

1 H BILL NO. 316
 2 INTRODUCED BY *Edmund Waldron Callum*
 3 *Dassinger, Ballyam, Tyeley, Packer, Foster, Sully*

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR MOTOR
 5 VEHICLE LIABILITY PROTECTION FOR OWNERS AND OPERATORS OF
 6 MOTOR VEHICLES AS A CONDITION OF OPERATION OF THOSE VEHICLES
 7 UPON THE HIGHWAYS OR PROPERTY OPEN TO USE BY THE PUBLIC AND
 8 GENERALLY REVISING THE PROVISIONS IN TITLE 53, CHAPTER 4,
 9 R.C.M. 1947; AMENDING SECTION 40-4403, R.C.M. 1947;
 10 REPEALING SECTIONS 53-418 THROUGH 53-420 AND 53-428 THROUGH
 11 53-458, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE."

12
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 Section 1. Definitions. For the purposes of this act,
 15 unless the context clearly indicates otherwise, the
 16 following definitions apply:

- 17 (1) "Department" means the department of justice
- 18 created by 82A-1201.
- 19 (2) "License" means a license, temporary instruction
- 20 permit, or temporary license issued by the department for
- 21 the purpose of authorizing a person to operate a motor
- 22 vehicle on the public highways.
- 23 (3) "Motor vehicle" means a vehicle that must be
- 24 registered as a condition of operation on the highways of
- 25 this state in accordance with Title 53.

1 (4) "Operator" means the person in actual physical
 2 control of a motor vehicle.

3 (5) "Owner" means a person, other than a lienholder,
 4 having the property in or title to a motor vehicle. The term
 5 includes a person entitled to the use and possession of a
 6 motor vehicle subject to a security interest in another
 7 person but excludes a lessee under a lease not intended as
 8 security.

9 (6) "Registration" means the registration certificates
 10 and registration, number, or license plates issued in
 11 accordance with the provisions of Title 53.

12 (7) "Uninsured motor vehicle" means a motor vehicle
 13 for which a motor vehicle liability insurance policy meeting
 14 the requirements of the laws of this state and of the
 15 commissioner of insurance is not in effect.

16 (8) "Judgment" means an enforceable judgment that has
 17 become final, without appeal, by expiration of the time
 18 within which an appeal might have been perfected or by final
 19 affirmation on appeal rendered by a court of competent
 20 jurisdiction of a state or of the United States, upon a
 21 cause of action arising out of the ownership, maintenance,
 22 or use upon a highway or property open to use by the public,
 23 of a vehicle of a type subject to the motor vehicle
 24 registration laws of this state, for damages, including
 25 damages for care and loss of services, because of bodily

1 injury to or death of a person or for damages because of
 2 injury to or destruction of property, including the loss of
 3 use of that property or upon a cause of action on an
 4 agreement of settlement for those damages.

5 (9) "Motor vehicle liability policy" means an owner's
 6 or operator's policy of liability insurance meeting the
 7 requirements of this act, issued by an insurance carrier
 8 authorized to transact business in this state or, in the
 9 case of a nonresident owner or operator, by an insurance
 10 carrier authorized to transact business in his state of
 11 residence, to or for the benefit of the person named therein
 12 as insured.

13 Section 2. Mandatory insurance. Except as provided by
 14 this act:

15 (1) an owner may not permit the operation of an
 16 uninsured motor vehicle upon a highway or upon property open
 17 to use by the public; and

18 (2) a person may not knowingly drive an uninsured
 19 vehicle upon a highway or upon property open to use by the
 20 public.

21 Section 3. Registration without insurance prohibited
 22 — revocation required. (1) Except as provided by this act,
 23 no person may register or reregister a motor vehicle unless
 24 that vehicle is covered by a motor vehicle liability
 25 insurance policy meeting the requirements of the laws of

1 this state and the commissioner of insurance.

2 (2) Upon a showing by its records or other sufficient
 3 evidence that the required insurance has not been provided
 4 or maintained for a motor vehicle, the department shall
 5 revoke the registration of that vehicle.

6 (3) The department shall notify the owner upon
 7 revocation of a vehicle's registration. A highway patrolman
 8 or peace officer may confiscate and forward to the
 9 department the registration and number plate of a vehicle
 10 whose registration has been revoked under this section.

11 Section 4. Exempt vehicles. The following vehicles and
 12 their drivers are exempt from the provisions of this act:

13 (1) a vehicle owned by the United States government or
 14 any state or political subdivision;

15 (2) a vehicle for which cash, securities, or a bond
 16 has been deposited or filed with the department upon such
 17 terms and conditions providing the same benefits available
 18 under a required motor vehicle liability insurance policy;

19 (3) a vehicle owned by a self-insurer certified as
 20 provided in [section 9 of this act];

21 (4) an implement of husbandry or special mobile
 22 equipment that is only incidentally operated on a highway or
 23 property open to use by the public;

24 (5) a vehicle operated upon a highway only for the
 25 purpose of crossing such highway from one property to

1 another;

2 (6) a commercial vehicle registered or proportionally
3 registered in this and any other jurisdiction provided that
4 vehicle is covered by a motor vehicle liability insurance
5 policy complying with the laws of another jurisdiction in
6 which it is registered;

7 (7) a vehicle moved solely by human or animal power.

8 Section 5. Vehicles owned by nonresidents. (1) A
9 vehicle owned by a nonresident and registered in a state
10 requiring motor vehicle liability insurance may not be
11 operated upon a highway or upon property open to use by the
12 public in this state unless a motor vehicle liability
13 insurance policy meeting the requirements of the laws and
14 regulations of that state is in effect or unless it
15 otherwise complies with the laws of that state concerning
16 compulsory financial responsibility. The department shall
17 report a violation of this act to the motor vehicle
18 administrator in the state where the vehicle is registered.

19 (2) A vehicle owned by a nonresident and registered in
20 a state not requiring insurance is exempt from this act.

21 Section 6. Requirements concerning motor vehicle
22 liability insurance. (1) An owner's motor vehicle liability
23 insurance policy shall:

24 (a) designate by explicit description or by
25 appropriate reference all motor vehicles covered by the

1 policy; and

2 (b) insure the person named therein and any other
3 person using any motor vehicle covered by the policy, with
4 the express or implied permission of the named insured,
5 against loss from the liability imposed by law for damages
6 arising out of the ownership, maintenance, or use of the
7 motor vehicle or motor vehicles within the United States of
8 America or the Dominion of Canada, subject to minimum limits
9 exclusive of interest and costs, with respect to each such
10 motor vehicle, as follows:

11 (i) \$25,000 because of bodily injury to or death of
12 one person in any one accident and subject to that limit for
13 one person;

14 (ii) \$50,000 because of bodily injury to or death of
15 two or more persons in any one accident; and

16 (iii) \$5,000 because of injury to or destruction of
17 property of others in any one accident.

18 (2) An operator's motor vehicle liability insurance
19 policy shall insure the person named as insured therein
20 against loss from the liability imposed upon him by law for
21 damages arising out of the use by him of any motor vehicle
22 not owned by him, within the same territorial limits and
23 subject to the same limits of liability as are set forth
24 above with respect to an owner's policy of liability
25 insurance.

1 (3) A motor vehicle liability insurance policy shall
 2 state the name and address of the named insured, the
 3 coverage afforded by the policy, the premium charged
 4 therefor, the policy period, which may not be less than 6
 5 months, and the limits of liability and shall contain an
 6 agreement or be endorsed that insurance is provided
 7 thereunder in accordance with the coverage defined in this
 8 act with respect to bodily injury and death or property
 9 damage, or both, and is subject to all the provisions of
 10 this act.

11 (4) A motor vehicle liability policy need not insure
 12 any liability under any workers' compensation law or any
 13 liability on account of bodily injury to or death of an
 14 employee of the insured while engaged in the employment,
 15 other than domestic, of the insured or while engaged in the
 16 operation, maintenance, or repair of a motor vehicle or any
 17 liability for damage to property owned by, rented to, in
 18 charge of, or transported by the insured.

19 (5) Each motor vehicle liability policy is subject to
 20 the following provisions, which need not be contained
 21 therein:

22 (a) The liability of the insurance carrier with
 23 respect to the insurance required by this act becomes
 24 absolute whenever injury or damage covered by the motor
 25 vehicle liability policy occurs; the policy may not be

1 canceled or annulled as to that liability by any agreement
 2 between the insurance carrier and the insured after the
 3 occurrence of the injury or damage. No statement made by the
 4 insured or on his behalf and no violation of the policy
 5 defeats or voids that policy.

6 (b) The satisfaction by the insured of a judgment for
 7 an injury or damage is not a condition precedent to the
 8 right or duty of the insurance carrier to make payment on
 9 account of that injury or damage.

10 (c) The insurance carrier has the right to settle any
 11 claim covered by the policy, and if a settlement is made in
 12 good faith, the amount thereof is deductible from the limits
 13 of liability specified in subsection (1) (b) of this section.

14 (d) The policy, the written application therefor, if
 15 any, and any rider or endorsement that does not conflict
 16 with the provisions of the act constitute the entire
 17 contract between the parties.

18 (6) No motor vehicle policy may be subject to
 19 cancellation, termination, or premium increase due to injury
 20 or damage incurred by the insured or operator unless the
 21 insured or operator is found to have violated a traffic law
 22 or ordinance of the state or a city; is found negligent or
 23 contributorially negligent in a court of law or by the
 24 arbitration proceedings contained in Title 93, chapter 201;
 25 or pays damages to another party whether by settlement or

1 otherwise. In no event may a premium be increased during the
2 term of the policy unless there is a change in exposure.

3 (7) Any policy that grants the coverage required for a
4 motor vehicle liability policy may also grant any lawful
5 coverage in excess of or in addition to the coverage
6 specified for a motor vehicle liability policy, and such
7 excess or additional coverage is not subject to the
8 provisions of this act. With respect to a policy that grants
9 excess or additional coverage, the term "motor vehicle
10 liability policy" when used in this act applies only to that
11 part of the coverage required by this section.

12 (8) Any motor vehicle liability policy may provide
13 that the insured shall reimburse the insurance carrier for
14 any payment the insurance carrier would not have been
15 obligated to make under the terms of the policy except for
16 the provisions of this act.

17 (9) Any motor vehicle liability policy may provide for
18 the prorating of the insurance thereunder with other valid
19 and collectible insurance.

20 (10) The requirements for a motor vehicle liability
21 policy may be fulfilled by the policies of one or more
22 insurance carriers when these policies together meet such
23 requirements.

24 (11) Any binder issued pending the issuance of a motor
25 vehicle liability policy fulfills the requirements for such

1 a policy.

2 (12) A reduced limits endorsement may not be issued by
3 any company to be attached to any policy issued in
4 compliance with this section.

5 Section 7. Certification of insurance. (1) The
6 department may require the owner of a vehicle to provide
7 certification of the existence of a vehicle insurance policy
8 on a form it prescribes.

9 (2) Upon request of an insured person or upon request
10 of the department, an insurer shall verify the existence of
11 a motor vehicle liability insurance policy on a form
12 prescribed by the department.

13 Section 8. Termination of insurance. (1) Within 30
14 days after the cancellation, nonrenewal, or other
15 termination of a motor vehicle liability insurance policy,
16 the owner shall return the registration and number plate for
17 any uninsured vehicle to the department.

18 (2) If, within 30 days after the termination of a
19 motor vehicle liability insurance policy, the owner insures
20 the vehicle under another policy, he shall certify the
21 existence of that insurance on a form prescribed by the
22 department.

23 (3) An insurance carrier shall notify the department,
24 on a form approved by it, of the cancellation, nonrenewal,
25 or other termination of a motor vehicle liability insurance

1 policy within 15 days after the cancellation, nonrenewal, or
2 other termination of that policy.

3 Section 9. Self-insurers. (1) Upon condition of
4 providing the same benefits available under a required motor
5 vehicle liability insurance policy, a person in whose name
6 more than 25 motor vehicles are registered may qualify as a
7 self-insurer by obtaining a certificate of self-insurance
8 issued by the department as provided in subsection (2) of
9 this section.

10 (2) The department may, in its discretion, upon an
11 application for a certificate of self-insurance, issue such
12 certificate when it is satisfied that the applicant is able
13 and will continue to be able to pay the same benefits
14 available under a required motor vehicle insurance policy.
15 A certificate may be issued authorizing a person to act as a
16 self-insurer for either property damage or bodily injury, or
17 both.

18 (3) Upon not less than 5 days' notice and a hearing
19 pursuant to that notice, the department may upon reasonable
20 grounds cancel a certificate of self-insurance. Failure to
21 pay a valid claim within 90 days of its submission or a
22 judgment within 30 days after it has become final is a
23 reasonable ground for the cancellation of a certificate of
24 self-insurance.

25 Section 10. When courts to report nonpayment of

1 judgments. Whenever a person fails within 60 days to satisfy
2 a judgment, the clerk of the court, or the judge of a court
3 that has no clerk, in which the judgment is rendered shall
4 forward to the department a certified copy of the judgment.
5 The certificates shall be on a form provided by the
6 department and shall be prima facie evidence of the facts
7 stated therein.

8 Section 11. Further action with respect to
9 nonresidents. If the defendant named in a certified copy of
10 a judgment is a nonresident, the department shall transmit a
11 certified copy of the judgment to the motor vehicle
12 administrator in the state where the defendant is a
13 resident.

14 Section 12. Suspension for nonpayment of judgments.
15 The department, upon receipt of a certified copy of a
16 judgment under provisions of [section 10], shall suspend the
17 license, registration, or nonresident's operating privilege
18 of any person against whom the judgment was rendered, except
19 as otherwise provided in this act.

20 Section 13. Exception in relation to government
21 vehicles. The provisions of the preceding section do not
22 apply with respect to a judgment arising out of an accident
23 caused by the ownership or operation, with permission, of a
24 vehicle owned or leased to the United States, this state, a
25 political subdivision of this state, or a municipality.

1 Section 14. Exception when insurer liable or
 2 insolvent. (1) No license, registration, or nonresident's
 3 operating privilege of any person may be suspended on
 4 account of the nonpayment of judgment provisions of this act
 5 if the department finds that an insurer was obligated to pay
 6 the judgment upon which the suspension is based, at least to
 7 the extent and for the amounts required by this act, but has
 8 not paid that judgment. A finding by the department that an
 9 insurer is obligated to pay a judgment is not binding upon
 10 the insurer and has no legal effect whatever except for the
 11 purposes of administering this section. Whenever in a
 12 judicial proceeding it is determined by a final judgment,
 13 decree, or order that an insurer is not obligated to pay a
 14 judgment, the department, notwithstanding a contrary finding
 15 it has made, shall suspend the license, registration, or
 16 nonresident's operating privilege of the person against whom
 17 the judgment was rendered, except as provided in subsection
 18 (2) of this section.

19 (2) The department may not suspend a license,
 20 registration, or nonresident's operating privilege of a
 21 person if the insurance applicable to that person or the
 22 vehicle being operated by him was placed with an insurer
 23 that was authorized to do business in this state and that,
 24 subsequent to the accident involving the owner or driver and
 25 prior to the settlement of the claim for that accident, went

1 into liquidation so that no benefit accrued to the owner or
 2 driver by reason of such insurer having provided that
 3 insurance.

4 Section 15. Suspension to continue until judgments
 5 paid. A license, registration, or nonresident's operating
 6 privilege suspended on account of nonpayment of judgment
 7 shall remain suspended and may not be renewed nor may a
 8 license or registration be issued in the name of a person
 9 holding a license or registration under suspension on
 10 account of nonpayment of judgment. No license or
 11 registration may be issued in the name of a person who has
 12 not previously been licensed or has not previously
 13 registered a vehicle and has not satisfied a judgment under
 14 this act. When every judgment has been satisfied in
 15 accordance with this act, the restrictions in this section
 16 do not apply.

17 Section 16. Payments sufficient to satisfy judgments.
 18 (1) For the purposes of this act a judgment is considered
 19 satisfied:

20 (a) when \$25,000 has been credited upon any judgment
 21 or judgments rendered in excess of that amount because of
 22 bodily injury to or death of one person as the result of any
 23 one accident; or

24 (b) when, subject to a limit of \$25,000 because of
 25 bodily injury to or death of one person, the sum of \$50,000

1 has been credited upon any judgment or judgments rendered in
 2 excess of that amount because of bodily injury to or death
 3 of two or more persons as the result of any one accident; or
 4 (c) where \$5,000 has been credited upon any judgment
 5 or judgments rendered in excess of that amount because of
 6 injury to or the destruction of the property of others as
 7 the result of any one accident.

8 (2) Payments made in settlements of any claims because
 9 of bodily injury, death, or property damage arising from a
 10 motor vehicle accident shall be credited in reduction of the
 11 amounts provided for in this section.

12 Section 17. Installment payment of judgments --
 13 default. (1) A judgment debtor, upon due notice to the
 14 judgment creditor, may apply to the court in which the
 15 judgment was rendered for the privilege of paying the
 16 judgment in installments. The court may, in its discretion
 17 and without prejudice to any other legal remedies the
 18 judgment creditor may have, then order and fix the amounts
 19 and times of payment of the installments.

20 (2) The department may not suspend a license,
 21 registration, or nonresident's operating privilege and shall
 22 restore any license, registration, or nonresident's
 23 operating privilege suspended following nonpayment of a
 24 judgment when the judgment debtor obtains an order
 25 permitting the payment of the judgment in installments and

1 while the payment of these installments is not in default.

2 Section 18. Action if breach of agreement. Should a
 3 judgment debtor fail to pay an installment specified in an
 4 order for installment payment of a judgment, the department,
 5 upon notice of default, shall suspend the license,
 6 registration, or nonresident's operating privilege of the
 7 judgment debtor until the judgment is satisfied in
 8 accordance with this act. After a default, the judgment
 9 debtor may again apply, after due notice to the judgment
 10 creditor, to the court that allowed the installment payments
 11 within 30 days after the default, for resumption of the
 12 privilege of payments by installments. The court may accept
 13 the application only after payment of past-due installments
 14 by the applicant.

15 Section 19. Assigned risk and claims plans. (1) After
 16 consultation with insurance companies authorized to issue
 17 motor vehicle liability insurance policies in this state,
 18 the commissioner of insurance shall approve reasonable
 19 assigned risk and claims plans as described in this section.
 20 Insofar as practicable, the plans shall be fair to the
 21 insurers and equitable to their policyholders.

22 (2) The commissioner of insurance shall approve a plan
 23 for the apportionment among the insurance companies of
 24 applicants for motor vehicle liability insurance policies
 25 who are unable to procure those policies through ordinary

1 methods.

2 (3) The commissioner of insurance shall approve a plan
3 for the apportionment among the insurance companies of
4 claims by residents not covered by a motor vehicle liability
5 insurance policy for damages arising out of the ownership,
6 maintenance, or use of a vehicle upon the highways or upon
7 property open to use by the public in this or another state.
8 Claims by persons who, at the time the claim originated,
9 were in violation of [section 2 of this act] are not
10 eligible for payment under this subsection, and payment of
11 an assigned claim shall not exceed the limits in a required
12 insurance policy.

13 (4) When a plan has been approved, all insurance
14 companies authorized to issue motor vehicle liability
15 insurance policies in this state shall subscribe to and
16 participate in that plan.

17 (5) A person aggrieved by any order or act of the
18 commissioner of insurance pursuant to this section may seek
19 judicial review in accordance with the Montana
20 Administrative Procedure Act.

21 Section 20. Act not to prevent other process. Nothing
22 in this act prevents the plaintiff in any action at law from
23 relying for relief upon the other processes provided by law.

24 Section 21. Penalty. A person convicted of violating
25 [section 2 of this act] or of purposefully failing to return

1 a registration as required under [section 8 of this act]
2 shall be fined no more than \$500 or be imprisoned not to
3 exceed 6 months, or both.

4 Section 22. Saving clause. This act does not affect
5 rights and duties that matured, penalties that were
6 incurred, or proceedings that were begun before the
7 effective date of this act.

8 Section 23. Codification. Sections 1 through 21 of
9 this act shall be codified in Title 53.

10 Section 24. Section 40-4403, R.C.M. 1947, is amended
11 to read as follows:

12 "40-4403. Motor vehicle liability policies to include
13 uninsured motorist coverage — rejection of coverage by
14 insured. No automobile liability or motor vehicle liability
15 policy insuring against loss resulting from liability
16 imposed by law for bodily injury or death suffered by any
17 person arising out of the ownership, maintenance, or use of
18 a motor vehicle, shall be delivered or issued for delivery
19 in this state, with respect to any motor vehicle registered
20 or principally garaged in this state, unless coverage is
21 provided therein or supplemental thereto, in limits for
22 bodily injury or death set forth in ~~section 53-426~~ Title 53,
23 under provisions filed with and approved by the insurance
24 commissioner, for the protection of persons insured
25 thereunder who are legally entitled to recover damages from

1 owners or operators of uninsured motor vehicles because of
2 bodily injury, sickness or disease, including death,
3 resulting therefrom; provided, that the named insured shall
4 have the right to reject such coverage; and, provided
5 further, that unless the named insured requests such
6 coverage in writing, such coverage need not be provided in
7 or supplemental to a renewal policy where the named insured
8 had rejected the coverage in connection with the policy
9 previously issued to him by the same insurer."

10 Section 25. Repealer. Sections 53-418 through 53-420
11 and 53-428 through 53-458, R.C.M. 1947, are repealed.

12 Section 26. Effective date. This act is effective
13 January 1, 1978.

-End-

STATE OF MONTANA

REQUEST NO. 151
1577

FISCAL NOTE

Form BD-15

In compliance with a written request received January 24, 1977, 19 , there is hereby submitted a Fiscal Note for HB 316 pursuant to Chapter 53, 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 :

An act providing for motor vehicle liability protection for owners and operators of motor vehicles as a condition of operation of those vehicles upon the highways or property open to use by the public, and generally reversing the provisions in Title 53, chapter 4, R.C.M. 1947; amending section 40-4403, R.C.M. 1947; repealing Sections 53-418 through 53-420 and 53-428 through 53-458, R.C.M. 1947;

ASSUMPTIONS:

1. Repealing Section 53-420, R.C.M. 1947, will relieve the Highway Patrol of the responsibility for providing certified abstracts of driving records and requiring a fee of \$2.00 that is deposited into the general fund.
2. The Registrar of Motor Vehicles would administer this act and would require certification of insurance forms be signed when registering or re-registering any motor vehicles.
3. An additional 1.50 FTE employees would be required by the Registrar of Motor Vehicles.

FISCAL IMPACT:

| | <u>FY78</u> | <u>FY79</u> |
|--|------------------|------------------|
| Loss of General Fund revenue due to repeal of 53-420 | <u>\$188,905</u> | <u>\$389,145</u> |
| Additional expenditures due to proposed legislation | | |
| Personal services | 13,246 | 27,664 |
| Operating expenses | 24,560 | 26,960 |
| Equipment | 2,925 | 0 |
| | <u>40,731</u> | <u>54,624</u> |
| Total cost of proposed legislation | <u>\$229,636</u> | <u>\$443,769</u> |

Richard L. Young
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-28-77