

## 1 HOUSE BILL NO. 514

2 INTRODUCED BY M. NOLAND

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE MONTANA  
 5 STATE FUND; REQUIRING THE STATE FUND TO PAY THE TAX ON NET PREMIUMS; PROVIDING  
 6 REQUIREMENTS IF THE STATE FUND FAILS TO PAY TAXES; AND AMENDING SECTIONS 33-1-115, 33-  
 7 2-705, AND 39-71-2375, MCA."

8

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

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

12 **"33-1-115. Operation of state fund as authorized insurer -- issuance of certificate of authority --**  
 13 **exceptions -- use of calendar year -- risk-based capital -- reporting requirements.** (1) The state fund  
 14 provided for in 39-71-2313 is an authorized insurer and, except as provided in this section, is subject to the  
 15 provisions in Title 33 that are generally applicable to authorized workers' compensation insurers in this state  
 16 and the provisions of Title 39, chapter 71, part 23.

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

21 (b) The state fund shall pay the annual fee under 33-2-708, provide the surplus funds required under  
 22 33-2-109 and 33-2-110, and provide to the commissioner the available documentation and information that is  
 23 provided by other insurers when applying for a certificate of authority under 33-2-115.

24 (c) The state fund is subject to the ~~reporting requirements under provisions of 33-2-705~~ but is not  
 25 ~~subject to the tax on net premiums.~~

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

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

1 (ii) revocation or suspension of its certificate of authority under any provision of Title 33 or any order or  
2 any provision that requires forfeiture of the state fund's obligation to insure employers as required in 39-71-  
3 2313;

4 (iii) liquidation or dissolution under Title 33;

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

6 (v) 33-12-104; or

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

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

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

10 (5) (a) If the state fund's risk-based capital falls below the company action level RBC as defined in  
11 33-2-1902, the commissioner shall issue a report to the governor, the state fund board of directors, and to the  
12 legislature. If the legislature is not in session, the report must go to the economic affairs interim committee and  
13 to the legislative auditor. The report must provide a description of the RBC measurement, the regulatory  
14 implications of the state fund falling below the RBC criteria, and the state fund's corrective action plan. If the  
15 commissioner is reporting on a regulatory action level RBC event, the report must include the state fund's  
16 corrective action plan, results of any examination or analysis by the commissioner, and any corrective orders  
17 issued by the commissioner.

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

23 (6) The state fund shall annually transfer funds to the commissioner, out of its surplus, for all  
24 necessary staffing and related expenses for a full-time attorney licensed to practice law in Montana and a full-  
25 time examiner qualified by education, training, experience, and high professional competence to examine the  
26 state fund pursuant to Title 33, chapter 1, part 4, and this section. The attorney and examiner must be  
27 employees of the commissioner.

28 (7) For the purposes of this section, the term "guaranteed market" has the definition provided in 39-

1 71-2312."

2

3 **Section 2.** Section 33-2-705, MCA, is amended to read:

4 **"33-2-705. Report on premiums and other consideration -- tax.** (1) Each authorized insurer and  
5 each formerly authorized insurer with respect to premiums received while an authorized insurer in this state  
6 shall file with the commissioner, on or before March 1 each year, a report in a form prescribed by the  
7 commissioner showing total direct premium income, including policy, membership, and other fees, premiums  
8 paid by application of dividends, refunds, savings, savings coupons, and similar returns or credits to payment of  
9 premiums for new or additional or extended or renewed insurance, charges for payment of premium in  
10 installments, and all other consideration for insurance from all kinds and classes of insurance, whether  
11 designated as a premium or otherwise, received by a life insurer or written by an insurer other than a life insurer  
12 during the preceding calendar year on account of policies covering property, subjects, or risks located, resident,  
13 or to be performed in Montana, with proper proportionate allocation of premium as to property, subjects, or risks  
14 in Montana insured under policies or contracts covering property, subjects, or risks located or resident in more  
15 than one state, after deducting from the total direct premium income applicable cancellations, returned  
16 premiums, the unabsorbed portion of any deposit premium, the amount of reduction in or refund of premiums  
17 allowed to industrial life policyholders for payment of premiums direct to an office of the insurer, all policy  
18 dividends, refunds, savings, savings coupons, and other similar returns paid or credited to policyholders with  
19 respect to the policies. As to title insurance, "premium" includes the total charge for the insurance. A deduction  
20 may not be made of the cash surrender values of policies. Considerations received on annuity contracts may  
21 not be included in total direct premium income and are not subject to tax.

22 (2) (a) Except as provided in subsections (2)(b) and (2)(c), coincident with the filing of the tax report  
23 referred to in subsection (1) and subject to 33-2-709, each insurer shall pay to the commissioner a tax on the  
24 net premiums computed at the rate of 2.75%.

25 (b) All casualty insurers issuing policies of legal professional liability insurance pursuant to 33-1-206  
26 shall pay to the commissioner a tax on the net premiums derived from legal professional liability insurance  
27 computed at a rate of 0.75%.

28 (c) A dormant captive insurer that has a valid certificate of dormancy shall pay to the commissioner an

1 annual dormancy tax of \$1,000 as provided in 33-28-401.

2 (3) That portion of the tax paid under this section by an insurer on account of premiums received for  
3 fire insurance must be separately specified in the report required by the commissioner for apportionment as  
4 provided by law. When insurance against fire is included with insurance of property against other perils at an  
5 undivided premium, the insurer shall make a reasonable allocation from the entire premium to the fire portion of  
6 the coverage as must be stated in the report and as may be approved or accepted by the commissioner.

7 (4) With respect to authorized insurers, the premium tax provided by this section or the annual  
8 dormancy tax under 33-28-401 must be payment in full and in lieu of all other demands for any and all state,  
9 county, city, district, municipal, and school taxes, licenses, fees, and excises of whatever kind or character,  
10 excepting only those prescribed by this code, taxes on real and tangible personal property located in this state,  
11 and taxes payable under 50-3-109.

12 (5) (a) The Except as provided in subsection (5)(b), the commissioner may suspend or revoke the  
13 certificate of authority of any insurer that fails to pay its taxes as required under this section.

14 (b) (i) If the state fund fails to pay its taxes as required under this section, the commissioner shall  
15 issue a report to the governor, the state fund board of directors, and the legislature. If the legislature is not in  
16 session, the report must go to the economic affairs interim committee and to the legislative auditor. The report  
17 must provide a description of the failure, including the amount of the taxes owed remaining unpaid, the state  
18 fund's corrective action plan, the results of any examination or analysis by the commissioner, and any  
19 corrective orders issued by the commissioner.

20 (ii) If the state fund fails to comply with any corrective order issued by the commissioner, the  
21 commissioner may initiate supervision proceedings under Title 33, chapter 2, part 13, against the state fund. If  
22 the state fund fails to comply with the commissioner's lawful supervision order under this subsection (5)(b), the  
23 commissioner may institute rehabilitation proceedings under Title 33, chapter 2, part 13.

24 (6) In addition to the penalty provided for in subsection (5), the commissioner may impose on an  
25 insurer who fails to pay the tax required under this section a fine of \$100 plus interest on the delinquent amount  
26 at the annual interest rate of 12%.

27 (7) The commissioner may by rule provide a quarterly schedule for payment of portions of the  
28 premium tax under this section during the year in which tax liability is accrued."

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2 **Section 3.** Section 39-71-2375, MCA, is amended to read:

3 **"39-71-2375. Operation of state fund as authorized insurer -- issuance of certificate of authority**

4 **-- exceptions -- use of calendar year -- risk-based capital -- reporting requirements.** (1) The state fund  
5 provided for in 39-71-2313 is an authorized insurer and, except as provided in this section, is subject to the  
6 provisions in Title 33 that are generally applicable to authorized workers' compensation insurers in this state  
7 and the provisions of Title 39, chapter 71, part 23.

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

12 (b) The state fund shall pay the annual fee under 33-2-708, provide the surplus funds required under  
13 33-2-109 and 33-2-110, and provide to the commissioner the available documentation and information that is  
14 provided by other insurers when applying for a certificate of authority under 33-2-115.

15 (c) The state fund is subject to the ~~reporting requirements under provisions of~~ 33-2-705 ~~but is not~~  
16 ~~subject to the tax on net premiums.~~

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

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

20 (ii) revocation or suspension of its certificate of authority under any provision of Title 33 or any order or  
21 any provision that requires forfeiture of the state fund's obligation to insure employers as required in 39-71-  
22 2313;

23 (iii) liquidation or dissolution under Title 33;

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

25 (v) 33-12-104; or

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

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

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

