

1 SENATE BILL NO. 254

2 INTRODUCED BY J. KEANE

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE STATE WORKERS' COMPENSATION
 5 INSURANCE FUND TO USE EXISTING EXCESS EQUITY FOR A ONE-TIME PAYMENT AGAINST CLAIMS
 6 FOR INJURIES ASSIGNED TO THE OLD FUND; LIMITING DIVIDENDS UNTIL A ONE-TIME PAYMENT IS
 7 MADE TO THE ACCOUNT COVERING CLAIMS FOR ACCIDENTS AND OCCUPATIONAL DISEASE THAT
 8 OCCURRED BEFORE JULY 1, 1990; PROHIBITING A PREMIUM INCREASE TO ACHIEVE THE EQUITY
 9 TRANSFER; AMENDING SECTIONS 39-71-2311, 39-71-2312, 39-71-2316, 39-71-2320, AND 39-71-2321, MCA;
 10 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

13
 14 **Section 1.** Section 39-71-2311, MCA, is amended to read:
 15 **"39-71-2311. Intent and purpose of plan -- expense constant defined.** (1) It is the intent and purpose
 16 of the state fund to allow employers an option to insure their liability for workers' compensation and occupational
 17 disease coverage with the state fund. The state fund must be neither more nor less than self-supporting. Premium
 18 rates must be set at least annually at a level sufficient to ensure the adequate funding of the insurance program,
 19 including the costs of administration, benefits, and adequate reserves, during and at the end of the period for
 20 which the rates will be in effect. In determining premium rates, the state fund shall make every effort to adequately
 21 predict future costs. When the costs of a factor influencing rates are unclear and difficult to predict, the state fund
 22 shall use a prediction calculated to be more than likely to cover those costs rather than less than likely to cover
 23 those costs. The prediction must take into account the goal of pooling risk and may not place an undue burden
 24 on employers that are not eligible for the tier with the lowest-rated premium for workers' compensation purposes.
 25 (2) Unnecessary surpluses that are created by the imposition of premiums found to have been set higher
 26 than necessary because of a high estimate of the cost of a factor or factors ~~may be refunded by the declaration~~
 27 ~~of a dividend as provided in this part~~ are subject to the provisions of 39-71-2320 and 39-71-2323. For the purpose
 28 of keeping the state fund solvent, the board of directors may implement multiple rating tiers as provided in
 29 39-71-2330 and may assess an expense constant, a minimum premium, or both.
 30 (3) As used in this section, "expense constant" means a premium charge applied to each workers'

1 compensation policy to pay expenses related to issuing, servicing, maintaining, recording, and auditing the
2 policy."

3

4 **Section 2.** Section 39-71-2312, MCA, is amended to read:

5 **"39-71-2312. Definitions.** Unless the context requires otherwise, in this part the following definitions
6 apply:

7 (1) "Board" means the board of directors of the state compensation insurance fund provided for in
8 2-15-1019.

9 (2) "Equity" has the same meaning as surplus. Surplus equals assets minus liabilities.

10 ~~(2)~~(3) "Executive director" means the chief executive officer of the state compensation insurance fund.

11 ~~(3)~~(4) "State fund" means the state compensation insurance fund provided for in 39-71-2313. It is also
12 known as compensation plan No. 3 or plan No. 3."

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14 **Section 3.** Section 39-71-2316, MCA, is amended to read:

15 **"39-71-2316. Powers of state fund.** (1) For the purposes of carrying out its functions, the state fund
16 may:

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

20 (b) sue and be sued;

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

23 (d) collect and disburse money received;

24 (e) adopt classifications and charge premiums for the classifications so that the state fund will be neither
25 more nor less than self-supporting. Premium rates for classifications may be adopted and changed only by using
26 a process, a procedure, formulas, and factors set forth in rules adopted under Title 2, chapter 4, parts 2 through
27 4. After the rules have been adopted, the state fund need not follow the rulemaking provisions of Title 2, chapter
28 4, when changing classifications and premium rates. The contested case rights and provisions of Title 2, chapter
29 4, do not apply to an employer's classification or premium rate. The state fund is required to belong to a licensed
30 workers' compensation advisory organization or a licensed workers' compensation rating organization under Title

1 33, chapter 16, part 4, and may use the classifications of employment adopted by the designated workers'
 2 compensation advisory organization, as provided in Title 33, chapter 16, part 10, and corresponding rates as a
 3 basis for setting its own rates. Except as provided in Title 33, chapter 16, part 10, a workers' compensation
 4 advisory organization or a licensed workers' compensation rating organization under Title 33, chapter 16, part
 5 4, or other person may not, without first obtaining the written permission of the employer, use, sell, or distribute
 6 an employer's specific payroll or loss information, including but not limited to experience modification factors.

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

8 (g) hire personnel;

9 (h) declare dividends if there is an excess of assets over liabilities. However, subject to the provisions
 10 of 39-71-2320(2), dividends may not be paid until adequate actuarially determined reserves are set aside.

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

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

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

16 (l) upon approval of the board, expend funds for scholarship, educational, or charitable purposes, subject
 17 to excess equity being available as provided in 39-71-2320(2);

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

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

23 (2) The state fund shall include a provision in every policy of insurance issued pursuant to this part that
 24 incorporates the restriction on the use and transfer of money collected by the state fund as provided for in
 25 39-71-2320."

26

27 **Section 4.** Section 39-71-2320, MCA, is amended to read:

28 **"39-71-2320. Property of state fund -- investment required -- exception. (1) (a)** All premiums and
 29 other money paid to the state fund, all property and securities acquired through the use of money belonging to
 30 the state fund, and all interest and dividends earned upon money belonging to the state fund are the sole property

1 of the state fund and must be used exclusively for the operations and obligations of the state fund.

2 (b) The money premiums collected by the state fund for claims for injuries occurring on or after July 1,
3 1990, may not be used for any other purpose and may not be transferred by the legislature to other funds or used
4 for other programs.

5 (c) Other money collected by the state fund must be deposited as provided in 39-71-2352 and subsection
6 (2) of this section.

7 (2) (a) Because the state fund consists of two accounts, as provided in 39-71-2321, and because the
8 state fund cannot provide dividends until the state fund has excess equity, as provided in 39-71-2316, the
9 determination of excess equity only for calendar year 2015 may be made only after a one-time deposit by January
10 1, 2016, of \$50 million from the state fund's excess equity to the account provided for in 39-71-2321 for claims
11 for injuries or occupational disease that occurred before July 1, 1990, and only if the reserve-to-equity ratio that
12 covers both accounts, as determined by the state fund's independent actuary in 2015, is at least 3 to 1.

13 (b) If the \$50 million is unavailable as provided in subsection (2)(a), the state fund may not increase
14 premiums to achieve the payment and shall deposit in the account described in subsection (2)(a) any amount
15 determined to be excess equity and provide a report to the appropriate legislative interim committee and the
16 legislative finance committee as to the reason the full \$50 million was not available.

17 (3) However, state State fund money must be invested by the board of investments provided for in
18 2-15-1808, and subject to the investment agreement with the board of investments, the earnings on investments
19 are the sole property of the state fund as provided in this section."

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21 **Section 5.** Section 39-71-2321, MCA, is amended to read:

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

26 (2) The money must be separated into two accounts based upon on whether they relate to claims for
27 injuries resulting from accidents or occupational disease that occurred before July 1, 1990, or claims for injuries
28 resulting from accidents or occupational disease that occur on or after that date. On or after [the effective date
29 of this act] and after the payment into the account for claims on accidents or occupational disease that occurred
30 before July 1, 1990, the interest income related to equity must be deposited into the appropriate account. As

1 provided in 39-71-2320, the money collected in premiums by the state fund for claims for injuries occurring on
2 or after July 1, 1990, may not be used for any other purpose.

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

4 (4) If a transfer is made as provided in 39-71-2352, that money must be deposited in the account to pay
5 claims and administrative expenses for injuries resulting from accidents or occupational disease that occurred
6 before July 1, 1990. All interest earned on that account must be retained in that account and may be used only
7 for the purposes described in this subsection."

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

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