

2015 WORKERS' COMPENSATION LEGISLATIVE SUMMARY

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BILLS SIGNED INTO LAW:

HB90 – By Rep. Andrea Olsen – Requested by the Department and Supported by LMAC – Effective July 1, 2015

Amends 39-71-107 – Requires 14 day written notice advising claimant of change in claims examiner.

Amends 39-71-704 – Decreases medical fee schedule updates from three times per year to one update each July using codes in effect on the previous January.

Amends 39-71-736 – Allows for receipt of vacation leave and paid time off leave, other than sick leave, concurrently with TTD.

Amends 39-71-915 – Changes the Subsequent Injury Fund assessment from the preceding fiscal year to the total amount paid by the fund from April 1 of the previous year through March 31 of the current year.

HB95 – By Rep. Kelly McCarthy – Revises Public Adjuster Laws – Effective March 30, 2015

Amends 33-1-402, 33-2-708, 33-17-102, 33-17-301, 33-17-1001, 33-17-1002, 33-17-1004, 33-17-1202, 33-17-1203, and 33-17-1205

This bill is included to clarify for Department employees the definitions of a “public adjuster” and an “adjuster” under the MT Insurance Code. A public adjuster means an adjuster employed by and representing the interest of the insured, not the insurance company. An adjuster means a person, who is an employee or independent contractor of an insurer, (insurance company) who investigates and negotiates settlement of claims on behalf of the insurer.

Although this bill does not impact workers’ compensation claims examiners, Plan 2 claims examiners and now due to SB123, Plan 3 claims examiners who adjust workers’ compensation and other lines of insurance are required to be licensed by the Insurance Commissioner and comply with all other laws regarding an “adjuster”.

Questions regarding “adjusters” should be referred to the Insurance Commissioner.

HB503 – By Rep. Tom Berry – Provides that loss information must be provided to the policyholder upon request – Effective April 23, 2015

Amends 39-71-606 – Upon request by the employer, if the insurer currently insures or has insured in the immediately preceding 5 years or when requested by the employer’s designated insurance producer, the insurer shall provide loss information for the period requested including all claim data for the employer’s claims; payment data on the employer’s closed claims; and payment data and loss reserve amounts on the employer’s open claims within 10 calendar days. The information is confidential insurance information and may not be disclosed for any other purpose without the express written consent of the insurer.

HB538 – By Rep. Mike Miller – Allowing a Montana (MT) employer to obtain coverage from North Dakota (ND) for its MT workers solely working in ND – Effective July 1, 2015 and terminates June 30, 2019

Amends 39-71-401 – Allows an employee of an employer in this state who is employed by the employer to work solely in ND and who is required by the laws of ND to be covered for workers' compensation while working in ND, is not considered to be an employee in MT while the employer maintains coverage in ND. "Work solely in ND" means the employee does not perform job duties in MT and coverage is required in ND. Travel that is commuting to and from a job site in ND from a MT location does not constitute performing job duties in MT even if the employer pays for the costs of travel or if the worker is paid for the travel time.

The MT insurer may require proof of the ND coverage and records of work in ND. The Department will develop a verification of employment form for use in MT.

SB4 – By Sen. Tom Facey – Authorizing appointment of substitute workers' compensation judges during vacancy – Requested by the Department and Supported by the LMAC - Effective October 1, 2015

Amends 39-71-2901 – Requires the chief justice to select a substitute judge within 30 days of receipt of the notice of vacancy if the workers' compensation judge becomes vacant and before the vacancy is permanently filled. If a temporary vacancy occurs due to a disability that precludes the judge from carrying out the duties for more than 60 days, a substitute judge must be appointed by the chief justice. The substitute may not serve longer than 90 days.

SB7 – By Sen. Roger Webb – Revising the Prescription Drug Registry – Effective July 1, 2015

Amends 37-7-1511 – Raises the nonrefundable fee to persons authorized to prescribe, dispense, or distribute controlled substances not to exceed \$30. The fees are used to defray the costs of maintaining the registry and the fees terminate June 30, 2017.

SB123 – By Sen. Bruce Tutvedt – Revising the regulatory authority over the Montana State Fund to provide regulatory and complaint processes under the insurance commissioner that generally apply to private workers' compensation insurers – Effective January 1, 2016 and applies to rates effective on or after July 1, 2016 for new and renewal policies

Amends 2-4-101, 17-1-102, 17-2-110, 33-1-102, 33-2-1902, 33-16-303, 33-16-1002, 33-16-1008, 33-16-1021, 33-16-1033, 33-16-1035, 39-71-2312, 39-71-2315, 39-71-2316, 39-71-2323, 39-71-2330, 29-71-2332, 39-71-2351, 39-71-2361, and 39-71-2363; repealing sections 33-16-1024, 39-71-2314, and 39-71-2362 – Provides general regulatory authority by the Insurance Commissioner for financial, rates, and policyholder complaints. The Department of Labor & Industry continues to perform regulatory functions in Workers' Compensation Act. Recommend reading the bill for specific changes.

SB258 – By Sen. Brian Hoven – Revises the definition of employer with regard to certain religious organizations – Effective October 1, 2015

Amends 39-71-117 and 39-71-118 – At the request of the Hutterites, an employer means a religious organization receiving remuneration from nonmembers for manufacturing or construction activities conducted by its members on or off the property owned or leased by the religious organization; or agricultural labor and services performed off the property owned or leased by the religious organization.

The definition of an employer in 39-71-117 and the definition of an employee in 39-71-118 for religious organizations is intended to implement administrative purposes of this chapter and not to be interpreted to create an employment relationship in any other context.

SB259 – By Sen. Bruce Tutvedt – Requested by the Department and Supported by LMAC – Transition clause effective April 29, 2015; Section 8 (Occupational Safety and Health Administration Assessment) effective July 1, 2016; remainder of bill effective July 1, 2015

Amends 39-71-201, 38-71-435, 39-71-1050, 50-71-113, 50-71-119, 50-72-106, and 50-73-107

Increases the workers' compensation assessment cap from up to 3% of benefits paid in the preceding year to up to 4% of benefits paid in the preceding year – Effective July 1, 2015.

Creates a separate occupational and safety administration assessment capped at up to 2% of benefits paid in the preceding year – Effective July 1, 2016.

SB347 – By Sen. Tom Facey – Revise coverage options for volunteer emergency medical and ambulance services – Effective July 1, 2015

Amends 39-71-118 – Allows an ambulance service or nontransporting medical unit to purchase workers' compensation coverage from Plan 1, 2, or 3.

SB379 – By Sen. Gordon Vance – Require the State Fund to submit a report on its budget to the Economic Affairs Interim Committee – Effective April 27, 2015

Amends 5-5-223 – State must annually provide a report on its Board of Director's approved budget to the committee.

SB396 – By Sen. Edward Buttrey - Generally revise regulation of transportation for hire laws- Effective July 1, 2015

Amending sections 7-1-111, 69-12-101, 69-12-102, 69-12-205, 69-12-210, 69-12-301, 69-12-311, 69-12-312, 69-12-313, 69-12-314, 69-12-321, 69-12-323, 69-12-324, 69-12-404, 69-12-406, 69-12-407, 69-12-415 and 69-12-501, repealing section 69-12-328, MCA.

This bill creates "Transportation Network Carriers and Drivers" (Uber, Lyft, etc) and exempts them from certain regulations by the PSC related to Taxicabs, Limousines, or For-hire vehicles. The bill also provides regulation of Transportation Network Carriers and Drivers regarding fees, operating requirements, financial responsibility, disclosures, insurance requirements, and exemption from local government regulation. It is unclear if the drivers will meet the Montana definition of an Independent Contractor or Employee. The Department will provide information about Montana's independent contractor laws to Transportation Network Carriers advertising for drivers in Montana.

BILLS VETOED BY GOVERNOR:

SB 288 – By Sen. Bruce Tutvedt – Medical recovery of medical payments from at fault parties – Effective July 1, 2015 – Vetoed by Governor April 29, 2015 – Governor's veto letter requested the issue of impact on modification factors be reviewed and considered by the LMAC.

Amended 39-71-414 – Provided that the insurer is entitled to full subrogation rights for all medical benefits paid, regardless of whether the claimant is able to demonstrate damages in excess of the workers' compensation benefits and the third-party recovery combined.

BILLS THAT FAILED TO PASS:

HB 17 – Rep. Tom Berry, at the request of the EAIC - Require workers’ compensation insurers to provide loss information.

The bill would have required a current workers’ compensation insurer or insurer providing coverage within the past 5 years to provide loss information to the insured employer. This bill was tabled in Committee at the request of Rep. Berry since he introduced HB 503, a similar piece of legislation which is detailed earlier in this report.

Tabled in House Business and Labor Committee.

HB271 – By Rep. Olszewski – Revising laws relating to the dispensing of drugs by medical practitioners to allow for the dispensing of drugs by physicians.

Amended 37-2-104 and 37-7-103 – Allowed a physician to dispense a drug that the physician prescribed if the dispensing was in accordance with the drug labeling requirements of the board of pharmacy.

Tabled in the House Human Services Committee.

HB299 – Rep. Mark Noland – Increased notification regarding penalties for fraudulent workers’ compensation claims for benefits.

Amended 39-71-316 and 39-71-606 – Required the Department and insurer to notify the claimant of the penalties for fraudulent claim reporting and provided the penalty to be used to promote fraud prevention efforts.

Tabled in the Senate Business, Labor and Economic Affairs Committee.

HB362 – Rep. Mary Ann Dunwell – Expanded standards of workplace health and safety for public sector employees.

Amended 50-71-112, 50-71-113, 50-71-116, 50-7-118, and 50-71-119 – Required the public employer to provide notice of exposure of hazards to employees and perform environmental testing of buildings prior to occupancy. Added occupational diseases to the Department’s inspection authority and provided employees the opportunity to observe any testing of exposed hazards and access inspection reports.

Tabled in House Human Services Committee.

HB413 – By Rep. Chuck Hunter and Sen. Bruce Tutvedt – Provided enabling legislation to create a Montana Private Sector Occupational Safety and Health Act – Requested by the Department and Supported by the LMAC and the Governor’s Office.

Amended 29-2-912, 39-71-201, and 49-2-301 – Assigned administrative, rulemaking, and enforcement duties to the Department; provided a funding mechanism, provided for a safety advisory council; provided for voluntary safety consultations; provided safety responsibilities for private sector employers and employees; provided for inspections, citations, monetary penalties, and due process protections; provided for stop-work orders and civil injunctive relief; and provided for whistle-blower protection for employees.

Failed on the House Floor.

HB500 – Rep. Andrea Olsen – Revised the terms for designating a treating physician.

Amended 39-71-1101 – Allows the injured worker to choose a second treating physician after the initial treating physician diagnoses the condition. The insurer may verify the second treating physician agrees to carry out the

responsibilities of the treating physician. After the insurer accepts liability, the insurer may change the treating physician if the physician fails to comply with the responsibilities or at any time with the consent of the worker.

Tabled in the House Business and Labor Committee.

HB622 – Rep. Ryan Lynch – Revised choice of treating physician.

Amended 39-71-201 and 39-71-1101 – Allows the worker to choose a second treating physician prior to designation by an insurer and provides for a change fee by the worker or the insurer if changes are made.

Withdrawn by the sponsor prior to hearing.

SB3 – Sen. Tom Facey at the request of the Department and supported by LMAC – Revised the impairment rating required for eligibility for vocational rehabilitation benefits.

Amended 39-71-1006 – Decreased the impairment rating needed without a wage loss from 15% to 10% for to be eligible for vocational rehabilitation services and benefits.

Tabled in the Senate Business, Labor and Economic Affairs Committee.

SB103 – Sen. Mary Caferro – Established a presumption in favor of professional firefighters for certain diseases.

Amended 39-71-116 and 39-71-2316 – Established a rebuttal presumption that certain diseases arose out of or was contracted in the course and scope of employment if the firefighter met the conditions described in the bill. Required use of a firefighter classification code and rating for all three coverage plans.

Tabled in the Senate Business, Labor and Economic Affairs Committee.

SB254 – Sen. Jim Keane – Required the State Fund to use existing excess equity for a one-time payment of “Old Fund” claims.

Amended 39-71-2311, 39-71-2312, 39-71-2316, 39-71-2320, and 39-71-2321 – Amended unnecessary surpluses and dividends to be subject to the one-time payment; defined “equity” to mean surplus; limited powers of the State Fund subject to the one-time payment; transfers \$50 million from the State Fund to the “Old Fund”; prohibits increasing premium to cover the \$50 million and requires report to the interim committee if the \$50 million is unavailable; amends the deposits of the State Fund subject to the \$50 million transfer to the “Old Fund”.

Indefinitely postponed on the Senate Floor and missed transmittal deadline to House.

SB292 – Sen. Matthew Rosendale – Required the Department to establish a drug formulary by rule.

Amended 39-71-727 – Required the department to establish by rule a drug formulary by July 1, 2016; required the department to report to the interim committee the number of prescription drugs denied by an insurer and number of petitions filed with the Work Comp Court.

Tabled in the House Business and Labor Committee.

SB398 – Sen. Jim Keane – Required a dividend payment by State Fund for two fiscal years.

Amended 39-71-2311 and 39-71-2323 – Required the State Fund to declare and pay dividends of \$50 million if the equity or surplus is projected to be more than \$375 million after payment of the dividend; amended unnecessary surpluses to be subject to the dividend payment.

Failed on the House Floor.

SB415 – Senators Pat Connell and Mary Caferro – Created a presumption in favor of firefighters for certain diseases and funding to pay benefits.

Amended 50-3-109 – Created a presumptive disease compensation fund administered by the Department to pay benefits on claims denied by the workers’ compensation insurers and payable by the fund; defined the terms in the bill; provided the diseases presumed compensable, set the requirements for eligibility, and benefit levels; amended the tax on fire insurance premiums to fund the presumptive disease compensation fund.

Tabled in Senate Finance and Claims.

