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As of: ~~June 20, 2016 (11:15AM)~~ ~~March 8, 2016 (3:34PM)~~

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\*\*\*\*\*FOR ELG DISCUSSION PURPOSES ONLY\*\*\*\*\*

Introduced By \*\*\*\*\*

By Request of the \*\*\*\*\*

A Bill for an Act entitled: "An Act revising laws governing workers' compensation for volunteer firefighters; allowing cost-share assistance to be provided to certain volunteer fire departments to purchase workers' compensation coverage; requiring coverage for volunteer firefighters; requiring that a certain percentage of the fire insurance premium tax revenue be used for the cost-share assistance; establishing eligibility criteria to receive cost-share assistance; requiring [the department] to establish an application process; amending sections 7-33-4510, 33-2-708, 39-71-118, and 50-3-109, MCA; and providing effective dates."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Workers' compensation cost-share assistance -- eligibility -- funding -- account.** (1) An employer may apply to ~~{the department}~~ the department of labor and industry to receive cost-share assistance to purchase workers' compensation coverage for the employer's volunteer firefighters.

(2) ~~{The department}~~ The department shall develop an application

**Comment [SU1]:** DLI appears to be an appropriate entity to administer the cost-share program.

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form and an application process and shall establish eligibility criteria, consistent with the provisions of subsection (3), for providing cost-share assistance.

(3) (a) An employer ~~that operates with a budget with income~~ of less than \$20,000 a year is eligible to receive cost-share assistance for 95% of the costs of purchasing workers' compensation coverage for its volunteer firefighters.

**Comment [SU2]:** The intent is that the means test applies to the daily operating funds, not grant funds for equipment or other purchases. "Income" is defined in subsection (5).

(b) An employer ~~that operates with a budget with income~~ of \$20,000 a year or more and less than \$40,000 a year is eligible to receive cost-share assistance for 50% of the costs of purchasing workers' compensation coverage for its volunteer firefighters.

(c) An employer ~~that operates with a budget with income~~ of \$40,000 a year or more is not eligible for cost-share assistance under this section.

(4) Calculation of volunteer firefighter premiums must be made as provided in 39-71-745.

~~(5) There is an account in the state special revenue fund to the credit of [the department] for the purposes provided in subsections (1) through (3). The insurance commissioner shall deposit 12% of the money collected under 50-3-109 in the account.~~

**Comment [SU3]:** The language establishing the account is moved to its own section (Section 2) so it can become effective upon passage and approval and begin collecting the tax revenue.

(5) (a) For the purposes of this section, "income" means money received by the employer for the ongoing operations of the fire agency. The term does not include money received in the form on one-time-only grants for the purchase of equipment, buildings, or other property or for the provision of training.

(b) An applicant for cost-share assistance under this section

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shall provide to the department a detailed budget that distinguishes income from other revenue.

**NEW SECTION. Section 2. Workers' compensation cost-share**

assistance account. There is an account in the state special revenue fund to the credit of the department of labor and industry for the purposes provided in [section 1]. The insurance commissioner shall deposit 12% of the money collected under 50-3-109 into the account.

The amount in the account may not exceed \$250,000. Any amount over \$250,000 must be deposited in the general fund.

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Comment [SU4]: This was made a separate section so that it could be made effective upon passage and approval. Money could begin flowing into the account before the rest of the bill takes effect.

**Section 23.** Section 7-33-4510

, MCA, is amended to read:

**"7-33-4510. Workers' compensation for volunteer**

**firefighters -- definitions.** (1) An employer ~~may~~ shall provide workers' compensation coverage as provided in Title 39, chapter 71, to any volunteer firefighter ~~who is listed on a roster of service.~~

(2) An employer may:

(a) purchase workers' compensation coverage from any entity authorized to provide workers' compensation coverage under plan No. 1, 2, or 3 as provided in Title 39, chapter 71; and-

(b) apply for cost-share assistance to purchase workers' compensation coverage as provided in [section 1].

(3) ~~If an employer provides workers' compensation coverage as provided in this section, the employer may,~~ The employer shall, upon payment of the filing fee provided for in 7-4-2631(1)(a), file

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a roster of service with the clerk and recorder in the county in which the employer is located and update the roster of service monthly if necessary to report changes in the number of volunteers on the roster of service. The clerk and recorder shall file the original and replace it with updates whenever necessary. The employer shall maintain the roster of service with the effective date of membership for each volunteer firefighter.

(4) For the purposes of this section and [section 1], the following definitions apply:

(a) (i) "Employer" means the governing body of a fire agency organized under Title 7, chapter 33, including a rural fire district, a fire service area, a volunteer fire department, a volunteer fire company, or a volunteer rural fire control crew.

(ii) The term does not mean a governing body of a city of the first class or second class, including a city to which 7-33-4109 applies, that provides workers' compensation coverage to employees as defined in 39-71-118.

(b) "Roster of service" means the list of volunteer firefighters who have filled out a membership card prior to performing services as a volunteer firefighter.

(c) (i) "Volunteer firefighter" means a volunteer who is on the employer's roster of service. A volunteer firefighter includes a volunteer emergency medical technician as defined in 50-6-202 who is on the roster of service. A volunteer firefighter is not required to be an active member as defined in 19-17-102.

(ii) The term does not mean an individual who is not listed

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on a roster of service or a member of a volunteer fire department provided for in 7-33-4109."

{ Internal References to 7-33-4510:

7-6-621 39-71-118 39-71-118 39-71-745

39-71-745 39-71-745 39-71-745 39-71-745 }

**Section ~~34~~.** Section 33-2-708

, MCA, is amended to read:

**"33-2-708. Fees and licenses.** (1) (a) Except as provided in subsection (5), the commissioner shall collect a fee of \$1,900 from each insurer applying for or annually renewing a certificate of authority to conduct the business of insurance in Montana.

(b) The commissioner shall collect certain additional fees as follows:

(i) nonresident insurance producer's license:

(A) application for original license, including issuance of license, if issued, \$100;

(B) biennial renewal of license, \$50;

(C) lapsed license reinstatement fee, \$100;

(ii) resident insurance producer's license lapsed license reinstatement fee, \$100;

(iii) surplus lines insurance producer's license:

(A) application for original license and for issuance of license, if issued, \$50;

(B) biennial renewal of license, \$100;

(C) lapsed license reinstatement fee, \$200;

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(iv) insurance adjuster's license:

(A) application for original license, including issuance of license, if issued, \$50;

(B) biennial renewal of license, \$100;

(C) lapsed license reinstatement fee, \$200;

(v) insurance consultant's license:

(A) application for original license, including issuance of license, if issued, \$50;

(B) biennial renewal of license, \$100;

(C) lapsed license reinstatement fee, \$200;

(vi) viatical settlement broker's license:

(A) application for original license, including issuance of license, if issued, \$50;

(B) biennial renewal of license, \$100;

(C) lapsed license reinstatement fee, \$200;

(vii) resident and nonresident rental car entity producer's license:

(A) application for original license, including issuance of license, if issued, \$100;

(B) quarterly filing fee, \$25;

(viii) an original notification fee for a life insurance producer acting as a viatical settlement broker, in accordance with 33-20-1303(2)(b), \$50;

(ix) navigator certification:

(A) application for original certification, including issuance of certificate if issued, \$100;

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(B) biennial renewal of certification, \$50;  
(C) lapsed certification reinstatement fee, \$100;  
(x) 50 cents for each page for copies of documents on file in the commissioner's office.

(c) The commissioner may adopt rules to determine the date by which a nonresident insurance producer, a surplus lines insurance producer, an insurance adjuster, an insurance public adjuster, or an insurance consultant is required to pay the fee for the biennial renewal of a license.

(2) (a) The commissioner shall charge a fee of \$75 for each course or program submitted for review as required by 33-17-1204 and 33-17-1205, but may not charge more than \$1,500 to a sponsoring organization submitting courses or programs for review in any biennium.

(b) Insurers and associations composed of members of the insurance industry are exempt from the charge in subsection (2) (a).

(3) (a) Except as provided in subsection (3) (b), the commissioner shall promptly deposit with the state treasurer to the credit of the general fund all fines and penalties and those amounts received pursuant to 33-2-311, 33-2-705, 33-28-201, and 50-3-109.

(b) (i) The commissioner shall deposit 33% of the money collected under 33-2-705 in the special revenue account provided for in 53-4-1115.

(ii) The commissioner shall deposit 12% of the money collected under 50-3-109 in the special revenue account provided for in [section  
±2] and shall deposit the remaining amount in the general fund.

Comment [SU5]: Previous draft had not accounted for the remaining 88%.

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(c) All other fees collected by the commissioner pursuant to Title 33 and the rules adopted under Title 33 must be deposited in the state special revenue fund to the credit of the state auditor's office.

(4) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of \$10 will be refunded.

(5) The commissioner shall collect a licensing fee of \$500 for casualty insurance companies issuing policies of legal professional liability insurance pursuant to 33-1-206."

{*Internal References to 33-2-708:*

33-1-115	33-2-115	33-2-117	33-2-305
33-2-1217	33-4-101	33-17-211	33-17-211
33-17-211	33-17-219	33-17-241	33-17-301
33-17-301	33-17-401	33-17-503	33-17-1002
33-17-1204	33-17-1402	33-20-1303	33-20-1303
33-20-1303	33-20-1315	33-30-311	39-71-2375
50-3-109	53-4-1115		}

**Section 45.** Section 39-71-118

, MCA, is amended to read:

**"39-71-118. Employee, worker, volunteer, volunteer firefighter, and volunteer emergency medical technician defined.**

(1) As used in this chapter, the term "employee" or "worker" means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and



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minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic employment is excluded.

(b) any juvenile who is performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer, as defined in 39-71-117, and, except as provided in subsection (9), whether or not receiving payment from a third party. However, this subsection (1)(c) does not apply to students enrolled in vocational training programs, as outlined in this subsection, while they are on the premises of a public school or community college.

(d) an aircrew member or other person who is employed as a volunteer under 67-2-105;

(e) a person, other than a juvenile as described in subsection (1)(b), who is performing community service for a nonprofit

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organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer, as defined in 39-71-117, and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (1)(e):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(f) an inmate working in a federally certified prison industries program authorized under 53-30-132;

(g) a volunteer firefighter as described in 7-33-4109 and 7-33-4510 or a person who provides ambulance services under Title 7, chapter 34, part 1;

(h) a person placed at a public or private entity's worksite pursuant to 53-4-704. The person is considered an employee for workers' compensation purposes only. The department of public health and human services shall provide workers' compensation coverage for recipients of financial assistance, as defined in 53-4-201, or for participants in the food stamp program, as defined in 53-2-902, who

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are placed at public or private worksites through an endorsement to the department of public health and human services' workers' compensation policy naming the public or private worksite entities as named insureds under the policy. The endorsement may cover only the entity's public assistance participants and may be only for the duration of each participant's training while receiving financial assistance or while participating in the food stamp program under a written agreement between the department of public health and human services and each public or private entity. The department of public health and human services may not provide workers' compensation coverage for individuals who are covered for workers' compensation purposes by another state or federal employment training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for work of a similar nature at the assigned worksite.

(i) subject to subsection (11), a member of a religious corporation, religious organization, or religious trust while performing services for the religious corporation, religious organization, or religious trust, as described in 39-71-117(1)(d).

(2) The terms defined in subsection (1) do not include a person who is:

(a) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities;

(b) performing services as a volunteer, except for a person who is otherwise entitled to coverage under the laws of this state. As used in this subsection (2)(b), "volunteer" means a person who

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performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.

(c) serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(d) performing temporary agricultural work for an employer if the person performing the work is otherwise exempt from the requirement to obtain workers' compensation coverage under 39-71-401(2)(r) with respect to a company that primarily performs agricultural work at a fixed business location or under 39-71-401(2)(d) and is not required to obtain an independent contractor's exemption certificate under 39-71-417 because the person does not regularly perform agricultural work away from the person's own fixed business location. For the purposes of this subsection, the term "agricultural" has the meaning provided in 15-1-101(1)(a).

(3) With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter a volunteer as defined in subsection (2)(b) ~~or a volunteer firefighter as defined in 7-33-4510.~~

(4) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a member-managed limited liability

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company, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership or limited liability partnership, the owner of the sole proprietorship, or any member of the limited liability company devoting full time to the partnership, limited liability partnership, proprietorship, or limited liability company business.

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (4) (d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (4) (d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than \$900 a month and not more than 1 1/2 times the state's average weekly wage.

(5) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any corporate officer or manager exempted under

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39-71-401(2).

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the corporate officer or manager to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A corporate officer or manager is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) For the purposes of an election under this subsection (5), all weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (5)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than \$200 a week and not more than 1 1/2 times the state's average weekly wage.

(6) Except as provided in Title 39, chapter 8, an employee or worker in this state whose services are furnished by a person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(7) A student currently enrolled in an elementary, secondary, or postsecondary educational institution who is participating in

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work-based learning activities and who is paid wages by the educational institution or business partner is the employee of the entity that pays the student's wages for all purposes under this chapter. A student who is not paid wages by the business partner or the educational institution is a volunteer and is subject to the provisions of this chapter.

(8) For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection (8)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

- (i) nonresident employees are hired in Montana;
- (ii) nonresident employees' wages are paid in Montana;
- (iii) nonresident employees are supervised in Montana; and
- (iv) business records are maintained in Montana.

(9) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (8)(b) or (8)(d) as a condition of approving the

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election under subsection (8)(d).

(10) (a) An ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county may elect to include as an employee within the provisions of this chapter a volunteer emergency medical technician who serves public safety through the ambulance service not otherwise covered by subsection (1)(g) or the paid or volunteer nontransporting medical unit. The ambulance service or nontransporting medical unit may purchase workers' compensation coverage from any entity authorized to provide workers' compensation coverage under plan No. 1, 2, or 3 as provided in this chapter.

(b) If there is an election under subsection (10)(a), the employer shall report payroll for all volunteer emergency medical technicians for premium and weekly benefit purposes based on the number of volunteer hours of each emergency medical technician, but no more than 60 hours, times the state's average weekly wage divided by 40 hours.

(c) An ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, may make a separate election to provide benefits as described in this subsection (10) to a member who is either a self-employed sole proprietor or partner who has elected not to be covered under this chapter, but who is covered as a volunteer emergency medical technician pursuant to subsection (10)(a). When injured in the course and scope of employment as a volunteer emergency



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medical technician, a member may instead of the benefits described in subsection (10)(b) be eligible for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. If the separate election is made as provided in this subsection (10), payroll information for those self-employed sole proprietors or partners must be reported and premiums must be assessed on the assumed weekly wage.

(d) A volunteer emergency medical technician who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17, if the individual is also eligible as a volunteer firefighter.

(e) (i) The term "volunteer emergency medical technician" means a person who has received a certificate issued by the board of medical examiners as provided in Title 50, chapter 6, part 2, and who serves the public through an ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county.

(ii) The term does not include a volunteer emergency medical technician who serves an employer as defined in ~~7-33-4510~~ [section 1].

(f) The term "volunteer hours" means the time spent by a volunteer emergency medical technician in the service of an employer or as a volunteer for a town, city, or county, including but not limited to training time, response time, and time spent at the employer's premises.

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(11) The definition of "employee" or "worker" in subsection (1)(i) is limited to implementing the administrative purposes of this chapter and may not be interpreted or construed to create an employment relationship in any other context."

{*Internal References to 39-71-118:*

7-33-4510 39-71-117 39-71-123 39-71-401  
39-71-442 39-71-744 39-71-4003 50-71-112

50-71-204 }

**Section 56.** Section 50-3-109

, MCA, is amended to read:

**"50-3-109. Tax on fire insurance premiums.** (1) Each insurer authorized to effect insurance on risks enumerated in subsection (2) that is doing business in this state shall pay to the state auditor during the month of February or March in each year, in addition to the taxes on premiums required by law to be paid by it, taxes on the fire portion of the direct premiums on the enumerated risks received during the previous calendar year after deducting cancellations and return premiums. A tax of 2 1/2% must be deposited ~~in the general fund~~ as provided in 33-2-708.

(2) The risks referred to in subsection (1) are:

(a) insurance of houses, buildings, and all other kinds of property against loss or damage by fire or other casualty;

(b) all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether by land, water, or air;

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(c) insurance against loss or damage to motor vehicles resulting from accident, collision, or marine and inland navigation and transportation perils;

(d) insurance of growing crops against loss or damage resulting from hail or the elements;

(e) insurance against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers, pumps, or other apparatus;

(f) insurance against loss or legal liability for loss because of damage to property caused by the use of teams or vehicles, whether by accident or collision or by explosion of any engine, tank, boiler, pipe, or tire of any vehicle; and

(g) insurance against theft of the whole or any part of a vehicle."

{ Internal References to 50-3-109:

19-17-301 33-2-323 33-2-323 33-2-705

33-2-708 }

NEW SECTION. **Section 67.** {standard} Codification

**instruction.** [Section 1] is intended to be codified as an integral part of Title 7, chapter 33, part 45, and the provisions of Title 7, chapter 33, part 45, apply to [section 1].

NEW SECTION. Section 8. Effective dates. (1) [Sections 2 and 3] are effective on passage and approval.

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(2) [Section 1] and [sections 4 through 6] are effective  
on July 1, 2018.

**Comment [SU6]:** The immediate effective date would allow the 12% of the FIPT revenue to begin going into the new account right away. The delayed effective date for the remainder of the bill allows for money to build up in the account before the cost-share assistance program begins.

- END -

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