

1 SENATE BILL NO. 369  
2 INTRODUCED BY J. TREBAS, C. FRIEDEL, J. ELLSWORTH  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING COVERAGE UNDER WORKERS' COMPENSATION  
5 FOR EMPLOYEES EXPERIENCING SERIOUS ADVERSE EVENTS AFTER RECEIVING EMPLOYER-  
6 MANDATED VACCINES; PROVIDING FOR A PRESUMPTIVE OCCUPATIONAL DISEASE; PROVIDING A  
7 DEFINITION; AMENDING SECTION 39-71-119, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE  
8 AND AN APPLICABILITY DATE."

9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11  
12 **Section 1.** Section 39-71-119, MCA, is amended to read:

13 **"39-71-119. Injury and accident defined.** (1) (a) "Injury" or "injured" means:

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

15 (b)(ii) damage to prosthetic devices;

16 (c)(iii) damage to appliances, except for damage to eyeglasses, contact lenses, dentures, or hearing

17 aids; or

18 (d)(iv) death.

19 (b) (i) The term includes a serious adverse event experienced by an employee after receiving a

20 vaccine mandated by an employer.

21 (ii) For the purposes of subsection (1)(b), "serious adverse event" means:

22 (A) death or a life-threatening illness;

23 (B) hospitalization or the prolongation of an existing hospitalization;

24 (C) a persistent or significant incapacity or substantial disruption of the ability to conduct normal life

25 functions; OR

26 (D) a congenital anomaly or a birth defect; or

27 (E)(D) a medical event that, based on appropriate medical judgment, may jeopardize the individual

1 and may require medical or surgical intervention to prevent an outcome described in subsections (1)(b)(ii)(A)  
2 through ~~(1)(b)(ii)(D)~~ (1)(B)(ii)(C).

3 (2) An injury is caused by an accident. An accident is:

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

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

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

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

8 (3) "Injury" or "injured" does not mean a physical or mental condition arising from:

9 (a) emotional or mental stress; or

10 (b) a nonphysical stimulus or activity.

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

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

15 (b) "Primary cause", as used in subsection (5)(a), means a cause that, with a reasonable degree of  
16 medical certainty, is responsible for more than 50% of the physical condition."  
17

18 **NEW SECTION. Section 2. Presumptive occupational disease -- employer-mandated vaccines -**

19 **- burden of proof.** (1) An employee for whom coverage is required under the Workers' Compensation Act and  
20 who was required by an employer to receive a vaccine and suffered an injury described in 39-71-119 is  
21 presumed to have a claim for a presumptive occupational disease.

22 (2) (a) An insurer is liable for the payment of compensation for presumptive occupational disease  
23 benefits under this chapter in the same manner as provided in 39-71-407, including objective medical findings  
24 of a disease listed in 39-71-407(2), and excluding the requirement in 39-71-407(10) that the objective medical  
25 findings trace a relationship between the presumptive occupational disease and the claimant's job history.

26 (b) (i) An insurer under plan No. 1, plan No. 2, or plan No. 3 that disputes a presumptive  
27 occupational disease claim has the burden of proof in establishing by a preponderance of the evidence that the

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Drafter: Jameson Walker, 406-444-3722

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1 employee is not suffering from a compensable presumptive occupational disease related to an employer-  
2 mandated vaccine. An insurer that disputes the claim may pay benefits under 39-71-608 or 39-71-615 and may  
3 pursue dispute mechanisms established in Title 39, chapter 71, part 24.

4 (ii) An insurer is not liable for the payment of workers' compensation benefits for a presumptive  
5 occupational disease if the insurer establishes by a preponderance of the evidence that the employee was not  
6 injured because of the employer-mandated vaccine.

7 (3) An employee or the employee's beneficiaries may pursue the dispute remedies provided in  
8 Title 39, chapter 71, part 24, if an insurer disputes a claim.

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10 **NEW SECTION. Section 3. Effective date.** [This act] is effective on passage and approval.

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12 **NEW SECTION. Section 4. Codification instruction.** [Section 2] is intended to be codified as a new  
13 part in Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [section 2].

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15 **NEW SECTION. Section 5. Applicability.** [This act] applies to injuries occurring on or after [the  
16 effective date of this act].

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