

SENATE BILL 405

Introduced by Keating, et al.

2/15	Introduced
2/15	Referred to Labor & Employment Relations
2/15	First Reading
2/20	Hearing
2/22	Fiscal Note Requested
2/22	Committee Report--Bill Passed as Amended
2/23	2nd Reading Passed
2/24	3rd Reading Failed
3/03	Fiscal Note Received
3/03	Fiscal Note Printed

1 Soratti BILL NO. 405  
2 INTRODUCED BY Legating 34411 27-2 Burgman  
3 Subcommittee on Health and Human Resources ANNESTAD Johnson DeSile  
4 A BILL FOR AN ACT ENTITLED: "AN ACT ABOLISHING THE STATE  
5 COMPENSATION MUTUAL INSURANCE FUND; PROVIDING FOR  
6 ADMINISTRATION AND PAYMENT OF EXISTING CLAIMS BY ONE OR MORE  
7 PRIVATE COMPANIES UNDER CONTRACTS WITH THE COMMISSIONER OF  
8 INSURANCE; PROVIDING FOR LOANS TO THE COMMISSIONER TO  
9 SERVICE THE CONTRACTS; PROVIDING FOR MUTUALLY AGREEABLE  
10 LUMP-SUM SETTLEMENTS; CREATING AN ASSIGNED RISK PLAN;  
11 PROVIDING THAT THE SCOPE AND COVERAGE OF THE INSURANCE IS AT  
12 THE NONSELF-INSURED EMPLOYER'S DISCRETION; ALLOWING AN  
13 EMPLOYER TO COMPLY WITH THE REQUIREMENT TO PROVIDE WORKERS'  
14 COMPENSATION COVERAGE BY OBTAINING ERISA COVERAGE; AMENDING  
15 SECTIONS 17-6-318, 19-12-401, 20-15-403, 31-2-106, 39-3-604,  
16 39-51-201, 39-71-101, 39-71-116, 39-71-117, 39-71-118,  
17 39-71-317, 39-71-401, 39-71-431, 39-71-2204, 39-71-2354,  
18 39-71-2501, 39-71-2502, 39-71-2503, 39-71-2504, 39-73-104,  
19 39-73-107, 39-73-108, 50-16-527, AND 50-71-325, MCA; AND  
20 REPEALING SECTIONS 2-15-1707, 39-71-102, 39-71-103,  
21 39-71-105, 39-71-119, 39-71-123, 39-71-201, 39-71-202,  
22 39-71-204, 39-71-205, 39-71-206, 39-71-208, 39-71-209,  
23 39-71-221, 39-71-222, 39-71-223, 39-71-224, 39-71-301,  
24 39-71-302, 39-71-303, 39-71-306, 39-71-307, 39-71-308,  
25 39-71-316, 39-71-402, 39-71-403, 39-71-405, 39-71-406,

1	39-71-407,	39-71-408,	39-71-409,	39-71-411,	39-71-412,
2	39-71-414,	39-71-415,	39-71-421,	39-71-426,	39-71-427,
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7	39-71-603,	39-71-604,	39-71-605,	39-71-606,	39-71-607,
8	39-71-608,	39-71-609,	39-71-610,	39-71-611,	39-71-612,
9	39-71-613,	39-71-614,	39-71-701,	39-71-702,	39-71-703,
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24	39-71-2320,	39-71-2321,	39-71-2322,	39-71-2323,	39-71-2325,
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1 39-71-2351, 39-71-2352, 39-71-2355, 39-71-2356, 39-71-2361,  
 2 39-71-2401, 39-71-2406, 39-71-2407, 39-71-2408, 39-71-2409,  
 3 39-71-2410, 39-71-2411, 39-71-2901, 39-71-2902, 39-71-2903,  
 4 39-71-2904, 39-71-2905, 39-71-2907, 39-71-2909, 39-71-2910,  
 5 39-71-2914, 39-72-101, 39-72-102, 39-72-103, 39-72-201,  
 6 39-72-202, 39-72-203, 39-72-204, 39-72-206, 39-72-301,  
 7 39-72-302, 39-72-303, 39-72-305, 39-72-310, 39-72-401,  
 8 39-72-402, 39-72-403, 39-72-404, 39-72-405, 39-72-408,  
 9 39-72-509, 39-72-601, 39-72-602, 39-72-605, 39-72-606,  
 10 39-72-607, 39-72-608, 39-72-609, 39-72-610, 39-72-611,  
 11 39-72-612, 39-72-613, 39-72-701, 39-72-703, 39-72-704,  
 12 39-72-705, 39-72-706, 39-72-707, 39-72-708, 39-72-709,  
 13 39-72-711, 39-72-712, AND 39-72-714, MCA."

14

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

16 **Section 1.** Section 39-71-101, MCA, is amended to read:

17 "39-71-101. Short title. This chapter may be cited as  
 18 the "Workers' Compensation and Occupational Disease Act".

19 **Section 2.** Section 39-71-116, MCA, is amended to read:

20 "39-71-116. Definitions. Unless the context otherwise  
 21 requires, words and phrases employed in this chapter have  
 22 the following meanings:

23 (1) "Administer--and--pay"--includes--all--actions--by--the  
 24 state--fund--under--the--Workers'--Compensation--Act--and--the  
 25 Occupational--Disease--Act--of--Montana--necessary--to--

1 (a)--the--investigation--review--and--settlement--of  
 2 claims;  
 3 (b)--payment--of--benefits;  
 4 (c)--setting--of--reserves;  
 5 (d)--furnishing--of--services--and--facilities--and  
 6 (e)--utilization--of--actuarial--audit--accounting--  
 7 vocational--rehabilitation--and--legal--services;

8 (2)--"Average--weekly--wage"--means--the--mean--weekly  
 9 earnings--of--all--employees--under--covered--employment--as  
 10 defined--and--established--annually--by--the--Montana--department  
 11 of--labor--and--industry--it--is--established--at--the--nearest  
 12 whole--dollar--number--and--must--be--adopted--by--the--department  
 13 prior--to--July--1--of--each--year;

14 (3)--"Beneficiary"--means:

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

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

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

21 (d)--an--invalid--child--over--the--age--of--18--years--who--is  
 22 dependent--upon--the--decendent--for--support--at--the--time--of  
 23 injury;

24 (e)--a--parent--who--is--dependent--upon--the--decendent--for  
 25 support--at--the--time--of--the--injury--if--no--beneficiary--as

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

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

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

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

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

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

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

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

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

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

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

(14) "Payroll", "annual payroll", or "annual payroll for  
 the preceding year" means the average annual payroll of the  
 employer for the preceding calendar year or, if the employer  
 shall not have operated a sufficient or any length of time  
 during such calendar year, 12 times the average monthly  
 payroll for the current year. However, an estimate may be  
 made by the department for any employer starting in business  
 if no average payrolls are available. This estimate is to be  
 adjusted by additional payment by the employer or refund by  
 the department, as the case may actually be, on December 31

1 of-such-current-year:-An-employer's-payroll-must-be-computed  
2 by-calculating-all-wages,-as-defined-in-39-71-123,-that--are  
3 paid-by-an-employer:-

4 {15}-"Permanent--partial--disability"--means-a-condition,  
5 after-a-worker-has--reached--maximum--healing,-in--which--a  
6 worker:-

7 {a)--has--a-medically-determined-physical-restriction-as  
8 a-result-of-an-injury-as-defined-in-39-71-119;-and

9 {b)--is-able-to-return-to-work-in-some-capacity-but--the  
10 physical-restriction-impairs-the-worker's-ability-to-work:-

11 {16}-"Permanent--total--disability"--means-a--condition  
12 resulting--from--injury--as-defined-in-this-chapter,-after-a  
13 worker-reaches-maximum-healing,-in-which--a--worker--has--no  
14 reasonable---prospect---of---physically--performing--regular  
15 employment:-Regular-employment-means--work--on--a--recurring  
16 basis--performed--for--remuneration--in--a--trade,-business,  
17 profession,-or-other--occupation--in--this--state,-back--of  
18 immediate--job--openings-is-not-a-factor-to-be-considered-in  
19 determining-if-a-worker-is-permanently-totally-disabled:-

20 {17}-The-term--"physician"--includes--"surgeon"--and--in  
21 either--case--means--one--authorized--by-law-to-practice-his  
22 profession-in-this-state:-

23 {18}-The-"plant-of-the-employer"--includes-the--place--of  
24 business--of-a-third-person-while-the-employer-has-access-to  
25 or-control-over-such-place-of-business-for--the--purpose--of

1 carrying-on-his-usual-trade,-business,-or-occupation:-

2 {19}-"Public-corporation"--means-the-state-or-any-county,  
3 municipal--corporation,-school--district,-city,-city-under  
4 commission-form-of-government-or-special-charter,-town,-or  
5 village:-

6 {20}-"Reasonably--safe--place--to--work"--means-that-the  
7 place-of-employment-has-been-made-as-free-from-danger-to-the  
8 life-or--safety--of--the--employee--as--the--nature--of--the  
9 employment-will-reasonably-permit:-

10 {21}-"Reasonably--safe--tools--and--appliances"--are-such  
11 tools-and-appliances-as-are-adapted-to--and--are--reasonably  
12 safe--for--use-for-the-particular-purpose-for-which-they-are  
13 furnished:-

14 {22}-"Temporary-service-contractor"--means--any--person,  
15 firm,-association,-or-corporation-conducting-business-that  
16 employs-individuals-directly-for-the-purpose--of--furnishing  
17 the---services--of--those--individuals--on--a--part-time--or  
18 temporary-basis-to-others:-

19 {23}-"Temporary--total--disability"--means--a--condition  
20 resulting-from-an-injury-as-defined--in--this--chapter--that  
21 results--in-total-loss-of-wages-and-exists-until-the-injured  
22 worker-reaches-maximum-healing:-

23 {24}-"Temporary-worker"--means-a-worker--whose--services  
24 are--furnished--to-another-on-a-part-time-or-temporary-basis  
25 to-substitute-for-a-permanent-employee-on-leave-or--to--meet

~~An emergency or short-term workload;~~

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

**Section 3.** Section 39-71-117, MCA, is amended to read:

"39-71-117. **Employer defined.** (1) "Employer" means:

(a) the state and each county, city and county, city school district, irrigation district, all other districts established by law, and all public corporations and quasi-public corporations and public agencies therein and every person, every prime contractor, and every firm, voluntary association, and private corporation, including any public service corporation and including an independent contractor who has any person in service under any appointment or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased employer or the receiver or trustee thereof;

(b) any association, corporation, or organization that seeks permission and meets the requirements set by the department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter; and

(c) any nonprofit association or corporation or other entity funded in whole or in part by federal, state, or local government funds that places community service participants, as defined in 39-71-118(1)(f), with nonprofit

organizations or associations or federal, state, or local government entities.

(2) A temporary service contractor is the employer of a temporary worker for premium and loss experience purposes.

(3) An employer defined in subsection (1) who utilizes the services of a worker furnished by another person, association, contractor, firm, or corporation, other than a temporary service contractor or an employee leasing company, is presumed to be the employer for workers' compensation premium and loss experience purposes for work performed by the worker. The presumption may be rebutted by substantial credible evidence of the following:

(a) the person, association, contractor, firm, or corporation, other than a temporary service contractor, furnishing the services of a worker to another retains control over all aspects of the work performed by the worker, both at the inception of employment and during all phases of the work; and

(b) the person, association, contractor, firm, or corporation, other than a temporary service contractor, furnishing the services of a worker to another has obtained workers' compensation and occupational disease insurance or its equivalent for the worker in Montana both at the inception of employment and during all phases of the work performed.

1 (4) Notwithstanding the provisions of subsection (3), a  
 2 common or contract motor carrier doing business in this  
 3 state who utilizes drivers in this state is considered the  
 4 employer, is liable for workers' compensation and  
 5 occupational disease premiums, and is subject to loss  
 6 experience rating in this state unless:

7 (a) the driver in this state is certified as an  
 8 independent contractor as provided in 39-71-401(3); or

9 (b) the person, association, contractor, firm, or  
 10 corporation furnishing drivers in this state to a motor  
 11 carrier has obtained workers' compensation and occupational  
 12 disease insurance on the drivers in Montana both at the  
 13 inception of employment and during all phases of the work  
 14 performed."

15 **Section 4.** Section 39-71-401, MCA, is amended to read:

16 "39-71-401. **Employments covered and employments**  
 17 **exempted.** (1) Except as provided in subsection (2), the  
 18 Workers' Compensation and Occupational Disease Act applies  
 19 to all employers as defined in 39-71-117 and to all  
 20 employees as defined in 39-71-118. An employer who has any  
 21 employee in service under any appointment or contract of  
 22 hire, expressed or implied, oral or written, shall elect--to  
 23 ~~be bound by the provisions of compensation plan No. 17-27 or~~  
 24 3 maintain a workers' compensation and occupational disease  
 25 insurance policy with an insurance company authorized to

1 transact workers' compensation and occupational disease  
 2 insurance in this state, must be self-insured as provided  
 3 for in this chapter, or shall make an irrevocable  
 4 contribution to a trustee or a third person pursuant to a  
 5 fringe benefit fund, plan, or program that meets the  
 6 requirements of the Employee Retirement Income Security Act  
 7 of 1974 that provides benefits to employees for health care,  
 8 pensions on retirement or death, life insurance, and  
 9 disability and sickness insurance. The employer may provide  
 10 other bona fide fringe benefits selected by the employer.  
 11 Each employee whose employer is bound by the Workers'  
 12 Compensation and Occupational Disease Act is subject to and  
 13 bound by the compensation-plan coverage option that has been  
 14 elected by the employer.

15 (2) Unless the employer elects coverage for these  
 16 employments under this chapter and an insurer allows such an  
 17 election, the Workers' Compensation and Occupational Disease  
 18 Act does not apply to any of the following employments:

19 (a) household and domestic employment;

20 (b) casual employment as defined in 39-71-116;

21 (c) employment of a dependent member of an employer's  
 22 family for whom an exemption may be claimed by the employer  
 23 under the federal Internal Revenue Code;

24 (d) employment of sole proprietors or working members  
 25 of a partnership, except as provided in subsection (3);

(e) employment of a broker or ~~salesman~~ salesperson performing under a license issued by the board of realty regulation;

(f) employment of a direct seller engaged in the sale of consumer products, primarily in the customer's home;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of any person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with any railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, or judge, at a school amateur athletic event, unless the person is otherwise employed by a school district;

(k) any person performing services as a newspaper carrier or free-lance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection, "free-lance correspondent" is a person who

submits articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":

(i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles; but

(ii) does not include an employee of the paper who, incidentally to ~~his~~ the employee's main duties, carries or delivers papers.

(1) cosmetologist's services and barber's services as defined in 39-51-204(1)(1).

(3) (a) A sole proprietor or a working member of a partnership who ~~holds-himself-out-or---considers---himself---an independent---contractor~~ represents to the public that the person is an independent contractor shall ~~elect-to-be---bound personally and individually by---the---provisions---of compensation---plan---No---17---27---or---37~~ maintain a workers' compensation and occupational disease insurance policy or be self-insured but he may apply to the department for an exemption from the Workers' Compensation and Occupational Disease Act ~~for-himself~~.

(b) The application must be made in accordance with the rules adopted by the department. The department may deny the application only if it determines that the applicant is not an independent contractor.

(c) When an application is approved by the department,



1 it is conclusive as to the status of an independent  
2 contractor and precludes the applicant from obtaining  
3 benefits under this chapter.

4 (d) When an ~~election of~~ application for an exemption is  
5 approved by the department, the ~~election~~ exemption remains  
6 effective and the independent contractor retains ~~his~~ the  
7 status as an independent contractor until ~~he~~ the person  
8 notifies the department of any change in ~~his~~ status and  
9 provides a description of ~~his~~ present work status.

10 (e) If the department denies the application for  
11 exemption, the applicant may contest the denial by  
12 petitioning for review of the decision by an appeals referee  
13 in the manner provided for in 39-51-1109. An applicant  
14 dissatisfied with the decision of the appeals referee may  
15 appeal the decision in accordance with the procedure  
16 established in 39-51-2403 and 39-51-2404.

17 (4) (a) A private corporation shall provide coverage  
18 for its officers and other employees ~~under the provisions of~~  
19 ~~compensation plan No. 17-27-or-3~~. However, pursuant to rules  
20 the department promulgates and subject in all cases to  
21 approval by the department, an officer of a private  
22 corporation may elect not to be bound as an employee under  
23 this chapter by giving a written notice, on a form provided  
24 by the department, ~~served in the following manner:~~

25 ~~{i}-if-the-employer-has-elected-to-be-bound-by-the~~

1 ~~provisions of compensation plan No. 17-27-or-3, by delivering the~~  
2 ~~notice to the board of directors of the employer and to the~~  
3 ~~department; or~~

4 ~~{ii}-if the employer has elected to be bound by the~~  
5 ~~provisions of compensation plan No. 2-or-3, by delivering~~  
6 ~~the notice to the board of directors of the employer, to the~~  
7 ~~department, and to the insurer.~~

8 (b) If the employer changes ~~plans or~~ insurers or  
9 changes status with respect to self-insurance, the officer's  
10 previous election is not effective and the officer shall  
11 again serve notice as provided if ~~he~~ the officer elects not  
12 to be bound.

13 (c) The appointment or election of an employee as an  
14 officer of a corporation for the purpose of excluding the  
15 employee from coverage under this chapter does not entitle  
16 the officer to elect not to be bound as an employee under  
17 this chapter. In any case, the officer shall sign the notice  
18 required by subsection (4)(a) under oath or affirmation, and  
19 ~~he~~ the officer is subject to the penalties for false  
20 swearing under 45-7-202 ~~if he falsifies the notice.~~

21 (5) Each employer shall post a sign in the workplace at  
22 the locations where notices to employees are normally  
23 posted, informing employees about the employer's current  
24 provision of workers' compensation and occupational disease  
25 insurance. A workplace is any location where an employee

performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on his the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."

**Section 5.** Section 39-71-431, MCA, is amended to read:

"39-71-431. **Assigned risk plan.** (1) ~~Following the date on which the provisions of 39-71-2311 through 39-71-2320 and 39-71-2337 are implemented but no later than December 31, 1990, the~~ The commissioner of the department of labor and industry may order the establishment of insurance shall establish and administer a plan to equitably apportion among ~~the state fund, plan No. 37 and private insurers, plan No. 27 the~~ workers' compensation and occupational disease coverage required by this chapter for employers who are unable to procure coverage through ordinary methods or by self-insurance. ~~In determining whether to order an assigned risk plan to be established, the commissioner shall consider~~

~~the effect a plan would have on the availability of workers' compensation insurance and the need to provide competitive workers' compensation premium rates for employers in this state. If the commissioner orders the establishment of an assigned risk plan, it may not take effect until at least 6 months following the commissioner's order creating the plan.~~

(2) All ~~plan No. 2 insurers and the state fund~~ insurance companies, other than self-insurers, authorized to transact workers' compensation and occupational disease insurance business in this state shall subscribe to and participate in the an assigned risk plan.

(3) If an insurer refuses to accept its equitable apportionment under the assigned risk plan, the commissioner of ~~insurance~~ may suspend or revoke the insurer's authority to issue workers' compensation and occupational disease insurance policies in this state.

~~(4) If an assigned risk plan is established and in effect, the state fund, plan No. 37 is not required to insure any employer in this state requesting coverage and it may refuse coverage for an employer, except for a state agency.~~

~~(5) (4) If an assigned risk plan is established and in effect, an~~ An employer who is refused the workers' compensation and occupational disease coverage required by this chapter by the state fund, plan No. 37 and by at least

two private insurers~~7--plan--No--27--may~~ must be assigned coverage by the commissioner under the assigned risk plan pursuant to the procedure established by the commissioner for the equitable apportionment of coverage."

**NEW SECTION. Section 6.** Contract for administration of claims for injuries that occurred before July 1, 1994 -- use and transfer of existing records. (1) Prior to July 1, 1994, the commissioner of insurance shall contract with one or more private insurance or other companies for the administration and payment of unpaid claims for workers' compensation and occupational diseases that occurred before July 1, 1994, and that were covered by insurance purchased through the former state compensation mutual insurance fund or its predecessor. The initial contracts must provide that work under the initial contracts will begin on July 1, 1994, but must be negotiated and signed far enough in advance of that date to allow the contractors sufficient time to prepare for the work. The state treasurer shall pay to contractors, out of accounts created by 39-71-2504 and on warrants authorized by the commissioner, amounts that the contractors require to be paid for the cost of administering and paying claims.

(2) Except as provided in [section 7], each claim must be administered and paid under the laws in effect on the date of the injury or disease.

(3) A company interested in a contract is entitled to fully inspect the written, typed, computerized, and other public records of the former state compensation mutual insurance fund, including data banks, paper records, and raw data. All records of the fund are transferred to the commissioner as of July 1, 1994, to be used by the commissioner to carry out the provisions of this section. The commissioner may, as necessary or desirable, transfer records or copies of records to contractors.

**NEW SECTION. Section 7.** Mutually agreeable lump-sum settlements. A workers' compensation or occupational disease claimant and a company that has entered into a contract under [section 6] may, regardless of the lump-sum law in effect on the date of the injury or disease, mutually agree to a lump-sum settlement of a claim. If a mutual agreement is not reached, the lump-sum law in effect on the date of the injury or disease applies.

**NEW SECTION. Section 8.** Disposal of existing assets. (1) The following financial assets must be transferred on July 1, 1994, to the contract account created by 39-71-2504:

(a) any assets in the fund created by former 39-71-502 that the department of labor and industry estimates are not needed on July 1, 1994, to pay claims under Title 39, chapter 71, part 5, for injuries and diseases that occurred before July 1, 1994;

1 (b) any assets in the fund referred to in former  
2 39-71-902 that the department estimates are not needed on  
3 July 1, 1994, to pay claims under part 9 for injuries and  
4 diseases that occurred before July 1, 1994;

5 (c) any assets in the fund referred to in former  
6 39-71-1004 that the department estimates are not needed on  
7 July 1, 1994, to pay claims under part 10 for injuries that  
8 occurred before July 1, 1994;

9 (d) any assets in the fund created by 39-71-2609 that  
10 the board created by 39-71-2604 estimates are not needed on  
11 July 1, 1994, to pay claims for injuries and diseases that  
12 occurred before July 1, 1994; and

13 (e) all financial assets of the former state mutual  
14 compensation insurance fund.

15 (2) Assets held by the department under part 21 must be  
16 held in the amount estimated by the department to be  
17 necessary for the payment, under 39-71-2108, of claims for  
18 injuries and diseases that occurred before July 1, 1994. The  
19 remaining assets must be distributed to the employers whose  
20 deposits under part 21 created the assets.

21 (3) Assets held by the department under former  
22 39-71-2206 and former 39-71-2207 that the department  
23 estimates are not needed under those sections on July 1,  
24 1994, to pay claims for injuries and diseases that occurred  
25 before that date must be returned to the insurers whose

1 deposits under those sections created the assets.

2 **Section 9.** Section 39-71-2354, MCA, is amended to read:

3 "39-71-2354. Use of payroll tax proceeds -- loans --  
4 bonds. ~~{1}-Taxes-collected-under-39-71-2503-may-be-used-only~~  
5 ~~to-administer-and-pay-claims-for-injuries-resulting-from~~  
6 ~~accidents-that-occurred-before-July-17-1990--including-the~~  
7 ~~cost-of-repaying-bonds-issued-and-loan-proceeds-given-under~~  
8 ~~39-71-2355-and-this-section.~~ If the state fund commissioner  
9 of insurance determines that, for the next 1 or more years  
10 following the date of the determination, the tax revenue  
11 collected under 39-71-2503, together with funds in the  
12 account accounts required by 39-71-2321 ~~--for-claims-for~~  
13 ~~injuries--resulting-from-accidents-that-occurred-before-July~~  
14 ~~17-1990~~ 39-71-2504, will be insufficient to ~~--administer--and~~  
15 ~~pay--those--claims~~ for the payment of contracts entered into  
16 under [section 6], the state fund ~~may, through its board--of~~  
17 ~~directors,~~ commissioner ~~request--the--budget--director--to~~  
18 ~~certify--to~~ shall advise the board of investments that  
19 additional funding is necessary. ~~if--the--budget--director~~  
20 ~~agrees--with--the--state--fund's--board--of--directors--that~~  
21 ~~additional--funding--is--necessary,~~ ~~the-budget-director-shall~~  
22 ~~certify-to-the-board-of--investments--the--amount--that--the~~  
23 ~~budget--director--determines--is--necessary-to-administer-and~~  
24 ~~pay--claims--for--injuries--resulting--from--accidents--that~~  
25 ~~occurred--before--July--17--1990.~~ ~~Except--as--provided--in~~

1 subsection-(2)-the The board of investments shall, at times  
 2 and in amounts it considers necessary or advisable, finance  
 3 the amount certified by the budget director by giving the  
 4 state fund the proceeds of a may loan the commissioner the  
 5 amounts necessary for payment of the contracts entered into  
 6 under [section 6]. The loans must bear interest at 7.5%.  
 7 Loaned amounts must be deposited in the contract account  
 8 created in 39-71-2504, or a bond issue to administer and pay  
 9 claims for injuries resulting from accidents that occurred  
 10 before July 1, 1990, loans must be from reserves accumulated  
 11 from premiums paid to the state fund based upon wages  
 12 payable on or after July 1, 1990. The board of investments  
 13 shall choose the method of financing that is most  
 14 cost effective for the state fund. A loan must bear interest  
 15 at the rate the money would earn in the pooled investment  
 16 fund required by 17-6-203. The board of investments may  
 17 also, upon request of the board of directors of the state  
 18 fund, give the state fund the proceeds of a bond issue to  
 19 be used to pay off loans made under 39-71-2355 and this  
 20 section. Bonds for the state fund must be workers'  
 21 compensation bonds issued under 39-71-2355.  
 22 (2)-The total amount of loan proceeds given to the  
 23 state fund plus workers' compensation bonds issued under  
 24 39-71-2355, except bonds issued to repay loans as provided  
 25 for in subsection (1), may not exceed \$220 million. All loan

1 and bond proceeds given to the state fund must be repaid to  
 2 the board of investments before July 1, 2020."

3 **Section 10.** Section 39-71-2501, MCA, is amended to  
 4 read:

5 "39-71-2501. Definitions. As used in this part, the  
 6 following definitions apply:

7 (1) "Department" means the department of revenue  
 8 provided for in 2-15-1301.

9 (2) "Employer" has the meaning set forth in 39-71-117.

10 (3) "Payroll" means the payroll of an employer for each  
 11 of the calendar quarters ending March 31, June 30, September  
 12 30, and December 31, for all employments covered under  
 13 39-71-401.

14 (4) "State fund" means the state compensation mutual  
 15 insurance fund.

16 (5) (4) "Tax" means the workers' compensation and  
 17 occupational disease payroll tax provided for in 39-71-2503.

18 (6) "Tax account" means the workers' compensation tax  
 19 account created by 39-71-2504."

20 **Section 11.** Section 39-71-2502, MCA, is amended to  
 21 read:

22 "39-71-2502. Findings and purpose. (1) Based on current  
 23 liabilities and actuarial analysis, an unfunded liability  
 24 presently exists in the state fund with regard to claims for  
 25 injuries resulting from accidents and for diseases that were

covered by insurance policies issued by the former state compensation mutual insurance fund or its predecessor that occurred before July 1, 1990, and it may increase. While legislative action is required to correct the causes of the unfunded liability, those actions will not provide sufficient funds to permit the state--fund--to--pay--its existing-liabilities-and-obligations payment of the unfunded liability in a timely manner from premium and investment income available to the state fund. Therefore, it is necessary to provide a source of funding for the unfunded liability in-addition-to-premium-and-investment-income.

(2) The police power of the state extends to all great public needs. The state, in the past and in the exercise of its police power, has determined that it ~~is~~ was greatly and immediately necessary to the public welfare to make workers' compensation and occupational disease insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has agencies incurred the unfunded liability described in subsection (1). The burden of this unfunded liability should not be borne solely by those employers who have insured with the state fund agencies because the availability of insurance to all employers through the state fund-has agencies benefited all employers who have had workers' compensation and occupational disease coverage. Therefore,

all employers who have employments covered by the workers' compensation and occupational disease laws should share in the cost of the unfunded liability.

(3) The purpose of this part is to provide a supplemental source of financing for the unfunded liability."

**Section 12.** Section 39-71-2503, MCA, is amended to read:

"39-71-2503. Workers' compensation and occupational disease payroll tax. (1) (a) There is imposed on each employer a workers' compensation and occupational disease payroll tax in an amount equal to 0.28% of the employer's payroll in the preceding calendar quarter for all employments covered under 39-71-401, except that if an employer is subject to 15-30-204(2), the tax is an amount equal to 0.28% of the employer's payroll in the preceding week. This payroll tax must be used to:

(i) reduce repay loans made to the former state compensation mutual insurance fund to pay the unfunded liability in-the-state-fund incurred for claims for injuries resulting from accidents and occupational diseases that occurred before July 1, 1990-;

(ii) repay loans made to the commissioner of insurance under 39-71-2354; and

(iii) pay contracts entered into by the commissioner of

1 insurance under [section 6].

2 (b) If one or more loans or bonds are outstanding, the  
3 tax must be continued at the 0.28% rate and the legislature  
4 may not modify the tax rate, the use of the tax proceeds, or  
5 this section in a manner that reduces the security for  
6 repayment of the outstanding loans or bonds, except that the  
7 legislature may forgive payment of the tax or reduce the tax  
8 rate for any 12-month period if the workers' compensation  
9 and occupational disease bond repayment account contains on  
10 the first day of that period an amount, regardless of the  
11 source, that is in excess of the reserve maintained in the  
12 account and that is equal to the amount needed to pay and  
13 dedicated to the payment of the principal, premium, and  
14 interest that must be paid during that period on the  
15 outstanding loans or bonds. The legislature may not increase  
16 the tax rate except upon a two-thirds vote of each house.

17 (b)(c) Each employer shall maintain the records the  
18 department requires concerning the employer's payroll. The  
19 records are subject to inspection by the department and its  
20 employees and agents during regular business hours.

21 (2) All collections of the tax are appropriated to and  
22 must be deposited as received in the tax-account accounts  
23 created in 39-71-2504. The tax is in addition to any other  
24 tax or fee assessed against employers subject to the tax.

25 (3) (a) On or before the last day of April, July,

1 October, and January, each employer subject to the tax shall  
2 file a return in the form and containing the information  
3 required by the department and, except as provided in  
4 subsection (3)(b), pay the amount of tax required by this  
5 section to be paid on the employer's payroll for the  
6 preceding calendar quarter.

7 (b) An employer subject to 15-30-204(2) shall remit to  
8 the department a weekly payment with its weekly withholding  
9 tax payment in the amount required by subsection (1)(a).

10 (c) A tax payment required by subsection (1)(a) must be  
11 made with the return filed pursuant to 15-30-204. The  
12 department shall first credit a payment to the liability  
13 under 15-30-202 and credit any remainder to the workers'  
14 compensation---tax--account--provided accounts created in  
15 39-71-2504.

16 (4) An employer's officer or employee with the duty to  
17 collect, account for, and pay to the department the amounts  
18 due under this section who willfully fails to pay an amount  
19 is liable to the state for the unpaid amount and any penalty  
20 and interest relating to that amount.

21 (5) Returns and remittances under subsection (3) and  
22 any information obtained by the department during an audit  
23 are subject to the provisions of 15-30-303, but the  
24 department may disclose the information to the department of  
25 labor and industry under circumstances and conditions that

1 ensure the continued confidentiality of the information.

2 (6) The department of labor and industry ~~and the state~~  
3 ~~fund shall, on July 17, 1991, or as soon after that date as~~  
4 ~~possible,~~ give the department a list of all employers having  
5 coverage under ~~any plan administered or regulated by the~~  
6 ~~department of labor and industry and the state fund.~~ After  
7 ~~the lists have been given to the department,~~ the department  
8 ~~of labor and industry and the state fund shall~~ this chapter  
9 and shall update the lists list weekly. The department of  
10 labor and industry ~~and the state fund~~ shall provide the  
11 department with access to their its computer data bases and  
12 paper files and records for the purpose of the department's  
13 administration of the tax imposed by this section.

14 (7) The provisions of Title 15, chapter 30, not in  
15 conflict with the provisions of this part regarding  
16 administration, remedies, enforcement, collections,  
17 hearings, interest, deficiency assessments, credits for  
18 overpayment, statute of limitations, penalties, and  
19 department rulemaking authority apply to the tax, to  
20 employers, and to the department."

21 **Section 13.** Section 39-71-2504, MCA, is amended to  
22 read:

23 "39-71-2504. Workers' compensation tax and occupational  
24 disease account -- loan repayment account -- contract  
25 account. (1) There is a workers' compensation tax and

1 occupational disease account in the state special revenue  
2 fund. The workers' compensation tax and occupational disease  
3 account consists of a tax contract account, a workers'  
4 compensation loan repayment account, and a workers'  
5 compensation and occupational disease bond repayment  
6 account.

7 (2) All collections of the tax, and interest and  
8 penalties on the tax, ~~and revenue appropriated to the~~  
9 ~~workers' compensation tax account under section 17-Chapter~~  
10 ~~97-Special laws of June 1989,~~ must first be deposited in the  
11 workers' compensation tax account. ~~All such money deposited~~  
12 ~~in the workers' compensation tax account must be credited to~~  
13 ~~the workers' compensation and occupational disease~~ bond  
14 repayment account to the extent necessary to pay the  
15 principal of and redemption premium and interest due on  
16 workers' compensation bonds issued under 39-71-2354 and  
17 39-71-2355 and to establish and maintain a reserve for the  
18 bonds equal to the maximum annual principal of and interest  
19 on the bonds in any future year. The collections must next  
20 be deposited in the workers' compensation loan repayment  
21 account to the extent necessary to pay the principal and  
22 interest due on loans issued to the commissioner of  
23 insurance under 39-71-2354 for the payment of contracts  
24 entered into under [section 6] and loans issued to the  
25 former state compensation mutual insurance fund for the



1 payment of unfunded liabilities. The balance in the workers'  
 2 compensation bond repayment account of the collected tax and  
 3 interest and penalties on the tax must be credited to the  
 4 tax deposited in the contract account within the workers'  
 5 compensation tax account and. The money in the contract  
 6 account is statutorily appropriated, as provided in  
 7 17-7-502, to the state fund to be used to reduce the  
 8 unfunded liability in the state fund incurred for claims for  
 9 injuries resulting from accidents that occurred before July  
 10 17, 1990 for the payment of contracts entered into under  
 11 [section 6]."

12 **Section 14.** Section 39-71-317, MCA, is amended to read:

13 "39-71-317. Employer not to terminate worker for filing  
 14 claim --- preference --- jurisdiction over dispute. (1) An  
 15 employer may not use as grounds for terminating a worker the  
 16 filing of a claim under this chapter or chapter 72 of this  
 17 title.

18 (2) When an injured worker is capable of returning to  
 19 work within 2 years from the date of injury and has received  
 20 a medical release to return to work, the worker must be  
 21 given a preference over other applicants for a comparable  
 22 position that becomes vacant if the position is consistent  
 23 with the worker's physical condition and vocational  
 24 abilities.

25 (3) This preference applies only to employment with the

1 employer for whom the employee was working at the time the  
 2 injury occurred.

3 (4) The department and workers' compensation court do  
 4 not have jurisdiction to administer or resolve a dispute  
 5 under this section. Exclusive jurisdiction is with the  
 6 district court."

7 **Section 15.** Section 39-71-2204, MCA, is amended to  
 8 read:

9 "39-71-2204. Insurer to submit notice of coverage  
 10 within thirty days -- penalty for failure. (1) The insurer  
 11 shall, within 30 days after the issuance of the policy of  
 12 workers' compensation and occupational disease insurance,  
 13 submit to the department the notice of coverage stating the  
 14 effective date of the policy insuring the employer and such  
 15 other information as may be required by the department.

16 (2) The department may, in its discretion, assess a  
 17 penalty of no more than \$200 against an insurer which that  
 18 as a general business practice does not comply with the  
 19 30-day notice requirement as set forth in subsection (1) of  
 20 this section."

21 **Section 16.** Section 39-73-104, MCA, is amended to read:

22 "39-73-104. Eligibility requirements for benefits.  
 23 Payment shall must be made under this chapter to any person  
 24 who:

25 (1) has silicosis, as defined in 39-73-101, which that

1 results in ~~his~~ the person's total disability so as to render  
 2 it impossible for ~~him~~ the person to follow continuously any  
 3 substantially gainful occupation;

4 (2) has resided in and been an inhabitant of the state  
 5 of Montana for 10 years or more immediately preceding the  
 6 date of the application;

7 (3) is not receiving, with respect to any month for  
 8 which he the person would receive a payment under this  
 9 chapter, compensation under ~~The the Workers' Compensation~~  
 10 ~~and Occupational Disease Act of--Montana,--as--provided--by~~  
 11 ~~chapter--72--of--this--title,--which~~ that will equal the sum of  
 12 \$200."

13 **Section 17.** Section 39-73-107, MCA, is amended to read:

14 "39-73-107. Amount of payments. Subject to the  
 15 provisions of this chapter and the deductions herein  
 16 provided, any person who has silicosis, as defined in this  
 17 chapter, and who has, subject to the regulations and  
 18 standards of the department of labor and industry, been  
 19 determined by the department to be entitled payment under  
 20 this chapter for silicosis ~~shall-be-granted~~ must receive a  
 21 payment by the department of \$200 per month, subject to such  
 22 appropriations as may from time to time be made. If he the  
 23 person is receiving payments under ~~The the Workers'~~  
 24 ~~Compensation and Occupational Disease Act of--Montana,--as~~  
 25 ~~provided-by-chapter-72-of-this-title,--which~~ that are less in

1 the aggregate than \$200, then he the person is entitled to a  
 2 payment under this chapter of the difference between the  
 3 amount received under ~~The the Workers' Compensation and~~  
 4 ~~Occupational Disease Act of--Montana,--as--provided--by--chapter~~  
 5 ~~72-of-this-title,~~ and \$200 per month. The legislature shall  
 6 authorize such additional appropriations as may be necessary  
 7 to make the increased monthly payments provided ~~herein~~ in  
 8 this section."

9 **Section 18.** Section 39-73-108, MCA, is amended to read:

10 "39-73-108. Payment of benefits where when person  
 11 entitled is in institution. If any person who is entitled to  
 12 benefits under this chapter ~~shall-be~~ is an inmate in any  
 13 Montana state institution, benefits ~~shall~~ may not be paid to  
 14 ~~him~~ that person but ~~shall~~ must be paid ~~his~~ to the person's:  
 15 ~~beneficiary,--if--any,--as--defined--in--39-71-116.~~

16 (1) spouse;

17 (2) children under 18 years of age, in equal amounts,  
 18 if the inmate has no spouse;

19 (3) children 18 years of age and older, in equal  
 20 amounts, if the inmate has no spouse or children under 18  
 21 years of age;

22 (4) parents, in equal amounts, if payment is not made  
 23 under subsections (1) through (3); or

24 (5) brothers and sisters, in equal amounts, if payment  
 25 is not made under subsections (1) through (4)."

**Section 19.** Section 19-12-401, MCA, is amended to read:

"19-12-401. Eligibility for pension benefits. In order to qualify for participation in the volunteer firefighters' pension plan under 19-12-404, a volunteer firefighter must meet each of the following requirements:

(1) (a) To qualify for full participation, he the firefighter must have completed a total of at least 20 years' service as an active volunteer firefighter and as an active member of a qualified volunteer fire company.

(b) If a firefighter is prevented from completing at least 20 years' service by dissolution or discontinuance of his the volunteer fire company, personal relocation due to transfer or loss of employment, personal disability, or any other factor beyond his the firefighter's reasonable control, he the firefighter may qualify for partial participation if he the firefighter has completed at least 10 years' service. In that event, he the firefighter is eligible for only a proportion of the benefits specified in 19-12-404, determined by multiplying the benefits by a fraction, the numerator of which is the number of years of active service completed and the denominator of which is 20.

(c) The years of active service are cumulative and need not be continuous. The service need not be acquired with one single fire company but may be a total of separate periods of active service with different fire companies in different

fire districts.

(d) Effective March 1, 1965, the annual period of service for the purpose of this chapter is the fiscal year. No A fractional part of any year may not count toward the service requirement, and to receive credit for any particular year, a volunteer firefighter must serve with one particular volunteer fire company throughout that entire fiscal year.

(2) (a) Except as provided in subsection (2)(b), he the firefighter must have attained the age of 55, but he need not be an active volunteer firefighter or an active member of any volunteer fire company ~~when he reaches~~ upon reaching that age.

(b) An active member of a volunteer fire company whose duty-related injury results in a permanent total disability ~~as--defined--in--39-71-116~~ is eligible to receive a partial pension regardless of his the member's age, calculated as follows:

(i) for a member with less than 10 years of service, a pension calculated as provided in subsection (1)(b) in which the numerator equals 10; or

(ii) for a member with 10 years or more of service, a pension calculated as provided in subsection (1)(b).

(c) For purposes of this subsection (2), "permanent total disability" means a condition, resulting from an

1 injury after a worker reaches maximum healing, in which a  
 2 worker is unable to return to work in the worker's job pool.

3 (3) During each of the years for which he the  
 4 firefighter claims credit under subsection (1), he the  
 5 firefighter must have completed a minimum of 30 hours of  
 6 instruction in matters pertaining to firefighting under a  
 7 program formulated and supervised by the chief or foreman of  
 8 his the volunteer fire company.

9 (4) Effective July 1, 1965, no a volunteer firefighter  
 10 may not receive credit for any year of membership in a  
 11 volunteer fire company unless, throughout the year:

12 (a) the company maintained firefighting equipment in  
 13 serviceable condition of a value of \$2,500 or more; and

14 (b) the company or the fire district served by it was  
 15 rated in class 5, 6, 7, 8, 9, or 10 by the board of fire  
 16 underwriters for the purpose of fire insurance premium  
 17 rates.

18 (5) He The firefighter must have ceased to be an active  
 19 member of any volunteer fire company, and if he the  
 20 firefighter applies for and receives pension benefits  
 21 hereunder under this chapter, he-will the firefighter is not  
 22 thereafter--be eligible to become an active member of any  
 23 volunteer fire company."

24 **Section 20.** Section 20-15-403, MCA, is amended to read:

25 "20-15-403. Applications of other school district

1 provisions. (1) When the term "school district" appears in  
 2 the following sections outside of Title 20, the term  
 3 includes community college districts and the provisions of  
 4 those sections applicable to school districts apply to  
 5 community college districts: 2-9-101, 2-9-111, 2-9-316,  
 6 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604,  
 7 7-6-2801, 7-7-123, 7-8-2214, 7-8-2216, 7-11-103, 7-12-4106,  
 8 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101, 15-6-204,  
 9 15-16-101, 15-16-601, 15-70-301, 15-70-322, 17-5-101,  
 10 17-5-202, 17-6-103, 17-6-204, 17-6-213, 17-7-201, 18-1-201,  
 11 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-404, 18-2-432,  
 12 18-5-205, 19-1-102, 19-1-811, 22-1-309, 25-1-402, 27-18-406,  
 13 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304,  
 14 ~~39-71-1167~~ 39-71-117, 39-71-2106, ~~39-71-22067~~ 40-6-237,  
 15 41-3-1132, 49-3-101, 49-3-102, 53-20-304, 77-3-321,  
 16 82-10-201, 82-10-202, 82-10-203, 85-7-2158, and 90-6-208 and  
 17 Rules 4D(2)(g) and 15(c), M.R.Civ.P., as amended.

18 (2) When the term "school district" appears in a  
 19 section outside of Title 20 but the section is not listed in  
 20 subsection (1), the school district provision does not apply  
 21 to a community college district."

22 **Section 21.** Section 31-2-106, MCA, is amended to read:

23 "31-2-106. **Exempt property** -- bankruptcy proceeding. No  
 24 An individual may not exempt from the property of the estate  
 25 in any bankruptcy proceeding the property specified in 11

1 U.S.C. 522(d). An individual may exempt from the property of  
2 the estate in any bankruptcy proceeding:

3 (1) that property exempt from execution of judgment as  
4 provided in 19-3-105, 19-4-706, 19-5-704, 19-6-705,  
5 19-7-705, 19-8-805, 19-9-1006, 19-10-504, 19-11-612,  
6 19-13-1004, 19-21-212, Title 25, chapter 13, part 6,  
7 33-7-522, 33-15-512 through 33-15-514, 35-10-502,  
8 39-51-3105, ~~39-71-743~~, 39-73-110, 53-2-607, 53-9-129, Title  
9 70, chapter 32, and 80-2-245;

10 (2) the individual's right to receive unemployment  
11 compensation and unemployment benefits; and

12 (3) the individual's right to receive benefits from or  
13 interest in a private or governmental retirement, pension,  
14 stock bonus, profit-sharing, annuity, or similar plan or  
15 contract on account of illness, disability, death, age, or  
16 length of service, excluding that portion of contributions  
17 made by the individual within 1 year before the filing of  
18 the petition in bankruptcy which exceeds 15% of the  
19 individual's gross income for that 1-year period, unless:

20 (a) the plan or contract was established by or under  
21 the auspices of an insider that employed the individual at  
22 the time the individual's rights under the plan or contract  
23 arose;

24 (b) the benefit is paid on account of age or length of  
25 service; and

1 (c) the plan or contract does not qualify under section  
2 401(a), 403(a), 403(b), 408, or 409 of the Internal Revenue  
3 Code of 1954 (26 U.S.C. 401(a), 403(b), 408, or 409)."

4 **Section 22.** Section 39-51-201, MCA, is amended to read:

5 "39-51-201. General definitions. As used in this  
6 chapter, unless the context clearly requires otherwise, the  
7 following definitions apply:

8 (1) "Annual payroll" means the total amount of wages  
9 paid by an employer, regardless of the time of payment, for  
10 employment during a calendar year.

11 (2) "Base period" means the first four of the last five  
12 completed calendar quarters immediately preceding the first  
13 day of an individual's benefit year. However, in the case of  
14 a combined-wage claim pursuant to the arrangement approved  
15 by the secretary of labor of the United States, the base  
16 period ~~shall--be~~ is that applicable under the unemployment  
17 law of the paying state. For an individual who fails to meet  
18 the qualifications of 39-51-2105 or a similar statute of  
19 another state due to a temporary total disability ~~as defined~~  
20 ~~in--39-71-116--or--a-similar-statute-of-another-state-or-the~~  
21 ~~United-States~~ as defined by department rule, the base period  
22 means the first four quarters of the last five quarters  
23 preceding the disability if a claim for unemployment  
24 benefits is filed within 24 months of the date on which the  
25 individual's disability was incurred.

(3) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

(4) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning with the first day of the calendar week in which ~~such~~ the individual files a valid claim for benefits, except that the benefit year ~~shall be~~ is 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

(5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404(4).

(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(9) "Employing unit" means any individual or organization, including the state government, any of its political subdivisions or instrumentalities, any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person ~~which~~ that has or had in its employ one or more individuals performing services for it within this state, except as provided under 39-51-204(1)(a) and (1)(b). All individuals performing services within this state for any employing unit ~~which~~ that maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is ~~deemed~~ considered to be employed by ~~such~~ the employing unit for the purposes of this chapter, whether ~~such~~ the individual was hired or paid directly by ~~such~~ the employing unit or by ~~such~~ the agent or employee, provided the employing unit has actual or constructive knowledge of the work.

(10) "Employment office" means a free public employment office or branch thereof of an office operated by this state or maintained as a part of a state-controlled system of

1 public employment offices or such other free public  
2 employment offices operated and maintained by the United  
3 States government or its instrumentalities as the department  
4 may approve.

5 (11) "Fund" means the unemployment insurance fund  
6 established by this chapter to which all contributions and  
7 payments in lieu of contributions are required to be paid  
8 and from which all benefits provided under this chapter  
9 ~~shall~~ must be paid.

10 (12) "Gross misconduct" means a criminal act, other than  
11 a violation of a motor vehicle traffic law, for which an  
12 individual has been convicted in a criminal court or has  
13 admitted or conduct which demonstrates a flagrant and wanton  
14 disregard of and for the rights or title or interest of a  
15 fellow employee or the employer.

16 (13) "Hospital" means an institution which has been  
17 licensed, certified, or approved by the state as a hospital.

18 (14) "Independent contractor" means an individual who  
19 renders service in the course of an occupation and:

20 (a) has been and will continue to be free from control  
21 or direction over the performance of the services, both  
22 under his the individual's contract and in fact; and

23 (b) is engaged in an independently established trade,  
24 occupation, profession, or business.

25 (15) (a) "Institution of higher education", for the

1 purposes of this part, means an educational institution  
2 which:

3 (i) admits as regular students only individuals having  
4 a certificate of graduation from a high school or the  
5 recognized equivalent of such a certificate;

6 (ii) is legally authorized in this state to provide a  
7 program of education beyond high school;

8 (iii) provides an educational program for which it  
9 awards a bachelor's or higher degree or provides a program  
10 which is acceptable for full credit toward such a degree, a  
11 program of postgraduate or postdoctoral studies, or a  
12 program of training to prepare students for gainful  
13 employment in a recognized occupation; and

14 (iv) is a public or other nonprofit institution.

15 (b) Notwithstanding any of the foregoing provisions of  
16 this subsection, all colleges and universities in this state  
17 are institutions of higher education for purposes of this  
18 part.

19 (16) "State" includes, in addition to the states of the  
20 United States of America, the District of Columbia, Puerto  
21 Rico, the Virgin Islands, and the Dominion of Canada.

22 (17) "Taxes" means contributions and assessments  
23 required under this chapter but does not include penalties  
24 or interest for past-due or unpaid contributions or  
25 assessments.

1 (18) "Unemployment insurance administration fund" means  
2 the unemployment insurance administration fund established  
3 by this chapter from which administrative expenses under  
4 this chapter ~~shall~~ must be paid.

5 (19) (a) "Wages" means all remuneration payable for  
6 personal services, including commissions and bonuses, the  
7 cash value of all remuneration payable in any medium other  
8 than cash, and backpay received pursuant to a dispute  
9 related to employment. The reasonable cash value of  
10 remuneration payable in any medium other than cash ~~shall~~  
11 must be estimated and determined in accordance with rules  
12 prescribed by the department.

13 (b) The term "wages" does not include:

14 (i) the amount of any payment made by the employer, if  
15 the payment was made under a plan established for the  
16 employees in general or for a specific class or classes of  
17 employees, to or on behalf of the employee for:

18 (A) retirement;

19 (B) sickness or accident disability under a workers'  
20 compensation law;

21 (C) medical and hospitalization expenses in connection  
22 with sickness or accident disability; or

23 (D) death;

24 (ii) remuneration paid by any county welfare office from  
25 public assistance funds for services performed at the

1 direction and request of ~~such~~ the county welfare office; or

2 (iii) employee expense reimbursements or allowances for  
3 meals, lodging, travel, subsistence, or other expenses, as  
4 set forth in department rules.

5 (20) "Week" means a period of 7 consecutive calendar  
6 days ending at midnight on Saturday.

7 (21) An individual's "weekly benefit amount" means the  
8 amount of benefits the individual would be entitled to  
9 receive for 1 week of total unemployment."

10 **Section 23.** Section 50-16-527, MCA, is amended to read:

11 "50-16-527. Patient authorization -- retention --  
12 effective period -- exception. (1) A health care provider  
13 shall retain each authorization or revocation in conjunction  
14 with any health care information from which disclosures are  
15 made.

16 (2) Except for authorizations to provide information to  
17 third-party health care payors, an authorization may not  
18 permit the release of health care information relating to  
19 health care that the patient receives more than 6 months  
20 after the authorization was signed.

21 ~~(3) An authorization in effect on October 17, 1987~~  
22 ~~remains valid for 36 months after October 17, 1987, unless an~~  
23 ~~earlier date is specified or it is revoked under 50-16-528.~~  
24 ~~Health care information disclosed under such an~~  
25 ~~authorization is otherwise subject to this part.~~ An



1 authorization ~~written after October 1, 1987~~, becomes invalid  
2 after the expiration date contained in the authorization,  
3 which may not exceed 30 months. If the authorization does  
4 not contain an expiration date, it expires 6 months after it  
5 is signed.

6 (4) Notwithstanding subsections (2) and (3), a signed  
7 claim for workers' compensation or occupational disease  
8 benefits authorizes disclosure to the workers' compensation  
9 ~~and occupational disease insurer, as defined in 39-71-116,~~  
10 by the health care provider. The disclosure authorized by  
11 this subsection relates only to information concerning the  
12 claimant's condition. This authorization is effective only  
13 as long as the claimant is claiming benefits."

14 **Section 24.** Section 50-71-325, MCA, is amended to read:

15 "50-71-325. Department authorized to prohibit further  
16 use of equipment constituting violation. (1) The department,  
17 upon finding any violation of any duly adopted safety code,  
18 order, or rule involving failure to install or maintain any  
19 safety appliance, device, or safeguard required by ~~such~~ the  
20 safety order, code, or rule, may prohibit the further use of  
21 the machine, equipment, or apparatus constituting ~~such~~ the  
22 violation and, when ~~such~~ the use is prohibited, shall post  
23 notice in an appropriate place in plain view of any person  
24 likely to use the same calling attention to the unsafe  
25 condition, defect, or lack of safeguard and the fact that

1 the further use thereof is prohibited.

2 (2) The notice required by subsection (1) ~~of this~~  
3 ~~section--shall~~ may not be removed until the required safety  
4 appliance, device, or safeguard complies with the  
5 requirement of the safety order or safety code.

6 (3) Every person who, after the notice required by  
7 subsection (1) ~~of this section~~ is posted as provided in that  
8 subsection, uses or operates any place of employment,  
9 machine, device, apparatus, or equipment referred to in  
10 subsection (1) ~~of this section~~ before it is made safe and  
11 the required safeguards or safety appliances or devices are  
12 provided or who defaces or destroys or removes any notice  
13 required by subsection (1) ~~of this section~~ without the  
14 authority of the department ~~or who fails or refuses to file~~  
15 ~~a report of accident as required by 39-71-307(1)~~ is guilty  
16 of a misdemeanor and, in addition to the punishment provided  
17 for misdemeanors, is subject to a civil penalty in an amount  
18 of not more than \$1,000. This civil penalty may be imposed  
19 and collected by the department in an action brought in the  
20 name of the state in the county in which the employer  
21 resides or in which ~~he~~ the employer employs workers. Any  
22 penalty collected under this subsection ~~shall~~ must be paid  
23 into the department's state special revenue account.

24 (4) Any person aggrieved by an order prohibiting the  
25 use of the machine, equipment, apparatus, or place of

employment as provided for in this section may request a hearing before the department within 20 days after entry of such the order. The department shall then affirm, modify, or revoke the order, and all procedures of this chapter relative to entry of orders, rehearing, and appeal shall apply."

**Section 25.** Section 17-6-318, MCA, is amended to read:

"17-6-318. Job credit interest rate reduction for small business loan participations. (1) A borrower who uses the proceeds of a small business loan participation funded under the provisions of this part to create jobs employing Montana residents is entitled to a job credit interest rate reduction for each job created over a 2-year period to employ a Montana resident. The date of the formal written interim or permanent loan application to the financial institution will be used as a beginning date for counting the number of jobs created. The job credit interest rate reduction may not apply to a loan participation of more than 1% of the total of the permanent coal tax trust fund determined at the end of the last completed fiscal year. The job credit interest rate reduction is equal to 0.05% for each job created to employ a Montana resident up to a maximum interest rate reduction of 2.5%.

(2) If the salary or wage of the job created:

(a) exceeds the average weekly wage, as-defined-in

39-71-116, the amount of the job credit interest rate reduction may be increased proportionately for each increment of 25% above the average weekly wage to a maximum of two times the average weekly wage; or

(b) is less than the average weekly wage, as-defined-in 39-71-116, the job credit interest rate reduction is reduced proportionately for each 25% increment below the average wage.

(3) A job credit interest rate reduction may not be allowed for a job created by the borrower using the proceeds of the loan for which the salary or wage is less than the minimum wage provided for in 39-3-409.

(4) No A job credit will not be given unless one whole job is created.

(5) To qualify for the job credit interest rate reduction, the borrower shall provide satisfactory evidence of the creation of jobs and make application in writing, through its financial institution, to the board when the loan is delivered to the board or not later than 45 days after the first and second anniversary dates of the loan."

**Section 26.** Section 39-71-118, MCA, is amended to read:

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

(a) each person in this state, including a contractor

1 other than an independent contractor, who is in the service  
 2 of an employer, as defined by 39-71-117, under any  
 3 appointment or contract of hire, expressed or implied, oral  
 4 or written. The terms include aliens and minors, whether  
 5 lawfully or unlawfully employed, and all of the elected and  
 6 appointed paid public officers and officers and members of  
 7 boards of directors of quasi-public or private corporations  
 8 while rendering actual service for such corporations for  
 9 pay. Casual employees as defined by 39-71-116 are included  
 10 as employees if they are not otherwise covered by workers'  
 11 compensation and occupational disease insurance and if an  
 12 employer has elected to be bound by the provisions of the  
 13 compensation law for these casual employments, as provided  
 14 in 39-71-401(2). Household or domestic service is excluded.

15 (b) a recipient of general relief who is performing  
 16 work for a county of this state under the provisions of  
 17 53-3-303 through 53-3-305 and any juvenile performing work  
 18 under authorization of a district court judge in a  
 19 delinquency prevention or rehabilitation program;

20 (c) a person receiving on-the-job vocational  
 21 rehabilitation training or other on-the-job training under a  
 22 state or federal vocational training program, whether or not  
 23 under an appointment or contract of hire with an employer as  
 24 defined in this chapter and whether or not receiving payment  
 25 from a third party. However, this subsection does not apply

1 to students enrolled in vocational training programs as  
 2 outlined above while they are on the premises of a public  
 3 school or community college.

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

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

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

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

23 ~~{ii} premiums must be paid by the employer, as defined~~  
 24 ~~in 39-71-117(3);--and--must--be-based-upon-the-minimum-wage~~  
 25 ~~established-under-Title-39--chapter--37--part--47--for--the~~

number--of--hours--of--community--service--required--under--the  
order--from--the--court--or--hearings--officer.

(2) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a fire company organized and funded by a county, a rural fire district, or a fire service area.

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

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

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

(d) All weekly workers' compensation and occupational

disease benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the electing employer may elect not less than \$900 a month and not more than 1 1/2 times the average weekly wage as defined in this chapter.

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

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

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

(a) a resident of Montana who is employed by an

1 employer and whose employment duties are primarily carried  
2 out or controlled within this state; or

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

6 **Section 27.** Section 39-3-604, MCA, is amended to read:

7 "39-3-604. Bond to be filed -- bond requirements --  
8 payment -- exception. (1) Except as provided in 39-3-605 and  
9 subsection (4), a person operating a business as a  
10 restaurant, bar, or tavern is required to file a bond equal  
11 to at least double the amount of the projected semimonthly  
12 payroll with the commissioner. The bond must be kept in full  
13 force and effect, and any cancellation or revocation of the  
14 bond or withdrawal of the sureties from the bond is grounds  
15 for enjoining the operation of business, as provided for in  
16 39-3-607, until a new bond of like tenure and effect is  
17 filed and approved.

18 (2) The bond required by subsection (1) must be filed  
19 with the commissioner. The state of Montana must be named as  
20 the obligee, with good and sufficient sureties to be  
21 approved by the attorney general.

22 (3) The bond must assure that the employees who perform  
23 labor or other personal services are guaranteed their wages  
24 if the person ceases operation of the business for any  
25 reason and is unable to pay the wages due and owing the

1 employees and must assure payment due the department as a  
2 result of payroll taxes.

3 (4) The bond must first be used to pay wages due and  
4 owing employees, then to pay payroll taxes due the  
5 department. ~~The bond may not be used to pay an amount due~~  
6 ~~the state compensation mutual insurance fund established in~~  
7 ~~39-71-2313.~~

8 (5) Except as provided in 39-3-605(2), this section  
9 does not apply to any person who has operated the same  
10 restaurant, bar, or tavern continuously since October 1,  
11 1980."

12 NEW SECTION. **Section 28. Repealer.** Sections 2-15-1707,

13 39-71-102, 39-71-103, 39-71-105, 39-71-119, 39-71-123,  
14 39-71-201, 39-71-202, 39-71-204, 39-71-205, 39-71-206,  
15 39-71-208, 39-71-209, 39-71-221, 39-71-222, 39-71-223,  
16 39-71-224, 39-71-301, 39-71-302, 39-71-303, 39-71-306,  
17 39-71-307, 39-71-308, 39-71-316, 39-71-402, 39-71-403,  
18 39-71-405, 39-71-406, 39-71-407, 39-71-408, 39-71-409,  
19 39-71-411, 39-71-412, 39-71-414, 39-71-415, 39-71-421,  
20 39-71-426, 39-71-427, 39-71-428, 39-71-434, 39-71-501,  
21 39-71-502, 39-71-503, 39-71-504, 39-71-505, 39-71-506,  
22 39-71-507, 39-71-508, 39-71-509, 39-71-510, 39-71-511,  
23 39-71-515, 39-71-516, 39-71-517, 39-71-518, 39-71-519,  
24 39-71-601, 39-71-602, 39-71-603, 39-71-604, 39-71-605,  
25 39-71-606, 39-71-607, 39-71-608, 39-71-609, 39-71-610,

1 39-71-611, 39-71-612, 39-71-613, 39-71-614, 39-71-701,  
 2 39-71-702, 39-71-703, 39-71-704, 39-71-708, 39-71-710,  
 3 39-71-711, 39-71-721, 39-71-722, 39-71-723, 39-71-724,  
 4 39-71-725, 39-71-726, 39-71-727, 39-71-736, 39-71-737,  
 5 39-71-739, 39-71-740, 39-71-741, 39-71-742, 39-71-743,  
 6 39-71-744, 39-71-801, 39-71-802, 39-71-803, 39-71-804,  
 7 39-71-805, 39-71-806, 39-71-807, 39-71-808, 39-71-809,  
 8 39-71-810, 39-71-811, 39-71-812, 39-71-813, 39-71-901,  
 9 39-71-902, 39-71-903, 39-71-904, 39-71-905, 39-71-906,  
 10 39-71-907, 39-71-908, 39-71-909, 39-71-910, 39-71-911,  
 11 39-71-912, 39-71-913, 39-71-1003, 39-71-1004, 39-71-1011,  
 12 39-71-1013, 39-71-1014, 39-71-1025, 39-71-1031, 39-71-1032,  
 13 39-71-2001, 39-71-2201, 39-71-2202, 39-71-2203, 39-71-2205,  
 14 39-71-2206, 39-71-2207, 39-71-2211, 39-71-2311, 39-71-2312,  
 15 39-71-2313, 39-71-2314, 39-71-2315, 39-71-2316, 39-71-2317,  
 16 39-71-2318, 39-71-2319, 39-71-2320, 39-71-2321, 39-71-2322,  
 17 39-71-2323, 39-71-2325, 39-71-2327, 39-71-2336, 39-71-2337,  
 18 39-71-2339, 39-71-2340, 39-71-2351, 39-71-2352, 39-71-2355,  
 19 39-71-2356, 39-71-2361, 39-71-2401, 39-71-2406, 39-71-2407,  
 20 39-71-2408, 39-71-2409, 39-71-2410, 39-71-2411, 39-71-2901,  
 21 39-71-2902, 39-71-2903, 39-71-2904, 39-71-2905, 39-71-2907,  
 22 39-71-2909, 39-71-2910, 39-71-2914, 39-72-101, 39-72-102,  
 23 39-72-103, 39-72-201, 39-72-202, 39-72-203, 39-72-204,  
 24 39-72-206, 39-72-301, 39-72-302, 39-72-303, 39-72-305,  
 25 39-72-310, 39-72-401, 39-72-402, 39-72-403, 39-72-404,

1 39-72-405, 39-72-408, 39-72-509, 39-72-601, 39-72-602,  
 2 39-72-605, 39-72-606, 39-72-607, 39-72-608, 39-72-609,  
 3 39-72-610, 39-72-611, 39-72-612, 39-72-613, 39-72-701,  
 4 39-72-703, 39-72-704, 39-72-705, 39-72-706, 39-72-707,  
 5 39-72-708, 39-72-709, 39-72-711, 39-72-712, and 39-72-714,  
 6 MCA, are repealed.

7 **NEW SECTION. Section 29. Codification instruction.**  
 8 [Sections 6 through 8] are intended to be codified as an  
 9 integral part of Title 39, chapter 71, and the provisions of  
 10 Title 39, chapter 71, apply to [sections 6 through 8].

-End-

APPROVED BY COMMITTEE  
ON LABOR & EMPLOYMENT  
RELATIONS

SENATE BILL NO. 405

INTRODUCED BY KEATING, BURNETT, RYE,  
BERGMAN, DEBRUYCKER, GAGE, TOEWS, HERTEL,  
AKLESTAD, R. JOHNSON, BOHLINGER,  
MILLS, PAVLOVICH

A BILL FOR AN ACT ENTITLED: "AN ACT ABOLISHING--THE--STATE  
COMPENSATION---MUTUAL---INSURANCE---FUND---PROVIDING---FOR  
ADMINISTRATION-AND-PAYMENT-OF-EXISTING-CLAIMS-BY-ONE-OR-MORE  
PRIVATE-COMPANIES-UNDER-CONTRACTS-WITH-THE--COMMISSIONER--OF  
INSURANCE;--PROVIDING--FOR--LOANS--TO--THE--COMMISSIONER--TO  
SERVICE--THE--CONTRACTS;--PROVIDING--FOR--MUTUALLY-AGREABLE  
LUMP-SUM--SETTLEMENTS;--CREATING--AN--ASSIGNED--RISK---PLAN;  
PROVIDING-THAT-THE-SCOPE-AND-COVERAGE-OF-THE-INSURANCE-IS-AT  
THE---NONSELF-INSURED---EMPLOYER'S--DISCRETION; ALLOWING AN  
EMPLOYER TO COMPLY WITH THE REQUIREMENT TO PROVIDE WORKERS'  
COMPENSATION COVERAGE BY OBTAINING ERISA COVERAGE; AND  
AMENDING SECTIONS-17-6-3107-19-12-4017-20-15-4037-31-2-1067  
39-3-6047-39-51-2017-39-71-1017-39-71-1167-39-71-1177  
39-71-1107-39-71-3177, SECTION 39-71-401, 39-71-4317  
39-71-2207-39-71-23547-39-71-25017-39-71-25027-39-71-25037  
39-71-25047-39-73-1047-39-73-1077-39-73-1087-50-16-5277-AND  
50-71-3257-MCA;--AND-REPEALING-SECTIONS-2-15-17077-39-71-1027  
39-71-1037-39-71-1057-39-71-1197-39-71-1237-39-71-2017  
39-71-2027-39-71-2047-39-71-2057-39-71-2067-39-71-2087

39-71-2097-39-71-2217-39-71-2227-39-71-2237-39-71-2247  
39-71-3017-39-71-3027-39-71-3037-39-71-3067-39-71-3077  
39-71-3087-39-71-3167-39-71-4027-39-71-4037-39-71-4057  
39-71-4067-39-71-4077-39-71-4087-39-71-4097-39-71-4117  
39-71-4127-39-71-4147-39-71-4157-39-71-4217-39-71-4267  
39-71-4277-39-71-4287-39-71-4347-39-71-5017-39-71-5027  
39-71-5037-39-71-5047-39-71-5057-39-71-5067-39-71-5077  
39-71-5087-39-71-5097-39-71-5107-39-71-5117-39-71-5157  
39-71-5167-39-71-5177-39-71-5187-39-71-5197-39-71-6017  
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 4 39-71-23407-39-71-23517-39-71-23527-39-71-23557--39-71-23567  
 5 39-71-23617--39-71-24017-39-71-24067-39-71-24077-39-71-24087  
 6 39-71-24097-39-71-24107-39-71-24117-39-71-29017--39-71-29027  
 7 39-71-29037--39-71-29047-39-71-29057-39-71-29077-39-71-29097  
 8 39-71-29107--39-71-29147--39-72-1017--39-72-1027--39-72-1037  
 9 39-72-2017--39-72-2027--39-72-2037--39-72-2047--39-72-2067  
 10 39-72-3017--39-72-3027--39-72-3037--39-72-3057--39-72-3107  
 11 39-72-4017--39-72-4027--39-72-4037--39-72-4047--39-72-4057  
 12 39-72-4087--39-72-5097--39-72-6017--39-72-6027--39-72-6057  
 13 39-72-6067--39-72-6077--39-72-6087--39-72-6097--39-72-6107  
 14 39-72-6117--39-72-6127--39-72-6137--39-72-7017--39-72-7037  
 15 39-72-7047--39-72-7057--39-72-7067--39-72-7077--39-72-7087  
 16 39-72-7097-39-72-7117-39-72-7127-AND-39-72-7147 MCA."

17  
 18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19 **Section 1.**--Section 39-71-1017-MCA7-is amended to read:--  
 20 "39-71-1017--Short-title.--This chapter may be cited as  
 21 the "Workers' Compensation and Occupational Disease Act"."

22 **Section 2.**--Section 39-71-1167-MCA7-is amended to read:--  
 23 "39-71-1167--Definitions.--Unless the context otherwise  
 24 requires, words and phrases employed in this chapter have  
 25 the following meanings:

1 (1)--"Administer and pay"--includes all actions by the  
 2 state fund under the Workers' Compensation Act and the  
 3 Occupational Disease Act of Montana necessary to:  
 4 (a)--the investigation, review, and settlement of  
 5 claims;  
 6 (b)--payment of benefits;  
 7 (c)--setting of reserves;  
 8 (d)--furnishing of services and facilities; and  
 9 (e)--utilization of actuarial, audit, accounting,  
 10 vocational rehabilitation, and legal services;  
 11 (2)--"Average weekly wage"--means the mean weekly  
 12 earnings of all employees under covered employment, as  
 13 defined and established annually by the Montana department  
 14 of labor and industry. It is established at the nearest  
 15 whole dollar number and must be adopted by the department  
 16 prior to July 1 of each year;  
 17 (3)--"Beneficiary"--means:  
 18 (a)--a surviving spouse living with or legally entitled  
 19 to be supported by the deceased at the time of injury;  
 20 (b)--an unmarried child under the age of 18 years;  
 21 (c)--an unmarried child under the age of 22 years who is  
 22 a full-time student in an accredited school or is enrolled  
 23 in an accredited apprenticeship program;  
 24 (d)--an invalid child over the age of 18 years who is  
 25 dependent upon the decedent for support at the time of



1 injury;

2 {e}--a--parent--who--is--dependent--upon--the--decendent--for

3 support--at--the--time--of--the--injury--if--no--beneficiary--as

4 defined--in--subsections--(3){a}--through--(3){d},--exists--and

5 {f}--a--brother--or--sister--under--the--age--of--18--years--if

6 dependent--upon--the--decendent--for--support--at--the--time--of--the

7 injury--but--only--until--the--age--of--18--years--and--only--when--no

8 beneficiary--as--defined--in--subsections--(3){a}--through

9 (3){e},--exists;

10 {4}--"Casual--employment"--means--employment--not--in--the

11 usual--course--of--trade,--business,--profession,--or--occupation

12 of--the--employer;

13 {5}--"Child"--includes--a--posthumous--child,--a--dependent

14 stepchild,--and--a--child--legally--adopted--prior--to--the--injury;

15 {6}--"Construction--industry"--means--the--major--group--of

16 general--contractors--and--operative--builders,--heavy

17 construction--(other--than--building--construction)--contractors,

18 and--special--trade--contractors,--listed--in--major--groups--15

19 through--17--in--the 1987 Standard Industrial Classification

20 Manual.--The--term--does--not--include--office--workers,--design

21 professionals,--salesmen,--estimators,--or--any--other--related

22 employment--that--is--not--directly--involved--on--a--regular--basis

23 in--the--provision--of--physical--labor--at--a--construction--or

24 renovation--site;

25 {7}--"Days"--means--calendar--days,--unless--otherwise

1 specified;

2 {8}{2}--"Department"--means--the--department--of--labor--and

3 industry;

4 {9}--"Fiscal--year"--means--the--period--of--time--between--July

5 1--and--the--succeeding--June--30;

6 {10}--"Insurer"--means--an--employer--bound--by--compensation

7 plan--No. 1,--an--insurance--company--transacting--business--under

8 compensation--plan--No. 2,--the--state--fund--under--compensation

9 plan--No. 3,--or--the--uninsured--employers'--fund--provided--for--in

10 part--5--of--this--chapter;

11 {11}--"Invalid"--means--one--who--is--physically--or--mentally

12 incapacitated;

13 {12}--"Maximum--healing"--means--the--status--reached--when--a

14 worker--is--as--far--restored--medically--as--the--permanent

15 character--of--the--work--related--injury--will--permit;

16 {13}--"Order"--means--any--decision,--rule,--direction,

17 requirement,--or--standard--of--the--department--or--any--other

18 determination--arrived--at--or--decision--made--by--the--department;

19 {14}--"Payroll",--"annual--payroll",--or--"annual--payroll--for

20 the--preceding--year"--means--the--average--annual--payroll--of--the

21 employer--for--the--preceding--calendar--year--or,--if--the--employer

22 shall--not--have--operated--a--sufficient--or--any--length--of--time

23 during--such--calendar--year,--12--times--the--average--monthly

24 payroll--for--the--current--year. However,--an--estimate--may--be

25 made--by--the--department--for--any--employer--starting--in--business

1 if no average payrolls are available. This estimate is to be  
2 adjusted by additional payment by the employer or refund by  
3 the department, as the case may actually be, on December 31  
4 of such current year. An employer's payroll must be computed  
5 by calculating all wages, as defined in 39-71-123, that are  
6 paid by an employer.

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

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

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

14 (16) "Permanent total disability" means a condition  
15 resulting from injury as defined in this chapter, after a  
16 worker reaches maximum healing, in which a worker has no  
17 reasonable prospect of physically performing regular  
18 employment. Regular employment means work on a recurring  
19 basis performed for remuneration in a trade, business,  
20 profession, or other occupation in this state. Lack of  
21 immediate job openings is not a factor to be considered in  
22 determining if a worker is permanently totally disabled.

23 (17) The term "physician" includes a surgeon and in  
24 either case means one authorized by law to practice his  
25 profession in this state.

1 (18) The "plant of the employer" includes the place of  
2 business of a third person while the employer has access to  
3 or control over such place of business for the purpose of  
4 carrying on his usual trade, business, or occupation.

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

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

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

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

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

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

{25}-"Year"-unless-otherwise-specified,-means--calendar year."

**Section 3.**--Section 39-71-117, MCA, is amended to read:--

"39-71-117. Employer defined;-(1)-"Employer"--means:

(a)--the--state--and--each-county,-city-and-county,-city school-district,-irrigation-district,-all--other--districts established--by--law--and--all--public--corporations--and quasi-public-corporations-and-public--agencies--therein--and every--person,-every--prime--contractor,-and--every--firm, voluntary--association--and--private-corporation,-including any-public-service-corporation-and-including-an--independent contractor---who---has---any--person--in--service--under--any appointment-or-contract-of-hire,-expressed-or-implied,-oral or--written,-and--the--legal-representative-of-any-deceased employer-or-the-receiver-or-trustee-thereof;

(b)--any-association,-corporation,-or-organization--that seeks--permission--and--meets--the--requirements--set-by-the department-by-rule-for-a-group-of--individual--employers--to operate--as--self-insured--under-plan-Not-1-of-this-chapter; and

(c)--any-nonprofit-association-or-corporation--or--other

entity--funded--in--whole--or--in-part-by-federal,-state,-or local--government--funds--that--places--community--service participants,-as-defined-in-39-71-118(1)(f),-with-nonprofit organizations-or-associations-or-federal,-state,-or--local government-entities;

(2)--A-temporary-service-contractor-is-the-employer-of-a temporary-worker-for-premium-and-loss-experience-purposes;

(3)--An-employer-defined-in-subsection-(1)-who-utilizes the-services-of-a-worker--furnished--by--another--person, association,-contractor,-firm,-or-corporation,-other-than-a temporary-service-contractor-or-an-employee-leasing-company, is-presumed-to-be-the-employer--for--workers'-compensation premium--and--loss-experience-purposes-for-work-performed-by the-worker.-The-presumption-may-be-rebutted--by--substantial credible-evidence-of-the-following:

(a)--the--person,-association,-contractor,-firm,-or corporation,-other--than--a--temporary--service--contractor, furnishing--the--services--of--a--worker--to-another-retains control-over-all--aspects--of--the--work--performed--by--the worker,-both--at-the-inception-of-employment-and-during-all phases-of-the-work;-and

(b)--the-person,-association,-contractor,-firm,-or corporation,-other--than--a--temporary--service-contractor, furnishing-the-services-of-a-worker-to-another-has-obtained workers'-compensation and-occupational-disease insurance or

1 its equivalent for the worker in Montana both at the  
2 inception of employment and during all phases of the work  
3 performed.

4 (4) Notwithstanding the provisions of subsection (3), a  
5 common or contract motor carrier doing business in this  
6 state who utilizes drivers in this state is considered the  
7 employer, is liable for workers' compensation and  
8 occupational disease premiums, and is subject to loss  
9 experience rating in this state unless:

10 (a) the driver in this state is certified as an  
11 independent contractor as provided in 39-71-401(3), or

12 (b) the person, association, contractor, firm, or  
13 corporation furnishing drivers in this state to a motor  
14 carrier has obtained workers' compensation and occupational  
15 disease insurance on the drivers in Montana both at the  
16 inception of employment and during all phases of the work  
17 performed."

18 **Section 1.** Section 39-71-401, MCA, is amended to read:

19 "39-71-401. Employments covered and employments  
20 exempted. (1) Except as provided in subsection (2), the  
21 Workers' Compensation and Occupational Disease Act applies  
22 to all employers as defined in 39-71-117 and to all  
23 employees as defined in 39-71-118. An employer who has any  
24 employee in service under any appointment or contract of  
25 hire, expressed or implied, oral or written, shall elect to

1 be bound by the provisions of compensation plan No. 1, 2, or  
2 3 maintain a workers' compensation and occupational disease  
3 insurance policy with an insurance company authorized to  
4 transact workers' compensation and occupational disease  
5 insurance in this state, must be self-insured as provided  
6 for in this chapter, or shall make an irrevocable  
7 contribution to a trustee or a third person pursuant to a  
8 fringe benefit fund, plan, or program that meets the  
9 requirements of the Employee Retirement Income Security Act  
10 of 1974 that provides benefits to employees for health care,  
11 pensions on retirement or death, life insurance, and  
12 disability and sickness insurance. The employer may provide  
13 other bona fide fringe benefits selected by the employer.  
14 ELECT TO BE BOUND BY THE PROVISIONS OF COMPENSATION PLAN NO.  
15 1, 2, OR 3 OR SHALL MAKE AN IRREVOCABLE CONTRIBUTION TO A  
16 TRUSTEE OR A THIRD PERSON PURSUANT TO A FRINGE BENEFIT FUND,  
17 PLAN, OR PROGRAM THAT MEETS THE REQUIREMENTS OF THE EMPLOYEE  
18 RETIREMENT INCOME SECURITY ACT OF 1974 (ERISA) AND THAT  
19 PROVIDES BENEFITS TO EMPLOYEES FOR HEALTH CARE, PENSIONS ON  
20 RETIREMENT OR DEATH, LIFE INSURANCE, AND DISABILITY AND  
21 SICKNESS INSURANCE. THE BENEFITS UNDER THE ERISA PLAN MAY  
22 NOT BE LESS THAN THE BENEFITS MANDATED BY WORKERS'  
23 COMPENSATION LAWS. THE BENEFITS OF AN ERISA PLAN MUST BE  
24 REVIEWED BY THE DEPARTMENT AND CERTIFIED AS MEETING  
25 STATUTORY REQUIREMENTS. Each employee whose employer is

1 bound by the Workers' Compensation ~~and-Occupational--Disease~~  
 2 Act is subject to and bound by the ~~compensation-plan~~  
 3 ~~coverage-option~~ COMPENSATION PLAN that has been elected by  
 4 the employer.

5 (2) Unless the employer elects coverage for these  
 6 employments under this chapter and an insurer allows such an  
 7 election, the Workers' Compensation ~~and-Occupational-Disease~~  
 8 Act does not apply to any of the following employments:

9 (a) household and domestic employment;

10 (b) casual employment as defined in 39-71-116;

11 (c) employment of a dependent member of an employer's  
 12 family for whom an exemption may be claimed by the employer  
 13 under the federal Internal Revenue Code;

14 (d) employment of sole proprietors or working members  
 15 of a partnership, except as provided in subsection (3);

16 (e) employment of a broker or ~~salesman~~ salesperson  
 17 performing under a license issued by the board of realty  
 18 regulation;

19 (f) employment of a direct seller engaged in the sale  
 20 of consumer products, primarily in the customer's home;

21 (g) employment for which a rule of liability for  
 22 injury, occupational disease, or death is provided under the  
 23 laws of the United States;

24 (h) employment of any person performing services in  
 25 return for aid or sustenance only, except employment of a

1 volunteer under 67-2-105;

2 (i) employment with any railroad engaged in interstate  
 3 commerce, except that railroad construction work is included  
 4 in and subject to the provisions of this chapter;

5 (j) employment as an official, including a timer,  
 6 referee, or judge, at a school amateur athletic event,  
 7 unless the person is otherwise employed by a school  
 8 district;

9 (k) any person performing services as a newspaper  
 10 carrier or free-lance correspondent if the person performing  
 11 the services or a parent or guardian of the person  
 12 performing the services in the case of a minor has  
 13 acknowledged in writing that the person performing the  
 14 services and the services are not covered. As used in this  
 15 subsection, "free-lance correspondent" is a person who  
 16 submits articles or photographs for publication and is paid  
 17 by the article or by the photograph. As used in this  
 18 subsection, "newspaper carrier":

19 (i) is a person who provides a newspaper with the  
 20 service of delivering newspapers singly or in bundles; but

21 (ii) does not include an employee of the paper who,  
 22 incidentally to his the employee's main duties, carries or  
 23 delivers papers.

24 (l) cosmetologist's services and barber's services as  
 25 defined in 39-51-204(1)(1).

(3) (a) A sole proprietor or a working member of a partnership who holds--himself-out-or-considers-himself-an independent-contractor represents to the public that the person is an independent contractor shall elect-to-be-bound ELECT TO BE BOUND personally and individually by--the provisions-of-compensation-plan-No-1-2-or-3, maintain--a workers'-compensation--and--occupational--disease-insurance policy-or-be-self-insured BY THE PROVISIONS OF COMPENSATION PLAN NO. 1, 2, OR 3, but he may apply to the department for an exemption from the Workers' Compensation and Occupational Disease Act for-himself.

(b) The application must be made in accordance with the rules adopted by the department. The department may deny the application only if it determines that the applicant is not an independent contractor.

(c) When an application is approved by the department, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(d) When an election-of application-for ELECTION OF an exemption is approved by the department, the election exemption ELECTION remains effective and the independent contractor retains his the status as an independent contractor until he the person notifies the department of any change in his status and provides a description of his

present work status.

(e) If the department denies the application for exemption, the applicant may contest the denial by petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with the procedure established in 39-51-2403 and 39-51-2404.

(4) (a) A private corporation shall provide coverage for its officers and other employees under-the-provisions-of compensation-plan-No-1-2-or-3 UNDER THE PROVISIONS OF COMPENSATION PLAN NO. 1, 2, OR 3. However, pursuant to rules the department promulgates and subject in all cases to approval by the department, an officer of a private corporation may elect not to be bound as an employee under this chapter by giving a written notice, on a form provided by the department, served-in-the-following-manner:

(i)--if--the--employer--has--elected--to--be--bound--by--the provisions-of-compensation-plan-No-1-2-or-3--by--delivering--the notice--to--the--board--of--directors--of--the--employer--and--to--the department;--or

(ii)--if--the--employer--has--elected--to--be--bound--by--the provisions--of--compensation--plan--No-2-or-3,--by--delivering the-notice SERVED IN THE FOLLOWING MANNER:

(1) IF THE EMPLOYER HAS ELECTED TO BE BOUND BY THE

1 PROVISIONS OF COMPENSATION PLAN NO. 1, BY DELIVERING THE  
 2 NOTICE TO THE BOARD OF DIRECTORS OF THE EMPLOYER AND TO THE  
 3 DEPARTMENT; OR

4 (II) IF THE EMPLOYER HAS ELECTED TO BE BOUND BY THE  
 5 PROVISIONS OF COMPENSATION PLAN NO. 2 OR 3, BY DELIVERING  
 6 THE NOTICE to the board of directors of the employer, to the  
 7 department, and to the insurer.

8 (b) If the employer changes ~~plans or~~ PLANS OR insurers  
 9 ~~or--changes--status--with--respect--to--self--insurance,~~ the  
 10 officer's previous election is not effective and the officer  
 11 shall again serve notice as provided if he the officer  
 12 elects not to be bound.

13 (c) The appointment or election of an employee as an  
 14 officer of a corporation for the purpose of excluding the  
 15 employee from coverage under this chapter does not entitle  
 16 the officer to elect not to be bound as an employee under  
 17 this chapter. In any case, the officer shall sign the notice  
 18 required by subsection (4)(a) under oath or affirmation, and  
 19 he the officer is subject to the penalties for false  
 20 swearing under 45-7-202 ~~if he falsifies the--notice~~ IF THE  
 21 OFFICER FALSIFIES THE NOTICE.

22 (5) Each employer shall post a sign in the workplace at  
 23 the locations where notices to employees are normally  
 24 posted, informing employees about the employer's current  
 25 provision of workers' compensation and occupational--disease

1 insurance. A workplace is any location where an employee  
 2 performs any work-related act in the course of employment,  
 3 regardless of whether the location is temporary or  
 4 permanent, and includes the place of business or property of  
 5 a third person while the employer has access to or control  
 6 over the place of business or property for the purpose of  
 7 carrying on his the employer's usual trade, business, or  
 8 occupation. The sign must be provided by the department,  
 9 distributed through insurers or directly by the department,  
 10 and posted by employers in accordance with rules adopted by  
 11 the department. An employer who purposely or knowingly fails  
 12 to post a sign as provided in this subsection is subject to  
 13 a \$50 fine for each citation."

14 **Section 5.--Section 39-71-431, MCA, is amended to read:--**

15 "39-71-431.--Assigned--risk-plan--(1)--Following-the-date  
 16 on-which-the-provisions-of-39-71-2311-through-39-71-2320-and  
 17 39-71-2337-are-implemented-but-no-later--than--December--31,  
 18 1990,--the--~~The~~--commissioner-of-the-department-of-labor-and  
 19 industry-may-order--the--establishment--of--insurance--shall  
 20 establish-and-administer-a-plan-to-equitably-apportion-among  
 21 the--state--fund,--plan--No.-3,--and--private-insurers, plan  
 22 No.-2, the workers' compensation--and--occupational--disease  
 23 coverage--required--by--this--chapter--for-employers-who-are  
 24 unable-to-procure-coverage-through-ordinary--methods--or--by  
 25 self-insurance,--In-determining-whether-to-order-an-assigned

1 risk-plan-to-be-established, the commissioner shall consider  
 2 the effect a plan would have on the availability of workers'  
 3 compensation insurance and the need to provide competitive  
 4 workers' compensation premium rates for employers in this  
 5 state. If the commissioner orders the establishment of an  
 6 assigned risk plan, it may not take effect until at least 6  
 7 months following the commissioner's order creating the plan.

8 (2) All plan No. 2 insurers and the state fund  
 9 insurance companies, other than self-insurers, authorized to  
 10 transact workers' compensation and occupational disease  
 11 insurance business in this state shall subscribe to and  
 12 participate in the assigned risk plan.

13 (3) If an insurer refuses to accept its equitable  
 14 apportionment under the assigned risk plan, the commissioner  
 15 of insurance may suspend or revoke the insurer's authority  
 16 to issue workers' compensation and occupational disease  
 17 insurance policies in this state.

18 (4) If an assigned risk plan is established and in  
 19 effect, the state fund, plan No. 3, is not required to  
 20 insure any employer in this state requesting coverage and  
 21 it may refuse coverage for an employer, except for a state  
 22 agency.

23 (5)(4) If an assigned risk plan is established and in  
 24 effect, an employer who is refused the workers'  
 25 compensation and occupational disease coverage required by

1 this chapter by the state fund, plan No. 3, and by at least  
 2 two private insurers, plan No. 2, may must be assigned  
 3 coverage by the commissioner under the assigned risk plan  
 4 pursuant to the procedure established by the commissioner  
 5 for the equitable apportionment of coverage."

6 NEW SECTION. **Section 6.** Contract for administration of  
 7 claims for injuries that occurred before July 1, 1994, use  
 8 and transfer of existing records. (1) Prior to July 1, 1994,  
 9 the commissioner of insurance shall contract with one or  
 10 more private insurance or other companies for the  
 11 administration and payment of unpaid claims for workers'  
 12 compensation and occupational diseases that occurred before  
 13 July 1, 1994, and that were covered by insurance purchased  
 14 through the former state compensation mutual insurance fund  
 15 or its predecessor. The initial contracts must provide that  
 16 work under the initial contracts will begin on July 1, 1994,  
 17 but must be negotiated and signed far enough in advance of  
 18 that date to allow the contractors sufficient time to  
 19 prepare for the work. The state treasurer shall pay to  
 20 contractors out of accounts created by 39-71-2504 and on  
 21 warrants authorized by the commissioner amounts that the  
 22 contractors require to be paid for the cost of administering  
 23 and paying claims.

24 (2) Except as provided in section 7, each claim must  
 25 be administered and paid under the laws in effect on the



1 date-of-the-injury-or-disease:

2 {3}--A-company-interested-in-a-contract-is-entitled-to  
3 fully-inspect-the-written,typed,computerized-and-other  
4 public-records-of-the-former-state-compensation-mutual  
5 insurance-fund,including-data-banks,paper-records,and-raw  
6 data.--All-records-of-the-fund-are-transferred-to-the  
7 commissioner-as-of-July-17-1994,to-be-used-by-the  
8 commissioner-to-carry-out-the-provisions-of-this-section.  
9 The-commissioner-may-as-necessary-or-desirable-transfer  
10 records-or-copies-of-records-to-contractors.

11 NEW-SECTION--Section 7. Mutually-agreeable-lump-sum-  
12 settlements.--A-workers-compensation-or-occupational-disease  
13 claimant--and--a-company--that--has-entered-into-a-contract  
14 under-{section-6}-may,regardless-of-the-lump-sum-law-in  
15 effect-on-the-date-of-the-injury-or-disease,mutually-agree  
16 to-a-lump-sum-settlement-of-a-claim.--If-a-mutual-agreement  
17 is-not-reached,the-lump-sum-law-in-effect-on-the-date-of  
18 the-injury-or-disease-applies.

19 NEW-SECTION--Section 8. Disposal-of-existing-assets.--  
20 {1}--The-following-financial-assets-must-be-transferred-on  
21 July-17-1994-to-the-contract-account-created-by-39-71-2504:  
22 {a)--any-assets-in-the-fund-created-by-former-39-71-502  
23 that-the-department-of-labor-and-industry-estimates-are-not  
24 needed-on-July-17-1994,to-pay-claims-under-Title-39,  
25 chapter-71,part-5,for-injuries-and-diseases-that-occurred

1 before-July-17-1994;

2 {b)--any-assets-in-the-fund-referred-to-in-former  
3 39-71-902-that-the-department-estimates-are-not-needed-on  
4 July-17-1994-to-pay-claims-under-part-9-for-injuries-and  
5 diseases-that-occurred-before-July-17-1994;

6 {c)--any-assets-in-the-fund-referred-to-in-former  
7 39-71-1004-that-the-department-estimates-are-not-needed-on  
8 July-17-1994-to-pay-claims-under-part-10-for-injuries-that  
9 occurred-before-July-17-1994;

10 {d)--any-assets-in-the-fund-created-by-39-71-2609-that  
11 the-board-created-by-39-71-2604-estimates-are-not-needed-on  
12 July-17-1994-to-pay-claims-for-injuries-and-diseases-that  
13 occurred-before-July-17-1994-and

14 {e)--all-financial-assets-of-the-former-state-mutual  
15 compensation-insurance-fund.

16 {2}--Assets-held-by-the-department-under-part-21-must-be  
17 held-in-the-amount-estimated-by-the-department-to-be  
18 necessary-for-the-payment-under-39-71-2100-of-claims-for  
19 injuries-and-diseases-that-occurred-before-July-17-1994.--The  
20 remaining-assets-must-be-distributed-to-the-employers-whose  
21 deposits-under-part-21-created-the-assets.

22 {3}--Assets--held--by--the--department--under--former  
23 39-71-2206--and--former--39-71-2207--that--the--department  
24 estimates--are--not--needed--under-those-sections-on-July-17  
25 1994,to-pay-claims-for-injuries-and-diseases-that-occurred

before--that--date--must--be--returned-to-the-insurers-whose  
deposits-under-those-sections-created-the-assets.

**Section 9.**--Section 39-71-2354, MCA, is amended to read:--

"39-71-2354. Use of payroll tax proceeds-----loans-----  
bonds--(1) Taxes collected under 39-71-2503 may be used only  
to--administer--and--pay--claims-for-injuries-resulting-from  
accidents-that-occurred-before-July-17-1990,--including--the  
cost--of-repaying-bonds-issued-and-loan-proceeds-given-under  
39-71-2355-and-this-section. If the state fund--commissioner  
of--insurance--determines-that, for the next 1 or more years  
following the date of the--determination,--the--tax--revenue  
collected--under--39-71-2503,--together--with--funds--in--the  
account--accounts--required--by--39-71-2321--for--claims--for  
injuries--resulting-from-accidents-that-occurred-before-July  
17-1990-39-71-2504, will be insufficient to--administer--and  
pay--those--claims--for--the--payment-of-contracts-entered-into  
under--(section-6), the state fund may, through its board--of  
directors,--commissioner--request--the--budget--director--to  
certify--to--shall--advise--the--board--of--investments--that  
additional funding is--necessary. If the--budget--director  
agrees--with--the--state--fund's--board--of--directors--that  
additional--funding--is--necessary, the budget director shall  
certify to the board of--investments--the--amount--that--the  
budget--director--determines--is--necessary--to--administer--and  
pay--claims--for--injuries--resulting--from--accidents--that

occurred--before--July--17--1990. Except--as--provided---in  
subsection--(2), the--The--board-of-investments-shall, at times  
and--in-amounts-it-considers-necessary-or-advisable, finance  
the-amount-certified-by-the-budget-director--by--giving--the  
state--fund--the-proceeds-of-a--may loan the commissioner the  
amounts necessary for payment of the contracts entered--into  
under--(section--6). The--loans-must-bear-interest-at-7.5%.  
loaned amounts must be deposited--in--the--contract--account  
created in 39-71-2504, or a bond issue to administer and pay  
claims--for--injuries-resulting-from-accidents-that-occurred  
before-July-17-1990. Loans must be from reserves accumulated  
from premiums paid--to--the--state--fund--based--upon--wages  
payable--on--or--after-July-17-1990. The board of investments  
shall--choose--the--method--of--financing---that---is---most  
cost-effective-for-the-state-fund. A loan must bear interest  
at--the--rate--the-money-would-earn-in-the-pooled-investment  
fund-required-by-17-6-203. The--board--of--investments--may  
also, upon--request--of--the--board-of-directors-of-the-state  
fund, give the state fund the proceeds of a bond--issue,--to  
be--used--to--pay--off--loans-made-under-39-71-2355-and-this  
section. Bonds--for--the--state--fund--must---be---workers'  
compensation bonds issued under 39-71-2355.

(2) The--total--amount--of--loan-proceeds-given-to-the  
state-fund-plus-workers'--compensation--bonds--issued--under  
39-71-2355, except--bonds-issued-to-repay-loans-as-provided

for in subsection (1), may not exceed \$220 million. All loan and bond proceeds given to the state fund must be repaid to the board of investments before July 1, 2020."

**Section 10.** Section 39-71-2501, MCA, is amended to read:

"39-71-2501. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of revenue provided for in 2-15-1301;

(2) "Employer" has the meaning set forth in 39-71-117;

(3) "Payroll" means the payroll of an employer for each of the calendar quarters ending March 31, June 30, September 30, and December 31, for all employments covered under 39-71-401;

(4) "State fund" means the state compensation mutual insurance fund;

(5) (4) "Tax" means the workers' compensation and occupational disease payroll tax provided for in 39-71-2503;

(6) "Tax account" means the workers' compensation tax account created by 39-71-2504."

**Section 11.** Section 39-71-2502, MCA, is amended to read:

"39-71-2502. Findings and purpose. (1) Based on current liabilities and actuarial analysis, an unfunded liability presently exists in the state fund with regard to claims for

injuries resulting from accidents and for diseases that were covered by insurance policies issued by the former state compensation mutual insurance fund or its predecessor that occurred before July 1, 1990, and it may increase. While legislative action is required to correct the causes of the unfunded liability, those actions will not provide sufficient funds to permit the state fund to pay its existing liabilities and obligations payment of the unfunded liability in a timely manner from premium and investment income available to the state fund. Therefore, it is necessary to provide a source of funding for the unfunded liability in addition to premium and investment income.

(2) The police power of the state extends to all great public needs. The state, in the past and in the exercise of its police power, has determined that it is was greatly and immediately necessary to the public welfare to make workers' compensation and occupational disease insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has agencies incurred the unfunded liability described in subsection (1). The burden of this unfunded liability should not be borne solely by those employers who have insured with the state fund agencies because the availability of insurance to all employers through the state fund has agencies benefited all employers who have had workers'

compensation--and--occupational-disease-coverage-Therefore,  
all-employers-who-have-employments-covered-by--the--workers'  
compensation--and--occupational-disease-laws-should-share-in  
the-cost-of-the-unfunded-liability.

(3)--The--purpose--of--this--part--is--to--provide--a  
supplemental---source---of---financing---for---the--unfunded  
liability."

**Section 12.**--Section--39-71-2503,--MCA,--is--amended--to--  
read:

"39-71-2503.---Workers'-compensation--and--occupational  
disease--payroll--tax--(1)-(a)--There--is--imposed--on--each  
employer-a-workers'-compensation--and--occupational--disease  
payroll--tax--in--an-amount-equal-to-0.28%-of-the-employer's  
payroll--in--the--preceding---calendar---quarter---for---all  
employments--covered--under--39-71-401,--except--that--if--an  
employer-is-subject-to-15-30-204(2),--the-tax--is--an-amount  
equal--to--0.28%--of-the-employer's-payroll-in-the-preceding  
week.--This-payroll-tax-must-be-used-to:

(i)--reduce--repay--loans--made--to--the--former---state  
compensation--mutual--insurance--fund--to--pay--the-unfunded  
liability-in-the-state-fund-incurred-for-claims-for-injuries  
resulting-from--accidents--and--occupational--diseases--that  
occurred-before-July-17-1990;

(ii)--repay--loans--made--to--the-commissioner-of-insurance  
under-39-71-2354;--and

(iii)--pay--contracts--entered--into--by--the-commissioner--of  
insurance--under--(section-6);

(b)--If--one--or--more--loans--or--bonds--are--outstanding,--the  
tax--must--be--continued--at--the-0.28%-rate--and--the--legislature  
may--not--modify--the-tax-rate,--the-use-of-the-tax-proceeds,--or  
this--section--in--a--manner--that--reduces--the--security--for  
repayment--of--the--outstanding--loans--or--bonds,--except--that--the  
legislature--may--forgive--payment--of--the-tax--or--reduce--the-tax  
rate--for--any-12-month-period--if--the--workers'-compensation  
and--occupational-disease--bond--repayment--account--contains--on  
the--first--day--of--that--period--an-amount,--regardless--of--the  
source,--that--is--in--excess--of--the--reserve--maintained--in--the  
account--and--that--is--equal--to--the--amount--needed--to--pay--and  
dedicated--to--the--payment--of--the--principal,--premium,--and  
interest--that--must--be--paid--during--that--period--on--the  
outstanding--loans--or--bonds.--The--legislature--may--not--increase  
the-tax-rate--except--upon--a--two-thirds-vote--of--each--house.

(b)(c)--Each--employer--shall--maintain--the--records--the  
department--requires--concerning--the--employer's--payroll.--The  
records--are--subject--to--inspection--by--the--department--and--its  
employees--and--agents--during--regular--business--hours.

(2)--All--collections--of--the-tax--are--appropriated--to--and  
must--be--deposited--as--received--in--the-tax-account--accounts  
created--in--39-71-2504.--The-tax--is--in--addition--to--any--other  
tax--or--fee--assessed--against--employers--subject--to--the-tax.

1       (3)--(a)--On--or--before--the--last--day--of--April--July,  
2       October,--and--January,--each--employer--subject--to--the--tax--shall  
3       file--a--return--in--the--form--and--containing--the--information  
4       required--by--the--department--and,--except--as--provided--in  
5       subsection--(3)(b),--pay--the--amount--of--tax--required--by--this  
6       section--to--be--paid--on--the--employer's--payroll--for--the  
7       preceding--calendar--quarter.

8       (b)--An--employer--subject--to--15-30-204(2)--shall--remit--to  
9       the--department--a--weekly--payment--with--its--weekly--withholding  
10       tax--payment--in--the--amount--required--by--subsection--(1)(a).

11       (c)--A--tax--payment--required--by--subsection--(1)(a)--must--be  
12       made--with--the--return--filed--pursuant--to--15-30-204.--The  
13       department--shall--first--credit--a--payment--to--the--liability  
14       under--15-30-202--and--credit--any--remainder--to--the--workers'  
15       compensation--tax--account--provided--accounts--created--in  
16       39-71-2504.

17       (4)--An--employer's--officer--or--employee--with--the--duty--to  
18       collect,--account--for,--and--pay--to--the--department--the--amounts  
19       due--under--this--section--who--willfully--fails--to--pay--an--amount  
20       is--liable--to--the--state--for--the--unpaid--amount--and--any--penalty  
21       and--interest--relating--to--that--amount.

22       (5)--Returns--and--remittances--under--subsection--(3)--and  
23       any--information--obtained--by--the--department--during--an--audit  
24       are--subject--to--the--provisions--of--15-30-303--but--the  
25       department--may--disclose--the--information--to--the--department--of

1       labor--and--industry--under--circumstances--and--conditions--that  
2       ensure--the--continued--confidentiality--of--the--information.

3       (6)--The--department--of--labor--and--industry--and--the--state  
4       fund--shall--on--July--1,--1991,--or--as--soon--after--that--date--as  
5       possible,--give--the--department--a--list--of--all--employers--having  
6       coverage--under--any--plan--administered--or--regulated--by--the  
7       department--of--labor--and--industry--and--the--state--fund.--After  
8       the--lists--have--been--given--to--the--department,--the--department  
9       of--labor--and--industry--and--the--state--fund--shall--this--chapter  
10       and--shall--update--the--lists--list--weekly. The--department--of  
11       labor--and--industry--and--the--state--fund--shall--provide--the  
12       department--with--access--to--their--its--computer--data--bases--and  
13       paper--files--and--records--for--the--purpose--of--the--department's  
14       administration--of--the--tax--imposed--by--this--section.

15       (7)--The--provisions--of--Title--15,--chapter--30,--not--in  
16       conflict--with--the--provisions--of--this--part--regarding  
17       administration,--remedies,--enforcement,--collections,  
18       hearings,--interest,--deficiency--assessments,--credits--for  
19       overpayment,--statute--of--limitations,--penalties,--and  
20       department--rulemaking--authority--apply--to--the--tax,--to  
21       employers,--and--to--the--department."

22       **Section 13.** Section--39-71-2504,--MEA,--is--amended--to--  
23       read:

24       "39-71-2504.--Workers'--compensation--tax--and--occupational  
25       disease--account-----loan--repayment--account-----contract

1 account. (1) There is a workers' compensation tax and  
 2 occupational disease account in the state special revenue  
 3 fund. The workers' compensation tax and occupational disease  
 4 account consists of a tax contract account, a workers'  
 5 compensation loan repayment account, and a workers'  
 6 compensation and occupational disease bond repayment  
 7 account.

8 (2) All collections of the tax, and interest and  
 9 penalties on the tax, and revenue appropriated to the  
 10 workers' compensation tax account under section 117 Chapter  
 11 97 Special Laws of June 1989, must first be deposited in the  
 12 workers' compensation tax account. All such money deposited  
 13 in the workers' compensation tax account must be credited to  
 14 the workers' compensation and occupational disease bond  
 15 repayment account to the extent necessary to pay the  
 16 principal of and redemption premium and interest due on  
 17 workers' compensation bonds issued under 39-71-2354 and  
 18 39-71-2355 and to establish and maintain a reserve for the  
 19 bonds equal to the maximum annual principal of and interest  
 20 on the bonds in any future year. The collections must next  
 21 be deposited in the workers' compensation loan repayment  
 22 account to the extent necessary to pay the principal and  
 23 interest due on loans issued to the commissioner of  
 24 insurance under 39-71-2354 for the payment of contracts  
 25 entered into under (section 6) and loans issued to the

1 former state compensation mutual insurance fund for the  
 2 payment of unfunded liabilities. The balance in the workers'  
 3 compensation bond repayment account of the collected tax and  
 4 interest and penalties on the tax must be credited to the  
 5 tax deposited in the contract account within the workers'  
 6 compensation tax account and. The money in the contract  
 7 account is statutorily appropriated, as provided in  
 8 17-7-582, to the state fund to be used to reduce the  
 9 unfunded liability in the state fund incurred for claims for  
 10 injuries resulting from accidents that occurred before July  
 11 1, 1990 for the payment of contracts entered into under  
 12 (section 6)."

#### 13 **Section 14.** Section 39-71-317, MCA, is amended to read--

14 "39-71-317. Employer not to terminate worker for filing  
 15 claim--preference--jurisdiction over dispute--(1) An  
 16 employer may not use as grounds for terminating a worker the  
 17 filing of a claim under this chapter or chapter 72 of this  
 18 title.

19 (2) When an injured worker is capable of returning to  
 20 work within 2 years from the date of injury and has received  
 21 a medical release to return to work, the worker must be  
 22 given a preference over other applicants for a comparable  
 23 position that becomes vacant if the position is consistent  
 24 with the worker's physical condition and vocational  
 25 abilities.

{3}--This preference applies only to employment with the employer--for--whom--the--employee--was--working--at--the--time--the--injury--occurred;

{4}--The department and workers' compensation court--do not--have--jurisdiction--to--administer--or--resolve--a--dispute under--this--section;--Exclusive--jurisdiction--is--with--the district court;"

**Section 15.**--Section--39-71-2204,--MCA,--is--amended--to--read:

"39-71-2204. Insurer--to--submit--notice--of--coverage within--thirty--days---penalty--for--failure--{1}--The--insurer shall,--within--30--days--after--the--issuance--of--the--policy--of workers' compensation and occupational disease insurance, submit--to--the--department--the--notice--of--coverage--stating--the effective--date--of--the--policy--insuring--the--employer--and--such other--information--as--may--be--required--by--the--department;

{2}--The--department--may,--in--its--discretion,--assess--a penalty--of--no--more--than--\$200--against--an--insurer--which--that as--a--general--business--practice--does--not--comply--with--the 30-day--notice--requirement--as--set--forth--in--subsection--{1}--of this--section;"

**Section 16.**--Section--39-73-104,--MCA,--is--amended--to--read:--

"39-73-104. Eligibility--requirements---for--benefits. Payment shall must be made under this chapter to any person who:

{1}--has--silicosis, as defined in 39-73-101, which that results in his the person's total disability so as to render it impossible for him the person to follow continuously any substantially gainful occupation;

{2}--has--resided--in--and--been--an--inhabitant--of--the--state of--Montana--for--10--years--or--more--immediately--preceding--the date--of--the--application;

{3}--is--not--receiving,--with--respect--to--any--month--for which--he--the person--would--receive--a--payment--under--this chapter,--compensation--under--The--the--Workers' Compensation and Occupational Disease Act--of--Montana,--as--provided--by chapter--72--of--this--title,--which--that will equal the sum of \$200;"

**Section 17.**--Section--39-73-107,--MCA,--is--amended--to--read:--

"39-73-107. Amount--of--payments;--Subject--to--the provisions--of--this--chapter--and--the--deductions--herein provided, any person who has silicosis, as defined in this chapter, and who has, subject to the regulations and standards of the department of labor and industry, been determined by the department to be entitled payment under this chapter for silicosis shall be granted must receive a payment by the department of \$200 per month, subject to such appropriations as may from time to time be made. If he the person is receiving payments under The the Workers' Compensation and Occupational Disease Act of Montana, as

provided by chapter 72 of this title, which that are less in the aggregate than \$200, then he the person is entitled to a payment under this chapter of the difference between the amount received under The the Workers' Compensation and Occupational Disease Act of Montana, as provided by chapter 72 of this title, and \$200 per month. The legislature shall authorize such additional appropriations as may be necessary to make the increased monthly payments provided herein in this section."

**Section 18.** Section 39-73-108, MCA, is amended to read:--

"39-73-108. Payment of benefits where when person entitled is in institution. If any person who is entitled to benefits under this chapter shall be is an inmate in any Montana state institution, benefits shall may not be paid to him that person but shall must be paid his to the person's beneficiary, if any, as defined in 39-71-116:

(1) spouse;

(2) children under 18 years of age, in equal amounts, if the inmate has no spouse;

(3) children 18 years of age and older, in equal amounts, if the inmate has no spouse or children under 18 years of age;

(4) parents, in equal amounts, if payment is not made under subsections (1) through (3); or

(5) brothers and sisters, in equal amounts, if payment

is not made under subsections (1) through (4)."

**Section 19.** Section 19-12-401, MCA, is amended to read:--

"19-12-401. Eligibility for pension benefits. In order to qualify for participation in the volunteer firefighters' pension plan under 19-12-404, a volunteer firefighter must meet each of the following requirements:

(1) (a) To qualify for full participation, he the firefighter must have completed a total of at least 20 years' service as an active volunteer firefighter and as an active member of a qualified volunteer fire company;

(b) If a firefighter is prevented from completing at least 20 years' service by dissolution or discontinuance of his the volunteer fire company, personal relocation due to transfer or loss of employment, personal disability, or any other factor beyond his the firefighter's reasonable control, he the firefighter may qualify for partial participation if he the firefighter has completed at least 10 years' service. In that event, he the firefighter is eligible for only a proportion of the benefits specified in 19-12-404, determined by multiplying the benefits by a fraction, the numerator of which is the number of years of active service completed and the denominator of which is 20;

(c) The years of active service are cumulative and need not be continuous. The service need not be acquired with one single fire company but may be a total of separate periods



1 of active service with different fire companies in different  
2 fire districts.

3 (d) Effective March 1, 1965, the annual period of  
4 service for the purpose of this chapter is the fiscal year.  
5 No fractional part of any year may not count toward the  
6 service requirement, and to receive credit for any  
7 particular year, a volunteer firefighter must serve with one  
8 particular volunteer fire company throughout that entire  
9 fiscal year.

10 (2) (a) Except as provided in subsection (2) (b), he the  
11 firefighter must have attained the age of 55, but he need  
12 not be an active volunteer firefighter or an active member  
13 of any volunteer fire company when he reaches upon reaching  
14 that age.

15 (b) An active member of a volunteer fire company whose  
16 duty-related injury results in a permanent total disability  
17 as defined in 39-71-116 is eligible to receive a partial  
18 pension regardless of his the member's age, calculated as  
19 follows:

20 (i) for a member with less than 10 years of service, a  
21 pension calculated as provided in subsection (1) (b) in which  
22 the numerator equals 10, or

23 (ii) for a member with 10 years or more of service, a  
24 pension calculated as provided in subsection (1) (b);

25 (c) For purposes of this subsection (2), "permanent

1 total disability" means a condition resulting from an  
2 injury after a worker reaches maximum healing in which a  
3 worker is unable to return to work in the worker's job pool.

4 (3) During each of the years for which he the  
5 firefighter claims credit under subsection (1), he the  
6 firefighter must have completed a minimum of 30 hours of  
7 instruction in matters pertaining to firefighting under a  
8 program formulated and supervised by the chief or foreman of  
9 his the volunteer fire company.

10 (4) Effective July 1, 1965, no a volunteer firefighter  
11 may not receive credit for any year of membership in a  
12 volunteer fire company unless, throughout the year:

13 (a) the company maintained firefighting equipment in  
14 serviceable condition of a value of \$2,500 or more, and

15 (b) the company or the fire district served by it was  
16 rated in class 5, 6, 7, 8, 9, or 10 by the board of fire  
17 underwriters for the purpose of fire insurance premium  
18 rates.

19 (5) He the firefighter must have ceased to be an active  
20 member of any volunteer fire company, and if he the  
21 firefighter applies for and receives pension benefits  
22 hereunder under this chapter, he will the firefighter is not  
23 thereafter be eligible to become an active member of any  
24 volunteer fire company.

25 Section 20. Section 20-15-403, MCA, is amended to read:

"20-15-403--Applications--of--other---school---district provisions--(1)--When-the-term-"school-district"--appears-in the--following--sections--outside--of--Title--20--the--term includes-community-college-districts-and-the--provisions--of those--sections--applicable--to--school--districts--apply-to community--college--districts--2-9-1017--2-9-1117--2-9-3167 2-16-1147-2-16-6027-2-16-6147-2-10-7037-7-3-11017--7-6-26047 7-6-20017--7-7-1237-7-8-22147-7-8-22167-7-11-1037-7-12-41067 7-13-1107-7-13-2107-7-15-42067-10-1-7037-15-1-1017-15-6-2047 15-16-1017--15-16-6017--15-70-3017--15-70-3227--17-5-1017 17-5-2027--17-6-1037-17-6-2047-17-6-2137-17-7-2017-10-1-2017 10-2-1017-10-2-1037-10-2-1137-10-2-1147-10-2-4047--10-2-4327 10-5-2057-19-1-1027-19-1-0117-22-1-3097-25-1-4027-27-10-4067 33-20-11047--39-3-1047--39-4-1077--39-31-1037--39-31-3047 39-71-1167--39-71-1177--39-71-21067--39-71-22067--40-6-2377 41-3-11327--49-3-1017--49-3-1027--53-20-3047--77-3-3217 02-10-2017-02-10-2027-02-10-2037-05-7-21507-and-90-6-208-and Rules-4B(2)(g)-and-15(c)7-M.R.Civ.P.7-as-amended-

(2)--When-the-term--"school--district"--appears--in--a section-outside-of-Title-20-but-the-section-is-not-listed-in subsection-(1)7-the-school-district-provision-does-not-apply to-a-community-college-district."

**Section 21.**--Section 31-2-1067-MCA7-is-amended-to-read:--

"31-2-1067--Exempt-property---bankruptcy-proceeding7-No An-individual-may-not-exempt-from-the-property-of-the-estate

in-any-bankruptcy-proceeding-the-property--specified--in--11 U.S.C.-522(d)7-An-individual-may-exempt-from-the-property-of the-estate-in-any-bankruptcy-proceeding7

(1)--that--property-exempt-from-execution-of-judgment-as provided--in--19-3-1057--19-4-7067--19-5-7047--19-6-7057 19-7-7057--19-8-0057--19-9-10067--19-10-5047--19-11-6127 19-13-10047--19-21-2127--Title--257--chapter--137--part--67 33-7-5227--33-15-5127--through--33-15-5147--35-10-5027 39-51-31057--39-71-7437-39-73-1107-53-2-6077-53-9-1297-Title 707-chapter-327-and-80-2-2457

(2)--the--individual's--right--to--receive--unemployment compensation-and-unemployment-benefits7-and

(3)--the--individual's--right--to--receive--benefits--from--or interest--in--a--private--or--governmental--retirement7-pension7 stock-bonus7-profit-sharing7-annuity7--or--similar--plan--or contract--on--account--of--illness7-disability7-death7-age7-or length-of-service7-excluding--that--portion--of--contributions made--by--the--individual--within--1-year--before--the--filing--of the--petition--in--bankruptcy--which--exceeds--15%--of--the individual's-gross-income-for-that-1-year-period7-unless7

(a)--the--plan--or--contract--was--established--by--or--under the--auspices--of--an--insider--that--employed--the--individual--at the--time--the--individual's--rights--under--the--plan--or--contract arose7

(b)--the--benefit--is--paid--on--account--of--age--or--length--of

service, and

(c) the plan or contract does not qualify under section 401(a), 403(a), 403(b), 408, or 409 of the Internal Revenue Code of 1954 (26 U.S.C. 401(a), 403(b), 408, or 409).

**Section 22.** Section 39-51-201, MCA, is amended to read:

"39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be is that applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another state due to a temporary total disability as defined in 39-71-116 or a similar statute of another state or the United States as defined by department rule, the base period means the first four quarters of the last five quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the

individual's disability was incurred.

(3) "Benefits" means the money payments payable to an individual as provided in this chapter, with respect to the individual's unemployment.

(4) "Benefit year" with respect to any individual means the 52 consecutive week period beginning with the first day of the calendar week in which such the individual files a valid claim for benefits, except that the benefit year shall be is 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

(5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404(4).

(8) "Department" means the department of labor and

1 industry provided for in Title 2, chapter 15, part 17.

2 (9) "Employing unit" means any individual or

3 organization, including the state government, any of its

4 political subdivisions or instrumentalities, any

5 partnership, association, trust, estate, joint stock

6 company, insurance company, or corporation, whether domestic

7 or foreign, or the receiver, trustee in bankruptcy, trustee

8 or successor thereof, or the legal representative of a

9 deceased person which that has or had in its employ one or

10 more individuals performing services for it within this

11 state except as provided under 39-51-204(1)(a) and (1)(b).

12 All individuals performing services within this state for

13 any employing unit which that maintains two or more separate

14 establishments within this state are considered to be

15 employed by a single employing unit for all the purposes of

16 this chapter. Each individual employed to perform or assist

17 in performing the work of any agent or employee of an

18 employing unit is deemed considered to be employed by such

19 the employing unit for the purposes of this chapter, whether

20 such the individual was hired or paid directly by such the

21 employing unit or by such the agent or employee, provided

22 the employing unit has actual or constructive knowledge of

23 the work.

24 (10) "Employment office" means a free public employment

25 office or branch thereof of an office operated by this state

1 or maintained as a part of a state-controlled system of

2 public employment offices or such other free public

3 employment offices operated and maintained by the United

4 States government or its instrumentalities as the department

5 may approve.

6 (11) "Fund" means the unemployment insurance fund

7 established by this chapter to which all contributions and

8 payments in lieu of contributions are required to be paid

9 and from which all benefits provided under this chapter

10 shall must be paid.

11 (12) "Gross misconduct" means a criminal act, other than

12 a violation of a motor vehicle traffic law, for which an

13 individual has been convicted in a criminal court or has

14 admitted or conduct which demonstrates a flagrant and wanton

15 disregard of and for the rights or title or interest of a

16 fellow employee or the employer.

17 (13) "Hospital" means an institution which has been

18 licensed, certified, or approved by the state as a hospital.

19 (14) "Independent contractor" means an individual who

20 renders service in the course of an occupation and:

21 (a) has been and will continue to be free from control

22 or direction over the performance of the services, both

23 under his the individual's contract and in fact; and

24 (b) is engaged in an independently established trade,

25 occupation, profession, or business.

{15}-{a}-"Institution--of--higher--education"--for--the purposes-of-this--party--means--an--educational--institution which:

{i}-admits--as-regular-students-only-individuals-having a-certificate-of--graduation--from--a--high--school--or--the recognized-equivalent-of-such-a-certificate;

{ii}-is--legally--authorized--in-this-state-to-provide-a program-of-education-beyond-high-school;

{iii}-provides--an--educational--program--for--which--it awards-a-bachelor's-or-higher-degree-or-provides--a--program which--is--acceptable-for--full-credit-toward-such-a-degree--a program--of--postgraduate--or--postdoctoral--studies--or--a program--of--training--to--prepare--students--for--gainful employment-in-a-recognized-occupation; and

{iv}-is-a-public-or-other-nonprofit-institution;

{b}-Notwithstanding--any-of-the-foregoing-provisions-of this-subsection, all-colleges-and-universities-in-this-state are-institutions-of-higher-education-for--purposes--of--this part;

{16}-"State"--includes, in-addition-to-the-states-of-the United-States-of-America, the-District-of--Columbia, Puerto Rico, the-Virgin-Islands, and-the-Dominion-of-Canada;

{17}-"Taxes"--means--contributions--and--assessments required--under--this-chapter-but-does-not-include-penalties or--interest--for--past-due--or--unpaid--contributions--or

assessments;

{18}-"Unemployment--insurance-administration-fund"--means the-unemployment-insurance-administration--fund--established by--this--chapter--from--which-administrative-expenses-under this-chapter-shall--must--be-paid;

{19}-{a}-"Wages"--means--all--remuneration--payable--for personal-services, including-commissions--and--bonuses,--the cash--value--of--all-remuneration-payable-in-any-medium-other than-cash,--and--backpay--received--pursuant--to--a--dispute related--to--employment. The--reasonable--cash--value--of remuneration-payable-in-any-medium--other--than--cash--shall must--be--estimated--and-determined-in-accordance-with-rules prescribed-by-the-department;

{b}-The-term-"wages"--does-not-include;

{i}-the-amount-of-any-payment-made-by-the-employer,--if the--payment--was--made--under--a--plan--established-for-the employees-in-general-or-for-a-specific-class-or--classes--of employees, to-or-on-behalf-of-the-employee-for;

{A}-retirement;

{B}-sickness--or--accident--disability-under-a-workers+ compensation-law;

{C}-medical-and-hospitalization-expenses-in--connection with-sickness-or-accident-disability; or

{D}-death;

{ii}-remuneration-paid-by-any-county-welfare-office-from

public--assistance--funds--for--services--performed--at--the  
 direction-and-request-of-such--the--county-welfare-office,-or  
 (iii)-employee--expense-reimbursements-or-allowances-for  
 meals,-lodging,-travel,-subsistence,-or-other--expenses,-as  
 set-forth-in-department-rules;

(20)--"Week"--means--a--period--of--7--consecutive--calendar  
 days--ending--at--midnight--on--Saturday;

(21)--An--individual's--"weekly-benefit-amount"--means--the  
 amount--of--benefits--the--individual--would--be--entitled--to  
 receive--for--1--week--of--total--unemployment;"

**Section 23.**--Section 50-16-527, MCA, is amended to read:--

"50-16-527.--Patient--authorization-----retention-----  
 effective--period-----exception--(1)--A--health--care--provider  
 shall--retain--each--authorization--or--revocation--in--conjunction  
 with--any--health--care--information--from--which--disclosures--are  
 made;

(2)--Except--for--authorizations--to--provide--information--to  
 third-party--health--care--payors,-an--authorization--may--not  
 permit--the--release--of--health--care--information--relating--to  
 health--care--that--the--patient--receives--more--than--6--months  
 after--the--authorization--was--signed;

(3)--An--authorization--in--effect--on--October--17--1987,  
 remains--valid--for--30--months--after--October--17--1987--unless--an  
 earlier--date--is--specified--or--it--is--revoked--under--50-16-528;  
 Health--care--information--disclosed--under--such--an

authorization--is--otherwise--subject--to--this--part.--An  
 authorization--written--after--October--17--1987--becomes--invalid  
 after--the--expiration--date--contained--in--the--authorization,  
 which--may--not--exceed--30--months.-If--the--authorization--does  
 not--contain--an--expiration--date,-it--expires--6--months--after--it  
 is--signed;

(4)--Notwithstanding--subsections--(2)--and--(3),--a--signed  
 claim--for--workers'-compensation--or--occupational-disease  
 benefits--authorizes--disclosure--to--the--workers'-compensation  
 and--occupational--disease--insurer,-as--defined--in--39-71-116,  
 by--the--health--care--provider.-The--disclosure--authorized--by  
 this--subsection--relates--only--to--information--concerning--the  
 claimant's--condition.-This--authorization--is--effective--only  
 as--long--as--the--claimant--is--claiming--benefits;"

**Section 24.**--Section 50-71-325, MCA, is amended to read:--

"50-71-325.--Department--authorized--to--prohibit--further  
 use--of--equipment--constituting--violation--(1)--The--department,  
 upon--finding--any--violation--of--any--duly--adopted--safety--code,  
 order,-or--rule--involving--failure--to--install--or--maintain--any  
 safety--appliance,-device,-or--safeguard--required--by--such--the  
 safety--order,-code,-or--rule,-may--prohibit--the--further--use--of  
 the--machine,-equipment,-or--apparatus--constituting--such--the  
 violation--and,-when--such--the--use--is--prohibited,-shall--post  
 notice--in--an--appropriate--place--in--plain--view--of--any--person  
 likely--to--use--the--same--calling--attention--to--the--unsafe

condition--defect--or--lack-of-safeguard-and-the-fact-that  
the-further-use-thereof-is-prohibited;

{2}--The-notice--required--by--subsection--{1}--of--this  
section--shall--may--not-be-removed-until-the-required-safety  
appliance--device--or--safeguard--complies--with--the  
requirement-of-the-safety-order-or-safety-code;

{3}--Every--person--who--after--the--notice-required-by  
subsection--{1}--of--this-section-is-posted-as-provided-in-that  
subsection--uses--or--operates--any--place--of--employment  
machine--device--apparatus--or--equipment--referred--to--in  
subsection--{1}--of--this-section-before-it-is-made-safe-and  
the-required-safeguards-or-safety-appliances-or-devices--are  
provided--or--who--defaces-or-destroys-or-removes-any-notice  
required-by-subsection--{1}--of--this-section--without--the  
authority--of--the-department-or-who-fails-or-refuses-to-file  
a-report-of-accident-as-required-by-39-71-307{1}--is-guilty  
of-a-misdemeanor-and--in-addition-to-the-punishment-provided  
for-misdemeanors--is-subject-to-a-civil-penalty-in-an-amount  
of--not--more-than-\$1,000--This-civil-penalty-may-be-imposed  
and-collected-by-the-department-in-an-action-brought-in--the  
name--of--the--state--in--the--county--in-which-the-employer  
resides-or-in-which-he--the--employer--employs--workers--Any  
penalty--collected--under-this-subsection-shall--must--be-paid  
into-the-department's-state-special-revenue-account;

{4}--Any-person-aggrieved-by-an-order-prohibiting--the

use--of--the--machine--equipment--apparatus--or--place-of  
employment-as-provided-for-in-this-section--may--request--a  
hearing--before-the-department-within-20-days-after-entry-of  
such--the-order--The-department-shall-then-affirm--modify--or  
revoke--the--order--and--all--procedures--of--this--chapter  
relative-to-entry-of-orders--rehearing--and--appeal--shall  
apply."

**Section 25.**--Section 17-6-318-MCA-is-amended-to-read:--

"17-6-318--Job-credit-interest-rate-reduction-for-small  
business--loan-participations--{1}-A-borrower-who-uses-the  
proceeds-of-a-small-business-loan-participation-funded-under  
the-provisions-of-this-part-to-create-jobs-employing-Montana  
residents--is--entitled--to--a--job--credit--interest--rate  
reduction--for--each--job--created--over--a-2-year-period-to  
employ-a-Montana-resident--The-date-of--the--formal--written  
interim--or--permanent--loan--application--to--the-financial  
institution-will-be-used-as-a-beginning-date--for--counting  
the-number--of--jobs--created--The-job-credit-interest-rate  
reduction-may-not-apply-to-a-loan-participation-of-more-than  
1%--of--the--total--of--the--permanent--coal--tax--trust--fund  
determined-at-the-end-of-the-last-completed-fiscal-year--The  
job--credit--interest--rate--reduction-is-equal-to-0.05%--for  
each-job-created-to--employ--a--Montana--resident--up--to--a  
maximum-interest-rate-reduction-of-2.5%;

{2}--if-the-salary-or-wage-of-the-job-created;

1 (a)--exceeds--the--average--weekly--wage--as--defined--in  
2 39-71-116, the--amount--of--the--job--credit--interest--rate  
3 reduction--may--be--increased--proportionately--for--each  
4 increment--of--25%--above--the--average--weekly--wage--to--a--maximum  
5 of--two--times--the--average--weekly--wage--or

6 (b)--is--less--than--the--average--weekly--wage, as--defined--in  
7 39-71-116, the--job--credit--interest--rate--reduction--is--reduced  
8 proportionately--for--each--25%--increment--below--the--average  
9 wage;

10 (3)--A--job--credit--interest--rate--reduction--may--not--be  
11 allowed--for--a--job--created--by--the--borrower--using--the--proceeds  
12 of--the--loan--for--which--the--salary--or--wage--is--less--than--the  
13 minimum--wage--provided--for--in--39-3-409;

14 (4)--No--A--job--credit--will--not--be--given--unless--one--whole  
15 job--is--created;

16 (5)--To--qualify--for--the--job--credit--interest--rate  
17 reduction, the--borrower--shall--provide--satisfactory--evidence  
18 of--the--creation--of--jobs--and--make--application--in--writing,  
19 through--its--financial--institution, to--the--board--when--the  
20 loan--is--delivered--to--the--board--or--not--later--than--45--days  
21 after--the--first--and--second--anniversary--dates--of--the--loan."

22 **Section 26.**--Section 39-71-118, MCA, is amended to read:--

23 "39-71-118. Employee, worker, workman, and volunteer  
24 firefighter defined. (1) The terms "employee", "workman", or  
25 "worker" mean:

1 (a)--each--person--in--this--state, including--a--contractor  
2 other--than--an--independent--contractor, who--is--in--the--service  
3 of--an--employer, as--defined--by--39-71-117, under--any  
4 appointment--or--contract--of--hire, expressed--or--implied, oral  
5 or--written. The--terms--include--aliens--and--minors, whether  
6 lawfully--or--unlawfully--employed, and--all--of--the--elected--and  
7 appointed--paid--public--officers--and--officers--and--members--of  
8 boards--of--directors--of--quasi--public--or--private--corporations  
9 while--rendering--actual--service--for--such--corporations--for  
10 pay. Casual employees as defined by 39-71-116 are included  
11 as--employees--if--they--are--not--otherwise--covered--by--workers'  
12 compensation and occupational disease insurance--and--if--an  
13 employer--has--elected--to--be--bound--by--the--provisions--of--the  
14 compensation law for these casual employments, as provided  
15 in 39-71-401(2). Household or domestic service is excluded;

16 (b)--a--recipient--of--general--relief--who--is--performing  
17 work--for--a--county--of--this--state--under--the--provisions--of  
18 53-3-303 through 53-3-305 and any juvenile performing work  
19 under--authorization--of--a--district--court--judge--in--a  
20 delinquency prevention or rehabilitation program;

21 (c)--a--person--receiving--on--the--job--vocational  
22 rehabilitation training or other on-the-job training under a  
23 state or federal vocational training program, whether or not  
24 under an appointment or contract of hire with an employer as  
25 defined in this chapter and whether or not receiving payment



1 from a third party. However, this subsection does not apply  
2 to students enrolled in vocational training programs as  
3 outlined above while they are on the premises of a public  
4 school or community college.

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

8 (e) an airman or other person employed as a volunteer  
9 under 67-2-105, or

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

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

24 (ii) premiums must be paid by the employer, as defined  
25 in 39-71-117(3), and must be based upon the minimum wage

1 established under Title 39, chapter 3, part 4, for the  
2 number of hours of community service required under the  
3 order from the court or hearings officer.

4 (2) The term "volunteer firefighter" means a  
5 firefighter who is an enrolled and active member of a fire  
6 company organized and funded by a county, a rural fire  
7 district, or a fire service area.

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

14 (b) In the event of such the election, the employer  
15 must shall serve upon the employer's insurer written notice  
16 naming the partners or sole proprietor to be covered and  
17 stating the level of workers' compensation and occupational  
18 disease coverage desired by electing the amount of wages to  
19 be reported, subject to the limitations in subsection  
20 (3)(d). A partner or sole proprietor is not considered an  
21 employee within this chapter until such the notice has been  
22 given.

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

1       (d)--All--weekly--workers'--compensation--and--occupational  
2       disease--benefits--must--be--based--on--the--amount--of--elected  
3       wages,--subject--to--the--minimum--and--maximum--limitations--of  
4       this--subsection;--For--premium--ratemaking--and--for--the  
5       determination--of--weekly--wage--for--weekly--compensation  
6       benefits,--the--electing--employer--may--elect--not--less--than--\$900  
7       a--month--and--not--more--than--1-1/2--times--the--average--weekly  
8       wage--as--defined--in--this--chapter;

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

17      (5)--An--employee,--workman,--or--worker--in--this--state--whose  
18      services--are--furnished--by--a--person,--association,--contractor,  
19      firm,--or--corporation,--other--than--a--temporary--service  
20      contractor,--to--an--employer--as--defined--in--39-71-117--is  
21      presumed--to--be--under--the--control--and--employment--of--the  
22      employer;--This--presumption--may--be--rebutted--as--provided--in  
23      39-71-117(3);

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

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

4       (b)--a--nonresident--of--Montana--whose--principal--employment  
5       duties--are--conducted--within--this--state--on--a--regular--basis  
6       for--an--employer;--"

7       **Section 27.**--Section 39-3-604, MCA, is amended to read:--

8       "39-3-604.--Bond--to--be--filed----bond--requirements--  
9       payment----exception;--(1)--Except--as--provided--in--39-3-605--and  
10      subsection--(4),--a--person--operating--a--business--as--a  
11      restaurant,--bar,--or--tavern--is--required--to--file--a--bond--equal  
12      to--at--least--double--the--amount--of--the--projected--semimonthly  
13      payroll--with--the--commissioner;--The--bond--must--be--kept--in--full  
14      force--and--effect,--and--any--cancellation--or--revocation--of--the  
15      bond--or--withdrawal--of--the--sureties--from--the--bond--is--grounds  
16      for--enjoining--the--operation--of--business,--as--provided--for--in  
17      39-3-607,--until--a--new--bond--of--like--tenure--and--effect--is  
18      filed--and--approved;

19      (2)--The--bond--required--by--subsection--(1)--must--be--filed  
20      with--the--commissioner;--The--state--of--Montana--must--be--named--as  
21      the--obligee,--with--good--and--sufficient--sureties--to--be  
22      approved--by--the--attorney--general;

23      (3)--The--bond--must--assure--that--the--employees--who--perform  
24      labor--or--other--personal--services--are--guaranteed--their--wages  
25      if--the--person--ceases--operation--of--the--business--for--any

reason-and-is-unable-to-pay-the--wages--due--and--owing--the  
employees--and--must--assure-payment-due-the-department-as-a  
result-of-payroll-taxes.

{4}--The-bond-must-first-be-used-to-pay--wages--due--and  
owing---employees,---then--to--pay--payroll--taxes--due--the  
department. The-bond-may-not-be-used-to-pay--an-amount--due  
the--state-compensation-mutual-insurance-fund-established-in  
39-71-2313.

{5}--Except-as-provided--in--39-3-605(2),--this--section  
does--not--apply--to--any--person--who-has-operated-the-same  
restaurant,bar,or-tavern--continuously--since--October--1,  
1980.<sup>4</sup>

**NEW SECTION. Section 28. Repealer. Sections 2-15-1707--**

39-71-102,---39-71-103,---39-71-105,---39-71-119,---39-71-123,  
39-71-201,---39-71-202,---39-71-204,---39-71-205,---39-71-206,  
39-71-208,---39-71-209,---39-71-221,---39-71-222,---39-71-223,  
39-71-224,---39-71-301,---39-71-302,---39-71-303,---39-71-306,  
39-71-307,---39-71-308,---39-71-316,---39-71-402,---39-71-403,  
39-71-405,---39-71-406,---39-71-407,---39-71-408,---39-71-409,  
39-71-411,---39-71-412,---39-71-414,---39-71-415,---39-71-421,  
39-71-426,---39-71-427,---39-71-428,---39-71-434,---39-71-501,  
39-71-502,---39-71-503,---39-71-504,---39-71-505,---39-71-506,  
39-71-507,---39-71-508,---39-71-509,---39-71-510,---39-71-511,  
39-71-515,---39-71-516,---39-71-517,---39-71-518,---39-71-519,  
39-71-601,---39-71-602,---39-71-603,---39-71-604,---39-71-605,

39-71-606,---39-71-607,---39-71-608,---39-71-609,---39-71-610,  
39-71-611,---39-71-612,---39-71-613,---39-71-614,---39-71-701,  
39-71-702,---39-71-703,---39-71-704,---39-71-708,---39-71-710,  
39-71-711,---39-71-721,---39-71-722,---39-71-723,---39-71-724,  
39-71-725,---39-71-726,---39-71-727,---39-71-736,---39-71-737,  
39-71-739,---39-71-740,---39-71-741,---39-71-742,---39-71-743,  
39-71-744,---39-71-801,---39-71-802,---39-71-803,---39-71-804,  
39-71-805,---39-71-806,---39-71-807,---39-71-808,---39-71-809,  
39-71-810,---39-71-811,---39-71-812,---39-71-813,---39-71-901,  
39-71-902,---39-71-903,---39-71-904,---39-71-905,---39-71-906,  
39-71-907,---39-71-908,---39-71-909,---39-71-910,---39-71-911,  
39-71-912,---39-71-913,---39-71-1003,---39-71-1004,---39-71-1011,  
39-71-1013,---39-71-1014,---39-71-1025,---39-71-1031,---39-71-1032,  
39-71-2001,---39-71-2201,---39-71-2202,---39-71-2203,---39-71-2205,  
39-71-2206,---39-71-2207,---39-71-2211,---39-71-2311,---39-71-2312,  
39-71-2313,---39-71-2314,---39-71-2315,---39-71-2316,---39-71-2317,  
39-71-2318,---39-71-2319,---39-71-2320,---39-71-2321,---39-71-2322,  
39-71-2323,---39-71-2325,---39-71-2327,---39-71-2336,---39-71-2337,  
39-71-2339,---39-71-2340,---39-71-2351,---39-71-2352,---39-71-2355,  
39-71-2356,---39-71-2361,---39-71-2401,---39-71-2406,---39-71-2407,  
39-71-2408,---39-71-2409,---39-71-2410,---39-71-2411,---39-71-2901,  
39-71-2902,---39-71-2903,---39-71-2904,---39-71-2905,---39-71-2907,  
39-71-2909,---39-71-2910,---39-71-2914,---39-72-101,---39-72-102,  
39-72-103,---39-72-201,---39-72-202,---39-72-203,---39-72-204,  
39-72-206,---39-72-301,---39-72-302,---39-72-303,---39-72-305,

1 39-72-310,--39-72-401,--39-72-402,---39-72-403,---39-72-404,  
2 39-72-405,---39-72-408,---39-72-509,--39-72-601,--39-72-602,  
3 39-72-605,--39-72-606,--39-72-607,---39-72-608,---39-72-609,  
4 39-72-610,---39-72-611,---39-72-612,--39-72-613,--39-72-701,  
5 39-72-703,--39-72-704,--39-72-705,---39-72-706,---39-72-707,  
6 39-72-708,--39-72-709,--39-72-711,39-72-712,--and-39-72-714,  
7 MCA,are-repeated,  
8 NEW-SECTION,--Section-29.--Codification----instruction--  
9 {Sections-6-through-8}-are-intended-to--be--codified--as--an  
10 integral-part-of-Title-39,chapter-71,--and-the-provisions-of  
11 Title-39,chapter-71,apply-to-{sections-6-through-8},

-End-

1                   SENATE BILL NO. 405  
 2                   INTRODUCED BY KEATING, BURNETT, RYE,  
 3                   BERGMAN, DEBRUYCKER, GAGE, TOEWS, HERTEL,  
 4                   AKLESTAD, R. JOHNSON, BOHLINGER,  
 5                   MILLS, PAVLOVICH  
 6  
 7   A BILL FOR AN ACT ENTITLED: "AN ACT ABOLISHING--THE--STATE  
 8   COMPENSATION---MUTUAL---INSURANCE---FUND;---PROVIDING---FOR  
 9   ADMINISTRATION-AND-PAYMENT-OF-EXISTING-CLAIMS-BY-ONE-OR-MORE  
 10   PRIVATE-COMPANIES-UNDER-CONTRACTS-WITH-THE--COMMISSIONER--OF  
 11   INSURANCE;--PROVIDING--FOR--LOANS--TO--THE--COMMISSIONER--TO  
 12   SERVICE--THE--CONTRACTS;--PROVIDING--FOR--MUTUALLY-AGREABLE  
 13   LUMP-SUM--SETTLEMENTS;--CREATING--AN--ASSIGNED--RISK--PLAN;  
 14   PROVIDING--THAT--THE--SCOPE-AND-COVERAGE-OF--THE--INSURANCE--IS--AT  
 15   THE---NONSELF-INSURED--EMPLOYER'S--DISCRETION; ALLOWING AN  
 16   EMPLOYER TO COMPLY WITH THE REQUIREMENT TO PROVIDE WORKERS'  
 17   COMPENSATION COVERAGE BY OBTAINING ERISA COVERAGE; AND  
 18   AMENDING SECTIONS-17-6-310, 19-12-401, 20-15-403, 31-2-106,  
 19   39-3-604, 39-51-201, 39-71-101, 39-71-116, 39-71-117,  
 20   39-71-118, 39-71-317, SECTION 39-71-401, 39-71-431,  
 21   39-71-2204, 39-71-2354, 39-71-2501, 39-71-2502, 39-71-2503,  
 22   39-71-2504, 39-73-104, 39-73-107, 39-73-108, 50-16-527, AND  
 23   50-71-325, MCA, AND REPEALING SECTIONS-2-15-1707, 39-71-102,  
 24   39-71-103, 39-71-105, 39-71-119, 39-71-123, 39-71-201,  
 25   39-71-202, 39-71-204, 39-71-205, 39-71-206, 39-71-208,

1   39-71-209, 39-71-221, 39-71-222, 39-71-223, 39-71-224,  
 2   39-71-301, 39-71-302, 39-71-303, 39-71-306, 39-71-307,  
 3   39-71-308, 39-71-316, 39-71-402, 39-71-403, 39-71-405,  
 4   39-71-406, 39-71-407, 39-71-408, 39-71-409, 39-71-411,  
 5   39-71-412, 39-71-414, 39-71-415, 39-71-421, 39-71-426,  
 6   39-71-427, 39-71-428, 39-71-434, 39-71-501, 39-71-502,  
 7   39-71-503, 39-71-504, 39-71-505, 39-71-506, 39-71-507,  
 8   39-71-508, 39-71-509, 39-71-510, 39-71-511, 39-71-515,  
 9   39-71-516, 39-71-517, 39-71-518, 39-71-519, 39-71-601,  
 10   39-71-602, 39-71-603, 39-71-604, 39-71-605, 39-71-606,  
 11   39-71-607, 39-71-608, 39-71-609, 39-71-610, 39-71-611,  
 12   39-71-612, 39-71-613, 39-71-614, 39-71-701, 39-71-702,  
 13   39-71-703, 39-71-704, 39-71-708, 39-71-710, 39-71-711,  
 14   39-71-721, 39-71-722, 39-71-723, 39-71-724, 39-71-725,  
 15   39-71-726, 39-71-727, 39-71-736, 39-71-737, 39-71-739,  
 16   39-71-740, 39-71-741, 39-71-742, 39-71-743, 39-71-744,  
 17   39-71-801, 39-71-802, 39-71-803, 39-71-804, 39-71-805,  
 18   39-71-806, 39-71-807, 39-71-808, 39-71-809, 39-71-810,

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