

SENATE BILL NO. 276

INTRODUCED BY STEINBEISSER, MCCHESENEY, BLACK

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING FUNERAL DIRECTORS, UNDERTAKERS, AND MORTICIANS TO SELL CERTAIN TYPES OF FUNERAL INSURANCE SUBJECT TO CERTAIN CONDITIONS IF LICENSED; DEFINING "FUNERAL INSURANCE"; ~~AND~~ AMENDING SECTIONS 33-17-211, ~~33-17-212~~, 33-17-214, AND 33-18-301, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

NEW SECTION. Section 1. Funeral insurance. (1) (a) "Funeral insurance" means ~~a contract or~~ AN insurance policy OR CERTIFICATE that requires A ONE-TIME PAYMENT OR the payment of premiums to provide for the costs of a funeral and burial for the policyholder or a named individual.

(b) Funeral insurance is a type of life insurance provided for in 33-1-208 and regulated under Title 33, chapter 20. The terms "burial insurance" and "preneed funeral insurance" have the same meaning as funeral insurance.

(c) Funeral insurance may be:

(i) included in a ~~whole~~ life insurance policy ~~without limits on the initial guaranteed death benefit~~. This form of funeral insurance may not be sold by or through a person licensed under Title 37, chapter 19, regardless of whether a person licensed under Title 37, chapter 19, also has ~~a certificate of authority to transact insurance~~ AN INSURANCE PRODUCER'S LICENSE IN THIS STATE.

(ii) a limited policy OR CERTIFICATE with a guaranteed death benefit that may be sold BY A LICENSED INSURANCE PRODUCER OR by a person licensed under Title 37, chapter 19, parts 3 and 4, if that person also has ~~a certificate of authority to transact insurance~~ AN INSURANCE PRODUCER'S LICENSE in this state. Unless otherwise provided by Title 33, chapter 20, the policy OR CERTIFICATE ~~limits~~ LIMIT under this subsection (1)(c)(ii) ~~are:~~

——— ~~(A) through 2008, is~~ up to \$15,000; ~~and~~

——— ~~(B) from January 1, 2009, an amount that equals the sum of \$15,000 plus an amount equal to \$15,000 multiplied by the percentage, if any, by which the consumer price index for all urban consumers published by the U.S. department of labor for the preceding calendar year exceeds the consumer price index for all urban consumers for the calendar year 2007.~~

(2) Funeral insurance for the purposes of Title 33 is not a fixed amount prepaid into a trust or escrow

fund, called a prearranged funeral plan, AS DESCRIBED IN 37-19-827, or a preneed arrangement, as defined in 37-19-101, and regulated under Title 37, part 19.

(3) A funeral insurance policy and any solicitation material for the policy must clearly indicate that:

(a) the policy is a life insurance product; AND

(b) the applicant INSURED may designate the beneficiary ~~if there is an appropriate, insurable interest, including but not limited to a funeral director, mortician, mortuary, or undertaker; and~~

~~_____ (c) the beneficiary may use the proceeds for any purpose.~~

(4) THE FUNERAL INSURANCE POLICY MUST STATE THAT THE INSURANCE COMPANY MAY SHALL, AS A CONDITION OF PAYING THE BENEFITS OF THE INSURANCE POLICY, REQUIRE FROM THE FUNERAL DIRECTOR, MORTICIAN, MORTUARY, OR UNDERTAKER:

(A) A CERTIFIED COPY OF THE CERTIFICATE OF DEATH OF THE INSURED OR OTHER EVIDENCE OF DEATH SATISFACTORY TO THE INSURANCE COMPANY; AND

(B) A CERTIFICATE OF COMPLETION SIGNED BY THE FUNERAL DIRECTOR, MORTICIAN, OR UNDERTAKER STATING THAT THE FUNERAL DIRECTOR, MORTICIAN, UNDERTAKER, OR MORTUARY HAS DELIVERED ALL THE GOODS AND PERFORMED ALL THE SERVICES CONTRACTED FOR, BY, OR ON BEHALF OF THE INSURED.

(5) (A) NOTWITHSTANDING THE PROVISIONS OF 33-15-414, THE FUNERAL INSURANCE POLICY MUST CONTAIN AN ASSIGNABILITY CLAUSE THAT ALLOWS THE POLICY OR CERTIFICATE TO BE ASSIGNED OR OTHERWISE TRANSFERRED TO ANOTHER FUNERAL DIRECTOR, MORTICIAN, MORTUARY, OR UNDERTAKER LICENSED TO DO BUSINESS IN THIS STATE IN CONJUNCTION WITH THE ASSUMPTION OF THE CONTRACTUAL OBLIGATION TO PROVIDE THE FUNERAL GOODS OR SERVICES TO THE EXTENT PERMITTED BY STATE OR FEDERAL LAW FOR THE PURPOSE OF THE INSURED'S ELIGIBILITY FOR SUPPLEMENTAL SECURITY INCOME BENEFITS, MEDICAID, OR OTHER PUBLIC ASSISTANCE BENEFITS.

(B) THE ASSIGNABILITY CLAUSE MAY NOT BE USED BY A FUNERAL DIRECTOR, MORTICIAN, MORTUARY, OR UNDERTAKER TO PLEDGE, ASSIGN, TRANSFER, BORROW FROM, OR OTHERWISE ENCUMBER AN INSURANCE POLICY ASSIGNED TO IT FOR PURPOSES OF PURCHASING FUNERAL GOODS OR SERVICES PRIOR TO DELIVERING ALL OF THE GOODS AND PERFORMING ALL OF THE SERVICES CONTRACTED FOR, BY, OR ON BEHALF OF THE INSURED.

(6) AFTER THE DEATH OF A PERSON WHO AT ANY TIME RECEIVED MEDICAID BENEFITS, A FUNERAL DIRECTOR, MORTICIAN, MORTUARY, UNDERTAKER, OR OTHER PERSON, INCLUDING BUT NOT LIMITED TO THE DECEDENT'S SPOUSE, HEIR, DEVISEE, OR PERSONAL REPRESENTATIVE, WHO IS THE BENEFICIARY OF FUNERAL INSURANCE IN EXCESS OF \$5,000 IN VALUE DESIGNATED TO PAY FOR THE DISPOSITION OF THE MEDICAID RECIPIENT'S REMAINS AND FOR RELATED EXPENSES SHALL, AFTER PAYING FOR THE DISPOSITION AND RELATED EXPENSES, PAY ALL REMAINING FUNDS TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES WITHIN 30 DAYS FOLLOWING THE RECEIPT OF THE FUNERAL INSURANCE DEATH

BENEFIT. THE FUNDS MUST BE PAID TO THE DEPARTMENT REGARDLESS OF ANY PROVISION IN A WRITTEN CONTRACT, INSURANCE POLICY, OR OTHER AGREEMENT ENTERED INTO ON OR AFTER [THE EFFECTIVE DATE OF THIS ACT] DIRECTING A DIFFERENT DISPOSITION OF THE FUNDS. FUNDS PAID TO THE DEPARTMENT UNDER THIS SECTION ARE NOT CONSIDERED TO BE PROPERTY OF THE DECEASED MEDICAID RECIPIENT'S ESTATE, AND THE PROVISIONS OF 53-6-167 DO NOT APPLY TO RECOVERY OF THE FUNDS BY THE DEPARTMENT.

NEW SECTION. SECTION 2. EXCESS FUNERAL INSURANCE PROCEEDS. FUNERAL INSURANCE PROCEEDS THAT EXCEED THE COST OF THE FUNERAL GOODS AND SERVICES PROVIDED MUST BE PAID IN ACCORDANCE WITH THE BENEFICIARY DESIGNATION IN THE INSURANCE POLICY OR CERTIFICATE.

NEW SECTION. SECTION 3. RULES. THE COMMISSIONER MAY ADOPT RULES TO REGULATE FUNERAL INSURANCE, INCLUDING BUT NOT LIMITED TO RULES REGARDING LICENSURE OF PRODUCERS, FORM REVIEW, AND CONSUMER PROTECTION.

Section 4. Section 33-17-211, MCA, is amended to read:

"33-17-211. General qualifications -- application for license. (1) An individual applying for a license shall apply in a form approved by the commissioner and declare under penalty of refusal, suspension, or revocation of the license that statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall verify that the individual:

- (a) is 18 years of age or older;
- (b) has not committed an act that is a ground for refusal, suspension, or revocation as set forth in 33-17-1001;
- (c) has paid the license fees stated in 33-2-708;
- (d) has successfully passed the examinations for each kind of insurance for which the individual has applied within 12 months of application;
- (e) is a resident of this state or of another state that grants similar privileges to residents of this state. Licenses issued based upon Montana state residency terminate if the licensee relocates to another state.
- (f) is competent, trustworthy, and of good reputation;
- (g) has experience or training or otherwise is qualified in the kind or kinds of insurance for which the applicant applies to be licensed and is reasonably familiar with the provisions of this code that govern the

applicant's operations as an insurance producer;

(h) if applying for a license as to ~~life or disability~~ LIFE OR DISABILITY INSURANCE, WITH THE SOLE EXCEPTION OF A LICENSE TO TRANSACT funeral insurance as defined in [section 1(1)(c)(i) [SECTION 1(1)(C)(II)]:

(i) is not a funeral director, undertaker, or mortician operating in this or any other state;

(ii) is not an officer, employee, or representative of a funeral director, undertaker, or mortician operating in this or any other state; or

(iii) does not hold an interest in or benefit from a business of a funeral director, undertaker, or mortician operating in this or any other state; and

(i) has completed a background examination pursuant to 33-17-220.

(2) A resident or nonresident business entity acting as an insurance producer is required to obtain an insurance producer's license. Application must be made in a form approved by the commissioner. To approve the application, the commissioner shall verify that:

(a) the business entity has paid the appropriate fee; and

(b) the business entity has designated an individual licensed insurance producer who is responsible for the business entity's compliance with the insurance laws of this state.

(3) A person acting as an insurance producer shall obtain a license. A person shall apply for a license in a form approved by the commissioner. Before approving the application, the commissioner shall verify that:

(a) the person meets the requirements listed in subsection (1);

(b) the person has paid the licensing fees stated in 33-2-708 for each individual licensed in conjunction with the person's license. A licensed person shall promptly notify the commissioner of each change relating to an individual listed in the license.

(c) the person has designated a licensed officer to be responsible for the person's compliance with the insurance laws and rules of this state;

(d) each member and employee of a partnership and each officer, director, stockholder, or employee of a corporation who is acting as an insurance producer in this state has obtained a license;

(e) (i) if the person is a partnership or corporation, the transaction of insurance business is within the purposes stated in the partnership agreement or the articles of incorporation; and

(ii) if the person is a corporation, the secretary of state has issued a certificate of existence or authority under 35-1-1312 or filed articles of incorporation under 35-1-220.

(4) (a) The commissioner may license as a resident insurance producer an association of licensed Montana insurance producers, whether or not incorporated, formed and existing substantially for purposes other

than insurance.

(b) The license must be used solely for the purpose of enabling the association to place, as a resident insurance producer, insurance of the properties, interests, and risks of the state of Montana and of other public agencies, bodies, and institutions and to receive the customary commission for the placement.

(c) The president and secretary of the association shall apply for the license in the name of the association, and the commissioner shall issue the license to the association in the association's name alone.

(d) The fee for the license is the same as that required by 33-2-708(1)(a).

(e) The commissioner may, after a hearing with notice to the association, revoke the license if the commissioner finds that continuation of the license is not in the public interest or that a ground listed in 33-17-1001 exists.

(5) An insurance producer using an assumed business name shall register the name with the commissioner before using the name."

~~Section 3.~~ Section 33-17-212, MCA, is amended to read:

~~"33-17-212. Examination required -- exceptions -- fees.~~ (1) Except as provided in subsection (6), an individual applying for a license is required to pass a written examination. The examination must test the knowledge of the individual concerning each kind of insurance listed in subsection (5) for which application is made, the duties and responsibilities of an insurance producer, and the insurance laws and rules of this state. The examination must be developed and conducted under rules adopted by the commissioner.

~~(2) The commissioner may conduct the examination or make arrangements, including contracting with an outside testing service, for administering the examination. The commissioner may arrange for the testing service to recover the cost of the examination from the applicant.~~

~~(3) An individual who fails to appear for the examination as scheduled or fails to pass the examination may reapply for an examination and shall remit all forms before being rescheduled for another examination.~~

~~(4) If the applicant is a partnership or corporation, each individual who is to be named in the license as having authority to act for the applicant in its insurance transactions under the license shall must meet the qualifications as provided in this section.~~

~~(5) Examination of an applicant for a license must cover all of the kinds of insurance for which the applicant has applied to be licensed, as constituted by any one or more of the following classifications:~~

~~(a) life insurance, which includes funeral insurance as defined in [section 1];~~

~~(b) disability insurance;~~

- ~~_____ (c) property insurance. For the purposes of this provision, property insurance includes marine insurance.~~
- ~~_____ (d) casualty insurance;~~
- ~~_____ (e) surety insurance;~~
- ~~_____ (f) limited lines credit insurance;~~
- ~~_____ (g) title insurance.~~
- ~~_____ (6) This section does not apply to and an examination is not required of:~~
- ~~_____ (a) an individual lawfully licensed as an insurance producer as to the kind or kinds of insurance to be transacted as of or immediately prior to January 1, 1961, and who continues to be licensed;~~
- ~~_____ (b) an applicant for a license covering the same kind or kinds of insurance as to which the applicant was licensed in this state, other than under a temporary license, within the 12 months immediately preceding the date of application unless the commissioner has suspended, revoked, or terminated the previous license;~~
- ~~_____ (c) an applicant for a license as a nonresident insurance producer;~~
- ~~_____ (d) transportation ticket agents of common carriers applying for a license to solicit and sell only:~~
- ~~_____ (i) accident insurance ticket policies; or~~
- ~~_____ (ii) insurance of personal effects while being carried as baggage on a common carrier, as incidental to their duties as transportation ticket agents;~~
- ~~_____ (e) an association applying for a license under 33-17-211; or~~
- ~~_____ (f) an individual who, within 90 days of cancellation of a license issued by the state of the individual's residence, files with the commissioner a current letter of clearance certifying that the individual has passed an examination and held an insurance license in good standing in the individual's state of licensure, except that the individual shall take an examination pertaining to this state's law and each kind of insurance for which the individual has applied for a license and that is not covered under the license held in the other state.~~
- ~~_____ (7) (a) Subject to the provisions of subsection (7)(b), an individual who applies for a nonresident insurance producer license in this state and who was previously licensed for the same lines of authority in another state may not be required to complete any prelicensing education or examination.~~
- ~~_____ (b) The exemption in subsection (7)(a) is available only if the individual is currently licensed in the other state or the individual's application is received within 90 days of the cancellation of the individual's previous license and if the other state issues a certification that indicates that, at as of the time of the cancellation, the individual was in good standing for the lines of authority requested in that state or the state's database records, maintained by the national association of insurance commissioners or any of the association's affiliates or subsidiaries that the association oversees, indicate that the insurance producer is or was licensed in good~~

~~standing for the lines of authority requested."~~

Section 5. Section 33-17-214, MCA, is amended to read:

"33-17-214. Issuance of license -- insurance producer lines of authority -- license data -- lapse of license -- change of address. (1) A person who has met the requirements of 33-17-211 and 33-17-212 must be issued a license, unless that person has been denied a license pursuant to 33-17-1001.

(2) An insurance producer may receive a license qualifying the insurance producer in one or more of the following lines of authority:

(a) life insurance coverage on human lives, including benefits of endowment and annuities, and the coverage may include:

(i) funeral insurance as defined in [section 1];

(ii) other benefits in the event of death or dismemberment by accident; and

(iii) benefits for disability income;

(b) accident and health or sickness insurance coverage providing for sickness, bodily injury, or accidental death, and the coverage may provide benefits for disability income;

(c) property insurance coverage for the direct or consequential loss or damage to property of every kind;

(d) casualty insurance coverage against legal liability, including liability for death, injury, or disability or damage to real or personal property;

(e) variable life and variable annuity products insurance coverage provided under variable life insurance contracts and variable annuities;

(f) personal lines of property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes;

(g) limited line credit insurance; or

(h) any other line of insurance permitted under Title 33.

(3) The license must state the name and address of the licensee, personal identification number, date of issuance, general conditions relative to expiration or termination, kind of insurance covered, and other information that the commissioner considers necessary.

(4) The license of a partnership, corporation, or association must also state the name of each individual authorized to exercise the license powers.

(5) Each license remains in effect, unless it is suspended, revoked, or terminated or the license lapses.

(6) A person shall inform the commissioner in writing of a change of address within 30 days of the

change."

Section 6. Section 33-18-301, MCA, is amended to read:

"33-18-301. Prohibited relations with mortuaries. (1) A life insurer and its board of directors, officers, employees, or representatives ~~that sell ANY LIFE INSURANCE, OTHER THAN funeral insurance, OTHER THAN~~ as defined in ~~[section 1(1)(c)(i)]~~ [SECTION 1(1)(C)(II)], may not own, manage, supervise, operate, or maintain any mortuary, funeral, or undertaking establishment in Montana.

(2) (a) A life insurer ~~that sells funeral insurance, as defined in [section 1(1)(c)(i)]~~, may not contract or agree with any funeral director, mortician, mortuary, or undertaker that the funeral director, mortician, undertaker, or mortuary or undertaker shall conduct the funeral or be named beneficiary of any person insured by the insurer.

(b) This subsection (2) does not prohibit a life insurer from ~~making insurance, designated as funeral insurance, available soliciting to sell or selling~~ SELLING, SOLICITING, OR NEGOTIATING funeral insurance, as defined in [section 1(1)(c)(ii)], through a funeral director, mortician, undertaker, or any employee of a mortuary or undertaker if the funeral director, mortician, undertaker or employee of a mortuary or undertaker, through whom the ~~solicitation or sale, SOLICITATION, OR NEGOTIATION~~ occurs, is an insurance producer licensed and qualified under 33-17-214 in ~~funeral insurance as defined in [section 1(1)(c)(ii)]~~. A LIFE INSURER THAT SELLS, SOLICITS, OR NEGOTIATES FUNERAL INSURANCE, AS DEFINED IN [SECTION 1(1)(C)(II)], THROUGH A FUNERAL DIRECTOR, MORTICIAN, UNDERTAKER, OR ANY EMPLOYEE OF A MORTUARY OR UNDERTAKER SHALL COMPLY WITH THE PROVISIONS OF [SECTIONS 1 AND 2].

~~(3) A funeral insurance policy and any solicitation material for the policy must clearly indicate that:~~

- ~~—— (a) the policy is a life insurance product;~~
- ~~—— (b) the applicant may designate the beneficiary if there is an appropriate and insurable interest;~~
- ~~—— (c) the beneficiary may use the proceeds for any purpose; and~~

~~(3) A FUNERAL INSURANCE POLICY OR CERTIFICATE AND ANY SOLICITATION MATERIAL FOR THE POLICY MUST CLEARLY INDICATE THAT:~~

- ~~(A) THE POLICY OR CERTIFICATE IS A LIFE INSURANCE PRODUCT;~~
- ~~(B) THE ~~INSURED~~ APPLICANT MAY DESIGNATE THE BENEFICIARY; AND~~
- ~~(C) THE BENEFICIARY MAY USE THE PROCEEDS FOR ANY PURPOSE.~~

~~(d)(3)(4) any~~ An attempt by the insurer or its representative to ~~have~~ require the insured to designate a specific beneficiary, including but not limited to a funeral director, mortician, mortuary, or undertaker, constitutes a violation of this section punishable as a misdemeanor pursuant to subsection (4).

~~(4)~~(5) Each violation of this section constitutes a misdemeanor punishable by a fine of not more than \$1,000 or by imprisonment for not more than 6 months, or both."

NEW SECTION. SECTION 7. CODIFICATION INSTRUCTION. [SECTIONS 1 THROUGH 3] ARE INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 33, CHAPTER 20, AND THE PROVISIONS OF TITLE 33, CHAPTER 20, APPLY TO [SECTIONS 1 THROUGH 3].

NEW SECTION. SECTION 8. SAVING CLAUSE. [THIS ACT] DOES NOT AFFECT RIGHTS AND DUTIES THAT MATURED, PENALTIES THAT WERE INCURRED, OR PROCEEDINGS THAT WERE BEGUN BEFORE [THE EFFECTIVE DATE OF THIS ACT].

NEW SECTION. SECTION 9. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE JANUARY 1, 2008.

- END -

