

HOUSE BILL NO. 178

INTRODUCED BY K. WALSH, S. FITZPATRICK

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING WORKERS' COMPENSATION LAWS RELATING TO WHEN THE EMPLOYEE IS ENGAGING IN SOCIAL OR RECREATIONAL ACTIVITY; REVISING LAWS RELATING TO EMPLOYEE INJURIES DURING SOCIAL OR RECREATIONAL ACTIVITIES AT THE WORKSITE OF THE EMPLOYER; AMENDING SECTION 39-71-407, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 39-71-407, MCA, is amended to read:

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

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

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

(b) engaged in ~~a~~an unpaid social or recreational activity, regardless of whether the employer pays for any portion of the activity or whether the activity occurs at the worksite of the employer. The exclusion from coverage of this subsection (2)(b) does not apply to an employee who, at the time of injury, is on paid time while participating in a social or recreational activity ~~or~~and whose presence at the activity is required or requested by the employer. For the purposes of this subsection (2)(b):

(i) "requested" means the employer asked the employee to assume duties for the activity so that the employee's presence is not completely voluntary and optional and the injury occurred in the performance of those duties; and

1 (ii) "social or recreational activity" means an activity that is generally undertaken by individuals for
2 exercise, relaxation, pleasure, or voluntary or optional preparation related to the employment.

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

6 (i) a claimed injury has occurred; or

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

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

10 (c) Objective medical findings are sufficient for a presumptive occupational disease as defined in
11 39-71-1401 but may be overcome by a preponderance of the evidence.

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

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

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

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

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

26 (b) For the purposes of this subsection (5), if an employee fails or refuses to take a drug test after
27 the accident and if the testing procedures comply with federal drug testing statutes and administrative
28 regulations applicable to private sector employers and employees as provided in Title 39, chapter 2, there is a

1 presumption that the major contributing cause of the accident was the employee's use of drugs not prescribed
2 by a physician.

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

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

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

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

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

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

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

27 (10) Except for cases of presumptive occupational disease as provided in 39-71-1401 and 39-71-
28 1402, an employee is not eligible for benefits payable under this chapter unless the entitlement to benefits is

1 established by objective medical findings that contain sufficient factual and historical information concerning the
2 relationship of the worker's condition to the original injury.

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

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

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

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

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

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

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

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

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

26 (15) In the case of pneumoconiosis, any coal mine operator who has acquired a mine in the state or
27 substantially all of the assets of a mine from a person who was an operator of the mine on or after December
28 30, 1969, is liable for and shall secure the payment of all benefits that would have been payable by that person

1 with respect to miners previously employed in the mine if acquisition had not occurred and that person had
 2 continued to operate the mine, and the prior operator of the mine is not relieved of any liability under this
 3 section.

4 (16) As used in this section, "major contributing cause" means a cause that is the leading cause
 5 contributing to the result when compared to all other contributing causes. (Void on occurrence of contingency--
 6 sec. 7, Ch. 158, L. 2019.)

7 **39-71-407. (Effective on occurrence of contingency) Liability of insurers -- limitations.** (1) For
 8 workers' compensation injuries, each insurer is liable for the payment of compensation, in the manner and to
 9 the extent provided in this section, to an employee of an employer covered under plan No. 1, plan No. 2, and
 10 the state fund under plan No. 3 that it insures who receives an injury arising out of and in the course of
 11 employment or, in the case of death from the injury, to the employee's beneficiaries, if any.

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

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

15 (b) engaged in ~~a~~an unpaid social or recreational activity, regardless of whether the employer pays
 16 for any portion of the activity or whether the activity occurs at the worksite of the employer. The exclusion from
 17 coverage of this subsection (2)(b) does not apply to an employee who, at the time of injury, is on paid time
 18 while participating in a social or recreational activity ~~or~~and whose presence at the activity is required or
 19 requested by the employer. For the purposes of this subsection (2)(b);:

20 (i) "requested" means the employer asked the employee to assume duties for the activity so that
 21 the employee's presence is not completely voluntary and optional and the injury occurred in the performance of
 22 those duties; and

23 (ii) "social or recreational activity" means an activity that is generally undertaken by individuals for
 24 exercise, relaxation, pleasure, or voluntary or optional preparation related to the employment.

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

27 (i) a claimed injury has occurred; or

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

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

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

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

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

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

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

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

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

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

28 (c) Nothing in this chapter may be construed to require an insurer to reimburse any person for

1 costs associated with the use of marijuana for a debilitating medical condition, as defined in 16-12-102.

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

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

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

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

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

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

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

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

27 (b) arises out of or is contracted in the course and scope of employment. An occupational disease
28 is considered to arise out of or be contracted in the course and scope of employment if the events occurring on

1 more than a single day or work shift are the major contributing cause of the occupational disease in relation to
2 other factors contributing to the occupational disease.

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

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

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

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

11 (15) In the case of pneumoconiosis, any coal mine operator who has acquired a mine in the state or
12 substantially all of the assets of a mine from a person who was an operator of the mine on or after December
13 30, 1969, is liable for and shall secure the payment of all benefits that would have been payable by that person
14 with respect to miners previously employed in the mine if acquisition had not occurred and that person had
15 continued to operate the mine, and the prior operator of the mine is not relieved of any liability under this
16 section.

17 (16) As used in this section, "major contributing cause" means a cause that is the leading cause
18 contributing to the result when compared to all other contributing causes."
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20 **NEW SECTION. Section 2. Effective date.** [This act] is effective on passage and approval.

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