



AN ACT GENERALLY REVISING ADMINISTRATIVE PROVISIONS OF THE VOLUNTARY EMPLOYEE BENEFIT ASSOCIATION ACT THAT ALLOWS PUBLIC EMPLOYEES TO USE UNUSED LEAVE FOR MEDICAL EXPENSES ON A TAX-EXEMPT BASIS; REVISING DEFINITIONS; CLARIFYING THE APPLICABILITY OF FEDERAL LAW AND WHAT CONSTITUTES THE PLAN DOCUMENT; CLARIFYING ACCOUNT ACCESS AND CONTRIBUTION PROVISIONS; REVISING DEATH BENEFIT PROVISIONS; AMENDING SECTIONS 2-18-1302, 2-18-1303, 2-18-1304, 2-18-1309, 2-18-1311, AND 2-18-1313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

**Section 1.** Section 2-18-1302, MCA, is amended to read:

**"2-18-1302. Purpose and intent.** The legislature finds that escalating health care expenses, particularly the increasing cost of medical treatment and health insurance, constitute a substantial financial burden during and after an employee's working career. The purpose of this part is to provide a means by which public employers may contribute to a plan established under a qualified tax-exempt trust organization to assist public employees, and their dependents, ~~and their beneficiaries~~ with paying for qualified health care expenses. Under the plan, employer contributions, investment earnings, and payments for qualified health care expenses are tax-exempt. The legislature also finds that centralized statewide administration offers a consistent approach and is more cost-effective, especially for smaller employers. However, the legislature does not intend to prohibit an employer from establishing a similar program as an alternative or in addition to participation in the statewide program provided for in this part. Additionally, the legislature intends to facilitate a grassroots process to determine plan participation."

**Section 2.** Section 2-18-1303, MCA, is amended to read:

**"2-18-1303. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Common association" means an association of employees established pursuant to 2-18-1310 for the purposes of employer and employee participation in the plan.

(2) "Contracting employer" means an employer who, pursuant to 2-18-1310, has contracted with the department to participate in the plan.

(3) "Department" means the department of administration established in 2-15-1001.

(4) "Dependent" means the tax-qualified dependent or child of the participant as determined under section 105(b) of the Internal Revenue Code, 26 U.S.C. 105(b).

~~(4)~~(5) (a) "Employee" means a person employed by an employer.

(b) The term does not include an independent contractor, a person hired by the employer under a personal services contract, or a student intern, as defined in 2-18-101.

~~(5)~~(6) "Employer" means a legally constituted department, board, commission, or any other administrative unit of state government, a county, an incorporated city or town, or any other political subdivision of the state, including a school district, or a unit of the university system.

~~(6)~~(7) "Health care expense trust account" or "account" means an account established for the payment of qualified health care expenses under the plan.

~~(7)~~(8) "Member" means an employee ~~who belongs to a voluntary employees' beneficiary association established under 2-18-1310~~ whose work unit voted to establish a common association.

(9) "Participant" means a member who terminates employment and for whom an account is established.

~~(8)~~(10) "Plan" means the employee welfare benefit plan established under section 501(c)(9) of the Internal Revenue Code ~~section, 26 U.S.C. 501(c)(9)~~, pursuant to 2-18-1304.

~~(9)~~(11) "Qualified health care expenses" means expenses paid by a ~~member~~ participant for medical care, as defined by 26 U.S.C. 213(d), for the ~~member~~ participant or the ~~member's~~ participant's spouse or dependent as defined by 26 U.S.C. 152."

**Section 3.** Section 2-18-1304, MCA, is amended to read:

**"2-18-1304. Statewide employee welfare benefit plan established -- health care expense trust accounts -- investment of funds -- account access -- administrative expenses.** (1) The department shall establish, through contracted services, a plan under a tax-exempt entity that qualifies as a voluntary employees' beneficiary association trust pursuant to section 501(c)(9) of the Internal Revenue Code, 26 U.S.C. 501(c)(9). The plan must provide ~~members~~ participants with individual health care expense trust accounts to pay ~~the~~ qualified health care expenses of ~~members, their dependents, and their beneficiaries.~~

(2) The department shall determine what investment vehicles will be offered to plan ~~members~~ participants. Each plan ~~member~~ participant is entitled to direct the investment of funds in the ~~member's~~ participant's account among the investment vehicles offered. The department shall provide for a default investment vehicle if a ~~member~~ participant fails to direct how funds are to be invested.

(3) At any time after a ~~member's~~ participant's account has been established, the ~~member~~ participant may access funds in the account in a manner prescribed by the department. The funds may be accessed only for the payment of qualified health care expenses and until the funds have been exhausted.

(4) Administrative expenses must be paid by the plan in a manner prescribed by the department."

**Section 4.** Section 2-18-1309, MCA, is amended to read:

**"2-18-1309. Administration of plan -- content of plan document.** (1) The department shall provide for the administration of the plan in the manner required to satisfy applicable tax qualification requirements of the Internal Revenue Code and other applicable federal law. If a statutory provision of this part conflicts with a qualification requirement of the Internal Revenue Code or other applicable federal law and any consequent federal regulations, the provision is either ineffective or must be interpreted to conform with the federal qualification requirements.

(2) For purposes of qualification pursuant to section 501(c)(9) of the Internal Revenue Code, 26 U.S.C. 501(c)(9), and any other applicable internal revenue service laws and regulations, the plan document is composed of this part, ~~and~~ the rules adopted by the department to implement this part, and the regulations adopted by the internal revenue service to implement section 105 of the Internal Revenue Code, 26 U.S.C. 105."

**Section 5.** Section 2-18-1311, MCA, is amended to read:

**"2-18-1311. Contributions of unused sick and vacation leave -- other contributions not prohibited.** (1) In a manner prescribed by the department, a contracting employer shall provide for a plan member to annually designate how many hours, if any, of the member's sick leave will be automatically converted to an employer contribution to the member's account each pay period as provided for in this section.

~~(2) (a) Except as provided in subsection (2)(b), a member may annually convert only the sick leave hours in excess of 240 hours and no more than the maximum prescribed by the contracting employer.~~

~~(b)(1) When the member's employment is terminated, the member's unused sick leave balance may be converted, in whole or in part, to an a tax-free employer contribution to the member's participant account pursuant to this section. For those amounts of sick leave not converted to employer contributions, the balance is allocated as required under 2-18-618(6).~~

~~(3)(2) The amount of the employer contribution to a member's participant's account for hours converted under this section must be equal to one-fourth of the pay attributed to the accumulated sick leave. The attributable pay must be computed on the basis of the employee's salary or wage at the time that the sick leave is converted. A member participant may not later receive as sick leave credit or as a lump-sum payment amounts contributed to the member's participant account pursuant to this section.~~

~~(3) At termination of employment, the member's unused vacation leave balance may be converted to a tax-free employer contribution to the participant account as provided for in 2-18-617.~~

(4) This section does not prohibit an employer from making other contributions permitted by statute and federal law or from entering into an agreement with a member participant for employer contributions to a member participant account in addition to the contributions provided for under this section."

**Section 6.** Section 2-18-1313, MCA, is amended to read:

**"2-18-1313. Beneficiaries — ~~death~~ Death benefits.** (1) A member may designate as a beneficiary an individual, charitable organization, or trust. The designation must be in a manner prescribed by the department.

~~(2)(1) Upon proof of a member's participant's death, if the deceased member's participant's account retains funds, the member's designated beneficiary participant's surviving spouse or dependent is entitled to use the account for qualified health care expenses or, to the extent allowable under applicable Internal~~

~~Revenue Code sections, to receive a taxable lump-sum payment of the deceased member's account balance incurred by the participant until the participant's death or incurred by the surviving spouse or a surviving dependent until loss of tax-qualified status.~~

(2) ~~The department shall prescribe by rule the disposition of a deceased member's participant's account if the member failed to designate a beneficiary or participant has no surviving designated beneficiary spouse or dependent."~~

**Section 7. Effective date.** [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,  
HB 76, originated in the House.

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Chief Clerk of the House

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2021.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2021.

HOUSE BILL NO. 76

INTRODUCED BY G. FRAZER

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

AN ACT GENERALLY REVISING ADMINISTRATIVE PROVISIONS OF THE VOLUNTARY EMPLOYEE BENEFIT ASSOCIATION ACT THAT ALLOWS PUBLIC EMPLOYEES TO USE UNUSED LEAVE FOR MEDICAL EXPENSES ON A TAX-EXEMPT BASIS; REVISING DEFINITIONS; CLARIFYING THE APPLICABILITY OF FEDERAL LAW AND WHAT CONSTITUTES THE PLAN DOCUMENT; CLARIFYING ACCOUNT ACCESS AND CONTRIBUTION PROVISIONS; REVISING DEATH BENEFIT PROVISIONS; AMENDING SECTIONS 2-18-1302, 2-18-1303, 2-18-1304, 2-18-1309, 2-18-1311, AND 2-18-1313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.