

1 HOUSE BILL NO. 534

2 INTRODUCED BY D. GALLIK

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DEFINITION OF "INJURY" IN WORKERS'
5 COMPENSATION AND OCCUPATIONAL DISEASE CLAIMS TO INCLUDE MENTAL INJURIES; REVISING
6 THE STATEMENT OF PUBLIC POLICY TO RECOGNIZE JOB-RELATED MENTAL INJURIES; AMENDING
7 SECTIONS 39-71-105, 39-71-119, 39-71-407, AND 39-72-102, MCA; AND PROVIDING AN EFFECTIVE DATE
8 AND AN APPLICABILITY DATE."

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

11

12 **Section 1.** Section 39-71-105, MCA, is amended to read:

13 **"39-71-105. Declaration of public policy.** For the purposes of interpreting and applying Title 39,
14 chapters 71 and 72, the following is the public policy of this state:

15 (1) It is an objective of the Montana workers' compensation system to provide, without regard to fault,
16 wage supplement and medical benefits to a worker suffering from a work-related injury or disease. Wage-loss
17 benefits are not intended to make an injured worker whole; they are intended to assist a worker at a reasonable
18 cost to the employer. Within that limitation, the wage-loss benefit should bear a reasonable relationship to actual
19 wages lost as a result of a work-related injury or disease.

20 (2) A worker's removal from the work force due to a work-related injury or disease has a negative impact
21 on the worker, the worker's family, the employer, and the general public. Therefore, it is an objective of the
22 workers' compensation system to return a worker to work as soon as possible after the worker has suffered a
23 work-related injury or disease.

24 (3) Montana's workers' compensation and occupational disease insurance systems are intended to be
25 primarily self-administering. Claimants should be able to speedily obtain benefits, and employers should be able
26 to provide coverage at reasonably constant rates. To meet these objectives, the system must be designed to
27 minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities.

28 (4) Title 39, chapters 71 and 72, must be (4) construed according to their terms and not liberally in favor
29 of any party.

30 (5) It is the intent of the legislature that ~~stress~~ mental harm claims, often referred to as "mental-mental

1 claims" and "mental-physical claims", are ~~not~~ compensable under Montana's workers' compensation and
 2 occupational disease laws. The legislature recognizes that although these claims are, at times, difficult to
 3 objectively verify ~~and that the claims have a potential to place an economic burden on the workers'~~
 4 ~~compensation and occupational disease system,~~ they can be medically verified. The legislature is appreciative
 5 of the services provided the people of Montana by law enforcement, emergency responders, firefighters, and
 6 other public safety workers and is cognizant that these workers do sometimes suffer from mental harm as a
 7 result of their work. The legislature also recognizes that there are other states that ~~do not~~ provide compensation
 8 for various categories of stress mental harm claims ~~and that stress claims have presented economic problems~~
 9 ~~for certain other jurisdictions. In addition, not all injuries are compensable under the present system, as is the~~
 10 ~~case with repetitive injury claims, and it is within the legislature's authority to define the limits of the workers'~~
 11 ~~compensation and occupational disease system."~~

12

13 **Section 2.** Section 39-71-119, MCA, is amended to read:

14 **"39-71-119. Injury and accident defined.** (1) "Injury" or "injured" means:

15 (a) internal or external physical harm to the body that is established by objective medical findings;
 16 (b) damage to prosthetic devices or appliances, except for damage to eyeglasses, contact lenses,
 17 dentures, or hearing aids; ~~or~~

18 (c) death; or

19 (d) mental harm that is established by medical findings made in accordance with criteria set forth in the
 20 Diagnostic and Statistical Manual of Mental Disorders.

21 (2) An injury is caused by an accident. An accident is:

22 (a) an unexpected traumatic incident or unusual strain;
 23 (b) identifiable by time and place of occurrence;
 24 (c) identifiable by member or part of the body affected; and
 25 (d) caused by a specific event on a single day or during a single work shift.

26 ~~(3) "Injury" or "injured" does not mean a physical or mental condition arising from:~~

27 ~~—— (a) emotional or mental stress; or~~

28 ~~—— (b) a nonphysical stimulus or activity.~~

29 ~~(4)~~(3) "Injury" or "injured" does not include a disease that is not caused by an accident.

30 ~~(5)~~(4) (a) A cardiovascular, pulmonary, respiratory, or other disease, cerebrovascular accident, or

1 myocardial infarction suffered by a worker is an injury only if the accident is the primary cause of the physical
2 condition in relation to other factors contributing to the physical condition.

3 (b) "Primary cause", as used in subsection ~~(5)(a)~~ (4)(a), means a cause that, with a reasonable degree
4 of medical certainty, is responsible for more than 50% of the physical condition."
5

6 **Section 3.** Section 39-71-407, MCA, is amended to read:

7 **"39-71-407. Liability of insurers -- limitations.** (1) Each insurer is liable for the payment of
8 compensation, in the manner and to the extent provided in this section, to an employee of an employer that it
9 insures who receives an injury arising out of and in the course of employment or, in the case of death from the
10 injury, to the employee's beneficiaries, if any.

11 (2) (a) An insurer is liable for an injury, as defined in 39-71-119, if the injury is established by objective
12 medical findings in the case of a physical injury or medical findings made in accordance with the criteria set forth
13 in the Diagnostic and Statistical Manual of Mental Disorders in the case of a mental injury and if the claimant
14 establishes that it is more probable than not that:

- 15 (i) a claimed injury has occurred; or
- 16 (ii) a claimed injury aggravated a preexisting condition.

17 (b) Proof that it was medically possible that a claimed injury occurred or that the claimed injury
18 aggravated a preexisting condition is not sufficient to establish liability.

19 (3) (a) An employee who suffers an injury or dies while traveling is not covered by this chapter unless:

- 20 (i) the employer furnishes the transportation or the employee receives reimbursement from the employer
21 for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment agreement and the
22 travel is necessitated by and on behalf of the employer as an integral part or condition of the employment; or
- 23 (ii) the travel is required by the employer as part of the employee's job duties.

24 (b) A payment made to an employee under a collective bargaining agreement, personnel policy manual,
25 or employee handbook or any other document provided to the employee that is not wages but is designated as
26 an incentive to work at a particular jobsite is not a reimbursement for the costs of travel, gas, oil, or lodging, and
27 the employee is not covered under this chapter while traveling.

28 (4) An employee is not eligible for benefits otherwise payable under this chapter if the employee's use
29 of alcohol or drugs not prescribed by a physician is the major contributing cause of the accident. However, if the
30 employer had knowledge of and failed to attempt to stop the employee's use of alcohol or drugs, this subsection

1 does not apply.

2 (5) If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to the
3 same part of the body, the workers' compensation insurer is not liable for any compensation or medical benefits
4 caused by the subsequent nonwork-related injury.

5 (6) An employee is not eligible for benefits payable under this chapter unless the entitlement to benefits
6 is established by objective medical findings in the case of a physical injury or medical findings made in
7 accordance with the criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders in the case of
8 a mental injury that contain sufficient factual and historical information concerning the relationship of the worker's
9 condition to the original injury.

10 (7) As used in this section, "major contributing cause" means a cause that is the leading cause
11 contributing to the result when compared to all other contributing causes."

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13 **Section 4.** Section 39-72-102, MCA, is amended to read:

14 **"39-72-102. Definitions.** As used in this chapter, unless the context requires otherwise, the following
15 definitions apply:

16 (1) "Beneficiary" is as defined in 39-71-116.

17 (2) "Child" is as defined in 39-71-116.

18 (3) "Department" means the department of labor and industry.

19 (4) "Disablement" means the event of becoming ~~physically~~ incapacitated by reason of an occupational
20 disease from performing work in the worker's job pool. Silicosis, when complicated by active pulmonary
21 tuberculosis, is presumed to be total disablement. "Disability", "total disability", and "totally disabled" are
22 synonymous with "disablement", but they have no reference to "permanent partial disability".

23 (5) "Employee" is as defined in 39-71-118.

24 (6) "Employer" is as defined in 39-71-117.

25 (7) "Independent contractor" is as defined in 39-71-120.

26 (8) "Insurer" is as defined in 39-71-116.

27 (9) "Invalid" is as defined in 39-71-116.

28 (10) "Occupational disease" means harm, damage, or death as set forth in 39-71-119(1) arising out of
29 or contracted in the course and scope of employment and caused by events occurring on more than a single
30 day or work shift. ~~The term does not include a physical or mental condition arising from emotional or mental~~

1 ~~stress or from a nonphysical stimulus or activity.~~

2 (11) "Order" is as defined in 39-71-116.

3 (12) "Pneumoconiosis" means a chronic dust disease of the lungs arising out of employment in coal
4 mines and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of ~~such~~
5 the employment.

6 (13) "Silicosis" means a chronic disease of the lungs caused by the prolonged inhalation of silicon
7 dioxide (SiO₂) and characterized by small discrete nodules of fibrous tissue similarly disseminated throughout
8 both lungs, causing the characteristic x-ray pattern, and by other variable clinical manifestations.

9 (14) "Wages" is as defined in 39-71-123.

10 (15) "Year" is as defined in 39-71-116."

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12 NEW SECTION. **Section 5. Effective date -- applicability.** [This act] is effective July 1, 2005, and
13 applies to claims arising on or after July 1, 2005.

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