

HOUSE BILL NO. 634

INTRODUCED BY T. WOODS

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE IMPOSITION OF A FEE ON HOSPITALS TO OFFSET STATE FUNDING FOR HIGHER EDUCATION; PROVIDING THE FEE IS BASED ON THE COMPENSATION OF THE HIGHEST PAID NONMEDICAL ADMINISTRATOR; PROVIDING FOR THE ASSESSMENT AND COLLECTION OF THE FEE; PROVIDING FOR THE DISPOSITION OF THE FUNDS FOR MEDICAL EDUCATION; CREATING A STATE SPECIAL REVENUE ACCOUNT; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN APPLICABILITY DATE AND A TERMINATION DATE."

WHEREAS, Montana hospitals rely on the state's higher education system to provide a highly trained work force; and

WHEREAS, hospitals in Montana are garnering an increasingly larger share of the state economy; and

WHEREAS, the Legislature finds it necessary to levy a fee on hospitals to be designated for offsetting costs to the higher education system.

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

NEW SECTION. Section 1. Definitions. For purposes of [sections 1 through 10], the following definitions apply:

(1) "Annual compensation" means wages, salary, bonuses, tips, taxable and nontaxable benefits, stock options, and any other compensation for services received from a hospital.

(2) "Department" means the department of revenue provided for in 2-15-1301.

(3) (a) "Hospital" means a facility licensed as a hospital pursuant to Title 50, chapter 5, and includes a critical access hospital.

(b) The term does not include the Montana state hospital.

(4) "Nonmedical administrator" means a person that does not practice medicine more than an average of 20 hours each week during the calendar year.

NEW SECTION. Section 2. Imposition of medical education fee -- fee as debt. (1) Each hospital

1 in the state shall file a return, on a form provided by the department, and pay a medical education fee in the
2 amount calculated in subsection (2). The fee is due and payable according to the due date provisions of
3 15-30-2604 for individual income taxpayers.

4 (2) The medical education fee is equal to the total annual compensation received by the highest paid
5 nonmedical administrator for the hospital.

6 (3) For the purpose of determining liability for the filing of statements and the payment of fees, penalties,
7 and interest owed under [sections 1 through 10]:

8 (a) the officer of a hospital whose responsibility it is to collect, truthfully account for, and pay to the state
9 the fee provided for in this section who fails to pay the fee is liable to the state for the fee and the penalty and
10 interest due on the amounts;

11 (b) each officer of the hospital, to the extent that the officer has access to the requisite records, is
12 individually liable along with the hospital for filing statements and for unpaid fees, penalties, and interest upon
13 a determination that the officer:

14 (i) possessed the responsibility to file statements and pay the fee on behalf of the hospital; and

15 (ii) possessed the responsibility on behalf of the hospital for directing the filing of tax statements or the
16 payment of other obligations and exercised that responsibility, resulting in the hospital's failure to file statements
17 required by [sections 1 through 10] or pay the fee due.

18 (4) In determining which officer is liable, the department is not limited to considering the elements set
19 forth in subsection (3)(a) to establish individual liability and may consider any other available information.

20 (5) Pursuant to rules established by the department, returns may be computer-generated and
21 electronically filed.

22

23 **NEW SECTION. Section 3. Returns -- recordkeeping -- authority of department.** (1) A hospital
24 required to collect and pay to the department the fees imposed by [sections 1 through 10] shall keep for 5 years
25 an accurate record of the annual compensation paid to each employee.

26 (2) For the purpose of determining compliance with the provisions of [sections 1 through 10], the
27 department is authorized to examine or cause to be examined any books, papers, records, or memoranda
28 relevant to making a determination of the amount of the fee due, whether the books, papers, records, or
29 memoranda are the property of or in the possession of the hospital filing the return or another person. In
30 determining compliance, the department may use statistical sampling and other sampling techniques consistent

1 with generally accepted auditing principles. The department may also:

- 2 (a) require the attendance of a person having knowledge or information relevant to a return;
- 3 (b) compel the production of books, papers, records, or memoranda by the person required to attend;
- 4 (c) take testimony on matters material to the determination; and
- 5 (d) administer oaths or affirmations.

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7 **NEW SECTION. Section 4. Deficiency assessment -- penalty and interest -- statute of limitations.**

8 (1) If the department determines that the amount of the fee due is greater than the amount disclosed by a return,

9 it shall mail the hospital a notice, pursuant to 15-1-211, of the additional fee proposed to be assessed. The notice

10 must contain a statement that if payment is not made, a warrant for distraint may be filed. The hospital may seek

11 review of the determination pursuant to 15-1-211.

12 (2) Penalty and interest must be added to a deficiency assessment as provided in 15-1-216. The

13 department may waive any penalty pursuant to 15-1-206.

14 (3) The amount of the fee due under any return may be determined by the department within 5 years

15 after the return was filed, regardless of whether the return was filed on or after the last day prescribed for filing.

16 For purposes of this section, a return due under [sections 1 through 10] and filed before the last day prescribed

17 by [section 2] is considered to be filed on the last day prescribed for filing.

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19 **NEW SECTION. Section 5. Procedure to compute fee in absence of statement -- estimation of fee**

20 **-- failure to file -- penalty and interest.** (1) If the hospital fails to file any return required by [section 2] within the

21 time required, the department may, at any time, audit the hospital or estimate the fee due from any information

22 in its possession and, based on the audit or estimate, assess the hospital for the fee, penalties, and interest due

23 the state.

24 (2) The department shall impose penalty and interest as provided in 15-1-216. The department shall mail

25 to the hospital a notice, pursuant to 15-1-211, of the fee, penalty, and interest proposed to be assessed. The

26 notice must contain a statement that if payment is not made, a warrant for distraint may be filed. The hospital may

27 seek review of the determination pursuant to 15-1-211. The department may waive any penalty pursuant to

28 15-1-206.

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30 **NEW SECTION. Section 6. Authority to collect delinquent fees.** (1) (a) The department shall collect

1 fees that are delinquent as determined under [sections 1 through 10].

2 (b) If a fee imposed by [sections 1 through 10] or any portion of the fee is not paid when due, the
3 department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.

4 (2) In addition to any other remedy, in order to collect delinquent fees after the time for appeal has
5 expired, the department may direct the offset of tax refunds or other funds due the hospital from the state.

6 (3) As provided in 15-1-705, the hospital has the right to a review of the fee liability prior to any offset
7 by the department.

8 (4) The department may file a claim for state funds on behalf of the hospital if a claim is required before
9 funds are available for offset.

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11 **NEW SECTION. Section 7. Refunds -- interest -- limitations.** (1) A claim for a refund or credit as a
12 result of overpayment of fees collected under [sections 1 through 10] must be filed within 5 years of the date that
13 the return was due, without regard to any extension of time for filing.

14 (2) (a) Interest paid by the department on an overpayment must be paid or credited at the same rate as
15 the rate charged on delinquent taxes under 15-1-216.

16 (b) Except as provided in subsection (2)(c), interest must be paid from the date that the return was due
17 or the date of overpayment, whichever is later. Interest does not accrue during any period in which the processing
18 of a claim is delayed more than 30 days because the hospital has not furnished necessary information.

19 (c) The department is not required to pay interest if:

20 (i) the overpayment is refunded or credited within 6 months of the date that a claim was filed; or

21 (ii) the amount of overpayment and interest does not exceed \$1.

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23 **NEW SECTION. Section 8. Disposition of funds for medical education -- medical education**
24 **account.** (1) There is a medical education account in the state special revenue fund established by 17-2-102.

25 (2) All money collected under [sections 1 through 10] must, in accordance with the provisions of
26 17-2-124, be deposited in the account.

27 (3) (a) The account must be used for the restricted purpose of offsetting the state share of medical
28 education in the following order of priority:

29 (i) graduate medical education, including but not limited to Montana family practice residencies, Montana
30 psychiatry residency, and Montana internal medicine residency;

- 1 (ii) the WWAMI medical education program;
- 2 (iii) the western interstate commission for higher education program; and
- 3 (iv) nursing education.
- 4 (b) Any remainder must be used by the university system for the purpose of controlling tuition costs.
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6 **NEW SECTION. Section 9. Information -- confidentiality.** (1) Except as provided in subsections (2)

7 through (4), in accordance with 15-30-2618 and 15-31-511, it is unlawful for an employee of the department or

8 any other public official or public employee to disclose or otherwise make known information that is disclosed in

9 a return or report required to be filed under [sections 1 through 10] or information that concerns the affairs of the

10 person making the return and that is acquired from the person's records, officers, or employees in an examination

11 or audit.

12 (2) This section may not be construed to prohibit the department from publishing statistics if they are

13 classified in a way that does not disclose the identity of a person making a return or the content of any particular

14 report or return. A person violating the provisions of this section is subject to the penalty provided in 15-30-2618

15 or 15-31-511 for violating the confidentiality of individual income tax or corporate income tax information.

16 (3) (a) The officers charged with the custody of the reports and returns may not be required to produce

17 them or evidence of anything contained in them in an action or proceeding in a court, except in an action or

18 proceeding:

19 (i) to which the department is a party under the provisions of [sections 1 through 10] or any other taxing

20 act; or

21 (ii) on behalf of a party to any action or proceedings under the provisions of [sections 1 through 10] or

22 other taxes when the reports or facts shown by the reports are directly involved in the action or proceedings.

23 (b) The court may require the production of and may admit in evidence only as much of the reports or

24 of the facts shown by the reports as are pertinent to the action or proceedings.

25 (4) This section may not be construed to limit the investigative authority of the legislative branch, as

26 provided in 5-11-106, 5-12-303, or 5-13-309.

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28 **NEW SECTION. Section 10. Rulemaking authority.** The department may adopt rules to administer

29 and enforce the provisions of [sections 1 through 10].

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