

SENATE BILL NO. 58

INTRODUCED BY M. MCNALLY

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING INSURANCE UNFAIR TRADE PRACTICE PERTAINING TO CLAIM INQUIRIES LAWS; PROHIBITING AN INSURER FROM CONSIDERING AN INSURED'S CLAIMS INQUIRIES THAT RESULTED IN NO PAYMENT IN THE APPLICATION FOR, RENEWAL OF, AND CHANGE IN AN INSURANCE POLICY; AND AMENDING SECTION 33-18-210, MCA."

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

Section 1. Section 33-18-210, MCA, is amended to read:

"33-18-210. Unfair discrimination and rebates prohibited for title, property, casualty, or surety insurance -- exceptions -- limitations. (1) Except as provided in subsections (3), (4), and (11)(a), a title, property, casualty, or surety insurer or an employee, representative, or insurance producer of an insurer may not, as an inducement to purchase insurance or after insurance has been effected, pay, allow, or give or offer to pay, allow, or give, directly or indirectly, a:

(a) rebate, discount, abatement, credit, or reduction of the premium named in the insurance policy;

(b) special favor or advantage in the dividends or other benefits to accrue on the policy; or

(c) valuable consideration or inducement not specified in the policy, except to the extent provided for in an applicable filing with the commissioner as provided by law.

(2) Except as provided in subsections (3), (4), and (11)(a), an insured named in a policy or an employee of the insured may not knowingly receive or accept, directly or indirectly, a:

(a) rebate, discount, abatement, credit, or reduction of premium;

(b) special favor or advantage; or

(c) valuable consideration or inducement.

(3) The prohibitions in subsections (1) and (2) do not apply to a benefit provided for by a telematics agreement as provided in 33-23-221 through 33-23-226.

(4) The prohibitions under subsections (1) and (2) do not apply to an active, retired, or honorably separated member of the United States armed forces as described in 33-18-217(1)(a) or to a spouse, surviving

1 spouse, dependent, or heir of a United States armed forces member as provided in 33-18-217.

2 (5) An insurer may not make or permit unfair discrimination in the premium or rates charged for
3 insurance, in the dividends or other benefits payable on insurance, or in any other of the terms and conditions
4 of the insurance either between insureds or property having like insuring or risk characteristics or between
5 insureds because of race, color, creed, religion, or national origin.

6 (6) This section may not be construed as prohibiting the payment of commissions or other compensation
7 to licensed insurance producers or as prohibiting an insurer from allowing or returning lawful dividends, savings,
8 or unabsorbed premium deposits to its participating policyholders, members, or subscribers.

9 (7) An insurer may not make or permit unfair discrimination between individuals or risks of the same
10 class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the
11 amount of insurance coverage on a property or casualty risk because of the geographic location of the risk,
12 unless:

13 (a) the refusal, cancellation, or limitation is for a business purpose that is not a mere pretext for unfair
14 discrimination; or

15 (b) the refusal, cancellation, or limitation is required by law or regulatory mandate.

16 (8) An insurer may not make or permit unfair discrimination between individuals or risks of the same
17 class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the
18 amount of insurance coverage on a residential property risk or on the personal property contained in the
19 residential property, because of the age of the residential property, unless:

20 (a) the refusal, cancellation, or limitation is for a business purpose that is not a mere pretext for unfair
21 discrimination; or

22 (b) the refusal, cancellation, or limitation is required by law or regulatory mandate.

23 (9) An insurer may not refuse to insure, refuse to continue to insure, or limit the amount of coverage
24 available to an individual because of the sex or marital status of the individual. However, an insurer may take
25 marital status into account for the purpose of defining persons eligible for dependents' benefits.

26 (10) An insurer may not terminate or modify coverage or refuse to issue or refuse to renew a property
27 or casualty policy or contract of insurance solely because the applicant or insured or any employee of either is
28 mentally or physically impaired. However, this subsection does not apply to accident and health insurance sold
29 by a casualty insurer, and this subsection may not be interpreted to modify any other provision of law relating to
30 the termination, modification, issuance, or renewal of any insurance policy or contract.

(11) (a) An insurer may not refuse to insure, refuse to continue to insure, charge higher rates, or limit the amount of coverage available to an individual under a private passenger automobile policy based solely on adverse information contained in an individual's driving record that is 3 years old or older. An insurer may provide discounts to an insured under a private passenger automobile policy based on favorable aspects of an insured's claims history that is 3 years old or older.

(b) An insurer may not use more than the most recent 5 years of loss experience that is available when determining whether to refuse to insure, refuse to continue to insure, charge higher rates, or limit the amount of coverage available under a commercial automobile policy. An insurer may provide discounts to an insured under a commercial automobile policy based on favorable aspects of an insured's claims history that is 5 years old or older.

(c) As used in subsection (11)(a), "private passenger automobile policy" means an automobile insurance policy issued to individuals or families but does not include policies known as commercial automobile policies.

(12) An insurer may not charge points or surcharge a private passenger motor vehicle policy because of a claim submitted under the insured's policy if the insured was not at fault.

(13) (a) An insurer may not consider an insured's inquiries or claims made to any insurer that did not result in a payment by the ANY insurer in considering an application for, renewal of, or change in an insurance policy as defined in 33-15-102.

(b) This subsection (13) does not apply to an insurer's consideration of a claim that was the basis for a criminal or civil insurance fraud action by a state or regulatory enforcement entity."

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