

EXHIBIT NO. 2
DATE 4-18-05
BILL NO. SB-114
*Free Conference
Committee*

SENATE BILL NO. 114

INTRODUCED BY TESTER

BY REQUEST OF THE STATE AUDITOR

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5 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A FELONY FOR TRANSACTING INSURANCE
6 WITHOUT A CERTIFICATE OF AUTHORITY UNLESS OTHERWISE ALLOWED UNDER THE INSURANCE
7 CODE; SPECIFYING THE CRIME AS A KNOWING REPRESENTATION OF OR ASSISTANCE TO AN
8 UNAUTHORIZED INSURANCE PRODUCER; DESIGNATING AS INSURANCE FRAUD THE TRANSACTION
9 OF INSURANCE WITHOUT A VALID CERTIFICATE OF AUTHORITY; ~~MAKING INSURANCE FRAUD OR~~
10 ~~PRESENTATION OF A FALSE INSURANCE APPLICATION, CLAIM, OR PROOF OF LOSS A CRIME OF~~
11 ~~DECEPTIVE PRACTICES~~ CLARIFYING LANGUAGE RELATING TO INSURANCE OFFENSES; AND
12 AMENDING SECTIONS 33-1-1202, 33-1-1211, 33-1-1302, 33-2-101, 33-2-104, AND 33-18-401, AND 45-6-317,
13 MCA."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16
17 **Section 1.** Section 33-1-1202, MCA, is amended to read:

18 **"33-1-1202. Insurance fraud.** (1) A person commits the ~~act~~ OFFENSE of insurance fraud when the
19 person:

20 ~~(1)(A)~~ (A) for the purpose of obtaining any money or benefit, presents or causes to be presented to any
21 insurer, purported insurer, producer, or administrator, as defined in 33-17-102, any written or oral statement,
22 including computer-generated documents, containing false, incomplete, or misleading information concerning
23 any fact or thing material to, as part of, or in support of a claim for payment or other benefit pursuant to an
24 insurance policy;

25 ~~(2)(B)~~ (B) assists, abets, solicits, or conspires with another to prepare or make any written or oral statement
26 containing false, incomplete, or misleading information concerning any fact that is intended to be presented to
27 any insurer or purported insurer or in connection with, material to, or in support of any claim for payment or other
28 benefit pursuant to an insurance policy or contract;

29 ~~(3)(C)~~ (C) presents or causes to be presented to or by an insurer, purported insurer, producer, or
30 administrator, as defined in 33-17-102, a materially false or altered application of insurance;

1 ~~(4)(D) accepts premium money knowing that coverage will not be provided;~~
 2 ~~(5)(E) as a health care provider, submits a false or altered bill or report of physical condition to an~~
 3 ~~insurer; or~~
 4 ~~(6)(F) offers or accepts a direct or indirect inducement to file a false statement of claim with the intent~~
 5 ~~of deceiving an insurer; or~~
 6 ~~(7)(G) acts as an insurer or transacts insurance in this state except as authorized by a subsisting~~
 7 ~~certificate of authority issued by the commissioner as provided in 33-2-101 in this code unless:~~
 8 ~~(i) AUTHORIZED TO ACT AS AN INSURER OR TO TRANSACT INSURANCE IN THIS STATE BY A SUBSISTING~~
 9 ~~CERTIFICATE OF AUTHORITY ISSUED BY THE COMMISSIONER PURSUANT TO 33-2-101;~~
 10 ~~(ii) AUTHORIZED OR LICENSED BY THE COMMISSIONER TO ACT AS AN INSURER OR TO TRANSACT INSURANCE IN~~
 11 ~~THIS STATE AS AN ELIGIBLE SURPLUS LINES INSURER OR PRODUCER PURSUANT TO CHAPTER 2, PART 3, OF THIS TITLE;~~
 12 ~~OR~~
 13 ~~(iii) LICENSED BY THE COMMISSIONER TO TRANSACT INSURANCE IN THIS STATE AS AN ADJUSTER, ADMINISTRATOR,~~
 14 ~~CONSULTANT, OR PRODUCER PURSUANT TO CHAPTER 17 OF THIS TITLE.~~
 15 ~~(2) A PERSON WHO KNOWINGLY VIOLATES THIS SECTION COMMITS THE OFFENSE OF INSURANCE FRAUD AND~~
 16 ~~SHALL BE IMPRISONED FOR A TERM NOT TO EXCEED 10 YEARS OR FINED AN AMOUNT NOT TO EXCEED \$100,000, OR~~
 17 ~~BOTH."~~

18
19 **Section 2.** Section 33-1-1211, MCA, is amended to read:

20 **"33-1-1211. Penalties CIVIL PENALTIES.** (1) If, after a hearing conducted under 33-1-701, the
21 commissioner determines that a person has committed insurance fraud, the commissioner may:

- 22 (a) impose any penalty provided for in 33-1-317; or and
- 23 (b) require the person to pay the costs of the proceeding.

24 ~~(2) Any Subject to 46-11-410, a person who purposely or knowingly commits insurance fraud commits~~
25 ~~the offense of theft under 45-6-301 and deceptive practices under 45-6-317.~~

26 ~~(3)(2)~~ (2) In addition to any other penalties, the commissioner shall require a person who commits
27 insurance fraud to make restitution to the insurer or to any other person for all financial loss sustained as a result
28 of the insurance fraud."

29
30 **Section 3.** Section 33-1-1392, MCA, is amended to read:

1 **"33-1-1302. Insurance fraud -- insurer.** (1) A person commits the act of insurance fraud when in the
 2 course of offering or selling insurance, the person misrepresents a material fact, known to the person to be
 3 untrue or made with reckless indifference as to whether it the material fact is true, with the intention of causing
 4 another person to rely upon the misrepresentation to that relying person's detriment.

5 (2) The commissioner may, after ~~having conducted~~ conducting a hearing pursuant to 33-1-701, impose
 6 the penalties provided for in 33-1-317 for a violation of this section. Failure to pay a fine under this section results
 7 in a lien upon the assets and property of the person as provided in 33-1-318(3).

8 (3) In addition to any penalty provided for in 33-1-317, the commissioner may require a person regulated
 9 under this title who commits insurance fraud to make full restitution to the victim for all financial losses sustained
 10 as a result of the fraud with interest of 10% a year from the date of the fraud plus any costs and reasonable
 11 attorney fees, less the amount of any income or refund received by the victim from the insurance.

12 (4) The commissioner may require a person who commits insurance fraud to make full restitution to any
 13 insurer, purported insurer, or insurance producer who may have sustained any losses as a result of the fraud
 14 with interest of 10% a year from the date of the loss plus any costs and reasonable attorney fees.

15 (5) An insurer, insurance producer, or other person who sustained any losses and who was awarded
 16 restitution may bring suit to recover those sums, including any attorney fees, interest at 10% a year, and costs
 17 incurred in obtaining a judgment.

18 (6) Failure of a person to pay any amount ordered under this section constitutes a forfeiture of the right
 19 to do business in this state.

20 ~~(7) A Subject to 46-11-410, a person who purposely or knowingly is involved in the misappropriation
 21 or theft of insurance premiums or proceeds commits the offense of theft and is punishable, as provided in
 22 45-6-301, and the and deceptive practices, as provided in 45-6-317, and is punishable as provided in 45-6-301
 23 and 45-6-317. The commissioner may refer evidence concerning the violation to the attorney general or other
 24 appropriate prosecuting attorney.~~

25 ~~(7) A PERSON WHO KNOWINGLY MISAPPROPRIATES AN INSURANCE PREMIUM PAID BY OR PROCEEDS DUE AN
 26 INSURED IS GUILTY OF A FELONY AND SHALL BE IMPRISONED FOR A TERM NOT TO EXCEED 10 YEARS OR FINED AN AMOUNT
 27 NOT TO EXCEED \$100,000, OR BOTH. THE COMMISSIONER MAY REFER A SUSPECTED OFFENSE TO THE ATTORNEY
 28 GENERAL OR THE APPROPRIATE COUNTY ATTORNEY."~~

29
 30 Section 4. Section 33-2-101, MCA, is amended to read:

1 ~~A TERM NOT TO EXCEED 10 YEARS OR FINED AN AMOUNT NOT TO EXCEED \$100,000, OR BOTH."~~

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3 Section 6. Section 33-18-401, MCA, is amended to read:

4 "33-18-401. False application, claim, and proof of loss -- criminal penalty. (1) An insurance
5 producer, examining physician, applicant, or other person who knowingly or willfully purposely makes a false
6 or fraudulent statement or representation in or with reference to an application for insurance is guilty of a
7 misdemeanor and upon conviction shall be punished by a fine of not less than \$250 or more than \$1,000 or by
8 imprisonment in the county jail for not less than 3 months or more than 6 months, or both such fine and
9 imprisonment at the discretion of the court.

10 (2) ~~An insurance producer, examining physician, applicant, or other~~ (a) ~~Subject to 46-11-410, a~~ A
11 person who, for the purpose of obtaining any money or benefit, knowingly or willfully purposely presents or
12 causes to be presented a false or fraudulent claim or any proof in support of such a false or fraudulent claim for
13 the payment of the loss upon a contract of insurance or prepares, makes, or subscribes a false or fraudulent
14 account, certificate, affidavit or proof of loss, or other document or writing, with intent that the same may be
15 presented or used in support of such a false or fraudulent claim, is guilty of ~~a crime theft under 45-6-301 or~~
16 ~~deceptive practices under 45-6-317, and a~~ A county attorney may initiate criminal proceedings against him ~~that~~

✓

17 ~~PERSON A FELONY AND SHALL BE IMPRISONED FOR A TERM NOT TO EXCEED 10 YEARS OR FINED AN AMOUNT NOT TO~~
18 ~~EXCEED \$100,000, OR BOTH. EITHER A COUNTY ATTORNEY OR THE ATTORNEY GENERAL MAY PROSECUTE THE PERSON.~~
theft under 45-6-301

19 (b) As used in subsection (2)(a), "person" includes but is not limited to an insurance producer, examining
20 physician, or applicant."

21

22 Section 7. Section 45-6-317, MCA, is amended to read:

23 "45-6-317. Deceptive practices. (1) A person commits the offense of deceptive practices when the
24 person purposely or knowingly:

25 (a) causes another, by deception or threat, to execute a document disposing of property or a document
26 by which a pecuniary obligation is incurred;

27 (b) makes or directs another to make a false or deceptive statement addressed to the public or any
28 person for the purpose of promoting or procuring the sale of property or services;

29 (c) makes or directs another to make a false or deceptive statement to any person respecting the
30 financial condition of the person making or directing another to make the statement for the purpose of procuring

1 a loan or credit or accepts a false or deceptive statement from any person who is attempting to procure a loan
2 or credit regarding that person's financial condition; or
3 ~~_____ (d) obtains or attempts to obtain property, labor, or services by any of the following means:~~
4 ~~_____ (i) using a credit card that was issued to another without the other's consent;~~
5 ~~_____ (ii) using a credit card that has been revoked or canceled;~~
6 ~~_____ (iii) using a credit card that has been falsely made, counterfeited, or altered in any material respect;~~
7 ~~_____ (iv) using the pretended number or description of a fictitious credit card;~~
8 ~~_____ (v) using a credit card that has expired when the credit card clearly indicates the expiration date;~~
9 ~~_____ (vi) committing insurance fraud as provided in 33-1-1202 or 33-1-1302; or~~
10 ~~_____ (vii) presenting a false insurance application, claim, or proof of loss as provided in 33-18-401(2).~~
11 ~~_____ (2) A person convicted of the offense of deceptive practices shall be fined an amount not to exceed~~
12 ~~\$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both. If the deceptive practices~~
13 ~~are part of a common scheme or the value of any property, labor, or services obtained or attempted to be~~
14 ~~obtained exceeds \$1,000, the offender shall be fined an amount not to exceed \$50,000 or be imprisoned in the~~
15 ~~state prison for a term not to exceed 10 years, or both."~~

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- END -

NOTICE