

SENATE BILL NO. 145

INTRODUCED BY D. BERRY

BY REQUEST OF THE STATE COMPENSATION INSURANCE FUND

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS GOVERNING THE STATE COMPENSATION INSURANCE FUND; AUTHORIZING THE STATE FUND TO ESTABLISH, AFTER CONSULTATION WITH THE DEPARTMENT OF ADMINISTRATION, ONE OR MORE ALTERNATIVE PERSONAL LEAVE PLANS FOR STATE FUND EMPLOYEES; PROVIDING AN EXEMPTION FOR THE STATE FUND FROM STATE PRINTING LAWS FOR EXTERNAL MARKETING OR EDUCATIONAL MATERIALS; SUBSTITUTING AN EXPENSE CONSTANT FOR A POLICY CHARGE; AUTHORIZING THE STATE FUND TO EXPEND FUNDS FOR SCHOLARSHIP, EDUCATIONAL, OR CHARITABLE PURPOSES; AUTHORIZING THE STATE FUND TO PROVIDE EMPLOYERS COVERAGE UNDER THE FEDERAL LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT, THE FEDERAL MERCHANT MARINE ACT (JONES ACT), AND THE FEDERAL EMPLOYERS' LIABILITY ACT; CLARIFYING AND SUBSTITUTING MULTIPLE RATING TIERS FOR VARIABLE PRICING; ELIMINATING THE ADMINISTRATIVE EXPENDITURE RESTRICTION ON THE STATE COMPENSATION INSURANCE FUND BOARD; REQUIRING A REPORT TO AN INTERIM COMMITTEE OF THE LEGISLATURE PRIOR TO THE 2003 LEGISLATIVE SESSION ON THE ALTERNATIVE PERSONAL LEAVE PLAN; AMENDING SECTIONS 2-18-601, 2-18-701, 2-18-703, 2-18-711, 18-7-101, 39-71-2311, 39-71-2316, 39-71-2330, AND 39-71-2363, MCA; REPEALING SECTION 39-71-2341, MCA; AND PROVIDING EFFECTIVE DATES."

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

NEW SECTION. Section 1. State fund alternative personal leave plan -- exception -- collective bargaining negotiation -- personal leave definition. (1) Except as provided in subsection (2), the state fund, after consultation with the department of administration, may develop an alternative personal leave plan for all state compensation insurance fund employees. The number of days and the rate at which the number of days are earned for the alternative personal leave plan must be the same as the combined total of days provided for in 2-18-612 and 2-18-618. Prior to implementation, the alternative personal leave plan must be adopted by the board and the board may adopt changes to the plan.

(2) The state fund, after consultation with the department of administration, may develop one or more

alternative personal leave plans for some or all of its employees or may choose to develop an alternative personal leave plan for a particular class of employees or work unit.

(3) To the extent that an alternative personal leave plan applies to an employee who is a member of a collective bargaining unit, the implementation of the personal leave plan is subject to negotiation under 39-31-305.

(4) As used in this section, "personal leave" means all leave provided to an employee under the provisions of Title 2, chapter 18, part 6.

Section 2. Section 2-18-601, MCA, is amended to read:

"2-18-601. Definitions. For the purpose of this part, except 2-18-620, the following definitions apply:

(1) (a) "Agency" means any legally constituted department, board, or commission of state, county, or city government or any political subdivision thereof of the state.

(b) The term does not mean the state compensation insurance fund.

(2) "Break in service" means a period of time in excess of 5 working days when the person is not employed and that severs continuous employment.

(3) "Continuous employment" means working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days.

(4) "Employee" means any person employed by an agency except elected state, county, and city officials, schoolteachers, and persons contracted as independent contractors or hired under personal services contracts.

(5) "Full-time employee" means an employee who normally works 40 hours a week.

(6) "Holiday" means a scheduled day off with pay to observe a legal holiday, as specified in 1-1-216 or 20-1-305, except Sundays.

(7) "Part-time employee" means an employee who normally works less than 40 hours a week.

(8) "Permanent employee" means a permanent employee as defined in 2-18-101.

(9) "Seasonal employee" means a seasonal employee as defined in 2-18-101.

(10) "Short-term worker" means a short-term worker as defined in 2-18-101.

(11) "Sick leave" means a leave of absence with pay for a sickness suffered by an employee or a member of the employee's immediate family or for a permanent state employee who is eligible for parental leave under the provisions of 2-18-606.

(12) "Temporary employee" means a temporary employee as defined in 2-18-101.

(13) "Transfer" means a change of employment from one agency to another agency in the same

jurisdiction without a break in service.

(14) "Vacation leave" means a leave of absence with pay for the purpose of rest, relaxation, or personal business at the request of the employee and with the concurrence of the employer."

Section 3. Section 2-18-701, MCA, is amended to read:

"2-18-701. Definitions. In this part, as it applies to a person employed in the executive, judicial, or legislative branches of state government, "employee" means:

- (1) a permanent full-time employee, as provided in 2-18-601;
- (2) a permanent part-time employee, as provided in 2-18-601, who is regularly scheduled to work 20 hours or more a week;
- (3) a seasonal full-time employee, as provided in 2-18-601, who is regularly scheduled to work 6 months or more a year or who works for a continuous period of more than 6 months a year although not regularly scheduled to do so;
- (4) a seasonal part-time employee, as provided in 2-18-601, who is regularly scheduled to work 20 hours or more a week for 6 months or more a year or who works 20 hours or more a week for a continuous period of more than 6 months a year although not regularly scheduled to do so;
- (5) elected officials;
- (6) officers and permanent employees of the legislative branch;
- (7) judges and permanent employees of the judicial branch;
- (8) academic, professional, and administrative personnel having individual contracts under the authority of the board of regents of higher education or the state board of public education;
- (9) a temporary full-time employee, as provided in 2-18-601:
 - (a) who is regularly scheduled to work more than 6 months a year;
 - (b) who works for a continuous period of more than 6 months a year although not regularly scheduled to do so; or
 - (c) whose temporary status is defined through collective bargaining; ~~and~~
- (10) a temporary part-time employee, as provided in 2-18-601:
 - (a) who is regularly scheduled to work 20 hours or more a week for 6 months or more a year;
 - (b) who works 20 hours or more a week for a continuous period of more than 6 months a year although not regularly scheduled to do so; or
 - (c) whose temporary status is defined through collective bargaining; and

(11) a part-time or full-time employee of the state compensation insurance fund. AS USED IN THIS SUBSECTION, "PART-TIME OR FULL-TIME EMPLOYEE OF THE STATE COMPENSATION INSURANCE FUND" MEANS AN EMPLOYEE ELIGIBLE FOR INCLUSION IN THE STATE EMPLOYEE GROUP BENEFIT PLANS UNDER THE RULES OF THE DEPARTMENT OF ADMINISTRATION.

Section 4. Section 2-18-703, MCA, is amended to read:

"2-18-703. Contributions. (1) Each agency, as defined in 2-18-601, and the state compensation insurance fund shall contribute the amount specified in this section ~~towards~~ toward the group benefits cost.

(2) For employees defined in 2-18-701 and for members of the legislature, the employer contribution for group benefits is ~~\$270 a month for the period from July 1999 through December 1999, \$285 a month for the period from January 2000 through December 2000, and \$295 a month for January 2001 and for each succeeding month.~~ For employees of the Montana university system, the employer contribution for group benefits is ~~\$285 a month for the period from July 1999 through June 2000 and \$295 a month for the period from July 2000 through June 2001 and for each succeeding month.~~ When a state employee is terminated to achieve a reduction in force, the continuation of contributions for group benefits beyond the termination date is subject to negotiation under 39-31-305. Permanent part-time, seasonal part-time, and temporary part-time employees who are regularly scheduled to work less than 20 hours a week are not eligible for the group benefit contribution. An employee who elects not to be covered by a state-sponsored group benefit plan may not receive the state contribution. A portion of the employer contribution for group benefits may be applied to an employee's costs for participation in Part B of medicare under Title XVIII of the Social Security Act, as amended, if the state group benefit plan is the secondary payer and medicare the primary payer.

(3) For employees of elementary and high school districts and of local government units, the employer's premium contributions may exceed but may not be less than \$10 a month.

(4) Unused employer contributions for any state employee must be transferred to an account established for this purpose by the department of administration and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member.

(5) Unused employer contributions for any government employee may be transferred to an account established for this purpose by a self-insured government and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member or to increase the reserves of the group.

(6) The laws prohibiting discrimination on the basis of marital status in Title 49 do not prohibit bona fide group insurance plans from providing greater or additional contributions for insurance benefits to employees with

dependents than to employees without dependents or with fewer dependents."

Section 5. Section 2-18-711, MCA, is amended to read:

"2-18-711. Cooperative purchasing of employee benefit services and insurance products -- procedures. (1) To provide employee group benefits, an agency, as defined in 2-18-601, and the state compensation insurance fund may participate with other agencies, nonprofit organizations, or business entities and in voluntary disability insurance purchasing pools provided for under 33-22-1815 if the agency or the state fund determines that cooperative purchasing is in the agency's or the state fund's best interest.

(2) Cooperative purchases under this section may be conducted according to purchasing procedures developed by the participating parties if, for contracts valued at \$20,000 a year or more, purchasing procedures, at a minimum, include:

- (a) public notice in three major Montana newspapers of requirements for submitting bids or offers; and
- (b) consideration of all submitted bids or offers.
- (3) For purposes of this section, "employee" also means a schoolteacher."

Section 6. Section 18-7-101, MCA, is amended to read:

"18-7-101. Power to contract for printing -- exception. (1) Except as provided in 1-11-301, the department has exclusive power, subject to the approval of the governor, to contract for all printing for any purpose used by the state in any state office (elective or appointive), agency, or institution.

(2) The department shall supervise and attend to all public printing of the state as provided in this chapter and shall prevent duplication and unnecessary printing.

(3) Unless otherwise provided by law, the department, in letting contracts as provided in this chapter, for the printing, binding, and publishing of all laws, journals, and reports of the state agencies and institutions may determine the quantity, quality, style, and grade of all such printing, binding, and publishing.

(4) The provisions of this chapter do not apply to the state compensation insurance fund for purposes of external marketing or educational materials."

Section 7. Section 39-71-2311, MCA, is amended to read:

"39-71-2311. Intent and purpose of plan -- expense constant defined. (1) It is the intent and purpose of the state fund to allow employers an option to insure their liability for workers' compensation and occupational disease coverage with the state fund. The state fund must be neither more nor less than self-supporting. Premium

rates must be set at least annually at a level sufficient to ensure the adequate funding of the insurance program, including the costs of administration, benefits, and adequate reserves, during and at the end of the period for which the rates will be in effect. In determining premium rates, the state fund shall make every effort to adequately predict future costs. When the costs of a factor influencing rates are unclear and difficult to predict, the state fund shall use a prediction calculated to be more than likely to cover those costs rather than less than likely to cover those costs. Unnecessary surpluses that are created by the imposition of premiums found to have been set higher than necessary because of a high estimate of the cost of a factor or factors may be refunded by the declaration of a dividend as provided in this part. For the purpose of keeping the state fund solvent, ~~the state fund shall implement variable pricing levels as provided in 39-71-2341 and~~ the board of directors may implement multiple rating tiers as provided in 39-71-2330 and may, in its discretion, assess a policy charge an expense constant, a minimum premium, or both.

(2) As used in this section, "expense constant" means a premium charge applied to each workers' compensation policy to pay expenses related to issuing, servicing, maintaining, recording, and auditing the policy."

Section 8. Section 39-71-2316, MCA, is amended to read:

"39-71-2316. Powers of state fund. For the purposes of carrying out its functions, the state fund may:

(1) insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state and, as part of the coverage, provide related employers' liability insurance upon approval of the board;

(2) sue and be sued;

(3) except as provided in section 21, Chapter 4, Special Laws of May 1990, enter into contracts relating to the administration of the state fund, including claims management, servicing, and payment;

(4) collect and disburse money received;

(5) adopt classifications and charge premiums for the classifications so that the state fund will be neither more nor less than self-supporting. Premium rates for classifications may only be adopted and changed using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2, chapter 4, parts 2 through 4. After the rules have been adopted, the state fund need not follow the rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The contested case rights and provisions of Title 2, chapter 4, do not apply to an employer's classification or premium rate. The state fund is required to belong to a licensed workers' compensation advisory organization or a licensed workers' compensation rating organization under Title

33, chapter 16, part 4, and may use the classifications of employment adopted by the designated workers' compensation advisory organization, as provided in Title 33, chapter 16, part 10, and corresponding rates as a basis for setting its own rates. Except as provided in Title 33, chapter 16, part 10, a workers' compensation advisory organization or a licensed workers' compensation rating organization under Title 33, chapter 16, part 4, or other person may not, without first obtaining the written permission of the employer, use, sell, or distribute an employer's specific payroll or loss information, including but not limited to experience modification factors.

(6) pay the amounts determined to be due under a policy of insurance issued by the state fund;

(7) hire personnel;

(8) declare dividends if there is an excess of assets over liabilities. However, dividends may not be paid until adequate actuarially determined reserves are set aside.

(9) adopt and implement one or more alternative personal leave plans pursuant to [section 1];

~~(9)~~(10) upon approval of the board, contract with licensed resident insurance producers;

~~(10)~~(11) upon approval of the board, enter into agreements with licensed workers' compensation insurers, insurance associations, or insurance producers to provide workers' compensation coverage in other states to Montana-domiciled employers insured with the state fund;

(12) upon approval of the board, expend funds for scholarship, educational, or charitable purposes;

(13) upon approval of the board, including terms and conditions, provide employers coverage under the federal Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901, et seq.) the federal Merchant Marine Act, 1920 (Jones Act, 46 U.S.C. 688), and the federal Employers' Liability Act (45 U.S.C. 51, et seq.);

~~(11)~~(14) perform all functions and exercise all powers of a private insurance carrier that are necessary, appropriate, or convenient for the administration of the state fund."

Section 9. Section 39-71-2330, MCA, is amended to read:

"39-71-2330. Rate setting -- surplus -- multiple rating tiers. (1) The board has the authority to establish the rates to be charged by the state fund for insurance. The board shall engage the services of an independent actuary who is a member in good standing with the American academy of actuaries to develop and recommend actuarially sound rates. Rates must be set at amounts sufficient, when invested, to carry the estimated cost of all claims to maturity, to meet the reasonable expenses of conducting the business of the state fund, and to amass and maintain an excess of surplus over the amount produced by the national association of insurance commissioners' risk-based capital requirements for a casualty insurer.

(2) Because surplus is desirable in the insurance business, the board shall annually determine the level

of surplus that must be maintained by the state fund pursuant to this section, but shall maintain a minimum surplus of 25% of annual earned premium. The state fund shall use the amount of the surplus above the risk-based capital requirements to secure the state fund against various risks inherent in or affecting the business of insurance and not accounted for or only partially measured by the risk-based capital requirements.

(3) The board may implement multiple rating tiers for classifications that take into consideration losses, premium size, and other factors relevant in placing an employer within a rating tier."

Section 10. Section 39-71-2363, MCA, is amended to read:

"39-71-2363. Agency law -- submission of budget -- annual report. (1) The state fund is subject to state laws applying to state agencies, except as otherwise provided by law, and it is exempt from the provisions of The Legislative Finance Act in Title 5, chapter 12, and the provisions of Title 17, chapter 7, parts 1 through 4. The state fund may use the debt collection procedures provided in Title 17, chapter 4, part 1.

(2) (a) Except as provided in 2-15-2015, the executive director shall annually submit to the board for its approval an estimated budget of the entire expense of administering the state fund for the succeeding fiscal year, with due regard to the business interests and contract obligations of the state fund. ~~The administrative expenditures approved by the board may not exceed 15% of the earned annual premium of the prior fiscal year.~~ A copy of the approved budget must be delivered to the governor and the legislature.

~~(b) The board may approve administrative expenditures in excess of 15% of the earned annual premium of the prior fiscal year, but the excess amount approved may not exceed one-half of the investment income earned in the prior fiscal year.~~

~~(e)(b)~~ Upon approval of the estimated budget for the succeeding fiscal year, the state fund shall, no later than October 1 of each year, submit the approved annual budget for review to the legislative finance committee established under 5-12-201.

~~(d)(c)~~ Dividends may not be included as administrative expenditures as provided in subsection (2)(a), but are a disbursement of excess surplus pursuant to 39-71-2323 after a determination by the state fund of income from operations.

(3) The board shall submit an annual financial report to the governor and to the legislature as provided in 5-11-210, indicating the business done by the state fund during the previous year and containing a statement of the estimated liabilities of the state fund as determined by an independent actuary."

NEW SECTION. **Section 11. Repealer.** Section 39-71-2341, MCA, is repealed.

NEW SECTION. Section 12. Report to legislative committee. Prior to the 2003 legislative session, the state compensation insurance fund shall report on the development of its alternative personal leave plan to the state administration, public retirement systems, and veterans' affairs interim committee.

NEW SECTION. Section 13. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 39, chapter 71, part 23, and the provisions of Title 39, chapter 71, part 23, apply to [section 1].

NEW SECTION. Section 14. Effective dates. (1) Except as provided in subsections (2) and (3), [this act] is effective on passage and approval.

(2) [Sections 1 through 5 and 8] are effective July 1, 2001.

(3) [Sections 7, 9, and 11] are effective July 1, 2002.

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