

HOUSE BILL NO. 756

Introduced: 02/12/83

Referred to Committee on Labor & Employment Relations: 02/12/83

Hearing: 2/17/83

Died in Committee

1 House BILL NO. 756
 2 INTRODUCED BY Walshon
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT DELINEATING AND
 5 EXPANDING THE CAUSES OF ACTION AND REMEDIES AVAILABLE TO AN
 6 INJURED EMPLOYEE OF AN UNINSURED EMPLOYER OR TO THE
 7 EMPLOYEE'S BENEFICIARIES; AMENDING SECTIONS 39-71-504,
 8 39-71-508 THROUGH 39-71-510, AND 39-71-2905, MCA."

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 10 WHEREAS, it is the public policy of the State of
 11 Montana to ensure that every employee who is required to be
 12 covered under the State's workers' compensation laws
 13 receives, in the event of compensable injury or death, the
 14 monetary compensation to which he is entitled or is adjudged
 15 to be entitled under Title 39, chapter 71, part 7; and

16 WHEREAS, under current laws, an employee of an
 17 uninsured employer or the employee's beneficiaries are
 18 significantly impeded in the ability to recover full or
 19 partial compensation for a compensable injury or death; and

20 WHEREAS, this situation exists because of all of the
 21 following factors:

22 (1) There are a significant number of uninsured
 23 employers in Montana.

24 (2) The insured employers' fund is, for all practical
 25 purposes, insolvent.

1 (3) Existing remedies for an injured employee or his
 2 beneficiaries are inadequate, particularly when the
 3 negligence of the employer is not or cannot be proven to be
 4 the proximate cause of the injury or death.

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

7 Section 1. Section 39-71-504, MCA, is amended to read:
 8 "39-71-504. Funding of fund ~~is an option for agreement~~
 9 ~~between division and injured employee.~~ The fund shall be
 10 funded in the following manner:

11 (1) The division shall require that the uninsured
 12 employer pay to the fund a penalty of either double the
 13 premium amount the employer would have paid on the payroll
 14 of the employer's workers in this state if the employer had
 15 been enrolled with compensation plan No. 3 or \$200,
 16 whichever is greater. In determining the premium amount for
 17 the calculation of the penalty under this subsection, the
 18 division shall make an assessment on how much premium would
 19 have been paid on the employer's past 3-year payroll for
 20 periods within the 3 years when the employer was uninsured.
 21 An assessment for payroll paid by the uninsured employer for
 22 any time prior to July 1, 1977, may not be made.

23 (2) (a) The fund shall receive from an uninsured
 24 employer an amount equal to all benefits paid or to be paid
 25 from the fund to an injured employee of the uninsured

employer. However, the uninsured employer's liability under this subsection (2)(a) may not exceed \$30,000 ~~\$50,000~~.

~~(b) The dollar limitation does not apply to an uninsured employer's liability to an injured employee or the employee's beneficiaries under 39-71-509 or [section 6].~~

(3) The division may determine that the \$1,000 assessments that are charged against an insurer in each case of an industrial death under 39-71-902(1) shall be paid to the uninsured employers' fund rather than the subsequent injury fund.

~~(4) The division may enter into an agreement with the injured employee or the employee's beneficiaries to assign to the employee or the beneficiaries all or part of the funds received by the division from the uninsured employer pursuant to subsection (2)(a)."~~

Section 2. Section 39-71-508, MCA, is amended to read:

"39-71-508. Election of--uninsured--employee--to--take under--the--fund--or--bring--action--against--employer---election binding Coordination of remedies. An employee who suffers an injury arising out of and in the course of employment while working for an uninsured employer as defined in 39-71-501 or an employee's beneficiaries in injuries resulting in death may elect---to---either---receive pursue all remedies concurrently, including but not limited to:

~~(1) a claim for~~ benefits from the uninsured employers'

fund; or--pursue

[2] a damage action against the employer. However, once an election has been made to either take from the fund or pursue a damage action, the election is final and binding on the employee or the employee's beneficiaries, heirs, and personal representatives. An injured employee or the employee's beneficiaries may not receive both benefits from the fund and pursue a damage action in accordance with 39-71-509;

~~(3) an independent action against an employer as provided in [section 6]; or~~

~~(4) any other civil remedy provided by law."~~

NEW SECTION. Section 3. Setoffs to claim against fund. A claim for benefits from the uninsured employer's fund must be discharged, finally or periodically, to the extent that an employee or the employee's beneficiaries receive actual monetary compensation by judgment or settlement from the uninsured employer, a third party who shares liability as defined in 39-71-412, or a fellow employee who shares liability as defined in 39-71-413.

Section 4. Section 39-71-510, MCA, is amended to read:

"39-71-510. Limitation on benefit entitlement under fund. Notwithstanding the provisions of 39-71-407, 39-71-502, and 39-71-503, injured employees or an employee's beneficiaries who elect--to--receive pursue a claim for

benefits from the uninsured employers' fund are not granted an entitlement by this state for full workers' compensation benefits from the fund. Benefits from the fund must be paid in accordance with the sums in the fund. If the division determines at any time that the sums in the fund are not adequate to fully pay all claims, the division may make appropriate proportionate reductions in benefits to all claimants. The reductions do not entitle claimants to retroactive reimbursements in the future."

Section 5. Section 39-71-509, MCA, is amended to read:

"39-71-509. ~~Election-to-bring-action~~ **Action** against uninsured employer -- limitation of employer's defenses. If an injured employee or the employee's beneficiaries ~~elect-to~~ bring an action to recover damages for personal injuries sustained or for death resulting from personal injuries so sustained, it is not a defense for the employer that the:

(1) employee was negligent unless such negligence was willful;

(2) injury was caused by the negligence of a fellow employee; or

(3) employee had assumed the risks inherent in, incident to, or arising out of his employment or arising from the failure of the employer to provide and maintain a reasonably safe place to work or reasonably safe tools or appliances."

~~NEW SECTION~~ Section 6. Independent cause of action.

(1) An injured employee or the employee's beneficiaries have an independent cause of action against an uninsured employer for failure to be enrolled in a compensation plan as required by this chapter.

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

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

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

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

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

(5) (a) If the uninsured employer is a corporation, the owners, officers, or directors of the corporation may be joined as defendants in the action.

(b) If it is shown by a preponderance of the evidence

1 that an owner, officer, or director was personally negligent
2 in failing to enroll under a compensation plan on behalf of
3 the corporation, a judgment may be rendered against the
4 owner, officer, or director jointly and severally for all or
5 a portion of the final damages awarded to the claimant, in
6 accordance with 27-1-703.

7 (c) It is not a defense for an owner, officer, or
8 director that he was acting as an agent of the corporation.

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

13 **NEW_SECTION.** Section 7. District court venue for
14 independent cause of action. An injured employee or an
15 employee's beneficiaries pursuing an independent cause of
16 action pursuant to [section 6] must bring such action in the
17 district court in the district where the claimant resides or
18 where the alleged violation occurred. The court may grant
19 such interim relief as it considers appropriate, including
20 but not limited to injunctive relief, attachment, or
21 receivership.

22 **NEW_SECTION.** Section 8. Requirement to serve papers.
23 In pursuing remedies under this part, an injured employee or
24 his beneficiaries shall serve all pleadings and all other
25 litigation papers on the division and the uninsured

1 employer, regardless of whether the division or the
2 uninsured employer is a party to the particular action to
3 which the papers relate.

4 **NEW_SECTION.** Section 9. Setoffs. Any actual monetary
5 compensation received by judgment or settlement by the
6 injured employee or the employee's beneficiaries under
7 39-71-509 or [section 6] may be offset by the uninsured
8 employer against his remaining liability under those
9 sections.

10 **NEW_SECTION.** Section 10. Settlement. The division,
11 the uninsured employer, the injured employee or his
12 beneficiaries, a third party who shares liability as defined
13 in 39-71-412, or a fellow employee who shares liability as
14 defined in 39-71-413 may enter into a settlement agreement
15 to finally settle the rights and liabilities under this part
16 of any or all of the parties. Such a settlement is subject
17 to division approval in accordance with 39-71-741.

18 Section 11. Section 39-71-2905, MCA, is amended to
19 read:

20 *39-71-2905. Petition to workers' compensation judge.
21 A claimant or an insurer who has a dispute concerning any
22 benefits under chapter 71 of this title may petition the
23 workers' compensation judge for a determination of the
24 dispute. The judge, after a hearing, shall make a
25 determination of the dispute in accordance with the law as

1 set forth in chapter 71 of this title. If the dispute
2 relates to benefits due a claimant under chapter 71, the
3 judge shall fix and determine any benefits to be paid and
4 specify the manner of payment. The workers' compensation
5 judge has exclusive jurisdiction to make determinations
6 concerning disputes under chapter 71, except as provided in
7 [section 11]. The penalties and assessments allowed against
8 an insurer under chapter 71 are the exclusive penalties and
9 assessments that can be assessed against an insurer for
10 disputes arising under chapter 71."
11 NEW SECTION. Section 12. Codification instruction.
12 Sections 3 and 6 through 10 are intended to be codified as
13 an integral part of Title 39, chapter 71, part 5.

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