

SENATE BILL NO. 173

INTRODUCED BY J. KEANE

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 REPORTING BY THE STATE FUND PRIOR TO IMPLEMENTING PAY~~  
7 ~~ADJUSTMENTS~~; REQUIRING THE STATE COMPENSATION INSURANCE FUND TO USE A ONE-TIME  
8 GENERAL FUND TRANSFER AND INCOME ON THAT TRANSFER PRIOR TO USING ITS ASSETS,  
9 INCLUDING SURPLUS ~~AND RESERVES~~ GENERATED BY INCOME ON PREMIUMS PAID TO THE STATE  
10 FUND BASED UPON WAGES PAYABLE ON OR AFTER JULY 1, ~~1990~~ 2013, TO PAY FOR INADEQUATELY  
11 FUNDED BENEFITS FOR INJURIES RESULTING FROM ACCIDENTS OR OCCUPATIONAL DISEASES THAT  
12 OCCURRED BEFORE JULY 1, 1990, COMMONLY KNOWN AS "OLD FUND" OBLIGATIONS; PROHIBITING  
13 THE STATE COMPENSATION INSURANCE FUND FROM RAISING RATES TO PAY FOR CLAIMS RELATED  
14 TO ACCIDENTS OR OCCUPATIONAL DISEASES THAT OCCURRED BEFORE JULY 1, 1990; ~~ELIMINATING~~  
15 PROVIDING A ONE-TIME TRANSFER FROM THE GENERAL FUND TO PAY FOR OLD FUND OBLIGATIONS  
16 AND CLEARLY ASSIGNING ALL LIABILITY FOR OLD FUND AND NEW FUND CLAIMS TO THE STATE FUND;  
17 REMOVING A LIMIT ON STATE COMPENSATION INSURANCE FUND ADMINISTRATIVE COSTS FOR THE  
18 OLD FUND; ~~REQUIRING A ONE-TIME TRANSFER FROM THE STATE FUND'S ASSETS TO ITS~~  
19 ~~POLICYHOLDERS~~; AMENDING SECTIONS 39-71-2316, 39-71-2320, 39-71-2321, 39-71-2323, AND  
20 39-71-2352, MCA; AND PROVIDING AN ~~IMMEDIATE~~ EFFECTIVE DATE."

21  
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23  
24 **Section 1.** Section 39-71-2316, MCA, is amended to read:  
25 **"39-71-2316. Powers of state fund.** (1) For the purposes of carrying out its functions, the state fund  
26 may:  
27 (a) insure any employer for workers' compensation and occupational disease liability as the coverage  
28 is required by the laws of this state and, as part of the coverage, provide related employers' liability insurance  
29 upon approval of the board;  
30 (b) sue and be sued;

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

1 appropriate, or convenient for the administration of the state fund.

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

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

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

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

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

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

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

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

21

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

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

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

1 investment agreement with the board of investments ~~and subsection (3)~~, the earnings on investments are the sole  
 2 property of the state fund as provided in this section.

3 ~~—— (3) As provided in 39-71-2352, the state fund's assets, including surplus and reserves generated by~~  
 4 ~~premiums paid to the state fund based upon wages payable on or after July 1, 1990, must be used to fund claims~~  
 5 ~~as provided in 39-71-2319 for injuries resulting from accidents or occupational diseases that occurred before July~~  
 6 ~~1, 1990, if these claims are not adequately funded."~~

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

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

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

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

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

18 ~~(2)(3)~~ All funds deposited in the state fund may be spent as provided in 17-8-101(2)(b)."

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

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

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

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

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

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

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

20           (2) The state fund shall:

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

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

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

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

1 ~~TRANSFER OR INCOME ON THAT TRANSFER UNLESS THOSE AMOUNTS ARE INADEQUATE, IN WHICH CASE THE PAYMENTS~~  
 2 ~~MUST BE AS PROVIDED IN SUBSECTION (1)(C).~~

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)(4) 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."~~

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

26  
 27 ~~NEW SECTION. SECTION 6. GENERAL FUND TRANSFER. THERE IS A TRANSFER FROM THE GENERAL FUND OF~~  
 28 ~~\$43.989 \$39.6 MILLION TO THE STATE COMPENSATION INSURANCE FUND ACCOUNT PROVIDED FOR IN 39-71-2321(2)(A).~~

29  
 30 ~~NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval JULY 1,~~

1 2013.

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- END -