

## SENATE BILL NO. 51

INTRODUCED BY D. HARGROVE

BY REQUEST OF THE STATE ADMINISTRATION, PUBLIC RETIREMENT SYSTEMS, AND VETERANS'  
AFFAIRS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE DEPARTMENT OF ADMINISTRATION TO ESTABLISH AN EMPLOYEE WELFARE BENEFIT PLAN CONSISTING OF INDIVIDUAL HEALTH CARE EXPENSE TRUST ACCOUNTS FOR PUBLIC EMPLOYEES; PROVIDING FOR PROGRAM ADMINISTRATION; PROVIDING THAT CONVERSION OF UNUSED SICK LEAVE TO EMPLOYER CONTRIBUTIONS TO THE PLAN MAY BE USED AS A FUNDING SOURCE; PROVIDING A TAX EXEMPTION FOR CONTRIBUTIONS, EARNINGS, AND PAYMENTS; PROVIDING DEATH BENEFITS; REQUIRING THAT THE BENEFIT PLAN BE SUBMITTED TO THE COMMISSIONER OF INTERNAL REVENUE FOR A PRIVATE LETTER RULING OF DETERMINATION TO ENSURE THAT THE PLAN IS FEDERALLY TAX-QUALIFIED; AUTHORIZING A LOAN FROM THE BOARD OF INVESTMENTS; CREATING A STATE DEBT; AMENDING SECTIONS 2-18-618 AND 15-30-111, MCA; AND PROVIDING EFFECTIVE DATES."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 10] may be cited as the "Voluntary Employees' Beneficiary Association Act".

NEW SECTION. **Section 2. Purpose and intent.** The legislature finds that escalating health care expenses, particularly the increasing cost of medical treatment and health insurance, constitute a substantial financial burden during and after an employee's working career. The purpose of [sections 1 through 10] is to provide a means by which public employers may contribute to a plan established under a qualified tax-exempt trust organization to assist public employees, their dependents, and their beneficiaries with paying for qualified health care expenses. Under the plan, employer contributions, investment earnings, and payments for qualified health care expenses are tax-exempt. The legislature also finds that centralized statewide administration offers a consistent approach and is more cost-effective, especially for smaller employers. However, the legislature does not intend to prohibit an employer from establishing a similar program as an alternative or in addition to participation in the statewide program provided for in [sections 1 through 10]. Additionally, the legislature intends

to facilitate a grassroots process to determine plan participation.

**NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 10], unless the context requires otherwise, the following definitions apply:

(1) "Common association" means an association of employees established pursuant to [section 7] for the purposes of employer and employee participation in the plan.

(2) "Contracting employer" means an employer who, pursuant to [section 7], has contracted with the department to participate in the plan.

(3) "Department" means the department of administration established in 2-15-1001.

(4) "Employee" means a person employed by an employer but does not include an independent contractor or person hired by the employer under a personal services contract.

(5) "Employer" means a legally constituted department, board, or commission of the state, a county, an incorporated city or town, or any political subdivision of the state, including a school district or a unit of the university system.

(6) "Health care expense trust account" or "account" means an account established for the payment of qualified health care expenses under the plan.

(7) "Member" means an employee who belongs to a voluntary employees' beneficiary association established under [section 7].

(8) "Plan" means the employee welfare benefit plan established under Internal Revenue Code section 501(c)(9) pursuant to [section 4].

(9) "Qualified health care expenses" means expenses paid by a member for medical care, as defined by 26 U.S.C. 213(d), for the member or the member's dependent as defined by 26 U.S.C. 152.

**NEW SECTION. Section 4. Statewide employee welfare benefit plan established -- health care expense trust accounts -- investment of funds -- account access -- administrative expenses.** (1) The department shall establish, through contracted services, a plan under a tax-exempt entity that qualifies as a voluntary employees' beneficiary association trust pursuant to section 501(c)(9), of the Internal Revenue Code, 26 U.S.C. 501(c)(9). The plan must provide members with individual health care expense trust accounts to pay the qualified health care expenses of members, their dependents, and their beneficiaries.

(2) The department shall determine what investment vehicles will be offered to plan members. Each plan member is entitled to direct the investment of funds in the member's account among the investment vehicles

offered. The department shall provide for a default investment vehicle if a member fails to direct how funds are to be invested.

(3) At any time after a member's account has been established, the member may access funds in the account in a manner prescribed by the department. The funds may be accessed only for the payment of qualified health care expenses and until the funds have been exhausted.

(4) Administrative expenses must be paid by the plan in a manner prescribed by the department.

NEW SECTION. Section 5. Rulemaking authority. The department shall adopt rules to implement the provisions of [sections 1 through 10]. The rules must be designed to allow the plan to conform to federal law.

NEW SECTION. Section 6. Administration of plan -- content of plan document. (1) The department shall provide for the administration of the plan in the manner required to satisfy applicable tax qualification requirements of the Internal Revenue Code. IF A STATUTORY PROVISION OF [SECTIONS 1 THROUGH 10] CONFLICTS WITH A QUALIFICATION REQUIREMENT OF THE INTERNAL REVENUE CODE AND ANY CONSEQUENT FEDERAL REGULATIONS, THE PROVISION IS EITHER INEFFECTIVE OR MUST BE INTERPRETED TO CONFORM WITH THE FEDERAL QUALIFICATION REQUIREMENTS.

(2) For purposes of qualification pursuant to section 501(c)(9) of the Internal Revenue Code, 26 U.S.C. 501(c)(9), and any other applicable internal revenue service laws and regulations, the plan document is composed of [sections 1 through 10] and the rules adopted by the department to implement [sections 1 through 10].

NEW SECTION. Section 7. Plan membership election -- contract for employer participation. (1) At the request of at least 25% of its employees, an employer ~~shall~~ MAY facilitate an election by all the employer's employees or by a specified group of the employer's employees to determine whether those employees will form an association for the purpose of participating in the plan. AN ELECTION AMONG EMPLOYEES ON WHETHER TO FORM AN ASSOCIATION MAY ALSO BE INITIATED BY THE EMPLOYER.

(2) If a majority of the employees voting on the question vote to become plan members, then, in a manner prescribed by the department:

(a) all of the employees that were eligible to vote on the question AND ANY EMPLOYEES SUBSEQUENTLY HIRED INTO THE POSITIONS COVERED UNDER THE TERMS AND CONDITIONS OF THE ELECTION must be formed as a common association for the purpose of plan membership and the employees must become plan members; and

(b) the employer shall enter into a contract with the department to participate in the plan and must become a contracting employer.

(3) A common association shall operate in a manner prescribed by the department unless the association is disbanded in a manner prescribed by the department.

(4) A contracting employer shall provide to the department, or the appropriate administering entity, the information necessary for the plan's operation. The department, in partnership with a contracting employer, shall provide to plan members the information necessary to actively participate in the plan.

**NEW SECTION. Section 8. Contributions of unused sick leave -- other contributions not prohibited.** (1) In a manner prescribed by the department, a contracting employer shall provide for a plan member to annually designate how many hours, if any, of the member's ~~unused~~ sick leave ~~that accrued during the previous 12 months~~ will be automatically converted to an employer contribution to the member's account each pay period AS PROVIDED FOR IN THIS SECTION. ~~However~~

(2) (A) EXCEPT AS PROVIDED IN SUBSECTION (2)(B), a member may ANNUALLY convert only the ~~unused~~ sick leave hours ~~accrued~~ in excess of ~~120~~ 240 hours and no more than the maximum prescribed ~~according to department rule:~~ BY THE CONTRACTING EMPLOYER.

(B) WHEN THE MEMBER'S EMPLOYMENT IS TERMINATED, THE MEMBER'S ENTIRE UNUSED SICK LEAVE BALANCE MUST BE AUTOMATICALLY CONVERTED TO AN EMPLOYER CONTRIBUTION TO THE MEMBER'S ACCOUNT PURSUANT TO THIS SECTION AND MAY NOT BE PAID AS A LUMP SUM UNDER 2-18-618(6).

(3) The amount of the employer contribution to a member's account for hours converted under this ~~subsection~~ SECTION must be equal to one-fourth of the pay attributed to the accumulated sick leave. The attributable pay must be computed on the basis of the employee's salary or wage at the time that the sick leave is converted. A member may not later receive as sick leave credit or as a lump-sum payment amounts contributed to the member's account pursuant to this ~~subsection~~ SECTION. ~~However, a member is still entitled to the lump-sum payment for unused and unconverted sick leave payable under 2-18-618(6).~~

(2)(4) This section does not prohibit an employer from entering into an agreement with a member for employer contributions to a member account in addition to the contributions provided for under ~~subsection (4)~~ THIS SECTION.

**NEW SECTION. Section 9. Tax exemption.** Employer contributions into an account, the accumulation of interest or other earnings in an account, and payments from an account for qualified health care expenses are

tax-exempt, as provided in 15-30-111 and under applicable federal laws and regulations to the extent that the plan is qualified under applicable sections of the Internal Revenue Code.

NEW SECTION. Section 10. Beneficiaries -- death benefits. (1) A member may designate as a beneficiary ~~any~~ AN individual, charitable organization, or trust ~~for the benefit of an individual.~~ The designation must be in a manner prescribed by the department.

(2) Upon proof of a member's death, if the deceased member's account retains funds, the member's designated beneficiary is entitled to use the account for qualified health care expenses or, TO THE EXTENT ALLOWABLE UNDER APPLICABLE INTERNAL REVENUE CODE SECTIONS, to receive a taxable lump-sum payment of the deceased member's account balance. ~~If there is no designated beneficiary or surviving designated beneficiary, the member's personal representative, as defined in 72-1-103, is entitled to a taxable lump-sum payment for disposition as part of the member's estate.~~

~~(3) If a payment under this section is payable to a minor, the payment must be made to one of the following in the listed order of preference:~~

~~(a) a surviving parent;~~

~~(b) a parent awarded custody of the minor in a dissolution of marriage proceeding;~~

~~(c) a custodian designated under Title 72, chapter 26;~~

~~(d) a guardian appointed pursuant to Title 72, chapter 5, part 2; or~~

~~(e) a conservator appointed pursuant to Title 72, chapter 5, part 4.~~

~~(4) Payment under this section fully discharges obligations of the plan, the plan's board of trustees, and the department to the deceased member and the member's beneficiaries.~~

~~(5) If a person is convicted of knowingly or purposely causing a member's death or disability, that person may not receive payments from the plan and any payments due must be made as otherwise provided by law: THE DEPARTMENT SHALL PRESCRIBE BY RULE THE DISPOSITION OF A DECEASED MEMBER'S ACCOUNT IF THE MEMBER FAILED TO DESIGNATE A BENEFICIARY OR HAS NO SURVIVING DESIGNATED BENEFICIARY.~~

**Section 11.** Section 2-18-618, MCA, is amended to read:

**"2-18-618. Sick leave.** (1) A permanent full-time employee earns sick leave credits from the first day of employment. For calculating sick leave credits, 2,080 hours (52 weeks x 40 hours) equals 1 year. Sick leave credits must be credited at the end of each pay period. Sick leave credits are earned at the rate of 12 working days for each year of service without restriction as to the number of working days that may be accumulated.

Employees are not entitled to be paid sick leave until they have been continuously employed 90 days.

(2) An employee may not accrue sick leave credits while in a leave-without-pay status.

(3) Permanent part-time employees are entitled to prorated leave benefits if they have worked the qualifying period.

(4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they work the qualifying period.

(5) A short-term worker may not earn sick leave credits.

(6) ~~An~~ Except as otherwise provided in [section 8], an employee who terminates employment with the agency is entitled to a lump-sum payment equal to one-fourth of the pay attributed to the accumulated sick leave. The pay attributed to the accumulated sick leave must be computed on the basis of the employee's salary or wage at the time the employee terminates employment with the state, county, or city. Accrual of sick leave credits for calculating the lump-sum payment provided for in this subsection begins July 1, 1971. The payment is the responsibility of the agency in which the sick leave accrues. However, an employee does not forfeit any sick leave rights or benefits accrued prior to July 1, 1971. However, when an employee transfers between agencies within the same jurisdiction, the employee is not entitled to a lump-sum payment. In a transfer between agencies, the receiving agency shall assume the liability for the accrued sick leave credits earned after July 1, 1971, and transferred with the employee.

(7) An employee who receives a lump-sum payment pursuant to this section or who, pursuant to [section 8], converts unused sick leave to employer contributions to a health care expense trust account and who is again employed by any agency may not be credited with sick leave for which the employee has previously been compensated or for which the employee has received an employer contribution to the health care expense trust account.

(8) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided for in this section.

(9) An employee of a state agency may contribute any portion of the employee's accumulated sick leave to a nonrefundable sick leave fund for state employees and becomes eligible to draw upon the fund if an extensive illness or accident exhausts the employee's accumulated sick leave, irrespective of the employee's membership or nonmembership in the employee welfare benefit plan established pursuant to [section 4]. The department of administration shall, in consultation with the state employee group benefits advisory council, provided for in 2-15-1016, administer the sick leave fund and adopt rules to implement this subsection.

(10) A local government may establish and administer through local rule a sick leave fund into which its

employees may contribute a portion of their accumulated sick leave."

**Section 12.** Section 15-30-111, MCA, is amended to read:

**"15-30-111. Adjusted gross income.** (1) Adjusted gross income is the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, 26 U.S.C. 62, as that section may be labeled or amended, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954 that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15);

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted; and

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period.

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, a county, municipality, or district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including

\$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) money, not exceeding \$3,000 for each taxpayer, contributed to a family education savings program account established in accordance with 15-62-201;

(m) principal withdrawn from an account for qualified higher education expenses, as defined in

15-62-103, for a designated beneficiary of the taxpayer;

(n) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(o) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period; ~~and~~

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-142.

(g) principal and income deposited in a health care expense trust account, as defined in [section 3], or withdrawn from the account for payment of qualified health care expenses as defined in [section 3].

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code of 1954, as those sections may be labeled or amended, is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the

two-earner married couple deduction exceeds \$15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(7) Married taxpayers who file a joint federal return and who make an election on the federal return to defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA, pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana income tax returns to defer the full taxable conversion amount from Montana adjusted gross income for the same time period. The deferred amount must be attributed to the taxpayer making the conversion. (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983.)"

**NEW SECTION. Section 13. Department to seek commissioner's ruling or opinion DETERMINATION -- certification to secretary of state.** The department of administration shall, as soon as practicable, request in writing a ~~ruling or opinion~~ DETERMINATION from the commissioner of internal revenue as to whether the employee welfare benefit plan created under [sections 1 through 10] is a qualified plan pursuant to section 501(c)(9) of the Internal Revenue Code. If the commissioner determines that the plan is qualified for a tax exemption, the department shall immediately certify that fact to the secretary of state and shall notify the code commissioner of the certification.

**NEW SECTION. Section 14. Loan from board of investments.** To pay the startup costs of the plan established under the Voluntary Employees' Beneficiary Association Act, the department of administration is authorized to receive a loan from the intercap revolving loan program adopted by the board of investments pursuant to 17-5-1605.

**NEW SECTION. SECTION 15. IMPLEMENTATION. IN IMPLEMENTING AND ADMINISTERING THE PROVISIONS OF [SECTIONS 1 THROUGH 10]:**

**(1) THE DEPARTMENT SHALL PROVIDE FOR THE CONVERSION OF UNUSED SICK LEAVE ACCRUED IN EXCESS OF THE MINIMUM ESTABLISHED IN [SECTION 8]; OR**

**(2) IF CONVERSION OF SICK LEAVE IN ACCORDANCE WITH SUBSECTION (1) CONFLICTS WITH APPLICABLE FEDERAL**

LAW, THEN THE DEPARTMENT SHALL PROVIDE FOR CONTRIBUTIONS TO THE HEALTH CARE EXPENSE ACCOUNTS IN LIEU OF SICK LEAVE ACCRUAL IN EXCESS OF THE MINIMUM ESTABLISHED IN [SECTION 8].

NEW SECTION. Section 16. Codification instruction. [Sections 1 through 10] are intended to be codified as an integral part of Title 2, chapter 18, and the provisions of Title 2, chapter 18, apply to [sections 1 through 10].

NEW SECTION. Section 17. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. SECTION 18. TWO-THIRDS VOTE REQUIRED. BECAUSE [SECTION 14] AUTHORIZES THE CREATION OF A STATE DEBT, ARTICLE VIII, SECTION 8, OF THE MONTANA CONSTITUTION REQUIRES A VOTE OF TWO-THIRDS OF THE MEMBERS OF EACH HOUSE OF THE LEGISLATURE FOR PASSAGE.

NEW SECTION. Section 19. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Sections 7 through 12] are effective on the date that the secretary of state receives certification from the department of administration pursuant to [section 13] that the commissioner of internal revenue has determined that the plan established pursuant to [sections 1 through 10] is qualified for a tax exemption pursuant to section 501(c)(9) of the Internal Revenue Code.

- END -

