

WORKERS' COMPENSATION SUBROGATION

LEGISLATOR NOTICE

The Legislative Services Division is required to offer a brief history on the subject matter of a bill draft request prior to drafting (5-4-105, MCA; [Chapter 309, Laws of 2017](#)). The history must include related legislation introduced over the last five sessions and hyperlinks to the bill, hearing information, and fiscal notes. The legislation links below open to the page showing the status and history of bills introduced on this topic in the past. The bill text and any related fiscal notes can be accessed through the link at the top of that page.

Legislation can be complex and this history is not intended to be exhaustive. Please contact the drafter of the requested bill for more information.

Background Materials and Research

Topic Summary: The Montana Supreme Court has consistently held that an insurer may not subrogate unless the insured had been made completely whole. However, prior to 2016 and due to the unique nature of Workers' Compensation insurance, it was unclear whether a workers' compensation insurer would be allowed to subrogate. The Montana Supreme Court clarified this in *Talbot v. WMK-Davis, LLC*, 2016 MT 247, 385 Mont. 109, 380 P.3d 823. Here, the court ruled that the Montana Constitution forbids workers' compensation insurance subrogation prior to an injured worker being made whole. As of 2018, Montana's workers' compensation subrogation statute, 39-71-414, MCA, has not been repealed or modified in response to *Talbot*.

Legislative Services Division Materials: HJR 25 Final Report, Economic Affairs Interim Committee:
<https://leg.mt.gov/content/Committees/Interim/2013-2014/Economic-Affairs/Committee-Topics/Required-Reports/eaic-final-report.pdf>.

Other Materials: Memorandum for Economic Affairs Interim Committee: Workers Compensation Subrogation Issues:
<https://leg.mt.gov/content/Committees/Interim/2013-2014/Economic-Affairs/Meetings/July-2014/HJR25-self-insurersMemo6-30-14.pdf>.

Introduced Legislation

2017

[LC1263](#) -- (C) Draft Died in Process -- AN ACT REPEALING WORKERS' COMPENSATION INSURANCE LAWS RELATING TO SUBROGATION; REPEALING SECTION 39-71-414, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

2015

[SB 288](#) -- (S) Vetoed by Governor -- AN ACT PROVIDING THAT A WORKERS' COMPENSATION INSURER HAS FULL SUBROGATION RIGHTS AGAINST AN AT-FAULT THIRD PARTY FOR MEDICAL CLAIMS REGARDLESS OF WHETHER DAMAGE AWARDS EXCEED A COMBINATION OF WORKERS' COMPENSATION BENEFITS AND THIRD-PARTY SETTLEMENTS; AMENDING SECTION 39-71-414, MCA; AND PROVIDING AN EFFECTIVE DATE.

2013

[HJ 25](#) -- (H) Filed with Secretary of State -- 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.

2011

[HB 334](#) -- Chapter Number Assigned -- AN ACT GENERALLY REVISING WORKERS' COMPENSATION LAWS; PROVIDING FOR CLOSURE OF CLAIMS; PROVIDING A PROCESS TO REOPEN MEDICAL CLAIMS; ESTABLISHING A MEDICAL DIRECTOR AND MEDICAL REVIEW PANEL; REVISING PERMANENT PARTIAL DISABILITY DEFINITION AND BENEFITS; CLARIFYING WHAT CONSTITUTES COURSE AND SCOPE OF EMPLOYMENT; ALLOWING RETROACTIVE BENEFIT PAYMENTS TO CERTAIN WORKERS; PROVIDING FOR SETTLEMENTS OF MEDICAL CLAIMS; PROVIDING FOR INSURER DESIGNATION OF TREATING PHYSICIANS; PROVIDING PAY SCALES FOR TREATING PHYSICIANS AND HEALTH CARE PROVIDERS; PROVIDING CERTAIN LIMITATIONS ON MEDICAL PAY SCHEDULES FOR THE BIENNIUM; REQUIRING THE LEGISLATIVE AUDITOR TO SUBMIT REPORTS ON THE MONTANA STATE FUND TO THE INSURANCE COMMISSIONER; REVISING VOCATIONAL REHABILITATION SERVICES AND TERMS TO ASSIST AN EMPLOYEE IN STAYING AT WORK OR RETURNING TO WORK; CREATING A STAY-AT-WORK/RETURN-TO-WORK ASSISTANCE FUND AND PROVIDING FOR ASSESSMENTS; EXTENDING RULEMAKING AUTHORITY; AMENDING SECTIONS 39-71-105, 39-71-116, 39-71-118, 39-71-225, 39-71-315, 39-71-320, 39-71-403, 39-71-407, 39-71-703, 39-71-704, 39-71-711, 39-71-721, 39-71-736, 39-71-741, 39-71-1011, 39-71-1025, 39-71-1031, 39-71-1101, 39-71-1102, 39-71-1106, AND 39-71-2361, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.

2009

N/A