

SENATE BILL NO. 150

INTRODUCED BY W. GALT, D. ZOLNIKOV, B. LER, B. USHER, G. HERTZ, K. BOGNER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO ALCOHOL AND SMOKING; CREATING THE CIGAR BAR ALCOHOLIC BEVERAGE ENDORSEMENT; APPLYING THE ENDORSEMENT TO CERTAIN ALCOHOLIC BEVERAGE LICENSES; PROVIDING REQUIREMENTS RELATING TO THE CIGAR BAR LICENSE ENDORSEMENT; PROVIDING A FEE; PROVIDING THAT EMPLOYEES OF CIGAR BARS ARE ENTITLED TO THE PRESUMPTION THAT CERTAIN DISEASES ARE COVERED BY WORKERS' COMPENSATION INSURANCE AND THE DISEASES WERE CAUSED IN THE COURSE AND SCOPE OF EMPLOYMENT AT THE CIGAR BAR; EXEMPTING CIGAR BARS FROM CLEAN INDOOR AIR ACT REQUIREMENTS; PROVIDING DEFINITIONS; AND AMENDING SECTIONS 39-71-105, 39-71-1401, 39-71-1402, 50-40-103, AND 50-40-104, MCA."

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

- NEW SECTION. **Section 1. Cigar bar -- license endorsement -- requirements.** (1) An all-beverages licensee under 16-4-201 may apply to the department for a cigar bar license endorsement. The department shall issue a cigar bar endorsement if the licensee meets the requirements of this section, determined through the department's suitability analysis as provided in 16-3-311. An application for a catering endorsement and an annual fee of \$200 must be submitted to the department for its approval.
- (2) A cigar bar endorsement permits the smoking of cigars on the licensed premises, which may constitute an enclosed public place as defined in 50-40-103 but is exempt from the prohibition on smoking in an enclosed public place as provided in 50-40-104.
- (3) A cigar bar endorsement may be issued only to an all-beverages licensee who holds a gaming or gambling license under Title 23, chapter 5, part 3, 5, or 6.
- (4) An establishment with a cigar bar endorsement:
- (a) may only allow cigars that are purchased on the licensed premises to be smoked;

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(b) must generate 10% or more of its annual gross income, excluding gaming or gambling income, from the sale of cigars;

(c) must have a humidor as defined in this section;

(d) may not permit the smoking of any other tobacco, marijuana, or alternative nicotine or vapor products, as defined in 16-11-302, on the licensed premises;

(e) ~~must~~ shall post a notice of the prohibition against smoking products other than cigars;

(f) may not knowingly sell to or permit entrance to a person less than 21 years of age;

(g) shall inform employees who work at the licensed premises that the employees may be entitled to presumptive illness if the requirements of 39-71-1401 and 39-71-1402 are met; and

~~(g)(h)~~ must be located in a freestanding structure occupied solely by the cigar bar, and smoke from a cigar may not migrate into an enclosed area where smoking is otherwise prohibited. If indoors, the establishment must have a public place that is enclosed by solid walls or windows, a ceiling, and a solid door and be equipped with a ventilation system as defined in this section.

(5) A licensee meeting the requirements of this section shall annually report to the department, on a form prescribed by the department, the revenue generated from the sale of cigars as a percentage of annual gross income and any other information considered necessary by the department for renewal of the cigar bar endorsement.

(6) For the purposes of this section, the following definitions apply:

(a) "Cigar" means a premium tobacco product that:

(i) is composed of only tobacco leaves, water, and an insignificant amount of vegetable-based adhesive;

(ii) is handmade and is not machine-made;

(iii) is wrapped in whole leaf tobacco;

(iv) contains a 100% leaf tobacco binder;

(v) is capped by hand;

(vi) does not have a filter, tip, or nontobacco mouthpiece;

(vii) has a characterizing flavor that is added through a natural process, such as mixing different

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1 types of tobacco leaves, soaking, or aromatic smoking, and is not flavored through a chemical process or other
2 means; and

3 (viii) weighs at least 2.7 grams a cigar.

4 (b) "Enclosed public place" has the same meaning as provided in 50-40-103.

5 (c) "Humidor" means an enclosure affixed to the location that is large enough for an individual to
6 stand and in which the humidity of the enclosure is controlled.

7 (d) "Ventilation system" means a dedicated system in which exhausted air is not recirculated to
8 nonsmoking areas and smoke is not back streamed into nonsmoking areas.

9

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

11 **"39-71-105. (Temporary) Declaration of public policy.** For the purposes of interpreting and
12 applying this chapter, the following is the public policy of this state:

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

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

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

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

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

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

(a) a stress claim, often referred to as a "mental-mental claim" or a "mental-physical claim", is not compensable under Montana's workers' compensation and occupational disease laws. The legislature recognizes that these claims are difficult to objectively verify and that the claims have a potential to place an economic burden on the workers' compensation and occupational disease system. The legislature also recognizes that there are other states that do not provide compensation for various categories of stress claims and that stress claims have presented economic problems for certain other jurisdictions. In addition, not all injuries are compensable under the present system, and it is within the legislature's authority to define the limits of the workers' compensation and occupational disease system. However, it is also within the legislature's authority to recognize the public service provided by firefighters and by employees of cigar bars under [section 1] and to join with other states that have extended a presumptive occupational disease recognition to firefighters.

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

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

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

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

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

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

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

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

(a) stress claims, often referred to as "mental-mental claims" and "mental-physical claims", are not compensable under Montana's workers' compensation and occupational disease laws. The legislature recognizes that these claims are difficult to objectively verify and that the claims have a potential to place an economic burden on the workers' compensation and occupational disease system. The legislature also recognizes that there are other states that do not provide compensation for various categories of stress claims and that stress claims have presented economic problems for certain other jurisdictions. In addition, not all

injuries are compensable under the present system, and it is within the legislature's authority to define the limits of the workers' compensation and occupational disease system.

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

Section 3. Section 39-71-1401, MCA, is amended to read:

"39-71-1401. (Temporary) Presumptive occupational disease for firefighters and cigar bar employees -- rebuttal -- applicability -- definitions. (1) (a) A firefighter or a cigar bar employee for whom coverage is required under the Workers' Compensation Act is presumed to have a claim for a presumptive occupational disease under the Workers' Compensation Act if the firefighter or cigar bar employee meets the requirements of 39-71-1402 and is diagnosed with one or more of the diseases listed in subsection (2) within the period listed.

(b) Coverage under 39-71-1402 and this section is optional for the employer of a firefighter for whom coverage under the Workers' Compensation Act is voluntary. An employer of a volunteer firefighter under 7-33-4109 or 7-33-4510 may elect as part of providing coverage under the Workers' Compensation Act to additionally obtain the presumptive occupational disease coverage, subject to the insurer agreeing to provide presumptive coverage.

(2) The following diseases are presumptive occupational diseases proximately caused by firefighting activities or cigar bar employee activities, provided that the evidence of the presumptive occupational disease becomes manifest after the number of years of the firefighter's or cigar bar employee's employment as listed for each occupational disease and within 10 years of the last date on which the firefighter or cigar bar employee was engaged in firefighting activities or cigar bar employee activities for an employer:

(a) bladder cancer after 12 years;

(b) brain cancer of any type after 10 years;

(c) breast cancer after 5 years if the diagnosis occurs before the firefighter is 40 years old and is not known to be associated with a genetic predisposition to breast cancer;

(d) cervical cancer after 15 years;

(e) colorectal cancer after 10 years;

(f) esophageal cancer after 10 years;

(g) kidney cancer after 15 years;

(h) leukemia after 5 years;

(i) lung cancer after 4 years;

(j) mesothelioma or asbestosis after 10 years;

(k) multiple myeloma after 15 years;

(l) myocardial infarction after 10 years;

(m) non-Hodgkin's lymphoma after 15 years; and

(n) testicular cancer after 10 years.

(3) For purposes of calculating the number of years of a firefighter's or cigar bar employee's employment history under subsection (2), a firefighter's or cigar bar employee's employment history after July 1, 2014, may be calculated.

(4) The beneficiaries of a firefighter or cigar bar employee who otherwise would be eligible for presumptive occupational disease benefits under this section but who dies prior to filing a claim, as provided in 39-71-1402, are eligible for death benefits in the same manner as for a death from an injury, as provided in 39-71-407. The beneficiaries under this subsection are similarly bound by the provisions of exclusive remedy as provided in 39-71-411 and subject to the filing requirements in 39-71-601.

(5) (a) Subject to the provisions of subsection (5)(c), an insurer is liable for the payment of compensation for presumptive occupational disease benefits under this chapter in the same manner as provided in 39-71-407, including objective medical findings of a disease listed in subsection (2) but excluding the requirement in 39-71-407(10) that the objective medical findings trace a relationship between the presumptive occupational disease and the claimant's job history. For myocardial infarction or lung cancer under

subsection (2), the diseases must be the type that can reasonably be caused by firefighting activities or cigar bar employee activities.

(b) (i) An insurer under plan 1, 2, or 3 that disputes a presumptive occupational disease claim has the burden of proof in establishing by a preponderance of the evidence that the firefighter is not suffering from a compensable presumptive occupational disease. An insurer that disputes the claim may pay benefits under 39-71-608 or 39-71-615 and may pursue dispute mechanisms established in Title 39, chapter 71, part 24.

(ii) An insurer is not liable for the payment of workers' compensation benefits for presumptive occupational disease if the insurer establishes by a preponderance of the evidence that the firefighter was not exposed during the course and scope of the firefighter's duties to smoke or particles in a quantity sufficient to have reasonably caused the disease claimed.

(c) A total claim payment by an insurer under this section is limited to \$5 million for each claim.

(6) This section does not limit an insurer's ability to assert that the occupational disease was not caused by the firefighter's employment history as a firefighter.

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

(8) The use of the term "occupational disease" includes a presumptive occupational disease when used in the definitions in 39-71-116 for "claims examiner", "permanent partial disability", "primary medical services", and "treating physician" and when used in 39-71-107, 39-71-307, 39-71-412, 39-71-503, 39-71-601, 39-71-604, 39-71-606, 39-71-615, 39-71-703, 39-71-704, 39-71-713, 39-71-714, 39-71-717, 39-71-1011, 39-71-1036, 39-71-1041, 39-71-1042, 39-71-1101, 39-71-1110, 39-71-1504, 39-71-2311, 39-71-2312, 39-71-2313, 39-71-2316, and 39-71-4003.

(9) Section 39-71-1402 and this section:

(a) apply only to presumptive occupational diseases for firefighters; and

(b) do not apply to any other issue relating to workers' compensation and may not be used or cited as guidance in the administration of Title 33 or 37.

(10) For the purposes of 39-71-1402 and this section, the following definitions apply:

(a) "Cigar bar employee" means an employee of a cigar bar under [section 1] that is employed at

1 an entity licensed to sell alcohol under Title 16 and has an endorsement under [section 1] that permits the
2 smoking of cigars on the premises. The employee must work for the employer in the licensed premises where
3 smoking is permitted on the premises.

4 ~~(a)~~(b) "Firefighter" means an individual whose primary duties involve extinguishing or investigating
5 fires, with at least 1 year of firefighting operations in Montana beginning on or after July 1, 2019, as:
6 (i) a firefighter defined in 19-13-104;
7 (ii) a volunteer firefighter defined in 7-33-4510, but only if the volunteer firefighter's employer has
8 elected coverage under Title 39, chapter 71, with an insurer that allows an election and the employer has opted
9 separately to include presumptive occupational disease coverage under 39-71-1402 and this section; or
10 (iii) a volunteer described in 7-33-4109 for a firefighting entity that has elected coverage under Title
11 39, chapter 71, with an insurer that allows an election and that has opted separately to include presumptive
12 occupational disease coverage.

13 ~~(b)~~(c) "Firefighting activities" means actions required of a firefighter that expose the firefighter to
14 extreme heat or inhalation or physical exposure to chemical fumes, smoke, particles, or other toxic gases
15 arising directly out of employment as a firefighter.

16 ~~(e)~~(d) "Presumptive occupational disease" means harm or damage from one or more of the diseases
17 listed under subsection (2) that is established by objective medical findings and that is contracted in the course
18 and scope of employment as a firefighter from either a single day or work shift or for more than a single day or
19 work shift but that is not specific to an accident. (Void on occurrence of contingency--sec. 7, Ch. 158, L. 2019.)"

21 **Section 4.** Section 39-71-1402, MCA, is amended to read:

22 **"39-71-1402. (Temporary) Conditions for claiming presumptive occupational disease. (1)**

23 Except as provided in subsection (4), the following must be satisfied for the presumption in 39-71-1401 to
24 apply:

25 (a) the firefighter or cigar bar employee must timely file a claim for a presumptive occupational
26 disease under Title 39, chapter 71, as soon as the firefighter or cigar bar employee knows or should have
27 known that the firefighter's or cigar bar employee's condition resulted from a presumptive occupational disease;

and

(b) (i) the firefighter or cigar bar employee must have undergone, within 90 days of hiring, a medical examination that did not reveal objective medical evidence or a family history of the presumptive occupational disease for which the presumption under 39-71-1401 is sought; and

(ii) the firefighter or cigar bar employee must have undergone subsequent periodic medical examinations at least once every 2 years.

(2) (a) Subsection (1)(b) does not require the employer of a firefighter or cigar bar employee to provide or pay for a medical examination, either at the time of hiring or during the subsequent term of employment.

(b) If the employer of a firefighter or cigar bar employee does not provide or pay for a medical examination under subsection (1)(b), the firefighter or cigar bar employee may satisfy the requirements of subsection (1)(b) by obtaining the medical examination at the firefighter's or cigar bar employee's expense or at the expense of another party.

(3) To qualify for a presumptive occupational disease, a firefighter or cigar bar employee may not:

(a) be a regular user of tobacco products;

(b) have a history of regular tobacco use in the 10 years preceding the filing of the claim under subsection (1)(a); or

(c) have been exposed by a cohabitant who regularly and habitually used tobacco products within the home for a period of 10 or more years prior to the diagnosis.

(4) A firefighter or cigar bar employee who, prior to July 1, 2019, did not receive a medical examination as frequently as the intervals set forth in subsection (1)(b) is not ineligible on that basis for a presumptive occupational disease claim under 39-71-1401 and this section. (Void on occurrence of contingency--sec. 7, Ch. 158, L. 2019.)"

Section 5. Section 50-40-103, MCA, is amended to read:

"50-40-103. Definitions. As used in this part, the following definitions apply:

(1) (a) "Bar" means an establishment with a license issued pursuant to Title 16, chapter 4, that is

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devoted to serving alcoholic beverages for consumption by guests or patrons on the premises and in which the serving of food is only incidental to the service of alcoholic beverages or gambling operations. The term includes but is not limited to taverns, night clubs, cocktail lounges, and casinos.

(b) The term does not include a cigar bar.

(2) "Cigar bar" means an establishment with a license issued pursuant to Title 16, chapter 4, part 2, that holds a cigar bar endorsement under [section 1] that permits the smoking of cigars in an enclosed public place.

(2)(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(3)(4) "Enclosed public place" means an indoor area, room, or vehicle that the general public is allowed to enter or that serves as a place of work, including but not limited to the following:

(a) restaurants;

(b) stores;

(c) public and private office buildings and offices, including all office buildings and offices of political subdivisions, as provided for in 50-40-201, and state government;

(d) trains, buses, and other forms of public transportation;

(e) health care facilities;

(f) auditoriums, arenas, and assembly facilities;

(g) meeting rooms open to the public;

(h) bars, but not including cigar bars as defined in subsection (2) of this section that meet the requirements of [section 1];

(i) community college facilities;

(j) facilities of the Montana university system; and

(k) public schools, as provided for in 20-1-220 and 50-40-104.

(4)(5) "Establishment" means an enterprise under one roof that serves the public and for which a single person, agency, corporation, or legal entity is responsible.

(5)(6) "Incidental to the service of alcoholic beverages or gambling operations" means that at least

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1 60% of the business's annual gross income comes from the sale of alcoholic beverages or gambling receipts,
2 or both.

3 ~~(6)~~(7) "Person" means an individual, partnership, corporation, association, political subdivision, or
4 other entity.

5 ~~(7)~~(8) "Place of work" means an enclosed room where one or more individuals work.

6 ~~(8)~~(9) "Smoking" or "to smoke" includes the act of lighting, smoking, or carrying a lighted cigar,
7 cigarette, pipe, or any smokable product and includes the use of marijuana."

8

9 **Section 6.** Section 50-40-104, MCA, is amended to read:

10 **"50-40-104. Smoking in enclosed public places prohibited -- notice to public -- places where**
11 **prohibition inapplicable.** (1) Except as otherwise provided in this section, smoking in an enclosed public place
12 is prohibited.

13 (2) The proprietor or manager of an establishment containing enclosed public places shall post a
14 sign in a conspicuous place at all public entrances to the establishment stating, in a manner that can be easily
15 read and understood, that smoking in the enclosed public place is prohibited.

16 (3) The proprietor or manager of an intrastate bus that is not chartered shall prohibit smoking in all
17 parts of the bus.

18 (4) The prohibition in subsection (1) does not apply to the following places, whether or not the
19 public is allowed access to those places:

20 (a) a private residence unless it is used for any of the following purposes, in which case the
21 prohibition in subsection (1) applies:

22 (i) a family day-care home or group day-care home, as defined in 52-2-703 and licensed pursuant
23 to Title 52, chapter 2, part 7;

24 (ii) an adult foster care home, as defined in 50-5-101 and licensed pursuant to Title 50, chapter 5;
25 or

26 (iii) a health care facility, as defined in 50-5-101 and licensed pursuant to Title 50, chapter 5;

27 (b) a private motor vehicle;

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- 1 (c) school property in which smoking is allowed pursuant to the exception in 20-1-220;
- 2 (d) a hotel or motel room designated as a smoking room and rented to a guest; however, not more
- 3 than 35% of the rooms available to rent to guests may be designated as smoking rooms; ~~and~~
- 4 (e) a site that is being used in connection with the practice of cultural activities by American
- 5 Indians that is in accordance with the American Indian Religious Freedom Act, 42 U.S.C. 1996 and 1996a; and
- 6 (f) a cigar bar as defined in 50-40-103 that meets the requirements of [section 1]."

7 - END -