

## 1 HOUSE JOINT RESOLUTION NO. 25

2 INTRODUCED BY S. REICHNER

3  
4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF  
5 MONTANA REQUESTING AN INTERIM STUDY OF MONTANA'S WORKERS' COMPENSATION SYSTEM  
6 REGARDING SUBROGATION, THE WORKERS' COMPENSATION COURT STRUCTURE, THE STRUCTURE  
7 OF THE STATE COMPENSATION INSURANCE FUND, AND VARIOUS MEDICAL AND SAFETY  
8 COMPONENTS OF THE WORKERS' COMPENSATION SYSTEM.

9  
10 WHEREAS, the term subrogation, frequently accompanied by the terms "made whole" and "third-party  
11 tortfeasors", is not well understood among those not in the insurance or legal worlds, yet the real-world impacts  
12 related to subrogation affect workers' compensation premiums paid by employers and affect injured workers who  
13 receive medical and wage-loss benefits under workers' compensation but do not receive compensation for pain  
14 and suffering or full wage-loss benefits, which may be available through subrogation if the worker's injuries were  
15 caused by a third-party tortfeasor; and

16 WHEREAS, under section 39-71-414, MCA, workers' compensation insurers are allowed to pursue  
17 subrogation and in certain cases to receive from third-party tortfeasors an offset of their workers' compensation  
18 payouts, yet various Montana court cases, including State Compensation Insurance Fund v. McMillan, 2001 MT  
19 168, 306 Mont. 155, 31 P.3d 347, have held that section 39-71-414, MCA, does not apply until a claimant is given  
20 a chance to be made whole in a civil action against a third party or, as provided in Article II, section 16, of the  
21 Montana Constitution, given "full legal redress for injury incurred in employment"; and

22 WHEREAS, workers' compensation insurers in other states may be able to successfully subrogate and  
23 receive offsets against their costs thus potentially lowering workers' compensation premiums while in Montana  
24 few insurers are willing to pay the court costs necessary to pursue subrogation because of concerns that under  
25 the constitutional interpretations an injured worker first must be made whole; and

26 WHEREAS, this lack of a feasible, clear process to hold a third party responsible by workers'  
27 compensation insurers who seek to recover costs through subrogation may contribute to workers' compensation  
28 premiums in Montana being among the top 10 highest rates nationwide as determined by a biennial Oregon  
29 workers' compensation analysis of national workers' compensation premiums; and

30 WHEREAS, previous studies of Montana's workers' compensation system have paid little attention to the

1 workers' compensation court's structure, including whether the political nature of the judicial appointment process  
 2 causes inconsistencies in the application of laws because of potential philosophical variations among judges; and

3 WHEREAS, SEVERAL OTHER STATES HAVE DISMANTLED THEIR STATE-BASED WORKERS' COMPENSATION FUNDS  
 4 AND A 2003-2004 STUDY OF SIMILARLY CHANGING MONTANA'S WORKERS' COMPENSATION SYSTEM TO ALLOW THE STATE  
 5 COMPENSATION INSURANCE FUND TO BECOME INDEPENDENT OF THE STATE WAS CONDUCTED BY THE STATE  
 6 COMPENSATION INSURANCE FUND ITSELF, AND A NEW REVIEW OF THE STATE COMPENSATION INSURANCE FUND'S  
 7 INDEPENDENCE IS AGAIN TIMELY;

8 WHEREAS, although the changes in workers' compensation laws in 2011 were broad and are expected  
 9 to take time to show their ultimate impacts, some changes may be evident as to efficiencies regarding medical  
 10 utilization and treatment guidelines, efforts to improve return-to-work or stay-at-work policies, and on-the-job  
 11 safety and reports on these topics may help to determine if other statutory changes or other actions are needed  
 12 to help reduce the number of Montanans injured or killed on the job.

13  
 14 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE  
 15 STATE OF MONTANA:

16 That the Legislative Council be requested to designate an appropriate interim committee, pursuant to  
 17 section 5-5-217, MCA, or direct sufficient staff resources to review:

18 (1) subrogation in light of Montana's Constitution and court cases regarding making an injured worker  
 19 "whole", including an examination of the meaning of "made whole" and the impacts of the lack of effective  
 20 subrogation on workers' compensation insurers;

21 (2) the use of subrogation in civil actions and in settlements and what lessons are to be learned  
 22 regarding application of the law for each approach;

23 (3) how other states handle subrogation for workers' compensation purposes;

24 (4) the structure of the workers' compensation court and whether nonpolitical appointments are feasible  
 25 or needed;

26 (5) THE STRUCTURE OF THE STATE COMPENSATION INSURANCE FUND AS A STATE AGENCY, THE IMPLICATIONS  
 27 OF INDEPENDENCE ON THE MONTANA WORKERS' COMPENSATION INSURANCE SYSTEM, AND THE REQUIREMENTS FOR  
 28 SEPARATING THE STATE COMPENSATION INSURANCE FUND FROM STATE GOVERNMENT;

29 ~~(5)~~(6) the use of medical utilization and treatment guidelines, including the guidelines related to narcotic  
 30 prescriptions, and whether any cost savings are associated with the use of the guidelines and whether medical

1 providers are using the guidelines;

2 ~~(6)(7)~~ the use of stay-at-work and return-to-work forms and the interaction between medical providers  
3 and employers to determine if employers are getting more information on workers' return-to-work status; ~~and~~

4 (8) THE IMPACT ON EMPLOYEES OF CHANGES TO BENEFITS, THE DEFINITION OF PERMANENT PARTIAL DISABILITY,  
5 AND OTHER PROVISIONS ENACTED BY THE 2011 LEGISLATURE IN HOUSE BILL NO. 334; AND

6 ~~(7)(9)~~ the actions already taken to increase safety in the workplace and what other actions may be  
7 possible or necessary to enhance safety in the workplace.

8 BE IT FURTHER RESOLVED, that a study provide an opportunity for panel discussions and interaction  
9 by stakeholders, including attorneys, insurers, and any injured workers willing to participate.

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

12 BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review  
13 requirements, be concluded prior to September 15, 2014.

14 BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions,  
15 comments, or recommendations of the appropriate committee, be reported to the 64th Legislature.

16 - END -