

HOUSE BILL 361

Introduced by Hibbard, et al.

1/27	Introduced
1/27	Referred to Workers' Compensation Select Committee
1/27	First Reading
1/27	Fiscal Note Requested
2/02	Fiscal Note Received
2/04	Fiscal Note Printed
2/08	Hearing
3/11	Committee Report--Bill Passed as Amended and Rereferred to Labor and Employment Relations
3/16	Hearing
3/20	Committee Report--Bill Passed as Amended
3/24	2nd Reading Passed
3/25	3rd Reading Passed
	Transmitted to Senate
3/26	First Reading
3/26	Referred to Workers' Compensation Select Committee
4/02	Hearing
4/07	Tabled in Committee

1 House BILL NO. 361
 2 INTRODUCED BY Bill C. Hagg
 3 BY REQUEST OF THE STATE FUND
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING
 6 WORKERS' COMPENSATION LAWS; DEFINING "OBJECTIVE MEDICAL
 7 FINDINGS"; INCLUDING INCOME TO SOLE PROPRIETORS AND PARTNERS
 8 IN THE DEFINITION OF WAGES; REVISING INSURERS' LIABILITY FOR
 9 INJURIES TO WORKERS; REVISING THE PROCEDURE FOR PRESENTATION
 10 OF CLAIMS; ALLOWING INSURERS TO SUSPEND BENEFITS TO WORKERS
 11 RECEIVING SOCIAL SECURITY DISABILITY BENEFITS; REVISING
 12 REQUIREMENTS TO RECEIVE PERMANENT PARTIAL DISABILITY
 13 BENEFITS; REVISING PROVISIONS REGARDING TERMINATION OF
 14 BENEFITS UPON RETIREMENT; REVISING IMPAIRMENT EVALUATION
 15 PROVISIONS; PROVIDING FOR DISCOUNTING OF LUMP-SUM
 16 SETTLEMENTS; ALLOWING SUSPENSION OF BENEFITS WHILE A
 17 CLAIMANT IS INCARCERATED FOR A MISDEMEANOR; REVISING THE
 18 DEFINITION OF DISABLED WORKER; DEFINING "WORKER'S JOB POOL";
 19 PROVIDING FOR DESIGNATION OF A REHABILITATION PROVIDER;
 20 CREATING JOB PLACEMENT BENEFITS; REVISING REHABILITATION
 21 BENEFITS; AMENDING SECTIONS 39-71-116, 39-71-119, 39-71-123,
 22 39-71-407, 39-71-601, 39-71-701, 39-71-702, 39-71-703,
 23 39-71-710, 39-71-711, 39-71-721, 39-71-741, 39-71-744,
 24 39-71-1011, AND 39-71-2001, MCA; AND PROVIDING AN EFFECTIVE
 25 DATE."



1
 2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 3 **Section 1.** Section 39-71-116, MCA, is amended to read:
 4 "39-71-116. Definitions. Unless the context otherwise
 5 requires, words and phrases employed in this chapter have
 6 the following meanings:
 7 (1) "Administer and pay" includes all actions by the
 8 state fund under the Workers' Compensation Act and the
 9 Occupational Disease Act of Montana necessary to:
 10 (a) the investigation, review, and settlement of
 11 claims;
 12 (b) payment of benefits;
 13 (c) setting of reserves;
 14 (d) furnishing of services and facilities; and
 15 (e) utilization of actuarial, audit, accounting,
 16 vocational rehabilitation, and legal services.
 17 (2) "Average weekly wage" means the mean weekly
 18 earnings of all employees under covered employment, as
 19 defined and established annually by the Montana department
 20 of labor and industry. It is established at the nearest
 21 whole dollar number and must be adopted by the department
 22 prior to July 1 of each year.
 23 (3) "Beneficiary" means:
 24 (a) a surviving spouse living with or legally entitled
 25 to be supported by the deceased at the time of injury;

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

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

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

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

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

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

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

(6) "Construction industry" means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors, listed in major groups 15 through 17 in the 1987 Standard Industrial Classification

Manual. The term does not include office workers, design professionals, salesmen sales personnel, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.

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

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

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

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

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

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

(13) "Objective medical findings" means medical evidence, including but not limited to range of motion, atrophy, muscle strength, muscle spasm, and diagnostic evidence, substantiated by clinical findings. Complaints of

1 pain in the absence of clinical findings are not considered
2 objective medical findings.

3 †13†(14) "Order" means any decision, rule, direction,
4 requirement, or standard of the department or any other
5 determination arrived at or decision made by the department.

6 †14†(15) "Payroll", "annual payroll", or "annual payroll
7 for the preceding year" means the average annual payroll of
8 the employer for the preceding calendar year or, if the
9 employer ~~shall~~ has not have operated a sufficient or any
10 length of time during such the calendar year, 12 times the
11 average monthly payroll for the current year. However, an
12 estimate may be made by the department for any employer
13 starting in business if ~~no~~ average payrolls are not
14 available. This estimate is to be adjusted by additional
15 payment by the employer or refund by the department, as the
16 case may actually be, on December 31 of such the current
17 year. An employer's payroll must be computed by calculating
18 all wages, as defined in 39-71-123, that are paid by an
19 employer.

20 †15†(16) "Permanent partial disability" means a
21 condition, after a worker has reached maximum healing, in
22 which a worker:

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

25 (b) is able to return to work in some capacity but the

1 physical restriction impairs the worker's ability to work.

2 †16†(17) "Permanent total disability" means a condition
3 resulting from injury as defined in this chapter, after a
4 worker reaches maximum healing, in which a worker has no
5 reasonable prospect of physically performing regular
6 employment, as determined after a vocational rehabilitation
7 evaluation. Regular employment means work on a recurring
8 basis performed for remuneration in a trade, business,
9 profession, or other occupation in this state. Lack of
10 immediate job openings is not a factor to be considered in
11 determining if a worker is permanently totally disabled.

12 †17†(18) The term "physician" includes "surgeon" and in
13 either case means one authorized by law to practice his the
14 person's profession in this state.

15 †18†(19) The "plant of the employer" includes the place
16 of business of a third person while the employer has access
17 to or control over such the place of business for the
18 purpose of carrying on his the employer's usual trade,
19 business, or occupation.

20 †19†(20) "Public corporation" means the state or any
21 county, municipal corporation, school district, city, city
22 under commission form of government or special charter,
23 town, or village.

24 †20†(21) "Reasonably safe place to work" means that the
25 place of employment has been made as free from danger to the

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

3 ~~{21}~~(22) "Reasonably safe tools and appliances" are such
4 tools and appliances as are adapted to and are reasonably
5 safe for use for the particular purpose for which they are
6 furnished.

7 ~~{22}~~(23) "Temporary service contractor" means any
8 person, firm, association, or corporation conducting
9 business that employs individuals directly for the purpose
10 of furnishing the services of those individuals on a
11 part-time or temporary basis to others.

12 ~~{23}~~(24) "Temporary total disability" means a condition
13 resulting from an injury as defined in this chapter that
14 results in total loss of wages and exists until the injured
15 worker reaches maximum healing.

16 ~~{24}~~(25) "Temporary worker" means a worker whose
17 services are furnished to another on a part-time or
18 temporary basis to substitute for a permanent employee on
19 leave or to meet an emergency or short-term workload.

20 ~~{25}~~(26) "Year", unless otherwise specified, means
21 calendar year."

22 **Section 2.** Section 39-71-119, MCA, is amended to read:

23 "39-71-119. Injury and accident defined. (1) "Injury"
24 or "injured" means:

25 (a) internal or external physical harm to the body that

1 is established by objective medical findings;

2 (b) damage to prosthetic devices or appliances, except
3 for damage to eyeglasses, contact lenses, dentures, or
4 hearing aids; or

5 (c) death.

6 (2) An injury is caused by an accident. An accident is:

7 (a) an unexpected traumatic incident or unusual strain;

8 (b) identifiable by time and place of occurrence;

9 (c) identifiable by member or part of the body
10 affected; and

11 (d) caused by a specific event on a single day or
12 during a single work shift.

13 (3) "Injury" or "injured" does not mean a physical or
14 mental condition arising from:

15 (a) emotional or mental stress; or

16 (b) a nonphysical stimulus or activity.

17 (4) "Injury" or "injured" does not include a disease
18 that is not caused by an accident.

19 (5) (a) A cardiovascular, pulmonary, respiratory, or
20 other disease, cerebrovascular accident, or myocardial
21 infarction suffered by a worker is an injury only if the
22 accident is the primary cause of the cumulative physical
23 harm in relation to other factors contributing to the
24 physical harm.

25 (b) "Primary cause", as used in subsection (5)(a),

means a cause that, with a reasonable degree of medical certainty, is responsible for more than 50% of the cumulative physical harm."

Section 3. Section 39-71-123, MCA, is amended to read:

"39-71-123. **Wages defined.** (1) "Wages" means the gross remuneration paid in money, or in a substitute for money, for services rendered by an employee, or income provided for in subsection (1)(d). Wages include but are not limited to:

(a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays, vacations, and sickness periods;

(b) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based on its actual value; and

(c) payments made to an employee on any basis other than time worked, including but not limited to piecework, an incentive plan, or profit-sharing arrangement; and

(d) income or payment in the form of a draw, wage, net profit, or substitute for money received or taken by a sole proprietor or partner, regardless of whether the sole proprietor or partner has performed work or provided services for that remuneration.

(2) Wages do not include:

(a) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, and other expenses, as

set forth in department rules;

(b) special rewards for individual invention or discovery;

(c) tips and other gratuities received by the employee in excess of those documented to the employer for tax purposes;

(d) contributions made by the employer to a group insurance or pension plan; or

(e) vacation or sick leave benefits accrued but not paid.

(3) For compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except if:

(a) the term of employment for the same employer is less than four pay periods, in which case the employee's wages are the hourly rate times the number of hours in a week for which the employee was hired to work; or

(b) for good cause shown by the claimant, the use of the four pay periods does not accurately reflect the claimant's employment history with the employer, in which case the insurer may use additional pay periods.

(4) (a) For the purpose of calculating compensation benefits for an employee working concurrent employments, the average actual wages must be calculated as provided in subsection (3).

(b) The compensation benefits for a covered volunteer must be based on the average actual wages in his the volunteer's regular employment, except self-employment as a sole proprietor or partner who elected not to be covered, from which he the volunteer is disabled by the injury incurred.

(c) The compensation benefits for an employee working at two or more concurrent remunerated employments must be based on the aggregate of average actual wages of all employments, except self-employment as a sole proprietor or partner who elected not to be covered, from which the employee is disabled by the injury incurred.

(5) The compensation benefits and the payroll, for premium purposes, for a volunteer firefighter covered pursuant to 39-71-118(4) must be based upon a wage of not less than \$900 a month and not more than 1 1/2 times the average weekly wage as defined in this chapter."

Section 4. Section 39-71-407, MCA, is amended to read:

"39-71-407. Liability of insurers -- limitations. (1) Every Each insurer is liable for the payment of compensation, in the manner and to the extent hereinafter provided in this section, to an employee of an employer it insures who receives an injury arising out of and in the course of his employment or, in the case of his death from such the injury, to his the employee's beneficiaries, if

any.

(2) (a) An insurer is liable for an injury, as defined in 39-71-119, if the injury is established by objective medical findings and if the claimant establishes it is more probable than not that:

(i) a claimed injury has occurred; or

(ii) a claimed injury aggravated a preexisting condition. If a compensable injury aggravates a preexisting condition and the combination causes or prolongs the disability or the need for medical treatment, the resultant condition is compensable only if the compensable injury is and remains the major contributing cause of the disability or need for treatment.

(b) A condition is not compensable as a consequence of a compensable injury unless the compensable injury is the major contributing cause of the condition.

~~(b)~~(c) Proof that it was medically possible that a claimed injury occurred or that such the claimed injury aggravated a preexisting condition is not sufficient to establish liability.

(3) An employee who suffers an injury or dies while traveling is not covered by this chapter unless:

(a) (i) the employer furnishes the transportation or the employee receives reimbursement from the employer for costs of travel, gas, oil, or lodging as a part of the

employee's benefits or employment agreement; and

(ii) the travel is necessitated by and on behalf of the employer as an integral part or condition of the employment; or

(b) the travel is required by the employer as part of the employee's job duties.

(4) (a) An employee is not eligible for benefits otherwise payable under this chapter if the employee's use of alcohol or drugs not prescribed by a physician is the sole-and-exclusive major contributing cause of the injury or death accident. However,--if-the-employer-had-knowledge-of and-failed-to-attempt-to-stop-the-employee's-use-of--alcohol or-drugs,--this-subsection-does-not-apply.

(b) An alcohol concentration of 0.10 or greater at the time of the accident constitutes a conclusive presumption that the consumption of alcoholic beverages was the major contributing cause of the accident.

(c) The employer's permission, encouragement, or actual knowledge of consumption of alcoholic beverages or drugs may not be considered in determining the compensability of an injury.

(5) If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to the same part of the body, the workers' compensation insurer is not liable for any compensation or medical benefits caused by the

subsequent nonwork-related injury.

(6) "Major contributing cause", as used in this section, means a cause that is the leading factor contributing to the result in comparison to all other contributing causes."

Section 5. Section 39-71-601, MCA, is amended to read:

"39-71-601. Statute of limitation on presentment of claim -- waiver. (1) In case of personal injury or death, all claims must be forever barred unless signed by the claimant or the claimant's representative and presented in writing to the employer, the insurer, or the department, as the case may be, within 12 months from the date of the happening of the accident, either by the claimant or someone legally authorized to act for-him-in-his on the claimant's behalf.

(2) The department may waive the time requirement up to an additional ~~24~~ 12 months only upon a reasonable showing by the claimant of:

~~(a)--lack-of-knowledge-of-disability;~~

~~(b)--latent-injury; or~~

~~(c) equitable estoppel."~~

Section 6. Section 39-71-701, MCA, is amended to read:

"39-71-701. Compensation for temporary total disability -- exception. (1) Subject to the limitation in 39-71-736 and subsection (4) of this section, a worker is eligible for

temporary total disability benefits when the worker suffers a total loss of wages as a result of an injury and until the worker reaches maximum healing.

(2) The determination of temporary total disability must be supported by a preponderance of objective medical evidence findings.

(3) Weekly compensation benefits for injury producing temporary total disability ~~shall be~~ are $66 \frac{2}{3}\%$ of the wages received at the time of the injury. The maximum weekly compensation benefits may not exceed the state's average weekly wage at the time of injury. Temporary total disability benefits must be paid for the duration of the worker's temporary disability. The weekly benefit amount may not be adjusted for cost of living as provided in 39-71-702(5).

(4) If the treating physician releases a worker to return to the same position regardless of availability of employment or to the same, a modified, or an alternative position that the individual is able and qualified to perform with the same employer at an equivalent or higher wage than he the individual received at the time of injury, the worker is no longer eligible for temporary total disability benefits even though he the individual has not reached maximum healing. A worker requalifies for temporary total disability benefits if the modified or alternative

position is no longer available for any reason to the worker and the worker continues to be temporarily totally disabled, as defined in 39-71-116.

(5) In cases where it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for such week, which amount is to be calculated from the date of the disability social security entitlement.

(6) If the claimant is awarded social security benefits, the insurer may, upon notification of the claimant's receipt of social security benefits, suspend biweekly compensation benefits for a period sufficient to recover any resulting overpayment of benefits. This subsection does not prevent a claimant and insurer from agreeing to a repayment plan.

(6)(7) Notwithstanding subsection (3) beginning July 17, 1987, through June 30, 1991, weekly compensation benefits for temporary total disability may not exceed the state's average weekly wage of \$299 established July 17, 1986. If a worker, after reaching maximum medical healing, at a later date again claims temporary total disability benefits, the entitlement must be established by written objective medical

findings that contain sufficient historical information concerning the cause of the disability."

Section 7. Section 39-71-702, MCA, is amended to read:

"39-71-702. Compensation for permanent total disability. (1) If a worker is no longer temporarily totally disabled and is permanently totally disabled, as defined in 39-71-116, the worker is eligible for permanent total disability benefits. Permanent total disability benefits must be paid for the duration of the worker's permanent total disability, subject to 39-71-710.

(2) The determination of permanent total disability must be supported by a preponderance of objective medical evidence findings, as determined after a vocational rehabilitation evaluation.

(3) Weekly compensation benefits for an injury resulting in permanent total disability ~~shall be~~ are $66 \frac{2}{3}\%$ of the wages received at the time of the injury. The maximum weekly compensation benefits ~~shall~~ may not exceed the state's average weekly wage at the time of injury.

(4) In cases where it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for such the week, which amount is

to be calculated from the date of the disability social security entitlement.

(5) A worker's benefit amount must be adjusted for a cost-of-living increase on the next July 1 after 104 weeks of permanent total disability benefits have been paid and on each succeeding July 1. A worker may not receive more than 10 such adjustments. The adjustment must be the percentage increase, if any, in the state's average weekly wage as adopted by the department over the state's average weekly wage adopted for the previous year or 3%, whichever is less.

~~(6) Notwithstanding--subsection--(3)--beginning-July-1, 1987, through-June-30, 1991, the maximum weekly compensation benefits for permanent total disability may not exceed the state's average weekly wage of \$299 established July 1, 1986. If the claimant is awarded social security benefits, the insurer may, upon notification of the claimant's receipt of social security benefits, suspend biweekly compensation benefits for a period sufficient to recover any resulting overpayment of benefits. This subsection does not prevent a claimant and insurer from agreeing to a repayment plan."~~

Section 8. Section 39-71-703, MCA, is amended to read:

"39-71-703. Compensation for permanent partial disability. (1) ~~if an~~ An injured worker suffers a ~~permanent partial disability and is no longer entitled to temporary total or permanent total disability benefits, the worker is~~

entitled to a permanent partial disability award, if that worker:

(a) suffers a permanent partial disability supported by objective medical findings; and

(b) has an impairment rating of more than zero as determined by the latest edition of the American medical association's Guides to the Evaluation of Permanent Impairment and if the basis of any part of the impairment rendered is supported by objective medical findings.

(2) In instances in which a preexisting condition is aggravated by a compensable injury, the impairment rating used in calculating an award under this section may include only the additional impairment caused by the compensable injury.

(3) The permanent partial disability award must be arrived at by multiplying the percentage arrived at through the calculation provided in subsection (4) by 350 weeks.

(4) An award granted an injured worker may not exceed a permanent partial disability rating of 100%. The criteria for the rating of disability must be calculated using the medical impairment rating as determined by the latest edition of the American medical association Guides to the Evaluation of Permanent Impairment. The percentage to be used in subsection (3) must be determined by adding the following applicable percentages to the impairment rating:

(a) if the claimant is 30 years of age or younger at the time of injury, 0%; if the claimant is over 30 years of age but under 56 years of age at the time of injury, 2%; and if the claimant is 56 years of age or older at the time of injury, 3%;

(b) for a worker who has completed less than 9 years of education, 3%; for a worker who has completed 9 through 12 years of education or who has received a graduate equivalency diploma, 2%; for a worker who has completed more than 12 years of education, 0%;

(c) if a worker has no wage loss as a result of the industrial injury, 0%; if a worker has an actual wage loss of \$2 or less an hour as a result of the industrial injury, 10%; if a worker has an actual wage loss of more than \$2 an hour as a result of the industrial injury, 20%; and

(d) if a worker, at the time of the injury, was performing heavy labor activity and after the injury the worker can perform only light or sedentary labor activity, 20%; if a worker, at the time of injury, was performing heavy labor activity and after the injury the worker can perform only medium labor activity, 15%; if a worker was performing medium labor activity at the time of the injury and after the injury the worker can perform only light or sedentary labor activity, 10%.

(5) The weekly benefit rate for permanent partial

disability is $66 \frac{2}{3}\%$ of the wages received at the time of injury, but the rate may not exceed one-half the state's average weekly wage. The weekly benefit amount established for an injured worker may not be changed by a subsequent adjustment in the state's average weekly wage for future fiscal years.

~~(5)~~(6) If a worker suffers a subsequent compensable injury ~~or--injuries-to-the-same-part-of-the-body~~, the award payable for the subsequent injury may not duplicate any amounts paid for the previous injury or injuries and the worker may not receive more than a total of 350 weeks of permanent partial disability benefits regardless of the number of injuries or parts of the body injured. The department shall make available to insurers information regarding the number of weeks of permanent partial disability benefits paid a claimant on injuries occurring after July 1, 1993.

~~(6)~~(7) As used in this section:

(a) "heavy labor activity" means the ability to lift over 50 pounds occasionally or up to 50 pounds frequently;

(b) "medium labor activity" means the ability to lift up to 50 pounds occasionally or up to 25 pounds frequently;

(c) "light labor activity" means the ability to lift up to 25 pounds occasionally or up to 10 pounds frequently; and

(d) "sedentary labor activity" means the ability to

lift up to 10 pounds occasionally or up to 5 pounds frequently."

Section 9. Section 39-71-710, MCA, is amended to read:

"39-71-710. Termination of benefits upon retirement.

(1) If a claimant is receiving disability or rehabilitation compensation benefits and the claimant receives social security retirement benefits, or is eligible to receive full social security retirement benefits, or receives retirement benefits from a retirement plan that is in lieu of social security retirement benefits, the claimant is considered to be retired. When the claimant is considered retired, the liability of the insurer is ended for payment of wage supplement, permanent partial disability benefits, permanent total disability benefits, and rehabilitation compensation benefits. However, the insurer remains liable for temporary total disability benefits, ~~any impairment award~~, and medical benefits.

(2) If a claimant who is eligible to receive social security retirement benefits and is gainfully employed suffers a work-related injury, the insurer retains liability for temporary total disability benefits, any impairment award, and medical benefits."

Section 10. Section 39-71-711, MCA, is amended to read:

"39-71-711. Impairment evaluation -- ratings. (1) An impairment rating:

(a) is a purely medical determination and must be determined by an impairment evaluator after a claimant has reached maximum healing;

(b) must be based on the current edition of the Guides to Evaluation of Permanent Impairment published by the American medical association; and

(c) must be expressed as a percentage of the whole person; and

(d) must be based only upon objective medical findings attributable to the compensable injury.

(2) A claimant or insurer, or both, may obtain an impairment rating from an evaluator who is a medical doctor or from an evaluator who is a chiropractor if the injury falls within the scope of chiropractic practice. If the claimant and insurer cannot agree upon the rating, the mediation procedure in part 24 of this chapter must be followed.

(3) An evaluator must be a physician licensed under Title 37, chapter 3, except if the claimant's treating physician is a chiropractor, the evaluator may be a chiropractor who is certified as an evaluator under chapter 12.

(4) Disputes over impairment ratings are not subject to 39-71-605."

Section 11. Section 39-71-741, MCA, is amended to read:

"39-71-741. Compromise settlements and lump-sum payments. (1) (a) Benefits may be converted in whole to a lump sum:

(i) if a claimant and an insurer dispute the initial compensability of an injury; and

(ii) if the claimant and insurer agree to a settlement.

(b) The agreement is subject to department approval. The department may disapprove an agreement under this section only if there is not a reasonable dispute over compensability.

(c) Upon approval, the agreement constitutes a compromise and release settlement and may not be reopened by the department.

(2) (a) If an insurer has accepted initial liability for an injury, permanent partial disability benefits may be converted in whole or in part to a lump-sum payment.

(b) The total of any lump-sum conversion in part that is awarded to a claimant prior to the claimant's final award may not exceed the anticipated award under 39-71-703 or ~~920,000~~ whichever is less.

(c) An agreement is subject to department approval. The department may disapprove an agreement only if the department determines that the settlement amount is inadequate. If disapproved, the department shall set forth in detail the reasons for disapproval.

(d) Upon approval, the agreement constitutes a compromise and release settlement and may not be reopened by the department.

(3) A lump-sum payment under subsection (2) must be discounted at the average rate for United States 10-year treasury bills in the previous calendar year, rounded to the nearest whole number or 7%, whichever is greater.

(3)(4) Permanent total disability benefits may be converted in whole or in part to a lump sum. The total of all lump-sum conversions in part that are awarded to a claimant may not exceed \$20,000. A conversion may be made only upon the written application of the injured worker with the concurrence of the insurer. Approval of the lump-sum payment rests in the discretion of the department. The approval or award of a lump-sum payment by the department or court must be the exception. It may be given only if the worker has demonstrated financial need that:

(a) relates to:

(i) the necessities of life;

(ii) an accumulation of debt incurred prior to the injury; or

(iii) a self-employment venture that is considered feasible under criteria set forth by the department; or

(b) arises subsequent to the date of injury or arises because of reduced income as a result of the injury.

(4)(5) Any lump-sum conversion of benefits under subsection (3)(4) must be converted to present value using the rate prescribed under subsection (5)(b)(6)(b).

(5)(6) (a) An insurer may recoup any lump-sum payment amortized at the rate established by the department, prorated biweekly over the projected duration of the compensation period.

(b) The rate adopted by the department must be based on the average rate for United States 10-year treasury bills in the previous calendar year, rounded to the nearest whole number or 7%, whichever is greater.

(c) If the projected compensation period is the claimant's lifetime, the life expectancy must be determined by using the most recent table of life expectancy as published by the United States national center for health statistics.

(6)(7) Subject to the other provisions of this section, the department has full power, authority, and jurisdiction to allow, approve, or condition compromise settlements for any type of benefits provided for under this chapter or lump-sum payments agreed to by workers and insurers. All such compromise settlements and lump-sum payments are void without the approval of the department. Approval by the department must be in writing. The department shall directly notify a claimant of a department order approving or denying

a claimant's compromise or lump-sum payment.

(7)(8) A dispute between a claimant and an insurer regarding the conversion of biweekly payments into a lump-sum is considered a dispute, for which a mediator and the workers' compensation court have jurisdiction to make a determination. If an insurer and a claimant agree to a compromise and release settlement or a lump-sum payment but the department disapproves the agreement, the parties may request the workers' compensation court to review the department's decision."

Section 12. Section 39-71-744, MCA, is amended to read:

"39-71-744. Benefits not due while claimant is incarcerated. A claimant is not eligible for any disability or rehabilitation compensation benefits while the claimant is incarcerated as the result of conviction of a felony or is incarcerated for a misdemeanor in a county jail for a period exceeding 30 days. The insurer remains liable for medical benefits. No A time limit on benefits otherwise provided in this chapter is not extended due to a period of incarceration."

Section 13. Section 39-71-1011, MCA, is amended to read:

"39-71-1011. Definitions. As used in this chapter, the following definitions apply:

(1) "Board of rehabilitation certification" means the

nonprofit, independent, fee-structured organization that is a member of the national commission for health certifying agencies and that is established to certify rehabilitation practitioners.

(2) "Disabled worker" means one who has a medically determined restriction, established by objective medical findings, resulting from a work-related injury that precludes--the--worker--from--returning--to--the--job--the--worker--held--at--the--time--of--the--injury, and for whom on-the-job training, education, or training is necessary to provide the worker with the capability to return to work.

(3) "Rehabilitation benefits" means benefits provided in 39-71-1003, 39-71-1025, [section 16], and 39-71-2001.

(4) "Rehabilitation plan" means an individualized plan to assist a disabled worker in acquiring skills or aptitudes to return to work through job--placement, on-the-job training, education, or training,--or---specialized---job modification.

(5) "Rehabilitation provider" means a rehabilitation counselor certified by the board for rehabilitation certification and designated by the insurer to the department or a department of social and rehabilitation services counselor when a worker has been certified by the department of social and rehabilitation services under 39-71-1003.

(6) "Rehabilitation services" consists of a program of evaluation, planning, and delivery of goods and services to assist a disabled worker to return to work.

(7) (a) "Worker's job pool" means those jobs the claimant is capable of performing, consistent with the worker's age, education, vocational experience, and aptitude and compatible with the worker's physical capacities and limitations as the result of the worker's injury. Lack of immediate job openings is not a factor to be considered in determining a worker's job pool.

(b) (i) A worker's job pool may be either local or statewide.

(ii) A local job pool is the Montana job service office area that includes the worker's residence.

(iii) A statewide job pool is the state of Montana or the state in which the worker resides."

NEW SECTION. Section 14. Rehabilitation goal and options. (1) The goal of rehabilitation services is to return a permanently injured worker to work with a minimum of retraining and as soon as possible after an injury occurs.

(2) Whenever possible, employment in a worker's local job pool must be considered and selected prior to consideration of employment in a worker's statewide job pool.

NEW SECTION. Section 15. Designation of rehabilitation provider and eligibility for rehabilitation benefits. (1) An insurer shall designate a vocational rehabilitation provider for all workers who suffer permanent partial disability or permanent total disability, as defined in 39-71-116, by following the provisions in 39-71-1014 for disabled workers.

(2) The designated rehabilitation provider shall evaluate and determine the return-to-work capabilities of the worker.

(3) If a worker is capable of returning to work in the worker's local or in the statewide job pool, further rehabilitation services or benefits are not required to be furnished by the insurer except as provided in [section 16].

(4) If a worker is not capable of returning to work without on-the-job training, a short-term retraining program of 12 months or less or a long-term retraining program of up to 104 weeks and rehabilitation benefits and services must be provided pursuant to a rehabilitation plan.

(5) The provisions of 39-71-1032 also apply to cooperation with a rehabilitation provider under [section 16] and this section.

NEW SECTION. Section 16. Job placement benefits. (1) A worker is eligible for job placement benefits if:

(a) the worker has not returned to work; and

(b) the worker has the capability to return to work but

has a medically determined restriction resulting from a work-related injury that precludes the worker from returning to the job the worker held at the time of the injury.

(2) If the worker is entitled to job placement benefits, a vocational rehabilitation provider shall assist the worker in actively seeking employment and the worker is to receive weekly benefits not to exceed 8 weeks at the temporary total disability rate.

Section 17. Section 39-71-2001, MCA, is amended to read:

"39-71-2001. Rehabilitation benefits. (1) Except as provided in subsection (5), An-injured a disabled worker is eligible for rehabilitation benefits if:

(a) ~~the-injury-results-in-permanent-partial--disability or--permanent--total--disability-as-defined-in-39-71-116~~ the worker has not returned to work;

~~(b)--a-physician-certifies-that-the--injured--worker--is physically--unable-to-work-at-the-job-the-worker-held-at-the time-of-the-injury;~~

~~(c)~~ (b) a rehabilitation plan completed by a rehabilitation provider and designated by the insurer certifies that the injured worker has reasonable vocational goals and a reemployment and wage potential with rehabilitation. The plan must take into consideration the worker's age, education, training, work history, residual

physical capacities, and vocational interests.

~~(d)~~ (c) a rehabilitation plan ~~between-the-injured-worker and-the-insurer~~ is filed with the department. If the plan calls for the expenditure of funds under 39-71-1004, the department shall authorize the department of social and rehabilitation services to use the funds.

(2) Prior to the filing of the rehabilitation plan, rehabilitation benefits at the injured worker's temporary total disability rate are payable to a disabled worker by the insurer but are not deductible from the benefits provided in subsection (3).

~~(2)~~ (3) After filing the rehabilitation plan with the department, the ~~injured~~ disabled worker is entitled to receive rehabilitation benefits at the injured worker's temporary total disability rate. The benefits must be paid for the period specified in the rehabilitation plan, not to exceed 104 weeks. Rehabilitation benefits must be paid during a reasonable period, not to exceed 10 weeks, while the worker is waiting to begin the agreed-upon rehabilitation plan. Rehabilitation benefits must be paid biweekly while the worker is satisfactorily completing the agreed-upon rehabilitation plan.

~~(3)--if--the--rehabilitation--plan--provides--for--job placement--a-vocational-rehabilitation-provider-shall-assist the-worker-in-obtaining-other-employment-and-the--worker--is~~

entitled to weekly benefits for a period not to exceed 8 weeks at the worker's temporary total disability rate. If, after receiving benefits under this subsection, the worker decides to proceed with a rehabilitation plan, the weeks in which benefits were paid under this subsection may not be credited against the maximum of 104 weeks of rehabilitation benefits provided in this section.

(4) If there is a dispute as to whether an injured worker can return to the job the worker held at the time of injury, the insurer shall designate a rehabilitation provider to evaluate and determine whether the worker can return to the job held at the time of injury. If it is determined that he cannot, the worker is entitled to rehabilitation benefits and services as provided in subsection (2).

(5)(4) A worker may not receive temporary total or biweekly permanent partial disability benefits and rehabilitation benefits during the same period of time.

(6)(5) The rehabilitation provider, as authorized by the insurer, shall continue to work with and assist the injured worker until the rehabilitation plan is completed.

(6) Unless a worker becomes a disabled worker within 1 year of reaching maximum medical improvement, a worker is not eligible for rehabilitation benefits through a rehabilitation plan.

Section 18. Section 39-71-721, MCA, is amended to read:

"39-71-721. Compensation for injury causing death -- limitation. (1) (a) If an injured employee dies and the injury was the proximate cause of such death, then the beneficiary of the deceased is entitled to the same compensation as though the death occurred immediately following the injury. A beneficiary's eligibility for benefits commences after the date of death, and the benefit level is established as set forth in subsection (2).

(b) The insurer is entitled to recover any overpayments or compensation paid in a lump sum to a worker prior to death but not yet recouped. The insurer shall recover such payments from the beneficiary's biweekly payments as provided in 39-71-741(5)(6).

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

(3) To beneficiaries as defined in 39-71-116(3)(e) and (3)(f), weekly benefits must be paid to the extent of the dependency at the time of the injury, subject to a maximum

of 66 2/3% of the decedent's wages. The maximum weekly compensation may not exceed the state's average weekly wage at the time of injury.

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

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

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

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

~~(8) Notwithstanding subsections (2) and (3), beginning July 1, 1987, through June 30, 1991, the maximum weekly compensation benefits for injury causing death may not exceed the state's average weekly wage of \$299 established July 1, 1986. Beginning July 1, 1987, through June 30, 1991, the minimum weekly compensation for injury causing death shall be \$149.50, which is 50% of the state's average weekly~~

~~wage established July 1, 1986, but in no event may it exceed the decedent's actual wages at the time of death."~~

NEW SECTION. **Section 19. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 20. Codification instruction.** [Sections 14 through 16] are intended to be codified as an integral part of Title 39, chapter 71, part 10, and the provisions of Title 39, chapter 71, part 10, apply to [sections 14 through 16].

NEW SECTION. **Section 21. Effective date.** [This act] is effective July 1, 1993.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

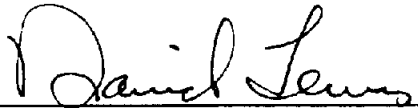
In compliance with a written request, there is hereby submitted a Fiscal Note for HB0361, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising workers' compensation laws; defining "objective medical findings"; including income to sole proprietors and partners in the definition of wages; revising insurers' liability for injuries to workers; revising the procedure for presentation of claims; allowing insurers to suspend benefits to workers receiving social security benefits; revising requirements to receive permanent partial disability benefits; revising provisions regarding termination of benefits upon retirement; revising impairment evaluation provisions; providing for discounting of lump-sum settlements; allowing suspension of benefits while a claimant is incarcerated for a misdemeanor; revising the definition of disabled worker; defining "worker's job pool"; providing for designation of a rehabilitation provider; creating job placement benefits; revising rehabilitation benefits.

FISCAL IMPACT:

This bill would likely result in a significant reduction in benefit payments and associated administrative costs for the State Fund. Information necessary to accurately estimate a level of savings is unavailable within the time frame for completion of this fiscal note.

 2-1-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

2-4-93
CHASE HIBBARD, PRIMARY SPONSOR DATE
Fiscal Note for HB0361, as introduced.

HB 361

APPROVED BY COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONS

HOUSE BILL NO. 361

INTRODUCED BY HIBBARD, HARP

BY REQUEST OF THE STATE FUND

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING WORKERS' COMPENSATION LAWS; DEFINING "OBJECTIVE MEDICAL FINDINGS"; INCLUDING INCOME TO SOLE PROPRIETORS AND PARTNERS IN THE DEFINITION OF WAGES; REVISING INSURERS' LIABILITY FOR INJURIES TO WORKERS; REVISING THE PROCEDURE FOR PRESENTATION OF CLAIMS; REQUIRING INSURERS TO NOTIFY EMPLOYERS OF REOPENED CLAIMS; ALLOWING INSURERS TO SUSPEND BENEFITS TO WORKERS RECEIVING SOCIAL SECURITY DISABILITY BENEFITS; REVISING REQUIREMENTS TO RECEIVE PERMANENT PARTIAL DISABILITY BENEFITS; REVISING PROVISIONS REGARDING TERMINATION OF BENEFITS UPON RETIREMENT; REVISING IMPAIRMENT EVALUATION PROVISIONS; ~~PROVIDING FOR DISCOUNTING OF LUMP-SUM SETTLEMENTS~~; ALLOWING SUSPENSION OF BENEFITS WHILE A CLAIMANT IS INCARCERATED FOR A MISDEMEANOR; ~~REVISING--THE DEFINITION OF DISABLED WORKER,--DEFINING--"WORKER'S JOB-POOL", PROVIDING--FOR--DESIGNATION--OF--A--REHABILITATION PROVIDER, CREATING JOB--PLACEMENT--BENEFITS~~; REVISING REHABILITATION BENEFITS; AMENDING SECTIONS 39-71-116, 39-71-119, 39-71-123, 39-71-407, 39-71-601, 39-71-606, 39-71-701, 39-71-702, 39-71-703, 39-71-710, 39-71-711, 39-71-721, ~~39-71-741~~, 39-71-744, ~~39-71-1011~~, AND 39-71-2001, 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:

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

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

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

(b) payment of benefits;

(c) setting of reserves;

(d) furnishing of services and facilities; and

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

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

(3) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled

1 to be supported by the deceased at the time of injury;

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

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

6 (d) an invalid child over the age of 18 years who is
7 dependent upon the decedent for support at the time of
8 injury;

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

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

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

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

22 (6) "Construction industry" means the major group of
23 general contractors and operative builders, heavy
24 construction (other than building construction) contractors,
25 and special trade contractors, listed in major groups 15

1 through 17 in the 1987 Standard Industrial Classification
2 Manual. The term does not include office workers, design
3 professionals, salesmen sales personnel, estimators, or any
4 other related employment that is not directly involved on a
5 regular basis in the provision of physical labor at a
6 construction or renovation site.

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

9 (8) "Department" means the department of labor and
10 industry.

11 (9) "Fiscal year" means the period of time between July
12 1 and the succeeding June 30.

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

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

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

23 (13) "Objective medical findings" means medical
24 evidence, including but not limited to range of motion,
25 atrophy, muscle strength, muscle spasm, and diagnostic

~~evidence--substantiated--by--clinical--findings~~ VERIFIABLE
FINDINGS DEMONSTRATED BY ACCEPTED DIAGNOSTIC PROCEDURES.

~~Complaints of pain in the absence of clinical~~ VERIFIABLE
~~findings are not considered objective medical findings.~~

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

{14}(15) "Payroll", "annual payroll", or "annual payroll
for the preceding year" means the average annual payroll of
the employer for the preceding calendar year or, if the
employer ~~shall~~ has not have operated a sufficient or any
length of time during such the calendar year, 12 times the
average monthly payroll for the current year. However, an
estimate may be made by the department for any employer
starting in business if no average payrolls are not
available. This estimate is to be adjusted by additional
payment by the employer or refund by the department, as the
case may actually be, on December 31 of such the current
year. An employer's payroll must be computed by calculating
all wages, as defined in 39-71-123, that are paid by an
employer.

{15}(16) "Permanent partial disability" means a
condition, after a worker has reached maximum healing, in
which a worker:

(a) has a medically determined physical restriction as

a result of an injury as defined in 39-71-119; and

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

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

{17}(18) The term "physician" includes "surgeon" and in
either case means one authorized by law to practice his the
person's profession in this state.

{18}(19) 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}(20) "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.

1 †28†(21) "Reasonably safe place to work" means that the
2 place of employment has been made as free from danger to the
3 life or safety of the employee as the nature of the
4 employment will reasonably permit.

5 †21†(22) "Reasonably safe tools and appliances" are such
6 tools and appliances as are adapted to and are reasonably
7 safe for use for the particular purpose for which they are
8 furnished.

9 †22†(23) "Temporary service contractor" means any
10 person, firm, association, or corporation conducting
11 business that employs individuals directly for the purpose
12 of furnishing the services of those individuals on a
13 part-time or temporary basis to others.

14 †23†(24) "Temporary total disability" means a condition
15 resulting from an injury as defined in this chapter that
16 results in total loss of wages and exists until the injured
17 worker reaches maximum healing.

18 †24†(25) "Temporary worker" means a worker whose
19 services are furnished to another on a part-time or
20 temporary basis to substitute for a permanent employee on
21 leave or to meet an emergency or short-term workload.

22 †25†(26) "Year", unless otherwise specified, means
23 calendar year."

24 **Section 2.** Section 39-71-119, MCA, is amended to read:

25 "39-71-119. Injury and accident defined. (1) "Injury"

1 or "injured" means:

2 (a) internal or external physical harm to the body that
3 is established by objective medical findings;

4 (b) damage to prosthetic devices or appliances, except
5 for damage to eyeglasses, contact lenses, dentures, or
6 hearing aids; or

7 (c) death.

8 (2) An injury is caused by an accident. An accident is:

9 (a) an unexpected traumatic incident or unusual strain;

10 (b) identifiable by time and place of occurrence;

11 (c) identifiable by member or part of the body
12 affected; and

13 (d) caused by a specific event on a single day or
14 during a single work shift.

15 (3) "Injury" or "injured" does not mean a physical or
16 mental condition arising from:

17 (a) emotional or mental stress; or

18 (b) a nonphysical stimulus or activity.

19 (4) "Injury" or "injured" does not include a disease
20 that is not caused by an accident.

21 (5) (a) A cardiovascular, pulmonary, respiratory, or
22 other disease, cerebrovascular accident, or myocardial
23 infarction suffered by a worker is an injury only if the
24 accident is the primary cause of the cumulative physical
25 harm in relation to other factors contributing to the

1 physical harm.

2 (b) "Primary cause", as used in subsection (5)(a),
3 means a cause that, with a reasonable degree of medical
4 certainty, is responsible for more than 50% of the
5 cumulative physical harm."

6 Section 3. Section 39-71-123, MCA, is amended to read:

7 "39-71-123. Wages defined. (1) "Wages" means the gross
8 remuneration paid in money, or in a substitute for money,
9 for services rendered by an employee, or income provided for
10 in subsection (1)(d). Wages include but are not limited to:

11 (a) commissions, bonuses, and remuneration at the
12 regular hourly rate for overtime work, holidays, vacations,
13 and sickness periods;

14 (b) board, lodging, rent, or housing if it constitutes
15 a part of the employee's remuneration and is based on its
16 actual value; and

17 (c) payments made to an employee on any basis other
18 than time worked, including but not limited to piecework, an
19 incentive plan, or profit-sharing arrangement; and

20 (d) income or payment in the form of a draw, wage, net
21 profit, or substitute for money received or taken by a sole
22 proprietor or partner, regardless of whether the sole
23 proprietor or partner has performed work or provided
24 services for that remuneration.

25 (2) Wages do not include:

1 (a) employee expense reimbursements or allowances for
2 meals, lodging, travel, subsistence, and other expenses, as
3 set forth in department rules;

4 (b) special rewards for individual invention or
5 discovery;

6 (c) tips and other gratuities received by the employee
7 in excess of those documented to the employer for tax
8 purposes;

9 (d) contributions made by the employer to a group
10 insurance or pension plan; or

11 (e) vacation or sick leave benefits accrued but not
12 paid.

13 (3) For compensation benefit purposes, the average
14 actual earnings for the four pay periods immediately
15 preceding the injury are the employee's wages, except if:

16 (a) the term of employment for the same employer is
17 less than four pay periods, in which case the employee's
18 wages are the hourly rate times the number of hours in a
19 week for which the employee was hired to work; or

20 (b) for good cause shown by the claimant, the use of
21 the four pay periods does not accurately reflect the
22 claimant's employment history with the employer, in which
23 case the insurer may use additional pay periods.

24 (4) (a) For the purpose of calculating compensation
25 benefits for an employee working concurrent employments, the

1 average actual wages must be calculated as provided in
2 subsection (3).

3 (b) The compensation benefits for a covered volunteer
4 must be based on the average actual wages in his the
5 volunteer's regular employment, except self-employment as a
6 sole proprietor or partner who elected not to be covered,
7 from which he the volunteer is disabled by the injury
8 incurred.

9 (c) The compensation benefits for an employee working
10 at two or more concurrent remunerated employments must be
11 based on the aggregate of average actual wages of all
12 employments, except self-employment as a sole proprietor or
13 partner who elected not to be covered, from which the
14 employee is disabled by the injury incurred.

15 (5) The compensation benefits and the payroll, for
16 premium purposes, for a volunteer firefighter covered
17 pursuant to 39-71-118(4) must be based upon a wage of not
18 less than \$900 a month and not more than 1 1/2 times the
19 average weekly wage as defined in this chapter."

20 **Section 4.** Section 39-71-407, MCA, is amended to read:

21 "39-71-407. Liability of insurers -- limitations. (1)
22 Every Each insurer is liable for the payment of
23 compensation, in the manner and to the extent hereinafter
24 provided in this section, to an employee of an employer it
25 insures who receives an injury arising out of and in the

1 course of his employment or, in the case of his death from
2 such the injury, to his the employee's beneficiaries, if
3 any.

4 (2) (a) An insurer is liable for an injury, as defined
5 in 39-71-119, if the injury is established by objective
6 medical findings and if the claimant establishes it is more
7 probable than not that:

8 (i) a claimed injury has occurred; or

9 (ii) a claimed injury aggravated a preexisting
10 condition. If a--compensable AN injury aggravates a
11 preexisting condition and the combination causes or prolongs
12 the disability or the need for medical treatment, the
13 resultant condition is compensable only if the compensable
14 AGGRAVATING injury is and remains the major contributing
15 cause of the disability or need for treatment.

16 (b) A AN INSURER IS NOT LIABLE FOR A condition is--not
17 compensable--as-a-consequence-of ARISING AFTER a compensable
18 injury unless the compensable injury is the major
19 contributing cause of the RESULTANT condition.

20 {b}(c) Proof that it was medically possible that a
21 claimed injury occurred or that such the claimed injury
22 aggravated a preexisting condition is not sufficient to
23 establish liability.

24 (3) An employee who suffers an injury or dies while
25 traveling is not covered by this chapter unless:

(a) (i) the employer furnishes the transportation or the employee receives reimbursement from the employer for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment agreement; and

(ii) the travel is necessitated by and on behalf of the employer as an integral part or condition of the employment; or

(b) the travel is required by the employer as part of the employee's job duties.

(4) (a) An employee is not eligible for benefits otherwise payable under this chapter if the employee's use of alcohol or drugs not prescribed by a physician is the sole-and-exclusive major contributing cause of the injury-or death accident. However,--if-the-employer-had-knowledge-of and-failed-to-attempt-to-stop-the-employee's-use-of--alcohol or-drugs,-this-subsection-does-not-apply-

(b) An alcohol concentration of 0.10 or greater at the time of the accident constitutes a conclusive presumption that the consumption of alcoholic beverages was the major contributing cause of the accident.

(c) The employer's permission, encouragement, or actual knowledge of consumption of alcoholic beverages or drugs may not be considered in determining the compensability of an injury.

(5) If a claimant who has reached maximum healing

suffers a subsequent nonwork-related injury to the same part of the body, the workers' compensation insurer is not liable for any compensation or medical benefits caused by the subsequent nonwork-related injury.

(6) "Major contributing cause", as used in this section, means a cause that is the leading factor contributing to the result in comparison to all other contributing causes."

Section 5. Section 39-71-601, MCA, is amended to read:

"39-71-601. Statute of limitation on presentment of claim -- waiver. (1) In case of personal injury or death, all claims must be forever barred unless signed by the claimant or the claimant's representative and presented in writing to the employer, the insurer, or the department, as the case may be, within 12 months from the date of the happening of the accident, either by the claimant or someone legally authorized to act for-him-in-his on the claimant's behalf.

(2) The department may waive the time requirement up to an additional 24 ~~12~~ 24 months only upon a reasonable showing by the claimant of:

~~(a)--lack-of-knowledge-of-disability;~~

~~(b)--latent-injury;-or~~

~~(c);~~

(A) LACK OF KNOWLEDGE OF DISABILITY;

1 (B) LATENT INJURY; OR

2 (C) equitable estoppel."

3 **Section 6.** Section 39-71-701, MCA, is amended to read:

4 "39-71-701. Compensation for temporary total disability
5 -- exception. (1) Subject to the limitation in 39-71-736 and
6 subsection SUBSECTIONS (4) AND (5) of this section, a worker
7 is eligible for temporary total disability benefits when the
8 worker suffers a total loss of wages as a result of an
9 injury and until the worker reaches maximum healing.

10 (2) The determination of temporary total disability
11 must be supported by a preponderance of objective medical
12 evidence findings.

13 (3) Weekly compensation benefits for injury producing
14 temporary total disability shall be are 66 2/3% of the wages
15 received at the time of the injury. The maximum weekly
16 compensation benefits may not exceed the state's average
17 weekly wage at the time of injury. Temporary total
18 disability benefits must be paid for the duration of the
19 worker's temporary disability. The weekly benefit amount may
20 not be adjusted for cost of living as provided in
21 39-71-702(5).

22 (4) IF THE TREATING PHYSICIAN RELEASES A WORKER TO
23 RETURN TO THE SAME POSITION, THE WORKER IS NO LONGER
24 ELIGIBLE FOR TEMPORARY TOTAL DISABILITY BENEFITS, REGARDLESS
25 OF AVAILABILITY OF EMPLOYMENT.

1 ~~†4†~~(5) If the treating physician releases a worker to
2 return to the same-position-regardless-of-availability-of
3 employment-or-to-the same, a modified, or an alternative
4 position that the individual is able and qualified to
5 perform with the same employer at an equivalent or higher
6 wage than he the individual received at the time of injury,
7 the worker is no longer eligible for temporary total
8 disability benefits even though he the individual has not
9 reached maximum healing. A worker requalifies for temporary
10 total disability benefits if the modified or alternative
11 position is no longer available for any reason to the worker
12 and the worker continues to be temporarily totally disabled,
13 as defined in 39-71-116.

14 ~~†5†~~(6) In cases where it is determined that periodic
15 disability benefits granted by the Social Security Act are
16 payable because of the injury, the weekly benefits payable
17 under this section are reduced, but not below zero, by an
18 amount equal, as nearly as practical, to one-half the
19 federal periodic benefits for such week, which amount is to
20 be calculated from the date of the disability social
21 security entitlement.

22 ~~†6†~~(7) If the claimant is awarded social security
23 benefits, the insurer may, upon notification of the
24 claimant's receipt of social security benefits, suspend
25 biweekly compensation benefits for a period sufficient to

1 recover any resulting overpayment of benefits. This
 2 subsection does not prevent a claimant and insurer from
 3 agreeing to a repayment plan.

4 ~~{6}{7}~~ Notwithstanding subsection {3}, beginning July
 5 17, 1987, through June 30, 1991, weekly compensation benefits
 6 for temporary total disability may not exceed the state's
 7 average weekly wage of \$299 established July 1, 1986. If a
 8 worker, after reaching maximum medical healing, at a later
 9 date again claims temporary total disability benefits, the
 10 entitlement must be established by written objective medical
 11 findings that contain sufficient historical information
 12 concerning the cause of the disability."

13 **Section 7.** Section 39-71-702, MCA, is amended to read:

14 "39-71-702. Compensation for permanent total
 15 disability. (1) If a worker is no longer temporarily totally
 16 disabled and is permanently totally disabled, as defined in
 17 39-71-116, the worker is eligible for permanent total
 18 disability benefits. Permanent total disability benefits
 19 must be paid for the duration of the worker's permanent
 20 total disability, subject to 39-71-710.

21 (2) The determination of permanent total disability
 22 must be supported by a preponderance of objective medical
 23 evidence findings, as determined after a vocational
 24 rehabilitation evaluation.

25 (3) Weekly compensation benefits for an injury

1 resulting in permanent total disability shall be are 66 2/3%
 2 of the wages received at the time of the injury. The maximum
 3 weekly compensation benefits shall may not exceed the
 4 state's average weekly wage at the time of injury.

5 (4) In cases where it is determined that periodic
 6 disability benefits granted by the Social Security Act are
 7 payable because of the injury, the weekly benefits payable
 8 under this section are reduced, but not below zero, by an
 9 amount equal, as nearly as practical, to one-half the
 10 federal periodic benefits for such the week, which amount is
 11 to be calculated from the date of the disability social
 12 security entitlement.

13 (5) A worker's benefit amount must be adjusted for a
 14 cost-of-living increase on the next July 1 after 104 weeks
 15 of permanent total disability benefits have been paid and on
 16 each succeeding July 1. A worker may not receive more than
 17 10 such adjustments. The adjustment must be the percentage
 18 increase, if any, in the state's average weekly wage as
 19 adopted by the department over the state's average weekly
 20 wage adopted for the previous year or 3%, whichever is less.

21 (6) Notwithstanding subsection {3}, beginning July 1,
 22 1987, through June 30, 1991, the maximum weekly compensation
 23 benefits for permanent total disability may not exceed the
 24 state's average weekly wage of \$299 established July 1,
 25 1986. If the claimant is awarded social security benefits,

1 the insurer may, upon notification of the claimant's receipt
 2 of social security benefits, suspend biweekly compensation
 3 benefits for a period sufficient to recover any resulting
 4 overpayment of benefits. This subsection does not prevent a
 5 claimant and insurer from agreeing to a repayment plan."

6 **Section 8.** Section 39-71-703, MCA, is amended to read:

7 "39-71-703. Compensation for permanent partial
 8 disability. (1) ~~if an An injured worker suffers a--permanent~~
 9 ~~partial--disability--and--is no longer entitled to temporary~~
 10 ~~total or permanent total disability benefits, the worker is~~
 11 entitled to a permanent partial disability award, if that
 12 worker:

13 (a) suffers a permanent partial disability supported by
 14 objective medical findings; and

15 (b) has an impairment rating of more than zero as
 16 determined by the latest edition of the American medical
 17 association's Guides to the Evaluation of Permanent
 18 Impairment and if the basis of any part of the impairment
 19 rendered is supported by objective medical findings.

20 (2) In instances in which a preexisting condition is
 21 aggravated by a compensable injury, the impairment rating
 22 used in calculating an award under this section may include
 23 only the additional impairment caused by the compensable
 24 injury.

25 (2)(3) The permanent partial disability award must be

1 arrived at by multiplying the percentage arrived at through
 2 the calculation provided in subsection (3)(4) by 350 weeks.

3 (3)(4) An award granted an injured worker may not
 4 exceed a permanent partial disability rating of 100%. The
 5 criteria for the rating of disability must be calculated
 6 using the medical impairment rating as determined by the
 7 latest edition of the American medical association Guides to
 8 the Evaluation of Permanent Impairment. The percentage to be
 9 used in subsection (2) (3) must be determined by adding the
 10 following applicable percentages to the impairment rating:

11 (a) if the claimant is 30 years of age or younger at
 12 the time of injury, 0%; if the claimant is over 30 years of
 13 age but under 56 years of age at the time of injury, 2%; and
 14 if the claimant is 56 years of age or older at the time of
 15 injury, 3%;

16 (b) for a worker who has completed less than 9 years of
 17 education, 3%; for a worker who has completed 9 through 12
 18 years of education or who has received a graduate
 19 equivalency diploma, 2%; for a worker who has completed more
 20 than 12 years of education, 0%;

21 (c) if a worker has no wage loss as a result of the
 22 industrial injury, 0%; if a worker has an actual wage loss
 23 of \$2 or less an hour as a result of the industrial injury,
 24 10%; if a worker has an actual wage loss of more than \$2 an
 25 hour as a result of the industrial injury, 20%; and

(d) if a worker, at the time of the injury, was performing heavy labor activity and after the injury the worker can perform only light or sedentary labor activity, 20%; if a worker, at the time of injury, was performing heavy labor activity and after the injury the worker can perform only medium labor activity, 15%; if a worker was performing medium labor activity at the time of the injury and after the injury the worker can perform only light or sedentary labor activity, 10%.

~~(4)~~(5) The weekly benefit rate for permanent partial disability is 66 2/3% of the wages received at the time of injury, but the rate may not exceed one-half the state's average weekly wage. The weekly benefit amount established for an injured worker may not be changed by a subsequent adjustment in the state's average weekly wage for future fiscal years.

~~(5)~~(6) If a worker suffers a subsequent compensable injury ~~or-injuries-to-the-same-part-of-the-body~~ OR INJURIES TO THE SAME PART OF THE BODY, the award payable for the subsequent injury may not duplicate any amounts paid for the previous injury or injuries and the worker may not receive more than a total of 350 weeks of permanent partial disability benefits regardless of the number of injuries or parts--of--the--body--injured. The department shall make available to insurers information regarding the number of

weeks of permanent partial disability benefits paid a claimant on injuries occurring after July 1, 1993.

~~(6)~~(7) As used in this section:

(a) "heavy labor activity" means the ability to lift over 50 pounds occasionally or up to 50 pounds frequently;

(b) "medium labor activity" means the ability to lift up to 50 pounds occasionally or up to 25 pounds frequently;

(c) "light labor activity" means the ability to lift up to 25 pounds occasionally or up to 10 pounds frequently; and

(d) "sedentary labor activity" means the ability to lift up to 10 pounds occasionally or up to 5 pounds frequently."

Section 9. Section 39-71-710, MCA, is amended to read:

"39-71-710. Termination of benefits upon retirement.

(1) If a claimant is receiving disability or rehabilitation compensation benefits and the claimant receives social security retirement benefits, or is eligible to receive full social security retirement benefits, or receives retirement benefits from a retirement plan that is in lieu of social security retirement benefits, the claimant is considered to be retired. When the claimant is considered retired, the liability of the insurer is ended for payment of wage supplement, permanent partial disability benefits, permanent total disability benefits, and rehabilitation compensation benefits. However, the insurer remains liable for temporary

total disability benefits, ~~any impairment award,~~ ANY IMPAIRMENT AWARD, and medical benefits.

(2) If a claimant who is eligible to receive social security retirement benefits and is gainfully employed suffers a work-related injury, the insurer retains liability for temporary total disability benefits, any impairment award, and medical benefits."

Section 10. Section 39-71-711, MCA, is amended to read:

"39-71-711. Impairment evaluation -- ratings. (1) An impairment rating:

(a) is a purely medical determination and must be determined by an impairment evaluator after a claimant has reached maximum healing;

(b) must be based on the current edition of the Guides to Evaluation of Permanent Impairment published by the American medical association; and

(c) must be expressed as a percentage of the whole person; and

(d) must be based only upon objective medical findings attributable to the compensable injury.

(2) A claimant or insurer, or both, may obtain an impairment rating from an evaluator who is a medical doctor or from an evaluator who is a chiropractor if the injury falls within the scope of chiropractic practice. If the claimant and insurer cannot agree upon the rating, the

mediation procedure in part 24 of this chapter must be followed.

(3) An evaluator must be a physician licensed under Title 37, chapter 3, except if the claimant's treating physician is a chiropractor, the evaluator may be a chiropractor who is certified as an evaluator under chapter 12.

(4) Disputes over impairment ratings are not subject to 39-71-605."

~~Section 11. Section 39-71-741, MCA, is amended to read:~~

~~"39-71-741. Compromise --- settlements --- and --- lump-sum payments. (1) (a) Benefits may be converted in whole to a lump sum.~~

~~(i) if a claimant and an insurer dispute the initial compensability of an injury; and~~

~~(ii) if the claimant and insurer agree to a settlement;~~

~~(b) The agreement is subject to department approval. The department may disapprove an agreement under this section only if there is not a reasonable dispute over compensability.~~

~~(c) Upon approval, the agreement constitutes a compromise and release settlement and may not be reopened by the department.~~

~~(2) (a) If an insurer has accepted initial liability for an injury, permanent partial disability benefits may be~~

converted-in-whole-or-in-part-to-a-lump-sum-payment.

(b)--The--total--of-any-lump-sum-conversion-in-part-that is-awarded-to-a-claimant-prior-to-the-claimant's-final-award may-not-exceed-the--anticipated--award--under--39-71-703--or \$20,000,--whichever-is-less.

(c)--An-agreement-is-subject-to-department-approval. The department--may--disapprove--an-agreement--only--if--the department--determines--that--the--settlement--amount--is inadequate--if--disapproved, the-department-shall-set-forth in-detail-the-reasons-for-disapproval.

(d)--Upon--approval,--the--agreement--constitutes--a compromise-and-release-settlement-and-may-not-be-reopened-by the-department.

(3)--A--lump-sum--payment--under--subsection--(2)--must-be discounted-at-the-average-rate--for--United--States--10-year treasury-bills-in-the-previous-calendar-year, rounded-to-the nearest-whole-number-or-7%, whichever-is-greater.

(3)(4)--Permanent--total--disability--benefits--may--be converted-in-whole-or-in-part-to-a-lump-sum. The--total--of all--lump-sum--conversions--in--part--that--are-awarded-to-a claimant-may-not-exceed-\$20,000. A-conversion--may--be--made only-upon-the-written-application-of-the-injured-worker-with the--concurrence--of--the--insurer. Approval-of-the-lump-sum payment-rests-in-the-discretion--of--the--department. The approval-or-award-of-a-lump-sum-payment-by-the-department-or

court--must--be--the--exception. It-may-be-given-only-if-the worker-has-demonstrated-financial-need-that:

(a)--relates-to:

(i)--the-necessities-of-life;

(ii)--an-accumulation--of--debt--incurred--prior--to--the injury; or

(iii)--a--self-employment--venture--that--is--considered feasible-under-criteria-set-forth-by-the-department; or

(b)--arises-subsequent-to-the-date-of-injury--or--arises because-of-reduced-income-as-a-result-of-the-injury.

(4)(5)--Any--lump-sum--conversion--of--benefits--under subsection--(3)(4)--must-be-converted-to-present--value--using the-rate-prescribed-under-subsection--(5)(b)(6)(b).

(5)(6)--(a)--An--insurer--may-recoup-any-lump-sum-payment amortized--at--the--rate--established--by--the--department, prorated--biweekly--over--the--projected--duration--of--the compensation-period.

(b)--The-rate-adopted-by-the-department-must-be-based-on the-average-rate-for-United-States-10-year-treasury-bills-in the-previous-calendar-year, rounded--to--the--nearest--whole number--or--7%, whichever-is-greater.

(c)--If--the--projected--compensation--period--is--the claimant's-lifetime, the-life-expectancy-must-be--determined by--using--the--most--recent--table--of--life--expectancy-as published-by-the-United-States-national-center--for--health

1 statistics.

2 {6}{7}--Subject-to-the-other-provisions-of-this-section,
3 the--department--has-full-power,--authority,--and-jurisdiction
4 to--allow,--approve,--or-condition-compromise--settlements--for
5 any--type--of--benefits--provided--for-under-this-chapter-or
6 lump-sum-payments-agreed-to-by--workers--and--insurers,--All
7 such--compromise--settlements-and-lump-sum-payments-are-void
8 without-the-approval-of--the--department,--Approval--by--the
9 department-must-be-in-writing,--The-department-shall-directly
10 notify-a-claimant-of-a-department-order-approving-or-denying
11 a-claimant's-compromise-or-lump-sum-payment.

12 {7}{8}--A-dispute--between-a--claimant--and-an-insurer
13 regarding--the--conversion--of--biweekly--payments--into--a
14 lump-sum--is--considered-a-dispute,--for-which-a-mediator-and
15 the-workers'-compensation-court-have-jurisdiction-to-make--a
16 determination,--If-an--insurer--and--a--claimant-agree-to-a
17 compromise-and-release-settlement-or-a-lump-sum-payment--but
18 the--department--disapproves--the-agreement,--the-parties-may
19 request--the--workers'-compensation-court--to--review--the
20 department's-decision."

21 Section 11. Section 39-71-744, MCA, is amended to read:

22 "39-71-744. Benefits not due while claimant is
23 incarcerated. A claimant is not eligible for any disability
24 or rehabilitation compensation benefits while the claimant
25 is incarcerated as the result of conviction of a felony or

1 is incarcerated for AS A RESULT OF A CONVICTION OF a
2 misdemeanor in a county jail for a period exceeding 30 days.

3 The insurer remains liable for medical benefits. No A time
4 limit on benefits otherwise provided in this chapter is not
5 extended due to a period of incarceration."

6 Section 13. Section 39-71-1011, MCA, is amended to--
7 read:

8 "39-71-1011. Definitions. As used in this chapter, the
9 following definitions apply:

10 {1}--"Board-of-rehabilitation-certification"--means--the
11 nonprofit,--independent,--fee-structured-organization-that-is
12 a-member-of-the-national-commission--for--health--certifying
13 agencies--and--that-is-established-to-certify-rehabilitation
14 practitioners.

15 {2}--"Disabled-worker"--means-one--who--has--a--medically
16 determined--restriction,--established--by--objective-medical
17 findings,--resulting--from--a--work-related--injury--that
18 precludes--the--worker--from-returning-to-the-job-the-worker
19 held-at-the-time-of-the--injury,--and--for--whom--on-the-job
20 training,--education,--or--training-is-necessary-to-provide-the
21 worker-with-the-capability-to-return-to-work.

22 {3}--"Rehabilitation-benefits"--means-benefits-provided
23 in-39-71-1003,--39-71-1025,--{section-16},--and-39-71-2001.

24 {4}--"Rehabilitation-plan"--means-an-individualized--plan
25 to-assist-a-disabled-worker-in-acquiring-skills-or-aptitudes

1 to---return---to---work---through---job---placement,---on-the-job
2 training,---education,---or---training,---or---specialized---job
3 modification;

4 {5}--"Rehabilitation-provider"--means--a-rehabilitation
5 counselor--certified--by--the---board---for---rehabilitation
6 certification---and---designated---by--the--insurer--to--the
7 department-or-a-department--of--social--and--rehabilitation
8 services--counselor--when-a-worker-has-been-certified-by-the
9 department--of--social--and--rehabilitation--services--under
10 39-71-1003;

11 {6}--"Rehabilitation-services"--consists-of-a-program-of
12 evaluation,---planning,---and-delivery-of-goods-and-services-to
13 assist-a-disabled-worker-to-return-to-work;

14 {7}--(a)--"Worker's-job-pool"--means--those--jobs---the
15 claimant--is--capable--of--performing,---consistent--with-the
16 worker's-age,---education,---vocational-experience,---and-aptitude
17 and-compatible-with-the--worker's--physical--capacities--and
18 limitations--as--the--result-of-the-worker's-injury,---back-of
19 immediate-job-openings-is-not-a-factor-to-be--considered--in
20 determining-a-worker's-job-pool;

21 {b}--(i)--A--worker's-job-pool-may-be-either-local-or
22 statewide;

23 {ii}-A-local-job-pool-is-the-Montana-job-service-office
24 area-that-includes-the-worker's-residence;

25 {iii}-A--statewide--job-pool-is-the-state-of-Montana-or

1 the-state-in-which-the-worker-resides;"

2 NEW-SECTION--Section-14--Rehabilitation---goal---and---
3 options--(1)-The-goal-of--rehabilitation--services--is--to
4 return--a--permanently-injured-worker-to-work-with-a-minimum
5 of-retraining-and--as--soon--as--possible--after--an--injury
6 occurs;

7 {2}--Whenever--possible,---employment-in-a-worker's-local
8 job-pool--must-be--considered--and---selected---prior---to
9 consideration--of--employment--in--a--worker's-statewide-job
10 pool;

11 NEW-SECTION--Section-15--Designation-of-rehabilitation---
12 provider-and-eligibility-for-rehabilitation-benefits--(1)-An
13 insurer-shall-designate-a-vocational-rehabilitation-provider
14 for-all-workers-who-suffer-permanent-partial--disability--or
15 permanent--total--disability,---as--defined--in-39-71-116,by
16 following-the-provisions-in-39-71-1014-for-disabled-workers;

17 {2}--The-designated---rehabilitation---provider---shall
18 evaluate--and--determine--the-return-to-work-capabilities-of
19 the-worker;

20 {3}--If-a-worker-is-capable-of-returning-to-work-in--the
21 worker's--local--or--in--the--statewide--job-pool,---further
22 rehabilitation--services--or-benefits-are-not-required-to-be
23 furnished-by-the-insurer-except-as-provided-in-{section-16};

24 {4}--If-a-worker-is-not-capable--of--returning--to--work
25 without-on-the-job-training,a-short-term-retraining-program

of 12 months or less or a long-term retraining program of up to 104 weeks and rehabilitation benefits and services must be provided pursuant to a rehabilitation plan.

(5) The provisions of 39-71-1032 also apply to cooperation with a rehabilitation provider under (section 16) and this section.

NEW SECTION. Section 16. Job placement benefits. (1) A worker is eligible for job placement benefits if:

(a) the worker has not returned to work; and

(b) the worker has the capability to return to work but has a medically determined restriction resulting from a work-related injury that precludes the worker from returning to the job the worker held at the time of the injury.

(2) If the worker is entitled to job placement benefits, a vocational rehabilitation provider shall assist the worker in actively seeking employment and the worker is to receive weekly benefits not to exceed 8 weeks at the temporary total disability rate.

Section 12. Section 39-71-2001, MCA, is amended to read:

"39-71-2001. Rehabilitation benefits. (1) Except as provided in subsection (5), An injured a disabled AN INJURED worker is eligible for rehabilitation benefits if:

(a) the injury results in permanent partial disability or permanent total disability as defined in 39-71-116 the

worker has not returned to work THE INJURY RESULTS IN
PERMANENT PARTIAL DISABILITY OR PERMANENT TOTAL DISABILITY
AS DEFINED IN 39-71-116;

(b) a physician certifies that the injured worker is physically unable to work at the job the worker held at the time of the injury;

(B) A PHYSICIAN CERTIFIES THAT THE INJURED WORKER IS
PHYSICALLY UNABLE TO WORK AT THE JOB THE WORKER HELD AT THE
TIME OF THE INJURY;

(c)(b)(C) a rehabilitation plan completed by a rehabilitation provider and designated by the insurer certifies that the injured worker has reasonable vocational goals and a reemployment and wage potential with rehabilitation. The plan must take into consideration the worker's age, education, training, work history, residual physical capacities, and vocational interests.

(d)(c)(D) a rehabilitation plan between the injured worker and the insurer BETWEEN THE INJURED WORKER AND THE
INSURER is filed with the department. If the plan calls for the expenditure of funds under 39-71-1004, the department shall authorize the department of social and rehabilitation services to use the funds.

(2) Prior to the filing of the rehabilitation plan,
rehabilitation benefits at the injured worker's temporary
total disability rate are payable to a disabled worker by

~~the insurer but are not deductible from the benefits provided in subsection (3).~~

~~(2)(3)(2)~~ After filing the rehabilitation plan with the department, the injured disabled INJURED worker is entitled to receive rehabilitation benefits at the injured worker's temporary total disability rate. The benefits must be paid for the period specified in the rehabilitation plan, not to exceed 104 weeks. Rehabilitation benefits must be paid during a reasonable period, not to exceed 10 weeks, while the worker is waiting to begin the agreed-upon AGREED-UPON rehabilitation plan. Rehabilitation benefits must be paid biweekly while the worker is satisfactorily completing the agreed-upon rehabilitation plan.

~~(3) If the rehabilitation plan provides for job placement, a vocational rehabilitation provider shall assist the worker in obtaining other employment and the worker is entitled to weekly benefits for a period not to exceed 8 weeks at the worker's temporary total disability rate. If after receiving benefits under this subsection, the worker decides to proceed with a rehabilitation plan, the weeks in which benefits were paid under this subsection may not be credited against the maximum of 104 weeks of rehabilitation benefits provided in this section.~~

~~(4) If there is a dispute as to whether an injured worker can return to the job the worker held at the time of~~

~~injury, the insurer shall designate a rehabilitation provider to evaluate and determine whether the worker can return to the job held at the time of injury. If it is determined that the worker cannot, the worker is entitled to rehabilitation benefits and services as provided in subsection (2).~~

(3) IF THE REHABILITATION PLAN PROVIDES FOR JOB PLACEMENT, A VOCATIONAL REHABILITATION PROVIDER SHALL ASSIST THE WORKER IN OBTAINING OTHER EMPLOYMENT AND THE WORKER IS ENTITLED TO WEEKLY BENEFITS FOR A PERIOD NOT TO EXCEED 8 WEEKS AT THE WORKER'S TEMPORARY TOTAL DISABILITY RATE. IF, AFTER RECEIVING BENEFITS UNDER THIS SUBSECTION, THE WORKER DECIDES TO PROCEED WITH A REHABILITATION PLAN, THE WEEKS IN WHICH BENEFITS WERE PAID UNDER THIS SUBSECTION MAY NOT BE CREDITED AGAINST THE MAXIMUM OF 104 WEEKS OF REHABILITATION BENEFITS PROVIDED IN THIS SECTION.

(4) IF THERE IS A DISPUTE AS TO WHETHER AN INJURED WORKER CAN RETURN TO THE JOB THE WORKER HELD AT THE TIME OF INJURY, THE INSURER SHALL DESIGNATE A REHABILITATION PROVIDER TO EVALUATE AND DETERMINE WHETHER THE WORKER CAN RETURN TO THE JOB HELD AT THE TIME OF INJURY. IF IT IS DETERMINED THAT THE WORKER CANNOT, THE WORKER IS ENTITLED TO REHABILITATION BENEFITS AND SERVICES AS PROVIDED IN SUBSECTION (2).

~~(5)(4)(5)~~ A worker may not receive temporary total or

biweekly permanent partial disability benefits and rehabilitation benefits during the same period of time.

~~(6)(5)(6)~~ The rehabilitation provider, as authorized by the insurer, shall continue to work with and assist the injured worker until the rehabilitation plan is completed.

~~(6)(7)~~ Unless a worker becomes a disabled worker within 1 year of reaching maximum medical improvement, a worker is not eligible for rehabilitation benefits through a rehabilitation plan."

Section 13. Section 39-71-721, MCA, is amended to read:

"39-71-721. Compensation for injury causing death -- limitation. (1) (a) If an injured employee dies and the injury was the proximate cause of such death, then the beneficiary of the deceased is entitled to the same compensation as though the death occurred immediately following the injury. A beneficiary's eligibility for benefits commences after the date of death, and the benefit level is established as set forth in subsection (2).

(b) The insurer is entitled to recover any overpayments or compensation paid in a lump sum to a worker prior to death but not yet recouped. The insurer shall recover such payments from the beneficiary's biweekly payments as provided in 39-71-741~~(5)(6)(5)~~.

(2) To beneficiaries as defined in 39-71-116(3)(a) through (3)(d), weekly compensation benefits for an injury

causing death are 66 2/3% of the decedent's wages. The maximum weekly compensation benefit may not exceed the state's average weekly wage at the time of injury. The minimum weekly compensation benefit is 50% of the state's average weekly wage, but in no event it may it not exceed the decedent's actual wages at the time of his death.

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

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

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

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

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

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

SECTION 14. SECTION 39-71-606, MCA, IS AMENDED TO READ:

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

(2) Every insurer under any plan for the payment of workers' compensation benefits shall notify the employer of the reopening of the claim within 14 days of the reopening of a claim for the purpose of paying compensation benefits.

~~{2}{3}~~ Upon the request of an employer it insures, an

insurer shall notify the employer of all compensation benefits that are ongoing and are being charged against that employer's account."

NEW SECTION. Section 15. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

~~NEW SECTION. Section 20. Codification. instruction. Sections 14 through 16 are intended to be codified as an integral part of Title 39, chapter 71, part 10, and the provisions of Title 39, chapter 71, part 10, apply to sections 14 through 16.~~

NEW SECTION. Section 16. Effective date. [This act] is effective July 1, 1993.

-End-

RE-REFERRED AND HB 0361/03
APPROVED BY COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONS
AS AMENDED

HOUSE BILL NO. 361

INTRODUCED BY HIBBARD, HARP
BY REQUEST OF THE STATE FUND

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING
WORKERS' COMPENSATION LAWS; DEFINING "OBJECTIVE MEDICAL
FINDINGS"; INCLUDING INCOME TO SOLE PROPRIETORS AND PARTNERS
IN THE DEFINITION OF WAGES; REVISING INSURERS' LIABILITY FOR
INJURIES TO WORKERS; REVISING THE PROCEDURE FOR PRESENTATION
OF CLAIMS; REQUIRING THE INSURER TO NOTIFY CLAIMANTS OF
BENEFITS AND ENTITLEMENTS USING INFORMATION PROVIDED BY THE
DEPARTMENT; REQUIRING INSURERS TO NOTIFY EMPLOYERS OF
REOPENED CLAIMS; ALLOWING INSURERS TO SUSPEND BENEFITS TO
WORKERS RECEIVING SOCIAL SECURITY DISABILITY BENEFITS;
REVISING REQUIREMENTS TO RECEIVE PERMANENT PARTIAL
DISABILITY BENEFITS; REVISING PROVISIONS REGARDING
TERMINATION OF BENEFITS UPON RETIREMENT; REVISING IMPAIRMENT
EVALUATION PROVISIONS; ~~PROVIDING FOR DISCOUNTING OF LUMP-SUM~~
~~SETTLEMENTS; ALLOWING SUSPENSION OF BENEFITS WHILE A~~
~~CLAIMANT IS INCARCERATED FOR A MISDEMEANOR; REVISING--THE~~
~~DEFINITION OF DISABLED WORKER;--DEFINING--"WORKER'S-JOB-POOL";~~
~~PROVIDING--FOR--DESIGNATION--OF--A--REHABILITATION-PROVIDER;~~
~~CREATING-JOB--PLACEMENT--BENEFITS;~~ REVISING REHABILITATION
BENEFITS; AMENDING SECTIONS 39-71-116, 39-71-119, 39-71-123,
39-71-407, 39-71-601, 39-71-606, 39-71-701, 39-71-702,

39-71-703, 39-71-710, 39-71-711, 39-71-721, ~~39-71-741,~~
39-71-744, ~~39-71-1011,~~ AND 39-71-2001, 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:

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

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

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

(b) payment of benefits;

(c) setting of reserves;

(d) furnishing of services and facilities; and

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

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

(3) "Beneficiary" means:

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

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

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

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

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

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

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

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

(6) "Construction industry" means the major group of general contractors and operative builders, heavy

construction (other than building construction) contractors, and special trade contractors, listed in major groups 15 through 17 in the 1987 Standard Industrial Classification Manual. The term does not include office workers, design professionals, salesmen sales personnel, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.

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

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

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

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

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

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

(13) "Objective medical findings" means medical

evidence, including but not limited to range of motion, atrophy, muscle strength, muscle spasm, and diagnostic evidence,--substantiated--by--clinical--findings VERIFIABLE FINDINGS DEMONSTRATED BY ACCEPTED DIAGNOSTIC PROCEDURES. Complaints of pain in the absence of clinical VERIFIABLE findings are not considered objective medical findings.

{13}{14} "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

{14}{15} "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer ~~shall~~ has not ~~have~~ operated a sufficient or any length of time during such the calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if no average payrolls are not available. This estimate is to be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of such the current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

{15}{16} "Permanent partial disability" means a condition, after a worker has reached maximum healing, in

which a worker:

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

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

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

{17}{18} The term "physician" includes "surgeon" and in either case means one authorized by law to practice ~~his~~ the person's profession in this state.

{18}{19} 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}{20} "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)~~(21) "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)~~(22) "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)~~(23) "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)~~(24) "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)~~(25) "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)~~(26) "Year", unless otherwise specified, means calendar year."

Section 2. Section 39-71-119, MCA, is amended to read:

"39-71-119. Injury and accident defined. (1) "Injury" or "injured" means:

(a) internal or external physical harm to the body that is established by objective medical findings;

(b) damage to prosthetic devices or appliances, except for damage to eyeglasses, contact lenses, dentures, or hearing aids; or

(c) death.

(2) An injury is caused by an accident. An accident is:

(a) an unexpected traumatic incident or unusual strain;

(b) identifiable by time and place of occurrence;

(c) identifiable by member or part of the body affected; and

(d) caused by a specific event on a single day or during a single work shift.

(3) "Injury" or "injured" does not mean a physical or mental condition arising from:

(a) emotional or mental stress; or

(b) a nonphysical stimulus or activity.

(4) "Injury" or "injured" does not include a disease that is not caused by an accident.

(5) (a) A cardiovascular, pulmonary, respiratory, or other disease, cerebrovascular accident, or myocardial infarction suffered by a worker is an injury only if the

1 accident is the primary cause of the cumulative physical
2 harm in relation to other factors contributing to the
3 physical harm.

4 (b) "Primary cause", as used in subsection (5)(a),
5 means a cause that, with a reasonable degree of medical
6 certainty, is responsible for more than 50% of the
7 cumulative physical harm."

8 **Section 3.** Section 39-71-123, MCA, is amended to read:

9 "39-71-123. **Wages defined.** (1) "Wages" means the gross
10 remuneration paid in money, or in a substitute for money,
11 for services rendered by an employee, or income provided for
12 in subsection (1)(d). Wages include but are not limited to:

13 (a) commissions, bonuses, and remuneration at the
14 regular hourly rate for overtime work, holidays, vacations,
15 and sickness periods;

16 (b) board, lodging, rent, or housing if it constitutes
17 a part of the employee's remuneration and is based on its
18 actual value; and

19 (c) payments made to an employee on any basis other
20 than time worked, including but not limited to piecework, an
21 incentive plan, or profit-sharing arrangement; and

22 (d) income or payment in the form of a draw, wage, net
23 profit, or substitute for money received or taken by a sole
24 proprietor or partner, regardless of whether the sole
25 proprietor or partner has performed work or provided

1 services for that remuneration.

2 (2) Wages do not include:

3 (a) employee expense reimbursements or allowances for
4 meals, lodging, travel, subsistence, and other expenses, as
5 set forth in department rules;

6 (b) special rewards for individual invention or
7 discovery;

8 (c) tips and other gratuities received by the employee
9 in excess of those documented to the employer for tax
10 purposes;

11 (d) contributions made by the employer to a group
12 insurance or pension plan; or

13 (e) vacation or sick leave benefits accrued but not
14 paid.

15 (3) For compensation benefit purposes, the average
16 actual earnings for the four pay periods immediately
17 preceding the injury are the employee's wages, except if:

18 (a) the term of employment for the same employer is
19 less than four pay periods, in which case the employee's
20 wages are the hourly rate times the number of hours in a
21 week for which the employee was hired to work; or

22 (b) for good cause shown by the claimant, the use of
23 the four pay periods does not accurately reflect the
24 claimant's employment history with the employer, in which
25 case the insurer may use additional pay periods.

(4) (a) For the purpose of calculating compensation benefits for an employee working concurrent employments, the average actual wages must be calculated as provided in subsection (3).

(b) The compensation benefits for a covered volunteer must be based on the average actual wages in his the volunteer's regular employment, except self-employment as a sole proprietor or partner who elected not to be covered, from which he the volunteer is disabled by the injury incurred.

(c) The compensation benefits for an employee working at two or more concurrent remunerated employments must be based on the aggregate of average actual wages of all employments, except self-employment as a sole proprietor or partner who elected not to be covered, from which the employee is disabled by the injury incurred.

(5) The compensation benefits and the payroll, for premium purposes, for a volunteer firefighter covered pursuant to 39-71-118(4) must be based upon a wage of not less than \$900 a month and not more than 1 1/2 times the average weekly wage as defined in this chapter."

Section 4. Section 39-71-407, MCA, is amended to read:

"39-71-407. Liability of insurers -- limitations. (1)

~~Every~~ Each insurer is liable for the payment of compensation, in the manner and to the extent hereinafter

provided in this section, to an employee of an employer it insures who receives an injury arising out of and in the course of his employment or, in the case of his death from such the injury, to his the employee's beneficiaries, if any.

(2) (a) An insurer is liable for an injury, as defined in 39-71-119, if the injury is established by objective medical findings and if the claimant establishes it is more probable than not that:

(i) a claimed injury has occurred; or

(ii) a claimed injury aggravated a preexisting condition. If a--compensable AN injury aggravates a preexisting condition and the combination causes or prolongs the disability or the need for medical treatment, the resultant condition is compensable only if the compensable AGGRAVATING injury is and remains the major contributing cause of the disability or need for treatment.

(b) A AN INSURER IS NOT LIABLE FOR A condition is--not compensable--as-a-consequence-of ARISING AFTER a compensable injury unless the compensable injury is the major contributing cause of the RESULTANT condition.

~~(b)(c)~~ Proof that it was medically possible that a claimed injury occurred or that such the claimed injury aggravated a preexisting condition is not sufficient to establish liability.

(3) An employee who suffers an injury or dies while traveling is not covered by this chapter unless:

(a) (i) the employer furnishes the transportation or the employee receives reimbursement from the employer for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment agreement; and

(ii) the travel is necessitated by and on behalf of the employer as an integral part or condition of the employment; or

(b) the travel is required by the employer as part of the employee's job duties.

(4) (a) An employee is not eligible for benefits otherwise payable under this chapter if the employee's use of alcohol or drugs not prescribed by a physician is the sole-and-exclusive major contributing cause of the injury-or death accident. However,--if-the-employer-had-knowledge-of and-failed-to-attempt-to-stop-the-employee's-use-of--alcohol or-drugs--this-subsection-does-not-apply.

(b) An alcohol concentration of 0.10 or greater at the time of the accident constitutes a conclusive presumption that the consumption of alcoholic beverages was the major contributing cause of the accident.

(c) The employer's permission, encouragement, or actual knowledge of consumption of alcoholic beverages or drugs may not be considered in determining the compensability of an

injury.

(5) If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to the same part of the body, the workers' compensation insurer is not liable for any compensation or medical benefits caused by the subsequent nonwork-related injury.

(6) "Major contributing cause", as used in this section, means a cause that is the leading factor contributing to the result in comparison to all other contributing causes."

Section 5. Section 39-71-601, MCA, is amended to read:

"39-71-601. Statute of limitation on presentment of claim -- waiver. (1) In case of personal injury or death, all claims must be forever barred unless signed by the claimant or the claimant's representative and presented in writing to the employer, the insurer, or the department, as the case may be, within 12 months from the date of the happening of the accident, either by the claimant or someone legally authorized to act for-him-in-his on the claimant's behalf.

(2) The department may waive the time requirement up to an additional 24 ~~12~~ 24 months only upon a reasonable showing by the claimant of:

(a)--lack-of-knowledge-of-disability;

(b)--latent-injury;-or

1 ~~(c):~~

2 ~~(A) LACK OF KNOWLEDGE OF DISABILITY;~~

3 ~~(B) LATENT INJURY; OR~~

4 ~~(C) equitable estoppel."~~

5 **Section 6.** Section 39-71-701, MCA, is amended to read:

6 "39-71-701. Compensation for temporary total disability
7 -- exception. (1) Subject to the limitation in 39-71-736 and
8 subsection SUBSECTIONS (4) AND (5) of this section, a worker
9 is eligible for temporary total disability benefits when the
10 worker suffers a total loss of wages as a result of an
11 injury and until the worker reaches maximum healing.

12 (2) The determination of temporary total disability
13 must be supported by a preponderance of objective medical
14 evidence findings.

15 (3) Weekly compensation benefits for injury producing
16 temporary total disability ~~shall be~~ are 66 2/3% of the wages
17 received at the time of the injury. The maximum weekly
18 compensation benefits may not exceed the state's average
19 weekly wage at the time of injury. Temporary total
20 disability benefits must be paid for the duration of the
21 worker's temporary disability. The weekly benefit amount may
22 not be adjusted for cost of living as provided in
23 39-71-702(5).

24 (4) IF THE TREATING PHYSICIAN RELEASES A WORKER TO
25 RETURN TO THE SAME POSITION, THE WORKER IS NO LONGER

1 ELIGIBLE FOR TEMPORARY TOTAL DISABILITY BENEFITS, REGARDLESS
2 OF AVAILABILITY OF EMPLOYMENT.

3 ~~†4†~~(5) If the treating physician releases a worker to
4 return to the same-position-regardless-of-availability-of
5 employment-or-to-the same, a modified, or an alternative
6 position that the individual is able and qualified to
7 perform with the same employer at an equivalent or higher
8 wage than he the individual received at the time of injury,
9 the worker is no longer eligible for temporary total
10 disability benefits even though he the individual has not
11 reached maximum healing. A worker requalifies for temporary
12 total disability benefits if the modified or alternative
13 position is no longer available for any reason to the worker
14 and the worker continues to be temporarily totally disabled,
15 as defined in 39-71-116.

16 ~~†5†~~(6) In cases where it is determined that periodic
17 disability benefits granted by the Social Security Act are
18 payable because of the injury, the weekly benefits payable
19 under this section are reduced, but not below zero, by an
20 amount equal, as nearly as practical, to one-half the
21 federal periodic benefits for such week, which amount is to
22 be calculated from the date of the disability social
23 security entitlement.

24 ~~†6†~~(7) If the claimant is awarded social security
25 benefits, the insurer may, upon notification of the

claimant's receipt of social security benefits, suspend biweekly compensation benefits for a period sufficient to recover any resulting overpayment of benefits. This subsection does not prevent a claimant and insurer from agreeing to a repayment plan.

~~{6}{7} Notwithstanding-subsection-{3}7--beginning--July 17-1987--through-June-307-19917-weekly-compensation-benefits for--temporary--total--disability-may-not-exceed-the-state's average-weekly-wage-of-\$299-established-July-17-19867 if--a worker7--after--reaching-maximum-medical-healing7-at-a-later date-again-claims-temporary-total-disability--benefits7--the entitlement-must-be-established-by-written-objective-medical findings--that--contain--sufficient--historical--information concerning-the-cause-of-the-disability7."~~

Section 7. Section 39-71-702, MCA, is amended to read:

"39-71-702. Compensation for permanent total disability. (1) If a worker is no longer temporarily totally disabled and is permanently totally disabled, as defined in 39-71-116, the worker is eligible for permanent total disability benefits. Permanent total disability benefits must be paid for the duration of the worker's permanent total disability, subject to 39-71-710.

(2) The determination of permanent total disability must be supported by a preponderance of objective medical evidence findings7--as--determined--after--a--vocational

rehabilitation-evaluation.

(3) Weekly compensation benefits for an injury resulting in permanent total disability ~~shall-be~~ are 66 2/3% of the wages received at the time of the injury. The maximum weekly compensation benefits ~~shall~~ may not exceed the state's average weekly wage at the time of injury.

(4) In cases where it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for such the week, which amount is to be calculated from the date of the disability social security entitlement.

(5) A worker's benefit amount must be adjusted for a cost-of-living increase on the next July 1 after 104 weeks of permanent total disability benefits have been paid and on each succeeding July 1. A worker may not receive more than 10 ~~such~~ adjustments. The adjustment must be the percentage increase, if any, in the state's average weekly wage as adopted by the department over the state's average weekly wage adopted for the previous year or 3%, whichever is less.

~~(6) Notwithstanding--subsection--{3}7--beginning--July-17-19877-through-June-307-19917-the-maximum-weekly-compensation benefits-for-permanent-total-disability-may-not--exceed--the~~

~~state's average weekly wage of \$299 established July 1, 1986. If the claimant is awarded social security benefits, the insurer may, upon notification of the claimant's receipt of social security benefits, suspend biweekly compensation benefits for a period sufficient to recover any resulting overpayment of benefits. This subsection does not prevent a claimant and insurer from agreeing to a repayment plan."~~

Section 8. Section 39-71-703, MCA, is amended to read:

"39-71-703. Compensation for permanent partial disability. (1) ~~if an~~ An injured worker suffers a ~~permanent partial disability and is no longer entitled to temporary total or permanent total disability benefits, the worker is~~ entitled to a permanent partial disability award ~~if that worker:~~

(a) suffers a permanent partial disability supported by objective medical findings; and

(b) has an impairment rating of more than zero as determined by the latest edition of the American medical association's Guides to the Evaluation of Permanent Impairment and if the basis of any part of the impairment rendered is supported by objective medical findings.

(2) In instances in which a preexisting condition is aggravated by a compensable injury, the impairment rating used in calculating an award under this section may include only the additional impairment caused by the compensable

injury.

~~(2)(3)~~ (3) The permanent partial disability award must be arrived at by multiplying the percentage arrived at through the calculation provided in subsection ~~(3)(4)~~ (3) by 350 weeks.

~~(3)(4)~~ (4) An award granted an injured worker may not exceed a permanent partial disability rating of 100%. The criteria for the rating of disability must be calculated using the medical impairment rating as determined by the latest edition of the American medical association Guides to the Evaluation of Permanent Impairment. The percentage to be used in subsection ~~(2)(3)~~ (3) must be determined by adding the following applicable percentages to the impairment rating:

(a) if the claimant is 30 years of age or younger at the time of injury, 0%; if the claimant is over 30 years of age but under 56 years of age at the time of injury, 2%; and if the claimant is 56 years of age or older at the time of injury, 3%;

(b) for a worker who has completed less than 9 years of education, 3%; for a worker who has completed 9 through 12 years of education or who has received a graduate equivalency diploma, 2%; for a worker who has completed more than 12 years of education, 0%;

(c) if a worker has no wage loss as a result of the industrial injury, 0%; if a worker has an actual wage loss of \$2 or less an hour as a result of the industrial injury,

10%; if a worker has an actual wage loss of more than \$2 an hour as a result of the industrial injury, 20%; and

(d) if a worker, at the time of the injury, was performing heavy labor activity and after the injury the worker can perform only light or sedentary labor activity, 20%; if a worker, at the time of injury, was performing heavy labor activity and after the injury the worker can perform only medium labor activity, 15%; if a worker was performing medium labor activity at the time of the injury and after the injury the worker can perform only light or sedentary labor activity, 10%.

~~†4†~~(5) The weekly benefit rate for permanent partial disability is 66 2/3% of the wages received at the time of injury, but the rate may not exceed one-half the state's average weekly wage. The weekly benefit amount established for an injured worker may not be changed by a subsequent adjustment in the state's average weekly wage for future fiscal years.

~~†5†~~(6) If a worker suffers a subsequent compensable injury ~~or-injuries-to-the-same-part-of-the-body~~ OR INJURIES TO THE SAME PART OF THE BODY, the award payable for the subsequent injury may not duplicate any amounts paid for the previous injury or injuries and the worker may not receive more than a total of 350 weeks of permanent partial disability benefits regardless of the number of injuries or

~~parts--of--the--body--injured.~~ The department shall make available to insurers information regarding the number of weeks of permanent partial disability benefits paid a claimant on injuries occurring after July 1, 1993.

~~†6†~~(7) As used in this section:

(a) "heavy labor activity" means the ability to lift over 50 pounds occasionally or up to 50 pounds frequently;

(b) "medium labor activity" means the ability to lift up to 50 pounds occasionally or up to 25 pounds frequently;

(c) "light labor activity" means the ability to lift up to 25 pounds occasionally or up to 10 pounds frequently; and

(d) "sedentary labor activity" means the ability to lift up to 10 pounds occasionally or up to 5 pounds frequently."

Section 9. Section 39-71-710, MCA, is amended to read:

"39-71-710. Termination of benefits upon retirement.

(1) If a claimant is receiving disability or rehabilitation compensation benefits and the claimant receives social security retirement benefits, or is eligible to receive full social security retirement benefits, or receives retirement benefits from a retirement plan that is in lieu of social security retirement benefits, the claimant is considered to be retired. When the claimant is considered retired, the liability of the insurer is ended for payment of wage supplement, permanent partial disability benefits, permanent

total disability benefits, and rehabilitation compensation benefits. However, the insurer remains liable for temporary total disability benefits, ~~any impairment award~~, ANY IMPAIRMENT AWARD, and medical benefits.

(2) If a claimant who is eligible to receive social security retirement benefits and is gainfully employed suffers a work-related injury, the insurer retains liability for temporary total disability benefits, any impairment award, and medical benefits."

Section 10. Section 39-71-711, MCA, is amended to read:

"39-71-711. Impairment evaluation -- ratings. (1) An impairment rating:

(a) is a purely medical determination and must be determined by an impairment evaluator after a claimant has reached maximum healing;

(b) must be based on the current edition of the Guides to Evaluation of Permanent Impairment published by the American medical association; and

(c) must be expressed as a percentage of the whole person; and

(d) must be based only upon objective medical findings attributable to the compensable injury.

(2) A claimant or insurer, or both, may obtain an impairment rating from an evaluator who is a medical doctor or from an evaluator who is a chiropractor if the injury

falls within the scope of chiropractic practice. If the claimant and insurer cannot agree upon the rating, the mediation procedure in part 24 of this chapter must be followed.

(3) An evaluator must be a physician licensed under Title 37, chapter 3, except if the claimant's treating physician is a chiropractor, the evaluator may be a chiropractor who is certified as an evaluator under chapter 12.

(4) Disputes over impairment ratings are not subject to 39-71-605."

~~Section 11. Section 39-71-741, MCA, is amended to read:~~

~~"39-71-741. Compromise --- settlements --- and --- lump-sum payments. (i) (a) Benefits may be converted in whole to a lump sum:~~

~~(i) if a claimant and an insurer dispute the initial compensability of an injury; and~~

~~(ii) if the claimant and insurer agree to a settlement;~~

~~(b) The agreement is subject to department approval. The department may disapprove an agreement under this section only if there is not a reasonable dispute over compensability;~~

~~(c) Upon approval, the agreement constitutes a compromise and release settlement and may not be reopened by the department;~~

{2}--(a)--If--an--insurer--has--accepted--initial--liability for--an--injury,--permanent--partial--disability--benefits--may--be converted--in--whole--or--in--part--to--a--lump--sum--payment;

{b}--The--total--of--any--lump--sum--conversion--in--part--that is--awarded--to--a--claimant--prior--to--the--claimant's--final--award may--not--exceed--the--anticipated--award--under--39-71-703--or \$20,000,--whichever--is--less;

{c}--An--agreement--is--subject--to--department--approval. The department---may---disapprove---an--agreement--only--if--the department--determines--that--the---settlement---amount---is inadequate. If--disapproved,--the--department--shall--set--forth in--detail--the--reasons--for--disapproval;

{d}--Upon--approval,--the--agreement--constitutes---a compromise--and--release--settlement--and--may--not--be--reopened--by the--department;

{3}--A--lump--sum--payment--under--subsection--(2)--must--be discounted--at--the--average--rate--for--United--States--10--year treasury--bills--in--the--previous--calendar--year,--rounded--to--the nearest--whole--number--or--7%,--whichever--is--greater.

{3}{4}--Permanent---total--disability--benefits--may--be converted--in--whole--or--in--part--to--a--lump--sum. The--total--of all--lump--sum--conversions--in--part--that--are--awarded--to--a claimant--may--not--exceed--\$20,000. A--conversion--may--be--made only--upon--the--written--application--of--the--injured--worker--with the--concurrence--of--the--insurer. Approval--of--the--lump--sum

payment--rests--in--the--discretion--of--the--department. The approval--or--award--of--a--lump--sum--payment--by--the--department--or court--must--be--the--exception. It--may--be--given--only--if--the worker--has--demonstrated--financial--need--that:

{a}--relates--to:

{i}--the--necessities--of--life;

{ii}--an--accumulation--of--debt--incurred--prior--to--the injury;--or

{iii}--a--self--employment--venture--that--is--considered feasible--under--criteria--set--forth--by--the--department;--or

{b}--arises--subsequent--to--the--date--of--injury--or--arises because--of--reduced--income--as--a--result--of--the--injury.

{4}{5}--Any---lump--sum---conversion--of--benefits--under subsection--(3){4}--must--be--converted--to--present--value--using the--rate--prescribed--under--subsection--(5){b}{6}{b}.

{5}{6}--(a) An--insurer--may--recoup--any--lump--sum--payment amortized--at--the--rate--established--by--the--department, prorated---biweekly--over--the--projected--duration--of--the compensation--period.

{b}--The--rate--adopted--by--the--department--must--be--based--on the--average--rate--for--United--States--10--year--treasury--bills--in the--previous--calendar--year,--rounded--to--the--nearest--whole number--or--7%,--whichever--is--greater.

{c}--If---the--projected--compensation--period--is--the claimant's--lifetime,--the--life--expectancy--must--be--determined

by--using--the--most--recent--table--of--life--expectancy--as
published--by--the--United--States--national--center--for--health
statistics.

{6}{7}--Subject-to-the-other-provisions-of-this-section,
the--department--has--full--power,--authority,--and--jurisdiction
to--allow,--approve,--or--condition--compromise--settlements--for
any--type--of--benefits--provided--for--under--this--chapter--or
lump-sum-payments--agreed--to--by--workers--and--insurers. All
such--compromise--settlements--and--lump-sum-payments--are--void
without--the--approval--of--the--department. Approval--by--the
department--must--be--in--writing. The--department--shall--directly
notify--a--claimant--of--a--department--order--approving--or--denying
a--claimant's--compromise--or--lump-sum--payment.

{7}{8}--A--dispute--between--a--claimant--and--an--insurer
regarding--the--conversion--of--biweekly--payments--into--a
lump-sum--is--considered--a--dispute,--for--which--a--mediator--and
the--workers'--compensation--court--have--jurisdiction--to--make--a
determination. If--an--insurer--and--a--claimant--agree--to--a
compromise--and--release--settlement--or--a--lump-sum--payment--but
the--department--disapproves--the--agreement,--the--parties--may
request--the--workers'--compensation--court--to--review--the
department's--decision."

Section 11. Section 39-71-744, MCA, is amended to read:

"39-71-744. Benefits not due while claimant is
incarcerated. A claimant is not eligible for any disability

or rehabilitation compensation benefits while the claimant
is incarcerated as the result of conviction of a felony or
is incarcerated for AS A RESULT OF A CONVICTION OF a
misdemeanor in a county jail for a period exceeding 30 days.
The insurer remains liable for medical benefits. No A time
limit on benefits otherwise provided in this chapter is not
extended due to a period of incarceration."

Section 13. Section 39-71-1011, MCA, is amended to--
read:

"39-71-1011. Definitions. As used in this chapter, the
following definitions apply:

{1}--"Board of rehabilitation certification"--means--the
nonprofit,--independent,--fee-structured--organization--that--is
a--member--of--the--national--commission--for--health--certifying
agencies--and--that--is--established--to--certify--rehabilitation
practitioners.

{2}--"Disabled worker"--means--one--who--has--a--medically
determined--restriction,--established--by--objective--medical
findings,--resulting--from--a--work-related--injury--that
precludes--the--worker--from--returning--to--the--job--the--worker
held--at--the--time--of--the--injury,--and--for--whom--on--the--job
training,--education,--or--training--is--necessary--to--provide--the
worker--with--the--capability--to--return--to--work.

{3}--"Rehabilitation--benefits"--means--benefits--provided
in--39-71-1003,--39-71-1025,--{section 16}--and--39-71-2001.

{4}--"Rehabilitation-plan"-means-an-individualized-plan to-assist-a-disabled-worker-in-acquiring-skills-or-aptitudes to---return---to---work---through---job---placement,---on-the-job training,---education,---or---training,---or---specialized---job modification;

{5}--"Rehabilitation-provider"-means-a-rehabilitation counselor---certified---by---the---board---for---rehabilitation certification---and---designated---by---the---insurer---to---the department-or-a-department-of-social-and-rehabilitation services---counselor---when-a-worker-has-been-certified-by-the department-of-social-and-rehabilitation-services---under 39-71-1003;

{6}--"Rehabilitation-services"-consists-of-a-program-of evaluation,---planning,---and-delivery-of-goods-and-services-to assist-a-disabled-worker-to-return-to-work;

{7}--(a) "Worker's-job-pool"-means--those--jobs--the claimant--is--capable--of--performing,--consistent--with--the worker's-age,--education,--vocational-experience,--and-aptitude and-compatible-with--the--worker's--physical--capacities--and limitations--as--the--result-of--the-worker's-injury,--back-of immediate-job-openings-is-not-a-factor-to-be-considered--in determining-a-worker's-job-pool;

{b}--(i) A-worker's-job-pool-may-be-either-local-or statewide;

{ii} A-local-job-pool-is-the-Montana-job-service-office

area-that-includes-the-worker's-residence;

{iii} A--statewide--job--pool-is-the-state-of-Montana-or the-state-in-which-the-worker-resides;"

NEW-SECTION. Section 14. Rehabilitation---goal---and--- options.---{1} The--goal--of--rehabilitation--services--is--to return--a--permanently-injured-worker-to-work-with-a-minimum of-retraining-and--as--soon--as--possible--after--an--injury occurs;

{2}--Whenever--possible,--employment-in-a-worker's-local job--pool--must--be--considered--and--selected---prior---to consideration--of--employment--in--a--worker's-statewide-job pool;

NEW-SECTION. Section 15. Designation-of-rehabilitation- provider-and-eligibility-for-rehabilitation-benefits.---{1} An insurer-shall-designate-a-vocational-rehabilitation-provider for-all-workers-who-suffer-permanent-partial--disability--or permanent--total--disability,--as--defined--in-39-71-116,--by following-the-provisions-in-39-71-1014-for-disabled-workers;

{2}--The--designated---rehabilitation---provider---shall evaluate--and--determine--the-return-to-work-capabilities-of the-worker;

{3}--If-a-worker-is-capable-of-returning-to-work-in--the worker's--local--or--in--the--statewide--job--pool,--further rehabilitation--services--or-benefits-are-not-required-to-be furnished-by-the-insurer-except-as-provided-in-{section-16};

{4}--if-a-worker-is-not-capable--of--returning--to--work without-on-the-job-training-a-short-term-retraining-program of-12-months-or-less-or-a-long-term-retraining-program-of-up to--104--weeks-and-rehabilitation-benefits-and-services-must be-provided-pursuant-to-a-rehabilitation-plan.

{5}--The--provisions--of--39-71-1032---also---apply---to cooperation--with--a--rehabilitation-provider-under-{section 16}-and-this-section.

NEW SECTION. Section 16. Job placement benefits.-(1)-A-- worker-is-eligible-for-job-placement-benefits-if:

{a}--the-worker-has-not-retained-to-work;-and

{b}--the-worker-has-the-capability-to-return-to-work-but has-a-medically--determined--restriction--resulting--from--a work-related-injury-that-precludes-the-worker-from-returning to-the-job-the-worker-held-at-the-time-of-the-injury.

{2}--If---the---worker---is---entitled---to---job---placement benefits-a-vocational-rehabilitation-provider-shall--assist the--worker-in-actively-seeking-employment-and-the-worker-is to-receive-weekly-benefits-not-to-exceed--8--weeks--at--the temporary-total-disability-rate.

Section 12. Section 39-71-2001, MCA, is amended to read:

"39-71-2001. Rehabilitation benefits. (1) Except--as provided-in-subsection-(5), An-injured a-disabled AN INJURED worker is eligible for rehabilitation benefits if:

(a) the--injury-results-in-permanent-partial-disability or-permanent-total-disability-as-defined--in--39-71-116 the worker--has--not--returned--to--work THE INJURY RESULTS IN PERMANENT PARTIAL DISABILITY OR PERMANENT TOTAL DISABILITY AS DEFINED IN 39-71-116;

{b}--a-physician-certifies--that-the-injured-worker-is physically-unable-to-work-at-the-job-the-worker-held-at--the time-of-the-injury;

(B) A PHYSICIAN CERTIFIES THAT THE INJURED WORKER IS PHYSICALLY UNABLE TO WORK AT THE JOB THE WORKER HELD AT THE TIME OF THE INJURY;

{c}{b}{(C)} a rehabilitation plan completed by a rehabilitation provider and designated by the insurer certifies that the injured worker has reasonable vocational goals and a reemployment and wage potential with rehabilitation. The plan must take into consideration the worker's age, education, training, work history, residual physical capacities, and vocational interests.

{d}{e}{(D)} a rehabilitation plan between--the-injured worker-and-the-insurer BETWEEN THE INJURED WORKER AND THE INSURER is filed with the department. If the plan calls for the expenditure of funds under 39-71-1004, the department shall authorize the department of social and rehabilitation services to use the funds.

{2}--Prior-to-the-filing-of--the--rehabilitation--plan,

rehabilitation--benefits--at--the--injured--worker's--temporary
total--disability--rate--are--payable--to--a--disabled--worker--by
the--insurer--but--are--not--deductible--from--the--benefits
provided--in--subsection--(3)--

(2)(3)(2) After filing the rehabilitation plan with the department, the injured disabled INJURED worker is entitled to receive rehabilitation benefits at the injured worker's temporary total disability rate. The benefits must be paid for the period specified in the rehabilitation plan, not to exceed 104 weeks. Rehabilitation benefits must be paid during a reasonable period, not to exceed 10 weeks, while the worker is waiting to begin the agreed-upon AGREED-UPON rehabilitation plan. Rehabilitation benefits must be paid biweekly while the worker is satisfactorily completing the agreed-upon rehabilitation plan.

(3)--if--the--rehabilitation--plan--provides--for--job
placement--a--vocational--rehabilitation--provider--shall--assist
the--worker--in--obtaining--other--employment--and--the--worker--is
entitled--to--weekly--benefits--for--a--period--not--to--exceed--8
weeks--at--the--worker's--temporary--total--disability--rate--if,
after--receiving--benefits--under--this--subsection--the--worker
decides--to--proceed--with--a--rehabilitation--plan--the--weeks--in
which--benefits--were--paid--under--this--subsection--may--not--be
credited--against--the--maximum--of--104--weeks--of--rehabilitation
benefits--provided--in--this--section--

(4)--if--there--is--a--dispute--as--to--whether--an--injured
worker--can--return--to--the--job--the--worker--held--at--the--time--of
injury--the--insurer--shall--designate--a--rehabilitation
provider--to--evaluate--and--determine--whether--the--worker--can
return--to--the--job--held--at--the--time--of--injury--if--it--is
determined--that--he--the--worker--cannot--the--worker--is--entitled
to--rehabilitation--benefits--and--services--as--provided--in
subsection--(2)--

(3) IF THE REHABILITATION PLAN PROVIDES FOR JOB
PLACEMENT, A VOCATIONAL REHABILITATION PROVIDER SHALL ASSIST
THE WORKER IN OBTAINING OTHER EMPLOYMENT AND THE WORKER IS
ENTITLED TO WEEKLY BENEFITS FOR A PERIOD NOT TO EXCEED 8
WEEKS AT THE WORKER'S TEMPORARY TOTAL DISABILITY RATE. IF,
AFTER RECEIVING BENEFITS UNDER THIS SUBSECTION, THE WORKER
DECIDES TO PROCEED WITH A REHABILITATION PLAN, THE WEEKS IN
WHICH BENEFITS WERE PAID UNDER THIS SUBSECTION MAY NOT BE
CREDITED AGAINST THE MAXIMUM OF 104 WEEKS OF REHABILITATION
BENEFITS PROVIDED IN THIS SECTION.

(4) IF THERE IS A DISPUTE AS TO WHETHER AN INJURED
WORKER CAN RETURN TO THE JOB THE WORKER HELD AT THE TIME OF
INJURY, THE INSURER SHALL DESIGNATE A REHABILITATION
PROVIDER TO EVALUATE AND DETERMINE WHETHER THE WORKER CAN
RETURN TO THE JOB HELD AT THE TIME OF INJURY. IF IT IS
DETERMINED THAT THE WORKER CANNOT, THE WORKER IS ENTITLED TO
REHABILITATION BENEFITS AND SERVICES AS PROVIDED IN

1 SUBSECTION (2).

2 ~~(5)~~~~(4)~~(5) A worker may not receive temporary total or
3 biweekly permanent partial disability benefits and
4 rehabilitation benefits during the same period of time.

5 ~~(6)~~~~(5)~~(6) The rehabilitation provider, as authorized by
6 the insurer, shall continue to work with and assist the
7 injured worker until the rehabilitation plan is completed.

8 ~~(6)~~(7) Unless a worker becomes a disabled worker within
9 1 year of reaching maximum medical improvement, a worker is
10 not eligible for rehabilitation benefits through a
11 rehabilitation plan."

12 **Section 13.** Section 39-71-721, MCA, is amended to read:

13 "39-71-721. Compensation for injury causing death --
14 limitation. (1) (a) If an injured employee dies and the
15 injury was the proximate cause of such death, then the
16 beneficiary of the deceased is entitled to the same
17 compensation as though the death occurred immediately
18 following the injury. A beneficiary's eligibility for
19 benefits commences after the date of death, and the benefit
20 level is established as set forth in subsection (2).

21 (b) The insurer is entitled to recover any overpayments
22 or compensation paid in a lump sum to a worker prior to
23 death but not yet recouped. The insurer shall recover such
24 payments from the beneficiary's biweekly payments as
25 provided in 39-71-741~~(5)~~~~(6)~~(5).

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

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

15 (4) If the decedent leaves no beneficiary as defined in
16 39-71-116, a lump-sum payment of \$3,000 must be paid to the
17 decedent's surviving parent or parents.

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

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

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

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

SECTION 14. SECTION 39-71-606, MCA, IS AMENDED TO READ:

"39-71-606. Insurer to accept or deny claim within thirty days of receipt -- NOTICE OF BENEFITS AND ENTITLEMENTS TO CLAIMANTS -- notice of denial -- notice of reopening -- notice to employer. (1) Every insurer under any plan for the payment of workers' compensation benefits shall, within 30 days of receipt of a claim for compensation, either accept or deny the claim, and if denied shall inform the claimant and the department in writing of such denial.

(2) THE DEPARTMENT SHALL MAKE AVAILABLE TO INSURERS FOR DISTRIBUTION TO CLAIMANTS SUFFICIENT COPIES OF A DOCUMENT

DESCRIBING CURRENT BENEFITS AND ENTITLEMENTS AVAILABLE UNDER TITLE 39, CHAPTER 71. UPON RECEIPT OF A CLAIM, EACH INSURER SHALL PROMPTLY NOTIFY THE CLAIMANT IN WRITING OF POTENTIAL BENEFITS AND ENTITLEMENTS AVAILABLE BY PROVIDING THE CLAIMANT A COPY OF THE DOCUMENT PREPARED BY THE DEPARTMENT.

~~{2}{3}~~ Every insurer under any plan for the payment of workers' compensation benefits shall notify the employer of the reopening of the claim within 14 days of the reopening of a claim for the purpose of paying compensation benefits.

~~{2}{3}{4}~~ Upon the request of an employer it insures, an insurer shall notify the employer of all compensation benefits that are ongoing and are being charged against that employer's account."

NEW SECTION. Section 15. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

~~NEW-SECTION--Section-20--Codification----instruction--{Sections-14-through-16}--are--intended--to--be--codified--as--an integral--part--of--Title--39--chapter--71--part--10--and--the provisions--of--Title--39--chapter--71--part--10--apply--to {sections-14-through-16}--~~

NEW SECTION. Section 16. Effective date. [This act] is

HB 0361/03

1 effective July 1, 1993.

-End-

HOUSE BILL NO. 361

INTRODUCED BY HIBBARD, HARP

BY REQUEST OF THE STATE FUND

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING WORKERS' COMPENSATION LAWS; DEFINING "OBJECTIVE MEDICAL FINDINGS"; INCLUDING INCOME TO SOLE PROPRIETORS AND PARTNERS IN THE DEFINITION OF WAGES; REVISING INSURERS' LIABILITY FOR INJURIES TO WORKERS; REVISING THE PROCEDURE FOR PRESENTATION OF CLAIMS; REQUIRING THE INSURER TO NOTIFY CLAIMANTS OF BENEFITS AND ENTITLEMENTS USING INFORMATION PROVIDED BY THE DEPARTMENT; REQUIRING INSURERS TO NOTIFY EMPLOYERS OF REOPENED CLAIMS; ALLOWING INSURERS TO SUSPEND BENEFITS TO WORKERS RECEIVING SOCIAL SECURITY DISABILITY BENEFITS; REVISING REQUIREMENTS TO RECEIVE PERMANENT PARTIAL DISABILITY BENEFITS; REVISING PROVISIONS REGARDING TERMINATION OF BENEFITS UPON RETIREMENT; REVISING IMPAIRMENT EVALUATION PROVISIONS; ~~PROVIDING FOR DISCOUNTING OF LUMP-SUM SETTLEMENTS~~; ALLOWING SUSPENSION OF BENEFITS WHILE A CLAIMANT IS INCARCERATED FOR A MISDEMEANOR; ~~REVISING--THE DEFINITION OF DISABLED WORKER;--DEFINING--"WORKER'S JOB POOL"; PROVIDING--FOR--DESIGNATION--OF--A--REHABILITATION PROVIDER; CREATING JOB--PLACEMENT--BENEFITS~~; REVISING REHABILITATION BENEFITS; AMENDING SECTIONS 39-71-116, 39-71-119, 39-71-123, 39-71-407, 39-71-601, 39-71-606, 39-71-701, 39-71-702,

39-71-703, 39-71-710, 39-71-711, 39-71-721, ~~39-71-741~~, 39-71-744, ~~39-71-1011~~, AND 39-71-2001, 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:

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

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

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

(b) payment of benefits;

(c) setting of reserves;

(d) furnishing of services and facilities; and

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

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

(3) "Beneficiary" means:

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

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

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

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

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

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

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

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

(6) "Construction industry" means the major group of general contractors and operative builders, heavy

construction (other than building construction) contractors, and special trade contractors, listed in major groups 15 through 17 in the 1987 Standard Industrial Classification Manual. The term does not include office workers, design professionals, salesmen sales personnel, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.

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

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

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

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

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

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

(13) "Objective medical findings" means medical

1 evidence, including but not limited to range of motion,
 2 atrophy, muscle strength, muscle spasm, and diagnostic
 3 evidence,--substantiated--by--clinical--findings VERIFIABLE
 4 FINDINGS DEMONSTRATED BY ACCEPTED DIAGNOSTIC PROCEDURES.
 5 Complaints of pain in the absence of clinical VERIFIABLE
 6 findings are not considered objective medical findings.

7 ~~(13)~~(14) "Order" means any decision, rule, direction,
 8 requirement, or standard of the department or any other
 9 determination arrived at or decision made by the department.

10 ~~(14)~~(15) "Payroll", "annual payroll", or "annual payroll
 11 for the preceding year" means the average annual payroll of
 12 the employer for the preceding calendar year or, if the
 13 employer ~~shall~~ has not have operated a sufficient or any
 14 length of time during such the calendar year, 12 times the
 15 average monthly payroll for the current year. However, an
 16 estimate may be made by the department for any employer
 17 starting in business if no average payrolls are not
 18 available. This estimate is to be adjusted by additional
 19 payment by the employer or refund by the department, as the
 20 case may actually be, on December 31 of such the current
 21 year. An employer's payroll must be computed by calculating
 22 all wages, as defined in 39-71-123, that are paid by an
 23 employer.

24 ~~(15)~~(16) "Permanent partial disability" means a
 25 condition, after a worker has reached maximum healing, in

1 which a worker:

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

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

6 ~~(16)~~(17) "Permanent total disability" means a condition
 7 resulting from injury as defined in this chapter, after a
 8 worker reaches maximum healing, in which a worker has no
 9 reasonable prospect of physically performing regular
 10 employment, as determined after a vocational rehabilitation
 11 evaluation. Regular employment means work on a recurring
 12 basis performed for remuneration in a trade, business,
 13 profession, or other occupation in this state. Lack of
 14 immediate job openings is not a factor to be considered in
 15 determining if a worker is permanently totally disabled.

16 ~~(17)~~(18) The term "physician" includes "surgeon" and in
 17 either case means one authorized by law to practice ~~his~~ the
 18 person's profession in this state.

19 ~~(18)~~(19) The "plant of the employer" includes the place
 20 of business of a third person while the employer has access
 21 to or control over such the place of business for the
 22 purpose of carrying on ~~his~~ the employer's usual trade,
 23 business, or occupation.

24 ~~(19)~~(20) "Public corporation" means the state or any
 25 county, municipal corporation, school district, city, city

under commission form of government or special charter, town, or village.

~~(20)~~(21) "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)~~(22) "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)~~(23) "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)~~(24) "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)~~(25) "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)~~(26) "Year", unless otherwise specified, means calendar year."

Section 2. Section 39-71-119, MCA, is amended to read:

"39-71-119. Injury and accident defined. (1) "Injury" or "injured" means:

(a) internal or external physical harm to the body that is established by objective medical findings;

(b) damage to prosthetic devices or appliances, except for damage to eyeglasses, contact lenses, dentures, or hearing aids; or

(c) death.

(2) An injury is caused by an accident. An accident is:

(a) an unexpected traumatic incident or unusual strain;

(b) identifiable by time and place of occurrence;

(c) identifiable by member or part of the body affected; and

(d) caused by a specific event on a single day or during a single work shift.

(3) "Injury" or "injured" does not mean a physical or mental condition arising from:

(a) emotional or mental stress; or

(b) a nonphysical stimulus or activity.

(4) "Injury" or "injured" does not include a disease that is not caused by an accident.

(5) (a) A cardiovascular, pulmonary, respiratory, or other disease, cerebrovascular accident, or myocardial infarction suffered by a worker is an injury only if the

1 accident is the primary cause of the cumulative physical
2 harm in relation to other factors contributing to the
3 physical harm.

4 (b) "Primary cause", as used in subsection (5)(a),
5 means a cause that, with a reasonable degree of medical
6 certainty, is responsible for more than 50% of the
7 cumulative physical harm."

8 **Section 3.** Section 39-71-123, MCA, is amended to read:

9 "39-71-123. Wages defined. (1) "Wages" means the gross
10 remuneration paid in money, or in a substitute for money,
11 for services rendered by an employee, or income provided for
12 in subsection (1)(d). Wages include but are not limited to:

13 (a) commissions, bonuses, and remuneration at the
14 regular hourly rate for overtime work, holidays, vacations,
15 and sickness periods;

16 (b) board, lodging, rent, or housing if it constitutes
17 a part of the employee's remuneration and is based on its
18 actual value; and

19 (c) payments made to an employee on any basis other
20 than time worked, including but not limited to piecework, an
21 incentive plan, or profit-sharing arrangement; and

22 (d) income or payment in the form of a draw, wage, net
23 profit, or substitute for money received or taken by a sole
24 proprietor or partner, regardless of whether the sole
25 proprietor or partner has performed work or provided

1 services for that remuneration.

2 (2) Wages do not include:

3 (a) employee expense reimbursements or allowances for
4 meals, lodging, travel, subsistence, and other expenses, as
5 set forth in department rules;

6 (b) special rewards for individual invention or
7 discovery;

8 (c) tips and other gratuities received by the employee
9 in excess of those documented to the employer for tax
10 purposes;

11 (d) contributions made by the employer to a group
12 insurance or pension plan; or

13 (e) vacation or sick leave benefits accrued but not
14 paid.

15 (3) For compensation benefit purposes, the average
16 actual earnings for the four pay periods immediately
17 preceding the injury are the employee's wages, except if:

18 (a) the term of employment for the same employer is
19 less than four pay periods, in which case the employee's
20 wages are the hourly rate times the number of hours in a
21 week for which the employee was hired to work; or

22 (b) for good cause shown by the claimant, the use of
23 the four pay periods does not accurately reflect the
24 claimant's employment history with the employer, in which
25 case the insurer may use additional pay periods.

(4) (a) For the purpose of calculating compensation benefits for an employee working concurrent employments, the average actual wages must be calculated as provided in subsection (3).

(b) The compensation benefits for a covered volunteer must be based on the average actual wages in his the volunteer's regular employment, except self-employment as a sole proprietor or partner who elected not to be covered, from which he the volunteer is disabled by the injury incurred.

(c) The compensation benefits for an employee working at two or more concurrent remunerated employments must be based on the aggregate of average actual wages of all employments, except self-employment as a sole proprietor or partner who elected not to be covered, from which the employee is disabled by the injury incurred.

(5) The compensation benefits and the payroll, for premium purposes, for a volunteer firefighter covered pursuant to 39-71-118(4) must be based upon a wage of not less than \$900 a month and not more than 1 1/2 times the average weekly wage as defined in this chapter."

Section 4. Section 39-71-407, MCA, is amended to read:

"39-71-407. **Liability of insurers -- limitations.** (1) Every Each insurer is liable for the payment of compensation, in the manner and to the extent hereinafter

provided in this section, to an employee of an employer it insures who receives an injury arising out of and in the course of his employment or, in the case of his death from such the injury, to his the employee's beneficiaries, if any.

(2) (a) An insurer is liable for an injury, as defined in 39-71-119, if the injury is established by objective medical findings and if the claimant establishes it is more probable than not that:

(i) a claimed injury has occurred; or

(ii) a claimed injury aggravated a preexisting condition. If a--compensable AN injury aggravates a preexisting condition and the combination causes or prolongs the disability or the need for medical treatment, the resultant condition is compensable only if the compensable AGGRAVATING injury is and remains the major contributing cause of the disability or need for treatment.

(b) A AN INSURER IS NOT LIABLE FOR A condition is--not compensable--as-a-consequence-of ARISING AFTER a compensable injury unless the compensable injury is the major contributing cause of the RESULTANT condition.

(b)(c) Proof that it was medically possible that a claimed injury occurred or that such the claimed injury aggravated a preexisting condition is not sufficient to establish liability.

(3) An employee who suffers an injury or dies while traveling is not covered by this chapter unless:

(a) (i) the employer furnishes the transportation or the employee receives reimbursement from the employer for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment agreement; and

(ii) the travel is necessitated by and on behalf of the employer as an integral part or condition of the employment; or

(b) the travel is required by the employer as part of the employee's job duties.

(4) (a) An employee is not eligible for benefits otherwise payable under this chapter if the employee's use of alcohol or drugs not prescribed by a physician is the sole-and-exclusive major contributing cause of the injury or death accident. ~~However,--if-the-employer-had-knowledge-of-and-failed-to-attempt-to-stop-the-employee's-use-of--alcohol-or-drugs,--this-subsection-does-not-apply.~~

(b) An alcohol concentration of 0.10 or greater at the time of the accident constitutes a conclusive presumption that the consumption of alcoholic beverages was the major contributing cause of the accident.

(c) The employer's permission, encouragement, or actual knowledge of consumption of alcoholic beverages or drugs may not be considered in determining the compensability of an

injury.

(5) If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to the same part of the body, the workers' compensation insurer is not liable for any compensation or medical benefits caused by the subsequent nonwork-related injury.

(6) "Major contributing cause", as used in this section, means a cause that is the leading factor contributing to the result in comparison to all other contributing causes."

Section 5. Section 39-71-601, MCA, is amended to read:

"39-71-601. Statute of limitation on presentment of claim -- waiver. (1) In case of personal injury or death, all claims must be forever barred unless signed by the claimant or the claimant's representative and presented in writing to the employer, the insurer, or the department, as the case may be, within 12 months from the date of the happening of the accident, either by the claimant or someone legally authorized to act for-him-in-his on the claimant's behalf.

(2) The department may waive the time requirement up to an additional ~~24~~ 12 ~~24~~ months only upon a reasonable showing by the claimant of:

(a) ~~--lack-of-knowledge-of-disability;~~

(b) ~~--latent-injury;--or~~

1 (c):

2 (A) LACK OF KNOWLEDGE OF DISABILITY;

3 (B) LATENT INJURY; OR

4 (C) equitable estoppel."

5 **Section 6.** Section 39-71-701, MCA, is amended to read:

6 "39-71-701. Compensation for temporary total disability
7 -- exception. (1) Subject to the limitation in 39-71-736 and
8 subsection SUBSECTIONS (4) AND (5) of this section, a worker
9 is eligible for temporary total disability benefits when the
10 worker suffers a total loss of wages as a result of an
11 injury and until the worker reaches maximum healing.

12 (2) The determination of temporary total disability
13 must be supported by a preponderance of objective medical
14 evidence findings.

15 (3) Weekly compensation benefits for injury producing
16 temporary total disability ~~shall be~~ are 66 2/3% of the wages
17 received at the time of the injury. The maximum weekly
18 compensation benefits may not exceed the state's average
19 weekly wage at the time of injury. Temporary total
20 disability benefits must be paid for the duration of the
21 worker's temporary disability. The weekly benefit amount may
22 not be adjusted for cost of living as provided in
23 39-71-702(5).

24 (4) IF THE TREATING PHYSICIAN RELEASES A WORKER TO
25 RETURN TO THE SAME POSITION, THE WORKER IS NO LONGER

1 ELIGIBLE FOR TEMPORARY TOTAL DISABILITY BENEFITS, REGARDLESS
2 OF AVAILABILITY OF EMPLOYMENT.

3 (4)(5) If the treating physician releases a worker to
4 return to the ~~same position regardless of availability of~~
5 ~~employment or to the same~~, a modified, or an alternative
6 position that the individual is able and qualified to
7 perform with the same employer at an equivalent or higher
8 wage than he the individual received at the time of injury,
9 the worker is no longer eligible for temporary total
10 disability benefits even though he the individual has not
11 reached maximum healing. A worker requalifies for temporary
12 total disability benefits if the modified or alternative
13 position is no longer available for any reason to the worker
14 and the worker continues to be temporarily totally disabled,
15 as defined in 39-71-116.

16 (5)(6) In cases where it is determined that periodic
17 disability benefits granted by the Social Security Act are
18 payable because of the injury, the weekly benefits payable
19 under this section are reduced, but not below zero, by an
20 amount equal, as nearly as practical, to one-half the
21 federal periodic benefits for such week, which amount is to
22 be calculated from the date of the disability social
23 security entitlement.

24 (6)(7) IF the claimant is awarded social security
25 benefits, the insurer may, upon notification of the

claimant's receipt of social security benefits, suspend biweekly compensation benefits for a period sufficient to recover any resulting overpayment of benefits. This subsection does not prevent a claimant and insurer from agreeing to a repayment plan.

~~(6)(7) Notwithstanding subsection (3), beginning July 1, 1987, through June 30, 1991, weekly compensation benefits for temporary total disability may not exceed the state's average weekly wage of \$299 established July 1, 1986. If a worker, after reaching maximum medical healing, at a later date again claims temporary total disability benefits, the entitlement must be established by written objective medical findings that contain sufficient historical information concerning the cause of the disability."~~

Section 7. Section 39-71-702, MCA, is amended to read:

"39-71-702. Compensation for permanent total disability. (1) If a worker is no longer temporarily totally disabled and is permanently totally disabled, as defined in 39-71-116, the worker is eligible for permanent total disability benefits. Permanent total disability benefits must be paid for the duration of the worker's permanent total disability, subject to 39-71-710.

(2) The determination of permanent total disability must be supported by a preponderance of objective medical evidence findings, as determined after a vocational

rehabilitation evaluation.

(3) Weekly compensation benefits for an injury resulting in permanent total disability ~~shall be~~ are $66 \frac{2}{3}\%$ of the wages received at the time of the injury. The maximum weekly compensation benefits ~~shall~~ may not exceed the state's average weekly wage at the time of injury.

(4) In cases where it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for such the week, which amount is to be calculated from the date of the disability social security entitlement.

(5) A worker's benefit amount must be adjusted for a cost-of-living increase on the next July 1 after 104 weeks of permanent total disability benefits have been paid and on each succeeding July 1. A worker may not receive more than 10 such adjustments. The adjustment must be the percentage increase, if any, in the state's average weekly wage as adopted by the department over the state's average weekly wage adopted for the previous year or 3%, whichever is less.

~~(6) Notwithstanding subsection (3), beginning July 1, 1987, through June 30, 1991, the maximum weekly compensation benefits for permanent total disability may not exceed the~~

~~state's average weekly wage of \$299 established July 1, 1986. If the claimant is awarded social security benefits, the insurer may, upon notification of the claimant's receipt of social security benefits, suspend biweekly compensation benefits for a period sufficient to recover any resulting overpayment of benefits. This subsection does not prevent a claimant and insurer from agreeing to a repayment plan."~~

Section 8. Section 39-71-703, MCA, is amended to read:

"39-71-703. Compensation for permanent partial disability. (1) ~~if an~~ An injured worker suffers a permanent partial disability and is no longer entitled to temporary total or permanent total disability benefits, the worker is entitled to a permanent partial disability award if that worker:

(a) suffers a permanent partial disability supported by objective medical findings; and

(b) has an impairment rating of more than zero as determined by the latest edition of the American medical association's Guides to the Evaluation of Permanent Impairment and if the basis of any part of the impairment rendered is supported by objective medical findings.

(2) In instances in which a preexisting condition is aggravated by a compensable injury, the impairment rating used in calculating an award under this section may include only the additional impairment caused by the compensable

injury.

~~(2)(3)~~ The permanent partial disability award must be arrived at by multiplying the percentage arrived at through the calculation provided in subsection ~~(3)(4)~~ by 350 weeks.

~~(3)(4)~~ An award granted an injured worker may not exceed a permanent partial disability rating of 100%. The criteria for the rating of disability must be calculated using the medical impairment rating as determined by the latest edition of the American medical association Guides to the Evaluation of Permanent Impairment. The percentage to be used in subsection ~~(2)(3)~~ must be determined by adding the following applicable percentages to the impairment rating:

(a) if the claimant is 30 years of age or younger at the time of injury, 0%; if the claimant is over 30 years of age but under 56 years of age at the time of injury, 2%; and if the claimant is 56 years of age or older at the time of injury, 3%;

(b) for a worker who has completed less than 9 years of education, 3%; for a worker who has completed 9 through 12 years of education or who has received a graduate equivalency diploma, 2%; for a worker who has completed more than 12 years of education, 0%;

(c) if a worker has no wage loss as a result of the industrial injury, 0%; if a worker has an actual wage loss of \$2 or less an hour as a result of the industrial injury,

1 10%; if a worker has an actual wage loss of more than \$2 an
2 hour as a result of the industrial injury, 20%; and

3 (d) if a worker, at the time of the injury, was
4 performing heavy labor activity and after the injury the
5 worker can perform only light or sedentary labor activity,
6 20%; if a worker, at the time of injury, was performing
7 heavy labor activity and after the injury the worker can
8 perform only medium labor activity, 15%; if a worker was
9 performing medium labor activity at the time of the injury
10 and after the injury the worker can perform only light or
11 sedentary labor activity, 10%.

12 ~~†4†~~(5) The weekly benefit rate for permanent partial
13 disability is 66 2/3% of the wages received at the time of
14 injury, but the rate may not exceed one-half the state's
15 average weekly wage. The weekly benefit amount established
16 for an injured worker may not be changed by a subsequent
17 adjustment in the state's average weekly wage for future
18 fiscal years.

19 ~~†5†~~(6) If a worker suffers a subsequent compensable
20 injury ~~or injuries to the same part of the body~~ OR INJURIES
21 TO THE SAME PART OF THE BODY, the award payable for the
22 subsequent injury may not duplicate any amounts paid for the
23 previous injury or injuries and the worker may not receive
24 more than a total of 350 weeks of permanent partial
25 disability benefits regardless of the number of injuries or

1 ~~parts--of--the--body--injured.~~ The department shall make
2 available to insurers information regarding the number of
3 weeks of permanent partial disability benefits paid a
4 claimant on injuries occurring after July 1, 1993.

5 ~~†6†~~(7) As used in this section:

6 (a) "heavy labor activity" means the ability to lift
7 over 50 pounds occasionally or up to 50 pounds frequently;

8 (b) "medium labor activity" means the ability to lift
9 up to 50 pounds occasionally or up to 25 pounds frequently;

10 (c) "light labor activity" means the ability to lift up
11 to 25 pounds occasionally or up to 10 pounds frequently; and

12 (d) "sedentary labor activity" means the ability to
13 lift up to 10 pounds occasionally or up to 5 pounds
14 frequently."

15 **Section 9.** Section 39-71-710, MCA, is amended to read:

16 **"39-71-710. Termination of benefits upon retirement.**

17 (1) If a claimant is receiving disability or rehabilitation
18 compensation benefits and the claimant receives social
19 security retirement benefits, or is eligible to receive full
20 social security retirement benefits, or receives retirement
21 benefits from a retirement plan that is in lieu of social
22 security retirement benefits, the claimant is considered to
23 be retired. When the claimant is considered retired, the
24 liability of the insurer is ended for payment of wage
25 supplement, permanent partial disability benefits, permanent

1 total disability benefits, and rehabilitation compensation
 2 benefits. However, the insurer remains liable for temporary
 3 total disability benefits, ~~any impairment award~~, ANY
 4 IMPAIRMENT AWARD, and medical benefits.

5 (2) If a claimant who is eligible to receive social
 6 security retirement benefits and is gainfully employed
 7 suffers a work-related injury, the insurer retains liability
 8 for temporary total disability benefits, any impairment
 9 award, and medical benefits."

10 **Section 10.** Section 39-71-711, MCA, is amended to read:

11 "39-71-711. Impairment evaluation -- ratings. (1) An
 12 impairment rating:

13 (a) is a purely medical determination and must be
 14 determined by an impairment evaluator after a claimant has
 15 reached maximum healing;

16 (b) must be based on the current edition of the Guides
 17 to Evaluation of Permanent Impairment published by the
 18 American medical association; and

19 (c) must be expressed as a percentage of the whole
 20 person; and

21 (d) must be based only upon objective medical findings
 22 attributable to the compensable injury.

23 (2) A claimant or insurer, or both, may obtain an
 24 impairment rating from an evaluator who is a medical doctor
 25 or from an evaluator who is a chiropractor if the injury

1 falls within the scope of chiropractic practice. If the
 2 claimant and insurer cannot agree upon the rating, the
 3 mediation procedure in part 24 of this chapter must be
 4 followed.

5 (3) An evaluator must be a physician licensed under
 6 Title 37, chapter 3, except if the claimant's treating
 7 physician is a chiropractor, the evaluator may be a
 8 chiropractor who is certified as an evaluator under chapter
 9 12.

10 (4) Disputes over impairment ratings are not subject to
 11 39-71-605."

12 ~~Section 11. Section 39-71-741, MCA, is amended to read:~~

13 ~~"39-71-741. Compromise --- settlements --- and --- lump-sum~~
 14 ~~payments: (i) (a) Benefits may be converted in whole to a~~
 15 ~~lump-sum:~~

16 ~~(i) if a claimant and an insurer dispute the initial~~
 17 ~~compensability of an injury; and~~

18 ~~(ii) if the claimant and insurer agree to a settlement;~~

19 ~~(b) The agreement is subject to department approval.~~
 20 ~~The department may disapprove an agreement under this~~
 21 ~~section only if there is not a reasonable dispute over~~
 22 ~~compensability;~~

23 ~~(c) Upon approval, the agreement constitutes a~~
 24 ~~compromise and release settlement and may not be reopened by~~
 25 ~~the department.~~

{2}--(a)--If--an--insurer--has--accepted--initial--liability for--an--injury,--permanent--partial--disability--benefits--may--be converted--in--whole--or--in--part--to--a--lump--sum--payment.

{b}--The--total--of--any--lump--sum--conversion--in--part--that is--awarded--to--a--claimant--prior--to--the--claimant's--final--award may--not--exceed--the--anticipated--award--under--39-71-703--or \$20,000,--whichever--is--less.

{c}--An--agreement--is--subject--to--department--approval. The department--may--disapprove--an--agreement--only--if--the department--determines--that--the--settlement--amount--is inadequate--if--disapproved,--the--department--shall--set--forth in--detail--the--reasons--for--disapproval.

{d}--Upon--approval,--the--agreement--constitutes--a compromise--and--release--settlement--and--may--not--be--reopened--by the--department.

{3}--A--lump--sum--payment--under--subsection--(2)--must--be discounted--at--the--average--rate--for--United--States--10--year treasury--bills--in--the--previous--calendar--year,--rounded--to--the nearest--whole--number--or--7%,--whichever--is--greater.

{3}{4}--Permanent--total--disability--benefits--may--be converted--in--whole--or--in--part--to--a--lump--sum. The--total--of all--lump--sum--conversions--in--part--that--are--awarded--to--a claimant--may--not--exceed--\$20,000. A--conversion--may--be--made only--upon--the--written--application--of--the--injured--worker--with the--concurrence--of--the--insurer. Approval--of--the--lump--sum

payment--rests--in--the--discretion--of--the--department. The approval--or--award--of--a--lump--sum--payment--by--the--department--or court--must--be--the--exception--it--may--be--given--only--if--the worker--has--demonstrated--financial--need--that:

{a}--relates--to:

{i}--the--necessities--of--life;

{ii}--an--accumulation--of--debt--incurred--prior--to--the injury;--or

{iii}--a--self--employment--venture--that--is--considered feasible--under--criteria--set--forth--by--the--department;--or

{b}--arises--subsequent--to--the--date--of--injury--or--arises because--of--reduced--income--as--a--result--of--the--injury.

{4}{5}--Any--lump--sum--conversion--of--benefits--under subsection--(3){4}--must--be--converted--to--present--value--using the--rate--prescribed--under--subsection--(5){b}{6}{b}.

{5}{6}--(a)--An--insurer--may--recoup--any--lump--sum--payment amortized--at--the--rate--established--by--the--department, prorated--biweekly--over--the--projected--duration--of--the compensation--period.

{b}--The--rate--adopted--by--the--department--must--be--based--on the--average--rate--for--United--States--10--year--treasury--bills--in the--previous--calendar--year,--rounded--to--the--nearest--whole number--or--7%,--whichever--is--greater.

{c}--If--the--projected--compensation--period--is--the claimant's--lifetime,--the--life--expectancy--must--be--determined

1 by--using--the--most--recent--table--of--life--expectancy--as
2 published--by--the--United--States--national--center--for--health
3 statistics:

4 {6}{7}--Subject-to-the-other-provisions-of-this-section,
5 the--department--has--full--power,--authority,--and--jurisdiction
6 to--allow,--approve,--or--condition--compromise--settlements--for
7 any--type--of--benefits--provided--for--under--this--chapter--or
8 lump-sum-payments--agreed-to-by--workers--and--insurers,--All
9 such--compromise--settlements--and--lump-sum-payments--are--void
10 without--the--approval--of--the--department,--Approval--by--the
11 department--must--be--in--writing,--The--department--shall--directly
12 notify--a--claimant--of--a--department--order--approving--or--denying
13 a--claimant's--compromise--or--lump-sum--payment:

14 {7}{8}--A--dispute--between--a--claimant--and--an--insurer
15 regarding--the--conversion--of--biweekly--payments--into--a
16 lump-sum--is--considered--a--dispute,--for--which--a--mediator--and
17 the--workers'--compensation--court--have--jurisdiction--to--make--a
18 determination,--if--an--insurer--and--a--claimant--agree--to--a
19 compromise--and--release--settlement--or--a--lump-sum--payment--but
20 the--department--disapproves--the--agreement,--the--parties--may
21 request--the--workers'--compensation--court--to--review--the
22 department's--decision:"

23 Section 11. Section 39-71-744, MCA, is amended to read:

24 "39-71-744. Benefits not due while claimant is
25 incarcerated. A claimant is not eligible for any disability

1 or rehabilitation compensation benefits while the claimant
2 is incarcerated as the result of conviction of a felony or
3 is incarcerated for AS A RESULT OF A CONVICTION OF a
4 misdemeanor in a county jail for a period exceeding 30 days.
5 The insurer remains liable for medical benefits. No A time
6 limit on benefits otherwise provided in this chapter is not
7 extended due to a period of incarceration."

8 Section 13. Section 39-71-1011, MCA, is amended to--
9 read:

10 "39-71-1011. Definitions. As used in this chapter, the
11 following definitions apply:

12 {1}--"Board-of-rehabilitation-certification"--means--the
13 nonprofit,--independent,--fee-structured-organization--that--is
14 a-member-of-the-national-commission--for--health--certifying
15 agencies--and--that--is--established--to--certify--rehabilitation
16 practitioners:

17 {2}--"Disabled-worker"--means--one--who--has--a--medically
18 determined--restriction,--established--by--objective-medical
19 findings,--resulting--from--a--work-related--injury--that
20 precludes--the--worker--from--returning--to--the--job--the--worker
21 held-at-the-time-of-the--injury,--and--for--whom--on-the-job
22 training,--education,--or--training-is-necessary--to--provide--the
23 worker-with-the-capability-to-return-to-work:

24 {3}--"Rehabilitation-benefits"--means--benefits--provided
25 in 39-71-1003, 39-71-1025, section 16, and 39-71-2001.

(4)--"Rehabilitation plan"--means--an--individualized--plan to--assist--a--disabled--worker--in--acquiring--skills--or--aptitudes to--return--to--work--through--job--placement,--on--the--job training,--education,--or--training,--or--specialized--job modification;

(5)--"Rehabilitation provider"--means--a--rehabilitation counselor--certified--by--the--board--for--rehabilitation certification--and--designated--by--the--insurer--to--the department--or--a--department--of--social--and--rehabilitation services--counselor--when--a--worker--has--been--certified--by--the department--of--social--and--rehabilitation--services--under 39-71-1003;

(6)--"Rehabilitation services"--consists--of--a--program--of evaluation,--planning,--and--delivery--of--goods--and--services--to assist--a--disabled--worker--to--return--to--work;

(7)--(a)--"Worker's--job--pool"--means--those--jobs--the claimant--is--capable--of--performing,--consistent--with--the worker's--age,--education,--vocational--experience,--and--aptitude and--compatible--with--the--worker's--physical--capacities--and limitations--as--the--result--of--the--worker's--injury,--lack--of immediate--job--openings--is--not--a--factor--to--be--considered--in determining--a--worker's--job--pool;

(b)--(i)--A--worker's--job--pool--may--be--either--local--or statewide;

(ii)--A--local--job--pool--is--the--Montana--job--service--office

area--that--includes--the--worker's--residence;

(iii)--A--statewide--job--pool--is--the--state--of--Montana--or the--state--in--which--the--worker--resides."

NEW SECTION. Section 14.--Rehabilitation--goal--and-- options--(1)--The--goal--of--rehabilitation--services--is--to return--a--permanently--injured--worker--to--work--with--a--minimum of--retraining--and--as--soon--as--possible--after--an--injury occurs;

(2)--Whenever--possible,--employment--in--a--worker's--local job--pool--must--be--considered--and--selected--prior--to consideration--of--employment--in--a--worker's--statewide--job pool;

NEW SECTION. Section 15.--Designation--of--rehabilitation-- provider--and--eligibility--for--rehabilitation--benefits--(1)--An insurer--shall--designate--a--vocational--rehabilitation--provider for--all--workers--who--suffer--permanent--partial--disability--or permanent--total--disability,--as--defined--in--39-71-116,--by following--the--provisions--in--39-71-1014--for--disabled--workers;

(2)--The--designated--rehabilitation--provider--shall evaluate--and--determine--the--return--to--work--capabilities--of the--worker;

(3)--If--a--worker--is--capable--of--returning--to--work--in--the worker's--local--or--in--the--statewide--job--pool,--further rehabilitation--services--or--benefits--are--not--required--to--be furnished--by--the--insurer--except--as--provided--in--section--16;

(4) If a worker is not capable of returning to work without on-the-job training, a short-term retraining program of 12 months or less or a long-term retraining program of up to 104 weeks and rehabilitation benefits and services must be provided pursuant to a rehabilitation plan.

(5) The provisions of 39-71-1032 also apply to cooperation with a rehabilitation provider under section 16 and this section.

~~NEW SECTION:~~ **Section 16.** Job placement benefits. (1) A worker is eligible for job placement benefits if:

(a) the worker has not returned to work, and

(b) the worker has the capability to return to work but has a medically determined restriction resulting from a work-related injury that precludes the worker from returning to the job the worker held at the time of the injury.

(2) If the worker is entitled to job placement benefits, a vocational rehabilitation provider shall assist the worker in actively seeking employment and the worker is to receive weekly benefits not to exceed 8 weeks at the temporary total disability rate.

Section 12. Section 39-71-2001, MCA, is amended to read:

"39-71-2001. Rehabilitation benefits. (1) ~~Except as provided in subsection (5),~~ An injured ~~a disabled~~ AN INJURED worker is eligible for rehabilitation benefits if:

(a) the injury results in permanent partial disability or permanent total disability as defined in 39-71-116 the worker has not returned to work THE INJURY RESULTS IN PERMANENT PARTIAL DISABILITY OR PERMANENT TOTAL DISABILITY AS DEFINED IN 39-71-116;

(b) a physician certifies that the injured worker is physically unable to work at the job the worker held at the time of the injury;

(B) A PHYSICIAN CERTIFIES THAT THE INJURED WORKER IS PHYSICALLY UNABLE TO WORK AT THE JOB THE WORKER HELD AT THE TIME OF THE INJURY;

~~(c)~~ (b) (C) a rehabilitation plan completed by a rehabilitation provider and designated by the insurer certifies that the injured worker has reasonable vocational goals and a reemployment and wage potential with rehabilitation. The plan must take into consideration the worker's age, education, training, work history, residual physical capacities, and vocational interests.

~~(d)~~ (c) (D) a rehabilitation plan between the injured worker and the insurer BETWEEN THE INJURED WORKER AND THE INSURER is filed with the department. If the plan calls for the expenditure of funds under 39-71-1004, the department shall authorize the department of social and rehabilitation services to use the funds.

(2) Prior to the filing of the rehabilitation plan,

rehabilitation--benefits--at--the--injured--worker's--temporary
total--disability--rate--are--payable--to--a--disabled--worker--by
the--insurer--but--are--not--deductible--from--the--benefits
provided--in--subsection--(3):

(2)(3)(2) After filing the rehabilitation plan with the department, the injured disabled INJURED worker is entitled to receive rehabilitation benefits at the injured worker's temporary total disability rate. The benefits must be paid for the period specified in the rehabilitation plan, not to exceed 104 weeks. Rehabilitation benefits must be paid during a reasonable period, not to exceed 10 weeks, while the worker is waiting to begin the agreed-upon AGREED-UPON rehabilitation plan. Rehabilitation benefits must be paid biweekly while the worker is satisfactorily completing the agreed-upon rehabilitation plan.

(3)--if--the--rehabilitation--plan--provides--for--job
placement--a--vocational--rehabilitation--provider--shall--assist
the--worker--in--obtaining--other--employment--and--the--worker--is
entitled--to--weekly--benefits--for--a--period--not--to--exceed--8
weeks--at--the--worker's--temporary--total--disability--rate--if--
after--receiving--benefits--under--this--subsection--the--worker
decides--to--proceed--with--a--rehabilitation--plan--the--weeks--in
which--benefits--were--paid--under--this--subsection--may--not--be
credited--against--the--maximum--of--104--weeks--of--rehabilitation
benefits--provided--in--this--section:

(4)--if--there--is--a--dispute--as--to--whether--an--injured
worker--can--return--to--the--job--the--worker--held--at--the--time--of
injury--the--insurer--shall--designate--a--rehabilitation
provider--to--evaluate--and--determine--whether--the--worker--can
return--to--the--job--held--at--the--time--of--injury--if--it--is
determined--that--he--the--worker--cannot--the--worker--is--entitled
to--rehabilitation--benefits--and--services--as--provided--in
subsection--(2):

(3) IF THE REHABILITATION PLAN PROVIDES FOR JOB
PLACEMENT, A VOCATIONAL REHABILITATION PROVIDER SHALL ASSIST
THE WORKER IN OBTAINING OTHER EMPLOYMENT AND THE WORKER IS
ENTITLED TO WEEKLY BENEFITS FOR A PERIOD NOT TO EXCEED 8
WEEKS AT THE WORKER'S TEMPORARY TOTAL DISABILITY RATE. IF,
AFTER RECEIVING BENEFITS UNDER THIS SUBSECTION, THE WORKER
DECIDES TO PROCEED WITH A REHABILITATION PLAN, THE WEEKS IN
WHICH BENEFITS WERE PAID UNDER THIS SUBSECTION MAY NOT BE
CREDITED AGAINST THE MAXIMUM OF 104 WEEKS OF REHABILITATION
BENEFITS PROVIDED IN THIS SECTION.

(4) IF THERE IS A DISPUTE AS TO WHETHER AN INJURED
WORKER CAN RETURN TO THE JOB THE WORKER HELD AT THE TIME OF
INJURY, THE INSURER SHALL DESIGNATE A REHABILITATION
PROVIDER TO EVALUATE AND DETERMINE WHETHER THE WORKER CAN
RETURN TO THE JOB HELD AT THE TIME OF INJURY. IF IT IS
DETERMINED THAT THE WORKER CANNOT, THE WORKER IS ENTITLED TO
REHABILITATION BENEFITS AND SERVICES AS PROVIDED IN

1 SUBSECTION (2).

2 ~~+5+~~~~4~~~~(5)~~ A worker may not receive temporary total or
3 biweekly permanent partial disability benefits and
4 rehabilitation benefits during the same period of time.

5 ~~+6+~~~~5~~~~(6)~~ The rehabilitation provider, as authorized by
6 the insurer, shall continue to work with and assist the
7 injured worker until the rehabilitation plan is completed.

8 ~~+6~~~~(7)~~ Unless a worker becomes a disabled worker within
9 1 year of reaching maximum medical improvement, a worker is
10 not eligible for rehabilitation benefits through a
11 rehabilitation plan."

12 **Section 13.** Section 39-71-721, MCA, is amended to read:

13 "39-71-721. Compensation for injury causing death --
14 limitation. (1) (a) If an injured employee dies and the
15 injury was the proximate cause of such death, then the
16 beneficiary of the deceased is entitled to the same
17 compensation as though the death occurred immediately
18 following the injury. A beneficiary's eligibility for
19 benefits commences after the date of death, and the benefit
20 level is established as set forth in subsection (2).

21 (b) The insurer is entitled to recover any overpayments
22 or compensation paid in a lump sum to a worker prior to
23 death but not yet recouped. The insurer shall recover such
24 payments from the beneficiary's biweekly payments as
25 provided in 39-71-741~~+5+~~~~6~~~~(5)~~.

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

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

15 (4) If the decedent leaves no beneficiary as defined in
16 39-71-116, a lump-sum payment of \$3,000 must be paid to the
17 decedent's surviving parent or parents.

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

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

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

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

SECTION 14. SECTION 39-71-606, MCA, IS AMENDED TO READ:

"39-71-606. Insurer to accept or deny claim within thirty days of receipt -- NOTICE OF BENEFITS AND ENTITLEMENTS TO CLAIMANTS -- notice of denial -- notice of reopening -- notice to employer. (1) Every insurer under any plan for the payment of workers' compensation benefits shall, within 30 days of receipt of a claim for compensation, either accept or deny the claim, and if denied shall inform the claimant and the department in writing of such denial.

(2) THE DEPARTMENT SHALL MAKE AVAILABLE TO INSURERS FOR DISTRIBUTION TO CLAIMANTS SUFFICIENT COPIES OF A DOCUMENT

DESCRIBING CURRENT BENEFITS AND ENTITLEMENTS AVAILABLE UNDER TITLE 39, CHAPTER 71. UPON RECEIPT OF A CLAIM, EACH INSURER SHALL PROMPTLY NOTIFY THE CLAIMANT IN WRITING OF POTENTIAL BENEFITS AND ENTITLEMENTS AVAILABLE BY PROVIDING THE CLAIMANT A COPY OF THE DOCUMENT PREPARED BY THE DEPARTMENT.

{2}{3} Every insurer under any plan for the payment of workers' compensation benefits shall notify the employer of the reopening of the claim within 14 days of the reopening of a claim for the purpose of paying compensation benefits.

{2}{3}{4} Upon the request of an employer it insures, an insurer shall notify the employer of all compensation benefits that are ongoing and are being charged against that employer's account."

NEW SECTION. Section 15. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION--Section 20--Codification----instruction--{Sections-14-through-16}--are--intended--to--be--codified--as--an--integral--part--of--Title--39--chapter--71--part--10--and--the--provisions--of--Title--39--chapter--71--part--10--apply--to--{sections-14-through-16}--

NEW SECTION. Section 16. Effective date. [This act] is

HB 0361/03

1 effective July 1, 1993.

-End-