

HB 784 INTRODUCED BY SMITH, C., ET AL.  
CREATING OFFICE OF INDUSTRIAL ATTORNEY TO REPRESENT  
WORKERS' COMPENSATION CLAIMANTS  
BY REQUEST OF DEPARTMENT OF LABOR & INDUSTRY

2/16 INTRODUCED  
2/16 REFERRED TO BUSINESS & LABOR  
2/16 FISCAL NOTE REQUESTED  
2/19 HEARING  
2/19 COMMITTEE REPORT--BILL PASSED AS AMENDED  
2/21 FISCAL NOTE RECEIVED  
2/21 2ND READING NOT PASSED

50 43

1 House BILL NO. 784  
 2 INTRODUCED BY C. Smith  
 3 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH THE OFFICE  
 6 OF STATE INDUSTRIAL ATTORNEY TO REPRESENT CLAIMANTS IN LEGAL  
 7 PROCEEDINGS CONCERNING THEIR ENTITLEMENT TO WORKERS'  
 8 COMPENSATION OR OCCUPATIONAL DISEASE BENEFITS; AMENDING  
 9 SECTION 39-71-201, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

12 NEW SECTION. Section 1. Office of state industrial  
 13 attorney -- appointment -- qualifications -- duties. (1)  
 14 There is an office of state industrial attorney. The office  
 15 is allocated to the department of administration for  
 16 administrative purposes only as prescribed in 2-15-121.

17 (2) The governor shall appoint the state industrial  
 18 attorney for a term of 4 years.

19 (3) To be the state industrial attorney, a person:

20 (a) shall have engaged in the active practice of law  
 21 for at least 5 years prior to appointment;

22 (b) shall devote full time to the duties of state  
 23 industrial attorney; and

24 (c) may not engage in the private practice of law.

25 (4) The duties of the state industrial attorney are

1 limited to those prescribed by [sections 5 and 6].

2 NEW SECTION. Section 2. Rulemaking authority. The  
 3 office of state industrial attorney may adopt rules that are  
 4 reasonably necessary for the administration of [sections 1  
 5 through 7], including rules establishing the procedure for  
 6 reimbursement by a claimant of costs pursuant to [section 5]  
 7 and the value of services of the state industrial attorney  
 8 pursuant to [section 7].

9 NEW SECTION. Section 3. Offices of state industrial  
 10 attorney. (1) The principal office of the state industrial  
 11 attorney is in Helena.

12 (2) The state industrial attorney may establish other  
 13 offices as necessary and convenient in the performance of  
 14 his duties.

15 NEW SECTION. Section 4. Staff -- operating expenses  
 16 -- report to governor. (1) The state industrial attorney may  
 17 employ the persons necessary to carry out his duties under  
 18 [sections 1 through 7], including deputy state industrial  
 19 attorneys.

20 (2) A deputy state industrial attorney:

21 (a) must be an attorney licensed to practice law in  
 22 this state;

23 (b) shall devote full time to the duties of deputy  
 24 industrial attorney; and

25 (c) may not engage in the private practice of law.



1 (3) All expenditures of the office of state industrial  
2 attorney, including but not limited to salaries, travel  
3 expenses, office rent, office equipment, and supplies, must  
4 be paid out of the workers' compensation administration fund  
5 established in 39-71-201.

6 (4) The state industrial attorney shall submit a  
7 report annually to the governor stating:

8 (a) the number of claimants represented by the office;  
9 and

10 (b) the amount and nature of the expenditures of the  
11 office.

12 NEW SECTION. Section 5. Representation by state  
13 industrial attorney -- reimbursement for costs. (1) Any  
14 person who is eligible to claim workers' compensation or  
15 occupational disease benefits under chapter 71 or 72 of this  
16 title may make a written request of the state industrial  
17 attorney to represent him in legal actions concerning his  
18 entitlement to benefits under those chapters.

19 (2) If in his discretion the state industrial attorney  
20 determines that a claimant would benefit from legal  
21 representation by the state industrial attorney, he shall  
22 provide such legal services as appropriate under the  
23 circumstances.

24 (3) A claimant shall reimburse the state industrial  
25 attorney for:

1 (a) reasonable costs;

2 (b) fees; and

3 (c) mileage for necessary witnesses attending a  
4 proceeding on the claimant's behalf.

5 NEW SECTION. Section 6. Representation without fee --  
6 duties of state industrial attorney. (1) If the state  
7 industrial attorney determines to represent a claimant, he  
8 shall do so without charge to the claimant for legal  
9 representation.

10 (2) When representing a claimant, the state industrial  
11 attorney shall:

12 (a) advise the claimant and negotiate on his behalf;  
13 and

14 (b) represent the claimant in all legal actions  
15 concerning the claimant's entitlement to benefits, including  
16 any appeals to the district and state supreme courts.

17 NEW SECTION. Section 7. Employment of private counsel  
18 by claimant. (1) The provisions of [sections 1 through 7] do  
19 not preclude a claimant from engaging private counsel at any  
20 time. However, the claimant's employment of private counsel  
21 relieves the state industrial attorney from further  
22 representation of the claimant's case.

23 (2) A claimant who uses the services of the state  
24 industrial attorney and who at the same time or subsequently  
25 retains private counsel shall reimburse the office of the

1 state industrial attorney for a reasonable attorney fee for  
2 any legal services rendered to the claimant by the state  
3 industrial attorney.

4 Section 8. Section 39-71-201, MCA, is amended to read:  
5 "39-71-201. Administration fund. (1) A workers'  
6 compensation administration fund is established out of which  
7 all costs of administering the Workers' Compensation and  
8 Occupational Disease Acts, all costs of the office of the  
9 state industrial attorney, and the various occupational  
10 safety acts the division must administer are to be paid upon  
11 lawful appropriation.

12 (2) The following moneys collected by the division  
13 shall be deposited in the state treasury to the credit of  
14 the workers' compensation administrative fund and shall be  
15 used for the administrative expenses of the division:

16 (a) all fees and fines provided in 39-71-205 and  
17 39-71-304;

18 (b) all fees paid for inspection of boilers and  
19 issuance of licenses to operating engineers as required by  
20 law;

21 (c) all fees paid from an assessment on each plan No.  
22 1 employer, plan No. 2 insurer, and plan No. 3, the state  
23 insurance fund. The assessments shall be levied against the  
24 preceding calendar year's gross annual payroll of the plan  
25 No. 1 employers and the gross annual direct premiums

1 collected in Montana on the policies of the plan No. 2  
2 insurers, insuring employers covered under the chapter,  
3 during the preceding calendar year. However, no assessment  
4 of the plan No. 1 employer or plan No. 2 insurer shall be  
5 less than \$200. The assessments shall be sufficient to fund  
6 the direct costs identified to the three plans and an  
7 equitable portion of the indirect costs based on the ratio  
8 of the preceding fiscal year's indirect costs distributed to  
9 the plans using proper accounting and cost allocation  
10 procedures. Plan No. 3 shall be assessed an amount  
11 sufficient to fund its direct costs and an equitable portion  
12 of the indirect costs as referred to above. Other sources  
13 of revenue, including unexpended funds from the preceding  
14 fiscal year, shall be used to reduce the costs before  
15 levying the assessments.

16 ~~(2)~~(3) The administration fund shall be debited with  
17 expenses incurred by the division in the general  
18 administration of the provisions of this chapter, including  
19 the salaries of its members, officers, and employees and the  
20 travel expenses of the members, officers, and employees, as  
21 provided for in 2-18-501 through 2-18-503, as amended,  
22 incurred while on the business of the division either within  
23 or without the state.

24 ~~(3)~~(4) Disbursements from the administration money  
25 shall be made after being approved by the division upon

1 claim therefor."

2 NEW SECTION. Section 9. Codification instruction.

3 Sections 1 through 7 are intended to be codified as an  
4 integral part of Title 39, and the provisions of Title 39  
5 apply to sections 1 through 7.

6 NEW SECTION. Section 10. Effective date. This act is  
7 effective July 1, 1987.

-End-

## STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB784, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to establish the Office of State Industrial Attorney to represent claimants in legal proceedings concerning their entitlement to workers' compensation or occupational disease benefits; amending Section 39-71-201, MCA; and providing an effective date.

ASSUMPTIONS:

1. Attorneys will be located in Helena with sufficient travel funds to contact claimants and take depositions, etc. across Montana.
2. There will be a caseload of 1,400 cases per year and about 350 cases per attorney per year.

FISCAL IMPACT:

	FY88		FY89	
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Current Law</u>	<u>Proposed Law</u>
FTE	0	6.00	0	6.00
<u>Expenditures:</u>				
Personal Services	\$ 0	\$ 163,771	\$ 0	\$ 163,146
Operating Expenses	0	30,488	0	30,488
Equipment	0	49,200	0	0
TOTAL	\$ 0	\$ 243,459	\$ 0	\$ 193,634

Expenses would be paid from State Special Revenue Fund.

David L. Hunter DATE 2/21/89  
 DAVID L. HUNTER, BUDGET DIRECTOR  
 Office of Budget and Program Planning

Clyde Smith DATE \_\_\_\_\_  
 CLYDE SMITH, PRIMARY SPONSOR

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**HB 784**

APPROVED BY COMM. ON  
BUSINESS AND LABOR

1 STATEMENT OF INTENT

2 HOUSE BILL 784

3 House Business and Labor Committee

4

5 A statement of intent is required for this bill because  
6 it creates a new state agency, the office of state  
7 industrial attorney, that has the authority to adopt rules  
8 regarding the provision of legal services to injured workers  
9 who are pursuing claims for workers' compensation or  
10 occupational disease benefits.

11 It is the intent of the legislature that the state  
12 industrial attorney promulgate rules concerning  
13 reimbursement by the claimant of the state industrial  
14 attorney of the reasonable value of legal services rendered  
15 by the state industrial attorney if a claimant replaces him  
16 with private counsel, and for costs. In representing a  
17 claimant, the state industrial attorney is free to use his  
18 professional judgment as to the best means to accomplish the  
19 representation.

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