

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

House BILL NO. 756

1 INTRODUCED BY Walker

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

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

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

22 (2) ~~1a1~~ The fund shall receive from an uninsured  
23 employer an amount equal to all benefits paid or to be paid  
24 from the fund to an injured employee of the uninsured

1 employer. However, the uninsured employer's liability under  
 2 this subsection ~~121(a)~~ may not exceed \$30,000 ~~\$50,000~~.

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

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

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

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

17 "39-71-508. ~~Election-of--uninsured--employee--to--take~~  
 18 ~~under--the--fund--or--bring--action--against--employer----election~~  
 19 ~~binding coordination of remedies.~~ An employee who suffers an

20 injury arising out of and in the course of employment while  
 21 working for an uninsured employer as defined in 39-71-501 or  
 22 an employee's beneficiaries in injuries resulting in death  
 23 may ~~elect--to--either--receive~~ pursue all remedies  
 24 concurrently, including but not limited to

25 ~~(1) a claim for benefits from the uninsured employer's~~

1 fund or pursue

2 ~~(2) a damage action against the employer--However,~~  
 3 ~~once-an-election-has-been-made-to-either-take-from-the--fund~~  
 4 ~~or-pursue-a-damage-action--the-election-is-final-and-binding~~  
 5 ~~on--the--employee--or--the--employee's--beneficiaries--heirs--and~~  
 6 ~~personal--representatives--An--injured--employee--or--the~~  
 7 ~~employee's--beneficiaries--may--not--receive--both--benefits--from~~  
 8 ~~the--fund--and--pursue-a--damage--action--in--accordance--with~~  
 9 ~~39-71-509.~~

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

12 ~~141. any other civil remedy provided by law."~~  
 13 NEW SECTION. Section 3. Setoffs to claim against  
 14 fund. A claim for benefits from the uninsured employer's  
 15 fund must be discharged, finally or periodically, to the  
 16 extent that an employee or the employee's beneficiaries  
 17 receive actual monetary compensation by judgment or  
 18 settlement from the uninsured employer, a third party who  
 19 shares liability as defined in 39-71-412, or a fellow  
 20 employee who shares liability as defined in 39-71-413.

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

22 "39-71-510. Limitation on benefit entitlement under  
 23 fund. Notwithstanding the provisions of 39-71-407,  
 24 39-71-502, and 39-71-503, injured employees or an employee's  
 25 beneficiaries who ~~elect--to--receive~~ pursue a claim for

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

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

11 "39-71-509. ~~Election-to-bring--action~~ Action against  
 12 uninsured employer -- Limitation of employer's defenses. If  
 13 an injured employee or the employee's beneficiaries ~~elect-to~~  
 14 bring an action to recover damages for personal injuries  
 15 sustained or for death resulting from personal injuries so  
 16 sustained, it is not a defense for the employer that the:

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

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

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

1 ~~YEN~~SECTION 6. Independent cause of action.  
 2 (1) An injured employee or the employee's beneficiaries have  
 3 an independent cause of action against an uninsured employer  
 4 for failure to be enrolled in a compensation plan as  
 5 required by this chapter.

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

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

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

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

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

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

25 (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 71]. 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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