

HOUSE BILL NO. 114

INTRODUCED BY S. FITZPATRICK

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO CONSUMER PROTECTION; PROHIBITING UNFAIR OR DECEPTIVE ACTS OR PRACTICES RELATING TO UNFAIR FINANCIAL PLANNING PRACTICES; PROVIDING EXCEPTIONS; REVISING UNFAIR CLAIM SETTLEMENT PRACTICES; REVISING INSURANCE LAWS RELATING TO FINANCIAL INSTITUTIONS; REVISING LAWS RELATED TO INSURANCE PRODUCERS AND FINANCIAL PLANNERS, INVESTMENT PLANNERS, FINANCIAL COUNSELORS, OR ANY OTHER SPECIALIST ENGAGED IN THE BUSINESS OF PROVIDING FINANCIAL PLANNING OR SIMILAR ADVICE; PROVIDING DEFINITIONS; AMENDING SECTIONS 33-18-201, 33-18-202, 33-18-203, 33-18-501, AND 33-18-1001, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

NEW SECTION. Section 1. Unfair financial planning practices -- producers. (1) (a) An insurance producer may not directly or indirectly hold the insurance producer out to the public as a financial planner, investment adviser, consultant, financial counselor, or any other type of specialist engaged in the business of providing financial planning or advice relating to investments, insurance, real estate, tax matters, or trust and estate matters if the insurance producer:

(i) is engaged in only the sale of insurance policies; and
(ii) does not hold a formal and recognized financial planning or consultant certification or designation.

(b) Subsection (1)(a) does not preclude an insurance producer who holds a formal and recognized financial planning or consultant certification or designation from displaying the certification or designation when only selling insurance. An insurance producer who is selling insurance as provided in this subsection (1)(b) may not charge an additional fee for services that are customarily associated with the solicitation, negotiation, or

1 servicing of policies.

2 (2) (a) An insurance producer may not engage in the business of financial planning without

3 disclosing to the client prior to the execution of the agreement that:

4 (i) the insurance producer is also an insurance producer; and

5 (ii) a commission for the sale of an insurance product will be received by the insurance producer in
6 addition to the fee for financial planning.

7 (b) The disclosure requirement under subsection (2)(a) may be met by including the required
8 information in any disclosure required by federal or state securities law.

9 (3) (a) An insurance producer may not charge fees for financial planning unless the fees are based
10 on a written agreement signed by the party to be charged before the services under the agreement are
11 performed.

12 (b) A copy of the agreement must be provided to the party to be charged at the time the
13 agreement is signed by the party. The written agreement must specifically state:

14 (i) the services for which the fee is to be charged;

15 (ii) the amount of the fee to be charged or how it will be determined or calculated; and

16 (iii) that the client is under no obligation to purchase an insurance product through the insurance
17 producer or consultant.

18 (c) The insurance producer shall retain a copy of the agreement for not less than 3 years after
19 completion of services, and a copy must be available to the commissioner on request.

20

21 **NEW SECTION. Section 2. Health insurance lead generators -- scope and definitions.** For the
22 purposes of 33-18-101, 33-18-102, 33-18-201 through 33-18-206, 33-18-208, 33-18-209, 33-18-302, 33-18-
23 303, and Title 33, chapter 18, part 10, the following terms apply:

24 (1) "Health insurance lead generator" means a person who utilizes a lead-generating device to:

25 (a) publicize the availability of what is or what purports to be a health insurance product or service
26 that the person is not licensed to sell directly to a customer;

27 (b) identify a customer who may want to learn more about a health insurance product; or

28 (c) sell or transmit customer information to insurers or producers for follow-up contact and sales

1 activity.

2 (2) "Lead-generating device" means any communication directed to the public that, regardless of
3 form, content, or stated purpose, is intended to result in the compilation or qualification of a list containing
4 names and other personal information to be used to solicit residents of the state for the purchase of what is or
5 what purports to be a health insurance product or service.

6 (3) "Person" includes a health insurance lead generator.
7

8 **Section 3.** Section 33-18-201, MCA, is amended to read:

9 **"33-18-201. Unfair claim settlement practices prohibited.** A person may not, with such frequency
10 as to indicate a general business practice, do any of the following:

11 (1) misrepresent pertinent facts or insurance policy provisions relating to coverages at issue;

12 (2) fail to acknowledge and act reasonably promptly upon communications with respect to claims
13 arising under insurance policies;

14 (3) fail to adopt and implement reasonable standards for the prompt investigation of claims arising
15 under insurance policies;

16 (4) refuse to pay claims without conducting a reasonable investigation based ~~upon~~on all available
17 information;

18 (5) fail to affirm or deny coverage of claims within a reasonable time after proof of loss statements
19 have been completed;

20 (6) neglect to attempt in good faith to effectuate prompt, fair, and equitable settlements of claims in
21 which liability has become reasonably clear;

22 (7) compel insureds to institute litigation to recover amounts due under an insurance policy by
23 offering substantially less than the amounts ultimately recovered in actions brought by the insureds;

24 (8) attempt to settle a claim for less than the amount to which a reasonable person would have
25 believed the person was entitled by reference to written or printed advertising material accompanying or made
26 part of an application;

27 (9) attempt to settle claims on the basis of an application that was altered without notice to or
28 knowledge or consent of the insured;

(10) make claims payments to insureds or beneficiaries not accompanied by statements setting forth the coverage under which the payments are being made;

(11) make known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

(12) delay the investigation or payment of claims by requiring an insured, claimant, or physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

(13) fail to promptly settle claims, if liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; or

(14) fail to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement; or

(15) upon request of a policyholder or a producer designated by a policyholder, fail to provide a list of claims charged against a policy as required by 33-15-1126."

Section 4. Section 33-18-202, MCA, is amended to read:

"33-18-202. Misrepresentation and false advertising of policies prohibited. ~~No person shall~~ A person may not make, issue, circulate, or cause to be made, issued, or circulated any estimate, illustration, circular, sales presentation, omission, comparison, or statement ~~which~~ that:

(1) misrepresents the benefits, advantages, conditions, or terms of any insurance policy;

(2) misrepresents the dividends or share of the surplus to be received on any insurance policy;

(3) makes any false or misleading statement as to the dividends or share of surplus previously paid on any insurance policy;

(4) is misleading or is a misrepresentation as to the financial condition of any person or as to the legal reserve system upon which any life insurer operates;

(5) uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof of the policy or class of policies;

(6) is a misrepresentation, including any intentional misquote of the premium rate, for the purpose of inducing or tending to induce the purchase, lapse, forfeiture, exchange, conversion, or surrender of any insurance policy;

(6)(7) is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy; or

(7)(8) misrepresents any insurance policy as being shares of stock; or

(9) offers or provides insurance as an inducement to the purchase of another policy or otherwise uses certain terms including but not limited to "free" or "no cost".

Section 5. Section 33-18-203, MCA, is amended to read:

"33-18-203. False or deceptive advertising prohibited. A person may not make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, electronic mail, internet advertisement or posting, or other publication or in the form of a notice, circular, pamphlet, letter, electronic posting of any kind, or poster, or over any radio or television station, or through the internet or other electronic means, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of the person's insurance business, that is untrue, deceptive, or misleading."

Section 6. Section 33-18-501, MCA, is amended to read:

"33-18-501. Lenders -- ~~restrictions on solicitation, rejection, charges, and disclosure~~ -- favoring insurance producer prohibited favored agent of insurer -- coercion of debtors. (1) (a) ~~No person may~~ A person may not require, as a condition precedent to the lending of money or extension of credit or any renewal thereof ~~of these~~, that the person to whom such ~~the~~ money or credit is extended or whose obligation a creditor is to acquire or finance to negotiate any contract of insurance or renewal thereof of these through a particular insurer or group of insurers or a particular insurance producer or group of insurance producers.

(b) Subsection (1)(a) does not prohibit a person, a depository institution, or an affiliate of a depository institution from informing a customer or prospective customer:

(i) that insurance is required to obtain a loan or credit;

(ii) that loan or credit approval is contingent on the procurement by the customer of acceptable insurance; or

(iii) that insurance is available from the person, depository institution, or affiliate of a depository institution.

(2) ~~No person~~ A person, a depository institution, or an affiliate of a depository institution who lends money or extends credit may not do any of the following:

(a) solicit insurance for the protection of real property, after a person indicates interest in securing a first-mortgage credit extension, until ~~such~~ the person has received a commitment in writing from the lender as to a loan or credit extension;

(b) unreasonably reject a contract of insurance furnished by the borrower for the protection of the property securing the credit or lien. A rejection is not unreasonable if it is based on reasonable standards, uniformly applied, relating to the extent of coverage required and the financial soundness and the services of an insurer. ~~Such~~ These standards may not discriminate against any particular type of insurer or call for the rejection of an insurance contract because the contract contains coverage in addition to that required by the credit transaction.

(c) require that any consumer, borrower, mortgagor, purchaser, insurer, or insurance producer pay a separate charge in connection with the handling of any contract of insurance required as security for a loan on real estate or pay a separate charge to substitute the insurance policy of one insurer for that of another. This subsection (2)(c) does not include the interest ~~which~~ that may be charged on premium loans or premium advancements in accordance with the terms of the loan or credit document and does not apply to changes charges that would be required when the person, depository institution, or affiliate of a depository institution is the licensed producer providing the insurance.

(d) use or disclose information relative to a contract of insurance ~~which~~ that is required by the credit transaction:

(i) for the purpose of replacing ~~such~~ the insurance; and

(ii) without the prior written consent of the borrower;

(e) use an advertisement or other insurance promotional material that would cause a reasonable

1 person to mistakenly believe that the federal government or the state is responsible for the insurance sales
2 activity of, or stands behind the credit of, the person, depository institution, or affiliate of a depository institution;
3 (e)(f) require any procedures or conditions of licensed insurance producers or insurers not
4 customarily required of those insurance producers or insurers affiliated or in any way connected with the person
5 who lends money or extends credit.

6 (3) Each person ~~who~~ depository institution or affiliate of a depository institution that lends money
7 or extends credit and ~~who~~ that solicits insurance primarily for personal family or household purposes or on real
8 and personal property subject to subsection (2) of this section must explain to the borrower in writing that the
9 insurance related to such credit extension may be purchased from an insurer or insurance producer of the
10 borrower's choice, subject only to the lender's right to reject a given insurer or insurance producer as provided
11 in subsection (2)(b). ~~Compliance with disclosures as to insurance required by truth-in-lending laws or~~
12 ~~comparable state laws shall be compliance with this subsection. The disclosure must inform the customer that~~
13 ~~the customer's choice of insurer or insurance producer will not affect the credit decision or credit terms in any~~
14 ~~way, except that the depository institution may impose reasonable requirements concerning the~~
15 ~~creditworthiness of the insurer and the scope of coverage chosen as provided in subsection (2)(b).~~

16 ~~(4) (a) A depository institution that solicits, sells, advertises, or offers insurance, and any person~~
17 ~~who solicits, sells, advertises, or offers insurance on behalf of a depository institution or on the premises of a~~
18 ~~depository institution, shall disclose to the customer in writing, where practicable and in a clear and~~
19 ~~conspicuous manner, prior to a sale that the insurance:~~

20 ~~(i) is not a deposit;~~

21 ~~(ii) is not insured by the federal deposit insurance corporation or any other federal government~~
22 ~~agency;~~

23 ~~(iii) is not guaranteed by the depository institution, its affiliate, if applicable, or any person who is~~
24 ~~soliciting, selling, advertising, or offering insurance, if applicable; and~~

25 ~~(iv) when appropriate, involves investment risk, including the possible loss of value.~~

26 ~~(b) An affiliate of a depository institution is subject to the requirements of subsection (4)(a) only to~~
27 ~~the extent that it sells, solicits, advertises, or offers insurance products or annuities at an office of a depository~~
28 ~~institution or on behalf of a depository institution. The requirements of subsection (4)(a) apply only when an~~

~~individual purchases, applies to purchase, or is solicited to purchase insurance products or annuities primarily for personal, family, or household purposes and only to the extent that the disclosure would be accurate.~~

~~(c) (i) A depository institution that solicits, sells, advertises, or offers insurance, and any person who solicits, sells, advertises, or offers insurance on behalf of a depository institution or on the premises of a depository institution, shall obtain written acknowledgment of the receipt of the disclosure from the customer at the time the customer receives the disclosure or at the time of the initial purchase of the insurance policy.~~

~~(ii) If the solicitation is conducted by telephone, the person or depository institution shall obtain an oral acknowledgment of receipt of the disclosure, maintain sufficient documentation to show that the acknowledgment was given by the customer, and make reasonable efforts to obtain a written acknowledgment from the customer.~~

~~(iii) If a customer affirmatively consents to receiving the disclosures electronically and if the disclosures are provided in a format that the customer may retain or obtain later, the person or depository institution may provide the disclosure and obtain acknowledgment of the receipt of the disclosure from the customer using electronic media.~~

~~(d) For the purposes of subsection (4)(c), a person is considered to be selling, soliciting, advertising, or offering insurance on behalf of a depository institution, whether at an office of the depository institution or another location, if one of the following applies:~~

~~(i) the person represents to the customer that the sale, solicitation, advertisement, or offer of the insurance is by or on behalf of the depository institution;~~

~~(ii) the depository institution refers a customer to the person who sells insurance and the depository institution has a contractual arrangement to receive commissions or fees derived from the sale of insurance resulting from the referral; or~~

~~(iii) documents evidencing the sale, solicitation, advertisement, or offer of insurance identify or refer to the depository institution.~~

~~(4) The commissioner may examine and investigate those insurance-related activities of any person which may be in violation of this section. Any affected person may submit to the commissioner a complaint or material pertinent to the enforcement of this section.~~

~~(5)(4) The commissioner may examine and investigate insurance activities of any person, depository~~

institution, affiliate of a depository institution, or insurer that the commissioner believes may be in violation of this section. The person, depository institution, affiliate of a depository institution, or insurer shall make its insurance books and records available to the commissioner and the commissioner's staff for inspection upon reasonable notice. An affected person may submit to the commissioner a complaint or material pertinent to the enforcement of this section.

~~(5)(6)(5)~~ Nothing ~~herein~~ in this section prevents a person, a depository institution, or an affiliate of a depository institution who lends money or extends credit from placing insurance on real or personal property in the event the mortgagor, borrower, or purchaser has failed to provide required insurance in accordance with the terms of the loan or credit document.

~~(6)(7)(6)~~ Nothing ~~contained~~ in this section applies to credit life or credit accident and health insurance.

~~(8)(7)~~ For the purposes of this section, the terms "depository institution" and "affiliate of a depository institution" have the same meaning as provided in 32-1-109."

Section 7. Section 33-18-1001, MCA, is amended to read:

"33-18-1001. Complaint handling -- marketing -- performance -- record. (1) An insurer shall maintain a complete record of all the complaints which it has received since the date of its last examination under 33-1-401. This record shall ~~must~~ indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of the complaints, and the time it took to process each complaint.

(2) An insurer or a health insurance lead generator shall maintain its books, records, documents, and other business records in an order that ensures data regarding complaints, claims, rating, underwriting, and marketing materials are accessible and retrievable for examination by the commissioner. The data must be maintained for at least ~~the current calendar year and the 5 preceding years.~~

~~(2)(3)~~ For the purposes of this section, "complaint" means any written communication primarily expressing a grievance."

NEW SECTION. Section 8. Codification instruction. [Sections 1 and 2] are intended to be codified

1 as an integral part of Title 33, chapter 18, and the provisions of Title 33, chapter 18, apply to [sections 1 and 2].

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3 NEW SECTION. **Section 9. Effective date.** [This act] is effective January 1, 2026.

4 - END -

AMENDED