

HOUSE BILL NO. 413

INTRODUCED BY C. HUNTER, B. TUTVEDT

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE MONTANA PRIVATE SECTOR
5 OCCUPATIONAL SAFETY AND HEALTH ACT; ASSIGNING ADMINISTRATIVE, RULEMAKING, AND
6 ENFORCEMENT DUTIES TO THE DEPARTMENT OF LABOR AND INDUSTRY; PROVIDING A FUNDING
7 MECHANISM; PROVIDING FOR A SAFETY ADVISORY COUNCIL; PROVIDING FOR VOLUNTARY SAFETY
8 CONSULTATIONS; PROVIDING SAFETY RESPONSIBILITIES FOR PRIVATE SECTOR EMPLOYERS AND
9 EMPLOYEES; PROVIDING FOR INSPECTIONS, CITATIONS, MONETARY PENALTIES, AND DUE PROCESS
10 PROTECTIONS; PROVIDING FOR STOP-WORK ORDERS AND CIVIL INJUNCTIVE RELIEF; PROVIDING
11 FOR WHISTLE-BLOWER PROTECTION FOR EMPLOYEES; AMENDING SECTIONS 39-2-912, 39-71-201,
12 AND 49-2-301, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

15
16 NEW SECTION. **Section 1. Short title -- purpose.** (1) [Sections 1 through 18] may be cited as the
17 "Montana Private Sector Occupational Safety and Health Act."

18 (2) [Sections 1 through 18] allow the state of Montana to administer and enforce occupational safety and
19 health laws for private sector employers in a manner that is at least as effective as the federal occupational safety
20 and health administration's enforcement of the Occupational Safety and Health Act of 1970, 29 U.S.C. 651, et
21 seq.

22
23 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 18], the following definitions
24 apply:

- 25 (1) "Department" means the department of labor and industry provided for in 2-15-1701.
- 26 (2) "Employee" has the meaning provided in 39-71-118.
- 27 (3) "Employer" has the meaning provided in 39-71-117.
- 28 (4) "Health" means protection against occupational illness.
- 29 (5) "Inspection" means an onsite review of a workplace by the department to determine compliance with
30 standards adopted under [sections 1 through 18].

- 1 (6) (a) "Private sector employee" means an employee of a private sector employer.
- 2 (b) The term does not include a bona fide independent contractor.
- 3 (7) "Private sector employer" means any employer that is not a public sector employer. The term includes
- 4 for-profit and not-for-profit employers.
- 5 (8) "Public sector employer" means:
- 6 (a) a state agency;
- 7 (b) each county in the state;
- 8 (c) each municipality in the state;
- 9 (d) each school district or community college; and
- 10 (e) any other political subdivision of the state.
- 11 (9) "Safety" means protection against occupational injury or death.
- 12 (10) "Safety consultation services" has the meaning provided in 39-71-1503.
- 13 (11) "Standard" means a rule adopted by the department pursuant to [sections 1 through 18] that is
- 14 designed to promote or ensure safety or health in the workplace.
- 15 (12) "State agency" means any branch of government, including a department, board, commission, office,
- 16 bureau, institution, university system entity, or unit of state government recognized in the state budget.
- 17 (13) "Workplace" means any site or location where an employee performs work for the employee's
- 18 employer.
- 19
- 20 **NEW SECTION. Section 3. Administrative authority -- funding.** (1) Once the certification provided
- 21 for in subsection (6) is made, the department has authority to enforce the provisions of [sections 1 through 18]
- 22 with respect to private sector employers.
- 23 (2) In addition to administering the provisions of [sections 1 through 18], the department may:
- 24 (a) promote occupational safety and health;
- 25 (b) educate employers and employees in occupational safety and health matters;
- 26 (c) conduct research regarding occupational safety and health data, topics, and techniques; and
- 27 (d) investigate occupational injuries, illnesses, and deaths involving private sector employees.
- 28 (3) The department may develop and operate a statewide employment safety program. The statewide
- 29 employment safety program may include but is not limited to:
- 30 (a) a safety awareness component;

1 (b) an employee education component;

2 (c) an employer education component; and

3 (d) industry-specific initiatives.

4 (4) The activities of the department under the provisions of [sections 1 through 18] are funded by the
5 workers' compensation administration fund provided in 39-71-201.

6 (5) The department may accept, receive, and administer gifts, grants, or other funds from public or
7 private agencies and from the United States for the purpose of carrying out the provisions of [sections 1 through
8 18]. Funds received by the department under this subsection must be deposited into the fund provided for in
9 39-71-201.

10 (6) The governor shall certify to the secretary of state the date upon which the federal occupational safety
11 and health administration enters into an operational status agreement with the department for the department's
12 enforcement of [sections 1 through 18].

13

14 **NEW SECTION. Section 4. Applicability of standards -- exceptions.** (1) The standards for safety
15 and health and enforcement rules adopted pursuant to [sections 1 through 18] apply to all private sector
16 employers in this state and to private sector employees.

17 (2) The standards and enforcement rules adopted pursuant to [sections 1 through 18] do not apply to
18 employment by:

19 (a) public sector employers subject to the provisions of Title 50, chapter 71, part 1;

20 (b) the federal government and its instrumentalities;

21 (c) a federally recognized tribal government; or

22 (d) a tribal government recognized by the state.

23

24 **NEW SECTION. Section 5. Duties of private sector employers and private sector employees.** (1)

25 Each private sector employer shall:

26 (a) furnish a place of employment that is free from recognized hazards that cause or are likely to cause
27 death or serious physical harm to private sector employees;

28 (b) adopt and use practices, means, methods, operations, and processes that are adequate to render
29 the workplace safe; and

30 (c) take appropriate actions necessary to protect the life, health, and safety of private sector employees.

1 (2) Each private sector employee shall comply with the safety and health standards, rules, and orders
2 issued pursuant to [sections 1 through 18] as they apply to the private sector employee's own actions and
3 conduct.

4
5 **NEW SECTION. Section 6. Rulemaking -- variances.** (1) The department shall adopt appropriate
6 standards for safety and health by administrative rule, including:

7 (a) any safety or health regulations promulgated by the federal occupational safety and health
8 administration; and

9 (b) standards to ensure that private sector employers have effectively implemented the provisions of the
10 Montana Safety Culture Act, Title 39, chapter 71, part 15.

11 (2) The department may adopt appropriate standards for safety and health by administrative rule,
12 including evidence-based standards that are not inconsistent with federal safety and health regulation but that
13 provide for a greater level of protection for employees.

14 (3) The department may adopt other rules that are reasonably necessary to implement [sections 1
15 through 18].

16 (4) (a) The department may by rule:

17 (i) provide a procedure to grant a temporary variance from the particular provisions of a standard; and

18 (ii) permit the temporary use of other or different devices or methods than provided by the standard.

19 (b) A temporary variance may be granted only if the private sector employer:

20 (i) has an effective program for complying with the standard as quickly as is practicable;

21 (ii) is taking all available steps to safeguard private sector employees against the hazards covered by
22 the standard; and

23 (iii) is unable to comply with the standard because:

24 (A) professional or technical personnel needed to implement compliance with the standard are
25 temporarily unavailable;

26 (B) material or equipment needed to comply with the standard is temporarily unavailable; or

27 (C) necessary construction or alteration of facilities cannot be completed by the effective date of the
28 standard.

29 (5) (a) Before the department proposes or amends any rule under subsection (1), it may consult with
30 the safety advisory council provided for in [section 7] and take into consideration the advice and comments of the

1 council concerning the proposed rule change.

2 (b) Before the department proposes or amends any rule or standard under subsection (2), it shall consult
3 with the safety advisory council provided for in [section 7] and shall take into consideration the advice and
4 comments of the council concerning the proposed rule change.

5
6 **NEW SECTION. Section 7. Safety advisory council -- purpose and structure.** (1) There is a safety
7 advisory council for the purpose of assisting the department with the application and implementation of [sections
8 1 through 18]. The council shall work cooperatively with the department and with representatives of private sector
9 employers and private sector employees, as well as members of the interested public, to determine which
10 occupational safety and health standards and related rules meet the needs of the private sector and the public
11 interest in efficiency, cost-effectiveness, and safety.

12 (2) The council consists of 12 members:

13 (a) eight members appointed by the governor:

14 (i) a representative of a statewide association of businesses;

15 (ii) a representative of a statewide association of small businesses;

16 (iii) a representative of an association of employers engaged in one or more construction trade;

17 (iv) a representative of a labor organization that has members employed in manufacturing;

18 (v) a representative of a labor organization that has members employed in the private sector;

19 (vi) a representative of a labor organization that has members employed in construction trades;

20 (vii) a representative of the Montana university system who has a professional background in
21 occupational safety and health; and

22 (viii) an individual with professional experience in occupational safety and health, and who is a member
23 of a nationally recognized organization or society of occupational safety and health professionals;

24 (b) the director of the department of commerce, or a person designated by the director;

25 (c) the commissioner of labor and industry, or a person designated by the commissioner; and

26 (d) two members of the legislature, who must be selected by the house majority leader, the house
27 minority leader, the senate majority leader, and the senate minority leader. The legislative members may not be
28 of the same political party. The legislative members of the council are not entitled to vote on matters brought
29 before the council.

30 (3) The appointed council members serve at the pleasure of the governor for terms of 3 years.

1 (4) The council is allocated to the department for administrative purposes only as provided in 2-15-121.

2 (5) The council and its appointed members are entitled to compensation as provided in 2-15-122.

3

4 **NEW SECTION. Section 8. Private sector employer records and reports.** (1) Each private sector
5 employer shall maintain records of occupational injuries, illnesses, and deaths as the department may require
6 by rule.

7 (2) The department may inspect those records or require that the private sector employer submit those
8 records to the department for its review.

9 (3) Except as otherwise provided by rule, a private sector employer complies with the requirements of
10 this section if the private sector employer completes and submits a first report of injury form to the department
11 or to the private sector employer's workers' compensation insurer within 30 days of the private sector employer
12 becoming aware of an occupational injury, illness, or death suffered by a private sector employee.

13

14 **NEW SECTION. Section 9. Inspections -- safety consultations.** (1) The department may inspect all
15 workplaces of any private sector employer for the purpose of determining whether the private sector employer
16 is in compliance with the safety and health standards that apply to the employer and the employer's workplaces.
17 A department employee conducting an inspection shall, upon request, present appropriate credentials to the
18 private sector employer. The department shall invite a representative of the private sector employer and a
19 representative of any labor organization that represents employees of the private sector employer who are
20 working at the workplace that is to be inspected to accompany the department employee on the inspection. The
21 labor organization representative must be on paid status while accompanying the department employee on the
22 inspection.

23 (2) An inspection performed pursuant to subsection (1) must be performed:

24 (a) periodically without prior notice or scheduling;

25 (b) as the result of a complaint of a violation of a safety or health standard at a private sector employer's
26 workplace;

27 (c) as part of a department investigation following a report of an occupational injury, illness, or death;
28 or

29 (d) following the issuance of a citation, after the private sector employer has been given a reasonable
30 opportunity to correct any violation of standards.

1 (3) The department may provide a safety consultation at the workplaces of any private sector employer
2 at the request of the private sector employer.

3 (4) A private sector employer may not interfere with a department inspection conducted pursuant to this
4 section or an inspection warrant issued pursuant to [section 10].

5 (5) The department may not unreasonably interfere with the operations of a private sector employer while
6 conducting an inspection. An unscheduled inspection or execution of an inspection warrant does not constitute
7 unreasonable interference with the private sector employer's operations.

8 (6) This section does not authorize the department's employees to engage in a breach of the peace.
9

10 **NEW SECTION. Section 10. Inspection warrant -- application -- entrance onto property.** (1) The
11 department may apply ex parte to any district court in the state for an inspection warrant in order to conduct an
12 inspection pursuant to [section 9].

13 (2) (a) An inspection warrant application may be made by the department in writing, in person, or, in the
14 case of exigent circumstances, via a telecommunications device.

15 (b) The inspection warrant application must be supported by cause for the inspection, and identify the
16 place or places to be inspected. An inspection warrant application must describe the general nature of the
17 operations to be inspected, but does not have to name a specific employer whose operations are to be inspected.
18 An inspection warrant application is not invalid because it does not identify the owner, tenant, or occupant of a
19 workplace that is to be inspected.

20 (3) Upon demonstration of cause, the district court must issue an inspection warrant. The inspection
21 warrant may provide for a date by which the warrant must be executed and the inspection be conducted.

22 (4) The department may request the assistance of appropriate local law enforcement agencies in order
23 that the department's employees may peaceably enter the property pursuant to an inspection warrant and
24 conduct an inspection.
25

26 **NEW SECTION. Section 11. Report of inspection -- violations -- penalty -- appeal process.** (1) (a)
27 The department shall make a written report of each inspection that it conducts under [section 9].

28 (b) The inspection report must include a list of violations of standards that the inspector discovered
29 during the inspection. A violation of a standard by a private sector employee is attributable to the private sector
30 employer for the purposes of [sections 1 through 18].

1 (c) The department shall provide a copy of the inspection report to the private sector employer and to
2 a representative of a labor organization that represents private sector employees at the workplace that was
3 inspected.

4 (d) The private sector employer shall post a copy of the list of hazards included in the inspection report
5 at one or more visible locations at the workplace that is the subject of the inspection report. The posting must be
6 in a location likely to be seen by employees at that workplace.

7 (2) The department shall issue a written citation to the private sector employer for a violation of a
8 standard. The citation must specify:

9 (a) the nature of the violation;

10 (b) the standard that was violated; and

11 (c) a timeframe within which the private sector employer is required to correct the violation.

12 (3) (a) The department may impose upon a private sector employer a monetary penalty of not more than
13 \$700 for each violation that was not committed purposely or knowingly and for which a citation has been issued.

14 (b) The department may, in its sole discretion, waive or reduce a penalty under this subsection (3) if the
15 private sector employer timely corrects or cures the violation for which the penalty was imposed.

16 (c) Monetary penalties collected pursuant to this subsection (3) must be deposited into the workers'
17 compensation administration fund provided for in 39-71-201.

18 (4) (a) The department may impose upon a private sector employer a monetary penalty of not more than
19 \$7,000 for each violation that was not committed purposely or knowingly but that constitutes a serious or repeat
20 violation, as defined by rule, and for which a citation has been issued.

21 (b) The department may, in its sole discretion, waive or reduce a penalty under this subsection (4) if the
22 private sector employer timely corrects or cures the violation for which the penalty was imposed.

23 (c) Monetary penalties collected pursuant to this subsection (4) must be deposited into the workers'
24 compensation administration fund provided for in 39-71-201.

25 (5) (a) The department may impose upon a private sector employer a monetary penalty of not more than
26 \$70,000 for each violation that is committed purposely or knowingly and for which a citation has been issued.

27 (b) The department may, in its sole discretion, waive or reduce a penalty under this subsection (5) if the
28 private sector employer timely corrects or cures the violation for which the penalty was imposed.

29 (c) Monetary penalties collected pursuant to this subsection (5) must be deposited into the workers'
30 compensation administration fund provided for in 39-71-201.

- 1 (6) (a) A private sector employer may appeal a citation or a penalty.
- 2 (b) An appeal to the department must be in writing and made within 30 days of the issuance of the
- 3 citation.
- 4 (c) The appeal of a citation or a penalty is conducted as a contested case under Title 2, chapter 4.
- 5 (7) As used in this section, the terms "purposely" and "knowingly" have the same meaning as provided
- 6 in 45-2-101.

7

8 **NEW SECTION. Section 12. Judicial review.** An employer aggrieved as the result of a contested case

9 may seek judicial review as provided under Title 2, chapter 4.

10

11 **NEW SECTION. Section 13. Retaliation prohibited -- remedies.** (1) A private sector employer may

12 not retaliate against a private sector employee who:

- 13 (a) contacts the department with a complaint of a violation of a standard in the workplace;
- 14 (b) cooperates with the department in the performance of an inspection or an investigation; or
- 15 (c) testifies or cooperates with the department in any case arising out of:
 - 16 (i) an inspection;
 - 17 (ii) an investigation;
 - 18 (iii) a citation;
 - 19 (iv) a temporary stop-work order; or
 - 20 (v) a civil action seeking injunctive relief.

21 (2) A private sector employee who has been retaliated against in violation of this section may file for relief

22 as provided for by Title 49, chapter 2.

23

24 **NEW SECTION. Section 14. Stop-work orders.** (1) The department shall order a private sector

25 employer to immediately and temporarily stop work at a particular workplace if a department inspector who has

26 personally observed the workplace and the hazards that are present determines that:

- 27 (a) the conditions or operations that are present at the workplace constitute a violation of a standard
- 28 established by the department;
- 29 (b) the violation poses an immediate and substantial risk of serious bodily injury or death to a private
- 30 sector employee or a member of the public; and

1 (c) the private sector employer or a private sector employee who is present at the workplace is unable
2 or unwilling to:

3 (i) immediately correct the violation; or

4 (ii) suspend the unsafe operation until the violation is corrected.

5 (2) The temporary stop-work order must be in writing and specify:

6 (a) the location of the workplace;

7 (b) the specific standard that is being violated;

8 (c) the nature of the risk posed by the violation;

9 (d) the date and the time that the temporary stop-work order is issued; and

10 (e) the name, employment address, and work telephone number of the person issuing the temporary
11 stop-work order.

12 (3) The temporary stop-work order is effective upon communication or delivery to any one of the
13 following:

14 (a) the private sector employer's onsite supervisor at the workplace;

15 (b) the private sector employer's manager in charge of workplace operations; or

16 (c) the chief executive of the private sector employer.

17 (4) A copy of the temporary stop-work order must be promptly posted by the department at the
18 workplace. A posted temporary stop-work order may not be removed by any person while it is in effect.

19 (5) A temporary stop-work order is effective for 72 hours unless:

20 (a) the violation is corrected to the satisfaction of the department; or

21 (b) the temporary stop-work order is stayed by order of a district court judge following actual notice to
22 the department and the private sector employer.

23 (6) The violation of a temporary stop-work order or the unauthorized removal of a posted copy of a
24 temporary stop-work order is punishable as a contempt of court.

25 (7) As used in this section, the term "serious bodily injury" has the same meaning as provided in
26 45-2-101.

27

28 **NEW SECTION. Section 15. Injunctive relief.** In addition to any remedies available under [sections
29 1 through 18], the department may institute and maintain in the name of the state an action for injunctive relief
30 as provided in Title 27, chapter 19, to:

- 1 (1) immediately restrain a private sector employer and private sector employees from engaging in any
 2 activity for which the department has issued a temporary stop-work order pursuant to [section 14];
 3 (2) enjoin a violation of [sections 1 through 18];
 4 (3) enjoin a violation of a rule, including a safety or health standard, adopted under [sections 1 through
 5 18]; or
 6 (4) require compliance with [sections 1 through 18], including compliance with any rules adopted under
 7 [sections 1 through 18].

8
 9 **NEW SECTION. Section 16. Confidentiality of trade secrets.** Trade secrets of an employer that are
 10 protected by the Uniform Trade Secrets Act pursuant to Title 30, chapter 14, part 4, may not be disclosed by the
 11 department.

12
 13 **NEW SECTION. Section 17. Safety consultation services.** The department may, in its sole discretion,
 14 provide onsite safety consultation services to private sector employers that request onsite safety consultation
 15 services.

16
 17 **NEW SECTION. Section 18. Occupational safety and health administration funding.** The costs of
 18 administering and enforcing [sections 1 through 18] are funded by the workers' compensation administration fund,
 19 as provided in 39-71-201.

20
 21 **Section 19.** Section 39-2-912, MCA, is amended to read:

22 **"39-2-912. Exemptions.** This part does not apply to a discharge:

23 (1) that is subject to any other state or federal statute that provides a procedure or remedy for contesting
 24 the dispute. The statutes include those that prohibit discharge for:

25 (a) filing complaints, charges, or claims with administrative bodies or that prohibit unlawful discrimination
 26 based on race, national origin, sex, age, disability, creed, religion, political belief, color, marital status, and other
 27 similar grounds; or

28 (b) engaging in any safety-related protected activity provided for in [section 13].

29 (2) of an employee covered by a written collective bargaining agreement or a written contract of
 30 employment for a specific term."

1

2 **Section 20.** Section 39-71-201, MCA, is amended to read:

3 **"39-71-201. Administration fund.** (1) A workers' compensation administration fund is established out
4 of which are to be paid upon lawful appropriation all costs of administering the Workers' Compensation Act and
5 the statutory occupational safety and health acts that the department is required to administer, with the exception
6 of the certification of independent contractors provided for in Title 39, chapter 71, part 4, the subsequent injury
7 fund provided for in 39-71-907, and the uninsured employers' fund provided for in 39-71-503. The department
8 shall collect and deposit in the state treasury to the credit of the workers' compensation administration fund:

9 (a) all fees and penalties provided in 39-71-107, 39-71-205, 39-71-223, 39-71-304, 39-71-307,
10 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337;

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

12 (c) all penalties assessed under [section 11];

13 (d) all federal funds received under 50-71-113(5) and [section 3(5)] that fund the department's activities
14 under Title 50, chapter 71; and

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

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

20 (a) total compensation benefits paid; and

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

24 (3) Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of this section, and plan No.
25 3, the state fund, shall file annually on March 1 in the form and containing the information required by the
26 department a report of paid losses pursuant to subsection (2).

27 (4) Each employer enrolled under compensation plan No. 1, compensation plan No. 2, or compensation
28 plan No. 3, the state fund, shall pay its proportionate share determined by the paid losses in the preceding
29 calendar year of all costs of administering and regulating the Workers' Compensation Act and the statutory
30 occupational safety acts that the department is required to administer, with the exception of the certification of

1 independent contractors provided for in Title 39, chapter 71, part 4, the subsequent injury fund provided for in
2 39-71-907, and the uninsured employers' fund provided for in 39-71-503. In addition, compensation plan No. 3,
3 the state fund, shall pay a proportionate share of these costs based upon paid losses for claims arising before
4 July 1, 1990.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (d) The premium surcharge must be paid whenever the employer pays a premium to the insurer. Each
28 insurer shall collect the premium surcharge levied against every employer that it insures. Each insurer shall pay
29 to the department all money collected as a premium surcharge within 20 days of the end of the calendar quarter
30 in which the money was collected. If an insurer fails to timely pay to the department the premium surcharge

1 collected under this section, the department may impose on the insurer an administrative fine of \$500 plus
2 interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be
3 deposited in the workers' compensation administration fund.

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

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

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

15 (9) An employer that makes a first-time application for permission to enroll under compensation plan No.
16 1 shall pay an assessment of \$500 within 15 days of being granted permission by the department to enroll under
17 compensation plan No. 1.

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

20 (11) The administration fund must be debited with expenses incurred by the department in the general
21 administration of the provisions of this chapter, including the salaries of its members, officers, and employees and
22 the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503,
23 incurred while on the business of the department either within or without the state.

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

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

30 (14) Penalties collected pursuant to [section 11] may only be expended for safety education and outreach

1 functions. The penalties collected pursuant to [section 11] may not be expended for safety inspection or
2 enforcement functions."

3

4 **Section 21.** Section 49-2-301, MCA, is amended to read:

5 **"49-2-301. Retaliation prohibited.** (1) It is an unlawful discriminatory practice for a person, educational
6 institution, financial institution, or governmental entity or agency to discharge, expel, blacklist, or otherwise
7 discriminate against an individual because the individual has opposed any practices forbidden under this chapter
8 or because the individual has filed a complaint, testified, assisted, or participated in any manner in an
9 investigation or proceeding under this chapter.

10 (2) It is an unlawful discriminatory practice for an employer to refuse employment to a person, to bar a
11 person from employment, or to discriminate against a person in compensation or in a term, condition, or privilege
12 of employment because of engaging in a protected activity provided for in [section 13]."

13

14 NEW SECTION. **Section 22. Codification instruction.** [Sections 1 through 18] are intended to be
15 codified as an integral part of Title 50, chapter 71, and the provisions of Title 50, chapter 71, apply to [sections
16 1 through 18].

17

18 NEW SECTION. **Section 23. Saving clause.** [This act] does not affect rights and duties that matured,
19 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

20

21 NEW SECTION. **Section 24. Severability.** If a part of [this act] is invalid, all valid parts that are
22 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
23 the part remains in effect in all valid applications that are severable from the invalid applications.

24

25 NEW SECTION. **Section 25. Effective date.** [This act] is effective July 1, 2015.

26

- END -