

## HOUSE BILL 238

Introduced by Whalen, et al.

1/17	Introduced
1/18	Referred to Business & Economic Development
1/18	Fiscal Note Requested
1/24	Fiscal Note Received
1/26	Fiscal Note Printed
2/01	Hearing
2/06	Committee Report-Bill Passed
2/08	Rereferred to Business & Economic Development
2/09	Committee Report-Bill Passed as Amended
2/13	2nd Reading Passed
2/13	Taken from Engrossing
2/13	Rereferred to Appropriations
2/28	Hearing
3/18	Tabled in Committee

1 *House* BILL NO. *238*  
 2 INTRODUCED BY *Whalen Blaylock Menahan*  
 3 *Yellowtail Connolly Cohen*  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE  
 5 DISCLOSURE OF LOSS AND EXPENSE EXPERIENCE BY PROPERTY AND  
 6 CASUALTY INSURERS FOR PURPOSES OF DETERMINING THE  
 7 APPROPRIATENESS OF RATES CHARGED BY SUCH INSURERS; PROVIDING  
 8 A PENALTY; AND REPEALING SECTION 33-16-202, MCA."  
 9  
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 11 NEW SECTION. Section 1. Financial disclosure reports  
 12 required -- rulemaking. The commissioner shall promulgate  
 13 rules requiring each authorized insurer writing property or  
 14 casualty insurance in Montana to record and report its loss  
 15 and expense experience and other data the commissioner finds  
 16 necessary to determine whether rates are fair and  
 17 appropriate. The commissioner may designate one or more  
 18 rating organizations or advisory organizations to gather and  
 19 compile such experience and data. The commissioner shall  
 20 require each authorized insurer writing property or casualty  
 21 insurance in this state to submit an annual report, on a  
 22 form furnished by the commissioner, showing its direct  
 23 writings in this state and in the United States.  
 24 NEW SECTION. Section 2. Content of direct writings  
 25 report. (1) The direct writings report required by [section

1 1] must include but is not limited to the following specific  
 2 types of insurance written by the insurer:  
 3 (a) political subdivision liability insurance,  
 4 reported separately in the following categories:  
 5 (i) municipalities;  
 6 (ii) school districts; and  
 7 (iii) authorities;  
 8 (b) public official liability insurance;  
 9 (c) dram shop or tavern owners liability insurance;  
 10 (d) day-care center liability insurance;  
 11 (e) errors and omissions liability insurance;  
 12 (f) officers and directors liability insurance,  
 13 reported separately as follows:  
 14 (i) nonprofit entities; and  
 15 (ii) for-profit entities;  
 16 (g) products liability insurance;  
 17 (h) medical malpractice insurance;  
 18 (i) attorney malpractice insurance;  
 19 (j) architect and engineer malpractice insurance; and  
 20 (k) motor vehicle insurance, reported separately for  
 21 commercial and private passenger vehicles as follows:  
 22 (i) motor vehicle liability insurance first-party  
 23 benefits;  
 24 (ii) motor vehicle bodily injury liability insurance;  
 25 (iii) motor vehicle property liability insurance;

1 (iv) uninsured motorist insurance; and  
 2 (v) underinsured motorist insurance.  
 3 (2) The direct writings report must include the  
 4 following data, specific both to this state and to the  
 5 United States, by the type of insurance for the previous  
 6 year ending December 31:  
 7 (a) direct premiums written;  
 8 (b) direct premiums earned;  
 9 (c) net investment income, including net realized  
 10 capital gains and losses, using appropriate estimates where  
 11 necessary;  
 12 (d) data for each of the following categories used to  
 13 develop the sum of incurred claims:  
 14 (i) dollar amount of claims closed with payment; plus  
 15 (ii) reserves for reported claims at the end of the  
 16 current year; minus  
 17 (iii) reserves for reported claims at the end of the  
 18 previous year; plus  
 19 (iv) reserves for incurred but not reported claims at  
 20 the end of the current year; minus  
 21 (v) reserves for incurred but not reported claims at  
 22 the end of the previous year; plus  
 23 (vi) loss adjustment expenses for claims closed; plus  
 24 (vii) reserves for loss adjustment expenses at the end  
 25 of the current year; minus

1 (viii) reserves for loss adjustment expenses at the end  
 2 of the previous year;  
 3 (e) actual incurred expenses, allocated separately to  
 4 loss adjustment, commissions, other acquisition costs,  
 5 advertising, general office expenses, taxes, licenses, fees,  
 6 and all other expenses;  
 7 (f) net underwriting gain or loss;  
 8 (g) net operation gain or loss, including net  
 9 investment income;  
 10 (h) the number and dollar amount of claims closed,  
 11 with payment by year incurred and the amount reserved for  
 12 them;  
 13 (i) the number of claims closed without payment, by  
 14 year and the dollar amount reserved for those claims; and  
 15 (j) any other information requested by the  
 16 commissioner.  
 17 (3) For the first year in which the insurer is  
 18 required to file a direct writings report, the data required  
 19 by subsections (2)(a) through (2)(g) must include the  
 20 previous calendar year and each of the preceding 4 calendar  
 21 years.  
 22 NEW SECTION. Section 3. Duty of commissioner. It is  
 23 the duty of the commissioner to annually compile and review  
 24 all reports submitted by insurers under [sections 1 and 2]  
 25 to determine the appropriateness of premium rates for

1 property and casualty insurance in this state. The  
 2 commissioner's findings and the filed reports must be  
 3 provided to the appropriate committees of the legislature  
 4 and made available to any interested insured party or  
 5 citizen. If the commissioner finds at any time that any rate  
 6 is no longer fair or appropriate, he shall issue an order  
 7 withdrawing his approval for the rate. The order must  
 8 specify reasons for withdrawal of approval and must be  
 9 furnished to each affected insurer and rating organization.  
 10 The order is effective 30 days from its issuance unless the  
 11 affected insurer meets the burden of showing that the rate  
 12 is in fact fair and appropriate.

13 NEW SECTION. Section 4. Filing prerequisite to doing  
 14 business. Each insurance company shall file all of the  
 15 information required under [sections 1 and 2] with the  
 16 commissioner as a prerequisite to obtaining permission to  
 17 write coverage, to continue to do business, or to increase  
 18 or decrease rates charged for insurance coverage.

19 NEW SECTION. Section 5. Penalty. An insurer who fails  
 20 to comply with the terms of [sections 1, 2, and 4] shall pay  
 21 a civil penalty of \$10,000 and thereafter a fine of \$200  
 22 daily until the terms of [sections 1, 2, and 4] are met.  
 23 Imposition of a penalty under this section precludes any  
 24 other monetary penalty that may be imposed under this title.

25 NEW SECTION. Section 6. Repealer. Section 33-16-202,

1 MCA, is repealed.

2 NEW SECTION. Section 7. Extension of authority. Any  
 3 existing authority to make rules on the subject of the  
 4 provisions of [this act] is extended to the provisions of  
 5 [this act].

6 NEW SECTION. Section 8. Codification instruction.  
 7 [Sections 1 through 5] are intended to be codified as an  
 8 integral part of Title 33, chapter 16, and the provisions of  
 9 Title 33, chapter 16, apply to [sections 1 through 5].

-End-

## STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB238, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing for the disclosure of loss and expense experience by property and casualty insurers for purposes of determining the appropriateness of rates charged by such insurers; providing a penalty; and repealing Section 33-16-202, MCA.

ASSUMPTIONS:

1. HB238 if enacted, will require 11 additional FTE for the Insurance Department, State Auditor's Office. The positions required would be 2 actuaries, 1 attorney, 4 field investigators, 2 compliance specialists, an office clerk and a data entry position.
2. The addition FTE, operating expenses, and equipment will be funded with Insurance Regulatory Trust Account state special.
3. All insurers will comply with the provisions of this bill, and no additional revenue will be collected.

FISCAL IMPACT:

	Current Law	FY90 Proposed Law	Difference	Current Law	FY91 Proposed Law	Difference
<u>Expenditures:</u>						
State Auditor's Office						
Insurance Department						
FTE	24	35	11	24	35	11
Personal Services	\$569,835	\$ 914,599	\$ 344,764	\$570,454	\$ 914,144	\$ 343,690
Operating Expenses	169,143	257,403	88,260	140,544	228,804	88,260
Equipment	2,029	14,379	12,350	-0-	-0-	-0-
TOTAL	\$741,007	\$1,186,381	\$ 445,374	\$710,998	\$1,142,948	\$ 431,950

Funding: Insurance Regulatory Trust Account state special.

*Ray Shackelford* 1/24/89  
 RAY SHACKLEFORD, BUDGET DIRECTOR DATE  
 OFFICE OF BUDGET AND PROGRAM PLANNING

TIMOTHY J. WHALEN, SPONSOR DATE

Fiscal Note for HB238, as introduced

**HB 238**

APPROVED BY COMM. ON BUSINESS  
AND ECONOMIC DEVELOPMENT

HOUSE BILL NO. 238

INTRODUCED BY WHALEN, BLAYLOCK, MENAHAN, YELLOWTAIL,  
CONNELLY, COHEN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE  
DISCLOSURE OF LOSS AND EXPENSE EXPERIENCE BY PROPERTY AND  
CASUALTY INSURERS FOR PURPOSES OF DETERMINING THE  
APPROPRIATENESS OF RATES CHARGED BY SUCH INSURERS; PROVIDING  
A PENALTY; AND REPEALING SECTION 33-16-202, MCA."

STATEMENT OF INTENT

A statement of intent is required for this bill because  
[section 1] requires the commissioner of insurance of the  
state of Montana (commissioner) to promulgate rules  
requiring each authorized insurer writing property or  
casualty insurance in Montana to record and report its loss  
and expense experience and other data the commissioner finds  
necessary to determine whether rates are fair and  
appropriate. The legislature intends that the rules be  
designed principally to protect Montana insurance consumers,  
while making property and casualty insurance more available  
in this state. The legislature further intends that the  
commissioner adopt those rules in accordance with 33-1-313.  
Section 33-1-313 grants the commissioner general rulemaking  
authority and permits the commissioner:

(1) to make only reasonable rules that do not extend,  
modify, or conflict with any law of this state or with any  
reasonable implication of a law; and

(2) to make or amend those rules only after a hearing  
of which notice has been given as required by 33-1-703.

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

NEW SECTION. **Section 1.** Financial disclosure reports  
required -- rulemaking. The commissioner shall promulgate  
rules requiring each authorized insurer writing property or  
casualty insurance in Montana to record and report its loss  
and expense experience and other data the commissioner finds  
necessary to determine whether rates are fair and  
appropriate. The commissioner may designate one or more  
rating organizations or advisory organizations to gather and  
compile such experience and data. The commissioner shall  
require each authorized insurer writing property or casualty  
insurance in this state to submit an annual report, on a  
form furnished by the commissioner, showing its direct  
writings in this state and in the United States.

NEW SECTION. **Section 2.** Content of direct writings  
report. (1) The direct writings report required by [section  
1] must include but is not limited to the following specific  
types of insurance written by the insurer:

(a) political subdivision liability insurance,

1 reported separately in the following categories:

2 (i) municipalities;

3 (ii) school districts; and

4 (iii) authorities;

5 (b) public official liability insurance;

6 (c) dram shop or tavern owners liability insurance;

7 (d) day-care center liability insurance;

8 (e) errors and omissions liability insurance;

9 (f) officers and directors liability insurance,

10 reported separately as follows:

11 (i) nonprofit entities; and

12 (ii) for-profit entities;

13 (g) products liability insurance;

14 (h) medical malpractice insurance;

15 (i) attorney malpractice insurance;

16 (j) architect and engineer malpractice insurance; and

17 (k) motor vehicle insurance, reported separately for

18 commercial and private passenger vehicles as follows:

19 (i) motor vehicle liability insurance first-party

20 benefits;

21 (ii) motor vehicle bodily injury liability insurance;

22 (iii) motor vehicle property liability insurance;

23 (iv) uninsured motorist insurance; and

24 (v) underinsured motorist insurance.

25 (2) The direct writings report must include the

1 following data, specific both to this state and to the

2 United States, by the type of insurance for the previous

3 year ending December 31:

4 (a) direct premiums written;

5 (b) direct premiums earned;

6 (c) net investment income, including net realized

7 capital gains and losses, using appropriate estimates where

8 necessary;

9 (d) data for each of the following categories used to

10 develop the sum of incurred claims:

11 (i) dollar amount of claims closed with payment; plus

12 (ii) reserves for reported claims at the end of the

13 current year; minus

14 (iii) reserves for reported claims at the end of the

15 previous year; plus

16 (iv) reserves for incurred but not reported claims at

17 the end of the current year; minus

18 (v) reserves for incurred but not reported claims at

19 the end of the previous year; plus

20 (vi) loss adjustment expenses for claims closed; plus

21 (vii) reserves for loss adjustment expenses at the end

22 of the current year; minus

23 (viii) reserves for loss adjustment expenses at the end

24 of the previous year;

25 (e) actual incurred expenses, allocated separately to

1 loss adjustment, commissions, other acquisition costs,  
2 advertising, general office expenses, taxes, licenses, fees,  
3 and all other expenses;

4 (f) net underwriting gain or loss;

5 (g) net operation gain or loss, including net  
6 investment income;

7 (h) the number and dollar amount of claims closed,  
8 with payment by year incurred and the amount reserved for  
9 them;

10 (i) the number of claims closed without payment, by  
11 year and the dollar amount reserved for those claims; and

12 (j) any other information requested by the  
13 commissioner.

14 (3) For the first year in which the insurer is  
15 required to file a direct writings report, the data required  
16 by subsections (2)(a) through (2)(g) must include the  
17 previous calendar year and each of the preceding 4 calendar  
18 years.

19 NEW SECTION. **Section 3.** Duty of commissioner. It is  
20 the duty of the commissioner to annually compile and review  
21 all reports submitted by insurers under [sections 1 and 2]  
22 to determine the appropriateness of premium rates for  
23 property and casualty insurance in this state. The  
24 commissioner's findings and the filed reports must be  
25 provided to the appropriate committees of the legislature

1 and made available to any interested insured party or  
2 citizen. If the commissioner finds at any time that any rate  
3 is no longer fair or appropriate, he shall issue an order  
4 withdrawing his approval for the rate. The order must  
5 specify reasons for withdrawal of approval and must be  
6 furnished to each affected insurer and rating organization.  
7 The order is effective 30 days from its issuance unless the  
8 affected insurer meets the burden of showing that the rate  
9 is in fact fair and appropriate.

10 NEW SECTION. **Section 4.** Filing prerequisite to doing  
11 business. Each insurance company shall file all of the  
12 information required under [sections 1 and 2] with the  
13 commissioner as a prerequisite to obtaining permission to  
14 write coverage, to continue to do business, or to increase  
15 or decrease rates charged for insurance coverage.

16 NEW SECTION. **Section 5.** Penalty. An insurer who fails  
17 to comply with the terms of [sections 1, 2, and 4] shall pay  
18 a civil penalty of \$10,000 and thereafter a fine of \$200  
19 daily until the terms of [sections 1, 2, and 4] are met.  
20 Imposition of a penalty under this section precludes any  
21 other monetary penalty that may be imposed under this title.

22 NEW SECTION. **Section 6.** Repealer. Section 33-16-202,  
23 MCA, is repealed.

24 NEW SECTION. **Section 7.** Extension of authority. Any  
25 existing authority to make rules on the subject of the



1 provisions of [this act] is extended to the provisions of  
2 [this act].

3 NEW SECTION. **Section 8.** Codification instruction.  
4 [Sections 1 through 5] are intended to be codified as an  
5 integral part of Title 33, chapter 16, and the provisions of  
6 Title 33, chapter 16, apply to [sections 1 through 5].

-End-

## HOUSE BILL NO. 238

INTRODUCED BY WHALEN, BLAYLOCK, MENAHAN, YELLOWTAIL,  
CONNELLY, COHEN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE  
DISCLOSURE OF LOSS AND EXPENSE EXPERIENCE BY PROPERTY AND  
CASUALTY INSURERS FOR---PURPOSES---OF---DETERMINING---THE  
APPROPRIATENESS---OF---RATES---CHARGED---BY---SUCH---INSURERS; AND  
PROVIDING A PENALTY; ~~AND REPEALING SECTION 33-16-202, MCA.~~"

## STATEMENT OF INTENT

A statement of intent is required for this bill because  
[section 1] requires the commissioner of insurance of the  
state of Montana (commissioner) to promulgate rules  
requiring each authorized insurer writing property or  
casualty insurance in Montana to record and report its loss  
and expense experience and other data the commissioner finds  
necessary to determine whether rates are fair and  
appropriate. The legislature intends that the rules be  
designed principally to protect Montana insurance consumers,  
while making property and casualty insurance more available  
in this state. The legislature further intends that the  
commissioner adopt those rules in accordance with 33-1-313.  
Section 33-1-313 grants the commissioner general rulemaking  
authority and permits the commissioner:

(1) to make only reasonable rules that do not extend,  
modify, or conflict with any law of this state or with any  
reasonable implication of a law; and  
(2) to make or amend those rules only after a hearing  
of which notice has been given as required by 33-1-703.

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

NEW SECTION. Section 1. Financial disclosure reports  
required -- rulemaking. The commissioner shall promulgate  
rules requiring each authorized insurer writing property or  
casualty insurance in Montana to record and report its loss  
and expense experience and other data the commissioner finds  
necessary to determine whether rates are fair and  
appropriate. The commissioner may designate one or more  
rating organizations or advisory organizations to gather and  
compile such experience and data. The commissioner shall  
require each authorized insurer writing property or casualty  
insurance in this state to submit an annual report, on a  
form furnished by the commissioner, showing its direct  
writings in this state and in the United States.

NEW SECTION. Section 2. Content of direct writings  
report. (1) The direct writings report required by [section  
1] must include but is not limited to the following specific  
types of insurance written by the insurer:

(a) political subdivision liability insurance,

1 reported separately in the following categories:

- 2 (i) municipalities;
- 3 (ii) school districts; and
- 4 (iii) authorities;
- 5 (b) public official liability insurance;
- 6 (c) dram shop or tavern owners liability insurance;
- 7 (d) day-care center liability insurance;
- 8 (e) errors and omissions liability insurance;
- 9 (f) officers and directors liability insurance,

10 reported separately as follows:

- 11 (i) nonprofit entities; and
- 12 (ii) for-profit entities;
- 13 (g) products liability insurance;
- 14 (h) medical malpractice insurance;
- 15 (i) attorney malpractice insurance;
- 16 (j) architect and engineer malpractice insurance; and
- 17 (k) motor vehicle insurance, reported separately for
- 18 commercial and private passenger vehicles as follows:
- 19 (i) motor vehicle liability insurance first-party
- 20 benefits;
- 21 (ii) motor vehicle bodily injury liability insurance;
- 22 (iii) motor vehicle property liability insurance;
- 23 (iv) uninsured motorist insurance; and
- 24 (v) underinsured motorist insurance.
- 25 (2) The direct writings report must include the

1 following data, specific both to this state and to the  
2 United States, by the type of insurance for the previous  
3 year ending December 31:

- 4 (a) direct premiums written;
- 5 (b) direct premiums earned;
- 6 (c) net investment income, including net realized  
7 capital gains and losses, using appropriate estimates where  
8 necessary;
- 9 (d) data for each of the following categories used to  
10 develop the sum of incurred claims:
- 11 (i) dollar amount of claims closed with payment; plus
- 12 (ii) reserves for reported claims at the end of the  
13 current year; minus
- 14 (iii) reserves for reported claims at the end of the  
15 previous year; plus
- 16 (iv) reserves for incurred but not reported claims at  
17 the end of the current year; minus
- 18 (v) reserves for incurred but not reported claims at  
19 the end of the previous year; plus
- 20 (vi) loss adjustment expenses for claims closed; plus
- 21 (vii) reserves for loss adjustment expenses at the end  
22 of the current year; minus
- 23 (viii) reserves for loss adjustment expenses at the end  
24 of the previous year;
- 25 (e) actual incurred expenses, allocated separately to

1 loss adjustment, commissions, other acquisition costs,  
2 advertising, general office expenses, taxes, licenses, fees,  
3 and all other expenses;

4 (f) net underwriting gain or loss;

5 (g) net operation gain or loss, including net  
6 investment income;

7 (h) the number and dollar amount of claims closed,  
8 with payment by year incurred and the amount reserved for  
9 them;

10 (i) the number of claims closed without payment, by  
11 year and the dollar amount reserved for those claims; and

12 (j) any other information requested by the  
13 commissioner.

14 (3) For the first year in which the insurer is  
15 required to file a direct writings report, the data required  
16 by subsections (2)(a) through (2)(g) must include the  
17 previous calendar year and each of the preceding 4 calendar  
18 years.

19 NEW SECTION. Section 3. Duty of commissioner. It is  
20 the duty of the commissioner to ~~annually compile and review~~  
21 STORE all reports submitted by insurers under [sections 1  
22 and 2] ~~to determine the appropriateness of premium rates for~~  
23 ~~property and casualty insurance in this state.~~ The  
24 ~~commissioner's findings and the~~ filed reports must be  
25 provided to the appropriate committees of the legislature

1 and made available to any interested insured party or  
2 citizen. ~~if the commissioner finds at any time that any rate~~  
3 ~~is no longer fair or appropriate, he shall issue an order~~  
4 ~~withdrawing his approval for the rate. The order must~~  
5 ~~specify reasons for withdrawal of approval and must be~~  
6 ~~furnished to each affected insurer and rating organization.~~  
7 ~~The order is effective 30 days from its issuance unless the~~  
8 ~~affected insurer meets the burden of showing that the rate~~  
9 ~~is in fact fair and appropriate.~~

10 NEW SECTION. Section 4. Filing prerequisite to doing  
11 business. Each insurance company INSURER shall file ANNUALLY  
12 all of the information required under [sections 1 and 2]  
13 with the commissioner as a prerequisite to ~~obtaining~~  
14 ~~permission to write coverage, to continue to do business, or~~  
15 ~~to increase or decrease rates charged for insurance coverage~~  
16 TRANSACTIONING INSURANCE IN THIS STATE.

17 NEW SECTION. Section 5. Penalty. An insurer who fails  
18 to comply with the terms of [sections 1, 2, and 4] shall pay  
19 a civil penalty of \$10,000 and thereafter a fine of \$200  
20 daily until the terms of [sections 1, 2, and 4] are met.  
21 Imposition of a penalty under this section precludes any  
22 other monetary penalty that may be imposed under this title.

23 ~~NEW SECTION. Section 6. Repealer. Section 33-16-292,~~  
24 ~~MCA, is repealed.~~

25 NEW SECTION. Section 6. Extension of authority. Any

1 existing authority to make rules on the subject of the  
2 provisions of [this act] is extended to the provisions of  
3 [this act].

4 NEW SECTION. **Section 7.** Codification instruction.  
5 [Sections 1 through 5] are intended to be codified as an  
6 integral part of Title 33, chapter 16, and the provisions of  
7 Title 33, chapter 16, apply to [sections 1 through 5].

-End-