

SENATE BILL NO. 108

INTRODUCED BY MCNUTT

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

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5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING WORKERS' COMPENSATION LAWS;  
6 CLARIFYING THAT INSURANCE REQUIREMENTS APPLY ONLY TO WORKERS IN THIS STATE;  
7 REDUCING THE LENGTH OF THE INDEPENDENT CONTRACTOR EXEMPTION FROM 3 YEARS TO 2  
8 YEARS; REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO MAINTAIN A 3-MONTH  
9 ADMINISTRATIVE COST BALANCE IN THE UNINSURED EMPLOYERS' FUND; PROVIDING A \$200  
10 PENALTY FOR UNINSURED EMPLOYERS WHO FAIL TO OBTAIN INSURANCE WITHIN 30 DAYS AFTER  
11 NOTICE OF THE REQUIREMENT TO OBTAIN WORKERS' COMPENSATION INSURANCE; PROVIDING FOR  
12 LATE FEES AND INTEREST WHEN AN EMPLOYER FAILS TO MAKE TIMELY PENALTY AND CLAIM  
13 REIMBURSEMENT PAYMENTS; ADDING LATE FEES AND INTEREST TO THE LIEN CREATED FOR AN  
14 EMPLOYER'S FAILURE TO PAY PENALTIES OR BENEFIT CLAIMS; PROVIDING A TIME LIMIT FOR  
15 PETITIONING THE WORKERS' COMPENSATION COURT AFTER THE MEDIATOR'S REPORT IS MAILED;  
16 PROVIDING FOR RECOVERY OF COLLECTION FEES AND COSTS; CLARIFYING THE DEFINITION OF  
17 "PERSON WITH A DISABILITY"; CHANGING THE NOTICE DATE OF YEARLY INSURANCE PLAN  
18 ASSESSMENTS FROM APRIL 30 TO MAY 31 OF EACH YEAR; PROVIDING THAT FAILURE TO RECEIVE  
19 THE CONCURRENCE OF A REPRESENTATIVE OF THE SUBSEQUENT INJURY FUND FOR COMPROMISE  
20 SETTLEMENTS AND LUMP-SUM ADVANCE PAYMENTS RELIEVES THE FUND OF LIABILITY; REQUIRING  
21 THE BOARD OF INVESTMENTS TO INVEST THE MONEY IN THE INDUSTRIAL ACCIDENT  
22 REHABILITATION ACCOUNT; AMENDING SECTIONS 39-71-401, 39-71-503, 39-71-504, 39-71-506,  
23 39-71-520, 39-71-901, 39-71-911, 39-71-915, AND 39-71-1004, MCA; AND PROVIDING AN EFFECTIVE  
24 DATE."

25  
26 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
27

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

28  
29 **"39-71-401. Employments covered and employments exempted.** (1) Except as provided in  
30 subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to all



1 employees, as defined in 39-71-118. An employer who has any employee in service under any appointment or  
2 contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation  
3 plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to  
4 and bound by the compensation plan that has been elected by the employer.

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

7 (a) household and domestic employment;

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

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

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

14 (e) employment of a real estate, securities, or insurance salesperson paid solely by commission and  
15 without a guarantee of minimum earnings;

16 (f) employment as a direct seller as defined by 26 U.S.C. 3508;

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

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

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

23 (j) employment as an official, including a timer, referee, umpire, or judge, at an amateur athletic event;

24 (k) employment of a person performing services as a newspaper carrier or freelance correspondent if  
25 the person performing the services or a parent or guardian of the person performing the services in the case of  
26 a minor has acknowledged in writing that the person performing the services and the services are not covered.

27 As used in this subsection, "freelance correspondent" is a person who submits articles or photographs for  
28 publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":

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

30 but

- 1 (ii) does not include an employee of the paper who, incidentally to the employee's main duties, carries  
2 or delivers papers.
- 3 (l) cosmetologist's services and barber's services as defined in 39-51-204(1)(e);
- 4 (m) a person who is employed by an enrolled tribal member or an association, business, corporation,  
5 or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is  
6 conducted solely within the exterior boundaries of an Indian reservation;
- 7 (n) employment of a jockey who is performing under a license issued by the board of horseracing from  
8 the time that the jockey reports to the scale room prior to a race through the time that the jockey is weighed out  
9 after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing,  
10 that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;
- 11 (o) employment of a trainer, assistant trainer, exercise person, or pony person who is performing  
12 services under a license issued by the board of horseracing while on the grounds of a licensed race meet;
- 13 (p) employment of an employer's spouse for whom an exemption based on marital status may be  
14 claimed by the employer under 26 U.S.C. 7703;
- 15 (q) a person who performs services as a petroleum land professional. As used in this subsection, a  
16 "petroleum land professional" is a person who:
- 17 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating  
18 a business agreement for the exploration or development of minerals;
- 19 (ii) is paid for services that are directly related to the completion of a contracted specific task rather than  
20 on an hourly wage basis; and
- 21 (iii) performs all services as an independent contractor pursuant to a written contract.
- 22 (r) an officer of a quasi-public or a private corporation or manager of a manager-managed limited liability  
23 company who qualifies under one or more of the following provisions:
- 24 (i) the officer or manager is not engaged in the ordinary duties of a worker for the corporation or the  
25 limited liability company and does not receive any pay from the corporation or the limited liability company for  
26 performance of the duties;
- 27 (ii) the officer or manager is engaged primarily in household employment for the corporation or the  
28 limited liability company;
- 29 (iii) the officer or manager either:
- 30 (A) owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the

1 limited liability company; or

2 (B) owns less than 20% of the number of shares of stock in the corporation or limited liability company  
3 if the officer's or manager's shares when aggregated with the shares owned by a person or persons listed in  
4 subsection (2)(r)(iv) total 20% or more of the number of shares in the corporation or limited liability company;  
5 or

6 (iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law,  
7 daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets the requirements of  
8 subsection (2)(r)(iii)(A) or (2)(r)(iii)(B).

9 (s) a person who is an officer or a manager of a ditch company as defined in 27-1-731;

10 (t) service performed by an ordained, commissioned, or licensed minister of a church in the exercise  
11 of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

12 (u) employment of a person who is not an employee or worker in this state as defined in 39-71-118(10).

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

18 (b) The application must be made in accordance with the rules adopted by the department. There is a  
19 ~~\$25~~ \$17 fee for the initial application. Any subsequent application renewal must be accompanied by a ~~\$25~~ \$17  
20 application fee. The application fee must be deposited in the administration fund established in 39-71-201 to  
21 offset the costs of administering the program.

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

24 (d) The exemption, if approved, remains in effect for ~~3~~ 2 years following the date of the department's  
25 approval. To maintain the independent contractor status, an independent contractor shall ~~every 3 years~~  
26 a renewal application every 2 years. ~~A renewal application must be submitted for all independent contractor~~  
27 ~~exemptions approved on or after July 1, 1995.~~ The renewal application and the ~~\$25~~ \$17 renewal application fee  
28 must be received by the department at least 30 days before the anniversary date of the previously approved  
29 exemption.

30 (e) A person who makes a false statement or misrepresentation concerning that person's status as an

1 exempt independent contractor is subject to a civil penalty of \$1,000. The department may impose the penalty  
2 for each false statement or misrepresentation. The penalty must be paid to the uninsured employers' fund. The  
3 lien provisions of 39-71-506 apply to the penalty imposed by this section.

4 (f) If the department denies the application for exemption, the applicant may, after mediation pursuant  
5 to department rules, contest the denial by petitioning the workers' compensation court.

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

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

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

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

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

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

1 as provided in this subsection is subject to a \$50 fine for each citation."

2

3 **Section 2.** Section 39-71-503, MCA, is amended to read:

4 **"39-71-503. Uninsured employers' fund -- purpose and administration of fund -- maintaining**  
 5 **balance for administrative costs -- appropriation.** (1) There is created an uninsured employers' fund in the  
 6 state special revenue account to pay:

7 (a) to an injured employee of an uninsured employer the same benefits the employee would have  
 8 received if the employer had been properly enrolled under compensation plan No. 1, 2, or 3, except as provided  
 9 in subsection (3);

10 (b) the costs of investigating and prosecuting workers' compensation fraud under 2-15-2015; and

11 (c) the expenses incurred by the department in administering the uninsured employers' fund.

12 (2) The department may refer to the workers' compensation fraud office, established in 2-15-2015,  
 13 cases involving:

14 (a) false or fraudulent claims for benefits; and

15 (b) criminal violations of 45-7-501.

16 (3) ~~(a) Surpluses~~ Except as provided in subsection (3)(b), surpluses and reserves may not be kept for  
 17 the fund. The department shall make payments that it considers appropriate as funds become available from  
 18 time to time. The payment of weekly disability benefits takes precedence over the payment of medical benefits.  
 19 Lump-sum payments of future projected benefits, including impairment awards, may not be made from the fund.  
 20 The board of investments shall invest the money of the fund, and the investment income must be deposited in  
 21 the fund.

22 (b) The department shall maintain at least a 3-month balance based on projected budget costs for  
 23 administration of the fund. The balance for administrative costs may be used by the department only in  
 24 administering the fund.

25 (4) The amounts necessary for the administration of the fund and for the payment of benefits from ~~this~~  
 26 the fund are statutorily appropriated, as provided in 17-7-502, from ~~this~~ the fund."

27

28 **Section 3.** Section 39-71-504, MCA, is amended to read:

29 **"39-71-504. Funding of fund -- option for agreement between department and injured employee.**

30 The fund is funded in the following manner:

1 (1) (a) The department may require that the uninsured employer pay to the fund a penalty of either up  
 2 to double the premium amount the employer would have paid on the payroll of the employer's workers in this  
 3 state if the employer had been enrolled with compensation plan No. 3 or \$200, whichever is greater. In  
 4 determining the premium amount for the calculation of the penalty under this subsection, the department shall  
 5 make an assessment based on how much premium would have been paid on the employer's past 3-year payroll  
 6 for periods within the 3 years when the employer was uninsured.

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

9 (c) In addition to any amounts recovered under subsections (1)(a) and (1)(b), the fund shall collect a  
 10 penalty of \$200 from an employer that fails to obtain Montana workers' compensation insurance within 30 days  
 11 of notice of the requirement.

12 (2) (a) An uninsured employer that fails to make timely penalty or claim reimbursement payments  
 13 required under this part must be assessed a late fee of \$50 for each late payment.

14 (b) Any unpaid balance owed to the fund under this part for penalties or claim reimbursement must  
 15 accrue interest at 12% a year or 1% a month or fraction of a month. Interest on unpaid balances accrues from  
 16 the date of the original billing.

17 (c) Late fees and interest assessed pursuant to this subsection (2) must be deposited into the fund for  
 18 payment of administrative expenses and benefits.

19 ~~(2)~~(3) The department may enter into an agreement with the injured employee or the employee's  
 20 beneficiaries to assign to the employee or the beneficiaries all or part of the funds collected by the department  
 21 from the uninsured employer pursuant to subsection (1)(b)."

22

23 **Section 4.** Section 39-71-506, MCA, is amended to read:

24 **"39-71-506. Lien for payment of unpaid penalties, fees, interest, and claims -- levy and execution.**

25 (1) If, upon demand of the department, an uninsured employer refuses to make the payments to the fund that  
 26 are provided for in ~~subsections (1) and (2)~~ of 39-71-504, the unpaid penalties, ~~fees, interest,~~ and claims have  
 27 the effect of a judgment against the employer at the time the payments become due. After the due process  
 28 requirements of 39-71-2401(2) and (3) are satisfied, the department may issue a certificate setting forth the  
 29 amount of payment due and direct the clerk of the district court of any county in the state to enter the certificate  
 30 as a judgment on the docket pursuant to 25-9-301. From the time the judgment is docketed, it becomes a lien

1 upon all real property of the employer. After satisfying any due process requirements, the department may  
2 enforce the judgment at any time within 10 years of creation of the lien.

3 (2) The department may settle through compromise with an uninsured employer the amount due the  
4 fund under 39-71-504."

5

6 **Section 5.** Section 39-71-520, MCA, is amended to read:

7 **"39-71-520. Time limit to appeal to mediation -- petitioning workers' compensation court -- failure**  
8 **to settle or petition.** (1) A dispute concerning uninsured employers' fund benefits must be appealed to  
9 mediation within 90 days from the date of the determination or the date that the determination is considered final.

10 (2) (a) If the parties fail to reach a settlement through the mediation process, any party may file a petition  
11 before the workers' compensation court.

12 (b) A party's petition must be filed within 60 days of the mailing of the mediator's report provided for in  
13 39-71-2411 unless the parties stipulate in writing to a longer time period for filing the petition.

14 (c) If a settlement is not reached through mediation and a petition is not filed within 60 days of the  
15 mailing of the mediator's report, the determination by the department is final."

16

17 **NEW SECTION. Section 6. Collection of penalties, claim costs, late fees, and interest -- liability**  
18 **for payment of collection costs.** (1) If the department is unable to collect penalties, claim costs, late fees, or  
19 interest assessed pursuant to the provisions of this part, the department may assign the debt to a collection  
20 service or transfer the debt to the department of revenue pursuant to Title 17, chapter 4, part 1.

21 (2) (a) The reasonable collection costs of a collection service, if approved by the department, or  
22 assistance costs charged the department by the department of revenue pursuant to 17-4-103(3) may be added  
23 to the debt for which collection is being sought.

24 (b) (i) All money collected by the department of revenue is subject to the provisions of 17-4-106.

25 (ii) All money collected by a collection service must be paid to the department, except that the collection  
26 service may retain those collection costs or, if the total debt is not collected, that portion of collection costs that  
27 are approved by the department.

28

29 **Section 7.** Section 39-71-901, MCA, is amended to read:

30 **"39-71-901. Definitions.** As used in this part, the following definitions apply:



1 (1) "Certificate" means documentation issued by the department to an individual who is a person with  
2 a disability.

3 (2) "Fund" means the subsequent injury fund in the proprietary fund category.

4 (3) "Person with a disability" means a person who has a medically certifiable permanent impairment  
5 that is a substantial obstacle to obtaining employment or to obtaining reemployment if the ~~employee~~ person  
6 should become unemployed, considering such factors as the person's age, education, training, experience, and  
7 employment rejection."

8

9 **Section 8.** Section 39-71-911, MCA, is amended to read:

10 **"39-71-911. Obligation to make payments on behalf of fund not an independent liability.** ~~The~~  
11 Except as provided in 39-71-909 and [section 10], the obligation imposed by this part on the insurer to make  
12 payments on behalf of the fund does not impose an independent liability on the insurer."

13

14 **Section 9.** Section 39-71-915, MCA, is amended to read:

15 **"39-71-915. Assessment of insurer -- employers -- definition -- collection.** (1) As used in this  
16 section, "paid losses" means the following benefits paid during the preceding calendar year for injuries covered  
17 by the Montana Workers' Compensation Act and the Occupational Disease Act of Montana without regard to  
18 the application of any deductible, regardless of whether the employer or the insurer pays the losses:

19 (a) total compensation benefits paid; and

20 (b) except for medical benefits in excess of \$200,000 for each occurrence that are exempt from  
21 assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital  
22 treatment and prescription drugs.

23 (2) The fund must be maintained by assessing each plan No. 1 employer, each employer insured by  
24 a plan No. 2 insurer, plan No. 3, the state fund, with respect to claims arising before July 1, 1990, and each  
25 employer insured by plan No. 3, the state fund. The assessment amount is the total amount of paid losses  
26 reimbursed from the fund in the preceding calendar year and the expenses of administration less other income.  
27 The total assessment amount to be collected must be allocated among plan No. 1 employers, plan No. 2  
28 employers, plan No. 3, the state fund, and plan No. 3 employers, based on a proportionate share of paid losses  
29 for the calendar year preceding the year in which the assessment is collected. The board of investments shall  
30 invest the money of the fund, and the investment income must be deposited in the fund.

1           (3) On or before ~~April 30~~ May 31 each year, the department shall notify each plan No. 1 employer, plan  
2 No. 2 insurer, and plan No. 3, the state fund, of the amount to be assessed for the ensuing fiscal year. The  
3 amount to be assessed against the state fund must separately identify the amount attributed to claims arising  
4 before July 1, 1990, and the amount attributable to state fund claims arising on or after July 1, 1990. On or  
5 before April 30 each year, the department, in consultation with the advisory organization designated under  
6 33-16-1023, shall notify plan No. 2 insurers and plan No. 3 of the premium surcharge rate to be effective for  
7 policies written or renewed on and after July 1 in that year.

8           (4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is a  
9 proportionate amount of total plan No. 1 paid losses during the preceding calendar year that is equal to the  
10 percentage that the total paid losses of the individual plan No. 1 employer bore to the total paid losses of all plan  
11 No. 1 employers during the preceding calendar year.

12           (5) The portion of the assessment attributable to state fund claims arising before July 1, 1990, is the  
13 proportionate amount that is equal to the percentage that total paid losses for those claims during the preceding  
14 calendar year bore to the total paid losses for all plans in the preceding calendar year. As required by  
15 39-71-2352, the state fund may not pass along to insured employers the cost of the subsequent injury fund  
16 assessment that is attributable to claims arising before July 1, 1990.

17           (6) The remaining portion of the assessment must be paid by way of a surcharge on premiums paid by  
18 employers being insured by a plan No. 2 insurer or plan No. 3, the state fund, for policies written or renewed  
19 annually on or after July 1. The surcharge rate must be computed by dividing the remaining portion of the  
20 assessment by the total amount of premiums paid by employers insured under plan No. 2 or plan No. 3 in the  
21 previous calendar year. The numerator for the calculation must be adjusted as provided by subsection (9).

22           (7) Each plan No. 2 insurer providing workers' compensation insurance and plan No. 3, the state fund,  
23 shall collect from its policyholders the assessment premium surcharge provided for in subsection (6). When  
24 collected, the assessment premium surcharge may not constitute an element of loss for the purpose of  
25 establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as  
26 separate costs imposed upon insured employers. The total of this assessment premium surcharge must be  
27 stated as a separate cost on an insured employer's policy or on a separate document submitted by the insured  
28 employer and must be identified as "workers' compensation subsequent injury fund surcharge". Each  
29 assessment premium surcharge must be shown as a percentage of the total workers' compensation policyholder  
30 premium. This assessment premium surcharge must be collected at the same time and in the same manner that

1 the premium for the coverage is collected. The assessment premium surcharge must be excluded from the  
 2 definition of premiums for all purposes, including computation of insurance producers' commissions or premium  
 3 taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the assessment  
 4 premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of  
 5 premium. If an employer fails to remit to an insurer the total amount due for the premium and assessment  
 6 premium surcharge, the amount received by the insurer must be applied to the assessment premium surcharge  
 7 first and the remaining amount applied to the premium due.

8 (8) (a) All assessments paid to the department must be deposited in the fund.

9 (b) Each plan No. 1 employer shall pay its assessment by July 1.

10 (c) Each plan No. 2 insurer and plan No. 3, the state fund, shall remit to the department all assessment  
 11 premium surcharges collected during a calendar quarter by not later than 20 days following the end of the  
 12 quarter.

13 (d) The state fund shall pay the portion of the assessment attributable to claims arising before July 1,  
 14 1990, by July 1.

15 (e) If a plan No. 1 employer, a plan No. 2 insurer, or plan No. 3, the state fund, fails to timely pay to the  
 16 department the assessment or assessment premium surcharge under this section, the department may impose  
 17 on the plan No. 1 employer, the plan No. 2 insurer, or plan No. 3, the state fund, an administrative fine of \$100  
 18 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must  
 19 be deposited in the fund.

20 (9) The amount of the assessment premium surcharge actually collected pursuant to subsection (7)  
 21 must be compared each year to the amount assessed and upon which the premium surcharge was calculated.  
 22 The amount undercollected or overcollected in any given year must be used as an adjustment to the numerator  
 23 provided for by subsection (6) for the following year's assessment premium surcharge."  
 24

25 **NEW SECTION. Section 10. Concurrence of fund in settlements and ~~lump-sum advances.~~** (1)  
 26 Petitions for compromise settlements and ~~lump-sum advances~~ that potentially involve payments from the fund  
 27 must have written concurrence by an authorized representative of the fund prior to submission for department  
 28 approval.

29 (2) The failure to receive written concurrence from the fund's representative relieves the fund of any  
 30 liability for payment of benefits for a compromise settlement or ~~lump-sum advance~~, and the obligation to pay

1 remains with the insurer.

2

3 **Section 11.** Section 39-71-1004, MCA, is amended to read:

4 **"39-71-1004. Industrial accident rehabilitation account.** (1) The payments provided in 39-71-1003  
5 must be made from the industrial accident rehabilitation account in the state special revenue fund. Payments  
6 to the account must be made each year upon an assessment by the department as follows:

7 (a) by each employer operating under the provisions of plan No. 1 of the Workers' Compensation Act,  
8 an amount to be assessed by the department, not exceeding 1% of the compensation paid to the employer's  
9 injured employees in Montana for the preceding calendar year;

10 (b) by each insurer insuring employers under the provisions of plan No. 2 of the Workers' Compensation  
11 Act, an amount to be assessed by the department, not exceeding 1% of the compensation paid to injured  
12 employees of its insured in Montana during the preceding calendar year;

13 (c) by the state fund, an amount to be assessed by the department, not exceeding 1% of the  
14 compensation paid by the state fund to injured employees in Montana during the preceding calendar year.

15 (2) Separate accounts of the amounts that were collected and disbursements that were made from the  
16 industrial accident rehabilitation account in the state special revenue fund must be kept for each of the plans.  
17 If in any fiscal year the amount that was collected from the employers under any plan exceeds the amount of  
18 payments for employees of the employers under the plan, the assessment against the employers under the plan  
19 for the following year must be reduced.

20 (3) The payments provided for in this section must be made to the department, which shall credit the  
21 sums paid to the industrial accident rehabilitation account in the custody of the state treasurer. Disbursements  
22 from the account must be made after approval by the department.

23 (4) The board of investments shall invest the money of the industrial accident rehabilitation account,  
24 and the investment income must be deposited in the industrial accident rehabilitation account.

25 ~~(4)(5)~~ The funds allocated or contributed as provided in this section may not be used for payment of  
26 administrative expenses of the department.

27 ~~(5)(6)~~ The methods and processes used to disburse rehabilitation expense payments to eligible disabled  
28 workers are procedural and do not affect the substantive rights of those disabled workers."

29

30 NEW SECTION. Section 12. Codification instruction. (1) [Section 6] is intended to be codified as

1 an integral part of Title 39, chapter 71, part 5, and the provisions of Title 39, chapter 71, part 5, apply to [section  
2 6].

3 (2) [Section 10] is intended to be codified as an integral part of Title 39, chapter 71, part 9, and the  
4 provisions of Title 39, chapter 71, part 9, apply to [section 10].

5  
6 **NEW SECTION. Section 13. Severability.** If a part of [this act] is invalid, all valid parts that are  
7 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
8 the part remains in effect in all valid applications that are severable from the invalid applications.

9  
10 **NEW SECTION. Section 14. Saving clause.** [This act] does not affect rights and duties that matured,  
11 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

12

13 **NEW SECTION. Section 15. Effective date.** [This act] is effective July 1, 2003.

14

- END -