

SENATE BILL NO. 91

INTRODUCED BY CHRISTIAENS, SIMON, WELDON, HOCKETT,  
S. RICE, TUSS, REAM

IN THE SENATE

JANUARY 7, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
JANUARY 27, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 28, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
JANUARY 29, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 32; NOES, 15.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

JANUARY 30, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
MARCH 16, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 27, 1993	SECOND READING, CONCURRED IN.
MARCH 30, 1993	THIRD READING, CONCURRED IN. AYES, 97; NOES, 3.
MARCH 31, 1993	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 5, 1993	SECOND READING, AMENDMENTS CONCURRED IN.
APRIL 6, 1993	THIRD READING, AMENDMENTS CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. 91  
 2 INTRODUCED BY *Sen. C. Tuss*  
 3 *SRice* *C. Tuss* *Ream*  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT EXTENDING WORKERS'  
 5 COMPENSATION DISABILITY AND REHABILITATION COMPENSATION  
 6 BENEFITS TO CERTAIN INMATES EMPLOYED WHILE PARTICIPATING IN  
 7 PRERELEASE CENTER PROGRAMS AND OFFENDERS EMPLOYED WHILE  
 8 PARTICIPATING IN COMMUNITY CORRECTIONS PROGRAMS AND  
 9 DIVERSIONARY PROGRAMS; AND AMENDING SECTIONS 39-71-118 AND  
 10 39-71-744, MCA."  
 11

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

13 **Section 1.** Section 39-71-118, MCA, is amended to read:

14 "39-71-118. **Employee, worker, workman, and volunteer**  
 15 **firefighter defined.** (1) The terms "employee", "workman", or  
 16 "worker" mean:

17 (a) each person in this state, including a contractor  
 18 other than an independent contractor, who is in the service  
 19 of an employer, as defined by 39-71-117, under any  
 20 appointment or contract of hire, expressed or implied, oral  
 21 or written. The terms include aliens and minors, whether  
 22 lawfully or unlawfully employed, and all of the elected and  
 23 appointed paid public officers and officers and members of  
 24 boards of directors of quasi-public or private corporations  
 25 while rendering actual service for such the corporations for

1 pay. Casual employees as defined by 39-71-116 are included  
 2 as employees if they are not otherwise covered by workers'  
 3 compensation and if an employer has elected to be bound by  
 4 the provisions of the compensation law for these casual  
 5 employments, as provided in 39-71-401(2). Household or  
 6 domestic service is excluded.

7 (b) a recipient of general relief who is performing  
 8 work for a county of this state under the provisions of  
 9 53-3-303 through 53-3-305 and any juvenile performing work  
 10 under authorization of a district court judge in a  
 11 delinquency prevention or rehabilitation program;

12 (c) a person receiving on-the-job vocational  
 13 rehabilitation training or other on-the-job training under a  
 14 state or federal vocational training program, whether or not  
 15 under an appointment or contract of hire with an employer as  
 16 defined in this chapter and whether or not receiving payment  
 17 from a third party. However, this subsection does not apply  
 18 to students enrolled in vocational training programs ~~as~~  
 19 ~~outlined-above~~ while they are on the premises of a public  
 20 school or community college.

21 (d) students enrolled and in attendance in programs of  
 22 vocational-technical education at designated  
 23 vocational-technical centers;

24 (e) an airman or other person employed as a volunteer  
 25 under 67-2-105; or

(f) a person, other than a juvenile as defined in subsection (1)(b), performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (f):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(g) an inmate who is employed while participating in a prerelease center program or an offender who is employed while participating in a community corrections program or a diversionary program.

(2) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a fire

company organized and funded by a county, a rural fire district, or a fire service area.

(3) (a) If the employer is a partnership or sole proprietorship, such the employer may elect to include as an employee within the provisions of this chapter any member of such the partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business.

(b) In the event of such an election as provided in subsection (3)(a), the employer must serve upon the employer's insurer written notice naming the partners or sole proprietor to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (3)(d). A partner or sole proprietor is not considered an employee within this chapter until such notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the electing employer may

1 elect not less than \$900 a month and not more than 1 1/2  
2 times the average weekly wage as defined in this chapter.

3 (4) The trustees of a rural fire district, a county  
4 governing body providing rural fire protection, or the  
5 county commissioners or trustees for a fire service area may  
6 elect to include as an employee within the provisions of  
7 this chapter any volunteer firefighter. A volunteer  
8 firefighter who receives workers' compensation coverage  
9 under this section may not receive disability benefits under  
10 Title 19, chapter 12.

11 (5) An employee, workman, or worker in this state whose  
12 services are furnished by a person, association, contractor,  
13 firm, or corporation, other than a temporary service  
14 contractor, to an employer as defined in 39-71-117 is  
15 presumed to be under the control and employment of the  
16 employer. This presumption may be rebutted as provided in  
17 39-71-117(3).

18 (6) For purposes of this section, an "employee,  
19 workman, or worker in this state" means:

20 (a) a resident of Montana who is employed by an  
21 employer and whose employment duties are primarily carried  
22 out or controlled within this state; or

23 (b) a nonresident of Montana whose principal employment  
24 duties are conducted within this state on a regular basis  
25 for an employer."

1 **Section 2.** Section 39-71-744, MCA, is amended to read:

2 "39-71-744. Benefits not due while claimant is  
3 incarcerated -- exceptions. (1) A claimant is not eligible  
4 for any disability or rehabilitation compensation benefits  
5 while the claimant is incarcerated in a correctional  
6 institution, such as the Montana state prison, the Swan  
7 River forest camp, or the Montana women's correctional  
8 center, as the result of conviction of a felony. The insurer  
9 remains liable for medical benefits. No A time limit on  
10 benefits otherwise provided in this chapter is not extended  
11 due to a period of incarceration.

12 (2) A claimant who is employed while participating in a  
13 prerelease center program or an offender who is employed  
14 while participating in a community corrections program or a  
15 diversionary program is eligible as an employee under  
16 39-71-118."

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0091, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

This bill would extend workers' compensation disability and rehabilitation compensation benefits to certain inmates employed while participating in prerelease center programs and offenders employed while participating in community corrections programs and diversionary programs.

ASSUMPTIONS:

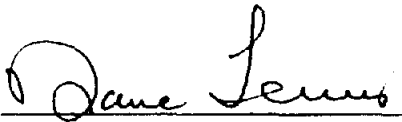
1. Employers currently pay workers' compensation insurance coverage of individuals employed through prison work release programs although such workers are ineligible for benefits if injured.
2. Employers who hire individuals participating in work release programs are likely to be insured by the State Fund but may be either self-insured or have coverage through a private carrier for workers compensation.
3. Work release participants who are injured on the job currently receive medical care through the program with jurisdiction (e.g., the Montana Department of Corrections and Human Services or county correctional programs).

FISCAL IMPACT:

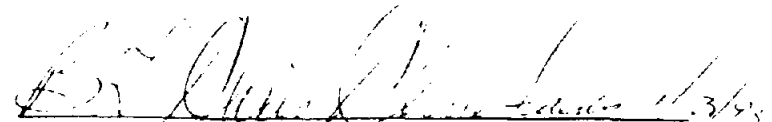
The fiscal impact is inestimable due to the inability to confidently predict an injury rate and average cost per injury for a relatively small number of individuals participating in work release programs throughout the state. The State Fund would experience a marginal increase in risk exposure with no corresponding increase in premium revenue. However, the impact on an estimated \$160 million in claims payments per year would be negligible. The Department of Corrections and Human Services would potentially experience minor savings.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Inestimable, potentially minor savings.

 1-12-93

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

 1-31-93

CHRIS CHRISTIAENS, PRIMARY SPONSOR      DATE

Fiscal Note for SB0091, as introduced

**SB 91**

APPROVED BY COMMITTEE  
ON LABOR & EMPLOYMENT  
RELATIONS

## SENATE BILL NO. 91

INTRODUCED BY CHRISTIAENS, SIMON, WELDON, HOCKETT,

S. RICE, TUSS, REAM

A BILL FOR AN ACT ENTITLED: "AN ACT EXTENDING WORKERS'  
COMPENSATION DISABILITY AND REHABILITATION COMPENSATION  
BENEFITS TO CERTAIN INMATES EMPLOYED WHILE PARTICIPATING IN  
PRERELEASE CENTER PROGRAMS AND--OFFENDERS--EMPLOYED WHILE  
PARTICIPATING--IN--COMMUNITY--CORRECTIONS--PROGRAMS AND  
DIVERSIONARY PROGRAMS; AND AMENDING SECTIONS 39-71-118 AND  
SECTION 39-71-744, MCA."

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

Section 17--Section 39-71-118, MCA, is amended to read:

"39-71-118. Employee, worker, workman, and volunteer  
firefighter defined. (1) The terms "employee", "workman", or  
"worker" mean:

(a) each person in this state, including a contractor  
other than an independent contractor, who is in the service  
of an employer as defined by 39-71-117 under any  
appointment or contract of hire, expressed or implied, oral  
or written. The terms include aliens and minors, whether  
lawfully or unlawfully employed, and all of the elected and  
appointed paid public officers and officers and members of  
boards of directors of quasi-public or private corporations

while rendering actual service for such the corporations for  
pay. Casual employees as defined by 39-71-116 are included  
as employees if they are not otherwise covered by workers'  
compensation and if an employer has elected to be bound by  
the provisions of the compensation law for these casual  
employments, as provided in 39-71-401(2). Household or  
domestic service is excluded.

(b) a recipient of general relief who is performing  
work for a county of this state under the provisions of  
53-3-303 through 53-3-305 and any juvenile performing work  
under authorization of a district court judge in a  
delinquency prevention or rehabilitation program;

(c) a person receiving on the job vocational  
rehabilitation training or other on the job training under a  
state or federal vocational training program, whether or not  
under an appointment or contract of hire with an employer as  
defined in this chapter and whether or not receiving payment  
from a third party. However, this subsection does not apply  
to students enrolled in vocational training programs as  
outlined above while they are on the premises of a public  
school or community college;

(d) students enrolled and in attendance in programs of  
vocational technical education at designated  
vocational technical centers;

(e) an airman or other person employed as a volunteer

1 under 67-2-105; or

2 (f) a person, other than a juvenile as defined in

3 subsection (1)(b), performing community service for a

4 nonprofit organization or association or for a federal,

5 state, or local government entity under a court order, or an

6 order from a hearings officer as a result of a probation or

7 parole violation, whether or not under appointment or

8 contract of hire with an employer as defined in this chapter

9 and whether or not receiving payment from a third party. For

10 a person covered by the definition in this subsection (f):

11 (i) compensation benefits must be limited to medical

12 expenses pursuant to 39-71-704 and an impairment award

13 pursuant to 39-71-703 that is based upon the minimum wage

14 established under Title 39, chapter 3, part 4, for a

15 full-time employee at the time of the injury; and

16 (ii) premiums must be paid by the employer, as defined

17 in 39-71-117(3), and must be based upon the minimum wage

18 established under Title 39, chapter 3, part 4, for the

19 number of hours of community service required under the

20 order from the court or hearings officer.

21 (g) an inmate who is employed while participating in a

22 prerelease center program or an offender who is employed

23 while participating in a community corrections program or a

24 diversionary program.

25 (2) The term "volunteer firefighter" means a

1 firefighter who is an enrolled and active member of a fire

2 company organized and funded by a county, a rural fire

3 district, or a fire service area.

4 (3) (a) If the employer is a partnership or sole

5 proprietorship, such the employer may elect to include as an

6 employee within the provisions of this chapter any member of

7 such the partnership or the owner of the sole proprietorship

8 devoting full time to the partnership or proprietorship

9 business:

10 (b) In the event of such an election as provided in

11 subsection (3)(a), the employer must serve upon the

12 employer's insurer written notice naming the partners or

13 sole proprietor to be covered and stating the level of

14 compensation coverage desired by electing the amount of

15 wages to be reported, subject to the limitations in

16 subsection (3)(d). A partner or sole proprietor is not

17 considered an employee within this chapter until such notice

18 has been given.

19 (c) A change in elected wages must be in writing and is

20 effective at the start of the next quarter following

21 notification.

22 (d) All weekly compensation benefits must be based on

23 the amount of elected wages, subject to the minimum and

24 maximum limitations of this subsection. For premium

25 ratemaking and for the determination of weekly wage for



weekly-compensation--benefits,--the--electing--employer--may  
elect--not--less--than--\$900-a-month-and-not-more-than-1-1/2  
times-the-average-weekly-wage-as-defined-in-this-chapter.

{4}--The-trustees-of-a-rural--fire--district,--a--county  
governing--body--providing--rural--fire--protection,--or-the  
county-commissioners-or-trustees-for-a-fire-service-area-may  
elect-to-include-as-an-employee--within--the--provisions--of  
this---chapter---any---volunteer--firefighter,--A-volunteer  
firefighter--who--receives--workers'-compensation--coverage  
under-this-section-may-not-receive-disability-benefits-under  
Title-19, chapter-12.

{5}--An-employee, workman, or worker in this state whose  
services-are-furnished-by-a-person, association, contractor,  
firm,--or--corporation,--other--than--a-temporary---service  
contractor,--to--an--employer--as--defined--in--39-71-117-is  
presumed-to-be-under--the--control--and--employment--of--the  
employer.---This--presumption--may-be-rebutted-as-provided-in  
39-71-117(3).

{6}--For--purposes--of--this--section,---an---"employee,  
workman, or worker in this state" means:

{a}--a--resident--of--Montana--who--is--employed--by--an  
employer--and--whose-employment-duties-are-primarily-carried  
out-or-controlled-within-this-state; or

{b}--a--nonresident-of-Montana-whose-principal-employment  
duties-are-conducted-within-this-state-on-a--regular--basis

for-an-employer."

**Section 1.** Section 39-71-744, MCA, is amended to read:

"39-71-744. Benefits not due while claimant is  
incarcerated -- exceptions. (1) A EXCEPT AS PROVIDED IN  
SUBSECTION (2), A claimant is not eligible for any  
disability or rehabilitation compensation benefits while the  
claimant is incarcerated in a correctional institution, such  
as the Montana state prison, the Swan River forest camp, or  
the Montana women's correctional center, as the result of  
conviction of a felony. The insurer remains liable for  
medical benefits. No A time limit on benefits otherwise  
provided in this chapter is not extended due to a period of  
incarceration.

(2) A claimant PERSON who is employed while  
participating in a prerelease center program or an offender  
who--is--employed--while--participating---in---a---community  
corrections-program or a diversionary program is eligible as  
an--employee-under-39-71-118 FOR TEMPORARY TOTAL BENEFITS AS  
PROVIDED IN 39-71-701 AND MEDICAL BENEFITS FOR A  
WORK-RELATED INJURY. OTHER DISABILITY OR REHABILITATION  
BENEFITS ARE NOT PAYABLE WHILE THE WORKER IS PARTICIPATING  
IN A PRERELEASE CENTER. THIS SUBSECTION DOES NOT PROHIBIT  
THE REINSTATEMENT OF OTHER BENEFITS UPON RELEASE FROM  
INCARCERATION, NOR DOES IT APPLY TO AN EMPLOYEE PERFORMING  
COMMUNITY SERVICE DESCRIBED IN 39-71-118(1)(F)."

-End-

-6-

## SENATE BILL NO. 91

INTRODUCED BY CHRISTIAENS, SIMON, WELDON, BOCKETT,

S. RICE, TUSS, REAM

A BILL FOR AN ACT ENTITLED: "AN ACT EXTENDING WORKERS' COMPENSATION DISABILITY AND REHABILITATION COMPENSATION BENEFITS TO CERTAIN INMATES EMPLOYED WHILE PARTICIPATING IN PRERELEASE CENTER PROGRAMS AND OFFENDERS EMPLOYED WHILE PARTICIPATING IN COMMUNITY CORRECTIONS PROGRAMS AND DIVERSIONARY PROGRAMS; AND AMENDING SECTIONS 39-71-118 AND SECTION 39-71-744, MCA."

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

Section 1. Section 39-71-118, MCA, is amended to read:

"39-71-118. Employee, worker, workman, and volunteer firefighter defined. (1) The terms "employee", "workman", or "worker" mean:

(a) each person in this state, including a contractor other than an independent contractor who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations

while rendering actual service for such the corporations for pay. Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) a recipient of general relief who is performing work for a county of this state under the provisions of 53-3-303 through 53-3-305 and any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on the job vocational rehabilitation training or other on the job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined above while they are on the premises of a public school or community college;

(d) students enrolled and in attendance in programs of vocational technical education at designated vocational technical centers;

(e) an airman or other person employed as a volunteer

under 67-2-105, or

(f) a person, other than a juvenile as defined in subsection (1)(b), performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (f):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(g) an inmate who is employed while participating in a prerelease center program or an offender who is employed while participating in a community corrections program or a diversionary program.

(2) The term "volunteer firefighter" means a

firefighter who is an enrolled and active member of a fire company organized and funded by a county, a rural fire district, or a fire service area.

(3)(a) If the employer is a partnership or sole proprietorship, such the employer may elect to include as an employee within the provisions of this chapter any member of such the partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business.

(b) In the event of such an election as provided in subsection (3)(a), the employer must serve upon the employer's insurer written notice naming the partners or sole proprietor to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (3)(d). A partner or sole proprietor is not considered an employee within this chapter until such notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for

1 weekly-compensation--benefits,--the--electing--employer--may  
2 elect--not--less--than--\$900-a-month-and-not-more-than-1-1/2  
3 times-the-average-weekly-wage-as-defined-in-this-chapter.

4 (4)--The-trustees-of-a-rural-fire-district,--a-county  
5 governing--body--providing--rural--fire--protection,--or-the  
6 county-commissioners-or-trustees-for-a-fire-service-area-may  
7 elect-to-include-as-an-employee--within--the--provisions--of  
8 this--chapter---any---volunteer--firefighter,--A-volunteer  
9 firefighter-who-receives-workers'-compensation-coverage  
10 under-this-section-may-not-receive-disability-benefits-under  
11 Title-19, chapter-12.

12 (5)--An-employee, workman, or worker in this state whose  
13 services-are-furnished-by-a-person, association, contractor,  
14 firm, or corporation, other than a temporary service  
15 contractor, to an employer as defined in 39-71-117 is  
16 presumed-to-be-under--the--control--and--employment--of--the  
17 employer. This presumption may be rebutted as provided in  
18 39-71-117(3).

19 (6)--For purposes of this section, an "employee,  
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21 (a)--a resident of Montana who is employed by an  
22 employer and whose employment duties are primarily carried  
23 out or controlled within this state; or

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2 Section 1. Section 39-71-744, MCA, is amended to read:

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10 conviction of a felony. The insurer remains liable for  
11 medical benefits. No A time limit on benefits otherwise  
12 provided in this chapter is not extended due to a period of  
13 incarceration.

14 (2) A claimant PERSON who is employed while  
15 participating in a prerelease center program or an offender  
16 who is employed while participating in a community  
17 corrections program or a diversionary program is eligible as  
18 an employee under 39-71-118 FOR TEMPORARY TOTAL BENEFITS AS  
19 PROVIDED IN 39-71-701 AND MEDICAL BENEFITS FOR A  
20 WORK-RELATED INJURY. OTHER DISABILITY OR REHABILITATION  
21 BENEFITS ARE NOT PAYABLE WHILE THE WORKER IS PARTICIPATING  
22 IN A PRERELEASE CENTER. THIS SUBSECTION DOES NOT PROHIBIT  
23 THE REINSTATEMENT OF OTHER BENEFITS UPON RELEASE FROM  
24 INCARCERATION, NOR DOES IT APPLY TO AN EMPLOYEE PERFORMING  
25 COMMUNITY SERVICE DESCRIBED IN 39-71-118(1)(F)."

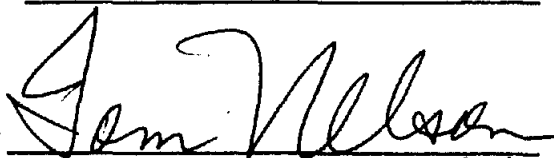
-End-

HOUSE STANDING COMMITTEE REPORT

March 12, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that Senate Bill 91 (third reading copy -- blue) be concurred in as amended

Signed:   
Tom Nelson, Chair

And, that such amendments read:

Carried by: Rep. Simon

1. Title, line 6.

Strike: "DISABILITY AND REHABILITATION COMPENSATION"

2. Page 6, line 20.

Following: "INJURY"

Insert: "received while participating in a prerelease center program or a diversionary program"

SB 91

Committee Vote:  
Yes 16, No 0.

HOUSE

## SENATE BILL NO. 91

INTRODUCED BY CHRISTIAENS, SIMON, WELDON, HOCKETT,

S. RICE, TUSS, REAM

A BILL FOR AN ACT ENTITLED: "AN ACT EXTENDING WORKERS' COMPENSATION DISABILITY--AND--REHABILITATION--COMPENSATION BENEFITS TO CERTAIN INMATES EMPLOYED WHILE PARTICIPATING IN PRERELEASE CENTER PROGRAMS AND--OFFENDERS--EMPLOYED WHILE PARTICIPATING--IN--COMMUNITY--CORRECTIONS--PROGRAMS AND DIVERSIONARY PROGRAMS; AND AMENDING SECTIONS 39-71-118 AND SECTION 39-71-744, MCA."

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while rendering actual service for such the corporations for pay. Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) a recipient of general relief who is performing work for a county of this state under the provisions of 53-3-303 through 53-3-305 and any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on the job vocational rehabilitation training or other on the job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined above while they are on the premises of a public school or community college;

(d) students enrolled and in attendance in programs of vocational technical education at designated vocational technical centers;

(e) an airman or other person employed as a volunteer

under-67-2-105;-or

{f}--a-person; other--than--a--juvenile--as--defined--in  
subsubsection--{1}{b};--performing--community--service--for--a  
nonprofit-organization-or--association--or--for--a--federat;  
state; or-local-government-entity-under-a-court-order; or-an  
order--from-a-hearings-officer-as-a-result-of-a-probation-or  
parole--violation;--whether--or--not--under--appointment--or  
contract-of-hire-with-an-employer-as-defined-in-this-chapter  
and-whether-or-not-receiving-payment-from-a-third-party;-For  
a-person-covered-by-the-definition-in-this-subsection-{f};

{i}--compensation-benefits-must-be--limited--to--medical  
expenses--pursuant--to--39-71-704--and--an--impairment-award  
pursuant-to-39-71-703-that-is-based-upon--the--minimum--wage  
established--under--Title--39;--chapter--37--part--47--for-a  
full-time-employee-at-the-time-of-the-injury; and

{ii}-premiums-must-be-paid-by-the-employer;--as--defined  
in--39-71-117{3};--and--must--be-based-upon-the-minimum-wage  
established-under-Title-39;--chapter--37--part--47--for--the  
number--of--hours--of--community--service-required-under-the  
order-from-the-court-or-hearings-officer;

{g}--an-inmate-who-is-employed-while-participating-in--a  
prerelease--center--program--or--an-offender-who-is-employed  
while-participating-in-a-community-corrections-program-or--a  
diversionary-program;

{2}--The----term--"volunteer--firefighter"---means---a

firefighter-who-is-an-enrolled-and-active-member-of--a--fire  
company--organized--and--funded--by--a--county; a-rural-fire  
district; or-a-fire-service-area;

{3}--{a}-if--the--employer--is--a--partnership--or--sole  
proprietorship; such the employer-may-elect-to-include-as-an  
employee-within-the-provisions-of-this-chapter-any-member-of  
such the partnership-or-the-owner-of-the-sole-proprietorship  
devoting-full-time--to--the--partnership--or--proprietorship  
business;

{b}--in--the--event--of--such an election as provided in  
subsubsection--{3}{a};--the--employer--must--serve--upon--the  
employer's--insurer--written--notice--naming-the-partners-or  
sole-proprietor-to-be-covered--and--stating--the--level--of  
compensation--coverage--desired--by--electing--the-amount-of  
wages--to--be--reported;--subject--to--the--limitations--in  
subsubsection--{3}{d};--A--partner--or--sole-proprietor-is-not  
considered-an-employee-within-this-chapter-until-such-notice  
has-been-given;

{c}--A-change-in-elected-wages-must-be-in-writing-and-is  
effective--at--the--start--of--the--next--quarter--following  
notification;

{d}--All-weekly-compensation-benefits-must-be--based--on  
the--amount--of--elected--wages;--subject-to-the-minimum-and  
maximum--limitations--of--this--subsection;--For--premium  
ratemaking--and--for--the--determination--of-weekly-wage-for

weekly-compensation--benefits,--the--electing--employer--may  
elect--not--less--than--\$900-a-month-and-not-more-than-1-1/2  
times-the-average-weekly-wage-as-defined-in-this-chapter:

(4)--The-trustees-of-a-rural--fire--district,--a-county  
governing--body--providing--rural--fire--protection,--or-the  
county-commissioners-or-trustees-for-a-fire-service-area-may  
elect-to-include-as-an-employee--within--the--provisions--of  
this--chapter--any--volunteer--firefighter,--A--volunteer  
firefighter--who--receives--workers--compensation--coverage  
under-this-section-may-not-receive-disability-benefits-under  
Title-19, chapter-12:

(5)--An-employee, workman, or worker in this state whose  
services-are-furnished-by-a-person, association, contractor,  
firm, or corporation, other than a temporary service  
contractor, to an employer as defined in 39-71-117 is  
presumed-to-be-under--the--control--and--employment--of--the  
employer. This presumption may be rebutted as provided in  
39-71-117(3):

(6)--For purposes of this section, an "employee,  
workman, or worker in this state" means:

(a)--a--resident--of--Montana--who--is--employed--by--an  
employer--and--whose-employment-duties-are-primarily-carried  
out-or-controlled-within-this-state; or

(b)--a--nonresident-of-Montana-whose-principal-employment  
duties-are-conducted-within-this-state-on-a--regular--basis

for-an-employer."

**Section 1.** Section 39-71-744, MCA, is amended to read:

"39-71-744. Benefits not due while claimant is  
incarcerated -- exceptions. (1) A EXCEPT AS PROVIDED IN  
SUBSECTION (2), A claimant is not eligible for any  
disability or rehabilitation compensation benefits while the  
claimant is incarcerated in a correctional institution, such  
as the Montana state prison, the Swan River forest camp, or  
the Montana women's correctional center, as the result of  
conviction of a felony. The insurer remains liable for  
medical benefits. No A time limit on benefits otherwise  
provided in this chapter is not extended due to a period of  
incarceration.

(2) A claimant PERSON who is employed while  
participating in a prerelease center program or an offender  
who-is-employed-while-participating-in-a-community  
corrections-program or a diversionary program is eligible as  
an-employee-under-39-71-118 FOR TEMPORARY TOTAL BENEFITS AS  
PROVIDED IN 39-71-701 AND MEDICAL BENEFITS FOR A  
WORK-RELATED INJURY RECEIVED WHILE PARTICIPATING IN A  
PRERELEASE CENTER PROGRAM OR A DIVERSIONARY PROGRAM. OTHER  
DISABILITY OR REHABILITATION BENEFITS ARE NOT PAYABLE WHILE  
THE WORKER IS PARTICIPATING IN A PRERELEASE CENTER. THIS  
SUBSECTION DOES NOT PROHIBIT THE REINSTATEMENT OF OTHER  
BENEFITS UPON RELEASE FROM INCARCERATION, NOR DOES IT APPLY



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1 TO AN EMPLOYEE PERFORMING COMMUNITY SERVICE DESCRIBED IN  
2 39-71-118(1)(F)."

-End-