AN ACT GENERALLY REVISING WORKERS' COMPENSATION LAWS; REVISING THE DEFINITION OF EMPLOYER FOR WORKERS' COMPENSATION COVERAGE; REVISING THE FREQUENCY OF SUMMARY REPORTS SUBMITTED BY INSURERS; REVISING PROVISIONS FOR MEDICAL STATUS FORMS; AND AMENDING SECTIONS 39-71-117, 39-71-201, 39-71-306, AND 39-71-1036, MCA.

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

Section 1. Section 39-71-117, MCA, is amended to read:

"**39-71-117. Employer defined.** (1) "Employer" means:

(a) the state and each county, city and county, city school district, and irrigation district; all other districts established by law; all public corporations and quasi-public corporations and public agencies; each person; each prime contractor; each firm, voluntary association, limited liability company, limited liability partnership, and private corporation, including any public service corporation and including an independent contractor who has a person in service under an appointment or contract of hire, expressed or implied, oral or written; and the legal representative of any deceased employer or the receiver or trustee of the deceased employer;

(b) any association, corporation, limited liability company, limited liability partnership, or organization that seeks permission and meets the requirements set by the department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter;

(c) any nonprofit association, limited liability company, limited liability partnership, or corporation or other entity funded in whole or in part by federal, state, or local government funds that places community service participants, as described in 39-71-118(1)(e), with nonprofit organizations or associations or federal, state, or local government entities;

(d) subject to subsection (5), a religious corporation, religious organization, or religious trust

receiving remuneration from nonmembers for:

(i) manufacturing or construction activities conducted by its members on or off the property owned or leased by the religious corporation, religious organization, or religious trust; or

(ii) agricultural labor and services performed off the property owned or leased by the religious corporation, religious organization, or religious trust; and

(e) an approved and authorized fiduciary, agent, or other person acting as fiscal agent under section 3504 of the Internal Revenue Code, 26 U.S.C. 3504, and 26 CFR 31.3504-1.

(2) A temporary service contractor is the employer of a temporary worker for premium and loss experience purposes.

(3) Except as provided in chapter 8 of this title, an employer defined in subsection (1) who uses the services of a worker furnished by another person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, is presumed to be the employer for workers' compensation premium and loss experience purposes for work performed by the worker. The presumption may be rebutted by substantial credible evidence ~~of the following~~ that ~~:~~

~~(a)~~ the person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, furnishing the services of a worker to another retains control over all aspects of the work performed by the worker, both at the inception of employment and during all phases of the work~~; and~~

~~(b) the person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, furnishing the services of a worker to another has obtained workers' compensation insurance for the worker in Montana both at the inception of employment and during all phases of the work performed~~.

(4) An interstate or intrastate common or contract motor carrier that maintains a place of business in this state and uses an employee or worker in this state is considered the employer of that employee, is liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:

(a) the worker in this state is certified as an independent contractor as provided in 39-71-417; or

(b) the person, association, contractor, firm, limited liability company, limited liability partnership, or corporation furnishing employees or workers in this state to a motor carrier has obtained Montana workers'

compensation insurance on the employees or workers in Montana both at the inception of employment and during all phases of the work performed.

(5) The definition of "employer" in subsection (1)(d) is limited to implementing the administrative purposes of this chapter and may not be interpreted or construed to create an employment relationship in any other context.

(6) (a) A fiscal agent that qualifies under subsection (1)(e) and that is designated as a payor, using federal, state, or local government funds, under 26 CFR 31.3504-1 is considered to be the employer for the purposes of the Workers' Compensation Act of those workers for whom the fiscal agent is making payments.

(b) The client of the fiscal agent, despite exercising control over the hiring, scheduling, and direction of the work tasks performed by the worker, is not the employer of that worker for the purposes of the Workers' Compensation Act."

Section 2. Section 39-71-201, MCA, is amended to read:

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

(a) all fees and penalties provided in 39-71-107, 39-71-205, 39-71-223, 39-71-304, 39-71-306, 39-71-307, 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; and

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

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

(a) total compensation benefits paid; and

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

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

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

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

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

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

(i) one installment due on July 1; or

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

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

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

(b) The assessment must be paid in:

(i) one installment due on July 1; or

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

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

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

insured employers.

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

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

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

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

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

than the assessed amount must be added to the amount to be collected as a premium surcharge in the following year.

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

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

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

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

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

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

Section 3. Section 39-71-306, MCA, is amended to read:

"**39-71-306. Insurers to file summary reports of benefits paid for injuries and miscellaneous expenses and statements of medical expenditures.** (1) ~~Each insurer shall, on or before the 15th day after each state government fiscal quarter ends,~~ By January 15 of each year, each insurer shall file with the

department:

(a) summary reports of benefits for all compensation payments made during the previous ~~state fiscal quarter~~ calendar year to injured workers or their beneficiaries or dependents;

(b) statements showing the amounts expended during the previous ~~state fiscal quarter~~ calendar year for all medical services for injured workers; and

(c) statements showing all miscellaneous amounts, other than compensation and medical expenditures, paid during the previous ~~state fiscal quarter~~ calendar year to or on behalf of injured workers or their beneficiaries or dependents and not otherwise reported as an expenditure for the workers' compensation administration assessment provided for in 39-71-201.

(2) An insurer that fails to file the summary report required by this section or the annual paid losses report required in 39-71-201 within 5 days after the date on which either report is due may be assessed a penalty in an amount of not less than $250 or more than $1,000 to be deposited in the workers' compensation administration fund."

Section 4. Section 39-71-1036, MCA, is amended to read:

"**39-71-1036. Medical status form.** (1) The department shall create a medical status form to be provided to a health care provider providing treatment for a compensable injury or occupational disease.

(2) The form must contain, at a minimum, the following information:

(a) the worker's first and last names and claim number;

(b) the ~~diagnosed condition~~ affected body part that is ~~a direct result of~~ directly related to the compensable injury or occupational disease;

~~(c) the treatment plan for the worker;~~

~~(d) identification of any medications prescribed for treatment of the worker;~~

~~(e)~~(c) the timeframe during which the treating physician recommends that the worker be completely off work;

~~(f)~~(d) the date or anticipated date of the worker's release to modified duty;

~~(g)~~(e) the date or anticipated date of the worker's release to full duty;

~~(h)~~(f) any temporary work restrictions applicable to the worker;

~~(i)~~(g) any permanent work restrictions applicable to the worker; and

~~(j) the anticipated date of maximum medical improvement; and~~

~~(k)~~(h) the date of the worker's next appointment.

(3) An insurer may request additional information from the health care provider not contained in the department's form.

(4) The treating physician or a designee shall complete the form following every office visit with the worker."

- END -

I hereby certify that the within bill,

HB 428, originated in the House.

_____

Chief Clerk of the House

_____

Speaker of the House

Signed this _____day

of_____, 2025.

_____

President of the Senate

Signed this _____day
of_____, 2025.

HOUSE BILL NO. 428

INTRODUCED BY M. THIEL

AN ACT GENERALLY REVISING WORKERS' COMPENSATION LAWS; REVISING THE DEFINITION OF EMPLOYER FOR WORKERS' COMPENSATION COVERAGE; REVISING THE FREQUENCY OF SUMMARY REPORTS SUBMITTED BY INSURERS; REVISING PROVISIONS FOR MEDICAL STATUS FORMS; AND AMENDING SECTIONS 39-71-117, 39-71-201, 39-71-306, AND 39-71-1036, MCA.