MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Senator Richard Manning, on February 19, 1991, at 3:25 p.m.

ROLL CALL

Members Present:
Richard Manning, Chairman (D)
Thomas Towe, Vice Chairman (D)
Gary Aklestad (R)
Chet Blaylock (D)
Gerry Devlin (R)
Thomas Keating (R)
J.D. Lynch (D)
Dennis Nathe (R)
Bob Pipinich (D)

Members Excused: NONE.

Staff Present: Tom Gomez (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: NONE.

HEARING ON SENATE BILL 343

Presentation and Opening Statement by Sponsor:

Senator David Rye told the Committee Senate Bill 343 is at the request of the Department of Labor and Industry. This bill would allow the department more flexibility in dealing with the uninsured employers fund.

Proponents' Testimony:

Mike Micone, Commissioner of the Department of Labor and Industry explained the present law states the department shall require a penalty; double the premium amount the employer failed to pay for workers' compensation insurance or $200 whichever is greater. He explained a number of instances in which the level of penalty is contested by the employer. This requires a contested case hearing, causes delay, and may involve the department in a court case. He explained the more flexibility the department has in working with the employers, the greater opportunity in resolving the cases. An example he cited involved
an employer who purchased a business and thought there was workers' compensation coverage. Thirty days after he took over operation of the business he discovered he was not covered. He immediately applied for coverage. The application triggered the department to conduct an audit which determined a period of approximately 60 days of non-coverage. In this instance the premium was $21.00. According to present law a $200 penalty was imposed. He explained the department wishes to have the flexibility to negotiate penalties and avoid contested case hearings.

Don Judge, Executive Secretary of the Montana State AFL-CIO spoke in support of Senate Bill 343. He explained the onus on the department to apply penalties in appropriate places, otherwise the burden of paying payroll tax falls on good employers paying the tax.

Opponents' Testimony:

NONE.

Questions From Committee Members:

NONE.

Closing by Sponsor:

Senator Rye closed on Senate Bill 343.

EXECUTIVE ACTION ON SENATE BILL 343

Motion:

Senator Towe moved Senate Bill 343 DO PASS.

Discussion:

NONE.

Amendments, Discussion, and Votes:

NONE.

Recommendation and Vote:

Motion to DO PASS CARRIED UNANIMOUS.

HEARING ON SENATE BILL 365

Presentation and Opening Statement by Sponsor:

Senator Tom Keating explained the purpose of Senate Bill 365
is to address a serious problem before the legislature perennially; to amend the Workers' Compensation Act. He presented an analogy. About ten years ago Poland was controlled entirely by the state. Everyone was told where they would work, how long they would work, what they would get paid; then where they would spend their money, etc. The government of Poland recognized the country was running out of food, and even though there were laws directing the agriculture communes to deliver certain quantities of food. In spite of the laws and the weight of government, the people and the government were unable to deliver that food. An idea coming outside was tried. The government decreed every farmer who wanted to, could set aside 10 acres of land. The farmer could grow anything of his choice on the 10 acre tract, in addition to the work being done for the government. The government left the choice of product up to the farmer. The farmer was allowed to sell the surplus. A free enterprise, profit-motivated situation was created. Within a short while there was food in the marketplace. Statistics revealed the 10 acre plots amounted to 4% of the agricultural land on which crops and food are grown; and yet, the 4% was producing 60% of the food stuffs in the marketplace. The plan was a success because individuals were making choices for themselves. What was good for individuals in the freedom of choice was good for the whole of society.

Senator Keating commented with all the government control in the workers' compensation law, trying to do what is best for everyone, "we have satisfied no one". He pointed out an unfunded liability exists, premiums are too high, general fund money is being spent to keep the system going, and taxes are being imposed on people not using the system. He submitted the failure is due to the state dictating to individuals what is best for them. He stated a single law cannot meet all the individual needs of all the people in the workplace, nor does it address the unique situations of each employer or employee. He told the Committee there are 27,000 employers in the plan. There are 400 different categories with premiums too high for some and too low for others. As a consequence there is political manipulations of premiums in an attempt to satisfy one group or another.

Senator Keating told the Committee the personnel with the state plan are industrious, hard-working, honest individuals. They apply the law correctly. The law does not work. His proposal is to "let people take care of themselves, let each of them do for themselves what they think is best in their situation; instead of the state trying to control thousands of daily decisions with a single law".

Senator Keating stated the best way to correct the situation is to let the participants correct it themselves.

He told the Committee Senate Bill 365 would repeal the entire workers' compensation and occupational disease act, except, the requirement every employer provide workers'
compensation and occupational disease insurance coverage for each firm. The law will define employers and employees and independent contractors. It will define the duties of the Department of Labor and Industry which will receive certificates of insurance from all employers, as well as unemployment payroll statements. There would be an assigned risk pool. Any private carrier operating in the state would take a fair share of the high-risk uninsurable employers. In order to address the unfunded liability, the insurance commissioner would be allowed to adjust and settle benefits and claims by contracting with private adjusters. A provision would allow the state auditor to borrow money from the economic development fund at 7.5% interest, using the existing .28% payroll tax as collateral, and buy down the unfunded liability. He requested Senate Bill 365 be amended to reinstate the self-insured (which had been deleted) except, with the benefits currently in law. The self-insurers would file a schedule of benefits with the insurance commissioner or the DOLI.

Proponents' Testimony:

Susan Witty, Chief Legal Counsel for State Auditor and Commissioner of Insurance, Andrea Bennett, told the Committee she was neither a proponent nor an opponent. She explained Senate Bill 365 would cause staffing problems for the Department of Insurance in the assigned risk plan and in the contracting with private insurers. She commented it would require at least additional staff. (Ms. Witty did not sign the Visitor's Register but her comments are entered here.)

Jack Traxler representing the Montana School Transportation Association Private Contractors spoke in support of Senate Bill 365 from prepared testimony. (Exhibit 1(a) and 1(b))

Riley Johnson representing the National Federation of Independent Businesses presented written testimony provided by an NFIB member, Roger Koopman. Mr. Koopman is the manager/owner of Career Concepts in Bozeman. (Exhibit #2)

Mr. Johnson told the Committee NFIB could not take a position on legislation unless it has a specific ballot position. He explained NFIB does not have a ballot position on "selling the fund". He explained NFIB does have a position in privatization which is greatly favored; their members are displeased with the present program; and displeased with the taxation and surtaxes put on small employers to solve the problem. He commented Senate Bill 365 is a step toward solving the problem.

Opponents' Testimony:

Mike Sherwood, lobbyist for the Montana Trial Lawyers Association told the Committee if Senate Bill 365 were a bill to abolish workers' compensation in Montana he would support it. He
explained the bill is not. In 1987 a compromise was struck in
good faith by injured workers and the counsel representing them
with the business interest in Montana. He commented labor and
the individuals he represented lived up to the compromise. There
have been no class action suits to label Senate Bill 315 as an
inadequate remedy. An attempt has been made to make SB 315 work.
Senate Bill 365 further restricts rights and remedies of injured
workers drastically reduced in SB 315. He explained it does not
allow a job preference, there is no lump sum except by agreement,
and there is no guarantee of workers' compensation. There are no
minimum benefits required. It requires a private employer to
have a workers' compensation plan, but there are no requirements
as to remedies or benefits allowed. He commented SB 315 is
working. The actuaries say it is sound.

Don Judge, Executive Secretary of the Montana State AFL-CIO
spoke in opposition to Senate Bill 365. He explained they share
the same concerns about the workers' compensation system and
benefit levels; the "so-called compromise" in 1985; and the
further compromise in 1987. He commented this was not
necessarily a compromise. The Montana State AFL-CIO was opposing
some of those bills and some of the provisions of those bills.
He told the Committee "workers have been the ones to take the
heat on that". He cited an example of the repetitive injury,
carpal tunnel syndrome, which is not covered as a workers'
disease. He explained with the more frequent use of computers
people are using repetitive motion. He told the Committee they
(labor) are not satisfied with the workers' compensation system
as it is, and appreciate any effort to correct the problems.
Senate Bill 365 does not straighten out that system. There would
be no guarantee of return to work and no guarantees for a safe
workplace, both of which have been stricken. He commented there
is a positive effect of the bill, it appears to eliminate the
exclusive remedy provisions of the Montana law. An employee can
sue an employer in the event of a workplace injury. He told the
Committee it appears to be the "most progressive thing in the
bill". Mr. Judge commented in about 1985 and again in 1987,
independent contractors in the construction industry were arguing
they wanted out of the system. It was an unfair system and a
burden on them. Those same independent contractors have demanded
this session they be placed back into the workers' compensation
system. They are finding problems in their industry,
particularly with sub-contractors, because they will not obtain
insurance to cover their workers. Under the current law the
general contractor becomes responsible when a sub-contractor does
not provide those benefits. He told the Committee nothing in
Senate Bill 365 covers those workers. Mr. Judge commented the
social costs and costs to workers as result of eliminating the
state compensation system far out-weight any advantages in
eliminating it.

Bob Heiser of the United Food and Commercial Workers
International Union urged DO NOT PASS on Senate Bill 365.
George Wood, Executive Secretary of the Montana Self Insurers Association told the Committee Senate Bill 365 would do away with a system with many faults, but the system provides benefits for both employer and employee and has provided a service to the state. He stated his appreciation for returning self-insurers to the bill but the insurance commissioner will find there may be 44 separate plans filed. Employers who would be in competition with the self-insurers may have different plans with benefits from unreasonable to reasonable. The employer would make the decision. The exclusive remedy would cause problems as a "give away, not an equal position for both sides". He told the Committee he sees "nothing but chaos" if a system is administered to provide benefits to injured workers without a benefit schedule or administrative procedures or in which disputes will be decided at district court.

Gene Fenderson of the Montana State Building and Construction Trades asked to go on record in opposition to Senate Bill 365.

Dan Edwards representing the Oil, Chemical and Atomic Workers International Union spoke in opposition to Senate Bill 365.

Questions From Committee Members:

Senator Towe asked Senator Keating if it were true he wishes to repeal all minimum benefits. Senator Keating explained if the benefits are put in the law, a minimum is established, the temptation to use the minimum would work against the employee. If the benefits are set high, the premiums are high. The employers will say they cannot afford the premium. The state would be an intermediary. The concept is to get the state out of the business. If the benefits are put into law they are subject "to tampering by every legislature". He commented the responsibility of insurance coverage should be in the private sector and into the hands of those it affects.

Senator Towe asked if Senator Keating intended to repeal the exclusivity; with employers being subject to suit by their employees. Senator Keating pointed to Exhibit #3 (a copy of the Constitution Article II Section 16) in which it states "no person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable, except as to fellow employees and his immediate employer who hired him, if such immediate employer provides coverage under the workers' compensation laws of the state.". He explained the exclusive remedy is written into the constitution. If the employer provides workers' compensation as required by the act he is not subject to liability.

Senator Towe asked if the worker were provided with $1 damage if it would authorize full immunity to employers from suit. Senator Keating explained this would be an extreme
workers could not sue the employer if they were injured. Senator Keating explained that was correct. The workers could sue if the benefits are not adequate. If the workers feels the benefits are not adequate they can sue on that basis; they cannot sue "just because they are injured".

Senator Devlin asked an new unfunded liability is being started, after the other unfunded bad debt is set aside. Senator Keating referred the question to Patrick Sweeney. Mr. Sweeney told the Committee the actuarial numbers indicate the new fund is solvent.

Senator Devlin asked Mr. Sweeney the date the last independent audit was performed. Mr. Sweeney explained the fund is currently undergoing actuarial review. There is preliminary information. He told the Committee it is an ongoing review. The actuary, to date, has found nothing in the review to bring to the attention of the state fund.

Senator Devlin asked Mr. Sweeney if there were a sign of a surplus. Mr. Sweeney told the Committee he "thinks they might make a dollar this year".

**Closing by Sponsor:**

Senator Keating closed on Senate Bill 365. He told the Committee there has been attempts to repair the system for quite some time. He explained it has not been done in the past, and will not be done in the future. He commented the state must make the decision, whether to be in the business or out of it. He stated "the state of Montana will not and cannot straighten the system just because government cannot inherently cannot solve all of the problems in the world." He explained the only way we can "straighten out this plan" is to get out of it.

**ADJOURNMENT**

Adjournment At: 4:15 p.m.

\[Signature\]

RICHARD E. MANKIN, Chairman

LINDA CASEY, Secretary
<table>
<thead>
<tr>
<th>NAME</th>
<th>PRESENT</th>
<th>ABSENT</th>
<th>EXCUSED</th>
</tr>
</thead>
<tbody>
<tr>
<td>SENATOR AKLESTAD</td>
<td>P</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SENATOR BLAYLOCK</td>
<td>P</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SENATOR DEVLIN</td>
<td>P</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SENATOR KEATING</td>
<td>P</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SENATOR LYNCH</td>
<td>P</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SENATOR MANNING</td>
<td>P</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SENATOR NATHE</td>
<td>P</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SENATOR PIPINICH</td>
<td>P</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SENATOR TOWE</td>
<td>P</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Each day attach to minutes.
MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration Senate Bill No. 343 (first reading copy -- white), respectfully report that Senate Bill No. 343 do pass.

Signed: ______________________________
Richard E. Manning, Chairman
Syracuse Transportation Union, Gentlemen

Of Labor & Employment Relations Committee

Good Afternoon, my name is Joe Thumber and I represent the Madison Street Transportation Association, Private Contractors.

Our Association supports Senate Bill 346, we are made up of nearly 50 contractors state wide with the number of employees ranging from 20 to 800 on the low side to 123 in the urban area.

The feeling is that obtaining our insurance from the private sector would not only benefit the insurance industry but from studies we have viewed it would be much better for the State, for the employees and in the long term the contractors.

I thank you and ask for your consideration for a positive vote on this Bill.

J. Thumber

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 1(a)
DATE 2/19/91
BILL NO. SB365
WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 1st day of Feb, 1991.

Name: Jack E. Taylor

Address: 4403 Shuarcit Dr.
Missoula, MT. 59803

Telephone Number: 1-251-374-9

Representing whom?

Montana School Transportation Association

Appearing on which proposal?

Senate Bill 365

Do you: Support? __  Amend? __  Oppose? __

Comments:

__________________________________________

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 1 (b)

DATE 2/19/91

BILL NO. SB 365

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY
MEMORANDUM


FROM: Roger Koopman, Mgr./Owner

RE: SB 365

Although previous commitments made it impossible for me to testify before your committee today, nevertheless, I wanted to submit this brief testimony as an enthusiastic endorsement of SB 365.

As you know, Mr. Chairman, the Legislature has been struggling with the Worker's Compensation State Fund for at least ten years, and seems no closer now than ever to genuine solutions. The Fund continues to run an enormous deficit, and is beset by inequity and inefficiency at every turn. Every effort at improving things has been band-aid surgery at best, and no long term cure of the patient is in sight.

Senator Keating's bill is most encouraging to me because it both identifies the fundamental problem and at the same time, points to the only legitimate long term solution. It addresses a basic truth that we have all been missing -- i.e., that there are many functions in our society that are best handled by government, and many more that are best handled by private enterprise. If there is anything that the State Fund has proven to us beyond the shadow of a doubt, it is that government does a lousy job of trying to be an insurance company.

This is no reflection on the integrity or sincerity of state workers, most of whom have doubtlessly worked long and hard at trying to make the current arrangement work. But I would respectfully suggest that the current system will never work, because the problems it faces are problems that are inherent in any state fund. The almost scandalous inefficiencies that are deeply rooted into our current system simply would not exist to any major degree, if Worker's Compensation insurance was provided exclusively by the private sector.

This is a classic example of where the profit motive and related dynamics of private business would force a level of efficiency that governmental institutions are not similarly motivated to require. Competing companies would provide excellent, cost-effective coverages because, to do otherwise, they would lose business. Unlike the State Fund, which knows it can get bailed out by the legislature, private insurance companies would have to stand on their own, with operations finely tuned by the rigors of the marketplace. Such a system inevitably serves everyone's best interests.

Last year I had 216 employees on my payroll; this year I anticipate at least a 50% increase from that. Worker's Compensation has been a major concern to me for the 11 years I have been in business. SB 365 is the first bright light I have seen on the horizon in all this time, and to me, it represents a very bold and progressive step forward for employers and employees alike, and it is certainly in keeping with the national trend toward privatization and away from state funds. Please pass this excellent, forward-looking legislation. Thank you.

[Signature]

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 2

DATE 2/19/91

BILL NO. SB 365
Section 18. Right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, was not intended to be limited to all the fundamental rights herein contained shall be held to permit the carrying of arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned.

Section 19. The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, was not intended to be limited to all the fundamental rights herein contained shall be held to permit the carrying of arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned.

Section 20. The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, was not intended to be limited to all the fundamental rights herein contained shall be held to permit the carrying of arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned.

Section 21. The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, was not intended to be limited to all the fundamental rights herein contained shall be held to permit the carrying of arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned.
39-71-120 LABOR

1921; re-en. Sec. 2864, R.C.M. 1935; Sec. 91-412, R.C.M. 1947; R.C.M. 1947, 92-412, 92-418, 92-418.1; amd. Sec. 3, Ch. 464, L. 1987.

39-71-120. Independent contractor defined. (1) An "independent contractor" is one who renders service in the course of an occupation and:

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

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

(2) An individual performing services for remuneration is considered to be an employee under this chapter unless the requirements of subsection (1) are met.

History: En. 92-438.1 by Sec. 1, Ch. 251, L. 1973; R.C.M. 1947, 92-438.1; amd. Sec. 5, Ch. 314, L. 1987.


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

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

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

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

(2) Wages do not include:

(a) employee travel expense reimbursements or allowances for meals, lodging, or transportation to or from any of those;

(b) special rewards for individual invention or discovery;

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

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

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

(3) For compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages.

(a) Payments made to an employee on any basis other than time worked, excluding vacation or sick leave benefits, in the four pay periods immediately preceding the injury or illness make up the average actual earnings.

(b) Time worked is included in the computation of actual earnings if:

(i) the employee was paid on a flat fee basis for time worked;

(ii) the employee was paid for services performed on a commission basis;

(iii) the employee was paid for services performed on a straight time basis.

The average actual earnings shall be the sum of the actual earnings divided by the number of pay periods.

(4) For the purpose of calculating compensation benefits for an employee working concurrent employments, the average actual wages must be calculated as provided in subsection (3).

History: 27-1A-120. Independent contractor defined. (1) An "independent contractor" is one who renders service in the course of an independently established trade, occupation, or business. The performance of the services, both under the contract and in fact, is subject to the control of the employer.

(2) An individual performing services for remuneration is considered to be an employee under this chapter unless the requirements of subsection (1) are met.

History: En. Sec. 68, Ch. 464, L. 1987.

39-71-120. Independent contractor defined. (1) An "independent contractor" is one who renders service in the course of an independently established trade, occupation, or business. The performance of the services, both under the contract and in fact, is subject to the control of the employer.

(2) An individual performing services for remuneration is considered to be an employee under this chapter unless the requirements of subsection (1) are met.

History: En. Sec. 68, Ch. 464, L. 1987.
WORKMANS' COMPENSATION - NO CHANGE OR AMENDMENT

PART 1
GENERAL PROVISIONS

39-71-101 No change Short title.
39-71-116 Amendment Definitions.
39-71-117 Amendment Employer defined.
39-71-118 No change Employee, worker, and workman defined.
39-71-120 No change Independent contractor defined

PART 2
ADMINISTRATIVE PROVISIONS

39-71-203 No change Powers of department - rules.

PART 3
MISCELLANEOUS PROVISIONS

39-71-304 No change Books, records, and payrolls to be open to inspection - penalty for refusal.
39-71-317 Amendment Employer not to terminate worker for filing claim - preference - jurisdiction over dispute.

PART 4
COVERAGE, LIABILITY AND SUBROGATION

39-71-401 Amendment Employments covered and employments exempted.
39-71-431 Amendment Assigned risk plan.

PART 21
COMPENSATION PLAN NUMBER ONE

39-71-2101. Amended General Requirements for Electing Coverage
39-71-2103. Amended Employer permitted to carry on business and settle directly with employee - individual liability.
39-71-2104. Amended Renewal of application.
39-71-2106. Amended Requiring security of employer.

1.
<table>
<thead>
<tr>
<th>Section</th>
<th>Type</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>39-71-2107</td>
<td>Amended</td>
<td>When employer to make deposit or security to guarantee payment of compensation.</td>
</tr>
<tr>
<td>39-71-2108</td>
<td>Amended</td>
<td>Failure of employer to pay compensation - duty of department.</td>
</tr>
<tr>
<td>39-71-2109</td>
<td>Amended</td>
<td>When employer may be relieved from liability.</td>
</tr>
<tr>
<td>39-71-2204</td>
<td>Amendment</td>
<td>Insurer to submit notice of coverage within thirty days - penalty for failure.</td>
</tr>
<tr>
<td>39-71-2501</td>
<td>Amended</td>
<td>Definitions.</td>
</tr>
<tr>
<td>39-71-2502</td>
<td>Amended</td>
<td>Findings and purpose.</td>
</tr>
<tr>
<td>39-71-2503</td>
<td>Amended</td>
<td>Workers' Compensation payroll tax - penalty.</td>
</tr>
<tr>
<td>39-71-2504</td>
<td>Amended</td>
<td>Workers' compensation tax account.</td>
</tr>
<tr>
<td>39-71-2601</td>
<td>Amended</td>
<td>Short Title</td>
</tr>
<tr>
<td>39-71-2602</td>
<td>Amended</td>
<td>Purpose - construction.</td>
</tr>
<tr>
<td>39-71-2603</td>
<td>Amended</td>
<td>Definitions.</td>
</tr>
<tr>
<td>39-71-2604</td>
<td>Amended</td>
<td>Board of directors of fund.</td>
</tr>
<tr>
<td>39-71-2609</td>
<td>Amended</td>
<td>Establishment of fund - employer participation required.</td>
</tr>
<tr>
<td>39-71-2610</td>
<td>Amended</td>
<td>Rulemaking - powers of fund.</td>
</tr>
<tr>
<td>39-71-2611</td>
<td>Amended</td>
<td>Duties, liabilities, and rights of fund.</td>
</tr>
<tr>
<td>39-71-2615</td>
<td>Amended</td>
<td>Initial fee - assessment.</td>
</tr>
<tr>
<td>39-71-2616</td>
<td>Amended</td>
<td>Reimbursement for obligations paid and assumed.</td>
</tr>
<tr>
<td>39-71-2617</td>
<td>Amended</td>
<td>Tax exemption.</td>
</tr>
<tr>
<td>39-71-2618</td>
<td>Amended</td>
<td>Immunity.</td>
</tr>
<tr>
<td>39-71-2619</td>
<td>Amended</td>
<td>Notification of insolvency by private self-insurer.</td>
</tr>
<tr>
<td>39-71-2620</td>
<td>Amended</td>
<td>Audit requirement.</td>
</tr>
</tbody>
</table>

2.
WORKMANS' COMPENSATION - REPEALING SECTIONS

GOVERNMENT STRUCTURE
AND ADMINISTRATION


PART 1
GENERAL PROVISIONS

39-71-102. Reference to plans.
39-71-123. Wages defined.

PART 2
ADMINISTRATIVE PROVISIONS

39-71-201. Administration fund.
39-71-204. Rescission, alteration, or amendment by department or its orders, decisions, or awards...effect...appeal.
39-71-205. Department authorized to charge certain fees
39-71-206. Legal advisers of department and state fund.
39-71-208. Blank forms, minutes, and records.
39-71-209. Publication or reports and bulletins authorized.
39-71-221. Public records of department - right to inspect.
39-71-222. Duties of department regarding inspection and examination of records.
39-71-224. Records exempt from disclosure - separation of exempt material from nonexempt.

PART 3
MISCELLANEOUS PROVISIONS

39-71-301. Certificates and certified copies as evidence.
39-71-303. Work paid for in property other than money - wages to be determined by department.
39-71-306. Insurers to file summary reports of benefits paid for injuries and statements of medical expenditures.
39-71-308. Neglect or refusal of public corporation to file payroll reports - arbitrary assessment by department.
39-71-316. Filing true claim - obtaining benefits through deception or other fraudulent means
39-71-402. Extraterritorial application and reciprocity.

1.
Plan three exclusive for state agencies - election of plan by other public corporations - finance of self-insurance fund.

Liability of employer who contracts work out.

Deduction from wages of any part of premium a misdemeanor.

Liability of insurers - limitations.

Liability as first lien in case of bankruptcy or failure.

Waivers by employee invalid.

Provisions of chapter exclusive remedy - nonliability of insured employer.

Liability of third party other than employer or fellow employee - additional cause of action.

Liability of fellow employee for intentional and malicious acts or omissions - additional cause of action.

Subrogation.

Procedure for resolving disputes regarding independent contractor status.

Financial incentives to institute safety programs.

Reciprocal agreements with Canadian provinces.

Conditions for reciprocal agreements.

Denial of reciprocity.

Deductible option for medical benefits.

PART 5

UNINSURED EMPLOYERS

Definition of uninsured employer.

Creation and purpose of uninsured employers' fund.

Administration of fund.

Funding of fund - option for agreement between department and injured employee.

Applicability of other provisions of chapter to fund.

Collection of payments from uninsured employer by suit.

Department to order uninsured employer to cease operations - noncompliance with order a misdemeanor - coordination of remedies.

Coordination of remedies.

Action against uninsured employer - limitation of employer's defenses.

Limitation on benefit entitlement under fund.

Setoffs to claim against fund.

Independent cause of action.

District court venue and jurisdiction for independent cause of action.

Requirement to serve papers.

Setoffs against remaining liability.

Settlement.

2.
PART 6
CLAIMS FOR BENEFITS

39-71-602. Statute of limitation not to apply during minority or mental incompetency unless guardian appointed.
39-71-603. Notice of injuries other than death to be submitted within thirty days.
39-71-605. Examination of employee by physician - effect of refusal to submit to examination - report and testimony of physician - cost.
39-71-606. Insurer to accept or deny claim within thirty days of receipt - notice of denial - notice to employer.
39-71-607. Suspension of payments by insurer up to thirty days pending receipt of medical information.
39-71-608. Payments within thirty days by insurer without admission of liability or waiver of defense authorized - notice.
39-71-609. Denial of claim after payments made or termination of all benefits or reduction to partial benefits by insurer - fourteen days' notice required.
39-71-610. Termination of benefits by insurer - department order to pay disputed benefits prior to hearing - limitation on order - right of reimbursement.
39-71-611. Costs and attorneys' fees payable on denial of claim or termination of benefits later found compensable.
39-71-612. Costs and attorneys' fees that may be assessed against an insurer by workers' compensation judge.
39-71-613. Regulation of attorneys' fees - forfeiture of fee for noncompliance.

PART 7
COMPENSATION AND BENEFITS GENERALLY

39-71-704. Payment of medical, hospital, and related services - fee schedules and hospital rates.
39-71-710. Termination of benefits upon retirement.
39-71-722. Who constitutes beneficiary to be determined as of date of accident.
39-71-723. How compensation to be divided among beneficiaries.
39-71-724. Payment of compensation to beneficiary not a resident of United States.
39-71-725. Payment of burial expense.
39-71-726. No compensation after death where death not result of injury.
39-71-737. Compensation to run consecutively - exception.
39-71-740. Payments - how made in most cases.
39-71-742. Who may receive payment.
39-71-743. Assignment or attachment of payments.
39-71-744. Benefits not due while claimant is incarcerated.

PART 8
COMPENSATION FOR OCCUPATIONAL DEAFNESS

39-71-801. Occupational deafness compensated as provided in part.
39-71-806. Disability payments not payable for temporary hearing loss due to prolonged exposure to noise.
39-71-809. Liability of employer for occupational deafness.
39-71-810. Employee to have worked ninety days for employer from whom compensation claimed.
39-71-811. Minimum exposure and noise intensity level required.
39-71-812. Limitation on amount of compensation payable to employee under part.
39-71-813. Limitation provisions applicable - when provisions begin to run.

PART 9
SUBSEQUENT INJURY RECEIVED BY VOCATIONALLY HANDICAPPED

39-71-901. Definitions.
39-71-902. Fund to receive payment from insurer for each death under chapter - assessment of insurers.
39-71-905. Certification as vocationally handicapped.
39-71-906. Employer hiring or retaining certified vocationally handicapped person to file information with department - effect of failure to file.

4.
Certified vocationally handicapped person to be compensated for injury as provided by chapter - insurer liability for compensation limited.

Notification of fund of its potential liability under part - review by fund.

Effect of fund's failure to give notification of its intent to dispute liability - subsequent notification by fund authorized.

Procedure for resolving disputes as to liability under part.

Obligation to make payments on behalf of fund not an independent liability.

Reimbursement to be promptly made.

Payments by fund directly to persons entitled.

PART 10

REFERRAL OF DISABLED WORKERS FOR VOCATIONAL REHABILITATION

Eligibility for vocational rehabilitation expenses.

Industrial accident rehabilitation account.

Definitions.

Rehabilitation goal and options.

Agreement between worker and insurer regarding option.

Rehabilitation services - required and provided by insurers and the department of social and rehabilitation services.

Designated rehabilitation provider - evaluation and report.

Rehabilitation panels.

Rehabilitation panel report.

Department's order of determination - exception - hearing.

Referral to department of social and rehabilitation services for retraining - benefits - appeals.

Total rehabilitation benefits during period of rehabilitation services - limitation - termination.

Wage supplement and partial rehabilitation benefits.

Auxiliary rehabilitation benefits.

Self-employment - criteria.

Exchange of information.

Termination of benefits for noncooperation with rehabilitation provider or the department of social and rehabilitation services - department hearing and appeal.

Department jurisdiction over rehabilitation disputes - appeals.
PART 22
COMPENSATION PLAN NUMBER TWO

39-71-2201. Election to be bound by plan.
39-71-2202. Policies made subject to chapter.
39-71-2203. Content of policies - policies subject to approval, change, or revision by department.
39-71-2205. Policy in effect until canceled or replaced - twenty-day notification of cancellation required - penalty.
39-71-2206. Deposits by insurer with department to guarantee payment of liability.

PART 23
COMPENSATION PLAN NUMBER THREE

39-71-2311. Intent and purpose of plan.
39-71-2312. Definitions.
39-71-2313. State compensation mutual insurance fund created.
39-71-2314. State fund a mutual insurance carrier.
39-71-2318. Personal liability excluded.
39-71-2320. Property of the state fund - investment required.
39-71-2321. What to be deposited in state fund.
39-71-2322. Money in state fund held in trust - disposition of funds upon repeal of chapter.
39-71-2323. Surplus in state fund - payment of dividends.
39-71-2325. State fund to keep accounts of segregations.
39-71-2327. Earnings of state fund to be credited to fund - improper use a felony.
39-71-2336. Manner of electing - contract or policy of insurance - payment of premium.
39-71-2337. State fund to submit notice of coverage within thirty days - penalty for failure.
39-71-2338. Policy remains in effect until canceled or replaced - twenty-day notification of cancellation required.
39-71-2339. Cancellation of coverage - thirty days' notice required.

PART 24
MEDIATION

39-71-2351. Purpose of separation of state fund liability as of July 1, 1990, and of separate funding of claims before and on or after that date.
Separate payment structure and sources for claims for injuries resulting from accidents that occurred before July 1, 1990 and on or after July 1, 1990 - spending limit.

Use of payroll tax proceeds - loans.
Legislative Audit of state fund.
Purpose.
Department authority - rules.
Mandatory, nonbinding mediation.
Duties of mediator.
Limitations on mediation proceedings.
Mediation procedure.

PART 29
WORKERS' COMPENSATION JUDGE

Location of office - court powers.
Operating expenses.
Administrative procedure act and rules of evidence applicable.
Direct appeal to supreme court.
Petition to workers' compensation judge.
Increase in award for unreasonable delay or refusal to pay.
Authority to review, diminish, or increase awards.
Stay pending posttrial motions and appeal.
Signing of petitions, pleadings, motions, and other papers - requirements - sanctions.

OCCUPATION DISEASE ACT OF MONTANA
PART 1
GENERAL PROVISIONS

Definitions.
No vested right to compensation.

PART 2
ADMINISTRATIVE PROVISIONS

Administration of chapter.
Powers of department.
Department to adopt rules.
Claim forms to be prescribed by department.
Legal action be department.

PART 3
COVERAGE AND LIABILITY

Who subject to chapter.
Employer liability.
Which employer liable.
Physical examination of applicant for employment - no liability for occupational diseases found - procedure and requirements - rules.
Right to compensation exclusive remedy - uninsured employers.

PART 4
PRESENTATION AND PAYMENT OF CLAIMS GENERALLY

39-72-401. Payment of compensation subject to provisions of chapter.
39-72-403. Time when claims must be presented.
39-72-404. False representation by employee concerning previous occupational disease.
39-72-405. General limitations on payment of compensation.
39-72-408. Proximate causation

PART 5
STANDARDS FOR DETERMINING WHETHER DEATH OR DISABILITY DUE TO PNEUMOCONIOSIS


PART 6
MEDICAL EXAMINATIONS - DETERMINING COMPENSABILITY OF CLAIMS

39-72-601. Medical panel.
39-72-602. Insurer may accept liability - procedure for medical examination when insurer has not accepted liability.
39-72-611. Hearing on determination - when.

PART 7
COMPENSATION AND BENEFITS

39-72-701. Compensation for total disability or death due to occupational disease other than pneumoconiosis.
39-72-703. Medical and hospital expenses.
39-72-714. Reduction or suspension of compensation for unsanitary or injurious practices or refusal to submit to medical or surgical treatment.
<table>
<thead>
<tr>
<th>Name</th>
<th>Representing</th>
<th>Bill #</th>
<th>Support</th>
<th>Oppose</th>
</tr>
</thead>
<tbody>
<tr>
<td>Donna Alexander</td>
<td>MT Industrial Relations</td>
<td>365</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Jack Trixler</td>
<td>MT Steelworkers</td>
<td>368</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Darrell Edwards</td>
<td>OR AFL-CIO</td>
<td>365</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Jay Reardon</td>
<td>Union Local 72</td>
<td>365</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Don Judge</td>
<td>MT State AFL-CIO</td>
<td>5B3443</td>
<td>Y</td>
<td></td>
</tr>
<tr>
<td>Darrell Edwards</td>
<td>MT State AFL-CIO</td>
<td>5B365</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Michael Sherwood</td>
<td>MLA</td>
<td>5B365</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Bob Heiser</td>
<td>U.P. Union</td>
<td>5B365</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Dorothy Traylor</td>
<td>Eagle Forestry Montana</td>
<td>5B365</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Eugene Ferguson</td>
<td>MT Steelworkers</td>
<td>5B365</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Darrell Edwards</td>
<td>OR AFL-CIO</td>
<td>5B2414</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>George West</td>
<td>MT Self Employers Assn.</td>
<td>5B365</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Leon Staley</td>
<td>MT Restaurant Assoc</td>
<td>5B365</td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

(Please leave prepared statement with Secretary)