

SENATE BILL NO. 295

INTRODUCED BY T. RICHMOND

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR CONVERSION OF ANNUAL LEAVE, SICK LEAVE, AND COMPENSATORY LEAVE TO DEATH BENEFITS IF A PUBLIC EMPLOYEE DIES IN AN ACCIDENT WHILE ON THE JOB; PROVIDING AN EXCEPTION IF THE EMPLOYEE DOES NOT NAME A BENEFICIARY OR AN ESTATE; AMENDING SECTIONS 2-18-412, 2-18-617, 2-18-618, AND 2-18-621, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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Section 1. Section 2-18-412, MCA, is amended to read:

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"2-18-412. Designation of person to receive decedent's warrants or death benefits -- reissuance.

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(1) A person employed by the state may file with the person's appointing power a designation of a person who, notwithstanding any other provision of law, shall, on the death of the employee, be entitled to receive all warrants that would have been payable to the decedent had the employee survived or death benefits as provided in this chapter. The employee may change the designation from time to time. A person designated shall claim the warrants from the state treasurer and on sufficient proof of identity, the treasurer shall reissue the warrant in the name of the designated person and deliver the warrant to the designated person.

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(2) The designation in subsection (1) may be used as a beneficiary under 2-18-617 or 2-18-618."

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Section 2. Section 2-18-617, MCA, is amended to read:

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"2-18-617. Accumulation of leave -- cash for unused -- transfer -- death benefit. (1) (a) Except as

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provided in subsection (1)(b), annual vacation leave may be accumulated to a total not to exceed two times the maximum number of days earned annually as of the end of the first pay period of the next calendar year. Excess vacation time is not forfeited if taken within 90 calendar days from the last day of the calendar year in which the excess was accrued.

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(b) It is the responsibility of the head of an employing agency to provide reasonable opportunity for an employee to use rather than forfeit accumulated vacation leave. If an employee makes a reasonable written request to use excess vacation leave before the excess vacation leave must be forfeited under subsection (1)(a)

1 and the employing agency denies the request, the excess vacation leave is not forfeited and the employing
2 agency shall ensure that the employee may use the excess vacation leave before the end of the calendar year
3 in which the leave would have been forfeited under subsection (1)(a).

4 (2) (a) An employee who terminates employment for a reason not reflecting discredit on the employee
5 and who has worked the qualifying period set forth in 2-18-611 is entitled upon the date of termination to either:

6 (i) cash compensation for unused vacation leave if the employee is not subject to subsection (2)(a)(ii);
7 or

8 (ii) conversion of the employee's unused vacation leave balance to an employer contribution to an
9 employee welfare benefit plan health care expense trust account established pursuant to 2-18-1304 if:

10 (A) the employee is a member who belongs to a voluntary employees' beneficiary association
11 established under 2-18-1310; and

12 (B) the contracting employer has entered into an agreement with members of the common association
13 for an employer contribution based on unused vacation leave provided for in 2-18-611.

14 (b) Vacation leave contributed to the sick leave fund, provided for in 2-18-618, is nonrefundable and is
15 not eligible for cash compensation upon termination.

16 (c) If an employee has earned vacation leave but dies from an accident while on the job, the accumulated
17 vacation leave not converted as provided in subsection (2)(a)(ii) must be paid out as a death benefit to the
18 employee's beneficiary or estate. These benefits are in addition to workers' compensation benefits, if those are
19 applicable.

20 (3) If an employee transfers between agencies of the same jurisdiction, cash compensation may not be
21 paid for unused vacation leave. In a transfer, the receiving agency assumes the liability for the accrued vacation
22 credits transferred with the employee.

23 (4) An employee may contribute accumulated vacation leave to a nonrefundable sick leave fund provided
24 for in 2-18-618. The department of administration shall, in consultation with the state employee group benefits
25 advisory council, provided for in 2-15-1016, adopt rules to implement this subsection.

26 (5) This section does not prohibit a school district from providing cash compensation for unused vacation
27 leave in lieu of the accumulation of the leave, either through a collective bargaining agreement or, in the absence
28 of a collective bargaining agreement, through a policy."

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30 **Section 3.** Section 2-18-618, MCA, is amended to read:

1 **"2-18-618. Sick leave -- death benefit payout.** (1) A permanent full-time employee earns sick leave
2 credits from the first day of employment. For calculating sick leave credits, 2,080 hours (52 weeks x 40 hours)
3 equals 1 year. Sick leave credits must be credited at the end of each pay period. Sick leave credits are earned
4 at the rate of 12 working days for each year of service without restriction as to the number of working days that
5 may be accumulated. Employees are not entitled to be paid sick leave until they have been continuously
6 employed 90 days.

7 (2) An employee may not accrue sick leave credits while in a leave-without-pay status.

8 (3) Permanent part-time employees are entitled to prorated leave benefits if they have worked the
9 qualifying period.

10 (4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they work
11 the qualifying period.

12 (5) A short-term worker may not earn sick leave credits.

13 (6) (a) Except as otherwise provided in 2-18-1311 or subsection (6)(c) of this section, an employee who
14 terminates employment with the agency is entitled to a lump-sum payment equal to one-fourth of the pay
15 attributed to the accumulated sick leave. The pay attributed to the accumulated sick leave must be computed on
16 the basis of the employee's salary or wage at the time the employee terminates employment with the state,
17 county, or city. Accrual of sick leave credits for calculating the lump-sum payment provided for in this subsection
18 begins July 1, 1971. The payment is the responsibility of the agency in which the sick leave accrues. However,
19 an employee does not forfeit any sick leave rights or benefits accrued prior to July 1, 1971. ~~However, when~~

20 (b) When an employee transfers between agencies within the same jurisdiction, the employee is not
21 entitled to a lump-sum payment. In a transfer between agencies, the receiving agency shall assume the liability
22 for the accrued sick leave credits earned after July 1, 1971, and transferred with the employee.

23 (c) For an employee who dies from an accident while on the job, any sick leave benefits that are not
24 converted as provided in 2-18-1311 or subsection (10) of this section must be paid out as a death benefit at 100%
25 of the accumulated value of the sick leave to the employee's beneficiary or estate.

26 (7) An employee who receives a lump-sum payment pursuant to this section or who, pursuant to
27 2-18-1311, converts unused sick leave to employer contributions to a health care expense trust account and who
28 is again employed by any agency may not be credited with sick leave for which the employee has previously been
29 compensated or for which the employee has received an employer contribution to the health care expense trust
30 account.

1 (8) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided for in
2 this section.

3 (9) An employee of a state agency may contribute any portion of the employee's accumulated sick leave
4 or accumulated vacation leave to a nonrefundable sick leave fund for state employees and becomes eligible to
5 draw upon the fund if an extensive illness or accident exhausts the employee's accumulated sick leave,
6 irrespective of the employee's membership or nonmembership in the employee welfare benefit plan established
7 pursuant to 2-18-1304. The department of administration shall, in consultation with the state employee group
8 benefits advisory council, provided for in 2-15-1016, administer the sick leave fund and adopt rules to implement
9 this subsection.

10 (10) A local government may establish and administer through local rule a sick leave fund into which its
11 employees may contribute a portion of their accumulated sick leave or vacation leave."

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13 **Section 4.** Section 2-18-621, MCA, is amended to read:

14 **"2-18-621. Unlawful termination -- unlawful payments.** (1) It is unlawful for an employer to terminate
15 or separate an employee from employment in an attempt to circumvent the provisions of 2-18-611, 2-18-612, and
16 2-18-614. If a question arises under this subsection, it must be submitted to arbitration as provided in Title 27,
17 chapter 5, as if an agreement described in 27-5-114 is in effect, unless there is an applicable collective bargaining
18 agreement to the contrary.

19 (2) (a) An employee who terminates employment is entitled to receive only:

20 (i) payments for accumulated wages, vacation leave as provided in 2-18-617, sick leave as provided in
21 2-18-618, and compensatory time earned as provided in the rules or policies of the employer or, in the case of
22 an employee's death, as described in [section 5]; and

23 (ii) if the termination is the result of a reduction in force, severance pay and a retraining allowance as
24 provided for in 2-18-622.

25 (b) An employee who terminates employment may not receive severance pay, a bonus, or any other type
26 of monetary payment not described in subsection (2)(a)(i) or (2)(a)(ii).

27 (3) Subsection (2) does not apply to:

28 (a) retirement benefits;

29 (b) a payment, settlement, award, or judgment that involves a potential or actual cause of action, legal
30 dispute, claim, grievance, contested case, or lawsuit; or

1 (c) any other payment authorized by law."
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3 **NEW SECTION. Section 5. Compensatory time death benefit.** (1) Subject to subsection (2),
4 compensatory time accumulated by an employee of a state agency as defined in 2-2-102 who dies in an accident
5 while on the job and before being able to use the compensatory time must be converted at 100% of its value to
6 a death benefit to be paid to the employee's beneficiary or estate.

7 (2) A distribution of compensatory time is not allowed if an employee of a state agency dies in an
8 accident while on the job without naming a beneficiary or an estate.
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10 **NEW SECTION. Section 6. Codification instruction.** [Section 5] is intended to be codified as an
11 integral part of Title 2, chapter 18, and the provisions of Title 2, chapter 18, apply to [section 5].
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13 **NEW SECTION. Section 7. Effective date.** [This act] is effective on passage and approval.
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