

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO WORKERS'
5 COMPENSATION INSURANCE; CREATING THE MONTANA WORKERS' COMPENSATION
6 MODERNIZATION ACT; CREATING A RESIDUAL MARKET PROGRAM AND POOL; ESTABLISHING THE
7 ELIGIBILITY OF RESIDUAL MARKET EMPLOYERS FOR COVERAGE; DISSOLVING THE STATE FUND;
8 PROVIDING FOR THE TRANSITION OF STATE FUND INSURANCE FUNCTIONS AND OPERATIONS;
9 PROVIDING FOR RUNOFF OF OPEN CLAIMS AND CLAIMS MANAGEMENT FOR THE STATE FUND;
10 REQUIRING LOSS PORTFOLIO TRANSFER OF OLD FUND CLAIMS; PROVIDING THAT STATE FUND
11 RESERVES AND SURPLUS ARE HELD IN TRUST; ESTABLISHING A TRUST FOR PAYMENT OF CLAIMS
12 AND LOSS PORTFOLIO TRANSFER; PROVIDING FOR DISPOSITION OF TRUST FOR SURPLUS AND
13 RESERVES ON RUNOFF OF ALL STATE FUND CLAIMS AND COMPLETION OF LOSS PORTFOLIO
14 TRANSFER; PROVIDING RULEMAKING AUTHORITY; PROVIDING DEFINITIONS; AMENDING SECTIONS
15 2-4-101, 2-4-702, 2-15-2015, 2-18-103, 2-18-601, 2-18-701, 2-18-703, 2-18-711, 5-5-223, 5-5-228, 5-11-222, 7-
16 33-4510, 15-30-2618, 17-1-102, 17-2-110, 17-6-203, 17-8-403, 18-4-132, 18-7-101, 19-3-1002, 33-1-1205, 33-
17 2-1902, 33-2-2402, 33-16-1002, 33-16-1008, 33-16-1021, 33-16-1033, 39-71-102, 39-71-103, 39-71-105, 39-
18 71-116, 39-71-118, 39-71-201, 39-71-206, 39-71-225, 39-71-307, 39-71-401, 39-71-403, 39-71-407, 39-71-
19 417, 39-71-419, 39-71-433, 39-71-434, 39-71-435, 39-71-441, 39-71-442, 39-71-503, 39-71-504, 39-71-505,
20 39-71-515, 39-71-606, 39-71-745, 39-71-915, 39-71-1050, 39-71-1101, 39-71-1401, 39-71-1505, 39-71-2211,
21 39-71-2312, 39-71-2323, 45-5-223, 45-7-501, AND 50-71-128, MCA; REPEALING SECTIONS 2-15-1019, 33-
22 1-115, 33-16-1011, 33-16-1012, 39-71-2311, 39-71-2312, 39-71-2313, 39-71-2315, 39-71-2316, 39-71-2317,
23 39-71-2318, 39-71-2319, 39-71-2320, 39-71-2321, 39-71-2322, 39-71-2323, 39-71-2325, 39-71-2327, 39-71-
24 2328, 39-71-2330, 39-71-2331, 39-71-2332, 39-71-2336, 39-71-2337, 39-71-2339, 39-71-2340, 39-71-2351,
25 39-71-2352, 39-71-2356, 39-71-2361, 39-71-2363, 39-71-2370, AND 39-71-2375, MCA; AND PROVIDING
26 EFFECTIVE DATES AND AN APPLICABILITY DATE."

27
28 WHEREAS, the Montana State Compensation Insurance Fund, as insurer of last resort for Montana

1 employers for the past 30 years, has provided a needed backstop to ensure availability of workers'
2 compensation; and

3 WHEREAS, the state fund was to be a key component of a competitive three-way market, including
4 self-insured employers (plan No. 1), private insurance carriers (plan No. 2), and the state fund (plan No. 3); and

5 WHEREAS, the state fund was originally capitalized using public funds from the State of Montana
6 general fund; and

7 WHEREAS, the state fund has requested and accepted public money and has used state resources
8 available to state agencies; and

9 WHEREAS, in 1991, the state fund had to be rescued by the state from a \$600-\$700 million unfunded
10 liability leading to the separation of the state fund into two entities, the old fund, which held the unfunded
11 liability, and the new fund; and

12 WHEREAS, all Montana employers and employees participated in the rehabilitation of the old fund
13 unfunded liability through payroll taxes; and

14 WHEREAS, after separation from the old fund liability, the new fund dominates the Montana workers'
15 compensation market so completely that competition from private insurance companies is discouraged and a
16 competitive three-way system no longer exists; and

17 WHEREAS, workers' compensation insurance is a "long-tail" insurance coverage and the state remains
18 ultimately liable for the solvency of the old fund and new fund; and

19 WHEREAS, since 1991, the workers' compensation insurance market has evolved and matured
20 nationwide, and the modern workers' compensation market comprises financially sound and responsible private
21 insurers able and willing to write insurance in a competitive voluntary Montana insurance market; and

22 WHEREAS, some employers for a number of reasons, such as new business, poor loss experience, or
23 the inherently dangerous nature of their work, cannot find a voluntary market insurer willing to provide them with
24 workers' compensation insurance; and

25 WHEREAS, the modern private workers' compensation insurance market has created a market of last
26 resort, a residual market, that makes an insurance program and pool of private workers' compensation insurers
27 available to residual market employers to ensure that all have a means of meeting their statutory obligations, no
28 employee will lack benefits, and the state will not be at risk for unfunded liabilities; and

1 WHEREAS, 34 states have adopted modern residual market plans; and

2 WHEREAS, on establishment of a residual market program and pool, all Montana policyholders can be
3 readily absorbed into the private insurance market at competitive rates; and

4 WHEREAS, there is no sound public policy reason for the state to remain at ultimate financial risk by
5 continued operation and subsidization of an insurance company, and there are compelling public policy reasons
6 to modernize Montana's workers' compensation insurance market; and

7 WHEREAS, there is no sound public policy reason for the state to remain at ultimate financial risk by
8 continued administration of old fund claims, the duration and severity of which have exceeded actuarial
9 projections; and

10 WHEREAS, the Department of Labor and Industry, under section 39-71-203, MCA, is vested with full
11 power, authority, and jurisdiction to do and perform all things that are necessary or convenient in the exercise of
12 any power, authority, or jurisdiction conferred on it under Title 39, chapter 71, MCA; and

13 WHEREAS, it is the Legislature's desire to modernize the Montana workers' compensation market by
14 eliminating the state's operation of an insurance company, increase competition among workers' compensation
15 insurers, reduce workers' compensation system costs, employ private insurance industry resources to establish
16 a residual market protection that ensures compliant workers' compensation coverage for all employers,
17 responsibly utilize public funds accrued within the state fund, and maintain current injured worker protections;
18 and

19 WHEREAS, it is the Legislature's desire to eliminate state financial liability for administration and
20 payment of claims arising before July 1, 1990; and

21 WHEREAS, Montana's workers' compensation rates are the 11th highest nationwide, and
22 modernization of the Montana market will result in a reduction in system costs, rates, and premiums for
23 workers' compensation insurance while not adversely affecting injured worker benefits; and

24 WHEREAS, modernization of Montana's workers' compensation insurance market will increase funds
25 available to the state by millions of dollars through resulting premium taxes and elimination of state services
26 and exemptions now supporting the state fund; and

27 WHEREAS, the surplus accumulated by the state fund is public money useful at this time to the state,
28 and it should be held in trust to ensure responsible administration and payment of all old fund liabilities and

1 open state fund claims; and

2 WHEREAS, the remaining surplus should be the principal of a trust created and maintained for public
3 purposes determined by this 68th Legislature.

4

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

6

7 NEW SECTION. **Section 1. Short title.** [Sections 1 through 3] may be cited as the "Montana
8 Workers' Compensation Modernization Act".

9

10 NEW SECTION. **Section 2. Residual market program and pool established -- contract with**
11 **advisory organization -- state fund cooperation -- program requirements -- reinsurance.** (1) The
12 department shall establish a residual market program and pool, also known as compensation plan No. 4 or plan
13 No. 4, in order to make workers' compensation coverage available to the guaranteed market. The purpose of
14 plan No. 4 is to guarantee that any employer in this state that is unable to obtain coverage in the voluntary
15 market that complies with the benefit requirements of this chapter may obtain coverage in plan No. 4.

16 (2) The department shall:

17 (a) contract with the advisory organization designated by the commissioner of insurance under 33-
18 16-1023(1) to implement and administer plan No. 4;

19 (b) request and obtain from the state compensation insurance fund all information regarding the
20 residual and voluntary market employers and the associated books of business insured by the state fund
21 relevant and necessary for the development of plan No. 4; and

22 (c) approve a plan of operation for plan No. 4 established under this section.

23 (3) The state fund shall cooperate with the department and the advisory organization under 33-16-
24 1023(1) and shall preserve and provide all information relevant and necessary for the development of plan No.
25 4.

26 (4) Plan No. 4 established under this section must:

27 (a) serve as the market of last resort for the guaranteed market in this state;

28 (b) require each plan No. 2 insurer licensed to write workers' compensation insurance in this state

1 to maintain membership in or a subscription to the advisory organization designated by the commissioner of
2 insurance as provided in 33-16-1023. Each insurer member in or subscriber to the designated advisory
3 organization shall participate in and accept its equitable apportionment assigned under plan No. 4 as a
4 condition of the insurer's authority to engage in the business of workers' compensation insurance in this state.
5 Plan No. 4 may provide that a plan No. 2 insurer may meet the insurer's obligation under this section through
6 direct policy assignment, participation in a reinsurance pooling mechanism, or otherwise under the procedures
7 and guidelines of the established plan.

8 (c) provide for the purchase of reinsurance through contract with the advisory organization
9 designated by the commissioner of insurance under 33-16-1023(1) to provide additional assurance of plan No.
10 4 solvency;

11 (d) specify the eligibility criteria and procedures for obtaining insurance through plan No. 4. The
12 eligibility criteria may allow for an employer to obtain insurance through plan No. 4 only if the employer has
13 been declined coverage by three plan No. 2 insurers in the voluntary market;

14 (e) provide for the implementation and administration of plan No. 4, including reasonable service
15 standards, policies, forms, and contracts as applicable to plan No. 2 insurers in the voluntary market;

16 (f) require delivery of benefits to injured workers through plan No. 4 to comply with the standards
17 and provisions of this chapter;

18 (g) require compliance by plan No. 4 under applicable standards of Title 33;

19 (h) provide rates for insurance produced through plan No. 4 that are actuarially sufficient to cover
20 all incurred losses, operating expenses, taxes and assessments on policies issued through plan No. 4, and
21 administrative expenses of plan No. 4 and be consistent with classification and ratemaking methodologies
22 under Title 33, chapter 16, part 10;

23 (i) provide incentives and procedures to facilitate a guaranteed market employer's ability to obtain
24 workers' compensation insurance coverage in the voluntary market;

25 (j) provide for a temporary authority to oversee and ensure the orderly and efficient dissolution of
26 the state compensation insurance fund, including:

27 (i) transition of the state fund's insurance functions and operations;

28 (ii) transition of state fund employees to other state or private employment or retirement and

1 vesting of the employees' retirement as provided in 19-2-1002; and
 2 (iii) satisfaction or termination of all state fund obligations and operations in cooperation with the
 3 department of administration under Title 2, chapter 19, part 1; and
 4 (k) ensure that the state is not exposed to financial liability for claims incurred in and benefits
 5 delivered through plan No. 4.
 6

7 **NEW SECTION. Section 3. Residual market plan -- plan No. 2 insurers required to participate --**
 8 **rates eligibility of residual market employers.** (1) There is a residual market plan established by the
 9 department as provided in [section 2].

10 (2) A plan No. 2 insurer that is authorized to write workers' compensation insurance shall be a
 11 member of the advisory organization that administers the residual market plan as provided in 33-16-1023 and
 12 shall participate in the residual market program and pool, plan No. 4, as provided in [section 2].

13 (3) If an employer has been declined coverage by three plan No. 2 insurers in the voluntary
 14 market, the employer may obtain insurance through plan No. 4.

15 (4) Plan No. 4 may not be required to provide coverage to a residual market employer if the
 16 employer or the employer's principals have defaulted on an obligation under the provisions of this chapter and
 17 the obligation remains unsatisfied.
 18

19 **NEW SECTION. Section 4. Dissolution of state fund.** (1) On implementation of the residual market
 20 program and pool as provided in [section 3], the state fund must be dissolved as follows:

- 21 (a) the commissioner of insurance shall rescind the state fund's certificate of authority; and
- 22 (b) the department shall:
 - 23 (i) as provided in [sections 5 through 8], assume all management and control of the state fund
 - 24 until dissolution under this section is complete;
 - 25 (ii) transition all policies, risks, and insurance functions of the state fund, compensation plan No. 3,
 - 26 to plan No. 2 or plan No. 4 insurers under a plan implemented under [section 3];
 - 27 (iii) transfer the claims administered by the state fund for administration under [sections 6 and 7];
 - 28 (iv) deposit the state fund reserves with the board of investments as provided in [sections 7 and 8];

1 (v) determine and pay dividends to all state fund policyholders as provided in former 39-71-2323;

2 (vi) dispose of the remaining state fund surplus with the board of investments as provided in

3 [sections 7 and 8]; and

4 (vii) dispose of remaining state fund assets, wind up the affairs of the state fund, and dissolve the
5 state fund as provided in this section.

6 (2) To implement the actions required under this section, the department shall consult with:

7 (a) the commissioner of insurance and the advisory organization under 33-16-1023(1) regarding
8 residual and voluntary market employers and associated books of business insured by the state fund and all
9 state fund operations; and

10 (b) the department of administration regarding all other state fund operations.

11 (3) The department shall contract with one or more qualified contractors to provide for the orderly
12 and efficient transition of state fund insurance functions and operations as provided in [section 5].

13 (4) The department may appoint a transition team to oversee any contract effecting the transition
14 of state fund business and operations under this section, wind up affairs of the state fund, and dissolve the
15 state fund.

16 (5) The state fund shall:

17 (a) preserve all information relevant and necessary to implement the actions required under this
18 section;

19 (b) cooperate with and provide all information relevant and necessary to implement the actions
20 required under this section to the department, the commissioner of insurance, the advisory organization under
21 33-16-1023(1), any qualified contractor engaged by the department under [sections 5 and 6], and any transition
22 team appointed by the department; and

23 (c) take all actions directed by the department to implement the requirements of this section.

24

25 **NEW SECTION. Section 5. Transition of state fund insurance functions and operations --**

26 **temporary intermediate authority.** To provide for the orderly and efficient transition of state fund insurance
27 functions and operations, the department shall:

28 (1) contract with one or more qualified contractors, including but not limited to an insurer

1 authorized under Title 33, a managing general agent licensed and qualified under Title 33, chapter 2, part 16, or
2 other qualified third-party administrator or authority, to:

3 (a) assume and transfer all policies, risks, and insurance coverage obligations of the state fund,
4 compensation plan No. 3, to a plan No. 2 insurer or the residual market program and pool, plan No. 4, under a
5 plan that:

6 (i) guarantees each state fund-insured employer continued workers' compensation insurance of at
7 least equal coverage as the employer was receiving from the state fund until the earlier of the date when the
8 covered employer's coverage transfers to a plan No. 2 or plan No. 4 insurer or 2 years from the date of
9 transition; and

10 (ii) guarantees each state fund-insured employer stabilized premium rates for the continued
11 coverage under subsection (1)(a)(i) as provided in [section 7]. The premium for continued coverage may not be
12 increased from the rate charged by the state fund but must be decreased if the intermediate authority is able to
13 provide a lower rate as filed under Title 33, chapter 16, part 10; and

14 (b) examine, administer, and complete runoff of all open claims filed against state fund-insured
15 employers until the claim runoff duties are implemented under [section 6]. The examination, administration, and
16 runoff of the claims under this section must comply with this chapter. The term "runoff" in this section has the
17 meaning provided in [section 7];

18 (2) transition state fund employees to other state or private employment or retirement and fully
19 fund the employees' retirement as provided in 19-2-1002 and [section 8]. The transition plan must provide for a
20 state employment preference for former state fund employees; and

21 (3) satisfy or terminate all state fund obligations and operations in cooperation with the department
22 of administration under Title 2, chapter 19, part 1.

23

24 **NEW SECTION. Section 6. Transition and runoff of state fund open and incurred but not**
25 **reported claims -- loss portfolio claims.** (1) The department shall make provisions for the examination,
26 administration, and runoff of the following workers' compensation claims against and being administered by the
27 state fund:

28 (a) all claims arising on or after July 1, 1990, open or incurred but not reported on the date of

1 dissolution under [section 4];

2 (b) all claims arising on or after July 1, 1990, reopened under applicable provisions of law on or
3 after the date of dissolution under [section 4]; and

4 (c) all claims arising before July 1, 1990, open and being administered and paid on the date of
5 dissolution under [section 4].

6 (2) The department shall contract for claim runoff through one or more loss portfolio transfers
7 subject to the provisions of [section 7]. The examination, administration, and runoff of the claims included in the
8 loss portfolio transfer must comply with this chapter. The contract for a loss portfolio transfer must expressly
9 eliminate all state liability for open claims under this section.

10 (3) Until the contract for the loss portfolio transfer is effected, the runoff of open claims under this
11 section must be handled by a contractor engaged under [section 5].

12 (4) As used in this section, "runoff" and "loss portfolio transfer" have the meanings provided in
13 [section 7].

14

15 NEW SECTION. Section 7. Runoff of open claims -- claims management -- trust for payment of
16 **claims.** (1) The department shall commence examination, administration, and runoff of the open and incurred
17 but not reported workers' compensation claims against and being administered by the state fund as provided by
18 a plan developed under [sections 5 and 6]. The claims payment, including all loss adjustment expenses and
19 associated assessments, and the consideration for the loss portfolio transfer must be paid from funds in trust
20 under this section.

21 (2) (a) A separate investment fund with the board of investments known as the state fund
22 dissolution trust must be maintained under 17-6-203.

23 (b) State fund reserves deposited with the board of investments as provided in [section 4] must be
24 deposited in the state fund dissolution trust and maintained for runoff of open state fund claims, including all
25 loss adjustment expenses and associated assessments.

26 (c) (i) State fund surplus deposited with the board of investments as provided in [section 4] must
27 be deposited in the state fund dissolution trust and maintained for:

28 (A) payment of final dividend to state fund policyholders under [section 4] and former 39-71-2323;

- 1 (B) stabilization of rates during the transition period as provided in [section 5]; and
- 2 (C) consideration for the loss portfolio transfer under [section 6].
- 3 (ii) Following the determination and payment of surplus for the uses provided in this subsection
- 4 (2)(c), remaining state fund surplus must be administered and used as provided in [section 8] and this section.
- 5 (3) (a) All payments under this section must be made from the state fund dissolution trust net
- 6 income.
- 7 (b) All state fund dissolution trust income that exceeds the amounts necessary for payment of
- 8 expenses in subsections (2)(b) and (2)(c) must be deposited to the credit of the state fund dissolution trust
- 9 principal. The principal of the state fund dissolution trust must remain in trust as provided in [section 8] and this
- 10 section.
- 11 (c) If the state fund dissolution trust income is insufficient to make the payments under subsection
- 12 (2)(b) or (2)(c), the department may authorize funds as may be necessary to be withdrawn from the state fund
- 13 dissolution trust principal.
- 14 (d) The department shall contract with a qualified independent actuary to determine the funds
- 15 necessary for the prescribed uses of the state fund dissolution trust under this section.
- 16 (4) On complete runoff and closure or transfer of all claims under this section, the remaining state
- 17 fund dissolution trust principal and income, if any, must be utilized or appropriated as provided in [section 8].
- 18 (5) As used in this section, the following definitions apply:
- 19 (a) "Loss portfolio transfer" means a financial or insurance transaction in which a financial or
- 20 insurance entity cedes loss obligations that are already incurred and must ultimately be paid to an accepting
- 21 financial or insurance entity.
- 22 (b) "Runoff" means the administration and payment of an open or incurred but not reported claim
- 23 for workers' compensation benefits insured under compensation plan No. 3 or administered or insured by the
- 24 contracted temporary intermediate authority under [section 5] until claim closure or completion of loss portfolio
- 25 transfer.
- 26 (c) "State fund dissolution trust" means the trust provided for in [section 8].

27

28 NEW SECTION. **Section 8. State fund reserves and surplus held in trust -- disposition on runoff**

1 **and transfer of all claims.** (1) The state compensation insurance fund reserves held under former Title 39,
 2 chapter 71, part 23, for open claims arising on or after July 1, 1990, and for open claims arising before July 1,
 3 1990, and the state fund surplus must be deposited in a fund established and maintained under 17-6-203 and
 4 held in trust for the uses and purposes provided in [section 7] and this section. The trust is known as the state
 5 fund dissolution trust. The board of investments shall manage the state fund dissolution trust as provided by
 6 law.

7 (2) The principal deposited to the state fund dissolution trust must remain in trust until the runoff of
 8 all claims is complete and the loss portfolio transfer is complete as provided in [sections 5 through 7]. The
 9 board of investments shall invest the money of the trust, and the investment income must be deposited in the
 10 trust.

11 (3) The surplus principal remaining after payments and deposits as provided in subsections (1)
 12 and (2) must be allocated to board of investments permanent funds as follows:

- 13 (a) funds sufficient to fund the unfunded liability of state retirement funds in 17-6-203(2); and
- 14 (b) remaining funds to a subfund established in the coal severance tax trust fund established
 15 under Article IX, section 5, of the Montana constitution as provided in 17-6-203(6) for rehabilitation and creation
 16 of Montana infrastructure.

17

18 **Section 9.** Section 2-4-101, MCA, is amended to read:

19 **"2-4-101. Short title -- purpose -- exception.** (1) This chapter is known and may be cited as the
 20 "Montana Administrative Procedure Act".

21 (2) The purposes of the Montana Administrative Procedure Act are to:

- 22 (a) generally give notice to the public of governmental action and to provide for public participation
 23 in that action;
- 24 (b) establish general uniformity and due process safeguards in agency rulemaking, legislative
 25 review of rules, and contested case proceedings;
- 26 (c) establish standards for judicial review of agency rules and final agency decisions; and
- 27 (d) provide the executive and judicial branches of government with statutory directives.

28 ~~(3) Effective July 1, 2016, this chapter does not apply to the operations of the state compensation~~

1 insurance fund provided for in Title 39, chapter 71, part 23. Administrative rules adopted by the state fund board
2 of directors prior to July 1, 2016, apply to new and renewal policies issued by the state fund that are effective
3 prior to July 1, 2016. The state fund is subject to rules adopted by any agency that by law apply to the state
4 fund."

5

6 **Section 10.** Section 2-4-702, MCA, is amended to read:

7 **"2-4-702. (Temporary) Initiating judicial review of contested cases.** (1) (a) Except as provided in
8 75-2-213 and 75-20-223, a person who has exhausted all administrative remedies available within the agency
9 and who is aggrieved by a final written decision in a contested case is entitled to judicial review under this
10 chapter. This section does not limit use of or the scope of judicial review available under other means of review,
11 redress, relief, or trial de novo provided by statute.

12 (b) A party who proceeds before an agency under the terms of a particular statute may not be
13 precluded from questioning the validity of that statute on judicial review, but the party may not raise any other
14 question not raised before the agency unless it is shown to the satisfaction of the court that there was good
15 cause for failure to raise the question before the agency.

16 (2) (a) Except as provided in 75-2-211, 75-2-213, and ~~subsections (2)(c) and (2)(e)~~ subsection
17 (2)(d) of this section, proceedings for review must be instituted by filing a petition in district court within 30 days
18 after service of the final written decision of the agency or, if a rehearing is requested, within 30 days after the
19 written decision is rendered. Except as otherwise provided by statute, subsection ~~(2)(d)~~ (2)(c), or subsection
20 ~~(2)(e)~~ (2)(d), the petition must be filed in the district court for the county where the petitioner resides or has the
21 petitioner's principal place of business or where the agency maintains its principal office. Copies of the petition
22 must be promptly served upon the agency and all parties of record.

23 (b) The petition must include a concise statement of the facts upon which jurisdiction and venue
24 are based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified
25 in 2-4-704(2) upon which the petitioner contends to be entitled to relief. The petition must demand the relief to
26 which the petitioner believes the petitioner is entitled, and the demand for relief may be in the alternative.

27 ~~(c) If a petition for review is filed pursuant to 33-16-1012(2)(c), the workers' compensation court,~~
28 ~~rather than the district court, has jurisdiction and the provisions of this part apply to the workers' compensation~~

1 court in the same manner as the provisions of this part apply to the district court.

2 ~~(d)~~(c) If a petition for review is filed challenging a licensing or permitting decision made pursuant to
3 Title 75 or Title 82, the petition for review must be filed in the county where the facility is located or proposed to
4 be located or where the action is proposed to occur.

5 ~~(e)~~(d) (i) A party who is aggrieved by a final decision on an application for a permit or change in
6 appropriation right filed under Title 85, chapter 2, part 3, may petition the district court or the water court for
7 judicial review of the decision. If a petition for judicial review is filed in the water court, the water court rather
8 than the district court has jurisdiction and the provisions of this part apply to the water court in the same manner
9 as they apply to the district court. The time for filing a petition is the same as provided in subsection (2)(a).

10 (ii) If more than one party is aggrieved by a final decision on an application for a permit or change
11 in appropriation right filed under Title 85, chapter 2, part 3, the district court where the appropriation right is
12 located has jurisdiction. If more than one aggrieved party files a petition but no aggrieved party files a petition in
13 the district court where the appropriation right is located, the first judicial district, Lewis and Clark County, has
14 jurisdiction.

15 (iii) If a petition for judicial review is filed in the district court, the petition for review must be filed in
16 the district court in the county where the appropriation right is located.

17 (3) Unless otherwise provided by statute, the filing of the petition may not stay enforcement of the
18 agency's decision. The agency may grant or the reviewing court may order a stay upon terms that it considers
19 proper, following notice to the affected parties and an opportunity for hearing. A stay may be issued without
20 notice only if the provisions of 27-19-315 through 27-19-317 are met.

21 (4) Within 30 days after the service of the petition or within further time allowed by the court, the
22 agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding
23 under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party
24 unreasonably refusing to stipulate to limit the record may be required by the court to pay the additional costs.
25 The court may require or permit subsequent corrections or additions to the record. (Terminates September 30,
26 2025--sec. 6, Ch. 126, L. 2017.)

27 **2-4-702. (Effective October 1, 2025) Initiating judicial review of contested cases.** (1) (a) Except
28 as provided in 75-2-213 and 75-20-223, a person who has exhausted all administrative remedies available

1 within the agency and who is aggrieved by a final written decision in a contested case is entitled to judicial
2 review under this chapter. This section does not limit use of or the scope of judicial review available under other
3 means of review, redress, relief, or trial de novo provided by statute.

4 (b) A party who proceeds before an agency under the terms of a particular statute may not be
5 precluded from questioning the validity of that statute on judicial review, but the party may not raise any other
6 question not raised before the agency unless it is shown to the satisfaction of the court that there was good
7 cause for failure to raise the question before the agency.

8 (2) (a) Except as provided in 75-2-211, and 75-2-213, ~~and subsection (2)(c) of this section,~~
9 proceedings for review must be instituted by filing a petition in district court within 30 days after service of the
10 final written decision of the agency or, if a rehearing is requested, within 30 days after the written decision is
11 rendered. Except as otherwise provided by statute or subsection ~~(2)(d)~~ (2)(c), the petition must be filed in the
12 district court for the county where the petitioner resides or has the petitioner's principal place of business or
13 where the agency maintains its principal office. Copies of the petition must be promptly served upon the agency
14 and all parties of record.

15 (b) The petition must include a concise statement of the facts upon which jurisdiction and venue
16 are based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified
17 in 2-4-704(2) upon which the petitioner contends to be entitled to relief. The petition must demand the relief to
18 which the petitioner believes the petitioner is entitled, and the demand for relief may be in the alternative.

19 ~~(c) If a petition for review is filed pursuant to 33-16-1012(2)(c), the workers' compensation court,~~
20 ~~rather than the district court, has jurisdiction and the provisions of this part apply to the workers' compensation~~
21 ~~court in the same manner as the provisions of this part apply to the district court.~~

22 ~~(d)(c)~~ If a petition for review is filed challenging a licensing or permitting decision made pursuant to
23 Title 75 or Title 82, the petition for review must be filed in the county where the facility is located or proposed to
24 be located or where the action is proposed to occur.

25 (3) Unless otherwise provided by statute, the filing of the petition may not stay enforcement of the
26 agency's decision. The agency may grant or the reviewing court may order a stay upon terms that it considers
27 proper, following notice to the affected parties and an opportunity for hearing. A stay may be issued without
28 notice only if the provisions of 27-19-315 through 27-19-317 are met.

1 (4) Within 30 days after the service of the petition or within further time allowed by the court, the
 2 agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding
 3 under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party
 4 unreasonably refusing to stipulate to limit the record may be required by the court to pay the additional costs.
 5 The court may require or permit subsequent corrections or additions to the record."

6

7 **Section 11.** Section 2-15-2015, MCA, is amended to read:

8 **"2-15-2015. Workers' compensation fraud investigation and prosecution office.** (1) There is a
 9 workers' compensation fraud investigation and prosecution office in the department of justice. The office shall
 10 investigate and prosecute cases referred by ~~the state compensation insurance fund~~ or the department of labor
 11 and industry on behalf of the uninsured employers' fund. The office is under the supervision and control of the
 12 attorney general and consists of:

13 (a) one or more investigators qualified by education, training, experience, and high professional
 14 competence in investigative procedures who shall investigate violations of the provisions of Title 39, chapter 71,
 15 at the request of ~~the state compensation insurance fund~~ or the department of labor and industry on behalf of the
 16 uninsured employers' fund; and

17 (b) one or more attorneys licensed to practice law in Montana who shall prosecute violations of the
 18 provisions of Title 39, chapter 71. The attorneys may also assist county attorneys in prosecuting violations of
 19 Title 39, chapter 71, without charge to the county.

20 (2) The ~~state compensation insurance fund~~, the department of labor and industry, and the
 21 department of justice shall submit to the legislature for approval one proposed biennial budget for the workers'
 22 compensation fraud office. The proposed budget for staffing and related expenses must be based ~~upon~~ on the
 23 needs of the ~~state compensation insurance fund~~ and the department of labor and industry on behalf of the
 24 uninsured employers' fund for investigating and prosecuting workers' compensation fraud."

25

26 **Section 12.** Section 2-18-103, MCA, is amended to read:

27 **"2-18-103. Officers and employees excepted.** Parts 1 through 3 and 10 do not apply to the following
 28 officers and employees in state government:

- 1 (1) elected officials;
- 2 (2) county assessors and their chief deputies;
- 3 (3) employees of the office of consumer counsel;
- 4 (4) judges and employees of the judicial branch;
- 5 (5) members of boards and commissions appointed by the governor, the legislature, or other
- 6 elected state officials;
- 7 (6) officers or members of the militia;
- 8 (7) agency heads appointed by the governor;
- 9 (8) academic and professional administrative personnel with individual contracts under the
- 10 authority of the board of regents of higher education;
- 11 (9) academic and professional administrative personnel and live-in houseparents who have
- 12 entered into individual contracts with the state school for the deaf and blind under the authority of the state
- 13 board of public education;
- 14 (10) investment officer, assistant investment officer, executive director, and eight professional staff
- 15 positions of the board of investments;
- 16 (11) four professional staff positions under the board of oil and gas conservation;
- 17 (12) director of the Montana state lottery and assistant director for security of the Montana state
- 18 lottery;
- 19 ~~(13) executive director and employees of the state compensation insurance fund;~~
- 20 ~~(14)~~(13) state racing stewards employed by the executive secretary of the Montana board of
- 21 horseracing;
- 22 ~~(15)~~(14) executive director of the Montana wheat and barley committee;
- 23 ~~(16)~~(15) commissioner of banking and financial institutions;
- 24 ~~(17)~~(16) training coordinator for county attorneys;
- 25 ~~(18)~~(17) employees of an entity of the legislative branch consolidated, as provided in 5-2-504;
- 26 ~~(19)~~(18) chief information officer in the department of administration;
- 27 ~~(20)~~(19) chief business development officer and six professional staff positions in the office of
- 28 economic development provided for in 2-15-218; and

1 ~~(21)~~(20) the director of the office of state public defender provided for in 2-15-1029."

2

3 **Section 13.** Section 2-18-601, MCA, is amended to read:

4 **"2-18-601. (Temporary) Definitions.** For the purpose of this part, the following definitions apply:

5 (1) (a) "Accident" means an unexpected traumatic incident or unusual strain that is identifiable by
6 time and place of occurrence and caused by a specific event on a single day or during a single work shift.

7 (b) The term does not include an employee's suicide.

8 (2) ~~(a)~~"Agency" means any legally constituted department, board, or commission of state, county,
9 or city government or any political subdivision of the state.

10 ~~(b) The term does not mean the state compensation insurance fund.~~

11 (3) "Break in service" means a period of time in excess of 5 working days when the person is not
12 employed and that severs continuous employment.

13 (4) "Common association" means an association of employees established pursuant to 2-18-1310
14 for the purposes of employer and employee participation in the plan.

15 (5) "Continuous employment" means working within the same jurisdiction without a break in
16 service of more than 5 working days or without a continuous absence without pay of more than 15 working
17 days.

18 (6) "Contracting employer" means an employer who, pursuant to 2-18-1310, has contracted with
19 the department of administration to participate in the plan.

20 (7) "Employee" means any person employed by an agency except elected state, county, and city
21 officials, schoolteachers, members of the instructional or scientific staff of a community college, persons
22 contracted as independent contractors or hired under personal services contracts, and student interns.

23 (8) "Full-time employee" means an employee who normally works 40 hours a week.

24 (9) "Holiday" means a scheduled day off with pay to observe a legal holiday, as specified in 1-1-
25 216 or 20-1-305, except Sundays.

26 (10) "Member" means an employee who belongs to a voluntary employees' beneficiary association
27 established under 2-18-1310.

28 (11) "Part-time employee" means an employee who normally works less than 40 hours a week.

- 1 (12) "Permanent employee" means a permanent employee as defined in 2-18-101.
- 2 (13) "Plan" means the employee welfare benefit plan established under Internal Revenue Code
3 section 501(c)(9) pursuant to 2-18-1304.
- 4 (14) "Seasonal employee" means a seasonal employee as defined in 2-18-101.
- 5 (15) "Short-term worker" means:
- 6 (a) for the executive and judicial branches, a short-term worker as defined in 2-18-101; or
7 (b) for the legislative branch, an individual who:
- 8 (i) may be hired by a legislative agency without using a competitive process for an hourly wage
9 established by the agency;
- 10 (ii) may not work for the agency for more than 6 months in a continuous 12-month period;
11 (iii) is not eligible for permanent status;
12 (iv) may not be hired into a permanent position by the agency without a competitive selection
13 process;
- 14 (v) is not eligible to earn the leave and holiday benefits provided in this part; and
15 (vi) may be discharged without cause.
- 16 (16) "Sick leave" means a leave of absence with pay for:
- 17 (a) a sickness suffered by an employee or a member of the employee's immediate family; or
18 (b) the time that an employee is unable to perform job duties because of:
- 19 (i) a physical or mental illness, injury, or disability;
20 (ii) maternity or pregnancy-related disability or treatment, including prenatal care, birth, or medical
21 care for the employee or the employee's child;
- 22 (iii) parental leave for a permanent employee as provided in 2-18-606;
23 (iv) quarantine resulting from exposure to a contagious disease;
24 (v) examination or treatment by a licensed health care provider;
25 (vi) short-term attendance, in an agency's discretion, to care for a relative or household member
26 not covered by subsection (16)(a) until other care can reasonably be obtained;
- 27 (vii) necessary care for a spouse, child, or parent with a serious health condition, as defined in the
28 Family and Medical Leave Act of 1993; or

1 (viii) death or funeral attendance of an immediate family member or, at an agency's discretion,
2 another person.

3 (17) "Student intern" means a student intern as defined in 2-18-101.

4 (18) "Temporary employee" means a temporary employee as defined in 2-18-101.

5 (19) "Transfer" means a change of employment from one agency to another agency in the same
6 jurisdiction without a break in service.

7 (20) "Vacation leave" means a leave of absence with pay for the purpose of rest, relaxation, or
8 personal business at the request of the employee and with the concurrence of the employer. (Terminates June
9 30, 2023--sec. 10, Ch. 167, L. 2019.)

10 **2-18-601. (Effective July 1, 2023) Definitions.** For the purpose of this part, the following definitions
11 apply:

12 (1) ~~(a)~~ "Agency" means any legally constituted department, board, or commission of state, county,
13 or city government or any political subdivision of the state.

14 ~~(b) The term does not mean the state compensation insurance fund.~~

15 (2) "Break in service" means a period of time in excess of 5 working days when the person is not
16 employed and that severs continuous employment.

17 (3) "Common association" means an association of employees established pursuant to 2-18-1310
18 for the purposes of employer and employee participation in the plan.

19 (4) "Continuous employment" means working within the same jurisdiction without a break in
20 service of more than 5 working days or without a continuous absence without pay of more than 15 working
21 days.

22 (5) "Contracting employer" means an employer who, pursuant to 2-18-1310, has contracted with
23 the department of administration to participate in the plan.

24 (6) "Employee" means any person employed by an agency except elected state, county, and city
25 officials, schoolteachers, members of the instructional or scientific staff of a community college, persons
26 contracted as independent contractors or hired under personal services contracts, and student interns.

27 (7) "Full-time employee" means an employee who normally works 40 hours a week.

28 (8) "Holiday" means a scheduled day off with pay to observe a legal holiday, as specified in 1-1-

1 216 or 20-1-305, except Sundays.

2 (9) "Member" means an employee who belongs to a voluntary employees' beneficiary association
3 established under 2-18-1310.

4 (10) "Part-time employee" means an employee who normally works less than 40 hours a week.

5 (11) "Permanent employee" means a permanent employee as defined in 2-18-101.

6 (12) "Plan" means the employee welfare benefit plan established under Internal Revenue Code
7 section 501(c)(9) pursuant to 2-18-1304.

8 (13) "Seasonal employee" means a seasonal employee as defined in 2-18-101.

9 (14) "Short-term worker" means:

10 (a) for the executive and judicial branches, a short-term worker as defined in 2-18-101; or

11 (b) for the legislative branch, an individual who:

12 (i) may be hired by a legislative agency without using a competitive process for an hourly wage
13 established by the agency;

14 (ii) may not work for the agency for more than 6 months in a continuous 12-month period;

15 (iii) is not eligible for permanent status;

16 (iv) may not be hired into a permanent position by the agency without a competitive selection
17 process;

18 (v) is not eligible to earn the leave and holiday benefits provided in this part; and

19 (vi) may be discharged without cause.

20 (15) "Sick leave" means a leave of absence with pay for:

21 (a) a sickness suffered by an employee or a member of the employee's immediate family; or

22 (b) the time that an employee is unable to perform job duties because of:

23 (i) a physical or mental illness, injury, or disability;

24 (ii) maternity or pregnancy-related disability or treatment, including prenatal care, birth, or medical
25 care for the employee or the employee's child;

26 (iii) parental leave for a permanent employee as provided in 2-18-606;

27 (iv) quarantine resulting from exposure to a contagious disease;

28 (v) examination or treatment by a licensed health care provider;

1 (vi) short-term attendance, in an agency's discretion, to care for a relative or household member
2 not covered by subsection (15)(a) until other care can reasonably be obtained;

3 (vii) necessary care for a spouse, child, or parent with a serious health condition, as defined in the
4 Family and Medical Leave Act of 1993; or

5 (viii) death or funeral attendance of an immediate family member or, at an agency's discretion,
6 another person.

7 (16) "Student intern" means a student intern as defined in 2-18-101.

8 (17) "Temporary employee" means a temporary employee as defined in 2-18-101.

9 (18) "Transfer" means a change of employment from one agency to another agency in the same
10 jurisdiction without a break in service.

11 (19) "Vacation leave" means a leave of absence with pay for the purpose of rest, relaxation, or
12 personal business at the request of the employee and with the concurrence of the employer."

13

14 **Section 14.** Section 2-18-701, MCA, is amended to read:

15 **"2-18-701. Definitions.** As used in this part, the following definitions apply:

16 (1) "Dependent" has the meaning provided in 33-22-140.

17 (2) "Employee", as the term applies to a person employed in the executive, judicial, or legislative
18 branches of state government, means:

19 (a) a permanent full-time employee, as provided in 2-18-601;

20 (b) a permanent part-time employee, as provided in 2-18-601, who is regularly scheduled to work
21 20 hours or more a week;

22 (c) a seasonal full-time employee, as provided in 2-18-601, who is regularly scheduled to work 6
23 months or more a year or who works for a continuous period of more than 6 months a year although not
24 regularly scheduled to do so;

25 (d) a seasonal part-time employee, as provided in 2-18-601, who is regularly scheduled to work 20
26 hours or more a week for 6 months or more a year or who works 20 hours or more a week for a continuous
27 period of more than 6 months a year although not regularly scheduled to do so;

28 (e) elected officials;

- 1 (f) officers and permanent employees of the legislative branch;
- 2 (g) judges and permanent employees of the judicial branch;
- 3 (h) academic, professional, and administrative personnel having individual contracts under the
- 4 authority of the board of regents of higher education or the state board of public education;
- 5 (i) a temporary full-time employee, as provided in 2-18-601:
- 6 (i) who is regularly scheduled to work more than 6 months a year;
- 7 (ii) who works for a continuous period of more than 6 months a year although not regularly
- 8 scheduled to do so; or
- 9 (iii) whose temporary status is defined through collective bargaining;
- 10 (j) a temporary part-time employee, as provided in 2-18-601:
- 11 (i) who is regularly scheduled to work 20 hours or more a week for 6 months or more a year;
- 12 (ii) who works 20 hours or more a week for a continuous period of more than 6 months a year
- 13 although not regularly scheduled to do so; or
- 14 (iii) whose temporary status is defined through collective bargaining;
- 15 (k) a full-time short-term worker, as provided in 2-18-101 and 2-18-601, who is in a position that
- 16 does not recur each year; and
- 17 (l) a part-time short-term worker, as provided in 2-18-101 and 2-18-601, who is regularly
- 18 scheduled to work 20 hours or more a week in a position that does not recur each year; ~~and~~
- 19 ~~(m) a part-time or full-time employee of the state compensation insurance fund. As used in this~~
- 20 ~~subsection, "part-time or full-time employee of the state compensation insurance fund" means an employee~~
- 21 ~~eligible for inclusion in the state employee group benefit plans under the rules of the department of~~
- 22 ~~administration."~~

Section 15. Section 2-18-703, MCA, is amended to read:

"2-18-703. Contributions. (1) Each agency, as defined in 2-18-601, ~~and the state compensation insurance fund~~ shall contribute the amount specified in this section toward the group benefits cost.

(2) (a) Except as provided in subsection (2)(b), for employees defined in 2-18-701 and for members of the legislature, the employer contribution for group benefits is \$1,054 a month.

1 (b) For employees defined in 2-18-701 and for members of the legislature, beginning January
2 2020 and for each succeeding month, the cost of group benefits, including both the employer and employee
3 contributions for group benefits and health flexible spending accounts, may not exceed the monthly amount for
4 self-only coverage and coverage other than self-only that will trigger the excise tax under 26 U.S.C. 4980I,
5 including any cost-of-living adjustments under 26 U.S.C. 4980I. This section limits contributions for group
6 benefits only to the extent needed to avoid triggering the excise tax under 26 U.S.C. 4980I.

7 (c) Except as provided in subsection (2)(d), for employees of the Montana university system, the
8 employer contribution for group benefits is \$1,054 a month.

9 (d) For employees of the Montana university system, beginning the earlier of July 2020 or the first
10 month in 2020 in which the excise tax under 26 U.S.C. 4980I applies, and for each succeeding month, the cost
11 of group benefits, including both the employer and employee contributions for group benefits and health flexible
12 spending accounts, may not exceed the monthly amount for self-only coverage and coverage other than self-
13 only that will trigger the excise tax under 26 U.S.C. 4980I, including any cost-of-living adjustments under 26
14 U.S.C. 4980I. This section limits contributions for group benefits only to the extent needed to avoid triggering
15 the excise tax under 26 U.S.C. 4980I.

16 (e) If a state employee is terminated to achieve a reduction in force, the continuation of
17 contributions for group benefits beyond the termination date is subject to negotiation under 39-31-305 and to
18 the protections of 2-18-1205. Permanent part-time, seasonal part-time, and temporary part-time employees
19 who are regularly scheduled to work less than 20 hours a week are not eligible for the group benefit
20 contribution. An employee who elects not to be covered by a state-sponsored group benefit plan may not
21 receive the state contribution. A portion of the employer contribution for group benefits may be applied to an
22 employee's costs for participation in Part B of medicare under Title XVIII of the Social Security Act, as
23 amended, if the state group benefit plan is the secondary payer and medicare the primary payer.

24 (3) For employees of elementary and high school districts, the employer's contributions may
25 exceed but may not be less than \$10 a month.

26 (4) (a) For employees of political subdivisions, as defined in 2-9-101, except school districts, the
27 employer's contributions may exceed but may not be less than \$10 a month.

28 (b) Subject to the public hearing requirement provided in 2-9-212(2)(b), the amount in excess of

1 the base contribution of a local government's property tax levy for contributions for group benefits as
2 determined in subsection (4)(c) is not subject to the mill levy calculation limitation provided for in 15-10-420.

3 (c) (i) Subject to subsections (4)(c)(ii) and (4)(c)(iii), the base contribution is determined by
4 multiplying the average annual contribution for each employee on July 1, 1999, times the number of employees
5 for whom the employer makes contributions for group benefits under 2-9-212 on July 1 of each fiscal year.

6 (ii) If a political subdivision did not make contributions for group benefits on or before July 1, 1999,
7 and subsequently does so, the base contribution is determined by multiplying the average annual contribution
8 for each employee in the first year the political subdivision provides contributions for group benefits times the
9 number of employees for whom the employer makes contributions for group benefits under 2-9-212 on July 1 of
10 each fiscal year.

11 (iii) If a political subdivision has made contributions for group benefits but has not previously levied
12 for contributions in excess of the base contribution, the political subdivision's base is determined by multiplying
13 the average annual contribution for each employee at the beginning of the fiscal year immediately preceding
14 the year in which the levy will first be levied times the number of employees for whom the employer made
15 contributions for group benefits under 2-9-212 in that fiscal year.

16 (5) Unused employer contributions for any state employee must be transferred to an account
17 established for this purpose by the department of administration and upon transfer may be used to offset losses
18 occurring to the group of which the employee is eligible to be a member.

19 (6) Unused employer contributions for any government employee may be transferred to an
20 account established for this purpose by a self-insured government and upon transfer may be used to offset
21 losses occurring to the group of which the employee is eligible to be a member or to increase the reserves of
22 the group.

23 (7) The laws prohibiting discrimination on the basis of marital status in Title 49 do not prohibit bona
24 fide group insurance plans from providing greater or additional contributions for insurance benefits to
25 employees with dependents than to employees without dependents or with fewer dependents."

26

27 **Section 16.** Section 2-18-711, MCA, is amended to read:

28 **"2-18-711. Cooperative purchasing of employee benefit services and insurance products --**

1 **procedures.** (1) To provide employee group benefits, an agency, as defined in 2-18-601, ~~and the state~~
 2 ~~compensation insurance fund~~ may participate with other agencies, nonprofit organizations, or business entities
 3 and in voluntary disability insurance purchasing pools provided for under 33-22-1815 if the agency ~~or the state~~
 4 ~~fund~~ determines that cooperative purchasing is in the agency's ~~or the state fund's~~ best interest.

5 (2) Cooperative purchases under this section may be conducted according to purchasing
 6 procedures developed by the participating parties if, for contracts valued at \$20,000 a year or more, purchasing
 7 procedures, at a minimum, include:

8 (a) public notice in three major Montana newspapers of requirements for submitting bids or offers;
 9 and

10 (b) consideration of all submitted bids or offers.

11 (3) For purposes of this section, "employee" also means a schoolteacher or a member of the
 12 instructional or scientific staff of a community college."

13

14 **Section 17.** Section 5-5-223, MCA, is amended to read:

15 **"5-5-223. Economic affairs interim committee.** ~~(4)~~The economic affairs interim committee has
 16 administrative rule review, draft legislation review, program evaluation, and monitoring functions for the
 17 following executive branch agencies and the entities attached to agencies for administrative purposes:

18 ~~(a)(1)~~ department of agriculture;

19 ~~(b)(2)~~ department of commerce;

20 ~~(c)(3)~~ department of labor and industry;

21 ~~(d)(4)~~ department of livestock;

22 ~~(e)(5)~~ office of the state auditor and insurance commissioner;

23 ~~(f)(6)~~ office of economic development;

24 ~~(g) the state compensation insurance fund provided for in 39-71-2313, including the board of directors~~
 25 ~~of the state compensation insurance fund established in 2-15-1019;~~

26 ~~(h)(7)~~ the division of banking and financial institutions provided for in 32-1-211; and

27 ~~(i)(8)~~ the divisions of the department of revenue that administer the Montana Alcoholic Beverage
 28 Code and the Montana Marijuana Regulation and Taxation Act.

1 ~~(2) The state compensation insurance fund shall annually provide to the committee a report in~~
 2 ~~accordance with 5-11-210 on its budget as approved by the state compensation insurance fund board of~~
 3 ~~directors."~~

4

5 **Section 18.** Section 5-5-228, MCA, is amended to read:

6 **"5-5-228. State administration and veterans' affairs interim committee.** (1) The state
 7 administration and veterans' affairs interim committee has administrative rule review, draft legislation review,
 8 program evaluation, and monitoring functions for the public employee retirement plans and for the following
 9 executive branch agencies and, unless otherwise assigned by law, the entities attached to the agencies for
 10 administrative purposes:

11 (a) department of administration, except:

12 ~~(i) the state compensation insurance fund provided for in 39-71-2313, including the board of directors~~
 13 ~~of the state compensation insurance fund established in 2-15-1019;~~

14 ~~(ii)~~(i) the Montana tax appeal board established in 2-15-1015;

15 ~~(iii)~~(ii) the division of banking and financial institutions; and

16 ~~(iv)~~(iii) the office of state public defender;

17 (b) department of military affairs; and

18 (c) office of the secretary of state.

19 (2) The committee shall:

20 (a) consider the actuarial and fiscal soundness of the state's public employee retirement systems,
 21 based on reports from the teachers' retirement board, the public employees' retirement board, and the board of
 22 investments, and study and evaluate the equity and benefit structure of the state's public employee retirement
 23 systems;

24 (b) establish principles of sound fiscal and public policy as guidelines;

25 (c) as necessary, develop legislation to keep the retirement systems consistent with sound policy
 26 principles; and

27 (d) publish, for legislators' use, information on the public employee retirement systems that the
 28 committee considers will be valuable to legislators when considering retirement legislation.

- 1 (3) The committee may:
- 2 (a) specify the date by which retirement board proposals affecting a retirement system must be
- 3 submitted to the committee for the review pursuant to subsection (1); and
- 4 (b) request personnel from state agencies, including boards, political subdivisions, and the state
- 5 public employee retirement systems, to furnish any information and render any assistance that the committee
- 6 may request."

7

8 **Section 19.** Section 5-11-222, MCA, is amended to read:

9 **"5-11-222. Reports to legislature.** (1) (a) Except as provided in subsection (1)(b) and (6), a report to
10 the legislature means a biennial report required by the legislature and filed in accordance with 5-11-210 on or
11 before September 1 of each year preceding the convening of a regular session of the legislature.

12 (b) If otherwise specified in law, a report may be required more or less frequently than the biennial
13 requirement in subsection (1)(a).

14 (2) Reports to the legislature include:

15 (a) annual reports on the unified investment program for public funds and public retirement
16 systems ~~and state compensation insurance fund~~ assets audits from the board of investments in accordance
17 with Article VIII, section 13 of the Montana constitution;

18 (b) federal mandates requirements from the governor in accordance with 2-1-407;

19 (c) activities of the state records committee in accordance with 2-6-1108;

20 (d) revenue studies from the director of revenue, if requested, in accordance with 2-7-104;

21 (e) legislative audit reports from the legislative audit division in accordance with 2-8-112 and 23-7-
22 410;

23 (f) progress on gender and racial balance from the governor in accordance with 2-15-108;

24 (g) a mental health report from the ombudsman in accordance with 2-15-210;

25 (h) policies related to children and families from the interagency coordinating council for state
26 prevention in accordance with 2-15-225;

27 (i) watercourse name changes, if any, from the secretary of state in accordance with 2-15-401;

28 (j) results of programs established in 2-15-3111 through 2-15-3113 from the livestock loss board

- 1 in accordance with 2-15-3113;
- 2 (k) the allocation of space report from the department of administration required in accordance
3 with 2-17-101;
- 4 (l) information technology activities in accordance with 2-17-512;
- 5 (m) state strategic information technology plan exceptions, if granted, from the department of
6 administration in accordance with 2-17-515;
- 7 (n) the state strategic information technology plan and biennial report from the department of
8 administration in accordance with 2-17-521 and 2-17-522;
- 9 (o) reports from standing, interim, and administrative committees, if prepared, in accordance with
10 2-17-825 and 5-5-216;
- 11 (p) statistical and other data related to business transacted by the courts from the court
12 administrator, if requested, in accordance with 3-1-702;
- 13 (q) the judicial standards commission report in accordance with 3-1-1126;
- 14 (r) an annual report on the actual cost of legislation that had a projected fiscal impact from the
15 office of budget and program planning in accordance with 5-4-208;
- 16 (s) a link to annual state agency reports on grants awarded in the previous fiscal year established
17 by the legislative finance committee in accordance with 5-12-208;
- 18 (t) reports prepared by the legislative fiscal analyst, and as determined by the analyst, in
19 accordance with 5-12-302(4);
- 20 (u) a report, if necessary, on administrative policies or rules adopted under 5-11-105 that may
21 impair the independence of the legislative audit division in accordance with 5-13-305;
- 22 (v) if a waste of state resources occurs, a report from the legislative state auditor, in accordance
23 with 5-13-311;
- 24 (w) school funding commission reports each fifth interim in accordance with 5-20-301;
- 25 (x) a report of political committee operations conducted on state-owned property, if required, from
26 a political committee to the legislative services division in accordance with 13-37-404;
- 27 (y) a report concerning taxable value from the department of revenue in accordance with 15-1-
28 205;

- 1 (z) a report on tax credits from the revenue interim committee in accordance with 15-30-2303;
- 2 (aa) semiannual reports on the Montana heritage preservation and development account from the
- 3 Montana heritage preservation and development commission in accordance with 15-65-121;
- 4 (bb) general marijuana regulation reports from the department of revenue in accordance with 16-12-
- 5 110;
- 6 (cc) medical marijuana registry reports from the department of revenue in accordance with 16-12-
- 7 532(3);
- 8 (dd) annual reports on general fund and nongeneral fund encumbrances from the department of
- 9 administration in accordance with 17-1-102;
- 10 (ee) loans or loan extensions authorized for two consecutive fiscal years from the department of
- 11 administration and office of commissioner of higher education, including negative cash balances from the
- 12 commissioner of higher education, in accordance with 17-2-107;
- 13 (ff) a report of local government entities that have balances contrary to limitations provided for in
- 14 17-2-302 or that failed to reduce the charge from the department of administration in accordance with 17-2-304;
- 15 (gg) an annual report from the board of investments in accordance with 17-5-1650(2);
- 16 (hh) a report on retirement system trust investments and benefits from the board of investments in
- 17 accordance with 17-6-230;
- 18 (ii) recommendations for reductions in spending and related analysis, if required, from the office of
- 19 budget and program planning in accordance with 17-7-140;
- 20 (jj) a statewide facility inventory and condition assessment from the department of administration
- 21 in accordance with 17-7-202;
- 22 (kk) actuary reports and investigations for public retirement systems from the public employees'
- 23 retirement board in accordance with 19-2-405;
- 24 (ll) a work report from the public employees' retirement board in accordance with 19-2-407;
- 25 (mm) annual actuarial reports and evaluations from the teachers' retirement board in accordance with
- 26 19-20-201;
- 27 (nn) reports from the state director of K-12 career and vocational and technical education, as
- 28 requested, in accordance with 20-7-308;

- 1 (oo) 5-year state plan for career and technical education reports from the board of regents in
- 2 accordance with 20-7-330;
- 3 (pp) a gifted and talented students report from the office of public instruction in accordance with 20-
- 4 7-904;
- 5 (qq) status changes for at-risk students from the office of public instruction in accordance with 20-9-
- 6 328;
- 7 (rr) status changes for American Indian students from the office of public instruction in accordance
- 8 with 20-9-330;
- 9 (ss) reports regarding the Montana Indian language preservation program from the office of public
- 10 instruction in accordance with 20-9-537;
- 11 (tt) proposals for funding community colleges from the board of regents in accordance with 20-15-
- 12 309;
- 13 (uu) expenditures and activities of the Montana agricultural experiment station and extension
- 14 service, as requested, in accordance with 20-25-236;
- 15 (vv) reports, if requested by the legislature, from the president of each of the units of the higher
- 16 education system in accordance with 20-25-305;
- 17 (ww) reports, if prepared by a public postsecondary institution, regarding free expression activities on
- 18 campus in accordance with 20-25-1506;
- 19 (xx) reports from the Montana historical society trustees in accordance with 22-3-107;
- 20 (yy) state lottery reports in accordance with 23-7-202;
- 21 (zz) a report from the division of banking and financial institutions, if required, from the department
- 22 of administration in accordance with 32-11-306;
- 23 ~~(aaa) state fund reports, if required, from the commissioner in accordance with 33-1-115;~~
- 24 ~~(bbb)~~(aaa) reports from the department of labor and industry in accordance with 39-6-101;
- 25 ~~(ccc)~~(bbb) victim unemployment benefits reports from the department of labor and industry in
- 26 accordance with 39-51-2111;
- 27 ~~(ddd) state fund business reports in accordance with 39-71-2363;~~
- 28 ~~(eee) risk-based capital reports, if required, from the state fund in accordance with 39-71-2375;~~

1 ~~(fff)~~(ccc) child custody reports from the office of the court administrator in accordance with 41-3-
2 1004;
3 ~~(ggg)~~(ddd) reports of remission of fine or forfeiture, respite, commutation, or pardon granted from the
4 governor in accordance with 46-23-316;
5 ~~(hhh)~~(eee) annual statewide public defender reports from the office of state public defender in
6 accordance with 47-1-125;
7 ~~(iii)~~(fff) a trauma care system report from the department of public health and human services in
8 accordance with 50-6-402;
9 ~~(jjj)~~(ggg) an older Montanans trust fund report from the department of public health and human
10 services in accordance with 52-3-115;
11 ~~(kkk)~~(hhh) Montana criminal justice oversight council reports in accordance with 53-1-216;
12 ~~(lll)~~(iii) medicaid block grant reports from the department of public health and human services in
13 accordance with 53-1-611;
14 ~~(mmm)~~(jjj) reports on the approval and implementation status of medicaid section 1115 waivers in
15 accordance with 53-2-215;
16 ~~(nnn)~~(kkk) provider rate, medicaid waiver, or medicaid state plan change reports from the department
17 of public health and human services in accordance with 53-6-101;
18 ~~(ooo)~~(lll) medicaid funding reports from the department of public health and human services in
19 accordance with 53-6-110;
20 ~~(ppp)~~(mmm) proposals regarding managed care for medicaid recipients, if required, from the
21 department of public health and human services in accordance with 53-6-116;
22 ~~(qqq)~~(nnn) suicide reduction plans from the department of public health and human services in
23 accordance with 53-21-1102;
24 ~~(rrr)~~(ooo) a compliance and inspection report from the department of corrections in accordance with
25 53-30-604;
26 ~~(sss)~~(ppp) emergency medical services grants from the department of transportation in accordance
27 with 61-2-109;
28 ~~(ttt)~~(qqq) annual financial reports on the environmental contingency account from the department of

- 1 environmental quality in accordance with 75-1-1101;
- 2 ~~(uuu)~~(rrr) the Flathead basin commission report in accordance with 75-7-304;
- 3 ~~(vvv)~~(sss) a report from the land board, if prepared, in accordance with 76-12-109;
- 4 ~~(www)~~(ttt) an annual state trust land report from the land board in accordance with 77-1-223;
- 5 ~~(xxx)~~(uuu) a noxious plant report, if prepared, from the department of agriculture in accordance with
- 6 80-7-713;
- 7 ~~(yyy)~~(vvv) state water plans from the department of natural resources and conservation in accordance
- 8 with 85-1-203;
- 9 ~~(zzz)~~(www) reports on the allocation of renewable resources grants and loans for emergencies, if
- 10 required, from the department of natural resources and conservation in accordance with 85-1-605;
- 11 ~~(aaa)~~(xxx) water storage projects from the governor's office in accordance with 85-1-704;
- 12 ~~(bbb)~~(yyy) upper Clark Fork River basin steering committee reports, if prepared, in accordance with
- 13 85-2-338;
- 14 ~~(eee)~~(zzz) upland game bird enhancement program reports in accordance with 87-1-250;
- 15 ~~(ddd)~~(aaa) private land/public wildlife advisory committee reports in accordance with 87-1-269;
- 16 ~~(eee)~~(bbb) a future fisheries improvement program report from the department of fish, wildlife, and
- 17 parks in accordance with 87-1-272;
- 18 ~~(fff)~~(ccc) license revenue recommendations from the department of fish, wildlife, and parks in
- 19 accordance with 87-1-629;
- 20 ~~(ggg)~~(ddd) land information data reports from the state library in accordance with 90-1-404;
- 21 ~~(hhh)~~(eee) hydrocarbon and geology investigation reports from the bureau of mines and geology in
- 22 accordance with 90-2-201;
- 23 ~~(iii)~~(fff) coal ash markets investigation reports from the department of commerce in accordance with
- 24 90-2-202;
- 25 ~~(jjj)~~(gggg) an annual report from the pacific northwest electric power and conservation planning council
- 26 in accordance with 90-4-403;
- 27 ~~(kkk)~~(hhh) community property-assessed capital enhancements program reports from the Montana
- 28 facility finance authority in accordance with 90-4-1303;

- 1 ~~(llll)~~(jjjj) veterans' home loan mortgage loan reports from the board of housing in accordance with 90-6-
2 604;
- 3 ~~(mmmm)~~(jjjj) matching infrastructure planning grant awards by the department of commerce in
4 accordance with 90-6-703(3); and
- 5 ~~(nnnn)~~(kkkk) treasure state endowment program reports from the department of commerce in
6 accordance with 90-6-710;
- 7 (3) Reports to the legislature include reports made to an interim committee as follows:
- 8 (a) reports to the law and justice interim committee, including:
- 9 (i) findings of the domestic violence fatality review commission in accordance with 2-15-2017;
- 10 (ii) the report from the missing indigenous persons review commission in accordance with 2-15-
11 2018;
- 12 (iii) reports from the department of justice and public safety officer standards and training council in
13 accordance with 2-15-2029;
- 14 (iv) information on the Montana False Claims Act from the department of justice in accordance with
15 17-8-416;
- 16 (v) annual case status reports from the attorney general in accordance with 41-3-210;
- 17 (vi) office of court administrator reports in accordance with 41-5-2003;
- 18 (vii) statewide public safety communications system activities from the department of justice in
19 accordance with 44-4-1606;
- 20 (viii) reports on the status of the crisis intervention team training program from the board of crime
21 control in accordance with 44-7-110;
- 22 (ix) restorative justice grant program status and performance from the board of crime control in
23 accordance with 44-7-302;
- 24 (x) reports on offenders under supervision with new offenses or violations from the department of
25 corrections in accordance with 46-23-1016;
- 26 (xi) supervision responses grid reports from the department of corrections in accordance with 46-
27 23-1028;
- 28 (xii) statewide public defender reports and information from the office of state public defender in

- 1 accordance with 47-1-125;
- 2 (xiii) every 5 years, a percentage change in public defender funding report from the legislative fiscal
3 analyst in accordance with 47-1-125;
- 4 (xiv) every 5 years, statewide public defender reports on the percentage change in funding from the
5 office of state public defender in accordance with 47-1-125; and
- 6 (xv) a report from the quality assurance unit from the department of corrections in accordance with
7 53-1-211;
- 8 (b) reports to the state administration and veterans' affairs interim committee, including:
- 9 (i) a report that includes information technology activities and additional information from the
10 information technology board in accordance with 2-17-512 and 2-17-513;
- 11 (ii) a report from the capitol complex advisory council in accordance with 2-17-804;
- 12 (iii) a report on the employee incentive award program from the department of administration in
13 accordance with 2-18-1103;
- 14 (iv) a board of veterans' affairs report in accordance with 10-2-102;
- 15 (v) a report on grants to the Montana civil air patrol from the department of military affairs in
16 accordance with 10-3-802;
- 17 (vi) annual reports on statewide election security from the secretary of state in accordance with 13-
18 1-205;
- 19 (vii) a report regarding the youth voting program, if requested, from the secretary of state in
20 accordance with 13-22-108;
- 21 (viii) a report from the commissioner of political practices in accordance with 13-37-120;
- 22 (ix) a report on retirement system trust investments from the board of investments in accordance
23 with 17-6-230;
- 24 (x) actuarial valuations and other reports from the public employees' retirement board in
25 accordance with 19-2-405 and 19-3-117;
- 26 (xi) actuarial valuations and other reports from the teachers' retirement board in accordance with
27 19-20-201 and 19-20-216;
- 28 (xii) a report on the reemployment of retired members of the teachers' retirement system from the

- 1 teachers' retirement board in accordance with 19-20-732; and
- 2 (xiii) changes, if any, affecting filing-office rules under the Uniform Commercial Code from the
- 3 secretary of state in accordance with 30-9A-527;
- 4 (c) reports to the children, families, health, and human services interim committee, including:
- 5 (i) performance data from the department of public health and human services in accordance with
- 6 2-15-2225;
- 7 (ii) quarterly reports on data requirements from the department of public health and human
- 8 services in accordance with 5-12-303;
- 9 (iii) prescription drug registry reports from the board of pharmacy in accordance with 37-7-1514;
- 10 (iv) Montana HELP Act workforce development reports from the department of public health and
- 11 human services in accordance with 39-12-103;
- 12 (v) annual reports from the child and family ombudsman in accordance with 41-3-1211;
- 13 (vi) reports on activities and recommendations on child protective services activities, if required,
- 14 from the child and family ombudsman in accordance with 41-3-1215;
- 15 (vii) reports on the out-of-state placement of high-risk children with multiagency service needs from
- 16 the department of public health and human services in accordance with 52-2-311;
- 17 (viii) private alternative adolescent residential and outdoor programs reports from the department of
- 18 public health and human services in accordance with 52-2-803;
- 19 (ix) an annual Montana parents as scholars program report from the department of public health
- 20 and human services in accordance with 53-4-209;
- 21 (x) provider rate, medicaid waiver, or medicaid state plan change reports from the department of
- 22 public health and human services in accordance with 53-6-101;
- 23 (xi) a report concerning mental health managed care services, if managed care is in place, from the
- 24 advisory council in accordance with 53-6-710;
- 25 (xii) quarterly medicaid reports related to expansion from the department of public health and
- 26 human services in accordance with 53-6-1325;
- 27 (xiii) annual Montana developmental center reports from the department of public health and human
- 28 services in accordance with 53-20-225; and

1 (xiv) annual children's mental health outcomes from the department of public health and human
2 services in accordance with 53-21-508;

3 (xv) suicide reduction plans from the department of public health and human services in
4 accordance with 53-21-1102;

5 (d) reports to the economic affairs interim committee, including:

6 (i) ~~the annual state compensation insurance fund budget from the board of directors in~~
7 ~~accordance with 5-5-223 and 39-71-2363;~~

8 ~~(ii)~~ general marijuana regulation reports from the department of revenue in accordance with 16-12-
9 110(3);

10 ~~(iii)~~(ii) medical marijuana registry reports from the department of revenue in accordance with 16-12-
11 532(3);

12 ~~(iv)~~(iii) annual reports on complaints against physicians certifying medical marijuana use from the
13 board of medical examiners in accordance with 16-12-532(4);

14 ~~(v)~~(iv) an annual report on the administrative rate required from the department of commerce from the
15 Montana heritage preservation and development commission in accordance with 22-3-1002;

16 ~~(vi)~~ state fund reports from the insurance commissioner, if required, in accordance with 33-1-115;

17 ~~(vii)~~(v) risk-based capital reports, if required, from the state fund in accordance with 33-1-115 and 39-
18 71-2375;

19 ~~(viii)~~(vi) annual reinsurance reports from the Montana reinsurance association board required in
20 accordance with 33-22-1308;

21 ~~(ix)~~(vii) reports from the department of labor and industry concerning board attendance in accordance
22 with 37-1-107;

23 ~~(x)~~(viii) annual reports on physician complaints related to medical marijuana from the board of medical
24 examiners in accordance with 37-3-203;

25 ~~(xi)~~(ix) prescription drug registry reports from the board of pharmacy in accordance with 37-7-1514;

26 ~~(xii)~~(x) status reports on the special revenue account and fees charged as a funding source from the
27 board of funeral service in accordance with 37-19-204;

28 ~~(xiii)~~(xi) unemployment insurance program integrity act reports from the department of labor and

- 1 industry in accordance with 39-15-706;
- 2 ~~(xiv)~~(xii) status reports on the distressed wood products industry revolving loan program from the
- 3 department of commerce in accordance with 90-1-503;
- 4 (e) reports to the education interim committee, including:
- 5 (i) reemployment of retired teachers, specialists, and administrators reports from the retirement
- 6 board in accordance with 19-20-732;
- 7 (ii) a report on participation in the interstate compact on educational opportunity for military
- 8 children in accordance with 20-1-231;
- 9 (iii) grow your own grant program reports from the commissioner of higher education in accordance
- 10 with 20-4-601;
- 11 (iv) standards of accreditation proposals and economic impact statements from the board of public
- 12 education in accordance with 20-7-101;
- 13 (v) advanced opportunity program reports from the board of public education in accordance with
- 14 20-7-1506;
- 15 (vi) progress on transformational learning plans from the board of public education in accordance
- 16 with 20-7-1602;
- 17 (vii) budget amendments, if needed, from school districts in accordance with 20-9-161;
- 18 (viii) annual Montana resident student financial aid program reports from the commissioner of higher
- 19 education in accordance with 20-26-105;
- 20 (ix) a historic preservation office report from the historic preservation officer in accordance with 22-
- 21 3-423; and
- 22 (x) interdisciplinary child information agreement reports from the office of public instruction in
- 23 accordance with 52-2-211;
- 24 (f) reports to the energy and telecommunications interim committee, including:
- 25 (i) the high-performance building report from the department of administration in accordance with
- 26 17-7-214;
- 27 (ii) an annual report from the consumer counsel in accordance with 69-1-222;
- 28 (iii) annual universal system benefits reports from utilities, electric cooperatives, and the

- 1 department of revenue in accordance with 69-8-402;
- 2 (iv) small-scale hydroelectric power generation reports from the department of natural resources
- 3 and conservation in accordance with 85-1-501; and
- 4 (v) geothermal reports from the Montana bureau of mines and geology in accordance with 90-3-
- 5 1301;
- 6 (g) reports to the revenue interim committee, including:
- 7 (i) use of the qualified endowment tax credit report from the department of revenue in accordance
- 8 with 15-1-230;
- 9 (ii) tax rates for the upcoming reappraisal cycle from the department of revenue in accordance with
- 10 15-7-111;
- 11 (iii) gray water property tax abatement usage reports from the department of revenue in
- 12 accordance with 15-24-3211;
- 13 (iv) information about job growth incentive tax credits from the department of revenue in
- 14 accordance with 15-30-2361;
- 15 (v) student scholarship contributions from the department of revenue in accordance with 15-30-
- 16 3112;
- 17 (vi) tax havens from the department of revenue in accordance with 15-31-322;
- 18 (vii) media production tax credit economic impact reports from the department of commerce in
- 19 accordance with 15-31-1011;
- 20 (viii) medical marijuana registry reports from the department of revenue in accordance with 16-12-
- 21 532(5);
- 22 (ix) complaints against physicians certifying use of medical marijuana from the board of medical
- 23 examiners in accordance with 16-12-532(5); and
- 24 (x) reports that actual or projected receipts will result in less revenue than estimated from the office
- 25 of budget and program planning, if necessary, in accordance with 17-7-140;
- 26 (h) reports to the transportation interim committee, including:
- 27 (i) biodiesel tax refunds from the department of transportation in accordance with 15-70-433;
- 28 (ii) cooperative agreement negotiations from the department of transportation in accordance with

- 1 15-70-450;
- 2 (iii) an annual alternative project delivery contracting report from the department of transportation in
- 3 accordance with 60-2-119; and
- 4 (iv) a special fuels inspection report from the department of transportation in accordance with 61-
- 5 10-154;
- 6 (i) reports to the environmental quality council, including:
- 7 (i) compliance and enforcement reports required in accordance with 75-1-314;
- 8 (ii) the state solid waste management and resource recovery plan, every 5 years, from the
- 9 department of environmental quality in accordance with 75-10-111;
- 10 (iii) annual orphan share reports from the department of environmental quality in accordance with
- 11 75-10-743;
- 12 (iv) Libby asbestos superfund oversight committee reports in accordance with 75-10-1601;
- 13 (v) annual subdivision sanitation reports from the department of environmental quality in
- 14 accordance with 76-4-116;
- 15 (vi) state trust land accessibility reports from the department of natural resources and conservation
- 16 in accordance with 77-1-820;
- 17 (vii) biennial land banking reports and annual state land cabin and home site sales reports from the
- 18 department of natural resources and conservation in accordance with 77-2-366;
- 19 (viii) biennially invasive species reports from the departments of fish, wildlife, and parks and natural
- 20 resources and conservation in accordance with 80-7-1006;
- 21 (ix) annual upper Columbia conservation commission reports in accordance with 80-7-1026;
- 22 (x) annual invasive species council reports in accordance with 80-7-1203;
- 23 (xi) sand and gravel reports, if an investigation is completed, in accordance with 82-2-701;
- 24 (xii) annual sage grouse population reports from the department of fish, wildlife, and parks in
- 25 accordance with 87-1-201;
- 26 (xiii) annual gray wolf management reports from the department of fish, wildlife, and parks in
- 27 accordance with 87-1-901;
- 28 (xiv) biennial Tendoy Mountain sheep herd reports from the department of fish, wildlife, and parks in

- 1 accordance with 87-2-702;
- 2 (xv) wildlife habitat improvement project reports from the department of fish, wildlife, and parks in
- 3 accordance with 87-5-807; and
- 4 (xvi) annual sage grouse oversight team activities and staffing reports in accordance with 87-5-918;
- 5 (j) reports to the water policy interim committee, including:
- 6 (i) drought and water supply advisory committee reports in accordance with 2-15-3308;
- 7 (ii) total maximum daily load reports from the department of environmental quality in accordance
- 8 with 75-5-703;
- 9 (iii) state water plans from the department of natural resources and conservation in accordance
- 10 with 85-1-203;
- 11 (iv) small-scale hydroelectric power generation reports from the department of natural resources
- 12 and conservation in accordance with 85-1-501;
- 13 (v) renewable resource grant and loan program reports from the department of natural resources
- 14 and conservation in accordance with 85-1-621;
- 15 (vi) quarterly adjudication reports from the department of natural resources and conservation and
- 16 the water court in accordance with 85-2-281;
- 17 (vii) water reservation reports from the department of natural resources and conservation in
- 18 accordance with 85-2-316;
- 19 (viii) instream flow reports from the department of fish, wildlife, and parks in accordance with 85-2-
- 20 436; and
- 21 (ix) ground water investigation program reports from the bureau of mines and geology in
- 22 accordance with 85-2-525;
- 23 (k) reports to the local government interim committee, including:
- 24 (i) sand and gravel, if an investigation is completed, in accordance with 82-2-701;
- 25 (ii) assistance to local governments on federal land management proposals from the department
- 26 of commerce in accordance with 90-1-182; and
- 27 (iii) emergency financial assistance to local government reports from the department of commerce,
- 28 if requests are made, in accordance with 90-6-703(2);

- 1 (l) reports to the state-tribal relations committee, including:
- 2 (i) reports from the missing indigenous persons review commission in accordance with 2-15-2018;
- 3 (ii) the Montana Indian language preservation program report from the state-tribal economic
- 4 development commission in accordance with 20-9-537;
- 5 (iii) reports from the missing indigenous persons task force in accordance with 44-2-411
- 6 (iv) a decennial economic contributions and impacts of Indian reservations report from the
- 7 department of commerce in accordance with 90-1-105;
- 8 (v) state-tribal economic development commission activities reports from the state-tribal economic
- 9 development commission in accordance with 90-1-132; and
- 10 (vi) state-tribal economic development commission reports provided regularly by the state director
- 11 of Indian affairs in accordance with 90-11-102.
- 12 (4) (a) Except as provided in subsections (4)(b) and (6) and unless otherwise required by law, a
- 13 report made to the legislature in accordance with subsection (3) may be provided orally before September 1 of
- 14 each year preceding the convening of a regular session of the legislature and in accordance with 5-11-
- 15 210(1)(b).
- 16 (b) After receiving an oral report, an interim or administrative committee responsible for receiving
- 17 the report may request a written report be filed with the legislature in accordance with 5-11-210(1)(a).
- 18 (c) This section may not be interpreted to preclude an interim or administrative committee from
- 19 requesting additional information.
- 20 (5) Reports to the legislature include multistate compact and agreement reports including:
- 21 (a) multistate tax compact reports in accordance with 15-1-601;
- 22 (b) interstate compact on educational opportunity for military children reports in accordance with
- 23 20-1-230 and 20-1-231;
- 24 (c) compact for education reports in accordance with 20-2-501;
- 25 (d) Western regional higher education compact reports in accordance with 20-25-801;
- 26 (e) interstate insurance product regulation compact reports in accordance with 33-39-101;
- 27 (f) interstate medical licensure compact reports in accordance with 37-3-356;
- 28 (g) interstate compact on juveniles reports in accordance with 41-6-101;

- 1 (h) interstate compact for adult offender supervision reports in accordance with 46-23-1115;
- 2 (i) vehicle equipment safety compact reports in accordance with 61-2-201;
- 3 (j) multistate highway transportation agreement reports in accordance with 61-10-1101; and
- 4 (k) western interstate nuclear compact reports in accordance with 90-5-201.
- 5 (6) Reports, transfers, statements, assessments, recommendations and changes required under
- 6 17-7-138, 17-7-139, 17-7-140, 19-2-405, 19-2-407, 19-3-117, 19-20-201, 19-20-216, 20-7-101, and 23-7-202,
- 7 ~~33-1-115, and 39-71-2375~~ must be provided as soon as the report is published and publicly available. Reports
- 8 required in subsections (2)(a), (2)(gg), (2)(hh), and (3)(b)(ix) must be provided following issuance of reports
- 9 issued under Title 5, chapter 13."

10

11 **Section 20.** Section 7-33-4510, MCA, is amended to read:

12 **"7-33-4510. Workers' compensation for volunteer firefighters -- notification if coverage not**

13 **provided -- definitions.** (1) An employer may provide workers' compensation coverage as provided in Title 39,

14 chapter 71, to any volunteer firefighter who is listed on a roster of service.

15 (2) An employer may purchase workers' compensation coverage from any entity authorized to

16 provide workers' compensation coverage under plan No. 1, 2, ~~or 3,~~ or 4 as provided in Title 39, chapter 71.

17 (3) If an employer provides workers' compensation coverage as provided in this section, the

18 employer may, upon payment of the filing fee provided for in 7-4-2631(1)(a), file a roster of service with the

19 clerk and recorder in the county in which the employer is located and update the roster of service monthly if

20 necessary to report changes in the number of volunteers on the roster of service. The clerk and recorder shall

21 file the original and replace it with updates whenever necessary. The employer shall maintain the roster of

22 service with the effective date of membership for each volunteer firefighter.

23 (4) If an employer does not provide workers' compensation coverage, the employer shall annually

24 notify the employer's volunteer firefighters that coverage is not provided.

25 (5) For the purposes of this section, the following definitions apply:

26 (a) (i) "Employer" means the governing body of a fire agency organized under Title 7, chapter 33,

27 including a rural fire district, a fire service area, a volunteer fire department, a volunteer fire company, or a

28 volunteer rural fire control crew.

1 (ii) The term does not mean a governing body of a city of the first class or second class, including
2 a city to which 7-33-4109 applies, that provides workers' compensation coverage to employees as defined in
3 39-71-118.

4 (b) "Roster of service" means the list of volunteer firefighters who have filled out a membership
5 card prior to performing services as a volunteer firefighter.

6 (c) (i) "Volunteer firefighter" means a volunteer who is on the employer's roster of service. A
7 volunteer firefighter may include a volunteer emergency care provider as defined in 50-6-202 who is on the
8 roster of service. A volunteer firefighter is not required to be an active member as defined in 19-17-102.

9 (ii) The term does not mean an individual who is not listed on a roster of service or a member of a
10 volunteer fire department provided for in 7-33-4109."

11

12 **Section 21.** Section 15-30-2618, MCA, is amended to read:

13 **"15-30-2618. (Temporary) Confidentiality of tax records.** (1) Except as provided in 5-12-303, 15-1-
14 106, 17-7-111, and subsections (7) through (9) of this section, in accordance with a proper judicial order, or as
15 otherwise provided by law, it is unlawful to divulge or make known in any manner:

16 (a) the amount of income or any particulars set forth or disclosed in any individual report or
17 individual return required under this chapter or any other information secured in the administration of this
18 chapter; or

19 (b) any federal return or federal return information disclosed on any return or report required by
20 rule of the department or under this chapter.

21 (2) (a) The officers charged with the custody of the reports and returns may not be required to
22 produce them or evidence of anything contained in them in an action or proceeding in a court, except in an
23 action or proceeding:

24 (i) to which the department is a party under the provisions of this chapter or any other taxing act;
25 or

26 (ii) on behalf of a party to any action or proceedings under the provisions of this chapter or other
27 taxes when the reports or facts shown by the reports are directly involved in the action or proceedings.

28 (b) The court may require the production of and may admit in evidence only as much of the reports

1 or of the facts shown by the reports as are pertinent to the action or proceedings.

2 (3) This section does not prohibit:

3 (a) the delivery to a taxpayer or the taxpayer's authorized representative of a certified copy of any
4 return or report filed in connection with the taxpayer's tax;

5 (b) the publication of statistics classified to prevent the identification of particular reports or returns
6 and the items of particular reports or returns;

7 (c) the inspection by the attorney general or other legal representative of the state of the report or
8 return of any taxpayer who brings an action to set aside or review the tax based on the report or return or
9 against whom an action or proceeding has been instituted in accordance with the provisions of 15-30-2630; or

10 (d) the delivery of information to the revenue interim committee relating to the annual job growth
11 incentive tax credit as provided in 15-30-2361.

12 (4) The department may deliver to a taxpayer's spouse the taxpayer's return or information related
13 to the return for a tax year if the spouse and the taxpayer filed the return with the filing status of married filing
14 separately on the same return. The information being provided to the spouse or reported on the return,
15 including subsequent adjustments or amendments to the return, must be treated in the same manner as if the
16 spouse and the taxpayer filed the return using a joint filing status for that tax year.

17 (5) Reports and returns must be preserved for at least 3 years and may be preserved until the
18 department orders them to be destroyed.

19 (6) Any offense against subsections (1) through (5) is punishable by a fine not exceeding \$500. If
20 the offender is an officer or employee of the state, the offender must be dismissed from office or employment
21 and may not hold any public office or public employment in this state for a period of 1 year after dismissal or, in
22 the case of a former officer or employee, for 1 year after conviction.

23 (7) This section may not be construed to prohibit the department from providing taxpayer return
24 information and information from employers' payroll withholding reports to:

25 (a) the department of labor and industry to be used for the purpose of investigation and prevention
26 of noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws; or

27 ~~(b) the state fund to be used for the purpose of investigation and prevention of noncompliance, fraud,~~
28 ~~and abuse under the workers' compensation program; or~~

1 ~~(e)~~(b) the department of public health and human services to verify, as required under 53-6-133, the
2 income reported by applicants for medical assistance.

3 (8) The department may permit the commissioner of internal revenue of the United States or the
4 proper officer of any state imposing a tax on the incomes of individuals or the authorized representative of
5 either officer to inspect the return of income of any individual or may furnish to the officer or an authorized
6 representative an abstract of the return of income of any individual or supply the officer with information
7 concerning an item of income contained in a return or disclosed by the report of an investigation of the income
8 or return of income of an individual, but the permission may be granted or information furnished only if the
9 statutes of the United States or of the other state grant substantially similar privileges to the proper officer of
10 this state charged with the administration of this chapter.

11 (9) On written request to the director or a designee of the director, the department shall furnish:

12 (a) to the department of justice all information necessary to identify those persons qualifying for the
13 additional exemption for blindness pursuant to 15-30-2114(4), for the purpose of enabling the department of
14 justice to administer the provisions of 61-5-105;

15 (b) to the department of public health and human services information acquired under 15-30-2616,
16 pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of public
17 assistance fraud and abuse, provided notice to the applicant has been given;

18 (c) to the department of labor and industry for the purpose of:

19 (i) prevention and detection of fraud and abuse in and eligibility for benefits under the
20 unemployment compensation and workers' compensation programs, information on whether a taxpayer who is
21 the subject of an ongoing investigation by the department of labor and industry is an employee, an independent
22 contractor, or self-employed;

23 (ii) administering the apprenticeship tax credit provided for in 39-6-109, employer and apprentice
24 information necessary to implement 15-30-2357, 15-31-173, and 39-6-109; and

25 (iii) administering the annual job growth incentive tax credit provided for in 39-11-404, taxpayer and
26 employee information necessary to implement 15-30-2361 and 15-31-175;

27 (d) to the department of fish, wildlife, and parks specific information that is available from income
28 tax returns and required under 87-2-102 to establish the residency requirements of an applicant for hunting and

1 fishing licenses;

2 (e) to the board of regents information required under 20-26-1111;

3 (f) to the legislative fiscal analyst and the office of budget and program planning individual income
4 tax information as provided in 5-12-303, 15-1-106, and 17-7-111. The information provided to the office of
5 budget and program planning must be the same as the information provided to the legislative fiscal analyst.

6 (g) to the department of transportation farm income information based on the most recent income
7 tax return filed by an applicant applying for a refund under 15-70-430, provided that notice to the applicant has
8 been given as provided in 15-70-430. The information obtained by the department of transportation is subject to
9 the same restrictions on disclosure as are individual income tax returns.

10 (h) to the department of commerce tax information about a taxpayer whose debt is assigned to the
11 department of revenue for offset or collection pursuant to the terms of Title 17, chapter 4, part 1. The
12 information provided to the department of commerce must be used for the purposes of preventing and detecting
13 fraud or abuse and determining eligibility for grants or loans. (Terminates June 30, 2025, on occurrence of
14 contingency--sec. 48, Ch. 415, L. 2019.)

15 **15-30-2618. (Temporary -- effective January 1, 2024) Confidentiality of tax records.** (1) Except
16 as provided in 5-12-303, 15-1-106, 17-7-111, and subsections (6) through (8) of this section, in accordance with
17 a proper judicial order, or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

18 (a) the amount of income or any particulars set forth or disclosed in any individual report or
19 individual return required under this chapter or any other information secured in the administration of this
20 chapter; or

21 (b) any federal return or federal return information disclosed on any return or report required by
22 rule of the department or under this chapter.

23 (2)(a) The officers charged with the custody of the reports and returns may not be required to produce
24 them or evidence of anything contained in them in an action or proceeding in a court, except in an action or
25 proceeding:

26 (i) to which the department is a party under the provisions of this chapter or any other taxing act;

27 or

28 (ii) on behalf of a party to any action or proceedings under the provisions of this chapter or other

1 taxes when the reports or facts shown by the reports are directly involved in the action or proceedings.

2 (b) The court may require the production of and may admit in evidence only as much of the reports
3 or of the facts shown by the reports as are pertinent to the action or proceedings.

4 (3) This section does not prohibit:

5 (a) the delivery to a taxpayer or the taxpayer's authorized representative of a certified copy of any
6 return or report filed in connection with the taxpayer's tax;

7 (b) the publication of statistics classified to prevent the identification of particular reports or returns
8 and the items of particular reports or returns;

9 (c) the inspection by the attorney general or other legal representative of the state of the report or
10 return of any taxpayer who brings an action to set aside or review the tax based on the report or return or
11 against whom an action or proceeding has been instituted in accordance with the provisions of 15-30-2630; or

12 (d) the delivery of information to the revenue interim committee relating to the annual job growth
13 incentive tax credit as provided in 15-30-2361.

14 (4) Reports and returns must be preserved for at least 3 years and may be preserved until the
15 department orders them to be destroyed.

16 (5) Any offense against subsections (1) through (4) is punishable by a fine not exceeding \$500. If
17 the offender is an officer or employee of the state, the offender must be dismissed from office or employment
18 and may not hold any public office or public employment in this state for a period of 1 year after dismissal or, in
19 the case of a former officer or employee, for 1 year after conviction.

20 (6) This section may not be construed to prohibit the department from providing taxpayer return
21 information and information from employers' payroll withholding reports to:

22 (a) the department of labor and industry to be used for the purpose of investigation and prevention
23 of noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws; or

24 ~~(b) the state fund to be used for the purpose of investigation and prevention of noncompliance, fraud,~~
25 ~~and abuse under the workers' compensation program; or~~

26 ~~(c)~~(b) the department of public health and human services to verify, as required under 53-6-133, the
27 income reported by applicants for medical assistance.

28 (7) The department may permit the commissioner of internal revenue of the United States or the

1 proper officer of any state imposing a tax on the incomes of individuals or the authorized representative of
2 either officer to inspect the return of income of any individual or may furnish to the officer or an authorized
3 representative an abstract of the return of income of any individual or supply the officer with information
4 concerning an item of income contained in a return or disclosed by the report of an investigation of the income
5 or return of income of an individual, but the permission may be granted or information furnished only if the
6 statutes of the United States or of the other state grant substantially similar privileges to the proper officer of
7 this state charged with the administration of this chapter.

8 (8) On written request to the director or a designee of the director, the department shall furnish:

9 (a) to the department of public health and human services information acquired under 15-30-2616,
10 pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of public
11 assistance fraud and abuse, provided notice to the applicant has been given;

12 (b) to the department of labor and industry for the purpose of:

13 (i) prevention and detection of fraud and abuse in and eligibility for benefits under the
14 unemployment compensation and workers' compensation programs, information on whether a taxpayer who is
15 the subject of an ongoing investigation by the department of labor and industry is an employee, an independent
16 contractor, or self-employed;

17 (ii) administering the apprenticeship tax credit provided for in 39-6-109, employer and apprentice
18 information necessary to implement 15-30-2357, 15-31-173, and 39-6-109; and

19 (iii) administering the annual job growth incentive tax credit provided for in 39-11-404, taxpayer and
20 employee information necessary to implement 15-30-2361 and 15-31-175;

21 (c) to the department of fish, wildlife, and parks specific information that is available from income
22 tax returns and required under 87-2-102 to establish the residency requirements of an applicant for hunting and
23 fishing licenses;

24 (d) to the board of regents information required under 20-26-1111;

25 (e) to the legislative fiscal analyst and the office of budget and program planning individual income
26 tax information as provided in 5-12-303, 15-1-106, and 17-7-111. The information provided to the office of
27 budget and program planning must be the same as the information provided to the legislative fiscal analyst.

28 (f) to the department of transportation farm income information based on the most recent income

1 tax return filed by an applicant applying for a refund under 15-70-430, provided that notice to the applicant has
2 been given as provided in 15-70-430. The information obtained by the department of transportation is subject to
3 the same restrictions on disclosure as are individual income tax returns.

4 (g) to the department of commerce tax information about a taxpayer whose debt is assigned to the
5 department of revenue for offset or collection pursuant to the terms of Title 17, chapter 4, part 1. The
6 information provided to the department of commerce must be used for the purposes of preventing and detecting
7 fraud or abuse and determining eligibility for grants or loans. (Terminates June 30, 2025, on occurrence of
8 contingency--sec. 48, Ch. 415, L. 2019; subsections (3)(d) and (8)(b)(iii) terminate December 31, 2028--sec.
9 24(1), Ch. 550, L. 2021.)

10 **15-30-2618. (Effective July 1, 2025, on occurrence of contingency) Confidentiality of tax**
11 **records.** (1) Except as provided in 5-12-303, 15-1-106, 17-7-111, and subsections (7) and (8) of this section, in
12 accordance with a proper judicial order, or as otherwise provided by law, it is unlawful to divulge or make known
13 in any manner:

14 (a)____—the amount of income or any particulars set forth or disclosed in any individual report or
15 individual return required under this chapter or any other information secured in the administration of this
16 chapter; or

17 (b) any federal return or federal return information disclosed on any return or report required by
18 rule of the department or under this chapter.

19 (2) (a) The officers charged with the custody of the reports and returns may not be required to
20 produce them or evidence of anything contained in them in an action or proceeding in a court, except in an
21 action or proceeding:

22 (i) to which the department is a party under the provisions of this chapter or any other taxing act;

23 or

24 (ii) on behalf of a party to any action or proceedings under the provisions of this chapter or other
25 taxes when the reports or facts shown by the reports are directly involved in the action or proceedings.

26 (b) The court may require the production of and may admit in evidence only as much of the reports
27 or of the facts shown by the reports as are pertinent to the action or proceedings.

28 (3) This section does not prohibit:

1 (a) the delivery to a taxpayer or the taxpayer's authorized representative of a certified copy of any
2 return or report filed in connection with the taxpayer's tax;

3 (b) the publication of statistics classified to prevent the identification of particular reports or returns
4 and the items of particular reports or returns;

5 (c) the inspection by the attorney general or other legal representative of the state of the report or
6 return of any taxpayer who brings an action to set aside or review the tax based on the report or return or
7 against whom an action or proceeding has been instituted in accordance with the provisions of 15-30-2630; or

8 (d) the delivery of information to the revenue interim committee relating to the annual job growth
9 incentive tax credit as provided in 15-30-2361.

10 (4) Reports and returns must be preserved for at least 3 years and may be preserved until the
11 department orders them to be destroyed.

12 (5) Any offense against subsections (1) through (4) is punishable by a fine not exceeding \$500. If
13 the offender is an officer or employee of the state, the offender must be dismissed from office or employment
14 and may not hold any public office or public employment in this state for a period of 1 year after dismissal or, in
15 the case of a former officer or employee, for 1 year after conviction.

16 (6) This section may not be construed to prohibit the department from providing taxpayer return
17 information and information from employers' payroll withholding reports to:

18 ~~(a) the department of labor and industry to be used for the purpose of investigation and prevention of~~
19 ~~noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws; or~~

20 ~~(b) the state fund to be used for the purpose of investigation and prevention of noncompliance, fraud,~~
21 ~~and abuse under the workers' compensation program.~~

22 (7) The department may permit the commissioner of internal revenue of the United States or the
23 proper officer of any state imposing a tax on the incomes of individuals or the authorized representative of
24 either officer to inspect the return of income of any individual or may furnish to the officer or an authorized
25 representative an abstract of the return of income of any individual or supply the officer with information
26 concerning an item of income contained in a return or disclosed by the report of an investigation of the income
27 or return of income of an individual, but the permission may be granted or information furnished only if the
28 statutes of the United States or of the other state grant substantially similar privileges to the proper officer of

1 this state charged with the administration of this chapter.

2 (8) On written request to the director or a designee of the director, the department shall furnish:

3 (a) to the department of public health and human services information acquired under 15-30-2616,
4 pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of public
5 assistance fraud and abuse, provided notice to the applicant has been given;

6 (b) to the department of labor and industry for the purpose of:

7 (i) prevention and detection of fraud and abuse in and eligibility for benefits under the
8 unemployment compensation and workers' compensation programs, information on whether a taxpayer who is
9 the subject of an ongoing investigation by the department of labor and industry is an employee, an independent
10 contractor, or self-employed;

11 (ii) administering the apprenticeship tax credit provided for in 39-6-109, employer and apprentice
12 information necessary to implement 15-30-2357, 15-31-173, and 39-6-109; and

13 (iii) administering the annual job growth incentive tax credit provided for in 39-11-404, taxpayer and
14 employee information necessary to implement 15-30-2361 and 15-31-175;

15 (c) to the department of fish, wildlife, and parks specific information that is available from income
16 tax returns and required under 87-2-102 to establish the residency requirements of an applicant for hunting and
17 fishing licenses;

18 (d) to the board of regents information required under 20-26-1111;

19 (e) to the legislative fiscal analyst and the office of budget and program planning individual income
20 tax information as provided in 5-12-303, 15-1-106, and 17-7-111. The information provided to the office of
21 budget and program planning must be the same as the information provided to the legislative fiscal analyst.

22 (f) to the department of transportation farm income information based on the most recent income
23 tax return filed by an applicant applying for a refund under 15-70-430, provided that notice to the applicant has
24 been given as provided in 15-70-430. The information obtained by the department of transportation is subject to
25 the same restrictions on disclosure as are individual income tax returns.

26 (g) to the department of commerce tax information about a taxpayer whose debt is assigned to the
27 department of revenue for offset or collection pursuant to the terms of Title 17, chapter 4, part 1. The
28 information provided to the department of commerce must be used for the purposes of preventing and detecting

1 fraud or abuse and determining eligibility for grants or loans. (Subsections (3)(d) and (8)(b)(iii) terminate
2 December 31, 2028--sec. 24(1), Ch. 550, L. 2021.)"

3

4 **Section 22.** Section 17-1-102, MCA, is amended to read:

5 **"17-1-102. Uniform accounting system and expenditure control.** (1) The department shall
6 establish a system of financial control so that the functioning of the various agencies of the state may be
7 improved, duplications of work by different state agencies and employees may be eliminated, public service
8 may be improved, and the cost of government may be reduced.

9 (2) The department shall prescribe and install a uniform accounting and reporting system for all
10 state agencies and institutions, reporting the receipt, use, and disposition of all public money and property in
11 accordance with generally accepted accounting principles.

12 (3) The uniform accounting and reporting system must contain three levels of expenditure. The first
13 level must include general categories, such as personal services, operating expenses, equipment, capital
14 outlay, local assistance, grants, benefits and claims, transfers, and debt service. The second level of
15 expenditure must include specific categories of expenditures within each first-level category. The third level of
16 expenditure must include specific items of expenditure within each category of the second level.

17 (4) ~~(a) Except as provided in subsection (4)(b), all~~ All state agencies, including units of the
18 university system but excluding community colleges, shall input all necessary transactions to the accounting
19 system prescribed in subsection (2) before the accounts are closed at the end of the fiscal year in order to
20 present the receipt, use, and disposition of all money and property for which the agency is accountable in
21 accordance with generally accepted accounting principles, except that for budgetary control purposes,
22 encumbrances that are required by generally accepted accounting principles to be reported as a reservation of
23 fund balance must be recorded as expenditures and liabilities on the accounting records in accordance with the
24 following requirements:

25 ~~(i)~~(a) Goods and services, grants, and local assistance that are paid for with the general fund, in
26 whole or in part, may be encumbered. The general fund encumbrances must be reviewed by the department,
27 and a specific extension plan must be presented by the encumbering agency to the department prior to the
28 fiscal yearend. If a valid extension plan is not received and approved, the department shall delete the

1 encumbrance at fiscal yearend. The department shall present a fiscal yearend report to the office of budget and
2 program planning and to the legislative fiscal analyst on each general fund encumbrance remaining at fiscal
3 yearend. The report must be provided in an electronic format. The department shall provide a copy of the fiscal
4 yearend report to the legislature in accordance with 5-11-210.

5 (ii)(b) Nongeneral fund encumbrances also require a valid extension plan approved by the
6 department at the end of each fiscal year. After 3 years, approved extensions must be included by the
7 department in its fiscal yearend report to the office of budget and program planning and to the legislative
8 finance committee.

9 ~~(b) The state fund provided for in Title 39, chapter 71, part 23, shall report on a calendar year basis."~~

10

11 **Section 23.** Section 17-2-110, MCA, is amended to read:

12 **"17-2-110. Fiscal year and financial reports.** (1) ~~Except for the state fund provided for in Title 39,~~
13 ~~chapter 71, part 23, the~~ The fiscal year for state purposes commences on July 1 of each year and ends on June
14 30 of each year. ~~The state fund's fiscal year starts on January 1 of each year and ends on December 31 of that~~
15 ~~same year.~~

16 (2) At the end of each fiscal year, the fiscal records of each state office, department, bureau,
17 commission, institution, university unit, and agency, collectively referred to as "state agency", must be closed.
18 Each state agency shall prepare the financial records and reconciliations for the fiscal year as the department
19 of administration may prescribe. The financial reports of the uniform accounting and reporting system
20 prescribed in 17-1-102(2) are to be completed and distributed not more than 31 days following the end of each
21 fiscal year. The department of administration may extend this time limit if a state agency can show necessity for
22 the extension.

23 (3) The reports are to be distributed to the department of administration and the legislative auditor
24 and any other state agency that the department of administration may prescribe. It is the intent of this provision
25 that these reports accurately and comprehensively present the financial activities of the reporting state agency
26 in accordance with generally accepted accounting principles so that the reports can be effectively used by the
27 executive and legislative branches of state government.

28 (4) Upon consolidation of the reports, the annual financial report by the department of

1 administration must be available for other individuals and organizations interested in the financial affairs of the
2 state of Montana."

3

4 **Section 24.** Section 17-6-203, MCA, is amended to read:

5 **"17-6-203. Separate investment funds.** Separate investment funds must be maintained as follows:

6 (1) the permanent funds, including all public school funds and funds of the Montana university
7 system and other state institutions of learning referred to in Article X, sections 2 and 10, of the Montana
8 constitution. The principal and any part of the principal of each fund constituting the Montana permanent fund
9 type are subject to deposit at any time when due under the statutory provisions applicable to the fund and
10 according to the provisions of the gift, donation, grant, legacy, bequest, or devise through or from which the
11 particular fund arises.

12 (2) a separate investment fund, which may not be held jointly with other funds, for money
13 pertaining to each retirement or insurance system maintained by the state, including:

- 14 (a) the public employees' retirement system described in Title 19, chapter 3;
- 15 (b) the judges' retirement system described in Title 19, chapter 5;
- 16 (c) the highway patrol officers' retirement system described in Title 19, chapter 6;
- 17 (d) the sheriffs' retirement system described in Title 19, chapter 7;
- 18 (e) the game wardens' and peace officers' retirement system described in Title 19, chapter 8;
- 19 (f) the municipal police officers' retirement system described in Title 19, chapter 9;
- 20 (g) the firefighters' unified retirement system described in Title 19, chapter 13;
- 21 (h) the Volunteer Firefighters' Compensation Act under Title 19, chapter 17;
- 22 (i) the teachers' retirement system described in Title 19, chapter 20; ~~and~~
- 23 (j) the workers' compensation program described in Title 39, chapter 71, part 23; and
- 24 (k) the residual market program and pool provided for in [sections 1 through 8];

25 (3) a pooled investment fund, including all other accounts within the treasury fund structure
26 established by 17-2-102;

27 (4) the fish and wildlife mitigation trust fund established by 87-1-611;

28 (5) a fund consisting of gifts, donations, grants, legacies, bequests, devises, and other

1 contributions made or given for a specific purpose or under conditions expressed in the gift, donation, grant,
2 legacy, bequest, devise, or contribution to be observed by the state of Montana. If a gift, donation, grant,
3 legacy, bequest, devise, or contribution permits investment and is not otherwise restricted by its terms, it may
4 be treated jointly with other gifts, donations, grants, legacies, bequests, devises, or contributions.

5 (6) a fund consisting of coal severance taxes allocated to the coal severance tax trust fund under
6 Article IX, section 5, of the Montana constitution. The principal of the coal severance tax trust fund is
7 permanent. If the legislature appropriates any part of the principal of the coal severance tax trust fund by a vote
8 of three-fourths of the members of each house, the appropriation or investment may create a gain or loss in the
9 principal.

10 (7) a Montana tobacco settlement trust fund established in accordance with Article XII, section 4,
11 of the Montana constitution and Title 17, chapter 6, part 6; and

12 (8) additional investment funds that are expressly required by law or that the board of investments
13 determines are necessary to fulfill fiduciary responsibilities of the state with respect to funds from a particular
14 source."

15

16 **Section 25.** Section 17-8-403, MCA, is amended to read:

17 **"17-8-403. False claims -- procedures -- penalties.** (1) Except as provided in subsection (2), a
18 person is liable to a governmental entity for a civil penalty of not less than \$5,500 and not more than \$11,000
19 for each act specified in this section, plus three times the amount of damages that a governmental entity
20 sustains, along with expenses, costs, and attorney fees, if the person:

21 (a) knowingly presents or causes to be presented a false or fraudulent claim for payment or
22 approval;

23 (b) knowingly makes, uses, or causes to be made or used a false record or statement material to a
24 false or fraudulent claim;

25 (c) conspires to commit a violation of this subsection (1);

26 (d) has possession, custody, or control of public property or money used or to be used by the
27 governmental entity and knowingly delivers or causes to be delivered less than all of the property or money;

28 (e) is authorized to make or deliver a document certifying receipt of property used or to be used by

1 the governmental entity and, with the intent to defraud the governmental entity or to willfully conceal the
2 property, makes or delivers a receipt without completely knowing that the information on the receipt is true;

3 (f) knowingly buys or receives as a pledge of an obligation or debt public property of the
4 governmental entity from any person who may not lawfully sell or pledge the property;

5 (g) knowingly makes, uses, or causes to be made or used a false record or statement material to
6 an obligation to pay or transmit money or property to a governmental entity or knowingly conceals or knowingly
7 and improperly avoids or decreases an obligation to pay or transmit money or property to a governmental
8 entity; or

9 (h) as a beneficiary of an inadvertent submission of a false or fraudulent claim to the governmental
10 entity, subsequently discovers the falsity of the claim or that the claim is fraudulent and fails to disclose the
11 false or fraudulent claim to the governmental entity within a reasonable time after discovery of the false or
12 fraudulent claim.

13 (2) In a civil action brought under 17-8-405 or 17-8-406, a court shall assess a civil penalty of not
14 less than \$5,500 and not more than \$11,000 for each act specified in this section, plus not less than two times
15 and not more than three times the amount of damages that a governmental entity sustains if the court finds all
16 of the following:

17 (a) The person committing the act furnished the government attorney with all information known to
18 that person about the act within 30 days after the date on which the person first obtained the information.

19 (b) The person fully cooperated with any investigation of the act by the government attorney.

20 (c) At the time that the person furnished the government attorney with information about the act, a
21 criminal prosecution, civil action, or administrative action had not been commenced with respect to the act and
22 the person did not have actual knowledge of the existence of an investigation into the act.

23 (3) A person who violates the provisions of this section is also liable to the governmental entity for
24 the expenses, costs, and attorney fees of the civil action brought to recover the penalty or damages.

25 (4) Liability under this section is joint and several for any act committed by two or more persons.

26 (5) This section does not apply to ~~claims, records, or statements made in relation to claims filed~~
27 ~~with the state compensation insurance fund under Title 39, chapter 71, or to claims, records, payments, or~~
28 statements made under the tax laws contained in Title 15 or 16 or made to the department of natural resources

1 and conservation under Title 77.

2 (6) (a) A court shall dismiss an action or claim brought under 17-8-406, unless opposed by the
3 governmental entity or unless the action is brought by the government attorney or the person who is the original
4 source of the information, if substantially the same allegations or transactions alleged in the action or claim
5 were publicly disclosed in:

6 (i) a criminal, civil, or administrative hearing in which the governmental entity or an agent of the
7 governmental entity is a party;

8 (ii) a state legislative, state auditor, or other governmental entity report, hearing, audit, or
9 investigation; or

10 (iii) the news media.

11 (b) The production of a record pursuant to Article II, section 9, of the Montana constitution or 2-6-
12 1003 is not a public disclosure for purposes of this section.

13 (c) For purposes of this subsection (6), "original source" means an individual who:

14 (i) prior to a public disclosure, voluntarily disclosed to the governmental entity the information on
15 which the allegations or transactions in a claim are based; or

16 (ii) has knowledge that is independent of and materially adds to the publicly disclosed allegations
17 and transactions and voluntarily provided the information to the governmental entity before filing an action.

18 (7) A person may not file a complaint or civil action brought under 17-8-406 against the state or an
19 officer or employee of the state arising from conduct by the officer or employee within the scope of the officer's
20 or employee's duties to the state unless the officer or employee has a financial interest in the conduct upon
21 which the complaint or civil action arises.

22 (8) The amount of the civil penalty set forth in subsections (1) and (2) must be adjusted for inflation
23 in a manner consistent with the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101-410.

24 (9) If a governmental entity does not intervene, the person who initiated the action has the same
25 right to conduct the action as the government attorney would have had if the governmental entity had
26 intervened, including the right to inspect government records and interview officers and employees of the
27 governmental entity."

28

1 **Section 26.** Section 18-4-132, MCA, is amended to read:

2 **"18-4-132. Application.** (1) This chapter applies to:

3 (a) the expenditure of public funds irrespective of their source, including federal assistance money,
4 by this state acting through a governmental body under any contract, except a contract exempted from this
5 chapter by this section or by another statute;

6 (b) a procurement of supplies or services that is at no cost to the state and from which income may
7 be derived by the vendor and to a procurement of supplies or services from which income or a more
8 advantageous business position may be derived by the state; and

9 (c) the disposal of state supplies.

10 (2) This chapter or rules adopted pursuant to this chapter do not prevent any governmental body
11 or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative
12 agreement.

13 (3) This chapter does not apply to:

14 (a) either grants or contracts between the state and its political subdivisions or other governments,
15 except as provided in part 4;

16 (b) construction contracts;

17 (c) expenditures of or the authorized sale or disposal of equipment purchased with money raised
18 by student activity fees designated for use by the student associations of the university system;

19 (d) contracts entered into by the Montana state lottery that have an aggregate value of less than
20 \$250,000;

21 (e) contracts entered into by the ~~state compensation insurance fund to procure insurance-related~~
22 ~~services;~~ department of labor and industry in administering [sections 1 through 8];

23 (f) employment of:

24 (i) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

25 (ii) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

26 (iii) an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested
27 case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive
28 order of the governor;

- 1 (iv) consulting actuaries;
- 2 (v) a private consultant employed by the student associations of the university system with money
- 3 raised from student activity fees designated for use by those student associations;
- 4 (vi) a private consultant employed by the Montana state lottery;
- 5 (vii) a private investigator licensed by any jurisdiction;
- 6 (viii) a claims adjuster; or
- 7 (ix) a court reporter appointed as an independent contractor under 3-5-601;
- 8 (g) electrical energy purchase contracts by the university of Montana or Montana state university,
- 9 as defined in 20-25-201. Any savings accrued by the university of Montana or Montana state university in the
- 10 purchase or acquisition of energy must be retained by the board of regents of higher education for university
- 11 allocation and expenditure.
- 12 (h) the purchase or commission of art for a museum or public display;
- 13 (i) contracting under 47-1-121 of the Montana Public Defender Act;
- 14 (j) contracting under Title 90, chapter 4, part 11; or
- 15 (k) contracting under Title 90, chapter 14, part 1, when the total contract value is \$12,501 or less.
- 16 (4) (a) Food products produced in Montana may be procured by either standard procurement
- 17 procedures or by direct purchase. Montana-produced food products may be procured by direct purchase when:
- 18 (i) the quality of available Montana-produced food products is substantially equivalent to the
- 19 quality of similar food products produced outside the state;
- 20 (ii) a vendor is able to supply Montana-produced food products in sufficient quantity; and
- 21 (iii) a bid for Montana-produced food products either does not exceed or reasonably exceeds the
- 22 lowest bid or price quoted for similar food products produced outside the state. A bid reasonably exceeds the
- 23 lowest bid or price quoted when, in the discretion of the person charged by law with the duty to purchase food
- 24 products for a governmental body, the higher bid is reasonable and capable of being paid out of that
- 25 governmental body's existing budget without any further supplemental or additional appropriation.
- 26 (b) The department shall adopt any rules necessary to administer the optional procurement
- 27 exception established in this subsection (4).
- 28 (5) As used in this section, the following definitions apply:

1 (a) "Food" means articles normally used by humans as food or drink, including articles used for
2 components of articles normally used by humans as food or drink.

3 (b) "Produced" means planted, cultivated, grown, harvested, raised, collected, processed, or
4 manufactured."

5

6 **Section 27.** Section 18-7-101, MCA, is amended to read:

7 **"18-7-101. Power to contract for printing -- exceptions.** (1) Except as provided in 1-11-301, 16-12-
8 104, and 16-12-503, the department has exclusive power, subject to the approval of the governor, to contract
9 for all printing for any purpose used by the state in any state office (elective or appointive), agency, or
10 institution.

11 (2) The department shall supervise and attend to all public printing of the state as provided in this
12 chapter and shall prevent duplication and unnecessary printing.

13 (3) Unless otherwise provided by law, the department, in letting contracts as provided in this
14 chapter, for the printing, binding, and publishing of all laws, journals, and reports of the state agencies and
15 institutions may determine the quantity, quality, style, and grade of all such printing, binding, and publishing.

16 ~~(4) The provisions of this chapter do not apply to the state compensation insurance fund for purposes~~
17 ~~of external marketing or educational materials."~~

18

19 **Section 28.** Section 19-3-1002, MCA, is amended to read:

20 **"19-3-1002. Eligibility for disability retirement.** (1) Except as provided in subsections (2) and (3), a
21 member entering service prior to February 24, 1991, who is not eligible for service retirement or early retirement
22 but who has at least 5 years of membership service and has become disabled while an active member is
23 eligible for disability retirement, as provided in 19-3-1008.

24 (2) An active member who was hired prior to July 1, 2011, and is 60 years of age or older or was
25 hired on or after July 1, 2011, and is 65 years of age or older and who has completed 5 years of membership
26 service and has had a duty-related accident forcing the member to terminate employment but who has not
27 received or is ineligible to receive workers' compensation benefits under Title 39, chapter 71, for the duty-
28 related accident may conditionally waive the member's eligibility for a service retirement in order to be eligible

1 for disability retirement. The waiver is effective only upon approval by the board of the member's written
2 application for disability retirement. ~~The board shall determine whether a member has become disabled. The~~
3 ~~board may request any information on file with the state compensation insurance fund concerning any duty-~~
4 ~~related accident. If information is not available, the board may request and the state fund shall then provide an~~
5 ~~investigative report on the disabling accident.~~

6 (3) (a) A member in service on February 24, 1991, has a one-time election to be covered for
7 disability purposes under the provisions of 19-3-1008(2). This election is irrevocable and must be made in
8 writing by the member no later than December 31, 1991. Coverage under the provisions of 19-3-1008(2)
9 commences on the date the completed written election is received by the board or its designated
10 representative. To be eligible for disability benefits under the provisions of this part, a member must have
11 completed 5 years of membership service and must have become disabled while an active member.

12 (b) An individual who became a member after February 24, 1991, and before July 1, 2011, who
13 has completed 5 years of membership service and has become disabled while an active member is covered for
14 disability purposes under the provisions of 19-3-1008(2) or (3).

15 (4) A member hired on or after July 1, 2011, who has completed 5 years of membership service
16 and has become disabled while an active member is covered for disability purposes under the provisions of 19-
17 3-1008(4)."

18

19 **Section 29.** Section 33-1-1205, MCA, is amended to read:

20 **"33-1-1205. Duties of authorized insurers, adjusters, administrators, consultants, and**

21 **producers -- notice exception.** (1) Each insurer, independent adjuster, independent administrator,
22 independent consultant, and independent producer shall cooperate fully with the commissioner with respect to
23 the provisions of this part.

24 (2) ~~Except as provided in subsection (4), an~~ An insurer, an officer, or an employee of the insurer,
25 an independent adjuster, an independent administrator, an independent consultant, or an independent producer
26 who has reason to believe that an insurance fraud has been or is being committed shall provide notice of the
27 alleged insurance fraud to the commissioner within 60 days. A producer of an insurer who has reason to
28 believe that an insurance fraud has been or is being committed shall report the alleged fraud to the insurer

1 within 60 days of discovery of the alleged insurance fraud. The insurer shall review the report. If the insurer
2 determines that there is reasonable likelihood that fraud has occurred, the insurer shall forward the report to the
3 commissioner within 30 days of receipt of the report.

4 (3) Notice to the commissioner by an insurer who has reason to believe that an insurance fraud
5 has been committed in connection with an insurance claim, application, or policy tolls any applicable time
6 period, for the commissioner, in any applicable insurance statute or related insurance regulation, or any
7 applicable provisions of Title 33, chapter 1, part 15, and tolls any time period arising under 33-18-232 or 33-18-
8 242 regarding unfair claims settlement practices.

9 ~~(4) Notice of an alleged insurance fraud involving an insurance claim or application submitted to the~~
10 ~~state compensation insurance fund or a policy issued by the state compensation insurance fund must be made~~
11 ~~within 60 days to the fraud detection and prevention unit established pursuant to 39-71-211."~~

12

13 **Section 30.** Section 33-2-1902, MCA, is amended to read:

14 **"33-2-1902. Definitions.** As used in this part, the following definitions apply:

15 (1) "Adjusted RBC report" means an RBC report that has been adjusted by the commissioner in
16 accordance with 33-2-1903(6).

17 (2) "Corrective order" means an order issued by the commissioner specifying corrective actions
18 that the commissioner has determined are required.

19 (3) "Domestic insurer" means any insurance company or health organization domiciled in this
20 state.

21 (4) "Foreign insurer" means any insurance company licensed to do business in this state under 33-
22 2-116 but not domiciled in this state, or a health organization licensed to do business in this state under Title
23 33, chapter 31, but not domiciled in this state.

24 (5) "Health organization" means a health maintenance organization or other managed care
25 organization licensed under Title 33, chapter 31. The term does not include an organization licensed as either a
26 life or disability insurer or a property and casualty insurer, or that is otherwise subject to either the life and
27 health or the property and casualty RBC requirements.

28 (6) "Insurer" includes life or other disability insurers, property and casualty insurers, and health

1 organizations.

2 (7) "Life or disability insurer" means:

3 (a) any insurance company licensed under 33-2-116 and engaged in the business of entering into
4 contracts of disability insurance, as described in 33-1-207, or life insurance, as described in 33-1-208;

5 (b) a licensed property and casualty insurer writing only disability insurance;

6 (c) any insurer engaged solely in the business of reinsurance of life or disability contracts;

7 (d) a fraternal benefit society formed under Title 33, chapter 7; or

8 (e) a health service corporation formed under Title 33, chapter 30.

9 (8) "NAIC" means the national association of insurance commissioners.

10 (9) "Negative trend" means, with respect to a life or health insurer, a negative trend over a period
11 of time, as determined in accordance with the trend test calculation included in the RBC instructions.

12 (10) (a) "Property and casualty insurer" means:

13 (i) any insurance company licensed under 33-2-116 and engaged in the business of entering into
14 contracts of property insurance, as described in 33-1-210, or casualty insurance, as described in 33-1-206;

15 (ii) any insurance company engaged solely in the business of reinsurance of property and casualty
16 contracts; or

17 (iii) any insurance company engaged in the business of surety and marine insurance.

18 (b) The term does not include monoline mortgage guaranty insurers, financial guaranty insurers,
19 and title insurers.

20 (11) "RBC instructions" means the RBC report, including risk-based capital instructions adopted by
21 the NAIC, as the RBC instructions may be amended by the NAIC from time to time in accordance with the
22 procedures adopted by the NAIC.

23 (12) "RBC level" means an insurer's authorized control level RBC, company action level RBC,
24 mandatory control level RBC, or regulatory action level RBC, in which:

25 (a) "authorized control level RBC" means the number determined under the risk-based capital
26 formula in accordance with the RBC instructions;

27 (b) ~~(i) "company action level RBC" means, with respect to any insurer except the state fund as~~
28 ~~provided in subsection (12)(b)(i),~~ the product of 2 and its authorized control level RBC;

1 (ii) ~~"company action level RBC" for the state fund is the product of 4 and its authorized control level~~

2 RBC;

3 (c) "mandatory control level RBC" means the product of 0.70 and the authorized control level RBC;

4 and

5 (d) ~~(i) "regulatory action level RBC" means, except for the state fund as provided in subsection~~

6 ~~(12)(d)(ii), the product of 1.5 and its authorized control level RBC;~~

7 ~~(ii) "regulatory action level RBC" for the state fund is the product of 3 and its authorized control level~~

8 RBC.

9 (13) "RBC plan" means a comprehensive financial plan containing the elements specified in 33-2-

10 1904(2). If the commissioner rejects the RBC plan and it is revised by the insurer, with or without the

11 commissioner's recommendation, the plan must be called a revised RBC plan.

12 (14) "RBC report" means the report required in 33-2-1903.

13 (15) "Total adjusted capital" means the sum of:

14 (a) an insurer's statutory capital and surplus; and

15 (b) other items, if any, as the RBC instructions may provide."

16

17 **Section 31.** Section 33-2-2402, MCA, is amended to read:

18 **"33-2-2402. Definitions.** As used in this part, the following definitions apply:

19 (1) "Claims processing services" means the administrative services performed in connection with

20 the processing and adjudicating of claims relating to pharmacist services that include either or both of the

21 following:

22 (a) receiving payments for pharmacist services; and

23 (b) making payments to pharmacists or pharmacies.

24 (2) "Enrollee" means a member, policyholder, subscriber, covered person, beneficiary, dependent,

25 or other individual participating in a health benefit plan.

26 (3) "Federally certified health entity" means a 340B covered entity as described in 42 U.S.C.

27 256b(a)(4).

28 (4) "Health benefit plan" means a policy, contract, certificate, or agreement entered into, offered, or

1 issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care
2 services.

3 (5) (a) "Health carrier" means an entity that is subject to the insurance laws and regulations of this
4 state or to the jurisdiction of the commissioner and that contracts or offers to contract or enters into an
5 agreement to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

6 (b) The term includes:

7 (i) self-funded multiple employer welfare arrangements as defined in 33-35-103; and

8 (ii) any other entity providing a plan of health insurance, health benefits, or health care services.

9 (6) "Manufacturer" has the meaning provided in 37-7-602.

10 (7) "Other prescription drug or device services" means services other than claims processing
11 services that are provided directly or indirectly, whether in connection with or separate from claims processing
12 services, including but not limited to:

13 (a) negotiating rebates, discounts, or other financial incentives and arrangements with
14 manufacturers, wholesale distributors, or other third parties;

15 (b) disbursing or distributing rebates;

16 (c) managing or participating in incentive programs or arrangements for pharmacist services;

17 (d) negotiating or entering into contractual arrangements with pharmacists, pharmacies, or both;

18 (e) developing and maintaining formularies;

19 (f) designing prescription drug benefit programs;

20 (g) advertising or promoting services; or

21 (h) administering prior authorization, step therapy, case management, or other utilization review
22 programs.

23 (8) "Pharmacist" has the meaning provided in 33-22-170.

24 (9) "Pharmacist services" means products, goods, and services or any combination of products,
25 goods, and services provided as part of the practice of pharmacy.

26 (10) "Pharmacy" means an established location, either physical or electronic, that is licensed by the
27 board of pharmacy pursuant to Title 37, chapter 7.

28 (11) (a) "Pharmacy benefit manager" means a person, including a wholly or partially owned or

1 controlled subsidiary of a pharmacy benefit manager, that provides claims processing services or other
2 prescription drug or device services, or both, to:

3 (i) enrollees who are residents of this state, for health benefit plans; or

4 (ii) injured workers of workers' compensation insurance carriers.

5 (b) The term does not include:

6 (i) a health care facility as defined in 50-5-101 that is licensed in this state;

7 (ii) a health care professional licensed under Title 37;

8 (iii) a consultant who provides advice only as to the selection or performance of a pharmacy benefit
9 manager; or

10 (iv) a health carrier or workers' compensation insurance carrier to the extent that the carrier
11 performs any claims processing and other prescription drug or device services exclusively for its enrollees or
12 injured workers.

13 (12) "Plan sponsor" has the meaning provided in 33-10-202.

14 (13) (a) "Rebates" means all price concessions, however characterized, paid by a manufacturer to a
15 pharmacy benefit manager, including discounts and other remuneration or price concessions, that are based on
16 the actual or estimated utilization of a prescription drug.

17 (b) The term includes price concessions based on the effectiveness of a prescription drug as in a
18 value-based or performance-based contract.

19 (14) "Wholesale acquisition cost" has the meaning provided in 42 U.S.C. 1395w-3a.

20 (15) "Wholesale distributor" or "distributor" has the meaning provided in 37-7-602.

21 (16) "Workers' compensation insurance carrier" means:

22 (a) an insurance company transacting business under compensation plan No. 2; or

23 (b) ~~the state fund compensation plan No. 3 under Title 39, chapter 71~~ the residual market program
24 and pool under [sections 1 through 7]."

25

26 **Section 32.** Section 33-16-1002, MCA, is amended to read:

27 **"33-16-1002. Applicability of part.** This part, together and in conjunction with parts 1 through 4 of
28 this chapter, applies to the making of premium rates for workers' compensation insurance issued under

1 compensation plan No. 2 and plan No. ~~3-4~~ of the Workers' Compensation Act, Title 39, chapter 71, part 22 and
2 ~~part 23, [sections 1 through 4]~~, respectively, or related employer's liability insurance, but does not apply to
3 reinsurance."

4

5 **Section 33.** Section 33-16-1008, MCA, is amended to read:

6 **"33-16-1008. Definitions.** As used in this part, the following definitions apply:

7 (1) "Accepted actuarial standards" means the standards adopted by the casualty actuarial society
8 in its Statement of Principles Regarding Property and Casualty Insurance Ratemaking and the Standards of
9 Practice adopted by the actuarial standards board.

10 (2) (a) "Advisory organization" means a person or organization that either has two or more
11 member insurers or is controlled either directly or indirectly by two or more insurers and that assists insurers in
12 ratemaking-related activities.

13 (b) The term does not include a joint underwriting association, any actuarial or legal consultant, or
14 any employee of an insurer or insurers under common control or management or their employees or manager.
15 For the purposes of this subsection (2)(b), two or more insurers who have a common ownership or operate in
16 this state under common control or management constitute a single insurer.

17 (3) "Classification system" means the plan, system, or arrangement for recognizing differences in
18 exposure to hazards among industries, occupations, or operations of insurance policyholders.

19 (4) "Contingencies" means provisions in rates to recognize the uncertainty of the estimates of
20 losses, loss adjustment expenses, other operating expenses, and investment income and profit that comprise
21 those rates. The provisions may be explicit, including but not limited to a specific charge to reflect systematic
22 variations of estimated costs from expected costs, or implicit, including but not limited to a consideration in
23 selecting a single estimate from a reasonable range of estimates, or both.

24 (5) "Developed losses" means adjusted losses, including loss adjustment expenses, using
25 accepted actuarial standards to eliminate the effect of differences between current payment or reserve
26 estimates and those needed to provide actual ultimate loss payments, including loss adjustment expense
27 payments.

28 (6) "Expenses" means the portion of a rate that is attributable to acquisition, filed supervision and

1 collection expenses, general expenses and taxes, licenses, or fees.

2 (7) "Experience rating" means a rating procedure using past insurance experience of the individual
3 policyholder to forecast future losses by measuring the policyholder's loss experience against the loss
4 experience of policyholders in the same classification to produce a prospective premium credit, debit, or unity
5 modification.

6 (8) "Insurer" means a person licensed to write workers' compensation insurance as a plan No. 2
7 insurer or plan ~~No. 3, the state fund, No. 4 insurer~~ under the laws of the state.

8 (9) "Loss trending" means a procedure for projecting developed losses to the average date of loss
9 for the period during which the policies are to be effective, including loss ratio trending.

10 (10) "Market" means the interaction in this state between buyers and plan No. 2 and plan No. 4
11 sellers of workers' compensation and employer's liability insurance pursuant to the provisions of this part.

12 (11) (a) "Prospective loss costs" means historical aggregate losses and loss adjustment expenses,
13 including all assessments that are loss-based and excluding any separately stated policyholder surcharges,
14 projected through development to their ultimate value and through trending to a future point in time and
15 ascertained by accepted actuarial standards.

16 (b) The term does not include provisions for profit or expenses other than loss adjustment
17 expenses and assessments that are loss-based.

18 (12) "Pure premium rate" means the portion of the rate that represents the loss cost per unit of
19 exposure, including loss adjustment expense.

20 (13) (a) "Rate" or "rates" means rate of premium, policy and membership fee, or any other charge
21 made by an insurer for or in connection with a contract or policy of workers' compensation and employer's
22 liability insurance, prior to application of individual risk variations based on loss or expense considerations.

23 (b) The term does not include minimum premiums.

24 (14) "Reserve estimates" means provisions for insurer obligations for future payments of loss or loss
25 adjustment expenses.

26 (15) "Statistical plan" means the plan, system, or arrangement that is used in collecting data.

27 (16) "Supplementary rate information" means a manual or plan of rates, statistical plan,
28 classification system, minimum premium, policy fee, rating rule, rate-related underwriting rule, and any other

1 information needed to determine the applicable premium for an individual insured that is consistent with the
2 purposes of this part and with rules prescribed by rule of the commissioner.

3 (17) "Supporting information" means the experience and judgment of the filer and the experience or
4 data of other insurers or advisory organizations relied on by the filer, the interpretation of any statistical data
5 relied on by the filer, descriptions of methods used in making the rates, and any other similar information
6 required to be filed by the commissioner."
7

8 **Section 34.** Section 33-16-1021, MCA, is amended to read:

9 **"33-16-1021. Ratemaking standards -- review by commissioner.** (1) Rates may not be excessive,
10 inadequate, or unfairly discriminatory.

11 (2) ~~(a) Except as provided in subsection (2)(b), rates~~ Rates in a competitive market are not
12 excessive. Rates in a noncompetitive market are excessive if they are likely to produce a long-run profit that is
13 unreasonably high in relation to services rendered.

14 ~~(b) Rates for the state fund may not be determined to be excessive unless the rate clearly is likely to~~
15 ~~produce an excess of assets over what is reasonably necessary to pay developed losses, contingencies,~~
16 ~~expenses, and a reasonable level of surplus.~~

17 (3) A rate may not be determined to be inadequate unless:

18 (a) the rate is clearly insufficient to sustain projected losses and expenses;

19 (b) the rate is unreasonably low and the use of the rate by the insurer has had or, if continued, will
20 tend to create a monopoly in the market; or

21 (c) funds equal to the full, ultimate cost of anticipated losses and loss adjustment expenses are not
22 produced when prospective loss costs are applied to anticipated payrolls.

23 (4) Unfair discrimination exists if, after allowing for practical limitations, price differentials fail to
24 reflect equitably the differences in expected losses and expenses. A rate is not unfairly discriminatory because
25 different premiums result for policyholders with different loss exposures or expense levels.

26 (5) In determining whether rates comply with standards under subsection (1), consideration must
27 be given to:

28 (a) past and prospective loss experience within and outside Montana, in accordance with accepted

- 1 actuarial principles;
- 2 (b) catastrophe hazards and contingencies;
- 3 (c) past and prospective expenses within and outside Montana;
- 4 (d) loadings for leveling premium rates over time for dividends, savings, or unabsorbed premium
- 5 deposits allowed or returned by insurers to their policyholders, members, or subscribers;
- 6 (e) a reasonable margin for underwriting profit; and
- 7 (f) all other relevant factors within and outside Montana.
- 8 (6) The systems of expense provisions included in the rates for use by an insurer or group of
- 9 insurers may differ from those of any other insurer or group of insurers to reflect the requirements of the
- 10 operating methods of the insurer or group of insurers.
- 11 (7) The rate may contain provisions of contingencies and an allowance permitting a reasonable
- 12 profit. In determining the reasonableness of a profit, consideration must be given to all investment income
- 13 attributable to premiums and the reserves associated with those premiums.
- 14 (8) The commissioner may investigate and determine whether rates in Montana are excessive,
- 15 inadequate, or unfairly discriminatory. In any investigation and determination, the commissioner shall also
- 16 consider the factors specified in 33-16-1020."

17

18 **Section 35.** Section 33-16-1033, MCA, is amended to read:

19 **"33-16-1033. Advisory organization -- permitted activity.** An advisory organization may:

- 20 (1) develop statistical plans, including class definitions;
- 21 (2) collect statistical data from members, subscribers, or any other source;
- 22 (3) prepare and distribute pure premium rate data, adjusted for loss development and loss
- 23 trending, in accordance with its statistical plan. The data and adjustments must be in sufficient detail to permit
- 24 insurers to modify pure premiums based upon their own rating methods or interpretations of underlying data.
- 25 (4) prepare and distribute manuals for rating rules and rating schedules that do not contain any
- 26 rules or schedules, including final rates, without information outside the manuals;
- 27 (5) distribute information that is filed with the commissioner and open to public inspection;
- 28 (6) conduct research and collect statistics in order to discover, identify, and classify information

1 relating to causes or prevention of losses;

2 (7) prepare and file policy forms and endorsements and consult with members, subscribers, and
3 others relative to their use and application;

4 (8) collect, compile, and distribute past and current prices of individual insurers, if the information is
5 made available to the general public;

6 (9) conduct research and collect information to determine the impact of benefit level changes on
7 pure premium rates;

8 (10) prepare and distribute rules and rating values for the uniform experience rating plan; and

9 (11) calculate and disseminate individual risk premium modification factors. Individual risk premium
10 modification factors may only be disseminated to:

11 (a) a licensed producer or an insurer for the business of insurance only; ~~and~~

12 (b) the department of labor and industry for regulatory purposes only. Individual employer payroll
13 and loss information may be provided to a person other than the current licensed producer or an insurer only
14 after obtaining the employer's written permission; and

15 (12) contract with the department to administer the state's residual market program and pool, plan
16 No. 4, under [sections 1 through 4]."

17

18 **Section 36.** Section 39-71-102, MCA, is amended to read:

19 **"39-71-102. Reference to plans.** Whenever compensation plan No. 1, 2, or ~~3~~ 4 is referred to, ~~such~~
20 ~~the~~ reference also includes all other sections ~~which that~~ are applicable to the subject matter of ~~such the~~
21 reference."

22

23 **Section 37.** Section 39-71-103, MCA, is amended to read:

24 **"39-71-103. Compensation provisions.** The compensation provisions of this chapter, whenever
25 referred to, ~~shall be held to include~~ the provisions of compensation plan No. 1, 2, or ~~3~~ 4 and all other sections of
26 this chapter applicable to ~~the same this chapter~~ or any part ~~thereof of this chapter.~~"

27

28 **Section 38.** Section 39-71-105, MCA, is amended to read:

1 **"39-71-105. (Temporary) Declaration of public policy.** For the purposes of interpreting and
2 applying this chapter, the following is the public policy of this state:

3 (1) An objective of the Montana workers' compensation system is to provide, without regard to
4 fault, wage-loss and medical benefits to a worker suffering from a work-related injury or disease. Wage-loss
5 benefits are not intended to make an injured worker whole but are intended to provide assistance to a worker at
6 a reasonable cost to the employer. Within that limitation, the wage-loss benefit should bear a reasonable
7 relationship to actual wages lost as a result of a work-related injury or disease.

8 (2) It is the intent of the legislature to assert that a conclusive presumption exists that recognizes
9 that a holder of a current, valid independent contractor exemption certificate issued by the department is an
10 independent contractor if the person is working under the independent contractor exemption certificate. The
11 holder of an independent contractor exemption certificate waives the rights, benefits, and obligations of this
12 chapter unless the person has elected to be bound personally and individually by the provisions of
13 compensation plan No. 1, 2, or ~~3~~ 4.

14 (3) A worker's removal from the workforce because of a work-related injury or disease has a
15 negative impact on the worker, the worker's family, the employer, and the general public. Therefore, an
16 objective of the workers' compensation system is to return a worker to work as soon as possible after the
17 worker has suffered a work-related injury or disease.

18 (4) Montana's workers' compensation and occupational disease insurance systems are intended to
19 be primarily self-administering. Claimants should be able to speedily obtain benefits, and employers should be
20 able to provide coverage at reasonably constant rates. To meet these objectives, the system must be designed
21 to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities.

22 (5) This chapter must be construed according to its terms and not liberally in favor of any party.

23 (6) It is the intent of the legislature that:

24 (a) a stress claim, often referred to as a "mental-mental claim" or a "mental-physical claim", is not
25 compensable under Montana's workers' compensation and occupational disease laws. The legislature
26 recognizes that these claims are difficult to objectively verify and that the claims have a potential to place an
27 economic burden on the workers' compensation and occupational disease system. The legislature also
28 recognizes that there are other states that do not provide compensation for various categories of stress claims

1 and that stress claims have presented economic problems for certain other jurisdictions. In addition, not all
2 injuries are compensable under the present system, and it is within the legislature's authority to define the limits
3 of the workers' compensation and occupational disease system. However, it is also within the legislature's
4 authority to recognize the public service provided by firefighters and to join with other states that have extended
5 a presumptive occupational disease recognition to firefighters.

6 (b) for occupational disease or presumptive occupational disease claims, because of the nature of
7 exposure, workers should not be required to provide notice to employers of the disease as required of injuries
8 and that the requirements for filing of claims reflect consideration of when the worker knew or should have
9 known that the worker's condition resulted from an occupational disease or a presumptive occupational
10 disease. The legislature recognizes that occupational diseases in the workplace are caused by events
11 occurring on more than a single day or work shift and that the legislature has the authority to define an
12 occupational disease or a presumptive occupational disease and establish the causal connection to the
13 workplace.

14 (7) It is the intent of the legislature that workers' compensation insurance be provided only by a
15 self-insured entity or by the private voluntary market and residual market.

16 (8) It is the intent of the legislature that all existing state liability for workers' compensation claims
17 arising before July 1, 1990, open and being administered and paid by the state fund, plan No. 3, be retired or
18 transferred as efficiently and expeditiously as possible as provided in [section 6]. (Void on occurrence of
19 contingency--sec. 7, Ch. 158, L. 2019.)

20 **39-71-105. (Effective on occurrence of contingency) Declaration of public policy.** For the
21 purposes of interpreting and applying this chapter, the following is the public policy of this state:

22 (1) An objective of the Montana workers' compensation system is to provide, without regard to
23 fault, wage-loss and medical benefits to a worker suffering from a work-related injury or disease. Wage-loss
24 benefits are not intended to make an injured worker whole but are intended to provide assistance to a worker at
25 a reasonable cost to the employer. Within that limitation, the wage-loss benefit should bear a reasonable
26 relationship to actual wages lost as a result of a work-related injury or disease.

27 (2) It is the intent of the legislature to assert that a conclusive presumption exists that recognizes
28 that a holder of a current, valid independent contractor exemption certificate issued by the department is an

1 independent contractor if the person is working under the independent contractor exemption certificate. The
2 holder of an independent contractor exemption certificate waives the rights, benefits, and obligations of this
3 chapter unless the person has elected to be bound personally and individually by the provisions of
4 compensation plan No. 1, 2, or ~~3~~ 4.

5 (3) A worker's removal from the workforce because of a work-related injury or disease has a
6 negative impact on the worker, the worker's family, the employer, and the general public. Therefore, an
7 objective of the workers' compensation system is to return a worker to work as soon as possible after the
8 worker has suffered a work-related injury or disease.

9 (4) Montana's workers' compensation and occupational disease insurance systems are intended to
10 be primarily self-administering. Claimants should be able to speedily obtain benefits, and employers should be
11 able to provide coverage at reasonably constant rates. To meet these objectives, the system must be designed
12 to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities.

13 (5) This chapter must be construed according to its terms and not liberally in favor of any party.

14 (6) It is the intent of the legislature that:

15 (a) stress claims, often referred to as "mental-mental claims" and "mental-physical claims", are not
16 compensable under Montana's workers' compensation and occupational disease laws. The legislature
17 recognizes that these claims are difficult to objectively verify and that the claims have a potential to place an
18 economic burden on the workers' compensation and occupational disease system. The legislature also
19 recognizes that there are other states that do not provide compensation for various categories of stress claims
20 and that stress claims have presented economic problems for certain other jurisdictions. In addition, not all
21 injuries are compensable under the present system, and it is within the legislature's authority to define the limits
22 of the workers' compensation and occupational disease system.

23 (b) for occupational disease claims, because of the nature of exposure, workers should not be
24 required to provide notice to employers of the disease as required of injuries and that the requirements for filing
25 of claims reflect consideration of when the worker knew or should have known that the worker's condition
26 resulted from an occupational disease. The legislature recognizes that occupational diseases in the workplace
27 are caused by events occurring on more than a single day or work shift and that it is within the legislature's
28 authority to define an occupational disease and establish the causal connection to the workplace.

1 (7) It is the intent of the legislature that workers' compensation insurance be provided only by a
2 self-insured entity or by the private voluntary market and residual market.

3 (8) It is the intent of the legislature that all existing state liability for workers' compensation claims
4 arising before July 1, 1990, open and being administered and paid by the state fund, plan No. 3, be retired or
5 transferred as efficiently and expeditiously as possible as provided in [section 6]."
6

7 **Section 39.** Section 39-71-116, MCA, is amended to read:

8 **"39-71-116. Definitions.** Unless the context otherwise requires, in this chapter, the following
9 definitions apply:

10 (1) "Actual wage loss" means that the wages that a worker earns or is qualified to earn after the
11 worker reaches maximum healing are less than the actual wages the worker received at the time of the injury.

12 (2) "Administer and pay" includes all actions ~~by the state fund~~ under the Workers' Compensation
13 Act necessary to:

14 (a) investigation, review, and settlement of claims;

15 (b) payment of benefits;

16 (c) setting of reserves;

17 (d) furnishing of services and facilities; and

18 (e) use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

19 (3) "Aid or sustenance" means a public or private subsidy made to provide a means of support,
20 maintenance, or subsistence for the recipient.

21 (4) "Beneficiary" means:

22 (a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of
23 injury;

24 (b) an unmarried child under 18 years of age;

25 (c) an unmarried child under 22 years of age who is a full-time student in an accredited school or is
26 enrolled in an accredited apprenticeship program;

27 (d) an invalid child over 18 years of age who is dependent, as defined in 26 U.S.C. 152, upon the
28 decedent for support at the time of injury;

1 (e) a parent who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the
2 time of the injury if a beneficiary, as defined in subsections (4)(a) through (4)(d), does not exist; and

3 (f) a brother or sister under 18 years of age if dependent, as defined in 26 U.S.C. 152, upon the
4 decedent for support at the time of the injury but only until the age of 18 years and only when a beneficiary, as
5 defined in subsections (4)(a) through (4)(e), does not exist.

6 (5) "Business partner" means the community, governmental entity, or business organization that
7 provides the premises for work-based learning activities for students.

8 (6) "Casual employment" means employment not in the usual course of the trade, business,
9 profession, or occupation of the employer.

10 (7) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to
11 the injury.

12 (8) (a) "Claims examiner" means an individual who, as a paid employee of the department, of a
13 plan No. 1, 2, or 3 ~~4~~ insurer, ~~or~~ of an administrator licensed under Title 33, chapter 17, or of an administrator
14 selected under [section 5], examines claims under chapter 71 to:

- 15 (i) determine liability;
- 16 (ii) apply the requirements of this title;
- 17 (iii) settle workers' compensation or occupational disease claims; or
- 18 (iv) determine survivor benefits.

19 (b) The term does not include an adjuster as defined in 33-17-102.

20 (9) (a) "Construction industry" means the major group of general contractors and operative
21 builders, heavy construction (other than building construction) contractors, and special trade contractors listed
22 in major group 23 in the North American Industry Classification System Manual.

23 (b) The term does not include office workers, design professionals, salespersons, estimators, or
24 any other related employment that is not directly involved on a regular basis in the provision of physical labor at
25 a construction or renovation site.

26 (10) "Days" means calendar days, unless otherwise specified.

27 (11) "Department" means the department of labor and industry.

28 (12) "Direct result" means that a diagnosed condition was caused or aggravated by an injury or

1 occupational disease.

2 (13) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

3 (14) "Guaranteed market" means the residual market program and pool that is required to insure
4 any residual market employer in this state that requests to insure their liability for workers' compensation and
5 occupational disease coverage and is eligible to obtain the coverage from the residual market program and
6 pool.

7 ~~(14)~~(15) "Health care provider" means a person who is licensed, certified, or otherwise authorized by
8 the laws of this state to provide health care in the ordinary course of business or practice of a profession.

9 ~~(15)~~(16) (a) "Household or domestic employment" means employment of persons other than members
10 of the household for the purpose of tending to the aid and comfort of the employer or members of the
11 employer's family, including but not limited to housecleaning and yard work.

12 (b) The term does not include employment beyond the scope of normal household or domestic
13 duties, such as home health care or domiciliary care.

14 ~~(16)~~(17) (a) "Indemnity benefits" means any payment made directly to the worker or the worker's
15 beneficiaries, other than a medical benefit. The term includes payments made pursuant to a reservation of
16 rights.

17 (b) The term does not include stay-at-work/return-to-work assistance, auxiliary benefits, or
18 expense reimbursements for items such as meals, travel, or lodging.

19 ~~(17)~~(18) "Insurer" means an employer bound by compensation plan No. 1, an insurance company
20 transacting business under compensation plan No. 2, or the ~~state fund under compensation plan No. 3~~ residual
21 market program and pool, plan No. 4.

22 ~~(18)~~(19) "Invalid" means one who is physically or mentally incapacitated.

23 ~~(19)~~(20) "Limited liability company" has the meaning provided in 35-8-102.

24 ~~(20)~~(21) "Maintenance care" means treatment designed to provide the optimum state of health while
25 minimizing recurrence of the clinical status.

26 ~~(21)~~(22) "Medical stability", "maximum medical improvement", "maximum healing", or "maximum
27 medical healing" means a point in the healing process when further material functional improvement would not
28 be reasonably expected from primary medical services.

1 ~~(22)~~(23) "Objective medical findings" means medical evidence, including range of motion, atrophy,
2 muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

3 ~~(23)~~(24) (a) "Occupational disease" means harm, damage, or death arising out of or contracted in the
4 course and scope of employment caused by events occurring on more than a single day or work shift.

5 (b) The term does not include a physical or mental condition arising from emotional or mental
6 stress or from a nonphysical stimulus or activity.

7 ~~(24)~~(25) "Order" means any decision, rule, direction, requirement, or standard of the department or any
8 other determination arrived at by the department.

9 ~~(25)~~(26) "Palliative care" means treatment designed to reduce or ease symptoms without curing the
10 underlying cause of the symptoms.

11 ~~(26)~~(27) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average
12 annual payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient
13 or any length of time during the calendar year, 12 times the average monthly payroll for the current year.
14 However, an estimate may be made by the department for any employer starting in business if average payrolls
15 are not available. This estimate must be adjusted by additional payment by the employer or refund by the
16 department, as the case may actually be, on December 31 of the current year. An employer's payroll must be
17 computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

18 ~~(27)~~(28) "Permanent partial disability" means a physical condition in which a worker, after reaching
19 maximum medical healing:

20 (a) has a permanent impairment, as determined by the sixth edition of the American medical
21 association's Guides to the Evaluation of Permanent Impairment, that is established by objective medical
22 findings for the ratable condition. The ratable condition must be a direct result of the compensable injury or
23 occupational disease and may not be based exclusively on complaints of pain.

24 (b) is able to return to work in some capacity but the permanent impairment impairs the worker's
25 ability to work; and

26 (c) has an actual wage loss as a result of the injury.

27 ~~(28)~~(29) "Permanent total disability" means a physical condition resulting from injury as defined in this
28 chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable

1 prospect of physically performing regular employment. Lack of immediate job openings is not a factor to be
2 considered in determining if a worker is permanently totally disabled.

3 ~~(29)~~(30) "Primary medical services" means treatment prescribed by the treating physician, for
4 conditions resulting from the injury or occupational disease, necessary for achieving medical stability.

5 ~~(30)~~(31) "Prosthetic device" or "prosthesis" means an artificial substitute for a missing body part.

6 ~~(34)~~(32) "Public corporation" means the state or a county, municipal corporation, school district, city,
7 city under a commission form of government or special charter, town, or village.

8 ~~(32)~~(33) "Reasonably safe place to work" means that the place of employment has been made as free
9 from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

10 ~~(33)~~(34) "Reasonably safe tools or appliances" are tools and appliances that are adapted to and that
11 are reasonably safe for use for the particular purpose for which they are furnished.

12 ~~(34)~~(35) "Regular employment" means work on a recurring basis performed for remuneration in a
13 trade, business, profession, or other occupation in this state.

14 (36) "Residual market employer" means an eligible employer that is unable to obtain workers'
15 compensation insurance in the usual manner through the voluntary insurance market in this state.

16 (37) "Residual market program and pool" means the program provided for in [sections 1 through 7]
17 that serves as the market of the last resort for the guaranteed market in this state. It is also known as
18 compensation plan No. 4 or plan No. 4.

19 ~~(35)~~(38) (a) "Secondary medical services" means those medical services or appliances that are
20 considered not medically necessary for medical stability. The services and appliances include but are not
21 limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs
22 designed to address disability and not impairment, or equipment offered by individuals, clinics, groups,
23 hospitals, or rehabilitation facilities.

24 (b) (i) As used in this subsection ~~(35)~~(38), "disability" means a condition in which a worker's ability
25 to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The
26 restrictions may be combined with factors, such as the worker's age, education, work history, and other factors
27 that affect the worker's ability to engage in gainful employment.

28 (ii) Disability does not mean a purely medical condition.

1 ~~(36)~~(39) "Sole proprietor" means the person who has the exclusive legal right or title to or ownership of
2 a business enterprise.

3 ~~(40)~~ "State compensation insurance fund" or "state fund" means a nonprofit, independent public
4 corporation established in former 39-71-2313 to provide workers' compensation and occupational disease
5 coverage. It is also known as compensation plan No. 3 or plan No. 3.

6 ~~(37)~~(41) "State's average weekly wage" means the mean weekly earnings of all employees under
7 covered employment, as defined and established annually by the department before July 1 and rounded to the
8 nearest whole dollar number.

9 ~~(38)~~(42) "Temporary partial disability" means a physical condition resulting from an injury, as defined in
10 39-71-119, in which a worker, prior to maximum healing:

11 (a) is temporarily unable to return to the position held at the time of injury because of a medically
12 determined physical restriction;

13 (b) returns to work in a modified or alternative employment; and

14 (c) suffers a partial wage loss.

15 ~~(39)~~(43) "Temporary service contractor" means a person, firm, association, partnership, limited liability
16 company, or corporation conducting business that hires its own employees and assigns them to clients to fill a
17 work assignment with a finite ending date to support or supplement the client's workforce in situations resulting
18 from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

19 ~~(40)~~(44) "Temporary total disability" means a physical condition resulting from an injury, as defined in
20 this chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical
21 healing.

22 ~~(44)~~(45) "Temporary worker" means a worker whose services are furnished to another on a part-time
23 or temporary basis to fill a work assignment with a finite ending date to support or supplement a workforce in
24 situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments
25 and projects.

26 ~~(42)~~(46) "Treating physician" means the person who, subject to the requirements of 39-71-1101, is
27 primarily responsible for delivery and coordination of the worker's medical services for the treatment of a
28 worker's compensable injury or occupational disease and is:

- 1 (a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting
- 2 privileges to practice in one or more hospitals, if any, in the area where the physician is located;
- 3 (b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;
- 4 (c) a physician assistant licensed by the state of Montana under Title 37, chapter 20, if there is not
- 5 a treating physician, as provided for in subsection ~~(42)~~ (46)(a), in the area where the physician assistant is
- 6 located;
- 7 (d) an osteopath licensed by the state of Montana under Title 37, chapter 3;
- 8 (e) a dentist licensed by the state of Montana under Title 37, chapter 4;
- 9 (f) for a claimant residing out of state or upon approval of the insurer, a treating physician defined
- 10 in subsections ~~(42)~~ (46)(a) through ~~(42)~~ (46)(e) who is licensed or certified in another state; or
- 11 (g) an advanced practice registered nurse licensed by the state of Montana under Title 37, chapter
- 12 8.

13 (47) "Voluntary market" means the workers' compensation insurance market in which workers'
 14 compensation insurance companies voluntarily offer coverage to applicants who meet the insurer's underwriting
 15 standards or guidelines.

16 ~~(43)~~(48) "Work-based learning activities" means job training and work experience conducted on the
 17 premises of a business partner as a component of school-based learning activities authorized by an
 18 elementary, secondary, or postsecondary educational institution.

19 ~~(44)~~(49) "Year", unless otherwise specified, means calendar year."
 20

21 **Section 40.** Section 39-71-118, MCA, is amended to read:

22 **"39-71-118. Employee, worker, volunteer, volunteer firefighter, and volunteer emergency care**
 23 **provider defined -- election of coverage.** (1) As used in this chapter, the term "employee" or "worker" means:

- 24 (a) each person in this state, including a contractor other than an independent contractor, who is in
- 25 the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or
- 26 implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of
- 27 the elected and appointed paid public officers and officers and members of boards of directors of quasi-public
- 28 or private corporations, except those officers identified in 39-71-401(2), while rendering actual service for the

1 corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not
2 otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of
3 the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic
4 employment is excluded.

5 (b) any juvenile who is performing work under authorization of a district court judge in a
6 delinquency prevention or rehabilitation program;

7 (c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job
8 training under a state or federal vocational training program, whether or not under an appointment or contract of
9 hire with an employer, as defined in 39-71-117, and, except as provided in subsection (7), whether or not
10 receiving payment from a third party. However, this subsection (1)(c) does not apply to students enrolled in
11 vocational training programs, as outlined in this subsection, while they are on the premises of a public school or
12 community college.

13 (d) an aircrew member or other person who is employed as a volunteer under 67-2-105;

14 (e) a person, other than a juvenile as described in subsection (1)(b), who is performing community
15 service for a nonprofit organization or association or for a federal, state, or local government entity under a
16 court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not
17 under appointment or contract of hire with an employer, as defined in 39-71-117, and whether or not receiving
18 payment from a third party. For a person covered by the definition in this subsection (1)(e):

19 (i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an
20 impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39,
21 chapter 3, part 4, for a full-time employee at the time of the injury; and

22 (ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon
23 the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service
24 required under the order from the court or hearings officer.

25 (f) an inmate working in a federally certified prison industries program authorized under 53-30-
26 132;

27 (g) a volunteer firefighter as described in 7-33-4109 or a person who provides ambulance services
28 under Title 7, chapter 34, part 1;

1 (h) a person placed at a public or private entity's worksite pursuant to 53-4-704. The person is
2 considered an employee for workers' compensation purposes only. The department of public health and human
3 services shall provide workers' compensation coverage for recipients of cash assistance, as defined in 53-4-
4 201, or for participants in the food stamp program, as defined in 53-2-902, who are placed at public or private
5 worksites through an endorsement to the department of public health and human services' workers'
6 compensation policy naming the public or private worksite entities as named insureds under the policy. The
7 endorsement may cover only the entity's public assistance participants and may be only for the duration of each
8 participant's training while receiving cash assistance or while participating in the food stamp program under a
9 written agreement between the department of public health and human services and each public or private
10 entity. The department of public health and human services may not provide workers' compensation coverage
11 for individuals who are covered for workers' compensation purposes by another state or federal employment
12 training program. Premiums and benefits must be based upon the wage that a probationary employee is paid
13 for work of a similar nature at the assigned worksite.

14 (i) subject to subsection (11), a member of a religious corporation, religious organization, or
15 religious trust while performing services for the religious corporation, religious organization, or religious trust, as
16 described in 39-71-117(1)(d).

17 (2) The terms defined in subsection (1) do not include a person who is:

18 (a) performing voluntary service at a recreational facility and who receives no compensation for
19 those services other than meals, lodging, or the use of the recreational facilities;

20 (b) performing services as a volunteer, except for a person who is otherwise entitled to coverage
21 under the laws of this state. As used in this subsection (2)(b), "volunteer" means a person who performs
22 services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-
23 71-123.

24 (c) serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and
25 providing care without wage compensation to no more than six foster children in the provider's own residence.
26 The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure
27 and recreational activities, and providing for other needs and activities arising in the provision of in-home foster
28 care.

1 (d) performing temporary agricultural work for an employer if the person performing the work is
2 otherwise exempt from the requirement to obtain workers' compensation coverage under 39-71-401(2)(r) with
3 respect to a company that primarily performs agricultural work at a fixed business location or under 39-71-
4 401(2)(d) and is not required to obtain an independent contractor's exemption certificate under 39-71-417
5 because the person does not regularly perform agricultural work away from the person's own fixed business
6 location. For the purposes of this subsection, the term "agricultural" has the meaning provided in 15-1-
7 101(1)(a).

8 (3) With the approval of the insurer, an employer may elect to include as an employee under the
9 provisions of this chapter a volunteer as defined in subsection (2)(b) or a volunteer firefighter as defined in 7-
10 33-4510.

11 (4) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a member-
12 managed limited liability company, the employer may elect to include as an employee within the provisions of
13 this chapter any member of the partnership or limited liability partnership, the owner of the sole proprietorship,
14 or any member of the limited liability company devoting full time to the partnership, limited liability partnership,
15 proprietorship, or limited liability company business.

16 (b) In the event of an election, the employer shall serve upon the employer's insurer written notice
17 naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage
18 desired by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A
19 partner, sole proprietor, or member is not considered an employee within this chapter until notice has been
20 given.

21 (c) A change in elected wages must be in writing and is effective at the start of the next quarter
22 following notification.

23 (d) All weekly compensation benefits must be based on the amount of elected wages, subject to
24 the minimum and maximum limitations of this subsection (4)(d). For premium ratemaking and for the
25 determination of the weekly wage for weekly compensation benefits, the electing employer may elect an
26 amount of not less than \$900 a month and not more than 1 1/2 times the state's average weekly wage.

27 (5) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited
28 liability company, the employer may elect to include as an employee within the provisions of this chapter any

1 corporate officer or manager exempted under 39-71-401(2).

2 (b) In the event of an election, the employer shall serve upon the employer's insurer written notice
3 naming the corporate officer or manager to be covered and stating the level of compensation coverage desired
4 by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A corporate
5 officer or manager is not considered an employee within this chapter until notice has been given.

6 (c) A change in elected wages must be in writing and is effective at the start of the next quarter
7 following notification.

8 (d) For the purposes of an election under this subsection (5), all weekly compensation benefits
9 must be based on the amount of elected wages, subject to the minimum and maximum limitations of this
10 subsection (5)(d). For premium ratemaking and for the determination of the weekly wage for weekly
11 compensation benefits, the electing employer may elect an amount of not less than \$200 a week and not more
12 than 1 1/2 times the state's average weekly wage.

13 (6) Except as provided in Title 39, chapter 8, an employee or worker in this state whose services
14 are furnished by a person, association, contractor, firm, limited liability company, limited liability partnership, or
15 corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to
16 be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-
17 117(3).

18 (7) (a) A student currently enrolled in an elementary, secondary, or postsecondary educational
19 institution who is participating in work-based learning activities and who is paid wages by the educational
20 institution or business partner is the employee of the entity that pays the student's wages for all purposes under
21 this chapter.

22 (b) An elementary or secondary student who is not paid wages by the business partner or the
23 educational institution in which the student is enrolled is a volunteer for whom coverage must be provided. The
24 business partner and the educational institution shall mutually determine and agree in writing whether the
25 business partner or the educational institution shall elect coverage for the student.

26 (8) For purposes of this section, an "employee or worker in this state" means:

27 (a) a resident of Montana who is employed by an employer and whose employment duties are
28 primarily carried out or controlled within this state;

1 (b) a nonresident of Montana whose principal employment duties are conducted within this state
2 on a regular basis for an employer;

3 (c) a nonresident employee of an employer from another state engaged in the construction
4 industry, as defined in 39-71-116, within this state; or

5 (d) a nonresident of Montana who does not meet the requirements of subsection (8)(b) and whose
6 employer elects coverage with an insurer that allows an election for an employer whose:

7 (i) nonresident employees are hired in Montana;

8 (ii) nonresident employees' wages are paid in Montana;

9 (iii) nonresident employees are supervised in Montana; and

10 (iv) business records are maintained in Montana.

11 (9) An insurer may require coverage for all nonresident employees of a Montana employer who do
12 not meet the requirements of subsection (8)(b) or (8)(d) as a condition of approving the election under
13 subsection (8)(d).

14 (10) (a) An ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer
15 nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county may elect to include as
16 an employee within the provisions of this chapter a volunteer emergency care provider who serves public safety
17 through the ambulance service not otherwise covered by subsection (1)(g) or the paid or volunteer
18 nontransporting medical unit. The ambulance service or nontransporting medical unit may purchase workers'
19 compensation coverage from any entity authorized to provide workers' compensation coverage under plan No.
20 1, 2, or ~~3~~4 as provided in this chapter.

21 (b) If there is an election under subsection (10)(a), the employer shall report payroll for all
22 volunteer emergency care providers for premium and weekly benefit purposes based on the number of
23 volunteer hours of each emergency care provider, but no more than 60 hours, times the state's average weekly
24 wage divided by 40 hours.

25 (c) An ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer
26 nontransporting medical unit, as defined in 50-6-302, may make a separate election to provide benefits as
27 described in this subsection (10) to a member who is either a self-employed sole proprietor or partner who has
28 elected not to be covered under this chapter, but who is covered as a volunteer emergency care provider

1 pursuant to subsection (10)(a). When injured in the course and scope of employment as a volunteer emergency
2 care provider, a member may instead of the benefits described in subsection (10)(b) be eligible for benefits at
3 an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. If
4 the separate election is made as provided in this subsection (10), payroll information for those self-employed
5 sole proprietors or partners must be reported and premiums must be assessed on the assumed weekly wage.

6 (d) A volunteer emergency care provider who receives workers' compensation coverage under this
7 section may not receive disability benefits under Title 19, chapter 17, if the individual is also eligible as a
8 volunteer firefighter.

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

13 (f) (i) The term "volunteer emergency care provider" means a person who is licensed by the board
14 of medical examiners as provided in Title 50, chapter 6, part 2, and who serves the public through an
15 ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical
16 unit, as defined in 50-6-302, in service to a town, city, or county.

17 (ii) The term does not include a volunteer emergency care provider who serves an employer as
18 defined in 7-33-4510.

19 (g) The term "volunteer hours" means the time spent by a volunteer emergency care provider in
20 the service of an employer or as a volunteer for a town, city, or county, including but not limited to training time,
21 response time, and time spent at the employer's premises.

22 (11) The definition of "employee" or "worker" in subsection (1)(i) is limited to implementing the
23 administrative purposes of this chapter and may not be interpreted or construed to create an employment
24 relationship in any other context."

25

26 **Section 41.** Section 39-71-201, MCA, is amended to read:

27 **"39-71-201. (Temporary) Workers' compensation administration fund.** (1) A workers'
28 compensation administration fund is established out of which are to be paid upon lawful appropriation all costs

1 of administering the Workers' Compensation Act, with the exception of the certification of independent
2 contractors provided for in Title 39, chapter 71, part 4, the subsequent injury fund provided for in 39-71-907,
3 and the uninsured employers' fund provided for in 39-71-503. The department may use the workers'
4 compensation administration fund to reimburse premiums for high-quality work-based learning programs, as
5 provided in 39-71-319. The department shall collect and deposit in the state treasury to the credit of the
6 workers' compensation administration fund:

7 (a) all fees and penalties provided in 39-71-107, 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-
8 71-315, 39-71-316, 39-71-401(6), 39-71-2204, and 39-71-2205, ~~and 39-71-2337~~; and

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

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

14 (a) total compensation benefits paid; and

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

18 (3) Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of this section, and plan
19 ~~No. 3, the state fund~~ No. 4 insurer, shall file annually on March 1 in the form and containing the information
20 required by the department a report of paid losses pursuant to subsection (2).

21 (4) Each employer enrolled under compensation plan No. 1, or compensation plan No. 2, ~~or~~
22 ~~compensation plan No. 3, the state fund, and each residual market employer enrolled under compensation plan~~
23 No. 4, the residual market program and pool, shall pay its proportionate share determined by the paid losses in
24 the preceding calendar year of all costs of administering and regulating the Workers' Compensation Act, with
25 the exception of the certification of independent contractors provided for in Title 39, chapter 71, part 4, the
26 subsequent injury fund provided for in 39-71-907, and the uninsured employers' fund provided for in 39-71-503.
27 In addition, ~~compensation plan No. 3, the state fund,~~ the entity administering claims under [section 4] shall pay
28 from the state fund dissolution trust provided for in [section 8] a proportionate share of these costs based upon

1 paid losses for claims arising before July 1, 1990, and open claims of the state fund, compensation plan No. 3,
2 as provided in [section 8].

3 (5) (a) Each employer enrolled under compensation plan No. 1 shall pay an assessment to fund
4 administrative and regulatory costs. The assessment may be up to 4% of the paid losses paid in the preceding
5 calendar year by or on behalf of the plan No. 1 employer. Any entity, other than the department, that assumes
6 the obligations of an employer enrolled under compensation plan No. 1 is considered to be the employer for the
7 purposes of this section.

8 (b) An employer formerly enrolled under compensation plan No. 1 shall pay an assessment to fund
9 administrative and regulatory costs. The assessment may be up to 4% of the paid losses paid in the preceding
10 calendar year by or on behalf of the employer for claims arising out of the time when the employer was enrolled
11 under compensation plan No. 1.

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

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

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

18 (d) If an employer fails to timely pay to the department the assessment under this section, the
19 department may impose on the employer an administrative fine of \$500 plus interest on the delinquent amount
20 at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers'
21 compensation administration fund and may be used to pay the reimbursement of premiums required under 39-
22 71-319.

23 (6) (a) ~~Compensation plan No. 3, the state fund,~~ The entity selected to administer claims under
24 [section 4] shall pay from the state fund dissolution trust provided for in [section 8] an assessment to fund
25 administrative and regulatory costs attributable to open claims of the state fund, compensation plan No. 3,
26 arising before July 1, 1990, and all open claims arising on or after July 1, 1990, as provided in [section 4]. The
27 assessment may be up to 4% of the paid losses paid in the preceding calendar year for claims arising before
28 July 1, 1990. ~~As required by 39-71-2352, the state fund may not pass along to insured employers the cost of~~

1 ~~the assessment for administrative and regulatory costs that is attributable to claims arising before July 1, 1990.~~

2 (b) The assessment must be paid in:

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

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

5 (c) ~~If the state fund fails to timely pay~~ assessment is not timely paid to the department ~~the~~

6 ~~assessment~~ under this section, the department may impose ~~on the state fund~~ an administrative fine of \$500

7 plus interest on the delinquent amount at the annual interest rate of 12% against the state fund dissolution trust

8 under [section 8] and administered under [section 4]. Administrative fines and interest must be deposited in the

9 workers' compensation administration fund.

10 (7) (a) Each employer insured under compensation plan No. 2 or ~~plan No. 3, the state fund,~~ plan

11 No. 4, the residual program and pool, shall pay a premium surcharge to fund administrative and regulatory

12 costs. The premium surcharge must be collected by each plan No. 2 insurer ~~and by plan No. 3, the state fund,~~

13 ~~and by plan No. 4, the residual market program and pool,~~ from each employer that ~~it insures~~ they insure. The

14 premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate

15 document submitted to the insured employer and must be identified as "workers' compensation regulatory

16 assessment surcharge". The premium surcharge must be excluded from the definition of premiums for all

17 purposes, including computation of insurance producers' commissions or premium taxes. However, an insurer

18 may cancel a workers' compensation policy for nonpayment of the premium surcharge. When collected,

19 assessments may not constitute an element of loss for the purpose of establishing rates for workers'

20 compensation insurance but, for the purpose of collection, must be treated as a separate cost imposed upon

21 insured employers.

22 (b) The amount to be funded by the premium surcharge may be up to 4% of the paid losses paid in

23 the preceding calendar year by or on behalf of all plan No. 2 or plan No. 4 insurers ~~and may be up to 4% of paid~~

24 ~~losses for claims arising on or after July 1, 1990, for plan No. 3, the state fund,~~ plus or minus any adjustments

25 as provided by subsection (7)(f). The amount to be funded must be divided by the total premium paid by all

26 employers enrolled under compensation plan No. 2 or plan No. ~~3~~4 during the preceding calendar year. A single

27 premium surcharge rate, applicable to all employers enrolled in compensation plan No. 2 or plan No. ~~3~~4, must

28 be calculated annually by the department by not later than April 30. The resulting rate, expressed as a

1 percentage, is levied against the premium paid by each employer enrolled under compensation plan No. 2 or
2 plan No. ~~3-4~~ in the next fiscal year.

3 (c) On or before April 30 of each year, the department, in consultation with the advisory
4 organization designated pursuant to 33-16-1023, shall notify plan No. 2 insurers and plan ~~No. 3, the state fund,~~
5 No. 4, the residual market program and pool, of the premium surcharge percentage to be effective for policies
6 written or renewed annually on and after July 1 of that year.

7 (d) The premium surcharge must be paid whenever the employer pays a premium to the insurer.
8 Each insurer shall collect the premium surcharge levied against every employer that it insures. Each insurer
9 shall pay to the department all money collected as a premium surcharge within 20 days of the end of the
10 calendar quarter in which the money was collected. If an insurer fails to timely pay to the department the
11 premium surcharge collected under this section, the department may impose on the insurer an administrative
12 fine of \$500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and
13 interest must be deposited in the workers' compensation administration fund and may be used to pay the
14 reimbursement of premiums required under 39-71-319.

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

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

23 (8) By July 1, an insurer under compensation plan No. 2 or compensation plan No. 4 that paid
24 benefits in the preceding calendar year but that will not collect any premium for coverage in the following fiscal
25 year shall pay an assessment of up to 4% of paid losses paid in the preceding calendar year. The department
26 shall determine and notify the insurer by April 30 of each year of the amount that is due by July 1.

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

1 enroll under compensation plan No. 1.

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

4 (11) The administration fund must be debited with expenses incurred by the department in the
5 general administration of the provisions of this chapter, including the salaries of its members, officers, and
6 employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501
7 through 2-18-503, incurred while on the business of the department either within or without the state.
8 Reimbursement of premiums required under 39-71-319 by the workers' compensation administration fund also
9 is a debit on the fund.

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

12 (13) The department may assess and collect the workers' compensation regulatory assessment
13 surcharge from uninsured employers, as defined in 39-71-501, that fail to properly comply with the coverage
14 requirements of the Workers' Compensation Act. Any amounts collected by the department pursuant to this
15 subsection must be deposited in the workers' compensation administration fund. (Terminates June 30, 2023--
16 sec. 7, Ch. 400, L. 2019.)

17 **39-71-201. (Effective July 1, 2023) Workers' compensation administration fund.** (1) A workers'
18 compensation administration fund is established out of which are to be paid upon lawful appropriation all costs
19 of administering the Workers' Compensation Act, with the exception of the certification of independent
20 contractors provided for in Title 39, chapter 71, part 4, the subsequent injury fund provided for in 39-71-907,
21 and the uninsured employers' fund provided for in 39-71-503. The department shall collect and deposit in the
22 state treasury to the credit of the workers' compensation administration fund:

23 (a) all fees and penalties provided in 39-71-107, 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-
24 71-315, 39-71-316, 39-71-401(6), 39-71-2204, and 39-71-2205, ~~and 39-71-2337~~; and

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

27 (2) For the purposes of this section, paid losses include the following benefits paid during the
28 preceding calendar year for injuries covered by the Workers' Compensation Act without regard to the

1 application of any deductible whether the employer or the insurer pays the losses:

2 (a) total compensation benefits paid; and

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

6 (3) Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of this section, and plan
7 ~~No. 3, the state fund, No 4 insurer~~ shall file annually on March 1 in the form and containing the information
8 required by the department a report of paid losses pursuant to subsection (2).

9 (4) Each employer enrolled under compensation plan No. 1, or compensation plan No. 2, or
10 ~~compensation plan No. 3, the state fund, and each residual market employer enrolled under compensation plan~~
11 No. 4, the residual market program and pool, shall pay its proportionate share determined by the paid losses in
12 the preceding calendar year of all costs of administering and regulating the Workers' Compensation Act, with
13 the exception of the certification of independent contractors provided for in Title 39, chapter 71, part 4, the
14 subsequent injury fund provided for in 39-71-907, and the uninsured employers' fund provided for in 39-71-503.
15 In addition, ~~compensation plan No. 3, the state fund,~~ the entity administering claims under [section 4] shall pay
16 from the state fund dissolution trust provided for in [section 8], a proportionate share of these costs based upon
17 paid losses for claims arising before July 1, 1990, and open claims of the state fund, compensation plan No. 3,
18 as provided in [section 8].

19 (5) (a) Each employer enrolled under compensation plan No. 1 shall pay an assessment to fund
20 administrative and regulatory costs. The assessment may be up to 4% of the paid losses paid in the preceding
21 calendar year by or on behalf of the plan No. 1 employer. Any entity, other than the department, that assumes
22 the obligations of an employer enrolled under compensation plan No. 1 is considered to be the employer for the
23 purposes of this section.

24 (b) An employer formerly enrolled under compensation plan No. 1 shall pay an assessment to fund
25 administrative and regulatory costs. The assessment may be up to 4% of the paid losses paid in the preceding
26 calendar year by or on behalf of the employer for claims arising out of the time when the employer was enrolled
27 under compensation plan No. 1.

28 (c) By April 30 of each year, the department shall notify employers described in subsections (5)(a)

1 and (5)(b) of the percentage of the assessment that comprises the compensation plan No. 1 proportionate
2 share of administrative and regulatory costs. The assessment provided for by this subsection (5) must be paid
3 by the employer in:

- 4 (i) one installment due on July 1; or
- 5 (ii) two equal installments due on July 1 and December 31 of each year.

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

10 (6) (a) ~~Compensation plan No. 3, the state fund,~~ The entity selected to administer claims under
11 [section 4] shall pay from the state fund dissolution trust provided for in [section 8] an assessment to fund
12 administrative and regulatory costs attributable to open claims of the state fund, compensation plan No. 3,
13 arising before July 1, 1990, and all open claims arising on or after July 1, 1990, as provided in [section 4]. The
14 assessment may be up to 4% of the paid losses paid in the preceding calendar year for claims arising before
15 July 1, 1990. ~~As required by 39-71-2352, the state fund may not pass along to insured employers the cost of~~
16 ~~the assessment for administrative and regulatory costs that is attributable to claims arising before July 1, 1990.~~

17 (b) The assessment must be paid in:
18 (i) one installment due on July 1; or
19 (ii) two equal installments due on July 1 and December 31 of each year.
20 (c) If the ~~state fund fails to timely pay~~ assessment is not timely paid to the department ~~the~~
21 ~~assessment~~ under this section, the department may impose ~~on the state fund~~ an administrative fine of \$500
22 plus interest on the delinquent amount at the annual interest rate of 12% against the state fund dissolution trust
23 under [section 8] and administered under [section 4]. Administrative fines and interest must be deposited in the
24 workers' compensation administration fund.

25 (7) (a) Each employer insured under compensation plan No. 2 or ~~plan No. 3, the state fund,~~ plan
26 No. 4, the residual program and pool, shall pay a premium surcharge to fund administrative and regulatory
27 costs. The premium surcharge must be collected by each plan No. 2 insurer ~~and by plan No. 3, the state fund,~~
28 and by plan No. 4, the residual market program and pool, from each employer that ~~it insures~~ they insure. The

1 premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate
 2 document submitted to the insured employer and must be identified as "workers' compensation regulatory
 3 assessment surcharge". The premium surcharge must be excluded from the definition of premiums for all
 4 purposes, including computation of insurance producers' commissions or premium taxes. However, an insurer
 5 may cancel a workers' compensation policy for nonpayment of the premium surcharge. When collected,
 6 assessments may not constitute an element of loss for the purpose of establishing rates for workers'
 7 compensation insurance but, for the purpose of collection, must be treated as a separate cost imposed upon
 8 insured employers.

9 (b) The amount to be funded by the premium surcharge may be up to 4% of the paid losses paid in
 10 the preceding calendar year by or on behalf of all plan No. 2 or plan No. 4 insurers ~~and may be up to 4% of paid~~
 11 ~~losses for claims arising on or after July 1, 1990, for plan No. 3, the state fund,~~ plus or minus any adjustments
 12 as provided by subsection (7)(f). The amount to be funded must be divided by the total premium paid by all
 13 employers enrolled under compensation plan No. 2 or plan No. ~~3~~4 during the preceding calendar year. A single
 14 premium surcharge rate, applicable to all employers enrolled in compensation plan No. 2 or plan No. ~~3~~4, must
 15 be calculated annually by the department by not later than April 30. The resulting rate, expressed as a
 16 percentage, is levied against the premium paid by each employer enrolled under compensation plan No. 2 or
 17 plan No. ~~3~~4 in the next fiscal year.

18 (c) On or before April 30 of each year, the department, in consultation with the advisory
 19 organization designated pursuant to 33-16-1023, shall notify plan No. 2 insurers and plan ~~No. 3, the state fund~~
 20 No. 4, the residual market program and pool, of the premium surcharge percentage to be effective for policies
 21 written or renewed annually on and after July 1 of that year.

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

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

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

9 (8) By July 1, an insurer under compensation plan No. 2 or compensation plan No. 4 that paid
10 benefits in the preceding calendar year but that will not collect any premium for coverage in the following fiscal
11 year shall pay an assessment of up to 4% of paid losses paid in the preceding calendar year. The department
12 shall determine and notify the insurer by April 30 of each year of the amount that is due by July 1.

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

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

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

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

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

28

1 **Section 42.** Section 39-71-206, MCA, is amended to read:

2 "**39-71-206. Legal advisers of department and state fund-- investigative and prosecution**
3 **services.** (1) The attorney general is the legal adviser of the department ~~and the state fund~~ and shall represent
4 ~~either entity~~ the department in all proceedings if requested by the department or state fund. The department
5 and state fund may employ other attorneys or legal advisers as they consider necessary.

6 ~~(2) As provided in 2-15-2015, the attorney general shall provide investigative and prosecution~~
7 ~~services to the state fund with respect to violations of this chapter."~~

8

9 **Section 43.** Section 39-71-225, MCA, is amended to read:

10 "**39-71-225. Workers' compensation database system.** (1) The department shall develop a
11 workers' compensation database system to generate management information about Montana's workers'
12 compensation system. The database system must be used to collect and compile information from insurers,
13 employers, health care providers, claimants, claims examiners, rehabilitation providers, and the legal
14 profession.

15 (2) Data collected must be used to provide:

16 (a) management information to the legislative and executive branches for the purpose of making
17 policy and management decisions, including but not limited to:

18 (i) performance information to enable the state to enact remedial efforts to ensure quality, control
19 abuse, and enhance cost control;

20 (ii) information on medical, indemnity, and rehabilitation costs, utilization, and trends;

21 (iii) information on litigation and attorney involvement for the purpose of identifying trends, problem
22 areas, and the costs of legal involvement;

23 (b) current and prior claim information to any insurer that is at risk on a claim, or that is alleged to
24 be at risk in any administrative or judicial proceeding, to determine claims liability or for fraud investigation. The
25 department may release information only upon written request by the insurer and may disclose only the
26 claimant's name, claimant's identification number, prior claim number, date of injury, body part involved, and
27 name and address of the insurer and claims examiner on each claim filed. Information obtained by an insurer
28 pursuant to this section must remain confidential and may not be disclosed to a third party except to the extent

1 necessary for determining claim liability or for fraud investigation.

2 (c) current and prior claim information to law enforcement agencies for purposes of fraud
3 investigation or prosecution; and

4 (d) to any insurer that is at risk on a claim, information identifying whether the claimant has been
5 certified by the department as a person with a disability. Information obtained by an insurer pursuant to this
6 subsection (2)(d) must remain confidential and may not be disclosed to a third party except as necessary to
7 implement the provisions of Title 39, chapter 71, part 9. An insurer may disclose to the employer that the
8 claimant has been certified by the department and of the potential for a limit on the insurer's liability and of
9 potential reimbursement by the subsequent injury fund.

10 (3) The department is authorized to collect from insurers, employers, medical providers, the legal
11 profession, and others the information necessary to generate the workers' compensation database system.

12 (4) The workers' compensation database system must be designed in accordance with the
13 following principles:

14 (a) avoidance of duplication and inconsistency;

15 (b) reasonable availability of data elements;

16 (c) value of information collected to be commensurate with the cost of retrieving the collected
17 information;

18 (d) uniformity to permit efficiency of collection and to allow interstate comparisons;

19 (e) a workable mechanism to ensure the accuracy of the data collected and to protect the
20 confidentiality of collected data;

21 (f) reasonable availability of the data at a fair cost to the user;

22 (g) a broad application to plan No. 1, plan No. 2, and plan No. ~~3~~4 insurers;

23 (h) compatibility with electronic data reporting;

24 (i) reporting procedures that can be handled through private data collection systems that adhere
25 to the provisions of subsections (4)(a) through (4)(h);

26 (j) implementation of reporting requirements that allow reasonable lead time for compliance.

27 (5) The department shall publish an annual report on the information compiled.

28 (6) Users of information obtained from the workers' compensation database under this section are

1 liable for damages arising from misuse or unlawful dissemination of database information.

2 (7) An insurer or a third-party administrator who submitted 50 or more "first reports of injury" to the
3 department in the preceding calendar year shall electronically submit the reports and any other reports related
4 to the reported claims in a nationally recognized format specified by department rule.

5 (8) The department may adopt rules to implement this section."
6

7 **Section 44.** Section 39-71-307, MCA, is amended to read:

8 **"39-71-307. Employers and insurers to file reports -- penalty.** (1) Every employer insured by a
9 plan No. 2 insurer or a plan No. 3 insurer or plan No. 4, the residual market program and pool, is required to file
10 with the employer's insurer, under rules adopted by the department, a full and complete report of every
11 accident, injury, or occupational disease to an employee arising out of or in the course of employment.

12 (2) Every insurer transacting business under this chapter shall, under rules adopted by the
13 department, make and file with the department the reports of every injury or occupational disease.

14 (3) An employer or insurer who refuses or neglects to submit the reports necessary for the proper
15 filing and review of a claim, as provided in subsection (1) or (2), shall be assessed a penalty of not less than
16 \$200 or more than \$500 for each offense. The department shall assess and collect the penalty. An employer or
17 insurer may contest a penalty assessment in a hearing conducted according to department rules."
18

19 **Section 45.** Section 39-71-401, MCA, is amended to read:

20 **"39-71-401. Employments covered and exemptions -- elections -- notice.** (1) Except as provided
21 in subsection (2), the Workers' Compensation Act applies to all employers and to all employees. An employer
22 who has any employee in service under any appointment or contract of hire, expressed or implied, oral or
23 written, shall elect to be bound by the provisions of compensation plan No. 1, 2, ~~or 3~~ or 4, the residual market
24 program and pool, unless the provisions of 39-71-442 apply. Each employee whose employer is bound by the
25 Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the
26 employer.

27 (2) Unless the employer elects coverage for these employments under this chapter and an insurer
28 allows an election, the Workers' Compensation Act does not apply to any of the following:

- 1 (a) household or domestic employment;
- 2 (b) casual employment;
- 3 (c) employment of a dependent member of an employer's family for whom an exemption may be
4 claimed by the employer under the federal Internal Revenue Code;
- 5 (d) employment of sole proprietors, working members of a partnership, working members of a
6 limited liability partnership, or working members of a member-managed limited liability company, except as
7 provided in subsection (3);
- 8 (e) employment of a real estate, securities, or insurance salesperson paid solely by commission
9 and without a guarantee of minimum earnings;
- 10 (f) employment as a direct seller as defined by 26 U.S.C. 3508;
- 11 (g) employment for which a rule of liability for injury, occupational disease, or death is provided
12 under the laws of the United States;
- 13 (h) employment of a person performing services in return for aid or sustenance only, except
14 employment of a volunteer under 67-2-105;
- 15 (i) employment with a railroad engaged in interstate commerce, except that railroad construction
16 work is included in and subject to the provisions of this chapter;
- 17 (j) employment as an official, including a timer, referee, umpire, or judge, at an amateur athletic
18 event;
- 19 (k) employment of a person performing services as a newspaper carrier or freelance
20 correspondent if the person performing the services or a parent or guardian of the person performing the
21 services in the case of a minor has acknowledged in writing that the person performing the services and the
22 services are not covered. As used in this subsection (2)(k):
 - 23 (i) "freelance correspondent" means a person who submits articles or photographs for publication
24 and is paid by the article or by the photograph; and
 - 25 (ii) "newspaper carrier":
 - 26 (A) means a person who provides a newspaper with the service of delivering newspapers singly or
27 in bundles; and
 - 28 (B) does not include an employee of the paper who, incidentally to the employee's main duties,

1 carries or delivers papers.

2 (l) cosmetologist's services and barber's services as referred to in 39-51-204(1)(e);

3 (m) a person who is employed by an enrolled tribal member or an association, business,
4 corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose
5 business is conducted solely within the exterior boundaries of an Indian reservation;

6 (n) employment of a jockey who is performing under a license issued by the board of horseracing
7 from the time that the jockey reports to the scale room prior to a race through the time that the jockey is
8 weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of
9 horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services as
10 a jockey;

11 (o) employment of a trainer, assistant trainer, exercise person, or pony person who is performing
12 services under a license issued by the board of horseracing while on the grounds of a licensed race meet;

13 (p) employment of an employer's spouse for whom an exemption based on marital status may be
14 claimed by the employer under 26 U.S.C. 7703;

15 (q) a person who performs services as a petroleum land professional. As used in this subsection, a
16 "petroleum land professional" is a person who:

17 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in
18 negotiating a business agreement for the exploration or development of minerals;

19 (ii) is paid for services that are directly related to the completion of a contracted specific task rather
20 than on an hourly wage basis; and

21 (iii) performs all services as an independent contractor pursuant to a written contract.

22 (r) an officer of a quasi-public or a private corporation or, except as provided in subsection (3), a
23 manager of a manager-managed limited liability company who qualifies under one or more of the following
24 provisions:

25 (i) the officer or manager is not engaged in the ordinary duties of a worker for the corporation or
26 the limited liability company and does not receive any pay from the corporation or the limited liability company
27 for performance of the duties;

28 (ii) the officer or manager is engaged primarily in household employment for the corporation or the

- 1 limited liability company;
- 2 (iii) the officer or manager either:
- 3 (A) owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of
- 4 the limited liability company; or
- 5 (B) owns less than 20% of the number of shares of stock in the corporation or limited liability
- 6 company if the officer's or manager's shares when aggregated with the shares owned by a person or persons
- 7 listed in subsection (2)(r)(iv) total 20% or more of the number of shares in the corporation or limited liability
- 8 company; or
- 9 (iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law,
- 10 daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets the requirements of
- 11 subsection (2)(r)(iii)(A) or (2)(r)(iii)(B);
- 12 (s) a person who is an officer or a manager of a ditch company as defined in 27-1-731;
- 13 (t) service performed by an ordained, commissioned, or licensed minister of a church in the
- 14 exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the
- 15 order;
- 16 (u) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite
- 17 care for individuals who, because of age or infirmity, are unable to care for themselves when the person
- 18 providing the service is employed directly by a family member or an individual who is a legal guardian;
- 19 (v) employment of a person performing the services of an intrastate or interstate common or
- 20 contract motor carrier when hired by an individual or entity who meets the definition of a broker or freight
- 21 forwarder, as provided in 49 U.S.C. 13102;
- 22 (w) employment of a person who is not an employee or worker in this state as defined in 39-71-
- 23 118(8);
- 24 (x) employment of a person who is working under an independent contractor exemption certificate;
- 25 (y) employment of an athlete by or on a team or sports club engaged in a contact sport. As used in
- 26 this subsection, "contact sport" means a sport that includes significant physical contact between the athletes
- 27 involved. Contact sports include but are not limited to football, hockey, roller derby, rugby, lacrosse, wrestling,
- 28 and boxing.

1 (z) a musician performing under a written contract.

2 (3) (a) (i) A person who regularly and customarily performs services at locations other than the
3 person's own fixed business location shall elect to be bound personally and individually by the provisions of
4 compensation plan No. 1, 2, ~~or 3~~ or 4 unless the person has waived the rights and benefits of the Workers'
5 Compensation Act by obtaining an independent contractor exemption certificate from the department pursuant
6 to 39-71-417.

7 (ii) Application fees or renewal fees for independent contractor exemption certificates must be
8 deposited in the state special revenue account established in 39-9-206 and must be used to offset the
9 certification administration costs.

10 (b) A person who holds an independent contractor exemption certificate may purchase a workers'
11 compensation insurance policy and with the insurer's permission elect coverage for the certificate holder.

12 (c) For the purposes of this subsection (3), "person" means:

13 (i) a sole proprietor;

14 (ii) a working member of a partnership;

15 (iii) a working member of a limited liability partnership;

16 (iv) a working member of a member-managed limited liability company; or

17 (v) a manager of a manager-managed limited liability company that is engaged in the work of the
18 construction industry as defined in 39-71-116.

19 (4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its
20 employees under the provisions of compensation plan No. 1, 2, ~~or 3~~ or 4. A quasi-public corporation, a private
21 corporation, or a manager-managed limited liability company may elect coverage for its corporate officers or
22 managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:

23 (i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by
24 delivering the notice to the board of directors of the corporation or to the management organization of the
25 manager-managed limited liability company; or

26 (ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 ~~or 3~~, or
27 4, by delivering the notice to the board of directors of the corporation or to the management organization of the
28 manager-managed limited liability company and to the insurer.

1 (b) If the employer changes plans or insurers, the employer's previous election is not effective and
2 the employer shall again serve notice to its insurer and to its board of directors or the management organization
3 of the manager-managed limited liability company if the employer elects to be bound.

4 (5) The appointment or election of an employee as an officer of a corporation, a partner in a
5 partnership, a partner in a limited liability partnership, or a member in or a manager of a limited liability
6 company for the purpose of exempting the employee from coverage under this chapter does not entitle the
7 officer, partner, member, or manager to exemption from coverage.

8 (6) Each employer shall post a sign in the workplace at the locations where notices to employees
9 are normally posted, informing employees about the employer's current provision of workers' compensation
10 insurance. A workplace is any location where an employee performs any work-related act in the course of
11 employment, regardless of whether the location is temporary or permanent, and includes the place of business
12 or property of a third person while the employer has access to or control over the place of business or property
13 for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided
14 by the department, distributed through insurers or directly by the department, and posted by employers in
15 accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign
16 as provided in this subsection is subject to a \$50 fine for each citation."
17

18 **Section 46.** Section 39-71-403, MCA, is amended to read:

19 **"39-71-403. Plan ~~three exclusive for state agencies -- election of plan by public corporations --~~**
20 **financing of self-insurance fund -- exemption for university system -- definitions -- rulemaking.** (1) (a)
21 ~~Except as provided in subsection (5), if a state agency is the employer, the terms, conditions, and provisions of~~
22 ~~compensation plan No. 3, state fund, are exclusive, compulsory, and obligatory upon both employer and~~
23 ~~employee. Any sums necessary to be paid under the provisions of this chapter by a state agency are~~
24 ~~considered to be ordinary and necessary expenses of the agency. The agency shall pay the sums into the state~~
25 ~~fund at the time and in the manner provided for in this chapter, notwithstanding that the state agency may have~~
26 ~~failed to anticipate the ordinary and necessary expense in a budget, estimate of expenses, appropriations,~~
27 ~~ordinances, or otherwise.~~

28 (b) ~~(i)~~ Subject to subsection (5), the department of administration, provided for in 2-15-1001, shall

1 obtain and manage workers' compensation insurance coverage for all state agencies.

2 ~~(ii) The state fund shall provide the department of administration with all information regarding the state~~
3 ~~agencies' coverage.~~

4 ~~(iii) Notwithstanding the status of a state agency as employer in subsection (1)(a) and contingent upon~~
5 ~~mutual agreement between the department of administration and the state fund, the state fund shall issue one~~
6 ~~or more policies for all state agencies.~~

7 ~~(iv)(b)~~ In any year in which the workers' compensation premium due from a state agency is lower than
8 in the previous year, the appropriation for that state agency must be reduced by the same amount that the
9 workers' compensation premium was reduced and the difference must be returned to the originating fund
10 instead of being applied to other purposes by the state agency submitting the premium.

11 (2) A public corporation, other than a state agency, may elect coverage under compensation plan
12 No. 1, plan No. 2, or plan No. ~~3~~4, separately or jointly with any other public corporation, other than a state
13 agency. A public corporation electing compensation plan No. 1 may purchase reinsurance or issue bonds or
14 notes pursuant to subsection (3)(b). A public corporation electing compensation plan No. 1 is subject to the
15 same provisions as a private employer electing compensation plan No. 1.

16 (3) (a) A public corporation, other than a state agency, that elects plan No. 1 may establish a fund
17 sufficient to pay the compensation and benefits provided for in this chapter and to discharge all liabilities that
18 are reasonably incurred during the fiscal year for which the election is effective. Proceeds from the fund must
19 be used only to pay claims covered by this chapter and for actual and necessary expenses required for the
20 efficient administration of the fund, including debt service on any bonds and notes issued pursuant to
21 subsection (3)(b).

22 (b) (i) A public corporation, other than a state agency, separately or jointly with another public
23 corporation, other than a state agency, may issue and sell its bonds and notes for the purpose of establishing,
24 in whole or in part, the self-insurance workers' compensation fund provided for in subsection (3)(a) and to pay
25 the costs associated with the sale and issuance of the bonds. Bonds and notes may be issued in an amount not
26 exceeding 0.18% of the total assessed value of taxable property, determined as provided in 15-8-111, of the
27 public corporation as of the date of issue. The bonds and notes must be authorized by resolution of the
28 governing body of the public corporation and are payable from an annual property tax levied in the amount

1 necessary to pay principal and interest on the bonds or notes. This authority to levy an annual property tax
2 exists despite any provision of law or maximum levy limitation, including 15-10-420, to the contrary. The
3 revenue derived from the sale of the bonds and notes may not be used for any other purpose.

4 (ii) The bonds and notes:

5 (A) may be sold at public or private sale;

6 (B) do not constitute debt within the meaning of any statutory debt limitation; and

7 (C) may contain other terms and provisions that the governing body determines.

8 (iii) Two or more public corporations, other than state agencies, may agree to exercise their
9 respective borrowing powers jointly under this subsection (3)(b) or may authorize a joint board to exercise the
10 powers on their behalf.

11 (iv) The fund established from the proceeds of bonds and notes issued and sold under this
12 subsection (3)(b) may, if sufficient, be used in lieu of a surety bond, reinsurance, specific and aggregate excess
13 insurance, or any other form of additional security necessary to demonstrate the public corporation's ability to
14 discharge all liabilities as provided in subsection (3)(a). Subject to the total assessed value limitation in
15 subsection (3)(b)(i), a public corporation may issue bonds and notes to establish a fund sufficient to discharge
16 liabilities for periods greater than 1 year.

17 (4) All money in the fund established under subsection (3)(a) not needed to meet immediate
18 expenditures must be invested by the governing body of the public corporation or the joint board created by two
19 or more public corporations as provided in subsection (3)(b)(iii), and all proceeds of the investment must be
20 credited to the fund.

21 (5) For the purposes of subsection (1)~~(b)~~, the judicial branch or the legislative branch may choose
22 not to have the department of administration manage its workers' compensation policy.

23 (6) The department of administration may adopt rules to implement subsection ~~(1)(b)(i)~~ (1)(a).

24 (7) As used in this section, the following definitions apply:

25 (a) "Public corporation" includes the Montana university system.

26 (b) (i) "State agency" means:

27 (A) the executive branch and its departments and all boards, commissions, committees, bureaus,
28 and offices;

- 1 (B) the judicial branch; and
- 2 (C) the legislative branch.
- 3 (ii) The term does not include the Montana university system."

4

5 **Section 47.** Section 39-71-407, MCA, is amended to read:

6 **"39-71-407. (Temporary) Liability of insurers -- limitations.** (1) For workers' compensation injuries,
7 each insurer is liable for the payment of compensation, in the manner and to the extent provided in this section,
8 to an employee of an employer covered under plan No. 1, plan No. 2, ~~and the state fund under plan No. 3 and~~
9 plan No. 4 that it insures who receives an injury arising out of and in the course of employment or, in the case
10 of death from the injury, to the employee's beneficiaries, if any.

11 (2) An injury does not arise out of and in the course of employment when the employee is:

12 (a) on a paid or unpaid break, is not at a worksite of the employer, and is not performing any
13 specific tasks for the employer during the break; or

14 (b) engaged in a social or recreational activity, regardless of whether the employer pays for any
15 portion of the activity. The exclusion from coverage of this subsection (2)(b) does not apply to an employee
16 who, at the time of injury, is on paid time while participating in a social or recreational activity or whose
17 presence at the activity is required or requested by the employer. For the purposes of this subsection (2)(b),
18 "requested" means the employer asked the employee to assume duties for the activity so that the employee's
19 presence is not completely voluntary and optional and the injury occurred in the performance of those duties.

20 (3) (a) Subject to subsection (3)(c), an insurer is liable for an injury, as defined in 39-71-119, only if
21 the injury is established by objective medical findings and if the claimant establishes that it is more probable
22 than not that:

- 23 (i) a claimed injury has occurred; or
- 24 (ii) a claimed injury has occurred and aggravated a preexisting condition.

25 (b) Proof that it was medically possible that a claimed injury occurred or that the claimed injury
26 aggravated a preexisting condition is not sufficient to establish liability.

27 (c) Objective medical findings are sufficient for a presumptive occupational disease as defined in
28 39-71-1401 but may be overcome by a preponderance of the evidence.

1 (4) (a) An employee who suffers an injury or dies while traveling is not covered by this chapter

2 unless:

3 (i) the employer furnishes the transportation or the employee receives reimbursement from the
4 employer for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment agreement
5 and the travel is necessitated by and on behalf of the employer as an integral part or condition of the
6 employment; or

7 (ii) the travel is required by the employer as part of the employee's job duties.

8 (b) A payment made to an employee under a collective bargaining agreement, personnel policy
9 manual, or employee handbook or any other document provided to the employee that is not wages but is
10 designated as an incentive to work at a particular jobsite is not a reimbursement for the costs of travel, gas, oil,
11 or lodging, and the employee is not covered under this chapter while traveling.

12 (5) (a) Except as provided in subsection (6), an employee is not eligible for benefits otherwise
13 payable under this chapter if the employee's use of alcohol or drugs not prescribed by a physician is the major
14 contributing cause of the accident.

15 (b) For the purposes of this subsection (5), if an employee fails or refuses to take a drug test after
16 the accident and if the testing procedures comply with federal drug testing statutes and administrative
17 regulations applicable to private sector employers and employees as provided in Title 39, chapter 2, there is a
18 presumption that the major contributing cause of the accident was the employee's use of drugs not prescribed
19 by a physician.

20 (6) (a) An employee who has received written certification, as defined in 16-12-502, from a
21 physician for the use of marijuana for a debilitating medical condition and who is otherwise eligible for benefits
22 payable under this chapter is subject to the limitations of subsections (6)(b) through (6)(d).

23 (b) An employee is not eligible for benefits otherwise payable under this chapter if the employee's
24 use of marijuana for a debilitating medical condition, as defined in 16-12-102, is the major contributing cause of
25 the injury or occupational disease.

26 (c) Nothing in this chapter may be construed to require an insurer to reimburse any person for
27 costs associated with the use of marijuana for a debilitating medical condition, as defined in 16-12-102.

28 (d) In an accepted liability claim, the benefits payable under this chapter may not be increased or

1 enhanced due to a worker's use of marijuana for a debilitating medical condition, as defined in 16-12-102. An
2 insurer remains liable for those benefits that the worker would qualify for absent the worker's use of marijuana
3 for a debilitating medical condition.

4 (7) The provisions of subsection (5) do not apply if the employer had knowledge of and failed to
5 attempt to stop the employee's use of alcohol or drugs not prescribed by a physician. This subsection (7) does
6 not apply to the use of marijuana for a debilitating medical condition because marijuana is not a prescribed
7 drug.

8 (8) If there is no dispute that an insurer is liable for an injury but there is a liability dispute between
9 two or more insurers, the insurer for the most recently filed claim shall pay benefits until that insurer proves that
10 another insurer is responsible for paying benefits or until another insurer agrees to pay benefits. If it is later
11 proven that the insurer for the most recently filed claim is not responsible for paying benefits, that insurer must
12 receive reimbursement for benefits paid to the claimant from the insurer proven to be responsible.

13 (9) If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to
14 the same part of the body, the workers' compensation insurer is not liable for any compensation or medical
15 benefits caused by the subsequent nonwork-related injury.

16 (10) Except for cases of presumptive occupational disease as provided in 39-71-1401 and 39-71-
17 1402, an employee is not eligible for benefits payable under this chapter unless the entitlement to benefits is
18 established by objective medical findings that contain sufficient factual and historical information concerning the
19 relationship of the worker's condition to the original injury.

20 (11) (a) For occupational diseases, every employer enrolled under plan No. 1, and every insurer
21 under plan No. 2, ~~or the state fund under plan No. 3 or plan No. 4~~ is liable for the payment of compensation, in
22 the manner and to the extent provided in this chapter, to an employee of an employer covered under plan No.
23 1, plan No. 2, ~~or the state fund under plan No. 3 or plan No. 4~~ if the employee is diagnosed with a compensable
24 occupational disease.

25 (b) The provisions of subsection (11)(a) apply to presumptive occupational disease if the employee
26 is diagnosed and meets the conditions of 39-71-1401 and 39-71-1402.

27 (12) An insurer is liable for an occupational disease only if the occupational disease:

28 (a) is established by objective medical findings; and

1 (b) arises out of or is contracted in the course and scope of employment. An occupational disease
2 is considered to arise out of or be contracted in the course and scope of employment if the events occurring on
3 more than a single day or work shift are the major contributing cause of the occupational disease in relation to
4 other factors contributing to the occupational disease. For the purposes of this subsection (12), an occupational
5 disease is not the same as a presumptive occupational disease.

6 (13) When compensation is payable for an occupational disease or a presumptive occupational
7 disease, the only employer liable is the employer in whose employment the employee was last injuriously
8 exposed to the hazard of the disease.

9 (14) When there is more than one insurer and only one employer at the time that the employee was
10 injuriously exposed to the hazard of the disease, the liability rests with the insurer providing coverage at the
11 earlier of:

12 (a) the time that the occupational disease or presumptive occupational disease was first diagnosed
13 by a health care provider; or

14 (b) the time that the employee knew or should have known that the condition was the result of an
15 occupational disease or a presumptive occupational disease.

16 (15) In the case of pneumoconiosis, any coal mine operator who has acquired a mine in the state or
17 substantially all of the assets of a mine from a person who was an operator of the mine on or after December
18 30, 1969, is liable for and shall secure the payment of all benefits that would have been payable by that person
19 with respect to miners previously employed in the mine if acquisition had not occurred and that person had
20 continued to operate the mine, and the prior operator of the mine is not relieved of any liability under this
21 section.

22 (16) As used in this section, "major contributing cause" means a cause that is the leading cause
23 contributing to the result when compared to all other contributing causes. (Void on occurrence of contingency--
24 sec. 7, Ch. 158, L. 2019.)

25 **39-71-407. (Effective on occurrence of contingency) Liability of insurers -- limitations.** (1) For
26 workers' compensation injuries, each insurer is liable for the payment of compensation, in the manner and to
27 the extent provided in this section, to an employee of an employer covered under plan No. 1, plan No. 2, ~~and~~
28 ~~the state fund under plan No. 3 and plan No. 4~~ that it insures who receives an injury arising out of and in the

1 course of employment or, in the case of death from the injury, to the employee's beneficiaries, if any.

2 (2) An injury does not arise out of and in the course of employment when the employee is:

3 (a) on a paid or unpaid break, is not at a worksite of the employer, and is not performing any
4 specific tasks for the employer during the break; or

5 (b) engaged in a social or recreational activity, regardless of whether the employer pays for any
6 portion of the activity. The exclusion from coverage of this subsection (2)(b) does not apply to an employee
7 who, at the time of injury, is on paid time while participating in a social or recreational activity or whose
8 presence at the activity is required or requested by the employer. For the purposes of this subsection (2)(b),
9 "requested" means the employer asked the employee to assume duties for the activity so that the employee's
10 presence is not completely voluntary and optional and the injury occurred in the performance of those duties.

11 (3) (a) An insurer is liable for an injury, as defined in 39-71-119, only if the injury is established by
12 objective medical findings and if the claimant establishes that it is more probable than not that:

13 (i) a claimed injury has occurred; or

14 (ii) a claimed injury has occurred and aggravated a preexisting condition.

15 (b) Proof that it was medically possible that a claimed injury occurred or that the claimed injury
16 aggravated a preexisting condition is not sufficient to establish liability.

17 (4) (a) An employee who suffers an injury or dies while traveling is not covered by this chapter
18 unless:

19 (i) the employer furnishes the transportation or the employee receives reimbursement from the
20 employer for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment agreement
21 and the travel is necessitated by and on behalf of the employer as an integral part or condition of the
22 employment; or

23 (ii) the travel is required by the employer as part of the employee's job duties.

24 (b) A payment made to an employee under a collective bargaining agreement, personnel policy
25 manual, or employee handbook or any other document provided to the employee that is not wages but is
26 designated as an incentive to work at a particular jobsite is not a reimbursement for the costs of travel, gas, oil,
27 or lodging, and the employee is not covered under this chapter while traveling.

28 (5) (a) Except as provided in subsection (6), an employee is not eligible for benefits otherwise

1 payable under this chapter if the employee's use of alcohol or drugs not prescribed by a physician is the major
2 contributing cause of the accident.

3 (b) For the purposes of this subsection (5), if an employee fails or refuses to take a drug test after
4 the accident and if the testing procedures comply with federal drug testing statutes and administrative
5 regulations applicable to private sector employers and employees as provided in Title 39, chapter 2, there is a
6 presumption that the major contributing cause of the accident was the employee's use of drugs not prescribed
7 by a physician.

8 (6) (a) An employee who has received written certification, as defined in 16-12-502, from a
9 physician for the use of marijuana for a debilitating medical condition and who is otherwise eligible for benefits
10 payable under this chapter is subject to the limitations of subsections (6)(b) through (6)(d).

11 (b) An employee is not eligible for benefits otherwise payable under this chapter if the employee's
12 use of marijuana for a debilitating medical condition, as defined in 16-12-102, is the major contributing cause of
13 the injury or occupational disease.

14 (c) Nothing in this chapter may be construed to require an insurer to reimburse any person for
15 costs associated with the use of marijuana for a debilitating medical condition, as defined in 16-12-102.

16 (d) In an accepted liability claim, the benefits payable under this chapter may not be increased or
17 enhanced due to a worker's use of marijuana for a debilitating medical condition, as defined in 16-12-102. An
18 insurer remains liable for those benefits that the worker would qualify for absent the worker's use of marijuana
19 for a debilitating medical condition.

20 (7) The provisions of subsection (5) do not apply if the employer had knowledge of and failed to
21 attempt to stop the employee's use of alcohol or drugs not prescribed by a physician. This subsection (7) does
22 not apply to the use of marijuana for a debilitating medical condition because marijuana is not a prescribed
23 drug.

24 (8) If there is no dispute that an insurer is liable for an injury but there is a liability dispute between
25 two or more insurers, the insurer for the most recently filed claim shall pay benefits until that insurer proves that
26 another insurer is responsible for paying benefits or until another insurer agrees to pay benefits. If it is later
27 proven that the insurer for the most recently filed claim is not responsible for paying benefits, that insurer must
28 receive reimbursement for benefits paid to the claimant from the insurer proven to be responsible.

1 (9) If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to
2 the same part of the body, the workers' compensation insurer is not liable for any compensation or medical
3 benefits caused by the subsequent nonwork-related injury.

4 (10) An employee is not eligible for benefits payable under this chapter unless the entitlement to
5 benefits is established by objective medical findings that contain sufficient factual and historical information
6 concerning the relationship of the worker's condition to the original injury.

7 (11) For occupational diseases, every employer enrolled under plan No. 1; and every insurer under
8 plan No. 2; or the state fund under plan No. 3 or plan No. 4 is liable for the payment of compensation, in the
9 manner and to the extent provided in this chapter, to an employee of an employer covered under plan No. 1,
10 plan No. 2, ~~or the state fund under plan No. 3 or plan No. 4~~ if the employee is diagnosed with a compensable
11 occupational disease.

12 (12) An insurer is liable for an occupational disease only if the occupational disease:

13 (a) is established by objective medical findings; and

14 (b) arises out of or is contracted in the course and scope of employment. An occupational disease
15 is considered to arise out of or be contracted in the course and scope of employment if the events occurring on
16 more than a single day or work shift are the major contributing cause of the occupational disease in relation to
17 other factors contributing to the occupational disease.

18 (13) When compensation is payable for an occupational disease, the only employer liable is the
19 employer in whose employment the employee was last injuriously exposed to the hazard of the disease.

20 (14) When there is more than one insurer and only one employer at the time that the employee was
21 injuriously exposed to the hazard of the disease, the liability rests with the insurer providing coverage at the
22 earlier of:

23 (a) the time that the occupational disease was first diagnosed by a health care provider; or

24 (b) the time that the employee knew or should have known that the condition was the result of an
25 occupational disease.

26 (15) In the case of pneumoconiosis, any coal mine operator who has acquired a mine in the state or
27 substantially all of the assets of a mine from a person who was an operator of the mine on or after December
28 30, 1969, is liable for and shall secure the payment of all benefits that would have been payable by that person

1 with respect to miners previously employed in the mine if acquisition had not occurred and that person had
2 continued to operate the mine, and the prior operator of the mine is not relieved of any liability under this
3 section.

4 (16) As used in this section, "major contributing cause" means a cause that is the leading cause
5 contributing to the result when compared to all other contributing causes."
6

7 **Section 48.** Section 39-71-417, MCA, is amended to read:

8 **"39-71-417. Independent contractor certification.** (1) (a) (i) Except as provided in subsection
9 (1)(a)(ii), a person who regularly and customarily performs services at a location other than the person's own
10 fixed business location shall apply to the department for an independent contractor exemption certificate unless
11 the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2,
12 or 3 4.

13 (ii) An officer or manager who is exempt under 39-71-401(2)(r)(iii) or (2)(r)(iv) may apply, but is not
14 required to apply, to the department for an independent contractor exemption certificate.

15 (b) A person who meets the requirements of this section and receives an independent contractor
16 exemption certificate is not required to obtain a personal workers' compensation insurance policy.

17 (c) For the purposes of this section, "person" means:

18 (i) a sole proprietor;

19 (ii) a working member of a partnership;

20 (iii) a working member of a limited liability partnership;

21 (iv) a working member of a member-managed limited liability company; or

22 (v) a manager of a manager-managed limited liability company that is engaged in the work of the
23 construction industry as defined in 39-71-116.

24 (2) The department shall adopt rules relating to an original application for or renewal of an
25 independent contractor exemption certificate. The department shall adopt by rule the amount of the fee for an
26 application or certificate renewal. The application or renewal must be accompanied by the fee.

27 (3)The department shall deposit the application or renewal fee in an account in the state special
28 revenue fund to pay the costs of administering the program.

1 (4) (a) To obtain an independent contractor exemption certificate, the applicant shall swear to and
2 acknowledge the following:

3 (i) that the applicant has been and will continue to be free from control or direction over the
4 performance of the person's own services, both under contract and in fact; and

5 (ii) that the applicant is engaged in an independently established trade, occupation, profession, or
6 business and will provide sufficient documentation of that fact to the department.

7 (b) For the purposes of subsection (4)(a)(i), an endorsement required for licensure, as provided in
8 37-47-303, does not imply or constitute control.

9 (5) (a) An applicant for an independent contractor exemption certificate shall submit an application
10 under oath on a form prescribed by the department and containing the following:

11 (i) the applicant's name and address;

12 (ii) the applicant's social security number;

13 (iii) each occupation for which the applicant is seeking independent contractor certification; and

14 (iv) other documentation as provided by department rule to assist in determining if the applicant
15 has an independently established business.

16 (b) The department shall adopt a retention schedule that maintains copies of documents submitted
17 in support of an initial application or renewal application for an independent contractor exemption certificate for
18 a minimum of 3 years after an application has been received by the department. The department shall, to the
19 extent feasible, produce renewal applications that reduce the burden on renewal applicants to supply
20 information that has been previously provided to the department as part of the application process.

21 (c) An applicant who applies on or after July 1, 2011, to renew an independent contractor
22 exemption certificate is not required to submit documents that have been previously submitted to the
23 department if:

24 (i) the applicant certifies under oath that the previously submitted documents are still valid and
25 current; and

26 (ii) the department, if it considers it necessary, independently verifies a specific document or
27 decides that a document has not expired pursuant to the document's own terms and is therefore still valid and
28 current.

1 (6) The department shall issue an independent contractor exemption certificate to an applicant if
2 the department determines that an applicant meets the requirements of this section.

3 (7) (a) When the department approves an application for an independent contractor exemption
4 certificate and the person is working under the independent contractor exemption certificate, the person's status
5 is conclusively presumed to be that of an independent contractor.

6 (b) A person working under an approved independent contractor exemption certificate has waived
7 all rights and benefits under the Workers' Compensation Act and is precluded from obtaining benefits unless
8 the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2,
9 or 3 4.

10 (c) For the purposes of the Workers' Compensation Act, a person is working under an independent
11 contractor exemption certificate if:

12 (i) the person is performing work in the trade, business, occupation, or profession listed on the
13 person's independent contractor exemption certificate; and

14 (ii) the hiring agent and the person holding the independent contractor exemption certificate do not
15 have a written or an oral agreement that the independent contractor exemption certificate holder's status with
16 respect to that hiring agent is that of an employee.

17 (8) Once issued, an independent contractor exemption certificate remains in effect for 2 years
18 unless:

19 (a) suspended or revoked pursuant to 39-71-418; or

20 (b) canceled by the independent contractor.

21 (9) If the department's independent contractor central unit denies an application for an
22 independent contractor exemption certificate, the applicant may contest that decision as provided in 39-71-
23 415(2)."

24

25 **Section 49.** Section 39-71-419, MCA, is amended to read:

26 **"39-71-419. Independent contractor violations -- penalty.** (1) A person may not:

27 (a) perform work as an independent contractor without first:

28 (i) obtaining from the department an independent contractor exemption certificate unless the

1 individual is not required to obtain an independent contractor exemption certificate pursuant to 39-71-417(1)(a);

2 or

3 (ii) electing to be bound personally and individually by the provisions of compensation plan No. 1,

4 2, or ~~3~~ 4;

5 (b) perform work as an independent contractor when the department has revoked or denied the

6 independent contractor's exemption certificate;

7 (c) transfer to another person or allow another person to use an independent contractor exemption

8 certificate that was not issued to that person;

9 (d) alter or falsify an independent contractor exemption certificate; or

10 (e) misrepresent the person's status as an independent contractor. A person who falsely claimed,

11 either in writing or through credible evidence, to have an independent contractor certification may not be

12 considered to be an employee solely based on not actually having an independent contractor exemption

13 certificate. The burden of proof that an independent contractor is certified rests with the independent contractor

14 and not the hiring entity.

15 (2) An employer may not:

16 (a) require an employee through coercion, misrepresentation, or fraudulent means to adopt

17 independent contractor status to avoid the employer's obligations to provide workers' compensation coverage;

18 or

19 (b) exert control to a degree that causes the independent contractor to violate the provisions of 39-

20 71-417(4).

21 (3) In addition to any other penalty or sanction provided in this chapter, a person or employer who

22 violates a provision of this section is subject to a fine to be assessed by the department of up to \$1,000 for each

23 violation. The department shall deposit the fines in the uninsured employers' fund. The lien provisions of 39-71-

24 506 apply to any assessed fines.

25 (4) A person or employer who disputes a fine assessed by the department pursuant to this section

26 may file an appeal with the department within 30 days of the date on which the fine was assessed. If, after

27 mediation, the issue is not resolved, the issue must be transferred to the workers' compensation court for

28 resolution."

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Section 50. Section 39-71-433, MCA, is amended to read:

"39-71-433. Group purchase of workers' compensation insurance. (1) Two or more business entities may join together to form a group to purchase individual workers' compensation insurance policies covering each member of the group.

(2) A group formed under this section may purchase individual workers' compensation insurance policies covering each member of the group from any insurer authorized to write workers' compensation insurance in this state, except that the ~~state fund, as defined in 39-71-2312~~ residual market plan and pool, as provided for in [section 2], has the right to refuse coverage of a group and its plan of operation but, subject to the eligibility requirements of the residual market program and pool, may not refuse coverage to an individual employer. Under an individual policy, the group is entitled to a premium or volume discount that would be applicable to a policy of the combined premium amount of the individual policies.

(3) A group shall apportion any discount or policyholder dividend received on workers' compensation insurance coverage among the members of the group according to a formula adopted in the plan of operation for the group.

(4) A group shall adopt a plan of operation that must include the composition and selection of a governing board, the methods for administering the group, the eligibility requirements to join the group, and guidelines for the workers' compensation insurance coverage obtained by the group, including the payment of premiums, the distribution of discounts, and the method for providing risk management."

Section 51. Section 39-71-434, MCA, is amended to read:

"39-71-434. Deductible insurance policy provision for medical benefits. (1) In order to lower the amount an employer is required to pay to obtain workers' compensation insurance coverage under this chapter, a workers' compensation policy issued by ~~the state compensation insurance fund under plan No. 3 or by plan~~ No. 4 or a private insurer under plan No. 2 must offer a deductible for the medical, hospital, and related services allowed under 39-71-704. The medical deductible must be offered in amounts of at least \$500.

(2) If the insured employer chooses to accept a medical deductible, the insured employer is liable for the amount of the deductible for the medical benefits paid for each otherwise compensable claim of work

1 injury suffered by an employee.

2 (3) The insured employer shall contract with the insurer to have the insurer pay the entire cost of
3 the covered medical benefits directly to the provider of medical or related services and then seek
4 reimbursement from the insured employer for the deductible amount. The insurer is entitled to reimbursement
5 only for medical, hospital, and related services allowed under 39-71-704, up to the amount of the deductible.

6 (4) If an insured employer who has contracted with an insurer for a medical deductible does not
7 pay the medical deductible amount to the insurer through reimbursement, the amount paid by the insurer on the
8 claim may be included as benefits paid in a determination of the insured employer's rate.

9 (5) If an insured employer chooses to accept a medical deductible, then for purposes of computing
10 rates and rating plans, all medical losses incurred must be reported to the insurer without regard to the
11 application of any medical deductible regardless of whether the employer or the insurer pays the losses."

12

13 **Section 52.** Section 39-71-435, MCA, is amended to read:

14 **"39-71-435. Workers' compensation and employers' liability insurance -- optional deductibles.**

15 (1) An insurer issuing a workers' compensation or an employer's liability insurance policy under compensation
16 plan No. 2 or plan No. 4, the residual market program and pool, may offer to the policyholder, as part of the
17 policy or by endorsement, optional deductibles for benefits payable under the policy consistent with the
18 standards contained in subsection (3).

19 (2) The advisory organization designated under 33-16-1023 may develop and file a deductible plan
20 or plans on behalf of its members consistent with the standards contained in subsection (3).

21 (3) The commissioner of insurance shall approve a deductible plan that is in accordance with the
22 following standards:

23 (a) Claimants' rights are properly protected and claimants' benefits are paid without regard to the
24 deductible.

25 (b) Premium reductions reflect the type and level of the deductible, consistent with accepted
26 actuarial standards.

27 (c) Premium reductions for deductibles are determined before application of any experience
28 modification, premium surcharge, or premium discount.

1 (d) Recognition is given to policyholder characteristics, including but not limited to size, financial
2 capabilities, nature of activities, and number of employees.

3 (e) The policyholder is liable to the insurer for the deductible amount in regard to benefits paid for
4 compensable claims.

5 (f) The insurer pays all of the deductible amount applicable to a compensable claim to the person
6 or provider entitled to benefits and then seeks reimbursement from the policyholder for the applicable
7 deductible amount.

8 (g) Failure by the policyholder to reimburse deductible amounts to the insurer is treated under the
9 policy as nonpayment of premium.

10 (h) Losses subject to the deductible must be reported and recorded as losses for purposes of
11 calculating rates for a policyholder on the same basis as losses under policies providing first dollar coverage.

12 ~~(4) The state compensation insurance fund, plan No. 3, may adopt the plan filed by the designated
13 advisory organization or adopt an optional deductible plan that meets the requirements of this section.~~

14 ~~(5)~~(4) For purposes of 39-71-201, 39-71-915, and 50-71-128, liability for assessments must be
15 ascertained without regard to application of any deductible, whether the employer or the insurer pays the
16 losses. For all other taxes and assessments based on premium, the amount of premium or assessment must
17 be determined after application of the deductible."
18

19 **Section 53.** Section 39-71-435, MCA, is amended to read:

20 **"39-71-435. Workers' compensation and employers' liability insurance -- optional deductibles.**

21 (1) An insurer issuing a workers' compensation or an employer's liability insurance policy under compensation
22 plan No. 3 or plan No. 4, the residual market program and pool, may offer to the policyholder, as part of the
23 policy or by endorsement, optional deductibles for benefits payable under the policy consistent with the
24 standards contained in subsection (3).

25 (2) The advisory organization designated under 33-16-1023 may develop and file a deductible plan
26 or plans on behalf of its members consistent with the standards contained in subsection (3).

27 (3) The commissioner of insurance shall approve a deductible plan that is in accordance with the
28 following standards:

1 (a) Claimants' rights are properly protected and claimants' benefits are paid without regard to the
2 deductible.

3 (b) Premium reductions reflect the type and level of the deductible, consistent with accepted
4 actuarial standards.

5 (c) Premium reductions for deductibles are determined before application of any experience
6 modification, premium surcharge, or premium discount.

7 (d) Recognition is given to policyholder characteristics, including but not limited to size, financial
8 capabilities, nature of activities, and number of employees.

9 (e) The policyholder is liable to the insurer for the deductible amount in regard to benefits paid for
10 compensable claims.

11 (f) The insurer pays all of the deductible amount applicable to a compensable claim to the person
12 or provider entitled to benefits and then seeks reimbursement from the policyholder for the applicable
13 deductible amount.

14 (g) Failure by the policyholder to reimburse deductible amounts to the insurer is treated under the
15 policy as nonpayment of premium.

16 (h) Losses subject to the deductible must be reported and recorded as losses for purposes of
17 calculating rates for a policyholder on the same basis as losses under policies providing first dollar coverage.

18 ~~(4) The state compensation insurance fund, plan No. 3, may adopt the plan filed by the designated
19 advisory organization or adopt an optional deductible plan that meets the requirements of this section.~~

20 ~~(5)~~(4) For purposes of 39-71-201, 39-71-915, and 50-71-128, liability for assessments must be
21 ascertained without regard to application of any deductible, whether the employer or the insurer pays the
22 losses. For all other taxes and assessments based on premium, the amount of premium or assessment must
23 be determined after application of the deductible."
24

25 **Section 54.** Section 39-71-441, MCA, is amended to read:

26 **"39-71-441. Tribal employment coverage.** The department may, as provided in Title 18, chapter 11,
27 enter into an agreement with a tribal government to recognize, with the same effect as the exclusive remedy
28 and benefits under plans No. 1, 2, and ~~3~~4, tribal workers' compensation plans or self-insured plans that the

1 department determines provide adequate coverage to persons who are:

2 (1) employed by an enrolled tribal member or by an association, business, corporation, or other
3 entity at least 51% of which is owned by one or more enrolled tribal members; and

4 (2) working outside the exterior boundaries of an Indian reservation."
5

6 **Section 55.** Section 39-71-442, MCA, is amended to read:

7 **"39-71-442. Employer option for extraterritorial coverage.** (1) Notwithstanding 39-71-118(8)(a), an
8 employee of an employer in this state who is employed by the employer to work solely in North Dakota, and
9 who is required by the laws of that state to be covered for workers' compensation purposes while working in
10 that state, is not considered to be an employee in this state covered under Title 39, chapter 71, during any time
11 that the employer maintains workers' compensation coverage for the employee in North Dakota. For purposes
12 of this section, "work solely in North Dakota" means the employee does not perform job duties in Montana and
13 coverage is required by the state of North Dakota. Travel that is commuting to and from a job site in North
14 Dakota from a location in Montana does not constitute performing job duties in Montana even if the employer
15 pays for all or a portion of the costs of travel or if the worker is paid for the travel time.

16 (2) A plan No. 1, 2, or ~~3-4~~ insurer providing coverage to the employer under this chapter may
17 require proof of coverage in North Dakota and records of work in North Dakota. An insurer may use a
18 verification of employment form, developed by the department, to request an attestation by the employer
19 regarding the employees working solely in North Dakota.

20 (3) (a) This section does not exempt an employee from coverage under this chapter when the
21 employee's usual job duties begin in this state and the employee is otherwise covered under 39-71-407(4)(a).

22 (b) This section exempts an employee from coverage under this chapter when the employee is
23 engaged in travel while commuting as provided in subsection (1)."
24

25 **Section 56.** Section 39-71-503, MCA, is amended to read:

26 **"39-71-503. Uninsured employers' fund -- purpose and administration of fund -- maintaining**
27 **balance for administrative costs -- appropriation.** (1) There is created an uninsured employers' fund in the
28 state special revenue account to pay:

1 (a) to an injured employee of an uninsured employer the same benefits the employee would have
2 received if the employer had been properly enrolled under compensation plan No. 1, 2, or ~~3~~4, except as
3 provided in subsection (3);

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

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

6 (2) The department may refer to the workers' compensation fraud office, established in 2-15-2015,
7 cases involving:

8 (a) false or fraudulent claims for benefits; and

9 (b) criminal violations of 45-7-501.

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

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

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

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

24

25 **Section 57.** Section 39-71-504, MCA, is amended to read:

26 **"39-71-504. Funding of fund -- option for agreement between department and injured**
27 **employee.** The fund is funded in the following manner:

28 (1) (a) The department may require that the uninsured employer pay to the fund a penalty of either

1 up to double the premium amount the employer would have paid on the payroll of the employer's workers in this
2 state if the employer had been enrolled with compensation plan No. ~~3~~4 or \$200, whichever is greater. In
3 determining the premium amount for the calculation of the penalty under this subsection, the department shall
4 make an assessment based on how much premium would have been paid on the employer's past 3-year
5 payroll for periods within the 3 years when the employer was uninsured.

6 (b) The fund shall collect from an uninsured employer an amount equal to all benefits paid or to be
7 paid from the fund to or on behalf of an injured employee of the uninsured employer.

8 (c) In addition to any amounts recovered under subsections (1)(a) and (1)(b), the fund shall collect
9 a penalty of \$200 from an employer that fails to obtain Montana workers' compensation insurance within 30
10 days of notice of the requirement.

11 (2) (a) An uninsured employer that fails to make timely penalty or claim reimbursement payments
12 required under this part must be assessed a late fee of \$50 for each late payment.

13 (b) Any unpaid balance owed to the fund under this part must accrue interest at 12% a year or 1%
14 a month or fraction of a month. Interest on unpaid balances accrues from the date of the original billing.

15 (c) Late fees and interest assessed pursuant to this subsection (2) must be deposited into the fund
16 for payment of administrative expenses and benefits.

17 (3) The department may enter into an agreement with the injured employee or the employee's
18 beneficiaries to assign to the employee or the beneficiaries all or part of the funds collected by the department
19 from the uninsured employer pursuant to subsection (1)(b)."

20

21 **Section 58.** Section 39-71-505, MCA, is amended to read:

22 **"39-71-505. Applicability of other provisions of chapter to fund.** All appropriate provisions in the
23 Workers' Compensation Act apply to the fund in the same manner as they apply to compensation plans No. 1,
24 2, and ~~3~~4."

25

26 **Section 59.** Section 39-71-515, MCA, is amended to read:

27 **"39-71-515. Independent cause of action.** (1) An injured employee or the employee's beneficiaries
28 have an independent cause of action against an uninsured employer for failure to be enrolled in a

1 compensation plan as required by this chapter.

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

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

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

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

9 (4) The amount of recoverable damages in an action is the amount of compensation that the
10 employee would have received had the employer been properly enrolled under compensation plan No. 1, 2, or
11 ~~3~~4.

12 (5) A plaintiff who prevails in an action brought under this section is entitled to recover reasonable
13 costs and attorney fees incurred in the action, in addition to damages."
14

15 **Section 60.** Section 39-71-606, MCA, is amended to read:

16 **"39-71-606. Insurer to accept or deny claim within 30 days of receipt -- notice of benefits and**
17 **entitlements to claimants -- notice of denial -- notice of reopening -- notice to employer -- employer's**
18 **right to loss information.** (1) Each insurer under any plan for the payment of workers' compensation benefits
19 shall, within 30 days of receipt of a claim for compensation signed by the claimant or the claimant's
20 representative, either accept or deny the claim and, if denied, shall inform the claimant and the department in
21 writing of the denial.

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

26 (b) The department may provide information to claimants regarding nonstatutory programs or
27 benefits offered to injured workers or the families of injured workers by a nonprofit organization. The
28 department may not provide the contact information of an injured worker to such an organization without the

1 express consent of the injured worker.

2 (3) Each insurer under plan No. 2 or No. ~~3~~4 for the payment of workers' compensation benefits
3 shall notify the employer of the reopening of the claim within 14 days after the reopening of a claim for the
4 purpose of paying compensation benefits.

5 (4) (a) When requested by an employer that an insurer currently insures or has insured in the
6 immediately preceding 5 years or when requested by the employer's designated insurance producer, an insurer
7 shall provide the loss information listed in subsection (4)(b) within 10 days of the request.

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

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

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

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

13 (c) The information provided under this subsection (4) is confidential insurance information. The
14 information may be used by the employer for internal management purposes or for procuring insurance
15 products but may not be disclosed for any other purpose without the express written consent of the insurer.

16 (5) Failure of an insurer to comply with the time limitations required in subsections (1) and (3) does
17 not constitute an acceptance of a claim as a matter of law. However, an insurer who fails to comply with 39-71-
18 608 or subsections (1) and (3) of this section may be assessed a penalty under 39-71-2907 if a claim is
19 determined to be compensable by the workers' compensation court."

20

21 **Section 61.** Section 39-71-745, MCA, is amended to read:

22 "**39-71-745. Calculation of volunteer firefighter benefits and premiums -- definitions.** (1) (a) A
23 plan No. 1, ~~or plan No. 2, or plan No. 4~~ insurer shall designate whether an employer, as defined in 7-33-4510, is
24 to use actual volunteer hours or a flat assumed payroll amount for each volunteer firefighter for calculating
25 premiums. The coverage option must be the same for all fire agencies organized under Title 7, chapter 33, that
26 are covered by that insurer and meet the definition of employer in 7-33-4510. ~~A plan No. 3 insurer shall use a~~
27 ~~flat assumed payroll amount for each volunteer firefighter for calculating premiums.~~

28 (b) If a plan No. 1, ~~or plan No. 2, or plan No. 4~~ insurer uses actual volunteer hours, the payroll

1 calculation is the number of actual volunteer hours of each volunteer firefighter, not to exceed 60 hours a week,
2 times the state's average weekly wage divided by 40 hours.

3 (c) When a plan No. 1, plan No. 2, or plan No. ~~3~~4 insurer uses a flat assumed payroll amount, the
4 assumed payroll for each volunteer firefighter must be reported as a full month for any month in which the
5 volunteer firefighter is on the roster of service as defined in 7-33-4510. The employer shall maintain the roster
6 of service with the effective date of membership for each volunteer firefighter.

7 (2) For benefit purposes, if concurrent employment under 39-71-123 does not apply, a volunteer
8 firefighter injured in the course and scope of employment as a volunteer firefighter is eligible for medical and
9 compensation benefits provided in Title 39, chapter 71. Any weekly compensation benefit must be based on
10 either the actual volunteer hours if chosen as provided in subsection (1)(b) or the flat assumed payroll amount
11 on which premiums are based, whichever is applicable.

12 (3) For the purposes of this section, the following definitions apply:

13 (a) "Volunteer firefighter" has the meaning provided in 7-33-4510.

14 (b) "Volunteer hours" means the time spent by a volunteer firefighter in the service of a fire agency
15 organized under Title 7, chapter 33, that meets the definition of employer in 7-33-4510, including but not limited
16 to training time, response time, and time spent at the premises of the fire agency."
17

18 **Section 62.** Section 39-71-915, MCA, is amended to read:

19 **"39-71-915. Assessment of insurer -- employers -- definition -- collection.** (1) As used in this
20 section, "paid losses" means the following benefits paid during the preceding calendar year for injuries covered
21 by the Workers' Compensation Act without regard to the application of any deductible, regardless of whether
22 the employer or the insurer pays the losses:

23 (a) total compensation benefits paid; and

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

27 (2) The fund must be maintained by assessing each plan No. 1 employer, each employer insured
28 by a plan No. 2 insurer, ~~plan No. 3, the state fund, or a~~ plan No. 4 insurer, and the state fund dissolution trust

1 under [section 8] with respect to state fund claims arising before July 1, 1990, and open state fund claims
 2 arising on or after July 1, 1990, as provided in [section 4]~~and each employer insured by plan No. 3, the state~~
 3 ~~fund.~~ The assessment amount is the total amount from April 1 of the previous year through March 31 of the
 4 current year paid by the fund plus the expenses of administration less other realized income that is deposited in
 5 the fund. The total assessment amount to be collected must be allocated among plan No. 1 employers, plan
 6 No. 2 employers, ~~plan No. 3, the state fund, and plan No. 3 employers~~ and the state fund dissolution trust under
 7 [section 8], based on a proportionate share of paid losses for the calendar year preceding the year in which the
 8 assessment is collected. The board of investments shall invest the money of the fund, and the investment
 9 income must be deposited in the fund.

10 (3) On or before May 31 each year, the department shall notify each plan No. 1 employer, plan No.
 11 2 insurer, ~~and plan No. 3, the state fund, and plan No. 4 insurer, and the claims administrator selected in~~
 12 [section 4] of the amount to be assessed for the ensuing fiscal year. The amount to be assessed against the
 13 state fund must separately identify the amount attributed to claims arising before July 1, 1990, and the amount
 14 attributable to state fund claims arising on or after July 1, 1990. On or before April 30 each year, the
 15 department, in consultation with the advisory organization designated under 33-16-1023, shall notify plan No. 2
 16 insurers ~~and plan No. 3 and plan No. 4 insurers~~ of the premium surcharge rate to be effective for policies
 17 written or renewed on and after July 1 in that year.

18 (4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer
 19 is a proportionate amount of total plan No. 1 paid losses during the preceding calendar year that is equal to the
 20 percentage that the total paid losses of the individual plan No. 1 employer bore to the total paid losses of all
 21 plan No. 1 employers during the preceding calendar year.

22 (5) The portion of the assessment attributable to state fund claims arising before July 1, 1990, is
 23 the proportionate amount that is equal to the percentage that total paid losses for those claims during the
 24 preceding calendar year bore to the total paid losses for all plans in the preceding calendar year. ~~As required by~~
 25 ~~39-71-2352, the state fund may not pass along to insured employers the cost of the subsequent injury fund~~
 26 ~~assessment that is attributable to claims arising before July 1, 1990.~~

27 (6) The remaining portion of the assessment must be paid by way of a surcharge on premiums
 28 paid by employers being insured by a plan No. 2 insurer ~~or plan No. 3, the state fund~~ or a plan No. 4 insurer, for

1 policies written or renewed annually on or after July 1. The surcharge rate must be computed by dividing the
 2 remaining portion of the assessment by the total amount of premiums paid by employers insured under plan
 3 No. 2 or plan No. ~~3~~4 in the previous calendar year. The numerator for the calculation must be adjusted as
 4 provided by subsection (9).

5 (7) Each plan No. 2 and plan No. 4 insurer providing workers' compensation insurance ~~and plan~~
 6 ~~No. 3, the state fund~~, shall collect from its policyholders the assessment premium surcharge provided for in
 7 subsection (6). When collected, the assessment premium surcharge may not constitute an element of loss for
 8 the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must
 9 be treated as separate costs imposed upon insured employers. The total of this assessment premium
 10 surcharge must be stated as a separate cost on an insured employer's policy or on a separate document
 11 submitted by the insured employer and must be identified as "workers' compensation subsequent injury fund
 12 surcharge". Each assessment premium surcharge must be shown as a percentage of the total workers'
 13 compensation policyholder premium. This assessment premium surcharge must be collected at the same time
 14 and in the same manner that the premium for the coverage is collected. The assessment premium surcharge
 15 must be excluded from the definition of premiums for all purposes, including computation of insurance
 16 producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy
 17 for nonpayment of the assessment premium surcharge. Cancellation must be in accordance with the
 18 procedures applicable to the nonpayment of premium. If an employer fails to remit to an insurer the total
 19 amount due for the premium and assessment premium surcharge, the amount received by the insurer must be
 20 applied to the assessment premium surcharge first and the remaining amount applied to the premium due.

21 (8) (a) All assessments paid to the department must be deposited in the fund.

22 (b) Each plan No. 1 employer shall pay its assessment by July 1.

23 (c) Each plan No. 2 and plan No. 4 insurer ~~and plan No. 3, the state fund~~, shall remit to the
 24 department all assessment premium surcharges collected during a calendar quarter by not later than 20 days
 25 following the end of the quarter.

26 (d) The ~~state fund~~ claims administrator selected under [section 4] shall pay by July 1 the portion of
 27 the assessment attributable to claims arising before July 1, 1990, by July 1 and open claims of the state fund,
 28 compensation plan No. 3, arising on or after July 1, 1990, as provided in [section 4].

1 (e) If a plan No. 1 employer, a plan No. 2 or a plan No. 4 insurer, or ~~plan No. 3, the state fund, the~~
2 claims administrator selected under [section 4] fails to timely pay to the department the assessment or
3 assessment premium surcharge under this section, the department may impose on the plan No. 1 employer,
4 the plan No. 2 or plan No. 4 insurer, or ~~plan No. 3, the state fund, the state fund dissolution trust under [section~~
5 8] an administrative fine of \$100 plus interest on the delinquent amount at the annual interest rate of 12%.
6 Administrative fines and interest must be deposited in the fund.

7 (9) The amount of the assessment premium surcharge actually collected pursuant to subsection
8 (7) must be compared each year to the amount assessed and upon which the premium surcharge was
9 calculated. The amount undercollected or overcollected in any given year must be used as an adjustment to the
10 numerator provided for by subsection (6) for the following year's assessment premium surcharge.

11 (10) If the total assessment is less than \$1 million for any year, the department may defer the
12 assessment amount for that year and add that amount to the assessment amount for the subsequent year."

13

14 **Section 63.** Section 39-71-1050, MCA, is amended to read:

15 **"39-71-1050. Assessment for stay-at-work/return-to-work assistance fund -- definition.** (1) (a)
16 The assistance fund must be maintained by assessing employers insured by plan No. 1, plan No. 2, and plan
17 No. ~~3~~ 4 an amount as provided in subsections (2) through (10).

18 (b) The board of investments shall invest the money in the assistance fund. The investment
19 income must be deposited in the assistance fund.

20 (2) The assessment amount is the total amount paid by the assistance fund in the preceding fiscal
21 year less other realized income that is deposited in the assistance fund. Allocation of the total assessment
22 amount among employers insured by plan No. 1, plan No. 2, and plan No. ~~3~~ 4 must be based on each plan's
23 proportionate share of money expended from the assistance fund for the calendar year preceding the year in
24 which the assessment is collected.

25 (3) On or before May 31 of each year, the department shall notify each plan No. 1 employer, plan
26 No. 2 insurer, ~~and plan No. 3, the state fund, and plan No. 4, the residual market program and pool,~~ of the
27 amount to be assessed for the ensuing fiscal year. On or before April 30 of each year, the department shall
28 consult with the advisory organization designated under 33-16-1023 and notify plan No. 2 insurers ~~and plan No.~~

1 ~~3, the state fund, and plan No. 4, the residual market program and pool,~~ of the premium surcharge rate to be
2 effective for policies written or renewed on or after July 1 in that year.

3 (4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer
4 is the amount actually expended by the assistance fund on behalf of injured workers employed by that plan No.
5 1 employer. A group of employers insured jointly under plan No. 1 is considered to be an individual employer
6 for the purposes of this subsection.

7 (5) After subtracting plan No. 1 assessments from the total assessment, the department shall
8 determine the surcharge rate for plan No. 2 and plan No. 4 insurers ~~and plan No. 3, the state fund,~~ by dividing
9 the remaining portion of the assessment by the total amount of premiums paid by employers insured under plan
10 No. 2 or plan No. ~~3~~4 in the previous calendar year. The numerator for the calculation must be adjusted as
11 provided in subsection (9).

12 (6) Employers insured under plan No. 2 or plan No. ~~3~~4 shall pay their portion of the assessment in
13 a surcharge on premiums for policies written or renewed annually on or after July 1.

14 (7) (a) Each plan No. 2 insurer ~~and plan No. 3, the state fund,~~ and plan No. 4, the residual market
15 program and pool, shall collect from its policyholders the assessment premium surcharge provided for in
16 subsection (5). When collected, the assessment premium surcharge may not constitute an element of loss for
17 the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must
18 be treated as separate costs imposed upon insured employers. The total of this assessment premium
19 surcharge must be stated as a separate cost on an insured employer's policy or on a separate document
20 submitted by the insured employer and must be identified as "workers' compensation stay-at-work/return-to-
21 work assistance fund surcharge". Each assessment premium surcharge must be shown as a percentage of the
22 total workers' compensation policyholder premium. This assessment premium surcharge must be collected at
23 the same time and in the same manner as the premium for the coverage. The assessment premium surcharge
24 must be excluded from the definition of premium for all purposes, including computation of insurance producers'
25 commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for
26 nonpayment of the assessment premium surcharge. Cancellation must be in accordance with the procedures
27 applicable to the nonpayment of premium.

28 (b) If an employer fails to remit to an insurer the total amount due for the premium and assessment

1 premium surcharge, the amount received by the insurer must be applied to the assessment premium surcharge
2 described in 39-71-201 first, then to the assessment premium surcharge described in 50-71-128, then to the
3 assessment premium surcharge in this section, and then to the surcharge in 39-71-915, with any remaining
4 amount applied to the premium due.

5 (8) (a) The department shall deposit all assessments due under this section into the assistance
6 fund.

7 (b) Each plan No. 1 employer shall pay its assessment due under this section by July 1.

8 (c) Each plan No. 2 or plan No. 4 insurer ~~and plan No. 3, the state fund~~, shall remit to the
9 department all assessment premium surcharges collected during a calendar quarter no later than 20 days
10 following the end of the quarter.

11 (d) If a plan No. 1 employer, or a plan No. 2 or a plan No. 4 insurer, ~~or plan No. 3, the state fund~~,
12 fails to timely pay to the department the assessment or assessment premium surcharge under this section, the
13 department may impose on the plan No. 1 employer, or the plan No. 2 or plan No. 4 insurer, ~~or plan No. 3, the~~
14 ~~state fund~~, an administrative fine of \$100 plus interest on the delinquent amount at the annual interest rate of
15 12%. Administrative fines and interest must be deposited in the assistance fund.

16 (9) Each year, the department shall compare the amount of the assessment premium surcharge
17 actually collected pursuant to subsection (5) with the amount assessed and upon which the premium surcharge
18 was calculated. The amount undercollected or overcollected in any given year must be used as an adjustment
19 to the numerator for the following year's assessment premium surcharge as provided in subsection (5).

20 (10) If the total assessment is less than \$100,000 for any year, the department may defer the
21 assessment for that year and add that amount to the assessment amount for the subsequent year.

22 (11) As used in this section, "money expended" means expenditures for stay-at-work/return-to-work
23 assistance from the assistance fund."
24

25 **Section 64.** Section 39-71-1101, MCA, is amended to read:

26 **"39-71-1101. Choice of health care provider by worker -- insurer designation or approval of**
27 **treating physician or referral to managed care or preferred provider organization -- payment terms --**
28 **definition.** (1) Prior to the insurer's designation or approval of a treating physician as provided in subsection (2)

1 or a referral to a managed care organization or preferred provider organization as provided in subsection (8), a
2 worker may choose a person who is listed in 39-71-116~~(42)~~(46) for initial treatment. Subject to subsection (2), if
3 the person listed under 39-71-116~~(42)~~(46) chosen by the worker agrees to comply with the requirements of
4 subsection (2), that person is the treating physician.

5 (2) Any time after acceptance of liability by an insurer, the insurer may designate or approve a
6 treating physician who agrees to assume the responsibilities of the treating physician. The designated or
7 approved treating physician:

8 (a) is responsible for coordinating the worker's receipt of medical services as provided in 39-71-
9 704;

10 (b) shall provide timely determinations required under this chapter, including but not limited to
11 maximum medical healing, physical restrictions, return to work, and approval of job analyses, and shall provide
12 documentation;

13 (c) shall provide or arrange for treatment within the utilization and treatment guidelines or obtain
14 prior approval for other treatment; and

15 (d) shall conduct or arrange for timely impairment ratings.

16 (3) The treating physician may refer the worker to other health care providers for medical services,
17 as provided in 39-71-704, for the treatment of a worker's compensable injury or occupational disease. A health
18 care provider to whom the worker is referred by the designated treating physician is not responsible for
19 coordinating care or providing determinations as required of the treating physician.

20 (4) The treating physician designated or approved by the insurer must be reimbursed at 110% of
21 the department's fee schedule.

22 (5) A health care provider to whom the worker is referred by the treating physician must be
23 reimbursed at 90% of the department's fee schedule.

24 (6) A health care provider providing health care on a compensable claim prior to the designation or
25 approval of the treating physician by the insurer must be reimbursed at 100% of the department's fee schedule.

26 (7) Regardless of the date of injury, the medical fee schedule rates in effect as adopted by the
27 department in 39-71-704 and the percentages referenced in subsections (4) through (6) of this section apply to
28 the medical service on the date on which the medical service was provided.

1 (8) The insurer may direct the worker to a managed care organization or a preferred provider
2 organization for designation of the treating physician.

3 (9) After the insurer directs a worker to a managed care organization or preferred provider
4 organization, a health care provider who otherwise qualifies as a treating physician but who is not a member of
5 a managed care organization may not provide treatment unless authorized by the insurer.

6 (10) After the date that a worker subject to the provisions of subsection (9) receives individual
7 written notice of a referral, the worker must, unless otherwise authorized by the insurer, receive medical
8 services from the organization designated by the insurer, in accordance with 39-71-1102 and 39-71-1104. The
9 designated treating physician in the organization then becomes the worker's treating physician. The insurer is
10 not liable for medical services obtained otherwise, except that a worker may receive immediate emergency
11 medical treatment for a compensable injury from a health care provider who is not a member of a managed
12 care organization or a preferred provider organization.

13 (11) Posting of managed care requirements in the workplace on bulletin boards, in personnel
14 policies, in company manuals, or by other general or broadcast means does not constitute individual written
15 notice. To constitute individual written notice under this section, information regarding referral to a managed
16 care organization must be provided to the worker in written form by mail or in person after the date of injury or
17 occupational disease."

18

19 **Section 65.** Section 39-71-1401, MCA, is amended to read:

20 **"39-71-1401. (Temporary) Presumptive occupational disease for firefighters -- rebuttal --**

21 **applicability -- definitions.** (1) (a) A firefighter for whom coverage is required under the Workers'
22 Compensation Act is presumed to have a claim for a presumptive occupational disease under the Workers'
23 Compensation Act if the firefighter meets the requirements of 39-71-1402 and is diagnosed with one or more of
24 the diseases listed in subsection (2) within the period listed.

25 (b) Coverage under 39-71-1402 and this section is optional for the employer of a firefighter for
26 whom coverage under the Workers' Compensation Act is voluntary. An employer of a volunteer firefighter under
27 7-33-4109 or 7-33-4510 may elect as part of providing coverage under the Workers' Compensation Act to
28 additionally obtain the presumptive occupational disease coverage, subject to the insurer agreeing to provide

1 presumptive coverage.

2 (2) The following diseases are presumptive occupational diseases proximately caused by
3 firefighting activities, provided that the evidence of the presumptive occupational disease becomes manifest
4 after the number of years of the firefighter's employment as listed for each occupational disease and within 10
5 years of the last date on which the firefighter was engaged in firefighting activities for an employer:

6 (a) bladder cancer after 12 years;

7 (b) brain cancer of any type after 10 years;

8 (c) breast cancer after 5 years if the diagnosis occurs before the firefighter is 40 years old and is
9 not known to be associated with a genetic predisposition to breast cancer;

10 (d) myocardial infarction after 10 years;

11 (e) colorectal cancer after 10 years;

12 (f) esophageal cancer after 10 years;

13 (g) kidney cancer after 15 years;

14 (h) leukemia after 5 years;

15 (i) mesothelioma or asbestosis after 10 years;

16 (j) multiple myeloma after 15 years;

17 (k) non-Hodgkin's lymphoma after 15 years; and

18 (l) lung cancer after 4 years.

19 (3) For purposes of calculating the number of years of a firefighter's employment history under
20 subsection (2), a firefighter's employment history after July 1, 2014, may be calculated.

21 (4) The beneficiaries of a firefighter who otherwise would be eligible for presumptive occupational
22 disease benefits under this section but who dies prior to filing a claim, as provided in 39-71-1402, are eligible
23 for death benefits in the same manner as for a death from an injury, as provided in 39-71-407. The beneficiaries
24 under this subsection are similarly bound by the provisions of exclusive remedy as provided in 39-71-411 and
25 subject to the filing requirements in 39-71-601.

26 (5) (a) Subject to the provisions of subsection (5)(c), an insurer is liable for the payment of
27 compensation for presumptive occupational disease benefits under this chapter in the same manner as
28 provided in 39-71-407, including objective medical findings of a disease listed in subsection (2) but excluding

1 the requirement in 39-71-407(10) that the objective medical findings trace a relationship between the
2 presumptive occupational disease and the claimant's job history. For myocardial infarction or lung cancer under
3 subsection (2), the diseases must be the type that can reasonably be caused by firefighting activities.

4 (b) (i) An insurer under plan ~~1, or 2, or 3~~ that disputes a presumptive occupational disease claim
5 has the burden of proof in establishing by a preponderance of the evidence that the firefighter is not suffering
6 from a compensable presumptive occupational disease. An insurer that disputes the claim may pay benefits
7 under 39-71-608 or 39-71-615 and may pursue dispute mechanisms established in Title 39, chapter 71, part
8 24.

9 (ii) An insurer is not liable for the payment of workers' compensation benefits for presumptive
10 occupational disease if the insurer establishes by a preponderance of the evidence that the firefighter was not
11 exposed during the course and scope of the firefighter's duties to smoke or particles in a quantity sufficient to
12 have reasonably caused the disease claimed.

13 (c) A total claim payment by an insurer under this section is limited to \$5 million for each claim.

14 (6) This section does not limit an insurer's ability to assert that the occupational disease was not
15 caused by the firefighter's employment history as a firefighter.

16 (7) A firefighter or the firefighter's beneficiaries may pursue the dispute remedies as provided in
17 Title 39, chapter 71, part 24, if an insurer disputes a claim.

18 (8) The use of the term "occupational disease" includes a presumptive occupational disease when
19 used in the definitions in 39-71-116 for "claims examiner", "permanent partial disability", "primary medical
20 services", and "treating physician" and when used in 39-71-107, 39-71-307, 39-71-412, 39-71-503, 39-71-601,
21 39-71-604, 39-71-606, 39-71-615, 39-71-703, 39-71-704, 39-71-713, 39-71-714, 39-71-717, 39-71-1011, 39-
22 71-1036, 39-71-1041, 39-71-1042, 39-71-1101, 39-71-1110, 39-71-1504, ~~39-71-2311, 39-71-2312, 39-71-2313,~~
23 ~~39-71-2316,~~ and 39-71-4003.

24 (9) Section 39-71-1402 and this section:

25 (a) apply only to presumptive occupational diseases for firefighters; and

26 (b) do not apply to any other issue relating to workers' compensation and may not be used or cited
27 as guidance in the administration of Title 33 or 37.

28 (10) For the purposes of 39-71-1402 and this section, the following definitions apply:

- 1 (a) "Firefighter" means an individual whose primary duties involve extinguishing or investigating
2 fires, with at least 1 year of firefighting operations in Montana beginning on or after July 1, 2019, as:
3 (i) a firefighter defined in 19-13-104;
4 (ii) a volunteer firefighter defined in 7-33-4510, but only if the volunteer firefighter's employer has
5 elected coverage under Title 39, chapter 71, with an insurer that allows an election and the employer has opted
6 separately to include presumptive occupational disease coverage under 39-71-1402 and this section; or
7 (iii) a volunteer described in 7-33-4109 for a firefighting entity that has elected coverage under Title
8 39, chapter 71, with an insurer that allows an election and that has opted separately to include presumptive
9 occupational disease coverage.

10 (b) "Firefighting activities" means actions required of a firefighter that expose the firefighter to
11 extreme heat or inhalation or physical exposure to chemical fumes, smoke, particles, or other toxic gases
12 arising directly out of employment as a firefighter.

13 (c) "Presumptive occupational disease" means harm or damage from one or more of the diseases
14 listed under subsection (2) that is established by objective medical findings and that is contracted in the course
15 and scope of employment as a firefighter from either a single day or work shift or for more than a single day or
16 work shift but that is not specific to an accident. (Void on occurrence of contingency--sec. 7, Ch. 158, L. 2019.)"

17

18 **Section 66.** Section 39-71-1505, MCA, is amended to read:

19 **"39-71-1505. Rulemaking authority.** The department shall adopt rules, including but not limited to
20 rules that require:

- 21 (1) each employer to conduct an educational-based safety program, including but not limited to:
22 (a) a safety training program to provide:
23 (i) new employee general safety orientation;
24 (ii) job- or task-specific safety training; and
25 (iii) continuous refresher safety training, including periodic safety meetings;
26 (b) periodic hazard assessment, with corrective actions identified; and
27 (c) appropriate documentation of performance of the activities; and
28 (2) an employer of more than five employees to have a comprehensive and effective safety

1 program, including but not limited to:

2 (a) subject to subsection (3), a safety committee composed of employee and employer
3 representatives that holds regularly scheduled meetings;

4 (b) procedures of reporting and investigating all work-related incidents, accidents, injuries, and
5 illnesses; and

6 (c) policies and procedures that assign specific safety responsibilities and safety performance
7 accountability.

8 (3) The department may adopt rules authorizing:

9 (a) a plan No. 2 or plan No. ~~3~~4 insurer to waive the requirement in subsection (2)(a) for a safety
10 committee if the employer presents sufficient evidence of an effective written safety plan and has a satisfactory
11 modification factor, if applicable, or has a low incident record of injuries; or

12 (b) the department to waive the requirement in subsection (2)(a) for a safety committee if a plan
13 No. 1 insurer approved by the department presents sufficient evidence of an effective safety program, including
14 a written safety plan. A waiver granted under this subsection (3)(b) to a member of the self-insurers guaranty
15 fund must be made with the concurrence of the fund."

16

17 **Section 67.** Section 39-71-2211, MCA, is amended to read:

18 **"39-71-2211. Premium rates for construction industry -- filing required.** (1) With respect to each
19 classification of risk in the construction industry under plan No. 2 and plan No. 4, the advisory organization
20 designated under 33-16-1023 shall file with the commissioner of insurance a method of computing premiums
21 that does not impose a higher insurance premium solely because of an employer's higher rate of wages paid.

22 (2) The commissioner shall accept a filing under subsection (1) that includes a reasonable method
23 of recognizing differences in rates of pay. This method must use a credit scale with the starting point set at
24 1.168 times the state's average weekly wage as reported by the department.

25 (3) The advisory organization shall file a revenue neutral plan for new and renewed policies for
26 prompt and orderly transition to a method of computing premiums that is in compliance with the requirements of
27 this section.

28 ~~(4) The state compensation insurance fund, plan No. 3, shall use the plan filed by the designated~~

1 ~~advisory organization or use a credit scale plan that meets the requirements of this section.~~

2 (5)(4) For the purposes of this section, "construction industry" means the construction group of code
3 classifications filed with and approved by the commissioner to be used by the advisory organization to comply
4 with this section."

5

6 **Section 68.** Section 39-71-2312, MCA, is amended to read:

7 **"39-71-2312. Definitions.** Unless the context requires otherwise, in this part the following definitions
8 apply:

9 (1) "Board" means the board of directors of the state compensation insurance fund provided for in
10 2-15-1019.

11 (2) "Commissioner" means the commissioner of insurance as provided in 2-15-1903.

12 (3) "Executive director" means the chief executive officer of the state compensation insurance
13 fund.

14 (4) "Fiscal year" means for the purposes of the state fund under Title 33 and this part the period
15 from January 1 in one year to December 31 of that same year. A fiscal year for the purposes of assessments
16 under Title 39, chapter 71, is as defined in 39-71-116.

17 (5) "Guaranteed market" means the plan No. 4, the residual market program and pool, insurer that
18 is required to insure any employer in this state who requests to insure their liability for workers' compensation
19 and occupational disease coverage and that may not refuse to provide coverage unless an employer or the
20 employer's principals have defaulted on an obligation and the default remains unsatisfied.

21 (6) "State fund" means the state compensation insurance fund provided for in 39-71-2313 ~~that~~
22 ~~serves as the guaranteed market for this state.~~ It is also known as compensation plan No. 3 ~~or plan No. 3.~~"

23

24 **Section 69.** Section 39-71-2323, MCA, is amended to read:

25 **"39-71-2323. Surplus in state fund -- payment of dividends.** (1) Subject to the provisions of 39-71-
26 2316, if at the end of any fiscal year there exists in the state fund account created by 39-71-2321 for claims for
27 injuries resulting from accidents that occur on or after July 1, 1990, an excess of assets over liabilities, including
28 necessary reserves and an appropriate surplus as determined by the board in accordance with 39-71-2330,

1 and if the excess may be refunded safely, then the board, after consultation with the independent actuary
2 engaged pursuant to 39-71-2330, may declare a dividend. The state fund must prescribe the manner of
3 payment to those employers who have paid premiums into the state fund in excess of liabilities.

4 (2) Prior to the dissolution of the state fund as provided in [section 4], after consultation with the
5 independent actuary, the department may declare and pay a dividend to current state fund policyholders as
6 follows:

7 (a) the dividend must be determined subject to the guidelines of subsection (1); and

8 (b) the dividend must be distributed in an equitable manner to all employers who are insured by
9 the state fund."

10

11 **Section 70.** Section 45-5-223, MCA, is amended to read:

12 **"45-5-223. Surreptitious visual observation or recordation -- place of residence -- public place -**

13 **- exceptions.** (1) A person commits the offense of surreptitious visual observation or recordation in a place of
14 residence if the person purposely or knowingly hides, waits, or otherwise loiters in person or by means of a
15 remote electronic device within or in the vicinity of a private dwelling house, apartment, or other place of
16 residence for the purpose of:

17 (a) watching, gazing at, or looking upon any occupant in the residence in a surreptitious manner
18 without the occupant's knowledge; or

19 (b) by means of an electronic device, surreptitiously observing or recording the visual image of any
20 occupant in the residence without the occupant's knowledge.

21 (2) A person commits the offense of surreptitious visual observation or recordation in public if the
22 person purposely or knowingly observes or records a visual image of the sexual or intimate parts of another
23 person in a public place without the other person's knowledge when the victim has a reasonable expectation of
24 privacy.

25 (3) Subsections (1) and (2) do not apply to a law enforcement officer, an agent or employee of an
26 insurer, or a private investigator licensed pursuant to 37-60-301 or to any person engaged in fraud detection,
27 prevention, or prosecution pursuant to 2-15-2015 ~~or 39-71-211~~ while the officer, agent, employee, or private
28 investigator is acting in the course and scope of employment for legitimate investigative purposes.

1 (4) A person convicted of an offense under subsection (1) or (2) shall be fined an amount not to
 2 exceed \$500 or be incarcerated in the county jail for a term not to exceed 6 months, or both. Upon a second
 3 conviction, a person shall be fined an amount not to exceed \$1,000 or be incarcerated for a term not to exceed
 4 1 year, or both. Upon a third or subsequent conviction, a person shall be fined an amount not to exceed
 5 \$10,000 or be incarcerated for a term not to exceed 5 years, or both."

6

7 **Section 71.** Section 45-7-501, MCA, is amended to read:

8 **"45-7-501. Employer misconduct.** (1) A person who is an employer, as defined in 39-71-117,
 9 commits the offense of employer misconduct if the person knowingly or purposely:

10 (a) avoids the person's responsibility to provide coverage for the person's employees as required
 11 by 39-71-401;

12 (b) misrepresents or falsifies employment records or information, including but not limited to
 13 understating the amount of payroll or the number of the person's employees; or

14 (c) refuses to pay premiums that the person is obligated to pay under compensation plan No. 2, as
 15 provided in Title 39, chapter 71, part 22, or compensation plan No. ~~3, as provided in Title 39, chapter 71, part~~
 16 ~~23 4, the residual market program and pool, as provided in [sections 1 through 4].~~

17 (2) A person convicted of the offense of employer misconduct shall be fined an amount not to
 18 exceed \$50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both."

19

20 **Section 72.** Section 50-71-128, MCA, is amended to read:

21 **"50-71-128. Occupational safety and health administration fund.** (1) (a) An occupational safety
 22 and health administration fund is established, out of which are to be paid upon lawful appropriation all costs
 23 incurred by the department on or after July 1, 2016, in administering Title 50, chapters 71, 72, and 73.

24 (b) The department shall collect and deposit in the state treasury to the credit of the occupational
 25 safety and health administration fund:

26 (i) all penalties assessed under 50-71-119;

27 (ii) all expenses recovered under 50-72-106 and 50-73-107;

28 (iii) all fees paid by an assessment on paid losses, plus administrative fines and interest provided

1 by this section; and

2 (iv) any grants or funds from private entities or the federal government intended for use by the
3 department in defraying occupational safety and health costs.

4 (2) For the purposes of this section, the term "paid losses" has the meaning provided in 39-71-201.

5 (3) Each plan No. 1 employer, each plan No. 2 and plan No. 4 insurer subject to the provisions of
6 this section, ~~and plan No. 3, the state fund, and the claims administrator selected under [section 4]~~ shall file
7 annually on March 1 in the form and containing the information required by the department a report of paid
8 losses.

9 (4) Each employer enrolled under compensation plan No. 1, compensation plan No. 2, or
10 compensation plan No. ~~3, the state fund,~~ 4, the residual market program and pool, shall pay its proportionate
11 share, as determined by the paid losses in the preceding calendar year, of all costs appropriated for the next
12 fiscal year for the purposes of administering Title 50, chapters 71, 72, and 73.

13 (5) (a) Each employer enrolled under compensation plan No. 1 shall pay an assessment to fund
14 administrative and regulatory costs. The assessment may be up to 2% of the paid losses that were paid in the
15 preceding calendar year by or on behalf of the plan No. 1 employer. Any entity, other than the department, that
16 assumes the obligations of an employer enrolled under compensation plan No. 1 is considered to be the
17 employer for the purposes of this section.

18 (b) An employer formerly enrolled under compensation plan No. 1 shall pay an assessment to fund
19 administrative and regulatory costs. The assessment may be up to 2% of the paid losses that were paid in the
20 preceding calendar year by or on behalf of the employer for claims arising out of the time when the employer
21 was enrolled under compensation plan No. 1.

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

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

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

28 (d) If an employer fails to timely pay to the department the assessment under this section, the

1 department may impose on the employer an administrative fine of \$500 plus interest on the delinquent amount
2 at the annual interest rate of 12%. Administrative fines and interest must be deposited in the occupational
3 safety and health administration fund.

4 (6) (a) Each employer insured under compensation plan No. 2 or plan No. ~~3, the state fund,~~ 4, the
5 residual market program and pool, shall pay a premium surcharge to fund administrative and regulatory costs.
6 The premium surcharge must be collected by each plan No. 2 insurer and by plan No. ~~3, the state fund,~~ 4, the
7 residual market program and pool, from each employer that ~~it insures~~ they insure. The premium surcharge must
8 be stated as a separate cost on an insured employer's policy or on a separate document submitted to the
9 insured employer and must be identified as "occupational safety and health regulatory assessment surcharge".
10 The premium surcharge must be excluded from the definition of premiums for all purposes, including
11 computation of insurance producers' commissions or premium taxes. However, an insurer may cancel a
12 workers' compensation policy for nonpayment of the premium surcharge. When collected, assessments may
13 not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but,
14 for the purpose of collection, must be treated as a separate cost imposed on insured employers.

15 (b) (i) The amount to be funded by the premium surcharge may be up to 2% of the paid losses that
16 were paid in the preceding calendar year by or on behalf of all plan No. 2 and plan No. 4 insurers and may be
17 up to 2% of paid losses for claims arising on or after July 1, 1990, for plan No. 3, the state fund, being
18 administered by the claims administrator selected under [section 4], plus or minus any adjustments as provided
19 by subsection (6)(f).

20 (ii) The amount determined under subsection (6)(b)(i) must be divided by the total premium paid
21 by all employers enrolled under compensation plan No. 2 or plan No. ~~3, the state fund~~ 4, the residual market
22 program and pool, during the preceding calendar year.

23 (iii) A single premium surcharge rate, applicable to all employers enrolled in compensation plan No.
24 2 or plan No. 3, the state fund, must be calculated annually by the department by not later than April 30. The
25 resulting rate, expressed as a percentage, is levied against the premium paid by each employer enrolled under
26 compensation plan No. 2 ~~or plan No. 3, the state fund,~~ or plan No. 4, the residual market program and pool, in
27 the next fiscal year.

28 (c) On or before April 30 of each year, the department, in consultation with the advisory

1 organization designated pursuant to 33-16-1023, shall notify plan No. 2 insurers and ~~plan No. 3, the state fund,~~
2 and plan No. 4, the residual market program and pool, of the premium surcharge percentage to be effective for
3 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.
5 Each insurer shall collect the premium surcharge levied against every employer that it insures. Each insurer
6 shall pay to the department all money collected as a premium surcharge within 20 days of the end of the
7 calendar quarter in which the money was collected. If an insurer fails to timely pay to the department the
8 premium surcharge collected under this section, the department may impose on the insurer an administrative
9 fine of \$500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and
10 interest must be deposited in the occupational safety and health 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
13 remaining amount applied to the premium due.

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

19 (7) By July 1, an insurer under compensation plan No. 2 or plan No. 4 that paid benefits in the
20 preceding calendar year but that will not collect any premium for coverage in the following fiscal year shall pay
21 an assessment of up to 2% of the paid losses that were paid in the preceding calendar year. The department
22 shall determine and notify the insurer by April 30 of each year of the amount that is due by July 1.

23 (8) The department shall deposit all funds received pursuant to this section in the state treasury, as
24 provided in this section.

25 (9) The administration fund must be debited with expenses incurred by the department in the
26 general administration of the provisions of Title 50, chapters 71, 72, and 73, including the salaries of its
27 members, officers, and employees and the travel expenses of the members, officers, and employees, as
28 provided for in 2-18-501 through 2-18-503, incurred while on the business of the department either within or

1 without the state.

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

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

8

9 NEW SECTION. Section 73. Repealer. The following sections of the Montana Code Annotated are
10 repealed:

- 11 2-15-1019. Board of directors of state compensation insurance fund -- legislative liaisons.
- 12 33-1-115. Operation of state fund as authorized insurer -- issuance of certificate of authority -- exceptions
- 13 -- use of calendar year -- risk-based capital -- reporting requirements.
- 14 33-16-1011. Classification review committee -- membership -- term.
- 15 33-16-1012. Functions and powers of classification review committee -- hearings -- rulemaking.
- 16 39-71-2311. Intent and purpose of plan -- expense constant defined.
- 17 39-71-2312. Definitions.
- 18 39-71-2313. State compensation insurance fund created -- obligation to insure.
- 19 39-71-2315. Management of state fund -- powers and duties of board -- business plan required.
- 20 39-71-2316. Powers of state fund.
- 21 39-71-2317. Appointment of executive director -- management staff.
- 22 39-71-2318. Personal liability excluded.
- 23 39-71-2319. Assets and liabilities of prior state fund.
- 24 39-71-2320. Property of state fund -- investment required -- exception.
- 25 39-71-2321. What to be deposited in state fund.
- 26 39-71-2322. Money in state fund held in trust -- disposition of funds upon repeal of chapter.
- 27 39-71-2323. Surplus in state fund -- payment of dividends.
- 28 39-71-2325. State fund to keep accounts of segregations.

- 1 39-71-2327. Earnings of state fund to be credited to fund -- improper use a felony.
- 2 39-71-2328. State fund alternative personal leave plan -- exception -- collective bargaining negotiation --
- 3 personal leave definition.
- 4 39-71-2330. Rate setting -- surplus -- multiple rating tiers.
- 5 39-71-2331. Workplace safety program.
- 6 39-71-2332. Pooled risk safety group.
- 7 39-71-2336. Manner of electing -- contract or policy of insurance -- payment of premium.
- 8 39-71-2337. State fund to submit notice of coverage within 30 days -- penalty for failure.
- 9 39-71-2339. Cancellation of coverage -- 20-day notice required.
- 10 39-71-2340. Collection in case of default.
- 11 39-71-2351. Purpose of separation of state fund liability as of July 1, 1990, and of separate funding of
- 12 claims before and on or after that date.
- 13 39-71-2352. Separate payment structure and sources for claims for injuries resulting from accidents that
- 14 occurred before July 1, 1990, and on or after July 1, 1990 -- spending limit -- authorizing transfer of money.
- 15 39-71-2356. Mutually agreeable lump-sum settlements.
- 16 39-71-2361. Legislative audit of state fund.
- 17 39-71-2363. Agency law -- annual report.
- 18 39-71-2370. Claims expenditures codes.
- 19 39-71-2375. Operation of state fund as authorized insurer -- issuance of certificate of authority -- exceptions
- 20 -- use of calendar year -- risk-based capital -- reporting requirements.

21

22 NEW SECTION. Section 74. Codification instruction. (1) [Sections 1 through 7] are intended to be

23 codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [sections

24 1 through 7].

25 (2) [Section 8] is intended to be codified as an integral part of Title 17, chapter 6, part 2, and the

26 provisions of Title 17, chapter 6, part 2, apply to [section 8].

27

28 NEW SECTION. Section 75. Saving clause. [This act] does not affect rights and duties that

1 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

2

3 NEW SECTION. Section 76. Severability. If a part of [this act] is invalid, all valid parts that are
4 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
5 the part remains in effect in all valid applications that are severable from the invalid applications.

6

7 NEW SECTION. Section 77. Effective dates. (1) Except as provided in subsection (2), [this act] is
8 effective July 1, 2024.

9 (2) [Sections 1, 2, 4, 5, 6, 25, 36, 37, 52, 66, 71 through 75, and 77] and this section are effective
10 on passage and approval.

11

12 NEW SECTION. Section 78. Applicability. [This act] applies to applications for workers'
13 compensation policies and to in-force or issued workers' compensation policies on or after July 1, 2024.

14

- END -