

SENATE BILL NO. 234

INTRODUCED BY S. FITZPATRICK

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING WORKERS' COMPENSATION
5 INSURANCE; AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO ELECT A WORKERS'
6 COMPENSATION PLAN UNDER PLANS NO. 1, NO. 2, OR NO. 3; AUTHORIZING THE STATE
7 COMPENSATION INSURANCE FUND TO INSURE ITS EMPLOYEES UNDER PLAN NO. 3 IF THE
8 DEPARTMENT OF ADMINISTRATION ELECTS COVERAGE FOR OTHER STATE AGENCIES UNDER PLANS
9 NO. 1 OR NO. 2; AUTHORIZING THE STATE COMPENSATION INSURANCE FUND TO CONTRACT WITH
10 THE DEPARTMENT OF ADMINISTRATION TO SERVE AS A THIRD-PARTY ADMINISTRATOR IF THE
11 DEPARTMENT OF ADMINISTRATION ELECTS COVERAGE FOR STATE AGENCIES UNDER PLAN NO. 1;
12 PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 39-71-403, 39-71-2201, AND
13 39-71-2316, MCA."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16
17 **Section 1.** Section 39-71-403, MCA, is amended to read:

18 **"39-71-403. ~~Plan three exclusive for state agencies -- election of plan by public corporations State~~**
19 **~~agency coverage -- public corporation coverage -- financing of self-insurance fund -- exemption for~~**
20 **~~university system -- definitions -- rulemaking.~~ (1) (a) Except as provided in [section 3] and subsection (5),~~if~~
21 ~~a state agency is the employer, the terms, conditions, and provisions of compensation plan No. 3, state fund, are~~
22 ~~exclusive, compulsory, and obligatory upon both employer and employee.~~ of this section, the department of
23 administration shall elect workers' compensation insurance coverage on behalf of all state agencies and manage
24 the coverage under the terms, conditions, and provisions of compensation plan No. 1, plan No. 2, or plan No. 3.
25 THE DEPARTMENT SHALL ELECT A PLAN THAT INSURES ALL STATE AGENCIES. IF THE DEPARTMENT ELECTS WORKERS'
26 COMPENSATION INSURANCE COVERAGE UNDER COMPENSATION PLAN NO. 2, THE INSURER MUST HAVE AN A FINANCIAL
27 STRENGTH RATING FROM A MAJOR FINANCIAL SERVICES ENTITY. The state agency is the employer for purposes of the
28 compensation plan selected pursuant to this section. Any sums necessary to be paid under the provisions of this
29 chapter by a state agency are considered to be ordinary and necessary expenses of the state agency. The state
30 agency shall pay the sums ~~into the state fund~~ at the time and in the manner provided for in this chapter,**

1 notwithstanding that the state agency may have failed to anticipate the ordinary and necessary expense in a
2 budget, estimate of expenses, appropriations, ordinances, or otherwise.

3 ~~(b) (i) Subject to subsection (5), the department of administration, provided for in 2-15-1001, shall~~
4 ~~manage~~ The department of administration shall elect coverage under one compensation plan to provide workers'
5 compensation insurance coverage for all state agencies except the state compensation insurance fund if the state
6 compensation insurance fund exercises the option in [section 3]. The plan selected by the department of
7 administration is to be exclusive, compulsory, and obligatory upon both the employer and the employee.

8 ~~(ii) The state fund insurer for the selected plan~~ shall provide the department of administration with all
9 information regarding the state agencies' coverage.

10 ~~(iii) Notwithstanding the status of a state agency as employer in subsection (1)(a) and contingent~~
11 Contingent upon mutual agreement between the department of administration and the ~~state fund, the state fund~~
12 plan No. 2 or plan No. 3 insurer, the plan No. 2 or plan No. 3 insurer shall issue one or more policies for all state
13 agencies.

14 (iv) In any year in which the workers' compensation premium due from a state agency is lower than in
15 the previous year, the appropriation for that state agency must be reduced by the same amount that the workers'
16 compensation premium was reduced and the difference must be returned to the originating fund instead of being
17 applied to other purposes by the state agency submitting the premium.

18 (2) ~~(a) A public corporation, other than a state agency,~~ may elect coverage under compensation plan No.
19 1, plan No. 2, or plan No. 3, separately or jointly with any other public corporation, ~~other than a state agency or~~
20 with the department of administration as provided in subsection (2)(b).

21 ~~(b) The department of administration on behalf of all state agencies, except as provided in [section 3],~~
22 may join with a public corporation to elect coverage under compensation plan No. 1, plan No. 2, or plan No. 3.
23 THE DEPARTMENT SHALL ELECT A PLAN THAT INSURES ALL STATE AGENCIES. IF THE DEPARTMENT ELECTS WORKERS'
24 COMPENSATION INSURANCE COVERAGE UNDER COMPENSATION PLAN NO. 2, THE INSURER MUST HAVE AN A FINANCIAL
25 STRENGTH RATING FROM A MAJOR FINANCIAL SERVICES ENTITY. Until notes or bonds described in [section 2(3)(c)] and
26 subsection (3) of this section are fully paid, the funds described in [section 2(2)(c)] and subsection (3)(a) of this
27 section must remain separate.

28 ~~(c) A public corporation~~ If electing coverage under compensation plan No. 1, a public corporation may
29 purchase reinsurance or may issue bonds or notes pursuant to subsection (3)(b). A public corporation electing
30 compensation plan No. 1 is subject to the same provisions as a private employer electing compensation plan No.

1 1.

2 (3) (a) A public corporation, ~~other than a state agency~~, that elects coverage under plan No. 1 may
3 establish a fund sufficient to pay the compensation and benefits provided for in this chapter and to discharge all
4 liabilities that are reasonably incurred during the fiscal year for which the election is effective. Proceeds from the
5 fund ~~must~~ may be used only to pay claims covered by this chapter and for actual and necessary expenses
6 required for the efficient administration of the fund, including debt service on any bonds and notes issued
7 pursuant to subsection (3)(b).

8 (b) (i) A public corporation, ~~other than a state agency~~, separately or jointly with another public
9 corporation, ~~other than a state agency~~, may issue and sell its bonds and notes for the purpose of establishing,
10 in whole or in part, the self-insurance workers' compensation fund provided for in subsection (3)(a) and to pay
11 the costs associated with the sale and issuance of the bonds. Bonds and notes may be issued in an amount not
12 exceeding 0.18% of the total assessed value of taxable property, determined as provided in 15-8-111, of the
13 public corporation as of the date of issue. The bonds and notes must be authorized by resolution of the governing
14 body of the public corporation and are payable from an annual property tax levied in the amount necessary to
15 pay principal and interest on the bonds or notes. This authority to levy an annual property tax exists despite any
16 provision of law or maximum levy limitation, including 15-10-420, to the contrary. The revenue derived from the
17 sale of the bonds and notes may not be used for any other purpose.

18 (ii) The bonds and notes:

19 (A) may be sold at public or private sale;

20 (B) do not constitute debt within the meaning of any statutory debt limitation; and

21 (C) may contain other terms and provisions that the governing body determines.

22 (iii) Two or more public corporations, ~~other than state agencies~~, may agree to exercise their respective
23 borrowing powers jointly under this subsection (3)(b) or may authorize a joint board to exercise the powers on
24 their behalf.

25 (iv) The fund established from the proceeds of bonds and notes issued and sold under this subsection
26 (3)(b) may, if sufficient, be used in lieu of a surety bond, reinsurance, specific and aggregate excess insurance,
27 or any other form of additional security necessary to demonstrate the public corporation's ability to discharge all
28 liabilities as provided in subsection (3)(a). Subject to the total assessed value limitation in subsection (3)(b)(i),
29 a public corporation may issue bonds and notes to establish a fund sufficient to discharge liabilities for periods
30 greater than 1 year.

1 (4) All money in the fund established under subsection (3)(a) not needed to meet immediate
 2 expenditures must be invested by the governing body of the public corporation or the joint board created by two
 3 or more public corporations as provided in subsection (3)(b)(iii), and all proceeds of the investment must be
 4 credited to the fund.

5 (5) For the purposes of subsection ~~(1)(b)~~ (1)(a), the judicial branch or the legislative branch may choose
 6 not to have the department of administration manage its workers' compensation policy.

7 (6) The department of administration may adopt rules to implement ~~subsection (1)(b)(i)~~ this section.

8 (7) As used in this section, the following definitions apply:

9 (a) "Public corporation" ~~includes~~ has the meaning provided in 39-71-116 except that a state agency is
 10 excluded and the Montana university system is included.

11 (b) (i) "State agency" means:

12 (A) the executive branch and its departments and all boards, commissions, committees, bureaus, and
 13 offices;

14 (B) the judicial branch; and

15 (C) the legislative branch.

16 (ii) The term does not include the Montana university system."
 17

18 **NEW SECTION. Section 2. Election of plan No. 1 by department of administration -- rulemaking.**

19 (1) If the department of administration elects coverage under compensation plan No. 1 as provided in 39-71-403,
 20 the department of administration is subject as a plan No. 1 insurer to the provisions of Title 39, chapter 71, except
 21 parts 21 and 26.

22 (2) The department of administration shall:

23 (a) ensure that the plan is operated in an actuarially sound manner and that the plan maintains reserves
 24 sufficient to liquidate incurred but not yet reported claim liability;

25 (b) issue separate notices of coverage to state agencies, subject to the provisions of [section 3]; and

26 (c) establish a self-insurance workers' compensation proprietary fund type to be used only to:

27 (i) pay claims for compensation and benefits provided for in this chapter and for actual and necessary
 28 expenses required for the efficient administration of claims and the fund and for equipment or programs to reduce
 29 the incidence of claims;

30 (ii) discharge all liabilities that are reasonably incurred during the fiscal year for which the election is

1 effective. The time limit of this subsection (2)(c)(ii) does not apply to liabilities accrued for the compensation and
 2 benefits under subsection (2)(c)(i), which may extend for more than 1 year.

3 (iii) pay the costs of reinsurance or the costs associated with the sale and issuance of bonds or notes
 4 provided for in this section, including debt service; and

5 (iv) pay assessments required under this chapter for any other plan No. 1 insurer.

6 (3) The department of administration may:

7 (a) purchase reinsurance;

8 (b) contract with a third-party administrator;

9 (c) through the board of investments, issue bonds or notes to cover unfunded liabilities caused by a
 10 catastrophic event or for the purpose of establishing, in whole or in part, the self-insurance workers' compensation
 11 proprietary fund provided for under subsection (2)(c). Bonds or notes issued under this subsection (3)(c) do not
 12 constitute a general obligation of the state and are not general obligation bonds. The bonds or notes must be paid
 13 for with the proceeds from the proprietary fund established under subsection (2)(c).

14 (d) adopt rules to implement the provisions of this section.

15

16 **NEW SECTION. Section 3. State compensation insurance fund coverage.** (1) If the department of
 17 administration elects coverage under compensation plan No. 1 or plan No. 2 under the provisions of 39-71-403,
 18 the state compensation insurance fund provided for in 39-71-2313 may choose to provide and manage workers'
 19 compensation coverage for its own employees under plan No. 3.

20 (2) If the state compensation insurance fund chooses coverage under compensation plan No. 3 as
 21 provided for in subsection (1), the state compensation insurance fund is exempt from 39-71-403.

22 (3) For the purposes of this chapter, if the state compensation insurance fund elects coverage under
 23 compensation plan No. 3, the state compensation insurance fund is the employer and the terms, conditions, and
 24 provisions of plan No. 3 are exclusive, compulsory, and obligatory upon both the employer and the employee.

25

26 **Section 4.** Section 39-71-2201, MCA, is amended to read:

27 **"39-71-2201. Election to be bound by plan -- captive reciprocal insurers.** (1) Any employer ~~except~~
 28 ~~those specified in 39-71-403~~ may, by filing an election to become bound by compensation plan No. 2, insure the
 29 employer's liability to pay the compensation and benefits provided by this chapter with any insurance company
 30 authorized to transact ~~such~~ workers' compensation business in this state.

1 (2) Any employer electing to become bound by compensation plan No. 2 shall make the election on the
2 form and in the manner prescribed by the department.

3 (3) A captive reciprocal insurer established by or on behalf of an employer or a group of employers is
4 considered to be a compensation plan No. 2 insurer. Pursuant to 33-28-205, a captive reciprocal insurer may not
5 be a member of an insurance guaranty association or guaranty fund."
6

7 **Section 5.** Section 39-71-2316, MCA, is amended to read:

8 **"39-71-2316. Powers of state fund.** (1) For the purposes of carrying out its functions, the state fund
9 may:

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

13 (b) sue and be sued;

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

16 (d) collect and disburse money received;

17 (e) except as provided in subsection (1)(f), use the uniform classification system as required in
18 33-16-1023 and charge premiums for the classifications so that the state fund will be neither more nor less than
19 self-supporting;

20 (f) continue the use of special classification codes that were in use prior to January 1, 2016, for
21 agriculture, municipalities, towns, cities, counties, and state agencies. The board shall file with the commissioner
22 rates and supplementary rate information for these special classifications.

23 (g) use the uniform experience rating plan provided for in 33-16-1023, except upon approval of the board
24 may adopt experience modification thresholds for use by the state fund for its insured employers;

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

26 (i) hire personnel;

27 (j) declare dividends if there is an excess of assets over liabilities. However, dividends may not be paid
28 until adequate actuarially determined reserves are set aside.

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

30 (l) upon approval of the board, contract with licensed resident insurance producers;

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

4 (n) upon approval of the board, expend funds for scholarship, educational, or charitable purposes;

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

8 (p) perform all functions and exercise all powers of a private insurance carrier that are necessary,
9 appropriate, or convenient for the administration of the state fund; and

10 (q) upon approval of the board, contract with the department of administration to serve as a third-party
11 administrator if the department of administration elects coverage for state agencies under compensation plan No.
12 1.

13 (2) The state fund shall include a provision in every policy of insurance issued pursuant to this part that
14 incorporates the restriction on the use and transfer of money collected by the state fund as provided for in
15 39-71-2320."

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17 NEW SECTION. Section 6. Codification instruction. [Sections ~~1 and 2~~ 2 AND 3] are intended to be
18 codified as an integral part of Title 39, chapter 71, part 4, and the provisions of Title 39, chapter 71, part 4, apply
19 to [sections ~~1 and 2~~ 2 AND 3].

20
21 NEW SECTION. Section 7. Severability. If a part of [this act] is invalid, all valid parts that are severable
22 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
23 remains in effect in all valid applications that are severable from the invalid applications.

24 - END -