

SENATE BILL NO. 381

INTRODUCED BY FORRESTER, HARP, DOWELL, SQUIRES, DRISCOLL

IN THE SENATE

FEBRUARY 12, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
FEBRUARY 22, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 23, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 24, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 48; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 1, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
MARCH 16, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 27, 1993	SECOND READING, CONCURRED IN.
MARCH 30, 1993	THIRD READING, CONCURRED IN. AYES, 98; NOES, 0.
MARCH 31, 1993	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 5, 1993	SECOND READING, AMENDMENTS CONCURRED IN.
APRIL 6, 1993	THIRD READING, AMENDMENTS CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. *381*  
 2 INTRODUCED BY *Forrest HARRIS David*  
 3 *Agencies*  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING UNDERINSURED  
 5 EMPLOYERS AS EMPLOYERS WHO KNOWINGLY MISCLASSIFY EMPLOYEES'  
 6 WORK CATEGORIES IN ORDER TO PAY LOWER WORKERS' COMPENSATION  
 7 PREMIUMS; PROVIDING FOR THE COLLECTION OF PAYMENTS;  
 8 PROVIDING PENALTIES OR FINES; AND CREATING REMEDIES FOR  
 9 ENFORCEMENT BY THE DEPARTMENT OF LABOR AND INDUSTRY."  
 10  
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 12 NEW SECTION. Section 1. Definition of underinsured  
 13 employer. For purposes of [sections 1 through 4], the term  
 14 "underinsured employer" means an employer who knowingly  
 15 misclassifies an employee in order to pay lower workers'  
 16 compensation rates than the employer would have been  
 17 required to pay if the character of the employee's work had  
 18 been properly classified.  
 19 NEW SECTION. Section 2. Penalties and remedies for  
 20 underinsuring. (1) (a) The department may require that an  
 21 underinsured employer pay to the department a penalty of  
 22 double the premium that the employer would have paid if the  
 23 employer had properly classified the employee or \$200,  
 24 whichever is greater.  
 25 (b) The penalty provided in subsection (1)(a) may be

1 assessed against the employer for each employee not properly  
 2 classified.  
 3 (2) When the department discovers an underinsured  
 4 employer, it shall order the employer to cease operations  
 5 until the employer's employees are properly classified and  
 6 the correct premium rates are being paid to the insurer.  
 7 (3) An employer who does not comply with the  
 8 department's order to cease operations is guilty of a  
 9 misdemeanor. Each day of violation is a separate offense.  
 10 The county attorney may bring a criminal action under this  
 11 subsection in the county in which the violation occurs.  
 12 Prosecution under this subsection does not bar the  
 13 department from enforcing its order by a civil action.  
 14 (4) The department may institute and maintain in the  
 15 name of the state, through the attorney general or the  
 16 county attorney, an action for an injunction order or other  
 17 civil remedy in district court to enforce its order to cease  
 18 operations.  
 19 (5) This section does not limit a private insurer's  
 20 civil remedies to collect premiums owed by the employer for  
 21 paying insufficient premiums due to misclassification of  
 22 employees.  
 23 NEW SECTION. Section 3. Collection of payments from  
 24 underinsured employer. If, upon demand of the department, an  
 25 underinsured employer refuses to make the payments due under

1 [section 2], the amount due may be collected by the  
2 department through suit. The department may settle through  
3 compromise with the underinsured employer the amount to be  
4 collected.

5 NEW SECTION. **Section 4.** Creation of underinsured  
6 employers' fund. (1) There is created a fund into which the  
7 money collected under [sections 2 and 3] must be deposited.  
8 The department shall administer the fund and use the money  
9 deposited into the fund to administer and enforce the  
10 provisions of [sections 1 through 4].

11 (2) Any surplus in the fund may not be kept in the fund  
12 and must be deposited in the uninsured employers' fund to be  
13 used for the purposes of that fund as provided in 39-71-502.

14 NEW SECTION. **Section 5.** Codification instruction.  
15 [Sections 1 through 4] are intended to be codified as an  
16 integral part of Title 39, chapter 71, and the provisions of  
17 Title 39, chapter 71, apply to [sections 1 through 4].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0381, as introduced.

**DESCRIPTION OF PROPOSED LEGISLATION:** This bill defines underinsured employers and provides for collection of underpayments on Worker's Compensation premiums, fines and penalties for underpaying.

**ASSUMPTIONS:**

**Department of Labor and Industry (DOLI):**

1. The staffing and funding to implement the proposal are assumed to be similar to the Employment Relations Division (ERD) Uninsured Employer Fund (UEF).
2. The new program would use the supervisor and clerical support of the UEF program. Three additional FTE would be required to staff the new program: 1 compliance specialist II, Grade 12, in Helena, to coordinate the activities of the field auditors, maintain the permanent records base, and audit employers' classification records solicited from the central office: 2 field representatives I, Grade 13, stationed in Billings and Missoula, would be responsible for on-site audits for compliance across the state. Personal services costs for the compliance specialist II are \$26,270 (FY94) and \$26,750 (FY95); personal services costs for each field representative I are \$28,328 (FY94) and \$28,808 (FY95). Total costs, \$82,926 (FY94) and \$84,366 (FY95).
3. Initial funding would come from the Workers' Comp Regulation fund (WC). A new fund would be created for the revenues derived from this new legislation, the UnderInsured Employers Fund (UIEF). When revenues in the UIEF are adequate, (assumed to be in FY95), the WC fund would be reimbursed from surplus in the UIEF.
4. Operating costs per FTE during FY92 in the UEF work unit were \$10,875. Therefore, estimated operating costs for the new fund are estimated to be \$32,625 each year of the biennium. In addition, there will be one-time costs including one desk (\$550), one chair (\$380), one legal sized four drawer filing cabinet (\$220), and one PC hutch (\$400) for each FTE during FY94. Total cost is \$18,150 (\$1,550 X 3).
5. One-time equipment costs will include a PC system (including LAN connectivity) for each FTE during FY94. Total cost of \$13,500 (\$4,500 X 3).

**State Fund**

6. The State Fund and DOLI will continue to have a normal exchange of audit information.
7. The burden of proving an employer "knowingly misclassified" will fall upon DOLI.

(Continued)

*David Lewis* 2-17-93  
DAVID LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

*Gary Forrester* 2/19/93  
GARY FORRESTER, PRIMARY SPONSOR      DATE

Fiscal Note for SB 381, as introduced

50381

FISCAL IMPACT:

Expenditures:

DOLI

	FY '94			FY '95		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	60.55	63.55	3.00	60.55	63.55	3.00
Personal Services	\$1,813,414	\$1,896,340	\$82,926	\$1,817,143	\$1,901,509	\$84,366
Operating Expenses	943,410	980,685	37,275	926,413	959,038	32,625
Equipment	87,020	100,520	13,500	87,020	87,020	0
Benefits and Claims	<u>1,628,827</u>	<u>1,628,827</u>	<u>0</u>	<u>1,769,827</u>	<u>1,769,827</u>	<u>0</u>
Total Expenditures	\$4,472,671	\$4,606,372	\$133,701	\$4,600,403	\$4,717,394	\$116,991

Funding:

General Fund	\$348,118	\$348,118	\$0	\$319,589	\$319,589	\$0
State Special Revenue Fund	1,723,306	1,723,306	0	1,722,779	1,722,779	0
Federal Special Revenue Fund	635,365	635,365	0	632,662	632,662	0
UnderInsured Employers Fund (UIEF)	0	0*	0	0	116,991	116,991
Proprietary Fund (WC)	<u>1,765,882</u>	<u>1,899,583</u>	<u>133,701</u>	<u>1,925,373</u>	<u>1,925,373</u>	<u>0</u>
Total Funding	\$4,472,671	\$4,606,372	\$133,701	\$4,600,403	\$4,717,394	\$116,991

\* The amount of funding for the UIEF is unknown. Therefore, a conservative estimate of zero funding in FY94 was used.

Revenues:

UnderInsured Employers Fund (UIEF)	\$0	\$0*	\$0	\$0	\$116,991	\$116,991
Proprietary Fund (WC)	<u>1,765,882</u>	<u>1,899,583</u>	<u>133,701</u>	<u>1,925,373</u>	<u>1,925,373</u>	<u>0</u>
Total Revenues	\$1,765,882	\$1,899,583	\$133,701	\$1,925,373	\$2,042,364	\$116,991

Net Impact:

DOLI \$133,701 from the WC fund in FY94 and \$116,991 from the UIEF fund in FY95 would be needed to support this legislation.  
State Fund The State Fund will be impacted by having the funding for this program come out of the WC fund during FY94. Currently, 66.33% of the total WC revenues are available to the State Fund (i.e. \$1,171,310 for FY94). The funding for FY94 of this program will reduce that available revenue by \$133,701. This will be repaid when the balance in the UIEF provides sufficient surplus. Please see technical notes.

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TECHNICAL NOTES:

1. Legislative language should be clarified to determine how far back ERD audits in order to determine the amount of the penalty. Currently the UEF program goes back three years.
2. Re: New Section 4 (2): Surplus in UnderInsured fund is not defined.
3. This program is intended to become self-funding, according to the legislative language, yet its proposed UnderInsured Employer Fund does not currently exist, and therefore has no funding to support the program. There are at least two funding alternatives: 1) General fund dollars could be used for the first two years of the program. During that time penalties would be deposited into this new UIEF, and beginning year three continue the operations of the UIEF program based on that source of funding. This was the way the original UEF program was started with \$150,000 "start-up" funds for administration and staffing purposes. 2) The bill can be amended to use Workers' Compensation Assessments for the first two years of operation, on the rationale that this program will greatly encourage employers to properly classify their workers for workers' compensation insurance purposes. This second alternative was the assumption used in preparing this fiscal note.

SB 381

APPROVED BY COMMITTEE  
ON LABOR & EMPLOYMENT  
RELATIONS

## SENATE BILL NO. 381

INTRODUCED BY FORRESTER, HARP, DOWELL, SQUIRES, DRISCOLL

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING UNDERINSURED EMPLOYERS AS EMPLOYERS WHO KNOWINGLY MISCLASSIFY MISREPRESENT EMPLOYEES' WORK CATEGORIES DESCRIPTIONS IN ORDER TO PAY LOWER WORKERS' COMPENSATION PREMIUMS; PROVIDING FOR THE COLLECTION OF PAYMENTS; PROVIDING PENALTIES OR FINES; AND CREATING REMEDIES FOR ENFORCEMENT BY THE DEPARTMENT OF LABOR AND INDUSTRY."

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

NEW SECTION. Section 1. Definition of underinsured employer. For purposes of [sections 1 through 4], the term "underinsured employer" means an employer who knowingly misclassifies MISREPRESENTS THE DUTIES OF an employee in order to pay lower workers' compensation rates than the employer would have been required to pay if the character of the employee's work had been properly classified. THE TERM "KNOWINGLY" HAS THE MEANING AS DEFINED IN 45-2-101.

NEW SECTION. Section 2. Penalties and remedies for underinsuring. (1) (a) The department may require that an underinsured employer pay to the department a penalty of double the premium that the employer would have paid if the employer had properly classified the employee or UP TO \$200,

whichever is greater. THE DEPARTMENT SHALL DETERMINE THE AMOUNT OF THE PENALTY BASED UPON THE GRAVITY OF THE VIOLATION, THE INTENT OF THE EMPLOYER, AND THE CLARITY OF THE RELEVANT CLASSIFICATION CODES. THE DETERMINATION BY THE DEPARTMENT IS SUBJECT TO THE PROVISIONS IN 39-71-204.

(b) The penalty provided in subsection (1)(a) may be assessed against the employer for each employee not properly classified.

(2) When the department discovers an underinsured employer, it shall MAY order the employer to cease operations until the employer's employees are properly classified and the correct premium rates are being paid to the insurer.

(3) An employer who does not comply with the department's order to cease operations is guilty of a misdemeanor. Each day of violation is a separate offense. The county attorney may bring a criminal action under this subsection in the county in which the violation occurs. Prosecution under this subsection does not bar the department from enforcing its order by a civil action.

(4) The department may institute and maintain in the name of the state, through the attorney general or the county attorney, an action for an injunction order or other civil remedy in district court to enforce its order to cease operations.



1       (5) This section does not limit a private insurer's  
2 civil remedies to collect premiums owed by the employer for  
3 paying insufficient premiums due to misclassification of  
4 employees.

5       NEW SECTION. **Section 3.** Collection of payments from  
6 underinsured employer. If, upon demand of the department, an  
7 underinsured employer refuses to make the payments due under  
8 [section 2], the amount due may be collected by the  
9 department through suit. The department may settle through  
10 compromise with the underinsured employer the amount to be  
11 collected.

12       NEW SECTION. **Section 4.** Creation of underinsured  
13 employers' fund. (1) There is created a fund into which the  
14 money collected under [sections 2 and 3] must be deposited.  
15 The department shall administer the fund and use the money  
16 deposited into the fund to administer and enforce the  
17 provisions of [sections 1 through 4].

18       (2) Any surplus in the fund may not be kept in the fund  
19 and must be deposited in the uninsured employers' fund to be  
20 used for the purposes of that fund as provided in 39-71-502.

21       NEW SECTION. **Section 5.** Codification instruction.  
22 [Sections 1 through 4] are intended to be codified as an  
23 integral part of Title 39, chapter 71, and the provisions of  
24 Title 39, chapter 71, apply to [sections 1 through 4].

-End-

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whichever is greater. THE DEPARTMENT SHALL DETERMINE THE AMOUNT OF THE PENALTY BASED UPON THE GRAVITY OF THE VIOLATION, THE INTENT OF THE EMPLOYER, AND THE CLARITY OF THE RELEVANT CLASSIFICATION CODES. THE DETERMINATION BY THE DEPARTMENT IS SUBJECT TO THE PROVISIONS IN 39-71-204.

(b) The penalty provided in subsection (1)(a) may be assessed against the employer for each employee not properly classified.

(2) When the department discovers an underinsured employer, it shall MAY order the employer to cease operations until the employer's employees are properly classified and the correct premium rates are being paid to the insurer.

(3) An employer who does not comply with the department's order to cease operations is guilty of a misdemeanor. Each day of violation is a separate offense. The county attorney may bring a criminal action under this subsection in the county in which the violation occurs. Prosecution under this subsection does not bar the department from enforcing its order by a civil action.

(4) The department may institute and maintain in the name of the state, through the attorney general or the county attorney, an action for an injunction order or other civil remedy in district court to enforce its order to cease operations.

(5) This section does not limit a private insurer's civil remedies to collect premiums owed by the employer for paying insufficient premiums due to misclassification of employees.

**NEW SECTION. Section 3.** Collection of payments from underinsured employer. If, upon demand of the department, an underinsured employer refuses to make the payments due under [section 2], the amount due may be collected by the department through suit. The department may settle through compromise with the underinsured employer the amount to be collected.

**NEW SECTION. Section 4.** Creation of underinsured employers' fund. (1) There is created a fund into which the money collected under [sections 2 and 3] must be deposited. The department shall administer the fund and use the money deposited into the fund to administer and enforce the provisions of [sections 1 through 4].

(2) Any surplus in the fund may not be kept in the fund and must be deposited in the uninsured employers' fund to be used for the purposes of that fund as provided in 39-71-502.

**NEW SECTION. Section 5.** Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [sections 1 through 4].


-End-

HOUSE STANDING COMMITTEE REPORT

March 12, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Labor report that Senate Bill 381 (third reading copy -- blue) be concurred in as amended.

Signed: 

Tom Nelson, Chair

And, that such amendments read:

Carried by: Rep. Driscoll

1. Page 1, line 24.

Following: line 23

Insert: "up to"

2. Page 1, line 25.

Strike: "UP TO"

3. Page 2, line 1.

Following: "greater."

Insert: "In determining the amount for the calculation of the penalty under this subsection (a), the department shall make an assessment on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was underinsured."

4. Page 2, line 3.

Following: "VIOLATION"

Strike: "," through "EMPLOYER,"

5. Page 2, line 9.

Following: line 8

Insert: "(c) The fund must receive from an underinsured employer an amount equal to all benefits paid or to be paid from the fund to an injured employee of the underinsured employer. However, the uninsured employer's liability under this subsection (c) may not exceed \$50,000."

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Committee Vote:  
Yes 14, No 0.

HOUSE

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\$200, whichever is greater. IN DETERMINING THE AMOUNT FOR THE CALCULATION OF THE PENALTY UNDER THIS SUBSECTION (A), THE DEPARTMENT SHALL MAKE AN ASSESSMENT ON HOW MUCH PREMIUM WOULD HAVE BEEN PAID ON THE EMPLOYER'S PAST 3-YEAR PAYROLL FOR PERIODS WITHIN THE 3 YEARS WHEN THE EMPLOYER WAS UNDERINSURED. THE DEPARTMENT SHALL DETERMINE THE AMOUNT OF THE PENALTY BASED UPON THE GRAVITY OF THE VIOLATION,--THE INTENT--OF--THE--EMPLOYER, AND THE CLARITY OF THE RELEVANT CLASSIFICATION CODES. THE DETERMINATION BY THE DEPARTMENT IS SUBJECT TO THE PROVISIONS IN 39-71-204.

(b) The penalty provided in subsection (1)(a) may be assessed against the employer for each employee not properly classified.

(C) THE FUND MUST RECEIVE FROM AN UNDERINSURED EMPLOYER AN AMOUNT EQUAL TO ALL BENEFITS PAID OR TO BE PAID FROM THE FUND TO AN INJURED EMPLOYEE OF THE UNDERINSURED EMPLOYER. HOWEVER, THE UNINSURED EMPLOYER'S LIABILITY UNDER THIS SUBSECTION (C) MAY NOT EXCEED \$50,000.

(2) When the department discovers an underinsured employer, it ~~shall~~ MAY order the employer to cease operations until the employer's employees are properly classified and the correct premium rates are being paid to the insurer.

(3) An employer who does not comply with the department's order to cease operations is guilty of a

1 misdemeanor. Each day of violation is a separate offense.  
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