

HOUSE BILL NO. 508

INTRODUCED BY R. OSMUNDSON

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A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING PERSONS REPRESENTING GLASS BROKERS IN CLAIMS FROM INSURANCE CODE REGULATION; AND AMENDING SECTIONS 33-1-102, 33-17-102, AND 33-18-223, MCA."

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

Section 1. Section 33-1-102, MCA, is amended to read:

"33-1-102. (Temporary) Compliance required -- exceptions -- health service corporations -- health maintenance organizations -- governmental insurance programs -- service contracts. (1) A person may not transact a business of insurance in Montana or a business relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) The provisions of this code do not apply with respect to:

- (a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;
- (b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and
- (c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of the corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) Except as provided in Title 33, chapter 40, part 1, this code does not apply to health maintenance organizations to the extent that the existence and operations of those organizations are governed by chapter 31.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, parts 21 and 23, and related sections.

(6) The department of public health and human services may limit the amount, scope, and duration of services for programs established under Title 53 that are provided under contract by entities subject to this title. The department of public health and human services may establish more restrictive eligibility requirements and fewer services than may be required by this title.

(7) This code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8, or the Montana university system group benefits plans established in Title 20, chapter 25, part



1 13.

2 (8) This code does not apply to insurance funded through the state self-insurance reserve fund provided
3 for in 2-9-202.

4 (9) (a) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement,
5 plan, or interlocal agreement between political subdivisions of this state in which the political subdivisions
6 undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or
7 self-insurance plan.

8 (b) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement,
9 plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program
10 of a single political subdivision of this state in which the political subdivision provides to its officers, elected
11 officials, or employees disability insurance or life insurance through a self-funded program.

12 (10) (a) This code does not apply to the marketing of, sale of, offering for sale of, issuance of, making
13 of, proposal to make, and administration of a service contract.

14 (b) A "service contract" means a contract or agreement for a separately stated consideration for a
15 specific duration to perform the repair, replacement, or maintenance of property or to indemnify for the repair,
16 replacement, or maintenance of property if an operational or structural failure is due to a defect in materials or
17 manufacturing or to normal wear and tear, with or without an additional provision for incidental payment or
18 indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service.
19 A service contract may provide for the repair, replacement, or maintenance of property for damage resulting from
20 power surges or accidental damage from handling. A service contract does not include motor club service as
21 defined in 61-12-301.

22 (11) (a) Subject to 33-18-201 and 33-18-242, this code does not apply to insurance for ambulance
23 services sold by a county, city, or town or to insurance sold by a third party if the county, city, or town is liable for
24 the financial risk under the contract with the third party as provided in 7-34-103.

25 (b) If the financial risk for ambulance service insurance is with an entity other than the county, city, or
26 town, the entity is subject to the provisions of this code.

27 (12) Except as provided in Title 33, chapter 40, part 1, this code does not apply to the self-insured student
28 health plan established in Title 20, chapter 25, part 14.

29 (13) This code does not apply to private air ambulance services that are in compliance with 50-6-320 and
30 that solicit membership subscriptions, accept membership applications, charge membership fees, and provide

1 air ambulance services to subscription members and designated members of their households.

2 (14) This code does not apply to guaranteed asset protection waivers that are governed by 30-14-151
3 through 30-14-157.

4 (15) This code does not apply to a person that:

5 (a) provides claim processing explanations and directions to the customer on behalf of an insurer;

6 (b) facilitates payments for the repair or replacement of vehicle glass claims on behalf of an insurer; or

7 (c) collects or aggregates data for an insurer related to the repair or replacement of vehicle glass.

8 (Terminates December 31, 2017--sec. 14, Ch. 363, L. 2013.)

9 **33-1-102. (Effective January 1, 2018) Compliance required -- exceptions -- health service**
10 **corporations -- health maintenance organizations -- governmental insurance programs -- service**

11 **contracts.** (1) A person may not transact a business of insurance in Montana or a business relative to a subject
12 resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

13 (2) The provisions of this code do not apply with respect to:

14 (a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

15 (b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

16 (c) fraternal benefit societies, except as stated in chapter 7.

17 (3) This code applies to health service corporations as prescribed in 33-30-102. The existence of the
18 corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

19 (4) This code does not apply to health maintenance organizations to the extent that the existence and
20 operations of those organizations are governed by chapter 31.

21 (5) This code does not apply to workers' compensation insurance programs provided for in Title 39,
22 chapter 71, parts 21 and 23, and related sections.

23 (6) The department of public health and human services may limit the amount, scope, and duration of
24 services for programs established under Title 53 that are provided under contract by entities subject to this title.
25 The department of public health and human services may establish more restrictive eligibility requirements and
26 fewer services than may be required by this title.

27 (7) This code does not apply to the state employee group insurance program established in Title 2,
28 chapter 18, part 8, or the Montana university system group benefits plans established in Title 20, chapter 25, part
29 13.

30 (8) This code does not apply to insurance funded through the state self-insurance reserve fund provided

1 for in 2-9-202.

2 (9) (a) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement,
3 plan, or interlocal agreement between political subdivisions of this state in which the political subdivisions
4 undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or
5 self-insurance plan.

6 (b) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement,
7 plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program
8 of a single political subdivision of this state in which the political subdivision provides to its officers, elected
9 officials, or employees disability insurance or life insurance through a self-funded program.

10 (10) (a) This code does not apply to the marketing of, sale of, offering for sale of, issuance of, making
11 of, proposal to make, and administration of a service contract.

12 (b) A "service contract" means a contract or agreement for a separately stated consideration for a
13 specific duration to perform the repair, replacement, or maintenance of property or to indemnify for the repair,
14 replacement, or maintenance of property if an operational or structural failure is due to a defect in materials or
15 manufacturing or to normal wear and tear, with or without an additional provision for incidental payment or
16 indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service.
17 A service contract may provide for the repair, replacement, or maintenance of property for damage resulting from
18 power surges or accidental damage from handling. A service contract does not include motor club service as
19 defined in 61-12-301.

20 (11) (a) Subject to 33-18-201 and 33-18-242, this code does not apply to insurance for ambulance
21 services sold by a county, city, or town or to insurance sold by a third party if the county, city, or town is liable for
22 the financial risk under the contract with the third party as provided in 7-34-103.

23 (b) If the financial risk for ambulance service insurance is with an entity other than the county, city, or
24 town, the entity is subject to the provisions of this code.

25 (12) This code does not apply to the self-insured student health plan established in Title 20, chapter 25,
26 part 14.

27 (13) This code does not apply to private air ambulance services that are in compliance with 50-6-320 and
28 that solicit membership subscriptions, accept membership applications, charge membership fees, and provide
29 air ambulance services to subscription members and designated members of their households.

30 (14) This code does not apply to guaranteed asset protection waivers that are governed by 30-14-151

1 through 30-14-157.

2 (15) This code does not apply to a person that:

3 (a) provides claim processing explanations and directions to the customer on behalf of an insurer;

4 (b) facilitates payments for the repair or replacement of vehicle glass claims on behalf of an insurer; or

5 (c) collects or aggregates data for an insurer related to the repair or replacement of vehicle glass."

6

7 **Section 2.** Section 33-17-102, MCA, is amended to read:

8 **"33-17-102. Definitions.** As used in this chapter, the following definitions apply:

9 (1) (a) "Adjuster" means a person who, on behalf of the insurer, for compensation as an independent
10 contractor or as the employee of an independent contractor or for a fee or commission investigates and
11 negotiates the settlement of claims arising under insurance contracts or otherwise acts on behalf of the insurer.

12 (b) The term does not include a:

13 (i) licensed attorney who is qualified to practice law in this state;

14 (ii) salaried employee of an insurer or of a managing general agent;

15 (iii) licensed insurance producer who adjusts or assists in adjustment of losses arising under policies
16 issued by the insurer;

17 (iv) licensed third-party administrator who adjusts or assists in adjustment of losses arising under policies
18 issued by the insurer; or

19 (v) claims examiner as defined in 39-71-116.

20 (2) "Adjuster license" means a document issued by the commissioner that authorizes a person to act
21 as an adjuster.

22 (3) (a) "Administrator" means a person who collects charges or premiums from residents of this state
23 in connection with life, disability, property, or casualty insurance or annuities or who adjusts or settles claims on
24 these coverages.

25 (b) The term does not include:

26 (i) an employer on behalf of its employees or on behalf of the employees of one or more subsidiaries of
27 affiliated corporations of the employer;

28 (ii) a union on behalf of its members;

29 (iii) (A) an insurer that is either authorized in this state or acting as an insurer with respect to a policy
30 lawfully issued and delivered by the insurer in and pursuant to the laws of a state in which the insurer is

- 1 authorized to transact insurance; or
- 2 (B) a health service corporation as defined in 33-30-101;
- 3 (iv) a life, disability, property, or casualty insurance producer who is licensed in this state and whose
- 4 activities are limited exclusively to the sale of insurance;
- 5 (v) a creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and
- 6 its debtors;
- 7 (vi) a trust established in conformity with 29 U.S.C. 186 or the trustees, agents, and employees of the
- 8 trust;
- 9 (vii) a trust exempt from taxation under section 501(a) of the Internal Revenue Code or the trustees and
- 10 employees of the trust;
- 11 (viii) a custodian acting pursuant to a custodian account that meets the requirements of section 401(f)
- 12 of the Internal Revenue Code or the agents and employees of the custodian;
- 13 (ix) a bank, credit union, or other financial institution that is subject to supervision or examination by
- 14 federal or state banking authorities;
- 15 (x) a company that issues credit cards and that advances for and collects premiums or charges from the
- 16 company's credit card holders who have authorized the company to do so, if the company does not adjust or
- 17 settle claims;
- 18 (xi) a person who adjusts or settles claims in the normal course of the person's practice or employment
- 19 as an attorney and who does not collect charges or premiums in connection with life or disability insurance or
- 20 annuities; ~~or~~
- 21 (xii) a person appointed as a managing general agent in this state whose activities are limited exclusively
- 22 to those described in 33-2-1501(10) and Title 33, chapter 2, part 16; or
- 23 (xiii) a person that:
- 24 (A) provides claim processing explanations and directions to the customer on behalf of an insurer;
- 25 (B) facilitates payments for the repair or replacement of vehicle glass claims on behalf of an insurer; or
- 26 (C) collects or aggregates data for an insurer related to the repair or replacement of vehicle glass.
- 27 (4) (a) "Business entity" means a corporation, association, partnership, limited liability company, limited
- 28 liability partnership, or other legal entity.
- 29 (b) The term does not include an individual.
- 30 (5) "Consultant" means an individual who for a fee examines, appraises, reviews, evaluates, makes

1 recommendations, or gives advice regarding an insurance policy, annuity, or pension contract, plan, or program.

2 (6) "Consultant license" means a document issued by the commissioner that authorizes an individual
3 to act as an insurance consultant.

4 (7) "Exchange" means a health benefit exchange established by the state of Montana or an exchange
5 established by the United States department of health and human services in accordance with 42 U.S.C. 18031.

6 (8) "Home state" means the District of Columbia or any state or territory of the United States in which
7 a person licensed under this chapter maintains a principal place of residence or a principal place of business.

8 (9) "Individual" means a natural person.

9 (10) "Insurance producer", except as provided in 33-17-103, means a person required to be licensed
10 under the laws of this state to sell, solicit, or negotiate insurance.

11 (11) "Lapse" means the expiration of the license for failure to renew by the biennial renewal date.

12 (12) "License" means a document issued by the commissioner that authorizes a person to act as an
13 insurance producer for the lines of authority specified in the document. The license itself does not create actual,
14 apparent, or inherent authority in the holder to represent or commit an insurer to a binding agreement.

15 (13) "Limited line credit insurance" includes credit life insurance, credit disability insurance, credit property
16 insurance, credit unemployment insurance, involuntary unemployment insurance, mortgage life insurance,
17 mortgage guaranty insurance, mortgage disability insurance, gap insurance, and any other form of insurance
18 offered in connection with an extension of credit that is limited to partially or wholly extinguishing the credit
19 obligation and that the commissioner determines should be designated as a form of limited line credit insurance.

20 (14) "Limited line credit insurance producer" means a person who sells, solicits, or negotiates one or
21 more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or
22 individual policy.

23 (15) "Limited lines insurance" means those lines of insurance that the commissioner finds necessary to
24 recognize for the purposes of complying with 33-17-401(3).

25 (16) "Limited lines producer" means a person authorized by the commissioner to sell, solicit, or negotiate
26 limited lines insurance.

27 (17) "Lines of authority" means any kind of insurance as defined in Title 33.

28 (18) "Navigator" means a person certified by the commissioner under 33-17-241 and selected to perform
29 the activities and duties identified in 42 U.S.C. 18031, et seq.

30 (19) "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or

1 prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or
2 conditions of the contract if the person engaged in negotiation either sells insurance or obtains insurance from
3 insurers for purchasers.

4 (20) "Person" means an individual or a business entity.

5 (21) "Public adjuster" means an adjuster employed by and representing the interests of the insured.

6 (22) "Sell" means to exchange a contract of insurance by any means, for money or the equivalent, on
7 behalf of an insurance company.

8 (23) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind
9 of insurance.

10 (24) "Suspend" means to bar the use of a person's license for a period of time."
11

12 **Section 3.** Section 33-18-223, MCA, is amended to read:

13 **"33-18-223. Prohibited activities -- glass broker defined.** (1) It is unlawful for an insurance company,
14 individually or with others, to directly or indirectly:

15 (a) establish an agreement with any person to act as a glass broker for the insurance company under
16 which the glass broker sets a price that must be met by a glass repair shop as a condition for doing glass
17 replacement or glass repair work for the insurance company;

18 (b) establish an agreement with a glass broker that requires a glass repair shop to bill through that glass
19 broker as a condition of doing glass replacement or glass repair work; or

20 (c) establish a price that must be met by a glass repair shop as a condition for doing glass replacement
21 or glass repair work that is below the market price as provided in 33-18-222.

22 (2) As used in this section, "glass broker" means an automobile glass company that acts as a third-party
23 agent for the insurer whenever the glass broker enters into agreements with other automobile glass dealers to
24 perform glass replacement or glass repair work. The term does not include a person that:

25 (a) provides claim processing explanations and directions to the customer on behalf of an insurer;

26 (b) facilitates payments for the repair or replacement of vehicle glass claims on behalf of an insurer; or

27 (c) collects or aggregates data for an insurer related to the repair or replacement of vehicle glass."
28

- END -