

SENATE BILL NO. 164

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

IN THE SENATE

JANUARY 15, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
JANUARY 18, 1993	SPONSORS ADDED.
FEBRUARY 8, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 9, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 10, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 49; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 23, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON WORKERS' COMP SELECT COMMITTEE.
	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

MARCH 24, 1993

CONCURRED IN. REPORT ADOPTED.

MARCH 25, 1993

SECOND READING, CONCURRED IN.

THIRD READING, CONCURRED IN.
AYES, 100; NOES, 0.

RETURNED TO SENATE.

IN THE SENATE

MARCH 26, 1993

RECEIVED FROM HOUSE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Back Senate* BILL NO. *164* *Benedict*
 2 INTRODUCED BY *Hallgren* *By R. Brown*
 3 BY REQUEST OF THE GOVERNOR *Yellowtail*
 4 *Blaylock* *AKLESTAD* *Grinde* *Sayles*
 5 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A WORKERS'
 6 COMPENSATION FRAUD INVESTIGATION AND PROSECUTION OFFICE IN
 7 THE DEPARTMENT OF JUSTICE; CREATING A WORKERS' COMPENSATION
 8 FRAUD PREVENTION AND DETECTION UNIT IN THE STATE FUND;
 9 CLARIFYING CRIMINAL PENALTIES FOR WORKERS' COMPENSATION
 10 FRAUD; AND AMENDING SECTIONS 39-71-206, 39-71-316 *Harding*
 11 39-71-701, 39-71-702, AND 39-71-2001, MCA." *Jerguson* *Trout*
 12
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 14 NEW SECTION. **Section 1.** Workers' compensation fraud
 15 office. There is a workers' compensation fraud investigation
 16 and prosecution office in the department of justice. The
 17 office shall investigate and prosecute fraud for the state
 18 compensation mutual insurance fund. The office is under the
 19 supervision and control of the attorney general and consists
 20 of:
 21 (1) three persons qualified by education, training,
 22 experience, and high professional competence in
 23 investigative procedures who shall investigate violations of
 24 the provisions of Title 39, chapters 71 and 72, at the
 25 request of the state compensation mutual insurance fund; and

1 (2) one person licensed to practice law in Montana who
 2 shall prosecute violations of the provisions of Title 39,
 3 chapters 71 and 72. The attorney may also assist county
 4 attorneys in prosecuting violations of Title 39, chapters 71
 5 and 72, without charge to the county.

6 (3) For purposes of this section, "fraud" has the
 7 meaning provided in 45-6-301(5).

8 **Section 2.** Section 39-71-206, MCA, is amended to read:

9 "39-71-206. Legal advisers of department and state fund
 10 -- investigative and prosecution services. (1) The attorney
 11 general is the legal adviser of the department and the state
 12 fund and shall represent either entity in all proceedings if
 13 requested by the department or state fund. The department
 14 and state fund may employ other attorneys or legal advisers
 15 as they consider necessary.

16 (2) As provided in [section 1], the attorney general
 17 shall provide investigative and prosecution services to the
 18 state fund with respect to violations of Title 39, chapters
 19 71 and 72."

20 NEW SECTION. **Section 3.** Fraud detection and prevention
 21 unit. (1) The state fund shall establish a fraud prevention
 22 and detection unit. The unit is responsible for developing
 23 detection and investigative procedures, providing
 24 investigative services, and providing training in the
 25 prevention and investigation of fraud with respect to Title

39, chapters 71 and 72.

(2) For purposes of this section, "fraud" has the meaning provided in 45-6-301(5).

Section 4. Section 39-71-316, MCA, is amended to read:

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

(2) A person who obtains or assists in obtaining benefits to which the person is not entitled under this chapter or chapter 72 of this title may be guilty of theft under 45-6-301. A county attorney may initiate criminal proceedings against the person. This subsection includes but is not limited to a person who is receiving temporary total disability benefits, permanent total disability benefits, or rehabilitation benefits while working without the knowledge and concurrence of the insurer."

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

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

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

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

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

(5) In cases where it is determined that periodic disability benefits granted by the Social Security Act are

1 payable because of the injury, the weekly benefits payable
2 under this section are reduced, but not below zero, by an
3 amount equal, as nearly as practical, to one-half the
4 federal periodic benefits for such the week, which amount is
5 to be calculated from the date of the disability social
6 security entitlement.

7 (6) Notwithstanding subsection (3), beginning July 1,
8 1987, through June 30, 1991, weekly compensation benefits
9 for temporary total disability may not exceed the state's
10 average weekly wage of \$299 established July 1, 1986.

11 (7) A worker may not receive both wages and temporary
12 total disability benefits without the consent of the
13 insurer. Failure of the worker to notify the insurer of the
14 receipt of wages while receiving temporary total disability
15 benefits may subject the worker to criminal penalties
16 provided in 45-6-301(6)."

17 **Section 6.** Section 39-71-702, MCA, is amended to read:

18 "39-71-702. Compensation for permanent total
19 disability. (1) If a worker is no longer temporarily totally
20 disabled and is permanently totally disabled, as defined in
21 39-71-116, the worker is eligible for permanent total
22 disability benefits. Permanent total disability benefits
23 must be paid for the duration of the worker's permanent
24 total disability, subject to 39-71-710.

25 (2) The determination of permanent total disability

1 must be supported by a preponderance of medical evidence.

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

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

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

23 ~~(6) Notwithstanding--subsection--(3)--beginning-July-1,~~
24 ~~1987--through-June-30, 1991--the-maximum-weekly-compensation~~
25 ~~benefits-for-permanent-total-disability-may-not--exceed--the~~

1 state's--average--weekly--wage--of--\$299--established--July-1,
 2 1986. A worker may not receive both wages and permanent
 3 total disability benefits without the consent of the
 4 insurer. Failure of the worker to notify the insurer of the
 5 receipt of wages while receiving permanent total disability
 6 benefits may subject the worker to criminal penalties
 7 provided in 45-6-301(6)."

8 **Section 7.** Section 39-71-2001, MCA, is amended to read:

9 "39-71-2001. **Rehabilitation benefits.** (1) An injured
 10 worker is eligible for rehabilitation benefits if:

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

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

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

23 (d) a rehabilitation plan between the injured worker
 24 and the insurer is filed with the department. If the plan
 25 calls for the expenditure of funds under 39-71-1004, the

1 department shall authorize the department of social and
 2 rehabilitation services to use the funds.

3 (2) After filing the rehabilitation plan with the
 4 department, the injured worker is entitled to receive
 5 rehabilitation benefits at the injured worker's temporary
 6 total disability rate. The benefits must be paid for the
 7 period specified in the rehabilitation plan, not to exceed
 8 104 weeks. Rehabilitation benefits must be paid during a
 9 reasonable period, not to exceed 10 weeks, while the worker
 10 is waiting to begin the agreed-upon rehabilitation plan.
 11 Rehabilitation benefits must be paid while the worker is
 12 satisfactorily completing the agreed-upon rehabilitation
 13 plan.

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

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

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

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

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

13 (7) A worker may not receive both wages and
14 rehabilitation benefits without the consent of the insurer.
15 Failure of the worker to notify the insurer of the receipt
16 of wages while receiving rehabilitation benefits may subject
17 the worker to criminal penalties provided in 45-6-301(6)."

18 **NEW SECTION. Section 8.** Codification instruction. (1)
19 [Section 1] is intended to be codified as an integral part
20 of Title 2, chapter 15, part 20, and the provisions of Title
21 2, chapter 15, part 20, apply to [section 1].

22 (2) [Section 3] is intended to be codified as an
23 integral part of Title 39, chapter 71, and the provisions of
24 Title 39, chapter 71, apply to [section 3].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0164, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act creating a workers' compensation fraud investigation and prosecution office in the Department of Justice; creating a workers' compensation fraud prevention and detection unit in the State Fund; clarifying criminal penalties for workers' compensation fraud.

ASSUMPTIONS:


State Fund:

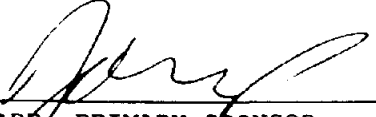
1. The State Fund would add 4.50 FTE to create a fraud detection and prevention unit: 1.00 FTE coordinator; 2.00 FTE field investigators; 1.00 FTE auditor; 0.50 FTE secretary.
2. The State Fund would be billed by the Department of Justice for additional costs incurred pursuant to this bill.
3. The executive budget current level includes amounts for an existing contract with the Department of Justice for approximately \$40,000 per year. In addition, the executive budget recommends an increase to this contract of \$65,000 in FY94 and \$90,000 in FY95. The fiscal impact shown below is in lieu of the increase recommended in the executive budget. If the executive budget modifications were approved, the fiscal impact shown below would be offset.

Department of Justice:

1. The Department of Justice would add 5.00 FTE to create a workers' compensation fraud investigation and prosecution office under the supervision of the Attorney General: 1.00 FTE attorney (gr. 19); 3.00 FTE investigators (gr. 16); and 1.00 FTE clerical support (gr. 9).
2. The executive budget current level includes 1.00 FTE level of effort associated with an existing contract with the State Fund for approximately \$40,000 per year. In addition, the executive budget recommends an increase to this contract of 1.00 FTE in FY94 and 2.00 FTE in FY95. The fiscal impact shown below is in lieu of the increase recommended in the executive budget. If the executive budget modifications were approved, the fiscal impact shown below would be offset.
2. Additional office space would be required.
3. The Department of Justice would bill the State Fund for the costs of operating the workers' compensation fraud investigation and prosecution office, similar to existing funding for the current contract.

FISCAL IMPACT: (continued)

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

 4/27/93
JOHN HARP, PRIMARY SPONSOR DATE
Fiscal Note for SB0164, as introduced
SB 164

FISCAL IMPACT:

Expenditures:

State Fund:	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
FTE	224.50	229.00	4.50	227.50	232.00	4.50
Personal Services	6,498,681	6,651,407	152,726	6,584,924	6,737,650	152,726
Operating Expenses	3,550,187	3,936,097	385,910	3,832,172	4,125,872	293,700
Equipment	310,066	373,281	63,215	236,597	236,597	0
Benefits	166,027,953	166,027,953	0	182,948,465	182,948,465	0
Transfers	2,839,300	2,839,300	0	2,716,695	2,716,695	0
Debt Service	<u>134,256</u>	<u>134,256</u>	<u>0</u>	<u>221,580</u>	<u>221,580</u>	<u>0</u>
Total (Proprietary)	\$179,360,443	\$179,996,294	\$601,851	\$196,540,433	\$196,986,859	\$446,426

Department of Justice:	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Law Enforcement Svcs (PG 18)						
FTE	43.50	48.50	5.00	43.50	48.50	4.50
Personal Services	1,493,857	1,717,757	223,900	1,503,813	1,727,713	223,900
Operating	515,960	563,960	48,000	523,781	571,781	48,000
Equipment	<u>125,770</u>	<u>203,270</u>	<u>77,500</u>	<u>92,520</u>	<u>92,520</u>	<u>0</u>
Total	2,135,587	2,484,987	349,400	2,120,114	2,392,014	271,900

Funding:	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
General Fund	1,322,529	1,322,529	0	1,328,485	1,328,485	0
State Special Revenue	413,363	762,763	349,400	407,792	679,692	271,900
Federal Fund	<u>399,695</u>	<u>399,695</u>	<u>0</u>	<u>383,837</u>	<u>383,837</u>	<u>0</u>
Total	2,135,587	2,484,987	349,400	2,120,114	2,392,014	271,900

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

SB0164 would increase the probability of detection and prosecution of individuals fraudulently receiving workers compensation benefits from the State Fund. An increased probability of detection and prosecution is likely to have a deterrent effect on individuals fraudulently seeking to receive benefits. Reductions in benefits paid by the State Fund are inestimable but potentially significant.

APPROVED BY COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONS

SENATE BILL NO. 164

INTRODUCED BY HARP, DRISCOLL, HALLIGAN, CRIPPEN,

B. BROWN, MOLNAR, BECK, BURNETT, BENEDICT, MESAROS,

GAGE, ORR, KENNEDY, VAN VALKENBURG, YELLOWTAIL, LYNCH,

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WAGNER, BOHARSKI, SWYSGOOD, NATHE, FISHER,

DEVLIN, SWIFT, HERTEL, HAGER, HARDING,

JERGESON, TVEIT, HERRON, TOWE

BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A WORKERS'
COMPENSATION FRAUD INVESTIGATION AND PROSECUTION OFFICE IN
THE DEPARTMENT OF JUSTICE; CREATING A WORKERS' COMPENSATION
FRAUD PREVENTION AND DETECTION UNIT IN THE STATE FUND;
CLARIFYING CRIMINAL PENALTIES FOR WORKERS' COMPENSATION
FRAUD; AND AMENDING SECTIONS 39-71-206, 39-71-316,
39-71-701, 39-71-702, AND 39-71-2001, MCA; AND PROVIDING AN
EFFECTIVE DATE."

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

NEW SECTION. **Section 1.** Workers' compensation fraud
office. There is a workers' compensation fraud investigation
and prosecution office in the department of justice. The

office shall investigate and prosecute fraud--for CASES
REFERRED BY the state compensation mutual insurance fund.

The office is under the supervision and control of the
attorney general and consists of:

(1) ~~three~~ FOUR persons qualified by education,
training, experience, and high professional competence in
investigative procedures who shall investigate violations of
the provisions of Title 39, chapters 71 and 72, at the
request of the state compensation mutual insurance fund; and

(2) one person licensed to practice law in Montana who
shall prosecute violations of the provisions of Title 39,
chapters 71 and 72. The attorney may also assist county
attorneys in prosecuting violations of Title 39, chapters 71
and 72, without charge to the county.

~~(3)--For purposes of this section, "fraud" has the~~
~~meaning provided in 45-6-301(5):~~

Section 2. Section 39-71-206, MCA, is amended to read:

"39-71-206. Legal advisers of department and state fund
-- investigative and prosecution services. (1) The attorney
general is the legal adviser of the department and the state
fund and shall represent either entity in all proceedings if
requested by the department or state fund. The department
and state fund may employ other attorneys or legal advisers
as they consider necessary.

(2) As provided in [section 1], the attorney general

shall provide investigative and prosecution services to the state fund with respect to violations of Title 39, chapters 71 and 72."

NEW SECTION. Section 3. Fraud detection and prevention unit -- EXPENDITURE ACCOUNTING. (1) The state fund shall establish a fraud prevention and detection unit. The unit is responsible for developing detection and investigative PREVENTION procedures, providing investigative DETECTION services, and providing training in the prevention and investigation DETECTION of fraud-with-respect-to FRAUDULENT CONDUCT UNDER Title 39, chapters 71 and 72, THAT IS SUBJECT TO PROSECUTION UNDER TITLE 45. THE UNIT SHALL REFER ALL CASES OF SUSPECTED FRAUDULENT CONDUCT TO THE WORKERS' COMPENSATION FRAUD INVESTIGATION AND PROSECUTION OFFICE ESTABLISHED IN [SECTION 1].

(2) ~~For--purposes--of--this--section,--"fraud"--has-the meaning-provided-in-45-6-301(5):~~ THE STATE FUND SHALL EXPEND MONEY TO INVESTIGATE FRAUD PURSUANT TO THIS SECTION AND SHALL SEPARATELY ACCOUNT FOR MONEY EXPENDED.

Section 4. Section 39-71-316, MCA, is amended to read:

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

(2) A person who obtains or assists in obtaining benefits to which the person is not entitled under this chapter or chapter 72 of this title ~~may--be~~ IS guilty of theft AND MAY BE PROSECUTED under 45-6-301. A county attorney OR THE ATTORNEY GENERAL may initiate criminal proceedings against the person. This subsection includes but is not limited to a person who is receiving temporary total disability benefits, permanent total disability benefits, or rehabilitation benefits while working without the knowledge and concurrence of the insurer."

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

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

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

(3) Weekly compensation benefits for injury producing temporary total disability shall be $66 \frac{2}{3}\%$ of the wages received at the time of the injury. The maximum weekly compensation benefits may not exceed the state's average weekly wage at the time of injury. Temporary total disability benefits must be paid for the duration of the

worker's temporary disability. The weekly benefit amount may not be adjusted for cost of living as provided in 39-71-702(5).

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

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

(6) Notwithstanding subsection (3), beginning July 1, 1987, through June 30, 1991, weekly compensation benefits

for temporary total disability may not exceed the state's average weekly wage of \$299 established July 1, 1986.

(7) A worker may not receive both wages and temporary total disability benefits without the WRITTEN consent of the insurer. Failure-of-the-worker-to-notify-the-insurer-of--the receipt--of-wages-while-receiving-temporary-total-disability benefits--may--subject--the--worker--to--criminal--penalties provided-in-45-6-301(6): A WORKER WHO RECEIVES BOTH WAGES AND TEMPORARY TOTAL DISABILITY BENEFITS WITHOUT WRITTEN CONSENT OF THE INSURER IS GUILTY OF THEFT AND MAY BE PROSECUTED UNDER 45-6-301."

Section 6. Section 39-71-702, MCA, is amended to read:

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

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

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

state's average weekly wage at the time of injury.

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

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

(6) ~~Notwithstanding--subsection--{3}--beginning-July-17-1987--through-June-30-1991--the-maximum-weekly-compensation-benefits-for-permanent-total-disability-may-not-exceed--the-state's--average--weekly--wage--of--\$299-established-July-17-1986-~~ A worker may not receive both wages and permanent total disability benefits without the WRITTEN consent of the insurer. Failure-of-the-worker-to-notify-the-insurer-of-the receipt-of-wages-while-receiving-permanent-total-disability

~~benefits--may--subject--the--worker--to--criminal--penalties provided--in--45-6-301(6)-~~ A WORKER WHO RECEIVES BOTH WAGES AND PERMANENT TOTAL DISABILITY BENEFITS WITHOUT WRITTEN CONSENT OF THE INSURER IS GUILTY OF THEFT AND MAY BE PROSECUTED UNDER 45-6-301."

Section 7. Section 39-71-2001, MCA, is amended to read:

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

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

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

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

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

1 (2) After filing the rehabilitation plan with the
 2 department, the injured worker is entitled to receive
 3 rehabilitation benefits at the injured worker's temporary
 4 total disability rate. The benefits must be paid for the
 5 period specified in the rehabilitation plan, not to exceed
 6 104 weeks. Rehabilitation benefits must be paid during a
 7 reasonable period, not to exceed 10 weeks, while the worker
 8 is waiting to begin the agreed-upon rehabilitation plan.
 9 Rehabilitation benefits must be paid while the worker is
 10 satisfactorily completing the agreed-upon rehabilitation
 11 plan.

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

22 (4) If there is a dispute as to whether an injured
 23 worker can return to the job the worker held at the time of
 24 injury, the insurer shall designate a rehabilitation
 25 provider to evaluate and determine whether the worker can

1 return to the job held at the time of injury. If it is
 2 determined that he the worker cannot return to work THE JOB
 3 HELD AT THE TIME OF INJURY, the worker is entitled to
 4 rehabilitation benefits and services as provided in
 5 subsection (2).

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

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

12 (7) A worker may not receive both wages and
 13 rehabilitation benefits without the WRITTEN consent of the
 14 insurer. Failure-of-the-worker-to-notify-the-insurer-of-the
 15 receipt-of-wages-while-receiving-rehabilitation-benefits-may
 16 subject--the--worker--to--criminal--penalties--provided---in
 17 45-6-301(6): A WORKER WHO RECEIVES BOTH WAGES AND
 18 REHABILITATION BENEFITS WITHOUT WRITTEN CONSENT OF THE
 19 INSURER IS GUILTY OF THEFT AND MAY BE PROSECUTED UNDER
 20 45-6-301."

21 NEW SECTION. Section 8. Codification instruction. (1)
 22 [Section 1] is intended to be codified as an integral part
 23 of Title 2, chapter 15, part 20, and the provisions of Title
 24 2, chapter 15, part 20, apply to [section 1].

25 (2) [Section 3] is intended to be codified as an

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1 integral part of Title 39, chapter 71, and the provisions of
2 Title 39, chapter 71, apply to [section 3].

3 NEW SECTION. SECTION 9. EFFECTIVE DATE. [THIS ACT] IS
4 EFFECTIVE JULY 1, 1993.

-End-

SENATE BILL NO. 164

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

BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A WORKERS'
COMPENSATION FRAUD INVESTIGATION AND PROSECUTION OFFICE IN
THE DEPARTMENT OF JUSTICE; CREATING A WORKERS' COMPENSATION
FRAUD PREVENTION AND DETECTION UNIT IN THE STATE FUND;
CLARIFYING CRIMINAL PENALTIES FOR WORKERS' COMPENSATION
FRAUD; AND AMENDING SECTIONS 39-71-206, 39-71-316,
39-71-701, 39-71-702, AND 39-71-2001, MCA; AND PROVIDING AN
EFFECTIVE DATE."

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

NEW SECTION. Section 1. Workers' compensation fraud
office. There is a workers' compensation fraud investigation
and prosecution office in the department of justice. The

office shall investigate and prosecute fraud--for CASES
REFERRED BY the state compensation mutual insurance fund.
The office is under the supervision and control of the
attorney general and consists of:

(1) three FOUR persons qualified by education,
training, experience, and high professional competence in
investigative procedures who shall investigate violations of
the provisions of Title 39, chapters 71 and 72, at the
request of the state compensation mutual insurance fund; and

(2) one person licensed to practice law in Montana who
shall prosecute violations of the provisions of Title 39,
chapters 71 and 72. The attorney may also assist county
attorneys in prosecuting violations of Title 39, chapters 71
and 72, without charge to the county.

~~{3}--For purposes of this section--"fraud"--has--the
meaning provided in 45-6-301(5)--~~

Section 2. Section 39-71-206, MCA, is amended to read:

"39-71-206. Legal advisers of department and state fund
-- investigative and prosecution services. (1) The attorney
general is the legal adviser of the department and the state
fund and shall represent either entity in all proceedings if
requested by the department or state fund. The department
and state fund may employ other attorneys or legal advisers
as they consider necessary.

(2) As provided in [section 1], the attorney general

1 shall provide investigative and prosecution services to the
 2 state fund with respect to violations of Title 39, chapters
 3 71 and 72."

4 **NEW SECTION. Section 3.** Fraud detection and prevention
 5 unit -- EXPENDITURE ACCOUNTING. (1) The state fund shall
 6 establish a fraud prevention and detection unit. The unit is
 7 responsible for developing detection and investigative
 8 PREVENTION procedures, providing investigative DETECTION
 9 services, and providing training in the prevention and
 10 investigation DETECTION of fraud-with-respect-to FRAUDULENT
 11 CONDUCT UNDER Title 39, chapters 71 and 72, THAT IS SUBJECT
 12 TO PROSECUTION UNDER TITLE 45. THE UNIT SHALL REFER ALL
 13 CASES OF SUSPECTED FRAUDULENT CONDUCT TO THE WORKERS'
 14 COMPENSATION FRAUD INVESTIGATION AND PROSECUTION OFFICE
 15 ESTABLISHED IN [SECTION 1].

16 (2) ~~For--purposes--of--this--section--"fraud"--has-the~~
 17 ~~meaning-provided-in-45-6-301(5):~~ THE STATE FUND SHALL EXPEND
 18 MONEY TO INVESTIGATE FRAUD PURSUANT TO THIS SECTION AND
 19 SHALL SEPARATELY ACCOUNT FOR MONEY EXPENDED.

20 **Section 4.** Section 39-71-316, MCA, is amended to read:

21 "39-71-316. Filing true claim -- obtaining benefits
 22 through deception or other fraudulent means. (1) A person
 23 filing a claim under this chapter or chapter 72 of this
 24 title, by signing the claim, affirms the information filed
 25 is true and correct to the best of that person's knowledge.

1 (2) A person who obtains or assists in obtaining
 2 benefits to which the person is not entitled under this
 3 chapter or chapter 72 of this title ~~may--be~~ IS guilty of
 4 theft AND MAY BE PROSECUTED under 45-6-301. A county
 5 attorney OR THE ATTORNEY GENERAL may initiate criminal
 6 proceedings against the person. This subsection includes but
 7 is not limited to a person who is receiving temporary total
 8 disability benefits, permanent total disability benefits, or
 9 rehabilitation benefits while working without the knowledge
 10 and concurrence of the insurer."

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

12 "39-71-701. Compensation for temporary total disability
 13 -- exception. (1) Subject to the limitation in 39-71-736 and
 14 subsection (4) of this section, a worker is eligible for
 15 temporary total disability benefits when the worker suffers
 16 a total loss of wages as a result of an injury and until the
 17 worker reaches maximum healing.

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

20 (3) Weekly compensation benefits for injury producing
 21 temporary total disability shall be $66 \frac{2}{3}\%$ of the wages
 22 received at the time of the injury. The maximum weekly
 23 compensation benefits may not exceed the state's average
 24 weekly wage at the time of injury. Temporary total
 25 disability benefits must be paid for the duration of the

worker's temporary disability. The weekly benefit amount may not be adjusted for cost of living as provided in 39-71-702(5).

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

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

(6) Notwithstanding subsection (3), beginning July 1, 1987, through June 30, 1991, weekly compensation benefits

for temporary total disability may not exceed the state's average weekly wage of \$299 established July 1, 1986.

(7) A worker may not receive both wages and temporary total disability benefits without the WRITTEN consent of the insurer. Failure-of-the-worker-to-notify-the-insurer-of--the receipt--of-wages-while-receiving-temporary-total-disability benefits--may--subject--the--worker--to--criminal--penalties provided-in-45-6-301(6); A WORKER WHO RECEIVES BOTH WAGES AND TEMPORARY TOTAL DISABILITY BENEFITS WITHOUT WRITTEN CONSENT OF THE INSURER IS GUILTY OF THEFT AND MAY BE PROSECUTED UNDER 45-6-301."

Section 6. Section 39-71-702, MCA, is amended to read:

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

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

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

1 state's average weekly wage at the time of injury.

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

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

18 (6) ~~Notwithstanding--subsection--(3)--beginning-July-1-~~
19 ~~1987-through-June-30-1991-the-maximum-weekly-compensation~~
20 ~~benefits-for-permanent-total-disability-may-not-exceed--the~~
21 ~~state's--average--weekly--wage--of--\$299-established-July-1-~~
22 ~~1986. A worker may not receive both wages and permanent~~
23 ~~total disability benefits without the WRITTEN consent of the~~
24 ~~insurer. Failure-of-the-worker-to-notify-the-insurer-of-the~~
25 ~~receipt-of-wages-while-receiving-permanent-total-disability~~

1 ~~benefits--may--subject--the--worker--to--criminal--penalties~~
2 ~~provided--in--45-6-301(6): A WORKER WHO RECEIVES BOTH WAGES~~
3 ~~AND PERMANENT TOTAL DISABILITY BENEFITS WITHOUT WRITTEN~~
4 ~~CONSENT OF THE INSURER IS GUILTY OF THEFT AND MAY BE~~
5 ~~PROSECUTED UNDER 45-6-301."~~

6 **Section 7.** Section 39-71-2001, MCA, is amended to read:

7 "39-71-2001. Rehabilitation benefits. (1) An injured
8 worker is eligible for rehabilitation benefits if:

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

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

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

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

1 (2) After filing the rehabilitation plan with the
2 department, the injured worker is entitled to receive
3 rehabilitation benefits at the injured worker's temporary
4 total disability rate. The benefits must be paid for the
5 period specified in the rehabilitation plan, not to exceed
6 104 weeks. Rehabilitation benefits must be paid during a
7 reasonable period, not to exceed 10 weeks, while the worker
8 is waiting to begin the agreed-upon rehabilitation plan.
9 Rehabilitation benefits must be paid while the worker is
10 satisfactorily completing the agreed-upon rehabilitation
11 plan.

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

22 (4) If there is a dispute as to whether an injured
23 worker can return to the job the worker held at the time of
24 injury, the insurer shall designate a rehabilitation
25 provider to evaluate and determine whether the worker can

1 return to the job held at the time of injury. If it is
2 determined that he the worker cannot return to work THE JOB
3 HELD AT THE TIME OF INJURY, the worker is entitled to
4 rehabilitation benefits and services as provided in
5 subsection (2).

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

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

12 (7) A worker may not receive both wages and
13 rehabilitation benefits without the WRITTEN consent of the
14 insurer. Failure-of-the-worker-to-notify-the-insurer-of-the
15 receipt-of-wages-while-receiving-rehabilitation-benefits-may
16 subject-the-worker-to-criminal-penalties-provided-in
17 45-6-301(6). A WORKER WHO RECEIVES BOTH WAGES AND
18 REHABILITATION BENEFITS WITHOUT WRITTEN CONSENT OF THE
19 INSURER IS GUILTY OF THEFT AND MAY BE PROSECUTED UNDER
20 45-6-301."

21 NEW SECTION. Section 8. Codification instruction. (1)
22 [Section 1] is intended to be codified as an integral part
23 of Title 2, chapter 15, part 20, and the provisions of Title
24 2, chapter 15, part 20, apply to [section 1].

25 (2) [Section 3] is intended to be codified as an

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1 integral part of Title 39, chapter 71, and the provisions of
2 Title 39, chapter 71, apply to [section 3].

3 NEW SECTION. SECTION 9. EFFECTIVE DATE. [THIS ACT] IS
4 EFFECTIVE JULY 1, 1993.

-End-

SENATE BILL NO. 164

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

BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A WORKERS'
 COMPENSATION FRAUD INVESTIGATION AND PROSECUTION OFFICE IN
 THE DEPARTMENT OF JUSTICE; CREATING A WORKERS' COMPENSATION
 FRAUD PREVENTION AND DETECTION UNIT IN THE STATE FUND;
 CLARIFYING CRIMINAL PENALTIES FOR WORKERS' COMPENSATION
 FRAUD; AND AMENDING SECTIONS 39-71-206, 39-71-316,
 39-71-701, 39-71-702, AND 39-71-2001, MCA; AND PROVIDING AN
 EFFECTIVE DATE."

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

NEW SECTION. Section 1. Workers' compensation fraud
 office. There is a workers' compensation fraud investigation
 and prosecution office in the department of justice. The

office shall investigate and prosecute fraud--for CASES
REFERRED BY the state compensation mutual insurance fund.

The office is under the supervision and control of the
 attorney general and consists of:

(1) three FOUR persons qualified by education,
 training, experience, and high professional competence in
 investigative procedures who shall investigate violations of
 the provisions of Title 39, chapters 71 and 72, at the
 request of the state compensation mutual insurance fund; and

(2) one person licensed to practice law in Montana who
 shall prosecute violations of the provisions of Title 39,
 chapters 71 and 72. The attorney may also assist county
 attorneys in prosecuting violations of Title 39, chapters 71
 and 72, without charge to the county.

~~{3}--For purposes of this section, "fraud" has the~~
~~meaning provided in 45-6-301(5).~~

Section 2. Section 39-71-206, MCA, is amended to read:

"39-71-206. Legal advisers of department and state fund
 -- investigative and prosecution services. (1) The attorney
 general is the legal adviser of the department and the state
 fund and shall represent either entity in all proceedings if
 requested by the department or state fund. The department
 and state fund may employ other attorneys or legal advisers
 as they consider necessary.

(2) As provided in [section 1], the attorney general

1 shall provide investigative and prosecution services to the
 2 state fund with respect to violations of Title 39, chapters
 3 71 and 72."

4 NEW SECTION. Section 3. Fraud detection and prevention
 5 unit -- EXPENDITURE ACCOUNTING. (1) The state fund shall
 6 establish a fraud prevention and detection unit. The unit is
 7 responsible for developing detection and investigative
 8 PREVENTION procedures, providing investigative DETECTION
 9 services, and providing training in the prevention and
 10 investigation DETECTION of fraud-with-respect-to FRAUDULENT
 11 CONDUCT UNDER Title 39, chapters 71 and 72, THAT IS SUBJECT
 12 TO PROSECUTION UNDER TITLE 45. THE UNIT SHALL REFER ALL
 13 CASES OF SUSPECTED FRAUDULENT CONDUCT TO THE WORKERS'
 14 COMPENSATION FRAUD INVESTIGATION AND PROSECUTION OFFICE
 15 ESTABLISHED IN (SECTION 1).

16 (2) ~~For--purposes--of--this--section,--"fraud"--has-the~~
 17 meaning-provided-in-45-6-301(5); THE STATE FUND SHALL EXPEND
 18 MONEY TO INVESTIGATE FRAUD PURSUANT TO THIS SECTION AND
 19 SHALL SEPARATELY ACCOUNT FOR MONEY EXPENDED.

20 Section 4. Section 39-71-316, MCA, is amended to read:

21 "39-71-316. Filing true claim -- obtaining benefits
 22 through deception or other fraudulent means. (1) A person
 23 filing a claim under this chapter or chapter 72 of this
 24 title, by signing the claim, affirms the information filed
 25 is true and correct to the best of that person's knowledge.

1 (2) A person who obtains or assists in obtaining
 2 benefits to which the person is not entitled under this
 3 chapter or chapter 72 of this title ~~may--be~~ IS guilty of
 4 theft AND MAY BE PROSECUTED under 45-6-301. A county
 5 attorney OR THE ATTORNEY GENERAL may initiate criminal
 6 proceedings against the person. This subsection includes but
 7 is not limited to a person who is receiving temporary total
 8 disability benefits, permanent total disability benefits, or
 9 rehabilitation benefits while working without the knowledge
 10 and concurrence of the insurer."

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

12 "39-71-701. Compensation for temporary total disability
 13 -- exception. (1) Subject to the limitation in 39-71-736 and
 14 subsection (4) of this section, a worker is eligible for
 15 temporary total disability benefits when the worker suffers
 16 a total loss of wages as a result of an injury and until the
 17 worker reaches maximum healing.

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

20 (3) Weekly compensation benefits for injury producing
 21 temporary total disability shall be $66 \frac{2}{3}\%$ of the wages
 22 received at the time of the injury. The maximum weekly
 23 compensation benefits may not exceed the state's average
 24 weekly wage at the time of injury. Temporary total
 25 disability benefits must be paid for the duration of the

worker's temporary disability. The weekly benefit amount may not be adjusted for cost of living as provided in 39-71-702(5).

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

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

(6) Notwithstanding subsection (3), beginning July 1, 1987, through June 30, 1991, weekly compensation benefits

for temporary total disability may not exceed the state's average weekly wage of \$299 established July 1, 1986.

(7) A worker may not receive both wages and temporary total disability benefits without the WRITTEN consent of the insurer. Failure-of-the-worker-to-notify-the-insurer-of-the receipt--of-wages-while-receiving-temporary-total-disability benefits--may--subject--the--worker--to--criminal--penalties provided-in-45-6-301(6): A WORKER WHO RECEIVES BOTH WAGES AND TEMPORARY TOTAL DISABILITY BENEFITS WITHOUT WRITTEN CONSENT OF THE INSURER IS GUILTY OF THEFT AND MAY BE PROSECUTED UNDER 45-6-301."

Section 6. Section 39-71-702, MCA, is amended to read:

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

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

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

1 state's average weekly wage at the time of injury.

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

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

18 (6) ~~Notwithstanding--subsection--(3)--beginning-July-1-~~
19 ~~1987--through-June-30--1991--the-maximum-weekly-compensation~~
20 ~~benefits-for-permanent-total-disability-may-not-exceed--the~~
21 ~~state's--average--weekly--wage--of--\$299-established-July-1-~~
22 ~~1986. A worker may not receive both wages and permanent~~
23 ~~total disability benefits without the WRITTEN consent of the~~
24 ~~insurer. Failure-of-the-worker-to-notify-the-insurer-of-the~~
25 ~~receipt-of-wages-while-receiving-permanent-total-disability~~

1 ~~benefits--may--subject--the--worker--to--criminal--penalties~~
2 ~~provided--in--45-6-301(6). A WORKER WHO RECEIVES BOTH WAGES~~
3 ~~AND PERMANENT TOTAL DISABILITY BENEFITS WITHOUT WRITTEN~~
4 ~~CONSENT OF THE INSURER IS GUILTY OF THEFT AND MAY BE~~
5 ~~PROSECUTED UNDER 45-6-301."~~

6 **Section 7.** Section 39-71-2001, MCA, is amended to read:

7 "39-71-2001. Rehabilitation benefits. (1) An injured
8 worker is eligible for rehabilitation benefits if:

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

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

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

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

1 (2) After filing the rehabilitation plan with the
2 department, the injured worker is entitled to receive
3 rehabilitation benefits at the injured worker's temporary
4 total disability rate. The benefits must be paid for the
5 period specified in the rehabilitation plan, not to exceed
6 104 weeks. Rehabilitation benefits must be paid during a
7 reasonable period, not to exceed 10 weeks, while the worker
8 is waiting to begin the agreed-upon rehabilitation plan.
9 Rehabilitation benefits must be paid while the worker is
10 satisfactorily completing the agreed-upon rehabilitation
11 plan.

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

22 (4) If there is a dispute as to whether an injured
23 worker can return to the job the worker held at the time of
24 injury, the insurer shall designate a rehabilitation
25 provider to evaluate and determine whether the worker can

1 return to the job held at the time of injury. If it is
2 determined that he the worker cannot return to work THE JOB
3 HELD AT THE TIME OF INJURY, the worker is entitled to
4 rehabilitation benefits and services as provided in
5 subsection (2).

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

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

12 (7) A worker may not receive both wages and
13 rehabilitation benefits without the WRITTEN consent of the
14 insurer. Failure-of-the-worker-to-notify-the-insurer-of-the
15 receipt-of-wages-while-receiving-rehabilitation-benefits-may
16 subject--the--worker--to--criminal--penalties--provided---in
17 45-6-301(6): A WORKER WHO RECEIVES BOTH WAGES AND
18 REHABILITATION BENEFITS WITHOUT WRITTEN CONSENT OF THE
19 INSURER IS GUILTY OF THEFT AND MAY BE PROSECUTED UNDER
20 45-6-301."

21 NEW SECTION. Section 8. Codification instruction. (1)
22 [Section 1] is intended to be codified as an integral part
23 of Title 2, chapter 15, part 20, and the provisions of Title
24 2, chapter 15, part 20, apply to [section 1].

25 (2) [Section 3] is intended to be codified as an

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1 integral part of Title 39, chapter 71, and the provisions of
2 Title 39, chapter 71, apply to {section 3}.

3 NEW SECTION. SECTION 9. EFFECTIVE DATE. [THIS ACT] IS
4 EFFECTIVE JULY 1, 1993.

-End-