

## 1 SENATE BILL NO. 173

2 INTRODUCED BY J. KEANE

3 BY REQUEST OF THE OFFICE OF BUDGET AND PROGRAM PLANNING

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5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING STATE WORKERS' COMPENSATION  
6 INSURANCE FUND LAWS; REQUIRING THE STATE COMPENSATION INSURANCE FUND TO USE ITS  
7 ASSETS, INCLUDING SURPLUS ~~AND RESERVES~~ GENERATED BY INCOME ON PREMIUMS PAID TO THE  
8 STATE FUND BASED UPON WAGES PAYABLE ON OR AFTER JULY 1, 1990, TO PAY FOR INADEQUATELY  
9 FUNDED BENEFITS FOR INJURIES RESULTING FROM ACCIDENTS OR OCCUPATIONAL DISEASES THAT  
10 OCCURRED BEFORE JULY 1, 1990, COMMONLY KNOWN AS "OLD FUND" OBLIGATIONS; PROHIBITING  
11 THE STATE COMPENSATION INSURANCE FUND FROM RAISING RATES TO PAY FOR CLAIMS RELATED  
12 TO ACCIDENTS OR OCCUPATIONAL DISEASES THAT OCCURRED BEFORE JULY 1, 1990; ELIMINATING  
13 A TRANSFER FROM THE GENERAL FUND TO PAY FOR OLD FUND OBLIGATIONS; REMOVING A LIMIT  
14 ON STATE COMPENSATION INSURANCE FUND ADMINISTRATIVE COSTS FOR THE OLD FUND;  
15 AMENDING SECTIONS 39-71-2316, 39-71-2320, 39-71-2321, 39-71-2323, AND 39-71-2352, MCA; AND  
16 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

17

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

19

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

21 **"39-71-2316. Powers of state fund.** (1) For the purposes of carrying out its functions, the state fund  
22 may:

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

26 (b) sue and be sued;

27 (c) enter into contracts relating to the administration of the state fund, including claims management,  
28 servicing, and payment;

29 (d) collect and disburse money received;

30 (e) adopt classifications and charge premiums for the classifications so that the state fund will be neither

1 more nor less than self-supporting. Premium rates for classifications may be adopted and changed only by using  
2 a process, a procedure, formulas, and factors set forth in rules adopted under Title 2, chapter 4, parts 2 through  
3 4. After the rules have been adopted, the state fund need not follow the rulemaking provisions of Title 2, chapter  
4 4, when changing classifications and premium rates. The contested case rights and provisions of Title 2, chapter  
5 4, do not apply to an employer's classification or premium rate. The state fund is required to belong to a licensed  
6 workers' compensation advisory organization or a licensed workers' compensation rating organization under Title  
7 33, chapter 16, part 4, and may use the classifications of employment adopted by the designated workers'  
8 compensation advisory organization, as provided in Title 33, chapter 16, part 10, and corresponding rates as a  
9 basis for setting its own rates. Except as provided in Title 33, chapter 16, part 10, a workers' compensation  
10 advisory organization or a licensed workers' compensation rating organization under Title 33, chapter 16, part  
11 4, or other person may not, without first obtaining the written permission of the employer, use, sell, or distribute  
12 an employer's specific payroll or loss information, including but not limited to experience modification factors.

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

14 (g) hire personnel;

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

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

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

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

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

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

26 (n) perform all functions and exercise all powers of a private insurance carrier that are necessary,  
27 appropriate, or convenient for the administration of the state fund.

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

1

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

3 **"39-71-2320. Property of state fund -- investment required -- exception.** (1) All premiums and other  
4 money paid to the state fund, all property and securities acquired through the use of money belonging to the state  
5 fund, and all interest and dividends earned upon money belonging to the state fund are the sole property of the  
6 state fund and must be used exclusively for the operations and obligations of the state fund.

7 (2) The ~~money~~ premiums collected by the state fund for claims for injuries occurring on or after July 1,  
8 1990, may not be used for any other purpose and may not be transferred by the legislature to other funds or used  
9 for ~~other~~ programs other than as specified in this section. ~~However, state~~ State fund money must be invested by  
10 the board of investments provided for in 2-15-1808, and subject to the investment agreement with the board of  
11 investments and subsection (3), the earnings on investments are the sole property of the state fund as provided  
12 in this section.

13 (3) As provided in 39-71-2352, the state fund's assets, including surplus and reserves generated by  
14 premiums paid to the state fund based upon wages payable on or after July 1, 1990, must be used to fund claims  
15 as provided in 39-71-2319 for injuries resulting from accidents or occupational diseases that occurred before July  
16 1, 1990, if these claims are not adequately funded."

17

18 **Section 3.** Section 39-71-2321, MCA, is amended to read:

19 **"39-71-2321. What to be deposited in state fund.** (1) All premiums, penalties, recoveries by  
20 subrogation, interest earned upon money belonging to the state fund, securities acquired by or through use of  
21 money, and all interest and penalties on taxes in accordance with 17-2-124 must be deposited in the state fund.  
22 ~~Except for a transfer authorized under 39-71-2352, the~~

23 (2) The money must be separated into two accounts as follows:

24 (a) an account based upon whether they relate to for claims for injuries resulting from accidents or  
25 occupational diseases that occurred before July 1, 1990, ~~or;~~ and

26 (b) an account for claims for injuries resulting from accidents or occupational diseases that occur on or  
27 after that date July 1, 1990.

28 ~~(2)~~(3) All funds deposited in the state fund may be spent as provided in 17-8-101(2)(b)."

29

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

1           **"39-71-2323. Surplus in state fund -- payment of dividends.** Subject to the provisions of 39-71-2316  
 2 and 39-71-2352, if at the end of any fiscal year there exists in the state fund account created by 39-71-2321 for  
 3 claims for injuries resulting from accidents or occupational diseases that occur on or after July 1, 1990, an excess  
 4 of assets over liabilities, including necessary reserves and an appropriate surplus as determined by the board  
 5 in accordance with 39-71-2330, and if the excess may be refunded safely, then the board, after consultation with  
 6 the independent actuary engaged pursuant to 39-71-2330, may declare a dividend. The rules of the state fund  
 7 must prescribe the manner of payment to those employers who have paid premiums into the state fund in excess  
 8 of liabilities."

9

10           **Section 5.** Section 39-71-2352, MCA, is amended to read:

11           **"39-71-2352. Separate payment structure and sources for claims for injuries resulting from**  
 12 **accidents that occurred before July 1, 1990, and on or after July 1, 1990 or occupational diseases --**  
 13 **prohibitions spending limit -- authorizing transfer of money.** (1) (a) Premiums paid to the state fund based  
 14 upon wages payable before July 1, 1990, may be used only to administer and pay claims for injuries resulting  
 15 from accidents or occupational diseases that occurred before July 1, 1990. Premiums paid to the state fund based  
 16 upon wages payable on or after July 1, 1990, may be used only to administer and pay claims for injuries resulting  
 17 from accidents or occupational diseases that occur on or after July 1, 1990.

18           (b) As provided in subsection (4), the state fund's assets, including the surplus and reserves generated  
 19 by premiums paid to the state fund based upon wages payable on or after July 1, 1990, must be used to pay  
 20 claims for injuries resulting from accidents or occupational diseases that occurred before July 1, 1990, if these  
 21 claims are not adequately funded.

22           (2) The state fund shall:

23           (a) determine the cost of administering and paying claims for injuries resulting from accidents or  
 24 occupational diseases that occurred before July 1, 1990, and separately determine the cost of administering and  
 25 paying claims for injuries resulting from accidents or occupational diseases that occur on or after July 1, 1990;

26           (b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and

27           (c) fund administrative expenses and benefit payments for claims for injuries resulting from accidents  
 28 or occupational diseases that occurred before July 1, 1990, and claims for injuries resulting from accidents or  
 29 occupational diseases that occur on or after July 1, 1990, separately from the sources provided by law.

30           (3) The state fund may not raise rates to pay for claims for injuries resulting from accidents or

1 occupational diseases that occurred before July 1, 1990, AND ALL FUNDS TO PAY FOR THOSE CLAIMS MUST BE PAID  
 2 FROM THE STATE FUND'S EQUITY OR SURPLUS AS THAT TERM IS USED IN 39-71-2323.

3 ~~(3) The state fund may not spend more than \$1.25 million a year to administer claims for injuries resulting~~  
 4 ~~from accidents that occurred before July 1, 1990.~~

5 ~~—— (4) As used in this section, "adequately funded" means the present value of:~~

6 ~~—— (a) the total cost of future benefits remaining to be paid; and~~

7 ~~—— (b) the cost of administering the claims.~~

8 ~~—— (5) An amount of funds in excess of the adequate funding amount established in subsection (4), based~~  
 9 ~~on audited financial statements adjusted for unrealized gains and losses, must be transferred to the general fund.~~

10 ~~(6)(4) If in any fiscal year after the old fund liability tax is terminated claims for injuries resulting from~~  
 11 ~~accidents or occupational diseases that occurred before July 1, 1990, are not adequately funded, any amount~~  
 12 ~~necessary to pay those claims for injuries resulting from accidents that occurred before July 1, 1990, must be~~  
 13 ~~transferred from the general fund state fund's assets, including surplus and reserves generated by premiums paid~~  
 14 ~~to the state fund based upon wages payable on or after July 1, 1990, to the account provided for in ~~39-71-2321~~~~  
 15 ~~39-71-2321(2)(a).~~

16 ~~(7)(5) The independent actuary engaged by the state fund pursuant to 39-71-2330 shall project the~~  
 17 ~~unpaid claims liability for claims for injuries resulting from accidents or occupational diseases that occurred before~~  
 18 ~~July 1, 1990, each fiscal year until all claims are paid."~~

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20 NEW SECTION. Section 6. Effective date. [This act] is effective on passage and approval.

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