

SENATE BILL NO. 173

INTRODUCED BY J. KEANE

BY REQUEST OF THE OFFICE OF BUDGET AND PROGRAM PLANNING

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING STATE WORKERS' COMPENSATION INSURANCE FUND LAWS; ~~REQUIRING REPORTING BY THE STATE FUND PRIOR TO IMPLEMENTING PAY ADJUSTMENTS;~~ REQUIRING THE STATE COMPENSATION INSURANCE FUND TO USE A ONE-TIME GENERAL FUND TRANSFER AND INCOME ON THAT TRANSFER PRIOR TO USING ITS ASSETS, INCLUDING SURPLUS ~~AND RESERVES~~ GENERATED BY INCOME ON PREMIUMS PAID TO THE STATE FUND BASED UPON WAGES PAYABLE ON OR AFTER JULY 1, ~~1990~~ 2013, TO PAY FOR INADEQUATELY FUNDED BENEFITS FOR INJURIES RESULTING FROM ACCIDENTS OR OCCUPATIONAL DISEASES THAT OCCURRED BEFORE JULY 1, 1990, COMMONLY KNOWN AS "OLD FUND" OBLIGATIONS; PROHIBITING THE STATE COMPENSATION INSURANCE FUND FROM RAISING RATES TO PAY FOR CLAIMS RELATED TO ACCIDENTS OR OCCUPATIONAL DISEASES THAT OCCURRED BEFORE JULY 1, 1990; ~~ELIMINATING PROVIDING A ONE-TIME~~ TRANSFER FROM THE GENERAL FUND TO PAY FOR OLD FUND OBLIGATIONS; REMOVING A LIMIT ON STATE COMPENSATION INSURANCE FUND ADMINISTRATIVE COSTS FOR THE OLD FUND; ~~REQUIRING A ONE-TIME TRANSFER FROM THE STATE FUND'S ASSETS TO ITS POLICYHOLDERS;~~ AMENDING SECTIONS 39-71-2316, 39-71-2320, 39-71-2321, 39-71-2323, AND 39-71-2352, MCA; AND PROVIDING AN ~~IMMEDIATE~~ EFFECTIVE 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:

- (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;
- (b) sue and be sued;
- (c) enter into contracts relating to the administration of the state fund, including claims management,

- 1 servicing, and payment;
- 2 (d) collect and disburse money received;
- 3 (e) adopt classifications and charge premiums for the classifications so that the state fund will be neither
4 more nor less than self-supporting. Premium rates for classifications may be adopted and changed only by using
5 a process, a procedure, formulas, and factors set forth in rules adopted under Title 2, chapter 4, parts 2 through
6 4. After the rules have been adopted, the state fund need not follow the rulemaking provisions of Title 2, chapter
7 4, when changing classifications and premium rates. The contested case rights and provisions of Title 2, chapter
8 4, do not apply to an employer's classification or premium rate. The state fund is required to belong to a licensed
9 workers' compensation advisory organization or a licensed workers' compensation rating organization under Title
10 33, chapter 16, part 4, and may use the classifications of employment adopted by the designated workers'
11 compensation advisory organization, as provided in Title 33, chapter 16, part 10, and corresponding rates as a
12 basis for setting its own rates. Except as provided in Title 33, chapter 16, part 10, a workers' compensation
13 advisory organization or a licensed workers' compensation rating organization under Title 33, chapter 16, part
14 4, or other person may not, without first obtaining the written permission of the employer, use, sell, or distribute
15 an employer's specific payroll or loss information, including but not limited to experience modification factors.
- 16 (f) pay the amounts determined to be due under a policy of insurance issued by the state fund;
- 17 (g) hire personnel;
- 18 (h) declare dividends if there is an excess of assets over liabilities. However, dividends may not be paid
19 until adequate actuarially determined reserves are set aside.
- 20 (i) adopt and implement one or more alternative personal leave plans pursuant to 39-71-2328;
- 21 (j) upon approval of the board, contract with licensed resident insurance producers;
- 22 (k) upon approval of the board, enter into agreements with licensed workers' compensation insurers,
23 insurance associations, or insurance producers to provide workers' compensation coverage in other states to
24 Montana-domiciled employers insured with the state fund;
- 25 (l) upon approval of the board, expend funds for scholarship, educational, or charitable purposes;
- 26 (m) upon approval of the board, including terms and conditions, provide employers coverage under the
27 federal Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901, et seq., the federal Merchant Marine
28 Act, 1920 (Jones Act), 46 U.S.C. 688, and the federal Employers' Liability Act, 45 U.S.C. 51, et seq.;
- 29 (n) perform all functions and exercise all powers of a private insurance carrier that are necessary,
30 appropriate, or convenient for the administration of the state fund.

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

4 (3) THE STATE FUND MAY NOT APPROVE OR IMPLEMENT ANY PAY ADJUSTMENTS, INCLUDING BONUSES OR MERIT
 5 PAY, TO ANY EMPLOYEE OR MEMBER OF EXECUTIVE MANAGEMENT UNTIL THE STATE FUND REPORTS TO THE OFFICE OF
 6 BUDGET AND PROGRAM PLANNING AND TO THE LEGISLATIVE FINANCE COMMITTEE IN A PUBLIC HEARING, WHICH INCLUDES
 7 PUBLIC COMMENT, THE FOLLOWING INFORMATION:

8 (A) THE FINANCIAL PERFORMANCE AND THE ACCOMPLISHMENT OF THE GOALS SET IN THE MOST RECENT
 9 BUSINESS PLAN ADOPTED PURSUANT TO 39-71-2315;

10 (B) THE ACTUARIAL SOUNDNESS OF THE FUNDS FOR INJURIES AND OCCUPATIONAL DISEASES OCCURRING BOTH
 11 PRIOR TO AND ON OR AFTER JULY 1, 1990;

12 (C) ANY DIVIDENDS DISBURSED IN THE CURRENT OR PREVIOUS FISCAL YEAR PURSUANT TO 39-71-2323;

13 (D) AN ANALYSIS OF THE PROPORTIONAL FAIRNESS AND EQUITY REGARDING PAY ADJUSTMENTS IN COMPARISON
 14 TO THE COMPENSATION TO OTHER STATE EMPLOYEES, CHANGES IN THE PREMIUMS PAID BY EMPLOYERS AND PREMIUMS
 15 IN COMPARISON TO THE OTHER WORKERS' COMPENSATION PLANS, AND ANY CHANGES IN THE BENEFITS RECEIVED BY
 16 INJURED WORKERS;

17 (E) THE ATTAINMENT OF THE 2.5-TO-1.0 RESERVE-TO-EQUITY RATIO; AND

18 (F) THE IMPACT OF THE BONUSES ON PENSION DETERMINATION FOR STATE FUND EMPLOYEES OR EXECUTIVE
 19 MANAGEMENT."

20

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

22 **"39-71-2320. Property of state fund -- investment required -- exception.** (1) All premiums and other
 23 money paid to the state fund, all property and securities acquired through the use of money belonging to the state
 24 fund, and all interest and dividends earned upon money belonging to the state fund are the sole property of the
 25 state fund and must be used exclusively for the operations and obligations of the state fund.

26 (2) ~~The~~ SUBJECT TO 39-71-2352, THE money premiums collected by the state fund for claims for injuries
 27 occurring on or after July 1, 1990, may not be used for any other purpose and may not be transferred by the
 28 legislature to other funds or used for ~~other~~ OTHER programs ~~other than as specified in this section.~~ However, state
 29 State fund money must be invested by the board of investments provided for in 2-15-1808, and subject to the
 30 investment agreement with the board of investments ~~and subsection (3),~~ the earnings on investments are the sole

1 property of the state fund as provided in this section.

2 ~~—— (3) As provided in 39-71-2352, the state fund's assets, including surplus and reserves generated by~~
 3 ~~premiums paid to the state fund based upon wages payable on or after July 1, 1990, must be used to fund claims~~
 4 ~~as provided in 39-71-2319 for injuries resulting from accidents or occupational diseases that occurred before July~~
 5 ~~1, 1990, if these claims are not adequately funded."~~

6

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

8 **"39-71-2321. What to be deposited in state fund.** (1) All premiums, penalties, recoveries by
 9 subrogation, interest earned upon money belonging to the state fund, securities acquired by or through use of
 10 money, and all interest and penalties on taxes in accordance with 17-2-124 must be deposited in the state fund.
 11 ~~Except for a transfer authorized under 39-71-2352, the~~

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

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

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

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

18

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

20 **"39-71-2323. Surplus in state fund -- payment of dividends.** Subject to the provisions of 39-71-2316
 21 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
 22 claims for injuries resulting from accidents or occupational diseases that occur on or after July 1, 1990, an excess
 23 of assets over liabilities, including necessary reserves and an appropriate surplus as determined by the board
 24 in accordance with 39-71-2330, and if the excess may be refunded safely, then the board, after consultation with
 25 the independent actuary engaged pursuant to 39-71-2330, may declare a dividend. The rules of the state fund
 26 must prescribe the manner of payment to those employers who have paid premiums into the state fund in excess
 27 of liabilities."

28

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

30 **"39-71-2352. Separate payment structure and sources for claims for injuries resulting from**

1 ~~accidents that occurred before July 1, 1990, and on or after July 1, 1990 or occupational diseases --~~
 2 ~~prohibitions spending limit -- authorizing transfer of money.~~ (1) (a) Premiums paid to the state fund based
 3 upon wages payable before July 1, 1990, may be used only to administer and pay claims for injuries resulting
 4 from accidents or occupational diseases that occurred before July 1, 1990.

5 (B) Premiums paid to the state fund based upon wages payable on or after July 1, 1990, AND PRIOR TO
 6 JULY 1, 2013, may be used only to administer and pay claims for injuries resulting from accidents or occupational
 7 diseases that occur on or after July 1, 1990.

8 (C) PREMIUMS PAID TO THE STATE FUND BASED UPON WAGES PAYABLE ON OR AFTER JULY 1, 2013, MAY BE USED
 9 TO ADMINISTER AND PAY CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS OR OCCUPATIONAL DISEASES THAT OCCUR
 10 EITHER BEFORE JULY 1, 1990, OR AFTER JULY 1, 1990, SUBJECT TO DEPLETION OF THE 2013 GENERAL FUND TRANSFER
 11 AND INCOME ON THAT TRANSFER.

12 (b)(D) As provided in subsection (4), AFTER EXPENDING THE ONE-TIME TRANSFER FROM THE GENERAL FUND
 13 AND ANY INCOME FROM THAT TRANSFER TO ADMINISTER AND PAY CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS OR
 14 OCCUPATIONAL DISEASES THAT OCCURRED BEFORE JULY 1, 1990, the state fund's assets, including the surplus and
 15 reserves generated by premiums paid to the state fund based upon wages payable on or after July 1, 1990 2013,
 16 must be used to pay claims for injuries resulting from accidents or occupational diseases that occurred before
 17 July 1, 1990, if these claims are not adequately funded.

18 (2) The state fund shall:

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

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

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

26 (3) The state fund may not raise rates to pay for claims for injuries resulting from accidents or
 27 occupational diseases that occurred before July 1, 1990, AND ALL FUNDS TO PAY FOR THOSE CLAIMS MUST BE PAID
 28 FROM THE STATE FUND'S EQUITY OR SURPLUS AS THAT TERM IS USED IN 39-71-2323 THE 2013 ONE-TIME GENERAL FUND
 29 TRANSFER OR INCOME ON THAT TRANSFER UNLESS THOSE AMOUNTS ARE INADEQUATE, IN WHICH CASE THE PAYMENTS
 30 MUST BE AS PROVIDED IN SUBSECTION (1)(C).

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

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

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

5 ~~_____ (b) the cost of administering the claims.~~

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

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

14 ~~(7)(5)(4) The independent actuary engaged by the state fund pursuant to 39-71-2330 shall project the~~
 15 ~~unpaid claims liability for claims for injuries resulting from accidents or occupational diseases that occurred before~~
 16 ~~July 1, 1990, each fiscal year until all claims are paid."~~

17
 18 ~~_____ **NEW SECTION. SECTION 6. FUND PAYMENT.** PRIOR TO JUNE 30, 2015, THE STATE COMPENSATION~~
 19 ~~INSURANCE FUND CREATED IN 39-71-2313 SHALL PAY TO ITS POLICYHOLDERS OF RECORD WHO PAY FOR WORKERS'~~
 20 ~~COMPENSATION PREMIUMS FOR PLAN YEAR 2014 \$7 MILLION OUT OF ITS SURPLUS GENERATED BY INCOME ON PREMIUMS~~
 21 ~~PAID TO THE STATE FUND BASED ON WAGES PAYABLE ON OR AFTER JULY 1, 1990. THE PAYMENT MUST BE~~
 22 ~~PROPORTIONATELY DISTRIBUTED BASED ON PREMIUM PAYMENTS DUE FOR PLAN YEAR 2014. THE PAYMENT IS NOT A~~
 23 ~~DIVIDEND. THE STATE FUND MAY DETERMINE THE METHOD OF PAYMENT.~~

24
 25 ~~_____ **NEW SECTION. SECTION 6. GENERAL FUND TRANSFER.** THERE IS A TRANSFER FROM THE GENERAL FUND OF~~
 26 ~~\$43.989 MILLION TO THE STATE COMPENSATION INSURANCE FUND ACCOUNT PROVIDED FOR IN 39-71-2321(2)(A).~~

27
 28 ~~_____ **NEW SECTION. Section 7. Effective date.** [This act] is effective on passage and approval JULY 1,~~
 29 ~~2013.~~

30 ~~- END -~~