

SENATE BILL NO. 234  
INTRODUCED BY C. WILLIAMS

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA BASIC PROPERTY AND CASUALTY INSURANCE INSPECTION AND PLACEMENT PROGRAM; PROVIDING DEFINITIONS; REQUIRING PARTICIPATION BY ALL INSURERS AND FARM MUTUAL INSURERS WRITING PROPERTY INSURANCE; CREATING A JOINT REINSURANCE ASSOCIATION FOR ACCEPTANCE AND DISTRIBUTION OF RISK FOR THE OWNERS OF PROPERTY THAT IS NOT OTHERWISE INSURABLE; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 18] may be referred to as the "Montana Basic Property and Casualty Insurance Inspection and Placement Program".

NEW SECTION. **Section 2. Purposes.** The purposes of the program are to:

- (1) ensure stability in the property and casualty insurance market of this state;
- (2) encourage maximum use, in obtaining basic property and casualty insurance, of the available, normal insurance market provided by authorized insurers;
- (3) make basic property and casualty insurance available when it cannot be obtained through the normal insurance market, subject to the provisions of [sections 1 through 18];
- (4) establish a fair access to insurance requirements plan; and
- (5) establish an all-industry placement facility and a joint reinsurance association for the equitable distribution and placement of risks among insurers as provided for in [sections 1 through 18].

NEW SECTION. **Section 3. Participation -- rulemaking.** (1) Participation in the program is mandatory for all insurers and farm mutual insurers authorized to engage in the property and casualty insurance business in this state who have premiums written.

(2) The commissioner may adopt rules to implement the provisions of [sections 1 through 18], including rules for forms, rate approval, property inspections, assessments, and assignment of risk.

**NEW SECTION. Section 4. Definitions.** As used in [sections 1 through 18], the following definitions apply:

(1) "All-industry placement facility" or "facility" means the organization formed by insurers to assist applicants in securing basic property and casualty insurance and to administer the program.

(2) (a) "Basic property and casualty insurance" means the coverage for eligible risks against direct loss to real and tangible personal property at a fixed location that is provided in a standard fire insurance policy, including builder's risk. Extended coverage for perils, including vandalism and theft insurance, may also be added by the facility governing committee with the approval of the commissioner.

(b) Basic property and casualty insurance does not include insurance for automobile risks, manufacturing risks, or other risks excluded by the facility governing committee with the approval of the commissioner.

(3) "Fire division" means a building or structure that is part of several buildings or structures and that is eligible for a separate rating in accordance with the rules filed with the commissioner by a licensed rating organization.

(4) "Habitational property" means a building that is used primarily for living units.

(5) "Inspection bureau" means the rating bureau or other organization designated by the facility, with the approval of the commissioner, to make inspections as required under the program and to perform other duties authorized by the facility.

(6) "Insurer" means any insurance company or other organization licensed to write and engaged in writing basic property and casualty insurance policies in this state on a direct basis, including the basic property and casualty insurance components of multiperil policies.

(7) "Joint reinsurance association" or "association" means the association formed by the insurers that provides for the equitable distribution of risks.

(8) "Premiums written" means gross direct premiums, excluding that portion of premiums on risks ceded to the joint reinsurance association, that are charged during the second preceding calendar year with respect to property in this state on all policies of basic property and casualty insurance and the basic property and casualty premium components of all multiperil policies, as computed by the facility, less return premiums, dividends paid or credited to policyholders, or the unused or unabsorbed portions of premium deposits.

(9) "Program" means the Montana basic property and casualty insurance inspection and placement program established in [sections 1 through 18] for providing insurance coverage through the all-industry placement facility and joint reinsurance association.

(10) "Servicing insurer" means an insurer designated by the governing committee of the facility to issue

policies on behalf of the facility.

**NEW SECTION. Section 5. Inspections -- reports.** (1) The manner and scope of the inspections of a property by the facility or an inspection bureau designated by the facility must be prescribed by the facility with the approval of the commissioner.

(2) An inspection report must be made for each property inspected. The report must cover pertinent structural and occupancy features as well as the general condition of any building, its premises, and surrounding structures. Representative photographs of the property may be taken during the inspection.

(3) Within 12 business days after the inspection, a copy of the completed inspection report and any photographs must be sent to the facility. A copy of the inspection report must be made available to the applicant.

**NEW SECTION. Section 6. Demonstration of inability to obtain other insurance -- assignment to servicing insurer.** (1) The facility may require the applicant to demonstrate an inability to obtain insurance in the normal market as a precondition to the placement of the applicant's business under the program. The facility may require an insurance producer to furnish copies of documents or information showing what effort was made by the insurance producer to obtain insurance in the admitted market.

(2) If upon receipt of an application for coverage the facility finds that the risk is eligible to be insured under the program, the facility shall assign the risk to a servicing insurer.

(3) After assignment of a risk to a servicing insurer, the facility shall apportion the assumed liability to the association insurers in the manner provided for in the plan of operation adopted by the association and applicable rules adopted by the commissioner.

**NEW SECTION. Section 7. Assessments.** (1) Assessments upon each insurer in the program for expenses in connection with facility business must be levied and assessed by the governing committee of the facility in the manner provided for in the plan of operation adopted by the association and applicable administrative rules adopted by the commissioner.

(2) All servicing expenses of the servicing insurer must be recoverable from the facility in the manner and to the extent determined by the governing committee of the facility.

**NEW SECTION. Section 8. Maximum limits on liability.** The maximum limits on liability that may be placed through the program are as follows:

(1) On any habitational property in one fire division under one ownership, the limit is its insurable market value. This limit of liability must apply jointly to real and personal property. In addition, the program may offer a maximum of \$10,000 in theft coverage on personal property, \$100,000 in liability coverage, with an aggregate limit of \$200,000, and \$1,000 in medical payments.

(2) On any commercial property in one fire division under one ownership, the limit is its insurable market value. Maximum limits apply jointly to real and personal property.

**NEW SECTION. Section 9. Action reports.** (1) The facility shall, within 10 business days after receipt of all required documentation, advise an applicant that the risk:

- (a) is acceptable;
- (b) is acceptable at a surcharged rate and advise the applicant of any specific conditions and charges;
- (c) is declined but will be acceptable if the actions or improvements noted in the declination notice are made by the applicant and acknowledged by the facility; or
- (d) is not eligible for the reasons stated in the declination notice.

(2) If a risk is declined because it fails to meet reasonable underwriting standards, the facility shall notify the applicant. Factors that may be considered when determining whether or not a risk meets reasonable underwriting standards are limited to the following:

- (a) the physical condition of the property, including its construction, heating, wiring, evidence of previous fires, or general deterioration;
- (b) the present use or housekeeping standards of the property; and
- (c) any other exposure determined by the governing committee and approved by the commissioner.

(3) If the risk is acceptable to the facility, the facility shall notify the applicant and the insurance producer designated by the applicant of the name of the servicing insurer and the premium to be charged. Upon receipt of an adequate premium, a policy must be issued within 10 business days.

(4) If all or part of the risk is conditionally declined because the risk does not meet reasonable underwriting standards but the property can be improved to meet the standards, the facility shall promptly advise the applicant of what actions or improvements noted in the declination notice should be made. Upon satisfactory completion of the improvements and notification to the facility, the facility may have the property reinspected and shall process the application in the manner prescribed by the program.

(5) If the inspection of the risk reveals that there are one or more substandard conditions, surcharges may be imposed in conformity with the rate filings approved by the commissioner.

(6) If the facility unconditionally declines all or part of the risk, the facility shall mail a declination notice to the applicant within 60 days of the date of application. At the time that the facility sends this notice to the applicant, it shall also advise the applicant of the right to appeal the decision of the facility to the commissioner and shall set forth in writing the procedures to be followed for the appeal.

**NEW SECTION. Section 10. Establishing joint reinsurance association.** (1) A joint reinsurance association must be created consisting of all insurers and farm mutual insurers subject to the provisions of [sections 1 through 18].

(2) Each insurer shall participate in the writings, expenses, profits, and losses of the association in the following manner:

(a) for habitational property risks, in the same proportion as its habitational property premiums written bear to the aggregate habitational property premiums written by all insurers in the program; and

(b) for commercial risks, in the same proportion as its commercial premiums written bear to the aggregate commercial premiums written by all insurers in the program.

(3) An insurer who is a member of a group of insurers under the same management or ownership may designate the insurer within the group to whom assignments must be made as a servicing insurer.

(4) The servicing insurer shall cede to and the joint reinsurance association shall assume 100% of all policies written under the program.

**NEW SECTION. Section 11. Association plan of operation.** The association shall adopt a plan of operation and rules of procedure that must be filed with and approved by the commissioner before being placed into effect. Amendments to the plan of operation or rules of procedure adopted must also be filed and approved by the commissioner before being placed into effect.

**NEW SECTION. Section 12. Standard policy coverage -- form and rate approval.** All policies issued pursuant to [sections 1 through 18] must be for basic property and casualty insurance on standard policy forms adopted by the governing committee of the facility and approved by the commissioner. The policies must be separately coded and issued for a term of 1 year at rates set by the governing committee under filings approved by the commissioner.

**NEW SECTION. Section 13. Cancellation or nonrenewal prohibited without approval.** (1) A

servicing insurer may not cancel or refuse to renew a policy issued under the program without approval of the facility.

(2) The facility may not cancel or allow a servicing insurer to cancel a policy issued under this program, except for the reasons provided for in 33-15-1103.

(3) The facility may not refuse to renew or allow a servicing insurer to refuse to renew a policy issued under this program except:

(a) for a cause that would have been grounds initially for nonacceptance of the risk under the program;

or

(b) with the approval of the governing committee of the facility and the commissioner.

(4) A notice of cancellation or nonrenewal of a policy issued under the program, together with a statement of the reason for the cancellation or nonrenewal, must be sent to the insurer at least 45 days before expiration of the policy.

(5) Each notice of cancellation or nonrenewal sent to the insured relating to a policy issued under the program must contain the procedures for reconsideration by the facility and must be accompanied by a statement that the insured has a right of appeal.

**NEW SECTION. Section 14. Right of appeal.** (1) An applicant may make a written appeal of a decision of the facility relating to the conditions for acceptance of coverage or a decision to cancel or not renew a policy. The appeal must be made to the commissioner within 30 days of the decision of the facility.

(2) An insurer may appeal any decision of the governing committee of the facility. A decision of the governing committee may be appealed in writing to the commissioner within 30 days from the decision of the committee.

**NEW SECTION. Section 15. Insurance producer commissions.** Commissions under the program must be determined by the governing committee of the facility and must be paid to the insurance producer designated by the applicant. The insurance producer must be licensed to write basic property and casualty insurance in this state.

**NEW SECTION. Section 16. Organization and duties of facility governing committee.** (1) The program must be administered by a governing committee of the facility, subject to the supervision of the commissioner, and must be operated by a manager appointed by the governing committee.

(2) The governing committee is authorized to adopt operating rules necessary to implement the program. The operating rules must be approved by the commissioner before their use.

(3) The governing committee shall consist of seven individuals appointed by the commissioner, as follows:

(a) one individual from each of the three authorized property and casualty insurers with the highest premium volume derived from or on behalf of Montana residents in the previous calendar year, as determined by the commissioner;

(b) one individual from the farm mutual insurers with the highest premium volume derived from or on behalf of Montana residents in the previous calendar year, as determined by the commissioner;

(c) one licensed insurance producer; and

(d) two individuals at large, appointed by the commissioner to represent the public interest.

(4) Members of the governing committee shall serve for a period of 1 year or until successors are appointed.

(5) There must be an annual meeting of the insurers and members of the governing committee on a date fixed by the committee.

(6) A special meeting may be called at a time and place designated by the committee or upon a written request to the committee by 10 insurers, not more than 1 of which may be in a group under the same management or ownership.

(7) Twenty days' written notice of the annual or special meeting must be given by the committee to the insurers and the public. Notice of any meeting must be accompanied by an agenda for the meeting.

(8) Each board member has one vote.

(9) Each amendment of the program is subject to approval by the commissioner.

(10) The committee shall meet as often as may be required to perform the general duties of administration of the facility or as required by the commissioner.

(11) The governing committee shall appoint a manager, who shall serve at the pleasure of the committee, to budget expenses, levy assessments, disburse funds, and perform all other duties necessary or incidental to the proper administration of the facility.

(12) Annually, the manager shall prepare an operating budget that is subject to approval by the governing committee and the commissioner. This budget must be furnished to the insurers after approval.

(13) The governing committee shall furnish to all insurers and to the commissioner an annual written report of operations. The form and detail of the report must be determined by the governing committee and the

commissioner.

(14) The governing committee may appoint any committees that it considers advisable.

**NEW SECTION. Section 17. Public education.** (1) The governing committee and all insurers shall undertake continuing public education, in cooperation with insurance producers and the commissioner, to ensure that the program receives adequate public attention.

(2) All insurers terminating a basic property or casualty insurance policy shall include in the cancellation or nonrenewal notice an explanation of the procedure for making application under this program, if applicable, for coverage of the property that is subject to the cancellation or nonrenewal.

**NEW SECTION. Section 18. Recordkeeping.** (1) A servicing insurer shall maintain records by policyholder, insurance producer of record, and dates of coverage for each application received and shall maintain any other records that may be required by the governing committee or the commissioner.

(2) A servicing insurer shall separately code and maintain statistics on policies written in accordance with the program and shall make reports on policies written as required by the governing committee or the commissioner.

(3) The manager of the facility shall submit to the governing committee and the commissioner annually or at any other periods that are designated by the commissioner a report setting forth the number of new applications received, renewal policies paid, risks inspected, and policies issued, along with any other information that the commissioner may request.

**NEW SECTION. Section 19. Codification instruction.** [Sections 1 through 18] are intended to be codified as an integral part of Title 33, chapter 24, and the provisions of Title 33, chapter 24, apply to [sections 1 through 18].

**NEW SECTION. Section 20. Effective date.** [This act] is effective January 1, 2008.

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