

SENATE BILL NO. 259

INTRODUCED BY B. TUTVEDT

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE FUNDING FOR CERTAIN ADMINISTRATIVE
5 FUNCTIONS OF THE DEPARTMENT OF LABOR AND INDUSTRY RELATED TO WORKERS'
6 COMPENSATION AND OCCUPATIONAL SAFETY AND HEALTH LAWS; INCREASING A PERCENTAGE THAT
7 MAY BE ASSESSED AGAINST WORKERS' COMPENSATION INSURERS FOR ADMINISTRATION OF THE
8 WORKERS' COMPENSATION ACT; CREATING A NEW ASSESSMENT FOR ADMINISTERING
9 OCCUPATIONAL SAFETY AND HEALTH LAWS; PROVIDING FOR A PROCEDURAL TRANSITION;
10 AMENDING SECTIONS 39-71-201, 39-71-435, 39-71-1050, 50-71-113, 50-71-119, 50-72-106, AND 50-73-107,
11 MCA; AND PROVIDING EFFECTIVE DATES."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
14

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

16 **"39-71-201. Administration Workers' compensation administration fund.** (1) A workers'
17 compensation administration fund is established out of which are to be paid upon lawful appropriation all costs
18 of administering the Workers' Compensation Act ~~and the statutory occupational safety and health acts that the~~
19 ~~department is required to administer~~, with the exception of the certification of independent contractors provided
20 for in Title 39, chapter 71, part 4, the subsequent injury fund provided for in 39-71-907, and the uninsured
21 employers' fund provided for in 39-71-503. The department shall collect and deposit in the state treasury to the
22 credit of the workers' compensation administration fund:

23 (a) all fees and penalties provided in 39-71-107, 39-71-205, 39-71-223, 39-71-304, 39-71-307,
24 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337;

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

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

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

1 (a) total compensation benefits paid; and

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

5 (3) Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of this section, and plan No.
6 3, the state fund, shall file annually on March 1 in the form and containing the information required by the
7 department a report of paid losses pursuant to subsection (2).

8 (4) Each employer enrolled under compensation plan No. 1, compensation plan No. 2, or compensation
9 plan No. 3, the state fund, shall pay its proportionate share determined by the paid losses in the preceding
10 calendar year of all costs of administering and regulating the Workers' Compensation Act ~~and the statutory~~
11 ~~occupational safety acts that the department is required to administer~~, with the exception of the certification of
12 independent contractors provided for in Title 39, chapter 71, part 4, the subsequent injury fund provided for in
13 39-71-907, and the uninsured employers' fund provided for in 39-71-503. In addition, compensation plan No. 3,
14 the state fund, shall pay ~~OUT OF ITS SURPLUS~~ a proportionate share of these costs based upon paid losses for
15 claims arising before July 1, 1990.

16 (5) (a) Each employer enrolled under compensation plan No. 1 shall pay an assessment to fund
17 administrative and regulatory costs. The assessment may be up to ~~3%~~ ~~5%~~ 4% of the paid losses paid in the
18 preceding calendar year by or on behalf of the plan No. 1 employer. Any entity, other than the department, that
19 assumes the obligations of an employer enrolled under compensation plan No. 1 is considered to be the employer
20 for the purposes of this section.

21 (b) An employer formerly enrolled under compensation plan No. 1 shall pay an assessment to fund
22 administrative and regulatory costs. The assessment may be up to ~~3%~~ ~~5%~~ 4% of the paid losses paid in the
23 preceding calendar year by or on behalf of the employer for claims arising out of the time when the employer was
24 enrolled under compensation plan No. 1.

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

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

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

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

5 (6) (a) Compensation plan No. 3, the state fund, shall pay ~~OUT OF ITS SURPLUS~~ an assessment to fund
 6 administrative and regulatory costs attributable to claims arising before July 1, 1990. The assessment may be
 7 up to ~~3%~~ 5% ~~4%~~ of the paid losses paid in the preceding calendar year for claims arising before July 1, 1990. As
 8 required by 39-71-2352, the state fund may not pass along to insured employers the cost of the assessment for
 9 administrative and regulatory costs that is attributable to claims arising before July 1, 1990, ~~EXCEPT THAT MONEY~~
 10 ~~FROM INTEREST EARNED ON INVESTMENTS AND MONEY OTHER THAN PREMIUMS MAY BE USED TO PAY THE ASSESSMENT~~
 11 ~~OUT OF ITS SURPLUS BEFORE ANY DIVIDENDS ARE PAID.~~

12 (b) ~~Payment of the~~ The assessment must be paid in:

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

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

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

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

29 (b) The amount to be funded by the premium surcharge may be up to ~~3%~~ 5% ~~4%~~ of the paid losses paid
 30 in the preceding calendar year by or on behalf of all plan No. 2 insurers and may be up to ~~3%~~ 5% ~~4%~~ of paid

1 losses for claims arising on or after July 1, 1990, for plan No. 3, the state fund, plus or minus any adjustments
2 as provided by subsection (7)(f). The amount to be funded must be divided by the total premium paid by all
3 employers enrolled under compensation plan No. 2 or plan No. 3 during the preceding calendar year. A single
4 premium surcharge rate, applicable to all employers enrolled in compensation plan No. 2 or plan No. 3, must be
5 calculated annually by the department by not later than April 30. The resulting rate, expressed as a percentage,
6 is levied against the premium paid by each employer enrolled under compensation plan No. 2 or plan No. 3 in
7 the next fiscal year.

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

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

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

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

25 (8) By July 1, an insurer under compensation plan No. 2 that ~~pays~~ paid benefits in the preceding calendar
26 year but that will not collect any premium for coverage in the following fiscal year shall pay an assessment of up
27 to 3% ~~5%~~ 4% of paid losses paid in the preceding calendar year. The department shall determine and notify the
28 insurer by April 30 of each year of the amount that is due by July 1.

29 (9) An employer that makes a first-time application for permission to enroll under compensation plan No.
30 1 shall pay an assessment of \$500 within 15 days of being granted permission by the department to enroll under

1 compensation plan No. 1.

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

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

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

10 (13) The department may assess and collect the workers' compensation regulatory assessment
11 surcharge from uninsured employers, as defined in 39-71-501, that fail to properly comply with the coverage
12 requirements of the Workers' Compensation Act. Any amounts collected by the department pursuant to this
13 subsection must be deposited in the workers' compensation administration fund."
14

15 **Section 2.** Section 39-71-435, MCA, is amended to read:

16 **"39-71-435. Workers' compensation and employers' liability insurance -- optional deductibles.** (1)
17 An insurer issuing a workers' compensation or an employer's liability insurance policy may offer to the
18 policyholder, as part of the policy or by endorsement, optional deductibles for benefits payable under the policy
19 consistent with the standards contained in subsection (3).

20 (2) The advisory organization designated under 33-16-1023 may develop and file a deductible plan or
21 plans on behalf of its members consistent with the standards contained in subsection (3).

22 (3) The commissioner of insurance shall approve a deductible plan that is in accordance with the
23 following standards:

24 (a) Claimants' rights are properly protected and claimants' benefits are paid without regard to the
25 deductible.

26 (b) Premium reductions reflect the type and level of the deductible, consistent with accepted actuarial
27 standards.

28 (c) Premium reductions for deductibles are determined before application of any experience modification,
29 premium surcharge, or premium discount.

30 (d) Recognition is given to policyholder characteristics, including but not limited to size, financial

1 capabilities, nature of activities, and number of employees.

2 (e) The policyholder is liable to the insurer for the deductible amount in regard to benefits paid for
3 compensable claims.

4 (f) The insurer pays all of the deductible amount applicable to a compensable claim to the person or
5 provider entitled to benefits and then seeks reimbursement from the policyholder for the applicable deductible
6 amount.

7 (g) Failure by the policyholder to reimburse deductible amounts to the insurer is treated under the policy
8 as nonpayment of premium.

9 (h) Losses subject to the deductible must be reported and recorded as losses for purposes of calculating
10 rates for a policyholder on the same basis as losses under policies providing first dollar coverage.

11 (4) The state compensation insurance fund, plan No. 3, may adopt the plan filed by the designated
12 advisory organization or adopt an optional deductible plan that meets the requirements of this section.

13 (5) For purposes of 39-71-201, ~~and~~ 39-71-915, and [section 8], liability for assessments must be
14 ascertained without regard to application of any deductible, whether the employer or the insurer pays the losses.
15 For all other taxes and assessments based on premium, the amount of premium or assessment must be
16 determined after application of the deductible."
17

18 **Section 3.** Section 39-71-1050, MCA, is amended to read:

19 **"39-71-1050. Assessment for stay-at-work/return-to-work assistance fund -- definition.** (1) (a) The
20 assistance fund must be maintained by assessing employers insured by plan No. 1, plan No. 2, and plan No. 3
21 an amount as provided in subsections (2) through (10).

22 (b) The board of investments shall invest the money in the assistance fund. The investment income must
23 be deposited in the assistance fund.

24 (2) The assessment amount is the total amount paid by the assistance fund in the preceding fiscal year
25 less other realized income that is deposited in the assistance fund. Allocation of the total assessment amount
26 among employers insured by plan No. 1, plan No. 2, and plan No. 3 must be based on each plan's proportionate
27 share of money expended from the assistance fund for the calendar year preceding the year in which the
28 assessment is collected.

29 (3) On or before May 31 of each year, the department shall notify each plan No. 1 employer, plan No.
30 2 insurer, and plan No. 3, the state fund, of the amount to be assessed for the ensuing fiscal year. On or before

1 April 30 of each year, the department shall consult with the advisory organization designated under 33-16-1023
2 and notify plan No. 2 insurers and plan No. 3, the state fund, of the premium surcharge rate to be effective for
3 policies written or renewed on or after July 1 in that year.

4 (4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is the
5 amount actually expended by the assistance fund on behalf of injured workers employed by that plan No. 1
6 employer. A group of employers insured jointly under plan No. 1 is considered to be an individual employer for
7 the purposes of this subsection.

8 (5) After subtracting plan No. 1 assessments from the total assessment, the department shall determine
9 the surcharge rate for plan No. 2 insurers and plan No. 3, the state fund, by dividing the remaining portion of the
10 assessment by the total amount of premiums paid by employers insured under plan No. 2 or plan No. 3 in the
11 previous calendar year. The numerator for the calculation must be adjusted as provided in subsection (9).

12 (6) Employers insured under plan No. 2 or plan No. 3 shall pay their portion of the assessment in a
13 surcharge on premiums for policies written or renewed annually on or after July 1.

14 (7) (a) Each plan No. 2 insurer and plan No. 3, the state fund, shall collect from its policyholders the
15 assessment premium surcharge provided for in subsection (5). When collected, the assessment premium
16 surcharge may not constitute an element of loss for the purpose of establishing rates for workers' compensation
17 insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers.
18 The total of this assessment premium surcharge must be stated as a separate cost on an insured employer's
19 policy or on a separate document submitted by the insured employer and must be identified as "workers'
20 compensation stay-at-work/return-to-work assistance fund surcharge". Each assessment premium surcharge
21 must be shown as a percentage of the total workers' compensation policyholder premium. This assessment
22 premium surcharge must be collected at the same time and in the same manner as the premium for the coverage.
23 The assessment premium surcharge must be excluded from the definition of premium for all purposes, including
24 computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a
25 workers' compensation policy for nonpayment of the assessment premium surcharge. Cancellation must be in
26 accordance with the procedures applicable to the nonpayment of premium.

27 (b) If an employer fails to remit to an insurer the total amount due for the premium and assessment
28 premium surcharge, the amount received by the insurer must be applied to the assessment premium surcharge
29 described in 39-71-201 first, then to the assessment premium surcharge described in [section 8], then to the
30 assessment premium surcharge in this section, and then to the surcharge in 39-71-915, with any remaining

1 amount applied to the premium due.

2 (8) (a) The department shall deposit all assessments due under this section into the assistance fund.

3 (b) Each plan No. 1 employer shall pay its assessment due under this section by July 1.

4 (c) Each plan No. 2 insurer and plan No. 3, the state fund, shall remit to the department all assessment
5 premium surcharges collected during a calendar quarter no later than 20 days following the end of the quarter.

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

11 (9) Each year, the department shall compare the amount of the assessment premium surcharge actually
12 collected pursuant to subsection (5) with the amount assessed and upon which the premium surcharge was
13 calculated. The amount undercollected or overcollected in any given year must be used as an adjustment to the
14 numerator for the following year's assessment premium surcharge as provided in subsection (5).

15 (10) If the total assessment is less than \$100,000 for any year, the department may defer the assessment
16 for that year and add that amount to the assessment amount for the subsequent year.

17 (11) As used in this section, "money expended" means expenditures for stay-at-work/return-to-work
18 assistance from the assistance fund."

19

20 **Section 4.** Section 50-71-113, MCA, is amended to read:

21 **"50-71-113. Administrative authority -- funding.** (1) The department has authority to administer the
22 provisions of this part.

23 (2) In addition to administering the provisions of this part, 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 public 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 this part are funded by the ~~workers'~~
5 ~~compensation~~ occupational safety and health administration fund provided for in ~~39-71-204~~ [section 8].

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 this part. Funds
8 received by the department under this subsection must be deposited into the fund provided for in ~~39-71-204~~
9 [section 8]."

10

11 **Section 5.** Section 50-71-119, MCA, is amended to read:

12 **"50-71-119. Report of inspection -- violations -- penalty -- appeal process.** (1) (a) The department
13 shall make a written report of each inspection ~~that it conducts~~ conducted under 50-71-118.

14 (b) The inspection report must include a list of violations of standards that the inspector discovered
15 during the inspection. A violation of a standard by a public sector employee is attributable to the public sector
16 employer for the purposes of this part.

17 (c) The department shall provide a copy of the inspection report to the public sector employer and to a
18 representative of a labor organization that represents public sector employees at the workplace that was
19 inspected.

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

23 (2) The department may issue a written citation to the public sector employer for a violation of a standard.
24 The citation must specify:

25 (a) the nature of the violation;

26 (b) the standard that was violated; and

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

28 (3) (a) The department may impose upon a public sector employer a monetary penalty of not more than
29 \$1,000 for each violation for which a citation has been issued.

30 (b) The department may, in its sole discretion, waive or reduce a penalty under this subsection (3) if the

1 public sector employer timely corrects or cures the violation for which the penalty was imposed.

2 (c) Monetary penalties collected pursuant to this subsection (3) must be deposited into the ~~workers'~~
3 ~~compensation~~ occupational safety and health administration fund provided for in ~~39-74-204~~ [section 8].

4 (4) (a) A public sector employer may appeal a citation or a penalty.

5 (b) An appeal to the department must be in writing and made within 30 days of the issuance of the
6 citation.

7 (c) The appeal of a citation or a penalty is conducted as a contested case under Title 2, chapter 4."
8

9 **Section 6.** Section 50-72-106, MCA, is amended to read:

10 **"50-72-106. Safety and industrial health consultation services authorized -- recovery of expenses.**

11 (1) The department may provide onsite safety and industrial health consultation services to mine operators that
12 request onsite safety and industrial health consultation services.

13 (2) The department may not charge for the consultation provided by this section, but it may recover from
14 the mine operator the cost of test kits, sampling media, associated laboratory fees, and other reasonable
15 expenses incurred during the consultation.

16 (3) Expenses recovered pursuant to subsection (2) must be deposited into the occupational safety and
17 health administration fund provided for in [section 8]."
18

19 **Section 7.** Section 50-73-107, MCA, is amended to read:

20 **"50-73-107. Safety and industrial health consultation services authorized -- recovery of expenses.**

21 (1) The department may provide onsite safety and industrial health consultation services to mine operators that
22 request onsite safety and industrial health consultation services.

23 (2) The department may not charge for the consultation provided by this section, but it may recover from
24 the mine operator the cost of test kits, sampling media, associated laboratory fees, and other reasonable
25 expenses incurred during the consultation.

26 (3) Expenses recovered pursuant to subsection (2) must be deposited into the occupational safety and
27 health administration fund provided for in [section 8]."
28

29 NEW SECTION. **Section 8. Occupational safety and health administration fund.** (1) (a) An
30 occupational safety and health administration fund is established, out of which are to be paid upon lawful

1 appropriation all costs incurred by the department on or after July 1, 2016, in administering Title 50, chapters 71,
2 72, and 73.

3 (b) The department shall collect and deposit in the state treasury to the credit of the occupational safety
4 and health administration fund:

5 (i) all penalties assessed under 50-71-119;

6 (ii) all expenses recovered under 50-72-106 and 50-73-107;

7 (iii) all fees paid by an assessment on paid losses, plus administrative fines and interest provided by this
8 section; and

9 (iv) any grants or funds from private entities or the federal government intended for use by the department
10 in defraying occupational safety and health costs.

11 (2) For the purposes of this section, the term "paid losses" has the meaning provided in 39-71-201.

12 (3) Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of this section, and plan No.
13 3, the state fund, shall file annually on March 1 in the form and containing the information required by the
14 department a report of paid losses.

15 (4) Each employer enrolled under compensation plan No. 1, compensation plan No. 2, or compensation
16 plan No. 3, the state fund, shall pay its proportionate share, as determined by the paid losses in the preceding
17 calendar year, of all costs appropriated for the next fiscal year for the purposes of administering Title 50, chapters
18 71, 72, and 73.

19 (5) (a) Each employer enrolled under compensation plan No. 1 shall pay an assessment to fund
20 administrative and regulatory costs. THE ASSESSMENT MAY BE UP TO 2% OF THE PAID LOSSES THAT WERE PAID IN THE
21 PRECEDING CALENDAR YEAR BY OR ON BEHALF OF THE PLAN NO. 1 EMPLOYER. Any entity, other than the department,
22 that assumes the obligations of an employer enrolled under compensation plan No. 1 is considered to be the
23 employer for the purposes of this section.

24 (b) An employer formerly enrolled under (b) compensation plan No. 1 shall pay an assessment to fund
25 administrative and regulatory costs. THE ASSESSMENT MAY BE UP TO 2% OF THE PAID LOSSES THAT WERE PAID IN THE
26 PRECEDING CALENDAR YEAR BY OR ON BEHALF OF THE EMPLOYER FOR CLAIMS ARISING OUT OF THE TIME WHEN THE
27 EMPLOYER WAS ENROLLED UNDER COMPENSATION PLAN NO. 1.

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

1 employer in:

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

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

4 (d) If an employer fails to timely pay to the department the assessment under this section, the
5 department may impose on the employer an administrative fine of \$500 plus interest on the delinquent amount
6 at the annual interest rate of 12%. Administrative fines and interest must be deposited in the occupational safety
7 and health administration fund.

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

19 (b) (i) The amount to be funded by the premium surcharge MAY BE UP TO 2% OF THE PAID LOSSES THAT
20 WERE PAID IN THE PRECEDING CALENDAR YEAR BY OR ON BEHALF OF ALL PLAN NO. 2 INSURERS AND MAY BE UP TO 2%
21 OF PAID LOSSES FOR CLAIMS ARISING ON OR AFTER JULY 1, 1990, FOR PLAN NO. 3, THE STATE FUND, plus or minus any
22 adjustments as provided by subsection (6)(f);

23 (ii) THE AMOUNT DETERMINED UNDER SUBSECTION (6)(B)(I) must be divided by the total premium paid by all
24 employers enrolled under compensation plan No. 2 or plan No. 3 during the preceding calendar year.

25 (iii) A single premium surcharge rate, applicable to all employers enrolled in compensation plan No. 2
26 or plan No. 3, must be calculated annually by the department by not later than April 30. The resulting rate,
27 expressed as a percentage, is levied against the premium paid by each employer enrolled under compensation
28 plan No. 2 or plan No. 3 in the next fiscal year.

29 (c) On or before April 30 of each year, the department, in consultation with the advisory organization
30 designated pursuant to 33-16-1023, shall notify plan No. 2 insurers and plan No. 3, the state fund, of the premium

1 surcharge percentage to be effective for policies written or renewed annually on and after July 1 of that year.

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

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

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

16 (7) By July 1, an insurer under compensation plan No. 2 that paid benefits in the preceding calendar year
17 but that will not collect any premium for coverage in the following fiscal year shall pay an assessment OF UP TO
18 2% OF THE PAID LOSSES THAT WERE PAID IN THE PRECEDING CALENDAR YEAR. The department shall determine and
19 notify the insurer by April 30 of each year of the amount that is due by July 1.

20 (8) The department shall deposit all funds received pursuant to this section in the state treasury, as
21 provided in this section.

22 (9) The administration fund must be debited with expenses incurred by the department in the general
23 administration of the provisions of Title 50, chapters 71, 72, and 73, including the salaries of its members, officers,
24 and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501
25 through 2-18-503, incurred while on the business of the department either within or without the state.

26 (10) Disbursements from the administration fund must be made after being approved by the department
27 upon claim for disbursement.

28 (11) The department may assess and collect the occupational safety and health regulatory assessment
29 surcharge from uninsured employers, as defined in 39-71-501, that fail to properly comply with the coverage
30 requirements of the Workers' Compensation Act. Any amounts collected by the department pursuant to this

1 subsection must be deposited in the occupational safety and health administration fund.

2

3 NEW SECTION. **Section 9. Codification instruction.** [Section 8] is intended to be codified as an
4 integral part of Title 50, chapter 71, part 1, and the provisions of Title 50, chapter 71, part 1, apply to [section 8].

5

6 NEW SECTION. **Section 10. Transition -- contingency provision.** If [this act] is passed and approved
7 on or after May 1, 2015, the department of labor and industry:

8 (1) shall as promptly as feasible prepare and send the billing statements for assessments due on July
9 1, 2015, according to the provisions of [this act]; and

10 (2) is exempt for the year 2015 from the April 30 deadline provided for assessments under
11 39-71-201(7)(c).

12

13 NEW SECTION. **Section 11. Effective dates.** (1) Except as provided in subsection (2), [this act] is
14 effective July 1, 2015.

15 (2) [Section 10] and this section are effective on passage and approval.

16

- END -