

HOUSE BILL NO. 622

INTRODUCED BY EWER, HARP

IN THE HOUSE

FEBRUARY 13, 1993	INTRODUCED AND REFERRED TO SELECT COMMITTEE ON WORKERS' COMPENSATION.  FIRST READING.
MARCH 13, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.  ON MOTION, REREFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
MARCH 20, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
MARCH 23, 1993	PRINTING REPORT.
MARCH 24, 1993	SECOND READING, DO PASS.
MARCH 25, 1993	ENGROSSING REPORT.  THIRD READING, PASSED. AYES, 98; NOES, 0.  TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 26, 1993	INTRODUCED AND REFERRED TO SELECT COMMITTEE ON WORKERS' COMPENSATION.  FIRST READING.
APRIL 8, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
APRIL 12, 1993	SECOND READING, CONCURRED IN AS AMENDED.
APRIL 13, 1993	ON MOTION, TAKEN FROM THIRD READING AND PLACED ON THIRD READING ON 82ND LEGISLATIVE DAY.
APRIL 14, 1993	THIRD READING, CONCURRED IN.

AYES, 46; NOES, 3.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 15, 1993

SECOND READING, AMENDMENTS NOT  
CONCURRED IN.

ON MOTION, FREE CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 19, 1993

ON MOTION, FREE CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

APRIL 22, 1993

FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 22, 1993

SECOND READING, FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

THIRD READING, FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

APRIL 23, 1993

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 622  
2 INTRODUCED BY Sen. HARP  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING  
5 WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LAWS;  
6 PROVIDING FOR SUSPENSION OF BENEFITS TO A WORKER WHO FAILS  
7 TO KEEP MEDICAL APPOINTMENTS; AUTHORIZING SETTLEMENTS FOR  
8 FUTURE MEDICAL BENEFITS; REVISING REHABILITATION BENEFITS  
9 REQUIREMENTS; DESIGNATING LIABILITY FOR OCCUPATIONAL DISEASE  
10 BENEFITS IF THERE IS MORE THAN ONE INSURER; REVISING  
11 BENEFITS WHEN OCCUPATIONAL DISEASE IS AGGRAVATED BY  
12 NONCOMPENSABLE DISEASE OR INFIRMITY; REQUIRING NONRESIDENT  
13 EMPLOYERS TO OBTAIN IN-STATE COVERAGE OR PAY THE DIFFERENCE  
14 IN PREMIUMS; PROVIDING FOR FINES FOR EMPLOYER MISCONDUCT;  
15 CREATING A MEDICAL PANEL AND PROCEDURES FOR HANDLING  
16 PREEXISTING INJURY DISPUTES; CREATING TEMPORARY PARTIAL  
17 DISABILITY BENEFITS; REQUIRING EMPLOYERS TO REPORT NEW  
18 EMPLOYEES TO THE INSURER AND DEPARTMENT WITHIN 72 HOURS OF  
19 THE FIRST PAYDAY AFTER HIRING; REVISING ELIGIBILITY  
20 REQUIREMENTS TO SELF-INSURE; AMENDING SECTIONS 39-71-116,  
21 39-71-307, 39-71-407, 39-71-604, 39-71-605, 39-71-607,  
22 39-71-741, 39-71-2001, 39-71-2101, 39-72-303, AND 39-72-706,  
23 MCA; AND REPEALING SECTION 39-71-402, MCA."  
24  
25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:



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

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

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

6 (e) a parent who is dependent upon the decedent for  
7 support at the time of the injury if no a beneficiary, as  
8 defined in subsections (3)(a) through (3)(d), exists does  
9 not exist; and

10 (f) a brother or sister under the age of 18 years if  
11 dependent upon the decedent for support at the time of the  
12 injury but only until the age of 18 years and only when no a  
13 beneficiary, as defined in subsections (3)(a) through  
14 (3)(e), exists does not exist.

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

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

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

1 professionals, salesmen salespersons, estimators, or any  
2 other related employment that is not directly involved on a  
3 regular basis in the provision of physical labor at a  
4 construction or renovation site.

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

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

9 (9) "Fiscal year" means the period of time between July  
10 1 and the succeeding June 30.

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

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

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

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

24 (14) "Payroll", "annual payroll", or "annual payroll for  
25 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~~ must 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) "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) "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~~ does not have a reasonable prospect of physically performing regular employment. 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) 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) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over ~~such~~ the place of business for the purpose of carrying on ~~his~~ the employer's usual trade, business, or occupation.

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

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

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

(22) "Temporary partial disability" means a condition

1 resulting from an injury as defined in 39-71-119, covering  
 2 the period after an injured worker returns to work in the  
 3 same, modified, or alternative employment and before the  
 4 worker has reached maximum healing.

5 {22}{23} "Temporary service contractor" means any  
 6 person, firm, association, or corporation conducting  
 7 business that employs individuals directly for the purpose  
 8 of furnishing the services of those individuals on a  
 9 part-time or temporary basis to others.

10 {23}{24} "Temporary total disability" means a condition  
 11 resulting from an injury as defined in this chapter that  
 12 results in total loss of wages and exists until the injured  
 13 worker reaches maximum healing.

14 {24}{25} "Temporary worker" means a worker whose  
 15 services are furnished to another on a part-time or  
 16 temporary basis to substitute for a permanent employee on  
 17 leave or to meet an emergency or short-term workload.

18 {25}{26} "Year", unless otherwise specified, means  
 19 calendar year."

20 **Section 2.** Section 39-71-307, MCA, is amended to read:

21 "39-71-307. Employers and insurers to file reports of  
 22 accidents -- penalty. (1) Every employer and every insurer  
 23 is required to file with the department, under department  
 24 rules, a full and complete report of every accident to an  
 25 employee arising out of or in the course of his employment

1 and resulting in loss of life or injury to the employee. The  
 2 reports must be furnished to the department in the form and  
 3 detail as the department prescribes and must provide  
 4 specific answers to all questions required by the department  
 5 under its rules. However, if an employer is unable to answer  
 6 a question, he the employer shall state the reason he--is  
 7 unable for the employer's inability to answer.

8 (2) Every insurer transacting business under this  
 9 chapter shall, at the time and in the manner prescribed by  
 10 the department, make and file with the department the  
 11 reports of accidents as the department requires.

12 (3) An employer, insurer, or adjuster who refuses or  
 13 neglects to submit to the department reports necessary for  
 14 the proper filing and review of a claim, as provided in  
 15 subsection (1), may shall be assessed a penalty of not less  
 16 than \$200 or more than \$500 for each offense. The department  
 17 shall assess and collect the penalty. An insurer may contest  
 18 a penalty assessment in a hearing conducted according to  
 19 department rules."

20 **Section 3.** Section 39-71-407, MCA, is amended to read:

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

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

3 (2) (a) An insurer is liable for an injury as defined  
 4 in 39-71-119 if the claimant establishes it is more probable  
 5 than not that:

6 (i) a claimed injury has occurred; or

7 (ii) a claimed injury aggravated a preexisting  
 8 condition.

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

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

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

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

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

24 (4) An employee is not eligible for benefits otherwise  
 25 payable under this chapter if ~~the employee's use of alcohol~~

1 ~~or drugs not prescribed by a physician is the sole and~~  
 2 ~~exclusive cause of the injury or death. However, if the~~  
 3 ~~employer had knowledge of and failed to attempt to stop the~~  
 4 ~~employee's use of alcohol or drugs, this subsection does not~~  
 5 ~~apply if it is medically determined that the employee's use of~~  
 6 ~~alcohol or nonprescription drugs was an influencing factor~~  
 7 ~~in the cause of the injury or death.~~

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

13 (6) If a preexisting condition is aggravated by any  
 14 other condition, disease, or infirmity not itself  
 15 compensable or if disability or death from any other cause  
 16 not itself compensable is aggravated, prolonged,  
 17 accelerated, or in any way contributed to by an injury as  
 18 defined in 39-71-119, the compensation and medical benefits  
 19 payable under this chapter must be reduced and limited to  
 20 the proportion of the disability or death resulting from the  
 21 injury.

22 (7) If a claimant's compensation is proportionally  
 23 reduced as provided in subsection (6) and the claimant  
 24 receives social security disability benefits, any offset  
 25 that an insurer may be entitled to must be reduced in the

1 same proportion as the claimant's compensation was reduced  
 2 for as long as the claimant receives the social security  
 3 disability benefits."

4 **Section 4.** Section 39-71-604, MCA, is amended to read:

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

16 (2) Workers applying for compensation for an injury or  
 17 occupational disease shall allow the insurer or the  
 18 insurer's designated agent direct access to medical service  
 19 providers, medical information, and the injured worker.  
 20 Failure to comply with this subsection will result in  
 21 termination of benefits.

22 ~~†2†~~(3) If death results from an injury, the parties  
 23 entitled to compensation or someone in their behalf shall  
 24 file a claim with the insurer. The claim must be accompanied  
 25 with proof of death and proof of relationship, showing the

1 parties entitled to compensation, certificate of the  
 2 attending physician, if any, and such other proof as may be  
 3 required by the department."

4 **Section 5.** Section 39-71-605, MCA, is amended to read:

5 "39-71-605. Examination of employee by physician --  
 6 effect of refusal to submit to examination -- report and  
 7 testimony of physician -- cost. (1) (a) Whenever in case of  
 8 injury the right to compensation under this chapter would  
 9 exist in favor of any employee, he the employee shall, upon  
 10 the written request of the insurer, submit from time to time  
 11 to examination by a physician or panel of physicians, who  
 12 ~~shall~~ must be provided and paid for by such the insurer, and  
 13 shall likewise submit to examination from time to time by  
 14 any physician or panel of physicians selected by the  
 15 department.

16 (b) The request or order for such an examination ~~shall~~  
 17 must fix a time and place for the examination, with regard  
 18 for the employee's convenience, ~~his~~ physical condition, and  
 19 ~~his~~ ability to attend at the time and place that is as close  
 20 to the employee's residence as is practical. The employee  
 21 ~~shall-be~~ is entitled to have a physician present at any such  
 22 examination. ~~So-long-as~~ If the employee, after such written  
 23 request, ~~shall-fail~~ fails or refuses to submit to  
 24 such the examination or ~~shall~~ in any way obstructs  
 25 the same examination, his the employee's right to



1 compensation ~~shall~~ must be suspended and is subject to the  
 2 provisions of 39-71-607. Any physician or panel of  
 3 physicians employed by the insurer or the department who  
 4 ~~shall-make~~ makes or be is present at any such examination  
 5 may be required to testify as to the results thereof of the  
 6 examination.

7 (2) In the event of a dispute concerning the physical  
 8 condition of a claimant or the cause or causes of the injury  
 9 or disability, if any, the department, at the request of the  
 10 claimant or insurer, as the case may be, shall require the  
 11 claimant to submit to such an examination as it ~~may--deem~~  
 12 considers desirable by a physician or panel of physicians  
 13 within the state or elsewhere who have had adequate and  
 14 substantial experience in the particular field of medicine  
 15 concerned with the matters presented by the dispute. The  
 16 physician or panel of physicians making the examination  
 17 shall file a written report of findings with the claimant  
 18 and insurer for their use in the determination of the  
 19 controversy involved. The requesting party shall pay the  
 20 physician or panel of physicians for the examination.

21 (3) This section does not apply to impairment  
 22 evaluations provided for in 39-71-711."

23 **Section 6.** Section 39-71-607, MCA, is amended to read:

24 "39-71-607. Suspension of payments by insurer up to  
 25 thirty days pending receipt of medical information. Under

1 rules adopted by the department ~~and-in-the-discretion-of-the~~  
 2 ~~department,~~ an insurer may suspend compensation payments for  
 3 not more than 30 days pending the receipt of medical  
 4 information when an injured worker unreasonably fails to  
 5 keep scheduled medical appointments. If, after a medical  
 6 examination, the injured worker is released to return to  
 7 work, the worker forfeits the right to any suspended  
 8 benefits."

9 **Section 7.** Section 39-71-741, MCA, is amended to read:

10 "39-71-741. ~~Compromise settlements and lump-sum~~  
 11 ~~payments.~~ (1) (a) Benefits may be converted in whole to a  
 12 lump sum:

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

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

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

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

23 (2) (a) If an insurer has accepted initial liability  
 24 for an injury, permanent partial disability benefits may be  
 25 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) 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) Any lump-sum conversion of benefits under subsection (3) must be converted to present value using the rate prescribed under subsection (5)(b).

(5) (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.

(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) 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,

including the right to future medical benefits, or for 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) 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.

(8) An injured worker's entitlement to future medical benefits may be terminated by mutual consent of the worker and the insurer, subject to department approval. The department may not disapprove an agreement unless it determines that the worker has not been fully compensated for terminating the worker's right to future medical benefits."

**Section 8.** Section 39-71-2001, MCA, is amended to read:

**"39-71-2001. Rehabilitation benefits.** (1) 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;

(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) 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) 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) After filing the rehabilitation plan with the department, the 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

1 is waiting to begin the agreed-upon rehabilitation plan.  
 2 Rehabilitation benefits must be paid while the worker is  
 3 satisfactorily completing the agreed-upon rehabilitation  
 4 plan.

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

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

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

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

4 (7) Upon receipt of notification of acceptance of a  
 5 claim by an insurer, the department shall notify the  
 6 claimant in writing of potential benefits and entitlements  
 7 pursuant to 39-71-1014, 39-71-1025, 39-71-1032, and this  
 8 section.

9 (8) The rehabilitation benefits referred to in this  
 10 section are applicable only with the actual provision of the  
 11 services and may not be negotiated as aspects of a  
 12 settlement.

13 (9) Rehabilitation benefits under this section must be  
 14 elected within 12 months of the date of maximum medical  
 15 improvement or they are forfeited."

16 **Section 9.** Section 39-72-303, MCA, is amended to read:

17 "39-72-303. Which employer liable. (1) Where  
 18 compensation is payable for an occupational disease, the  
 19 only employer liable ~~shall--be~~ is the employer in whose  
 20 employment the employee was last injuriously exposed to the  
 21 hazard of such the disease.

22 (2) When there is more than one insurer and only one  
 23 employer at the time the employee was injuriously exposed to  
 24 the hazard of the disease, the liability rests with the  
 25 insurer providing coverage at the earlier of:

(a) the time the occupational disease was first diagnosed by an attending physician, consulting physician, or medical panel; or

(b) the time the employee knew or should have known that the condition was the result of an occupational disease.

(2)(3) In the case of pneumoconiosis, any coal mine operator who has acquired a mine in the state or substantially all of the assets thereof of a mine from a person who was an operator of such the mine on or after December 30, 1969, is liable for and must shall secure the payment of all benefits which that would have been payable by that person with respect to miners previously employed in such the mine if acquisition had not occurred and that person had continued to operate such the mine, and the prior operator of such the mine shall is not be relieved of any liability under this section."

**Section 10.** Section 39-72-706, MCA, is amended to read:

"39-72-706. **Aggravation.** (1) If an occupational disease is aggravated by any other disease or infirmity not itself compensable or if disability or death from any other cause not itself compensable is aggravated, prolonged, accelerated, or in any way contributed to by an occupational disease, the compensation and medical benefits payable under this chapter must be reduced and limited to such the

proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death ~~as--such--occupational--disease--as-a causative-factor-bears-to-all-the-causes-of-such--disability or-death.~~

(2) If compensation is reduced a proportionate amount as provided in subsection (1) and the worker receives disability social security benefits, the offset entitlement granted to the insurer must be reduced in the same proportionate amount as the compensation and medical benefits as long as the worker continues to receive disability social security benefits."

**NEW SECTION. Section 11.** Requirement of state coverage for nonresident employers. (1) Beginning July 1, 1993, nonresident employers shall provide workers' compensation coverage under plan No. 1, 2, or 3 or, in the alternative, shall deposit with the department a nonrefundable amount of money equal to the difference between the premium paid out-of-state by the nonresident and the premium the nonresident would pay in Montana if the premium in Montana is higher than the out-of-state premium rate.

(2) Beginning July 1, 1993, a nonresident employer shall verify with the department, prior to commencing to do business in this state, that the nonresident employer has obtained workers' compensation under one of this state's

coverage plans or shall deposit any money due pursuant to subsection (1). The department may monitor the activities of a nonresident employer on a regular basis to ensure that proper coverage is in effect.

(3) The department shall deposit the money collected pursuant to subsection (1) in the uninsured employers' fund provided for in 39-71-502.

**NEW SECTION. Section 12. Employer misconduct.** The department shall fine an employer convicted under 45-7-501 an amount equal to ten times any amount that the department determines the employer wrongfully withheld in not obtaining workers' compensation coverage or in not obtaining the proper workers' compensation coverage. The department shall deposit the money collected pursuant to this section in the uninsured employers' account provided for in 39-71-502.

**NEW SECTION. Section 13. Medical panel for preexisting conditions.** (1) The department shall create a list of physicians to serve on an industrial injury medical panel. The physicians must be nominated by the board of medical examiners and must be certified or eligible for certification in a specialty relevant to the medical issue to be examined by the panel pursuant to this section.

(2) If a dispute exists between a claimant and an employer regarding the extent of liability for the aggravation of a preexisting condition as the result of an

injury and a settlement cannot be reached, the following procedure must be followed:

(a) The department shall direct the claimant to a member of the medical panel for examination. The panel member must be provided with all relevant medical records, including the findings of independent medical examinations. The panel member shall determine as a percentage the amount of apportionment, if any, assignable to any other noncompensable disease, condition, or infirmity. The department shall forward a copy of the report to the claimant and employer. The party requesting the examination shall pay for the cost of the examination.

(b) Either party may, within 20 days of receipt of the report and at the party's expense, request that the claimant be examined by a second panel member to be selected by the department. The second panel member shall conduct an examination of the claimant and submit a report regarding apportionment with respect to any preexisting condition. The department shall forward copies of the report to the parties.

(c) If a second report is requested, the department shall appoint a third panel member and the two reporting members to review the two reports and to issue a report establishing the amount of apportionment to be assigned to any preexisting condition. The three panel members may

consult with the claimant's attending physician or any independent medical examiner.

(d) If a second examination is not requested, the department shall issue its order determining the percentage of apportionment assigned to any other noncompensable disease, condition, or infirmity, based on the report of the first examining panel member. If a second examination is requested, the department shall base its order on the report of the three panel members. The report of the three members is prima facie evidence of the matters contained in the report.

**NEW SECTION. Section 14. Temporary partial disability benefits.** (1) If, prior to maximum healing, an injured worker is medically approved to return to the same, modified, or alternative employment that the worker is able and qualified to perform and the worker suffers an actual wage loss as a result of a temporary work restriction, the worker qualifies for temporary partial disability benefits.

(2) Weekly compensation benefits for temporary partial disability must be the difference between the injured worker's hourly wage received at the time of the injury, subject to a maximum of 40 hours a week, and the actual weekly wages earned during the period that the claimant is temporarily partially disabled.

(3) Temporary partial disability benefits are limited

to a total of 26 weeks of combined weekly compensation or are payable until the time the worker is no longer temporarily partially disabled, whichever occurs first.

(4) The amount of temporary partial disability benefits must be based upon payroll records provided by the employer and calculated on a biweekly basis. The combined wages and compensation benefits may not exceed the worker's average weekly wage at the time of injury.

(5) Temporary partial disability may not be considered an element of permanent partial disability and may not be credited against any permanent impairment or any permanent partial disability award or settlement achieved after the injured worker reaches maximum healing.

**NEW SECTION. Section 15. Reporting new employees.** Any employer operating in this state shall report any new employees hired to work in this state and the work classification of those employees to the employer's insurer and the department within 72 hours of the first regularly scheduled payday after hiring the employee.

**Section 16.** Section 39-71-2101, MCA, is amended to read:

"39-71-2101. General requirements for electing coverage under plan. (1) An employer may elect to be bound by compensation plan No. 1 upon furnishing satisfactory proof to the department and the Montana self-insurers guaranty

fund of his solvency and financial ability to pay the compensation and benefits provided for in this chapter ~~provided-for~~ and to discharge all liabilities which that are reasonably likely to be incurred by him during the fiscal year for which such the election is effective, and The employer may, by order of the department and with the concurrence of the guaranty fund, make such the payments directly to his employees as they may become entitled to receive payments under the terms and conditions of this chapter.

(2) Employers who comply with the provisions of this chapter and who are participating in collectively bargained, jointly administered Taft-Hartley trust funds are eligible to provide self-insured workers' compensation benefits for their employees."

**NEW SECTION. Section 17. Repealer.** Section 39-71-402, MCA, is repealed.

**NEW SECTION. Section 18. Codification instruction.** (1) [Sections 11, 12, and 15] are intended to be codified as an integral part of Title 39, chapter 71, part 3, and the provisions of Title 39, chapter 71, part 3, apply to [sections 11, 12, and 15].

(2) [Sections 13 and 14] are intended to be codified as an integral part of Title 39, chapter 71, part 7, and the provisions of Title 39, chapter 71, part 7, apply to

[sections 13 and 14].

-End-



STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0622, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising workers' compensation and occupational disease laws; providing for suspension of benefits to a worker who fails to keep medical appointments; authorizing settlements for future medical benefits; revising rehabilitation benefits requirements; designating liability for occupational disease benefits if there is more than one insurer; revising benefits when occupational disease is aggravated by noncompensable disease or infirmity; requiring nonresident employers to obtain in-state coverage or pay the difference in premiums; providing for fines for employers misconduct; creating a medical panel and procedures for handling preexisting injury disputes; creating temporary partial disability benefits; requiring employers to report new employees to the insurer and Department within 72 hours of the first payday after hiring; revising eligibility requirements to self-insure.

ASSUMPTIONS:

Department of Labor and Industry:

1. 1.00 FTE mediator (grade 16) will be required to meet the additional mediation workload created by the proposed sections 39-71-407(6) and (7), 39-71-604(2), 39-71-605(1b), 39-71-607, 39-71-741(6) and (8), and 39-72-303.
2. 0.50 FTE claims examiner (grade 13) will be required for additional workload created by the proposed section 2(3) and section 8, 39-71-2001(7).
3. 1.00 FTE program officer (grade 14) for ERD Policy Compliance unit to meet the increased workload created by the proposed new section 11 and 39-71-2101. Work for this position would focus on Plan 1 approvals and renewals, and to handle the pre-existing conditions panel process.
4. 1.00 FTE statistical technician (grade 9) for data entry of information that new section 15 requires.
5. Costs would be funded from assessments to workers' compensation carriers.

State Compensation Mutual Insurance Fund:

1. In order to determine the fiscal impact to the State Fund as a result of this bill an actuarial study would be necessary; however, due to the time constraints a study cannot be accomplished for the fiscal note.
2. A portion of the costs incurred by the Department of Labor and Industry would be assessed to the State Fund. It is assumed that 65% of costs would be assessed to the State Fund.

(continued)

 2-20-93

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

2/22/93  
DAVID EWER, PRIMARY SPONSOR      DATE

Fiscal Note for HB0622, as introduced

HB 622

FISCAL IMPACT:

DLI Employment Relations Div. (Pg 04):

	FY '94			FY '95		
<u>Expenditures:</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	60.55	64.05	3.50	60.55	64.05	3.50
Personal Services	1,813,414	1,915,184	101,770	1,817,143	1,920,593	103,450
Operating Expenses	943,410	988,669	45,259	926,413	965,472	39,059
Equipment	87,020	105,020	18,000	87,020	87,020	0
Benefits	<u>1,628,827</u>	<u>1,628,827</u>	<u>0</u>	<u>1,769,827</u>	<u>1,769,827</u>	<u>0</u>
Total	4,472,671	4,637,700	165,029	4,600,403	4,742,912	142,509
<u>Funding:</u>						
General Fund	348,118	348,118	0	319,589	319,589	0
State Special Revenue	1,723,306	1,888,335	165,029	1,722,779	1,865,288	142,509
Federal Revenue	635,365	635,365	0	632,662	632,662	0
Proprietary Revenue	<u>1,765,882</u>	<u>1,765,882</u>	<u>0</u>	<u>1,925,373</u>	<u>1,925,373</u>	<u>0</u>
Total	4,472,671	4,637,700	165,029	4,600,403	4,742,912	142,509
<u>Revenues:</u>						
WC Assessments (02)	3,197,368	3,362,397	165,029	3,199,373	3,341,882	142,509

State Compensation Mutual Insurance Fund:

Expenditures:

Medical benefits in proportion to preexisting conditions (section 3) are likely to substantially reduce medical claims expenditures. In the absence of an actuarial analysis, the total net effect of the proposed legislation with respect to claims expenditures is unknown. Workers' compensation assessments would increase by approximately \$79,200 in FY94 and \$71,700 in FY95.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Local governments which self-insure for workers' compensation coverage would incur additional workers' compensation assessments from the Department of Labor.

APPROVED BY THE SELECT COMMITTEE  
ON WORKER'S COMPENSATION

HOUSE BILL NO. 622

INTRODUCED BY EWER, HARP

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LAWS; PROVIDING FOR SUSPENSION OF BENEFITS TO A WORKER WHO FAILS TO KEEP MEDICAL APPOINTMENTS; AUTHORIZING SETTLEMENTS FOR FUTURE MEDICAL BENEFITS; REVISING REHABILITATION BENEFITS REQUIREMENTS; DESIGNATING LIABILITY FOR OCCUPATIONAL DISEASE BENEFITS IF THERE IS MORE THAN ONE INSURER; REVISING BENEFITS WHEN OCCUPATIONAL DISEASE IS AGGRAVATED BY NONCOMPENSABLE DISEASE OR INFIRMITY; ~~REQUIRING--NONRESIDENT EMPLOYERS--TO--OBTAIN--IN--STATE--COVERAGE--OR--PAY--THE--DIFFERENCE--IN--PREMIUMS;--PROVIDING--FOR--FINES--FOR--EMPLOYER--MISCONDUCT;~~ CREATING A MEDICAL PANEL AND PROCEDURES FOR HANDLING PREEXISTING INJURY DISPUTES; CREATING TEMPORARY PARTIAL DISABILITY BENEFITS; ~~REQUIRING--EMPLOYERS--TO--REPORT--NEW EMPLOYEES--TO--THE--INSURER--AND--DEPARTMENT--WITHIN--72--HOURS--OF--THE--FIRST--PAYDAY--AFTER--HIRING;~~ REVISING ELIGIBILITY REQUIREMENTS TO SELF-INSURE; ALLOWING CERTAIN OPTIONAL DEDUCTIBLES TO POLICYHOLDERS; REQUIRING SUSPENSION, REVOCATION, OR DENIAL OF A PROFESSIONAL OR OCCUPATIONAL LICENSE FOR VIOLATION OF THE WORKERS' COMPENSATION LAW; REVISING THE DEFINITION OF UNPROFESSIONAL CONDUCT; PROHIBITING CERTAIN ACTIONS; PRECLUDING LIABILITY FOR

REPORTING VIOLATIONS OF THE WORKERS' COMPENSATION LAW; ALLOWING AUGMENTATION OF TEMPORARY TOTAL DISABILITY BENEFITS WITH SICK LEAVE AND VACATION LEAVE; REQUIRING THE STATE FUND BOARD TO ADOPT AN ANNUAL BUSINESS PLAN; AMENDING SECTIONS 37-1-131, 37-3-322, 37-6-310, 37-10-311, 37-12-321, 37-14-321, 39-71-116, 39-71-307, 39-71-407, 39-71-604, 39-71-316, 39-71-605, 39-71-607, 39-71-736, 39-71-741, 39-71-2001, 39-71-2101, 39-71-2315, AND 39-72-303, AND 39-72-706, MCA; AND REPEALING--SECTION--39-71-407--MCA 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,

1 vocational rehabilitation, and legal services.

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

8 (3) "Beneficiary" means:

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

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

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

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

18 (e) a parent who is dependent upon the decedent for  
19 support at the time of the injury if no a beneficiary, as  
20 defined in subsections (3)(a) through (3)(d), exists does  
21 not exist; and

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

1 (3)(e), exists does not exist.

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

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

7 (6) "Construction industry" means the major group of  
8 general contractors and operative builders, heavy  
9 construction (other than building construction) contractors,  
10 and special trade contractors, listed in major groups 15  
11 through 17 in the 1987 Standard Industrial Classification  
12 Manual. The term does not include office workers, design  
13 professionals, ~~salesmen~~ salespersons, estimators, or any  
14 other related employment that is not directly involved on a  
15 regular basis in the provision of physical labor at a  
16 construction or renovation site.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (19) "Public corporation" means the state or any county,

municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

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

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

(22) "Temporary partial disability" means a condition resulting from an injury as defined in 39-71-119, covering the period after an injured worker returns to work in the same, modified, or alternative employment and before the worker has reached maximum healing IN WHICH A WORKER, PRIOR TO MAXIMUM HEALING:

(A) IS TEMPORARILY UNABLE TO RETURN TO THE POSITION HELD AT THE TIME OF INJURY BECAUSE OF A MEDICALLY DETERMINED PHYSICAL RESTRICTION;

(B) RETURNS TO WORK IN A MODIFIED OR ALTERNATIVE EMPLOYMENT; AND

(C) SUFFERS A PARTIAL WAGE LOSS.

~~(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 39-71-307, MCA, is amended to read:

"39-71-307. Employers and insurers to file reports of accidents -- penalty. (1) Every employer and every insurer is required to file with the department, under department rules, a full and complete report of every accident to an employee arising out of or in the course of his employment and resulting in loss of life or injury to the employee. The reports must be furnished to the department in the form and detail as the department prescribes and must provide specific answers to all questions required by the department under its rules. However, if an employer is unable to answer a question, he the employer shall state the reason ~~he is~~

1 ~~unable for the employer's inability to answer.~~

2 (2) Every insurer transacting business under this  
3 chapter shall, at the time and in the manner prescribed by  
4 the department, make and file with the department the  
5 reports of accidents as the department requires.

6 (3) An employer, insurer, or adjuster who refuses or  
7 neglects to submit to the department reports necessary for  
8 the proper filing and review of a claim, as provided in  
9 subsection (1), may shall be assessed a penalty of not less  
10 than \$200 or more than \$500 for each offense. The department  
11 shall assess and collect the penalty. An insurer may contest  
12 a penalty assessment in a hearing conducted according to  
13 department rules."

14 Section 3:--Section 39-71-407, MCA, is amended to read:

15 "39-71-407. --liability of insurers-- --limitations-- (1)  
16 Every--insurer-is-liaable-for-the-payment-of-compensation, in  
17 the-manner-and-to-the-extent-hereinafter--provided in--this  
18 section,--to--an--employee--of--an--employer--it-insures-who  
19 receives-an-injury-arising-out-of-and-in-the-course--of--his  
20 employment--or,--in--the--case--of--his--death-from-such the  
21 injury,--to-his the-employee's beneficiaries,--if-any.

22 (2)--(a)--An-insurer-is-liaable-for-an-injury--as--defined  
23 in-39-71-119-if-the-claimant-establishes-it-is-more-probable  
24 than-not-that:

25 (i)--a-claimed-injury-has-occurred,--or

1 (ii)--a---claimed---injury---aggravated---a---preexisting  
2 condition;

3 (b)--Proof-that-it-was-medically-possible-that-a-claimed  
4 injury-occurred-or-that-such the claimed-injury-aggravated-a  
5 preexisting---condition---is--not--sufficient--to--establish  
6 liability;

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

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

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

16 (b)--the--travel--is-required-by-the-employer-as-part-of  
17 the-employee's-job-duties;

18 (4)--An-employee-is-not-eligible-for-benefits--otherwise  
19 payable--under-this-chapter-if-the-employee's-use-of-alcohol  
20 or-drugs-not-prescribed-by--a--physician--is--the--sole--and  
21 exclusive--cause--of--the--injury--or-death. However,--if-the  
22 employer-had-knowledge-of-and-failed-to-attempt-to-stop--the  
23 employee's-use-of-alcohol-or-drugs,--this-subsection-does-not  
24 apply it-is-medically-determined-that-the-employee's-use-of  
25 alcohol-or-nonprescription-drugs-was-an--influencing--factor

in the cause of the injury or death:

(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) If a preexisting condition is aggravated by any other condition, disease, or infirmity not itself compensable or if disability or death from any other cause not itself compensable is aggravated, prolonged, accelerated, or in any way contributed to by an injury as defined in 39-71-119, the compensation and medical benefits payable under this chapter must be reduced and limited to the proportion of the disability or death resulting from the injury.

(7) If a claimant's compensation is proportionally reduced as provided in subsection (6) and the claimant receives social security disability benefits, any offset that an insurer may be entitled to must be reduced in the same proportion as the claimant's compensation was reduced for as long as the claimant receives the social security disability benefits."

Section 4. Section 39-71-604, MCA, is amended to read:

"39-71-604. Application for compensation: (1) If a worker is entitled to benefits under this chapter, the

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

(2) Workers applying for compensation for an injury or occupational disease shall allow the insurer or the insurer's designated agent direct access to medical service providers, medical information, and the injured worker. Failure to comply with this subsection will result in termination of benefits.

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

**Section 3.** Section 39-71-605, MCA, is amended to read:

"39-71-605. Examination of employee by physician -- effect of refusal to submit to examination -- report and



1 testimony of physician -- cost. (1) (a) Whenever in case of  
 2 injury the right to compensation under this chapter would  
 3 exist in favor of any employee, he the employee shall, upon  
 4 the written request of the insurer, submit from time to time  
 5 to examination by a physician or panel of physicians, who  
 6 ~~shall~~ must be provided and paid for by ~~such~~ the insurer, and  
 7 shall likewise submit to examination from time to time by  
 8 any physician or panel of physicians selected by the  
 9 department.

10 (b) The request or order for ~~such an~~ an examination ~~shall~~  
 11 must fix a time and place for the examination, with regard  
 12 for the employee's convenience, his physical condition, and  
 13 his ability to attend at the time and place that is as close  
 14 to the employee's residence as is practical. The employee  
 15 ~~shall-be~~ is entitled to have a physician present at any such  
 16 examination. ~~So-long-as~~ If the employee, after such written  
 17 request, ~~shall--fail~~ fails or ~~refuse~~ refuses to submit to  
 18 ~~such the~~ the examination or ~~shall~~ in any way ~~obstruct~~ obstructs  
 19 the same examination, his ~~the~~ employee's right to  
 20 compensation ~~shall must~~ be suspended and is subject to the  
 21 provisions of 39-71-607. Any physician or panel of  
 22 physicians employed by the insurer or the department who  
 23 ~~shall--make~~ makes or ~~be is~~ is present at any such examination  
 24 may be required to testify as to the results thereof of the  
 25 examination.

1 (2) In the event of a dispute concerning the physical  
 2 condition of a claimant or the cause or causes of the injury  
 3 or disability, if any, the department, at the request of the  
 4 claimant or insurer, as the case may be, shall require the  
 5 claimant to submit to ~~such an~~ an examination as it ~~may-deem~~  
 6 considers desirable by a physician or panel of physicians  
 7 within the state or elsewhere who have had adequate and  
 8 substantial experience in the particular field of medicine  
 9 concerned with the matters presented by the dispute. The  
 10 physician or panel of physicians making the examination  
 11 shall file a written report of findings with the claimant  
 12 and insurer for their use in the determination of the  
 13 controversy involved. The requesting party shall pay the  
 14 physician or panel of physicians for the examination.

15 (3) This section does not apply to impairment  
 16 evaluations provided for in 39-71-711."

17 **Section 4.** Section 39-71-607, MCA, is amended to read:

18 "39-71-607. Suspension of payments by insurer up-to  
 19 thirty-days pending receipt of medical information. Under  
 20 rules adopted by the department and-in-the-discretion-of-the  
 21 department, an insurer may suspend compensation payments for  
 22 not--more--than--30--days pending the receipt of medical  
 23 information when an injured worker unreasonably fails to  
 24 keep scheduled medical appointments. If, after a medical  
 25 examination, the injured worker is released to return to

1 work, the worker forfeits the right to any suspended  
2 benefits."

3 **Section 5.** Section 39-71-741, MCA, is amended to read:

4 "39-71-741. Compromise settlements and lump-sum  
5 payments. (1) (a) Benefits may be converted in whole to a  
6 lump sum:

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

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

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

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

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

20 (b) The total of any lump-sum conversion in part that  
21 is awarded to a claimant prior to the claimant's final award  
22 may not exceed the anticipated award under 39-71-703 or  
23 \$20,000, whichever is less.

24 (c) An agreement is subject to department approval. The  
25 department may disapprove an agreement only if the

1 department determines that the settlement amount is  
2 inadequate. If disapproved, the department shall set forth  
3 in detail the reasons for disapproval.

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

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

17 (a) relates to:

18 (i) the necessities of life;

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

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

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

25 (4) Any lump-sum conversion of benefits under

subsection (3) must be converted to present value using the rate prescribed under subsection (5)(b).

(5) (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.

(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) 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, including the right to future medical benefits, or for 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) 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.

~~(8) An injured worker's entitlement to future medical benefits may be terminated by mutual consent of the worker and the insurer, subject to department approval. The department may not disapprove an agreement unless it determines that the worker has not been fully compensated for terminating the worker's right to future medical benefits.~~

**Section 6.** Section 39-71-2001, MCA, is amended to read:

**"39-71-2001. Rehabilitation benefits.** (1) 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;

(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;

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

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

13 (2) After filing the rehabilitation plan with the  
 14 department, the injured worker is entitled to receive  
 15 rehabilitation benefits at the injured worker's temporary  
 16 total disability rate. The benefits must be paid for the  
 17 period specified in the rehabilitation plan, not to exceed  
 18 104 weeks. Rehabilitation benefits must be paid during a  
 19 reasonable period, not to exceed 10 weeks, while the worker  
 20 is waiting to begin the agreed-upon rehabilitation plan.  
 21 Rehabilitation benefits must be paid BIWEEKLY while the  
 22 worker is satisfactorily completing the agreed-upon  
 23 rehabilitation plan AND ARE NOT SUBJECT TO THE LUMP-SUM  
 24 PAYMENT PROVISIONS OF 39-71-741.

25 (3) If the rehabilitation plan provides for job

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

10 (4) If there is a dispute as to whether an injured  
 11 worker can return to the job the worker held at the time of  
 12 injury, the insurer shall designate a rehabilitation  
 13 provider to evaluate and determine whether the worker can  
 14 return to the job held at the time of injury. If it is  
 15 determined that he the worker cannot return to the job HELD  
 16 AT THE TIME OF INJURY, the worker is entitled to  
 17 rehabilitation benefits and services as provided in  
 18 subsection (2).

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

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

25 (7) Upon receipt of notification of acceptance of a

claim by an insurer, the department shall notify the claimant in writing of ~~potential benefits and entitlements~~ THE SERVICES AND BENEFITS AVAILABLE pursuant to 39-71-1014, 39-71-1025, 39-71-1032, and this section THE VOCATIONAL REHABILITATION PROVISIONS OF THE WORKERS' COMPENSATION ACT.

~~(8) The rehabilitation benefits referred to in this section are applicable only with the actual provision of the services and may not be negotiated as aspects of a settlement.~~

~~(9) Rehabilitation benefits under this section must be elected within 12 months of the date of maximum medical improvement or they are forfeited.~~

**Section 7.** Section 39-72-303, MCA, is amended to read:

"39-72-303. Which employer liable. (1) Where compensation is payable for an occupational disease, the only employer liable shall be is the employer in whose employment the employee was last injuriously exposed to the hazard of such the disease.

(2) When there is more than one insurer and only one employer at the time the employee was injuriously exposed to the hazard of the disease, the liability rests with the insurer providing coverage at the earlier of:

(a) the time the occupational disease was first diagnosed by an attending A TREATING physician, consulting physician, or medical panel; or

(b) the time the employee knew or should have known that the condition was the result of an occupational disease.

(2)(3) In the case of pneumoconiosis, any coal mine operator who has acquired a mine in the state or substantially all of the assets thereof of a mine from a person who was an operator of such the mine on or after December 30, 1969, is liable for and must shall secure the payment of all benefits which that would have been payable by that person with respect to miners previously employed in such the mine if acquisition had not occurred and that person had continued to operate such the mine, and the prior operator of such the mine shall is not be relieved of any liability under this section."

Section 10. Section 39-72-706, MCA, is amended to read:

"39-72-706. Aggravation. (1) If an occupational disease is aggravated by any other disease or infirmity not itself compensable or if disability or death from any other cause not itself compensable is aggravated, prolonged, accelerated, or in any way contributed to by an occupational disease, the compensation and medical benefits payable under this chapter must be reduced and limited to such the proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death as such occupational disease as a

causative factor bears to all the causes of such disability or death.

(2) If compensation is reduced a proportionate amount as provided in subsection (1) and the worker receives disability social security benefits, the offset entitlement granted to the insurer must be reduced in the same proportionate amount as the compensation and medical benefits as long as the worker continues to receive disability social security benefits.

NEW SECTION. Section 11. Requirement of state coverage for nonresident employers. (1) Beginning July 1, 1993, nonresident employers shall provide workers' compensation coverage under plan No. 1, 2, or 3 or, in the alternative, shall deposit with the department a nonrefundable amount of money equal to the difference between the premium paid out of state by the nonresident and the premium the nonresident would pay in Montana if the premium in Montana is higher than the out-of-state premium rate.

(2) Beginning July 1, 1993, a nonresident employer shall verify with the department prior to commencing to do business in this state that the nonresident employer has obtained workers' compensation under one of this state's coverage plans or shall deposit any money due pursuant to subsection (1). The department may monitor the activities of a nonresident employer on a regular basis to ensure that

proper coverage is in effect.

(3) The department shall deposit the money collected pursuant to subsection (1) in the uninsured employers' fund provided for in 39-71-502.

NEW SECTION. Section 12. Employer misconduct. The department shall fine an employer convicted under 45-7-501 an amount equal to ten times any amount that the department determines the employer wrongfully withheld in not obtaining workers' compensation coverage or in not obtaining the proper workers' compensation coverage. The department shall deposit the money collected pursuant to this section in the uninsured employers' account provided for in 39-71-502.

NEW SECTION. Section 8. Medical panel for preexisting conditions. (1) The department shall create a list of physicians to serve on an industrial injury medical panel. The physicians must be nominated by the board of medical examiners and must be certified or eligible for certification in a specialty relevant to the medical issue to be examined by the panel pursuant to this section.

(2) If a dispute exists between a claimant and an employer regarding the extent of liability for the aggravation of a preexisting condition as the result of an injury and a settlement cannot be reached, the following procedure must be followed:

(a) The department shall direct the claimant to a

1 member of the medical panel for examination. The panel  
 2 member must be provided with all relevant medical records,  
 3 including the findings of independent medical examinations.  
 4 The panel member shall determine as a percentage the amount  
 5 of apportionment, if any, assignable to any other  
 6 noncompensable disease, condition, or infirmity. The  
 7 department shall forward a copy of the report to the  
 8 claimant and employer. The party requesting the examination  
 9 shall pay for the cost of the examination.

10 (b) Either party may, within 20 days of receipt of the  
 11 report and at the party's expense, request that the claimant  
 12 be examined by a second panel member to be selected by the  
 13 department. The second panel member shall conduct an  
 14 examination of the claimant and submit a report regarding  
 15 apportionment with respect to any preexisting condition. The  
 16 department shall forward copies of the report to the  
 17 parties.

18 (c) If a second report is requested, the department  
 19 shall appoint a third panel member and the two reporting  
 20 members to review the two reports and to issue a report  
 21 establishing the amount of apportionment to be assigned to  
 22 any preexisting condition. The three panel members may  
 23 consult with the claimant's attending physician or any  
 24 independent medical examiner.

25 (d) If a second examination is not requested, the

1 department shall issue its order determining the percentage  
 2 of apportionment assigned to any other noncompensable  
 3 disease, condition, or infirmity, based on the report of the  
 4 first examining panel member. If a second examination is  
 5 requested, the department shall base its order on the report  
 6 of the three panel members. The report of the three members  
 7 is prima facie evidence of the matters contained in the  
 8 report.

9 NEW SECTION. Section 9. Temporary partial disability  
 10 benefits. (1) If, prior to maximum healing, an injured  
 11 worker is--medically HAS A PHYSICAL RESTRICTION, AS  
 12 DETERMINED BY OBJECTIVE MEDICAL FINDINGS, AND IS approved to  
 13 return to the--same, A modified, or alternative employment  
 14 that the worker is able and qualified to perform and the  
 15 worker suffers an actual wage loss as a result of a  
 16 temporary work restriction, the worker qualifies for  
 17 temporary partial disability benefits.

18 (2) Weekly compensation benefits for temporary partial  
 19 disability must be the difference between the injured  
 20 worker's hourly AVERAGE WEEKLY wage received at the time of  
 21 the injury, subject to a maximum of 40 hours a week, and the  
 22 actual weekly wages earned during the period that the  
 23 claimant is temporarily partially disabled, NOT TO EXCEED  
 24 THE STATE'S AVERAGE WEEKLY WAGE AT THE TIME OF INJURY.

25 (3) Temporary partial disability benefits are limited

to a total of 26 weeks of combined weekly compensation or are payable until the time the worker is no longer temporarily partially disabled, whichever occurs first.

(4) The amount of temporary partial disability benefits must be based upon payroll records provided by the employer and calculated on a biweekly basis. The combined wages and compensation benefits may not exceed the worker's average weekly wage at the time of injury.

(4) A WORKER REQUALIFIES FOR TEMPORARY TOTAL DISABILITY BENEFITS IF THE MODIFIED POSITION IS NO LONGER AVAILABLE TO THE WORKER AND THE WORKER CONTINUES TO BE TEMPORARILY TOTALLY DISABLED AS DEFINED IN 39-71-116.

(5) Temporary partial disability may not be considered an element of permanent partial disability and may not be credited against any permanent impairment or any permanent partial disability award or settlement achieved after the injured worker reaches maximum healing.

~~NEW SECTION. Section 15. Reporting new employees. Any employer operating in this state shall report any new employees hired to work in this state and the work classification of those employees to the employer's insurer and the department within 72 hours of the first regularly scheduled payday after hiring the employee.~~

**Section 10.** Section 39-71-2101, MCA, is amended to read:

**39-71-2101. General requirements for electing coverage under plan. (1)** An employer may elect to be bound by compensation plan No. 1 upon furnishing satisfactory proof to the department and the Montana self-insurers guaranty fund of his solvency and financial ability to pay the compensation and benefits provided for in this chapter provided for and to discharge all liabilities which that are reasonably likely to be incurred by him during the fiscal year for which such the election is effective. and The employer may, by order of the department and with the concurrence of the guaranty fund, make such the payments directly to his employees as they may become entitled to receive payments under the terms and conditions of this chapter.

(2) Employers who comply with the provisions of this chapter and who are participating in collectively bargained, jointly administered Taft-Hartley trust funds are eligible to provide self-insured workers' compensation benefits for their employees."

~~NEW SECTION. Section 17. Repealer. Section 39-71-402, MCA, is repealed.~~

**NEW SECTION. SECTION 11. WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE -- OPTIONAL DEDUCTIBLES. (1)** AN INSURER ISSUING A WORKERS' COMPENSATION OR AN EMPLOYER'S LIABILITY INSURANCE POLICY MAY OFFER TO THE POLICYHOLDER, AS



1 PART OF THE POLICY OR BY ENDORSEMENT, OPTIONAL DEDUCTIBLES  
 2 FOR BENEFITS PAYABLE UNDER THE POLICY CONSISTENT WITH THE  
 3 STANDARDS CONTAINED IN SUBSECTION (3).

4 (2) A RATING ORGANIZATION MAY DEVELOP AND FILE A  
 5 DEDUCTIBLE PLAN OR PLANS ON BEHALF OF ITS MEMBERS CONSISTENT  
 6 WITH THE STANDARDS CONTAINED IN SUBSECTION (3).

7 (3) THE COMMISSIONER OF INSURANCE SHALL APPROVE A  
 8 DEDUCTIBLE PLAN THAT IS IN ACCORDANCE WITH THE FOLLOWING  
 9 STANDARDS:

10 (A) CLAIMANTS' RIGHTS ARE PROPERLY PROTECTED AND  
 11 CLAIMANTS' BENEFITS ARE PAID WITHOUT REGARD TO THE  
 12 DEDUCTIBLE.

13 (B) PREMIUM REDUCTIONS REFLECT THE TYPE AND LEVEL OF  
 14 THE DEDUCTIBLE, CONSISTENT WITH ACCEPTED ACTUARIAL  
 15 STANDARDS.

16 (C) PREMIUM REDUCTIONS FOR DEDUCTIBLES ARE DETERMINED  
 17 BEFORE APPLICATION OF ANY EXPERIENCE MODIFICATION, PREMIUM  
 18 SURCHARGE, OR PREMIUM DISCOUNT.

19 (D) RECOGNITION IS GIVEN TO POLICYHOLDER  
 20 CHARACTERISTICS, INCLUDING BUT NOT LIMITED TO SIZE,  
 21 FINANCIAL CAPABILITIES, NATURE OF ACTIVITIES, AND NUMBER OF  
 22 EMPLOYEES.

23 (E) THE POLICYHOLDER IS LIABLE TO THE INSURER FOR THE  
 24 DEDUCTIBLE AMOUNT IN REGARD TO BENEFITS PAID FOR COMPENSABLE  
 25 CLAIMS.

1 (F) THE INSURER PAYS ALL OF THE DEDUCTIBLE AMOUNT  
 2 APPLICABLE TO A COMPENSABLE CLAIM TO THE PERSON OR PROVIDER  
 3 ENTITLED TO BENEFITS AND THEN SEEKS REIMBURSEMENT FROM THE  
 4 POLICYHOLDER FOR THE APPLICABLE DEDUCTIBLE AMOUNT.

5 (G) FAILURE BY THE POLICYHOLDER TO REIMBURSE DEDUCTIBLE  
 6 AMOUNTS TO THE INSURER IS TREATED UNDER THE POLICY AS  
 7 NONPAYMENT OF PREMIUM.

8 (H) LOSSES SUBJECT TO THE DEDUCTIBLE MUST BE REPORTED  
 9 AND RECORDED AS LOSSES FOR PURPOSES OF RATEMAKING AND  
 10 APPLICATION OF THE EXPERIENCE RATING PLAN ON THE SAME BASIS  
 11 AS LOSSES UNDER POLICIES PROVIDING FIRST DOLLAR COVERAGE.

12 (4) THE STATE COMPENSATION MUTUAL INSURANCE FUND, PLAN  
 13 NO. 3, MAY ADOPT THE PLAN FILED BY THE RATING ORGANIZATION  
 14 OR ADOPT AN OPTIONAL DEDUCTIBLE PLAN THAT MEETS THE  
 15 REQUIREMENTS OF THIS SECTION.

16 (5) FOR PURPOSES OF 39-71-201, LIABILITY FOR  
 17 ASSESSMENTS MUST BE ASCERTAINED BASED ON PREMIUMS COLLECTED,  
 18 IN THE CASE OF POLICIES WRITTEN UNDER PLAN NO. 2, OR ON THE  
 19 ASSESSMENT LEVIED, IN THE CASE OF POLICIES WRITTEN UNDER  
 20 PLAN NO. 3, FOR WHICH THE POLICYHOLDER WOULD HAVE BEEN  
 21 OBLIGATED WITHOUT THE DEDUCTIBLE. FOR ALL OTHER TAXES AND  
 22 ASSESSMENTS BASED ON PREMIUM, THE AMOUNT OF PREMIUM OR  
 23 ASSESSMENT MUST BE DETERMINED AFTER APPLICATION OF THE  
 24 DEDUCTIBLE.

25 SECTION 12. SECTION 39-71-316, MCA, IS AMENDED TO READ:

1 "39-71-316. Filing true claim -- obtaining benefits  
2 through deception or other fraudulent means. (1) A person  
3 filing a claim under this chapter or chapter 72 of this  
4 title, by signing the claim, affirms the information filed  
5 is true and correct to the best of that person's knowledge.

6 (2) A person who obtains or assists in obtaining  
7 benefits to which the person is not entitled under this  
8 chapter or chapter 72 of this title may be guilty of theft  
9 under 45-6-301. A county attorney may initiate criminal  
10 proceedings against the person.

11 (3) A person licensed under the provisions of Title 37  
12 is subject to suspension, revocation, or denial of a license  
13 if the person knowingly claims or assists in the claiming of  
14 benefits in violation of the provisions of chapter 72 or  
15 this chapter."

16 **SECTION 13. SECTION 37-1-131, MCA, IS AMENDED TO READ:**

17 "37-1-131. Duties of boards. Each board within the  
18 department shall:

19 (1) set and enforce standards and rules governing the  
20 licensing, certification, registration, and conduct of the  
21 members of the particular profession or occupation within  
22 its jurisdiction;

23 (2) sit in judgment in hearings for the suspension,  
24 revocation, or denial of a license of an actual or potential  
25 member of the particular profession or occupation within its

1 jurisdiction. The hearings shall be conducted by legal  
2 counsel when required under 37-1-121(1).

3 (3) suspend, revoke, or deny a license of a person who  
4 the board determines, after a hearing as provided in  
5 subsection (2), is guilty of knowingly defrauding, abusing,  
6 or aiding in the defrauding or abusing of the workers'  
7 compensation system in violation of the provisions of Title  
8 39, chapter 71 or 72;

9 ~~†3†~~(4) pay to the department its pro rata share of the  
10 assessed costs of the department under 37-1-101(6);

11 ~~†4†~~(5) consult with the department before the board  
12 initiates a program expansion, under existing legislation,  
13 to determine if the board has adequate money and  
14 appropriation authority to fully pay all costs associated  
15 with the proposed program expansion. The board may not  
16 expand a program if the board does not have adequate money  
17 and appropriation authority available."

18 **SECTION 14. SECTION 37-3-322, MCA, IS AMENDED TO READ:**

19 "37-3-322. Unprofessional conduct. As used in this  
20 chapter, "unprofessional conduct" means:

21 (1) resorting to fraud, misrepresentation, or deception  
22 in applying for or in securing a license or in taking the  
23 examination provided for in this chapter;

24 (2) performing abortion contrary to law;

25 (3) obtaining a fee or other compensation, either

1 directly or indirectly, by the misrepresentation that a  
2 manifestly incurable disease, injury, or condition of a  
3 person can be cured;

4 (4) employing abusive billing practices;

5 (5) directly or indirectly giving or receiving a fee,  
6 commission, rebate, or other compensation for professional  
7 services not actually rendered. This prohibition does not  
8 preclude the legal functioning of lawful professional  
9 partnerships, corporations, or associations.

10 (6) willful disobedience of the rules of the board;

11 (7) conviction of an offense involving moral turpitude  
12 or conviction of a felony involving moral turpitude, and the  
13 judgment of the conviction, unless pending on appeal, is  
14 conclusive evidence of unprofessional conduct;

15 (8) commission of an act of sexual abuse, misconduct,  
16 or exploitation related to the licensee's practice of  
17 medicine;

18 (9) administering, dispensing, or prescribing a  
19 narcotic or hallucinatory drug, as defined by the federal  
20 food and drug administration or successors, otherwise than  
21 in the course of legitimate or reputable professional  
22 practice;

23 (10) conviction or violation of a federal or state law  
24 regulating the possession, distribution, or use of a  
25 narcotic or hallucinatory drug, as defined by the federal

1 food and drug administration, and the judgment of  
2 conviction, unless pending on appeal, is conclusive evidence  
3 of unprofessional conduct;

4 (11) habitual intemperance or excessive use of narcotic  
5 drugs, alcohol, or any other drug or substance to the extent  
6 that the use impairs the user physically or mentally;

7 (12) conduct unbecoming a person licensed to practice  
8 medicine or detrimental to the best interests of the public  
9 as defined by rule of the board;

10 (13) conduct likely to deceive, defraud, or harm the  
11 public;

12 (14) making a false or misleading statement regarding  
13 the licensee's skill or the effectiveness or value of the  
14 medicine, treatment, or remedy prescribed by the licensee or  
15 at the licensee's direction in the treatment of a disease or  
16 other condition of the body or mind;

17 (15) resorting to fraud, misrepresentation, or deception  
18 in the examination or treatment of a person or in billing or  
19 reporting to a person, company, institution, or  
20 organization, including fraud, misrepresentation, or  
21 deception with regard to a claim for benefits under Title  
22 39, chapter 71 or 72;

23 (16) use of a false, fraudulent, or deceptive statement  
24 in any document connected with the practice of medicine;

25 (17) practicing medicine under a false or assumed name;

1 (18) testifying in court on a contingency basis;

2 (19) conspiring to misrepresent or willfully

3 misrepresenting medical conditions improperly to increase or

4 decrease a settlement, award, verdict, or judgment;

5 (20) aiding or abetting in the practice of medicine by a

6 person not licensed to practice medicine or a person whose

7 license to practice medicine is suspended;

8 (21) allowing another person or organization to use the

9 licensee's license to practice medicine;

10 (22) malpractice or negligent practice;

11 (23) except as provided in this subsection, practicing

12 medicine as the partner, agent, or employee of or in joint

13 venture with a person who does not hold a license to

14 practice medicine within this state; however, this does not

15 prohibit:

16 (a) the incorporation of an individual licensee or

17 group of licensees as a professional service corporation

18 under Title 35, chapter 4;

19 (b) a single consultation with or a single treatment by

20 a person or persons licensed to practice medicine and

21 surgery in another state or territory of the United States

22 or foreign country; or

23 (c) practicing medicine as the partner, agent, or

24 employee of or in joint venture with a hospital, medical

25 assistance facility, or other licensed health care provider.

1 However:

2 (i) the partnership, agency, employment, or joint

3 venture must be evidenced by a written agreement containing

4 language to the effect that the relationship created by the

5 agreement may not affect the exercise of the physician's

6 independent judgment in the practice of medicine;

7 (ii) the physician's independent judgment in the

8 practice of medicine must in fact be unaffected by the

9 relationship; and

10 (iii) the physician may not be required to refer any

11 patient to a particular provider or supplier or take any

12 other action the physician determines not to be in the

13 patient's best interest.

14 (24) willfully or negligently violating the

15 confidentiality between physician and patient, except as

16 required by law;

17 (25) failing to report to the board any adverse

18 judgment, settlement, or award arising from a medical

19 liability claim related to acts or conduct similar to acts

20 or conduct that would constitute grounds for action as

21 defined in this section;

22 (26) failing to transfer pertinent and necessary medical

23 records to another physician when requested to do so by the

24 subject patient or by the patient's legally designated

25 representative;

(27) failing to furnish to the board or its investigators or representatives information legally requested by the board;

(28) failing to cooperate with a lawful investigation conducted by the board;

(29) violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate parts 1 through 3 of this chapter or the rules authorized by them;

(30) having been subject to disciplinary action of another state or jurisdiction against a license or other authorization to practice medicine, based upon acts or conduct by the licensee similar to acts or conduct that would constitute grounds for action as defined in this section. A certified copy of the record of the action taken by the other state or jurisdiction is evidence of unprofessional conduct.

(31) any other act, whether specifically enumerated or not, which, in fact, constitutes unprofessional conduct."

**SECTION 15. SECTION 37-6-310, MCA, IS AMENDED TO READ:**

"37-6-310. Unprofessional conduct. As used in this chapter, "unprofessional conduct" means:

(1) resorting to fraud, misrepresentation, or deception in applying for or in securing a license or in taking the examination provided for in this chapter;

(2) obtaining a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition of a person can be cured;

(3) willful disobedience of the rules of the board;

(4) final conviction of an offense involving moral turpitude;

(5) administering, dispensing, or prescribing a narcotic or hallucinatory drug, as defined by the federal food and drug administration or successors, otherwise than in the course of legitimate or reputable professional practice;

(6) final conviction of a violation of a federal or state law regulating the possession, distribution, or use of a narcotic or hallucinatory drug, as defined by the federal food and drug administration;

(7) habitual intemperance or excessive use of narcotic drugs, alcohol, or any other drug or substance to the extent that the use impairs the user physically or mentally;

(8) conduct unbecoming a person licensed to practice podiatry or detrimental to the best interest of the public;

(9) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organization, including fraud, misrepresentation, or

1 deception with regard to a claim for benefits under Title  
 2 39, chapter 71 or 72;

3 (10) testifying in court on a contingency basis;

4 (11) conspiring to misrepresent or willfully  
 5 misrepresenting medical conditions to increase or decrease a  
 6 settlement, award, verdict, or judgment;

7 (12) aiding or abetting in the practice of medicine a  
 8 person not licensed to practice medicine or a person whose  
 9 license to practice medicine is suspended;

10 (13) gross malpractice or negligent practice;

11 (14) practicing podiatry as the partner, agent, or  
 12 employee of or in joint venture with a person who does not  
 13 hold a license to practice podiatry within this state;  
 14 however, this does not prohibit the incorporation of an  
 15 individual licensee or group of licensees as a professional  
 16 service corporation under Title 35, chapter 4, nor does this  
 17 apply to a single consultation with or a single treatment by  
 18 a person or persons licensed to practice podiatry in another  
 19 state or territory of the United States or foreign country;

20 (15) violating or attempting to violate, directly or  
 21 indirectly, or assisting in or abetting the violation of or  
 22 conspiring to violate parts 1 through 3 of this chapter or  
 23 the rules authorized by parts 1 through 3; or

24 (16) any other act, whether specifically enumerated or  
 25 not, which in fact constitutes unprofessional conduct."

1 **SECTION 16. SECTION 37-10-311, MCA, IS AMENDED TO READ:**

2 **"37-10-311. Revocation -- unprofessional conduct. (1)**

3 The board may revoke a certificate of registration for:

4 (a) physical or mental incompetence;

5 (b) gross malpractice or repeated malpractice;

6 (c) a violation of any of the provisions of this  
 7 chapter or rules or orders of the board; or

8 (d) unprofessional conduct.

9 (2) Unprofessional conduct includes:

10 (a) obtaining a fee by fraud or misrepresentation;

11 (b) employing, directly or indirectly, a suspended or  
 12 unlicensed optometrist to perform work covered by this  
 13 chapter;

14 (c) directly or indirectly accepting employment to  
 15 practice optometry from a person not having a valid  
 16 certificate of registration as an optometrist or accepting  
 17 employment to practice optometry for or from a company or  
 18 corporation;

19 (d) permitting another to use his the optometrist's  
 20 certificate of registration;

21 (e) soliciting or sending a solicitor from house to  
 22 house;

23 (f) treatment or advice in which untruthful or  
 24 improbable statements are made;

25 (g) professing to cure nonocular disease;

(h) advertising in which ambiguous or misleading statements are made; or

(i) the use in advertising of the expression "eye specialist" or "specialist on eyes" in connection with the name of an optometrist. This chapter does not prohibit legitimate or truthful advertising by a registered optometrist; or

(j) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organization, including fraud, misrepresentation, or a claim for benefits under Title 39, chapter 71 or 72.

(3) Before a certificate is revoked, the holder shall be given a notice and an opportunity for a hearing.

(4) Any optometrist convicted a second time for violation of the provisions of this chapter or whose certificate of registration or examination has been revoked a second time shall not be permitted to practice optometry in this state."

**SECTION 17. SECTION 37-12-321, MCA, IS AMENDED TO READ:**

"37-12-321. Unprofessional conduct. As used in this chapter, "unprofessional conduct" means:

(1) resorting to fraud, misrepresentation, or deception in applying for or securing a license or in taking the examination provided for in this chapter;

(2) obtaining any form of compensation, directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition can be cured;

(3) practicing chiropractic under a false or assumed name or impersonating another practitioner of like or different name;

(4) knowingly disobeying a rule of the board;

(5) conviction of a criminal offense involving moral turpitude. A certified copy of the judgment of conviction is conclusive evidence of the conviction. This subsection is subject to chapter 1, part 2, of this title.

(6) habitual intemperance or excessive use of narcotic drugs, alcohol, or any other substance to the extent that such use impairs the user's physical or mental professional capability;

(7) administering, dispensing, or prescribing a narcotic or hallucinatory drug, as defined by the federal food and drug administration or successors;

(8) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organization, including fraud, misrepresentation, or deception with regard to a claim for benefits under Title 39, chapter 71 or 72;

(9) testifying in court on a contingency basis;

(10) conspiring to misrepresent or knowingly misrepresenting physical conditions in order to increase or decrease a settlement or award;

(11) aiding or abetting in the practice of chiropractic a person not licensed to practice chiropractic or a person whose license is suspended;

(12) practicing chiropractic as the partner, agent, or employee of or in joint venture with a person not licensed to practice chiropractic in this state. However, this does not prohibit incorporation as a professional service corporation under Title 35, chapter 4, or prevent a single consultation with or a single treatment by a person licensed to practice chiropractic in another state or territory of the United States or a foreign country.

(13) violating, attempting or conspiring to violate, or aiding or abetting in the violation of this chapter or the rules adopted under it; or

(14) conduct unbecoming a person licensed to practice chiropractic or detrimental to the best interests of the public."

**SECTION 18. SECTION 37-14-321, MCA, IS AMENDED TO READ:**

"37-14-321. Revocation or suspension of license or permit. A license or permit may be suspended for a fixed period or may be revoked, or such technologist or technician may be censured, reprimanded, or otherwise disciplined as

determined by the board if, after a hearing before the board, it is determined that the radiologic technologist or limited permit technician:

(1) is guilty of fraud or deceit in activities as a radiologic technologist or limited permit technician or has been guilty of any fraud or deceit in procuring the license or permit;

(2) has been convicted in a court of competent jurisdiction of a crime involving moral turpitude;

(3) is an habitual drunkard or is addicted to the use of narcotics or other drugs having a similar effect or is not mentally competent;

(4) is guilty of unethical or unprofessional conduct, as defined by rules promulgated by the board, including fraud, misrepresentation, or deception with regard to a claim for benefits under Title 39, chapter 71 or 72, or has been guilty of incompetence or negligence in his activities as a radiologic technologist or limited permit technician;

(5) has continued to perform as a radiologic technologist or limited permit technician without obtaining a license or permit or renewal as required by this chapter."

**NEW SECTION. SECTION 19. PROHIBITED ACTIONS**

**PENALTY. (1) THE FOLLOWING ACTIONS BY A MEDICAL PROVIDER CONSTITUTE VIOLATIONS AND ARE SUBJECT TO THE PENALTY IN SUBSECTION (3):**



1        (A) FAILING TO DOCUMENT, UNDER OATH, THE PROVISION OF  
 2        THE SERVICES OR TREATMENT FOR WHICH COMPENSATION IS CLAIMED  
 3        UNDER CHAPTER 72 OR THIS CHAPTER; OR

4        (B) REFERRING A WORKER FOR TREATMENT OR DIAGNOSIS OF AN  
 5        INJURY OR ILLNESS THAT IS COMPENSABLE UNDER CHAPTER 72 OR  
 6        THIS CHAPTER TO A FACILITY OWNED WHOLLY OR IN PART BY THE  
 7        PROVIDER, UNLESS THE PROVIDER INFORMS THE WORKER OF THE  
 8        OWNERSHIP INTEREST AND PROVIDES THE NAME AND ADDRESS OF  
 9        ALTERNATE FACILITIES, IF ANY EXIST.

10       (2) A PERSON LICENSED TO PRACTICE LAW IN MONTANA OR A  
 11       MEDICAL CARE PROVIDER WHO ADVERTISES SERVICES OR FACILITIES  
 12       WITH THE INTENTION THAT A WORKER USE THOSE SERVICES OR  
 13       FACILITIES WITH REGARD TO AN INJURY OR ILLNESS THAT IS  
 14       COMPENSABLE UNDER CHAPTER 72 OR THIS CHAPTER AND WHO FAILS  
 15       TO ANNOUNCE IN THE ADVERTISEMENT THAT FILING A FRAUDULENT  
 16       CLAIM IS THEFT, AS PROVIDED IN 39-71-316, IS SUBJECT TO THE  
 17       PENALTY IN SUBSECTION (3).

18       (3) A PERSON WHO VIOLATES THIS SECTION MAY BE ASSESSED  
 19       A PENALTY OF NOT LESS THAN \$200 OR MORE THAN \$500 FOR EACH  
 20       OFFENSE. THE DEPARTMENT SHALL ASSESS AND COLLECT THE  
 21       PENALTY.

22       NEW SECTION. SECTION 20. NO LIABILITY FOR REPORTING  
 23       VIOLATION. A PERSON, INCLUDING BUT NOT LIMITED TO AN INSURER  
 24       OR AN EMPLOYER, MAY NOT BE HELD LIABLE FOR CIVIL DAMAGES AS  
 25       A RESULT OF REPORTING IN GOOD FAITH INFORMATION THAT THE

1       PERSON BELIEVES PROVES A VIOLATION OF THE PROVISIONS OF  
 2       CHAPTER 72 OR THIS CHAPTER.

3       **SECTION 21. SECTION 39-71-736, MCA, IS AMENDED TO READ:**

4       **"39-71-736. Compensation -- from what date paid.**

5       (1) (a) No compensation may be paid for the first 48 hours  
 6       or 6 days' loss of wages, whichever is less, that the  
 7       claimant is totally disabled and unable to work due to an  
 8       injury. A claimant is eligible for compensation starting  
 9       with the 7th day.

10       (b) However, separate benefits of medical and hospital  
 11       services must be furnished from the date of injury.

12       (2) For the purpose of this section, except as provided  
 13       in subsection (3), an injured worker is not considered to be  
 14       entitled to compensation benefits if the worker is receiving  
 15       sick leave benefits, except that each day for which the  
 16       worker elects to receive sick leave counts 1 day toward the  
 17       6-day waiting period.

18       (3) Augmentation of temporary total disability benefits  
 19       with sick leave by an employer pursuant to a collective  
 20       bargaining agreement may not disqualify a worker from  
 21       receiving temporary total disability benefits.

22       (4) Receipt of vacation leave by an injured worker may  
 23       not affect the worker's eligibility for temporary total  
 24       disability benefits."

25       **SECTION 22. SECTION 39-71-2315, MCA, IS AMENDED TO**

1 READ:

2 "39-71-2315. Management of state fund -- powers and  
3 duties of the board -- business plan required. (1) The  
4 management and control of the state fund is vested solely in  
5 the board.

6 (2) The board is vested with full power, authority, and  
7 jurisdiction over the state fund. The board may perform all  
8 acts necessary or convenient in the exercise of any power,  
9 authority, or jurisdiction over the state fund, either in  
10 the administration of the state fund or in connection with  
11 the insurance business to be carried on under the provisions  
12 of this part, as fully and completely as the governing body  
13 of a private mutual insurance carrier, in order to fulfill  
14 the objectives and intent of this part. Bonds may not be  
15 issued by the board, the state fund, or the executive  
16 director.

17 (3) The board shall adopt a business plan no later than  
18 June 30 for the next fiscal year. At a minimum, the plan  
19 must include:

20 (a) specific goals for the fiscal year for financial  
21 performance. The standard for measurement of financial  
22 performances must include an evaluation of premium to  
23 surplus.

24 (b) specific goals for the fiscal year for operating  
25 performance. Goals must include but not be limited to

1 specific performance standards for staff in the area of  
2 senior management, underwriting, and claims administration.  
3 Goals must, in general, maximize efficiency, economy, and  
4 equity as allowed by law.

5 (4) The business plan must be available upon request to  
6 the general public for a fee not to exceed the actual cost  
7 of publication. However, performance goals relating to a  
8 specific employment position are confidential and not  
9 available to the public.

10 (5) No sooner than July 1 or later than October 31, the  
11 board shall convene a public meeting to review the  
12 performance of the state fund, using the business plan for  
13 comparison of all the established goals and targets. The  
14 board shall publish, by November 30 of each year, a report  
15 of the state fund's actual performance as compared to the  
16 business plan."

17 NEW SECTION. Section 23. Codification instruction. (1)  
18 {Sections--117-127--and-15}--are-intended-to-be-codified-as-an  
19 integral-part-of-Title-39,--chapter--717--part--37--and--the  
20 provisions--of--Title--39,--chapter--717--part--37--apply-to  
21 {sections-117-127-and-15}.

22 {2}--{Sections--13--and--14} [SECTIONS 8 AND 9] are  
23 intended to be codified as an integral part of Title 39,  
24 chapter 71, part 7, and the provisions of Title 39, chapter  
25 71, part 7, apply to {sections-13-and-14}. [SECTIONS 8 AND

9].

(2) [SECTION 11] IS INTENDED TO BE CODIFIED AS AN  
INTEGRAL PART OF TITLE 39, CHAPTER 71, PART 4, AND THE  
PROVISIONS OF TITLE 39, CHAPTER 71, PART 4, APPLY TO  
[SECTION 11].

(3) [SECTIONS 19 AND 20] ARE INTENDED TO BE CODIFIED AS  
AN INTEGRAL PART OF TITLE 39, CHAPTER 71, AND THE PROVISIONS  
OF TITLE 39, CHAPTER 71, APPLY TO [SECTIONS 19 AND 20].

NEW SECTION. **SECTION 24.** 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 25.** EFFECTIVE DATE. [THIS ACT] IS  
EFFECTIVE JULY 1, 1993.

-End-

APPROVED BY COMMITTEE  
ON LABOR & EMPLOYMENT  
RELATIONS  
AS AMENDED

## HOUSE BILL NO. 622

INTRODUCED BY EWER, HARP

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LAWS; PROVIDING FOR SUSPENSION OF BENEFITS TO A WORKER WHO FAILS TO KEEP MEDICAL APPOINTMENTS; AUTHORIZING SETTLEMENTS FOR FUTURE MEDICAL BENEFITS; REVISING REHABILITATION BENEFITS REQUIREMENTS; DESIGNATING LIABILITY FOR OCCUPATIONAL DISEASE BENEFITS IF THERE IS MORE THAN ONE INSURER; REVISING BENEFITS WHEN OCCUPATIONAL DISEASE IS AGGRAVATED BY NONCOMPENSABLE DISEASE OR INFIRMITY; ALLOWING APPORTIONMENT OF COMPENSATION FOR PREEXISTING CONDITIONS BETWEEN INSURERS; ~~REQUIRING--NONRESIDENT-EMPLOYERS-TO-OBTAIN-IN-STATE-COVERAGE OR-PAY-THE-DIFFERENCE-IN-PREMIUMS;-PROVIDING-FOR--FINES--FOR EMPLOYER-MISCONDUCT; CREATING-A-MEDICAL-PANEL-AND-PROCEDURES FOR-HANDLING-PREEXISTING-INJURY-DISPUTES;~~ CREATING TEMPORARY PARTIAL DISABILITY BENEFITS; ~~REQUIRING-EMPLOYERS-TO-REPORT NEW-EMPLOYEES-TO-THE-INSURER-AND-DEPARTMENT-WITHIN-72--HOURS OF--THE--FIRST--PAYDAY--AFTER--HIRING;~~ REVISING ELIGIBILITY REQUIREMENTS TO SELF-INSURE; ALLOWING CERTAIN OPTIONAL DEDUCTIBLES TO POLICYHOLDERS; REQUIRING SUSPENSION, REVOCATION, OR DENIAL OF A PROFESSIONAL OR OCCUPATIONAL LICENSE FOR VIOLATION OF THE WORKERS' COMPENSATION LAW; REVISING THE DEFINITION OF UNPROFESSIONAL CONDUCT;

PROHIBITING CERTAIN ACTIONS; PRECLUDING LIABILITY FOR REPORTING VIOLATIONS OF THE WORKERS' COMPENSATION LAW; ALLOWING AUGMENTATION OF TEMPORARY TOTAL DISABILITY BENEFITS WITH SICK LEAVE AND VACATION LEAVE; REQUIRING THE STATE FUND BOARD TO ADOPT AN ANNUAL BUSINESS PLAN; ALLOWING GROUP PURCHASE OF WORKERS' COMPENSATION INSURANCE; REQUIRING THE INSURER TO NOTIFY CLAIMANTS OF BENEFITS AND ENTITLEMENT USING INFORMATION PROVIDED BY THE DEPARTMENT; AMENDING SECTIONS 37-1-131, 37-3-322, 37-6-310, 37-10-311, 37-12-321, 37-14-321, 39-71-116, 39-71-307, 39-71-407, 39-71-604, 39-71-316, 39-71-407, 39-71-605, 39-71-606, 39-71-607, 39-71-736, 39-71-741, 39-71-2001, 39-71-2101, 39-71-2315, AND 39-72-303, 39-72-706, AND 39-72-707, AND 39-72-706, MCA; AND REPEALING SECTION 39-71-402, MCA PROVIDING AN EFFECTIVE DATE."

STATEMENT OF INTENT

A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL BECAUSE [SECTION 23] REQUIRES THE DEPARTMENT BY RULE TO ADOPT FORMS, CRITERIA, AND PROCEDURES FOR THE ISSUANCE OF CERTIFICATES OF APPROVAL FOR GROUPS ELIGIBLE TO PURCHASE GROUP INSURANCE. THE RULES ADOPTED BY THE DEPARTMENT MUST:

(1) BE CONSISTENT WITH THE PROVISIONS OF TITLE 39, CHAPTER 71, AND [THIS ACT]; AND

(2) ADDRESS WHO MAY BE IN A GROUP, HOW A MEMBER MAY BE

1 REMOVED FROM THE GROUP, THE CRITERIA FOR CERTIFICATION, THE  
 2 APPORTIONMENT OF DIVIDENDS OR DISCOUNTS, THE REQUIREMENTS  
 3 FOR A PLAN OF OPERATION, AND ANY REPORTING REQUIREMENTS THAT  
 4 MAY BE NECESSARY.

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

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

8 "39-71-116. Definitions. Unless the context otherwise  
 9 requires, words and phrases employed in this chapter have  
 10 the following meanings:

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

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

16 (b) payment of benefits;

17 (c) setting of reserves;

18 (d) furnishing of services and facilities; and

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

21 (2) "Average weekly wage" means the mean weekly  
 22 earnings of all employees under covered employment, as  
 23 defined and established annually by the Montana department  
 24 of labor and industry. It is established at the nearest  
 25 whole dollar number and must be adopted by the department

1 prior to July 1 of each year.

2 (3) "Beneficiary" means:

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

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

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

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

12 (e) a parent who is dependent upon the decedent for  
 13 support at the time of the injury if no a beneficiary, as  
 14 defined in subsections (3)(a) through (3)(d), exists does  
 15 not exist; and

16 (f) a brother or sister under the age of 18 years if  
 17 dependent upon the decedent for support at the time of the  
 18 injury but only until the age of 18 years and only when no a  
 19 beneficiary, as defined in subsections (3)(a) through  
 20 (3)(e), exists does not exist.

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

24 (5) "Child" includes a posthumous child, a dependent  
 25 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~~ salespersons, 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) "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) "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~~ must 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) "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) "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~~ does not have a reasonable prospect of physically performing regular employment. 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) 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) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over ~~such~~ the place of business for the purpose of carrying on ~~his~~ the employer's usual trade, business, or occupation.

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

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

employment will reasonably permit.

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

(22) "Temporary partial disability" means a condition resulting from an injury as defined in 39-71-1197--covering the--period--after--an-injured-worker-returns-to-work-in-the same--modified,--or--alternative--employment--and--before--the worker--has-reached-maximum-healing IN WHICH A WORKER, PRIOR TO MAXIMUM HEALING;

(A) IS TEMPORARILY UNABLE TO RETURN TO THE POSITION HELD AT THE TIME OF INJURY BECAUSE OF A MEDICALLY DETERMINED PHYSICAL RESTRICTION;

(B) RETURNS TO WORK IN A MODIFIED OR ALTERNATIVE EMPLOYMENT; AND

(C) SUFFERS A PARTIAL WAGE LOSS.

~~(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

1 worker reaches maximum healing.

2 ~~{24}~~{25} "Temporary worker" means a worker whose  
3 services are furnished to another on a part-time or  
4 temporary basis to substitute for a permanent employee on  
5 leave or to meet an emergency or short-term workload.

6 ~~{25}~~{26} "Year", unless otherwise specified, means  
7 calendar year."

8 **Section 2.** Section 39-71-307, MCA, is amended to read:

9 "39-71-307. Employers and insurers to file reports of  
10 accidents -- penalty. (1) Every employer and every insurer  
11 is required to file with the department, under department  
12 rules, a full and complete report of every accident to an  
13 employee arising out of or in the course of his employment  
14 and resulting in loss of life or injury to the employee. The  
15 reports must be furnished to the department in the form and  
16 detail as the department prescribes and must provide  
17 specific answers to all questions required by the department  
18 under its rules. However, if an employer is unable to answer  
19 a question, he the employer shall state the reason he--is  
20 unable for the employer's inability to answer.

21 (2) Every insurer transacting business under this  
22 chapter shall, at the time and in the manner prescribed by  
23 the department, make and file with the department the  
24 reports of accidents as the department requires.

25 (3) An employer, insurer, or adjuster who refuses or

1 neglects to submit to the department reports necessary for  
2 the proper filing and review of a claim, as provided in  
3 subsection (1), may shall be assessed a penalty of not less  
4 than \$200 or more than \$500 for each offense. The department  
5 shall assess and collect the penalty. An insurer may contest  
6 a penalty assessment in a hearing conducted according to  
7 department rules."

8 ~~Section 39-71-407, MCA, is amended to read:~~

9 ~~"39-71-407. Liability of insurers--limitations--(1)  
10 Every insurer is liable for the payment of compensation--in  
11 the--manner--and--to the extent hereinafter provided in this  
12 section--to an--employee--of--an--employer--it--insures--who  
13 receives--an--injury--arising out of and in the course of his  
14 employment--or--in the--case--of--his--death--from--such the  
15 injury--to his the employee's beneficiaries--if any--~~

16 ~~{2}--(a)--An--insurer--is liable for an injury as defined  
17 in 39-71-119 if the claimant establishes it is more probable  
18 than not that--~~

19 ~~{i}--a--claimed injury has occurred--or~~

20 ~~{ii}--a--claimed--injury--aggravated--a--preexisting  
21 condition--~~

22 ~~{b}--Proof that it was medically possible that a claimed  
23 injury occurred or that such the claimed injury aggravated a  
24 preexisting--condition--is--not--sufficient--to--establish  
25 liability--~~



1       (3)--An--employee--who--suffers--an--injury--or--dies--while  
 2       traveling--is--not--covered--by--this--chapter--unless:  
 3       (a)--(i)--the--employer--furnishes--the--transportation--or  
 4       the--employee--receives--reimbursement--from--the--employer--for  
 5       costs--of--travel,--gas,--oil,--or--lodging--as--a--part--of--the  
 6       employee's--benefits--or--employment--agreement;--and  
 7       (ii)--the--travel--is--necessitated--by--and--on--behalf--of--the  
 8       employer--as--an--integral--part--or--condition--of--the--employment;  
 9       or  
 10       (b)--the--travel--is--required--by--the--employer--as--part--of  
 11       the--employee's--job--duties.  
 12       (4)--An--employee--is--not--eligible--for--benefits--otherwise  
 13       payable--under--this--chapter--if--the--employee's--use--of--alcohol  
 14       or--drugs--not--prescribed--by--a--physician--is--the--sole--and  
 15       exclusive--cause--of--the--injury--or--death. However, if the  
 16       employer--had--knowledge--of--and--failed--to--attempt--to--stop--the  
 17       employee's--use--of--alcohol--or--drugs,--this--subsection--does--not  
 18       apply it-is-medically-determined-that-the-employee's-use-of  
 19       alcohol--or--nonprescription--drugs--was--an--influencing--factor  
 20       in--the--cause--of--the--injury--or--death.  
 21       (5)--if--a--claimant--who--has--reached--maximum--healing  
 22       suffers--a--subsequent--nonwork--related--injury--to--the--same--part  
 23       of--the--body,--the--workers'--compensation--insurer--is--not--liable  
 24       for--any--compensation--or--medical--benefits--caused--by--the  
 25       subsequent--nonwork--related--injury.

1       (6)--if--a--preexisting--condition--is--aggravated--by--any  
 2       other--condition,--disease,--or--infirmity--not--itself  
 3       compensable--or--if--disability--or--death--from--any--other--cause  
 4       not--itself--compensable--is--aggravated,--prolonged,  
 5       accelerated,--or--in--any--way--contributed--to--by--an--injury--as  
 6       defined--in--39-71-119,--the--compensation--and--medical--benefits  
 7       payable--under--this--chapter--must--be--reduced--and--limited--to  
 8       the--proportion--of--the--disability--or--death--resulting--from--the  
 9       injury.  
 10       (7)--if--a--claimant's--compensation--is--proportionally  
 11       reduced--as--provided--in--subsection--(6)--and--the--claimant  
 12       receives--social--security--disability--benefits,--any--offset  
 13       that--an--insurer--may--be--entitled--to--must--be--reduced--in--the  
 14       same--proportion--as--the--claimant's--compensation--was--reduced  
 15       for--as--long--as--the--claimant--receives--the--social--security  
 16       disability--benefits."  
 17       Section 4.--Section 39-71-604, MCA, is amended to read:  
 18       "39-71-604.--Application--for--compensation;--(1)--if--a  
 19       worker--is--entitled--to--benefits--under--this--chapter,--the  
 20       worker--shall--file--with--the--insurer--all--reasonable  
 21       information--needed--by--the--insurer--to--determine  
 22       compensability. It is the duty of the worker's attending  
 23       physician--to--lend--all--necessary--assistance--in--making  
 24       application--for--compensation--and--such the proof--of--other  
 25       matters--as--may--be--required--by--the--rules--of--the--department

~~without--charge--to--the--worker--The--filing--of--forms--or--other  
documentation--by--the--attending--physician--does--not--constitute  
a--claim--for--compensation--~~

~~(2)--Workers--applying--for--compensation--for--an--injury--or  
occupational--disease--shall--allow--the--insurer--or--the  
insurer's--designated--agent--direct--access--to--medical--service  
providers--medical--information--and--the--injured--worker--  
Failure--to--comply--with--this--subsection--will--result--in  
termination--of--benefits--~~

~~(2)(3)--If--death--results--from--an--injury--the--parties  
entitled--to--compensation--or--someone--in--their--behalf--shall  
file--a--claim--with--the--insurer--The--claim--must--be--accompanied  
with--proof--of--death--and--proof--of--relationship--showing--the  
parties--entitled--to--compensation--certificate--of--the  
attending--physician--if--any--and--such--other--proof--as--may--be  
required--by--the--department--"~~

**Section 3.** Section 39-71-605, MCA, is amended to read:

"39-71-605. Examination of employee by physician --  
effect of refusal to submit to examination -- report and  
testimony of physician -- cost. (1) (a) Whenever in case of  
injury the right to compensation under this chapter would  
exist in favor of any employee, he the employee shall, upon  
the written request of the insurer, submit from time to time  
to examination by a physician or panel of physicians, who  
shall must be provided and paid for by such the insurer, and

shall likewise submit to examination from time to time by  
any physician or panel of physicians selected by the  
department.

(b) The request or order for such an examination shall  
must fix a time and place for the examination, with regard  
for the employee's convenience, his physical condition, and  
his ability to attend at the time and place that is as close  
to the employee's residence as is practical. The employee  
shall-be is entitled to have a physician present at any such  
examination. ~~So long as~~ If the employee, after such written  
request, shall-fail fails or refuse refuses to submit to  
such the examination or shall in any way obstruct obstructs  
the same examination, his the employee's right to  
compensation shall must be suspended and is subject to the  
provisions of 39-71-607. Any physician or panel of  
physicians employed by the insurer or the department who  
shall-make makes or be is present at any such examination  
may be required to testify as to the results thereof of the  
examination.

(2) In the event of a dispute concerning the physical  
condition of a claimant or the cause or causes of the injury  
or disability, if any, the department, at the request of the  
claimant or insurer, as the case may be, shall require the  
claimant to submit to such an examination as it may--deem  
considers desirable by a physician or panel of physicians

within the state or elsewhere who have had adequate and substantial experience in the particular field of medicine concerned with the matters presented by the dispute. The physician or panel of physicians making the examination shall file a written report of findings with the claimant and insurer for their use in the determination of the controversy involved. The requesting party shall pay the physician or panel of physicians for the examination.

(3) This section does not apply to impairment evaluations provided for in 39-71-711."

**Section 4.** Section 39-71-607, MCA, is amended to read:

"39-71-607. Suspension of payments by insurer up--to thirty--days pending receipt of medical information. Under rules adopted by the department and-in-the-discretion-of-the department, an insurer may suspend compensation payments for not-more--than--30--days pending the receipt of medical information when an injured worker unreasonably fails to keep scheduled medical appointments. If, after a medical examination, the injured worker is released to return to work, the worker forfeits the right to any suspended benefits."

**Section 5.** 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.

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

11 (a) relates to:

12 (i) the necessities of life;

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

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

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

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

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

1 (b) The rate adopted by the department must be based on  
 2 the average rate for United States 10-year treasury bills in  
 3 the previous calendar year, rounded to the nearest whole  
 4 number.

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

10 (6) Subject to the other provisions of this section,  
 11 the department has full power, authority, and jurisdiction  
 12 to allow, approve, or condition compromise settlements for  
 13 any type of benefits provided for under this chapter,  
 14 including the right to future medical benefits, or for  
 15 lump-sum payments agreed to by workers and insurers. All  
 16 such compromise settlements and lump-sum payments are void  
 17 without the approval of the department. Approval by the  
 18 department must be in writing. The department shall directly  
 19 notify a claimant of a department order approving or denying  
 20 a claimant's compromise or lump-sum payment.

21 (7) A dispute between a claimant and an insurer  
 22 regarding the conversion of biweekly payments into a  
 23 lump-sum is considered a dispute, for which a mediator and  
 24 the workers' compensation court have jurisdiction to make a  
 25 determination. If an insurer and a claimant agree to a

1 compromise and release settlement or a lump-sum payment but  
 2 the department disapproves the agreement, the parties may  
 3 request the workers' compensation court to review the  
 4 department's decision.

5 ~~(8) An injured worker's entitlement to future medical~~  
 6 ~~benefits may be terminated by mutual consent of the worker~~  
 7 ~~and the insurer, subject to department approval. The~~  
 8 ~~department may not disapprove an agreement unless it~~  
 9 ~~determines that the worker has not been fully compensated~~  
 10 ~~for terminating the worker's right to future medical~~  
 11 ~~benefits."~~

12 **Section 6.** Section 39-71-2001, MCA, is amended to read:

13 "39-71-2001. Rehabilitation benefits. (1) An injured  
 14 worker is eligible for rehabilitation benefits if:

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

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

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

1 capacities, and vocational interests.

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

7 (2) After filing the rehabilitation plan with the  
 8 department, the injured worker is entitled to receive  
 9 rehabilitation benefits at the injured worker's temporary  
 10 total disability rate. The benefits must be paid for the  
 11 period specified in the rehabilitation plan, not to exceed  
 12 104 weeks. Rehabilitation benefits must be paid during a  
 13 reasonable period, not to exceed 10 weeks, while the worker  
 14 is waiting to begin the agreed-upon rehabilitation plan.  
 15 Rehabilitation benefits must be paid BIWEEKLY while the  
 16 worker is satisfactorily completing the agreed-upon  
 17 rehabilitation plan AND ARE NOT SUBJECT TO THE LUMP-SUM  
 18 PAYMENT PROVISIONS OF 39-71-741.

19 (3) If the rehabilitation plan provides for job  
 20 placement, a vocational rehabilitation provider shall assist  
 21 the worker in obtaining other employment and the worker is  
 22 entitled to weekly benefits for a period not to exceed 8  
 23 weeks at the worker's temporary total disability rate. If,  
 24 after receiving benefits under this subsection, the worker  
 25 decides to proceed with a rehabilitation plan, the weeks in

1 which benefits were paid under this subsection may not be  
2 credited against the maximum of 104 weeks of rehabilitation  
3 benefits provided in this section.

4 (4) If there is a dispute as to whether an injured  
5 worker can return to the job the worker held at the time of  
6 injury, the insurer shall designate a rehabilitation  
7 provider to evaluate and determine whether the worker can  
8 return to the job held at the time of injury. If it is  
9 determined that he the worker cannot return to the job HELD  
10 AT THE TIME OF INJURY, the worker is entitled to  
11 rehabilitation benefits and services as provided in  
12 subsection (2).

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

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

19 ~~{7}--Upon receipt of notification of acceptance of a~~  
20 ~~claim by an insurer, the department shall notify the~~  
21 ~~claimant in writing of potential benefits and entitlements~~  
22 ~~THE SERVICES AND BENEFITS AVAILABLE pursuant to 39-71-1014,~~  
23 ~~39-71-1025, 39-71-1032, and this section THE VOCATIONAL~~  
24 ~~REHABILITATION PROVISIONS OF THE WORKERS' COMPENSATION ACT.~~

25 ~~{8}--The rehabilitation benefits referred to in this~~

1 ~~section are applicable only with the actual provision of the~~  
2 ~~services and may not be negotiated as aspects of a~~  
3 ~~settlement.~~

4 ~~{9}--Rehabilitation benefits under this section must be~~  
5 ~~elected within 12 months of the date of maximum medical~~  
6 ~~improvement or they are forfeited."~~

7 **Section 7.** Section 39-72-303, MCA, is amended to read:

8 "39-72-303. Which employer liable. (1) Where  
9 compensation is payable for an occupational disease, the  
10 only employer liable shall be is the employer in whose  
11 employment the employee was last injuriously exposed to the  
12 hazard of such the disease.

13 (2) When there is more than one insurer and only one  
14 employer at the time the employee was injuriously exposed to  
15 the hazard of the disease, the liability rests with the  
16 insurer providing coverage at the earlier of:

17 (a) the time the occupational disease was first  
18 diagnosed by an attending A TREATING physician, consulting  
19 physician, or medical panel; or

20 (b) the time the employee knew or should have known  
21 that the condition was the result of an occupational  
22 disease.

23 {2}{3} In the case of pneumoconiosis, any coal mine  
24 operator who has acquired a mine in the state or  
25 substantially all of the assets thereof of a mine from a

1 person who was an operator of such the mine on or after  
 2 December 30, 1969, is liable for and must shall secure the  
 3 payment of all benefits which that would have been payable  
 4 by that person with respect to miners previously employed in  
 5 such the mine if acquisition had not occurred and that  
 6 person had continued to operate such the mine, and the prior  
 7 operator of such the mine ~~shall~~ is not be relieved of any  
 8 liability under this section."

9 Section-10,--Section-39-72-706,--MCA,--is-amended-to-read:

10 "39-72-706,--Aggravation:--(1)--If-an-occupational-disease  
 11 is-aggravated-by-any-other-disease-or-infirmity--not--itself  
 12 compensable--or--if-disability-or-death-from-any-other-cause  
 13 not---itself---compensable---is---aggravated,---prolonged,  
 14 accelerated,--or--in-any-way-contributed-to-by-an-occupational  
 15 disease,--the-compensation and-medical-benefits payable-under  
 16 this--chapter--must--be--reduced--and--limited--to--such the  
 17 proportion-only-of-the-compensation-that-would-be-payable-if  
 18 the--occupational--disease--were--the--sole--cause--of---the  
 19 disability--or--death--as--such--occupational--disease--as-a  
 20 causative-factor-bears-to-all-the-causes-of-such--disability  
 21 or-death:

22 (2)--If--compensation--is--reduced-a-proportionate-amount  
 23 as provided in--subsection--(1)--and--the-worker--receives  
 24 disability--social-security-benefits,--the-offset-entitlement  
 25 granted--to--the--insurer--must--be--reduced--in--the--same

1 proportionate---amount---as---the---compensation and---medical  
 2 benefits as---long---as---the---worker---continues---to---receive  
 3 disability-social-security-benefits."

4 NEW-SECTION:--Section-11,--Requirement-of-state-coverage  
 5 for--nonresident--employers,--(1)--Beginning--July--1,--1993,  
 6 nonresident-employers-shall--provide--workers'--compensation  
 7 coverage--under--plan-No.-17-2,--or-3-or,--in-the-alternative,  
 8 shall-deposit-with-the-department-a-nonrefundable-amount--of  
 9 money--equal--to--the--difference--between--the-premium-paid  
 10 out-of-state--by--the--nonresident--and--the---premium---the  
 11 nonresident--would--pay-in-Montana-if-the-premium-in-Montana  
 12 is-higher-than-the-out-of-state-premium-rate:

13 (2)--Beginning-July--1,--1993,--a--nonresident--employer  
 14 shall--verify-with-the-department,--prior-to-commencing-to-do  
 15 business-in-this-state,--that-the--nonresident--employer--has  
 16 obtained--workers'--compensation--under--one-of-this-state's  
 17 coverage-plans-or-shall-deposit-any-money--due--pursuant--to  
 18 subsection-(1).--The-department-may-monitor-the-activities-of  
 19 a--nonresident--employer--on--a-regular-basis-to-ensure-that  
 20 proper-coverage-is-in-effect:

21 (3)--The-department-shall-deposit--the--money--collected  
 22 pursuant--to-subsection-(1)--in-the-uninsured-employers'--fund  
 23 provided-for-in-39-71-502.

24 NEW-SECTION:--Section-12,--Employer---misconduct,---The--  
 25 department--shall--fine-an-employer-convicted-under-45-7-501

an amount equal to ten times any amount that the department determines the employer wrongfully withheld in not obtaining workers' compensation coverage or in not obtaining the proper workers' compensation coverage. The department shall deposit the money collected pursuant to this section in the uninsured employers' account provided for in 39-71-502.

NEW SECTION. Section 8. Medical panel for preexisting conditions. (1) The department shall create a list of physicians to serve on an industrial injury medical panel. The physicians must be nominated by the board of medical examiners and must be certified or eligible for certification in a specialty relevant to the medical issue to be examined by the panel pursuant to this section.

(2) If a dispute exists between a claimant and an employer regarding the extent of liability for the aggravation of a preexisting condition as the result of an injury and a settlement cannot be reached, the following procedure must be followed:

(a) The department shall direct the claimant to a member of the medical panel for examination. The panel member must be provided with all relevant medical records, including the findings of independent medical examinations. The panel member shall determine as a percentage the amount of apportionment, if any, assignable to any other noncompensable disease, condition, or infirmity. The

department shall forward a copy of the report to the claimant and employer. The party requesting the examination shall pay for the cost of the examination.

(b) Either party may, within 20 days of receipt of the report and at the party's expense, request that the claimant be examined by a second panel member to be selected by the department. The second panel member shall conduct an examination of the claimant and submit a report regarding apportionment with respect to any preexisting condition. The department shall forward copies of the report to the parties.

(c) If a second report is requested, the department shall appoint a third panel member and the two reporting members to review the two reports and to issue a report establishing the amount of apportionment to be assigned to any preexisting condition. The three panel members may consult with the claimant's attending physician or any independent medical examiner.

(d) If a second examination is not requested, the department shall issue its order determining the percentage of apportionment assigned to any other noncompensable disease, condition, or infirmity, based on the report of the first examining panel member. If a second examination is requested, the department shall base its order on the report of the three panel members. The report of the three members



1 is-prima-facie-evidence-of--the--matters--contained--in--the  
2 report.

3 NEW SECTION. Section 8. Temporary partial disability  
4 benefits. (1) If, prior to maximum healing, an injured  
5 worker is--medically HAS A PHYSICAL RESTRICTION, AS  
6 DETERMINED BY OBJECTIVE MEDICAL FINDINGS, AND IS approved to  
7 return to the--same, A modified, or alternative employment  
8 that the worker is able and qualified to perform and the  
9 worker suffers an actual wage loss as a result of a  
10 temporary work restriction, the worker qualifies for  
11 temporary partial disability benefits.

12 (2) Weekly compensation benefits for temporary partial  
13 disability must be the difference between the injured  
14 worker's hourly AVERAGE WEEKLY wage received at the time of  
15 the injury, subject to a maximum of 40 hours a week, and the  
16 actual weekly wages earned during the period that the  
17 claimant is temporarily partially disabled, NOT TO EXCEED  
18 THE STATE'S AVERAGE WEEKLY WAGE AT THE TIME OF INJURY.

19 (3) Temporary partial disability benefits are limited  
20 to a total of 26 weeks of--combined--weekly--compensation--or  
21 are--payable--until--the--time--the--worker--is--no--longer  
22 temporarily--partially--disabled,--whichever--occurs--first.

23 (4)--The-amount-of-temporary-partial-disability-benefits  
24 must-be-based-upon-payroll-records-provided-by-the--employer  
25 and--calculated--on-a-biweekly-basis--The-combined-wages-and

1 compensation-benefits-may-not-exceed--the--worker's--average  
2 weekly-wage-at-the-time-of-injury.

3 (4) A WORKER REQUALIFIES FOR TEMPORARY TOTAL DISABILITY  
4 BENEFITS IF THE MODIFIED POSITION IS NO LONGER AVAILABLE TO  
5 THE WORKER AND THE WORKER CONTINUES TO BE TEMPORARILY  
6 TOTALLY DISABLED AS DEFINED IN 39-71-116.

7 (5) Temporary partial disability may not be considered  
8 an element of permanent partial disability and may not be  
9 credited against any permanent impairment or any permanent  
10 partial disability award or settlement achieved after the  
11 injured worker reaches maximum healing.

12 NEW-SECTION--Section-15--Reporting--new-employees--Any  
13 employer-operating--in--this--state--shall--report--any--new  
14 employees--hired--to--work--in--this--state--and--the--work  
15 classification-of-those-employees-to-the-employer's--insurer  
16 and--the--department--within-72-hours-of-the-first-regularly  
17 scheduled-payday-after-hiring-the-employee.

18 **Section 9.** Section 39-71-2101, MCA, is amended to read:

19 \*39-71-2101. General requirements for electing coverage  
20 under plan. (1) An employer may elect to be bound by  
21 compensation plan No. 1 upon furnishing satisfactory proof  
22 to the department and the Montana self-insurers guaranty  
23 fund of his solvency and financial ability to pay the  
24 compensation and benefits provided for in this chapter  
25 provided-for and to discharge all liabilities which that are

reasonably likely to be incurred by him during the fiscal year for which such the election is effective, and The employer may, by order of the department and with the concurrence of the guaranty fund, make such the payments directly to his employees as they may become entitled to receive payments under the terms and conditions of this chapter.

(2) Employers who comply with the provisions of this chapter and who are participating in collectively bargained, jointly administered Taft-Hartley trust funds are eligible to provide self-insured workers' compensation benefits for their employees."

~~NEW SECTION. Section 17. Repealer. Section 39-71-402, MEA, is repealed.~~

**NEW SECTION. SECTION 10. WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE -- OPTIONAL DEDUCTIBLES. (1)** AN INSURER ISSUING A WORKERS' COMPENSATION OR AN EMPLOYER'S LIABILITY INSURANCE POLICY MAY OFFER TO THE POLICYHOLDER, AS PART OF THE POLICY OR BY ENDORSEMENT, OPTIONAL DEDUCTIBLES FOR BENEFITS PAYABLE UNDER THE POLICY CONSISTENT WITH THE STANDARDS CONTAINED IN SUBSECTION (3).

(2) A RATING ORGANIZATION MAY DEVELOP AND FILE A DEDUCTIBLE PLAN OR PLANS ON BEHALF OF ITS MEMBERS CONSISTENT WITH THE STANDARDS CONTAINED IN SUBSECTION (3).

(3) THE COMMISSIONER OF INSURANCE SHALL APPROVE A

DEDUCTIBLE PLAN THAT IS IN ACCORDANCE WITH THE FOLLOWING STANDARDS:

(A) CLAIMANTS' RIGHTS ARE PROPERLY PROTECTED AND CLAIMANTS' BENEFITS ARE PAID WITHOUT REGARD TO THE DEDUCTIBLE.

(B) PREMIUM REDUCTIONS REFLECT THE TYPE AND LEVEL OF THE DEDUCTIBLE, CONSISTENT WITH ACCEPTED ACTUARIAL STANDARDS.

(C) PREMIUM REDUCTIONS FOR DEDUCTIBLES ARE DETERMINED BEFORE APPLICATION OF ANY EXPERIENCE MODIFICATION, PREMIUM SURCHARGE, OR PREMIUM DISCOUNT.

(D) RECOGNITION IS GIVEN TO POLICYHOLDER CHARACTERISTICS, INCLUDING BUT NOT LIMITED TO SIZE, FINANCIAL CAPABILITIES, NATURE OF ACTIVITIES, AND NUMBER OF EMPLOYEES.

(E) THE POLICYHOLDER IS LIABLE TO THE INSURER FOR THE DEDUCTIBLE AMOUNT IN REGARD TO BENEFITS PAID FOR COMPENSABLE CLAIMS.

(F) THE INSURER PAYS ALL OF THE DEDUCTIBLE AMOUNT APPLICABLE TO A COMPENSABLE CLAIM TO THE PERSON OR PROVIDER ENTITLED TO BENEFITS AND THEN SEEKS REIMBURSEMENT FROM THE POLICYHOLDER FOR THE APPLICABLE DEDUCTIBLE AMOUNT.

(G) FAILURE BY THE POLICYHOLDER TO REIMBURSE DEDUCTIBLE AMOUNTS TO THE INSURER IS TREATED UNDER THE POLICY AS NONPAYMENT OF PREMIUM.

(H) LOSSES SUBJECT TO THE DEDUCTIBLE MUST BE REPORTED AND RECORDED AS LOSSES FOR PURPOSES OF RATEMAKING AND APPLICATION OF THE EXPERIENCE RATING PLAN ON THE SAME BASIS AS LOSSES UNDER POLICIES PROVIDING FIRST DOLLAR COVERAGE.

(4) THE STATE COMPENSATION MUTUAL INSURANCE FUND, PLAN NO. 3, MAY ADOPT THE PLAN FILED BY THE RATING ORGANIZATION OR ADOPT AN OPTIONAL DEDUCTIBLE PLAN THAT MEETS THE REQUIREMENTS OF THIS SECTION.

(5) FOR PURPOSES OF 39-71-201, LIABILITY FOR ASSESSMENTS MUST BE ASCERTAINED BASED ON PREMIUMS COLLECTED, IN THE CASE OF POLICIES WRITTEN UNDER PLAN NO. 2, OR ON THE ASSESSMENT LEVIED, IN THE CASE OF POLICIES WRITTEN UNDER PLAN NO. 3, FOR WHICH THE POLICYHOLDER WOULD HAVE BEEN OBLIGATED WITHOUT THE DEDUCTIBLE. FOR ALL OTHER TAXES AND ASSESSMENTS BASED ON PREMIUM, THE AMOUNT OF PREMIUM OR ASSESSMENT MUST BE DETERMINED AFTER APPLICATION OF THE DEDUCTIBLE.

**SECTION 11. SECTION 39-71-316, MCA, IS AMENDED TO READ:**

"39-71-316. Filing true claim -- obtaining benefits through deception or other fraudulent means. (1) A person filing a claim under this chapter or chapter 72 of this title, by signing the claim, affirms the information filed is true and correct to the best of that person's knowledge.

(2) A person who obtains or assists in obtaining benefits to which the person is not entitled under this

chapter or chapter 72 of this title may be guilty of theft under 45-6-301. A county attorney may initiate criminal proceedings against the person.

(3) A person licensed under the provisions of Title 37 is subject to suspension, revocation, or denial of a license if the person knowingly claims or assists in the claiming of benefits in violation of the provisions of chapter 72 or this chapter."

**SECTION 12. SECTION 37-1-131, MCA, IS AMENDED TO READ:**

"37-1-131. Duties of boards. Each board within the department shall:

(1) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within its jurisdiction;

(2) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within its jurisdiction. The hearings shall be conducted by legal counsel when required under 37-1-121(1).

(3) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection (2), is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers' compensation system in violation of the provisions of Title

1 39, chapter 71 or 72;

2 ~~(3)~~(4) pay to the department its pro rata share of the  
3 assessed costs of the department under 37-1-101(6);

4 ~~(4)~~(5) consult with the department before the board  
5 initiates a program expansion, under existing legislation,  
6 to determine if the board has adequate money and  
7 appropriation authority to fully pay all costs associated  
8 with the proposed program expansion. The board may not  
9 expand a program if the board does not have adequate money  
10 and appropriation authority available."

11 **SECTION 13. SECTION 37-3-322, MCA, IS AMENDED TO READ:**

12 "37-3-322. Unprofessional conduct. As used in this  
13 chapter, "unprofessional conduct" means:

14 (1) resorting to fraud, misrepresentation, or deception  
15 in applying for or in securing a license or in taking the  
16 examination provided for in this chapter;

17 (2) performing abortion contrary to law;

18 (3) obtaining a fee or other compensation, either  
19 directly or indirectly, by the misrepresentation that a  
20 manifestly incurable disease, injury, or condition of a  
21 person can be cured;

22 (4) employing abusive billing practices;

23 (5) directly or indirectly giving or receiving a fee,  
24 commission, rebate, or other compensation for professional  
25 services not actually rendered. This prohibition does not

1 preclude the legal functioning of lawful professional  
2 partnerships, corporations, or associations.

3 (6) willful disobedience of the rules of the board;

4 (7) conviction of an offense involving moral turpitude  
5 or conviction of a felony involving moral turpitude, and the  
6 judgment of the conviction, unless pending on appeal, is  
7 conclusive evidence of unprofessional conduct;

8 (8) commission of an act of sexual abuse, misconduct,  
9 or exploitation related to the licensee's practice of  
10 medicine;

11 (9) administering, dispensing, or prescribing a  
12 narcotic or hallucinatory drug, as defined by the federal  
13 food and drug administration or successors, otherwise than  
14 in the course of legitimate or reputable professional  
15 practice;

16 (10) conviction or violation of a federal or state law  
17 regulating the possession, distribution, or use of a  
18 narcotic or hallucinatory drug, as defined by the federal  
19 food and drug administration, and the judgment of  
20 conviction, unless pending on appeal, is conclusive evidence  
21 of unprofessional conduct;

22 (11) habitual intemperance or excessive use of narcotic  
23 drugs, alcohol, or any other drug or substance to the extent  
24 that the use impairs the user physically or mentally;

25 (12) conduct unbecoming a person licensed to practice

1 medicine or detrimental to the best interests of the public  
2 as defined by rule of the board;

3 (13) conduct likely to deceive, defraud, or harm the  
4 public;

5 (14) making a false or misleading statement regarding  
6 the licensee's skill or the effectiveness or value of the  
7 medicine, treatment, or remedy prescribed by the licensee or  
8 at the licensee's direction in the treatment of a disease or  
9 other condition of the body or mind;

10 (15) resorting to fraud, misrepresentation, or deception  
11 in the examination or treatment of a person or in billing or  
12 reporting to a person, company, institution, or  
13 organization, including fraud, misrepresentation, or  
14 deception with regard to a claim for benefits under Title  
15 39, chapter 71 or 72;

16 (16) use of a false, fraudulent, or deceptive statement  
17 in any document connected with the practice of medicine;

18 (17) practicing medicine under a false or assumed name;

19 (18) testifying in court on a contingency basis;

20 (19) conspiring to misrepresent or willfully  
21 misrepresenting medical conditions improperly to increase or  
22 decrease a settlement, award, verdict, or judgment;

23 (20) aiding or abetting in the practice of medicine by a  
24 person not licensed to practice medicine or a person whose  
25 license to practice medicine is suspended;

1 (21) allowing another person or organization to use the  
2 licensee's license to practice medicine;

3 (22) malpractice or negligent practice;

4 (23) except as provided in this subsection, practicing  
5 medicine as the partner, agent, or employee of or in joint  
6 venture with a person who does not hold a license to  
7 practice medicine within this state; however, this does not  
8 prohibit:

9 (a) the incorporation of an individual licensee or  
10 group of licensees as a professional service corporation  
11 under Title 35, chapter 4;

12 (b) a single consultation with or a single treatment by  
13 a person or persons licensed to practice medicine and  
14 surgery in another state or territory of the United States  
15 or foreign country; or

16 (c) practicing medicine as the partner, agent, or  
17 employee of or in joint venture with a hospital, medical  
18 assistance facility, or other licensed health care provider.  
19 However:

20 (i) the partnership, agency, employment, or joint  
21 venture must be evidenced by a written agreement containing  
22 language to the effect that the relationship created by the  
23 agreement may not affect the exercise of the physician's  
24 independent judgment in the practice of medicine;

25 (ii) the physician's independent judgment in the

1 practice of medicine must in fact be unaffected by the  
2 relationship; and

3 (iii) the physician may not be required to refer any  
4 patient to a particular provider or supplier or take any  
5 other action the physician determines not to be in the  
6 patient's best interest.

7 (24) willfully or negligently violating the  
8 confidentiality between physician and patient, except as  
9 required by law;

10 (25) failing to report to the board any adverse  
11 judgment, settlement, or award arising from a medical  
12 liability claim related to acts or conduct similar to acts  
13 or conduct that would constitute grounds for action as  
14 defined in this section;

15 (26) failing to transfer pertinent and necessary medical  
16 records to another physician when requested to do so by the  
17 subject patient or by the patient's legally designated  
18 representative;

19 (27) failing to furnish to the board or its  
20 investigators or representatives information legally  
21 requested by the board;

22 (28) failing to cooperate with a lawful investigation  
23 conducted by the board;

24 (29) violating or attempting to violate, directly or  
25 indirectly, or assisting in or abetting the violation of or

1 conspiring to violate parts 1 through 3 of this chapter or  
2 the rules authorized by them;

3 (30) having been subject to disciplinary action of  
4 another state or jurisdiction against a license or other  
5 authorization to practice medicine, based upon acts or  
6 conduct by the licensee similar to acts or conduct that  
7 would constitute grounds for action as defined in this  
8 section. A certified copy of the record of the action taken  
9 by the other state or jurisdiction is evidence of  
10 unprofessional conduct.

11 (31) any other act, whether specifically enumerated or  
12 not, which, in fact, constitutes unprofessional conduct."

13 **SECTION 14. SECTION 37-6-310, MCA, IS AMENDED TO READ:**

14 **"37-6-310. Unprofessional conduct. As used in this**  
15 **chapter, "unprofessional conduct" means:**

16 (1) resorting to fraud, misrepresentation, or deception  
17 in applying for or in securing a license or in taking the  
18 examination provided for in this chapter;

19 (2) obtaining a fee or other compensation, either  
20 directly or indirectly, by the misrepresentation that a  
21 manifestly incurable disease, injury, or condition of a  
22 person can be cured;

23 (3) willful disobedience of the rules of the board;

24 (4) final conviction of an offense involving moral  
25 turpitude;

(5) administering, dispensing, or prescribing a narcotic or hallucinatory drug, as defined by the federal food and drug administration or successors, otherwise than in the course of legitimate or reputable professional practice;

(6) final conviction of a violation of a federal or state law regulating the possession, distribution, or use of a narcotic or hallucinatory drug, as defined by the federal food and drug administration;

(7) habitual intemperance or excessive use of narcotic drugs, alcohol, or any other drug or substance to the extent that the use impairs the user physically or mentally;

(8) conduct unbecoming a person licensed to practice podiatry or detrimental to the best interest of the public;

(9) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organization, including fraud, misrepresentation, or deception with regard to a claim for benefits under Title 39, chapter 71 or 72;

(10) testifying in court on a contingency basis;

(11) conspiring to misrepresent or willfully misrepresenting medical conditions to increase or decrease a settlement, award, verdict, or judgment;

(12) aiding or abetting in the practice of medicine a

person not licensed to practice medicine or a person whose license to practice medicine is suspended;

(13) gross malpractice or negligent practice;

(14) practicing podiatry as the partner, agent, or employee of or in joint venture with a person who does not hold a license to practice podiatry within this state; however, this does not prohibit the incorporation of an individual licensee or group of licensees as a professional service corporation under Title 35, chapter 4, nor does this apply to a single consultation with or a single treatment by a person or persons licensed to practice podiatry in another state or territory of the United States or foreign country;

(15) violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate parts 1 through 3 of this chapter or the rules authorized by parts 1 through 3; or

(16) any other act, whether specifically enumerated or not, which in fact constitutes unprofessional conduct."

**SECTION 15. SECTION 37-10-311, MCA, IS AMENDED TO READ:**

"37-10-311. Revocation -- unprofessional conduct. (1)

The board may revoke a certificate of registration for:

(a) physical or mental incompetence;

(b) gross malpractice or repeated malpractice;

(c) a violation of any of the provisions of this chapter or rules or orders of the board; or

1 (d) unprofessional conduct.

2 (2) Unprofessional conduct includes:

3 (a) obtaining a fee by fraud or misrepresentation;

4 (b) employing, directly or indirectly, a suspended or

5 unlicensed optometrist to perform work covered by this

6 chapter;

7 (c) directly or indirectly accepting employment to

8 practice optometry from a person not having a valid

9 certificate of registration as an optometrist or accepting

10 employment to practice optometry for or from a company or

11 corporation;

12 (d) permitting another to use his the optometrist's

13 certificate of registration;

14 (e) soliciting or sending a solicitor from house to

15 house;

16 (f) treatment or advice in which untruthful or

17 improbable statements are made;

18 (g) professing to cure nonocular disease;

19 (h) advertising in which ambiguous or misleading

20 statements are made; or

21 (i) the use in advertising of the expression "eye

22 specialist" or "specialist on eyes" in connection with the

23 name of an optometrist. This chapter does not prohibit

24 legitimate or truthful advertising by a registered

25 optometrist; or

1 (j) resorting to fraud, misrepresentation, or deception

2 in the examination or treatment of a person or in billing or

3 reporting to a person, company, institution, or

4 organization, including fraud, misrepresentation, or a claim

5 for benefits under Title 39, chapter 71 or 72.

6 (3) Before a certificate is revoked, the holder shall

7 be given a notice and an opportunity for a hearing.

8 (4) Any optometrist convicted a second time for

9 violation of the provisions of this chapter or whose

10 certificate of registration or examination has been revoked

11 a second time shall not be permitted to practice optometry

12 in this state."

13 **SECTION 16. SECTION 37-12-321, MCA, IS AMENDED TO READ:**

14 "37-12-321. Unprofessional conduct. As used in this

15 chapter, "unprofessional conduct" means:

16 (1) resorting to fraud, misrepresentation, or deception

17 in applying for or securing a license or in taking the

18 examination provided for in this chapter;

19 (2) obtaining any form of compensation, directly or

20 indirectly, by the misrepresentation that a manifestly

21 incurable disease, injury, or condition can be cured;

22 (3) practicing chiropractic under a false or assumed

23 name or impersonating another practitioner of like or

24 different name;

25 (4) knowingly disobeying a rule of the board;



(5) conviction of a criminal offense involving moral turpitude. A certified copy of the judgment of conviction is conclusive evidence of the conviction. This subsection is subject to chapter 1, part 2, of this title.

(6) habitual intemperance or excessive use of narcotic drugs, alcohol, or any other substance to the extent that such use impairs the user's physical or mental professional capability;

(7) administering, dispensing, or prescribing a narcotic or hallucinatory drug, as defined by the federal food and drug administration or successors;

(8) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organization, including fraud, misrepresentation, or deception with regard to a claim for benefits under Title 39, chapter 71 or 72;

(9) testifying in court on a contingency basis;

(10) conspiring to misrepresent or knowingly misrepresenting physical conditions in order to increase or decrease a settlement or award;

(11) aiding or abetting in the practice of chiropractic a person not licensed to practice chiropractic or a person whose license is suspended;

(12) practicing chiropractic as the partner, agent, or

employee of or in joint venture with a person not licensed to practice chiropractic in this state. However, this does not prohibit incorporation as a professional service corporation under Title 35, chapter 4, or prevent a single consultation with or a single treatment by a person licensed to practice chiropractic in another state or territory of the United States or a foreign country.

(13) violating, attempting or conspiring to violate, or aiding or abetting in the violation of this chapter or the rules adopted under it; or

(14) conduct unbecoming a person licensed to practice chiropractic or detrimental to the best interests of the public."

#### **SECTION 17. SECTION 37-14-321, MCA, IS AMENDED TO READ:**

"37-14-321. Revocation or suspension of license or permit. A license or permit may be suspended for a fixed period or may be revoked, or such technologist or technician may be censured, reprimanded, or otherwise disciplined as determined by the board if, after a hearing before the board, it is determined that the radiologic technologist or limited permit technician:

(1) is guilty of fraud or deceit in activities as a radiologic technologist or limited permit technician or has been guilty of any fraud or deceit in procuring the license or permit;

(2) has been convicted in a court of competent jurisdiction of a crime involving moral turpitude;

(3) is an habitual drunkard or is addicted to the use of narcotics or other drugs having a similar effect or is not mentally competent;

(4) is guilty of unethical or unprofessional conduct, as defined by rules promulgated by the board, including fraud, misrepresentation, or deception with regard to a claim for benefits under Title 39, chapter 71 or 72, or has been guilty of incompetence or negligence in his activities as a radiologic technologist or limited permit technician;

(5) has continued to perform as a radiologic technologist or limited permit technician without obtaining a license or permit or renewal as required by this chapter."

NEW SECTION. SECTION 18. PROHIBITED ACTIONS --  
PENALTY. (1) THE FOLLOWING ACTIONS BY A MEDICAL PROVIDER  
CONSTITUTE VIOLATIONS AND ARE SUBJECT TO THE PENALTY IN  
SUBSECTION (3)(2):

(A) FAILING TO DOCUMENT, UNDER OATH, THE PROVISION OF  
THE SERVICES OR TREATMENT FOR WHICH COMPENSATION IS CLAIMED  
UNDER CHAPTER 72 OR THIS CHAPTER; OR

(B) REFERRING A WORKER FOR TREATMENT OR DIAGNOSIS OF AN  
INJURY OR ILLNESS THAT IS COMPENSABLE UNDER CHAPTER 72 OR  
THIS CHAPTER TO A FACILITY OWNED WHOLLY OR IN PART BY THE  
PROVIDER, UNLESS THE PROVIDER INFORMS THE WORKER OF THE

OWNERSHIP INTEREST AND PROVIDES THE NAME AND ADDRESS OF  
ALTERNATE FACILITIES, IF ANY EXIST.

(2) -- A PERSON LICENSED TO PRACTICE LAW IN MONTANA -- OR -- A  
MEDICAL -- CARE PROVIDER WHO ADVERTISES SERVICES OR FACILITIES  
WITH THE INTENTION THAT A WORKER USE THOSE SERVICES OR  
FACILITIES WITH REGARD TO AN INJURY OR ILLNESS THAT IS  
COMPENSABLE UNDER CHAPTER 72 OR THIS CHAPTER AND WHO FAILS  
TO ANNOUNCE IN THE ADVERTISEMENT THAT FILING A FRAUDULENT  
CLAIM IS THEFT, AS PROVIDED IN 39-71-316, IS SUBJECT TO THE  
PENALTY IN SUBSECTION (3):

(3)(2) A PERSON WHO VIOLATES THIS SECTION MAY BE  
ASSESSED A PENALTY OF NOT LESS THAN \$200 OR MORE THAN \$500  
FOR EACH OFFENSE. THE DEPARTMENT SHALL ASSESS AND COLLECT  
THE PENALTY.

NEW SECTION. SECTION 19. NO LIABILITY FOR REPORTING  
VIOLATION. A PERSON, INCLUDING BUT NOT LIMITED TO AN INSURER  
OR AN EMPLOYER, MAY NOT BE HELD LIABLE FOR CIVIL DAMAGES AS  
A RESULT OF REPORTING IN GOOD FAITH INFORMATION THAT THE  
PERSON BELIEVES PROVES A VIOLATION OF THE PROVISIONS OF  
CHAPTER 72 OR THIS CHAPTER.

SECTION 20. SECTION 39-71-736, MCA, IS AMENDED TO READ:

"39-71-736. Compensation -- from what date paid.  
(1) (a) No compensation may be paid for the first 48 hours  
or 6 days' loss of wages, whichever is less, that the  
claimant is totally disabled and unable to work due to an

injury. A claimant is eligible for compensation starting with the 7th day.

(b) However, separate benefits of medical and hospital services must be furnished from the date of injury.

(2) For the purpose of this section, except as provided in subsection (3), an injured worker is not considered to be entitled to compensation benefits if the worker is receiving sick leave benefits, except that each day for which the worker elects to receive sick leave counts 1 day toward the 6-day waiting period.

(3) Augmentation of temporary total disability benefits with sick leave by an employer pursuant to a collective bargaining agreement may not disqualify a worker from receiving temporary total disability benefits.

(4) Receipt of vacation leave by an injured worker may not affect the worker's eligibility for temporary total disability benefits."

**SECTION 21. SECTION 39-71-2315, MCA, IS AMENDED TO READ:**

"39-71-2315. Management of state fund -- powers and duties of the board -- business plan required. (1) The management and control of the state fund is vested solely in the board.

(2) The board is vested with full power, authority, and jurisdiction over the state fund. The board may perform all

acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the state fund, either in the administration of the state fund or in connection with the insurance business to be carried on under the provisions of this part, as fully and completely as the governing body of a private mutual insurance carrier, in order to fulfill the objectives and intent of this part. Bonds may not be issued by the board, the state fund, or the executive director.

(3) The board shall adopt a business plan no later than June 30 for the next fiscal year. At a minimum, the plan must include:

(a) specific goals for the fiscal year for financial performance. The standard for measurement of financial performances must include an evaluation of premium to surplus.

(b) specific goals for the fiscal year for operating performance. Goals must include but not be limited to specific performance standards for staff in the area of senior management, underwriting, and claims administration. Goals must, in general, maximize efficiency, economy, and equity as allowed by law.

(4) The business plan must be available upon request to the general public for a fee not to exceed the actual cost of publication. However, performance goals relating to a

specific employment position are confidential and not available to the public.

(5) No sooner than July 1 or later than October 31, the board shall convene a public meeting to review the performance of the state fund, using the business plan for comparison of all the established goals and targets. The board shall publish, by November 30 of each year, a report of the state fund's actual performance as compared to the business plan."

NEW SECTION. **SECTION 22.** DEFINITIONS. AS USED IN [SECTION 23], THE FOLLOWING DEFINITIONS APPLY:

(1) "BUSINESS ENTITY" MEANS A BUSINESS ENTERPRISE OWNED BY A SINGLE PERSON, CORPORATION, ORGANIZATION, BUSINESS TRUST, TRUST, PARTNERSHIP, JOINT VENTURE, ASSOCIATION, OR OTHER BUSINESS ENTITY.

(2) "GROUP" MEANS TWO OR MORE BUSINESS ENTITIES THAT JOIN TOGETHER WITH THE APPROVAL OF THE DEPARTMENT TO PURCHASE INDIVIDUAL WORKERS' COMPENSATION INSURANCE POLICIES COVERING EACH BUSINESS ENTITY THAT IS PART OF A GROUP.

NEW SECTION. **SECTION 23.** GROUP PURCHASE OF WORKERS' COMPENSATION INSURANCE. (1) ON RECEIVING APPROVAL OF THE DEPARTMENT, TWO OR MORE BUSINESS ENTITIES MAY JOIN TOGETHER TO FORM A GROUP TO PURCHASE INDIVIDUAL WORKERS' COMPENSATION INSURANCE POLICIES COVERING EACH MEMBER OF THE GROUP.

(2) TO BE ELIGIBLE TO JOIN A GROUP, THE DEPARTMENT

SHALL DETERMINE THAT A BUSINESS ENTITY IS ENGAGED IN A BUSINESS PURSUIT THAT IS THE SAME AS OR SIMILAR TO THE BUSINESS PURSUITS OF THE OTHER ENTITIES PARTICIPATING IN THE GROUP.

(3) THE DEPARTMENT SHALL ESTABLISH A CERTIFICATION PROGRAM FOR GROUPS ORGANIZED UNDER THIS SECTION AND SHALL ISSUE TO ELIGIBLE BUSINESS ENTITIES CERTIFICATES OF APPROVAL THAT AUTHORIZE FORMATION AND MAINTENANCE OF A GROUP.

(4) THE DEPARTMENT BY RULE SHALL ADOPT FORMS, CRITERIA, AND PROCEDURES FOR THE ISSUANCE OF CERTIFICATES OF APPROVAL TO GROUPS UNDER THIS SECTION.

(5) A GROUP CERTIFIED UNDER THIS SECTION MAY PURCHASE INDIVIDUAL WORKERS' COMPENSATION INSURANCE POLICIES COVERING EACH MEMBER OF THE GROUP FROM ANY INSURER AUTHORIZED TO WRITE WORKERS' COMPENSATION INSURANCE IN THIS STATE. UNDER AN INDIVIDUAL POLICY, THE GROUP IS ENTITLED TO A PREMIUM OR VOLUME DISCOUNT THAT WOULD BE APPLICABLE TO A POLICY OF THE COMBINED PREMIUM AMOUNT OF THE INDIVIDUAL POLICIES.

(6) A GROUP SHALL APPORTION ANY DISCOUNT OR POLICYHOLDER DIVIDEND RECEIVED ON WORKERS' COMPENSATION INSURANCE COVERAGE AMONG THE MEMBERS OF THE GROUP ACCORDING TO A FORMULA ADOPTED IN THE PLAN OF OPERATION FOR THE GROUP.

(7) A GROUP SHALL ADOPT A PLAN OF OPERATION THAT MUST INCLUDE THE COMPOSITION AND SELECTION OF A GOVERNING BOARD, THE METHODS FOR ADMINISTERING THE GROUP, AND GUIDELINES FOR

1 THE WORKERS' COMPENSATION INSURANCE COVERAGE OBTAINED BY THE  
 2 GROUP, INCLUDING THE PAYMENT OF PREMIUMS, THE DISTRIBUTION  
 3 OF DISCOUNTS, AND THE METHOD FOR PROVIDING RISK MANAGEMENT.  
 4 A GROUP SHALL FILE A COPY OF ITS PLAN OF OPERATION WITH THE  
 5 DEPARTMENT.

6 **SECTION 24.** SECTION 39-71-407, MCA, IS AMENDED TO READ:

7 "39-71-407. Liability of insurers -- limitations --  
 8 apportionment. (1) Every insurer is liable for the payment  
 9 of compensation, in the manner and to the extent hereinafter  
 10 provided in this section, to an employee of an employer it  
 11 insures who receives an injury arising out of and in the  
 12 course of his employment or, in the case of his death from  
 13 such the injury, to his the employee's beneficiaries, if  
 14 any.

15 (2) (a) An insurer is liable for an injury as defined  
 16 in 39-71-119 if the claimant establishes it is more probable  
 17 than not that:

18 (i) a claimed injury has occurred; or

19 (ii) a claimed injury aggravated a preexisting  
 20 condition.

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

25 (3) An employee who suffers an injury or dies while

1 traveling is not covered by this chapter unless:

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

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

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

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

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

23 (6) If an injury, as defined in 39-71-119, occurs that  
 24 involves an aggravation of a preexisting condition, the  
 25 permanent total, permanent partial, and medical benefits

1 payable under this chapter after a worker reaches maximum  
 2 healing must be apportioned between the insurer or insurers  
 3 who are liable for coverage for the preexisting condition  
 4 and the insurers who are liable for coverage for the  
 5 aggravation injury. The insurer for the injury is  
 6 responsible only for the portion attributable to the  
 7 aggravation injury.

8 (7) If a workers' compensation insurer had a  
 9 compensable claim for the preexisting condition, the insurer  
 10 remains liable for the portion attributable to that insurer  
 11 for permanent total, permanent partial, and medical  
 12 benefits."

13 **SECTION 25. SECTION 39-72-706, MCA, IS AMENDED TO READ:**

14 "39-72-706. Aggravation -- apportionment. (1) If an  
 15 occupational disease is aggravated by any other disease or  
 16 infirmity not itself compensable or if disability or death  
 17 from any other cause not itself compensable is aggravated,  
 18 prolonged, accelerated, or in any way contributed to by an  
 19 occupational disease, the compensation payable under this  
 20 chapter must be reduced-and-limited-to-such-proportion-only  
 21 of--the--compensation--that--would---be---payable---if---the  
 22 occupational--disease--were-the-sole-cause-of-the-disability  
 23 or-death-as-such-occupational-disease-as-a-causative--factor  
 24 bears--to--all--the--causes--of--such--disability--or--death  
 25 apportioned between the preexisting condition and the

1 liability attributable to the occupational disease after the  
 2 worker reaches maximum healing.

3 (2) If a workers' compensation insurer had a  
 4 compensable claim for the preexisting condition, the insurer  
 5 remains liable for the portion attributable to that insurer  
 6 for benefits paid.

7 (3) If compensation is reduced--a---proportionate  
 8 amount apportioned as provided in subsection (1) and the  
 9 worker receives disability social security benefits, the  
 10 offset entitlement granted to the insurer must be reduced  
 11 apportioned in the same proportionate amount as the  
 12 compensation as long as the worker continues to receive  
 13 disability social security benefits."

14 **SECTION 26. SECTION 39-72-707, MCA, IS AMENDED TO READ:**

15 "39-72-707. Silicosis with complications. In cases of  
 16 disability or death from silicosis complicated with  
 17 tuberculosis of the lungs, compensation shall must be  
 18 payable as for disability or death from an uncomplicated  
 19 silicosis. In case of disability or death from silicosis  
 20 when complicated with any disease not compensable under this  
 21 chapter and other than pulmonary tuberculosis, compensation  
 22 shall---be--reduced must be apportioned as provided in  
 23 39-72-706."

24 **SECTION 27. SECTION 39-71-606, MCA, IS AMENDED TO READ:**

25 "39-71-606. Insurer to accept or deny claim within

thirty days of receipt -- notice of denial -- 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 entitlement available under Title 39, chapter 71. Upon receipt of a claim, each insurer shall promptly notify the claimant in writing of potential benefits and entitlement available by providing the claimant a copy of the document prepared by the department.

(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 28. Codification instruction. (1) {Sections--117-127-and-15}-are-intended-to-be-codified-as-an integral-part-of-Title-39,--chapter--71,--part--37--and--the provisions--of--Title--39,--chapter--71,--part--37--apply-to {sections-117-127-and-15}.

{2}--{Sections--13--and--14} {SECTIONS--8--AND--9} are [SECTION 8] IS intended to be codified as an integral part of Title 39, chapter 71, part 7, and the provisions of Title

39, chapter 71, part 7, apply to {sections-13-and-14}-  
{SECTIONS-8-AND-9} [SECTION 8].

(2) [SECTION 11 10] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 39, CHAPTER 71, PART 4, AND THE PROVISIONS OF TITLE 39, CHAPTER 71, PART 4, APPLY TO [SECTION 11 10].

(3) [SECTIONS 19--AND-20 18 AND 19] ARE INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 39, CHAPTER 71, AND THE PROVISIONS OF TITLE 39, CHAPTER 71, APPLY TO [SECTIONS 19-AND-20 18 AND 19].

(4) [SECTIONS 22 AND 23] ARE INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 39, CHAPTER 71, AND THE PROVISIONS OF TITLE 39, CHAPTER 71, APPLY TO [SECTIONS 22 AND 23].

NEW SECTION. SECTION 29. 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 30. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE JULY 1, 1993.

-End-

## HOUSE BILL NO. 622

INTRODUCED BY EWER, HARP

1 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING  
2 WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LAWS;  
3 PROVIDING FOR SUSPENSION OF BENEFITS TO A WORKER WHO FAILS  
4 TO KEEP MEDICAL APPOINTMENTS; AUTHORIZING SETTLEMENTS FOR  
5 FUTURE MEDICAL BENEFITS; REVISING REHABILITATION BENEFITS  
6 REQUIREMENTS; DESIGNATING LIABILITY FOR OCCUPATIONAL DISEASE  
7 BENEFITS IF THERE IS MORE THAN ONE INSURER; REVISING  
8 BENEFITS WHEN OCCUPATIONAL DISEASE IS AGGRAVATED BY  
9 NONCOMPENSABLE DISEASE OR INFIRMITY; ALLOWING APPORTIONMENT  
10 OF COMPENSATION FOR PREEXISTING CONDITIONS BETWEEN INSURERS;  
11 REQUIRING--NONRESIDENT-EMPLOYERS-TO-OBTAIN-IN-STATE-COVERAGE  
12 OR-PAY-THE-DIFFERENCE-IN-PREMIUMS; PROVIDING FOR--FINES--FOR  
13 EMPLOYER-MISCONDUCT; CREATING-A-MEDICAL-PANEL-AND-PROCEDURES  
14 FOR-HANDLING-PREEXISTING-INJURY-DISPUTES; CREATING TEMPORARY  
15 PARTIAL DISABILITY BENEFITS; REQUIRING-EMPLOYERS-TO-REPORT  
16 NEW-EMPLOYEES-TO-THE-INSURER-AND-DEPARTMENT-WITHIN-72--HOURS  
17 OF--THE--FIRST--PAYDAY--AFTER--HIRING; REVISING ELIGIBILITY  
18 REQUIREMENTS TO SELF-INSURE; ALLOWING CERTAIN OPTIONAL  
19 DEDUCTIBLES TO POLICYHOLDERS; REQUIRING SUSPENSION,  
20 REVOCATION, OR DENIAL OF A PROFESSIONAL OR OCCUPATIONAL  
21 LICENSE FOR VIOLATION OF THE WORKERS' COMPENSATION LAW;  
22 REVISING THE DEFINITION OF UNPROFESSIONAL CONDUCT;

1 PROHIBITING CERTAIN ACTIONS; PRECLUDING LIABILITY FOR  
2 REPORTING VIOLATIONS OF THE WORKERS' COMPENSATION LAW;  
3 ALLOWING AUGMENTATION OF TEMPORARY TOTAL DISABILITY BENEFITS  
4 WITH SICK LEAVE AND VACATION LEAVE; REQUIRING THE STATE FUND  
5 BOARD TO ADOPT AN ANNUAL BUSINESS PLAN; ALLOWING GROUP  
6 PURCHASE OF WORKERS' COMPENSATION INSURANCE; REQUIRING THE  
7 INSURER TO NOTIFY CLAIMANTS OF BENEFITS AND ENTITLEMENT  
8 USING INFORMATION PROVIDED BY THE DEPARTMENT; AMENDING  
9 SECTIONS 37-1-131, 37-3-322, 37-6-310, 37-10-311, 37-12-321,  
10 37-14-321, 39-71-116, 39-71-307, 39-71-407, 39-71-604,  
11 39-71-316, 39-71-407, 39-71-605, 39-71-606, 39-71-607,  
12 39-71-736, 39-71-741, 39-71-2001, 39-71-2101, 39-71-2315,  
13 AND 39-72-303, 39-72-706, AND 39-72-707, AND 39-72-706; MCA;  
14 AND REPEALING SECTION 39-71-402; MCA PROVIDING AN EFFECTIVE  
15 DATE."

## STATEMENT OF INTENT

18 A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL BECAUSE  
19 [SECTION 23] REQUIRES THE DEPARTMENT BY RULE TO ADOPT FORMS,  
20 CRITERIA, AND PROCEDURES FOR THE ISSUANCE OF CERTIFICATES OF  
21 APPROVAL FOR GROUPS ELIGIBLE TO PURCHASE GROUP INSURANCE.  
22 THE RULES ADOPTED BY THE DEPARTMENT MUST:

- 23 (1) BE CONSISTENT WITH THE PROVISIONS OF TITLE 39,  
24 CHAPTER 71, AND [THIS ACT]; AND  
25 (2) ADDRESS WHO MAY BE IN A GROUP, HOW A MEMBER MAY BE



1 REMOVED FROM THE GROUP, THE CRITERIA FOR CERTIFICATION, THE  
 2 APPORTIONMENT OF DIVIDENDS OR DISCOUNTS, THE REQUIREMENTS  
 3 FOR A PLAN OF OPERATION, AND ANY REPORTING REQUIREMENTS THAT  
 4 MAY BE NECESSARY.

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

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

8 "39-71-116. Definitions. Unless the context otherwise  
 9 requires, words and phrases employed in this chapter have  
 10 the following meanings:

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

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

16 (b) payment of benefits;

17 (c) setting of reserves;

18 (d) furnishing of services and facilities; and

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

21 (2) "Average weekly wage" means the mean weekly  
 22 earnings of all employees under covered employment, as  
 23 defined and established annually by the Montana department  
 24 of labor and industry. It is established at the nearest  
 25 whole dollar number and must be adopted by the department

1 prior to July 1 of each year.

2 (3) "Beneficiary" means:

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

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

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

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

12 (e) a parent who is dependent upon the decedent for  
 13 support at the time of the injury if no a beneficiary, as  
 14 defined in subsections (3)(a) through (3)(d), exists does  
 15 not exist; and

16 (f) a brother or sister under the age of 18 years if  
 17 dependent upon the decedent for support at the time of the  
 18 injury but only until the age of 18 years and only when no a  
 19 beneficiary, as defined in subsections (3)(a) through  
 20 (3)(e), exists does not exist.

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

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

1 (6) "Construction industry" means the major group of  
 2 general contractors and operative builders, heavy  
 3 construction (other than building construction) contractors,  
 4 and special trade contractors, listed in major groups 15  
 5 through 17 in the 1987 Standard Industrial Classification  
 6 Manual. The term does not include office workers, design  
 7 professionals, ~~salesmen~~ salespersons, estimators, or any  
 8 other related employment that is not directly involved on a  
 9 regular basis in the provision of physical labor at a  
 10 construction or renovation site.

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

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

15 (9) "Fiscal year" means the period of time between July  
 16 1 and the succeeding June 30.

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

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

24 (12) "Maximum healing" means the status reached when a  
 25 worker is as far restored medically as the permanent

1 character of the work-related injury will permit.

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

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

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

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

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

(16) "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~~ does not have a reasonable prospect of physically performing regular employment. 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) 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) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over such the place of business for the purpose of carrying on his the employer's usual trade, business, or occupation.

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

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

employment will reasonably permit.

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

(22) "Temporary partial disability" means a condition resulting from an injury as defined in 39-71-119,--covering the--period--after--an-injured-worker-returns-to-work-in-the same, modified, or alternative--employment--and--before--the worker--has-reached-maximum-healing IN WHICH A WORKER, PRIOR TO MAXIMUM HEALING:

(A) IS TEMPORARILY UNABLE TO RETURN TO THE POSITION HELD AT THE TIME OF INJURY BECAUSE OF A MEDICALLY DETERMINED PHYSICAL RESTRICTION;

(B) RETURNS TO WORK IN A MODIFIED OR ALTERNATIVE EMPLOYMENT; AND

(C) SUFFERS A PARTIAL WAGE LOSS.

~~(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 39-71-307, MCA, is amended to read:

"39-71-307. Employers and insurers to file reports of accidents -- penalty. (1) Every employer and every insurer is required to file with the department, under department rules, a full and complete report of every accident to an employee arising out of or in the course of his employment and resulting in loss of life or injury to the employee. The reports must be furnished to the department in the form and detail as the department prescribes and must provide specific answers to all questions required by the department under its rules. However, if an employer is unable to answer a question, he the employer shall state the reason he--is unable for the employer's inability to answer.

(2) Every insurer transacting business under this chapter shall, at the time and in the manner prescribed by the department, make and file with the department the reports of accidents as the department requires.

(3) An employer, insurer, or adjuster who refuses or

neglects to submit to the department reports necessary for the proper filing and review of a claim, as provided in subsection (1), may shall be assessed a penalty of not less than \$200 or more than \$500 for each offense. The department shall assess and collect the penalty. An insurer may contest a penalty assessment in a hearing conducted according to department rules."

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

~~"39-71-407. Liability of insurers--limitations--(1) Every 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 claimant establishes it is more probable than not that:~~

~~(i)--a claimed injury has occurred; or~~

~~(ii)--a claimed injury aggravated a preexisting condition;~~

~~(b)--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) 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 cause of the injury or death. 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 it is medically determined that the employee's use of alcohol or nonprescription drugs was an influencing factor in the cause of the injury or death.

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

(6) If a preexisting condition is aggravated by any other condition, disease, or infirmity not itself compensable or if disability or death from any other cause not itself compensable is aggravated, prolonged, accelerated, or in any way contributed to by an injury as defined in 39-71-119, the compensation and medical benefits payable under this chapter must be reduced and limited to the proportion of the disability or death resulting from the injury.

(7) If a claimant's compensation is proportionally reduced as provided in subsection (6) and the claimant receives social security disability benefits, any offset that an insurer may be entitled to must be reduced in the same proportion as the claimant's compensation was reduced for as long as the claimant receives the social security disability benefits."

Section 4. Section 39-71-604, MCA, is amended to read:

"39-71-604. Application for compensation. (1) If a worker is entitled to benefits under this chapter, the worker shall file with the insurer all reasonable information needed by the insurer to determine compensability. It is the duty of the worker's attending physician to lend all necessary assistance in making application for compensation and such the proof of other matters as may be required by the rules of the department

without--charge--to-the-worker--The-filing-of-forms-or-other  
documentation-by-the-attending-physician-does-not-constitute  
a-claim-for-compensation.

~~{2}--Workers-applying-for-compensation-for-an-injury--or  
occupational--disease--shall--allow--the--insurer--or--the  
insurer's-designated-agent-direct-access-to-medical--service  
providers--medical--information--and--the--injured-worker--  
Failure-to--comply--with--this--subsection--will--result--in  
termination-of-benefits--~~

~~{2}{3}--If--death--results--from--an-injury--the-parties  
entitled-to-compensation-or-someone-in--their--behalf--shall  
file-a-claim-with-the-insurer--The-claim-must-be-accompanied  
with--proof--of-death-and-proof-of-relationship--showing-the  
parties--entitled--to--compensation--certificate--of--the  
attending--physician--if-any--and-such-other-proof-as-may-be  
required-by-the-department--~~

**Section 3.** Section 39-71-605, MCA, is amended to read:

"39-71-605. Examination of employee by physician --  
effect of refusal to submit to examination -- report and  
testimony of physician -- cost. (1) (a) Whenever in case of  
injury the right to compensation under this chapter would  
exist in favor of any employee, he the employee shall, upon  
the written request of the insurer, submit from time to time  
to examination by a physician or panel of physicians, who  
shall must be provided and paid for by such the insurer, and

shall likewise submit to examination from time to time by  
any physician or panel of physicians selected by the  
department.

(b) The request or order for such an examination ~~shall~~  
must fix a time and place for the examination, with regard  
for the employee's convenience, his physical condition, and  
his ability to attend at the time and place that is as close  
to the employee's residence as is practical. The employee  
~~shall-be is~~ entitled to have a physician present at any such  
examination. ~~So-long-as If~~ the employee, after such written  
request, ~~shall-fail falls~~ or refuse refuses to submit to  
such the examination or ~~shall~~ in any way obstruct obstructs  
the same examination, his the employee's right to  
compensation ~~shall must~~ be suspended and is subject to the  
provisions of 39-71-607. Any physician or panel of  
physicians employed by the insurer or the department who  
~~shall-make makes~~ or be is present at any such examination  
may be required to testify as to the results thereof of the  
examination.

(2) In the event of a dispute concerning the physical  
condition of a claimant or the cause or causes of the injury  
or disability, if any, the department, at the request of the  
claimant or insurer, as the case may be, shall require the  
claimant to submit to such an examination as it ~~may--deem~~  
considers desirable by a physician or panel of physicians

1 within the state or elsewhere who have had adequate and  
 2 substantial experience in the particular field of medicine  
 3 concerned with the matters presented by the dispute. The  
 4 physician or panel of physicians making the examination  
 5 shall file a written report of findings with the claimant  
 6 and insurer for their use in the determination of the  
 7 controversy involved. The requesting party shall pay the  
 8 physician or panel of physicians for the examination.

9 (3) This section does not apply to impairment  
 10 evaluations provided for in 39-71-711."

11 **Section 4.** Section 39-71-607, MCA, is amended to read:

12 "39-71-607. Suspension of payments by insurer up--to  
 13 thirty--days pending receipt of medical information. Under  
 14 rules adopted by the department and-in-the-discretion-of-the  
 15 department, an insurer may suspend compensation payments for  
 16 not-more--than--30--days pending the receipt of medical  
 17 information when an injured worker unreasonably fails to  
 18 keep scheduled medical appointments. If, after a medical  
 19 examination, the injured worker is released to return to  
 20 work, the worker forfeits the right to any suspended  
 21 benefits."

22 **Section 5.** Section 39-71-741, MCA, is amended to read:

23 "39-71-741. Compromise settlements and lump-sum  
 24 payments. (1) (a) Benefits may be converted in whole to a  
 25 lump sum:

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

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

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

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

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

14 (b) The total of any lump-sum conversion in part that  
 15 is awarded to a claimant prior to the claimant's final award  
 16 may not exceed the anticipated award under 39-71-703 or  
 17 \$20,000, whichever is less.

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

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

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

11 (a) relates to:

12 (i) the necessities of life;

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

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

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

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

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

1 (b) The rate adopted by the department must be based on  
 2 the average rate for United States 10-year treasury bills in  
 3 the previous calendar year, rounded to the nearest whole  
 4 number.

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

10 (6) Subject to the other provisions of this section,  
 11 the department has full power, authority, and jurisdiction  
 12 to allow, approve, or condition compromise settlements for  
 13 any type of benefits provided for under this chapter,  
 14 including the right to future medical benefits, or for  
 15 lump-sum payments agreed to by workers and insurers. All  
 16 such compromise settlements and lump-sum payments are void  
 17 without the approval of the department. Approval by the  
 18 department must be in writing. The department shall directly  
 19 notify a claimant of a department order approving or denying  
 20 a claimant's compromise or lump-sum payment.

21 (7) A dispute between a claimant and an insurer  
 22 regarding the conversion of biweekly payments into a  
 23 lump-sum is considered a dispute, for which a mediator and  
 24 the workers' compensation court have jurisdiction to make a  
 25 determination. If an insurer and a claimant agree to a



1 compromise and release settlement or a lump-sum payment but  
2 the department disapproves the agreement, the parties may  
3 request the workers' compensation court to review the  
4 department's decision.

5 ~~(8) An injured worker's entitlement to future medical~~  
6 ~~benefits may be terminated by mutual consent of the worker~~  
7 ~~and the insurer, subject to department approval. The~~  
8 ~~department may not disapprove an agreement unless it~~  
9 ~~determines that the worker has not been fully compensated~~  
10 ~~for terminating the worker's right to future medical~~  
11 ~~benefits."~~

12 **Section 6.** Section 39-71-2001, MCA, is amended to read:

13 "39-71-2001. Rehabilitation benefits. (1) An injured  
14 worker is eligible for rehabilitation benefits if:

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

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

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

1 capacities, and vocational interests.

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

7 (2) After filing the rehabilitation plan with the  
8 department, the injured worker is entitled to receive  
9 rehabilitation benefits at the injured worker's temporary  
10 total disability rate. The benefits must be paid for the  
11 period specified in the rehabilitation plan, not to exceed  
12 104 weeks. Rehabilitation benefits must be paid during a  
13 reasonable period, not to exceed 10 weeks, while the worker  
14 is waiting to begin the agreed-upon rehabilitation plan.  
15 Rehabilitation benefits must be paid BIWEEKLY while the  
16 worker is satisfactorily completing the agreed-upon  
17 rehabilitation plan AND ARE NOT SUBJECT TO THE LUMP-SUM  
18 PAYMENT PROVISIONS OF 39-71-741.

19 (3) If the rehabilitation plan provides for job  
20 placement, a vocational rehabilitation provider shall assist  
21 the worker in obtaining other employment and the worker is  
22 entitled to weekly benefits for a period not to exceed 8  
23 weeks at the worker's temporary total disability rate. If,  
24 after receiving benefits under this subsection, the worker  
25 decides to proceed with a rehabilitation plan, the weeks in

1 which benefits were paid under this subsection may not be  
2 credited against the maximum of 104 weeks of rehabilitation  
3 benefits provided in this section.

4 (4) If there is a dispute as to whether an injured  
5 worker can return to the job the worker held at the time of  
6 injury, the insurer shall designate a rehabilitation  
7 provider to evaluate and determine whether the worker can  
8 return to the job held at the time of injury. If it is  
9 determined that he the worker cannot return to the job HELD  
10 AT THE TIME OF INJURY, the worker is entitled to  
11 rehabilitation benefits and services as provided in  
12 subsection (2).

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

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

19 ~~(7) Upon receipt of notification of acceptance of a~~  
20 ~~claim by an insurer, the department shall notify the~~  
21 ~~claimant in writing of potential benefits and entitlements~~  
22 ~~THE SERVICES AND BENEFITS AVAILABLE pursuant to 39-71-1014,~~  
23 ~~39-71-1025, 39-71-1032, and this section THE VOCATIONAL~~  
24 ~~REHABILITATION PROVISIONS OF THE WORKERS' COMPENSATION ACT.~~

25 ~~(8) The rehabilitation benefits referred to in this~~

1 ~~section are applicable only with the actual provision of the~~  
2 ~~services and may not be negotiated as aspects of a~~  
3 ~~settlement.~~

4 ~~(9) Rehabilitation benefits under this section must be~~  
5 ~~elected within 12 months of the date of maximum medical~~  
6 ~~improvement or they are forfeited.~~

7 **Section 7.** Section 39-72-303, MCA, is amended to read:

8 "39-72-303. Which employer liable. (1) Where  
9 compensation is payable for an occupational disease, the  
10 only employer liable shall be is the employer in whose  
11 employment the employee was last injuriously exposed to the  
12 hazard of such the disease.

13 (2) When there is more than one insurer and only one  
14 employer at the time the employee was injuriously exposed to  
15 the hazard of the disease, the liability rests with the  
16 insurer providing coverage at the earlier of:

17 (a) the time the occupational disease was first  
18 diagnosed by an attending A TREATING physician, consulting  
19 physician, or medical panel; or

20 (b) the time the employee knew or should have known  
21 that the condition was the result of an occupational  
22 disease.

23 ~~(2)(3)~~ In the case of pneumoconiosis, any coal mine  
24 operator who has acquired a mine in the state or  
25 substantially all of the assets thereof of a mine from a

1 person who was an operator of such the mine on or after  
 2 December 30, 1969, is liable for and must shall secure the  
 3 payment of all benefits which that would have been payable  
 4 by that person with respect to miners previously employed in  
 5 such the mine if acquisition had not occurred and that  
 6 person had continued to operate such the mine, and the prior  
 7 operator of such the mine shall is not be relieved of any  
 8 liability under this section."

9 Section 10:--Section 39-72-706, MCA, is amended to read:

10 "39-72-706,--Aggravation--(1)--if an occupational disease  
 11 is aggravated by any other disease or infirmity--not--itself  
 12 compensable--or--if disability or death from any other cause  
 13 not--itself--compensable--is--aggravated,--prolonged,  
 14 accelerated, or in any way contributed to by an occupational  
 15 disease, the compensation and medical benefits payable under  
 16 this chapter must be reduced and limited to such the  
 17 proportion only of the compensation that would be payable if  
 18 the occupational disease were the sole cause of the  
 19 disability or death as such occupational disease as a  
 20 causative factor bears to all the causes of such disability  
 21 or death;

22 (2)--If compensation is reduced a proportionate amount  
 23 as provided in subsection (1) and the worker receives  
 24 disability-social security benefits, the offset entitlement  
 25 granted to the insurer must be reduced in the same

1 proportionate amount as the compensation and medical  
 2 benefits as long as the worker continues to receive  
 3 disability-social security benefits."

4 NEW SECTION--Section 11--Requirement of state coverage  
 5 for nonresident employers--(1)--Beginning July 1, 1993,  
 6 nonresident employers shall provide workers' compensation  
 7 coverage under plan No. 1, 2, or 3 or, in the alternative,  
 8 shall deposit with the department a nonrefundable amount of  
 9 money equal to the difference between the premium paid  
 10 out of state by the nonresident and the premium the  
 11 nonresident would pay in Montana if the premium in Montana  
 12 is higher than the out-of-state premium rate.

13 (2)--Beginning July 1, 1993, a nonresident employer  
 14 shall verify with the department, prior to commencing to do  
 15 business in this state, that the nonresident employer has  
 16 obtained workers' compensation under one of this state's  
 17 coverage plans or shall deposit any money due pursuant to  
 18 subsection (1). The department may monitor the activities of  
 19 a nonresident employer on a regular basis to ensure that  
 20 proper coverage is in effect.

21 (3)--The department shall deposit the money collected  
 22 pursuant to subsection (1) in the uninsured employers' fund  
 23 provided for in 39-71-502.

24 NEW SECTION--Section 12--Employer misconduct--The  
 25 department shall fine an employer convicted under 45-7-501

an amount equal to ten times any amount that the department determines the employer wrongfully withheld in not obtaining workers' compensation coverage or in not obtaining the proper workers' compensation coverage. The department shall deposit the money collected pursuant to this section in the uninsured employers' account provided for in 39-71-502.

**NEW SECTION. Section 8. Medical panel for preexisting conditions.** (1) The department shall create a list of physicians to serve on an industrial injury medical panel. The physicians must be nominated by the board of medical examiners and must be certified or eligible for certification in a specialty relevant to the medical issue to be examined by the panel pursuant to this section.

(2) If a dispute exists between a claimant and an employer regarding the extent of liability for the aggravation of a preexisting condition as the result of an injury and a settlement cannot be reached, the following procedure must be followed:

(a) The department shall direct the claimant to a member of the medical panel for examination. The panel member must be provided with all relevant medical records, including the findings of independent medical examinations. The panel member shall determine as a percentage the amount of apportionment, if any, assignable to any other noncompensable disease, condition, or infirmity. The

department shall forward a copy of the report to the claimant and employer. The party requesting the examination shall pay for the cost of the examination.

(b) Either party may, within 20 days of receipt of the report and at the party's expense, request that the claimant be examined by a second panel member to be selected by the department. The second panel member shall conduct an examination of the claimant and submit a report regarding apportionment with respect to any preexisting condition. The department shall forward copies of the report to the parties.

(c) If a second report is requested, the department shall appoint a third panel member and the two reporting members to review the two reports and to issue a report establishing the amount of apportionment to be assigned to any preexisting condition. The three panel members may consult with the claimant's attending physician or any independent medical examiner.

(d) If a second examination is not requested, the department shall issue its order determining the percentage of apportionment assigned to any other noncompensable disease, condition, or infirmity, based on the report of the first examining panel member. If a second examination is requested, the department shall base its order on the report of the three panel members. The report of the three members

1 is-prima-facie-evidence-of--the--matters--contained--in--the  
2 report:

3 NEW SECTION. Section 8. Temporary partial disability  
4 benefits. (1) If, prior to maximum healing, an injured  
5 worker is--medically HAS A PHYSICAL RESTRICTION, AS  
6 DETERMINED BY OBJECTIVE MEDICAL FINDINGS, AND IS approved to  
7 return to the--same, A modified, or alternative employment  
8 that the worker is able and qualified to perform and the  
9 worker suffers an actual wage loss as a result of a  
10 temporary work restriction, the worker qualifies for  
11 temporary partial disability benefits.

12 (2) Weekly compensation benefits for temporary partial  
13 disability must be the difference between the injured  
14 worker's hourly AVERAGE WEEKLY wage received at the time of  
15 the injury, subject to a maximum of 40 hours a week, and the  
16 actual weekly wages earned during the period that the  
17 claimant is temporarily partially disabled, NOT TO EXCEED  
18 THE STATE'S AVERAGE WEEKLY WAGE AT THE TIME OF INJURY.

19 (3) Temporary partial disability benefits are limited  
20 to a total of 26 weeks of--combined--weekly--compensation--or  
21 are--payable--until--the--time--the--worker--is--no--longer  
22 temporarily-partially-disabled, whichever occurs first.

23 (4)--The-amount-of-temporary-partial-disability-benefits  
24 must-be-based-upon-payroll-records-provided-by-the--employer  
25 and--calculated--on-a-biweekly-basis--The-combined-wages-and

1 compensation-benefits-may-not-exceed--the--worker's--average  
2 weekly-wage-at-the-time-of-injury.

3 (4) A WORKER REQUALIFIES FOR TEMPORARY TOTAL DISABILITY  
4 BENEFITS IF THE MODIFIED POSITION IS NO LONGER AVAILABLE TO  
5 THE WORKER AND THE WORKER CONTINUES TO BE TEMPORARILY  
6 TOTALLY DISABLED AS DEFINED IN 39-71-116.

7 (5) Temporary partial disability may not be considered  
8 an element of permanent partial disability and may not be  
9 credited against any permanent impairment or any permanent  
10 partial disability award or settlement achieved after the  
11 injured worker reaches maximum healing.

12 NEW-SECTION--Section-15--Reporting--new-employees--Any  
13 employer-operating--in--this--state--shall--report--any--new  
14 employees--hired--to--work--in--this--state--and--the--work  
15 classification-of-those-employees-to-the-employer's--insurer  
16 and--the--department--within-72-hours-of-the-first-regularly  
17 scheduled-payday-after-hiring-the-employee.

18 **Section 9.** Section 39-71-2101, MCA, is amended to read:

19 "39-71-2101. General requirements for electing coverage  
20 under plan. (1) An employer may elect to be bound by  
21 compensation plan No. 1 upon furnishing satisfactory proof  
22 to the department and the Montana self-insurers guaranty  
23 fund of his solvency and financial ability to pay the  
24 compensation and benefits provided for in this chapter  
25 provided for and to discharge all liabilities which that are

reasonably likely to be incurred by him during the fiscal year for which such the election is effective, and The employer may, by order of the department and with the concurrence of the guaranty fund, make such the payments directly to his employees as they may become entitled to receive payments under the terms and conditions of this chapter.

(2) Employers who comply with the provisions of this chapter and who are participating in collectively bargained, jointly administered Taft-Hartley trust funds are eligible to provide self-insured workers' compensation benefits for their employees."

NEW-SECTION---Section-17---Repealer---Section--39-71-402,  
MCA, is repealed:

NEW SECTION. **SECTION 10. WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE -- OPTIONAL DEDUCTIBLES.** (1) AN INSURER ISSUING A WORKERS' COMPENSATION OR AN EMPLOYER'S LIABILITY INSURANCE POLICY MAY OFFER TO THE POLICYHOLDER, AS PART OF THE POLICY OR BY ENDORSEMENT, OPTIONAL DEDUCTIBLES FOR BENEFITS PAYABLE UNDER THE POLICY CONSISTENT WITH THE STANDARDS CONTAINED IN SUBSECTION (3).

(2) A RATING ORGANIZATION MAY DEVELOP AND FILE A DEDUCTIBLE PLAN OR PLANS ON BEHALF OF ITS MEMBERS CONSISTENT WITH THE STANDARDS CONTAINED IN SUBSECTION (3).

(3) THE COMMISSIONER OF INSURANCE SHALL APPROVE A

DEDUCTIBLE PLAN THAT IS IN ACCORDANCE WITH THE FOLLOWING STANDARDS:

(A) CLAIMANTS' RIGHTS ARE PROPERLY PROTECTED AND CLAIMANTS' BENEFITS ARE PAID WITHOUT REGARD TO THE DEDUCTIBLE.

(B) PREMIUM REDUCTIONS REFLECT THE TYPE AND LEVEL OF THE DEDUCTIBLE, CONSISTENT WITH ACCEPTED ACTUARIAL STANDARDS.

(C) PREMIUM REDUCTIONS FOR DEDUCTIBLES ARE DETERMINED BEFORE APPLICATION OF ANY EXPERIENCE MODIFICATION, PREMIUM SURCHARGE, OR PREMIUM DISCOUNT.

(D) RECOGNITION IS GIVEN TO POLICYHOLDER CHARACTERISTICS, INCLUDING BUT NOT LIMITED TO SIZE, FINANCIAL CAPABILITIES, NATURE OF ACTIVITIES, AND NUMBER OF EMPLOYEES.

(E) THE POLICYHOLDER IS LIABLE TO THE INSURER FOR THE DEDUCTIBLE AMOUNT IN REGARD TO BENEFITS PAID FOR COMPENSABLE CLAIMS.

(F) THE INSURER PAYS ALL OF THE DEDUCTIBLE AMOUNT APPLICABLE TO A COMPENSABLE CLAIM TO THE PERSON OR PROVIDER ENTITLED TO BENEFITS AND THEN SEEKS REIMBURSEMENT FROM THE POLICYHOLDER FOR THE APPLICABLE DEDUCTIBLE AMOUNT.

(G) FAILURE BY THE POLICYHOLDER TO REIMBURSE DEDUCTIBLE AMOUNTS TO THE INSURER IS TREATED UNDER THE POLICY AS NONPAYMENT OF PREMIUM.

(H) LOSSES SUBJECT TO THE DEDUCTIBLE MUST BE REPORTED AND RECORDED AS LOSSES FOR PURPOSES OF RATEMAKING AND APPLICATION OF THE EXPERIENCE RATING PLAN ON THE SAME BASIS AS LOSSES UNDER POLICIES PROVIDING FIRST DOLLAR COVERAGE.

(4) THE STATE COMPENSATION MUTUAL INSURANCE FUND, PLAN NO. 3, MAY ADOPT THE PLAN FILED BY THE RATING ORGANIZATION OR ADOPT AN OPTIONAL DEDUCTIBLE PLAN THAT MEETS THE REQUIREMENTS OF THIS SECTION.

(5) FOR PURPOSES OF 39-71-201, LIABILITY FOR ASSESSMENTS MUST BE ASCERTAINED BASED ON PREMIUMS COLLECTED, IN THE CASE OF POLICIES WRITTEN UNDER PLAN NO. 2, OR ON THE ASSESSMENT LEVIED, IN THE CASE OF POLICIES WRITTEN UNDER PLAN NO. 3, FOR WHICH THE POLICYHOLDER WOULD HAVE BEEN OBLIGATED WITHOUT THE DEDUCTIBLE. FOR ALL OTHER TAXES AND ASSESSMENTS BASED ON PREMIUM, THE AMOUNT OF PREMIUM OR ASSESSMENT MUST BE DETERMINED AFTER APPLICATION OF THE DEDUCTIBLE.

**SECTION 11. SECTION 39-71-316, MCA, IS AMENDED TO READ:**

"39-71-316. Filing true claim -- obtaining benefits through deception or other fraudulent means. (1) A person filing a claim under this chapter or chapter 72 of this title, by signing the claim, affirms the information filed is true and correct to the best of that person's knowledge.

(2) A person who obtains or assists in obtaining benefits to which the person is not entitled under this

chapter or chapter 72 of this title may be guilty of theft under 45-6-301. A county attorney may initiate criminal proceedings against the person.

(3) A person licensed under the provisions of Title 37 is subject to suspension, revocation, or denial of a license if the person knowingly claims or assists in the claiming of benefits in violation of the provisions of chapter 72 or this chapter."

**SECTION 12. SECTION 37-1-131, MCA, IS AMENDED TO READ:**

"37-1-131. Duties of boards. Each board within the department shall:

(1) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within its jurisdiction;

(2) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within its jurisdiction. The hearings shall be conducted by legal counsel when required under 37-1-121(1).

(3) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection (2), is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers' compensation system in violation of the provisions of Title

1 39, chapter 71 or 72;

2 ~~(3)~~(4) pay to the department its pro rata share of the  
3 assessed costs of the department under 37-1-101(6);

4 ~~(4)~~(5) consult with the department before the board  
5 initiates a program expansion, under existing legislation,  
6 to determine if the board has adequate money and  
7 appropriation authority to fully pay all costs associated  
8 with the proposed program expansion. The board may not  
9 expand a program if the board does not have adequate money  
10 and appropriation authority available."

11 **SECTION 13. SECTION 37-3-322, MCA, IS AMENDED TO READ:**

12 "37-3-322. Unprofessional conduct. As used in this  
13 chapter, "unprofessional conduct" means:

14 (1) resorting to fraud, misrepresentation, or deception  
15 in applying for or in securing a license or in taking the  
16 examination provided for in this chapter;

17 (2) performing abortion contrary to law;

18 (3) obtaining a fee or other compensation, either  
19 directly or indirectly, by the misrepresentation that a  
20 manifestly incurable disease, injury, or condition of a  
21 person can be cured;

22 (4) employing abusive billing practices;

23 (5) directly or indirectly giving or receiving a fee,  
24 commission, rebate, or other compensation for professional  
25 services not actually rendered. This prohibition does not

1 preclude the legal functioning of lawful professional  
2 partnerships, corporations, or associations.

3 (6) willful disobedience of the rules of the board;

4 (7) conviction of an offense involving moral turpitude  
5 or conviction of a felony involving moral turpitude, and the  
6 judgment of the conviction, unless pending on appeal, is  
7 conclusive evidence of unprofessional conduct;

8 (8) commission of an act of sexual abuse, misconduct,  
9 or exploitation related to the licensee's practice of  
10 medicine;

11 (9) administering, dispensing, or prescribing a  
12 narcotic or hallucinatory drug, as defined by the federal  
13 food and drug administration or successors, otherwise than  
14 in the course of legitimate or reputable professional  
15 practice;

16 (10) conviction or violation of a federal or state law  
17 regulating the possession, distribution, or use of a  
18 narcotic or hallucinatory drug, as defined by the federal  
19 food and drug administration, and the judgment of  
20 conviction, unless pending on appeal, is conclusive evidence  
21 of unprofessional conduct;

22 (11) habitual intemperance or excessive use of narcotic  
23 drugs, alcohol, or any other drug or substance to the extent  
24 that the use impairs the user physically or mentally;

25 (12) conduct unbecoming a person licensed to practice



1 medicine or detrimental to the best interests of the public  
2 as defined by rule of the board;

3 (13) conduct likely to deceive, defraud, or harm the  
4 public;

5 (14) making a false or misleading statement regarding  
6 the licensee's skill or the effectiveness or value of the  
7 medicine, treatment, or remedy prescribed by the licensee or  
8 at the licensee's direction in the treatment of a disease or  
9 other condition of the body or mind;

10 (15) resorting to fraud, misrepresentation, or deception  
11 in the examination or treatment of a person or in billing or  
12 reporting to a person, company, institution, or  
13 organization, including fraud, misrepresentation, or  
14 deception with regard to a claim for benefits under Title  
15 39, chapter 71 or 72;

16 (16) use of a false, fraudulent, or deceptive statement  
17 in any document connected with the practice of medicine;

18 (17) practicing medicine under a false or assumed name;

19 (18) testifying in court on a contingency basis;

20 (19) conspiring to misrepresent or willfully  
21 misrepresenting medical conditions improperly to increase or  
22 decrease a settlement, award, verdict, or judgment;

23 (20) aiding or abetting in the practice of medicine by a  
24 person not licensed to practice medicine or a person whose  
25 license to practice medicine is suspended;

1 (21) allowing another person or organization to use the  
2 licensee's license to practice medicine;

3 (22) malpractice or negligent practice;

4 (23) except as provided in this subsection, practicing  
5 medicine as the partner, agent, or employee of or in joint  
6 venture with a person who does not hold a license to  
7 practice medicine within this state; however, this does not  
8 prohibit:

9 (a) the incorporation of an individual licensee or  
10 group of licensees as a professional service corporation  
11 under Title 35, chapter 4;

12 (b) a single consultation with or a single treatment by  
13 a person or persons licensed to practice medicine and  
14 surgery in another state or territory of the United States  
15 or foreign country; or

16 (c) practicing medicine as the partner, agent, or  
17 employee of or in joint venture with a hospital, medical  
18 assistance facility, or other licensed health care provider.  
19 However:

20 (i) the partnership, agency, employment, or joint  
21 venture must be evidenced by a written agreement containing  
22 language to the effect that the relationship created by the  
23 agreement may not affect the exercise of the physician's  
24 independent judgment in the practice of medicine;

25 (ii) the physician's independent judgment in the

1 practice of medicine must in fact be unaffected by the  
2 relationship; and

3 (iii) the physician may not be required to refer any  
4 patient to a particular provider or supplier or take any  
5 other action the physician determines not to be in the  
6 patient's best interest.

7 (24) willfully or negligently violating the  
8 confidentiality between physician and patient, except as  
9 required by law;

10 (25) failing to report to the board any adverse  
11 judgment, settlement, or award arising from a medical  
12 liability claim related to acts or conduct similar to acts  
13 or conduct that would constitute grounds for action as  
14 defined in this section;

15 (26) failing to transfer pertinent and necessary medical  
16 records to another physician when requested to do so by the  
17 subject patient or by the patient's legally designated  
18 representative;

19 (27) failing to furnish to the board or its  
20 investigators or representatives information legally  
21 requested by the board;

22 (28) failing to cooperate with a lawful investigation  
23 conducted by the board;

24 (29) violating or attempting to violate, directly or  
25 indirectly, or assisting in or abetting the violation of or

1 conspiring to violate parts 1 through 3 of this chapter or  
2 the rules authorized by them;

3 (30) having been subject to disciplinary action of  
4 another state or jurisdiction against a license or other  
5 authorization to practice medicine, based upon acts or  
6 conduct by the licensee similar to acts or conduct that  
7 would constitute grounds for action as defined in this  
8 section. A certified copy of the record of the action taken  
9 by the other state or jurisdiction is evidence of  
10 unprofessional conduct.

11 (31) any other act, whether specifically enumerated or  
12 not, which, in fact, constitutes unprofessional conduct."

13 **SECTION 14. SECTION 37-6-310, MCA, IS AMENDED TO READ:**

14 "37-6-310. Unprofessional conduct. As used in this  
15 chapter, "unprofessional conduct" means:

16 (1) resorting to fraud, misrepresentation, or deception  
17 in applying for or in securing a license or in taking the  
18 examination provided for in this chapter;

19 (2) obtaining a fee or other compensation, either  
20 directly or indirectly, by the misrepresentation that a  
21 manifestly incurable disease, injury, or condition of a  
22 person can be cured;

23 (3) willful disobedience of the rules of the board;

24 (4) final conviction of an offense involving moral  
25 turpitude;

(5) administering, dispensing, or prescribing a narcotic or hallucinatory drug, as defined by the federal food and drug administration or successors, otherwise than in the course of legitimate or reputable professional practice;

(6) final conviction of a violation of a federal or state law regulating the possession, distribution, or use of a narcotic or hallucinatory drug, as defined by the federal food and drug administration;

(7) habitual intemperance or excessive use of narcotic drugs, alcohol, or any other drug or substance to the extent that the use impairs the user physically or mentally;

(8) conduct unbecoming a person licensed to practice podiatry or detrimental to the best interest of the public;

(9) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organization, including fraud, misrepresentation, or deception with regard to a claim for benefits under Title 39, chapter 71 or 72;

(10) testifying in court on a contingency basis;

(11) conspiring to misrepresent or willfully misrepresenting medical conditions to increase or decrease a settlement, award, verdict, or judgment;

(12) aiding or abetting in the practice of medicine a

person not licensed to practice medicine or a person whose license to practice medicine is suspended;

(13) gross malpractice or negligent practice;

(14) practicing podiatry as the partner, agent, or employee of or in joint venture with a person who does not hold a license to practice podiatry within this state; however, this does not prohibit the incorporation of an individual licensee or group of licensees as a professional service corporation under Title 35, chapter 4, nor does this apply to a single consultation with or a single treatment by a person or persons licensed to practice podiatry in another state or territory of the United States or foreign country;

(15) violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate parts 1 through 3 of this chapter or the rules authorized by parts 1 through 3; or

(16) any other act, whether specifically enumerated or not, which in fact constitutes unprofessional conduct."

**SECTION 15. SECTION 37-10-311, MCA, IS AMENDED TO READ:**

"37-10-311. Revocation -- unprofessional conduct. (1)

The board may revoke a certificate of registration for:

(a) physical or mental incompetence;

(b) gross malpractice or repeated malpractice;

(c) a violation of any of the provisions of this chapter or rules or orders of the board; or

1 (d) unprofessional conduct.

2 (2) Unprofessional conduct includes:

3 (a) obtaining a fee by fraud or misrepresentation;

4 (b) employing, directly or indirectly, a suspended or  
5 unlicensed optometrist to perform work covered by this  
6 chapter;

7 (c) directly or indirectly accepting employment to  
8 practice optometry from a person not having a valid  
9 certificate of registration as an optometrist or accepting  
10 employment to practice optometry for or from a company or  
11 corporation;

12 (d) permitting another to use his the optometrist's  
13 certificate of registration;

14 (e) soliciting or sending a solicitor from house to  
15 house;

16 (f) treatment or advice in which untruthful or  
17 improbable statements are made;

18 (g) professing to cure nonocular disease;

19 (h) advertising in which ambiguous or misleading  
20 statements are made; or

21 (i) the use in advertising of the expression "eye  
22 specialist" or "specialist on eyes" in connection with the  
23 name of an optometrist. This chapter does not prohibit  
24 legitimate or truthful advertising by a registered  
25 optometrist; or

1 (j) resorting to fraud, misrepresentation, or deception  
2 in the examination or treatment of a person or in billing or  
3 reporting to a person, company, institution, or  
4 organization, including fraud, misrepresentation, or a claim  
5 for benefits under Title 39, chapter 71 or 72.

6 (3) Before a certificate is revoked, the holder shall  
7 be given a notice and an opportunity for a hearing.

8 (4) Any optometrist convicted a second time for  
9 violation of the provisions of this chapter or whose  
10 certificate of registration or examination has been revoked  
11 a second time shall not be permitted to practice optometry  
12 in this state."

13 **SECTION 16. SECTION 37-12-321, MCA, IS AMENDED TO READ:**

14 "37-12-321. Unprofessional conduct. As used in this  
15 chapter, "unprofessional conduct" means:

16 (1) resorting to fraud, misrepresentation, or deception  
17 in applying for or securing a license or in taking the  
18 examination provided for in this chapter;

19 (2) obtaining any form of compensation, directly or  
20 indirectly, by the misrepresentation that a manifestly  
21 incurable disease, injury, or condition can be cured;

22 (3) practicing chiropractic under a false or assumed  
23 name or impersonating another practitioner of like or  
24 different name;

25 (4) knowingly disobeying a rule of the board;

(5) conviction of a criminal offense involving moral turpitude. A certified copy of the judgment of conviction is conclusive evidence of the conviction. This subsection is subject to chapter 1, part 2, of this title.

(6) habitual intemperance or excessive use of narcotic drugs, alcohol, or any other substance to the extent that such use impairs the user's physical or mental professional capability;

(7) administering, dispensing, or prescribing a narcotic or hallucinatory drug, as defined by the federal food and drug administration or successors;

(8) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organization, including fraud, misrepresentation, or deception with regard to a claim for benefits under Title 39, chapter 71 or 72;

(9) testifying in court on a contingency basis;

(10) conspiring to misrepresent or knowingly misrepresenting physical conditions in order to increase or decrease a settlement or award;

(11) aiding or abetting in the practice of chiropractic a person not licensed to practice chiropractic or a person whose license is suspended;

(12) practicing chiropractic as the partner, agent, or

employee of or in joint venture with a person not licensed to practice chiropractic in this state. However, this does not prohibit incorporation as a professional service corporation under Title 35, chapter 4, or prevent a single consultation with or a single treatment by a person licensed to practice chiropractic in another state or territory of the United States or a foreign country.

(13) violating, attempting or conspiring to violate, or aiding or abetting in the violation of this chapter or the rules adopted under it; or

(14) conduct unbecoming a person licensed to practice chiropractic or detrimental to the best interests of the public."

**SECTION 17. SECTION 37-14-321, MCA, IS AMENDED TO READ:**

"37-14-321. Revocation or suspension of license or permit. A license or permit may be suspended for a fixed period or may be revoked, or such technologist or technician may be censured, reprimanded, or otherwise disciplined as determined by the board if, after a hearing before the board, it is determined that the radiologic technologist or limited permit technician:

(1) is guilty of fraud or deceit in activities as a radiologic technologist or limited permit technician or has been guilty of any fraud or deceit in procuring the license or permit;

(2) has been convicted in a court of competent jurisdiction of a crime involving moral turpitude;

(3) is an habitual drunkard or is addicted to the use of narcotics or other drugs having a similar effect or is not mentally competent;

(4) is guilty of unethical or unprofessional conduct, as defined by rules promulgated by the board, including fraud, misrepresentation, or deception with regard to a claim for benefits under Title 39, chapter 71 or 72, or has been guilty of incompetence or negligence in his activities as a radiologic technologist or limited permit technician;

(5) has continued to perform as a radiologic technologist or limited permit technician without obtaining a license or permit or renewal as required by this chapter."

NEW SECTION. SECTION 18. PROHIBITED ACTIONS --  
PENALTY. (1) THE FOLLOWING ACTIONS BY A MEDICAL PROVIDER  
CONSTITUTE VIOLATIONS AND ARE SUBJECT TO THE PENALTY IN  
SUBSECTION (3) (2):

(A) FAILING TO DOCUMENT, UNDER OATH, THE PROVISION OF  
THE SERVICES OR TREATMENT FOR WHICH COMPENSATION IS CLAIMED  
UNDER CHAPTER 72 OR THIS CHAPTER; OR

(B) REFERRING A WORKER FOR TREATMENT OR DIAGNOSIS OF AN  
INJURY OR ILLNESS THAT IS COMPENSABLE UNDER CHAPTER 72 OR  
THIS CHAPTER TO A FACILITY OWNED WHOLLY OR IN PART BY THE  
PROVIDER, UNLESS THE PROVIDER INFORMS THE WORKER OF THE

OWNERSHIP INTEREST AND PROVIDES THE NAME AND ADDRESS OF  
ALTERNATE FACILITIES, IF ANY EXIST.

(2) -- A PERSON LICENSED TO PRACTICE LAW IN MONTANA -- OR -- A  
MEDICAL -- CARE PROVIDER WHO ADVERTISES SERVICES OR FACILITIES  
WITH THE INTENTION THAT -- A WORKER -- USE -- THOSE -- SERVICES -- OR  
FACILITIES -- WITH -- REGARD -- TO -- AN -- INJURY -- OR -- ILLNESS -- THAT -- IS  
COMPENSABLE UNDER CHAPTER 72 OR THIS CHAPTER AND -- WHO -- FAILS  
TO -- ANNOUNCE -- IN -- THE ADVERTISEMENT THAT FILING A FRAUDULENT  
CLAIM IS THEFT, AS PROVIDED IN 39-71-316, IS SUBJECT TO -- THE  
PENALTY IN SUBSECTION (3):

(3) (2) A PERSON WHO VIOLATES THIS SECTION MAY BE  
ASSESSED A PENALTY OF NOT LESS THAN \$200 OR MORE THAN \$500  
FOR EACH OFFENSE. THE DEPARTMENT SHALL ASSESS AND COLLECT  
THE PENALTY.

NEW SECTION. SECTION 19. NO LIABILITY FOR REPORTING  
VIOLATION. A PERSON, INCLUDING BUT NOT LIMITED TO AN INSURER  
OR AN EMPLOYER, MAY NOT BE HELD LIABLE FOR CIVIL DAMAGES AS  
A RESULT OF REPORTING IN GOOD FAITH INFORMATION THAT THE  
PERSON BELIEVES PROVES A VIOLATION OF THE PROVISIONS OF  
CHAPTER 72 OR THIS CHAPTER.

SECTION 20. SECTION 39-71-736, MCA, IS AMENDED TO READ:

"39-71-736. Compensation -- from what date paid.  
(1) (a) No compensation may be paid for the first 48 hours  
or 6 days' loss of wages, whichever is less, that the  
claimant is totally disabled and unable to work due to an

injury. A claimant is eligible for compensation starting with the 7th day.

(b) However, separate benefits of medical and hospital services must be furnished from the date of injury.

(2) For the purpose of this section, except as provided in subsection (3), an injured worker is not considered to be entitled to compensation benefits if the worker is receiving sick leave benefits, except that each day for which the worker elects to receive sick leave counts 1 day toward the 6-day waiting period.

(3) Augmentation of temporary total disability benefits with sick leave by an employer pursuant to a collective bargaining agreement may not disqualify a worker from receiving temporary total disability benefits.

(4) Receipt of vacation leave by an injured worker may not affect the worker's eligibility for temporary total disability benefits."

**SECTION 21. SECTION 39-71-2315, MCA, IS AMENDED TO READ:**

"39-71-2315. Management of state fund -- powers and duties of the board -- business plan required. (1) The management and control of the state fund is vested solely in the board.

(2) The board is vested with full power, authority, and jurisdiction over the state fund. The board may perform all

acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the state fund, either in the administration of the state fund or in connection with the insurance business to be carried on under the provisions of this part, as fully and completely as the governing body of a private mutual insurance carrier, in order to fulfill the objectives and intent of this part. Bonds may not be issued by the board, the state fund, or the executive director.

(3) The board shall adopt a business plan no later than June 30 for the next fiscal year. At a minimum, the plan must include:

(a) specific goals for the fiscal year for financial performance. The standard for measurement of financial performances must include an evaluation of premium to surplus.

(b) specific goals for the fiscal year for operating performance. Goals must include but not be limited to specific performance standards for staff in the area of senior management, underwriting, and claims administration. Goals must, in general, maximize efficiency, economy, and equity as allowed by law.

(4) The business plan must be available upon request to the general public for a fee not to exceed the actual cost of publication. However, performance goals relating to a

specific employment position are confidential and not available to the public.

(5) No sooner than July 1 or later than October 31, the board shall convene a public meeting to review the performance of the state fund, using the business plan for comparison of all the established goals and targets. The board shall publish, by November 30 of each year, a report of the state fund's actual performance as compared to the business plan."

NEW SECTION. **SECTION 22. DEFINITIONS.** AS USED IN [SECTION 23], THE FOLLOWING DEFINITIONS APPLY:

(1) "BUSINESS ENTITY" MEANS A BUSINESS ENTERPRISE OWNED BY A SINGLE PERSON, CORPORATION, ORGANIZATION, BUSINESS TRUST, TRUST, PARTNERSHIP, JOINT VENTURE, ASSOCIATION, OR OTHER BUSINESS ENTITY.

(2) "GROUP" MEANS TWO OR MORE BUSINESS ENTITIES THAT JOIN TOGETHER WITH THE APPROVAL OF THE DEPARTMENT TO PURCHASE INDIVIDUAL WORKERS' COMPENSATION INSURANCE POLICIES COVERING EACH BUSINESS ENTITY THAT IS PART OF A GROUP.

NEW SECTION. **SECTION 23. GROUP PURCHASE OF WORKERS' COMPENSATION INSURANCE.** (1) ON RECEIVING APPROVAL OF THE DEPARTMENT, TWO OR MORE BUSINESS ENTITIES MAY JOIN TOGETHER TO FORM A GROUP TO PURCHASE INDIVIDUAL WORKERS' COMPENSATION INSURANCE POLICIES COVERING EACH MEMBER OF THE GROUP.

(2) TO BE ELIGIBLE TO JOIN A GROUP, THE DEPARTMENT

SHALL DETERMINE THAT A BUSINESS ENTITY IS ENGAGED IN A BUSINESS PURSUIT THAT IS THE SAME AS OR SIMILAR TO THE BUSINESS PURSUITS OF THE OTHER ENTITIES PARTICIPATING IN THE GROUP.

(3) THE DEPARTMENT SHALL ESTABLISH A CERTIFICATION PROGRAM FOR GROUPS ORGANIZED UNDER THIS SECTION AND SHALL ISSUE TO ELIGIBLE BUSINESS ENTITIES CERTIFICATES OF APPROVAL THAT AUTHORIZE FORMATION AND MAINTENANCE OF A GROUP.

(4) THE DEPARTMENT BY RULE SHALL ADOPT FORMS, CRITERIA, AND PROCEDURES FOR THE ISSUANCE OF CERTIFICATES OF APPROVAL TO GROUPS UNDER THIS SECTION.

(5) A GROUP CERTIFIED UNDER THIS SECTION MAY PURCHASE INDIVIDUAL WORKERS' COMPENSATION INSURANCE POLICIES COVERING EACH MEMBER OF THE GROUP FROM ANY INSURER AUTHORIZED TO WRITE WORKERS' COMPENSATION INSURANCE IN THIS STATE. UNDER AN INDIVIDUAL POLICY, THE GROUP IS ENTITLED TO A PREMIUM OR VOLUME DISCOUNT THAT WOULD BE APPLICABLE TO A POLICY OF THE COMBINED PREMIUM AMOUNT OF THE INDIVIDUAL POLICIES.

(6) A GROUP SHALL APPORTION ANY DISCOUNT OR POLICYHOLDER DIVIDEND RECEIVED ON WORKERS' COMPENSATION INSURANCE COVERAGE AMONG THE MEMBERS OF THE GROUP ACCORDING TO A FORMULA ADOPTED IN THE PLAN OF OPERATION FOR THE GROUP.

(7) A GROUP SHALL ADOPT A PLAN OF OPERATION THAT MUST INCLUDE THE COMPOSITION AND SELECTION OF A GOVERNING BOARD, THE METHODS FOR ADMINISTERING THE GROUP, AND GUIDELINES FOR



THE WORKERS' COMPENSATION INSURANCE COVERAGE OBTAINED BY THE GROUP, INCLUDING THE PAYMENT OF PREMIUMS, THE DISTRIBUTION OF DISCOUNTS, AND THE METHOD FOR PROVIDING RISK MANAGEMENT. A GROUP SHALL FILE A COPY OF ITS PLAN OF OPERATION WITH THE DEPARTMENT.

**SECTION 24. SECTION 39-71-407, MCA, IS AMENDED TO READ:**

**"39-71-407. Liability of insurers -- limitations -- apportionment.** (1) Every 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 claimant establishes it is more probable than not that:

(i) a claimed injury has occurred; or

(ii) a claimed injury aggravated a preexisting condition.

(b) 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) 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 cause of the injury or death. 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.

(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) If an injury, as defined in 39-71-119, occurs that involves an aggravation of a preexisting condition, the permanent total, permanent partial, and medical benefits

payable under this chapter after a worker reaches maximum healing must be apportioned between the insurer or insurers who are liable for coverage for the preexisting condition and the insurers who are liable for coverage for the aggravation injury. The insurer for the injury is responsible only for the portion attributable to the aggravation injury.

(7) If a workers' compensation insurer had a compensable claim for the preexisting condition, the insurer remains liable for the portion attributable to that insurer for permanent total, permanent partial, and medical benefits."

**SECTION 25. SECTION 39-72-706, MCA, IS AMENDED TO READ:**

"39-72-706. Aggravation -- apportionment. (1) If an occupational disease is aggravated by any other disease or infirmity not itself compensable or if disability or death from any other cause not itself compensable is aggravated, prolonged, accelerated, or in any way contributed to by an occupational disease, the compensation payable under this chapter must be reduced-and-limited-to-such-proportion-only of--the--compensation--that--would---be---payable---if---the occupational--disease--were-the-sole-cause-of-the-disability or-death-as-such-occupational-disease-as-a-causative--factor bears--to--all--the--causes--of--such--disability--or--death apportioned between the preexisting condition and the

liability attributable to the occupational disease after the worker reaches maximum healing.

(2) If a workers' compensation insurer had a compensable claim for the preexisting condition, the insurer remains liable for the portion attributable to that insurer for benefits paid.

(3) If compensation is reduced--a---proportionate amount apportioned as provided in subsection (1) and the worker receives disability social security benefits, the offset entitlement granted to the insurer must be reduced apportioned in the same proportionate amount as the compensation as long as the worker continues to receive disability social security benefits."

**SECTION 26. SECTION 39-72-707, MCA, IS AMENDED TO READ:**

"39-72-707. Silicosis with complications. In cases of disability or death from silicosis complicated with tuberculosis of the lungs, compensation shall must be payable as for disability or death from an uncomplicated silicosis. In case of disability or death from silicosis when complicated with any disease not compensable under this chapter and other than pulmonary tuberculosis, compensation shall---be--reduced must be apportioned as provided in 39-72-706."

**SECTION 27. 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 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 entitlement available under Title 39, chapter 71. Upon receipt of a claim, each insurer shall promptly notify the claimant in writing of potential benefits and entitlement available by providing the claimant a copy of the document prepared by the department.

(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 28.** Codification instruction. (1) ~~{Sections--11,--12,--and--15} are intended to be codified as an integral part of Title 39, chapter 71, part 3, and the provisions of Title 39, chapter 71, part 3, apply to {sections--11,--12,--and--15}.~~

~~{2}--{Sections--13--and--14} {SECTIONS--8--AND--9} are~~  
[SECTION 8] IS intended to be codified as an integral part of Title 39, chapter 71, part 7, and the provisions of Title

39, chapter 71, part 7, apply to ~~{sections--13--and--14}.~~  
~~{SECTIONS--8--AND--9} [SECTION 8].~~

(2) [SECTION 11 10] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 39, CHAPTER 71, PART 4, AND THE PROVISIONS OF TITLE 39, CHAPTER 71, PART 4, APPLY TO [SECTION 11 10].

(3) [SECTIONS 19--AND--20 18 AND 19] ARE INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 39, CHAPTER 71, AND THE PROVISIONS OF TITLE 39, CHAPTER 71, APPLY TO [SECTIONS 19--AND--20 18 AND 19].

(4) [SECTIONS 22 AND 23] ARE INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 39, CHAPTER 71, AND THE PROVISIONS OF TITLE 39, CHAPTER 71, APPLY TO [SECTIONS 22 AND 23].

**NEW SECTION. SECTION 29. 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 30. EFFECTIVE DATE.** [THIS ACT] IS EFFECTIVE JULY 1, 1993.

-End-

SENATE SELECT COMMITTEE REPORT

Page 1 of 2  
April 7, 1993

Page 2 of 2  
April 7, 1993

MR. PRESIDENT:

We, your select committee on Worker's Compensation having had under consideration House Bill No. 622 (third reading copy -- blue), respectfully report that House Bill No. 622 be amended as follows and as so amended be concurred in.

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

That such amendments read:

1. Title, page 1, lines 7 and 8.  
Following: "APPOINTMENTS;" on line 7  
Strike: the remainder of line 7 through "BENEFITS;" on line 8
2. Title, page 2, line 12.  
Strike: "39-71-741,"  
Insert: "22"
3. Page 2, line 19.  
Strike: "23"  
Insert: "22"
4. Page 15, line 22 through page 19, line 11.  
Strike: section 5 in its entirety  
Renumber: subsequent sections
5. Page 27, line 12.  
Following: "(2)"  
Strike: line 12 through "benefits"  
Insert: "An insurer's liability"
6. Page 27, line 18.  
Strike: line 18 in its entirety  
Insert: "the injured worker's temporary total disability benefit rate."
7. Page 49, line 11.  
Strike: "23"  
Insert: "22"
8. Page 50, line 15.  
Following: "STATE"  
Insert: ", except that the state fund, as defined in 39-71-2312, has the right to refuse coverage of a group and its plan of operation but cannot refuse coverage to an individual employer"

9. Page 55, line 24.

Page 56, line 2.

Strike: "8"

Insert: "7"

10. Page 56, lines 3 and 6.

Strike: "10"

Insert: "9"

11. Page 56, lines 7 and 10.

Following: "20"

Insert: "17 and"

Following: "18"

Strike: "AND 19"

12. Page 56, lines 11 and 13.


Following: "SECTIONS"

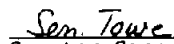
Insert: "21 and"

Following: "22"

Strike: "AND 23"

-END-

  
Amd. Coord.  
Sec. of Senate

  
Senator Carrying Bill

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HB622

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SENATE COMMITTEE OF THE WHOLE AMENDMENT

April 12, 1993 1:10 pm

April 12, 1993  
Page 2 of 2

Mr. Chairman: I move to amend House Bill No. 622 (third reading copy -- blue).

ADOPT

REJECT

Signed: Sue Bartlett  
Senator Sue Bartlett

That such amendments read:

1. Page 51, line 6 through 53, line 12.

Strike: Section 23 in its entirety

Insert: "Section 23. Section 39-71-407, MCA, is amended to read:

"39-71-407. Liability of insurers -- limitations. (1) Every 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 that 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 claimant establishes that it is more probable than not that:

- (i) a claimed injury has occurred; or
- (ii) a claimed injury aggravated a preexisting condition.

(b) 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) 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. 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.

(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) As used in this section, "major contributing cause" means a leading factor contributing to the result when compared to all other contributing factors."

-END-

SENATE COMMITTEE OF THE WHOLE AMENDMENT

April 12, 1993 1:13 pm

Mr. Chairman: I move to amend House Bill No. 622 (third reading copy -- blue).

ADOPT

REJECT

Signed: Sue Bartlett

Senator Sue Bartlett

That such amendments read:

1. Title, page 1, lines 12 and 13.  
Following: "INFIRMITY;" on line 12  
Strike: the remainder of line 12 and line 13 in their entirety

2. Title, page 2, line 11.  
Strike: "39-71-407,"

3. Title, page 2, line 13.  
Following: "AND"  
Insert: "AND"  
Strike: "39-72-706, AND 39-72-707,"

4. Page 51, line 6 through page 54, line 23.  
Strike: sections 23, 24, and 25 in their entirety  
Renumber: subsequent sections

-END-

SENATE

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M- Amd. Coord.

SENATE COMMITTEE OF THE WHOLE AMENDMENT

April 12, 1993 1:15 pm

Mr. Chairman: I move to amend House Bill No. 622 (third reading copy -- blue).

ADOPT

REJECT

Signed: Sue Bartlett

Senator Sue Bartlett

That such amendments read:

1. Title, page 1, lines 8 and 9.  
Following: "BENEFITS;" on line 8  
Strike: the remainder of line 8 through "REQUIREMENTS;" on line 9

2. Title, page 2, line 12.  
Strike: "39-71-2001,"

3. Page 2, line 19.  
Strike: "22"  
Insert: "21"

4. Page 19, line 12 through page 22, line 6.  
Strike: section 5 in its entirety  
Renumber: subsequent sections

5. Page 49, line 11.  
Strike: "22"  
Insert: "21"

6. Page 55, line 24.  
Page 56, line 2.  
Strike: "7"  
Insert: "6"

7. Page 56, lines 3 and 6.  
Strike: "9"  
Insert: "8"

8. Page 56, lines 7 and 10.  
Strike: "17 AND 18"  
Insert: "16 and 17"

9. Page 56, lines 11 and 13.  
Strike: "21 AND 22"  
Insert: "20 and 21"

-END-

SENATE

H8622

r801314CW.Sma

M- Amd. Coord.

SENATE COMMITTEE OF THE WHOLE AMENDMENT

April 12, 1993 1:53 pm

April 12, 1993  
Page 2 of 4

Mr. Chairman: I move to amend House Bill No. 622 (third reading copy -- blue).

ADOPT

REJECT

Signed:   
Senator Gary Forrester

That such amendments read:

1. Title, page 2, line 8.

Following: ";"

Insert: "ALLOWING INSURERS TO SUSPEND BENEFITS TO WORKERS  
RECEIVING SOCIAL SECURITY DISABILITY BENEFITS;"

2. Title, page 2, line 10.

Following: "39-71-116,"

Insert: "39-71-123,"

3. Title, page 2, line 11.

Following: "39-71-407,"

Insert: "39-71-601,"

4. Title, page 2, line 12.

Following: line 11

Insert: "39-71-701,"

5. Page 55, line 18.

Following: line 17

Insert: "Section 27. 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 1½ times the average weekly wage as defined in this chapter."

Section 28. Section 39-71-601, MCA, is amended to read:

"39-71-601. Statute of limitation on presentation 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,

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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 months upon a reasonable showing by the claimant of:

- (a) lack of knowledge of disability;
- (b) latent injury; or
- (c) equitable estoppel."

Section 29. 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 medical evidence.

(3) Weekly compensation benefits for injury producing temporary total disability shall be are 66 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

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benefits. This subsection does not prevent a claimant and insurer from agreeing to a repayment plan.

(6) 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."

Renumber: subsequent sections

-END-



## HOUSE BILL NO. 622

INTRODUCED BY EWER, HARP

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LAWS; PROVIDING FOR SUSPENSION OF BENEFITS TO A WORKER WHO FAILS TO KEEP MEDICAL APPOINTMENTS; ~~AUTHORIZING SETTLEMENTS FOR FUTURE MEDICAL BENEFITS; REVISING--REHABILITATION--BENEFITS REQUIREMENTS; DESIGNATING LIABILITY FOR OCCUPATIONAL DISEASE BENEFITS--IF--THERE--IS--MORE--THAN--ONE--INSURER;--REVISING BENEFITS---WHEN---OCCUPATIONAL---DISEASE---IS---AGGRAVATED---BY NONCOMPENSABLE DISEASE OR INFIRMITY; ALLOWING--APPORTIONMENT OF COMPENSATION FOR PREEXISTING CONDITIONS BETWEEN INSURERS; REQUIRING--NONRESIDENT EMPLOYERS TO OBTAIN IN-STATE COVERAGE OR PAY THE DIFFERENCE IN PREMIUMS; PROVIDING FOR--FINES--FOR EMPLOYER MISCONDUCT; CREATING A MEDICAL PANEL AND PROCEDURES FOR HANDLING PREEXISTING INJURY DISPUTES; CREATING TEMPORARY PARTIAL DISABILITY BENEFITS; REQUIRING EMPLOYERS TO REPORT NEW EMPLOYEES TO THE INSURER AND DEPARTMENT WITHIN 72--HOURS OF--THE--FIRST--PAYDAY--AFTER--HIRING; REVISING ELIGIBILITY REQUIREMENTS TO SELF-INSURE; ALLOWING CERTAIN OPTIONAL DEDUCTIBLES TO POLICYHOLDERS; REQUIRING SUSPENSION, REVOCATION, OR DENIAL OF A PROFESSIONAL OR OCCUPATIONAL LICENSE FOR VIOLATION OF THE WORKERS' COMPENSATION LAW; REVISING THE DEFINITION OF UNPROFESSIONAL CONDUCT;~~

PROHIBITING CERTAIN ACTIONS; PRECLUDING LIABILITY FOR REPORTING VIOLATIONS OF THE WORKERS' COMPENSATION LAW; ALLOWING AUGMENTATION OF TEMPORARY TOTAL DISABILITY BENEFITS WITH SICK LEAVE AND VACATION LEAVE; REQUIRING THE STATE FUND BOARD TO ADOPT AN ANNUAL BUSINESS PLAN; ALLOWING GROUP PURCHASE OF WORKERS' COMPENSATION INSURANCE; REQUIRING THE INSURER TO NOTIFY CLAIMANTS OF BENEFITS AND ENTITLEMENT USING INFORMATION PROVIDED BY THE DEPARTMENT; ALLOWING INSURERS TO SUSPEND BENEFITS TO WORKERS RECEIVING SOCIAL SECURITY DISABILITY BENEFITS; AMENDING SECTIONS 37-1-131, 37-3-322, 37-6-310, 37-10-311, 37-12-321, 37-14-321, 39-71-116, 39-71-123, 39-71-307, 39-71-407, 39-71-604, 39-71-316, 39-71-407, 39-71-407, 39-71-601, 39-71-605, 39-71-606, 39-71-607, 39-71-701, 39-71-736, 39-71-741, 39-71-2001, 39-71-2101, 39-71-2315, AND AND 39-72-303, 39-72-706, AND 39-72-707, AND 39-72-706, MCA; AND REPEALING SECTION 39-71-402, MCA PROVIDING AN EFFECTIVE DATE."

STATEMENT OF INTENT

A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL BECAUSE [SECTION 23 22 21] REQUIRES THE DEPARTMENT BY RULE TO ADOPT FORMS, CRITERIA, AND PROCEDURES FOR THE ISSUANCE OF CERTIFICATES OF APPROVAL FOR GROUPS ELIGIBLE TO PURCHASE GROUP INSURANCE. THE RULES ADOPTED BY THE DEPARTMENT MUST:

(1) BE CONSISTENT WITH THE PROVISIONS OF TITLE 39,

1 CHAPTER 71, AND (THIS ACT); AND

2 (2) ADDRESS WHO MAY BE IN A GROUP, HOW A MEMBER MAY BE  
 3 REMOVED FROM THE GROUP, THE CRITERIA FOR CERTIFICATION, THE  
 4 APPORTIONMENT OF DIVIDENDS OR DISCOUNTS, THE REQUIREMENTS  
 5 FOR A PLAN OF OPERATION, AND ANY REPORTING REQUIREMENTS THAT  
 6 MAY BE NECESSARY.

7  
 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

10 "39-71-116. Definitions. Unless the context otherwise  
 11 requires, words and phrases employed in this chapter have  
 12 the following meanings:

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

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

18 (b) payment of benefits;

19 (c) setting of reserves;

20 (d) furnishing of services and facilities; and

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

23 (2) "Average weekly wage" means the mean weekly  
 24 earnings of all employees under covered employment, as  
 25 defined and established annually by the Montana department

1 of labor and industry. It is established at the nearest  
 2 whole dollar number and must be adopted by the department  
 3 prior to July 1 of each year.

4 (3) "Beneficiary" means:

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

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

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

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

14 (e) a parent who is dependent upon the decedent for  
 15 support at the time of the injury if no a beneficiary, as  
 16 defined in subsections (3)(a) through (3)(d), exists does  
 17 not exist; and

18 (f) a brother or sister under the age of 18 years if  
 19 dependent upon the decedent for support at the time of the  
 20 injury but only until the age of 18 years and only when no a  
 21 beneficiary, as defined in subsections (3)(a) through  
 22 (3)(e), exists does not exist.

23 (4) "Casual employment" means employment not in the  
 24 usual course of trade, business, profession, or occupation  
 25 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~~ salespersons, 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) "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) "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~~ must 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) "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) "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~~ does not have a reasonable prospect of physically performing regular employment. 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) 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) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over ~~such the~~ place of business for the purpose of carrying on ~~his~~ the employer's usual trade, business, or occupation.

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

(20) "Reasonably safe place to work" means that the

place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

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

(22) "Temporary partial disability" means a condition resulting from an injury as defined in 39-71-119, covering the period after an injured worker returns to work in the same, modified, or alternative employment and before the worker has reached maximum healing IN WHICH A WORKER, PRIOR TO MAXIMUM HEALING:

(A) IS TEMPORARILY UNABLE TO RETURN TO THE POSITION HELD AT THE TIME OF INJURY BECAUSE OF A MEDICALLY DETERMINED PHYSICAL RESTRICTION;

(B) RETURNS TO WORK IN A MODIFIED OR ALTERNATIVE EMPLOYMENT; AND

(C) SUFFERS A PARTIAL WAGE LOSS.

~~(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 39-71-307, MCA, is amended to read:

"39-71-307. Employers and insurers to file reports of accidents -- penalty. (1) Every employer and every insurer is required to file with the department, under department rules, a full and complete report of every accident to an employee arising out of or in the course of his employment and resulting in loss of life or injury to the employee. The reports must be furnished to the department in the form and detail as the department prescribes and must provide specific answers to all questions required by the department under its rules. However, if an employer is unable to answer a question, he the employer shall state the reason he is unable for the employer's inability to answer.

(2) Every insurer transacting business under this chapter shall, at the time and in the manner prescribed by the department, make and file with the department the

reports of accidents as the department requires.

(3) An employer, insurer, or adjuster who refuses or neglects to submit to the department reports necessary for the proper filing and review of a claim, as provided in subsection (1), may shall be assessed a penalty of not less than \$200 or more than \$500 for each offense. The department shall assess and collect the penalty. An insurer may contest a penalty assessment in a hearing conducted according to department rules."

~~Section 3. Section 39-71-407, MCA, is amended to read:~~

~~"39-71-407. Liability of insurers -- limitations -- (1) Every 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 claimant establishes it is more probable than not that:~~

~~(i) a claimed injury has occurred; or~~

~~(ii) a claimed injury aggravated a preexisting condition;~~

~~(b) Proof that it was medically possible that a claimed injury occurred or that such the claimed injury aggravated a~~

1 preexisting---condition---is---not---sufficient---to---establish  
2 liability.

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

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

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

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

14 (4)---An---employee---is---not---eligible---for---benefits---otherwise  
15 payable---under---this---chapter---if---the---employee's---use---of---alcohol  
16 or---drugs---not---prescribed---by---a---physician---is---the---sole---and  
17 exclusive---cause---of---the---injury---or---death. However, if the  
18 employer had knowledge of and failed to attempt to stop the  
19 employee's use of alcohol or drugs, this subsection does not  
20 apply it is medically determined that the employee's use of  
21 alcohol or nonprescription drugs was an influencing factor  
22 in the cause of the injury or death.

23 (5)---If---a---claimant---who---has---reached---maximum---healing  
24 suffers---a---subsequent---nonwork-related---injury---to---the---same---part  
25 of---the---body,---the---workers'---compensation---insurer---is---not---liable

1 for---any---compensation---or---medical---benefits---caused---by---the  
2 subsequent---nonwork-related---injury.

3 (6)---If---a---preexisting---condition---is---aggravated---by---any  
4 other---condition,---disease,---or---infirmity---not---itself  
5 compensable---or---if---disability---or---death---from---any---other---cause  
6 not---itself---compensable---is---aggravated,---prolonged,  
7 accelerated,---or---in---any---way---contributed---to---by---an---injury---as  
8 defined---in---39-71-119,---the---compensation---and---medical---benefits  
9 payable---under---this---chapter---must---be---reduced---and---limited---to  
10 the---proportion---of---the---disability---or---death---resulting---from---the  
11 injury.

12 (7)---If---a---claimant's---compensation---is---proportionally  
13 reduced---as---provided---in---subsection---(6)---and---the---claimant  
14 receives---social---security---disability---benefits,---any---offset  
15 that---an---insurer---may---be---entitled---to---must---be---reduced---in---the  
16 same---proportion---as---the---claimant's---compensation---was---reduced  
17 for---as---long---as---the---claimant---receives---the---social---security  
18 disability---benefits."

19 Section 4.---Section 39-71-604, MCA, is amended to read:

20 "39-71-604.---Application---for---compensation.---(1)---If---a  
21 worker---is---entitled---to---benefits---under---this---chapter,---the  
22 worker---shall---file---with---the---insurer---all---reasonable  
23 information---needed---by---the---insurer---to---determine  
24 compensability. It is the duty of the worker's attending  
25 physician---to---lend---all---necessary---assistance---in---making

1 application-for-compensation-and-such the proof--of--other  
 2 matters--as--may--be-required-by-the-rules-of-the-department  
 3 without-charge-to-the-worker.-The-filing-of-forms--or--other  
 4 documentation-by-the-attending-physician-does-not-constitute  
 5 a-claim-for-compensation;

6 ~~(2)--Workers--applying-for-compensation-for-an-injury-or~~  
 7 ~~occupational--disease--shall--allow--the--insurer--or--the~~  
 8 ~~insurer's--designated-agent-direct-access-to-medical-service~~  
 9 ~~providers, medical information, and the injured worker.~~  
 10 ~~Failure--to--comply--with--this--subsection--will--result-in~~  
 11 ~~termination-of-benefits.~~

12 ~~(2)(3)--If-death-results-from--an--injury,--the--parties~~  
 13 ~~entitled--to--compensation--or--someone-in-their-behalf--shall~~  
 14 ~~file-a-claim-with-the-insurer.-The-claim-must-be-accompanied~~  
 15 ~~with-proof-of-death-and-proof-of-relationship,--showing--the~~  
 16 ~~parties---entitled---to--compensation,--certificate--of--the~~  
 17 ~~attending-physician, if any, and such other proof as may be~~  
 18 ~~required-by-the-department."~~

19 **Section 3.** Section 39-71-605, MCA, is amended to read:

20 "39-71-605. Examination of employee by physician --  
 21 effect of refusal to submit to examination -- report and  
 22 testimony of physician -- cost. (1) (a) Whenever in case of  
 23 injury the right to compensation under this chapter would  
 24 exist in favor of any employee, he the employee shall, upon  
 25 the written request of the insurer, submit from time to time

1 to examination by a physician or panel of physicians, who  
 2 shall must be provided and paid for by such the insurer, and  
 3 shall likewise submit to examination from time to time by  
 4 any physician or panel of physicians selected by the  
 5 department.

6 (b) The request or order for such an examination shall  
 7 must fix a time and place for the examination, with regard  
 8 for the employee's convenience, his physical condition, and  
 9 his ability to attend at the time and place that is as close  
 10 to the employee's residence as is practical. The employee  
 11 shall-be is entitled to have a physician present at any such  
 12 examination. So-long-as If the employee, after such written  
 13 request, shall--fail fails or refuse refuses to submit to  
 14 such the examination or shall in any way obstruct obstructs  
 15 the same examination, his the employee's right to  
 16 compensation shall must be suspended and is subject to the  
 17 provisions of 39-71-607. Any physician or panel of  
 18 physicians employed by the insurer or the department who  
 19 shall--make makes or be is present at any such examination  
 20 may be required to testify as to the results thereof of the  
 21 examination.

22 (2) In the event of a dispute concerning the physical  
 23 condition of a claimant or the cause or causes of the injury  
 24 or disability, if any, the department, at the request of the  
 25 claimant or insurer, as the case may be, shall require the

claimant to submit to such an examination as it may deem considers desirable by a physician or panel of physicians within the state or elsewhere who have had adequate and substantial experience in the particular field of medicine concerned with the matters presented by the dispute. The physician or panel of physicians making the examination shall file a written report of findings with the claimant and insurer for their use in the determination of the controversy involved. The requesting party shall pay the physician or panel of physicians for the examination.

(3) This section does not apply to impairment evaluations provided for in 39-71-711."

**Section 4.** Section 39-71-607, MCA, is amended to read:

"39-71-607. Suspension of payments by insurer up to thirty days pending receipt of medical information. Under rules adopted by the department and in the discretion of the department, an insurer may suspend compensation payments for not more than 30 days pending the receipt of medical information when an injured worker unreasonably fails to keep scheduled medical appointments. If, after a medical examination, the injured worker is released to return to work, the worker forfeits the right to any suspended benefits."

**Section 5.** 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}--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}--Any---lump-sum---conversion---of---benefits---under  
subsection--{3}--must-be-converted-to-present-value-using-the  
rate-prescribed-under-subsection-{5}{b};

{5}--{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;

{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}--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,  
including-the-right-to-future-medical-benefits, or for  
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}--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.

(8) An injured worker's entitlement to future medical benefits may be terminated by mutual consent of the worker and the insurer, subject to department approval. The department may not disapprove an agreement unless it determines that the worker has not been fully compensated for terminating the worker's right to future medical benefits.

**Section 5. Section 39-71-2001, MCA, is amended to read:**

**39-71-2001. Rehabilitation benefits. (1) 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;

(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) 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) 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) After filing the rehabilitation plan with the department, the 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 rehabilitation plan. Rehabilitation benefits must be paid BIWEEKLY while the worker is satisfactorily completing the agreed-upon rehabilitation plan AND ARE NOT SUBJECT TO THE LUMP SUM PAYMENT PROVISIONS OF 39-71-741.

(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 return to the job ~~HEED~~ AT THE TIME OF INJURY, the worker is entitled to rehabilitation benefits and services as provided in subsection (2).

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

(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.

(7) Upon receipt of notification of acceptance of a claim by an insurer, the department shall notify the claimant in writing of potential benefits and entitlements THE SERVICES AND BENEFITS AVAILABLE pursuant to 39-71-1014, 39-71-1025, 39-71-1032, and this section THE VOCATIONAL

# REHABILITATION PROVISIONS OF THE WORKERS' COMPENSATION ACT.

(8) The rehabilitation benefits referred to in this section are applicable only with the actual provision of the services and may not be negotiated as aspects of a settlement.

(9) Rehabilitation benefits under this section must be elected within 12 months of the date of maximum medical improvement or they are forfeited.

Section 5. Section 39-72-303, MCA, is amended to read:

"39-72-303. Which employer liable. (1) Where compensation is payable for an occupational disease, the only employer liable shall be is the employer in whose employment the employee was last injuriously exposed to the hazard of such the disease.

(2) When there is more than one insurer and only one employer at the time the employee was injuriously exposed to the hazard of the disease, the liability rests with the insurer providing coverage at the earlier of:

(a) the time the occupational disease was first diagnosed by an attending A TREATING physician consulting physician or medical panel; or

(b) the time the employee knew or should have known that the condition was the result of an occupational disease.

(3) In the case of pneumoconiosis, any coal mine

1 operator who has acquired a mine in the state or  
 2 substantially all of the assets thereof of a mine from a  
 3 person who was an operator of such the mine on or after  
 4 December 30, 1969, is liable for and must shall secure the  
 5 payment of all benefits which that would have been payable  
 6 by that person with respect to miners previously employed in  
 7 such the mine if acquisition had not occurred and that  
 8 person had continued to operate such the mine, and the prior  
 9 operator of such the mine shall is not be relieved of any  
 10 liability under this section."

11 Section-10:--Section-39-72-706, MCA, is amended to read:

12 \*39-72-706--Aggravation--(1)--If an occupational disease  
 13 is--aggravated--by--any--other--disease--or--infirmity--not--itself  
 14 compensable--or--if--disability--or--death--from--any--other--cause  
 15 not---itself---compensable---is---aggravated,---prolonged,  
 16 accelerated, or in any way contributed to by an occupational  
 17 disease, the compensation and medical benefits payable under  
 18 this chapter--must--be--reduced--and--limited--to--such the  
 19 proportion--only--of--the--compensation--that--would--be--payable--if  
 20 the---occupational--disease--were--the--sole--cause--of--the  
 21 disability--or--death--as--such--occupational--disease--as--a  
 22 causative--factor--bears--to--all--the--causes--of--such--disability  
 23 or--death.

24 (2)--if compensation is reduced a proportionate amount  
 25 as provided in subsection--(1)--and--the--worker--receives

1 disability--social--security--benefits,--the--offset--entitlement  
 2 granted---to--the--insurer--must--be--reduced--in--the--same  
 3 proportionate--amount--as--the--compensation and---medical  
 4 benefits as--long--as--the--worker--continues--to--receive  
 5 disability--social--security--benefits."

6 NEW-SECTION:--Section-11:--Requirement-of-state-coverage  
 7 for-nonresident-employers--(1)--Beginning--July--1,--1993,  
 8 nonresident-employers--shall--provide-workers--compensation  
 9 coverage--under--plan--No--1,--2,--or--3--or,--in--the--alternative,  
 10 shall--deposit--with--the--department--a--nonrefundable--amount--of  
 11 money--equal--to--the--difference--between--the--premium--paid  
 12 out-of-state---by---the--nonresident--and--the--premium--the  
 13 nonresident--would--pay--in--Montana--if--the--premium--in--Montana  
 14 is--higher--than--the--out-of-state--premium--rate.

15 (2)--Beginning--July--1,--1993,--a--nonresident-employer  
 16 shall--verify--with--the--department,--prior--to--commencing--to--do  
 17 business--in--this--state,--that--the--nonresident-employer--has  
 18 obtained-workers--compensation--under--one--of--this--state's  
 19 coverage--plans--or--shall--deposit--any--money--due--pursuant--to  
 20 subsection--(1).--The--department--may--monitor--the--activities--of  
 21 a--nonresident-employer--on--a--regular--basis--to--ensure--that  
 22 proper--coverage--is--in--effect.

23 (3)--The--department--shall--deposit--the--money--collected  
 24 pursuant--to--subsection--(1)--in--the--uninsured-employers--fund  
 25 provided--for--in--39-71-502.

~~NEW SECTION. Section 12. Employer misconduct. The department shall fine an employer convicted under 45-7-501 an amount equal to ten times any amount that the department determines the employer wrongfully withheld in not obtaining workers' compensation coverage or in not obtaining the proper workers' compensation coverage. The department shall deposit the money collected pursuant to this section in the uninsured employers' account provided for in 39-71-502.~~

~~NEW SECTION. Section 8. Medical panel for preexisting conditions. (1) The department shall create a list of physicians to serve on an industrial injury medical panel. The physicians must be nominated by the board of medical examiners and must be certified or eligible for certification in a specialty relevant to the medical issue to be examined by the panel pursuant to this section.~~

~~(2) If a dispute exists between a claimant and an employer regarding the extent of liability for the aggravation of a preexisting condition as the result of an injury and a settlement cannot be reached, the following procedure must be followed:~~

~~(a) The department shall direct the claimant to a member of the medical panel for examination. The panel member must be provided with all relevant medical records, including the findings of independent medical examinations. The panel member shall determine as a percentage the amount~~

~~of apportionment, if any, assignable to any other noncompensable disease, condition, or infirmity. The department shall forward a copy of the report to the claimant and employer. The party requesting the examination shall pay for the cost of the examination.~~

~~(b) Either party may, within 20 days of receipt of the report and at the party's expense, request that the claimant be examined by a second panel member to be selected by the department. The second panel member shall conduct an examination of the claimant and submit a report regarding apportionment with respect to any preexisting condition. The department shall forward copies of the report to the parties.~~

~~(c) If a second report is requested, the department shall appoint a third panel member and the two reporting members to review the two reports and to issue a report establishing the amount of apportionment to be assigned to any preexisting condition. The three panel members may consult with the claimant's attending physician or any independent medical examiner.~~

~~(d) If a second examination is not requested, the department shall issue its order determining the percentage of apportionment assigned to any other noncompensable disease, condition, or infirmity, based on the report of the first examining panel member. If a second examination is~~

~~requested, the department shall base its order on the report of the three panel members. The report of the three members is prime facie evidence of the matters contained in the report.~~

NEW SECTION. Section 6. Temporary partial disability benefits. (1) If, prior to maximum healing, an injured worker ~~is medically~~ HAS A PHYSICAL RESTRICTION, AS DETERMINED BY OBJECTIVE MEDICAL FINDINGS, AND IS approved to return to the same, A modified, or alternative employment that the worker is able and qualified to perform and the worker suffers an actual wage loss as a result of a temporary work restriction, the worker qualifies for temporary partial disability benefits.

(2) Weekly compensation benefits AN INSURER'S LIABILITY for temporary partial disability must be the difference between the injured worker's hourly AVERAGE WEEKLY wage received at the time of the injury, subject to a maximum of 40 hours a week, and the actual weekly wages earned during the period that the claimant is temporarily partially disabled, NOT TO EXCEED THE STATE'S AVERAGE WEEKLY WAGE AT THE TIME OF INJURY. THE INJURED WORKER'S TEMPORARY TOTAL DISABILITY BENEFIT RATE.

(3) Temporary partial disability benefits are limited to a total of 26 weeks of combined weekly compensation or ~~are payable until the time the worker is no longer~~

~~temporarily partially disabled, whichever occurs first.~~

~~(4) The amount of temporary partial disability benefits must be based upon payroll records provided by the employer and calculated on a biweekly basis. The combined wages and compensation benefits may not exceed the worker's average weekly wage at the time of injury.~~

(4) A WORKER REQUALIFIES FOR TEMPORARY TOTAL DISABILITY BENEFITS IF THE MODIFIED POSITION IS NO LONGER AVAILABLE TO THE WORKER AND THE WORKER CONTINUES TO BE TEMPORARILY TOTALLY DISABLED AS DEFINED IN 39-71-116.

(5) Temporary partial disability may not be considered an element of permanent partial disability and may not be credited against any permanent impairment or any permanent partial disability award or settlement achieved after the injured worker reaches maximum healing.

~~NEW SECTION. Section 15. Reporting new employees. Any employer operating in this state shall report any new employees hired to work in this state and the work classification of those employees to the employer's insurer and the department within 72 hours of the first regularly scheduled payday after hiring the employee.~~

**Section 7.** Section 39-71-2101, MCA, is amended to read:

**"39-71-2101. General requirements for electing coverage under plan.** (1) An employer may elect to be bound by compensation plan No. 1 upon furnishing satisfactory proof

1 to the department and the Montana self-insurers guaranty  
 2 fund of his solvency and financial ability to pay the  
 3 compensation and benefits provided for in this chapter  
 4 provided-for and to discharge all liabilities which that are  
 5 reasonably likely to be incurred by-him during the fiscal  
 6 year for which such the election is effective. and The  
 7 employer may, by order of the department and with the  
 8 concurrence of the guaranty fund, make such the payments  
 9 directly to his employees as they may become entitled to  
 10 receive payments under the terms and conditions of this  
 11 chapter.

12 (2) Employers who comply with the provisions of this  
 13 chapter and who are participating in collectively bargained,  
 14 jointly administered Taft-Hartley trust funds are eligible  
 15 to provide self-insured workers' compensation benefits for  
 16 their employees."

17 ~~NEW-SECTION--Section-17--Repealer--Section-39-71-4027~~  
 18 ~~MEAY-is-repeated-~~

19 NEW SECTION. SECTION 8. WORKERS' COMPENSATION AND  
 20 EMPLOYERS' LIABILITY INSURANCE -- OPTIONAL DEDUCTIBLES. (1)  
 21 AN INSURER ISSUING A WORKERS' COMPENSATION OR AN EMPLOYER'S  
 22 LIABILITY INSURANCE POLICY MAY OFFER TO THE POLICYHOLDER, AS  
 23 PART OF THE POLICY OR BY ENDORSEMENT, OPTIONAL DEDUCTIBLES  
 24 FOR BENEFITS PAYABLE UNDER THE POLICY CONSISTENT WITH THE  
 25 STANDARDS CONTAINED IN SUBSECTION (3).

1 (2) A RATING ORGANIZATION MAY DEVELOP AND FILE A  
 2 DEDUCTIBLE PLAN OR PLANS ON BEHALF OF ITS MEMBERS CONSISTENT  
 3 WITH THE STANDARDS CONTAINED IN SUBSECTION (3).

4 (3) THE COMMISSIONER OF INSURANCE SHALL APPROVE A  
 5 DEDUCTIBLE PLAN THAT IS IN ACCORDANCE WITH THE FOLLOWING  
 6 STANDARDS:

7 (A) CLAIMANTS' RIGHTS ARE PROPERLY PROTECTED AND  
 8 CLAIMANTS' BENEFITS ARE PAID WITHOUT REGARD TO THE  
 9 DEDUCTIBLE.

10 (B) PREMIUM REDUCTIONS REFLECT THE TYPE AND LEVEL OF  
 11 THE DEDUCTIBLE, CONSISTENT WITH ACCEPTED ACTUARIAL  
 12 STANDARDS.

13 (C) PREMIUM REDUCTIONS FOR DEDUCTIBLES ARE DETERMINED  
 14 BEFORE APPLICATION OF ANY EXPERIENCE MODIFICATION, PREMIUM  
 15 SURCHARGE, OR PREMIUM DISCOUNT.

16 (D) RECOGNITION IS GIVEN TO POLICYHOLDER  
 17 CHARACTERISTICS, INCLUDING BUT NOT LIMITED TO SIZE,  
 18 FINANCIAL CAPABILITIES, NATURE OF ACTIVITIES, AND NUMBER OF  
 19 EMPLOYEES.

20 (E) THE POLICYHOLDER IS LIABLE TO THE INSURER FOR THE  
 21 DEDUCTIBLE AMOUNT IN REGARD TO BENEFITS PAID FOR COMPENSABLE  
 22 CLAIMS.

23 (F) THE INSURER PAYS ALL OF THE DEDUCTIBLE AMOUNT  
 24 APPLICABLE TO A COMPENSABLE CLAIM TO THE PERSON OR PROVIDER  
 25 ENTITLED TO BENEFITS AND THEN SEEKS REIMBURSEMENT FROM THE

POLICYHOLDER FOR THE APPLICABLE DEDUCTIBLE AMOUNT.

(G) FAILURE BY THE POLICYHOLDER TO REIMBURSE DEDUCTIBLE AMOUNTS TO THE INSURER IS TREATED UNDER THE POLICY AS NONPAYMENT OF PREMIUM.

(H) LOSSES SUBJECT TO THE DEDUCTIBLE MUST BE REPORTED AND RECORDED AS LOSSES FOR PURPOSES OF RATEMAKING AND APPLICATION OF THE EXPERIENCE RATING PLAN ON THE SAME BASIS AS LOSSES UNDER POLICIES PROVIDING FIRST DOLLAR COVERAGE.

(4) THE STATE COMPENSATION MUTUAL INSURANCE FUND, PLAN NO. 3, MAY ADOPT THE PLAN FILED BY THE RATING ORGANIZATION OR ADOPT AN OPTIONAL DEDUCTIBLE PLAN THAT MEETS THE REQUIREMENTS OF THIS SECTION.

(5) FOR PURPOSES OF 39-71-201, LIABILITY FOR ASSESSMENTS MUST BE ASCERTAINED BASED ON PREMIUMS COLLECTED, IN THE CASE OF POLICIES WRITTEN UNDER PLAN NO. 2, OR ON THE ASSESSMENT LEVIED, IN THE CASE OF POLICIES WRITTEN UNDER PLAN NO. 3, FOR WHICH THE POLICYHOLDER WOULD HAVE BEEN OBLIGATED WITHOUT THE DEDUCTIBLE. FOR ALL OTHER TAXES AND ASSESSMENTS BASED ON PREMIUM, THE AMOUNT OF PREMIUM OR ASSESSMENT MUST BE DETERMINED AFTER APPLICATION OF THE DEDUCTIBLE.

SECTION 9. SECTION 39-71-316, MCA, IS AMENDED TO READ:

"39-71-316. Filing true claim -- obtaining benefits through deception or other fraudulent means. (1) A person filing a claim under this chapter or chapter 72 of this

title, by signing the claim, affirms the information filed is true and correct to the best of that person's knowledge.

(2) A person who obtains or assists in obtaining benefits to which the person is not entitled under this chapter or chapter 72 of this title may be guilty of theft under 45-6-301. A county attorney may initiate criminal proceedings against the person.

(3) A person licensed under the provisions of Title 37 is subject to suspension, revocation, or denial of a license if the person knowingly claims or assists in the claiming of benefits in violation of the provisions of chapter 72 or this chapter."

SECTION 10. SECTION 37-1-131, MCA, IS AMENDED TO READ:

"37-1-131. Duties of boards. Each board within the department shall:

(1) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within its jurisdiction;

(2) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within its jurisdiction. The hearings shall be conducted by legal counsel when required under 37-1-121(1).

(3) suspend, revoke, or deny a license of a person who



the board determines, after a hearing as provided in subsection (2), is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers' compensation system in violation of the provisions of Title 39, chapter 71 or 72;

(3)(4) pay to the department its pro rata share of the assessed costs of the department under 37-1-101(6);

(4)(5) consult with the department before the board initiates a program expansion, under existing legislation, to determine if the board has adequate money and appropriation authority to fully pay all costs associated with the proposed program expansion. The board may not expand a program if the board does not have adequate money and appropriation authority available."

**SECTION 11. SECTION 37-3-322, MCA, IS AMENDED TO READ:**

"37-3-322. Unprofessional conduct. As used in this chapter, "unprofessional conduct" means:

(1) resorting to fraud, misrepresentation, or deception in applying for or in securing a license or in taking the examination provided for in this chapter;

(2) performing abortion contrary to law;

(3) obtaining a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition of a person can be cured;

(4) employing abusive billing practices;

(5) directly or indirectly giving or receiving a fee, commission, rebate, or other compensation for professional services not actually rendered. This prohibition does not preclude the legal functioning of lawful professional partnerships, corporations, or associations.

(6) willful disobedience of the rules of the board;

(7) conviction of an offense involving moral turpitude or conviction of a felony involving moral turpitude, and the judgment of the conviction, unless pending on appeal, is conclusive evidence of unprofessional conduct;

(8) commission of an act of sexual abuse, misconduct, or exploitation related to the licensee's practice of medicine;

(9) administering, dispensing, or prescribing a narcotic or hallucinatory drug, as defined by the federal food and drug administration or successors, otherwise than in the course of legitimate or reputable professional practice;

(10) conviction or violation of a federal or state law regulating the possession, distribution, or use of a narcotic or hallucinatory drug, as defined by the federal food and drug administration, and the judgment of conviction, unless pending on appeal, is conclusive evidence of unprofessional conduct;

(11) habitual intemperance or excessive use of narcotic drugs, alcohol, or any other drug or substance to the extent that the use impairs the user physically or mentally;

(12) conduct unbecoming a person licensed to practice medicine or detrimental to the best interests of the public as defined by rule of the board;

(13) conduct likely to deceive, defraud, or harm the public;

(14) making a false or misleading statement regarding the licensee's skill or the effectiveness or value of the medicine, treatment, or remedy prescribed by the licensee or at the licensee's direction in the treatment of a disease or other condition of the body or mind;

(15) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organization, including fraud, misrepresentation, or deception with regard to a claim for benefits under Title 39, chapter 71 or 72;

(16) use of a false, fraudulent, or deceptive statement in any document connected with the practice of medicine;

(17) practicing medicine under a false or assumed name;

(18) testifying in court on a contingency basis;

(19) conspiring to misrepresent or willfully misrepresenting medical conditions improperly to increase or

decrease a settlement, award, verdict, or judgment;

(20) aiding or abetting in the practice of medicine by a person not licensed to practice medicine or a person whose license to practice medicine is suspended;

(21) allowing another person or organization to use the licensee's license to practice medicine;

(22) malpractice or negligent practice;

(23) except as provided in this subsection, practicing medicine as the partner, agent, or employee of or in joint venture with a person who does not hold a license to practice medicine within this state; however, this does not prohibit:

(a) the incorporation of an individual licensee or group of licensees as a professional service corporation under Title 35, chapter 4;

(b) a single consultation with or a single treatment by a person or persons licensed to practice medicine and surgery in another state or territory of the United States or foreign country; or

(c) practicing medicine as the partner, agent, or employee of or in joint venture with a hospital, medical assistance facility, or other licensed health care provider. However:

(i) the partnership, agency, employment, or joint venture must be evidenced by a written agreement containing

language to the effect that the relationship created by the agreement may not affect the exercise of the physician's independent judgment in the practice of medicine;

(ii) the physician's independent judgment in the practice of medicine must in fact be unaffected by the relationship; and

(iii) the physician may not be required to refer any patient to a particular provider or supplier or take any other action the physician determines not to be in the patient's best interest.

(24) willfully or negligently violating the confidentiality between physician and patient, except as required by law;

(25) failing to report to the board any adverse judgment, settlement, or award arising from a medical liability claim related to acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section;

(26) failing to transfer pertinent and necessary medical records to another physician when requested to do so by the subject patient or by the patient's legally designated representative;

(27) failing to furnish to the board or its investigators or representatives information legally requested by the board;

(28) failing to cooperate with a lawful investigation conducted by the board;

(29) violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate parts 1 through 3 of this chapter or the rules authorized by them;

(30) having been subject to disciplinary action of another state or jurisdiction against a license or other authorization to practice medicine, based upon acts or conduct by the licensee similar to acts or conduct that would constitute grounds for action as defined in this section. A certified copy of the record of the action taken by the other state or jurisdiction is evidence of unprofessional conduct.

(31) any other act, whether specifically enumerated or not, which, in fact, constitutes unprofessional conduct."

**SECTION 12. SECTION 37-6-310, MCA, IS AMENDED TO READ:**

"37-6-310. Unprofessional conduct. As used in this chapter, "unprofessional conduct" means:

(1) resorting to fraud, misrepresentation, or deception in applying for or in securing a license or in taking the examination provided for in this chapter;

(2) obtaining a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition of a

1 person can be cured;

2 (3) willful disobedience of the rules of the board;

3 (4) final conviction of an offense involving moral  
4 turpitude;

5 (5) administering, dispensing, or prescribing a  
6 narcotic or hallucinatory drug, as defined by the federal  
7 food and drug administration or successors, otherwise than  
8 in the course of legitimate or reputable professional  
9 practice;

10 (6) final conviction of a violation of a federal or  
11 state law regulating the possession, distribution, or use of  
12 a narcotic or hallucinatory drug, as defined by the federal  
13 food and drug administration;

14 (7) habitual intemperance or excessive use of narcotic  
15 drugs, alcohol, or any other drug or substance to the extent  
16 that the use impairs the user physically or mentally;

17 (8) conduct unbecoming a person licensed to practice  
18 podiatry or detrimental to the best interest of the public;

19 (9) resorting to fraud, misrepresentation, or deception  
20 in the examination or treatment of a person or in billing or  
21 reporting to a person, company, institution, or  
22 organization, including fraud, misrepresentation, or  
23 deception with regard to a claim for benefits under Title  
24 39, chapter 71 or 72;

25 (10) testifying in court on a contingency basis;

1 (11) conspiring to misrepresent or willfully  
2 misrepresenting medical conditions to increase or decrease a  
3 settlement, award, verdict, or judgment;

4 (12) aiding or abetting in the practice of medicine a  
5 person not licensed to practice medicine or a person whose  
6 license to practice medicine is suspended;

7 (13) gross malpractice or negligent practice;

8 (14) practicing podiatry as the partner, agent, or  
9 employee of or in joint venture with a person who does not  
10 hold a license to practice podiatry within this state;  
11 however, this does not prohibit the incorporation of an  
12 individual licensee or group of licensees as a professional  
13 service corporation under Title 35, chapter 4, nor does this  
14 apply to a single consultation with or a single treatment by  
15 a person or persons licensed to practice podiatry in another  
16 state or territory of the United States or foreign country;

17 (15) violating or attempting to violate, directly or  
18 indirectly, or assisting in or abetting the violation of or  
19 conspiring to violate parts 1 through 3 of this chapter or  
20 the rules authorized by parts 1 through 3; or

21 (16) any other act, whether specifically enumerated or  
22 not, which in fact constitutes unprofessional conduct."

23 **SECTION 13. SECTION 37-10-311, MCA, IS AMENDED TO READ:**

24 "37-10-311. Revocation -- unprofessional conduct. (1)  
25 The board may revoke a certificate of registration for:

- 1 (a) physical or mental incompetence;
- 2 (b) gross malpractice or repeated malpractice;
- 3 (c) a violation of any of the provisions of this
- 4 chapter or rules or orders of the board; or
- 5 (d) unprofessional conduct.
- 6 (2) Unprofessional conduct includes:
- 7 (a) obtaining a fee by fraud or misrepresentation;
- 8 (b) employing, directly or indirectly, a suspended or
- 9 unlicensed optometrist to perform work covered by this
- 10 chapter;
- 11 (c) directly or indirectly accepting employment to
- 12 practice optometry from a person not having a valid
- 13 certificate of registration as an optometrist or accepting
- 14 employment to practice optometry for or from a company or
- 15 corporation;
- 16 (d) permitting another to use his the optometrist's
- 17 certificate of registration;
- 18 (e) soliciting or sending a solicitor from house to
- 19 house;
- 20 (f) treatment or advice in which untruthful or
- 21 improbable statements are made;
- 22 (g) professing to cure nonocular disease;
- 23 (h) advertising in which ambiguous or misleading
- 24 statements are made; or
- 25 (i) the use in advertising of the expression "eye

1 specialist" or "specialist on eyes" in connection with the  
 2 name of an optometrist. This chapter does not prohibit  
 3 legitimate or truthful advertising by a registered  
 4 optometrist; or

5 (j) resorting to fraud, misrepresentation, or deception  
 6 in the examination or treatment of a person or in billing or  
 7 reporting to a person, company, institution, or  
 8 organization, including fraud, misrepresentation, or a claim  
 9 for benefits under Title 39, chapter 71 or 72.

10 (3) Before a certificate is revoked, the holder shall  
 11 be given a notice and an opportunity for a hearing.

12 (4) Any optometrist convicted a second time for  
 13 violation of the provisions of this chapter or whose  
 14 certificate of registration or examination has been revoked  
 15 a second time shall not be permitted to practice optometry  
 16 in this state."

17 **SECTION 14. SECTION 37-12-321, MCA, IS AMENDED TO READ:**

18 "37-12-321. Unprofessional conduct. As used in this  
 19 chapter, "unprofessional conduct" means:

20 (1) resorting to fraud, misrepresentation, or deception  
 21 in applying for or securing a license or in taking the  
 22 examination provided for in this chapter;

23 (2) obtaining any form of compensation, directly or  
 24 indirectly, by the misrepresentation that a manifestly  
 25 incurable disease, injury, or condition can be cured;

(3) practicing chiropractic under a false or assumed name or impersonating another practitioner of like or different name;

(4) knowingly disobeying a rule of the board;

(5) conviction of a criminal offense involving moral turpitude. A certified copy of the judgment of conviction is conclusive evidence of the conviction. This subsection is subject to chapter 1, part 2, of this title.

(6) habitual intemperance or excessive use of narcotic drugs, alcohol, or any other substance to the extent that such use impairs the user's physical or mental professional capability;

(7) administering, dispensing, or prescribing a narcotic or hallucinatory drug, as defined by the federal food and drug administration or successors;

(8) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organization, including fraud, misrepresentation, or deception with regard to a claim for benefits under Title 39, chapter 71 or 72;

(9) testifying in court on a contingency basis;

(10) conspiring to misrepresent or knowingly misrepresenting physical conditions in order to increase or decrease a settlement or award;

(11) aiding or abetting in the practice of chiropractic a person not licensed to practice chiropractic or a person whose license is suspended;

(12) practicing chiropractic as the partner, agent, or employee of or in joint venture with a person not licensed to practice chiropractic in this state. However, this does not prohibit incorporation as a professional service corporation under Title 35, chapter 4, or prevent a single consultation with or a single treatment by a person licensed to practice chiropractic in another state or territory of the United States or a foreign country.

(13) violating, attempting or conspiring to violate, or aiding or abetting in the violation of this chapter or the rules adopted under it; or

(14) conduct unbecoming a person licensed to practice chiropractic or detrimental to the best interests of the public."

**SECTION 15. SECTION 37-14-321, MCA, IS AMENDED TO READ:**

"37-14-321. Revocation or suspension of license or permit. A license or permit may be suspended for a fixed period or may be revoked, or such technologist or technician may be censured, reprimanded, or otherwise disciplined as determined by the board if, after a hearing before the board, it is determined that the radiologic technologist or limited permit technician:

(1) is guilty of fraud or deceit in activities as a radiologic technologist or limited permit technician or has been guilty of any fraud or deceit in procuring the license or permit;

(2) has been convicted in a court of competent jurisdiction of a crime involving moral turpitude;

(3) is an habitual drunkard or is addicted to the use of narcotics or other drugs having a similar effect or is not mentally competent;

(4) is guilty of unethical or unprofessional conduct, as defined by rules promulgated by the board, including fraud, misrepresentation, or deception with regard to a claim for benefits under Title 39, chapter 71 or 72, or has been guilty of incompetence or negligence in his activities as a radiologic technologist or limited permit technician;

(5) has continued to perform as a radiologic technologist or limited permit technician without obtaining a license or permit or renewal as required by this chapter."

**NEW SECTION. SECTION 16. PROHIBITED ACTIONS --**  
**PENALTY. (1) THE FOLLOWING ACTIONS BY A MEDICAL PROVIDER**  
**CONSTITUTE VIOLATIONS AND ARE SUBJECT TO THE PENALTY IN**  
**SUBSECTION (3) (2):**

**(A) FAILING TO DOCUMENT, UNDER OATH, THE PROVISION OF**  
**THE SERVICES OR TREATMENT FOR WHICH COMPENSATION IS CLAIMED**  
**UNDER CHAPTER 72 OR THIS CHAPTER; OR**

**(B) REFERRING A WORKER FOR TREATMENT OR DIAGNOSIS OF AN**  
**INJURY OR ILLNESS THAT IS COMPENSABLE UNDER CHAPTER 72 OR**  
**THIS CHAPTER TO A FACILITY OWNED WHOLLY OR IN PART BY THE**  
**PROVIDER, UNLESS THE PROVIDER INFORMS THE WORKER OF THE**  
**OWNERSHIP INTEREST AND PROVIDES THE NAME AND ADDRESS OF**  
**ALTERNATE FACILITIES, IF ANY EXIST.**

**(2) -- A PERSON LICENSED TO PRACTICE LAW IN MONTANA OR A**  
**MEDICAL CARE PROVIDER WHO ADVERTISES SERVICES OR FACILITIES**  
**WITH THE INTENTION THAT A WORKER USE THOSE SERVICES OR**  
**FACILITIES WITH REGARD TO AN INJURY OR ILLNESS THAT IS**  
**COMPENSABLE UNDER CHAPTER 72 OR THIS CHAPTER AND WHO FAILS**  
**TO ANNOUNCE IN THE ADVERTISEMENT THAT FILING A FRAUDULENT**  
**CLAIM IS THEFT, AS PROVIDED IN 39-71-316, IS SUBJECT TO THE**  
**PENALTY IN SUBSECTION (3);**

**(3) (2) A PERSON WHO VIOLATES THIS SECTION MAY BE**  
**ASSESSED A PENALTY OF NOT LESS THAN \$200 OR MORE THAN \$500**  
**FOR EACH OFFENSE. THE DEPARTMENT SHALL ASSESS AND COLLECT**  
**THE PENALTY.**

**NEW SECTION. SECTION 17. NO LIABILITY FOR REPORTING**  
**VIOLATION. A PERSON, INCLUDING BUT NOT LIMITED TO AN INSURER**  
**OR AN EMPLOYER, MAY NOT BE HELD LIABLE FOR CIVIL DAMAGES AS**  
**A RESULT OF REPORTING IN GOOD FAITH INFORMATION THAT THE**  
**PERSON BELIEVES PROVES A VIOLATION OF THE PROVISIONS OF**  
**CHAPTER 72 OR THIS CHAPTER.**

**SECTION 18. SECTION 39-71-736, MCA, IS AMENDED TO READ:**

"39-71-736. Compensation -- from what date paid.

(1) (a) No compensation may be paid for the first 48 hours or 6 days' loss of wages, whichever is less, that the claimant is totally disabled and unable to work due to an injury. A claimant is eligible for compensation starting with the 7th day.

(b) However, separate benefits of medical and hospital services must be furnished from the date of injury.

(2) For the purpose of this section, except as provided in subsection (3), an injured worker is not considered to be entitled to compensation benefits if the worker is receiving sick leave benefits, except that each day for which the worker elects to receive sick leave counts 1 day toward the 6-day waiting period.

(3) Augmentation of temporary total disability benefits with sick leave by an employer pursuant to a collective bargaining agreement may not disqualify a worker from receiving temporary total disability benefits.

(4) Receipt of vacation leave by an injured worker may not affect the worker's eligibility for temporary total disability benefits."

**SECTION 19. SECTION 39-71-2315, MCA, IS AMENDED TO READ:**

"39-71-2315. Management of state fund -- powers and duties of the board -- business plan required. (1) The

management and control of the state fund is vested solely in the board.

(2) The board is vested with full power, authority, and jurisdiction over the state fund. The board may perform all acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the state fund, either in the administration of the state fund or in connection with the insurance business to be carried on under the provisions of this part, as fully and completely as the governing body of a private mutual insurance carrier, in order to fulfill the objectives and intent of this part. Bonds may not be issued by the board, the state fund, or the executive director.

(3) The board shall adopt a business plan no later than June 30 for the next fiscal year. At a minimum, the plan must include:

(a) specific goals for the fiscal year for financial performance. The standard for measurement of financial performances must include an evaluation of premium to surplus.

(b) specific goals for the fiscal year for operating performance. Goals must include but not be limited to specific performance standards for staff in the area of senior management, underwriting, and claims administration. Goals must, in general, maximize efficiency, economy, and



equity as allowed by law.

(4) The business plan must be available upon request to the general public for a fee not to exceed the actual cost of publication. However, performance goals relating to a specific employment position are confidential and not available to the public.

(5) No sooner than July 1 or later than October 31, the board shall convene a public meeting to review the performance of the state fund, using the business plan for comparison of all the established goals and targets. The board shall publish, by November 30 of each year, a report of the state fund's actual performance as compared to the business plan."

NEW SECTION. **SECTION 20. DEFINITIONS. AS USED IN**  
[SECTION 23 22 21], THE FOLLOWING DEFINITIONS APPLY:

(1) "BUSINESS ENTITY" MEANS A BUSINESS ENTERPRISE OWNED BY A SINGLE PERSON, CORPORATION, ORGANIZATION, BUSINESS TRUST, TRUST, PARTNERSHIP, JOINT VENTURE, ASSOCIATION, OR OTHER BUSINESS ENTITY.

(2) "GROUP" MEANS TWO OR MORE BUSINESS ENTITIES THAT JOIN TOGETHER WITH THE APPROVAL OF THE DEPARTMENT TO PURCHASE INDIVIDUAL WORKERS' COMPENSATION INSURANCE POLICIES COVERING EACH BUSINESS ENTITY THAT IS PART OF A GROUP.

NEW SECTION. **SECTION 21. GROUP PURCHASE OF WORKERS' COMPENSATION INSURANCE. (1) ON RECEIVING APPROVAL OF THE**

DEPARTMENT, TWO OR MORE BUSINESS ENTITIES MAY JOIN TOGETHER TO FORM A GROUP TO PURCHASE INDIVIDUAL WORKERS' COMPENSATION INSURANCE POLICIES COVERING EACH MEMBER OF THE GROUP.

(2) TO BE ELIGIBLE TO JOIN A GROUP, THE DEPARTMENT SHALL DETERMINE THAT A BUSINESS ENTITY IS ENGAGED IN A BUSINESS PURSUIT THAT IS THE SAME AS OR SIMILAR TO THE BUSINESS PURSUITS OF THE OTHER ENTITIES PARTICIPATING IN THE GROUP.

(3) THE DEPARTMENT SHALL ESTABLISH A CERTIFICATION PROGRAM FOR GROUPS ORGANIZED UNDER THIS SECTION AND SHALL ISSUE TO ELIGIBLE BUSINESS ENTITIES CERTIFICATES OF APPROVAL THAT AUTHORIZE FORMATION AND MAINTENANCE OF A GROUP.

(4) THE DEPARTMENT BY RULE SHALL ADOPT FORMS, CRITERIA, AND PROCEDURES FOR THE ISSUANCE OF CERTIFICATES OF APPROVAL TO GROUPS UNDER THIS SECTION.

(5) A GROUP CERTIFIED UNDER THIS SECTION MAY PURCHASE INDIVIDUAL WORKERS' COMPENSATION INSURANCE POLICIES COVERING EACH MEMBER OF THE GROUP FROM ANY INSURER AUTHORIZED TO WRITE WORKERS' COMPENSATION INSURANCE IN THIS STATE, EXCEPT THAT THE STATE FUND, AS DEFINED IN 39-71-2312, HAS THE RIGHT TO REFUSE COVERAGE OF A GROUP AND ITS PLAN OF OPERATION BUT CANNOT REFUSE COVERAGE TO AN INDIVIDUAL EMPLOYER. UNDER AN INDIVIDUAL POLICY, THE GROUP IS ENTITLED TO A PREMIUM OR VOLUME DISCOUNT THAT WOULD BE APPLICABLE TO A POLICY OF THE COMBINED PREMIUM AMOUNT OF THE INDIVIDUAL POLICIES.

(6) A GROUP SHALL APPORTION ANY DISCOUNT OR POLICYHOLDER DIVIDEND RECEIVED ON WORKERS' COMPENSATION INSURANCE COVERAGE AMONG THE MEMBERS OF THE GROUP ACCORDING TO A FORMULA ADOPTED IN THE PLAN OF OPERATION FOR THE GROUP.

(7) A GROUP SHALL ADOPT A PLAN OF OPERATION THAT MUST INCLUDE THE COMPOSITION AND SELECTION OF A GOVERNING BOARD, THE METHODS FOR ADMINISTERING THE GROUP, AND GUIDELINES FOR THE WORKERS' COMPENSATION INSURANCE COVERAGE OBTAINED BY THE GROUP, INCLUDING THE PAYMENT OF PREMIUMS, THE DISTRIBUTION OF DISCOUNTS, AND THE METHOD FOR PROVIDING RISK MANAGEMENT. A GROUP SHALL FILE A COPY OF ITS PLAN OF OPERATION WITH THE DEPARTMENT.

**SECTION 24. -- SECTION 39-71-407, MCA, IS AMENDED TO READ:**

~~39-71-407. -- liability of insurers -- limitations -- apportionment. -- (1) -- Every 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 claimant establishes it is more probable than not that:~~

~~(i) -- a claimed injury has occurred; or~~

~~(ii) -- a claimed injury aggravated a preexisting condition;~~

~~(b) -- 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) -- 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 cause of the injury or death. 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.~~

~~(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) If an injury, as defined in 39-71-119, occurs that involves an aggravation of a preexisting condition, the permanent total, permanent partial, and medical benefits payable under this chapter after a worker reaches maximum healing must be apportioned between the insurer or insurers who are liable for coverage for the preexisting condition and the insurers who are liable for coverage for the aggravation injury. The insurer for the injury is responsible only for the portion attributable to the aggravation injury.

(7) If a workers' compensation insurer had a compensable claim for the preexisting condition, the insurer remains liable for the portion attributable to that insurer for permanent total, permanent partial, and medical benefits.

**SECTION 25. SECTION 39-72-706, MCA, IS AMENDED TO READ:**

"39-72-706. Aggravation --- apportionment. (1) If an occupational disease is aggravated by any other disease or infirmity not itself compensable or if disability or death from any other cause not itself compensable is aggravated, prolonged, accelerated, or in any way contributed to by an

occupational disease, the compensation payable under this chapter must be reduced and limited to such proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death as such occupational disease as a causative factor bears to all the causes of such disability or death apportioned between the preexisting condition and the liability attributable to the occupational disease after the worker reaches maximum healing.

(2) If a workers' compensation insurer had a compensable claim for the preexisting condition, the insurer remains liable for the portion attributable to that insurer for benefits paid.

(2)(3) If compensation is reduced a proportionate amount apportioned as provided in subsection (1) and the worker receives disability social security benefits, the offset entitlement granted to the insurer must be reduced apportioned in the same proportionate amount as the compensation as long as the worker continues to receive disability social security benefits."

**SECTION 26. SECTION 39-72-707, MCA, IS AMENDED TO READ:**

"39-72-707. Silicosis with complications. In cases of disability or death from silicosis complicated with tuberculosis of the lungs, compensation shall must be payable as for disability or death from an uncomplicated

~~silicosis, in case of disability or death from silicosis when complicated with any disease not compensable under this chapter and other than pulmonary tuberculosis, compensation shall be reduced must be apportioned as provided in 39-72-706."~~

**SECTION 22. 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 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 entitlement available under Title 39, chapter 71. Upon receipt of a claim, each insurer shall promptly notify the claimant in writing of potential benefits and entitlement available by providing the claimant a copy of the document prepared by the department.

(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."

**SECTION 23. 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

1 in excess of those documented to the employer for tax  
2 purposes;

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

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

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

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

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

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

22 (b) The compensation benefits for a covered volunteer  
23 must be based on the average actual wages in his the  
24 volunteer's regular employment, except self-employment as a  
25 sole proprietor or partner who elected not to be covered,

1 from which he the volunteer is disabled by the injury  
2 incurred.

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

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

14 **SECTION 24. SECTION 39-71-601, MCA, IS AMENDED TO READ:**

15 "39-71-601. Statute of limitation on presentment of  
16 claim -- waiver. (1) In case of personal injury or death,  
17 all claims must be forever barred unless signed by the  
18 claimant or the claimant's representative and presented in  
19 writing to the employer, the insurer, or the department, as  
20 the case may be, within 12 months from the date of the  
21 happening of the accident, either by the claimant or someone  
22 legally authorized to act for-him-in-his on the claimant's  
23 behalf.

24 (2) The department may waive the time requirement up to  
25 an additional 24 months upon a reasonable showing by the

claimant of:

- (a) lack of knowledge of disability;
- (b) latent injury; or
- (c) equitable estoppel."

**SECTION 25. 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 medical evidence.

(3) Weekly compensation benefits for injury producing temporary total disability shall be are 66 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, 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}--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."~~

**SECTION 26. SECTION 39-71-407, MCA, IS AMENDED TO READ:**

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

Every 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 that 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 claimant establishes that it is more probable than not that:

(i) a claimed injury has occurred; or

(ii) a claimed injury aggravated a preexisting condition.

(b) 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) 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~~ exclusive major contributing cause of the injury or death. 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.

(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) As used in this section, "major contributing cause" means a leading factor contributing to the result when compared to all other contributing factors."

**NEW SECTION. Section 27. Codification instruction. (1)**  
~~{Sections--117-127-and-15}-are-intended-to-be-codified-as-an integral-part-of-Title-39,--chapter--71,--part--3,--and--the~~

provisions--of--Title--39,--chapter--71,--part--7,--apply-to  
 {sections-11,12,--and-15}.

{2}--{Sections--13--and--14} {SECTIONS--8--AND--9} are  
 [SECTION 8 7 6] IS intended to be codified as an integral  
 part of Title 39, chapter 71, part 7, and the provisions of  
 Title 39, chapter 71, part 7, apply to {sections-13-and-14},  
 {SECTIONS-8-AND-9} [SECTION 8 7 6].

(2) [SECTION 11 10 9 8] IS INTENDED TO BE CODIFIED AS  
 AN INTEGRAL PART OF TITLE 39, CHAPTER 71, PART 4, AND THE  
 PROVISIONS OF TITLE 39, CHAPTER 71, PART 4, APPLY TO  
 [SECTION 11 10 9 8].

(3) [SECTIONS 19-AND-20 17-AND-18 16 AND 17 AND-19] ARE  
 INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 39,  
 CHAPTER 71, AND THE PROVISIONS OF TITLE 39, CHAPTER 71,  
 APPLY TO [SECTIONS 19-AND-20 17-AND-18 16 AND 17 AND-19].

(4) [SECTIONS 21-AND-22 20 AND 21 AND-23] ARE INTENDED  
 TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 39, CHAPTER 71,  
 AND THE PROVISIONS OF TITLE 39, CHAPTER 71, APPLY TO  
 [SECTIONS 21-AND-22 20 AND 21 AND-23].

NEW SECTION. SECTION 28. 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.

1 NEW SECTION. SECTION 29. EFFECTIVE DATE. [THIS ACT] IS  
 2 EFFECTIVE JULY 1, 1993.

-End-



Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered House Bill 622 and recommend as follows:

1. Title, page 2, line 8.

Following: "DEPARTMENT;"

Insert: "REQUIRING INSURERS TO NOTIFY EMPLOYERS OF REOPENED CLAIMS;"

2. Title, page 2, line 14.

Following: "39-71-701,"

Insert: "39-71-702,"

3. Page 27, lines 7 and 8.

Following: "RESTRICTION" on line 7

Strike: the remainder of line 7 through "FINDINGS," on line 8

4. Page 31, lines 6 and 7.

Following: "OF" on line 6

Strike: the remainder of line 6 through "PLAN" on line 7

Insert: "calculating rates for a policyholder"

5. Page 55, line 8.

Following: "receipt"

Insert: "--- notice of benefits and entitlements to claimants"

Following: "denial"

Insert: "--- notice of reopening"

6. Page 55, line 21.

Following: "(3)"

Insert: "Each insurer under plan No. 2 or No. 3 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.

(4)"

7. Page 62, line 11.

Strike: "injury or death"

Insert: "accident"

8. Page 62, line 21.

Following: "a"

Insert: "cause that is the"

ADOPT

REJECT

Following: "leading"

Strike: "factor"

Insert: "cause"

9. Page 62, line 22.

Strike: "factors"

Insert: "causes"

10. Page 62, line 23.

Following: line 22

Insert: "Section 27. 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 medical evidence.

(3) Weekly compensation benefits for an injury resulting in permanent total disability shall be 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 each 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~~

April 20, 1993  
Page 3 of 3


agreeing to a repayment plan."

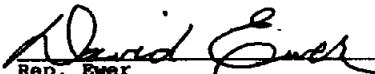
Renumber: subsequent sections

And this Free Conference Committee report be adopted.


For the House:

  
Rep. Hibbard, Chair

  
Rep. Benedict

  
Rep. Ewer

For the Senate:

  
Sen. Lynch, Chair

  
Sen. Alp

  
Sen. Wilson

## HOUSE BILL NO. 622

INTRODUCED BY EWER, HARP

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LAWS; PROVIDING FOR SUSPENSION OF BENEFITS TO A WORKER WHO FAILS TO KEEP MEDICAL APPOINTMENTS; ~~AUTHORIZING SETTLEMENTS FOR FUTURE MEDICAL BENEFITS; REVISING--REHABILITATION--BENEFITS REQUIREMENTS; DESIGNATING LIABILITY FOR OCCUPATIONAL DISEASE BENEFITS IF THERE IS MORE THAN ONE INSURER; REVISING BENEFITS WHEN OCCUPATIONAL DISEASE IS AGGRAVATED BY NONCOMPENSABLE DISEASE OR INFIRMITY; ALLOWING--APPORTIONMENT OF COMPENSATION FOR PREEXISTING CONDITIONS BETWEEN INSURERS; REQUIRING--NONRESIDENT EMPLOYERS TO OBTAIN IN-STATE COVERAGE OR PAY THE DIFFERENCE IN PREMIUMS; PROVIDING FOR--FINES--FOR EMPLOYER MISCONDUCT; CREATING A MEDICAL PANEL AND PROCEDURES FOR HANDLING PREEXISTING INJURY DISPUTES; CREATING TEMPORARY PARTIAL DISABILITY BENEFITS; REQUIRING EMPLOYERS TO REPORT NEW EMPLOYEES TO THE INSURER AND DEPARTMENT WITHIN 72--HOURS OF--THE--FIRST--PAYDAY--AFTER--HIRING; REVISING ELIGIBILITY REQUIREMENTS TO SELF-INSURE; ALLOWING CERTAIN OPTIONAL DEDUCTIBLES TO POLICYHOLDERS; REQUIRING SUSPENSION, REVOCATION, OR DENIAL OF A PROFESSIONAL OR OCCUPATIONAL LICENSE FOR VIOLATION OF THE WORKERS' COMPENSATION LAW; REVISING THE DEFINITION OF UNPROFESSIONAL CONDUCT;~~

PROHIBITING CERTAIN ACTIONS; PRECLUDING LIABILITY FOR REPORTING VIOLATIONS OF THE WORKERS' COMPENSATION LAW; ALLOWING AUGMENTATION OF TEMPORARY TOTAL DISABILITY BENEFITS WITH SICK LEAVE AND VACATION LEAVE; REQUIRING THE STATE FUND BOARD TO ADOPT AN ANNUAL BUSINESS PLAN; ALLOWING GROUP PURCHASE OF WORKERS' COMPENSATION INSURANCE; REQUIRING THE INSURER TO NOTIFY CLAIMANTS OF BENEFITS AND ENTITLEMENT 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; AMENDING SECTIONS 37-1-131, 37-3-322, 37-6-310, 37-10-311, 37-12-321, 37-14-321, 39-71-116, 39-71-123, 39-71-307, 39-71-407, 39-71-604, 39-71-316, 39-71-407, 39-71-407, 39-71-601, 39-71-605, 39-71-606, 39-71-607, 39-71-701, 39-71-702, 39-71-736, 39-71-741, 39-71-2001, 39-71-2101, 39-71-2315, AND AND 39-72-303, 39-72-706, AND 39-72-707, AND 39-72-706, MCA; AND REPEALING SECTION--39-71-402,--MCA PROVIDING AN EFFECTIVE DATE."

## STATEMENT OF INTENT

A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL BECAUSE [SECTION 23 22 21] REQUIRES THE DEPARTMENT BY RULE TO ADOPT FORMS, CRITERIA, AND PROCEDURES FOR THE ISSUANCE OF CERTIFICATES OF APPROVAL FOR GROUPS ELIGIBLE TO PURCHASE

1 GROUP INSURANCE. THE RULES ADOPTED BY THE DEPARTMENT MUST:

2 (1) BE CONSISTENT WITH THE PROVISIONS OF TITLE 39,  
3 CHAPTER 71, AND [THIS ACT]; AND

4 (2) ADDRESS WHO MAY BE IN A GROUP, HOW A MEMBER MAY BE  
5 REMOVED FROM THE GROUP, THE CRITERIA FOR CERTIFICATION, THE  
6 APPORTIONMENT OF DIVIDENDS OR DISCOUNTS, THE REQUIREMENTS  
7 FOR A PLAN OF OPERATION, AND ANY REPORTING REQUIREMENTS THAT  
8 MAY BE NECESSARY.

9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

12 "39-71-116. Definitions. Unless the context otherwise  
13 requires, words and phrases employed in this chapter have  
14 the following meanings:

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

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

20 (b) payment of benefits;

21 (c) setting of reserves;

22 (d) furnishing of services and facilities; and

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

25 (2) "Average weekly wage" means the mean weekly

1 earnings of all employees under covered employment, as  
2 defined and established annually by the Montana department  
3 of labor and industry. It is established at the nearest  
4 whole dollar number and must be adopted by the department  
5 prior to July 1 of each year.

6 (3) "Beneficiary" means:

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

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

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

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

16 (e) a parent who is dependent upon the decedent for  
17 support at the time of the injury if no a beneficiary, as  
18 defined in subsections (3)(a) through (3)(d), exists does  
19 not exist; and

20 (f) a brother or sister under the age of 18 years if  
21 dependent upon the decedent for support at the time of the  
22 injury but only until the age of 18 years and only when no a  
23 beneficiary, as defined in subsections (3)(a) through  
24 (3)(e), exists does not exist.

25 (4) "Casual employment" means employment not in the

1 usual course of trade, business, profession, or occupation  
2 of the employer.

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

5 (6) "Construction industry" means the major group of  
6 general contractors and operative builders, heavy  
7 construction (other than building construction) contractors,  
8 and special trade contractors, listed in major groups 15  
9 through 17 in the 1987 Standard Industrial Classification  
10 Manual. The term does not include office workers, design  
11 professionals, salesmen salespersons, estimators, or any  
12 other related employment that is not directly involved on a  
13 regular basis in the provision of physical labor at a  
14 construction or renovation site.

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

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

19 (9) "Fiscal year" means the period of time between July  
20 1 and the succeeding June 30.

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

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

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

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

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

23 (15) "Permanent partial disability" means a condition,  
24 after a worker has reached maximum healing, in which a  
25 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) "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~~ does not have a reasonable prospect of physically performing regular employment. 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) 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) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over ~~such~~ the place of business for the purpose of carrying on ~~his~~ the employer's usual trade, business, or occupation.

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

village.

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

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

(22) "Temporary partial disability" means a condition resulting from an injury as defined in 39-71-119--covering the period after an injured worker returns to work--in--the same--modified--or--alternative--employment--and--before--the worker has reached maximum healing IN WHICH A WORKER, PRIOR TO MAXIMUM HEALING:

(A) IS TEMPORARILY UNABLE TO RETURN TO THE POSITION HELD AT THE TIME OF INJURY BECAUSE OF A MEDICALLY DETERMINED PHYSICAL RESTRICTION;

(B) RETURNS TO WORK IN A MODIFIED OR ALTERNATIVE EMPLOYMENT; AND

(C) SUFFERS A PARTIAL WAGE LOSS.

~~{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

1 part-time or temporary basis to others.

2 ~~{23}~~{24} "Temporary total disability" means a condition  
3 resulting from an injury as defined in this chapter that  
4 results in total loss of wages and exists until the injured  
5 worker reaches maximum healing.

6 ~~{24}~~{25} "Temporary worker" means a worker whose  
7 services are furnished to another on a part-time or  
8 temporary basis to substitute for a permanent employee on  
9 leave or to meet an emergency or short-term workload.

10 ~~{25}~~{26} "Year", unless otherwise specified, means  
11 calendar year."

12 **Section 2.** Section 39-71-307, MCA, is amended to read:

13 "39-71-307. Employers and insurers to file reports of  
14 accidents -- penalty. (1) Every employer and every insurer  
15 is required to file with the department, under department  
16 rules, a full and complete report of every accident to an  
17 employee arising out of or in the course of his employment  
18 and resulting in loss of life or injury to the employee. The  
19 reports must be furnished to the department in the form and  
20 detail as the department prescribes and must provide  
21 specific answers to all questions required by the department  
22 under its rules. However, if an employer is unable to answer  
23 a question, he the employer shall state the reason he is  
24 unable for the employer's inability to answer.

25 (2) Every insurer transacting business under this

1 chapter shall, at the time and in the manner prescribed by  
2 the department, make and file with the department the  
3 reports of accidents as the department requires.

4 (3) An employer, insurer, or adjuster who refuses or  
5 neglects to submit to the department reports necessary for  
6 the proper filing and review of a claim, as provided in  
7 subsection (1), may shall be assessed a penalty of not less  
8 than \$200 or more than \$500 for each offense. The department  
9 shall assess and collect the penalty. An insurer may contest  
10 a penalty assessment in a hearing conducted according to  
11 department rules."

12 ~~Section-39-71-407-MCA-is-amended-to-read-~~

13 ~~"39-71-407-liability-of-insurers-----limitations---{1}~~  
14 ~~Every-insurer-is-liable-for-the-payment-of-compensation-in~~  
15 ~~the-manner-and-to-the-extent-hereinafter---provided in--this~~  
16 ~~section--to--an--employee--of--an--employer--it-insures-who~~  
17 ~~receives-an-injury-arising-out-of-and-in-the-course-of--his~~  
18 ~~employment--or--in--the--case--of--his--death-from-such the~~  
19 ~~injury--to-his the-employee's beneficiaries--if-any-~~

20 ~~{2}--(a)-An-insurer-is-liable-for-an-injury--as--defined~~  
21 ~~in-39-71-119-if-the-claimant-establishes-it-is-more-probable~~  
22 ~~than-not-that-~~

23 ~~{i}-a-claimed-injury-has-occurred;-or~~

24 ~~{ii}-a---claimed---injury---aggravated---a---preexisting~~  
25 ~~condition-~~

(b)--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)--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--cause--of--the--injury--or--death. 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 it-is-medically-determined-that-the-employee's-use-of alcohol-or-nonprescription-drugs-was-an--influencing--factor in-the-cause-of-the-injury-or-death.

(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)--If-a--preexisting--condition--is-aggravated-by-any other--condition,--disease,--or--infirmity--not--itself compensable--or--if-disability-or-death-from-any-other-cause not--itself--compensable--is--aggravated,--prolonged, accelerated,--or--in-any-way-contributed-to-by-an-injury-as defined-in-39-71-119, the-compensation-and-medical--benefits payable--under--this--chapter-must-be-reduced-and-limited-to the-proportion-of-the-disability-or-death-resulting-from-the injury.

(7)--If-a--claimant's--compensation--is--proportionally reduced-as-provided--in--subsection--(6)--and--the--claimant receives--social--security--disability--benefits, any-offset that-an-insurer-may-be-entitled-to-must-be--reduced--in--the same--proportion--as-the-claimant's-compensation-was-reduced for-as-long-as-the-claimant--receives--the--social--security disability-benefits."

Section 4.--Section 39-71-604, MCA, is amended to read:

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



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

~~(2) Workers applying for compensation for an injury or occupational disease shall allow the insurer or the insurer's designated agent direct access to medical service providers, medical information, and the injured worker. Failure to comply with this subsection will result in termination of benefits.~~

~~(2)(3) If death results from an injury, the parties entitled to compensation or someone in their behalf shall file a claim with the insurer. The claim must be accompanied with proof of death and proof of relationship, showing the parties entitled to compensation, certificate of the attending physician, if any, and such other proof as may be required by the department.~~

**Section 3.** Section 39-71-605, MCA, is amended to read:

"39-71-605. Examination of employee by physician -- effect of refusal to submit to examination -- report and testimony of physician -- cost. (1) (a) Whenever in case of injury the right to compensation under this chapter would

exist in favor of any employee, he the employee shall, upon the written request of the insurer, submit from time to time to examination by a physician or panel of physicians, who shall must be provided and paid for by such the insurer, and shall likewise submit to examination from time to time by any physician or panel of physicians selected by the department.

(b) The request or order for such an examination shall must fix a time and place for the examination, with regard for the employee's convenience, his physical condition, and his ability to attend at the time and place that is as close to the employee's residence as is practical. The employee shall be is entitled to have a physician present at any such examination. ~~So long as~~ If the employee, after such written request, shall fail fails or refuse refuses to submit to such the examination or shall in any way obstruct obstructs the same examination, his the employee's right to compensation shall must be suspended and is subject to the provisions of 39-71-607. Any physician or panel of physicians employed by the insurer or the department who shall make makes or be is present at any such examination may be required to testify as to the results thereof of the examination.

(2) In the event of a dispute concerning the physical condition of a claimant or the cause or causes of the injury

or disability, if any, the department, at the request of the claimant or insurer, as the case may be, shall require the claimant to submit to such an examination as it may deem considers desirable by a physician or panel of physicians within the state or elsewhere who have had adequate and substantial experience in the particular field of medicine concerned with the matters presented by the dispute. The physician or panel of physicians making the examination shall file a written report of findings with the claimant and insurer for their use in the determination of the controversy involved. The requesting party shall pay the physician or panel of physicians for the examination.

(3) This section does not apply to impairment evaluations provided for in 39-71-711."

**Section 4.** Section 39-71-607, MCA, is amended to read:

"39-71-607. Suspension of payments by insurer up to thirty days pending receipt of medical information. Under rules adopted by the department and in the discretion of the department, an insurer may suspend compensation payments for not more than 30 days pending the receipt of medical information when an injured worker unreasonably fails to keep scheduled medical appointments. If, after a medical examination, the injured worker is released to return to work, the worker forfeits the right to any suspended benefits."

**Section 5.** Section 39-71-741, MCA, is amended to read:

"39-71-741. Compromise and 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

1 in-detail-the-reasons-for-disapproval;

2 {d}--Upon-approval,---the---agreement---constitutes---a

3 compromise-and-release-settlement-and-may-not-be-reopened-by

4 the-department;

5 {3}--Permanent---total---disability---benefits---may--be

6 converted-in-whole-or-in-part-to-a-lump-sum;--The--total--of

7 all--lump-sum--conversions--in--part--that--are-awarded-to-a

8 claimant-may-not-exceed-\$20,000;--A-conversion--may--be--made

9 only-upon-the-written-application-of-the-injured-worker-with

10 the--concurrence--of--the--insurer;--Approval-of-the-lump-sum

11 payment-rests-in--the--discretion--of--the--department;--The

12 approval-or-award-of-a-lump-sum-payment-by-the-department-or

13 court--must--be--the--exception;--it-may-be-given-only-if-the

14 worker-has-demonstrated-financial-need-that:

15 {a}--relates-to:

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

17 {ii}--an-accumulation-of-debt-incurred-prior-to--the

18 injury;--or

19 {iii}--a---self-employment-venture--that--is--considered

20 feasible-under-criteria-set-forth-by-the-department;--or

21 {b}--arises-subsequent-to-the-date-of-injury--or--arises

22 because-of-reduced-income-as-a-result-of-the-injury;

23 {4}--Any---lump-sum---conversion---of---benefits---under

24 subsection--{3}--must-be-converted-to-present-value-using-the

25 rate-prescribed-under-subsection-{5}{b};

1 {5}--{a}--An-insurer--may--recoup--any--lump-sum--payment

2 amortized---at--the--rate--established--by--the--department,

3 prorated--biweekly--over--the--projected--duration--of---the

4 compensation-period;

5 {b}--The-rate-adopted-by-the-department-must-be-based-on

6 the-average-rate-for-United-States-10-year-treasury-bills-in

7 the--previous--calendar--year;--rounded-to-the-nearest-whole

8 number;

9 {c}--If--the--projected--compensation--period---is---the

10 claimant's--lifetime,--the-life-expectancy-must-be-determined

11 by-using--the--most--recent--table--of--life--expectancy--as

12 published--by--the--United-States-national-center-for-health

13 statistics;

14 {6}--Subject-to-the-other-provisions--of--this--section,

15 the--department--has-full-power,--authority,--and-jurisdiction

16 to-allow,--approve,--or-condition-compromise-settlements--for

17 any--type--of--benefits--provided--for--under--this-chapter,

18 including-the-right-to-future-medical-benefits, or for

19 lump-sum-payments--agreed--to--by-workers-and-insurers;--All

20 such-compromise-settlements-and-lump-sum-payments--are--void

21 without--the--approval--of--the--department;--Approval-by-the

22 department-must-be-in-writing;--The-department-shall-directly

23 notify-a-claimant-of-a-department-order-approving-or-denying

24 a-claimant's-compromise-or-lump-sum-payment;

25 {7}--A-dispute--between--a--claimant--and--an--insurer

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

9 (8) An injured worker's entitlement to future medical  
 10 benefits may be terminated by mutual consent of the worker  
 11 and the insurer, subject to department approval. The  
 12 department may not disapprove an agreement unless it  
 13 determines that the worker has not been fully compensated  
 14 for terminating the worker's right to future medical  
 15 benefits.

16 **Section 5.** Section 39-71-2001, MCA, is amended to read:

17 "39-71-2001. Rehabilitation benefits: (1) An injured  
 18 worker is eligible for rehabilitation benefits if:

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

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

24 (c) a rehabilitation plan completed by a rehabilitation  
 25 provider and designated by the insurer certifies that the

1 injured worker has reasonable vocational goals and a  
 2 reemployment and wage potential with rehabilitation. The  
 3 plan must take into consideration the worker's age,  
 4 education, training, work history, residual physical  
 5 capacities, and vocational interests.

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

11 (2) After filing the rehabilitation plan with the  
 12 department, the injured worker is entitled to receive  
 13 rehabilitation benefits at the injured worker's temporary  
 14 total disability rate. The benefits must be paid for the  
 15 period specified in the rehabilitation plan, not to exceed  
 16 104 weeks. Rehabilitation benefits must be paid during a  
 17 reasonable period, not to exceed 10 weeks, while the worker  
 18 is waiting to begin the agreed-upon rehabilitation plan.  
 19 Rehabilitation benefits must be paid BIWEEKLY while the  
 20 worker is satisfactorily completing the agreed-upon  
 21 rehabilitation plan AND ARE NOT SUBJECT TO THE LUMP-SUM  
 22 PAYMENT PROVISIONS OF 39-71-741.

23 (3) If the rehabilitation plan provides for job  
 24 placement, a vocational rehabilitation provider shall assist  
 25 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 return-to-the-job ~~HEED~~ AT--THE--TIME--OF--INJURY, the--worker--is--entitled--to rehabilitation--benefits--and--services---as---provided---in subsection-(2).

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

(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.

(7)--Upon-receipt-of-notification-of--acceptance--of--a claim--by--an--insurer,--the--department--shall--notify--the claimant--in-writing-of potential-benefits-and-entitlements

THE-SERVICES-AND-BENEFITS-AVAILABLE pursuant-to 39-71-1014, 39-71-1025, 39-71-1032, and--this--section THE-VOCATIONAL REHABILITATION-PROVISIONS-OF-THE-WORKERS'-COMPENSATION-ACT.

(8)--The-rehabilitation-benefits--referred--to--in--this section-are-applicable-only-with-the-actual-provision-of-the services---and--may--not--be--negotiated--as--aspects--of--a settlement.

(9)--Rehabilitation-benefits-under-this-section-must--be elected--within--12--months--of--the-date-of-maximum-medical improvement-or-they-are-forfeited."

Section 5. Section 39-72-303, MCA, is amended to read:

"39-72-303. Which employer liable. (1) Where compensation is payable for an occupational disease, the only employer liable shall--be is the employer in whose employment the employee was last injuriously exposed to the hazard of such the disease.

(2) When there is more than one insurer and only one employer at the time the employee was injuriously exposed to the hazard of the disease, the liability rests with the insurer providing coverage at the earlier of:

(a) the time the occupational disease was first diagnosed by an-attending A TREATING physician, consulting physician, or medical panel; or

(b) the time the employee knew or should have known that the condition was the result of an occupational

1 disease.

2     ~~(2)(3)~~ In the case of pneumoconiosis, any coal mine  
3 operator who has acquired a mine in the state or  
4 substantially all of the assets thereof of a mine from a  
5 person who was an operator of such the mine on or after  
6 December 30, 1969, is liable for and must shall secure the  
7 payment of all benefits which that would have been payable  
8 by that person with respect to miners previously employed in  
9 such the mine if acquisition had not occurred and that  
10 person had continued to operate such the mine, and the prior  
11 operator of such the mine shall is not be relieved of any  
12 liability under this section."

13     ~~Section 39-72-706, MCA, is amended to read:~~

14     ~~"39-72-706. Aggravation. (1) If an occupational disease~~  
15 ~~is aggravated by any other disease or infirmity not itself~~  
16 ~~compensable or if disability or death from any other cause~~  
17 ~~not itself compensable is aggravated, prolonged,~~  
18 ~~accelerated, or in any way contributed to by an occupational~~  
19 ~~disease, the compensation and medical benefits payable under~~  
20 ~~this chapter must be reduced and limited to such the~~  
21 ~~proportion only of the compensation that would be payable if~~  
22 ~~the occupational disease were the sole cause of the~~  
23 ~~disability or death as such occupational disease as a~~  
24 ~~causative factor bears to all the causes of such disability~~  
25 ~~or death.~~

1     ~~(2) If compensation is reduced a proportionate amount~~  
2 ~~as provided in subsection (1) and the worker receives~~  
3 ~~disability social security benefits, the offset entitlement~~  
4 ~~granted to the insurer must be reduced in the same~~  
5 ~~proportionate amount as the compensation and medical~~  
6 ~~benefits as long as the worker continues to receive~~  
7 ~~disability social security benefits."~~

8     ~~NEW SECTION. Section 39-72-706. Requirement of state coverage~~  
9 ~~for nonresident employers. (1) Beginning July 1, 1993,~~  
10 ~~nonresident employers shall provide workers' compensation~~  
11 ~~coverage under plan No. 1, 2, or 3 or, in the alternative,~~  
12 ~~shall deposit with the department a nonrefundable amount of~~  
13 ~~money equal to the difference between the premium paid~~  
14 ~~out of state by the nonresident and the premium the~~  
15 ~~nonresident would pay in Montana if the premium in Montana~~  
16 ~~is higher than the out of state premium rate.~~

17     ~~(2) Beginning July 1, 1993, a nonresident employer~~  
18 ~~shall verify with the department, prior to commencing to do~~  
19 ~~business in this state, that the nonresident employer has~~  
20 ~~obtained workers' compensation under one of this state's~~  
21 ~~coverage plans or shall deposit any money due pursuant to~~  
22 ~~subsection (1). The department may monitor the activities of~~  
23 ~~a nonresident employer on a regular basis to ensure that~~  
24 ~~proper coverage is in effect.~~

25     ~~(3) The department shall deposit the money collected~~

pursuant to subsection (1) in the uninsured employers' fund provided for in 39-71-502.

**NEW SECTION, Section 12. Employer misconduct.** The department shall fine an employer convicted under 45-7-501 an amount equal to ten times any amount that the department determines the employer wrongfully withheld in not obtaining workers' compensation coverage or in not obtaining the proper workers' compensation coverage. The department shall deposit the money collected pursuant to this section in the uninsured employers' account provided for in 39-71-502.

**NEW SECTION, Section 8. Medical panel for preexisting conditions.** (1) The department shall create a list of physicians to serve on an industrial injury medical panel. The physicians must be nominated by the board of medical examiners and must be certified or eligible for certification in a specialty relevant to the medical issue to be examined by the panel pursuant to this section.

(2) If a dispute exists between a claimant and an employer regarding the extent of liability for the aggravation of a preexisting condition as the result of an injury and a settlement cannot be reached, the following procedure must be followed:

(a) The department shall direct the claimant to a member of the medical panel for examination. The panel member must be provided with all relevant medical records,

including the findings of independent medical examinations. The panel member shall determine as a percentage the amount of apportionment, if any, assignable to any other noncompensable disease, condition, or infirmity. The department shall forward a copy of the report to the claimant and employer. The party requesting the examination shall pay for the cost of the examination.

(b) Either party may, within 20 days of receipt of the report and at the party's expense, request that the claimant be examined by a second panel member to be selected by the department. The second panel member shall conduct an examination of the claimant and submit a report regarding apportionment with respect to any preexisting condition. The department shall forward copies of the report to the parties.

(c) If a second report is requested, the department shall appoint a third panel member and the two reporting members to review the two reports and to issue a report establishing the amount of apportionment to be assigned to any preexisting condition. The three panel members may consult with the claimant's attending physician or any independent medical examiner.

(d) If a second examination is not requested, the department shall issue its order determining the percentage of apportionment assigned to any other noncompensable

disease, condition, or infirmity, based on the report of the first examining panel member. If a second examination is requested, the department shall base its order on the report of the three panel members. The report of the three members is prima facie evidence of the matters contained in the report.

NEW SECTION. Section 6. Temporary partial disability benefits. (1) If, prior to maximum healing, an injured worker is medically HAS A PHYSICAL RESTRICTION, AS DETERMINED BY OBJECTIVE MEDICAL FINDINGS, AND IS approved to return to the same, a modified, or alternative employment that the worker is able and qualified to perform and the worker suffers an actual wage loss as a result of a temporary work restriction, the worker qualifies for temporary partial disability benefits.

(2) Weekly compensation benefits AN INSURER'S LIABILITY for temporary partial disability must be the difference between the injured worker's hourly AVERAGE WEEKLY wage received at the time of the injury, subject to a maximum of 40 hours a week, and the actual weekly wages earned during the period that the claimant is temporarily partially disabled, NOT TO EXCEED THE STATE'S AVERAGE WEEKLY WAGE AT THE TIME OF INJURY. THE INJURED WORKER'S TEMPORARY TOTAL DISABILITY BENEFIT RATE.

(3) Temporary partial disability benefits are limited

to a total of 26 weeks of combined weekly compensation or are payable until the time the worker is no longer temporarily partially disabled, whichever occurs first.

(4) The amount of temporary partial disability benefits must be based upon payroll records provided by the employer and calculated on a biweekly basis. The combined wages and compensation benefits may not exceed the worker's average weekly wage at the time of injury.

(4) A WORKER REQUALIFIES FOR TEMPORARY TOTAL DISABILITY BENEFITS IF THE MODIFIED POSITION IS NO LONGER AVAILABLE TO THE WORKER AND THE WORKER CONTINUES TO BE TEMPORARILY TOTALLY DISABLED AS DEFINED IN 39-71-116.

(5) Temporary partial disability may not be considered an element of permanent partial disability and may not be credited against any permanent impairment or any permanent partial disability award or settlement achieved after the injured worker reaches maximum healing.

NEW SECTION. Section 15. Reporting new employees. Any employer operating in this state shall report any new employees hired to work in this state and the work classification of those employees to the employer's insurer and the department within 72 hours of the first regularly scheduled payday after hiring the employee.

Section 7. Section 39-71-2101, MCA, is amended to read: "39-71-2101. General requirements for electing coverage



under plan. (1) An employer may elect to be bound by compensation plan No. 1 upon furnishing satisfactory proof to the department and the Montana self-insurers guaranty fund of his solvency and financial ability to pay the compensation and benefits provided for in this chapter provided-for and to discharge all liabilities which that are reasonably likely to be incurred by him during the fiscal year for which such the election is effective, and The employer may, by order of the department and with the concurrence of the guaranty fund, make such the payments directly to his employees as they may become entitled to receive payments under the terms and conditions of this chapter.

(2) Employers who comply with the provisions of this chapter and who are participating in collectively bargained, jointly administered Taft-Hartley trust funds are eligible to provide self-insured workers' compensation benefits for their employees."

~~NEW SECTION--Section-17--Repealer--Section-39-71-402,  
MCA, is repealed.~~

NEW SECTION. SECTION 8. WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE -- OPTIONAL DEDUCTIBLES. (1) AN INSURER ISSUING A WORKERS' COMPENSATION OR AN EMPLOYER'S LIABILITY INSURANCE POLICY MAY OFFER TO THE POLICYHOLDER, AS PART OF THE POLICY OR BY ENDORSEMENT, OPTIONAL DEDUCTIBLES

FOR BENEFITS PAYABLE UNDER THE POLICY CONSISTENT WITH THE STANDARDS CONTAINED IN SUBSECTION (3).

(2) A RATING ORGANIZATION MAY DEVELOP AND FILE A DEDUCTIBLE PLAN OR PLANS ON BEHALF OF ITS MEMBERS CONSISTENT WITH THE STANDARDS CONTAINED IN SUBSECTION (3).

(3) THE COMMISSIONER OF INSURANCE SHALL APPROVE A DEDUCTIBLE PLAN THAT IS IN ACCORDANCE WITH THE FOLLOWING STANDARDS:

(A) CLAIMANTS' RIGHTS ARE PROPERLY PROTECTED AND CLAIMANTS' BENEFITS ARE PAID WITHOUT REGARD TO THE DEDUCTIBLE.

(B) PREMIUM REDUCTIONS REFLECT THE TYPE AND LEVEL OF THE DEDUCTIBLE, CONSISTENT WITH ACCEPTED ACTUARIAL STANDARDS.

(C) PREMIUM REDUCTIONS FOR DEDUCTIBLES ARE DETERMINED BEFORE APPLICATION OF ANY EXPERIENCE MODIFICATION, PREMIUM SURCHARGE, OR PREMIUM DISCOUNT.

(D) RECOGNITION IS GIVEN TO POLICYHOLDER CHARACTERISTICS, INCLUDING BUT NOT LIMITED TO SIZE, FINANCIAL CAPABILITIES, NATURE OF ACTIVITIES, AND NUMBER OF EMPLOYEES.

(E) THE POLICYHOLDER IS LIABLE TO THE INSURER FOR THE DEDUCTIBLE AMOUNT IN REGARD TO BENEFITS PAID FOR COMPENSABLE CLAIMS.

(F) THE INSURER PAYS ALL OF THE DEDUCTIBLE AMOUNT

1 APPLICABLE TO A COMPENSABLE CLAIM TO THE PERSON OR PROVIDER  
 2 ENTITLED TO BENEFITS AND THEN SEEKS REIMBURSEMENT FROM THE  
 3 POLICYHOLDER FOR THE APPLICABLE DEDUCTIBLE AMOUNT.

4 (G) FAILURE BY THE POLICYHOLDER TO REIMBURSE DEDUCTIBLE  
 5 AMOUNTS TO THE INSURER IS TREATED UNDER THE POLICY AS  
 6 NONPAYMENT OF PREMIUM.

7 (H) LOSSES SUBJECT TO THE DEDUCTIBLE MUST BE REPORTED  
 8 AND RECORDED AS LOSSES FOR PURPOSES OF RATEMAKING--AND  
 9 APPLICATION--OF-THE-EXPERIENCE-RATING-PLAN CALCULATING RATES  
 10 FOR A POLICYHOLDER ON THE SAME BASIS AS LOSSES UNDER  
 11 POLICIES PROVIDING FIRST DOLLAR COVERAGE.

12 (4) THE STATE COMPENSATION MUTUAL INSURANCE FUND, PLAN  
 13 NO. 3, MAY ADOPT THE PLAN FILED BY THE RATING ORGANIZATION  
 14 OR ADOPT AN OPTIONAL DEDUCTIBLE PLAN THAT MEETS THE  
 15 REQUIREMENTS OF THIS SECTION.

16 (5) FOR PURPOSES OF 39-71-201, LIABILITY FOR  
 17 ASSESSMENTS MUST BE ASCERTAINED BASED ON PREMIUMS COLLECTED,  
 18 IN THE CASE OF POLICIES WRITTEN UNDER PLAN NO. 2, OR ON THE  
 19 ASSESSMENT LEVIED, IN THE CASE OF POLICIES WRITTEN UNDER  
 20 PLAN NO. 3, FOR WHICH THE POLICYHOLDER WOULD HAVE BEEN  
 21 OBLIGATED WITHOUT THE DEDUCTIBLE. FOR ALL OTHER TAXES AND  
 22 ASSESSMENTS BASED ON PREMIUM, THE AMOUNT OF PREMIUM OR  
 23 ASSESSMENT MUST BE DETERMINED AFTER APPLICATION OF THE  
 24 DEDUCTIBLE.

25 SECTION 9. SECTION 39-71-316, MCA, IS AMENDED TO READ:

1 "39-71-316. Filing true claim -- obtaining benefits  
 2 through deception or other fraudulent means. (1) A person  
 3 filing a claim under this chapter or chapter 72 of this  
 4 title, by signing the claim, affirms the information filed  
 5 is true and correct to the best of that person's knowledge.

6 (2) A person who obtains or assists in obtaining  
 7 benefits to which the person is not entitled under this  
 8 chapter or chapter 72 of this title may be guilty of theft  
 9 under 45-6-301. A county attorney may initiate criminal  
 10 proceedings against the person.

11 (3) A person licensed under the provisions of Title 37  
 12 is subject to suspension, revocation, or denial of a license  
 13 if the person knowingly claims or assists in the claiming of  
 14 benefits in violation of the provisions of chapter 72 or  
 15 this chapter."

16 SECTION 10. SECTION 37-1-131, MCA, IS AMENDED TO READ:

17 "37-1-131. Duties of boards. Each board within the  
 18 department shall:

19 (1) set and enforce standards and rules governing the  
 20 licensing, certification, registration, and conduct of the  
 21 members of the particular profession or occupation within  
 22 its jurisdiction;

23 (2) sit in judgment in hearings for the suspension,  
 24 revocation, or denial of a license of an actual or potential  
 25 member of the particular profession or occupation within its

1 jurisdiction. The hearings shall be conducted by legal  
2 counsel when required under 37-1-121(1).

3 (3) suspend, revoke, or deny a license of a person who  
4 the board determines, after a hearing as provided in  
5 subsection (2), is guilty of knowingly defrauding, abusing,  
6 or aiding in the defrauding or abusing of the workers'  
7 compensation system in violation of the provisions of Title  
8 39, chapter 71 or 72;

9 ~~(3)~~(4) pay to the department its pro rata share of the  
10 assessed costs of the department under 37-1-101(6);

11 ~~(4)~~(5) consult with the department before the board  
12 initiates a program expansion, under existing legislation,  
13 to determine if the board has adequate money and  
14 appropriation authority to fully pay all costs associated  
15 with the proposed program expansion. The board may not  
16 expand a program if the board does not have adequate money  
17 and appropriation authority available."

18 **SECTION 11. SECTION 37-3-322, MCA, IS AMENDED TO READ:**

19 "37-3-322. Unprofessional conduct. As used in this  
20 chapter, "unprofessional conduct" means:

21 (1) resorting to fraud, misrepresentation, or deception  
22 in applying for or in securing a license or in taking the  
23 examination provided for in this chapter;

24 (2) performing abortion contrary to law;

25 (3) obtaining a fee or other compensation, either

1 directly or indirectly, by the misrepresentation that a  
2 manifestly incurable disease, injury, or condition of a  
3 person can be cured;

4 (4) employing abusive billing practices;

5 (5) directly or indirectly giving or receiving a fee,  
6 commission, rebate, or other compensation for professional  
7 services not actually rendered. This prohibition does not  
8 preclude the legal functioning of lawful professional  
9 partnerships, corporations, or associations.

10 (6) willful disobedience of the rules of the board;

11 (7) conviction of an offense involving moral turpitude  
12 or conviction of a felony involving moral turpitude, and the  
13 judgment of the conviction, unless pending on appeal, is  
14 conclusive evidence of unprofessional conduct;

15 (8) commission of an act of sexual abuse, misconduct,  
16 or exploitation related to the licensee's practice of  
17 medicine;

18 (9) administering, dispensing, or prescribing a  
19 narcotic or hallucinatory drug, as defined by the federal  
20 food and drug administration or successors, otherwise than  
21 in the course of legitimate or reputable professional  
22 practice;

23 (10) conviction or violation of a federal or state law  
24 regulating the possession, distribution, or use of a  
25 narcotic or hallucinatory drug, as defined by the federal

1 food and drug administration, and the judgment of  
2 conviction, unless pending on appeal, is conclusive evidence  
3 of unprofessional conduct;

4 (11) habitual intemperance or excessive use of narcotic  
5 drugs, alcohol, or any other drug or substance to the extent  
6 that the use impairs the user physically or mentally;

7 (12) conduct unbecoming a person licensed to practice  
8 medicine or detrimental to the best interests of the public  
9 as defined by rule of the board;

10 (13) conduct likely to deceive, defraud, or harm the  
11 public;

12 (14) making a false or misleading statement regarding  
13 the licensee's skill or the effectiveness or value of the  
14 medicine, treatment, or remedy prescribed by the licensee or  
15 at the licensee's direction in the treatment of a disease or  
16 other condition of the body or mind;

17 (15) resorting to fraud, misrepresentation, or deception  
18 in the examination or treatment of a person or in billing or  
19 reporting to a person, company, institution, or  
20 organization, including fraud, misrepresentation, or  
21 deception with regard to a claim for benefits under Title  
22 39, chapter 71 or 72;

23 (16) use of a false, fraudulent, or deceptive statement  
24 in any document connected with the practice of medicine;

25 (17) practicing medicine under a false or assumed name;

1 (18) testifying in court on a contingency basis;

2 (19) conspiring to misrepresent or willfully  
3 misrepresenting medical conditions improperly to increase or  
4 decrease a settlement, award, verdict, or judgment;

5 (20) aiding or abetting in the practice of medicine by a  
6 person not licensed to practice medicine or a person whose  
7 license to practice medicine is suspended;

8 (21) allowing another person or organization to use the  
9 licensee's license to practice medicine;

10 (22) malpractice or negligent practice;

11 (23) except as provided in this subsection, practicing  
12 medicine as the partner, agent, or employee of or in joint  
13 venture with a person who does not hold a license to  
14 practice medicine within this state; however, this does not  
15 prohibit:

16 (a) the incorporation of an individual licensee or  
17 group of licensees as a professional service corporation  
18 under Title 35, chapter 4;

19 (b) a single consultation with or a single treatment by  
20 a person or persons licensed to practice medicine and  
21 surgery in another state or territory of the United States  
22 or foreign country; or

23 (c) practicing medicine as the partner, agent, or  
24 employee of or in joint venture with a hospital, medical  
25 assistance facility, or other licensed health care provider.

1 However:

2 (i) the partnership, agency, employment, or joint  
3 venture must be evidenced by a written agreement containing  
4 language to the effect that the relationship created by the  
5 agreement may not affect the exercise of the physician's  
6 independent judgment in the practice of medicine;

7 (ii) the physician's independent judgment in the  
8 practice of medicine must in fact be unaffected by the  
9 relationship; and

10 (iii) the physician may not be required to refer any  
11 patient to a particular provider or supplier or take any  
12 other action the physician determines not to be in the  
13 patient's best interest.

14 (24) willfully or negligently violating the  
15 confidentiality between physician and patient, except as  
16 required by law;

17 (25) failing to report to the board any adverse  
18 judgment, settlement, or award arising from a medical  
19 liability claim related to acts or conduct similar to acts  
20 or conduct that would constitute grounds for action as  
21 defined in this section;

22 (26) failing to transfer pertinent and necessary medical  
23 records to another physician when requested to do so by the  
24 subject patient or by the patient's legally designated  
25 representative;

1 (27) failing to furnish to the board or its  
2 investigators or representatives information legally  
3 requested by the board;

4 (28) failing to cooperate with a lawful investigation  
5 conducted by the board;

6 (29) violating or attempting to violate, directly or  
7 indirectly, or assisting in or abetting the violation of or  
8 conspiring to violate parts 1 through 3 of this chapter or  
9 the rules authorized by them;

10 (30) having been subject to disciplinary action of  
11 another state or jurisdiction against a license or other  
12 authorization to practice medicine, based upon acts or  
13 conduct by the licensee similar to acts or conduct that  
14 would constitute grounds for action as defined in this  
15 section. A certified copy of the record of the action taken  
16 by the other state or jurisdiction is evidence of  
17 unprofessional conduct.

18 (31) any other act, whether specifically enumerated or  
19 not, which, in fact, constitutes unprofessional conduct."

20 **SECTION 12. SECTION 37-6-310, MCA, IS AMENDED TO READ:**

21 "37-6-310. Unprofessional conduct. As used in this  
22 chapter, "unprofessional conduct" means:

23 (1) resorting to fraud, misrepresentation, or deception  
24 in applying for or in securing a license or in taking the  
25 examination provided for in this chapter;

(2) obtaining a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition of a person can be cured;

(3) willful disobedience of the rules of the board;

(4) final conviction of an offense involving moral turpitude;

(5) administering, dispensing, or prescribing a narcotic or hallucinatory drug, as defined by the federal food and drug administration or successors, otherwise than in the course of legitimate or reputable professional practice;

(6) final conviction of a violation of a federal or state law regulating the possession, distribution, or use of a narcotic or hallucinatory drug, as defined by the federal food and drug administration;

(7) habitual intemperance or excessive use of narcotic drugs, alcohol, or any other drug or substance to the extent that the use impairs the user physically or mentally;

(8) conduct unbecoming a person licensed to practice podiatry or detrimental to the best interest of the public;

(9) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organisation, including fraud, misrepresentation, or

deception with regard to a claim for benefits under Title 39, chapter 71 or 72;

(10) testifying in court on a contingency basis;

(11) conspiring to misrepresent or willfully misrepresenting medical conditions to increase or decrease a settlement, award, verdict, or judgment;

(12) aiding or abetting in the practice of medicine a person not licensed to practice medicine or a person whose license to practice medicine is suspended;

(13) gross malpractice or negligent practice;

(14) practicing podiatry as the partner, agent, or employee of or in joint venture with a person who does not hold a license to practice podiatry within this state; however, this does not prohibit the incorporation of an individual licensee or group of licensees as a professional service corporation under Title 35, chapter 4, nor does this apply to a single consultation with or a single treatment by a person or persons licensed to practice podiatry in another state or territory of the United States or foreign country;

(15) violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate parts 1 through 3 of this chapter or the rules authorized by parts 1 through 3; or

(16) any other act, whether specifically enumerated or not, which in fact constitutes unprofessional conduct."

**SECTION 13. SECTION 37-10-311, MCA, IS AMENDED TO READ:**

"37-10-311. Revocation -- unprofessional conduct. (1)

The board may revoke a certificate of registration for:

- (a) physical or mental incompetence;
- (b) gross malpractice or repeated malpractice;
- (c) a violation of any of the provisions of this chapter or rules or orders of the board; or
- (d) unprofessional conduct.

(2) Unprofessional conduct includes:

- (a) obtaining a fee by fraud or misrepresentation;
- (b) employing, directly or indirectly, a suspended or unlicensed optometrist to perform work covered by this chapter;
- (c) directly or indirectly accepting employment to practice optometry from a person not having a valid certificate of registration as an optometrist or accepting employment to practice optometry for or from a company or corporation;
- (d) permitting another to use his the optometrist's certificate of registration;
- (e) soliciting or sending a solicitor from house to house;
- (f) treatment or advice in which untruthful or improbable statements are made;
- (g) professing to cure nonocular disease;

(h) advertising in which ambiguous or misleading statements are made; or

(i) the use in advertising of the expression "eye specialist" or "specialist on eyes" in connection with the name of an optometrist. This chapter does not prohibit legitimate or truthful advertising by a registered optometrist; or

(j) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organization, including fraud, misrepresentation, or a claim for benefits under Title 39, chapter 71 or 72.

(3) Before a certificate is revoked, the holder shall be given a notice and an opportunity for a hearing.

(4) Any optometrist convicted a second time for violation of the provisions of this chapter or whose certificate of registration or examination has been revoked a second time shall not be permitted to practice optometry in this state."

**SECTION 14. SECTION 37-12-321, MCA, IS AMENDED TO READ:**

"37-12-321. Unprofessional conduct. As used in this chapter, "unprofessional conduct" means:

- (1) resorting to fraud, misrepresentation, or deception in applying for or securing a license or in taking the examination provided for in this chapter;

(2) obtaining any form of compensation, directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition can be cured;

(3) practicing chiropractic under a false or assumed name or impersonating another practitioner of like or different name;

(4) knowingly disobeying a rule of the board;

(5) conviction of a criminal offense involving moral turpitude. A certified copy of the judgment of conviction is conclusive evidence of the conviction. This subsection is subject to chapter 1, part 2, of this title.

(6) habitual intemperance or excessive use of narcotic drugs, alcohol, or any other substance to the extent that such use impairs the user's physical or mental professional capability;

(7) administering, dispensing, or prescribing a narcotic or hallucinatory drug, as defined by the federal food and drug administration or successors;

(8) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organization, including fraud, misrepresentation, or deception with regard to a claim for benefits under Title 39, chapter 71 or 72;

(9) testifying in court on a contingency basis;

(10) conspiring to misrepresent or knowingly misrepresenting physical conditions in order to increase or decrease a settlement or award;

(11) aiding or abetting in the practice of chiropractic a person not licensed to practice chiropractic or a person whose license is suspended;

(12) practicing chiropractic as the partner, agent, or employee of or in joint venture with a person not licensed to practice chiropractic in this state. However, this does not prohibit incorporation as a professional service corporation under Title 35, chapter 4, or prevent a single consultation with or a single treatment by a person licensed to practice chiropractic in another state or territory of the United States or a foreign country.

(13) violating, attempting or conspiring to violate, or aiding or abetting in the violation of this chapter or the rules adopted under it; or

(14) conduct unbecoming a person licensed to practice chiropractic or detrimental to the best interests of the public."

**SECTION 15. SECTION 37-14-321, MCA, IS AMENDED TO READ:**

"37-14-321. Revocation or suspension of license or permit. A license or permit may be suspended for a fixed period or may be revoked, or such technologist or technician may be censured, reprimanded, or otherwise disciplined as



determined by the board if, after a hearing before the board, it is determined that the radiologic technologist or limited permit technician:

(1) is guilty of fraud or deceit in activities as a radiologic technologist or limited permit technician or has been guilty of any fraud or deceit in procuring the license or permit;

(2) has been convicted in a court of competent jurisdiction of a crime involving moral turpitude;

(3) is an habitual drunkard or is addicted to the use of narcotics or other drugs having a similar effect or is not mentally competent;

(4) is guilty of unethical or unprofessional conduct, as defined by rules promulgated by the board, including fraud, misrepresentation, or deception with regard to a claim for benefits under Title 39, chapter 71 or 72, or has been guilty of incompetence or negligence in his activities as a radiologic technologist or limited permit technician;

(5) has continued to perform as a radiologic technologist or limited permit technician without obtaining a license or permit or renewal as required by this chapter."

**NEW SECTION. SECTION 16. PROHIBITED ACTIONS --**

**PENALTY. (1) THE FOLLOWING ACTIONS BY A MEDICAL PROVIDER CONSTITUTE VIOLATIONS AND ARE SUBJECT TO THE PENALTY IN SUBSECTION (3) (2):**

**(A) FAILING TO DOCUMENT, UNDER OATH, THE PROVISION OF THE SERVICES OR TREATMENT FOR WHICH COMPENSATION IS CLAIMED UNDER CHAPTER 72 OR THIS CHAPTER; OR**

**(B) REFERRING A WORKER FOR TREATMENT OR DIAGNOSIS OF AN INJURY OR ILLNESS THAT IS COMPENSABLE UNDER CHAPTER 72 OR THIS CHAPTER TO A FACILITY OWNED WHOLLY OR IN PART BY THE PROVIDER, UNLESS THE PROVIDER INFORMS THE WORKER OF THE OWNERSHIP INTEREST AND PROVIDES THE NAME AND ADDRESS OF ALTERNATE FACILITIES, IF ANY EXIST.**

**(2) -- A PERSON LICENSED TO PRACTICE LAW IN MONTANA OR A MEDICAL CARE PROVIDER WHO ADVERTISES SERVICES OR FACILITIES WITH THE INTENTION THAT A WORKER USE THOSE SERVICES OR FACILITIES WITH REGARD TO AN INJURY OR ILLNESS THAT IS COMPENSABLE UNDER CHAPTER 72 OR THIS CHAPTER AND WHO FAILS TO ANNOUNCE IN THE ADVERTISEMENT THAT FILING A FRAUDULENT CLAIM IS THEFT, AS PROVIDED IN 39-71-316, IS SUBJECT TO THE PENALTY IN SUBSECTION (3);**

**(3) (2) A PERSON WHO VIOLATES THIS SECTION MAY BE ASSESSED A PENALTY OF NOT LESS THAN \$200 OR MORE THAN \$500 FOR EACH OFFENSE. THE DEPARTMENT SHALL ASSESS AND COLLECT THE PENALTY.**

**NEW SECTION. SECTION 17. NO LIABILITY FOR REPORTING VIOLATION. A PERSON, INCLUDING BUT NOT LIMITED TO AN INSURER OR AN EMPLOYER, MAY NOT BE HELD LIABLE FOR CIVIL DAMAGES AS A RESULT OF REPORTING IN GOOD FAITH INFORMATION THAT THE**

PERSON BELIEVES PROVES A VIOLATION OF THE PROVISIONS OF  
CHAPTER 72 OR THIS CHAPTER.

**SECTION 18.** SECTION 39-71-736, MCA, IS AMENDED TO READ:

"39-71-736. Compensation -- from what date paid.

(1) (a) No compensation may be paid for the first 48 hours or 6 days' loss of wages, whichever is less, that the claimant is totally disabled and unable to work due to an injury. A claimant is eligible for compensation starting with the 7th day.

(b) However, separate benefits of medical and hospital services must be furnished from the date of injury.

(2) For the purpose of this section, except as provided in subsection (3), an injured worker is not considered to be entitled to compensation benefits if the worker is receiving sick leave benefits, except that each day for which the worker elects to receive sick leave counts 1 day toward the 6-day waiting period.

(3) Augmentation of temporary total disability benefits with sick leave by an employer pursuant to a collective bargaining agreement may not disqualify a worker from receiving temporary total disability benefits.

(4) Receipt of vacation leave by an injured worker may not affect the worker's eligibility for temporary total disability benefits."

**SECTION 19.** SECTION 39-71-2315, MCA, IS AMENDED TO

READ:

"39-71-2315. Management of state fund -- powers and duties of the board -- business plan required. (1) The management and control of the state fund is vested solely in the board.

(2) The board is vested with full power, authority, and jurisdiction over the state fund. The board may perform all acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the state fund, either in the administration of the state fund or in connection with the insurance business to be carried on under the provisions of this part, as fully and completely as the governing body of a private mutual insurance carrier, in order to fulfill the objectives and intent of this part. Bonds may not be issued by the board, the state fund, or the executive director.

(3) The board shall adopt a business plan no later than June 30 for the next fiscal year. At a minimum, the plan must include:

(a) specific goals for the fiscal year for financial performance. The standard for measurement of financial performances must include an evaluation of premium to surplus.

(b) specific goals for the fiscal year for operating performance. Goals must include but not be limited to

specific performance standards for staff in the area of senior management, underwriting, and claims administration. Goals must, in general, maximize efficiency, economy, and equity as allowed by law.

(4) The business plan must be available upon request to the general public for a fee not to exceed the actual cost of publication. However, performance goals relating to a specific employment position are confidential and not available to the public.

(5) No sooner than July 1 or later than October 31, the board shall convene a public meeting to review the performance of the state fund, using the business plan for comparison of all the established goals and targets. The board shall publish, by November 30 of each year, a report of the state fund's actual performance as compared to the business plan."

NEW SECTION. SECTION 20. DEFINITIONS. AS USED IN [SECTION 23 22 21], THE FOLLOWING DEFINITIONS APPLY:

(1) "BUSINESS ENTITY" MEANS A BUSINESS ENTERPRISE OWNED BY A SINGLE PERSON, CORPORATION, ORGANIZATION, BUSINESS TRUST, TRUST, PARTNERSHIP, JOINT VENTURE, ASSOCIATION, OR OTHER BUSINESS ENTITY.

(2) "GROUP" MEANS TWO OR MORE BUSINESS ENTITIES THAT JOIN TOGETHER WITH THE APPROVAL OF THE DEPARTMENT TO PURCHASE INDIVIDUAL WORKERS' COMPENSATION INSURANCE POLICIES

COVERING EACH BUSINESS ENTITY THAT IS PART OF A GROUP.

NEW SECTION. SECTION 21. GROUP PURCHASE OF WORKERS' COMPENSATION INSURANCE. (1) ON RECEIVING APPROVAL OF THE DEPARTMENT, TWO OR MORE BUSINESS ENTITIES MAY JOIN TOGETHER TO FORM A GROUP TO PURCHASE INDIVIDUAL WORKERS' COMPENSATION INSURANCE POLICIES COVERING EACH MEMBER OF THE GROUP.

(2) TO BE ELIGIBLE TO JOIN A GROUP, THE DEPARTMENT SHALL DETERMINE THAT A BUSINESS ENTITY IS ENGAGED IN A BUSINESS PURSUIT THAT IS THE SAME AS OR SIMILAR TO THE BUSINESS PURSUITS OF THE OTHER ENTITIES PARTICIPATING IN THE GROUP.

(3) THE DEPARTMENT SHALL ESTABLISH A CERTIFICATION PROGRAM FOR GROUPS ORGANIZED UNDER THIS SECTION AND SHALL ISSUE TO ELIGIBLE BUSINESS ENTITIES CERTIFICATES OF APPROVAL THAT AUTHORIZE FORMATION AND MAINTENANCE OF A GROUP.

(4) THE DEPARTMENT BY RULE SHALL ADOPT FORMS, CRITERIA, AND PROCEDURES FOR THE ISSUANCE OF CERTIFICATES OF APPROVAL TO GROUPS UNDER THIS SECTION.

(5) A GROUP CERTIFIED UNDER THIS SECTION MAY PURCHASE INDIVIDUAL WORKERS' COMPENSATION INSURANCE POLICIES COVERING EACH MEMBER OF THE GROUP FROM ANY INSURER AUTHORIZED TO WRITE WORKERS' COMPENSATION INSURANCE IN THIS STATE, EXCEPT THAT THE STATE FUND, AS DEFINED IN 39-71-2312, HAS THE RIGHT TO REFUSE COVERAGE OF A GROUP AND ITS PLAN OF OPERATION BUT CANNOT REFUSE COVERAGE TO AN INDIVIDUAL EMPLOYER. UNDER AN

INDIVIDUAL POLICY, THE GROUP IS ENTITLED TO A PREMIUM OR VOLUME DISCOUNT THAT WOULD BE APPLICABLE TO A POLICY OF THE COMBINED PREMIUM AMOUNT OF THE INDIVIDUAL POLICIES.

(6) A GROUP SHALL APPORTION ANY DISCOUNT OR POLICYHOLDER DIVIDEND RECEIVED ON WORKERS' COMPENSATION INSURANCE COVERAGE AMONG THE MEMBERS OF THE GROUP ACCORDING TO A FORMULA ADOPTED IN THE PLAN OF OPERATION FOR THE GROUP.

(7) A GROUP SHALL ADOPT A PLAN OF OPERATION THAT MUST INCLUDE THE COMPOSITION AND SELECTION OF A GOVERNING BOARD, THE METHODS FOR ADMINISTERING THE GROUP, AND GUIDELINES FOR THE WORKERS' COMPENSATION INSURANCE COVERAGE OBTAINED BY THE GROUP, INCLUDING THE PAYMENT OF PREMIUMS, THE DISTRIBUTION OF DISCOUNTS, AND THE METHOD FOR PROVIDING RISK MANAGEMENT. A GROUP SHALL FILE A COPY OF ITS PLAN OF OPERATION WITH THE DEPARTMENT.

**SECTION 24. SECTION 39-71-407, NCA, IS AMENDED TO READ:**

39-71-407. Liability of insurers -- limitations -- apportionment. (1) Every 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 claimant establishes it is more probable than not that:

(i) a claimed injury has occurred; or

(ii) a claimed injury aggravated a preexisting condition;

(b) 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) 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 cause of the injury or death. However, if the employer had knowledge of and failed to attempt to stop the

1 employee's use of alcohol or drugs, this subsection does not  
2 apply.

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

8 (6) If an injury, as defined in 39-72-119, occurs that  
9 involves an aggravation of a preexisting condition, the  
10 permanent total, permanent partial, and medical benefits  
11 payable under this chapter after a worker reaches maximum  
12 healing must be apportioned between the insurer or insurers  
13 who are liable for coverage for the preexisting condition  
14 and the insurers who are liable for coverage for the  
15 aggravation injury. The insurer for the injury is  
16 responsible only for the portion attributable to the  
17 aggravation injury.

18 (7) If a workers' compensation insurer had a  
19 compensable claim for the preexisting condition, the insurer  
20 remains liable for the portion attributable to that insurer  
21 for permanent total, permanent partial, and medical  
22 benefits.

23 **SECTION 25. SECTION 39-72-706, MCA, IS AMENDED TO READ:**

24 "39-72-706. Aggravation apportionment. (1) If an  
25 occupational disease is aggravated by any other disease or

1 infirmity not itself compensable or if disability or death  
2 from any other cause not itself compensable is aggravated,  
3 prolonged, accelerated, or in any way contributed to by an  
4 occupational disease, the compensation payable under this  
5 chapter must be reduced and limited to such proportion only  
6 of the compensation that would be payable if the  
7 occupational disease were the sole cause of the disability  
8 or death as such occupational disease as a causative factor  
9 bears to all the causes of such disability or death  
10 apportioned between the preexisting condition and the  
11 liability attributable to the occupational disease after the  
12 worker reaches maximum healing.

13 (2) If a workers' compensation insurer had a  
14 compensable claim for the preexisting condition, the insurer  
15 remains liable for the portion attributable to that insurer  
16 for benefits paid.

17 (2)(3) If compensation is reduced a proportionate  
18 amount apportioned as provided in subsection (1) and the  
19 worker receives disability social security benefits, the  
20 offset entitlement granted to the insurer must be reduced  
21 apportioned in the same proportionate amount as the  
22 compensation as long as the worker continues to receive  
23 disability social security benefits.

24 **SECTION 26. SECTION 39-72-707, MCA, IS AMENDED TO READ:**

25 "39-72-707. Silicosis with complications in cases of

disability--or--death--from---silicosis---complicated---with tuberculosis--of--the--lungs,--compensation--shall must be payable--as--for--disability--or--death--from--an--uncomplicated silicosis--In--case--of--disability--or--death--from--silicosis when--complicated--with--any--disease--not--compensable--under--this chapter--and--other--than--pulmonary--tuberculosis,--compensation shall--be--reduced must--be--apportioned as--provided---in 39-72-706."A

**SECTION 22. 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 entitlement available under Title 39, chapter 71. Upon receipt of a claim, each insurer shall promptly notify the claimant in writing of potential benefits and entitlement available by providing the claimant a copy of the document prepared by the department.

(3) EACH INSURER UNDER PLAN NO. 2 OR NO. 3 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.

(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."

**SECTION 23. 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 24. 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 months upon a reasonable showing by the claimant of:

- (a) lack of knowledge of disability;
- (b) latent injury; or
- (c) equitable estoppel."

**SECTION 25. 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 medical evidence.

(3) Weekly compensation benefits for injury producing temporary total disability shall be are 66 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, 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



1 be calculated from the date of the disability social  
2 security entitlement.

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

10 ~~(6) Notwithstanding subsection (3), beginning July 1,~~  
11 ~~1987, through June 30, 1991, weekly compensation benefits~~  
12 ~~for temporary total disability may not exceed the state's~~  
13 ~~average weekly wage of \$299 established July 1, 1986.~~

14 **SECTION 26. SECTION 39-71-407, MCA, IS AMENDED TO READ:**

15 "39-71-407. Liability of insurers -- limitations. (1)  
16 Every insurer is liable for the payment of compensation, in  
17 the manner and to the extent hereinafter provided in this  
18 section, to an employee of an employer that it insures who  
19 receives an injury arising out of and in the course of his  
20 employment or, in the case of his death from such the  
21 injury, to his the employee's beneficiaries, if any.

22 (2) (a) An insurer is liable for an injury as defined  
23 in 39-71-119 if the claimant establishes that it is more  
24 probable than not that:

25 (i) a claimed injury has occurred; or

1 (ii) a claimed injury aggravated a preexisting  
2 condition.

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

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

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

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

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

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

25 (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) As used in this section, "major contributing cause" means a CAUSE THAT IS THE leading factor CAUSE contributing to the result when compared to all other contributing factors CAUSES."

**SECTION 27. 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 medical evidence.

(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)--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."~~

**NEW SECTION. Section 28. Codification instruction. (1)**

1 ~~{Sections 117-127-and-15}~~ are intended to be codified as an  
 2 ~~integral part of Title 39, chapter 71, part 3, and the~~  
 3 ~~provisions of Title 39, chapter 71, part 3, apply to~~  
 4 ~~{sections 117-127-and-15}.~~

5 ~~{2}--{Sections 13--and--14} {SECTIONS 8--AND--9}~~ are  
 6 [SECTION 8 7 6] IS intended to be codified as an integral  
 7 part of Title 39, chapter 71, part 7, and the provisions of  
 8 Title 39, chapter 71, part 7, apply to ~~{sections 13-and-14}.~~  
 9 ~~{SECTIONS 8-AND-9}~~ [SECTION 8 7 6].

10 (2) [SECTION 11 10 9 8] IS INTENDED TO BE CODIFIED AS  
 11 AN INTEGRAL PART OF TITLE 39, CHAPTER 71, PART 4, AND THE  
 12 PROVISIONS OF TITLE 39, CHAPTER 71, PART 4, APPLY TO  
 13 [SECTION 11 10 9 8].

14 (3) [SECTIONS 19-AND-20 17-AND-18 16 AND 17 AND-19] ARE  
 15 INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 39,  
 16 CHAPTER 71, AND THE PROVISIONS OF TITLE 39, CHAPTER 71,  
 17 APPLY TO [SECTIONS 19-AND-20 17-AND-18 16 AND 17 AND-19].

18 (4) [SECTIONS 21-AND-22 20 AND 21 AND-23] ARE INTENDED  
 19 TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 39, CHAPTER 71,  
 20 AND THE PROVISIONS OF TITLE 39, CHAPTER 71, APPLY TO  
 21 [SECTIONS 21-AND-22 20 AND 21 AND-23].

22 NEW SECTION. SECTION 29. SEVERABILITY. IF A PART OF  
 23 [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE  
 24 FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS  
 25 ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART

1 REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE  
 2 SEVERABLE FROM THE INVALID APPLICATIONS.  
 3 NEW SECTION. SECTION 30. EFFECTIVE DATE. [THIS ACT] IS  
 4 EFFECTIVE JULY 1, 1993.

-End-