

1 HOUSE BILL NO. 130

2 INTRODUCED BY FITZPATRICK

3 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING STATUTES THAT APPLY TO THE
 6 UNINSURED EMPLOYERS' FUND; CLARIFYING WORKERS' COMPENSATION COURT JURISDICTION FOR
 7 DISPUTES INVOLVING AN UNINSURED EMPLOYER OR AN EMPLOYER ALLEGED TO BE UNINSURED;
 8 PROVIDING FOR CASE REFERRAL TO A COUNTY ATTORNEY; ESTABLISHING PARTIES WHO MUST BE
 9 NAMED IN CERTAIN DISPUTES INVOLVING UNINSURED EMPLOYERS OR THE UNINSURED EMPLOYERS
 10 FUND; AMENDING SECTIONS 39-71-501, 39-71-503, 39-71-505, 39-71-515, 39-71-516, AND 39-71-541, MCA;
 11 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND ~~A RETROACTIVE~~ AN APPLICABILITY DATE."
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13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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15 **Section 1.** Section 39-71-501, MCA, is amended to read:

16 **"39-71-501. Definition of uninsured employer.** For the purposes of ~~39-71-501, 39-71-503 through~~
 17 ~~39-71-511, 39-71-515 through 39-71-520, and 39-71-541,~~ the Workers' Compensation Act, the term "uninsured
 18 employer" means an employer who has not properly complied with the provisions of 39-71-401."
 19

20 **Section 2.** Section 39-71-503, MCA, is amended to read:

21 **"39-71-503. Uninsured employers' fund -- purpose and administration of fund -- legislative intent**
 22 **-- maintaining balance for administrative costs -- appropriation.** (1) There is created an uninsured employers'
 23 fund in the state special revenue account to pay:

24 (a) to an injured employee of an uninsured employer the ~~same~~ benefits the employee would have
 25 received if the employer had been properly enrolled under compensation plan No. 1, 2, or 3, except as provided
 26 for in 39-71-505 and subject to the limitations in 39-71-510 and subsection (3) (4) of this section;

27 (b) the costs of investigating and prosecuting workers' compensation fraud under 2-15-2015; and

28 (c) the expenses incurred by the department in administering the uninsured employers' fund.

29 (2) It is the intent of the legislature that the uninsured employers' fund is not an insurer as defined in
 30 39-71-116 because the uninsured employers' fund is intended to be a safety net for injured workers of employers

1 that do not properly obtain workers' compensation coverage.

2 ~~(2)~~(3) The department may refer to a county attorney or to the workers' compensation fraud office,
3 established in 2-15-2015, cases involving:

4 (a) false or fraudulent claims for benefits from the fund, as provided in 39-71-316; and

5 (b) criminal violations of 45-7-501 for employer misconduct.

6 ~~(3)~~(4) (a) Except as provided in subsection ~~(3)(b)~~ (4)(b), surpluses and reserves may not be kept for the
7 fund. The department shall make payments that it considers appropriate as funds become available from time
8 to time. The payment of ~~weekly~~ disability benefits takes precedence over the payment of medical benefits.
9 Lump-sum payments of future projected benefits, including impairment awards, may not be made from the fund
10 except as provided in 39-71-519. The board of investments shall invest the money of the fund, and the investment
11 income must be deposited in the fund.

12 (b) The department shall maintain at least a 3-month balance based on projected budget costs for
13 administration of the fund. The balance for administrative costs may be used by the department only in
14 administering the fund.

15 (c) The maximum aggregate medical benefits expenditure that may be made from the fund may not
16 exceed \$100,000 for any single claim regardless of whether the claim arises from an injury or an occupational
17 disease.

18 (d) All disability payments paid under this part must be made at the end of each ~~4-week~~ 2-WEEK period.

19 ~~(4)~~(5) The amounts necessary for the payment of benefits from the fund are statutorily appropriated, as
20 provided in 17-7-502, from the fund."

21

22 **Section 3.** Section 39-71-505, MCA, is amended to read:

23 **"39-71-505. Applicability to fund of other provisions of chapter that refer to insurers --**
24 **applicability to fund of other provisions of chapter.** (1) ~~All appropriate~~ The following provisions in the Workers'
25 Compensation Act that refer to insurers apply to the fund established in 39-71-503 in the same manner as they
26 apply to compensation plans No. 1, 2, and 3;

27 (a) 39-71-106, 39-71-107(1) through (3), (6), and (10), 39-71-116(41)(f), and 39-71-118;

28 (b) 39-71-225(1) through (6);

29 (c) 39-71-316;

30 (d) 39-71-401, 39-71-405, 39-71-407, 39-71-408, 39-71-414, and 39-71-415;

1 (e) 39-71-601, 39-71-603 through 39-71-605, 39-71-606(1), (2), and (4), 39-71-607 through 39-71-610,
 2 and 39-71-615;

3 (f) 39-71-701, 39-71-702, 39-71-704, 39-71-710 through 39-71-712, 39-71-714, 39-71-717, 39-71-721,
 4 39-71-724, 39-71-727, and 39-71-741 through 39-71-744;

5 (g) 39-71-1006, 39-71-1011, 39-71-1014, 39-71-1025, 39-71-1031, 39-71-1032, and 39-71-1036;

6 (h) 39-71-1101 through 39-71-1104 and 39-71-1106 through 39-71-1108;

7 (i) 39-71-2406, 39-71-2408, and 39-71-2411;

8 (j) 39-71-2905 and 39-71-2909;

9 (k) 39-71-4002 and 39-71-4004.

10 (2) The following provisions of the Workers' Compensation Act that refer to insurers do not apply to the
 11 fund established in 39-71-503:

12 (a) 39-71-107(4), (5), (7), and (8);

13 (b) 39-71-201 and 39-71-225(7);

14 (c) 39-71-306, 39-71-307, 39-71-320, and 39-71-325;

15 (d) 39-71-421 and 39-71-433 through 39-71-435;

16 (e) 39-71-606(3) and (5), 39-71-611, 39-71-612, 39-71-613(4), and 39-71-614;

17 (f) 39-71-1004, 39-71-1041 through 39-71-1043, 39-71-1049, and 39-71-1050;

18 (g) 39-71-1105;

19 (h) 39-71-2203 through 39-71-2205 and 39-71-2215(4)(b); and

20 (i) 39-71-2907.

21 (3) All other appropriate provisions in the Workers' Compensation Act apply to the fund established in
 22 39-71-503 in the same manner as they apply to compensation plans No. 1, 2, and 3, except for the following that
 23 do not apply:

24 (a) 39-71-740 and 39-71-1003; and

25 (b) all sections in parts 9 and 15 of this chapter."

26

27 **Section 4.** Section 39-71-515, MCA, is amended to read:

28 **"39-71-515. Independent cause of action.** (1) An injured employee or the employee's beneficiaries
 29 have an independent cause of action against an uninsured employer for failure to be enrolled in a compensation
 30 plan as required by this chapter.

1 (2) In an action described in subsection (1), prima facie liability of the uninsured employer exists if the
2 claimant proves, by a preponderance of the evidence, that:

3 (a) the employer was required by law to be enrolled under compensation plan No. 1, 2, or 3 with respect
4 to the claimant; and

5 (b) the employer was not enrolled on the date of the injury or death.

6 (3) It is not a defense to an action that the employee had knowledge of or consented to the employer's
7 failure to carry insurance or that the employee was negligent in permitting the failure to exist.

8 (4) The amount of recoverable damages in an action is the amount of compensation that the employee
9 would have received had the employer been properly enrolled under compensation plan No. 1, 2, or 3.

10 (5) A plaintiff who prevails in an action brought under this section is entitled to recover reasonable costs
11 and attorney fees incurred in the action, in addition to damages.

12 (6) The rights provided by this section are granted without prejudice to the ability of an injured employee
13 or an employee's beneficiaries to file a petition with the workers' compensation judge pursuant to 39-71-541."
14

15 **Section 5.** Section 39-71-516, MCA, is amended to read:

16 **"39-71-516. District court venue and jurisdiction for independent cause of action.** (1) An injured
17 employee or an employee's beneficiaries pursuing an independent cause of action pursuant to 39-71-515 shall
18 bring the action in the district court in the district where the claimant resides or where the alleged violation
19 occurred. The court may grant interim relief that it considers appropriate, including but not limited to injunctive
20 relief, attachment, or receivership. The court may request the workers' compensation judge to determine the
21 amount of recoverable damages due to the employee.

22 (2) The rights provided by this section are granted without prejudice to the power of the workers'
23 compensation judge to hear and decide a petition for hearing filed pursuant to 39-71-541."
24

25 **Section 6.** Section 39-71-541, MCA, is amended to read:

26 **"39-71-541. ~~Uninsured employer as party to benefits~~ Parties to disputes involving uninsured**
27 **~~employer's fund~~ -- indemnification by uninsured employer for benefits paid -- lien for payment -- levy and**
28 **execution.** (1) ~~An uninsured employer or an employer alleged to be uninsured is a party to all disputes~~
29 ~~concerning any benefits for which the employer may become obligated to indemnify the department pursuant to~~
30 ~~39-71-504(1)(b).~~ When there is a dispute over the payment of benefits from the uninsured employers' fund,

1 including the denial of liability, and a petition for hearing is filed with the workers' compensation judge pursuant
 2 to 39-71-2905, the following must be named as parties to the action:

3 (a) the injured worker or the injured worker's beneficiaries;

4 (b) any employer alleged to be an uninsured employer that is liable for the claim for benefits; and

5 (c) the uninsured employers' fund.

6 (2) When there is a dispute over whether an uninsured employer is liable to indemnify the fund as
 7 provided in 39-71-504(1)(b) and a petition for hearing is filed with the workers' compensation judge pursuant to
 8 39-71-2905, the following must be named as parties to the action:

9 (a) the employer alleged to be an uninsured employer that is liable for the claim for benefits;

10 (b) the injured worker or the injured worker's beneficiaries; and

11 (c) the uninsured employers' fund.

12 (3) Any dispute filed under subsection (1) is separate from an injured employee's or an employee's
 13 beneficiary's right to pursue an independent cause of action pursuant to 39-71-515 and 39-71-516.

14 ~~(2) (a) After mediation pursuant to department rules, an uninsured employer or an employer alleged to~~
 15 ~~be uninsured is joined as a party when a dispute over benefits is brought before the workers' compensation judge~~
 16 ~~pursuant to 39-71-2905.~~

17 ~~(b)(4) (a)~~ The workers' compensation judge may enter a judgment, including a default judgment, requiring
 18 an uninsured employer to indemnify the department with respect to any benefits paid or ordered payable by the
 19 department in relation to the claim.

20 ~~(c)(b)~~ If a judgment ordered under subsection ~~(2)(b)~~ (4)(a) includes a specific amount paid or ordered
 21 payable, the department may issue to the uninsured employer a certificate listing the amount of payment due and
 22 directing the clerk of the district court of any county in the state to enter the certificate as a judgment on the docket
 23 pursuant to 25-9-301. The judgment becomes a lien on all real property of the uninsured employer from the time
 24 of being entered on the docket.

25 ~~(3)(5)~~ (a) An uninsured employer is obligated to make claim reimbursements as provided in
 26 39-71-504(1)(b), plus the interest and other charges assessed on the claim reimbursement as provided in
 27 39-71-504(2), when demand for those payments is made to the uninsured employer.

28 (b) If the uninsured employer does not make the payments and does not dispute the obligation in the
 29 manner provided by 39-71-520, the department may issue a certificate listing the amount of payment due and
 30 directing the clerk of the district court of any county in the state to enter the certificate as a judgment on the docket

1 pursuant to 25-9-301. The judgment becomes a lien on all real property of the uninsured employer from the time
2 of being entered on the docket.

3 ~~(4)(6)~~ A judgment lien filed pursuant to this section may be renewed for another 10-year period upon
4 motion of the lienholder or by a judgment for that purpose."

5
6 NEW SECTION. Section 7. Saving clause. [This act] does not affect rights and duties that matured,
7 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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9 NEW SECTION. Section 8. Effective date. [This act] is effective on passage and approval.

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11 ~~NEW SECTION. Section 9. Retroactive applicability.~~ [This act] applies retroactively, within the
12 meaning of 1-2-109, to uninsured employers' fund claims filed on or after July 1, 1993.

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14 NEW SECTION. SECTION 9. APPLICABILITY. [THIS ACT] APPLIES TO UNINSURED EMPLOYERS' FUND CLAIMS
15 THAT ARISE ON OR AFTER [THE EFFECTIVE DATE OF THIS ACT].

16 - END -