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House BILL NO. *494*
INTRODUCED BY *[Signature]* *SULLIVAN* *SULLIVAN* *VINCENT* *[Signature]*
MULAR

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 92-204.1, R.C.M. 1947, BY GRANTING AN INJURED EMPLOYEE AN INDEPENDENT ACTION AGAINST A GROSSLY NEGLIGENT EMPLOYER."

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

Section 1. Section 92-204.1, R.C.M. 1947, is amended to read as follows:

"92-204.1. Election of employer and employee to come under act--action against third party causing injury--right to subrogation. Where both the employer and employee have elected to come under this act, the provisions of this act shall be exclusive, and such election shall be held to be a surrender by such employer and the servants, and employees of such employer and such employee, as among themselves, of their right to any other method, form or kind of compensation, or determination thereof, or to any other compensation, or kind of determination thereof, or cause of action at law, suit in equity, or statutory or common-law right or remedy, or proceeding whatever, for or on account of any personal injury to or death of such employee, except as such rights may be hereinafter specifically granted; and such election shall bind the employee himself, and in case

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of death shall bind his personal representative, and all persons having any right or claim to compensation for his injury or death, as well as the employer, and the servants and employees of such employer, and those conducting his business during liquidation, bankruptcy or insolvency. The right to compensation and medical benefits as provided by this act shall not be affected by the fact that the injury, occupational disease or death is caused by the negligence of a third party other than the employer, or the servants or employees of the employer. Whenever such event shall occur to an employee while performing the duties of his employment and such event shall be caused by the act or omission of some persons or corporations other than his employer, or the servants or employees of his employer, then such employee, or in case of his death his heirs or personal representative shall, in addition to the right to receive compensation under this act, have a right to prosecute any cause of action he may have for damages against such persons or corporations. Further provided, that whenever such employee shall receive an injury while performing the duties of his employment and such injury or injuries, so received by such employee, are caused by the intentional and malicious act or omission of a servant or employee of his employer, then such employee, or in case of his death, his heirs or personal representatives, shall, in addition to the right to receive

1 compensation under the Workmen's Compensation Act, have a
2 right to prosecute any cause of action he may have for
3 damages against such servants or employees of his employer,
4 causing such injury. Provided, that the employer or insurer
5 shall be entitled to full subrogation for all compensation
6 and benefits paid or to be paid under this act, except as
7 otherwise provided in this section. The employer's or
8 insurer's right of subrogation shall be a first lien on such
9 claim, judgment or recovery. The employee shall institute
10 such third party action after giving the employer or insurer
11 reasonable notice of his intention to institute such third
12 party action. The employee may request that such insurer pay
13 a proportionate share of the reasonable cost, including
14 attorneys' fees, of such third party action. The insurer may
15 elect not to participate in the cost of the third party
16 action, but as such election is made the insurer shall be
17 deemed to have waived fifty percent (50%) of its subrogation
18 rights granted by the section. Provided, however, that if an
19 employee refuses or fails to institute such action within
20 one (1) year from the date of injury, the employer or
21 insurer may institute such third party action in his name
22 and for his benefit or that of his personal representative.
23 If the employee or his personal representative institutes
24 such third party action, he shall be entitled to at least
25 one-third (1/3) of the amount recovered by judgment or

1 compromise settlement less his proportionate share of the
2 reasonable costs, including attorneys' fees, in the event
3 the amount of recovery is insufficient to provide him with
4 that amount after payment of subrogation. In the event the
5 employer or insurer institutes such third party action, he
6 shall pay to the employee any amount recovered by judgment
7 or settlement which is in excess of the amounts paid or to
8 be paid under this act an employer's or insurer's reasonable
9 costs and attorneys' fees. Nothing contained in this section
10 shall prevent the employer or insurer, including the
11 division of workmen's compensation, from entering into
12 compromise agreements in settlement of subrogation rights.
13 If death results from the injury or occupational disease,
14 the employer shall have a right of action against the third
15 party for recovery of any amount paid under this act, and
16 such right of action shall be in addition to any cause of
17 action by the heirs or personal representative of the
18 deceased. In the event that the amount of compensation and
19 benefits payable under this act shall not have been fully
20 determined at the time such employee or his heirs or
21 personal representative, or the employer or insurer, shall
22 receive settlement of his action, prosecuted as aforesaid,
23 then the division shall determine what proportion of such
24 settlement shall be allocated under subrogation and such
25 determination may be appealed as any other determination of

1 the division. In addition, when an employee receives an
2 injury while performing the duties of his employment and the
3 injury results from the gross negligence of the employer in
4 not providing safe working conditions, then the injured
5 employee, or in case of his death, his heirs or personal
6 representative, shall, in addition to the right to receive
7 compensation under the Workmen's Compensation Act, have a
8 right to prosecute any cause of action he may have for
9 damages against the employer causing the injury."

-End-

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