

SENATE BILL 406

Introduced by Williams, et al.

2/15	Introduced
2/16	First Reading
2/16	Referred to Labor & Employment Relations
2/21	Hearing
2/23	Committee Report--Bill Not Passed as Amended
2/23	Adverse Committee Report Adopted
2/25	Reconsidered Adoption of Adverse Committee Report
2/26	2nd Reading Do Pass as Amended Motion Failed
2/26	2nd Reading Indefinitely Postponed

1 *Senate* BILL NO. *406*
 2 INTRODUCED BY *William P. ...*
 3 *Randy ...*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 5 WORKERS' COMPENSATION LAWS; AND AMENDING SECTIONS 39-71-119,
 6 39-71-123, 39-71-407, AND 39-71-601, MCA."

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 **Section 1.** Section 39-71-119, MCA, is amended to read:

10 "39-71-119. Injury and accident defined. (1) "Injury"
11 or "injured" means:

- 12 (a) internal or external physical harm to the body;
- 13 (b) damage to prosthetic devices or appliances, except
- 14 for damage to eyeglasses, contact lenses, dentures, or
- 15 hearing aids; or
- 16 (c) death.
- 17 (2) An injury is caused by an accident. An accident is:
- 18 (a) an unexpected traumatic incident or unusual strain;
- 19 (b) identifiable by time and place of occurrence;
- 20 (c) identifiable by member or part of the body
- 21 affected; and
- 22 (d) caused by a specific event on a single day or
- 23 during a single work shift.
- 24 (3) "Injury" or "injured" does not mean a physical or
- 25 mental condition arising from:

- 1 (a) emotional or mental stress; or
- 2 (b) a nonphysical stimulus or activity.
- 3 (4) "Injury" or "injured" does not include a disease
- 4 that is not caused by an accident.
- 5 (5) (a) A cardiovascular, pulmonary, respiratory, or
- 6 other disease, cerebrovascular accident, or myocardial
- 7 infarction suffered by a worker is an injury only if the
- 8 accident is the primary cause of the physical harm in
- 9 relation to other factors contributing to the physical harm.
- 10 (b) "Primary cause", as used in subsection (5)(a),
- 11 means a cause that, with a reasonable degree of medical
- 12 certainty, is responsible for more than 50% of the
- 13 cumulative physical harm in relation to other factors
- 14 contributing to the physical harm."

15 **Section 2.** Section 39-71-123, MCA, is amended to read:

16 "39-71-123. Wages defined. (1) "Wages" means the gross
17 remuneration paid in money, or in a substitute for money,
18 for services rendered by an employee. Wages include but are
19 not limited to:

- 20 (a) commissions, bonuses, and remuneration at the
- 21 regular hourly rate for overtime work, holidays, vacations,
- 22 and sickness periods;
- 23 (b) board, lodging, rent, or housing if it constitutes
- 24 a part of the employee's remuneration and is based on its
- 25 actual value; and



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1 (c) payments made to an employee on any basis other
2 than time worked, including but not limited to piecework, an
3 incentive plan, or profit-sharing arrangement.

4 (2) Wages do not include:

5 (a) employee travel expense reimbursements or
6 allowances for meals, lodging, travel, and subsistence;

7 (b) special rewards for individual invention or
8 discovery;

9 (c) tips and other gratuities received by the employee
10 in excess of those documented to the employer for tax
11 purposes;

12 (d) contributions made by the employer to a group
13 insurance or pension plan; or

14 (e) vacation or sick leave benefits accrued but not
15 paid.

16 (3) For compensation benefit purposes, the average
17 actual earnings for the four pay periods immediately
18 preceding the injury are the employee's wages, except if:

19 (a) the term of employment for the same employer is
20 less than four pay periods, in which case the employee's
21 wages are the hourly rate times the number of hours in a
22 week for which the employee was hired to work; or

23 (b) for good cause shown by the claimant, the use of
24 the four pay periods does not accurately reflect the
25 claimant's employment history with the employer, in which

1 case the insurer may use additional pay periods.

2 (4) (a) For the purpose of calculating compensation
3 benefits for an employee working concurrent employments, the
4 average actual wages must be calculated as provided in
5 subsection (3).

6 (b) The compensation benefits for a covered volunteer
7 must be based on the average actual wages in his regular
8 employment, except self-employment as a sole proprietor or
9 partner who elected not to be covered, from which he is
10 disabled by the injury incurred.

11 (c) The compensation benefits for an employee working
12 at two or more concurrent remunerated employments must be
13 based on the aggregate of average actual wages of all
14 employments, except self-employment as a sole proprietor or
15 partner who elected not to be covered, from which the
16 employee is disabled by the injury incurred.

17 (5) If a worker engaged in self-employment is otherwise
18 entitled to temporary total disability benefits and the
19 worker is to receive self-employment income, the temporary
20 total disability benefits he receives must be reduced by an
21 amount equaling two-thirds of the self-employment income."

22 **Section 3.** Section 39-71-407, MCA, is amended to read:

23 **"39-71-407. Liability of insurers -- limitations. (1)**

24 Every insurer is liable for the payment of compensation, in
25 the manner and to the extent hereinafter provided, to an

1 employee of an employer it insures who receives an injury
2 arising out of and in the course of his employment or, in
3 the case of his death from such injury, to his
4 beneficiaries, if any.

5 (2) (a) An insurer is liable for an injury as defined
6 in 39-71-119 if the claimant establishes it is more probable
7 than not that:

8 (i) a claimed injury has occurred; or

9 (ii) a claimed injury aggravated a preexisting
10 condition.

11 (b) Proof that it was medically possible that a claimed
12 injury occurred or that such claimed injury aggravated a
13 preexisting condition is not sufficient to establish
14 liability.

15 (c) An insurer is liable for an injury under
16 39-71-119(5) only if the disabling condition suffered by the
17 worker is attributable to a greater degree to the
18 work-related injury rather than to a nonwork-related disease
19 process or medical condition.

20 (3) An employee who suffers an injury or dies while
21 traveling is not covered by this chapter unless:

22 (a) (i) the employer furnishes the transportation or
23 the employee receives reimbursement from the employer for
24 costs of travel, gas, oil, or lodging as a part of the
25 employee's benefits or employment agreement; and

1 (ii) the travel is necessitated by and on behalf of the
2 employer as an integral part or condition of the employment;
3 or

4 (b) the travel is required by the employer as part of
5 the employee's job duties.

6 (4) An employee is not eligible for benefits otherwise
7 payable under this chapter if the employee's use of alcohol
8 or drugs not prescribed by a physician is the sole and
9 exclusive cause of the injury or death. However, if the
10 employer had knowledge of and failed to attempt to stop the
11 employee's use of alcohol or drugs, this subsection does not
12 apply.

13 (5) If a claimant who has reached maximum healing
14 suffers a subsequent nonwork-related injury to the same part
15 of the body, the workers' compensation insurer is not liable
16 for any compensation or medical benefits caused by the
17 subsequent nonwork-related injury."

18 **Section 4.** Section 39-71-601, MCA, is amended to read:

19 **"39-71-601. Statute of limitation on presentment of**
20 **claim -- waiver.** (1) In case of personal injury or death,
21 all claims must be forever barred unless signed by the
22 claimant or his representative and presented in writing to
23 the employer, the insurer, or the department, as the case
24 may be, within 12 months from the date of the happening of
25 the accident, either by the claimant or someone legally

1 authorized to act for him in his behalf.

2 (2) (a) The Except as provided in subsection (2)(b),
3 the department may waive the time requirement up to an
4 additional 24 months upon a reasonable showing by the
5 claimant of:

6 (a)(i) lack of knowledge of disability;

7 (b)(ii) latent injury; or

8 (c)(iii) equitable estoppel.

9 (b) (i) A claim may not be filed more than 12 months
10 after the claimant first seeks medical attention for the
11 work-related injury.

12 (ii) A waiver or tolling of the 12-month filing period
13 established in subsection (1) may not be granted for a
14 period more than 12 months after the claimant first seeks
15 medical attention for the work-related injury."

-End-

SB 0406/02
COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONS

RECOMMEND DO NOT PASS
ON MOTION, PRINTED AND
PLACED ON SECOND READING

1 SENATE BILL NO. 406

2 INTRODUCED BY WILLIAMS, PINSONEAULT, WEEDING, KEATING,
3 KENNEDY, THAYER, BENEDICT, THOMAS

4
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