

SENATE BILL NO. 360  
INTRODUCED BY F. THOMAS

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE STATE FUND TO INCLUDE A PROVISION IN EVERY POLICY OF INSURANCE ISSUED THAT INCORPORATES A RESTRICTION ON THE USE AND TRANSFER OF MONEY COLLECTED BY THE STATE FUND; PROHIBITING THE LEGISLATURE FROM TRANSFERRING THE ASSETS OF THE STATE FUND FOR CLAIMS FOR INJURIES OCCURRING ON OR AFTER JULY 1, 1990, TO OTHER FUNDS OR FOR OTHER PROGRAMS; AMENDING SECTIONS 39-71-2316, 39-71-2320, 39-71-2322, AND 39-71-2327, MCA; AND PROVIDING ~~AN IMMEDIATE~~ A DELAYED AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

**Section 1.** Section 39-71-2316, MCA, is amended to read:

**"39-71-2316. Powers of state fund.** (1) For the purposes of carrying out its functions, the state fund may:

~~(1)~~(a) 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)~~(b) sue and be sued;

~~(3)~~(c) 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)~~(d) collect and disburse money received;

~~(5)~~(e) 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)~~(f) pay the amounts determined to be due under a policy of insurance issued by the state fund;

~~(7)~~(g) hire personnel;

~~(8)~~(h) 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)~~(i) adopt and implement one or more alternative personal leave plans pursuant to 39-71-2328;

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

~~(11)~~(k) 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)~~(l) upon approval of the board, expend funds for scholarship, educational, or charitable purposes;

~~(13)~~(m) 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.);

~~(14)~~(n) 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.

(2) The state fund shall include a provision in every policy of insurance issued pursuant to this part that incorporates the restriction on the use and transfer of money collected by the state fund as provided for in 39-71-2320."

**Section 2.** Section 39-71-2320, MCA, is amended to read:

**"39-71-2320. Property of state fund -- investment required -- exception.** ~~(1) Except as provided in subsection (2), all~~ All premiums and other money paid to the state fund, all property and securities acquired through the use of money belonging to the state fund, and all interest and dividends earned upon money belonging to the state fund are the sole property of the state fund and must be used exclusively for the operations and obligations of the state fund. The money collected by the state fund FOR CLAIMS FOR INJURIES OCCURRING ON

OR AFTER JULY 1, 1990, may not be used for any other purpose and may not be transferred by the legislature to other funds or used for other programs. However, state fund money must be invested by the board of investments provided for in 2-15-1808, and subject to the investment agreement with the board of investments, the earnings on investments are the sole property of the state fund as provided in this section.

~~(2) The state fund shall pay to the general fund:~~

~~— (a) \$10 million in the fiscal year ending June 30, 1998; and~~

~~— (b) \$10 million in the fiscal year ending June 30, 1999."~~

**Section 3.** Section 39-71-2322, MCA, is amended to read:

**"39-71-2322. Money in state fund held in trust -- disposition of funds upon repeal of chapter -- exception.** Except as provided in 39-71-2320, the The money coming into the state fund must be held in trust for the purpose for which the money was collected. If this chapter is repealed, the money is subject to the disposition provided by the legislature repealing this chapter. In the absence of a legislative provision, distribution must be in accordance with the justice of the matter, due regard being given to obligations of compensation incurred and existing."

**Section 4.** Section 39-71-2327, MCA, is amended to read:

**"39-71-2327. Earnings of state fund to be credited to fund -- improper use a felony -- exception.** ~~Except as provided in 39-71-2320, all~~ All earnings made by the state fund by reason of interest paid for the deposit of funds or otherwise must be credited to and become a part of the fund, and the making of profit, either directly or indirectly, by any person out of the use of the fund is a felony. A person convicted of an offense under this section is punishable by imprisonment in the state prison for a term not to exceed 2 years or a fine of not more than \$5,000, or both."

NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval JULY 1, 2005  
ON PASSAGE AND APPROVAL.

NEW SECTION. Section 6. Applicability. [This act] applies to policies issued or renewed by the state fund on or after [the effective date of this act].

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