

SENATE BILL NO. 278

INTRODUCED BY THAYER, SMITH, VAN VALKENBURG, NORMAN,  
HAGER, LYNCH, HALLIGAN, NATHE, SIMON, MCLANE, ABRAMS, GAGE,  
SQUIRES, DRISCOLL, BOYLAN, OWENS, THOMAS, WEEDING, MARKS,  
WALKER, MAZUREK, DARKO, HARP, WHALEN, ADDY, KEATING,  
AKLESTAD, BISHOP, FARRELL, BLAYLOCK, MANNING, PIPINICH,  
HANNAH, HOFMAN, PAVLOVICH, MEYER

BY REQUEST OF THE GOVERNOR

IN THE SENATE

JANUARY 28, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
FEBRUARY 15, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 16, 1989	PRINTING REPORT.
FEBRUARY 17, 1989	SECOND READING, DO PASS.
FEBRUARY 18, 1989	ENGROSSING REPORT.
FEBRUARY 20, 1989	THIRD READING, PASSED. AYES, 50; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 19, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR.
FEBRUARY 21, 1989	FIRST READING.
MARCH 10, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 11, 1989	SECOND READING, CONCURRED IN.
MARCH 13, 1989	THIRD READING, CONCURRED IN. AYES, 98; NOES, 1.

RETURNED TO SENATE.

IN THE SENATE

MARCH 14, 1989

RECEIVED FROM HOUSE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Montana* BILL NO. *278* *Parlanti*  
 2 INTRODUCED BY *Smith, Van Vleet, Norman, Hoyer*  
 3 BY REQUEST OF THE GOVERNOR *McNamee, Hoyer*  
 4 *NATHAN* *Simon, McNamee, Hoyer*  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A GUARANTY  
 6 FUND FOR EMPLOYERS WHO SELF-INSURE UNDER THE WORKERS'  
 7 COMPENSATION LAWS TO PROVIDE FOR PAYMENT OF CLAIMS AGAINST  
 8 SELF-INSURED EMPLOYERS WHO BECOME INSOLVENT AND UNABLE TO  
 9 PAY WORKERS' COMPENSATION CLAIMS; ESTABLISHING A BOARD OF  
 10 DIRECTORS TO ADMINISTER THE FUND; PROVIDING AN ASSESSMENT  
 11 AGAINST SELF-INSURED EMPLOYERS TO FINANCE THE FUND; AND  
 12 PROVIDING EFFECTIVE DATES."

#### 14 STATEMENT OF INTENT

15 A statement of intent is required for this bill because  
 16 [section 6] delegates to the newly established board of  
 17 directors of the Montana self-insurers guaranty fund  
 18 rulemaking authority to administer the guaranty fund.

19 It is the intent of [section 4] that the governor have  
 20 the authority to implement staggered terms for board members  
 21 during the appointing process.

22 It is the intent of [section 6] that the board of  
 23 directors of the Montana self-insurers guaranty fund have  
 24 the general authority to adopt rules to implement and  
 25 enforce [this act]. The rules should provide:

- 1 (1) a process for electing members and officers of the
- 2 board;
- 3 (2) a method for filling any vacancy on the board;
- 4 (3) a description of the duties of board members;
- 5 (4) a method of keeping records of the board;
- 6 (5) a method for transacting the business of the
- 7 board; and
- 8 (6) a description of the banking and investment policy
- 9 of the board.

10 The rules should also establish the general duties and  
 11 powers of operation of the fund. These include establishing  
 12 a method of assessing contributions to the fund and a method  
 13 of prorating payment if available funds are not sufficient  
 14 to pay all claims.

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

17 NEW SECTION. **Section 1.** Short title. [This act] may  
 18 be cited as the "Montana Self-Insurers Guaranty Fund Act".

19 NEW SECTION. **Section 2.** Purpose -- construction. (1)  
 20 The purposes of [this act] are to provide a mechanism for  
 21 the payment of covered workers' compensation claims of  
 22 employers bound by compensation plan No. 1 who are unable to  
 23 pay the claims because of insolvency, to establish a fund  
 24 from which the claims may be paid, and to establish a board  
 25 to assess the cost of the protection among those employers.

1 (2) [This act] must be liberally construed to effect  
2 its purposes. The statement of its purposes constitutes an  
3 aid and a guide to the act's interpretation.

4 NEW SECTION. Section 3. Definitions. As used in [this  
5 act], unless the context requires otherwise, the following  
6 definitions apply:

7 (1) "Board" means the board of directors of the  
8 Montana self-insurers guaranty fund.

9 (2) "Fund" means the Montana self-insurers guaranty  
10 fund established pursuant to [section 5].

11 (3) "Insolvent private self-insurer" means an  
12 employer:

13 (a) (i) that is unable to pay workers' compensation  
14 claims because:

15 (A) it has been determined to be insolvent by a court  
16 of competent jurisdiction; or

17 (B) bankruptcy proceedings have been instituted by or  
18 against it; or

19 (ii) whose claims are not being paid on its behalf; and

20 (b) whose security has been exhausted pursuant to  
21 39-71-2108.

22 (4) "Member" means an employer bound by compensation  
23 plan No. 1 that participates in the Montana self-insurers  
24 guaranty fund.

25 (5) "Private self-insurer" means a private employer

1 bound by compensation plan No. 1 that has secured the  
2 payment of workers' compensation claims pursuant to  
3 39-71-2101.

4 NEW SECTION. Section 4. Board of directors of fund.  
5 (1) There is a board of directors of the Montana  
6 self-insurers guaranty fund.

7 (2) The board consists of five members who are  
8 representatives of private self-insurers and who shall serve  
9 staggered 4-year terms.

10 (3) Board members are elected by the members of the  
11 fund, with each member having one vote.

12 (4) Board members may be reimbursed from the assets of  
13 the fund for the actual expenses incurred in connection with  
14 their duties as board members.

15 NEW SECTION. Section 5. Establishment of fund --  
16 employer participation required. (1) There is a nonprofit  
17 unincorporated legal entity, to be known as the Montana  
18 self-insurers guaranty fund, financed as provided in  
19 [sections 8 and 9]. The fund shall perform its functions  
20 under rules adopted by, and powers exercised through, the  
21 board established under [section 4].

22 (2) A private self-insurer shall participate as a  
23 member in the fund as a condition of the authority to  
24 self-insure in this state under 39-71-2101.

25 (3) The division shall consult with the board

1 regarding the suitability of allowing an employer to  
2 self-insure or to continue as a self-insured employer.

3 NEW SECTION. **Section 6.** Rulemaking -- powers of fund.

4 (1) The board shall establish the rules necessary to carry  
5 out the purposes of [this act] and to meet the  
6 responsibilities of the fund.

7 (2) The fund may carry out its responsibilities  
8 directly or by contract. It may, if it considers necessary,  
9 purchase services and insurance and borrow funds.

10 (3) The fund may receive confidential information  
11 concerning the financial condition of a private self-insurer  
12 whose liabilities to pay compensation may devolve upon the  
13 fund. The board shall adopt rules to prevent dissemination  
14 of the information.

15 NEW SECTION. **Section 7.** Duties, liabilities, and  
16 rights of fund. (1) The fund shall assume the workers'  
17 compensation obligations of a private self-insurer that come  
18 due after the private self-insurer has been determined to be  
19 an insolvent self-insurer.

20 (2) The fund is not liable for the payment of any  
21 penalties or interest assessed for any act or omission of a  
22 person acting on behalf of the fund.

23 (3) The fund is a party in interest in all proceedings  
24 involving workers' compensation claims against an insolvent  
25 private self-insurer whose workers' compensation obligations

1 have been paid or assumed by the fund. The fund has the same  
2 rights and defenses as the insolvent private self-insurer,  
3 including but not limited to all of the following:

4 (a) to appear and deny, defend, and appeal a claim;  
5 and

6 (b) to receive notice of, investigate, adjust,  
7 compromise, settle, and pay a claim.

8 NEW SECTION. **Section 8.** Initial fee -- assessment.

9 (1) A private self-insurer shall pay to the fund an initial  
10 fee of \$1,000 upon becoming a member. Thereafter, a member's  
11 financial obligation to the fund must be established by  
12 assessment as provided in subsection (2).

13 (2) The fund may assess each of its members a pro rata  
14 share of the amount necessary to carry out the purposes of  
15 [this act]. However, the total annual assessments in any  
16 calendar year may not exceed 5% of the indemnity  
17 compensation paid by each member for claims insured during  
18 the previous calendar year. Funds obtained by assessment  
19 pursuant to this subsection may be used only for the  
20 purposes of [this act].

21 (3) A former member is liable for assessments made by  
22 the fund for 3 years following the date the member's status  
23 as a private self-insurer is terminated, whether the  
24 termination is by action of the private self-insurer or the  
25 division. A former member's assessment must be based on the

1 12-month period immediately preceding the member's  
2 termination of its status as a private self-insurer.

3 (4) The board shall certify to the division the  
4 collection and receipt of assessments, noting any  
5 delinquencies. The board shall take appropriate action to  
6 collect a delinquent assessment.

7 NEW SECTION. Section 9. Reimbursement for obligations  
8 paid and assumed. (1) The fund shall obtain reimbursement  
9 from an insolvent private self-insurer up to the amount of  
10 the insolvent private self-insurer's workers' compensation  
11 obligations paid and assumed by the fund. This includes  
12 reimbursement for reasonable administrative and legal costs.

13 (2) This right, as subrogee of any claimants in any  
14 action to collect against the private self-insurer as the  
15 debtor, includes but is not limited to a right to a claim  
16 for wages and other necessities of life advanced to any  
17 claimants.

18 (3) The fund may obtain from the security deposit or  
19 proceeds of other workers' compensation insurance of an  
20 insolvent private self-insurer the amount of the insolvent  
21 private self-insurer's compensation obligations, including  
22 reasonable administrative and legal costs, paid or assumed  
23 by the fund.

24 (4) The fund may bring an action against any other  
25 insurance carrier and person to recover compensation paid

1 and liability assumed by the fund, including but not limited  
2 to:

3 (a) any excess insurance carrier of the private  
4 self-insurer; and

5 (b) any person whose negligence or breach of any  
6 obligation contributed to any underestimation of the private  
7 self-insurer's total accrual of liability as reported to the  
8 division.

9 NEW SECTION. Section 10. Tax exemption. The fund is  
10 exempt from payment of all fees and taxes levied by this  
11 state or by any city, county, or other political  
12 subdivision, except taxes levied on real or personal  
13 property.

14 NEW SECTION. Section 11. Immunity. There is no  
15 liability on the part of, and no claim for relief of any  
16 nature may arise against, any member, the fund, its agents  
17 or employees, or the board for any action taken by them in  
18 the performance of their powers and duties under [this act].

19 NEW SECTION. Section 12. Notification of insolvency  
20 by private self-insurer. As a condition of the privilege to  
21 self-insure pursuant to Title 39, chapter 71, part 21, a  
22 private self-insurer shall agree in writing to notify the  
23 division and the fund within 24 hours of the filing of any  
24 bankruptcy or determination of insolvency relating to that  
25 private self-insurer.

1        NEW SECTION. Section 13. Audit requirement. Within 6  
2 months after the close of any fiscal year in which the fund  
3 has assumed the workers' compensation obligations of an  
4 insolvent private self-insurer, the fund shall:

5        (1) contract for an independent certified audit of the  
6 financial activities of the fund; and

7        (2) report on the financial status of the fund to the  
8 division and to fund members.

9        NEW SECTION. Section 14. Extension of authority. Any  
10 existing authority to make rules on the subject of the  
11 provisions of [this act] is extended to the provisions of  
12 [this act].

13        NEW SECTION. Section 15. Codification instruction.  
14 [Sections 1 through 13] are intended to be codified as an  
15 integral part of Title 39, chapter 71, and the provisions of  
16 Title 39, chapter 71, apply to [sections 1 through 13].

17        NEW SECTION. Section 16. Effective date. (1) [Section  
18 14] and [this section] are effective on passage and  
19 approval.

20        (2) [Sections 1 through 13] and [section 15] are  
21 effective July 1, 1989.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB278, as introduced.


DESCRIPTION OF PROPOSED LEGISLATION:

An Act entitled, "An Act creating a guaranty fund for employers who self-insure under the Workers' Compensation laws to provide for payment of claims against self-insured employers who become insolvent and unable to pay workers' compensation claims; establishing a board of directors to administer the fund; providing an assessment against self-insured employers to finance the fund; and providing effective dates."

ASSUMPTIONS:

1. The Division of Workers' Compensation will not administer the fund nor will it perform any functions including financial analysis or collection of assessment on behalf of the fund.
2. The Division will not regulate solvency of the fund.
3. Division employees will not serve on the board.
4. The Division will continue to have sole authority to grant an employer approval to self-insure and to set security deposit amounts and conditions for self-insurance privileges.
5. Contested case hearings conducted by the Division will not increase.

FISCAL IMPACT: There is no fiscal impact.

  
RAY SHACKLEFORD, BUDGET DIRECTOR      2/4/89      DATE  
OFFICE OF BUDGET AND PROGRAM PLANNING

  
GENE THAYER, PRIMARY SPONSOR      2/4/89      DATE

Fiscal Note for SB278, as introduced

**SB 278**



APPROVED BY COMMITTEE  
ON LABOR & EMPLOYMENT  
RELATIONS

## SENATE BILL NO. 278

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FUND FOR EMPLOYERS WHO SELF-INSURE UNDER THE WORKERS'  
COMPENSATION LAWS TO PROVIDE FOR PAYMENT OF CLAIMS AGAINST  
SELF-INSURED EMPLOYERS WHO BECOME INSOLVENT AND UNABLE TO  
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DIRECTORS TO ADMINISTER THE FUND; PROVIDING AN ASSESSMENT  
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PROVIDING EFFECTIVE DATES."

## STATEMENT OF INTENT

A statement of intent is required for ACCOMPANIES this  
bill because [section 6] delegates to the newly established  
board of directors of the Montana self-insurers guaranty  
fund rulemaking authority to administer the guaranty fund.

THE FUND IS A PRIVATE, NONPROFIT LEGAL ENTITY. THE  
MEMBERS OF THE BOARD OF DIRECTORS MUST BE ELECTED BY MEMBERS

OF THE FUND, EXCEPT FOR THE INITIAL APPOINTMENTS, WHICH MUST  
BE MADE BY THE GOVERNOR.

It is the intent of [section 4] that the governor have  
the authority to implement staggered terms for board members  
during the INITIAL appointing process.

It is the intent of [section 6] that the board of  
directors of the Montana self-insurers guaranty fund have  
the general authority to adopt rules to implement and  
enforce [this act]. The rules should provide:

- (1) a process for electing members and officers of the  
board;
- (2) a method for filling any vacancy on the board;
- (3) a description of the duties of board members;
- (4) a method of keeping records of the board;
- (5) a method for transacting the business of the  
board; and
- (6) a description of the banking and investment policy  
of the board.

The rules should also establish the general duties and  
powers of operation of the fund. These include establishing  
a method of assessing contributions to the fund and a method  
of prorating payment if available funds are not sufficient  
to pay all claims.

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

1        NEW SECTION. Section 1. Short title. [This act] may  
2 be cited as the "Montana Self-Insurers Guaranty Fund Act".

3        NEW SECTION. Section 2. Purpose -- construction. (1)  
4 The purposes of [this act] are to provide a mechanism for  
5 the payment of covered workers' compensation claims of  
6 employers bound by compensation plan No. 1 who are unable to  
7 pay the claims because of insolvency, to establish a fund  
8 from which the claims may be paid, and to establish a board  
9 to assess the cost of the protection among those employers.

10        (2) [This act] must be liberally construed to effect  
11 its purposes. The statement of its purposes constitutes an  
12 aid and a guide to the act's interpretation.

13        NEW SECTION. Section 3. Definitions. As used in [this  
14 act], unless the context requires otherwise, the following  
15 definitions apply:

16        (1) "Board" means the board of directors of the  
17 Montana self-insurers guaranty fund.

18        (2) "Fund" means the Montana self-insurers guaranty  
19 fund established pursuant to [section 5].

20        (3) "Insolvent private self-insurer" means an  
21 employer:

22        (a) (i) that is unable to pay workers' compensation  
23 claims because:

24        (A) it has been determined to be insolvent by a court  
25 of competent jurisdiction; or

1        (B) bankruptcy proceedings have been instituted by or  
2 against it; or

3        (ii) whose claims are not being paid on its behalf; and

4        (b) whose security has been exhausted pursuant to  
5 39-71-2108.

6        (4) "Member" means an employer bound by compensation  
7 plan No. 1 that participates in the Montana self-insurers  
8 guaranty fund.

9        (5) "Private self-insurer" means a private employer  
10 bound by compensation plan No. 1 that has secured the  
11 payment of workers' compensation claims pursuant to  
12 39-71-2101.

13        NEW SECTION. Section 4. Board of directors of fund.

14        (1) There is a board of directors of the Montana  
15 self-insurers guaranty fund.

16        (2) The board consists of five members who are  
17 representatives of private self-insurers and who shall serve  
18 staggered 4-year terms.

19        (3) Board members are elected by the members of the  
20 fund, with each member having one vote.

21        (4) Board members may be reimbursed from the assets of  
22 the fund for the actual expenses incurred in connection with  
23 their duties as board members.

24        NEW SECTION. Section 5. Establishment of fund --  
25 employer participation required. (1) There is a nonprofit

unincorporated legal entity, to be known as the Montana self-insurers guaranty fund, financed as provided in [sections 8 and 9]. The fund shall perform its functions under rules adopted by, and powers exercised through, the board established under [section 4].

(2) A private self-insurer shall participate as a member in the fund as a condition of the authority to self-insure in this state under 39-71-2101.

(3) The division shall consult with the board regarding the suitability of allowing an employer to self-insure or to continue as a self-insured employer.

**NEW SECTION. Section 6. Rulemaking -- powers of fund.**

(1) The board shall establish the rules necessary to carry out the purposes of [this act] and to meet the responsibilities of the fund.

(2) The fund may carry out its responsibilities directly or by contract. It may, if it considers necessary, purchase services and insurance and borrow funds.

(3) The fund may receive confidential information concerning the financial condition of a private self-insurer whose liabilities to pay compensation may devolve upon the fund. The board shall adopt rules to prevent dissemination of the information.

**NEW SECTION. Section 7. Duties, liabilities, and rights of fund.** (1) The fund shall assume the workers'

compensation obligations of a private self-insurer that come due after the private self-insurer has been determined to be an insolvent self-insurer.

(2) The fund is not liable for the payment of any penalties or interest assessed for any act or omission of a person acting on behalf of the fund.

(3) The fund is a party in interest in all proceedings involving workers' compensation claims against an insolvent private self-insurer whose workers' compensation obligations have been paid or assumed by the fund. The fund has the same rights and defenses as the insolvent private self-insurer, including but not limited to all of the following:

(a) to appear and deny, defend, and appeal a claim; and

(b) to receive notice of, investigate, adjust, compromise, settle, and pay a claim.

**NEW SECTION. Section 8. Initial fee -- assessment.**

(1) A private self-insurer shall pay to the fund an initial fee of \$1,000 upon becoming a member. Thereafter, a member's financial obligation to the fund must be established by assessment as provided in subsection (2).

(2) The fund may assess each of its members a pro rata share of the amount necessary to carry out the purposes of [this act]. However, the total annual assessments in any calendar year may not exceed 5% of the indemnity

1 compensation paid by each member ~~for claims--insured~~ during  
2 the previous calendar year. Funds obtained by assessment  
3 pursuant to this subsection may be used only for the  
4 purposes of [this act].

5 (3) A former member is liable for assessments made by  
6 the fund for 3 years following the date the member's status  
7 as a private self-insurer is terminated, whether the  
8 termination is by action of the private self-insurer or the  
9 division. A former member's assessment must be based on the  
10 12-month period immediately preceding the member's  
11 termination of its status as a private self-insurer.

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23 action to collect against the private self-insurer as the  
24 debtor, includes but is not limited to a right to a claim  
25 for wages and other necessities of life advanced to any

1 claimants.

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3 proceeds of other workers' compensation insurance of an  
4 insolvent private self-insurer the amount of the insolvent  
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16 self-insurer's total accrual of liability as reported to the  
17 division.

18 NEW SECTION. Section 10. Tax exemption. The fund is  
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20 state or by any city, county, or other political  
21 subdivision, except taxes levied on real or personal  
22 property.

23 NEW SECTION. Section 11. Immunity. There is no  
24 liability on the part of, and no claim for relief of any  
25 nature may arise against, any member, the fund, its agents

1 or employees, or the board for any action taken by them in  
2 the performance of their powers and duties under [this act].

3 NEW SECTION. Section 12. Notification of insolvency  
4 by private self-insurer. As a condition of the privilege to  
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7 division and the fund within 24 hours of the filing of any  
8 bankruptcy or determination of insolvency relating to that  
9 private self-insurer.

10 NEW SECTION. Section 13. Audit requirement. Within  
11 BIANNUALLY OR WITHIN 6 months after the close of any fiscal  
12 year in which the fund has assumed the workers' compensation  
13 obligations of an insolvent private self-insurer, the fund  
14 shall:

15 (1) contract for an independent certified audit of the  
16 financial activities of the fund; and

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18 division and to fund members.

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20 existing authority to make rules on the subject of the  
21 provisions of [this act] is extended to the provisions of  
22 [this act].

23 NEW SECTION. Section 15. Codification instruction.  
24 [Sections 1 through 13] are intended to be codified as an  
25 integral part of Title 39, chapter 71, and the provisions of

1 Title 39, chapter 71, apply to [sections 1 through 13].

2 NEW SECTION. Section 16. Effective date. (1) [Section  
3 14] and [this section] are effective on passage and  
4 approval.

5 (2) [Sections 1 through 13] and [section 15] are  
6 effective July 1, 1989.

-End-

## SENATE BILL NO. 278

INTRODUCED BY THAYER, SMITH, VAN VALKENBURG, NORMAN,

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## STATEMENT OF INTENT

A statement of intent is required for ACCOMPANIES this bill because [section 6] delegates to the newly established board of directors of the Montana self-insurers guaranty fund rulemaking authority to administer the guaranty fund.

THE FUND IS A PRIVATE, NONPROFIT LEGAL ENTITY. THE MEMBERS OF THE BOARD OF DIRECTORS MUST BE ELECTED BY MEMBERS

OF THE FUND, EXCEPT FOR THE INITIAL APPOINTMENTS, WHICH MUST BE MADE BY THE GOVERNOR.

It is the intent of [section 4] that the governor have the authority to implement staggered terms for board members during the INITIAL appointing process.

It is the intent of [section 6] that the board of directors of the Montana self-insurers guaranty fund have the general authority to adopt rules to implement and enforce [this act]. The rules should provide:

- (1) a process for electing members and officers of the board;
- (2) a method for filling any vacancy on the board;
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The rules should also establish the general duties and powers of operation of the fund. These include establishing a method of assessing contributions to the fund and a method of prorating payment if available funds are not sufficient to pay all claims.

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

1        NEW SECTION. **Section 1.** Short title. [This act] may  
2 be cited as the "Montana Self-Insurers Guaranty Fund Act".

3        NEW SECTION. **Section 2.** Purpose -- construction. (1)  
4 The purposes of [this act] are to provide a mechanism for  
5 the payment of covered workers' compensation claims of  
6 employers bound by compensation plan No. 1 who are unable to  
7 pay the claims because of insolvency, to establish a fund  
8 from which the claims may be paid, and to establish a board  
9 to assess the cost of the protection among those employers.

10        (2) [This act] must be liberally construed to effect  
11 its purposes. The statement of its purposes constitutes an  
12 aid and a guide to the act's interpretation.

13        NEW SECTION. **Section 3.** Definitions. As used in [this  
14 act], unless the context requires otherwise, the following  
15 definitions apply:

16        (1) "Board" means the board of directors of the  
17 Montana self-insurers guaranty fund.

18        (2) "Fund" means the Montana self-insurers guaranty  
19 fund established pursuant to [section 5].

20        (3) "Insolvent private self-insurer" means an  
21 employer:

22        (a) (i) that is unable to pay workers' compensation  
23 claims because:

24        (A) it has been determined to be insolvent by a court  
25 of competent jurisdiction; or

1        (B) bankruptcy proceedings have been instituted by or  
2 against it; or

3        (ii) whose claims are not being paid on its behalf; and

4        (b) whose security has been exhausted pursuant to  
5 39-71-2108.

6        (4) "Member" means an employer bound by compensation  
7 plan No. 1 that participates in the Montana self-insurers  
8 guaranty fund.

9        (5) "Private self-insurer" means a private employer  
10 bound by compensation plan No. 1 that has secured the  
11 payment of workers' compensation claims pursuant to  
12 39-71-2101.

13        NEW SECTION. **Section 4.** Board of directors of fund.

14        (1) There is a board of directors of the Montana  
15 self-insurers guaranty fund.

16        (2) The board consists of five members who are  
17 representatives of private self-insurers and who shall serve  
18 staggered 4-year terms.

19        (3) Board members are elected by the members of the  
20 fund, with each member having one vote.

21        (4) Board members may be reimbursed from the assets of  
22 the fund for the actual expenses incurred in connection with  
23 their duties as board members.

24        NEW SECTION. **Section 5.** Establishment of fund --  
25 employer participation required. (1) There is a nonprofit

1 unincorporated legal entity, to be known as the Montana  
2 self-insurers guaranty fund, financed as provided in  
3 [sections 8 and 9]. The fund shall perform its functions  
4 under rules adopted by, and powers exercised through, the  
5 board established under [section 4].

6 (2) A private self-insurer shall participate as a  
7 member in the fund as a condition of the authority to  
8 self-insure in this state under 39-71-2101.

9 (3) The division shall consult with the board  
10 regarding the suitability of allowing an employer to  
11 self-insure or to continue as a self-insured employer.

12 NEW SECTION. Section 6. Rulemaking -- powers of fund.

13 (1) The board shall establish the rules necessary to carry  
14 out the purposes of [this act] and to meet the  
15 responsibilities of the fund.

16 (2) The fund may carry out its responsibilities  
17 directly or by contract. It may, if it considers necessary,  
18 purchase services and insurance and borrow funds.

19 (3) The fund may receive confidential information  
20 concerning the financial condition of a private self-insurer  
21 whose liabilities to pay compensation may devolve upon the  
22 fund. The board shall adopt rules to prevent dissemination  
23 of the information.

24 NEW SECTION. Section 7. Duties, liabilities, and  
25 rights of fund. (1) The fund shall assume the workers'

1 compensation obligations of a private self-insurer that come  
2 due after the private self-insurer has been determined to be  
3 an insolvent self-insurer.

4 (2) The fund is not liable for the payment of any  
5 penalties or interest assessed for any act or omission of a  
6 person acting on behalf of the fund.

7 (3) The fund is a party in interest in all proceedings  
8 involving workers' compensation claims against an insolvent  
9 private self-insurer whose workers' compensation obligations  
10 have been paid or assumed by the fund. The fund has the same  
11 rights and defenses as the insolvent private self-insurer,  
12 including but not limited to all of the following:

13 (a) to appear and deny, defend, and appeal a claim;  
14 and

15 (b) to receive notice of, investigate, adjust,  
16 compromise, settle, and pay a claim.

17 NEW SECTION. Section 8. Initial fee -- assessment.

18 (1) A private self-insurer shall pay to the fund an initial  
19 fee of \$1,000 upon becoming a member. Thereafter, a member's  
20 financial obligation to the fund must be established by  
21 assessment as provided in subsection (2).

22 (2) The fund may assess each of its members a pro rata  
23 share of the amount necessary to carry out the purposes of  
24 [this act]. However, the total annual assessments in any  
25 calendar year may not exceed 5% of the indemnity



1 compensation paid by each member ~~for-claims--insured~~ during  
2 the previous calendar year. Funds obtained by assessment  
3 pursuant to this subsection may be used only for the  
4 purposes of [this act].

5 (3) A former member is liable for assessments made by  
6 the fund for 3 years following the date the member's status  
7 as a private self-insurer is terminated, whether the  
8 termination is by action of the private self-insurer or the  
9 division. A former member's assessment must be based on the  
10 12-month period immediately preceding the member's  
11 termination of its status as a private self-insurer.

12 (4) The board shall certify to the division the  
13 collection and receipt of assessments, noting any  
14 delinquencies. The board shall take appropriate action to  
15 collect a delinquent assessment.

16 NEW SECTION. Section 9. Reimbursement for obligations  
17 paid and assumed. (1) The fund shall obtain reimbursement  
18 from an insolvent private self-insurer up to the amount of  
19 the insolvent private self-insurer's workers' compensation  
20 obligations paid and assumed by the fund. This includes  
21 reimbursement for reasonable administrative and legal costs.

22 (2) This right, as subrogee of any claimants in any  
23 action to collect against the private self-insurer as the  
24 debtor, includes but is not limited to a right to a claim  
25 for wages and other necessities of life advanced to any

1 claimants.

2 (3) The fund may obtain from the security deposit or  
3 proceeds of other workers' compensation insurance of an  
4 insolvent private self-insurer the amount of the insolvent  
5 private self-insurer's compensation obligations, including  
6 reasonable administrative and legal costs, paid or assumed  
7 by the fund.

8 (4) The fund may bring an action against any other  
9 insurance carrier and person to recover compensation paid  
10 and liability assumed by the fund, including but not limited  
11 to:

12 (a) any excess insurance carrier of the private  
13 self-insurer; and

14 (b) any person whose negligence or breach of any  
15 obligation contributed to any underestimation of the private  
16 self-insurer's total accrual of liability as reported to the  
17 division.

18 NEW SECTION. Section 10. Tax exemption. The fund is  
19 exempt from payment of all fees and taxes levied by this  
20 state or by any city, county, or other political  
21 subdivision, except taxes levied on real or personal  
22 property.

23 NEW SECTION. Section 11. Immunity. There is no  
24 liability on the part of, and no claim for relief of any  
25 nature may arise against, any member, the fund, its agents

1 or employees, or the board for any action taken by them in  
2 the performance of their powers and duties under [this act].

3 NEW SECTION. Section 12. Notification of insolvency  
4 by private self-insurer. As a condition of the privilege to  
5 self-insure pursuant to Title 39, chapter 71, part 21, a  
6 private self-insurer shall agree in writing to notify the  
7 division and the fund within 24 hours of the filing of any  
8 bankruptcy or determination of insolvency relating to that  
9 private self-insurer.

10 NEW SECTION. Section 13. Audit requirement. Within  
11 BIANNUALLY OR WITHIN 6 months after the close of any fiscal  
12 year in which the fund has assumed the workers' compensation  
13 obligations of an insolvent private self-insurer, the fund  
14 shall:

15 (1) contract for an independent certified audit of the  
16 financial activities of the fund; and

17 (2) report on the financial status of the fund to the  
18 division and to fund members.

19 NEW SECTION. Section 14. Extension of authority. Any  
20 existing authority to make rules on the subject of the  
21 provisions of [this act] is extended to the provisions of  
22 [this act].

23 NEW SECTION. Section 15. Codification instruction.  
24 [Sections 1 through 13] are intended to be codified as an  
25 integral part of Title 39, chapter 71, and the provisions of

1 Title 39, chapter 71, apply to [sections 1 through 13].

2 NEW SECTION. Section 16. Effective date. (1) [Section  
3 14] and [this section] are effective on passage and  
4 approval.

5 (2) [Sections 1 through 13] and [section 15] are  
6 effective July 1, 1989.

-End-

## 1 SENATE BILL NO. 278

2 INTRODUCED BY THAYER, SMITH, VAN VALKENBURG, NORMAN,  
3 HAGER, LYNCH, HALLIGAN, NATHE, SIMON, MCLANE, ABRAMS, GAGE,  
4 SQUIRES, DRISCOLL, BOYLAN, OWENS, THOMAS, WEEDING, MARKS,  
5 WALKER, MAZUREK, DARKO, HARP, WHALEN, ADDY, KEATING,  
6 AKLESTAD, BISHOP, FARRELL, BLAYLOCK, MANNING, PIPINICH,  
7 HANNAH, HOFMAN, PAVLOVICH, MEYER  
8 BY REQUEST OF THE GOVERNOR

9  
10 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A GUARANTY  
11 FUND FOR EMPLOYERS WHO SELF-INSURE UNDER THE WORKERS'  
12 COMPENSATION LAWS TO PROVIDE FOR PAYMENT OF CLAIMS AGAINST  
13 SELF-INSURED EMPLOYERS WHO BECOME INSOLVENT AND UNABLE TO  
14 PAY WORKERS' COMPENSATION CLAIMS; ESTABLISHING A BOARD OF  
15 DIRECTORS TO ADMINISTER THE FUND; PROVIDING AN ASSESSMENT  
16 AGAINST SELF-INSURED EMPLOYERS TO FINANCE THE FUND; AND  
17 PROVIDING EFFECTIVE DATES."

18  
19 STATEMENT OF INTENT

20 A statement of intent is required for ACCOMPANIES this  
21 bill because [section 6] delegates to the newly established  
22 board of directors of the Montana self-insurers guaranty  
23 fund rulemaking authority to administer the guaranty fund.

24 THE FUND IS A PRIVATE, NONPROFIT LEGAL ENTITY. THE  
25 MEMBERS OF THE BOARD OF DIRECTORS MUST BE ELECTED BY MEMBERS

1 OF THE FUND, EXCEPT FOR THE INITIAL APPOINTMENTS, WHICH MUST  
2 BE MADE BY THE GOVERNOR.

3 It is the intent of [section 4] that the governor have  
4 the authority to implement staggered terms for board members  
5 during the INITIAL appointing process.

6 It is the intent of [section 6] that the board of  
7 directors of the Montana self-insurers guaranty fund have  
8 the general authority to adopt rules to implement and  
9 enforce [this act]. The rules should provide:

- 10 (1) a process for electing members and officers of the  
11 board;  
12 (2) a method for filling any vacancy on the board;  
13 (3) a description of the duties of board members;  
14 (4) a method of keeping records of the board;  
15 (5) a method for transacting the business of the  
16 board; and  
17 (6) a description of the banking and investment policy  
18 of the board.

19 The rules should also establish the general duties and  
20 powers of operation of the fund. These include establishing  
21 a method of assessing contributions to the fund and a method  
22 of prorating payment if available funds are not sufficient  
23 to pay all claims.

24  
25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

1 NEW SECTION. Section 1. Short title. [This act] may  
2 be cited as the "Montana Self-Insurers Guaranty Fund Act".

3 NEW SECTION. Section 2. Purpose -- construction. (1)  
4 The purposes of [this act] are to provide a mechanism for  
5 the payment of covered workers' compensation claims of  
6 employers bound by compensation plan No. 1 who are unable to  
7 pay the claims because of insolvency, to establish a fund  
8 from which the claims may be paid, and to establish a board  
9 to assess the cost of the protection among those employers.

10 (2) [This act] must be liberally construed to effect  
11 its purposes. The statement of its purposes constitutes an  
12 aid and a guide to the act's interpretation.

13 NEW SECTION. Section 3. Definitions. As used in [this  
14 act], unless the context requires otherwise, the following  
15 definitions apply:

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17 Montana self-insurers guaranty fund.

18 (2) "Fund" means the Montana self-insurers guaranty  
19 fund established pursuant to [section 5].

20 (3) "Insolvent private self-insurer" means an  
21 employer:

22 (a) (i) that is unable to pay workers' compensation  
23 claims because:

24 (A) it has been determined to be insolvent by a court  
25 of competent jurisdiction; or

1 (B) bankruptcy proceedings have been instituted by or  
2 against it; or

3 (ii) whose claims are not being paid on its behalf; and

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5 39-71-2108.

6 (4) "Member" means an employer bound by compensation  
7 plan No. 1 that participates in the Montana self-insurers  
8 guaranty fund.

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23 their duties as board members.

24 NEW SECTION. Section 5. Establishment of fund --  
25 employer participation required. (1) There is a nonprofit

unincorporated legal entity, to be known as the Montana self-insurers guaranty fund, financed as provided in [sections 8 and 9]. The fund shall perform its functions under rules adopted by, and powers exercised through, the board established under [section 4].

(2) A private self-insurer shall participate as a member in the fund as a condition of the authority to self-insure in this state under 39-71-2101.

(3) The division shall consult with the board regarding the suitability of allowing an employer to self-insure or to continue as a self-insured employer.

**NEW SECTION. Section 6. Rulemaking -- powers of fund.**

(1) The board shall establish the rules necessary to carry out the purposes of [this act] and to meet the responsibilities of the fund.

(2) The fund may carry out its responsibilities directly or by contract. It may, if it considers necessary, purchase services and insurance and borrow funds.

(3) The fund may receive confidential information concerning the financial condition of a private self-insurer whose liabilities to pay compensation may devolve upon the fund. The board shall adopt rules to prevent dissemination of the information.

**NEW SECTION. Section 7. Duties, liabilities, and**

**rights of fund.** (1) The fund shall assume the workers'

compensation obligations of a private self-insurer that come due after the private self-insurer has been determined to be an insolvent self-insurer.

(2) The fund is not liable for the payment of any penalties or interest assessed for any act or omission of a person acting on behalf of the fund.

(3) The fund is a party in interest in all proceedings involving workers' compensation claims against an insolvent private self-insurer whose workers' compensation obligations have been paid or assumed by the fund. The fund has the same rights and defenses as the insolvent private self-insurer, including but not limited to all of the following:

(a) to appear and deny, defend, and appeal a claim; and

(b) to receive notice of, investigate, adjust, compromise, settle, and pay a claim.

**NEW SECTION. Section 8. Initial fee -- assessment.**

(1) A private self-insurer shall pay to the fund an initial fee of \$1,000 upon becoming a member. Thereafter, a member's financial obligation to the fund must be established by assessment as provided in subsection (2).

(2) The fund may assess each of its members a pro rata share of the amount necessary to carry out the purposes of [this act]. However, the total annual assessments in any calendar year may not exceed 5% of the indemnity

1 compensation paid by each member for-claims--insured during  
2 the previous calendar year. Funds obtained by assessment  
3 pursuant to this subsection may be used only for the  
4 purposes of [this act].

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7 as a private self-insurer is terminated, whether the  
8 termination is by action of the private self-insurer or the  
9 division. A former member's assessment must be based on the  
10 12-month period immediately preceding the member's  
11 termination of its status as a private self-insurer.

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20 obligations paid and assumed by the fund. This includes  
21 reimbursement for reasonable administrative and legal costs.

22 (2) This right, as subrogee of any claimants in any  
23 action to collect against the private self-insurer as the  
24 debtor, includes but is not limited to a right to a claim  
25 for wages and other necessities of life advanced to any

1 claimants.

2 (3) The fund may obtain from the security deposit or  
3 proceeds of other workers' compensation insurance of an  
4 insolvent private self-insurer the amount of the insolvent  
5 private self-insurer's compensation obligations, including  
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8 (4) The fund may bring an action against any other  
9 insurance carrier and person to recover compensation paid  
10 and liability assumed by the fund, including but not limited  
11 to:

12 (a) any excess insurance carrier of the private  
13 self-insurer; and

14 (b) any person whose negligence or breach of any  
15 obligation contributed to any underestimation of the private  
16 self-insurer's total accrual of liability as reported to the  
17 division.

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20 state or by any city, county, or other political  
21 subdivision, except taxes levied on real or personal  
22 property.

23 NEW SECTION. Section 11. Immunity. There is no  
24 liability on the part of, and no claim for relief of any  
25 nature may arise against, any member, the fund, its agents

1 or employees, or the board for any action taken by them in  
2 the performance of their powers and duties under [this act].

3 NEW SECTION. Section 12. Notification of insolvency  
4 by private self-insurer. As a condition of the privilege to  
5 self-insure pursuant to Title 39, chapter 71, part 21, a  
6 private self-insurer shall agree in writing to notify the  
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8 bankruptcy or determination of insolvency relating to that  
9 private self-insurer.

10 NEW SECTION. Section 13. Audit requirement. Within  
11 BIANNUALLY OR WITHIN 6 months after the close of any fiscal  
12 year in which the fund has assumed the workers' compensation  
13 obligations of an insolvent private self-insurer, the fund  
14 shall:

15 (1) contract for an independent certified audit of the  
16 financial activities of the fund; and

17 (2) report on the financial status of the fund to the  
18 division and to fund members.

19 NEW SECTION. Section 14. Extension of authority. Any  
20 existing authority to make rules on the subject of the  
21 provisions of [this act] is extended to the provisions of  
22 [this act].

23 NEW SECTION. Section 15. Codification instruction.  
24 [Sections 1 through 13] are intended to be codified as an  
25 integral part of Title 39, chapter 71, and the provisions of

1 Title 39, chapter 71, apply to [sections 1 through 13].

2 NEW SECTION. Section 16. Effective date. (1) [Section  
3 14] and [this section] are effective on passage and  
4 approval.

5 (2) [Sections 1 through 13] and [section 15] are  
6 effective July 1, 1989.

-End-