

HOUSE BILL NO. 817

INTRODUCED BY GLASER, DRISCOLL, COHEN, SIMON

BY REQUEST OF THE HOUSE COMMITTEE ON BUSINESS AND LABOR

IN THE HOUSE

FEBRUARY 18, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & LABOR.
FEBRUARY 19, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 19, 1987	ON MOTION, TAKEN FROM PRINTING AND REREFERRED TO COMMITTEE ON TAXATION.
FEBRUARY 20, 1987	PRINTING REPORT.
MARCH 7, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
MARCH 9, 1987	PRINTING REPORT.
MARCH 10, 1987	SECOND READING, DO PASS.
MARCH 11, 1987	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 96; NOES, 1.
	TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 13, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
MARCH 27, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
	STATEMENT OF INTENT ADOPTED.
MARCH 31, 1987	SECOND READING, CONCURRED IN.

APRIL 1, 1987

THIRD READING, CONCURRED IN.
AYES, 49; NOES, 0.

RETURNED TO HOUSE WITH STATEMENT
OF INTENT.

IN THE HOUSE

APRIL 8, 1987

RECEIVED FROM SENATE.

SECOND READING, STATEMENT OF
INTENT ADOPTED.

APRIL 9, 1987

THIRD READING, STATEMENT OF
INTENT ADOPTED.

SENT TO ENROLLING.

1 House BILL NO. 817
 2 INTRODUCED BY William D. ...
 3 BY REQUEST OF THE HOUSE COMMITTEE ON BUSINESS AND LABOR

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH
 6 INDEPENDENT LIABILITY FUNDS FOR THE PROTECTION OF THE PUBLIC
 7 AND FOR SMALL BUSINESSES IN THE STATE OF MONTANA; AND
 8 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

9
 10 WHEREAS, the current crisis in the liability insurance
 11 industry has made it increasingly difficult, and often
 12 prohibitively expensive, for many small businesses in
 13 Montana to obtain comprehensive and adequate liability
 14 insurance; and

15 WHEREAS, some small businesses have found it
 16 impossible, in the current insurance market, to obtain
 17 coverage for their major areas of risk, particularly in
 18 connection with product liability and extra hazardous risks;
 19 and

20 WHEREAS, many small businesses have had no choice but
 21 to purchase inadequate insurance or to go without insurance
 22 and, therefore have indiscriminately exposed themselves and
 23 all of their business assets to liability; and

24 WHEREAS, the general public would benefit from a system
 25 that would assure that money or assets are available to

1 answer any justifiable claims made against small businesses
 2 in Montana; and

3 WHEREAS, the general public would benefit from a system
 4 that would encourage each small business within the State of
 5 Montana to minimize its exposure to liability claims.

6
 7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

8 Section 1. Short title. [Sections 1 through 17] may be
 9 cited as the "Independent Liability Fund Act".

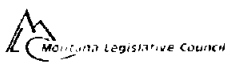
10 Section 2. Purpose. The purpose of [this act] is to
 11 create a means by which small businesses operating in
 12 Montana may establish independent liability funds to set
 13 aside assets or make investments to meet any liability
 14 claims that might be made against the small businesses by
 15 third parties.

16 Section 3. Definitions. As used in [this act], the
 17 following definitions apply:

18 (1) "Fiscal year" means the 12-month period used by a
 19 particular small business in preparing and filing its state
 20 income tax returns.

21 (2) "Independent liability fund" means a collection of
 22 money, assets, and investments that has been set aside by a
 23 small business to meet the needs of any liability claims
 24 brought against it by third parties.

25 (3) "Liability claim" means any legal or extra legal



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 HB-817

1 action by a third party asserting a right to compensation
2 for a wrong done to it by a small business with an
3 independent liability fund.

4 (4) "Small business" means any commercial or nonprofit
5 enterprise qualified to do business in the state and
6 qualified as a small business under the criteria established
7 by the federal small business administration on [the
8 effective date of this act].

9 (5) "Third party" means a person other than an
10 employee or the management of a small business or of a
11 subsidiary or closely related enterprise of a small
12 business.

13 Section 4. Right to establish independent liability
14 fund. A small business operating in the state may establish
15 an independent liability fund to provide for defense,
16 settlement, or payment of any liability claims against it by
17 a third party.

18 Section 5. Establishment of independent liability
19 fund. A small business may notify the commissioner, on a
20 form supplied by the commissioner, of its intention to
21 establish an independent liability fund. The small business
22 shall fully and clearly designate the money, assets, or
23 investments it is setting aside for its independent
24 liability fund.

25 Section 6. Additions to independent liability fund.

1 Within the limits provided in [section 7], a small business
2 may make such additions to its independent liability fund as
3 it considers appropriate.

4 Section 7. Limit on the amount of fund. The
5 independent liability fund of any small business may not be
6 greater than the larger of the following:

7 (1) the total of all legally required liability
8 insurance; or

9 (2) five times the gross sales of the small business
10 in its most recent fiscal year.

11 Section 8. Composition of independent liability fund.
12 The money, assets, and investments contributed to an
13 independent liability fund must meet the criteria
14 established for investments by an insurance company in Title
15 33, chapter 2, part 8, and must be valued as such assets and
16 investments would be valued.

17 Section 9. Tax deductibility. The amount of
18 contributions made by a small business to its independent
19 liability fund as defined in [this act] are deductible to
20 that small business on its Montana income tax return for the
21 fiscal year in which the contributions are made to the fund.

22 Section 10. Treatment of income on contents of
23 independent liability fund. Income on the money, assets, and
24 investments in an independent liability fund as defined in
25 [this act] may be contributed to the fund. If it is not so

1 contributed, it is taxable in accordance with Title 15,
2 chapters 30 and 31.

3 Section 11. Inviolability of fund. Once money, assets,
4 or investments have been contributed to an independent
5 liability fund, they may not be used or removed from the
6 fund except in the manner prescribed by [sections 12 and
7 15].

8 Section 12. Deduction of costs. (1) The actual costs
9 of administering an independent liability fund must be
10 deducted from the fund or from income arising out of the
11 money, assets, and investments in the fund. Such costs
12 include the cost of defending against or negotiating a
13 settlement of any liability claim, as well as the full
14 amount of any claim paid.

15 (2) A small business may not deduct the cost of any
16 in-house administration of its independent liability fund.
17 The commissioner may review any third-party arrangement for
18 administration of an independent liability fund to ascertain
19 whether such costs are deductible under this section.

20 Section 13. Tax deductibility of administrative costs.
21 Administrative costs under [section 12(1)] are deductible on
22 Montana state income tax returns for the fiscal year in
23 which they are paid or accrued.

24 Section 14. Taxation of independent liability fund
25 contributions. The net value of independent liability fund

1 contributions for any given fiscal year is taxed in
2 accordance with 33-2-705(2).

3 Section 15. Termination of independent liability fund.
4 (1) When a small business with an independent liability fund
5 ceases its operations, either voluntarily or involuntarily,
6 it shall provide a trust to administer any principal
7 remaining in its fund and to pay any outstanding claims for
8 the longest of the following applicable periods:

9 (a) any statute of limitations applicable to
10 operations of a small business;

11 (b) any legally required period of insurance coverage;
12 or

13 (c) 15 years.

14 (2) The principal of an independent liability fund
15 must remain inviolate, except as it is needed to pay just
16 claims, for the full applicable termination period.
17 However, income from the principal not needed for
18 administrative costs may be paid during the termination
19 period to the person or persons who are designated to
20 ultimately receive the principal of the fund, and such
21 income is taxable to that person or persons.

22 Section 16. Taxable liability on termination of
23 independent liability fund. If an independent liability fund
24 established pursuant to [this act] is terminated as provided
25 in [section 15], the income from the principal distributed

1 pursuant to [section 15(2)] is taxable to that person or
2 persons.

3 Section 17. Rules. (1) The commissioner has authority
4 to implement [this act] and to make any rules and
5 regulations required to carry out the purposes of [this
6 act].

7 (2) The commissioner shall by rule establish criteria
8 for ascertaining the inviolability and health of each
9 independent liability fund and shall initiate sanctions
10 against funds that are not secure or viable.

11 Section 18. Severability. If a part of this act is
12 invalid, all valid parts that are severable from the invalid
13 part remain in effect. If a part of this act is invalid in
14 one or more of its applications, the part remains in effect
15 in all valid applications that are severable from the
16 invalid applications.

17 Section 19. Codification instructions. (1) Sections 1
18 through 8, 11, 12, 14, 15, and 17 are intended to be
19 codified as an integral part of Title 33, and the provisions
20 of Title 33 apply to sections 1 through 8, 11, 12, 14, 15,
21 and 17.

22 (2) Sections 9, 10, 13, and 16 are intended to be
23 codified as integral parts of Title 15, chapters 30 and 31,
24 and the provisions of Title 15, chapters 30 and 31, apply to
25 sections 9, 10, 13, and 16.

1 Section 20. Effective date. This act is effective on
2 passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB817, second reading copy.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to establish independent liability funds for the protection of the public and for small businesses in the state of Montana; and providing an immediate effective date.

ASSUMPTIONS:

1. The average effective tax rate (corporate and individual) on all small businesses electing to establish an independent liability fund is 6 percent.
2. The insurance premium tax rate for these businesses is 2.75 percent.
3. Revenues are impacted only to the extent that a particular small business electing to establish a fund is profitable.

FISCAL IMPACT:

Revenue:

It is not known how many small businesses would elect to establish an independent liability insurance fund, the amount of contributions that would be made by each small business, or the taxable income of these businesses. Consequently, the total dollar impact of this bill is not known.

However, for each \$1,000 that is contributed to independent liability insurance funds, the state would lose \$10.90 in general fund, \$15.00 for school equalization, and \$6.60 in debt service funds.

Expenditures:

No cost impact can be estimated. Additional responsibilities assigned to the State Auditor's office will create additional expenditures. Forms design, printing, mailing and storage will be required. The Auditor is required to establish rules to insure the health of each fund and monitor the soundness of each fund. Because it is impossible to estimate the number of businesses that would create funds, the costs of administration can not be estimated.

TECHNICAL NOTE:

1. The bill does not provide rule-making authority for the Department of Revenue.
2. Section 8 of the bill requires that all assets contributed to the independent liability fund must meet the minimum investment criteria in Title 33, Chapter 2, part 8. Actually, the proper valuation of assets is addressed in 33-2-532 through 535 of MCA.
3. The bill assigns duties to the State Auditor to determine whether costs are deductible for Montana Income Tax. That creates a conflict with the duties of the Department of Revenue.
4. The State Auditor's office is granted the authority to impose sanctions. Those sanctions are not defined.

David L. Hunter DATE 3/3/87
DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning

Bill Glaser DATE April 4, 87
BILL GLASER, PRIMARY SPONSOR

Fiscal Note for HB817, second reading copy.

HB 817

RE-REFERRED AND
APPROVED BY COMMITTEE
ON TAXATION

AS AMENDED

HOUSE BILL NO. 817

INTRODUCED BY GLASER, DRISCOLL, COHEN, SIMON

BY REQUEST OF THE HOUSE COMMITTEE ON BUSINESS AND LABOR

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH
INDEPENDENT LIABILITY FUNDS FOR THE PROTECTION OF THE PUBLIC
AND FOR SMALL BUSINESSES IN THE STATE OF MONTANA; AND
PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, the current crisis in the liability insurance
industry has made it increasingly difficult, and often
prohibitively expensive, for many small businesses in
Montana to obtain comprehensive and adequate liability
insurance; and

WHEREAS, some small businesses have found it
impossible, in the current insurance market, to obtain
coverage for their major areas of risk, particularly in
connection with product liability and extra hazardous risks;
and

WHEREAS, many small businesses have had no choice but
to purchase inadequate insurance or to go without insurance
and, therefore have indiscriminately exposed themselves and
all of their business assets to liability; and

WHEREAS, the general public would benefit from a system
that would assure that money or assets are available to

answer any justifiable claims made against small businesses
in Montana; and

WHEREAS, the general public would benefit from a system
that would encourage each small business within the State of
Montana to minimize its exposure to liability claims.

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

Section 1. Short title. [Sections 1 through 17 19] may
be cited as the "Independent Liability Fund Act".

Section 2. Purpose. The purpose of [this act] is to
create a means by which small businesses operating in
Montana may establish independent liability funds to set
aside assets or make investments to meet any liability
claims that might be made against the small businesses by
third parties.

Section 3. Definitions. As used in [this act], the
following definitions apply:

(1) "Fiscal year" means the 12-month period used by a
particular small business in preparing and filing its state
MONTANA INDIVIDUAL INCOME TAX, CORPORATE LICENSE TAX, OR
CORPORATE income tax returns RETURN.

(2) "Independent liability fund" means a collection of
money, assets, and investments that has been set aside by a
small business to meet the needs of any liability claims,
EXCEPT WORKERS' COMPENSATION CLAIMS, brought against it by



1 third parties.

2 (3) "Liability claim" means any legal or extra legal
3 action by a third party asserting a right to compensation
4 for a wrong done to it by a small business with an
5 independent liability fund.

6 (4) "Small business" means any commercial or nonprofit
7 enterprise qualified to do business in the state and
8 qualified as a small business under the criteria established
9 by the federal small business administration on [the
10 effective date of this act].

11 (5) "Third party" means a person other than an
12 employee or the management of a small business or of a
13 subsidiary or closely related enterprise of a small
14 business.

15 Section 4. Right to establish independent liability
16 fund. A small business operating in the state may establish
17 an independent liability fund to provide for defense,
18 settlement, or payment of any liability claims against it by
19 a third party.

20 Section 5. Establishment of independent liability
21 fund. A small business may SHALL notify the commissioner, on
22 a form supplied by the commissioner, of its intention to
23 establish an independent liability fund. The small business
24 shall fully and clearly designate the money, assets, or
25 investments it is setting aside for its independent

1 liability fund.

2 Section 6. Additions to independent liability fund.
3 Within the limits provided in [section 7], a small business
4 may make such additions to its independent liability fund as
5 it considers appropriate.

6 Section 7. Limit on the amount of fund. The
7 independent liability fund of any small business may not be
8 greater than the larger of the following:

9 (1) the total of all legally required liability
10 insurance; or

11 (2) five times the gross sales of the small business
12 in its most recent fiscal year.

13 Section 8. Composition of independent liability fund.
14 The money, assets, and investments contributed to an
15 independent liability fund must meet the criteria
16 established for investments by an insurance company in Title
17 33, chapter 2, part 8, and must be valued as such assets and
18 investments would be valued.

19 Section 9. Tax deductibility. The amount of
20 contributions made by a small business to its independent
21 liability fund as defined in [this act] are deductible to
22 that small business on its Montana INDIVIDUAL income tax
23 return for the fiscal TAXABLE year in which the
24 contributions are made to the fund.

25 SECTION 10. TAX DEDUCTIBILITY. THE AMOUNT OF

1 CONTRIBUTIONS MADE BY A SMALL BUSINESS TO ITS INDEPENDENT
 2 LIABILITY FUND AS DEFINED IN [THIS ACT] IS DEDUCTIBLE TO
 3 THAT SMALL BUSINESS ON ITS MONTANA CORPORATE LICENSE TAX OR
 4 CORPORATE INCOME TAX RETURN FOR THE TAXABLE YEAR IN WHICH
 5 THE CONTRIBUTIONS ARE MADE TO THE FUND.

6 Section 11. Treatment of income on contents of
 7 independent liability fund. Income on the money, assets, and
 8 investments in an independent liability fund as defined in
 9 [this act] may be contributed to the fund. If it is not so
 10 contributed, it is taxable in accordance with ~~Title 15,~~
 11 ~~chapters 30 and 31~~ THE APPLICABLE PROVISIONS OF THIS
 12 CHAPTER.

13 Section 12. Inviolability of fund. Once money, assets,
 14 or investments have been contributed to an independent
 15 liability fund, they may not be used or removed from the
 16 fund except in the manner prescribed by [sections 12 13 and
 17 15 17].

18 Section 13. Deduction of costs. (1) The actual costs
 19 of administering an independent liability fund ~~must~~ MAY be
 20 deducted from the fund or from income arising out of the
 21 money, assets, and investments in the fund. Such costs
 22 include the cost of defending against or negotiating a
 23 settlement of any liability claim, as well as the full
 24 amount of any claim paid.

25 (2) A small business may not deduct the cost of any

1 in-house administration of its independent liability fund.
 2 The commissioner may review any third-party arrangement for
 3 administration of an independent liability fund to ascertain
 4 whether such costs are deductible under this section.

5 Section 14. Tax deductibility of administrative costs
 6 ~~-- EXCEPTION.~~ Administrative costs under ~~{section 12(1)}~~
 7 [SECTION 13(1)], EXCEPT THOSE PAID FROM THE PRINCIPAL OF AN
 8 INDEPENDENT LIABILITY FUND, are deductible on Montana state
 9 INDIVIDUAL income tax returns for the fiscal year in which
 10 they are paid or accrued.

11 SECTION 15. TAX DEDUCTIBILITY OF ADMINISTRATIVE COSTS.
 12 ADMINISTRATIVE COSTS UNDER [SECTION 13(1)], EXCEPT THOSE
 13 PAID FROM THE PRINCIPAL OF AN INDEPENDENT LIABILITY FUND,
 14 ARE DEDUCTIBLE ON THE MONTANA CORPORATE LICENSE TAX OR
 15 CORPORATE INCOME TAX RETURN FOR THE TAXABLE YEAR IN WHICH
 16 THEY ARE PAID OR ACCRUED.

17 Section 16. Taxation of independent liability fund
 18 contributions. The net value of independent liability fund
 19 contributions for any given fiscal year is taxed in
 20 accordance with 33-2-705(2).

21 Section 17. Termination of independent liability fund.
 22 (1) When a small business with an independent liability fund
 23 ceases its operations, either voluntarily or involuntarily,
 24 it shall provide a trust to administer any principal
 25 remaining in its fund and to pay any outstanding claims for

1 the longest of the following applicable periods:

2 (a) any statute of limitations applicable to
3 operations of a THAT PARTICULAR small business;

4 (b) any legally required period of insurance coverage;
5 or

6 (c) 15 years.

7 (2) The principal of an independent liability fund
8 must remain inviolate, except as it is needed to pay just
9 claims, for the full applicable termination period.
10 However, income from the principal not needed for
11 administrative costs may be paid during the termination
12 period to the person or persons who are designated to
13 ultimately receive the principal of the fund, and such
14 income is taxable to that person or persons.

15 Section 18. Taxable liability on termination of
16 independent liability fund. If an independent liability fund
17 established pursuant to [this act] is terminated as provided
18 in [section 15 17], the income from the principal
19 distributed pursuant to [section 15(2) 17(2)] is taxable to
20 that person or persons UNDER THE APPLICABLE PROVISIONS OF
21 THIS CHAPTER.

22 Section 19. Rules. (1) The commissioner has authority
23 to implement [this act] and to make any rules and
24 regulations required to carry out the purposes of [this
25 act].

1 (2) The commissioner shall by rule establish criteria
2 for ascertaining the inviolability and health of each
3 independent liability fund and shall initiate sanctions
4 against funds that are not secure or viable.

5 SECTION 20. EXTENSION OF AUTHORITY. ANY EXISTING
6 AUTHORITY OF THE DEPARTMENT OF REVENUE TO MAKE RULES ON THE
7 SUBJECT OF THE PROVISIONS OF THIS ACT IS EXTENDED TO THE
8 PROVISIONS OF THIS ACT; HOWEVER, ANY RULES MADE BY THE
9 DEPARTMENT OF REVENUE MUST BE CONSISTENT WITH RULES
10 PROMULGATED UNDER SECTION 19.

11 Section 21. Severability. If a part of this act is
12 invalid, all valid parts that are severable from the invalid
13 part remain in effect. If a part of this act is invalid in
14 one or more of its applications, the part remains in effect
15 in all valid applications that are severable from the
16 invalid applications.

17 Section 22. Codification instructions. (1) Sections 1
18 through 8, ~~11-12-14-15-and-17~~ 12, 13, 16, 17, AND 19 are
19 intended to be codified as an integral part of Title 33, and
20 the provisions of Title 33 apply to sections 1 through 8,
21 ~~11-12-14-15-and-17~~ 12, 13, 16, 17, AND 19.

22 (2) Sections 9, ~~10-13~~ 11, 14, and 16 18 are intended
23 to be codified as integral parts of Title 15, ~~chapters~~
24 CHAPTER 30 and-31, and the provisions of Title 15, ~~chapters~~
25 CHAPTER 30 and-31, apply to sections 9, ~~10-13~~ 11, 14, and

1 ~~16~~ 18.

2 (3) SECTIONS 10, 11, 15, AND 18 ARE INTENDED TO BE
3 CODIFIED AS AN INTEGRAL PART OF TITLE 15, CHAPTER 31, AND
4 THE PROVISIONS OF TITLE 15, CHAPTER 31, APPLY TO SECTIONS
5 10, 11, 15, AND 18.

6 Section 23. Effective date. This act is effective on
7 passage and approval.

-End-

APPROVED BY COMM. ON
BUSINESS AND LABOR

HOUSE BILL NO. 817

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23 Section 16. Taxable liability on termination of
24 independent liability fund. If an independent liability fund
25 established pursuant to [this act] is terminated as provided

1 in [section 15], the income from the principal distributed
 2 pursuant to [section 15(2)] is taxable to that person or
 3 persons.

4 Section 17. Rules. (1) The commissioner has authority
 5 to implement [this act] and to make any rules and
 6 regulations required to carry out the purposes of [this
 7 act].

8 (2) The commissioner shall by rule establish criteria
 9 for ascertaining the inviolability and health of each
 10 independent liability fund and shall initiate sanctions
 11 against funds that are not secure or viable.

12 Section 18. Severability. If a part of this act is
 13 invalid, all valid parts that are severable from the invalid
 14 part remain in effect. If a part of this act is invalid in
 15 one or more of its applications, the part remains in effect
 16 in all valid applications that are severable from the
 17 invalid applications.

18 Section 19. Codification instructions. (1) Sections 1
 19 through 8, 11, 12, 14, 15, and 17 are intended to be
 20 codified as an integral part of Title 33, and the provisions
 21 of Title 33 apply to sections 1 through 8, 11, 12, 14, 15,
 22 and 17.

23 (2) Sections 9, 10, 13, and 16 are intended to be
 24 codified as integral parts of Title 15, chapters 30 and 31,
 25 and the provisions of Title 15, chapters 30 and 31, apply to

1 sections 9, 10, 13, and 16.

2 Section 20. Effective date. This act is effective on
 3 passage and approval.

-End-

HOUSE BILL NO. 817

INTRODUCED BY GLASER, DRISCOLL, COHEN, SIMON

BY REQUEST OF THE HOUSE COMMITTEE ON BUSINESS AND LABOR

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH INDEPENDENT LIABILITY FUNDS FOR THE PROTECTION OF THE PUBLIC AND FOR SMALL BUSINESSES IN THE STATE OF MONTANA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, the current crisis in the liability insurance industry has made it increasingly difficult, and often prohibitively expensive, for many small businesses in Montana to obtain comprehensive and adequate liability insurance; and

WHEREAS, some small businesses have found it impossible, in the current insurance market, to obtain coverage for their major areas of risk, particularly in connection with product liability and extra hazardous risks; and

WHEREAS, many small businesses have had no choice but to purchase inadequate insurance or to go without insurance and, therefore have indiscriminately exposed themselves and all of their business assets to liability; and

WHEREAS, the general public would benefit from a system that would assure that money or assets are available to

answer any justifiable claims made against small businesses in Montana; and

WHEREAS, the general public would benefit from a system that would encourage each small business within the State of Montana to minimize its exposure to liability claims.

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

Section 1. Short title. [Sections 1 through 17 19] may be cited as the "Independent Liability Fund Act".

Section 2. Purpose. The purpose of [this act] is to create a means by which small businesses operating in Montana may establish independent liability funds to set aside assets or make investments to meet any liability claims that might be made against the small businesses by third parties.

Section 3. Definitions. As used in [this act], the following definitions apply:

(1) "Fiscal year" means the 12-month period used by a particular small business in preparing and filing its state MONTANA INDIVIDUAL INCOME TAX, CORPORATE LICENSE TAX, OR CORPORATE income tax returns RETURN.

(2) "Independent liability fund" means a collection of money, assets, and investments that has been set aside by a small business to meet the needs of any liability claims, EXCEPT WORKERS' COMPENSATION CLAIMS, brought against it by

1 third parties.

2 (3) "Liability claim" means any legal or extra legal
3 action by a third party asserting a right to compensation
4 for a wrong done to it by a small business with an
5 independent liability fund.

6 (4) "Small business" means any commercial or nonprofit
7 enterprise qualified to do business in the state and
8 qualified as a small business under the criteria established
9 by the federal small business administration on [the
10 effective date of this act].

11 (5) "Third party" means a person other than an
12 employee or the management of a small business or of a
13 subsidiary or closely related enterprise of a small
14 business.

15 Section 4. Right to establish independent liability
16 fund. A small business operating in the state may establish
17 an independent liability fund to provide for defense,
18 settlement, or payment of any liability claims against it by
19 a third party.

20 Section 5. Establishment of independent liability
21 fund. A small business may SHALL notify the commissioner, on
22 a form supplied by the commissioner, of its intention to
23 establish an independent liability fund. The small business
24 shall fully and clearly designate the money, assets, or
25 investments it is setting aside for its independent

1 liability fund.

2 Section 6. Additions to independent liability fund.
3 Within the limits provided in [section 7], a small business
4 may make such additions to its independent liability fund as
5 it considers appropriate.

6 Section 7. Limit on the amount of fund. The
7 independent liability fund of any small business may not be
8 greater than the larger of the following:

9 (1) the total of all legally required liability
10 insurance; or

11 (2) five times the gross sales of the small business
12 in its most recent fiscal year.

13 Section 8. Composition of independent liability fund.
14 The money, assets, and investments contributed to an
15 independent liability fund must meet the criteria
16 established for investments by an insurance company in Title
17 33, chapter 2, part 8, and must be valued as such assets and
18 investments would be valued.

19 Section 9. Tax deductibility. The amount of
20 contributions made by a small business to its independent
21 liability fund as defined in [this act] are deductible to
22 that small business on its Montana INDIVIDUAL income tax
23 return for the fiscal TAXABLE year in which the
24 contributions are made to the fund.

25 SECTION 10. TAX DEDUCTIBILITY. THE AMOUNT OF

1 CONTRIBUTIONS MADE BY A SMALL BUSINESS TO ITS INDEPENDENT
 2 LIABILITY FUND AS DEFINED IN [THIS ACT] IS DEDUCTIBLE TO
 3 THAT SMALL BUSINESS ON ITS MONTANA CORPORATE LICENSE TAX OR
 4 CORPORATE INCOME TAX RETURN FOR THE TAXABLE YEAR IN WHICH
 5 THE CONTRIBUTIONS ARE MADE TO THE FUND.

6 Section 11. Treatment of income on contents of
 7 independent liability fund. Income on the money, assets, and
 8 investments in an independent liability fund as defined in
 9 [this act] may be contributed to the fund. If it is not so
 10 contributed, it is taxable in accordance with ~~Title 15,~~
 11 ~~chapters--30--and--31~~ THE APPLICABLE PROVISIONS OF THIS
 12 CHAPTER.

13 Section 12. Inviolability of fund. Once money, assets,
 14 or investments have been contributed to an independent
 15 liability fund, they may not be used or removed from the
 16 fund except in the manner prescribed by [sections ~~12~~ 13 and
 17 ~~15~~ 17].

18 Section 13. Deduction of costs. (1) The actual costs
 19 of administering an independent liability fund ~~must~~ MAY be
 20 deducted from the fund or from income arising out of the
 21 money, assets, and investments in the fund. Such costs
 22 include the cost of defending against or negotiating a
 23 settlement of any liability claim, as well as the full
 24 amount of any claim paid.

25 (2) A small business may not deduct the cost of any

1 in-house administration of its independent liability fund.
 2 The commissioner may review any third-party arrangement for
 3 administration of an independent liability fund to ascertain
 4 whether such costs are deductible under this section.

5 Section 14. Tax deductibility of administrative costs
 6 -- EXCEPTION. Administrative costs under ~~{section--12(1)}~~
 7 [SECTION 13(1)], EXCEPT THOSE PAID FROM THE PRINCIPAL OF AN
 8 INDEPENDENT LIABILITY FUND, are deductible on Montana state
 9 INDIVIDUAL income tax returns for the fiscal year in which
 10 they are paid or accrued.

11 SECTION 15. TAX DEDUCTIBILITY OF ADMINISTRATIVE COSTS.
 12 ADMINISTRATIVE COSTS UNDER [SECTION 13(1)], EXCEPT THOSE
 13 PAID FROM THE PRINCIPAL OF AN INDEPENDENT LIABILITY FUND,
 14 ARE DEDUCTIBLE ON THE MONTANA CORPORATE LICENSE TAX OR
 15 CORPORATE INCOME TAX RETURN FOR THE TAXABLE YEAR IN WHICH
 16 THEY ARE PAID OR ACCRUED.

17 Section 16. Taxation of independent liability fund
 18 contributions. The net value of independent liability fund
 19 contributions for any given fiscal year is taxed in
 20 accordance with 33-2-705(2).

21 Section 17. Termination of independent liability fund.
 22 (1) When a small business with an independent liability fund
 23 ceases its operations, either voluntarily or involuntarily,
 24 it shall provide a trust to administer any principal
 25 remaining in its fund and to pay any outstanding claims for

1 the longest of the following applicable periods:

2 (a) any statute of limitations applicable to

3 operations of a THAT PARTICULAR small business;

4 (b) any legally required period of insurance coverage;

5 or

6 (c) 15 years.

7 (2) The principal of an independent liability fund

8 must remain inviolate, except as it is needed to pay just

9 claims, for the full applicable termination period.

10 However, income from the principal not needed for

11 administrative costs may be paid during the termination

12 period to the person or persons who are designated to

13 ultimately receive the principal of the fund, and such

14 income is taxable to that person or persons.

15 Section 18. Taxable liability on termination of

16 independent liability fund. If an independent liability fund

17 established pursuant to [this act] is terminated as provided

18 in [section ~~15~~ 17], the income from the principal

19 distributed pursuant to [section ~~15(2)~~ 17(2)] is taxable to

20 that person or persons UNDER THE APPLICABLE PROVISIONS OF

21 THIS CHAPTER.

22 Section 19. Rules. (1) The commissioner has authority

23 to implement [this act] and to make any rules and

24 regulations required to carry out the purposes of [this

25 act].

1 (2) The commissioner shall by rule establish criteria

2 for ascertaining the inviolability and health of each

3 independent liability fund and shall initiate sanctions

4 against funds that are not secure or viable.

5 SECTION 20. EXTENSION OF AUTHORITY. ANY EXISTING

6 AUTHORITY OF THE DEPARTMENT OF REVENUE TO MAKE RULES ON THE

7 SUBJECT OF THE PROVISIONS OF THIS ACT IS EXTENDED TO THE

8 PROVISIONS OF THIS ACT; HOWEVER, ANY RULES MADE BY THE

9 DEPARTMENT OF REVENUE MUST BE CONSISTENT WITH RULES

10 PROMULGATED UNDER SECTION 19.

11 Section 21. Severability. If a part of this act is

12 invalid, all valid parts that are severable from the invalid

13 part remain in effect. If a part of this act is invalid in

14 one or more of its applications, the part remains in effect

15 in all valid applications that are severable from the

16 invalid applications.

17 Section 22. Codification instructions. (1) Sections 1

18 through 8, ~~11, 12, 14, 15, and 17~~ 12, 13, 16, 17, AND 19 are

19 intended to be codified as an integral part of Title 33, and

20 the provisions of Title 33 apply to sections 1 through 8,

21 ~~11, 12, 14, 15, and 17~~ 12, 13, 16, 17, AND 19.

22 (2) Sections 9, ~~10, 13~~ 11, 14, and ~~16~~ 18 are intended

23 to be codified as integral parts of Title 15, chapters

24 CHAPTER 30 and 31, and the provisions of Title 15, chapters

25 CHAPTER 30 and 31, apply to sections 9, ~~10, 13~~ 11, 14, and

1 ~~16~~ 18.

2 (3) SECTIONS 10, 11, 15, AND 18 ARE INTENDED TO BE
3 CODIFIED AS AN INTEGRAL PART OF TITLE 15, CHAPTER 31, AND
4 THE PROVISIONS OF TITLE 15, CHAPTER 31, APPLY TO SECTIONS
5 10, 11, 15, AND 18.

6 Section 23. Effective date. This act is effective on
7 passage and approval.

-End-

1 STATEMENT OF INTENT

2 HOUSE BILL 817

3 Senate Business and Industry Committee

4
5 A statement of intent is required for this bill in
6 order to provide a guideline for regulation of independent
7 liability funds. In sections 5 and 17 of this bill, the
8 legislature grants to the commissioner of insurance general
9 rulemaking authority to do the following:

10 (1) supply forms for the registration of small
11 business independent liability funds;

12 (2) ascertain the inviolability of each independent
13 liability fund;

14 (3) ascertain the financial health of each independent
15 liability fund;

16 (4) initiate sanctions against independent liability
17 funds that are not secure or viable; and

18 (5) make any other rules and regulations required to
19 carry out the purposes of the Independent Liability Fund
20 Act.

1 HOUSE BILL NO. 817

2 INTRODUCED BY GLASER, DRISCOLL, COHEN, SIMON

3 BY REQUEST OF THE HOUSE COMMITTEE ON BUSINESS AND LABOR

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH
6 INDEPENDENT LIABILITY FUNDS FOR THE PROTECTION OF THE PUBLIC
7 AND FOR SMALL BUSINESSES IN THE STATE OF MONTANA; AND
8 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

9
10 WHEREAS, the current crisis in the liability insurance
11 industry has made it increasingly difficult, and often
12 prohibitively expensive, for many small businesses in
13 Montana to obtain comprehensive and adequate liability
14 insurance; and

15 WHEREAS, some small businesses have found it
16 impossible, in the current insurance market, to obtain
17 coverage for their major areas of risk, particularly in
18 connection with product liability and extra hazardous risks;
19 and

20 WHEREAS, many small businesses have had no choice but
21 to purchase inadequate insurance or to go without insurance
22 and, therefore have indiscriminately exposed themselves and
23 all of their business assets to liability; and

24 WHEREAS, the general public would benefit from a system
25 that would assure that money or assets are available to

1 answer any justifiable claims made against small businesses
2 in Montana; and

3 WHEREAS, the general public would benefit from a system
4 that would encourage each small business within the State of
5 Montana to minimize its exposure to liability claims.

6
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

8 Section 1. Short title. [Sections 1 through ~~17~~ 19] may
9 be cited as the "Independent Liability Fund Act".

10 Section 2. Purpose. The purpose of [this act] is to
11 create a means by which small businesses operating in
12 Montana may establish independent liability funds to set
13 aside assets or make investments to meet any liability
14 claims that might be made against the small businesses by
15 third parties.

16 Section 3. Definitions. As used in [this act], the
17 following definitions apply:

18 (1) "Fiscal year" means the 12-month period used by a
19 particular small business in preparing and filing its state
20 MONTANA INDIVIDUAL INCOME TAX, CORPORATE LICENSE TAX, OR
21 CORPORATE income tax returns RETURN.

22 (2) "Independent liability fund" means a collection of
23 money, assets, and investments that has been set aside by a
24 small business to meet the needs of any liability claims,
25 EXCEPT WORKERS' COMPENSATION CLAIMS, brought against it by

1 third parties.

2 (3) "Liability claim" means any legal or extra legal
3 action by a third party asserting a right to compensation
4 for a wrong done to it by a small business with an
5 independent liability fund.

6 (4) "Small business" means any commercial or nonprofit
7 enterprise qualified to do business in the state and
8 qualified as a small business under the criteria established
9 by the federal small business administration on [the
10 effective date of this act].

11 (5) "Third party" means a person other than an
12 employee or the management of a small business or of a
13 subsidiary or closely related enterprise of a small
14 business.

15 Section 4. Right to establish independent liability
16 fund. A small business operating in the state may establish
17 an independent liability fund to provide for defense,
18 settlement, or payment of any liability claims against it by
19 a third party.

20 Section 5. Establishment of independent liability
21 fund. A small business may SHALL notify the commissioner, on
22 a form supplied by the commissioner, of its intention to
23 establish an independent liability fund. The small business
24 shall fully and clearly designate the money, assets, or
25 investments it is setting aside for its independent

1 liability fund.

2 Section 6. Additions to independent liability fund.
3 Within the limits provided in [section 7], a small business
4 may make such additions to its independent liability fund as
5 it considers appropriate.

6 Section 7. Limit on the amount of fund. The
7 independent liability fund of any small business may not be
8 greater than the larger of the following:

- 9 (1) the total of all legally required liability
- 10 insurance; or
- 11 (2) five times the gross sales of the small business
- 12 in its most recent fiscal year.

13 Section 8. Composition of independent liability fund.
14 The money, assets, and investments contributed to an
15 independent liability fund must meet the criteria
16 established for investments by an insurance company in Title
17 33, chapter 2, part 8, and must be valued as such assets and
18 investments would be valued.

19 Section 9. Tax deductibility. The amount of
20 contributions made by a small business to its independent
21 liability fund as defined in [this act] are deductible to
22 that small business on its Montana INDIVIDUAL income tax
23 return for the fiscal TAXABLE year in which the
24 contributions are made to the fund.

25 SECTION 10. TAX DEDUCTIBILITY. THE AMOUNT OF

1 CONTRIBUTIONS MADE BY A SMALL BUSINESS TO ITS INDEPENDENT
 2 LIABILITY FUND AS DEFINED IN [THIS ACT] IS DEDUCTIBLE TO
 3 THAT SMALL BUSINESS ON ITS MONTANA CORPORATE LICENSE TAX OR
 4 CORPORATE INCOME TAX RETURN FOR THE TAXABLE YEAR IN WHICH
 5 THE CONTRIBUTIONS ARE MADE TO THE FUND.

6 Section 11. Treatment of income on contents of
 7 independent liability fund. Income on the money, assets, and
 8 investments in an independent liability fund as defined in
 9 [this act] may be contributed to the fund. If it is not so
 10 contributed, it is taxable in accordance with ~~Title 15,~~
 11 ~~chapters 30 and 31~~ THE APPLICABLE PROVISIONS OF THIS
 12 CHAPTER.

13 Section 12. Inviolability of fund. Once money, assets,
 14 or investments have been contributed to an independent
 15 liability fund, they may not be used or removed from the
 16 fund except in the manner prescribed by [sections ~~12~~ 13 and
 17 ~~15~~ 17].

18 Section 13. Deduction of costs. (1) The actual costs
 19 of administering an independent liability fund ~~must~~ MAY be
 20 deducted from the fund or from income arising out of the
 21 money, assets, and investments in the fund. Such costs
 22 include the cost of defending against or negotiating a
 23 settlement of any liability claim, as well as the full
 24 amount of any claim paid.

25 (2) A small business may not deduct the cost of any

1 in-house administration of its independent liability fund.
 2 The commissioner may review any third-party arrangement for
 3 administration of an independent liability fund to ascertain
 4 whether such costs are deductible under this section.

5 Section 14. Tax deductibility of administrative costs
 6 -- EXCEPTION. Administrative costs under ~~{section 12(1)}~~
 7 [SECTION 13(1)], EXCEPT THOSE PAID FROM THE PRINCIPAL OF AN
 8 INDEPENDENT LIABILITY FUND, are deductible on Montana state
 9 INDIVIDUAL income tax returns for the fiscal year in which
 10 they are paid or accrued.

11 SECTION 15. TAX DEDUCTIBILITY OF ADMINISTRATIVE COSTS.
 12 ADMINISTRATIVE COSTS UNDER [SECTION 13(1)], EXCEPT THOSE
 13 PAID FROM THE PRINCIPAL OF AN INDEPENDENT LIABILITY FUND,
 14 ARE DEDUCTIBLE ON THE MONTANA CORPORATE LICENSE TAX OR
 15 CORPORATE INCOME TAX RETURN FOR THE TAXABLE YEAR IN WHICH
 16 THEY ARE PAID OR ACCRUED.

17 Section 16. Taxation of independent liability fund
 18 contributions. The net value of independent liability fund
 19 contributions for any given fiscal year is taxed in
 20 accordance with 33-2-705(2).

21 Section 17. Termination of independent liability fund.
 22 (1) When a small business with an independent liability fund
 23 ceases its operations, either voluntarily or involuntarily,
 24 it shall provide a trust to administer any principal
 25 remaining in its fund and to pay any outstanding claims for

1 the longest of the following applicable periods:

2 (a) any statute of limitations applicable to
3 operations of a THAT PARTICULAR small business;

4 (b) any legally required period of insurance coverage;
5 or

6 (c) 15 years.

7 (2) The principal of an independent liability fund
8 must remain inviolate, except as it is needed to pay just
9 claims, for the full applicable termination period.
10 However, income from the principal not needed for
11 administrative costs may be paid during the termination
12 period to the person or persons who are designated to
13 ultimately receive the principal of the fund, and such
14 income is taxable to that person or persons.

15 Section 18. Taxable liability on termination of
16 independent liability fund. If an independent liability fund
17 established pursuant to [this act] is terminated as provided
18 in [section ~~15~~ 17], the income from the principal
19 distributed pursuant to [section ~~15+2~~ 17(2)] is taxable to
20 that person or persons UNDER THE APPLICABLE PROVISIONS OF
21 THIS CHAPTER.

22 Section 19. Rules. (1) The commissioner has authority
23 to implement [this act] and to make any rules and
24 regulations required to carry out the purposes of [this
25 act].

1 (2) The commissioner shall by rule establish criteria
2 for ascertaining the inviolability and health of each
3 independent liability fund and shall initiate sanctions
4 against funds that are not secure or viable.

5 SECTION 20. EXTENSION OF AUTHORITY. ANY EXISTING
6 AUTHORITY OF THE DEPARTMENT OF REVENUE TO MAKE RULES ON THE
7 SUBJECT OF THE PROVISIONS OF THIS ACT IS EXTENDED TO THE
8 PROVISIONS OF THIS ACT; HOWEVER, ANY RULES MADE BY THE
9 DEPARTMENT OF REVENUE MUST BE CONSISTENT WITH RULES
10 PROMULGATED UNDER SECTION 19.

11 Section 21. Severability. If a part of this act is
12 invalid, all valid parts that are severable from the invalid
13 part remain in effect. If a part of this act is invalid in
14 one or more of its applications, the part remains in effect
15 in all valid applications that are severable from the
16 invalid applications.

17 Section 22. Codification instructions. (1) Sections 1
18 through 8, ~~11-12-14-15-and-17~~ 12, 13, 16, 17, AND 19 are
19 intended to be codified as an integral part of Title 33, and
20 the provisions of Title 33 apply to sections 1 through 8,
21 ~~11-12-14-15-and-17~~ 12, 13, 16, 17, AND 19.

22 (2) Sections 9, ~~10-13~~ 11, 14, and 16 18 are intended
23 to be codified as integral parts of Title 15, ~~chapters~~
24 CHAPTER 30 and-31, and the provisions of Title 15, ~~chapters~~
25 CHAPTER 30 and-31, apply to sections 9, ~~10-13~~ 11, 14, and

1 ~~16~~ 18.

2 (3) SECTIONS 10, 11, 15, AND 18 ARE INTENDED TO BE
3 CODIFIED AS AN INTEGRAL PART OF TITLE 15, CHAPTER 31, AND
4 THE PROVISIONS OF TITLE 15, CHAPTER 31, APPLY TO SECTIONS
5 10, 11, 15, AND 18.

6 Section 23. Effective date. This act is effective on
7 passage and approval.

-End-

STANDING COMMITTEE REPORT

73

SENATE

MARCH 27, 19 87

MARCH 27, 19 87

MR. PRESIDENT

We, your committee on BUSINESS AND INDUSTRY

having had under consideration HOUSE BILL No. 817

THIRD reading copy (BLUE color)

GLASER (WEEDING)

INDEPENDENT LIABILITY FUNDS FOR SMALL BUSINESS

Respectfully report as follows: That HOUSE BILL No. 817

MR. PRESIDENT,

WE, YOUR COMMITTEE ON BUSINESS AND INDUSTRY HAVING HAD UNDER CONSIDERATION HOUSE BILL NO. 817, ATTACH THE FOLLOWING STATEMENT OF INTENT:

STATEMENT OF INTENT
House Bill No. 817

A statement of intent is required for this bill in order to provide a guideline for regulation of independent liability funds. In sections 5 and 17 of this bill, the legislature grants to the commissioner of insurance general rulemaking authority to do the following:

- (1) supply forms for the registration of small business independent liability funds;
- (2) ascertain the inviolability of each independent liability fund;
- (3) ascertain the financial health of each independent liability fund;
- (4) initiate sanctions against independent liability funds that are not secure or viable; and
- (5) to make any other rules and regulations required to carry out the purposes of the Independent Liability Fund Act.

REPORT ADOPTED

BE CONCURRED IN

STATEMENT OF INTENT ADOPTED AND ATTACHED

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SENATOR ALLEN C. KOLSTAD, Chairman

Allen C. Kolstad

3-27-87
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