

SENATE BILL NO. 394

INTRODUCED BY C. NEUMANN, J. REAVIS, G. HUNTER, W. MCKAMEY, D. HARVEY, M. YAKAWICH, B.

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR WORKERS' COMPENSATION COVERAGE OF POSTTRAUMATIC STRESS DISORDER FOR FIRST RESPONDERS; PROVIDING A DEFINITION; AMENDING SECTIONS 39-71-105, 39-71-116, AND 39-71-119, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

NEW SECTION. Section 1. Coverage for posttraumatic stress disorder for first responders -- definitions. (1) A first responder may have a compensable claim under Montana's workers' compensation and occupational disease laws relating to posttraumatic stress disorder as provided in this section.

(2) A first responder must be diagnosed with posttraumatic stress disorder, according to the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American psychiatric association. The diagnosis for posttraumatic stress disorder must find that the injury or occupational disease arises out of the course and scope of employment of the first responder.

(3) A claim for posttraumatic stress disorder is subject to the provisions of Title 39, chapter 71, unless the context requires otherwise.

(4) For the purposes of this section, the term "first responder" means:

(a) a firefighter;

(b) a law enforcement officer;

(c) an employee of a county detention center or prison; or

(d) any other authorized person who responds to an emergency in a professional capacity.

Section 2. Section 39-71-105, MCA, is amended to read:

"39-71-105. (Temporary) Declaration of public policy. For the purposes of interpreting and

1 applying this chapter, the following is the public policy of this state:

2 (1) An objective of the Montana workers' compensation system is to provide, without regard to
3 fault, wage-loss and medical benefits to a worker suffering from a work-related injury or disease. Wage-loss
4 benefits are not intended to make an injured worker whole but are intended to provide assistance to a worker at
5 a reasonable cost to the employer. Within that limitation, the wage-loss benefit should bear a reasonable
6 relationship to actual wages lost as a result of a work-related injury or disease.

7 (2) It is the intent of the legislature to assert that a conclusive presumption exists that recognizes
8 that a holder of a current, valid independent contractor exemption certificate issued by the department is an
9 independent contractor if the person is working under the independent contractor exemption certificate. The
10 holder of an independent contractor exemption certificate waives the rights, benefits, and obligations of this
11 chapter unless the person has elected to be bound personally and individually by the provisions of
12 compensation plan No. 1, 2, or 3.

13 (3) A worker's removal from the workforce because of a work-related injury or disease has a
14 negative impact on the worker, the worker's family, the employer, and the general public. Therefore, an
15 objective of the workers' compensation system is to return a worker to work as soon as possible after the
16 worker has suffered a work-related injury or disease.

17 (4) Montana's workers' compensation and occupational disease insurance systems are intended to
18 be primarily self-administering. Claimants should be able to speedily obtain benefits, and employers should be
19 able to provide coverage at reasonably constant rates. To meet these objectives, the system must be designed
20 to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities.

21 (5) This chapter must be construed according to its terms and not liberally in favor of any party.

22 (6) It is the intent of the legislature that:

23 (a) except as provided in [section 1], a stress claim, often referred to as a "mental-mental claim" or
24 a "mental-physical claim", is not compensable under Montana's workers' compensation and occupational
25 disease laws. The legislature recognizes that these claims are difficult to objectively verify and that the claims
26 have a potential to place an economic burden on the workers' compensation and occupational disease system.
27 The legislature also recognizes that there are other states that do not provide compensation for various
28 categories of stress claims and that stress claims have presented economic problems for certain other

1 jurisdictions. In addition, not all injuries are compensable under the present system, and it is within the
2 legislature's authority to define the limits of the workers' compensation and occupational disease system.
3 However, it is also within the legislature's authority to recognize the public service provided by firefighters and
4 to join with other states that have extended a presumptive occupational disease recognition to firefighters.

5 (b) for occupational disease or presumptive occupational disease claims, because of the nature of
6 exposure, workers should not be required to provide notice to employers of the disease as required of injuries
7 and that the requirements for filing of claims reflect consideration of when the worker knew or should have
8 known that the worker's condition resulted from an occupational disease or a presumptive occupational
9 disease. The legislature recognizes that occupational diseases in the workplace are caused by events
10 occurring on more than a single day or work shift and that the legislature has the authority to define an
11 occupational disease or a presumptive occupational disease and establish the causal connection to the
12 workplace. (Void on occurrence of contingency--sec. 7, Ch. 158, L. 2019.)

13 **39-71-105. (Effective on occurrence of contingency) Declaration of public policy.** For the
14 purposes of interpreting and applying this chapter, the following is the public policy of this state:

15 (1) An objective of the Montana workers' compensation system is to provide, without regard to
16 fault, wage-loss and medical benefits to a worker suffering from a work-related injury or disease. Wage-loss
17 benefits are not intended to make an injured worker whole but are intended to provide assistance to a worker at
18 a reasonable cost to the employer. Within that limitation, the wage-loss benefit should bear a reasonable
19 relationship to actual wages lost as a result of a work-related injury or disease.

20 (2) It is the intent of the legislature to assert that a conclusive presumption exists that recognizes
21 that a holder of a current, valid independent contractor exemption certificate issued by the department is an
22 independent contractor if the person is working under the independent contractor exemption certificate. The
23 holder of an independent contractor exemption certificate waives the rights, benefits, and obligations of this
24 chapter unless the person has elected to be bound personally and individually by the provisions of
25 compensation plan No. 1, 2, or 3.

26 (3) A worker's removal from the workforce because of a work-related injury or disease has a
27 negative impact on the worker, the worker's family, the employer, and the general public. Therefore, an
28 objective of the workers' compensation system is to return a worker to work as soon as possible after the

1 worker has suffered a work-related injury or disease.

2 (4) Montana's workers' compensation and occupational disease insurance systems are intended to
3 be primarily self-administering. Claimants should be able to speedily obtain benefits, and employers should be
4 able to provide coverage at reasonably constant rates. To meet these objectives, the system must be designed
5 to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities.

6 (5) This chapter must be construed according to its terms and not liberally in favor of any party.

7 (6) It is the intent of the legislature that:

8 (a) except as provided in [section 1], stress claims, often referred to as "mental-mental claims" and
9 "mental-physical claims", are not compensable under Montana's workers' compensation and occupational
10 disease laws. The legislature recognizes that these claims are difficult to objectively verify and that the claims
11 have a potential to place an economic burden on the workers' compensation and occupational disease system.
12 The legislature also recognizes that there are other states that do not provide compensation for various
13 categories of stress claims and that stress claims have presented economic problems for certain other
14 jurisdictions. In addition, not all injuries are compensable under the present system, and it is within the
15 legislature's authority to define the limits of the workers' compensation and occupational disease system.

16 (b) for occupational disease claims, because of the nature of exposure, workers should not be
17 required to provide notice to employers of the disease as required of injuries and that the requirements for filing
18 of claims reflect consideration of when the worker knew or should have known that the worker's condition
19 resulted from an occupational disease. The legislature recognizes that occupational diseases in the workplace
20 are caused by events occurring on more than a single day or work shift and that it is within the legislature's
21 authority to define an occupational disease and establish the causal connection to the workplace."
22

23 **Section 3.** Section 39-71-116, MCA, is amended to read:

24 **"39-71-116. Definitions.** Unless the context otherwise requires, in this chapter, the following
25 definitions apply:

26 (1) "Actual wage loss" means that the wages that a worker earns or is qualified to earn after the
27 worker reaches maximum healing are less than the actual wages the worker received at the time of the injury.

28 (2) "Administer and pay" includes all actions by the state fund under the Workers' Compensation

1 Act necessary to:

2 (a) investigation, review, and settlement of claims;

3 (b) payment of benefits;

4 (c) setting of reserves;

5 (d) furnishing of services and facilities; and

6 (e) use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

7 (3) "Aid or sustenance" means a public or private subsidy made to provide a means of support,
8 maintenance, or subsistence for the recipient.

9 (4) "Beneficiary" means:

10 (a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of
11 injury;

12 (b) an unmarried child under 18 years of age;

13 (c) an unmarried child under 22 years of age who is a full-time student in an accredited school or is
14 enrolled in an accredited apprenticeship program;

15 (d) an invalid child over 18 years of age who is dependent, as defined in 26 U.S.C. 152, upon the
16 decedent for support at the time of injury;

17 (e) a parent who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the
18 time of the injury if a beneficiary, as defined in subsections (4)(a) through (4)(d), does not exist; and

19 (f) a brother or sister under 18 years of age if dependent, as defined in 26 U.S.C. 152, upon the
20 decedent for support at the time of the injury but only until the age of 18 years and only when a beneficiary, as
21 defined in subsections (4)(a) through (4)(e), does not exist.

22 (5) "Business partner" means the community, governmental entity, or business organization that
23 provides the premises for work-based learning activities for students.

24 (6) "Casual employment" means employment not in the usual course of the trade, business,
25 profession, or occupation of the employer.

26 (7) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to
27 the injury.

28 (8) (a) "Claims examiner" means an individual who, as a paid employee of the department, of a

plan No. 1, 2, or 3 insurer, or of an administrator licensed under Title 33, chapter 17, examines claims under chapter 71 to:

(i) determine liability;

(ii) apply the requirements of this title;

(iii) settle workers' compensation or occupational disease claims; or

(iv) determine survivor benefits.

(b) The term does not include an adjuster as defined in 33-17-102.

(9) (a) "Construction industry" means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors listed in major group 23 in the North American Industry Classification System Manual.

(b) The term does not include office workers, design professionals, salespersons, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.

(10) "Days" means calendar days, unless otherwise specified.

(11) "Department" means the department of labor and industry.

(12) "Direct result" means that a diagnosed condition was caused or aggravated by an injury or occupational disease.

(13) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(14) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession.

(15) (a) "Household or domestic employment" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work.

(b) The term does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

(16) (a) "Indemnity benefits" means any payment made directly to the worker or the worker's beneficiaries, other than a medical benefit. The term includes payments made pursuant to a reservation of rights.

(b) The term does not include stay-at-work/return-to-work assistance, auxiliary benefits, or expense reimbursements for items such as meals, travel, or lodging.

(17) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

(18) "Invalid" means one who is physically or mentally incapacitated.

(19) "Limited liability company" has the meaning provided in 35-8-102.

(20) "Maintenance care" means treatment designed to provide the optimum state of health while minimizing recurrence of the clinical status.

(21) "Medical stability", "maximum medical improvement", "maximum healing", or "maximum medical healing" means a point in the healing process when further material functional improvement would not be reasonably expected from primary medical services.

(22) "Objective medical findings" means medical evidence, including range of motion, atrophy, muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

(23) (a) "Occupational disease" means harm, damage, or death arising out of or contracted in the course and scope of employment caused by events occurring on more than a single day or work shift.

(b) ~~The~~ Except as provided in [section 1], the term does not include a physical or mental condition arising from emotional or mental stress or from a nonphysical stimulus or activity.

(24) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at by the department.

(25) "Palliative care" means treatment designed to reduce or ease symptoms without curing the underlying cause of the symptoms.

(26) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if average payrolls are not available. This estimate must be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of the current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

1 (27) "Permanent partial disability" means a physical condition in which a worker, after reaching
2 maximum medical healing:

3 (a) has a permanent impairment, as determined by the sixth edition of the American medical
4 association's Guides to the Evaluation of Permanent Impairment, that is established by objective medical
5 findings for the ratable condition. The ratable condition must be a direct result of the compensable injury or
6 occupational disease and may not be based exclusively on complaints of pain.

7 (b) is able to return to work in some capacity but the permanent impairment impairs the worker's
8 ability to work; and

9 (c) has an actual wage loss as a result of the injury.

10 (28) "Permanent total disability" means a physical condition resulting from injury as defined in this
11 chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable
12 prospect of physically performing regular employment. Lack of immediate job openings is not a factor to be
13 considered in determining if a worker is permanently totally disabled.

14 (29) "Primary medical services" means treatment prescribed by the treating physician, for conditions
15 resulting from the injury or occupational disease, necessary for achieving medical stability.

16 (30) "Prosthetic device" or "prosthesis" means an artificial substitute for a missing body part.

17 (31) "Public corporation" means the state or a county, municipal corporation, school district, city, city
18 under a commission form of government or special charter, town, or village.

19 (32) "Reasonably safe place to work" means that the place of employment has been made as free
20 from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

21 (33) "Reasonably safe tools or appliances" are tools and appliances that are adapted to and that are
22 reasonably safe for use for the particular purpose for which they are furnished.

23 (34) "Regular employment" means work on a recurring basis performed for remuneration in a trade,
24 business, profession, or other occupation in this state.

25 (35) (a) "Secondary medical services" means those medical services or appliances that are
26 considered not medically necessary for medical stability. The services and appliances include but are not
27 limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs
28 designed to address disability and not impairment, or equipment offered by individuals, clinics, groups,

1 hospitals, or rehabilitation facilities.

2 (b) (i) As used in this subsection (35), "disability" means a condition in which a worker's ability to
3 engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The
4 restrictions may be combined with factors, such as the worker's age, education, work history, and other factors
5 that affect the worker's ability to engage in gainful employment.

6 (ii) Disability does not mean a purely medical condition.

7 (36) "Sole proprietor" means the person who has the exclusive legal right or title to or ownership of
8 a business enterprise.

9 (37) "State's average weekly wage" means the mean weekly earnings of all employees under
10 covered employment, as defined and established annually by the department before July 1 and rounded to the
11 nearest whole dollar number.

12 (38) "Temporary partial disability" means, except as provided in [section 1], a physical condition
13 resulting from an injury, as defined in 39-71-119, in which a worker, prior to maximum healing:

14 (a) is temporarily unable to return to the position held at the time of injury because of a medically
15 determined physical restriction;

16 (b) returns to work in a modified or alternative employment; and

17 (c) suffers a partial wage loss.

18 (39) "Temporary service contractor" means a person, firm, association, partnership, limited liability
19 company, or corporation conducting business that hires its own employees and assigns them to clients to fill a
20 work assignment with a finite ending date to support or supplement the client's workforce in situations resulting
21 from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

22 (40) "Temporary total disability" means, except as provided in [section 1], a physical condition
23 resulting from an injury, as defined in this chapter, that results in total loss of wages and exists until the injured
24 worker reaches maximum medical healing.

25 (41) "Temporary worker" means a worker whose services are furnished to another on a part-time or
26 temporary basis to fill a work assignment with a finite ending date to support or supplement a workforce in
27 situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments
28 and projects.

(42) "Treating physician" means the person who, subject to the requirements of 39-71-1101, is primarily responsible for delivery and coordination of the worker's medical services for the treatment of a worker's compensable injury or occupational disease and is:

(a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting privileges to practice in one or more hospitals, if any, in the area where the physician is located;

(b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

(c) a physician assistant licensed by the state of Montana under Title 37, chapter 20, if there is not a treating physician, as provided for in subsection (42)(a), in the area where the physician assistant is located;

(d) an osteopath licensed by the state of Montana under Title 37, chapter 3;

(e) a dentist licensed by the state of Montana under Title 37, chapter 4;

(f) for a claimant residing out of state or upon approval of the insurer, a treating physician defined in subsections (42)(a) through (42)(e) who is licensed or certified in another state; or

(g) an advanced practice registered nurse licensed by the state of Montana under Title 37, chapter 8.

(43) "Work-based learning activities" means job training and work experience conducted on the premises of a business partner as a component of school-based learning activities authorized by an elementary, secondary, or postsecondary educational institution.

(44) "Year", unless otherwise specified, means calendar year."

Section 4. Section 39-71-119, MCA, is amended to read:

"39-71-119. Injury and accident defined. (1) "Injury" or "injured" means:

(a) internal or external physical harm to the body that is established by objective medical findings;

(b) damage to prosthetic devices;

(c) damage to appliances, except for damage to eyeglasses, contact lenses, dentures, or hearing aids; or

(d) posttraumatic stress disorder as provided in [section 1]; or

~~(d)(e)~~ death.

(2) An-Except as provided in [section 1], an injury is caused by an accident. An accident, except as

1 provided in [section 1], is:

2 (a) an unexpected traumatic incident or unusual strain;

3 (b) identifiable by time and place of occurrence;

4 (c) identifiable by member or part of the body affected; and

5 (d) caused by a specific event on a single day or during a single work shift.

6 (3) ~~"Injury"~~ Except as provided in [section 1], "injury" or "injured" does not mean a physical or
7 mental condition arising from:

8 (a) emotional or mental stress; or

9 (b) a nonphysical stimulus or activity.

10 (4) "Injury" or "injured" does not include a disease that is not caused by an accident.

11 (5) (a) A cardiovascular, pulmonary, respiratory, or other disease, cerebrovascular accident, or
12 myocardial infarction suffered by a worker is an injury only if the accident is the primary cause of the physical
13 condition in relation to other factors contributing to the physical condition.

14 (b) "Primary cause", as used in subsection (5)(a), means a cause that, with a reasonable degree of
15 medical certainty, is responsible for more than 50% of the physical condition."

16

17 NEW SECTION. Section 5. Codification instruction. [Section 1] is intended to be codified as an
18 integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [section 1].

19

20 NEW SECTION. Section 6. Severability. If a part of [this act] is invalid, all valid parts that are
21 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
22 the part remains in effect in all valid applications that are severable from the invalid applications.

23

24 NEW SECTION. Section 7. Applicability. [This act] applies to claims for workers' compensation in
25 which a diagnosis finds that the injury or occupational disease of posttraumatic stress disorder was caused by
26 events occurring on or after [the effective date of this act].

27 - END -