

HOUSE BILL NO. 234

1/17 Introduced
1/17 Referred to Business & Labor
1/18 Fiscal Note Requested
1/24 Fiscal Note Received
2/11 Hearing
2/14 Adverse Committee Report
2/15 Bill Killed

1 HOUSE BILL NO. 234
2 INTRODUCED BY Erwin

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT
5 INVESTMENT INCOME EARNED OR REALIZED BY CERTAIN WORKERS'
6 COMPENSATION INSURERS BE CONSIDERED WHEN DETERMINING PREMIUM
7 RATES; REQUIRING THAT PREMIUM RATES TO BE PAID FOR WORKERS'
8 COMPENSATION INSURANCE FOR THE CONSTRUCTION INDUSTRY BE
9 COMPUTED ON THE NUMBER OF HOURS WORKED RATHER THAN ON A
10 PERCENTAGE OF PAYROLL; AMENDING SECTIONS 33-16-1004,
11 39-71-116, AND 39-71-2302, MCA; AND PROVIDING AN
12 APPLICABILITY DATE."

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

15 Section 1. Section 33-16-1004, MCA, is amended to
16 read:

17 "33-16-1004. Rates -- considerations -- methods --
18 standards. All rates shall be made in accordance with the
19 following provisions:

20 (1) Due consideration shall be given to past and
21 prospective loss experience within and outside this state,
22 to catastrophe hazards, if any, to a reasonable margin for
23 underwriting profit and contingencies, to dividends,
24 savings, or unabsorbed premium deposits allowed or returned
25 by insurers to their policyholders, members, or subscribers,

1 to past and prospective expenses both countrywide and those
2 specially applicable to this state, to investment income
3 earned or realized by insurers from their unearned premium,
4 loss, and loss expense reserve funds generated from business
5 within this state, and to all other relevant factors within
6 and outside this state.

7 (2) The systems of expense provisions included in the
8 rates for use by an insurer or group of insurers may differ
9 from those of other insurers or groups of insurers to
10 reflect the requirements of the operating methods of any
11 insurer or group with respect to any kind of insurance or
12 with respect to any subdivision or combination thereof for
13 which subdivision or combination separate expense provisions
14 are applicable.

15 (3) Risks may be grouped by classifications for the
16 establishment of rates and minimum premiums. Classification
17 rates may be modified to produce rates on individual risks
18 in accordance with rating plans which establish standards
19 for measuring variations in hazards or expense provisions,
20 or both. Such standards may measure any difference among
21 risks that can be demonstrated to have a probable effect
22 upon losses or expenses.

23 (4) Rates shall not be excessive, inadequate, or
24 unfairly discriminatory.

25 (5) Except to the extent necessary to meet the



1 provisions of subsections (1) through (3), uniformity among
2 insurers in any matter within the scope of this section is
3 neither required nor prohibited."

4 Section 2. Section 39-71-116, MCA, is amended to read:

5 "39-71-116. Definitions. Unless the context otherwise
6 requires, words and phrases employed in this chapter have
7 the following meanings:

8 (1) "Average weekly wage" means the mean weekly
9 earnings of all employees under covered employment, as
10 defined and established annually by the Montana department
11 of labor and industry. It is established at the nearest
12 whole dollar number and must be adopted by the division of
13 workers' compensation prior to July 1 of each year.

14 (2) "Beneficiary" means:

15 (a) a surviving wife or husband;

16 (b) an unmarried child under the age of 18 years;

17 (c) an unmarried child under the age of 25 years who
18 is a full-time student in an accredited school;

19 (d) an invalid child over the age of 18 years who is
20 dependent upon the decedent for support at the time of
21 injury;

22 (e) a parent who is dependent upon the decedent for
23 support at the time of the injury (however, such a parent is
24 a beneficiary only when no beneficiary, as defined in
25 subsections (2)(a) through (2)(d) of this section, exists);

1 and

2 (f) a brother or sister under the age of 18 years if
3 dependent upon the decedent for support at the time of the
4 injury (however, such a brother or sister is a beneficiary
5 only until the age of 18 years and only when no beneficiary,
6 as defined in subsections (2)(a) through (2)(e) of this
7 section, exists).

8 (3) "Casual employment" means employment not in the
9 usual course of trade, business, profession, or occupation
10 of the employer. Any person hauling or assisting in hauling
11 of sugar beets or grains, in case of emergency, is
12 considered engaged in casual employment.

13 (4) "Child" includes a posthumous child, a dependent
14 stepchild, a child legally adopted prior to the injury, and
15 an illegitimate child legitimized prior to the injury.

16 (5) "Construction industry" means any activity in
17 connection with the erection, alteration, repair,
18 replacement, renovation, installation, or demolition of any
19 building, highway, bridge, or structure.

20 (6) "Division" means the division of workers'
21 compensation of the department of labor and industry
22 provided for in 2-15-1702.

23 (7) "Fiscal year" means the period of time between
24 July 1 and the succeeding June 30.

25 (8) "Husband" or "widower" means only a husband or

1 widower living with or legally entitled to be supported by
2 the deceased at the time of her injury.

3 ~~(8)~~(9) "Insurer" means an employer bound by
4 compensation plan No. 1, an insurance company transacting
5 business under compensation plan No. 2, the industrial
6 insurance account under compensation plan No. 3, or the
7 uninsured employers' fund provided for in part 5 of this
8 chapter.

9 ~~(9)~~(10) "Invalid" means one who is physically or
10 mentally incapacitated.

11 ~~(10)~~(11) "Order" means any decision, rule, direction,
12 requirement, or standard of the division or any other
13 determination arrived at or decision made by the division.

14 ~~(11)~~(12) "Payroll", "annual payroll", or "annual
15 payroll for the preceding year" means the average annual
16 payroll of the employer for the preceding calendar year or,
17 if the employer shall not have operated a sufficient or any
18 length of time during such calendar year, 12 times the
19 average monthly payroll for the current year; provided, that
20 an estimate may be made by the division for any employer
21 starting in business where no average payrolls are
22 available, such estimate to be adjusted by additional
23 payment by the employer or refund by the division, as the
24 case may actually be on December 31 of such current year.

25 ~~(12)~~(13) "Permanent partial disability" means a

1 condition resulting from injury as defined in this chapter
2 that results in the actual loss of earnings or earning
3 capability less than total that exists after the injured
4 worker is as far restored as the permanent character of the
5 injuries will permit. Disability shall be supported by a
6 preponderance of medical evidence.

7 ~~(13)~~(14) "Permanent total disability" means a condition
8 resulting from injury as defined in this chapter that
9 results in the loss of actual earnings or earning capability
10 that exists after the injured worker is as far restored as
11 the permanent character of the injuries will permit and
12 which results in the worker having no reasonable prospect of
13 finding regular employment of any kind in the normal labor
14 market. Disability shall be supported by a preponderance of
15 medical evidence.

16 ~~(14)~~(15) The term "physician" includes "surgeon" and in
17 either case means one authorized by law to practice his
18 profession in this state.

19 ~~(15)~~(16) "The plant of the employer" includes the place
20 of business of a third person while the employer has access
21 to or control over such place of business for the purpose of
22 carrying on his usual trade, business, or occupation.

23 ~~(16)~~(17) "Public corporation" means the state or any
24 county, municipal corporation, school district, city, city
25 under commission form of government or special charter,

1 town, or village.

2 ~~†17~~(18) "Reasonably safe place to work" means that the
3 place of employment has been made as free from danger to the
4 life or safety of the employee as the nature of the
5 employment will reasonably permit.

6 ~~†18~~(19) "Reasonably safe tools and appliances" are
7 such tools and appliances as are adapted to and are
8 reasonably safe for use for the particular purpose for which
9 they are furnished.

10 ~~†19~~(20) "Temporary total disability" means a condition
11 resulting from an injury as defined in this chapter that
12 results in total loss of wages and exists until the injured
13 worker is as far restored as the permanent character of the
14 injuries will permit. Disability shall be supported by a
15 preponderance of medical evidence.

16 ~~†20~~(21) "Wages" means the average gross earnings
17 received by the employee at the time of the injury for the
18 usual hours of employment in a week, and overtime is not to
19 be considered. Sick leave benefits accrued by employees of
20 public corporations, as defined by subsection ~~†16~~ (17) of
21 this section, are considered wages.

22 ~~†21~~(22) "Wife" or "widow" means only a wife or widow
23 living with or legally entitled to be supported by the
24 deceased at the time of the injury.

25 ~~†22~~(23) "Year", unless otherwise specified, means

1 calendar year."

2 NEW SECTION. Section 3. Premium rates for
3 construction industry. The premium rates under plan No. 2 to
4 be paid for workers' compensation insurance for the
5 construction industry must be computed on the number of
6 hours worked for each occupation classification rather than
7 on a percentage of payroll.

8 Section 4. Section 39-71-2302, MCA, is amended to
9 read:

10 "39-71-2302. General requirements for electing
11 coverage under plan. (1) Every Except as provided in
12 subsection (2), every employer subject to the provisions of
13 compensation plan No. 3 shall at the times and in the manner
14 prescribed by the division pay to the division a premium
15 based on a percentage of his payroll as determined by the
16 division, which shall be a member of a rating organization
17 in accordance with the provisions of this chapter.

18 (2) Premium rates for the construction industry must
19 be computed on the number of hours worked for each
20 occupation classification rather than on a percentage of
21 payroll."

22 NEW SECTION. Section 5. Extension of authority. Any
23 existing authority of the workers' compensation division to
24 make rules on the subject of the provisions of this act is
25 extended to the provisions of this act.

1 NEW SECTION. Section 6. Codification instruction.
2 Section 3 is intended to be codified as an integral part of
3 Title 39, chapter 71, part 22, and the provisions of Title
4 39, chapter 71, apply to section 3.

5 NEW SECTION. Section 7. Applicability. Sections 1
6 through 4 apply to workers' compensation policies issued or
7 renewed on or after October 1, 1985.

-End-

STATE OF MONTANA
FISCAL NOTE

REQUEST NO. FNN 133-85

Form BD-15

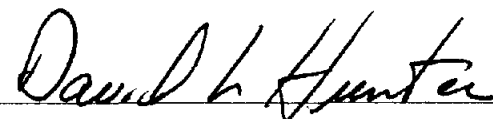
In compliance with a written request received January 18, 19 85, there is hereby submitted a Fiscal Note for H.B. 234 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

H.B. 234 requires that investment income earned or realized by certain workers' compensation insurers be considered when determining premium rates, and requiring that premium rates to be paid for worker's compensation insurance for the construction industry be computed on the number of hours worked rather than on a percentage of payroll.

ASSUMPTIONS:

1. The portion of this bill "requiring that investment income earned or realized by certain workers' compensation insurers be considered when determining premium rates" has no impact on the State Fund. The State Fund already uses its investment income in rate making calculations.
2. The State Fund policy data base has been used in this analysis to identify the "construction industry" as defined in 39-71-116(5) of this bill.
3. This bill has no impact on benefits. The bill will cause a shift of costs (premium) from some employers in the construction industry to other employers in the industry, plus the short term developmental costs and the long term additional costs of an hourly based premium system will be borne by the construction industry in the form of a net premium increase.
4. The implementation of this bill would require a phased approach including the following stages.
 - (a) Parallel collection of payroll and hours data from employers in the construction industry. The continued collection of both hours and payroll would be necessary in order to be compatible with interstate ratings and the national NCCI experience rating system which is required by state law.



BUDGET DIRECTOR
Office of Budget and Program Planning

Date: JAN 23, 1985

HB 234

- (b) Rate calculations to establish rates per hours worked in order to replace the rates per \$100 of payroll. The resultant "hourly" rates must be sufficient to cover accident costs, as well as additional administrative costs. These rate calculations would be reviewed by the Fund's actuarial consultants.
- (c) A computer system enhancement would be necessary in order to accommodate the hourly based construction industry while retaining all other industries on a payroll basis.
- (d) A revision of audit procedures would be necessary to verify the reported hours. Auditing reported hours would be more difficult and less accurate than verifying payroll amounts. There are no cross checks on hours such as UI and Tax reports that exist for payroll.

FISCAL IMPACT ON STATE SPECIAL REVENUES:

<u>Expenditures:</u>	<u>FY 86</u>	<u>FY 87</u>	<u>Total Biennium</u>
Personal Services	\$ 14,000	\$ 14,000	\$ 28,000
Operating Expenses	129,500	30,000	159,500
Equipment	<u>4,000</u>	<u> </u>	<u>4,000</u>
	\$147,500	\$ 44,000	\$191,500