

1 HOUSE BILL NO. 110

2 INTRODUCED BY J. WELBORN

3 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING WORKERS' COMPENSATION STATUTES;
6 REQUIRING REGISTERED CONSTRUCTION CONTRACTORS TO PROVIDE PROOF OF WORKERS'
7 COMPENSATION INSURANCE; REQUIRING WORKERS' COMPENSATION INSURERS AND THEIR AGENTS
8 TO PAY MEDICAL PROVIDERS ON A TIMELY AND APPROPRIATE BASIS AND PROVIDING PENALTIES ON
9 THE INSURER FOR FAILURE TO DO SO; CLARIFYING THE MINIMUM WAGE TO BE USED FOR PREMIUM
10 AND BENEFIT PURPOSES BY CERTAIN PERSONS ELECTING WORKERS' COMPENSATION COVERAGE;
11 CLARIFYING THE GROUNDS ON WHICH AN INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE
12 MAY BE REVOKED; CLARIFYING THAT INTEREST ON A SECURITY DEPOSIT ACCRUES TO THE
13 INSURER; AMENDING SECTIONS 39-9-201, 39-71-107, 39-71-118, 39-71-418, AND 39-71-2215, MCA; AND
14 PROVIDING AN EFFECTIVE DATE."

15

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

17

18 **Section 1.** Section 39-9-201, MCA, is amended to read:19 **"39-9-201. Registration required -- application.** (1) Each construction contractor shall register with
20 the department.21 (2) An applicant for registration as a construction contractor shall submit an application on a form to be
22 provided by the department that must include the following information:

- 23 (a) the applicant's social security number;
- 24 (b) proof of ~~compliance with~~ workers' compensation ~~laws~~ coverage as required under subsection (3);
- 25 (c) the I.R.S. employer identification number, if any; and
- 26 (d) the name and address of:
- 27 (i) each partner if the applicant is a firm or partnership;
- 28 (ii) the owner if the applicant is an individual proprietorship;
- 29 (iii) the corporate officers and registered agent if the applicant is a corporation; or
- 30 (iv) the manager of a manager-managed limited liability company or the members of a member-managed

1 limited liability company and the registered agent if the applicant is a limited liability company.

2 (3) A construction contractor shall furnish proof that the construction contractor has elected and obtained
3 coverage under compensation plan No. 1, compensation plan No. 2, or compensation plan No. 3. The
4 construction contractor must have suitable coverage in place at the time of registration to ensure that any
5 employee hired by the construction contractor has coverage under the terms of the Workers' Compensation Act,
6 Title 39, chapter 71."

7

8 **Section 2.** Section 39-71-107, MCA, is amended to read:

9 **"39-71-107. Insurers to act promptly on claims -- in-state claims examiners -- third-party agents**

10 **-- penalties.** (1) Pursuant to the public policy stated in 39-71-105, prompt claims handling practices are
11 necessary to provide appropriate service to injured workers, to employers, and to providers who are the
12 customers of the workers' compensation system.

13 (2) All workers' compensation and occupational disease claims filed pursuant to the Workers'
14 Compensation Act must be examined by a claims examiner in Montana. For a claim to be considered as
15 examined by a claims examiner in Montana, the claims examiner examining the claim is required to determine
16 the entitlement to benefits, authorize payment of all benefits due, manage the claim, have authority to settle the
17 claim, maintain an office located in Montana, and examine Montana claims from that office. Use of a mailbox or
18 maildrop in Montana does not constitute maintaining an office in Montana.

19 (3) An insurer shall maintain the documents related to each claim filed with the insurer under the
20 Workers' Compensation Act at the Montana office of the claims examiner examining the claim in Montana until
21 the claim is settled. The documents may be either original documents or duplicates of the original documents and
22 must be maintained in a manner that allows the documents to be retrieved from that office and copied at the
23 request of the claimant or the department. Settled claim files stored outside of the claims examiner's office must
24 be made available within 48 hours of a request for the file. Electronic or optically imaged documents are
25 permitted.

26 (4) (a) An insurer that uses a third-party agent to provide the insurer with claim examination services
27 shall notify the department in writing of a change of a third-party agent at least 14 days in advance of the change.

28 (b) The department may assess a penalty not to exceed \$200 against an insurer that does not comply
29 with the advance notice provision in subsection (4)(a). The penalty may be assessed for each failure by an insurer
30 to give the required advance notice.

1 (5) (a) An insurer that uses a third-party agent to review medical bills shall, when first using the agent's
2 services and annually in subsequent years, obtain written certification from the agent that, for each bill the agent
3 reviews, the agent agrees to calculate the payment due based on the Montana workers' compensation medical
4 fee schedules, provided for under 39-71-704, that were in effect on the date the service was provided.

5 (b) An insurer whose agent neglects or fails to use the proper fee schedule shall be assessed a penalty
6 of not less than \$200 or more than \$1,000 for each bill that its agent reviews under a fee schedule other than the
7 proper Montana fee schedule.

8 (c) An insurer that without good cause neglects or fails to pay medical bills on an accepted liability claim
9 within 60 days of the bill statement date may be assessed a penalty of not less than \$200 or more than \$1,000
10 for each bill that is the subject of a delay as provided in this subsection (5)(c).

11 ~~(5)(6)~~ An insurer shall provide to the claimant:

12 (a) a written statement of the reasons that a claim is being denied at the time of denial;

13 (b) whenever benefits are denied to a claimant, a written explanation of how the claimant may appeal
14 an insurer's decision; and

15 (c) a written explanation of the amount of wage-loss benefits being paid to the claimant, along with an
16 explanation of the calculation used to compute those benefits. The explanation must be sent within 7 days of the
17 initial payment of the benefit.

18 ~~(6)(7)~~ An insurer shall:

19 (a) begin making payments that are due on a claim within 14 days of acceptance of the claim, unless
20 the insurer promptly notifies the claimant that the insurer needs additional information in order to begin paying
21 benefits and specifies the information needed; and

22 (b) pay settlements within 30 days of the date the department issues an order approving the settlement.

23 (8) An insurer may contest a penalty assessed pursuant to subsection (4) or (5) in a hearing conducted
24 according to department rules. A party may appeal the final agency order to the workers' compensation court.
25 The court shall review the order pursuant to the requirements of 2-4-704.

26 ~~(7)(9)~~ The department may adopt rules to implement this section.

27 ~~(8)(10)~~ (a) For the purposes of this section, "settled claim" means a department-approved or
28 court-ordered compromise of benefits between a claimant and an insurer or a claim that was paid in full.

29 (b) The term does not include a claim in which there has been only a lump-sum advance of benefits."
30

1 **Section 3.** Section 39-71-118, MCA, is amended to read:

2 **"39-71-118. Employee, worker, volunteer, and volunteer firefighter defined.** (1) As used in this
3 chapter, the term "employee" or "worker" means:

4 (a) each person in this state, including a contractor other than an independent contractor, who is in the
5 service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied,
6 oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the
7 elected and appointed paid public officers and officers and members of boards of directors of quasi-public or
8 private corporations, except those officers identified in 39-71-401(2), while rendering actual service for the
9 corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not
10 otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of
11 the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic
12 employment is excluded.

13 (b) any juvenile who is performing work under authorization of a district court judge in a delinquency
14 prevention or rehabilitation program;

15 (c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job training
16 under a state or federal vocational training program, whether or not under an appointment or contract of hire with
17 an employer, as defined in 39-71-117, and, except as provided in subsection (9), whether or not receiving
18 payment from a third party. However, this subsection (1)(c) does not apply to students enrolled in vocational
19 training programs, as outlined in this subsection, while they are on the premises of a public school or community
20 college.

21 (d) an aircrew member or other person who is employed as a volunteer under 67-2-105;

22 (e) a person, other than a juvenile as described in subsection (1)(b), who is performing community
23 service for a nonprofit organization or association or for a federal, state, or local government entity under a court
24 order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under
25 appointment or contract of hire with an employer, as defined in 39-71-117, and whether or not receiving payment
26 from a third party. For a person covered by the definition in this subsection (1)(e):

27 (i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment
28 award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part
29 4, for a full-time employee at the time of the injury; and

30 (ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the

1 minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service
2 required under the order from the court or hearings officer.

3 (f) an inmate working in a federally certified prison industries program authorized under 53-30-132;

4 (g) a volunteer firefighter as described in 7-33-4109 or a person who provides ambulance services under
5 Title 7, chapter 34, part 1;

6 (h) a person placed at a public or private entity's worksite pursuant to 53-4-704. The person is
7 considered an employee for workers' compensation purposes only. The department of public health and human
8 services shall provide workers' compensation coverage for recipients of financial assistance, as defined in
9 53-4-201, or for participants in the food stamp program, as defined in 53-2-902, who are placed at public or
10 private worksites through an endorsement to the department of public health and human services' workers'
11 compensation policy naming the public or private worksite entities as named insureds under the policy. The
12 endorsement may cover only the entity's public assistance participants and may be only for the duration of each
13 participant's training while receiving financial assistance or while participating in the food stamp program under
14 a written agreement between the department of public health and human services and each public or private
15 entity. The department of public health and human services may not provide workers' compensation coverage
16 for individuals who are covered for workers' compensation purposes by another state or federal employment
17 training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for
18 work of a similar nature at the assigned worksite.

19 (i) a member of a religious corporation, religious organization, or religious trust while performing services
20 for the religious corporation, religious organization, or religious trust, as described in 39-71-117(1)(d).

21 (2) The terms defined in subsection (1) do not include a person who is:

22 (a) participating in recreational activity and who at the time is relieved of and is not performing prescribed
23 duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other
24 emolument of employment;

25 (b) performing voluntary service at a recreational facility and who receives no compensation for those
26 services other than meals, lodging, or the use of the recreational facilities;

27 (c) performing services as a volunteer, except for a person who is otherwise entitled to coverage under
28 the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs services on
29 behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.

30 (d) serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and

1 providing care without wage compensation to no more than six foster children in the provider's own residence.
2 The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure
3 and recreational activities, and providing for other needs and activities arising in the provision of in-home foster
4 care.

5 (3) With the approval of the insurer, an employer may elect to include as an employee under the
6 provisions of this chapter any volunteer as defined in subsection (2)(c).

7 (4) (a) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a
8 governmental fire agency organized under Title 7, chapter 33, except 7-33-4109.

9 (b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service of an
10 employer, including but not limited to training time, response time, and time spent at the employer's premises.

11 (5) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a member-managed
12 limited liability company, the employer may elect to include as an employee within the provisions of this chapter
13 any member of the partnership or limited liability partnership, the owner of the sole proprietorship, or any member
14 of the limited liability company devoting full time to the partnership, limited liability partnership, proprietorship, or
15 limited liability company business.

16 (b) In the event of an election, the employer shall serve upon the employer's insurer written notice
17 naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage
18 desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A partner,
19 sole proprietor, or member is not considered an employee within this chapter until notice has been given.

20 (c) A change in elected wages must be in writing and is effective at the start of the next quarter following
21 notification.

22 (d) All weekly compensation benefits must be based on the amount of elected wages, subject to the
23 minimum and maximum limitations of this subsection (5)(d). For premium ratemaking and for the determination
24 of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of ~~not less than~~
25 ~~\$900 a month~~ equal to not less than the minimum hourly wage established by 39-3-409, times 40 hours a week,
26 for a business with annual gross sales of more than \$110,000 and but not more than 1 1/2 times the state's
27 average weekly wage.

28 (6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability
29 company, the employer may elect to include as an employee within the provisions of this chapter any corporate
30 officer or manager exempted under 39-71-401(2).

1 (b) In the event of an election, the employer shall serve upon the employer's insurer written notice
2 naming the corporate officer or manager to be covered and stating the level of compensation coverage desired
3 by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A corporate officer
4 or manager is not considered an employee within this chapter until notice has been given.

5 (c) A change in elected wages must be in writing and is effective at the start of the next quarter following
6 notification.

7 (d) All weekly compensation benefits must be based on the amount of elected wages, subject to the
8 minimum and maximum limitations of this subsection (6)(d). For premium ratemaking and for the determination
9 of the weekly wage for weekly compensation benefits, the electing employer may elect an amount ~~of not less than~~
10 \$200 equal to not less than the minimum hourly wage established by 39-3-409, times 40 hours a week, for a
11 business with annual gross sales of more than \$110,000 and but not more than 1 1/2 times the state's average
12 weekly wage.

13 (7) (a) The trustees of a rural fire district, a county governing body providing rural fire protection, or the
14 county commissioners or trustees for a fire service area may elect to include as an employee within the provisions
15 of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage
16 under this section may not receive disability benefits under Title 19, chapter 17.

17 (b) In the event of an election, the employer shall report payroll for all volunteer firefighters for premium
18 and weekly benefit purposes based on the number of volunteer hours of each firefighter times the average weekly
19 wage divided by 40 hours, subject to a maximum of 1 1/2 times the state's average weekly wage.

20 (c) A self-employed sole proprietor or partner who has elected not to be covered under this chapter, but
21 who is covered as a volunteer firefighter pursuant to subsection (7)(a) and when injured in the course and scope
22 of employment as a volunteer firefighter, may in addition to the benefits described in subsection (7)(b) be eligible
23 for benefits at an assumed wage of the minimum hourly wage established under Title 39, chapter 3, part 4, for
24 by 39-3-409 for a business with annual gross sales of more than \$110,000 multiplied by 2,080 hours a year. The
25 trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners
26 or trustees for a fire service area may make an election for benefits. If an election is made, payrolls must be
27 reported and premiums must be assessed on the assumed wage.

28 (8) Except as provided in chapter 8 of this title, an employee or worker in this state whose services are
29 furnished by a person, association, contractor, firm, limited liability company, limited liability partnership, or
30 corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to

1 be under the control and employment of the employer. This presumption may be rebutted as provided in
2 39-71-117(3).

3 (9) A student currently enrolled in an elementary, secondary, or postsecondary educational institution
4 who is participating in work-based learning activities and who is paid wages by the educational institution or
5 business partner is the employee of the entity that pays the student's wages for all purposes under this chapter.
6 A student who is not paid wages by the business partner or the educational institution is a volunteer and is subject
7 to the provisions of this chapter.

8 (10) For purposes of this section, an "employee or worker in this state" means:

9 (a) a resident of Montana who is employed by an employer and whose employment duties are primarily
10 carried out or controlled within this state;

11 (b) a nonresident of Montana whose principal employment duties are conducted within this state on a
12 regular basis for an employer;

13 (c) a nonresident employee of an employer from another state engaged in the construction industry, as
14 defined in 39-71-116, within this state; or

15 (d) a nonresident of Montana who does not meet the requirements of subsection (10)(b) and whose
16 employer elects coverage with an insurer that allows an election for an employer whose:

17 (i) nonresident employees are hired in Montana;

18 (ii) nonresident employees' wages are paid in Montana;

19 (iii) nonresident employees are supervised in Montana; and

20 (iv) business records are maintained in Montana.

21 (11) An insurer may require coverage for all nonresident employees of a Montana employer who do not
22 meet the requirements of subsection (10)(b) or (10)(d) as a condition of approving the election under subsection
23 (10)(d)."

24

25 **Section 4.** Section 39-71-418, MCA, is amended to read:

26 **"39-71-418. Suspension or revocation of independent contractor exemption certificate.** (1) The
27 department may suspend an independent contractor exemption certificate for a specific business relationship if
28 the department determines that the employing unit exerts or retains a right of control to a degree that causes a
29 certificate holder to violate the provisions of 39-71-417(4).

30 (2) The department may revoke an independent contractor exemption certificate after determining that

1 the certificate holder:

2 (a) ~~provided made~~ misrepresentations in the application affidavit or certificate renewal form;

3 (b) altered or amended the application form, the renewal application form, other supporting
4 documentation required by the department, or the independent contractor exemption certificate; ~~or~~

5 (c) failed to cooperate with the department in providing information relevant to the continued validity of
6 the holder's certificate; or

7 (d) does not have an independently established business.

8 (3) A decision by the department to suspend or revoke an independent contractor exemption certificate
9 takes effect upon issuance of the decision. Suspension or revocation of the independent contractor exemption
10 certificate does not invalidate the certificate holder's waiver of the rights and benefits of the Workers'
11 Compensation Act for the period prior to notice to the hiring agent by the department of the department's decision
12 to suspend or revoke the independent contractor exemption certificate.

13 (4) A decision by the department's independent contractor central unit to suspend or revoke an
14 independent contractor exemption certificate may be contested in the same manner as provided in 39-71-415(2)."
15

16 **Section 5.** Section 39-71-2215, MCA, is amended to read:

17 **"39-71-2215. Security deposit to ensure payment of liability of plan No. 2 insurer.** (1) Except as
18 provided in subsection (7), a plan No. 2 insurer issuing or renewing a policy on or after January 1, 2008, shall post
19 a security deposit with the department as provided by this section. The purpose of the security deposit is to
20 provide a ready source of funds to pay claims arising under this chapter if the plan No. 2 insurer:

21 (a) becomes insolvent;

22 (b) is placed in receivership;

23 (c) declares bankruptcy;

24 (d) seeks protection from its creditors; or

25 (e) is otherwise unwilling or unable to pay its liabilities arising under this chapter.

26 (2) The amount of the security deposit, which is subject to the discretion of the department, must be in
27 an amount from \$25,000 to \$250,000. The security deposit must be posted in the form of:

28 (a) a certificate of deposit;

29 (b) a United States treasury note; or

30 (c) an irrevocable letter of credit.

1 (3) If a plan No. 2 insurer fails to discharge any determined liability within the time set by the department,
2 the department may convert the security deposit to cash and use the proceeds to pay the liability. Upon the
3 conversion, the plan No. 2 insurer shall immediately furnish additional security to the department in an amount
4 determined by the department to provide reasonable assurance that all current and future liabilities incurred by
5 the plan No. 2 insurer as a result of the coverage provided under this chapter can be fully paid.

6 (4) (a) The security deposit required by this section is the property of the department and is held in trust
7 by the department for the payment of the liabilities of the plan No. 2 insurer incurred under this chapter.

8 (b) Any earnings made by the security deposit accrue to the ~~security deposit insurer~~ insurer.

9 (c) Upon proof of final payment of all liabilities incurred under this chapter, the unexpended portion of
10 the security deposit must be discharged and any proceeds remaining are payable to the plan No. 2 insurer.

11 (5) In the event of the insolvency of a plan No. 2 insurer, the department may, in its discretion, release
12 part or all of the security deposit to the Montana insurance guaranty association, provided for in 33-10-103, for
13 payment of the plan No. 2 insurer's Montana workers' compensation claims if:

14 (a) the plan No. 2 insurer has been determined to be insolvent by a court of competent jurisdiction or is
15 the debtor in a bankruptcy proceeding;

16 (b) the plan No. 2 insurer is unable to pay its workers' compensation claims; and

17 (c) the plan No. 2 insurer's Montana workers' compensation liabilities have become the responsibility
18 of the Montana insurance guaranty association.

19 (6) The department is authorized to share information and coordinate its actions with the Montana
20 insurance commissioner and other appropriate regulatory agencies with respect to actions taken pursuant to this
21 section.

22 (7) A captive reciprocal insurer specified in 39-71-2201 is not subject to this section."
23

24 **NEW SECTION. Section 6. Effective date.** [This act] is effective July 1, 2011.

25 - END -