

HOUSE BILL NO. 516

INTRODUCED BY K. WALSH, M. THIEL, M. CUFFE, L. JONES, W. MCKAMEY, D. HARVEY, S. FITZPATRICK, A. OLSEN, G. PARRY

A BILL FOR AN ACT ENTITLED: "AN ACT TRANSFERRING THE WORKERS' COMPENSATION JUDGE FROM THE DEPARTMENT OF LABOR AND INDUSTRY TO THE JUDICIAL BRANCH; PROVIDING FOR SUPERVISION AND ADMINISTRATION BY THE SUPREME COURT; CREATING A WORKERS' COMPENSATION COURT FUND AND PROVIDING FOR AN ANNUAL TRANSFER OF FUNDS TO THE FUND; PROVIDING FOR A TRANSITION; PROVIDING FOR A ONE-TIME ELECTION FOR THE CURRENT WORKERS' COMPENSATION JUDGE TO ELECT TO REMAIN IN THE JUDGE'S CURRENT RETIREMENT SYSTEM; AMENDING SECTIONS 2-15-1707, 19-5-301, AND 39-71-201, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 2-15-1707, MCA, is amended to read:

"2-15-1707. ~~Office of workers' compensation judge -- allocation -- appointment -- term -- qualifications -- salary.~~ Workers' compensation judge (1) ~~There is the office of workers' compensation judge. The office is allocated to the department of labor and industry for administrative purposes only as prescribed in 2-15-121.~~ There is a workers' compensation court. The workers' compensation court is presided over by a workers' compensation judge.

(2) The governor shall appoint the workers' compensation judge for a term of 6 years in the same manner provided by Title 3, chapter 1, part 9, for the appointment of supreme court justices or district court judges. A vacancy must be filled in the same manner as the original appointment.

(3) To be eligible for workers' compensation judge, a person must:

(a) have the qualifications necessary for district court judges found in Article VII, section 9, of the Montana constitution;

(b) devote full time to the duties of workers' compensation judge and not engage in the private practice of law.

1 (4) The workers' compensation judge is entitled to the same salary and ~~other emoluments as that~~
 2 ~~of a district judge but must be accorded retirement benefits under the public employees' retirement system~~
 3 expense allowances as provided in 3-5-211."
 4

5 NEW SECTION. Section 2. Supervision and administration by supreme court. (1) The Montana
 6 supreme court shall supervise the activities of the workers' compensation court, the workers' compensation
 7 judge, and associated personnel in implementing [section 3] and this section.

8 (2) The supreme court shall pay the expenses of the workers' compensation judge and the salaries
 9 and expenses of the workers' compensation judge's staff from appropriations made for that purpose.

10 (3) Salaries and expenses must be paid out of the workers' compensation court fund provided in
 11 [section 3].

12 (4) As used in this section, "salaries and expenses" include but are not limited to the salaries and
 13 expenses of personnel, the cost of office equipment and office space, and other necessary expenses that may
 14 be incurred in the administration of [section 3] and this section.
 15

16 NEW SECTION. Section 3. Workers' compensation court fund -- annual transfer of funds. (1)
 17 There is a workers' compensation court fund special revenue account within the state special revenue fund
 18 established in 17-2-102. The money in the account must be used solely for the purpose of administering the
 19 workers' compensation court as provided in [section 2].

20 (2) By July 15 of each fiscal year, the department of labor and industry shall transfer \$500,000
 21 from the workers' compensation administration fund established in 39-71-201 to the workers' compensation
 22 court fund.
 23

24 **Section 4.** Section 19-5-301, MCA, is amended to read:

25 **"19-5-301. Membership -- inactive vested members -- inactive nonvested members.** (1) Except
 26 for a judge or justice who elected in writing to remain under the public employees' retirement system on or
 27 before October 1, 1985, or a workers' compensation judge who elected in writing to remain under the public
 28 employees' retirement system on or before October 1, 2025, a judge of a district court, a justice of the supreme

1 court, and the chief water judge or associate water judge provided for in 3-7-221, and the workers'
2 compensation judge provided for in 2-15-1707 must be members of the Montana judges' retirement system.

3 (2) A judge pro tempore is not eligible for active membership in the retirement system.

4 (3) A member with at least 5 years of membership service who terminates service and does not
5 take a refund of the member's accumulated contributions is an inactive vested member and retains the right to
6 purchase service credit and to receive a retirement benefit under the provisions of this chapter.

7 (4) A member with less than 5 years of membership service who terminates service and leaves the
8 member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not
9 eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund
10 of the member's accumulated contributions."
11

12 **Section 5.** Section 39-71-201, MCA, is amended to read:

13 **"39-71-201. Workers' compensation administration fund.** (1) A workers' compensation
14 administration fund is established out of which are to be paid upon lawful appropriation all costs of
15 administering the Workers' Compensation Act, with the exception of the certification of independent contractors
16 provided for in Title 39, chapter 71, part 4, the subsequent injury fund provided for in 39-71-907, and the
17 uninsured employers' fund provided for in 39-71-503. The department may use the workers' compensation
18 administration fund to reimburse premiums for high-quality work-based learning programs, as provided in 39-
19 71-319. The department shall collect and deposit in the state treasury to the credit of the workers'
20 compensation administration fund:

21 (a) all fees and penalties provided in 39-71-107, 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-
22 71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; and

23 (b) all fees paid by an assessment on paid losses, plus administrative fines and interest provided
24 by this section.

25 (2) For the purposes of this section, paid losses include the following benefits paid during the
26 preceding calendar year for injuries covered by the Workers' Compensation Act without regard to the
27 application of any deductible whether the employer or the insurer pays the losses:

28 (a) total compensation benefits paid; and

1 (b) except for medical benefits in excess of \$200,000 for each occurrence that are exempt from
2 assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital
3 treatment and prescription drugs.

4 (3) Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of this section, and plan
5 No. 3, the state fund, shall file annually on March 1 in the form and containing the information required by the
6 department a report of paid losses pursuant to subsection (2).

7 (4) Each employer enrolled under compensation plan No. 1, compensation plan No. 2, or
8 compensation plan No. 3, the state fund, shall pay its proportionate share determined by the paid losses in the
9 preceding calendar year of all costs of administering and regulating the Workers' Compensation Act, with the
10 exception of the certification of independent contractors provided for in Title 39, chapter 71, part 4, the
11 subsequent injury fund provided for in 39-71-907, and the uninsured employers' fund provided for in 39-71-503.
12 In addition, compensation plan No. 3, the state fund, shall pay a proportionate share of these costs based upon
13 paid losses for claims arising before July 1, 1990.

14 (5) (a) Each employer enrolled under compensation plan No. 1 shall pay an assessment to fund
15 administrative and regulatory costs. The assessment may be up to 4% of the paid losses paid in the preceding
16 calendar year by or on behalf of the plan No. 1 employer. Any entity, other than the department, that assumes
17 the obligations of an employer enrolled under compensation plan No. 1 is considered to be the employer for the
18 purposes of this section.

19 (b) An employer formerly enrolled under compensation plan No. 1 shall pay an assessment to fund
20 administrative and regulatory costs. The assessment may be up to 4% of the paid losses paid in the preceding
21 calendar year by or on behalf of the employer for claims arising out of the time when the employer was enrolled
22 under compensation plan No. 1.

23 (c) By April 30 of each year, the department shall notify employers described in subsections (5)(a)
24 and (5)(b) of the percentage of the assessment that comprises the compensation plan No. 1 proportionate
25 share of administrative and regulatory costs. The assessment provided for by this subsection (5) must be paid
26 by the employer in:

27 (i) one installment due on July 1; or

28 (ii) two equal installments due on July 1 and December 31 of each year.

1 (d) If an employer fails to timely pay to the department the assessment under this section, the
2 department may impose on the employer an administrative fine of \$500 plus interest on the delinquent amount
3 at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers'
4 compensation administration fund and may be used to pay the reimbursement of premiums required under 39-
5 71-319.

6 (6) (a) Compensation plan No. 3, the state fund, shall pay an assessment to fund administrative
7 and regulatory costs attributable to claims arising before July 1, 1990. The assessment may be up to 4% of the
8 paid losses paid in the preceding calendar year for claims arising before July 1, 1990. As required by 39-71-
9 2352, the state fund may not pass along to insured employers the cost of the assessment for administrative and
10 regulatory costs that is attributable to claims arising before July 1, 1990.

11 (b) The assessment must be paid in:

12 (i) one installment due on July 1; or

13 (ii) two equal installments due on July 1 and December 31 of each year.

14 (c) If the state fund fails to timely pay to the department the assessment under this section, the
15 department may impose on the state fund an administrative fine of \$500 plus interest on the delinquent amount
16 at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers'
17 compensation administration fund.

18 (7) (a) Each employer insured under compensation plan No. 2 or plan No. 3, the state fund, shall
19 pay a premium surcharge to fund administrative and regulatory costs. The premium surcharge must be
20 collected by each plan No. 2 insurer and by plan No. 3, the state fund, from each employer that it insures. The
21 premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate
22 document submitted to the insured employer and must be identified as "workers' compensation regulatory
23 assessment surcharge". The premium surcharge must be excluded from the definition of premiums for all
24 purposes, including computation of insurance producers' commissions or premium taxes. However, an insurer
25 may cancel a workers' compensation policy for nonpayment of the premium surcharge. When collected,
26 assessments may not constitute an element of loss for the purpose of establishing rates for workers'
27 compensation insurance but, for the purpose of collection, must be treated as a separate cost imposed upon
28 insured employers.

1 (b) The amount to be funded by the premium surcharge may be up to 4% of the paid losses paid in
2 the preceding calendar year by or on behalf of all plan No. 2 insurers and may be up to 4% of paid losses for
3 claims arising on or after July 1, 1990, for plan No. 3, the state fund, plus or minus any adjustments as provided
4 by subsection (7)(f). The amount to be funded must be divided by the total premium paid by all employers
5 enrolled under compensation plan No. 2 or plan No. 3 during the preceding calendar year. A single premium
6 surcharge rate, applicable to all employers enrolled in compensation plan No. 2 or plan No. 3, must be
7 calculated annually by the department by not later than April 30. The resulting rate, expressed as a percentage,
8 is levied against the premium paid by each employer enrolled under compensation plan No. 2 or plan No. 3 in
9 the next fiscal year.

10 (c) On or before April 30 of each year, the department, in consultation with the advisory
11 organization designated pursuant to 33-16-1023, shall notify plan No. 2 insurers and plan No. 3, the state fund,
12 of the premium surcharge percentage to be effective for policies written or renewed annually on and after July 1
13 of that year.

14 (d) The premium surcharge must be paid whenever the employer pays a premium to the insurer.
15 Each insurer shall collect the premium surcharge levied against every employer that it insures. Each insurer
16 shall pay to the department all money collected as a premium surcharge within 20 days of the end of the
17 calendar quarter in which the money was collected. If an insurer fails to timely pay to the department the
18 premium surcharge collected under this section, the department may impose on the insurer an administrative
19 fine of \$500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and
20 interest must be deposited in the workers' compensation administration fund and may be used to pay the
21 reimbursement of premiums required under 39-71-319.

22 (e) If an employer fails to remit to an insurer the total amount due for the premium and premium
23 surcharge, the amount received by the insurer must be applied to the premium surcharge first and the
24 remaining amount applied to the premium due.

25 (f) The amount actually collected as a premium surcharge in a given year must be compared to
26 the assessment on the paid losses paid in the preceding year. Any excess amount collected must be deducted
27 from the amount to be collected as a premium surcharge in the following year. The amount collected that is less
28 than the assessed amount must be added to the amount to be collected as a premium surcharge in the

1 following year.

2 (8) By July 1, an insurer under compensation plan No. 2 that paid benefits in the preceding
3 calendar year but that will not collect any premium for coverage in the following fiscal year shall pay an
4 assessment of up to 4% of paid losses paid in the preceding calendar year. The department shall determine
5 and notify the insurer by April 30 of each year of the amount that is due by July 1.

6 (9) An employer that makes a first-time application for permission to enroll under compensation
7 plan No. 1 shall pay an assessment of \$500 within 15 days of being granted permission by the department to
8 enroll under compensation plan No. 1.

9 (10) The department shall deposit all funds received pursuant to this section in the state treasury, as
10 provided in this section.

11 (11) The administration fund must be debited with expenses incurred by the department in the
12 general administration of the provisions of this chapter, including the salaries of its members, officers, and
13 employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501
14 through 2-18-503, incurred while on the business of the department either within or without the state.
15 Reimbursement of premiums required under 39-71-319 by the workers' compensation administration fund also
16 is a debit on the fund.

17 (12) Disbursements from the administration fund must be made after being approved by the
18 department upon claim for disbursement.

19 (13) The department shall transfer funds to the workers' compensation court fund as provided by
20 [section 3].

21 ~~(13)~~(14)The department may assess and collect the workers' compensation regulatory assessment
22 surcharge from uninsured employers, as defined in 39-71-501, that fail to properly comply with the coverage
23 requirements of the Workers' Compensation Act. Any amounts collected by the department pursuant to this
24 subsection must be deposited in the workers' compensation administration fund."
25

26 **NEW SECTION. Section 6. Transition -- rights of personnel -- rights to property -- rules and**
27 **orders -- legal proceedings -- rights of duties under existing transactions -- references.** (1) (a) The
28 workers' compensation judge and each employee of the office of workers' compensation judge affected by the

1 transfer of the office from the executive branch to the judicial branch are entitled to all rights that the judge or
2 employee possessed as a judge or employee before [the effective date of this act], including:

- 3 (i) rights to tenure in office and of pay;
- 4 (ii) rights to vacation pay, sick pay, and leave;
- 5 (iii) rights under any retirement or personnel plan or labor union contract;
- 6 (iv) rights to compensatory time earned; and
- 7 (v) any other rights under any law or administrative policy.

8 (b) This section is not intended to create any new rights for the workers' compensation judge or
9 any employee but to continue only those rights in effect before [the effective date of this act].

10 (2) The supreme court succeeds to the rights to all real and personal property of that agency
11 relating to the functions or parts of the office of workers' compensation judge. The property includes real
12 property, records, office equipment, supplies, contracts, books, papers, documents, maps, appropriations,
13 accounts within and outside of the state treasury, funds, vehicles, and all other similar property. However, the
14 supreme court may not use or divert money in a fund or account for a purpose other than provided by law. The
15 governor shall resolve any conflict as to the proper disposition of the property, and the governor's decision is
16 final.

17 (3) The supreme court succeeds to the rules and orders of the office of workers' compensation
18 judge relating to the functions or parts of functions transferred in [this act]. The rules and orders of the office of
19 workers' compensation judge in effect before [the effective date of this act] remain in effect until amended,
20 repealed, superseded, or nullified by proper authority or by law.

21 (4) The transfer of the office of workers' compensation judge to the judicial branch does not affect
22 the validity of any judicial or administrative proceeding pending or that may have been commenced before [the
23 effective date of this act].

24 (5) The rights, privileges, and duties of the holders of bonds and other obligations issued and of
25 the parties to contracts, leases, indentures, and other transactions entered into by the office of workers'
26 compensation judge before [the effective date of this act], by the state or by any agency, officer, or employee of
27 the state or any agency, and covenants and agreements remain in effect, and none of those rights, privileges,
28 duties, covenants, or agreements are impaired or diminished by reason of the transfer of the functions of the

1 office of workers' compensation judge. The supreme court is substituted for the department of labor and
2 industry and succeeds to its rights and duties under the provisions of those bonds, contracts, leases,
3 indentures, and other transactions related to the office of workers' compensation judge.

4 (6) Unless inconsistent with the provisions of [this act], references to the office of workers'
5 compensation judge in any contract or other document must apply to the supreme court.

6
7 **NEW SECTION. Section 7. Retirement plan election for workers' compensation judge.** A
8 workers' compensation judge who is an active member of the public employees' retirement system on [the
9 effective date of this act] may elect to remain under that system by notifying the public employees' retirement
10 board in writing of the election on or before October 1, 2025.

11
12 **NEW SECTION. Section 8. Directions to code commissioner.** (1) Section 2-15-1707 is intended to
13 be renumbered and codified as a new chapter in Title 3.

14 (2) The code commissioner is instructed to renumber sections currently in Title 39, chapter 71, part
15 29, into the same new chapter in Title 3 as [sections 2 and 3] and 2-15-1707.

16 (3) The code commissioner is instructed to change all internal references within and to the
17 renumbered subsections in the Montana Code Annotated, including within sections enacted or amended by the
18 2025 legislature, to reflect the new section numbers assigned pursuant to this section.

19 (4) Any section enacted by the 2025 legislature that is to be codified in Title 39, chapter 71, part
20 29, must be codified as an integral part of the new chapter, and the provisions of the new chapter apply to the
21 enacted sections.

22
23 **NEW SECTION. Section 9. Codification instruction.** [Sections 2 and 3] are intended to be codified
24 as a new chapter in Title 3, and the provisions of Title 3 apply to [sections 2 and 3].

25
26 **NEW SECTION. Section 10. Saving clause.** [This act] does not affect rights and duties that
27 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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