HOUSE BILL NO. 665

INTRODUCED BY D. GALLIK

A BILL FOR AN ACT ENTITLED: "AN ACT STRENGTHENING ENFORCEMENT OF MANDATORY MOTOR VEHICLE LIABILITY INSURANCE LAWS; CREATING THE UNINSURED MOTORIST IDENTIFICATION PROGRAM AND PROVIDING FOR A DATABASE; REQUIRING INSURERS TO PROVIDE CERTAIN INFORMATION TO THE DEPARTMENT OF JUSTICE'S DESIGNATED AGENT; PROVIDING FOR AN UNINSURED MOTORIST IDENTIFICATION FEE TO FUND THE PROGRAM; PROVIDING GUIDELINES FOR USE OF DISCLOSED INFORMATION AND PENALTIES FOR IMPROPER DISCLOSURE; AMENDING SECTIONS 17-7-502, 33-19-104, 33-19-202, AND 33-19-306, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 10] may be cited as the "Montana Uninsured Motorist Compliance Act".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 10], the following definitions apply:

(1) "Commissioner" means the commissioner of insurance.

(2) "Database" means the uninsured motorist identification database created in [section 3].

(3) "Department" means the department of justice.

(4) "Designated agent" means the party with whom the department contracts under [section 3].

(5) "Program" means the uninsured motorist identification program created in [section 3].

NEW SECTION. **Section 3. Creation of program and database -- designated agent to administer program -- duties of designated agent.** (1) There is an uninsured motorist identification program. The purpose of the program is to establish an uninsured motorist identification database to verify a motor vehicle owner's compliance with mandatory liability insurance requirements under Title 61, chapter 6, part 3, and to assist in reducing the number of uninsured motor vehicles on the highways of the state.

(2) The program must be administered by the department with the assistance of a designated agent.

(3) The department shall contract, in accordance with Title 18, chapter 4, and subject to subsection (4), with a designated agent to establish and maintain a database for the purposes of [sections 1 through 10].

(4) (a) The department may not contract with a designated agent as provided in subsection (3) unless at least two responsible and responsive bidders submit bids in response to the department's request for proposals or invitation for bids.

(b) The department may not use the sole source procurement method provided for in 18-4-306 for the purposes of this program.

(5) The designated agent shall develop and maintain a computer database from the information provided by insurers under [section 5] and by the department under [section 4]. The database must be developed and maintained in accordance with guidelines established by the department and designed to allow state and local law enforcement agencies to efficiently access the database.

(6) The designated agent shall, at least monthly:

(a) update the database with the motor vehicle insurance information provided by insurers; and

(b) compare all current motor vehicle registrations against the database.

(7) The designated agent shall archive computer data files at least semiannually for auditing purposes. The designated agent shall provide the department and the legislative auditor access to any records necessary to audit the program and verify billings made by the designated agent and to verify the accuracy of the designated agent's matching of vehicle registration with insurance data.

NEW SECTION. **Section 4. Department's duties.** (1) The department shall provide the designated agent with a record of all current motor vehicle registrations, excluding registrations provided for in 61-3-529, 61-3-711 through 61-3-733, and 61-3-736 through 61-3-738, and the name, date of birth, address, and driver's license number of all persons on the driver's license database.

(2) The department shall adopt rules to implement [sections 1 through 10], including rules for the use of the database.

NEW SECTION. **Section 5. Insurers' duties -- exemption from liability for negligence.** (1) On or before the 7th day of each calendar month, each insurer that issues a policy that includes motor vehicle liability coverage, uninsured motorist coverage, underinsured motorist coverage, or personal injury coverage under Title

33, chapter 23, part 2, shall provide to the department's designated agent a record of each motor vehicle insurance policy that was issued by the insurer and that was in effect during the previous month, excluding any policy issued for a commercial motor vehicle registered or proportionately registered in Montana or in any other jurisdiction.

(2) The record must include:

(a) the name, date of birth, and driver's license number of each insured owner or operator and the address of the named insured;

(b) the make, year, and vehicle identification number of each insured vehicle; and

(c) the policy number, effective date, and expiration date of each policy.

(3) Each insurer shall provide the information in an electronic or other format acceptable to the department's designated agent.

(4) The commissioner may assess against an insurer a civil penalty of up to $250 for each day that an insurer fails to comply with this section. An insurer is entitled to notice and a hearing before the penalty is assessed, and if the insurer shows that the failure to comply with this section was inadvertent, accidental, or the result of excusable neglect, the commissioner may not impose the civil penalty.

(5) Except for gross negligence, an insurer is not liable in negligence for any damages resulting from providing the designated agent with information as required by this section.

NEW SECTION. **Section 6. Uninsured motorist identification fee.** (1) Except as provided in subsection (2), an uninsured motorist identification fee of $1 must be assessed on the registration and reregistration of each motor vehicle subject to registration or reregistration under Title 61, chapter 3.

(2) A motor vehicle that is owned or leased by the United States or a state, county, or city is exempt from the fee assessed by this section.

(3) The uninsured motorist identification fee must be collected by the county treasurer and forwarded to the state treasurer for deposit in the uninsured motorist identification restricted account established in [section 10].

NEW SECTION. **Section 7. Uninsured vehicles -- providing proof of insurance.** (1) If the comparison made under [section 3] shows that a motor vehicle is not insured for 2 consecutive months, the designated agent shall provide notice to the owner of the motor vehicle that the owner has 15 days to provide:

(a) proof of liability insurance, a certificate of self-insurance, or an indemnity bond as required by 61-6-301; or

(b) proof of exemption from the liability insurance requirement under 61-6-303.

(2) If the owner of a motor vehicle fails to provide satisfactory proof as required by subsection (1), the designated agent shall:

(a) note the owner's failure to respond to the first notice and the date of the first notice in the database; and

(b) provide a second notice to the owner advising that if the proof required by subsection (1) is not provided by the owner within 10 days, the vehicle's registration will be subject to suspension by the department.

(3) If the owner of a motor vehicle fails to provide the proof required by subsection (1) within the time specified in the second notice, the designated agent shall:

(a) note the owner's failure to respond to the second notice and the date of the second notice in the database; and

(b) report the owner's noncompliance and relevant vehicle information to the department for suspension action under [section 8].

NEW SECTION. **Section 8. Suspension of vehicle registration.** (1) Upon receipt of notice from the designated agent that the owner of a vehicle has failed to provide satisfactory proof of liability insurance or exemption after two notices have been given, the department shall:

(a) suspend the registration of the vehicle for which the owner failed to provide proof; and

(b) direct the designated agent to send notice of the suspension to the owner.

(2) A criminal penalty may also be imposed under Title 61, chapter 6, part 3.

NEW SECTION. **Section 9. Use and confidentiality of database information -- exemption from liability for negligence.** (1) Information in the database established under [section 3] provided by a person to the designated agent is considered to be the property of the person providing the information. The provisions of Title 2, chapter 6, parts 1 and 2, do not apply to the information, and the information may not be disclosed by the designated agent or the department, except as provided in subsection (2).

(2) For the purposes of investigating, litigating, or enforcing the mandatory vehicle liability insurance requirements of Title 61, chapter 6, part 3, the designated agent shall:

(a) verify a motor vehicle's insurance status to law enforcement agencies, courts, and the department;

(b) issue to any state or local government agency or court a certificate documenting the insurance status, according to the database, of a specific individual or motor vehicle for the time period designated by the government agency or court; and

(c) disclose the insurance status of a motor vehicle and personal information identifying the motor vehicle owner to a peace officer acting in the officer's official capacity to enforce motor vehicle registration, insurance, or traffic control laws.

(3) A certificate or electronic report from the designated agent documenting or verifying the insurance status of a specific individual or motor vehicle supersedes an insurance card issued at least 15 days before the report.

(4) A person who knowingly releases or discloses information from the database for a purpose or to a person or entity other than as authorized in subsection (2) is guilty of a criminal offense and upon conviction may be fined an amount not to exceed $50,000, imprisoned for a period not to exceed 10 years, or both.

NEW SECTION. **Section 10. Uninsured motorist identification restricted account -- statutory appropriation.** (1) There is an uninsured motorist identification restricted account in the state special revenue fund provided for in 17-2-102.

(2) Fees received by the state treasurer pursuant to [section 6] must be deposited in the account.

(3) For the period beginning January 1, 2004, and ending June 30, 2005, there is statutorily appropriated, as provided in 17-7-502, from the uninsured motorist identification restricted account to the department of justice the amount of $1,325,000 to be used to administer [sections 1 through 10]. For the fiscal year beginning July 1, 2005, and for each fiscal year thereafter, there is statutorily appropriated, as provided in 17-7-502, from the uninsured motorist identification restricted account to the department of justice the amount of $850,000 to be used to administer [sections 1 through 10].

Section 11. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both

of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; [section 10]; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005; pursuant to sec. 17, Ch. 414, L. 2001, the inclusion of 2-15-151 terminates December 31, 2006; and pursuant to sec. 2, Ch. 594, L. 2001, the inclusion of 17-3-241 becomes effective July 1, 2003.)"

Section 12. Section 33-19-104, MCA, is amended to read:

"33-19-104. Definitions. As used in this chapter, the following definitions apply:

(1) (a) "Adverse underwriting decision" means any of the following actions with respect to insurance transactions involving insurance coverage that are individually underwritten:

(i) a declination of insurance coverage;

(ii) a termination of insurance coverage;

(iii) failure of an insurance producer to apply for insurance coverage with a specific insurance institution that the insurance producer represents and that is requested by an applicant;

(iv) in the case of a property or casualty insurance coverage:

(A) placement by an insurance institution or insurance producer of a risk with a residual market mechanism, an unauthorized insurer, or an insurance institution that specializes in substandard risks; or

(B) the charging of a higher rate on the basis of information that differs from that which the applicant or policyholder furnished;

(v) in the case of a life, health, or disability insurance coverage, an offer to insure at higher than standard rates.

(b) The following actions are not adverse underwriting decisions, but the insurance institution or insurance producer responsible for their occurrence shall nevertheless provide the applicant or policyholder with the specific reason or reasons for their occurrence:

(i) the termination of an individual policy form on a class or statewide basis;

(ii) a declination of insurance coverage solely because the coverage is not available on a class or statewide basis; or

(iii) the rescission of a policy.

(2) "Affiliate" or "affiliated" means a person who directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with another person.

(3) "Applicant" means a person who seeks to contract for insurance coverage other than a person seeking group insurance that is not individually underwritten.

(4) "Consumer report" means any written, oral, or other communication of information bearing on a natural person's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used or expected to be used in connection with an insurance transaction.

(5) "Consumer reporting agency" means a person who:

(a) regularly engages, in whole or in part, in the practice of assembling or preparing consumer reports for a monetary fee;

(b) obtains information primarily from sources other than insurance institutions; and

(c) furnishes consumer reports to other persons.

(6) "Control", including the terms "controlled by" or "under common control with", means the possession,

direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

(7) "Declination of insurance coverage" means a denial, in whole or in part, by an insurance institution or insurance producer of requested insurance coverage.

(8) "Individual" means a natural person who:

(a) regarding property or casualty insurance, is a past, present, or proposed named insured or certificate holder;

(b) regarding life, health, or disability insurance, is a past, present, or proposed principal insured or certificate holder;

(c) is a past, present, or proposed policyowner;

(d) is a past or present applicant;

(e) is a past or present claimant; or

(f) derived, derives, or is proposed to derive insurance coverage under an insurance policy or certificate subject to this chapter.

(9) "Institutional source" means a person or governmental entity that provides information about an individual to an insurance producer, insurance institution, or insurance-support organization, other than:

(a) an insurance producer;

(b) the individual who is the subject of the information; or

(c) a natural person acting in a personal capacity rather than a business or professional capacity.

(10) "Insurance function" means claims administration, claims adjustment and management, fraud investigation, underwriting, loss control, ratemaking functions, reinsurance, risk management, case management, disease management, quality assessment, quality improvement, provider credentialing verification, <u>reporting under [section 5],</u> utilization review, peer review activities, subrogation, grievance procedures, insurance transactions, and internal administration of compliance and policyholder service functions.

(11) (a) "Insurance institution" means a corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society, or other person engaged in the business of insurance, including health maintenance organizations, and health service corporations as defined in 33-30-101.

(b) Insurance institution does not include insurance producers or insurance-support organizations.

(12) "Insurance producer" means an insurance producer as defined in 33-17-102 and 33-30-311.

(13) (a) "Insurance-support organization" means a person who assembles or collects information about natural persons for the purpose of providing the information to an insurance institution or insurance producer for insurance transactions, including:

(i) the furnishing of consumer reports or investigative consumer reports to an insurance institution or insurance producer for use in connection with an insurance transaction; or

(ii) the collection of personal information from insurance institutions, insurance producers, or other insurance-support organizations for the purpose of detecting or preventing fraud, material misrepresentation, or material nondisclosure in connection with insurance underwriting or insurance claim activity.

(b) The following persons are not insurance-support organizations for purposes of this chapter: insurance producers, government institutions, medical care institutions, and medical professionals.

(14) "Insurance transaction" means a transaction involving insurance primarily for personal, family, or household needs, rather than for business or professional needs, that entails:

(a) the determination of an individual's eligibility for an insurance coverage, benefit, or payment; or

(b) the servicing of an insurance application, policy, contract, or certificate.

(15) "Investigative consumer report" means a consumer report or portion of a consumer report containing information about a natural person's character, general reputation, personal characteristics, or mode of living obtained through personal interviews with the person's neighbors, friends, associates, acquaintances, or others who may have knowledge concerning this type of information.

(16) "Licensee" means:

(a) an insurance institution, insurance producer, or other person who is licensed or required to be licensed, authorized or required to be authorized, or registered or required to be registered pursuant to this title; or

(b) a surplus lines insurer.

(17) "Medical care institution" means a facility or institution that is licensed to provide health care services to natural persons, including but not limited to health maintenance organizations, home health agencies, hospitals, medical clinics, public health agencies, rehabilitation agencies, and skilled nursing facilities.

(18) "Medical professional" means a person who is licensed or certified to provide health care services to natural persons, including but not limited to a chiropractor, clinical dietitian, clinical psychologist, dentist, nurse, occupational therapist, optometrist, pharmacist, physical therapist, physician, podiatrist, psychiatric social worker,

or speech-language pathologist.

(19) "Medical record information" means personal information that:

(a) relates to an individual's physical or mental condition, medical history, medical claims history, or medical treatment; and

(b) is obtained from a medical professional or medical care institution, from the individual, or from the individual's spouse, parent, or legal guardian.

(20) "Person" means a natural person, corporation, association, partnership, or other legal entity.

(21) "Personal information" means any individually identifiable information gathered in connection with an insurance transaction from which judgments can be made about an individual's character, habits, avocations, finances, occupation, general reputation, credit, health, or any other personal characteristics. Personal information includes an individual's name and address and medical record information but does not include privileged information.

(22) "Policyholder" means a person who:

(a) in the case of individual property or casualty insurance, is a present named insured;

(b) in the case of individual life, health, or disability insurance, is a present policyowner; or

(c) in the case of group insurance that is individually underwritten, is a present group certificate holder.

(23) "Pretext interview" means an interview during which a person, in an attempt to obtain information about a natural person, performs one or more of the following acts:

(a) pretends to be someone else;

(b) pretends to represent a person not in fact being represented;

(c) misrepresents the true purpose of the interview; or

(d) refuses to provide identification upon request.

(24) "Privileged information" means any individually identifiable information that:

(a) relates to a civil or criminal proceeding involving an individual; and

(b) is collected in connection with or in reasonable anticipation of a claim for insurance benefits or civil or criminal proceeding involving an individual. Information otherwise meeting the requirements of privileged information under this subsection is considered personal information under this chapter if it is disclosed in violation of 33-19-306.

(25) "Residual market mechanism" means an association, organization, or other entity defined or described in 61-6-144.

(26) "Separate, written authorization" means an individual's written authorization that is:

(a) given to the recipient of personal or privileged information that has been disclosed pursuant to 33-19-306(3) through ~~(22)~~ (23); and

(b) separate from any written authorization obtained by the disclosing insurance institution, insurance producer, or insurance-support organization.

(27) "Termination of insurance coverage" or "termination of an insurance policy" means either a cancellation or nonrenewal of an insurance policy, in whole or in part, for any reason other than the failure to pay a premium as required by the policy.

(28) "Unauthorized insurer" means an insurance institution that has not been granted a certificate of authority by the commissioner to transact the business of insurance in this state."

Section 13. Section 33-19-202, MCA, is amended to read:

"33-19-202. Notice of insurance information practices -- delivery of notice. A licensee shall provide a clear and conspicuous notice of information practices that accurately reflects its privacy policies and practices to individuals about whom personal information is collected by the licensee in connection with insurance transactions as follows:

(1) (a) Except as provided in subsection (2), in the case of a policyholder or certificate holder, a notice must be delivered by an insurance institution:

(i) in the case of policies issued after July 1, 2001, no later than at the time of the delivery of the insurance policy or certificate, unless the notice delivered to the policyholder or certificate holder pursuant to subsection (4)(a) when the policyholder or certificate holder was an applicant is still accurate;

(ii) at least annually, the 12-month period for which may be defined by the insurance institution and must be used consistently. The notice to certificate holders required in this subsection (1)(a)(ii) is not required if the insurance institution has not had any communication, including receiving a claim, from a certificate holder since the initial or last annual notice provided to the certificate holder.

(iii) in the case of a policy renewed after July 1, 2001, no later than the policy renewal date, except that notice is not required in connection with a policy renewal if:

(A) personal information is collected only from the policyholder or from public records; or

(B) a notice meeting the requirements of this section has been given within the previous 12 months.

(b) When a policyholder or certificate holder obtains a new insurance product or service or when a

policy is reinstated and any notices already provided are no longer accurate with respect to the new product, service, or reinstatement, a new or revised and accurate notice must be delivered to the policyholder or certificate holder no later than the time that the product or service is provided by the licensee or at the time of reinstatement, except that notice is not required if personal information is collected only from the policyholder or from public records.

(2) (a) An insurance institution is not required to meet the requirements of this section with respect to certificate holders until the insurance institution has personally identifiable information regarding the certificate holder.

(b) Until the notice requirements of subsection (1) are met, a third-party administrator or other agent or representative of an insurance institution may not disclose personal information, except as allowed in 33-19-306(2).

(3) The notice required in subsection (1) must be in writing and must state:

(a) the categories of personal information that may be collected from persons other than the individual or individuals covered;

(b) if a licensee discloses personal or privileged information to a third party without an authorization pursuant to an exception in 33-19-306 or 33-19-307, a separate description of the categories of information and the categories of third parties to whom the licensee discloses personal information;

(c) the categories of personal information about a former policyholder or certificate holder that the licensee discloses pursuant to 33-19-306 and 33-19-307 and the categories of persons to whom the disclosure may be made;

(d) any disclosure that the licensee makes pursuant to section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act, 15 U.S.C. 1681, et seq.;

(e) the licensee's policies and practices with respect to protecting the confidentiality and security of personal and privileged information;

(f) a description of the rights established under 33-19-301 and 33-19-302 and the manner in which those rights may be exercised;

(g) that information obtained from a report prepared by an insurance-support organization may be retained by the insurance-support organization and disclosed to other persons if the licensee collects or uses information from an insurance-support organization; and

(h) that an individual is entitled to receive, upon written request to the licensee, a record of any

subsequent disclosures of medical record information made by the licensee pursuant to 33-19-306 that must include:

(i) the name, address, and institutional affiliation, if any, of each person receiving or examining the medical information during the preceding 3 years;

(ii) the date of the receipt or examination; and

(iii) to the extent practicable, a description of the information disclosed.

(4) In the case of individuals who are not policyholders or certificate holders:

(a) except as provided in subsection (7), in the case of an applicant, an insurance institution shall provide a notice as described in subsection (3) when the applicant submits an application;

(b) for all other individuals, a notice must be given when a licensee seeks an authorization pursuant to 33-19-306(2) to make a disclosure that is not allowed by a disclosure exception provided for in 33-19-306(3) through ~~(22)~~ (23) or 33-19-307. A notice given pursuant to this subsection (4)(b) may be in an abbreviated form and must state that:

(i) personal information may be collected from persons other than the individual or individuals proposed for coverage;

(ii) the information as well as other personal or privileged information subsequently collected by the insurance institution or insurance producer may in certain circumstances be disclosed to third parties without authorization;

(iii) a right of access and correction exists with respect to all personal information collected; and

(iv) the notice prescribed in subsection (3) must be furnished upon request. The abbreviated notice provided for in this subsection (4)(b) must explain a reasonable means by which an individual may obtain that notice.

(5) The obligations imposed by this section upon a licensee may be satisfied:

(a) by another licensee authorized to act on its behalf;

(b) by sending a notice to the primary policyholder of an individual policy or to the primary certificate holder.

(6) A licensee shall provide a notice required by this section so that an intended recipient can reasonably be expected to receive actual notice in writing or, if the intended recipient agrees, electronically, as follows:

(a) by hand-delivering a printed copy of the notice to the intended recipient;

(b) by mailing a printed copy of the notice to the last-known address of the individual separately or in a policy, billing, or other written communication; or

(c) for an individual who has agreed to conduct transactions electronically, as provided in applicable law, by posting the notice on the electronic site and requiring the individual to acknowledge receipt of the notice as a necessary step to obtaining a particular insurance product or service.

(7) An insurance institution may provide the notice required in subsection (4)(a) telephonically if an application is submitted by telephone. A telephone notice under this subsection may be in abbreviated form as provided for in subsections (4)(b)(i) through (4)(b)(iv).

(8) If a licensee is required to provide notice concerning privacy in addition to the notice required by this section, the licensee may satisfy the notice requirements in this section through the use of combined or separate notices. If more than one notice form is used, a notice containing provisions specific to Montana must conspicuously refer to any other notice form."

Section 14. Section 33-19-306, MCA, is amended to read:

"33-19-306. Disclosure limitations and conditions. (1) Except as provided in this section, a licensee may not disclose personal or privileged information about an individual collected or received in connection with an insurance transaction.

(2) Disclosure may be made with the written authorization of the individual. The authorization must be in the form provided in 33-19-206.

(3) Disclosure limited to that which is reasonably necessary may be made to a person to enable the person to provide information to the disclosing licensee for the purpose of detecting or preventing criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with an insurance transaction. A person to whom information is disclosed pursuant to this subsection shall agree in writing not to further disclose the information, but this requirement for an agreement does not prevent disclosure of information that is necessary to obtain further information for the purposes set forth in this subsection.

(4) (a) Disclosure may be made between licensees if the information disclosed is limited to that which is reasonably necessary:

(i) to detect or prevent criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with insurance transactions; or

(ii) for either the disclosing or receiving licensee to perform its insurance function in connection with an

insurance transaction involving an individual.

(b) A licensee receiving information pursuant to this subsection (4) may not further disclose the information unless otherwise permitted by this section.

(5) Disclosure may be made to a medical care institution, a medical professional, or the individual to whom the information pertains if that information is reasonably necessary for the following purposes:

(a) verifying insurance coverage or benefits;

(b) informing an individual of a medical problem of which the individual may not be aware;

(c) conducting an operations or services audit; or

(d) determining the reasonableness or necessity of medical services.

(6) Disclosure:

(a) may be made to an insurance regulatory authority that agrees not to further disclose the information without the individual's separate, written authorization;

(b) must be made as required by law; and

(c) must be or may be made to the commissioner as required or permitted by law.

(7) Disclosure may be made by a licensee or an insurance-support organization to a law enforcement or other government authority or to an insurance regulatory agency:

(a) to protect the interests of a licensee in preventing, investigating, or prosecuting the perpetration of fraud upon a licensee; or

(b) if the licensee or insurance-support organization reasonably believes that illegal activities have been conducted by the individual.

(8) Disclosure that is limited to that which is reasonably necessary may be made as otherwise permitted or required by law.

(9) Disclosure that is limited to that which is reasonably necessary may be made in response to a facially valid administrative or judicial order, including a search warrant or subpoena.

(10) (a) Except as provided in subsection (10)(b), disclosure that is limited to that which is reasonably necessary may be made for the purpose of conducting actuarial or research studies if:

(i) an individual is not identified in any actuarial or research report;

(ii) materials allowing the individual to be identified are returned or destroyed as soon as they are no longer needed; and

(iii) the actuarial or research organization agrees not to further disclose the information without the

individual's separate, written authorization.

(b) Disclosure of information may be made for:

(i) health research that is subject to the approval of an institutional review board and the requirements of federal law and regulations governing biomedical research; or

(ii) epidemiological or drug therapy outcomes research that requires information that has been made anonymous to protect the identity of the patient through coding or encryption.

(11) Disclosure may be made to a party or a representative of a party to a proposed sale, transfer, merger, or consolidation of all or part of the business of the licensee or insurance-support organization if:

(a) prior to the consummation of the sale, transfer, merger, or consolidation only information is disclosed that is reasonably necessary to enable the recipient to make business decisions about the purchase, transfer, merger, or consolidation; and

(b) the recipient agrees not to further disclose the information without the individual's separate, written authorization.

(12) (a) Disclosure that is limited to that which is reasonably necessary may be made to a licensee's affiliate as follows:

(i) to allow use of the information in connection with an audit of the licensee;

(ii) to enable a licensee to perform an insurance function; or

(iii) as allowed by 33-19-307.

(b) A licensee disclosing pursuant to this section must have a written agreement with the affiliate that the affiliate will not use or further disclose information received except to carry out the purposes set forth in subsection (12)(a) and that if further disclosure is necessary to meet those purposes, the disclosure will be made only to the licensee or to a person who agrees in writing to be bound by the same prohibition on use and disclosure. A disclosure allowed by 33-19-307 is governed by that section.

(13) Disclosure that is limited to that which is reasonably necessary may be made to an insurance-support organization to perform insurance-support services for the licensee. The insurance-support organization may redisclose the information to the extent necessary to provide its services to its member or subscriber licensees and other insurance-support organizations or as otherwise permitted by law, but not for a marketing purpose.

(14) Notwithstanding any other provision of this section, disclosure may be made to a group policyholder for the purpose of reporting claims experience or conducting an audit of the licensee's operations or services

if the information disclosed is reasonably necessary for the group policyholder to conduct the review or audit and the group policyholder agrees not to further disclose the information without the individual's separate, written authorization. Information disclosed pursuant to this subsection must be edited to prevent the identification of the applicant, policyholder, or certificate holder.

(15) Disclosure that is limited to that which is reasonably necessary may be made to a professional peer review organization for the purpose of reviewing the service or conduct of a medical care institution or medical professional if the professional peer review organization agrees not to further disclose the information without the individual's separate, written authorization.

(16) Disclosure that is limited to that which is reasonably necessary may be made to a governmental authority as required by federal or state law or for the purpose of determining the individual's eligibility for health benefits for which the governmental authority may be liable.

(17) Disclosure that is limited to that which is reasonably necessary may be made to a certificate holder or policyholder for the purpose of providing information regarding the status of an insurance transaction. Disclosure pursuant to this subsection may not be made to a group policyholder without a separate, written authorization from the individual.

(18) Disclosure may be made to a person contractually engaged to provide services to enable a licensee to perform an insurance function, or to perform an insurance function on behalf of a licensee, if the person agrees in writing that the person will not use or further disclose information obtained or developed pursuant to the engagement except to carry out the limited purpose of the engagement and that if further disclosure is necessary to perform the insurance function, that disclosure will be made only to the licensee or to a person who agrees in writing to be bound by the same prohibitions on use and disclosure.

(19) If a licensee has to disclose personal information in order to perform an insurance function and disclosure is not permitted under another exception in this section, disclosure may be made to a person other than a licensee if the disclosure is limited to that which is reasonably necessary to enable the person to perform services or an insurance function for the disclosing licensee and if the person is notified by the licensee that the person is prohibited from:

(a) using the information other than to carry out the limited purpose for which the information is disclosed; and

(b) disclosing the information other than to the licensee and as allowed in subsection (3).

(20) Notwithstanding any other provision of this chapter, disclosure for a marketing purpose may be

made only as allowed by 33-19-307.

(21) Disclosure may be made as provided in [section 5].

~~(21)~~(22) Nothing in this section may be construed to prevent the disclosure of personal information that is otherwise discoverable pursuant to the Montana Rules of Civil Procedure.

~~(22)~~(23) The commissioner may adopt rules creating additional exceptions to disclosure restrictions for the purpose of allowing a licensee or insurance-support organization to carry out a necessary insurance function. The commissioner shall adopt rules establishing the methods that must be used by licensees to prevent identification as described in subsection (14)."

NEW SECTION. **Section 15. Codification instruction.** [Sections 1 through 10] are intended to be codified as an integral part of Title 61, chapter 6, and the provisions of Title 61 apply to [sections 1 through 10].

NEW SECTION. **Section 16. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective January 1, 2004.

(2) [Sections 3(3), 3(4), 4(2), and this section] are effective on passage and approval.

NEW SECTION. **Section 17. Termination.** [This act] terminates January 1, 2008.

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