

## 1 HOUSE BILL NO. 511

2 INTRODUCED BY S. GUNDERSON

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE MONTANA  
5 STATE FUND; REVISING FUND TRANSFER REQUIREMENTS TO THE COMMISSIONER OF INSURANCE;  
6 REVISING DEFINITIONS AND EXCEPTIONS TO THE STATE FUND; PROVIDING FOR THE ADOPTION OF  
7 AN ADVISORY RATE AND EQUALIZED LOSS COST MULTIPLIER FOR SOLVENCY; REQUIRING THAT  
8 THE PAYMENT OF DIVIDENDS BY THE STATE FUND NOT BE CONDITIONED ON RENEWAL OF THE  
9 POLICY OR CONTRACT; REVISING SURPLUS REQUIREMENTS; AMENDING SECTIONS 33-1-115, 33-2-  
10 1902, 39-71-2311, 39-71-2323, 39-71-2330, AND 39-71-2375, MCA; AND PROVIDING AN EFFECTIVE DATE  
11 AND AN APPLICABILITY DATE."

12

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

14

15 **Section 1.** Section 33-1-115, MCA, is amended to read:

16 **"33-1-115. Operation of state fund as authorized insurer -- issuance of certificate of authority --**  
17 **exceptions -- use of calendar year -- risk-based capital -- reporting requirements.** (1) The state fund  
18 provided for in 39-71-2313 is an authorized insurer and, except as provided in this section, is subject to the  
19 provisions in Title 33 that are generally applicable to authorized workers' compensation insurers in this state  
20 and the provisions of Title 39, chapter 71, part 23.

21 (2) (a) The commissioner shall issue a certificate of authority to the state fund to write workers'  
22 compensation insurance coverages, as provided in 39-71-2316, and except as otherwise provided in this  
23 section the requirements of Title 33, chapter 2, part 1, do not apply. The certificate of authority must be  
24 continuously renewed by the commissioner.

25 (b) The state fund shall pay the annual fee under 33-2-708, provide the surplus funds required under  
26 33-2-109 and 33-2-110, and provide to the commissioner the available documentation and information that is  
27 provided by other insurers when applying for a certificate of authority under 33-2-115.

28 (c) The state fund is subject to the reporting requirements under 33-2-705 but is not subject to the tax

1 on net premiums.

2 (3) (a) The state fund, as the guaranteed market for workers' compensation insurance for employers  
3 pursuant to 39-71-2313, is not subject to:

4 (i) formation requirements of an insurer under Title 33, chapter 3;

5 (ii) revocation or suspension of its certificate of authority under any provision of Title 33 or any order or  
6 any provision that requires forfeiture of the state fund's obligation to insure employers as required in 39-71-  
7 2313;

8 (iii) liquidation or dissolution under Title 33;

9 (iv) participation in the guaranty association provided for in Title 33, chapter 10;

10 (v) 33-12-104; or

11 (vi) any assessment of punitive or exemplary damages.

12 (b) The state fund is subject to 33-16-1023, except as provided in 39-71-2316(1)(e), (1)(f), and (1)(g).

13 (4) The state fund shall complete financial reporting and accounting on a calendar year basis.

14 (5) (a) If the state fund's risk-based capital falls below the company action level RBC as defined in  
15 33-2-1902, the commissioner shall issue a report to the governor, the state fund board of directors, and to the  
16 legislature. If the legislature is not in session, the report must go to the economic affairs interim committee and  
17 to the legislative auditor. The report must provide a description of the RBC measurement, the regulatory  
18 implications of the state fund falling below the RBC criteria, and the state fund's corrective action plan. If the  
19 commissioner is reporting on a regulatory action level RBC event, the report must include the state fund's  
20 corrective action plan, results of any examination or analysis by the commissioner, and any corrective orders  
21 issued by the commissioner.

22 (b) If the state fund fails to comply with any lawful order of the commissioner, the commissioner may  
23 initiate supervision proceedings under Title 33, chapter 2, part 13, against state fund. If the state fund fails to  
24 comply with the commissioner's lawful supervision order under this subsection (5)(b), the commissioner may  
25 institute rehabilitation proceedings under Title 33, chapter 2, part 13, only if the commissioner is petitioning for  
26 rehabilitation based on the grounds provided in 33-2-1321(1) or (2).

27 ~~(6) The state fund shall annually transfer funds to the commissioner, out of its surplus, for all~~  
28 ~~necessary staffing and related expenses for a full-time attorney licensed to practice law in Montana and a full-~~

1 ~~time examiner qualified by education, training, experience, and high professional competence to examine the~~  
 2 ~~state fund pursuant to Title 33, chapter 1, part 4, and this section. The attorney and examiner must be~~  
 3 ~~employees of the commissioner.~~

4 ~~(7)(6)~~ For the purposes of this section, the term "guaranteed market" has the definition provided in 39-  
 5 71-2312."

6

7 **Section 2.** Section 33-2-1902, MCA, is amended to read:

8 **"33-2-1902. Definitions.** As used in this part, the following definitions apply:

9 (1) "Adjusted RBC report" means an RBC report that has been adjusted by the commissioner in  
 10 accordance with 33-2-1903(6).

11 (2) "Corrective order" means an order issued by the commissioner specifying corrective actions that  
 12 the commissioner has determined are required.

13 (3) "Domestic insurer" means any insurance company or health organization domiciled in this state.

14 (4) "Foreign insurer" means any insurance company licensed to do business in this state under 33-2-  
 15 116 but not domiciled in this state, or a health organization licensed to do business in this state under Title 33,  
 16 chapter 31, but not domiciled in this state.

17 (5) "Health organization" means a health maintenance organization or other managed care  
 18 organization licensed under Title 33, chapter 31. The term does not include an organization licensed as either a  
 19 life or disability insurer or a property and casualty insurer, or that is otherwise subject to either the life and  
 20 health or the property and casualty RBC requirements.

21 (6) "Insurer" includes life or other disability insurers, property and casualty insurers, and health  
 22 organizations.

23 (7) "Life or disability insurer" means:

24 (a) any insurance company licensed under 33-2-116 and engaged in the business of entering into  
 25 contracts of disability insurance, as described in 33-1-207, or life insurance, as described in 33-1-208;

26 (b) a licensed property and casualty insurer writing only disability insurance;

27 (c) any insurer engaged solely in the business of reinsurance of life or disability contracts;

28 (d) a fraternal benefit society formed under Title 33, chapter 7; or

1 (e) a health service corporation formed under Title 33, chapter 30.

2 (8) "NAIC" means the national association of insurance commissioners.

3 (9) "Negative trend" means, with respect to a life or health insurer, a negative trend over a period of  
4 time, as determined in accordance with the trend test calculation included in the RBC instructions.

5 (10) (a) "Property and casualty insurer" means:

6 (i) any insurance company licensed under 33-2-116 and engaged in the business of entering into  
7 contracts of property insurance, as described in 33-1-210, or casualty insurance, as described in 33-1-206;

8 (ii) any insurance company engaged solely in the business of reinsurance of property and casualty  
9 contracts; or

10 (iii) any insurance company engaged in the business of surety and marine insurance.

11 (b) The term does not include monoline mortgage guaranty insurers, financial guaranty insurers, and  
12 title insurers.

13 (11) "RBC instructions" means the RBC report, including risk-based capital instructions adopted by the  
14 NAIC, as the RBC instructions may be amended by the NAIC from time to time in accordance with the  
15 procedures adopted by the NAIC.

16 (12) "RBC level" means an insurer's authorized control level RBC, company action level RBC,  
17 mandatory control level RBC, or regulatory action level RBC, in which:

18 (a) "authorized control level RBC" means the number determined under the risk-based capital formula  
19 in accordance with the RBC instructions;

20 (b) ~~(i) "company action level RBC" means, with respect to any insurer except the state fund as  
21 provided in subsection (12)(b)(ii), the product of 2 and its authorized control level RBC;~~

22 ~~(ii) "company action level RBC" for the state fund is the product of 4 and its authorized control level  
23 RBC;~~

24 (c) "mandatory control level RBC" means the product of 0.70 and the authorized control level RBC;  
25 and

26 (d) ~~(i) "regulatory action level RBC" means, except for the state fund as provided in subsection  
27 (12)(d)(ii), the product of 1.5 and its authorized control level RBC;~~

28 ~~(ii) "regulatory action level RBC" for the state fund is the product of 3 and its authorized control level~~

1 RBC.

2 (13) "RBC plan" means a comprehensive financial plan containing the elements specified in 33-2-  
3 1904(2). If the commissioner rejects the RBC plan and it is revised by the insurer, with or without the  
4 commissioner's recommendation, the plan must be called a revised RBC plan.

5 (14) "RBC report" means the report required in 33-2-1903.

6 (15) "Total adjusted capital" means the sum of:

7 (a) an insurer's statutory capital and surplus; and

8 (b) other items, if any, as the RBC instructions may provide."

9

10 **Section 3.** Section 39-71-2311, MCA, is amended to read:

11 **"39-71-2311. Intent and purpose of plan -- ~~expense constant defined~~ adoption of advisory rate**  
12 **and equalized loss cost multiplier for solvency.** (1) It is the intent and purpose of the state fund to allow  
13 employers an option to insure their liability for workers' compensation and occupational disease coverage with  
14 the state fund. The state fund must be neither more nor less than self-supporting. Premium rates that include a  
15 reasonable expense constant must be set at least annually at a level sufficient to ensure the adequate funding  
16 of the insurance program, including the costs of administration, benefits, and adequate reserves, during and at  
17 the end of the period for which the rates will be in effect. In determining premium rates, the state fund shall  
18 make every effort to adequately predict future costs. ~~When the costs of a factor influencing rates are unclear~~  
19 ~~and difficult to predict, the state fund shall use a prediction calculated to be more than likely to cover those~~  
20 ~~costs rather than less than likely to cover those costs.~~ The prediction must take into account the goal of pooling  
21 risk and may not place an ~~undue burden on employers that are not eligible for the tier with the lowest rated~~  
22 ~~premium for workers' compensation purposes~~ inequitable burden on any employer or class or employers  
23 insured by the state fund.

24 (2) Unnecessary surpluses that are created by the imposition of premiums found to have been set  
25 higher than necessary because of a high estimate of the cost of a factor or factors may be refunded by the  
26 declaration of a dividend as provided in this part. For the purpose of keeping the state fund solvent, the board of  
27 directors may implement multiple rating tiers as provided in 39-71-2330 and ~~may assess an expense constant,~~  
28 ~~a minimum premium, or both~~ shall adopt the advisory loss cost rate filed by the advisory organization and

1 approved by the commissioner of insurance as provided in Title 33, chapter 16, part 10, plus an expense  
 2 constant not less than the equalized loss cost multiplier for solvency for the rating period. Scheduled premium  
 3 credits in any form filed with the rate may not produce a net rate lower than the applicable loss cost rate plus an  
 4 equalized loss cost multiplier for solvency net premium.

5 (3) As used in this section, the following definitions apply:

6 (a) "expense constant" means a premium charge applied to each workers' compensation policy to pay  
 7 expenses related to issuing, servicing, maintaining, recording, and auditing the policy. "Equalized loss cost  
 8 multiplier for solvency" means an expense constant of .35% of the advisory rate filed by the advisory  
 9 organization and approved by the commissioner of insurance as provided in Title 33, chapter 16, part 10.

10 (b) "Expense constant" means a premium charge applied to each workers' compensation policy to  
 11 pay expenses related to issuing, servicing, maintaining, recording, and auditing the policy."

12

13 **Section 4.** Section 39-71-2323, MCA, is amended to read:

14 **"39-71-2323. Surplus in state fund -- payment of dividends.** Subject to the provisions of 39-71-  
 15 2316, if at the end of any fiscal year there exists in the state fund account created by 39-71-2321 for claims for  
 16 injuries resulting from accidents that occur on or after July 1, 1990, an excess of assets over liabilities, including  
 17 necessary reserves and an appropriate surplus as determined by the board in accordance with 39-71-2330,  
 18 and if the excess may be refunded safely, then the board, after consultation with the independent actuary  
 19 engaged pursuant to 39-71-2330, may declare a dividend. The state fund must prescribe the manner of  
 20 payment to those employers who have paid premiums into the state fund in excess of liabilities. The state fund  
 21 may not condition the payment of a dividend on the renewal of a policy or contract."

22

23 **Section 5.** Section 39-71-2330, MCA, is amended to read:

24 **"39-71-2330. Rate setting -- surplus -- multiple rating tiers.** (1) The board has the authority to  
 25 establish the rates to be charged by the state fund and the supplementary rate information to determine the  
 26 applicable premium as provided in 39-71-2311 and 39-71-2316 and shall file the rates and supplementary rate  
 27 information with the commissioner as provided in Title 33, chapter 16. The board shall engage the services of  
 28 an independent actuary who is a member in good standing with the American academy of actuaries to develop

1 and recommend actuarially sound rates. Rates must be set at amounts sufficient, when invested, to carry the  
2 estimated cost of all claims to maturity, to meet the reasonable expenses of conducting the business of the  
3 state fund, and to amass and maintain ~~an excess of a surplus over~~in the amount produced by the national  
4 association of insurance commissioners' risk-based capital requirements for a casualty insurer.

5 (2) Because surplus is desirable in the insurance business, the board shall annually determine the  
6 level of surplus that must be maintained by the state fund pursuant to this section. The state fund shall use the  
7 amount of the surplus above the risk-based capital requirements to secure the state fund against various risks  
8 inherent in or affecting the business of insurance and not accounted for or only partially measured by the risk-  
9 based capital requirements.

10 (3) The board may establish multiple rating tiers for classifications that take into consideration losses,  
11 premium size, and other factors relevant in placing an employer within a rating tier. The board shall file any  
12 multiple rating tiers with the commissioner for review as provided in Title 33, chapter 16."  
13

14 **Section 6.** Section 39-71-2375, MCA, is amended to read:

15 **"39-71-2375. Operation of state fund as authorized insurer -- issuance of certificate of authority**  
16 **-- exceptions -- use of calendar year -- risk-based capital -- reporting requirements.** (1) The state fund  
17 provided for in 39-71-2313 is an authorized insurer and, except as provided in this section, is subject to the  
18 provisions in Title 33 that are generally applicable to authorized workers' compensation insurers in this state  
19 and the provisions of Title 39, chapter 71, part 23.

20 (2) (a) The commissioner shall issue a certificate of authority to the state fund to write workers'  
21 compensation insurance coverages, as provided in 39-71-2316, and except as otherwise provided in this  
22 section the requirements of Title 33, chapter 2, part 1, do not apply. The certificate of authority must be  
23 continuously renewed by the commissioner.

24 (b) The state fund shall pay the annual fee under 33-2-708, provide the surplus funds required under  
25 33-2-109 and 33-2-110, and provide to the commissioner the available documentation and information that is  
26 provided by other insurers when applying for a certificate of authority under 33-2-115.

27 (c) The state fund is subject to the reporting requirements under 33-2-705 but is not subject to the tax  
28 on net premiums.

- 1 (3) (a) The state fund, as the guaranteed market for workers' compensation insurance for employers  
2 pursuant to 39-71-2313, is not subject to:
- 3 (i) formation requirements of an insurer under Title 33, chapter 3;
  - 4 (ii) revocation or suspension of its certificate of authority under any provision of Title 33 or any order or  
5 any provision that requires forfeiture of the state fund's obligation to insure employers as required in 39-71-  
6 2313;
  - 7 (iii) liquidation or dissolution under Title 33;
  - 8 (iv) participation in the guaranty association provided for in Title 33, chapter 10;
  - 9 (v) 33-12-104; or
  - 10 (vi) any assessment of punitive or exemplary damages.
- 11 (b) The state fund is subject to 33-16-1023, except as provided in 39-71-2316(1)(e), (1)(f), and (1)(g).
- 12 (4) The state fund shall complete financial reporting and accounting on a calendar year basis.
- 13 (5) (a) If the state fund's risk-based capital falls below the company action level RBC as defined in  
14 33-2-1902, the commissioner shall issue a report to the governor, the state fund board of directors, and to the  
15 legislature. If the legislature is not in session, the report must go to the economic affairs interim committee and  
16 to the legislative auditor. The report must provide a description of the RBC measurement, the regulatory  
17 implications of the state fund falling below the RBC criteria, and the state fund's corrective action plan. If the  
18 commissioner is reporting on a regulatory action level RBC event, the report must include the state fund's  
19 corrective action plan, results of any examination or analysis by the commissioner, and any corrective orders  
20 issued by the commissioner.
- 21 (b) If the state fund fails to comply with any lawful order of the commissioner, the commissioner may  
22 initiate supervision proceedings under Title 33, chapter 2, part 13, against state fund. If the state fund fails to  
23 comply with the commissioner's lawful supervision order under this subsection (5)(b), the commissioner may  
24 institute rehabilitation proceedings under Title 33, chapter 2, part 13, only if the commissioner is petitioning for  
25 rehabilitation based on the grounds provided in 33-2-1321(1) or (2).
- 26 ~~(6) The state fund shall annually transfer funds to the commissioner, out of its surplus, for all~~  
27 ~~necessary staffing and related expenses for a full-time attorney licensed to practice law in Montana and a full-~~  
28 ~~time examiner qualified by education, training, experience, and high professional competence to examine the~~



1 state fund pursuant to Title 33, chapter 1, part 4, and this section. The attorney and examiner must be  
2 employees of the commissioner.

3 ~~(7)(6)~~ For the purposes of this section, the term "guaranteed market" has the definition provided in 39-  
4 71-2312."

5

6 NEW SECTION. **Section 7. Effective date.** [This act] is effective July 1, 2021.

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8 NEW SECTION. **Section 8. Applicability.** [This act] applies to insurance contracts entered into or  
9 renewed on or after July 1, 2021.

10

- END -