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Sen. Steve Stivers BILL NO. 349
INTRODUCED BY *Anthony J. Moore*

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE WORKERS' COMPENSATION REGULATORY FUNCTIONS OF THE DEPARTMENT OF LABOR AND INDUSTRY; PERMITTING AN INSURER ACCESS TO THE WORKERS' COMPENSATION DATA BASE SYSTEM; ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF LABOR AND INDUSTRY DETERMINE WAGES PAID IN PROPERTY OTHER THAN MONEY; REQUIRING THAT THE INDEPENDENT CONTRACTOR EXEMPTION PROCESS BE SELF-FUNDING; ELIMINATING DEPARTMENT OF LABOR AND INDUSTRY CERTIFICATION OF TRADE GROUPS THAT WISH TO PURCHASE GROUP INSURANCE; ELIMINATING OBSOLETE REFERENCES TO THE ASSIGNED RISK POOL; CLARIFYING THE ADMINISTRATION OF THE UNINSURED EMPLOYERS' FUND; INCREASING THE PENALTY AGAINST UNINSURED EMPLOYERS; ELIMINATING THE UNDERINSURED EMPLOYERS' FUND; CLARIFYING THE PROCEDURES RELATING TO COMPROMISE SETTLEMENTS AND LUMP-SUM CONVERSIONS; CLARIFYING REHABILITATION PLAN AGREEMENTS; ELIMINATING MEDICAL ADVISORY COMMITTEES; ELIMINATING PLAN NO. 2 DEPOSIT REQUIREMENTS; PROVIDING FOR REFUND OF PLAN NO. 2 INSURER DEPOSITS AND THE TRANSFER OF SURPLUS FUNDS IN THE UNDERINSURED EMPLOYERS' FUND TO THE UNINSURED EMPLOYERS' FUND; AMENDING SECTIONS 20-15-403, 33-2-119, 39-71-225, 39-71-303, 39-71-401, 39-71-433, 39-71-503, 39-71-504, 39-71-704, 39-71-721, 39-71-741, AND 39-71-2314, MCA; REPEALING SECTIONS 39-71-431, 39-71-531, 39-71-532, 39-71-533, 39-71-534, 39-71-1013, 39-71-1109, AND 39-71-2206, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

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Section 1. Section 20-15-403, MCA, is amended to read:

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"20-15-403. Applications of other school district provisions. (1) When the term "school district" appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123, 7-8-2214, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101,



1 15-6-204, 15-16-101, 15-16-605, 15-70-301, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213,
 2 17-7-201, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-404, 18-2-432, 18-5-205, 19-1-102,
 3 19-1-811, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304,
 4 39-71-116, 39-71-117, 39-71-2106, ~~39-71-2206~~, 40-6-237, 41-3-1132, 49-3-101, 49-3-102, 53-20-304,
 5 77-3-321, 82-10-201, 82-10-202, 82-10-203, 85-7-2158, and 90-6-208 and Rules 4D(2)(g) and 15(c),
 6 M.R.Civ.P., as amended.

7 (2) When the term "school district" appears in a section outside of Title 20 but the section is not
 8 listed in subsection (1), the school district provision does not apply to a community college district."
 9

10 **Section 2.** Section 33-2-119, MCA, is amended to read:

11 "**33-2-119. Suspension or revocation for violations and special grounds.** (1) The commissioner
 12 may, ~~in his discretion~~, suspend or revoke an insurer's certificate of authority if, after a hearing ~~thereon~~, he
 13 the commissioner finds that the insurer has:

14 (a) violated any lawful order of the commissioner or any provision of this code other than those
 15 for which suspension or revocation is mandatory;

16 (b) reinsured more than 90% of its risks resident, located, or to be performed in Montana, in
 17 another insurer. In considering suspension or revocation, the commissioner shall consider all relevant
 18 factors, including whether:

19 (i) after the reinsurance transaction all parties will be in compliance with Montana law; and

20 (ii) the transaction will substantially reduce protection and service to Montana policyholders;

21 ~~(c) failed to accept an equitable apportionment of assigned coverage as required by 39-71-431.~~

22 (2) The commissioner shall, after a hearing ~~thereon~~, suspend or revoke an insurer's certificate of
 23 authority if ~~he~~ the commissioner finds that the insurer:

24 (a) is in unsound condition or in ~~such~~ a condition or using ~~such~~ methods or practices in the conduct
 25 of its business ~~as to~~ that render its further transaction of insurance in Montana injurious or hazardous to
 26 its policyholders or to the public;

27 (b) has refused to be examined or to produce its accounts, records, and files for examination or
 28 if any of its officers have refused to give information with respect to its affairs, when required by the
 29 commissioner;

30 (c) has failed to pay any final judgment rendered against it in Montana within 30 days after the

1 judgment became final;

2 (d) with such frequency as to indicate its general business practice in Montana, has without just
3 cause refused to pay a proper claim arising under its policies, whether the claim is in favor of an insured
4 or is in favor of a third person with respect to the liability of an insured to the third person, or without just
5 cause compels the insured or claimant to accept less than the amount due ~~him~~ the claimant or to employ
6 attorneys or to bring suit against the insurer or insured to secure full payment or settlement of the claims;

7 (e) is affiliated with and under the same general management or interlocking directorate or
8 ownership as another insurer ~~which~~ that transacts direct insurance in Montana without having a certificate
9 of authority ~~therefor~~, except as permitted as to a surplus lines insurer under part 3 of this chapter.

10 (3) The commissioner may, ~~in his discretion and~~ without advance notice or a hearing ~~thereon~~,
11 immediately suspend the certificate of authority of any insurer as to which proceedings for receivership,
12 conservatorship, rehabilitation, or other delinquency proceedings have been commenced in any state."

13

14 **Section 3.** Section 39-71-225, MCA, is amended to read:

15 **"39-71-225. Workers' compensation data base system.** (1) The department shall develop a
16 workers' compensation data base system to generate management information about Montana's workers'
17 compensation system. The data base system must be used to collect and compile information from insurers,
18 employers, medical providers, claimants, adjusters, rehabilitation providers, and the legal profession.

19 (2) Data collected must be used to provide:

20 (a) management information to the legislative and executive branches for the purpose of making
21 policy and management decisions, including but not limited to:

22 ~~(a)(i)~~ performance information to enable the state to enact remedial efforts to ensure quality,
23 control abuse, and enhance cost control;

24 ~~(b)(ii)~~ information on medical, indemnity, and rehabilitation costs, utilization, and trends; ~~and~~

25 ~~(c)(iii)~~ information on litigation and attorney involvement for the purpose of identifying trends,
26 problem areas, and the costs of legal involvement; and

27 (b) current and prior claim information to insurers, including insurers authorized to transact
28 insurance in other states, to determine claims liability and fraud investigation and prosecution.

29 ~~(2)(3)~~ The department is authorized to collect from insurers, employers, medical providers, the legal
30 profession, and others the information necessary to generate the workers' compensation data base system.

- 1 ~~(3)~~(4) The workers' compensation data base system must be designed in accordance with the
 2 following principles:
- 3 (a) avoidance of duplication and inconsistency;
- 4 (b) reasonable availability of data elements;
- 5 (c) value of information collected to be commensurate with the cost of retrieving the collected
 6 information;
- 7 (d) uniformity to permit efficiency of collection and to allow interstate comparisons;
- 8 (e) a workable mechanism to ensure the accuracy of the data collected and to protect the
 9 confidentiality of collected data;
- 10 (f) reasonable availability of the data at a fair cost to the user;
- 11 (g) a broad application to plan No. 1, plan No. 2, and plan No. 3 insurers;
- 12 (h) compatibility with electronic data reporting;
- 13 (i) reporting procedures that can be handled through private data collection systems that adhere
 14 to the provisions of subsections ~~(3)(a)~~ (4)(a) through ~~(3)(h)~~ (4)(h);
- 15 (j) implementation of reporting requirements that allow reasonable lead time for compliance.
- 16 ~~(4)(5) (a) The department shall take all steps necessary to have the workers' compensation data
 17 base system fully operational by July 1, 1995.~~
- 18 ~~(b) After the workers' compensation data base system is operational, the~~ The department shall
 19 publish ~~an annual~~ a biennial report ~~and may publish quarterly reports~~ on the information compiled.
- 20 (6) Users of information obtained from the workers' compensation data base under this section are
 21 liable for damages arising from misuse or unlawful dissemination of data base information."

22

23 **Section 4.** Section 39-71-303, MCA, is amended to read:

24 "**39-71-303. Work paid for in property other than money** ~~—wages to be determined by~~
 25 ~~department. Where any~~ When an employer procures any work to be done, payment for which is ~~to be~~ was
 26 made in property other than money or its equivalent and the value of ~~which~~ the property is speculative or
 27 intangible, the wages of the employees receiving ~~such~~ the compensation ~~shall be determined by the~~
 28 ~~department in accordance with~~ must be the ~~going~~ wage for the same or similar work in the district or
 29 locality where the ~~same is to be~~ work was performed."

30

1 **Section 5.** Section 39-71-401, MCA, is amended to read:

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

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

11 (a) household and domestic employment;

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

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

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

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

19 (f) employment of a direct seller as defined in 26 U.S.C. 3508;

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

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

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

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

28 (k) employment of a person performing services as a newspaper carrier or free-lance correspondent
29 if the person performing the services or a parent or guardian of the person performing the services in the
30 case of a minor has acknowledged in writing that the person performing the services and the services are

1 not covered. As used in this subsection, "free-lance correspondent" is a person who submits articles or
2 photographs for publication and is paid by the article or by the photograph. As used in this subsection,
3 "newspaper carrier":

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

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

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

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

12 (n) employment of a jockey performing under a license issued by the board of horseracing from the
13 time the jockey reports to the scale room prior to a race through the time the jockey is weighed out after
14 a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing,
15 that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

16 (o) employment of an employer's spouse for whom an exemption based on marital status may be
17 claimed by the employer under 26 U.S.C. 7703;

18 (p) a person who performs services as a petroleum land professional. As used in this subsection,
19 a "petroleum land professional" is a person who:

20 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in
21 negotiating a business agreement for the exploration or development of minerals;

22 (ii) is paid for services that are directly related to the completion of a contracted specific task rather
23 than on an hourly wage basis; and

24 (iii) performs all services as an independent contractor pursuant to a written contract.

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

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

30 (ii) the officer or manager is engaged primarily in household employment for the corporation or the

1 limited liability company;

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

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

7 (3) (a) A sole proprietor, a working member of a partnership, or a working member of a
8 member-managed limited liability company who represents to the public that the person is an independent
9 contractor shall elect to be bound personally and individually by the provisions of compensation plan No.
10 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

11 (b) The application must be made in accordance with the rules adopted by the department. ~~There~~
12 ~~is no~~ The fee for the initial application. Any subsequent application and any renewal must be accompanied
13 ~~by a \$25 application fee determined by the department in an amount that is sufficient to fully fund the cost~~
14 of administering the program. The application fee must be deposited in the administration fund established
15 in 39-71-201 ~~to offset the costs of administering the program.~~

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

18 (d) The exemption, if approved, remains in effect for 1 year following the date of the department's
19 approval. To maintain the independent contractor status, an independent contractor shall annually submit
20 a renewal application. A renewal application must be submitted for all independent contractor exemptions
21 approved as of July 1, 1995, or thereafter. The renewal application and the \$25 renewal application fee
22 must be received by the department at least 30 days prior to the anniversary date of the previously
23 approved exemption.

24 (e) A person who makes a false statement or misrepresentation concerning that person's status
25 as an exempt independent contractor is subject to a civil penalty of \$1,000. The department may impose
26 the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured
27 employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.

28 (f) If the department denies the application for exemption, the applicant may contest the denial by
29 petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An
30 applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with

1 the procedure established in 39-51-2403 and 39-51-2404.

2 (4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its
3 employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private
4 corporation, or a manager-managed limited liability company may elect coverage for its corporate officers
5 or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following
6 manner:

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

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

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

16 (5) The appointment or election of an employee as an officer of a corporation, a partner in a
17 partnership, or a member in or a manager of a limited liability company for the purpose of exempting the
18 employee from coverage under this chapter does not entitle the officer, partner, member, or manager to
19 exemption from coverage.

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

30 **Section 6.** Section 39-71-433, MCA, is amended to read:

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

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

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

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

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

15 ~~(6)~~(2) A group ~~certified~~ formed under this section may purchase individual workers' compensation
16 insurance policies covering each member of the group from any insurer authorized to write workers'
17 compensation insurance in this state, except that the state fund, as defined in 39-71-2312, has the right
18 to refuse coverage of a group and its plan of operation but ~~cannot~~ may not refuse coverage to an individual
19 employer. Under an individual policy, the group is entitled to a premium or volume discount that would be
20 applicable to a policy of the combined premium amount of the individual policies.

21 ~~(7)~~(3) A group shall apportion any discount or policyholder dividend received on workers'
22 compensation insurance coverage among the members of the group according to a formula adopted in the
23 plan of operation for the group.

24 ~~(8)~~(4) A group shall adopt a plan of operation that must include the composition and selection of
25 a governing board, the methods for administering the group, the eligibility requirements to join the group,
26 and guidelines for the workers' compensation insurance coverage obtained by the group, including the
27 payment of premiums, the distribution of discounts, and the method for providing risk management. A
28 group shall file a copy of its plan of operation with the department."

29
30 **Section 7.** Section 39-71-503, MCA, is amended to read:

1 **"39-71-503. Administration of fund -- appropriation.** (1) The department shall administer the fund
 2 and shall pay from it all expenses of administering the fund, all loss adjustment expenses for claims of
 3 injured employees of uninsured employers, and all proper benefits to injured employees of uninsured
 4 employers.

5 (2) Surpluses and reserves may not be kept for the fund. The department shall make payments that
 6 it considers appropriate as funds become available from time to time. The payment of weekly disability
 7 benefits takes ~~preference~~ precedence over the payment of medical benefits. Lump-sum payments of future
 8 projected benefits, including impairment awards, may not be made from the fund. The board of investments
 9 shall invest the money of the fund, and the investment income must be deposited in the fund. ~~The cost of~~
 10 ~~administration of the fund must be paid out of the money in the fund.~~

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

13

14 **Section 8.** Section 39-71-504, MCA, is amended to read:

15 **"39-71-504. Funding of fund -- option for agreement between department and injured employee.**

16 The fund is funded in the following manner:

17 (1) (a) The department may require that the uninsured employer pay to the fund a penalty of either
 18 up to ~~double~~ treble the premium amount the employer would have paid on the payroll of the employer's
 19 workers in this state if the employer had been enrolled with compensation plan No. 3 for the period of time
 20 that the employer was uninsured or \$200 \$10,000, whichever is greater. ~~In determining the premium~~
 21 ~~amount for the calculation of the penalty under this subsection, the department shall make an assessment~~
 22 ~~on how much premium would have been paid on the employer's past 3-year payroll for periods within the~~
 23 ~~3 years when the employer was uninsured.~~

24 ~~(2)(b)~~ (b) The fund shall ~~receive~~ collect from an uninsured employer an amount equal to all benefits
 25 paid or to be paid from the fund to an injured employee of the uninsured employer.

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

29 ~~(4)~~(2) The department may enter into an agreement with the injured employee or the employee's
 30 beneficiaries to assign to the employee or the beneficiaries all or part of the funds ~~received~~ collected by the

1 department from the uninsured employer pursuant to subsection ~~(2)~~ (1)(b)."

2

3 **Section 9.** Section 39-71-704, MCA, is amended to read:

4 **"39-71-704. Payment of medical, hospital, and related services -- fee schedules and hospital rates**
5 **-- fee limitation.** (1) In addition to the compensation provided under this chapter and as an additional benefit
6 separate and apart from compensation benefits actually provided, the following must be furnished:

7 (a) After the happening of a compensable injury and subject to other provisions of this chapter, the
8 insurer shall furnish reasonable primary medical services for conditions resulting from the injury for those
9 periods as the nature of the injury or the process of recovery requires.

10 (b) The insurer shall furnish secondary medical services only upon a clear demonstration of
11 cost-effectiveness of the services in returning the injured worker to actual employment.

12 (c) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses,
13 prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in
14 39-71-119, arising out of and in the course of employment.

15 (d) The insurer shall reimburse a worker for reasonable travel expenses incurred in travel to a
16 medical provider for treatment of an injury only if the travel is incurred at the request of the insurer.
17 Reimbursement must be at the rates allowed for reimbursement of travel by state employees.

18 (e) Except for the repair or replacement of a prosthesis furnished as a result of an industrial injury,
19 the benefits provided for in this section terminate when they are not used for a period of 60 consecutive
20 months.

21 (f) Notwithstanding subsection (1)(a), the insurer may not be required to furnish, after the worker
22 has achieved medical stability, palliative or maintenance care except:

23 (i) when provided to a worker who has been determined to be permanently totally disabled and for
24 whom it is medically necessary to monitor administration of prescription medication to maintain the worker
25 in a medically stationary condition; or

26 (ii) when necessary to monitor the status of a prosthetic device.

27 (g) If the worker's treating physician believes that palliative or maintenance care that would
28 otherwise not be compensable under subsection (1)(f) is appropriate to enable the worker to continue
29 current employment or that there is a clear probability of returning the worker to employment, the treating
30 physician shall first request approval from the insurer for the treatment. If approval is not granted, the

1 treating physician may request approval from the department for the treatment. The department shall
2 appoint a panel of physicians, including at least one treating physician from the area of specialty in which
3 the injured worker is being treated, pursuant to rules that the department may adopt, to review the
4 proposed treatment and determine its appropriateness.

5 (h) Notwithstanding any other provisions of this chapter, the department, by rule and upon the
6 advice of the professional licensing boards of practitioners affected by the rule, may exclude from
7 compensability any medical treatment that the department finds to be unscientific, unproved, outmoded,
8 or experimental.

9 (2) The department shall annually establish a schedule of fees for medical nonhospital services
10 necessary for the treatment of injured workers. Charges submitted by providers must be the usual and
11 customary charges for nonworkers' compensation patients. The department may require insurers to submit
12 information to be used in establishing the schedule. ~~The department shall establish utilization and treatment~~
13 ~~standards for all medical services provided for under this chapter in consultation with the standing medical~~
14 ~~advisory committees provided for in 39-71-1109.~~

15 (3) The department shall establish rates for hospital services necessary for the treatment of injured
16 workers. Beginning January 1, 1995, the rates may be based on per diem or diagnostic-related groups. The
17 rates established by the department pursuant to this subsection may not be less than medicaid
18 reimbursement rates. Approved rates must be in effect for a period of 12 months from the date of approval.
19 The department may coordinate this ratesetting function with other public agencies that have similar
20 responsibilities. For services available in Montana, insurers are not required to pay facilities located outside
21 Montana rates that are greater than those allowed for services delivered in Montana.

22 (4) The percentage increase in medical costs payable under this chapter may not exceed the annual
23 percentage increase in the state's average weekly wage as defined in 39-71-116.

24 (5) Payment pursuant to reimbursement agreements between managed care organizations or
25 preferred provider organizations and insurers is not bound by the provisions of this section.

26 (6) Disputes between an insurer and a medical service provider regarding the amount of a fee for
27 medical services must be resolved by a hearing before the department upon written application of a party
28 to the dispute.

29 (7) (a) After the initial visit, the worker is responsible for 20%, but not to exceed \$10, of the cost
30 of each subsequent visit to a medical service provider for treatment relating to a compensable injury or

1 occupational disease, unless the visit is to a medical service provider in a managed care organization as
2 requested by the insurer or is a visit to a preferred provider as requested by the insurer.

3 (b) After the initial visit, the worker is responsible for \$25 of the cost of each subsequent visit to
4 a hospital emergency department for treatment relating to a compensable injury or occupational disease.

5 (c) "Visit", as used in subsections (7)(a) and (7)(b), means each time the worker obtains services
6 relating to a compensable injury or occupational disease from:

7 (i) a treating physician;

8 (ii) a physical therapist;

9 (iii) a psychologist; or

10 (iv) hospital outpatient services available in a nonhospital setting.

11 (d) A worker is not responsible for the cost of a subsequent visit pursuant to subsection (7)(a) if
12 the visit is an examination requested by an insurer pursuant to 39-71-605."

13

14 **Section 10.** Section 39-71-721, MCA, is amended to read:

15 **"39-71-721. Compensation for injury causing death -- limitation.** (1) (a) If an injured employee dies
16 and the injury was the proximate cause of the death, the beneficiary of the deceased is entitled to the same
17 compensation as though the death occurred immediately following the injury. A beneficiary's eligibility for
18 benefits commences after the date of death, and the benefit level is established as set forth in subsection
19 (2).

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

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

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

1 of injury.

2 (4) If the decedent leaves no beneficiary, a lump-sum payment of \$3,000 must be paid to the
3 decedent's surviving parent or parents.

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

9 (6) In all cases, benefits must be paid to beneficiaries.

10 (7) Benefits paid under this section may not be adjusted for cost of living as provided in
11 39-71-702."

12

13 **Section 11.** Section 39-71-741, MCA, is amended to read:

14 **"39-71-741. Compromise settlements and lump-sum payments.** (1) By written agreement filed
15 with the department, benefits under this chapter may be converted in whole or in part into a lump sum.
16 An agreement is subject to department approval. If the department fails to approve the agreement in
17 writing within 14 days of the filing with the department, the agreement is approved. The department shall
18 directly notify a claimant of a department order approving or disapproving a claimant's compromise or
19 lump-sum payment. Upon approval, the agreement constitutes a compromise and release settlement and
20 may not be reopened by the department. The department may approve an agreement to convert the
21 following benefits to a lump sum only under the following conditions:

22 (a) ~~Benefits under this chapter may be converted in whole or in part to a lump sum:~~

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

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

25 (b) ~~The agreement is subject to department approval. The department may disapprove an~~
26 ~~agreement under this section only if there is not a~~ there is a reasonable dispute over compensability;:

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

29 (2) ~~(a)(b) Permanent~~ permanent partial disability benefits ~~may be converted in whole or in part to~~
30 ~~a lump sum payment if:~~

1 ~~(i)~~ if an insurer has accepted initial liability for an injury; ~~and~~

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

3 ~~(b)~~ The total of any permanent partial lump-sum conversion in part that is awarded to a claimant
4 prior to the claimant’s final award may not exceed the anticipated award under 39-71-703.

5 ~~(c)~~ An agreement is subject to department approval. The department may disapprove an agreement
6 under this subsection (1)(b) only if the department determines that the lump-sum conversion amount is
7 inadequate. ~~If disapproved, the department shall set forth in detail the reasons for disapproval.~~

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

9 ~~(3)(c)~~ Permanent permanent total disability benefits may be converted in whole or in part to a lump
10 sum. ~~The~~ if the total of all lump-sum conversions in part that are awarded to a claimant ~~may do~~ not exceed
11 \$20,000. ~~A conversion may be made only upon the written application of the injured worker with the~~
12 ~~concurrence of the insurer. Approval of the lump-sum payment rests in the discretion of the department.~~
13 The approval or award of a lump-sum permanent total disability payment in whole or in part by the
14 department or court must be the exception. It may be given only if the worker has demonstrated financial
15 need that:

16 ~~(a)(i)~~ relates to:

17 ~~(A)~~ the necessities of life;

18 ~~(B)~~ an accumulation of debt incurred prior to the injury; or

19 ~~(C)~~ a self-employment venture that is considered feasible under criteria set forth by the
20 department; or

21 ~~(b)(ii)~~ arises subsequent to the date of injury or arises because of reduced income as a result of
22 the injury.

23 ~~(4)(2)~~ Any lump-sum conversion of benefits under this section must be converted to present value
24 using the rate prescribed under subsection ~~(5)(b)~~ (3)(b).

25 ~~(5)(3)~~ (a) An insurer may recoup any lump-sum payment amortized at the rate established by the
26 department, prorated biweekly over the projected duration of the compensation period.

27 (b) The rate adopted by the department must be based on the average rate for United States
28 10-year treasury bills in the previous calendar year.

29 (c) If the projected compensation period is the claimant’s lifetime, the life expectancy must be
30 determined by using the most recent table of life expectancy as published by the United States national

1 center for health statistics.

2 ~~(6) Subject to the other provisions of this section, the department shall approve or deny in writing~~
 3 ~~compromise settlements and lump-sum payments agreed to by workers and insurers. The department shall~~
 4 ~~directly notify a claimant of a department order approving or denying a claimant's compromise or lump-sum~~
 5 ~~payment.~~

6 ~~(7)(4)~~ A dispute between a claimant and an insurer regarding the conversion of biweekly payments
 7 into a lump-sum is considered a dispute, for which a mediator and the workers' compensation court have
 8 jurisdiction to make a determination. If an insurer and a claimant agree to a compromise and release
 9 settlement or a lump-sum payment but the department disapproves the agreement, the parties may request
 10 the workers' compensation court to review the department's decision."

11

12 **Section 12.** Section 39-71-2314, MCA, is amended to read:

13 **"39-71-2314. State fund —~~assigned risk plan~~ subject to laws applying to state agencies.** ~~(1) If~~
 14 ~~an assigned risk plan is established and administered pursuant to 39-71-431, the state fund is subject to~~
 15 ~~the premium tax liability for insurers as provided in 33-2-705 based on earned premium and paid on revenue~~
 16 ~~from the previous fiscal year.~~

17 ~~(2)~~ The state fund is subject to laws that generally apply to state agencies, including but not limited
 18 to Title 2, chapters 2, 3, 4 (only as provided in 39-71-2316), and 6, and Title 5, chapter 13. The state fund
 19 is not exempt from a law that applies to state agencies unless that law specifically exempts the state fund
 20 by name and clearly states that it is exempt from that law."

21

22 **NEW SECTION. Section 13. Transfer of deposits and surplus funds.** (1) All deposits held in trust
 23 by the department of labor and industry pursuant to 39-71-2206 must be returned to the insurer who made
 24 the deposit on or before December 31, 1997.

25 (2) Any surplus funds remaining in the underinsured employers' fund on [the effective date of this
 26 act] must be deposited in the uninsured employers' fund provided for in 39-71-502.

27

28 **NEW SECTION. Section 14. Repealer.** Sections 39-71-431, 39-71-531, 39-71-532, 39-71-533,
 29 39-71-534, 39-71-1013, 39-71-1109, and 39-71-2206, MCA, are repealed.

30

1 NEW SECTION. Section 15. Severability. If a part of [this act] is invalid, all valid parts that are
2 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
3 applications, the part remains in effect in all valid applications that are severable from the invalid
4 applications.

5

6 NEW SECTION. Section 16. Effective date. [This act] is effective July 1, 1997.

7

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0349, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising workers' compensation regulatory functions of the Department of Labor and Industry; permitting an insurer access to the workers' compensation database system; eliminating the requirement that the Department of Labor and Industry determine wages paid in property other than money; requiring that the independent contractor exemption process be self-funding; eliminating the Department of Labor and Industry certification of trade groups that wish to purchase group insurance; eliminating obsolete references to the assigned risk pool; clarifying the administration of the uninsured employers' fund; increasing the penalty against uninsured employers; eliminating the underinsured employer's fund; clarifying the procedures relating to compromise settlements and lump-sum conversions; clarifying rehabilitation plan agreements; eliminating medical advisory committees; eliminating plan 2 deposit requirements; providing for refund of plan 2 insurer deposits and the transfer of surplus funds in the underinsured employers' fund to the uninsured employers' fund.

ASSUMPTIONS:

State Fund:

1. The workers' compensation database system at the Department of Labor and Industry (DLI) would enable insurers to receive current and prior years claim information on a claimant. This would assist the insurer in determining compensability and assist with the detection and prevention of fraud. This information would be provided to insurers, including those licensed to transact insurance in other states. There is a potential fiscal impact to the State Fund to access this information electronically. The access costs are currently unknown.
2. The proposed legislation changes the reporting on the information compiled from annual to biennial, which would have no fiscal impact to the State Fund.
3. There is potential for fiscal impact if the information obtained from the workers' compensation database system is misused. The State Fund would not misuse or unlawfully disseminate database information. Therefore, no fiscal impact to the State Fund.
4. The DLI would no longer be required, under 39-71-303, MCA, to determine wages equivalence in property. All disputes regarding wage equivalence would be directed to dispute resolution as provided for under the Workers' Compensation Act.
5. The fee for Workers' Compensation Act exemptions applied for through the DLI would no longer be established statutorily at \$25. The fee for application and renewal would be determined by the DLI. The fee would be established at a level sufficient to fully fund the cost of administering the program. Insurers would not be charged, through the administrative assessment, to pay for costs associated with exempting independent contractors which are not covered by the application fees. This would not have a fiscal impact on the State Fund. In fiscal 1997 the State Fund was not charged under the administrative assessment for costs associated with the exemptions. In fiscal 1996 the State Fund was assessed \$64,850 for this purpose.
6. Under the proposed legislation the DLI would no longer certify groups. The fiscal 1997 administrative assessment charged the State Fund \$1,193 for this purpose.
7. The State Fund maintains the right to refuse coverage of a group but may not refuse coverage to an individual employer.
8. There would be no fiscal impact to the State Fund as a result of the changes to the uninsured employers language in Section 8 of the proposed legislation. The State Fund was not assessed for this in fiscal 1997 but was assessed \$44,149 for this purpose in fiscal 1996.

(Continued)

Dave Lewis 2-18-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Thomas Keating 2/18/97
THOMAS KEATING, PRIMARY SPONSOR DATE

Fiscal Note for SB0349, as introduced

SB 349

(continued)

9. The proposed legislation eliminates the medical advisory committee which assists the DLI in determining standards for medical services providers. The State Fund was charged \$59,981 in the fiscal 1997 administrative assessment for medical regulation. The cost associated with the committee and establishing the standards are potential future savings; however, the fiscal impact is unknown.
10. Under the proposed legislation the DLI would have 14 days to disapprove compromise settlements and lump-sum settlements. If the DLI does not disapprove the compromise settlement or lump-sum settlement within 14 days the compromise settlement or lump-sum settlement is considered approved. There is potential for savings to State Fund benefit payments; however, the fiscal impact is unknown.

Department of Labor and Industry:

11. SB 349 changes the penalties that the Department of Labor and Industry may assess for uninsured employers' fund (UEF).
12. Additional staff time would be required to educate the public on the changes. Pamphlets and other forms of public information would be re-written to explain the changes. 2,500 copies of the pamphlets would be required for current level uninsured employers (2,500 x .035/pamphlet = \$88), plus postage and handling costs (2,500 x \$0.45 = \$1,125). In addition 15,000 pamphlets would be printed for use in Small Business Clinics and to respond to public requests (15,000 x .035/pamphlet = \$525). (\$88 + \$1,125 + \$525 = \$1,738).
13. Repeal of 39-71-2206, 39-71-433 and 39-71-704, MCA, eliminates a 0.80 grade 14 FTE (\$25,550 in fiscal 1998), and a 1.00 FTE (\$31,947 in fiscal 1999). Per diem reduction of \$1,200 in each year and operating costs reduction of \$11,072 in fiscal 1998 and \$18,524 in fiscal 1999.
14. The proposed legislation enables the Independent Contractor (IC) program to charge an amount sufficient to fully fund the cost to administer the program.
15. The full impact of the scope of the amendments to Section 3 (page 3, lines 27-28) is unclear. DLI interpretation is that the department would require the ability to contract for programming and database maintenance and a server expansion for a dial-in data access option. One contracted programmer would be needed for five months (867 hours) at \$43.87 per hour for front-end programming (\$38,035), and a second contracted programmer would be needed for five months at \$64.78 per hour for back-end programming (\$56,164). Contracted services for ongoing maintenance would cost \$16,843 for the balance of fiscal 1998 (260 hours x \$64.78 per hour) and \$33,686 in fiscal 1999 and thereafter. An additional file server would be needed at a cost of \$100,000, and a 0.25 FTE network administrator to keep the new server available for data searches by insurers, at a cost of \$8,694 for salary and benefits, and \$2,945 for operating expenses.

FISCAL IMPACT:

State Fund:

There is potential for savings to the State Fund as a result of the proposed legislation; however, the fiscal impact cannot be determined.

Department of Labor and Industry:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
<u>Expenditures:</u>		
FTE	(0.55)	(0.75)
Personal Services	(16,856)	(23,253)
Per diem	(1,200)	(1,200)
Operating Expenses	104,653	18,107
Equipment	<u>100,000</u>	<u>0</u>
Total	186,597	(6,346)
<u>Funding:</u>		
UEF (06055)	1,474	0
WC (02455)	<u>185,123</u>	<u>(6,346)</u>
Total	186,597	(6,346)
<u>Revenues:</u>		
WC (02455)	218,545	10,497

(Continued)

TECHNICAL NOTES:

1. SB 41 impacts the under-insured employers as does this proposed legislation.
2. Section 5(3)(b) requires the DLI to set the fees at the amount sufficient to fully fund the costs of administering the program. However, Section 5(3)(d) sets the renewal application rate at \$25.
3. Imposing a 14-day time limit on the settlement process (section 11(1)) ignores common problems in mailing and other processing.

1 SENATE BILL NO. 349

2 INTRODUCED BY KEATING, SIMON

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE WORKERS' COMPENSATION REGULATORY
5 FUNCTIONS OF THE DEPARTMENT OF LABOR AND INDUSTRY; PERMITTING AN INSURER ACCESS TO
6 THE WORKERS' COMPENSATION DATA BASE SYSTEM; ELIMINATING THE REQUIREMENT THAT THE
7 DEPARTMENT OF LABOR AND INDUSTRY DETERMINE WAGES PAID IN PROPERTY OTHER THAN MONEY;
8 ~~REQUIRING THAT THE INDEPENDENT CONTRACTOR EXEMPTION PROCESS BE SELF-FUNDING;~~
9 ELIMINATING DEPARTMENT OF LABOR AND INDUSTRY CERTIFICATION OF TRADE GROUPS THAT WISH
10 TO PURCHASE GROUP INSURANCE; ELIMINATING OBSOLETE REFERENCES TO THE ASSIGNED RISK
11 POOL; CLARIFYING THE ADMINISTRATION OF THE UNINSURED EMPLOYERS' FUND; ~~INCREASING THE~~
12 ~~PENALTY AGAINST UNINSURED EMPLOYERS;~~ ELIMINATING THE UNDERINSURED EMPLOYERS' FUND;
13 CLARIFYING THE PROCEDURES RELATING TO COMPROMISE SETTLEMENTS AND LUMP-SUM
14 CONVERSIONS; CLARIFYING REHABILITATION PLAN AGREEMENTS; ELIMINATING MEDICAL ADVISORY
15 COMMITTEES; ELIMINATING PLAN NO. 2 DEPOSIT REQUIREMENTS; PROVIDING FOR REFUND OF PLAN
16 NO. 2 INSURER DEPOSITS AND THE TRANSFER OF SURPLUS FUNDS IN THE UNDERINSURED
17 EMPLOYERS' FUND TO THE UNINSURED EMPLOYERS' FUND; PROVIDING THAT AN INDEPENDENT
18 CONTRACTOR EXEMPTION REMAINS IN EFFECT FOR 3 YEARS; AMENDING SECTIONS 20-15-403,
19 33-2-119, 39-71-225, 39-71-303, 39-71-401, 39-71-433, 39-71-503, 39-71-504, 39-71-704, 39-71-721,
20 39-71-741, AND 39-71-2314, MCA; REPEALING SECTIONS 39-71-431, 39-71-531, 39-71-532,
21 39-71-533, 39-71-534, 39-71-1013, 39-71-1109, AND 39-71-2206, MCA; AND PROVIDING AN
22 EFFECTIVE DATE."

23

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

25

26 **Section 1.** Section 20-15-403, MCA, is amended to read:

27 **"20-15-403. Applications of other school district provisions.** (1) When the term "school district"
28 appears in the following sections outside of Title 20, the term includes community college districts and the
29 provisions of those sections applicable to school districts apply to community college districts: 2-9-101,
30 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123,

1 7-8-2214, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101,
 2 15-6-204, 15-16-101, 15-16-605, 15-70-301, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213,
 3 17-7-201, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-404, 18-2-432, 18-5-205, 19-1-102,
 4 19-1-811, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304,
 5 39-71-116, 39-71-117, 39-71-2106, ~~39-71-2206~~, 40-6-237, 41-3-1132, 49-3-101, 49-3-102, 53-20-304,
 6 77-3-321, 82-10-201, 82-10-202, 82-10-203, 85-7-2158, and 90-6-208 and Rules 4D(2)(g) and 15(c),
 7 M.R.Civ.P., as amended.

8 (2) When the term "school district" appears in a section outside of Title 20 but the section is not
 9 listed in subsection (1), the school district provision does not apply to a community college district."
 10

11 **Section 2.** Section 33-2-119, MCA, is amended to read:

12 **"33-2-119. Suspension or revocation for violations and special grounds.** (1) The commissioner
 13 may, ~~in his discretion~~, suspend or revoke an insurer's certificate of authority if, after a hearing ~~thereon~~, ~~he~~
 14 the commissioner finds that the insurer has:

15 (a) violated any lawful order of the commissioner or any provision of this code other than those
 16 for which suspension or revocation is mandatory;

17 (b) reinsured more than 90% of its risks resident, located, or to be performed in Montana, in
 18 another insurer. In considering suspension or revocation, the commissioner shall consider all relevant
 19 factors, including whether:

20 (i) after the reinsurance transaction all parties will be in compliance with Montana law; and

21 (ii) the transaction will substantially reduce protection and service to Montana policyholders;

22 ~~(c) failed to accept an equitable apportionment of assigned coverage as required by 39-71-431.~~

23 (2) The commissioner shall, after a hearing ~~thereon~~, suspend or revoke an insurer's certificate of
 24 authority if ~~he~~ the commissioner finds that the insurer:

25 (a) is in unsound condition or in ~~such a~~ such condition or using ~~such~~ such methods or practices in the conduct
 26 of its business ~~as to~~ that render its further transaction of insurance in Montana injurious or hazardous to
 27 its policyholders or to the public;

28 (b) has refused to be examined or to produce its accounts, records, and files for examination or
 29 if any of its officers have refused to give information with respect to its affairs, when required by the
 30 commissioner;

1 (c) has failed to pay any final judgment rendered against it in Montana within 30 days after the
2 judgment became final;

3 (d) with such frequency as to indicate its general business practice in Montana, has without just
4 cause refused to pay a proper claim arising under its policies, whether the claim is in favor of an insured
5 or is in favor of a third person with respect to the liability of an insured to the third person, or without just
6 cause compels the insured or claimant to accept less than the amount due ~~him~~ the claimant or to employ
7 attorneys or to bring suit against the insurer or insured to secure full payment or settlement of the claims;

8 (e) is affiliated with and under the same general management or interlocking directorate or
9 ownership as another insurer ~~which~~ that transacts direct insurance in Montana without having a certificate
10 of authority ~~therefor~~, except as permitted as to a surplus lines insurer under part 3 of this chapter.

11 (3) The commissioner may, ~~in his discretion and~~ without advance notice or a hearing ~~thereon~~,
12 immediately suspend the certificate of authority of any insurer as to which proceedings for receivership,
13 conservatorship, rehabilitation, or other delinquency proceedings have been commenced in any state."
14

15 **Section 3.** Section 39-71-225, MCA, is amended to read:

16 **"39-71-225. Workers' compensation data base system.** (1) The department shall develop a
17 workers' compensation data base system to generate management information about Montana's workers'
18 compensation system. The data base system must be used to collect and compile information from insurers,
19 employers, medical providers, claimants, adjusters, rehabilitation providers, and the legal profession.

20 (2) Data collected must be used to provide:

21 (a) management information to the legislative and executive branches for the purpose of making
22 policy and management decisions, including but not limited to:

23 ~~(a)(i)~~ performance information to enable the state to enact remedial efforts to ensure quality,
24 control abuse, and enhance cost control;

25 ~~(b)(ii)~~ information on medical, indemnity, and rehabilitation costs, utilization, and trends; ~~and~~

26 ~~(c)(iii)~~ information on litigation and attorney involvement for the purpose of identifying trends,
27 problem areas, and the costs of legal involvement; and

28 (b) current and prior claim information to insurers, including insurers authorized to transact
29 insurance in other states, to determine claims liability and fraud investigation and prosecution. IN

30 ENSURING THAT THE RIGHT OF INDIVIDUAL PRIVACY IS NOT INFRINGED WITHOUT A SHOWING OF

1 COMPELLING STATE INTEREST, THE INFORMATION TO BE RELEASED, UPON WRITTEN REQUEST BY AN
 2 AT-RISK INSURER, MAY BE ONLY THE CLAIMANT'S NAME, CLAIMANT'S IDENTIFICATION NUMBER,
 3 PRIOR CLAIM NUMBER, DATE OF INJURY, BODY PART INVOLVED, AND NAME AND ADDRESS OF THE
 4 INSURER AND CLAIM ADJUSTER ON EACH CLAIM FILED. INFORMATION OBTAINED BY AN INSURER
 5 PURSUANT TO THIS SECTION MUST REMAIN CONFIDENTIAL AND MAY NOT BE DISCLOSED TO A THIRD
 6 PARTY EXCEPT TO THE EXTENT NECESSARY FOR THE INVESTIGATION AND PROSECUTION OF FRAUD,
 7 CLAIMS MANAGEMENT, OR CLAIMS PROCESSING.

8 ~~(2)(3)~~ The department is authorized to collect from insurers, employers, medical providers, the legal
 9 profession, and others the information necessary to generate the workers' compensation data base system.

10 ~~(3)(4)~~ The workers' compensation data base system must be designed in accordance with the
 11 following principles:

12 (a) avoidance of duplication and inconsistency;

13 (b) reasonable availability of data elements;

14 (c) value of information collected to be commensurate with the cost of retrieving the collected
 15 information;

16 (d) uniformity to permit efficiency of collection and to allow interstate comparisons;

17 (e) a workable mechanism to ensure the accuracy of the data collected and to protect the
 18 confidentiality of collected data;

19 (f) reasonable availability of the data at a fair cost to the user;

20 (g) a broad application to plan No. 1, plan No. 2, and plan No. 3 insurers;

21 (h) compatibility with electronic data reporting;

22 (i) reporting procedures that can be handled through private data collection systems that adhere
 23 to the provisions of subsections ~~(3)(a)~~ (4)(a) through ~~(3)(h)~~ (4)(h);

24 (j) implementation of reporting requirements that allow reasonable lead time for compliance.

25 ~~(4)(5) (a) The department shall take all steps necessary to have the workers' compensation data~~
 26 ~~base system fully operational by July 1, 1995.~~

27 ~~(b) After the workers' compensation data base system is operational, the~~ The department shall
 28 ~~publish an annual~~ a biennial report and ~~may publish quarterly reports~~ on the information compiled.

29 (6) Users of information obtained from the workers' compensation data base under this section are
 30 liable for damages arising from misuse or unlawful dissemination of data base information."

1 **Section 4.** Section 39-71-303, MCA, is amended to read:

2 "**39-71-303. Work paid for in property other than money** ~~wages to be determined by~~
3 ~~department.~~ ~~Where any~~ When an employer procures any work to be done, payment for which ~~is to be~~ was
4 made in property other than money or its equivalent and the value of ~~which the~~ property is speculative or
5 intangible, the wages of the employees receiving such the compensation ~~shall be determined by the~~
6 ~~department in accordance with~~ must be the going wage for the same or similar work in the district or
7 locality where the ~~same is to be~~ work was performed."

8

9 **Section 5.** Section 39-71-401, MCA, is amended to read:

10 "**39-71-401. Employments covered and employments exempted.** (1) Except as provided in
11 subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to
12 all employees, as defined in 39-71-118. An employer who has any employee in service under any
13 appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the
14 provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers'
15 Compensation Act is subject to and bound by the compensation plan that has been elected by the
16 employer.

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

- 19 (a) household and domestic employment;
- 20 (b) casual employment as defined in 39-71-116;
- 21 (c) employment of a dependent member of an employer's family for whom an exemption may be
22 claimed by the employer under the federal Internal Revenue Code;
- 23 (d) employment of sole proprietors, working members of a partnership, or working members of a
24 member-managed limited liability company, except as provided in subsection (3);
- 25 (e) employment of a broker or ~~salesman~~ salesperson performing under a license issued by the board
26 of realty regulation;
- 27 (f) employment of a direct seller as defined in 26 U.S.C. 3508;
- 28 (g) employment for which a rule of liability for injury, occupational disease, or death is provided
29 under the laws of the United States;
- 30 (h) employment of a person performing services in return for aid or sustenance only, except

1 employment of a volunteer under 67-2-105;

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

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

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

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

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

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

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

20 (n) employment of a jockey performing under a license issued by the board of horseracing from the
21 time the jockey reports to the scale room prior to a race through the time the jockey is weighed out after
22 a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing,
23 that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

24 (o) employment of an employer's spouse for whom an exemption based on marital status may be
25 claimed by the employer under 26 U.S.C. 7703;

26 (p) a person who performs services as a petroleum land professional. As used in this subsection,
27 a "petroleum land professional" is a person who:

28 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in
29 negotiating a business agreement for the exploration or development of minerals;

30 (ii) is paid for services that are directly related to the completion of a contracted specific task rather

1 than on an hourly wage basis; and

2 (iii) performs all services as an independent contractor pursuant to a written contract.

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

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

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

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

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

15 (3) (a) A sole proprietor, a working member of a partnership, or a working member of a
16 member-managed limited liability company who represents to the public that the person is an independent
17 contractor shall elect to be bound personally and individually by the provisions of compensation plan No.
18 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

19 (b) The application must be made in accordance with the rules adopted by the department. ~~There~~
20 ~~is no~~ THE THERE IS NO fee for the initial INITIAL application. ~~Any subsequent application and any renewal.~~
21 ANY SUBSEQUENT APPLICATION must be accompanied by a ~~\$25 application fee determined by the~~
22 ~~department in an amount that is sufficient to fully fund the cost of administering the program~~
23 ACCOMPANIED BY A \$25 APPLICATION FEE. The application fee must be deposited in the administration
24 fund established in 39-71-201 ~~to offset the costs of administering the program~~ TO OFFSET THE COSTS
25 OF ADMINISTERING THE PROGRAM.

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

28 (d) The exemption, if approved, remains in effect for ~~1 year~~ 3 YEARS following the date of the
29 department's approval. To maintain the independent contractor status, an independent contractor shall
30 ~~annually~~ EVERY 3 YEARS submit a renewal application. A renewal application must be submitted for all

1 independent contractor exemptions approved as of July 1, 1995, or thereafter. The renewal application and
2 the \$25 renewal application fee must be received by the department at least 30 days prior to the
3 anniversary date of the previously approved exemption.

4 (e) A person who makes a false statement or misrepresentation concerning that person's status
5 as an exempt independent contractor is subject to a civil penalty of \$1,000. The department may impose
6 the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured
7 employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.

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

12 (4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its
13 employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private
14 corporation, or a manager-managed limited liability company may elect coverage for its corporate officers
15 or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following
16 manner:

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

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

23 (b) If the employer changes plans or insurers, the employer's previous election is not effective and
24 the employer shall again serve notice to its insurer and to its board of directors or the management
25 organization of the manager-managed limited liability company if the employer elects to be bound.

26 (5) The appointment or election of an employee as an officer of a corporation, a partner in a
27 partnership, or a member in or a manager of a limited liability company for the purpose of exempting the
28 employee from coverage under this chapter does not entitle the officer, partner, member, or manager to
29 exemption from coverage.

30 (6) Each employer shall post a sign in the workplace at the locations where notices to employees

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

10 **Section 6.** Section 39-71-433, MCA, is amended to read:

11 **"39-71-433. Group purchase of workers' compensation insurance.** (1) ~~On receiving approval of~~
 12 ~~the department, two~~ Two or more business entities may join together to form a group to purchase individual
 13 workers' compensation insurance policies covering each member of the group.

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

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

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

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

25 ~~(6)~~(2) A group ~~certified~~ formed under this section may purchase individual workers' compensation
 26 insurance policies covering each member of the group from any insurer authorized to write workers'
 27 compensation insurance in this state, except that the state fund, as defined in 39-71-2312, has the right
 28 to refuse coverage of a group and its plan of operation but ~~cannot~~ may not refuse coverage to an individual
 29 employer. Under an individual policy, the group is entitled to a premium or volume discount that would be
 30 applicable to a policy of the combined premium amount of the individual policies.

1 ~~(7)(3)~~ A group shall apportion any discount or policyholder dividend received on workers' compensation insurance coverage among the members of the group according to a formula adopted in the plan of operation for the group.

2 ~~(8)(4)~~ A group shall adopt a plan of operation that must include the composition and selection of a governing board, the methods for administering the group, the eligibility requirements to join the group, and guidelines for the workers' compensation insurance coverage obtained by the group, including the payment of premiums, the distribution of discounts, and the method for providing risk management. A group shall file a copy of its plan of operation with the department."

9

10 **Section 7.** Section 39-71-503, MCA, is amended to read:

11 "**39-71-503. Administration of fund -- appropriation.** (1) The department shall administer the fund and shall pay from it all expenses of administering the fund, all loss adjustment expenses for claims of injured employees of uninsured employers, and all proper benefits to injured employees of uninsured employers.

12 (2) Surpluses and reserves may not be kept for the fund. The department shall make payments that it considers appropriate as funds become available from time to time. The payment of weekly disability benefits takes ~~preference~~ precedence over the payment of medical benefits. Lump-sum payments of future projected benefits, including impairment awards, may not be made from the fund. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund. ~~The cost of administration of the fund must be paid out of the money in the fund.~~

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

23

24 **Section 8.** Section 39-71-504, MCA, is amended to read:

25 "**39-71-504. Funding of fund -- option for agreement between department and injured employee.**

26 The fund is funded in the following manner:

27 (1) (a) The department may require that the uninsured employer pay to the fund a penalty of either up to ~~double treble~~ DOUBLE the premium amount the employer would have paid on the payroll of the employer's workers in this state if the employer had been enrolled with compensation plan No. 3 for the ~~period of time that the employer was uninsured~~ or ~~\$200~~ \$10,000 ~~\$200~~, whichever is greater. IN

1 DETERMINING THE PREMIUM AMOUNT FOR THE CALCULATION OF THE PENALTY UNDER THIS
 2 SUBSECTION, THE DEPARTMENT SHALL MAKE AN ASSESSMENT BASED ON HOW MUCH PREMIUM
 3 WOULD HAVE BEEN PAID ON THE EMPLOYER'S PAST 3-YEAR PAYROLL FOR PERIODS WITHIN THE 3
 4 YEARS WHEN THE EMPLOYER WAS UNINSURED. ~~In determining the premium amount for the calculation~~
 5 ~~of the penalty under this subsection, the department shall make an assessment on how much premium~~
 6 ~~would have been paid on the employer's past 3-year payroll for periods within the 3 years when the~~
 7 ~~employer was uninsured.~~

8 ~~(2)(b)~~ The fund shall ~~receive~~ collect from an uninsured employer an amount equal to all benefits
 9 paid or to be paid from the fund to an injured employee of the uninsured employer.

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

13 (2) THE DEPARTMENT MAY DETERMINE THAT THE \$1,000 ASSESSMENTS THAT ARE CHARGED
 14 AGAINST AN INSURER IN EACH CASE OF AN INDUSTRIAL DEATH UNDER 39-71-902(1) MUST BE PAID
 15 TO THE UNINSURED EMPLOYERS' FUND RATHER THAN THE SUBSEQUENT INJURY FUND.

16 ~~(4)(2)(3)~~ The department may enter into an agreement with the injured employee or the employee's
 17 beneficiaries to assign to the employee or the beneficiaries all or part of the funds ~~received~~ collected by the
 18 department from the uninsured employer pursuant to subsection ~~(2)~~ (1)(b)."

19

20 **Section 9.** Section 39-71-704, MCA, is amended to read:

21 **"39-71-704. Payment of medical, hospital, and related services -- fee schedules and hospital rates**
 22 **-- fee limitation.** (1) In addition to the compensation provided under this chapter and as an additional benefit
 23 separate and apart from compensation benefits actually provided, the following must be furnished:

24 (a) After the happening of a compensable injury and subject to other provisions of this chapter, the
 25 insurer shall furnish reasonable primary medical services for conditions resulting from the injury for those
 26 periods as the nature of the injury or the process of recovery requires.

27 (b) The insurer shall furnish secondary medical services only upon a clear demonstration of
 28 cost-effectiveness of the services in returning the injured worker to actual employment.

29 (c) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses,
 30 prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in

1 39-71-119, arising out of and in the course of employment.

2 (d) The insurer shall reimburse a worker for reasonable travel expenses incurred in travel to a
3 medical provider for treatment of an injury only if the travel is incurred at the request of the insurer.
4 Reimbursement must be at the rates allowed for reimbursement of travel by state employees.

5 (e) Except for the repair or replacement of a prosthesis furnished as a result of an industrial injury,
6 the benefits provided for in this section terminate when they are not used for a period of 60 consecutive
7 months.

8 (f) Notwithstanding subsection (1)(a), the insurer may not be required to furnish, after the worker
9 has achieved medical stability, palliative or maintenance care except:

10 (i) when provided to a worker who has been determined to be permanently totally disabled and for
11 whom it is medically necessary to monitor administration of prescription medication to maintain the worker
12 in a medically stationary condition; or

13 (ii) when necessary to monitor the status of a prosthetic device.

14 (g) If the worker's treating physician believes that palliative or maintenance care that would
15 otherwise not be compensable under subsection (1)(f) is appropriate to enable the worker to continue
16 current employment or that there is a clear probability of returning the worker to employment, the treating
17 physician shall first request approval from the insurer for the treatment. If approval is not granted, the
18 treating physician may request approval from the department for the treatment. The department shall
19 appoint a panel of physicians, including at least one treating physician from the area of specialty in which
20 the injured worker is being treated, pursuant to rules that the department may adopt, to review the
21 proposed treatment and determine its appropriateness.

22 (h) Notwithstanding any other provisions of this chapter, the department, by rule and upon the
23 advice of the professional licensing boards of practitioners affected by the rule, may exclude from
24 compensability any medical treatment that the department finds to be unscientific, unproved, outmoded,
25 or experimental.

26 (2) The department shall annually establish a schedule of fees for medical nonhospital services
27 necessary for the treatment of injured workers. Charges submitted by providers must be the usual and
28 customary charges for nonworkers' compensation patients. The department may require insurers to submit
29 information to be used in establishing the schedule. ~~The department shall establish utilization and treatment~~
30 ~~standards for all medical services provided for under this chapter in consultation with the standing medical~~

1 ~~advisory committees provided for in 39-71-1109.~~

2 (3) The department shall establish rates for hospital services necessary for the treatment of injured
3 workers. Beginning January 1, 1995, the rates may be based on per diem or diagnostic-related groups. The
4 rates established by the department pursuant to this subsection may not be less than medicaid
5 reimbursement rates. Approved rates must be in effect for a period of 12 months from the date of approval.
6 The department may coordinate this ratesetting function with other public agencies that have similar
7 responsibilities. For services available in Montana, insurers are not required to pay facilities located outside
8 Montana rates that are greater than those allowed for services delivered in Montana.

9 (4) The percentage increase in medical costs payable under this chapter may not exceed the annual
10 percentage increase in the state's average weekly wage as defined in 39-71-116.

11 (5) Payment pursuant to reimbursement agreements between managed care organizations or
12 preferred provider organizations and insurers is not bound by the provisions of this section.

13 (6) Disputes between an insurer and a medical service provider regarding the amount of a fee for
14 medical services must be resolved by a hearing before the department upon written application of a party
15 to the dispute.

16 (7) (a) After the initial visit, the worker is responsible for 20%, but not to exceed \$10, of the cost
17 of each subsequent visit to a medical service provider for treatment relating to a compensable injury or
18 occupational disease, unless the visit is to a medical service provider in a managed care organization as
19 requested by the insurer or is a visit to a preferred provider as requested by the insurer.

20 (b) After the initial visit, the worker is responsible for \$25 of the cost of each subsequent visit to
21 a hospital emergency department for treatment relating to a compensable injury or occupational disease.

22 (c) "Visit", as used in subsections (7)(a) and (7)(b), means each time the worker obtains services
23 relating to a compensable injury or occupational disease from:

24 (i) a treating physician;

25 (ii) a physical therapist;

26 (iii) a psychologist; or

27 (iv) hospital outpatient services available in a nonhospital setting.

28 (d) A worker is not responsible for the cost of a subsequent visit pursuant to subsection (7)(a) if
29 the visit is an examination requested by an insurer pursuant to 39-71-605."

30

1 **Section 10.** Section 39-71-721, MCA, is amended to read:

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

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

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

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

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

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

26 (6) In all cases, benefits must be paid to beneficiaries.

27 (7) Benefits paid under this section may not be adjusted for cost of living as provided in
28 39-71-702."

29

30 **Section 11.** Section 39-71-741, MCA, is amended to read:

1 **"39-71-741. Compromise settlements and lump-sum payments.** (1) By written agreement filed
 2 with the department, benefits under this chapter may be converted in whole or in part into a lump sum.
 3 An agreement is subject to department approval. If the department fails to approve OR DISAPPROVE the
 4 agreement in writing within 14 days of the filing with the department, the agreement is approved. The
 5 department shall directly notify a claimant of a department order approving or disapproving a claimant's
 6 compromise or lump-sum payment. Upon approval, the agreement constitutes a compromise and release
 7 settlement and may not be reopened by the department. The department may approve an agreement to
 8 convert the following benefits to a lump sum only under the following conditions:

9 (a) ~~Benefits under this chapter may be converted in whole or in part to a lump sum:~~

10 ~~(i) all benefits if a claimant and an insurer dispute the initial compensability of an injury; and~~

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

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

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

16 ~~(2) (a)(b) Permanent permanent partial disability benefits may be converted in whole or in part to~~
 17 ~~a lump sum payment if:~~

18 ~~(i) if an insurer has accepted initial liability for an injury; and~~

19 ~~(ii) the claimant and the insurer agree to a lump sum conversion.~~

20 ~~(b) The total of any permanent partial lump-sum conversion in part that is awarded to a claimant~~
 21 ~~prior to the claimant's final award may not exceed the anticipated award under 39-71-703.~~

22 ~~(c) An agreement is subject to department approval. The department may disapprove an agreement~~
 23 ~~under this subsection (1)(b) only if the department determines that the lump-sum conversion amount is~~
 24 ~~inadequate. If disapproved, the department shall set forth in detail the reasons for disapproval.~~

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

26 ~~(3)(c) Permanent permanent total disability benefits may be converted in whole or in part to a lump~~
 27 ~~sum. The if the total of all lump-sum conversions in part that are awarded to a claimant may do not exceed~~
 28 ~~\$20,000. A conversion may be made only upon the written application of the injured worker with the~~
 29 ~~concurrence of the insurer. Approval of the lump sum payment rests in the discretion of the department.~~

30 The approval or award of a lump-sum permanent total disability payment in whole or in part by the

1 department or court must be the exception. It may be given only if the worker has demonstrated financial
2 need that:

3 ~~(a)~~(i) relates to:

4 ~~(i)~~(A) the necessities of life;

5 ~~(ii)~~(B) an accumulation of debt incurred prior to the injury; or

6 ~~(iii)~~(C) a self-employment venture that is considered feasible under criteria set forth by the
7 department; or

8 ~~(b)~~(ii) arises subsequent to the date of injury or arises because of reduced income as a result of
9 the injury.

10 ~~(4)~~(2) Any lump-sum conversion of benefits under this section must be converted to present value
11 using the rate prescribed under subsection ~~(5)~~(b) ~~(3)~~(b).

12 ~~(5)~~(3) (a) An insurer may recoup any lump-sum payment amortized at the rate established by the
13 department, prorated biweekly over the projected duration of the compensation period.

14 (b) The rate adopted by the department must be based on the average rate for United States
15 10-year treasury bills in the previous calendar year.

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

19 ~~(6) Subject to the other provisions of this section, the department shall approve or deny in writing~~
20 ~~compromise settlements and lump-sum payments agreed to by workers and insurers. The department shall~~
21 ~~directly notify a claimant of a department order approving or denying a claimant's compromise or lump-sum~~
22 ~~payment.~~

23 ~~(7)~~(4) A dispute between a claimant and an insurer regarding the conversion of biweekly payments
24 into a lump-sum is considered a dispute, for which a mediator and the workers' compensation court have
25 jurisdiction to make a determination. If an insurer and a claimant agree to a compromise and release
26 settlement or a lump-sum payment but the department disapproves the agreement, the parties may request
27 the workers' compensation court to review the department's decision."
28

29 **Section 12.** Section 39-71-2314, MCA, is amended to read:

30 "**39-71-2314. State fund — assigned risk plan subject to laws applying to state agencies.** ~~(1) If~~

1 ~~an assigned risk plan is established and administered pursuant to 39-71-431, the state fund is subject to~~
2 ~~the premium tax liability for insurers as provided in 33-2-705 based on earned premium and paid on revenue~~
3 ~~from the previous fiscal year.~~

4 (2) The state fund is subject to laws that generally apply to state agencies, including but not limited
5 to Title 2, chapters 2, 3, 4 (only as provided in 39-71-2316), and 6, and Title 5, chapter 13. The state fund
6 is not exempt from a law that applies to state agencies unless that law specifically exempts the state fund
7 by name and clearly states that it is exempt from that law."

8

9 **NEW SECTION. Section 13. Transfer of deposits and surplus funds.** (1) All deposits held in trust
10 by the department of labor and industry pursuant to 39-71-2206 must be returned to the insurer who made
11 the deposit on or before December 31, 1997.

12 (2) Any surplus funds remaining in the underinsured employers' fund on [the effective date of this
13 act] must be deposited in the uninsured employers' fund provided for in 39-71-502.

14

15 **NEW SECTION. Section 14. Repealer.** Sections 39-71-431, 39-71-531, 39-71-532, 39-71-533,
16 39-71-534, 39-71-1013, 39-71-1109, and 39-71-2206, MCA, are repealed.

17

18 **NEW SECTION. Section 15. Severability.** If a part of [this act] is invalid, all valid parts that are
19 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
20 applications, the part remains in effect in all valid applications that are severable from the invalid
21 applications.

22

23 **NEW SECTION. Section 16. Effective date.** [This act] is effective July 1, 1997.

24

-END-

1 SENATE BILL NO. 349

2 INTRODUCED BY KEATING, SIMON

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE WORKERS' COMPENSATION REGULATORY
5 FUNCTIONS OF THE DEPARTMENT OF LABOR AND INDUSTRY; PERMITTING AN INSURER ACCESS TO
6 THE WORKERS' COMPENSATION DATA BASE SYSTEM; ELIMINATING THE REQUIREMENT THAT THE
7 DEPARTMENT OF LABOR AND INDUSTRY DETERMINE WAGES PAID IN PROPERTY OTHER THAN MONEY;
8 ~~REQUIRING THAT THE INDEPENDENT CONTRACTOR EXEMPTION PROCESS BE SELF FUNDING;~~
9 ELIMINATING DEPARTMENT OF LABOR AND INDUSTRY CERTIFICATION OF TRADE GROUPS THAT WISH
10 TO PURCHASE GROUP INSURANCE; ELIMINATING OBSOLETE REFERENCES TO THE ASSIGNED RISK
11 POOL; CLARIFYING THE ADMINISTRATION OF THE UNINSURED EMPLOYERS' FUND; ~~INCREASING THE~~
12 ~~PENALTY AGAINST UNINSURED EMPLOYERS;~~ ELIMINATING THE UNDERINSURED EMPLOYERS' FUND;
13 CLARIFYING THE PROCEDURES RELATING TO COMPROMISE SETTLEMENTS AND LUMP-SUM
14 CONVERSIONS; CLARIFYING REHABILITATION PLAN AGREEMENTS; ELIMINATING MEDICAL ADVISORY
15 COMMITTEES; ELIMINATING PLAN NO. 2 DEPOSIT REQUIREMENTS; PROVIDING FOR REFUND OF PLAN
16 NO. 2 INSURER DEPOSITS AND THE TRANSFER OF SURPLUS FUNDS IN THE UNDERINSURED
17 EMPLOYERS' FUND TO THE UNINSURED EMPLOYERS' FUND; PROVIDING THAT AN INDEPENDENT
18 CONTRACTOR EXEMPTION REMAINS IN EFFECT FOR 3 YEARS; AMENDING SECTIONS 20-15-403,
19 33-2-119, 39-71-225, 39-71-303, 39-71-401, 39-71-433, 39-71-503, 39-71-504, 39-71-704, 39-71-721,
20 39-71-741, AND 39-71-2314, MCA; REPEALING SECTIONS 39-71-431, 39-71-531, 39-71-532,
21 39-71-533, 39-71-534, 39-71-1013, 39-71-1109, AND 39-71-2206, MCA; AND PROVIDING AN
22 EFFECTIVE DATE."

23

24 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 SECOND READING COPY
(YELLOW) FOR COMPLETE TEXT.**

1 SENATE BILL NO. 349

2 INTRODUCED BY KEATING, SIMON

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE WORKERS' COMPENSATION REGULATORY
5 FUNCTIONS OF THE DEPARTMENT OF LABOR AND INDUSTRY; PERMITTING AN INSURER ACCESS TO
6 THE WORKERS' COMPENSATION DATA BASE SYSTEM; ~~ELIMINATING THE REQUIREMENT THAT THE~~
7 ~~DEPARTMENT OF LABOR AND INDUSTRY DETERMINE WAGES PAID IN PROPERTY OTHER THAN MONEY;~~
8 ~~REQUIRING THAT THE INDEPENDENT CONTRACTOR EXEMPTION PROCESS BE SELF-FUNDING;~~
9 ELIMINATING DEPARTMENT OF LABOR AND INDUSTRY CERTIFICATION OF TRADE GROUPS THAT WISH
10 TO PURCHASE GROUP INSURANCE; ELIMINATING OBSOLETE REFERENCES TO THE ASSIGNED RISK
11 POOL; CLARIFYING THE ADMINISTRATION OF THE UNINSURED EMPLOYERS' FUND; ~~INCREASING THE~~
12 ~~PENALTY AGAINST UNINSURED EMPLOYERS;~~ ELIMINATING THE UNDERINSURED EMPLOYERS' FUND;
13 CLARIFYING THE PROCEDURES RELATING TO COMPROMISE SETTLEMENTS AND LUMP-SUM
14 CONVERSIONS; CLARIFYING REHABILITATION PLAN AGREEMENTS; ELIMINATING MEDICAL ADVISORY
15 COMMITTEES; ELIMINATING PLAN NO. 2 DEPOSIT REQUIREMENTS; PROVIDING FOR REFUND OF PLAN
16 NO. 2 INSURER DEPOSITS AND THE TRANSFER OF SURPLUS FUNDS IN THE UNDERINSURED
17 EMPLOYERS' FUND TO THE UNINSURED EMPLOYERS' FUND; PROVIDING THAT AN INDEPENDENT
18 CONTRACTOR EXEMPTION REMAINS IN EFFECT FOR 3 YEARS; AMENDING SECTIONS 20-15-403,
19 33-2-119, 39-71-225, ~~39-71-303~~, 39-71-401, 39-71-433, 39-71-503, 39-71-504, 39-71-704, 39-71-721,
20 39-71-741, AND 39-71-2314, MCA; REPEALING SECTIONS 39-71-431, 39-71-531, 39-71-532,
21 39-71-533, 39-71-534, 39-71-1013, 39-71-1109, AND 39-71-2206, MCA; AND PROVIDING AN
22 EFFECTIVE DATE."

23
24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

25
26 **Section 1.** Section 20-15-403, MCA, is amended to read:
27 **"20-15-403. Applications of other school district provisions.** (1) When the term "school district"
28 appears in the following sections outside of Title 20, the term includes community college districts and the
29 provisions of those sections applicable to school districts apply to community college districts: 2-9-101,
30 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123,

1 7-8-2214, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101,
 2 15-6-204, 15-16-101, 15-16-605, 15-70-301, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213,
 3 17-7-201, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-404, 18-2-432, 18-5-205, 19-1-102,
 4 19-1-811, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304,
 5 39-71-116, 39-71-117, 39-71-2106, ~~39-71-2206~~, 40-6-237, 41-3-1132, 49-3-101, 49-3-102, 53-20-304,
 6 77-3-321, 82-10-201, 82-10-202, 82-10-203, 85-7-2158, and 90-6-208 and Rules 4D(2)(g) and 15(c),
 7 M.R.Civ.P., as amended.

8 (2) When the term "school district" appears in a section outside of Title 20 but the section is not
 9 listed in subsection (1), the school district provision does not apply to a community college district."
 10

11 **Section 2.** Section 33-2-119, MCA, is amended to read:

12 "**33-2-119. Suspension or revocation for violations and special grounds.** (1) The commissioner
 13 may, ~~in his discretion~~, suspend or revoke an insurer's certificate of authority if, after a hearing ~~thereon~~, ~~he~~
 14 the commissioner finds that the insurer has:

15 (a) violated any lawful order of the commissioner or any provision of this code other than those
 16 for which suspension or revocation is mandatory;

17 (b) reinsured more than 90% of its risks resident, located, or to be performed in Montana, in
 18 another insurer. In considering suspension or revocation, the commissioner shall consider all relevant
 19 factors, including whether:

- 20 (i) after the reinsurance transaction all parties will be in compliance with Montana law; and
 21 (ii) the transaction will substantially reduce protection and service to Montana policyholders;
 22 ~~(c) failed to accept an equitable apportionment of assigned coverage as required by 39-71-431.~~

23 (2) The commissioner shall, after a hearing ~~thereon~~, suspend or revoke an insurer's certificate of
 24 authority if ~~he~~ the commissioner finds that the insurer:

25 (a) is in unsound condition or in ~~such a~~ condition or using ~~such~~ methods or practices in the conduct
 26 of its business ~~as to that~~ render its further transaction of insurance in Montana injurious or hazardous to
 27 its policyholders or to the public;

28 (b) has refused to be examined or to produce its accounts, records, and files for examination or
 29 if any of its officers have refused to give information with respect to its affairs, when required by the
 30 commissioner;

1 (c) has failed to pay any final judgment rendered against it in Montana within 30 days after the
2 judgment became final;

3 (d) with such frequency as to indicate its general business practice in Montana, has without just
4 cause refused to pay a proper claim arising under its policies, whether the claim is in favor of an insured
5 or is in favor of a third person with respect to the liability of an insured to the third person, or without just
6 cause compels the insured or claimant to accept less than the amount due ~~him~~ the claimant or to employ
7 attorneys or to bring suit against the insurer or insured to secure full payment or settlement of the claims;

8 (e) is affiliated with and under the same general management or interlocking directorate or
9 ownership as another insurer ~~which that~~ transacts direct insurance in Montana without having a certificate
10 of authority ~~therefor~~, except as permitted as to a surplus lines insurer under part 3 of this chapter.

11 (3) The commissioner may, ~~in his discretion and~~ without advance notice or a hearing ~~thereon~~,
12 immediately suspend the certificate of authority of any insurer as to which proceedings for receivership,
13 conservatorship, rehabilitation, or other delinquency proceedings have been commenced in any state."
14

15 **Section 3.** Section 39-71-225, MCA, is amended to read:

16 "**39-71-225. Workers' compensation data base system.** (1) The department shall develop a
17 workers' compensation data base system to generate management information about Montana's workers'
18 compensation system. The data base system must be used to collect and compile information from insurers,
19 employers, medical providers, claimants, adjusters, rehabilitation providers, and the legal profession.

20 (2) Data collected must be used to provide:

21 (a) management information to the legislative and executive branches for the purpose of making
22 policy and management decisions, including but not limited to:

23 ~~(a)(i)~~ (i) performance information to enable the state to enact remedial efforts to ensure quality,
24 control abuse, and enhance cost control;

25 ~~(b)(ii)~~ (ii) information on medical, indemnity, and rehabilitation costs, utilization, and trends; ~~and~~

26 ~~(c)(iii)~~ (iii) information on litigation and attorney involvement for the purpose of identifying trends,
27 problem areas, and the costs of legal involvement; ~~and~~

28 ~~(b) current and prior claim information to insurers, including insurers authorized to transact~~
29 ~~insurance in other states, to determine~~ ANY INSURER THAT IS AT RISK ON A CLAIM, OR THAT IS
30 ALLEGED TO BE AT RISK IN ANY ADMINISTRATIVE OR JUDICIAL PROCEEDING, TO DETERMINE claims

1 ~~liability and OR FOR fraud investigation and prosecution. IN ENSURING THAT THE RIGHT OF INDIVIDUAL~~
 2 ~~PRIVACY IS NOT INFRINGED WITHOUT A SHOWING OF COMPELLING STATE INTEREST, THE~~
 3 ~~INFORMATION TO BE RELEASED. THE DEPARTMENT MAY RELEASE INFORMATION ONLY UPON~~
 4 ~~WRITTEN REQUEST BY AN THE AT-RISK INSURER, AND MAY BE DISCLOSE ONLY THE CLAIMANT'S~~
 5 ~~NAME, CLAIMANT'S IDENTIFICATION NUMBER, PRIOR CLAIM NUMBER, DATE OF INJURY, BODY PART~~
 6 ~~INVOLVED, AND NAME AND ADDRESS OF THE INSURER AND CLAIM ADJUSTER ON EACH CLAIM FILED.~~
 7 ~~INFORMATION OBTAINED BY AN INSURER PURSUANT TO THIS SECTION MUST REMAIN CONFIDENTIAL~~
 8 ~~AND MAY NOT BE DISCLOSED TO A THIRD PARTY EXCEPT TO THE EXTENT NECESSARY FOR THE~~
 9 ~~INVESTIGATION AND PROSECUTION OF FRAUD, CLAIMS MANAGEMENT, OR CLAIMS PROCESSING~~
 10 ~~DETERMINING CLAIM LIABILITY OR FOR FRAUD INVESTIGATION; AND~~

11 (C) CURRENT AND PRIOR CLAIM INFORMATION TO LAW ENFORCEMENT AGENCIES FOR
 12 PURPOSES OF FRAUD INVESTIGATION OR PROSECUTION.

13 ~~(2)(3)~~ The department is authorized to collect from insurers, employers, medical providers, the legal
 14 profession, and others the information necessary to generate the workers' compensation data base system.

15 ~~(3)(4)~~ The workers' compensation data base system must be designed in accordance with the
 16 following principles:

17 (a) avoidance of duplication and inconsistency;

18 (b) reasonable availability of data elements;

19 (c) value of information collected to be commensurate with the cost of retrieving the collected
 20 information;

21 (d) uniformity to permit efficiency of collection and to allow interstate comparisons;

22 (e) a workable mechanism to ensure the accuracy of the data collected and to protect the
 23 confidentiality of collected data;

24 (f) reasonable availability of the data at a fair cost to the user;

25 (g) a broad application to plan No. 1, plan No. 2, and plan No. 3 insurers;

26 (h) compatibility with electronic data reporting;

27 (i) reporting procedures that can be handled through private data collection systems that adhere
 28 to the provisions of subsections ~~(3)(a)~~ (4)(a) through ~~(3)(h)~~ (4)(h);

29 (j) implementation of reporting requirements that allow reasonable lead time for compliance.

30 ~~(4)(5) (a) The department shall take all steps necessary to have the workers' compensation data~~

1 ~~base system fully operational by July 1, 1995.~~

2 ~~(b) After the workers' compensation data base system is operational, the~~ The department shall
3 publish an ~~annual~~ a biennial AN ANNUAL report and ~~may publish quarterly reports~~ on the information
4 compiled.

5 (6) Users of information obtained from the workers' compensation data base under this section are
6 liable for damages arising from misuse or unlawful dissemination of data base information."

7

8 ~~Section 4. Section 39-71-303, MCA, is amended to read:~~

9 ~~"39-71-303. Work paid for in property other than money -- wages to be determined by~~
10 ~~department. Where any~~ When an employer procures any work to be done, payment for which is to be
11 made in property other than money or its equivalent and the value of which ~~the property is speculative or~~
12 ~~intangible, the wages of the employees receiving such~~ the compensation shall be determined by the
13 ~~department in accordance with~~ must be the going wage for the same or similar work in the district or
14 ~~locality where the same is to be~~ work was performed."

15

16 ~~Section 4. Section 39-71-401, MCA, is amended to read:~~

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

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

- 26 (a) household and domestic employment;
- 27 (b) casual employment as defined in 39-71-116;
- 28 (c) employment of a dependent member of an employer's family for whom an exemption may be
29 claimed by the employer under the federal Internal Revenue Code;
- 30 (d) employment of sole proprietors, working members of a partnership, or working members of a

1 member-managed limited liability company, except as provided in subsection (3);

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

4 (f) employment of a direct seller as defined in 26 U.S.C. 3508;

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

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

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

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

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

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

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

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

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

27 (n) employment of a jockey performing under a license issued by the board of horseracing from the
28 time the jockey reports to the scale room prior to a race through the time the jockey is weighed out after
29 a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing,
30 that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

1 (o) employment of an employer's spouse for whom an exemption based on marital status may be
2 claimed by the employer under 26 U.S.C. 7703;

3 (p) a person who performs services as a petroleum land professional. As used in this subsection,
4 a "petroleum land professional" is a person who:

5 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in
6 negotiating a business agreement for the exploration or development of minerals;

7 (ii) is paid for services that are directly related to the completion of a contracted specific task rather
8 than on an hourly wage basis; and

9 (iii) performs all services as an independent contractor pursuant to a written contract.

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

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

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

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

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

22 (3) (a) A sole proprietor, a working member of a partnership, or a working member of a
23 member-managed limited liability company who represents to the public that the person is an independent
24 contractor shall elect to be bound personally and individually by the provisions of compensation plan No.
25 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

26 (b) The application must be made in accordance with the rules adopted by the department. ~~There~~
27 ~~is no~~ THERE IS NO A \$25 fee for the initial INITIAL application. ~~Any subsequent application and any~~
28 ~~renewal.~~ ANY SUBSEQUENT APPLICATION RENEWAL must be accompanied by a ~~\$25 application fee~~
29 ~~determined by the department in an amount that is sufficient to fully fund the cost of administering the~~
30 ~~program~~ ACCOMPANIED BY A \$25 APPLICATION FEE. The application fee must be deposited in the

1 administration fund established in 39-71-201 ~~to offset the costs of administering the program~~ TO OFFSET
2 THE COSTS OF ADMINISTERING THE PROGRAM.

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

5 (d) The exemption, if approved, remains in effect for ~~1 year~~ 3 YEARS following the date of the
6 department's approval. To maintain the independent contractor status, an independent contractor shall
7 ~~annually~~ EVERY 3 YEARS submit a renewal application. A renewal application must be submitted for all
8 independent contractor exemptions approved as of July 1, 1995, or thereafter. The renewal application and
9 the \$25 renewal application fee must be received by the department at least 30 days prior to the
10 anniversary date of the previously approved exemption.

11 (e) A person who makes a false statement or misrepresentation concerning that person's status
12 as an exempt independent contractor is subject to a civil penalty of \$1,000. The department may impose
13 the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured
14 employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.

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

19 (4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its
20 employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private
21 corporation, or a manager-managed limited liability company may elect coverage for its corporate officers
22 or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following
23 manner:

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

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

30 (b) If the employer changes plans or insurers, the employer's previous election is not effective and

1 the employer shall again serve notice to its insurer and to its board of directors or the management
2 organization of the manager-managed limited liability company if the employer elects to be bound.

3 (5) The appointment or election of an employee as an officer of a corporation, a partner in a
4 partnership, or a member in or a manager of a limited liability company for the purpose of exempting the
5 employee from coverage under this chapter does not entitle the officer, partner, member, or manager to
6 exemption from coverage.

7 (6) Each employer shall post a sign in the workplace at the locations where notices to employees
8 are normally posted, informing employees about the employer's current provision of workers' compensation
9 insurance. A workplace is any location where an employee performs any work-related act in the course of
10 employment, regardless of whether the location is temporary or permanent, and includes the place of
11 business or property of a third person while the employer has access to or control over the place of
12 business or property for the purpose of carrying on the employer's usual trade, business, or occupation.
13 The sign must be provided by the department, distributed through insurers or directly by the department,
14 and posted by employers in accordance with rules adopted by the department. An employer who purposely
15 or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."
16

17 **Section 5.** Section 39-71-433, MCA, is amended to read:

18 "**39-71-433. Group purchase of workers' compensation insurance.** (1) ~~On receiving approval of~~
19 ~~the department, two~~ Two or more business entities may join together to form a group to purchase individual
20 workers' compensation insurance policies covering each member of the group.

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

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

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

29 ~~(5) A group certified under this section may add additional members without approval from the~~
30 ~~department if the additional members meet the specific criteria identified in the original application and any~~

1 ~~modifications to the criteria, as approved by the department.~~

2 ~~(6)(2)~~ A group ~~certified~~ formed under this section may purchase individual workers' compensation
3 insurance policies covering each member of the group from any insurer authorized to write workers'
4 compensation insurance in this state, except that the state fund, as defined in 39-71-2312, has the right
5 to refuse coverage of a group and its plan of operation but ~~cannot~~ may not refuse coverage to an individual
6 employer. Under an individual policy, the group is entitled to a premium or volume discount that would be
7 applicable to a policy of the combined premium amount of the individual policies.

8 ~~(7)(3)~~ A group shall apportion any discount or policyholder dividend received on workers'
9 compensation insurance coverage among the members of the group according to a formula adopted in the
10 plan of operation for the group.

11 ~~(8)(4)~~ A group shall adopt a plan of operation that must include the composition and selection of
12 a governing board, the methods for administering the group, the eligibility requirements to join the group,
13 and guidelines for the workers' compensation insurance coverage obtained by the group, including the
14 payment of premiums, the distribution of discounts, and the method for providing risk management. A
15 ~~group shall file a copy of its plan of operation with the department."~~

16

17 **Section 6.** Section 39-71-503, MCA, is amended to read:

18 **"39-71-503. Administration of fund -- appropriation.** (1) The department shall administer the fund
19 and shall pay from it all expenses of administering the fund, all loss adjustment expenses for claims of
20 injured employees of uninsured employers, and all proper benefits to injured employees of uninsured
21 employers.

22 (2) Surpluses and reserves may not be kept for the fund. The department shall make payments that
23 it considers appropriate as funds become available from time to time. The payment of weekly disability
24 benefits takes ~~preference~~ precedence over the payment of medical benefits. Lump-sum payments of future
25 projected benefits, including impairment awards, may not be made from the fund. The board of investments
26 shall invest the money of the fund, and the investment income must be deposited in the fund. ~~The cost of~~
27 ~~administration of the fund must be paid out of the money in the fund.~~

28 (3) The amounts necessary for the payment of benefits from this fund are statutorily appropriated,
29 as provided in 17-7-502, from this fund."
30

1 **Section 7.** Section 39-71-504, MCA, is amended to read:

2 **"39-71-504. Funding of fund -- option for agreement between department and injured employee.**

3 The fund is funded in the following manner:

4 (1) ~~(a)~~ The department may require that the uninsured employer pay to the fund a penalty of either
 5 up to ~~double~~ ~~treble~~ **DOUBLE** the premium amount the employer would have paid on the payroll of the
 6 employer's workers in this state if the employer had been enrolled with compensation plan No. 3 ~~for the~~
 7 ~~period of time that the employer was uninsured~~ or ~~\$200~~ ~~\$10,000~~ **\$200**, whichever is greater. IN
 8 DETERMINING THE PREMIUM AMOUNT FOR THE CALCULATION OF THE PENALTY UNDER THIS
 9 SUBSECTION, THE DEPARTMENT SHALL MAKE AN ASSESSMENT BASED ON HOW MUCH PREMIUM
 10 WOULD HAVE BEEN PAID ON THE EMPLOYER'S PAST 3-YEAR PAYROLL FOR PERIODS WITHIN THE 3
 11 YEARS WHEN THE EMPLOYER WAS UNINSURED. ~~In determining the premium amount for the calculation~~
 12 ~~of the penalty under this subsection, the department shall make an assessment on how much premium~~
 13 ~~would have been paid on the employer's past 3-year payroll for periods within the 3 years when the~~
 14 ~~employer was uninsured.~~

15 ~~(2)(b)~~ The fund shall ~~receive~~ **collect** from an uninsured employer an amount equal to all benefits
 16 paid or to be paid from the fund to an injured employee of the uninsured employer.

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

20 ~~(2) THE DEPARTMENT MAY DETERMINE THAT THE \$1,000 ASSESSMENTS THAT ARE CHARGED~~
 21 ~~AGAINST AN INSURER IN EACH CASE OF AN INDUSTRIAL DEATH UNDER 39-71-902(1) MUST BE PAID~~
 22 ~~TO THE UNINSURED EMPLOYERS' FUND RATHER THAN THE SUBSEQUENT INJURY FUND.~~

23 ~~(4)(2)(3)(2)~~ The department may enter into an agreement with the injured employee or the
 24 employee's beneficiaries to assign to the employee or the beneficiaries all or part of the funds ~~received~~
 25 **collected** by the department from the uninsured employer pursuant to subsection ~~(2)~~ **(1)(b).**"

26
 27 **Section 8.** Section 39-71-704, MCA, is amended to read:

28 **"39-71-704. Payment of medical, hospital, and related services -- fee schedules and hospital rates**
 29 **-- fee limitation.** (1) In addition to the compensation provided under this chapter and as an additional benefit
 30 separate and apart from compensation benefits actually provided, the following must be furnished:

1 (a) After the happening of a compensable injury and subject to other provisions of this chapter, the
2 insurer shall furnish reasonable primary medical services for conditions resulting from the injury for those
3 periods as the nature of the injury or the process of recovery requires.

4 (b) The insurer shall furnish secondary medical services only upon a clear demonstration of
5 cost-effectiveness of the services in returning the injured worker to actual employment.

6 (c) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses,
7 prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in
8 39-71-119, arising out of and in the course of employment.

9 (d) The insurer shall reimburse a worker for reasonable travel expenses incurred in travel to a
10 medical provider for treatment of an injury only if the travel is incurred at the request of the insurer.
11 Reimbursement must be at the rates allowed for reimbursement of travel by state employees.

12 (e) Except for the repair or replacement of a prosthesis furnished as a result of an industrial injury,
13 the benefits provided for in this section terminate when they are not used for a period of 60 consecutive
14 months.

15 (f) Notwithstanding subsection (1)(a), the insurer may not be required to furnish, after the worker
16 has achieved medical stability, palliative or maintenance care except:

17 (i) when provided to a worker who has been determined to be permanently totally disabled and for
18 whom it is medically necessary to monitor administration of prescription medication to maintain the worker
19 in a medically stationary condition; or

20 (ii) when necessary to monitor the status of a prosthetic device.

21 (g) If the worker's treating physician believes that palliative or maintenance care that would
22 otherwise not be compensable under subsection (1)(f) is appropriate to enable the worker to continue
23 current employment or that there is a clear probability of returning the worker to employment, the treating
24 physician shall first request approval from the insurer for the treatment. If approval is not granted, the
25 treating physician may request approval from the department for the treatment. The department shall
26 appoint a panel of physicians, including at least one treating physician from the area of specialty in which
27 the injured worker is being treated, pursuant to rules that the department may adopt, to review the
28 proposed treatment and determine its appropriateness.

29 (h) Notwithstanding any other provisions of this chapter, the department, by rule and upon the
30 advice of the professional licensing boards of practitioners affected by the rule, may exclude from

1 compensability any medical treatment that the department finds to be unscientific, unproved, outmoded,
2 or experimental.

3 (2) The department shall annually establish a schedule of fees for medical nonhospital services
4 necessary for the treatment of injured workers. Charges submitted by providers must be the usual and
5 customary charges for nonworkers' compensation patients. The department may require insurers to submit
6 information to be used in establishing the schedule. ~~The department shall establish utilization and treatment~~
7 ~~standards for all medical services provided for under this chapter in consultation with the standing medical~~
8 ~~advisory committees provided for in 39-71-1109.~~

9 (3) The department shall establish rates for hospital services necessary for the treatment of injured
10 workers. Beginning January 1, 1995, the rates may be based on per diem or diagnostic-related groups. The
11 rates established by the department pursuant to this subsection may not be less than medicaid
12 reimbursement rates. Approved rates must be in effect for a period of 12 months from the date of approval.
13 The department may coordinate this ratesetting function with other public agencies that have similar
14 responsibilities. For services available in Montana, insurers are not required to pay facilities located outside
15 Montana rates that are greater than those allowed for services delivered in Montana.

16 (4) The percentage increase in medical costs payable under this chapter may not exceed the annual
17 percentage increase in the state's average weekly wage as defined in 39-71-116.

18 (5) Payment pursuant to reimbursement agreements between managed care organizations or
19 preferred provider organizations and insurers is not bound by the provisions of this section.

20 (6) Disputes between an insurer and a medical service provider regarding the amount of a fee for
21 medical services must be resolved by a hearing before the department upon written application of a party
22 to the dispute.

23 (7) (a) After the initial visit, the worker is responsible for 20%, but not to exceed \$10, of the cost
24 of each subsequent visit to a medical service provider for treatment relating to a compensable injury or
25 occupational disease, unless the visit is to a medical service provider in a managed care organization as
26 requested by the insurer or is a visit to a preferred provider as requested by the insurer.

27 (b) After the initial visit, the worker is responsible for \$25 of the cost of each subsequent visit to
28 a hospital emergency department for treatment relating to a compensable injury or occupational disease.

29 (c) "Visit", as used in subsections (7)(a) and (7)(b), means each time the worker obtains services
30 relating to a compensable injury or occupational disease from:

- 1 (i) a treating physician;
2 (ii) a physical therapist;
3 (iii) a psychologist; or
4 (iv) hospital outpatient services available in a nonhospital setting.
5 (d) A worker is not responsible for the cost of a subsequent visit pursuant to subsection (7)(a) if
6 the visit is an examination requested by an insurer pursuant to 39-71-605."

7

8 **Section 9.** Section 39-71-721, MCA, is amended to read:

9 **"39-71-721. Compensation for injury causing death -- limitation.** (1) (a) If an injured employee dies
10 and the injury was the proximate cause of the death, the beneficiary of the deceased is entitled to the same
11 compensation as though the death occurred immediately following the injury. A beneficiary's eligibility for
12 benefits commences after the date of death, and the benefit level is established as set forth in subsection
13 (2).

14 (b) The insurer is entitled to recover any overpayments or compensation paid in a lump sum to a
15 worker prior to death but not yet recouped. The insurer shall recover the payments from the beneficiary's
16 biweekly payments as provided in 39-71-741~~(6)~~(3).

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

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

26 (4) If the decedent leaves no beneficiary, a lump-sum payment of \$3,000 must be paid to the
27 decedent's surviving parent or parents.

28 (5) If any beneficiary of a deceased employee dies, the right of the beneficiary to compensation
29 under this chapter ceases. Death benefits must be paid to a surviving spouse for 500 weeks subsequent
30 to the date of the deceased employee's death or until the spouse's remarriage, whichever occurs first. After

1 benefit payments cease to a surviving spouse, death benefits must be paid to beneficiaries, if any, as
2 defined in 39-71-116(5)(b) through (5)(d).

3 (6) In all cases, benefits must be paid to beneficiaries.

4 (7) Benefits paid under this section may not be adjusted for cost of living as provided in
5 39-71-702."

6

7 **Section 10.** Section 39-71-741, MCA, is amended to read:

8 "**39-71-741. Compromise settlements and lump-sum payments.** (1) By written agreement filed
9 with the department, benefits under this chapter may be converted in whole or in part into a lump sum.
10 An agreement is subject to department approval. If the department fails to approve OR DISAPPROVE the
11 agreement in writing within 14 days of the filing with the department, the agreement is approved. The
12 department shall directly notify a claimant of a department order approving or disapproving a claimant's
13 compromise or lump-sum payment. Upon approval, the agreement constitutes a compromise and release
14 settlement and may not be reopened by the department. The department may approve an agreement to
15 convert the following benefits to a lump sum only under the following conditions:

16 (a) ~~Benefits under this chapter may be converted in whole or in part to a lump sum:~~

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

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

19 (b) ~~The agreement is subject to department approval. The department may disapprove an~~
20 ~~agreement under this section only if there is not a~~ there is a reasonable dispute over compensability; and

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

23 (2) ~~(a)(b) Permanent permanent~~ partial disability benefits ~~may be converted in whole or in part to~~
24 ~~a lump-sum payment if:~~

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

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

27 (b) The total of any permanent partial lump-sum conversion in part that is awarded to a claimant
28 prior to the claimant's final award may not exceed the anticipated award under 39-71-703.

29 (c) ~~An agreement is subject to department approval. The department may disapprove an agreement~~
30 under this subsection (1)(b) only if the department determines that the lump-sum conversion amount is

1 inadequate. If disapproved, the department shall set forth in detail the reasons for disapproval.

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

3 ~~(3)(c) Permanent permanent total disability benefits may be converted in whole or in part to a lump~~

4 ~~sum. The if the total of all lump-sum conversions in part that are awarded to a claimant may do not exceed~~

5 ~~\$20,000. A conversion may be made only upon the written application of the injured worker with the~~

6 ~~concurrence of the insurer. Approval of the lump-sum payment rests in the discretion of the department.~~

7 The approval or award of a lump-sum permanent total disability payment in whole or in part by the

8 department or court must be the exception. It may be given only if the worker has demonstrated financial

9 need that:

10 ~~(a)(i)~~ relates to:

11 ~~(i)(A)~~ the necessities of life;

12 ~~(i)(B)~~ an accumulation of debt incurred prior to the injury; or

13 ~~(i)(C)~~ a self-employment venture that is considered feasible under criteria set forth by the

14 department; or

15 ~~(b)(ii)~~ arises subsequent to the date of injury or arises because of reduced income as a result of

16 the injury; OR

17 (D) EXCEPT AS OTHERWISE PROVIDED IN THIS CHAPTER, ALL OTHER COMPROMISE

18 SETTLEMENTS AND LUMP-SUM PAYMENTS AGREED TO BY A CLAIMANT AND INSURER.

19 ~~(4)(2)~~ Any lump-sum conversion of benefits under this section must be converted to present value

20 using the rate prescribed under subsection ~~(5)(b)~~ (3)(b).

21 ~~(5)(3)~~ (a) An insurer may recoup any lump-sum payment amortized at the rate established by the

22 department, prorated biweekly over the projected duration of the compensation period.

23 (b) The rate adopted by the department must be based on the average rate for United States

24 10-year treasury bills in the previous calendar year.

25 (c) If the projected compensation period is the claimant's lifetime, the life expectancy must be

26 determined by using the most recent table of life expectancy as published by the United States national

27 center for health statistics.

28 ~~(6) Subject to the other provisions of this section, the department shall approve or deny in writing~~

29 ~~compromise settlements and lump-sum payments agreed to by workers and insurers. The department shall~~

30 ~~directly notify a claimant of a department order approving or denying a claimant's compromise or lump-sum~~

1 ~~payment.~~

2 ~~(7)(4)~~ A dispute between a claimant and an insurer regarding the conversion of biweekly payments
3 into a lump-sum is considered a dispute, for which a mediator and the workers' compensation court have
4 jurisdiction to make a determination. If an insurer and a claimant agree to a compromise and release
5 settlement or a lump-sum payment but the department disapproves the agreement, the parties may request
6 the workers' compensation court to review the department's decision."

7

8 **Section 11.** Section 39-71-2314, MCA, is amended to read:

9 **"39-71-2314. State fund ~~assigned risk plan~~ subject to laws applying to state agencies.** ~~(1) If~~
10 ~~an assigned risk plan is established and administered pursuant to 39-71-431, the state fund is subject to~~
11 ~~the premium tax liability for insurers as provided in 33-2-705 based on earned premium and paid on revenue~~
12 ~~from the previous fiscal year.~~

13 ~~(2)~~ The state fund is subject to laws that generally apply to state agencies, including but not limited
14 to Title 2, chapters 2, 3, 4 (only as provided in 39-71-2316), and 6, and Title 5, chapter 13. The state fund
15 is not exempt from a law that applies to state agencies unless that law specifically exempts the state fund
16 by name and clearly states that it is exempt from that law."

17

18 **NEW SECTION. Section 12. Transfer of deposits and surplus funds.** (1) All deposits held in trust
19 by the department of labor and industry pursuant to 39-71-2206 must be returned to the insurer who made
20 the deposit on or before December 31, 1997.

21 (2) Any surplus funds remaining in the underinsured employers' fund on [the effective date of this
22 act] must be deposited in the uninsured employers' fund provided for in 39-71-502.

23

24 **NEW SECTION. Section 13. Repealer.** Sections 39-71-431, 39-71-531, 39-71-532, 39-71-533,
25 39-71-534, 39-71-1013, 39-71-1109, and 39-71-2206, MCA, are repealed.

26

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

1 NEW SECTION. **Section 15. Effective date.** [This act] is effective July 1, 1997.

2 -END-

1 SENATE BILL NO. 349

2 INTRODUCED BY KEATING, SIMON

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE WORKERS' COMPENSATION REGULATORY
 5 FUNCTIONS OF THE DEPARTMENT OF LABOR AND INDUSTRY; PERMITTING AN INSURER ACCESS TO
 6 THE WORKERS' COMPENSATION DATA BASE SYSTEM; ~~ELIMINATING THE REQUIREMENT THAT THE~~
 7 ~~DEPARTMENT OF LABOR AND INDUSTRY DETERMINE WAGES PAID IN PROPERTY OTHER THAN MONEY;~~
 8 ~~REQUIRING THAT THE INDEPENDENT CONTRACTOR EXEMPTION PROCESS BE SELF-FUNDING;~~
 9 ELIMINATING DEPARTMENT OF LABOR AND INDUSTRY CERTIFICATION OF TRADE GROUPS THAT WISH
 10 TO PURCHASE GROUP INSURANCE; ELIMINATING OBSOLETE REFERENCES TO THE ASSIGNED RISK
 11 POOL; CLARIFYING THE ADMINISTRATION OF THE UNINSURED EMPLOYERS' FUND; ~~INCREASING THE~~
 12 ~~PENALTY AGAINST UNINSURED EMPLOYERS;~~ ELIMINATING THE UNDERINSURED EMPLOYERS' FUND;
 13 CLARIFYING THE PROCEDURES RELATING TO COMPROMISE SETTLEMENTS AND LUMP-SUM
 14 CONVERSIONS; CLARIFYING REHABILITATION PLAN AGREEMENTS; ELIMINATING MEDICAL ADVISORY
 15 COMMITTEES; ELIMINATING PLAN NO. 2 DEPOSIT REQUIREMENTS; PROVIDING FOR REFUND OF PLAN
 16 NO. 2 INSURER DEPOSITS AND THE TRANSFER OF SURPLUS FUNDS IN THE UNDERINSURED
 17 EMPLOYERS' FUND TO THE UNINSURED EMPLOYERS' FUND; PROVIDING THAT AN INDEPENDENT
 18 CONTRACTOR EXEMPTION REMAINS IN EFFECT FOR 3 YEARS; AMENDING SECTIONS 20-15-403,
 19 33-2-119, 39-71-225, ~~39-71-303~~, 39-71-401, 39-71-433, 39-71-503, 39-71-504, 39-71-704, 39-71-721,
 20 39-71-741, AND 39-71-2314, MCA; REPEALING SECTIONS 39-71-431, 39-71-531, 39-71-532,
 21 39-71-533, 39-71-534, 39-71-1013, 39-71-1109, AND 39-71-2206, MCA; AND PROVIDING AN
 22 EFFECTIVE DATE."

23

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

25

26 **Section 1.** Section 20-15-403, MCA, is amended to read:

27 **"20-15-403. Applications of other school district provisions.** (1) When the term "school district"
 28 appears in the following sections outside of Title 20, the term includes community college districts and the
 29 provisions of those sections applicable to school districts apply to community college districts: 2-9-101,
 30 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123,

1 7-8-2214, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101,
 2 15-6-204, 15-16-101, 15-16-605, 15-70-301, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213,
 3 17-7-201, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-404, 18-2-432, 18-5-205, 19-1-102,
 4 19-1-811, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304,
 5 39-71-116, 39-71-117, 39-71-2106, ~~39-71-2206~~, 40-6-237, 41-3-1132, 49-3-101, 49-3-102, 53-20-304,
 6 77-3-321, 82-10-201, 82-10-202, 82-10-203, 85-7-2158, and 90-6-208 and Rules 4D(2)(g) and 15(c),
 7 M.R.Civ.P., as amended.

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

10

11 **Section 2.** Section 33-2-119, MCA, is amended to read:

12 **"33-2-119. Suspension or revocation for violations and special grounds.** (1) The commissioner
 13 may, ~~in his discretion~~, suspend or revoke an insurer's certificate of authority if, after a hearing ~~thereon~~, ~~he~~
 14 the commissioner finds that the insurer has:

15 (a) violated any lawful order of the commissioner or any provision of this code other than those
 16 for which suspension or revocation is mandatory;

17 (b) reinsured more than 90% of its risks resident, located, or to be performed in Montana, in
 18 another insurer. In considering suspension or revocation, the commissioner shall consider all relevant
 19 factors, including whether:

- 20 (i) after the reinsurance transaction all parties will be in compliance with Montana law; and
 21 (ii) the transaction will substantially reduce protection and service to Montana policyholders;
 22 ~~(c) failed to accept an equitable apportionment of assigned coverage as required by 39-71-431.~~

23 (2) The commissioner shall, after a hearing ~~thereon~~, suspend or revoke an insurer's certificate of
 24 authority if ~~he~~ the commissioner finds that the insurer:

25 (a) is in unsound condition or in ~~such a~~ condition or using ~~such~~ methods or practices in the conduct
 26 of its business ~~as to that~~ render its further transaction of insurance in Montana injurious or hazardous to
 27 its policyholders or to the public;

28 (b) has refused to be examined or to produce its accounts, records, and files for examination or
 29 if any of its officers have refused to give information with respect to its affairs, when required by the
 30 commissioner;

1 (c) has failed to pay any final judgment rendered against it in Montana within 30 days after the
2 judgment became final;

3 (d) with such frequency as to indicate its general business practice in Montana, has without just
4 cause refused to pay a proper claim arising under its policies, whether the claim is in favor of an insured
5 or is in favor of a third person with respect to the liability of an insured to the third person, or without just
6 cause compels the insured or claimant to accept less than the amount due ~~him~~ the claimant or to employ
7 attorneys or to bring suit against the insurer or insured to secure full payment or settlement of the claims;

8 (e) is affiliated with and under the same general management or interlocking directorate or
9 ownership as another insurer ~~which~~ that transacts direct insurance in Montana without having a certificate
10 of authority ~~therefor~~, except as permitted as to a surplus lines insurer under part 3 of this chapter.

11 (3) The commissioner may, ~~in his discretion and~~ without advance notice or a hearing ~~thereon~~,
12 immediately suspend the certificate of authority of any insurer as to which proceedings for receivership,
13 conservatorship, rehabilitation, or other delinquency proceedings have been commenced in any state."
14

15 **Section 3.** Section 39-71-225, MCA, is amended to read:

16 "**39-71-225. Workers' compensation data base system.** (1) The department shall develop a
17 workers' compensation data base system to generate management information about Montana's workers'
18 compensation system. The data base system must be used to collect and compile information from insurers,
19 employers, medical providers, claimants, adjusters, rehabilitation providers, and the legal profession.

20 (2) Data collected must be used to provide:

21 (a) management information to the legislative and executive branches for the purpose of making
22 policy and management decisions, including but not limited to:

23 ~~(a)(i)~~ performance information to enable the state to enact remedial efforts to ensure quality,
24 control abuse, and enhance cost control;

25 ~~(b)(ii)~~ information on medical, indemnity, and rehabilitation costs, utilization, and trends; ~~and~~

26 ~~(c)(iii)~~ information on litigation and attorney involvement for the purpose of identifying trends,
27 problem areas, and the costs of legal involvement; ~~and~~

28 ~~(b) current and prior claim information to insurers, including insurers authorized to transact~~
29 ~~insurance in other states, to determine~~ ANY INSURER THAT IS AT RISK ON A CLAIM, OR THAT IS
30 ALLEGED TO BE AT RISK IN ANY ADMINISTRATIVE OR JUDICIAL PROCEEDING, TO DETERMINE claims

1 ~~liability and OR FOR fraud investigation and prosecution. IN ENSURING THAT THE RIGHT OF INDIVIDUAL~~
 2 ~~PRIVACY IS NOT INFRINGED WITHOUT A SHOWING OF COMPELLING STATE INTEREST, THE~~
 3 ~~INFORMATION TO BE RELEASED. THE DEPARTMENT MAY RELEASE INFORMATION ONLY UPON~~
 4 ~~WRITTEN REQUEST BY AN THE AT-RISK INSURER, AND MAY BE DISCLOSE ONLY THE CLAIMANT'S~~
 5 ~~NAME, CLAIMANT'S IDENTIFICATION NUMBER, PRIOR CLAIM NUMBER, DATE OF INJURY, BODY PART~~
 6 ~~INVOLVED, AND NAME AND ADDRESS OF THE INSURER AND CLAIM ADJUSTER ON EACH CLAIM FILED.~~
 7 ~~INFORMATION OBTAINED BY AN INSURER PURSUANT TO THIS SECTION MUST REMAIN CONFIDENTIAL~~
 8 ~~AND MAY NOT BE DISCLOSED TO A THIRD PARTY EXCEPT TO THE EXTENT NECESSARY FOR THE~~
 9 ~~INVESTIGATION AND PROSECUTION OF FRAUD, CLAIMS MANAGEMENT, OR CLAIMS PROCESSING~~
 10 ~~DETERMINING CLAIM LIABILITY OR FOR FRAUD INVESTIGATION; AND~~

11 (C) CURRENT AND PRIOR CLAIM INFORMATION TO LAW ENFORCEMENT AGENCIES FOR
 12 PURPOSES OF FRAUD INVESTIGATION OR PROSECUTION.

13 ~~(2)(3)~~ The department is authorized to collect from insurers, employers, medical providers, the legal
 14 profession, and others the information necessary to generate the workers' compensation data base system.

15 ~~(3)(4)~~ The workers' compensation data base system must be designed in accordance with the
 16 following principles:

- 17 (a) avoidance of duplication and inconsistency;
- 18 (b) reasonable availability of data elements;
- 19 (c) value of information collected to be commensurate with the cost of retrieving the collected
 20 information;
- 21 (d) uniformity to permit efficiency of collection and to allow interstate comparisons;
- 22 (e) a workable mechanism to ensure the accuracy of the data collected and to protect the
 23 confidentiality of collected data;
- 24 (f) reasonable availability of the data at a fair cost to the user;
- 25 (g) a broad application to plan No. 1, plan No. 2, and plan No. 3 insurers;
- 26 (h) compatibility with electronic data reporting;
- 27 (i) reporting procedures that can be handled through private data collection systems that adhere
 28 to the provisions of subsections ~~(3)(a)~~ (4)(a) through ~~(3)(h)~~ (4)(h);
- 29 (j) implementation of reporting requirements that allow reasonable lead time for compliance.

30 ~~(4)(5) (a) The department shall take all steps necessary to have the workers' compensation data~~

1 ~~base system fully operational by July 1, 1995.~~

2 ~~(b) After the workers' compensation data base system is operational, the~~ The department shall
3 publish ~~an annual a biennial~~ AN ANNUAL report and ~~may publish quarterly reports~~ on the information
4 compiled.

5 (6) Users of information obtained from the workers' compensation data base under this section are
6 liable for damages arising from misuse or unlawful dissemination of data base information."

7

8 **Section 4.** ~~Section 39-71-303, MCA, is amended to read:~~

9 ~~"39-71-303. Work paid for in property other than money — wages to be determined by~~
10 ~~department. Where any~~ When an employer procures any work to be done, payment for which is to be was
11 ~~made in property other than money or its equivalent and the value of which~~ the property is speculative or
12 ~~intangible, the wages of the employees receiving such~~ the compensation shall be determined by the
13 ~~department in accordance with~~ must be the going wage for the same or similar work in the district or
14 ~~locality where the same is to be~~ work was performed."

15

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

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

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

- 26 (a) household and domestic employment;
- 27 (b) casual employment as defined in 39-71-116;
- 28 (c) employment of a dependent member of an employer's family for whom an exemption may be
29 claimed by the employer under the federal Internal Revenue Code;
- 30 (d) employment of sole proprietors, working members of a partnership, or working members of a

1 member-managed limited liability company, except as provided in subsection (3);

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

4 (f) employment of a direct seller as defined in 26 U.S.C. 3508;

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

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

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

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

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

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

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

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

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

27 (n) employment of a jockey performing under a license issued by the board of horseracing from the
28 time the jockey reports to the scale room prior to a race through the time the jockey is weighed out after
29 a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing,
30 that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

1 (o) employment of an employer's spouse for whom an exemption based on marital status may be
2 claimed by the employer under 26 U.S.C. 7703;

3 (p) a person who performs services as a petroleum land professional. As used in this subsection,
4 a "petroleum land professional" is a person who:

5 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in
6 negotiating a business agreement for the exploration or development of minerals;

7 (ii) is paid for services that are directly related to the completion of a contracted specific task rather
8 than on an hourly wage basis; and

9 (iii) performs all services as an independent contractor pursuant to a written contract.

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

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

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

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

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

22 (3) (a) A sole proprietor, a working member of a partnership, or a working member of a
23 member-managed limited liability company who represents to the public that the person is an independent
24 contractor shall elect to be bound personally and individually by the provisions of compensation plan No.
25 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

26 (b) The application must be made in accordance with the rules adopted by the department. ~~There~~
27 ~~is no~~ THERE IS NO A \$25 fee for the initial INITIAL application. Any subsequent application and any
28 renewal. ANY SUBSEQUENT APPLICATION RENEWAL must be accompanied by a \$25 application fee
29 ~~determined by the department in an amount that is sufficient to fully fund the cost of administering the~~
30 program ACCOMPANIED BY A \$25 APPLICATION FEE. The application fee must be deposited in the

1 administration fund established in 39-71-201 ~~to offset the costs of administering the program~~ TO OFFSET
 2 THE COSTS OF ADMINISTERING THE PROGRAM.

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

5 (d) The exemption, if approved, remains in effect for ~~1 year~~ 3 YEARS following the date of the
 6 department's approval. To maintain the independent contractor status, an independent contractor shall
 7 ~~annually~~ EVERY 3 YEARS submit a renewal application. A renewal application must be submitted for all
 8 independent contractor exemptions approved as of July 1, 1995, or thereafter. The renewal application and
 9 the \$25 renewal application fee must be received by the department at least 30 days prior to the
 10 anniversary date of the previously approved exemption.

11 (e) A person who makes a false statement or misrepresentation concerning that person's status
 12 as an exempt independent contractor is subject to a civil penalty of \$1,000. The department may impose
 13 the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured
 14 employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.

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

19 (4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its
 20 employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private
 21 corporation, or a manager-managed limited liability company may elect coverage for its corporate officers
 22 or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following
 23 manner:

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

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

30 (b) If the employer changes plans or insurers, the employer's previous election is not effective and

1 the employer shall again serve notice to its insurer and to its board of directors or the management
2 organization of the manager-managed limited liability company if the employer elects to be bound.

3 (5) The appointment or election of an employee as an officer of a corporation, a partner in a
4 partnership, or a member in or a manager of a limited liability company for the purpose of exempting the
5 employee from coverage under this chapter does not entitle the officer, partner, member, or manager to
6 exemption from coverage.

7 (6) Each employer shall post a sign in the workplace at the locations where notices to employees
8 are normally posted, informing employees about the employer's current provision of workers' compensation
9 insurance. A workplace is any location where an employee performs any work-related act in the course of
10 employment, regardless of whether the location is temporary or permanent, and includes the place of
11 business or property of a third person while the employer has access to or control over the place of
12 business or property for the purpose of carrying on the employer's usual trade, business, or occupation.
13 The sign must be provided by the department, distributed through insurers or directly by the department,
14 and posted by employers in accordance with rules adopted by the department. An employer who purposely
15 or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."
16

17 **Section 5.** Section 39-71-433, MCA, is amended to read:

18 "**39-71-433. Group purchase of workers' compensation insurance.** (1) ~~On receiving approval of~~
19 ~~the department, two~~ Two or more business entities may join together to form a group to purchase individual
20 workers' compensation insurance policies covering each member of the group.

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

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

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

29 ~~(5) A group certified under this section may add additional members without approval from the~~
30 ~~department if the additional members meet the specific criteria identified in the original application and any~~

1 ~~modifications to the criteria, as approved by the department.~~

2 ~~(6)(2)~~ A group ~~certified~~ formed under this section may purchase individual workers' compensation
3 insurance policies covering each member of the group from any insurer authorized to write workers'
4 compensation insurance in this state, except that the state fund, as defined in 39-71-2312, has the right
5 to refuse coverage of a group and its plan of operation but ~~cannot~~ may not refuse coverage to an individual
6 employer. Under an individual policy, the group is entitled to a premium or volume discount that would be
7 applicable to a policy of the combined premium amount of the individual policies.

8 ~~(7)(3)~~ A group shall apportion any discount or policyholder dividend received on workers'
9 compensation insurance coverage among the members of the group according to a formula adopted in the
10 plan of operation for the group.

11 ~~(8)(4)~~ A group shall adopt a plan of operation that must include the composition and selection of
12 a governing board, the methods for administering the group, the eligibility requirements to join the group,
13 and guidelines for the workers' compensation insurance coverage obtained by the group, including the
14 payment of premiums, the distribution of discounts, and the method for providing risk management. A
15 ~~group shall file a copy of its plan of operation with the department."~~

16

17 **Section 6.** Section 39-71-503, MCA, is amended to read:

18 **"39-71-503. Administration of fund -- appropriation.** (1) The department shall administer the fund
19 and shall pay from it all expenses of administering the fund, all loss adjustment expenses for claims of
20 injured employees of uninsured employers, and all proper benefits to injured employees of uninsured
21 employers.

22 (2) Surpluses and reserves may not be kept for the fund. The department shall make payments that
23 it considers appropriate as funds become available from time to time. The payment of weekly disability
24 benefits takes ~~preference~~ precedence over the payment of medical benefits. Lump-sum payments of future
25 projected benefits, including impairment awards, may not be made from the fund. The board of investments
26 shall invest the money of the fund, and the investment income must be deposited in the fund. ~~The cost of~~
27 ~~administration of the fund must be paid out of the money in the fund.~~

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

30

1 **Section 7.** Section 39-71-504, MCA, is amended to read:

2 "**39-71-504. Funding of fund -- option for agreement between department and injured employee.**

3 The fund is funded in the following manner:

4 (1) ~~(a)~~ The department may require that the uninsured employer pay to the fund a penalty of either
 5 up to ~~double triple~~ **DOUBLE** the premium amount the employer would have paid on the payroll of the
 6 employer's workers in this state if the employer had been enrolled with compensation plan No. 3 ~~for the~~
 7 ~~period of time that the employer was uninsured~~ or ~~\$200 \$10,000~~ **\$200**, whichever is greater. IN
 8 DETERMINING THE PREMIUM AMOUNT FOR THE CALCULATION OF THE PENALTY UNDER THIS
 9 SUBSECTION, THE DEPARTMENT SHALL MAKE AN ASSESSMENT BASED ON HOW MUCH PREMIUM
 10 WOULD HAVE BEEN PAID ON THE EMPLOYER'S PAST 3-YEAR PAYROLL FOR PERIODS WITHIN THE 3
 11 YEARS WHEN THE EMPLOYER WAS UNINSURED. ~~In determining the premium amount for the calculation~~
 12 ~~of the penalty under this subsection, the department shall make an assessment on how much premium~~
 13 ~~would have been paid on the employer's past 3-year payroll for periods within the 3 years when the~~
 14 ~~employer was uninsured.~~

15 ~~(2)(b)~~ The fund shall ~~receive~~ collect from an uninsured employer an amount equal to all benefits
 16 paid or to be paid from the fund to an injured employee of the uninsured employer.

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

20 ~~(2) THE DEPARTMENT MAY DETERMINE THAT THE \$1,000 ASSESSMENTS THAT ARE CHARGED~~
 21 ~~AGAINST AN INSURER IN EACH CASE OF AN INDUSTRIAL DEATH UNDER 39-71-902(1) MUST BE PAID~~
 22 ~~TO THE UNINSURED EMPLOYERS' FUND RATHER THAN THE SUBSEQUENT INJURY FUND.~~

23 ~~(4)(2)(3)(2)~~ The department may enter into an agreement with the injured employee or the
 24 employee's beneficiaries to assign to the employee or the beneficiaries all or part of the funds ~~received~~
 25 collected by the department from the uninsured employer pursuant to subsection ~~(2)~~ (1)(b)."

26
 27 **Section 8.** Section 39-71-704, MCA, is amended to read:

28 "**39-71-704. Payment of medical, hospital, and related services -- fee schedules and hospital rates**
 29 **-- fee limitation.** (1) In addition to the compensation provided under this chapter and as an additional benefit
 30 separate and apart from compensation benefits actually provided, the following must be furnished:

1 (a) After the happening of a compensable injury and subject to other provisions of this chapter, the
2 insurer shall furnish reasonable primary medical services for conditions resulting from the injury for those
3 periods as the nature of the injury or the process of recovery requires.

4 (b) The insurer shall furnish secondary medical services only upon a clear demonstration of
5 cost-effectiveness of the services in returning the injured worker to actual employment.

6 (c) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses,
7 prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in
8 39-71-119, arising out of and in the course of employment.

9 (d) The insurer shall reimburse a worker for reasonable travel expenses incurred in travel to a
10 medical provider for treatment of an injury only if the travel is incurred at the request of the insurer.
11 Reimbursement must be at the rates allowed for reimbursement of travel by state employees.

12 (e) Except for the repair or replacement of a prosthesis furnished as a result of an industrial injury,
13 the benefits provided for in this section terminate when they are not used for a period of 60 consecutive
14 months.

15 (f) Notwithstanding subsection (1)(a), the insurer may not be required to furnish, after the worker
16 has achieved medical stability, palliative or maintenance care except:

17 (i) when provided to a worker who has been determined to be permanently totally disabled and for
18 whom it is medically necessary to monitor administration of prescription medication to maintain the worker
19 in a medically stationary condition; or

20 (ii) when necessary to monitor the status of a prosthetic device.

21 (g) If the worker's treating physician believes that palliative or maintenance care that would
22 otherwise not be compensable under subsection (1)(f) is appropriate to enable the worker to continue
23 current employment or that there is a clear probability of returning the worker to employment, the treating
24 physician shall first request approval from the insurer for the treatment. If approval is not granted, the
25 treating physician may request approval from the department for the treatment. The department shall
26 appoint a panel of physicians, including at least one treating physician from the area of specialty in which
27 the injured worker is being treated, pursuant to rules that the department may adopt, to review the
28 proposed treatment and determine its appropriateness.

29 (h) Notwithstanding any other provisions of this chapter, the department, by rule and upon the
30 advice of the professional licensing boards of practitioners affected by the rule, may exclude from

1 compensability any medical treatment that the department finds to be unscientific, unproved, outmoded,
2 or experimental.

3 (2) The department shall annually establish a schedule of fees for medical nonhospital services
4 necessary for the treatment of injured workers. Charges submitted by providers must be the usual and
5 customary charges for nonworkers' compensation patients. The department may require insurers to submit
6 information to be used in establishing the schedule. ~~The department shall establish utilization and treatment~~
7 ~~standards for all medical services provided for under this chapter in consultation with the standing medical~~
8 ~~advisory committees provided for in 39-71-1109.~~

9 (3) The department shall establish rates for hospital services necessary for the treatment of injured
10 workers. Beginning January 1, 1995, the rates may be based on per diem or diagnostic-related groups. The
11 rates established by the department pursuant to this subsection may not be less than medicaid
12 reimbursement rates. Approved rates must be in effect for a period of 12 months from the date of approval.
13 The department may coordinate this ratesetting function with other public agencies that have similar
14 responsibilities. For services available in Montana, insurers are not required to pay facilities located outside
15 Montana rates that are greater than those allowed for services delivered in Montana.

16 (4) The percentage increase in medical costs payable under this chapter may not exceed the annual
17 percentage increase in the state's average weekly wage as defined in 39-71-116.

18 (5) Payment pursuant to reimbursement agreements between managed care organizations or
19 preferred provider organizations and insurers is not bound by the provisions of this section.

20 (6) Disputes between an insurer and a medical service provider regarding the amount of a fee for
21 medical services must be resolved by a hearing before the department upon written application of a party
22 to the dispute.

23 (7) (a) After the initial visit, the worker is responsible for 20%, but not to exceed \$10, of the cost
24 of each subsequent visit to a medical service provider for treatment relating to a compensable injury or
25 occupational disease, unless the visit is to a medical service provider in a managed care organization as
26 requested by the insurer or is a visit to a preferred provider as requested by the insurer.

27 (b) After the initial visit, the worker is responsible for \$25 of the cost of each subsequent visit to
28 a hospital emergency department for treatment relating to a compensable injury or occupational disease.

29 (c) "Visit", as used in subsections (7)(a) and (7)(b), means each time the worker obtains services
30 relating to a compensable injury or occupational disease from:

- 1 (i) a treating physician;
 2 (ii) a physical therapist;
 3 (iii) a psychologist; or
 4 (iv) hospital outpatient services available in a nonhospital setting.
 5 (d) A worker is not responsible for the cost of a subsequent visit pursuant to subsection (7)(a) if
 6 the visit is an examination requested by an insurer pursuant to 39-71-605."

7

8 **Section 9.** Section 39-71-721, MCA, is amended to read:

9 **"39-71-721. Compensation for injury causing death -- limitation.** (1) (a) If an injured employee dies
 10 and the injury was the proximate cause of the death, the beneficiary of the deceased is entitled to the same
 11 compensation as though the death occurred immediately following the injury. A beneficiary's eligibility for
 12 benefits commences after the date of death, and the benefit level is established as set forth in subsection
 13 (2).

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

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

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

26 (4) If the decedent leaves no beneficiary, a lump-sum payment of \$3,000 must be paid to the
 27 decedent's surviving parent or parents.

28 (5) If any beneficiary of a deceased employee dies, the right of the beneficiary to compensation
 29 under this chapter ceases. Death benefits must be paid to a surviving spouse for 500 weeks subsequent
 30 to the date of the deceased employee's death or until the spouse's remarriage, whichever occurs first. After

1 benefit payments cease to a surviving spouse, death benefits must be paid to beneficiaries, if any, as
2 defined in 39-71-116(5)(b) through (5)(d).

3 (6) In all cases, benefits must be paid to beneficiaries.

4 (7) Benefits paid under this section may not be adjusted for cost of living as provided in
5 39-71-702."

6

7 **Section 10.** Section 39-71-741, MCA, is amended to read:

8 **"39-71-741. Compromise settlements and lump-sum payments.** (1) By written agreement filed
9 with the department, benefits under this chapter may be converted in whole or in part into a lump sum.
10 An agreement is subject to department approval. If the department fails to approve OR DISAPPROVE the
11 agreement in writing within 14 days of the filing with the department, the agreement is approved. The
12 department shall directly notify a claimant of a department order approving or disapproving a claimant's
13 compromise or lump-sum payment. Upon approval, the agreement constitutes a compromise and release
14 settlement and may not be reopened by the department. The department may approve an agreement to
15 convert the following benefits to a lump sum only under the following conditions:

16 (a) ~~Benefits under this chapter may be converted in whole or in part to a lump sum:~~

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

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

19 (b) ~~The agreement is subject to department approval. The department may disapprove an~~
20 ~~agreement under this section only if there is not a~~ there is a reasonable dispute over compensability; and

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

23 (2) ~~(a)(b) Permanent permanent~~ partial disability benefits ~~may be converted in whole or in part to~~
24 ~~a lump-sum payment if:~~

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

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

27 (b) The total of any permanent partial lump-sum conversion in part that is awarded to a claimant
28 prior to the claimant's final award may not exceed the anticipated award under 39-71-703.

29 (c) ~~An agreement is subject to department approval. The department may disapprove an agreement~~
30 under this subsection (1)(b) only if the department determines that the lump-sum conversion amount is

1 inadequate. If disapproved, the department shall set forth in detail the reasons for disapproval.

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

3 ~~(3)(c) Permanent permanent total disability benefits may be converted in whole or in part to a lump~~
 4 ~~sum. The if the total of all lump-sum conversions in part that are awarded to a claimant may do not exceed~~
 5 ~~\$20,000. A conversion may be made only upon the written application of the injured worker with the~~
 6 ~~concurrence of the insurer. Approval of the lump-sum payment rests in the discretion of the department.~~
 7 The approval or award of a lump-sum permanent total disability payment in whole or in part by the
 8 department or court must be the exception. It may be given only if the worker has demonstrated financial
 9 need that:

10 ~~(a)(i)~~ relates to:

11 ~~(i)(A)~~ the necessities of life;

12 ~~(i)(B)~~ an accumulation of debt incurred prior to the injury; or

13 ~~(i)(C)~~ a self-employment venture that is considered feasible under criteria set forth by the
 14 department; or

15 ~~(ii)~~ arises subsequent to the date of injury or arises because of reduced income as a result of
 16 the injury; OR

17 (D) EXCEPT AS OTHERWISE PROVIDED IN THIS CHAPTER, ALL OTHER COMPROMISE
 18 SETTLEMENTS AND LUMP-SUM PAYMENTS AGREED TO BY A CLAIMANT AND INSURER.

19 ~~(4)(2)~~ Any lump-sum conversion of benefits under this section must be converted to present value
 20 using the rate prescribed under subsection ~~(5)(b)~~ (3)(b).

21 ~~(5)(3)~~ (a) An insurer may recoup any lump-sum payment amortized at the rate established by the
 22 department, prorated biweekly over the projected duration of the compensation period.

23 (b) The rate adopted by the department must be based on the average rate for United States
 24 10-year treasury bills in the previous calendar year.

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

28 ~~(6) Subject to the other provisions of this section, the department shall approve or deny in writing~~
 29 ~~compromise settlements and lump-sum payments agreed to by workers and insurers. The department shall~~
 30 ~~directly notify a claimant of a department order approving or denying a claimant's compromise or lump-sum~~

1 ~~payment.~~

2 ~~(7)(4)~~ A dispute between a claimant and an insurer regarding the conversion of biweekly payments
3 into a lump-sum is considered a dispute, for which a mediator and the workers' compensation court have
4 jurisdiction to make a determination. If an insurer and a claimant agree to a compromise and release
5 settlement or a lump-sum payment but the department disapproves the agreement, the parties may request
6 the workers' compensation court to review the department's decision."

7

8 **Section 11.** Section 39-71-2314, MCA, is amended to read:

9 **"39-71-2314. State fund — assigned risk plan subject to laws applying to state agencies.** ~~(1) If~~
10 ~~an assigned risk plan is established and administered pursuant to 39-71-431, the state fund is subject to~~
11 ~~the premium tax liability for insurers as provided in 33-2-705 based on earned premium and paid on revenue~~
12 ~~from the previous fiscal year.~~

13 ~~(2)~~ The state fund is subject to laws that generally apply to state agencies, including but not limited
14 to Title 2, chapters 2, 3, 4 (only as provided in 39-71-2316), and 6, and Title 5, chapter 13. The state fund
15 is not exempt from a law that applies to state agencies unless that law specifically exempts the state fund
16 by name and clearly states that it is exempt from that law."

17

18 **NEW SECTION. Section 12. Transfer of deposits and surplus funds.** (1) All deposits held in trust
19 by the department of labor and industry pursuant to 39-71-2206 must be returned to the insurer who made
20 the deposit on or before December 31, 1997.

21 (2) Any surplus funds remaining in the underinsured employers' fund on [the effective date of this
22 act] must be deposited in the uninsured employers' fund provided for in 39-71-502.

23

24 **NEW SECTION. Section 13. Repealer.** Sections 39-71-431, 39-71-531, 39-71-532, 39-71-533,
25 39-71-534, 39-71-1013, 39-71-1109, and 39-71-2206, MCA, are repealed.

26

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

