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House BILL NO. 200

INTRODUCED BY Ellen Bergman Hillard Bought
Bartlett
Cocchiarella BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE WORKERS' COMPENSATION ACT AND THE OCCUPATIONAL DISEASE ACT OF MONTANA; ADDING DEFINITIONS; EXEMPTING CORPORATE OFFICERS AND MANAGERS OF LIMITED LIABILITY COMPANIES FROM COVERAGE UNLESS THE EMPLOYER ELECTS TO COVER THE OFFICER OR MANAGER AND THE INSURER ALLOWS THE ELECTION; CLARIFYING PROHIBITIONS REGARDING MEDICAL PROVIDER SELF-REFERRAL; AUTHORIZING THE DEPARTMENT OF LABOR AND INDUSTRY TO CONDUCT HEARINGS AND APPEALS BY TELEPHONE OR VIDEOCONFERENCE; CLARIFYING THE STATUS OF LIMITED LIABILITY COMPANIES; CLARIFYING THE LIABILITY OF AN EMPLOYER WHO CONTRACTS WORK OUT; CLARIFYING THE DEPARTMENT'S RESPONSIBILITY IN APPROVING THE GROUP PURCHASE OF WORKERS' COMPENSATION INSURANCE; REQUIRING THE INVESTMENT INCOME OF THE UNINSURED EMPLOYERS' FUND TO BE DEPOSITED IN THE FUND; REMOVING THE LIMIT ON AN UNINSURED EMPLOYER'S LIABILITY FOR CLAIMS; INCREASING THE AUTHORITY TO FILE CEASE AND DESIST ORDERS TO INCLUDE PERSONS, BUSINESSES, AND ENTITIES THAT HAVE CONTRACTED WITH UNINSURED EMPLOYERS AND PROVIDING FOR PENALTIES; PROVIDING A DISTRICT COURT WITH THE OPTION TO REQUEST THE WORKERS' COMPENSATION JUDGE TO DETERMINE THE AMOUNT OF RECOVERABLE DAMAGES DUE TO AN INJURED UNINSURED WORKER; REMOVING THE REFERENCES TO WAGE SUPPLEMENT; REQUIRING THE BOARD OF INVESTMENTS TO INVEST CERTAIN MONEY IN THE SUBSEQUENT INJURY FUND AND REQUIRING THE INVESTMENT INCOME TO BE DEPOSITED IN THE FUND; REDUCING THE TIME PERIOD ALLOWED FOR A PARTY TO RESPOND TO A WORKERS' COMPENSATION MEDIATOR'S RECOMMENDATION; REVISING THE MEDICAL PANEL PROCESS; AMENDING SECTIONS 39-71-116, 39-71-117, 39-71-118, 39-71-315, 39-71-318, 39-71-401, 39-71-405, 39-71-432, 39-71-433, 39-71-503, 39-71-504, 39-71-507, 39-71-516, 39-71-710, 39-71-721, 39-71-723, 39-71-737, 39-71-902, 39-71-1108, 39-71-2103, 39-71-2411, 39-71-2905, 39-72-601, 39-72-602, AND 39-72-612, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES."

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



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

2 "**39-71-116. Definitions.** Unless the context otherwise requires, words and phrases employed in
3 this chapter have the following meanings:

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

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

7 (b) payment of benefits;

8 (c) setting of reserves;

9 (d) furnishing of services and facilities; and

10 (e) ~~utilization~~ use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

11 (2) "Aid or sustenance" means any public or private subsidy made to provide a means of support,
12 maintenance, or subsistence for the recipient.

13 ~~(2)~~(3) "Average weekly wage" means the mean weekly earnings of all employees under covered
14 employment, as defined and established annually by the ~~Montana~~ department of labor and industry. It is
15 established at the nearest whole dollar number and must be adopted by the department prior to July 1 of
16 each year.

17 ~~(3)~~(4) "Beneficiary" means:

18 (a) a surviving spouse living with or legally entitled to be supported by the deceased at the time
19 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 a full-time student in an accredited school
22 or is enrolled in an accredited apprenticeship program;

23 (d) an invalid child over the age of 18 years who is dependent upon the decedent for support at
24 the time of injury;

25 (e) a parent who is dependent upon the decedent for support at the time of the injury if a
26 beneficiary, as defined in subsections ~~(3)(a)~~ (4)(a) through ~~(3)(d)~~ (4)(d), does not exist; and

27 (f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the
28 time of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections
29 ~~(3)(a)~~ (4)(a) through ~~(3)(e)~~ (4)(e), does not exist.

30 ~~(4)~~(5) "Casual employment" means employment not in the usual course of trade, business,

1 profession, or occupation of the employer.

2 ~~(5)~~(6) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior
3 to the injury.

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

10 ~~(7)~~(8) "Days" means calendar days, unless otherwise specified.

11 ~~(8)~~(9) "Department" means the department of labor and industry.

12 ~~(9)~~(10) "Disability" means a condition in which a worker's ability to engage in gainful employment
13 is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined
14 with factors, such as the worker's age, education, work history, and other factors that affect the worker's
15 ability to engage in gainful employment. Disability does not mean a purely medical condition.

16 ~~(10)~~(11) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

17 (12) "Household or domestic employment" means employment of persons other than members of
18 the household for the purpose of tending to the aid and comfort of the employer or members of the
19 employer's family, including but not limited to housecleaning and yard work, but does not include
20 employment beyond the scope of normal household or domestic duties, such as home health care or
21 domiciliary care.

22 ~~(11)~~(13) "Insurer" means an employer bound by compensation plan No. 1, an insurance company
23 transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

24 ~~(12)~~(14) "Invalid" means one who is physically or mentally incapacitated.

25 (15) "Limited liability company" is as defined in 35-8-102.

26 ~~(13)~~(16) "Maintenance care" means treatment designed to provide the optimum state of health
27 while minimizing recurrence of the clinical status.

28 ~~(14)~~(17) "Medical stability", "maximum healing", or "maximum medical healing" means a point in
29 the healing process when further material improvement would not be reasonably expected from primary
30 medical treatment.

1 ~~(15)~~(18) "Order" means any decision, rule, direction, requirement, or standard of the department
2 or any other determination arrived at or decision made by the department.

3 ~~(16)~~(19) "Palliative care" means treatment designed to reduce or ease symptoms without curing
4 the underlying cause of the symptoms.

5 ~~(17)~~(20) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average
6 annual payroll of the employer for the preceding calendar year or, if the employer has not operated a
7 sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the
8 current year. However, an estimate may be made by the department for any employer starting in business
9 if average payrolls are not available. This estimate must be adjusted by additional payment by the employer
10 or refund by the department, as the case may actually be, on December 31 of the current year. An
11 employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by
12 an employer.

13 ~~(18)~~(21) "Permanent partial disability" means a condition, after a worker has reached maximum
14 medical healing, in which a worker:

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

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

19 ~~(19)~~(22) "Permanent total disability" means a condition resulting from injury as defined in this
20 chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable
21 prospect of physically performing regular employment. Regular employment means work on a recurring
22 basis performed for remuneration in a trade, business, profession, or other occupation in this state. Lack
23 of immediate job openings is not a factor to be considered in determining if a worker is permanently totally
24 disabled.

25 ~~(20)~~(23) The "plant of the employer" includes the place of business of a third person while the
26 employer has access to or control over the place of business for the purpose of carrying on the employer's
27 usual trade, business, or occupation.

28 ~~(21)~~(24) "Primary medical services" means treatment prescribed by a treating physician, for
29 conditions resulting from the injury, necessary for achieving medical stability.

30 ~~(22)~~(25) "Public corporation" means the state or any county, municipal corporation, school district,

1 city, city under a commission form of government or special charter, town, or village.

2 ~~(23)~~(26) "Reasonably safe place to work" means that the place of employment has been made as
3 free from danger to the life or safety of the employee as the nature of the employment will reasonably
4 permit.

5 ~~(24)~~(27) "Reasonably safe tools and appliances" are tools and appliances ~~as~~ that are adapted to and
6 that are reasonably safe for use for the particular purpose for which they are furnished.

7 ~~(25)~~(28) "Secondary medical services" means those medical services or appliances that are
8 considered not medically necessary for medical stability. The services and appliances include but are not
9 limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs
10 designed to address disability and not impairment, or equipment offered by individuals, clinics, groups,
11 hospitals, or rehabilitation facilities.

12 (29) "Sole proprietor" means the person who has the exclusive legal right or title to or ownership
13 of a business enterprise.

14 ~~(26)~~(30) "Temporary partial disability" means a condition resulting from an injury, as defined in
15 39-71-119, in which a worker, prior to maximum healing:

16 (a) is temporarily unable to return to the position held at the time of injury because of a medically
17 determined physical restriction;

18 (b) returns to work in a modified or alternative employment; and

19 (c) suffers a partial wage loss.

20 ~~(27)~~(31) "Temporary service contractor" means ~~any~~ a person, firm, association, or corporation
21 conducting business that employs individuals directly for the purpose of furnishing the services of those
22 individuals on a part-time or temporary basis to others.

23 ~~(28)~~(32) "Temporary total disability" means a condition resulting from an injury, as defined in this
24 chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical
25 healing.

26 ~~(29)~~(33) "Temporary worker" means a worker whose services are furnished to another on a
27 part-time or temporary basis to substitute for a permanent employee on leave or to meet an emergency or
28 short-term workload.

29 ~~(30)~~(34) "Treating physician" means a person who is primarily responsible for the treatment of a
30 worker's compensable injury and is:

1 (a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting
2 privileges to practice in one or more hospitals, if any, in the area where the physician is located;

3 (b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

4 (c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if
5 there is not a physician, as defined in subsection ~~(30)(a)~~ (34)(a), in the area where the physician
6 assistant-certified is located;

7 (d) an osteopath licensed by the state of Montana under Title 37, chapter 5; or

8 (e) a dentist licensed by the state of Montana under Title 37, chapter 4.

9 ~~(34)(35)~~ "Year", unless otherwise specified, means calendar year."
10

11 **Section 2.** Section 39-71-117, MCA, is amended to read:

12 **"39-71-117. Employer defined.** (1) "Employer" means:

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

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

23 (c) any nonprofit association, limited liability company, or corporation or other entity funded in
24 whole or in part by federal, state, or local government funds that places community service participants,
25 as defined in 39-71-118(1)(f), with nonprofit organizations or associations or federal, state, or local
26 government entities.

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

29 (3) An employer defined in subsection (1) who ~~utilizes~~ uses the services of a worker furnished by
30 another person, association, contractor, firm, limited liability company, or corporation, other than a

1 temporary service contractor, is presumed to be the employer for workers' compensation premium and loss
 2 experience purposes for work performed by the worker. The presumption may be rebutted by substantial
 3 credible evidence of the following:

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

8 (b) the person, association, contractor, firm, limited liability company, or corporation, other than
 9 a temporary service contractor, furnishing the services of a worker to another has obtained workers'
 10 compensation insurance for the worker in Montana both at the inception of employment and during all
 11 phases of the work performed.

12 (4) Notwithstanding the provisions of subsection (3), an interstate or intrastate common or contract
 13 motor carrier doing business in this state who ~~utilizes~~ uses drivers in this state is considered the employer,
 14 is liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:

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

17 (b) the person, association, contractor, firm, limited liability company, or corporation furnishing
 18 drivers in this state to a motor carrier has obtained workers' compensation insurance on the drivers in
 19 Montana both at the inception of employment and during all phases of the work performed."

20

21 **Section 3.** Section 39-71-118, MCA, is amended to read:

22 **"39-71-118. Employee, worker, and volunteer firefighter defined.** (1) The ~~terms~~ term "employee"
 23 or "worker" means:

24 (a) each person in this state, including a contractor other than an independent contractor, who is
 25 in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire,
 26 expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully
 27 employed, and all of the elected and appointed paid public officers and officers and members of boards of
 28 directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while
 29 rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are
 30 included as employees if they are not otherwise covered by workers' compensation and if an employer has

1 elected to be bound by the provisions of the compensation law for these casual employments, as provided
2 in 39-71-401(2). Household or domestic ~~service~~ employment is excluded.

3 (b) any juvenile performing work under authorization of a district court judge in a delinquency
4 prevention or rehabilitation program;

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

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

12 (e) an aircrew member or other person employed as a volunteer under 67-2-105;

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

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

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

24 (g) an inmate working in a federally certified prison industries program authorized under 53-1-301.

25 (2) The terms defined in subsection (1) do not include a person who is:

26 (a) participating in recreational activity and who at the time is relieved of and is not performing
27 prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket,
28 permit, device, or other emolument of employment; or

29 (b) performing voluntary service at a recreational facility and who receives no compensation for
30 those services other than meals, lodging, or the use of the recreational facilities.

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

3 (4) (a) If the employer is a partnership, ~~or sole proprietorship proprietor, or a member-managed~~
4 limited liability company, the employer may elect to include as an employee within the provisions of this
5 chapter any member of the partnership, ~~or the owner of the sole proprietorship, or any member of the~~
6 limited liability company devoting full time to the partnership, ~~or proprietorship, or limited liability company~~
7 business.

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

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

15 (d) All weekly compensation benefits must be based on the amount of elected wages, subject to
16 the minimum and maximum limitations of this subsection. For premium ratemaking and for the
17 determination of weekly wage for weekly compensation benefits, the electing employer may elect not less
18 than \$900 a month and not more than 1 ½ times the average weekly wage, as defined in this chapter.

19 (5) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited
20 liability company, the employer may elect to include as an employee within the provisions of this chapter
21 any corporate officer or manager exempted under 39-71-401(2).

22 (b) In the event of an election, the employer shall serve upon the employer's insurer written notice
23 naming the corporate officer or manager to be covered and stating the level of compensation coverage
24 desired by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A
25 corporate officer or manager is not considered an employee within this chapter until notice has been given.

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

28 (d) All weekly compensation benefits must be based on the amount of elected wages, subject to
29 the minimum and maximum limitations of this subsection. For premium ratemaking and for the
30 determination of the weekly wage for weekly compensation benefits, the electing employer may elect not

1 less than \$200 a week and not more than 1 ½ times the average weekly wage, as defined in this chapter.

2 ~~(5)(6)~~ The trustees of a rural fire district, a county governing body providing rural fire protection,
3 or the county commissioners or trustees for a fire service area may elect to include as an employee within
4 the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers'
5 compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

6 ~~(6)(7)~~ An employee or worker in this state whose services are furnished by a person, association,
7 contractor, firm, limited liability company, or corporation, other than a temporary service contractor, to an
8 employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer.
9 This presumption may be rebutted as provided in 39-71-117(3).

10 ~~(7)(8)~~ For purposes of this section, an "employee or worker in this state" means:

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

13 (b) a nonresident of Montana whose principal employment duties are conducted within this state
14 on a regular basis for an employer;

15 (c) a nonresident employee of an employer from another state engaged in the construction industry,
16 as defined in 39-71-116, within this state; or

17 (d) a nonresident of Montana who does not meet the requirements of subsection ~~(7)(b)~~ (8)(b) and
18 whose employer elects coverage with an insurer that allows an election for an employer whose:

19 (i) nonresident employees are hired in Montana;

20 (ii) nonresident employees' wages are paid in Montana;

21 (iii) nonresident employees are supervised in Montana; and

22 (iv) business records are maintained in Montana.

23 ~~(8)(9)~~ An insurer may require coverage for all nonresident employees of a Montana employer who
24 do not meet the requirements of subsection ~~(7)(b)~~ (8)(b) or ~~(7)(d)~~ (8)(d) as a condition of approving the
25 election under subsection ~~(7)(d)~~ (8)(d)."

26

27 **Section 4.** Section 39-71-315, MCA, is amended to read:

28 **"39-71-315. Prohibited actions -- penalty.** (1) The following actions by a medical provider
29 constitute violations and are subject to the penalty in subsection (2):

30 (a) failing to document, under oath, the provision of the services or treatment for which

1 compensation is claimed under chapter 72 or this chapter; or

2 (b) referring a worker for treatment or diagnosis of an injury or illness that is compensable under
3 chapter 72 or this chapter to a facility owned wholly or in part by the provider, unless the provider informs
4 the worker of the ownership interest and provides the name and address of alternate facilities, if any exist.

5 (2) A person who violates this section may be assessed a penalty of not less than \$200 or more
6 than \$500 for each offense. The department shall assess and collect the penalty.

7 (3) Subsection (1)(b) does not apply to medical services provided to an injured worker by a treating
8 physician with an ownership interest in a managed care organization that has been certified by the
9 department."

10

11 **Section 5.** Section 39-71-318, MCA, is amended to read:

12 "**39-71-318. Hearings -- rules of evidence -- conduct.** (1) The statutory and ~~common-law~~
13 common-law rules of evidence do not apply to a hearing before the department under this chapter.

14 (2) A hearing under this chapter may be conducted by telephone or by videoconference."

15

16 **Section 6.** Section 39-71-401, MCA, is amended to read:

17 "**39-71-401. Employments covered and employments exempted.** (1) Except as provided in
18 subsection (2), the Workers' Compensation Act applies to all employers₂ as defined in 39-71-117₂ and to
19 all employees₂ as defined in 39-71-118. An employer who has any employee in service under any
20 appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the
21 provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers'
22 Compensation Act is subject to and bound by the compensation plan that has been elected by the
23 employer.

24 (2) Unless the employer elects coverage for these employments under this chapter and an insurer
25 allows ~~such~~ an election, the Workers' Compensation Act does not apply to any of the following
26 employments:

27 (a) household and domestic employment;

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

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

1 (d) employment of sole proprietors, ~~or~~ working members of a partnership, or working members of
2 a member-managed limited liability company, except as provided in subsection (3);

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

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

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

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

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

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

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

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

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

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

26 (m) a person who is employed by an enrolled tribal member ~~who operates~~ or an association,
27 business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members,
28 whose business is conducted solely within the exterior boundaries of an Indian reservation;

29 (n) an officer of a quasi-public or a private corporation or manager of a manager-managed limited
30 liability company who qualifies under one or more of the following provisions:

1 (i) the officer or manager is engaged in the ordinary duties of a worker for the corporation or the
 2 limited liability company and does not receive any pay from the corporation or the limited liability company
 3 for performance of the duties;

4 (ii) the officer or manager is engaged primarily in household employment for the corporation or the
 5 limited liability company;

6 (iii) the officer or manager owns 20% or more of the number of shares of stock in the corporation
 7 or owns 20% or more of the limited liability company; or

8 (iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law,
 9 daughter-in-law, nephew, niece, brother, or sister of a corporate officer who owns 20% or more of the
 10 number of shares of stock in the corporation or who owns 20% or more of the limited liability company.

11 (3) (a) A sole proprietor, ~~or~~ a working member of a partnership, or a working member of a
 12 member-managed limited liability company who represents to the public that the person is an independent
 13 contractor shall elect to be bound personally and individually by the provisions of compensation plan No.
 14 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

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

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

20 (d) When an election of an exemption is approved by the department, the election remains effective
 21 and the independent contractor retains the status as an independent contractor until the independent
 22 contractor notifies the department of any change in status and provides a description of present work
 23 status.

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

28 (4) (a) A ~~private~~ corporation or a manager-managed limited liability company shall provide coverage
 29 for its ~~officers and other~~ employees under the provisions of compensation plan No. 1, 2, or 3. ~~However,~~
 30 ~~pursuant to rules the department promulgates and subject in all cases to approval by the department, an~~

1 ~~officer of~~ A quasi-public corporation, a private corporation, or a manager-managed limited liability company
 2 ~~may elect not to be bound as an employee under this chapter~~ coverage for its corporate officers or
 3 managers, who are otherwise exempt under subsection (2), by giving a written notice, on a form provided
 4 ~~by the department, served~~ in the following manner:

5 (i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by
 6 delivering the notice to the board of directors of the corporation or to the management organization of the
 7 manager-managed limited liability company employer and to the department; or

8 (ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by
 9 delivering the notice to the board of directors of the corporation or to the management organization of the
 10 manager-managed limited liability company employer, to the department, and to the insurer.

11 (b) If the employer changes plans or insurers, the ~~officer's~~ employer's previous election is not
 12 effective and the ~~officer~~ employer shall again serve notice ~~as provided~~ to its insurer and to its board of
 13 directors or the management organization of the manager-managed limited liability company if the ~~officer~~
 14 employer elects ~~not~~ to be bound.

15 ~~(e)(5)~~ The appointment or election of an employee as an officer of a corporation, a partner in a
 16 partnership, or a member in or a manager of a limited liability company for the purpose of ~~excluding~~
 17 exempting the employee from coverage under this chapter does not entitle the officer, partner, member,
 18 or manager to ~~elect not to be bound as an employee under this chapter. In any case, the officer shall sign~~
 19 ~~the notice required by subsection (4)(a) under oath or affirmation and is subject to the penalties for false~~
 20 ~~swearing under 45-7-202 if the officer falsifies the notice~~ to exemption from coverage.

21 ~~(5)(6)~~ Each employer shall post a sign in the workplace at the locations where notices to employees
 22 are normally posted, informing employees about the employer's current provision of compensation
 23 insurance. A workplace is any location where an employee performs any work-related act in the course of
 24 employment, regardless of whether the location is temporary or permanent, and includes the place of
 25 business or property of a third person while the employer has access to or control over the place of
 26 business or property for the purpose of carrying on the employer's usual trade, business, or occupation.
 27 The sign must be provided by the department, distributed through insurers or directly by the department,
 28 and posted by employers in accordance with rules adopted by the department. An employer who purposely
 29 or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."
 30

1 **Section 7.** Section 39-71-405, MCA, is amended to read:

2 **"39-71-405. Liability of employer who contracts work out.** (1) An employer who contracts with
3 an independent contractor to have work performed of a kind ~~which~~ that is a regular or a recurrent part of
4 the work of the trade, business, occupation, or profession of ~~such~~ the employer is liable for the payment
5 of benefits under this chapter to the employees of the contractor or the subcontractor if the contractor or
6 subcontractor has not properly complied with the coverage requirements of the ~~Worker's~~ Workers'
7 Compensation Act. ~~Any~~ An insurer who becomes liable for payment of benefits may recover the amount
8 of benefits paid and to be paid and necessary expenses from the contractor or subcontractor primarily liable
9 therein.

10 (2) ~~Where~~ When an employer contracts to have any work to be done by a contractor, other than
11 an independent contractor, and the work ~~se~~ contracted to be done is a part or process in the trade or
12 business of the employer, then the employer is liable to pay all benefits under this chapter to the same
13 extent as if the work were done without the intervention of the contractor, and the work ~~se~~ contracted to
14 be done ~~shall~~ may not be construed to be casual employment. ~~Where~~ When an employer contracts work
15 to be done as specified in this subsection, the contractor and the contractor's employees ~~shall~~ come under
16 that plan of compensation adopted by the employer.

17 (3) ~~Where~~ When an employer contracts any work to be done, wholly or in part for the employer,
18 by an independent contractor, ~~where~~ when the work ~~se~~ contracted to be done is casual employment as to
19 ~~such~~ the employer, then the contractor ~~shall become~~ is the employer for the purposes of this chapter."
20

21 **Section 8.** Section 39-71-432, MCA, is amended to read:

22 **"39-71-432. Definitions.** As used in 39-71-433, the following definitions apply:

23 (1) "Business entity" means a business enterprise owned by a single person, corporation,
24 organization, business trust, trust, partnership, limited liability company, joint venture, association, or other
25 business entity.

26 (2) "Group" means two or more business entities that join together with the approval of the
27 department to purchase individual workers' compensation insurance policies covering each business entity
28 that is part of a group."
29

30 **Section 9.** Section 39-71-433, MCA, is amended to read:

1 **"39-71-433. Group purchase of workers' compensation insurance.** (1) On receiving approval of
2 the department, two or more business entities may join together to form a group to purchase individual
3 workers' compensation insurance policies covering each member of the group.

4 (2) To be eligible to join a new group that is forming, the department shall determine that a
5 business entity is engaged in a business pursuit that is the same as or similar to the business pursuits of
6 the other entities participating in the group.

7 (3) The department shall establish a certification program for groups organized under this section
8 and shall issue to eligible business entities certificates of approval that authorize formation and maintenance
9 of a group.

10 (4) The department by rule shall adopt forms, criteria, and procedures for the issuance of
11 certificates of approval to groups under this section.

12 (5) A group certified under this section may add additional members without approval from the
13 department if the additional members meet the specific criteria identified in the original application and any
14 modifications to the criteria, as approved by the department.

15 ~~(5)~~(6) A group certified under this section may purchase individual workers' compensation
16 insurance policies covering each member of the group from any insurer authorized to write workers'
17 compensation insurance in this state, except that the state fund, as defined in 39-71-2312, has the right
18 to refuse coverage of a group and its plan of operation but cannot refuse coverage to an individual
19 employer. Under an individual policy, the group is entitled to a premium or volume discount that would be
20 applicable to a policy of the combined premium amount of the individual policies.

21 ~~(6)~~(7) A group shall apportion any discount or policyholder dividend received on workers'
22 compensation insurance coverage among the members of the group according to a formula adopted in the
23 plan of operation for the group.

24 ~~(7)~~(8) A group shall adopt a plan of operation that must include the composition and selection of
25 a governing board, the methods for administering the group, the eligibility requirements to join the group,
26 and guidelines for the workers' compensation insurance coverage obtained by the group, including the
27 payment of premiums, the distribution of discounts, and the method for providing risk management. A
28 group shall file a copy of its plan of operation with the department."
29

30 **Section 10.** Section 39-71-503, MCA, is amended to read:

1 **"39-71-503. Administration of fund -- appropriation.** (1) The department shall administer the fund
2 and shall pay all proper benefits to injured employees of uninsured employers.

3 (2) Surpluses and reserves may not be kept for the fund. The department shall make ~~such~~
4 payments ~~as that~~ it considers appropriate as funds become available from time to time. The payment of
5 weekly disability benefits takes preference over the payment of medical benefits. ~~No lump-sum~~ Lump-sum
6 payments of future projected benefits, including impairment awards, may not be made from the fund. The
7 board of investments shall invest the money of the fund, and the investment income must be deposited in
8 the fund. The cost of administration of the fund must be paid out of the money in the fund.

9 (3) The amounts necessary for the payment of benefits from this fund are statutorily appropriated,
10 as provided in 17-7-502, from this fund."

11
12 **Section 11.** Section 39-71-504, MCA, is amended to read:

13 **"39-71-504. Funding of fund -- option for agreement between department and injured employee.**

14 The fund is funded in the following manner:

15 (1) The department may require that the uninsured employer pay to the fund a penalty of either
16 up to double the premium amount the employer would have paid on the payroll of the employer's workers
17 in this state if the employer had been enrolled with compensation plan No. 3 or \$200, whichever is greater.
18 In determining the premium amount for the calculation of the penalty under this subsection, the department
19 shall make an assessment on how much premium would have been paid on the employer's past 3-year
20 payroll for periods within the 3 years when the employer was uninsured. ~~An assessment for payroll paid~~
21 ~~by the uninsured employer for any time prior to July 1, 1977, may not be made.~~

22 (2) ~~(a)~~ The fund shall receive from an uninsured employer an amount equal to all benefits paid or
23 to be paid from the fund to an injured employee of the uninsured employer. ~~However, the uninsured~~
24 ~~employer's liability under this subsection (2)(a) may not exceed \$50,000.~~

25 ~~(b) The dollar limitation does not apply to an uninsured employer's liability to an injured employee~~
26 ~~or the employee's beneficiaries under 39-71-509 or 39-71-515.~~

27 (3) The department may determine that the \$1,000 assessments that are charged against an
28 insurer in each case of an industrial death under 39-71-902(1) shall must be paid to the uninsured
29 employers' fund rather than the subsequent injury fund.

30 (4) The department may enter into an agreement with the injured employee or the employee's

1 beneficiaries to assign to the employee or the beneficiaries all or part of the funds received by the
2 department from the uninsured employer pursuant to subsection ~~(2)(a)~~ (2)."

3
4 **Section 12.** Section 39-71-507, MCA, is amended to read:

5 **"39-71-507. Department to order uninsured employer to cease operations -- noncompliance with**
6 **order a misdemeanor -- coordination of remedies.** (1) When the department discovers an uninsured
7 employer, it shall order ~~him~~ the employer to cease operations until ~~he~~ the employer has elected to be bound
8 by a compensation plan.

9 (2) When the department discovers a person, business, or other entity functioning as a prime
10 contractor that has subcontracted for the services of an uninsured employer, it may order the person,
11 business, or other entity functioning as a prime contractor to cease all operations until the uninsured
12 employer has elected to be bound by a compensation plan.

13 ~~(2)(3)~~ (3) An employer who does not comply with the department's order to cease operations is guilty
14 of a misdemeanor. Each day of violation is a separate offense. The county attorney may prosecute a
15 criminal action under this subsection in the county in which the violation occurs. Prosecution under this
16 subsection does not bar the department from enforcing its order by a civil action.

17 (4) A person, business, or other entity functioning as a prime contractor that does not comply with
18 the department's order to cease all operations is guilty of a misdemeanor. Each day of violation is a
19 separate offense. The county attorney may prosecute a criminal action under this subsection in the county
20 in which the violation occurs. Prosecution under this subsection does not bar the department from
21 enforcing its order by a civil action. In addition, the department may assess a penalty against the person,
22 business, or other entity functioning as a prime contractor of not more than \$1,000 per day for each day
23 of violation.

24 ~~(3)(5)~~ (5) The department may institute and maintain in the name of the state, through the attorney
25 general or the county attorney of the county in which the violation occurs, an action for an injunction order
26 or other civil remedy in district court to enforce its order to cease operations.

27 ~~(4)(6)~~ (6) The remedies provided in 39-71-506 and subsections ~~(2) and (3)~~ (3) through (5) of this
28 section are not mutually exclusive and may be pursued concurrently."

29
30 **Section 13.** Section 39-71-516, MCA, is amended to read:

1 **"39-71-516. District court venue and jurisdiction for independent cause of action.** An injured
 2 employee or an employee's beneficiaries pursuing an independent cause of action pursuant to 39-71-515
 3 ~~must~~ shall bring ~~such the~~ action in the district court in the district where the claimant resides or where the
 4 alleged violation occurred. The court may grant ~~such~~ interim relief ~~as that~~ it considers appropriate, including
 5 but not limited to injunctive relief, attachment, or receivership. The court may request the workers'
 6 compensation judge to determine the amount of recoverable damages due to the employee."

7
 8 **Section 14.** Section 39-71-710, MCA, is amended to read:

9 **"39-71-710. Termination of benefits upon retirement.** (1) If a claimant is receiving disability or
 10 rehabilitation compensation benefits and the claimant receives social security retirement benefits or is
 11 eligible to receive full social security retirement benefits, the claimant is considered to be retired. When the
 12 claimant is considered retired, the liability of the insurer is ended for payment of ~~wage supplement,~~
 13 ~~permanent total disability,~~ and rehabilitation compensation benefits. However, the insurer remains liable for
 14 temporary total disability benefits, any impairment award, and medical benefits.

15 (2) If a claimant who is eligible to receive social security retirement benefits and is gainfully
 16 employed suffers a work-related injury, the insurer retains liability for temporary total disability benefits,
 17 any impairment award, and medical benefits."

18
 19 **Section 15.** Section 39-71-721, MCA, is amended to read:

20 **"39-71-721. Compensation for injury causing death -- limitation.** (1) (a) If an injured employee dies
 21 and the injury was the proximate cause of ~~such~~ death, then the beneficiary of the deceased is entitled to
 22 the same compensation as though the death occurred immediately following the injury. A beneficiary's
 23 eligibility for benefits commences after the date of death, and the benefit level is established as set forth
 24 in subsection (2).

25 (b) The insurer is entitled to recover any overpayments or compensation paid in a lump sum to a
 26 worker prior to death but not yet recouped. The insurer shall recover ~~such the~~ payments from the
 27 beneficiary's biweekly payments as provided in 39-71-741(5).

28 (2) To beneficiaries as defined in 39-71-116(3)(a) ~~(4)(a)~~ through ~~(3)(d)~~ (4)(d), weekly compensation
 29 benefits for an injury causing death are 66 2/3% of the decedent's wages. The maximum weekly
 30 compensation benefit may not exceed the state's average weekly wage at the time of injury. The minimum

1 weekly compensation benefit is 50% of the state's average weekly wage, but in no event may it exceed
2 the decedent's actual wages at the time of his death.

3 (3) To beneficiaries as defined in 39-71-116~~(3)(e)~~(4)(e) and ~~(3)(f)~~ (4)(f), weekly benefits must be
4 paid to the extent of the dependency at the time of the injury, subject to a maximum of 66 2/3% of the
5 decedent's wages. The maximum weekly compensation may not exceed the state's average weekly wage
6 at the time of injury.

7 (4) If the decedent leaves no beneficiary ~~as defined in 39-71-116~~, a lump-sum payment of \$3,000
8 must be paid to the decedent's surviving parent or parents.

9 (5) If any beneficiary of a deceased employee dies, the right of ~~such~~ the beneficiary to
10 compensation under this chapter ceases. Death benefits must be paid to a surviving spouse for 500 weeks
11 subsequent to the date of the deceased employee's death or until the spouse's remarriage, whichever
12 occurs first. After benefit payments cease to a surviving spouse, death benefits must be paid to
13 beneficiaries, if any, as defined in 39-71-116~~(3)(b)~~ (4)(b) through ~~(3)(d)~~ (4)(d).

14 (6) In all cases, benefits must be paid to beneficiaries, ~~as defined in 39-71-116~~.

15 (7) Benefits paid under this section may not be adjusted for cost of living as provided in 39-71-702.

16 ~~(8) Notwithstanding subsections (2) and (3), beginning July 1, 1987, through June 30, 1991, the~~
17 ~~maximum weekly compensation benefits for injury causing death may not exceed the state's average~~
18 ~~weekly wage of \$200 established July 1, 1986. Beginning July 1, 1987, through June 30, 1991, the~~
19 ~~minimum weekly compensation for injury causing death shall be \$149.50, which is 50% of the state's~~
20 ~~average weekly wage established July 1, 1986, but in no event may it exceed the decedent's actual wages~~
21 ~~at the time of death."~~

22
23 **Section 16.** Section 39-71-723, MCA, is amended to read:

24 "**39-71-723. How compensation to be divided among beneficiaries.** Compensation due to
25 beneficiaries ~~shall~~ must be paid to the surviving spouse, if any, or if none, then divided equally among or
26 for the benefit of the children. In cases ~~where~~ in which beneficiaries are a surviving spouse and stepchildren
27 of ~~such~~ the spouse, the compensation ~~shall~~ must be divided equally among all beneficiaries. Compensation
28 due to beneficiaries as defined in 39-71-116~~(3)(e)~~(4)(e) and ~~(3)(f)~~ (4)(f), ~~where~~ when there is more than
29 one, ~~shall~~ must be divided equitably among them, and the question of dependency and amount ~~thereof~~ shall
30 ~~be~~ is a question of fact for determination by the department."

1 **Section 17.** Section 39-71-737, MCA, is amended to read:

2 **"39-71-737. Compensation to run consecutively -- exceptions.** Compensation ~~shall~~ must run
3 consecutively and not concurrently, and payment ~~shall~~ may not be made for two classes of disability over
4 the same period, except that impairment awards and auxiliary rehabilitation benefits may be paid
5 concurrently with other classes of benefits, ~~and wage supplement and partial rehabilitation benefits may~~
6 ~~be paid concurrently."~~

7

8 **Section 18.** Section 39-71-902, MCA, is amended to read:

9 **"39-71-902. Fund to receive payment from insurer for each death under chapter -- assessment of**
10 **insurers.** (1) In ~~every~~ each case of the death of an employee under this chapter, the insurer shall pay to the
11 fund the sum of \$1,000. In addition, the department may assess ~~every~~ each insurer an amount not to
12 exceed 5% of the compensation paid in Montana in the preceding fiscal year. The assessment must be
13 transmitted annually to the subsequent injury fund by the employer or insurer. The board of investments
14 shall invest the money of the fund, and the investment income must be deposited in the fund. The cost of
15 administration of the fund must be paid out of money in the fund.

16 (2) When, in the judgment of the department, the amount of money in the subsequent injury fund
17 is such that there is a surplus above and beyond projected liabilities and administrative costs, the
18 department may at its discretion suspend or reduce further collection of assessments for a period of time
19 determined by the department."

20

21 **Section 19.** Section 39-71-1108, MCA, is amended to read:

22 **"39-71-1108. Physician self-referral prohibition.** (1) Unless authorized by the insurer, a treating
23 physician may not refer a claimant to a health care facility at which the physician does not directly provide
24 care or services when the physician has an investment interest in the facility, unless there is a
25 demonstrated need in the community for the facility and alternative financing is not available. The insurer
26 or the claimant is not liable for charges incurred in violation of this section.

27 (2) Subsection (1) does not apply to care or services provided directly to an injured worker by a
28 treating physician with an ownership interest in a managed care organization that has been certified by the
29 department."

30

1 **Section 20.** Section 39-71-2103, MCA, is amended to read:

2 **"39-71-2103. Employer permitted to carry on business and settle directly with employee --**
 3 **individual liability.** (1) If ~~such the~~ employer making ~~such the~~ election ~~shall be~~ is found by the department
 4 and the Montana self-insurers guaranty fund to have the requisite financial ability to pay the compensation
 5 and benefits in this chapter ~~provided for~~, then the department, with the concurrence of the guaranty fund,
 6 shall grant to the employer permission to carry on ~~his~~ business for the fiscal year within which ~~such the~~
 7 election is made and ~~such~~ proof filed, or the remaining portion of ~~such the~~ fiscal year, and to make ~~such~~
 8 payments directly to ~~his the~~ employees as they may become entitled to receive the ~~same~~ payments.

9 (2) Each individual employer in an association, corporation, limited liability company, or organization
 10 of employers given permission by the department to operate as self-insured under plan No. 1 of this chapter
 11 is jointly and severally liable for all obligations incurred by the association, corporation, limited liability
 12 company, or organization under this chapter. An association, corporation, limited liability company, or
 13 organization of employers given permission to operate as self-insured ~~must~~ shall maintain excess liability
 14 coverage in amounts and under ~~such~~ conditions as provided by rules of the department."
 15

16 **Section 21.** Section 39-71-2411, MCA, is amended to read:

17 **"39-71-2411. Mediation procedure.** (1) Except as otherwise provided, a claimant or an insurer --
 18 having a dispute relating to benefits under chapter 71 or 72 of this title may petition the department for
 19 mediation of the dispute.

20 (2) A party may take part in mediation proceedings with or without representation.

21 (3) The mediator shall review the department file for the case and may receive any additional
 22 documentation or argument either party submits.

23 (4) The mediator shall request that each party offer argument summarizing the party's position.
 24 A party's argument must fully present the party's case. The argument is not limited by the rules of
 25 evidence.

26 (5) After the parties have presented all their information and argument to the mediator, ~~he the~~
 27 mediator shall recommend a solution to the parties within a reasonable time to be established by rule.

28 (6) A party shall notify the mediator within ~~45~~ 20 days of the mailing of ~~his the~~ mediator's report
 29 whether the party accepts the mediator's recommendation. If either party does not accept the mediator's
 30 recommendation, the party may petition the workers' compensation court for resolution of the dispute.

1 (7) (a) If a mediator determines that either party failed to cooperate in the mediation process, the
2 mediator shall prepare a written report setting forth the determination and the grounds for the
3 determination. The report must be mailed to the parties and to the workers' compensation court. Unless
4 a party disputes the determination as set forth in subsection (7)(c), the parties shall repeat the mediation
5 process, but only one time.

6 (b) A mediator may determine that a party has failed to cooperate in the mediation process only
7 if the party failed to:

8 (i) supply information or offer a summary of the party's position as reasonably requested by the
9 mediator;

10 (ii) attend scheduled mediation conferences unless excused by the mediator; or

11 (iii) listen to and review the information and position offered by the opposing party.

12 (c) If a party disputes a mediator's determination that the party failed to cooperate in the mediation
13 process, the party may file a petition with the workers' compensation court. Upon receipt of a petition, the
14 court shall summon the parties and the mediator to determine by oral discussion whether the mediator's
15 determination of noncooperation is supportable. If the court finds that the mediator's determination is
16 supportable, the court may order the parties to attempt a second time to mediate their dispute."
17

18 **Section 22.** Section 39-71-2905, MCA, is amended to read:

19 **"39-71-2905. Petition to workers' compensation judge.** A claimant or an insurer who has a dispute
20 concerning any benefits under chapter 71 of this title may petition the workers' compensation judge for
21 a determination of the dispute after satisfying dispute resolution requirements otherwise provided in this
22 chapter. In addition, the district court that has jurisdiction over a pending action under 39-71-515 may
23 request the workers' compensation judge to determine the amount of recoverable damages due to the
24 employee. The judge, after a hearing, shall make a determination of the dispute in accordance with the law
25 as set forth in chapter 71 of this title. If the dispute relates to benefits due to a claimant under chapter 71,
26 the judge shall fix and determine any benefits to be paid and specify the manner of payment. After parties
27 have satisfied dispute resolution requirements provided elsewhere in this chapter, the workers'
28 compensation judge has exclusive jurisdiction to make determinations concerning disputes under chapter
29 71, except as provided in 39-71-317 and 39-71-516. The penalties and assessments allowed against an
30 insurer under chapter 71 are the exclusive penalties and assessments that can be assessed by the workers'

1 compensation judge against an insurer for disputes arising under chapter 71."

2

3 **Section 23.** Section 39-72-601, MCA, is amended to read:

4 "**39-72-601. Medical panel.** (1) The department shall develop a list of physicians to serve on the
5 occupational disease medical panel. The list may include physicians nominated by the board of medical
6 examiners. A physician on the panel must be certified by ~~his~~ the physician's specialty board or be eligible
7 for certification in the specialty area appropriate to the claimant's condition in relation to this chapter.

8 (2) The department shall select a panel physician to examine a claimant, as required. The
9 department shall appoint, as required, ~~one member of the panel to be the chairman~~ a physician as the
10 presiding officer."

11

12 **Section 24.** Section 39-72-602, MCA, is amended to read:

13 "**39-72-602. Insurer may accept liability -- procedure for medical examination when insurer has not**
14 **accepted liability.** (1) An insurer may accept liability for a claim under this chapter based on information
15 submitted to it by a claimant.

16 (2) In order to determine the compensability of claims under this chapter when an insurer has not
17 accepted liability, the following procedure must be followed:

18 (a) The department shall direct the claimant to a member of the medical panel for an examination.
19 The panel member shall conduct an examination to determine whether the claimant is totally disabled and
20 is suffering from an occupational disease. The panel member shall submit a report of ~~his~~ the member's
21 findings to the department.

22 (b) Either the claimant or the insurer may, within 20 days after the receipt of the report by the first
23 panel member, request that the claimant be examined by a second panel member. If a second examination
24 is requested, the department shall direct the claimant to a second panel member who shall conduct an
25 examination to determine whether ~~he believes~~ the claimant is totally disabled and is suffering from an
26 occupational disease. The panel member shall submit a report of ~~his~~ the member's findings to the
27 department. ~~When a second examination has been requested, the reports of the examinations shall be~~
28 ~~submitted to three members of the medical panel for review. A~~ The medical panel member ~~or the panel~~
29 may, in order to ~~assist the panel member or the panel in reaching~~ reach a conclusion, consult with the
30 claimant's attending physician. The reports from the two examining physicians must be sent by the

1 ~~department to the presiding officer of the panel.~~ The ~~three panel members~~ presiding officer shall issue a
2 report concerning the claimant's physical condition and whether the claimant is suffering from an
3 occupational disease.

4 (c) (i) If a second examination is not requested, the department shall issue its order determining
5 whether the claimant is entitled to occupational disease benefits based on the report of the first examining
6 physician.

7 (ii) If a second examination is requested, the department shall issue its order based on the report
8 of the ~~three members of the medical panel~~ presiding officer.

9 ~~(d) For the purpose of reviewing the reports of the examinations and issuing the report under~~
10 ~~subsection (2)(b), the three members of the medical panel shall be the two members of the panel who~~
11 ~~examined the claimant and the panel chairman.~~ If the panel chairman presiding officer has examined the
12 claimant, the ~~panel chairman~~ department shall appoint another ~~member of the medical panel to be the third~~
13 ~~member~~ presiding officer."

14

15 **Section 25.** Section 39-72-612, MCA, is amended to read:

16 **"39-72-612. Hearing and appeal to workers' compensation judge.** (1) Within 20 days after the
17 department has issued its order of determination as to whether the claimant is entitled to benefits under
18 this chapter, a party may request a hearing. In order to perfect an appeal to the workers' compensation
19 judge, the appealing party shall request a hearing before the department. The department shall grant a
20 hearing, ~~and the~~ which may be conducted by telephone or by videoconference. The department's final
21 determination may not be issued until after the hearing.

22 (2) Appeals from a final determination of the department must be made to the workers'
23 compensation judge within 30 days after the department has issued its final determination. The judge, after
24 a hearing held pursuant to 39-71-2903 and 39-71-2904, shall make a final determination concerning the
25 claimant's claim. The judge may overrule the department only on the basis that the department's
26 determination is:

- 27 (a) in violation of constitutional or statutory provisions;
28 (b) in excess of the statutory authority of the agency;
29 (c) made upon unlawful procedure;
30 (d) affected by other error of law;

1 (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole
2 record; or

3 (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise
4 of discretion."
5

6 **NEW SECTION. Section 26. Saving clause.** [This act] does not affect rights and duties that
7 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
8 act].
9

10 **NEW SECTION. Section 27. Severability.** If a part of [this act] is invalid, all valid parts that are
11 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
12 applications, the part remains in effect in all valid applications that are severable from the invalid
13 applications.
14

15 **NEW SECTION. Section 28. Applicability.** (1) [Section 10] applies retroactively, within the
16 meaning of 1-2-109, to all occurrences beginning after October 1, 1977.

17 (2) [Section 18] applies retroactively, within the meaning of 1-2-109, to all occurrences beginning
18 after October 1, 1973.

19 (3) [Sections 5 and 25] apply to hearings or appeals requested on or after [the effective date of
20 this act].
21

22 **NEW SECTION. Section 29. Effective dates.** (1) [Sections 5, 13, 22, and 25 through 28 and this
23 section] are effective on passage and approval.

24 (2) [Sections 1 through 4, 6 through 12, 14 through 21, 23, and 24] are effective October 1,
25 1995.
26

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0200, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

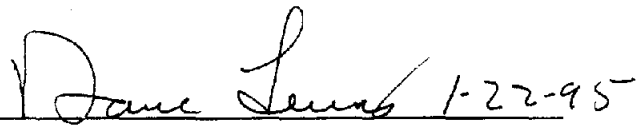
An act generally revising the workers' compensation act and the occupational disease act; adding definitions; exempting corporate officers and managers of limited liability companies from coverage unless the employer elects to cover the officer or manager and the insurer allows the election; clarifying prohibitions regarding medical provider self-referral; authorizing the Department of Labor and Industry to conduct hearings and appeals by telephone or video conference; clarifying the status of limited liability companies; clarifying the liability of an employer who contracts work out; clarifying the department's responsibility in approving the group purchase of workers' compensation insurance; requiring the investment income of the uninsured employers' fund to be deposited in the fund; removing the limit on an uninsured employer's liability for claims; increasing the authority to file cease and desist orders to include persons, businesses, and entities that have contracted with uninsured employers and providing for penalties; providing a district court with the option to request the workers' compensation judge to determine the amount of recoverable damages due to an injured uninsured worker; removing the references to wage supplement; requiring the board of investments to invest certain money in the subsequent injury fund and requiring the investment income to be deposited in the fund; reducing the time period allowed for a party to respond to a workers' compensation mediator's recommendation; revising the medical panel process.

ASSUMPTIONS:

State Compensation Insurance Fund (State Fund):

1. "Aid or sustenance" is not considered wages.
2. Quasi-public, private corporations and manager-managed limited liability companies must elect coverage for corporate officers or managers, at a minimum election of \$200.00 per week.
3. The State Fund can not determine the number of quasi-public, private corporations and manager-managed limited liability companies that would elect coverage.
4. Currently, quasi-public, private corporations and manager-managed limited liability companies must reject coverage for corporate officers or managers.
5. Coverage would extend to the subcontractor of an independent contractor or to subcontractors of subcontractors.
6. The department may issue an order to a prime contractor to cease all operations if a direct subcontractor with whom the prime contracted is uninsured. The department does not have the same authority with regard to subcontractors of subcontractors. The incentive for insuring coverage compliance is lost beyond the immediate subcontractor of a prime contractor. This exposes the State Fund to additional liability under 39-71-405.
7. Since the actual number of quasi-public, private corporations and manager-managed limited liability companies insured by the State Fund is unknown, it has been assumed that 1/2 of the State Fund policyholders are one of these types of entities.
8. The State Fund will be required to modify its computer system at an estimated cost of \$35,700.

(Continued)


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

ELLEN BERGMAN, PRIMARY SPONSOR DATE

Fiscal Note for HB0200, as introduced

HB 200

(continued)

9. State Fund will be required to redesign and purchase many internal/external policy forms at an estimated cost of \$27,260. This does not include labor cost.
10. The total fiscal impact of this bill to revenues and benefit payments can not be determined.

Montana Board of Investments:

11. This act requires that the Montana Board of Investments invest the "uninsured employees" fund and the "subsequent injury" fund and deposit the investment earnings in the respective accounts in accordance with current practice. Therefore, there is no fiscal impact.

Department of Labor and Industry:

12. There is no fiscal impact with the passage of this legislation.
13. Presently, the department conducts telephone hearings; however, a recent Supreme Court decision may change that practice. Failure to enact the legislation authorizing telephone hearings could result in increased expenditures for reimbursement of hearings officers travel expenses and automation costs.
14. If in-person hearings are necessary, an additional 0.59 FTE hearings officer would be required and the total cost to the program would be \$69,301 in FY96 and \$50,861 in FY97.

FISCAL IMPACT:

State Fund

| | <u>FY96</u> | <u>FY97</u> |
|----------------------|-------------------|-------------------|
| <u>Expenditures:</u> | <u>Difference</u> | <u>Difference</u> |
| Operating Expenses | 62,960 | 10,000 |
| <u>Funding:</u> | | |
| Insurance Fund (06) | 62,960 | 10,000 |

APPROVED BY COMMITTEE
ON BUSINESS AND LABOR

1 HOUSE BILL NO. 200

2 INTRODUCED BY BERGMAN, HIBBARD, BENEDICT, BARTLETT, COCCHIARELLA

3 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE WORKERS' COMPENSATION ACT
6 AND THE OCCUPATIONAL DISEASE ACT OF MONTANA; ADDING DEFINITIONS; EXEMPTING
7 CORPORATE OFFICERS AND MANAGERS OF LIMITED LIABILITY COMPANIES FROM COVERAGE UNLESS
8 THE EMPLOYER ELECTS TO COVER THE OFFICER OR MANAGER AND THE INSURER ALLOWS THE
9 ELECTION; CLARIFYING PROHIBITIONS REGARDING MEDICAL PROVIDER SELF-REFERRAL; AUTHORIZING
10 THE DEPARTMENT OF LABOR AND INDUSTRY TO CONDUCT HEARINGS AND APPEALS BY TELEPHONE
11 OR VIDEOCONFERENCE; CLARIFYING THE STATUS OF LIMITED LIABILITY COMPANIES; CLARIFYING THE
12 LIABILITY OF AN EMPLOYER WHO CONTRACTS WORK OUT; CLARIFYING THE DEPARTMENT'S
13 RESPONSIBILITY IN APPROVING THE GROUP PURCHASE OF WORKERS' COMPENSATION INSURANCE;
14 REQUIRING THE INVESTMENT INCOME OF THE UNINSURED EMPLOYERS' FUND TO BE DEPOSITED IN
15 THE FUND; REMOVING THE LIMIT ON AN UNINSURED EMPLOYER'S LIABILITY FOR CLAIMS; INCREASING
16 THE AUTHORITY TO FILE CEASE AND DESIST ORDERS TO INCLUDE PERSONS, BUSINESSES, AND
17 ENTITIES THAT HAVE CONTRACTED WITH UNINSURED EMPLOYERS AND PROVIDING FOR PENALTIES;
18 PROVIDING A DISTRICT COURT WITH THE OPTION TO REQUEST THE WORKERS' COMPENSATION
19 JUDGE TO DETERMINE THE AMOUNT OF RECOVERABLE DAMAGES DUE TO AN INJURED UNINSURED
20 WORKER; REMOVING THE REFERENCES TO WAGE SUPPLEMENT; REQUIRING THE BOARD OF
21 INVESTMENTS TO INVEST CERTAIN MONEY IN THE SUBSEQUENT INJURY FUND AND REQUIRING THE
22 INVESTMENT INCOME TO BE DEPOSITED IN THE FUND; REDUCING THE TIME PERIOD ALLOWED FOR
23 A PARTY TO RESPOND TO A WORKERS' COMPENSATION MEDIATOR'S RECOMMENDATION; REVISING
24 THE MEDICAL PANEL PROCESS; AMENDING SECTIONS 39-71-116, 39-71-117, 39-71-118, 39-71-315,
25 39-71-318, 39-71-401, 39-71-405, 39-71-432, 39-71-433, 39-71-503, 39-71-504, 39-71-507,
26 39-71-516, 39-71-710, 39-71-721, 39-71-723, 39-71-737, 39-71-902, 39-71-1108, 39-71-2103,
27 39-71-2411, 39-71-2905, 39-72-601, 39-72-602, AND 39-72-612, MCA; AND PROVIDING EFFECTIVE
28 DATES AND APPLICABILITY DATES."

29

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

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

2 "**39-71-116. Definitions.** Unless the context otherwise requires, words and phrases employed in
3 this chapter have the following meanings:

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

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

7 (b) payment of benefits;

8 (c) setting of reserves;

9 (d) furnishing of services and facilities; and

10 (e) ~~utilization~~ use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

11 (2) "Aid or sustenance" means any public or private subsidy made to provide a means of support,
12 maintenance, or subsistence for the recipient.

13 ~~(2)(3)~~ "Average weekly wage" means the mean weekly earnings of all employees under covered
14 employment, as defined and established annually by the ~~Montana~~ department of labor and industry. It is
15 established at the nearest whole dollar number and must be adopted by the department prior to July 1 of
16 each year.

17 ~~(3)(4)~~ "Beneficiary" means:

18 (a) a surviving spouse living with or legally entitled to be supported by the deceased at the time
19 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 a full-time student in an accredited school
22 or is enrolled in an accredited apprenticeship program;

23 (d) an invalid child over the age of 18 years who is dependent upon the decedent for support at
24 the time of injury;

25 (e) a parent who is dependent upon the decedent for support at the time of the injury if a
26 beneficiary, as defined in subsections ~~(3)(a)~~ (4)(a) through ~~(3)(d)~~ (4)(d), does not exist; and

27 (f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the
28 time of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections
29 ~~(3)(a)~~ (4)(a) through ~~(3)(e)~~ (4)(e), does not exist.

30 ~~(4)(5)~~ "Casual employment" means employment not in the usual course of trade, business,

1 profession, or occupation of the employer.

2 ~~(5)(6)~~ "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior
3 to the injury.

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

10 ~~(7)(8)~~ "Days" means calendar days, unless otherwise specified.

11 ~~(8)(9)~~ "Department" means the department of labor and industry.

12 ~~(9)(10)~~ "Disability" means a condition in which a worker's ability to engage in gainful employment
13 is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined
14 with factors, such as the worker's age, education, work history, and other factors that affect the worker's
15 ability to engage in gainful employment. Disability does not mean a purely medical condition.

16 ~~(10)(11)~~ "Fiscal year" means the period of time between July 1 and the succeeding June 30.

17 (12) "Household or domestic employment" means employment of persons other than members of
18 the household for the purpose of tending to the aid and comfort of the employer or members of the
19 employer's family, including but not limited to housecleaning and yard work, but does not include
20 employment beyond the scope of normal household or domestic duties, such as home health care or
21 domiciliary care.

22 ~~(11)(13)~~ "Insurer" means an employer bound by compensation plan No. 1, an insurance company
23 transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

24 ~~(12)(14)~~ "Invalid" means one who is physically or mentally incapacitated.

25 (15) "Limited liability company" is as defined in 35-8-102.

26 ~~(13)(16)~~ "Maintenance care" means treatment designed to provide the optimum state of health
27 while minimizing recurrence of the clinical status.

28 ~~(14)(17)~~ "Medical stability", "maximum healing", or "maximum medical healing" means a point in
29 the healing process when further material improvement would not be reasonably expected from primary
30 medical treatment.

1 ~~(15)~~(18) "Order" means any decision, rule, direction, requirement, or standard of the department
2 or any other determination arrived at or decision made by the department.

3 ~~(16)~~(19) "Palliative care" means treatment designed to reduce or ease symptoms without curing
4 the underlying cause of the symptoms.

5 ~~(17)~~(20) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average
6 annual payroll of the employer for the preceding calendar year or, if the employer has not operated a
7 sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the
8 current year. However, an estimate may be made by the department for any employer starting in business
9 if average payrolls are not available. This estimate must be adjusted by additional payment by the employer
10 or refund by the department, as the case may actually be, on December 31 of the current year. An
11 employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by
12 an employer.

13 ~~(18)~~(21) "Permanent partial disability" means a condition, after a worker has reached maximum
14 medical healing, in which a worker:

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

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

19 ~~(19)~~(22) "Permanent total disability" means a condition resulting from injury as defined in this
20 chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable
21 prospect of physically performing regular employment. Regular employment means work on a recurring
22 basis performed for remuneration in a trade, business, profession, or other occupation in this state. Lack
23 of immediate job openings is not a factor to be considered in determining if a worker is permanently totally
24 disabled.

25 ~~(20)~~(23) The "plant of the employer" includes the place of business of a third person while the
26 employer has access to or control over the place of business for the purpose of carrying on the employer's
27 usual trade, business, or occupation.

28 ~~(21)~~(24) "Primary medical services" means treatment prescribed by a treating physician, for
29 conditions resulting from the injury, necessary for achieving medical stability.

30 ~~(22)~~(25) "Public corporation" means the state or any county, municipal corporation, school district,

1 city, city under a commission form of government or special charter, town, or village.

2 ~~(23)~~(26) "Reasonably safe place to work" means that the place of employment has been made as
3 free from danger to the life or safety of the employee as the nature of the employment will reasonably
4 permit.

5 ~~(24)~~(27) "Reasonably safe tools and appliances" are tools and appliances ~~as that~~ are adapted to and
6 that are reasonably safe for use for the particular purpose for which they are furnished.

7 ~~(25)~~(28) "Secondary medical services" means those medical services or appliances that are
8 considered not medically necessary for medical stability. The services and appliances include but are not
9 limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs
10 designed to address disability and not impairment, or equipment offered by individuals, clinics, groups,
11 hospitals, or rehabilitation facilities.

12 (29) "Sole proprietor" means the person who has the exclusive legal right or title to or ownership
13 of a business enterprise.

14 ~~(26)~~(30) "Temporary partial disability" means a condition resulting from an injury, as defined in
15 39-71-119, in which a worker, prior to maximum healing:

16 (a) is temporarily unable to return to the position held at the time of injury because of a medically
17 determined physical restriction;

18 (b) returns to work in a modified or alternative employment; and

19 (c) suffers a partial wage loss.

20 ~~(27)~~(31) "Temporary service contractor" means ~~any~~ a person, firm, association, or corporation
21 conducting business that employs individuals directly for the purpose of furnishing the services of those
22 individuals on a part-time or temporary basis to others.

23 ~~(29)~~(32) "Temporary total disability" means a condition resulting from an injury, as defined in this
24 chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical
25 healing.

26 ~~(29)~~(33) "Temporary worker" means a worker whose services are furnished to another on a
27 part-time or temporary basis to substitute for a permanent employee on leave or to meet an emergency or
28 short-term workload.

29 ~~(30)~~(34) "Treating physician" means a person who is primarily responsible for the treatment of a
30 worker's compensable injury and is:

1 (a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting
2 privileges to practice in one or more hospitals, if any, in the area where the physician is located;

3 (b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

4 (c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if
5 there is not a physician, as defined in subsection ~~(30)(a)~~ (34)(a), in the area where the physician
6 assistant-certified is located;

7 (d) an osteopath licensed by the state of Montana under Title 37, chapter 5; or

8 (e) a dentist licensed by the state of Montana under Title 37, chapter 4.

9 ~~(31)(35)~~ "Year", unless otherwise specified, means calendar year."
10

11 **Section 2.** Section 39-71-117, MCA, is amended to read:

12 **"39-71-117. Employer defined.** (1) "Employer" means:

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

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

23 (c) any nonprofit association, limited liability company, or corporation or other entity funded in
24 whole or in part by federal, state, or local government funds that places community service participants,
25 as defined in 39-71-118(1)(f), with nonprofit organizations or associations or federal, state, or local
26 government entities.

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

29 (3) An employer defined in subsection (1) who ~~utilizes~~ uses the services of a worker furnished by
30 another person, association, contractor, firm, limited liability company, or corporation, other than a

1 temporary service contractor, is presumed to be the employer for workers' compensation premium and loss
 2 experience purposes for work performed by the worker. The presumption may be rebutted by substantial
 3 credible evidence of the following:

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

8 (b) the person, association, contractor, firm, limited liability company, or corporation, other than
 9 a temporary service contractor, furnishing the services of a worker to another has obtained workers'
 10 compensation insurance for the worker in Montana both at the inception of employment and during all
 11 phases of the work performed.

12 (4) Notwithstanding the provisions of subsection (3), an interstate or intrastate common or contract
 13 motor carrier doing business in this state who ~~utilizes~~ uses drivers in this state is considered the employer,
 14 is liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:

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

17 (b) the person, association, contractor, firm, limited liability company, or corporation furnishing
 18 drivers in this state to a motor carrier has obtained workers' compensation insurance on the drivers in
 19 Montana both at the inception of employment and during all phases of the work performed."

20

21 **Section 3.** Section 39-71-118, MCA, is amended to read:

22 **"39-71-118. Employee, worker, and volunteer firefighter defined.** (1) The ~~terms~~ term "employee"
 23 or "worker" means:

24 (a) each person in this state, including a contractor other than an independent contractor, who is
 25 in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire,
 26 expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully
 27 employed, and all of the elected and appointed paid public officers and officers and members of boards of
 28 directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while
 29 rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are
 30 included as employees if they are not otherwise covered by workers' compensation and if an employer has

1 elected to be bound by the provisions of the compensation law for these casual employments, as provided
2 in 39-71-401(2). Household or domestic ~~service~~ employment is excluded.

3 (b) any juvenile performing work under authorization of a district court judge in a delinquency
4 prevention or rehabilitation program;

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

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

12 (e) an aircrew member or other person employed as a volunteer under 67-2-105;

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

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

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

24 (g) an inmate working in a federally certified prison industries program authorized under 53-1-301.

25 (2) The terms defined in subsection (1) do not include a person who is:

26 (a) participating in recreational activity and who at the time is relieved of and is not performing
27 prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket,
28 permit, device, or other emolument of employment; or

29 (b) performing voluntary service at a recreational facility and who receives no compensation for
30 those services other than meals, lodging, or the use of the recreational facilities.

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

3 (4) (a) If the employer is a partnership, ~~or sole proprietorship proprietor~~, or a member-managed
4 limited liability company, the employer may elect to include as an employee within the provisions of this
5 chapter any member of the partnership, ~~or the owner of the sole proprietorship~~, or any member of the
6 limited liability company devoting full time to the partnership, ~~or proprietorship~~, or limited liability company
7 business.

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

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

15 (d) All weekly compensation benefits must be based on the amount of elected wages, subject to
16 the minimum and maximum limitations of this subsection. For premium ratemaking and for the
17 determination of weekly wage for weekly compensation benefits, the electing employer may elect not less
18 than \$900 a month and not more than 1 ½ times the average weekly wage, as defined in this chapter.

19 (5) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited
20 liability company, the employer may elect to include as an employee within the provisions of this chapter
21 any corporate officer or manager exempted under 39-71-401(2).

22 (b) In the event of an election, the employer shall serve upon the employer's insurer written notice
23 naming the corporate officer or manager to be covered and stating the level of compensation coverage
24 desired by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A
25 corporate officer or manager is not considered an employee within this chapter until notice has been given.

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

28 (d) All weekly compensation benefits must be based on the amount of elected wages, subject to
29 the minimum and maximum limitations of this subsection. For premium ratemaking and for the
30 determination of the weekly wage for weekly compensation benefits, the electing employer may elect not

1 less than \$200 a week and not more than 1 ½ times the average weekly wage, as defined in this chapter.

2 ~~(5)(6)~~ The trustees of a rural fire district, a county governing body providing rural fire protection,
3 or the county commissioners or trustees for a fire service area may elect to include as an employee within
4 the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers'
5 compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

6 ~~(6)(7)~~ An employee or worker in this state whose services are furnished by a person, association,
7 contractor, firm, limited liability company, or corporation, other than a temporary service contractor, to an
8 employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer.
9 This presumption may be rebutted as provided in 39-71-117(3).

10 ~~(7)(8)~~ For purposes of this section, an "employee or worker in this state" means:

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

13 (b) a nonresident of Montana whose principal employment duties are conducted within this state
14 on a regular basis for an employer;

15 (c) a nonresident employee of an employer from another state engaged in the construction industry,
16 as defined in 39-71-116, within this state; or

17 (d) a nonresident of Montana who does not meet the requirements of subsection ~~(7)(b)~~ (8)(b) and
18 whose employer elects coverage with an insurer that allows an election for an employer whose:

19 (i) nonresident employees are hired in Montana;

20 (ii) nonresident employees' wages are paid in Montana;

21 (iii) nonresident employees are supervised in Montana; and

22 (iv) business records are maintained in Montana.

23 ~~(8)(9)~~ An insurer may require coverage for all nonresident employees of a Montana employer who
24 do not meet the requirements of subsection ~~(7)(b)~~ (8)(b) or ~~(7)(d)~~ (8)(d) as a condition of approving the
25 election under subsection ~~(7)(d)~~ (8)(d)."

26

27 **Section 4.** Section 39-71-315, MCA, is amended to read:

28 **"39-71-315. Prohibited actions -- penalty.** (1) The following actions by a medical provider
29 constitute violations and are subject to the penalty in subsection (2):

30 (a) failing to document, under oath, the provision of the services or treatment for which

1 compensation is claimed under chapter 72 or this chapter; or

2 (b) referring a worker for treatment or diagnosis of an injury or illness that is compensable under
3 chapter 72 or this chapter to a facility owned wholly or in part by the provider, unless the provider informs
4 the worker of the ownership interest and provides the name and address of alternate facilities, if any exist.

5 (2) A person who violates this section may be assessed a penalty of not less than \$200 or more
6 than \$500 for each offense. The department shall assess and collect the penalty.

7 (3) Subsection (1)(b) does not apply to medical services provided to an injured worker by a treating
8 physician with an ownership interest in a managed care organization that has been certified by the
9 department."

10

11 **Section 5.** Section 39-71-318, MCA, is amended to read:

12 "**39-71-318. Hearings -- rules of evidence -- conduct.** (1) The statutory and ~~common-law~~
13 common-law rules of evidence do not apply to a hearing before the department under this chapter.

14 (2) A hearing under this chapter may be conducted by telephone or by videoconference."

15

16 **Section 6.** Section 39-71-401, MCA, is amended to read:

17 "**39-71-401. Employments covered and employments exempted.** (1) Except as provided in
18 subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to
19 all employees, as defined in 39-71-118. An employer who has any employee in service under any
20 appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the
21 provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers'
22 Compensation Act is subject to and bound by the compensation plan that has been elected by the
23 employer.

24 (2) Unless the employer elects coverage for these employments under this chapter and an insurer
25 allows ~~such~~ an election, the Workers' Compensation Act does not apply to any of the following
26 employments:

27 (a) household and domestic employment;

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

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

1 (d) employment of sole proprietors, ~~or~~ working members of a partnership, or working members of
2 a member-managed limited liability company, except as provided in subsection (3);

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

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

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

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

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

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

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

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

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

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

26 (m) a person who is employed by an enrolled tribal member ~~who operates~~ or an association,
27 business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members,
28 whose business is conducted solely within the exterior boundaries of an Indian reservation;

29 (n) an officer of a quasi-public or a private corporation or manager of a manager-managed limited
30 liability company who qualifies under one or more of the following provisions:

1 (i) the officer or manager is engaged in the ordinary duties of a worker for the corporation or the
 2 limited liability company and does not receive any pay from the corporation or the limited liability company
 3 for performance of the duties;

4 (ii) the officer or manager is engaged primarily in household employment for the corporation or the
 5 limited liability company;

6 (iii) the officer or manager owns 20% or more of the number of shares of stock in the corporation
 7 or owns 20% or more of the limited liability company; or

8 (iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law,
 9 daughter-in-law, nephew, niece, brother, or sister of a corporate officer who owns 20% or more of the
 10 number of shares of stock in the corporation or who owns 20% or more of the limited liability company.

11 (3) (a) A sole proprietor, ~~or~~ a working member of a partnership, or a working member of a
 12 member-managed limited liability company who represents to the public that the person is an independent
 13 contractor shall elect to be bound personally and individually by the provisions of compensation plan No.
 14 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

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

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

20 (d) When an election of an exemption is approved by the department, the election remains effective
 21 and the independent contractor retains the status as an independent contractor until the independent
 22 contractor notifies the department of any change in status and provides a description of present work
 23 status.

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

28 (4) (a) A ~~private~~ corporation or a manager-managed limited liability company shall provide coverage
 29 for its ~~officers and other~~ employees under the provisions of compensation plan No. 1, 2, or 3. ~~However,~~
 30 ~~pursuant to rules the department promulgates and subject in all cases to approval by the department, an~~

1 ~~officer of A quasi-public corporation, a private corporation, or a manager-managed limited liability company~~
 2 ~~may elect not to be bound as an employee under this chapter~~ coverage for its corporate officers or
 3 managers, who are otherwise exempt under subsection (2), by giving a written notice, on a form provided
 4 ~~by the department, served~~ in the following manner:

5 (i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by
 6 delivering the notice to the board of directors of the corporation or to the management organization of the
 7 manager-managed limited liability company ~~employer and to the department;~~ or

8 (ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by
 9 delivering the notice to the board of directors of the corporation or to the management organization of the
 10 manager-managed limited liability company ~~employer, to the department,~~ and to the insurer.

11 (b) If the employer changes plans or insurers, the ~~officer's~~ employer's previous election is not
 12 effective and the ~~officer~~ employer shall again serve notice ~~as provided~~ to its insurer and to its board of
 13 directors or the management organization of the manager-managed limited liability company if the ~~officer~~
 14 employer elects ~~not~~ to be bound.

15 ~~(e)(5)~~ The appointment or election of an employee as an officer of a corporation, a partner in a
 16 partnership, or a member in or a manager of a limited liability company for the purpose of ~~excluding~~
 17 exempting the employee from coverage under this chapter does not entitle the officer, partner, member,
 18 or manager ~~to elect not to be bound as an employee under this chapter. In any case, the officer shall sign~~
 19 ~~the notice required by subsection (4)(a) under oath or affirmation and is subject to the penalties for false~~
 20 ~~swearing under 45-7-202 if the officer falsifies the notice to exemption from coverage.~~

21 ~~(5)(6)~~ Each employer shall post a sign in the workplace at the locations where notices to employees
 22 are normally posted, informing employees about the employer's current provision of compensation
 23 insurance. A workplace is any location where an employee performs any work-related act in the course of
 24 employment, regardless of whether the location is temporary or permanent, and includes the place of
 25 business or property of a third person while the employer has access to or control over the place of
 26 business or property for the purpose of carrying on the employer's usual trade, business, or occupation.
 27 The sign must be provided by the department, distributed through insurers or directly by the department,
 28 and posted by employers in accordance with rules adopted by the department. An employer who purposely
 29 or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."
 30

1 **Section 7.** Section 39-71-405, MCA, is amended to read:

2 "**39-71-405. Liability of employer who contracts work out.** (1) An employer who contracts with
3 an independent contractor to have work performed of a kind ~~which~~ that is a regular or a recurrent part of
4 the work of the trade, business, occupation, or profession of ~~such~~ the employer is liable for the payment
5 of benefits under this chapter to the employees of the contractor or the subcontractor if the contractor or
6 subcontractor has not properly complied with the coverage requirements of the ~~Worker's~~ Workers'
7 Compensation Act. ~~Any~~ An insurer who becomes liable for payment of benefits may recover the amount
8 of benefits paid and to be paid and necessary expenses from the contractor or subcontractor primarily liable
9 therein.

10 (2) ~~Where~~ When an employer contracts to have any work to be done by a contractor, other than
11 an independent contractor, and the work ~~se~~ contracted to be done is a part or process in the trade or
12 business of the employer, then the employer is liable to pay all benefits under this chapter to the same
13 extent as if the work were done without the intervention of the contractor, and the work ~~se~~ contracted to
14 be done ~~shall~~ may not be construed to be casual employment. ~~Where~~ When an employer contracts work
15 to be done as specified in this subsection, the contractor and the contractor's employees ~~shall~~ come under
16 that plan of compensation adopted by the employer.

17 (3) ~~Where~~ When an employer contracts any work to be done, wholly or in part for the employer,
18 by an independent contractor, ~~where~~ when the work ~~se~~ contracted to be done is casual employment as to
19 ~~such~~ the employer, then the contractor ~~shall become~~ is the employer for the purposes of this chapter."
20

21 **Section 8.** Section 39-71-432, MCA, is amended to read:

22 "**39-71-432. Definitions.** As used in 39-71-433, the following definitions apply:

23 (1) "Business entity" means a business enterprise owned by a single person, corporation,
24 organization, business trust, trust, partnership, limited liability company, joint venture, association, or other
25 business entity.

26 (2) "Group" means two or more business entities that join together with the approval of the
27 department to purchase individual workers' compensation insurance policies covering each business entity
28 that is part of a group."
29

30 **Section 9.** Section 39-71-433, MCA, is amended to read:

1 **"39-71-433. Group purchase of workers' compensation insurance.** (1) On receiving approval of
2 the department, two or more business entities may join together to form a group to purchase individual
3 workers' compensation insurance policies covering each member of the group.

4 (2) To be eligible to join a new group that is forming, the department shall determine that a
5 business entity is engaged in a business pursuit that is the same as or similar to the business pursuits of
6 the other entities participating in the group.

7 (3) The department shall establish a certification program for groups organized under this section
8 and shall issue to eligible business entities certificates of approval that authorize formation and maintenance
9 of a group.

10 (4) The department by rule shall adopt forms, criteria, and procedures for the issuance of
11 certificates of approval to groups under this section.

12 (5) A group certified under this section may add additional members without approval from the
13 department if the additional members meet the specific criteria identified in the original application and any
14 modifications to the criteria, as approved by the department.

15 ~~(5)~~(6) A group certified under this section may purchase individual workers' compensation
16 insurance policies covering each member of the group from any insurer authorized to write workers'
17 compensation insurance in this state, except that the state fund, as defined in 39-71-2312, has the right
18 to refuse coverage of a group and its plan of operation but cannot refuse coverage to an individual
19 employer. Under an individual policy, the group is entitled to a premium or volume discount that would be
20 applicable to a policy of the combined premium amount of the individual policies.

21 ~~(6)~~(7) A group shall apportion any discount or policyholder dividend received on workers'
22 compensation insurance coverage among the members of the group according to a formula adopted in the
23 plan of operation for the group.

24 ~~(7)~~(8) A group shall adopt a plan of operation that must include the composition and selection of
25 a governing board, the methods for administering the group, the eligibility requirements to join the group,
26 and guidelines for the workers' compensation insurance coverage obtained by the group, including the
27 payment of premiums, the distribution of discounts, and the method for providing risk management. A
28 group shall file a copy of its plan of operation with the department."
29

30 **Section 10.** Section 39-71-503, MCA, is amended to read:

1 **"39-71-503. Administration of fund -- appropriation.** (1) The department shall administer the fund
2 and shall pay all proper benefits to injured employees of uninsured employers.

3 (2) Surpluses and reserves may not be kept for the fund. The department shall make ~~such~~
4 payments ~~as~~ that it considers appropriate as funds become available from time to time. The payment of
5 weekly disability benefits takes preference over the payment of medical benefits. ~~No lump-sum~~ Lump-sum
6 payments of future projected benefits, including impairment awards, may not be made from the fund. The
7 board of investments shall invest the money of the fund, and the investment income must be deposited in
8 the fund. The cost of administration of the fund must be paid out of the money in the fund.

9 (3) The amounts necessary for the payment of benefits from this fund are statutorily appropriated,
10 as provided in 17-7-502, from this fund."

11
12 **Section 11.** Section 39-71-504, MCA, is amended to read:

13 **"39-71-504. Funding of fund -- option for agreement between department and injured employee.**

14 The fund is funded in the following manner:

15 (1) The department may require that the uninsured employer pay to the fund a penalty of either
16 up to double the premium amount the employer would have paid on the payroll of the employer's workers
17 in this state if the employer had been enrolled with compensation plan No. 3 or \$200, whichever is greater.
18 In determining the premium amount for the calculation of the penalty under this subsection, the department
19 shall make an assessment on how much premium would have been paid on the employer's past 3-year
20 payroll for periods within the 3 years when the employer was uninsured. ~~An assessment for payroll paid~~
21 ~~by the uninsured employer for any time prior to July 1, 1977, may not be made.~~

22 (2) ~~(a)~~ The fund shall receive from an uninsured employer an amount equal to all benefits paid or
23 to be paid from the fund to an injured employee of the uninsured employer. ~~However, the uninsured~~
24 ~~employer's liability under this subsection (2)(a) may not exceed \$50,000.~~

25 ~~(b) The dollar limitation does not apply to an uninsured employer's liability to an injured employee~~
26 ~~or the employee's beneficiaries under 39-71-509 or 39-71-515.~~

27 (3) The department may determine that the \$1,000 assessments that are charged against an
28 insurer in each case of an industrial death under 39-71-902(1) ~~shall~~ must be paid to the uninsured
29 employers' fund rather than the subsequent injury fund.

30 (4) The department may enter into an agreement with the injured employee or the employee's

1 beneficiaries to assign to the employee or the beneficiaries all or part of the funds received by the
2 department from the uninsured employer pursuant to subsection ~~(2)(a)~~ (2)."

3
4 **Section 12.** Section 39-71-507, MCA, is amended to read:

5 **"39-71-507. Department to order uninsured employer to cease operations -- noncompliance with**
6 **order a misdemeanor -- coordination of remedies.** (1) When the department discovers an uninsured
7 employer, it shall order ~~him~~ the employer to cease operations until ~~he~~ the employer has elected to be bound
8 by a compensation plan.

9 (2) When the department discovers a person, business, or other entity functioning as a prime
10 contractor that has subcontracted for the services of an uninsured employer, it may order the person,
11 business, or other entity functioning as a prime contractor to cease CAUSE all operations PERFORMED BY
12 THE UNINSURED EMPLOYER TO CEASE AT WORKSITES CONTROLLED BY THE PRIME CONTRACTOR until
13 the uninsured employer has elected to be bound by a compensation plan. IF AFTER 3 BUSINESS DAYS
14 FOLLOWING THE ORDER BY THE DEPARTMENT THE PERSON, BUSINESS, OR OTHER ENTITY
15 FUNCTIONING AS A PRIME CONTRACTOR HAS NOT COMPLIED WITH THE ORDER, THE DEPARTMENT
16 MAY ORDER THE PRIME CONTRACTOR TO CEASE ALL OPERATIONS AT THE AFFECTED WORKSITES.

17 ~~(2)(3)~~ (3) An employer who does not comply with the department's order to cease operations is guilty
18 of a misdemeanor. Each day of violation is a separate offense. The county attorney may prosecute a
19 criminal action under this subsection in the county in which the violation occurs. Prosecution under this
20 subsection does not bar the department from enforcing its order by a civil action.

21 (4) A person, business, or other entity functioning as a prime contractor that does not comply with
22 the department's order to cease all operations is guilty of a misdemeanor. Each day of violation is a
23 separate offense. The county attorney may prosecute a criminal action under this subsection in the county
24 in which the violation occurs. Prosecution under this subsection does not bar the department from
25 enforcing its order by a civil action. In addition, the department may assess a penalty against the person,
26 business, or other entity functioning as a prime contractor of not more than \$1,000 per day for each day
27 of violation.

28 ~~(3)(5)~~ (5) The department may institute and maintain in the name of the state, through the attorney
29 general or the county attorney of the county in which the violation occurs, an action for an injunction order
30 or other civil remedy in district court to enforce its order to cease operations.

1 ~~(4)(6)~~ The remedies provided in 39-71-506 and subsections ~~(2) and (3)~~ (3) through (5) of this
2 section are not mutually exclusive and may be pursued concurrently."

3

4 **Section 13.** Section 39-71-516, MCA, is amended to read:

5 **"39-71-516. District court venue and jurisdiction for independent cause of action.** An injured
6 employee or an employee's beneficiaries pursuing an independent cause of action pursuant to 39-71-515
7 ~~must~~ shall bring ~~such~~ the action in the district court in the district where the claimant resides or where the
8 alleged violation occurred. The court may grant ~~such~~ interim relief ~~as that~~ it considers appropriate, including
9 but not limited to injunctive relief, attachment, or receivership. The court may request the workers'
10 compensation judge to determine the amount of recoverable damages due to the employee."

11

12 **Section 14.** Section 39-71-710, MCA, is amended to read:

13 **"39-71-710. Termination of benefits upon retirement.** (1) If a claimant is receiving disability or
14 rehabilitation compensation benefits and the claimant receives social security retirement benefits or is
15 eligible to receive full social security retirement benefits, the claimant is considered to be retired. When the
16 claimant is considered retired, the liability of the insurer is ended for payment of ~~wage supplement,~~
17 permanent total disability, and rehabilitation compensation benefits. However, the insurer remains liable for
18 temporary total disability benefits, any impairment award, and medical benefits.

19 (2) If a claimant who is eligible to receive social security retirement benefits and is gainfully
20 employed suffers a work-related injury, the insurer retains liability for temporary total disability benefits,
21 any impairment award, and medical benefits."

22

23 **Section 15.** Section 39-71-721, MCA, is amended to read:

24 **"39-71-721. Compensation for injury causing death -- limitation.** (1) (a) If an injured employee dies
25 and the injury was the proximate cause of ~~such~~ death, then the beneficiary of the deceased is entitled to
26 the same compensation as though the death occurred immediately following the injury. A beneficiary's
27 eligibility for benefits commences after the date of death, and the benefit level is established as set forth
28 in subsection (2).

29 (b) The insurer is entitled to recover any overpayments or compensation paid in a lump sum to a
30 worker prior to death but not yet recouped. The insurer shall recover ~~such~~ the payments from the

1 beneficiary's biweekly payments as provided in 39-71-741(5).

2 (2) To beneficiaries as defined in 39-71-116~~(3)(a)~~(4)(a) through ~~(3)(d)~~ (4)(d), weekly compensation
3 benefits for an injury causing death are 66 2/3% of the decedent's wages. The maximum weekly
4 compensation benefit may not exceed the state's average weekly wage at the time of injury. The minimum
5 weekly compensation benefit is 50% of the state's average weekly wage, but in no event may it exceed
6 the decedent's actual wages at the time of his death.

7 (3) To beneficiaries as defined in 39-71-116~~(3)(e)~~(4)(e) and ~~(3)(f)~~ (4)(f), weekly benefits must be
8 paid to the extent of the dependency at the time of the injury, subject to a maximum of 66 2/3% of the
9 decedent's wages. The maximum weekly compensation may not exceed the state's average weekly wage
10 at the time of injury.

11 (4) If the decedent leaves no beneficiary as defined in ~~39-71-116~~, a lump-sum payment of \$3,000
12 must be paid to the decedent's surviving parent or parents.

13 (5) If any beneficiary of a deceased employee dies, the right of ~~such~~ the beneficiary to
14 compensation under this chapter ceases. Death benefits must be paid to a surviving spouse for 500 weeks
15 subsequent to the date of the deceased employee's death or until the spouse's remarriage, whichever
16 occurs first. After benefit payments cease to a surviving spouse, death benefits must be paid to
17 beneficiaries, if any, as defined in 39-71-116~~(3)(b)~~ (4)(b) through ~~(3)(d)~~ (4)(d).

18 (6) In all cases, benefits must be paid to beneficiaries, ~~as defined in 39-71-116~~.

19 (7) Benefits paid under this section may not be adjusted for cost of living as provided in 39-71-702.

20 ~~(8) Notwithstanding subsections (2) and (3), beginning July 1, 1987, through June 30, 1991, the~~
21 ~~maximum weekly compensation benefits for injury causing death may not exceed the state's average~~
22 ~~weekly wage of \$299 established July 1, 1986. Beginning July 1, 1987, through June 30, 1991, the~~
23 ~~minimum weekly compensation for injury causing death shall be \$149.50, which is 50% of the state's~~
24 ~~average weekly wage established July 1, 1986, but in no event may it exceed the decedent's actual wages~~
25 ~~at the time of death."~~

26

27 **Section 16.** Section 39-71-723, MCA, is amended to read:

28 "**39-71-723. How compensation to be divided among beneficiaries.** Compensation due to
29 beneficiaries ~~shall~~ must be paid to the surviving spouse, if any, or if none, then divided equally among or
30 for the benefit of the children. In cases ~~where~~ in which beneficiaries are a surviving spouse and stepchildren

1 of ~~such~~ the spouse, the compensation ~~shall~~ must be divided equally among all beneficiaries. Compensation
 2 due to beneficiaries as defined in 39-71-116~~(3)(e)~~(4)(e) and ~~(3)(f)~~ (4)(f), ~~where~~ when there is more than
 3 one, ~~shall~~ must be divided equitably among them, and the question of dependency and amount ~~thereof~~ shall
 4 be is a question of fact for determination by the department."

5
 6 **Section 17.** Section 39-71-737, MCA, is amended to read:

7 "**39-71-737. Compensation to run consecutively -- exceptions.** Compensation ~~shall~~ must run
 8 consecutively and not concurrently, and payment ~~shall~~ may not be made for two classes of disability over
 9 the same period, except that impairment awards and auxiliary rehabilitation benefits may be paid
 10 concurrently with other classes of benefits, ~~and wage supplement and partial rehabilitation benefits may~~
 11 ~~be paid concurrently."~~

12
 13 **Section 18.** Section 39-71-902, MCA, is amended to read:

14 "**39-71-902. Fund to receive payment from insurer for each death under chapter -- assessment of**
 15 **insurers.** (1) In ~~every~~ each case of the death of an employee under this chapter, the insurer shall pay to the
 16 fund the sum of \$1,000. In addition, the department may assess ~~every~~ each insurer an amount not to
 17 exceed 5% of the compensation paid in Montana in the preceding fiscal year. The assessment must be
 18 transmitted annually to the subsequent injury fund by the employer or insurer. The board of investments
 19 shall invest the money of the fund, and the investment income must be deposited in the fund. The cost of
 20 administration of the fund must be paid out of money in the fund.

21 (2) When, in the judgment of the department, the amount of money in the subsequent injury fund
 22 is such that there is a surplus above and beyond projected liabilities and administrative costs, the
 23 department may at its discretion suspend or reduce further collection of assessments for a period of time
 24 determined by the department."

25
 26 **Section 19.** Section 39-71-1108, MCA, is amended to read:

27 "**39-71-1108. Physician self-referral prohibition.** (1) Unless authorized by the insurer, a treating
 28 physician may not refer a claimant to a health care facility at which the physician does not directly provide
 29 care or services when the physician has an investment interest in the facility, unless there is a
 30 demonstrated need in the community for the facility and alternative financing is not available. The insurer

1 or the claimant is not liable for charges incurred in violation of this section.

2 (2) Subsection (1) does not apply to care or services provided directly to an injured worker by a
3 treating physician with an ownership interest in a managed care organization that has been certified by the
4 department."

5
6 **Section 20.** Section 39-71-2103, MCA, is amended to read:

7 **"39-71-2103. Employer permitted to carry on business and settle directly with employee --**
8 **individual liability.** (1) If ~~such the~~ employer making ~~such the~~ election ~~shall be~~ is found by the department
9 and the Montana self-insurers guaranty fund to have the requisite financial ability to pay the compensation
10 and benefits in this chapter ~~provided for~~, then the department, with the concurrence of the guaranty fund,
11 shall grant to the employer permission to carry on ~~his~~ business for the ~~fiscal~~ year within which ~~such the~~
12 election is made and ~~such~~ proof filed, or the remaining portion of ~~such the~~ fiscal year, and to make ~~such~~
13 payments directly to ~~his the~~ employees as they may become entitled to receive the ~~same~~ payments.

14 (2) Each individual employer in an association, corporation, limited liability company, or organization
15 of employers given permission by the department to operate as self-insured under plan No. 1 of this chapter
16 is jointly and severally liable for all obligations incurred by the association, corporation, limited liability
17 company, or organization under this chapter. An association, corporation, limited liability company, or
18 organization of employers given permission to operate as self-insured ~~must~~ shall maintain excess liability
19 coverage in amounts and under ~~such~~ conditions as provided by rules of the department."
20

21 **Section 21.** Section 39-71-2411, MCA, is amended to read:

22 **"39-71-2411. Mediation procedure.** (1) Except as otherwise provided, a claimant or an insurer
23 having a dispute relating to benefits under chapter 71 or 72 of this title may petition the department for
24 mediation of the dispute.

25 (2) A party may take part in mediation proceedings with or without representation.

26 (3) The mediator shall review the department file for the case and may receive any additional
27 documentation or argument either party submits.

28 (4) The mediator shall request that each party offer argument summarizing the party's position.
29 A party's argument must fully present the party's case. The argument is not limited by the rules of
30 evidence.

1 (5) After the parties have presented all their information and argument to the mediator, ~~he~~ the
2 mediator shall recommend a solution to the parties within a reasonable time to be established by rule.

3 (6) A party shall notify the mediator within ~~45~~ 20 25 days of the mailing of ~~his~~ the mediator's
4 report whether the party accepts the mediator's recommendation. If either party does not accept the
5 mediator's recommendation, the party may petition the workers' compensation court for resolution of the
6 dispute.

7 (7) (a) If a mediator determines that either party failed to cooperate in the mediation process, the
8 mediator shall prepare a written report setting forth the determination and the grounds for the
9 determination. The report must be mailed to the parties and to the workers' compensation court. Unless
10 a party disputes the determination as set forth in subsection (7)(c), the parties shall repeat the mediation
11 process, but only one time.

12 (b) A mediator may determine that a party has failed to cooperate in the mediation process only
13 if the party failed to:

14 (i) supply information or offer a summary of the party's position as reasonably requested by the
15 mediator;

16 (ii) attend scheduled mediation conferences unless excused by the mediator; or

17 (iii) listen to and review the information and position offered by the opposing party.

18 (c) If a party disputes a mediator's determination that the party failed to cooperate in the mediation
19 process, the party may file a petition with the workers' compensation court. Upon receipt of a petition, the
20 court shall summon the parties and the mediator to determine by oral discussion whether the mediator's
21 determination of noncooperation is supportable. If the court finds that the mediator's determination is
22 supportable, the court may order the parties to attempt a second time to mediate their dispute."
23

24 **Section 22.** Section 39-71-2905, MCA, is amended to read:

25 **"39-71-2905. Petition to workers' compensation judge.** A claimant or an insurer who has a dispute
26 concerning any benefits under chapter 71 of this title may petition the workers' compensation judge for
27 a determination of the dispute after satisfying dispute resolution requirements otherwise provided in this
28 chapter. In addition, the district court that has jurisdiction over a pending action under 39-71-515 may
29 request the workers' compensation judge to determine the amount of recoverable damages due to the
30 employee. The judge, after a hearing, shall make a determination of the dispute in accordance with the law

1 as set forth in chapter 71 of this title. If the dispute relates to benefits due to a claimant under chapter 71,
2 the judge shall fix and determine any benefits to be paid and specify the manner of payment. After parties
3 have satisfied dispute resolution requirements provided elsewhere in this chapter, the workers'
4 compensation judge has exclusive jurisdiction to make determinations concerning disputes under chapter
5 71, except as provided in 39-71-317 and 39-71-516. The penalties and assessments allowed against an
6 insurer under chapter 71 are the exclusive penalties and assessments that can be assessed by the workers'
7 compensation judge against an insurer for disputes arising under chapter 71."

8
9 **Section 23.** Section 39-72-601, MCA, is amended to read:

10 **"39-72-601. Medical panel.** (1) The department shall develop a list of physicians to serve on the
11 occupational disease medical panel. The list may include physicians nominated by the board of medical
12 examiners. A physician on the panel must be certified by ~~his~~ the physician's specialty board or be eligible
13 for certification in the specialty area appropriate to the claimant's condition in relation to this chapter.

14 (2) The department shall select a panel physician to examine a claimant, as required. The
15 department shall appoint, as required, ~~one member of the panel to be the chairman~~ a physician as the
16 presiding officer."

17
18 **Section 24.** Section 39-72-602, MCA, is amended to read:

19 **"39-72-602. Insurer may accept liability -- procedure for medical examination when insurer has not**
20 **accepted liability.** (1) An insurer may accept liability for a claim under this chapter based on information
21 submitted to it by a claimant.

22 (2) In order to determine the compensability of claims under this chapter when an insurer has not
23 accepted liability, the following procedure must be followed:

24 (a) The department shall direct the claimant to a member of the medical panel for an examination.
25 The panel member shall conduct an examination to determine whether the claimant is totally disabled and
26 is suffering from an occupational disease. The panel member shall submit a report of ~~his~~ the member's
27 findings to the department.

28 (b) Either the claimant or the insurer may, within 20 days after the receipt of the report by the first
29 panel member, request that the claimant be examined by a second panel member. If a second examination
30 is requested, the department shall direct the claimant to a second panel member who shall conduct an

1 examination to determine whether ~~he believes~~ the claimant is totally disabled and is suffering from an
 2 occupational disease. The panel member shall submit a report of ~~his~~ the member's findings to the
 3 department. ~~When a second examination has been requested, the reports of the examinations shall be~~
 4 ~~submitted to three members of the medical panel for review. A~~ The medical panel member ~~or the panel~~
 5 may, in order to ~~assist the panel member or the panel in reaching~~ reach a conclusion, consult with the
 6 claimant's attending physician. The reports from the two examining physicians must be sent by the
 7 department to the presiding officer of the panel. ~~The three panel members~~ presiding officer shall issue a
 8 report concerning the claimant's physical condition and whether the claimant is suffering from an
 9 occupational disease.

10 (c) (i) If a second examination is not requested, the department shall issue its order determining
 11 whether the claimant is entitled to occupational disease benefits based on the report of the first examining
 12 physician.

13 (ii) If a second examination is requested, the department shall issue its order based on the report
 14 of the ~~three members of the medical panel~~ presiding officer.

15 (d) ~~For the purpose of reviewing the reports of the examinations and issuing the report under~~
 16 ~~subsection (2)(b), the three members of the medical panel shall be the two members of the panel who~~
 17 ~~examined the claimant and the panel chairman.~~ If the panel ~~chairman~~ presiding officer has examined the
 18 claimant, the ~~panel chairman~~ department shall appoint another ~~member of the medical panel to be the third~~
 19 ~~member~~ presiding officer."

20

21 **Section 25.** Section 39-72-612, MCA, is amended to read:

22 **"39-72-612. Hearing and appeal to workers' compensation judge.** (1) Within 20 days after the
 23 department has issued its order of determination as to whether the claimant is entitled to benefits under
 24 this chapter, a party may request a hearing. In order to perfect an appeal to the workers' compensation
 25 judge, the appealing party shall request a hearing before the department. The department shall grant a
 26 hearing, ~~and the~~ which may be conducted by telephone or by videoconference. The department's final
 27 determination may not be issued until after the hearing.

28 (2) Appeals from a final determination of the department must be made to the workers'
 29 compensation judge within 30 days after the department has issued its final determination. The judge, after
 30 a hearing held pursuant to 39-71-2903 and 39-71-2904, shall make a final determination concerning the

1 claimant's claim. The judge may overrule the department only on the basis that the department's
2 determination is:

3 (a) in violation of constitutional or statutory provisions;

4 (b) in excess of the statutory authority of the agency;

5 (c) made upon unlawful procedure;

6 (d) affected by other error of law;

7 (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole
8 record; or

9 (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise
10 of discretion."

11

12 **NEW SECTION. Section 26. Saving clause.** [This act] does not affect rights and duties that
13 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
14 act].

15

16 **NEW SECTION. Section 27. Severability.** If a part of [this act] is invalid, all valid parts that are
17 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
18 applications, the part remains in effect in all valid applications that are severable from the invalid
19 applications.

20

21 **NEW SECTION. Section 28. Applicability.** (1) [Section 10] applies retroactively, within the
22 meaning of 1-2-109, to all occurrences beginning after October 1, 1977.

23 (2) [Section 18] applies retroactively, within the meaning of 1-2-109, to all occurrences beginning
24 after October 1, 1973.

25 (3) [Sections 5 and 25] apply to hearings or appeals requested on or after [the effective date of
26 this act].

27

28 **NEW SECTION. Section 29. Effective dates.** (1) [Sections 5, 13, 22, and 25 through 28 and this
29 section] are effective on passage and approval.

30 (2) [Sections 1 through 4, 6 through 12, 14 through 21, 23, and 24] are effective October 1,

1 1995.

2

-END-

1 HOUSE BILL NO. 200

2 INTRODUCED BY BERGMAN, HIBBARD, BENEDICT, BARTLETT, COCCHIARELLA

3 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE WORKERS' COMPENSATION ACT
6 AND THE OCCUPATIONAL DISEASE ACT OF MONTANA; ADDING DEFINITIONS; EXEMPTING
7 CORPORATE OFFICERS AND MANAGERS OF LIMITED LIABILITY COMPANIES FROM COVERAGE UNLESS
8 THE EMPLOYER ELECTS TO COVER THE OFFICER OR MANAGER AND THE INSURER ALLOWS THE
9 ELECTION; CLARIFYING PROHIBITIONS REGARDING MEDICAL PROVIDER SELF-REFERRAL; AUTHORIZING
10 THE DEPARTMENT OF LABOR AND INDUSTRY TO CONDUCT HEARINGS AND APPEALS BY TELEPHONE
11 OR VIDEOCONFERENCE; CLARIFYING THE STATUS OF LIMITED LIABILITY COMPANIES; CLARIFYING THE
12 LIABILITY OF AN EMPLOYER WHO CONTRACTS WORK OUT; CLARIFYING THE DEPARTMENT'S
13 RESPONSIBILITY IN APPROVING THE GROUP PURCHASE OF WORKERS' COMPENSATION INSURANCE;
14 REQUIRING THE INVESTMENT INCOME OF THE UNINSURED EMPLOYERS' FUND TO BE DEPOSITED IN
15 THE FUND; REMOVING THE LIMIT ON AN UNINSURED EMPLOYER'S LIABILITY FOR CLAIMS; INCREASING
16 THE AUTHORITY TO FILE CEASE AND DESIST ORDERS TO INCLUDE PERSONS, BUSINESSES, AND
17 ENTITIES THAT HAVE CONTRACTED WITH UNINSURED EMPLOYERS AND PROVIDING FOR PENALTIES;
18 PROVIDING A DISTRICT COURT WITH THE OPTION TO REQUEST THE WORKERS' COMPENSATION
19 JUDGE TO DETERMINE THE AMOUNT OF RECOVERABLE DAMAGES DUE TO AN INJURED UNINSURED
20 WORKER; REMOVING THE REFERENCES TO WAGE SUPPLEMENT; REQUIRING THE BOARD OF
21 INVESTMENTS TO INVEST CERTAIN MONEY IN THE SUBSEQUENT INJURY FUND AND REQUIRING THE
22 INVESTMENT INCOME TO BE DEPOSITED IN THE FUND; REDUCING THE TIME PERIOD ALLOWED FOR
23 A PARTY TO RESPOND TO A WORKERS' COMPENSATION MEDIATOR'S RECOMMENDATION; REVISING
24 THE MEDICAL PANEL PROCESS; AMENDING SECTIONS 39-71-116, 39-71-117, 39-71-118, 39-71-315,
25 39-71-318, 39-71-401, 39-71-405, 39-71-432, 39-71-433, 39-71-503, 39-71-504, 39-71-507,
26 39-71-516, 39-71-710, 39-71-721, 39-71-723, 39-71-737, 39-71-902, 39-71-1108, 39-71-2103,
27 39-71-2411, 39-71-2905, 39-72-601, 39-72-602, AND 39-72-612, MCA; AND PROVIDING EFFECTIVE
28 DATES AND APPLICABILITY DATES."

29
30 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

2 **"39-71-116. Definitions.** Unless the context otherwise requires, words and phrases employed in
3 this chapter have the following meanings:

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

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

7 (b) payment of benefits;

8 (c) setting of reserves;

9 (d) furnishing of services and facilities; and

10 (e) ~~utilization~~ use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

11 (2) "Aid or sustenance" means any public or private subsidy made to provide a means of support,
12 maintenance, or subsistence for the recipient.

13 ~~(2)(3)~~ (3) "Average weekly wage" means the mean weekly earnings of all employees under covered
14 employment, as defined and established annually by the Montana department of labor and industry. It is
15 established at the nearest whole dollar number and must be adopted by the department prior to July 1 of
16 each year.

17 ~~(3)(4)~~ (4) "Beneficiary" means:

18 (a) a surviving spouse living with or legally entitled to be supported by the deceased at the time
19 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 a full-time student in an accredited school
22 or is enrolled in an accredited apprenticeship program;

23 (d) an invalid child over the age of 18 years who is dependent upon the decedent for support at
24 the time of injury;

25 (e) a parent who is dependent upon the decedent for support at the time of the injury if a
26 beneficiary, as defined in subsections ~~(3)(a)~~ (4)(a) through ~~(3)(d)~~ (4)(d), does not exist; and

27 (f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the
28 time of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections
29 ~~(3)(a)~~ (4)(a) through ~~(3)(e)~~ (4)(e), does not exist.

30 ~~(4)(5)~~ (5) "Casual employment" means employment not in the usual course of trade, business,

1 profession, or occupation of the employer.

2 ~~(5)(6)~~ "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior
3 to the injury.

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

10 ~~(7)(8)~~ "Days" means calendar days, unless otherwise specified.

11 ~~(8)(9)~~ "Department" means the department of labor and industry.

12 ~~(9)(10)~~ "Disability" means a condition in which a worker's ability to engage in gainful employment
13 is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined
14 with factors, such as the worker's age, education, work history, and other factors that affect the worker's
15 ability to engage in gainful employment. Disability does not mean a purely medical condition.

16 ~~(10)(11)~~ "Fiscal year" means the period of time between July 1 and the succeeding June 30.

17 (12) "Household or domestic employment" means employment of persons other than members of
18 the household for the purpose of tending to the aid and comfort of the employer or members of the
19 employer's family, including but not limited to housecleaning and yard work, but does not include
20 employment beyond the scope of normal household or domestic duties, such as home health care or
21 domiciliary care.

22 ~~(11)(13)~~ "Insurer" means an employer bound by compensation plan No. 1, an insurance company
23 transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

24 ~~(12)(14)~~ "Invalid" means one who is physically or mentally incapacitated.

25 (15) "Limited liability company" is as defined in 35-8-102.

26 ~~(13)(16)~~ "Maintenance care" means treatment designed to provide the optimum state of health
27 while minimizing recurrence of the clinical status.

28 ~~(14)(17)~~ "Medical stability", "maximum healing", or "maximum medical healing" means a point in
29 the healing process when further material improvement would not be reasonably expected from primary
30 medical treatment.

1 ~~(15)~~(18) "Order" means any decision, rule, direction, requirement, or standard of the department
2 or any other determination arrived at or decision made by the department.

3 ~~(16)~~(19) "Palliative care" means treatment designed to reduce or ease symptoms without curing
4 the underlying cause of the symptoms.

5 ~~(17)~~(20) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average
6 annual payroll of the employer for the preceding calendar year or, if the employer has not operated a
7 sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the
8 current year. However, an estimate may be made by the department for any employer starting in business
9 if average payrolls are not available. This estimate must be adjusted by additional payment by the employer
10 or refund by the department, as the case may actually be, on December 31 of the current year. An
11 employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by
12 an employer.

13 ~~(18)~~(21) "Permanent partial disability" means a condition, after a worker has reached maximum
14 medical healing, in which a worker:

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

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

19 ~~(19)~~(22) "Permanent total disability" means a condition resulting from injury as defined in this
20 chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable
21 prospect of physically performing regular employment. Regular employment means work on a recurring
22 basis performed for remuneration in a trade, business, profession, or other occupation in this state. Lack
23 of immediate job openings is not a factor to be considered in determining if a worker is permanently totally
24 disabled.

25 ~~(20)~~(23) The "plant of the employer" includes the place of business of a third person while the
26 employer has access to or control over the place of business for the purpose of carrying on the employer's
27 usual trade, business, or occupation.

28 ~~(21)~~(24) "Primary medical services" means treatment prescribed by a treating physician, for
29 conditions resulting from the injury, necessary for achieving medical stability.

30 ~~(22)~~(25) "Public corporation" means the state or any county, municipal corporation, school district,

1 city, city under a commission form of government or special charter, town, or village.

2 ~~(23)~~(26) "Reasonably safe place to work" means that the place of employment has been made as
3 free from danger to the life or safety of the employee as the nature of the employment will reasonably
4 permit.

5 ~~(24)~~(27) "Reasonably safe tools and appliances" are tools and appliances ~~æ~~ that are adapted to and
6 that are reasonably safe for use for the particular purpose for which they are furnished.

7 ~~(25)~~(28) "Secondary medical services" means those medical services or appliances that are
8 considered not medically necessary for medical stability. The services and appliances include but are not
9 limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs
10 designed to address disability and not impairment, or equipment offered by individuals, clinics, groups,
11 hospitals, or rehabilitation facilities.

12 (29) "Sole proprietor" means the person who has the exclusive legal right or title to or ownership
13 of a business enterprise.

14 ~~(26)~~(30) "Temporary partial disability" means a condition resulting from an injury, as defined in
15 39-71-119, in which a worker, prior to maximum healing:

16 (a) is temporarily unable to return to the position held at the time of injury because of a medically
17 determined physical restriction;

18 (b) returns to work in a modified or alternative employment; and

19 (c) suffers a partial wage loss.

20 ~~(27)~~(31) "Temporary service contractor" means ~~any~~ a person, firm, association, or corporation
21 conducting business that employs individuals directly for the purpose of furnishing the services of those
22 individuals on a part-time or temporary basis to others.

23 ~~(28)~~(32) "Temporary total disability" means a condition resulting from an injury, as defined in this
24 chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical
25 healing.

26 ~~(29)~~(33) "Temporary worker" means a worker whose services are furnished to another on a
27 part-time or temporary basis to substitute for a permanent employee on leave or to meet an emergency or
28 short-term workload.

29 ~~(30)~~(34) "Treating physician" means a person who is primarily responsible for the treatment of a
30 worker's compensable injury and is:

1 (a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting
2 privileges to practice in one or more hospitals, if any, in the area where the physician is located;

3 (b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

4 (c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if
5 there is not a physician, as defined in subsection ~~(30)(a)~~ (34)(a), in the area where the physician
6 assistant-certified is located;

7 (d) an osteopath licensed by the state of Montana under Title 37, chapter 5; or

8 (e) a dentist licensed by the state of Montana under Title 37, chapter 4.

9 ~~(34)~~(35) "Year", unless otherwise specified, means calendar year."
10

11 **Section 2.** Section 39-71-117, MCA, is amended to read:

12 **"39-71-117. Employer defined.** (1) "Employer" means:

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

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

23 (c) any nonprofit association, limited liability company, or corporation or other entity funded in
24 whole or in part by federal, state, or local government funds that places community service participants,
25 as defined in 39-71-118(1)(f), with nonprofit organizations or associations or federal, state, or local
26 government entities.

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

29 (3) An employer defined in subsection (1) who ~~utilizes~~ uses the services of a worker furnished by
30 another person, association, contractor, firm, limited liability company, or corporation, other than a

1 temporary service contractor, is presumed to be the employer for workers' compensation premium and loss
 2 experience purposes for work performed by the worker. The presumption may be rebutted by substantial
 3 credible evidence of the following:

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

8 (b) the person, association, contractor, firm, limited liability company, or corporation, other than
 9 a temporary service contractor, furnishing the services of a worker to another has obtained workers'
 10 compensation insurance for the worker in Montana both at the inception of employment and during all
 11 phases of the work performed.

12 (4) Notwithstanding the provisions of subsection (3), an interstate or intrastate common or contract
 13 motor carrier doing business in this state who ~~utilizes~~ uses drivers in this state is considered the employer,
 14 is liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:

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

17 (b) the person, association, contractor, firm, limited liability company, or corporation furnishing
 18 drivers in this state to a motor carrier has obtained workers' compensation insurance on the drivers in
 19 Montana both at the inception of employment and during all phases of the work performed."
 20

21 **Section 3.** Section 39-71-118, MCA, is amended to read:

22 **"39-71-118. Employee, worker, and volunteer firefighter defined.** (1) The ~~terms~~ term "employee"
 23 or "worker" means:

24 (a) each person in this state, including a contractor other than an independent contractor, who is
 25 in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire,
 26 expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully
 27 employed, and all of the elected and appointed paid public officers and officers and members of boards of
 28 directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while
 29 rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are
 30 included as employees if they are not otherwise covered by workers' compensation and if an employer has

1 elected to be bound by the provisions of the compensation law for these casual employments, as provided
2 in 39-71-401(2). Household or domestic ~~service~~ employment is excluded.

3 (b) any juvenile performing work under authorization of a district court judge in a delinquency
4 prevention or rehabilitation program;

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

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

12 (e) an aircrew member or other person employed as a volunteer under 67-2-105;

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

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

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

24 (g) an inmate working in a federally certified prison industries program authorized under 53-1-301.

25 (2) The terms defined in subsection (1) do not include a person who is:

26 (a) participating in recreational activity and who at the time is relieved of and is not performing
27 prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket,
28 permit, device, or other emolument of employment; or

29 (b) performing voluntary service at a recreational facility and who receives no compensation for
30 those services other than meals, lodging, or the use of the recreational facilities.

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

3 (4) (a) If the employer is a partnership, ~~or sole proprietorship~~ proprietor, or a member-managed
4 limited liability company, the employer may elect to include as an employee within the provisions of this
5 chapter any member of the partnership, ~~or the owner of the sole proprietorship~~, or any member of the
6 limited liability company devoting full time to the partnership, ~~or proprietorship~~, or limited liability company
7 business.

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

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

15 (d) All weekly compensation benefits must be based on the amount of elected wages, subject to
16 the minimum and maximum limitations of this subsection. For premium ratemaking and for the
17 determination of weekly wage for weekly compensation benefits, the electing employer may elect not less
18 than \$900 a month and not more than 1 ½ times the average weekly wage, as defined in this chapter.

19 (5) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited
20 liability company, the employer may elect to include as an employee within the provisions of this chapter
21 any corporate officer or manager exempted under 39-71-401(2).

22 (b) In the event of an election, the employer shall serve upon the employer's insurer written notice
23 naming the corporate officer or manager to be covered and stating the level of compensation coverage
24 desired by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A
25 corporate officer or manager is not considered an employee within this chapter until notice has been given.

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

28 (d) All weekly compensation benefits must be based on the amount of elected wages, subject to
29 the minimum and maximum limitations of this subsection. For premium ratemaking and for the
30 determination of the weekly wage for weekly compensation benefits, the electing employer may elect not

1 less than \$200 a week and not more than 1 ½ times the average weekly wage, as defined in this chapter.

2 ~~(6)~~(6) The trustees of a rural fire district, a county governing body providing rural fire protection,
3 or the county commissioners or trustees for a fire service area may elect to include as an employee within
4 the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers'
5 compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

6 ~~(7)~~(7) An employee or worker in this state whose services are furnished by a person, association,
7 contractor, firm, limited liability company, or corporation, other than a temporary service contractor, to an
8 employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer.
9 This presumption may be rebutted as provided in 39-71-117(3).

10 ~~(7)~~(8) For purposes of this section, an "employee or worker in this state" means:

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

13 (b) a nonresident of Montana whose principal employment duties are conducted within this state
14 on a regular basis for an employer;

15 (c) a nonresident employee of an employer from another state engaged in the construction industry,
16 as defined in 39-71-116, within this state; or

17 (d) a nonresident of Montana who does not meet the requirements of subsection ~~(7)(b)~~ (8)(b) and
18 whose employer elects coverage with an insurer that allows an election for an employer whose:

19 (i) nonresident employees are hired in Montana;

20 (ii) nonresident employees' wages are paid in Montana;

21 (iii) nonresident employees are supervised in Montana; and

22 (iv) business records are maintained in Montana.

23 ~~(8)~~(9) An insurer may require coverage for all nonresident employees of a Montana employer who
24 do not meet the requirements of subsection ~~(7)(b)~~ (8)(b) or ~~(7)(d)~~ (8)(d) as a condition of approving the
25 election under subsection ~~(7)(d)~~ (8)(d)."

26

27 **Section 4.** Section 39-71-315, MCA, is amended to read:

28 **"39-71-315. Prohibited actions -- penalty.** (1) The following actions by a medical provider
29 constitute violations and are subject to the penalty in subsection (2):

30 (a) failing to document, under oath, the provision of the services or treatment for which

1 compensation is claimed under chapter 72 or this chapter; or

2 (b) referring a worker for treatment or diagnosis of an injury or illness that is compensable under
3 chapter 72 or this chapter to a facility owned wholly or in part by the provider, unless the provider informs
4 the worker of the ownership interest and provides the name and address of alternate facilities, if any exist.

5 (2) A person who violates this section may be assessed a penalty of not less than \$200 or more
6 than \$500 for each offense. The department shall assess and collect the penalty.

7 (3) Subsection (1)(b) does not apply to medical services provided to an injured worker by a treating
8 physician with an ownership interest in a managed care organization that has been certified by the
9 department."

10

11 **Section 5.** Section 39-71-318, MCA, is amended to read:

12 **"39-71-318. Hearings -- rules of evidence -- conduct.** (1) The statutory and ~~common-law~~
13 common-law rules of evidence do not apply to a hearing before the department under this chapter.

14 (2) A hearing under this chapter may be conducted by telephone or by videoconference."

15

16 **Section 6.** Section 39-71-401, MCA, is amended to read:

17 **"39-71-401. Employments covered and employments exempted.** (1) Except as provided in
18 subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to
19 all employees, as defined in 39-71-118. An employer who has any employee in service under any
20 appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the
21 provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers'
22 Compensation Act is subject to and bound by the compensation plan that has been elected by the
23 employer.

24 (2) Unless the employer elects coverage for these employments under this chapter and an insurer
25 allows ~~such~~ an election, the Workers' Compensation Act does not apply to any of the following
26 employments:

27 (a) household and domestic employment;

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

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

1 (d) employment of sole proprietors, ~~or~~ working members of a partnership, or working members of
2 a member-managed limited liability company, except as provided in subsection (3);

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

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

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

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

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

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

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

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

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

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

26 (m) a person who is employed by an enrolled tribal member ~~who operates~~ or an association,
27 business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members,
28 whose business is conducted solely within the exterior boundaries of an Indian reservation;

29 (n) an officer of a quasi-public or a private corporation or manager of a manager-managed limited
30 liability company who qualifies under one or more of the following provisions:

1 (i) the officer or manager is engaged in the ordinary duties of a worker for the corporation or the
 2 limited liability company and does not receive any pay from the corporation or the limited liability company
 3 for performance of the duties;

4 (ii) the officer or manager is engaged primarily in household employment for the corporation or the
 5 limited liability company;

6 (iii) the officer or manager owns 20% or more of the number of shares of stock in the corporation
 7 or owns 20% or more of the limited liability company; or

8 (iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law,
 9 daughter-in-law, nephew, niece, brother, or sister of a corporate officer who owns 20% or more of the
 10 number of shares of stock in the corporation or who owns 20% or more of the limited liability company.

11 (3) (a) A sole proprietor, or a working member of a partnership, or a working member of a
 12 member-managed limited liability company who represents to the public that the person is an independent
 13 contractor shall elect to be bound personally and individually by the provisions of compensation plan No.
 14 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

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

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

20 (d) When an election of an exemption is approved by the department, the election remains effective
 21 and the independent contractor retains the status as an independent contractor until the independent
 22 contractor notifies the department of any change in status and provides a description of present work
 23 status.

24 (E) A PERSON WHO MAKES A FALSE STATEMENT OR MISREPRESENTATION CONCERNING
 25 THAT PERSON'S STATUS AS AN EXEMPT INDEPENDENT CONTRACTOR IS SUBJECT TO A CIVIL
 26 PENALTY OF \$1,000. THE DEPARTMENT MAY IMPOSE THE PENALTY FOR EACH FALSE STATEMENT
 27 OR MISREPRESENTATION. THE PENALTY MUST BE PAID TO THE UNINSURED EMPLOYERS' FUND. THE
 28 LIEN PROVISIONS OF 39-71-506 APPLY TO THE PENALTY IMPOSED BY THIS SECTION.

29 ~~(e)~~(F) If the department denies the application for exemption, the applicant may contest the denial
 30 by petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109.

1 An applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance
2 with the procedure established in 39-51-2403 and 39-51-2404.

3 (4) (a) ~~A private corporation or a manager-managed limited liability company~~ shall provide coverage
4 for its ~~officers and other~~ employees under the provisions of compensation plan No. 1, 2, or 3. ~~However,~~
5 ~~pursuant to rules the department promulgates and subject in all cases to approval by the department, an~~
6 ~~officer of~~ A quasi-public corporation, a private corporation, or a manager-managed limited liability company
7 may elect ~~not to be bound as an employee under this chapter~~ coverage for its corporate officers or
8 managers, who are otherwise exempt under subsection (2), by giving a written notice, ~~on a form provided~~
9 ~~by the department, served~~ in the following manner:

10 (i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by
11 delivering the notice to the board of directors of the corporation or to the management organization of the
12 manager-managed limited liability company employer and to the department; or

13 (ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by
14 delivering the notice to the board of directors of the corporation or to the management organization of the
15 manager-managed limited liability company employer, to the department, and to the insurer.

16 (b) If the employer changes plans or insurers, the ~~officer's~~ employer's previous election is not
17 effective and the ~~officer~~ employer shall again serve notice ~~as provided to its insurer and to its board of~~
18 directors or the management organization of the manager-managed limited liability company if the ~~officer~~
19 employer elects ~~not~~ to be bound.

20 ~~(5)~~ (5) The appointment or election of an employee as an officer of a corporation, a partner in a
21 partnership, or a member in or a manager of a limited liability company for the purpose of ~~excluding~~
22 exempting the employee from coverage under this chapter does not entitle the officer, partner, member,
23 or manager ~~to elect not to be bound as an employee under this chapter. In any case, the officer shall sign~~
24 ~~the notice required by subsection (4)(a) under oath or affirmation and is subject to the penalties for false~~
25 ~~swearing under 45-7-202 if the officer falsifies the notice to exemption from coverage.~~

26 ~~(6)~~ (6) Each employer shall post a sign in the workplace at the locations where notices to employees
27 are normally posted, informing employees about the employer's current provision of compensation
28 insurance. A workplace is any location where an employee performs any work-related act in the course of
29 employment, regardless of whether the location is temporary or permanent, and includes the place of
30 business or property of a third person while the employer has access to or control over the place of

1 business or property for the purpose of carrying on the employer's usual trade, business, or occupation.
 2 The sign must be provided by the department, distributed through insurers or directly by the department,
 3 and posted by employers in accordance with rules adopted by the department. An employer who purposely
 4 or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."
 5

6 **Section 7.** Section 39-71-405, MCA, is amended to read:

7 **"39-71-405. Liability of employer who contracts work out -- EXCEPTION.** (1) AN EXCEPT AS
 8 PROVIDED IN SUBSECTION (4), AN employer who contracts with an independent contractor to have work
 9 performed of a kind ~~which~~ that is a regular or a recurrent part of the work of the trade, business,
 10 occupation, or profession of ~~such~~ the employer is liable for the payment of benefits under this chapter to
 11 the employees of the contractor or the subcontractor if the contractor or subcontractor has not properly
 12 complied with the coverage requirements of the ~~Worker's~~ Workers' Compensation Act. ~~Any~~ An insurer who
 13 becomes liable for payment of benefits may recover the amount of benefits paid and to be paid and
 14 necessary expenses from the contractor or subcontractor primarily liable therein.

15 (2) ~~Where~~ When an employer contracts to have any work to be done by a contractor, other than
 16 an independent contractor, and the work ~~se~~ contracted to be done is a part or process in the trade or
 17 business of the employer, then the employer is liable to pay all benefits under this chapter to the same
 18 extent as if the work were done without the intervention of the contractor, and the work ~~se~~ contracted to
 19 be done ~~shall~~ may not be construed to be casual employment. ~~Where~~ When an employer contracts work
 20 to be done as specified in this subsection, the contractor and the contractor's employees ~~shall~~ come under
 21 that plan of compensation adopted by the employer.

22 (3) ~~Where~~ When an employer contracts any work to be done, wholly or in part for the employer,
 23 by an independent contractor, ~~where~~ when the work ~~se~~ contracted to be done is casual employment as to
 24 ~~such~~ the employer, then the contractor ~~shall become~~ is the employer for the purposes of this chapter.

25 (4) (A) AN EMPLOYER IS NOT LIABLE FOR INJURIES INCURRED BY ANYONE WORKING FOR AN
 26 INDEPENDENT CONTRACTOR IF THE EMPLOYER, AT THE TIME THAT A CONTRACT IS EXECUTED WITH
 27 AN INDEPENDENT CONTRACTOR, VERIFIES IN A NOTARIZED WRITING SIGNED BY BOTH THE EMPLOYER
 28 AND THE CONTRACTOR THAT:

29 (i) THE CONTRACTOR HAS PROVIDED TO THE EMPLOYER A COPY OF THE CURRENT
 30 INDEPENDENT CONTRACTOR EXEMPTION ISSUED BY THE DEPARTMENT PURSUANT TO 39-71-401(3)

1 FOR THE TYPE OF WORK THAT THE CONTRACTOR WILL BE DOING FOR THE EMPLOYER; AND

2 (II) THE CONTRACTOR:

3 (A) HAS STATED, UNDER PENALTY OF PERJURY, THAT THE CONTRACTOR WILL PERSONALLY
 4 PERFORM ALL OF THE WORK REQUIRED OF THE CONTRACTOR BY THE CONTRACT WITHOUT HIRING
 5 ANY EMPLOYEE, ASSISTANT, OR SUBCONTRACTOR WHO IS NOT COVERED BY WORKERS'
 6 COMPENSATION INSURANCE; OR

7 (B) HAS PROVIDED TO THE EMPLOYER A CERTIFICATE OF CURRENT WORKERS'
 8 COMPENSATION INSURANCE COVERAGE FOR THE CONTRACTOR'S EMPLOYEES.

9 (B) A PERSON WHO MAKES A FALSE STATEMENT OR MISREPRESENTATION IN CONNECTION
 10 WITH THE WRITTEN STATEMENT PROVIDED FOR IN SUBSECTION (4)(A) IS SUBJECT TO A CIVIL
 11 PENALTY OF \$1,000. THE DEPARTMENT MAY IMPOSE THE PENALTY FOR EACH FALSE STATEMENT
 12 OR MISREPRESENTATION. THE PENALTY MUST BE PAID TO THE UNINSURED EMPLOYERS' FUND. THE
 13 LIEN PROVISIONS OF 39-71-506 APPLY TO THE PENALTY IMPOSED BY THIS SECTION.

14 (5) IF A DISPUTE ARISES CONCERNING WHETHER AN EMPLOYER IS ENTITLED TO THE DEFENSE
 15 PROVIDED IN SUBSECTION (4), THE EMPLOYER HAS THE BURDEN OF PROVING COMPLIANCE WITH THE
 16 PROVISIONS OF SUBSECTION (4)."

17
 18 **Section 8.** Section 39-71-432, MCA, is amended to read:

19 **"39-71-432. Definitions.** As used in 39-71-433, the following definitions apply:

20 (1) "Business entity" means a business enterprise owned by a single person, corporation,
 21 organization, business trust, trust, partnership, limited liability company, joint venture, association, or other
 22 business entity.

23 (2) "Group" means two or more business entities that join together with the approval of the
 24 department to purchase individual workers' compensation insurance policies covering each business entity
 25 that is part of a group."

26
 27 **Section 9.** Section 39-71-433, MCA, is amended to read:

28 **"39-71-433. Group purchase of workers' compensation insurance.** (1) On receiving approval of
 29 the department, two or more business entities may join together to form a group to purchase individual
 30 workers' compensation insurance policies covering each member of the group.

1 (2) To be eligible to join a new group that is forming, the department shall determine that a
 2 business entity is engaged in a business pursuit that is the same as or similar to the business pursuits of
 3 the other entities participating in the group.

4 (3) The department shall establish a certification program for groups organized under this section
 5 and shall issue to eligible business entities certificates of approval that authorize formation and maintenance
 6 of a group.

7 (4) The department by rule shall adopt forms, criteria, and procedures for the issuance of
 8 certificates of approval to groups under this section.

9 (5) A group certified under this section may add additional members without approval from the
 10 department if the additional members meet the specific criteria identified in the original application and any
 11 modifications to the criteria, as approved by the department.

12 ~~(5)~~(6) A group certified under this section may purchase individual workers' compensation
 13 insurance policies covering each member of the group from any insurer authorized to write workers'
 14 compensation insurance in this state, except that the state fund, as defined in 39-71-2312, has the right
 15 to refuse coverage of a group and its plan of operation but cannot refuse coverage to an individual
 16 employer. Under an individual policy, the group is entitled to a premium or volume discount that would be
 17 applicable to a policy of the combined premium amount of the individual policies.

18 ~~(6)~~(7) A group shall apportion any discount or policyholder dividend received on workers'
 19 compensation insurance coverage among the members of the group according to a formula adopted in the
 20 plan of operation for the group.

21 ~~(7)~~(8) A group shall adopt a plan of operation that must include the composition and selection of
 22 a governing board, the methods for administering the group, the eligibility requirements to join the group,
 23 and guidelines for the workers' compensation insurance coverage obtained by the group, including the
 24 payment of premiums, the distribution of discounts, and the method for providing risk management. A
 25 group shall file a copy of its plan of operation with the department."
 26

27 **Section 10.** Section 39-71-503, MCA, is amended to read:

28 **"39-71-503. Administration of fund -- appropriation.** (1) The department shall administer the fund
 29 and shall pay all proper benefits to injured employees of uninsured employers.

30 (2) Surpluses and reserves may not be kept for the fund. The department shall make such

1 payments ~~as that~~ it considers appropriate as funds become available from time to time. The payment of
 2 weekly disability benefits takes preference over the payment of medical benefits. ~~No lump-sum~~ Lump-sum
 3 payments of future projected benefits, including impairment awards, may not be made from the fund. The
 4 board of investments shall invest the money of the fund, and the investment income must be deposited in
 5 the fund. The cost of administration of the fund must be paid out of the money in the fund.

6 (3) The amounts necessary for the payment of benefits from this fund are statutorily appropriated,
 7 as provided in 17-7-502, from this fund."

8

9 **Section 11.** Section 39-71-504, MCA, is amended to read:

10 **"39-71-504. Funding of fund -- option for agreement between department and injured employee.**

11 The fund is funded in the following manner:

12 (1) The department may require that the uninsured employer pay to the fund a penalty of either
 13 up to double the premium amount the employer would have paid on the payroll of the employer's workers
 14 in this state if the employer had been enrolled with compensation plan No. 3 or \$200, whichever is greater.
 15 In determining the premium amount for the calculation of the penalty under this subsection, the department
 16 shall make an assessment on how much premium would have been paid on the employer's past 3-year
 17 payroll for periods within the 3 years when the employer was uninsured. ~~An assessment for payroll paid~~
 18 ~~by the uninsured employer for any time prior to July 1, 1977, may not be made.~~

19 (2) ~~(a)~~ The fund shall receive from an uninsured employer an amount equal to all benefits paid or
 20 to be paid from the fund to an injured employee of the uninsured employer. ~~However, the uninsured~~
 21 ~~employer's liability under this subsection (2)(a) may not exceed \$50,000.~~

22 ~~(b) The dollar limitation does not apply to an uninsured employer's liability to an injured employee~~
 23 ~~or the employee's beneficiaries under 39-71-500 or 39-71-515.~~

24 (3) The department may determine that the \$1,000 assessments that are charged against an
 25 insurer in each case of an industrial death under 39-71-902(1) ~~shall~~ must be paid to the uninsured
 26 employers' fund rather than the subsequent injury fund.

27 (4) The department may enter into an agreement with the injured employee or the employee's
 28 beneficiaries to assign to the employee or the beneficiaries all or part of the funds received by the
 29 department from the uninsured employer pursuant to subsection ~~(2)(a)~~ (2)."

30

1 **Section 12.** Section 39-71-507, MCA, is amended to read:

2 **"39-71-507. Department to order uninsured employer to cease operations -- noncompliance with**
3 **order a misdemeanor -- coordination of remedies.** (1) When the department discovers an uninsured
4 employer, it shall order ~~him~~ the employer to cease operations until ~~he~~ the employer has elected to be bound
5 by a compensation plan.

6 (2) When the department discovers a person, business, or other entity functioning as a prime
7 contractor that has subcontracted for the services of an uninsured employer, it may order the person,
8 business, or other entity functioning as a prime contractor to ~~cease~~ CAUSE all operations PERFORMED BY
9 THE UNINSURED EMPLOYER TO CEASE AT WORKSITES CONTROLLED BY THE PRIME CONTRACTOR until
10 the uninsured employer has elected to be bound by a compensation plan. IF AFTER 3 BUSINESS DAYS
11 FOLLOWING THE ORDER BY THE DEPARTMENT THE PERSON, BUSINESS, OR OTHER ENTITY
12 FUNCTIONING AS A PRIME CONTRACTOR HAS NOT COMPLIED WITH THE ORDER, THE DEPARTMENT
13 MAY ORDER THE PRIME CONTRACTOR TO CEASE ALL OPERATIONS AT THE AFFECTED WORKSITES.

14 ~~(2)~~(3) An employer who does not comply with the department's order to cease operations is guilty
15 of a misdemeanor. Each day of violation is a separate offense. The county attorney may prosecute a
16 criminal action under this subsection in the county in which the violation occurs. Prosecution under this
17 subsection does not bar the department from enforcing its order by a civil action.

18 (4) A person, business, or other entity functioning as a prime contractor that does not comply with
19 the department's order to cease all operations is guilty of a misdemeanor. Each day of violation is a
20 separate offense. The county attorney may prosecute a criminal action under this subsection in the county
21 in which the violation occurs. Prosecution under this subsection does not bar the department from
22 enforcing its order by a civil action. In addition, the department may assess a penalty against the person,
23 business, or other entity functioning as a prime contractor of not more than \$1,000 per day for each day
24 of violation.

25 ~~(3)~~(5) The department may institute and maintain in the name of the state, through the attorney
26 general or the county attorney of the county in which the violation occurs, an action for an injunction order
27 or other civil remedy in district court to enforce its order to cease operations.

28 ~~(4)~~(6) The remedies provided in 39-71-506 and subsections ~~(2)~~ and ~~(3)~~ (3) through (5) of this
29 section are not mutually exclusive and may be pursued concurrently."
30

1 **Section 13.** Section 39-71-516, MCA, is amended to read:

2 **"39-71-516. District court venue and jurisdiction for independent cause of action.** An injured
3 employee or an employee's beneficiaries pursuing an independent cause of action pursuant to 39-71-515
4 ~~must~~ shall bring ~~such~~ the action in the district court in the district where the claimant resides or where the
5 alleged violation occurred. The court may grant ~~such~~ interim relief ~~as~~ that it considers appropriate, including
6 but not limited to injunctive relief, attachment, or receivership. The court may request the workers'
7 compensation judge to determine the amount of recoverable damages due to the employee."

8
9 **Section 14.** Section 39-71-710, MCA, is amended to read:

10 **"39-71-710. Termination of benefits upon retirement.** (1) If a claimant is receiving disability or
11 rehabilitation compensation benefits and the claimant receives social security retirement benefits or is
12 eligible to receive full social security retirement benefits, the claimant is considered to be retired. When the
13 claimant is considered retired, the liability of the insurer is ended for payment of ~~wage supplement,~~
14 permanent total disability, and rehabilitation compensation benefits. However, the insurer remains liable for
15 temporary total disability benefits, any impairment award, and medical benefits.

16 (2) If a claimant who is eligible to receive social security retirement benefits and is gainfully
17 employed suffers a work-related injury, the insurer retains liability for temporary total disability benefits,
18 any impairment award, and medical benefits."

19
20 **Section 15.** Section 39-71-721, MCA, is amended to read:

21 **"39-71-721. Compensation for injury causing death -- limitation.** (1) (a) If an injured employee dies
22 and the injury was the proximate cause of ~~such~~ death, then the beneficiary of the deceased is entitled to
23 the same compensation as though the death occurred immediately following the injury. A beneficiary's
24 eligibility for benefits commences after the date of death, and the benefit level is established as set forth
25 in subsection (2).

26 (b) The insurer is entitled to recover any overpayments or compensation paid in a lump sum to a
27 worker prior to death but not yet recouped. The insurer shall recover ~~such~~ the payments from the
28 beneficiary's biweekly payments as provided in 39-71-741(5).

29 (2) To beneficiaries as defined in 39-71-116 ~~(3)(e)~~ (4)(a) through ~~(3)(e)~~ (4)(d), weekly compensation
30 benefits for an injury causing death are 66 2/3% of the decedent's wages. The maximum weekly

1 compensation benefit may not exceed the state's average weekly wage at the time of injury. The minimum
 2 weekly compensation benefit is 50% of the state's average weekly wage, but in no event may it exceed
 3 the decedent's actual wages at the time of his death.

4 (3) To beneficiaries as defined in 39-71-116~~(3)(e)~~(4)(e) and ~~(3)(f)~~ (4)(f), weekly benefits must be
 5 paid to the extent of the dependency at the time of the injury, subject to a maximum of 66 2/3% of the
 6 decedent's wages. The maximum weekly compensation may not exceed the state's average weekly wage
 7 at the time of injury.

8 (4) If the decedent leaves no beneficiary as defined in ~~39-71-116~~, a lump-sum payment of \$3,000
 9 must be paid to the decedent's surviving parent or parents.

10 (5) If any beneficiary of a deceased employee dies, the right of ~~such~~ the beneficiary to
 11 compensation under this chapter ceases. Death benefits must be paid to a surviving spouse for 500 weeks
 12 subsequent to the date of the deceased employee's death or until the spouse's remarriage, whichever
 13 occurs first. After benefit payments cease to a surviving spouse, death benefits must be paid to
 14 beneficiaries, if any, as defined in 39-71-116~~(3)(b)~~ (4)(b) through ~~(3)(d)~~ (4)(d).

15 (6) In all cases, benefits must be paid to beneficiaries, ~~as defined in 39-71-116~~.

16 (7) Benefits paid under this section may not be adjusted for cost of living as provided in 39-71-702.

17 ~~(8) Notwithstanding subsections (2) and (3), beginning July 1, 1987, through June 30, 1991, the~~
 18 ~~maximum weekly compensation benefits for injury causing death may not exceed the state's average~~
 19 ~~weekly wage of \$299 established July 1, 1986. Beginning July 1, 1987, through June 30, 1991, the~~
 20 ~~minimum weekly compensation for injury causing death shall be \$149.50, which is 50% of the state's~~
 21 ~~average weekly wage established July 1, 1986, but in no event may it exceed the decedent's actual wages~~
 22 ~~at the time of death."~~

23
 24 **Section 16.** Section 39-71-723, MCA, is amended to read:

25 **"39-71-723. How compensation to be divided among beneficiaries.** Compensation due to
 26 beneficiaries ~~shall~~ must be paid to the surviving spouse, if any, or if none, then divided equally among or
 27 for the benefit of the children. In cases ~~where~~ in which beneficiaries are a surviving spouse and stepchildren
 28 of ~~such~~ the spouse, the compensation ~~shall~~ must be divided equally among all beneficiaries. Compensation
 29 due to beneficiaries as defined in 39-71-116~~(3)(e)~~(4)(e) and ~~(3)(f)~~ (4)(f), ~~where~~ when there is more than
 30 one, ~~shall~~ must be divided equitably among them, and the question of dependency and amount thereof shall

1 be is a question of fact for determination by the department."

2

3 **Section 17.** Section 39-71-737, MCA, is amended to read:

4 "**39-71-737. Compensation to run consecutively -- exceptions.** Compensation ~~shall~~ must run
5 consecutively and not concurrently, and payment ~~shall~~ may not be made for two classes of disability over
6 the same period, except that impairment awards and auxiliary rehabilitation benefits may be paid
7 concurrently with other classes of benefits, ~~and wage supplement and partial rehabilitation benefits may~~
8 ~~be paid concurrently.~~"

9

10 **Section 18.** Section 39-71-902, MCA, is amended to read:

11 "**39-71-902. Fund to receive payment from insurer for each death under chapter -- assessment of**
12 **insurers.** (1) In ~~every~~ each case of the death of an employee under this chapter, the insurer shall pay to the
13 fund the sum of \$1,000. In addition, the department may assess ~~every~~ each insurer an amount not to
14 exceed 5% of the compensation paid in Montana in the preceding fiscal year. The assessment must be
15 transmitted annually to the subsequent injury fund by the employer or insurer. The board of investments
16 shall invest the money of the fund, and the investment income must be deposited in the fund. The cost of
17 administration of the fund must be paid out of money in the fund.

18 (2) When, in the judgment of the department, the amount of money in the subsequent injury fund
19 is such that there is a surplus above and beyond projected liabilities and administrative costs, the
20 department may at its discretion suspend or reduce further collection of assessments for a period of time
21 determined by the department."

22

23 **Section 19.** Section 39-71-1108, MCA, is amended to read:

24 "**39-71-1108. Physician self-referral prohibition.** (1) Unless authorized by the insurer, a treating
25 physician may not refer a claimant to a health care facility at which the physician does not directly provide
26 care or services when the physician has an investment interest in the facility, unless there is a
27 demonstrated need in the community for the facility and alternative financing is not available. The insurer
28 or the claimant is not liable for charges incurred in violation of this section.

29 (2) Subsection (1) does not apply to care or services provided directly to an injured worker by a
30 treating physician with an ownership interest in a managed care organization that has been certified by the

1 department."

2

3 **Section 20.** Section 39-71-2103, MCA, is amended to read:

4 **"39-71-2103. Employer permitted to carry on business and settle directly with employee --**
 5 **individual liability.** (1) If ~~such~~ the employer making ~~such~~ the election ~~shall be~~ is found by the department
 6 and the Montana self-insurers guaranty fund to have the requisite financial ability to pay the compensation
 7 and benefits in this chapter ~~provided for~~, then the department, with the concurrence of the guaranty fund,
 8 shall grant to the employer permission to carry on ~~his~~ the business for the ~~fiscal~~ year within which ~~such~~ the
 9 election is made and ~~such~~ proof filed, or the remaining portion of ~~such~~ the ~~fiscal~~ year, and to make ~~such~~ such
 10 payments directly to ~~his~~ the employees as they may become entitled to receive the ~~same~~ payments.

11 (2) Each individual employer in an association, corporation, limited liability company, or organization
 12 of employers given permission by the department to operate as self-insured under plan No. 1 of this chapter
 13 is jointly and severally liable for all obligations incurred by the association, corporation, limited liability
 14 company, or organization under this chapter. An association, corporation, limited liability company, or
 15 organization of employers given permission to operate as self-insured ~~must~~ shall maintain excess liability
 16 coverage in amounts and under ~~such~~ such conditions as provided by rules of the department."

17

18 **Section 21.** Section 39-71-2411, MCA, is amended to read:

19 **"39-71-2411. Mediation procedure.** (1) Except as otherwise provided, a claimant or an insurer
 20 having a dispute relating to benefits under chapter 71 or 72 of this title may petition the department for
 21 mediation of the dispute.

22 (2) A party may take part in mediation proceedings with or without representation.

23 (3) The mediator shall review the department file for the case and may receive any additional
 24 documentation or argument either party submits.

25 (4) The mediator shall request that each party offer argument summarizing the party's position.
 26 A party's argument must fully present the party's case. The argument is not limited by the rules of
 27 evidence.

28 (5) After the parties have presented all their information and argument to the mediator, ~~he~~ the
 29 mediator shall recommend a solution to the parties within a reasonable time to be established by rule.

30 (6) A party shall notify the mediator within ~~45~~ 20 25 days of the mailing of ~~his~~ the mediator's

1 report whether the party accepts the mediator's recommendation. If either party does not accept the
2 mediator's recommendation, the party may petition the workers' compensation court for resolution of the
3 dispute.

4 (7) (a) If a mediator determines that either party failed to cooperate in the mediation process, the
5 mediator shall prepare a written report setting forth the determination and the grounds for the
6 determination. The report must be mailed to the parties and to the workers' compensation court. Unless
7 a party disputes the determination as set forth in subsection (7)(c), the parties shall repeat the mediation
8 process, but only one time.

9 (b) A mediator may determine that a party has failed to cooperate in the mediation process only
10 if the party failed to:

11 (i) supply information or offer a summary of the party's position as reasonably requested by the
12 mediator;

13 (ii) attend scheduled mediation conferences unless excused by the mediator; or

14 (iii) listen to and review the information and position offered by the opposing party.

15 (c) If a party disputes a mediator's determination that the party failed to cooperate in the mediation
16 process, the party may file a petition with the workers' compensation court. Upon receipt of a petition, the
17 court shall summon the parties and the mediator to determine by oral discussion whether the mediator's
18 determination of noncooperation is supportable. If the court finds that the mediator's determination is
19 supportable, the court may order the parties to attempt a second time to mediate their dispute."
20

21 **Section 22.** Section 39-71-2905, MCA, is amended to read:

22 **"39-71-2905. Petition to workers' compensation judge.** A claimant or an insurer who has a dispute
23 concerning any benefits under chapter 71 of this title may petition the workers' compensation judge for
24 a determination of the dispute after satisfying dispute resolution requirements otherwise provided in this
25 chapter. In addition, the district court that has jurisdiction over a pending action under 39-71-515 may
26 request the workers' compensation judge to determine the amount of recoverable damages due to the
27 employee. The judge, after a hearing, shall make a determination of the dispute in accordance with the law
28 as set forth in chapter 71 of this title. If the dispute relates to benefits due to a claimant under chapter 71,
29 the judge shall fix and determine any benefits to be paid and specify the manner of payment. After parties
30 have satisfied dispute resolution requirements provided elsewhere in this chapter, the workers'

1 compensation judge has exclusive jurisdiction to make determinations concerning disputes under chapter
2 71, except as provided in 39-71-317 and 39-71-516. The penalties and assessments allowed against an
3 insurer under chapter 71 are the exclusive penalties and assessments that can be assessed by the workers'
4 compensation judge against an insurer for disputes arising under chapter 71."

5
6 **Section 23.** Section 39-72-601, MCA, is amended to read:

7 **"39-72-601. Medical panel.** (1) The department shall develop a list of physicians to serve on the
8 occupational disease medical panel. The list may include physicians nominated by the board of medical
9 examiners. A physician on the panel must be certified by ~~his~~ the physician's specialty board or be eligible
10 for certification in the specialty area appropriate to the claimant's condition in relation to this chapter.

11 (2) The department shall select a panel physician to examine a claimant, as required. The
12 department shall appoint, as required, ~~one member of the panel to be the chairman~~ a physician as the
13 presiding officer."

14
15 **Section 24.** Section 39-72-602, MCA, is amended to read:

16 **"39-72-602. Insurer may accept liability -- procedure for medical examination when insurer has not**
17 **accepted liability.** (1) An insurer may accept liability for a claim under this chapter based on information
18 submitted to it by a claimant.

19 (2) In order to determine the compensability of claims under this chapter when an insurer has not
20 accepted liability, the following procedure must be followed:

21 (a) The department shall direct the claimant to a member of the medical panel for an examination.
22 The panel member shall conduct an examination to determine whether the claimant is totally disabled and
23 is suffering from an occupational disease. The panel member shall submit a report of ~~his~~ the member's
24 findings to the department.

25 (b) Either the claimant or the insurer may, within 20 days after the receipt of the report by the first
26 panel member, request that the claimant be examined by a second panel member. If a second examination
27 is requested, the department shall direct the claimant to a second panel member who shall conduct an
28 examination to determine whether ~~he believes~~ the claimant is totally disabled and is suffering from an
29 occupational disease. The panel member shall submit a report of ~~his~~ the member's findings to the
30 department. ~~When a second examination has been requested, the reports of the examinations shall be~~

1 ~~submitted to three members of the medical panel for review. A~~ The medical panel member ~~or the panel~~
 2 may, in order to ~~assist the panel member or the panel in reaching~~ reach a conclusion, consult with the
 3 claimant's attending physician. The reports from the two examining physicians must be sent by the
 4 department to the presiding officer of the panel. ~~The three panel members~~ presiding officer shall issue a
 5 report concerning the claimant's physical condition and whether the claimant is suffering from an
 6 occupational disease.

7 (c) (i) If a second examination is not requested, the department shall issue its order determining
 8 whether the claimant is entitled to occupational disease benefits based on the report of the first examining
 9 physician.

10 (ii) If a second examination is requested, the department shall issue its order based on the report
 11 of the ~~three members of the medical panel~~ presiding officer.

12 ~~(d) For the purpose of reviewing the reports of the examinations and issuing the report under~~
 13 ~~subsection (2)(b), the three members of the medical panel shall be the two members of the panel who~~
 14 ~~examined the claimant and the panel chairman.~~ If the panel ~~chairman~~ presiding officer has examined the
 15 claimant, the ~~panel chairman~~ department shall appoint another ~~member of the medical panel to be the third~~
 16 ~~member~~ presiding officer."

17

18 **Section 25.** Section 39-72-612, MCA, is amended to read:

19 **"39-72-612. Hearing and appeal to workers' compensation judge.** (1) Within 20 days after the
 20 department has issued its order of determination as to whether the claimant is entitled to benefits under
 21 this chapter, a party may request a hearing. In order to perfect an appeal to the workers' compensation
 22 judge, the appealing party shall request a hearing before the department. The department shall grant a
 23 hearing, ~~and the~~ which may be conducted by telephone or by videoconference. The department's final
 24 determination may not be issued until after the hearing.

25 (2) Appeals from a final determination of the department must be made to the workers'
 26 compensation judge within 30 days after the department has issued its final determination. The judge, after
 27 a hearing held pursuant to 39-71-2903 and 39-71-2904, shall make a final determination concerning the
 28 claimant's claim. The judge may overrule the department only on the basis that the department's
 29 determination is:

30 (a) in violation of constitutional or statutory provisions;

1 (b) in excess of the statutory authority of the agency;

2 (c) made upon unlawful procedure;

3 (d) affected by other error of law;

4 (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole
5 record; or

6 (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise
7 of discretion."

8
9 **NEW SECTION. Section 26. Saving clause.** [This act] does not affect rights and duties that
10 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
11 act].

12
13 **NEW SECTION. Section 27. Severability.** If a part of [this act] is invalid, all valid parts that are
14 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
15 applications, the part remains in effect in all valid applications that are severable from the invalid
16 applications.

17
18 **NEW SECTION. Section 28. Applicability.** (1) [Section 10] applies retroactively, within the
19 meaning of 1-2-109, to all occurrences beginning after October 1, 1977.

20 (2) [Section 18] applies retroactively, within the meaning of 1-2-109, to all occurrences beginning
21 after October 1, 1973.

22 (3) [Sections 5 and 25] apply to hearings or appeals requested on or after [the effective date of
23 this act].

24
25 **NEW SECTION. Section 29. Effective dates.** (1) [Sections 5, 13, 22, and 25 through 28 and this
26 section] are effective on passage and approval.

27 (2) [Sections 1 through 4, 6 through 12, 14 through 21, 23, and 24] are effective October 1,
28 1995.

29 -END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
March 10, 1995

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration HB 200 (third reading copy -- blue), respectfully report that HB 200 be amended as follows and as so amended be concurred in.

Signed: 
Senator Thomas F. Keating, Chair

That such amendments read:

1. Title, lines 11 and 12.

Following: "COMPANIES;" on line 11

Strike: remainder of line 11 through "OUT;" on line 12

2. Title, line 25.

Strike: "39-71-405,"

3. Page 11, line 12.

Following: "conduct"

Insert: "-- **exception**"

4. Page 11, line 14.

Following: "(2)"

Strike: "A"

Insert: "Except for a hearing before the workers' compensation court, a"

5. Page 13, lines 15 through 17.

Following: "department" on line 15

Insert: "and must be accompanied by a \$25 application fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset the costs of administering the program"

Following: "."


Strike: remainder of line 15 through "contractor." on line 17

6. Page 13, lines 20 through 23.

Following: "(d)" on line 20

Strike: remainder of line 20 through "status." on line 23

Insert: "The exemption, if approved, remains in effect for 1 year following the date of the department's approval. To maintain the independent contractor status, an independent contractor shall annually submit a renewal application. A renewal application must be submitted for all independent contractor exemptions approved as of October 1, 1995, or thereafter. The renewal application and the \$25 renewal


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Amd. Coord.
Sec. of Senate


Senator Carrying Bill

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application fee must be received by the department at least 30 days prior to the anniversary date of the previously approved exemption."

7. Page 15, line 6 through page 16, line 16.
Strike: section 7 in its entirety
Renumber: subsequent sections

8. Page 27, line 18.
Strike: "10"
Insert: "9"

9. Page 27, line 20.
Strike: "18"
Insert: "17"

10. Page 27, line 22.
Strike: "25"
Insert: "24"

11. Page 27, line 25.
Strike: "13, 22, and 25 through 28"
Insert: "12, 21, and 24 through 27"

12. Page 27, line 27.
Strike: "12, 14 through 21, 23, and 24"
Insert: "11, 13 through 20, 22, and 23"

-END-

1 HOUSE BILL NO. 200

2 INTRODUCED BY BERGMAN, HIBBARD, BENEDICT, BARTLETT, COCCHIARELLA

3 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE WORKERS' COMPENSATION ACT
6 AND THE OCCUPATIONAL DISEASE ACT OF MONTANA; ADDING DEFINITIONS; EXEMPTING
7 CORPORATE OFFICERS AND MANAGERS OF LIMITED LIABILITY COMPANIES FROM COVERAGE UNLESS
8 THE EMPLOYER ELECTS TO COVER THE OFFICER OR MANAGER AND THE INSURER ALLOWS THE
9 ELECTION; CLARIFYING PROHIBITIONS REGARDING MEDICAL PROVIDER SELF-REFERRAL; AUTHORIZING
10 THE DEPARTMENT OF LABOR AND INDUSTRY TO CONDUCT HEARINGS AND APPEALS BY TELEPHONE
11 OR VIDEOCONFERENCE; CLARIFYING THE STATUS OF LIMITED LIABILITY COMPANIES; ~~CLARIFYING THE~~
12 ~~LIABILITY OF AN EMPLOYER WHO CONTRACTS WORK OUT~~; CLARIFYING THE DEPARTMENT'S
13 RESPONSIBILITY IN APPROVING THE GROUP PURCHASE OF WORKERS' COMPENSATION INSURANCE;
14 REQUIRING THE INVESTMENT INCOME OF THE UNINSURED EMPLOYERS' FUND TO BE DEPOSITED IN
15 THE FUND; REMOVING THE LIMIT ON AN UNINSURED EMPLOYER'S LIABILITY FOR CLAIMS; INCREASING
16 THE AUTHORITY TO FILE CEASE AND DESIST ORDERS TO INCLUDE PERSONS, BUSINESSES, AND
17 ENTITIES THAT HAVE CONTRACTED WITH UNINSURED EMPLOYERS AND PROVIDING FOR PENALTIES;
18 PROVIDING A DISTRICT COURT WITH THE OPTION TO REQUEST THE WORKERS' COMPENSATION
19 JUDGE TO DETERMINE THE AMOUNT OF RECOVERABLE DAMAGES DUE TO AN INJURED UNINSURED
20 WORKER; REMOVING THE REFERENCES TO WAGE SUPPLEMENT; REQUIRING THE BOARD OF
21 INVESTMENTS TO INVEST CERTAIN MONEY IN THE SUBSEQUENT INJURY FUND AND REQUIRING THE
22 INVESTMENT INCOME TO BE DEPOSITED IN THE FUND; REDUCING THE TIME PERIOD ALLOWED FOR
23 A PARTY TO RESPOND TO A WORKERS' COMPENSATION MEDIATOR'S RECOMMENDATION; REVISING
24 THE MEDICAL PANEL PROCESS; AMENDING SECTIONS 39-71-116, 39-71-117, 39-71-118, 39-71-315,
25 39-71-318, 39-71-401, ~~39-71-405~~, 39-71-432, 39-71-433, 39-71-503, 39-71-504, 39-71-507,
26 39-71-516, 39-71-710, 39-71-721, 39-71-723, 39-71-737, 39-71-902, 39-71-1108, 39-71-2103,
27 39-71-2411, 39-71-2905, 39-72-601, 39-72-602, AND 39-72-612, MCA; AND PROVIDING EFFECTIVE
28 DATES AND APPLICABILITY DATES."

29
30 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

2 "**39-71-116. Definitions.** Unless the context otherwise requires, words and phrases employed in
3 this chapter have the following meanings:

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

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

7 (b) payment of benefits;

8 (c) setting of reserves;

9 (d) furnishing of services and facilities; and

10 (e) ~~utilization~~ use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

11 (2) "Aid or sustenance" means any public or private subsidy made to provide a means of support,
12 maintenance, or subsistence for the recipient.

13 ~~(2)(3)~~ (3) "Average weekly wage" means the mean weekly earnings of all employees under covered
14 employment, as defined and established annually by the ~~Montana~~ department of labor and industry. It is
15 established at the nearest whole dollar number and must be adopted by the department prior to July 1 of
16 each year.

17 ~~(3)(4)~~ (4) "Beneficiary" means:

18 (a) a surviving spouse living with or legally entitled to be supported by the deceased at the time
19 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 a full-time student in an accredited school
22 or is enrolled in an accredited apprenticeship program;

23 (d) an invalid child over the age of 18 years who is dependent upon the decedent for support at
24 the time of injury;

25 (e) a parent who is dependent upon the decedent for support at the time of the injury if a
26 beneficiary, as defined in subsections ~~(3)(a)~~ (4)(a) through ~~(3)(d)~~ (4)(d), does not exist; and

27 (f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the
28 time of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections
29 ~~(3)(a)~~ (4)(a) through ~~(3)(e)~~ (4)(e), does not exist.

30 ~~(4)(5)~~ (5) "Casual employment" means employment not in the usual course of trade, business,

1 profession, or occupation of the employer.

2 ~~(5)~~(6) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior
3 to the injury.

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

10 ~~(7)~~(8) "Days" means calendar days, unless otherwise specified.

11 ~~(8)~~(9) "Department" means the department of labor and industry.

12 ~~(9)~~(10) "Disability" means a condition in which a worker's ability to engage in gainful employment
13 is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined
14 with factors, such as the worker's age, education, work history, and other factors that affect the worker's
15 ability to engage in gainful employment. Disability does not mean a purely medical condition.

16 ~~(10)~~(11) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

17 (12) "Household or domestic employment" means employment of persons other than members of
18 the household for the purpose of tending to the aid and comfort of the employer or members of the
19 employer's family, including but not limited to housecleaning and yard work, but does not include
20 employment beyond the scope of normal household or domestic duties, such as home health care or
21 domiciliary care.

22 ~~(11)~~(13) "Insurer" means an employer bound by compensation plan No. 1, an insurance company
23 transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

24 ~~(12)~~(14) "Invalid" means one who is physically or mentally incapacitated.

25 (15) "Limited liability company" is as defined in 35-8-102.

26 ~~(13)~~(16) "Maintenance care" means treatment designed to provide the optimum state of health
27 while minimizing recurrence of the clinical status.

28 ~~(14)~~(17) "Medical stability", "maximum healing", or "maximum medical healing" means a point in
29 the healing process when further material improvement would not be reasonably expected from primary
30 medical treatment.

1 ~~(15)~~(18) "Order" means any decision, rule, direction, requirement, or standard of the department
2 or any other determination arrived at or decision made by the department.

3 ~~(16)~~(19) "Palliative care" means treatment designed to reduce or ease symptoms without curing
4 the underlying cause of the symptoms.

5 ~~(17)~~(20) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average
6 annual payroll of the employer for the preceding calendar year or, if the employer has not operated a
7 sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the
8 current year. However, an estimate may be made by the department for any employer starting in business
9 if average payrolls are not available. This estimate must be adjusted by additional payment by the employer
10 or refund by the department, as the case may actually be, on December 31 of the current year. An
11 employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by
12 an employer.

13 ~~(18)~~(21) "Permanent partial disability" means a condition, after a worker has reached maximum
14 medical healing, in which a worker:

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

16 and

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

19 ~~(19)~~(22) "Permanent total disability" means a condition resulting from injury as defined in this
20 chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable
21 prospect of physically performing regular employment. Regular employment means work on a recurring
22 basis performed for remuneration in a trade, business, profession, or other occupation in this state. Lack
23 of immediate job openings is not a factor to be considered in determining if a worker is permanently totally
24 disabled.

25 ~~(20)~~(23) The "plant of the employer" includes the place of business of a third person while the
26 employer has access to or control over the place of business for the purpose of carrying on the employer's
27 usual trade, business, or occupation.

28 ~~(21)~~(24) "Primary medical services" means treatment prescribed by a treating physician, for
29 conditions resulting from the injury, necessary for achieving medical stability.

30 ~~(22)~~(25) "Public corporation" means the state or any county, municipal corporation, school district,

1 city, city under a commission form of government or special charter, town, or village.

2 ~~(23)~~(26) "Reasonably safe place to work" means that the place of employment has been made as
3 free from danger to the life or safety of the employee as the nature of the employment will reasonably
4 permit.

5 ~~(24)~~(27) "Reasonably safe tools and appliances" are tools and appliances ~~as that~~ are adapted to and
6 that are reasonably safe for use for the particular purpose for which they are furnished.

7 ~~(25)~~(28) "Secondary medical services" means those medical services or appliances that are
8 considered not medically necessary for medical stability. The services and appliances include but are not
9 limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs
10 designed to address disability and not impairment, or equipment offered by individuals, clinics, groups,
11 hospitals, or rehabilitation facilities.

12 (29) "Sole proprietor" means the person who has the exclusive legal right or title to or ownership
13 of a business enterprise.

14 ~~(26)~~(30) "Temporary partial disability" means a condition resulting from an injury, as defined in
15 39-71-119, in which a worker, prior to maximum healing:

16 (a) is temporarily unable to return to the position held at the time of injury because of a medically
17 determined physical restriction;

18 (b) returns to work in a modified or alternative employment; and

19 (c) suffers a partial wage loss.

20 ~~(27)~~(31) "Temporary service contractor" means ~~any~~ a person, firm, association, or corporation
21 conducting business that employs individuals directly for the purpose of furnishing the services of those
22 individuals on a part-time or temporary basis to others.

23 ~~(28)~~(32) "Temporary total disability" means a condition resulting from an injury, as defined in this
24 chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical
25 healing.

26 ~~(29)~~(33) "Temporary worker" means a worker whose services are furnished to another on a
27 part-time or temporary basis to substitute for a permanent employee on leave or to meet an emergency or
28 short-term workload.

29 ~~(30)~~(34) "Treating physician" means a person who is primarily responsible for the treatment of a
30 worker's compensable injury and is:

1 (a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting
2 privileges to practice in one or more hospitals, if any, in the area where the physician is located;

3 (b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

4 (c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if
5 there is not a physician, as defined in subsection ~~(30)(a)~~ (34)(a), in the area where the physician
6 assistant-certified is located;

7 (d) an osteopath licensed by the state of Montana under Title 37, chapter 5; or

8 (e) a dentist licensed by the state of Montana under Title 37, chapter 4.

9 ~~(31)(35)~~ "Year", unless otherwise specified, means calendar year."

10
11 **Section 2.** Section 39-71-117, MCA, is amended to read:

12 **"39-71-117. Employer defined.** (1) "Employer" means:

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

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

23 (c) any nonprofit association, limited liability company, or corporation or other entity funded in
24 whole or in part by federal, state, or local government funds that places community service participants,
25 as defined in 39-71-118(1)(f), with nonprofit organizations or associations or federal, state, or local
26 government entities.

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

29 (3) An employer defined in subsection (1) who ~~utilizes~~ uses the services of a worker furnished by
30 another person, association, contractor, firm, limited liability company, or corporation, other than a

1 temporary service contractor, is presumed to be the employer for workers' compensation premium and loss
2 experience purposes for work performed by the worker. The presumption may be rebutted by substantial
3 credible evidence of the following:

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

8 (b) the person, association, contractor, firm, limited liability company, or corporation, other than
9 a temporary service contractor, furnishing the services of a worker to another has obtained workers'
10 compensation insurance for the worker in Montana both at the inception of employment and during all
11 phases of the work performed.

12 (4) Notwithstanding the provisions of subsection (3), an interstate or intrastate common or contract
13 motor carrier doing business in this state who ~~utilizes~~ uses drivers in this state is considered the employer,
14 is liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:

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

17 (b) the person, association, contractor, firm, limited liability company, or corporation furnishing
18 drivers in this state to a motor carrier has obtained workers' compensation insurance on the drivers in
19 Montana both at the inception of employment and during all phases of the work performed."
20

21 **Section 3.** Section 39-71-118, MCA, is amended to read:

22 **"39-71-118. Employee, worker, and volunteer firefighter defined.** (1) The ~~terms~~ term "employee"
23 or "worker" means:

24 (a) each person in this state, including a contractor other than an independent contractor, who is
25 in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire,
26 expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully
27 employed, and all of the elected and appointed paid public officers and officers and members of boards of
28 directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while
29 rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are
30 included as employees if they are not otherwise covered by workers' compensation and if an employer has

1 elected to be bound by the provisions of the compensation law for these casual employments, as provided
2 in 39-71-401(2). Household or domestic ~~service~~ employment is excluded.

3 (b) any juvenile performing work under authorization of a district court judge in a delinquency
4 prevention or rehabilitation program;

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

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

12 (e) an aircrew member or other person employed as a volunteer under 67-2-105;

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

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

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

24 (g) an inmate working in a federally certified prison industries program authorized under 53-1-301.

25 (2) The terms defined in subsection (1) do not include a person who is:

26 (a) participating in recreational activity and who at the time is relieved of and is not performing
27 prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket,
28 permit, device, or other emolument of employment; or

29 (b) performing voluntary service at a recreational facility and who receives no compensation for
30 those services other than meals, lodging, or the use of the recreational facilities.

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

3 (4) (a) If the employer is a partnership, ~~or sole proprietorship proprietor~~, or a member-managed
4 limited liability company, the employer may elect to include as an employee within the provisions of this
5 chapter any member of the partnership, ~~or the owner of the sole proprietorship~~, or any member of the
6 limited liability company devoting full time to the partnership, ~~or proprietorship~~, or limited liability company
7 business.

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

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

15 (d) All weekly compensation benefits must be based on the amount of elected wages, subject to
16 the minimum and maximum limitations of this subsection. For premium ratemaking and for the
17 determination of weekly wage for weekly compensation benefits, the electing employer may elect not less
18 than \$900 a month and not more than 1 ½ times the average weekly wage, as defined in this chapter.

19 (5) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited
20 liability company, the employer may elect to include as an employee within the provisions of this chapter
21 any corporate officer or manager exempted under 39-71-401(2).

22 (b) In the event of an election, the employer shall serve upon the employer's insurer written notice
23 naming the corporate officer or manager to be covered and stating the level of compensation coverage
24 desired by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A
25 corporate officer or manager is not considered an employee within this chapter until notice has been given.

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

28 (d) All weekly compensation benefits must be based on the amount of elected wages, subject to
29 the minimum and maximum limitations of this subsection. For premium ratemaking and for the
30 determination of the weekly wage for weekly compensation benefits, the electing employer may elect not

1 less than \$200 a week and not more than 1 ½ times the average weekly wage, as defined in this chapter.

2 ~~(5)(6)~~ The trustees of a rural fire district, a county governing body providing rural fire protection,
3 or the county commissioners or trustees for a fire service area may elect to include as an employee within
4 the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers'
5 compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

6 ~~(6)(7)~~ An employee or worker in this state whose services are furnished by a person, association,
7 contractor, firm, limited liability company, or corporation, other than a temporary service contractor, to an
8 employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer.
9 This presumption may be rebutted as provided in 39-71-117(3).

10 ~~(7)(8)~~ For purposes of this section, an "employee or worker in this state" means:

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

13 (b) a nonresident of Montana whose principal employment duties are conducted within this state
14 on a regular basis for an employer;

15 (c) a nonresident employee of an employer from another state engaged in the construction industry,
16 as defined in 39-71-116, within this state; or

17 (d) a nonresident of Montana who does not meet the requirements of subsection ~~(7)(b)~~ (8)(b) and
18 whose employer elects coverage with an insurer that allows an election for an employer whose:

19 (i) nonresident employees are hired in Montana;

20 (ii) nonresident employees' wages are paid in Montana;

21 (iii) nonresident employees are supervised in Montana; and

22 (iv) business records are maintained in Montana.

23 ~~(8)(9)~~ An insurer may require coverage for all nonresident employees of a Montana employer who
24 do not meet the requirements of subsection ~~(7)(b)~~ (8)(b) or ~~(7)(d)~~ (8)(d) as a condition of approving the
25 election under subsection ~~(7)(d)~~ (8)(d)."

26

27 **Section 4.** Section 39-71-315, MCA, is amended to read:

28 **"39-71-315. Prohibited actions -- penalty.** (1) The following actions by a medical provider
29 constitute violations and are subject to the penalty in subsection (2):

30 (a) failing to document, under oath, the provision of the services or treatment for which

1 compensation is claimed under chapter 72 or this chapter; or

2 (b) referring a worker for treatment or diagnosis of an injury or illness that is compensable under
3 chapter 72 or this chapter to a facility owned wholly or in part by the provider, unless the provider informs
4 the worker of the ownership interest and provides the name and address of alternate facilities, if any exist.

5 (2) A person who violates this section may be assessed a penalty of not less than \$200 or more
6 than \$500 for each offense. The department shall assess and collect the penalty.

7 (3) Subsection (1)(b) does not apply to medical services provided to an injured worker by a treating
8 physician with an ownership interest in a managed care organization that has been certified by the
9 department."

10
11 **Section 5.** Section 39-71-318, MCA, is amended to read:

12 "**39-71-318. Hearings -- rules of evidence -- conduct -- EXCEPTION.** (1) The statutory and ~~common~~
13 ~~law~~ common-law rules of evidence do not apply to a hearing before the department under this chapter.

14 (2) A EXCEPT FOR A HEARING BEFORE THE WORKERS' COMPENSATION COURT, A hearing
15 under this chapter may be conducted by telephone or by videoconference."

16
17 **Section 6.** Section 39-71-401, MCA, is amended to read:

18 "**39-71-401. Employments covered and employments exempted.** (1) Except as provided in
19 subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to
20 all employees, as defined in 39-71-118. An employer who has any employee in service under any
21 appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the
22 provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers'
23 Compensation Act is subject to and bound by the compensation plan that has been elected by the
24 employer.

25 (2) Unless the employer elects coverage for these employments under this chapter and an insurer
26 allows ~~such~~ an election, the Workers' Compensation Act does not apply to any of the following
27 employments:

28 (a) household and domestic employment;

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

30 (c) employment of a dependent member of an employer's family for whom an exemption may be

- 1 claimed by the employer under the federal Internal Revenue Code;
- 2 (d) employment of sole proprietors, ~~or~~ working members of a partnership, or working members of
3 a member-managed limited liability company, except as provided in subsection (3);
- 4 (e) employment of a broker or salesman performing under a license issued by the board of realty
5 regulation;
- 6 (f) employment of a direct seller engaged in the sale of consumer products, primarily in the
7 customer's home;
- 8 (g) employment for which a rule of liability for injury, occupational disease, or death is provided
9 under the laws of the United States;
- 10 (h) employment of ~~any~~ a person performing services in return for aid or sustenance only, except
11 employment of a volunteer under 67-2-105;
- 12 (i) employment with ~~any~~ a railroad engaged in interstate commerce, except that railroad
13 construction work is included in and subject to the provisions of this chapter;
- 14 (j) employment as an official, including a timer, referee, or judge, at a school amateur athletic
15 event, unless the person is otherwise employed by a school district;
- 16 (k) ~~any~~ employment of a person performing services as a newspaper carrier or free-lance
17 correspondent if the person performing the services or a parent or guardian of the person performing the
18 services in the case of a minor has acknowledged in writing that the person performing the services and
19 the services are not covered. As used in this subsection, "free-lance correspondent" is a person who
20 submits articles or photographs for publication and is paid by the article or by the photograph. As used in
21 this subsection, "newspaper carrier":
- 22 (i) is a person who provides a newspaper with the service of delivering newspapers singly or in
23 bundles; but
- 24 (ii) does not include an employee of the paper who, incidentally to the employee's main duties,
25 carries or delivers papers.
- 26 (l) cosmetologist's services and barber's services as defined in 39-51-204(1)(l);
- 27 (m) a person who is employed by an enrolled tribal member ~~who operates~~ or an association,
28 business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members,
29 whose business is conducted solely within the exterior boundaries of an Indian reservation;
- 30 (n) an officer of a quasi-public or a private corporation or manager of a manager-managed limited

1 liability company who qualifies under one or more of the following provisions:

2 (i) the officer or manager is engaged in the ordinary duties of a worker for the corporation or the
 3 limited liability company and does not receive any pay from the corporation or the limited liability company
 4 for performance of the duties;

5 (ii) the officer or manager is engaged primarily in household employment for the corporation or the
 6 limited liability company;

7 (iii) the officer or manager owns 20% or more of the number of shares of stock in the corporation
 8 or owns 20% or more of the limited liability company; or

9 (iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law,
 10 daughter-in-law, nephew, niece, brother, or sister of a corporate officer who owns 20% or more of the
 11 number of shares of stock in the corporation or who owns 20% or more of the limited liability company.

12 (3) (a) A sole proprietor, ~~or~~ a working member of a partnership, or a working member of a
 13 member-managed limited liability company who represents to the public that the person is an independent
 14 contractor shall elect to be bound personally and individually by the provisions of compensation plan No.
 15 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

16 (b) The application must be made in accordance with the rules adopted by the department AND
 17 MUST BE ACCOMPANIED BY A \$25 APPLICATION FEE. THE APPLICATION FEE MUST BE DEPOSITED
 18 IN THE ADMINISTRATION FUND ESTABLISHED IN 39-71-201 TO OFFSET THE COSTS OF ADMINISTERING
 19 THE PROGRAM. The department may deny the application only if it determines that the applicant is not an
 20 independent contractor.

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

23 ~~(d) When an election of an exemption is approved by the department, the election remains effective~~
 24 ~~and the independent contractor retains the status as an independent contractor until the independent~~
 25 ~~contractor notifies the department of any change in status and provides a description of present work~~
 26 ~~status. THE EXEMPTION, IF APPROVED, REMAINS IN EFFECT FOR 1 YEAR FOLLOWING THE DATE OF~~
 27 ~~THE DEPARTMENT'S APPROVAL. TO MAINTAIN THE INDEPENDENT CONTRACTOR STATUS, AN~~
 28 ~~INDEPENDENT CONTRACTOR SHALL ANNUALLY SUBMIT A RENEWAL APPLICATION. A RENEWAL~~
 29 ~~APPLICATION MUST BE SUBMITTED FOR ALL INDEPENDENT CONTRACTOR EXEMPTIONS APPROVED~~
 30 ~~AS OF OCTOBER 1, 1995, OR THEREAFTER. THE RENEWAL APPLICATION AND THE \$25 RENEWAL~~

1 APPLICATION FEE MUST BE RECEIVED BY THE DEPARTMENT AT LEAST 30 DAYS PRIOR TO THE
 2 ANNIVERSARY DATE OF THE PREVIOUSLY APPROVED EXEMPTION.

3 (E) A PERSON WHO MAKES A FALSE STATEMENT OR MISREPRESENTATION CONCERNING
 4 THAT PERSON'S STATUS AS AN EXEMPT INDEPENDENT CONTRACTOR IS SUBJECT TO A CIVIL
 5 PENALTY OF \$1,000. THE DEPARTMENT MAY IMPOSE THE PENALTY FOR EACH FALSE STATEMENT
 6 OR MISREPRESENTATION. THE PENALTY MUST BE PAID TO THE UNINSURED EMPLOYERS' FUND. THE
 7 LIEN PROVISIONS OF 39-71-506 APPLY TO THE PENALTY IMPOSED BY THIS SECTION.

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

12 (4) (a) ~~A private corporation or a manager-managed limited liability company~~ shall provide coverage
 13 for its ~~officers and other~~ employees under the provisions of compensation plan No. 1, 2, or 3. ~~However,~~
 14 ~~pursuant to rules the department promulgates and subject in all cases to approval by the department,~~ an
 15 ~~officer of~~ A quasi-public corporation, a private corporation, or a manager-managed limited liability company
 16 ~~may elect not to be bound as an employee under this chapter~~ coverage for its corporate officers or
 17 managers, who are otherwise exempt under subsection (2), by giving a written notice, on a form provided
 18 ~~by the department, served~~ in the following manner:

19 (i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by
 20 delivering the notice to the board of directors of the corporation or to the management organization of the
 21 manager-managed limited liability company ~~employer and to the department;~~ or

22 (ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by
 23 delivering the notice to the board of directors of the corporation or to the management organization of the
 24 manager-managed limited liability company ~~employer, to the department,~~ and to the insurer.

25 (b) If the employer changes plans or insurers, the ~~officer's~~ employer's previous election is not
 26 effective and the ~~officer~~ employer shall again serve notice ~~as provided~~ to its insurer and to its board of
 27 directors or the management organization of the manager-managed limited liability company if the ~~officer~~
 28 employer elects ~~not~~ to be bound.

29 ~~(5)~~ The appointment or election of an employee as an officer of a corporation, a partner in a
 30 partnership, or a member in or a manager of a limited liability company for the purpose of ~~excluding~~

1 ~~exempting~~ the employee from coverage under this chapter does not entitle the officer, partner, member,
 2 or manager to elect not to be bound as an employee under this chapter. In any case, the officer shall sign
 3 the notice required by subsection (4)(a) under oath or affirmation and is subject to the penalties for false
 4 swearing under 45-7-202 if the officer falsifies the notice to exemption from coverage.

5 ~~(5)~~(6) Each employer shall post a sign in the workplace at the locations where notices to employees
 6 are normally posted, informing employees about the employer's current provision of compensation
 7 insurance. A workplace is any location where an employee performs any work-related act in the course of
 8 employment, regardless of whether the location is temporary or permanent, and includes the place of
 9 business or property of a third person while the employer has access to or control over the place of
 10 business or property for the purpose of carrying on the employer's usual trade, business, or occupation.
 11 The sign must be provided by the department, distributed through insurers or directly by the department,
 12 and posted by employers in accordance with rules adopted by the department. An employer who purposely
 13 or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."
 14

15 ~~Section 7.~~ Section 39-71-405, MCA, is amended to read:

16 ~~"39-71-405. Liability of employer who contracts work out~~ **EXCEPTION.** (1) ~~An~~ **EXCEPT AS**
 17 **PROVIDED IN SUBSECTION (4),** ~~AN~~ employer who contracts with an independent contractor to have work
 18 performed of a kind which that is a regular or a recurrent part of the work of the trade, business,
 19 occupation, or profession of such the employer is liable for the payment of benefits under this chapter to
 20 the employees of the contractor or the subcontractor if the contractor or subcontractor has not properly
 21 complied with the coverage requirements of the Worker's Workers' Compensation Act. ~~Any~~ An insurer who
 22 becomes liable for payment of benefits may recover the amount of benefits paid and to be paid and
 23 necessary expenses from the contractor or subcontractor primarily liable therein.

24 (2) ~~Where~~ When an employer contracts to have any work to be done by a contractor, other than
 25 an independent contractor, and the work so contracted to be done is a part or process in the trade or
 26 business of the employer, then the employer is liable to pay all benefits under this chapter to the same
 27 extent as if the work were done without the intervention of the contractor, and the work so contracted to
 28 be done shall may not be construed to be casual employment. ~~Where~~ When an employer contracts work
 29 to be done as specified in this subsection, the contractor and the contractor's employees shall come under
 30 that plan of compensation adopted by the employer.

1 ~~(3) Where When an employer contracts any work to be done, wholly or in part for the employer,~~
 2 ~~by an independent contractor, where when the work so contracted to be done is casual employment as to~~
 3 ~~such the employer, then the contractor shall become is the employer for the purposes of this chapter.~~

4 ~~(4) (A) AN EMPLOYER IS NOT LIABLE FOR INJURIES INCURRED BY ANYONE WORKING FOR AN~~
 5 ~~INDEPENDENT CONTRACTOR IF THE EMPLOYER, AT THE TIME THAT A CONTRACT IS EXECUTED WITH~~
 6 ~~AN INDEPENDENT CONTRACTOR, VERIFIES IN A NOTARIZED WRITING SIGNED BY BOTH THE EMPLOYER~~
 7 ~~AND THE CONTRACTOR THAT:~~

8 ~~(I) THE CONTRACTOR HAS PROVIDED TO THE EMPLOYER A COPY OF THE CURRENT~~
 9 ~~INDEPENDENT CONTRACTOR EXEMPTION ISSUED BY THE DEPARTMENT PURSUANT TO 39-71-401(3)~~
 10 ~~FOR THE TYPE OF WORK THAT THE CONTRACTOR WILL BE DOING FOR THE EMPLOYER; AND~~

11 ~~(II) THE CONTRACTOR:~~

12 ~~(A) HAS STATED, UNDER PENALTY OF PERJURY, THAT THE CONTRACTOR WILL PERSONALLY~~
 13 ~~PERFORM ALL OF THE WORK REQUIRED OF THE CONTRACTOR BY THE CONTRACT WITHOUT HIRING~~
 14 ~~ANY EMPLOYEE, ASSISTANT, OR SUBCONTRACTOR WHO IS NOT COVERED BY WORKERS'~~
 15 ~~COMPENSATION INSURANCE; OR~~

16 ~~(B) HAS PROVIDED TO THE EMPLOYER A CERTIFICATE OF CURRENT WORKERS'~~
 17 ~~COMPENSATION INSURANCE COVERAGE FOR THE CONTRACTOR'S EMPLOYEES.~~

18 ~~(B) A PERSON WHO MAKES A FALSE STATEMENT OR MISREPRESENTATION IN CONNECTION~~
 19 ~~WITH THE WRITTEN STATEMENT PROVIDED FOR IN SUBSECTION (4)(A) IS SUBJECT TO A CIVIL~~
 20 ~~PENALTY OF \$1,000. THE DEPARTMENT MAY IMPOSE THE PENALTY FOR EACH FALSE STATEMENT~~
 21 ~~OR MISREPRESENTATION. THE PENALTY MUST BE PAID TO THE UNINSURED EMPLOYERS' FUND. THE~~
 22 ~~LIEN PROVISIONS OF 39-71-506 APPLY TO THE PENALTY IMPOSED BY THIS SECTION.~~

23 ~~(5) IF A DISPUTE ARISES CONCERNING WHETHER AN EMPLOYER IS ENTITLED TO THE DEFENSE~~
 24 ~~PROVIDED IN SUBSECTION (4), THE EMPLOYER HAS THE BURDEN OF PROVING COMPLIANCE WITH THE~~
 25 ~~PROVISIONS OF SUBSECTION (4)."~~

26
 27 **Section 7.** Section 39-71-432, MCA, is amended to read:

28 **"39-71-432. Definitions.** As used in 39-71-433, the following definitions apply:

29 (1) "Business entity" means a business enterprise owned by a single person, corporation,
 30 organization, business trust, trust, partnership, limited liability company, joint venture, association, or other

1 business entity.

2 (2) "Group" means two or more business entities that join together with the approval of the
3 department to purchase individual workers' compensation insurance policies covering each business entity
4 that is part of a group."

5

6 **Section 8.** Section 39-71-433, MCA, is amended to read:

7 **"39-71-433. Group purchase of workers' compensation insurance.** (1) On receiving approval of
8 the department, two or more business entities may join together to form a group to purchase individual
9 workers' compensation insurance policies covering each member of the group.

10 (2) To be eligible to join a new group that is forming, the department shall determine that a
11 business entity is engaged in a business pursuit that is the same as or similar to the business pursuits of
12 the other entities participating in the group.

13 (3) The department shall establish a certification program for groups organized under this section
14 and shall issue to eligible business entities certificates of approval that authorize formation and maintenance
15 of a group.

16 (4) The department by rule shall adopt forms, criteria, and procedures for the issuance of
17 certificates of approval to groups under this section.

18 (5) A group certified under this section may add additional members without approval from the
19 department if the additional members meet the specific criteria identified in the original application and any
20 modifications to the criteria, as approved by the department.

21 ~~(5)(6)~~ (6) A group certified under this section may purchase individual workers' compensation
22 insurance policies covering each member of the group from any insurer authorized to write workers'
23 compensation insurance in this state, except that the state fund, as defined in 39-71-2312, has the right
24 to refuse coverage of a group and its plan of operation but cannot refuse coverage to an individual
25 employer. Under an individual policy, the group is entitled to a premium or volume discount that would be
26 applicable to a policy of the combined premium amount of the individual policies.

27 ~~(6)(7)~~ (7) A group shall apportion any discount or policyholder dividend received on workers'
28 compensation insurance coverage among the members of the group according to a formula adopted in the
29 plan of operation for the group.

30 ~~(7)(8)~~ (8) A group shall adopt a plan of operation that must include the composition and selection of

1 a governing board, the methods for administering the group, the eligibility requirements to join the group,
 2 and guidelines for the workers' compensation insurance coverage obtained by the group, including the
 3 payment of premiums, the distribution of discounts, and the method for providing risk management. A
 4 group shall file a copy of its plan of operation with the department."

5
 6 **Section 9.** Section 39-71-503, MCA, is amended to read:

7 **"39-71-503. Administration of fund -- appropriation.** (1) The department shall administer the fund
 8 and shall pay all proper benefits to injured employees of uninsured employers.

9 (2) Surpluses and reserves may not be kept for the fund. The department shall make ~~such~~
 10 payments ~~as~~ that it considers appropriate as funds become available from time to time. The payment of
 11 weekly disability benefits takes preference over the payment of medical benefits. ~~No lump-sum~~ Lump-sum
 12 payments of future projected benefits, including impairment awards, may not be made from the fund. The
 13 board of investments shall invest the money of the fund, and the investment income must be deposited in
 14 the fund. The cost of administration of the fund must be paid out of the money in the fund.

15 (3) The amounts necessary for the payment of benefits from this fund are statutorily appropriated,
 16 as provided in 17-7-502, from this fund."

17
 18 **Section 10.** Section 39-71-504, MCA, is amended to read:

19 **"39-71-504. Funding of fund -- option for agreement between department and injured employee.**
 20 The fund is funded in the following manner:

21 (1) The department may require that the uninsured employer pay to the fund a penalty of either
 22 up to double the premium amount the employer would have paid on the payroll of the employer's workers
 23 in this state if the employer had been enrolled with compensation plan No. 3 or \$200, whichever is greater.
 24 In determining the premium amount for the calculation of the penalty under this subsection, the department
 25 shall make an assessment on how much premium would have been paid on the employer's past 3-year
 26 payroll for periods within the 3 years when the employer was uninsured. ~~An assessment for payroll paid~~
 27 ~~by the uninsured employer for any time prior to July 1, 1977, may not be made.~~

28 (2) ~~(a)~~ The fund shall receive from an uninsured employer an amount equal to all benefits paid or
 29 to be paid from the fund to an injured employee of the uninsured employer. ~~However, the uninsured~~
 30 ~~employer's liability under this subsection (2)(a) may not exceed \$50,000.~~

1 ~~(b) The dollar limitation does not apply to an uninsured employer's liability to an injured employee~~
 2 ~~or the employee's beneficiaries under 39-71-509 or 39-71-516.~~

3 (3) The department may determine that the \$1,000 assessments that are charged against an
 4 insurer in each case of an industrial death under 39-71-902(1) ~~shall~~ must be paid to the uninsured
 5 employers' fund rather than the subsequent injury fund.

6 (4) The department may enter into an agreement with the injured employee or the employee's
 7 beneficiaries to assign to the employee or the beneficiaries all or part of the funds received by the
 8 department from the uninsured employer pursuant to subsection ~~(2)(a)~~ (2)."

9
 10 **Section 11.** Section 39-71-507, MCA, is amended to read:

11 "**39-71-507. Department to order uninsured employer to cease operations -- noncompliance with**
 12 **order a misdemeanor -- coordination of remedies.** (1) When the department discovers an uninsured
 13 employer, it shall order ~~him~~ the employer to cease operations until ~~he~~ the employer has elected to be bound
 14 by a compensation plan.

15 (2) When the department discovers a person, business, or other entity functioning as a prime
 16 contractor that has subcontracted for the services of an uninsured employer, it may order the person,
 17 business, or other entity functioning as a prime contractor to cease CAUSE all operations PERFORMED BY
 18 THE UNINSURED EMPLOYER TO CEASE AT WORKSITES CONTROLLED BY THE PRIME CONTRACTOR until
 19 the uninsured employer has elected to be bound by a compensation plan. IF AFTER 3 BUSINESS DAYS
 20 FOLLOWING THE ORDER BY THE DEPARTMENT THE PERSON, BUSINESS, OR OTHER ENTITY
 21 FUNCTIONING AS A PRIME CONTRACTOR HAS NOT COMPLIED WITH THE ORDER, THE DEPARTMENT
 22 MAY ORDER THE PRIME CONTRACTOR TO CEASE ALL OPERATIONS AT THE AFFECTED WORKSITES.

23 ~~(2)(3)~~ (3) An employer who does not comply with the department's order to cease operations is guilty
 24 of a misdemeanor. Each day of violation is a separate offense. The county attorney may prosecute a
 25 criminal action under this subsection in the county in which the violation occurs. Prosecution under this
 26 subsection does not bar the department from enforcing its order by a civil action.

27 (4) A person, business, or other entity functioning as a prime contractor that does not comply with
 28 the department's order to cease all operations is guilty of a misdemeanor. Each day of violation is a
 29 separate offense. The county attorney may prosecute a criminal action under this subsection in the county
 30 in which the violation occurs. Prosecution under this subsection does not bar the department from

1 enforcing its order by a civil action. In addition, the department may assess a penalty against the person,
2 business, or other entity functioning as a prime contractor of not more than \$1,000 per day for each day
3 of violation.

4 ~~(3)(5)~~ The department may institute and maintain in the name of the state, through the attorney
5 general or the county attorney of the county in which the violation occurs, an action for an injunction order
6 or other civil remedy in district court to enforce its order to cease operations.

7 ~~(4)(6)~~ The remedies provided in 39-71-506 and subsections ~~(2) and (3)~~ (3) through (5) of this
8 section are not mutually exclusive and may be pursued concurrently."
9

10 **Section 12.** Section 39-71-516, MCA, is amended to read:

11 **"39-71-516. District court venue and jurisdiction for independent cause of action.** An injured
12 employee or an employee's beneficiaries pursuing an independent cause of action pursuant to 39-71-515
13 ~~must shall~~ bring ~~such the~~ action in the district court in the district where the claimant resides or where the
14 alleged violation occurred. The court may grant ~~such~~ interim relief ~~as that~~ it considers appropriate, including
15 but not limited to injunctive relief, attachment, or receivership. The court may request the workers'
16 compensation judge to determine the amount of recoverable damages due to the employee."
17

18 **Section 13.** Section 39-71-710, MCA, is amended to read:

19 **"39-71-710. Termination of benefits upon retirement.** (1) If a claimant is receiving disability or
20 rehabilitation compensation benefits and the claimant receives social security retirement benefits or is
21 eligible to receive full social security retirement benefits, the claimant is considered to be retired. When the
22 claimant is considered retired, the liability of the insurer is ended for payment of ~~wage supplement,~~
23 ~~permanent total disability,~~ and rehabilitation compensation benefits. However, the insurer remains liable for
24 temporary total disability benefits, any impairment award, and medical benefits.

25 (2) If a claimant who is eligible to receive social security retirement benefits and is gainfully
26 employed suffers a work-related injury, the insurer retains liability for temporary total disability benefits,
27 any impairment award, and medical benefits."
28

29 **Section 14.** Section 39-71-721, MCA, is amended to read:

30 **"39-71-721. Compensation for injury causing death -- limitation.** (1) (a) If an injured employee dies

1 and the injury was the proximate cause of ~~such~~ death, then the beneficiary of the deceased is entitled to
 2 the same compensation as though the death occurred immediately following the injury. A beneficiary's
 3 eligibility for benefits commences after the date of death, and the benefit level is established as set forth
 4 in subsection (2).

5 (b) The insurer is entitled to recover any overpayments or compensation paid in a lump sum to a
 6 worker prior to death but not yet recouped. The insurer shall recover ~~such~~ the payments from the
 7 beneficiary's biweekly payments as provided in 39-71-741(5).

8 (2) To beneficiaries as defined in 39-71-116~~(3)(a)~~(4)(a) through ~~(3)(d)~~ (4)(d), weekly compensation
 9 benefits for an injury causing death are 66 2/3% of the decedent's wages. The maximum weekly
 10 compensation benefit may not exceed the state's average weekly wage at the time of injury. The minimum
 11 weekly compensation benefit is 50% of the state's average weekly wage, but in no event may it exceed
 12 the decedent's actual wages at the time of ~~his~~ death.

13 (3) To beneficiaries as defined in 39-71-116~~(3)(e)~~(4)(e) and ~~(3)(f)~~ (4)(f), weekly benefits must be
 14 paid to the extent of the dependency at the time of the injury, subject to a maximum of 66 2/3% of the
 15 decedent's wages. The maximum weekly compensation may not exceed the state's average weekly wage
 16 at the time of injury.

17 (4) If the decedent leaves no beneficiary as defined in ~~39-71-116~~, a lump-sum payment of \$3,000
 18 must be paid to the decedent's surviving parent or parents.

19 (5) If any beneficiary of a deceased employee dies, the right of ~~such~~ the beneficiary to
 20 compensation under this chapter ceases. Death benefits must be paid to a surviving spouse for 500 weeks
 21 subsequent to the date of the deceased employee's death or until the spouse's remarriage, whichever
 22 occurs first. After benefit payments cease to a surviving spouse, death benefits must be paid to
 23 beneficiaries, if any, as defined in 39-71-116~~(3)(b)~~ (4)(b) through ~~(3)(d)~~ (4)(d).

24 (6) In all cases, benefits must be paid to beneficiaries, ~~as defined in 39-71-116~~.

25 (7) Benefits paid under this section may not be adjusted for cost of living as provided in 39-71-702.

26 ~~(8) Notwithstanding subsections (2) and (3), beginning July 1, 1987, through June 30, 1991, the~~
 27 ~~maximum weekly compensation benefits for injury causing death may not exceed the state's average~~
 28 ~~weekly wage of \$299 established July 1, 1986. Beginning July 1, 1987, through June 30, 1991, the~~
 29 ~~minimum weekly compensation for injury causing death shall be \$149.50, which is 50% of the state's~~
 30 ~~average weekly wage established July 1, 1986, but in no event may it exceed the decedent's actual wages~~

1 ~~at the time of death."~~

2
3 **Section 15.** Section 39-71-723, MCA, is amended to read:

4 **"39-71-723. How compensation to be divided among beneficiaries.** Compensation due to
5 beneficiaries ~~shall~~ must be paid to the surviving spouse, if any, or if none, then divided equally among or
6 for the benefit of the children. In cases ~~where~~ in which beneficiaries are a surviving spouse and stepchildren
7 of ~~such the~~ spouse, the compensation ~~shall~~ must be divided equally among all beneficiaries. Compensation
8 due to beneficiaries as defined in 39-71-116~~(3)(e)(4)(e)~~ and ~~(3)(f)~~ (4)(f), ~~where~~ when there is more than
9 one, ~~shall~~ must be divided equitably among them, and the question of dependency and amount ~~thereof shall~~
10 be is a question of fact for determination by the department."

11
12 **Section 16.** Section 39-71-737, MCA, is amended to read:

13 **"39-71-737. Compensation to run consecutively -- exceptions.** Compensation ~~shall~~ must run
14 consecutively and not concurrently, and payment ~~shall~~ may not be made for two classes of disability over
15 the same period, except that impairment awards and auxiliary rehabilitation benefits may be paid
16 concurrently with other classes of benefits, ~~and wage supplement and partial rehabilitation benefits may~~
17 ~~be paid concurrently."~~

18
19 **Section 17.** Section 39-71-902, MCA, is amended to read:

20 **"39-71-902. Fund to receive payment from insurer for each death under chapter -- assessment of**
21 **insurers.** (1) In ~~every each~~ case of the death of an employee under this chapter, the insurer shall pay to the
22 fund the sum of \$1,000. In addition, the department may assess ~~every each~~ insurer an amount not to
23 exceed 5% of the compensation paid in Montana in the preceding fiscal year. The assessment must be
24 transmitted annually to the subsequent injury fund by the employer or insurer. The board of investments
25 shall invest the money of the fund, and the investment income must be deposited in the fund. The cost of
26 administration of the fund must be paid out of money in the fund.

27 (2) When, in the judgment of the department, the amount of money in the subsequent injury fund
28 is such that there is a surplus above and beyond projected liabilities and administrative costs, the
29 department may at its discretion suspend or reduce further collection of assessments for a period of time
30 determined by the department."

1 **Section 18.** Section 39-71-1108, MCA, is amended to read:

2 **"39-71-1108. Physician self-referral prohibition.** (1) Unless authorized by the insurer, a treating
3 physician may not refer a claimant to a health care facility at which the physician does not directly provide
4 care or services when the physician has an investment interest in the facility, unless there is a
5 demonstrated need in the community for the facility and alternative financing is not available. The insurer
6 or the claimant is not liable for charges incurred in violation of this section.

7 (2) Subsection (1) does not apply to care or services provided directly to an injured worker by a
8 treating physician with an ownership interest in a managed care organization that has been certified by the
9 department."

10

11 **Section 19.** Section 39-71-2103, MCA, is amended to read:

12 **"39-71-2103. Employer permitted to carry on business and settle directly with employee --**
13 **individual liability.** (1) If ~~such the~~ employer making ~~such the~~ election ~~shall be~~ is found by the department
14 and the Montana self-insurers guaranty fund to have the requisite financial ability to pay the compensation
15 and benefits in this chapter ~~provided for~~, then the department, with the concurrence of the guaranty fund,
16 shall grant to the employer permission to carry on ~~his~~ business for the ~~fiscal~~ year within which ~~such the~~
17 election is made and ~~such~~ proof filed, or the remaining portion of ~~such the~~ fiscal year, and to make ~~such~~
18 payments directly to ~~his the~~ employees as they may become entitled to receive the same payments.

19 (2) Each individual employer in an association, corporation, limited liability company, or organization
20 of employers given permission by the department to operate as self-insured under plan No. 1 of this chapter
21 is jointly and severally liable for all obligations incurred by the association, corporation, limited liability
22 company, or organization under this chapter. An association, corporation, limited liability company, or
23 organization of employers given permission to operate as self-insured ~~must~~ shall maintain excess liability
24 coverage in amounts and under ~~such~~ conditions as provided by rules of the department."

25

26 **Section 20.** Section 39-71-2411, MCA, is amended to read:

27 **"39-71-2411. Mediation procedure.** (1) Except as otherwise provided, a claimant or an insurer
28 having a dispute relating to benefits under chapter 71 or 72 of this title may petition the department for
29 mediation of the dispute.

30 (2) A party may take part in mediation proceedings with or without representation.

1 (3) The mediator shall review the department file for the case and may receive any additional
2 documentation or argument either party submits.

3 (4) The mediator shall request that each party offer argument summarizing the party's position.
4 A party's argument must fully present the party's case. The argument is not limited by the rules of
5 evidence.

6 (5) After the parties have presented all their information and argument to the mediator, ~~he~~ the
7 mediator shall recommend a solution to the parties within a reasonable time to be established by rule.

8 (6) A party shall notify the mediator within ~~45~~ 20 25 days of the mailing of ~~his~~ the mediator's
9 report whether the party accepts the mediator's recommendation. If either party does not accept the
10 mediator's recommendation, the party may petition the workers' compensation court for resolution of the
11 dispute.

12 (7) (a) If a mediator determines that either party failed to cooperate in the mediation process, the
13 mediator shall prepare a written report setting forth the determination and the grounds for the
14 determination. The report must be mailed to the parties and to the workers' compensation court. Unless
15 a party disputes the determination as set forth in subsection (7)(c), the parties shall repeat the mediation
16 process, but only one time.

17 (b) A mediator may determine that a party has failed to cooperate in the mediation process only
18 if the party failed to:

19 (i) supply information or offer a summary of the party's position as reasonably requested by the
20 mediator;

21 (ii) attend scheduled mediation conferences unless excused by the mediator; or

22 (iii) listen to and review the information and position offered by the opposing party.

23 (c) If a party disputes a mediator's determination that the party failed to cooperate in the mediation
24 process, the party may file a petition with the workers' compensation court. Upon receipt of a petition, the
25 court shall summon the parties and the mediator to determine by oral discussion whether the mediator's
26 determination of noncooperation is supportable. If the court finds that the mediator's determination is
27 supportable, the court may order the parties to attempt a second time to mediate their dispute."
28

29 **Section 21.** Section 39-71-2905, MCA, is amended to read:

30 **"39-71-2905. Petition to workers' compensation judge.** A claimant or an insurer who has a dispute

1 concerning any benefits under chapter 71 of this title may petition the workers' compensation judge for
2 a determination of the dispute after satisfying dispute resolution requirements otherwise provided in this
3 chapter. In addition, the district court that has jurisdiction over a pending action under 39-71-515 may
4 request the workers' compensation judge to determine the amount of recoverable damages due to the
5 employee. The judge, after a hearing, shall make a determination of the dispute in accordance with the law
6 as set forth in chapter 71 of this title. If the dispute relates to benefits due to a claimant under chapter 71,
7 the judge shall fix and determine any benefits to be paid and specify the manner of payment. After parties
8 have satisfied dispute resolution requirements provided elsewhere in this chapter, the workers'
9 compensation judge has exclusive jurisdiction to make determinations concerning disputes under chapter
10 71, except as provided in 39-71-317 and 39-71-516. The penalties and assessments allowed against an
11 insurer under chapter 71 are the exclusive penalties and assessments that can be assessed by the workers'
12 compensation judge against an insurer for disputes arising under chapter 71."

13
14 **Section 22.** Section 39-72-601, MCA, is amended to read:

15 **"39-72-601. Medical panel.** (1) The department shall develop a list of physicians to serve on the
16 occupational disease medical panel. The list may include physicians nominated by the board of medical
17 examiners. A physician on the panel must be certified by ~~his~~ the physician's specialty board or be eligible
18 for certification in the specialty area appropriate to the claimant's condition in relation to this chapter.

19 (2) The department shall select a panel physician to examine a claimant, as required. The
20 department shall appoint, as required, ~~one member of the panel to be the chairman~~ a physician as the
21 presiding officer."

22
23 **Section 23.** Section 39-72-602, MCA, is amended to read:

24 **"39-72-602. Insurer may accept liability -- procedure for medical examination when insurer has not**
25 **accepted liability.** (1) An insurer may accept liability for a claim under this chapter based on information
26 submitted to it by a claimant.

27 (2) In order to determine the compensability of claims under this chapter when an insurer has not
28 accepted liability, the following procedure must be followed:

29 (a) The department shall direct the claimant to a member of the medical panel for an examination.
30 The panel member shall conduct an examination to determine whether the claimant is totally disabled and

1 is suffering from an occupational disease. The panel member shall submit a report of ~~his~~ the member's
2 findings to the department.

3 (b) Either the claimant or the insurer may, within 20 days after the receipt of the report by the first
4 panel member, request that the claimant be examined by a second panel member. If a second examination
5 is requested, the department shall direct the claimant to a second panel member who shall conduct an
6 examination to determine whether ~~he believes~~ the claimant is totally disabled and is suffering from an
7 occupational disease. The panel member shall submit a report of ~~his~~ the member's findings to the
8 department. ~~When a second examination has been requested, the reports of the examinations shall be~~
9 ~~submitted to three members of the medical panel for review. A~~ The medical panel member ~~or the panel~~
10 may, in order to ~~assist the panel member or the panel in reaching~~ reach a conclusion, consult with the
11 claimant's attending physician. The reports from the two examining physicians must be sent by the
12 department to the presiding officer of the panel. ~~The three panel members~~ presiding officer shall issue a
13 report concerning the claimant's physical condition and whether the claimant is suffering from an
14 occupational disease.

15 (c) (i) If a second examination is not requested, the department shall issue its order determining
16 whether the claimant is entitled to occupational disease benefits based on the report of the first examining
17 physician.

18 (ii) If a second examination is requested, the department shall issue its order based on the report
19 of the ~~three members of the medical panel~~ presiding officer.

20 (d) ~~For the purpose of reviewing the reports of the examinations and issuing the report under~~
21 ~~subsection (2)(b), the three members of the medical panel shall be the two members of the panel who~~
22 ~~examined the claimant and the panel chairman.~~ If the panel ~~chairman~~ presiding officer has examined the
23 claimant, the ~~panel chairman~~ department shall appoint another ~~member of the medical panel to be the third~~
24 ~~member~~ presiding officer."

25

26 **Section 24.** Section 39-72-612, MCA, is amended to read:

27 **"39-72-612. Hearing and appeal to workers' compensation judge.** (1) Within 20 days after the
28 department has issued its order of determination as to whether the claimant is entitled to benefits under
29 this chapter, a party may request a hearing. In order to perfect an appeal to the workers' compensation
30 judge, the appealing party shall request a hearing before the department. The department shall grant a

1 hearing, ~~and the~~ which may be conducted by telephone or by videoconference. The department's final
2 determination may not be issued until after the hearing.

3 (2) Appeals from a final determination of the department must be made to the workers'
4 compensation judge within 30 days after the department has issued its final determination. The judge, after
5 a hearing held pursuant to 39-71-2903 and 39-71-2904, shall make a final determination concerning the
6 claimant's claim. The judge may overrule the department only on the basis that the department's
7 determination is:

8 (a) in violation of constitutional or statutory provisions;

9 (b) in excess of the statutory authority of the agency;

10 (c) made upon unlawful procedure;

11 (d) affected by other error of law;

12 (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole
13 record; or

14 (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise
15 of discretion."

16

17 NEW SECTION. **Section 25. Saving clause.** [This act] does not affect rights and duties that
18 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
19 act].

20

21 NEW SECTION. **Section 26. Severability.** If a part of [this act] is invalid, all valid parts that are
22 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
23 applications, the part remains in effect in all valid applications that are severable from the invalid
24 applications.

25

26 NEW SECTION. **Section 27. Applicability.** (1) [Section ~~40~~ 9] applies retroactively, within the
27 meaning of 1-2-109, to all occurrences beginning after October 1, 1977.

28 (2) [Section ~~48~~ 17] applies retroactively, within the meaning of 1-2-109, to all occurrences
29 beginning after October 1, 1973.

30 (3) [Sections 5 and ~~26~~ 24] apply to hearings or appeals requested on or after [the effective date

1 of this act].

2

3 NEW SECTION. Section 28. Effective dates. (1) [Sections 5, ~~13, 22, and 25 through 28~~ 12, 21,
4 AND 24 THROUGH 27 and this section] are effective on passage and approval.

5 (2) [Sections 1 through 4, 6 through ~~12, 14 through 21, 23, and 24~~ 11, 13 THROUGH 20, 22,
6 AND 23] are effective October 1, 1995.

7

-END-



FREE CONFERENCE COMMITTEE

on House Bill 200

Report No. , April 7, 1995

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered **House Bill 200** and recommend as follows:

1. Page 13, line 16.

Strike: "AND"

Insert: ". There is no fee for the initial application. Any subsequent application"

2. Page 13, line 30.

Strike: "OCTOBER"

Insert: "July"

3. Page 28, lines 5 and 6.

Following: "4"

Strike: remainder of line 5 and line 6 in their entirety

Insert: "and 6 are effective July 1, 1995."

(3) [Sections 7 through 11, 13 through 20, 22, and 23] are effective October 1, 1995."

We recommend that the amendments considered above to House Bill 200 be acceded to by the senate.


And this FREE Conference Committee report be adopted.

For the House:

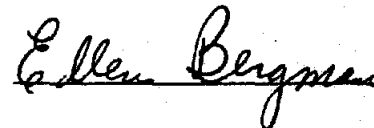
Ellis


Chair

Bergman


Cocchiarella

Cocchiarella


Ellen Bergman

ADOPT

REJECT

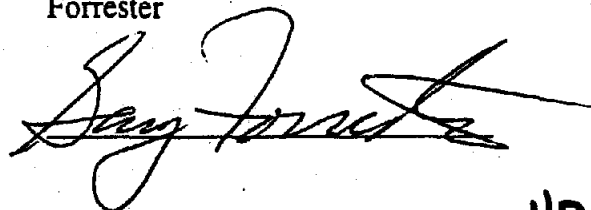
For the Senate:

Benedict 

Chair

Harp 

Forrester



1 HOUSE BILL NO. 200

2 INTRODUCED BY BERGMAN, HIBBARD, BENEDICT, BARTLETT, COCCHIARELLA

3 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE WORKERS' COMPENSATION ACT
6 AND THE OCCUPATIONAL DISEASE ACT OF MONTANA; ADDING DEFINITIONS; EXEMPTING
7 CORPORATE OFFICERS AND MANAGERS OF LIMITED LIABILITY COMPANIES FROM COVERAGE UNLESS
8 THE EMPLOYER ELECTS TO COVER THE OFFICER OR MANAGER AND THE INSURER ALLOWS THE
9 ELECTION; CLARIFYING PROHIBITIONS REGARDING MEDICAL PROVIDER SELF-REFERRAL; AUTHORIZING
10 THE DEPARTMENT OF LABOR AND INDUSTRY TO CONDUCT HEARINGS AND APPEALS BY TELEPHONE
11 OR VIDEOCONFERENCE; CLARIFYING THE STATUS OF LIMITED LIABILITY COMPANIES; ~~CLARIFYING THE~~
12 ~~LIABILITY OF AN EMPLOYER WHO CONTRACTS WORK OUT~~; CLARIFYING THE DEPARTMENT'S
13 RESPONSIBILITY IN APPROVING THE GROUP PURCHASE OF WORKERS' COMPENSATION INSURANCE;
14 REQUIRING THE INVESTMENT INCOME OF THE UNINSURED EMPLOYERS' FUND TO BE DEPOSITED IN
15 THE FUND; REMOVING THE LIMIT ON AN UNINSURED EMPLOYER'S LIABILITY FOR CLAIMS; INCREASING
16 THE AUTHORITY TO FILE CEASE AND DESIST ORDERS TO INCLUDE PERSONS, BUSINESSES, AND
17 ENTITIES THAT HAVE CONTRACTED WITH UNINSURED EMPLOYERS AND PROVIDING FOR PENALTIES;
18 PROVIDING A DISTRICT COURT WITH THE OPTION TO REQUEST THE WORKERS' COMPENSATION
19 JUDGE TO DETERMINE THE AMOUNT OF RECOVERABLE DAMAGES DUE TO AN INJURED UNINSURED
20 WORKER; REMOVING THE REFERENCES TO WAGE SUPPLEMENT; REQUIRING THE BOARD OF
21 INVESTMENTS TO INVEST CERTAIN MONEY IN THE SUBSEQUENT INJURY FUND AND REQUIRING THE
22 INVESTMENT INCOME TO BE DEPOSITED IN THE FUND; REDUCING THE TIME PERIOD ALLOWED FOR
23 A PARTY TO RESPOND TO A WORKERS' COMPENSATION MEDIATOR'S RECOMMENDATION; REVISING
24 THE MEDICAL PANEL PROCESS; AMENDING SECTIONS 39-71-116, 39-71-117, 39-71-118, 39-71-315,
25 39-71-318, 39-71-401, ~~39-71-406~~, 39-71-432, 39-71-433, 39-71-503, 39-71-504, 39-71-507,
26 39-71-516, 39-71-710, 39-71-721, 39-71-723, 39-71-737, 39-71-902, 39-71-1108, 39-71-2103,
27 39-71-2411, 39-71-2905, 39-72-601, 39-72-602, AND 39-72-612, MCA; AND PROVIDING EFFECTIVE
28 DATES AND APPLICABILITY DATES."

29

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



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

2 "**39-71-116. Definitions.** Unless the context otherwise requires, words and phrases employed in
3 this chapter have the following meanings:

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

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

7 (b) payment of benefits;

8 (c) setting of reserves;

9 (d) furnishing of services and facilities; and

10 (e) ~~utilization~~ use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

11 (2) "Aid or sustenance" means any public or private subsidy made to provide a means of support,
12 maintenance, or subsistence for the recipient.

13 ~~(2)~~(3) "Average weekly wage" means the mean weekly earnings of all employees under covered
14 employment, as defined and established annually by the ~~Montana~~ department of labor and industry. It is
15 established at the nearest whole dollar number and must be adopted by the department prior to July 1 of
16 each year.

17 ~~(3)~~(4) "Beneficiary" means:

18 (a) a surviving spouse living with or legally entitled to be supported by the deceased at the time
19 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 a full-time student in an accredited school
22 or is enrolled in an accredited apprenticeship program;

23 (d) an invalid child over the age of 18 years who is dependent upon the decedent for support at
24 the time of injury;

25 (e) a parent who is dependent upon the decedent for support at the time of the injury if a
26 beneficiary, as defined in subsections ~~(3)(a)~~ (4)(a) through ~~(3)(d)~~ (4)(d), does not exist; and

27 (f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the
28 time of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections
29 ~~(3)(a)~~ (4)(a) through ~~(3)(e)~~ (4)(e), does not exist.

30 ~~(4)~~(5) "Casual employment" means employment not in the usual course of trade, business,

1 profession, or occupation of the employer.

2 ~~(5)~~(6) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior
3 to the injury.

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

10 ~~(7)~~(8) "Days" means calendar days, unless otherwise specified.

11 ~~(8)~~(9) "Department" means the department of labor and industry.

12 ~~(9)~~(10) "Disability" means a condition in which a worker's ability to engage in gainful employment
13 is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined
14 with factors, such as the worker's age, education, work history, and other factors that affect the worker's
15 ability to engage in gainful employment. Disability does not mean a purely medical condition.

16 ~~(10)~~(11) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

17 (12) "Household or domestic employment" means employment of persons other than members of
18 the household for the purpose of tending to the aid and comfort of the employer or members of the
19 employer's family, including but not limited to housecleaning and yard work, but does not include
20 employment beyond the scope of normal household or domestic duties, such as home health care or
21 domiciliary care.

22 ~~(11)~~(13) "Insurer" means an employer bound by compensation plan No. 1, an insurance company
23 transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

24 ~~(12)~~(14) "Invalid" means one who is physically or mentally incapacitated.

25 (15) "Limited liability company" is as defined in 35-8-102.

26 ~~(13)~~(16) "Maintenance care" means treatment designed to provide the optimum state of health
27 while minimizing recurrence of the clinical status.

28 ~~(14)~~(17) "Medical stability", "maximum healing", or "maximum medical healing" means a point in
29 the healing process when further material improvement would not be reasonably expected from primary
30 medical treatment.

1 ~~(15)~~(18) "Order" means any decision, rule, direction, requirement, or standard of the department
2 or any other determination arrived at or decision made by the department.

3 ~~(16)~~(19) "Palliative care" means treatment designed to reduce or ease symptoms without curing
4 the underlying cause of the symptoms.

5 ~~(17)~~(20) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average
6 annual payroll of the employer for the preceding calendar year or, if the employer has not operated a
7 sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the
8 current year. However, an estimate may be made by the department for any employer starting in business
9 if average payrolls are not available. This estimate must be adjusted by additional payment by the employer
10 or refund by the department, as the case may actually be, on December 31 of the current year. An
11 employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by
12 an employer.

13 ~~(19)~~(21) "Permanent partial disability" means a condition, after a worker has reached maximum
14 medical healing, in which a worker:

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

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

19 ~~(19)~~(22) "Permanent total disability" means a condition resulting from injury as defined in this
20 chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable
21 prospect of physically performing regular employment. Regular employment means work on a recurring
22 basis performed for remuneration in a trade, business, profession, or other occupation in this state. Lack
23 of immediate job openings is not a factor to be considered in determining if a worker is permanently totally
24 disabled.

25 ~~(20)~~(23) The "plant of the employer" includes the place of business of a third person while the
26 employer has access to or control over the place of business for the purpose of carrying on the employer's
27 usual trade, business, or occupation.

28 ~~(21)~~(24) "Primary medical services" means treatment prescribed by a treating physician, for
29 conditions resulting from the injury, necessary for achieving medical stability.

30 ~~(22)~~(25) "Public corporation" means the state or any county, municipal corporation, school district,

1 city, city under a commission form of government or special charter, town, or village.

2 ~~(23)~~(26) "Reasonably safe place to work" means that the place of employment has been made as
3 free from danger to the life or safety of the employee as the nature of the employment will reasonably
4 permit.

5 ~~(24)~~(27) "Reasonably safe tools and appliances" are tools and appliances ~~as that~~ are adapted to and
6 that are reasonably safe for use for the particular purpose for which they are furnished.

7 ~~(25)~~(28) "Secondary medical services" means those medical services or appliances that are
8 considered not medically necessary for medical stability. The services and appliances include but are not
9 limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs
10 designed to address disability and not impairment, or equipment offered by individuals, clinics, groups,
11 hospitals, or rehabilitation facilities.

12 (29) "Sole proprietor" means the person who has the exclusive legal right or title to or ownership
13 of a business enterprise.

14 ~~(26)~~(30) "Temporary partial disability" means a condition resulting from an injury, as defined in
15 39-71-119, in which a worker, prior to maximum healing:

16 (a) is temporarily unable to return to the position held at the time of injury because of a medically
17 determined physical restriction;

18 (b) returns to work in a modified or alternative employment; and

19 (c) suffers a partial wage loss.

20 ~~(27)~~(31) "Temporary service contractor" means ~~any~~ a person, firm, association, or corporation
21 conducting business that employs individuals directly for the purpose of furnishing the services of those
22 individuals on a part-time or temporary basis to others.

23 ~~(28)~~(32) "Temporary total disability" means a condition resulting from an injury, as defined in this
24 chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical
25 healing.

26 ~~(29)~~(33) "Temporary worker" means a worker whose services are furnished to another on a
27 part-time or temporary basis to substitute for a permanent employee on leave or to meet an emergency or
28 short-term workload.

29 ~~(30)~~(34) "Treating physician" means a person who is primarily responsible for the treatment of a
30 worker's compensable injury and is:

1 (a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting
2 privileges to practice in one or more hospitals, if any, in the area where the physician is located;

3 (b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

4 (c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if
5 there is not a physician, as defined in subsection ~~(30)(a)~~ (34)(a), in the area where the physician
6 assistant-certified is located;

7 (d) an osteopath licensed by the state of Montana under Title 37, chapter 5; or

8 (e) a dentist licensed by the state of Montana under Title 37, chapter 4.

9 ~~(34)~~(35) "Year", unless otherwise specified, means calendar year."
10

11 **Section 2.** Section 39-71-117, MCA, is amended to read:

12 **"39-71-117. Employer defined.** (1) "Employer" means:

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

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

23 (c) any nonprofit association, limited liability company, or corporation or other entity funded in
24 whole or in part by federal, state, or local government funds that places community service participants,
25 as defined in 39-71-118(1)(f), with nonprofit organizations or associations or federal, state, or local
26 government entities.

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

29 (3) An employer defined in subsection (1) who ~~utilizes~~ uses the services of a worker furnished by
30 another person, association, contractor, firm, limited liability company, or corporation, other than a

1 temporary service contractor, is presumed to be the employer for workers' compensation premium and loss
 2 experience purposes for work performed by the worker. The presumption may be rebutted by substantial
 3 credible evidence of the following:

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

8 (b) the person, association, contractor, firm, limited liability company, or corporation, other than
 9 a temporary service contractor, furnishing the services of a worker to another has obtained workers'
 10 compensation insurance for the worker in Montana both at the inception of employment and during all
 11 phases of the work performed.

12 (4) Notwithstanding the provisions of subsection (3), an interstate or intrastate common or contract
 13 motor carrier doing business in this state who ~~utilizes~~ uses drivers in this state is considered the employer,
 14 is liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:

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

17 (b) the person, association, contractor, firm, limited liability company, or corporation furnishing
 18 drivers in this state to a motor carrier has obtained workers' compensation insurance on the drivers in
 19 Montana both at the inception of employment and during all phases of the work performed."
 20

21 **Section 3.** Section 39-71-118, MCA, is amended to read:

22 **"39-71-118. Employee, worker, and volunteer firefighter defined.** (1) The ~~terms~~ term "employee"
 23 or "worker" means:

24 (a) each person in this state, including a contractor other than an independent contractor, who is
 25 in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire,
 26 expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully
 27 employed, and all of the elected and appointed paid public officers and officers and members of boards of
 28 directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while
 29 rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are
 30 included as employees if they are not otherwise covered by workers' compensation and if an employer has

1 elected to be bound by the provisions of the compensation law for these casual employments, as provided
2 in 39-71-401(2). Household or domestic ~~service~~ employment is excluded.

3 (b) any juvenile performing work under authorization of a district court judge in a delinquency
4 prevention or rehabilitation program;

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

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

12 (e) an aircrew member or other person employed as a volunteer under 67-2-105;

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

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

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

24 (g) an inmate working in a federally certified prison industries program authorized under 53-1-301.

25 (2) The terms defined in subsection (1) do not include a person who is:

26 (a) participating in recreational activity and who at the time is relieved of and is not performing
27 prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket,
28 permit, device, or other emolument of employment; or

29 (b) performing voluntary service at a recreational facility and who receives no compensation for
30 those services other than meals, lodging, or the use of the recreational facilities.

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

3 (4) (a) If the employer is a partnership, ~~or sole proprietorship proprietor,~~ or a member-managed
4 limited liability company, the employer may elect to include as an employee within the provisions of this
5 chapter any member of the partnership, ~~or the owner of the sole proprietorship,~~ or any member of the
6 limited liability company devoting full time to the partnership, ~~or proprietorship,~~ or limited liability company
7 business.

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

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

15 (d) All weekly compensation benefits must be based on the amount of elected wages, subject to
16 the minimum and maximum limitations of this subsection. For premium ratemaking and for the
17 determination of weekly wage for weekly compensation benefits, the electing employer may elect not less
18 than \$900 a month and not more than 1 ½ times the average weekly wage, as defined in this chapter.

19 (5) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited
20 liability company, the employer may elect to include as an employee within the provisions of this chapter
21 any corporate officer or manager exempted under 39-71-401(2).

22 (b) In the event of an election, the employer shall serve upon the employer's insurer written notice
23 naming the corporate officer or manager to be covered and stating the level of compensation coverage
24 desired by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A
25 corporate officer or manager is not considered an employee within this chapter until notice has been given.

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

28 (d) All weekly compensation benefits must be based on the amount of elected wages, subject to
29 the minimum and maximum limitations of this subsection. For premium ratemaking and for the
30 determination of the weekly wage for weekly compensation benefits, the electing employer may elect not

1 less than \$200 a week and not more than 1 ½ times the average weekly wage, as defined in this chapter.

2 ~~(5)~~(6) The trustees of a rural fire district, a county governing body providing rural fire protection,
3 or the county commissioners or trustees for a fire service area may elect to include as an employee within
4 the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers'
5 compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

6 ~~(6)~~(7) An employee or worker in this state whose services are furnished by a person, association,
7 contractor, firm, limited liability company, or corporation, other than a temporary service contractor, to an
8 employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer.
9 This presumption may be rebutted as provided in 39-71-117(3).

10 ~~(7)~~(8) For purposes of this section, an "employee or worker in this state" means:

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

13 (b) a nonresident of Montana whose principal employment duties are conducted within this state
14 on a regular basis for an employer;

15 (c) a nonresident employee of an employer from another state engaged in the construction industry,
16 as defined in 39-71-116, within this state; or

17 (d) a nonresident of Montana who does not meet the requirements of subsection ~~(7)(b)~~ (8)(b) and
18 whose employer elects coverage with an insurer that allows an election for an employer whose:

19 (i) nonresident employees are hired in Montana;

20 (ii) nonresident employees' wages are paid in Montana;

21 (iii) nonresident employees are supervised in Montana; and

22 (iv) business records are maintained in Montana.

23 ~~(8)~~(9) An insurer may require coverage for all nonresident employees of a Montana employer who
24 do not meet the requirements of subsection ~~(7)(b)~~ (8)(b) or ~~(7)(d)~~ (8)(d) as a condition of approving the
25 election under subsection ~~(7)(d)~~ (8)(d)."

26
27 **Section 4.** Section 39-71-315, MCA, is amended to read:

28 **"39-71-315. Prohibited actions -- penalty.** (1) The following actions by a medical provider
29 constitute violations and are subject to the penalty in subsection (2):

30 (a) failing to document, under oath, the provision of the services or treatment for which

1 compensation is claimed under chapter 72 or this chapter; or

2 (b) referring a worker for treatment or diagnosis of an injury or illness that is compensable under
3 chapter 72 or this chapter to a facility owned wholly or in part by the provider, unless the provider informs
4 the worker of the ownership interest and provides the name and address of alternate facilities, if any exist.

5 (2) A person who violates this section may be assessed a penalty of not less than \$200 or more
6 than \$500 for each offense. The department shall assess and collect the penalty.

7 (3) Subsection (1)(b) does not apply to medical services provided to an injured worker by a treating
8 physician with an ownership interest in a managed care organization that has been certified by the
9 department."

10

11 **Section 5.** Section 39-71-318, MCA, is amended to read:

12 **"39-71-318. Hearings -- rules of evidence -- conduct -- EXCEPTION.** (1) The statutory and ~~common~~
13 ~~law~~ common-law rules of evidence do not apply to a hearing before the department under this chapter.

14 (2) A EXCEPT FOR A HEARING BEFORE THE WORKERS' COMPENSATION COURT, A hearing
15 under this chapter may be conducted by telephone or by videoconference."

16

17 **Section 6.** Section 39-71-401, MCA, is amended to read:

18 **"39-71-401. Employments covered and employments exempted.** (1) Except as provided in
19 subsection (2), the Workers' Compensation Act applies to all employers₂ as defined in 39-71-117₂ and to
20 all employees₂ as defined in 39-71-118. An employer who has any employee in service under any
21 appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the
22 provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers'
23 Compensation Act is subject to and bound by the compensation plan that has been elected by the
24 employer.

25 (2) Unless the employer elects coverage for these employments under this chapter and an insurer
26 allows ~~such~~ an election, the Workers' Compensation Act does not apply to any of the following
27 employments:

28 (a) household and domestic employment;

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

30 (c) employment of a dependent member of an employer's family for whom an exemption may be

- 1 claimed by the employer under the federal Internal Revenue Code;
- 2 (d) employment of sole proprietors, ~~or~~ working members of a partnership, or working members of
- 3 a member-managed limited liability company, except as provided in subsection (3);
- 4 (e) employment of a broker or salesman performing under a license issued by the board of realty
- 5 regulation;
- 6 (f) employment of a direct seller engaged in the sale of consumer products, primarily in the
- 7 customer's home;
- 8 (g) employment for which a rule of liability for injury, occupational disease, or death is provided
- 9 under the laws of the United States;
- 10 (h) employment of ~~any~~ a person performing services in return for aid or sustenance only, except
- 11 employment of a volunteer under 67-2-105;
- 12 (i) employment with ~~any~~ a railroad engaged in interstate commerce, except that railroad
- 13 construction work is included in and subject to the provisions of this chapter;
- 14 (j) employment as an official, including a timer, referee, or judge, at a school amateur athletic
- 15 event, unless the person is otherwise employed by a school district;
- 16 (k) ~~any~~ employment of a person performing services as a newspaper carrier or free-lance
- 17 correspondent if the person performing the services or a parent or guardian of the person performing the
- 18 services in the case of a minor has acknowledged in writing that the person performing the services and
- 19 the services are not covered. As used in this subsection, "free-lance correspondent" is a person who
- 20 submits articles or photographs for publication and is paid by the article or by the photograph. As used in
- 21 this subsection, "newspaper carrier":
- 22 (i) is a person who provides a newspaper with the service of delivering newspapers singly or in
- 23 bundles; but
- 24 (ii) does not include an employee of the paper who, incidentally to the employee's main duties,
- 25 carries or delivers papers.
- 26 (l) cosmetologist's services and barber's services as defined in 39-51-204(1)(l);
- 27 (m) a person who is employed by an enrolled tribal member ~~who operates~~ or an association,
- 28 business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members,
- 29 whose business is conducted solely within the exterior boundaries of an Indian reservation;
- 30 (n) an officer of a quasi-public or a private corporation or manager of a manager-managed limited

1 liability company who qualifies under one or more of the following provisions:

2 (i) the officer or manager is engaged in the ordinary duties of a worker for the corporation or the
 3 limited liability company and does not receive any pay from the corporation or the limited liability company
 4 for performance of the duties;

5 (ii) the officer or manager is engaged primarily in household employment for the corporation or the
 6 limited liability company;

7 (iii) the officer or manager owns 20% or more of the number of shares of stock in the corporation
 8 or owns 20% or more of the limited liability company; or

9 (iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law,
 10 daughter-in-law, nephew, niece, brother, or sister of a corporate officer who owns 20% or more of the
 11 number of shares of stock in the corporation or who owns 20% or more of the limited liability company.

12 (3) (a) A sole proprietor, or a working member of a partnership, or a working member of a
 13 member-managed limited liability company who represents to the public that the person is an independent
 14 contractor shall elect to be bound personally and individually by the provisions of compensation plan No.
 15 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

16 (b) The application must be made in accordance with the rules adopted by the department AND,
 17 THERE IS NO FEE FOR THE INITIAL APPLICATION. ANY SUBSEQUENT APPLICATION MUST BE
 18 ACCOMPANIED BY A \$25 APPLICATION FEE. THE APPLICATION FEE MUST BE DEPOSITED IN THE
 19 ADMINISTRATION FUND ESTABLISHED IN 39-71-201 TO OFFSET THE COSTS OF ADMINISTERING THE
 20 PROGRAM. The department may deny the application only if it determines that the applicant is not an
 21 independent contractor.

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

24 ~~(d) When an election of an exemption is approved by the department, the election remains effective~~
 25 ~~and the independent contractor retains the status as an independent contractor until the independent~~
 26 ~~contractor notifies the department of any change in status and provides a description of present work~~
 27 ~~status. THE EXEMPTION, IF APPROVED, REMAINS IN EFFECT FOR 1 YEAR FOLLOWING THE DATE OF~~
 28 THE DEPARTMENT'S APPROVAL. TO MAINTAIN THE INDEPENDENT CONTRACTOR STATUS, AN
 29 INDEPENDENT CONTRACTOR SHALL ANNUALLY SUBMIT A RENEWAL APPLICATION. A RENEWAL
 30 APPLICATION MUST BE SUBMITTED FOR ALL INDEPENDENT CONTRACTOR EXEMPTIONS APPROVED

1 AS OF ~~OCTOBER~~ JULY 1, 1995, OR THEREAFTER. THE RENEWAL APPLICATION AND THE \$25
 2 RENEWAL APPLICATION FEE MUST BE RECEIVED BY THE DEPARTMENT AT LEAST 30 DAYS PRIOR TO
 3 THE ANNIVERSARY DATE OF THE PREVIOUSLY APPROVED EXEMPTION.

4 (E) A PERSON WHO MAKES A FALSE STATEMENT OR MISREPRESENTATION CONCERNING
 5 THAT PERSON'S STATUS AS AN EXEMPT INDEPENDENT CONTRACTOR IS SUBJECT TO A CIVIL
 6 PENALTY OF \$1,000. THE DEPARTMENT MAY IMPOSE THE PENALTY FOR EACH FALSE STATEMENT
 7 OR MISREPRESENTATION. THE PENALTY MUST BE PAID TO THE UNINSURED EMPLOYERS' FUND. THE
 8 LIEN PROVISIONS OF 39-71-506 APPLY TO THE PENALTY IMPOSED BY THIS SECTION.

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

13 (4) (a) ~~A private corporation or a manager-managed limited liability company~~ shall provide coverage
 14 for its ~~officers and other~~ employees under the provisions of compensation plan No. 1, 2, or 3. ~~However,~~
 15 ~~pursuant to rules the department promulgates and subject in all cases to approval by the department, an~~
 16 ~~officer of~~ A quasi-public corporation, a private corporation, or a manager-managed limited liability company
 17 ~~may elect not to be bound as an employee under this chapter~~ coverage for its corporate officers or
 18 managers, who are otherwise exempt under subsection (2), by giving a written notice, on a form provided
 19 ~~by the department, served~~ in the following manner:

20 (i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by
 21 delivering the notice to the board of directors of the corporation or to the management organization of the
 22 manager-managed limited liability company employer and to the department; or

23 (ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by
 24 delivering the notice to the board of directors of the corporation or to the management organization of the
 25 manager-managed limited liability company employer, to the department, and to the insurer.

26 (b) If the employer changes plans or insurers, the ~~officer's~~ employer's previous election is not
 27 effective and the ~~officer~~ employer shall again serve notice ~~as provided~~ to its insurer and to its board of
 28 directors or the management organization of the manager-managed limited liability company if the ~~officer~~
 29 employer elects ~~not~~ to be bound.

30 ~~(5)~~ The appointment or election of an employee as an officer of a corporation, a partner in a

1 ~~partnership, or a member in or a manager of a limited liability company~~ for the purpose of excluding
 2 ~~exempting~~ the employee from coverage under this chapter does not entitle the officer, ~~partner, member,~~
 3 ~~or manager~~ to elect not to be bound as an employee under this chapter. In any case, the officer shall sign
 4 the notice required by subsection (4)(a) under oath or affirmation and is subject to the penalties for false
 5 swearing under 45-7-202 if the officer falsifies the notice to exemption from coverage.

6 (5)(6) Each employer shall post a sign in the workplace at the locations where notices to employees
 7 are normally posted, informing employees about the employer's current provision of compensation
 8 insurance. A workplace is any location where an employee performs any work-related act in the course of
 9 employment, regardless of whether the location is temporary or permanent, and includes the place of
 10 business or property of a third person while the employer has access to or control over the place of
 11 business or property for the purpose of carrying on the employer's usual trade, business, or occupation.
 12 The sign must be provided by the department, distributed through insurers or directly by the department,
 13 and posted by employers in accordance with rules adopted by the department. An employer who purposely
 14 or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."
 15

16 ~~Section 7. Section 39-71-405, MCA, is amended to read:~~

17 ~~"39-71-405. Liability of employer who contracts work out — EXCEPTION. (1) An EXCEPT AS~~
 18 ~~PROVIDED IN SUBSECTION (4), AN employer who contracts with an independent contractor to have work~~
 19 ~~performed of a kind which that is a regular or a recurrent part of the work of the trade, business,~~
 20 ~~occupation, or profession of such the employer is liable for the payment of benefits under this chapter to~~
 21 ~~the employees of the contractor or the subcontractor if the contractor or subcontractor has not properly~~
 22 ~~complied with the coverage requirements of the Worker's Workers' Compensation Act. Any An insurer who~~
 23 ~~becomes liable for payment of benefits may recover the amount of benefits paid and to be paid and~~
 24 ~~necessary expenses from the contractor or subcontractor primarily liable therein.~~

25 (2) ~~Where When~~ an employer contracts to have any work to be done by a contractor, other than
 26 an independent contractor, and the work so contracted to be done is a part or process in the trade or
 27 business of the employer, then the employer is liable to pay all benefits under this chapter to the same
 28 extent as if the work were done without the intervention of the contractor, and the work so contracted to
 29 be done shall may not be construed to be casual employment. ~~Where When~~ an employer contracts work
 30 to be done as specified in this subsection, the contractor and the contractor's employees shall come under

1 that plan of compensation adopted by the employer.

2 ~~(3) Where When an employer contracts any work to be done, wholly or in part for the employer,~~
3 ~~by an independent contractor, where when the work so contracted to be done is casual employment as to~~
4 ~~such the employer, then the contractor shall become is the employer for the purposes of this chapter.~~

5 ~~(4) (A) AN EMPLOYER IS NOT LIABLE FOR INJURIES INCURRED BY ANYONE WORKING FOR AN~~
6 ~~INDEPENDENT CONTRACTOR IF THE EMPLOYER, AT THE TIME THAT A CONTRACT IS EXECUTED WITH~~
7 ~~AN INDEPENDENT CONTRACTOR, VERIFIES IN A NOTARIZED WRITING SIGNED BY BOTH THE EMPLOYER~~
8 ~~AND THE CONTRACTOR THAT:~~

9 ~~(i) THE CONTRACTOR HAS PROVIDED TO THE EMPLOYER A COPY OF THE CURRENT~~
10 ~~INDEPENDENT CONTRACTOR EXEMPTION ISSUED BY THE DEPARTMENT PURSUANT TO 39-71-401(3)~~
11 ~~FOR THE TYPE OF WORK THAT THE CONTRACTOR WILL BE DOING FOR THE EMPLOYER; AND~~

12 ~~(ii) THE CONTRACTOR:~~

13 ~~(A) HAS STATED, UNDER PENALTY OF PERJURY, THAT THE CONTRACTOR WILL PERSONALLY~~
14 ~~PERFORM ALL OF THE WORK REQUIRED OF THE CONTRACTOR BY THE CONTRACT WITHOUT HIRING~~
15 ~~ANY EMPLOYEE, ASSISTANT, OR SUBCONTRACTOR WHO IS NOT COVERED BY WORKERS'~~
16 ~~COMPENSATION INSURANCE; OR~~

17 ~~(B) HAS PROVIDED TO THE EMPLOYER A CERTIFICATE OF CURRENT WORKERS'~~
18 ~~COMPENSATION INSURANCE COVERAGE FOR THE CONTRACTOR'S EMPLOYEES.~~

19 ~~(B) A PERSON WHO MAKES A FALSE STATEMENT OR MISREPRESENTATION IN CONNECTION~~
20 ~~WITH THE WRITTEN STATEMENT PROVIDED FOR IN SUBSECTION (4)(A) IS SUBJECT TO A CIVIL~~
21 ~~PENALTY OF \$1,000. THE DEPARTMENT MAY IMPOSE THE PENALTY FOR EACH FALSE STATEMENT~~
22 ~~OR MISREPRESENTATION. THE PENALTY MUST BE PAID TO THE UNINSURED EMPLOYERS' FUND. THE~~
23 ~~LIEN PROVISIONS OF 39-71-506 APPLY TO THE PENALTY IMPOSED BY THIS SECTION.~~

24 ~~(5) IF A DISPUTE ARISES CONCERNING WHETHER AN EMPLOYER IS ENTITLED TO THE DEFENSE~~
25 ~~PROVIDED IN SUBSECTION (4), THE EMPLOYER HAS THE BURDEN OF PROVING COMPLIANCE WITH THE~~
26 ~~PROVISIONS OF SUBSECTION (4)."~~

27
28 **Section 7.** Section 39-71-432, MCA, is amended to read:

29 **"39-71-432. Definitions.** As used in 39-71-433, the following definitions apply:

30 (1) "Business entity" means a business enterprise owned by a single person, corporation,

1 organization, business trust, trust, partnership, limited liability company, joint venture, association, or other
2 business entity.

3 (2) "Group" means two or more business entities that join together with the approval of the
4 department to purchase individual workers' compensation insurance policies covering each business entity
5 that is part of a group."

6

7 **Section 8.** Section 39-71-433, MCA, is amended to read:

8 **"39-71-433. Group purchase of workers' compensation insurance.** (1) On receiving approval of
9 the department, two or more business entities may join together to form a group to purchase individual
10 workers' compensation insurance policies covering each member of the group.

11 (2) To be eligible to join a new group that is forming, the department shall determine that a
12 business entity is engaged in a business pursuit that is the same as or similar to the business pursuits of
13 the other entities participating in the group.

14 (3) The department shall establish a certification program for groups organized under this section
15 and shall issue to eligible business entities certificates of approval that authorize formation and maintenance
16 of a group.

17 (4) The department by rule shall adopt forms, criteria, and procedures for the issuance of
18 certificates of approval to groups under this section.

19 (5) A group certified under this section may add additional members without approval from the
20 department if the additional members meet the specific criteria identified in the original application and any
21 modifications to the criteria, as approved by the department.

22 ~~(5)~~(6) A group certified under this section may purchase individual workers' compensation
23 insurance policies covering each member of the group from any insurer authorized to write workers'
24 compensation insurance in this state, except that the state fund, as defined in 39-71-2312, has the right
25 to refuse coverage of a group and its plan of operation but cannot refuse coverage to an individual
26 employer. Under an individual policy, the group is entitled to a premium or volume discount that would be
27 applicable to a policy of the combined premium amount of the individual policies.

28 ~~(6)~~(7) A group shall apportion any discount or policyholder dividend received on workers'
29 compensation insurance coverage among the members of the group according to a formula adopted in the
30 plan of operation for the group.

1 ~~(7)(8)~~ A group shall adopt a plan of operation that must include the composition and selection of
 2 a governing board, the methods for administering the group, the eligibility requirements to join the group,
 3 and guidelines for the workers' compensation insurance coverage obtained by the group, including the
 4 payment of premiums, the distribution of discounts, and the method for providing risk management. A
 5 group shall file a copy of its plan of operation with the department."

6
 7 **Section 9.** Section 39-71-503, MCA, is amended to read:

8 **"39-71-503. Administration of fund -- appropriation.** (1) The department shall administer the fund
 9 and shall pay all proper benefits to injured employees of uninsured employers.

10 (2) Surpluses and reserves may not be kept for the fund. The department shall make ~~such~~
 11 payments ~~as that~~ it considers appropriate as funds become available from time to time. The payment of
 12 weekly disability benefits takes preference over the payment of medical benefits. ~~No lump-sum~~ Lump-sum
 13 payments of future projected benefits, including impairment awards, may not be made from the fund. The
 14 board of investments shall invest the money of the fund, and the investment income must be deposited in
 15 the fund. The cost of administration of the fund must be paid out of the money in the fund.

16 (3) The amounts necessary for the payment of benefits from this fund are statutorily appropriated,
 17 as provided in 17-7-502, from this fund."

18
 19 **Section 10.** Section 39-71-504, MCA, is amended to read:

20 **"39-71-504. Funding of fund -- option for agreement between department and injured employee.**
 21 The fund is funded in the following manner:

22 (1) The department may require that the uninsured employer pay to the fund a penalty of either
 23 up to double the premium amount the employer would have paid on the payroll of the employer's workers
 24 in this state if the employer had been enrolled with compensation plan No. 3 or \$200, whichever is greater.
 25 In determining the premium amount for the calculation of the penalty under this subsection, the department
 26 shall make an assessment on how much premium would have been paid on the employer's past 3-year
 27 payroll for periods within the 3 years when the employer was uninsured. ~~An assessment for payroll paid~~
 28 ~~by the uninsured employer for any time prior to July 1, 1977, may not be made.~~

29 (2) ~~(a)~~ The fund shall receive from an uninsured employer an amount equal to all benefits paid or
 30 to be paid from the fund to an injured employee of the uninsured employer. ~~However, the uninsured~~

1 employer's liability under this subsection (2)(a) may not exceed \$50,000.

2 ~~(b) The dollar limitation does not apply to an uninsured employer's liability to an injured employee~~
3 ~~or the employee's beneficiaries under 39-71-509 or 39-71-515.~~

4 (3) The department may determine that the \$1,000 assessments that are charged against an
5 insurer in each case of an industrial death under 39-71-902(1) shall must be paid to the uninsured
6 employers' fund rather than the subsequent injury fund.

7 (4) The department may enter into an agreement with the injured employee or the employee's
8 beneficiaries to assign to the employee or the beneficiaries all or part of the funds received by the
9 department from the uninsured employer pursuant to subsection ~~(2)(a)~~ (2)."

10
11 **Section 11.** Section 39-71-507, MCA, is amended to read:

12 **"39-71-507. Department to order uninsured employer to cease operations -- noncompliance with**
13 **order a misdemeanor -- coordination of remedies.** (1) When the department discovers an uninsured
14 employer, it shall order ~~him~~ the employer to cease operations until ~~he~~ the employer has elected to be bound
15 by a compensation plan.

16 (2) When the department discovers a person, business, or other entity functioning as a prime
17 contractor that has subcontracted for the services of an uninsured employer, it may order the person,
18 business, or other entity functioning as a prime contractor to cease CAUSE all operations PERFORMED BY
19 THE UNINSURED EMPLOYER TO CEASE AT WORKSITES CONTROLLED BY THE PRIME CONTRACTOR until
20 the uninsured employer has elected to be bound by a compensation plan. IF AFTER 3 BUSINESS DAYS
21 FOLLOWING THE ORDER BY THE DEPARTMENT THE PERSON, BUSINESS, OR OTHER ENTITY
22 FUNCTIONING AS A PRIME CONTRACTOR HAS NOT COMPLIED WITH THE ORDER, THE DEPARTMENT
23 MAY ORDER THE PRIME CONTRACTOR TO CEASE ALL OPERATIONS AT THE AFFECTED WORKSITES.

24 ~~(2)(3)~~ (3) An employer who does not comply with the department's order to cease operations is guilty
25 of a misdemeanor. Each day of violation is a separate offense. The county attorney may prosecute a
26 criminal action under this subsection in the county in which the violation occurs. Prosecution under this
27 subsection does not bar the department from enforcing its order by a civil action.

28 (4) A person, business, or other entity functioning as a prime contractor that does not comply with
29 the department's order to cease all operations is guilty of a misdemeanor. Each day of violation is a
30 separate offense. The county attorney may prosecute a criminal action under this subsection in the county

1 in which the violation occurs. Prosecution under this subsection does not bar the department from
 2 enforcing its order by a civil action. In addition, the department may assess a penalty against the person,
 3 business, or other entity functioning as a prime contractor of not more than \$1,000 per day for each day
 4 of violation.

5 ~~(3)~~(5) The department may institute and maintain in the name of the state, through the attorney
 6 general or the county attorney of the county in which the violation occurs, an action for an injunction order
 7 or other civil remedy in district court to enforce its order to cease operations.

8 ~~(4)~~(6) The remedies provided in 39-71-506 and subsections ~~(2) and (3)~~ (3) through (5) of this
 9 section are not mutually exclusive and may be pursued concurrently."

10
 11 **Section 12.** Section 39-71-516, MCA, is amended to read:

12 **"39-71-516. District court venue and jurisdiction for independent cause of action.** An injured
 13 employee or an employee's beneficiaries pursuing an independent cause of action pursuant to 39-71-515
 14 ~~must shall~~ bring ~~such the~~ action in the district court in the district where the claimant resides or where the
 15 alleged violation occurred. The court may grant ~~such~~ interim relief ~~as that~~ it considers appropriate, including
 16 but not limited to injunctive relief, attachment, or receivership. The court may request the workers'
 17 compensation judge to determine the amount of recoverable damages due to the employee."

18
 19 **Section 13.** Section 39-71-710, MCA, is amended to read:

20 **"39-71-710. Termination of benefits upon retirement.** (1) If a claimant is receiving disability or
 21 rehabilitation compensation benefits and the claimant receives social security retirement benefits or is
 22 eligible to receive full social security retirement benefits, the claimant is considered to be retired. When the
 23 claimant is considered retired, the liability of the insurer is ended for payment of ~~wage supplement,~~
 24 permanent total disability, and rehabilitation compensation benefits. However, the insurer remains liable for
 25 temporary total disability benefits, any impairment award, and medical benefits.

26 (2) If a claimant who is eligible to receive social security retirement benefits and is gainfully
 27 employed suffers a work-related injury, the insurer retains liability for temporary total disability benefits,
 28 any impairment award, and medical benefits."

29
 30 **Section 14.** Section 39-71-721, MCA, is amended to read:

1 **"39-71-721. Compensation for injury causing death -- limitation.** (1) (a) If an injured employee dies
 2 and the injury was the proximate cause of ~~such~~ death, then the beneficiary of the deceased is entitled to
 3 the same compensation as though the death occurred immediately following the injury. A beneficiary's
 4 eligibility for benefits commences after the date of death, and the benefit level is established as set forth
 5 in subsection (2).

6 (b) The insurer is entitled to recover any overpayments or compensation paid in a lump sum to a
 7 worker prior to death but not yet recouped. The insurer shall recover ~~such~~ the payments from the
 8 beneficiary's biweekly payments as provided in 39-71-741(5).

9 (2) To beneficiaries as defined in 39-71-116~~(3)(a)~~(4)(a) through ~~(3)(d)~~ (4)(d), weekly compensation
 10 benefits for an injury causing death are 66 2/3% of the decedent's wages. The maximum weekly
 11 compensation benefit may not exceed the state's average weekly wage at the time of injury. The minimum
 12 weekly compensation benefit is 50% of the state's average weekly wage, but in no event may it exceed
 13 the decedent's actual wages at the time of ~~his~~ death.

14 (3) To beneficiaries as defined in 39-71-116~~(3)(e)~~(4)(e) and ~~(3)(f)~~ (4)(f), weekly benefits must be
 15 paid to the extent of the dependency at the time of the injury, subject to a maximum of 66 2/3% of the
 16 decedent's wages. The maximum weekly compensation may not exceed the state's average weekly wage
 17 at the time of injury.

18 (4) If the decedent leaves no beneficiary ~~as defined in 39-71-116~~, a lump-sum payment of \$3,000
 19 must be paid to the decedent's surviving parent or parents.

20 (5) If any beneficiary of a deceased employee dies, the right of ~~such~~ the beneficiary to
 21 compensation under this chapter ceases. Death benefits must be paid to a surviving spouse for 500 weeks
 22 subsequent to the date of the deceased employee's death or until the spouse's remarriage, whichever
 23 occurs first. After benefit payments cease to a surviving spouse, death benefits must be paid to
 24 beneficiaries, if any, as defined in 39-71-116~~(3)(b)~~ (4)(b) through ~~(3)(d)~~ (4)(d).

25 (6) In all cases, benefits must be paid to beneficiaries, ~~as defined in 39-71-116~~.

26 (7) Benefits paid under this section may not be adjusted for cost of living as provided in 39-71-702.

27 ~~(8) Notwithstanding subsections (2) and (3), beginning July 1, 1987, through June 30, 1991, the~~
 28 ~~maximum weekly compensation benefits for injury causing death may not exceed the state's average~~
 29 ~~weekly wage of \$299 established July 1, 1986. Beginning July 1, 1987, through June 30, 1991, the~~
 30 ~~minimum weekly compensation for injury causing death shall be \$149.50, which is 50% of the state's~~

1 ~~average weekly wage established July 1, 1986, but in no event may it exceed the decedent's actual wages~~
 2 ~~at the time of death."~~

3

4 **Section 15.** Section 39-71-723, MCA, is amended to read:

5 "39-71-723. **How compensation to be divided among beneficiaries.** Compensation due to
 6 beneficiaries ~~shall~~ must be paid to the surviving spouse, if any, or if none, then divided equally among or
 7 for the benefit of the children. In cases ~~where~~ in which beneficiaries are a surviving spouse and stepchildren
 8 of ~~such~~ the spouse, the compensation ~~shall~~ must be divided equally among all beneficiaries. Compensation
 9 due to beneficiaries as defined in 39-71-116~~(3)(e)(4)(e)~~ and ~~(3)(f)(4)(f)~~, ~~where~~ when there is more than
 10 one, ~~shall~~ must be divided equitably among them, and the question of dependency and amount ~~thereof shall~~
 11 ~~be~~ is a question of fact for determination by the department."

12

13 **Section 16.** Section 39-71-737, MCA, is amended to read:

14 "39-71-737. **Compensation to run consecutively -- exceptions.** Compensation ~~shall~~ must run
 15 consecutively and not concurrently, and payment ~~shall~~ may not be made for two classes of disability over
 16 the same period, except that impairment awards and auxiliary rehabilitation benefits may be paid
 17 concurrently with other classes of benefits, ~~and wage supplement and partial rehabilitation benefits may~~
 18 ~~be paid concurrently."~~

19

20 **Section 17.** Section 39-71-902, MCA, is amended to read:

21 "39-71-902. **Fund to receive payment from insurer for each death under chapter -- assessment of**
 22 **insurers.** (1) In ~~every~~ each case of the death of an employee under this chapter, the insurer shall pay to the
 23 fund the sum of \$1,000. In addition, the department may assess ~~every~~ each insurer an amount not to
 24 exceed 5% of the compensation paid in Montana in the preceding fiscal year. The assessment must be
 25 transmitted annually to the subsequent injury fund by the employer or insurer. The board of investments
 26 shall invest the money of the fund, and the investment income must be deposited in the fund. The cost of
 27 administration of the fund must be paid out of money in the fund.

28 (2) When, in the judgment of the department, the amount of money in the subsequent injury fund
 29 is such that there is a surplus above and beyond projected liabilities and administrative costs, the
 30 department may at its discretion suspend or reduce further collection of assessments for a period of time

1 determined by the department."

2

3 **Section 18.** Section 39-71-1108, MCA, is amended to read:

4 **"39-71-1108. Physician self-referral prohibition.** (1) Unless authorized by the insurer, a treating
5 physician may not refer a claimant to a health care facility at which the physician does not directly provide
6 care or services when the physician has an investment interest in the facility, unless there is a
7 demonstrated need in the community for the facility and alternative financing is not available. The insurer
8 or the claimant is not liable for charges incurred in violation of this section.

9 (2) Subsection (1) does not apply to care or services provided directly to an injured worker by a
10 treating physician with an ownership interest in a managed care organization that has been certified by the
11 department."

12

13 **Section 19.** Section 39-71-2103, MCA, is amended to read:

14 **"39-71-2103. Employer permitted to carry on business and settle directly with employee --**
15 **individual liability.** (1) If ~~such the~~ employer making ~~such the~~ election ~~shall be~~ is found by the department
16 and the Montana self-insurers guaranty fund to have the requisite financial ability to pay the compensation
17 and benefits in this chapter ~~provided for~~, then the department, with the concurrence of the guaranty fund,
18 shall grant to the employer permission to carry on ~~his~~ business for the ~~fiscal~~ year within which ~~such the~~
19 election is made and ~~such~~ proof filed, or the remaining portion of ~~such the~~ fiscal year, and to make ~~such~~
20 payments directly to ~~his~~ the employees as they may become entitled to receive the ~~same~~ payments.

21 (2) Each individual employer in an association, corporation, limited liability company, or organization
22 of employers given permission by the department to operate as self-insured under plan No. 1 of this chapter
23 is jointly and severally liable for all obligations incurred by the association, corporation, limited liability
24 company, or organization under this chapter. An association, corporation, limited liability company, or
25 organization of employers given permission to operate as self-insured ~~must~~ shall maintain excess liability
26 coverage in amounts and under ~~such~~ conditions as provided by rules of the department."

27

28 **Section 20.** Section 39-71-2411, MCA, is amended to read:

29 **"39-71-2411. Mediation procedure.** (1) Except as otherwise provided, a claimant or an insurer
30 having a dispute relating to benefits under chapter 71 or 72 of this title may petition the department for

1 mediation of the dispute.

2 (2) A party may take part in mediation proceedings with or without representation.

3 (3) The mediator shall review the department file for the case and may receive any additional
4 documentation or argument either party submits.

5 (4) The mediator shall request that each party offer argument summarizing the party's position.
6 A party's argument must fully present the party's case. The argument is not limited by the rules of
7 evidence.

8 (5) After the parties have presented all their information and argument to the mediator, ~~he~~ the
9 mediator shall recommend a solution to the parties within a reasonable time to be established by rule.

10 (6) A party shall notify the mediator within ~~45~~ 20 25 days of the mailing of ~~his~~ the mediator's
11 report whether the party accepts the mediator's recommendation. If either party does not accept the
12 mediator's recommendation, the party may petition the workers' compensation court for resolution of the
13 dispute.

14 (7) (a) If a mediator determines that either party failed to cooperate in the mediation process, the
15 mediator shall prepare a written report setting forth the determination and the grounds for the
16 determination. The report must be mailed to the parties and to the workers' compensation court. Unless
17 a party disputes the determination as set forth in subsection (7)(c), the parties shall repeat the mediation
18 process, but only one time.

19 (b) A mediator may determine that a party has failed to cooperate in the mediation process only
20 if the party failed to:

21 (i) supply information or offer a summary of the party's position as reasonably requested by the
22 mediator;

23 (ii) attend scheduled mediation conferences unless excused by the mediator; or

24 (iii) listen to and review the information and position offered by the opposing party.

25 (c) If a party disputes a mediator's determination that the party failed to cooperate in the mediation
26 process, the party may file a petition with the workers' compensation court. Upon receipt of a petition, the
27 court shall summon the parties and the mediator to determine by oral discussion whether the mediator's
28 determination of noncooperation is supportable. If the court finds that the mediator's determination is
29 supportable, the court may order the parties to attempt a second time to mediate their dispute."
30

1 **Section 21.** Section 39-71-2905, MCA, is amended to read:

2 **"39-71-2905. Petition to workers' compensation judge.** A claimant or an insurer who has a dispute
3 concerning any benefits under chapter 71 of this title may petition the workers' compensation judge for
4 a determination of the dispute after satisfying dispute resolution requirements otherwise provided in this
5 chapter. In addition, the district court that has jurisdiction over a pending action under 39-71-515 may
6 request the workers' compensation judge to determine the amount of recoverable damages due to the
7 employee. The judge, after a hearing, shall make a determination of the dispute in accordance with the law
8 as set forth in chapter 71 of this title. If the dispute relates to benefits due to a claimant under chapter 71,
9 the judge shall fix and determine any benefits to be paid and specify the manner of payment. After parties
10 have satisfied dispute resolution requirements provided elsewhere in this chapter, the workers'
11 compensation judge has exclusive jurisdiction to make determinations concerning disputes under chapter
12 71, except as provided in 39-71-317 and 39-71-516. The penalties and assessments allowed against an
13 insurer under chapter 71 are the exclusive penalties and assessments that can be assessed by the workers'
14 compensation judge against an insurer for disputes arising under chapter 71."

15
16 **Section 22.** Section 39-72-601, MCA, is amended to read:

17 **"39-72-601. Medical panel.** (1) The department shall develop a list of physicians to serve on the
18 occupational disease medical panel. The list may include physicians nominated by the board of medical
19 examiners. A physician on the panel must be certified by ~~his~~ the physician's specialty board or be eligible
20 for certification in the specialty area appropriate to the claimant's condition in relation to this chapter.

21 (2) The department shall select a panel physician to examine a claimant, as required. The
22 department shall appoint, as required, ~~one member of the panel to be the chairman~~ a physician as the
23 presiding officer."

24
25 **Section 23.** Section 39-72-602, MCA, is amended to read:

26 **"39-72-602. Insurer may accept liability -- procedure for medical examination when insurer has not**
27 **accepted liability.** (1) An insurer may accept liability for a claim under this chapter based on information
28 submitted to it by a claimant.

29 (2) In order to determine the compensability of claims under this chapter when an insurer has not
30 accepted liability, the following procedure must be followed:

1 (a) The department shall direct the claimant to a member of the medical panel for an examination.
 2 The panel member shall conduct an examination to determine whether the claimant is totally disabled and
 3 is suffering from an occupational disease. The panel member shall submit a report of ~~his~~ the member's
 4 findings to the department.

5 (b) Either the claimant or the insurer may, within 20 days after the receipt of the report by the first
 6 panel member, request that the claimant be examined by a second panel member. If a second examination
 7 is requested, the department shall direct the claimant to a second panel member who shall conduct an
 8 examination to determine whether ~~he believes~~ the claimant is totally disabled and is suffering from an
 9 occupational disease. The panel member shall submit a report of ~~his~~ the member's findings to the
 10 department. ~~When a second examination has been requested, the reports of the examinations shall be~~
 11 ~~submitted to three members of the medical panel for review. A~~ The medical panel member ~~or the panel~~
 12 may, in order to ~~assist the panel member or the panel in reaching~~ reach a conclusion, consult with the
 13 claimant's attending physician. The reports from the two examining physicians must be sent by the
 14 department to the presiding officer of the panel. ~~The three panel members~~ presiding officer shall issue a
 15 report concerning the claimant's physical condition and whether the claimant is suffering from an
 16 occupational disease.

17 (c) (i) If a second examination is not requested, the department shall issue its order determining
 18 whether the claimant is entitled to occupational disease benefits based on the report of the first examining
 19 physician.

20 (ii) If a second examination is requested, the department shall issue its order based on the report
 21 of the ~~three members of the medical panel~~ presiding officer.

22 (d) ~~For the purpose of reviewing the reports of the examinations and issuing the report under~~
 23 ~~subsection (2)(b), the three members of the medical panel shall be the two members of the panel who~~
 24 ~~examined the claimant and the panel chairman.~~ If the panel ~~chairman~~ presiding officer has examined the
 25 claimant, the ~~panel chairman~~ department shall appoint another ~~member of the medical panel to be the third~~
 26 ~~member~~ presiding officer."

27
 28 **Section 24.** Section 39-72-612, MCA, is amended to read:

29 **"39-72-612. Hearing and appeal to workers' compensation judge.** (1) Within 20 days after the
 30 department has issued its order of determination as to whether the claimant is entitled to benefits under

1 this chapter, a party may request a hearing. In order to perfect an appeal to the workers' compensation
2 judge, the appealing party shall request a hearing before the department. The department shall grant a
3 hearing, ~~and the~~ which may be conducted by telephone or by videoconference. The department's final
4 determination may not be issued until after the hearing.

5 (2) Appeals from a final determination of the department must be made to the workers'
6 compensation judge within 30 days after the department has issued its final determination. The judge, after
7 a hearing held pursuant to 39-71-2903 and 39-71-2904, shall make a final determination concerning the
8 claimant's claim. The judge may overrule the department only on the basis that the department's
9 determination is:

- 10 (a) in violation of constitutional or statutory provisions;
11 (b) in excess of the statutory authority of the agency;
12 (c) made upon unlawful procedure;
13 (d) affected by other error of law;
14 (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole
15 record; or
16 (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise
17 of discretion."

18
19 NEW SECTION. **Section 25. Saving clause.** [This act] does not affect rights and duties that
20 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
21 act].

22
23 NEW SECTION. **Section 26. Severability.** If a part of [this act] is invalid, all valid parts that are
24 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
25 applications, the part remains in effect in all valid applications that are severable from the invalid
26 applications.

27
28 NEW SECTION. **Section 27. Applicability.** (1) [Section ~~40~~ 9] applies retroactively, within the
29 meaning of 1-2-109, to all occurrences beginning after October 1, 1977.

30 (2) [Section ~~48~~ 17] applies retroactively, within the meaning of 1-2-109, to all occurrences

1 beginning after October 1, 1973.

2 (3) [Sections 5 and ~~25~~ 24] apply to hearings or appeals requested on or after [the effective date
3 of this act].

4

5 NEW SECTION. Section 28. Effective dates. (1) [Sections 5, ~~13, 22, and 25 through 28~~ 12, 21,
6 AND 24 THROUGH 27 and this section] are effective on passage and approval.

7 (2) [Sections 1 through 4, ~~6 through 12, 14 through 21, 23, and 24~~ 11, 13 THROUGH 20, 22,
8 AND 23] are effective ~~October 1, 1995~~ AND 6 ARE EFFECTIVE JULY 1, 1995.

9 (3) [SECTIONS 7 THROUGH 11, 13 THROUGH 20, 22, AND 23] ARE EFFECTIVE OCTOBER 1,
10 1995.

11

-END-