



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

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

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

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

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

WHEREAS, previous studies of Montana's workers' compensation system have paid little attention to the workers' compensation court's structure, including whether the political nature of the judicial appointment process causes inconsistencies in the application of laws because of potential philosophical variations among judges; and

WHEREAS, several other states have dismantled their state-based workers' compensation funds and a 2003-2004 study of similarly changing Montana's workers' compensation system to allow the State Compensation Insurance Fund to become independent of the state was conducted by the State Compensation Insurance Fund itself, and a new review of the State Compensation Insurance Fund's independence is again timely;

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

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 review:

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

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

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

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

(5) the structure of the State Compensation Insurance Fund as a state agency, the implications of independence on the Montana workers' compensation insurance system, and the requirements for separating the State Compensation Insurance Fund from state government;

(6) the use of medical utilization and treatment guidelines, including the guidelines related to narcotic prescriptions, and whether any cost savings are associated with the use of the guidelines and whether medical providers are using the guidelines;

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

(8) the impact on employees of changes to benefits, the definition of permanent partial disability, and other provisions enacted by the 2011 Legislature in House Bill No. 334; and

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

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

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, 2014.

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 64th Legislature.

- END -

I hereby certify that the within joint resolution,
HJ 0025, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2013.

President of the Senate

Signed this _____ day
of _____, 2013.

HOUSE JOINT RESOLUTION NO. 25

INTRODUCED BY S. REICHNER

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