

HOUSE BILL NO. 17

INTRODUCED BY T. BERRY

BY REQUEST OF THE ECONOMIC AFFAIRS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING WORKERS' COMPENSATION INSURERS TO PROVIDE LOSS INFORMATION ON AN EMPLOYER'S POLICY TO THE EMPLOYER OR THE EMPLOYER'S INSURANCE PRODUCER OR BROKER; LIMITING DISCOVERY; PROVIDING A FINE; AMENDING SECTIONS 39-71-201 AND 39-71-606, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 39-71-201, MCA, is amended to read:

"39-71-201. Administration fund. (1) A workers' compensation administration fund is established out of which are to be paid upon lawful appropriation all costs of administering the Workers' Compensation Act and the statutory occupational safety and health acts that the department is required to administer, with the exception of the certification of independent contractors provided for in Title 39, chapter 71, part 4, the subsequent injury fund provided for in 39-71-907, and the uninsured employers' fund provided for in 39-71-503. The department shall collect and deposit in the state treasury to the credit of the workers' compensation administration fund:

(a) all fees and penalties provided in 39-71-107, 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-315, 39-71-316, 39-71-401(6), 39-71-606(6), 39-71-2204, 39-71-2205, and 39-71-2337;

(b) all penalties assessed under 50-71-119; and

(c) all fees paid by an assessment on paid losses, plus administrative fines and interest provided by this section.

(2) For the purposes of this section, paid losses include the following benefits paid during the preceding calendar year for injuries covered by the Workers' Compensation Act without regard to the application of any deductible whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) except for medical benefits in excess of \$200,000 for each occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

1 (3) Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of this section, and plan No.
2 3, the state fund, shall file annually on March 1 in the form and containing the information required by the
3 department a report of paid losses pursuant to subsection (2).

4 (4) Each employer enrolled under compensation plan No. 1, compensation plan No. 2, or compensation
5 plan No. 3, the state fund, shall pay its proportionate share determined by the paid losses in the preceding
6 calendar year of all costs of administering and regulating the Workers' Compensation Act and the statutory
7 occupational safety acts that the department is required to administer, with the exception of the certification of
8 independent contractors provided for in Title 39, chapter 71, part 4, the subsequent injury fund provided for in
9 39-71-907, and the uninsured employers' fund provided for in 39-71-503. In addition, compensation plan No. 3,
10 the state fund, shall pay a proportionate share of these costs based upon paid losses for claims arising before
11 July 1, 1990.

12 (5) (a) Each employer enrolled under compensation plan No. 1 shall pay an assessment to fund
13 administrative and regulatory costs. The assessment may be up to 3% of the paid losses paid in the preceding
14 calendar year by or on behalf of the plan No. 1 employer. Any entity, other than the department, that assumes
15 the obligations of an employer enrolled under compensation plan No. 1 is considered to be the employer for the
16 purposes of this section.

17 (b) An employer formerly enrolled under compensation plan No. 1 shall pay an assessment to fund
18 administrative and regulatory costs. The assessment may be up to 3% of the paid losses paid in the preceding
19 calendar year by or on behalf of the employer for claims arising out of the time when the employer was enrolled
20 under compensation plan No. 1.

21 (c) By April 30 of each year, the department shall notify employers described in subsections (5)(a) and
22 (5)(b) of the percentage of the assessment that comprises the compensation plan No. 1 proportionate share of
23 administrative and regulatory costs. Payment of the assessment provided for by this subsection (5) must be paid
24 by the employer in:

25 (i) one installment due on July 1; or

26 (ii) two equal installments due on July 1 and December 31 of each year.

27 (d) If an employer fails to timely pay to the department the assessment under this section, the
28 department may impose on the employer an administrative fine of \$500 plus interest on the delinquent amount
29 at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers'
30 compensation administration fund.

1 (6) (a) Compensation plan No. 3, the state fund, shall pay an assessment to fund administrative and
2 regulatory costs attributable to claims arising before July 1, 1990. The assessment may be up to 3% of the paid
3 losses paid in the preceding calendar year for claims arising before July 1, 1990. As required by 39-71-2352, the
4 state fund may not pass along to insured employers the cost of the assessment for administrative and regulatory
5 costs that is attributable to claims arising before July 1, 1990.

6 (b) Payment of the assessment must be paid in:

7 (i) one installment due on July 1; or

8 (ii) two equal installments due on July 1 and December 31 of each year.

9 (c) If the state fund fails to timely pay to the department the assessment under this section, the
10 department may impose on the state fund an administrative fine of \$500 plus interest on the delinquent amount
11 at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers'
12 compensation administration fund.

13 (7) (a) Each employer insured under compensation plan No. 2 or plan No. 3, the state fund, shall pay
14 a premium surcharge to fund administrative and regulatory costs. The premium surcharge must be collected by
15 each plan No. 2 insurer and by plan No. 3, the state fund, from each employer that it insures. The premium
16 surcharge must be stated as a separate cost on an insured employer's policy or on a separate document
17 submitted to the insured employer and must be identified as "workers' compensation regulatory assessment
18 surcharge". The premium surcharge must be excluded from the definition of premiums for all purposes, including
19 computation of insurance producers' commissions or premium taxes. However, an insurer may cancel a workers'
20 compensation policy for nonpayment of the premium surcharge. When collected, assessments may not constitute
21 an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose
22 of collection, must be treated as a separate cost imposed upon insured employers.

23 (b) The amount to be funded by the premium surcharge may be up to 3% of the paid losses paid in the
24 preceding calendar year by or on behalf of all plan No. 2 insurers and may be up to 3% of paid losses for claims
25 arising on or after July 1, 1990, for plan No. 3, the state fund, plus or minus any adjustments as provided by
26 subsection (7)(f). The amount to be funded must be divided by the total premium paid by all employers enrolled
27 under compensation plan No. 2 or plan No. 3 during the preceding calendar year. A single premium surcharge
28 rate, applicable to all employers enrolled in compensation plan No. 2 or plan No. 3, must be calculated annually
29 by the department by not later than April 30. The resulting rate, expressed as a percentage, is levied against the
30 premium paid by each employer enrolled under compensation plan No. 2 or plan No. 3 in the next fiscal year.

1 (c) On or before April 30 of each year, the department, in consultation with the advisory organization
2 designated pursuant to 33-16-1023, shall notify plan No. 2 insurers and plan No. 3, the state fund, of the premium
3 surcharge percentage to be effective for policies written or renewed annually on and after July 1 of that year.

4 (d) The premium surcharge must be paid whenever the employer pays a premium to the insurer. Each
5 insurer shall collect the premium surcharge levied against every employer that it insures. Each insurer shall pay
6 to the department all money collected as a premium surcharge within 20 days of the end of the calendar quarter
7 in which the money was collected. If an insurer fails to timely pay to the department the premium surcharge
8 collected under this section, the department may impose on the insurer an administrative fine of \$500 plus
9 interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be
10 deposited in the workers' compensation administration fund.

11 (e) If an employer fails to remit to an insurer the total amount due for the premium and premium
12 surcharge, the amount received by the insurer must be applied to the premium surcharge first and the remaining
13 amount applied to the premium due.

14 (f) The amount actually collected as a premium surcharge in a given year must be compared to the
15 assessment on the paid losses paid in the preceding year. Any excess amount collected must be deducted from
16 the amount to be collected as a premium surcharge in the following year. The amount collected that is less than
17 the assessed amount must be added to the amount to be collected as a premium surcharge in the following year.

18 (8) By July 1, an insurer under compensation plan No. 2 that pays benefits in the preceding calendar
19 year but that will not collect any premium for coverage in the following fiscal year shall pay an assessment of up
20 to 3% of paid losses paid in the preceding calendar year. The department shall determine and notify the insurer
21 by April 30 of each year of the amount that is due by July 1.

22 (9) An employer that makes a first-time application for permission to enroll under compensation plan No.
23 1 shall pay an assessment of \$500 within 15 days of being granted permission by the department to enroll under
24 compensation plan No. 1.

25 (10) The department shall deposit all funds received pursuant to this section in the state treasury, as
26 provided in this section.

27 (11) The administration fund must be debited with expenses incurred by the department in the general
28 administration of the provisions of this chapter, including the salaries of its members, officers, and employees and
29 the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503,
30 incurred while on the business of the department either within or without the state.

1 (12) Disbursements from the administration fund must be made after being approved by the department
2 upon claim for disbursement.

3 (13) The department may assess and collect the workers' compensation regulatory assessment
4 surcharge from uninsured employers, as defined in 39-71-501, that fail to properly comply with the coverage
5 requirements of the Workers' Compensation Act. Any amounts collected by the department pursuant to this
6 subsection must be deposited in the workers' compensation administration fund."

7

8 **Section 2.** Section 39-71-606, MCA, is amended to read:

9 **"39-71-606. Insurer to accept or deny claim within 30 days of receipt -- notice of benefits and**
10 **entitlements to claimants -- notice of denial -- notice of reopening -- notice to employer -- employer's right**
11 **to loss information -- jurisdiction -- penalty.** (1) Each insurer under any plan for the payment of workers'
12 compensation benefits shall, within 30 days of receipt of a claim for compensation signed by the claimant or the
13 claimant's representative, either accept or deny the claim and, if denied, shall inform the claimant and the
14 department in writing of the denial.

15 (2) The department shall make available to insurers for distribution to claimants sufficient copies of a
16 document describing current benefits and entitlements available under Title 39, chapter 71. Upon receipt of a
17 claim, each insurer shall promptly notify the claimant in writing of potential benefits and entitlements available by
18 providing the claimant a copy of the document prepared by the department.

19 (3) Each insurer under plan No. 2 or No. 3 for the payment of workers' compensation benefits shall notify
20 the employer of the reopening of the claim within 14 days of the reopening of a claim for the purpose of paying
21 compensation benefits.

22 (4) (a) Upon the request of an employer that it ~~is~~ an insurer currently insures or has insured in the
23 immediately preceding 5 years or upon the request of the employer's authorized insurance producer, an insurer
24 shall notify the employer of shall provide the loss information listed in subsection (4)(b) within 14 business days
25 of the request.

26 (b) Loss information to be provided under this subsection (4) must include for the period requested:

27 (i) all date of injury or occupational disease data for the employer's claims;

28 (ii) payment data on the employer's closed claims; and

29 (iii) payment data and loss reserve amounts on the employer's open claims, including all compensation
30 benefits that are ongoing and are being charged against that employer's account.

1 (c) The information provided under this subsection (4) is intended only for the purposes of the employer
2 that sought the information and may be used only for the requested purpose by an insurer or the employer's
3 insurance producer to whom the employer gives that information.

4 (5) Failure of an insurer to comply with the time limitations required in ~~this section~~ subsections (1) and
5 (3) does not constitute an acceptance of a claim as a matter of law. However, an insurer who fails to comply with
6 39-71-608 or ~~this section~~ subsections (1) and (3) may be assessed a penalty under 39-71-2907 if a claim is
7 determined to be compensable by the workers' compensation court.

8 (6) An insurer who fails to comply with subsection (4) is subject to a fine of \$500 if the insurer does not
9 respond in 14 business days and an additional \$500 if the insurer does not respond within 30 business days.
10 Fines for noncompliance must be deposited in the workers' compensation administration fund in 39-71-201.

11 (7) A dispute over the application of this section must be filed with the workers' compensation court."

12

13 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

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