

1 HOUSE BILL NO. 150

2 INTRODUCED BY R. JOHNSON

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT DECREASING AS OF JULY 1, 1997, THE RATE OF THE OLD
5 FUND LIABILITY TAX ON EMPLOYERS TO 0.25 PERCENT AND THE RATE ON EMPLOYEES TO 0.1
6 PERCENT; ELIMINATING THE STATE FUND'S AUTHORITY TO OBTAIN BONDS FOR REPAYING CLAIMS
7 FOR INJURIES RESULTING FROM ACCIDENTS OCCURRING PRIOR TO JULY 1, 1990; REQUIRING THE
8 STATE FUND TO TRANSFER SURPLUS FUNDS TO THE GENERAL FUND TO REPAY THE \$20 MILLION
9 APPROPRIATED IN 1989 TO REDUCE THE UNFUNDED LIABILITY IN THE STATE COMPENSATION
10 MUTUAL INSURANCE FUND; AMENDING SECTIONS 39-71-2311, 39-71-2316, 39-71-2320, 39-71-2321,
11 39-71-2323, 39-71-2327, 39-71-2351, 39-71-2352, 39-71-2354, 39-71-2355, 39-71-2501, 39-71-2503,
12 39-71-2504, AND 39-71-2505, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY
13 DATE."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16
17 **Section 1.** Section 39-71-2311, MCA, is amended to read:

18 **"39-71-2311. Intent and purpose of plan.** It is the intent and purpose of the state fund to allow
19 employers an option to insure their liability for workers' compensation and occupational disease coverage
20 with the state fund. The state fund must be neither more nor less than self-supporting. Premium rates must
21 be set at least annually at a level sufficient to ensure the adequate funding of the insurance program,
22 including the costs of administration, benefits, and adequate reserves, during and at the end of the period
23 for which the rates will be in effect. In determining premium rates, the state fund shall make every effort
24 to adequately predict future costs. When the costs of a factor influencing rates are unclear and difficult to
25 predict, the state fund shall use a prediction calculated to be more than likely to cover those costs rather
26 than less than likely to cover those costs. ~~Unnecessary~~ Except as provided in [section 15], unnecessary
27 surpluses that are created by the imposition of premiums found to have been set higher than necessary
28 because of a high estimate of the cost of a factor or factors may be refunded by the declaration of a
29 dividend as provided in this part. For the purpose of keeping the state fund solvent, the state fund shall
30 implement variable pricing levels as provided in 39-71-2341 and the board of directors may, in its

1 discretion, assess a policy charge, a minimum premium, or both."

2

3 **Section 2.** Section 39-71-2316, MCA, is amended to read:

4 **"39-71-2316. Powers of state fund.** For the purposes of carrying out its functions, the state fund
5 may:

6 (1) insure any employer for workers' compensation and occupational disease liability as the
7 coverage is required by the laws of this state and, as part of the coverage, provide related employers'
8 liability insurance upon approval of the board;

9 (2) sue and be sued;

10 (3) except as provided in section 21, Chapter 4, Special Laws of May 1990, enter into contracts
11 relating to the administration of the state fund, including claims management, servicing, and payment;

12 (4) collect and disburse money received;

13 (5) adopt classifications and charge premiums for the classifications so that the state fund will be
14 neither more nor less than self-supporting. Premium rates for classifications may only be adopted and
15 changed using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2,
16 chapter 4, parts 2 through 4. After the rules have been adopted, the state fund need not follow the
17 rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The contested
18 case rights and provisions of Title 2, chapter 4, do not apply to an employer's classification or premium
19 rate. The state fund is required to belong to a licensed workers' compensation advisory organization or a
20 licensed workers' compensation rating organization under Title 33, chapter 16, part 4, and may use the
21 classifications of employment adopted by the designated workers' compensation advisory organization, as
22 provided in Title 33, chapter 16, part 10, and corresponding rates as a basis for setting its own rates.
23 Except as provided in Title 33, chapter 16, part 10, a workers' compensation advisory organization or a
24 licensed workers' compensation rating organization under Title 33, chapter 16, part 4, or other person may
25 not, without first obtaining the written permission of the employer, use, sell, or distribute an employer's
26 specific payroll or loss information, including but not limited to experience modification factors.

27 (6) pay the amounts determined due under a policy of insurance issued by the state fund;

28 (7) hire personnel;

29 (8) after transfer of the funds required in [section 15], declare dividends if there is an excess of
30 assets over liabilities. However, dividends may not be paid until adequate actuarially determined reserves

1 are set aside. If those reserves have been set aside, money that can be declared as a dividend must be
 2 transferred to the account created by 39-71-2321 for claims for injuries resulting from accidents that
 3 occurred before July 1, 1990, and used for the purposes of that account. After all claims funded by that
 4 account have been paid, dividends may be declared and paid to insureds.

5 (9) perform all functions and exercise all powers of a private insurance carrier that are necessary,
 6 appropriate, or convenient for the administration of the state fund."

7
 8 **Section 3.** Section 39-71-2320, MCA, is amended to read:

9 **"39-71-2320. (Temporary) Property of state fund -- investment required. All Except as provided**
 10 **in [section 15], all premiums and other money paid to the state fund, all property and securities acquired**
 11 **through the use of money belonging to the state fund, and all interest and dividends earned upon money**
 12 **belonging to the state fund are the sole property of the state fund and must be used exclusively for the**
 13 **operations and obligations of the state fund. The money collected by the state fund may not be used for**
 14 **any other purpose. However, state fund money must be invested by the board of investments provided for**
 15 **in 2-15-1808.**

16 ~~**39-71-2320. (Effective July 1, 1997, on occurrence of contingency) Property of state fund --**~~
 17 ~~**investment required -- exception for common stock. (1) All premiums and other money paid to the state**~~
 18 ~~**fund, all property and securities acquired through the use of money belonging to the state fund, and all**~~
 19 ~~**interest and dividends earned upon money belonging to the state fund are the sole property of the state**~~
 20 ~~**fund and must be used exclusively for the operations and obligations of the state fund. The money collected**~~
 21 ~~**by the state fund may not be used for any other purpose. However, state fund money must be invested**~~
 22 ~~**by the board of investments provided for in 2-15-1808. Except as provided in subsection (2), state fund**~~
 23 ~~**money may be invested in common stocks of any corporation.**~~

24 ~~**(2) State fund money may be invested in common stocks of a corporation if the investment does**~~
 25 ~~**not cause the book value of state fund common stock investments to exceed 15% of the book value of**~~
 26 ~~**the state fund total invested assets or does not cause the book value of common stock investments in one**~~
 27 ~~**corporation to exceed 2% of the book value of the state fund total invested assets on the date of purchase.**~~
 28 ~~**(Effective on approval by electorate of House Bill No. 463 sec. 5, Ch. 424, L. 1995.)"**~~

29
 30 **Section 4.** Section 39-71-2321, MCA, is amended to read:

1 **"39-71-2321. What to be deposited in state fund.** (1) (a) All premiums, penalties, recoveries by
2 subrogation, interest earned upon money belonging to the state fund, and securities acquired by or through
3 use of money must be deposited in the state fund. They must be separated into two accounts based upon
4 whether they relate to claims for injuries resulting from accidents that occurred before July 1, 1990, or
5 claims for injuries resulting from accidents that occur on or after that date.

6 (b) All funds deposited in the state fund are statutorily appropriated as provided in 17-7-502.

7 (2) The proceeds of ~~bonds issued and~~ loans given to the state fund under 39-71-2354 and
8 39-71-2355 must be deposited in the account for claims for injuries resulting from accidents that occurred
9 before July 1, 1990."
10

11 **Section 5.** Section 39-71-2323, MCA, is amended to read:

12 **"39-71-2323. Surplus in state fund -- payment of dividends -- transfer of required surplus.** Subject
13 to the provisions of 39-71-2316 and [section 15], if at the end of any fiscal year there exists in the state
14 fund account created by 39-71-2321 for claims for injuries resulting from accidents that occur on or after
15 July 1, 1990, an excess of assets over liabilities, including necessary reserves and a reasonable surplus,
16 and if the excess may be refunded safely, then the state fund may declare a dividend. The rules of the state
17 fund must prescribe the manner of payment to those employers who have paid premiums into the state
18 fund in excess of liabilities chargeable to them in the fund for that year. In determining the amount or
19 proportion of the balance to which the employer is entitled as dividends, the state fund shall give
20 consideration to the prior paid premiums and accident experience of each individual employer during the
21 dividend year."
22

23 **Section 6.** Section 39-71-2327, MCA, is amended to read:

24 **"39-71-2327. Earnings of state fund to be credited to fund -- improper use a felony -- exception.**
25 ~~All~~ Except for the transfer required in [section 15], all earnings made by the state fund by reason of interest
26 paid for the deposit ~~thereof~~ of earnings or otherwise must be credited to and become a part of the fund,
27 and the making of profit, either directly or indirectly, by any person out of the use of the fund is a felony.
28 A person convicted of an offense under this section is punishable by imprisonment in the state prison for
29 a term not to exceed 2 years or a fine of not more than \$5,000, or both."
30

1 **Section 7.** Section 39-71-2351, MCA, is amended to read:

2 **"39-71-2351. Purpose of separation of state fund liability as of July 1, 1990, and of separate**
 3 **funding of claims before and on or after that date.** (1) An unfunded liability exists in the state fund. It has
 4 existed since at least the mid-1980s and has grown each year. There have been numerous attempts to
 5 solve the problem by legislation and other methods. These attempts have alleviated the problem somewhat,
 6 but the problem has not been solved.

7 (2) The legislature has determined that it is necessary to the public welfare to make workers'
 8 compensation insurance available to all employers through the state fund as the insurer of last resort. In
 9 making this insurance available, the state fund has incurred the unfunded liability. The legislature has
 10 determined that the most cost-effective and efficient way to provide a source of funding for and to ensure
 11 payment of the unfunded liability and the best way to administer the unfunded liability is to:

12 (a) separate the liability of the state fund on the basis of whether a claim is for an injury resulting
 13 from an accident that occurred before July 1, 1990, or an accident that occurs on or after that date;

14 (b) create an old fund liability tax provided for in 39-71-2503 and dedicate the tax money first to
 15 ~~the repayment of bonds issued under 39-71-2354 and 39-71-2355 and then to the repayment of loans~~
 16 given under 39-71-2354 and 39-71-2355 and the direct payment of the costs of administering and paying
 17 claims for injuries from accidents that occurred before July 1, 1990.

18 (3) The legislature further determines that in order to prevent the creation of a new unfunded
 19 liability with respect to claims for injuries for accidents that occur on or after July 1, 1990, certain duties
 20 of the state fund should be clarified and legislative oversight of the state fund should be increased."

21

22 **Section 8.** Section 39-71-2352, MCA, is amended to read:

23 **"39-71-2352. Separate payment structure and sources for claims for injuries resulting from**
 24 **accidents that occurred before July 1, 1990, and on or after July 1, 1990 -- spending limit -- transfer of**
 25 **required surplus.** (1) Premiums paid to the state fund based upon wages payable before July 1, 1990, may
 26 be used only to administer and pay claims for injuries resulting from accidents that occurred before July
 27 1, 1990. Except as provided in 39-71-2316, and 39-71-2354, and [section 15], premiums paid to the state
 28 fund based upon wages payable on or after July 1, 1990, may be used only to administer and pay claims
 29 for injuries resulting from accidents that occur on or after July 1, 1990.

30 (2) The state fund shall:

1 (a) determine the cost of administering and paying claims for injuries resulting from accidents that
2 occurred before July 1, 1990, and separately determine the cost of administering and paying claims for
3 injuries resulting from accidents that occur on or after July 1, 1990;

4 (b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and

5 (c) fund administrative expenses and benefit payments for claims for injuries resulting from
6 accidents that occurred before July 1, 1990, and claims for injuries resulting from accidents that occur on
7 or after July 1, 1990, separately from the sources provided by law.

8 (3) The state fund may not spend more than \$3 million a year to administer claims for injuries
9 resulting from accidents that occurred before July 1, 1990."

10
11 **Section 9.** Section 39-71-2354, MCA, is amended to read:

12 **"39-71-2354. Use of old fund liability tax proceeds -- loans -- bonds.** (1) Taxes collected under
13 39-71-2503 may be used only to administer and pay claims for injuries resulting from accidents that
14 occurred before July 1, 1990, including the cost of repaying ~~bonds issued and~~ loan proceeds given under
15 39-71-2355 and this section. If the state fund determines that, for the next 1 or more years following the
16 date of the determination, the tax revenue, together with funds in the account required by 39-71-2321 for
17 claims for injuries resulting from accidents that occurred before July 1, 1990, will be insufficient to
18 administer and pay those claims, the state fund may, through its board of directors, request the budget
19 director to certify to the board of investments that additional funding is necessary. If the budget director
20 agrees with the state fund's board of directors that additional funding is necessary, the budget director shall
21 certify to the board of investments the amount that the budget director determines is necessary to
22 administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Except
23 as provided in subsection (2), the board of investments shall, at times and in amounts it considers
24 necessary or advisable, finance the amount certified by the budget director by giving the state fund the
25 proceeds of a loan ~~or a bond issue~~ to administer and pay claims for injuries resulting from accidents that
26 occurred before July 1, 1990. Loans must be from reserves accumulated from premiums paid to the state
27 fund based upon wages payable on or after July 1, 1990. The board of investments shall choose the
28 method of financing that is most cost-effective for the state fund. A loan must bear interest at the rate that
29 the board of investments determines the money would earn if invested on behalf of the state fund. ~~The~~
30 ~~board of investments may also, upon request of the board of directors of the state fund, give the state fund~~

1 ~~the proceeds of a bond issue, to be used to pay off loans made under 39-71-2355 and this section. Bonds~~
 2 ~~for the state fund must be workers' compensation bonds issued under 39-71-2355.~~

3 (2) The total amount of loan proceeds given to the state fund plus workers' compensation bonds
 4 issued under 39-71-2355, ~~except bonds issued to repay loans as provided for in subsection (1),~~ may not
 5 exceed ~~\$220~~ \$50 million. All loan ~~and bond~~ proceeds given to the state fund must be repaid to the board
 6 of investments before July 1, 2020."

7
 8 **Section 10.** Section 39-71-2355, MCA, is amended to read:

9 **"39-71-2355. Workers' compensation bonds—loans loan proceeds -- form -- principal and**
 10 **interest.** (1) Subject to the ~~\$220~~ \$50 million limit contained in 39-71-2354(2), the board of investments
 11 may not give the state fund loan proceeds ~~or issue workers' compensation bonds~~ unless the aggregate
 12 amount of outstanding and proposed loans ~~and bonds~~ can be serviced with no more than 90% of the
 13 amount of tax revenue that the department of revenue estimates will be raised by the tax imposed under
 14 39-71-2503 during the remainder of the then current fiscal year and during each succeeding fiscal year
 15 through the end of the fiscal year in which the last then outstanding or proposed loan ~~or bond~~ will be repaid
 16 or retired.

17 ~~(2) Bonds are limited obligations payable solely from and secured by the money deposited in the~~
 18 ~~workers' compensation bond repayment account created by 39-71-2504. Each series of bonds may be~~
 19 ~~issued by the board of investments at public or private sale, in denominations and form, whether payable~~
 20 ~~to bearer or registered as to principal or both principal and interest, with such provisions for the conversion~~
 21 ~~or exchange, bearing interest at a rate or rates or the method of determining the rate or rates, maturing at~~
 22 ~~times, not later than June 30, 2020, subject to redemption at earlier times and prices and upon notice, and~~
 23 ~~payable at the office of a fiscal agency of the state, as determined by the board of investments. Any action~~
 24 ~~taken by the board of investments under 39-71-2354 and this section must be approved by at least a~~
 25 ~~majority vote of its members.~~

26 ~~(3) In all other respects the board of investments is authorized to prescribe the form and terms of~~
 27 ~~the bonds and shall do whatever is lawful and necessary for their issuance and payment.~~

28 ~~(4) Bonds and any interest coupons appurtenant thereto must be signed by the members of the~~
 29 ~~board of investments, and the bonds must be issued under the great seal of the state of Montana. The~~
 30 ~~bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the~~

1 ~~limitations prescribed by law. The state treasurer shall keep a record of all bonds issued and sold.~~

2 ~~(5)(2)~~ All loan ~~and bond~~ proceeds given to the state fund must be deposited to the credit of the
3 account required by 39-71-2321 for claims for injuries resulting from accidents that occurred before July
4 1, 1990, and may be used only for the administration and payment of those claims and for the costs of
5 giving the loan proceeds ~~and issuing the bonds."~~

6

7 **Section 11.** Section 39-71-2501, MCA, is amended to read:

8 **"39-71-2501. Definitions.** As used in this part, the following definitions apply:

9 (1) "Account" means the workers' compensation ~~bond~~ loan repayment account established in
10 39-71-2504.

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

12 (3) "Employee" includes an officer, employee, or elected public official of the United States, the
13 state of Montana, or any political subdivision of the United States or the state of Montana or any agency
14 or instrumentality of the United States, the state of Montana, or a political subdivision of the United States
15 or the state of Montana. The term "employee" also includes an officer of a corporation.

16 (4) (a) "Employer" means, except as provided in subsection (4)(b), the person for whom an
17 individual performs or performed any service, of whatever nature, as an employee of the person.

18 (b) If the person for whom the individual performs or performed the service does not have control
19 of the payment of the wages for the service, the term "employer" means the person who has control of
20 the payment of wages.

21 (5) "Federal workers' compensation legislation" means federal legislation that provides an employee
22 with compensation or remuneration for accidental injury or death. This legislation includes but is not limited
23 to the Federal Employers' Liability Act, the Federal Employees' Compensation Act, and the Defense Base
24 Act.

25 (6) "Ongoing activities" means obligations or occurrences that are continuous, rather than
26 intermittent or occasional, that exist for a definite period of time during the year, or that are intended to
27 cover or apply to successive and similar obligations or occurrences.

28 (7) "Publicly traded limited partnership" means a business entity that issues shares or similar
29 ownership interests that are sold or purchased by persons through certified stockbrokers or licensed traders
30 on a public exchange recognized by the securities exchange commission.

1 (8) "State fund" means the state compensation insurance fund.

2 (9) "Tax" or "old fund liability tax" means the workers' compensation old fund liability tax provided
3 for in 39-71-2503, created to address the unfunded liability for claims for injuries resulting from accidents
4 that occurred before July 1, 1990.

5 (10) "Wages" means all remuneration for services performed in the state of Montana by an
6 employee for an employer, including the cash value of all remuneration paid in any medium other than cash.

7 The term does not include remuneration paid:

8 (a) for casual labor not in the course of the employer's trade or business performed in any calendar
9 quarter by an employee unless the cash remuneration paid for the service is \$50 or more and the service
10 is performed by an individual who is regularly employed by the employer to perform the service. For
11 purposes of this subsection (10)(a), an individual is considered to be regularly employed by an employer
12 during a calendar quarter only if:

13 (i) on each of 24 days during the calendar quarter, the individual performs service not in the course
14 of the employer's trade or business for the employer for some portion of the day; and

15 (ii) the individual was regularly employed, as determined under subsection (10)(a)(i), by the
16 employer in the performance of service during the preceding calendar quarter.

17 (b) for services not in the course of the employer's trade or business, to the extent that
18 remuneration is paid in any medium other than cash, when the payments are in the form of lodging or meals
19 and the payments are received by the employee at the request of and for the convenience of the employer;

20 (c) to or for an employee as a payment for or a contribution toward the cost of any group plan or
21 program that benefits the employee, including but not limited to life insurance, hospitalization insurance for
22 the employee or the employee's dependents, and employees' club activities;

23 (d) as payments from a multiple employer welfare arrangement, as defined in 29 U.S.C. 1002, to
24 a qualified individual employee;

25 (e) as wages or compensation, the taxation of which is prohibited by federal law;

26 (f) as wages or compensation for services performed by Montana residents outside the borders of
27 the state of Montana."

28

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

30 **"39-71-2503. Workers' compensation old fund liability tax.** (1) (a) There is imposed on each

1 employer, except an employer whose employees are covered by federal workers' compensation legislation,
2 a workers' compensation old fund liability tax in an amount equal to ~~0.28%~~ 0.14%, plus the additional
3 amount of old fund liability tax provided in 39-71-2505, of the wages paid by the employer:

4 (i) for the preceding payroll period for employers subject to the payment schedule contained in
5 15-30-204(1);

6 (ii) for the preceding month for employers subject to the payment schedule contained in
7 15-30-204(2); and

8 (iii) for the preceding year for employers subject to the payment schedule contained in
9 15-30-204(3)(a).

10 (b) There is imposed on each employee, except an employee who is covered by federal workers'
11 compensation legislation, an old fund liability tax, as provided in 39-71-2505, on the employee's wages.
12 An employer paying wages for services performed in Montana shall deduct and withhold the tax from the
13 wages.

14 (c) (i) There is imposed on each business of a sole proprietor, on each subchapter S. corporation
15 shareholder, on each partner of a partnership, and on each member or manager of a limited liability
16 company a workers' compensation old fund liability tax, as provided in 39-71-2505, on the profit of each
17 separate business of a sole proprietor and on the distributive share of ordinary income of each shareholder,
18 partner, or member or manager derived from ongoing activities.

19 (ii) The tax imposed in this subsection (1)(c) applies only to the ordinary income of a shareholder,
20 partner, member, or manager as the term "ordinary income" is defined in the Internal Revenue Code.

21 (iii) Partners of a publicly traded limited partnership are not subject to the tax imposed in this
22 subsection (1)(c).

23 (d) A corporate officer of a subchapter S. corporation who receives wages as an employee of the
24 corporation shall pay the old fund liability tax on both the wages and any distributive share of ordinary
25 income at the employee rate. The subchapter S. corporation is not liable for the tax on the corporate
26 officer's wages.

27 (e) A corporate officer of a closely held corporation who owns stock in a closely held corporation
28 that meets the stock ownership test under section 542(a)(2) of the Internal Revenue Code and receives
29 wages as an employee of the corporation is required to pay the old fund liability tax only on the wages
30 received. The corporation is not liable for the tax on the corporate officer's wages.

1 (f) This old fund liability tax must be used to reduce the unfunded liability in the state fund incurred
2 for claims for injuries resulting from accidents that occurred before July 1, 1990. If one or more loans ~~or~~
3 ~~bonds~~ are outstanding, the legislature may not reduce the security for repayment of the outstanding loans
4 ~~or bonds~~, except that the legislature may forgive payment of a tax or reduce a tax rate for any 12-month
5 period if the workers' compensation ~~bond~~ loan repayment account contains on the first day of that period
6 an amount, regardless of the source, that is in excess of the reserve maintained in the account and that
7 is equal to the amount needed to pay and dedicated to the payment of the principal, premium, and interest
8 that must be paid during that period on the outstanding loans ~~or bonds~~.

9 (g) Each employer shall maintain the records that the department requires concerning the old fund
10 liability tax. The records are subject to inspection by the department and its employees and agents during
11 regular business hours.

12 (h) An employee does not have any right of action against an employer for any money deducted
13 and withheld from the employee's wages and paid to the state in compliance or intended compliance with
14 this section.

15 (i) The employer is liable to the state for any amount of old fund liability taxes, plus interest and
16 penalty, when the employer fails to withhold from an employee's wages or fails to remit to the state the
17 old fund liability tax required by this section.

18 (j) A sole proprietor, subchapter S. corporation shareholder, partner of a partnership, or member
19 or manager of a limited liability company is liable to the state for the old fund liability tax, plus interest and
20 penalty, when the sole proprietor, shareholder, partner, or member or manager fails to remit to the state
21 the old fund liability tax required by this section.

22 (2) All collections of the tax must be deposited as received in the account. The tax is in addition
23 to any other tax or fee assessed against persons subject to the tax.

24 (3) (a) Tax payments and returns required by subsections (1)(a) and (1)(b) must be made pursuant
25 to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any
26 remainder to the account provided for in 39-71-2504.

27 (b) Tax payments due from sole proprietors, subchapter S. corporation shareholders, partners of
28 partnerships, and members or managers of limited liability companies must be made with and at the same
29 time as the returns filed pursuant to 15-30-144 and 15-30-241. The department shall first credit a payment
30 to the liability under 15-30-103 or 15-30-202 and shall then credit any remainder to the account provided

1 for in 39-71-2504.

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

5 (5) Returns and remittances under subsection (3) and any information obtained by the department
6 during an audit are subject to the provisions of 15-30-303, but the department may disclose the information
7 to the department of labor and industry for the purpose of investigation and prevention of noncompliance,
8 tax evasion, fraud, and abuse under the unemployment insurance laws, under circumstances and conditions
9 that ensure the continued confidentiality of the information.

10 (6) The department of labor and industry and the state fund shall give the department a list of all
11 employers having coverage under any plan administered or regulated by the department of labor and
12 industry and the state fund. The department of labor and industry and the state fund shall update the lists
13 weekly. The department of labor and industry and the state fund shall provide the department with access
14 to their computer data bases and paper files and records for the purpose of the department's administration
15 of the tax imposed by this section.

16 (7) The provisions of Title 15, chapter 30, that are not in conflict with the provisions of this part
17 regarding administration, remedies, enforcement, collections, hearings, interest, deficiency assessments,
18 credits for overpayment, statute of limitations, penalties, estimated taxes, and department rulemaking
19 authority apply to the tax, to employers, to employees, to sole proprietors, to subchapter S. corporation
20 shareholders, to partners of partnerships, to members or managers of limited liability companies, and to the
21 department."

22

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

24 **"39-71-2504. Workers' compensation ~~bond~~ loan repayment account.** (1) There is a workers'
25 compensation ~~bond~~ loan repayment account in the enterprise fund.

26 (2) All collections of the tax imposed under 39-71-2503 and the interest and penalties on the tax
27 must, in accordance with the provisions of 15-1-501, be deposited in the workers' compensation ~~bond~~ loan
28 repayment account. All money deposited in the workers' compensation ~~bond~~ loan repayment account must
29 be retained in the account to the extent necessary to pay the principal of and the redemption premium and
30 interest due on workers' compensation ~~bonds~~ loans issued under 39-71-2354 and 39-71-2355 and to

1 establish and maintain a reserve for the ~~bonds~~ loans equal to the maximum annual principal of and interest
2 on the ~~bonds~~ loans in any future year. The balance in the workers' compensation ~~bond~~ loan repayment
3 account is statutorily appropriated, as provided in 17-7-502, to the state fund to be used to reduce the
4 unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred
5 before July 1, 1990."

6

7 **Section 14.** Section 39-71-2505, MCA, is amended to read:

8 **"39-71-2505. Payment of unfunded liability for injuries resulting from accidents occurring before**
9 **July 1, 1990.** (1) The state fund shall pay for the cost of administering and paying claims for injuries
10 resulting from accidents that occurred before July 1, 1990, not covered by any other funding source, by
11 borrowing from the reserves accumulated from premiums paid to the state fund, based upon wages payable
12 on or after July 1, 1990, and invested by the board of investments, from time to time, the amount that the
13 state fund determines and that the budget director certifies, as provided in 39-71-2354, will be needed to
14 pay for administering and paying the claims for the ensuing year.

15 (2) (a) In January of each year, prior to the start of the following fiscal year, the state fund shall
16 forward to the budget director information pertaining to the amount that the state fund will borrow for the
17 ensuing fiscal year to pay for the cost of administering and paying claims for the injuries provided for in
18 subsection (1). In addition, the state fund shall forward to the budget director the schedule of projected
19 liability payments and cash needs on which the amount to be borrowed is based. The schedule must include
20 but is not limited to total projected liability payments, loans ~~and bond debt~~ payments, revenue from the old
21 fund liability tax provided for in 39-71-2503, projected fiscal yearend cash, and the projected fiscal yearend
22 cash for the year 2007.

23 (b) (i) There is imposed on each employer a workers' compensation old fund liability tax as provided
24 in 39-71-2503. The employer old fund liability tax is an amount equal to ~~0.5%~~ 0.25% of the employer's
25 payroll in the preceding calendar quarter.

26 (ii) The employee old fund liability tax is an amount equal to ~~0.2%~~ 0.1% of the employee's wages
27 in the preceding calendar quarter.

28 (iii) The old fund liability tax is an amount equal to ~~0.2%~~ 0.1% on the profit of each separate
29 business of a sole proprietor and on the distributive share of ordinary income of each subchapter S.
30 corporation shareholder, partner of a partnership, or member or manager of a limited liability company.

1 (iv) The rate of the employer old fund liability tax determined by this section includes the ~~0.28%~~
2 0.14% employer old fund liability tax provided for in 39-71-2503.

3 (v) (A) ~~The employer old fund liability tax that is in excess of the 0.28%~~ 0.14% tax provided for
4 in 39-71-2503 terminates at the end of fiscal year 2007.

5 (B) ~~If the debt service account has sufficient funds to pay outstanding bonds or if no bonds are~~
6 ~~outstanding, the~~ The old fund liability tax may not be imposed after the end of fiscal year 2007.

7 (vi) The old fund liability tax described in this section must be collected and deposited as provided
8 in 39-71-2503 and 39-71-2504.

9 (3) If in any January the cumulative projected amount to be borrowed by the state fund from
10 reserves accumulated from premiums paid to the state fund based on wages payable on or after July 1,
11 1990, to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990,
12 ~~not including any outstanding bonds as of May 13, 1993,~~ exceeds \$80 million for the following fiscal year,
13 the tax rate on the persons subject to the old fund liability tax must be increased by 0.05% for the
14 following fiscal year over the current tax rate. If in any January the projected fiscal yearend cash balance
15 for the current fiscal year exceeds \$25 million, the tax rate on the persons subject to the old fund liability
16 tax must be reduced by 0.05% from the current tax rate for the following fiscal year.

17 (4) The total tax on the persons subject to the old fund liability tax may not exceed ~~0.75%~~ 0.5%.

18 (5) The budget director shall certify the cash flow projections of the state fund required by this
19 section and shall notify the department of revenue no later than April 1 of the rate of tax to be collected
20 pursuant to this section."

21
22 **NEW SECTION. Section 15. Transfer of funds to repay 1989 appropriation from general fund.** (1)

23 Except as provided in subsection (3), the state fund shall, on [the effective date of this act], transfer \$20
24 million to the general fund from the surplus in the account created in 39-71-2321 relating to the claims for
25 injuries resulting from accidents that occur on or after July 1, 1990, to repay the money appropriated from
26 the general fund to the workers' compensation tax account during the June 1989 special legislative session
27 to reduce the unfunded liability in the state compensation mutual insurance fund.

28 (2) The transfer required by subsection (1) is contingent upon the state fund's projected compliance
29 with the provisions of 39-71-2330, which requires the state fund to amass and maintain by July 1, 2003,
30 a surplus of 25% of the annual premium.

1 (3) If on [the effective date of this act] the surplus is insufficient to transfer the total amount of
2 \$20 million required in subsection (1), the state fund shall, on each October 1 following [the effective date
3 of this act], transfer to the general fund from the account established in 39-71-2321 and referred to in
4 subsection (1) of this section any surplus that is in excess of the amount required in subsection (2) of this
5 section until the entire \$20 million has been transferred. The budget director shall certify the state fund's
6 projection of compliance with 39-71-2330 prior to the transfer of funds to the general fund or the decision
7 that sufficient funds are not available to make a transfer.

8

9 **NEW SECTION. Section 16. Effective date -- applicability.** (1) [This act] is effective July 1, 1997.

10 (2) [Sections 12 and 14] apply retroactively to taxes collected after December 31, 1996.

11

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0150, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:


An act decreasing as of July 1, 1997, the rate of the Old Fund Liability Tax on employers to 0.25 percent and the rate on employees to 0.1 percent; eliminating the state fund's authority to obtain bonds for repaying claims for injuries resulting from accidents occurring prior to July 1, 1990; requiring the state fund to transfer surplus funds to the general fund to repay the \$20 million appropriated in 1989 to reduce the unfunded liability in the state compensation mutual insurance fund; and providing an effective date and an applicability date.

ASSUMPTIONS:

Reduction in Old Fund Liability Tax Rates:

1. Under current law there is imposed: on each employer an Old Fund Liability Tax (OFLT) equal to 0.5 percent of the employer's payroll in the preceding quarter; an employee OFLT equal to 0.2 percent of the employee's wages in the preceding quarter; an OFLT of 0.2 percent on the profit of each separate business of a sole proprietor and on the distributive share of ordinary income of each subchapter S corporation shareholder, partner of a partnership, or member or manager of a limited liability company.
2. Current law and proposed law provide for the expiration of the Payroll Tax/OFLT at the end of fiscal year 2007.
3. Current law OFLT revenues are projected to be \$48,427,000 during fiscal year 1997, \$49,857,000 during fiscal year 1998, and \$43,476,000 during fiscal year 1999.
4. Contingency provisions of current law reduce the OFLT rates for fiscal year 1999 to 0.45 percent for employers and 0.15 percent for employees and self-employed persons; for 2000 to 0.4 percent for employers and 0.1 percent for employees and self-employed persons; and for fiscal year 2001 and thereafter to 0.28 percent for employers and 0.0 percent for employees and self-employed persons.
5. Tax rates under current law can be eliminated at the end of fiscal year 2001 with enough tax receipts set aside to pay Old Fund claims.
6. Payroll base growth is assumed to be 3.0 percent per year for employers and employees and 2.5 percent per year for self-employed reporters.
7. Proposed law continues the provision to reduce the tax rate 0.05 percent on employers, employees and self-employed individuals in each year the cash balance in the Old Fund is estimated to exceed \$25 million.
8. Tax rates under the proposed law would require the payroll tax continue until 6/30/2010 to have enough tax receipts set aside to pay Old Fund claims with taxpayers paying \$236 million.
9. The proposed law is unclear as to whether the 0.05 percent reduction in tax rates mentioned in 39-71-2505, MCA, applies to the tax on employers mentioned in 39-71-2503, MCA.
10. The following tables reflect the 0.14 percent tax rate on employers that is assumed to continue until the Old Fund unpaid liability is fully funded (through 2010) and does not have a 0.05 percent rate reduction on employers mentioned in 39-71-2503, MCA, based on the cash position of the Old Fund.
11. The effective date of the bill is July 1, 1997. The DoR will continue to collect OFLT taxes at current law rates through June 30, 1997. This will result in an over collection of taxes for this period once the retroactive provisions of the bill take effect July 1, 1997. This will require the department to refund or credit in fiscal year 1998 excess OFLT taxes collected in fiscal year 1997.

(Continued)


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

ROYAL JOHNSON, PRIMARY SPONSOR DATE

Fiscal Note for HB0150, as introduced

HB 150

Repayment of \$20 Million 1989 Appropriation from General Fund:

12. During the June 1989 special session \$20 million general fund was appropriated to the State Fund to address the unfunded liability issue existing in the Old Fund. This action canceled a planned 22.0 percent rate increase. The State Fund shall re-pay to the general fund the \$20 million appropriation in one installment in FY98. Additional short-term interest earnings of \$500,000 over those included in HJR 2 estimates will accrue to the general fund.
13. The primary source of State Fund revenue is earned through payments of premium by policyholders.
14. The primary source of Old Fund revenue is the OFLT.
15. Repayment is conditional on projected surplus position of the State Fund of 25 percent of premium (39-71-2330, MCA). Full repayment during fiscal year 1998 is assumed.

FISCAL IMPACT:

Expenditures:

ACCOUNTING ENTITY 06035 - NEW FUND Proposed law will increase expenditures \$20 million in the form of repayment of the general fund 1989 appropriation.

Revenues:

ACCOUNTING ENTITY 06035 - NEW FUND Proposed law will decrease investment income \$2,366,125 over the biennium in the form of lost investment income due to the repayment of \$20 million to the general fund.

ACCOUNTING ENTITY 06039 - OLD FUND Proposed law will decrease revenues \$54,812,000 by June 30, 1999 due to the proposed decrease in tax rates retroactive to January 1, 1997.

Net Impact:

	<u>FY98</u> <u>Difference</u>	<u>FY99</u> <u>Difference</u>
OLD FUND		
OFLT receipts	(24,919,000)	(17,801,000)
NEW FUND		
Repayment of \$20 million	(20,000,000)	0
Investment income on \$20 million	<u>(1,150,000)</u>	<u>(1,216,125)</u>
Total New Fund	(21,150,000)	(1,216,125)
GENERAL FUND		
Repayment of \$20 million	20,000,000	0
Investment income on \$20 million	<u>500,000</u>	<u>0</u>
Total New Fund	20,500,000	0

Projections under current law indicate the payroll tax will end 6/30/2001, with taxpayers paying \$198 million. To provide sufficient tax receipts set aside to pay Old Fund claims under the proposed law projections would require continuation of the employer portion of the payroll tax until 6/30/2010, with taxpayers paying \$236 million.

Under current and proposed laws, indicated tax rates and projected collections will be:

Fiscal Year	CURRENT LAW RATES			PROPOSED LAW RATES		
	Employer Rate	Employee Rate	Self-Employed Rate	Employer Rate	Employee Rate	Self-Employed Rate
1997	0.500%	0.200%	0.200%	*0.500/0.250%	0.150%	0.150%
1998	0.500%	0.200%	0.200%	*0.250%	0.100%	0.100%
1999	0.450%	0.150%	0.150%	0.250%	0.100%	0.100%
2000	0.400%	0.100%	0.100%	0.250%	0.100%	0.100%
2001	0.280%	0.000%	0.000%	0.200%	0.050%	0.050%
2002	0.000%	0.000%	0.000%	0.150%	0.000%	0.000%
2003				0.140%	0.000%	0.000%
2004				0.140%	0.000%	0.000%
2005				0.140%	0.000%	0.000%
2006				0.140%	0.000%	0.000%
2007				0.140%	0.000%	0.000%
2008				0.140%	0.000%	0.000%

2009		0.140%	0.000%	0.000%
2010		0.140%	0.000%	0.000%
2011		0.000%	0.000%	0.000%

Current Law Collections

	Discount	Employer Pmt	Employee Pmt	Self Emp Pmt	Total	Working Capital Balance
1997	5.00%	31,293,000	12,529,000	4,605,000	48,427,000	21,288,000
1998	5.75%	32,232,000	12,905,000	4,720,000	49,857,000	50,850,000
1999	5.66%	29,879,000	9,969,000	3,628,000	43,476,000	77,167,000
2000	5.57%	27,356,000	6,846,000	2,479,000	36,681,000	99,346,000
2001	5.49%	19,724,000	0	0	19,724,000	106,710,000
2002	5.41%	0	0	0	0	96,129,000
2003	5.33%	0	0	0	0	86,334,000
2004	5.25%	0	0	0	0	77,314,000
2005	5.17%	0	0	0	0	69,045,000
2006	5.09%	0	0	0	0	61,491,000
2007	<u>5.01%</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	54,614,000
	5.34%	140,484,000	42,249,000	15,432,000	198,165,000	
						Net Present Value.....
						173,096,245

Proposed Law Collections

	Discount	Employer Pmt	Employee Pmt	Self Emp Pmt	Total	Working Capital Balance
1997	5.00%	23,475,000	9,402,000	3,458,000	36,335,000	9,196,000
1998	5.75%	16,119,000	6,456,000	2,363,000	24,938,000	12,428,000
1999	5.66%	16,603,000	6,650,000	2,422,000	25,675,000	18,265,000
2000	5.57%	17,101,000	6,849,000	2,483,000	26,433,000	26,630,000
2001	5.49%	14,091,000	3,527,000	1,273,000	18,891,000	29,147,000
2002	5.41%	10,886,000	0	0	10,886,000	25,023,000
2003	5.33%	10,465,000	0	0	10,465,000	21,649,000
2004	5.25%	10,779,000	0	0	10,779,000	19,758,000
2005	5.17%	11,102,000	0	0	11,102,000	19,360,000
2006	5.09%	11,435,000	0	0	11,435,000	20,456,000
2007	<u>5.01%</u>	<u>11,778,000</u>	<u>0</u>	<u>0</u>	<u>11,778,000</u>	23,043,000
	5.34%	153,834,000	32,884,000	11,999,000	198,717,000	
						Net Present Value.....
						157,710,097

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

State Fund projects that under the proposed law, the Old Fund will have a surplus of \$10 million by 2022 when most of the Old Fund losses will be paid off.

If the OFLT is to end in 2007, State Fund projects there will be a \$40 million deficit in the Old Fund in 2022 when most of the Old Fund losses will be paid off.

Extension of the tax by this proposal will continue administrative expenses incurred by the Department of Revenue (DoR) for tax collection activities by about \$500,000 per year.

TECHNICAL NOTES:

1. Proposed law indicates the \$20 million refund to the general fund is to be made from the New Fund surplus. Section 39-71-2322, MCA may need to be revised to allow New Fund money to be used for this purpose, as it was not originally collected for disposition in the manner proposed by this legislation. There is a provision in current law which states that New Fund money can only be used for the purpose for which it was intended: payment of benefits and administrative expenses for work-related injuries.
2. The title of the bill does not indicate a change in the OFLT tax rate for self-employed persons, even though a change is provided for in the bill.
3. * Note: The effective date of the bill is July 1, 1997; yet the bill provides for a reduction in OFLT tax rates retroactive to January 1, 1997. This will require the DoR to collect OFLT taxes at current law tax rates for the first 6 months of 1997, and then provide for some type of refund or credit mechanism to return the over collection of taxes in fiscal year 1998. The bill does not contemplate or discuss how the department is to accomplish this.
4. Section 16 of the bill states that the reduction in OFLT rates applies "...retroactively to taxes collected after December 31, 1996." This will result in differential treatment of different groups of taxpayers. For example, employees will pay at a rate of 0.2% for the first half of fiscal year 1997 and at a rate of 0.1% for the second half of fiscal year 1997; but self-employed persons will pay at just the 0.1% rate for the entire time period. This is because employees pay incrementally over time through withholding, whereas self-employed persons pay just once when they file their income tax returns. The same is true for employers who pay incrementally over time, versus employers who pay only once per year when they file their returns also. To correct this problem the language should be changed to read "...retroactively to liability incurred after December 31, 1996.
5. The table outlining net present value under current law and proposed law collections is provided for reference. The discount used for purposes of the calculation is a simple average of the discount for each of the eleven years of collections, based on the State Fund's projected annual discount rates.

MOTION TO TAKE FROM TABLE,
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HOUSE BILL NO. 150

INTRODUCED BY R. JOHNSON

A BILL FOR AN ACT ENTITLED: "AN ACT DECREASING AS OF JULY 1, 1997, THE RATE OF THE OLD FUND LIABILITY TAX ON EMPLOYERS TO 0.25 PERCENT AND THE RATE ON EMPLOYEES TO 0.1 PERCENT; ELIMINATING THE STATE FUND'S AUTHORITY TO OBTAIN BONDS FOR REPAYING CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS OCCURRING PRIOR TO JULY 1, 1990; REQUIRING THE STATE FUND TO TRANSFER SURPLUS FUNDS TO THE GENERAL FUND TO REPAY THE \$20 MILLION APPROPRIATED IN 1989 TO REDUCE THE UNFUNDED LIABILITY IN THE STATE COMPENSATION MUTUAL INSURANCE FUND; AMENDING SECTIONS 39-71-2311, 39-71-2316, 39-71-2320, 39-71-2321, 39-71-2323, 39-71-2327, 39-71-2351, 39-71-2352, 39-71-2354, 39-71-2355, 39-71-2501, 39-71-2503, 39-71-2504, AND 39-71-2505, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

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

1 HOUSE BILL NO. 150

2 INTRODUCED BY R. JOHNSON

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT DECREASING AS OF JULY 1, 1997, THE RATE OF THE OLD
 5 FUND LIABILITY TAX ON EMPLOYERS TO 0.25 PERCENT AND THE RATE ON EMPLOYEES AND
 6 SELF-EMPLOYED PERSONS TO 0.1 PERCENT AND PROVIDING FOR PHASING OUT THE OLD FUND
 7 LIABILITY TAX ON EMPLOYEES AND SELF-EMPLOYED PERSONS BY JULY 1, 2000, AND ON EMPLOYERS
 8 BY JULY 1, 2001; ELIMINATING THE STATE FUND'S AUTHORITY TO OBTAIN BONDS FOR REPAYING
 9 CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS OCCURRING PRIOR TO JULY 1, 1990; REQUIRING
 10 THE STATE FUND TO TRANSFER SURPLUS FUNDS TO THE GENERAL FUND TO REPAY THE \$20 MILLION
 11 APPROPRIATED IN 1989 TO REDUCE THE UNFUNDED LIABILITY IN THE STATE COMPENSATION
 12 MUTUAL INSURANCE FUND; PROVIDING FOR THE TRANSFER OF \$63.8 MILLION TO THE OLD FUND
 13 ACCOUNT; ELIMINATING THE AUTHORITY OF THE STATE FUND TO ADMINISTER OR PAY CLAIMS FOR
 14 INJURIES FROM ACCIDENTS OCCURRING BEFORE JULY 1, 1990, EXCEPT PURSUANT TO A CONTRACT
 15 AUTHORIZED BY THE DEPARTMENT OF ADMINISTRATION; AMENDING SECTIONS 15-30-207, 17-7-502,
 16 33-16-1024, 39-71-116, 39-71-406, 39-71-2311, 39-71-2316, 39-71-2320, 39-71-2321, 39-71-2322,
 17 39-71-2323, 39-71-2327, 39-71-2351, 39-71-2352, 39-71-2354, 39-71-2355, 39-71-2501, 39-71-2503,
 18 39-71-2504, AND 39-71-2505, MCA; REPEALING SECTIONS 39-71-2354, 39-71-2355, 39-71-2501,
 19 39-71-2502, 39-71-2503, 39-71-2504, AND 39-71-2506, MCA; AND PROVIDING AN EFFECTIVE DATE
 20 AND AN APPLICABILITY DATE DATES AND TERMINATION DATES."

21

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

23

24 SECTION 1. SECTION 15-30-207, MCA, IS AMENDED TO READ:

25 "15-30-207. Annual statement by employer. (1) ~~Every~~ Each employer shall, on or before February
 26 28 in each year, file with the department a wage and tax statement for each employee in ~~such~~ a form ~~and~~
 27 summarizing ~~such~~ the information ~~as that~~ the department requires, including the total wages paid to the
 28 employee during the preceding calendar year or any part ~~thereof~~ of the preceding calendar year and
 29 showing the total amount of the federal income tax deducted and withheld from ~~such~~ the wages and the
 30 total amount of the tax deducted and withheld ~~therefrom~~ under the provisions of 15-30-201 through

1 15-30-209 and ~~39-71-2503~~.

2 (2) The annual statement filed by an employer with respect to the wage payments reported
3 constitutes full compliance with the requirements of 15-30-301 relating to the duties of information agents,
4 and no additional information return is required with respect to ~~such~~ those wage payments.

5 (3) In addition to any other penalty provided by law, the failure of an employer to furnish a
6 statement as required by subsection (1) subjects the employer to a penalty of \$5 for each failure, ~~provided~~
7 ~~that if~~ the minimum penalty for failure to file the statements required on or before February 28 of each year
8 ~~shall be~~ is \$50. This penalty may be abated by the department upon a showing of good cause by the
9 employer. The penalty may be collected in the same manner as are other tax debts."

10

11 **SECTION 2. SECTION 17-7-502, MCA, IS AMENDED TO READ:**

12 "**17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
13 appropriation is an appropriation made by permanent law that authorizes spending by a state agency
14 without the need for a biennial legislative appropriation or budget amendment.

15 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply
16 with both of the following provisions:

17 (a) The law containing the statutory authority must be listed in subsection (3).

18 (b) The law or portion of the law making a statutory appropriation must specifically state that a
19 statutory appropriation is made as provided in this section.

20 (3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105;
21 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706;
22 15-30-195; 15-31-702; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;
23 16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 17-6-101; 17-6-201; 17-7-304;
24 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205;
25 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-9-361; 20-26-1503; 23-5-136; 23-5-306; 23-5-409;
26 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503;
27 39-71-907; 39-71-2321; ~~39-71-2504~~; 44-12-206; 44-13-102; 50-4-623; 50-5-232; 50-40-206; 53-6-150;
28 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-12-123;
29 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301;
30 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

1 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
 2 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
 3 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of
 4 Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as
 5 determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the
 6 bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec.
 7 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for
 8 supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates
 9 July 1, 2001.)"

10
 11 **SECTION 3. SECTION 33-16-1024, MCA, IS AMENDED TO READ:**

12 **"33-16-1024. Plan No. 3 membership in licensed workers' compensation advisory organization**
 13 **-- reporting requirements.** (1) The plan No. 3 insurer under Title 39, chapter 71, part 23, is required to be
 14 a member of a licensed workers' compensation advisory organization or a licensed workers' compensation
 15 rating organization under Title 33, chapter 16, part 4.

16 (2) If the plan No. 3 insurer is not a member of the workers' compensation advisory organization
 17 designated under 33-16-1023, then, subject to the deviations from the uniform statistical plan, uniform
 18 classification system, and uniform experience rating plan that may be approved by the board of directors
 19 of the plan No. 3 insurer as provided in 39-71-2316~~(4)~~, the insurer shall:

20 (a) record and report its workers' compensation experience to the designated advisory organization
 21 as required in the uniform statistical plan of the designated workers' compensation advisory organization
 22 approved by the commissioner, the uniform classification system, and the uniform experience rating plan
 23 that have been filed by the designated advisory organization with and approved by the commissioner; and

24 (b) use the forms and adhere to the rules that the designated advisory organization develops and
 25 files with the commissioner under 33-16-1023."

26
 27 **SECTION 4. SECTION 39-71-116, MCA, IS AMENDED TO READ:**

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

30 (1) "Actual wage loss" means that the wages that a worker earns or is qualified to earn after the

1 worker reaches maximum healing are less than the actual wages the worker received at the time of the
2 injury.

3 (2) For claims relating to injuries resulting from accidents occurring on or after July 1, 1990,

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

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

7 (b) payment of benefits;

8 (c) setting of reserves;

9 (d) furnishing of services and facilities; and

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

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

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

16 (5) "Beneficiary" means:

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

19 (b) an unmarried child under 18 years of age;

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

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

24 (e) a parent who is dependent upon the decedent for support at the time of the injury if a
25 beneficiary, as defined in subsections (5)(a) through (5)(d), does not exist; and

26 (f) a brother or sister under 18 years of age if dependent upon the decedent for support at the time
27 of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections (5)(a)
28 through (5)(e), does not exist.

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

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

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

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

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

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

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

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

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

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

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

23 (17) "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 (18) "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 (19) "Order" means any decision, rule, direction, requirement, or standard of the department or any
29 other determination arrived at or decision made by the department.

30 (20) "Palliative care" means treatment designed to reduce or ease symptoms without curing the

1 underlying cause of the symptoms.

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

9 (22) "Permanent partial disability" means a physical condition in which a worker, after reaching
10 maximum medical healing:

11 (a) has a permanent impairment established by objective medical findings;

12 (b) is able to return to work in some capacity but the permanent impairment impairs the worker's
13 ability to work; and

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

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

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

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

26 (26) "Public corporation" means the state or any county, municipal corporation, school district, city,
27 city under a commission form of government or special charter, town, or village.

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

30 (28) "Reasonably safe tools and appliances" are tools and appliances that are adapted to and that

1 are reasonably safe for use for the particular purpose for which they are furnished.

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

7 (b) (i) As used in this subsection (29), "disability" means a condition in which a worker's ability
8 to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury.
9 The restrictions may be combined with factors, such as the worker's age, education, work history, and
10 other factors that affect the worker's ability to engage in gainful employment.

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

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

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

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

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

19 (c) suffers a partial wage loss.

20 (32) "Temporary service contractor" means a person, firm, association, partnership, limited liability
21 company, or corporation conducting business that hires its own employees and assigns them to clients to
22 fill a work assignment with a finite ending date to support or supplement the client's workforce in situations
23 resulting from employee absences, skill shortages, seasonal workloads, and special assignments and
24 projects.

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

28 (34) "Temporary worker" means a worker whose services are furnished to another on a part-time
29 or temporary basis to fill a work assignment with a finite ending date to support or supplement a workforce
30 in situations resulting from employee absences, skill shortages, seasonal workloads, and special

1 assignments and projects.

2 (35) "Treating physician" means a person who is primarily responsible for the treatment of a
3 worker's compensable injury and is:

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

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

7 (c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if
8 there is not a physician, as defined in subsection (35)(a), in the area where the physician assistant-certified
9 is located;

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

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

12 (36) "Year", unless otherwise specified, means calendar year."
13

14 **SECTION 5. SECTION 39-71-406, MCA, IS AMENDED TO READ:**

15 **"39-71-406. Deduction from wages of any part of premium a misdemeanor.** It is unlawful for the
16 employer to deduct or obtain any part of any premium required to be paid by this chapter from the wages
17 or earnings of the employer's workers, and the making or attempt to make any such deduction is a
18 misdemeanor. ~~The workers' compensation old fund liability tax under 39-71-2503 is not a premium for the~~
19 ~~purpose of this section."~~

20

21 **Section 6.** Section 39-71-2311, MCA, is amended to read:

22 **"39-71-2311. Intent and purpose of plan.** It is the intent and purpose of the state fund to allow
23 employers an option to insure their liability for workers' compensation and occupational disease coverage
24 with the state fund. The state fund must be neither more nor less than self-supporting. Premium rates must
25 be set at least annually at a level sufficient to ensure the adequate funding of the insurance program,
26 including the costs of administration, benefits, and adequate reserves, during and at the end of the period
27 for which the rates will be in effect. In determining premium rates, the state fund shall make every effort
28 to adequately predict future costs. When the costs of a factor influencing rates are unclear and difficult to
29 predict, the state fund shall use a prediction calculated to be more than likely to cover those costs rather
30 than less than likely to cover those costs. ~~Unnecessary~~ Except as provided in [section 15-28], unnecessary

1 surpluses that are created by the imposition of premiums found to have been set higher than necessary
2 because of a high estimate of the cost of a factor or factors may be refunded by the declaration of a
3 dividend as provided in this part. For the purpose of keeping the state fund solvent, the state fund shall
4 implement variable pricing levels as provided in 39-71-2341 and the board of directors may, in its
5 discretion, assess a policy charge, a minimum premium, or both.”

6

7 **Section 7.** Section 39-71-2316, MCA, is amended to read:

8 **“39-71-2316. Powers of state fund. (1)** For the purposes of carrying out its functions, the state
9 fund may:

10 ~~(1)(A)~~ insure any employer for workers’ compensation and occupational disease liability as the
11 coverage is required by the laws of this state and, as part of the coverage, provide related employers’
12 liability insurance upon approval of the board;

13 ~~(2)(B)~~ sue and be sued;

14 ~~(3)(C)~~ except as provided in section 21, Chapter 4, Special Laws of May 1990, enter into contracts
15 relating to the administration of the state fund, including claims management, servicing, and payment;

16 ~~(4)(D)~~ collect and disburse money received;

17 ~~(5)(E)~~ adopt classifications and charge premiums for the classifications so that the state fund will
18 be neither more nor less than self-supporting. Premium rates for classifications may only be adopted and
19 changed using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2,
20 chapter 4, parts 2 through 4. After the rules have been adopted, the state fund need not follow the
21 rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The contested
22 case rights and provisions of Title 2, chapter 4, do not apply to an employer’s classification or premium
23 rate. The state fund is required to belong to a licensed workers’ compensation advisory organization or a
24 licensed workers’ compensation rating organization under Title 33, chapter 16, part 4, and may use the
25 classifications of employment adopted by the designated workers’ compensation advisory organization, as
26 provided in Title 33, chapter 16, part 10, and corresponding rates as a basis for setting its own rates.
27 Except as provided in Title 33, chapter 16, part 10, a workers’ compensation advisory organization or a
28 licensed workers’ compensation rating organization under Title 33, chapter 16, part 4, or other person may
29 not, without first obtaining the written permission of the employer, use, sell, or distribute an employer’s
30 specific payroll or loss information, including but not limited to experience modification factors.

1 ~~(6)(F)~~ pay the amounts determined due under a policy of insurance issued by the state fund;
 2 ~~(7)(G)~~ hire personnel;
 3 ~~(8)(H)~~ after transfer of the funds required in [section 15 28], declare dividends if there is an excess
 4 of assets over liabilities. However, dividends may not be paid until adequate actuarially determined reserves
 5 are set aside. If those reserves have been set aside, money that can be declared as a dividend must be
 6 transferred to the account created by 39-71-2321 for claims for injuries resulting from accidents that
 7 occurred before July 1, 1990, and used for the purposes of that account. After all claims funded by that
 8 account have been paid, dividends may be declared and paid to insureds.
 9 ~~(9)(I)~~ perform all functions and exercise all powers of a private insurance carrier that are necessary,
 10 appropriate, or convenient for the administration of the state fund.

11 (2) THE STATE FUND SHALL, NO LATER THAN JUNE 30, 1998, TRANSFER \$63.8 MILLION TO
 12 THE ACCOUNT CREATED IN 39-71-2321 TO PAY CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS
 13 THAT OCCURRED BEFORE JULY 1, 1990."
 14

15 **SECTION 8. SECTION 39-71-2316, MCA, IS AMENDED TO READ:**

16 **"39-71-2316. Powers of state fund.** For the purposes of carrying out its functions to administer
 17 and pay claims for injuries resulting from accidents occurring on or after July 1, 1990, the state fund may:

18 (1) insure any employer for workers' compensation and occupational disease liability as the
 19 coverage is required by the laws of this state and, as part of the coverage, provide related employers'
 20 liability insurance upon approval of the board;

21 (2) sue and be sued;

22 (3) except as provided in section 21, Chapter 4, Special Laws of May 1990, enter into contracts
 23 relating to the administration of the state fund, including claims management, servicing, and payment;

24 (4) collect and disburse money received;

25 (5) adopt classifications and charge premiums for the classifications so that the state fund will be
 26 neither more nor less than self-supporting. Premium rates for classifications may only be adopted and
 27 changed using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2,
 28 chapter 4, parts 2 through 4. After the rules have been adopted, the state fund need not follow the
 29 rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The contested
 30 case rights and provisions of Title 2, chapter 4, do not apply to an employer's classification or premium

1 rate. The state fund is required to belong to a licensed workers' compensation advisory organization or a
 2 licensed workers' compensation rating organization under Title 33, chapter 16, part 4, and may use the
 3 classifications of employment adopted by the designated workers' compensation advisory organization, as
 4 provided in Title 33, chapter 16, part 10, and corresponding rates as a basis for setting its own rates.
 5 Except as provided in Title 33, chapter 16, part 10, a workers' compensation advisory organization or a
 6 licensed workers' compensation rating organization under Title 33, chapter 16, part 4, or other person may
 7 not, without first obtaining the written permission of the employer, use, sell, or distribute an employer's
 8 specific payroll or loss information, including but not limited to experience modification factors.

9 (6) pay the amounts determined due under a policy of insurance issued by the state fund;

10 (7) hire personnel;

11 (8) declare dividends if there is an excess of assets over liabilities. However, dividends may not
 12 be paid until adequate actuarially determined reserves are set aside. If those reserves have been set aside,
 13 money that can be declared as a dividend must be transferred to the account created by 39-71-2321 for
 14 claims for injuries resulting from accidents that occurred before July 1, 1990, and used for the purposes
 15 of that account. After all claims funded by that account have been paid, dividends may be declared and
 16 paid to insureds.

17 (9) perform all functions and exercise all powers of a private insurance carrier that are necessary,
 18 appropriate, or convenient for the administration of the state fund;

19 (10) enter into a contract authorized by the department of administration pursuant to Title 18,
 20 chapter 4, to administer and pay claims for injuries resulting from accidents that occurred before July 1,
 21 1990. If a contract is approved, the state fund shall, upon request, report to the legislative finance
 22 committee."

23
 24 **Section 9.** Section 39-71-2320, MCA, is amended to read:

25 **"39-71-2320. ~~(Temporary)~~ Property of state fund -- investment required.** All Except as provided
 26 in [section 45 28], all premiums and other money paid to the state fund, all property and securities acquired
 27 through the use of money belonging to the state fund, and all interest and dividends earned upon money
 28 belonging to the state fund are the sole property of the state fund and must be used exclusively for the
 29 operations and obligations of the state fund. The money collected by the state fund may not be used for
 30 any other purpose. However, state fund money must be invested by the board of investments provided for

1 in 2-15-1808.

2 ~~39-71-2320. (Effective July 1, 1997, on occurrence of contingency) Property of state fund --~~
 3 ~~investment required -- exception for common stock. (1) All premiums and other money paid to the state~~
 4 ~~fund, all property and securities acquired through the use of money belonging to the state fund, and all~~
 5 ~~interest and dividends earned upon money belonging to the state fund are the sole property of the state~~
 6 ~~fund and must be used exclusively for the operations and obligations of the state fund. The money collected~~
 7 ~~by the state fund may not be used for any other purpose. However, state fund money must be invested~~
 8 ~~by the board of investments provided for in 2-15-1808. Except as provided in subsection (2), state fund~~
 9 ~~money may be invested in common stocks of any corporation.~~

10 ~~(2) State fund money may be invested in common stocks of a corporation if the investment does~~
 11 ~~not cause the book value of state fund common stock investments to exceed 15% of the book value of~~
 12 ~~the state fund total invested assets or does not cause the book value of common stock investments in one~~
 13 ~~corporation to exceed 2% of the book value of the state fund total invested assets on the date of purchase.~~
 14 ~~(Effective on approval by electorate of House Bill No. 463 sec. 5, Ch. 424, L. 1995.)"~~

15

16 **Section 10.** Section 39-71-2321, MCA, is amended to read:

17 **"39-71-2321. What to be deposited in state fund. (1) (a)** All premiums, penalties, recoveries by
 18 subrogation, interest earned upon money belonging to the state fund, and securities acquired by or through
 19 use of money must be deposited in the state fund. They must be separated into two accounts based upon
 20 whether they relate to claims for injuries resulting from accidents that occurred before July 1, 1990, or
 21 claims for injuries resulting from accidents that occur on or after that date.

22 (b) All funds deposited in the state fund are statutorily appropriated as provided in 17-7-502.

23 (2) The proceeds of ~~bonds issued and~~ loans given to the state fund under 39-71-2354 and
 24 39-71-2355 must be deposited in the account for claims for injuries resulting from accidents that occurred
 25 before July 1, 1990."

26

27 **SECTION 11. SECTION 39-71-2321, MCA, IS AMENDED TO READ:**

28 **"39-71-2321. What to be deposited in state fund -- contract required for administration or**
 29 **payment of claims for accidents occurring before July 1, 1990.** (1) (a) All premiums, penalties, recoveries
 30 by subrogation, interest earned upon money belonging to the state fund, and securities acquired by or

1 through use of money must be deposited in the state fund. They must be separated into two accounts
2 based upon whether they relate to claims for injuries resulting from accidents that occurred before July 1,
3 1990, or claims for injuries resulting from accidents that occur on or after that date.

4 (b) All funds deposited in the state fund are statutorily appropriated as provided in 17-7-502.

5 (2) ~~The proceeds of bonds issued and loans given to the state fund under 39-71-2354 and~~
6 ~~39-71-2355 must be deposited in the account for claims for injuries resulting from accidents that occurred~~
7 ~~before July 1, 1990~~ The state fund may not administer or pay claims for injuries resulting from accidents
8 that occurred before July 1, 1990, unless authorized pursuant to a contract entered into under
9 39-71-2316."

10
11 **SECTION 12. SECTION 39-71-2322, MCA, IS AMENDED TO READ:**

12 **"39-71-2322. Money in state fund held in trust -- disposition of funds upon repeal of chapter --**
13 **exception. The Except as provided in [section 28], the money coming into the state fund must be held in**
14 **trust for the purpose for which the money was collected. If this chapter is repealed, the money is subject**
15 **to the disposition provided by the legislature repealing this chapter. In the absence of a legislative provision,**
16 **distribution must be in accordance with the justice of the matter, due regard being had to obligations of**
17 **compensation incurred and existing."**

18
19 **Section 13. Section 39-71-2323, MCA, is amended to read:**

20 **"39-71-2323. Surplus in state fund -- payment of dividends -- transfer of required surplus.** Subject
21 to the provisions of 39-71-2316 and [section 45 28], if at the end of any fiscal year there exists in the state
22 fund account created by 39-71-2321 for claims for injuries resulting from accidents that occur on or after
23 July 1, 1990, an excess of assets over liabilities, including necessary reserves and a reasonable surplus,
24 and if the excess may be refunded safely, then the state fund may declare a dividend. The rules of the state
25 fund must prescribe the manner of payment to those employers who have paid premiums into the state
26 fund in excess of liabilities chargeable to them in the fund for that year. In determining the amount or
27 proportion of the balance to which the employer is entitled as dividends, the state fund shall give
28 consideration to the prior paid premiums and accident experience of each individual employer during the
29 dividend year."

1 **Section 14.** Section 39-71-2327, MCA, is amended to read:

2 **"39-71-2327. Earnings of state fund to be credited to fund -- improper use a felony -- exception.**
 3 ~~All Except for the transfer required in [section 45 28],~~ all earnings made by the state fund by reason of
 4 interest paid for the deposit ~~thereof~~ of earnings or otherwise must be credited to and become a part of the
 5 fund, and the making of profit, either directly or indirectly, by any person out of the use of the fund is a
 6 felony. A person convicted of an offense under this section is punishable by imprisonment in the state
 7 prison for a term not to exceed 2 years or a fine of not more than \$5,000, or both."

8

9 **Section 15.** Section 39-71-2351, MCA, is amended to read:

10 **"39-71-2351. Purpose of separation of state fund liability as of July 1, 1990, and of separate**
 11 **funding of claims before and on or after that date.** (1) An unfunded liability exists in the state fund. It has
 12 existed since at least the mid-1980s and has grown each year. There have been numerous attempts to
 13 solve the problem by legislation and other methods. These attempts have alleviated the problem somewhat,
 14 but the problem has not been solved.

15 (2) The legislature has determined that it is necessary to the public welfare to make workers'
 16 compensation insurance available to all employers through the state fund as the insurer of last resort. In
 17 making this insurance available, the state fund has incurred the unfunded liability. The legislature has
 18 determined that the most cost-effective and efficient way to provide a source of funding for and to ensure
 19 payment of the unfunded liability and the best way to administer the unfunded liability is to:

20 (a) separate the liability of the state fund on the basis of whether a claim is for an injury resulting
 21 from an accident that occurred before July 1, 1990, or an accident that occurs on or after that date;

22 (b) create an old fund liability tax provided for in 39-71-2503 and dedicate the tax money first to
 23 ~~the repayment of bonds issued under 39-71-2354 and 39-71-2355 and then to~~ the repayment of loans
 24 given under 39-71-2354 and 39-71-2355 and the direct payment of the costs of administering and paying
 25 claims for injuries from accidents that occurred before July 1, 1990.

26 (3) The legislature further determines that in order to prevent the creation of a new unfunded
 27 liability with respect to claims for injuries for accidents that occur on or after July 1, 1990, certain duties
 28 of the state fund should be clarified and legislative oversight of the state fund should be increased."

29

30 **SECTION 16. SECTION 39-71-2351, MCA, IS AMENDED TO READ:**

1 **"39-71-2351. Purpose of separation of state fund liability as of July 1, 1990, and of separate**
 2 **funding of claims before and on or after that date.** (1) An unfunded liability exists in the state fund. It has
 3 existed since at least the mid-1980s and has grown each year. There have been numerous attempts to
 4 solve the problem by legislation and other methods. These attempts have alleviated the problem somewhat,
 5 but the problem has not been solved.

6 (2) The legislature has determined that it is necessary to the public welfare to make workers'
 7 compensation insurance available to all employers through the state fund as the insurer of last resort. In
 8 making this insurance available, the state fund has incurred the unfunded liability. The legislature has
 9 determined that the most cost-effective and efficient way to provide a source of funding for and to ensure
 10 payment of the unfunded liability and the best way to administer the unfunded liability is to:

11 ~~(a) separate the liability of the state fund on the basis of whether a claim is for an injury resulting~~
 12 ~~from an accident that occurred before July 1, 1990, or an accident that occurs on or after that date;~~

13 ~~(b) create an old fund liability tax provided for in 39-71-2503 and dedicate the tax money first to~~
 14 ~~the repayment of bonds issued under 39-71-2354 and 39-71-2355 and then to the repayment of loans~~
 15 ~~given under 39-71-2354 and 39-71-2355 and the direct payment of the costs of administering and paying~~
 16 ~~claims for injuries from accidents that occurred before July 1, 1990.~~

17 (3) The legislature further determines that in order to prevent the creation of a new unfunded
 18 liability with respect to claims for injuries for accidents that occur on or after July 1, 1990, certain duties
 19 of the state fund should be clarified and legislative oversight of the state fund should be increased."
 20

21 **Section 17.** Section 39-71-2352, MCA, is amended to read:

22 **"39-71-2352. Separate payment structure and sources for claims for injuries resulting from**
 23 **accidents that occurred before July 1, 1990, and on or after July 1, 1990 -- spending limit -- transfer of**
 24 **required surplus.** (1) Premiums paid to the state fund based upon wages payable before July 1, 1990, may
 25 be used only to administer and pay claims for injuries resulting from accidents that occurred before July
 26 1, 1990. Except as provided in 39-71-2316, ~~and 39-71-2354,~~ and [section 15 28], premiums paid to the
 27 state fund based upon wages payable on or after July 1, 1990, may be used only to administer and pay
 28 claims for injuries resulting from accidents that occur on or after July 1, 1990.

29 (2) The state fund shall:

30 (a) determine the cost of administering and paying claims for injuries resulting from accidents that

1 occurred before July 1, 1990, and separately determine the cost of administering and paying claims for
2 injuries resulting from accidents that occur on or after July 1, 1990;

3 (b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and

4 (c) fund administrative expenses and benefit payments for claims for injuries resulting from
5 accidents that occurred before July 1, 1990, and claims for injuries resulting from accidents that occur on
6 or after July 1, 1990, separately from the sources provided by law.

7 (3) The state fund may not spend more than \$3 million a year to administer claims for injuries
8 resulting from accidents that occurred before July 1, 1990."

9

10 **SECTION 18. SECTION 39-71-2352, MCA, IS AMENDED TO READ:**

11 "39-71-2352. **Separate payment structure and sources for claims for injuries resulting from**
12 **accidents that occurred before July 1, 1990, and on or after July 1, 1990 —spending limit.** (1) ~~Premiums~~
13 ~~paid to the state fund based upon wages payable before July 1, 1990, may be used only to administer and~~
14 ~~pay claims for injuries resulting from accidents that occurred before July 1, 1990. Except as provided in~~
15 ~~39-71-2316 and 39-71-2354, premiums~~ Premiums paid to the state fund based upon wages payable on
16 or after July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents
17 that occur on or after July 1, 1990.

18 (2) The state fund shall:

19 (a) determine the cost of administering and paying claims for injuries resulting from accidents that
20 ~~occurred before July 1, 1990, and separately determine the cost of administering and paying claims for~~
21 ~~injuries resulting from accidents that occur on or after July 1, 1990;~~

22 (b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and

23 (c) fund administrative expenses and benefit payments for claims for injuries resulting from
24 accidents that ~~occurred before July 1, 1990, and claims for injuries resulting from accidents that~~ occur on
25 or after July 1, 1990, separately from the sources provided by law.

26 (3) ~~The state fund may not spend more than \$3 million a year to administer claims for injuries~~
27 ~~resulting from accidents that occurred before July 1, 1990~~ The state fund may not administer or pay claims
28 for injuries resulting from accidents that occurred before July 1, 1990, unless pursuant to a contract
29 entered into under 39-71-2316."

30

1 **Section 19.** Section 39-71-2354, MCA, is amended to read:

2 "**39-71-2354. Use of old fund liability tax proceeds -- loans -- bonds.** (1) Taxes collected under
3 39-71-2503 may be used only to administer and pay claims for injuries resulting from accidents that
4 occurred before July 1, 1990, including the cost of repaying ~~bonds issued and~~ loan proceeds given under
5 39-71-2355 and this section. If the state fund determines that, for the next 1 or more years following the
6 date of the determination, the tax revenue, together with funds in the account required by 39-71-2321 for
7 claims for injuries resulting from accidents that occurred before July 1, 1990, will be insufficient to
8 administer and pay those claims, the state fund may, through its board of directors, request the budget
9 director to certify to the board of investments that additional funding is necessary. If the budget director
10 agrees with the state fund's board of directors that additional funding is necessary, the budget director shall
11 certify to the board of investments the amount that the budget director determines is necessary to
12 administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Except
13 as provided in subsection (2), the board of investments shall, at times and in amounts it considers
14 necessary or advisable, finance the amount certified by the budget director by giving the state fund the
15 proceeds of a loan ~~or a bond issue~~ to administer and pay claims for injuries resulting from accidents that
16 occurred before July 1, 1990. Loans must be from reserves accumulated from premiums paid to the state
17 fund based upon wages payable on or after July 1, 1990. The board of investments shall choose the
18 method of financing that is most cost-effective for the state fund. A loan must bear interest at the rate that
19 the board of investments determines the money would earn if invested on behalf of the state fund. ~~The~~
20 ~~board of investments may also, upon request of the board of directors of the state fund, give the state fund~~
21 ~~the proceeds of a bond issue, to be used to pay off loans made under 39-71-2355 and this section. Bonds~~
22 ~~for the state fund must be workers' compensation bonds issued under 39-71-2355.~~

23 (2) The total amount of loan proceeds given to the state fund plus workers' compensation bonds
24 issued under 39-71-2355, ~~except bonds issued to repay loans as provided for in subsection (1),~~ may not
25 exceed ~~\$220~~ \$50 million. All loan ~~and bond~~ proceeds given to the state fund must be repaid to the board
26 of investments before July 1, 2020."

27

28 **SECTION 20. SECTION 39-71-2354, MCA, IS AMENDED TO READ:**

29 "**39-71-2354. Use of old fund liability tax proceeds -- loans -- bonds.** (1) Taxes collected under
30 39-71-2503 may be used only to administer and pay claims for injuries resulting from accidents that

1 occurred before July 1, 1990, ~~including the cost of repaying bonds issued and loan proceeds given under~~
 2 ~~39-71-2355 and this section.~~ If the state fund legislative finance committee, after consultation with the
 3 legislative auditor and the budget director, determines that, for the next 1 or more years following the date
 4 of the determination, the tax revenue, together with funds in the account required by 39-71-2321 for
 5 claims for injuries resulting from accidents that occurred before July 1, 1990, will be insufficient to
 6 administer and pay those claims, the ~~state fund may, through its board of directors,~~ legislative finance
 7 committee may request the budget director to certify to the board of investments that additional funding
 8 is necessary. ~~If the budget director agrees with the state fund's board of directors that additional funding~~
 9 ~~is necessary, the budget director shall certify to the board of investments the amount that the budget~~
 10 ~~director determines is necessary to administer and pay claims for injuries resulting from accidents that~~
 11 ~~occurred before July 1, 1990. Except as provided in~~ Pursuant to subsection (2), the board of investments
 12 shall, at times and in amounts it considers necessary or advisable, finance the amount certified by the
 13 budget director by giving the state fund the proceeds of a loan or a bond issue to administer and pay
 14 claims for injuries resulting from accidents that occurred before July 1, 1990. Loans must be from reserves
 15 accumulated from premiums paid to the state fund based upon wages payable on or after July 1, 1990.
 16 The board of investments shall choose the method of financing that is most cost-effective for the state
 17 fund. A loan must bear interest at the rate that the board of investments determines the money would earn
 18 if invested on behalf of the state fund. ~~The board of investments may also, upon request of the board of~~
 19 ~~directors of the state fund, give the state fund the proceeds of a bond issue, to be used to pay off loans~~
 20 ~~made under 39-71-2355 and this section. Bonds for the state fund must be workers' compensation bonds~~
 21 ~~issued under 39-71-2355.~~

22 (2) ~~The total amount of loan proceeds given to the state fund plus workers' compensation bonds~~
 23 ~~issued under 39-71-2355, except bonds issued to repay loans as provided for in subsection (1), may not~~
 24 ~~exceed \$220 million. All loan and bond proceeds given to the state fund must be repaid to the board of~~
 25 ~~investments before July 1, 2020~~ The legislative finance committee may contract for the administration and
 26 payment of claims for injuries resulting from accidents occurring before July 1, 1990. Except as authorized
 27 under a contract with the legislative finance committee under 39-71-2316, the state fund may not
 28 administer or pay claims for injuries resulting from accidents that occurred before July 1, 1990."
 29

30 **Section 21.** Section 39-71-2355, MCA, is amended to read:

1 **"39-71-2355. Workers' compensation bonds -- loans loan proceeds -- form -- principal and**
 2 **interest.** (1) Subject to the ~~220~~ 50 million limit contained in 39-71-2354(2), the board of investments
 3 may not give the state fund loan proceeds ~~or issue workers' compensation bonds~~ unless the aggregate
 4 amount of outstanding and proposed loans ~~and bonds~~ can be serviced with no more than 90% of the
 5 amount of tax revenue that the department of revenue estimates will be raised by the tax imposed under
 6 39-71-2503 during the remainder of the then current fiscal year and during each succeeding fiscal year
 7 through the end of the fiscal year in which the last then outstanding or proposed loan ~~or bond~~ will be repaid
 8 or retired.

9 ~~(2) Bonds are limited obligations payable solely from and secured by the money deposited in the~~
 10 ~~workers' compensation bond repayment account created by 39-71-2504. Each series of bonds may be~~
 11 ~~issued by the board of investments at public or private sale, in denominations and form, whether payable~~
 12 ~~to bearer or registered as to principal or both principal and interest, with such provisions for the conversion~~
 13 ~~or exchange, bearing interest at a rate or rates or the method of determining the rate or rates, maturing at~~
 14 ~~times, not later than June 30, 2020, subject to redemption at earlier times and prices and upon notice, and~~
 15 ~~payable at the office of a fiscal agency of the state, as determined by the board of investments. Any action~~
 16 ~~taken by the board of investments under 39-71-2354 and this section must be approved by at least a~~
 17 ~~majority vote of its members.~~

18 ~~(3) In all other respects the board of investments is authorized to prescribe the form and terms of~~
 19 ~~the bonds and shall do whatever is lawful and necessary for their issuance and payment.~~

20 ~~(4) Bonds and any interest coupons appurtenant thereto must be signed by the members of the~~
 21 ~~board of investments, and the bonds must be issued under the great seal of the state of Montana. The~~
 22 ~~bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the~~
 23 ~~limitations prescribed by law. The state treasurer shall keep a record of all bonds issued and sold.~~

24 ~~(5)(2) All loan and bond proceeds given to the state fund must be deposited to the credit of the~~
 25 ~~account required by 39-71-2321 for claims for injuries resulting from accidents that occurred before July~~
 26 ~~1, 1990, and may be used only for the administration and payment of those claims and for the costs of~~
 27 ~~giving the loan proceeds and issuing the bonds."~~

28
 29 **Section 22.** Section 39-71-2501, MCA, is amended to read:

30 **"39-71-2501. Definitions.** As used in this part, the following definitions apply:

1 (1) "Account" means the workers' compensation ~~bond~~ loan repayment account established in
2 39-71-2504.

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

4 (3) "Employee" includes an officer, employee, or elected public official of the United States, the
5 state of Montana, or any political subdivision of the United States or the state of Montana or any agency
6 or instrumentality of the United States, the state of Montana, or a political subdivision of the United States
7 or the state of Montana. The term "employee" also includes an officer of a corporation.

8 (4) (a) "Employer" means, except as provided in subsection (4)(b), the person for whom an
9 individual performs or performed any service, of whatever nature, as an employee of the person.

10 (b) If the person for whom the individual performs or performed the service does not have control
11 of the payment of the wages for the service, the term "employer" means the person who has control of
12 the payment of wages.

13 (5) "Federal workers' compensation legislation" means federal legislation that provides an employee
14 with compensation or remuneration for accidental injury or death. This legislation includes but is not limited
15 to the Federal Employers' Liability Act, the Federal Employees' Compensation Act, and the Defense Base
16 Act.

17 (6) "Ongoing activities" means obligations or occurrences that are continuous, rather than
18 intermittent or occasional, that exist for a definite period of time during the year, or that are intended to
19 cover or apply to successive and similar obligations or occurrences.

20 (7) "Publicly traded limited partnership" means a business entity that issues shares or similar
21 ownership interests that are sold or purchased by persons through certified stockbrokers or licensed traders
22 on a public exchange recognized by the securities exchange commission.

23 (8) "State fund" means the state compensation insurance fund.

24 (9) "Tax" or "old fund liability tax" means the workers' compensation old fund liability tax provided
25 for in 39-71-2503, created to address the unfunded liability for claims for injuries resulting from accidents
26 that occurred before July 1, 1990.

27 (10) "Wages" means all remuneration for services performed in the state of Montana by an
28 employee for an employer, including the cash value of all remuneration paid in any medium other than cash.
29 The term does not include remuneration paid:

30 (a) for casual labor not in the course of the employer's trade or business performed in any calendar

1 quarter by an employee unless the cash remuneration paid for the service is \$50 or more and the service
2 is performed by an individual who is regularly employed by the employer to perform the service. For
3 purposes of this subsection (10)(a), an individual is considered to be regularly employed by an employer
4 during a calendar quarter only if:

5 (i) on each of 24 days during the calendar quarter, the individual performs service not in the course
6 of the employer's trade or business for the employer for some portion of the day; and

7 (ii) the individual was regularly employed, as determined under subsection (10)(a)(i), by the
8 employer in the performance of service during the preceding calendar quarter.

9 (b) for services not in the course of the employer's trade or business, to the extent that
10 remuneration is paid in any medium other than cash, when the payments are in the form of lodging or meals
11 and the payments are received by the employee at the request of and for the convenience of the employer;

12 (c) to or for an employee as a payment for or a contribution toward the cost of any group plan or
13 program that benefits the employee, including but not limited to life insurance, hospitalization insurance for
14 the employee or the employee's dependents, and employees' club activities;

15 (d) as payments from a multiple employer welfare arrangement, as defined in 29 U.S.C. 1002, to
16 a qualified individual employee;

17 (e) as wages or compensation, the taxation of which is prohibited by federal law;

18 (f) as wages or compensation for services performed by Montana residents outside the borders of
19 the state of Montana."

20

21 **Section 23.** Section 39-71-2503, MCA, is amended to read:

22 **"39-71-2503. Workers' compensation old fund liability tax.** (1) (a) There is imposed on each
23 employer, except an employer whose employees are covered by federal workers' compensation legislation,
24 a workers' compensation old fund liability tax in an amount equal to ~~0.28%~~ 0.14%, plus the additional
25 amount of old fund liability tax provided in 39-71-2505, of the wages paid by the employer:

26 (i) for the preceding payroll period for employers subject to the payment schedule contained in
27 15-30-204(1);

28 (ii) for the preceding month for employers subject to the payment schedule contained in
29 15-30-204(2); and

30 (iii) for the preceding year for employers subject to the payment schedule contained in

1 15-30-204(3)(a).

2 (b) There is imposed on each employee, except an employee who is covered by federal workers'
3 compensation legislation, an old fund liability tax, as provided in 39-71-2505, on the employee's wages.
4 An employer paying wages for services performed in Montana shall deduct and withhold the tax from the
5 wages.

6 (c) (i) There is imposed on each business of a sole proprietor, on each subchapter S. corporation
7 shareholder, on each partner of a partnership, and on each member or manager of a limited liability
8 company a workers' compensation old fund liability tax, as provided in 39-71-2505, on the profit of each
9 separate business of a sole proprietor and on the distributive share of ordinary income of each shareholder,
10 partner, or member or manager derived from ongoing activities.

11 (ii) The tax imposed in this subsection (1)(c) applies only to the ordinary income of a shareholder,
12 partner, member, or manager as the term "ordinary income" is defined in the Internal Revenue Code.

13 (iii) Partners of a publicly traded limited partnership are not subject to the tax imposed in this
14 subsection (1)(c).

15 (d) A corporate officer of a subchapter S. corporation who receives wages as an employee of the
16 corporation shall pay the old fund liability tax on both the wages and any distributive share of ordinary
17 income at the employee rate. The subchapter S. corporation is not liable for the tax on the corporate
18 officer's wages.

19 (e) A corporate officer of a closely held corporation who owns stock in a closely held corporation
20 that meets the stock ownership test under section 542(a)(2) of the Internal Revenue Code and receives
21 wages as an employee of the corporation is required to pay the old fund liability tax only on the wages
22 received. The corporation is not liable for the tax on the corporate officer's wages.

23 (f) This old fund liability tax must be used to reduce the unfunded liability in the state fund incurred
24 for claims for injuries resulting from accidents that occurred before July 1, 1990. If one or more loans ~~or~~
25 ~~bonds~~ are outstanding, the legislature may not reduce the security for repayment of the outstanding loans
26 ~~or bonds~~, except that the legislature may forgive payment of a tax or reduce a tax rate for any 12-month
27 period if the workers' compensation ~~bond~~ loan repayment account contains on the first day of that period
28 an amount, regardless of the source, that is in excess of the reserve maintained in the account and that
29 is equal to the amount needed to pay and dedicated to the payment of the principal, premium, and interest
30 that must be paid during that period on the outstanding loans ~~or bonds~~.

1 (g) Each employer shall maintain the records that the department requires concerning the old fund
2 liability tax. The records are subject to inspection by the department and its employees and agents during
3 regular business hours.

4 (h) An employee does not have any right of action against an employer for any money deducted
5 and withheld from the employee's wages and paid to the state in compliance or intended compliance with
6 this section.

7 (i) The employer is liable to the state for any amount of old fund liability taxes, plus interest and
8 penalty, when the employer fails to withhold from an employee's wages or fails to remit to the state the
9 old fund liability tax required by this section.

10 (j) A sole proprietor, subchapter S. corporation shareholder, partner of a partnership, or member
11 or manager of a limited liability company is liable to the state for the old fund liability tax, plus interest and
12 penalty, when the sole proprietor, shareholder, partner, or member or manager fails to remit to the state
13 the old fund liability tax required by this section.

14 (2) All collections of the tax must be deposited as received in the account. The tax is in addition
15 to any other tax or fee assessed against persons subject to the tax.

16 (3) (a) Tax payments and returns required by subsections (1)(a) and (1)(b) must be made pursuant
17 to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any
18 remainder to the account provided for in 39-71-2504.

19 (b) Tax payments due from sole proprietors, subchapter S. corporation shareholders, partners of
20 partnerships, and members or managers of limited liability companies must be made with and at the same
21 time as the returns filed pursuant to 15-30-144 and 15-30-241. The department shall first credit a payment
22 to the liability under 15-30-103 or 15-30-202 and shall then credit any remainder to the account provided
23 for in 39-71-2504.

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

27 (5) Returns and remittances under subsection (3) and any information obtained by the department
28 during an audit are subject to the provisions of 15-30-303, but the department may disclose the information
29 to the department of labor and industry for the purpose of investigation and prevention of noncompliance,
30 tax evasion, fraud, and abuse under the unemployment insurance laws, under circumstances and conditions

1 that ensure the continued confidentiality of the information.

2 (6) The department of labor and industry and the state fund shall give the department a list of all
3 employers having coverage under any plan administered or regulated by the department of labor and
4 industry and the state fund. The department of labor and industry and the state fund shall update the lists
5 weekly. The department of labor and industry and the state fund shall provide the department with access
6 to their computer data bases and paper files and records for the purpose of the department's administration
7 of the tax imposed by this section.

8 (7) The provisions of Title 15, chapter 30, that are not in conflict with the provisions of this part
9 regarding administration, remedies, enforcement, collections, hearings, interest, deficiency assessments,
10 credits for overpayment, statute of limitations, penalties, estimated taxes, and department rulemaking
11 authority apply to the tax, to employers, to employees, to sole proprietors, to subchapter S. corporation
12 shareholders, to partners of partnerships, to members or managers of limited liability companies, and to the
13 department."

14

15 **SECTION 24. SECTION 39-71-2503, MCA, IS AMENDED TO READ:**

16 "39-71-2503. **Workers' compensation old fund liability tax.** (1) (a) There is imposed on each
17 employer, except an employer whose employees are covered by federal workers' compensation legislation,
18 a workers' compensation old fund liability tax in an amount equal to ~~0.28%~~ 0.14%, plus the additional
19 amount of old fund liability tax provided in 39-71-2505, of the wages paid by the employer:

20 (i) for the preceding payroll period for employers subject to the payment schedule contained in
21 15-30-204(1);

22 (ii) for the preceding month for employers subject to the payment schedule contained in
23 15-30-204(2); and

24 (iii) for the preceding year for employers subject to the payment schedule contained in
25 15-30-204(3)(a).

26 ~~(b) There is imposed on each employee, except an employee who is covered by federal workers'~~
27 ~~compensation legislation, an old fund liability tax, as provided in 39-71-2505, on the employee's wages.~~
28 ~~An employer paying wages for services performed in Montana shall deduct and withhold the tax from the~~
29 ~~wages.~~

30 ~~(c) (i) There is imposed on each business of a sole proprietor, on each subchapter S. corporation~~

1 ~~shareholder, on each partner of a partnership, and on each member or manager of a limited liability~~
2 ~~company a workers' compensation old fund liability tax, as provided in 39-71-2505, on the profit of each~~
3 ~~separate business of a sole proprietor and on the distributive share of ordinary income of each shareholder,~~
4 ~~partner, or member or manager derived from ongoing activities.~~

5 ~~(ii) The tax imposed in this subsection (c) applies only to the ordinary income of a shareholder,~~
6 ~~partner, member, or manager as the term "ordinary income" is defined in the Internal Revenue Code.~~

7 ~~(iii) Partners of a publicly traded limited partnership are not subject to the tax imposed in this~~
8 ~~subsection (c).~~

9 ~~(d) A corporate officer of a subchapter S corporation who receives wages as an employee of the~~
10 ~~corporation shall pay the old fund liability tax on both the wages and any distributive share of ordinary~~
11 ~~income at the employee rate. The subchapter S corporation is not liable for the tax on the corporate~~
12 ~~officer's wages.~~

13 ~~(e) A corporate officer of a closely held corporation who owns stock in a closely held corporation~~
14 ~~that meets the stock ownership test under section 542(a)(2) of the Internal Revenue Code and receives~~
15 ~~wages as an employee of the corporation is required to pay the old fund liability tax only on the wages~~
16 ~~received. The corporation is not liable for the tax on the corporate officer's wages.~~

17 ~~(f)(b) This old fund liability tax must be used to reduce the unfunded liability in the state fund~~
18 ~~incurred for claims for injuries resulting from accidents that occurred before July 1, 1990. If one or more~~
19 ~~loans or bonds are outstanding, the legislature may not reduce the security for repayment of the~~
20 ~~outstanding loans or bonds, except that the legislature may forgive payment of a tax or reduce a tax rate~~
21 ~~for any 12-month period if the workers' compensation ~~bond~~ loan repayment account contains on the first~~
22 ~~day of that period an amount, regardless of the source, that is in excess of the reserve maintained in the~~
23 ~~account and that is equal to the amount needed to pay and dedicated to the payment of the principal,~~
24 ~~premium, and interest that must be paid during that period on the outstanding loans or bonds.~~

25 ~~(g)(c) Each employer shall maintain the records that the department requires concerning the old~~
26 ~~fund liability tax. The records are subject to inspection by the department and its employees and agents~~
27 ~~during regular business hours.~~

28 ~~(h) An employee does not have any right of action against an employer for any money deducted~~
29 ~~and withheld from the employee's wages and paid to the state in compliance or intended compliance with~~
30 ~~this section.~~

1 ~~(i) The employer is liable to the state for any amount of old fund liability taxes, plus interest and~~
2 ~~penalty, when the employer fails to withhold from an employee's wages or fails to remit to the state the~~
3 ~~old fund liability tax required by this section.~~

4 ~~(j) A sole proprietor, subchapter S, corporation shareholder, partner of a partnership, or member~~
5 ~~or manager of a limited liability company is liable to the state for the old fund liability tax, plus interest and~~
6 ~~penalty, when the sole proprietor, shareholder, partner, or member or manager fails to remit to the state~~
7 ~~the old fund liability tax required by this section.~~

8 (2) All collections of the tax must be deposited as received in the account. The tax is in addition
9 to any other tax or fee assessed against persons subject to the tax.

10 (3) ~~(a)~~ Tax payments and returns required by ~~subsections~~ subsection (1)(a) and ~~(1)(b)~~ must be
11 made pursuant to 15-30-204. The department shall first credit a payment to the liability under 15-30-202
12 and credit any remainder to the account provided for in 39-71-2504.

13 ~~(b) Tax payments due from sole proprietors, subchapter S, corporation shareholders, partners of~~
14 ~~partnerships, and members or managers of limited liability companies must be made with and at the same~~
15 ~~time as the returns filed pursuant to 15-30-144 and 15-30-241. The department shall first credit a payment~~
16 ~~to the liability under 15-30-103 or 15-30-202 and shall then credit any remainder to the account provided~~
17 ~~for in 39-71-2504.~~

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

21 (5) Returns and remittances under subsection (3) and any information obtained by the department
22 during an audit are subject to the provisions of 15-30-303, but the department may disclose the information
23 to the department of labor and industry for the purpose of investigation and prevention of noncompliance,
24 tax evasion, fraud, and abuse under the unemployment insurance laws, under circumstances and conditions
25 that ensure the continued confidentiality of the information.

26 (6) The department of labor and industry and the state fund shall give the department a list of all
27 employers having coverage under any plan administered or regulated by the department of labor and
28 industry and the state fund. The department of labor and industry and the state fund shall update the lists
29 weekly. The department of labor and industry and the state fund shall provide the department with access
30 to their computer data bases and paper files and records for the purpose of the department's administration

1 of the tax imposed by this section.

2 (7) The provisions of Title 15, chapter 30, that are not in conflict with the provisions of this part
3 regarding administration, remedies, enforcement, collections, hearings, interest, deficiency assessments,
4 credits for overpayment, statute of limitations, penalties, estimated taxes, and department rulemaking
5 authority apply to the tax, to employers, ~~to employees, to sole proprietors, to subchapter S corporation~~
6 ~~shareholders, to partners of partnerships, to members or managers of limited liability companies,~~ and to the
7 department."

8
9 **Section 13.** ~~Section 39-71-2504, MCA, is amended to read:~~

10 ~~"39-71-2504. Workers' compensation bond loan repayment account. (1) There is a workers'~~
11 ~~compensation bond loan repayment account in the enterprise fund.~~

12 ~~(2) All collections of the tax imposed under 39-71-2503 and the interest and penalties on the tax~~
13 ~~must, in accordance with the provisions of 15-1-501, be deposited in the workers' compensation bond loan~~
14 ~~repayment account. All money deposited in the workers' compensation bond loan repayment account must~~
15 ~~be retained in the account to the extent necessary to pay the principal of and the redemption premium and~~
16 ~~interest due on workers' compensation bonds loans issued under 39-71-2354 and 39-71-2355 and to~~
17 ~~establish and maintain a reserve for the bonds loans equal to the maximum annual principal of and interest~~
18 ~~on the bonds loans in any future year. The balance in the workers' compensation bond loan repayment~~
19 ~~account is statutorily appropriated, as provided in 17-7-502, to the state fund to be used to reduce the~~
20 ~~unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred~~
21 ~~before July 1, 1990."~~

22
23 **Section 25.** Section 39-71-2505, MCA, is amended to read:

24 **"39-71-2505. Payment of unfunded liability for injuries resulting from accidents occurring before**
25 **July 1, 1990.** (1) The state fund shall pay for the cost of administering and paying claims for injuries
26 resulting from accidents that occurred before July 1, 1990, not covered by any other funding source, by
27 borrowing from the reserves accumulated from premiums paid to the state fund, based upon wages payable
28 on or after July 1, 1990, and invested by the board of investments, from time to time, the amount that the
29 state fund determines and that the budget director certifies, as provided in 39-71-2354, will be needed to
30 pay for administering and paying the claims for the ensuing year.

1 (2) (a) In January of each year, prior to the start of the following fiscal year, the state fund shall
 2 forward to the budget director information pertaining to the amount that the state fund will borrow for the
 3 ensuing fiscal year to pay for the cost of administering and paying claims for the injuries provided for in
 4 subsection (1). In addition, the state fund shall forward to the budget director the schedule of projected
 5 liability payments and cash needs on which the amount to be borrowed is based. The schedule must include
 6 but is not limited to total projected liability payments, loans ~~and bond debt~~ payments, revenue from the old
 7 fund liability tax provided for in 39-71-2503, projected fiscal yearend cash, and the projected fiscal yearend
 8 cash for the year 2007.

9 (b) (i) There is imposed on each employer a workers' compensation old fund liability tax as provided
 10 in 39-71-2503. The employer old fund liability tax is an amount equal to ~~0.5%~~ 0.25% of the employer's
 11 payroll in the preceding calendar quarter.

12 (ii) The employee old fund liability tax is an amount equal to ~~0.2%~~ 0.1% of the employee's wages
 13 in the preceding calendar quarter.

14 (iii) The old fund liability tax is an amount equal to ~~0.2%~~ 0.1% 0.15% on the profit of each separate
 15 business of a sole proprietor and on the distributive share of ordinary income of each subchapter S.
 16 corporation shareholder, partner of a partnership, or member or manager of a limited liability company.

17 (iv) The rate of the employer old fund liability tax determined by this section includes the ~~0.28%~~
 18 0.14% employer old fund liability tax provided for in 39-71-2503.

19 (v) (A) The employer old fund liability tax that is in excess of the ~~0.28%~~ 0.14% tax provided for
 20 in 39-71-2503 terminates at the end of fiscal year 2007.

21 (B) ~~If the debt service account has sufficient funds to pay outstanding bonds or if no bonds are~~
 22 ~~outstanding, the~~ The old fund liability tax may not be imposed after the end of fiscal year 2007.

23 (vi) The old fund liability tax described in this section must be collected and deposited as provided
 24 in 39-71-2503 and 39-71-2504.

25 (3) If in any January the cumulative projected amount to be borrowed by the state fund from
 26 reserves accumulated from premiums paid to the state fund based on wages payable on or after July 1,
 27 1990, to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990,
 28 ~~not including any outstanding bonds as of May 13, 1993,~~ exceeds \$80 million for the following fiscal year,
 29 the tax rate on the persons subject to the old fund liability tax must be increased by 0.05% for the
 30 following fiscal year over the current tax rate. If in any January the projected fiscal yearend cash balance

1 for the current fiscal year exceeds \$25 million, the tax rate on the persons subject to the old fund liability
2 tax must be reduced by 0.05% from the current tax rate for the following fiscal year.

3 (4) The total tax on the persons subject to the old fund liability tax may not exceed ~~0.75%~~ 0.5%.

4 (5) The budget director shall certify the cash flow projections of the state fund required by this
5 section and shall notify the department of revenue no later than April 1 of the rate of tax to be collected
6 pursuant to this section."

7

8 **SECTION 26. SECTION 39-71-2505, MCA, IS AMENDED TO READ:**

9 **"39-71-2505. Payment of unfunded liability for injuries resulting from accidents occurring before**

10 **July 1, 1990.** (1) The state fund shall pay for the cost of administering and paying claims for injuries
11 resulting from accidents that occurred before July 1, 1990, not covered by any other funding source, by
12 borrowing from the reserves accumulated from premiums paid to the state fund, based upon wages payable
13 on or after July 1, 1990, and invested by the board of investments, from time to time, the amount that the
14 state fund determines and that the budget director certifies, as provided in 39-71-2354, will be needed to
15 pay for administering and paying the claims for the ensuing year.

16 (2) (a) In January of each year, prior to the start of the following fiscal year, the state fund shall
17 forward to the budget director information pertaining to the amount that the state fund will borrow for the
18 ensuing fiscal year to pay for the cost of administering and paying claims for the injuries provided for in
19 subsection (1). In addition, the state fund shall forward to the budget director the schedule of projected
20 liability payments and cash needs on which the amount to be borrowed is based. The schedule must include
21 but is not limited to total projected liability payments, loans and bond debt payments, revenue from the old
22 fund liability tax provided for in 39-71-2503, projected fiscal yearend cash, and the projected fiscal yearend
23 cash for the year ~~2007~~ 2001.

24 (b) (i) There is imposed on each employer a workers' compensation old fund liability tax as provided
25 in 39-71-2503. The employer old fund liability tax is an amount equal to ~~0.5%~~ 0.25% of the employer's
26 payroll in the preceding calendar quarter.

27 (ii) The employee old fund liability tax is an amount equal to ~~0.2%~~ 0.1% of the employee's wages
28 in the preceding calendar quarter.

29 (iii) The old fund liability tax is an amount equal to ~~0.2%~~ 0.1% on the profit of each separate
30 business of a sole proprietor and on the distributive share of ordinary income of each subchapter S.

1 corporation shareholder, partner of a partnership, or member or manager of a limited liability company.

2 (iv) The rate of the employer old fund liability tax determined by this section includes the ~~0.28%~~
3 0.14% employer old fund liability tax provided for in 39-71-2503.

4 (v) ~~(A)~~ The employer old fund liability tax that is in excess of the ~~0.28%~~ 0.14% tax provided for
5 in 39-71-2503 terminates at the end of fiscal year 2007.

6 ~~(B) If the debt service account has sufficient funds to pay outstanding bonds or if no bonds are
7 outstanding, the old fund liability tax may not be imposed after the end of fiscal year 2007.~~

8 (vi) The old fund liability tax described in this section must be collected and deposited as provided
9 in 39-71-2503 ~~and 39-71-2504~~.

10 (3) If in any January the cumulative projected amount to be borrowed by the state fund from
11 reserves accumulated from premiums paid to the state fund based on wages payable on or after July 1,
12 1990, to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990,
13 not including any outstanding bonds as of May 13, 1993, exceeds \$80 million for the following fiscal year,
14 the tax rate on the persons subject to the old fund liability tax must be increased by 0.05% for the
15 following fiscal year over the current tax rate. If in any January the projected fiscal yearend cash balance
16 for the current fiscal year exceeds \$25 million, the tax rate on the persons subject to the old fund liability
17 tax must be reduced by 0.05% from the current tax rate for the following fiscal year.

18 (4) The total tax on the persons subject to the old fund liability tax may not exceed 0.75%.

19 (5) The budget director shall certify the cash flow projections of the state fund required by this
20 section and shall notify the department of revenue no later than April 1 of the rate of tax to be collected
21 pursuant to this section."
22

23 **SECTION 27. SECTION 39-71-2505, MCA, IS AMENDED TO READ:**

24 **"39-71-2505. Payment of unfunded liability for injuries resulting from accidents occurring before**
25 **July 1, 1990.** (1) The state fund shall pay for the cost of administering and paying claims for injuries
26 resulting from accidents that occurred before July 1, 1990, not covered by any other funding source, by
27 borrowing from the reserves accumulated from premiums paid to the state fund, based upon wages payable
28 on or after July 1, 1990, and invested by the board of investments, from time to time, the amount that the
29 state fund determines and that the budget director certifies, as provided in 39-71-2354, will be needed to
30 pay for administering and paying the claims for the ensuing year.

1 (2) (a) In January of each year, prior to the start of the following fiscal year, the state fund shall
 2 forward to the budget director information pertaining to the amount that the state fund will borrow for the
 3 ensuing fiscal year to pay for the cost of administering and paying claims for the injuries provided for in
 4 subsection (1). In addition, the state fund shall forward to the budget director the schedule of projected
 5 liability payments and cash needs on which the amount to be borrowed is based. The schedule must include
 6 but is not limited to total projected liability payments, loans and bond debt payments, revenue from the old
 7 fund liability tax provided for in 39-71-2503, projected fiscal yearend cash, and the projected fiscal yearend
 8 cash for the year ~~2007~~ 2001.

9 (b) (i) There is imposed on each employer a workers' compensation old fund liability tax as provided
 10 in 39-71-2503. The employer old fund liability tax is an amount equal to ~~0.5%~~ 0.25% of the employer's
 11 payroll in the preceding calendar quarter.

12 ~~(ii) The employee old fund liability tax is an amount equal to 0.2% of the employee's wages in the~~
 13 ~~preceding calendar quarter.~~

14 ~~(iii) The old fund liability tax is an amount equal to 0.2% on the profit of each separate business~~
 15 ~~of a sole proprietor and on the distributive share of ordinary income of each subchapter S corporation~~
 16 ~~shareholder, partner of a partnership, or member or manager of a limited liability company.~~

17 ~~(iv)(ii) The rate of the employer old fund liability tax determined by this section includes the 0.28%~~
 18 0.14% employer old fund liability tax provided for in 39-71-2503.

19 ~~(v)(iii) (A) The employer old fund liability tax that is in excess of the 0.28%~~ 0.14% tax provided
 20 for in 39-71-2503 terminates at the end of fiscal year ~~2007~~ 2001.

21 ~~(B) If the debt service account has sufficient funds to pay outstanding bonds or if no bonds are~~
 22 ~~outstanding, the old fund liability tax may not be imposed after the end of fiscal year 2007.~~

23 ~~(vi)(iv) The old fund liability tax described in this section must be collected and deposited as~~
 24 ~~provided in 39-71-2503 and 39-71-2504.~~

25 (3) If in any January the cumulative projected amount to be borrowed by the state fund from
 26 reserves accumulated from premiums paid to the state fund based on wages payable on or after July 1,
 27 1990, to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990,
 28 not including any outstanding bonds as of May 13, 1993, exceeds \$80 million for the following fiscal year,
 29 the tax rate on the persons subject to the old fund liability tax must be increased by 0.05% for the
 30 following fiscal year over the current tax rate. If in any January the projected fiscal yearend cash balance

1 for the current fiscal year exceeds \$25 million, the tax rate on the persons subject to the old fund liability
2 tax must be reduced by 0.05% from the current tax rate for the following fiscal year.

3 (4) The total tax on the persons subject to the old fund liability tax may not exceed 0.75%.

4 (5) The budget director shall certify the cash flow projections of the state fund required by this
5 section and shall notify the department of revenue no later than April 1 of the rate of tax to be collected
6 pursuant to this section."

7

8 **NEW SECTION. Section 28. Transfer of funds to repay 1989 appropriation from general fund.** (1)
9 Except as provided in subsection (3), the state fund shall, on [the effective date of this act], transfer \$20
10 million to the general fund from the surplus in the account created in 39-71-2321 relating to the claims for
11 injuries resulting from accidents that occur on or after July 1, 1990, to repay the money appropriated from
12 the general fund to the workers' compensation tax account during the June 1989 special legislative session
13 to reduce the unfunded liability in the state compensation mutual insurance fund.

14 (2) The transfer required by subsection (1) is contingent upon the state fund's projected compliance
15 with the provisions of 39-71-2330, which requires the state fund to amass and maintain by July 1, 2003,
16 a surplus of 25% of the annual premium.

17 (3) If on [the effective date of this act] the surplus is insufficient to transfer the total amount of
18 \$20 million required in subsection (1), the state fund shall, on each October 1 following [the effective date
19 of this act], transfer to the general fund from the account established in 39-71-2321 and referred to in
20 subsection (1) of this section any surplus that is in excess of the amount required in subsection (2) of this
21 section until the entire \$20 million has been transferred. The budget director shall certify the state fund's
22 projection of compliance with 39-71-2330 prior to the transfer of funds to the general fund or the decision
23 that sufficient funds are not available to make a transfer.

24

25 **NEW SECTION. SECTION 29. TRANSFER OF FUNDS. THE BALANCE REMAINING IN THE**
26 **WORKERS' COMPENSATION BOND REPAYMENT ACCOUNT ON JUNE 30, 1997, MUST BE DEPOSITED**
27 **IN THE STATE FUND AS PROVIDED IN 39-71-2321.**

28

29 **NEW SECTION. SECTION 30. REPEALER. (1) SECTION 39-71-2504, MCA, IS REPEALED.**

30 **(2) SECTIONS 39-71-2354, 39-71-2355, 39-71-2501, 39-71-2502, 39-71-2503, 39-71-2505,**

1 AND 39-71-2506, MCA, ARE REPEALED.

2
3 NEW SECTION. Section 31. Effective date --applicability. (1) ~~{This act} is~~ [SECTIONS 3, 6, 7,
4 9 AND 10, 12 THROUGH 15, 17, 19, 21 THROUGH 23, 25, AND 29] ARE effective July 1, 1997.

5 (2) ~~{Sections 12 and 14} apply retroactively to taxes collected after December 31, 1996.~~
6 [SECTIONS 2, 28, 30(1), AND 32 AND THIS SECTION] ARE EFFECTIVE ON PASSAGE AND APPROVAL.

7 (3) [SECTIONS 4, 8, 11, 18, 20, AND 27] ARE EFFECTIVE JULY 1, 1998.

8 (4) [SECTION 26] IS EFFECTIVE JANUARY 1, 1998.

9 (5) [SECTIONS 1, 5, AND 24] ARE EFFECTIVE JULY 1, 2000.

10 (6) [SECTIONS 16 AND 30(2)] ARE EFFECTIVE JULY 1, 2001.

11
12 NEW SECTION. SECTION 32. TERMINATION. (1) [SECTIONS 7, 10, 17, 19, AND 26]
13 TERMINATE JUNE 30, 1998.

14 (2) [SECTION 25] TERMINATES DECEMBER 31, 1997.

15 (3) [SECTION 15] TERMINATES JUNE 30, 2000.

16 -END-

1 HOUSE BILL NO. 160

2 INTRODUCED BY TASH

3 BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING ADMINISTRATIVE ENFORCEMENT FOR VIOLATIONS
6 OF THE JUNK VEHICLE AND MOTOR VEHICLE WRECKING FACILITY LAWS; AUTHORIZING FACILITY
7 LICENSE SUSPENSION OR DENIAL FOR VIOLATION OF AN ORDER; AUTHORIZING FACILITY LICENSE
8 REVOCATION FOR VIOLATION OF A SUSPENSION ORDER; AMENDING SECTION 75-10-514, MCA; AND
9 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12
13 NEW SECTION. **Section 1. Administrative enforcement.** (1) When the department determines that
14 a violation of this part, a violation of a rule adopted under this part, or a violation of a license provision has
15 occurred, it may serve written notice of the violation on the alleged violator or the violator's agent. The
16 notice must specify the law, rule, or license provision alleged to be violated and the facts alleged to
17 constitute a violation and may include an order to take necessary corrective action within a reasonable
18 period of time. The order becomes final 30 days after the notice is served unless the person named
19 requests, in writing, a hearing before the board. On receipt of the request for a hearing, the board shall
20 schedule a hearing. Service by mail is complete on the date of mailing.

21 (2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it
22 shall either affirm or change the department's order. An order may prescribe the date by which the
23 violation must cease and may prescribe time limits for particular action. If, after a hearing, the board finds
24 that a violation has not occurred, it shall rescind the department's order.

25 (3) ~~This section does not prevent the board or THE department from making~~ SHALL MAKE efforts
26 to obtain voluntary compliance through warning, conference, or any other appropriate means BEFORE
27 ISSUING AN ORDER PURSUANT TO SUBSECTION (1).

28
29 **Section 2.** Section 75-10-514, MCA, is amended to read:

30 "75-10-514. **Denial, suspension, or revocation of license -- grounds.** (1) The department may

1 deny, or suspend, or revoke a motor vehicle wrecking facility's license ~~when it proves the business on any~~
 2 of the following grounds:

3 ~~(1)(a) The applicant or licensee~~ sold or otherwise disposed of a motor vehicle, trailer, or any part
 4 ~~thereof~~ of a motor vehicle or trailer when it knew the vehicle or part was stolen or was appropriated
 5 without the consent of the owner;

6 ~~(2)(b) The applicant or licensee~~ committed forgery on a certificate of title covering a vehicle that
 7 has been reassembled from parts obtained from the disassembling of other vehicles;

8 ~~(3)(c) The applicant or licensee~~ committed any illegal act or omission ~~which that~~ has caused loss
 9 as the result of a sale of a motor vehicle, trailer, or part ~~thereof~~ of a motor vehicle or trailer.

10 ~~(4)(d) The applicant or licensee~~ failed to comply with this part or with a rule of the department;

11 ~~(5)(e) The applicant or licensee~~ obtained a license fraudulently.

12 (2) The department may revoke a motor vehicle wrecking facility's license on the following
 13 grounds:

14 (a) the license was suspended pursuant to subsection (1)(d) and the facility failed to cure the defect
 15 or defects underlying the suspension during the period of suspension; or

16 (b) the license was suspended pursuant to subsection (1)(a), (1)(b), (1)(c), or (1)(e) and, after
 17 suspension, the licensee performed an act that is grounds for suspension pursuant to subsections (1)(a)
 18 through (1)(e) at any time during the remaining active life of the facility."

19

20 **NEW SECTION. Section 3. Codification instruction.** [Section 1] is intended to be codified as an
 21 integral part of Title 75, chapter 10, part 5, and the provisions of Title 75, chapter 10, part 5, apply to
 22 [section 1].

23

24 **NEW SECTION. Section 4. Saving clause.** [This act] does not affect rights and duties that
 25 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
 26 act].

27

28 **NEW SECTION. Section 5. Effective date.** [This act] is effective on passage and approval.

29

-END-