

1 *House* BILL NO. *749*
 2 INTRODUCED BY *E. Anderson Walker, Frank*
 3 *Farage*

4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING AN
 5 UNSATISFIED JUDGMENT ACCOUNT IN THE EARMARKED REVENUE FUND
 6 TO COMPENSATE THE VICTIMS OF MOTOR VEHICLE ACCIDENTS CAUSED
 7 BY UNINSURED MOTORISTS WHO CANNOT PAY JUDGMENTS AGAINST THEM
 8 AND PROVIDING FOR ADMINISTRATION OF THE ACCOUNT."

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Additional registration fee. At the time of
 12 registering or reregistering a motor vehicle, the owner
 13 shall pay in addition to any other fees, a fee of \$2 for
 14 each motor vehicle registered.

15 Section 2. Unsatisfied judgment account established --
 16 administration of account -- appropriation of account
 17 proceeds -- suspension of fee collection. (1) Fees paid
 18 under [section 1] shall be deposited in an account to be
 19 known as the unsatisfied judgment account in the earmarked
 20 revenue fund. This account shall be administered by the
 21 commissioner of insurance.

22 (2) Judgments recovered under this act shall be paid
 23 from the unsatisfied judgment account, and the proceeds of
 24 the account are appropriated for that purpose and for the
 25 purpose of fund administration. Funds used to administer

1 this account may not exceed \$35,000 in a fiscal year.

2 Section 3. Recovery from account. If a resident of
 3 Montana recovers a judgment in a Montana court in an action
 4 for damages resulting from bodily injury to or the death of
 5 a person arising in connection with the ownership,
 6 maintenance, operation, or use of a motor vehicle in Montana
 7 by the judgment debtor, he may apply to the judge of the
 8 district court in which the judgment was rendered for an
 9 order directing payment of the judgment or a portion of the
 10 judgment out of the unsatisfied judgment account under the
 11 following conditions:

- 12 (1) the judgment is final;
- 13 (2) the whole amount of the judgment has not been
- 14 satisfied;
- 15 (3) an execution has been issued on the judgment;
- 16 (4) there was no property of the judgment debtor that
- 17 could be found or the property sold under the execution was
- 18 insufficient to satisfy the judgment debt;
- 19 (5) the judgment debtor has been examined with respect
- 20 to whether he was insured against his legal liability in the
- 21 case;
- 22 (6) an exhaustive search has been made to ascertain
- 23 whether the judgment debtor is possessed of property liable
- 24 to be sold or applied in satisfaction of the judgment and it
- 25 has been found that either the debtor has no property or the

1 value of the property found is insufficient to satisfy the
2 judgment.

3 Section 4. Recovery from fund when liability cannot be
4 determined. (1) When bodily injury to or the death of any
5 person who is a resident of this state is occasioned by or
6 arises out of an accident caused by the operation,
7 maintenance, or use of a motor vehicle in this state and the
8 identity of the person or persons against whom an action
9 might be brought for the recovery of damages for the bodily
10 injury or death resulting from the accident cannot be
11 ascertained, a person who would be entitled to bring such
12 action to recover damages may bring an action in the
13 district court of the county in which the accident occurred
14 within 6 months from the date of the accident against the
15 unsatisfied judgment account, by service upon the state
16 insurance commissioner, for the recovery of such damages
17 from such fund, provided notice of such accident was given
18 to a police officer immediately after the accident occurred
19 and the name of such officer is alleged in the complaint. No
20 payment may be made from the fund in satisfaction of any
21 judgment obtained in such action in excess of \$5,000,
22 exclusive of costs, for bodily injury to or the death of any
23 one person or in excess of \$10,000 for any one accident.

24 (2) This section does not limit the liabilities or
25 remedies of any person on the cause of action growing out of

1 the accident for which suit was brought against the fund,
2 but the fund shall be subrogated pro tanto to the rights of
3 any person who has obtained judgment under the provisions of
4 this section to the extent that the fund has made payment in
5 satisfaction thereof.

6 Section 5. Appearance of attorney general. The
7 provisions of [section 4] do not apply in the case of any
8 judgment entered by default unless the insurance
9 commissioner and the attorney general have been given at
10 least 30 days' notice prior to the entry of such judgment,
11 to which notice is attached a copy of the summons and
12 complaint. Upon receipt of such notice, the attorney general
13 may enter an appearance, file a defense, appear by counsel
14 at the trial, or take such other action as he considers
15 appropriate on behalf and in the name of the defendant and
16 may thereupon, on behalf and in the name of the defendant,
17 conduct his defense, and all acts done in accordance
18 therewith are considered acts of the defendant. The attorney
19 general may appear and be heard on any application for
20 payment from the account and may show cause, if any there
21 be, why the order applied for should not be made.

22 Section 6. Empowering attorney general to appoint
23 special counsel. The attorney general at his discretion may
24 appoint special counsel to defend the account. The trial
25 judge of the district court shall fix the amount of such

1 special attorney's fees and expenditures and certify such
2 amount to the attorney general whc, after approving, shall
3 certify same to the administrator of the unsatisfied
4 judgment account.

5 Section 7. Order on state treasury to pay judgment. If
6 the court is satisfied of the truth of the matters shown by
7 the judgment creditor to prove he has met the condition
8 required by [section 3] and, if the applicant has taken all
9 reasonable steps to enforce the collection of the judgment,
10 that there is good reason for believing that the judgment
11 debtor has no property liable to be sold or applied in
12 satisfaction of the judgment or of the balance owing thereon
13 and is not insured under a policy of automobile insurance by
14 the terms of which the insurer is liable to pay the amount
15 of the judgment in whole or in part, the court shall order,
16 subject to [section 9], payment made from the account in the
17 amount of the judgment or the balance owing thereon.

18 Section 8. Appeal from order permissible. An order
19 made under [section 7] is subject to appeal to the supreme
20 court by the judgment creditor or by the attorney general in
21 the manner provided by law for the taking of appeals from
22 final orders in a civil action.

23 Section 9. Limitation on amount payable from fund --
24 nonassignable. (1) Recovery from the fund is limited to
25 payment of the following, exclusive of costs:

1 (a) \$10,000 for bodily injury, including death, of one
2 person in any one accident;

3 (b) \$20,000 for bodily injury, including death, of two
4 or more persons in any one accident.

5 (2) The amount authorized to be paid shall be within
6 the limits provided by this section and shall be determined
7 as follows:

8 (a) If the judgment creditor has effected collection
9 of a portion of the judgment from any source, except as
10 provided for in subsections (b) and (c) of this subsection,
11 the fund is authorized to pay him the difference between the
12 amount collected and the amount of the judgment, or \$10,000,
13 whichever is smaller. However, if the judgment creditor or
14 creditors have collected an amount equal to the limits
15 payable from the fund from the insurance or nonexempt assets
16 of the judgment debtor, then they are precluded from
17 recovery from the fund.

18 (b) If the judgment creditor has effected collection
19 of a portion of the judgment from payment from workers'
20 compensation, then the amount collected from that source
21 shall be subtracted from the judgment before the procedure
22 outlined in subsection (a) of this subsection is followed.

23 (c) If the judgment creditor was covered by an
24 uninsured motorist insurance policy at the time of the
25 accident, then the maximum liability limit of that policy

1 must first be subtracted from the judgment before the
 2 procedure outlined in subsection (a) of this subsection is
 3 followed. However, if the maximum liability limit of the
 4 policy is equal to the limits payable from the fund, then no
 5 recovery from the fund is allowed.

6 (3) The right of any person to recover from the
 7 unsatisfied judgment fund is not assignable and subrogation
 8 of that right is not allowed.

9 Section 10. Judgment assigned to state. Before making
 10 any payment on a judgment from the account in compliance
 11 with an order, the judgment creditor shall assign such
 12 judgment to the state for the use and benefit of the
 13 account.

14 Section 11. Order of payment from account — pro rata
 15 distribution. In the event at the time of the filing of such
 16 order there is not sufficient money in the account to
 17 satisfy the order, the order shall be registered by the
 18 state and shall be paid when the money is available in the
 19 fund, and subsequent orders shall be paid therefrom in the
 20 order of registration. If more than two judgments are
 21 obtained against a judgment debtor upon causes of action
 22 arising out of one accident and the aggregate amount due
 23 thereon, after crediting collections, if any, exceeds
 24 \$20,000, the court in making its order shall direct that the
 25 state prorate the distribution from the fund in the

1 proportion which each judgment or the balance unpaid thereon
 2 bears to the sum of \$20,000.

3 Section 12. Amount to be repaid before privileges
 4 restored — interest — installment payments permissible —
 5 compromise of amount due. (1) Whenever the driver's license
 6 or driving privileges of any person or the registration of a
 7 motor vehicle registered in his name has been suspended or
 8 revoked pursuant to the laws of this state and the state has
 9 paid from the account any amount toward the satisfaction of
 10 a judgment and costs recovered against such person, the
 11 suspension or revocation may not be removed, the driver's
 12 license or driving privileges or registration restored, any
 13 new license or driving privilege issued or granted, or
 14 registration permitted to be made by such person until he
 15 has repaid in full to the state the amount so paid from the
 16 account, together with interest thereon at the rate of 6% a
 17 year from the date of such payment, and has furnished proof
 18 of financial responsibility as required by the laws of this
 19 state; provided that the court in which such judgment was
 20 rendered may, upon 10 days' notice to the attorney general,
 21 make an order permitting payment of the amount which such
 22 person is indebted to the fund to be paid in installments,
 23 and in such case, such person's driver's license or his
 24 driving privileges or registration privileges, if the same
 25 have been suspended or revoked or have expired, may be

1 restored and shall remain in effect until and unless such
2 person defaults in making any installment payment specified
3 in such order.

4 (2) In the event of a default, the commissioner shall,
5 upon notice of such default, notify the motor vehicle
6 division, and such person's driver's license, driving
7 privileges, or registration privileges shall be suspended
8 until the amount of default has been paid in full and the
9 additional sum of \$200 has been paid to the account to be
10 applied to the judgment. The judgment debtor may petition
11 the court in which the judgment was rendered for a
12 compromise of the judgment. The court in its discretion,
13 upon notice to the attorney general, may order a compromise
14 if the court is satisfied that such a compromise would be in
15 the interests of justice and that the fund would benefit
16 therefrom. Upon payment in full of such compromised amount,
17 the attorney general shall issue a satisfaction of judgment
18 to the judgment debtor. In no case may a compromise be
19 ordered which is less than \$500 or 20% of the judgment,
20 whichever amount is greater.

-End-

STATE OF MONTANA

REQUEST NO. 506-77

FISCAL NOTE

Form BD-15

In compliance with a written request received February 14, 19 77, there is hereby submitted a Fiscal Note for House Bill 749 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 OF PROPOSED LEGISLATION:

Establishes an unsatisfied judgment account in the Earmarked Revenue Fund to compensate the victims of motor vehicle accidents caused by uninsured motorists who cannot pay judgments against them and provides for administration of the account.

ASSUMPTIONS:

1. "Motor Vehicle" includes automobiles, trucks, trailers and motorcycles.
2. Presently there are 800,000 motor vehicles registered in Montana. The number will increase 4.8% each year.

FISCAL IMPACT:

	<u>FY 78</u>	<u>FY 79</u>
Revenue		
Collections to Unsatisfied Judgment Account	<u>\$1,678,800</u>	<u>\$1,757,286</u>

Expenditures

Provisions of the proposed legislation could require substantial expenditures in the Attorney General's office; however, no cost estimates can be provided at this time.

Richard C. [Signature]
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-18-77