

1 HOUSE JOINT RESOLUTION NO. 25

2 INTRODUCED BY S. REICHNER

3
4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF
5 MONTANA REQUESTING AN INTERIM STUDY OF MONTANA'S WORKERS' COMPENSATION SYSTEM
6 REGARDING SUBROGATION, THE WORKERS' COMPENSATION COURT STRUCTURE, AND VARIOUS
7 MEDICAL AND SAFETY COMPONENTS OF THE WORKERS' COMPENSATION SYSTEM.

8
9 WHEREAS, the term subrogation, frequently accompanied by the terms "made whole" and "third-party
10 tortfeasors", is not well understood among those not in the insurance or legal worlds, yet the real-world impacts
11 related to subrogation affect workers' compensation premiums paid by employers and affect injured workers who
12 receive medical and wage-loss benefits under workers' compensation but do not receive compensation for pain
13 and suffering or full wage-loss benefits, which may be available through subrogation if the worker's injuries were
14 caused by a third-party tortfeasor; and

15 WHEREAS, under section 39-71-414, MCA, workers' compensation insurers are allowed to pursue
16 subrogation and in certain cases to receive from third-party tortfeasors an offset of their workers' compensation
17 payouts, yet various Montana court cases, including State Compensation Insurance Fund v. McMillan, 2001 MT
18 168, 306 Mont. 155, 31 P.3d 347, have held that section 39-71-414, MCA, does not apply until a claimant is given
19 a chance to be made whole in a civil action against a third party or, as provided in Article II, section 16, of the
20 Montana Constitution, given "full legal redress for injury incurred in employment"; and

21 WHEREAS, workers' compensation insurers in other states may be able to successfully subrogate and
22 receive offsets against their costs thus potentially lowering workers' compensation premiums while in Montana
23 few insurers are willing to pay the court costs necessary to pursue subrogation because of concerns that under
24 the constitutional interpretations an injured worker first must be made whole; and

25 WHEREAS, this lack of a feasible, clear process to hold a third party responsible by workers'
26 compensation insurers who seek to recover costs through subrogation may contribute to workers' compensation
27 premiums in Montana being among the top 10 highest rates nationwide as determined by a biennial Oregon
28 workers' compensation analysis of national workers' compensation premiums; and

29 WHEREAS, previous studies of Montana's workers' compensation system have paid little attention to the
30 workers' compensation court's structure, including whether the political nature of the judicial appointment process

1 causes inconsistencies in the application of laws because of potential philosophical variations among judges; and
2 WHEREAS, although the changes in workers' compensation laws in 2011 were broad and are expected
3 to take time to show their ultimate impacts, some changes may be evident as to efficiencies regarding medical
4 utilization and treatment guidelines, efforts to improve return-to-work or stay-at-work policies, and on-the-job
5 safety and reports on these topics may help to determine if other statutory changes or other actions are needed
6 to help reduce the number of Montanans injured or killed on the job.

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8 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE
9 STATE OF MONTANA:

10 That the Legislative Council be requested to designate an appropriate interim committee, pursuant to
11 section 5-5-217, MCA, or direct sufficient staff resources to review:

12 (1) subrogation in light of Montana's Constitution and court cases regarding making an injured worker
13 "whole", including an examination of the meaning of "made whole" and the impacts of the lack of effective
14 subrogation on workers' compensation insurers;

15 (2) the use of subrogation in civil actions and in settlements and what lessons are to be learned
16 regarding application of the law for each approach;

17 (3) how other states handle subrogation for workers' compensation purposes;

18 (4) the structure of the workers' compensation court and whether nonpolitical appointments are feasible
19 or needed;

20 (5) the use of medical utilization and treatment guidelines, including the guidelines related to narcotic
21 prescriptions, and whether any cost savings are associated with the use of the guidelines and whether medical
22 providers are using the guidelines;

23 (6) the use of stay-at-work and return-to-work forms and the interaction between medical providers and
24 employers to determine if employers are getting more information on workers' return-to-work status; and

25 (7) the actions already taken to increase safety in the workplace and what other actions may be possible
26 or necessary to enhance safety in the workplace.

27 BE IT FURTHER RESOLVED, that a study provide an opportunity for panel discussions and interaction
28 by stakeholders, including attorneys, insurers, and any injured workers willing to participate.

29 BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be
30 presented to and reviewed by an appropriate committee designated by the Legislative Council.

1 BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review
2 requirements, be concluded prior to September 15, 2014.

3 BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions,
4 comments, or recommendations of the appropriate committee, be reported to the 64th Legislature.

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