

House BILL NO. 496

INTRODUCED BY Bohlinger

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING SUBROGATION RIGHTS FOR AN INSURER AGAINST A JUDGMENT OR RECOVERY RECEIVED BY AN INSURED PERSON FROM A LIABLE THIRD PARTY; PROVIDING A PROCEDURE FOR NOTICE OF AN INTENT TO BRING AN ACTION AGAINST A THIRD PARTY; PROVIDING FOR SHARED COSTS OF A THIRD-PARTY ACTION; PROVIDING AN INSURER'S RIGHT OF ACTION AGAINST A THIRD PARTY; AND AMENDING SECTION 33-23-203, MCA."

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

**NEW SECTION. Section 1. Subrogation rights.** An insurance policy that is subject to chapters 22, 23, or 30 of this title may contain a provision providing that, to the extent necessary for the reimbursement of benefits paid to or on behalf of the insured person, the insurer is entitled to subrogation, pursuant to [section 2], against a judgment or recovery received by the insured person from a third party whose wrongful act or omission caused the injury necessitating benefit payments.

**NEW SECTION. Section 2. Notice -- shared cost of third-party action -- limitation.** (1) If an insured person intends to institute an action for damages against a third party, the insured person shall give the insurer reasonable notice of that intent.

(2) The insured person may request that the insurer pay a proportionate share of the reasonable costs of the third-party action, including attorney fees.

(3) An insurer may elect not to participate in the cost of the action. If an election is made, the insurer waives 50% of any subrogation rights granted to it by [section 1].

(4) Except as provided in [section 3], the insurer's right of subrogation granted in [section 1] may not be enforced until the insured person has been fully compensated for injuries suffered.

**NEW SECTION. Section 3. Insurer's right of action.** (1) If an insured person does not initiate an action for damages against a third party within the time period prescribed for the commencement of the cause of action, the insurer may initiate an action against the third party to enforce the insurer's

1 subrogation rights.

2 (2) The insurer may initiate an action within 1 year after the expiration of the period prescribed for  
3 the commencement of the insured person's cause of action against the third party.

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5 **Section 4.** Section 33-23-203, MCA, is amended to read:

6 **"33-23-203. Limitation of liability under motor vehicle liability policy.** (1) Unless a motor vehicle  
7 liability policy specifically provides otherwise, the limits of insurance coverage available under ~~any such the~~  
8 policy, including the limits of liability under uninsured motorist coverage, must be determined as follows,  
9 regardless of the number of motor vehicles insured under the policy:

10 (a) the limit of insurance coverage available for any one accident is the limit specified for the motor  
11 vehicle involved in the accident;

12 (b) if no motor vehicle insured under the policy is involved in the accident, the limit of insurance  
13 coverage available for any one accident is the highest limit of coverage specified for any one motor vehicle  
14 insured under the policy; and

15 (c) the limits of coverage specified for each motor vehicle insured under the policy may not be  
16 added together to determine the limit of insurance coverage available under the policy for any one accident.

17 (2) A motor vehicle liability policy may also provide for other reasonable limitations, exclusions,  
18 ~~or~~ reductions of coverage which, or subrogation clauses that are designed to prevent duplicate payments  
19 for the same element of loss under the motor vehicle liability policy or under other casualty or disability  
20 policy or health service corporation contract that provides coverage for a wrongful act or omission causing  
21 injury necessitating benefit payments."

22

23 **NEW SECTION. Section 5. Codification instructions.** (1) [Sections 1 and 2] are intended to be  
24 codified as an integral part of Title 33, chapter 23, part 1, and the provisions of Title 33, chapter 23, part  
25 1, apply to [sections 1 and 2].

26 (2) [Section 3] is intended to be codified as an integral part of Title 33, chapter 22, part 16; Title  
27 33, chapter 23, part 1; and Title 33, chapter 30, part 11.

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STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0496, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

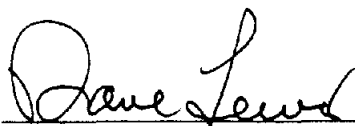
A bill authorizing subrogation rights for an insurer against a judgment or recovery received by an insured person from a liable third party; providing a procedure for notice of an intent to bring an action against a third party.

ASSUMPTIONS:

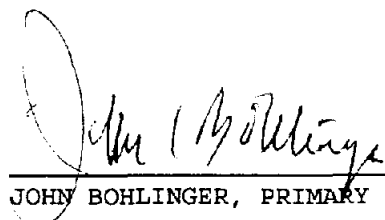
1. The bill will add one requirement for rates and forms review.
2. Present law staff in the State Auditor's Office will be able to handle the added review item in the normal processing of filing. The bill has no material fiscal impact on the State Auditor's Office.

FISCAL IMPACT:

None.

 2-15-95

DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

 2-15-95

JOHN BOHLINGER, PRIMARY SPONSOR      DATE

Fiscal Note for HB0496, as introduced

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