

HOUSE BILL NO. 155

INTRODUCED BY SMITH, MARKS, AKLESTAD, THOMAS,  
HAYNE, OWENS, PETERSON, SPRING

BY REQUEST OF THE DIVISION OF WORKERS' COMPENSATION

IN THE HOUSE

JANUARY 13, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 14, 1989	FIRST READING.
JANUARY 21, 1989	ON MOTION BY CHIEF SPONSOR, REPRESENTATIVES MARKS, THOMAS, HAYNE, OWENS, PETERSON, AND SPRING; AND SENATOR AKLESTAD ADDED AS SPONSORS.
JANUARY 30, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 31, 1989	PRINTING REPORT.
FEBRUARY 1, 1989	SECOND READING, DO PASS.
FEBRUARY 2, 1989	ENGROSSING REPORT.
FEBRUARY 3, 1989	THIRD READING, PASSED. AYES, 75; NOES, 24.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 4, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
MARCH 1, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 3, 1989	SECOND READING, CONCURRED IN.
MARCH 6, 1989	THIRD READING, CONCURRED IN.

AYES, 50; NOES, 0.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 8, 1989

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS  
CONCURRED IN.

MARCH 9, 1989

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 155  
2 INTRODUCED BY S. Smith  
3 BY REQUEST OF THE DIVISION OF WORKERS' COMPENSATION  
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5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT A  
6 WORKERS' COMPENSATION INSURER IS NOT LIABLE FOR BENEFITS ON  
7 AN EXISTING CLAIM TO AN EMPLOYEE WHO SUFFERS A NEW INJURY TO  
8 A PREVIOUSLY INJURED PART OF THE BODY IF THE EMPLOYEE  
9 PREVIOUSLY REACHED MAXIMUM HEALING; AND AMENDING SECTION  
10 39-71-407, MCA."  
11  
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
13 **Section 1.** Section 39-71-407, MCA, is amended to read:  
14 "39-71-407. Liability of insurers -- limitations. (1)  
15 Every insurer is liable for the payment of compensation, in  
16 the manner and to the extent hereinafter provided, to an  
17 employee of an employer it insures who receives an injury  
18 arising out of and in the course of his employment or, in  
19 the case of his death from such injury, to his  
20 beneficiaries, if any.  
21 (2) (a) An insurer is liable for an injury as defined  
22 in 39-71-119 if the claimant establishes it is more probable  
23 than not that:  
24 (i) a claimed injury has occurred; or  
25 (ii) a claimed injury aggravated a preexisting

1 condition.  
2 (b) Proof that it was medically possible that a  
3 claimed injury occurred or that such claimed injury  
4 aggravated a preexisting condition is not sufficient to  
5 establish liability.  
6 (3) An employee who suffers an injury or dies while  
7 traveling is not covered by this chapter unless:  
8 (a) (i) the employer furnishes the transportation or  
9 the employee receives reimbursement from the employer for  
10 costs of travel, gas, oil, or lodging as a part of the  
11 employee's benefits or employment agreement; and  
12 (ii) the travel is necessitated by and on behalf of the  
13 employer as an integral part or condition of the employment;  
14 or  
15 (b) the travel is required by the employer as part of  
16 the employee's job duties.  
17 (4) An employee is not eligible for benefits otherwise  
18 payable under this chapter if the employee's use of alcohol  
19 or drugs not prescribed by a physician is the sole and  
20 exclusive cause of the injury or death. However, if the  
21 employer had knowledge of and failed to attempt to stop the  
22 employee's use of alcohol or drugs, this subsection does not  
23 apply.  
24 (5) An insurer is not liable for the payment of  
25 compensation or medical benefits on an existing claim if the

1 employee receives a new injury, as defined in 39-71-119,  
2 regardless of whether the new injury arose out of and in the  
3 course of his employment, if the injury is to the same part  
4 of the body and the worker previously reached maximum  
5 healing. An employee who receives a new work-related injury  
6 shall file a new claim."

7       **Section 2. Extension of authority.** Any existing  
8 authority to make rules on the subject of the provisions of  
9 [this act] is extended to the provisions of [this act].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB155, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 155 would provide that a workers' compensation insurer is not liable for benefits on an existing claim to an employee who suffers a new injury to a previously injured part of the body if the employee previously reached maximum healing.

ASSUMPTIONS:

This bill is to address the results of one court case and does not change the normal claims process.

ESTIMATED EFFECT ON REVENUE AND/OR EXPENDITURES:

There is no way to estimate the cost savings. This is in response to one court decision which extended the liability of the employer's insurance carrier for a non-job related injury to the same part of the body. The impact on the trust fund would be a cost savings but would depend on the number of cases in the future which met the intent of the statutes.

*Ray Shackelford*

RAY/SHACKLEFORD, BUDGET DIRECTOR  
OFFICE OF BUDGET AND PROGRAM PLANNING

*1/19/89*

DATE

*Clyde B. Smith*

CLYDE B. SMITH, PRIMARY SPONSOR

*1-26-89*

DATE

Fiscal Note for HB155, as introduced

**HB 155**

APPROVED BY COMMITTEE  
ON JUDICIARY

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the manner and to the extent hereinafter provided, to an  
employee of an employer it insures who receives an injury  
arising out of and in the course of his employment or, in  
the case of his death from such injury, to his  
beneficiaries, if any.

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

(i) a claimed injury has occurred; or

(ii) a claimed injury aggravated a preexisting  
condition.

(b) Proof that it was medically possible that a  
claimed injury occurred or that such claimed injury  
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establish liability.

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

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

(ii) the travel is necessitated by and on behalf of the  
employer as an integral part or condition of the employment;  
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employer had knowledge of and failed to attempt to stop the  
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apply.

~~(5) An insurer is not liable for the payment of~~

1 ~~compensation or medical benefits on an existing claim if the~~  
2 ~~employee receives a new injury, as defined in 39-71-119,~~  
3 ~~regardless of whether the new injury arose out of and in the~~  
4 ~~course of his employment, if the injury is to the same part~~  
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6 ~~healing. An employee who receives a new work-related injury~~  
7 ~~shall file a new claim~~ IF A CLAIMANT WHO HAS REACHED MAXIMUM  
8 HEALING SUFFERS A SUBSEQUENT NONWORK-RELATED INJURY TO THE  
9 SAME PART OF THE BODY, THE WORKERS' COMPENSATION INSURER IS  
10 NOT LIABLE FOR ANY COMPENSATION OR MEDICAL BENEFITS CAUSED  
11 BY THE SUBSEQUENT NONWORK-RELATED INJURY."

12 NEW SECTION. **Section 2.** Extension of authority. Any  
13 existing authority to make rules on the subject of the  
14 provisions of [this act] is extended to the provisions of  
15 [this act].

-End-

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

(i) a claimed injury has occurred; or

(ii) a claimed injury aggravated a preexisting condition.

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

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15 [this act].

-End-

SENATE STANDING COMMITTEE REPORT

February 28, 1989

MR. PRESIDENT:

We, your committee on Labor and Employment Relations, having had under consideration HB 155 (third reading copy -- blue), respectfully report that HB 155 be amended and as so amended be concurred in:

Sponsor: Smith (Devlin)

1. Title, line 8.

Strike: "NEW"

Insert: "NONWORK-RELATED"

AND AS AMENDED BE CONCURRED IN

Signed:   
Gary C. Aklestad, Chairman

SENATE

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