

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE LAWS RELATING TO WORKERS'
5 COMPENSATION LIABILITY; PROVIDING FOR WILLFULLY NEGLIGENT ACTS; DEFINING "WILLFULLY
6 NEGLIGENT"; AND AMENDING SECTION 39-71-413, MCA."

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9
10 **Section 1.** Section 39-71-413, MCA, is amended to read:

11 **"39-71-413. Liability of employer or fellow employee for willfully negligent or intentional and**
12 **deliberate acts -- additional cause of action -- negligent injury defined -- intentional injury defined. (1)**

13 (a) If an employee is negligently injured by a willfully negligent act of the employee's employer or by the willfully
14 negligent act of a fellow employee while performing the duties of employment, the employee or in the case of
15 death the employee's heirs or personal representatives, in addition to the right to receive compensation under
16 the Workers' Compensation Act, have a cause of action for damages against the person whose willfully
17 negligent act caused the injury.

18 (b) If an employee is intentionally injured by an intentional and deliberate act of the employee's
19 employer or by the intentional and deliberate act of a fellow employee while performing the duties of
20 employment, the employee or in case of death the employee's heirs or personal representatives, in addition to
21 the right to receive compensation under the Workers' Compensation Act, have a cause of action for damages
22 against the person whose intentional and deliberate act caused the intentional injury.

23 (b)(c) For the purposes of this section, the standard of proof for an act to be determined to be willfully
24 negligent or intentional and deliberate is clear and convincing evidence.

25 (2) An employer is not vicariously liable under this section for the willfully negligent or intentional and
26 deliberate acts of an employee.

27 (3) As used in this section:

28 (a) "intentional injury" means an injury caused by an intentional and deliberate act that is specifically

1 and actually intended to cause injury to the employee injured and there is actual knowledge that an injury is
2 certain to occur;

3 (b) "negligent injury" means an injury caused by a willfully negligent act wherein a fellow employee or
4 employee's employer knowingly or intentionally disregards facts that create a high probability of injury and:

5 (i) deliberately proceeds to act in conscious or intentional disregard of the high probability of injury; or

6 (ii) deliberately proceeds to act with indifference to the high probability of injury; and

7 (c) "willfully" and "negligent" have the meanings as defined in 1-1-204.

8 ~~(3) As used in this section, "intentional injury" means an injury caused by an intentional and deliberate~~
9 ~~act that is specifically and actually intended to cause injury to the employee injured and there is actual~~
10 ~~knowledge that an injury is certain to occur."~~

11 - END -