



AN ACT REVISING THE REQUIREMENTS FOR PROFESSIONAL LIABILITY INSURANCE COVERAGE FOR REAL ESTATE BROKER AND SALESPERSON LICENSEES; REVISING DEDUCTIBLE REQUIREMENTS; AMENDING SECTION 37-51-325, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 37-51-325, MCA, is amended to read:

"37-51-325. Professional liability insurance required -- errors and omissions insurance coverage -- policy requirements. (1) A real estate broker or salesperson with an active real estate license under this chapter must maintain continuous professional liability insurance coverage that meets the requirements of this section during the period of licensure. The insurance must cover the broker or salesperson for activities contemplated under Title 37, chapter 51, part 3, including errors and omissions by the real estate broker or salesperson.

(2) A real estate broker or salesperson with an active real estate license under this chapter must be covered by professional liability insurance through a policy:

(a) issued to real estate broker or salesperson licensees provided on a group policy basis that is approved by the board;

(b) obtained by real estate broker or salesperson licensees independently; or

(c) issued to the firm with which a real estate broker or salesperson license is affiliated.

(3) All policies issued under this chapter must:

(a) be issued by an insurer licensed under Title 33 to provide professional liability insurance;

(b) offer prior acts coverage to an insured who maintains continuous past insurance coverage;

(c) provide an automatic 60-day extended reporting period to report a claim if the policy is cancelled or not renewed for any reason other than nonpayment of premium or a deductible; and

(d) offer an optional extended reporting of not less than 365 days to report a claim, as long as the insured requests the extended reporting period and pays any additional premium for the extended reporting period within 60 days after expiration or cancellation of the policy.

(4) (a) A professional liability insurance policy must be issued to the board and must cover a group of real estate brokers and salespersons licensed under Title 37, chapter 51, part 3, as named insureds. The board may request bids from insurers for the group policy and may use a limited solicitation under 18-4-305. The maximum contract period between the insurer and the board is seven consecutive policy terms, although the board may place the contract out for bid at the end of any policy period. A policy term is for a year. A real estate broker or salesperson licensee may not be denied coverage or be cancelled by the group policy.

(b) The group policy must:

(i) have a minimum per-claim limit of \$100,000;

(ii) have a minimum annual aggregate limit of \$300,000;

(iii) have a deductible maximum of \$2,500 a claim for damages; and

(iv) provide coverage that is specific to the real estate broker or salesperson licensee regardless of changes in supervising broker.

(5) If the board is unable to obtain a professional liability insurance policy as described in subsection (4) on terms and conditions the board determines are commercially reasonable, the requirements of this section do not apply to the licensing period for which the policy is sought.

(6) A professional liability insurance policy may be independently issued to a real estate broker or salesperson licensee. The individual policy must:

(a) have a minimum per-claim limit of \$100,000;

(b) have a minimum annual aggregate limit of \$300,000; and

(c) have a deductible maximum of \$2,500 a claim for damages.

(7) A professional liability insurance policy issued to the firm with which a real estate broker or salesperson licensee is affiliated must:

(a) have a minimum per-claim limit of \$100,000;

(b) have a minimum annual aggregate limit of \$1 million; and

~~(c) provide for a deductible not to exceed \$10,000 a claim to be paid by the firm with which a real~~

~~estate broker or salesperson licensee is affiliated~~

(c) have a maximum deductible as follows:

(i) \$10,000 a claim; or

(ii) greater than \$10,000 a claim but not to exceed \$100,000 a claim, provided the firm has

obtained written approval from the board, based on rules adopted by the board, that the firm is financially able to pay the difference between the amount of the deductible set forth in the firm's professional liability insurance policy and \$10,000.

(8) An applicant seeking to obtain a real estate broker or salesperson license or renew an active real estate broker or salesperson license shall prove to the board compliance with the insurance requirements of this section. A real estate broker or salesperson licensee who fails to produce proof of coverage on request by the board or its designee is subject to administrative suspension or disciplinary action as determined by the board.

(9) For purposes of this section, the following definitions apply:

(a) "Aggregate limit" means a provision in an insurance contract limiting the maximum liability of an insurer for a series of losses in a given time period, such as a policy term.

(b) "Claims-made and reported policy" means an insurance policy written on a claims-made and reported basis, which provides coverage for claims first made against the insured and first reported to the insurer during the insured's policy period for acts, errors, or omissions that occur after the insured's retroactive date.

(c) "Extended reporting period" means a designated period of time after expiration or cancellation of a claims-made and reported policy during which a claim may be made and reported as if the claim had been made and reported during the policy period.

(d) "Per-claim limit" means the maximum limit payable, per licensee, for damages arising from the same or a related claim.

(e) "Prior acts coverage" means coverage under a policy for claims made against the insured and reported to the insurer that arise from acts, errors, or omissions in services rendered by an insured prior to inception of the current policy period.

(f) "Proof of coverage" means a copy of the actual policy of insurance, a certificate of insurance,

or a binder of insurance.

(g) "Retroactive date" means a provision, found in many claims-made and reported policies, that the policy may not cover claims for injuries or damages that occurred before the retroactive date even if the claim is first made during the policy period."

Section 2. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,
HB 615, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2023.

President of the Senate

Signed this _____ day
of _____, 2023.

HOUSE BILL NO. 615

INTRODUCED BY R. FITZGERALD, E. BUTTREY, C. KNUDSEN, K. SEEKINS-CROWE, M. BERTOGLIO

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