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conducting his business during liquiaation, dankruptcy or insolvency. The rignt to compensation ana medical penefits as provided by this act shazt is not be affected by the fact that tine injury, occupational disease or death is causea by the negligence of a third party otner than the employer, or the servants or employees of the employer. Whenever such event shałi-seeur occurs to an employee while performing the duties of his employment and such event shatz-be is caused by the act or omission of some persons or corporations other than his employer, or the servants or employees of his employer, then--suen the employee, or in case of nis death his heirs or personal representative shall, in addition to the right to receive compensation under this act, nave a right to prosecute any cause of action he may have for damages against such persons or corporations. further proficedt-thet-whenevex-steh However, if an employee shatz reeerve receives an injury while performing the duties of his employment and suen the injury or injuries, so received by such the employee, are caused by the intentional and malicious act or omission of a servant or employee of his employer, then--sueh the employee, or in case of his death, his heirs or personal representatives, shall, in adidion to the right to receive compensation under the Workmen's Compensation Act, have a right to prosecute any cause of action he may have for damages against suen the servants or


#### Abstract

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Section 3．There is a new R．C．M．section numbered

92-204.2 that reads as follows:
92-204.2. Subrogation. (1) If an action is prosecutea as provided for in section $92-204.1$, the insurer is entithea to subrogation for all compensation and jenefits paid or to be paid uncer the workmen's compensation act, except as otherwise proviaded in this section. The insarer's right of subrogation sinali be a first lien on the claim, judgment, or recovery.
(2) If the empioyee is going to institute the tiaird party action, the employee shall give the insurer reasomable notice of the intention to institute the action.
(a) The employee may request that the insurer pay a proportionate share of the reasonable cost, including attorneys' fees, of the action.
(b) The insurer may elect not to participate in the cost of the action. If tais election is made, the insurer is considered to have waived fifty percent (50\%) of its subrogation rights granted by this section.
(c) If the employee or the employee's personal representative institutes the action, the employee is entitled to at least one third (1/3) of the amount recovered by judgment or settlement less a proportionate snare of reasonable costs including attorneys ${ }^{\text { }}$ fees, if tine amount of recovery is insufficient to proviae the employee with that amount after payment of subrogation.
(3) If an employee refuses or fails to institute the third party action within one (1) year from the wate of injury, the insurer may institute the action in the nane of the employee and for his denefit or that of his personal representative. If the insurer institutes the accion, ne shall pay to the employee any amount recovered by judgnent or settlement which is in excess of the amounts paia or to be paid under the act after tne insurer's reasonable costs including attorneys' fees for prosecuting the action have been aeducted from the recovery.
(4) An insurer may enter into compromise agreedents in settlement of subrogation rights.
(5) If death results from the injury or occupational disease, the insurer may sue a third party for recovery of any amount paid under this action, and such an action shall be in addition to any action by the neirs or personal representatives of the deceased.
(6) If tine amount of compensation and otner beaefits payable under the act have not been fuliy determined at the tine the employee or his heirs or personal representatives, or the insurer nave settleā in any manner the action, as provided for in this section, the division snall determine what proportion of the settlement shall be allocated under subrogation. The division's determination may be apealeu as any other determination of the division.
jection 4. There is a new R.C.M. section nunwerea 92-212 that reads as follows:

92-212. Uninsured employer's fund. (1) Tinere is created an uninsured employer's fund. The purpose of this fund is to pay to an injured employee of an uninsured employer, the same benefits such employee would have received if the employer had been properly enrolled unoer compensation plan no. 1,2 , or 3 . The division shall administer the fund and shall pay all proper benefits to injured employees of uninsured employers.
(2) The fund sinall be funded in the foilowing manner:
(a) The division shall require that the uninsured employer pay to the fund a penalty of either double the premiun amount the employer would nave paid on the payroll of the employer's employees in this state if the employer had been enrolled with compensation plan no. 3 or one thousand dollars ( $\$ 1000$ ), whichever is greater. In determining the premium amount for the calculation of the penalty under this subsection, the division shall make an assessment on how much premium would nave been paià on the employer's past three year payroll for periods within the three (3) years when the employer was uninsured, but an assessment prior to July 1 , 1975, may not be made; and
(b) The fund shall receive from an uninsured employer ar amount equal to all benefits paic or to be paid to an
injured employee of the uninsured employer. If an uninsured employer refuses to make the payments to the fund, upon demand, the sum may be collected for the fund, as provided for in this section, by the division through suit. The division may compromise with an uninsured erployer the amount due the fund under this section.
(c) The fund shall also be funded from the state general fund for payment of benefits as provided for in tnis section. However, any amounts collected under subsections (2)(a) or (2) (b) of this section shall be expended before any general fund appropriations are expended.
(3) Proper surpluses and reserves sinall be kept for the fund. The board of investments shall invest the moneys of the fund. The cost of administration of the fund shall be paid out of the money in the fund.
(4) All appropriate provisions in the workjuen's compensation act apply to the fund in the same manner as they apply to compensation plans no. 1, 2, or 3 .
(5) when the division discovers an uninsured employer, the division shali order the employer to cease operations until a proper election nas been made by the employer to de bound by a compensation plan. An employer who does not comply with the division's orcier to cease operations is guilty of a misdemeanor.

Section 5. Section $92-435$, R.C.N. $1 \times 47$, is amended to
read as follows：
＂92－435．Insurer defined．＂Insurer＂means any insuranee－eempanr－autherized－to－transact－businesa－－in－－tnise －tate－－insuring－any－－empłeyer－－under－－enisa－aet－ana－inezudea
 the－nstate－fund $\boldsymbol{T}^{M}$ an employer bound by compensation plan no． 1，an insurance company transacting business under compensation plan no．2，the industrial insurance account under compensation plan no．3，and includes the uninsured employer＇s fund provided for in section 92－212．＂

Section 6．Section 92－614，R．C．M．1947，is amended to read as follows：
＂92－614．Who liable for injuries under the different pians－of act and in what amounts，extraterritorial application and reciprocity．（1）Every empioyex－whe－snatz beceme－－beund－－by－and－－subject－－－to－－－ehe－－－provisions－－－ef compensatien－－płan－－number－－one－－4t才－anai－every－employer－ane insurer－whe－－sheł̇－－beeome－－bounū－－by－－ana－－suiojeet－－te－tine prowiaiens－－of－－eompensation－－pian－－number－－two－tzto－and－the inüustriat－aceíient－funi－where－the－empieyer－of－－the－－injuxeá empまoyee－－hes－－become－bound－by－and－subjeet－to－the－provisions of－eompersation－ptan－Mor－ヲ7 insurer shall be liable for the payment of compensation in the manner and to the extent hereinafter provioed to an employee of an employer it insures who ines－－eteeteē－－to－－eeme－under－tinie－aetr－ana－wino
shati－reeeive receives an injury arising out of and in the course of his employment，ory in the case of his death from such injury，to his the employee＇s beneficiaries，is any； orf－－if－nener－to－his－major－depenientst－if－anyt－ert－if－nonet

（2）If a workman employed in this state who is subject to the provisions of this act temporarily leaves the state incidental to that employment and receives an injury arising out of and in the course of such employment，the provisions of this act shall apply to such workman as though he were injured within this state．
（3）If a workman from another state and his employer from another state are temporarily engaged in work within this state，this act shall not apply to them：
（a）if the employer and employee are bound by the provisions of the Workmen＇s Compensation Law or similar law of such other state which applies to them while they are in the state of Montana，and
（b）if the Workmen＇s Compensation．Act of this state is recognized and uiven effect as the exclusive remedy for workmen employed in this state who are injurea wnile temporarily employed in such otier state．
（4）A certificate from an authorized officer of the workmen＇s compensation department or similar agency of another state certifying that an employer of such other －12－
state is bound oy the Workmen's Compensation Act of the state and that its act will ve applied to employees of the employer while in the state of Montana shall de prina facie evidence of the application of the workmen's Compensation Law of the certifying state.
(5) The industriat-teeident-poara-shati-have-authority division may, with the approval of the governor, to enter into agreements with workmen's compensation agencies of other states for the purpose of promulgating regulations not inconsistent with the provisions of this act to carry out the extraterritorial application of the workmen's compensation laws of the agreeing states."

Section 7. Sections 92-201, 92-203, 92-205, 92-207.1, 92-208, 92-209, 92-210, 92-211, 92-1102, 92-1116, and 92-1117, R.C.M. 1947, are repealed.
-End-

HB75
$\qquad$

# In compliance with a written request received . Jan. 31 <br> $\qquad$ 1975 <br> $\qquad$ , there is hereby submitted a Fiscal Note for House Bill 75 pursuant to Chapter 63, Laws of Montana, 1965 -Thirty. Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request. 

## DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 75 creates an uninsured employer's fund to grant all employees workmen's compensation benefits even if employers are not properly insured; provides funding of the fund, gives the Division of Workmen's Compensation authority to grant, by rule, exemptions for corporate officers, and redefines the definition of insurer.

## ASSUMPTIONS:

1. Overhead costs such as Centralized Services, data processing, etc. can be absorbed by the Workmens' Compensation Division.
2. A $10 \%$ pay raise for personnel in FY 1977 will occur.
3. Operating expenses will be $39 \%$ of salaries, the same ratio as the Workmens' Compensation Compliance Program.
4. There will be 120 compensatory cases per year; the average compensation and medical reserves will be $\$ 9,000$ per case. Uninsured employers will reimburse the fund in an estimated $60 \%$ of the cases. All 'medical only' cases will be fully reimbursed. (Note: these are rough estimates; since this is a new program no historical data exists upon which. to base predictions)

FISCAL IMPACT:
Estimated Increase in Expenditure by Category

| Personal Services | $\$ 54,898$ | $\$ 60,390$ |
| :--- | ---: | ---: |
| Operating Expenses | 21,410 | 23,552 |
| Capital Outlay | 6,467 | 0 |
| Benefits (Net of Reimbursements) | $\underline{432,000}$ | $\underline{432,000}$ |
| Estimated total increase in expenditures | $\underline{\$ 514,775}$ |  |

## CONCLUSIONS:

Enactment of House Bill 75 would result in an estimated $\$ 1,031,000$ appropriation required from the General Fund during the next biennium. The required amount will vary depending upon the level of compensations and the reimbursements by uninsured employers.


Office of Budget and Program Planning
Date:



#### Abstract

\section*{Approved by Comnittee <br> on Labor \& Employment Relations <br> on Labor \& Employment Relations}


HOUSE BILL NO. 75
INTRODUCED BY KIMBLE, MCKITTRICK, HARPER, SLOAN, JOHNSON

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS 92-202.1, 92-204.1, 92-435, AND 92-614, R.C.M. 1947; CREATING AN UNINSURED EMPLOYER'S FUND TO GRANT ALL EMPLOYEES IN THIS STATE WORKMEN'S COMPENSATION BENEFITS EVEN IF THEIR EMPLOYERS ARE NOT PROPERLY INSURED; PROVIDING FOR FUNDING OF TIIE FUND; GIVING THE DIVISION OF WORKMEN'S COMPENSATION AUTHORITY TO GRANT, BY RULE, EXEMPTIONS FOR CORPORATE OFFICERS; REDEFINING THE DEFINITION OF INSURER; AND REPEALING SECTIONS 92-201, 92-203, 92-205, 92-207. 2 , 92-208, 92-209, 92-210, 92-211, 92-1102, 92-1116, AND 92-1117, R.C.M. 1947."

BE IT ENACTED BY THE IEGGISLATURE OF THE STATE OF MONTANA:
Section 1. Section 92-202.1, R.C.M. 1947, is amended to read as follows:
"92-202.1. Employments covered and employments exempted from coverage. This-aet-shati-not-apply-te-any-of the--fołtowing--empłeyments--untess--the---empteyer---ełeets eeverage---umder---this-azet (1) Except as provided in subsection (2) of this section, the Workmen's Compensation Act applies to all employers as defined in section 92-410.1 and to all employees as defined in section 92-411. Such
employers who have any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan no. 1, 2, or 3. Every employee whose employer is bound by this act shall become subject to and bound by that compensation plan that has been elected by the employer.
(2) This act does not apply to any of the following employments unless the employer elects coverage FOR THESE EAPLOYMENTS under this act:
t¥t (a) Household employment.
tz+ (b) Casual employment.
tヲt (c) Employment of members of an employer's family dwelling in his household.
t4t (d) Employment of sole proprietors or working members of a partnership.

45t (e) Employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States.
t6t (f) Any person performing services in return for aid or sustenance only.
(g) officers of private corporations who have, by rules adopted by the division, been designated exempt under the Workmen's Compensation Act."

Section 2. Section 92-204.1, R.C.M. 1947, is amended
to read as follows:
"92-204.1. Election of employer and employee to come
under act--action against third party causing injury--right
to--subrogetion. Where--beth-the-emptoyer-and-enptoyee-have
etected-te-eome For all employments covered under this act,
the provisions of this act shazt-be are exclusiver,-ard-sueh
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uninsured employers, and except as otherwise provided in the
act, an employer is not subject to any liability whatsoever
for the death or personal injury to any emplayees covered by
the act. The act binds the employee himself, and in case
of death sheit-bine binds his personal representative, and
all persons having any right or claim to compensation for
his injury or death, as well as the employer, and the
servants and employees of such employer, and those
conducting his business during liquidation, bankruptcy or insolvency. The right to compensation and medical benefits as provided by this act shał̇ is not be affected by the fact that the injury, occupational disease or death is caused by the negligence of a third party other than the employer, or the servants or employees of the employer. Whenever such event shati-eeear occurs to an employee while performing the duties of his employment and such event shati-be is caused Dy the act or omission of some persons or corporations other than his employer, or the servants or employees of his employer, then--sueh the employee, or in case of his death his heirs or personal representative shall, in addition to the right to receive compensation under this act, have a right to prosecute any cause of action he may have for damages against such persons or corporations. Further providedp-that-whenever-sueh However, if an employee shaity feeeive receives an injury while performing the duties of his employment and sueh the injury or injuries, so received by sueh the employee, are caused by the intentional and malicious act or omission of a servant or employee of his employer, then--sueh the employee, or in case of his death, his heirs or personal representatives, shall, in addition to the right to receive compensation under the Workmen's Compensation Act, have a right to prosecute any cause of action he may have for damages against sueh the servants or

HB 75

the--ameunt--ef-yecovery-is-inguffieient-te-provide-hin-with that-ameant-after-payment-of-subregations--In-ehe-event--the emptoyer--or--insurer-institutes-sueh-third-party-aetient-he shałł-pay-te-the-empłoyee-any-amotnt-reeorered--by--广udgment or--settłement--which-is-in-exeeso-of-the-ameunes-paid-oz-ee be-paid-under-this-aet-an-emplorerls-or-insurerls-seasenable
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Section 3. There is a new R.C.M. section numbered

## 92-204. 2 that reads as follows:

92-204.2. Subrogation. (1) If af action is prosecuted as provided for in section 92-204.1, the insurer is entitled to subrogation for all compensation and benefits paid or to be paid under the Workmen's Compensation Act, except as otaerwise provided in this section. The insurer's right of subrogation shall be a first iien on the claim, judgment, or recovery.
(2) If the employee is going to institute the third party action, the employee shall give the insurer reasonable notice of the intention to institute the action.
(a) The employee may request that the insurer pay $a$ proportionate share of the reasonable cost, including attorneys' fees, of the action.
(b) The insurer may elect not to participate in the cost of the action. If this election is made, the insurer is considered to have waived fifty percent (50\%) of its subrogation rights granted by this section.
(c) If the emplovee or the employee's personal representative institutes the action, the employee is entitled to at least one third (1/3) of the amount recovered by judgment or settlement less a proportionate share of reasonable costs including attorneys' fees, if the amount of recovery is insufficient to provide the employee with that amount after payment of subrogation.
(3) If an employee refuses or fails to institute the third party action within one (1) year from the date of injury, the insurer may institute the action in the name of the employee and for his benefit or that of his personal representative. If the insurer institutes the action, he shall pay to the employee any amount recovered by judgment or settlement which is in excess of the amounts paid or to be paid under the act after the insurer's reasonable costs including attorneys' fees for prosecuting the action have been deducted from the recovery.
(4) An insurer may enter into compromise agreements in settlement of subrogation rights.
(5) If death results from the injury or occupational disease, the insurer may sue a third party for recovery of any amount paid under this action, and such an action shall be in addition to any action by the heirs or personal representatives of the deceased.
(6) If the amount of compensation and other benefits payable under the act have not been fully determined at the time the employee or his heirs or personal representatives, or the insurer have settled in any manner the action, as provided for in this section, the division shall determine what proportion of the settlement shall be allocated under subrogation. The division's determination may be appealed as any other determination of the division.

Section 4. There is a new R.C.M. section numbered 92-212 that reads as follows:

92-212. Uninsured employer's fund. (1) There is created an uninsured employer's fund. The purpose of this fund is to pay to an injured employee of an uninsured employer, the same benefits such employee would have received if the employer had been properly enrolled under compensation plan no. 1, 2, or 3. FOR THE PURPOSES OF THIS SECTION, THE WORDS "UNINSURED EMPLOYER" SHALL MEAN AN EMPLOYER WHO HAS NOT PROPERLY COMPLIED WITE THE PROVISIONS OF SECTION 92-202.1. The division shall administer the fund and shall pay all proper benefits to injured empioyees of uninsured employers.
(2) The fund shall be funded in the following manner:
(a) The division shall require that the uninsured employer pay to the fund a penalty of either double the premium amount the employer would have paid on the payroll of the employer's employees in this state if the employer had been enrolled with compensation plan no. 3 or one thousand dollars (\$1000), whichever is greater. In determining the premium amount for the calculation of the penalty under this subsection, the division shall make an assessment on how much premium would have been paid on the employer's past three year payroll for periods within the three (3) years when the employer was uninsured, but an -9-

## assessment prior to July 1, 1975, may not be made; and

(b) The fund shall receive from an uninsured employer an amount equal to all benefits paid or to be paid to an injured employee of the uninsured employer. If an uninsured employer refuses to make the payments to the fund, upon demand, the sum may be collected for the fund, as provided for in this section, by the division through suit. The division may compromise with an uninsured employer the amount due the fund under this section.
(c) The fund shall also be funded from the state general fund for payment of benefits as provided for in this section. However, any amounts collected under subsections (2) (a) or (2) (b) of this section shall be expended before any general fund appropriations are expended.
(3) Proper surpluses and reserves shall be kept for the fund. The board of investments shall invest the moneys of the fund. The cost of administration of the fund shall be paid out of the money in the fund.
(4) All appropriate provisions in the Workmen's compensation Act apply to the fund in the same manner as they apply to compensation plans no. 1,2 , or 3.
(5) When the division discovers an uninsured employer, the division shall order the employer to cease operations until a proper election has been made by the employer to be bound by a compensation plan. An employer who does not
comply with the division's order to cease operations is guilty of a misdemeanor.

Section 5. Section 92-435, R.C.M. 1947, is amended to read as follows:
"92-435. Insurer defined. "Insurer" means any insurance--eompany--autherized--te-transatebusiness-in-this state-insuring-any-employer--unter--thiss-aet--and--inetudes
 the-ngtate-famtan an employer bound by compensation plan no. 1, an insurance company transacting business under compensation plan no. 2, the industrial insurance account under compensation plan no. 3, and incluaes the uninsured employex's fund provided for in section 92-212."

Section 6. Section $92-614$, R.C.M. 1947, is amended to read as follows:
"92-614. Who liable for injuries under the eifferent płans---of act and in what amounts, extraterritorial application and reciprocity. (1) Every empleyex--whe--shati вееөме---bounä---by---anai---subjeet--te--the--provisiteno--of eompensation-płen-number-ene-t¥tr--and--every--empterer--and insuyer--who--mhatiz--beeome--beund--by--tnd--subjeet--te-the previsions-ef-compensation-płan--number--two--fzłr--and--the tndustriat--aecident--fund-where-the-empleyer-of-the-injured empleyee-has-beeome-bound-by-and-subject-te--the--previstions of--eompensatien-pzan-Her-ヨy insurer shall be liable for the
payment of compensation in the manner and to the extent hereinafter provided to an employee of an employer it insures who has-ezeetel-te-eome--ander--this-acer-and--whe shatz-reeeive receives an injury arising out of and in the course of hise employment, ory in the case of his death from such injury, to his the employee's beneficiaries, if anys
 te-his-miner-depententst-i£-any.
(2) If a workman employed in this state who is subject to the provisions of this act temporarily leaves the state incidental to that employment and receives an injury arising out of and in the course of such employment, the provisions of this act shall apply to such workman as though he were injured within this state.
(3) If a workman from another state and his employer from another state are temporarily engaged in work within this state, this act shall not apply to them:
(a) if the employer and employee are bound by the provisions of the Workmen's Compensation Law or similar law of such other state which applies to them while they are in the state of Montana, and
(b) if the Workmen's Compensation Act of this state is recognized and given effect as the exclusive remedy for workraen employed in this state who are injured while temporarily employed in such other state.
(4) A certificate from an authorized officer of the workmen's compensation department or similar agency of another state certifying that an employer of such other state is bound by the Workmen's Compensation Act of the state and that its act will be applied to employees of the employer while in the state of Montana shall be prima facie evidence of the application of the Workmen's Compensation Law of the certifying state.
(5) The industriat-aceidert-beard-shatz-have-autheritey division may, with the approval of the governor, ee enter into agreements with workmen's compensation agencies of other states for the purpose of promulgating regulations not inconsistent with the provisions of this act to carry out the extraterritorial application of the workmen's compensation laws of the agreeing states."

Section 7. Sections 92-201, 92-203, 92-205, 92-207.1, 92-208, 92-209, 92-210, 92-211, 92-1102, 92-1116, and 92-1117, R.C.M. 1947, are repealed.

## HOUSE BILL NO. 75

INTRODUCED BY KIMBLE, MCKITTRICK, HARPER, SLOAN, JOHNSON

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS 92-202.1, 92-204.1, 92-435, AND 92-614, R.C.M. 1947; CREATING AN UNINSURED EMPLOYER'S FUND TO GRANT ALL EMPLOYEES IM THIS STATE WORKMEN'S COMPENSATION BENEFITS EVEN IF THEIR EMPLOYERS ARE NOT PROPERLY INSURED; PROVIDING FOR FUNDING OF THE FUND; GIVING THE DIVISION OF WORKMEN'S COMPENSATION AUTHORITY TO GRANT, BY RULE, EXEMPTIONS FOR CORPORATE OFFICERS; REDEFINIAG THE DEFINITION OF INSURER; AND REPEALING SECTIONS 92-201, 92-203, 92-205, 92-207.1, 92-208, 92-209, 92-210, 92-211, 92-1102, 92-1116, AND 92-1117, R.C.M. 1947." be It enacted by the legislature of the state of montana:

Section 1. Section 92-202.1, R.C.M. 1947, is amended to read as follows:
"92-202.1. Employments covered and employments exempted from coverage. 畩is-aet-thelł-not-apply-to-any-ef the--fotzowing-hemptoyments--unkeos--the---empteyer---eteete eoverage---under---this--eet (1) Except as provided in subsection (2) of this section, the Workmen's Compensation Act applies to all employers as defined in section 92-410.1 and to all employees as defined in section 92-411. Such

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employers who have any employee in service under any
appointment or contract of hire, expressed or implied, oral
or written, shall elect to be bound by the provisions of
compensation plan no. 1, 2, or 3. Every employee whose
employer is bound by this act shall become subject to and
bound by that compensation plan that has been elected by the
employer.
            (2) This act does not apply to any of the following
employments unless the employer elects coverage FOR THESE
EMPLOYMENTS under this act:
    t#f (a) Household employment.
    fz+ (b) Casual employment.
    +3+ (c) Employment of members of an employer's family
dwelling in his household.
    44 (d) Employment of sole proprietors or working
members of a partnership.
    f5t (e) Employment for which a rule of liability for
injury, occupational disease, or death is provided under the
laws of the United States.
    f6t (f) Any person performing services in return for
aid or sustenance only.
    (g) Officers of private corporations who have, by
rules adopted by the division, been designated exempt under
the Workmen's Compensation Act."
    Section 2. Section 92-204.1, R.C.M. 1947, is amended
to read as follows:
"92-204.1. Election of employer and employee to come under act-action against third party causing injury--wighe te--subrogetien. Where--beth-the-empteyer-and-ernpleyee-have eqeeted-te-eome For all employments covered under this act, the provisions of this act shati-be are exclusiver,-end-sueh ezeetion--shaty--be--heta-to-be-a-surrender-by-sueh-empteyer and-the-servantst-and-employees-of-such--employer-ama--such emptoyeer--as-among-themsezvest-ef-their-might-te-any-ether methodr-form--er--ikind--ef--eompensationt--or--determination
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conducting his business during liquidation, bankruptcy or insolvency. The right to compensation and medical benefits as provided by this act mhelt is not be affected by the fact that the injury, occupational disease or death is caused by the negligence of a third party other than the employer, or the servants or employees of the employer. Whenever such event shatt-eceur occurs to an employee while performing the duties of his employment and such event shełt-be is caused by the act or omission of some persons or corporations other than his employer, or the servants or employees of his employer, then-maeh the employee, or in case of his death his heirs or personal representative shall, in addition to the right to receive compensation under this act, have a right to prosecute any cause of action he may have for damages against such persons or corporations. Purther prowided;-that-whenever-sanh However, if an employee shatit reeetve receives an injury while performing the duties of his employment and sueh the injury or injuries, so received by sueh the employee, are caused by the intentional and malicious act or omission of a servant or employee of his employer, then--aweh the employee, or in case of his death, his heirg or personal representatives, shall, in addition to the right to receive compensation under the Workmen's Compensation Act, have a right to prosecute any cause of action he may have for damages against sueh the servants or -4-

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employees of his employer, causing sueh the injury. picevidedt-thet-the-empzeyer-er-insurer-shati-be-entittzed--te fułz--Bubregation--fer-aty-eompensation-ant-benefits-paid-or
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Section 3. There is a new R.C.M. section numbered -6- HB 75
\end{abstract}
\begin{tabular}{|c|c|}
\hline 92-204.2 that reads as follows:
92-204.2. Subrogation. (1) If an action is prosecuted & 1 \\
\hline as provided for in section 92-204.1, the insurer is entitled & 3 \\
\hline to subrogation for all compensation and benefits paid or to & 4 \\
\hline be paid under the Workmen's Compensation Act, except as & 5 \\
\hline otherwise provided in this section. The insurer's right of & 6 \\
\hline subrogation shall be a first lien on the claim, judgment, or & 7 \\
\hline recovery. & 8 \\
\hline (2) If the employee is going to institute the third & 9 \\
\hline party action, the employee shall give the insurer reasonable & 10 \\
\hline notice of the intention to institute the action. & 11 \\
\hline (a) The employee may request that the insurer pay \(e\) & 12 \\
\hline proportionate share of the reasonable cost, including & 13 \\
\hline attorneys' fees, of the action. & 14 \\
\hline (b) The insurer may elect not to participate in the & 15 \\
\hline cost of the action. If this election is made, the insurer & 16 \\
\hline is considered to have waived fifty percent (50\%) of its & 17 \\
\hline subrogation rights granted by this section. & 18 \\
\hline (c) If the employee or the employee's personal & 19 \\
\hline representative institutes the action, the employee is & 20 \\
\hline entitled to at least one third (1/3) of the amount recovered & 21 \\
\hline by judgment or settlement less a proportionate share of & 22 \\
\hline reasonable costs including attorneys' fees, if the amount of & 23 \\
\hline recovery is insufficient to provide the employee with that & 24 \\
\hline amount after payment of subrogation. & 25 \\
\hline
\end{tabular}
(3) If an employee refuses or fails to institute the third party action within one (1) year from the date of injury, the insurer may institute the action in the name of the employee and for his benefit or that of his personal representative. If the insurer institutes the action, he shall pay to the employee any amount recovered by judgment or settlement which is in excess of the amounts paid or to be paid under the act after the insurer's reasonable costs including attorneys' fees for prosecuting the action have been deducted from the recovery.
(4) An insurer may enter into compromise agreements in settlement of subrogation rights.
(5) If death results from the injury or occupational disease, the insurer may sue a third party for recovery of any amount paid under this action, and such an action shall be in addition to any action by the heirs or personal representatives of the deceased.
(6) If the amount of compensation and other benefits payable under the act have not been fully determined at the time the employee or his heirs or personal representatives, or the insurer have settled in any manner the action, as provided for in this section, the division shall determine what proportion of the settlement shall be allocated under subrogation. The division's determination may be appealed as any other determination of the division.
Section 4. There is a new R.C.M. section numbered 92-212 that reads as follows:
92-212. Uninsured employer's fund. (1) There is created an uninsured employer's fund. The purpose of this fund is to pay to an injured employee of an uninsured employer, the same benefits such employee would have received if the employer had been properly enrolled under compensation plan no. 1 , 2 , or 3. FOR THE PURPOSES OF THIS SECTION, THE WORDS "UNINSURED EMPLOYER" SHALL MEAN AN EMPLOYER WHO HAS NOT PROPERLX COMPLIED WITH THE PROVISIONS OF SECTION 92-202.1. The division shall administer the fund and shall pay all proper benefits to injured employees of uninsured employers.
(2) The fund shall be funded in the following manner:
(a) The division shall require that the uninsured employer pay to the fund a penalty of either dounle the premium amount the employer would have paid on the payroll of the employer's employees in this state if the employer had been enrolled with compensation plan no. 3 or one thousand dollars (\$1000), whichever is greater. In determining the premium amount for the calculation of the penalty under this subsection, the division shall make an assessment on how much premium would have been paid on the employer's past three year payroll for periods within the three (3) years when the employer was uninsured, but an

> assessment prior to July l, l975, may not be made; and (b) The fund shall receive from an uninsured employer an amount equal to all benefits paid or to be paid to an injured employee of the uninsured employer. If an uninsured employer refuses to make the payments to the fund, upon demand, the sum may be collected for the fund, as provided for in this section, by the division through suit. The division may compromise with an uninsured employer the amount due the fund under this section. (c) The fund shall also be funded from the state general fund for payment of benefits as provided for in this section. However, any amounts collected under subsections (2) (a) or (2) (b) of this section shall be expended before any general fund appropriations are expended. (3) Proper surpluses and reserves shall be kept for the fund. The board of investments shall invest the moneys of the fund. The cost of administration of the fund shall be paid out of the money in the fund. (4) All appropriate provisions in the workmen's compensation Act apply to the fund in the same manner as they apply to compensation plans no. l, 2 , or 3 . until a proper election has been made by the employer to be bound by a compensation plan. An employer who does not
comply with the division's order to cease operations is
guilty of a misdemeanor.
    Section 5. Section 92-435, R.C.M. 1947, is amended to
read as follows:
    "92-43. Insurer defined. "Insurer" means any
insurance--company--autherized--te-transaet-business-in-this
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the-nstate-fund \(\boldsymbol{F}^{\|}\)an employer bound by compensation plan no.
1, an insurance company transacting business under
compensation plan no. 2, the industrial insurance account
under compensation plan no. 3, and includes the uninsured
employer's fund provided for in section 92-212."
    Section 6. Section 92-614, R.C.M. 1947, is amended to
read as follows:
    "92-614. Who liable for injuries under the differemt
ptane---ef act and in what amounts, extraterritorial
application and reciprocity. (1) Every empleyer-whe-shaty
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payment of compensation in the manner and to the extent hereinafter provided to an employee of an employer it insures who has－etectet－te－eome－－under－－this－aetr－ant－－whe shałł－reeetre receives an injury arising out of and in the course of his employment，ory in the case of his death from such injury，to his the employee＇s beneficiaries，if anyt өrт－íf－nener－te－his－majer－ te－his－miner－dependentsfーェ£ーany．
（2）If a workman employed in this state who is subject to the provisions of this act temporarily leaves the state incidental to that employment and receives an injury arising out of and in the course of such employment，the provisions of this act shall apply to such workman as though he were injured within this state．
（3）If a workman from another state and his employer from another state are temporarily engaged in work within this state，this act shall not apply to them：
（a）if the employer and employee are bound by the provisions of the Workmen＇s Compensation Law or similar law of such other state which applies to them while they are in the state of Montana，and
（b）if the Workmen＇s Compensation Act of this state is recognized and given effect as the exclusive remedy for workmen employed in this state who are injured while temporarily employed in such other state．
(4) A certificate from an authorized officer of the workmen's corapensation department or similar agency of another state certifying that an employer of such other state is bound by the Workmen's Compensation Act of the state and that its act will be applied to employees of the employer while in the state of Montana shall be prima facie evidence of the application of the Workmen's Compensation Law of the certifying state.
(5) The inductriat-aceident-beard-shatz-heve-authority division may, with the approval of the governor, enter into agreements with workmen's compensation agencies of other states for the purpose of promulgating regulations not inconsistent with the provisions of this act to carry out the extraterritorial application of the workmen's compensation laws of the agreeing states."

Section 7. Sections 92-201, 92-203, 92-205, 92-207.1, 92-208, 92-209, 92-210, 92-211, 92-1102, 92-1116, and 92-1117, R.C.M. 1947, are repealed.```


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    A bidL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS 92-202.1, 92-204.1, 92-435, AND 92-614, R.C.M. 1947: CREATING AM UNLLiSURED EMPLOYER'S FUND TO GRANT ALL EMPLOYEES IT TEIS STATE WORKMEI'S COMPENSATION BENEFITS EVEN IF THEIR EMPLOYERS ARE NOT PRORERLY INSURED; PROVIDING FOR FUNDING OF THE FUND; GIVING TEE DIVESION OF WORKMEN'S COMPENSATION AUTHORITY TO GRANT, BY RULE, EXEIPTIONS FOR CORPORATE OFFICERS; REDEFINING THE DEFINITION OF INSURER; AND REFEALING SECTIONS 92-201, 92-203, 92-205, 92-207.1, 92-208, 92-209, 92-210, 92-211, 92-1102, 92-1110, AND 92-1117, R.C.M. 1947."

    BE IT ENACTED BY THE LEGISLATURE OF THE STAME OF MONTANA: Section 1. Section 92-202.1, R.C.M. 1947, is amended to read as follows:
    "92-202.1. Employments covered and employments exempted from coverage. This-act-shał̇-net-apply-te-any-ei the--fełtowing--empteyments--untess--the---empieyer---eteees eoverage---uncer---this--aett (1) Except as provided in subsection (2) of this section, the workmen's compensation act applies to all employers as defined in section 92-410.1 and to all employees as defined in section 92-411. Such

