

Senate Bill 209  
An Act to regulate post claim underwriting  
Written remarks of Randy Bishop  
Billings Montana

Underwriting is the practice of evaluating the risk to be insured. It originated in the 17<sup>th</sup> Century at Lloyds Coffee House, on Tower Street, London, England. There, persons seeking insurance coverage for shipping goods would circulate among the merchants a written description of the vessel, cargo, captain, crew, route and amount of insurance coverage sought. Any Lloyd's patron interested in pursuing the business of insurance was free to evaluate the risk and, if determined acceptable, write his name and the amount of insurance he was willing to provide, "under" the description on the piece of paper. Hence, the term "underwriting." Cady and Gates, *Post Claim Underwriting*, 102 WVLR 809 (Summer 2000).

Post claim underwriting turns this risk evaluation process upside down. An insurer engaged in post claim underwriting, "waits until a claim has been filed to obtain information and make underwriting decisions which should have been made when the application (for insurance) was made, not after the policy was issued." *Lewis v. Equity Nat'l Life Ins. Co.*, 637 So.2d 183, 186.

Instead of looking for ways to pay or deny the *claim*, the insurer engaged in post claim underwriting, receives the claim and immediately

begins looking for ways to avoid, or rescind, *the policy*. It examines the application and, for the first time, gathers and reviews the basic information bearing upon the risk. It takes these steps for the purpose of deciding *after the fact* whether to insure. Thus, the insurer avoids the expense of traditional insurance underwriting, and instead allows the occurrence of the loss to weed out the bad risks. At this point, of course, it's too late for the applicant to obtain other insurance at any price – the loss has already been suffered. In the case of life insurance, it is also too late to ask the policyholder any questions – the policyholder is dead.

Insurance applications, and particularly in the arena of low-end insurance, such as credit life and credit disability insurance, are sometimes drafted in a manner calculated to facilitate post claim underwriting and post claim policy rescissions. Examples of two such insurance applications actually used in Montana are attached, marked "A" and "B."

Honest Montanans are being victimized by the practice of post claim underwriting. Post claim underwriting has been prohibited for years, but that prohibition is difficult for the Office of the Insurance Commissioner to enforce because the prohibition is unclear, and inconsistent with Montana statutes which govern rescission. The purpose of this bill is to clarify the statutory definition of the prohibited practice of post claim underwriting as

set forth in § 33-18-215, M.C.A., and reconcile the prohibition of post claim underwriting with existing Montana law governing rescission of insurance policies, as set forth in § 33-15-403, M.C.A.

Thank you for your time and consideration of this important bill.

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APPLICATION

To Be Eligible For This Insurance, You Must Be Able To Answer "NO" To The Following Questions:

To the best of your knowledge and belief, have you had or been treated for:

	INSURED OBLIGOR		JOINT INSURED	
	Yes	No	Yes	No
1. Symptoms of any disease or disorder of the heart or circulatory system? .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Symptoms of any cancer or tumor? .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Symptoms of diabetes? .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Symptoms of stroke, epilepsy, liver disease, .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Symptoms of any disease or disorder of the digestive system? .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

I/we hereby declare that the statements on the application are true and complete to the best of my knowledge and belief and that they are the basis on which insurance requested by me may be issued. In the event insurance is not approved, Life Investors Insurance Company of America shall return any premium paid within 30 days of the date of the indebtedness; however, if a valid claim arises within such 30 days and prior to the Company having taken any action, insurance shall not be denied.

Insured obligor only. If disability is requested: I hereby declare that as of the date below, I am actively employed for wage or profit on a full-time basis (at least 30 hours per week.) (Unemployment solely because of seasonal lay-off shall not disqualify an otherwise eligible obligor.)

Date

4-16-90

Signature of Proposed Insured Obligor

*[Handwritten Signature]*

APPLICATION FOR INSURANCE

I hereby certify that I am in good health and am not under treatment for, or receiving medical advice for any illness, disease, or physical or mental impairment. In addition, I have not been diagnosed as having Acquired Immune Deficiency Syndrome (AIDS), AIDS Related Complex, or tested positive for antibodies to the AIDS virus. If applying for disability coverage, I also certify that I am gainfully employed and working at least 30 hours per week for the past month or unemployed solely because of seasonal layoff.

My date of birth is correctly stated above.

I make the above certifications with the intent of inducing Union Fidelity Life Insurance Company to issue this certificate of insurance. I understand that: (a) no person has the right to waive or change this application or the certificate of insurance; and (b) any untruthful answer or misrepresentation may be a basis for a denial of benefits or the voiding of this certificate of insurance.

Signed: Lawrence C. Williams Date: 12-7-96 Signed: Barbara Williams Date: 12/7/96  
Debtor (1st Signer of Contract) Co-Debtor (Joint Life Insurance Only)