

HOUSE BILL NO. 529

INTRODUCED BY ADDY

IN THE HOUSE

January 28, 1985	Introduced and referred to Committee on Judiciary.
February 23, 1985	Committee recommend bill do pass as amended. Report adopted. Bill printed and placed on members' desks.
February 25, 1985	Second reading, do pass.
February 26, 1985	Considered correctly engrossed.
February 27, 1985	Third reading, passed. Transmitted to Senate.

IN THE SENATE

March 5, 1985	Introduced and referred to Committee on Judiciary.
March 22, 1985	Committee recommend bill be concurred in. Report adopted.
March 23, 1985	Second reading, concurred in as amended.
March 26, 1985	Third reading, concurred in. Ayes, 50; Noes, 0. Returned to House with amendments.

IN THE HOUSE

March 27, 1985

Received from Senate.

April 8, 1985

Second reading, amendments
concurrent in.

On motion, rules suspended and
bill placed on third reading
this day.

Third reading, amendments
concurrent in.

Sent to enrolling.

Reported correctly enrolled.

1 HOUSE BILL NO. 529
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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."

9
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, or his
13 beneficiaries, receive, in the event of compensable injury
14 or death, the monetary compensation to which they are
15 entitled or are adjudged to be entitled under Title 39,
16 chapter 71, part 7; and

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

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

- 23 (1) There is a significant number of uninsured
24 employers in Montana.
25 (2) The insured employers' fund is, for all practical

1 purposes, insolvent.
2 (3) Existing remedies for an injured employee or his
3 beneficiaries are inadequate, particularly when the
4 negligence of the employer is not or cannot be proven to be
5 the proximate cause of the injury or death.
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7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

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

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

1 from the fund to an injured employee of the uninsured
2 employer. However, the uninsured employer's liability under
3 this subsection (2)(a) may not exceed ~~\$\$\$7000~~ \$50,000.

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

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

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

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

18 "~~39-71-508. Election--of--uninsured--employee--to--take~~
19 ~~under-the-fund-or-bring-action-against-employer-----election~~
20 ~~binding~~ Coordination of remedies. An employee who suffers an
21 injury arising out of and in the course of employment while
22 working for an uninsured employer as defined in 39-71-501 or
23 an employee's beneficiaries in injuries resulting in death
24 may ~~elect---to---either---receive~~ pursue all remedies
25 concurrently, including but not limited to;

1 (1) a claim for benefits from the uninsured employers'
2 fund; or pursue

3 (2) a damage action against the employer;--However,7
4 once--an-election-has-been-made-to-either--take--from--the--fund
5 or--pursue--a--damage--action,--the--election--is--final--and--binding
6 on--the--employee--or--the--employee's--beneficiaries,--heirs,--and
7 personal---representatives.---An--injured--employee--or--the
8 employee's--beneficiaries--may--not--receive--both--benefits--from
9 the--fund--and--pursue--a--damage--action; in accordance with
10 39-71-509;

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

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

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

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

23 "39-71-510. Limitation on benefit entitlement under
24 fund. Notwithstanding the provisions of 39-71-407,
25 39-71-502, and 39-71-503, injured employees or an employee's

1 beneficiaries who ~~elect--to--receive~~ pursue a claim for
 2 benefits from the uninsured employers' fund are not granted
 3 an entitlement by this state for full workers' compensation
 4 benefits from the fund. Benefits from the fund must be paid
 5 in accordance with the sums in the fund. If the division
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 7 adequate to fully pay all claims, the division may make
 8 appropriate proportionate reductions in benefits to all
 9 claimants. The reductions do not entitle claimants to
 10 retroactive reimbursements in the future."

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

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

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

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

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

1 appliances."

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

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

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

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

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

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

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

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

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

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

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

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

23 NEW SECTION. Section 8. Requirement to serve papers.
24 In pursuing remedies under this part, an injured employee or
25 his beneficiaries shall serve all pleadings and all other

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

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

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

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

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

1 determination of the dispute in accordance with the law as
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8 [section 7]. The penalties and assessments allowed against
9 an insurer under chapter 71 are the exclusive penalties and
10 assessments that can be assessed against an insurer for
11 disputes arising under chapter 71."

12 NEW SECTION. Section 12. Extension of authority. Any
13 existing authority of the division of workers' compensation
14 to make rules on the subject of the provisions of this act
15 is extended to the provisions of this act.

16 NEW SECTION. Section 13. Codification instruction.
17 Sections 3 and 6 through 10 are intended to be codified as
18 an integral part of Title 39, chapter 71, part 5.

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APPROVED BY COMMITTEE
ON JUDICIARY

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~~(b) If it is shown by a preponderance of the evidence that an owner, officer, or director was personally negligent in failing to enroll under a compensation plan on behalf of the corporation, a judgment may be rendered against the owner, officer, or director jointly and severally for all or a portion of the final damages awarded to the claimant, in accordance with 27-1-703.~~

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

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

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1 determination of the dispute in accordance with the law as
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 23 incident to, or arising out of his employment or arising
 24 from the failure of the employer to provide and maintain a
 25 reasonably safe place to work or reasonably safe tools or

1 appliances."

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

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

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

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

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

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

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

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

~~(b) If it is shown by a preponderance of the evidence that an owner, officer, or director was personally negligent in failing to enroll under a compensation plan on behalf of the corporation, a judgment may be rendered against the owner, officer, or director jointly and severally for all or a portion of the final damages awarded to the claimant, in accordance with 27-1-703.~~

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

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

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

NEW SECTION. Section 8. Requirement to serve papers. In pursuing remedies under this part, an injured employee or his beneficiaries shall serve all pleadings and all other

litigation papers on the division and the uninsured employer, regardless of whether the division or the uninsured employer is a party to the particular action to which the papers relate.

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

NEW SECTION. Section 10. Settlement. The division, the uninsured employer, the injured employee or his beneficiaries, 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 may enter into a settlement agreement to finally settle the rights and liabilities under this part of any or all of the parties. Such a settlement is subject to division approval in accordance with 39-71-741.

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

"39-71-2905. Petition to workers' compensation judge. A claimant or an insurer who has a dispute concerning any benefits under chapter 71 of this title may petition the workers' compensation judge for a determination of the dispute. The judge, after a hearing, shall make a

1 determination of the dispute in accordance with the law as
2 set forth in chapter 71 of this title. If the dispute
3 relates to benefits due a claimant under chapter 71, the
4 judge shall fix and determine any benefits to be paid and
5 specify the manner of payment. The workers' compensation
6 judge has exclusive jurisdiction to make determinations
7 concerning disputes under chapter 71, except as provided in
8 [section 7]. The penalties and assessments allowed against
9 an insurer under chapter 71 are the exclusive penalties and
10 assessments that can be assessed against an insurer for
11 disputes arising under chapter 71."

12 NEW SECTION. Section 12. Extension of authority. Any
13 existing authority of the division of workers' compensation
14 to make rules on the subject of the provisions of this act
15 is extended to the provisions of this act.

16 NEW SECTION. Section 13. Codification instruction.
17 Sections 3 and 6 through 10 are intended to be codified as
18 an integral part of Title 39, chapter 71, part 5.

-End-

COMMITTEE OF THE WHOLE AMENDMENT

SENATE

3-23-85

DATE

2:57 p.m.

TIME

MR. CHAIRMAN: I MOVE TO AMEND

HOUSE BILL

No. 529

third

reading copy (

blue

Color

) as follows:

Page 1, line 25.

Following: "The"

Strike: "insured"

Insert: "uninsured"

J

ADOPT

REJECT

Mazurek

MAZUREK

1 HOUSE BILL NO. 529

2 INTRODUCED BY ADDY

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."

9
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, or his
13 beneficiaries, receive, in the event of compensable injury
14 or death, the monetary compensation to which they are
15 entitled or are adjudged to be entitled under Title 39,
16 chapter 71, part 7; and

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

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

23 (1) There is a significant number of uninsured
24 employers in Montana.

25 (2) The ~~insured~~ UNINSURED employers' fund is, for all

1 practical purposes, insolvent.

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

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

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

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

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

1 from the fund to an injured employee of the uninsured
2 employer. However, the uninsured employer's liability under
3 this subsection (2)(a) may not exceed ~~\$\$\$0,000~~ \$50,000.

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

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

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

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

18 "39-71-508. ~~Election--of--uninsured--employee--to--take~~
19 ~~under-the-fund-or-bring-action-against-employer-----election~~
20 ~~binding~~ Coordination of remedies. An employee who suffers an
21 injury arising out of and in the course of employment while
22 working for an uninsured employer as defined in 39-71-501 or
23 an employee's beneficiaries in injuries resulting in death
24 may ~~elect---to---either---receive~~ pursue all remedies
25 concurrently, including but not limited to;

1 (1) a claim for benefits from the uninsured employers'
2 fund; or pursue

3 (2) a damage action against the employer;--However,
4 once--an-election-has-been-made-to-either-take-from-the-fund
5 or-pursue-a-damage-action,--the-election-is-final-and-binding
6 on-the-employee-or-the-employee's-beneficiaries,--heirs,--and
7 personal---representatives.---An--injured--employee--or--the
8 employee's-beneficiaries-may-not-receive-both-benefits--from
9 the--fund--and--pursue--a--damage-action; in accordance with
10 39-71-509;

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

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

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

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

23 "39-71-510. Limitation on benefit entitlement under
24 fund. Notwithstanding the provisions of 39-71-407,
25 39-71-502, and 39-71-503, injured employees or an employee's

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

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

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

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

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

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

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 21 have received had the employer been properly enrolled under
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23 ~~(5)--(a)--If--the--uninsured--employer--is--a--corporation--~~
 24 ~~the--owners--officers--or--directors--of--the--corporation--may--be~~
 25 ~~joined--as--defendants--in--the--action--~~

~~(b) If it is shown by a preponderance of the evidence that an owner, officer, or director was personally negligent in failing to enroll under a compensation plan on behalf of the corporation, a judgment may be rendered against the owner, officer, or director jointly and severally for all or a portion of the final damages awarded to the claimant, in accordance with 27-1-703.~~

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