

Unofficial Draft Copy

As of: June 27, 2018 (12:17pm)

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**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act requiring workers' compensation coverage for volunteer firefighters; removing redundant disability provisions within volunteer firefighter or fire department relief association pension funds; providing for distribution of fund if fire department relief association is dissolved; superseding the unfunded mandate laws; amending sections 7-33-4510, 19-18-105, 19-18-501, 19-18-502, 19-18-601, 19-18-604, 19-18-605, and 39-71-118, MCA; repealing sections 19-17-501, 19-17-502, 19-17-503, 19-17-601, 19-17-602, 19-17-603, 19-17-604, 19-17-605, and 19-17-606, MCA; and providing a delayed effective date."

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

Section 1. Section 7-33-4510, MCA, is amended to read:

"7-33-4510. Workers' compensation for volunteer firefighters -- notification if coverage not provided -- 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 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,~~

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~~chapter 71.~~

~~(3)(2)~~ (2) If ~~an~~ An employer that provides workers' compensation coverage as provided in this section, ~~the employer may,~~ shall, upon payment of the filing fee provided for in 7-4-2631(1)(a), file 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) If an employer does not provide workers' compensation coverage, the employer shall annually notify the employer's volunteer firefighters that coverage is not provided.~~

~~(5)~~ (3) For the purposes of this section, 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

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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 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 r 39-71-118a 39-71-118 a 39-71-745x}

Section 2. Section 19-17-405, MCA, is amended to read:

"19-17-405. Survivorship benefits to surviving spouse or dependent children. (1) Subject to subsection (2) and the limitation in subsection (4), survivorship benefits equal to the full or partial pension benefits otherwise payable to the deceased member must be paid or continue to be paid to:

(a) the surviving spouse, unless the spouse is convicted of knowingly, purposely, or intentionally causing a member's death ~~or disability;~~

(b) the dependent children upon the spouse's death; or

(c) if the deceased member left no surviving spouse but left a dependent child, to the guardian or other person having custody of the dependent child.

(2) Benefits payable to a dependent child must be paid pursuant to 19-2-803.

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(3) The survivorship benefit must be paid in each of the following circumstances:

(a) the death ~~on or after July 1, 1995,~~ of a member who had at least 10 years of service and who was not receiving pension benefits; or

(b) the death ~~on or after July 1, 1985,~~ of a retired member who was receiving pension benefits but who had not received benefits for a total of 40 months.

(4) Survivorship benefits under subsection (1) terminate when benefits have been paid for a total of 40 months, including ~~any pension or disability~~ benefits paid to the retiree before death. At the request of the recipient, a lump-sum payment may be made in lieu of up to 40 months of survivorship benefits."

{*Internal References to 19-17-405:
19-12-405x*}

Section 3. Section 19-18-105, MCA, is amended to read:

"19-18-105. Establishment of disability and pension fund -- dissolution. (1) A fund to be known as the "disability and pension fund" of the fire department relief association of the city or town shall be established and maintained in every city or town where the fire department has formed or ~~hereafter~~ forms an association under 19-18-102.

(2) After [the effective date of this act], the fund must be divided into a disability account and a pension account.

(a) The disability account may be funded as provided in 19-18-501(1) and (3) through (5).

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(b) The pension account may be funded as provided in 19-18-501(1) and (2).

(3) Upon dissolution of the fund, the incorporating city or town shall revert any disability account funds not necessary for outstanding disability account distributions into the incorporating city or town's general fund and shall distribute the pension account funds to those eligible for a service pension."

{*Internal References to 19-18-105:*
19-11-105x 19-18-101x}

Section 4. Section 19-18-501, MCA, is amended to read:

"19-18-501. Contributions to fund. The disability and pension fund consists of:

(1) all bequests, fees, gifts, emoluments, donations, or money from other sources given or paid to the fund, except as otherwise designated by the donor⁷. The money received under this section, if not otherwise designated by the donor, must be distributed evenly between the disability fund and the pension fund.

(2) a monthly contribution to the fund by each paid or part-paid member of the association amounting to 6% of the member's regular monthly salary;

(3) the proceeds of the tax levy provided for in 19-18-504;

(4) all money received from the state, including those payments provided for in 19-18-512; and

(5) all interest and other income earned from the

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investment of the fund, which must be distributed between the disability account and the pension account in proportion to the investment contributions of each account."

{*Internal References to 19-18-501:*
19-11-501x 19-18-602x}

Section 5. Section 19-18-502, MCA, is amended to read:

"19-18-502. Refund of firefighter's contribution. (1) A firefighter is entitled to a refund, in a lump sum and without interest, of all the member's monthly contributions to the fund made under 19-18-501(2), within 60 days after permanent separation from service in the fire department, except for separation by reason of retirement, death, or disability that would otherwise qualify the firefighter or the firefighter's surviving spouse or children to receive workers' compensation benefits, including survivor's benefits ~~or an allowance from the association.~~

(2) A firefighter who is eligible to receive a partial service pension under 19-18-603 may either elect to take the refund provided for in this section or elect to receive the partial pension."

{*Internal References to 19-18-502:*
19-11-502x 19-18-603x}

Section 6. Section 19-18-601, MCA, is amended to read:

"19-18-601. Benefits the association may provide. ~~Every~~ A fire department relief association may ~~allow to its members~~ benefits for the following causes, as provided by law use the

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disability and pension fund only to pay for the following:

(1) a service pension to a member who, by reason of service, has become entitled to a service pension;

~~(2) to a member who has become maimed or disabled for life in line of duty;~~

~~(3) to a member who has suffered injury in line of duty;~~

~~(4) to a member who has contracted sickness in line of duty;~~

~~(5) funeral expenses of a member;~~

~~(6) pensions to the surviving spouse, orphan, or orphans of a deceased member.~~

(2) workers' compensation coverage for the fire department in the incorporated city or town that created the fire department relief association; or

(3) minor administrative expenses, as defined by the board of trustees formed under 19-18-104, to administer the service pension or the workers' compensation coverage. The minor administrative expenses may cover the bond required by 19-18-202."

{*Internal References to 19-18-601:*
19-11-601 x}

Section 7. Section 19-18-604, MCA, is amended to read:

"19-18-604. Disability pension. (1) Each A member who, prior to [the effective date of this act], received a disability pension from the association shall pay is eligible for a lump-sum payment of a disability pension upon a vote of the board of

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trustees and the agreement of the member. The lump-sum payment may be paid out of the disability account in the disability and pension fund but must be paid before July 1, 2020. ~~out of its disability and pension fund, to each of its members who has become disabled by reason of sickness or injury.~~

(2) The Any disability pension paid under this section must be equal to one-half of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for the member's services to the fire department of the city or town in which the association was formed.

~~(2)~~(3) A For a member who ~~completes~~ has completed by [the effective date of this act] 20 years of service and ~~elects~~ elected to serve additional years must receive the pension provided for in subsection (1) is increased at the rate of 1% per year for each additional year of service completed, up to a maximum of 60% of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for services as an active member of the fire department. This subsection (3) applies only to members who were eligible for the disability pension prior to [the effective date of this act].

~~(3)~~(4) The monthly pension paid to members must be at least one-half the regular monthly salary paid to a confirmed active firefighter of that city, as provided each year in the budget of that city. The monthly pension paid to a member retiring prior to July 1, 1974, must be at least \$200. In the case of volunteer

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firefighters who began receiving a disability pension before [the effective date of this act], the disability pension may not exceed \$125 a month.

(5) A member who was eligible for a disability pension paid over time prior to [the effective date of this act] may refuse a lump-sum payment provided for in subsection (1). The disability pension for that member must be paid out of the disability account."

{*Internal References to 19-18-604:*

19-11-604x 19-18-603 a 19-18-605a 19-18-605a}

Section 8. Section 19-18-605, MCA, is amended to read:

"19-18-605. Pensions to surviving spouses and children. (1) ~~Each~~ After [the effective date of this act], an association shall pay, out of ~~its~~ the pension account of the disability and pension fund, a monthly pension to the surviving spouse or children of a deceased member of the association who on the date of death was an active member of the fire department in the city or town in which the association was formed, and who had elected to retire from active service in the fire department and receive a service pension as provided for by 19-18-602, ~~or who, prior to death, had suffered a sickness or injury and was receiving or was qualified to receive a disability pension as provided by 19-18-604.~~ The pension must be equal to one-half of the last month's salary received as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, by the deceased member for services rendered as an active member of the fire

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department in the city or town in which the association was formed.

(2) If the deceased member completed 20 years of service and elected to serve additional years, the pension provided for in subsection (1) must be increased at the rate of 1% per a year for each additional year of service completed, up to a maximum of 60% of the last month's salary received as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, by the deceased member for services as an active member of the fire department.

(3) The monthly pension paid to the surviving spouse or children of an active member or an active member who elects to retire must be at least one-half the regular monthly salary paid to a confirmed active firefighter of that city, as provided each year in the budget of that city. The monthly pension paid to the surviving spouse or children of an active member who died prior to July 1, 1974, or who elected to retire before July 1, 1974, must be at least \$200. In the case of a volunteer firefighter, the pension paid to a surviving spouse or children may not exceed the amount provided for a service pension for a volunteer firefighter under 19-18-602(3).

(4) A pension may be paid to the surviving spouse only as long as the spouse remains unmarried. A surviving spouse is not entitled to a pension under this section if the marriage was entered into after the firefighter elected to retire from active service and began to receive a service pension as provided for by 19-18-602 or if the marriage was entered into after the

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firefighter ~~qualified for and~~ had begun to receive a disability pension as provided for by 19-18-604. The pension provided for in this section may not be paid to the children of deceased firefighters after they have attained 18 years of age.

(5) Survivors of a member of a fire department relief association after [the effective date of this act] are eligible for survivor benefits under Title 39, chapter 71, if the member died in the line of duty and had coverage under a workers' compensation policy."

{*Internal References to 19-18-605:
19-11-605x*}

Section 9. Section 39-71-118, MCA, is amended to read:

"39-71-118. Employee, worker, volunteer, volunteer firefighter, and volunteer emergency medical technician defined -- election of coverage. (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 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

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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 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

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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 [section 1] or a person who provides ambulance services under Title 7, chapter 34, part 1~~7~~. Determination of premiums and benefits for volunteer firefighters must be made as provided in 39-71-745.

(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 are placed at public or private worksites through an endorsement to the department of

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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

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person who 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

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partnership, sole proprietor, or a member-managed limited liability 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

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employer may elect to include as an employee within the provisions of this chapter any corporate officer or manager exempted under 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.

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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 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

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(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 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

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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 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) An ambulance service not otherwise covered by subsection (1)(g) or a nontransporting medical unit, as defined in 50-6-302, that does not elect to purchase workers' compensation coverage for its volunteer emergency medical technicians under the provisions of this section shall annually notify its volunteer emergency medical technicians that coverage is not provided.

(f) (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

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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.

(g) 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.

(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 a 39-71-117 x 39-71-123x 39-71-401x
39-71-442 x 39-71-744 x 39-71-4003 x 50-71-112x
50-71-204x}

NEW SECTION. **Section 10.** {standard} **Repealer.** The following sections of the Montana Code Annotated are repealed:

- 19-17-501. Eligibility for medical and funeral expenses.
- 19-17-502. Medical expenses.
- 19-17-503. Funeral expenses.
- 19-17-601. Eligibility for disability benefits.
- 19-17-602. Amount of disability benefit.
- 19-17-603. Determination of disability.
- 19-17-604. Medical review of certain disability retirees.

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19-17-605. Cancellation of disability benefits.

19-17-606. Time disability benefits commence.

{*Internal References to 19-17-501:* 19-12-501x
Internal References to 19-17-502: 19-12-502 x 19-17-501r
Internal References to 19-17-503: 19-12-503 x 19-17-501r
Internal References to 19-17-601: 19-17-602r
Internal References to 19-17-602: None.
Internal References to 19-17-603: 19-17-410x 19-17-601r
Internal References to 19-17-604: 19-17-408 x 19-17-605r 19-17-605r
Internal References to 19-17-605: 19-17-409x
Internal References to 19-17-606: None.}

NEW SECTION. Section 11. Unfunded mandate laws superseded.

The provisions of [this act] expressly supersede and modify the requirements of 1-2-112 through 1-2-116.

NEW SECTION. Section 12. {standard} Effective date. [This act] is effective January 1, 2020.

- END -

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