

House Bill 282

In The House

January 16, 1981	Introduced and referred to Committee on Business and Industry.
January 17, 1981	Fiscal note requested.
January 22, 1981	Fiscal note returned.
April 23, 1981	Died in Committee.

HOUSE BILL NO. 282

INTRODUCED BY LeRoy Hager

1 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PREMIUM
 2 TAX PROVISIONS FOR WORKERS' COMPENSATION INSURANCE; IMPOSING
 3 THE TAX ON THE STATE COMPENSATION INSURANCE FUND; ALLOCATING
 4 A PORTION OF THE TAX TO THE UNINSURED EMPLOYERS' FUND TO, IN
 5 PART, COVER EMPLOYEES OF UNINSURED SUBCONTRACTORS; REMOVING
 6 WORKERS' COMPENSATION INSURANCE LIABILITY OF PRIME
 7 CONTRACTORS FOR EMPLOYEES OF UNINSURED SUBCONTRACTORS;
 8 AMENDING SECTIONS 15-31-101, 33-2-705, 39-71-405, AND
 9 39-71-504, MCA."

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

11 Section 1. Section 33-2-705, MCA, is amended to read:
 12 "33-2-705. Report on premiums and other consideration
 13 -- tax. (1) Each authorized insurer and each formerly
 14 authorized insurer with respect to premiums so received
 15 while an authorized insurer in this state shall file with
 16 the commissioner, on or before March 1 each year, a report
 17 (except as to wet marine and transportation insurance taxed
 18 under subsection (3) below) in form as prescribed by the
 19 commissioner showing total direct premium income, including
 20 policy, membership, and other fees, premiums paid by
 21 application of dividends, refunds, savings, savings coupons,

1 and similar returns or credits to payment of premiums for
 2 new or additional or extended or renewed insurance, charges
 3 for payment of premium in installments, and all other
 4 consideration for insurance from all kinds and classes of
 5 insurance whether designated as a premium or otherwise,
 6 received by it during the preceding calendar year on account
 7 of policies covering property, subjects, or risks located,
 8 resident, or to be performed in Montana, with proper
 9 proportionate allocation of premium as to such property,
 10 subjects, or risks in Montana insured under policies or
 11 contracts covering property, subjects, or risks located or
 12 resident in more than one state, after deducting from such
 13 total direct premium income applicable cancellations,
 14 returned premiums, the unabsorbed portion of any deposit
 15 premium, the amount of reduction in or refund of premiums
 16 allowed to industrial life policyholders for payment of
 17 premiums direct to an office of the insurer, all policy
 18 dividends, refunds, savings, savings coupons, and other
 19 similar returns paid or credited to policyholders with
 20 respect to such policies. As to title insurance, "premium"
 21 includes only the risk portion of the charge for such
 22 insurance. No deduction shall be made of the cash surrender
 23 values of policies. Considerations received on annuity
 24 contracts shall not be included in total direct premium
 25 income and shall not be subject to tax.

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1 (2) Coincident with the filing of the tax report
2 referred to in subsection (1) above, each such insurer shall
3 pay to the commissioner a tax upon such net premiums,
4 excluding premiums received for workers' compensation
5 insurance. This tax may be computed in either of the
6 following ways:

7 (a) (i) A domestic insurer may choose to compute its
8 tax based on the percentage of its admitted assets invested
9 in Montana securities according to the following schedule:

10 (A) 2 3/4% of net premiums if the insurer has 0% of
11 its admitted assets invested in Montana securities;

12 (B) 2 1/4% of net premiums if the insurer has at least
13 25% of its admitted assets invested in Montana securities;

14 (C) 1 3/4% of net premiums if the insurer has at least
15 50% of its admitted assets invested in Montana securities;

16 (D) 1 1/4% of net premiums if the insurer has at least
17 75% of its admitted assets invested in Montana securities;
18 and

19 (E) 3/4% of net premiums if the insurer has 100% of
20 its admitted assets invested in Montana securities.

21 (ii) "Admitted assets" are those assets allowed in
22 33-2-501.

23 (iii) An insurer choosing this method of computation
24 must itemize its Montana securities on a detailed schedule
25 attached to its annual tax report.

1 (b) (i) If the method provided for in subsection (a)
2 is not used, the insurer shall compute its tax at the rate
3 of 2 3/4% of the net premiums, excluding premiums received
4 for workers' compensation insurance.

5 (ii) An insurer choosing this method and having not
6 less than 50% of its paid-in capital stock invested in
7 Montana securities is allowed to deduct whatever tax it may
8 have already paid to the state of Montana and its political
9 subdivisions, during the same calendar year as to which
10 premium tax is being paid, from the amount otherwise due
11 under this section.

12 (3) Coincident with the filing of the tax report
13 referred to in subsection (1) above, each insurer, including
14 the state compensation insurance fund provided for in
15 39-71-2301, shall pay to the commissioner a tax upon such
16 net premiums for workers' compensation insurance. This tax
17 may be computed in either of the following ways:

18 (a) (i) A domestic insurer may choose to compute its
19 tax based on the percentage of its admitted assets invested
20 in Montana securities according to the following schedule:

21 (A) 2.250% of net premiums if the insurer has 0% of
22 its admitted assets invested in Montana Securities;

23 (B) 2.000% of net premiums if the insurer has at least
24 25% of its admitted assets invested in Montana securities;

25 (C) 1.750% of net premiums if the insurer has at least

1 50% of its admitted assets invested in Montana securities;
 2 (D) 1.500% of net premiums if the insurer has at least
 3 75% of its admitted assets invested in Montana securities;
 4 and
 5 (E) 1.250% of net premiums if the insurer has 100% of
 6 its admitted assets invested in Montana securities.
 7 (ii) "Admitted assets" are those assets allowed in
 8 33-2-501.
 9 (iii) An insurer, including the state compensation
 10 insurance fund, choosing this method of computation, must
 11 itemize its Montana securities on a detailed schedule.
 12 (b) (i) If the method provided for in subsection
 13 (3)(a) is not used, the insurer shall compute its tax at the
 14 rate of 2.250% of the net premiums.
 15 (ii) An insurer choosing this method and having not
 16 less than 50% of its paid-in capital stock invested in
 17 Montana securities is allowed to deduct whatever tax it may
 18 have already paid to the state of Montana and its political
 19 subdivisions during the same calendar year as to which
 20 premium tax is being paid from the amount otherwise due
 21 under the section.
 22 (4) The state fund is not required to comply with the
 23 reporting requirements set forth in this section, but shall
 24 pay the premium tax based on net premium collected on the
 25 previous fiscal year as set forth in its annual report that

1 is required to be published pursuant to 39-71-210. The net
 2 premium collected does not include that premium collected
 3 from state agencies covered by the state fund.
 4 (5) Forty percent of the total amount collected under
 5 subsections (3) and (4) shall be paid to the uninsured
 6 employers account in the agency fund no later than May 30 of
 7 each year. When it is actuarially determined that the
 8 liabilities of the uninsured employers fund are properly
 9 reserved, any uncommitted funds shall be transferred to the
 10 general fund.
 11 ~~(3)(6)~~ For the purpose of subsection (2):
 12 (a) "paid-in capital stock" as to a mutual or
 13 reciprocal insurer shall be deemed to be an amount equal to
 14 10% of the insurer's assets; and
 15 (b) "Montana securities" shall be deemed to include
 16 only general obligations of the state of Montana or of its
 17 political subdivisions, mortgage loans secured by a first
 18 lien upon real estate located in Montana, and real estate
 19 located in Montana owned by the insurer, all if otherwise
 20 lawful investments of the insurer under this code.
 21 ~~(4)(7)~~ (a) On or before March 1 of each year each
 22 insurer shall file with the commissioner, on forms as
 23 prescribed and furnished or accepted by him, a report of its
 24 gross underwriting profit on wet marine and transportation
 25 insurance, as defined in 33-1-209, written in this state

1 during the calendar year next preceding and shall at the
2 same time pay to the commissioner a tax of 3/4 of 1% of such
3 gross underwriting profit.

4 (b) Such gross underwriting profit shall be
5 ascertained by deducting from the net premiums (i.e., gross
6 premiums less all return premiums and premiums for
7 reinsurance) on such wet marine and transportation insurance
8 contracts the net losses paid (i.e., gross losses paid less
9 salvage and recoveries on reinsurance ceded) during such
10 calendar year under such contracts. In the case of insurers
11 issuing participating contracts, such gross underwriting
12 profit shall not include for computation of the tax
13 prescribed by this subsection ~~(3) (7)~~ the amounts refunded,
14 credited, or paid as participation dividends or savings by
15 such insurers to the holders of such contracts.

16 ~~(5) (2)~~ That portion of the tax paid hereunder by an
17 insurer on account of premiums received for fire insurance
18 shall be separately specified in the report as required by
19 the commissioner, for apportionment as provided by law.
20 Where insurance against fire is included with insurance of
21 property against other perils at an undivided premium, the
22 insurer shall make such reasonable allocation from such
23 entire premium to the fire portion of the coverage as shall
24 be stated in such report and as may be approved or accepted
25 by the commissioner.

1 ~~(6) (9)~~ With respect to authorized insurers the premium
2 tax provided by this section shall be payment in full and in
3 lieu of all other demands for any and all state, county,
4 city, district, municipal, and school taxes, licenses, fees,
5 and excises of whatever kind or character, excepting only
6 those prescribed by this code, taxes on real and tangible
7 personal property located in this state, and taxes payable
8 under 50-3-109.

9 ~~(7) (10)~~ The commissioner may suspend or revoke the
10 certificate of authority of any insurer which fails to pay
11 its taxes as required under this section."

12 Section 2. Section 39-71-504, MCA, is amended to read:
13 "39-71-504. Funding of fund. The fund shall be funded
14 in the following manner:

15 (1) The division shall require that the uninsured
16 employer pay to the fund a penalty of either double the
17 premium amount the employer would have paid on the payroll
18 of the employer's workers in this state if the employer had
19 been enrolled with compensation plan No. 3 or \$200,
20 whichever is greater. In determining the premium amount for
21 the calculation of the penalty under this subsection, the
22 division shall make an assessment on how much premium would
23 have been paid on the employer's past 3-year payroll for
24 periods within the 3 years when the employer was uninsured.
25 An assessment for payroll paid by the uninsured employer for

1 any time prior to July 1, 1977, may not be made.

2 (2) The fund shall receive from an uninsured employer
3 an amount equal to all benefits paid or to be paid from the
4 fund to an injured employee of the uninsured employer.
5 However, the uninsured employer's liability under this
6 subsection may not exceed \$30,000.

7 (3) The division may determine that the \$1,000
8 assessments that are charged against an insurer in each case
9 of an industrial death under 39-71-902(1) shall be paid to
10 the uninsured employers' fund rather than the subsequent
11 injury fund.

12 (4) The fund shall receive a percentage of the premium
13 tax as provided for in 33-2-705."

14 Section 3. Section 39-71-405, MCA, is amended to read:
15 "39-71-405. Liability of employer who contracts work
16 out. ~~(1) An employer who contracts with an independent~~
17 ~~contractor to have work performed of a kind which is a~~
18 ~~regular or a recurrent part of the work of the trade~~
19 ~~business, occupation, or profession of such employer is~~
20 ~~liable for the payment of benefits under this chapter to the~~
21 ~~employees of the contractor if the contractor has not~~
22 ~~properly complied with the coverage requirements of the~~
23 ~~Worker's Compensation Act. Any insurer who becomes liable~~
24 ~~for payment of benefits may recover the amount of benefits~~
25 ~~paid and to be paid and necessary expenses from the~~

1 ~~contractor-primary-liable-therein~~

2 ~~(2) (1) Where an employer contracts to have any work~~
3 ~~to be done by a contractor other than an independent~~
4 ~~contractor, and the work so contracted to be done is a part~~
5 ~~or process in the trade or business of the employer, then~~
6 ~~the employer is liable to pay all benefits under this~~
7 ~~chapter to the same extent as if the work were done without~~
8 ~~the intervention of the contractor, and the work so~~
9 ~~contracted to be done shall not be construed to be casual~~
10 ~~employment. Where an employer contracts work to be done as~~
11 ~~specified in this subsection, the contractor and the~~
12 ~~contractor's employees shall come under that plan of~~
13 ~~compensation adopted by the employer.~~

14 ~~(3) (2) Where an employer contracts any work to be~~
15 ~~done, wholly or in part for the employer, by an independent~~
16 ~~contractor, where the work so contracted to be done is~~
17 ~~casual employment as to such employer, then the contractor~~
18 ~~shall become the employer for the purposes of this chapter."~~

19 Section 4. Section 15-31-101, MCA, is amended to read:
20 "15-31-101. Organizations subject to tax. (1) The term
21 "corporation" includes associations, joint-stock companies,
22 common-law trusts and business trusts which do business in
23 an organized capacity, and all other corporations whether
24 created, organized, or existing under and pursuant to the
25 laws, agreements, or declarations of trust of any state,

1 country, or the United States.

2 (2) The terms "engaged in business" and "doing
3 business" both mean actively engaging in any transaction for
4 the purpose of financial or pecuniary gain or profit.

5 (3) Every corporation, except as hereinafter provided
6 and except as provided in 33-2-705~~(6)~~(9), engaged in
7 business in the state of Montana shall annually pay to the
8 state treasurer as a license fee for the privilege of
9 carrying on business in this state such percentage or
10 percentages of its total net income for the preceding
11 taxable year at the rate hereinafter set forth. In the case
12 of corporations having income from business activity which
13 is taxable both within and without this state, the license
14 fee shall be measured by the net income derived from or
15 attributable to Montana sources as determined under part 3.
16 This tax is due and payable on the 15th day of the 5th month
17 following the close of the taxable year of the corporation;
18 however, the tax becomes a lien as provided in this chapter
19 on the last day of the taxable year in which the income was
20 earned and is for the privilege of carrying on business in
21 this state for the taxable year in which the income was
22 earned.

23 (4) Every bank organized under the laws of the state
24 of Montana, of any other state, or of the United States and
25 every savings and loan association organized under the laws

1 of this state or of the United States is subject to the
2 Montana corporation license tax provided for under this
3 chapter. For taxable years beginning on and after January 1,
4 1972, this subsection is effective in accordance with Public
5 Law 91-156, section 2 (12 U.S.C. 548)."

-End-

STATE OF MONTANA

REQUEST NO. 147-81

FISCAL NOTE

Form BD-15

In compliance with a written request received January 19, 19 81, there is hereby submitted a Fiscal Note for House Bill 282 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

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

A proposal revising the premium tax on workers' compensation insurance carriers and including the State Compensation Insurance Fund. Forty percent (40%) of total tax collected will help fund the Uninsured Employers' Fund.

Assumptions

1. Private workers' compensation carriers will continue to share the market proportionally with the State Fund as they do presently.
2. State Fund rates, dividends, and premium paid by state agencies will remain stable.

Current Law

	<u>FY 1982</u>	<u>FY 1983</u>
Premium-Private Carriers	\$24,700,000	\$24,200,000
Tax rate per 33-2-705	x <u>.0275</u>	x <u>.0275</u>
Estimated General Fund Revenue	\$ <u>679,250</u>	\$ <u>665,500</u>

Proposed Law

Premium-Private Carriers	\$24,700,000	\$24,200,000
State Fund Taxable Premium	<u>23,349,646</u>	<u>24,318,391</u>
Total Taxable Premium	48,049,646	48,518,391
Taxable Rate	x <u>.0225</u>	x <u>.0225</u>
Total Tax	\$ <u>1,081,117</u>	\$ <u>1,091,664</u>
Uninsured Fund Share at 40%	\$ 432,447	\$ 436,665
General Fund Share at 60%	648,447	654,999
General Fund Reduction	\$ 30,580	\$ 10,501

Fiscal Impact

A reduction to General Fund revenue of \$30,580 in FY 1982 and \$10,501 in FY 1983.


BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-21-81