

HOUSE BILL 81

Introduced by Harrington, et al.

1/05	Introduced
1/06	Referred to Business & Economic Development
1/06	Fiscal Note Requested
1/12	Hearing
1/13	Fiscal Note Received
1/13	Fiscal Note Printed
	Died in Committee

1 HOUSE BILL NO. 81  
2 INTRODUCED BY Harmon, Whalen, Russell, Cohen  
3 Menahon, Squires, Thomas

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REGULATE THE  
5 ADVERTISING OF LIFE OR DISABILITY INSURANCE AND ANNUITY  
6 CONTRACTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

9 NEW SECTION. Section 1. Purpose. The purpose of [this  
10 act] is to establish minimum standards and guidelines of  
11 conduct to assure a full disclosure to the public of all  
12 material and relevant information in the advertising of life  
13 or disability insurance policies and annuity contracts and  
14 to prevent unfair, deceptive, and misleading advertising.

15 NEW SECTION. Section 2. Scope. (1) The obligations  
16 imposed by [this act] apply to any life or disability  
17 insurance or annuity advertisement intended for  
18 presentation, distribution, or dissemination in Montana when  
19 such presentation, distribution, or dissemination is made  
20 either directly or indirectly by or on behalf of an insurer,  
21 agent, or managing general agent.

22 (2) Every insurer authorized to provide life or  
23 disability insurance in Montana shall establish and maintain  
24 control over the content, form, and method of dissemination  
25 of all advertisements of its policies. All advertisements

1 are the responsibility of the insurer whose policies are  
2 advertised, regardless of whether written, created,  
3 designed, or presented by him.

4 NEW SECTION. Section 3. Definitions. As used in [this  
5 act], unless the context requires otherwise, the following  
6 definitions apply:

7 (1) (a) "Advertisement" means material designed to  
8 create public interest in life or disability insurance,  
9 annuities, or an insurer. Advertisements include material  
10 designed to induce the public to purchase, increase, modify,  
11 reinstate, borrow on, surrender, replace, or retain a  
12 policy. Types of advertisement include but are not limited  
13 to:

14 (i) printed and published material, audio-visual  
15 material, and descriptive literature of an insurer used in  
16 direct mail, newspapers, magazines, radio or television  
17 scripts, billboards, or similar displays;

18 (ii) descriptive literature and sales aids of all  
19 kinds, issued by an insurer, agent, or broker for  
20 presentation to members of the public, including but not  
21 limited to circulars, leaflets, booklets, pictures,  
22 illustrations, and form letters; and

23 (iii) prepared sales talks, presentations, and  
24 materials designed for use by agents, managing general  
25 agents, and solicitors.

1 (b) the term does not include:

2 (i) communications or materials used within an  
3 insurer's own organization and not intended for  
4 dissemination to the public;

5 (ii) individual communications with current  
6 policyholders other than material urging policyholders to  
7 purchase, increase, modify, reinstate, or retain a policy;  
8 or

9 (iii) a general announcement from a group or blanket  
10 policyholder to eligible individuals on an employment or  
11 membership list that a policy, program, or contract has been  
12 written or arranged. The announcement must clearly indicate  
13 that it is preliminary to the issuance of a booklet  
14 explaining the proposed coverage.

15 (2) "Exception" means a policy provision eliminating  
16 coverage for a specified hazard. It is a statement of risk  
17 not assumed under the policy.

18 (3) "Institutional advertisement" means an  
19 advertisement having as its purpose the promotion of the  
20 reader's or viewer's interest in the concept of life or  
21 disability insurance or annuities, or the promotion of the  
22 insurer.

23 (4) "Invitation to contract" means an advertisement  
24 which is neither an invitation to inquire nor an  
25 institutional advertisement.

1 (5) (a) "Invitation to inquire" means an  
2 advertisement, which does not refer to cost, having as its  
3 objective the creation of a desire to inquire further about  
4 the product and that is limited to a brief description of  
5 the loss for which benefits are payable. An invitation to  
6 inquire may contain:

7 (i) the dollar amount of benefits payable; or

8 (ii) the period of time during which the benefit is  
9 payable.

10 (b) An invitation to inquire that specifies either the  
11 dollar amount of benefits payable or the period of time  
12 during which the benefits are payable must include a  
13 provision stating: "For costs and further details of the  
14 coverage, including exclusions, reductions, or limitations,  
15 and the terms under which the policy may be continued in  
16 force, see your agent or write to the company."

17 (6) "Limitation" means a provision that restricts  
18 coverage under the policy, other than an exception or a  
19 reduction.

20 (7) "Nonguaranteed policy element" means a premium,  
21 cash value, death benefit, endowment value, dividend, or  
22 other policy benefit or pricing element or portion thereof  
23 for which the amount is not guaranteed by the terms of the  
24 contract.

25 (8) "Policy" means a policy, plan, certificate

(including a fraternal benefit certificate), contract, agreement, statement of coverage, rider, or endorsement that provides for life insurance, annuity benefits, accident or sickness benefits, or medical, surgical or hospital expense benefits, on an indemnity, reimbursement, service, or prepaid basis.

(9) "Reduction" means a provision that reduces the amount of the benefits. A risk of loss is assumed, but upon the occurrence of a loss, payment is limited to some amount or period less than would be otherwise payable had the reduction not been used.

**NEW SECTION. Section 4. Disclosure requirements.** (1) All information required to be disclosed by [this act] must be set forth conspicuously and in close conjunction to the statements to which it relates or under appropriate prominent captions so that it is not minimized, rendered obscure, presented in an ambiguous fashion, or intermingled with the text of the advertisement, making it confusing or misleading.

(2) The commissioner shall adopt reasonable rules to establish specific standards for the disclosure of required information in the advertising of life or disability insurance policies and annuity contracts. The standards must be designed to inform the public, in advance of purchase, of the advantages and disadvantages of the insurance product

without exaggerating benefits or minimizing limitations. The standards may include but are not limited to:

(a) descriptions of the principal benefits and coverage provided in the policy;

(b) statements of the exclusions, reductions, and limitations contained in the policy;

(c) statements on renewal, cancellation, and termination;

(d) benefit limitations, exclusions, and reductions;

(e) statements on nonguaranteed policy elements;

(f) premiums;

(g) testimonials, appraisals, analyses, or endorsements by third parties;

(h) introductory, initial, or special offers and enrollment periods.

(3) The commissioner may adopt reasonable rules that prohibit policy provisions not specifically authorized by statute that, in the opinion of the commissioner, are unjust or unfair or that discriminate against any person insured or proposed for coverage under a life or disability insurance policy or annuity contract.

**NEW SECTION. Section 5. Form and content of advertisements.** (1) The form and content of an advertisement for a life or disability insurance policy or an annuity contract must be sufficiently complete and clear to avoid

1 deception or the capacity or tendency to mislead or deceive.  
 2 The commissioner, after a hearing, shall determine whether  
 3 an advertisement has the capacity or tendency to mislead or  
 4 deceive based upon the overall impression that the  
 5 advertisement is reasonably expected to create upon a person  
 6 of average education and intelligence within the segment of  
 7 the public to which it is directed.

8 (2) An advertisement must be truthful and not  
 9 misleading in fact or in implication. Words or phrases may  
 10 not be used if their meaning is clear only by implication or  
 11 by familiarity with insurance terminology.

12 NEW SECTION. Section 6. Identity of insurer. (1) The  
 13 insurer shall state its name in all of its advertisements.  
 14 The form number or numbers of the policy advertised must be  
 15 stated in an advertisement that is an invitation to  
 16 contract. An advertisement may not use a trade name,  
 17 insurance group designation, name of the parent company of  
 18 the insurer, name of a particular division of the insurer,  
 19 service mark, slogan, symbol, or other device that without  
 20 disclosing the name of the actual insurer would have the  
 21 capacity or tendency to mislead or deceive as to the true  
 22 identity of the insurer or that would create the impression  
 23 that a company other than the insurer has any responsibility  
 24 for the financial obligation under a policy.

25 (2) An advertisement may not use any combination of

1 words, symbols, or physical materials that by their content,  
 2 phraseology, shape, color, or other characteristics are so  
 3 similar to a combination of words, symbols, or physical  
 4 materials used by a governmental program, agency, or entity  
 5 or that otherwise appear to be of a nature tending to  
 6 mislead prospective insureds into believing that the  
 7 solicitation is in some manner connected with such  
 8 governmental program, agency, or entity.

9 NEW SECTION. Section 7. Statements about an insurer.

10 (1) An advertisement may not contain statements, pictures,  
 11 or illustrations that are false or misleading, in fact or by  
 12 implication, with respect to the insurer's assets,  
 13 liabilities, insurance in force, corporate structure,  
 14 financial condition, years of operation, or the relative  
 15 position of the insurer in the insurance business.

16 (2) An advertisement may not contain a recommendation  
 17 by any commercial rating system unless it clearly indicates  
 18 the purpose of the recommendation and the limitations of the  
 19 scope and extent of the recommendation.

20 NEW SECTION. Section 8. Jurisdictional licensing and  
 21 status of insurer. (1) An advertisement that is intended to  
 22 be seen or heard beyond the limits of the jurisdiction in  
 23 which the insurer is licensed may not imply licensing beyond  
 24 those limits.

25 (2) An advertisement may not create the impression

1 that the insurer, its financial condition or status, the  
 2 payment of its claims, or the merits, desirability, or  
 3 advisability of its policy forms or kinds of plans of  
 4 insurance are recommended or endorsed by any governmental  
 5 program, agency, or entity unless a governmental program,  
 6 agency, or entity has in fact recommended or endorsed a  
 7 policy form or plan. Such fact of endorsement may be stated  
 8 if the governmental entity authorizes the use of its  
 9 recommendation or endorsement in the advertisement.

10 NEW SECTION. Section 9. Enforcement procedures. (1)  
 11 After [the effective date of this act], each insurer shall  
 12 maintain a file containing a specimen copy of every printed,  
 13 published, or prepared advertisement for its individual  
 14 policies and typical franchise and group policies  
 15 disseminated in Montana. The file must contain a notation  
 16 for each advertisement, indicating the manner and extent of  
 17 distribution and the form number of the policy. The file is  
 18 subject to regular and periodic inspection by the  
 19 department. A copy of all advertisements must be kept on  
 20 file for 4 years or until the filing of the next regular  
 21 report on examination of the insurer, whichever is longer.

22 (2) Each insurer required to file an annual statement  
 23 must also file with the department a certificate of  
 24 compliance with the provisions of [this act]. A certificate  
 25 of compliance must be executed by an authorized officer of

1 the insurer, who must state that, to the best of his  
 2 knowledge, the advertisements that were disseminated by the  
 3 insurer during the preceding statement year complied with or  
 4 were made to comply with the provisions of [this act] and  
 5 Title 33.

6 NEW SECTION. Section 10. Filing requirements for  
 7 advertising. Every insurer or other legal entity providing  
 8 life or disability insurance or annuity contracts in Montana  
 9 must provide to the commissioner for his review a copy of  
 10 any advertisement intended for use in this state.  
 11 Advertising material must be filed by the insurer with the  
 12 department at least 60 days before the insurer intends to  
 13 use the advertisement in this state.

14 NEW SECTION. Section 11. Penalties. The commissioner  
 15 may, after conducting a hearing pursuant to 33-1-701, impose  
 16 a fine of up to \$1,000 for each violation of any provision  
 17 of [sections 1 through 10]. The fine is in addition to all  
 18 other penalties imposed by the commissioner. Imposition of a  
 19 fine under this section is an order from which an appeal may  
 20 be taken, pursuant to the provisions of 33-1-711.

21 NEW SECTION. Section 12. Extension of authority. Any  
 22 existing authority to make rules on the subject of the  
 23 provisions of [this act] is extended to the provisions of  
 24 [this act].

25 NEW SECTION. Section 13. Codification instruction.

1 [Sections 1 through 11] are intended to be codified as an  
2 integral part of Title 33, chapter 18, and the provisions of  
3 Title 33, chapter 18, apply to [sections 1 through 11].

4 NEW SECTION. **Section 14.** Severability. If a part of  
5 [this act] is invalid, all valid parts that are severable  
6 from the invalid part remain in effect. If a part of [this  
7 act] is invalid in one or more of its applications, the part  
8 remains in effect in all valid applications that are  
9 severable from the invalid applications.

10 NEW SECTION. **Section 15.** Effective date. [This act]  
11 is effective on 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 HB081, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to regulate the advertising of life or disability insurance and annuity contracts; and providing an immediate effective date.

ASSUMPTIONS:

An additional FTE will be needed by the administering agency in order to comply with the act.

FISCAL IMPACT:Expenditures:Proposed Law

	<u>FY90</u>	<u>FY91</u>
Personal Services	\$22,188	\$22,197
Operating Expenses	500	500
Equipment	3,201	-0-
TOTAL	\$25,889	\$22,697

Funding Source:

State Special Revenue Funds	\$25,889	\$22,697
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1/12/89

RAY SHACKLEFORD, BUDGET DIRECTOR  
OFFICE OF BUDGET AND PROGRAM PLANNING

  
DAN W. HARRINGTON, PRIMARY SPONSOR

DATE

Fiscal Note for HB081, as introduced