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NO. 7

## Initiative Measure No. 7

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RELATING TO COMPENSATION OF WORKMEN  
INJURED IN EXTRA-HAZARDOUS INDUSTRIES.

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To Be Voted Upon at the General Election,  
November 3, 1914.

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ARGUMENT IN BACK OF PAMPHLET

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Published by the Secretary of State

1914

Montana State Library



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THE NUMBER AND FORM IN WHICH THE  
QUESTION WILL BE PRINTED ON A  
SEPARATE OFFICIAL BALLOT  
ARE AS FOLLOWS:

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**Initiative Measure No. 7**

A BILL

To Propose by Initiative Petition:

An Act Entitled: "An Act relating to compensation of injured workmen, and compensation to their dependents where such injuries result in death, creating an industrial insurance department, providing for the creation and disbursement of funds for its administration and for the compensation and care of workmen injured in extra-hazardous employment, providing penalties for non-observance of regulations for prevention of injuries and for violation of this Act, asserting the police power, and, except in certain cases, abolishing the doctrine of negligence as ground for recovery of damages, and depriving courts of jurisdiction of such controversies."

For the Initiative Measure No. 7.  
Relating to Compensation of Workmen Injured in  
Extra-Hazardous Industries.

Against Said Measure No. 7.

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"Section III, Revised Code as Amended:

"The manner of voting on measures submitted to the people shall be: By marking the ballot with a cross in or on the diagram opposite and to the left of the proposition **FOR WHICH** the voter desires to vote."

Published by the Secretary of State,  
June, 1914.

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HELENA, MONTANA



## A BILL

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**BE IT ENACTED BY THE PEOPLE OF THE STATE OF MONTANA:**

### **Section 1. Declaration of Police Power.**

The common law system governing the remedy of workmen against employers for injuries received in hazardous work is inconsistent with modern industrial conditions. In practice it proves to be economically unwise and unfair. Its administration has produced the result that little of the cost of the employer has reached the workman and that little only at large expense to the public. The remedy of the workman has been uncertain, slow and inadequate. Injuries in such works, formerly occasional, have become frequent and inevitable. The welfare of the state depends upon its industries, and even more upon the welfare of its wage-workers. The state of Montana, therefore, exercising herein its police and sovereign power, declares that all phases of the premises are withdrawn from private controversy, and sure and certain relief for workmen, injured in extra-hazardous work, and their families and dependents is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding or compensation, except as otherwise provided in this act; and to that end all civil actions and civil causes of action for such personal injuries and all jurisdiction of the courts of the state over such causes are hereby abolished, except as in this act provided.

## **Section 2. Enumeration of Extra-Hazardous Works.**

There is a hazard in all employment, but certain employments have come to be, and to be recognized as being inherently constantly dangerous. This act is intended to apply to all such inherently hazardous works and occupations, and it is the purpose to embrace all of them, which are within the legislative jurisdiction of the state, in the following enumeration, and they are intended to be embraced within the term "extra-hazardous" wherever used in this act, to-wit: Factories, mills and workshops where machinery is used; printing, electrotyping, photo engraving and stereotyping plants where machinery is used; foundries, blast furnaces, mines, wells, gas works, water works, reduction works, breweries, elevators, wharves, docks, dredges, smelters, powder works, laundries operated by power, quarries, engineering works, theaters using moving picture machines operated by electric current, logging, lumbering and ship building operations; logging, street and interurban railroads; buildings being constructed, repaired, moved or demolished; telegraph, telephone, electric light or power plants or lines; steam heating or power plants, steamboats, tugs, ferries and railroads, not specifically exempted herein. If there be or arise any extra-hazardous occupation or work other than those hereinabove enumerated, it shall come under this act, and its rate of contribution to the department funds hereinafter established, shall be determined by the department hereafter created, upon the basis of the relation which the risk involved bears to the risks classified in section 4.

## **Section 3. Definitions.**

In the sense of this act words employed mean as here stated, to-wit: Factories mean undertakings in which the business of working at commodities is carried on with power-driven machinery, either in manufacture, repair or change, and shall include the premises, yard and plant of the concern.

Workshop means any plant, yard, premises, room or place wherein power-driven machinery is employed and manual labor is exercised by way of trade for gain or otherwise in or incidental to the process of making, altering, repairing, ornamenting, finishing or adapting for sale or otherwise any article or part of article, machine or thing, over which premises room

or place the employer of the person working therein has the right of access or control.

Mill, means any plant, premises, room or place where machinery is used, any process of machinery, changing, altering or repairing any article or commodity for sale or otherwise, together with the yards and premises which are a part of the plant, including elevators, warehouses and bunkers.

Mine means any mine where coal, clay, ore, mineral, gypsum or rock is dug or mined underground.

Quarry means an open cut from which coal is mined, or clay, ore, mineral gypsum, sand, gravel or rock is cut out or taken for manufacturing, building or construction purposes.

Engineering work means any work of construction, improvement or alteration, or repair of buildings, structures, streets, highways, sewers, street railways, railroads, logging roads, interurban railroads, harbors, docks, canals, electric, steam or water power plants; telegraph or telephone plants and lines; electric light or power lines, and includes any other works for the construction, alteration or repair of which machinery driven by mechanical power is used.

Except when otherwise expressly stated, employer, means any person, body of persons, corporate or otherwise, and the legal personal representatives of a deceased employer, who employ one or more workmen engaged in this state in any extra-hazardous work.

Workman means every person in this state, who, after March 1st, 1915, is engaged in the employment of an employer carrying on or conducting any of the industries scheduled or classified in section 4, whether by ways of manual labor or otherwise, and whether upon the premises or at the plant, or he being in the course of his employment, away from the plant of his employer: provided, however, that if the injury to a workman occurring away from the plant of his employer is due to the negligence or wrong of another not in the same employ, the injured workman, or if death result from the injury, instantaneously or otherwise, his widow, widower, children, or dependents, as the case may be, shall elect whether to take under this act or seek a remedy against such other, such election to be in advance of any suit under this section, and if he take under this act, the cause of action against

such other, shall be assigned to the state for the benefit of the accident fund; if the other choice is made, the accident fund shall contribute only the deficiency, if any, between the amount of recovery against such third person actually collected, and the compensation provided or estimated by this act for such case.

Any such cause of action assigned to the state may be prosecuted, or compromised by the department, in its discretion. Any compromise by the workman of any such suit, which would leave a deficiency to be made good out of the accident fund, may be made only with the written approval of the department. Any individual employer, or any member or officer of any corporate employer who shall be carried upon the pay roll at a salary or wage not less than the average salary or wage named in such pay roll and who shall be injured, shall be entitled to the benefit of this act as and under the same circumstances as and subject to the same obligations as a workman.

Dependent means any of the following named relatives of a workman whose death results from any accident or injury and who leaves surviving no widow, widower, or dependent child, viz: Dependent child, father, mother, grandfather, grandmother, step-father, step-mother, grandson, granddaughter, step-son, step-daughter, brother, sister, half-sister, half-brother, niece, nephew, who, at the time of the accident are dependent, in whole or in part, for their support upon the earnings of the workman.

Beneficiary means a husband, wife, child or dependent of a workman, in whom shall vest a right to receive payment under this act.

Invalid means one who is physically or mentally incapacitated from earning.

The word "child" as used in this act, includes a posthumous child, a child legally adopted prior to the injury, and an illegitimate child legitimated prior to the injury.

A dependent child means an invalid child of whatever age, a male child until he shall have reached the age of sixteen years, and a female child until she shall have reached the age of eighteen years.

The word injury or injured, as used in this act, refers only to an injury resulting from some fortuitous event as distinguished from the contraction of diseases.

**Section 4. Schedule of Contribution.**

In so much as industry should bear the burden of the cost of its accidents, each employer shall, prior to November 15th of each year, pay into the state treasury, in accordance with the following schedule, a sum equal to a percentage of his total pay roll for that year, to-wit: (The same being deemed the most accurate method of equitable distribution of burden in proportion to relative hazard.)

**CONSTRUCTION WORK.**

Tunnels, bridges, trestles, sub-aqueous works, ditches and canals (other than irrigation without blasting), dock excavation, fire escapes, sewers, house moving, house wrecking .....	.085
Iron or steel frame structures or parts of structures .....	.100
Electric light or power plants or systems; telegraph or telephone systems, pile driving, steam railroads.....	.075
Steeple, towers, or grain elevators, not metal framed; dry-docks without excavation, jetties, breakwaters, chimneys, marine railways, waterworks or systems, electric railways with rock work or blasting, erecting fireproof doors or shutters, blasting .....	.075
Steam heating plants, tanks, water towers or windmills, not metal frames .....	.060
Shaft sinking .....	.100
Concrete buildings, freight or passenger elevators, fireproofing of buildings, galvanized iron or tin works, gas works or system, marble, stone or brick works, road making with blasting, roof work, safe moving, slate work, outside plumbing work, metal smoke stacks or chimneys .....	.075
Excavations not otherwise specified, blast furnaces .....	.060
Street or other grading, cable or electric street railways without blasting, advertising signs, ornamental work in buildings .....	.050
Ship or boat building or wrecking with scaffolds, floating docks .....	.065
Carpenter work not otherwise specified .....	.055
Installation of steam boilers or engines, putting up belts for machinery, placing wire in conduits, installing dynamos.	



marble, stone or tile setting, inside work, mantle setting, metal ceiling work, mill or ship wrighting, painting of buildings or structures, installation of automatic sprinklers, ship or boat rigging, concrete laying in floors, foundations or street paving, asphalt laying, covering steam pipes or boilers, installation of machinery not otherwise specified .....	.050
Drilling wells, installing electrical apparatus or fire alarm systems in buildings, house heating or ventilation systems, glass setting, building hot houses, lathing, paper hanging, plastering, inside plumbing, wooden stair building, road making .....	.030
<b>OPERATION (Including Repair Work) of (All Combinations of Material Take the Higher Rate When Not Otherwise Provided.)</b>	
Logging railroads, railroads other than those specifically exempted herein, dredges, interurban electric railroads using third rail system, dry or floating docks .....	.075
Electric light or power plants, interurban electric railroads not using third rail system, quarries .....	.060
Street railways, all employees; telegraph or telephone systems, stone crushing, blast furnaces, smelters, coal mines, gas works, steamboats, tugs, ferries .....	.045
Mines, other than coal, steam heating or power plants.....	.050
Grain elevators, laundries, waterworks, paper, or pulp mills, garbage works .....	.030

**FACTORIES USING POWER DRIVEN MACHINERY.**

Stamping tin or metal .....	.065
Bridge work, railroad car or locomotive making or repairing, cooperage, logging with or without machinery, sawmills, shingle mills, staves, veneer, box lath, packing cases, sash, door or blinds, barrel, keg, pail, basket, tub, woodenware or wooden fibre ware, fibre ware, rolling mills, making steam shovels or dredges, tanks, water towers, asphalt, building material not otherwise specified, fertilizer, cement, stone with or without machinery, kindling wood, masts and spars with or without machinery, canneries, metal stamping extra, creosoting works, pile treating	

works .....	.0375
Excelsior, iron, steel, copper, zinc, brass or lead articles, or wares not otherwise specified, working in wood not otherwise specified, hardware, tile, brick, terra cotta, fire clay, pottery, earthenware, porcelean ware, peat, fuel bricketts	.030
Breweries, bottling works, boiler works, foundries, machine shops, not otherwise specified .....	.030
Cordage, working in foodstuffs, including oils, fruit, and vegetables, working in wool, cloth, leather, paper, broom, brush, rubber or textiles not otherwise specified .....	.025
Making jewelry, soap, tallow, lard, grease, condensed milk....	.025
Creameries, electrotyping, photo engraving, engraving, lithographing, printing .....	.015

#### MISCELLANEOUS WORK.

Stevedoring, longshoring (longshoring) .....	.025
Operating stock yards, with or without railroad entry, packing houses .....	.0375
Wharf operating, artificial ice, refrigerating or cold storage, plants, tanneries, electric systems, not otherwise specified .....	.030
Theater stage employes .....	.025
Fireworks manufacturing .....	.075
Powder works .....	.150

#### DATE OF APPLICATION OF ACT.

The application of this act as between employers and workmen shall date from and include the first day of March, 1915. The payment for March, April and May of 1915, shall be preliminarily collected upon the pay roll of the last preceding three months of operation. At the end of each year an adjustment of accounts shall be made upon the basis of the actual pay roll.

Any shortage shall be made good on or before December 1st, following. Every employer who shall enter into business at any intermediate day shall make his payment for the initial year or portion thereof, before commencing operation; its amount shall be calculated upon his estimated pay roll, an adjustment shall be made on or before January 2d. of the following year in the manner above provided.

For the purpose of such payments accounts shall be kept with

each industry in accordance with the classification herein provided and no class shall be liable for the depletion of the accident and administration funds from accidents happening in any other class. Each class shall meet and be liable for the accidents occurring in such class. There shall be collected from each class as an initial payment into the accident and administration funds as above specified on or before the 1st day of March, 1915, one-fourth of the premium of the next succeeding year, and one-twelfth thereof at the close of each month after May, 1915. Provided, any class having sufficient funds credited to its account at the end of the first three months or any months thereafter, to meet the requirements of the accident and administration funds, that class shall not be called upon for such month.

In case of accidents occurring in such class after lapsed payment or payments said class shall pay the said lapsed or deferred payments commencing at the first lapsed payment, as may be necessary to meet such requirements of the accident and administration funds.

#### **CREATION OF "ACCIDENT" AND "ADMINISTRATION" FUNDS.**

The funds thereby created shall be termed the "Accident fund" and the "Administration fund" and shall be devoted exclusively to the purposes specified for them in this act. In the division of moneys accruing to these funds, the "Accident fund" shall receive eighty-five per centum (85%) and the "Administration fund" shall receive fifteen per centum (15%) of all contributions paid by the employers in the several industries; the history of state insurance showing that the cost of economical administration need not exceed fifteen per centum.

At the close of each fiscal year any surplus moneys that may have accumulated in the Administration fund during the period last past, in excess of the actual and economical cost of administration of the Industrial Insurance Department shall be transferred from the Administration fund to and become a part of the Accident fund.

In that the intent is that the funds created under this section shall ultimately become neither more or less than self-supporting the classifications are subject to re-arrangement by the Industrial

Insurance Commission following any relative increase or decrease of hazard shown by experience. Notice of any change in classifications or premium rates shall be given by publication in two daily newspapers of general circulation for a period of four calendar weeks.

It shall be unlawful for the employer to deduct or obtain any part of the premium required by this section to be by him paid from the wages or earnings of his workmen or any of them, and the making or attempt to make any such deduction shall be a misdemeanor. If, after this act shall have come into operation, it is shown by experience under the act because of poor or careless management, any establishment or work is unduly dangerous in comparison with other like establishments or works, the department may advance its classification of risks and premium rates in proportion to the undue hazard. In accordance with the same principle, any such increase in classification or premium rate, shall be subject to restoration to the schedule rate. Any such change in classification of risks or premium rates, or any change caused by the change in the class of work, occurring during the year shall, at the time of the annual adjustment, be adjusted by the department in proportion to its duration in accordance with the schedule of this section. If, at the end of any year, it shall be seen that the contribution to the accident and administration funds by any class of industry shall be less than the drain upon the funds on account of that class, the deficiency shall be made good to the funds on the 2d day of January of the following year by the employers of that class in proportion to their respective payments for the past year.

For the purpose of such payments and making good of deficits the particular classes of industry shall be as follows:

### CONSTRUCTION WORK.

Class 1. Tunnels, sewer, shaft sinking, drilling wells.

Class 2. Bridges, mill wrighting, trestles, steeples, towers, or grain elevators not metal framed, tanks, water towers, wind-mills, not metal framed.

Class 3. Sub-aqueous works, canal other than irrigation or docks with or without blasting, pile driving, jetties, break-waters, marine railways.

Class 4. House moving, house wrecking, safe moving.

Class 5. Iron or steel frame structures or parts of structures; fire escapes, erecting fire proof doors or shutters, blast furnaces, concrete chimneys, freight or passenger elevators, fire proofing of buildings, galvanized iron or tin work, marble, stone or brick work, roof work, slate work, plumbing work, metal smoke stack or chimneys, advertising signs, ornamental metal work in buildings; carpenter work not otherwise specified; marble, stone or tile setting, marble setting, metal ceiling work, painting of buildings or structures, concrete laying in floors, or foundations; glass setting; building hot houses, lathing, paper hanging, plastering, wooden stair building.

Class 6. Electric light and power plants or systems; telegraph or telephone systems; cable or electric railways with or without rock work or blasting; water works or systems; steam heating plants; gas works or systems; installation of steam boilers or engines; placing wires in conduits; installing dynamos; putting up belts for machinery; installation of automatic sprinklers; covering steam pipes or boilers; installation of machinery not otherwise specified; installing electrical apparatus or fire alarm system in buildings; house heating or ventilating systems.

Class 7. Steam railroads, not specifically exempted herein, logging railroads.

Class 8. Road making; street or other grading; concrete laying in street paving; asphalt laying.

Class 9. Ship or boat building with scaffolds; ship wrighting; ship or boat rigging; floating docks.

#### OPERATION (Including Repair Work) of:

Class 10. Logging; saw mills; shingle mills; lath mills; planing mills; masts and spars with or without machinery.

Class 12. Dredges; dry or floating docks.

Class 13. Electric light or power plants or systems; steam heat or power plants or systems; electric systems not otherwise specified.

Class 14. Street railways.

Class 15. Telegraph systems; telephone systems.

Class 16. Coal mines, washers, tipples, etc.

Class 17. Quarries; stone crushing; mines other than coal.

Class 18. Blast furnaces; smelters; rolling mills; reduction work for treatment of ore.

Class 19. Gas works.

Class 20. Steamboats; tugs, ferries.

Class 21. Grain elevators.

Class 22. Laundries.

Class 23. Water works.

Class 24. Paper or pulp mills.

Class 25. Garbage works; fertilizer.

**FACTORIES (Using Power Driven Machinery).**

Class 26. Stamping tin or metal.

Class 27. Bridge work, making steam shovels or dredges; tanks; water towers.

Class 28. Railroad car or locomotive making or repairing.

Class 29. Cooperage; staves; veneer; box; packing cases; sash, door or blinds; barrel; keg; pail; basket; tub woodware or wood fibre ware; kindling wood; excelsior; working in wood not otherwise specified.

Class 30. Asphalt.

Class 31. Cement; stone with or without machinery; building material not otherwise specified.

Class 32. Canneries of fruit or vegetables.

Class 33. Canneries of fish or meat products.

Class 34. Iron, steel, copper, zinc, brass or lead articles or wares; hardware; boiler works, foundries; machine shops not otherwise specified.

Class 35. Tile, brick, terra cotta; fire clay; pottery; earthenware; porcelain ware.

Class 36. Peat fuel; briquettes.

Class 37. Breweries; bottling works.

Class 38. Cordage, working in wool; cloth, leather, paper, brush, rubber or textile not otherwise specified.

Class 39. Working in foodstuffs, including oils, fruits, vegetables.

Class 40. Condensed milk, canneries, creameries.

Class 41. Electrotyping; photo engraving; engraving; lithographing; making jewelry; printing.

Class 42. Stevedoring; longshoreing; (longshoring); wharf operation.

Class 43. Stockyards, packing houses; making soap, tallow, lard, grease, tanneries.

Class 44. Artificial ice; refrigerating or cold storage plant.

Class 45. Theater stage employees; moving picture machine operators.

Class 46. Fireworks manufacturing; powder works.

Class 47. Creosoting works; pile treating works.

If a single establishment or work comprises several occupations listed in this section in different risk classes, the premium shall be computed according to the payroll of each occupation if clearly separable; otherwise an average rate of premium shall be charged for the entire establishment, taking into consideration the number of employees and the relative hazards. If an employer besides employing workmen in extra-hazardous employment shall also employ workmen in employments not extra hazardous the provisions of this act shall apply only to the extra hazardous departments and employments and the workmen employed therein. In computing the pay roll the entire compensation received by every workmen employed in extra-hazardous employment shall be included, whether it be in the form of salary, wage, piece work, overtime, or any allowance in the way of profit sharing, premium or otherwise, and whether payable in money, board or otherwise.

#### **Section 5. Schedule of Awards.**

Each workman who shall be injured, whether upon the premises or at the plant, or, he being in the course of his employment, away from the plant of his employer, or his family or dependents in case of death of the workman, shall receive out of the accident fund compensation in accordance with the following schedule, and, except as in this act otherwise provided, such payment shall be in lieu of any and all rights of action whatsoever against any person whomsoever.

#### **COMPENSATION SCHEDULE.**

(a) Where death results from the injury, instantaneously or otherwise, the expenses of burial shall be paid in all cases, not to exceed One Hundred Dollars (\$100) in any case, and (1) if the workman leaves a widow or invalid widower, a monthly payment of Thirty (\$30) Dollars shall be made throughout the life of the

surviving spouse, to cease at the end of the month in which re-marriage shall occur; and the surviving spouse shall also receive Seven dollars and fifty cents (\$7.50) per month for each dependent child of the deceased at the time of the occurrence of the accident or injury until such child shall cease to be a dependent, but the total monthly payment under this paragraph (1) of subdivision (a) shall not exceed Fifty-two dollars and fifty cents (\$52.50). Upon re-marriage of a widow she shall receive, once and for all, a lump sum equal to twelve times her monthly allowance, viz: The sum of Three hundred and sixty (\$360) dollars, but the monthly payments for the child or children shall continue as before.

(2) If the workman leaves no wife or husband, but a dependent child or children, a monthly payment of Seventeen dollars and fifty cents (\$17.50) shall be made to each such child until such child shall cease to be a dependent, but the total monthly payments shall not exceed Fifty-two dollars and fifty cents (\$52.50), and any deficit shall be deducted proportionately among the beneficiaries.

(3) If the workman leaves no widow, widower or dependent child, but leaves a dependent or dependents, a monthly payment shall be made to each dependent equal to fifty per cent of the average monthly support actually received by such dependent from the workman during the twelve months next preceding the occurrence of the injury, but the total payment to all dependents in any case shall not exceed Thirty (\$30) dollars per month.

The payment to any dependent shall cease if and when, under the same circumstances, the necessity creating the dependency would have ceased if the injury had not happened.

If the workman is under the age of twenty-one years, and unmarried at the time of his death, the parents or parent of the workman shall receive Thirty (\$30) dollars per month for each month after his death until the time at which he would have arrived at the age of twenty-one years.

(4) In the event a surviving spouse receiving monthly payments shall die, leaving a dependent child or children the sum he or she shall be receiving on account of such child or children shall be thereafter paid to the child increased one hundred per cent but the total to all children shall not exceed the sum of Fifty-two



dollars and fifty cents (\$52.50) per month.

(b) Permanent total disability means the loss of both legs or both arms, or one leg and one arm, total loss of eyesight, paralysis or other condition permanently incapacitating the workman from performing any work at a gainful occupation.

If the workman receive a permanent injury, the nature of which demands constant attention which he, on account of the nature of said injury, is unable to administer to himself, then the department, as herein created, may furnish an attendant in addition to any compensation enumerated herein.

When permanent total disability results from the injury the workman shall receive monthly during the period of such disability:

(1) If unmarried at the time of the injury, the sum of thirty (\$30) dollars.

(2) If the workman have a wife or invalid husband, but no dependent child the sum of Thirty-five (\$35) dollars. If the husband is not an invalid, the monthly payment of Thirty-five (\$35) will be reduced to Twenty-five (\$25) dollars.

(3) If the workman have a wife or husband and a dependent child or children, or being a widower or widow, have any such child or children, the monthly payment provided in the preceding paragraph shall be increased to Seven dollars and fifty cents (\$7.50) more for each such child until such child shall cease to be a dependent, but the total monthly payment shall not exceed Fifty-two dollars and fifty cents (\$52.50).

(c) If the injured workman die during the period of total disability, whatever the cause of death, leaving a widow, invalid widower or dependent child, the surviving widow or invalid widower shall receive Thirty dollars (\$30) per month until death or re-marriage, to be increased Seven dollars and fifty cents (\$7.50) per month for each dependent child, but if such child is or shall be without father or mother, such child shall receive Seventeen dollars and fifty cents (\$17.50) per month. The total combined monthly payment under this paragraph shall in no case exceed Fifty-two dollars and fifty cents (\$52.50). Upon re-marriage the payments on account of a child or children shall continue as before to the child or children.

(d) When the total disability is only temporary, the sched-

ule of payment contained in paragraphs (1), (2), and (3), of the foregoing subdivision (b), shall apply so long as the total disability shall continue, increased fifty (50) per cent for the first six months of such continuance, but in no case shall the increase operate to make the monthly payment exceed sixty (60) per cent of the monthly wage (the daily wage multiplied by twenty-six) the workman was receiving at the time of his injury. As soon as recovery is so complete that the present earning power of the workman, at any kind of work, is restored to that existing at the time of the occurrence of the injury the payments shall cease. If and so long as the present earning power is only partially restored the payments shall continue in the proportion which the new earning power shall bear to the old. No compensation shall be payable out of the accident fund unless the loss of earning power shall exceed five (5) per cent.

(e) For every case of accident or injury resulting in death, instantaneously or otherwise, or permanent disability it shall be the duty of the department to forthwith notify the state treasurer, and he shall set apart out of the accident fund a sum of money for the case, to be known as the estimated lump value of the monthly payments provided for it, to be calculated upon the theory that a monthly payment of Thirty dollars (\$30) to a person thirty years of age, is equal to a lump sum payment, according to the expectancy of life as fixed by the American Mortality Table, or Six Thousand dollars (\$6,000), but the total in no case to exceed the sum of Six thousand dollars (\$6,000). The state treasurer shall invest said sum at interest in the class of securities provided by law for the investment of the permanent school fund, and out of the same and its earnings, shall be paid the monthly installments and any lump sum payment then or thereafter arranged for the case. Any deficiency shall be made good out of, and any balance or over-plus shall revert to the accident fund. The state treasurer shall keep accurate account of all such segregations of the accident fund, and may borrow from the main fund to meet monthly payments pending conversion into cash of any security, and in such case shall repay such temporary loan out of the cash realized from the security.

(f) Permanent partial disability means the loss of either one foot, one leg, one hand, one arm, one eye, one or more fingers, one or more toes, any dislocation where ligaments are severed, or any other injury known in surgery to be permanent partial disability. For any permanent partial disability resulting from an injury the workmen shall receive compensation in an amount equal to fifty (50) per centum of his wages for the periods stated against such injuries; provided, however, that in computing the compensation for permanent partial disability as provided for in this section, that the average monthly wage of the injured employe shall be considered to be not less than One hundred dollars (\$100) per month: In cases of:

The loss by separation of one arm at or above the elbow joint or the permanent and complete loss of the use of one arm, seventy-two months.

The loss by separation of one hand at or above the wrist joint, or the permanent and complete loss of the use of one hand, fifty-seven months.

The loss by separation of one leg at or above the knee joint, or the permanent and complete loss of the use of one leg, sixty-six months.

The loss by separation of one foot at or above the ankle joint, or the permanent and complete loss of the use of one foot, forty-eight months.

The permanent and complete loss of hearing in both ears, seventy-two months.

The permanent and complete loss of hearing in one ear, thirty-six months.

The permanent and complete loss of the sight of one eye, thirty months.

The loss by separation of a thumb, thirteen months; a first finger, nine months; a second finger, seven months; a third finger, six months; a fourth finger, five months.

The loss of one phalange of a thumb or two phalanges of a finger shall be considered equal to the loss of one-half of a thumb or finger, and a compensation for one-half of the above periods shall be payable.

The loss of more than one phalange of a thumb and more than two phalanges of a finger shall be considered as the loss of an entire thumb or finger.

The loss by separation of a great toe, nine months; any other toe four months.

Compensation for any other permanent partial disability shall be in the proportion which the extent of such disability shall bear to the maximum, said maximum being fifty (50) per centum of wages for a period of seventy-two months. If the injured workman be under the age of twenty-one years and unmarried, the parents or parent shall also receive a lump sum payment equal to 20 per cent of the amount awarded the minor workman.

(g) Should a further accident occur to a workman already receiving a monthly payment under this section for a temporary disability, or who has been previously the recipient of a lump sum payment under this act, his future compensation shall be adjusted according to the other provisions of this section and with regard to the combined effect of his injuries, and his past receipt of money under this act.

(h) If aggravation, diminution, or termination of disability takes place or be discovered after the rate of compensation shall have been established or compensation terminated in any case the department may, upon the application of the beneficiary or upon its own motion, readjust for future application the rate of compensation in accordance with the rules in this section provided for the same, or in proper case terminate the payments.

(i) A husband or wife of an injured workman, living in a state of abandonment for more than one year at the time of the injury, or subsequently, shall not be a beneficiary under this act.

(j) If a beneficiary shall reside or remove out of the state the department may, in its discretion, convert any monthly payments provided for such case into a lump sum payment (not in any case to exceed Six thousand dollars (\$6,000), upon the theory, according to the expectancy of life as fixed by the American Mortality Table, that a monthly payment of Thirty dollars (\$30) to a person of thirty years of age is worth Six thousand dollars (\$6,000), or, with the consent of the beneficiary, for a smaller sum.

(k) Any court review under this section shall be initiated in the county where the workman resides or resided at the time of the injury, or in which the injury occurred.

#### **Section 6. Intentional Injuries—Status of Minors.**

If injury or death results to a workman from the deliberate intention of the workman himself to produce such injury or death neither the workman nor the widow, widower, child or dependent of the workman shall receive any payment whatsoever out of the accident fund. If injury or death results to a workman from the deliberate intention of his employer to produce such injury or death, the workman, the widow, widower, child or dependent of the workman shall have the privilege to take under this act and also have cause of action against the employer, as if this act had not been enacted, for any excess of damage over the amount received or receivable under this act.

A minor working at an age legally permitted under the laws of this state shall be deemed sui juris for the purpose of this act, and no other person shall have any cause of action or right to compensation for an injury to such minor workman except as expressly provided in this act, but in the event of a lump sum payment becoming due under this act to such minor workman, the management of the sum shall be within the jurisdiction of the public administrator or court the same as other property of minors.

#### **Section 7. Conversion Into Lump Sum Payment.**

In case of death or permanent total disability the monthly payment provided may be converted, in whole or in part, into a lump sum payment (not in any case to exceed Six thousand dollars (\$6,000), on the theory, according to the expectancy of life as fixed by the American Mortality Table, that a monthly payment of Thirty dollars (\$30) to a person thirty years of age is worth the sum of Six thousand dollars (\$6,000) in which event the monthly payment shall cease in whole or in part accordingly or proportionately. Such conversion may only be made after the happening of the injury and upon the written application of the beneficiary (in case of minor children, the application may be by either parent) to the department and shall rest in the discretion of the department. Within the rule aforesaid the amount and value

of the lump sum payment may be agreed upon between the department and the beneficiary.

#### **Section 8. Defaulting Employers.**

If any employer shall default in any payment to the funds hereinbefore in this act required, the sum due shall be collected by action at law in the name of the state as plaintiff, and such right of action shall be in addition to any other right of action or remedy. In respect to any injury happening to any of his workmen during the period of any default in the payment of any premium under section 4 the defaulting employer shall not, if such default be after demand for payment, be entitled to the benefits of this act, but shall be liable to suit by the injured workman (or the husband, wife, child or dependent of such workman in case death result from the accident), as he would have been prior to the passage of this act.

In case the recovery actually collected in such suit shall equal or exceed the compensation to which the plaintiff therein would be entitled under this act, the plaintiff shall not be paid anything out of the accident fund; if the said amount shall be less than such compensation under this act, the accident fund shall contribute the amount of the deficiency. The person so entitled under the provisions of this section to sue shall have the choice (to be exercised before suit) of proceeding by suit or taking under this act. If such person shall take under this act, the cause of action against the employer shall be assigned to the state for the benefit of the accident fund. In any suit brought upon such cause of action the defense of fellow servant, assumption of risk, and the doctrine of contributory and comparative negligence shall be inadmissible.

Any such cause of action assigned to the state may be prosecuted or compromised by the department in its discretion. Any compromise by the workman of any such suit, which would leave a deficiency to be made good out of the accident fund, may be made only with the written approval of the department.

#### **Section 9. Employer's Responsibility for Safeguard.**

If any workman shall be injured because of the absence of any safeguard or protection required to be provided or maintained by, or pursuant to, any statute or ordinance, or any depart-

ment regulation under any statute, or be, at the time of the injury, of less than the maximum age prescribed by law for the employment of a minor in the occupation in which he shall be engaged when injured, the employer shall, within ten days after demand therefor by the department, pay into the accident fund, in addition to the sum required by section 4 to be paid:

(a) In case the consequent payment to the workman out of the accident fund be a lump sum, a sum equal to fifty (50) per cent of that amount.

(b) In case the consequent payment to the workman be payable in monthly payments, a sum equal to fifty per cent of the lump value of such monthly payment, estimated in accordance with the rule stated in section 7.

The foregoing provisions of this act shall not apply to the employer if the absence of such guard or protection be due to the removal thereof by the injured workman himself, or with his knowledge, by any of his fellow workmen, unless such removal be by order or direction of the employer or superintendent or foreman of the employer, or any one placed by the employer in control or direction of such workman. If the removal of such guard or protection be by the workman himself or with his consent by any of his fellow workmen, unless done by order or direction of the employer or the superintendent or foreman of the employer, or any one placed by the employer in control, or direction of such workman, the schedule of compensation provided in section 5 shall be reduced ten (10) per cent for the individual case of such workman.

#### **Section 9<sup>1</sup>/<sub>2</sub>. First Aid or Treatment Cost of An Injury to Workmen.**

In all cases of injury to a workman known in this act as permanent total, permanent partial, and temporary total, he shall receive, in addition to the compensation provided in this act, proper and necessary medical, surgical and hospital services and Seven dollars and fifty cents (\$7.50) per week as compensation, said Seven dollars and fifty cents (\$7.50) to be paid at the end of each week for a period of not exceeding twenty-one days, whether the disability be temporary or otherwise. Provided, however, that where the employees of the employment wherein the injury occurred, prior to the adoption of this act, owned and

operated their own co-operative hospital or hospitals, then the employer shall not be required to pay for such hospital services.

It shall be the duty of the employer to see to it that immediate medical and surgical services are rendered, and transportation to hospital provided, and all costs for said First Aid or Treatment to injured employees, as enumerated in this section, shall be borne by the employer, by whom said workman was employed when the injury occurred.

For failure to comply with the provisions of this section on the part of the employer, the department may take such steps as they deem advisable in the premises.

In all cases wherein the nature of the accident is such as to raise a reasonable doubt in the mind of the attending physician or physicians, as to the ability of the workman to continue work, then no compensation shall be paid for the first seven days immediately following the injury.

#### **Section 10. Exemption of Awards.**

No money paid or payable under this act out of the accident fund shall, prior to issuance and delivery of the warrant therefor, be capable of being assigned, charged, nor even be taken in execution or attached or garnished, nor shall the same pass to any other person by operation of law. Any such assignment or charge shall be void.

#### **Section 11. Non-Waiver of Act by Contract.**

No employer or workman shall exempt himself from the burden or waive the benefits of this act by any contract, agreement, rule or regulation, and any such contract, agreement, rule or regulation shall be pro tanto void.

#### **Section 12. Filing Claim for Compensation.**

(a) Where a workman is entitled to compensation under this act he shall file with the department, his application for such, together with the certificate of the physician who attended him, and it shall be the duty of the physician to inform the injured workman of his rights, under this act and to lend all necessary assistance in making this application for compensation and such proof of other matters as required by the rules of the department without charge to the workman.

(b) Where death results from injury the parties entitled to compensation under this act, or some one in their behalf, shall



make application for the same to the department, which application must be accompanied with proof of death and proof of relationship showing the parties to be entitled to compensation under this act, certificates of attending physician, if any, and such other proof as required by the rules of the department.

(c) If change of circumstances warrant an increase or re-arrangement of compensation, like application shall be made therefor. No increase or re-arrangement shall be operative for any period prior to application therefor.

(d) No application shall be valid or claim thereunder enforceable unless filed within one year after the day upon which the injury occurred or the right thereto accrued.

### **Section 13. Medical Examination.**

Any workman entitled to receive compensation under this act is required, if requested by the department, to submit himself for medical examination at a time and from time to time at a place reasonably convenient for the workman and as may be provided by the rules of the department. If the workman refuse to submit to any such examination, or obstructs the same, his rights to such monthly payments shall be suspended until such examination has taken place, and no compensation shall be payable during or for account of such period.

### **Section 14. Notice of Accident.**

Whenever any accident occurs to any workman it shall be the duty of the employer to at once report such accident and the injury resulting therefrom to the department, and also to any local representative of the department. Such report shall state:

1. The time, cause and nature of the accidents and injuries, and the probable duration of the injury resulting therefrom.
2. Whether the accident arose out of or in the course of the injured person's employment.
3. Any other matters the rules and regulations of the department may prescribe.

### **Section 15. Inspection of Employer's Books.**

The books, records and pay rolls of the employer pertinent to the administration of this act shall always be open to inspection by the department or its traveling auditor, agent or assistant, for the purpose of ascertaining the correctness of the pay roll, the

men employed, and such other information as may be necessary for the department and its management under this act. Refusal on the part of the employer to submit said books, records and pay rolls for such inspection to any member of the commission or any assistant presenting written authority from the commission, shall subject the offending employer to a penalty of One hundred dollars (\$100) for each offense, to be collected by civil action in the name of the state. All sums collected under this section shall be paid into the accident fund, and the individual who shall personally give such refusal shall be guilty of a misdemeanor.

**Section 16. Penalty for Misrepresentation as to Pay Roll.**

Any employer who shall misrepresent to the department the amount of pay roll upon which the premium under this act is based shall be liable to the state in ten times the amount of the difference in premium paid and the amount the employer should have paid. The liability to the state under this section shall be enforced in a civil action in the name of the state. All sums collected under this section shall be paid into the accident fund.

**Section 17. Public and Contract Work.**

Whenever the state, county or any municipal corporation shall engage in any extra-hazardous work in which workmen are employed for wages, this act shall be applicable thereto. The employer's payments into the department fund shall be made from the treasury of the state, county or municipality. If said work is being done by contract, the pay roll of the contractor and the sub-contractor shall be the basis of computation, and in the case of contract work consuming less than one year in performance, the required payment into the accident and administration funds shall be based upon the total pay roll. The contractor and any sub-contractor shall be subject to the provisions of this act, and the state for its general fund, the county or municipal corporation shall be entitled to collect from the contractor the full amount payable to the Industrial Insurance department, and the contractor in turn shall be entitled to collect from the sub-contractor his proportionate amount of the payment. The provisions of this section shall apply to all extra-hazardous work done by contract, except that in private work the contractor shall be responsible, primarily and directly, to this department for the proper percentage

of the total pay roll of the work and the owner of the property affected by the contract shall be surety for such payments. Whenever and so long as, by state law, city charter or municipal ordinances, provision is made for municipal employees injured in the course of employment, such employees shall not be entitled to the benefits of this act and shall not be included in the pay roll of the municipality under this act.

**Section 18. Interstate Commerce.**

The provisions of this act shall not apply to any workman engaged in the actual movement of trains upon railroads engaged in interstate or foreign traffic. Workmen engaged in the actual movement of trains, include only those employed in the engine, train and switching services.,

**Section 19. Elective Adoption of Act.**

Any employer and his employees engaged in works not extra-hazardous may, by their joint election, filed with the department, accept the provisions of this act, and such acceptances, when approved by the department, shall subject them irrevocably to the provisions of this act to all intents and purposes as if they had been originally included in its terms. Ninety (90) per cent of the minimum rate specified in Section 4 shall be applicable to such cases until otherwise provided by law.

Employers not electing to accept the provisions of this act, and engaged in works not extra hazardous, shall display in a conspicuous manner about their works, and in a sufficient number of places reasonably to inform their workmen of the fact, printed notices stating they are not contributors to the fund.

**Section 20. Court Review.**

Any employer, workman, beneficiary, or person feeling aggrieved at any decision of the department affecting his interests under this act may have the same reviewed by a proceeding for that purpose, in the nature of an appeal, initiated in the district court of the county of his residence, except as otherwise provided in subdivision (1) of section numbered (5) in so far as such decision rests upon questions of fact, or of the proper application of the provisions of this act, it being the intent that matters resting in the discretion of the department shall not be subject to review.

The proceedings in every such appeal shall be informal and summary, but full opportunity to be heard shall be had before judgment is pronounced. No such appeal shall be entertained unless notice of appeal shall have been served by mail or personally upon some member of the commission within twenty days following the rendition of the decision appealed from and communication thereof to the person affected thereby. No bond shall be required, except that an appeal by the employer from a decision of the department under section 9 shall be ineffectual unless, within five days following the service of notice thereof, a bond, with surety satisfactory to the court, shall be filed, conditioned to perform the judgment of the court. Except in the case last named an appeal shall not be a stay. Either party shall be entitled to a jury trial upon demand. It shall be unlawful for any attorney engaged in any such appeal to charge or receive any fee therein in excess of a reasonable fee, to be fixed by the court in the case, and, if the decision of the department shall be reversed or modified, such fee and the fees of medical and other witnesses and the costs shall be payable out of the administration fund, if the accident fund is affected by the litigation. In other respects the practice in civil cases shall apply. Appeal shall lie from the judgment of the district court as in other civil cases. The attorney-general shall be the legal adviser of the department and shall represent it in all proceedings, whenever so requested by any of the commissioners. In all court proceedings under or pursuant to this act, the decision of the department shall be prima facie correct, and the burden of proof shall be upon the party attacking the same.

#### **Section 21. Creation of Department.**

The administration of this act is imposed upon a department to be known as the Industrial Insurance Department, to consist of three commissioners to be appointed by the governor, within thirty days after the passage of this act, not more than two of whom shall belong to one political party. One of them shall hold office for the first two years, another for the first four years, and another for the first six years following the passage of this act. Thereafter the term shall be six years. Each commissioner shall hold until his successor shall be appointed and shall have qualified. A decision of any question arising under this act con-

curred in by two of the commissioners shall be the decision of the department.

Inasmuch as the duties to be performed by such commissioners, vitally concern the employer and employees, as well as the people of the whole state, it is hereby declared to be the purpose of this act that persons be appointed as commissioners who shall fairly represent the interests of all concerned in its administration. No commissioner shall hold any other office or position of profit or pursue any other business or vocation, but shall devote his entire time to the duties of his office.

The governor may at any time remove any commissioner for inefficiency, neglect of duty, or malfeasance in office. Before such removal he shall give such commissioner a copy of the charges against him and shall fix the time when he can be heard in his own defense, which shall not be less than ten days thereafter, and such hearing shall be open to the public.

If such commissioner shall be removed the governor shall file in the office of the secretary of state, a complete statement of all charges made against such commissioner and his findings thereon, with a record of the proceedings.

Before entering on the duties of his office, each commissioner shall take and subscribe to an oath or affirmation that he will support the constitution of the United States and of this state and faithfully and honestly discharge the duties of such office of commissioner; that he holds no other office or position of profit, and that he pursues and will pursue while such commissioner no other calling or vocation, and that he holds, and while such commissioner will hold, no other position under any political party, which oath or affirmation shall be filed in the office of the secretary of state.

Each of the commissioners shall also, before entering upon the duties of his office, execute a bond payable to the state of Montana, in the penal sum of Ten Thousand Dollars (\$10,000) with sureties to be approved by the governor, conditioned for the faithful discharge of the duties of his office, which bond, when so executed and approved, shall be filed in the office of the secretary of state. The commission shall select one of their members as a chairman. The main office of the commission shall be at the

state capitol, but branch offices may be established at other places in the state. Each member of the commission shall have power to issue subpoenas requiring the attendance of witnesses and the production of books and documents.

**Section 22. Salary of Commissioners.**

The salary of each of the commissioners shall be three thousand dollars (\$3,000) per annum, and he shall be allowed his actual and necessary traveling and incidental expenses; and any assistant to the commissioners shall be paid for each full day's service rendered by him, his actual and necessary traveling expenses and such compensation as the commission may deem proper, not to exceed six dollars (\$6) per day to an auditor, or five dollars (\$5) per day to any other assistant.

The salaries and all other expenses of the administration of the department shall be paid out of the administration fund created herein.

**Section 23. Deputies and Assistants.**

The commissioners may appoint a sufficient number of auditors and assistants to aid them in the administration of this act, at an expense not to exceed three thousand dollars (\$3,000) per month. They may employ one or more physicians in each county for the purpose of official medical examinations, whose compensation shall be limited to five dollars (\$5) for each examination and report therein. They may procure such record books as they may deem necessary for the record of the financial transactions and statistical data of the department, and the necessary documents, forms and blanks. They may establish and require of all employers to install and maintain a uniform form of pay roll.

**Section 24. Conduct, Management and Supervision of Department.**

The commission shall, in accordance with the provisions of this act:

1. Establish and promulgate rules governing the administration of this act.
2. Ascertain and establish the amounts to be paid into and out of the accident fund.
3. Regulate the proof of accident and extent thereof, the proof of death and the proof of relationship and the extent of dependency.

4. Supervise the medical, surgical and hospital treatment to the intent that same may be in all cases suitable and wholesome.

5. Issue proper receipts for money received, and certificates for benefits accrued and accruing.

6. Investigate the cause of all serious injuries and report to the governor from time to time any violations or laxity in performance of protective statutes or regulations coming under the observation of the department.

7. Compile and preserve statistics showing the number of accidents occurring in the establishment of works of each employer, the liabilities and expenditures of the accident fund on account of, and the premium collected from the same, and hospital charges and expenses.

8. Make annual reports to the governor (one of them not more than sixty nor less than thirty days prior to each regular session of the legislature) of the workings of the department and showing the financial status and outstanding obligations of the accident and administration funds and the statistics aforesaid.

#### **Section 25. Medical Witnesses.**

Upon the appeal of any workman from any decision of the department affecting the extent of his injuries or the progress of same, the court may appoint not to exceed three physicians to examine the physical condition of the appellant, who shall make to the court their report thereon, and they may be interrogated before the court by or on behalf of the appellant in relation to the same. The fee of each shall be fixed by the court, but shall not exceed ten dollars (\$10) per day each.

#### **Section 26. Disbursement of Funds.**

Disbursement out of the funds shall be made only upon warrants drawn by the state auditor upon vouchers therefor transmitted to him by the department and audited by him. The state treasurer shall pay every warrant out of the fund upon which it is drawn. If, at any time, there shall not be sufficient money in the fund, on which any such warrant shall have been drawn wherewith to pay the same, the employer on account of whose workman it was that the warrant was drawn shall pay the same, and he

shall be credited upon his next following contribution to such fund the amount so paid with interest thereon at the legal rate from the date of such payment to the date such next following contribution became payable, and if the amount of the credit shall exceed the amount of the contribution, he shall have a warrant upon the same fund for the excess, and if any such warrant shall not be paid, it shall remain, nevertheless payable out of the fund. The state treasurer shall to such extent as shall appear to him to be advisable, keep the moneys of the unsegregated portion of the accident fund invested at interest in the class of securities provided by law for the investment of the permanent school fund. The state treasurer shall be liable on his official bond for the safe custody of the moneys and securities of the accident and administration funds in the manner provided by the laws of the state of Montana. "An act to provide for state depositories and to regulate the deposits of state moneys therein," shall be applied to said moneys and the handling thereof by the state treasurer.

#### **Section 27. Test of Invalidity of Act.**

If any employer shall be adjudicated to be outside the lawful scope of this act, the act shall not apply to him or his workmen, or if any workman shall be adjudicated to be outside the lawful scope of this act because of remoteness of his work from the hazard of his employer's work, any such adjudication shall not impair the validity of this act in other respects, and in every such case an accounting in accordance with the justice of the case shall be had of moneys received. If the provisions of Section 4 of this act for the creation of the accident and administration funds or the provisions of this act making the compensation to the workman provided in it exclusive of any other remedy on the part of the workman shall be held invalid the entire act shall be thereby invalidated except the provisions of Section 30, and an accounting according to the justice of the case shall be had of moneys received. In other respects an adjudication of invalidity of any part of this act shall not affect the validity of the act as a whole or any other part thereof.

#### **Section 28. Statute of Limitations Saved.**

If the provisions of this act relative to compensation for injuries to or death of workmen become invalid because of any ad-



judication, or be repealed, the period intervening between the occurrence of an injury or death not previously compensated for under this act by lump payment or completed monthly payments and such repeal or the rendition of the final adjudication or invalidity shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death;

Provided, that such action be commenced within one year after such repeal or adjudication; but in any such action any sum paid out of the accident fund to the workman on account of injury, for whom the action is prosecuted, shall be taken into account or disposed of as follows: If the defendant employer shall have paid without delinquency into the accident fund the payment provided by Section 4, such sums shall be credited upon the recovery as payment thereon, otherwise the sum shall not be so credited but shall be deducted from the sum collected and be paid into the said fund from which they had been previously disbursed.

#### **Section 29. Safeguard Regulations Preserved.**

Nothing in this act contained shall repeal any existing law providing for the installation or maintenance of any device, means or method for the prevention of accidents in extra-hazardous work or for a penalty or punishment for failure to install or maintain any such protective device, means or method.

#### **Section 30. Distribution of Funds in Case of Repeal.**

If this act shall be hereafter repealed, all moneys which are in the fund at the time of the repeal shall be subject to such disposition as may be provided by legislation, and in default of such legislative provision distribution thereof shall be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing, and, provided, further, that if Section 4 of this act shall be held invalid that on and after the date of such adjudication, in any suit brought by a workman against an employer to recover damages for personal injury, or in case of his death, instantaneously or otherwise, by a dependent of said workman for compensation, the defense of fellow-servant and assumption of risk, and the doctrine of contributory and comparative negligence shall be inadmissible in the courts of the

state of Montana as a defense in any such cause of action.

**Section 31. Saving Clause.**

This act shall not affect any action pending or cause of action existing on the 1st day of March, 1915.

**Section 32.**

All acts and parts of acts in conflict with this act are hereby repealed.

# ARGUMENT

(Affirmative.)

Submitted by the Peoples' Power League of Montana in Favor of the Measure Proposed by Initiative Petitions and Designated on the Official Ballot as Follows:

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For the Initiative Measure No. 7.  
Relating to Compensation of Workmen Injured in  
Extra-Hazardous Industries.

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Against Said Measure No. 7.

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The following list gives the names of the officers and members of the committees of the Peoples' Power League:

## OFFICERS.

President, Miles Romney, Hamilton, Montana; Secretary, M. McCusker, Livingston, Montana.

## EXECUTIVE COMMITTEE.

Miles Romney, Hamilton, Montana; M. McCusker, Livingston, Montana; John Blewett, Fromberg, Montana; R. N. Sutherland, Great Falls, Montana; W. K. Harber, Fort Benton, Montana; Albert Michaud, Miles City, Montana; D. J. Donohue, Glendive, Montana; James Holland, Havre, Montana; John F. Duffy, Kalispell, Montana; Edwin K. Cheadle, Lewistown, Montana; Walter S. Hartman, Bozeman, Montana; James A. Jergenson, Whitehall, Montana; T. J. Walsh, Helena, Montana; D. J. Fitzpatrick, Missoula, Montana; W. E. Nippert, Thompson, Montana; John C. Lowney, Butte, Montana; H. W. Nelson, Billings, Montana; Henry Drennan, Big Horn, Montana; Adam Wilkerson, Roundup, Montana; J. B. Rankin, Anaconda, Montana; Harvey Coit, Big Timber, Montana.

## WAYS AND MEANS COMMITTEE.

Dennis Murphy, Miners Union, Butte, Montana.

Henry Drennan, President, District No. 27, United Mine Workers of America, Billings, Montana.

M. M. Donoghue, President, and O. M. Partelow, Secretary, Montana Federation of Labor.

J. B. Rankin, President, Mill and Smeltermen's Union of Anaconda.

M. McCusker, Affiliated Railway Trades. Livingston, Montana.

Miles Romney, Hamilton, Montana.

The Peoples' Power League of Montana is a non-partisan organization. Its object is to extend and perfect the direct power of the voter over their state and local governments—that the people may rule.

We believe that the approval of the Initiative Measure No. 7 relating to the Compensation of workmen injured in extra-hazardous industries will redound to the welfare of the state in a marked degree. Conservation in the highest sense is the object of this bill. Conservation of the lives of the wage-workers, upon whom finally rests the prosperity of the state.

## INITIATIVE MEASURE NO. 7.

Relating to Compensation of Workmen Injured in Extra-Hazardous Industries.

Coupled with the farm-loan bill and advocated by the Peoples' Power League, is Initiative Bill Number 7, which provides for the care and compensation of injured workmen. Forty-seven classes are listed as extra-hazardous in this bill. Farming, stock-growing, merchandizing and other relatively non-hazardous occupations are not included. Chief among the occupations that the experience tables have demonstrated are extra-hazardous, are: Mining, smelting, lumbering and other occupations where power-driven machinery is used. Railway men engaged in

interstate commerce are not included, for the reason that they are cared for under a federal statute.

This bill provides an industrial insurance, administered by a state commission, representative of the employee, the employer and the public. The entire cost of the department, both of insurance and of administration, is met by assessments upon the pay rolls of the industries affected, which are classified upon a basis of relative hazard. Not one penny comes from the general tax payer. The cost of administration cannot exceed 15 per cent.

The Montana bill is modeled from the Washington industrial insurance or workmen's compensation act. The Washington act has worked smoothly for several years past, winning the enthusiastic commendation of a great majority of the employers as well as the employees of the state of Washington. For more extended reference to the Washington law the reader is advised to write the industrial insurance department, Olympia, Washington, for copies of the annual reports.

The idea of industrial insurance is borrowed from Germany, where a system of workmen's compensation was promulgated in August, 1871, by William I. and Bismarck. Following Germany, most of the enlightened nations of Europe abandoned the negligence-litigation system in favor of compensation, regardless of fault. And New Zealand, Canada and many of the American states have adopted the compensation plan, although the state of Washington, in 1911, was the first to enact a compulsory insurance act.

### **"SAFETY FIRST."**

Under the Washington-Montana plan, "Safety First" is the slogan. Authoritative statistics prove conclusively that from 75 to 90 per cent of accidents may be prevented by proper precautions and safeguards. And it has been demonstrated that the most effective way to prevent accidents is to render it cheaper to provide safety devices than to kill and maim men and women employed in the industries.

With this in view and to afford a fair and adequate compensation, the rates in the proposed bill are higher than in the Washington law. It is believed, however, that the effect of such

enforcement of precautionary measures will be to automatically lower the rates. Under the Montana bill, "First Aid Treatment" is provided. This is a just and humane provision, that is being generally adopted in all the states.

The cry for just and equal compensation for workmen injured in extra-hazardous industries has long gone unheeded in the state of Montana. Relief has been promised in the platforms of the several parties but in every instance it has been denied by the legislature. The Murphy bill, of which this bill is as nearly identical as the initiative laws will permit, passed the house of representatives of the Thirteenth Assembly with but three dissenting votes, but was strangled in the senate. Despairing of relief from this quarter the workmen of Montana propose to carry their appeal direct to all the people.

The Washington plan of compulsory industrial insurance having been adopted, the voter will be interested in the operation of the plan in that state.

Mr. John H. Wallace was a member of the state commission that prepared the original draft of the Washington law and he is now a member of the State Industrial Commission that is so efficiently administering the law.

#### **"CARRIES MORE SUBSTANTIAL JUSTICE THAN THE WASHINGTON LAW."**

The following letter addressed to Miles Romney, President of the Peoples' Power League, dated, Olympia, Wash., Oct. 15, 1913, is encouraging to say the least. Mr. Wallace says in part:

"In answer to yours of the 12th inst., I am forwarding an annual report of Washington State Industrial Commission, together with such other literature as may be of service in studying the compensation system of this state. The copy of your proposed law received and I am pleased to know that you are endeavoring to initiate a law modeled after the Washington Act, which carries with it, and rightfully so, more substantial justice than the Washington Act. \* \* \* Your schedule awards will be a great inducement to prevent accidents by compelling employers to provide safety devices wherever practicable to escape the heavy drain incident to the maiming and killing of workmen."

The report of the first year's operation of the Washington law recites that, "the employers of the state of Washington, their

employees under the Act and the general taxpayers, are so nearly unanimously satisfied with the principles demonstrated workable during the past year, that, it is believed, a referendum separately put to each interest would result in an overwhelming indorsement of the law and a tribute to the constructive genius of the profound student of industrial problems and constitutional law, who was the author of the Washington Compensation Act, Mr. Harold Preston."

And among the results confidentially predicted by the sponsors for the Act the annual report of the Washington Industrial Commission claims that the following has been accomplished:

1. Furnish certain, prompt and reasonable compensation to the victims of work accidents and their dependents, 80 per cent of whom have heretofore had no right to redress under common law rules.

2. Free the courts from the delay, cost and criticism incident to the great mass of personal injury litigation heretofore burdening them.

3. Relieve public and private charity of much of the destitution due to uncompensated industrial accidents.

4. Eliminate economic waste in the payments to unnecessary lawyers, witnesses and casualty corporations and the expense and time loss due to trials and appeals.

5. Provide a method whereby one hundred cents shall go to the injured workman out of every dollar paid out by the employer for that purpose, premium rates automatically adjusted to actual cost.

6. Supplant concealment of fault in accidents by a spirit of frank study of causes; resulting in good will between employer and operative, lessening the number of preventable accidents, and reducing the cost and suffering thereby.

7. Home rule of compensation funds, same being invested in bonds of Washington municipalities, etc., instead of being drained out of the state by premium remittances to eastern financial centers.

8. State control of statistical information and education in accident prevention.

## ARGUMENT

SUBMITTED BY M. McCUSKER IN FAVOR OF INITIATIVE MEASURE NO. 7, RELATING TO THE COMPENSATION OF WORKMEN INJURED IN EXTRA-HAZARDOUS WORK.

### FARM LABORERS EXEMPTED.

The Workman's Compensation Act herewith presented does not include farm laborers, clerks or office employees, but only those employees engaged in extra-hazardous employments as enumerated in Section 2 of the accompanying bill.

### EMPLOYEES ENGAGED IN INTERSTATE COMMERCE EXEMPTED.

The Workman's Compensation Act herewith presented does not include employees engaged in interstate commerce because the United States Government has original jurisdiction over all interstate employees and has seen fit to exercise this jurisdiction by the passage of a National Employers' Liability Act. Hence, we exclude them from our bill by Section 18, which reads:

Section 18. Interstate Commerce.

"The provisions of this Act shall not apply to any workman engaged in the actual movement of trains upon railroads engaged in interstate or foreign traffic. Workmen engaged in the actual movement of trains includes only those employed in the engine, train and switching service."

### TO THE TAX PAYER.

The passage of the enclosed Workman's Compensation Bill will not cost the tax payers one cent in any way, but will actually be a saving to the State and counties by forcing industry to care for those injured or made dependent, instead of as now throwing them into our charitable institutions.

### TO THE RETAIL BUSINESS MAN.

At the present time the business men of this state are carrying on their books thousands of dollars of debt contracted by employees engaged in extra-hazardous occupations and if one of those are injured the retail merchant loses the account. Under a Compensation Act this would not occur because the injured



employee could meet his obligation out of the compensation awarded him.

### DIVISION OF INDUSTRY INTO CLASSES.

Each class of industry under our Act is put into a separate class and the different branches of these industries into sub-classes, and each one is charged a separate insurance rate depending upon the hazard of that class. The money thus derived from the premiums of each class goes to pay the awards of that class and none other. As an illustration: LAUNDRIES ARE IN CLASS 22, and take a rate of 3 per cent, but in the actual operation of the Act in Washington they are only assessed 43c per \$100 of the pay roll. It will cost that same class approximately 64½c per \$100 of the pay roll in Montana. The money so derived in the State of Washington, and the same will hold true under our Act, went to pay for accidents occurring in the laundry business alone.

The statutory rates set in all such bills is far higher than necessary. Under the Washington Act laundries carry a statutory rate of \$2 per \$100 of the pay roll, but this class only needed 43c per \$100 of the pay roll to pay all awards approved up to October 1st, 1913.

Actual cost to coal operators under our Act will be approximately \$2.89½ per \$100 of the pay roll.

Mines other than coal, approximately \$2.65 per \$100 of the pay roll.

Lumber business, approximately \$2.65½ per \$100 of the pay roll. Which when figured on the actual labor cost of 1,000 feet of lumber amounts to about 15c per 1,000 feet.

The above figures are based on the actual experience of the State of Washington plus 50 per cent and are approximately correct. Any other employers desiring to know exactly what it will cost him will be furnished that information by writing to M. McCusker, Secretary-Treasurer of the Peoples' Power League, Livingston, Montana.

### WORKMEN'S COMPENSATION—WHAT IT IS AND WHAT IT ISN'T.

Workmen's Compensation is State accident insurance. It has been in operation in every civilized country for years. It is now in active operation in 22 states of this Union. Its principle is

that industry should bear the loss caused by industrial accident the same, and in the same spirit, that it now bears the loss caused by the breakage or depreciation of machinery or plant. And that the money so paid by the employer shall go to the injured employee, or their dependents, and not as now be eaten up by costly litigation.

It is an exclusive remedy. That is, when an employer has paid his insurance his obligation is discharged and he cannot be sued for more damages.

The enclosed Bill also provided that a careless employer, who does not provide necessary safeguards is assessed an extra amount, over careful employers, and in this way we hope to materially reduce industrial accidents.

#### **OUR ACT AND THE REASON IT WAS DRAFTED.**

There has been much comparing of figures to prove that our Act is higher than similar Acts in other States, and particularly the Washington Act. I wish to state frankly that we pay an amount 50 per cent higher than the Washington Act. I state this frankly and also with a certain amount of just pride simply because the Washington Act does not, and it is recognized that it does not pay a just compensation. But as we did not arbitrarily raise the Washington rates, I will state clearly, just why they were raised.

“Compensation” must do one thing, and that is to adequately compensate. Any Act which purports to do this but does not, is not a “Compensation Act,” but a fraud and a cheat. This being true let us either pass a “Compensation Act,” or else forget the subject in its entirety.

What is an “Adequate Compensation?” Is it possible to “adequately compensate” a man (or woman) for the loss of an arm or a leg? Plainly not. For we might give him a railroad or a mine, but still he would be minus that arm or leg and would feel its loss equally as keen. Neither can we ever hope to “adequately compensate” a wife for the loss of a husband she loves. We might give such a woman the entire world, and the little stars, then throw in golden chains to hang them in her hair with and still that would not be an “adequate compensation.”

This being true we must either give up or else discard all the

sentiment connected with the question. After the sentiment has been discarded there alone remains the cold, and yet clear, matter of equity and justice.

### WHAT IS JUSTICE?

It is doing unto others as we would be done by.

### WHAT IS EQUITY?

It is that which appears to every unbiased mind as fair and honorable.

This is the path we have followed in drafting the Bill under consideration. We have honestly tried to hew as near to this line of justice and equity and fairness as is humanely possible, wavering neither on one side nor on the other.

The conclusion we came to were these: That in all cases of minor accidents—and by minor accidents we mean such as do not leave any permanent defect—the injured employee should be returned to his work in as good financial condition as when he was injured. In other words his medical and hospital bills should be paid and his family cared for.

Some there are who intend to attack this measure because it contains a section known as FIRST AID TO THE INJURED. I will quote the following from the Washington Report of 1912:

“There can be no question but that there is an insistent demand on part of injured workmen, their families and friends for some amendment to the Act whereby victims of work accidents will be given immediate and thoroughly competent medical attention after an injury: and that the cost of such treatment be either paid by the employer directly, or by the State out of some fund, or indirectly by an increase in the scale of awards sufficient to cover the cost in all cases.”

Is it necessary to add anything to this?

In cases of permanent partial disability, such as the loss of an arm, he should receive such an amount as to enable him to compete in the labor market with able-bodied men. And we pay for such an injury—the loss of an arm—not less than \$3,000. But why this particular amount? Some will contend that it is not enough, and others that it is too much. Then why \$3,600? Was this a compromise? No! It is a matter of cold equity and justice.

It is this: A conservative estimate of the average monthly earning of workmen in Montana would be \$50 per month. This is low.

The average expectancy of life of a workman is twenty-five years.

The loss of an arm is everywhere recognized as a 60 per cent disability.

\$3,600, if invested, should pay, besides taxes, 6% per annum, or \$216, which amounts to \$18 per month, but if the injured workman was earning \$50 per month, his loss, caused by the 60 per cent disability, would amount to \$30 per month. He draws \$18, which leaves a loss of \$12 per month. But he has been paid a lump sum of \$3,600, which represents his loss of \$12 per month for 25 years.

$\$12 \times 12 \text{ equals } \$144.$

$\$144 \times 25 \text{ equals } \$3,600.$

That is cold equity and justice.

This same method has been followed in figuring all such permanent partial disabilities.

In cases of total disability, such as the loss of both feet, both hands, both eyes, one foot and one hand, total paralysis, or an injury to the brain which results in imbecility, we allow the sum of \$30 per month if unmarried at the time of the injury, and \$35 if married, and \$7.50 per month for each child, but all awards not to exceed \$52.50 per month.

In cases of death from accident, while at work, we allow the widow \$30 per month as long as she lives or until she remarries, and \$7.50 per month for each child, but recognize only three children. We are forced to recognize that many; one to take the place of the father, one to take the place of the mother, and one for the legitimate increase of the human race.

But why did we decide to give the widow \$30 per month?

Was it because the figures 3 and 0 held some peculiar fascination for the men who drafted this measure? No. Again "Justice and Equity" appear and demand that this woman who has lost a husband through an industrial accident be maintained, neither above nor below, the "bread line." And I maintain that no woman can be "kept" in Montana in a condition conducive to

health on a sum less than \$30 per month, nor children on less than \$7.50 per month.

Those who are willing to take a contract to keep a woman on \$30 per month and children on \$7.50 are few, but few or many, they are the only ones entitled to object to this section as being too high.

There is some talk at the present time, by a few employers, to the effect that if this Bill is defeated "they will see to it" that a "just bill" is passed by the next Legislative Assembly. Now I am forced to inquire as to what a "just bill" is? And my curiosity also prompts me to inquire as to who these employers are who so boldly assert that they control the legislative machinery of this State to the degree where they are able to confidently assert that they can pass any measure they desire. Surely for once these employers have over estimated their strength. There are two sides to this controversy—the employer and the employee. There are some employees who assert that for the loss of an arm they should be compensated to the extent of being given the plant, the mine or the railroad, wherein the accident occurred. And then there are some employers who assert, and equally as boldly that an injured employee should receive nothing, or at most only a small sum, for an accident. Both are wrong, and wrong in exactly the same degree.

Theoretically "industry should bear the burden of the loss caused by the industrial accidents to their machinery or plant." And why not; is not a man as good as a machine? That is cold "equity and justice."

But right here a fear seizes the heart of men lest "cold equity and justice" traverse the line of fairness. Now what is fairness? "Do unto others as you would be done by." That means when taken into consideration the present question that each should recognize the right of the other. There is a difference of opinion and I wish to say to you, Mr. Employer, and also to you, Mr. Employee, that "Fairness" demands that you split the difference. This is what we say in our Bill and this is the proof:

In estimating last year's accidents in the State of Washington (from the report of the Washington Compensation Commission of 1913) in units of one man's labor for one year, and as-

suming that the average year of labor consists of 300 work days, and that the expectancy of a workman's life is 25 years, which is a very conservative estimate, I find that the loss in years of labor has been as follows:

From fatal cases .....	8,225.0
From temporary total disability .....	1,135.8
From permanent partial disabilities ....	4,131.2
From permanent total disabilities .....	325.0
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Total from all injuries .....	13,817.0 years

This means that the accidents of the State of Washington lessened the productive capacity of that commonwealth to the extent of the perpetual labor of an industrial army of 13,817 men.

Without any remedial legislation, either in the form of employers' liability acts, or compensation laws, all this loss would be borne by the employees. Some states by passing certain laws have stated that certain proportions of this should be borne by each, but I find that invariably the employees are forced to stand by far the greater portion of this loss. In our law we have frankly stated that each should bear half. That is fair.

In Washington we find that it is divided as follows: (Washington reports of 1913.):

Per cent of loss borne by industry ....	28.3%
Per cent of loss borne by employees....	71.7%

That is not splitting the difference. That is not fair. And that is the reason that there is such an insistent demand on the part of injured employees to have the law amended.

Under the Act herewith presented we pay an average of approximately 50 per cent more compensation. Hence: 28.3 per cent borne by Washington employers x  $1\frac{1}{2}$ , equals 42.45 per cent borne by Montana's employers.

71.7 per cent borne by Washington employees minus 14.15 per cent, equals 57.55 per cent borne by Montana's employees.

The employers under this arrangement have the better of "Cold Equity and Justice," by 57.55 per cent, for industry, theoretically should stand all the burden, and the better of "Fairness," which is splitting the difference, by 7.55 per cent.

## COLD BUSINESS.

The Bill presented here is an insurance law. It insures an employer in exactly the same degree that it insures an employee.

A small coal operator who has perhaps worked all his life to build up a business suffers a catastrophe in his mine. Under the present system that man would be ruined and the dependents of those killed would in most instances be thrown on public charity, for the entire property would not perhaps be sufficient to pay jury awards, but under this bill an assessment would be levied upon the pay roll of all concerns engaged in coal mining within the State, and out of this the awards would be paid, and the operator would continue his business. The principle involved in this insurance is the same as mutual fire insurance; a certain number of men band themselves together in a mutual fire insurance company to insure each other against loss caused by fire, and when one has fire they are all assessed a certain amount and this goes to cover the loss.

Every employer at the present time fears damage suits. And in order to protect himself from them he insures himself in some casualty insurance company. "Casualty insurance" is this: An employer pays a premium to this company to protect him from personal damage suits. The casualty company agrees to fight all such suits in court and pay all judgments against the employer up to and including \$5,000, but no more. (This is a general statement.) This compensation law says that these employers shall pay to the State Industrial Insurance Department instead of to a private casualty company, a certain amount of his pay roll. But instead of promising to fight the injured employee in court they contract to pay him a certain definite sum for every class of injury.

But "Cold Business" demands to know which is the most expensive method. To illuminate the matter, I submit the following extract from the first annual report of the Industrial Insurance Department of the State of Washington. (I am forced to use the Washington statistics on this matter, owing to the fact that Montana has never collected any information on this point.)

The real burden of Industrial Insurance. (Report 1912, p. 275).

"That the fear of an intolerable premium burden on the industries was unfounded is clearly demonstrated by the experience of even one year, in which collections have naturally been incomplete and in a few classes more funds were accumulated on the first quarter's call (required by law) than was required.

"The table following from sworn official report shows that over \$900,000 was paid in casualty premiums alone, the great preponderance doubtless being expended to cover risks in "extra-hazardous" employments, during 1910.

"While the industries under the compensation act contributed \$1,000,000 in premiums during the year only about \$700,000 was actually required to pay cash awards and set aside reserves. The remaining \$300,000 was on hand Oct. 1, 1912.

"Under the common law system, to the \$900,000 annual premium drained for court protection (with casualty rates continuously being increased), there must be added a chain of indirect cost; jury verdicts in excess of \$5,000 which was the usual limit of a policy's protection, retainers, paid lawyers, transportation furnished witnesses and their hotel bills, reduced production in plants by the employer's enforced absence and that of his foreman, etc., attending court; the time, expense and worry of ferreting out and keeping in touch with witnesses, misunderstanding and suspicion of other workmen resulting from pending litigation, the danger of bankruptcy through vindictive jury verdicts and the impairment of credit at banks, incident to considerable litigation; the "settlements" by self-insurers like the coal and street railroad corporations, and the numerous contractors who "took their chances."

"Probably the annual drain on industries of Washington under the common law system would aggregate not less than \$1,250,000.00.

This is interesting; it costs the employers of Washington \$700,000 (not counting reserves) to protect themselves from industrial accidents during 1912, and this sum went direct to their



injured employees, while under the common law system it cost these same employers \$1,250,000 for this same protection in 1910, a saving of \$550,000 in one year.

The Act presented here is 50 per cent higher than the Washington Act and upon that basis I figure \$700,000 x 1½ equals \$1,100,000. \$1,125,000, that it cost employers of Washington in 1910 minus \$1,100,000 equals \$150,00, which represents the approximate saving to the employers of Montana by the passage of this Act.

And still there are some so easily frightened as to think that the passage of this Act will injure business in this state.

This is our side of the case. We have been honest, frank and fearless in presenting it. We are equally as honest, frank and fearless in drafting the measure. We are proud of our work and we submit it to the people of this State with absolute confidence in the outcome.

(Signed) M. McCUSKER, Sec.-Treas.,  
Peoples' Power League of Montana.





