

SENATE JOINT RESOLUTION NO. 30

INTRODUCED BY R. ZINKE

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO EXAMINE THE PREMIUM COST DRIVERS IN MONTANA'S WORKERS' COMPENSATION SYSTEM AND LAWS RELATED TO THE MONTANA STATE FUND AND TO PROPOSE LEGISLATION FOR CONSIDERATION BY THE 62ND LEGISLATURE TO ADDRESS THE PREMIUM COST DRIVERS AND THE MONTANA STATE FUND.

WHEREAS, Montana has the second highest workers' compensation premium rates in the nation, according to the 2008 Oregon Workers' Compensation Premium Rate Ranking Summary; and

WHEREAS, Montana recorded 6.3 injuries for every 100 full-time equivalent workers in 2007 or 1.5 times the comparable national data of 4.2 injuries for every 100 full-time equivalent workers; and

WHEREAS, Montana's medical costs account for 69% of benefit dollars, according to the National Council for Compensation Insurance State Advisory Forum Report, 2008, and in 2004 Montana's medical benefits were more than 77% greater than the national average, ranking Montana second of 46 jurisdictions surveyed nationwide for the share of medical benefits in workers' compensation costs; and

WHEREAS, the time spent off work after an injury is 26% higher in Montana than the national average, according to the National Council for Compensation Insurance State Advisory Forum Report, 2008; AND

WHEREAS, THE LABOR-MANAGEMENT ADVISORY COUNCIL ON WORKERS' COMPENSATION CONSISTING OF EQUAL REPRESENTATION OF THE TWO PRIMARY WORKERS' COMPENSATION STAKEHOLDERS GROUPS, NAMELY MANAGEMENT AND LABOR, WAS FORMED IN DECEMBER 2006 UNDER AGENCY ORDER BY THE COMMISSIONER OF LABOR AND INDUSTRY AND WAS COMMISSIONED TO IDENTIFY AND RESEARCH THE PRIMARY COST DRIVERS IN WORKERS' COMPENSATION; AND

WHEREAS, A FEBRUARY 2009 LEGISLATIVE AUDIT DIVISION REPORT CONCLUDED THAT LEGAL COMPLIANCE RISKS FACED BY THE MONTANA STATE FUND MAY BE HIGHER BECAUSE OF AN INTERNAL AND EXTERNAL LACK OF REGULATORY OVERSIGHT MECHANISMS, WHICH IS OF POTENTIAL SIGNIFICANCE BECAUSE OF MONTANA STATE FUND'S CURRENT MARKET DOMINANCE OF 67% OF A MARKET THAT IS SHARED WITH PRIVATE CARRIERS PROVIDING WORKERS' COMPENSATION INSURANCE, EXCLUDING SELF-INSURED EMPLOYERS; AND

WHEREAS, STATUTORY DIRECTION FOR THE MONTANA STATE FUND TO OPERATE AS A SELF-SUSTAINING BUSINESS IN A MANNER SIMILAR TO THAT OF A PRIVATELY OPERATED MUTUAL INSURANCE BUSINESS HAS RESULTED IN THE

MONTANA STATE FUND DEVELOPING COMPENSATION AND INCENTIVE PLANS AND PREMIUM AND OTHER PERFORMANCE MEASURES SIMILAR TO THOSE OF PRIVATE COMPANIES.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to conduct a review of Montana's workers' compensation premium cost drivers as compared to premium cost drivers in other Western states with similar industries. The review is to include ~~comparisons on:~~

- (1) the frequency of claims by types of claims;
- (2) medical costs; IN PARTICULAR:
 - (A) DURATION AND AVAILABILITY OF AND ACCESS TO MEDICAL TREATMENTS;
 - (B) USE OF UTILIZATION AND TREATMENT GUIDELINES AND THEIR EFFECTIVENESS IN OTHER JURISDICTIONS; AND
 - (C) EVALUATION OF THE IMPACT ON COST CONTAINMENT AND ACCESS TO MEDICAL TREATMENT RESULTING FROM CHANGES TO MEDICAL FEE SCHEDULES IMPLEMENTED BY THE DEPARTMENT OF LABOR AND INDUSTRY IN 2007 AND 2008;
- (3) RESEARCH AND ANALYSIS ON WHETHER MONTANA SHOULD INCLUDE PRESUMPTIONS REGARDING OCCUPATIONAL DISEASES ASSOCIATED WITH SPECIFIC OCCUPATIONS;
- (4) RECOMMENDATIONS ON THE APPROPRIATE PAYMENT OF ATTORNEY FEES IN CASES INVOLVING MEDICAL BENEFITS;
- (5) EVALUATION OF AND RECOMMENDATIONS ON EXEMPTIONS IN WORKERS' COMPENSATION;
- (6) STRUCTURAL ISSUES IN MONTANA, PARTICULARLY AS THEY RELATE TO THE THREE-TIERED SYSTEM INVOLVING SELF-INSURERS, PRIVATE CARRIERS, AND THE MONTANA STATE FUND.
- ~~(3) location of injuries and proximity to medical care;~~
- ~~(4) duration of medical treatments;~~
- ~~(5) the incidence of age-related medical conditions;~~
- ~~(6) the length of time off work from an injury; and~~
- ~~(7) the percentage of open claims.~~

BE IT FURTHER RESOLVED, that the study identify any additional areas that impact premium cost drivers AND REQUEST THE LABOR-MANAGEMENT ADVISORY COUNCIL ON WORKERS' COMPENSATION TO RESEARCH THESE AREAS and the interaction between workers and employers that may affect the premium cost drivers.

BE IT FURTHER RESOLVED, that the study incorporate reports from the Labor-Management Advisory

Council and stakeholders involved in workers' compensation insurance, including injured workers, attorneys or other representatives for injured workers, insurers, and employers, and that the material from the study be compiled into a report and draft legislation for consideration by the 62nd Legislature.

BE IT FURTHER RESOLVED, THAT THE STUDY EXAMINE THE OPERATION AND STRUCTURE OF THE MONTANA STATE FUND, THE MONTANA STATE FUND'S RELATIONSHIP WITH STATE GOVERNMENT AND OTHER INSURERS, AND STATE OVERSIGHT OF THE MONTANA STATE FUND.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2010.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 62nd Legislature.

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