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## RECENT DEVELOPMENTS IN MONTANA WORKERS' COMPENSATION LAW

Neil S. Keefeer\*

### I. INTRODUCTION

The winds of change are blowing in the field of workers' compensation law. National developments have influenced greatly the Montana law of workers' compensation in recent years. The Montana legislature in the 1971 legislative session began a major overhaul of the Montana Workers' Compensation Act. The Montana Workers' Compensation Act has been amended both as to substance and procedure so that Montana is now within the mainstream of current national thinking in the workers' compensation field.

A comprehensive survey of Montana workers' compensation law was recently completed by the Continuing Legal Education Committee of the Montana Bar Association.<sup>1</sup> The purpose of this article is not to survey the Montana law of workers' compensation, but simply to discuss certain of the more significant changes in the Montana Workers' Compensation Act from 1971 through 1975, to discuss these changes in historical perspective, and to prognosticate somewhat as to future developments.

### II. WORKERS' COMPENSATION: A STATE LAW DEVELOPMENT

Of all the social-economic insurance programs that have developed in the United States this century, workers' compensation is unique in that it has been strictly a state law development. The workers' compensation laws of the fifty states and Puerto Rico are presently independent of any federal legislative or administrative supervision. Although the various state laws have a common philosophical thread, they differ considerably in provisions, extent of coverage, compulsory and elective features, benefit provisions and administrative proceedings. In the 1960's, public recognition of these differences stimulated debate about the fairness and adequacy of present workers' compensation laws in the light of eco-

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1. CONTINUING LEGAL EDUCATION COMMITTEE, STATE BAR OF MONTANA, MONTANA WORKERS' COMPENSATION MANUAL (1976). This manual is available from the State Bar of Montana, Kent Parcel, Executive Director, 600 N. Cooke, Helena, Montana, 59601.

conomic growth, the changing labor force, increased medical knowledge, new technological risks to health and safety, and increases in the general level of wages and the cost of living.

The International Association of Industrial Accident Boards and Commissions (IAIABC), as early as 1952, clearly recognized the need for improvement in the various state laws, and adopted standards, or recommendations as to the minimum standards that all individual state laws should provide.<sup>2</sup> No state met all of these standards. Many states met almost none. In comparison to the laws of other states, Montana ranked approximately at a median level.

Beginning in the early 1960's, a number of the more progressive states appointed study commissions to evaluate the workers' compensation laws of the particular state. Montana joined this trend in 1969 when Governor Forrest Anderson appointed a Governor's Advisory Commission with representatives from labor, management, the practicing bar and the insurance industry. Although there have been numerous changes of membership, the Governor's Advisory Commission still exists and has been responsible for the more progressive changes in the Montana Workers' Compensation Act.

### III. FEDERAL DEVELOPMENTS

Federal actions have provided the impetus for reform in workers' compensation law. In recent years a growing concern about workers' safety, adequate compensation, and medical benefit levels has prompted significant improvements in the workers' compensation program operated by the federal government,<sup>3</sup> and in the laws covering private employees in the District of Columbia, longshoremens and harbor workers, and private employees on overseas construction projects.<sup>4</sup> Congress enacted the Federal Coal Mine Health and Safety Act of 1969<sup>5</sup> which provides for work place health and safety standards, plus medical care and compensation benefits for miners suffering from Black Lung.

Despite a general awareness of inadequacies in state workers' compensation programs, Congress, until 1970, refrained from infringing on this area of state jurisdiction. It then enacted one of the

2. International Association of Industrial Accident Boards and Commissions, Box 3016, Des Moines, Iowa, 50316, Harry W. Dahl, Executive Director. The 23 IAIABC Standards are set out in Appendix A.

3. Federal Employee's Compensation Act, 5 U.S.C. §§ 8101-93 (1970), *as amended*, 5 U.S.C. §§ 8101-93 (Supp. IV, 1974).

4. Longshoremens' and Harbor Workers' Compensation Act Amendments of 1972, Pub. L. No. 92-576, 86 Stat. 1251, *amending* 33 U.S.C. §§ 901-50 (1970) (codified at 33 U.S.C. §§ 901-50 (Supp. 1974)).

5. Federal Coal Mine Health and Safety Act of 1969, Pub. L. No. 91-173, 83 Stat. 742 (codified at 30 U.S.C. §§ 801-960 (1970)).

most important pieces of legislation in American history, the Williams-Steiger Occupational Safety and Health Act of 1970 (OSHA).<sup>6</sup> This act was an extraordinarily far-reaching piece of legislation. It created safety standard-setting procedures and enforcement authority, and established a national study commission on state workers' compensation laws, thus launching a national study of state workers' compensation programs in an area heretofore reserved exclusively to the states. Congress gave the commission a full agenda, directing it to determine if state laws provided an adequate, prompt, and equitable system of compensation.<sup>7</sup>

The National Study Commission, appointed by the President, included representatives from the medical profession, industry, labor, workers' compensation agencies, universities and the insurance industry. The Commission submitted its report to the President in July, 1972, and then disbanded.<sup>8</sup> The report of the National Commission on State Workers' Compensation Laws contained approximately eighty-four separate recommendations, nineteen of which the commission considered so essential as to require federal intervention if, by July, 1975, the various states did not sufficiently improve their existing systems.<sup>9</sup> The standards of the International Association of Industrial Accident Boards and Commissions,<sup>10</sup> although somewhat modified, were essentially incorporated by the National Study Commission as its nineteen essential recommendations. The message to the states was loud and clear - reform or submit to federal regulation.

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6. Occupational Safety and Health Act of 1970, Pub. L. No. 91-596, 84 Stat. 1590 (codified at 29 U.S.C. §§ 651-78 (1970)).

7. 29 U.S.C. § 676(d)(1) (1970). The Commission was directed to consider the following factors: the amount and duration of permanent and temporary disability benefits and the criteria for determining the maximum limitations thereon; the amount and duration of medical benefits and provisions insuring adequate medical care and free choice of physician; the extent of coverage of workers, including exemptions based on numbers or type of employment; standards for determining which injuries or diseases should be deemed compensable; rehabilitation; coverage under second or subsequent injury funds; time limits on filing claims; waiting periods; compulsory or elective coverage; administration; legal expenses; the feasibility and desirability of a uniform system of reporting information concerning job-related injuries and diseases and the operation of workmen's compensation laws; the resolution of conflict of laws; extra-territoriality and similar problems arising from claims with multi-state aspects; the extent to which private insurance carriers are excluded from supplying workmen's compensation coverage and the desirability of such exclusionary practices, to the extent they are found to exist; the relationship between workmen's compensation on the one hand, and old-age, disability, and survivor's insurance and other types of insurance, public or private, on the other hand; methods of implementing the recommendations of the Commission.

8. U.S. DEPT. OF LABOR REPORT OF THE NATIONAL COMMISSION ON STATE WORKMEN'S COMPENSATION LAWS (1972).

9. *Id.* These nineteen essential recommendations are summarized in Appendix B.

10. *Supra* note 2.

The National Commission Report established consensus standards for state workers' compensation laws. The states were given until July 1, 1975, to comply with the essential elements of the Commission's recommendations. At that time Congress would review the progress made by the states. If the 1975 review revealed that the states were still lagging, then Congress would guarantee compliance by enacting the essential recommendations as mandatory federal standards. The report of the National Commission on State Workers' Compensation Laws has had an obvious two-fold effect. First, it established the federal presence in a formerly exclusive state province. Second, it created a flurry of state activity to amend workers' compensation laws to avoid or minimize federal control.

#### IV. MONTANA'S PROGRESS

The Montana Governor's Advisory Commission functioned within the guidelines of the report of the National Commission on State Workers' Compensation Laws. Because the National Commission Report was not formally issued until July, 1972, the legislative bill package submitted to the 1971 legislative session was of necessity somewhat limited. Eighteen bills were actually submitted to the 1971 legislature and enacted.<sup>11</sup> Although many of these bills were of a procedural or housekeeping nature, several important substantive changes were enacted.

The Montana Occupational Disease Act was substantially improved by amending the definition of occupational diseases to include all diseases that arise out of or are contracted from and in the course of employment.<sup>12</sup> The specified injury statute was amended to provide compensation for a healing period in addition to compensation for loss of specified member of the body.<sup>13</sup> The \$5000 limitation in payment of medical benefits was deleted to allow unlimited

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11. Laws of Montana (1971), ch. 38, § 1; Laws of Montana (1971), ch. 40, § 1; Laws of Montana (1971), ch. 41, § 1; Laws of Montana (1971), ch. 140, § 1; Laws of Montana (1971), ch. 141, § 1; Laws of Montana (1971), ch. 142, § 1; Laws of Montana (1971), ch. 143, § 1; Laws of Montana (1971), ch. 145, § 1; Laws of Montana (1971), ch. 146, § 1; Laws of Montana (1971), ch. 174, § 1; Laws of Montana (1971), ch. 175, § 1; Laws of Montana (1971), ch. 190, §§ 1-9; Laws of Montana (1971), ch. 308, §§ 1-2; Laws of Montana (1971), ch. 359, § 1; Laws of Montana (1971), ch. 363, § 1; Laws of Montana (1971), ch. 366, § 1; Laws of Montana (1971), ch. 402, § 1; Laws of Montana (1971), ch. 410, § 1.

12. Laws of Montana (1971), ch. 41, § 1, *amending REVISED CODES OF MONTANA* (1947) [hereinafter cited as R.C.M. 1947], § 92-1304 (Supp. 1975).

13. Laws of Montana (1971), ch. 140, § 1, *amending* R.C.M. 1947, § 92-709. This statute was amended in 1975 by deleting the reference to compensation payments for healing periods. Laws of Montana (1975), ch. 386, § 2, *amending* R.C.M. 1947, § 92-709 (Supp. 1975).

medical benefits during the first thirty-six months following an injury.<sup>14</sup>

The definition of the disability necessary to qualify for silicosis benefits was greatly liberalized.<sup>15</sup> Temporary total disability benefits were greatly liberalized, and the Social Security offset to temporary total disability benefits was enacted.<sup>16</sup> Injured workmen enrolled in vocational rehabilitation training while living at home were given a maintenance allowance.<sup>17</sup> A work week was redefined as "five working days".<sup>18</sup> The Workers' Compensation Division was given the power to promulgate regulations to prevent pseudo-corporations from avoiding workers' compensation coverage.<sup>19</sup> The term "employee" was redefined to include vocational rehabilitation trainees and other on-the-job trainees.<sup>20</sup> Members of partnerships and sole proprietorships were also allowed to elect coverage under the Act.<sup>21</sup>

The Montana Governor's Advisory Commission began its studies in 1969. The National Commission on State Workers' Compensation Laws held hearings and conducted studies at the same time. The State Commission elected to await the National Commission Report before submitting a comprehensive law revision package to the legislature. Upon publication of the National Commission Report, the State Commission prepared a comprehensive legislative package and presented it to the 1973 legislature. The 1973 bill package was the single most important revision of the Montana Workers'

14. Laws of Montana (1971), ch. 359, § 1, *amending* R.C.M. 1947, § 92-706. This statute was repealed in 1973, Laws of Montana (1973), ch. 252, § 2, and replaced by a new statute providing for compensation for reasonable medical and hospital services for the first thirty-six months after the injury. The Division, upon a showing of good cause by the injured worker, could grant an extension of these benefits. *See* p. 201 & notes 31, 32 *infra*.

15. Laws of Montana (1971), ch. 360, §§ 1-2, *amending* R.C.M. 1947, §§ 71-1001 to 1003.

16. Laws of Montana (1971), ch. 174, § 1, *amending* R.C.M. 1947, § 92-701. This statute was repealed in 1973, Laws of Montana (1973), ch. 471, § 2, and replaced by a new statute establishing compensation for temporary total disability at 66 2/3% of the wages received at the time of the injury. Laws of Montana (1973), ch. 471, § 1 (codified at R.C.M. 1947, § 92-701.1 (Supp. 1975)).

17. Laws of Montana (1971), ch. 363, § 1, *amending* R.C.M. 1947, § 92-1403 (Supp. 1975).

18. Laws of Montana (1971), ch. 175, § 1, *amending* R.C.M. 1947, § 92-422. This statute was repealed in 1973, Laws of Montana (1973), ch. 445, § 2, and replaced by a new statute which defined the "average weekly wage" as the mean weekly earnings of all employees under covered employment as established annually by the Employment Security Division of the Montana Department of Labor and Industry. Laws of Montana (1973), ch. 445, § 1, (codified at R.C.M. 1947, § 92-423.2 (Supp. 1975)).

19. Laws of Montana (1971), ch. 145, § 1, *amending* R.C.M. 1947, § 92-208 (Supp. 1975).

20. Laws of Montana (1971), ch. 308, § 1, *amending* R.C.M. 1947, § 92-411 (Supp. 1975).

21. *Id.*

Compensation Act. It closely followed the guidelines set forth in the National Commission Report, bringing the Montana Workers' Compensation Act into substantial compliance with the 1975 guidelines of the National Commission Report.

The first significant feature of the 1973 amendments is the expanded coverage of the Act. The law is now compulsory as to all Montana employment, both public and private,<sup>22</sup> except for minor exceptions.<sup>23</sup> The law prior to July 1, 1973, required only that certain employees who worked in hazardous industries be covered by workers' compensation insurance. Historically, agricultural employees were specifically exempted from mandatory coverage. The net effect of the old law was that a large segment of the Montana work force, including agricultural workers, could receive workers' compensation benefits only if their employers chose to provide them. The net effect of the new law is to require that all agricultural workers, and a number of others previously exempted, be covered by workers' compensation insurance. Employers are required to provide coverage for all workers, whether full-time or part-time, regardless of age, unless the worker falls within the limited exemptions.<sup>24</sup>

The second significant feature of the 1973 amendments is greatly improved benefit schedules. The classifications of disability as temporary total, permanent partial and permanent total were defined for the first time.<sup>25</sup> The historic formula for determining benefit schedules was significantly altered. The payment schedules for temporary total disability traditionally had been based upon the number of dependents that the injured worker supported, with four or more as the maximum payment bracket. Montana rejected this theory which in many ways discriminated against the single worker. In its place, Montana adopted the National Commission guidelines as to temporary total disability, which provide a new schedule for all workers regardless of dependents, allowing benefits of two-

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22. Laws of Montana (1971), ch. 282, § 1 (codified at R.C.M. 1947, § 92-207.1 (Supp. 1975)); Laws of Montana (1971), ch. 282, § 2 (repealing R.C.M. 1947, § 92-207). R.C.M. 1947, §§ 92-301 to -306 which defined extra-hazardous activities to which the Act applied was repealed. Laws of Montana (1973), ch. 443, § 6.

23. The exceptions to coverage under the Montana Workers' Compensation Act are: household employment, casual employment, members of the employer's family dwelling in his household, sole proprietors or working members of a partnership, employees covered under a federal compensation law, and persons performing services in return for aid or sustenance only. Laws of Montana (1973), ch. 492, § 1 (codified at R.C.M. 1947, § 92-202.1 (Supp. 1975)).

24. R.C.M. 1947, § 92-202.1 (Supp. 1975).

25. Laws of Montana (1973), ch. 107, § 1 (codified at R.C.M. 1947, § 92-439 (Supp. 1975)) defines "temporary total disability". Laws of Montana (1973), ch. 108, § 1 (codified at R.C.M. 1947, § 92-440 (Supp. 1975)) defines "permanent partial disability". Laws of Montana (1973), ch. 109, § 1 (codified at R.C.M. 1947, § 92-441 (Supp. 1975)) defines "permanent total disability".

thirds of the worker's average weekly earnings, not to exceed the average weekly statewide wage.<sup>26</sup> The same formula was adopted for permanent total disability with the additional provision that total permanent disability be paid for the duration of the disability, rather than be subject to a five hundred week limitation.<sup>27</sup> Permanent partial disability rates were increased so that the maximum weekly compensation is now one-half of the state's average weekly wage.<sup>28</sup> Although the National Commission Report is quite comprehensive, it did not purport to study all of the national compensation problems. The report simply ignored the problem of permanent partial disability.

Prior to 1973, death benefits were limited to six hundred weeks. Now death benefits are paid to a surviving widow or dependent widower until his or her death or remarriage.<sup>29</sup> A second injury fund likewise was established in 1973.<sup>30</sup> Even if an injured worker is completely rehabilitated and job ready, many employers are reluctant to hire him because of the risk of a second injury. Consequently, many handicapped workers who would otherwise hold responsible productive jobs become welfare cases. The second injury fund assumes a substantial portion of the employer's liability for subsequent injuries, and should greatly increase the ability of rehabilitated workers to find employment and provide a respectable living for themselves and their families. In 1973, the Workers' Compensation Division was given the power to extend medical and hospital benefits beyond the historic three-year limitation when an injured worker made application for an extension.<sup>31</sup> In 1975, these benefits were made payable without limitation as to duration or to dollar amount.<sup>32</sup>

The report of the National Commission on State Workers' Compensation Laws recognized that an effective delivery system, the fifth objective of a modern workers' compensation program, was necessary to achieve the other four basic objectives: 1) complete

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26. Laws of Montana (1973), ch. 471, § 1 (codified at R.C.M. 1947, § 92-701.1 (Supp. 1975)); Laws of Montana (1973), ch. 471, § 2 (repealing R.C.M. 1947, § 92-701).

27. Laws of Montana (1973), ch. 202, § 1 (codified at R.C.M. 1947, § 92-702.1 (Supp. 1975)); Laws of Montana (1973), ch. 202, § 2 (repealing R.C.M. 1947, § 92-702).

28. Laws of Montana (1973), ch. 155, § 1 (codified at R.C.M. 1947, § 92-703.1 (Supp. 1975)); Laws of Montana (1973), ch. 155, § 2 (repealing R.C.M. 1947, § 92-703).

29. Laws of Montana (1973), ch. 203, § 1 (codified at R.C.M. 1947, § 92-704.1 (Supp. 1975)); Laws of Montana (1973), ch. 203, § 2 (repealing R.C.M. 1947, § 92-704).

30. Laws of Montana (1973), ch. 254, § 1 (codified at R.C.M. 1947, § 92-709.1 (Supp. 1975)); Laws of Montana (1973), ch. 254, § 2 (repealing R.C.M. 1947, § 92-709A).

31. Laws of Montana (1973), ch. 252, § 1 (codified at R.C.M. 1947, § 92-706.1 (Supp. 1975)); Laws of Montana (1973), ch. 252, § 2 (repealing R.C.M. 1947, § 92-706).

32. Laws of Montana (1975), ch. 189, § 1, amending R.C.M. 1947, § 92-706.1 (Supp. 1975).



coverage, 2) adequate income maintenance, 3) necessary medical care and rehabilitation, and 4) safety incentives.<sup>33</sup> The Montana legislature of 1973 addressed itself to the delivery system. An insurance carrier is required to accept or deny the claim within thirty days and may only terminate compensation upon notice.<sup>34</sup> The carrier is responsible for reasonable costs and attorneys' fees incurred by the claimant if it denies a claim for compensation or terminates compensation benefits and if the claim is later adjudged compensable.<sup>35</sup> The 1974 and 1975 sessions of the legislature continued to examine the delivery system.<sup>36</sup>

Perhaps the most significant development in this area was the enactment of House Bill 100 by the 1975 legislative session.<sup>37</sup> This Act created the office of Workers' Compensation Judge.<sup>38</sup> It removed all of the quasi-judicial functions of the Workers' Compensation Division and in effect transferred those functions to the Workers' Compensation Judge.<sup>39</sup> The Workers' Compensation Judge is appointed by the Governor,<sup>40</sup> and must have the qualifications of a district court judge.<sup>41</sup> Currently contested workers' compensation cases go before the Workers' Compensation Court for determination.<sup>42</sup> The Judge likewise reviews all full and final compromise settlements of claims and may within ten days disapprove the settlement order.<sup>43</sup> The concept of *rusticum forum* has, however, been retained and the Workers' Compensation Court is not bound by the

33. *Supra* note 8.

34. Laws of Montana (1973), ch. 477, § 1 (codified at R.C.M. 1947, § 92-615 (Supp. 1975)).

35. Laws of Montana (1973), ch. 477, § 2 (codified at R.C.M. 1947, § 92-616 (Supp. 1975)).

36. *See, e.g.*, H. J. Res. No. 51, 43d Sess. (Mont. 1974) (study all aspects of Workmen's Compensation Act); S. J. Res. No. 70, 43d Sess. (Mont. 1974) (study premium rate structure of Workmen's Compensation Act); Laws of Montana (1974), ch. 173, § 1, *amending* R.C.M. 1947, § 92-615 (Supp. 1975) (notice of denial of claim by insurer); Laws of Montana (1974), ch. 173, § 2, *amending* R.C.M. 1947, § 92-616 (Supp. 1975) (costs and attorneys' fees payable on denial of claim later found compensable); Laws of Montana (1974), ch. 269, § 3, *amending* R.C.M. 1947, § 92-708 (Supp. 1975) (manner of payment of compensation); Laws of Montana (1974), ch. 272, § 1, *amending* R.C.M. 1947, § 92-702.1 (Supp. 1975) (payment of benefits for total permanent disability); Laws of Montana (1975), ch. 9, § 1, *amending* R.C.M. 1947, § 92-715 (Supp. 1975) (direct notice of award to claimants); Laws of Montana (1975), ch. 124, § 1 (codified at R.C.M. 1947, § 92-617 (Supp. 1975)) (Division may require payments by an insurer prior to hearing).

37. Laws of Montana (1975), ch. 537, §§ 1-8 (codified at R.C.M. 1947, §§ 82A-1016, 92-848 to -852 (Supp. 1975)).

38. R.C.M. 1947, § 82A-1016 (Supp. 1975).

39. R.C.M. 1947, § 92-848 (Supp. 1975).

40. R.C.M. 1947, § 82A-1016(2) (Supp. 1975).

41. R.C.M. 1947, § 82A-1016(3)(a) (Supp. 1975).

42. R.C.M. 1947, § 92-848(1) (Supp. 1975).

43. R.C.M. 1947, § 92-848(3) (Supp. 1975).

common law and statutory rules of evidence.<sup>44</sup> An appeal from an order of the Workers' Compensation Court is made directly to the Montana Supreme Court, thus by-passing appeal to the district court.<sup>45</sup>

## V. CONGRESSIONAL PROPOSALS

The United States Chamber of Commerce publishes an analysis of workers' compensation laws on an annual basis. The 1976 edition contains a chart showing the status of each state relative to the nineteen essential recommendations of the National Commission Report.<sup>46</sup> Montana stands in the forefront of states insofar as compliance is concerned. In the areas where the Montana Act is marked down, the variance is either inconsequential or easily correctable. A number of states, however, including our sister state of Wyoming, have done virtually nothing to upgrade their laws.

The failure of certain states to do anything about their workers' compensation programs has led to congressional action. On June 18, 1973, Senator Harrison A. Williams, Jr. (D-N.J.) and Senator Jacob K. Javits (R-N.Y.) introduced a bill for a national workers' compensation standards act, known as the Williams-Javits Bill.<sup>47</sup> That bill died with the 93d Congress. Senators Williams and Javits and Congressmen Daniels and Perkins again introduced legislation to establish federal minimum standards for all state workers' compensation laws and to encourage the states to bring their laws up to federal minimum requirements. This legislation, entitled "National Workers' Compensation Act of 1975", was introduced in the Senate as S. 2018 and in the House of Representatives as H.R. 9431. It superseded the 1973 Williams-Javits measure, but died with the 94th Congress. Committee hearings were held on these bills in both the Senate and the House of Representatives, but no further action was taken on them.

There are several basic approaches under congressional consideration. The Williams-Javits Bill of 1973 contemplated a scheme of minimum standards with which all state plans had to comply. The Secretary of Labor would be authorized to suspend operation of any state law failing to meet these standards, and impose the provisions of the Longshoremen's and Harbor Workers' Act.<sup>48</sup> The 1975 legislation, particularly H.R. 9431, would establish a series of entitlements to which all workers have a right as a basic element of any workers'

44. R.C.M. 1947, § 92-852(1) (Supp. 1975).

45. R.C.M. 1947, § 92-852(2) (Supp. 1975).

46. CHAMBER OF COMMERCE OF THE UNITED STATES, ANALYSIS OF WORKERS' COMPENSATION LAWS (inside back cover) (1976).

47. S. 2008, 93d Cong., 1st Sess. (1973).

48. S. 2008, 93d Cong., 1st Sess. (1973).

compensation program. The House Bill, rather than superimposing the Longshoremen's Act upon a state, would allow the worker denied these entitlements to sue in a federal court to enforce his rights.

## VI. CONCLUSION

The inescapable conclusion is that federal involvement of some sort appears inevitable. Consensus national standards have evolved as a result of the report of the National Commission on State Workers' Compensation Laws submitted to the President in July, 1972. Many states have made a sincere effort to upgrade their workers' compensation laws to meet the consensus national standards. Other states have done little or nothing. As a result, federal legislation has been introduced to impose federal supervision. This could take the form of a federal workers' compensation act containing national standards to be imposed upon the states which do not voluntarily upgrade their laws, or the creation of an independent right to sue for minimum entitlements in the federal courts. Because workers' compensation is such a vast field, retention of the states' administrative machinery is absolutely essential to any effective delivery system. An analysis of the Montana Workers' Compensation Act shows that Montana has made a sincere effort to improve its laws, and is now in substantial compliance with the nineteen essential recommendations of the National Commission Report. The impact of any federal legislation, therefore, should not be too great in the state of Montana. Montana must, of course, continue to monitor its laws to provide improvements or changes, necessary for an effective compensation system. The task may never be finished.

## APPENDIX A

## STANDARDS UNDER STUDY BY THE IAIABC

1. **COMPULSORY LAW**—Employer or employee does not have the right of election to reject coverage as provided by the workmen's compensation law of the jurisdiction.

2. **NO NUMERICAL EXEMPTION**—There shall be no numerical exemption of the employees included under the workmen's compensation law of the jurisdiction.

3. **SPECIFIC EXEMPTION**—There shall be no specific exemption of any hazardous employment.

4. **FARM EMPLOYMENT**—All farm employees shall be covered by all employers who have a payroll that exceeds \$1,000 per annum.

5. **COVERAGE OF OCCUPATIONAL INJURIES**—Coverage of all occupational injuries, including ionizing radiation, should be full and complete rather than limited to a schedule specified in the law.

6. **COVERAGE OF OCCUPATIONAL DISEASES**—Coverage of all occupational disease, including ionizing radiation, should be full and complete rather than limited to a schedule specified in the law.

7. **MEDICAL CARE FOR OCCUPATIONAL INJURIES**—Medical care should be full for occupational injuries without limitation to the cost or time and shall include physical rehabilitation and vocational rehabilitation.

8. **MEDICAL CARE FOR OCCUPATIONAL DISEASES**—Medical care should be full for occupational diseases without limitation as to cost or time and shall include physical rehabilitation and vocational rehabilitation.

9. **SUPERVISION OF MEDICAL CARE**—The workmen's compensation agency should have the authority to supervise and control medical care and should exercise such authority and supervision.

10. **INITIAL CHOICE OF PHYSICIAN**—The injured workman shall have free initial choice of the physician who treats him.

11. **REHABILITATION**—All activities, care, cure, maintenance, and restoration to work of injured workers should be under the direct control and supervision of the compensation agency. To this end, the workmen's compensation agency should include a rehabilitation division which should promote full utilization and development of governmental and private rehabilitation facilities for the benefit of injured workers.

12. **MAINTENANCE BENEFITS**—Benefits for maintenance and other necessary expenses should be provided during the period of rehabilitation and such benefits should be in addition to those provided in medical care and compensation awards.

13. **AVERAGE WEEKLY WAGE**—Compensation should be at the rate of 66 2/3 percent of the worker's wages up to at least the

average weekly wage for the jurisdiction. (Average weekly wage of the jurisdiction is meant to be the average wage of all employments in the jurisdiction.)

14. **PERMANENT TOTAL DISABILITY**—In the case of permanent total disability, benefits should be paid for life or during such disability.

15. **DEATH BENEFITS**—In case of death, benefits should be paid to the widow or widower until death or remarriage.

16. **DEATH BENEFITS**—In case of death, benefits should be paid to the children during their minority, and to other dependents during the period of their inability of self-support.

17. **WAITING PERIOD**—The waiting period should be for not more than three calendar days; and if the disability continues for more than two weeks, compensation should be paid from the date of disability.

18. **ILLEGALLY EMPLOYED MINORS**—Minors under eighteen who are injured while employed in violation of any law or regulation of the state should be paid benefits that are double those otherwise payable.

19. **SECOND INJURY FUND**—Legislation should facilitate the employment of physically handicapped workers by giving coverage of disability or death resulting from a combination of prior disease or infirmity with a covered occupational injury or disease, and with limitation of employer's liability when disability or death results from a combination of prior disease or infirmity with a covered occupational injury or disease, and provide a special fund for paying benefits authorized over and above the employer's liability.

20. **CLAIMS ADMINISTRATION**—The administration of workmen's compensation law should be under and confined to the supervision and direction of the duly appointed administrative agency of each jurisdiction.

21. **JUDICIAL REVIEW**—Judicial review should be limited to consideration of the record of the Board on questions of law only without a trial de novo.

22. **LIMITATIONS FOR FILING CLAIM**—There should be an adequate time limit for the filing of an occupational disease claim, including disability resulting from ionizing radiation.

23. **LIMITATION FOR FILING CLAIM**—There should be an adequate time limit for the filing of an occupational injury claim, including disability from ionizing radiation.

APPENDIX B

SUMMARY OF NINETEEN ESSENTIAL RECOMMENDATIONS  
OF THE NATIONAL STUDY COMMISSION

COMPULSORY AND UNIVERSAL COVERAGE:

1. Coverage by workmen's compensation laws be compulsory — no waivers.
2. Employers not be exempted from workmen's compensation coverage because of the number of employees.
3. Coverage be extended to *all* occupations.
4. *1st:* As of July 1, 1973, each agricultural employer who has an annual payroll that exceeds \$1000 be required to have coverage. *2nd:* As of July 1, 1975, farm workers be covered on the same basis as other employees.
5. As of July 1, 1975, household workers and all casual workers be covered at least to the extent they are covered by Social Security.
6. Workmen's compensation coverage be mandatory for all government employees.
7. No exemptions for any class of employees such as professional athletes or employees of charitable organizations.

EMPLOYEE:

8. "Employee" be defined as broadly as possible.
9. Workmen's compensation coverage be made available on an optimal basis for employers, partners and the self-employed.
10. Workers be eligible for workmen's compensation benefits from the first moment of their employment.
11. An employee or his survivor be given the choice of filing a claim in the state where the injury or death occurred, where employment was principally localized, or where the employee was hired.

DEFINITION OF INJURY:

12. The "accident" requirement be dropped as a test for compensability.
13. Full coverage be allowed for work-related diseases.
14. The "arising out of and in the course of the employment" test be used to determine coverage of injuries and diseases.
15. The etiology of a disease, being a medical question, be determined by a disability evaluation unit under the control and supervision of the workmen's compensation agency.
16. For deaths and impairments apparently caused by a combination of work-related and non-work-related sources, issues of causation be determined by the disability evaluation unit.
17. Full workmen's compensation benefits be paid for an impairment or death resulting from both work-related and non-work-related causes if the work-related factor was a significant cause of the impairment or death.

18. Workmen's compensation benefits be the exclusive liability of an employer when an employee is impaired or dies because of a work-related injury or disease.

19. Suits by employees against negligent third parties generally be permitted. Immunity from negligence actions should be extended to any third party performing the normal functions of the employer.