

## 1 SENATE BILL NO. 352

2 INTRODUCED BY D. STEINBEISSER

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 4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING SPECIAL RISK CLASSIFICATIONS FOR PRIVATE  
 5 PASSENGER AND COMMERCIAL AUTOMOBILE POLICIES TO BE BASED ON FAVORABLE AND ADVERSE  
 6 INFORMATION CONTAINED IN AN ~~INDIVIDUAL'S DRIVING~~ EXPERIENCE RECORD; AND AMENDING  
 7 SECTIONS 33-16-201 AND 33-18-210, MCA."

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

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 11 **Section 1.** Section 33-16-201, MCA, is amended to read:  
 12 **"33-16-201. Standards applicable to rates.** The following standards apply to the making and use of  
 13 rates pertaining to all classes of insurance to which the provisions of this chapter are applicable:  
 14 (1) (a) Rates may not be excessive or inadequate, and they may not be unfairly discriminatory.  
 15 (b) A rate may not be held to be excessive unless the rate is unreasonably high for the insurance  
 16 provided and a reasonable degree of competition does not exist in the area with respect to the classification to  
 17 which the rate is applicable.  
 18 (c) A rate may not be held to be inadequate unless the rate is unreasonably low for the insurance  
 19 provided and the continued use of the rate endangers the solvency of the insurer using the rate or unless the rate  
 20 is unreasonably low for the insurance provided and the use of the rate by the insurer has, or if continued will have,  
 21 the effect of destroying competition or creating a monopoly.  
 22 (2) (a) Consideration must be given, when applicable, to past and prospective loss experience within  
 23 and outside this state, to revenue and profits from reserves, to conflagration and catastrophe hazards, if any, to  
 24 a reasonable margin for underwriting profit and contingencies, to past and prospective expenses, both  
 25 countrywide and those specially applicable to this state, and to all other factors, including judgment factors,  
 26 considered relevant within and outside this state. In the case of fire insurance rates, consideration may be given  
 27 to the experience of the fire insurance business during the most recent 5-year period for which experience is  
 28 available.  
 29 (b) Consideration may also be given in the making and use of rates to dividends, savings, or unabsorbed  
 30 premium deposits allowed or returned by insurers to their policyholders, members, or subscribers.

1 (3) The systems of expense provisions included in the rates for use by any insurer or group of insurers  
 2 may differ from those of other insurers or groups of insurers to reflect the operating methods of the insurer or  
 3 group with respect to any kind of insurance or with respect to any subdivision or combination of insurance.

4 (4) (a) Risks may be grouped by classifications for the establishment of rates and minimum premiums.  
 5 Classification rates may be modified to produce rates for ~~individual~~ separate risks in accordance with rating plans  
 6 that establish standards for measuring variations in hazards or expense provisions, or both. The standards may  
 7 measure any difference among risks that have a probable effect upon losses or expenses. Classifications or  
 8 modifications of classifications of risks may be established, based upon size, expense, management, individual  
 9 experience, location or dispersion of hazard, or any other reasonable considerations.

10 (b) Special risk classifications may be established for private passenger automobile policies. Special  
 11 risk classifications may be based upon favorable aspects of an ~~insured's~~ insured individual's claims history that  
 12 is 3 years old or older. ~~However, a special risk classification~~ Special risk classifications may not be established  
 13 based ~~solely~~ on anything adverse to the insured in a information contained in an insured individual's driving record  
 14 that is 3 years old or older.

15 (c) SPECIAL RISK CLASSIFICATIONS MAY BE ESTABLISHED FOR COMMERCIAL AUTOMOBILE POLICIES. SPECIAL RISK  
 16 CLASSIFICATIONS FOR COMMERCIAL AUTOMOBILE POLICIES MAY BE BASED UPON FAVORABLE ASPECTS OF AN INSURED'S  
 17 CLAIMS HISTORY THAT IS 5 YEARS OLD OR OLDER. SPECIAL RISK CLASSIFICATIONS FOR COMMERCIAL AUTOMOBILE  
 18 POLICIES MAY NOT BE ESTABLISHED BASED UPON LOSS EXPERIENCE THAT IS 5 YEARS OLD OR OLDER ESTABLISHED FOR  
 19 AN INSURED'S ADVERSE LOSS EXPERIENCE MAY NOT USE MORE THAN THE MOST RECENT 5 YEARS OF CLAIMS HISTORY  
 20 THAT IS AVAILABLE.

21 (e)(D) Classifications and modifications apply to all risks under the same or substantially the same  
 22 circumstances or conditions.

23 (d)(E) As used in subsection (4)(b), "private passenger automobile policy" means an automobile  
 24 insurance policy issued to individuals or families but does not include policies known as commercial automobile  
 25 policies."

26  
 27 **Section 2.** Section 33-18-210, MCA, is amended to read:

28 **"33-18-210. Unfair discrimination and rebates prohibited -- property, casualty, and surety**  
 29 **insurances.** (1) A title, property, casualty, or surety insurer or an employee, representative, or insurance  
 30 producer of an insurer may not, as an inducement to purchase insurance or after insurance has been effected,

1 pay, allow, or give or offer to pay, allow, or give, directly or indirectly, a:

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

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

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

6 (2) An insured named in a policy or an employee of the insured may not knowingly receive or accept,  
7 directly or indirectly, a:

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

9 (b) special favor or advantage; or

10 (c) valuable consideration or inducement.

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

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

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

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

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

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

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

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

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

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

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

15 (B) AN INSURER MAY NOT USE ~~NO~~ MORE THAN THE MOST RECENT 5 YEARS OF LOSS EXPERIENCE THAT IS  
16 AVAILABLE WHEN DETERMINING WHETHER TO REFUSE TO INSURE, REFUSE TO CONTINUE TO INSURE, CHARGE HIGHER  
17 RATES, OR LIMIT THE AMOUNT OF COVERAGE AVAILABLE UNDER A COMMERCIAL AUTOMOBILE POLICY. AN INSURER MAY  
18 PROVIDE DISCOUNTS TO AN INSURED UNDER A COMMERCIAL AUTOMOBILE POLICY BASED ON FAVORABLE ASPECTS OF AN  
19 INSURED'S CLAIMS HISTORY THAT IS 5 YEARS OLD OR OLDER.

20 (b)(c) As used in subsection (9)(a), "private passenger automobile policy" means an automobile  
21 insurance policy issued to individuals or families but does not include policies known as commercial automobile  
22 policies.

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

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