

Economic Affairs Interim Committee

61st Montana Legislature

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BART CAMPBELL, Staff Attorney
CLAUDIA (CJ) JOHNSON, Secretary

as of August 12, 2010

Memo

To: Economic Affairs Committee Members
From: Pat Murdo, Committee Staff
Re: Workers' Compensation Coverage Lapses and Retroactive Payments

In response to an issue raised at the end of the June 29, 2010, Economic Affairs Committee staff recommended further exploration of ways to help workers' compensation policyholders to know that when their coverage lapses and then is renewed that the payments made are applied retroactively. A related concern was that a policyholder that had had a policy canceled may end up paying retroactively to reinstitute a policy even while that policyholder had been reported to the Department of Labor and Industry (DOLI) as an uninsured employer. DOLI under 39-71-504, MCA, "may require that the uninsured employer pay to the [uninsured employer] fund a penalty of either up to double the premium amount the employer would have paid on the payroll... or \$200, whichever is greater". In addition the department "shall collect a penalty of \$200 from an employer that fails to obtain Montana workers' compensation insurance within 30 days of notice of the requirement".

After discussions with Montana State Fund and further review of statutes and notifications that go out to policyholders, the staff recommendation is to make no changes in existing statutes for Plan 2 insurers and Plan 3, the Montana State Fund. The applicable statutes, while they do not specifically say that payments are applied retroactively, outline what happens with nonpayment of premiums and cancellation of policies. Whether a policyholder experiences a seamless renewal of a policy when payments are made after a policy has been canceled is dependent on the insurer. There remains a question of whether DOLI assesses a penalty in cases of a time lag.

The following language for Plan 2 insurers is similar to that for Plan 3, Montana State Fund:

39-71-2205. Policy in effect until canceled or replaced -- twenty-day notification of cancellation required -- penalty. (1) The policy remains in effect until canceled, and cancellation may take effect only by written notice to the named insured and to the department at least 20 days prior to the date of cancellation. However, the policy terminates on the effective date of a replacement or succeeding workers' compensation insurance policy issued to the insured. Nothing in this section prevents an insurer from canceling a policy of workers' compensation insurance before a replacement policy is issued to the insured. Notice to the department under this section must be provided electronically.

(2) The department:

(a) may recognize the advisory organization designated under 33-16-1023 or recognize other organizations as agents for authorized workers' compensation insurers in Montana; and

(b) shall, under terms and conditions acceptable to the department, accept notice of cancellation received from the agents recognized under subsection (2)(a) as the insurer's notice of cancellation.

(3) (a) The department may assess a penalty of up to \$200 against an insurer that does not comply with the notice requirement in subsection (1). The penalty may be assessed for each policy cancellation that is not reported to the department in a timely manner.

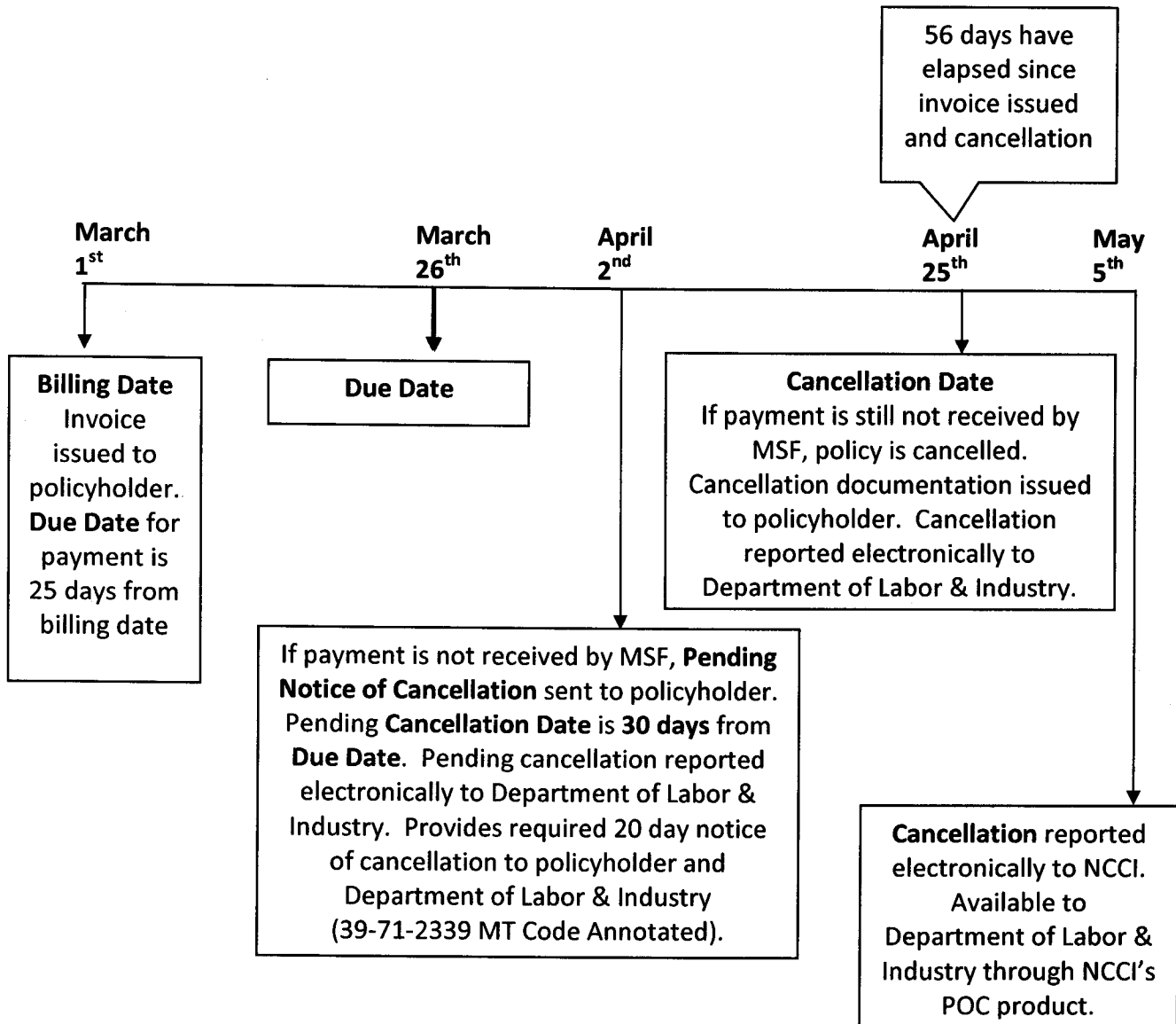
(b) An insurer may contest the penalty assessment in a hearing conducted according to department rules.

The attached documents from Montana State Fund show an example of a time line for failure to pay policy premiums and for failure to report payroll. The timeline for premium nonpayment shows that 56 days elapse before cancellation is final, that DOLI gets notice at least 20 days in advance and a second notice made through the advisory organization designated under 33-16-1023 (the National Council on Compensation Insurance, Inc or NCCI). The timeline for failure to report payroll shows 61 days lapsing before a policy is canceled.

MONTANA STATE FUND (MSF)

CANCELLATION ILLUSTRATION FOR:

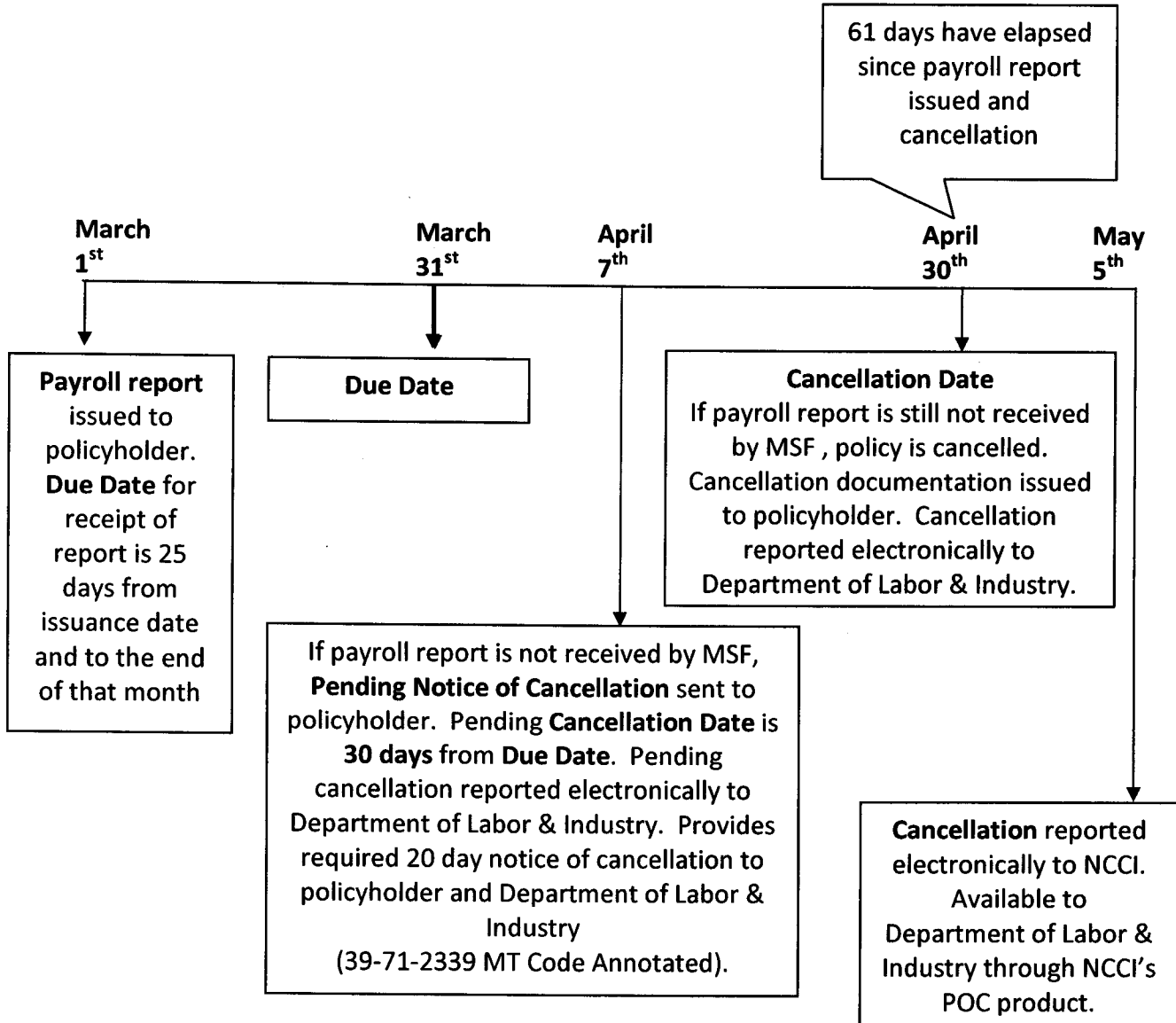
NON PAYMENT OF PREMIUM



MONTANA STATE FUND (MSF)

CANCELLATION ILLUSTRATION FOR:

NON REPORTING OF PAYROLL





5 South Last Chance Gulch - P.O. Box 4759 - Helena, MT 59604-4759
 Customer Service 800-332-6102 or 406-444-6500
 Fax 406-444-5963 - TDD/TTY 406-444-5971
 Fraud Hotline 888-682-7463 (888-MT-CRIME)
 www.montanastatefund.com

Policy Invoice

[Redacted Agency Information]

Invoice No: [Redacted]
 Invoice Date: 03/01/2010
 Team: 1
 Policy No: [Redacted]
 Policy Status: Active

	Due Date	Amount
Past Balance:		\$0.00
Current Balance:	03/26/2010	\$554.78
Total:		\$554.78

Agency: [Redacted] (Phone: 1-406-[Redacted])

Your insurance protection is important. In order to maintain uninterrupted coverage, please remit payment by the due date.

Date	Transaction	Installment No. / Period	Amount
02/01/2010	Balance Forward from the last Invoice		\$554.79
02/19/2010	Installment	3 of 3 / (12/19/2009 - 12/19/2010)	\$554.78
02/25/2010	Payment Received - THANK YOU!		(\$554.79)
TOTAL:			\$554.78

CF290A (Rev. 06/2008)

Return this portion with your payment. To ensure proper credit of your payment, write your policy number on all checks.

Invoice No: [Redacted]
 Policy No: [Redacted]
 Total: \$554.78

Mail payment to:

**MONTANA STATE FUND
 P O BOX 31477
 BILLINGS MT 59107-1477**



[Redacted Footer]



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PENDING CANCELLATION NOTICE

██████████
 ██████████
 ██████████
 ██████████

POLICY #: ██████████
TEAM: 1
DATE: 04/02/2010

Your policy will be cancelled at 12:01 a.m. on the pending cancellation date(s) shown below unless each item is received by its pending cancellation date:

PENDING CANCELLATION DATE	DUE DATE	INSTALLMENT # - PERIOD	ITEM	AMOUNT
04/25/2010	03/26/2010	3 of 3 - 12/19/2009 - 12/19/2010	Installment	\$554.78
			AMOUNT PAST DUE:	\$554.78

Any payment received will be credited to the oldest item due.

Items received after the cancellation date(s) will not reinstate the policy.

State law requires you to post the enclosed sign(s) to inform your employees about the pending cancellation.

We value your business. If you have any questions, please contact your agent or a customer service specialist.

Team # 1
 800-332-6102 or 406-444-6500

cc: ██████████

IMPORTANT

Montana law requires most business owners purchase workers' compensation insurance. An employer who does not have this insurance is subject to penalties by the Department of Labor and Industry.

Montana's Insurance Carrier of Choice and Industry Leader in Service.



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Fax 406-444-5963 - TDD/TTY 406-444-5971
Fraud Hotline 888-682-7463 (888-MT-CRIME)
www.montanastatefund.com

CANCELLATION INFORMATION

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Cancellation Date: 04/25/2010
Policy #: [REDACTED]
Team: 1
Date: 04/26/2010

Your policy was cancelled on the date shown above. The following item(s) are required:

Submit your Payroll Report for the period of 12/19/2009 to 04/25/2010

Once final premium has been calculated, we will refund any excess premium or bill for additional premium.

New coverage will not be available until the cancelled policy is reconciled. Any payments or payroll information received will not reinstate the cancelled policy.

If you have any questions, please contact your agent or a customer service specialist.

Team # 1
800-332-6102 or 406-444-6500
CC: [REDACTED]

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