

SENATE BILL NO. 404

INTRODUCED BY F. THOMAS

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A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING WHAT IS TAXED FOR INSURANCE PREMIUM TAX PURPOSES; CLARIFYING THAT CERTAIN FEES MAY BE SEPARATELY CHARGED; AMENDING SECTIONS 33-2-705, 33-15-102, AND 33-18-212, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 33-2-705, MCA, is amended to read:

"33-2-705. Report on premiums and other consideration -- tax. (1) (a) Each authorized insurer and each formerly authorized insurer with respect to premiums received while an authorized insurer in this state shall file with the commissioner, on or before March 1 each year, a report in a form prescribed by the commissioner showing:

(i) total direct premium income, including policy, membership, and other fees or considerations not exempt under subsection (1)(e) or (1)(f);

(ii) premiums paid by application of dividends, refunds, savings, savings coupons, and similar returns or credits to payment of premiums for new or additional or extended or renewed insurance;

(iii) charges for payment of premium in installments; and

(iv) all other consideration for insurance from all kinds and classes of insurance, whether designated as a premium or otherwise, received by a life insurer or written by an insurer other than a life insurer during the preceding calendar year on account of policies covering property, subjects, or risks located, resident, or to be performed in Montana, ~~with~~

(b) The report must indicate proper proportionate allocation of premium as to property, subjects, or risks in Montana insured under policies or contracts covering property, subjects, or risks located or resident in more than one state, after deducting from the total direct premium income applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, the amount of reduction in or refund of premiums allowed to industrial life policyholders for payment of premiums direct to an office of the insurer, all policy dividends, refunds, savings, savings coupons, and other similar returns paid or credited to policyholders with respect to the policies.

(c) As to title insurance, "premium" includes the total charge for the insurance.

1 (d) A deduction may not be made of the cash surrender values of policies.

2 (e) The fees and taxes excluded from the definition of premium in 33-15-102 may not be calculated as
3 part of the premium for the purposes of the premium tax paid under this section.

4 (f) Considerations received on annuity contracts may not be included in total direct premium income and
5 are not subject to tax.

6 (2) Coincident with the filing of the tax report referred to in subsection (1), each insurer shall pay to the
7 commissioner a tax upon the net premiums computed at the rate of 2 3/4%.

8 (3) That portion of the tax paid under this section by an insurer on account of premiums received for fire
9 insurance must be separately specified in the report required by the commissioner for apportionment as provided
10 by law. When insurance against fire is included with insurance of property against other perils at an undivided
11 premium, the insurer shall make a reasonable allocation from the entire premium to the fire portion of the
12 coverage as must be stated in the report and as may be approved or accepted by the commissioner.

13 (4) With respect to authorized insurers, the premium tax provided by this section must be payment in
14 full and in lieu of all other demands for any and all state, county, city, district, municipal, and school taxes,
15 licenses, fees, and excises of whatever kind or character, excepting only those prescribed by this code, taxes
16 on real and tangible personal property located in this state, and taxes payable under 50-3-109.

17 (5) The commissioner may suspend or revoke the certificate of authority of any insurer that fails to pay
18 its taxes as required under this section.

19 (6) In addition to the penalty provided for in subsection (5), the commissioner may impose upon an
20 insurer who fails to pay the tax required under this section a fine of \$100 plus interest on the delinquent amount
21 at the annual interest rate of 12%.

22 (7) The commissioner may by rule provide a quarterly schedule for payment of portions of the premium
23 tax under this section during the year in which tax liability is accrued."
24

25 **Section 2.** Section 33-15-102, MCA, is amended to read:

26 **"33-15-102. Definitions.** (1) "Policy" means the written contract of or written agreement for or effecting
27 insurance, by whatever name called, and includes all clauses, riders, endorsements, and papers attached ~~thereto~~
28 to and a part thereof of the contract or written agreement.

29 (2) (a) "Premium" is the consideration for insurance, by whatever name called. Any assessment or
30 membership, policy, survey, inspection, service, or similar fee or charge in consideration for an insurance contract

1 is ~~deemed~~ considered part of the premium.

2 (b) The term does not include:

3 (i) the amount of applicable state or federal taxes imposed on a surplus lines insurance producer; or

4 (ii) a fee imposed on a policy or contract issued by a licensed property and casualty insurance producer
5 or a surplus lines insurance producer if:

6 (A) the fee is separately disclosed on an invoice or billing statement mailed or delivered to the insured;

7 (B) the fee reflects the actual administrative expenses incurred by the insurance producer; and

8 (C) the fee is no more than \$50 for a personal lines insurance policy or \$100 for a commercial lines
9 insurance policy."

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11 **Section 3.** Section 33-18-212, MCA, is amended to read:

12 **"33-18-212. ~~Illegal dealing in premiums -- improper~~ Improper charges for insurance -- allowed**

13 **additional charges.** (1) ~~A~~ Except as provided in subsection (2), a person may not willfully collect any sum as a
14 premium or charge for insurance that:

15 (a) is not then provided or is not in due course to be provided, subject to acceptance of the risk by the
16 insurer, by an insurance policy issued by an insurer as authorized by this code; ~~or~~

17 ~~(2) A person may not willfully collect as a premium or charge for insurance any sum~~

18 (b) is in excess of or less than the premium or charge applicable to the insurance and, as specified in the
19 policy, in accordance with the applicable classifications and rates filed with or approved by the commissioner;

20 ~~or in.~~ In cases in which classifications, premiums, or rates are not required by this code to be filed or approved,

21 the premiums and charges may not be in excess of or less than those specified in the policy and as fixed by the

22 insurer. This provision may not prohibit the charging and collection, by surplus lines insurance producers licensed

23 under chapter 2, part 3, of the amount of applicable state and federal taxes in addition to the premium required

24 by the insurer. This provision may not prohibit the charging and collection, by a life insurer, of amounts

25 (2) This section does not prohibit the charging and collection of the following in addition to the premium
26 amount:

27 (a) taxes or fees that are excluded from premiums as provided in 33-2-705 and 33-15-102; or

28 (b) the amounts required by a life insurer that are actually to be expended for medical examination of an
29 applicant for life insurance or for reinstatement of a life insurance policy.

30 (3) Each violation of this section is punishable under 33-1-104."

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2 NEW SECTION. **Section 4. Effective date.** [This act] is effective July 1, 2013.

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