

1 HOUSE BILL NO. 948

2 INTRODUCED BY L. DEMING, K. LOVE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING INSURANCE LAWS RELATING TO THE
5 STATE AUDITOR; PROVIDING THAT THE INSURANCE DEPARTMENT OF THE STATE AUDITOR IS NOT
6 A CRIMINAL JUSTICE AGENCY; REQUIRING THAT INSURANCE INVESTIGATIONS TO UNDER THE
7 STATE AUDITOR BE REFERRED TO THE ATTORNEY GENERAL, THE APPLICABLE COUNTY
8 ATTORNEY, OR THE CRIMINAL JUSTICE AGENCY WITH JURISDICTION OVER THE MATTER;
9 PROVIDING AN APPROPRIATION; AMENDING SECTIONS 33-1-311, 33-1-409, AND 33-1-1203, MCA; AND
10 PROVIDING AN EFFECTIVE DATE."

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

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14 **Section 1.** Section 33-1-311, MCA, is amended to read:

15 **"33-1-311. General powers and duties.** (1) The commissioner shall enforce the applicable
16 provisions of the laws of this state and shall execute the duties imposed on the commissioner by the laws of
17 this state.

18 (2) The commissioner has the powers and authority expressly conferred upon the commissioner
19 by or reasonably implied from the provisions of the laws of this state.

20 (3) Except as otherwise provided in 33-39-101, the commissioner shall administer the department
21 to ensure that the interests of insurance consumers are protected.

22 (4) The commissioner may conduct examinations and investigations of insurance matters, in
23 addition to examinations and investigations expressly authorized, as the commissioner considers proper, to
24 determine whether any person has violated any provision of the laws of this state or to secure information
25 useful in the lawful administration of any provision. The cost of additional examinations and investigations must
26 be borne by the state.

27 (5) The commissioner shall maintain as confidential any information or document received from:

28 (a) the national association of insurance commissioners; or

(b) another state agency, an insurance department from another state, a federal agency, the interstate insurance product regulation commission, or a foreign government that treats the same information or document as confidential. The commissioner may provide information or documents, including information or documents that are confidential, to another state agency, the national association of insurance commissioners, a state or federal law enforcement agency, a federal agency, the interstate insurance product regulation commission, a foreign government, or an insurance department in another state if the recipient agrees to maintain the confidentiality of the information or documents.

(6) The department is not a criminal justice agency as defined in 44-5-103 and shall refer all criminal matters to the attorney general, the county attorney in the jurisdiction where a violation of Title 33 occurred, or any other criminal justice agency that may have jurisdiction over criminal matters."

Section 2. Section 33-1-409, MCA, is amended to read:

"33-1-409. Examination reports -- hearings -- confidentiality -- publication. (1) All examination reports must be composed only of facts appearing upon the books, records, or other documents of the company, its agents, or other persons examined or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs. The report must contain the conclusions and recommendations that the examiners find reasonably warranted from the facts.

(2) Not later than 60 days following completion of the examination, the examiner in charge shall file with the department a verified written report of examination under oath. Upon receipt of the verified report, the department shall transmit the report to the company examined, together with a notice that gives the company examined a reasonable opportunity, but not more than 30 days, to make a written submission or rebuttal with respect to any matters contained in the examination report.

(3) Within 30 days of the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers and enter an order:

(a) adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, regulation, or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers

1 necessary and appropriate to cure the violation.

2 (b) rejecting the examination report with directions to the examiners to reopen the examination for
3 purposes of obtaining additional data, documentation, information, or testimony and of refiling pursuant to
4 subsection (2); or

5 (c) calling for an investigatory hearing with no less than 20 days' notice to the company for
6 purposes of obtaining additional data, documentation, information, and testimony.

7 (4) (a) All orders entered pursuant to subsection (3)(a) must be accompanied by findings and
8 conclusions resulting from the commissioner's consideration and review of the examination report, relevant
9 examiner workpapers, and any written submissions or rebuttals. An order must be considered a final
10 administrative decision and may be appealed pursuant to Title 33, chapter 1, part 7, and must be served upon
11 the company by certified mail, together with a copy of the adopted examination report. Within 30 days of the
12 issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under
13 oath that they have received a copy of the adopted report and related orders.

14 (b) (i) A hearing conducted under subsection (3)(c) by the commissioner or an authorized
15 representative must be conducted as a nonadversarial, confidential, investigatory proceeding as necessary for
16 the resolution of any inconsistencies, discrepancies, or disputed issues apparent upon the face of the filed
17 examination report or raised by or as a result of the commissioner's review of relevant workpapers or by the
18 written submission or rebuttal of the company. Within 20 days of the conclusion of the hearing, the
19 commissioner shall enter an order pursuant to subsection (3)(a).

20 (ii) The commissioner may not appoint an examiner as an authorized representative to conduct the
21 hearing. The hearing must proceed expeditiously with discovery by the company limited to the examiner's
22 workpapers that tend to substantiate any assertions set forth in any written submission or rebuttal. The
23 commissioner or the commissioner's representative may issue subpoenas for the attendance of witnesses or
24 the production of documents considered relevant to the investigation, whether under the control of the
25 department, the company, or other persons. The documents produced must be included in the record, and
26 testimony taken by the commissioner or the commissioner's representative must be under oath and preserved
27 for the record. This section does not require the department to disclose any information or records that would
28 indicate or show the existence or content of an investigation or activity of a criminal justice agency that could be

1 prosecuted by an applicable criminal justice agency under 33-1-311.

2 (iii) The hearing must proceed with the commissioner or the commissioner's representative posing
3 questions to the persons subpoenaed. The company and the department may present testimony relevant to the
4 investigation. Cross-examination may be conducted only by the commissioner or the commissioner's
5 representative. The company and the department must be permitted to make closing statements and may be
6 represented by counsel of their choice.

7 (5) (a) Upon the adoption of the examination report under subsection (3)(a), the commissioner
8 shall continue to hold the content of the examination report as private and confidential information for a period
9 of 30 days, except to the extent provided in subsection (2). After 30 days, the commissioner shall open the
10 report for public inspection as long as a court of competent jurisdiction has not stayed its publication.

11 (b) This title does not prevent and may not be construed as prohibiting the commissioner from
12 disclosing the content of an examination report or preliminary examination report, the results of an examination,
13 or any matter relating to a report or results to the insurance department of this state or of any other state or
14 country, to law enforcement officials of this state or of any other state, or to an agency of the federal
15 government at any time as long as the agency or office receiving the report or matters relating to the report
16 agrees in writing to hold it in a manner consistent with this part.

17 (c) If the commissioner determines that regulatory action is appropriate as a result of an
18 examination, the commissioner may initiate any proceedings or actions as provided by law.

19 (6) (a) Working papers must be given confidential treatment, are not subject to subpoena, are not
20 discoverable or admissible as evidence in any private action, and may not be made public by the commissioner
21 or any other person except to the extent provided in 33-1-311(5) and subsection (5) of this section. Persons
22 given access to working papers shall agree, prior to receiving the information, to treat the information in the
23 manner required by this section unless prior written consent has been obtained from the company to which the
24 working papers pertain.

25 (b) For purposes of subsection (6)(a), "working papers" means:

26 (i) all papers and copies created, produced, obtained by, or disclosed to the commissioner or any
27 other person in the course of an examination or analysis by the commissioner;

28 (ii) confidential criminal justice information, as defined in 44-5-103;

1 (iii) personal information protected by an individual privacy interest; and

2 (iv) specifically identified trade secrets, as defined in 30-14-402, that have been obtained by or
3 disclosed to the commissioner or any other person in the course of an examination made under this part for
4 which there are reasonable grounds of privilege that are asserted by the party claiming the privilege."
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6 **Section 3.** Section 33-1-1203, MCA, is amended to read:

7 **"33-1-1203. Powers and duties of commissioner -- confidentiality of documents.** (1) The
8 commissioner may:

9 (a) initiate independent inquiries and conduct independent investigations when the commissioner
10 has reason to believe that insurance fraud may be, has been, or is currently being committed;

11 (b) respond to notice or complaints generated by federal, state, county, and local law enforcement
12 officers, other entities with law enforcement responsibilities, or governmental agencies or units;

13 (c) review and respond to notices or reports of insurance fraud submitted by any person, select the
14 incidents of suspected fraud that in the commissioner's judgment require further and more detailed
15 investigation, and conduct the investigations;

16 (d) conduct independent examinations of insurance fraud to determine the extent of insurance
17 fraud, deceit, or intentional misrepresentation;

18 (e) after investigation, report any meritorious alleged violation of the law to the appropriate
19 prosecuting authority or licensing agencies; and

20 (f) assemble evidence, prepare charges, and prosecute, if requested, or otherwise assist any
21 prosecuting authority that has jurisdiction, including the attorney general.

22 (2) Papers, records, documents, reports, materials, or other evidence relative to the subject of an
23 insurance fraud investigation must remain confidential and must be treated as confidential criminal justice
24 information, as defined in 44-5-103, that must be referred to the attorney general, the county attorney in the
25 jurisdiction where the violation of Title 33 occurred, or any other applicable criminal justice agency as provided
26 in 33-1-311. Evidence procured pursuant to this section may not be disseminated, except as provided in 44-5-
27 303.

28 (3) The commissioner shall notify the person who or the entity that has given notice of an alleged

1 insurance fraud pursuant to 33-1-1205(2) of receipt of the notice by the commissioner and of the disposition of
2 the notice and any resulting investigation."

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4 NEW SECTION. **Section 4. Appropriation.** There is appropriated \$250,000 from the general fund to
5 the attorney general for the biennium beginning July 1, 2025, for the purpose of enforcing criminal insurance
6 laws upon referrals from the commissioner of insurance as provided in [this act].

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8 NEW SECTION. **Section 5. Effective date.** [This act] is effective July 1, 2025.

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