

1 SENATE BILL NO. 232

2 INTRODUCED BY J. KEANE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO
5 DEVELOP A REQUEST FOR PROPOSALS AND SOLICIT BIDS TO TRANSFER THE MANAGEMENT OF THE
6 WORKERS' COMPENSATION OLD FUND FROM THE STATE FUND TO THE SUCCESSFUL BIDDER;
7 PROVIDING THAT THE TRANSFER TAKE PLACE ON JULY 1, 2013; AMENDING SECTIONS 39-71-201,
8 39-71-915, AND 39-71-2321, MCA; REPEALING SECTION 39-71-2352, MCA; AND PROVIDING EFFECTIVE
9 DATES."

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

12
13 **NEW SECTION. Section 1. Request for proposals to administer workers' compensation old fund.**

14 (1) By July 1, 2012, the department of labor and industry shall develop a request for proposals for the
15 administration of the workers' compensation old fund and solicit bids. The request for proposals must specify that
16 the successful bidder shall assume the administration of the old fund on July 1, 2013. The bid must be awarded
17 no later than January 30, 2013.

18 (2) In developing the request for proposals, the department shall require at a minimum that the
19 successful bidder:

20 (a) determine the cost of administering and paying claims for injuries resulting from accidents that
21 occurred before July 1, 1990;

22 (b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and

23 (c) fund administrative expenses and benefit payments for claims for injuries resulting from accidents
24 that occurred before July 1, 1990, from the sources provided by law.

25 (3) The successful bidder may not spend more than \$1.25 million a year to administer claims for injuries
26 resulting from accidents that occurred before July 1, 1990.

27 (4) (a) An amount of funds in excess of adequate funding, based on audited financial statements
28 adjusted for unrealized gains and losses, must be transferred to the general fund by the successful bidder.

29 (b) As used in subsection (4)(a), "adequate funding" means the present value of:

30 (i) the total cost of future benefits remaining to be paid; and

1 (ii) the cost of administering the claims.

2 (5) An independent actuary must be engaged by the successful bidder to project the unpaid claims
3 liability for claims for injuries resulting from accidents that occurred before July 1, 1990, for each fiscal year until
4 all claims are paid.

5

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

7 **"39-71-201. Administration fund.** (1) A workers' compensation administration fund is established out
8 of which are to be paid upon lawful appropriation all costs of administering the Workers' Compensation Act and
9 the statutory occupational safety and health acts that the department is required to administer, with the exception
10 of the certification of independent contractors provided for in Title 39, chapter 71, part 4, the subsequent injury
11 fund provided for in 39-71-907, and the uninsured employers' fund provided for in 39-71-503. The department
12 shall collect and deposit in the state treasury to the credit of the workers' compensation administration fund:

13 (a) all fees and penalties provided in 39-71-107, 39-71-205, 39-71-223, 39-71-304, 39-71-307,
14 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337;

15 (b) all penalties assessed under 50-71-119; and

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

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

21 (a) total compensation benefits paid; and

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

25 (3) Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of this section, and plan No.
26 3, the state fund, shall file annually on March 1 in the form and containing the information required by the
27 department a report of paid losses pursuant to subsection (2).

28 (4) Each employer enrolled under compensation plan No. 1, compensation plan No. 2, or compensation
29 plan No. 3, the state fund, shall pay its proportionate share determined by the paid losses in the preceding
30 calendar year of all costs of administering and regulating the Workers' Compensation Act and the statutory

1 occupational safety acts that the department is required to administer, with the exception of the certification of
2 independent contractors provided for in Title 39, chapter 71, part 4, the subsequent injury fund provided for in
3 39-71-907, and the uninsured employers' fund provided for in 39-71-503. In addition, compensation plan No. 3,
4 the state fund, shall pay a proportionate share of these costs based upon paid losses for claims arising before
5 July 1, 1990.

6 (5) (a) Each employer enrolled under compensation plan No. 1 shall pay an assessment to fund
7 administrative and regulatory costs. The assessment may be up to 3% of the paid losses paid in the preceding
8 calendar year by or on behalf of the plan No. 1 employer. Any entity, other than the department, that assumes
9 the obligations of an employer enrolled under compensation plan No. 1 is considered to be the employer for the
10 purposes of this section.

11 (b) An employer formerly enrolled under compensation plan No. 1 shall pay an assessment to fund
12 administrative and regulatory costs. The assessment may be up to 3% of the paid losses paid in the preceding
13 calendar year by or on behalf of the employer for claims arising out of the time when the employer was enrolled
14 under compensation plan No. 1.

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

19 (i) one installment due on July 1; or

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

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

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

1 (b) Payment of the assessment must be paid in:

2 (i) one installment due on July 1; or

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

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

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

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

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

29 (d) The premium surcharge must be paid whenever the employer pays a premium to the insurer. Each
30 insurer shall collect the premium surcharge levied against every employer that it insures. Each insurer shall pay

1 to the department all money collected as a premium surcharge within 20 days of the end of the calendar quarter
2 in which the money was collected. If an insurer fails to timely pay to the department the premium surcharge
3 collected under this section, the department may impose on the insurer an administrative fine of \$500 plus
4 interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be
5 deposited in the workers' compensation administration fund.

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

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

13 (8) By July 1, an insurer under compensation plan No. 2 that pays benefits in the preceding calendar
14 year but that will not collect any premium for coverage in the following fiscal year shall pay an assessment of up
15 to 3% of paid losses paid in the preceding calendar year. The department shall determine and notify the insurer
16 by April 30 of each year of the amount that is due by July 1.

17 (9) An employer that makes a first-time application for permission to enroll under compensation plan No.
18 1 shall pay an assessment of \$500 within 15 days of being granted permission by the department to enroll under
19 compensation plan No. 1.

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

22 (11) The administration fund must be debited with expenses incurred by the department in the general
23 administration of the provisions of this chapter, including the salaries of its members, officers, and employees and
24 the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503,
25 incurred while on the business of the department either within or without the state.

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

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

1 subsection must be deposited in the workers' compensation administration fund."

2

3 **Section 3.** Section 39-71-915, MCA, is amended to read:

4 **"39-71-915. Assessment of insurer -- employers -- definition -- collection.** (1) As used in this section,
5 "paid losses" means the following benefits paid during the preceding calendar year for injuries covered by the
6 Workers' Compensation Act without regard to the application of any deductible, regardless of whether the
7 employer or the insurer pays the losses:

8 (a) total compensation benefits paid; and

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

12 (2) The fund must be maintained by assessing each plan No. 1 employer, each employer insured by a
13 plan No. 2 insurer, plan No. 3, the state fund, with respect to claims arising before July 1, 1990, and each
14 employer insured by plan No. 3, the state fund. The assessment amount is the total amount paid by the fund in
15 the preceding fiscal year and the expenses of administration less other realized income that is deposited in the
16 fund. The total assessment amount to be collected must be allocated among plan No. 1 employers, plan No. 2
17 employers, plan No. 3, the state fund, and plan No. 3 employers, based on a proportionate share of paid losses
18 for the calendar year preceding the year in which the assessment is collected. The board of investments shall
19 invest the money of the fund, and the investment income must be deposited in the fund.

20 (3) On or before May 31 each year, the department shall notify each plan No. 1 employer, plan No. 2
21 insurer, and plan No. 3, the state fund, of the amount to be assessed for the ensuing fiscal year. The amount to
22 be assessed against the state fund must separately identify the amount attributed to claims arising before July
23 1, 1990, and the amount attributable to state fund claims arising on or after July 1, 1990. On or before April 30
24 each year, the department, in consultation with the advisory organization designated under 33-16-1023, shall
25 notify plan No. 2 insurers and plan No. 3 of the premium surcharge rate to be effective for policies written or
26 renewed on and after July 1 in that year.

27 (4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is a
28 proportionate amount of total plan No. 1 paid losses during the preceding calendar year that is equal to the
29 percentage that the total paid losses of the individual plan No. 1 employer bore to the total paid losses of all plan
30 No. 1 employers during the preceding calendar year.

1 (5) The portion of the assessment attributable to ~~state fund~~ claims arising before July 1, 1990, is the
2 proportionate amount that is equal to the percentage that total paid losses for those claims during the preceding
3 calendar year bore to the total paid losses for all plans in the preceding calendar year. ~~As required by 39-71-2352,~~
4 ~~the state fund may not pass along to insured employers the~~ The cost of the subsequent injury fund assessment
5 that is attributable to claims arising before July 1, 1990, may not be passed along to the insured employers.

6 (6) The remaining portion of the assessment must be paid by way of a surcharge on premiums paid by
7 employers being insured by a plan No. 2 insurer or plan No. 3, the state fund, for policies written or renewed
8 annually on or after July 1. The surcharge rate must be computed by dividing the remaining portion of the
9 assessment by the total amount of premiums paid by employers insured under plan No. 2 or plan No. 3 in the
10 previous calendar year. The numerator for the calculation must be adjusted as provided by subsection (9).

11 (7) Each plan No. 2 insurer providing workers' compensation insurance and plan No. 3, the state fund,
12 shall collect from its policyholders the assessment premium surcharge provided for in subsection (6). When
13 collected, the assessment premium surcharge may not constitute an element of loss for the purpose of
14 establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as
15 separate costs imposed upon insured employers. The total of this assessment premium surcharge must be stated
16 as a separate cost on an insured employer's policy or on a separate document submitted by the insured employer
17 and must be identified as "workers' compensation subsequent injury fund surcharge". Each assessment premium
18 surcharge must be shown as a percentage of the total workers' compensation policyholder premium. This
19 assessment premium surcharge must be collected at the same time and in the same manner that the premium
20 for the coverage is collected. The assessment premium surcharge must be excluded from the definition of
21 premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except
22 that an insurer may cancel a workers' compensation policy for nonpayment of the assessment premium
23 surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium.
24 If an employer fails to remit to an insurer the total amount due for the premium and assessment premium
25 surcharge, the amount received by the insurer must be applied to the assessment premium surcharge first and
26 the remaining amount applied to the premium due.

27 (8) (a) All assessments paid to the department must be deposited in the fund.

28 (b) Each plan No. 1 employer shall pay its assessment by July 1.

29 (c) Each plan No. 2 insurer and plan No. 3, the state fund, shall remit to the department all assessment
30 premium surcharges collected during a calendar quarter by not later than 20 days following the end of the quarter.

1 (d) The state fund shall pay the portion of the assessment attributable to claims arising before July 1,
2 1990, by July 1.

3 (e) If a plan No. 1 employer, a plan No. 2 insurer, or plan No. 3, the state fund, fails to timely pay to the
4 department the assessment or assessment premium surcharge under this section, the department may impose
5 on the plan No. 1 employer, the plan No. 2 insurer, or plan No. 3, the state fund, an administrative fine of \$100
6 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must
7 be deposited in the fund.

8 (9) The amount of the assessment premium surcharge actually collected pursuant to subsection (7) must
9 be compared each year to the amount assessed and upon which the premium surcharge was calculated. The
10 amount undercollected or overcollected in any given year must be used as an adjustment to the numerator
11 provided for by subsection (6) for the following year's assessment premium surcharge.

12 (10) If the total assessment is less than \$1 million for any year, the department may defer the assessment
13 amount for that year and add that amount to the assessment amount for the subsequent year."
14

15 **Section 4.** Section 39-71-2321, MCA, is amended to read:

16 **"39-71-2321. What to be deposited in state fund.** (1) All premiums, penalties, recoveries by
17 subrogation, interest earned upon money belonging to the state fund, securities acquired by or through use of
18 money, and all interest and penalties on taxes in accordance with 17-2-124 must be deposited in the state fund.
19 ~~Except for a transfer authorized under 39-71-2352, the~~ The money must be separated into two accounts based
20 upon whether they relate to claims for injuries resulting from accidents that occurred before July 1, 1990, or
21 claims for injuries resulting from accidents that occur on or after that date.

22 (2) All funds deposited in the state fund may be spent as provided in 17-8-101(2)(b)."
23

24 NEW SECTION. **Section 5. Repealer.** The following section of the Montana Code Annotated is
25 repealed:

26 39-71-2352. Separate payment structure and sources for claims for injuries resulting from accidents that
27 occurred before July 1, 1990, and on or after July 1, 1990 -- spending limit -- authorizing transfer
28 of money.
29

30 NEW SECTION. **Section 6. Effective dates.** (1) Except as provided in subsection (2), [this act] is

1 effective on passage and approval.

2 (2) [Sections 2 through 5] are effective July 1, 2013.

3 - END -