, 12 times the average monthly
24 payroll for the current year. However, an estimate may be
25 made by the department for any employer starting in business

1 if no average payrolls are available. This estimate is to be
2 adjusted by additional payment by the employer or refund by
3 the department, as the case may actually be, on December 31
4 of such current year. An employer's payroll must be computed
5 by calculating all wages, as defined in 39-71-123, that are
6 paid by an employer.

7 (15) "Permanent partial disability" means a condition,
8 after a worker has reached maximum healing, in which a
9 worker:

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

12 (b) is able to return to work in some capacity but the
13 physical restriction impairs the worker's ability to work.

14 (16) "Permanent total disability" means a condition
15 resulting from injury as defined in this chapter, after a
16 worker reaches maximum healing, in which a worker has no
17 reasonable prospect of physically performing regular
18 employment. Regular employment means work on a recurring
19 basis performed for remuneration in a trade, business,
20 profession, or other occupation in this state. Lack of
21 immediate job openings is not a factor to be considered in
22 determining if a worker is permanently totally disabled.

23 (17) The term "physician" includes "surgeon" and in
24 either case means one authorized by law to practice his
25 profession in this state.

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

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

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

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

(22) "Temporary service contractor" means any person, firm, association, or corporation conducting business that employs individuals directly for the purpose of furnishing the services of those individuals on a part-time or temporary basis to others.

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

worker reaches maximum healing.

(24) "Temporary worker" means a worker whose services are furnished to another on a part-time or temporary basis to substitute for a permanent employee on leave or to meet an emergency or short-term workload.

(25) "Year", unless otherwise specified, means calendar year."

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

"39-71-201. Administration fund. (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the various occupational safety acts the department must administer, with the exception of the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund, are to be paid upon lawful appropriation. The following money collected by the department must be deposited in the state treasury to the credit of the workers' compensation administrative fund and must be used for the administrative expenses of the department:

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

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

1 (c) all fees paid from an assessment on each plan No. 1
 2 employer, plan No. 2 insurer, and plan No. 3, the state
 3 fund. The assessments must be levied against the preceding
 4 calendar year's gross annual payroll of the plan No. 1
 5 employers and the gross annual direct premiums collected in
 6 Montana on the policies of the plan No. 2 insurers, insuring
 7 employers covered under the chapter, during the preceding
 8 calendar year. However, no an assessment of the plan No. 1
 9 employer or plan No. 2 insurer may not be less than \$200. If
 10 at any time during the prior fiscal year a plan No. 1
 11 employer is granted permission to self-insure or a plan No.
 12 2 insurer is authorized to insure employers under this
 13 chapter, that plan No. 1 employer or plan No. 2 insurer is
 14 subject to assessment. The assessments must be sufficient to
 15 fund the direct costs identified to the three plans and an
 16 equitable portion of the indirect costs based on the ratio
 17 of the preceding fiscal year's indirect costs distributed to
 18 the plans, using proper accounting and cost allocation
 19 procedures. Plan No. 3 must be assessed an amount sufficient
 20 to fund the direct costs and an equitable portion of the
 21 indirect costs of regulating plan No. 3. Other sources of
 22 revenue, including unexpended funds from the preceding
 23 fiscal year, must be used to reduce the costs before levying
 24 the assessments.

25 (2) The administration fund must be debited with

1 expenses incurred by the department in the general
 2 administration of the provisions of this chapter, including
 3 the salaries of its members, officers, and employees and the
 4 travel expenses of the members, officers, and employees, as
 5 provided for in 2-18-501 through 2-18-503, as amended,
 6 incurred while on the business of the department either
 7 within or without the state.

8 (3) Disbursements from the administration money must be
 9 made after being approved by the department upon claim
 10 therefor."

11 **Section 3.** Section 39-71-304, MCA, is amended to read:

12 "39-71-304. Books, records, and payrolls to be open to
 13 inspection -- penalty for refusal -- subpoenas. (1) The
 14 books, records, and payrolls of an employer pertinent to the
 15 administration of this chapter must always be open to
 16 inspection by the department or any duly authorized employee
 17 thereof for the purpose of ascertaining the correctness of
 18 the payroll, the number of workers employed, and such other
 19 information as may be necessary for the department and its
 20 management under this chapter. Refusal on the part of an
 21 employer to submit the books, records, and payrolls for such
 22 inspection shall subject the offending employer to a penalty
 23 not exceeding \$500 for each offense, to be collected through
 24 a civil action in the name of the state and paid into the
 25 state treasury.

(2) In addition to the remedy provided in subsection (1), the department may issue subpoenas and compel testimony for the production of evidence, including books, records, papers, documents, and other objects as may be necessary and proper in regard to any investigation or proceeding under this chapter. In the case of disobedience of a subpoena issued and served or the refusal of a witness to testify as to any matter for which the witness may be interrogated in a proceeding before the department, the department may apply to a district court for an order to compel compliance with the subpoena or testimony. Disobedience of the court's order constitutes contempt of court."

Section 4. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers as defined in 39-71-117 and to all employees as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these

employments under this chapter and an insurer allows such an election, the Workers' Compensation Act does not apply to any of the following employments:

- (a) household and domestic employment;
- (b) casual employment as defined in 39-71-116;
- (c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;
- (d) employment of sole proprietors or working members of a partnership, except as provided in subsection (3);
- (e) employment of a broker or salesman performing under a license issued by the board of realty regulation;
- (f) employment of a direct seller engaged in the sale of consumer products, primarily in the customer's home;
- (g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;
- (h) employment of any person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;
- (i) employment with any railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;
- (j) employment as an official, including a timer, referee, or judge, at a school amateur athletic event,

1 unless the person is otherwise employed by a school
2 district;

3 (k) any person performing services as a newspaper
4 carrier or free-lance correspondent if the person performing
5 the services or a parent or guardian of the person
6 performing the services in the case of a minor has
7 acknowledged in writing that the person performing the
8 services and the services are not covered. As used in this
9 subsection, "free-lance correspondent" is a person who
10 submits articles or photographs for publication and is paid
11 by the article or by the photograph. As used in this
12 subsection, "newspaper carrier":

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

15 (ii) does not include an employee of the paper who,
16 incidentally to his the employee's main duties, carries or
17 delivers papers.

18 (l) cosmetologist's services and barber's services as
19 defined in 39-51-204(1)(1);

20 (m) a person who is employed by an enrolled tribal
21 member and who operates solely within the exterior
22 boundaries of an Indian reservation.

23 (3) (a) A sole proprietor or a working member of a
24 partnership who ~~holds--himself--out~~ represents to be or
25 ~~considers--himself~~ is considered an independent contractor

1 shall elect to be bound personally and individually by the
2 provisions of compensation plan No. 1, 2, or 3, but he may
3 apply to the department for an a personal exemption from the
4 Workers' Compensation Act ~~for-himself~~.

5 (b) The application must be made in accordance with the
6 rules adopted by the department. The department may deny the
7 application only if it determines that the applicant is not
8 an independent contractor.

9 (c) When an application is approved by the department,
10 it is conclusive as to the status of an independent
11 contractor and precludes the applicant from obtaining
12 benefits under this chapter.

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

19 (e) If the department denies the application for
20 exemption, the applicant may contest the denial by
21 petitioning for review of the decision by an appeals referee
22 in the manner provided for in 39-51-1109. An applicant
23 dissatisfied with the decision of the appeals referee may
24 appeal the decision in accordance with the procedure
25 established in 39-51-2403 and 39-51-2404.

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

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

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

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

(c) The appointment or election of an employee as an officer of a corporation for the purpose of excluding the employee from coverage under this chapter does not entitle the officer to elect not to be bound as an employee under this chapter. In any case, the officer shall sign the notice

required by subsection (4)(a) under oath or affirmation, and he is subject to the penalties for false swearing under 45-7-202 if he the officer falsifies the notice.

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

Section 5. Section 39-71-503, MCA, is amended to read:

"39-71-503. Administration of fund -- appropriation.

(1) The department shall administer the fund and shall pay all proper benefits to injured employees of uninsured employers.

(2) Surpluses and reserves ~~shall~~ may not be kept for the fund. The department shall make such payments as it considers appropriate as funds become available from time to time. The payment of weekly disability benefits takes preference over the payment of medical benefits. No lump-sum payments of future projected benefits, including impairment awards, may be made from the fund. The board of investments shall invest the ~~moneys~~ money of the fund. The cost of administration of the fund ~~shall~~ must be paid out of the money in the fund.

(3) The amounts necessary for the administration and payment of benefits from this fund are statutorily appropriated, as provided in 17-7-502, from this fund."

Section 6. Section 39-71-504, MCA, is amended to read:

"39-71-504. Funding of fund -- option for agreement between department and injured employee -- liability of corporate officers. The fund is funded in the following manner:

(1) The department may require that the uninsured employer pay to the fund a penalty of either up to double the premium amount the employer would have paid on the payroll of the employer's workers in this state if the employer had been enrolled with compensation plan No. 3 or \$200, whichever is greater. In determining the penalty, wages paid to spouses of sole proprietors or spouses of

partners must be excluded. In determining the premium amount for the calculation of the penalty under this subsection, the department shall make an assessment on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was uninsured. An assessment for payroll paid by the uninsured employer for any time prior to July 1, 1977, may not be made.

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

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

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

(4) The department may enter into an agreement with the injured employee or the employee's beneficiaries to assign to the employee or the beneficiaries all or part of the funds received by the department from the uninsured employer

pursuant to subsection (2)(a).

(5) When a corporation subject to Title 35 has failed to file an annual report with the secretary of state as required by law, the department shall hold the corporation officers jointly and severally liable for any uninsured employer penalties or claim costs due for the period in which the corporation is delinquent in filing the annual report. If the annual report is filed after the specified time, the officers may not be held liable for the uninsured employer penalties or claim costs that accrue after the report is filed.

Section 7. Section 39-71-505, MCA, is amended to read:

"39-71-505. Applicability of other provisions of chapter to fund -- limitations. All appropriate provisions in the Workers' Compensation Act apply to the fund in the same manner as they apply to compensation plans No. 1, 2, and 3, except that the workers' compensation judge may not do the following:

(1) assess costs and attorney fees, as provided in 39-71-611, against the uninsured employers' fund; or

(2) assess an increase in award for unreasonable delay or refusal to pay, as provided in 39-71-2907, against the uninsured employers' fund."

Section 8. Section 39-71-506, MCA, is amended to read:

"39-71-506. Collection---of---payments---from---uninsured

employer-by-suit Lien for payment of unpaid penalties and claims -- levy and execution. (1) If, upon demand of the department, an uninsured employer refuses to make the payments to the fund that are provided for in subsections (1) and (2) of 39-71-504, the sums-may-be-collected-by-the department-through-suit unpaid penalties and claims have the effect of a judgment against the employer at the time the payments become due. The department may issue a certificate setting forth the amount of payment due and direct the clerk of the district court of any county in the state to enter the certificate as a judgment on the docket pursuant to 25-9-301. From the time the judgment is docketed, it becomes a lien upon all real and personal property of the employer. After satisfying any due process requirements, the department may enforce the judgment at any time within 10 years of creation of the lien.

(2) The lien provided for in subsection (1) is not valid against any third party owning an interest in the real or personal property subject to the lien if:

(a) the third party interest is recorded prior to the entrance of the certificate as a judgment; and

(b) the third party receives from the most recent grantor of the interest a signed affidavit stating that any penalties and claims relating to the property have been paid.

(3) The department may settle through compromise with an uninsured employer the amount due the fund under 39-71-504."

Section 9. Section 39-71-708, MCA, is amended to read:

"39-71-708. Compensation for disfigurement. (1) The department may award proper and equitable benefits for Injured workers who suffer serious face, head, or neck disfigurement; may be entitled to benefits not to exceed \$2,500, in addition to benefits payable under 39-71-703.

(2) No A payment under this section shall may not be in lieu of the separate benefit of medical and hospital services or of any benefits paid under 39-71-701 for temporary total disability."

Section 10. Section 39-71-902, MCA, is amended to read:

"39-71-902. Fund to receive payment from insurer for each death under chapter -- assessment of insurers. (1) In every case of the death of an employee under this chapter, the insurer shall pay to the fund the sum of \$1,000. In addition, the department may assess every insurer an amount not to exceed 5% of the compensation paid in Montana in the preceding fiscal year. The assessment must be transmitted annually to the subsequent injury fund by the employer or insurer. The cost of administration of the fund must be paid out of money in the fund.

(2) When, in the judgment of the department, the amount

of money in the subsequent injury fund is such that there is a surplus above and beyond projected liabilities and administrative costs, the department may at its discretion suspend or reduce further collection of assessments for a period of time determined by the department."

Section 11. Section 39-71-907, MCA, is amended to read:

"39-71-907. Certified vocationally handicapped person to be compensated for injury as provided by chapter -- insurer liability for compensation limited -- appropriation.

(1) A person certified as vocationally handicapped who receives a personal injury arising out of and in the course of his employment and resulting in death or disability must be paid compensation in the manner and to the extent provided in this chapter or, in case of his death resulting from such injury, the compensation must be paid to his the person's beneficiaries or dependents. The liability of the insurer for payment of medical and burial benefits as provided in this chapter is limited to those benefits arising from services rendered during the period of 104 weeks after the date of injury. The liability of the insurer for payment of benefits as provided in this chapter is limited to 104 weeks of compensation benefits actually paid. Thereafter, all compensation and the cost of all medical care and burial is the liability of the fund.

(2) The amounts necessary for the administration and

1 payment of benefits from this fund are statutorily
 2 appropriated, as provided in section 17-7-502, from this
 3 fund."

4 **Section 12.** Section 39-71-2104, MCA, is amended to
 5 read:

6 "39-71-2104. Renewal of application. Every An employer,
 7 so long as he that employer continues in his employment and
 8 ~~so long as he~~ continues to be bound by compensation plan No.
 9 1, shall, ~~at least 30 days before the expiration of each~~
 10 ~~fiscal year,~~ annually renew his the application to be
 11 permitted to continue to make such payments ~~as aforesaid~~
 12 directly to his employees for the next ensuing ~~fiscal~~ year
 13 ~~and under like circumstances as those mentioned for the~~
 14 ~~granting of such permission upon such first application,~~
 15 the The department may, with the concurrence of the Montana
 16 self-insurers guaranty fund, renew the same application from
 17 year to year. The annual renewal application must be in the
 18 form, for the period, and subject to the time limits
 19 prescribed by the department."

20 **Section 13.** Section 39-71-2106, MCA, is amended to
 21 read:

22 "39-71-2106. Requiring security of employer. (1) (a)
 23 The department may require any employer who elects to be
 24 bound by compensation plan No. 1 to provide a security
 25 deposit in accordance with rules adopted by the department.

1 All securities of the United States treasury must be used as
 2 a security deposit in book-entry form. Except as provided in
 3 subsection (1)(b), the security deposit may be a surety
 4 bond, government bond, certificate of deposit, or letter of
 5 credit approved by the department and must be the greater
 6 of:

7 (i) \$250,000; or

8 (ii) an average of the workers' compensation liabilities
 9 incurred by the employer in Montana for the past 3 calendar
 10 years.

11 (b) The department may, in accordance with rules
 12 adopted by the department, require a larger deposit as
 13 additional evidence of solvency and financial ability to pay
 14 the liabilities provided by this chapter.

15 (2) (a) The department shall require an employer to
 16 give security in addition to the security described in
 17 subsection (1) if:

18 (i) the department determines that the employer is
 19 insolvent or lacks the financial ability to pay the
 20 compensation that is required under this chapter and that is
 21 chargeable to the employer during the fiscal year to be
 22 covered by the permission provided for in 39-71-2103; or

23 (ii) the employer is ~~an association, corporation, or~~
 24 organization a group of individual employers seeking
 25 permission to operate under compensation plan No. 1.

(b) The additional security required in subsection (2)(a) must be an amount that the department finds reasonable and necessary to meet all liabilities that the employer may accrue under this chapter during the fiscal year.

(3) (a) The security provided for in subsection (2) must be deposited with the department and may be either an estimated percent of the employer's last preceding annual payroll or a percent of the established amount of his the employer's annual payroll for the fiscal year. The security may consist of:

(i) a bond or undertaking executed to the department in the amount to be fixed by it with two or more sufficient sureties, which undertaking must be conditioned that the employer will pay or cause to be paid to his employees all sums and amounts for which the employer becomes liable under the terms of this chapter during the fiscal year; or

(ii) any state, county, municipal, or school district bonds or the bonds or evidence of indebtedness of any individuals or corporations that the department considers solvent.

(b) Every deposit and the character and amount of the securities must at all times be subject to approval, revision, or change by the department as it may require.

(c) Upon proof of the final payment of the liability

for which the securities are given, the securities or any remainder of the securities must be returned to the depositor.

(4) The department is liable for the value and safekeeping of all deposits or securities and shall, at any time, upon demand of a bondsman or the depositor, account for the deposits or securities and the earnings of the deposits or securities."

Section 14. Section 39-71-2204, MCA, is amended to read:

"39-71-2204. Insurer to submit notice of coverage within thirty days -- penalty for failure. (1) The insurer shall, within 30 days after the issuance of the policy of workers' compensation insurance, submit to the department the notice of coverage stating the effective date of the policy insuring the employer and such other information as may be required by the department.

(2) The department may:

(a) recognize the national council on compensation insurance as an agent for authorized workers' compensation insurers in Montana; and

(b) under terms and conditions acceptable to the department, accept notice of coverage received from the national council on compensation insurance as the insurer's notice of coverage.

1 ~~(2)~~(3) The department may, in its discretion, assess a
2 penalty of no more than \$200 against an insurer which that
3 as a general business practice does not comply with the
4 30-day notice requirement as set forth in subsection (1) of
5 this-section."

6 **Section 15.** Section 39-71-2205, MCA, is amended to
7 read:

8 "39-71-2205. Policy in effect until canceled or
9 replaced -- twenty-day notification of cancellation required
10 -- penalty. (1) The policy remains in effect until canceled,
11 and cancellation may take effect only by written notice to
12 the named insured and to the department at least 20 days
13 prior to the date of cancellation. However, the policy
14 terminates on the effective date of a replacement or
15 succeeding workers' compensation insurance policy issued to
16 the insured. Nothing in this section prevents an insurer
17 from canceling a policy of workers' compensation insurance
18 before a replacement policy is issued to the insured.

19 (2) The department may:

20 (a) recognize the national council on compensation
21 insurance as an agent for authorized workers' compensation
22 insurers in Montana; and

23 (b) under terms and conditions acceptable to the
24 department, accept notice of cancellation received from the
25 national council on compensation insurance as the insurer's

1 notice of cancellation.

2 ~~(2)~~(3) (a) The department may assess a penalty of up to
3 \$200 against an insurer that does not comply with the notice
4 requirement in subsection (1).

5 (b) An insurer may contest the penalty assessment in a
6 hearing conducted according to department rules."

7 **Section 16.** Section 39-71-2206, MCA, is amended to
8 read:

9 "39-71-2206. Deposits by insurer with department to
10 guarantee payment of liability. (1) (a) Before issuance of
11 any policy by an insurer as herein authorized, the insurer
12 must shall deposit with the department bonds book-entry
13 securities of the United States or the state of Montana or
14 of any school district, county, city, or town in the state
15 of Montana or a corporate surety bond made out to and
16 approved by the department in an amount not less than
17 \$25,000 or more than \$200,000, as the department may
18 determine.

19 (b) If any insurer fails to discharge any liability
20 after the amount thereof is determined by the department and
21 within the time limited by the department, the department
22 shall convert the bonds or such any part thereof as is
23 necessary into cash and from the proceeds liquidate such the
24 liability, and thereafter the insurer must shall make an
25 additional deposit to meet any deficiency caused thereby. It

is intended to give the department the discretion in the matter of whether an insurer has failed to discharge any liability.

(c) If any insurer fails to replace a canceling, terminating, or maturing security within the time limit established by the department, the department shall protect the security deposit by converting the canceling, terminating, or maturing security into cash and shall maintain the deposit until a replacement security acceptable to the department is deposited.

(2) Within 30 days of the happening of an accident where death or the nature of the injury renders the amount of future payments certain or reasonably certain, the insurer shall make a deposit, as herein defined, with the department for the protection and guarantee of the payment of such the liability in such a sum as the department may direct. However, if the department considers the amount on deposit by the insurer under the provisions of subsection (1) ~~of this section~~ sufficient to cover all liabilities of the insurer, then no further deposit may be required.

(3) Any deposit made under the provisions of compensation plan No. 2 must be held in trust by the department as security for the payment of the liability for which the deposit was made. Such The deposit may be reduced from time to time with the permission of the department as

the payment of the liability of the insurer may reduce the amount required to be on deposit. Such The deposit may be changed or renewed when desired by the depositor by withdrawing the same or any part thereof and substituting other deposits therefor. Upon proof of the final payment of the liability for which such the deposit was made, any deposit remaining must be returned to the depositor. All earnings made by such the deposit must first be applied upon any liability of the depositors, and if no such liability exists, then such the earnings must upon demand be delivered to such the depositor. The department and its bondsmen are liable for the value and safekeeping of such the deposit and shall at any time, upon demand of a depositor, account for the same and the earnings thereof.

(4) In the event of an insolvency of a plan No. 2 insurer, the department may, at its discretion, release part or all of the deposit held to the Montana insurance guaranty association for payment of the insurer's Montana workers' compensation claims if:

(a) the insurer has been determined to be insolvent by a court of competent jurisdiction or bankruptcy proceedings have been instituted by or against it;

(b) the insurer is unable to pay its workers' compensation claims; and

(c) the insurer's Montana workers' compensation

1 liabilities have become the responsibility of the Montana
2 insurance guaranty association."

3 **Section 17.** Section 39-71-2615, MCA, is amended to
4 read:

5 "39-71-2615. Initial fee -- assessment. (1) A private
6 self-insurer shall pay to the fund an initial fee of \$1,000
7 upon becoming a member. Thereafter, a member's financial
8 obligation to the fund must be established by assessment as
9 provided in subsection (2).

10 (2) The fund may assess each of its members a pro rata
11 share of the amount necessary to carry out the purposes of
12 this part. However, the total annual assessments in any
13 calendar year may not exceed 5% of the indemnity
14 compensation paid by each member during the previous
15 calendar year. Funds obtained by assessment pursuant to this
16 subsection may be used only for the purposes of this part.

17 (3) A former member is liable for assessments made by
18 the fund for 3 years following the date the member's status
19 as a private self-insurer is terminated, whether the
20 termination is by action of the private self-insurer or the
21 department. A former member's assessment must be based on
22 the 12-month-period compensation paid during the policy year
23 immediately preceding the member's termination of its status
24 as a private self-insurer.

25 (4) The board shall certify to the department the

1 collection and receipt of assessments, noting any
2 delinquencies. The board shall take appropriate action to
3 collect a delinquent assessment."

4 **Section 18.** Section 39-72-405, MCA, is amended to read:

5 "39-72-405. General limitations on payment of
6 compensation. (1) Compensation may not be paid when the last
7 day of the injurious exposure of the employee to the hazard
8 of the occupational disease has occurred prior to July 1,
9 1959.

10 (2) When any an employee in employment on or after
11 January 1, 1959, because he the employee has an occupational
12 disease incurred in and caused by such the employment which
13 that is not yet disabling, is discharged or transferred from
14 the employment in which he the employee is engaged or when
15 he the employee ceases his employment and it is in fact, as
16 determined by the medical panel, inadvisable for him the
17 employee on account of a nondisabling occupational disease
18 to continue in employment and he the employee suffers wage
19 loss by reason of the discharge, transfer, or cessation, the
20 department-may-allow-compensation-on-account-thereof--as--it
21 considers--just, compensation may be paid, not exceeding
22 \$10,000, by an agreement between the insurer and the
23 claimant. If the parties fail to reach an agreement, the
24 mediation procedures in part 24 of this chapter must be
25 followed."

Section 19. Section 39-72-608, MCA, is amended to read:

"39-72-608. Payment of medical examination, report, and autopsy expenses. The expense of the first medical examination and report as provided in 39-72-602 must be borne by the insurer. The expense of a reexamination and panel report must be borne by the dissatisfied party requesting the reexamination. The expense of the periodic medical examinations and reports, as provided in 39-72-607, must be borne by the party requesting the periodic medical examination. The expense of the autopsy, as provided for in 39-72-606, must be borne by the party requesting the autopsy. When the occupational disease causes death, the expense of any examinations and reports, as provided in 39-72-605, must be borne by the party requesting the examination."

Section 20. 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; 39-71-503; 39-71-907; 39-71-2504; 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, that have been authorized and issued pursuant to the laws of

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

NEW SECTION. Section 21. Time limit to appeal. A dispute concerning uninsured employers' fund benefits must be appealed to mediation within 90 days from the date of the determination or the determination is considered final.

NEW SECTION. Section 22. Administration of adjusters.
(1) An insurer shall conduct administration of its claims adjusting services through a person knowledgeable in the application of Montana workers' compensation and occupational disease law and administrative rules. The person retained or employed as an adjuster by an insurer must be able to demonstrate, in a manner satisfactory to the department, a thorough knowledge of workers' compensation and occupational disease law and administrative rules.

(2) an insurer shall designate at least one adjuster

who has the authority and ability to pay compensation when due and who has the authority to settle claims.

(3) The department, in cooperation with the state auditor, may regulate and certify adjusters for workers' compensation adjusting.

NEW SECTION. Section 23. Repealer. Sections 39-71-2109 and 39-71-2207, MCA, are repealed.

NEW SECTION. Section 24. Codification instruction.
[Sections 21 and 22] 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 21 and 22].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0287, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: A bill generally revising the Workers' Compensation Act and the Occupational Disease Act of Montana.

ASSUMPTIONS:

In reference to sections 14 and 15 of the proposed legislation:

1. 25% of the phone and postage costs for the Policy Compliance unit of the Employment Relations Division (ERD) of the Department of Labor, or \$1,100 per year, would be eliminated under the change created by this proposed legislation.
2. Programming changes the ERD database are needed to enable ERD to accept electronic access to policy information from Plan II insurance companies. Programming costs are estimated at a total of \$3,500, or \$1,750 to cover Section 14 changes (Section 39-71-2204) and \$1,750 to cover Section 15 changes (Section 39-71-2205). The NCCI data tapes would arrive monthly, and loading the data from these 12 tapes per year is estimated to cost a total of \$2,400. After the first-year conversation costs of \$3,500, the on-going costs will increase by \$1,300. (\$2,400 NCCI data download less \$1,100 old postage/phone costs).

In reference to section 22 of the proposed legislation:

3. 1.00 FTE management analyst (grade 13) would be required to assist ERD in developing administrative rules, coordinating with the Insurance Commissioner to develop standards for certification, testing methodologies for certifying, tracking ongoing training required for continuing certification, managing complaints, assessing fines, and de-certification procedures when necessary.
4. Costs associated with the support of the management analyst will be similar to costs associated with staff in the Investigations Unit of ERD.
5. One-time start-up costs for the management analyst would include desk, chair, file cabinet, and PC with compatible software.

FISCAL IMPACT: (continued)

 2-1-93

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 2-2-93

WILLIAM WISEMAN, PRIMARY SPONSOR DATE

Fiscal Note for HB0287, as introduced.

HB 287

FISCAL IMPACT:

Expenditures:

Employment Relations Div. (Pg 04)

	<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>
FTE	60.55	61.55	1.00	60.55	61.55	1.00
Personal Services	1,813,414	1,843,205	29,791	1,817,143	1,846,950	29,807
Operating Expenses	943,410	956,610	13,200	926,413	936,713	10,300
Equipment	87,020	93,070	6,050	87,020	87,020	0
Benefits	<u>1,628,827</u>	<u>1,628,827</u>	<u>0</u>	<u>1,769,827</u>	<u>1,769,827</u>	<u>0</u>
Total	4,472,671	4,521,712	49,041	4,600,403	4,640,510	40,107

Funding:

General Fund	348,118	348,118	0	319,589	319,589	0
State Special Revenue	1,723,306	1,772,347	49,041	1,722,779	1,762,886	40,107
Federal Revenue	635,365	635,365	0	632,662	632,662	0
Proprietary Revenue	<u>1,765,882</u>	<u>1,765,882</u>	<u>0</u>	<u>1,925,373</u>	<u>1,925,373</u>	<u>0</u>
Total	4,472,671	4,521,712	49,041	4,600,403	4,640,510	40,107

Revenues:

WC Assessments (02)	3,197,368	3,246,409	49,041	3,199,373	3,239,480	40,107
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EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Sections 14 and 15 of the proposed legislation would reduce the cost of policy data submission for Plan II insurers, providing minor savings to self-insured local government entities.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

1. Benefit payments from the subsequent injury fund and the uninsured employer fund would be statutorily appropriated [sections 5 and 10] due to unpredictability of the amount of benefits payments required.
2. Automation conversion [sections 14 and 15] would improve reliability of policy information and reduce claims handling errors.
3. Certification and regulation [section 22] would reduce error rates for insurers.

HB 287

APPROVED BY COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONS

HOUSE BILL NO. 287

INTRODUCED BY WISEMAN, HIBBARD, BENEDICT,

COCCHIARELLA, SQUIRES

BY REQUEST OF THE DEPARTMENT OF

LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE WORKERS' COMPENSATION ACT AND THE OCCUPATIONAL DISEASE ACT OF MONTANA; DELETING THE UNINSURED EMPLOYERS' FUND FROM THE DEFINITION OF "INSURER"; CLARIFYING WHO IS SUBJECT TO ADMINISTRATIVE ASSESSMENT; ALLOWING ISSUANCE OF SUBPOENAS; EXEMPTING FROM WORKERS' COMPENSATION A PERSON WHO IS EMPLOYED BY AN ENROLLED TRIBAL MEMBER AND WHO OPERATES WITHIN THE BOUNDARIES OF A RESERVATION; PROVIDING FOR STATUTORY APPROPRIATIONS FOR THE UNINSURED EMPLOYERS' FUND AND THE SUBSEQUENT INJURY FUND; EXCLUDING FROM THE UNINSURED EMPLOYER PENALTY THE WAGES PAID TO SPOUSES OF SOLE PROPRIETORS OR SPOUSES OF PARTNERS; HOLDING---CORPORATE OFFICERS---PERSONALLY---LIABLE---FOR---THE---UNINSURED---EMPLOYER PENALTY---IF---A---CORPORATE---REPORT---IS---NOT---FILED;---REMOVING---COSTS, ATTORNEY---FEES,---AND---INCREASED---AWARDS---FROM---APPLICATION---TO---THE UNINSURED-EMPLOYERS'-FUND; PROVIDING FOR A LIEN FOR AN UNPAID UNINSURED EMPLOYER PENALTY; CLARIFYING THE DEPARTMENT OF LABOR AND INDUSTRY'S ROLE IN COMPENSATION FOR DISFIGUREMENT; PROVIDING FOR PAYMENT OF ADMINISTRATIVE COSTS

OUT OF THE SUBSEQUENT INJURY FUND; CHANGING THE SELF-INSURED EMPLOYER ANNUAL RENEWAL FROM THE DEPARTMENT'S FISCAL YEAR TO THE EMPLOYER'S POLICY YEAR; RECOGNIZING THE NATIONAL COUNCIL ON COMPENSATION INSURANCE AS AN AGENT FOR INSURERS; PROVIDING FOR BOOK-ENTRY SECURITIES; AUTHORIZING THE DEPARTMENT TO CONVERT SECURITIES TO CASH AND RELEASE SECURITIES TO THE MONTANA INSURANCE GUARANTY ASSOCIATION; CHANGING THE ASSESSMENT PERIOD FOR THE SELF-INSURERS GUARANTY FUND; CLARIFYING THE DEPARTMENT'S ROLE IN PAYMENT OF NONDISABLING OCCUPATIONAL DISEASE BENEFITS; PROVIDING FOR PAYMENT OF EXAMINATION COSTS BY THE REQUESTOR WHEN OCCUPATIONAL DISEASE CAUSES DEATH; PROVIDING A TIME LIMIT TO APPEAL AN UNINSURED EMPLOYERS' FUND BENEFIT ISSUE TO MEDIATION; PROVIDING FOR ~~THE---ADMINISTRATION---~~ CERTIFICATION--OF--ADJUSTERS SPECIFIC CLAIMS EXPENDITURES CODES; AMENDING SECTIONS 17-7-502, 39-71-116, 39-71-201, 39-71-304, 39-71-401, 39-71-503, ~~39-71-504,---39-71-505,~~ 39-71-506, 39-71-708, 39-71-902, 39-71-907, 39-71-2104, 39-71-2106, 39-71-2204, 39-71-2205, 39-71-2206, 39-71-2615, 39-72-405, AND 39-72-608, MCA; AND REPEALING SECTIONS 39-71-2109 AND 39-71-2207, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

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



1 "39-71-116. Definitions. Unless the context otherwise
2 requires, words and phrases employed in this chapter have
3 the following meanings:

4 (1) "Administer and pay" includes all actions by the
5 state fund under the Workers' Compensation Act and the
6 Occupational Disease Act of Montana necessary to:

7 (a) the investigation, review, and settlement of
8 claims;

9 (b) payment of benefits;

10 (c) setting of reserves;

11 (d) furnishing of services and facilities; and

12 (e) utilization of actuarial, audit, accounting,
13 vocational rehabilitation, and legal services.

14 (2) "Average weekly wage" means the mean weekly
15 earnings of all employees under covered employment, as
16 defined and established annually by the Montana department
17 of labor and industry. It is established at the nearest
18 whole dollar number and must be adopted by the department
19 prior to July 1 of each year.

20 (3) "Beneficiary" means:

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

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

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

1 in an accredited apprenticeship program;

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

5 (e) a parent who is dependent upon the decedent for
6 support at the time of the injury if no beneficiary, as
7 defined in subsections (3)(a) through (3)(d), exists; and

8 (f) a brother or sister under the age of 18 years if
9 dependent upon the decedent for support at the time of the
10 injury but only until the age of 18 years and only when no
11 beneficiary, as defined in subsections (3)(a) through
12 (3)(e), exists.

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

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

18 (6) "Construction industry" means the major group of
19 general contractors and operative builders, heavy
20 construction (other than building construction) contractors,
21 and special trade contractors, listed in major groups 15
22 through 17 in the 1987 Standard Industrial Classification
23 Manual. The term does not include office workers, design
24 professionals, salesmen, estimators, or any other related
25 employment that is not directly involved on a regular basis

1 in the provision of physical labor at a construction or
2 renovation site.

3 (7) "Days" means calendar days, unless otherwise
4 specified.

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

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

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

14 (11) "Invalid" means one who is physically or mentally
15 incapacitated.

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

19 (13) "Order" means any decision, rule, direction,
20 requirement, or standard of the department or any other
21 determination arrived at or decision made by the department.

22 (14) "Payroll", "annual payroll", or "annual payroll for
23 the preceding year" means the average annual payroll of the
24 employer for the preceding calendar year or, if the employer
25 shall not have operated a sufficient or any length of time

1 during such calendar year, 12 times the average monthly
2 payroll for the current year. However, an estimate may be
3 made by the department for any employer starting in business
4 if no average payrolls are available. This estimate is to be
5 adjusted by additional payment by the employer or refund by
6 the department, as the case may actually be, on December 31
7 of such current year. An employer's payroll must be computed
8 by calculating all wages, as defined in 39-71-123, that are
9 paid by an employer.

10 (15) "Permanent partial disability" means a condition,
11 after a worker has reached maximum healing, in which a
12 worker:

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

15 (b) is able to return to work in some capacity but the
16 physical restriction impairs the worker's ability to work.

17 (16) "Permanent total disability" means a condition
18 resulting from injury as defined in this chapter, after a
19 worker reaches maximum healing, in which a worker has no
20 reasonable prospect of physically performing regular
21 employment. Regular employment means work on a recurring
22 basis performed for remuneration in a trade, business,
23 profession, or other occupation in this state. Lack of
24 immediate job openings is not a factor to be considered in
25 determining if a worker is permanently totally disabled.

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

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

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

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

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

(22) "Temporary service contractor" means any person, firm, association, or corporation conducting business that employs individuals directly for the purpose of furnishing the services of those individuals on a part-time or temporary basis to others.

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

(24) "Temporary worker" means a worker whose services are furnished to another on a part-time or temporary basis to substitute for a permanent employee on leave or to meet an emergency or short-term workload.

(25) "Year", unless otherwise specified, means calendar year."

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

"39-71-201. **Administration fund.** (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the various occupational safety acts the department must administer, with the exception of the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund, are to be paid upon lawful appropriation. The following money collected by the department must be deposited in the state treasury to the credit of the workers' compensation administrative fund and must be used for the administrative expenses of the department:

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

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

(c) all fees paid from an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund. The assessments must be levied against the preceding calendar year's gross annual payroll of the plan No. 1 employers and the gross annual direct premiums collected in Montana on the policies of the plan No. 2 insurers, insuring employers covered under the chapter, during the preceding calendar year. However, no an assessment of the plan No. 1 employer or plan No. 2 insurer may not be less than \$200. If at any time during the prior fiscal year a plan No. 1 employer is granted permission to self-insure or a plan No. 2 insurer is authorized to insure employers under this chapter, that plan No. 1 employer or plan No. 2 insurer is subject to assessment. The assessments must be sufficient to fund the direct costs identified to the three plans and an equitable portion of the indirect costs based on the ratio of the preceding fiscal year's indirect costs distributed to the plans, using proper accounting and cost allocation procedures. Plan No. 3 must be assessed an amount sufficient to fund the direct costs and an equitable portion of the indirect costs of regulating plan No. 3. Other sources of revenue, including unexpended funds from the preceding

fiscal year, must be used to reduce the costs before levying the assessments.

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

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

Section 3. Section 39-71-304, MCA, is amended to read:

"39-71-304. Books, records, and payrolls to be open to inspection -- penalty for refusal -- subpoenas. (1) The books, records, and payrolls of an employer pertinent to the administration of this chapter must always be open to inspection by the department or any duly authorized employee thereof for the purpose of ascertaining the correctness of the payroll, the number of workers employed, and such other information as may be necessary for the department and its management under this chapter. Refusal on the part of an employer to submit the books, records, and payrolls for such inspection shall subject the offending employer to a penalty

not exceeding \$500 for each offense, to be collected through a civil action in the name of the state and paid into the state treasury.

(2) In addition to the remedy provided in subsection (1), the department may issue subpoenas and compel testimony for the production of evidence, including books, records, papers, documents, and other objects as may be necessary and proper in regard to any investigation or proceeding under this chapter. In the case of disobedience of a subpoena issued and served or the refusal of a witness to testify as to any matter for which the witness may be interrogated in a proceeding before the department, the department may apply to a district court for an order to compel compliance with the subpoena or testimony. Disobedience of the court's order constitutes contempt of court."

Section 4. Section 39-71-401, MCA, is amended to read:

"39-71-401. **Employments covered and employments exempted.** (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers as defined in 39-71-117 and to all employees as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is

subject to and bound by the compensation plan that has been elected by the employer.

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

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116;

(c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors or working members of a partnership, except as provided in subsection (3);

(e) employment of a broker or salesman performing under a license issued by the board of realty regulation;

(f) employment of a direct seller engaged in the sale of consumer products, primarily in the customer's home;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

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

(i) employment with any railroad engaged in interstate commerce, except that railroad construction work is included

1 in and subject to the provisions of this chapter;

2 (j) employment as an official, including a timer,
3 referee, or judge, at a school amateur athletic event,
4 unless the person is otherwise employed by a school
5 district;

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

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

18 (ii) does not include an employee of the paper who,
19 incidentally to his the employee's main duties, carries or
20 delivers papers.

21 (l) cosmetologist's services and barber's services as
22 defined in 39-51-204(1)(1);

23 (m) a person who is employed by an enrolled tribal
24 member and who operates solely within the exterior
25 boundaries of an Indian reservation.

1 (3) (a) A sole proprietor or a working member of a
2 partnership who ~~holds-himself-out~~ represents to be or THE
3 PUBLIC THAT THE PERSON considers-himself is considered an
4 independent contractor shall elect to be bound personally
5 and individually by the provisions of compensation plan No.
6 1, 2, or 3, but he may apply to the department for an a
7 personal AN exemption from the Workers' Compensation Act for
8 himself.

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

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

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

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

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

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

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

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

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

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

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

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

Section 5. Section 39-71-503, MCA, is amended to read:

1 ~~"39-71-503. Administration of fund -- appropriation.~~

2 (1) The department shall administer the fund and shall pay
3 all proper benefits to injured employees of uninsured
4 employers.

5 (2) Surpluses and reserves ~~shall~~ may not be kept for
6 the fund. The department shall make such payments as it
7 considers appropriate as funds become available from time to
8 time. The payment of weekly disability benefits takes
9 preference over the payment of medical benefits. No lump-sum
10 payments of future projected benefits, including impairment
11 awards, may be made from the fund. The board of investments
12 shall invest the moneys money of the fund. The cost of
13 administration of the fund ~~shall~~ must be paid out of the
14 money in the fund.

15 (3) The amounts necessary for the administration and
16 payment of benefits from this fund are statutorily
17 appropriated, as provided in 17-7-502, from this fund."

18 ~~Section 6.--Section 39-71-504, MCA, is amended to read:--~~

19 ~~"39-71-504.--Funding--of--fund-----option-for-agreement~~
20 ~~between-department-and--injured--employee -----liability--of~~
21 ~~corporate-officers.--The--fund--is--funded-in-the-following~~
22 ~~manner:~~

23 (1) ~~The--department--may--require--that--the--uninsured~~
24 ~~employer-pay-to-the-fund-a-penalty-of-either--up--to--double~~
25 ~~the--premium--amount--the--employer--would--have-paid-on-the~~

1 ~~payroll-of-the-employer's--workers--in--this--state--if--the~~
2 ~~employer--had--been-enrolled-with-compensation-plan-No.--3--or~~
3 ~~\$2007--whichever-is--greater. In--determining--the--penalty,~~
4 ~~wages--paid--to--spouses--of--sole-proprietors-or-spouses-of~~
5 ~~partners-must-be-excluded. in-determining-the-premium-amount~~
6 ~~for-the-calculation-of-the-penalty--under--this--subsection,~~
7 ~~the--department-shall-make-an-assessment-on-how-much-premium~~
8 ~~would-have-been-paid-on-the-employer's-past--3-year--payroll~~
9 ~~for--periods--within--the--3--years--when--the--employer-was~~
10 ~~uninsured.--An-assessment-for-payroll-paid-by--the--uninsured~~
11 ~~employer--for--any--time--prior--to-July-17,1977,--may-not-be~~
12 ~~made.~~

13 (2) ~~(a) The fund shall must receive from an uninsured~~
14 ~~employer an amount equal to all benefits paid or to be paid~~
15 ~~from the fund to an injured employee of the uninsured~~
16 ~~employer. However, the uninsured employer's liability under~~
17 ~~this subsection (2)(a) may not exceed \$50,000.~~

18 (2) ~~(b) The dollar limitation does not apply to an~~
19 ~~uninsured employer's liability to an injured employee or the~~
20 ~~employee's beneficiaries under 39-71-509 or 39-71-515.~~

21 (3) ~~The department may determine that the \$17,000~~
22 ~~assessments that are charged against an insurer in each case~~
23 ~~of an industrial death under 39-71-902(1) shall must be paid~~
24 ~~to the uninsured employers' fund rather than the subsequent~~
25 ~~injury fund.~~

~~(4) The department may enter into an agreement with the injured employee or the employee's beneficiaries to assign to the employee or the beneficiaries all or part of the funds received by the department from the uninsured employer pursuant to subsection (2)(a).~~

~~(5) When a corporation subject to Title 35 has failed to file an annual report with the secretary of state as required by law, the department shall hold the corporation officers jointly and severally liable for any uninsured employer penalties or claim costs due for the period in which the corporation is delinquent in filing the annual report. If the annual report is filed after the specified time, the officers may not be held liable for the uninsured employer penalties or claim costs that accrue after the report is filed.~~

Section 7. ~~Section 39-71-505, MCA, is amended to read:~~

~~"39-71-505. Applicability of other provisions of chapter to fund -- limitations. All appropriate provisions in the Workers' Compensation Act apply to the fund in the same manner as they apply to compensation plans Not 17-27 and 37 except that the workers' compensation judge may not do the following:~~

~~(1) assess costs and attorney fees, as provided in 39-71-617 against the uninsured employers' fund; or~~

~~(2) assess an increase in award for unreasonable delay~~

~~or refusal to pay, as provided in 39-71-2907, against the uninsured employers' fund."~~

Section 6. Section 39-71-506, MCA, is amended to read:

~~"39-71-506. Collection of payments from uninsured employer by suit Lien for payment of unpaid penalties and claims -- levy and execution. (1) If, upon demand of the department, an uninsured employer refuses to make the payments to the fund that are provided for in subsections (1) and (2) of 39-71-504, the sums may be collected by the department through suit unpaid penalties and claims have the effect of a judgment against the employer at the time the payments become due. The department may issue a certificate setting forth the amount of payment due and direct the clerk of the district court of any county in the state to enter the certificate as a judgment on the docket pursuant to 25-9-301. From the time the judgment is docketed, it becomes a lien upon all real and personal property of the employer. After satisfying any due process requirements, the department may enforce the judgment at any time within 10 years of creation of the lien.~~

~~(2) The lien provided for in subsection (1) is not valid against any third party owning an interest in the real or personal property subject to the lien if:~~

~~(a) the third party interest is recorded prior to the entrance of the certificate as a judgment; and~~

(b) the third party receives from the most recent grantor of the interest a signed affidavit stating that any penalties and claims relating to the property have been paid.

(3) The department may settle through compromise with an uninsured employer the amount due the fund under 39-71-504."

Section 7. Section 39-71-708, MCA, is amended to read:

"39-71-708. Compensation for disfigurement. (1) The department--may--award--proper--and--equitable--benefits--for Injured workers who suffer serious face, head, or neck disfigurement, may be entitled to benefits not to exceed \$2,500, in addition to benefits payable under 39-71-703.

(2) No A payment under this section shall may not be in lieu of the separate benefit of medical and hospital services or of any benefits paid under 39-71-701 for temporary total disability."

Section 8. Section 39-71-902, MCA, is amended to read:

"39-71-902. Fund to receive payment from insurer for each death under chapter -- assessment of insurers. (1) In every case of the death of an employee under this chapter, the insurer shall pay to the fund the sum of \$1,000. In addition, the department may assess every insurer an amount not to exceed 5% of the compensation paid in Montana in the preceding fiscal year. The assessment must be transmitted

annually to the subsequent injury fund by the employer or insurer. The cost of administration of the fund must be paid out of money in the fund.

(2) When, in the judgment of the department, the amount of money in the subsequent injury fund is such that there is a surplus above and beyond projected liabilities and administrative costs, the department may at its discretion suspend or reduce further collection of assessments for a period of time determined by the department."

Section 9. Section 39-71-907, MCA, is amended to read:

"39-71-907. Certified vocationally handicapped person to be compensated for injury as provided by chapter -- insurer liability for compensation limited -- appropriation.

(1) A person certified as vocationally handicapped who receives a personal injury arising out of and in the course of his employment and resulting in death or disability must be paid compensation in the manner and to the extent provided in this chapter or, in case of his death resulting from such injury, the compensation must be paid to his the person's beneficiaries or dependents. The liability of the insurer for payment of medical and burial benefits as provided in this chapter is limited to those benefits arising from services rendered during the period of 104 weeks after the date of injury. The liability of the insurer for payment of benefits as provided in this chapter is

1 limited to 104 weeks of compensation benefits actually paid.
 2 Thereafter, all compensation and the cost of all medical
 3 care and burial is the liability of the fund.

4 (2) The amounts necessary for the administration and
 5 payment of benefits from this fund are statutorily
 6 appropriated, as provided in section 17-7-502, from this
 7 fund."

8 **Section 10.** Section 39-71-2104, MCA, is amended to
 9 read:

10 "39-71-2104. Renewal of application. Every An employer,
 11 so long as he that employer continues in his employment TO
 12 EMPLOY and ~~so long as he~~ continues to be bound by
 13 compensation plan No. 1, shall, ~~at least 30 days before the~~
 14 ~~expiration of each fiscal year,~~ annually renew his the
 15 application to be permitted to continue to make such
 16 payments ~~as aforesaid~~ directly to his employees for the next
 17 ~~ensuing fiscal year, and under like circumstances as those~~
 18 ~~mentioned for the granting of such permission upon such~~
 19 ~~first application,~~ the The department may, with the
 20 concurrence of the Montana self-insurers guaranty fund,
 21 renew the same application from year to year. The annual
 22 renewal application must be in the form, for the period, and
 23 subject to the time limits prescribed by the department."

24 **Section 11.** Section 39-71-2106, MCA, is amended to
 25 read:

1 "39-71-2106. Requiring security of employer. (1) (a)
 2 The department may require any employer who elects to be
 3 bound by compensation plan No. 1 to provide a security
 4 deposit in accordance with rules adopted by the department.
 5 All securities of the United States treasury must be used as
 6 a security deposit in book-entry form. Except as provided in
 7 subsection (1)(b), the security deposit may be a surety
 8 bond, government bond, certificate of deposit, or letter of
 9 credit approved by the department and must be the greater
 10 of:

11 (i) \$250,000; or
 12 (ii) an average of the workers' compensation liabilities
 13 incurred by the employer in Montana for the past 3 calendar
 14 years.

15 (b) The department may, in accordance with rules
 16 adopted by the department, require a larger deposit as
 17 additional evidence of solvency and financial ability to pay
 18 the liabilities provided by this chapter.

19 (2) (a) The department shall require an employer to
 20 give security in addition to the security described in
 21 subsection (1) if:

22 (i) the department determines that the employer is
 23 insolvent--or lacks the financial ability to pay the
 24 compensation that is required EXPECTED under this chapter
 25 and that is chargeable to the employer during the fiscal

1 year to be covered by the permission provided for in
2 39-71-2103; or

3 (ii) the employer is ~~an--association,--corporation,--or~~
4 organization a group of individual employers seeking
5 permission to operate under compensation plan No. 1.

6 (b) The additional security required in subsection
7 (2)(a) must be an amount that the department finds
8 reasonable and necessary to meet all liabilities that the
9 employer may accrue under this chapter during the fiscal
10 year.

11 (3) (a) The security provided for in subsection (2)
12 must be deposited with the department ~~and may be--either--an~~
13 ~~estimated--percent--of--the employer's last preceding annual~~
14 ~~payroll--or--a percent--of--the established amount--of--his~~ the
15 employer's ~~annual payroll for the fiscal year~~. The security
16 may consist of:

17 (i) a bond ~~or undertaking~~ executed to the department in
18 the amount to be fixed by it with ~~two--or--more--sufficient~~
19 ~~sureties~~ A SURETY, which undertaking must be conditioned
20 that the employer will pay or cause to be paid to his
21 employees all sums and amounts for which the employer
22 becomes liable under the terms of this chapter during the
23 fiscal year; or

24 (ii) any state, county, municipal, or school district
25 bonds or the bonds or evidence of indebtedness of any

1 individuals or corporations that the department considers
2 solvent; OR

3 (III) OTHER SECURITY DEPOSITS ALLOWED IN SUBSECTION
4 (1)(A).

5 (b) Every deposit and the character and amount of the
6 securities must at all times be subject to approval,
7 revision, or change by the department as it may require.

8 (c) Upon proof of the final payment of the liability
9 for which the securities are given, the securities or any
10 remainder of the securities must be returned to the
11 depositor.

12 (4) The department is liable for the value and
13 safekeeping of all deposits or securities and shall, at any
14 time, upon demand of a bondsman or the depositor, account
15 for the deposits or securities and the earnings of the
16 deposits or securities."

17 **Section 12.** Section 39-71-2204, MCA, is amended to
18 read:

19 "39-71-2204. Insurer to submit notice of coverage
20 within thirty days -- penalty for failure. (1) The insurer
21 shall, within 30 days after the issuance of the policy of
22 workers' compensation insurance, submit to the department
23 the notice of coverage stating the effective date of the
24 policy insuring the employer and such other information as
25 may be required by the department.

(2) The department may:

(a) recognize the national council on compensation insurance as an agent for authorized workers' compensation insurers in Montana; and

(b) under terms and conditions acceptable to the department, accept notice of coverage received from the national council on compensation insurance as the insurer's notice of coverage.

{2}(3) The department may, in its discretion, assess a penalty of no more than \$200 against an insurer which that as a general business practice does not comply with the 30-day notice requirement as set forth in subsection (1) of this-section."

Section 13. Section 39-71-2205, MCA, is amended to read:

"39-71-2205. Policy in effect until canceled or replaced -- twenty-day notification of cancellation required -- penalty. (1) The policy remains in effect until canceled, and cancellation may take effect only by written notice to the named insured and to the department at least 20 days prior to the date of cancellation. However, the policy terminates on the effective date of a replacement or succeeding workers' compensation insurance policy issued to the insured. Nothing in this section prevents an insurer from canceling a policy of workers' compensation insurance

before a replacement policy is issued to the insured.

(2) The department may:

(a) recognize the national council on compensation insurance as an agent for authorized workers' compensation insurers in Montana; and

(b) under terms and conditions acceptable to the department, accept notice of cancellation received from the national council on compensation insurance as the insurer's notice of cancellation.

{2}(3) (a) The department may assess a penalty of up to \$200 against an insurer that does not comply with the notice requirement in subsection (1).

(b) An insurer may contest the penalty assessment in a hearing conducted according to department rules."

Section 14. Section 39-71-2206, MCA, is amended to read:

"39-71-2206. Deposits by insurer with department to guarantee payment of liability. (1) (a) Before issuance of any policy by an insurer as herein authorized, the insurer must shall deposit with the department bonds book-entry securities of the United States or the state of Montana or of any school district, county, city, or town in the state of Montana or a corporate surety bond made out to and approved by the department in an amount not less than \$25,000 or more than \$200,000, as the department may

1 determine.

2 (b) If any insurer fails to discharge any liability
 3 after the amount thereof is determined by the department and
 4 within the time limited by the department, the department
 5 shall convert the bonds or such any part thereof as is
 6 necessary into cash and from the proceeds liquidate such the
 7 liability, and thereafter the insurer must shall make an
 8 additional deposit to meet any deficiency caused thereby. It
 9 is intended to give the department the discretion in the
 10 matter of whether an insurer has failed to discharge any
 11 liability.

12 (c) If any insurer fails to replace a canceling,
 13 terminating, or maturing security within the time limit
 14 established by the department, the department shall protect
 15 the security deposit by converting the canceling,
 16 terminating, or maturing security into cash and shall
 17 maintain the deposit until a replacement security acceptable
 18 to the department is deposited.

19 (2) Within 30 days of the happening of an accident
 20 where death or the nature of the injury renders the amount
 21 of future payments certain or reasonably certain, the
 22 insurer shall make a deposit, as herein defined, with the
 23 department for the protection and guarantee of the payment
 24 of such the liability in such a sum as the department may
 25 direct. However, if the department considers the amount on

1 deposit by the insurer under the provisions of subsection
 2 (1) of this section sufficient to cover all liabilities of
 3 the insurer, then no further deposit may be required.

4 (3) Any deposit made under the provisions of
 5 compensation plan No. 2 must be held in trust by the
 6 department as security for the payment of the liability for
 7 which the deposit was made. Such The deposit may be reduced
 8 from time to time with the permission of the department as
 9 the payment of the liability of the insurer may reduce the
 10 amount required to be on deposit. Such The deposit may be
 11 changed or renewed when desired by the depositor by
 12 withdrawing the same or any part thereof and substituting
 13 other deposits therefor. Upon proof of the final payment of
 14 the liability for which such the deposit was made, any
 15 deposit remaining must be returned to the depositor. All
 16 earnings made by such the deposit must first be applied upon
 17 any liability of the depositors, and if no such liability
 18 exists, then such the earnings must upon demand be delivered
 19 to such the depositor. The department and its bondsmen are
 20 liable for the value and safekeeping of such the deposit and
 21 shall at any time, upon demand of a depositor, account for
 22 the same and the earnings thereof.

23 (4) In the event of an insolvency of a plan No. 2
 24 insurer, the department may, at its discretion, release part
 25 or all of the deposit held to the Montana insurance guaranty

1 association for payment of the insurer's Montana workers'
2 compensation claims if:

3 (a) the insurer has been determined to be insolvent by
4 a court of competent jurisdiction or bankruptcy proceedings
5 have been instituted by or against it;

6 (b) the insurer is unable to pay its workers'
7 compensation claims; and

8 (c) the insurer's Montana workers' compensation
9 liabilities have become the responsibility of the Montana
10 insurance guaranty association."

11 **Section 15.** Section 39-71-2615, MCA, is amended to
12 read:

13 "39-71-2615. Initial fee -- assessment. (1) A private
14 self-insurer shall pay to the fund an initial fee of \$1,000
15 upon becoming a member. Thereafter, a member's financial
16 obligation to the fund must be established by assessment as
17 provided in subsection (2).

18 (2) The fund may assess each of its members a pro rata
19 share of the amount necessary to carry out the purposes of
20 this part. However, the total annual assessments in any
21 calendar year may not exceed 5% of the indemnity
22 compensation paid by each member during the previous
23 calendar year. Funds obtained by assessment pursuant to this
24 subsection may be used only for the purposes of this part.

25 (3) A former member is liable for assessments made by

1 the fund for 3 years following the date the member's status
2 as a private self-insurer is terminated, whether the
3 termination is by action of the private self-insurer or the
4 department. A former member's assessment must be based on
5 the 12-month-period compensation paid during the policy LAST
6 APPROVAL year immediately preceding the member's termination
7 of its status as a private self-insurer.

8 (4) The board shall certify to the department the
9 collection and receipt of assessments, noting any
10 delinquencies. The board shall take appropriate action to
11 collect a delinquent assessment."

12 **Section 16.** Section 39-72-405, MCA, is amended to read:

13 "39-72-405. General limitations on payment of
14 compensation. (1) Compensation may not be paid when the last
15 day of the injurious exposure of the employee to the hazard
16 of the occupational disease has occurred prior to July 1,
17 1959.

18 (2) When any an employee in employment on or after
19 January 1, 1959, because he the employee has an occupational
20 disease incurred in and caused by such the employment which
21 that is not yet disabling, is discharged or transferred from
22 the employment in which he the employee is engaged or when
23 he the employee ceases his employment and it is in fact, as
24 determined by the medical panel, inadvisable for him the
25 employee on account of a nondisabling occupational disease

to continue in employment and he the employee suffers wage loss by reason of the discharge, transfer, or cessation, the ~~department--may--allow--compensation--on--account--thereof--as--it~~ considers just, compensation may be paid, not exceeding \$10,000, by an agreement between the insurer and the claimant. If the parties fail to reach an agreement, the mediation procedures in TITLE 39, CHAPTER 71, part 24, of this chapter must be followed."

Section 17. Section 39-72-608, MCA, is amended to read:

"39-72-608. Payment of medical examination, report, and autopsy expenses. The expense of the first medical examination and report as provided in 39-72-602 must be borne by the insurer. The expense of a reexamination and panel report must be borne by the dissatisfied party requesting the reexamination. The expense of the periodic medical examinations and reports, as provided in 39-72-607, must be borne by the party requesting the periodic medical examination. The expense of the autopsy, as provided for in 39-72-606, must be borne by the party requesting the autopsy. When the occupational disease causes death, the expense of any examinations and reports, as provided in 39-72-605, must be borne by the party requesting the examination."

Section 18. 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; 39-71-503; 39-71-907; 39-71-2504; 44-12-206; 44-13-102;

1 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101;
 2 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808;
 3 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220;
 4 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

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

20 NEW SECTION. Section 19. Time limit to appeal. A
 21 dispute concerning uninsured employers' fund benefits must
 22 be appealed to mediation within 90 days from the date of the
 23 determination or the determination is considered final.

24 NEW SECTION. Section 22. Administration of adjusters.
 25 (1) An insurer shall conduct administration of its claims

1 adjusting services through a person knowledgeable in the
 2 application of Montana workers' compensation and
 3 occupational disease law and administrative rules. The
 4 person retained or employed as an adjuster by an insurer
 5 must be able to demonstrate, in a manner satisfactory to the
 6 department, a thorough knowledge of workers' compensation
 7 and occupational disease law and administrative rules.

8 (2) An insurer shall designate at least one adjuster
 9 who has the authority and ability to pay compensation when
 10 due and who has the authority to settle claims.

11 (3) The department, in cooperation with the state
 12 auditor, may regulate and certify adjusters for workers'
 13 compensation adjusting.

14 NEW SECTION. SECTION 20. SPECIFIC CLAIMS EXPENDITURES
 15 CODES. THE STATE FUND SHALL ACCOUNT FOR DIFFERENT KINDS OF
 16 CLAIMS AND ADMINISTRATIVE EXPENSES SEPARATELY. PAYMENTS MADE
 17 TO CLAIMANTS AND THEIR DESIGNATED HEALTH CARE PROVIDERS MUST
 18 BE ACCOUNTED FOR SEPARATELY FROM PAYMENTS TO PROVIDERS AND
 19 VENDORS OF SERVICES HIRED BY THE STATE FUND. THE STATE FUND
 20 SHALL SPECIFICALLY ACCOUNT FOR THE FOLLOWING COSTS
 21 SEPARATELY:

22 (1) PAYMENTS TO HEALTH CARE PROVIDERS FOR INDEPENDENT
 23 MEDICAL EVALUATIONS OR OTHER SERVICES PROVIDED AT THE
 24 REQUEST OF THE STATE FUND;

25 (2) PAYMENTS TO MEDICAL PANELS;

1 (3) PAYMENTS TO REHABILITATION PROVIDERS FOR SERVICES
2 PERFORMED AT THE REQUEST OF THE STATE FUND;

3 (4) PAYMENTS MADE FOR RETRAINING OR ON-THE-JOB TRAINING
4 PROGRAMS AND OTHER REHABILITATION PAYMENTS MADE TO INJURED
5 WORKERS;

6 (5) PAYMENTS MADE IN-HOUSE OR FOR CONTRACTED LEGAL
7 COUNSEL; AND

8 (6) PAYMENTS TO PRIVATE INVESTIGATORS AND OTHER SERVICE
9 PROVIDERS MADE IN CONNECTION WITH FRAUD INVESTIGATION.

10 NEW SECTION. Section 21. Repealer. Sections 39-71-2109
11 and 39-71-2207, MCA, are repealed.

12 NEW SECTION. Section 22. Codification instruction.
13 [Sections 21-and-22 19 AND 20] are intended to be codified
14 as an integral part of Title 39, chapter 71, and the
15 provisions of Title 39, chapter 71, apply to [sections 21
16 and-22 19 AND 20].

17 NEW SECTION. SECTION 23. EFFECTIVE DATE. [THIS ACT] IS
18 EFFECTIVE JULY 1, 1993.

-End-

1 HOUSE BILL NO. 287

2 INTRODUCED BY WISEMAN, HIBBARD, BENEDICT,

3 COCCHIARELLA, SQUIRES

4 BY REQUEST OF THE DEPARTMENT OF

5 LABOR AND INDUSTRY

6
 7 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
 8 WORKERS' COMPENSATION ACT AND THE OCCUPATIONAL DISEASE ACT
 9 OF MONTANA; DELETING THE UNINSURED EMPLOYERS' FUND FROM THE
 10 DEFINITION OF "INSURER"; CLARIFYING WHO IS SUBJECT TO
 11 ADMINISTRATIVE ASSESSMENT; ALLOWING ISSUANCE OF SUBPOENAS;
 12 EXEMPTING FROM WORKERS' COMPENSATION A PERSON WHO IS
 13 EMPLOYED BY AN ENROLLED TRIBAL MEMBER AND WHO OPERATES
 14 WITHIN THE BOUNDARIES OF A RESERVATION; PROVIDING FOR
 15 STATUTORY APPROPRIATIONS FOR THE UNINSURED EMPLOYERS' FUND
 16 AND THE SUBSEQUENT INJURY FUND; EXCLUDING FROM THE UNINSURED
 17 EMPLOYER PENALTY THE WAGES PAID TO SPOUSES OF SOLE
 18 PROPRIETORS OR SPOUSES OF PARTNERS; ~~HOLDING---CORPORATE~~
 19 ~~OFFICERS---PERSONALLY---LIABLE---FOR---THE---UNINSURED---EMPLOYER~~
 20 ~~PENALTY-IF-A-CORPORATE-REPORT-IS-NOT-FILED; REMOVING---COSTS~~
 21 ~~ATTORNEY---FEES; AND-INCREASED-AWARDS-FROM-APPLICATION-TO-THE~~
 22 ~~UNINSURED-EMPLOYERS'-FUND; PROVIDING FOR A LIEN FOR AN~~
 23 UNPAID UNINSURED EMPLOYER PENALTY; CLARIFYING THE DEPARTMENT
 24 OF LABOR AND INDUSTRY'S ROLE IN COMPENSATION FOR
 25 DISFIGUREMENT; PROVIDING FOR PAYMENT OF ADMINISTRATIVE COSTS

1 OUT OF THE SUBSEQUENT INJURY FUND; CHANGING THE SELF-INSURED
 2 EMPLOYER ANNUAL RENEWAL FROM THE DEPARTMENT'S FISCAL YEAR TO
 3 THE EMPLOYER'S POLICY YEAR; RECOGNIZING THE NATIONAL COUNCIL
 4 ON COMPENSATION INSURANCE AS AN AGENT FOR INSURERS;
 5 PROVIDING FOR BOOK-ENTRY SECURITIES; AUTHORIZING THE
 6 DEPARTMENT TO CONVERT SECURITIES TO CASH AND RELEASE
 7 SECURITIES TO THE MONTANA INSURANCE GUARANTY ASSOCIATION;
 8 CHANGING THE ASSESSMENT PERIOD FOR THE SELF-INSURERS
 9 GUARANTY FUND; CLARIFYING THE DEPARTMENT'S ROLE IN PAYMENT
 10 OF NONDISABLING OCCUPATIONAL DISEASE BENEFITS; PROVIDING FOR
 11 PAYMENT OF EXAMINATION COSTS BY THE REQUESTOR WHEN
 12 OCCUPATIONAL DISEASE CAUSES DEATH; PROVIDING A TIME LIMIT TO
 13 APPEAL AN UNINSURED EMPLOYERS' FUND BENEFIT ISSUE TO
 14 MEDIATION; PROVIDING FOR ~~THE---ADMINISTRATION---AND~~
 15 ~~CERTIFICATION---OF---ADJUSTERS~~ SPECIFIC CLAIMS EXPENDITURES
 16 CODES; AMENDING SECTIONS 17-7-502, 39-71-116, 39-71-201,
 17 39-71-304, 39-71-401, 39-71-503, 39-71-504, ~~---39-71-505,~~
 18 39-71-506, 39-71-708, 39-71-902, 39-71-907, 39-71-2104,

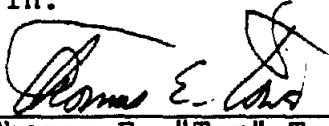
THERE ARE NO CHANGES IN THIS BILL
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 19, 1993

MR. PRESIDENT:


We, your committee on Labor and Employment Relations having had under consideration House Bill No. 287 (first reading copy -- blue), respectfully report that House Bill No. 287 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 2, lines 14 through 16.
Following: "MEDIATION;" on line 14
Strike: remainder of line 14 through "CODES;" on line 16
2. Page 20, line 12.
Strike: "The"
Insert: "After the due process requirements of 39-71-2401(2) and (3) are satisfied, the"
3. Page 20, line 17.
Following: "real"
Strike: "and personal"
4. Page 20, line 21 through page 21, line 4.
Strike: subsection (2) in its entirety
Re-number: subsequent subsection
5. Page 36, line 14 through page 37, line 9.
Strike: section 20 in its entirety
Re-number: subsequent sections
6. Page 37, line 13.
Strike: "Sections"
Insert: "Section"
Strike: "AND 20"
Strike: "are"
Insert: "is"
7. Page 37, lines 15 and 16.
Strike: "sections" on line 15
Insert: "section"
Strike: "AND 20" on line 16

-END-

 Amd. Coord.
n) Sec. of Senate


Senator Carrying Bill

SENATE
HB 287
621240SC.San

HOUSE BILL NO. 287

INTRODUCED BY WISEMAN, HIBBARD, BENEDICT,

COCCHIARELLA, SQUIRES

BY REQUEST OF THE DEPARTMENT OF

LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE WORKERS' COMPENSATION ACT AND THE OCCUPATIONAL DISEASE ACT OF MONTANA; DELETING THE UNINSURED EMPLOYERS' FUND FROM THE DEFINITION OF "INSURER"; CLARIFYING WHO IS SUBJECT TO ADMINISTRATIVE ASSESSMENT; ALLOWING ISSUANCE OF SUBPOENAS; EXEMPTING FROM WORKERS' COMPENSATION A PERSON WHO IS EMPLOYED BY AN ENROLLED TRIBAL MEMBER AND WHO OPERATES WITHIN THE BOUNDARIES OF A RESERVATION; PROVIDING FOR STATUTORY APPROPRIATIONS FOR THE UNINSURED EMPLOYERS' FUND AND THE SUBSEQUENT INJURY FUND; EXCLUDING FROM THE UNINSURED EMPLOYER PENALTY THE WAGES PAID TO SPOUSES OF SOLE PROPRIETORS OR SPOUSES OF PARTNERS; ~~HOLDING---CORPORATE OFFICERS---PERSONALLY---LIABLE---FOR---THE---UNINSURED---EMPLOYER PENALTY---IF---A---CORPORATE---REPORT---IS---NOT---FILED---; REMOVING---COSTS, ATTORNEY---FEES,---AND---INCREASED---AWARDS---FROM---APPLICATION---TO---THE UNINSURED---EMPLOYERS'---FUND;~~ PROVIDING FOR A LIEN FOR AN UNPAID UNINSURED EMPLOYER PENALTY; CLARIFYING THE DEPARTMENT OF LABOR AND INDUSTRY'S ROLE IN COMPENSATION FOR DISFIGUREMENT; PROVIDING FOR PAYMENT OF ADMINISTRATIVE COSTS

OUT OF THE SUBSEQUENT INJURY FUND; CHANGING THE SELF-INSURED EMPLOYER ANNUAL RENEWAL FROM THE DEPARTMENT'S FISCAL YEAR TO THE EMPLOYER'S POLICY YEAR; RECOGNIZING THE NATIONAL COUNCIL ON COMPENSATION INSURANCE AS AN AGENT FOR INSURERS; PROVIDING FOR BOOK-ENTRY SECURITIES; AUTHORIZING THE DEPARTMENT TO CONVERT SECURITIES TO CASH AND RELEASE SECURITIES TO THE MONTANA INSURANCE GUARANTY ASSOCIATION; CHANGING THE ASSESSMENT PERIOD FOR THE SELF-INSURERS GUARANTY FUND; CLARIFYING THE DEPARTMENT'S ROLE IN PAYMENT OF NONDISABLING OCCUPATIONAL DISEASE BENEFITS; PROVIDING FOR PAYMENT OF EXAMINATION COSTS BY THE REQUESTOR WHEN OCCUPATIONAL DISEASE CAUSES DEATH; PROVIDING A TIME LIMIT TO APPEAL AN UNINSURED EMPLOYERS' FUND BENEFIT ISSUE TO MEDIATION; ~~PROVIDING---FOR THE---ADMINISTRATION---AND CERTIFICATION---OF---ADJUSTERS SPECIFIC---CLAIMS---EXPENDITURES CODES;~~ AMENDING SECTIONS 17-7-502, 39-71-116, 39-71-201, 39-71-304, 39-71-401, 39-71-503, ~~39-71-504,---39-71-505,~~ 39-71-506, 39-71-708, 39-71-902, 39-71-907, 39-71-2104, 39-71-2106, 39-71-2204, 39-71-2205, 39-71-2206, 39-71-2615, 39-72-405, AND 39-72-608, MCA; AND REPEALING SECTIONS 39-71-2109 AND 39-71-2207, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

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

1 "39-71-116. Definitions. Unless the context otherwise
2 requires, words and phrases employed in this chapter have
3 the following meanings:

4 (1) "Administer and pay" includes all actions by the
5 state fund under the Workers' Compensation Act and the
6 Occupational Disease Act of Montana necessary to:

7 (a) the investigation, review, and settlement of
8 claims;

9 (b) payment of benefits;

10 (c) setting of reserves;

11 (d) furnishing of services and facilities; and

12 (e) utilization of actuarial, audit, accounting,
13 vocational rehabilitation, and legal services.

14 (2) "Average weekly wage" means the mean weekly
15 earnings of all employees under covered employment, as
16 defined and established annually by the Montana department
17 of labor and industry. It is established at the nearest
18 whole dollar number and must be adopted by the department
19 prior to July 1 of each year.

20 (3) "Beneficiary" means:

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

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

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

1 in an accredited apprenticeship program;

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

5 (e) a parent who is dependent upon the decedent for
6 support at the time of the injury if no beneficiary, as
7 defined in subsections (3)(a) through (3)(d), exists; and

8 (f) a brother or sister under the age of 18 years if
9 dependent upon the decedent for support at the time of the
10 injury but only until the age of 18 years and only when no
11 beneficiary, as defined in subsections (3)(a) through
12 (3)(e), exists.

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

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

18 (6) "Construction industry" means the major group of
19 general contractors and operative builders, heavy
20 construction (other than building construction) contractors,
21 and special trade contractors, listed in major groups 15
22 through 17 in the 1987 Standard Industrial Classification
23 Manual. The term does not include office workers, design
24 professionals, salesmen, estimators, or any other related
25 employment that is not directly involved on a regular basis

1 in the provision of physical labor at a construction or
2 renovation site.

3 (7) "Days" means calendar days, unless otherwise
4 specified.

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

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

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

14 (11) "Invalid" means one who is physically or mentally
15 incapacitated.

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

19 (13) "Order" means any decision, rule, direction,
20 requirement, or standard of the department or any other
21 determination arrived at or decision made by the department.

22 (14) "Payroll", "annual payroll", or "annual payroll for
23 the preceding year" means the average annual payroll of the
24 employer for the preceding calendar year or, if the employer
25 shall not have operated a sufficient or any length of time

1 during such calendar year, 12 times the average monthly
2 payroll for the current year. However, an estimate may be
3 made by the department for any employer starting in business
4 if no average payrolls are available. This estimate is to be
5 adjusted by additional payment by the employer or refund by
6 the department, as the case may actually be, on December 31
7 of such current year. An employer's payroll must be computed
8 by calculating all wages, as defined in 39-71-123, that are
9 paid by an employer.

10 (15) "Permanent partial disability" means a condition,
11 after a worker has reached maximum healing, in which a
12 worker:

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

15 (b) is able to return to work in some capacity but the
16 physical restriction impairs the worker's ability to work.

17 (16) "Permanent total disability" means a condition
18 resulting from injury as defined in this chapter, after a
19 worker reaches maximum healing, in which a worker has no
20 reasonable prospect of physically performing regular
21 employment. Regular employment means work on a recurring
22 basis performed for remuneration in a trade, business,
23 profession, or other occupation in this state. Lack of
24 immediate job openings is not a factor to be considered in
25 determining if a worker is permanently totally disabled.

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

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

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

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

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

21 (22) "Temporary service contractor" means any person,
22 firm, association, or corporation conducting business that
23 employs individuals directly for the purpose of furnishing
24 the services of those individuals on a part-time or
25 temporary basis to others.

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

5 (24) "Temporary worker" means a worker whose services
6 are furnished to another on a part-time or temporary basis
7 to substitute for a permanent employee on leave or to meet
8 an emergency or short-term workload.

9 (25) "Year", unless otherwise specified, means calendar
10 year."

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

12 "39-71-201. Administration fund. (1) A workers'
13 compensation administration fund is established out of which
14 all costs of administering the Workers' Compensation and
15 Occupational Disease Acts and the various occupational
16 safety acts the department must administer, with the
17 exception of the subsequent injury fund, as provided for in
18 39-71-907, and the uninsured employers' fund, are to be paid
19 upon lawful appropriation. The following money collected by
20 the department must be deposited in the state treasury to
21 the credit of the workers' compensation administrative fund
22 and must be used for the administrative expenses of the
23 department:

24 (a) all fees and penalties provided in 39-71-205 and
25 39-71-304;

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

(c) all fees paid from an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund. The assessments must be levied against the preceding calendar year's gross annual payroll of the plan No. 1 employers and the gross annual direct premiums collected in Montana on the policies of the plan No. 2 insurers, insuring employers covered under the chapter, during the preceding calendar year. However, no an assessment of the plan No. 1 employer or plan No. 2 insurer may not be less than \$200. If at any time during the prior fiscal year a plan No. 1 employer is granted permission to self-insure or a plan No. 2 insurer is authorized to insure employers under this chapter, that plan No. 1 employer or plan No. 2 insurer is subject to assessment. The assessments must be sufficient to fund the direct costs identified to the three plans and an equitable portion of the indirect costs based on the ratio of the preceding fiscal year's indirect costs distributed to the plans, using proper accounting and cost allocation procedures. Plan No. 3 must be assessed an amount sufficient to fund the direct costs and an equitable portion of the indirect costs of regulating plan No. 3. Other sources of revenue, including unexpended funds from the preceding

fiscal year, must be used to reduce the costs before levying the assessments.

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

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

Section 3. Section 39-71-304, MCA, is amended to read:

"39-71-304. Books, records, and payrolls to be open to inspection -- penalty for refusal -- subpoenas. (1) The books, records, and payrolls of an employer pertinent to the administration of this chapter must always be open to inspection by the department or any duly authorized employee thereof for the purpose of ascertaining the correctness of the payroll, the number of workers employed, and such other information as may be necessary for the department and its management under this chapter. Refusal on the part of an employer to submit the books, records, and payrolls for such inspection shall subject the offending employer to a penalty

not exceeding \$500 for each offense, to be collected through a civil action in the name of the state and paid into the state treasury.

(2) In addition to the remedy provided in subsection (1), the department may issue subpoenas and compel testimony for the production of evidence, including books, records, papers, documents, and other objects as may be necessary and proper in regard to any investigation or proceeding under this chapter. In the case of disobedience of a subpoena issued and served or the refusal of a witness to testify as to any matter for which the witness may be interrogated in a proceeding before the department, the department may apply to a district court for an order to compel compliance with the subpoena or testimony. Disobedience of the court's order constitutes contempt of court."

Section 4. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers as defined in 39-71-117 and to all employees as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is

subject to and bound by the compensation plan that has been elected by the employer.

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

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116;

(c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors or working members of a partnership, except as provided in subsection (3);

(e) employment of a broker or salesman performing under a license issued by the board of realty regulation;

(f) employment of a direct seller engaged in the sale of consumer products, primarily in the customer's home;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

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

(i) employment with any railroad engaged in interstate commerce, except that railroad construction work is included

in and subject to the provisions of this chapter;

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

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

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

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

(l) cosmetologist's services and barber's services as defined in 39-51-204(1)(l);

(m) a person who is employed by an enrolled tribal member and who operates solely within the exterior boundaries of an Indian reservation.

(3) (a) A sole proprietor or a working member of a partnership who ~~holds-himself-out~~ represents to be or THE PUBLIC THAT THE PERSON considers-himself is considered an independent contractor shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3, but he may apply to the department for ~~an a~~ personal AN exemption from the Workers' Compensation Act for himself.

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

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

(d) When an election of an exemption is approved by the department, the election remains effective and the independent contractor retains his the status as an independent contractor until he the independent contractor notifies the department of any change in his status and provides a description of his present work status.

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

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

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

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

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

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

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

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

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

25 **Section 5.** Section 39-71-503, MCA, is amended to read:

***39-71-503. Administration of fund -- appropriation.**

(1) The department shall administer the fund and shall pay all proper benefits to injured employees of uninsured employers.

(2) Surpluses and reserves shall may not be kept for the fund. The department shall make such payments as it considers appropriate as funds become available from time to time. The payment of weekly disability benefits takes preference over the payment of medical benefits. No lump-sum payments of future projected benefits, including impairment awards, may be made from the fund. The board of investments shall invest the moneys money of the fund. The cost of administration of the fund shall must be paid out of the money in the fund.

(3) The amounts necessary for the administration and payment of benefits from this fund are statutorily appropriated, as provided in 17-7-502, from this fund.

Section 6. Section 39-71-504, MCA, is amended to read:--

***39-71-504. Funding of fund ----- option for agreement between department and injured employee ----- liability of corporate officers. The fund is funded in the following manner:**

(1) The department may require that the uninsured employer pay to the fund a penalty of either up to double the premium amount the employer would have paid on the

payroll of the employer's workers in this state if the employer had been enrolled with compensation plan No. 3 or \$200, whichever is greater. In determining the penalty, wages paid to spouses of sole proprietors or spouses of partners must be excluded. In determining the premium amount for the calculation of the penalty under this subsection, the department shall make an assessment on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was uninsured. An assessment for payroll paid by the uninsured employer for any time prior to July 17, 1977, may not be made.

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

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

(3) The department may determine that the \$1,000 assessments that are charged against an insurer in each case of an industrial death under 39-71-902(1) shall must be paid to the uninsured employers' fund rather than the subsequent injury fund.

~~{4}--The department may enter into an agreement with the injured employee or the employee's beneficiaries to assign to the employee or the beneficiaries all or part of the funds received by the department from the uninsured employer pursuant to subsection {2}{a}.~~

~~{5}--When a corporation subject to Title 35 has failed to file an annual report with the secretary of state as required by law, the department shall hold the corporation officers jointly and severally liable for any uninsured employer penalties or claim costs due for the period in which the corporation is delinquent in filing the annual report. If the annual report is filed after the specified time, the officers may not be held liable for the uninsured employer penalties or claim costs that accrue after the report is filed."~~

Section 7. ~~Section 39-71-505, MCA, is amended to read:--~~

~~"39-71-505. Applicability of other provisions of chapter to fund limitations. All appropriate provisions in the Workers' Compensation Act apply to the fund in the same manner as they apply to compensation plans No. 1, 2, and 3, except that the workers' compensation judge may not do the following:~~

~~{1}--assess costs and attorney fees as provided in 39-71-611, against the uninsured employers' fund; or~~

~~{2}--assess an increase in award for unreasonable delay~~

~~or refusal to pay as provided in 39-71-2907, against the uninsured employers' fund."~~

Section 6. Section 39-71-506, MCA, is amended to read:

~~"39-71-506. Collection of payments from uninsured employer by suit Lien for payment of unpaid penalties and claims -- levy and execution. (1) If, upon demand of the department, an uninsured employer refuses to make the payments to the fund that are provided for in subsections (1) and (2) of 39-71-504, the sums may be collected by the department through suit unpaid penalties and claims have the effect of a judgment against the employer at the time the payments become due. The AFTER THE DUE PROCESS REQUIREMENTS OF 39-71-2401(2) AND (3) ARE SATISFIED, THE department may issue a certificate setting forth the amount of payment due and direct the clerk of the district court of any county in the state to enter the certificate as a judgment on the docket pursuant to 25-9-301. From the time the judgment is docketed, it becomes a lien upon all real and personal property of the employer. After satisfying any due process requirements, the department may enforce the judgment at any time within 10 years of creation of the lien.~~

~~{2}--The lien provided for in subsection {1} is not valid against any third party owning an interest in the real or personal property subject to the lien if:~~

~~{a}--the third party interest is recorded prior to the~~

~~entrance-of-the-certificate-as-a-judgment; and~~

~~{b}--the-third--party--receives--from--the--most--recent
grantor--of-the-interest-a-signed-affidavit-stating-that-any
penalties-and-claims-relating--to--the--property--have--been
paid;~~

{3}(2) The department may settle through compromise with an uninsured employer the amount due the fund under 39-71-504."

Section 7. Section 39-71-708, MCA, is amended to read:

"39-71-708. Compensation for disfigurement. (1) The department--may--award--proper--and--equitable--benefits--for
Injured workers who suffer serious face, head, or neck disfigurement; may be entitled to benefits not to exceed \$2,500, in addition to benefits payable under 39-71-703.

(2) No A payment under this section shall may not be in lieu of the separate benefit of medical and hospital services or of any benefits paid under 39-71-701 for temporary total disability."

Section 8. Section 39-71-902, MCA, is amended to read:

"39-71-902. Fund to receive payment from insurer for each death under chapter -- assessment of insurers. (1) In every case of the death of an employee under this chapter, the insurer shall pay to the fund the sum of \$1,000. In addition, the department may assess every insurer an amount not to exceed 5% of the compensation paid in Montana in the

preceding fiscal year. The assessment must be transmitted annually to the subsequent injury fund by the employer or insurer. The cost of administration of the fund must be paid out of money in the fund.

(2) When, in the judgment of the department, the amount of money in the subsequent injury fund is such that there is a surplus above and beyond projected liabilities and administrative costs, the department may at its discretion suspend or reduce further collection of assessments for a period of time determined by the department."

Section 9. Section 39-71-907, MCA, is amended to read:

"39-71-907. Certified vocationally handicapped person to be compensated for injury as provided by chapter -- insurer liability for compensation limited -- appropriation.

(1) A person certified as vocationally handicapped who receives a personal injury arising out of and in the course of his employment and resulting in death or disability must be paid compensation in the manner and to the extent provided in this chapter or, in case of his death resulting from such injury, the compensation must be paid to his the person's beneficiaries or dependents. The liability of the insurer for payment of medical and burial benefits as provided in this chapter is limited to those benefits arising from services rendered during the period of 104 weeks after the date of injury. The liability of the insurer

for payment of benefits as provided in this chapter is limited to 104 weeks of compensation benefits actually paid. Thereafter, all compensation and the cost of all medical care and burial is the liability of the fund.

(2) The amounts necessary for the administration and payment of benefits from this fund are statutorily appropriated, as provided in section 17-7-502, from this fund.

Section 10. Section 39-71-2104, MCA, is amended to read:

"39-71-2104. Renewal of application. Every An employer, so long as he that employer continues in his employment TO EMPLOY and ~~so long as~~ he continues to be bound by compensation plan No. 1, ~~shall at least 30 days before the expiration of each fiscal year,~~ annually renew his the application to be permitted to continue to make such payments ~~as aforesaid~~ directly to his employees for the next ~~ensuing fiscal year, and under like circumstances as those mentioned for the granting of such permission upon such first application,~~ the The department may, with the concurrence of the Montana self-insurers guaranty fund, renew the same application from year to year. The annual renewal application must be in the form, for the period, and subject to the time limits prescribed by the department."

Section 11. Section 39-71-2106, MCA, is amended to

read:

"39-71-2106. Requiring security of employer. (1) (a) The department may require any employer who elects to be bound by compensation plan No. 1 to provide a security deposit in accordance with rules adopted by the department. All securities of the United States treasury must be used as a security deposit in book-entry form. Except as provided in subsection (1)(b), the security deposit may be a surety bond, government bond, certificate of deposit, or letter of credit approved by the department and must be the greater of:

(i) \$250,000; or

(ii) an average of the workers' compensation liabilities incurred by the employer in Montana for the past 3 calendar years.

(b) The department may, in accordance with rules adopted by the department, require a larger deposit as additional evidence of solvency and financial ability to pay the liabilities provided by this chapter.

(2) (a) The department shall require an employer to give security in addition to the security described in subsection (1) if:

(i) the department determines that the employer ~~is insolvent or~~ lacks the financial ability to pay the compensation that is required EXPECTED under this chapter

and that is chargeable to the employer during the fiscal year to be covered by the permission provided for in 39-71-2103; or

(ii) the employer is ~~an--association,--corporation,--or organization~~ a group of individual employers seeking permission to operate under compensation plan No. 1.

(b) The additional security required in subsection (2)(a) must be an amount that the department finds reasonable and necessary to meet all liabilities that the employer may accrue under this chapter during the fiscal year.

(3) (a) The security provided for in subsection (2) must be deposited with the department ~~and may be either an estimated percent of the employer's last preceding annual payroll or a percent of the established amount of his~~ the employer's annual payroll for the fiscal year. The security may consist of:

(i) a bond ~~or undertaking~~ executed to the department in the amount to be fixed by it with ~~two--or--more--sufficient~~ sureties A SURETY, which undertaking must be conditioned that the employer will pay or cause to be paid to his employees all sums and amounts for which the employer becomes liable under the terms of this chapter during the fiscal year; or

(ii) any state, county, municipal, or school district

bonds or the bonds or evidence of indebtedness of any individuals or corporations that the department considers solvent; OR

(III) OTHER SECURITY DEPOSITS ALLOWED IN SUBSECTION

(1)(A).

(b) Every deposit and the character and amount of the securities must at all times be subject to approval, revision, or change by the department as it may require.

(c) Upon proof of the final payment of the liability for which the securities are given, the securities or any remainder of the securities must be returned to the depositor.

(4) The department is liable for the value and safekeeping of all deposits or securities and shall, at any time, upon demand of a bondsman or the depositor, account for the deposits or securities and the earnings of the deposits or securities."

Section 12. Section 39-71-2204, MCA, is amended to read:

"39-71-2204. Insurer to submit notice of coverage within thirty days -- penalty for failure. (1) The insurer shall, within 30 days after the issuance of the policy of workers' compensation insurance, submit to the department the notice of coverage stating the effective date of the policy insuring the employer and such other information as

may be required by the department.

(2) The department may:

(a) recognize the national council on compensation insurance as an agent for authorized workers' compensation insurers in Montana; and

(b) under terms and conditions acceptable to the department, accept notice of coverage received from the national council on compensation insurance as the insurer's notice of coverage.

(2)(3) The department may, in its discretion, assess a penalty of no more than \$200 against an insurer which that as a general business practice does not comply with the 30-day notice requirement as set forth in subsection (1) of this-section."

Section 13. Section 39-71-2205, MCA, is amended to read:

"39-71-2205. Policy in effect until canceled or replaced -- twenty-day notification of cancellation required -- penalty. (1) The policy remains in effect until canceled, and cancellation may take effect only by written notice to the named insured and to the department at least 20 days prior to the date of cancellation. However, the policy terminates on the effective date of a replacement or succeeding workers' compensation insurance policy issued to the insured. Nothing in this section prevents an insurer

from canceling a policy of workers' compensation insurance before a replacement policy is issued to the insured.

(2) The department may:

(a) recognize the national council on compensation insurance as an agent for authorized workers' compensation insurers in Montana; and

(b) under terms and conditions acceptable to the department, accept notice of cancellation received from the national council on compensation insurance as the insurer's notice of cancellation.

(2)(3) (a) The department may assess a penalty of up to \$200 against an insurer that does not comply with the notice requirement in subsection (1).

(b) An insurer may contest the penalty assessment in a hearing conducted according to department rules."

Section 14. Section 39-71-2206, MCA, is amended to read:

"39-71-2206. Deposits by insurer with department to guarantee payment of liability. (1) (a) Before issuance of any policy by an insurer as herein authorized, the insurer must shall deposit with the department bonds book-entry securities of the United States or the state of Montana or of any school district, county, city, or town in the state of Montana or a corporate surety bond made out to and approved by the department in an amount not less than

\$25,000 or more than \$200,000, as the department may determine.

(b) If any insurer fails to discharge any liability after the amount thereof is determined by the department and within the time limited by the department, the department shall convert the bonds or such any part thereof as is necessary into cash and from the proceeds liquidate such the liability, and thereafter the insurer must shall make an additional deposit to meet any deficiency caused thereby. It is intended to give the department the discretion in the matter of whether an insurer has failed to discharge any liability.

(c) If any insurer fails to replace a canceling, terminating, or maturing security within the time limit established by the department, the department shall protect the security deposit by converting the canceling, terminating, or maturing security into cash and shall maintain the deposit until a replacement security acceptable to the department is deposited.

(2) Within 30 days of the happening of an accident where death or the nature of the injury renders the amount of future payments certain or reasonably certain, the insurer shall make a deposit, as herein defined, with the department for the protection and guarantee of the payment of such the liability in such a sum as the department may

direct. However, if the department considers the amount on deposit by the insurer under the provisions of subsection (1) ~~of this section~~ sufficient to cover all liabilities of the insurer, then no further deposit may be required.

(3) Any deposit made under the provisions of compensation plan No. 2 must be held in trust by the department as security for the payment of the liability for which the deposit was made. ~~Such~~ The deposit may be reduced from time to time with the permission of the department as the payment of the liability of the insurer may reduce the amount required to be on deposit. ~~Such~~ The deposit may be changed or renewed when desired by the depositor by withdrawing the same or any part thereof and substituting other deposits therefor. Upon proof of the final payment of the liability for which such the deposit was made, any deposit remaining must be returned to the depositor. All earnings made by such the deposit must first be applied upon any liability of the depositors, and if no such liability exists, then such the earnings must upon demand be delivered to such the depositor. The department and its bondsmen are liable for the value and safekeeping of such the deposit and shall at any time, upon demand of a depositor, account for the same and the earnings thereof.

(4) In the event of an insolvency of a plan No. 2 insurer, the department may, at its discretion, release part

1 or all of the deposit held to the Montana insurance guaranty
 2 association for payment of the insurer's Montana workers'
 3 compensation claims if:

4 (a) the insurer has been determined to be insolvent by
 5 a court of competent jurisdiction or bankruptcy proceedings
 6 have been instituted by or against it;

7 (b) the insurer is unable to pay its workers'
 8 compensation claims; and

9 (c) the insurer's Montana workers' compensation
 10 liabilities have become the responsibility of the Montana
 11 insurance guaranty association."

12 **Section 15.** Section 39-71-2615, MCA, is amended to
 13 read:

14 "39-71-2615. Initial fee -- assessment. (1) A private
 15 self-insurer shall pay to the fund an initial fee of \$1,000
 16 upon becoming a member. Thereafter, a member's financial
 17 obligation to the fund must be established by assessment as
 18 provided in subsection (2).

19 (2) The fund may assess each of its members a pro rata
 20 share of the amount necessary to carry out the purposes of
 21 this part. However, the total annual assessments in any
 22 calendar year may not exceed 5% of the indemnity
 23 compensation paid by each member during the previous
 24 calendar year. Funds obtained by assessment pursuant to this
 25 subsection may be used only for the purposes of this part.

1 (3) A former member is liable for assessments made by
 2 the fund for 3 years following the date the member's status
 3 as a private self-insurer is terminated, whether the
 4 termination is by action of the private self-insurer or the
 5 department. A former member's assessment must be based on
 6 the 12-month-period compensation paid during the policy LAST
 7 APPROVAL year immediately preceding the member's termination
 8 of its status as a private self-insurer.

9 (4) The board shall certify to the department the
 10 collection and receipt of assessments, noting any
 11 delinquencies. The board shall take appropriate action to
 12 collect a delinquent assessment."

13 **Section 16.** Section 39-72-405, MCA, is amended to read:

14 "39-72-405. General limitations on payment of
 15 compensation. (1) Compensation may not be paid when the last
 16 day of the injurious exposure of the employee to the hazard
 17 of the occupational disease has occurred prior to July 1,
 18 1959.

19 (2) When any an employee in employment on or after
 20 January 1, 1959, because he the employee has an occupational
 21 disease incurred in and caused by such the employment which
 22 that is not yet disabling, is discharged or transferred from
 23 the employment in which he the employee is engaged or when
 24 he the employee ceases his employment and it is in fact, as
 25 determined by the medical panel, inadvisable for him the

1 employee on account of a nondisabling occupational disease
 2 to continue in employment and he the employee suffers wage
 3 loss by reason of the discharge, transfer, or cessation, the
 4 ~~department--may--allow--compensation--on--account--thereof--as--it~~
 5 ~~considers--just;~~ compensation may be paid, not exceeding
 6 \$10,000, by an agreement between the insurer and the
 7 claimant. If the parties fail to reach an agreement, the
 8 mediation procedures in TITLE 39, CHAPTER 71, part 24, of
 9 this chapter must be followed."

10 **Section 17.** Section 39-72-608, MCA, is amended to read:

11 "39-72-608. Payment of medical examination, report, and
 12 autopsy expenses. The expense of the first medical
 13 examination and report as provided in 39-72-602 must be
 14 borne by the insurer. The expense of a reexamination and
 15 panel report must be borne by the dissatisfied party
 16 requesting the reexamination. The expense of the periodic
 17 medical examinations and reports, as provided in 39-72-607,
 18 must be borne by the party requesting the periodic medical
 19 examination. The expense of the autopsy, as provided for in
 20 39-72-606, must be borne by the party requesting the
 21 autopsy. When the occupational disease causes death, the
 22 expense of any examinations and reports, as provided in
 23 39-72-605, must be borne by the party requesting the
 24 examination."

25 **Section 18.** Section 17-7-502, MCA, is amended to read:

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

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

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

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

14 (3) The following laws are the only laws containing
 15 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;
 16 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111;
 17 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117;
 18 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;
 19 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409;
 20 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007;
 21 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513;
 22 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109;
 23 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811;
 24 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631;
 25 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501;

39-71-503; 39-71-907; 39-71-2504; 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, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)"

NEW SECTION. Section 19. Time limit to appeal. A dispute concerning uninsured employers' fund benefits must be appealed to mediation within 90 days from the date of the determination or the determination is considered final.

NEW SECTION. Section 22. Administration of adjusters.

(1) An insurer shall conduct administration of its claims adjusting services through a person knowledgeable in the application of Montana workers' compensation and occupational disease law and administrative rules. The person retained or employed as an adjuster by an insurer must be able to demonstrate, in a manner satisfactory to the department, a thorough knowledge of workers' compensation and occupational disease law and administrative rules.

(2) An insurer shall designate at least one adjuster who has the authority and ability to pay compensation when due and who has the authority to settle claims.

(3) The department, in cooperation with the state auditor, may regulate and certify adjusters for workers' compensation adjusting.

NEW SECTION. SECTION 20. SPECIFIC CLAIMS EXPENDITURES. THE STATE FUND SHALL ACCOUNT FOR DIFFERENT KINDS OF CLAIMS AND ADMINISTRATIVE EXPENSES SEPARATELY. PAYMENTS MADE TO CLAIMANTS AND THEIR DESIGNATED HEALTH CARE PROVIDERS MUST BE ACCOUNTED FOR SEPARATELY FROM PAYMENTS TO PROVIDERS AND VENDORS OF SERVICES HIRED BY THE STATE FUND. THE STATE FUND SHALL SPECIFICALLY ACCOUNT FOR THE FOLLOWING COSTS SEPARATELY:

(1) PAYMENTS TO HEALTH CARE PROVIDERS FOR INDEPENDENT MEDICAL EVALUATIONS OR OTHER SERVICES PROVIDED AT THE REQUEST OF THE STATE FUND;

~~(2) -- PAYMENTS TO MEDICAL PANELS;~~

~~(3) -- PAYMENTS TO REHABILITATION PROVIDERS FOR SERVICES
PERFORMED AT THE REQUEST OF THE STATE FUND;~~

~~(4) -- PAYMENTS MADE FOR RETRAINING OR ON-THE-JOB TRAINING
PROGRAMS AND OTHER REHABILITATION PAYMENTS MADE TO INJURED
WORKERS;~~

~~(5) -- PAYMENTS MADE IN HOUSE OR FOR CONTRACTED LEGAL
COUNSEL; AND~~

~~(6) -- PAYMENTS TO PRIVATE INVESTIGATORS AND OTHER SERVICE
PROVIDERS MADE IN CONNECTION WITH FRAUD INVESTIGATION;~~

NEW SECTION. Section 20. Repealer. Sections 39-71-2109
and 39-71-2207, MCA, are repealed.

NEW SECTION. Section 21. Codification instruction.
[Sections SECTION 21-and-22 19 ANB-20] are IS intended to be
codified as an integral part of Title 39, chapter 71, and
the provisions of Title 39, chapter 71, apply to [sections
SECTION 21-and-22 19 ANB-20].

NEW SECTION. SECTION 22. EFFECTIVE DATE. [THIS ACT] IS
EFFECTIVE JULY 1, 1993.

-End-

Conference Committee
on House Bill 287
Report No. 1, April 15, 1993

April 15, 1993
Page 2 of 2

Page 1 of 2

Mr. Speaker and Mr. President:

We, your Conference Committee on House Bill 287 met and considered House Bill 287 and recommend that the bill (reference copy -- salmon) be amended as follows:

1. Title, page 2, line 16.

Following: "~~CODES~~,"

Insert: "PROVIDING FOR REVIEW AND MODIFICATION OF CLAIMS EXPENDITURES CODES;"

2. Page 37, line 11.

Following: line 10

Insert: "NEW SECTION. Section 20. Claims expenditures codes.

The state fund shall continually review its claims expenditure coding structure to separately account for claims and administrative expenses. If a review demonstrates a compelling need for expenditure information that is not available, the state fund shall expand or modify its claims expenditure coding structure."

Renumber: subsequent sections

3. Page 37, line 14.

Strike: "SECTION"

Insert: "Sections"

Following: "~~AND 20~~"

Insert: "and 20"

Strike: "IS"

Insert: "are"

4. Page 37, line 17.

Strike: "SECTION"


Insert: "sections"

Following: "~~AND 20~~"

Insert: "and 20"

And, that this Conference Committee report be adopted.

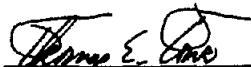
For the House:


Rep. Benedict, Chair


Rep. Cocchiarella


Rep. Wiseman

For the Senate:


Sen. Towe, Chair


Sen. Wilson


Sen. Keating

ADOPT

REJECT

831301CC.Hpf

CCR.41
HB 287
831301CC.Hpf

HOUSE BILL NO. 287
 INTRODUCED BY WISEMAN, HIBBARD, BENEDICT,
 COCCHIARELLA, SQUIRES
 BY REQUEST OF THE DEPARTMENT OF
 LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
 WORKERS' COMPENSATION ACT AND THE OCCUPATIONAL DISEASE ACT
 OF MONTANA; DELETING THE UNINSURED EMPLOYERS' FUND FROM THE
 DEFINITION OF "INSURER"; CLARIFYING WHO IS SUBJECT TO
 ADMINISTRATIVE ASSESSMENT; ALLOWING ISSUANCE OF SUBPOENAS;
 EXEMPTING FROM WORKERS' COMPENSATION A PERSON WHO IS
 EMPLOYED BY AN ENROLLED TRIBAL MEMBER AND WHO OPERATES
 WITHIN THE BOUNDARIES OF A RESERVATION; PROVIDING FOR
 STATUTORY APPROPRIATIONS FOR THE UNINSURED EMPLOYERS' FUND
 AND THE SUBSEQUENT INJURY FUND; EXCLUDING FROM THE UNINSURED
 EMPLOYER PENALTY THE WAGES PAID TO SPOUSES OF SOLE
 PROPRIETORS OR SPOUSES OF PARTNERS; ~~HOLDING---CORPORATE~~
~~OFFICERS---PERSONALLY---LIABLE---FOR---THE---UNINSURED---EMPLOYER~~
~~PENALTY-IF-A-CORPORATE-REPORT-IS-NOT-FILED; REMOVING---COSTS,~~
~~ATTORNEY---FEES, AND INCREASED AWARDS FROM APPLICATION TO THE~~
~~UNINSURED EMPLOYERS' FUND;~~ PROVIDING FOR A LIEN FOR AN
 UNPAID UNINSURED EMPLOYER PENALTY; CLARIFYING THE DEPARTMENT
 OF LABOR AND INDUSTRY'S ROLE IN COMPENSATION FOR
 DISFIGUREMENT; PROVIDING FOR PAYMENT OF ADMINISTRATIVE COSTS

OUT OF THE SUBSEQUENT INJURY FUND; CHANGING THE SELF-INSURED
 EMPLOYER ANNUAL RENEWAL FROM THE DEPARTMENT'S FISCAL YEAR TO
 THE EMPLOYER'S POLICY YEAR; RECOGNIZING THE NATIONAL COUNCIL
 ON COMPENSATION INSURANCE AS AN AGENT FOR INSURERS;
 PROVIDING FOR BOOK-ENTRY SECURITIES; AUTHORIZING THE
 DEPARTMENT TO CONVERT SECURITIES TO CASH AND RELEASE
 SECURITIES TO THE MONTANA INSURANCE GUARANTY ASSOCIATION;
 CHANGING THE ASSESSMENT PERIOD FOR THE SELF-INSURERS
 GUARANTY FUND; CLARIFYING THE DEPARTMENT'S ROLE IN PAYMENT
 OF NONDISABLING OCCUPATIONAL DISEASE BENEFITS; PROVIDING FOR
 PAYMENT OF EXAMINATION COSTS BY THE REQUESTOR WHEN
 OCCUPATIONAL DISEASE CAUSES DEATH; PROVIDING A TIME LIMIT TO
 APPEAL AN UNINSURED EMPLOYERS' FUND BENEFIT ISSUE TO
 MEDIATION; ~~PROVIDING---FOR THE---ADMINISTRATION---AND~~
~~CERTIFICATION---OF---ADJUSTERS SPECIFIC---CLAIMS---EXPENDITURES~~
~~CODES;~~ PROVIDING FOR REVIEW AND MODIFICATION OF CLAIMS
EXPENDITURES CODES; AMENDING SECTIONS 17-7-502, 39-71-116,
 39-71-201, 39-71-304, 39-71-401, 39-71-503, 39-71-504,
 39-71-505, 39-71-506, 39-71-708, 39-71-902, 39-71-907,
 39-71-2104, 39-71-2106, 39-71-2204, 39-71-2205, 39-71-2206,
 39-71-2615, 39-72-405, AND 39-72-608. MCA; AND REPEALING
 SECTIONS 39-71-2109 AND 39-71-2207, MCA; AND PROVIDING AN
EFFECTIVE DATE."

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

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

2 "39-71-116. Definitions. Unless the context otherwise
3 requires, words and phrases employed in this chapter have
4 the following meanings:

5 (1) "Administer and pay" includes all actions by the
6 state fund under the Workers' Compensation Act and the
7 Occupational Disease Act of Montana necessary to:

8 (a) the investigation, review, and settlement of
9 claims;

10 (b) payment of benefits;

11 (c) setting of reserves;

12 (d) furnishing of services and facilities; and

13 (e) utilization of actuarial, audit, accounting,
14 vocational rehabilitation, and legal services.

15 (2) "Average weekly wage" means the mean weekly
16 earnings of all employees under covered employment, as
17 defined and established annually by the Montana department
18 of labor and industry. It is established at the nearest
19 whole dollar number and must be adopted by the department
20 prior to July 1 of each year.

21 (3) "Beneficiary" means:

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

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

25 (c) an unmarried child under the age of 22 years who is

1 a full-time student in an accredited school or is enrolled
2 in an accredited apprenticeship program;

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

6 (e) a parent who is dependent upon the decedent for
7 support at the time of the injury if no beneficiary, as
8 defined in subsections (3)(a) through (3)(d), exists; and

9 (f) a brother or sister under the age of 18 years if
10 dependent upon the decedent for support at the time of the
11 injury but only until the age of 18 years and only when no
12 beneficiary, as defined in subsections (3)(a) through
13 (3)(e), exists.

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

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

19 (6) "Construction industry" means the major group of
20 general contractors and operative builders, heavy
21 construction (other than building construction) contractors,
22 and special trade contractors, listed in major groups 15
23 through 17 in the 1987 Standard Industrial Classification
24 Manual. The term does not include office workers, design
25 professionals, salesmen, estimators, or any other related

1 employment that is not directly involved on a regular basis
2 in the provision of physical labor at a construction or
3 renovation site.

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

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

8 (9) "Fiscal year" means the period of time between July
9 1 and the succeeding June 30.

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

15 (11) "Invalid" means one who is physically or mentally
16 incapacitated.

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

20 (13) "Order" means any decision, rule, direction,
21 requirement, or standard of the department or any other
22 determination arrived at or decision made by the department.

23 (14) "Payroll", "annual payroll", or "annual payroll for
24 the preceding year" means the average annual payroll of the
25 employer for the preceding calendar year or, if the employer

1 shall not have operated a sufficient or any length of time
2 during such calendar year, 12 times the average monthly
3 payroll for the current year. However, an estimate may be
4 made by the department for any employer starting in business
5 if no average payrolls are available. This estimate is to be
6 adjusted by additional payment by the employer or refund by
7 the department, as the case may actually be, on December 31
8 of such current year. An employer's payroll must be computed
9 by calculating all wages, as defined in 39-71-123, that are
10 paid by an employer.

11 (15) "Permanent partial disability" means a condition,
12 after a worker has reached maximum healing, in which a
13 worker:

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

16 (b) is able to return to work in some capacity but the
17 physical restriction impairs the worker's ability to work.

18 (16) "Permanent total disability" means a condition
19 resulting from injury as defined in this chapter, after a
20 worker reaches maximum healing, in which a worker has no
21 reasonable prospect of physically performing regular
22 employment. Regular employment means work on a recurring
23 basis performed for remuneration in a trade, business,
24 profession, or other occupation in this state. Lack of
25 immediate job openings is not a factor to be considered in

determining if a worker is permanently totally disabled.

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

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

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

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

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

(22) "Temporary service contractor" means any person, firm, association, or corporation conducting business that employs individuals directly for the purpose of furnishing the services of those individuals on a part-time or

temporary basis to others.

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

(24) "Temporary worker" means a worker whose services are furnished to another on a part-time or temporary basis to substitute for a permanent employee on leave or to meet an emergency or short-term workload.

(25) "Year", unless otherwise specified, means calendar year."

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

"39-71-201. Administration fund. (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the various occupational safety acts the department must administer, with the exception of the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund, are to be paid upon lawful appropriation. The following money collected by the department must be deposited in the state treasury to the credit of the workers' compensation administrative fund and must be used for the administrative expenses of the department:

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

1 39-71-304;

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

5 (c) all fees paid from an assessment on each plan No. 1
6 employer, plan No. 2 insurer, and plan No. 3, the state
7 fund. The assessments must be levied against the preceding
8 calendar year's gross annual payroll of the plan No. 1
9 employers and the gross annual direct premiums collected in
10 Montana on the policies of the plan No. 2 insurers, insuring
11 employers covered under the chapter, during the preceding
12 calendar year. However, no an assessment of the plan No. 1
13 employer or plan No. 2 insurer may not be less than \$200. If
14 at any time during the prior fiscal year a plan No. 1
15 employer is granted permission to self-insure or a plan No.
16 2 insurer is authorized to insure employers under this
17 chapter, that plan No. 1 employer or plan No. 2 insurer is
18 subject to assessment. The assessments must be sufficient to
19 fund the direct costs identified to the three plans and an
20 equitable portion of the indirect costs based on the ratio
21 of the preceding fiscal year's indirect costs distributed to
22 the plans, using proper accounting and cost allocation
23 procedures. Plan No. 3 must be assessed an amount sufficient
24 to fund the direct costs and an equitable portion of the
25 indirect costs of regulating plan No. 3. Other sources of

1 revenue, including unexpended funds from the preceding
2 fiscal year, must be used to reduce the costs before levying
3 the assessments.

4 (2) The administration fund must be debited with
5 expenses incurred by the department in the general
6 administration of the provisions of this chapter, including
7 the salaries of its members, officers, and employees and the
8 travel expenses of the members, officers, and employees, as
9 provided for in 2-18-501 through 2-18-503, as amended,
10 incurred while on the business of the department either
11 within or without the state.

12 (3) Disbursements from the administration money must be
13 made after being approved by the department upon claim
14 therefor."

15 **Section 3.** Section 39-71-304, MCA, is amended to read:

16 "39-71-304. Books, records, and payrolls to be open to
17 inspection -- penalty for refusal -- subpoenas. (1) The
18 books, records, and payrolls of an employer pertinent to the
19 administration of this chapter must always be open to
20 inspection by the department or any duly authorized employee
21 thereof for the purpose of ascertaining the correctness of
22 the payroll, the number of workers employed, and such other
23 information as may be necessary for the department and its
24 management under this chapter. Refusal on the part of an
25 employer to submit the books, records, and payrolls for such

1 inspection shall subject the offending employer to a penalty
2 not exceeding \$500 for each offense, to be collected through
3 a civil action in the name of the state and paid into the
4 state treasury.

5 (2) In addition to the remedy provided in subsection
6 (1), the department may issue subpoenas and compel testimony
7 for the production of evidence, including books, records,
8 papers, documents, and other objects as may be necessary and
9 proper in regard to any investigation or proceeding under
10 this chapter. In the case of disobedience of a subpoena
11 issued and served or the refusal of a witness to testify as
12 to any matter for which the witness may be interrogated in a
13 proceeding before the department, the department may apply
14 to a district court for an order to compel compliance with
15 the subpoena or testimony. Disobedience of the court's order
16 constitutes contempt of court."

17 **Section 4.** Section 39-71-401, MCA, is amended to read:

18 "39-71-401. Employments covered and employments
19 exempted. (1) Except as provided in subsection (2), the
20 Workers' Compensation Act applies to all employers as
21 defined in 39-71-117 and to all employees as defined in
22 39-71-118. An employer who has any employee in service under
23 any appointment or contract of hire, expressed or implied,
24 oral or written, shall elect to be bound by the provisions
25 of compensation plan No. 1, 2, or 3. Each employee whose

1 employer is bound by the Workers' Compensation Act is
2 subject to and bound by the compensation plan that has been
3 elected by the employer.

4 (2) Unless the employer elects coverage for these
5 employments under this chapter and an insurer allows such an
6 election, the Workers' Compensation Act does not apply to
7 any of the following employments:

8 (a) household and domestic employment;

9 (b) casual employment as defined in 39-71-116;

10 (c) employment of a dependent member of an employer's
11 family for whom an exemption may be claimed by the employer
12 under the federal Internal Revenue Code;

13 (d) employment of sole proprietors or working members
14 of a partnership, except as provided in subsection (3);

15 (e) employment of a broker or salesman performing under
16 a license issued by the board of realty regulation;

17 (f) employment of a direct seller engaged in the sale
18 of consumer products, primarily in the customer's home;

19 (g) employment for which a rule of liability for
20 injury, occupational disease, or death is provided under the
21 laws of the United States;

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

25 (i) employment with any railroad engaged in interstate

commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

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

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

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

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

(l) cosmetologist's services and barber's services as defined in 39-51-204(1)(1);

(m) a person who is employed by an enrolled tribal member and who operates solely within the exterior

boundaries of an Indian reservation.

(3) (a) A sole proprietor or a working member of a partnership who holds--himself-out represents to be or THE PUBLIC THAT THE PERSON considers-himself is considered an independent contractor shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3; but he may apply to the department for an personal AN exemption from the Workers' Compensation Act for himself.

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

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

(d) When an election of an exemption is approved by the department, the election remains effective and the independent contractor retains his the status as an independent contractor until he the independent contractor notifies the department of any change in his status and provides a description of his present work status.

(e) If the department denies the application for exemption, the applicant may contest the denial by

petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with the procedure established in 39-51-2403 and 39-51-2404.

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

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

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

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

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

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

Section 5. Section 39-71-503, MCA, is amended to read:

"39-71-503. Administration of fund -- appropriation.

(1) The department shall administer the fund and shall pay all proper benefits to injured employees of uninsured employers.

(2) Surpluses and reserves shall may not be kept for the fund. The department shall make such payments as it considers appropriate as funds become available from time to time. The payment of weekly disability benefits takes preference over the payment of medical benefits. No lump-sum payments of future projected benefits, including impairment awards, may be made from the fund. The board of investments shall invest the moneys money of the fund. The cost of administration of the fund shall must be paid out of the money in the fund.

(3) The amounts necessary for the administration--and payment of benefits from this fund are statutorily appropriated, as provided in 17-7-502, from this fund."

Section 6. Section 39-71-504, MCA, is amended to read:--

"39-71-504. --Funding of fund-----option--for--agreement between--department--and--injured--employee --liability of corporate officers. The fund--is--funded--in--the--following manner:

{1}--The--department--may--require--that--the--uninsured employer--pay--to--the--fund--a--penalty--of--either--up--to--double

the--premium--amount--the--employer--would--have--paid--on--the payroll--of--the--employer's--workers--in--this--state--if--the employer--had--been--enrolled--with--compensation--plan--No--3--or \$200,--whichever--is--greater. In--determining--the--penalty, wages--paid--to--spouses--of--sole--proprietors--or--spouses--of partners--must--be--excluded. In--determining--the--premium--amount for--the--calculation--of--the--penalty--under--this--subsection, the--department--shall--make--an--assessment--on--how--much--premium would--have--been--paid--on--the--employer's--past--3--year--payroll for--periods--within--the--3--years--when--the--employer--was uninsured. --An--assessment--for--payroll--paid--by--the--uninsured employer--for--any--time--prior--to--July--17--1977,--may--not--be made.

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

{b}--The--dollar--limitation--does--not--apply--to--an uninsured--employer's--liability--to--an--injured--employee--or--the employee's--beneficiaries--under--39-71-509--or--39-71-515.

{3}--The--department--may--determine--that--the--\$17,000 assessments--that--are--charged--against--an--insurer--in--each--case of--an--industrial--death--under--39-71-902(1)--shall must be--paid to--the--uninsured--employers'--fund--rather--than--the--subsequent

injury fund:

~~{4}--The department may enter into an agreement with the injured employee or the employee's beneficiaries to assign to the employee or the beneficiaries all or part of the funds received by the department from the uninsured employer pursuant to subsection {2}(a):~~

~~{5}--When a corporation subject to Title 35 has failed to file an annual report with the secretary of state as required by law, the department shall hold the corporation officers jointly and severally liable for any uninsured employer penalties or claim costs due for the period in which the corporation is delinquent in filing the annual report. If the annual report is filed after the specified time, the officers may not be held liable for the uninsured employer penalties or claim costs that accrue after the report is filed."~~

Section 7. ~~Section 39-71-505, MCA, is amended to read:--~~

~~"39-71-505. Applicability of other provisions of chapter to fund --- limitations. All appropriate provisions in the Workers' Compensation Act apply to the fund in the same manner as they apply to compensation plans. Nor 17-27 and 37, except that the workers' compensation judge may not do the following:~~

~~{1}--assess costs and attorney fees, as provided in 39-71-611, against the uninsured employers' fund, or~~

~~{2}--assess an increase in award for unreasonable delay or refusal to pay, as provided in 39-71-2907, against the uninsured employers' fund."~~

Section 6. Section 39-71-506, MCA, is amended to read:

"39-71-506. Collection of payments from uninsured employer by suit Lien for payment of unpaid penalties and claims -- levy and execution. (1) If, upon demand of the department, an uninsured employer refuses to make the payments to the fund that are provided for in subsections (1) and (2) of 39-71-504, the sums may be collected by the department through suit unpaid penalties and claims have the effect of a judgment against the employer at the time the payments become due. THE AFTER THE DUE PROCESS REQUIREMENTS OF 39-71-2401(2) AND (3) ARE SATISFIED, THE department may issue a certificate setting forth the amount of payment due and direct the clerk of the district court of any county in the state to enter the certificate as a judgment on the docket pursuant to 25-9-301. From the time the judgment is docketed, it becomes a lien upon all real and personal property of the employer. After satisfying any due process requirements, the department may enforce the judgment at any time within 10 years of creation of the lien.

~~{2}--The lien provided for in subsection {1} is not valid against any third party owning an interest in the real or personal property subject to the lien if:~~

~~(a) the third party interest is recorded prior to the entrance of the certificate as a judgment, and~~

~~(b) the third party receives from the most recent grantor of the interest a signed affidavit stating that any penalties and claims relating to the property have been paid.~~

~~(3)(2)~~ The department may settle through compromise with an uninsured employer the amount due the fund under 39-71-504."

Section 7. Section 39-71-708, MCA, is amended to read:

"39-71-708. Compensation for disfigurement. (1) The department may award proper and equitable benefits for Injured workers who suffer serious face, head, or neck disfigurement, may be entitled to benefits not to exceed \$2,500, in addition to benefits payable under 39-71-703.

(2) No A payment under this section shall may not be in lieu of the separate benefit of medical and hospital services or of any benefits paid under 39-71-701 for temporary total disability."

Section 8. Section 39-71-902, MCA, is amended to read:

"39-71-902. Fund to receive payment from insurer for each death under chapter -- assessment of insurers. (1) In every case of the death of an employee under this chapter, the insurer shall pay to the fund the sum of \$1,000. In addition, the department may assess every insurer an amount

not to exceed 5% of the compensation paid in Montana in the preceding fiscal year. The assessment must be transmitted annually to the subsequent injury fund by the employer or insurer. The cost of administration of the fund must be paid out of money in the fund.

(2) When, in the judgment of the department, the amount of money in the subsequent injury fund is such that there is a surplus above and beyond projected liabilities and administrative costs, the department may at its discretion suspend or reduce further collection of assessments for a period of time determined by the department."

Section 9. Section 39-71-907, MCA, is amended to read:

"39-71-907. Certified vocationally handicapped person to be compensated for injury as provided by chapter -- insurer liability for compensation limited -- appropriation.

(1) A person certified as vocationally handicapped who receives a personal injury arising out of and in the course of his employment and resulting in death or disability must be paid compensation in the manner and to the extent provided in this chapter or, in case of his death resulting from such injury, the compensation must be paid to his the person's beneficiaries or dependents. The liability of the insurer for payment of medical and burial benefits as provided in this chapter is limited to those benefits arising from services rendered during the period of 104

1 weeks after the date of injury. The liability of the insurer
2 for payment of benefits as provided in this chapter is
3 limited to 104 weeks of compensation benefits actually paid.
4 Thereafter, all compensation and the cost of all medical
5 care and burial is the liability of the fund.

6 (2) The amounts necessary for the administration--and
7 payment of benefits from this fund are statutorily
8 appropriated, as provided in section 17-7-502, from this
9 fund."

10 **Section 10.** Section 39-71-2104, MCA, is amended to
11 read:

12 "39-71-2104. Renewal of application. Every An employer,
13 so long as he that employer continues in his employment TO
14 EMPLOY and ~~so long as he~~ continues to be bound by
15 compensation plan No. 1, ~~shall at least 30 days before the~~
16 ~~expiration of each fiscal year,~~ annually renew his the
17 application to be permitted to continue to make such
18 payments ~~as aforesaid~~ directly to his employees for the next
19 ~~ensuing fiscal year, and under like circumstances as those~~
20 ~~mentioned for the granting of such permission upon such~~
21 ~~first application,~~ the The department may, with the
22 concurrence of the Montana self-insurers guaranty fund,
23 renew the ~~same~~ application from year to year. The annual
24 renewal application must be in the form, for the period, and
25 subject to the time limits prescribed by the department."

1 **Section 11.** Section 39-71-2106, MCA, is amended to
2 read:

3 "39-71-2106. Requiring security of ~~employer~~. (1) (a)
4 The department may require any employer who elects to be
5 bound by compensation plan No. 1 to provide a security
6 deposit in accordance with rules adopted by the department.
7 All securities of the United States treasury must be used as
8 a security deposit in book-entry form. Except as provided in
9 subsection (1)(b), the security deposit may be a surety
10 bond, government bond, certificate of deposit, or letter of
11 credit approved by the department and must be the greater
12 of:

13 (i) \$250,000; or

14 (ii) an average of the workers' compensation liabilities
15 incurred by the employer in Montana for the past 3 calendar
16 years.

17 (b) The department may, in accordance with rules
18 adopted by the department, require a larger deposit as
19 additional evidence of solvency and financial ability to pay
20 the liabilities provided by this chapter.

21 (2) (a) The department shall require an employer to
22 give security in addition to the security described in
23 subsection (1) if:

24 (i) the department determines that the employer is
25 insolvent---or lacks the financial ability to pay the

1 compensation that is required EXPECTED under this chapter
 2 and that is chargeable to the employer during the fiscal
 3 year to be covered by the permission provided for in
 4 39-71-2103; or

5 (ii) the employer is an--association,--corporation,--or
 6 organization a group of individual employers seeking
 7 permission to operate under compensation plan No. 1.

8 (b) The additional security required in subsection
 9 (2)(a) must be an amount that the department finds
 10 reasonable and necessary to meet all liabilities that the
 11 employer may accrue under this chapter during the fiscal
 12 year.

13 (3) (a) The security provided for in subsection (2)
 14 must be deposited with the department and--may-be-either-an
 15 estimated-percent-of-the-employer's--last--preceding--annual
 16 payroll--or--a--percent-of-the-established-amount-of-his the
 17 employer's annual payroll-for-the-fiscal-year. The security
 18 may consist of:

19 (i) a bond or--undertaking executed to the department in
 20 the amount to be fixed by it with two-or-more-sufficient
 21 sureties A SURETY, which undertaking must be conditioned
 22 that the employer will pay or cause to be paid to his
 23 employees all sums and amounts for which the employer
 24 becomes liable under the terms of this chapter during the
 25 fiscal year; or

1 (ii) any state, county, municipal, or school district
 2 bonds or the bonds or evidence of indebtedness of any
 3 individuals or corporations that the department considers
 4 solvent; OR

5 (III) OTHER SECURITY DEPOSITS ALLOWED IN SUBSECTION
 6 (1)(A).

7 (b) Every deposit and the character and amount of the
 8 securities must at all times be subject to approval,
 9 revision, or change by the department as it may require.

10 (c) Upon proof of the final payment of the liability
 11 for which the securities are given, the securities or any
 12 remainder of the securities must be returned to the
 13 depositor.

14 (4) The department is liable for the value and
 15 safekeeping of all deposits or securities and shall, at any
 16 time, upon demand of a bondsman or the depositor, account
 17 for the deposits or securities and the earnings of the
 18 deposits or securities."

19 **Section 12.** Section 39-71-2204, MCA, is amended to
 20 read:

21 "39-71-2204. Insurer to submit notice of coverage
 22 within thirty days -- penalty for failure. (1) The insurer
 23 shall, within 30 days after the issuance of the policy of
 24 workers' compensation insurance, submit to the department
 25 the notice of coverage stating the effective date of the

1 policy insuring the employer and such other information as
2 may be required by the department.

3 (2) The department may:

4 (a) recognize the national council on compensation
5 insurance as an agent for authorized workers' compensation
6 insurers in Montana; and

7 (b) under terms and conditions acceptable to the
8 department, accept notice of coverage received from the
9 national council on compensation insurance as the insurer's
10 notice of coverage.

11 ~~†2†~~(3) The department may, in its discretion, assess a
12 penalty of no more than \$200 against an insurer which that
13 as a general business practice does not comply with the
14 30-day notice requirement as set forth in subsection (1) of
15 this-section.

16 **Section 13.** Section 39-71-2205, MCA, is amended to
17 read:

18 "39-71-2205. Policy in effect until canceled or
19 replaced -- twenty-day notification of cancellation required
20 -- penalty. (1) The policy remains in effect until canceled,
21 and cancellation may take effect only by written notice to
22 the named insured and to the department at least 20 days
23 prior to the date of cancellation. However, the policy
24 terminates on the effective date of a replacement or
25 succeeding workers' compensation insurance policy issued to

1 the insured. Nothing in this section prevents an insurer
2 from canceling a policy of workers' compensation insurance
3 before a replacement policy is issued to the insured.

4 (2) The department may:

5 (a) recognize the national council on compensation
6 insurance as an agent for authorized workers' compensation
7 insurers in Montana; and

8 (b) under terms and conditions acceptable to the
9 department, accept notice of cancellation received from the
10 national council on compensation insurance as the insurer's
11 notice of cancellation.

12 ~~†2†~~(3) (a) The department may assess a penalty of up to
13 \$200 against an insurer that does not comply with the notice
14 requirement in subsection (1).

15 (b) An insurer may contest the penalty assessment in a
16 hearing conducted according to department rules."

17 **Section 14.** Section 39-71-2206, MCA, is amended to
18 read:

19 "39-71-2206. Deposits by insurer with department to
20 guarantee payment of liability. (1) (a) Before issuance of
21 any policy by an insurer as herein authorized, the insurer
22 must shall deposit with the department bonds book-entry
23 securities of the United States or the state of Montana or
24 of any school district, county, city, or town in the state
25 of Montana or a corporate surety bond made out to and

1 approved by the department in an amount not less than
2 \$25,000 or more than \$200,000, as the department may
3 determine.

4 (b) If any insurer fails to discharge any liability
5 after the amount thereof is determined by the department and
6 within the time limited by the department, the department
7 shall convert the bonds or such any part thereof as is
8 necessary into cash and from the proceeds liquidate such the
9 liability, and thereafter the insurer must shall make an
10 additional deposit to meet any deficiency caused thereby. It
11 is intended to give the department the discretion in the
12 matter of whether an insurer has failed to discharge any
13 liability.

14 (c) If any insurer fails to replace a canceling,
15 terminating, or maturing security within the time limit
16 established by the department, the department shall protect
17 the security deposit by converting the canceling,
18 terminating, or maturing security into cash and shall
19 maintain the deposit until a replacement security acceptable
20 to the department is deposited.

21 (2) Within 30 days of the happening of an accident
22 where death or the nature of the injury renders the amount
23 of future payments certain or reasonably certain, the
24 insurer shall make a deposit, as herein defined, with the
25 department for the protection and guarantee of the payment

1 of such the liability in such a sum as the department may
2 direct. However, if the department considers the amount on
3 deposit by the insurer under the provisions of subsection
4 (1) ~~of--this-section~~ sufficient to cover all liabilities of
5 the insurer, then no further deposit may be required.

6 (3) Any deposit made under the provisions of
7 compensation plan No. 2 must be held in trust by the
8 department as security for the payment of the liability for
9 which the deposit was made. Such The deposit may be reduced
10 from time to time with the permission of the department as
11 the payment of the liability of the insurer may reduce the
12 amount required to be on deposit. Such The deposit may be
13 changed or renewed when desired by the depositor by
14 withdrawing the same or any part thereof and substituting
15 other deposits therefor. Upon proof of the final payment of
16 the liability for which such the deposit was made, any
17 deposit remaining must be returned to the depositor. All
18 earnings made by such the deposit must first be applied upon
19 any liability of the depositors, and if no such liability
20 exists, then such the earnings must upon demand be delivered
21 to such the depositor. The department and its bondsmen are
22 liable for the value and safekeeping of such the deposit and
23 shall at any time, upon demand of a depositor, account for
24 the same and the earnings thereof.

25 (4) In the event of an insolvency of a plan No. 2

insurer, the department may, at its discretion, release part or all of the deposit held to the Montana insurance guaranty association for payment of the insurer's Montana workers' compensation claims if:

(a) the insurer has been determined to be insolvent by a court of competent jurisdiction or bankruptcy proceedings have been instituted by or against it;

(b) the insurer is unable to pay its workers' compensation claims; and

(c) the insurer's Montana workers' compensation liabilities have become the responsibility of the Montana insurance guaranty association."

Section 15. Section 39-71-2615, MCA, is amended to read:

"39-71-2615. Initial fee -- assessment. (1) A private self-insurer shall pay to the fund an initial fee of \$1,000 upon becoming a member. Thereafter, a member's financial obligation to the fund must be established by assessment as provided in subsection (2).

(2) The fund may assess each of its members a pro rata share of the amount necessary to carry out the purposes of this part. However, the total annual assessments in any calendar year may not exceed 5% of the indemnity compensation paid by each member during the previous calendar year. Funds obtained by assessment pursuant to this

subsection may be used only for the purposes of this part.

(3) A former member is liable for assessments made by the fund for 3 years following the date the member's status as a private self-insurer is terminated, whether the termination is by action of the private self-insurer or the department. A former member's assessment must be based on the 12-month-period compensation paid during the policy LAST APPROVAL year immediately preceding the member's termination of its status as a private self-insurer.

(4) The board shall certify to the department the collection and receipt of assessments, noting any delinquencies. The board shall take appropriate action to collect a delinquent assessment."

Section 16. Section 39-72-405, MCA, is amended to read:

"39-72-405. General limitations on payment of compensation. (1) Compensation may not be paid when the last day of the injurious exposure of the employee to the hazard of the occupational disease has occurred prior to July 1, 1959.

(2) When any an employee in employment on or after January 1, 1959, because he the employee has an occupational disease incurred in and caused by such the employment which that is not yet disabling, is discharged or transferred from the employment in which he the employee is engaged or when he the employee ceases his employment and it is in fact, as

1 determined by the medical panel, inadvisable for him the
 2 employee on account of a nondisabling occupational disease
 3 to continue in employment and he the employee suffers wage
 4 loss by reason of the discharge, transfer, or cessation, the
 5 ~~department may allow compensation on account thereof as it~~
 6 ~~considers just~~ compensation may be paid, not exceeding
 7 \$10,000, by an agreement between the insurer and the
 8 claimant. If the parties fail to reach an agreement, the
 9 mediation procedures in TITLE 39, CHAPTER 71, part 24, of
 10 this chapter must be followed."

11 **Section 17.** Section 39-72-608, MCA, is amended to read:

12 "39-72-608. Payment of medical examination, report, and
 13 autopsy expenses. The expense of the first medical
 14 examination and report as provided in 39-72-602 must be
 15 borne by the insurer. The expense of a reexamination and
 16 panel report must be borne by the dissatisfied party
 17 requesting the reexamination. The expense of the periodic
 18 medical examinations and reports, as provided in 39-72-607,
 19 must be borne by the party requesting the periodic medical
 20 examination. The expense of the autopsy, as provided for in
 21 39-72-606, must be borne by the party requesting the
 22 autopsy. When the occupational disease causes death, the
 23 expense of any examinations and reports, as provided in
 24 39-72-605, must be borne by the party requesting the
 25 examination."

1 **Section 18.** Section 17-7-502, MCA, is amended to read:

2 "17-7-502. Statutory appropriations — definition —
 3 requisites for validity. (1) A statutory appropriation is an
 4 appropriation made by permanent law that authorizes spending
 5 by a state agency without the need for a biennial
 6 legislative appropriation or budget amendment.

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

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

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

15 (3) The following laws are the only laws containing
 16 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;
 17 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111;
 18 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117;
 19 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;
 20 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409;
 21 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007;
 22 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513;
 23 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109;
 24 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811;
 25 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;
 39-71-503; 39-71-907; 39-71-2504; 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, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)"

NEW SECTION. Section 19. Time limit to appeal. A dispute concerning uninsured employers' fund benefits must be appealed to mediation within 90 days from the date of the determination or the determination is considered final.

NEW SECTION. Section 22. Administration of adjusters.

(1) An insurer shall conduct administration of its claims adjusting services through a person knowledgeable in the application of Montana workers' compensation and occupational disease law and administrative rules. The person retained or employed as an adjuster by an insurer must be able to demonstrate, in a manner satisfactory to the department, a thorough knowledge of workers' compensation and occupational disease law and administrative rules.

(2) An insurer shall designate at least one adjuster who has the authority and ability to pay compensation when due and who has the authority to settle claims.

(3) The department, in cooperation with the state auditor, may regulate and certify adjusters for workers' compensation adjusting.

NEW SECTION. SECTION 20. SPECIFIC CLAIMS EXPENDITURES

CODES. THE STATE FUND SHALL ACCOUNT FOR DIFFERENT KINDS OF CLAIMS AND ADMINISTRATIVE EXPENSES SEPARATELY. PAYMENTS MADE TO CLAIMANTS AND THEIR DESIGNATED HEALTH CARE PROVIDERS MUST BE ACCOUNTED FOR SEPARATELY FROM PAYMENTS TO PROVIDERS AND VENDORS OF SERVICES HIRED BY THE STATE FUND. THE STATE FUND SHALL SPECIFICALLY ACCOUNT FOR THE FOLLOWING COSTS SEPARATELY:

(1) PAYMENTS TO HEALTH CARE PROVIDERS FOR INDEPENDENT MEDICAL EVALUATIONS OR OTHER SERVICES PROVIDED AT THE

1 REQUEST-OF-THE-STATE-FUND;
 2 {2}--PAYMENTS-TO-MEDICAL-PANELS;
 3 {3}--PAYMENTS-TO-REHABILITATION-PROVIDERS--FOR--SERVICES
 4 PERFORMED-AT-THE-REQUEST-OF-THE-STATE-FUND;
 5 {4}--PAYMENTS-MADE-FOR-RETRAINING-OR-ON-THE-JOB-TRAINING
 6 PROGRAMS--AND--OTHER-REHABILITATION-PAYMENTS-MADE-TO-INJURED
 7 WORKERS;
 8 {5}--PAYMENTS-MADE--IN-HOUSE--OR--FOR--CONTRACTED--LEGAL
 9 COUNSEL--AND
 10 {6}--PAYMENTS-TO-PRIVATE-INVESTIGATORS-AND-OTHER-SERVICE
 11 PROVIDERS-MADE-IN-CONNECTION-WITH-FRAUD-INVESTIGATION;

12 NEW SECTION. SECTION 20. CLAIMS EXPENDITURES CODES.
 13 THE STATE FUND SHALL CONTINUALLY REVIEW ITS CLAIMS
 14 EXPENDITURE CODING STRUCTURE TO SEPARATELY ACCOUNT FOR
 15 CLAIMS AND ADMINISTRATIVE EXPENSES. IF A REVIEW DEMONSTRATES
 16 A COMPELLING NEED FOR EXPENDITURE INFORMATION THAT IS NOT
 17 AVAILABLE, THE STATE FUND SHALL EXPAND OR MODIFY ITS CLAIMS
 18 EXPENDITURE CODING STRUCTURE.

19 NEW SECTION. Section 21. Repealer. Sections 39-71-2109
 20 and 39-71-2207, MCA, are repealed.

21 NEW SECTION. Section 22. Codification instruction.
 22 [Sections ~~SECTION~~ SECTIONS 21-and-22 19 AND-20 AND 20] are
 23 19 ARE intended to be codified as an integral part of Title
 24 39, chapter 71, and the provisions of Title 39, chapter 71,
 25 apply to [sections ~~SECTION~~ SECTIONS 21-and-22 19 AND-20 AND

1 20].

2 NEW SECTION. SECTION 23. EFFECTIVE DATE. [THIS ACT] IS
 3 EFFECTIVE JULY 1, 1993.

-End-