

House BILL NO. 414

INTRODUCED BY

Stacy *James & Benedit & Alford*

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE NAME AND DUTIES OF THE WORKERS' COMPENSATION CLASSIFICATION AND RATING COMMITTEE; REVISING THE FUNDING REQUIREMENTS FOR THE COMMITTEE; REQUIRING THE COMMITTEE TO ESTABLISH AND REVISE WORKERS' COMPENSATION CLASSIFICATIONS PURSUANT TO THE MONTANA ADMINISTRATIVE PROCEDURE ACT; ELIMINATING THE REQUIREMENT FOR THE COMMITTEE TO ESTABLISH WORKERS' COMPENSATION ADVISORY PREMIUM RATES; ALLOWING ANY POLICYHOLDER OR INSURER TO FILE AN OBJECTION TO A CLASSIFICATION ASSIGNED TO A POLICYHOLDER PURSUANT TO RULES GOVERNING THE ISSUANCE OR APPLICATION OF CLASSIFICATIONS; REVISING THE PROCEDURE FOR A HEARING TO REVIEW CLASSIFICATIONS OR RULES RELATING TO CLASSIFICATIONS; ALLOWING AN ADDITIONAL HEARING BEFORE SEEKING LEGAL REDRESS THROUGH A COURT; CHANGING THE VENUE AND JURISDICTION FOR JUDICIAL REVIEW TO THE WORKERS' COMPENSATION COURT FROM THE DISTRICT COURT FOR APPEALS FROM DECISIONS OF THE CLASSIFICATION REVIEW COMMITTEE; AND AMENDING SECTIONS 2-4-702, 33-16-1011, AND 33-16-1012, MCA."

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

Section 1. Section 2-4-702, MCA, is amended to read:

"2-4-702. Initiating judicial review of contested cases. (1) (a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute.

(b) A party who proceeds before an agency under the terms of a particular statute ~~shall~~ may not be precluded from questioning the validity of that statute on judicial review, but ~~such~~ the party may not raise any other question not raised before the agency unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2) (a) ~~Proceedings~~ Except as provided in subsection (2) (c), proceedings for review ~~shall~~ must be instituted by filing a petition in district court within 30 days after service of the final decision of the agency

1 or, if a rehearing is requested, within 30 days after the decision ~~thereon~~ is rendered. Except as otherwise
 2 provided by statute, the petition ~~shall~~ must be filed in the district court for the county where the petitioner
 3 resides or has ~~his~~ the petitioner's principal place of business or where the agency maintains its principal
 4 office. Copies of the petition ~~shall~~ must be promptly served upon the agency and all parties of record.

5 (b) The petition ~~shall~~ must include a concise statement of the facts upon which jurisdiction and
 6 venue are based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds
 7 specified in 2-4-704(2) upon which the petitioner contends he is entitled to relief. The petition ~~shall~~ must
 8 demand the relief to which the petitioner believes ~~he~~ the petitioner is entitled, and the demand for relief may
 9 be in the alternative.

10 (c) If a petition for review is filed pursuant to 33-16-1012(2)(c), the workers' compensation court,
 11 rather than the district court, has jurisdiction and the provisions of this part apply to the workers'
 12 compensation court in the same manner as the provisions of this part apply to the district court.

13 (3) Unless otherwise provided by statute, the filing of the petition ~~shall~~ may not stay enforcement
 14 of the agency's decision. The agency may grant or the reviewing court may order a stay upon terms ~~which~~
 15 that it considers proper, following notice to the affected parties and an opportunity for hearing. A stay may
 16 be issued without notice only if the provisions of 27-19-315, 27-19-316, and 27-19-317 are met.

17 (4) Within 30 days after the service of the petition or within further time allowed by the court, the
 18 agency shall transmit to the reviewing court the original or a certified copy of the entire record of the
 19 proceeding under review. By stipulation of all parties to the review proceedings, the record may be
 20 shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the
 21 additional costs. The court may require or permit subsequent corrections or additions to the record."
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23 **Section 2.** Section 33-16-1011, MCA, is amended to read:

24 **"33-16-1011. Classification ~~and rating~~ review committee -- membership -- term.** (1) There is a
 25 classification ~~and rating~~ review committee.

26 (2) The committee is composed of five voting members, consisting of:

27 (a) two representatives of private insurance carriers writing workers' compensation insurance in
 28 Montana. The members must be appointed by the Montana commissioner of insurance.

29 (b) one licensed independent insurance producer who resides in Montana, appointed by the
 30 commissioner of insurance;

1 (c) one representative of the state compensation insurance fund who is an employee of the state
2 fund and who is appointed by the ~~executive director~~ president of the state fund; and

3 (d) one representative of an employer who is insured by either a private insurance carrier or the
4 state compensation insurance fund, appointed by the commissioner of insurance.

5 (3) Each member shall hold office for a period of 3 years. An appointee who fills the vacancy of
6 a member whose term has not expired shall fill only the remaining term and may be reappointed for a full
7 term.

8 (4) Before appointments are to be made by the commissioner of insurance under subsections (2)(a),
9 (2)(b), and (2)(d), established private organizations representing insurance carriers, independent insurance
10 producers, and employers may submit names of individuals they recommend for appointments. The
11 commissioner of insurance shall ~~give consideration to~~ consider the names submitted before appointments
12 are made. However, the commissioner of insurance is not required to appoint any person from the names
13 submitted.

14 (5) The committee must be staffed by the rating organization and be funded ~~from the operations~~
15 ~~budget of~~ by the rating organization. Committee members may, if they request, be paid their actual and
16 necessary travel expenses.

17 (6) Documents and other information concerning the committee's actions must be made available
18 for public review in the office of the commissioner of insurance."

19
20 **Section 3.** Section 33-16-1012, MCA, is amended to read:

21 **"33-16-1012. Functions and powers of classification ~~and rating review~~ committee -- hearings --**
22 **rulemaking.** (1) The classification ~~and rating review~~ committee shall:

23 (a) meet not less than semiannually to conduct its business;

24 (b) make the final determination regarding the establishment or revision of all classifications in
25 accordance with the procedures set forth in Title 2, chapter 4, part 3;

26 (c) ~~establish the advisory premium rates as provided for in 33-16-1005;~~

27 (d) publish material and pamphlets as it considers appropriate;

28 (e)(d) act as a review committee concerning objections filed by ~~employers~~ a policyholder or insurer
29 in relation to classifications assigned to ~~the employer by an insurer~~ a policyholder according to rules
30 governing the issuance or application of classifications; and

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0414, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:


An act revising the name and duties of the workers' compensation classification and rating committee; revising the refunding requirements for the committee; requiring the committee to establish and revise worker's compensation classifications pursuant to the Montana Administrative Procedures Act; eliminating the requirement for the committee to establish workers' compensation advisory premium rates; allowing any policyholder or insurer to file an objection to a classification assigned to a policyholder pursuant to rules governing the issuance or application of classifications; revising the procedure for a hearing to review classifications or rules relating to classifications; allowing an additional hearing before seeking legal redress through a court; changing the venue and jurisdiction for judicial review to the workers' compensation court from the district court for appeals from decisions of the classification review committee.

ASSUMPTIONS:

1. The current Classification and Rating Committee will be known as the Classification and Review Committee.
2. The Classification and Review Committee will be authorized to make final determinations regarding establishment or revision of all workers' compensation classifications in Montana in accordance with the Montana Administrative Procedures Act (MAPA).
3. The Classification and Review Committee is authorized to hear disputes between insurers and policyholders regarding classifications.
4. The Classification and Review Committee must use governing rules regarding classifications in rendering decisions.
5. The initial hearing in a dispute is informal and nonbinding. An aggrieved party may initiate an informal contested case proceeding.
6. The Classification and Review Committee may appoint a hearing examiner.
7. After a hearing, an aggrieved party may petition the Workers' Compensation Court for a review in accordance with MAPA.
8. The Classification and Review Committee is staffed and funded by the rating organization appointed.
9. The Classification and Review Committee is not authorized to review the rates of any insurer.

FISCAL IMPACT:

There is potential fiscal impact to the State Fund though the funding of the Classification and Review Committee and the funding for the Workers' Compensation Court. This potential impact cannot be determined though it is anticipated to be minimal.

 2-9-95

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning



HAL HARPER, PRIMARY SPONSOR DATE

Fiscal Note for HB0414, as introduced

HB 414

APPROVED BY COMMITTEE
ON BUSINESS AND LABOR

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INTRODUCED BY HARPER, FORRESTER, BENEDICT, HIBBARD

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7 COMPENSATION CLASSIFICATIONS PURSUANT TO THE MONTANA ADMINISTRATIVE PROCEDURE ACT;
8 ELIMINATING THE REQUIREMENT FOR THE COMMITTEE TO ESTABLISH WORKERS' COMPENSATION
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10 A CLASSIFICATION ASSIGNED TO A POLICYHOLDER PURSUANT TO RULES GOVERNING THE ISSUANCE
11 OR APPLICATION OF CLASSIFICATIONS; REVISING THE PROCEDURE FOR A HEARING TO REVIEW
12 CLASSIFICATIONS OR RULES RELATING TO CLASSIFICATIONS; ALLOWING AN ADDITIONAL HEARING
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10 (c) If a petition for review is filed pursuant to 33-16-1012(2)(c), the workers' compensation court,
 11 rather than the district court, has jurisdiction and the provisions of this part apply to the workers'
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 14 of the agency's decision. The agency may grant or the reviewing court may order a stay upon terms ~~which~~
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17 (4) Within 30 days after the service of the petition or within further time allowed by the court, the
 18 agency shall transmit to the reviewing court the original or a certified copy of the entire record of the
 19 proceeding under review. By stipulation of all parties to the review proceedings, the record may be
 20 shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the
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24 **"33-16-1011. Classification ~~and rating~~ review committee -- membership -- term.** (1) There is a
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26 (2) The committee is composed of five voting members, consisting of:

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 28 Montana. The members must be appointed by the Montana commissioner of insurance.

29 (b) one licensed independent insurance producer who resides in Montana, appointed by the
 30 commissioner of insurance;

1 (c) one representative of the state compensation insurance fund who is an employee of the state
 2 fund and who is appointed by the ~~executive director~~ president EXECUTIVE DIRECTOR of the state fund;
 3 and

4 (d) one representative of an employer who is insured by either a private insurance carrier or the
 5 state compensation insurance fund, appointed by the commissioner of insurance.

6 (3) Each member shall hold office for a period of 3 years. An appointee who fills the vacancy of
 7 a member whose term has not expired shall fill only the remaining term and may be reappointed for a full
 8 term.

9 (4) Before appointments are to be made by the commissioner of insurance under subsections (2)(a),
 10 (2)(b), and (2)(d), established private organizations representing insurance carriers, independent insurance
 11 producers, and employers may submit names of individuals they recommend for appointments. The
 12 commissioner of insurance shall ~~give consideration to~~ consider the names submitted before appointments
 13 are made. However, the commissioner of insurance is not required to appoint any person from the names
 14 submitted.

15 (5) The committee must be staffed by the rating organization and be funded ~~from the operations~~
 16 ~~budget of~~ by the rating organization. Committee members may, if they request, be paid their actual and
 17 necessary travel expenses.

18 (6) Documents and other information concerning the committee's actions must be made available
 19 for public review in the office of the commissioner of insurance."
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21 **Section 3.** Section 33-16-1012, MCA, is amended to read:

22 **"33-16-1012. Functions and powers of classification and rating review committee -- hearings --**
 23 **rulemaking.** (1) The classification ~~and rating review~~ committee shall:

24 (a) meet not less than semiannually to conduct its business;

25 (b) make the final determination regarding the establishment or revision of all classifications in
 26 accordance with the procedures set forth in Title 2, chapter 4, part 3;

27 (c) ~~establish the advisory premium rates as provided for in 33-16-1005;~~

28 ~~(d)~~ publish material and pamphlets as it considers appropriate;

29 ~~(e)~~ (d) act as a review committee concerning objections filed by employers a policyholder or insurer
 30 in relation to classifications assigned to the employer by an insurer a policyholder according to rules

1 governing the issuance or application of classifications; and

2 ~~{f}(e)~~ make rules as may be necessary for the conduct of any business that is subject to notice and
3 hearings. The rules must be published and adopted as provided in Title 2, chapter 4, part 3, and must be
4 published in the Administrative Rules of Montana as part of the rules promulgated by the commissioner of
5 insurance.

6 (2) (a) ~~A~~ The initial hearing conducted by the committee pursuant to subsection ~~{f}(e)~~ (1)(d) must
7 be an informal proceeding as provided in 2-4-604 and nonbinding upon the parties and must be conducted
8 pursuant to rules of procedure that the committee considers to be appropriate. The committee shall issue
9 its written advisory decision within 30 days of the conclusion of the hearing and send a written copy of
10 the decision by first-class mail, postage prepaid, to each party. Each party to the informal hearing shall
11 notify the committee and each other party of the notifying party's intent to be bound or not bound by the
12 committee's advisory decision, and the notice must be made within 30 days of the date the committee
13 mails the written copy of the decision to the parties.

14 (b) A party who is aggrieved by a the advisory decision of the committee, OR BY THE REFUSAL
15 OF A PARTY TO BE BOUND BY THE COMMITTEE'S ADVISORY DECISION rendered after a hearing
16 conducted pursuant to subsection (2)(a) may, petition for judicial review of the decision pursuant to Title
17 2, chapter 4, part 7 within 30 days after the written advisory decision is mailed EXPIRATION OF THE
18 30-DAY NOTICE DEADLINE SPECIFIED IN SUBSECTION (2)(A), initiate an informal contested case
19 proceeding pursuant to 2-4-604 before the committee, and the committee shall hear the matter in a de novo
20 administrative proceeding as provided in Title 2, chapter 4, part 6. The committee may, in its discretion
21 or at the request of any party, appoint a hearings examiner. If a hearings examiner is appointed, the
22 examiner shall take evidence and prepare proposed findings of fact and conclusions of law that the
23 committee may accept, reject, or modify, in whole or in part, based on the evidence produced during the
24 informal contested case proceeding.

25 (c) A party who is aggrieved by a decision of the committee rendered after a hearing conducted
26 pursuant to subsection (2)(b) may petition the workers' compensation court for judicial review of the
27 decision pursuant to Title 2, chapter 4, part 7.

28 (3) The committee is subject to the provisions of Title 2, chapter 3, parts 1 and 2."

29

-END-

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 24 of judicial review available under other means of review, redress, relief, or trial de novo provided by statute.

25 (b) A party who proceeds before an agency under the terms of a particular statute ~~shall~~ may not
 26 be precluded from questioning the validity of that statute on judicial review, but ~~such~~ the party may not
 27 raise any other question not raised before the agency unless it is shown to the satisfaction of the court that
 28 there was good cause for failure to raise the question before the agency.

29 (2) (a) ~~Proceedings~~ Except as provided in subsection (2) (c), proceedings for review ~~shall~~ must be
 30 instituted by filing a petition in district court within 30 days after service of the final decision of the agency

1 or, if a rehearing is requested, within 30 days after the decision ~~thereon~~ is rendered. Except as otherwise
 2 provided by statute, the petition ~~shall~~ must be filed in the district court for the county where the petitioner
 3 resides or has ~~his~~ the petitioner's principal place of business or where the agency maintains its principal
 4 office. Copies of the petition ~~shall~~ must be promptly served upon the agency and all parties of record.

5 (b) The petition ~~shall~~ must include a concise statement of the facts upon which jurisdiction and
 6 venue are based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds
 7 specified in 2-4-704(2) upon which the petitioner contends he is entitled to relief. The petition ~~shall~~ must
 8 demand the relief to which the petitioner believes ~~he~~ the petitioner is entitled, and the demand for relief may
 9 be in the alternative.

10 (c) If a petition for review is filed pursuant to 33-16-1012(2)(c), the workers' compensation court,
 11 rather than the district court, has jurisdiction and the provisions of this part apply to the workers'
 12 compensation court in the same manner as the provisions of this part apply to the district court.

13 (3) Unless otherwise provided by statute, the filing of the petition ~~shall~~ may not stay enforcement
 14 of the agency's decision. The agency may grant or the reviewing court may order a stay upon terms ~~which~~
 15 that it considers proper, following notice to the affected parties and an opportunity for hearing. A stay may
 16 be issued without notice only if the provisions of 27-19-315, 27-19-316, and 27-19-317 are met.

17 (4) Within 30 days after the service of the petition or within further time allowed by the court, the
 18 agency shall transmit to the reviewing court the original or a certified copy of the entire record of the
 19 proceeding under review. By stipulation of all parties to the review proceedings, the record may be
 20 shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the
 21 additional costs. The court may require or permit subsequent corrections or additions to the record."
 22

23 **Section 2.** Section 33-16-1011, MCA, is amended to read:

24 **"33-16-1011. Classification ~~and rating~~ review committee -- membership -- term.** (1) There is a
 25 classification ~~and rating~~ review committee.

26 (2) The committee is composed of five voting members, consisting of:

27 (a) two representatives of private insurance carriers writing workers' compensation insurance in
 28 Montana. The members must be appointed by the Montana commissioner of insurance.

29 (b) one licensed independent insurance producer who resides in Montana, appointed by the
 30 commissioner of insurance;

1 (c) one representative of the state compensation insurance fund who is an employee of the state
 2 fund and who is appointed by the ~~executive director~~ ~~president~~ EXECUTIVE DIRECTOR of the state fund;
 3 and

4 (d) one representative of an employer who is insured by either a private insurance carrier or the
 5 state compensation insurance fund, appointed by the commissioner of insurance.

6 (3) Each member shall hold office for a period of 3 years. An appointee who fills the vacancy of
 7 a member whose term has not expired shall fill only the remaining term and may be reappointed for a full
 8 term.

9 (4) Before appointments are to be made by the commissioner of insurance under subsections (2)(a),
 10 (2)(b), and (2)(d), established private organizations representing insurance carriers, independent insurance
 11 producers, and employers may submit names of individuals they recommend for appointments. The
 12 commissioner of insurance shall ~~give consideration to~~ consider the names submitted before appointments
 13 are made. However, the commissioner of insurance is not required to appoint any person from the names
 14 submitted.

15 (5) The committee must be staffed by the rating organization and be funded ~~from the operations~~
 16 ~~budget of~~ by the rating organization. Committee members may, if they request, be paid their actual and
 17 necessary travel expenses.

18 (6) Documents and other information concerning the committee's actions must be made available
 19 for public review in the office of the commissioner of insurance."
 20

21 **Section 3.** Section 33-16-1012, MCA, is amended to read:

22 **"33-16-1012. Functions and powers of classification ~~and rating~~ review committee -- hearings --**
 23 **rulemaking.** (1) The classification ~~and rating~~ review committee shall:

24 (a) ~~meet~~ not less than semiannually to conduct its business;

25 (b) make the final determination regarding the establishment or revision of all classifications in
 26 accordance with the procedures set forth in Title 2, chapter 4, part 3;

27 (c) ~~establish the advisory premium rates as provided for in 33-16-1005;~~

28 ~~(d)~~ publish material and pamphlets as it considers appropriate;

29 ~~(e)(d)~~ act as a review committee concerning objections filed by ~~employers~~ a policyholder or insurer
 30 in relation to classifications assigned to ~~the employer by an insurer~~ a policyholder according to rules

1 governing the issuance or application of classifications; and

2 ~~(#)(e)~~ make rules as may be necessary for the conduct of any business that is subject to notice and
3 hearings. The rules must be published and adopted as provided in Title 2, chapter 4, part 3, and must be
4 published in the Administrative Rules of Montana as part of the rules promulgated by the commissioner of
5 insurance.

6 (2) (a) ~~A~~ The initial hearing conducted by the committee pursuant to subsection ~~(#)(e)~~ (1)(d) must
7 be an informal proceeding as provided in 2-4-604 and nonbinding upon the parties and must be conducted
8 pursuant to rules of procedure that the committee considers to be appropriate. The committee shall issue
9 its written advisory decision within 30 days of the conclusion of the hearing and send a written copy of
10 the decision by first-class mail, postage prepaid, to each party. Each party to the informal hearing shall
11 notify the committee and each other party of the notifying party's intent to be bound or not bound by the
12 committee's advisory decision, and the notice must be made within 30 days of the date the committee
13 mails the written copy of the decision to the parties.

14 (b) A party who is aggrieved by a the advisory decision of the committee, OR BY THE REFUSAL
15 OF A PARTY TO BE BOUND BY THE COMMITTEE'S ADVISORY DECISION rendered after a hearing
16 conducted pursuant to subsection (2)(a) may, ~~petition for judicial review of the decision pursuant to Title~~
17 ~~2, chapter 4, part 7~~ within 30 days after the written advisory decision is mailed EXPIRATION OF THE
18 30-DAY NOTICE DEADLINE SPECIFIED IN SUBSECTION (2)(A), initiate an informal contested case
19 proceeding pursuant to 2-4-604 before the committee, and the committee shall hear the matter in a de novo
20 administrative proceeding as provided in Title 2, chapter 4, part 6. The committee may, in its discretion
21 or at the request of any party, appoint a hearings examiner. If a hearings examiner is appointed, the
22 examiner shall take evidence and prepare proposed findings of fact and conclusions of law that the
23 committee may accept, reject, or modify, in whole or in part, based on the evidence produced during the
24 informal contested case proceeding.

25 (c) A party who is aggrieved by a decision of the committee rendered after a hearing conducted
26 pursuant to subsection (2)(b) may petition the workers' compensation court for judicial review of the
27 decision pursuant to Title 2, chapter 4, part 7.

28 (3) The committee is subject to the provisions of Title 2, chapter 3, parts 1 and 2."

29 -END-