

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.

House BILL NO. 622

2 INTRODUCED BY Conrad 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



HB622
INTRODUCED BILL

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

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

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

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

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

20 (16) "Permanent total disability" means a condition
 21 resulting from injury as defined in this chapter, after a
 22 worker reaches maximum healing, in which a worker ~~has no~~
 23 does not have a reasonable prospect of physically performing
 24 regular employment. Regular employment means work on a
 25 recurring basis performed for remuneration in a trade,

1 business, profession, or other occupation in this state.
 2 Lack of immediate job openings is not a factor to be
 3 considered in determining if a worker is permanently totally
 4 disabled.

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

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

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

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

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

25 (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 ~~t22~~(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 ~~t23~~(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 ~~t24~~(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 ~~t25~~(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) Every insurer is liable for the payment of compensation, in
 22 the manner and to the extent hereinafter provided in this
 23 section, to an employee of an employer it insures who
 24 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--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 ~~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 or refuse refuses to submit to such the examination or shall in any way obstruct obstructs
 24 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.

1 (b) The total of any lump-sum conversion in part that
 2 is awarded to a claimant prior to the claimant's final award
 3 may not exceed the anticipated award under 39-71-703 or
 4 \$20,000, whichever is less.

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

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

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

23 (a) relates to:
 24 (i) the necessities of life;
 25 (ii) an accumulation of debt incurred prior to the

1 injury; or
 2 (iii) a self-employment venture that is considered
 3 feasible under criteria set forth by the department; or
 4 (b) arises subsequent to the date of injury or arises
 5 because of reduced income as a result of the injury.

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

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

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

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

22 (6) Subject to the other provisions of this section,
 23 the department has full power, authority, and jurisdiction
 24 to allow, approve, or condition compromise settlements for
 25 any type of benefits provided for under this chapter.

1 including the right to future medical benefits, or for
 2 lump-sum payments agreed to by workers and insurers. All
 3 such compromise settlements and lump-sum payments are void
 4 without the approval of the department. Approval by the
 5 department must be in writing. The department shall directly
 6 notify a claimant of a department order approving or denying
 7 a claimant's compromise or lump-sum payment.

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

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

24 **Section 8.** Section 39-71-2001, MCA, is amended to read:
 25 "39-71-2001. Rehabilitation benefits. (1) An injured

1 worker is eligible for rehabilitation benefits if:
 2 (a) the injury results in permanent partial disability
 3 or permanent total disability as defined in 39-71-116;
 4 (b) a physician certifies that the injured worker is
 5 physically unable to work at the job the worker held at the
 6 time of the injury;
 7 (c) a rehabilitation plan completed by a rehabilitation
 8 provider and designated by the insurer certifies that the
 9 injured worker has reasonable vocational goals and a
 10 reemployment and wage potential with rehabilitation. The
 11 plan must take into consideration the worker's age,
 12 education, training, work history, residual physical
 13 capacities, and vocational interests.
 14 (d) a rehabilitation plan between the injured worker
 15 and the insurer is filed with the department. If the plan
 16 calls for the expenditure of funds under 39-71-1004, the
 17 department shall authorize the department of social and
 18 rehabilitation services to use the funds.
 19 (2) After filing the rehabilitation plan with the
 20 department, the injured worker is entitled to receive
 21 rehabilitation benefits at the injured worker's temporary
 22 total disability rate. The benefits must be paid for the
 23 period specified in the rehabilitation plan, not to exceed
 24 104 weeks. Rehabilitation benefits must be paid during a
 25 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:

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

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

7 ~~(2)(3)~~ In the case of pneumoconiosis, any coal mine
 8 operator who has acquired a mine in the state or
 9 substantially all of the assets thereof of a mine from a
 10 person who was an operator of such the mine on or after
 11 December 30, 1969, is liable for and must shall secure the
 12 payment of all benefits which that would have been payable
 13 by that person with respect to miners previously employed in
 14 such the mine if acquisition had not occurred and that
 15 person had continued to operate such the mine, and the prior
 16 operator of such the mine shall is not be relieved of any
 17 liability under this section."

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

19 **"39-72-706. Aggravation.** (1) If an occupational disease
 20 is aggravated by any other disease or infirmity not itself
 21 compensable or if disability or death from any other cause
 22 not itself compensable is aggravated, prolonged,
 23 accelerated, or in any way contributed to by an occupational
 24 disease, the compensation and medical benefits payable under
 25 this chapter must be reduced and limited to such the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (3) Temporary partial disability benefits are limited

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

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

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

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

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

22 **"39-71-2101. General requirements for electing coverage**
 23 **under plan. (1) An employer may elect to be bound by**
 24 **compensation plan No. 1 upon furnishing satisfactory proof**
 25 **to the department and the Montana self-insurers guaranty**

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

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

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

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

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

1 [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)

Dave Lewis 2-20-93

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

DAVID EWER, PRIMARY SPONSOR DATE

Fiscal Note for HB0622, as introduced

2/22/93

HB 622

FISCAL IMPACT:

DLI Employment Relations Div. (Pg 04):

<u>Expenditures:</u>	FY '94			FY '95		
	<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

1 HOUSE BILL NO. 622
2 INTRODUCED BY EWER, H.

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-OBTAINT-IN-STATE-COVERAGE-OR-PAY-THE-DIFFERENCE
14 IN-PREMIUMS;--PROVIDING-POR-PINES--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---APTER--HIRING; REVISING ELIGIBILITY
20 REQUIREMENTS TO SELF-INSURE; ALLOWING CERTAIN OPTIONAL
21 DEDUCTIBLES TO POLICYHOLDERS; REQUIRING SUSPENSION,
22 REVOCATION, OR DENIAL OF A PROFESSIONAL OR OCCUPATIONAL
23 LICENSE FOR VIOLATION OF THE WORKERS' COMPENSATION LAW;
24 REVISING THE DEFINITION OF UNPROFESSIONAL CONDUCT;
25 PROHIBITING CERTAIN ACTIONS; PRECLUDING LIABILITY FOR

1 REPORTING VIOLATIONS OF THE WORKERS' COMPENSATION LAW;
2 ALLOWING AUGMENTATION OF TEMPORARY TOTAL DISABILITY BENEFITS
3 WITH SICK LEAVE AND VACATION LEAVE; REQUIRING THE STATE FUND
4 BOARD TO ADOPT AN ANNUAL BUSINESS PLAN; AMENDING SECTIONS
5 37-1-131, 37-3-322, 37-6-310, 37-10-311, 37-12-321,
6 37-14-321, 39-71-116, 39-71-307, 39-71-407,--39-71-604,
7 39-71-316, 39-71-605, 39-71-607, 39-71-736, 39-71-741,
8 39-71-2001, 39-71-2101, 39-71-2315, AND 39-72-303, AND
9 39-72-706, MCA; AND REPEALING--SECTION--39-71-402,--MEA
10 PROVIDING AN EFFECTIVE DATE."
11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
13
14 **Section 1.** Section 39-71-116, MCA, is amended to read:
15
16 "39-71-116. **Definitions.** Unless the context otherwise
17 requires, words and phrases employed in this chapter have
18 the following meanings:
19
20 (1) "Administer and pay" includes all actions by the
21 state fund under the Workers' Compensation Act and the
22 Occupational Disease Act of Montana necessary to:
23
24 (a) the investigation, review, and settlement of
25 claims;
26
27 (b) payment of benefits;
28
29 (c) setting of reserves;
30
31 (d) furnishing of services and facilities; and
32
33 (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
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 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,

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

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

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

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

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

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

23 (C) SUFFERS A PARTIAL WAGE LOSS.

24 t22t(23) "Temporary service contractor" means any
 25 person, firm, association, or corporation conducting

1 business that employs individuals directly for the purpose
 2 of furnishing the services of those individuals on a
 3 part-time or temporary basis to others.

4 t23t(24) "Temporary total disability" means a condition
 5 resulting from an injury as defined in this chapter that
 6 results in total loss of wages and exists until the injured
 7 worker reaches maximum healing.

8 t24t(25) "Temporary worker" means a worker whose
 9 services are furnished to another on a part-time or
 10 temporary basis to substitute for a permanent employee on
 11 leave or to meet an emergency or short-term workload.

12 t25t(26) "Year", unless otherwise specified, means
 13 calendar year."

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

15 "39-71-307. Employers and insurers to file reports of
 16 accidents -- penalty. (1) Every employer and every insurer
 17 is required to file with the department, under department
 18 rules, a full and complete report of every accident to an
 19 employee arising out of or in the course of his employment
 20 and resulting in loss of life or injury to the employee. The
 21 reports must be furnished to the department in the form and
 22 detail as the department prescribes and must provide
 23 specific answers to all questions required by the department
 24 under its rules. However, if an employer is unable to answer
 25 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,--MEA,--is-amended-to-read:
15 39-71-407,--liability-of-insurers----limitations:--(1)
16 Every--insurer-is-litable-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)--ta}--An--insurer-is-litable-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 (iii)--a--claimed--injury--aggravated--a--preexisting
2 condition:

3 tb}--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 (t3)--An--employee--who--suffers--an--injury--or--dies--while
8 traveling--is--not--covered--by--this--chapter--unless:

9 ta}--(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 (tii)--the--travel--is--necessitated--by--and--on--behalf--of--the
14 employer--as--an--integral--part--or--condition--of--the--employment;
15 or

16 (tb}--the--travel--is--required--by--the--employer--as--part--of
17 the--employee's--job--duties.

18 (t4)--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

1 in-the-cause-of-the-injury-or-death:

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

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

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

23 Section 4--Section 39-71-604,--MCA,--is-amended-to-read:
 24 "39-71-604.--Application--for--compensation:--(1)--If--a
 25 worker--is--entitled--to--benefits--under--this--chapter,--the

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

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

16 (2)(3)--If-death-results-from--an--injury,--the--parties
 17 entitled--to--compensation--or--someone-in-their-behalf-shall
 18 file-a-claim-with-the-insurer,--The-claim-must-be-accompanied
 19 with-proof-of-death-and-proof-of-relationship,--showing--the
 20 parties---entitled---to--compensation,--certificate--of--the
 21 attending-physician,--if-any,--and-such-other-proof-as-may--be
 22 required-by-the-department."

23 **Section 3.** Section 39-71-605, MCA, is amended to read:
 24 "39-71-605. Examination of employee by physician --
 25 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 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 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 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 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

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

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

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

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

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

1 a claimant's compromise or lump-sum payment.

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

11 ~~t87--An--injured--worker's--entitlement-to-future-medical~~
 12 ~~benefits--may--be--terminated--by--mutual--consent--of--the--worker~~
 13 ~~and--the--insurer--subject--to--department--approval.--The~~
 14 ~~department--may--not--disapprove--an--agreement--unless--it~~
 15 ~~determines--that--the--worker--has--not--been--fully--compensated~~
 16 ~~for--terminating--the--worker's--right--to--future--medical~~
 17 ~~benefits--"~~

18 **Section 6.** Section 39-71-2001, MCA, is amended to read:
 19 **"39-71-2001. Rehabilitation benefits.** (1) An injured
 20 worker is eligible for rehabilitation benefits if:
 21 (a) the injury results in permanent partial disability
 22 or permanent total disability as defined in 39-71-116;
 23 (b) a physician certifies that the injured worker is
 24 physically unable to work at the job the worker held at the
 25 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

1 claim by an insurer, the department shall notify the
 2 claimant in writing of potential-benefits--and--entitlements
 3 THE SERVICES AND BENEFITS AVAILABLE pursuant to 39-71-10147
 4 39-71-10257, 39-71-10327,--and--this--section THE VOCATIONAL
 5 REHABILITATION PROVISIONS OF THE WORKERS' COMPENSATION ACT.

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

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

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

14 "39-72-303. Which employer liable. (1) Where
 15 compensation is payable for an occupational disease, the
 16 only employer liable shall be is the employer in whose
 17 employment the employee was last injuriously exposed to the
 18 hazard of such the disease.

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

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

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

4 (2)(3) In the case of pneumoconiosis, any coal mine
 5 operator who has acquired a mine in the state or
 6 substantially all of the assets thereof of a mine from a
 7 person who was an operator of such the mine on or after
 8 December 30, 1969, is liable for and must shall secure the
 9 payment of all benefits which that would have been payable
 10 by that person with respect to miners previously employed in
 11 such the mine if acquisition had not occurred and that
 12 person had continued to operate such the mine, and the prior
 13 operator of such the mine shall is not be relieved of any
 14 liability under this section."

15 Section 10--Section 39-72-706, MCA, is amended to read:
 16 "39-72-706--Aggravation:--if--an--occupational--disease
 17 is--aggravated--by--any--other--disease--or--infirmity--not--itself
 18 compensable--or--if--disability--or--death--from--any--other--cause
 19 not--itself--compensable--is--aggravated,--prolonged,
 20 accelerated,--or--in--any--way--contributed--to--by--an--occupational
 21 disease,--the--compensation and medical benefits payable under
 22 this--chapter--must--be--reduced--and--limited--to--such the
 23 proportion--only--of--the--compensation--that--would--be--payable--if
 24 the--occupational--disease--were--the--sole--cause--of--the
 25 disability--or--death--as--such--occupational--disease--as--a

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

3 (2)--if--compensation--is-reduced-a-proportionate-amount
 4 as provided in--subsection--(1)--and--the--worker--receives
 5 disability--social-security-benefits,--the-offset-entitlement
 6 granted--to--the--insurer--must--be--reduced--in--the--same
 7 proportionate--amount--as--the--compensation and--medical
 8 benefits as--long--as--the--worker--continues--to--receive
 9 disability-social-security-benefits."

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

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

1 proper-coverage-is-in-effect.

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

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

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

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

25 (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

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

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

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

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

18 ~~NEW SECTION. Section 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.~~

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

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

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

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

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 t37(4) pay to the department its pro rata share of the
 10 assessed costs of the department under 37-1-101(6);

11 t47(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
deception with regard to a claim for benefits under Title
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 15. 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;

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

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

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

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

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

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

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

22 (9) resorting to fraud, misrepresentation, or deception
 23 in the examination or treatment of a person or in billing or
 24 reporting to a person, company, institution, or
 25 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;

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

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

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

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

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

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

21 "37-12-321. Unprofessional conduct. As used in this
 22 chapter, "unprofessional conduct" means:

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

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

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

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

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

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

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

19 (8) 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 (9) testifying in court on a contingency basis;

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

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

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

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

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

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

22 "37-14-321. Revocation or suspension of license or
 23 permit. A license or permit may be suspended for a fixed
 24 period or may be revoked, or such technologist or technician
 25 may be censured, reprimanded, or otherwise disciplined as

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

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

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

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

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

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

22 **NEW SECTION. SECTION 19. PROHIBITED ACTIONS --**
 23 **PENALTY.** (1) THE FOLLOWING ACTIONS BY A MEDICAL PROVIDER
 24 CONSTITUTE VIOLATIONS AND ARE SUBJECT TO THE PENALTY IN
 25 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--and--15} are intended to be codified as an
 19 integral part of Title 39, chapter 71, part 3, and the
 20 provisions of Title 39, chapter 71, part 3, apply to
 21 {sections--117--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

1 9].

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

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

9 NEW SECTION. SECTION 24. SEVERABILITY. IF A PART OF
10 [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE
11 FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS
12 ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART
13 REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE
14 SEVERABLE FROM THE INVALID APPLICATIONS.

15 NEW SECTION. SECTION 25. EFFECTIVE DATE. [THIS ACT] IS
16 EFFECTIVE JULY 1, 1993.

-End-

1 HOUSE BILL NO. 622
2 INTRODUCED BY EWER, H.

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; ALLOWING APPORTIONMENT
13 OF COMPENSATION FOR PREEXISTING CONDITIONS BETWEEN INSURERS;
14 REQUIRING--NONRESIDENT--EMPLOYERS--TO--OBTAIN--IN--STATE--COVERAGE
15 OR--PAY--THE--DIFFERENCE--IN--PREMIUMS;--PROVIDING--FOR--FINES--FOR
16 EMPLOYER--MISCONDUCT; CREATING--A--MEDICAL--PANEL--AND--PROCEDURES
17 FOR--HANDLING--PREEXISTING--INJURY--DISPUTES; CREATING TEMPORARY
18 PARTIAL DISABILITY BENEFITS; REQUIRING--EMPLOYERS--TO--REPORT
19 NEW--EMPLOYEES--TO--THE--INSURER--AND--DEPARTMENT--WITHIN--72--HOURS
20 OF--THE--FIRST--PAYDAY--AFTER--HIRING; REVISING ELIGIBILITY
21 REQUIREMENTS TO SELF-INSURE; ALLOWING CERTAIN OPTIONAL
22 DEDUCTIBLES TO POLICYHOLDERS; REQUIRING SUSPENSION,
23 REVOCATION, OR DENIAL OF A PROFESSIONAL OR OCCUPATIONAL
24 LICENSE FOR VIOLATION OF THE WORKERS' COMPENSATION LAW;
25 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, 39-71-487,--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.

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

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

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

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

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

1 employment will reasonably permit.

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

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

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

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

17 (C) SUFFERS A PARTIAL WAGE LOSS.

18 ~~t22~~(23) "Temporary service contractor" means any
 19 person, firm, association, or corporation conducting
 20 business that employs individuals directly for the purpose
 21 of furnishing the services of those individuals on a
 22 part-time or temporary basis to others.

23 ~~t23~~(24) "Temporary total disability" means a condition
 24 resulting from an injury as defined in this chapter that
 25 results in total loss of wages and exists until the injured

1 worker reaches maximum healing.

2 ~~t24~~(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 ~~t25~~(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-3---Section-39-71-407,-MCA,-is-amended-to-read-
9 "39-71-407---liability--of--insurers---limitations---
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 ~~t27--t27--An--insurer--is--liable--for--an--injury--as--defined~~
17 ~~in-39-71-319-if-the-claimant-establishes-it-is-more-probable~~
18 ~~than-not-that-~~

19 ~~t17--a--claimed--injury--has--occurred;--or~~
20 ~~t17--a---claimed---injury---aggravated---a---preexisting~~
21 ~~condition-~~

22 ~~t17--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,--MEA,--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

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

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

10 ~~t27t37--if--death--results--from--an--injury--the--parties~~
 11 entitled-to-compensation-or-someone-in--their--behalf--shall
 12 file-a-claim-with-the-insurer--The-claim-must-be-accompanied
 13 with--proof--of-death-and-proof-of-relationship;--showing-the
 14 parties--entitled--to--compensation;--certificate---of---the
 15 attending--physician;--if-any;--and-such-other-proof-as-may-be
 16 required-by-the-department--"

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

18 "39-71-605. Examination of employee by physician --
 19 effect of refusal to submit to examination -- report and
 20 testimony of physician -- cost. (1) (a) Whenever in case of
 21 injury the right to compensation under this chapter would
 22 exist in favor of any employee, he the employee shall, upon
 23 the written request of the insurer, submit from time to time
 24 to examination by a physician or panel of physicians, who
 25 shall must be provided and paid for by such the insurer, and

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

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

20 (2) In the event of a dispute concerning the physical
 21 condition of a claimant or the cause or causes of the injury
 22 or disability, if any, the department, at the request of the
 23 claimant or insurer, as the case may be, shall require the
 24 claimant to submit to such an examination as it may--deem
 25 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 ~~+87--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 t7j--Upon--receipt--of--notification--of--acceptance--of--a
 20 claim--by--an--insurer--the--department--shall--notify--the
claimant--in--writing--of--potential--benefits--and--entitlements
THE--SERVICES--AND--BENEFITS--AVAILABLE pursuant to 39-71-10147
39-71-10257, 39-71-10327,--and--this--section THE--VOCATIONAL
REHABILITATION--PROVISIONS--OF--THE--WORKERS--COMPENSATION--ACT.
 25 t8j--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 {9j--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 {2j(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-18.--Section-39-72-706,--MEA,--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-45-7-502

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

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

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

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

1 department--shall--forward--a--copy--of--the--report--to-the
 2 claimant-and-employer.--The-party-requesting-the--examination
 3 shall--pay-for-the-cost-of-the-examination.
 4 (b)--Either--party--may,--within-20-days-of-receipt-of-the
 5 report--and--at--the--party's-expense,--request--that--the--claimant
 6 be-examined-by-a-second-panel-member--to-be-selected--by--the
 7 department.--The--second--panel--member--shall--conduct--an
 8 examination--of--the--claimant--and--submit--a--report--regarding
 9 apportionment--with--respect--to--any--preexisting--condition.--The
 10 department--shall--forward--copies--of--the--report--to--the
 11 parties.

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

19 (d)--If--a--second--examination--is--not--requested,--the
 20 department--shall--issue--its--order--determining--the--percentage
 21 of--apportionment--assigned--to--any--other--noncompensable
 22 disease,--condition,--or--infirmity,--based--on--the--report--of--the
 23 first-examining-panel-member.--If--a--second--examination--is
 24 requested,--the--department--shall--base--its--order--on--the--report
 25 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
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
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 ~~t4)--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**

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

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

13 NEW SECTION.--Section-17--Repeater--Section--39-71-4027
 14 MEA, is repealed.

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

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

25 (3) THE COMMISSIONER OF INSURANCE SHALL APPROVE A

1 DEDUCTIBLE PLAN THAT IS IN ACCORDANCE WITH THE FOLLOWING
 2 STANDARDS:
 3 (A) CLAIMANTS' RIGHTS ARE PROPERLY PROTECTED AND
 4 CLAIMANTS' BENEFITS ARE PAID WITHOUT REGARD TO THE
 5 DEDUCTIBLE.
 6 (B) PREMIUM REDUCTIONS REFLECT THE TYPE AND LEVEL OF
 7 THE DEDUCTIBLE, CONSISTENT WITH ACCEPTED ACTUARIAL
 8 STANDARDS.
 9 (C) PREMIUM REDUCTIONS FOR DEDUCTIBLES ARE DETERMINED
 10 BEFORE APPLICATION OF ANY EXPERIENCE MODIFICATION, PREMIUM
 11 SURCHARGE, OR PREMIUM DISCOUNT.
 12 (D) RECOGNITION IS GIVEN TO POLICYHOLDER
 13 CHARACTERISTICS, INCLUDING BUT NOT LIMITED TO SIZE,
 14 FINANCIAL CAPABILITIES, NATURE OF ACTIVITIES, AND NUMBER OF
 15 EMPLOYEES.
 16 (E) THE POLICYHOLDER IS LIABLE TO THE INSURER FOR THE
 17 DEDUCTIBLE AMOUNT IN REGARD TO BENEFITS PAID FOR COMPENSABLE
 18 CLAIMS.
 19 (F) THE INSURER PAYS ALL OF THE DEDUCTIBLE AMOUNT
 20 APPLICABLE TO A COMPENSABLE CLAIM TO THE PERSON OR PROVIDER
 21 ENTITLED TO BENEFITS AND THEN SEEKS REIMBURSEMENT FROM THE
 22 POLICYHOLDER FOR THE APPLICABLE DEDUCTIBLE AMOUNT.
 23 (G) FAILURE BY THE POLICYHOLDER TO REIMBURSE DEDUCTIBLE
 24 AMOUNTS TO THE INSURER IS TREATED UNDER THE POLICY AS
 25 NONPAYMENT OF PREMIUM.

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

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

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

18 **SECTION 11. SECTION 39-71-316, MCA, IS AMENDED TO READ:**
 19 "39-71-316. Filing true claim -- obtaining benefits
 20 through deception or other fraudulent means. (1) A person
 21 filing a claim under this chapter or chapter 72 of this
 22 title, by signing the claim, affirms the information filed
 23 is true and correct to the best of that person's knowledge.
 24 (2) A person who obtains or assists in obtaining
 25 benefits to which the person is not entitled under this

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

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

9 **SECTION 12. SECTION 37-1-131, MCA, IS AMENDED TO READ:**
 10 "37-1-131. Duties of boards. Each board within the
 11 department shall:

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

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

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

1 39, chapter 71 or 72;

2 t37(4) pay to the department its pro rata share of the
 3 assessed costs of the department under 37-1-101(6);

4 t47(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;

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

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

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

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

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

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

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

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

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

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

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

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

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

20 "37-10-311. Revocation -- unprofessional conduct. (1)
 21 The board may revoke a certificate of registration for:

22 (a) physical or mental incompetence;
 23 (b) gross malpractice or repeated malpractice;
 24 (c) a violation of any of the provisions of this
 25 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;

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

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

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

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

16 (9) testifying in court on a contingency basis;

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

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

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

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

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

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

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

15 "37-14-321. Revocation or suspension of license or
 16 permit. A license or permit may be suspended for a fixed
 17 period or may be revoked, or such technologist or technician
 18 may be censured, reprimanded, or otherwise disciplined as
 19 determined by the board if, after a hearing before the
 20 board, it is determined that the radiologic technologist or
 21 limited permit technician:

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

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

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

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

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

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

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

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

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

3 {2}--A PERSON LICENSED TO PRACTICE LAW IN MONTANA--OR--A
 4 MEDICAL--CARE PROVIDER WHO ADVERTISES SERVICES OR FACILITIES
 5 WITH THE INTENTION THAT--A WORKER--USE--THOSE SERVICES--OR
 6 FACILITIES--WITH REGARD TO--AN INJURY--OR ILLNESS THAT IS
 7 COMPENSABLE UNDER CHAPTER 72 OR THIS CHAPTER AND WHO FAILS
 8 TO ANNOUNCE IN THE ADVERTISEMENT THAT FILING A FRAUDULENT
 9 CLAIM IS THEFT, AS PROVIDED IN 39-71-316, IS SUBJECT TO THE
 10 PENALTY IN SUBSECTION 18.

11 {3}(2) A PERSON WHO VIOLATES THIS SECTION MAY BE
 12 ASSESSED A PENALTY OF NOT LESS THAN \$200 OR MORE THAN \$500
 13 FOR EACH OFFENSE. THE DEPARTMENT SHALL ASSESS AND COLLECT
 14 THE PENALTY.

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

21 **SECTION 20. SECTION 39-71-736, MCA, IS AMENDED TO READ:**
 22 "39-71-736. Compensation -- from what date paid.
 23 (1) (a) No compensation may be paid for the first 48 hours
 24 or 6 days' loss of wages, whichever is less, that the
 25 claimant is totally disabled and unable to work due to an

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

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

5 (2) For the purpose of this section, except as provided
 6 in subsection (3), an injured worker is not considered to be
 7 entitled to compensation benefits if the worker is receiving
 8 sick leave benefits, except that each day for which the
 9 worker elects to receive sick leave counts 1 day toward the
 10 6-day waiting period.

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

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

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

20 "39-71-2315. Management of state fund -- powers and
 21 duties of the board -- business plan required. (1) The
 22 management and control of the state fund is vested solely in
 23 the board.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (7) A GROUP SHALL ADOPT A PLAN OF OPERATION THAT MUST
 24 INCLUDE THE COMPOSITION AND SELECTION OF A GOVERNING BOARD,
 25 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 (2)(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

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

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

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

18 NEW SECTION. Section 28. Codification instruction. (1)
 19 {Sections--11,--12,--and--15}--are--intended--to--be--codified--as--an
 20 integral--part--of--Title--39,--chapter--71,--part--37,--and--the
 21 provisions--of--Title--39,--chapter--71,--part--37,--apply--to
 22 {sections--11,--12,--and--15}.

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

1 39, chapter 71, part 7, apply to {sections--13--and--14}--
 2 {SECTIONS--8--AND--9} [SECTION 8].

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

7 (3) [SECTIONS 19--AND--20 18 AND 19] ARE INTENDED TO BE
 8 CODIFIED AS AN INTEGRAL PART OF TITLE 39, CHAPTER 71, AND
 9 THE PROVISIONS OF TITLE 39, CHAPTER 71, APPLY TO [SECTIONS
 10 19--AND--20 18 AND 19].

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

14 NEW SECTION. SECTION 29. SEVERABILITY. IF A PART OF
 15 [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE
 16 FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS
 17 ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART
 18 REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE
 19 SEVERABLE FROM THE INVALID APPLICATIONS.

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

-End-

HOUSE BILL NO. 622
INTRODUCED BY EWER, HARP

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; ALLOWING APPORTIONMENT
13 OF COMPENSATION FOR PREEXISTING CONDITIONS BETWEEN INSURERS;
14 REQUIRING--NONRESIDENT-EMPLOYERS--TO-OBTAINT-IN-STATE-COVERAGE
15 OR-PAY-THE-DIFFERENCE-IN-PREMIUMS; PROVIDING--FOR--FINES--FOR
16 EMPLOYER-MISCONDUCT; CREATING-A-MEDICAL-PANEL--AND-PROCEDURES
17 FOR-HANDLING-PREEXISTING-INJURY-DISPUTES; CREATING TEMPORARY
18 PARTIAL DISABILITY BENEFITS; REQUIRING-EMPLOYERS--TO-REPORT
19 NEW-EMPLOYEES--TO--THE--INSURER--AND-DEPARTMENT--WITHIN--72--HOURS
20 OF--THE--FIRST--PAYDAY--AFTER--HIRING; REVISING ELIGIBILITY
21 REQUIREMENTS TO SELF-INSURE; ALLOWING CERTAIN OPTIONAL
22 DEDUCTIBLES TO POLICYHOLDERS; REQUIRING SUSPENSION,
23 REVOCATION, OR DENIAL OF A PROFESSIONAL OR OCCUPATIONAL
24 LICENSE FOR VIOLATION OF THE WORKERS' COMPENSATION LAW;
25 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, 39-71-684,
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.

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

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

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

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

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

1 employment will reasonably permit.

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

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

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

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

17 (C) SUFFERS A PARTIAL WAGE LOSS.

18 ~~t22~~(23) "Temporary service contractor" means any
 19 person, firm, association, or corporation conducting
 20 business that employs individuals directly for the purpose
 21 of furnishing the services of those individuals on a
 22 part-time or temporary basis to others.

23 ~~t23~~(24) "Temporary total disability" means a condition
 24 resulting from an injury as defined in this chapter that
 25 results in total loss of wages and exists until the injured

1 worker reaches maximum healing.

2 ~~t24~~^{t25}(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 ~~t25~~^{t26}(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--liability--of--insurers---limitations--(1)
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 if 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 proportionately
 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.⁴
 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

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

4 {2}--Workers-applying-for-compensation-for-an-injury--or
 5 occupational--disease--shall--allow--the--insurer--or--the
 6 insurer's-designated-agent-direct-access-to-medical--service
 7 providers;--medical--information;--and--the--injured-worker-
 8 Failure-to--comply--with--this--subsection--will--result--in
 9 termination-of-benefits-

10 ~~t27t37~~--If--death--results--from--an-injury--the-parties
 11 entitled-to-compensation-or-someone-in--their--behalf--shall
 12 file-a-claim-with-the-insurer--The-claim-must-be-accompanied
 13 with--proof--of-death-and-proof-of-relationship;--showing-the
 14 parties--entitled--to--compensation;--certificate--of--the
 15 attending--physician;--if-any;--and-such-other-proof-as-may-be
 16 required-by-the-department--"

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

18 *39-71-605. Examination of employee by physician --
 19 effect of refusal to submit to examination -- report and
 20 testimony of physician -- cost. (1) (a) Whenever in case of
 21 injury the right to compensation under this chapter would
 22 exist in favor of any employee, he the employee shall, upon
 23 the written request of the insurer, submit from time to time
 24 to examination by a physician or panel of physicians, who
 25 shall must be provided and paid for by such the insurer, and

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

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

20 (2) In the event of a dispute concerning the physical
 21 condition of a claimant or the cause or causes of the injury
 22 or disability, if any, the department, at the request of the
 23 claimant or insurer, as the case may be, shall require the
 24 claimant to submit to such an examination as it may--deem
 25 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 t7j--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 39-71-10147,
 23 39-71-10257-39-71-10327, and this section THE--VOCATIONAL
 24 REHABILITATION-PROVISIONS-OF-THE-WORKERS'-COMPENSATION-ACT.
 25 t8j--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 t9j--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 t2j(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-#0---Section-39-72-706,-MEA,-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
 or-death.

21 (2)--If--compensation--is-reduced-a-proportionate-amount
 22 as provided in--subsection--(1)--and--the--worker--receives
 23 disability--social-security-benefits,-the-offset-entitlement
 24 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-#1---Requirement-of-state-coverage
 5 for--nonresident--employers---(1)--Beginning--July--17-1993,
 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-#2---Employer---misconduct----The--
 25 department--shall--fine-an-employer-convicted-under-45-7-501

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

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

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

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

1 department--shall--forward--a--copy--of--the--report--to-the
 2 claimant--and--employer--The--party-requesting--the--examination
 3 shall--pay--for--the--cost--of--the--examination.
 4 (b)--Either--party--may--within--20--days--of--receipt--of--the
 5 report--and--at--the--party's--expense--request--that--the--claimant
 6 be--examined--by--a--second--panel--member--to--be--selected--by--the
 7 department--The--second--panel--member--shall--conduct--an
 8 examination--of--the--claimant--and--submit--a--report--regarding
 9 apportionment--with--respect--to--any--preexisting--condition--The
 10 department--shall--forward--copies--of--the--report--to--the
 11 parties.

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

19 (d)--If--a--second--examination--is--not--requested--the
 20 department--shall--issue--its--order--determining--the--percentage
 21 of--apportionment--assigned--to--any--other--noncompensable
 22 disease--condition--or--infirmity--based--on--the--report--of--the
 23 first--examining--panel--member--If--a--second--examination--is
 24 requested--the--department--shall--base--its--order--on--the--report
 25 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
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
THE STATE'S AVERAGE WEEKLY WAGE AT THE TIME OF INJURY.

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

22 ~~t47--The-amount-of-temporary-partial-disability-benefits~~
 23 ~~must-be-based-upon-payroll-records-provided-by-the--employer~~
 24 ~~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**

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

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

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

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

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

25 (3) THE COMMISSIONER OF INSURANCE SHALL APPROVE A

1 DEDUCTIBLE PLAN THAT IS IN ACCORDANCE WITH THE FOLLOWING
 2 STANDARDS:
 3 (A) CLAIMANTS' RIGHTS ARE PROPERLY PROTECTED AND
 4 CLAIMANTS' BENEFITS ARE PAID WITHOUT REGARD TO THE
 5 DEDUCTIBLE.
 6 (B) PREMIUM REDUCTIONS REFLECT THE TYPE AND LEVEL OF
 7 THE DEDUCTIBLE, CONSISTENT WITH ACCEPTED ACTUARIAL
 8 STANDARDS.
 9 (C) PREMIUM REDUCTIONS FOR DEDUCTIBLES ARE DETERMINED
 10 BEFORE APPLICATION OF ANY EXPERIENCE MODIFICATION, PREMIUM
 11 SURCHARGE, OR PREMIUM DISCOUNT.
 12 (D) RECOGNITION IS GIVEN TO POLICYHOLDER
 13 CHARACTERISTICS, INCLUDING BUT NOT LIMITED TO SIZE,
 14 FINANCIAL CAPABILITIES, NATURE OF ACTIVITIES, AND NUMBER OF
 15 EMPLOYEES.
 16 (E) THE POLICYHOLDER IS LIABLE TO THE INSURER FOR THE
 17 DEDUCTIBLE AMOUNT IN REGARD TO BENEFITS PAID FOR COMPENSABLE
 18 CLAIMS.
 19 (F) THE INSURER PAYS ALL OF THE DEDUCTIBLE AMOUNT
 20 APPLICABLE TO A COMPENSABLE CLAIM TO THE PERSON OR PROVIDER
 21 ENTITLED TO BENEFITS AND THEN SEEKS REIMBURSEMENT FROM THE
 22 POLICYHOLDER FOR THE APPLICABLE DEDUCTIBLE AMOUNT.
 23 (G) FAILURE BY THE POLICYHOLDER TO REIMBURSE DEDUCTIBLE
 24 AMOUNTS TO THE INSURER IS TREATED UNDER THE POLICY AS
 25 NONPAYMENT OF PREMIUM.

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

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

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

18 SECTION 11. SECTION 39-71-316, MCA, IS AMENDED TO READ:
 19 "39-71-316. Filing true claim -- obtaining benefits
 20 through deception or other fraudulent means. (1) A person
 21 filling a claim under this chapter or chapter 72 of this
 22 title, by signing the claim, affirms the information filed
 23 is true and correct to the best of that person's knowledge.

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

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

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

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

10 "37-1-131. Duties of boards. Each board within the
 11 department shall:

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

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

21 (3) suspend, revoke, or deny a license of a person who
 22 the board determines, after a hearing as provided in
 23 subsection (2), is guilty of knowingly defrauding, abusing,
 24 or aiding in the defrauding or abusing of the workers'
 25 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;

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

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

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

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

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

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

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

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

1 person not licensed to practice medicine or a person whose
 2 license to practice medicine is suspended;
 3 (13) gross malpractice or negligent practice;
 4 (14) practicing podiatry as the partner, agent, or
 5 employee of or in joint venture with a person who does not
 6 hold a license to practice podiatry within this state;
 7 however, this does not prohibit the incorporation of an
 8 individual licensee or group of licensees as a professional
 9 service corporation under Title 35, chapter 4, nor does this
 10 apply to a single consultation with or a single treatment by
 11 a person or persons licensed to practice podiatry in another
 12 state or territory of the United States or foreign country;
 13 (15) violating or attempting to violate, directly or
 14 indirectly, or assisting in or abetting the violation of or
 15 conspiring to violate parts 1 through 3 of this chapter or
 16 the rules authorized by parts 1 through 3; or
 17 (16) any other act, whether specifically enumerated or
 18 not, which in fact constitutes unprofessional conduct."

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

20 **"37-10-311. Revocation -- unprofessional conduct. (1)**
 21 The board may revoke a certificate of registration for:
 22 (a) physical or mental incompetence;
 23 (b) gross malpractice or repeated malpractice;
 24 (c) a violation of any of the provisions of this
 25 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;

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

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

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

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

16 (9) testifying in court on a contingency basis;

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

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

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

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

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

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

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

15 "37-14-321. Revocation or suspension of license or
 16 permit. A license or permit may be suspended for a fixed
 17 period or may be revoked, or such technologist or technician
 18 may be censured, reprimanded, or otherwise disciplined as
 19 determined by the board if, after a hearing before the
 20 board, it is determined that the radiologic technologist or
 21 limited permit technician:

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

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

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

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

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

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

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

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

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

3 {2}--A-PERSON-LICENSEE-TO-PRACTICE-LAW-IN-MONTANA--OR--A
4 MEDICAL--CARE-PROVIDER-WHO-ADVERTISES-SERVICES-OR-PACILITIES
5 WITH-THE-INTENTION-THAT--A--WORKER--USE--THOSE--SERVICES--OR
6 PACILITIES--WITH--REGARD--TO--AN--INJURY--OR-ILLNESS-THAT-IS
7 COMPENSABLE-UNDER-CHAPTER-72-OR-THIS-CHAPTER-AND--WHO--PAIS
8 TO--ANNOUNCE--IN--THE-ADVERTISMENT-THAT-FILING-A-FRAUDULENT
9 CLAIM-IS-THEFT,-AS-PROVIDED-IN-39-71-316,-IS-SUBJECT-TO--THE
10 PENALTY-IN-SUBSECTION-{3}.

11 {3}(2) A PERSON WHO VIOLATES THIS SECTION MAY BE
12 ASSESSED A PENALTY OF NOT LESS THAN \$200 OR MORE THAN \$500
13 FOR EACH OFFENSE. THE DEPARTMENT SHALL ASSESS AND COLLECT
14 THE PENALTY.

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

21 **SECTION 20. SECTION 39-71-736, MCA, IS AMENDED TO READ:**
22 "39-71-736. Compensation -- from what date paid.
23 (1) (a) No compensation may be paid for the first 48 hours
24 or 6 days' loss of wages, whichever is less, that the
25 claimant is totally disabled and unable to work due to an

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

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

5 (2) For the purpose of this section, except as provided
6 in subsection (3), an injured worker is not considered to be
7 entitled to compensation benefits if the worker is receiving
8 sick leave benefits, except that each day for which the
9 worker elects to receive sick leave counts 1 day toward the
10 6-day waiting period.

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

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

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

20 "39-71-2315. Management of state fund -- powers and
21 duties of the board -- business plan required. (1) The
22 management and control of the state fund is vested solely in
23 the board.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (3) THE DEPARTMENT SHALL ESTABLISH A CERTIFICATION
 6 PROGRAM FOR GROUPS ORGANIZED UNDER THIS SECTION AND SHALL
 7 ISSUE TO ELIGIBLE BUSINESS ENTITIES CERTIFICATES OF APPROVAL
 8 THAT AUTHORIZE FORMATION AND MAINTENANCE OF A GROUP.
 9 (4) THE DEPARTMENT BY RULE SHALL ADOPT FORMS, CRITERIA,
 10 AND PROCEDURES FOR THE ISSUANCE OF CERTIFICATES OF APPROVAL
 11 TO GROUPS UNDER THIS SECTION.

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

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

23 (7) A GROUP SHALL ADOPT A PLAN OF OPERATION THAT MUST
 24 INCLUDE THE COMPOSITION AND SELECTION OF A GOVERNING BOARD,
 25 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 (2)(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

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

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

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

18 NEW SECTION. Section 28. Codification instruction. (1)
 19 ~~Sections--12,-and-15} are intended to be codified as an~~
 20 ~~integral part of Title 39,--chapter--71,--part--3,--and--the~~
 21 ~~provisions--of--Title--39,--chapter--71,--part--3,--apply--to~~
 22 ~~Sections--11,-12,-and-15}.~~

23 ~~12--{Sections--13--and--14} {sections--8--AND--9} are~~
 24 [SECTION 8] IS intended to be codified as an integral part
 25 of Title 39, chapter 71, part 7, and the provisions of Title

1 39, chapter 71, part 7, apply to ~~sections--13-and-14}.~~
 2 ~~{sections--8-and-9} [SECTION 8].~~

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

7 (3) [SECTIONS 19--AND--20 18 AND 19] ARE INTENDED TO BE
 8 CODIFIED AS AN INTEGRAL PART OF TITLE 39, CHAPTER 71, AND
 9 THE PROVISIONS OF TITLE 39, CHAPTER 71, APPLY TO [SECTIONS
 10 19--AND--20 18 AND 19].

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

14 NEW SECTION. SECTION 29. SEVERABILITY. IF A PART OF
 15 [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE
 16 FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS
 17 ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART
 18 REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE
 19 SEVERABLE FROM THE INVALID APPLICATIONS.

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

-End-

SENATE SELECT COMMITTEE REPORT

Page 1 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,"

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"

Page 2 of 2
April 7, 1993

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-

AM
Amd. Coord.
Sec. of Senate

Sen. Towe
Senator Carrying Bill

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SENATE

HB622
781556SC.San

SENATE COMMITTEE OF THE WHOLE AMENDMENT

April 12, 1993 1:10 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. 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,

April 12, 1993
Page 2 of 2

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-

M Amd. Coord.

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SENATE

HB622
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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

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M Amd. Coord.

SENATE COMMITTEE OF THE WHOLE AMENDMENT

April 12, 1993 1:53 pm

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 arrangements; 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.

April 12, 1993
Page 2 of 4

(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,

SENATE

HB 622

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April 12, 1993
Page 3 of 4

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

April 12, 1993
Page 4 of 4

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

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; ALLOWING--APPORTIONMENT
13 OF COMPENSATION FOR PREEXISTING CONDITIONS BETWEEN INSURERS;
14 REQUIRING--NONRESIDENT EMPLOYERS TO OBTAIN IN-STATE COVERAGE
15 OR PAY THE DIFFERENCE IN PREMIUMS; PROVIDING FOR FINES FOR
16 EMPLOYER MISCONDUCT; CREATING A MEDICAL PANEL AND PROCEDURES
17 FOR HANDLING PREEXISTING INJURY DISPUTES; CREATING TEMPORARY
18 PARTIAL DISABILITY BENEFITS; REQUIRING EMPLOYERS TO REPORT
19 NEW EMPLOYEES TO THE INSURER AND DEPARTMENT WITHIN 72 HOURS
20 OF--THE--FIRST--PAYDAY--AFTER--HIRING; REVISING ELIGIBILITY
21 REQUIREMENTS TO SELF-INSURE; ALLOWING CERTAIN OPTIONAL
22 DEDUCTIBLES TO POLICYHOLDERS; REQUIRING SUSPENSION,
23 REVOCATION, OR DENIAL OF A PROFESSIONAL OR OCCUPATIONAL
24 LICENSE FOR VIOLATION OF THE WORKERS' COMPENSATION LAW;
25 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; ALLOWING
9 INSURERS TO SUSPEND BENEFITS TO WORKERS RECEIVING SOCIAL
10 SECURITY DISABILITY BENEFITS; AMENDING SECTIONS 37-1-131,
11 37-3-322, 37-6-310, 37-10-311, 37-12-321, 37-14-321,
12 39-71-116, 39-71-123, 39-71-307, 39-71-407, 39-71-684,
13 39-71-316, 39-71-407, 39-71-407, 39-71-601, 39-71-605,
14 39-71-606, 39-71-607, 39-71-701, 39-71-736, 39-71-741,
15 39-71-2001, 39-71-2101, 39-71-2315, AND AND 39-72-303,
16 39-72-706, AND 39-72-707, AND 39-72-706, MCA; AND REPEALING
17 SECTION 39-71-402, MCA PROVIDING AN EFFECTIVE DATE."

STATEMENT OF INTENT

20 A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL BECAUSE
21 [SECTION 23 22 21] REQUIRES THE DEPARTMENT BY RULE TO ADOPT
22 FORMS, CRITERIA, AND PROCEDURES FOR THE ISSUANCE OF
23 CERTIFICATES OF APPROVAL FOR GROUPS ELIGIBLE TO PURCHASE
24 GROUP INSURANCE. THE RULES ADOPTED BY THE DEPARTMENT MUST:
25 (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 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

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

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

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

17 (b) payment of benefits;

18 (c) setting of reserves;

19 (d) furnishing of services and facilities; and

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

22 (2) "Average weekly wage" means the mean weekly
 23 earnings of all employees under covered employment, as
 24 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.

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

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

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

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

17 (9) "Fiscal year" means the period of time between July
18 1 and the succeeding June 30.

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

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

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

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

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

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

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

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

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

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

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

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

25 (20) "Reasonably safe place to work" means that the

1 place of employment has been made as free from danger to the
 2 life or safety of the employee as the nature of the
 3 employment will reasonably permit.

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

8 (22) "Temporary partial disability" means a condition
 9 resulting from an injury as defined in 39-71-1197--covering
 10 the-period-after-an-injured-worker-returns-to--work--in--the
 11 same7--modified--or--alternative--employment-and-before-the
 12 worker-has-reached-maximum-healing IN WHICH A WORKER, PRIOR
 13 TO MAXIMUM HEALING:

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

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

19 (C) SUFFERS A PARTIAL WAGE LOSS.

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

25 (24) "Temporary total disability" means a condition

1 resulting from an injury as defined in this chapter that
 2 results in total loss of wages and exists until the injured
 3 worker reaches maximum healing.

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

8 ~~(25)~~⁽²⁶⁾ "Year", unless otherwise specified, means
 9 calendar year."

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

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

23 (2) Every insurer transacting business under this
 24 chapter shall, at the time and in the manner prescribed by
 25 the department, make and file with the department the

1 reports of accidents as the department requires.

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

10 Section-37--Section-39-71-407,-MCA,-is-amended-to-read:
 11 "39-71-407--liability-of-insurers----limitations---(1)
 12 Every--insurer-is-liable-for-the-payment-of-compensation--in
 13 the-manner-and-to-the-extent-hereinafter--provided in--this
 14 section--to--an--employee--of--an--employer--it--insures-who
 15 receives-an-injury-arising-out-of-and-in-the-course--of--his
 16 employment--or,--in--the--case--of--his--death--from--such the
 17 injury,--to--his the-employee's beneficiaries,--if--any--

18 (2)--(a) An-insurer-is-liable-for-an-injury--as--defined
 19 in-39-71-319-if-the-claimant-establishes-it-is-more-probable
 20 than-not-that:

21 (i)--a-claimed-injury-has-occurred;--or
 22 (ii)--a---claimed---injury---aggravated---a---preexisting
 23 condition:

24 (b)--Proof--that-it-was-medically-possible--that-a-claimed
 25 injury-occurred--or--that--such the claimed-injury-aggravated-a

1 preexisting---condition---is---not---sufficient---to---establish
 2 liability:

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

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

12 (iv)---the-travel---is-required-by-the-employer-as-part-of
 13 the-employee's-job-duties.

14 (t4)---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
alcohol-or-nonprescription-drugs-was-an-influencing-factor
in-the-cause-of-the-injury-or-death.

21 (t5)---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

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

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

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

13 **Section 4.** Section 39-71-607, MCA, is amended to read:
 14 "39-71-607. Suspension of payments by insurer up-to
 15 thirty-days pending receipt of medical information. Under
 16 rules adopted by the department and-in-the-discretion-of-the
 17 department, an insurer may suspend compensation payments for
 18 not--more--than--30--days pending the receipt of medical
 19 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."

24 **Section 5.** Section 39-71-741, MCA, is amended to read:
 25 "39-71-741. Compromise----settlements----and---lump-sum

1 payments--(i)--(a)--Benefits--may--be--converted--in--whole--to--a
 2 lump-sum:
 3 (i)--if--a--claimant--and--an--insurer--dispute--the--initial
 4 compensability--of--an--injury--;--and
 5 (ii)--if--the--claimant--and--insurer--agree--to--a--settlement;
 6 (b)--The--agreement--is--subject--to--department--approval--
 7 the--department--may--disapprove--an--agreement--under--this
 8 section--only--if--there--is--not--a--reasonable--dispute--over
 9 compensability;
 10 (c)--Upon--approval,---the---agreement---constitutes---a
 11 compromise--and--release--settlement--and--may--not--be--reopened--by
 12 the--department;
 13 (2)--(a)--if--an--insurer--has--accepted--initial--liability
 14 for--an--injury--;--permanent--partial--disability--benefits--may--be
 15 converted--in--whole--or--in--part--to--a--lump--sum--payment--;
 16 (b)--The--total--of--any--lump--sum--conversion--in--part--that
 17 is--awarded--to--a--claimant--prior--to--the--claimant's--final--award
 18 may--not--exceed--the--anticipated--award--under--39-71-703--or
 19 \$20,000--;--whichever--is--less--;
 20 (c)--An--agreement--is--subject--to--department--approval--. The
 21 department--may--disapprove--an--agreement--only--if--the
 22 department--determines--that--the--settlement--amount--is
 23 inadequate--;--if--disapproved--;--the--department--shall--set--forth
 24 in--detail--the--reasons--for--disapproval--;
 25 (d)--Upon--approval,---the---agreement---constitutes---a

1 compromise-and-release-settlement-and-may-not-be-reopened-by
 2 the-department-

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

13 {a)--relates-to--
 14 {i};--the-necessities-of-life;
 15 {ii};-an-accumulation--of--debt--incurred--prior--to--the
 16 injury--or
 17 {iii};-a---self-employment--venture--that--is--considered
 18 feasible--under--criteria-set-forth--by--the--department--;--or
 19 {b)--arises--subsequent--to--the--date--of--injury--or--arises
 20 because--of--reduced--income--as--a--result--of--the--injury--
 21 {4)--Any--lump-sum--conversion--of--benefits--under
 22 subsection--{3};-must-be-converted-to-present-value--using--the
 23 rate--prescribed--under--subsection--{5}{b});--
 24 {5)--{a)--An-insurer--may--recoup--any--lump-sum--payment
 25 amortized--at--the--rate--established--by--the--department,

1 prorated--biweekly--over--the--projected--duration--of--the
 2 compensation-period;

3 {b)--The--rate--adopted--by--the--department--must--be--based--on
 4 the--average--rate--for--United--States--10--year--treasury--bills--in
 5 the--previous--calendar--year--rounded--to--the--nearest--whole
 6 number--

7 {c)--if--the--projected--compensation--period--is--the
 8 claimant's--lifetime--the--life--expectancy--must--be--determined
 9 by--using--the--most--recent--table--of--life--expectancy--as
 10 published--by--the--United--States--national--center--for--health
 11 statistics;

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

23 {7)--A--dispute--between--a--claimant--and--an--insurer
 24 regarding--the--conversion--of--biweekly--payments--into--a
 25 lump-sum--is--considered--a--dispute, for--which--a--mediator--and

1 the--workers'-compensation-court-have-jurisdiction-to-make-a
 2 determination--if-an-insurer--and-a-claimant--agree--to-a
 3 compromise--and-release-settlement-or-a-lump-sum-payment-but
 4 the-department-disapproves-the-agreement,--the--parties--may
 5 request--the--workers'-compensation-court--to--review--the
 6 department's--decision.

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

14 **Section 5.**--Section-39-71-2001,-MCA,-is-amended-to-read:--
 15 39-71-2001. Rehabilitation--benefits.--(1)--An--injured
 16 worker--is--eligible--for--rehabilitation--benefits--if:

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

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

22 (c)--a--rehabilitation--plan--completed--by--a--rehabilitation
 23 provider--and--designated--by--the--insurer--certifies--that--the
 24 injured--worker--has--reasonable--vocational--goals--and--a
 25 reemployment--and--wage--potential--with--rehabilitation.--The

1 plan--must--take--into--consideration--the--worker's--age,
 2 education,--training,--work--history,--residual--physical
 3 capacities,--and--vocational--interests.

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

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

21 (3)--if--the--rehabilitation--plan--provides--for--job
 22 placement,--a--vocational--rehabilitation--provider--shall--assist
 23 the--worker--in--obtaining--other--employment--and--the--worker--is
 24 entitled--to--weekly--benefits--for--a--period--not--to--exceed--8
 25 weeks--at--the--worker's--temporary--total--disability--rate.--If,

1 after--receiving--benefits--under--this--subsection,--the--worker
 2 decides--to--proceed--with--a--rehabilitation--plan,--the--weeks--in
 3 which--benefits--were--paid--under--this--subsection--may--not--be
 4 credited--against--the--maximum--of--104--weeks--of--rehabilitation
 5 benefits--provided--in--this--section.

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

15 {5}--A--worker--may--not--receive--temporary--total--or
 16 biweekly--permanent--partial--disability--benefits--and
 17 rehabilitation--benefits--during--the--same--period--of--time.

18 {6}--The--rehabilitation--provider,--as--authorized--by--the
 19 insurer,--shall--continue--to--work--with--and--assist--the--injured
 20 worker--until--the--rehabilitation--plan--is--completed.

21 {7}--Upon--receipt--of--notification--of--acceptance--of--a
 22 claim--by--an--insurer,--the--department--shall--notify--the
 23 claimant--in--writing--of--potential--benefits--and--entitlements
 24 THE-SERVICES-AND-BENEFITS-AVAILABLE pursuant--to 39-71-10147
 25 39-71-1025,--39-71-1032,--and--this--section THE-VOCATIONAL

1 REHABILITATION-PROVISIONS-OF-THE-WORKERS'-COMPENSATION-ACT.
 2 {8}--The--rehabilitation--benefits--referred--to--in--this
 3 section--are--applicable--only--with--the--actual--provision--of--the
 4 services--and--may--not--be--negotiated--as--aspects--of--a
 5 settlement.

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

9 **Section 5.** Section 39-72-303, MCA, is amended to read:
 10 "39-72-303. Which employer liable. (1) Where
 11 compensation is payable for an occupational disease, the
 12 only employer liable shall--be is the employer in whose
 13 employment the employee was last injuriously exposed to the
 14 hazard of such the disease.

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

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

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

25 {2}(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-#0r--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-#1r--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.

1 **NEW SECTION.** **Section 42. Employer misconduct.** The
 2 department shall fine an employer convicted under 45-7-501
 3 an amount equal to ten times any amount that the department
 4 determines the employer wrongfully withheld in not obtaining
 5 workers' compensation coverage or in not obtaining the
 6 proper workers' compensation coverage. The department shall
 7 deposit the money collected pursuant to this section in the
 8 uninsured employers' account provided for in 39-71-502.

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

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

21 (a) The department shall direct the claimant to a
 22 member of the medical panel for examination. The panel
 23 member must be provided with all relevant medical records,
 24 including the findings of independent medical examinations.
 25 The panel member shall determine as a percentage the amount

1 of apportionment, if any, assignable to any other
 2 noncompensable disease, condition, or infirmity. The
 3 department shall forward a copy of the report to the
 4 claimant and employer. The party requesting the examination
 5 shall pay for the cost of the examination.

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

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

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

1 requested, the department shall base its order on the report
 2 of the three-panel members. The report of the three members
 3 is prima facie evidence of the matters contained in the
 4 report.

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

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

23 (3) Temporary partial disability benefits are limited
 24 to a total of 26 weeks of combined weekly compensation or
 25 are---payable---until---the---time---the---worker---is---no---longer

1 **temporarily-partially-disabled, whichever occurs first.**
 2 (4) The amount of temporary partial disability benefits
 3 must be based upon payroll records provided by the employer
 4 and calculated on a biweekly basis. The combined wages and
 5 compensation benefits may not exceed the worker's average
 6 weekly wage at the time of injury.

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

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

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

22 **Section 7. Section 39-71-2101, MCA, is amended to read:**
 23 **"39-71-2101. General requirements for electing coverage**
 24 **under plan.** (1) An employer may elect to be bound by
 25 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 MEA, is repealed.

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

1 **POLICYHOLDER FOR THE APPLICABLE DEDUCTIBLE AMOUNT.**

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

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

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

11 (5) FOR PURPOSES OF 39-71-201, LIABILITY FOR
 12 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.

13 **SECTION 9. SECTION 39-71-316, MCA, IS AMENDED TO READ:**
 14 "39-71-316. Filing true claim -- obtaining benefits
through deception or other fraudulent means. (1) A person
filling a claim under this chapter or chapter 72 of this

1 title, by signing the claim, affirms the information filed
 2 is true and correct to the best of that person's knowledge.

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

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

11 **SECTION 10. SECTION 37-1-131, MCA, IS AMENDED TO READ:**

12 "37-1-131. Duties of boards. Each board within the
department shall:

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

16 (2) sit in judgment in hearings for the suspension,
 17 revocation, or denial of a license of an actual or potential
 18 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).

19 (3) suspend, revoke, or deny a license of a person who

1 the board determines, after a hearing as provided in
 2 subsection (2), is guilty of knowingly defrauding, abusing,
 3 or aiding in the defrauding or abusing of the workers'
 4 compensation system in violation of the provisions of Title
 5 39, chapter 71 or 72;

6 t37(4) pay to the department its pro rata share of the
 7 assessed costs of the department under 37-1-101(6);

8 t47(5) consult with the department before the board
 9 initiates a program expansion, under existing legislation,
 10 to determine if the board has adequate money and
 11 appropriation authority to fully pay all costs associated
 12 with the proposed program expansion. The board may not
 13 expand a program if the board does not have adequate money
 14 and appropriation authority available."

15 **SECTION 11. SECTION 37-3-322, MCA, IS AMENDED TO READ:**
 16 "37-3-322. Unprofessional conduct. As used in this
 17 chapter, "unprofessional conduct" means:

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

21 (2) performing abortion contrary to law;

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

1 (4) employing abusive billing practices;
 2 (5) directly or indirectly giving or receiving a fee,
 3 commission, rebate, or other compensation for professional
 4 services not actually rendered. This prohibition does not
 5 preclude the legal functioning of lawful professional
 6 partnerships, corporations, or associations.

7 (6) willful disobedience of the rules of the board;
 8 (7) conviction of an offense involving moral turpitude
 9 or conviction of a felony involving moral turpitude, and the
 10 judgment of the conviction, unless pending on appeal, is
 11 conclusive evidence of unprofessional conduct;

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

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

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

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

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

7 (13) conduct likely to deceive, defraud, or harm the
8 public;

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

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

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

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

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

24 (19) conspiring to misrepresent or willfully
25 misrepresenting medical conditions improperly to increase or

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

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

3 person not licensed to practice medicine or a person whose

4 license to practice medicine is suspended;

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

6 licensee's license to practice medicine;

7 (22) malpractice or negligent practice;

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

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

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

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

12 prohibit:

13 (a) the incorporation of an individual licensee or

14 group of licensees as a professional service corporation

15 under Title 35, chapter 4;

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

17 a person or persons licensed to practice medicine and

18 surgery in another state or territory of the United States

19 or foreign country; or

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

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

22 assistance facility, or other licensed health care provider.

23 However:

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

25 venture must be evidenced by a written agreement containing

1 language to the effect that the relationship created by the
 2 agreement may not affect the exercise of the physician's
 3 independent judgment in the practice of medicine;

4 (ii) the physician's independent judgment in the
 5 practice of medicine must in fact be unaffected by the
 6 relationship; and

7 (iii) the physician may not be required to refer any
 8 patient to a particular provider or supplier or take any
 9 other action the physician determines not to be in the
 10 patient's best interest.

11 (24) willfully or negligently violating the
 12 confidentiality between physician and patient, except as
 13 required by law;

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

19 (26) failing to transfer pertinent and necessary medical
 20 records to another physician when requested to do so by the
 21 subject patient or by the patient's legally designated
 22 representative;

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

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

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

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

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

17 **SECTION 12. SECTION 37-6-310, MCA, IS AMENDED TO READ:**

18 "37-6-310. Unprofessional conduct. As used in this
 19 chapter, "unprofessional conduct" means:

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

23 (2) obtaining a fee or other compensation, either
 24 directly or indirectly, by the misrepresentation that a
 25 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;

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

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

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

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

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

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

22 (9) testifying in court on a contingency basis;

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

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

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

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

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

18 SECTION 15. SECTION 37-14-321, MCA, IS AMENDED TO READ:

19 "37-14-321. Revocation or suspension of license or
 20 permit. A license or permit may be suspended for a fixed
 21 period or may be revoked, or such technologist or technician
 22 may be censured, reprimanded, or otherwise disciplined as
 23 determined by the board if, after a hearing before the
 24 board, it is determined that the radiologic technologist or
 25 limited permit technician:

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

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

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

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

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

19 NEW SECTION. SECTION 16. PROHIBITED ACTIONS --
 20 PENALTY. (1) THE FOLLOWING ACTIONS BY A MEDICAL PROVIDER
 21 CONSTITUTE VIOLATIONS AND ARE SUBJECT TO THE PENALTY IN
 22 SUBSECTION (3) (2):
 23 (A) FAILING TO DOCUMENT, UNDER OATH, THE PROVISION OF
 24 THE SERVICES OR TREATMENT FOR WHICH COMPENSATION IS CLAIMED
 25 UNDER CHAPTER 72 OR THIS CHAPTER; OR

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

7 (2) A PERSON LICENSED TO PRACTICE LAW IN MONTANA OR A
 8 MEDICAL CARE PROVIDER WHO ADVERTISES SERVICES OR FACILITIES
 9 WITH THE INTENTION THAT A WORKER USE THOSE SERVICES OR
 10 FACILITIES WITH REGARD TO AN INJURY OR ILLNESS THAT IS
 11 COMPENSABLE UNDER CHAPTER 72 OR THIS CHAPTER AND WHO FAILS
 12 TO ANNOUNCE IN THE ADVERTISEMENT THAT FILING A FRAUDULENT
 13 CLAIM IS THEFT AS PROVIDED IN 39-71-3167 IS SUBJECT TO THE
 14 PENALTY IN SUBSECTION (3).

15 (3) (2) A PERSON WHO VIOLATES THIS SECTION MAY BE
 16 ASSESSED A PENALTY OF NOT LESS THAN \$200 OR MORE THAN \$500
 17 FOR EACH OFFENSE. THE DEPARTMENT SHALL ASSESS AND COLLECT
 18 THE PENALTY.

19 NEW SECTION. SECTION 17. NO LIABILITY FOR REPORTING
 20 VIOLATION. A PERSON, INCLUDING BUT NOT LIMITED TO AN INSURER
 21 OR AN EMPLOYER, MAY NOT BE HELD LIABLE FOR CIVIL DAMAGES AS
 22 A RESULT OF REPORTING IN GOOD FAITH INFORMATION THAT THE
 23 PERSON BELIEVES PROVES A VIOLATION OF THE PROVISIONS OF
 24 CHAPTER 72 OR THIS CHAPTER.

25 SECTION 18. SECTION 39-71-736, MCA, IS AMENDED TO READ:

1 "39-71-736. Compensation -- from what date paid.
 2 (1) (a) No compensation may be paid for the first 48 hours
 3 or 6 days' loss of wages, whichever is less, that the
 4 claimant is totally disabled and unable to work due to an
 5 injury. A claimant is eligible for compensation starting
 6 with the 7th day.

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

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

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

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

22 SECTION 19. SECTION 39-71-2315, MCA, IS AMENDED TO
 23 READ:

24 "39-71-2315. Management of state fund -- powers and
 25 duties of the board -- business plan required. (1) The

1 management and control of the state fund is vested solely in
 2 the board.

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

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

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

21 (b) specific goals for the fiscal year for operating
 22 performance. Goals must include but not be limited to
 23 specific performance standards for staff in the area of
 24 senior management, underwriting, and claims administration.
 25 Goals must, in general, maximize efficiency, economy, and

1 equity as allowed by law.

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

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

14 NEW SECTION. SECTION 20. DEFINITIONS. AS USED IN
 15 [SECTION 23 22 21], THE FOLLOWING DEFINITIONS APPLY:

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

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

24 NEW SECTION. SECTION 21. GROUP PURCHASE OF WORKERS'
 25 COMPENSATION INSURANCE. (1) ON RECEIVING APPROVAL OF THE

1 DEPARTMENT, TWO OR MORE BUSINESS ENTITIES MAY JOIN TOGETHER
 2 TO FORM A GROUP TO PURCHASE INDIVIDUAL WORKERS' COMPENSATION
 3 INSURANCE POLICIES COVERING EACH MEMBER OF THE GROUP.

4 (2) TO BE ELIGIBLE TO JOIN A GROUP, THE DEPARTMENT
 5 SHALL DETERMINE THAT A BUSINESS ENTITY IS ENGAGED IN A
 6 BUSINESS PURSUIT THAT IS THE SAME AS OR SIMILAR TO THE
 7 BUSINESS PURSUITS OF THE OTHER ENTITIES PARTICIPATING IN THE
 8 GROUP.

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

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

16 (5) A GROUP CERTIFIED UNDER THIS SECTION MAY PURCHASE
 17 INDIVIDUAL WORKERS' COMPENSATION INSURANCE POLICIES COVERING
 18 EACH MEMBER OF THE GROUP FROM ANY INSURER AUTHORIZED TO
 19 WRITE WORKERS' COMPENSATION INSURANCE IN THIS STATE, EXCEPT
 20 THAT THE STATE FUND, AS DEFINED IN 39-71-2312, HAS THE RIGHT
 21 TO REFUSE COVERAGE OF A GROUP AND ITS PLAN OF OPERATION BUT
 22 CANNOT REFUSE COVERAGE TO AN INDIVIDUAL EMPLOYER. UNDER AN
 23 INDIVIDUAL POLICY, THE GROUP IS ENTITLED TO A PREMIUM OR
 24 VOLUME DISCOUNT THAT WOULD BE APPLICABLE TO A POLICY OF THE
 25 COMBINED PREMIUM AMOUNT OF THE INDIVIDUAL POLICIES.

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

5 (7) A GROUP SHALL ADOPT A PLAN OF OPERATION THAT MUST
 6 INCLUDE THE COMPOSITION AND SELECTION OF A GOVERNING BOARD,
 7 THE METHODS FOR ADMINISTERING THE GROUP, AND GUIDELINES FOR
 8 THE WORKERS' COMPENSATION INSURANCE COVERAGE OBTAINED BY THE
 9 GROUP, INCLUDING THE PAYMENT OF PREMIUMS, THE DISTRIBUTION
 10 OF DISCOUNTS, AND THE METHOD FOR PROVIDING RISK MANAGEMENT.
 11 A GROUP SHALL FILE A COPY OF ITS PLAN OF OPERATION WITH THE
 12 DEPARTMENT.

13 SECTION 24. -- SECTION 39-71-407, NCA, IS AMENDED TO READ:

14 39-71-407. --liability-of--insurers-----limitations
 15 apportionment. --(1) Every insurer is liable for the payment
 16 of compensation, in the manner and to the extent hereinafter
 17 provided in this section, to an employee of an employer it
 18 insures--who--receives--an--injury--arising--out--of--and--in--the
 19 course--of--his--employment--or,--in--the--case--of--his--death--from
 20 such the injury--to--his the employee's beneficiaries, if
 21 any.

22 (2) --(a) An insurer is liable 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) 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.

25 (5) If--a--claimant--who--has--reached--maximum--healing

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

5 {6}--If an injury, as defined in 39-71-119, occurs that
 6 involves an aggravation of a preexisting condition, the
 7 permanent--totally--permanent--partial,--and--medical--benefits
 8 payable--under--this--chapter--after--a--worker--reaches--maximum
 9 healing--must--be--apportioned--between--the--insurer--or--insurers
 10 who--are--liable--for--coverage--for--the--preexisting--condition
 11 and--the--insurers--who--are--liable--for--coverage--for--the
 12 aggravation--injury.--The--insurer--for--the--injury--is
 13 responsible--only--for--the--portion--attributable--to--the
 14 aggravation--injury.

15 {7}--If a workers' compensation--insurer--had--a
 16 compensable--claim--for--the--preexisting--condition, the--insurer
 17 remains--liable--for--the--portion--attributable--to--that--insurer
 18 for--permanent--totally--permanent--partial,--and--medical
 19 benefits.*

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

21 39-72-706.---Aggravation ---apportionment.---{1}--If an
 22 occupational--disease--is--aggravated--by--any--other--disease--or
 23 infirmity--not--itself--compensable--or--if--disability--or--death
 24 from--any--other--cause--not--itself--compensable--is--aggravated,
 25 prolonged,--accelerated,--or--in--any--way--contributed--to--by--an

1 occupational--disease,--the--compensation--payable--under--this
 2 chapter--must--be--reduced--and--limited--to--such--proportion--only
 3 of--the--compensation--that--would--be--payable--if--the
 4 occupational--disease--were--the--sole--cause--of--the--disability
 5 or--death--as--such--occupational--disease--as--a--causative--factor
 6 bears--to--all--the--causes--of--such--disability--or--death
 7 apportioned--between--the--preexisting--condition--and--the
 8 liability--attributable--to--the--occupational--disease--after--the
 9 worker--reaches--maximum--healing.

10 {2}--If a workers' compensation--insurer--had--a
 11 compensable--claim--for--the--preexisting--condition, the--insurer
 12 remains--liable--for--the--portion--attributable--to--that--insurer
 13 for--benefits--paid.

14 {2}{3}--If compensation--is--reduced--a--proportionate
 15 amount apportioned as provided in subsection {1}--and--the
 16 worker--receives--disability--social--security--benefits,--the
 17 offset--entitlement--granted--to--the--insurer--must--be--reduced
 18 apportioned in--the--same--proportionate--amount--as--the
 19 compensation--as--long--as--the--worker--continues--to--receive
 20 disability--social--security--benefits.*

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

22 39-72-707.---Silicosis--with--complications.---In--cases--of
 23 disability--or--death--from--silicosis--complicated--with
 24 tuberculosis--of--the--lungs,--compensation--shall must be
 25 payable--as--for--disability--or--death--from--an--uncomplicated

1 silicosis--in--case--of--disability-or-death-from-silicosis
 2 when-complicated-with-any-disease-not-compensable-under-this
 3 chapter-and-other-than-pulmonary-tuberculosis;--compensation
 4 shall--be--reduced must--be--apportioned as--provided--in
 5 39-72-706.*

6 SECTION 22. SECTION 39-71-606, MCA, IS AMENDED TO READ:

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

14 (2) The department shall make available to insurers for
 15 distribution to claimants sufficient copies of a document
 16 describing current benefits and entitlement available under
 17 Title 39, chapter 71. Upon receipt of a claim, each insurer
 18 shall promptly notify the claimant in writing of potential
 19 benefits and entitlement available by providing the claimant
 20 a copy of the document prepared by the department.

21 (3) Upon the request of an employer it insures, an
 22 insurer shall notify the employer of all compensation
 23 benefits that are ongoing and are being charged against that
 24 employer's account."

25 SECTION 23. SECTION 39-71-123, MCA, IS AMENDED TO READ:

1 "39-71-123. Wages defined. (1) "Wages" means the gross
 2 remuneration paid in money, or in a substitute for money,
 3 for services rendered by an employee, or income provided for
 4 in subsection (1)(d). Wages include but are not limited to:
 5 (a) commissions, bonuses, and remuneration at the
 6 regular hourly rate for overtime work, holidays, vacations,
 7 and sickness periods;
 8 (b) board, lodging, rent, or housing if it constitutes
 9 a part of the employee's remuneration and is based on its
 10 actual value; and
 11 (c) payments made to an employee on any basis other
 12 than time worked, including but not limited to piecework, an
 13 incentive plan, or profit-sharing arrangement; and
 14 (d) income or payment in the form of a draw, wage, net
 15 profit, or substitute for money received or taken by a sole
 16 proprietor or partner, regardless of whether the sole
 17 proprietor or partner has performed work or provided
 18 services for that remuneration.
 19 (2) Wages do not include:
 20 (a) employee expense reimbursements or allowances for
 21 meals, lodging, travel, subsistence, and other expenses, as
 22 set forth in department rules;
 23 (b) special rewards for individual invention or
 24 discovery;
 25 (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 presentation 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

1 claimant of:

2 (a) lack of knowledge of disability;
 3 (b) latent injury; or
 4 (c) equitable estoppel."

5 **SECTION 25. SECTION 39-71-701, MCA, IS AMENDED TO READ:**

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

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

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

23 (4) If the treating physician releases a worker to
 24 return to the same, a modified, or an alternative position
 25 that the individual is able and qualified to perform with

1 the same employer at an equivalent or higher wage than he
 2 the individual received at the time of injury, the worker is
 3 no longer eligible for temporary total disability benefits
 4 even though he the individual has not reached maximum
 5 healing. A worker requalifies for temporary total disability
 6 benefits if the modified or alternative position is no
 7 longer available for any reason to the worker and the worker
 8 continues to be temporarily totally disabled, as defined in
 9 39-71-116.

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

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

25 ~~(6) Notwithstanding subsection (3), beginning July 1,~~

1 ~~1987, through June 30, 1991, -- weekly -- compensation -- benefits~~
 2 ~~for -- temporary -- total -- disability may not exceed the state's~~
 3 ~~average weekly wage of \$299 established July 1, 1986.~~"

4 **SECTION 26. SECTION 39-71-407, MCA, IS AMENDED TO READ:**

5 "39-71-407. Liability of insurers -- limitations. (1)
 6 Every insurer is liable for the payment of compensation, in
 7 the manner and to the extent hereinafter provided in this
 8 section, to an employee of an employer that it insures who
 9 receives an injury arising out of and in the course of his
 10 employment or, in the case of his death from such the
 11 injury, to his the employee's beneficiaries, if any.

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

15 (i) a claimed injury has occurred; or
 16 (ii) a claimed injury aggravated a preexisting
 17 condition.

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

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

24 (a) (i) the employer furnishes the transportation or
 25 the employee receives reimbursement from the employer for

1 costs of travel, gas, oil, or lodging as a part of the
 2 employee's benefits or employment agreement; and

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

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

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

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

20 (6) As used in this section, "major contributing cause"
 21 means a leading factor contributing to the result when
 22 compared to all other contributing factors."

23 **NEW SECTION. Section 27. Codification instruction.** (1)
 24 {Sections--11, 12, and 15} are intended to be codified as an
 25 integral part of Title 39, -- chapter 71, -- part 3, -- and -- the

1 provisions--of--Title--39,--chapter--71,--part--3,--apply--to
 2 ~~sections--13,--14,--15~~.

3 (2) ~~{Sections--13--and--14}~~ ~~{SECTIONS--8--AND--9}~~ are
 4 [SECTION 8 7 6] is intended to be codified as an integral
 5 part of Title 39, chapter 71, part 7, and the provisions of
 6 Title 39, chapter 71, part 7, apply to ~~sections--13--and--14~~,
 7 ~~{SECTIONS--8--AND--9}~~ [SECTION 8 7 6].

8 (2) [SECTION 11 10 9 8] IS INTENDED TO BE CODIFIED AS
 9 AN INTEGRAL PART OF TITLE 39, CHAPTER 71, PART 4, AND THE
 10 PROVISIONS OF TITLE 39, CHAPTER 71, PART 4, APPLY TO
 11 [SECTION 11 10 9 8].

12 (3) [SECTIONS 19-AND-20 17-AND-18 16 AND 17 AND-19] ARE
 13 INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 39,
 14 CHAPTER 71, AND THE PROVISIONS OF TITLE 39, CHAPTER 71,
 15 APPLY TO [SECTIONS 19-AND-20 17-AND-18 16 AND 17 AND-19].

16 (4) [SECTIONS 21-AND-22 20 AND 21 AND-23] ARE INTENDED
 17 TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 39, CHAPTER 71,
 18 AND THE PROVISIONS OF TITLE 39, CHAPTER 71, APPLY TO
 19 [SECTIONS 21-AND-22 20 AND 21 AND-23].

20 NEW SECTION. SECTION 28. SEVERABILITY. IF A PART OF
 21 [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE
 22 FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS
 23 ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART
 24 REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE
 25 SEVERABLE FROM THE INVALID APPLICATIONS.

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

-End-

Page 1 of 3

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 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

F.C.C.R. #1

HB 622

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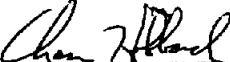
April 20, 1993
Page 3 of 3

agreeing to a repayment plan."

Renumber: subsequent sections

And this Free Conference Committee report be adopted.

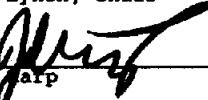
For the House:

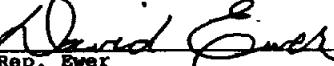

Rep. Ribbard, Chair

For the Senate:


Sen. Lynch, Chair


Rep. Benedict


Sen. Sharp


Rep. Ewer


Sen. Wilson

HOUSE BILL NO. 622
INTRODUCED BY EWER, HARP

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; ALLOWING--APPORTIONMENT
13 OF COMPENSATION FOR PREEXISTING CONDITIONS BETWEEN INSURERS;
14 REQUIRING NONRESIDENT EMPLOYERS TO OBTAIN IN-STATE COVERAGE
15 OR PAY THE DIFFERENCE IN PREMIUMS; PROVIDING FOR FINES FOR
16 EMPLOYER MISCONDUCT; CREATING A MEDICAL PANEL AND PROCEDURES
17 FOR HANDLING PREEXISTING INJURY DISPUTES; CREATING TEMPORARY
18 PARTIAL DISABILITY BENEFITS; REQUIRING EMPLOYERS TO REPORT
19 NEW EMPLOYEES TO THE INSURER AND DEPARTMENT WITHIN 72 HOURS
20 OF THE FIRST PAYDAY AFTER HIRING; REVISING ELIGIBILITY
21 REQUIREMENTS TO SELF-INSURE; ALLOWING CERTAIN OPTIONAL
22 DEDUCTIBLES TO POLICYHOLDERS; REQUIRING SUSPENSION,
23 REVOCATION, OR DENIAL OF A PROFESSIONAL OR OCCUPATIONAL
24 LICENSE FOR VIOLATION OF THE WORKERS' COMPENSATION LAW;
25 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; REQUIRING
9 INSURERS TO NOTIFY EMPLOYERS OF REOPENED CLAIMS; ALLOWING
10 INSURERS TO SUSPEND BENEFITS TO WORKERS RECEIVING SOCIAL
11 SECURITY DISABILITY BENEFITS; AMENDING SECTIONS 37-1-131,
12 37-3-322, 37-6-310, 37-10-311, 37-12-321, 37-14-321,
13 39-71-116, 39-71-123, 39-71-307, 39-71-407, 39-71-604,
14 39-71-316, 39-71-407, 39-71-407, 39-71-601, 39-71-605,
15 39-71-606, 39-71-607, 39-71-701, 39-71-702, 39-71-736,
16 39-71-741, 39-71-2001, 39-71-2101, 39-71-2315, AND AND
17 39-72-303, 39-72-706, AND 39-72-707, AND 39-72-706, MCA; AND
18 REPEALING SECTION--39-71-402,--MCA PROVIDING AN EFFECTIVE
19 DATE."

21 STATEMENT OF INTENT

22 A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL BECAUSE
23 SECTION 23 22 21] REQUIRES THE DEPARTMENT BY RULE TO ADOPT
24 FORMS, CRITERIA, AND PROCEDURES FOR THE ISSUANCE OF
25 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:

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

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

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

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

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

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

1 village.

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

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

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

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

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

21 (C) SUFFERS A PARTIAL WAGE LOSS.

22 ~~(22)~~(23) "Temporary service contractor" means any
 23 person, firm, association, or corporation conducting
 24 business that employs individuals directly for the purpose
 25 of furnishing the services of those individuals on a

1 part-time or temporary basis to others.

2 ~~t23~~^{t24} "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 ~~t24~~^{t25} "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 ~~t25~~^{t26} "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-3--Section-39-71-407,-MCA,-is-amended-to-read-~~
13 ~~"39-71-407.--liability-of-insurers----limitations---(i)~~
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 ~~t2)--(a)--An--insurer-is--liable-for-an-injury--as--defined~~
21 ~~in-39-71-319-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:~~

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

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

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

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

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

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

25 (5)--if--a--claimant--who--has--reached--maximum--healing

1 suffers--a--subsequent--nonwork--related--injury--to--the--same--part
 2 of--the--body;--the--workers'--compensation--insurer--is--not--liable
 3 for--any--compensation--or--medical--benefits--caused--by--the
 4 subsequent--nonwork--related--injury--

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

14 (7)--if--a--claimant's--compensation--is--proportionally
 15 reduced--as--provided--in--subsection--(6)--and--the--claimant
 16 receives--social--security--disability--benefits;--any--offset
 17 that--an--insurer--may--be--entitled--to--must--be--reduced--in--the
 18 same--proportion--as--the--claimant's--compensation--was--reduced
 19 for--as--long--as--the--claimant--receives--the--social--security
 20 disability--benefits--"

21 Section 4--Section 39-71-604, MCA, is amended to read:
 22 "39-71-604--Application--for--compensation--(1)--if--a
 23 worker--is--entitled--to--benefits--under--this--chapter;--the
 24 worker--shall--file--with--the--insurer--all--reasonable
 25 information--needed--by--the--insurer--to--determine

1 compensability--it is the duty--of--the--worker's--attending
 2 physician---to--lend--all--necessary--assistance--in--making
 3 application-for-compensation-and-such the proof--of--other
 4 matters--as--may--be-required-by-the-rules-of-the-department
 5 without-charge-to-the-worker--The-filing-of-forms--or--other
 6 documentation-by-the-attending-physician-does-not-constitute
 7 a-claim-for-compensation.

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

14 (2)(3) If death results from an injury,--the--parties
 15 entitled--to--compensation--or--someone-in-their-behalf--shall
 16 file-a-claim-with-the-insurer--The-claim--must--be--accompanied
 17 with--proof-of-death-and--proof-of-relationship,--showing--the
 18 parties--entitled--to--compensation--certificate--of--the
 19 attending-physician,--if--any,--and--such--other--proof--as--may--be
 20 required--by--the--department.

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

22 "39-71-605. Examination of employee by physician --
 23 effect of refusal to submit to examination -- report and
 24 testimony of physician -- cost. (1) (a) Whenever in case of
 25 injury the right to compensation under this chapter would

1 exist in favor of any employee, he the employee shall, upon
 2 the written request of the insurer, submit from time to time
 3 to examination by a physician or panel of physicians, who
 4 shall must be provided and paid for by such the insurer, and
 5 shall likewise submit to examination from time to time by
 6 any physician or panel of physicians selected by the
 7 department.

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

24 (2) In the event of a dispute concerning the physical
 25 condition of a claimant or the cause or causes of the injury

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

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

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

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

1 **Section 5.** Section 39-71-741, MCA, is amended to read--
 2 39-71-741---Compromise---settlements---and---lump-sum
 3 payments--{(i)}-{(a)}-Benefits-may-be-converted-in--whole--to--a
 4 lump-sum:
 5 {ii}--if--a--claimant--and-an-insurer-dispute-the-initial
 6 compensability-of-an-injury; and
 7 {iii}--if-the-claimant-and-insurer-agree-to-a-settlement;
 8 {b}--The-agreement-is-subject--to--department--approval;
 9 The--department--may--disapprove--an--agreement--under--this
 10 section--only--if--there--is--not--a-reasonable-dispute-over
 11 compensability;
 12 {c}--Upon--approval;--the---agreement---constitutes---a
 13 compromise-and-release-settlement-and-may-not-be-reopened-by
 14 the-department;
 15 {2}--{(a)}-If--an--insurer--has-accepted-initial-liability
 16 for-an-injury,-permanent-partial-disability-benefits-may--be
 17 converted-in-whole-or-in-part-to-a-lump-sum-payment;
 18 {b}--The--total--of-any-lump-sum-conversion-in-part-that
 19 is-awarded-to-a-claimant-prior-to-the-claimant's-final-award
 20 may-not-exceed-the--anticipated--award--under--39-71-703--or
 21 \$20,000,-whichever-is-less;
 22 {c}--An-agreement-is-subject-to-department-approval--The
 23 department---may---disapprove---an--agreement--only--if--the
 24 department--determines--that--the---settlement---amount---is
 25 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 {b)--the-necessities-of-life;

17 {c)--an-accumulation--of--debt--incurred--prior--to--the
18 injury;--or

19 {d)--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--authorise--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

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

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

17 {5}--A--worker--may--not--receive--temporary--total--or
 18 biweekly--permanent--partial--disability--benefits--and
 19 rehabilitation-benefits-during-the-same-period-of-time.

20 {6}--The-rehabilitation-provider, as-authorized--by--the
 21 insurer,--shall-continue-to-work-with-and-assist-the-injured
 22 worker-until-the-rehabilitation-plan-is-completed.

23 {7}--Upon-receipt-of-notification--of--acceptance--of--a
 24 claim--by--an--insurer--the--department--shall--notify--the
 25 claimant--in--writing--of potential--benefits--and--entitlements

1 THE-SERVICES-AND-BENEFITS-AVAILABLE pursuant-to 39-71-1014;
 2 39-71-1025;--39-71-1032;--and--this--section THE-VOCATIONAL
 3 REHABILITATION-PROVISIONS-OF-THE-WORKERS'-COMPENSATION-ACT.
 4 f8)--The-rehabilitation-benefits--referred--to--in--this
 5 section--are--applicable--only--with--the--actual--provision--of--the
 6 services--and--may--not--be--negotiated--as--aspects--of--a
 7 settlement.

8 f9)--Rehabilitation-benefits--under--this--section--must--be
 9 elected--within--12--months--of--the--date--of--maximum--medical
 10 improvement--or--they--are--forfeited."

11 **Section 5.** Section 39-72-303, MCA, is amended to read:
 12 "39-72-303. Which employer liable. (1) Where
 13 compensation is payable for an occupational disease, the
 14 only employer liable shall--be is the employer in whose
 15 employment the employee was last injuriously exposed to the
 16 hazard of such the disease.

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

21 (a) the time the occupational disease was first
 22 diagnosed by an-attending A TREATING physician-consulting
 23 physician or medical panel; or
 24 (b) the time the employee knew or should have known
 25 that the condition was the result of an occupational

1 disease.

2 t2;(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-10---Section-39-72-7067-MCA, is amended to read:
 14 39-72-7067--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 t2;--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-11---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.--17-27-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 t2;--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 t3;--The--department--shall--deposit--the--money--collected

1 pursuant-to-subsection-(1)-in-the-uninsured-employers'-fund
 2 provided-for-in-39-71-502.

3 **NEW SECTION.** **Section 12.** Employer----misconduct----The--
 4 department--shall--fine-an-employer-convicted--under--45-7-503
 5 an--amount--equal-to-ten-times-any-amount--that-the-department
 6 determines--the-employer-wrongfully-withheld-in-not-obtaining
 7 workers'-compensation--coverage--or--in--not--obtaining--the
 8 proper--workers'-compensation-coverage--The-department-shall
 9 deposit-the-money-collected-pursuant-to-this-section-in--the
 10 uninsured-employers'-account-provided-for-in-39-71-502.

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

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

23 (a)--The--department--shall--direct--the--claimant--to-a
 24 member-of-the--medical--panel--for--examination--The--panel
 25 member--must--be--provided-with-all-relevant-medical-records--

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

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

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

23 (d)--If-a--second--examination--is--not--requested,--the
 24 department--shall-issue-its-order-determining-the-percentage
 25 of--apportionment--assigned--to--any--other--noncompensable

1 disease, condition, or infirmity, based on the report of the
 2 first examining panel member. If a second examination is
 3 requested, the department shall base its order on the report
 4 of the three panel members. The report of the three members
 5 is prima facie evidence of the matters contained in the
 6 report.

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

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

25 (3) Temporary partial disability benefits are limited

1 to a total of 26 weeks of combined weekly compensation or
 2 are payable until the time the worker is no longer
 3 temporarily partially disabled, whichever occurs first.
 4 (4) The amount of temporary partial disability benefits
 5 must be based upon payroll records provided by the employer
 6 and calculated on a biweekly basis. The combined wages and
 7 compensation benefits may not exceed the worker's average
 8 weekly wage at the time of injury.

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

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

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

24 Section 7. Section 39-71-2101, MCA, is amended to read:
 25 "39-71-2101. General requirements for electing coverage

1 under plan. (1) An employer may elect to be bound by
 2 compensation plan No. 1 upon furnishing satisfactory proof
 3 to the department and the Montana self-insurers guaranty
 4 fund of his solvency and financial ability to pay the
 5 compensation and benefits provided for in this chapter
 6 provided-for and to discharge all liabilities which that are
 7 reasonably likely to be incurred by-him during the fiscal
 8 year for which the election is effective, and The
 9 employer may, by order of the department and with the
 10 concurrence of the guaranty fund, make such the payments
 11 directly to his employees as they may become entitled to
 12 receive payments under the terms and conditions of this
 13 chapter.

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

19 NEW SECTION. --Section-17---Repeater--Section-39-71-402,
 20 ~~Meat-is-repeated~~

21 NEW SECTION. SECTION 8. WORKERS' COMPENSATION AND
 22 EMPLOYERS' LIABILITY INSURANCE -- OPTIONAL DEDUCTIBLES. (1)
 23 AN INSURER ISSUING A WORKERS' COMPENSATION OR AN EMPLOYER'S
 24 LIABILITY INSURANCE POLICY MAY OFFER TO THE POLICYHOLDER, AS
 25 PART OF THE POLICY OR BY ENDORSEMENT, OPTIONAL DEDUCTIBLES

1 FOR BENEFITS PAYABLE UNDER THE POLICY CONSISTENT WITH THE
 2 STANDARDS CONTAINED IN SUBSECTION (3).
 3 (2) A RATING ORGANIZATION MAY DEVELOP AND FILE A
 4 DEDUCTIBLE PLAN OR PLANS ON BEHALF OF ITS MEMBERS CONSISTENT
 5 WITH THE STANDARDS CONTAINED IN SUBSECTION (3).
 6 (3) THE COMMISSIONER OF INSURANCE SHALL APPROVE A
 7 DEDUCTIBLE PLAN THAT IS IN ACCORDANCE WITH THE FOLLOWING
 8 STANDARDS:
 9 (A) CLAIMANTS' RIGHTS ARE PROPERLY PROTECTED AND
 10 CLAIMANTS' BENEFITS ARE PAID WITHOUT REGARD TO THE
 11 DEDUCTIBLE.
 12 (B) PREMIUM REDUCTIONS REFLECT THE TYPE AND LEVEL OF
 13 THE DEDUCTIBLE, CONSISTENT WITH ACCEPTED ACTUARIAL
 14 STANDARDS.
 15 (C) PREMIUM REDUCTIONS FOR DEDUCTIBLES ARE DETERMINED
 16 BEFORE APPLICATION OF ANY EXPERIENCE MODIFICATION, PREMIUM
 17 SURCHARGE, OR PREMIUM DISCOUNT.
 18 (D) RECOGNITION IS GIVEN TO POLICYHOLDER
 19 CHARACTERISTICS, INCLUDING BUT NOT LIMITED TO SIZE,
 20 FINANCIAL CAPABILITIES, NATURE OF ACTIVITIES, AND NUMBER OF
 21 EMPLOYEES.
 22 (E) THE POLICYHOLDER IS LIABLE TO THE INSURER FOR THE
 23 DEDUCTIBLE AMOUNT IN REGARD TO BENEFITS PAID FOR COMPENSABLE
 24 CLAIMS.
 25 (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 filling 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
deception with regard to a claim for benefits under Title
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;

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

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

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

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

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

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

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

22 (9) resorting to fraud, misrepresentation, or deception
 23 in the examination or treatment of a person or in billing or
 24 reporting to a person, company, institution, or
 25 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 13. 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;

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

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

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

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

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

20 **SECTION 14. SECTION 37-12-321, MCA, IS AMENDED TO READ:**

21 "37-12-321. Unprofessional conduct. As used in this
22 chapter, "unprofessional conduct" means:

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

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

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

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

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

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

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

19 (8) 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 (9) testifying in court on a contingency basis;

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

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

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

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

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

21 **SECTION 15. SECTION 37-14-321, MCA, IS AMENDED TO READ:**

22 "37-14-321. Revocation or suspension of license or
 23 permit. A license or permit may be suspended for a fixed
 24 period or may be revoked, or such technologist or technician
 25 may be censured, reprimanded, or otherwise disciplined as

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

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

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

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

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

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

22 NEW SECTION. SECTION 16. PROHIBITED ACTIONS --
 23 PENALTY. (1) THE FOLLOWING ACTIONS BY A MEDICAL PROVIDER
 24 CONSTITUTE VIOLATIONS AND ARE SUBJECT TO THE PENALTY IN
 25 SUBSECTION ~~(3)~~ (2):

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 FAILING A FRAUDULENT~~
 16 ~~CLAIM IS THEFT AS PROVIDED IN 39-71-3167 IS SUBJECT TO THE~~
 17 ~~PENALTY IN SUBSECTION ~~(3)~~~~

18 ~~(3) (2) A PERSON WHO VIOLATES THIS SECTION MAY BE~~
 19 ~~ASSESSED A PENALTY OF NOT LESS THAN \$200 OR MORE THAN \$500~~
 20 ~~FOR EACH OFFENSE. THE DEPARTMENT SHALL ASSESS AND COLLECT~~
 21 ~~THE PENALTY.~~

22 NEW SECTION. SECTION 17. 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 18. 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 19. 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 20. DEFINITIONS. AS USED IN
 18 [SECTION 23 22 21], THE FOLLOWING DEFINITIONS APPLY:

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

23 (2) "GROUP" MEANS TWO OR MORE BUSINESS ENTITIES THAT
 24 JOIN TOGETHER WITH THE APPROVAL OF THE DEPARTMENT TO
 25 PURCHASE INDIVIDUAL WORKERS' COMPENSATION INSURANCE POLICIES

1 COVERING EACH BUSINESS ENTITY THAT IS PART OF A GROUP.
 2 NEW SECTION. SECTION 21. GROUP PURCHASE OF WORKERS'
 3 COMPENSATION INSURANCE. (1) ON RECEIVING APPROVAL OF THE
 4 DEPARTMENT, TWO OR MORE BUSINESS ENTITIES MAY JOIN TOGETHER
 5 TO FORM A GROUP TO PURCHASE INDIVIDUAL WORKERS' COMPENSATION
 6 INSURANCE POLICIES COVERING EACH MEMBER OF THE GROUP.

7 (2) TO BE ELIGIBLE TO JOIN A GROUP, THE DEPARTMENT
 8 SHALL DETERMINE THAT A BUSINESS ENTITY IS ENGAGED IN A
 9 BUSINESS PURSUIT THAT IS THE SAME AS OR SIMILAR TO THE
 10 BUSINESS PURSUITS OF THE OTHER ENTITIES PARTICIPATING IN THE
 11 GROUP.

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

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

19 (5) A GROUP CERTIFIED UNDER THIS SECTION MAY PURCHASE
 20 INDIVIDUAL WORKERS' COMPENSATION INSURANCE POLICIES COVERING
 21 EACH MEMBER OF THE GROUP FROM ANY INSURER AUTHORIZED TO
 22 WRITE WORKERS' COMPENSATION INSURANCE IN THIS STATE, EXCEPT
 23 THAT THE STATE FUND, AS DEFINED IN 39-71-2312, HAS THE RIGHT
 24 TO REFUSE COVERAGE OF A GROUP AND ITS PLAN OF OPERATION BUT
 25 CANNOT REFUSE COVERAGE TO AN INDIVIDUAL EMPLOYER. UNDER AN

1 INDIVIDUAL POLICY, THE GROUP IS ENTITLED TO A PREMIUM OR
 2 VOLUME DISCOUNT THAT WOULD BE APPLICABLE TO A POLICY OF THE
 3 COMBINED PREMIUM AMOUNT OF THE INDIVIDUAL POLICIES.

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

8 (7) A GROUP SHALL ADOPT A PLAN OF OPERATION THAT MUST
 9 INCLUDE THE COMPOSITION AND SELECTION OF A GOVERNING BOARD,
 10 THE METHODS FOR ADMINISTERING THE GROUP, AND GUIDELINES FOR
 11 THE WORKERS' COMPENSATION INSURANCE COVERAGE OBTAINED BY THE
 12 GROUP, INCLUDING THE PAYMENT OF PREMIUMS, THE DISTRIBUTION
 13 OF DISCOUNTS, AND THE METHOD FOR PROVIDING RISK MANAGEMENT.
 14 A GROUP SHALL FILE A COPY OF ITS PLAN OF OPERATION WITH THE
 15 DEPARTMENT.

16 SECTION 24. SECTION 39-71-407, NCA, IS AMENDED TO READ:
 17 39-71-407.---liability--of--insurers-----limitations --
 18 apportionment.-(1) Every insurer is liable for the payment
 19 of compensation, in the manner and to the extent hereinafter
 20 provided in this section, to an employee of an employer it
 21 insures who receives an injury arising out of and in the
 22 course of his employment or, in the case of his death from
 23 such the injury, to his the employee's beneficiaries, if
 24 any.
 25 (2)-(a) An insurer is liable for an injury as defined

1 in 39-71-119 if the claimant establishes it is more probable
 2 than not that:
 3 (i) a claimed injury has occurred; or
 4 (ii) a claimed injury aggravated a preexisting
 5 condition.
 6 (b) Proof that it was medically possible that a claimed
 7 injury occurred or that such the claimed injury aggravated a
 8 preexisting condition is not sufficient to establish
 9 liability.
 10 (c) An employee who suffers an injury or dies while
 11 traveling is not covered by this chapter unless:
 12 (i) the employer furnishes the transportation or
 13 the employee receives reimbursement from the employer for
 14 costs of travel, gas, oil, or lodging as a part of the
 15 employee's benefits or employment agreement; and
 16 (ii) the travel is necessitated by and on behalf of the
 17 employer as an integral part or condition of the employment;
 18 or
 19 (b) the travel is required by the employer as part of
 20 the employee's job duties.
 21 (d) An employee is not eligible for benefits otherwise
 22 payable under this chapter if the employee's use of alcohol
 23 or drugs not prescribed by a physician is the sole and
 24 exclusive cause of the injury or death. However, if the
 25 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 39-71-119, 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.²

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.²

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

25 "39-72-707. Bileasis with complications. In cases of

1 disability--or--death--from---silicosis---complicated---with
 2 tuberculosis--of--the--lungs,--compensation--shall must be
 3 payable--as--for--disability--or--death--from--an--uncomplicated
 4 silicosis--in--case--of--disability--or--death--from--silicosis
 5 when--complicated--with--any--disease--not--compensable--under--this
 6 chapter--and--other--than--pulmonary--tuberculosis,--compensation
 7 shall--be--reduced must--be--apportioned as--provided---in
 8 39-72-706."

9 **SECTION 22. SECTION 39-71-606, MCA, IS AMENDED TO READ:**

10 "39-71-606. Insurer to accept or deny claim within
 11 thirty days of receipt -- NOTICE OF BENEFITS AND
 12 ENTITLEMENTS TO CLAIMANTS -- notice of denial -- NOTICE OF
 13 REOPENING -- notice to employer. (1) Every insurer under any
 14 plan for the payment of workers' compensation benefits
 15 shall, within 30 days of receipt of a claim for
 16 compensation, either accept or deny the claim, and if denied
 17 shall inform the claimant and the department in writing of
 18 such denial.

19 (2) The department shall make available to insurers for
 20 distribution to claimants sufficient copies of a document
 21 describing current benefits and entitlement available under
 22 Title 39, chapter 71. Upon receipt of a claim, each insurer
 23 shall promptly notify the claimant in writing of potential
 24 benefits and entitlement available by providing the claimant
 25 a copy of the document prepared by the department.

1 (3) EACH INSURER UNDER PLAN NO. 2 OR NO. 3 FOR THE
 2 PAYMENT OF WORKERS' COMPENSATION BENEFITS SHALL NOTIFY THE
 3 EMPLOYER OF THE REOPENING OF THE CLAIM WITHIN 14 DAYS OF THE
 4 REOPENING OF A CLAIM FOR THE PURPOSE OF PAYING COMPENSATION
 5 BENEFITS.

6 (4) Upon the request of an employer it insures, an
 7 insurer shall notify the employer of all compensation
 8 benefits that are ongoing and are being charged against that
 9 employer's account."

10 **SECTION 23. SECTION 39-71-123, MCA, IS AMENDED TO READ:**

11 "39-71-123. Wages defined. (1) "Wages" means the gross
 12 remuneration paid in money, or in a substitute for money,
 13 for services rendered by an employee, or income provided for
 14 in subsection (1)(d). Wages include but are not limited to:
 15 (a) commissions, bonuses, and remuneration at the
 16 regular hourly rate for overtime work, holidays, vacations,
 17 and sickness periods;

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

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

24 (d) income or payment in the form of a draw, wage, net
 25 profit, or substitute for money received or taken by a sole

1 proprietor or partner, regardless of whether the sole
 2 proprietor or partner has performed work or provided
 3 services for that remuneration.

4 (2) Wages do not include:

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

8 (b) special rewards for individual invention or
 9 discovery;

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

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

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

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

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

24 (b) for good cause shown by the claimant, the use of
 25 the four pay periods does not accurately reflect the

1 claimant's employment history with the employer, in which
 2 case the insurer may use additional pay periods.

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

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

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

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

24 **SECTION 24. SECTION 39-71-601, MCA, IS AMENDED TO READ:**
 25 **"39-71-601. Statute of limitation on presentment of**

1 claim -- waiver. (1) In case of personal injury or death,
 2 all claims must be forever barred unless signed by the
 3 claimant or the claimant's representative and presented in
 4 writing to the employer, the insurer, or the department, as
 5 the case may be, within 12 months from the date of the
 6 happening of the accident, either by the claimant or someone
 7 legally authorized to act ~~for-him-in-his~~ on the claimant's
 8 behalf.

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

- 12 (a) lack of knowledge of disability;
- 13 (b) latent injury; or
- 14 (c) equitable estoppel."

15 **SECTION 25. SECTION 39-71-701, MCA, IS AMENDED TO READ:**

16 "39-71-701. Compensation for temporary total disability
 17 -- exception. (1) Subject to the limitation in 39-71-736 and
 18 subsection (4) of this section, a worker is eligible for
 19 temporary total disability benefits when the worker suffers
 20 a total loss of wages as a result of an injury and until the
 21 worker reaches maximum healing.

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

24 (3) Weekly compensation benefits for injury producing
 25 temporary total disability shall be are 66 2/3% of the wages

1 received at the time of the injury. The maximum weekly
 2 compensation benefits may not exceed the state's average
 3 weekly wage at the time of injury. Temporary total
 4 disability benefits must be paid for the duration of the
 5 worker's temporary disability. The weekly benefit amount may
 6 not be adjusted for cost of living as provided in
 7 39-71-702(5).

8 (4) If the treating physician releases a worker to
 9 return to the same, a modified, or an alternative position
 10 that the individual is able and qualified to perform with
 11 the same employer at an equivalent or higher wage than he
 12 the individual received at the time of injury, the worker is
 13 no longer eligible for temporary total disability benefits
 14 even though he the individual has not reached maximum
 15 healing. A worker requalifies for temporary total disability
 16 benefits if the modified or alternative position is no
 17 longer available for any reason to the worker and the worker
 18 continues to be temporarily totally disabled, as defined in
 19 39-71-116.

20 (5) In cases where it is determined that periodic
 21 disability benefits granted by the Social Security Act are
 22 payable because of the injury, the weekly benefits payable
 23 under this section are reduced, but not below zero, by an
 24 amount equal, as nearly as practical, to one-half the
 25 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 *67--Notwithstanding--subsection--{37},--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 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 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

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

5 (6) As used in this section, "major contributing cause"
 6 means a CAUSE THAT IS THE leading factor CAUSE contributing
 7 to the result when compared to all other contributing
 8 factors CAUSES."

9 **SECTION 27. SECTION 39-71-702, MCA, IS AMENDED TO READ:**

10 "39-71-702. Compensation for permanent total
 11 disability. (1) If a worker is no longer temporarily totally
 12 disabled and is permanently totally disabled, as defined in
 13 39-71-116, the worker is eligible for permanent total
 14 disability benefits. Permanent total disability benefits
 15 must be paid for the duration of the worker's permanent
 16 total disability, subject to 39-71-710.

17 (2) The determination of permanent total disability
 18 must be supported by a preponderance of medical evidence.

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

24 (4) In cases where it is determined that periodic
 25 disability benefits granted by the Social Security Act are

1 payable because of the injury, the weekly benefits payable
 2 under this section are reduced, but not below zero, by an
 3 amount equal, as nearly as practical, to one-half the
 4 federal periodic benefits for such the week, which amount is
 5 to be calculated from the date of the disability social
 6 security entitlement.

7 (5) A worker's benefit amount must be adjusted for a
 8 cost-of-living increase on the next July 1 after 104 weeks
 9 of permanent total disability benefits have been paid and on
 10 each succeeding July 1. A worker may not receive more than
 11 10 such adjustments. The adjustment must be the percentage
 12 increase, if any, in the state's average weekly wage as
 13 adopted by the department over the state's average weekly
 14 wage adopted for the previous year or 3%, whichever is less.

15 (6) Notwithstanding--subsection--37,--beginning--July--1,
 16 1987,--through--June--30,--1991,--the--maximum--weekly--compensation
 17 benefits--for--permanent--total--disability--may--not--exceed--the
 18 state's--average--weekly--wage--of--\$299--established--July--1,
 19 1986. If the claimant is awarded social security benefits,
 20 the insurer may, upon notification of the claimant's receipt
 21 of social security benefits, suspend biweekly compensation
 22 benefits for a period sufficient to recover any resulting
 23 overpayment of benefits. This subsection does not prevent a
 24 claimant and insurer from agreeing to a repayment plan."

25 **NEW SECTION. Section 28. Codification instruction. (1)**

1 {Sections-11,12, 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-11,12, 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-