

**Unofficial Draft Copy**

As of: August 27, 2010 (1:40pm)

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\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the \*\*\*\*\*

A Bill for an Act entitled: "An Act allowing the state of Montana the option to choose among insurers for state employees' workers' compensation insurance coverage; providing state workers' compensation fund with authority to serve as a third-party administrator if state chooses to self-insure; amending sections 39-71-403, 39-71-2203, and 39-71-2316, MCA; and providing an effective date."

Be it enacted by the Legislature of the State of Montana:

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

**"39-71-403. ~~Plan three exclusive for state agencies -- election~~ Election of plan by state agencies or public corporations -- financing of self-insurance fund funds -- exemption for university system -- definitions -- rulemaking.**

(1) (a) ~~Except as provided in subsection (5), if a~~ The department of administration, established under 2-15-1001, may elect coverage on behalf of all state agencies under compensation plan No. 1, plan No. 2, or plan No. 3, separately or jointly with a public corporation.

(b) If the department of administration pursuant to subsection (1)(a) elects to self-insure and provide coverage under plan No. 1, the department of administration:

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(i) may purchase reinsurance;

(ii) may, through the board of investments, issue bonds or notes to cover unfunded liabilities caused by a catastrophic event or for the purpose of establishing, in whole or in part, the self-insurance workers' compensation fund provided for in subsection (1)(b)(iii). Bonds or notes issued under this subsection do not constitute a general obligation of the state of Montana and are not general obligation bonds. The bonds or notes must be paid off with the proceeds from the proprietary fund established under subsection (1)(b)(iii).

(iii) shall establish a proprietary fund type to be used only to:

(A) pay the compensation and benefits provided for in this chapter;

(B) discharge all liabilities that are reasonably incurred during the fiscal year for which the election is effective;

(C) pay for the costs of reinsurance or the costs associated with the sale and issuance of bonds or notes provided for in subsection (1)(b)(ii); and

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

(iv) is not subject to Title 39, chapter 71, part 21; and

(v) may contract with a third-party administrator to handle workers' compensation claims.

(c) If the department of administration chooses to provide coverage under a plan No. 2 insurer, the state compensation insurance fund created under 39-71-2313 may choose to insure

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under plan No. 3. If the state compensation insurance fund chooses to insure under plan No. 3, the provisions of subsections (1)(d) do not apply to the state compensation insurance fund, which for the purposes of this subsection is the employer, and the terms, conditions, and provisions of plan No. 3 are exclusive, compulsory, and obligatory upon both the employer and the employee.

(d) For any compensation plan chosen by the department of administration on behalf of all state agencies, the state agency is the employer, and the terms, conditions, and provisions of compensation plan No. 3, state fund, the elected compensation plan are exclusive, compulsory, and obligatory upon both employer and employee.

(e) Any sums necessary to be paid under the provisions of this chapter by a state agency are considered to be ordinary and necessary expenses of the state agency. The state agency shall pay the sums into the state fund for the elected compensation plan at the time and in the manner provided for in this chapter, notwithstanding that the state agency may have failed to anticipate the ordinary and necessary expense in a budget, estimate of expenses, appropriations, ordinances, or otherwise.

(f) If coverage is provided under plan No. 1, the state agency shall pay into the proprietary fund established in subsection (1)(b).

(b)(g) (i) Subject to subsection (5), the Except as provided in subsection (1)(c), the department of administration, provided for in 2-15-1001, shall manage workers' compensation

insurance coverage for all state agencies. The management of coverage for the legislative and the judicial branches must include review and coordination with each branch.

~~(ii)(h)~~ The If the department of administration elects coverage under compensation plan No. 3, the state fund shall provide the department of administration with all information regarding the state agencies' coverage.

~~(iii)(i)~~ Notwithstanding the status of a state agency as employer in subsection (1)(a) and contingent upon mutual agreement between (1)(d), the department of administration and the state fund, the state fund shall issue one or more policies for all state agencies when obtaining coverage from a plan No. 2 insurer or a plan No. 3 may require one or more policies. If the department of administration chooses to self-insure under plan No. 1, the department of administration may issue separate notices of coverage to state agencies.

(2) A public corporation, other than a state agency, may:

(a) elect coverage under compensation plan No. 1, plan No. 2, or plan No. 3, separately or jointly with any other public corporation, ~~other than a state agency. A public corporation;~~

(b) if electing compensation plan No. 1 ~~may~~ purchase reinsurance or issue bonds or notes pursuant to subsection (3)(b). A public corporation electing compensation plan No. 1 is subject to the same provisions as a private employer electing compensation plan No. 1.

(3) (a) A public corporation, other than a state agency, that elects plan No. 1 may establish a fund sufficient to pay the

compensation and benefits provided for in this chapter and to discharge all liabilities that are reasonably incurred during the fiscal year for which the election is effective. Proceeds from the fund must be used only to pay claims covered by this chapter and for actual and necessary expenses required for the efficient administration of the fund, including debt service on any bonds and notes issued pursuant to subsection (3)(b).

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

~~(ii)~~ (4) The bonds and notes described in subsections (1) and (3):

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

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

(C) for bonds described in subsection (3) may contain other terms and provisions that the governing body determines.

~~(iii)~~ (5) Two or more public corporations, other than state agencies, may agree to exercise their respective borrowing powers jointly under ~~this~~ subsection (3)(b) or may authorize a joint board to exercise the powers on their behalf.

~~(iv)~~ (6) The fund established from the proceeds of bonds and notes issued and sold under ~~this~~ subsection (3)(b) may, if sufficient, be used in lieu of a surety bond, reinsurance, specific and aggregate excess insurance, or any other form of additional security necessary to demonstrate the public corporation's ability to discharge all liabilities as provided in subsection (3)(a). Subject to the total assessed value limitation in subsection (3)(b)~~(i)~~, a public corporation may issue bonds and notes to establish a fund sufficient to discharge liabilities for periods greater than 1 year.

~~(4)~~ (7) (a) All money in the fund established under subsection (1)(b) or (3)(a) not needed to meet immediate expenditures must be invested as provided in subsection (7)(b). All proceeds of the investment must be credited to the fund.

(b) (i) The board of investments shall administer the fund established under subsection (1)(b). ~~by the~~

(ii) The governing body of the public corporation or the joint board created by two or more public corporations as provided in subsection ~~(3)(b)(iii)~~, and all proceeds of the

~~investment must be credited to the fund (5) shall invest the proceeds of a fund established under subsection (3)(a).~~

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

~~(6)(8) The department of administration may adopt rules to implement subsection (1)(b)(i).~~

~~(7)(9) As used in this section, the following definitions apply:~~

~~(a) "Public corporation" includes the Montana university system.~~

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

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

~~(B) the judicial branch; and~~

~~(C) the legislative branch.~~

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

*{ Internal References to 39-71-403:  
39-71-2201x }*

**Section 2.** Section 39-71-2203, MCA, is amended to read:

**"39-71-2203. Content of policies -- policies subject to approval, change, or revision by department.** (1) All policies insuring the payment of compensation under this chapter must contain a clause to the effect that, as between the employee and

the insurer:

(a) the notice to or knowledge of the occurrence of the injury on the part of the insured constitutes notice or knowledge, as the case may be, on the part of the insurer;

(b) jurisdiction of the insured for the purpose of this chapter is the jurisdiction of the insurer; and

(c) the insurer is in all things bound by and subject to the awards, orders, judgments, or decrees rendered against the insured.

(2) A policy may not be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to compensation all the installments of compensation or other payments provided for in this chapter and that the obligation is not affected by any default of the insured after the injury or by any default in the giving of any notice required by the policy or by this chapter or otherwise. The agreement must be construed to be a direct promise by the insured to the person entitled to compensation.

(3) Every policy or contract insuring against liability for compensation under compensation plan No. 2 must contain a clause to the effect that the insurer is directly and primarily liable to and will pay directly to the employee or in case of death to the employee's beneficiaries or major or minor dependents the compensation, if any, for which the employer is liable.

(4) Every policy must at all times be subject to approval, change, or revision by the department and must contain the clauses, agreements, and promises required by this chapter.



(5) ~~All~~ Except as provided in 39-71-403, all Montana operations of an employer, as defined in 39-71-117, covered under plan No. 2 must be insured by the same insurer."

{*Internal References to 39-71-2203: None.*}

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

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

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

(b) sue and be sued;

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

(d) collect and disburse money received;

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

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

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

(g) hire personnel;

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

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

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

(k) upon approval of the board, enter into agreements with licensed workers' compensation insurers, insurance associations, or insurance producers to provide workers' compensation coverage

in other states to Montana-domiciled employers insured with the state fund;

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

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

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

(o) contract with the department of administration or the department when jointly operating with a public corporation, as provided in (1)(a), to provide workers' compensation, occupational disease, and employers' liability claims administration, loss control, and other related services.

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

{Internal References to 39-71-2316:  
33-16-1024 x 39-71-2314 x 39-71-2323x}

NEW SECTION. **Section 4. {standard} Effective date.** [This act] is effective July 1, 2011.

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