

HOUSE BILL NO. 186

INTRODUCED BY C. HUNTER

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A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE DEPARTMENT OF LABOR AND INDUSTRY TO PROVIDE UP TO ~~\$1 MILLION~~ \$500,000 PER YEAR IN MATCHING FUNDS FOR WORKPLACE SAFETY PROGRAMS IN CONJUNCTION WITH A NOT-FOR-PROFIT CORPORATION; INCREASING CERTAIN ASSESSMENTS PAID INTO THE ADMINISTRATION FUND; AMENDING SECTION 39-71-201, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE."

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

**Section 1.** Section 39-71-201, MCA, is amended to read:

**"39-71-201. Administration fund.** (1) A workers' compensation administration fund is established out of which are to be paid upon lawful appropriation all costs of administering the Workers' Compensation Act and the statutory occupational safety and health acts that the department is required to administer, with the exception of the certification of independent contractors provided for in Title 39, chapter 71, part 4, the subsequent injury fund provided for in 39-71-907, and the uninsured employers' fund provided for in 39-71-503. The department shall collect and deposit in the state treasury to the credit of the workers' compensation administration fund:

(a) all fees and penalties provided in 39-71-107, 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337;

(b) all penalties assessed under 50-71-119; and

(c) all fees paid by an assessment on paid losses, plus administrative fines and interest provided by this section.

(2) For the purposes of this section, paid losses include the following benefits paid during the preceding calendar year for injuries covered by the Workers' Compensation Act without regard to the application of any deductible whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

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



1 (3) Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of this section, and plan No.  
2 3, the state fund, shall file annually on March 1 in the form and containing the information required by the  
3 department a report of paid losses pursuant to subsection (2).

4 (4) Each employer enrolled under compensation plan No. 1, compensation plan No. 2, or compensation  
5 plan No. 3, the state fund, shall pay its proportionate share determined by the paid losses in the preceding  
6 calendar year of all costs of administering and regulating the Workers' Compensation Act and the statutory  
7 occupational safety acts that the department is required to administer, with the exception of the certification of  
8 independent contractors provided for in Title 39, chapter 71, part 4, the subsequent injury fund provided for in  
9 39-71-907, and the uninsured employers' fund provided for in 39-71-503. In addition, compensation plan No. 3,  
10 the state fund, shall pay a proportionate share of these costs based upon paid losses for claims arising before  
11 July 1, 1990.

12 (5) (a) Each employer enrolled under compensation plan No. 1 shall pay an assessment to fund  
13 administrative and regulatory costs. The assessment may be up to ~~3%~~ ~~3.5%~~ 3.25% of the paid losses paid in the  
14 preceding calendar year by or on behalf of the plan No. 1 employer. Any entity, other than the department, that  
15 assumes the obligations of an employer enrolled under compensation plan No. 1 is considered to be the employer  
16 for the purposes of this section.

17 (b) An employer formerly enrolled under compensation plan No. 1 shall pay an assessment to fund  
18 administrative and regulatory costs. The assessment may be up to ~~3%~~ ~~3.5%~~ 3.25% of the paid losses paid in the  
19 preceding calendar year by or on behalf of the employer for claims arising out of the time when the employer was  
20 enrolled under compensation plan No. 1.

21 (c) By April 30 of each year, the department shall notify employers described in subsections (5)(a) and  
22 (5)(b) of the percentage of the assessment that comprises the compensation plan No. 1 proportionate share of  
23 administrative and regulatory costs. Payment of the assessment provided for by this subsection (5) must be paid  
24 by the employer in:

25 (i) one installment due on July 1; or

26 (ii) two equal installments due on July 1 and December 31 of each year.

27 (d) If an employer fails to timely pay to the department the assessment under this section, the  
28 department may impose on the employer an administrative fine of \$500 plus interest on the delinquent amount  
29 at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers'  
30 compensation administration fund.

1           (6) (a) Compensation plan No. 3, the state fund, shall pay an assessment to fund administrative and  
2 regulatory costs attributable to claims arising before July 1, 1990. The assessment may be up to 3% of the paid  
3 losses paid in the preceding calendar year for claims arising before July 1, 1990. As required by 39-71-2352, the  
4 state fund may not pass along to insured employers the cost of the assessment for administrative and regulatory  
5 costs that is attributable to claims arising before July 1, 1990.

6           (b) Payment of the assessment must be paid in:

7           (i) one installment due on July 1; or

8           (ii) two equal installments due on July 1 and December 31 of each year.

9           (c) If the state fund fails to timely pay to the department the assessment under this section, the  
10 department may impose on the state fund an administrative fine of \$500 plus interest on the delinquent amount  
11 at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers'  
12 compensation administration fund.

13           (7) (a) Each employer insured under compensation plan No. 2 or plan No. 3, the state fund, shall pay  
14 a premium surcharge to fund administrative and regulatory costs. The premium surcharge must be collected by  
15 each plan No. 2 insurer and by plan No. 3, the state fund, from each employer that it insures. The premium  
16 surcharge must be stated as a separate cost on an insured employer's policy or on a separate document  
17 submitted to the insured employer and must be identified as "workers' compensation regulatory assessment  
18 surcharge". The premium surcharge must be excluded from the definition of premiums for all purposes, including  
19 computation of insurance producers' commissions or premium taxes. However, an insurer may cancel a workers'  
20 compensation policy for nonpayment of the premium surcharge. When collected, assessments may not constitute  
21 an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose  
22 of collection, must be treated as a separate cost imposed upon insured employers.

23           (b) The amount to be funded by the premium surcharge may be up to ~~3%~~ 3.5% 3.25% of the paid losses  
24 paid in the preceding calendar year by or on behalf of all plan No. 2 insurers and may be up to ~~3%~~ 3.5% 3.25%  
25 of paid losses for claims arising on or after July 1, 1990, for plan No. 3, the state fund, plus or minus any  
26 adjustments as provided by subsection (7)(f). The amount to be funded must be divided by the total premium paid  
27 by all employers enrolled under compensation plan No. 2 or plan No. 3 during the preceding calendar year. A  
28 single premium surcharge rate, applicable to all employers enrolled in compensation plan No. 2 or plan No. 3,  
29 must be calculated annually by the department by not later than April 30. The resulting rate, expressed as a  
30 percentage, is levied against the premium paid by each employer enrolled under compensation plan No. 2 or plan

1 No. 3 in the next fiscal year.

2 (c) On or before April 30 of each year, the department, in consultation with the advisory organization  
3 designated pursuant to 33-16-1023, shall notify plan No. 2 insurers and plan No. 3, the state fund, of the premium  
4 surcharge percentage to be effective for policies written or renewed annually on and after July 1 of that year.

5 (d) The premium surcharge must be paid whenever the employer pays a premium to the insurer. Each  
6 insurer shall collect the premium surcharge levied against every employer that it insures. Each insurer shall pay  
7 to the department all money collected as a premium surcharge within 20 days of the end of the calendar quarter  
8 in which the money was collected. If an insurer fails to timely pay to the department the premium surcharge  
9 collected under this section, the department may impose on the insurer an administrative fine of \$500 plus  
10 interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be  
11 deposited in the workers' compensation administration fund.

12 (e) If an employer fails to remit to an insurer the total amount due for the premium and premium  
13 surcharge, the amount received by the insurer must be applied to the premium surcharge first and the remaining  
14 amount applied to the premium due.

15 (f) The amount actually collected as a premium surcharge in a given year must be compared to the  
16 assessment on the paid losses paid in the preceding year. Any excess amount collected must be deducted from  
17 the amount to be collected as a premium surcharge in the following year. The amount collected that is less than  
18 the assessed amount must be added to the amount to be collected as a premium surcharge in the following year.

19 (8) By July 1, an insurer under compensation plan No. 2 that pays benefits in the preceding calendar  
20 year but that will not collect any premium for coverage in the following fiscal year shall pay an assessment of up  
21 to ~~3%~~ ~~3.5%~~ 3.25% of paid losses paid in the preceding calendar year. The department shall determine and notify  
22 the insurer by April 30 of each year of the amount that is due by July 1.

23 (9) An employer that makes a first-time application for permission to enroll under compensation plan No.  
24 1 shall pay an assessment of \$500 within 15 days of being granted permission by the department to enroll under  
25 compensation plan No. 1.

26 (10) The department shall deposit all funds received pursuant to this section in the state treasury, as  
27 provided in this section.

28 (11) The administration fund must be debited with expenses incurred by the department in the general  
29 administration of the provisions of this chapter, including the salaries of its members, officers, and employees and  
30 the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503,

1 incurred while on the business of the department either within or without the state.

2 (12) Disbursements from the administration fund must be made after being approved by the department  
3 upon claim for disbursement.

4 (13) The department may assess and collect the workers' compensation regulatory assessment  
5 surcharge from uninsured employers, as defined in 39-71-501, that fail to properly comply with the coverage  
6 requirements of the Workers' Compensation Act. Any amounts collected by the department pursuant to this  
7 subsection must be deposited in the workers' compensation administration fund."

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9 **NEW SECTION. Section 2. Department to provide matching funds for certain safety programs.**

10 (1) Except as provided in subsections (2) and (3), the department shall allocate and pay up to ~~\$1 million~~  
11 \$500,000 a year in matching funds from the revenue generated by the workers' compensation administrative  
12 assessment provided in 39-71-201 for the development of workplace safety programs in conjunction with a  
13 not-for-profit corporation that has as its primary purpose the promotion of workplace safety and health in Montana.

14 (2) The amount allocated and paid by the department pursuant to subsection (1) may be provided only  
15 to match, on a dollar-for-dollar basis, donations made to the not-for-profit corporation described in subsection (1).

16 (3) The amount allocated and paid by the department pursuant to subsection (1) is limited to the amount  
17 that would have been raised by:

18 (a) an assessment rate of ~~0.5%~~ 0.25% on the paid losses of compensation plan No. 1 self-insured  
19 employers, pursuant to 39-71-201(5)(a) and (5)(b);

20 (b) an assessment rate of ~~0.5%~~ 0.25% on paid losses of compensation plan No. 2 insurers, pursuant  
21 to 39-71-201(8); and

22 (c) the amount of premium surcharge necessary to fund an assessment rate of ~~0.5%~~ 0.25% on paid  
23 losses of compensation plan No. 2 insurers and compensation plan No. 3, the state fund, pursuant to  
24 39-71-201(7).

25 (4) If the amount actually collected at the rate specified in subsection (3) exceeds the amount allocated  
26 and paid by the department to the not-for-profit corporation described in subsection (1) in any given year, all of  
27 the excess amount collected that year must be credited to the workers' compensation administration fund  
28 provided for in 39-71-201. The credit must be used to decrease the following year's administrative assessment  
29 and premium surcharge in an equitable manner.

30 **(5) IF A NOT-FOR-PROFIT CORPORATION THAT RECEIVES MATCHING DOLLARS FOR WORKPLACE SAFETY FROM**

1 THE STATE ISSUES A REQUEST FOR PROPOSALS, A REPORT ON ANY BEST PRACTICES FOR WORKPLACE SAFETY DEVELOPED  
2 AS A RESULT, INCLUDING ANY DATA COLLECTED OR BENCHMARKS FOR IMPROVING SAFETY, MAY BE PROVIDED TO THE  
3 DEPARTMENT AND THE APPROPRIATE LEGISLATIVE INTERIM COMMITTEE BY SEPTEMBER OF ANY YEAR PRECEDING A  
4 REGULAR LEGISLATIVE SESSION.

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6 NEW SECTION. Section 3. Codification instruction. [Section 2] is intended to be codified as an  
7 integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [section 2].

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9 COORDINATION SECTION. SECTION 4. COORDINATION INSTRUCTION. IF HOUSE BILL NO. 334 IS NOT  
10 PASSED AND APPROVED, THEN [THIS ACT] IS VOID.

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12 NEW SECTION. Section 5. Effective date. [This act] is effective July 1, 2011.

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14 NEW SECTION. Section 6. Applicability. [This act] applies to assessments due on or after July 1,  
15 2011, and premiums payable for policies that are renewed or become effective on or after July 1, 2011.

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17 NEW SECTION. Section 7. Termination. [This act] terminates June 30, 2015.

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