

SENATE BILL NO. 163

INTRODUCED BY HARP, DRISCOLL, B. BROWN, TOWE,
HALLIGAN, BECK, BURNETT, GAGE, MESAROS, ORR, WAGNER,
KENNEDY, BRANDEWIE, CRIPPEN, BENEDICT, WILSON,
VAN VALKENBURG, YELLOWTAIL, BLAYLOCK, AKLESTAD, GRINDE,
BERGSAGEL, LYNCH, COCCHIARELLA, QUILICI, MERCER, WANZENRIED,
HIBBARD, J. RICE, DOWELL, SWYSGOOD, SCHYE, STRIZICH, HERRON,
BOHARSKI, NATHE, HARDING, DEVLIN, JERGESON, SWIFT,
HERTEL, HAGER, TVEIT
BY REQUEST OF THE GOVERNOR

IN THE SENATE

JANUARY 15, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
FEBRUARY 12, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 13, 1993	PRINTING REPORT.
FEBRUARY 18, 1993	SECOND READING, DO PASS.
FEBRUARY 19, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 50; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 23, 1993	INTRODUCED AND REFERRED TO SELECT COMMITTEE ON WORKERS' COMPENSATION.
	FIRST READING.
MARCH 11, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
	ON MOTION, REREFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
MARCH 20, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 24, 1993	SECOND READING, CONCURRED IN.

MARCH 25, 1993

THIRD READING, CONCURRED IN.
AYES, 94; NOES, 4.

RETURNED TO SENATE.

IN THE SENATE

MARCH 26, 1993

RECEIVED FROM HOUSE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Bob Smith* BILL NO. *163*
 2 INTRODUCED BY *HARP* *Bob Brown* *John Kelly*
 3 *Barlow* BY REQUEST OF THE GOVERNOR
 4 *Staylock* *AKLESTAD* *Yellow* *GRINOE* *Bequa* *Spuch*
 5 A BILL FOR AN ACT ENTITLED "AN ACT CREATING THE MONTANA
 6 SAFETY CULTURE ACT; REQUIRING EMPLOYERS TO ESTABLISH SAFETY
 7 PROGRAMS; REQUIRING SAFETY TRAINING AND EDUCATION PROGRAMS;
 8 *Wm. E. Edwards* *Harding* *Jergeson* *Griff*
 9 CONSULTATION SERVICES; GRANTING IMMUNITY TO INSURERS FOR
 10 CERTAIN OCCURRENCES; CREATING A SAFE EMPLOYMENT EDUCATION
 11 AND TRAINING ADVISORY COMMITTEE; ALLOWING THE STATE FUND TO
 12 IMPLEMENT VARIABLE PRICING LEVELS; ALLOWING THE STATE FUND
 13 TO PLACE A SURCHARGE ON HIGH-LOSS EMPLOYERS; AMENDING
 14 SECTION 39-71-2311, MCA; AND PROVIDING EFFECTIVE DATES."

STATEMENT OF INTENT

17 A statement of intent is required for this bill because
 18 [section 5] authorizes the department of labor and industry
 19 to adopt rules to implement safety programs and to stimulate
 20 the creation of a safety culture in Montana workplaces. The
 21 rules adopted by the department must:

22 (1) be consistent with the provisions of [this act] and
 23 of Titles 33 and 39 and Title 50, chapter 71; and

24 (2) further the objectives of improving occupational
 25 safety and health and reducing the costs of the workers'

1 compensation system by attempting to control or diminish the
 2 incidence of injury or illness.

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

5 NEW SECTION. **Section 1.** Short title. [Sections 1
 6 through 9] may be cited as the "Montana Safety Culture Act".

7 NEW SECTION. **Section 2.** Purpose. The purpose of
 8 [sections 1 through 9] is to reduce the incidence of
 9 occupational injury and illness by promoting safety in the
 10 workplace in order to control the costs of claims for
 11 workers' compensation insurance. The creation of a safety
 12 culture requires employers to provide training and education
 13 to make safety awareness part of the requirement for each
 14 worker's satisfactory job performance and requires the
 15 department to promote safety awareness for the public
 16 through the education and preparation of each student for
 17 entrance into the labor market. A reduction in workplace
 18 injuries, illnesses, and deaths through enhanced safety on
 19 the job benefits the public as well as the employers and the
 20 employees by lowering both financial and physical costs.
 21 Ensuring immunity to insurers in the provision of safety
 22 consultation services encourages and promotes safety in the
 23 workplace and improves the relationship between employers
 24 and employees.

25 NEW SECTION. **Section 3.** Safety consultation. (1) As

1 used in [sections 1 through 9], "safety consultation
2 services" means assistance rendered by an insurer to advise
3 and aid a policyholder, management, or an employer in the
4 identification, evaluation, and control of existing and
5 potential accidental and occupational health problems. The
6 services may be delivered in person, by mail, or by
7 telephone, based upon need.

8 (2) Safety consultation services include but are not
9 limited to:

10 (a) surveys consisting of onsite identification and
11 subsequent evaluation of exposures relative to employees,
12 materials, equipment, work methods, processes, and
13 facilities;

14 (b) recommendations expressed in the form of
15 communications to policyholders or employers, with reference
16 to control of exposures to occupational accident, injury, or
17 illness and to improvement of safety programs and systems;

18 (c) training programs, including aids, programs, and
19 materials made available to assist in the control of
20 exposures;

21 (d) consultations to advise employers relative to risk,
22 exposure, and experience in the policyholder's business;

23 (e) accident analysis consisting of review of reported
24 accidents to determine cause and trends; and

25 (f) industrial hygiene services, including recognition,

1 evaluation, and control of chemical, physical, and
2 biological exposures.

3 NEW SECTION. **Section 4. Safety programs -- educational**
4 **activities.** To promote health and safety in places of
5 employment in this state:

6 (1) each public or private employer shall establish and
7 administer a safety program in accordance with rules adopted
8 by the department pursuant to [section 5]; and

9 (2) the department, relying upon the support and
10 assistance of concerned private entities or other
11 governmental agencies, shall produce and distribute material
12 to the schools of Montana and provide guest speakers
13 intended to:

14 (a) educate students about the necessity for safe work
15 practices;

16 (b) prepare students to embark on accident-free
17 careers; and

18 (c) disseminate information promoting the reduction and
19 control of the rate of incidence of workplace injuries or
20 occupational disease.

21 NEW SECTION. **Section 5. Rulemaking authority.** The
22 department shall adopt rules, including but not limited to
23 rules that require:

24 (1) each employer to conduct an educational-based
25 safety program, including but not limited to:

1 (a) a safety training program to provide:
 2 (i) new employee general safety orientation;
 3 (ii) job- or task-specific safety training; and
 4 (iii) continuous refresher safety training, including
 5 periodic safety meetings;
 6 (b) periodic hazard assessment, with corrective actions
 7 identified; and
 8 (c) appropriate documentation of performance of the
 9 activities; and
 10 (2) an employer of more than five employees to have a
 11 comprehensive safety program, including but not limited to:
 12 (a) a safety committee composed of employee and
 13 employer representatives that holds regularly scheduled
 14 meetings;
 15 (b) procedures of reporting and investigating all
 16 work-related incidents, accidents, injuries, and illnesses;
 17 and
 18 (c) policies and procedures that assign specific safety
 19 responsibilities and safety performance accountability.
 20 **NEW SECTION. Section 6. Notification of safety**
 21 **consultation services available by insurer.** To implement
 22 safety requirements, each insurer shall notify each
 23 policyholder or employer of the type of safety consultation
 24 services available and the location where the safety
 25 consultation services may be requested.

1 **NEW SECTION. Section 7. Safety consultation services**
 2 **-- safety program as provision of insurance contract or**
 3 **agreement.** (1) Each insurer shall provide safety
 4 consultation services to each of its policyholders or
 5 employers who request the assistance.
 6 (2) The safety consultation services to be provided are
 7 within the discretion of the insurer but must include
 8 consideration of the hazard, experience, and size of the
 9 policyholder's or employer's operations.
 10 (3) The insurer shall establish a system of priorities
 11 to use in responding to worksite safety consultation service
 12 requests, giving first priority to employers that have an
 13 unreasonably high actual or potential loss experience.
 14 (4) Each insurer's insurance contract or agreement must
 15 require each policyholder or employer to implement a safety
 16 program as part of the contract or agreement to provide
 17 workers' compensation coverage.
 18 **NEW SECTION. Section 8. Safety employment education**
 19 **and training advisory committee -- terms -- expenses --**
 20 **duties -- meetings.** (1) There is a safety employment
 21 education and training advisory committee composed of seven
 22 members appointed by the commissioner of labor and industry
 23 to serve for terms of 3 years or at the pleasure of the
 24 commissioner.
 25 (2) The committee consists of:

- 1 (a) three members representing employees;
- 2 (b) three members representing employers; and
- 3 (c) one member representing the department of labor and
- 4 industry.
- 5 (3) The committee shall elect its presiding officer.
- 6 (4) Before the expiration of the term of a member of
- 7 the committee, the commissioner shall appoint a successor. A
- 8 member may be reappointed. The commissioner shall make an
- 9 appointment to fill a vacancy before a term expires.
- 10 (5) The members of the committee serve without
- 11 compensation but are entitled to travel expenses as provided
- 12 in 2-18-501.
- 13 (6) The commissioner shall prescribe the committee's
- 14 duties, including but not limited to recommending to the
- 15 commissioner methods by which the department may:
- 16 (a) implement safety education in secondary schools and
- 17 vocational-technical programs;
- 18 (b) facilitate the implementation of employer safety
- 19 programs; and
- 20 (c) universally increase safety awareness in the
- 21 workplace.
- 22 (7) The committee shall meet at least once every 3
- 23 months at a place and time determined by the committee and
- 24 shall meet at other times and places determined by a
- 25 majority of the members of the committee or the presiding

- 1 officer of the committee. Four members of the committee
- 2 constitute a quorum for the transaction of business, but the
- 3 department member may not be counted to determine a quorum.
- 4 **NEW SECTION. Section 9. Safety consultation services**
- 5 **-- insurer's exemption from civil liability -- exceptions.**
- 6 (1) The furnishing of or the failure to furnish safety
- 7 consultation services related to, in connection with, or
- 8 incidental to a workers' compensation insurance contract or
- 9 agreement to provide workers' compensation coverage does not
- 10 subject the insurer or its agents, employees, or service
- 11 contractors to liability for damages from injury, loss, or
- 12 death, whether direct or consequential, occurring as a
- 13 result of any act or omission by any person in the course of
- 14 providing safety consultation services.
- 15 (2) Subsection (1) does not apply:
- 16 (a) if the injury, loss, or death occurred during the
- 17 actual performance of safety consultation services and was
- 18 directly and proximately caused by the negligence of the
- 19 insurer or its agents, employees, or service contractors;
- 20 (b) to any safety consultation services required to be
- 21 performed under the provisions of a written service contract
- 22 for which a specific charge is made and not incidental to a
- 23 policy of insurance; or
- 24 (c) in an action against an insurer or its agents,
- 25 employees, or service contractors for damages caused by the

act or omission of the insurer or its agents, employees, or service contractors in which it is judicially determined that the act or omission constituted a crime or involved actual malice.

NEW SECTION. Section 10. Variable pricing -- higher premium by state fund for noncompliance with safety program.

(1) The state fund shall:

(a) implement variable pricing levels within individual rate classifications to reward an employer with a good safety record and penalize an employer with a poor safety record. The timeliness of an employer's payroll reporting and premium payments and other relevant factors may be considered in the placement of an employer within the variable pricing levels.

(b) provide an additional pricing level with a higher rate within the classification for those employers who do not satisfactorily implement a safety program subsequent to an insurer's provision of or attempt to provide onsite safety consultation services.

(2) The state fund may assess a surcharge of an additional 20% on premiums payable to the state fund by high-loss employers. The criteria for identifying high-loss employers must be established by the state fund board of directors by rule.

NEW SECTION. Section 11. Safety program requirement in

workers' compensation policies. A policy, contract, or agreement to insure an employer against a workers' compensation or occupational disease risk must require each policyholder or employer to implement a safety program, as provided in [section 7], as part of the policy, contract, or agreement to provide workers' compensation or occupational disease insurance coverage.

Section 12. Section 39-71-2311, MCA, is amended to read:

"39-71-2311. Intent and purpose of plan. It is the intent and purpose of the state fund to allow employers the option to insure their liability for workers' compensation and occupational disease coverage with a mutual insurance fund. The state fund is required to insure any employer in this state requesting coverage, and it may not refuse coverage for an employer ~~unless--an--assigned--risk--plan established--under--39-71-431--is--in-effect~~. The state fund must be neither more nor less than self-supporting. Premium rates must be set at least annually at a level sufficient to ensure the adequate funding of the insurance program, including the costs of administration, benefits, and adequate reserves, during and at the end of the period for which the rates will be in effect. In determining premium rates, the state fund shall make every effort to adequately predict future costs. When the costs of a factor influencing

1 rates are unclear and difficult to predict, the state fund
 2 shall use a prediction calculated to be more than likely to
 3 cover those costs rather than less than likely to cover
 4 those costs. Unnecessary surpluses that are created by the
 5 imposition of premiums found to have been set higher than
 6 necessary because of a high estimate of the cost of a factor
 7 or factors may be refunded by the declaration of a dividend
 8 as provided in this part. For the purpose of keeping the
 9 state fund solvent, it must implement variable pricing
 10 levels ~~within--individual-rate-classifications-to-reward-an~~
 11 ~~employer-with-a-good-safety-record-and-penalize-an--employer~~
 12 ~~with--a--poor-safety-record--An-employer's-payroll-reporting~~
 13 ~~and-premium-history-and-other-relevant-factors-may--also--be~~
 14 ~~considered---in--implementing--variable--pricing--levels~~ as
 15 provided in [section 10]."

16 **NEW SECTION. Section 13.** Codification instruction. (1)
 17 [Sections 1 through 7 and 9] are intended to be codified as
 18 an integral part of Title 39, chapter 71, and the provisions
 19 of Title 39, chapter 71, apply to [sections 1 through 7 and
 20 9].

21 (2) [Section 8] is intended to be codified as an
 22 integral part of Title 2, chapter 15, and the provisions of
 23 Title 2, chapter 15, apply to [section 8].

24 (3) [Section 10] is intended to be codified as an
 25 integral part of Title 39, chapter 71, part 23, and the

1 provisions of Title 39, chapter 71, part 23, apply to
 2 [section 10].

3 (4) [Section 11] is intended to be codified as an
 4 integral part of Title 33, chapter 15, part 3, and the
 5 provisions of Title 33, chapter 15, part 3, apply to
 6 [section 11].

7 **NEW SECTION. Section 14.** Saving clause. [This act]
 8 does not affect rights and duties that matured, penalties
 9 that were incurred, or proceedings that were begun before
 10 [the effective date of this act].

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

17 **NEW SECTION. Section 16.** Effective dates. (1)
 18 [Sections 5, 8, and this section] are effective July 1,
 19 1993.

20 (2) [Sections 1 through 4, 6, 7, and 9 through 15] are
 21 effective January 1, 1994.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0163, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act creating the Montana Safety Culture Act; requiring employers to establish safety programs; requiring safety training and education programs; requiring workers' compensation insurers to provide safety consultation services; granting immunity to insurers for certain occurrences; creating a safe employment education and training advisory committee; allowing the State Fund to implement variable pricing levels; allowing the State Fund to place a surcharge on high-loss employers.

ASSUMPTIONS:

State Fund:

1. There would be increased numbers of requests for safety consultation services and increased numbers of "high loss" accounts accepting safety consultation services due to variable pricing.
2. A priority system would be established to provide safety services on a cost effective basis.
3. A system of on-site field visitations and passive safety training/education will be established prior to the January 1, 1994, effective date to ensure availability of services beginning on the effective date.
4. The State Fund computer system is on a fiscal year cycle. To avoid significant costs of changing to a calendar-year cycle, the assignment of policies to higher rate categories will be delayed until July 1, 1994, versus the January 1, 1994, effective date.
5. Variable pricing, including a category for assessment of a 20% surcharge, is authorized under current law. The bill clarifies that uncooperative employers can be charged a higher rate within their classification, despite actual safety record. Variable pricing, per se, would be revenue neutral over a long time frame.
6. Increased costs in the Department of Labor would be passed through to the State Fund through the workers' compensation assessment. In FY92, 48.71% of workers' compensation assessments were made to the State Fund with the balance assessed to private carriers and self-insureds.

Department of Labor:

1. A total of 193 high schools and five vo-tech centers in Montana represent 12,500 students who would receive a mailing from the department twice per academic year.
2. The 193 high schools would be visited personally by a training officer, who would conduct safety awareness exercises, once every two years.
3. An advisory council, consisting of seven members, will be appointed by the Commissioner to meet monthly in first year; bi-monthly in second year. No stipends will be paid but per diem will be given.
4. The department will have rule making authority as set forth in the bill and will be required to file with Secretary of State.
5. One full time training officer (grade 14) will be required to organize, coordinate and schedule the mailings and to make presentations in the schools and to trade associations. The training officer also will provide staff assistance to the advisory committee.
6. Costs are as estimated by the Department of Labor.

(continued)

Dave Lewis 1-26-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

John Hare 1/26/93
JOHN HARE, PRIMARY SPONSOR DATE

Fiscal Note for SB0163, as introduced

SB163

Fiscal Note Request, SB0163, as introduced
Form BD-15 page 2
(continued)

FISCAL IMPACT:

State Fund:

Expenditures:

	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	224.50	230.50	6.00	227.50	235.50	8.00
Personal Services	6,498,681	6,694,773	196,092	6,584,924	6,846,380	261,456
Operating	3,615,187	3,721,102	105,915	3,922,172	3,975,562	53,390
Equipment	310,066	404,566	94,500	236,597	236,597	0
Benefits	166,027,953	166,027,953	0	182,948,465	182,948,465	0
Transfers	2,839,300	2,884,944	45,644	2,716,695	2,741,577	37,962
Debt Service	134,256	134,256	0	221,580	221,580	0
Total (Proprietary)	\$179,425,443	\$179,867,594	\$442,151	\$196,630,433	\$196,983,241	\$352,808

Department of Labor and Industry:
Research Safety & Training Div (PG 07)

	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	64.30	65.30	1.00	64.30	65.30	1.00
Personal Services	2,062,070	2,098,675	36,605	2,064,578	2,101,663	37,085
Operating Expenses	1,065,101	1,119,401	54,300	1,065,246	1,106,096	40,850
Equipment	136,304	139,104	2,800	76,059	76,059	0
Total	3,263,475	3,357,180	93,705	3,205,883	3,283,818	77,935

Funding:

Workers' Comp. Assessment (02)	1,114,877	1,208,582	93,705	1,057,225	1,135,160	77,935
Federal Revenue	2,148,598	2,148,598	0	2,148,658	2,148,658	0
Total	3,263,475	3,357,180	93,705	3,205,883	3,283,818	77,935

Revenue:

WC Assessments (02)	3,197,368	3,291,073	93,705	3,199,373	3,277,308	77,935
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LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Safety education for vocational technical students training for high risk occupations are likely to enhance safety awareness in the workplace. In addition, effectively targeted safety consultations and increased financial incentives for employers to implement safety improvements are likely to decrease the incidence of preventable injury and occupational disease. Reductions in State Fund payment of workers' compensation claims and associated costs are inestimable but potentially significant.

SB 163

APPROVED BY COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONS

SENATE BILL NO. 163

INTRODUCED BY HARP, DRISCOLL, B. BROWN, TOWE,

HALLIGAN, BECK, BURNETT, GAGE, MESAROS, ORR, WAGNER,

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BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA SAFETY CULTURE ACT; REQUIRING EMPLOYERS TO ESTABLISH SAFETY PROGRAMS; REQUIRING SAFETY TRAINING AND EDUCATION PROGRAMS; REQUIRING WORKERS' COMPENSATION INSURERS TO PROVIDE SAFETY CONSULTATION SERVICES; GRANTING IMMUNITY TO INSURERS FOR CERTAIN OCCURRENCES; CREATING A SAFE EMPLOYMENT EDUCATION AND TRAINING ADVISORY COMMITTEE; ALLOWING THE STATE FUND TO IMPLEMENT VARIABLE PRICING LEVELS; ALLOWING THE STATE FUND TO PLACE A SURCHARGE ON HIGH-LOSS EMPLOYERS; AMENDING SECTION 39-71-2311, MCA; AND PROVIDING EFFECTIVE DATES."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 5] authorizes the department of labor and industry

to adopt rules to implement safety programs and to stimulate the creation of a safety culture in Montana workplaces. The rules adopted by the department must:

(1) be consistent with the provisions of [this act] and of Titles 33 and 39 and Title 50, chapter 71; and

(2) further the objectives of improving occupational safety and health and reducing the costs of the workers' compensation system by attempting to control or diminish the incidence of injury or illness.

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

NEW SECTION. Section 1. Short title. [Sections 1 through 9] may be cited as the "Montana Safety Culture Act".

NEW SECTION. Section 2. Purpose. The purpose of [sections 1 through 9] is to reduce the incidence of occupational injury and illness by promoting safety in the workplace in order to control the costs of claims for workers' compensation insurance. The creation of a safety culture requires employers to provide training and education to make safety awareness part of the requirement for each worker's satisfactory job performance and requires the department to promote safety awareness for the public through the education and preparation of each student for entrance into the labor market. A reduction in workplace injuries, illnesses, and deaths through enhanced safety on

the job benefits the public as well as the employers and the employees by lowering both financial and physical costs. Ensuring immunity to insurers in the provision of safety consultation services encourages and promotes safety in the workplace and improves the relationship between employers and employees.

NEW SECTION. Section 3. Safety consultation. (1) As used in [sections 1 through 9], "safety consultation services" means assistance rendered by an insurer to advise and aid ~~a policyholder, management, or an~~ INSURED employer in the identification, evaluation, and control of existing and potential accidental and occupational health problems. The services may be delivered in person, by mail, or by telephone, based upon need.

(2) Safety consultation services include but are not limited to:

(a) surveys consisting of onsite identification and subsequent evaluation of exposures relative to employees, materials, equipment, work methods, processes, and facilities;

(b) recommendations expressed in the form of communications to ~~policyholders--or--employers~~ AN INSURED EMPLOYER, with reference to control of exposures to occupational accident, injury, or illness and to improvement of safety programs and systems;

(c) training programs, including aids, programs, and materials made available to assist in the control of exposures;

(d) consultations to advise INSURED employers relative to risk, exposure, and experience in the ~~policyholder's~~ INSURED EMPLOYER'S business;

(e) accident analysis consisting of review of reported accidents to determine cause and trends; and

(f) industrial hygiene services, including recognition, evaluation, and control of chemical, physical, and biological exposures.

NEW SECTION. Section 4. Safety programs -- educational activities. (1) To promote health and safety in places of employment in this state:

(1)(A) each public or private employer shall establish and administer a safety program in accordance with rules adopted by the department pursuant to [section 5]; and

(2)(B) the department, relying upon the support and assistance of concerned private entities or other governmental agencies, shall produce and distribute material to the schools of Montana and provide guest speakers intended to:

(a)(I) educate students about the necessity for safe work practices;

(b)(II) prepare students to embark on accident-free

careers; and

~~(c)~~ (III) disseminate information promoting the reduction and control of the rate of incidence of workplace injuries or occupational disease.

(2) AN EMPLOYER WHO EMPLOYS TEMPORARY WORKERS SHALL INCLUDE THOSE WORKERS IN THE EMPLOYER'S SAFETY PROGRAM. A TEMPORARY SERVICES CONTRACTOR SHALL PROVIDE A SAFETY PROGRAM FOR EMPLOYEES NOT EMPLOYED BY OTHER EMPLOYERS.

NEW SECTION. Section 5. Rulemaking authority. The department shall adopt rules, including but not limited to rules that require:

(1) each employer to conduct an educational-based safety program, including but not limited to:

(a) a safety training program to provide:

(i) new employee general safety orientation;

(ii) job- or task-specific safety training; and

(iii) continuous refresher safety training, including periodic safety meetings;

(b) periodic hazard assessment, with corrective actions identified; and

(c) appropriate documentation of performance of the activities; and

(2) an employer of more than five employees to have a comprehensive AND EFFECTIVE safety program, including but not limited to:

(a) a safety committee composed of employee and employer representatives that holds regularly scheduled meetings;

(b) procedures of reporting and investigating all work-related incidents, accidents, injuries, and illnesses; and

(c) policies and procedures that assign specific safety responsibilities and safety performance accountability.

NEW SECTION. Section 6. Notification of safety consultation services available by insurer. To implement safety requirements, each insurer shall notify each policyholder-or INSURED employer of the type of safety consultation services available and the location where the safety consultation services may be requested.

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(2) The safety consultation services to be provided are within the discretion of the insurer but must include consideration of the hazard, experience, and size of the policyholder's-or INSURED employer's operations.

(3) The insurer shall establish a system of priorities to use in responding to worksite safety consultation service

requests, giving first priority to INSURED employers that have an unreasonably high actual or potential loss experience.

(4) Each insurer's insurance contract or agreement must require each policyholder or INSURED employer to implement a safety program as part of the contract or agreement to provide workers' compensation coverage.

NEW SECTION. Section 8. Safety employment education and training advisory committee -- terms -- expenses -- duties -- meetings. (1) There is a safety employment education and training advisory committee composed of seven members appointed by the commissioner of labor and industry to serve for terms of 3 years or ~~at the pleasure of the commissioner.~~

(2) The committee consists of:

- (a) three members representing employees;
- (b) three members representing employers; and
- (c) one member representing the department of labor and industry.

(3) The committee shall elect its presiding officer.

(4) Before the expiration of the term of a member of the committee, the commissioner shall appoint a successor. A member may be reappointed. The commissioner shall make an appointment to fill a vacancy ~~before a term expires.~~

(5) The members of the committee serve without

compensation but are entitled to travel expenses as provided in 2-18-501.

(6) The commissioner shall prescribe the committee's duties, including but not limited to recommending to the commissioner methods by which the department may:

(a) implement safety education in secondary schools and vocational-technical programs;

(b) facilitate the implementation of employer safety programs; and

(c) universally increase safety awareness in the workplace.

(7) The committee shall meet at least once every 3 months at a place and time determined by the committee and shall meet at other times and places determined by a majority of the members of the committee or the presiding officer of the committee. Four members of the committee constitute a quorum for the transaction of business, but the department member may not be counted to determine a quorum.

NEW SECTION. Section 9. Safety consultation services -- insurer's exemption from civil liability -- exceptions.

(1) The furnishing of or the failure to furnish safety consultation services related to, in connection with, or incidental to a workers' compensation insurance contract or agreement to provide workers' compensation coverage does not subject the insurer or its agents, employees, or service

contractors to liability for damages from injury, loss, or death, whether direct or consequential, occurring as a result of any act or omission by any person in the course of providing safety consultation services.

(2) Subsection (1) does not apply:

(a) if the injury, loss, or death occurred during the actual performance of safety consultation services and was directly and proximately caused by the negligence of the insurer or its agents, employees, or service contractors;

(b) to any safety consultation services required to be performed under the provisions of a written service contract for which a specific charge is made and not incidental to a policy of insurance; or

(c) in an action against an insurer or its agents, employees, or service contractors for damages caused by the act or omission of the insurer or its agents, employees, or service contractors in which it is judicially determined that the act or omission constituted a crime or involved actual malice.

NEW SECTION. Section 10. Variable pricing -- higher premium by state fund for noncompliance with safety program -- EXPENDITURE ACCOUNTING. (1) The state fund shall:

(a) implement variable pricing levels within individual rate classifications to reward an employer with a good safety record and penalize an employer with a poor safety

record. The timeliness of an employer's payroll reporting and premium payments and other relevant factors may be considered in the placement of an employer within the variable pricing levels.

(b) provide an additional pricing level with a higher rate within the classification for those employers who do not satisfactorily implement a safety program subsequent to an-insurer's THE provision of or attempt to provide onsite safety consultation services.

(2) The state fund may assess a surcharge of an additional 20% on premiums payable to the state fund by high-loss employers. The criteria for identifying high-loss employers must be established by the state fund board of directors by rule.

(3) THE STATE FUND SHALL SEPARATELY ACCOUNT FOR MONEY EXPENDED UNDER [SECTIONS 1 THROUGH 11] AND 39-71-2311.

NEW SECTION. Section 11. Safety program requirement in workers' compensation policies. A policy, contract, or agreement to insure an employer against a workers' compensation or occupational disease risk must require each policyholder--or INSURED employer to implement a safety program, as provided in [section 7], as part of the policy, contract, or agreement to provide workers' compensation or occupational disease insurance coverage.

Section 12. Section 39-71-2311, MCA, is amended to

1 read:

2 "39-71-2311. Intent and purpose of plan. It is the
3 intent and purpose of the state fund to allow employers the
4 option to insure their liability for workers' compensation
5 and occupational disease coverage with a mutual insurance
6 fund. The state fund is required to insure any employer in
7 this state requesting coverage, and it may not refuse
8 coverage for an employer unless--an--assigned--risk-plan
9 established-under-39-71-431-is-in--effect. The state fund
10 must be neither more nor less than self-supporting. Premium
11 rates must be set at least annually at a level sufficient to
12 ensure the adequate funding of the insurance program,
13 including the costs of administration, benefits, and
14 adequate reserves, during and at the end of the period for
15 which the rates will be in effect. In determining premium
16 rates, the state fund shall make every effort to adequately
17 predict future costs. When the costs of a factor influencing
18 rates are unclear and difficult to predict, the state fund
19 shall use a prediction calculated to be more than likely to
20 cover those costs rather than less than likely to cover
21 those costs. Unnecessary surpluses that are created by the
22 imposition of premiums found to have been set higher than
23 necessary because of a high estimate of the cost of a factor
24 or factors may be refunded by the declaration of a dividend
25 as provided in this part. For the purpose of keeping the

1 state fund solvent, it must implement variable pricing
2 levels within-individual-rate-classifications-to--reward--an
3 employer--with-a-good-safety-record-and-penalize-an-employer
4 with-a-poor-safety-record--An-employer's--payroll--reporting
5 and--premium--history-and-other-relevant-factors-may-also-be
6 considered--in--implementing--variable--pricing--levels as
7 provided in [section 10]."

8 NEW SECTION. Section 13. Codification instruction. (1)

9 [Sections 1 through 7 and 9] are intended to be codified as
10 an integral part of Title 39, chapter 71, and the provisions
11 of Title 39, chapter 71, apply to [sections 1 through 7 and
12 9].

13 (2) [Section 8] is intended to be codified as an
14 integral part of Title 2, chapter 15, and the provisions of
15 Title 2, chapter 15, apply to [section 8].

16 (3) [Section 10] is intended to be codified as an
17 integral part of Title 39, chapter 71, part 23, and the
18 provisions of Title 39, chapter 71, part 23, apply to
19 [section 10].

20 (4) [Section 11] is intended to be codified as an
21 integral part of Title 33, chapter 15, part 3, and the
22 provisions of Title 33, chapter 15, part 3, apply to
23 [section 11].

24 NEW SECTION. Section 14. Saving clause. [This act]
25 does not affect rights and duties that matured, penalties

1 that were incurred, or proceedings that were begun before
2 [the effective date of this act].

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

9 NEW SECTION. **Section 16. Effective dates.** (1)
10 [Sections 5, 8, and this section] are effective July 1,
11 1993.

12 (2) [Sections 1 through 4, 6, 7, and 9 through 15] are
13 effective January 1, 1994.

-End-

SENATE BILL NO. 163

INTRODUCED BY HARP, DRISCOLL, B. BROWN, TOWE,
HALLIGAN, BECK, BURNETT, GAGE, MESAROS, ORR, WAGNER,
KENNEDY, BRANDEWIE, CRIPPEN, BENEDICT, WILSON,

VAN VALKENBURG, YELLOWTAIL, BLAYLOCK, AKLESTAD, GRINDE,
BERGSAGEL, LYNCH, COCCHIARELLA, QUILICI, MERCER, WANZENRIED,
HIBBARD, J. RICE, DOWELL, SWYSGOOD, SCHYE, STRIZICH, HERRON,
BOHARSKI, NATHE, HARDING, DEVLIN, JERGESON, SWIFT,
HERTEL, HAGER, TVEIT

BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA
SAFETY CULTURE ACT; REQUIRING EMPLOYERS TO ESTABLISH SAFETY
PROGRAMS; REQUIRING SAFETY TRAINING AND EDUCATION PROGRAMS;
REQUIRING WORKERS' COMPENSATION INSURERS TO PROVIDE SAFETY
CONSULTATION SERVICES; GRANTING IMMUNITY TO INSURERS FOR
CERTAIN OCCURRENCES; CREATING A SAFE EMPLOYMENT EDUCATION
AND TRAINING ADVISORY COMMITTEE; ALLOWING THE STATE FUND TO
IMPLEMENT VARIABLE PRICING LEVELS; ALLOWING THE STATE FUND
TO PLACE A SURCHARGE ON HIGH-LOSS EMPLOYERS; AMENDING
SECTION 39-71-2311, MCA; AND PROVIDING EFFECTIVE DATES."

STATEMENT OF INTENT

A statement of intent is required for this bill because
[section 5] authorizes the department of labor and industry

to adopt rules to implement safety programs and to stimulate
the creation of a safety culture in Montana workplaces. The
rules adopted by the department must:

(1) be consistent with the provisions of [this act] and
of Titles 33 and 39 and Title 50, chapter 71; and

(2) further the objectives of improving occupational
safety and health and reducing the costs of the workers'
compensation system by attempting to control or diminish the
incidence of injury or illness.

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

NEW SECTION. Section 1. Short title. [Sections 1
through 9] may be cited as the "Montana Safety Culture Act".

NEW SECTION. Section 2. Purpose. The purpose of
[sections 1 through 9] is to reduce the incidence of
occupational injury and illness by promoting safety in the
workplace in order to control the costs of claims for
workers' compensation insurance. The creation of a safety
culture requires employers to provide training and education
to make safety awareness part of the requirement for each
worker's satisfactory job performance and requires the
department to promote safety awareness for the public
through the education and preparation of each student for
entrance into the labor market. A reduction in workplace
injuries, illnesses, and deaths through enhanced safety on

the job benefits the public as well as the employers and the employees by lowering both financial and physical costs. Ensuring immunity to insurers in the provision of safety consultation services encourages and promotes safety in the workplace and improves the relationship between employers and employees.

NEW SECTION. Section 3. Safety consultation. (1) As used in [sections 1 through 9], "safety consultation services" means assistance rendered by an insurer to advise and aid a-policyholder--management--or an INSURED employer in the identification, evaluation, and control of existing and potential accidental and occupational health problems. The services may be delivered in person, by mail, or by telephone, based upon need.

(2) Safety consultation services include but are not limited to:

(a) surveys consisting of onsite identification and subsequent evaluation of exposures relative to employees, materials, equipment, work methods, processes, and facilities;

(b) recommendations expressed in the form of communications to policyholders--or--employers AN INSURED EMPLOYER, with reference to control of exposures to occupational accident, injury, or illness and to improvement of safety programs and systems;

(c) training programs, including aids, programs, and materials made available to assist in the control of exposures;

(d) consultations to advise INSURED employers relative to risk, exposure, and experience in the policyholder's INSURED EMPLOYER'S business;

(e) accident analysis consisting of review of reported accidents to determine cause and trends; and

(f) industrial hygiene services, including recognition, evaluation, and control of chemical, physical, and biological exposures.

NEW SECTION. Section 4. Safety programs -- educational activities. (1) To promote health and safety in places of employment in this state:

(A) each public or private employer shall establish and administer a safety program in accordance with rules adopted by the department pursuant to [section 5]; and

(B) the department, relying upon the support and assistance of concerned private entities or other governmental agencies, shall produce and distribute material to the schools of Montana and provide guest speakers intended to:

(I) educate students about the necessity for safe work practices;

(II) prepare students to embark on accident-free

1 careers; and

2 ~~(c)~~(III) disseminate information promoting the reduction
3 and control of the rate of incidence of workplace injuries
4 or occupational disease.

5 (2) AN EMPLOYER WHO EMPLOYS TEMPORARY WORKERS SHALL
6 INCLUDE THOSE WORKERS IN THE EMPLOYER'S SAFETY PROGRAM. A
7 TEMPORARY SERVICES CONTRACTOR SHALL PROVIDE A SAFETY PROGRAM
8 FOR EMPLOYEES NOT EMPLOYED BY OTHER EMPLOYERS.

9 NEW SECTION. Section 5. Rulemaking authority. The
10 department shall adopt rules, including but not limited to
11 rules that require:

12 (1) each employer to conduct an educational-based
13 safety program, including but not limited to:

14 (a) a safety training program to provide:
15 (i) new employee general safety orientation;
16 (ii) job- or task-specific safety training; and
17 (iii) continuous refresher safety training, including
18 periodic safety meetings;

19 (b) periodic hazard assessment, with corrective actions
20 identified; and

21 (c) appropriate documentation of performance of the
22 activities; and

23 (2) an employer of more than five employees to have a
24 comprehensive AND EFFECTIVE safety program, including but
25 not limited to:

1 (a) a safety committee composed of employee and
2 employer representatives that holds regularly scheduled
3 meetings;

4 (b) procedures of reporting and investigating all
5 work-related incidents, accidents, injuries, and illnesses;
6 and

7 (c) policies and procedures that assign specific safety
8 responsibilities and safety performance accountability.

9 NEW SECTION. Section 6. Notification of safety
10 consultation services available by insurer. To implement
11 safety requirements, each insurer shall notify each
12 policyholder-or INSURED employer of the type of safety
13 consultation services available and the location where the
14 safety consultation services may be requested.

15 NEW SECTION. Section 7. Safety consultation services
16 -- safety program as provision of insurance contract or
17 agreement. (1) Each insurer shall provide safety
18 consultation services to each of its policyholders--or
19 INSURED employers who request the assistance.

20 (2) The safety consultation services to be provided are
21 within the discretion of the insurer but must include
22 consideration of the hazard, experience, and size of the
23 policyholder's-or INSURED employer's operations.

24 (3) The insurer shall establish a system of priorities
25 to use in responding to worksite safety consultation service

1 requests, giving first priority to INSURED employers that
2 have an unreasonably high actual or potential loss
3 experience.

4 (4) Each insurer's insurance contract or agreement must
5 require each policyholder or INSURED employer to implement a
6 safety program as part of the contract or agreement to
7 provide workers' compensation coverage.

8 NEW SECTION. Section 8. Safety employment education
9 and training advisory committee -- terms -- expenses --
10 duties -- meetings. (1) There is a safety employment
11 education and training advisory committee composed of seven
12 members appointed by the commissioner of labor and industry
13 to serve for terms of 3 years or-at-the-pleasure-of-the
14 commissioner.

15 (2) The committee consists of:

16 (a) three members representing employees;
17 (b) three members representing employers; and
18 (c) one member representing the department of labor and
19 industry.

20 (3) The committee shall elect its presiding officer.

21 (4) Before the expiration of the term of a member of
22 the committee, the commissioner shall appoint a successor. A
23 member may be reappointed. The commissioner shall make an
24 appointment to fill a vacancy before-a-term-expires.

25 (5) The members of the committee serve without

1 compensation but are entitled to travel expenses as provided
2 in 2-18-501.

3 (6) The commissioner shall prescribe the committee's
4 duties, including but not limited to recommending to the
5 commissioner methods by which the department may:

6 (a) implement safety education in secondary schools and
7 vocational-technical programs;

8 (b) facilitate the implementation of employer safety
9 programs; and

10 (c) universally increase safety awareness in the
11 workplace.

12 (7) The committee shall meet at least once every 3
13 months at a place and time determined by the committee and
14 shall meet at other times and places determined by a
15 majority of the members of the committee or the presiding
16 officer of the committee. Four members of the committee
17 constitute a quorum for the transaction of business, but the
18 department member may not be counted to determine a quorum.

19 NEW SECTION. Section 9. Safety consultation services
20 -- insurer's exemption from civil liability -- exceptions.

21 (1) The furnishing of or the failure to furnish safety
22 consultation services related to, in connection with, or
23 incidental to a workers' compensation insurance contract or
24 agreement to provide workers' compensation coverage does not
25 subject the insurer or its agents, employees, or service

1 contractors to liability for damages from injury, loss, or
2 death, whether direct or consequential, occurring as a
3 result of any act or omission by any person in the course of
4 providing safety consultation services.

5 (2) Subsection (1) does not apply:

6 (a) if the injury, loss, or death occurred during the
7 actual performance of safety consultation services and was
8 directly and proximately caused by the negligence of the
9 insurer or its agents, employees, or service contractors;

10 (b) to any safety consultation services required to be
11 performed under the provisions of a written service contract
12 for which a specific charge is made and not incidental to a
13 policy of insurance; or

14 (c) in an action against an insurer or its agents,
15 employees, or service contractors for damages caused by the
16 act or omission of the insurer or its agents, employees, or
17 service contractors in which it is judicially determined
18 that the act or omission constituted a crime or involved
19 actual malice.

20 NEW SECTION. Section 10. Variable pricing -- higher
21 premium by state fund for noncompliance with safety program
22 -- EXPENDITURE ACCOUNTING. (1) The state fund shall:

23 (a) implement variable pricing levels within individual
24 rate classifications to reward an employer with a good
25 safety record and penalize an employer with a poor safety

1 record. The timeliness of an employer's payroll reporting
2 and premium payments and other relevant factors may be
3 considered in the placement of an employer within the
4 variable pricing levels.

5 (b) provide an additional pricing level with a higher
6 rate within the classification for those employers who do
7 not satisfactorily implement a safety program subsequent to
8 an-insurer's THE provision of or attempt to provide onsite
9 safety consultation services.

10 (2) The state fund may assess a surcharge of an
11 additional 20% on premiums payable to the state fund by
12 high-loss employers. The criteria for identifying high-loss
13 employers must be established by the state fund board of
14 directors by rule.

15 (3) THE STATE FUND SHALL SEPARATELY ACCOUNT FOR MONEY
16 EXPENDED UNDER [SECTIONS 1 THROUGH 11] AND 39-71-2311.

17 NEW SECTION. Section 11. Safety program requirement in
18 workers' compensation policies. A policy, contract, or
19 agreement to insure an employer against a workers'
20 compensation or occupational disease risk must require each
21 policyholder--or INSURED employer to implement a safety
22 program, as provided in [section 7], as part of the policy,
23 contract, or agreement to provide workers' compensation or
24 occupational disease insurance coverage.

25 Section 12. Section 39-71-2311, MCA, is amended to

1 read:

2 *39-71-2311. Intent and purpose of plan. It is the
3 intent and purpose of the state fund to allow employers the
4 option to insure their liability for workers' compensation
5 and occupational disease coverage with a mutual insurance
6 fund. The state fund is required to insure any employer in
7 this state requesting coverage, and it may not refuse
8 coverage for an employer unless--an--assigned--risk-plan
9 established-under-39-71-431-is-in--effect. The state fund
10 must be neither more nor less than self-supporting. Premium
11 rates must be set at least annually at a level sufficient to
12 ensure the adequate funding of the insurance program,
13 including the costs of administration, benefits, and
14 adequate reserves, during and at the end of the period for
15 which the rates will be in effect. In determining premium
16 rates, the state fund shall make every effort to adequately
17 predict future costs. When the costs of a factor influencing
18 rates are unclear and difficult to predict, the state fund
19 shall use a prediction calculated to be more than likely to
20 cover those costs rather than less than likely to cover
21 those costs. Unnecessary surpluses that are created by the
22 imposition of premiums found to have been set higher than
23 necessary because of a high estimate of the cost of a factor
24 or factors may be refunded by the declaration of a dividend
25 as provided in this part. For the purpose of keeping the

1 state fund solvent, it must implement variable pricing
2 levels within-individual-rate-classifications-to--reward--an
3 employer--with-a-good-safety-record-and-penalize-an-employer
4 with-a-poor-safety-record--An-employer's--payroll--reporting
5 and--premium--history-and-other-relevant-factors-may-also-be
6 considered--in--implementing--variable--pricing--levels as
7 provided in [section 10]."

8 NEW SECTION. Section 13. Codification instruction. (1)
9 [Sections 1 through 7 and 9] are intended to be codified as
10 an integral part of Title 39, chapter 71, and the provisions
11 of Title 39, chapter 71, apply to [sections 1 through 7 and
12 9].

13 (2) [Section 8] is intended to be codified as an
14 integral part of Title 2, chapter 15, and the provisions of
15 Title 2, chapter 15, apply to [section 8].

16 (3) [Section 10] is intended to be codified as an
17 integral part of Title 39, chapter 71, part 23, and the
18 provisions of Title 39, chapter 71, part 23, apply to
19 [section 10].

20 (4) [Section 11] is intended to be codified as an
21 integral part of Title 33, chapter 15, part 3, and the
22 provisions of Title 33, chapter 15, part 3, apply to
23 [section 11].

24 NEW SECTION. Section 14. Saving clause. [This act]
25 does not affect rights and duties that matured, penalties

1 that were incurred, or proceedings that were begun before
2 [the effective date of this act].

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

9 NEW SECTION. **Section 16. Effective dates.** (1)
10 [Sections 5, 8, and this section] are effective July 1,
11 1993.

12 (2) [Sections 1 through 4, 6, 7, and 9 through 15] are
13 effective January 1, 1994.

-End-

SENATE BILL NO. 163

INTRODUCED BY HARP, DRISCOLL, B. BROWN, TOWE,

HALLIGAN, BECK, BURNETT, GAGE, MESAROS, ORR, WAGNER,

KENNEDY, BRANDEWIE, CRIPPEN, BENEDICT, WILSON,

VAN VALKENBURG, YELLOWTAIL, BLAYLOCK, AKLESTAD, GRINDE,

BERGSAGEL, LYNCH, COCCHIARELLA, QUILICI, MERCER, WANZENRIED,

HIBBARD, J. RICE, DOWELL, SWYSGOOD, SCHYE, STRIZICH, HERRON,

BOHARSKI, NATHE, HARDING, DEVLIN, JERGESON, SWIFT,

HERTEL, HAGER, TVEIT

BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA SAFETY CULTURE ACT; REQUIRING EMPLOYERS TO ESTABLISH SAFETY PROGRAMS; REQUIRING SAFETY TRAINING AND EDUCATION PROGRAMS; REQUIRING WORKERS' COMPENSATION INSURERS TO PROVIDE SAFETY CONSULTATION SERVICES; GRANTING IMMUNITY TO INSURERS FOR CERTAIN OCCURRENCES; CREATING A SAFE EMPLOYMENT EDUCATION AND TRAINING ADVISORY COMMITTEE; ALLOWING THE STATE FUND TO IMPLEMENT VARIABLE PRICING LEVELS; ALLOWING THE STATE FUND TO PLACE A SURCHARGE ON HIGH-LOSS EMPLOYERS; AMENDING SECTION 39-71-2311, MCA; AND PROVIDING EFFECTIVE DATES."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 5] authorizes the department of labor and industry

to adopt rules to implement safety programs and to stimulate the creation of a safety culture in Montana workplaces. The rules adopted by the department must:

(1) be consistent with the provisions of [this act] and of Titles 33 and 39 and Title 50, chapter 71; and

(2) further the objectives of improving occupational safety and health and reducing the costs of the workers' compensation system by attempting to control or diminish the incidence of injury or illness.

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

NEW SECTION. Section 1. Short title. [Sections 1 through 9] may be cited as the "Montana Safety Culture Act".

NEW SECTION. Section 2. Purpose. The purpose of [sections 1 through 9] is to reduce the incidence of occupational injury and illness by promoting safety in the workplace in order to control the costs of claims for workers' compensation insurance. The creation of a safety culture requires employers to provide training and education to make safety awareness part of the requirement for each worker's satisfactory job performance and requires the department to promote safety awareness for the public through the education and preparation of each student for entrance into the labor market. A reduction in workplace injuries, illnesses, and deaths through enhanced safety on

the job benefits the public as well as the employers and the employees by lowering both financial and physical costs. Ensuring immunity to insurers in the provision of safety consultation services encourages and promotes safety in the workplace and improves the relationship between employers and employees.

NEW SECTION. Section 3. Safety consultation. (1) As used in [sections 1 through 9], "safety consultation services" means assistance rendered by an insurer to advise and aid ~~a-policyholder, management, or an~~ INSURED employer in the identification, evaluation, and control of existing and potential accidental and occupational health problems. The services may be delivered in person, by mail, or by telephone, based upon need.

(2) Safety consultation services include but are not limited to:

(a) surveys consisting of onsite identification and subsequent evaluation of exposures relative to employees, materials, equipment, work methods, processes, and facilities;

(b) recommendations expressed in the form of communications to ~~policyholders--or--employers~~ AN INSURED EMPLOYER, with reference to control of exposures to occupational accident, injury, or illness and to improvement of safety programs and systems;

(c) training programs, including aids, programs, and materials made available to assist in the control of exposures;

(d) consultations to advise INSURED employers relative to risk, exposure, and experience in the ~~policyholder's~~ INSURED EMPLOYER'S business;

(e) accident analysis consisting of review of reported accidents to determine cause and trends; and

(f) industrial hygiene services, including recognition, evaluation, and control of chemical, physical, and biological exposures.

NEW SECTION. Section 4. Safety programs -- educational activities. (1) To promote health and safety in places of employment in this state:

{1}(A) each public or private employer shall establish and administer a safety program in accordance with rules adopted by the department pursuant to [section 5]; and

{2}(B) the department, relying upon the support and assistance of concerned private entities or other governmental agencies, shall produce and distribute material to the schools of Montana and provide guest speakers intended to:

{a}(I) educate students about the necessity for safe work practices;

{b}(II) prepare students to embark on accident-free

careers; and

(c) (III) disseminate information promoting the reduction and control of the rate of incidence of workplace injuries or occupational disease.

(2) AN EMPLOYER WHO EMPLOYS TEMPORARY WORKERS SHALL INCLUDE THOSE WORKERS IN THE EMPLOYER'S SAFETY PROGRAM. A TEMPORARY SERVICES CONTRACTOR SHALL PROVIDE A SAFETY PROGRAM FOR EMPLOYEES NOT EMPLOYED BY OTHER EMPLOYERS.

NEW SECTION. Section 5. Rulemaking authority. The department shall adopt rules, including but not limited to rules that require:

(1) each employer to conduct an educational-based safety program, including but not limited to:

(a) a safety training program to provide:

(i) new employee general safety orientation;

(ii) job- or task-specific safety training; and

(iii) continuous refresher safety training, including periodic safety meetings;

(b) periodic hazard assessment, with corrective actions identified; and

(c) appropriate documentation of performance of the activities; and

(2) an employer of more than five employees to have a comprehensive AND EFFECTIVE safety program, including but not limited to:

(a) a safety committee composed of employee and employer representatives that holds regularly scheduled meetings;

(b) procedures of reporting and investigating all work-related incidents, accidents, injuries, and illnesses; and

(c) policies and procedures that assign specific safety responsibilities and safety performance accountability.

NEW SECTION. Section 6. Notification of safety consultation services available by insurer. To implement safety requirements, each insurer shall notify each policyholder-or INSURED employer of the type of safety consultation services available and the location where the safety consultation services may be requested.

NEW SECTION. Section 7. Safety consultation services -- safety program as provision of insurance contract or agreement. (1) Each insurer shall provide safety consultation services to each of its policyholders--or INSURED employers who request the assistance.

(2) The safety consultation services to be provided are within the discretion of the insurer but must include consideration of the hazard, experience, and size of the policyholder's-or INSURED employer's operations.

(3) The insurer shall establish a system of priorities to use in responding to worksite safety consultation service

1 requests, giving first priority to INSURED employers that
2 have an unreasonably high actual or potential loss
3 experience.

4 (4) Each insurer's insurance contract or agreement must
5 require each policyholder-or INSURED employer to implement a
6 safety program as part of the contract or agreement to
7 provide workers' compensation coverage.

8 NEW SECTION. Section 8. Safety employment education
9 and training advisory committee -- terms -- expenses --
10 duties -- meetings. (1) There is a safety employment
11 education and training advisory committee composed of seven
12 members appointed by the commissioner of labor and industry
13 to serve for terms of 3 years or-at-the-pleasure-of-the
14 commissioner.

15 (2) The committee consists of:

16 (a) three members representing employees;

17 (b) three members representing employers; and

18 (c) one member representing the department of labor and
19 industry.

20 (3) The committee shall elect its presiding officer.

21 (4) Before the expiration of the term of a member of
22 the committee, the commissioner shall appoint a successor. A
23 member may be reappointed. The commissioner shall make an
24 appointment to fill a vacancy before-a-term-expires.

25 (5) The members of the committee serve without

1 compensation but are entitled to travel expenses as provided
2 in 2-18-501.

3 (6) The commissioner shall prescribe the committee's
4 duties, including but not limited to recommending to the
5 commissioner methods by which the department may:

6 (a) implement safety education in secondary schools and
7 vocational-technical programs;

8 (b) facilitate the implementation of employer safety
9 programs; and

10 (c) universally increase safety awareness in the
11 workplace.

12 (7) The committee shall meet at least once every 3
13 months at a place and time determined by the committee and
14 shall meet at other times and places determined by a
15 majority of the members of the committee or the presiding
16 officer of the committee. Four members of the committee
17 constitute a quorum for the transaction of business, but the
18 department member may not be counted to determine a quorum.

19 NEW SECTION. Section 9. Safety consultation services
20 -- insurer's exemption from civil liability -- exceptions.

21 (1) The furnishing of or the failure to furnish safety
22 consultation services related to, in connection with, or
23 incidental to a workers' compensation insurance contract or
24 agreement to provide workers' compensation coverage does not
25 subject the insurer or its agents, employees, or service

1 contractors to liability for damages from injury, loss, or
2 death, whether direct or consequential, occurring as a
3 result of any act or omission by any person in the course of
4 providing safety consultation services.

5 (2) Subsection (1) does not apply:

6 (a) if the injury, loss, or death occurred during the
7 actual performance of safety consultation services and was
8 directly and proximately caused by the negligence of the
9 insurer or its agents, employees, or service contractors;

10 (b) to any safety consultation services required to be
11 performed under the provisions of a written service contract
12 for which a specific charge is made and not incidental to a
13 policy of insurance; or

14 (c) in an action against an insurer or its agents,
15 employees, or service contractors for damages caused by the
16 act or omission of the insurer or its agents, employees, or
17 service contractors in which it is judicially determined
18 that the act or omission constituted a crime or involved
19 actual malice.

20 NEW SECTION. Section 10. Variable pricing -- higher
21 premium by state fund for noncompliance with safety program
22 -- EXPENDITURE ACCOUNTING. (1) The state fund shall:

23 (a) implement variable pricing levels within individual
24 rate classifications to reward an employer with a good
25 safety record and penalize an employer with a poor safety

1 record. The timeliness of an employer's payroll reporting
2 and premium payments and other relevant factors may be
3 considered in the placement of an employer within the
4 variable pricing levels.

5 (b) provide an additional pricing level with a higher
6 rate within the classification for those employers who do
7 not satisfactorily implement a safety program subsequent to
8 an-insurer's THE provision of or attempt to provide onsite
9 safety consultation services.

10 (2) The state fund may assess a surcharge of an
11 additional 20% on premiums payable to the state fund by
12 high-loss employers. The criteria for identifying high-loss
13 employers must be established by the state fund board of
14 directors by rule.

15 {3} THE STATE FUND SHALL SEPARATELY ACCOUNT FOR MONEY
16 EXPENDED UNDER [SECTIONS 1 THROUGH 11] AND 39-71-2311.

17 NEW SECTION. Section 11. Safety program requirement in
18 workers' compensation policies. A policy, contract, or
19 agreement to insure an employer against a workers'
20 compensation or occupational disease risk must require each
21 policyholder--or INSURED employer to implement a safety
22 program, as provided in [section 7], as part of the policy,
23 contract, or agreement to provide workers' compensation or
24 occupational disease insurance coverage.

25 Section 12. Section 39-71-2311, MCA, is amended to

1 read:

2 "39-71-2311. Intent and purpose of plan. It is the
3 intent and purpose of the state fund to allow employers the
4 option to insure their liability for workers' compensation
5 and occupational disease coverage with a mutual insurance
6 fund. The state fund is required to insure any employer in
7 this state requesting coverage, and it may not refuse
8 coverage for an employer unless--an--assigned--risk-plan
9 established-under-39-71-431-is-in--effect. The state fund
10 must be neither more nor less than self-supporting. Premium
11 rates must be set at least annually at a level sufficient to
12 ensure the adequate funding of the insurance program,
13 including the costs of administration, benefits, and
14 adequate reserves, during and at the end of the period for
15 which the rates will be in effect. In determining premium
16 rates, the state fund shall make every effort to adequately
17 predict future costs. When the costs of a factor influencing
18 rates are unclear and difficult to predict, the state fund
19 shall use a prediction calculated to be more than likely to
20 cover those costs rather than less than likely to cover
21 those costs. Unnecessary surpluses that are created by the
22 imposition of premiums found to have been set higher than
23 necessary because of a high estimate of the cost of a factor
24 or factors may be refunded by the declaration of a dividend
25 as provided in this part. For the purpose of keeping the

1 state fund solvent, it must implement variable pricing
2 levels within-individual-rate-classifications-to--reward--an
3 employer--with-a-good-safety-record-and-penalize-an-employer
4 with-a-poor-safety-record--An-employer's--payroll--reporting
5 and--premium--history-and-other-relevant-factors-may-also-be
6 considered--in--implementing--variable--pricing--levels as
7 provided in [section 10]."

8 NEW SECTION. Section 13. Codification instruction. (1)

9 [Sections 1 through 7 and 9] are intended to be codified as
10 an integral part of Title 39, chapter 71, and the provisions
11 of Title 39, chapter 71, apply to [sections 1 through 7 and
12 9].

13 (2) [Section 8] is intended to be codified as an
14 integral part of Title 2, chapter 15, and the provisions of
15 Title 2, chapter 15, apply to [section 8].

16 (3) [Section 10] is intended to be codified as an
17 integral part of Title 39, chapter 71, part 23, and the
18 provisions of Title 39, chapter 71, part 23, apply to
19 [section 10].

20 (4) [Section 11] is intended to be codified as an
21 integral part of Title 33, chapter 15, part 3, and the
22 provisions of Title 33, chapter 15, part 3, apply to
23 [section 11].

24 NEW SECTION. Section 14. Saving clause. [This act]
25 does not affect rights and duties that matured, penalties

1 that were incurred, or proceedings that were begun before
2 [the effective date of this act].

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

9 NEW SECTION. **Section 16. Effective dates.** (1)
10 [Sections 5, 8, and this section] are effective July 1,
11 1993.

12 (2) [Sections 1 through 4, 6, 7, and 9 through 15] are
13 effective January 1, 1994.

-End-