

*Marshall*  
 INTRODUCED BY *Benedict* *Harper*  
 SENATE BILL NO. 375  
*MERCER GRINDE* *Slater* *AKLESTAD* *Anner* *Cobb* *Feating*

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING WORKERS' COMPENSATION AND  
 OCCUPATIONAL DISEASE LAWS; AUTHORIZING PAYMENT OF MEDICAL CLAIMS WITHOUT  
 ACCEPTANCE OF LIABILITY; REQUIRING INSURERS TO ACT PROMPTLY ON CLAIMS; DEFINING  
 "OBJECTIVE MEDICAL FINDINGS" AND REQUIRING INJURY AND DISABILITY TO BE ESTABLISHED BY  
 OBJECTIVE MEDICAL FINDINGS; REVISING THE DEFINITION OF "INJURY"; DEFINING "ACTUAL WAGE  
 LOSS"; REVISING REQUIREMENTS TO RECEIVE PERMANENT PARTIAL DISABILITY BENEFITS; REVISING  
 PROVISIONS REGARDING TERMINATION OF BENEFITS UPON RETIREMENT; REVISING PROVISIONS FOR  
 LUMP-SUM CONVERSIONS; ALLOWING SUSPENSION OF BENEFITS WHILE A CLAIMANT IS  
 INCARCERATED FOR A MISDEMEANOR; REVISING THE DEFINITION OF DISABLED WORKER; EXEMPTING  
 PAYMENT AGREEMENTS BETWEEN A PREFERRED PROVIDER ORGANIZATION AND AN INSURER FROM  
 PRESCRIPTION DRUG PAYMENT LIMITS; REVISING REHABILITATION BENEFITS; AUTHORIZING THE  
 WORKERS' COMPENSATION COURT JUDGE TO STAY PROCEEDINGS IN CERTAIN CIRCUMSTANCES;  
 REVISING THE DEFINITION OF "WAGES"; AUTHORIZING A REDUCTION IN BENEFITS FOR THIRD-PARTY  
 RECOVERIES; AUTHORIZING THE TERMINATION OF TEMPORARY TOTAL BENEFITS UPON NOTIFICATION  
 OF A WORKER'S RELEASE TO RETURN TO WORK; REQUIRING A SOLE PROPRIETOR, PARTNER,  
 CORPORATE OFFICER, OR MANAGER OR MEMBER OF A LIMITED LIABILITY COMPANY OR A DESIGNEE  
 TO PROVIDE NOTICE OF INJURY WITHIN 30 DAYS; AUTHORIZING TERMINATION OF CERTAIN BENEFITS  
 FOR NONCOOPERATION WITH A REHABILITATION PROVIDER; REVISING THE FILING TIME FOR  
 OCCUPATIONAL DISEASE CLAIMS; REVISING PROVISIONS FOR PAYMENT OF MEDICAL EXPENSES IN  
 OCCUPATIONAL DISEASE CLAIMS; EXTENDING TEMPORARY PARTIAL DISABILITY BENEFITS;  
 AMENDING SECTIONS 39-71-116, 39-71-119, 39-71-123, 39-71-407, 39-71-603, 39-71-609, 39-71-701,  
 39-71-702, 39-71-703, 39-71-710, 39-71-711, 39-71-712, 39-71-721, 39-71-723, 39-71-727,  
 39-71-741, 39-71-744, 39-71-1011, 39-71-1032, 39-71-2001, 39-72-403, AND 39-72-704, MCA; AND  
 PROVIDING AN EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 4] authorizes the department of labor



1 and industry to adopt rules to provide for prompt claims handling practices for injured workers, for  
2 employers, and for providers who are the customers of the workers' compensation system. It is the intent  
3 of the legislature that the department of labor and industry adopt rules providing claimants with written  
4 explanations of claims and the methodology of benefit calculation.

5

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

7

8 **NEW SECTION. Section 1. Stay pending determination by district court.** Upon a motion and filing  
9 of an affidavit by either party and after a hearing, the workers' compensation judge may grant a stay of  
10 proceedings in the workers' compensation court if a criminal action involving workers' compensation  
11 insurance fraud by a claimant has been filed in district court.

12

13 **NEW SECTION. Section 2. Benefit reduction for third-party recovery.** (1) If an employee is injured  
14 or dies and obtains a third-party recovery, settlement, or award, an insurer may reduce by 30% the benefits  
15 paid or that are required to be paid to the employee or beneficiary pursuant to chapter 71 or 72 as a result  
16 of the injury or death. The reduction applies to any recovery, settlement, or award regardless of the form  
17 of action or the nature of damages. The total of any reductions may not exceed 30% of any third-party  
18 recovery, settlement, or award.

19 (2) This section does not limit or prohibit an insurer's right to pursue subrogation pursuant to  
20 39-71-414.

21 (3) If an insurer is entitled to subrogation pursuant to 39-71-414, the amount subrogated must be  
22 offset by any reduction in benefits pursuant to subsection (1).

23

24 **NEW SECTION. Section 3. Payment of medical claims without acceptance of liability.** (1) An  
25 insurer may pay a medical claim that is based upon the report of a nonwage loss injury or occupational  
26 disease without the payments being construed as an acceptance of liability for the claim.

27 (2) An insurer shall, within 10 days of making payment under subsection (1), notify the worker of  
28 the payment of the medical claim without acceptance of liability.

29 (3) Upon written request by a worker for the payment of indemnity benefits or for a determination  
30 of liability, the insurer shall investigate the claim to determine liability for the injury or occupational disease

1 under 39-71-606 or 39-71-608.

2

3 **NEW SECTION.** **Section 4. Insurers to act promptly on claims.** (1) Pursuant to the public policy  
4 stated in 39-71-105, prompt claims handling practices are necessary to provide appropriate service to  
5 injured workers, to employers, and to providers who are the customers of the workers' compensation  
6 system.

7 (2) An insurer shall provide to the claimant:

8 (a) a written statement of the reasons that a claim is being denied at the time of denial;

9 (b) whenever benefits requested by a claimant are denied, a written explanation of how the  
10 claimant may appeal an insurer's decision; and

11 (c) a written explanation of the amount of wage loss benefits being paid to the claimant, along with  
12 an explanation of the calculation used to compute those benefits. The explanation must be sent within 7  
13 days of the initial payment of the benefit.

14 (3) An insurer shall:

15 (a) begin making payments that are due on a claim within 14 days of acceptance of the claim,  
16 unless the insurer promptly notifies the claimant that the insurer needs additional information in order to  
17 begin paying benefits and specifies the information needed; and

18 (b) pay settlements within 30 days of the date the department issues an order approving the  
19 settlement.

20 (4) An insurer may not make payments pursuant to 39-71-608 or any other reservation of rights  
21 for more than 90 days without:

22 (a) written consent of the claimant; or

23 (b) approval of the department.

24 (5) The department may adopt rules to implement this section.

25

26 **Section 5.** Section 39-71-116, MCA, is amended to read:

27 **"39-71-116. Definitions.** Unless the context otherwise requires, words and phrases ~~employed~~ used  
28 in this chapter have the following meanings:

29 (1) "Actual wage loss" means that the wages that a worker earns or is qualified to earn after the  
30 worker reaches maximum healing are less than the actual wages the worker received at the time of the

1 injury.

2 ~~(1)~~(2) "Administer and pay" includes all actions by the state fund under the Workers'  
3 Compensation Act and the Occupational Disease Act of Montana necessary to:

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

5 (b) payment of benefits;

6 (c) setting of reserves;

7 (d) furnishing of services and facilities; and

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

9 ~~(2)~~(3) "Average weekly wage" means the mean weekly earnings of all employees under covered  
10 employment, as defined and established annually by the Montana department of labor and industry. It is  
11 established at the nearest whole dollar number and must be adopted by the department prior to July 1 of  
12 each year.

13 ~~(3)~~(4) "Beneficiary" means:

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

16 (b) an unmarried child under ~~the age of~~ 18 years of age;

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

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

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

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

26 ~~(4)~~(5) "Casual employment" means employment not in the usual course of the trade, business,  
27 profession, or occupation of the employer.

28 ~~(6)~~(6) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior  
29 to the injury.

30 ~~(6)~~(7) "Construction industry" means the major group of general contractors and operative builders,

1 heavy construction (other than building construction) contractors, and special trade contractors, listed in  
 2 major groups 15 through 17 in the 1987 Standard Industrial Classification Manual. The term does not  
 3 include office workers, design professionals, salespersons, estimators, or any other related employment that  
 4 is not directly involved on a regular basis in the provision of physical labor at a construction or renovation  
 5 site.

6 ~~(7)~~(8) "Days" means calendar days, unless otherwise specified.

7 ~~(8)~~(9) "Department" means the department of labor and industry.

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

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

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

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

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

18 (14) "Medical stability", "maximum healing", or "maximum medical healing" means a point in the  
 19 healing process when further material improvement would not be reasonably expected from primary medical  
 20 treatment.

21 (15) "Objective medical findings" means medical evidence, including range of motion, atrophy,  
 22 muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

23 ~~(15)~~(16) "Order" means any decision, rule, direction, requirement, or standard of the department  
 24 or any other determination arrived at or decision made by the department.

25 ~~(16)~~(17) "Palliative care" means treatment designed to reduce or ease symptoms without curing  
 26 the underlying cause of the symptoms.

27 ~~(17)~~(18) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average  
 28 annual payroll of the employer for the preceding calendar year or, if the employer has not operated a  
 29 sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the  
 30 current year. However, an estimate may be made by the department for any employer starting in business

1 if average payrolls are not available. This estimate must be adjusted by additional payment by the employer  
 2 or refund by the department, as the case may actually be, on December 31 of the current year. An  
 3 employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by  
 4 an employer.

5 ~~(18)~~(19) "Permanent partial disability" means a physical condition, ~~after in which~~ a worker, ~~has~~  
 6 ~~reached after reaching~~ maximum medical ~~healing, in which a worker~~ healing:

7 (a) ~~has a medically determined physical restriction as a result of an injury as defined in 39-71-119~~  
 8 has a permanent impairment established by objective medical findings; and

9 (b) is able to return to work in some capacity but the ~~physical restriction~~ permanent impairment  
 10 impairs the worker's ability to work; and

11 (c) has an actual wage loss as a result of the injury.

12 ~~(19)~~(20) "Permanent total disability" means a physical condition resulting from injury as defined in  
 13 this chapter, after a worker reaches maximum medical healing, in which a worker does not have a  
 14 reasonable prospect of physically performing regular employment. Regular employment means work on a  
 15 recurring basis performed for remuneration in a trade, business, profession, or other occupation in this  
 16 state. Lack of immediate job openings is not a factor to be considered in determining if a worker is  
 17 permanently totally disabled.

18 ~~(20)~~(21) The "plant of the employer" includes the place of business of a third person while the  
 19 employer has access to or control over the place of business for the purpose of carrying on the employer's  
 20 usual trade, business, or occupation.

21 ~~(21)~~(22) "Primary medical services" means treatment prescribed by a treating physician, for  
 22 conditions resulting from the injury, necessary for achieving medical stability.

23 ~~(22)~~(23) "Public corporation" means the state or any county, municipal corporation, school district,  
 24 city, city under commission form of government or special charter, town, or village.

25 ~~(23)~~(24) "Reasonably safe place to work" means that the place of employment has been made as  
 26 free from danger to the life or safety of the employee as the nature of the employment will reasonably  
 27 permit.

28 ~~(24)~~(25) "Reasonably safe tools and appliances" are tools and appliances as are adapted to and are  
 29 reasonably safe for use for the particular purpose for which they are furnished.

30 ~~(25)~~(26) (a) "Secondary medical services" means those medical services or appliances considered

1 not medically necessary for medical stability. The services and appliances include but are not limited to  
 2 spas or hot tubs, work hardening, physical restoration programs and other restoration programs designed  
 3 to address disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or  
 4 rehabilitation facilities.

5 (b) (i) As used in this subsection (26), "disability" means a condition in which a worker's ability  
 6 to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury.  
 7 The restrictions may be combined with factors, such as the worker's age, education, work history, and  
 8 other factors that affect the worker's ability to engage in gainful employment.

9 (ii) Disability does not mean a purely medical condition.

10 ~~(26)~~(27) "Temporary partial disability" means a physical condition resulting from an injury as defined  
 11 in 39-71-119 in which a worker, prior to maximum healing:

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

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

15 (c) suffers a partial wage loss.

16 ~~(27)~~(28) "Temporary service contractor" means any person, firm, association, or corporation  
 17 conducting business that employs individuals directly for the purpose of furnishing the services of those  
 18 individuals on a part-time or temporary basis to others.

19 ~~(28)~~(29) "Temporary total disability" means a physical condition resulting from an injury as defined  
 20 in this chapter that results in total loss of wages and exists until the injured worker reaches maximum  
 21 medical healing.

22 ~~(29)~~(30) "Temporary worker" means a worker whose services are furnished to another on a  
 23 part-time or temporary basis to substitute for a permanent employee on leave or to meet an emergency or  
 24 short-term workload.

25 ~~(30)~~(31) "Treating physician" means a person who is primarily responsible for the treatment of a  
 26 worker's compensable injury and is:

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

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

30 (c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if

1 there is not a physician, as defined in subsection ~~(30)(a)~~ (31)(a), in the area where the physician  
2 assistant-certified is located;

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

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

5 ~~(31)(32)~~ "Year", unless otherwise specified, means calendar year."  
6

7 **Section 6.** Section 39-71-119, MCA, is amended to read:

8 **"39-71-119. Injury and accident defined.** (1) "Injury" or "injured" means:

9 (a) internal or external physical harm to the body that is established by objective medical findings;

10 (b) damage to prosthetic devices or appliances, except for damage to eyeglasses, contact lenses,  
11 dentures, or hearing aids; or

12 (c) death.

13 (2) An injury is caused by an accident. An accident is:

14 (a) an unexpected traumatic incident or unusual strain;

15 (b) identifiable by time and place of occurrence;

16 (c) identifiable by member or part of the body affected; and

17 (d) caused by a specific event on a single day or during a single work shift.

18 (3) "Injury" or "injured" does not mean a physical or mental condition arising from:

19 (a) emotional or mental stress; or

20 (b) a nonphysical stimulus or activity.

21 (4) "Injury" or "injured" does not include a disease that is not caused by an accident.

22 (5) (a) A cardiovascular, pulmonary, respiratory, or other disease, cerebrovascular accident, or  
23 myocardial infarction suffered by a worker is an injury only if the accident is the primary cause of the  
24 physical harm condition in relation to other factors contributing to the physical harm condition.

25 (b) "Primary cause", as used in subsection (5)(a), means a cause that, with a reasonable degree  
26 of medical certainty, is responsible for more than 50% of the physical condition."  
27

28 **Section 7.** Section 39-71-123, MCA, is amended to read:

29 **"39-71-123. Wages defined.** (1) "Wages" means the gross remuneration paid in money, or in a  
30 substitute for money, for services rendered by an employee, or income provided for in subsection (1)(d).



1 Wages include but are not limited to:

2 (a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays,  
3 vacations, and sickness periods;

4 (b) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is  
5 based on its actual value;

6 (c) payments made to an employee on any basis other than time worked, including but not limited  
7 to piecework, an incentive plan, or profit-sharing arrangement; and

8 (d) income or payment in the form of a draw, wage, net profit, or substitute for money received  
9 or taken by a sole proprietor or partner, regardless of whether the sole proprietor or partner has performed  
10 work or provided services for that remuneration.

11 (2) Wages do not include:

12 (a) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, and  
13 other expenses, as set forth in department rules;

14 (b) special rewards for individual invention or discovery;

15 (c) tips and other gratuities received by the employee in excess of those documented to the  
16 employer for tax purposes;

17 (d) contributions made by the employer to a group insurance or pension plan; or

18 (e) vacation or sick leave benefits accrued but not paid.

19 (3) ~~For (a) Except as provided in subsection (3)(b), for~~ compensation benefit purposes, the average  
20 actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except  
21 that if:

22 ~~(a) the term of employment for the same employer is less than four pay periods, in which case the~~  
23 ~~employee's wages are the hourly rate times the number of hours in a week for which the employee was~~  
24 ~~hired to work; or,~~

25 (b) ~~for~~ For good cause shown, by the claimant, the use of the four pay periods does not accurately  
26 reflect the claimant's employment history with the employer, in which case the insurer may use additional  
27 pay periods if the use of the last four pay periods does not accurately reflect the claimant's employment  
28 history with the employer, the wage may be calculated by dividing the total earnings for an additional period  
29 of time, not to exceed 1 year prior to the date of injury, by the number of weeks in that period, including  
30 periods of idleness or seasonal fluctuations.

1           (4) (a) For the purpose of calculating compensation benefits for an employee working concurrent  
2 employments, the average actual wages must be calculated as provided in subsection (3). As used in this  
3 subsection, "concurrent employment" means employment in which the employee was actually employed  
4 at the time of the injury and would have continued to be employed without a break in the term of  
5 employment if not for the injury.

6           (b) The compensation benefits for a covered volunteer must be based on the average actual wages  
7 in the volunteer's regular employment, except self-employment as a sole proprietor or partner who elected  
8 not to be covered, from which the volunteer is disabled by the injury incurred.

9           (c) The compensation benefits for an employee working at two or more concurrent remunerated  
10 employments must be based on the aggregate of average actual wages of all employments, except  
11 self-employment as a sole proprietor or partner who elected not to be covered, from which the employee  
12 is disabled by the injury incurred.

13           (5) The compensation benefits and the payroll, for premium purposes, for a volunteer firefighter  
14 covered pursuant to 39-71-118 must be based upon a wage of not less than \$900 a month and not more  
15 than 1 1/2 times the average weekly wage as defined in this chapter."  
16

17           **Section 8.** Section 39-71-407, MCA, is amended to read:

18           "**39-71-407. Liability of insurers -- limitations.** (1) ~~Every~~ Each insurer is liable for the payment of  
19 compensation, in the manner and to the extent provided in this section, to an employee of an employer that  
20 it insures who receives an injury arising out of and in the course of employment or, in the case of death  
21 from the injury, to the employee's beneficiaries, if any.

22           (2) (a) An insurer is liable for an injury, as defined in 39-71-119, if the injury is established by  
23 objective medical findings and if the claimant establishes that it is more probable than not that:

24           (i) a claimed injury has occurred; or

25           (ii) a claimed injury aggravated a preexisting condition.

26           (b) Proof that it was medically possible that a claimed injury occurred or that the claimed injury  
27 aggravated a preexisting condition is not sufficient to establish liability.

28           (3) An employee who suffers an injury or dies while traveling is not covered by this chapter unless:

29           (a) (i) the employer furnishes the transportation or the employee receives reimbursement from the  
30 employer for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment

1 agreement; and

2 (ii) the travel is necessitated by and on behalf of the employer as an integral part or condition of  
3 the employment; or

4 (b) the travel is required by the employer as part of the employee's job duties.

5 (4) An employee is not eligible for benefits otherwise payable under this chapter if the employee's  
6 use of alcohol or drugs not prescribed by a physician is the major contributing cause of the accident.  
7 However, if the employer had knowledge of and failed to attempt to stop the employee's use of alcohol  
8 or drugs, this subsection does not apply.

9 (5) If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury  
10 to the same part of the body, the workers' compensation insurer is not liable for any compensation or  
11 medical benefits caused by the subsequent nonwork-related injury.

12 (6) An employee is not eligible for benefits payable under this chapter unless the entitlement to  
13 benefits is established by objective medical findings that contain sufficient factual and historical information  
14 concerning the relationship of the worker's condition to the original injury.

15 ~~(6)(7)~~ As used in this section, "major contributing cause" means a cause that is the leading cause  
16 contributing to the result when compared to all other contributing causes."

17

18 **Section 9.** Section 39-71-603, MCA, is amended to read:

19 **"39-71-603. Notice of injuries other than death to be submitted within thirty days.** ~~No (1)~~ A claim  
20 to recover benefits under the Workers' Compensation Act, for injuries not resulting in death, may not be  
21 considered compensable unless, within 30 days after the occurrence of the accident ~~which~~ that is claimed  
22 to have caused the injury, notice of the time and place where the accident occurred and the nature of the  
23 injury is given to the employer or the employer's insurer by the injured employee or someone on the  
24 employee's behalf. Actual knowledge of the accident and injury on the part of the employer or the  
25 employer's managing agent or superintendent in charge of the work ~~upon~~ in which the injured employee  
26 was engaged at the time of the injury is equivalent to notice.

27 (2) If a sole proprietor, partner, manager of a manager-managed limited liability company, member  
28 of a member-managed limited liability company, or corporate officer covered under this chapter is injured  
29 in an accident, the sole proprietor, partner, manager, member, or corporate officer or an appointed designee  
30 shall, within 30 days, notify the insurer of the time and location of the accident and the nature of the

1 injury."

2

3 **Section 10.** Section 39-71-609, MCA, is amended to read:

4 **"39-71-609. Denial of claim after payments made or termination of all benefits or reduction to**  
5 **partial benefits by insurer -- fourteen days' notice required -- exception.** ¶ (1) Except as provided in  
6 subsection (2), if an insurer determines to deny a claim on which payments have been made under  
7 39-71-608 during a time of further investigation or, after a claim has been accepted, terminates all biweekly  
8 compensation benefits, it may do so only after 14 days' written notice to the claimant, the claimant's  
9 authorized representative, if any, and the department. For injuries occurring prior to July 1, 1987, an  
10 insurer must give 14 days' written notice to the claimant before reducing benefits from total to partial.  
11 However, if an insurer has knowledge that a claimant has returned to work, compensation benefits may  
12 be terminated as of the time the claimant returned to work.

13 (2) Temporary total disability benefits may be terminated on the date that the worker has been  
14 released to return to work in some capacity."

15

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

17 **"39-71-701. Compensation for temporary total disability -- exception.** (1) Subject to the limitation  
18 in 39-71-736 and subsection (4) of this section, a worker is eligible for temporary total disability benefits;  
19 (a) when the worker suffers a total loss of wages as a result of an injury and until the worker  
20 reaches maximum healing; or  
21 (b) until the worker has been released to return to the employment in which the worker was  
22 engaged at the time of the injury or to employment with similar physical requirements.

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

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

30 (4) If the treating physician releases a worker to return to the same, a modified, or an alternative

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

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

10 (6) If the claimant is awarded social security benefits, the insurer may, upon notification of the  
11 claimant's receipt of social security benefits, suspend biweekly compensation benefits for a period sufficient  
12 to recover any resulting overpayment of benefits. This subsection does not prevent a claimant and insurer  
13 from agreeing to a repayment plan.

14 (7) A worker may not receive both wages and temporary total disability benefits without the  
15 written consent of the insurer. A worker who receives both wages and temporary total disability benefits  
16 without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301."

17  
18 **Section 12.** Section 39-71-702, MCA, is amended to read:

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

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

25 (3) Weekly compensation benefits for an injury resulting in permanent total disability are 66 2/3%  
26 of the wages received at the time of the injury. The maximum weekly compensation benefits may not  
27 exceed the state's average weekly wage at the time of injury.

28 (4) In cases ~~where~~ in which it is determined that periodic disability benefits granted by the Social  
29 Security Act are payable because of the injury, the weekly benefits payable under this section are reduced,  
30 but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for

1 the week, which amount is to be calculated from the date of the disability social security entitlement.

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

7 (6) A worker may not receive both wages and permanent total disability benefits without the  
8 written consent of the insurer. A worker who receives both wages and permanent total disability benefits  
9 without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301.

10 (7) If the claimant is awarded social security benefits, the insurer may, upon notification of the  
11 claimant's receipt of social security benefits, suspend biweekly compensation benefits for a period sufficient  
12 to recover any resulting overpayment of benefits. This subsection does not prevent a claimant and insurer  
13 from agreeing to a repayment plan."

14

15 **Section 13.** Section 39-71-703, MCA, is amended to read:

16 "**39-71-703. Compensation for permanent partial disability.** (1) If an injured worker suffers a  
17 permanent partial disability and is no longer entitled to temporary total or permanent total disability benefits,  
18 the worker is entitled to a permanent partial disability award: if that worker:

19 (a) has an actual wage loss as a result of the injury; and

20 (b) has a permanent impairment rating that:

21 (i) is established by objective medical findings; and

22 (ii) is more than zero as determined by the latest edition of the American medical association Guides  
23 to the Evaluation of Permanent Impairment.

24 (2) When a worker receives an impairment rating as the result of a compensable injury and has no  
25 actual wage loss as a result of the injury, the worker is eligible for an impairment award only.

26 ~~(2)(3)~~ The permanent partial disability award must be arrived at by multiplying the percentage  
27 arrived at through the calculation provided in subsection ~~(3)~~ (4) by 350 weeks.

28 ~~(3) An~~ (4) A permanent partial disability award granted an injured worker may not exceed a  
29 permanent partial disability rating of 100%. ~~The criteria for the rating of disability must be calculated using~~  
30 ~~the medical impairment rating as determined by the latest edition of the American medical association~~

1 ~~Guides to the Evaluation of Permanent Impairment.~~

2 (5) The percentage to be used in subsection ~~(2)~~ (3) must be determined by adding all of the  
3 following applicable percentages to the impairment rating:

4 (a) if the claimant is ~~30~~ 40 years of age or younger at the time of injury, 0%; if the claimant is over  
5 ~~30~~ 40 years of age ~~but under 56 years of age~~ at the time of injury, ~~2%~~ 1%; ~~and if the claimant is 56 years~~  
6 ~~of age or older at the time of injury, 3%;~~

7 (b) for a worker who has completed less than ~~9~~ 12 years of education, ~~3%~~ 1%; for a worker who  
8 has completed ~~9 through 12 years~~ or more of education or who has received a graduate equivalency  
9 diploma, ~~2%~~ 0%; ~~for a worker who has completed more than 12 years of education, 0%;~~

10 (c) if a worker has no actual wage loss as a result of the industrial injury, 0%; if a worker has an  
11 actual wage loss of \$2 or less an hour as a result of the industrial injury, 10%; if a worker has an actual  
12 wage loss of more than \$2 an hour as a result of the industrial injury, 20%; ~~and. Wage loss benefits must~~  
13 ~~be based on the difference between the actual wages received at the time of injury and the wages that the~~  
14 ~~worker earns or is qualified to earn after the worker reaches maximum healing.~~

15 (d) if a worker, at the time of the injury, was performing heavy labor activity and after the injury  
16 the worker can perform only light or sedentary labor activity, ~~20%~~ 5%; if a worker, at the time of injury,  
17 was performing heavy labor activity and after the injury the worker can perform only medium labor activity,  
18 ~~15%~~ 3%; if a worker was performing medium labor activity at the time of the injury and after the injury  
19 the worker can perform only light or sedentary labor activity, ~~10%~~ 2%.

20 ~~(4)~~(6) The weekly benefit rate for permanent partial disability is ~~66~~ 2/3% of the wages received  
21 at the time of injury, but the rate may not exceed one-half the state's average weekly wage. The weekly  
22 benefit amount established for an injured worker may not be changed by a subsequent adjustment in the  
23 state's average weekly wage for future fiscal years.

24 ~~(5)~~(7) If a worker suffers a subsequent compensable injury or injuries to the same part of the body,  
25 the award payable for the subsequent injury may not duplicate any amounts paid for the previous injury  
26 or injuries.

27 (8) If a worker is eligible for a rehabilitation plan, permanent partial disability benefits payable under  
28 this section must be calculated based on the wages that the worker earns or would be qualified to earn  
29 following the completion of the rehabilitation plan.

30 ~~(6)~~(9) As used in this section:

1 (a) "heavy labor activity" means the ability to lift over 50 pounds occasionally or up to 50 pounds  
2 frequently;

3 (b) "medium labor activity" means the ability to lift up to 50 pounds occasionally or up to 25  
4 pounds frequently;

5 (c) "light labor activity" means the ability to lift up to 25 pounds occasionally or up to 10 pounds  
6 frequently; and

7 (d) "sedentary labor activity" means the ability to lift up to 10 pounds occasionally or up to 5  
8 pounds frequently."

9

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

11 **"39-71-710. Termination of benefits upon retirement.** (1) If a claimant is receiving disability or  
12 rehabilitation compensation benefits and the claimant receives social security retirement benefits or is  
13 eligible to receive or is receiving full social security retirement benefits or retirement benefits from a system  
14 that is an alternative to social security retirement benefits, the claimant is considered to be retired. When  
15 the claimant is ~~considered~~ retired, the liability of the insurer is ended for payment of ~~wage supplement~~  
16 permanent partial disability benefits other than the impairment award, payment of permanent total disability  
17 benefits, and payment of 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 under subsection (1) to receive ~~social security~~ retirement benefits  
20 and is while gainfully employed suffers a work-related injury, the insurer retains liability for temporary total  
21 disability benefits, any impairment award, and medical benefits."

22

23 **Section 15.** Section 39-71-711, MCA, is amended to read:

24 **"39-71-711. Impairment evaluation -- ratings.** (1) An impairment rating:

25 (a) is a purely medical determination and must be determined by an impairment evaluator after a  
26 claimant has reached maximum healing;

27 (b) must be based on the current edition of the Guides to Evaluation of Permanent Impairment  
28 published by the American medical association; and

29 (c) must be expressed as a percentage of the whole person; and

30 (d) must be established by objective medical findings.



1 (2) A claimant or insurer, or both, may obtain an impairment rating from an evaluator who is a  
 2 medical doctor or from an evaluator who is a chiropractor if the injury falls within the scope of chiropractic  
 3 practice. If the claimant and insurer cannot agree upon the rating, the mediation procedure in part 24 of  
 4 this chapter must be followed.

5 (3) An evaluator must be a physician licensed under Title 37, chapter 3, except if the claimant's  
 6 treating physician is a chiropractor, the evaluator may be a chiropractor who is certified as an evaluator  
 7 under chapter 12.

8 (4) Disputes over impairment ratings are not subject to 39-71-605."  
 9

10 **Section 16.** Section 39-71-712, MCA, is amended to read:

11 **"39-71-712. Temporary partial disability benefits.** (1) If, prior to maximum healing, an injured  
 12 worker has a physical restriction and is approved to return to a modified or alternative employment that the  
 13 worker is able and qualified to perform and the worker suffers an actual wage loss as a result of a  
 14 temporary work restriction, the worker qualifies for temporary partial disability benefits.

15 (2) An insurer's liability for temporary partial disability must be the difference between the injured  
 16 worker's average weekly wage received at the time of the injury, subject to a maximum of 40 hours a  
 17 week, and the actual weekly wages earned during the period that the claimant is temporarily partially  
 18 disabled, not to exceed the injured worker's temporary total disability benefit rate.

19 (3) Temporary partial disability benefits are limited to a total of 26 weeks. The insurer may extend  
 20 the period of temporary partial disability payments.

21 (4) A worker requalifies for temporary total disability benefits if the modified position is no longer  
 22 available to the worker and the worker continues to be temporarily totally disabled as defined in 39-71-116.

23 (5) Temporary partial disability may not be ~~considered an element of permanent partial disability~~  
 24 ~~and may not be credited against any permanent impairment or any permanent partial disability award or~~  
 25 ~~settlement achieved after the injured worker reaches maximum healing under 39-71-703."~~

26  
 27 **Section 17.** Section 39-71-721, MCA, is amended to read:

28 **"39-71-721. Compensation for injury causing death -- limitation.** (1) (a) If an injured employee  
 29 dies and the injury was the proximate cause of ~~such~~ the death, ~~then~~ the beneficiary of the deceased is  
 30 entitled to the same compensation as though the death occurred immediately following the injury. A

1 beneficiary's eligibility for benefits commences after the date of death, and the benefit level is established  
2 as set forth in subsection (2).

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

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

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

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

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

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

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

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

30

1           **Section 18.** Section 39-71-723, MCA, is amended to read:

2           "**39-71-723. How compensation to be divided among beneficiaries.** Compensation due to  
3 beneficiaries ~~shall~~ must be paid to the surviving spouse, if any, or if none, then divided equally among or  
4 for the benefit of the children. In cases ~~where~~ in which beneficiaries are a surviving spouse and  
5 stepchildren of ~~such~~ the spouse, the compensation ~~shall~~ must be divided equally among all beneficiaries.  
6 Compensation due to beneficiaries as defined in 39-71-116~~(3)(e)~~(4)(e) and ~~(3)(f)~~ (4)(f), ~~where~~ if there is  
7 more than one, ~~shall~~ must be divided equitably among them, and the question of dependency and amount  
8 ~~thereof shall~~ must be a question of fact for determination by the department."

9

10           **Section 19.** Section 39-71-727, MCA, is amended to read:

11           "**39-71-727. Payment for prescription drugs -- limitations.** (1) For payment of prescription drugs,  
12 an insurer is liable only for the purchase of generic-name drugs if the generic-name product is the  
13 therapeutic equivalent of the brand-name drug prescribed by the physician, unless the generic-name drug  
14 is unavailable.

15           (2) If an injured worker prefers a brand-name drug, the worker may pay directly to the pharmacist  
16 the difference in the reimbursement rate between the brand-name drug and the generic-name product, and  
17 the pharmacist may ~~only~~ bill the insurer only for the reimbursement rate of the generic-name drug.

18           (3) The pharmacist may bill only for the cost of the generic-name product on a signed itemized  
19 billing, except if purchase of the brand-name drug is allowed as provided in subsection (1).

20           (4) When billing for a brand-name drug, the pharmacist shall certify that the generic-name drug was  
21 unavailable.

22           (5) Reimbursement rates payable by an insurer ~~subject to an agreement pursuant to 39-71-1102~~  
23 are limited to the average wholesale price of the product at the time of dispensing, plus a dispensing fee  
24 not to exceed \$5.50 per product.

25           (6) The pharmacist may not dispense more than a 30-day supply at any one time.

26           (7) For purposes of this section, average wholesale prices must be updated weekly.

27           (8) For purposes of this section, the terms "brand name", "drug product", and "generic name" have  
28 the same meaning as provided in 37-7-502.

29           (9) An insurer may not require a worker receiving benefits under this chapter to obtain medications  
30 from an out-of-state mail service pharmacy.

1           (10) The provisions of this section do not apply to an agreement between a preferred provider  
2 organization and an insurer."

3  
4           **Section 20.** Section 39-71-741, MCA, is amended to read:

5           **"39-71-741. Compromise settlements and lump-sum payments.** (1) (a) Benefits under this chapter  
6 may be converted in whole or in part to a lump sum:

7           (i) if a claimant and an insurer dispute the initial compensability of an injury; and

8           (ii) if the claimant and insurer agree to a settlement.

9           (b) The agreement is subject to department approval. The department may disapprove an  
10 agreement under this section only if there is not a reasonable dispute over compensability.

11           (c) Upon approval, the agreement constitutes a compromise and release settlement and may not  
12 be reopened by the department.

13           (2) (a) ~~If an insurer has accepted initial liability for an injury, permanent~~ Permanent partial disability  
14 benefits may be converted in whole or in part to a lump-sum payment if:

15           (i) an insurer has accepted initial liability for an injury; and

16           (ii) the claimant and the insurer agree to a lump-sum conversion.

17           (b) The total of any lump-sum conversion in part that is awarded to a claimant prior to the  
18 claimant's final award may not exceed the anticipated award under 39-71-703 ~~or \$20,000, whichever is~~  
19 ~~less.~~

20           (c) An agreement is subject to department approval. The department may disapprove an agreement  
21 only if the department determines that the ~~settlement~~ lump-sum conversion amount is inadequate. If  
22 disapproved, the department shall set forth in detail the reasons for disapproval.

23           (d) Upon approval, ~~the agreement constitutes~~ a compromise and release settlement ~~and~~ may not  
24 be reopened by the department.

25           (3) Permanent total disability benefits may be converted in whole or in part to a lump sum. The  
26 total of all lump-sum conversions in part that are awarded to a claimant may not exceed \$20,000. A  
27 conversion may be made only upon the written application of the injured worker with the concurrence of  
28 the insurer. Approval of the lump-sum payment rests in the discretion of the department. The approval  
29 or award of a lump-sum payment by the department or court must be the exception. It may be given only  
30 if the worker has demonstrated financial need that:

1 (a) relates to:

2 (i) the necessities of life;

3 (ii) an accumulation of debt incurred prior to the injury; or

4 (iii) a self-employment venture that is considered feasible under criteria set forth by the department;

5 or

6 (b) arises subsequent to the date of injury or arises because of reduced income as a result of the  
7 injury.

8 (4) Any lump-sum conversion of benefits under ~~subsection (3)~~ this section must be converted to  
9 present value using the rate prescribed under subsection (5)(b).

10 (5) (a) An insurer may recoup any lump-sum payment amortized at the rate established by the  
11 department, prorated biweekly over the projected duration of the compensation period.

12 (b) The rate adopted by the department must be based on the average rate for United States  
13 10-year treasury bills in the previous calendar year, ~~rounded to the nearest whole number.~~

14 (c) If the projected compensation period is the claimant's lifetime, the life expectancy must be  
15 determined by using the most recent table of life expectancy as published by the United States national  
16 center for health statistics.

17 (6) Subject to the other provisions of this section, the department ~~has full power, authority, and~~  
18 ~~jurisdiction to allow, shall approve, or condition or deny in writing~~ compromise settlements for any type of  
19 ~~benefits provided for under this chapter and~~ or lump-sum payments agreed to by workers and insurers. All  
20 ~~such compromise settlements and lump-sum payments are void without the approval of the department.~~  
21 ~~Approval by the department must be in writing.~~ The department shall directly notify a claimant of a  
22 department order approving or denying a claimant's compromise or lump-sum payment.

23 (7) A dispute between a claimant and an insurer regarding the conversion of biweekly payments  
24 into a lump-sum is considered a dispute, for which a mediator and the workers' compensation court have  
25 jurisdiction to make a determination. If an insurer and a claimant agree to a compromise and release  
26 settlement or a lump-sum payment but the department disapproves the agreement, the parties may request  
27 the workers' compensation court to review the department's decision."  
28

29 **Section 21.** Section 39-71-744, MCA, is amended to read:

30 **"39-71-744. Benefits not due while claimant is incarcerated -- exceptions.** (1) Except as provided

1 in subsection (2), a claimant is not eligible for disability or rehabilitation compensation benefits while the  
 2 claimant is incarcerated for a period exceeding 30 days in a correctional institution, ~~such as the Montana~~  
 3 ~~state prison or the Montana women's correctional center~~ or jail, as the result of conviction of a felony or  
 4 a misdemeanor. The insurer remains liable for medical benefits. A time limit on benefits otherwise provided  
 5 in this chapter is not extended due to a period of incarceration.

6 (2) A person who is employed while participating in a prerelease center program or a diversionary  
 7 program is eligible for temporary total benefits as provided in 39-71-701 and medical benefits for a  
 8 work-related injury received while participating in a prerelease center program or a diversionary program.  
 9 Other disability or rehabilitation benefits are not payable while the worker is participating in a prerelease  
 10 center. This subsection does not prohibit the reinstatement of other benefits upon release from  
 11 incarceration, nor does it apply to an employee performing community service described in  
 12 39-71-118(1)(f)."

13  
 14 **Section 22.** Section 39-71-1011, MCA, is amended to read:

15 **"39-71-1011. Definitions.** As used in this chapter, the following definitions apply:

16 (1) "Board of rehabilitation certification" means the nonprofit, independent, fee-structured  
 17 organization that is a member of the national commission for health certifying agencies and that is  
 18 established to certify rehabilitation practitioners.

19 (2) "Disabled worker" means ~~one~~ a worker who has a ~~medically determined restriction~~ permanent  
 20 impairment, established by objective medical findings, resulting from a work-related injury that precludes  
 21 the worker from returning to the job the worker held at the time of the injury or to a job with similar  
 22 physical requirements and who has an actual wage loss as a result of the injury.

23 (3) "Rehabilitation benefits" means benefits provided in 39-71-1003, 39-71-1025, and  
 24 39-71-2001.

25 (4) "Rehabilitation plan" means an individualized plan ~~to assist~~ that assists a disabled worker in  
 26 acquiring skills or aptitudes to return to work through job placement, on-the-job training, education, training,  
 27 or specialized job modification and that reasonably reduces the worker's actual wage loss.

28 (5) "Rehabilitation provider" means a rehabilitation counselor certified by the board for rehabilitation  
 29 certification and designated by the insurer to the department or a department of social and rehabilitation  
 30 services counselor when a worker has been certified by the department of social and rehabilitation services

1 under 39-71-1003.

2 (6) "Rehabilitation services" ~~consists of~~ means a program of evaluation, planning, and ~~delivery of~~  
3 ~~goods and services~~ implementation of a rehabilitation plan to assist a disabled worker to return to work."

4

5 **Section 23.** Section 39-71-1032, MCA, is amended to read:

6 **"39-71-1032. Termination of benefits for noncooperation with rehabilitation provider -- department**  
7 **hearing and appeal.** (1) If an insurer believes that a worker is refusing unreasonably to cooperate with the  
8 rehabilitation provider, the insurer, with 14 days' notice to the worker and department on a form approved  
9 by the department, may terminate any ~~rehabilitation~~ benefits, except medical benefits and the impairment  
10 award, that the worker is receiving ~~under this part~~ until the worker cooperates.

11 (2) The worker may contest the insurer's termination of benefits by filing a written exception to  
12 the department within 20 working days after the date of the 14-day notice. The worker or insurer may  
13 request a hearing before the department. The department shall hold a hearing within 30 days of receipt  
14 of the request. The department shall issue an order within 15 days of the hearing.

15 (3) If the worker prevails at a hearing before the department, it may award attorney fees and costs  
16 to the worker under 39-71-612.

17 (4) Within 30 days after the department mails its order to the party's last-known address, a party  
18 may appeal to the workers' compensation court."

19

20 **Section 24.** Section 39-71-2001, MCA, is amended to read:

21 **"39-71-2001. Rehabilitation benefits.** (1) ~~An injured~~ A disabled worker as defined in 39-71-1011  
22 is eligible for rehabilitation benefits if:

23 (a) ~~the injury results in permanent partial disability or permanent total disability as defined in~~  
24 ~~39-71-116~~ the worker has an actual wage loss as a result of the injury;

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

27 (c) ~~a rehabilitation plan completed by~~ (b) a rehabilitation provider, and as designated by the insurer,  
28 certifies that the injured worker has reasonable vocational goals and a reemployment ~~and wage potential~~  
29 opportunity and will have a reasonable reduction in the worker's actual wage loss with rehabilitation; and

30 ~~The plan must take into consideration the worker's age, education, training, work history, residual physical~~

1 ~~capacities, and vocational interests.~~

2 ~~(d)(c)~~ a rehabilitation plan between agreed upon by the injured worker and the insurer is filed with  
3 the department. The plan must take into consideration the worker's age, education, training, work history,  
4 residual physical capacities, and vocational interests. The plan must specify a beginning and completion  
5 date. If the plan calls for the expenditure of funds under 39-71-1004, the department shall authorize the  
6 department of social and rehabilitation services to use the funds.

7 (2) After filing the rehabilitation plan with the department, the ~~injured~~ disabled worker is entitled  
8 to receive ~~rehabilitation~~ biweekly compensation benefits at the injured worker's temporary total disability  
9 rate. The benefits must be paid for the period specified in the rehabilitation plan, not to exceed 104 weeks.  
10 ~~Rehabilitation benefits must be paid during a reasonable period, not to exceed 10 weeks, while the worker~~  
11 ~~is waiting to begin the agreed upon rehabilitation plan. The rehabilitation plan must be completed within~~  
12 26 weeks of the completion date specified in the plan. Rehabilitation benefits must be paid biweekly while  
13 the worker is satisfactorily ~~completing~~ progressing in the agreed-upon rehabilitation plan. Benefits under  
14 this section are not subject to the lump-sum provisions of 39-71-741.

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

21 ~~(4) If there is a dispute as to whether an injured worker can return to the job the worker held at~~  
22 ~~the time of injury, the insurer shall designate a rehabilitation provider to evaluate and determine whether~~  
23 ~~the worker can return to the job held at the time of injury. If it is determined that the worker cannot return~~  
24 ~~to the job held at the time of injury, the worker is entitled to rehabilitation benefits and services as provided~~  
25 ~~in subsection (2).~~

26 ~~(5)(3)~~ A worker may not receive temporary total ~~or biweekly permanent partial~~ disability benefits  
27 and ~~rehabilitation~~ the benefits under subsection (2) during the same period of time.

28 ~~(6) The (4)~~ A rehabilitation provider, ~~as authorized by the insurer,~~ shall continue to ~~work with and~~  
29 assist the injured worker until the rehabilitation plan is completed.

30 (5) To be eligible for benefits under this section, a worker is required to begin the rehabilitation plan



1 within 78 weeks of reaching maximum medical healing.

2 ~~(7)(6)~~ A worker may not receive both wages and rehabilitation benefits without the written consent  
3 of the insurer. A worker who receives both wages and rehabilitation benefits without written consent of  
4 the insurer is guilty of theft and may be prosecuted under 45-6-301."

5

6 **Section 25.** Section 39-72-403, MCA, is amended to read:

7 **"39-72-403. Time when claims must be presented.** (1) When a claimant seeks benefits under this  
8 chapter, ~~his~~ the claimant's claims for benefits must be presented in writing to the employer, the employer's  
9 insurer, or the department within ~~2 years~~ 1 year from the date the claimant knew or should have known  
10 that ~~his total disability~~ the claimant's condition resulted from an occupational disease. When a beneficiary  
11 seeks benefits under this chapter, ~~his~~ claims for death benefits must be presented in writing to the  
12 employer, the employer's insurer, or the department within 1 year from the date the beneficiaries knew or  
13 should have known that the decedent's death was related to an occupational disease.

14 (2) The department may, upon a reasonable showing by the claimant or a decedent's beneficiaries  
15 that the claimant or the beneficiaries could not have known that the claimant's condition or the employee's  
16 death was related to an occupational disease, waive the claim time requirement up to an additional 2  
17 years."

18

19 **Section 26.** Section 39-72-704, MCA, is amended to read:

20 **"39-72-704. Medical and hospital expenses.** In addition to the compensation provided by this  
21 chapter, an employee who becomes either totally or partially disabled from an occupational disease is  
22 entitled to receive, for treatment of the occupational disease, ~~without limitation as to length of time or dollar~~  
23 ~~amount, reasonable medical services, hospitalization, medicines, and other treatment approved by the~~  
24 ~~department~~ payment of medical expenses under Title 39, chapter 71."

25

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

30

1           **NEW SECTION. Section 28. Codification instructions.** (1) [Section 1] is intended to be codified  
2 as an integral part of Title 39, chapter 71, part 29, and the provisions of Title 39, chapter 71, part 29,  
3 apply to [section 1].

4           (2) [Section 2] is intended to be codified as an integral part of Title 39, chapter 71, part 4, and the  
5 provisions of Title 39, chapter 71, part 4, apply to [section 2].

6           (3) [Section 3] is intended to be codified as an integral part of Title 39, chapter 71, part 6, and the  
7 provisions of Title 39, chapter 71, part 6, apply to [section 3].

8           (4) [Section 4] is intended to be codified as an integral part of Title 39, chapter 71, part 1, and the  
9 provisions of Title 39, chapter 71, part 1, apply to [section 4].

10           (5) Section 39-71-2001 is intended to be renumbered and codified as an integral part of Title 39,  
11 chapter 71, part 10.

12

13           **NEW SECTION. Section 29. Effective date.** [This act] is effective July 1, 1995.

14

-END-

STATE OF MONTANA - FISCAL NOTE

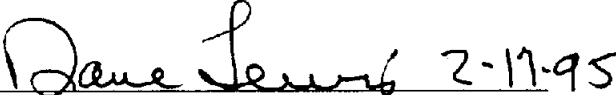
Fiscal Note for SB0375, as introduced

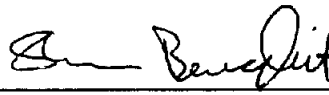
DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising workers' compensation and occupational disease laws.

ASSUMPTIONS:

1. A closed claim study was completed of Plan I, Plan II and Plan III closed claims. The study reviewed 747 State Fund closed claims from fiscal years 1983 to 1994. Of these, 168 were post-1991 law claims. Analysis of these claims was the basis to determine the impact of the provisions of this bill. Of these 168 claims, 149 were permanent partial disability (PPD) claims.
  2. The cost of the 168 post-1991 PPD closed claims reviewed in the study totaled \$4,742,671, for an average cost per claim of \$28,230. The costs of the 149 PPD closed claims was \$2,267,946. Based on State Fund data, 62.5% of the total wage loss claims reported are PPD and 37.5% are temporary total disability (TTD) that do not move to PPD.
  3. Number of wage loss claims reported in FY94 was 3,686.
  4. Estimated claim costs associated with PPD claims in FY94 is \$65,034,863 (62.5% x 3,686 claims x \$28,230 = \$65,034,863).
  5. Actuarial estimate of FY94 ultimate claim costs is \$198,500,000 (\$119,000,000 indemnity, \$79,500,000 medical).
  6. The PPD total costs of the 149 closed claims reviewed were: age & education - 8.3%; physical restriction - 25.5%; rehabilitation (8 wk provision) - 9.4%.
  7. The Section 13 estimated effect of this bill is: physical restriction - 77% reduction in benefits; age - 70% reduction in benefits; education - 52% reduction in benefits; net age and education - 61% reduction of benefits; rehab will result in 100% reduction of the lump sum for 8 weeks settlement.
  8. Estimated cost savings on FY94 ultimate costs for changes in Section 13 of this bill: age & education - \$65,034,863 x 8.3% x 61% = 3,292,715; physical restriction - \$65,034,863 x 25.5% x 77% = 12,769,595; rehabilitation - \$65,034,863 x 9.4% x 100% = 6,113,277; total cost savings Section 13 = \$22,175,587
  9. Estimated impact of Section 10 of this bill: a) FY95 average date of medical service to mailroom date is 48.67 days (6.95 weeks); b) 14 days of benefit requirements from date of notification; c) 6 weeks of mail time plus 2 weeks of benefits equals a total of 8 weeks; d) the average weekly wage for TTD benefits is estimated at \$225; e) 37.5% of all claims are TTD, 37.5% of 3,686 = 1,382 claims; f) savings estimated at: 8 weeks x \$225/wk x 1,382 claims = \$2,487,600 savings Section 10
  10. Objective medical findings have been previously estimated by NCCI at 1% of total indemnity. \$119,000,000 x 1% = \$1,190,000 (savings Section 6).
  11. Average duration for compensation benefits for PPD claims is estimated at 103 weeks. FY94 average weekly wage was \$181 for PPD claims. Assume a discount rate of 6%. Savings from discounting lump sum settlements of PPD claims is estimated at \$1,075 per claim on 2,304 claims, or \$2,476,800 (savings Section 20).
  12. One-time estimated cost of computer changes to implement this bill are \$30,000.
  13. Estimated savings: Section 6 = \$1,190,000; Section 10 = \$2,487,600; Section 13 = \$22,175,587; Section 20 = \$2,476,800; Total = \$28,329,987 or 14.3% of FY94 ultimates.
  14. Projected total ultimates is \$164,000,000 in FY96 and \$157,500,000 in FY97.
- (continued on next page)

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

      2-17-95  
STEVE BENEDICT, PRIMARY SPONSOR      DATE

FISCAL IMPACT:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
Total Ultimate Liabilities	(\$23,452,000)	(\$22,522,500)

The estimated reduction in total ultimate liabilities would put very significant downward pressure on total premium revenues required by the State Fund. The extent to which premium revenues would be reduced would be subject to analysis by the State Fund's independent actuary and action by the State Fund board of directors.

STATE OF MONTANA - FISCAL NOTE

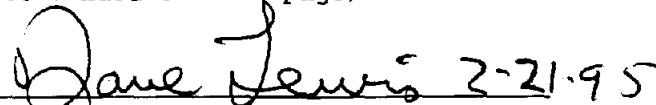
Fiscal Note for SB0375, as introduced (revised)

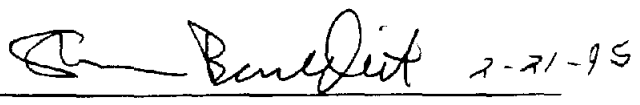
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- (continued on next page)

  
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Office of Budget and Program Planning

  
STEVE BENEDICT, PRIMARY SPONSOR      DATE

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*Marshall*  
 2 INTRODUCED BY *Benedict* *Wells* *Simkins* *L. Smith*  
*Miller* *Keenan* *GRINOZ* *Stewart* *ANKLESTAD* *Ahner* *Cobb* *Geating*  
 SENATE BILL NO. 375

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING WORKERS' COMPENSATION AND  
 5 OCCUPATIONAL DISEASE LAWS; AUTHORIZING PAYMENT OF MEDICAL CLAIMS WITHOUT  
 6 ACCEPTANCE OF LIABILITY; REQUIRING INSURERS TO ACT PROMPTLY ON CLAIMS; DEFINING  
 7 "OBJECTIVE MEDICAL FINDINGS" AND REQUIRING INJURY AND DISABILITY TO BE ESTABLISHED BY  
 8 OBJECTIVE MEDICAL FINDINGS; REVISING THE DEFINITION OF "INJURY"; DEFINING "ACTUAL WAGE  
 9 LOSS"; REVISING REQUIREMENTS TO RECEIVE PERMANENT PARTIAL DISABILITY BENEFITS; REVISING  
 10 PROVISIONS REGARDING TERMINATION OF BENEFITS UPON RETIREMENT; REVISING PROVISIONS FOR  
 11 LUMP-SUM CONVERSIONS; ALLOWING SUSPENSION OF BENEFITS WHILE A CLAIMANT IS  
 12 INCARCERATED FOR A MISDEMEANOR; REVISING THE DEFINITION OF DISABLED WORKER; EXEMPTING  
 13 PAYMENT AGREEMENTS BETWEEN A PREFERRED PROVIDER ORGANIZATION AND AN INSURER FROM  
 14 PRESCRIPTION DRUG PAYMENT LIMITS; REVISING REHABILITATION BENEFITS; AUTHORIZING THE  
 15 WORKERS' COMPENSATION COURT JUDGE TO STAY PROCEEDINGS IN CERTAIN CIRCUMSTANCES;  
 16 REVISING THE DEFINITION OF "WAGES"; AUTHORIZING A REDUCTION IN BENEFITS FOR THIRD-PARTY  
 17 RECOVERIES; AUTHORIZING THE TERMINATION OF TEMPORARY TOTAL BENEFITS UPON NOTIFICATION  
 18 OF A WORKER'S RELEASE TO RETURN TO WORK; REQUIRING A SOLE PROPRIETOR, PARTNER,  
 19 CORPORATE OFFICER, OR MANAGER OR MEMBER OF A LIMITED LIABILITY COMPANY OR A DESIGNEE  
 20 TO PROVIDE NOTICE OF INJURY WITHIN 30 DAYS; AUTHORIZING TERMINATION OF CERTAIN BENEFITS  
 21 FOR NONCOOPERATION WITH A REHABILITATION PROVIDER; REVISING THE FILING TIME FOR  
 22 OCCUPATIONAL DISEASE CLAIMS; REVISING PROVISIONS FOR PAYMENT OF MEDICAL EXPENSES IN  
 23 OCCUPATIONAL DISEASE CLAIMS; EXTENDING TEMPORARY PARTIAL DISABILITY BENEFITS;  
 24 AMENDING SECTIONS 39-71-116, 39-71-119, 39-71-123, 39-71-407, 39-71-603, 39-71-609, 39-71-701,  
 25 39-71-702, 39-71-703, 39-71-710, 39-71-711, 39-71-712, 39-71-721, 39-71-723, 39-71-727,  
 26 39-71-741, 39-71-744, 39-71-1011, 39-71-1032, 39-71-2001, 39-72-403, AND 39-72-704, MCA; AND  
 27 PROVIDING AN EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 4] authorizes the department of labor

1 and industry to adopt rules to provide for prompt claims handling practices for injured workers, for  
2 employers, and for providers who are the customers of the workers' compensation system. It is the intent  
3 of the legislature that the department of labor and industry adopt rules providing claimants with written  
4 explanations of claims and the methodology of benefit calculation.

5  
6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

7  
8 **NEW SECTION. Section 1. Stay pending determination by district court.** Upon a motion and filing  
9 of an affidavit by either party and after a hearing, the workers' compensation judge may grant a stay of  
10 proceedings in the workers' compensation court if a criminal action involving workers' compensation  
11 insurance fraud by a claimant has been filed in district court.

12  
13 **NEW SECTION. Section 2. Benefit reduction for third-party recovery.** (1) If an employee is injured  
14 or dies and obtains a third-party recovery, settlement, or award, an insurer may reduce by 30% the benefits  
15 paid or that are required to be paid to the employee or beneficiary pursuant to chapter 71 or 72 as a result  
16 of the injury or death. The reduction applies to any recovery, settlement, or award regardless of the form  
17 of action or the nature of damages. The total of any reductions may not exceed 30% of any third-party  
18 recovery, settlement, or award.

19 (2) This section does not limit or prohibit an insurer's right to pursue subrogation pursuant to  
20 39-71-414.

21 (3) If an insurer is entitled to subrogation pursuant to 39-71-414, the amount subrogated must be  
22 offset by any reduction in benefits pursuant to subsection (1).

23  
24 **NEW SECTION. Section 3. Payment of medical claims without acceptance of liability.** (1) An  
25 insurer may pay a medical claim that is based upon the report of a nonwage loss injury or occupational  
26 disease without the payments being construed as an acceptance of liability for the claim.

27 (2) An insurer shall, within 10 days of making payment under subsection (1), notify the worker of  
28 the payment of the medical claim without acceptance of liability.

29 (3) Upon written request by a worker for the payment of indemnity benefits or for a determination  
30 of liability, the insurer shall investigate the claim to determine liability for the injury or occupational disease



1 under 39-71-606 or 39-71-608.

2  
3 **NEW SECTION. Section 4. Insurers to act promptly on claims.** (1) Pursuant to the public policy  
4 stated in 39-71-105, prompt claims handling practices are necessary to provide appropriate service to  
5 injured workers, to employers, and to providers who are the customers of the workers' compensation  
6 system.

7 (2) An insurer shall provide to the claimant:

8 (a) a written statement of the reasons that a claim is being denied at the time of denial;

9 (b) whenever benefits requested by a claimant are denied, a written explanation of how the  
10 claimant may appeal an insurer's decision; and

11 (c) a written explanation of the amount of wage loss benefits being paid to the claimant, along with  
12 an explanation of the calculation used to compute those benefits. The explanation must be sent within 7  
13 days of the initial payment of the benefit.

14 (3) An insurer shall:

15 (a) begin making payments that are due on a claim within 14 days of acceptance of the claim,  
16 unless the insurer promptly notifies the claimant that the insurer needs additional information in order to  
17 begin paying benefits and specifies the information needed; and

18 (b) pay settlements within 30 days of the date the department issues an order approving the  
19 settlement.

20 (4) An insurer may not make payments pursuant to 39-71-608 or any other reservation of rights  
21 for more than 90 days without:

22 (a) written consent of the claimant; or

23 (b) approval of the department.

24 (5) The department may adopt rules to implement this section.

25

26 **Section 5.** Section 39-71-116, MCA, is amended to read:

27 "**39-71-116. Definitions.** Unless the context otherwise requires, words and phrases ~~employed~~ used  
28 in this chapter have the following meanings:

29 (1) "Actual wage loss" means that the wages that a worker earns or is qualified to earn after the  
30 worker reaches maximum healing are less than the actual wages the worker received at the time of the

1 injury.

2 ~~(1)(2)~~ "Administer and pay" includes all actions by the state fund under the Workers'  
3 Compensation Act and the Occupational Disease Act of Montana necessary to:

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

9 ~~(2)(3)~~ "Average weekly wage" means the mean weekly earnings of all employees under covered  
10 employment, as defined and established annually by the Montana department of labor and industry. It is  
11 established at the nearest whole dollar number and must be adopted by the department prior to July 1 of  
12 each year.

13 ~~(3)(4)~~ "Beneficiary" means:

- 14 (a) a surviving spouse living with or legally entitled to be supported by the deceased at the time  
15 of injury;
- 16 (b) an unmarried child under ~~the age of~~ 18 years of age;
- 17 (c) an unmarried child under ~~the age of~~ 22 years of age who is a full-time student in an accredited  
18 school or is enrolled in an accredited apprenticeship program;
- 19 (d) an invalid child over ~~the age of~~ 18 years of age who is dependent upon the decedent for  
20 support at the time of injury;
- 21 (e) a parent who is dependent upon the decedent for support at the time of the injury if a  
22 beneficiary, as defined in subsections ~~(3)(a)~~ (4)(a) through ~~(3)(d)~~ (4)(d), does not exist; and
- 23 (f) a brother or sister under ~~the age of~~ 18 years of age if dependent upon the decedent for support  
24 at the time of the injury but only until the age of 18 years and only when a beneficiary, as defined in  
25 subsections ~~(3)(a)~~ (4)(a) through ~~(3)(e)~~ (4)(e), does not exist.

26 ~~(4)(5)~~ "Casual employment" means employment not in the usual course of the trade, business,  
27 profession, or occupation of the employer.

28 ~~(5)(6)~~ "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior  
29 to the injury.

30 ~~(6)(7)~~ "Construction industry" means the major group of general contractors and operative builders,

1 heavy construction (other than building construction) contractors, and special trade contractors, listed in  
 2 major groups 15 through 17 in the 1987 Standard Industrial Classification Manual. The term does not  
 3 include office workers, design professionals, salespersons, estimators, or any other related employment that  
 4 is not directly involved on a regular basis in the provision of physical labor at a construction or renovation  
 5 site.

6 ~~(7)~~(8) "Days" means calendar days, unless otherwise specified.

7 ~~(8)~~(9) "Department" means the department of labor and industry.

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

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

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

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

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

18 (14) "Medical stability", "maximum healing", or "maximum medical healing" means a point in the  
 19 healing process when further material improvement would not be reasonably expected from primary medical  
 20 treatment.

21 (15) "Objective medical findings" means medical evidence, including range of motion, atrophy,  
 22 muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

23 ~~(15)~~(16) "Order" means any decision, rule, direction, requirement, or standard of the department  
 24 or any other determination arrived at or decision made by the department.

25 ~~(16)~~(17) "Palliative care" means treatment designed to reduce or ease symptoms without curing  
 26 the underlying cause of the symptoms.

27 ~~(17)~~(18) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average  
 28 annual payroll of the employer for the preceding calendar year or, if the employer has not operated a  
 29 sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the  
 30 current year. However, an estimate may be made by the department for any employer starting in business

1 if average payrolls are not available. This estimate must be adjusted by additional payment by the employer  
 2 or refund by the department, as the case may actually be, on December 31 of the current year. An  
 3 employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by  
 4 an employer.

5 ~~(18)~~(19) "Permanent partial disability" means a physical condition, ~~after in which~~ a worker, ~~has~~  
 6 ~~reached after reaching~~ maximum medical ~~healing, in which a worker~~ healing:

7 (a) ~~has a medically determined physical restriction as a result of an injury as defined in 39-71-119~~  
 8 has a permanent impairment established by objective medical findings; and

9 (b) is able to return to work in some capacity but the ~~physical restriction~~ permanent impairment  
 10 impairs the worker's ability to work; and

11 (c) has an actual wage loss as a result of the injury.

12 ~~(19)~~(20) "Permanent total disability" means a physical condition resulting from injury as defined in  
 13 this chapter, after a worker reaches maximum medical healing, in which a worker does not have a  
 14 reasonable prospect of physically performing regular employment. Regular employment means work on a  
 15 recurring basis performed for remuneration in a trade, business, profession, or other occupation in this  
 16 state. Lack of immediate job openings is not a factor to be considered in determining if a worker is  
 17 permanently totally disabled.

18 ~~(20)~~(21) The "plant of the employer" includes the place of business of a third person while the  
 19 employer has access to or control over the place of business for the purpose of carrying on the employer's  
 20 usual trade, business, or occupation.

21 ~~(21)~~(22) "Primary medical services" means treatment prescribed by a treating physician, for  
 22 conditions resulting from the injury, necessary for achieving medical stability.

23 ~~(22)~~(23) "Public corporation" means the state or any county, municipal corporation, school district,  
 24 city, city under commission form of government or special charter, town, or village.

25 ~~(23)~~(24) "Reasonably safe place to work" means that the place of employment has been made as  
 26 free from danger to the life or safety of the employee as the nature of the employment will reasonably  
 27 permit.

28 ~~(24)~~(25) "Reasonably safe tools and appliances" are tools and appliances as are adapted to and are  
 29 reasonably safe for use for the particular purpose for which they are furnished.

30 ~~(25)~~(26) (a) "Secondary medical services" means those medical services or appliances considered

1 not medically necessary for medical stability. The services and appliances include but are not limited to  
2 spas or hot tubs, work hardening, physical restoration programs and other restoration programs designed  
3 to address disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or  
4 rehabilitation facilities.

5 (b) (i) As used in this subsection (26), "disability" means a condition in which a worker's ability  
6 to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury.  
7 The restrictions may be combined with factors, such as the worker's age, education, work history, and  
8 other factors that affect the worker's ability to engage in gainful employment.

9 (ii) Disability does not mean a purely medical condition.

10 ~~(26)~~(27) "Temporary partial disability" means a physical condition resulting from an injury as defined  
11 in 39-71-119 in which a worker, prior to maximum healing:

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

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

15 (c) suffers a partial wage loss.

16 ~~(27)~~(28) "Temporary service contractor" means any person, firm, association, or corporation  
17 conducting business that employs individuals directly for the purpose of furnishing the services of those  
18 individuals on a part-time or temporary basis to others.

19 ~~(28)~~(29) "Temporary total disability" means a physical condition resulting from an injury as defined  
20 in this chapter that results in total loss of wages and exists until the injured worker reaches maximum  
21 medical healing.

22 ~~(29)~~(30) "Temporary worker" means a worker whose services are furnished to another on a  
23 part-time or temporary basis to substitute for a permanent employee on leave or to meet an emergency or  
24 short-term workload.

25 ~~(30)~~(31) "Treating physician" means a person who is primarily responsible for the treatment of a  
26 worker's compensable injury and is:

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

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

30 (c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if

1 there is not a physician, as defined in subsection ~~(30)(a)~~ (31)(a), in the area where the physician  
2 assistant-certified is located;

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

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

5 ~~(31)(32)~~ "Year", unless otherwise specified, means calendar year."

6  
7 **Section 6.** Section 39-71-119, MCA, is amended to read:

8 **"39-71-119. Injury and accident defined.** (1) "Injury" or "injured" means:

9 (a) internal or external physical harm to the body that is established by objective medical findings;

10 (b) damage to prosthetic devices or appliances, except for damage to eyeglasses, contact lenses,  
11 dentures, or hearing aids; or

12 (c) death.

13 (2) An injury is caused by an accident. An accident is:

14 (a) an unexpected traumatic incident or unusual strain;

15 (b) identifiable by time and place of occurrence;

16 (c) identifiable by member or part of the body affected; and

17 (d) caused by a specific event on a single day or during a single work shift.

18 (3) "Injury" or "injured" does not mean a physical or mental condition arising from:

19 (a) emotional or mental stress; or

20 (b) a nonphysical stimulus or activity.

21 (4) "Injury" or "injured" does not include a disease that is not caused by an accident.

22 (5) (a) A cardiovascular, pulmonary, respiratory, or other disease, cerebrovascular accident, or  
23 myocardial infarction suffered by a worker is an injury only if the accident is the primary cause of the  
24 physical ~~harm~~ condition in relation to other factors contributing to the physical ~~harm~~ condition.

25 (b) "Primary cause", as used in subsection (5)(a), means a cause that, with a reasonable degree  
26 of medical certainty, is responsible for more than 50% of the physical condition."

27  
28 **Section 7.** Section 39-71-123, MCA, is amended to read:

29 **"39-71-123. Wages defined.** (1) "Wages" means the gross remuneration paid in money, or in a  
30 substitute for money, for services rendered by an employee, or income provided for in subsection (1)(d).

1 Wages include but are not limited to:

2 (a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays,  
3 vacations, and sickness periods;

4 (b) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is  
5 based on its actual value;

6 (c) payments made to an employee on any basis other than time worked, including but not limited  
7 to piecework, an incentive plan, or profit-sharing arrangement; and

8 (d) income or payment in the form of a draw, wage, net profit, or substitute for money received  
9 or taken by a sole proprietor or partner, regardless of whether the sole proprietor or partner has performed  
10 work or provided services for that remuneration.

11 (2) Wages do not include:

12 (a) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, and  
13 other expenses, as set forth in department rules;

14 (b) special rewards for individual invention or discovery;

15 (c) tips and other gratuities received by the employee in excess of those documented to the  
16 employer for tax purposes;

17 (d) contributions made by the employer to a group insurance or pension plan; or

18 (e) vacation or sick leave benefits accrued but not paid.

19 (3) ~~For (a) Except as provided in subsection (3)(b),~~ for compensation benefit purposes, the average  
20 actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except  
21 that if:

22 ~~(a) the term of employment for the same employer is less than four pay periods, in which case the~~  
23 ~~employee's wages are the hourly rate times the number of hours in a week for which the employee was~~  
24 ~~hired to work; or,~~

25 (b) ~~for~~ For good cause shown, by the claimant, the use of the four pay periods does not accurately  
26 reflect the claimant's employment history with the employer, in which case the insurer may use additional  
27 pay periods if the use of the last four pay periods does not accurately reflect the claimant's employment  
28 history with the employer, the wage may be calculated by dividing the total earnings for an additional period  
29 of time, not to exceed 1 year prior to the date of injury, by the number of weeks in that period, including  
30 periods of idleness or seasonal fluctuations.

1 (4) (a) For the purpose of calculating compensation benefits for an employee working concurrent  
2 employments, the average actual wages must be calculated as provided in subsection (3). As used in this  
3 subsection, "concurrent employment" means employment in which the employee was actually employed  
4 at the time of the injury and would have continued to be employed without a break in the term of  
5 employment if not for the injury.

6 (b) The compensation benefits for a covered volunteer must be based on the average actual wages  
7 in the volunteer's regular employment, except self-employment as a sole proprietor or partner who elected  
8 not to be covered, from which the volunteer is disabled by the injury incurred.

9 (c) The compensation benefits for an employee working at two or more concurrent remunerated  
10 employments must be based on the aggregate of average actual wages of all employments, except  
11 self-employment as a sole proprietor or partner who elected not to be covered, from which the employee  
12 is disabled by the injury incurred.

13 (5) The compensation benefits and the payroll, for premium purposes, for a volunteer firefighter  
14 covered pursuant to 39-71-118 must be based upon a wage of not less than \$900 a month and not more  
15 than 1 1/2 times the average weekly wage as defined in this chapter."

16

17 **Section 8.** Section 39-71-407, MCA, is amended to read:

18 **"39-71-407. Liability of insurers -- limitations.** (1) ~~Every~~ Each insurer is liable for the payment of  
19 compensation, in the manner and to the extent provided in this section, to an employee of an employer that  
20 it insures who receives an injury arising out of and in the course of employment or, in the case of death  
21 from the injury, to the employee's beneficiaries, if any.

22 (2) (a) An insurer is liable for an injury, as defined in 39-71-119, if the injury is established by  
23 objective medical findings and if the claimant establishes that it is more probable than not that:

24 (i) a claimed injury has occurred; or

25 (ii) a claimed injury aggravated a preexisting condition.

26 (b) Proof that it was medically possible that a claimed injury occurred or that the claimed injury  
27 aggravated a preexisting condition is not sufficient to establish liability.

28 (3) An employee who suffers an injury or dies while traveling is not covered by this chapter unless:

29 (a) (i) the employer furnishes the transportation or the employee receives reimbursement from the  
30 employer for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment



1 agreement; and

2 (ii) the travel is necessitated by and on behalf of the employer as an integral part or condition of  
3 the employment; or

4 (b) the travel is required by the employer as part of the employee's job duties.

5 (4) An employee is not eligible for benefits otherwise payable under this chapter if the employee's  
6 use of alcohol or drugs not prescribed by a physician is the major contributing cause of the accident.  
7 However, if the employer had knowledge of and failed to attempt to stop the employee's use of alcohol  
8 or drugs, this subsection does not apply.

9 (5) If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury  
10 to the same part of the body, the workers' compensation insurer is not liable for any compensation or  
11 medical benefits caused by the subsequent nonwork-related injury.

12 (6) An employee is not eligible for benefits payable under this chapter unless the entitlement to  
13 benefits is established by objective medical findings that contain sufficient factual and historical information  
14 concerning the relationship of the worker's condition to the original injury.

15 ~~(6)~~(7) As used in this section, "major contributing cause" means a cause that is the leading cause  
16 contributing to the result when compared to all other contributing causes."

17

18 **Section 9.** Section 39-71-603, MCA, is amended to read:

19 "**39-71-603. Notice of injuries other than death to be submitted within thirty days.** ~~No~~ (1) A claim  
20 to recover benefits under the Workers' Compensation Act, for injuries not resulting in death, may not be  
21 considered compensable unless, within 30 days after the occurrence of the accident ~~which~~ that is claimed  
22 to have caused the injury, notice of the time and place where the accident occurred and the nature of the  
23 injury is given to the employer or the employer's insurer by the injured employee or someone on the  
24 employee's behalf. Actual knowledge of the accident and injury on the part of the employer or the  
25 employer's managing agent or superintendent in charge of the work ~~upon~~ in which the injured employee  
26 was engaged at the time of the injury is equivalent to notice.

27 (2) If a sole proprietor, partner, manager of a manager-managed limited liability company, member  
28 of a member-managed limited liability company, or corporate officer covered under this chapter is injured  
29 in an accident, the sole proprietor, partner, manager, member, or corporate officer or an appointed designee  
30 shall, within 30 days, notify the insurer of the time and location of the accident and the nature of the

1 injury."

2

3 **Section 10.** Section 39-71-609, MCA, is amended to read:

4 **"39-71-609. Denial of claim after payments made or termination of all benefits or reduction to**  
 5 **partial benefits by insurer -- fourteen days' notice required -- exception.** ¶ (1) Except as provided in  
 6 subsection (2), if an insurer determines to deny a claim on which payments have been made under  
 7 39-71-608 during a time of further investigation or, after a claim has been accepted, terminates all biweekly  
 8 compensation benefits, it may do so only after 14 days' written notice to the claimant, the claimant's  
 9 authorized representative, if any, and the department. For injuries occurring prior to July 1, 1987, an  
 10 insurer must give 14 days' written notice to the claimant before reducing benefits from total to partial.  
 11 However, if an insurer has knowledge that a claimant has returned to work, compensation benefits may  
 12 be terminated as of the time the claimant returned to work.

13 (2) Temporary total disability benefits may be terminated on the date that the worker has been  
 14 released to return to work in some capacity."

15

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

17 **"39-71-701. Compensation for temporary total disability -- exception.** (1) Subject to the limitation  
 18 in 39-71-736 and subsection (4) of this section, a worker is eligible for temporary total disability benefits;  
 19 (a) when the worker suffers a total loss of wages as a result of an injury and until the worker  
 20 reaches maximum healing; or  
 21 (b) until the worker has been released to return to the employment in which the worker was  
 22 engaged at the time of the injury or to employment with similar physical requirements.

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

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

30 (4) If the treating physician releases a worker to return to the same, a modified, or an alternative

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

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

10 (6) If the claimant is awarded social security benefits, the insurer may, upon notification of the  
 11 claimant's receipt of social security benefits, suspend biweekly compensation benefits for a period sufficient  
 12 to recover any resulting overpayment of benefits. This subsection does not prevent a claimant and insurer  
 13 from agreeing to a repayment plan.

14 (7) A worker may not receive both wages and temporary total disability benefits without the  
 15 written consent of the insurer. A worker who receives both wages and temporary total disability benefits  
 16 without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301."

17  
 18 **Section 12.** Section 39-71-702, MCA, is amended to read:

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

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

25 (3) Weekly compensation benefits for an injury resulting in permanent total disability are 66 2/3%  
 26 of the wages received at the time of the injury. The maximum weekly compensation benefits may not  
 27 exceed the state's average weekly wage at the time of injury.

28 (4) In cases ~~where~~ in which it is determined that periodic disability benefits granted by the Social  
 29 Security Act are payable because of the injury, the weekly benefits payable under this section are reduced,  
 30 but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for

1 the week, which amount is to be calculated from the date of the disability social security entitlement.

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

7 (6) A worker may not receive both wages and permanent total disability benefits without the  
8 written consent of the insurer. A worker who receives both wages and permanent total disability benefits  
9 without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301.

10 (7) If the claimant is awarded social security benefits, the insurer may, upon notification of the  
11 claimant's receipt of social security benefits, suspend biweekly compensation benefits for a period sufficient  
12 to recover any resulting overpayment of benefits. This subsection does not prevent a claimant and insurer  
13 from agreeing to a repayment plan."

14  
15 **Section 13.** Section 39-71-703, MCA, is amended to read:

16 **"39-71-703. Compensation for permanent partial disability.** (1) If an injured worker suffers a  
17 permanent partial disability and is no longer entitled to temporary total or permanent total disability benefits,  
18 the worker is entitled to a permanent partial disability award: if that worker:

19 (a) has an actual wage loss as a result of the injury; and

20 (b) has a permanent impairment rating that:

21 (i) is established by objective medical findings; and

22 (ii) is more than zero as determined by the latest edition of the American medical association Guides  
23 to the Evaluation of Permanent Impairment.

24 (2) When a worker receives an impairment rating as the result of a compensable injury and has no  
25 actual wage loss as a result of the injury, the worker is eligible for an impairment award only.

26 ~~(2)(3)~~ The permanent partial disability award must be arrived at by multiplying the percentage  
27 arrived at through the calculation provided in subsection ~~(3)~~ (4) by 350 weeks.

28 ~~(3) An~~ (4) A permanent partial disability award granted an injured worker may not exceed a  
29 permanent partial disability rating of 100%. ~~The criteria for the rating of disability must be calculated using~~  
30 ~~the medical impairment rating as determined by the latest edition of the American medical association~~

1 ~~Guides to the Evaluation of Permanent Impairment.~~

2 (5) The percentage to be used in subsection ~~(2)~~ (3) must be determined by adding all of the  
3 following applicable percentages to the impairment rating:

4 (a) if the claimant is ~~30~~ 40 years of age or younger at the time of injury, 0%; if the claimant is over  
5 ~~30~~ 40 years of age ~~but under 56 years of age~~ at the time of injury, ~~2%~~ 1%; ~~and if the claimant is 56 years~~  
6 ~~of age or older at the time of injury, 3%;~~

7 (b) for a worker who has completed less than ~~9~~ 12 years of education, ~~3%~~ 1%; for a worker who  
8 has completed ~~9 through~~ 12 years or more of education or who has received a graduate equivalency  
9 diploma, ~~2%~~ 0%; ~~for a worker who has completed more than 12 years of education, 0%;~~

10 (c) if a worker has no actual wage loss as a result of the industrial injury, 0%; if a worker has an  
11 actual wage loss of \$2 or less an hour as a result of the industrial injury, 10%; if a worker has an actual  
12 wage loss of more than \$2 an hour as a result of the industrial injury, 20%; ~~and~~ Wage loss benefits must  
13 be based on the difference between the actual wages received at the time of injury and the wages that the  
14 worker earns or is qualified to earn after the worker reaches maximum healing.

15 (d) if a worker, at the time of the injury, was performing heavy labor activity and after the injury  
16 the worker can perform only light or sedentary labor activity, ~~20%~~ 5%; if a worker, at the time of injury,  
17 was performing heavy labor activity and after the injury the worker can perform only medium labor activity,  
18 ~~15%~~ 3%; if a worker was performing medium labor activity at the time of the injury and after the injury  
19 the worker can perform only light or sedentary labor activity, ~~10%~~ 2%.

20 ~~(4)~~(6) The weekly benefit rate for permanent partial disability is 66 2/3% of the wages received  
21 at the time of injury, but the rate may not exceed one-half the state's average weekly wage. The weekly  
22 benefit amount established for an injured worker may not be changed by a subsequent adjustment in the  
23 state's average weekly wage for future fiscal years.

24 ~~(5)~~(7) If a worker suffers a subsequent compensable injury or injuries to the same part of the body,  
25 the award payable for the subsequent injury may not duplicate any amounts paid for the previous injury  
26 or injuries.

27 (8) If a worker is eligible for a rehabilitation plan, permanent partial disability benefits payable under  
28 this section must be calculated based on the wages that the worker earns or would be qualified to earn  
29 following the completion of the rehabilitation plan.

30 ~~(6)~~(9) As used in this section:

1 (a) "heavy labor activity" means the ability to lift over 50 pounds occasionally or up to 50 pounds  
2 frequently;

3 (b) "medium labor activity" means the ability to lift up to 50 pounds occasionally or up to 25  
4 pounds frequently;

5 (c) "light labor activity" means the ability to lift up to 25 pounds occasionally or up to 10 pounds  
6 frequently; and

7 (d) "sedentary labor activity" means the ability to lift up to 10 pounds occasionally or up to 5  
8 pounds frequently."

9

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

11 **"39-71-710. Termination of benefits upon retirement.** (1) If a claimant is receiving disability or  
12 rehabilitation compensation benefits and the claimant receives social security retirement benefits or is  
13 eligible to receive or is receiving full social security retirement benefits or retirement benefits from a system  
14 that is an alternative to social security retirement benefits, the claimant is considered to be retired. When  
15 the claimant is ~~considered~~ retired, the liability of the insurer is ended for payment of ~~wage supplement~~  
16 permanent partial disability benefits other than the impairment award, payment of permanent total disability  
17 benefits, and payment of 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 under subsection (1) to receive ~~social security~~ retirement benefits  
20 and ~~is~~ while gainfully employed suffers a work-related injury, the insurer retains liability for temporary total  
21 disability benefits, any impairment award, and medical benefits."

22

23 **Section 15.** Section 39-71-711, MCA, is amended to read:

24 **"39-71-711. Impairment evaluation -- ratings.** (1) An impairment rating:

25 (a) is a purely medical determination and must be determined by an impairment evaluator after a  
26 claimant has reached maximum healing;

27 (b) must be based on the current edition of the Guides to Evaluation of Permanent Impairment  
28 published by the American medical association; and

29 (c) must be expressed as a percentage of the whole person; and

30 (d) must be established by objective medical findings.

1 (2) A claimant or insurer, or both, may obtain an impairment rating from an evaluator who is a  
2 medical doctor or from an evaluator who is a chiropractor if the injury falls within the scope of chiropractic  
3 practice. If the claimant and insurer cannot agree upon the rating, the mediation procedure in part 24 of  
4 this chapter must be followed.

5 (3) An evaluator must be a physician licensed under Title 37, chapter 3, except if the claimant's  
6 treating physician is a chiropractor, the evaluator may be a chiropractor who is certified as an evaluator  
7 under chapter 12.

8 (4) Disputes over impairment ratings are not subject to 39-71-605."  
9

10 **Section 16.** Section 39-71-712, MCA, is amended to read:

11 **"39-71-712. Temporary partial disability benefits.** (1) If, prior to maximum healing, an injured  
12 worker has a physical restriction and is approved to return to a modified or alternative employment that the  
13 worker is able and qualified to perform and the worker suffers an actual wage loss as a result of a  
14 temporary work restriction, the worker qualifies for temporary partial disability benefits.

15 (2) An insurer's liability for temporary partial disability must be the difference between the injured  
16 worker's average weekly wage received at the time of the injury, subject to a maximum of 40 hours a  
17 week, and the actual weekly wages earned during the period that the claimant is temporarily partially  
18 disabled, not to exceed the injured worker's temporary total disability benefit rate.

19 (3) Temporary partial disability benefits are limited to a total of 26 weeks. The insurer may extend  
20 the period of temporary partial disability payments.

21 (4) A worker requalifies for temporary total disability benefits if the modified position is no longer  
22 available to the worker and the worker continues to be temporarily totally disabled as defined in 39-71-116.

23 (5) Temporary partial disability may not be ~~considered an element of permanent partial disability~~  
24 ~~and may not be~~ credited against any ~~permanent impairment or any~~ permanent partial disability award or  
25 settlement ~~achieved after the injured worker reaches maximum healing~~ under 39-71-703."  
26

27 **Section 17.** Section 39-71-721, MCA, is amended to read:

28 **"39-71-721. Compensation for injury causing death -- limitation.** (1) (a) If an injured employee  
29 dies and the injury was the proximate cause of ~~such~~ the death, ~~then~~ the beneficiary of the deceased is  
30 entitled to the same compensation as though the death occurred immediately following the injury. A

1 beneficiary's eligibility for benefits commences after the date of death, and the benefit level is established  
2 as set forth in subsection (2).

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

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

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

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

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

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

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

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

30



1           **Section 18.** Section 39-71-723, MCA, is amended to read:

2           **"39-71-723. How compensation to be divided among beneficiaries.** Compensation due to  
3 beneficiaries ~~shall~~ must be paid to the surviving spouse, if any, or if none, then divided equally among or  
4 for the benefit of the children. In cases ~~where~~ in which beneficiaries are a surviving spouse and  
5 stepchildren of ~~each~~ the spouse, the compensation ~~shall~~ must be divided equally among all beneficiaries.  
6 Compensation due to beneficiaries as defined in 39-71-116(3)(e) ~~(4)(e)~~ and ~~(3)(f)~~ (4)(f), ~~where~~ if there is  
7 more than one, ~~shall~~ must be divided equitably among them, and the question of dependency and amount  
8 ~~thereof shall~~ must be a question of fact for determination by the department."

9

10           **Section 19.** Section 39-71-727, MCA, is amended to read:

11           **"39-71-727. Payment for prescription drugs -- limitations.** (1) For payment of prescription drugs,  
12 an insurer is liable only for the purchase of generic-name drugs if the generic-name product is the  
13 therapeutic equivalent of the brand-name drug prescribed by the physician, unless the generic-name drug  
14 is unavailable.

15           (2) If an injured worker prefers a brand-name drug, the worker may pay directly to the pharmacist  
16 the difference in the reimbursement rate between the brand-name drug and the generic-name product, and  
17 the pharmacist may ~~only~~ bill the insurer only for the reimbursement rate of the generic-name drug.

18           (3) The pharmacist may bill only for the cost of the generic-name product on a signed itemized  
19 billing, except if purchase of the brand-name drug is allowed as provided in subsection (1).

20           (4) When billing for a brand-name drug, the pharmacist shall certify that the generic-name drug was  
21 unavailable.

22           (5) Reimbursement rates payable by an insurer ~~subject to an agreement pursuant to 39-71-1102~~  
23 are limited to the average wholesale price of the product at the time of dispensing, plus a dispensing fee  
24 not to exceed \$5.50 per product.

25           (6) The pharmacist may not dispense more than a 30-day supply at any one time.

26           (7) For purposes of this section, average wholesale prices must be updated weekly.

27           (8) For purposes of this section, the terms "brand name", "drug product", and "generic name" have  
28 the same meaning as provided in 37-7-502.

29           (9) An insurer may not require a worker receiving benefits under this chapter to obtain medications  
30 from an out-of-state mail service pharmacy.

1           (10) The provisions of this section do not apply to an agreement between a preferred provider  
 2 organization and an insurer."

3  
 4           **Section 20.** Section 39-71-741, MCA, is amended to read:

5           **"39-71-741. Compromise settlements and lump-sum payments.** (1) (a) Benefits under this chapter  
 6 may be converted in whole or in part to a lump sum:

7           (i) if a claimant and an insurer dispute the initial compensability of an injury; and

8           (ii) if the claimant and insurer agree to a settlement.

9           (b) The agreement is subject to department approval. The department may disapprove an  
 10 agreement under this section only if there is not a reasonable dispute over compensability.

11           (c) Upon approval, the agreement constitutes a compromise and release settlement and may not  
 12 be reopened by the department.

13           (2) (a) ~~If an insurer has accepted initial liability for an injury, permanent~~ Permanent partial disability  
 14 benefits may be converted in whole or in part to a lump-sum payment if:

15           (i) an insurer has accepted initial liability for an injury; and

16           (ii) the claimant and the insurer agree to a lump-sum conversion.

17           (b) The total of any lump-sum conversion in part that is awarded to a claimant prior to the  
 18 claimant's final award may not exceed the anticipated award under 39-71-703 ~~or \$20,000, whichever is~~  
 19 ~~less.~~

20           (c) An agreement is subject to department approval. The department may disapprove an agreement  
 21 only if the department determines that the ~~settlement~~ lump-sum conversion amount is inadequate. If  
 22 disapproved, the department shall set forth in detail the reasons for disapproval.

23           (d) Upon approval, ~~the agreement constitutes~~ a compromise and release settlement ~~and~~ may not  
 24 be reopened by the department.

25           (3) Permanent total disability benefits may be converted in whole or in part to a lump sum. The  
 26 total of all lump-sum conversions in part that are awarded to a claimant may not exceed \$20,000. A  
 27 conversion may be made only upon the written application of the injured worker with the concurrence of  
 28 the insurer. Approval of the lump-sum payment rests in the discretion of the department. The approval  
 29 or award of a lump-sum payment by the department or court must be the exception. It may be given only  
 30 if the worker has demonstrated financial need that:

1 (a) relates to:  
 2 (i) the necessities of life;  
 3 (ii) an accumulation of debt incurred prior to the injury; or  
 4 (iii) a self-employment venture that is considered feasible under criteria set forth by the department;  
 5 or

6 (b) arises subsequent to the date of injury or arises because of reduced income as a result of the  
 7 injury.

8 (4) Any lump-sum conversion of benefits under ~~subsection (3)~~ this section must be converted to  
 9 present value using the rate prescribed under subsection (5)(b).

10 (5) (a) An insurer may recoup any lump-sum payment amortized at the rate established by the  
 11 department, prorated biweekly over the projected duration of the compensation period.

12 (b) The rate adopted by the department must be based on the average rate for United States  
 13 10-year treasury bills in the previous calendar year, ~~rounded to the nearest whole number.~~

14 (c) If the projected compensation period is the claimant's lifetime, the life expectancy must be  
 15 determined by using the most recent table of life expectancy as published by the United States national  
 16 center for health statistics.

17 (6) Subject to the other provisions of this section, the department ~~has full power, authority, and~~  
 18 ~~jurisdiction to allow, shall approve, or condition or deny in writing~~ compromise settlements ~~for any type of~~  
 19 ~~benefits provided for under this chapter and~~ or lump-sum payments agreed to by workers and insurers. ~~All~~  
 20 ~~such compromise settlements and lump sum payments are void without the approval of the department.~~  
 21 ~~Approval by the department must be in writing.~~ The department shall directly notify a claimant of a  
 22 department order approving or denying a claimant's compromise or lump-sum payment.

23 (7) A dispute between a claimant and an insurer regarding the conversion of biweekly payments  
 24 into a lump-sum is considered a dispute, for which a mediator and the workers' compensation court have  
 25 jurisdiction to make a determination. If an insurer and a claimant agree to a compromise and release  
 26 settlement or a lump-sum payment but the department disapproves the agreement, the parties may request  
 27 the workers' compensation court to review the department's decision."  
 28

29 **Section 21.** Section 39-71-744, MCA, is amended to read:

30 **"39-71-744. Benefits not due while claimant is incarcerated -- exceptions.** (1) Except as provided

1 in subsection (2), a claimant is not eligible for disability or rehabilitation compensation benefits while the  
2 claimant is incarcerated for a period exceeding 30 days in a correctional institution, ~~such as the Montana~~  
3 ~~state prison or the Montana women's correctional center~~ or jail, as the result of conviction of a felony or  
4 a misdemeanor. The insurer remains liable for medical benefits. A time limit on benefits otherwise provided  
5 in this chapter is not extended due to a period of incarceration.

6 (2) A person who is employed while participating in a prerelease center program or a diversionary  
7 program is eligible for temporary total benefits as provided in 39-71-701 and medical benefits for a  
8 work-related injury received while participating in a prerelease center program or a diversionary program.  
9 Other disability or rehabilitation benefits are not payable while the worker is participating in a prerelease  
10 center. This subsection does not prohibit the reinstatement of other benefits upon release from  
11 incarceration, nor does it apply to an employee performing community service described in  
12 39-71-118(1)(f)."

13  
14 **Section 22.** Section 39-71-1011, MCA, is amended to read:

15 **"39-71-1011. Definitions.** As used in this chapter, the following definitions apply:

16 (1) "Board of rehabilitation certification" means the nonprofit, independent, fee-structured  
17 organization that is a member of the national commission for health certifying agencies and that is  
18 established to certify rehabilitation practitioners.

19 (2) "Disabled worker" means ~~one~~ a worker who has a medically determined restriction permanent  
20 impairment, established by objective medical findings, resulting from a work-related injury that precludes  
21 the worker from returning to the job the worker held at the time of the injury or to a job with similar  
22 physical requirements and who has an actual wage loss as a result of the injury.

23 (3) "Rehabilitation benefits" means benefits provided in 39-71-1003, 39-71-1025, and  
24 39-71-2001.

25 (4) "Rehabilitation plan" means an individualized plan ~~to assist~~ that assists a disabled worker in  
26 acquiring skills or aptitudes to return to work through job placement, on-the-job training, education, training,  
27 or specialized job modification and that reasonably reduces the worker's actual wage loss.

28 (5) "Rehabilitation provider" means a rehabilitation counselor certified by the board for rehabilitation  
29 certification and designated by the insurer to the department or a department of social and rehabilitation  
30 services counselor when a worker has been certified by the department of social and rehabilitation services

1 under 39-71-1003.

2 (6) "Rehabilitation services" ~~consists of~~ means a program of evaluation, planning, and ~~delivery of~~  
3 ~~goods and services~~ implementation of a rehabilitation plan to assist a disabled worker to return to work."

4

5 **Section 23.** Section 39-71-1032, MCA, is amended to read:

6 **"39-71-1032. Termination of benefits for noncooperation with rehabilitation provider -- department**  
7 **hearing and appeal.** (1) If an insurer believes that a worker is refusing unreasonably to cooperate with the  
8 rehabilitation provider, the insurer, with 14 days' notice to the worker and department on a form approved  
9 by the department, may terminate any ~~rehabilitation~~ benefits, except medical benefits and the impairment  
10 award, that the worker is receiving under this part until the worker cooperates.

11 (2) The worker may contest the insurer's termination of benefits by filing a written exception to  
12 the department within 20 working days after the date of the 14-day notice. The worker or insurer may  
13 request a hearing before the department. The department shall hold a hearing within 30 days of receipt  
14 of the request. The department shall issue an order within 15 days of the hearing.

15 (3) If the worker prevails at a hearing before the department, it may award attorney fees and costs  
16 to the worker under 39-71-612.

17 (4) Within 30 days after the department mails its order to the party's last-known address, a party  
18 may appeal to the workers' compensation court."

19

20 **Section 24.** Section 39-71-2001, MCA, is amended to read:

21 **"39-71-2001. Rehabilitation benefits.** (1) ~~An injured~~ A disabled worker as defined in 39-71-1011  
22 is eligible for rehabilitation benefits if:

23 (a) ~~the injury results in permanent partial disability or permanent total disability as defined in~~  
24 ~~39-71-116~~ the worker has an actual wage loss as a result of the injury;

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

27 (c) ~~a rehabilitation plan completed by~~ (b) a rehabilitation provider, and as designated by the insurer,  
28 certifies that the injured worker has reasonable vocational goals and a reemployment ~~and wage potential~~  
29 opportunity and will have a reasonable reduction in the worker's actual wage loss with rehabilitation; and  
30 ~~The plan must take into consideration the worker's age, education, training, work history, residual physical~~

1 ~~capacities, and vocational interests.~~

2 ~~(d)(c)~~ a rehabilitation plan ~~between~~ agreed upon by the injured worker and the insurer is filed with  
3 the department. The plan must take into consideration the worker's age, education, training, work history,  
4 residual physical capacities, and vocational interests. The plan must specify a beginning and completion  
5 date. If the plan calls for the expenditure of funds under 39-71-1004, the department shall authorize the  
6 department of social and rehabilitation services to use the funds.

7 (2) After filing the rehabilitation plan with the department, the ~~injured~~ disabled worker is entitled  
8 to receive ~~rehabilitation~~ biweekly compensation benefits at the injured worker's temporary total disability  
9 rate. The benefits must be paid for the period specified in the rehabilitation plan, not to exceed 104 weeks.  
10 ~~Rehabilitation benefits must be paid during a reasonable period, not to exceed 10 weeks, while the worker~~  
11 ~~is waiting to begin the agreed upon rehabilitation plan.~~ The rehabilitation plan must be completed within  
12 26 weeks of the completion date specified in the plan. Rehabilitation benefits must be paid biweekly while  
13 the worker is satisfactorily ~~completing~~ progressing in the agreed-upon rehabilitation plan. Benefits under  
14 this section are not subject to the lump-sum provisions of 39-71-741.

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

21 ~~(4) If there is a dispute as to whether an injured worker can return to the job the worker held at~~  
22 ~~the time of injury, the insurer shall designate a rehabilitation provider to evaluate and determine whether~~  
23 ~~the worker can return to the job held at the time of injury. If it is determined that the worker cannot return~~  
24 ~~to the job held at the time of injury, the worker is entitled to rehabilitation benefits and services as provided~~  
25 ~~in subsection (2).~~

26 ~~(5)(3)~~ A worker may not receive temporary total or ~~biweekly permanent partial disability~~ benefits  
27 and ~~rehabilitation~~ the benefits under subsection (2) during the same period of time.

28 ~~(6) The (4) A~~ rehabilitation provider, ~~as~~ authorized by the insurer, shall continue to ~~work with and~~  
29 assist the injured worker until the rehabilitation plan is completed.

30 (5) To be eligible for benefits under this section, a worker is required to begin the rehabilitation plan

1 within 78 weeks of reaching maximum medical healing.

2 ~~(7)(6)~~ A worker may not receive both wages and rehabilitation benefits without the written consent  
3 of the insurer. A worker who receives both wages and rehabilitation benefits without written consent of  
4 the insurer is guilty of theft and may be prosecuted under 45-6-301."

5

6 **Section 25.** Section 39-72-403, MCA, is amended to read:

7 **"39-72-403. Time when claims must be presented.** (1) When a claimant seeks benefits under this  
8 chapter, ~~his~~ the claimant's claims for benefits must be presented in writing to the employer, the employer's  
9 insurer, or the department within ~~2 years~~ 1 year from the date the claimant knew or should have known  
10 that ~~his total disability~~ the claimant's condition resulted from an occupational disease. When a beneficiary  
11 seeks benefits under this chapter, ~~his~~ claims for death benefits must be presented in writing to the  
12 employer, the employer's insurer, or the department within 1 year from the date the beneficiaries knew or  
13 should have known that the decedent's death was related to an occupational disease.

14 (2) The department may, upon a reasonable showing by the claimant or a decedent's beneficiaries  
15 that the claimant or the beneficiaries could not have known that the claimant's condition or the employee's  
16 death was related to an occupational disease, waive the claim time requirement up to an additional 2  
17 years."

18

19 **Section 26.** Section 39-72-704, MCA, is amended to read:

20 **"39-72-704. Medical and hospital expenses.** In addition to the compensation provided by this  
21 chapter, an employee who becomes either totally or partially disabled from an occupational disease is  
22 entitled to receive, ~~for treatment of the occupational disease, without limitation as to length of time or dollar~~  
23 ~~amount, reasonable medical services, hospitalization, medicines, and other treatment approved by the~~  
24 ~~department~~ payment of medical expenses under Title 39, chapter 71."

25

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

30

1           **NEW SECTION. Section 28. Codification instructions.** (1) [Section 1] is intended to be codified  
2 as an integral part of Title 39, chapter 71, part 29, and the provisions of Title 39, chapter 71, part 29,  
3 apply to [section 1].

4           (2) [Section 2] is intended to be codified as an integral part of Title 39, chapter 71, part 4, and the  
5 provisions of Title 39, chapter 71, part 4, apply to [section 2].

6           (3) [Section 3] is intended to be codified as an integral part of Title 39, chapter 71, part 6, and the  
7 provisions of Title 39, chapter 71, part 6, apply to [section 3].

8           (4) [Section 4] is intended to be codified as an integral part of Title 39, chapter 71, part 1, and the  
9 provisions of Title 39, chapter 71, part 1, apply to [section 4].

10          (5) Section 39-71-2001 is intended to be renumbered and codified as an integral part of Title 39,  
11 chapter 71, part 10.

12

13           **NEW SECTION. Section 29. Effective date.** [This act] is effective July 1, 1995.

14

-END-



*Marshall*  
 2 INTRODUCED BY *Benedict* SENATE BILL NO. 375 *Harp*  
*Fisher* *Wells* *Simmons* *Denny* *Wells* *Simmons* *L. Smith*  
 3 *MERCER* *GRINOW* *Slater* *AKLESTAD* *HARP* *Bo Brain* *Clay*

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING WORKERS' COMPENSATION AND  
 5 OCCUPATIONAL DISEASE LAWS; AUTHORIZING PAYMENT OF MEDICAL CLAIMS WITHOUT  
 6 ACCEPTANCE OF LIABILITY; REQUIRING INSURERS TO ACT PROMPTLY ON CLAIMS; DEFINING  
 7 "OBJECTIVE MEDICAL FINDINGS" AND REQUIRING INJURY AND DISABILITY TO BE ESTABLISHED BY  
 8 OBJECTIVE MEDICAL FINDINGS; REVISING THE DEFINITION OF "INJURY"; DEFINING "ACTUAL WAGE  
 9 LOSS"; REVISING REQUIREMENTS TO RECEIVE PERMANENT PARTIAL DISABILITY BENEFITS; REVISING  
 10 PROVISIONS REGARDING TERMINATION OF BENEFITS UPON RETIREMENT; REVISING PROVISIONS FOR  
 11 LUMP-SUM CONVERSIONS; ALLOWING SUSPENSION OF BENEFITS WHILE A CLAIMANT IS  
 12 INCARCERATED FOR A MISDEMEANOR; REVISING THE DEFINITION OF DISABLED WORKER; EXEMPTING  
 13 PAYMENT AGREEMENTS BETWEEN A PREFERRED PROVIDER ORGANIZATION AND AN INSURER FROM  
 14 PRESCRIPTION DRUG PAYMENT LIMITS; REVISING REHABILITATION BENEFITS; AUTHORIZING THE  
 15 WORKERS' COMPENSATION COURT JUDGE TO STAY PROCEEDINGS IN CERTAIN CIRCUMSTANCES;  
 16 REVISING THE DEFINITION OF "WAGES"; AUTHORIZING A REDUCTION IN BENEFITS FOR THIRD-PARTY  
 17 RECOVERIES; AUTHORIZING THE TERMINATION OF TEMPORARY TOTAL BENEFITS UPON NOTIFICATION  
 18 OF A WORKER'S RELEASE TO RETURN TO WORK; REQUIRING A SOLE PROPRIETOR, PARTNER,  
 19 CORPORATE OFFICER, OR MANAGER OR MEMBER OF A LIMITED LIABILITY COMPANY OR A DESIGNEE  
 20 TO PROVIDE NOTICE OF INJURY WITHIN 30 DAYS; AUTHORIZING TERMINATION OF CERTAIN BENEFITS  
 21 FOR NONCOOPERATION WITH A REHABILITATION PROVIDER; REVISING THE FILING TIME FOR  
 22 OCCUPATIONAL DISEASE CLAIMS; REVISING PROVISIONS FOR PAYMENT OF MEDICAL EXPENSES IN  
 23 OCCUPATIONAL DISEASE CLAIMS; EXTENDING TEMPORARY PARTIAL DISABILITY BENEFITS;  
 24 AMENDING SECTIONS 39-71-116, 39-71-119, 39-71-123, 39-71-407, 39-71-603, 39-71-609, 39-71-701,  
 25 39-71-702, 39-71-703, 39-71-710, 39-71-711, 39-71-712, 39-71-721, 39-71-723, 39-71-727,  
 26 39-71-741, 39-71-744, 39-71-1011, 39-71-1032, 39-71-2001, 39-72-403, AND 39-72-704, MCA; AND  
 27 PROVIDING AN EFFECTIVE DATE."  
 28

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.



## 1 SENATE BILL NO. 375

2 INTRODUCED BY BENEDICT, HIBBARD, HARP, BROWN, CLARK, MARSHALL, KASTEN, FISHER, BAER,  
3 MILLS, BOHLINGER, ROSE, BURNETT, WELLS, DENNY, SIMPKINS, HARGROVE, L. SMITH, MILLER,  
4 MERCER, KEENAN, GRINDE, STORY, AKLESTAD, DEVANEY, AHNER, COBB, KEATING, BRAINARD,  
5 REHBEIN, FUCHS, DEBRUYCKER, ANDERSON, GRIMES, MCGEE, KITZENBERG, SOFT, FORBES,  
6 TAYLOR, BERGMAN, MCKEE, TREXLER, HERTEL, M. HANSON, BARNETT, VICK, ARNOTT, GREEN,  
7 SOMERVILLE, HAYNE, MASOLO, HERRON, FORRESTER, EMERSON, JABS, JENKINS, MESAROS,  
8 COLE, GAGE, SLITER, CRIPPEN

9  
10 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING WORKERS' COMPENSATION AND  
11 OCCUPATIONAL DISEASE LAWS; AUTHORIZING PAYMENT OF MEDICAL CLAIMS WITHOUT  
12 ACCEPTANCE OF LIABILITY; REQUIRING INSURERS TO ACT PROMPTLY ON CLAIMS; DEFINING  
13 "OBJECTIVE MEDICAL FINDINGS" AND REQUIRING INJURY AND DISABILITY TO BE ESTABLISHED BY  
14 OBJECTIVE MEDICAL FINDINGS; REVISING THE DEFINITION OF "INJURY"; DEFINING "ACTUAL WAGE  
15 LOSS"; REVISING REQUIREMENTS TO RECEIVE PERMANENT PARTIAL DISABILITY BENEFITS; REVISING  
16 PROVISIONS REGARDING TERMINATION OF BENEFITS UPON RETIREMENT; REVISING PROVISIONS FOR  
17 LUMP-SUM CONVERSIONS; ALLOWING SUSPENSION OF BENEFITS WHILE A CLAIMANT IS  
18 INCARCERATED FOR A MISDEMEANOR; REVISING THE DEFINITION OF DISABLED WORKER; EXEMPTING  
19 PAYMENT AGREEMENTS BETWEEN A PREFERRED PROVIDER ORGANIZATION AND AN INSURER FROM  
20 PRESCRIPTION DRUG PAYMENT LIMITS; REVISING REHABILITATION BENEFITS; AUTHORIZING THE  
21 WORKERS' COMPENSATION COURT JUDGE TO STAY PROCEEDINGS IN CERTAIN CIRCUMSTANCES;  
22 REVISING THE DEFINITION OF "WAGES"; AUTHORIZING A REDUCTION IN BENEFITS FOR THIRD-PARTY  
23 RECOVERIES; AUTHORIZING THE TERMINATION OF TEMPORARY TOTAL BENEFITS UPON NOTIFICATION  
24 OF A WORKER'S RELEASE TO RETURN TO WORK; REQUIRING A SOLE PROPRIETOR, PARTNER,  
25 CORPORATE OFFICER, OR MANAGER OR MEMBER OF A LIMITED LIABILITY COMPANY OR A DESIGNEE  
26 TO PROVIDE NOTICE OF INJURY WITHIN 30 DAYS; AUTHORIZING TERMINATION OF CERTAIN BENEFITS  
27 FOR NONCOOPERATION WITH A REHABILITATION PROVIDER; REVISING THE FILING TIME FOR  
28 OCCUPATIONAL DISEASE CLAIMS; REVISING PROVISIONS FOR PAYMENT OF MEDICAL EXPENSES IN  
29 OCCUPATIONAL DISEASE CLAIMS; EXTENDING TEMPORARY PARTIAL DISABILITY BENEFITS;  
30 AMENDING SECTIONS 39-71-116, 39-71-119, 39-71-123, 39-71-407, 39-71-603, 39-71-609, 39-71-701,

1 39-71-702, 39-71-703, 39-71-710, 39-71-711, 39-71-712, 39-71-721, 39-71-723, 39-71-727,  
 2 39-71-741, 39-71-744, 39-71-1011, 39-71-1032, 39-71-2001, 39-72-403, AND 39-72-704, MCA; AND  
 3 PROVIDING AN EFFECTIVE DATE."

4  
 5 STATEMENT OF INTENT

6 A statement of intent is required for this bill because [section 4] authorizes the department of labor  
 7 and industry to adopt rules to provide for prompt claims handling practices for injured workers, for  
 8 employers, and for providers who are the customers of the workers' compensation system. It is the intent  
 9 of the legislature that the department of labor and industry adopt rules providing claimants with written  
 10 explanations of claims and the methodology of benefit calculation.

11  
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13  
 14 NEW SECTION. **Section 1. Stay pending determination by district court.** Upon a motion and filing  
 15 of an affidavit by either party and after a hearing, the workers' compensation judge may grant a stay of  
 16 proceedings in the workers' compensation court if a criminal action involving workers' compensation  
 17 insurance fraud by a claimant has been filed in district court.

18  
 19 NEW SECTION. **Section 2. Benefit reduction for third-party recovery.** (1) If an employee is injured  
 20 or dies and obtains a third-party recovery, settlement, or award, an insurer may reduce by 30% the benefits  
 21 paid or that are required to be paid to the employee or beneficiary pursuant to chapter 71 or 72 as a result  
 22 of the injury or death. The reduction applies to any recovery, settlement, or award regardless of the form  
 23 of action or the nature of damages. The total of any reductions may not exceed 30% of any third-party  
 24 recovery, settlement, or award.

25 (2) This section does not limit or prohibit an insurer's right to pursue subrogation pursuant to  
 26 39-71-414.

27 (3) If an insurer is entitled to subrogation pursuant to 39-71-414, the amount subrogated must be  
 28 offset by any reduction in benefits pursuant to subsection (1).

29  
 30 NEW SECTION. **Section 3. Payment of medical claims without acceptance of liability.** (1) An

1 insurer may pay a medical claim that is based upon the report of a nonwage loss injury or occupational  
2 disease without the payments being construed as an acceptance of liability for the claim.

3 (2) An insurer shall, within 10 days of making payment under subsection (1), notify the worker of  
4 the payment of the medical claim without acceptance of liability.

5 (3) Upon written request by a worker for the payment of indemnity benefits or for a determination  
6 of liability, the insurer shall investigate the claim to determine liability for the injury or occupational disease  
7 under 39-71-606 or 39-71-608.

8  
9 **NEW SECTION. Section 4. Insurers to act promptly on claims.** (1) Pursuant to the public policy  
10 stated in 39-71-105, prompt claims handling practices are necessary to provide appropriate service to  
11 injured workers, to employers, and to providers who are the customers of the workers' compensation  
12 system.

13 (2) An insurer shall provide to the claimant:

14 (a) a written statement of the reasons that a claim is being denied at the time of denial;

15 (b) whenever benefits requested by a claimant are denied, a written explanation of how the  
16 claimant may appeal an insurer's decision; and

17 (c) a written explanation of the amount of wage loss benefits being paid to the claimant, along with  
18 an explanation of the calculation used to compute those benefits. The explanation must be sent within 7  
19 days of the initial payment of the benefit.

20 (3) An insurer shall:

21 (a) begin making payments that are due on a claim within 14 days of acceptance of the claim,  
22 unless the insurer promptly notifies the claimant that the insurer needs additional information in order to  
23 begin paying benefits and specifies the information needed; and

24 (b) pay settlements within 30 days of the date the department issues an order approving the  
25 settlement.

26 (4) An insurer may not make payments pursuant to 39-71-608 or any other reservation of rights  
27 for more than 90 days without:

28 (a) written consent of the claimant; or

29 (b) approval of the department.

30 (5) The department may adopt rules to implement this section.

1           **Section 5.** Section 39-71-116, MCA, is amended to read:

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

4           (1) "Actual wage loss" means that the wages that a worker earns or is qualified to earn after the  
5 worker reaches maximum healing are less than the actual wages the worker received at the time of the  
6 injury.

7           ~~(1)(2)~~ "Administer and pay" includes all actions by the state fund under the Workers'  
8 Compensation Act and the Occupational Disease Act of Montana necessary to:

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

10           (b) payment of benefits;

11           (c) setting of reserves;

12           (d) furnishing of services and facilities; and

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

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

18           ~~(3)(4)~~ "Beneficiary" means:

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

21           (b) an unmarried child under ~~the age of~~ 18 years of age;

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

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

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

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

1           ~~(4)~~(5) "Casual employment" means employment not in the usual course of the trade, business,  
2 profession, or occupation of the employer.

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

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

11           ~~(7)~~(8) "Days" means calendar days, unless otherwise specified.

12           ~~(8)~~(9) "Department" means the department of labor and industry.

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

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

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

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

21           (13) "Maintenance care" means treatment designed to provide the optimum state of health while  
22 minimizing recurrence of the clinical status.

23           (14) "Medical stability", "maximum healing", or "maximum medical healing" means a point in the  
24 healing process when further material improvement would not be reasonably expected from primary medical  
25 treatment.

26           (15) "Objective medical findings" means medical evidence, including range of motion, atrophy,  
27 muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

28           ~~(15)~~(16) "Order" means any decision, rule, direction, requirement, or standard of the department  
29 or any other determination arrived at or decision made by the department.

30           ~~(16)~~(17) "Palliative care" means treatment designed to reduce or ease symptoms without curing

1 the underlying cause of the symptoms.

2 ~~(17)~~(18) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average  
3 annual payroll of the employer for the preceding calendar year or, if the employer has not operated a  
4 sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the  
5 current year. However, an estimate may be made by the department for any employer starting in business  
6 if average payrolls are not available. This estimate must be adjusted by additional payment by the employer  
7 or refund by the department, as the case may actually be, on December 31 of the current year. An  
8 employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by  
9 an employer.

10 ~~(18)~~(19) "Permanent partial disability" means a physical condition, ~~after in which~~ a worker, ~~has~~  
11 ~~reached~~ after reaching maximum medical healing, ~~in which a worker~~ healing:

12 (a) ~~has a medically determined physical restriction as a result of an injury as defined in 39-71-119~~  
13 has a permanent impairment established by objective medical findings; and

14 (b) is able to return to work in some capacity but the ~~physical restriction~~ permanent impairment  
15 impairs the worker's ability to work; and

16 (c) has an actual wage loss as a result of the injury.

17 ~~(19)~~(20) "Permanent total disability" means a physical condition resulting from injury as defined in  
18 this chapter, after a worker reaches maximum medical healing, in which a worker does not have a  
19 reasonable prospect of physically performing regular employment. Regular employment means work on a  
20 recurring basis performed for remuneration in a trade, business, profession, or other occupation in this  
21 state. Lack of immediate job openings is not a factor to be considered in determining if a worker is  
22 permanently totally disabled.

23 ~~(20)~~(21) The "plant of the employer" includes the place of business of a third person while the  
24 employer has access to or control over the place of business for the purpose of carrying on the employer's  
25 usual trade, business, or occupation.

26 ~~(21)~~(22) "Primary medical services" means treatment prescribed by a treating physician, for  
27 conditions resulting from the injury, necessary for achieving medical stability.

28 ~~(22)~~(23) "Public corporation" means the state or any county, municipal corporation, school district,  
29 city, city under commission form of government or special charter, town, or village.

30 ~~(23)~~(24) "Reasonably safe place to work" means that the place of employment has been made as

1 free from danger to the life or safety of the employee as the nature of the employment will reasonably  
2 permit.

3 ~~(24)~~(25) "Reasonably safe tools and appliances" are tools and appliances as are adapted to and are  
4 reasonably safe for use for the particular purpose for which they are furnished.

5 ~~(25)~~(26) (a) "Secondary medical services" means those medical services or appliances considered  
6 not medically necessary for medical stability. The services and appliances include but are not limited to  
7 spas or hot tubs, work hardening, physical restoration programs and other restoration programs designed  
8 to address disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or  
9 rehabilitation facilities.

10 (b) (i) As used in this subsection (26), "disability" means a condition in which a worker's ability  
11 to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury.  
12 The restrictions may be combined with factors, such as the worker's age, education, work history, and  
13 other factors that affect the worker's ability to engage in gainful employment.

14 (ii) Disability does not mean a purely medical condition.

15 ~~(26)~~(27) "Temporary partial disability" means a physical condition resulting from an injury as defined  
16 in 39-71-119 in which a worker, prior to maximum healing:

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

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

20 (c) suffers a partial wage loss.

21 ~~(27)~~(28) "Temporary service contractor" means any person, firm, association, or corporation  
22 conducting business that employs individuals directly for the purpose of furnishing the services of those  
23 individuals on a part-time or temporary basis to others.

24 ~~(28)~~(29) "Temporary total disability" means a physical condition resulting from an injury as defined  
25 in this chapter that results in total loss of wages and exists until the injured worker reaches maximum  
26 medical healing.

27 ~~(29)~~(30) "Temporary worker" means a worker whose services are furnished to another on a  
28 part-time or temporary basis to substitute for a permanent employee on leave or to meet an emergency or  
29 short-term workload.

30 ~~(30)~~(31) "Treating physician" means a person who is primarily responsible for the treatment of a



1 worker's compensable injury and is:

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

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

5 (c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if  
6 there is not a physician, as defined in subsection ~~(30)(a)~~ (31)(a), in the area where the physician  
7 assistant-certified is located;

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

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

10 ~~(31)(32)~~ "Year", unless otherwise specified, means calendar year."  
11

11

12 **Section 6.** Section 39-71-119, MCA, is amended to read:

13 **"39-71-119. Injury and accident defined.** (1) "Injury" or "injured" means:

14 (a) internal or external physical harm to the body that is established by objective medical findings;

15 (b) damage to prosthetic devices or appliances, except for damage to eyeglasses, contact lenses,  
16 dentures, or hearing aids; or

17 (c) death.

18 (2) An injury is caused by an accident. An accident is:

19 (a) an unexpected traumatic incident or unusual strain;

20 (b) identifiable by time and place of occurrence;

21 (c) identifiable by member or part of the body affected; and

22 (d) caused by a specific event on a single day or during a single work shift.

23 (3) "Injury" or "injured" does not mean a physical or mental condition arising from:

24 (a) emotional or mental stress; or

25 (b) a nonphysical stimulus or activity.

26 (4) "Injury" or "injured" does not include a disease that is not caused by an accident.

27 (5) (a) A cardiovascular, pulmonary, respiratory, or other disease, cerebrovascular accident, or  
28 myocardial infarction suffered by a worker is an injury only if the accident is the primary cause of the  
29 physical ~~harm~~ condition in relation to other factors contributing to the physical ~~harm~~ condition.

30 (b) "Primary cause", as used in subsection (5)(a), means a cause that, with a reasonable degree

1 of medical certainty, is responsible for more than 50% of the physical condition."

2

3 **Section 7.** Section 39-71-123, MCA, is amended to read:

4 **"39-71-123. Wages defined.** (1) "Wages" means the gross remuneration paid in money, or in a  
5 substitute for money, for services rendered by an employee, or income provided for in subsection (1)(d).  
6 Wages include but are not limited to:

7 (a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays,  
8 vacations, and sickness periods;

9 (b) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is  
10 based on its actual value;

11 (c) payments made to an employee on any basis other than time worked, including but not limited  
12 to piecework, an incentive plan, or profit-sharing arrangement; and

13 (d) income or payment in the form of a draw, wage, net profit, or substitute for money received  
14 or taken by a sole proprietor or partner, regardless of whether the sole proprietor or partner has performed  
15 work or provided services for that remuneration.

16 (2) Wages do not include:

17 (a) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, and  
18 other expenses, as set forth in department rules;

19 (b) special rewards for individual invention or discovery;

20 (c) tips and other gratuities received by the employee in excess of those documented to the  
21 employer for tax purposes;

22 (d) contributions made by the employer to a group insurance or pension plan; or

23 (e) vacation or sick leave benefits accrued but not paid.

24 (3) ~~For (a) Except as provided in subsection (3)(b), for~~ compensation benefit purposes, the average  
25 actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except  
26 that if:

27 ~~(a) the term of employment for the same employer is less than four pay periods, in which case the~~  
28 employee's wages are the hourly rate times the number of hours in a week for which the employee was  
29 hired to work; ~~or,~~

30 (b) ~~for~~ For good cause shown, ~~by the claimant, the use of the four pay periods does not accurately~~

1 ~~reflect the claimant's employment history with the employer, in which case the insurer may use additional~~  
 2 ~~pay periods if the use of the last four pay periods does not accurately reflect the claimant's employment~~  
 3 ~~history with the employer, the wage may be calculated by dividing the total earnings for an additional period~~  
 4 ~~of time, not to exceed 1 year prior to the date of injury, by the number of weeks in that period, including~~  
 5 ~~periods of idleness or seasonal fluctuations.~~

6 (4) (a) For the purpose of calculating compensation benefits for an employee working concurrent  
 7 employments, the average actual wages must be calculated as provided in subsection (3). As used in this  
 8 subsection, "concurrent employment" means employment in which the employee was actually employed  
 9 at the time of the injury and would have continued to be employed without a break in the term of  
 10 employment if not for the injury.

11 (b) The compensation benefits for a covered volunteer must be based on the average actual wages  
 12 in the volunteer's regular employment, except self-employment as a sole proprietor or partner who elected  
 13 not to be covered, from which the volunteer is disabled by the injury incurred.

14 (c) The compensation benefits for an employee working at two or more concurrent remunerated  
 15 employments must be based on the aggregate of average actual wages of all employments, except  
 16 self-employment as a sole proprietor or partner who elected not to be covered, from which the employee  
 17 is disabled by the injury incurred.

18 (5) The compensation benefits and the payroll, for premium purposes, for a volunteer firefighter  
 19 covered pursuant to 39-71-118 must be based upon a wage of not less than \$900 a month and not more  
 20 than 1 1/2 times the average weekly wage as defined in this chapter."

21  
 22 **Section 8.** Section 39-71-407, MCA, is amended to read:

23 **"39-71-407. Liability of insurers -- limitations.** (1) ~~Every~~ Each insurer is liable for the payment of  
 24 compensation, in the manner and to the extent provided in this section, to an employee of an employer that  
 25 it insures who receives an injury arising out of and in the course of employment or, in the case of death  
 26 from the injury, to the employee's beneficiaries, if any.

27 (2) (a) An insurer is liable for an injury, as defined in 39-71-119, if the injury is established by  
 28 objective medical findings and if the claimant establishes that it is more probable than not that:

29 (i) a claimed injury has occurred; or

30 (ii) a claimed injury aggravated a preexisting condition.

1 (b) Proof that it was medically possible that a claimed injury occurred or that the claimed injury  
2 aggravated a preexisting condition is not sufficient to establish liability.

3 (3) An employee who suffers an injury or dies while traveling is not covered by this chapter unless:

4 (a) (i) the employer furnishes the transportation or the employee receives reimbursement from the  
5 employer for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment  
6 agreement; and

7 (ii) the travel is necessitated by and on behalf of the employer as an integral part or condition of  
8 the employment; or

9 (b) the travel is required by the employer as part of the employee's job duties.

10 (4) An employee is not eligible for benefits otherwise payable under this chapter if the employee's  
11 use of alcohol or drugs not prescribed by a physician is the major contributing cause of the accident.  
12 However, if the employer had knowledge of and failed to attempt to stop the employee's use of alcohol  
13 or drugs, this subsection does not apply.

14 (5) If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury  
15 to the same part of the body, the workers' compensation insurer is not liable for any compensation or  
16 medical benefits caused by the subsequent nonwork-related injury.

17 (6) An employee is not eligible for benefits payable under this chapter unless the entitlement to  
18 benefits is established by objective medical findings that contain sufficient factual and historical information  
19 concerning the relationship of the worker's condition to the original injury.

20 ~~(6)(7)~~ As used in this section, "major contributing cause" means a cause that is the leading cause  
21 contributing to the result when compared to all other contributing causes."  
22

23 **Section 9.** Section 39-71-603, MCA, is amended to read:

24 **"39-71-603. Notice of injuries other than death to be submitted within thirty days.** ~~Ne~~ (1) A claim  
25 to recover benefits under the Workers' Compensation Act<sub>7</sub> for injuries not resulting in death<sub>7</sub> may not be  
26 considered compensable unless, within 30 days after the occurrence of the accident ~~which~~ that is claimed  
27 to have caused the injury, notice of the time and place where the accident occurred and the nature of the  
28 injury is given to the employer or the employer's insurer by the injured employee or someone on the  
29 employee's behalf. Actual knowledge of the accident and injury on the part of the employer or the  
30 employer's managing agent or superintendent in charge of the work ~~upon~~ in which the injured employee

1 was engaged at the time of the injury is equivalent to notice.

2 (2) If a sole proprietor, partner, manager of a manager-managed limited liability company, member  
 3 of a member-managed limited liability company, or corporate officer covered under this chapter is injured  
 4 in an accident, the sole proprietor, partner, manager, member, or corporate officer or an appointed designee  
 5 shall, within 30 days, notify the insurer of the time and location of the accident and the nature of the  
 6 injury."

7

8 **Section 10.** Section 39-71-609, MCA, is amended to read:

9 **"39-71-609. Denial of claim after payments made or termination of all benefits or reduction to**  
 10 **partial benefits by insurer -- fourteen days' notice required -- exception.** ¶ (1) Except as provided in  
 11 subsection (2), if an insurer determines to deny a claim on which payments have been made under  
 12 39-71-608 during a time of further investigation or, after a claim has been accepted, terminates all biweekly  
 13 compensation benefits, it may do so only after 14 days' written notice to the claimant, the claimant's  
 14 authorized representative, if any, and the department. For injuries occurring prior to July 1, 1987, an  
 15 insurer must give 14 days' written notice to the claimant before reducing benefits from total to partial.  
 16 However, if an insurer has knowledge that a claimant has returned to work, compensation benefits may  
 17 be terminated as of the time the claimant returned to work.

18 (2) Temporary total disability benefits may be terminated on the date that the worker has been  
 19 released to return to work in some capacity."

20

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

22 **"39-71-701. Compensation for temporary total disability -- exception.** (1) Subject to the limitation  
 23 in 39-71-736 and subsection (4) of this section, a worker is eligible for temporary total disability benefits;

24 (a) when the worker suffers a total loss of wages as a result of an injury and until the worker  
 25 reaches maximum healing; or

26 (b) until the worker has been released to return to the employment in which the worker was  
 27 engaged at the time of the injury or to employment with similar physical requirements.

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

30 (3) Weekly compensation benefits for injury producing temporary total disability are 66 2/3% of

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

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

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

15 (6) If the claimant is awarded social security benefits, the insurer may, upon notification of the  
 16 claimant's receipt of social security benefits, suspend biweekly compensation benefits for a period sufficient  
 17 to recover any resulting overpayment of benefits. This subsection does not prevent a claimant and insurer  
 18 from agreeing to a repayment plan.

19 (7) A worker may not receive both wages and temporary total disability benefits without the  
 20 written consent of the insurer. A worker who receives both wages and temporary total disability benefits  
 21 without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301."  
 22

23 **Section 12.** Section 39-71-702, MCA, is amended to read:

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

28 (2) The determination of permanent total disability must be supported by a preponderance of  
 29 objective medical ~~evidence~~ findings.

30 (3) Weekly compensation benefits for an injury resulting in permanent total disability are 66 2/3%

1 of the wages received at the time of the injury. The maximum weekly compensation benefits may not  
2 exceed the state's average weekly wage at the time of injury.

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

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

12 (6) A worker may not receive both wages and permanent total disability benefits without the  
13 written consent of the insurer. A worker who receives both wages and permanent total disability benefits  
14 without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301.

15 (7) If the claimant is awarded social security benefits, the insurer may, upon notification of the  
16 claimant's receipt of social security benefits, suspend biweekly compensation benefits for a period sufficient  
17 to recover any resulting overpayment of benefits. This subsection does not prevent a claimant and insurer  
18 from agreeing to a repayment plan."

19

20 **Section 13.** Section 39-71-703, MCA, is amended to read:

21 **"39-71-703. Compensation for permanent partial disability.** (1) If an injured worker suffers a  
22 permanent partial disability and is no longer entitled to temporary total or permanent total disability benefits,  
23 the worker is entitled to a permanent partial disability award ~~if that worker:~~ if that worker:

24 (a) has an actual wage loss as a result of the injury; and

25 (b) has a permanent impairment rating that:

26 (i) is established by objective medical findings; and

27 (ii) is more than zero as determined by the latest edition of the American medical association Guides  
28 to the Evaluation of Permanent Impairment.

29 (2) When a worker receives an impairment rating as the result of a compensable injury and has no  
30 actual wage loss as a result of the injury, the worker is eligible for an impairment award only.

1           ~~(2)~~(3) The permanent partial disability award must be arrived at by multiplying the percentage  
2 arrived at through the calculation provided in subsection ~~(3)~~ (4) by 350 weeks.

3           ~~(3)~~ An (4) A permanent partial disability award granted an injured worker may not exceed a  
4 permanent partial disability rating of 100%. ~~The criteria for the rating of disability must be calculated using~~  
5 ~~the medical impairment rating as determined by the latest edition of the American medical association~~  
6 ~~Guides to the Evaluation of Permanent Impairment.~~

7           (5) The percentage to be used in subsection ~~(2)~~ (3) must be determined by adding all of the  
8 following applicable percentages to the impairment rating:

9           (a) if the claimant is ~~30~~ 40 years of age or younger at the time of injury, 0%; if the claimant is over  
10 ~~30~~ 40 years of age ~~but under 56 years of age~~ at the time of injury, ~~2%~~ 1%; ~~and if the claimant is 56 years~~  
11 ~~of age or older at the time of injury, 3%;~~

12           (b) for a worker who has completed less than ~~9~~ 12 years of education, ~~3%~~ 1%; for a worker who  
13 has completed ~~9~~ through 12 years or more of education or who has received a graduate equivalency  
14 diploma, ~~2%~~ 0%; ~~for a worker who has completed more than 12 years of education, 0%;~~

15           (c) if a worker has no actual wage loss as a result of the industrial injury, 0%; if a worker has an  
16 actual wage loss of \$2 or less an hour as a result of the industrial injury, 10%; if a worker has an actual  
17 wage loss of more than \$2 an hour as a result of the industrial injury, 20%; ~~and~~. Wage loss benefits must  
18 be based on the difference between the actual wages received at the time of injury and the wages that the  
19 worker earns or is qualified to earn after the worker reaches maximum healing.

20           (d) if a worker, at the time of the injury, was performing heavy labor activity and after the injury  
21 the worker can perform only light or sedentary labor activity, ~~20%~~ 5%; if a worker, at the time of injury,  
22 was performing heavy labor activity and after the injury the worker can perform only medium labor activity,  
23 ~~15%~~ 3%; if a worker was performing medium labor activity at the time of the injury and after the injury  
24 the worker can perform only light or sedentary labor activity, ~~10%~~ 2%.

25           ~~(4)~~(6) The weekly benefit rate for permanent partial disability is  $66\frac{2}{3}\%$  of the wages received  
26 at the time of injury, but the rate may not exceed one-half the state's average weekly wage. The weekly  
27 benefit amount established for an injured worker may not be changed by a subsequent adjustment in the  
28 state's average weekly wage for future fiscal years.

29           ~~(5)~~(7) If a worker suffers a subsequent compensable injury or injuries to the same part of the body,  
30 the award payable for the subsequent injury may not duplicate any amounts paid for the previous injury



1 or injuries.

2 (8) If a worker is eligible for a rehabilitation plan, permanent partial disability benefits payable under  
 3 this section must be calculated based on the wages that the worker earns or would be qualified to earn  
 4 following the completion of the rehabilitation plan.

5 ~~(6)~~(9) As used in this section:

6 (a) "heavy labor activity" means the ability to lift over 50 pounds occasionally or up to 50 pounds  
 7 frequently;

8 (b) "medium labor activity" means the ability to lift up to 50 pounds occasionally or up to 25  
 9 pounds frequently;

10 (c) "light labor activity" means the ability to lift up to 25 pounds occasionally or up to 10 pounds  
 11 frequently; and

12 (d) "sedentary labor activity" means the ability to lift up to 10 pounds occasionally or up to 5  
 13 pounds frequently."

14

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

16 **"39-71-710. Termination of benefits upon retirement.** (1) If a claimant is receiving disability or  
 17 rehabilitation compensation benefits and the claimant receives social security retirement benefits or is  
 18 eligible to receive or is receiving full social security retirement benefits or retirement benefits from a system  
 19 that is an alternative to social security retirement benefits, the claimant is considered to be retired. When  
 20 the claimant is ~~considered~~ retired, the liability of the insurer is ended for payment of ~~wage supplement~~  
 21 permanent partial disability benefits other than the impairment award, payment of permanent total disability  
 22 benefits, and payment of rehabilitation compensation benefits. However, the insurer remains liable for  
 23 temporary total disability benefits, any impairment award, and medical benefits.

24 (2) If a claimant who is eligible under subsection (1) to receive ~~social security~~ retirement benefits  
 25 and ~~is~~ while gainfully employed suffers a work-related injury, the insurer retains liability for temporary total  
 26 disability benefits, any impairment award, and medical benefits."

27

28 **Section 15.** Section 39-71-711, MCA, is amended to read:

29 **"39-71-711. Impairment evaluation -- ratings.** (1) An impairment rating:

30 (a) is a purely medical determination and must be determined by an impairment evaluator after a

1 claimant has reached maximum healing;

2 (b) must be based on the current edition of the Guides to Evaluation of Permanent Impairment  
3 published by the American medical association; and

4 (c) must be expressed as a percentage of the whole person; and

5 (d) must be established by objective medical findings.

6 (2) A claimant or insurer, or both, may obtain an impairment rating from an evaluator who is a  
7 medical doctor or from an evaluator who is a chiropractor if the injury falls within the scope of chiropractic  
8 practice. If the claimant and insurer cannot agree upon the rating, the mediation procedure in part 24 of  
9 this chapter must be followed.

10 (3) An evaluator must be a physician licensed under Title 37, chapter 3, except if the claimant's  
11 treating physician is a chiropractor, the evaluator may be a chiropractor who is certified as an evaluator  
12 under chapter 12.

13 (4) Disputes over impairment ratings are not subject to 39-71-605."  
14

15 **Section 16.** Section 39-71-712, MCA, is amended to read:

16 **"39-71-712. Temporary partial disability benefits.** (1) If, prior to maximum healing, an injured  
17 worker has a physical restriction and is approved to return to a modified or alternative employment that the  
18 worker is able and qualified to perform and the worker suffers an actual wage loss as a result of a  
19 temporary work restriction, the worker qualifies for temporary partial disability benefits.

20 (2) An insurer's liability for temporary partial disability must be the difference between the injured  
21 worker's average weekly wage received at the time of the injury, subject to a maximum of 40 hours a  
22 week, and the actual weekly wages earned during the period that the claimant is temporarily partially  
23 disabled, not to exceed the injured worker's temporary total disability benefit rate.

24 (3) Temporary partial disability benefits are limited to a total of 26 weeks. The insurer may extend  
25 the period of temporary partial disability payments.

26 (4) A worker requalifies for temporary total disability benefits if the modified position is no longer  
27 available to the worker and the worker continues to be temporarily totally disabled as defined in 39-71-116.

28 (5) Temporary partial disability may not be ~~considered an element of permanent partial disability~~  
29 ~~and may not be credited against any permanent impairment or any permanent partial disability award or~~  
30 ~~settlement achieved after the injured worker reaches maximum healing~~ under 39-71-703."

1           **Section 17.** Section 39-71-721, MCA, is amended to read:

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

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

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

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

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

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

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

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

28           (8) Notwithstanding subsections (2) and (3), beginning July 1, 1987, through June 30, 1991, the  
29 maximum weekly compensation benefits for injury causing death may not exceed the state's average  
30 weekly wage of \$299 established July 1, 1986. Beginning July 1, 1987, through June 30, 1991, the

1 minimum weekly compensation for injury causing death shall be \$149.50, which is 50% of the state's  
 2 average weekly wage established July 1, 1986, but in no event may it exceed the decedent's actual wages  
 3 at the time of death."

4

5 **Section 18.** Section 39-71-723, MCA, is amended to read:

6 **"39-71-723. How compensation to be divided among beneficiaries.** Compensation due to  
 7 beneficiaries ~~shall~~ must be paid to the surviving spouse, if any, or if none, then divided equally among or  
 8 for the benefit of the children. In cases ~~where~~ in which beneficiaries are a surviving spouse and  
 9 stepchildren of ~~such~~ the spouse, the compensation ~~shall~~ must be divided equally among all beneficiaries.  
 10 Compensation due to beneficiaries as defined in 39-71-116(3)(e)(4)(e) and ~~(3)(f)~~ (4)(f), ~~where~~ if there is  
 11 more than one, ~~shall~~ must be divided equitably among them, and the question of dependency and amount  
 12 ~~thereof shall~~ must be a question of fact for determination by the department."

13

14 **Section 19.** Section 39-71-727, MCA, is amended to read:

15 **"39-71-727. Payment for prescription drugs -- limitations.** (1) For payment of prescription drugs,  
 16 an insurer is liable only for the purchase of generic-name drugs if the generic-name product is the  
 17 therapeutic equivalent of the brand-name drug prescribed by the physician, unless the generic-name drug  
 18 is unavailable.

19 (2) If an injured worker prefers a brand-name drug, the worker may pay directly to the pharmacist  
 20 the difference in the reimbursement rate between the brand-name drug and the generic-name product, and  
 21 the pharmacist may ~~only~~ bill the insurer only for the reimbursement rate of the generic-name drug.

22 (3) The pharmacist may bill only for the cost of the generic-name product on a signed itemized  
 23 billing, except if purchase of the brand-name drug is allowed as provided in subsection (1).

24 (4) When billing for a brand-name drug, the pharmacist shall certify that the generic-name drug was  
 25 unavailable.

26 (5) Reimbursement rates payable by an insurer ~~subject to an agreement pursuant to 39-71-1102~~  
 27 are limited to the average wholesale price of the product at the time of dispensing, plus a dispensing fee  
 28 not to exceed \$5.50 per product.

29 (6) The pharmacist may not dispense more than a 30-day supply at any one time.

30 (7) For purposes of this section, average wholesale prices must be updated weekly.

1 (8) For purposes of this section, the terms "brand name", "drug product", and "generic name" have  
2 the same meaning as provided in 37-7-502.

3 (9) An insurer may not require a worker receiving benefits under this chapter to obtain medications  
4 from an out-of-state mail service pharmacy.

5 (10) The provisions of this section do not apply to an agreement between a preferred provider  
6 organization and an insurer."

7  
8 **Section 20.** Section 39-71-741, MCA, is amended to read:

9 **"39-71-741. Compromise settlements and lump-sum payments.** (1) (a) Benefits under this chapter  
10 may be converted in whole or in part to a lump sum:

11 (i) if a claimant and an insurer dispute the initial compensability of an injury; and

12 (ii) if the claimant and insurer agree to a settlement.

13 (b) The agreement is subject to department approval. The department may disapprove an  
14 agreement under this section only if there is not a reasonable dispute over compensability.

15 (c) Upon approval, the agreement constitutes a compromise and release settlement and may not  
16 be reopened by the department.

17 (2) (a) ~~If an insurer has accepted initial liability for an injury, permanent~~ Permanent partial disability  
18 benefits may be converted in whole or in part to a lump-sum payment if:

19 (i) an insurer has accepted initial liability for an injury; and

20 (ii) the claimant and the insurer agree to a lump-sum conversion.

21 (b) The total of any lump-sum conversion in part that is awarded to a claimant prior to the  
22 claimant's final award may not exceed the anticipated award under 39-71-703 ~~or \$20,000, whichever is~~  
23 ~~less.~~

24 (c) An agreement is subject to department approval. The department may disapprove an agreement  
25 only if the department determines that the ~~settlement~~ lump-sum conversion amount is inadequate. If  
26 disapproved, the department shall set forth in detail the reasons for disapproval.

27 (d) Upon approval, ~~the agreement constitutes~~ a compromise and release settlement ~~and~~ may not  
28 be reopened by the department.

29 (3) Permanent total disability benefits may be converted in whole or in part to a lump sum. The  
30 total of all lump-sum conversions in part that are awarded to a claimant may not exceed \$20,000. A

1 conversion may be made only upon the written application of the injured worker with the concurrence of  
 2 the insurer. Approval of the lump-sum payment rests in the discretion of the department. The approval  
 3 or award of a lump-sum payment by the department or court must be the exception. It may be given only  
 4 if the worker has demonstrated financial need that:

5 (a) relates to:

6 (i) the necessities of life;

7 (ii) an accumulation of debt incurred prior to the injury; or

8 (iii) a self-employment venture that is considered feasible under criteria set forth by the department;

9 or

10 (b) arises subsequent to the date of injury or arises because of reduced income as a result of the  
 11 injury.

12 (4) Any lump-sum conversion of benefits under ~~subsection (3)~~ this section must be converted to  
 13 present value using the rate prescribed under subsection (5)(b).

14 (5) (a) An insurer may recoup any lump-sum payment amortized at the rate established by the  
 15 department, prorated biweekly over the projected duration of the compensation period.

16 (b) The rate adopted by the department must be based on the average rate for United States  
 17 10-year treasury bills in the previous calendar year, ~~rounded to the nearest whole number.~~

18 (c) If the projected compensation period is the claimant's lifetime, the life expectancy must be  
 19 determined by using the most recent table of life expectancy as published by the United States national  
 20 center for health statistics.

21 (6) Subject to the other provisions of this section, the department ~~has full power, authority, and~~  
 22 ~~jurisdiction to allow, shall approve, or condition or deny in writing~~ compromise settlements for any type of  
 23 ~~benefits provided for under this chapter and or lump-sum payments agreed to by workers and insurers. All~~  
 24 ~~such compromise settlements and lump sum payments are void without the approval of the department.~~  
 25 ~~Approval by the department must be in writing.~~ The department shall directly notify a claimant of a  
 26 department order approving or denying a claimant's compromise or lump-sum payment.

27 (7) A dispute between a claimant and an insurer regarding the conversion of biweekly payments  
 28 into a lump-sum is considered a dispute, for which a mediator and the workers' compensation court have  
 29 jurisdiction to make a determination. If an insurer and a claimant agree to a compromise and release  
 30 settlement or a lump-sum payment but the department disapproves the agreement, the parties may request

1 the workers' compensation court to review the department's decision."

2  
3 **Section 21.** Section 39-71-744, MCA, is amended to read:

4 **"39-71-744. Benefits not due while claimant is incarcerated -- exceptions.** (1) Except as provided  
5 in subsection (2), a claimant is not eligible for disability or rehabilitation compensation benefits while the  
6 claimant is incarcerated for a period exceeding 30 days in a correctional institution, ~~such as the Montana~~  
7 ~~state prison or the Montana women's correctional center~~ or jail, as the result of conviction of a felony or  
8 a misdemeanor. The insurer remains liable for medical benefits. A time limit on benefits otherwise provided  
9 in this chapter is not extended due to a period of incarceration.

10 (2) A person who is employed while participating in a prerelease center program or a diversionary  
11 program is eligible for temporary total benefits as provided in 39-71-701 and medical benefits for a  
12 work-related injury received while participating in a prerelease center program or a diversionary program.  
13 Other disability or rehabilitation benefits are not payable while the worker is participating in a prerelease  
14 center. This subsection does not prohibit the reinstatement of other benefits upon release from  
15 incarceration, nor does it apply to an employee performing community service described in  
16 39-71-118(1)(f)."

17  
18 **Section 22.** Section 39-71-1011, MCA, is amended to read:

19 **"39-71-1011. Definitions.** As used in this chapter, the following definitions apply:

20 (1) "Board of rehabilitation certification" means the nonprofit, independent, fee-structured  
21 organization that is a member of the national commission for health certifying agencies and that is  
22 established to certify rehabilitation practitioners.

23 (2) "Disabled worker" means ~~one a worker~~ who has a ~~medically determined restriction~~ permanent  
24 impairment, established by objective medical findings, resulting from a work-related injury that precludes  
25 the worker from returning to the job the worker held at the time of the injury or to a job with similar  
26 physical requirements and who has an actual wage loss as a result of the injury.

27 (3) "Rehabilitation benefits" means benefits provided in 39-71-1003, 39-71-1025, and  
28 39-71-2001.

29 (4) "Rehabilitation plan" means an individualized plan ~~to assist~~ that assists a disabled worker in  
30 acquiring skills or aptitudes to return to work through job placement, on-the-job training, education, training,

1 or specialized job modification and that reasonably reduces the worker's actual wage loss.

2 (5) "Rehabilitation provider" means a rehabilitation counselor certified by the board for rehabilitation  
3 certification and designated by the insurer to the department or a department of social and rehabilitation  
4 services counselor when a worker has been certified by the department of social and rehabilitation services  
5 under 39-71-1003.

6 (6) "Rehabilitation services" ~~consists of~~ means a program of evaluation, planning, and ~~delivery of~~  
7 ~~goods and services~~ implementation of a rehabilitation plan to assist a disabled worker to return to work."  
8

9 **Section 23.** Section 39-71-1032, MCA, is amended to read:

10 **"39-71-1032. Termination of benefits for noncooperation with rehabilitation provider -- department**  
11 **hearing and appeal.** (1) If an insurer believes that a worker is refusing unreasonably to cooperate with the  
12 rehabilitation provider, the insurer, with 14 days' notice to the worker and department on a form approved  
13 by the department, may terminate any ~~rehabilitation~~ benefits, except medical benefits and the impairment  
14 award, that the worker is receiving ~~under this part~~ until the worker cooperates.

15 (2) The worker may contest the insurer's termination of benefits by filing a written exception to  
16 the department within 20 working days after the date of the 14-day notice. The worker or insurer may  
17 request a hearing before the department. The department shall hold a hearing within 30 days of receipt  
18 of the request. The department shall issue an order within 15 days of the hearing.

19 (3) If the worker prevails at a hearing before the department, it may award attorney fees and costs  
20 to the worker under 39-71-612.

21 (4) Within 30 days after the department mails its order to the party's last-known address, a party  
22 may appeal to the workers' compensation court."  
23

24 **Section 24.** Section 39-71-2001, MCA, is amended to read:

25 **"39-71-2001. Rehabilitation benefits.** (1) ~~An injured~~ A disabled worker as defined in 39-71-1011  
26 is eligible for rehabilitation benefits if:

27 (a) ~~the injury results in permanent partial disability or permanent total disability as defined in~~  
28 ~~39-71-116~~ the worker has an actual wage loss as a result of the injury;

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



1 ~~(a)~~ a rehabilitation plan completed by (b) a rehabilitation provider, and as designated by the insurer,  
 2 certifies that the injured worker has reasonable vocational goals and a reemployment ~~and wage potential~~  
 3 opportunity and will have a reasonable reduction in the worker's actual wage loss with rehabilitation; and  
 4 The plan must take into consideration the worker's age, education, training, work history, residual physical  
 5 capacities, and vocational interests.

6 ~~(d)~~(c) a rehabilitation plan ~~between~~ agreed upon by the injured worker and the insurer is filed with  
 7 the department. The plan must take into consideration the worker's age, education, training, work history,  
 8 residual physical capacities, and vocational interests. The plan must specify a beginning and completion  
 9 date. If the plan calls for the expenditure of funds under 39-71-1004, the department shall authorize the  
 10 department of social and rehabilitation services to use the funds.

11 (2) After filing the rehabilitation plan with the department, the ~~injured~~ disabled worker is entitled  
 12 to receive ~~rehabilitation~~ biweekly compensation benefits at the injured worker's temporary total disability  
 13 rate. The benefits must be paid for the period specified in the rehabilitation plan, not to exceed 104 weeks.  
 14 ~~Rehabilitation benefits must be paid during a reasonable period, not to exceed 10 weeks, while the worker~~  
 15 ~~is waiting to begin the agreed upon rehabilitation plan.~~ The rehabilitation plan must be completed within  
 16 26 weeks of the completion date specified in the plan. Rehabilitation benefits must be paid biweekly while  
 17 the worker is satisfactorily ~~completing~~ progressing in the agreed-upon rehabilitation plan. Benefits under  
 18 this section are not subject to the lump-sum provisions of 39-71-741.

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

25 ~~(4) If there is a dispute as to whether an injured worker can return to the job the worker held at~~  
 26 ~~the time of injury, the insurer shall designate a rehabilitation provider to evaluate and determine whether~~  
 27 ~~the worker can return to the job held at the time of injury. If it is determined that the worker cannot return~~  
 28 ~~to the job held at the time of injury, the worker is entitled to rehabilitation benefits and services as provided~~  
 29 ~~in subsection (2).~~

30 ~~(5)~~(3) A worker may not receive temporary total ~~or biweekly permanent partial~~ disability benefits

1 and ~~rehabilitation~~ the benefits under subsection (2) during the same period of time.

2 ~~(6) The (4) A~~ rehabilitation provider, ~~as~~ authorized by the insurer, shall continue to ~~work with and~~  
3 assist the injured worker until the rehabilitation plan is completed.

4 (5) To be eligible for benefits under this section, a worker is required to begin the rehabilitation plan  
5 within 78 weeks of reaching maximum medical healing.

6 ~~(7)(6)~~ A worker may not receive both wages and rehabilitation benefits without the written consent  
7 of the insurer. A worker who receives both wages and rehabilitation benefits without written consent of  
8 the insurer is guilty of theft and may be prosecuted under 45-6-301."

9

10 **Section 25.** Section 39-72-403, MCA, is amended to read:

11 **"39-72-403. Time when claims must be presented.** (1) When a claimant seeks benefits under this  
12 chapter, ~~his~~ the claimant's claims for benefits must be presented in writing to the employer, the employer's  
13 insurer, or the department within ~~2 years~~ 1 year from the date the claimant knew or should have known  
14 that ~~his total disability~~ the claimant's condition resulted from an occupational disease. When a beneficiary  
15 seeks benefits under this chapter, ~~his~~ claims for death benefits must be presented in writing to the  
16 employer, the employer's insurer, or the department within 1 year from the date the beneficiaries knew or  
17 should have known that the decedent's death was related to an occupational disease.

18 (2) The department may, upon a reasonable showing by the claimant or a decedent's beneficiaries  
19 that the claimant or the beneficiaries could not have known that the claimant's condition or the employee's  
20 death was related to an occupational disease, waive the claim time requirement up to an additional 2  
21 years."

22

23 **Section 26.** Section 39-72-704, MCA, is amended to read:

24 **"39-72-704. Medical and hospital expenses.** In addition to the compensation provided by this  
25 chapter, an employee who becomes either totally or partially disabled from an occupational disease is  
26 entitled to receive, for treatment of the occupational disease, without limitation as to length of time or dollar  
27 amount, reasonable medical services, hospitalization, medicines, and other treatment approved by the  
28 department payment of medical expenses under Title 39, chapter 71."

29

30 NEW SECTION. **Section 27. Severability.** If a part of [this act] is invalid, all valid parts that are

1 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
2 applications, the part remains in effect in all valid applications that are severable from the invalid  
3 applications.

4

5 **NEW SECTION. Section 28. Codification instructions.** (1) [Section 1] is intended to be codified  
6 as an integral part of Title 39, chapter 71, part 29, and the provisions of Title 39, chapter 71, part 29,  
7 apply to [section 1].

8 (2) [Section 2] is intended to be codified as an integral part of Title 39, chapter 71, part 4, and the  
9 provisions of Title 39, chapter 71, part 4, apply to [section 2].

10 (3) [Section 3] is intended to be codified as an integral part of Title 39, chapter 71, part 6, and the  
11 provisions of Title 39, chapter 71, part 6, apply to [section 3].

12 (4) [Section 4] is intended to be codified as an integral part of Title 39, chapter 71, part 1, and the  
13 provisions of Title 39, chapter 71, part 1, apply to [section 4].

14 (5) Section 39-71-2001 is intended to be renumbered and codified as an integral part of Title 39,  
15 chapter 71, part 10.

16

17 **NEW SECTION. Section 29. Effective date.** [This act] is effective July 1, 1995.

18

-END-