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HOUSE BILL NO. 896
INTRODUCED BY N. NICOL

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING WORKERS' COMPENSATION LAWS; PROVIDING FOR THE RESIDUAL MARKET PROGRAM AND POOL FOR THE GUARANTEED MARKET; REVISING LAWS RELATED TO THE MONTANA STATE FUND; REQUIRING MONTANA STATE FUND TO PAY PREMIUM TAX; REVISING DEFINITIONS; AMENDING SECTIONS 7-33-4510, 17-6-203, 18-4-132, 33-16-1002, 33-16-1008, 33-16-1033, 39-71-102, 39-71-103, 39-71-105, 39-71-116, 39-71-118, 39-71-201, 39-71-225, 39-71-307, 39-71-401, 39-71-403, 39-71-407, 39-71-417, 39-71-419, 39-71-433, 39-71-434, 39-71-435, 39-71-441, 39-71-442, 39-71-503, 39-71-504, 39-71-505, 39-71-515, 39-71-606, 39-71-745, 39-71-915, 39-71-1050, 39-71-1101, 39-71-1401, 39-71-1505, 39-71-2211, 39-71-2312, 39-71-2313, 39-71-2351, 39-71-2375, 45-7-501, 50-71-128, AND 90-14-110, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 3] may be cited as the "Montana Workers' Compensation Modernization Act".

NEW SECTION. **Section 2. Residual market program and pool established -- contract with advisory organization -- state fund cooperation -- program requirements -- reinsurance.** (1) The department shall establish a residual market program and pool, also known as compensation plan No. 4 or plan No. 4, in order to make workers' compensation coverage available to the guaranteed market. The purpose of plan No. 4 is to guarantee that any employer in this state that is unable to obtain coverage in the voluntary market that complies with the benefit requirements of this chapter may obtain coverage in plan No. 4.

- (2) The department shall:
 - (a) contract with the advisory organization designated by the commissioner of insurance under 33-16-1023(1) to implement and administer plan No. 4;
 - (b) request and obtain from the state compensation insurance fund all information regarding the

1 residual and voluntary market employers and the associated books of business insured by the state fund
2 relevant and necessary for the development of plan No. 4; and

3 (c) approve a plan of operation for plan No. 4 established under this section.

4 (3) The state fund shall cooperate with the department and the advisory organization under 33-16-
5 1023(1) and shall preserve and provide all information relevant and necessary for the development of plan No.
6 4.

7 (4) Plan No. 4 established under this section must:

8 (a) serve as the market of last resort for the guaranteed market in this state;

9 (b) require each plan No. 2 insurer licensed to write workers' compensation insurance in this state
10 to maintain membership in or a subscription to the advisory organization designated by the commissioner of
11 insurance as provided in 33-16-1023. Each insurer member in or subscriber to the designated advisory
12 organization shall participate in and accept its equitable apportionment assigned under plan No. 4 as a
13 condition of the insurer's authority to engage in the business of workers' compensation insurance in this state.
14 Plan No. 4 may provide that a plan No. 2 insurer may meet the insurer's obligation under this section through
15 direct policy assignment, participation in a reinsurance pooling mechanism, or otherwise under the procedures
16 and guidelines of the established plan.

17 (c) provide for the purchase of reinsurance through contract with the advisory organization
18 designated by the commissioner of insurance under 33-16-1023(1) to provide additional assurance of plan No.
19 4 solvency;

20 (d) specify the eligibility criteria and procedures for obtaining insurance through plan No. 4. The
21 eligibility criteria may allow for an employer to obtain insurance through plan No. 4 only if the employer has
22 been declined coverage by three plan No. 2 insurers in the voluntary market.

23 (e) provide for the implementation and administration of plan No. 4, including reasonable service
24 standards, policies, forms, and contracts as applicable to plan No. 2 insurers in the voluntary market;

25 (f) require delivery of benefits to injured workers through plan No. 4 to comply with the standards
26 and provisions of this chapter;

27 (g) require compliance by plan No. 4 under applicable standards of Title 33;

28 (h) provide rates for insurance produced through plan No. 4 that are actuarially sufficient to cover

1 all incurred losses, operating expenses, taxes and assessments on policies issued through plan No. 4, and
2 administrative expenses of plan No. 4 and be consistent with classification and ratemaking methodologies
3 under Title 33, chapter 16, part 10;

4 (i) provide incentives and procedures to facilitate a guaranteed market employer's ability to obtain
5 workers' compensation insurance coverage in the voluntary market;

6 (j) provide for a temporary authority to oversee and ensure the orderly and efficient dissolution of
7 the state compensation insurance fund, including the transition of the state fund's insurance functions and
8 operations related to the residual market; and

9 (k) ensure that the state is not exposed to financial liability for claims incurred in and benefits
10 delivered through plan No. 4.

11

12 **NEW SECTION. Section 3. Residual market plan -- plan No. 2 insurers required to participate --**
13 **rates eligibility of residual market employers.** (1) There is a residual market plan established by the
14 department as provided in [section 2].

15 (2) A plan No. 2 insurer that is authorized to write workers' compensation insurance must be a
16 member of the advisory organization that administers the residual market plan as provided in 33-16-1023 and
17 shall participate in the residual market program and pool, plan No. 4, as provided in [section 2].

18 (3) If an employer has been declined coverage by three plan No. 2 insurers in the voluntary
19 market, the employer may obtain insurance through plan No. 4.

20 (4) Plan No. 4 may not be required to provide coverage to a residual market employer if the
21 employer or the employer's principals have defaulted on an obligation under the provisions of this chapter and
22 the obligation remains unsatisfied.

23

24 **Section 4.** Section 7-33-4510, MCA, is amended to read:

25 **"7-33-4510. Workers' compensation for volunteer firefighters -- notification if coverage not**
26 **provided -- definitions.** (1) An employer may provide workers' compensation coverage as provided in Title 39,
27 chapter 71, to any volunteer firefighter who is listed on a roster of service.

28 (2) An employer may purchase workers' compensation coverage from any entity authorized to provide

1 workers' compensation coverage under plan No. 1, 2, ~~or 3~~, or 4 as provided in Title 39, chapter 71.

2 (3) If an employer provides workers' compensation coverage as provided in this section, the employer
3 may, upon payment of the filing fee provided for in 7-4-2631(1)(a), file a roster of service with the clerk and
4 recorder in the county in which the employer is located and update the roster of service monthly if necessary to
5 report changes in the number of volunteers on the roster of service. The clerk and recorder shall file the original
6 and replace it with updates whenever necessary. The employer shall maintain the roster of service with the
7 effective date of membership for each volunteer firefighter.

8 (4) If an employer does not provide workers' compensation coverage, the employer shall annually
9 notify the employer's volunteer firefighters that coverage is not provided.

10 (5) For the purposes of this section, the following definitions apply:

11 (a) (i) "Employer" means the governing body of a fire agency organized under Title 7, chapter 33,
12 including a rural fire district, a fire service area, a volunteer fire department, a volunteer fire company, or a
13 volunteer rural fire control crew.

14 (ii) The term does not mean a governing body of a city of the first class or second class, including a
15 city to which 7-33-4109 applies, that provides workers' compensation coverage to employees as defined in 39-
16 71-118.

17 (b) "Roster of service" means the list of volunteer firefighters who have filled out a membership card
18 prior to performing services as a volunteer firefighter.

19 (c) (i) "Volunteer firefighter" means a volunteer who is on the employer's roster of service. A
20 volunteer firefighter may include a volunteer emergency care provider as defined in 50-6-202 who is on the
21 roster of service. A volunteer firefighter is not required to be an active member as defined in 19-17-102.

22 (ii) The term does not mean an individual who is not listed on a roster of service or a member of a
23 volunteer fire department provided for in 7-33-4109."

24

25 **Section 5.** Section 17-6-203, MCA, is amended to read:

26 **"17-6-203. Separate investment funds.** Separate investment funds must be maintained as follows:

27 (1) the permanent funds, including all public school funds and funds of the Montana university system
28 and other state institutions of learning referred to in Article X, sections 2 and 10, of the Montana constitution.

1 The principal and any part of the principal of each fund constituting the Montana permanent fund type are
 2 subject to deposit at any time when due under the statutory provisions applicable to the fund and according to
 3 the provisions of the gift, donation, grant, legacy, bequest, or devise through or from which the particular fund
 4 arises.

5 (2) a separate investment fund, which may not be held jointly with other funds, for money pertaining to
 6 each retirement or insurance system maintained by the state, including:

- 7 (a) the public employees' retirement system described in Title 19, chapter 3;
- 8 (b) the judges' retirement system described in Title 19, chapter 5;
- 9 (c) the highway patrol officers' retirement system described in Title 19, chapter 6;
- 10 (d) the sheriffs' retirement system described in Title 19, chapter 7;
- 11 (e) the game wardens' and peace officers' retirement system described in Title 19, chapter 8;
- 12 (f) the municipal police officers' retirement system described in Title 19, chapter 9;
- 13 (g) the firefighters' unified retirement system described in Title 19, chapter 13;
- 14 (h) the Volunteer Firefighters' Compensation Act under Title 19, chapter 17;
- 15 (i) the teachers' retirement system described in Title 19, chapter 20; ~~and~~
- 16 (j) the workers' compensation program described in Title 39, chapter 71, part 23; and
- 17 (k) the residual market program and pool provided for in [sections 1 through 3];

18 (3) a pooled investment fund, including all other accounts within the treasury fund structure
 19 established by 17-2-102;

20 (4) the fish and wildlife mitigation trust fund established by 87-1-611;

21 (5) a fund consisting of gifts, donations, grants, legacies, bequests, devises, and other contributions
 22 made or given for a specific purpose or under conditions expressed in the gift, donation, grant, legacy, bequest,
 23 devise, or contribution to be observed by the state of Montana. If a gift, donation, grant, legacy, bequest,
 24 devise, or contribution permits investment and is not otherwise restricted by its terms, it may be treated jointly
 25 with other gifts, donations, grants, legacies, bequests, devises, or contributions.

26 (6) a fund consisting of coal severance taxes allocated to the coal severance tax trust fund under
 27 Article IX, section 5, of the Montana constitution. The principal of the coal severance tax trust fund is
 28 permanent. If the legislature appropriates any part of the principal of the coal severance tax trust fund by a vote

1 of three-fourths of the members of each house, the appropriation or investment may create a gain or loss in the
2 principal.

3 (7) a Montana tobacco settlement trust fund established in accordance with Article XII, section 4, of
4 the Montana constitution and Title 17, chapter 6, part 6; and

5 (8) additional investment funds that are expressly required by law or that the board of investments
6 determines are necessary to fulfill fiduciary responsibilities of the state with respect to funds from a particular
7 source."

8

9 **Section 6.** Section 18-4-132, MCA, is amended to read:

10 **"18-4-132. Application.** (1) This chapter applies to:

11 (a) the expenditure of public funds irrespective of their source, including federal assistance money, by
12 this state acting through a governmental body under any contract, except a contract exempted from this chapter
13 by this section or by another statute;

14 (b) a procurement of supplies or services that is at no cost to the state and from which income may be
15 derived by the vendor and to a procurement of supplies or services from which income or a more advantageous
16 business position may be derived by the state; and

17 (c) the disposal of state supplies.

18 (2) This chapter or rules adopted pursuant to this chapter do not prevent any governmental body or
19 political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative
20 agreement.

21 (3) This chapter does not apply to:

22 (a) either grants or contracts between the state and its political subdivisions or other governments,
23 except as provided in part 4;

24 (b) construction contracts;

25 (c) expenditures of or the authorized sale or disposal of equipment purchased with money raised by
26 student activity fees designated for use by the student associations of the university system;

27 (d) contracts entered into by the Montana state lottery that have an aggregate value of less than
28 \$250,000;

1 (e) contracts entered into by the state compensation insurance fund to procure insurance-related
2 services;

3 ~~(f)~~ (g) contracts entered into by the department of labor and industry in administering [sections 1
4 through 3];

5 ~~(f)~~(g) employment of:

6 (i) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

7 (ii) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

8 (iii) an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested
9 case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive
10 order of the governor;

11 (iv) consulting actuaries;

12 (v) a private consultant employed by the student associations of the university system with money
13 raised from student activity fees designated for use by those student associations;

14 (vi) a private consultant employed by the Montana state lottery;

15 (vii) a private investigator licensed by any jurisdiction;

16 (viii) a claims adjuster; or

17 (ix) a court reporter appointed as an independent contractor under 3-5-601;

18 ~~(g)~~(h) electrical energy purchase contracts by the university of Montana or Montana state university,
19 as defined in 20-25-201. Any savings accrued by the university of Montana or Montana state university in the
20 purchase or acquisition of energy must be retained by the board of regents of higher education for university
21 allocation and expenditure.

22 ~~(h)~~(i) the purchase or commission of art for a museum or public display;

23 ~~(i)~~(j) contracting under 47-1-121 of the Montana Public Defender Act;

24 ~~(j)~~(k) contracting under Title 90, chapter 4, part 11; or

25 ~~(k)~~(l) contracting under Title 90, chapter 14, part 1, when the total contract value is \$12,501 or less.

26 (4) (a) Food products produced in Montana may be procured by either standard procurement
27 procedures or by direct purchase. Montana-produced food products may be procured by direct purchase when:

28 (i) the quality of available Montana-produced food products is substantially equivalent to the quality of

1 similar food products produced outside the state;

2 (ii) a vendor is able to supply Montana-produced food products in sufficient quantity; and

3 (iii) a bid for Montana-produced food products either does not exceed or reasonably exceeds the
4 lowest bid or price quoted for similar food products produced outside the state. A bid reasonably exceeds the
5 lowest bid or price quoted when, in the discretion of the person charged by law with the duty to purchase food
6 products for a governmental body, the higher bid is reasonable and capable of being paid out of that
7 governmental body's existing budget without any further supplemental or additional appropriation.

8 (b) The department shall adopt any rules necessary to administer the optional procurement exception
9 established in this subsection (4).

10 (5) As used in this section, the following definitions apply:

11 (a) "Food" means articles normally used by humans as food or drink, including articles used for
12 components of articles normally used by humans as food or drink.

13 (b) "Produced" means planted, cultivated, grown, harvested, raised, collected, processed, or
14 manufactured."
15

16 **Section 7.** Section 33-16-1002, MCA, is amended to read:

17 **"33-16-1002. Applicability of part.** This part, together and in conjunction with parts 1 through 4 of
18 this chapter, applies to the making of premium rates for workers' compensation insurance issued under
19 compensation plan No. 2, ~~and~~ plan No. 3 of the Workers' Compensation Act, Title 39, chapter 71, part 22 and
20 part 23, and [sections 1 through 3], respectively, or related employer's liability insurance, but does not apply to
21 reinsurance."
22

23 **Section 8.** Section 33-16-1008, MCA, is amended to read:

24 **"33-16-1008. Definitions.** As used in this part, the following definitions apply:

25 (1) "Accepted actuarial standards" means the standards adopted by the casualty actuarial society in
26 its Statement of Principles Regarding Property and Casualty Insurance Ratemaking and the Standards of
27 Practice adopted by the actuarial standards board.

28 (2) (a) "Advisory organization" means a person or organization that either has two or more member

1 insurers or is controlled either directly or indirectly by two or more insurers and that assists insurers in
2 ratemaking-related activities.

3 (b) The term does not include a joint underwriting association, any actuarial or legal consultant, or any
4 employee of an insurer or insurers under common control or management or their employees or manager. For
5 the purposes of this subsection (2)(b), two or more insurers who have a common ownership or operate in this
6 state under common control or management constitute a single insurer.

7 (3) "Classification system" means the plan, system, or arrangement for recognizing differences in
8 exposure to hazards among industries, occupations, or operations of insurance policyholders.

9 (4) "Contingencies" means provisions in rates to recognize the uncertainty of the estimates of losses,
10 loss adjustment expenses, other operating expenses, and investment income and profit that comprise those
11 rates. The provisions may be explicit, including but not limited to a specific charge to reflect systematic
12 variations of estimated costs from expected costs, or implicit, including but not limited to a consideration in
13 selecting a single estimate from a reasonable range of estimates, or both.

14 (5) "Developed losses" means adjusted losses, including loss adjustment expenses, using accepted
15 actuarial standards to eliminate the effect of differences between current payment or reserve estimates and
16 those needed to provide actual ultimate loss payments, including loss adjustment expense payments.

17 (6) "Expenses" means the portion of a rate that is attributable to acquisition, filed supervision and
18 collection expenses, general expenses and taxes, licenses, or fees.

19 (7) "Experience rating" means a rating procedure using past insurance experience of the individual
20 policyholder to forecast future losses by measuring the policyholder's loss experience against the loss
21 experience of policyholders in the same classification to produce a prospective premium credit, debit, or unity
22 modification.

23 (8) "Insurer" means a person licensed to write workers' compensation insurance as a plan No. 2
24 insurer, ~~or plan No. 3, the state fund, or plan No. 4 insurer~~ under the laws of the state.

25 (9) "Loss trending" means a procedure for projecting developed losses to the average date of loss for
26 the period during which the policies are to be effective, including loss ratio trending.

27 (10) "Market" means the interaction in this state between buyers and plan No. 2 sellers of workers'
28 compensation and employer's liability insurance pursuant to the provisions of this part.

1 (11) (a) "Prospective loss costs" means historical aggregate losses and loss adjustment expenses,
2 including all assessments that are loss-based and excluding any separately stated policyholder surcharges,
3 projected through development to their ultimate value and through trending to a future point in time and
4 ascertained by accepted actuarial standards.

5 (b) The term does not include provisions for profit or expenses other than loss adjustment expenses
6 and assessments that are loss-based.

7 (12) "Pure premium rate" means the portion of the rate that represents the loss cost per unit of
8 exposure, including loss adjustment expense.

9 (13) (a) "Rate" or "rates" means rate of premium, policy and membership fee, or any other charge
10 made by an insurer for or in connection with a contract or policy of workers' compensation and employer's
11 liability insurance, prior to application of individual risk variations based on loss or expense considerations.

12 (b) The term does not include minimum premiums.

13 (14) "Reserve estimates" means provisions for insurer obligations for future payments of loss or loss
14 adjustment expenses.

15 (15) "Statistical plan" means the plan, system, or arrangement that is used in collecting data.

16 (16) "Supplementary rate information" means a manual or plan of rates, statistical plan, classification
17 system, minimum premium, policy fee, rating rule, rate-related underwriting rule, and any other information
18 needed to determine the applicable premium for an individual insured that is consistent with the purposes of
19 this part and with rules prescribed by rule of the commissioner.

20 (17) "Supporting information" means the experience and judgment of the filer and the experience or
21 data of other insurers or advisory organizations relied on by the filer, the interpretation of any statistical data
22 relied on by the filer, descriptions of methods used in making the rates, and any other similar information
23 required to be filed by the commissioner."
24

25 **Section 9.** Section 33-16-1033, MCA, is amended to read:

26 **"33-16-1033. Advisory organization -- permitted activity.** An advisory organization may:

27 (1) develop statistical plans, including class definitions;

28 (2) collect statistical data from members, subscribers, or any other source;

1 (3) prepare and distribute pure premium rate data, adjusted for loss development and loss trending, in
 2 accordance with its statistical plan. The data and adjustments must be in sufficient detail to permit insurers to
 3 modify pure premiums based upon their own rating methods or interpretations of underlying data.

4 (4) prepare and distribute manuals for rating rules and rating schedules that do not contain any rules
 5 or schedules, including final rates, without information outside the manuals;

6 (5) distribute information that is filed with the commissioner and open to public inspection;

7 (6) conduct research and collect statistics in order to discover, identify, and classify information
 8 relating to causes or prevention of losses;

9 (7) prepare and file policy forms and endorsements and consult with members, subscribers, and
 10 others relative to their use and application;

11 (8) collect, compile, and distribute past and current prices of individual insurers, if the information is
 12 made available to the general public;

13 (9) conduct research and collect information to determine the impact of benefit level changes on pure
 14 premium rates;

15 (10) prepare and distribute rules and rating values for the uniform experience rating plan; and

16 (11) calculate and disseminate individual risk premium modification factors. Individual risk premium
 17 modification factors may only be disseminated to:

18 (a) a licensed producer or an insurer for the business of insurance only; ~~and~~

19 (b) the department of labor and industry for regulatory purposes only. Individual employer payroll and
 20 loss information may be provided to a person other than the current licensed producer or an insurer only after
 21 obtaining the employer's written permission; and

22 (12) contract with the department to administer the state's residual market program and pool, plan
 23 No. 4, under [sections 1 through 3]."

24

25 **Section 10.** Section 39-71-102, MCA, is amended to read:

26 **"39-71-102. Reference to plans.** Whenever compensation plan No. 1, 2, ~~or 3, or 4~~ is referred to,
 27 ~~such the~~ reference also includes all other sections ~~which that~~ are applicable to the subject matter of ~~such the~~
 28 reference."

1

2 **Section 11.** Section 39-71-103, MCA, is amended to read:

3 **"39-71-103. Compensation provisions.** The compensation provisions of this chapter, whenever
4 referred to, ~~shall~~must be held to include the provisions of compensation plan No. 1, 2, ~~or 3, or 4~~ and all other
5 sections of this chapter applicable to ~~the same~~ this chapter or any part ~~thereof~~ of this chapter."

6

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

8 **"39-71-105. (Temporary) Declaration of public policy.** For the purposes of interpreting and
9 applying this chapter, the following is the public policy of this state:

10 (1) An objective of the Montana workers' compensation system is to provide, without regard to fault,
11 wage-loss and medical benefits to a worker suffering from a work-related injury or disease. Wage-loss benefits
12 are not intended to make an injured worker whole but are intended to provide assistance to a worker at a
13 reasonable cost to the employer. Within that limitation, the wage-loss benefit should bear a reasonable
14 relationship to actual wages lost as a result of a work-related injury or disease.

15 (2) It is the intent of the legislature to assert that a conclusive presumption exists that recognizes that
16 a holder of a current, valid independent contractor exemption certificate issued by the department is an
17 independent contractor if the person is working under the independent contractor exemption certificate. The
18 holder of an independent contractor exemption certificate waives the rights, benefits, and obligations of this
19 chapter unless the person has elected to be bound personally and individually by the provisions of
20 compensation plan No. 1, 2, ~~or 3, or 4~~.

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

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

1 (5) This chapter must be construed according to its terms and not liberally in favor of any party.

2 (6) It is the intent of the legislature that:

3 (a) a stress claim, often referred to as a "mental-mental claim" or a "mental-physical claim", is not
4 compensable under Montana's workers' compensation and occupational disease laws. The legislature
5 recognizes that these claims are difficult to objectively verify and that the claims have a potential to place an
6 economic burden on the workers' compensation and occupational disease system. The legislature also
7 recognizes that there are other states that do not provide compensation for various categories of stress claims
8 and that stress claims have presented economic problems for certain other jurisdictions. In addition, not all
9 injuries are compensable under the present system, and it is within the legislature's authority to define the limits
10 of the workers' compensation and occupational disease system. However, it is also within the legislature's
11 authority to recognize the public service provided by firefighters and to join with other states that have extended
12 a presumptive occupational disease recognition to firefighters.

13 (b) for occupational disease or presumptive occupational disease claims, because of the nature of
14 exposure, workers should not be required to provide notice to employers of the disease as required of injuries
15 and that the requirements for filing of claims reflect consideration of when the worker knew or should have
16 known that the worker's condition resulted from an occupational disease or a presumptive occupational
17 disease. The legislature recognizes that occupational diseases in the workplace are caused by events
18 occurring on more than a single day or work shift and that the legislature has the authority to define an
19 occupational disease or a presumptive occupational disease and establish the causal connection to the
20 workplace.

21 (7) It is the intent of the legislature that workers' compensation insurance be provided only by a
22 self-insured entity or by the private voluntary market and residual market. (Void on occurrence of contingency--
23 sec. 7, Ch. 158, L. 2019.)

24 **39-71-105. (Effective on occurrence of contingency) Declaration of public policy.** For the
25 purposes of interpreting and applying this chapter, the following is the public policy of this state:

26 (1) An objective of the Montana workers' compensation system is to provide, without regard to fault,
27 wage-loss and medical benefits to a worker suffering from a work-related injury or disease. Wage-loss benefits
28 are not intended to make an injured worker whole but are intended to provide assistance to a worker at a

1 reasonable cost to the employer. Within that limitation, the wage-loss benefit should bear a reasonable
2 relationship to actual wages lost as a result of a work-related injury or disease.

3 (2) It is the intent of the legislature to assert that a conclusive presumption exists that recognizes that
4 a holder of a current, valid independent contractor exemption certificate issued by the department is an
5 independent contractor if the person is working under the independent contractor exemption certificate. The
6 holder of an independent contractor exemption certificate waives the rights, benefits, and obligations of this
7 chapter unless the person has elected to be bound personally and individually by the provisions of
8 compensation plan No. 1, 2, ~~or 3~~, or 4.

9 (3) A worker's removal from the workforce because of a work-related injury or disease has a negative
10 impact on the worker, the worker's family, the employer, and the general public. Therefore, an objective of the
11 workers' compensation system is to return a worker to work as soon as possible after the worker has suffered a
12 work-related injury or disease.

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

17 (5) This chapter must be construed according to its terms and not liberally in favor of any party.

18 (6) It is the intent of the legislature that:

19 (a) stress claims, often referred to as "mental-mental claims" and "mental-physical claims", are not
20 compensable under Montana's workers' compensation and occupational disease laws. The legislature
21 recognizes that these claims are difficult to objectively verify and that the claims have a potential to place an
22 economic burden on the workers' compensation and occupational disease system. The legislature also
23 recognizes that there are other states that do not provide compensation for various categories of stress claims
24 and that stress claims have presented economic problems for certain other jurisdictions. In addition, not all
25 injuries are compensable under the present system, and it is within the legislature's authority to define the limits
26 of the workers' compensation and occupational disease system.

27 (b) for occupational disease claims, because of the nature of exposure, workers should not be
28 required to provide notice to employers of the disease as required of injuries and that the requirements for filing

1 of claims reflect consideration of when the worker knew or should have known that the worker's condition
 2 resulted from an occupational disease. The legislature recognizes that occupational diseases in the workplace
 3 are caused by events occurring on more than a single day or work shift and that it is within the legislature's
 4 authority to define an occupational disease and establish the causal connection to the workplace.

5 (7) It is the intent of the legislature that workers' compensation insurance be provided only by a
 6 self-insured entity or by the private voluntary market and residual market."

7

8 **Section 13.** Section 39-71-116, MCA, is amended to read:

9 **"39-71-116. Definitions.** Unless the context otherwise requires, in this chapter, the following
 10 definitions apply:

11 (1) "Actual wage loss" means that the wages that a worker earns or is qualified to earn after the
 12 worker reaches maximum healing are less than the actual wages the worker received at the time of the injury.

13 (2) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act
 14 necessary to:

15 (a) investigation, review, and settlement of claims;

16 (b) payment of benefits;

17 (c) setting of reserves;

18 (d) furnishing of services and facilities; and

19 (e) use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

20 (3) "Aid or sustenance" means a public or private subsidy made to provide a means of support,
 21 maintenance, or subsistence for the recipient.

22 (4) "Beneficiary" means:

23 (a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of
 24 injury;

25 (b) an unmarried child under 18 years of age;

26 (c) an unmarried child under 22 years of age who is a full-time student in an accredited school or is
 27 enrolled in an accredited apprenticeship program;

28 (d) an invalid child over 18 years of age who is dependent, as defined in 26 U.S.C. 152, upon the

1 decedent for support at the time of injury;

2 (e) a parent who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time
3 of the injury if a beneficiary, as defined in subsections (4)(a) through (4)(d), does not exist; and

4 (f) a brother or sister under 18 years of age if dependent, as defined in 26 U.S.C. 152, upon the
5 decedent for support at the time of the injury but only until the age of 18 years and only when a beneficiary, as
6 defined in subsections (4)(a) through (4)(e), does not exist.

7 (5) "Business partner" means the community, governmental entity, or business organization that
8 provides the premises for work-based learning activities for students.

9 (6) "Casual employment" means employment not in the usual course of the trade, business,
10 profession, or occupation of the employer.

11 (7) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to
12 the injury.

13 (8) (a) "Claims examiner" means an individual who, as a paid employee of the department, of a plan
14 No. 1, 2, ~~or 3~~, or 4 insurer, or of an administrator licensed under Title 33, chapter 17, examines claims under
15 chapter 71 to:

16 (i) determine liability;

17 (ii) apply the requirements of this title;

18 (iii) settle workers' compensation or occupational disease claims; or

19 (iv) determine survivor benefits.

20 (b) The term does not include an adjuster as defined in 33-17-102.

21 (9) (a) "Construction industry" means the major group of general contractors and operative builders,
22 heavy construction (other than building construction) contractors, and special trade contractors listed in major
23 group 23 in the North American Industry Classification System Manual.

24 (b) The term does not include office workers, design professionals, salespersons, estimators, or any
25 other related employment that is not directly involved on a regular basis in the provision of physical labor at a
26 construction or renovation site.

27 (10) "Days" means calendar days, unless otherwise specified.

28 (11) "Department" means the department of labor and industry.

1 (12) "Direct result" means that a diagnosed condition was caused or aggravated by an injury or
2 occupational disease.

3 (13) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

4 (14) "Guaranteed market" means the residual market program and pool that is required to insure
5 any residual market employer in this state that requests to insure their liability for workers' compensation and
6 occupational disease coverage and is eligible to obtain the coverage from the residual market program and
7 pool.

8 ~~(14)~~(15) "Health care provider" means a person who is licensed, certified, or otherwise authorized by
9 the laws of this state to provide health care in the ordinary course of business or practice of a profession.

10 ~~(15)~~(16) (a) "Household or domestic employment" means employment of persons other than members
11 of the household for the purpose of tending to the aid and comfort of the employer or members of the
12 employer's family, including but not limited to housecleaning and yard work.

13 (b) The term does not include employment beyond the scope of normal household or domestic duties,
14 such as home health care or domiciliary care.

15 ~~(16)~~(17) (a) "Indemnity benefits" means any payment made directly to the worker or the worker's
16 beneficiaries, other than a medical benefit. The term includes payments made pursuant to a reservation of
17 rights.

18 (b) The term does not include stay-at-work/return-to-work assistance, auxiliary benefits, or expense
19 reimbursements for items such as meals, travel, or lodging.

20 ~~(17)~~(18) "Insurer" means an employer bound by compensation plan No. 1, an insurance company
21 transacting business under compensation plan No. 2, ~~or~~ the state fund under compensation plan No. 3, or the
22 residual market program and pool, plan No. 4.

23 ~~(18)~~(19) "Invalid" means one who is physically or mentally incapacitated.

24 ~~(19)~~(20) "Limited liability company" has the meaning provided in 35-8-102.

25 ~~(20)~~(21) "Maintenance care" means treatment designed to provide the optimum state of health while
26 minimizing recurrence of the clinical status.

27 ~~(21)~~(22) "Medical stability", "maximum medical improvement", "maximum healing", or "maximum
28 medical healing" means a point in the healing process when further material functional improvement would not

1 be reasonably expected from primary medical services.

2 ~~(22)~~(23) "Objective medical findings" means medical evidence, including range of motion, atrophy,
3 muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

4 ~~(23)~~(24) (a) "Occupational disease" means harm, damage, or death arising out of or contracted in the
5 course and scope of employment caused by events occurring on more than a single day or work shift.

6 (b) The term does not include a physical or mental condition arising from emotional or mental stress
7 or from a nonphysical stimulus or activity.

8 ~~(24)~~(25) "Order" means any decision, rule, direction, requirement, or standard of the department or any
9 other determination arrived at by the department.

10 ~~(25)~~(26) "Palliative care" means treatment designed to reduce or ease symptoms without curing the
11 underlying cause of the symptoms.

12 ~~(26)~~(27) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average
13 annual payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient
14 or any length of time during the calendar year, 12 times the average monthly payroll for the current year.
15 However, an estimate may be made by the department for any employer starting in business if average payrolls
16 are not available. This estimate must be adjusted by additional payment by the employer or refund by the
17 department, as the case may actually be, on December 31 of the current year. An employer's payroll must be
18 computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

19 ~~(27)~~(28) "Permanent partial disability" means a physical condition in which a worker, after reaching
20 maximum medical healing:

21 (a) has a permanent impairment, as determined by the sixth edition of the American medical
22 association's Guides to the Evaluation of Permanent Impairment, that is established by objective medical
23 findings for the ratable condition. The ratable condition must be a direct result of the compensable injury or
24 occupational disease and may not be based exclusively on complaints of pain.

25 (b) is able to return to work in some capacity but the permanent impairment impairs the worker's
26 ability to work; and

27 (c) has an actual wage loss as a result of the injury.

28 ~~(28)~~(29) "Permanent total disability" means a physical condition resulting from injury as defined in this

1 chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable
2 prospect of physically performing regular employment. Lack of immediate job openings is not a factor to be
3 considered in determining if a worker is permanently totally disabled.

4 ~~(29)~~(30) "Primary medical services" means treatment prescribed by the treating physician, for
5 conditions resulting from the injury or occupational disease, necessary for achieving medical stability.

6 ~~(30)~~(31) "Prosthetic device" or "prosthesis" means an artificial substitute for a missing body part.

7 ~~(34)~~(32) "Public corporation" means the state or a county, municipal corporation, school district, city,
8 city under a commission form of government or special charter, town, or village.

9 ~~(32)~~(33) "Reasonably safe place to work" means that the place of employment has been made as free
10 from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

11 ~~(33)~~(34) "Reasonably safe tools or appliances" are tools and appliances that are adapted to and that
12 are reasonably safe for use for the particular purpose for which they are furnished.

13 ~~(34)~~(35) "Regular employment" means work on a recurring basis performed for remuneration in a
14 trade, business, profession, or other occupation in this state.

15 (36) "Residual market employer" means an eligible employer that is unable to obtain workers'
16 compensation insurance in the usual manner through the voluntary insurance market in this state.

17 (37) "Residual market program and pool" means the program provided for in [sections 1 through 3]
18 that serves as the market of the last resort for the guaranteed market in this state. It is also known as
19 compensation plan No. 4 or plan No. 4.

20 ~~(35)~~(38) (a) "Secondary medical services" means those medical services or appliances that are
21 considered not medically necessary for medical stability. The services and appliances include but are not
22 limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs
23 designed to address disability and not impairment, or equipment offered by individuals, clinics, groups,
24 hospitals, or rehabilitation facilities.

25 (b) (i) As used in this subsection ~~(35)~~, "disability" means a condition in which a worker's ability to
26 engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The
27 restrictions may be combined with factors, such as the worker's age, education, work history, and other factors
28 that affect the worker's ability to engage in gainful employment.

1 (ii) Disability does not mean a purely medical condition.

2 ~~(36)~~(39) "Sole proprietor" means the person who has the exclusive legal right or title to or ownership of
3 a business enterprise.

4 ~~(37)~~(40) "State's average weekly wage" means the mean weekly earnings of all employees under
5 covered employment, as defined and established annually by the department before July 1 and rounded to the
6 nearest whole dollar number.

7 ~~(38)~~(41) "Temporary partial disability" means a physical condition resulting from an injury, as defined in
8 39-71-119, in which a worker, prior to maximum healing:

9 (a) is temporarily unable to return to the position held at the time of injury because of a medically
10 determined physical restriction;

11 (b) returns to work in a modified or alternative employment; and

12 (c) suffers a partial wage loss.

13 ~~(39)~~(42) "Temporary service contractor" means a person, firm, association, partnership, limited liability
14 company, or corporation conducting business that hires its own employees and assigns them to clients to fill a
15 work assignment with a finite ending date to support or supplement the client's workforce in situations resulting
16 from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

17 ~~(40)~~(43) "Temporary total disability" means a physical condition resulting from an injury, as defined in
18 this chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical
19 healing.

20 ~~(41)~~(44) "Temporary worker" means a worker whose services are furnished to another on a part-time
21 or temporary basis to fill a work assignment with a finite ending date to support or supplement a workforce in
22 situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments
23 and projects.

24 ~~(42)~~(45) "Treating physician" means the person who, subject to the requirements of 39-71-1101, is
25 primarily responsible for delivery and coordination of the worker's medical services for the treatment of a
26 worker's compensable injury or occupational disease and is:

27 (a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting
28 privileges to practice in one or more hospitals, if any, in the area where the physician is located;

1 (b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

2 (c) a physician assistant licensed by the state of Montana under Title 37, chapter 20, if there is not a
3 treating physician, as provided for in subsection ~~(42)~~ (45)(a), in the area where the physician assistant is
4 located;

5 (d) an osteopath licensed by the state of Montana under Title 37, chapter 3;

6 (e) a dentist licensed by the state of Montana under Title 37, chapter 4;

7 (f) for a claimant residing out of state or upon approval of the insurer, a treating physician defined in
8 subsections ~~(42)(a) through (42)(e)~~ (45)(a) through (45)(e) who is licensed or certified in another state; or

9 (g) an advanced practice registered nurse licensed by the state of Montana under Title 37, chapter 8.

10 (46) "Voluntary market" means the workers' compensation insurance market in which workers'
11 compensation insurance companies voluntarily offer coverage to applicants who meet the insurer's underwriting
12 standards or guidelines.

13 ~~(43)~~(47) "Work-based learning activities" means job training and work experience conducted on the
14 premises of a business partner as a component of school-based learning activities authorized by an
15 elementary, secondary, or postsecondary educational institution.

16 ~~(44)~~(48) "Year", unless otherwise specified, means calendar year."
17

18 **Section 14.** Section 39-71-118, MCA, is amended to read:

19 **"39-71-118. Employee, worker, volunteer, volunteer firefighter, and volunteer emergency care**
20 **provider defined -- election of coverage.** (1) As used in this chapter, the term "employee" or "worker" means:

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

1 employment is excluded.

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

4 (c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job training
5 under a state or federal vocational training program, whether or not under an appointment or contract of hire
6 with an employer, as defined in 39-71-117, and, except as provided in subsection (7), whether or not receiving
7 payment from a third party. However, this subsection (1)(c) does not apply to students enrolled in vocational
8 training programs, as outlined in this subsection, while they are on the premises of a public school or
9 community college.

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

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

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

19 (ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the
20 minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service
21 required under the order from the court or hearings officer.

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

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

25 (h) a person placed at a public or private entity's worksite pursuant to 53-4-704. The person is
26 considered an employee for workers' compensation purposes only. The department of public health and human
27 services shall provide workers' compensation coverage for recipients of cash assistance, as defined in 53-4-
28 201, or for participants in the food stamp program, as defined in 53-2-902, who are placed at public or private

1 worksites through an endorsement to the department of public health and human services' workers'
 2 compensation policy naming the public or private worksite entities as named insureds under the policy. The
 3 endorsement may cover only the entity's public assistance participants and may be only for the duration of each
 4 participant's training while receiving cash assistance or while participating in the food stamp program under a
 5 written agreement between the department of public health and human services and each public or private
 6 entity. The department of public health and human services may not provide workers' compensation coverage
 7 for individuals who are covered for workers' compensation purposes by another state or federal employment
 8 training program. Premiums and benefits must be based upon the wage that a probationary employee is paid
 9 for work of a similar nature at the assigned worksite.

10 (i) subject to subsection (11), a member of a religious corporation, religious organization, or religious
 11 trust while performing services for the religious corporation, religious organization, or religious trust, as
 12 described in 39-71-117(1)(d).

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

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

16 (b) performing services as a volunteer, except for a person who is otherwise entitled to coverage
 17 under the laws of this state. As used in this subsection (2)(b), "volunteer" means a person who performs
 18 services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-
 19 71-123.

20 (c) serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and
 21 providing care without wage compensation to no more than six foster children in the provider's own residence.
 22 The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure
 23 and recreational activities, and providing for other needs and activities arising in the provision of in-home foster
 24 care.

25 (d) performing temporary agricultural work for an employer if the person performing the work is
 26 otherwise exempt from the requirement to obtain workers' compensation coverage under 39-71-401(2)(r) with
 27 respect to a company that primarily performs agricultural work at a fixed business location or under 39-71-
 28 401(2)(d) and is not required to obtain an independent contractor's exemption certificate under 39-71-417

1 because the person does not regularly perform agricultural work away from the person's own fixed business
2 location. For the purposes of this subsection, the term "agricultural" has the meaning provided in 15-1-
3 101(1)(a).

4 (3) With the approval of the insurer, an employer may elect to include as an employee under the
5 provisions of this chapter a volunteer as defined in subsection (2)(b) or a volunteer firefighter as defined in 7-
6 33-4510.

7 (4) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a member-
8 managed limited liability company, the employer may elect to include as an employee within the provisions of
9 this chapter any member of the partnership or limited liability partnership, the owner of the sole proprietorship,
10 or any member of the limited liability company devoting full time to the partnership, limited liability partnership,
11 proprietorship, or limited liability company business.

12 (b) In the event of an election, the employer shall serve upon the employer's insurer written notice
13 naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage
14 desired by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A
15 partner, sole proprietor, or member is not considered an employee within this chapter until notice has been
16 given.

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

19 (d) All weekly compensation benefits must be based on the amount of elected wages, subject to the
20 minimum and maximum limitations of this subsection (4)(d). For premium ratemaking and for the determination
21 of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less
22 than \$900 a month and not more than 1 1/2 times the state's average weekly wage.

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

26 (b) In the event of an election, the employer shall serve upon the employer's insurer written notice
27 naming the corporate officer or manager to be covered and stating the level of compensation coverage desired
28 by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A corporate

1 officer or manager is not considered an employee within this chapter until notice has been given.

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

4 (d) For the purposes of an election under this subsection (5), all weekly compensation benefits must
5 be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection
6 (5)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation
7 benefits, the electing employer may elect an amount of not less than \$200 a week and not more than 1 1/2
8 times the state's average weekly wage.

9 (6) Except as provided in Title 39, chapter 8, an employee or worker in this state whose services are
10 furnished by a person, association, contractor, firm, limited liability company, limited liability partnership, or
11 corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to
12 be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-
13 117(3).

14 (7) (a) A student currently enrolled in an elementary, secondary, or postsecondary educational
15 institution who is participating in work-based learning activities and who is paid wages by the educational
16 institution or business partner is the employee of the entity that pays the student's wages for all purposes under
17 this chapter.

18 (b) An elementary or secondary student who is not paid wages by the business partner or the
19 educational institution in which the student is enrolled is a volunteer for whom coverage must be provided. The
20 business partner and the educational institution shall mutually determine and agree in writing whether the
21 business partner or the educational institution shall elect coverage for the student.

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

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

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

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

1 (d) a nonresident of Montana who does not meet the requirements of subsection (8)(b) and whose
2 employer elects coverage with an insurer that allows an election for an employer whose:

- 3 (i) nonresident employees are hired in Montana;
4 (ii) nonresident employees' wages are paid in Montana;
5 (iii) nonresident employees are supervised in Montana; and
6 (iv) business records are maintained in Montana.

7 (9) An insurer may require coverage for all nonresident employees of a Montana employer who do not
8 meet the requirements of subsection (8)(b) or (8)(d) as a condition of approving the election under subsection
9 (8)(d).

10 (10) (a) An ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer
11 nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county may elect to include as
12 an employee within the provisions of this chapter a volunteer emergency care provider who serves public safety
13 through the ambulance service not otherwise covered by subsection (1)(g) or the paid or volunteer
14 nontransporting medical unit. The ambulance service or nontransporting medical unit may purchase workers'
15 compensation coverage from any entity authorized to provide workers' compensation coverage under plan No.
16 1, 2, ~~or 3~~, or 4 as provided in this chapter.

17 (b) If there is an election under subsection (10)(a), the employer shall report payroll for all volunteer
18 emergency care providers for premium and weekly benefit purposes based on the number of volunteer hours of
19 each emergency care provider, but no more than 60 hours, times the state's average weekly wage divided by
20 40 hours.

21 (c) An ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer
22 nontransporting medical unit, as defined in 50-6-302, may make a separate election to provide benefits as
23 described in this subsection (10) to a member who is either a self-employed sole proprietor or partner who has
24 elected not to be covered under this chapter, but who is covered as a volunteer emergency care provider
25 pursuant to subsection (10)(a). When injured in the course and scope of employment as a volunteer emergency
26 care provider, a member may instead of the benefits described in subsection (10)(b) be eligible for benefits at
27 an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. If
28 the separate election is made as provided in this subsection (10), payroll information for those self-employed

1 sole proprietors or partners must be reported and premiums must be assessed on the assumed weekly wage.

2 (d) A volunteer emergency care provider who receives workers' compensation coverage under this
3 section may not receive disability benefits under Title 19, chapter 17, if the individual is also eligible as a
4 volunteer firefighter.

5 (e) An ambulance service not otherwise covered by subsection (1)(g) or a nontransporting medical
6 unit, as defined in 50-6-302, that does not elect to purchase workers' compensation coverage for its volunteer
7 emergency care providers under the provisions of this section shall annually notify its volunteer emergency care
8 providers that coverage is not provided.

9 (f) (i) The term "volunteer emergency care provider" means a person who is licensed by the board of
10 medical examiners as provided in Title 50, chapter 6, part 2, and who serves the public through an ambulance
11 service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as
12 defined in 50-6-302, in service to a town, city, or county.

13 (ii) The term does not include a volunteer emergency care provider who serves an employer as
14 defined in 7-33-4510.

15 (g) The term "volunteer hours" means the time spent by a volunteer emergency care provider in the
16 service of an employer or as a volunteer for a town, city, or county, including but not limited to training time,
17 response time, and time spent at the employer's premises.

18 (11) The definition of "employee" or "worker" in subsection (1)(i) is limited to implementing the
19 administrative purposes of this chapter and may not be interpreted or construed to create an employment
20 relationship in any other context."

21

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

23 **"39-71-201. (Temporary) Workers' compensation administration fund.** (1) A workers'
24 compensation administration fund is established out of which are to be paid upon lawful appropriation all costs
25 of administering the Workers' Compensation Act, with the exception of the certification of independent
26 contractors provided for in Title 39, chapter 71, part 4, the subsequent injury fund provided for in 39-71-907,
27 and the uninsured employers' fund provided for in 39-71-503. The department may use the workers'
28 compensation administration fund to reimburse premiums for high-quality work-based learning programs, as

1 provided in 39-71-319. The department shall collect and deposit in the state treasury to the credit of the
2 workers' compensation administration fund:

3 (a) all fees and penalties provided in 39-71-107, 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-
4 315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; and

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

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

10 (a) total compensation benefits paid; and

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

14 (3) Each plan No. 1 employer, each plan No. 2 insurer subject to the provisions of this section, ~~and~~
15 plan No. 3, the state fund, and each residual market employer enrolled under compensation plan No. 4, the
16 residual market program and pool, shall file annually on March 1 in the form and containing the information
17 required by the department a report of paid losses pursuant to subsection (2).

18 (4) Each employer enrolled under compensation plan No. 1, compensation plan No. 2, ~~or~~
19 compensation plan No. 3, the state fund, or compensation plan No. 4, the residual market program and pool,
20 shall pay its proportionate share determined by the paid losses in the preceding calendar year of all costs of
21 administering and regulating the Workers' Compensation Act, with the exception of the certification of
22 independent contractors provided for in Title 39, chapter 71, part 4, the subsequent injury fund provided for in
23 39-71-907, and the uninsured employers' fund provided for in 39-71-503. In addition, compensation plan No. 3,
24 the state fund, shall pay a proportionate share of these costs based upon paid losses for claims arising before
25 July 1, 1990.

26 (5) (a) Each employer enrolled under compensation plan No. 1 shall pay an assessment to fund
27 administrative and regulatory costs. The assessment may be up to 4% of the paid losses paid in the preceding
28 calendar year by or on behalf of the plan No. 1 employer. Any entity, other than the department, that assumes

1 the obligations of an employer enrolled under compensation plan No. 1 is considered to be the employer for the
2 purposes of this section.

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

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

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

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

13 (d) If an employer fails to timely pay to the department the assessment under this section, the
14 department may impose on the employer an administrative fine of \$500 plus interest on the delinquent amount
15 at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers'
16 compensation administration fund and may be used to pay the reimbursement of premiums required under 39-
17 71-319.

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

23 (b) The assessment must be paid in:

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

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

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

1 compensation administration fund.

2 (7) (a) Each employer insured under compensation plan No. 2, ~~or~~ plan No. 3, the state fund, or plan
3 No. 4, the residual program and pool, shall pay a premium surcharge to fund administrative and regulatory
4 costs. The premium surcharge must be collected by each plan No. 2 insurer, ~~and by~~ plan No. 3, the state fund,
5 and plan No. 4, the residual market program and pool, from each employer that ~~it insures~~ they insure. The
6 premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate
7 document submitted to the insured employer and must be identified as "workers' compensation regulatory
8 assessment surcharge". The premium surcharge must be excluded from the definition of premiums for all
9 purposes, including computation of insurance producers' commissions or premium taxes. However, an insurer
10 may cancel a workers' compensation policy for nonpayment of the premium surcharge. When collected,
11 assessments may not constitute an element of loss for the purpose of establishing rates for workers'
12 compensation insurance but, for the purpose of collection, must be treated as a separate cost imposed upon
13 insured employers.

14 (b) The amount to be funded by the premium surcharge may be up to 4% of the paid losses paid in
15 the preceding calendar year by or on behalf of all plan No. 2, or plan No. 4 insurers ~~and may be up to 4% of~~
16 ~~paid losses for claims arising on or after July 1, 1990, for plan No. 3, the state fund~~, plus or minus any
17 adjustments as provided by subsection (7)(f). The amount to be funded must be divided by the total premium
18 paid by all employers enrolled under compensation plan No. 2, ~~or~~ plan No. 3 or plan No. 4 during the preceding
19 calendar year. A single premium surcharge rate, applicable to all employers enrolled in compensation plan No.
20 2, ~~or~~ plan No. 3, or plan No. 4 must be calculated annually by the department by not later than April 30. The
21 resulting rate, expressed as a percentage, is levied against the premium paid by each employer enrolled under
22 compensation plan No. 2, or plan No. 3, or plan No. 4 in the next fiscal year.

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

27 (d) The premium surcharge must be paid whenever the employer pays a premium to the insurer.
28 Each insurer shall collect the premium surcharge levied against every employer that it insures. Each insurer

1 shall pay to the department all money collected as a premium surcharge within 20 days of the end of the
 2 calendar quarter in which the money was collected. If an insurer fails to timely pay to the department the
 3 premium surcharge collected under this section, the department may impose on the insurer an administrative
 4 fine of \$500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and
 5 interest must be deposited in the workers' compensation administration fund and may be used to pay the
 6 reimbursement of premiums required under 39-71-319.

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

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

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

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

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

24 (11) The administration fund must be debited with expenses incurred by the department in the general
 25 administration of the provisions of this chapter, including the salaries of its members, officers, and employees
 26 and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-
 27 503, incurred while on the business of the department either within or without the state. Reimbursement of
 28 premiums required under 39-71-319 by the workers' compensation administration fund also is a debit on the

1 fund.

2 (12) Disbursements from the administration fund must be made after being approved by the
3 department 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. (Terminates June 30, 2023--
8 sec. 7, Ch. 400, L. 2019.)

9 **39-71-201. (Effective July 1, 2023) Workers' compensation administration fund.** (1) A workers'
10 compensation administration fund is established out of which are to be paid upon lawful appropriation all costs
11 of administering the Workers' Compensation Act, with the exception of the certification of independent
12 contractors provided for in Title 39, chapter 71, part 4, the subsequent injury fund provided for in 39-71-907,
13 and the uninsured employers' fund provided for in 39-71-503. The department shall collect and deposit in the
14 state treasury to the credit of the workers' compensation administration fund:

15 (a) all fees and penalties provided in 39-71-107, 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-
16 315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; and

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

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

22 (a) total compensation benefits paid; and

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

26 (3) Each plan No. 1 employer, each plan No. 2 insurer subject to the provisions of this section, ~~and~~
27 plan No. 3, the state fund, and each residual market employer enrolled under compensation plan No. 4, the
28 residual market program and pool, shall file annually on March 1 in the form and containing the information

1 required by the department a report of paid losses pursuant to subsection (2).

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

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

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

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

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

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

25 (d) If an employer fails to timely pay to the department the assessment under this section, the
26 department may impose on the employer an administrative fine of \$500 plus interest on the delinquent amount
27 at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers'
28 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 4% of the paid
3 losses paid in the preceding calendar year for claims arising before July 1, 1990. As required by 39-71-2352,
4 the state fund may not pass along to insured employers the cost of the assessment for administrative and
5 regulatory costs that is attributable to claims arising before July 1, 1990.

6 (b) 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, or plan
14 No. 4, the residual program and pool, shall pay a premium surcharge to fund administrative and regulatory
15 costs. The premium surcharge must be collected by each plan No. 2 insurer, ~~and by~~ plan No. 3, the state fund,
16 and plan No. 4, the residual market program and pool, from each employer that ~~it insures~~ they insure. The
17 premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate
18 document submitted to the insured employer and must be identified as "workers' compensation regulatory
19 assessment surcharge". The premium surcharge must be excluded from the definition of premiums for all
20 purposes, including computation of insurance producers' commissions or premium taxes. However, an insurer
21 may cancel a workers' compensation policy for nonpayment of the premium surcharge. When collected,
22 assessments may not constitute an element of loss for the purpose of establishing rates for workers'
23 compensation insurance but, for the purpose of collection, must be treated as a separate cost imposed upon
24 insured employers.

25 (b) The amount to be funded by the premium surcharge may be up to 4% of the paid losses paid in
26 the preceding calendar year by or on behalf of all plan No. 2 or plan No. 4 insurers ~~and may be up to 4% of paid~~
27 ~~losses for claims arising on or after July 1, 1990, for plan No. 3, the state fund,~~ plus or minus any adjustments
28 as provided by subsection (7)(f). The amount to be funded must be divided by the total premium paid by all

1 employers enrolled under compensation plan No. 2, ~~or plan No. 3, or plan No. 4~~ during the preceding calendar
2 year. A single premium surcharge rate, applicable to all employers enrolled in compensation plan No. 2, ~~or plan~~
3 No. 3, or plan No. 4 must be calculated annually by the department by not later than April 30. The resulting rate,
4 expressed as a percentage, is levied against the premium paid by each employer enrolled under compensation
5 plan No. 2, ~~or plan No. 3, or plan No. 4~~ in the next fiscal year.

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

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

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

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

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

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

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

6 (11) The administration fund must be debited with expenses incurred by the department in the general
7 administration of the provisions of this chapter, including the salaries of its members, officers, and employees
8 and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-
9 503, incurred while on the business of the department either within or without the state.

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

12 (13) The department may assess and collect the workers' compensation regulatory assessment
13 surcharge from uninsured employers, as defined in 39-71-501, that fail to properly comply with the coverage
14 requirements of the Workers' Compensation Act. Any amounts collected by the department pursuant to this
15 subsection must be deposited in the workers' compensation administration fund."
16

17 **Section 16.** Section 39-71-225, MCA, is amended to read:

18 **"39-71-225. Workers' compensation database system.** (1) The department shall develop a
19 workers' compensation database system to generate management information about Montana's workers'
20 compensation system. The database system must be used to collect and compile information from insurers,
21 employers, health care providers, claimants, claims examiners, rehabilitation providers, and the legal
22 profession.

23 (2) Data collected must be used to provide:

24 (a) management information to the legislative and executive branches for the purpose of making
25 policy and management decisions, including but not limited to:

26 (i) performance information to enable the state to enact remedial efforts to ensure quality, control
27 abuse, and enhance cost control;

28 (ii) information on medical, indemnity, and rehabilitation costs, utilization, and trends;

1 (iii) information on litigation and attorney involvement for the purpose of identifying trends, problem
2 areas, and the costs of legal involvement;

3 (b) current and prior claim information to any insurer that is at risk on a claim, or that is alleged to be
4 at risk in any administrative or judicial proceeding, to determine claims liability or for fraud investigation. The
5 department may release information only upon written request by the insurer and may disclose only the
6 claimant's name, claimant's identification number, prior claim number, date of injury, body part involved, and
7 name and address of the insurer and claims examiner on each claim filed. Information obtained by an insurer
8 pursuant to this section must remain confidential and may not be disclosed to a third party except to the extent
9 necessary for determining claim liability or for fraud investigation.

10 (c) current and prior claim information to law enforcement agencies for purposes of fraud investigation
11 or prosecution; and

12 (d) to any insurer that is at risk on a claim, information identifying whether the claimant has been
13 certified by the department as a person with a disability. Information obtained by an insurer pursuant to this
14 subsection (2)(d) must remain confidential and may not be disclosed to a third party except as necessary to
15 implement the provisions of Title 39, chapter 71, part 9. An insurer may disclose to the employer that the
16 claimant has been certified by the department and of the potential for a limit on the insurer's liability and of
17 potential reimbursement by the subsequent injury fund.

18 (3) The department is authorized to collect from insurers, employers, medical providers, the legal
19 profession, and others the information necessary to generate the workers' compensation database system.

20 (4) The workers' compensation database system must be designed in accordance with the following
21 principles:

22 (a) avoidance of duplication and inconsistency;

23 (b) reasonable availability of data elements;

24 (c) value of information collected to be commensurate with the cost of retrieving the collected
25 information;

26 (d) uniformity to permit efficiency of collection and to allow interstate comparisons;

27 (e) a workable mechanism to ensure the accuracy of the data collected and to protect the
28 confidentiality of collected data;

- 1 (f) reasonable availability of the data at a fair cost to the user;
- 2 (g) a broad application to plan No. 1, plan No. 2, ~~and plan No. 3,~~ and plan No. 4 insurers;
- 3 (h) compatibility with electronic data reporting;
- 4 (i) reporting procedures that can be handled through private data collection systems that adhere to
- 5 the provisions of subsections (4)(a) through (4)(h);
- 6 (j) implementation of reporting requirements that allow reasonable lead time for compliance.

7 (5) The department shall publish an annual report on the information compiled.

8 (6) Users of information obtained from the workers' compensation database under this section are

9 liable for damages arising from misuse or unlawful dissemination of database information.

10 (7) An insurer or a third-party administrator who submitted 50 or more "first reports of injury" to the

11 department in the preceding calendar year shall electronically submit the reports and any other reports related

12 to the reported claims in a nationally recognized format specified by department rule.

13 (8) The department may adopt rules to implement this section."

14

15 **Section 17.** Section 39-71-307, MCA, is amended to read:

16 **"39-71-307. Employers and insurers to file reports -- penalty.** (1) Every employer insured by a

17 plan No. 2 insurer, or a plan No. 3 insurer, or plan No. 4, the residual market program and pool insurer, is

18 required to file with the employer's insurer, under rules adopted by the department, a full and complete report of

19 every accident, injury, or occupational disease to an employee arising out of or in the course of employment.

20 (2) Every insurer transacting business under this chapter shall, under rules adopted by the

21 department, make and file with the department the reports of every injury or occupational disease.

22 (3) An employer or insurer who refuses or neglects to submit the reports necessary for the proper

23 filing and review of a claim, as provided in subsection (1) or (2), shall be assessed a penalty of not less than

24 \$200 or more than \$500 for each offense. The department shall assess and collect the penalty. An employer or

25 insurer may contest a penalty assessment in a hearing conducted according to department rules."

26

27 **Section 18.** Section 39-71-401, MCA, is amended to read:

28 **"39-71-401. Employments covered and exemptions -- elections -- notice.** (1) Except as provided

1 in subsection (2), the Workers' Compensation Act applies to all employers and to all employees. An employer
 2 who has any employee in service under any appointment or contract of hire, expressed or implied, oral or
 3 written, shall elect to be bound by the provisions of compensation plan No. 1, 2, ~~or 3~~, or 4, the residual market
 4 program and pool, unless the provisions of 39-71-442 apply. Each employee whose employer is bound by the
 5 Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the
 6 employer.

7 (2) Unless the employer elects coverage for these employments under this chapter and an insurer
 8 allows an election, the Workers' Compensation Act does not apply to any of the following:

- 9 (a) household or domestic employment;
- 10 (b) casual employment;
- 11 (c) employment of a dependent member of an employer's family for whom an exemption may be
 12 claimed by the employer under the federal Internal Revenue Code;
- 13 (d) employment of sole proprietors, working members of a partnership, working members of a limited
 14 liability partnership, or working members of a member-managed limited liability company, except as provided in
 15 subsection (3);
- 16 (e) employment of a real estate, securities, or insurance salesperson paid solely by commission and
 17 without a guarantee of minimum earnings;
- 18 (f) employment as a direct seller as defined by 26 U.S.C. 3508;
- 19 (g) employment for which a rule of liability for injury, occupational disease, or death is provided under
 20 the laws of the United States;
- 21 (h) employment of a person performing services in return for aid or sustenance only, except
 22 employment of a volunteer under 67-2-105;
- 23 (i) employment with a railroad engaged in interstate commerce, except that railroad construction work
 24 is included in and subject to the provisions of this chapter;
- 25 (j) employment as an official, including a timer, referee, umpire, or judge, at an amateur athletic event;
- 26 (k) employment of a person performing services as a newspaper carrier or freelance correspondent if
 27 the person performing the services or a parent or guardian of the person performing the services in the case of
 28 a minor has acknowledged in writing that the person performing the services and the services are not covered.

1 As used in this subsection (2)(k):

2 (i) "freelance correspondent" means a person who submits articles or photographs for publication and
3 is paid by the article or by the photograph; and

4 (ii) "newspaper carrier":

5 (A) means a person who provides a newspaper with the service of delivering newspapers singly or in
6 bundles; and

7 (B) does not include an employee of the paper who, incidentally to the employee's main duties,
8 carries or delivers papers.

9 (l) cosmetologist's services and barber's services as referred to in 39-51-204(1)(e);

10 (m) a person who is employed by an enrolled tribal member or an association, business, corporation,
11 or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is
12 conducted solely within the exterior boundaries of an Indian reservation;

13 (n) employment of a jockey who is performing under a license issued by the board of horseracing
14 from the time that the jockey reports to the scale room prior to a race through the time that the jockey is
15 weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of
16 horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services as
17 a jockey;

18 (o) employment of a trainer, assistant trainer, exercise person, or pony person who is performing
19 services under a license issued by the board of horseracing while on the grounds of a licensed race meet;

20 (p) employment of an employer's spouse for whom an exemption based on marital status may be
21 claimed by the employer under 26 U.S.C. 7703;

22 (q) a person who performs services as a petroleum land professional. As used in this subsection, a
23 "petroleum land professional" is a person who:

24 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in
25 negotiating a business agreement for the exploration or development of minerals;

26 (ii) is paid for services that are directly related to the completion of a contracted specific task rather
27 than on an hourly wage basis; and

28 (iii) performs all services as an independent contractor pursuant to a written contract.

1 (r) an officer of a quasi-public or a private corporation or, except as provided in subsection (3), a
2 manager of a manager-managed limited liability company who qualifies under one or more of the following
3 provisions:

4 (i) the officer or manager is not engaged in the ordinary duties of a worker for the corporation or the
5 limited liability company and does not receive any pay from the corporation or the limited liability company for
6 performance of the duties;

7 (ii) the officer or manager is engaged primarily in household employment for the corporation or the
8 limited liability company;

9 (iii) the officer or manager either:

10 (A) owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of
11 the limited liability company; or

12 (B) owns less than 20% of the number of shares of stock in the corporation or limited liability company
13 if the officer's or manager's shares when aggregated with the shares owned by a person or persons listed in
14 subsection (2)(r)(iv) total 20% or more of the number of shares in the corporation or limited liability company; or

15 (iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law,
16 daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets the requirements of
17 subsection (2)(r)(iii)(A) or (2)(r)(iii)(B);

18 (s) a person who is an officer or a manager of a ditch company as defined in 27-1-731;

19 (t) service performed by an ordained, commissioned, or licensed minister of a church in the exercise
20 of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

21 (u) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care
22 for individuals who, because of age or infirmity, are unable to care for themselves when the person providing
23 the service is employed directly by a family member or an individual who is a legal guardian;

24 (v) employment of a person performing the services of an intrastate or interstate common or contract
25 motor carrier when hired by an individual or entity who meets the definition of a broker or freight forwarder, as
26 provided in 49 U.S.C. 13102;

27 (w) employment of a person who is not an employee or worker in this state as defined in 39-71-
28 118(8);

1 (x) employment of a person who is working under an independent contractor exemption certificate;

2 (y) employment of an athlete by or on a team or sports club engaged in a contact sport. As used in
3 this subsection, "contact sport" means a sport that includes significant physical contact between the athletes
4 involved. Contact sports include but are not limited to football, hockey, roller derby, rugby, lacrosse, wrestling,
5 and boxing.

6 (z) a musician performing under a written contract.

7 (3) (a) (i) A person who regularly and customarily performs services at locations other than the
8 person's own fixed business location shall elect to be bound personally and individually by the provisions of
9 compensation plan No. 1, 2, ~~or 3~~, or 4 unless the person has waived the rights and benefits of the Workers'
10 Compensation Act by obtaining an independent contractor exemption certificate from the department pursuant
11 to 39-71-417.

12 (ii) Application fees or renewal fees for independent contractor exemption certificates must be
13 deposited in the state special revenue account established in 39-9-206 and must be used to offset the
14 certification administration costs.

15 (b) A person who holds an independent contractor exemption certificate may purchase a workers'
16 compensation insurance policy and with the insurer's permission elect coverage for the certificate holder.

17 (c) For the purposes of this subsection (3), "person" means:

18 (i) a sole proprietor;

19 (ii) a working member of a partnership;

20 (iii) a working member of a limited liability partnership;

21 (iv) a working member of a member-managed limited liability company; or

22 (v) a manager of a manager-managed limited liability company that is engaged in the work of the
23 construction industry as defined in 39-71-116.

24 (4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its
25 employees under the provisions of compensation plan No. 1, 2, ~~or 3~~, or 4. A quasi-public corporation, a private
26 corporation, or a manager-managed limited liability company may elect coverage for its corporate officers or
27 managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:

28 (i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by

1 delivering the notice to the board of directors of the corporation or to the management organization of the
2 manager-managed limited liability company; or

3 (ii) if the employer has elected to be bound by the provisions of compensation plan No. ~~2~~, ~~or 3~~, or 4, by
4 delivering the notice to the board of directors of the corporation or to the management organization of the
5 manager-managed limited liability company and to the insurer.

6 (b) If the employer changes plans or insurers, the employer's previous election is not effective and the
7 employer shall again serve notice to its insurer and to its board of directors or the management organization of
8 the manager-managed limited liability company if the employer elects to be bound.

9 (5) The appointment or election of an employee as an officer of a corporation, a partner in a
10 partnership, a partner in a limited liability partnership, or a member in or a manager of a limited liability
11 company for the purpose of exempting the employee from coverage under this chapter does not entitle the
12 officer, partner, member, or manager to exemption from coverage.

13 (6) Each employer shall post a sign in the workplace at the locations where notices to employees are
14 normally posted, informing employees about the employer's current provision of workers' compensation
15 insurance. A workplace is any location where an employee performs any work-related act in the course of
16 employment, regardless of whether the location is temporary or permanent, and includes the place of business
17 or property of a third person while the employer has access to or control over the place of business or property
18 for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided
19 by the department, distributed through insurers or directly by the department, and posted by employers in
20 accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign
21 as provided in this subsection is subject to a \$50 fine for each citation."

22

23 **Section 19.** Section 39-71-403, MCA, is amended to read:

24 **"39-71-403. Plan three exclusive for state agencies -- election of plan by public corporations --**
25 **financing of self-insurance fund -- exemption for university system -- definitions -- rulemaking.** (1) (a)
26 Except as provided in subsection (5), if a state agency is the employer, the terms, conditions, and provisions of
27 compensation plan No. 3, state fund, are exclusive, compulsory, and obligatory upon both employer and
28 employee. Any sums necessary to be paid under the provisions of this chapter by a state agency are

1 considered to be ordinary and necessary expenses of the agency. The agency shall pay the sums into the state
2 fund at the time and in the manner provided for in this chapter, notwithstanding that the state agency may have
3 failed to anticipate the ordinary and necessary expense in a budget, estimate of expenses, appropriations,
4 ordinances, or otherwise.

5 (b) (i) Subject to subsection (5), the department of administration, provided for in 2-15-1001, shall
6 manage workers' compensation insurance coverage for all state agencies.

7 (ii) The state fund shall provide the department of administration with all information regarding the state
8 agencies' coverage.

9 (iii) Notwithstanding the status of a state agency as employer in subsection (1)(a) and contingent upon
10 mutual agreement between the department of administration and the state fund, the state fund shall issue one
11 or more policies for all state agencies.

12 (iv) In any year in which the workers' compensation premium due from a state agency is lower than in
13 the previous year, the appropriation for that state agency must be reduced by the same amount that the
14 workers' compensation premium was reduced and the difference must be returned to the originating fund
15 instead of being applied to other purposes by the state agency submitting the premium.

16 (2) A public corporation, other than a state agency, may elect coverage under compensation plan No.
17 1, plan No. 2, ~~or~~ plan No. 3, or plan No. 4, separately or jointly with any other public corporation, other than a
18 state agency. A public corporation electing compensation plan No. 1 may purchase reinsurance or issue bonds
19 or notes pursuant to subsection (3)(b). A public corporation electing compensation plan No. 1 is subject to the
20 same provisions as a private employer electing compensation plan No. 1.

21 (3) (a) A public corporation, other than a state agency, that elects plan No. 1 may establish a fund
22 sufficient to pay the compensation and benefits provided for in this chapter and to discharge all liabilities that
23 are reasonably incurred during the fiscal year for which the election is effective. Proceeds from the fund must
24 be used only to pay claims covered by this chapter and for actual and necessary expenses required for the
25 efficient administration of the fund, including debt service on any bonds and notes issued pursuant to
26 subsection (3)(b).

27 (b) (i) A public corporation, other than a state agency, separately or jointly with another public
28 corporation, other than a state agency, may issue and sell its bonds and notes for the purpose of establishing,

1 in whole or in part, the self-insurance workers' compensation fund provided for in subsection (3)(a) and to pay
2 the costs associated with the sale and issuance of the bonds. Bonds and notes may be issued in an amount not
3 exceeding 0.18% of the total assessed value of taxable property, determined as provided in 15-8-111, of the
4 public corporation as of the date of issue. The bonds and notes must be authorized by resolution of the
5 governing body of the public corporation and are payable from an annual property tax levied in the amount
6 necessary to pay principal and interest on the bonds or notes. This authority to levy an annual property tax
7 exists despite any provision of law or maximum levy limitation, including 15-10-420, to the contrary. The
8 revenue derived from the sale of the bonds and notes may not be used for any other purpose.

9 (ii) The bonds and notes:

10 (A) may be sold at public or private sale;

11 (B) do not constitute debt within the meaning of any statutory debt limitation; and

12 (C) may contain other terms and provisions that the governing body determines.

13 (iii) Two or more public corporations, other than state agencies, may agree to exercise their respective
14 borrowing powers jointly under this subsection (3)(b) or may authorize a joint board to exercise the powers on
15 their behalf.

16 (iv) The fund established from the proceeds of bonds and notes issued and sold under this subsection
17 (3)(b) may, if sufficient, be used in lieu of a surety bond, reinsurance, specific and aggregate excess insurance,
18 or any other form of additional security necessary to demonstrate the public corporation's ability to discharge all
19 liabilities as provided in subsection (3)(a). Subject to the total assessed value limitation in subsection (3)(b)(i), a
20 public corporation may issue bonds and notes to establish a fund sufficient to discharge liabilities for periods
21 greater than 1 year.

22 (4) All money in the fund established under subsection (3)(a) not needed to meet immediate
23 expenditures must be invested by the governing body of the public corporation or the joint board created by two
24 or more public corporations as provided in subsection (3)(b)(iii), and all proceeds of the investment must be
25 credited to the fund.

26 (5) For the purposes of subsection (1)(b), the judicial branch or the legislative branch may choose not
27 to have the department of administration manage its workers' compensation policy.

28 (6) The department of administration may adopt rules to implement subsection (1)(b)(i).

1 (7) As used in this section, the following definitions apply:

2 (a) "Public corporation" includes the Montana university system.

3 (b) (i) "State agency" means:

4 (A) the executive branch and its departments and all boards, commissions, committees, bureaus, and
5 offices;

6 (B) the judicial branch; and

7 (C) the legislative branch.

8 (ii) The term does not include the Montana university system."
9

10 **Section 20.** Section 39-71-407, MCA, is amended to read:

11 **"39-71-407. (Temporary) Liability of insurers -- limitations.** (1) For workers' compensation injuries,
12 each insurer is liable for the payment of compensation, in the manner and to the extent provided in this section,
13 to an employee of an employer covered under plan No. 1, plan No. 2, ~~and~~ the state fund under plan No. 3, and
14 plan No. 4 that it insures who receives an injury arising out of and in the course of employment or, in the case
15 of death from the injury, to the employee's beneficiaries, if any.

16 (2) An injury does not arise out of and in the course of employment when the employee is:

17 (a) on a paid or unpaid break, is not at a worksite of the employer, and is not performing any specific
18 tasks for the employer during the break; or

19 (b) engaged in a social or recreational activity, regardless of whether the employer pays for any
20 portion of the activity. The exclusion from coverage of this subsection (2)(b) does not apply to an employee
21 who, at the time of injury, is on paid time while participating in a social or recreational activity or whose
22 presence at the activity is required or requested by the employer. For the purposes of this subsection (2)(b),
23 "requested" means the employer asked the employee to assume duties for the activity so that the employee's
24 presence is not completely voluntary and optional and the injury occurred in the performance of those duties.

25 (3) (a) Subject to subsection (3)(c), an insurer is liable for an injury, as defined in 39-71-119, only if
26 the injury is established by objective medical findings and if the claimant establishes that it is more probable
27 than not that:

28 (i) a claimed injury has occurred; or

1 (ii) a claimed injury has occurred and aggravated a preexisting condition.

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

4 (c) Objective medical findings are sufficient for a presumptive occupational disease as defined in 39-
5 71-1401 but may be overcome by a preponderance of the evidence.

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

8 (i) the employer furnishes the transportation or the employee receives reimbursement from the
9 employer for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment agreement
10 and the travel is necessitated by and on behalf of the employer as an integral part or condition of the
11 employment; or

12 (ii) the travel is required by the employer as part of the employee's job duties.

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

17 (5) (a) Except as provided in subsection (6), an employee is not eligible for benefits otherwise
18 payable under this chapter if the employee's use of alcohol or drugs not prescribed by a physician is the major
19 contributing cause of the accident.

20 (b) For the purposes of this subsection (5), if an employee fails or refuses to take a drug test after the
21 accident and if the testing procedures comply with federal drug testing statutes and administrative regulations
22 applicable to private sector employers and employees as provided in Title 39, chapter 2, there is a presumption
23 that the major contributing cause of the accident was the employee's use of drugs not prescribed by a
24 physician.

25 (6) (a) An employee who has received written certification, as defined in 16-12-502, from a physician
26 for the use of marijuana for a debilitating medical condition and who is otherwise eligible for benefits payable
27 under this chapter is subject to the limitations of subsections (6)(b) through (6)(d).

28 (b) An employee is not eligible for benefits otherwise payable under this chapter if the employee's use

1 of marijuana for a debilitating medical condition, as defined in 16-12-102, is the major contributing cause of the
2 injury or occupational disease.

3 (c) Nothing in this chapter may be construed to require an insurer to reimburse any person for costs
4 associated with the use of marijuana for a debilitating medical condition, as defined in 16-12-102.

5 (d) In an accepted liability claim, the benefits payable under this chapter may not be increased or
6 enhanced due to a worker's use of marijuana for a debilitating medical condition, as defined in 16-12-102. An
7 insurer remains liable for those benefits that the worker would qualify for absent the worker's use of marijuana
8 for a debilitating medical condition.

9 (7) The provisions of subsection (5) do not apply if the employer had knowledge of and failed to
10 attempt to stop the employee's use of alcohol or drugs not prescribed by a physician. This subsection (7) does
11 not apply to the use of marijuana for a debilitating medical condition because marijuana is not a prescribed
12 drug.

13 (8) If there is no dispute that an insurer is liable for an injury but there is a liability dispute between two
14 or more insurers, the insurer for the most recently filed claim shall pay benefits until that insurer proves that
15 another insurer is responsible for paying benefits or until another insurer agrees to pay benefits. If it is later
16 proven that the insurer for the most recently filed claim is not responsible for paying benefits, that insurer must
17 receive reimbursement for benefits paid to the claimant from the insurer proven to be responsible.

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

21 (10) Except for cases of presumptive occupational disease as provided in 39-71-1401 and 39-71-1402,
22 an employee is not eligible for benefits payable under this chapter unless the entitlement to benefits is
23 established by objective medical findings that contain sufficient factual and historical information concerning the
24 relationship of the worker's condition to the original injury.

25 (11) (a) For occupational diseases, every employer enrolled under plan No. 1, and every insurer under
26 plan No. 2, ~~or~~ the state fund under plan No. 3, or plan No. 4 is liable for the payment of compensation, in the
27 manner and to the extent provided in this chapter, to an employee of an employer covered under plan No. 1,
28 plan No. 2, ~~or~~ the state fund under plan No. 3, or plan No. 4 if the employee is diagnosed with a compensable

1 occupational disease.

2 (b) The provisions of subsection (11)(a) apply to presumptive occupational disease if the employee is
3 diagnosed and meets the conditions of 39-71-1401 and 39-71-1402.

4 (12) An insurer is liable for an occupational disease only if the occupational disease:

5 (a) is established by objective medical findings; and

6 (b) arises out of or is contracted in the course and scope of employment. An occupational disease is
7 considered to arise out of or be contracted in the course and scope of employment if the events occurring on
8 more than a single day or work shift are the major contributing cause of the occupational disease in relation to
9 other factors contributing to the occupational disease. For the purposes of this subsection (12), an occupational
10 disease is not the same as a presumptive occupational disease.

11 (13) When compensation is payable for an occupational disease or a presumptive occupational
12 disease, the only employer liable is the employer in whose employment the employee was last injuriously
13 exposed to the hazard of the disease.

14 (14) When there is more than one insurer and only one employer at the time that the employee was
15 injuriously exposed to the hazard of the disease, the liability rests with the insurer providing coverage at the
16 earlier of:

17 (a) the time that the occupational disease or presumptive occupational disease was first diagnosed by
18 a health care provider; or

19 (b) the time that the employee knew or should have known that the condition was the result of an
20 occupational disease or a presumptive occupational disease.

21 (15) In the case of pneumoconiosis, any coal mine operator who has acquired a mine in the state or
22 substantially all of the assets of a mine from a person who was an operator of the mine on or after December
23 30, 1969, is liable for and shall secure the payment of all benefits that would have been payable by that person
24 with respect to miners previously employed in the mine if acquisition had not occurred and that person had
25 continued to operate the mine, and the prior operator of the mine is not relieved of any liability under this
26 section.

27 (16) As used in this section, "major contributing cause" means a cause that is the leading cause
28 contributing to the result when compared to all other contributing causes. (Void on occurrence of contingency--

1 sec. 7, Ch. 158, L. 2019.)

2 **39-71-407. (Effective on occurrence of contingency) Liability of insurers -- limitations.** (1) For
3 workers' compensation injuries, each insurer is liable for the payment of compensation, in the manner and to
4 the extent provided in this section, to an employee of an employer covered under plan No. 1, plan No. 2, ~~and~~
5 the state fund under plan No. 3, and plan No. 4 that it insures who receives an injury arising out of and in the
6 course of employment or, in the case of death from the injury, to the employee's beneficiaries, if any.

7 (2) An injury does not arise out of and in the course of employment when the employee is:

8 (a) on a paid or unpaid break, is not at a worksite of the employer, and is not performing any specific
9 tasks for the employer during the break; or

10 (b) engaged in a social or recreational activity, regardless of whether the employer pays for any
11 portion of the activity. The exclusion from coverage of this subsection (2)(b) does not apply to an employee
12 who, at the time of injury, is on paid time while participating in a social or recreational activity or whose
13 presence at the activity is required or requested by the employer. For the purposes of this subsection (2)(b),
14 "requested" means the employer asked the employee to assume duties for the activity so that the employee's
15 presence is not completely voluntary and optional and the injury occurred in the performance of those duties.

16 (3) (a) An insurer is liable for an injury, as defined in 39-71-119, only if the injury is established by
17 objective medical findings and if the claimant establishes that it is more probable than not that:

18 (i) a claimed injury has occurred; or

19 (ii) a claimed injury has occurred and aggravated a preexisting condition.

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

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

24 (i) the employer furnishes the transportation or the employee receives reimbursement from the
25 employer for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment agreement
26 and the travel is necessitated by and on behalf of the employer as an integral part or condition of the
27 employment; or

28 (ii) the travel is required by the employer as part of the employee's job duties.

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

5 (5) (a) Except as provided in subsection (6), an employee is not eligible for benefits otherwise
 6 payable under this chapter if the employee's use of alcohol or drugs not prescribed by a physician is the major
 7 contributing cause of the accident.

8 (b) For the purposes of this subsection (5), if an employee fails or refuses to take a drug test after the
 9 accident and if the testing procedures comply with federal drug testing statutes and administrative regulations
 10 applicable to private sector employers and employees as provided in Title 39, chapter 2, there is a presumption
 11 that the major contributing cause of the accident was the employee's use of drugs not prescribed by a
 12 physician.

13 (6) (a) An employee who has received written certification, as defined in 16-12-502, from a physician
 14 for the use of marijuana for a debilitating medical condition and who is otherwise eligible for benefits payable
 15 under this chapter is subject to the limitations of subsections (6)(b) through (6)(d).

16 (b) An employee is not eligible for benefits otherwise payable under this chapter if the employee's use
 17 of marijuana for a debilitating medical condition, as defined in 16-12-102, is the major contributing cause of the
 18 injury or occupational disease.

19 (c) Nothing in this chapter may be construed to require an insurer to reimburse any person for costs
 20 associated with the use of marijuana for a debilitating medical condition, as defined in 16-12-102.

21 (d) In an accepted liability claim, the benefits payable under this chapter may not be increased or
 22 enhanced due to a worker's use of marijuana for a debilitating medical condition, as defined in 16-12-102. An
 23 insurer remains liable for those benefits that the worker would qualify for absent the worker's use of marijuana
 24 for a debilitating medical condition.

25 (7) The provisions of subsection (5) do not apply if the employer had knowledge of and failed to
 26 attempt to stop the employee's use of alcohol or drugs not prescribed by a physician. This subsection (7) does
 27 not apply to the use of marijuana for a debilitating medical condition because marijuana is not a prescribed
 28 drug.

1 (8) If there is no dispute that an insurer is liable for an injury but there is a liability dispute between two
2 or more insurers, the insurer for the most recently filed claim shall pay benefits until that insurer proves that
3 another insurer is responsible for paying benefits or until another insurer agrees to pay benefits. If it is later
4 proven that the insurer for the most recently filed claim is not responsible for paying benefits, that insurer must
5 receive reimbursement for benefits paid to the claimant from the insurer proven to be responsible.

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

9 (10) An employee is not eligible for benefits payable under this chapter unless the entitlement to
10 benefits is established by objective medical findings that contain sufficient factual and historical information
11 concerning the relationship of the worker's condition to the original injury.

12 (11) For occupational diseases, every employer enrolled under plan No. 1, and every insurer under
13 plan No. 2, or the state fund under plan No. 3, or plan No. 4 is liable for the payment of compensation, in the
14 manner and to the extent provided in this chapter, to an employee of an employer covered under plan No. 1,
15 plan No. 2, or the state fund under plan No. 3, or plan No. 4 if the employee is diagnosed with a compensable
16 occupational disease.

17 (12) An insurer is liable for an occupational disease only if the occupational disease:

18 (a) is established by objective medical findings; and

19 (b) arises out of or is contracted in the course and scope of employment. An occupational disease is
20 considered to arise out of or be contracted in the course and scope of employment if the events occurring on
21 more than a single day or work shift are the major contributing cause of the occupational disease in relation to
22 other factors contributing to the occupational disease.

23 (13) When compensation is payable for an occupational disease, the only employer liable is the
24 employer in whose employment the employee was last injuriously exposed to the hazard of the disease.

25 (14) When there is more than one insurer and only one employer at the time that the employee was
26 injuriously exposed to the hazard of the disease, the liability rests with the insurer providing coverage at the
27 earlier of:

28 (a) the time that the occupational disease was first diagnosed by a health care provider; or

1 (b) the time that the employee knew or should have known that the condition was the result of an
2 occupational disease.

3 (15) In the case of pneumoconiosis, any coal mine operator who has acquired a mine in the state or
4 substantially all of the assets of a mine from a person who was an operator of the mine on or after December
5 30, 1969, is liable for and shall secure the payment of all benefits that would have been payable by that person
6 with respect to miners previously employed in the mine if acquisition had not occurred and that person had
7 continued to operate the mine, and the prior operator of the mine is not relieved of any liability under this
8 section.

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

12 **Section 21.** Section 39-71-417, MCA, is amended to read:

13 **"39-71-417. Independent contractor certification.** (1) (a) (i) Except as provided in subsection
14 (1)(a)(ii), a person who regularly and customarily performs services at a location other than the person's own
15 fixed business location shall apply to the department for an independent contractor exemption certificate unless
16 the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2,
17 ~~or 3, or 4.~~

18 (ii) An officer or manager who is exempt under 39-71-401(2)(r)(iii) or (2)(r)(iv) may apply, but is not
19 required to apply, to the department for an independent contractor exemption certificate.

20 (b) A person who meets the requirements of this section and receives an independent contractor
21 exemption certificate is not required to obtain a personal workers' compensation insurance policy.

22 (c) For the purposes of this section, "person" means:

23 (i) a sole proprietor;

24 (ii) a working member of a partnership;

25 (iii) a working member of a limited liability partnership;

26 (iv) a working member of a member-managed limited liability company; or

27 (v) a manager of a manager-managed limited liability company that is engaged in the work of the
28 construction industry as defined in 39-71-116.

1 (2) The department shall adopt rules relating to an original application for or renewal of an
2 independent contractor exemption certificate. The department shall adopt by rule the amount of the fee for an
3 application or certificate renewal. The application or renewal must be accompanied by the fee.

4 (3) The department shall deposit the application or renewal fee in an account in the state special
5 revenue fund to pay the costs of administering the program.

6 (4) (a) To obtain an independent contractor exemption certificate, the applicant shall swear to and
7 acknowledge the following:

8 (i) that the applicant has been and will continue to be free from control or direction over the
9 performance of the person's own services, both under contract and in fact; and

10 (ii) that the applicant is engaged in an independently established trade, occupation, profession, or
11 business and will provide sufficient documentation of that fact to the department.

12 (b) For the purposes of subsection (4)(a)(i), an endorsement required for licensure, as provided in 37-
13 47-303, does not imply or constitute control.

14 (5) (a) An applicant for an independent contractor exemption certificate shall submit an application
15 under oath on a form prescribed by the department and containing the following:

16 (i) the applicant's name and address;

17 (ii) the applicant's social security number;

18 (iii) each occupation for which the applicant is seeking independent contractor certification; and

19 (iv) other documentation as provided by department rule to assist in determining if the applicant has an
20 independently established business.

21 (b) The department shall adopt a retention schedule that maintains copies of documents submitted in
22 support of an initial application or renewal application for an independent contractor exemption certificate for a
23 minimum of 3 years after an application has been received by the department. The department shall, to the
24 extent feasible, produce renewal applications that reduce the burden on renewal applicants to supply
25 information that has been previously provided to the department as part of the application process.

26 (c) An applicant who applies on or after July 1, 2011, to renew an independent contractor exemption
27 certificate is not required to submit documents that have been previously submitted to the department if:

28 (i) the applicant certifies under oath that the previously submitted documents are still valid and

1 current; and

2 (ii) the department, if it considers it necessary, independently verifies a specific document or decides
3 that a document has not expired pursuant to the document's own terms and is therefore still valid and current.

4 (6) The department shall issue an independent contractor exemption certificate to an applicant if the
5 department determines that an applicant meets the requirements of this section.

6 (7) (a) When the department approves an application for an independent contractor exemption
7 certificate and the person is working under the independent contractor exemption certificate, the person's status
8 is conclusively presumed to be that of an independent contractor.

9 (b) A person working under an approved independent contractor exemption certificate has waived all
10 rights and benefits under the Workers' Compensation Act and is precluded from obtaining benefits unless the
11 person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, ~~or~~
12 3, or 4.

13 (c) For the purposes of the Workers' Compensation Act, a person is working under an independent
14 contractor exemption certificate if:

15 (i) the person is performing work in the trade, business, occupation, or profession listed on the
16 person's independent contractor exemption certificate; and

17 (ii) the hiring agent and the person holding the independent contractor exemption certificate do not
18 have a written or an oral agreement that the independent contractor exemption certificate holder's status with
19 respect to that hiring agent is that of an employee.

20 (8) Once issued, an independent contractor exemption certificate remains in effect for 2 years unless:

21 (a) suspended or revoked pursuant to 39-71-418; or

22 (b) canceled by the independent contractor.

23 (9) If the department's independent contractor central unit denies an application for an independent
24 contractor exemption certificate, the applicant may contest that decision as provided in 39-71-415(2)."

25

26 **Section 22.** Section 39-71-419, MCA, is amended to read:

27 **"39-71-419. Independent contractor violations -- penalty.** (1) A person may not:

28 (a) perform work as an independent contractor without first:

1 (i) obtaining from the department an independent contractor exemption certificate unless the
2 individual is not required to obtain an independent contractor exemption certificate pursuant to 39-71-417(1)(a);
3 or

4 (ii) electing to be bound personally and individually by the provisions of compensation plan No. 1, 2, or
5 3, or 4;

6 (b) perform work as an independent contractor when the department has revoked or denied the
7 independent contractor's exemption certificate;

8 (c) transfer to another person or allow another person to use an independent contractor exemption
9 certificate that was not issued to that person;

10 (d) alter or falsify an independent contractor exemption certificate; or

11 (e) misrepresent the person's status as an independent contractor. A person who falsely claimed,
12 either in writing or through credible evidence, to have an independent contractor certification may not be
13 considered to be an employee solely based on not actually having an independent contractor exemption
14 certificate. The burden of proof that an independent contractor is certified rests with the independent contractor
15 and not the hiring entity.

16 (2) An employer may not:

17 (a) require an employee through coercion, misrepresentation, or fraudulent means to adopt
18 independent contractor status to avoid the employer's obligations to provide workers' compensation coverage;
19 or

20 (b) exert control to a degree that causes the independent contractor to violate the provisions of 39-71-
21 417(4).

22 (3) In addition to any other penalty or sanction provided in this chapter, a person or employer who
23 violates a provision of this section is subject to a fine to be assessed by the department of up to \$1,000 for each
24 violation. The department shall deposit the fines in the uninsured employers' fund. The lien provisions of 39-71-
25 506 apply to any assessed fines.

26 (4) A person or employer who disputes a fine assessed by the department pursuant to this section
27 may file an appeal with the department within 30 days of the date on which the fine was assessed. If, after
28 mediation, the issue is not resolved, the issue must be transferred to the workers' compensation court for

1 resolution."

2

3 **Section 23.** Section 39-71-433, MCA, is amended to read:

4 **"39-71-433. Group purchase of workers' compensation insurance.** (1) Two or more business
5 entities may join together to form a group to purchase individual workers' compensation insurance policies
6 covering each member of the group.

7 (2) A group formed under this section may purchase individual workers' compensation insurance
8 policies covering each member of the group from any insurer authorized to write workers' compensation
9 insurance in this state, except that the ~~state fund, as defined in 39-71-2312~~ residual market program and pool,
10 plan No. 4, has the right to refuse coverage of a group and its plan of operation but, subject to the eligibility
11 requirements of the residual market program and pool, may not refuse coverage to an individual employer.
12 Under an individual policy, the group is entitled to a premium or volume discount that would be applicable to a
13 policy of the combined premium amount of the individual policies.

14 (3) A group shall apportion any discount or policyholder dividend received on workers' compensation
15 insurance coverage among the members of the group according to a formula adopted in the plan of operation
16 for the group.

17 (4) A group shall adopt a plan of operation that must include the composition and selection of a
18 governing board, the methods for administering the group, the eligibility requirements to join the group, and
19 guidelines for the workers' compensation insurance coverage obtained by the group, including the payment of
20 premiums, the distribution of discounts, and the method for providing risk management."

21

22 **Section 24.** Section 39-71-434, MCA, is amended to read:

23 **"39-71-434. Deductible insurance policy provision for medical benefits.** (1) In order to lower the
24 amount an employer is required to pay to obtain workers' compensation insurance coverage under this chapter,
25 a workers' compensation policy issued by the state compensation insurance fund under plan No. 3 ~~or~~ by a
26 private insurer under plan No. 2, or a policy issued under plan No. 4 must offer a deductible for the medical,
27 hospital, and related services allowed under 39-71-704. The medical deductible must be offered in amounts of
28 at least \$500.

1 (2) If the insured employer chooses to accept a medical deductible, the insured employer is liable for
2 the amount of the deductible for the medical benefits paid for each otherwise compensable claim of work injury
3 suffered by an employee.

4 (3) The insured employer shall contract with the insurer to have the insurer pay the entire cost of the
5 covered medical benefits directly to the provider of medical or related services and then seek reimbursement
6 from the insured employer for the deductible amount. The insurer is entitled to reimbursement only for medical,
7 hospital, and related services allowed under 39-71-704, up to the amount of the deductible.

8 (4) If an insured employer who has contracted with an insurer for a medical deductible does not pay
9 the medical deductible amount to the insurer through reimbursement, the amount paid by the insurer on the
10 claim may be included as benefits paid in a determination of the insured employer's rate.

11 (5) If an insured employer chooses to accept a medical deductible, then for purposes of computing
12 rates and rating plans, all medical losses incurred must be reported to the insurer without regard to the
13 application of any medical deductible regardless of whether the employer or the insurer pays the losses."
14

15 **Section 25.** Section 39-71-435, MCA, is amended to read:

16 **"39-71-435. Workers' compensation and employers' liability insurance -- optional deductibles.**

17 (1) An insurer issuing a workers' compensation or an employer's liability insurance policy under compensation
18 plan No. 2 or plan No. 4, the residual market program and pool, may offer to the policyholder, as part of the
19 policy or by endorsement, optional deductibles for benefits payable under the policy consistent with the
20 standards contained in subsection (3).

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

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

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

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

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

3 (d) Recognition is given to policyholder characteristics, including but not limited to size, financial
4 capabilities, nature of activities, and number of employees.

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

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

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

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

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

16 (5) For purposes of 39-71-201, 39-71-915, and 50-71-128, liability for assessments must be
17 ascertained without regard to application of any deductible, whether the employer or the insurer pays the
18 losses. For all other taxes and assessments based on premium, the amount of premium or assessment must
19 be determined after application of the deductible."
20

21 **Section 26.** Section 39-71-441, MCA, is amended to read:

22 **"39-71-441. Tribal employment coverage.** The department may, as provided in Title 18, chapter 11,
23 enter into an agreement with a tribal government to recognize, with the same effect as the exclusive remedy
24 and benefits under plans No. 1, 2, ~~and 3~~, and 4 tribal workers' compensation plans or self-insured plans that the
25 department determines provide adequate coverage to persons who are:

26 (1) employed by an enrolled tribal member or by an association, business, corporation, or other entity
27 at least 51% of which is owned by one or more enrolled tribal members; and

28 (2) working outside the exterior boundaries of an Indian reservation."

1

2 **Section 27.** Section 39-71-442, MCA, is amended to read:

3 **"39-71-442. Employer option for extraterritorial coverage.** (1) Notwithstanding 39-71-118(8)(a), an
4 employee of an employer in this state who is employed by the employer to work solely in North Dakota, and
5 who is required by the laws of that state to be covered for workers' compensation purposes while working in
6 that state, is not considered to be an employee in this state covered under Title 39, chapter 71, during any time
7 that the employer maintains workers' compensation coverage for the employee in North Dakota. For purposes
8 of this section, "work solely in North Dakota" means the employee does not perform job duties in Montana and
9 coverage is required by the state of North Dakota. Travel that is commuting to and from a job site in North
10 Dakota from a location in Montana does not constitute performing job duties in Montana even if the employer
11 pays for all or a portion of the costs of travel or if the worker is paid for the travel time.

12 (2) A plan No. 1, 2, ~~or 3~~, or 4 insurer providing coverage to the employer under this chapter may
13 require proof of coverage in North Dakota and records of work in North Dakota. An insurer may use a
14 verification of employment form, developed by the department, to request an attestation by the employer
15 regarding the employees working solely in North Dakota.

16 (3) (a) This section does not exempt an employee from coverage under this chapter when the
17 employee's usual job duties begin in this state and the employee is otherwise covered under 39-71-407(4)(a).

18 (b) This section exempts an employee from coverage under this chapter when the employee is
19 engaged in travel while commuting as provided in subsection (1)."

20

21 **Section 28.** Section 39-71-503, MCA, is amended to read:

22 **"39-71-503. Uninsured employers' fund -- purpose and administration of fund -- maintaining**
23 **balance for administrative costs -- appropriation.** (1) There is created an uninsured employers' fund in the
24 state special revenue account to pay:

25 (a) to an injured employee of an uninsured employer the same benefits the employee would have
26 received if the employer had been properly enrolled under compensation plan No. 1, 2, ~~or 3~~, or 4 except as
27 provided in subsection (3);

28 (b) the costs of investigating and prosecuting workers' compensation fraud under 2-15-2015; and

1 (c) the expenses incurred by the department in administering the uninsured employers' fund.

2 (2) The department may refer to the workers' compensation fraud office, established in 2-15-2015,
3 cases involving:

4 (a) false or fraudulent claims for benefits; and

5 (b) criminal violations of 45-7-501.

6 (3) (a) Except as provided in subsection (3)(b), surpluses and reserves may not be kept for the fund.

7 The department shall make payments that it considers appropriate as funds become available from time to
8 time. The payment of weekly disability benefits takes precedence over the payment of medical benefits. Lump-
9 sum payments of future projected benefits, including impairment awards, may not be made from the fund. The
10 board of investments shall invest the money of the fund, and the investment income must be deposited in the
11 fund.

12 (b) The department shall maintain at least a 3-month balance based on projected budget costs for
13 administration of the fund. The balance for administrative costs may be used by the department only in
14 administering the fund.

15 (c) The maximum aggregate medical benefits expenditure that may be made from the fund may not
16 exceed \$100,000 for any single claim regardless of whether the claim arises from an injury or an occupational
17 disease.

18 (4) The amounts necessary for the payment of benefits from the fund are statutorily appropriated, as
19 provided in 17-7-502, from the fund."

20

21 **Section 29.** Section 39-71-504, MCA, is amended to read:

22 **"39-71-504. Funding of fund -- option for agreement between department and injured**

23 **employee.** The fund is funded in the following manner:

24 (1) (a) The department may require that the uninsured employer pay to the fund a penalty of either
25 up to double the premium amount the employer would have paid on the payroll of the employer's workers in this
26 state if the employer had been enrolled with compensation plan No. 3 or 4 or \$200, whichever is greater. In
27 determining the premium amount for the calculation of the penalty under this subsection, the department shall
28 make an assessment based on how much premium would have been paid on the employer's past 3-year

1 payroll for periods within the 3 years when the employer was uninsured.

2 (b) The fund shall collect from an uninsured employer an amount equal to all benefits paid or to be
3 paid from the fund to or on behalf of an injured employee of the uninsured employer.

4 (c) In addition to any amounts recovered under subsections (1)(a) and (1)(b), the fund shall collect a
5 penalty of \$200 from an employer that fails to obtain Montana workers' compensation insurance within 30 days
6 of notice of the requirement.

7 (2) (a) An uninsured employer that fails to make timely penalty or claim reimbursement payments
8 required under this part must be assessed a late fee of \$50 for each late payment.

9 (b) Any unpaid balance owed to the fund under this part must accrue interest at 12% a year or 1% a
10 month or fraction of a month. Interest on unpaid balances accrues from the date of the original billing.

11 (c) Late fees and interest assessed pursuant to this subsection (2) must be deposited into the fund for
12 payment of administrative expenses and benefits.

13 (3) The department may enter into an agreement with the injured employee or the employee's
14 beneficiaries to assign to the employee or the beneficiaries all or part of the funds collected by the department
15 from the uninsured employer pursuant to subsection (1)(b)."

16

17 **Section 30.** Section 39-71-505, MCA, is amended to read:

18 **"39-71-505. Applicability of other provisions of chapter to fund.** All appropriate provisions in the
19 Workers' Compensation Act apply to the fund in the same manner as they apply to compensation plans No. 1,
20 2, ~~and 3,~~ and 4."

21

22 **Section 31.** Section 39-71-515, MCA, is amended to read:

23 **"39-71-515. Independent cause of action.** (1) An injured employee or the employee's beneficiaries
24 have an independent cause of action against an uninsured employer for failure to be enrolled in a
25 compensation plan as required by this chapter.

26 (2) In an action described in subsection (1), prima facie liability of the uninsured employer exists if the
27 claimant proves, by a preponderance of the evidence, that:

28 (a) the employer was required by law to be enrolled under compensation plan No. 1, 2, ~~or 3~~ or 4 with

1 respect to the claimant; and

2 (b) the employer was not enrolled on the date of the injury or death.

3 (3) It is not a defense to an action that the employee had knowledge of or consented to the
4 employer's failure to carry insurance or that the employee was negligent in permitting the failure to exist.

5 (4) The amount of recoverable damages in an action is the amount of compensation that the
6 employee would have received had the employer been properly enrolled under compensation plan No. 1, 2, ~~or~~
7 3, or 4.

8 (5) A plaintiff who prevails in an action brought under this section is entitled to recover reasonable
9 costs and attorney fees incurred in the action, in addition to damages."

10

11 **Section 32.** Section 39-71-606, MCA, is amended to read:

12 **"39-71-606. Insurer to accept or deny claim within 30 days of receipt -- notice of benefits and**
13 **entitlements to claimants -- notice of denial -- notice of reopening -- notice to employer -- employer's**
14 **right to loss information.** (1) Each insurer under any plan for the payment of workers' compensation benefits
15 shall, within 30 days of receipt of a claim for compensation signed by the claimant or the claimant's
16 representative, either accept or deny the claim and, if denied, shall inform the claimant and the department in
17 writing of the denial.

18 (2) (a) The department shall make available to insurers for distribution to claimants sufficient copies
19 of a document describing current benefits and entitlements available under Title 39, chapter 71. On receipt of a
20 claim, each insurer shall promptly notify the claimant in writing of potential benefits and entitlements available
21 by providing the claimant a copy of the document prepared by the department.

22 (b) The department may provide information to claimants regarding nonstatutory programs or benefits
23 offered to injured workers or the families of injured workers by a nonprofit organization. The department may
24 not provide the contact information of an injured worker to such an organization without the express consent of
25 the injured worker.

26 (3) Each insurer under plan No. 2, ~~or~~ No. 3, or No. 4 for the payment of workers' compensation
27 benefits shall notify the employer of the reopening of the claim within 14 days after the reopening of a claim for
28 the purpose of paying compensation benefits.

1 (4) (a) When requested by an employer that an insurer currently insures or has insured in the
2 immediately preceding 5 years or when requested by the employer's designated insurance producer, an insurer
3 shall provide the loss information listed in subsection (4)(b) within 10 days of the request.

4 (b) Loss information provided under this subsection (4) must include for the period requested:

5 (i) all date of injury or occupational disease data for the employer's claims;

6 (ii) payment data on the employer's closed claims; and

7 (iii) payment data and loss reserve amounts on the employer's open claims, including all compensation
8 benefits that are ongoing and are being charged against that employer's account.

9 (c) The information provided under this subsection (4) is confidential insurance information. The
10 information may be used by the employer for internal management purposes or for procuring insurance
11 products but may not be disclosed for any other purpose without the express written consent of the insurer.

12 (5) Failure of an insurer to comply with the time limitations required in subsections (1) and (3) does
13 not constitute an acceptance of a claim as a matter of law. However, an insurer who fails to comply with 39-71-
14 608 or subsections (1) and (3) of this section may be assessed a penalty under 39-71-2907 if a claim is
15 determined to be compensable by the workers' compensation court."

16

17 **Section 33.** Section 39-71-745, MCA, is amended to read:

18 **"39-71-745. Calculation of volunteer firefighter benefits and premiums -- definitions.** (1) (a) A
19 plan No. 1 or plan No. 2 insurer shall designate whether an employer, as defined in 7-33-4510, is to use actual
20 volunteer hours or a flat assumed payroll amount for each volunteer firefighter for calculating premiums. The
21 coverage option must be the same for all fire agencies organized under Title 7, chapter 33, that are covered by
22 that insurer and meet the definition of employer in 7-33-4510. A plan No. 3 or plan No. 4 insurer shall use a flat
23 assumed payroll amount for each volunteer firefighter for calculating premiums.

24 (b) If a plan No. 1 or plan No. 2 insurer uses actual volunteer hours, the payroll calculation is the
25 number of actual volunteer hours of each volunteer firefighter, not to exceed 60 hours a week, times the state's
26 average weekly wage divided by 40 hours.

27 (c) When a plan No. 1, plan No. 2, ~~or~~ plan No. 3, or plan No. 4 insurer uses a flat assumed payroll
28 amount, the assumed payroll for each volunteer firefighter must be reported as a full month for any month in

1 which the volunteer firefighter is on the roster of service as defined in 7-33-4510. The employer shall maintain
2 the roster of service with the effective date of membership for each volunteer firefighter.

3 (2) For benefit purposes, if concurrent employment under 39-71-123 does not apply, a volunteer
4 firefighter injured in the course and scope of employment as a volunteer firefighter is eligible for medical and
5 compensation benefits provided in Title 39, chapter 71. Any weekly compensation benefit must be based on
6 either the actual volunteer hours if chosen as provided in subsection (1)(b) or the flat assumed payroll amount
7 on which premiums are based, whichever is applicable.

8 (3) For the purposes of this section, the following definitions apply:

9 (a) "Volunteer firefighter" has the meaning provided in 7-33-4510.

10 (b) "Volunteer hours" means the time spent by a volunteer firefighter in the service of a fire agency
11 organized under Title 7, chapter 33, that meets the definition of employer in 7-33-4510, including but not limited
12 to training time, response time, and time spent at the premises of the fire agency."
13

14 **Section 34.** Section 39-71-915, MCA, is amended to read:

15 **"39-71-915. Assessment of insurer -- employers -- definition -- collection.** (1) As used in this
16 section, "paid losses" means the following benefits paid during the preceding calendar year for injuries covered
17 by the Workers' Compensation Act without regard to the application of any deductible, regardless of whether
18 the employer or the insurer pays the losses:

19 (a) total compensation benefits paid; and

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

23 (2) The fund must be maintained by assessing each plan No. 1 employer, each employer insured by a
24 plan No. 2 insurer, plan No. 3, the state fund, or plan No. 4, the residual market program and pool, with respect
25 to claims arising before July 1, 1990, and each employer insured by plan No. 3, the state fund. The assessment
26 amount is the total amount from April 1 of the previous year through March 31 of the current year paid by the
27 fund plus the expenses of administration less other realized income that is deposited in the fund. The total
28 assessment amount to be collected must be allocated among plan No. 1 employers, plan No. 2 employers, plan

1 No. 3, the state fund, ~~and plan No. 3 employers,~~ plan No. 4, the residual market program and pool, and plan
 2 No. 4 employers, based on a proportionate share of paid losses for the calendar year preceding the year in
 3 which the assessment is collected. The board of investments shall invest the money of the fund, and the
 4 investment income must be deposited in the fund.

5 (3) On or before May 31 each year, the department shall notify each plan No. 1 employer, plan No. 2
 6 insurer, ~~and plan No. 3, the state fund,~~ and plan No. 4, the residual market program and pool, of the amount to
 7 be assessed for the ensuing fiscal year. The amount to be assessed against the state fund must separately
 8 identify the amount attributed to claims arising before July 1, 1990, and the amount attributable to state fund
 9 claims arising on or after July 1, 1990. On or before April 30 each year, the department, in consultation with the
 10 advisory organization designated under 33-16-1023, shall notify plan No. 2, ~~insurers and plan No. 3,~~ and plan
 11 No. 4 insurers of the premium surcharge rate to be effective for policies written or renewed on and after July 1
 12 in that year.

13 (4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is a
 14 proportionate amount of total plan No. 1 paid losses during the preceding calendar year that is equal to the
 15 percentage that the total paid losses of the individual plan No. 1 employer bore to the total paid losses of all
 16 plan No. 1 employers during the preceding calendar year.

17 (5) The portion of the assessment attributable to state fund claims arising before July 1, 1990, is the
 18 proportionate amount that is equal to the percentage that total paid losses for those claims during the preceding
 19 calendar year bore to the total paid losses for all plans in the preceding calendar year. As required by 39-71-
 20 2352, the state fund may not pass along to insured employers the cost of the subsequent injury fund
 21 assessment that is attributable to claims arising before July 1, 1990.

22 (6) The remaining portion of the assessment must be paid by way of a surcharge on premiums paid
 23 by employers being insured by a plan No. 2 insurer or plan No. 3, the state fund, for policies written or renewed
 24 annually on or after July 1. The surcharge rate must be computed by dividing the remaining portion of the
 25 assessment by the total amount of premiums paid by employers insured under plan No. 2 or plan No. 3 in the
 26 previous calendar year. The numerator for the calculation must be adjusted as provided by subsection (9).

27 (7) Each plan No. 2 and plan No. 4 insurer providing workers' compensation insurance and plan No.
 28 3, the state fund, shall collect from its policyholders the assessment premium surcharge provided for in

1 subsection (6). When collected, the assessment premium surcharge may not constitute an element of loss for
 2 the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must
 3 be treated as separate costs imposed upon insured employers. The total of this assessment premium
 4 surcharge must be stated as a separate cost on an insured employer's policy or on a separate document
 5 submitted by the insured employer and must be identified as "workers' compensation subsequent injury fund
 6 surcharge". Each assessment premium surcharge must be shown as a percentage of the total workers'
 7 compensation policyholder premium. This assessment premium surcharge must be collected at the same time
 8 and in the same manner that the premium for the coverage is collected. The assessment premium surcharge
 9 must be excluded from the definition of premiums for all purposes, including computation of insurance
 10 producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy
 11 for nonpayment of the assessment premium surcharge. Cancellation must be in accordance with the
 12 procedures applicable to the nonpayment of premium. If an employer fails to remit to an insurer the total
 13 amount due for the premium and assessment premium surcharge, the amount received by the insurer must be
 14 applied to the assessment premium surcharge first and the remaining amount applied to the premium due.

15 (8) (a) All assessments paid to the department must be deposited in the fund.

16 (b) Each plan No. 1 employer shall pay its assessment by July 1.

17 (c) Each plan No. 2 insurer, ~~and~~ plan No. 3, the state fund, and plan No. 4, the residual market
 18 program and pool, shall remit to the department all assessment premium surcharges collected during a
 19 calendar quarter by not later than 20 days following the end of the quarter.

20 (d) The state fund shall pay the portion of the assessment attributable to claims arising before July 1,
 21 1990, by July 1.

22 (e) If a plan No. 1 employer, a plan No. 2 insurer, ~~or~~ plan No. 3, the state fund, or plan No. 4, the
 23 residual market program and pool, fails to timely pay to the department the assessment or assessment
 24 premium surcharge under this section, the department may impose on the plan No. 1 employer, the plan No. 2
 25 insurer, or plan No. 3, the state fund, an administrative fine of \$100 plus interest on the delinquent amount at
 26 the annual interest rate of 12%. Administrative fines and interest must be deposited in the fund.

27 (9) The amount of the assessment premium surcharge actually collected pursuant to subsection (7)
 28 must be compared each year to the amount assessed and upon which the premium surcharge was calculated.

1 The amount undercollected or overcollected in any given year must be used as an adjustment to the numerator
2 provided for by subsection (6) for the following year's assessment premium surcharge.

3 (10) If the total assessment is less than \$1 million for any year, the department may defer the
4 assessment amount for that year and add that amount to the assessment amount for the subsequent year."

5

6 **Section 35.** Section 39-71-1050, MCA, is amended to read:

7 **"39-71-1050. Assessment for stay-at-work/return-to-work assistance fund -- definition.** (1) (a)

8 The assistance fund must be maintained by assessing employers insured by plan No. 1, plan No. 2, ~~and~~ plan
9 No. 3, and plan No. 4 an amount as provided in subsections (2) through (10).

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

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

17 (3) On or before May 31 of each year, the department shall notify each plan No. 1 employer, plan No.
18 2 insurer, ~~and~~ plan No. 3, the state fund, and plan No. 4, the residual market program and pool, of the amount
19 to be assessed for the ensuing fiscal year. On or before April 30 of each year, the department shall consult with
20 the advisory organization designated under 33-16-1023 and notify plan No. 2 insurers, ~~and~~ plan No. 3, the state
21 fund, and plan No. 4, the residual market program and pool, of the premium surcharge rate to be effective for
22 policies written or renewed on or after July 1 in that year.

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

27 (5) After subtracting plan No. 1 assessments from the total assessment, the department shall
28 determine the surcharge rate for plan No. 2 insurers, ~~and~~ plan No. 3, the state fund, and plan No. 4, the

1 residual market program and pool, by dividing the remaining portion of the assessment by the total amount of
2 premiums paid by employers insured under plan No. 2, ~~or~~ plan No. 3, or plan No. 4 in the previous calendar
3 year. The numerator for the calculation must be adjusted as provided in subsection (9).

4 (6) Employers insured under plan No. 2, ~~or~~ plan No. 3, or plan No. 4 shall pay their portion of the
5 assessment in a surcharge on premiums for policies written or renewed annually on or after July 1.

6 (7) (a) Each plan No. 2 insurer, ~~and~~ plan No. 3, the state fund, and plan No. 4, the residual market
7 program and pool, shall collect from its policyholders the assessment premium surcharge provided for in
8 subsection (5). When collected, the assessment premium surcharge may not constitute an element of loss for
9 the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must
10 be treated as separate costs imposed upon insured employers. The total of this assessment premium
11 surcharge must be stated as a separate cost on an insured employer's policy or on a separate document
12 submitted by the insured employer and must be identified as "workers' compensation stay-at-work/return-to-
13 work assistance fund surcharge". Each assessment premium surcharge must be shown as a percentage of the
14 total workers' compensation policyholder premium. This assessment premium surcharge must be collected at
15 the same time and in the same manner as the premium for the coverage. The assessment premium surcharge
16 must be excluded from the definition of premium for all purposes, including computation of insurance producers'
17 commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for
18 nonpayment of the assessment premium surcharge. Cancellation must be in accordance with the procedures
19 applicable to the nonpayment of premium.

20 (b) If an employer fails to remit to an insurer the total amount due for the premium and assessment
21 premium surcharge, the amount received by the insurer must be applied to the assessment premium surcharge
22 described in 39-71-201 first, then to the assessment premium surcharge described in 50-71-128, then to the
23 assessment premium surcharge in this section, and then to the surcharge in 39-71-915, with any remaining
24 amount applied to the premium due.

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

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

27 (c) Each plan No. 2 insurer, ~~and~~ plan No. 3, the state fund, and plan No. 4, the residual market
28 program and pool, shall remit to the department all assessment premium surcharges collected during a

1 calendar quarter no later than 20 days following the end of the quarter.

2 (d) If a plan No. 1 employer, a plan No. 2 insurer, ~~or~~ plan No. 3, the state fund, or plan No. 4, the
 3 residual market program and pool, fails to timely pay to the department the assessment or assessment
 4 premium surcharge under this section, the department may impose on the plan No. 1 employer, the plan No. 2
 5 insurer, ~~or~~ plan No. 3, the state fund, or plan No. 4 an administrative fine of \$100 plus interest on the delinquent
 6 amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the assistance
 7 fund.

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

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

14 (11) As used in this section, "money expended" means expenditures for stay-at-work/return-to-work
 15 assistance from the assistance fund."
 16

17 **Section 36.** Section 39-71-1101, MCA, is amended to read:

18 **"39-71-1101. Choice of health care provider by worker -- insurer designation or approval of**
 19 **treating physician or referral to managed care or preferred provider organization -- payment terms --**
 20 **definition.** (1) Prior to the insurer's designation or approval of a treating physician as provided in subsection (2)
 21 or a referral to a managed care organization or preferred provider organization as provided in subsection (8), a
 22 worker may choose a person who is listed in 39-71-116~~(42)~~ (45) for initial treatment. Subject to subsection (2),
 23 if the person listed under 39-71-116~~(42)~~ (45) chosen by the worker agrees to comply with the requirements of
 24 subsection (2), that person is the treating physician.

25 (2) Any time after acceptance of liability by an insurer, the insurer may designate or approve a
 26 treating physician who agrees to assume the responsibilities of the treating physician. The designated or
 27 approved treating physician:

28 (a) is responsible for coordinating the worker's receipt of medical services as provided in 39-71-704;

1 (b) shall provide timely determinations required under this chapter, including but not limited to
2 maximum medical healing, physical restrictions, return to work, and approval of job analyses, and shall provide
3 documentation;

4 (c) shall provide or arrange for treatment within the utilization and treatment guidelines or obtain prior
5 approval for other treatment; and

6 (d) shall conduct or arrange for timely impairment ratings.

7 (3) The treating physician may refer the worker to other health care providers for medical services, as
8 provided in 39-71-704, for the treatment of a worker's compensable injury or occupational disease. A health
9 care provider to whom the worker is referred by the designated treating physician is not responsible for
10 coordinating care or providing determinations as required of the treating physician.

11 (4) The treating physician designated or approved by the insurer must be reimbursed at 110% of the
12 department's fee schedule.

13 (5) A health care provider to whom the worker is referred by the treating physician must be
14 reimbursed at 90% of the department's fee schedule.

15 (6) A health care provider providing health care on a compensable claim prior to the designation or
16 approval of the treating physician by the insurer must be reimbursed at 100% of the department's fee schedule.

17 (7) Regardless of the date of injury, the medical fee schedule rates in effect as adopted by the
18 department in 39-71-704 and the percentages referenced in subsections (4) through (6) of this section apply to
19 the medical service on the date on which the medical service was provided.

20 (8) The insurer may direct the worker to a managed care organization or a preferred provider
21 organization for designation of the treating physician.

22 (9) After the insurer directs a worker to a managed care organization or preferred provider
23 organization, a health care provider who otherwise qualifies as a treating physician but who is not a member of
24 a managed care organization may not provide treatment unless authorized by the insurer.

25 (10) After the date that a worker subject to the provisions of subsection (9) receives individual written
26 notice of a referral, the worker must, unless otherwise authorized by the insurer, receive medical services from
27 the organization designated by the insurer, in accordance with 39-71-1102 and 39-71-1104. The designated
28 treating physician in the organization then becomes the worker's treating physician. The insurer is not liable for

1 medical services obtained otherwise, except that a worker may receive immediate emergency medical
2 treatment for a compensable injury from a health care provider who is not a member of a managed care
3 organization or a preferred provider organization.

4 (11) Posting of managed care requirements in the workplace on bulletin boards, in personnel policies,
5 in company manuals, or by other general or broadcast means does not constitute individual written notice. To
6 constitute individual written notice under this section, information regarding referral to a managed care
7 organization must be provided to the worker in written form by mail or in person after the date of injury or
8 occupational disease."

9

10 **Section 37.** Section 39-71-1401, MCA, is amended to read:

11 **"39-71-1401. (Temporary) Presumptive occupational disease for firefighters -- rebuttal --**

12 **applicability -- definitions.** (1) (a) A firefighter for whom coverage is required under the Workers'
13 Compensation Act is presumed to have a claim for a presumptive occupational disease under the Workers'
14 Compensation Act if the firefighter meets the requirements of 39-71-1402 and is diagnosed with one or more of
15 the diseases listed in subsection (2) within the period listed.

16 (b) Coverage under 39-71-1402 and this section is optional for the employer of a firefighter for whom
17 coverage under the Workers' Compensation Act is voluntary. An employer of a volunteer firefighter under 7-33-
18 4109 or 7-33-4510 may elect as part of providing coverage under the Workers' Compensation Act to
19 additionally obtain the presumptive occupational disease coverage, subject to the insurer agreeing to provide
20 presumptive coverage.

21 (2) The following diseases are presumptive occupational diseases proximately caused by firefighting
22 activities, provided that the evidence of the presumptive occupational disease becomes manifest after the
23 number of years of the firefighter's employment as listed for each occupational disease and within 10 years of
24 the last date on which the firefighter was engaged in firefighting activities for an employer:

25 (a) bladder cancer after 12 years;

26 (b) brain cancer of any type after 10 years;

27 (c) breast cancer after 5 years if the diagnosis occurs before the firefighter is 40 years old and is not
28 known to be associated with a genetic predisposition to breast cancer;

- 1 (d) myocardial infarction after 10 years;
2 (e) colorectal cancer after 10 years;
3 (f) esophageal cancer after 10 years;
4 (g) kidney cancer after 15 years;
5 (h) leukemia after 5 years;
6 (i) mesothelioma or asbestosis after 10 years;
7 (j) multiple myeloma after 15 years;
8 (k) non-Hodgkin's lymphoma after 15 years; and
9 (l) lung cancer after 4 years.

10 (3) For purposes of calculating the number of years of a firefighter's employment history under
11 subsection (2), a firefighter's employment history after July 1, 2014, may be calculated.

12 (4) The beneficiaries of a firefighter who otherwise would be eligible for presumptive occupational
13 disease benefits under this section but who dies prior to filing a claim, as provided in 39-71-1402, are eligible
14 for death benefits in the same manner as for a death from an injury, as provided in 39-71-407. The beneficiaries
15 under this subsection are similarly bound by the provisions of exclusive remedy as provided in 39-71-411 and
16 subject to the filing requirements in 39-71-601.

17 (5) (a) Subject to the provisions of subsection (5)(c), an insurer is liable for the payment of
18 compensation for presumptive occupational disease benefits under this chapter in the same manner as
19 provided in 39-71-407, including objective medical findings of a disease listed in subsection (2) but excluding
20 the requirement in 39-71-407(10) that the objective medical findings trace a relationship between the
21 presumptive occupational disease and the claimant's job history. For myocardial infarction or lung cancer under
22 subsection (2), the diseases must be the type that can reasonably be caused by firefighting activities.

23 (b) (i) An insurer under plan 1, 2, ~~or 3~~, or 4 that disputes a presumptive occupational disease claim
24 has the burden of proof in establishing by a preponderance of the evidence that the firefighter is not suffering
25 from a compensable presumptive occupational disease. An insurer that disputes the claim may pay benefits
26 under 39-71-608 or 39-71-615 and may pursue dispute mechanisms established in Title 39, chapter 71, part
27 24.

28 (ii) An insurer is not liable for the payment of workers' compensation benefits for presumptive

1 occupational disease if the insurer establishes by a preponderance of the evidence that the firefighter was not
2 exposed during the course and scope of the firefighter's duties to smoke or particles in a quantity sufficient to
3 have reasonably caused the disease claimed.

4 (c) A total claim payment by an insurer under this section is limited to \$5 million for each claim.

5 (6) This section does not limit an insurer's ability to assert that the occupational disease was not
6 caused by the firefighter's employment history as a firefighter.

7 (7) A firefighter or the firefighter's beneficiaries may pursue the dispute remedies as provided in Title
8 39, chapter 71, part 24, if an insurer disputes a claim.

9 (8) The use of the term "occupational disease" includes a presumptive occupational disease when
10 used in the definitions in 39-71-116 for "claims examiner", "permanent partial disability", "primary medical
11 services", and "treating physician" and when used in 39-71-107, 39-71-307, 39-71-412, 39-71-503, 39-71-601,
12 39-71-604, 39-71-606, 39-71-615, 39-71-703, 39-71-704, 39-71-713, 39-71-714, 39-71-717, 39-71-1011, 39-
13 71-1036, 39-71-1041, 39-71-1042, 39-71-1101, 39-71-1110, 39-71-1504, 39-71-2311, 39-71-2312, 39-71-2313,
14 39-71-2316, and 39-71-4003.

15 (9) Section 39-71-1402 and this section:

16 (a) apply only to presumptive occupational diseases for firefighters; and

17 (b) do not apply to any other issue relating to workers' compensation and may not be used or cited as
18 guidance in the administration of Title 33 or 37.

19 (10) For the purposes of 39-71-1402 and this section, the following definitions apply:

20 (a) "Firefighter" means an individual whose primary duties involve extinguishing or investigating fires,
21 with at least 1 year of firefighting operations in Montana beginning on or after July 1, 2019, as:

22 (i) a firefighter defined in 19-13-104;

23 (ii) a volunteer firefighter defined in 7-33-4510, but only if the volunteer firefighter's employer has
24 elected coverage under Title 39, chapter 71, with an insurer that allows an election and the employer has opted
25 separately to include presumptive occupational disease coverage under 39-71-1402 and this section; or

26 (iii) a volunteer described in 7-33-4109 for a firefighting entity that has elected coverage under Title 39,
27 chapter 71, with an insurer that allows an election and that has opted separately to include presumptive
28 occupational disease coverage.

1 (b) "Firefighting activities" means actions required of a firefighter that expose the firefighter to extreme
2 heat or inhalation or physical exposure to chemical fumes, smoke, particles, or other toxic gases arising directly
3 out of employment as a firefighter.

4 (c) "Presumptive occupational disease" means harm or damage from one or more of the diseases
5 listed under subsection (2) that is established by objective medical findings and that is contracted in the course
6 and scope of employment as a firefighter from either a single day or work shift or for more than a single day or
7 work shift but that is not specific to an accident. (Void on occurrence of contingency--sec. 7, Ch. 158, L. 2019.)"

8

9 **Section 38.** Section 39-71-1505, MCA, is amended to read:

10 **"39-71-1505. Rulemaking authority.** The department shall adopt rules, including but not limited to
11 rules that require:

12 (1) each employer to conduct an educational-based safety program, including but not limited to:

13 (a) a safety training program to provide:

14 (i) new employee general safety orientation;

15 (ii) job- or task-specific safety training; and

16 (iii) continuous refresher safety training, including periodic safety meetings;

17 (b) periodic hazard assessment, with corrective actions identified; and

18 (c) appropriate documentation of performance of the activities; and

19 (2) an employer of more than five employees to have a comprehensive and effective safety program,

20 including but not limited to:

21 (a) subject to subsection (3), a safety committee composed of employee and employer

22 representatives that holds regularly scheduled meetings;

23 (b) procedures of reporting and investigating all work-related incidents, accidents, injuries, and

24 illnesses; and

25 (c) policies and procedures that assign specific safety responsibilities and safety performance

26 accountability.

27 (3) The department may adopt rules authorizing:

28 (a) a plan No. 2, ~~or~~ plan No. 3, or plan No. 4 insurer to waive the requirement in subsection (2)(a) for

1 a safety committee if the employer presents sufficient evidence of an effective written safety plan and has a
2 satisfactory modification factor, if applicable, or has a low incident record of injuries; or

3 (b) the department to waive the requirement in subsection (2)(a) for a safety committee if a plan No. 1
4 insurer approved by the department presents sufficient evidence of an effective safety program, including a
5 written safety plan. A waiver granted under this subsection (3)(b) to a member of the self-insurers guaranty fund
6 must be made with the concurrence of the fund."

7

8 **Section 39.** Section 39-71-2211, MCA, is amended to read:

9 **"39-71-2211. Premium rates for construction industry -- filing required.** (1) With respect to each
10 classification of risk in the construction industry under plan No. 2 or plan No. 4, the advisory organization
11 designated under 33-16-1023 shall file with the commissioner of insurance a method of computing premiums
12 that does not impose a higher insurance premium solely because of an employer's higher rate of wages paid.

13 (2) The commissioner shall accept a filing under subsection (1) that includes a reasonable method of
14 recognizing differences in rates of pay. This method must use a credit scale with the starting point set at 1.168
15 times the state's average weekly wage as reported by the department.

16 (3) The advisory organization shall file a revenue neutral plan for new and renewed policies for
17 prompt and orderly transition to a method of computing premiums that is in compliance with the requirements of
18 this section.

19 (4) The state compensation insurance fund, plan No. 3, shall use the plan filed by the designated
20 advisory organization or use a credit scale plan that meets the requirements of this section.

21 (5) For the purposes of this section, "construction industry" means the construction group of code
22 classifications filed with and approved by the commissioner to be used by the advisory organization to comply
23 with this section."

24

25 **Section 40.** Section 39-71-2312, MCA, is amended to read:

26 **"39-71-2312. Definitions.** Unless the context requires otherwise, in this part the following definitions
27 apply:

28 (1) "Board" means the board of directors of the state compensation insurance fund provided for in 2-

1 15-1019.

2 (2) "Commissioner" means the commissioner of insurance as provided in 2-15-1903.

3 (3) "Executive director" means the chief executive officer of the state compensation insurance fund.

4 (4) "Fiscal year" means for the purposes of the state fund under Title 33 and this part the period from
5 January 1 in one year to December 31 of that same year. A fiscal year for the purposes of assessments under
6 Title 39, chapter 71, is as defined in 39-71-116.

7 (5) "Guaranteed market" means the plan No. 4, the residual market program and pool, insurer that is
8 required to insure any employer in this state who requests to insure their liability for workers' compensation and
9 occupational disease coverage and that may not refuse to provide coverage unless an employer or the
10 employer's principals have defaulted on an obligation and the default remains unsatisfied.

11 (6) "State fund" means the state compensation insurance fund provided for in 39-71-2313 ~~that serves~~
12 ~~as the guaranteed market for this state~~. It is also known as compensation plan No. 3 or plan No. 3."

13

14 **Section 41.** Section 39-71-2313, MCA, is amended to read:

15 **"39-71-2313. State compensation insurance fund created ~~—obligation to insure.~~** (1) There is a
16 state compensation insurance fund known as the state fund that is a nonprofit, independent public corporation
17 established for the purpose of allowing an option for employers to insure their liability for workers' compensation
18 and occupational disease coverage under this chapter.

19 (2) The state fund ~~is required~~ may to insure any employer in this state who requests coverage, and it
20 ~~may not refuse to provide coverage unless an employer or the employer's principals have defaulted on a state~~
21 ~~fund obligation and the default remains unsatisfied."~~

22

23 **Section 42.** Section 39-71-2351, MCA, is amended to read:

24 **"39-71-2351. Purpose of separation of state fund liability as of July 1, 1990, and of separate**
25 **funding of claims before and on or after that date.** (1) ~~The legislature has determined that it is necessary to~~
26 ~~the public welfare to make workers' compensation insurance available to all employers through the state fund~~
27 ~~as the guaranteed market. In~~ The legislature has determined that in previous years of making this insurance
28 available, and prior to July 1, 1990, the state fund incurred an unfunded liability. The legislature determined that

1 the most cost-effective and efficient way to provide a source of funding for and to ensure payment of the
 2 unfunded liability and the best way to administer the unfunded liability was to separate the liability of the state
 3 fund on the basis of whether a claim is for an injury resulting from an accident that occurred before July 1,
 4 1990, or an accident that occurs on or after that date.

5 (2) The legislature further determines that in order to prevent the creation of a new unfunded liability
 6 with respect to claims for injuries for accidents that occur on or after July 1, 1990, certain duties of the state
 7 fund should be clarified and regulation of the state fund, effective January 1, 2016, and subject to 33-1-115 and
 8 39-71-2375, should be under Title 33, which governs plan No. 2 and plan No. 3 insurers operating in this state."

9

10 **Section 43.** Section 39-71-2375, MCA, is amended to read:

11 **"39-71-2375. Operation of state fund as authorized insurer -- issuance of certificate of authority**

12 **-- exceptions -- use of calendar year -- risk-based capital -- reporting requirements.** (1) The state fund
 13 provided for in 39-71-2313 is an authorized insurer and, except as provided in this section, is subject to the
 14 provisions in Title 33 that are generally applicable to authorized workers' compensation insurers in this state
 15 and the provisions of Title 39, chapter 71, part 23.

16 (2) (a) The commissioner shall issue a certificate of authority to the state fund to write workers'
 17 compensation insurance coverages, as provided in 39-71-2316, and except as otherwise provided in this
 18 section the requirements of Title 33, chapter 2, part 1, do not apply. The certificate of authority must be
 19 continuously renewed by the commissioner.

20 (b) The state fund shall pay the annual fee under 33-2-708, provide the surplus funds required under
 21 33-2-109 and 33-2-110, and provide to the commissioner the available documentation and information that is
 22 provided by other insurers when applying for a certificate of authority under 33-2-115.

23 (c) The state fund is subject to the reporting requirements under 33-2-705 ~~but~~ and is not subject to the
 24 tax on net premiums.

25 (d) The state fund is subject to the provisions of Title 33, chapter 2, part 24, if it contracts with one or
 26 more pharmacy benefit managers as defined in 33-2-2402.

27 ~~(3) (a) The state fund, as the guaranteed market for workers' compensation insurance for employers~~
 28 ~~pursuant to 39-71-2313, is not subject to:~~

- 1 (i) ~~formation requirements of an insurer under Title 33, chapter 3;~~
- 2 (ii) ~~revocation or suspension of its certificate of authority under any provision of Title 33 or any order or~~
- 3 ~~any provision that requires forfeiture of the state fund's obligation to insure employers as required in 39-71-~~
- 4 ~~2313;~~
- 5 (iii) ~~liquidation or dissolution under Title 33;~~
- 6 (iv) ~~participation in the guaranty association provided for in Title 33, chapter 10;~~
- 7 (v) ~~33-12-104; or~~
- 8 (vi) ~~any assessment of punitive or exemplary damages.~~

9 (b) ~~The state fund is subject to 33-16-1023, except as provided in 39-71-2316 (1)(e), (1)(f), and (1)(g).~~
 10 (4)(3) The state fund shall complete financial reporting and accounting on a calendar year basis.

11 (5)(4) (a) If the state fund's risk-based capital falls below the company action level RBC as defined in
 12 33-2-1902, the commissioner shall issue a report to the governor, the state fund board of directors, and to the
 13 legislature. If the legislature is not in session, the report must go to the economic affairs interim committee in
 14 accordance with 5-11-210 and to the legislative auditor. The report must provide a description of the RBC
 15 measurement, the regulatory implications of the state fund falling below the RBC criteria, and the state fund's
 16 corrective action plan. If the commissioner is reporting on a regulatory action level RBC event, the report must
 17 include the state fund's corrective action plan, results of any examination or analysis by the commissioner, and
 18 any corrective orders issued by the commissioner.

19 (b) If the state fund fails to comply with any lawful order of the commissioner, the commissioner may
 20 initiate supervision proceedings under Title 33, chapter 2, part 13, against state fund. If the state fund fails to
 21 comply with the commissioner's lawful supervision order under this subsection (5)(b) (4)(b), the commissioner
 22 may institute rehabilitation proceedings under Title 33, chapter 2, part 13, only if the commissioner is petitioning
 23 for rehabilitation based on the grounds provided in 33-2-1321(1) or (2).

24 (6)(5) The state fund shall annually transfer funds to the commissioner, out of its surplus, for all
 25 necessary staffing and related expenses for a full-time attorney licensed to practice law in Montana and a full-
 26 time examiner qualified by education, training, experience, and high professional competence to examine the
 27 state fund pursuant to Title 33, chapter 1, part 4, and this section. The attorney and examiner must be
 28 employees of the commissioner.

1 ~~(7) For the purposes of this section, the term "guaranteed market" has the definition provided in 39-~~
2 ~~71-2342."~~

3

4 **Section 44.** Section 45-7-501, MCA, is amended to read:

5 **"45-7-501. Employer misconduct.** (1) A person who is an employer, as defined in 39-71-117,
6 commits the offense of employer misconduct if the person knowingly or purposely:

7 (a) avoids the person's responsibility to provide coverage for the person's employees as required by
8 39-71-401;

9 (b) misrepresents or falsifies employment records or information, including but not limited to
10 understating the amount of payroll or the number of the person's employees; or

11 (c) refuses to pay premiums that the person is obligated to pay under compensation plan No. 2, as
12 provided in Title 39, chapter 71, part 22, ~~or~~ compensation plan No. 3, as provided in Title 39, chapter 71, part
13 23, or compensation plan No. 4, the residual market program and pool, as provided in [sections 1 through 3].

14 (2) A person convicted of the offense of employer misconduct shall be fined an amount not to exceed
15 \$50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both."

16

17 **Section 45.** Section 50-71-128, MCA, is amended to read:

18 **"50-71-128. Occupational safety and health administration fund.** (1) (a) An occupational safety
19 and health administration fund is established, out of which are to be paid upon lawful appropriation all costs
20 incurred by the department on or after July 1, 2016, in administering Title 50, chapters 71, 72, and 73.

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

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

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

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

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

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

2 (3) Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of this section, ~~and~~ plan
3 No. 3, the state fund, and plan No. 4, the residual market program and pool, shall file annually on March 1 in
4 the form and containing the information required by the department a report of paid losses.

5 (4) Each employer enrolled under compensation plan No. 1, compensation plan No. 2, ~~or~~
6 compensation plan No. 3, the state fund, or compensation plan No. 4, the residual market program and pool,
7 shall pay its proportionate share, as determined by the paid losses in the preceding calendar year, of all costs
8 appropriated for the next fiscal year for the purposes of administering Title 50, chapters 71, 72, and 73.

9 (5) (a) Each employer enrolled under compensation plan No. 1 shall pay an assessment to fund
10 administrative and regulatory costs. The assessment may be up to 2% of the paid losses that were paid in the
11 preceding calendar year by or on behalf of the plan No. 1 employer. Any entity, other than the department, that
12 assumes the obligations of an employer enrolled under compensation plan No. 1 is considered to be the
13 employer for the purposes of this section.

14 (b) An employer formerly enrolled under compensation plan No. 1 shall pay an assessment to fund
15 administrative and regulatory costs. The assessment may be up to 2% of the paid losses that were paid in the
16 preceding calendar year by or on behalf of the employer for claims arising out of the time when the employer
17 was enrolled under compensation plan No. 1.

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

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

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

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

28 (6) (a) Each employer insured under compensation plan No. 2, ~~or~~ plan No. 3, the state fund, or plan

1 No. 4, the residual market program and pool, shall pay a premium surcharge to fund administrative and
2 regulatory costs. The premium surcharge must be collected by each plan No. 2 insurer, ~~and~~ by plan No. 3, the
3 state fund, and by plan No. 4, the residual market program and pool, from each employer that it insures. The
4 premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate
5 document submitted to the insured employer and must be identified as "occupational safety and health
6 regulatory assessment surcharge". The premium surcharge must be excluded from the definition of premiums
7 for all purposes, including computation of insurance producers' commissions or premium taxes. However, an
8 insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. When collected,
9 assessments may not constitute an element of loss for the purpose of establishing rates for workers'
10 compensation insurance but, for the purpose of collection, must be treated as a separate cost imposed on
11 insured employers.

12 (b) (i) The amount to be funded by the premium surcharge may be up to 2% of the paid losses that
13 were paid in the preceding calendar year by or on behalf of all plan No. 2 and plan No. 4 insurers and may be
14 up to 2% of paid losses for claims arising on or after July 1, 1990, for plan No. 3, the state fund, plus or minus
15 any adjustments as provided by subsection (6)(f).

16 (ii) The amount determined under subsection (6)(b)(i) must be divided by the total premium paid by all
17 employers enrolled under compensation plan No. 2, ~~or~~ plan No. 3, the state fund, or plan No. 4, the residual
18 market program and pool, during the preceding calendar year.

19 (iii) A single premium surcharge rate, applicable to all employers enrolled in compensation plan No. 2
20 or plan No. 3, the state fund, must be calculated annually by the department by not later than April 30. The
21 resulting rate, expressed as a percentage, is levied against the premium paid by each employer enrolled under
22 compensation plan No. 2, ~~or~~ plan No. 3, the state fund, or plan No. 4, the residual market program and pool, in
23 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, and plan
26 No. 4, the residual market program and pool, of the premium surcharge percentage to be effective for policies
27 written or renewed annually on and after July 1 of that year.

28 (d) The premium surcharge must be paid whenever the employer pays a premium to the insurer.

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

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

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

15 (7) By July 1, an insurer under compensation plan No. 2 or plan No. 4 that paid benefits in the
16 preceding calendar year but that will not collect any premium for coverage in the following fiscal year shall pay
17 an assessment of up to 2% of the paid losses that were paid in the preceding calendar year. The department
18 shall determine and notify the insurer by April 30 of each year of the amount that is due by July 1.

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

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

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

27 (11) The department may assess and collect the occupational safety and health regulatory
28 assessment surcharge from uninsured employers, as defined in 39-71-501, that fail to properly comply with the

1 coverage requirements of the Workers' Compensation Act. Any amounts collected by the department pursuant
2 to this subsection must be deposited in the occupational safety and health administration fund."

3

4 **Section 46.** Section 90-14-110, MCA, is amended to read:

5 **"90-14-110. Contracts and cooperative agreements authorized under part.** A contract or
6 cooperative agreement may be authorized under this part for the purposes of an exemption from the Montana
7 Procurement Act pursuant to 18-4-132(3)(~~k~~)(l) only if:

8 (1) the contract implements a community service project consistent with the provisions of 90-14-105;
9 and

10 (2) the contract does not involve an activity prohibited under 90-14-106."

11

12 NEW SECTION. **Section 47. Codification instruction.** [Sections 1 through 3] are intended to be
13 codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [sections
14 1 through 3].

15

16 NEW SECTION. **Section 48. Saving clause.** [This act] does not affect rights and duties that
17 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

18

19 NEW SECTION. **Section 49. Severability.** If a part of [this act] is invalid, all valid parts that are
20 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
21 the part remains in effect in all valid applications that are severable from the invalid applications.

22

23 NEW SECTION. **Section 50. Applicability.** [This act] applies to applications for workers'
24 compensation policies and to in-force or issued workers' compensation policies on or after July 1, 2024.

25

- END -