

SENATE BILL NO. 343
INTRODUCED BY K. BALES

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LICENSING OF INSURANCE ADJUSTERS; ALLOWING A PROVISIONAL ADJUSTER LICENSE AND A TEMPORARY ADJUSTER LICENSE; REQUIRING AN ADJUSTER LICENSE OR A TEMPORARY ADJUSTER LICENSE FOR OUT-OF-STATE ADJUSTERS SENT INTO THIS STATE OR WORKING ELECTRONICALLY ON MONTANA LOSS CLAIMS; AMENDING SECTIONS 33-2-708, 33-17-102, 33-17-301, 33-17-1001, 33-17-1202, 33-17-1203, AND 33-17-1205, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 33-2-708, MCA, is amended to read:

"33-2-708. Fees and licenses. (1) (a) Except as provided in 33-17-212(2), the commissioner shall collect a fee of \$1,900 from each insurer applying for or annually renewing a certificate of authority to conduct the business of insurance in Montana.

(b) The commissioner shall collect certain additional fees as follows:

(i) nonresident insurance producer's license:

(A) application for original license, including issuance of license, if issued, \$100;

(B) biennial renewal of license, \$50;

(C) lapsed license reinstatement fee, \$100;

(ii) resident insurance producer's license lapsed license reinstatement fee, \$100;

(iii) surplus lines insurance producer's license:

(A) application for original license and for issuance of license, if issued, \$50;

(B) biennial renewal of license, \$100;

(C) lapsed license reinstatement fee, \$200;

(iv) insurance adjuster's adjuster license, which for the purposes of this section does not include a provisional adjuster license or a temporary adjuster license:

(A) application for original license, including issuance of license, if issued, \$50;

(B) biennial renewal of license, \$100;

(C) lapsed license reinstatement fee, \$200;

(v) insurance consultant's license:

(A) application for original license, including issuance of license, if issued, \$50;

(B) biennial renewal of license, \$100;

(C) lapsed license reinstatement fee, \$200;

(vi) viatical settlement broker's license:

(A) application for original license, including issuance of license, if issued, \$50;

(B) biennial renewal of license, \$100;

(C) lapsed license reinstatement fee, \$200;

(vii) resident and nonresident rental car entity producer's license:

(A) application for original license, including issuance of license, if issued, \$100;

(B) quarterly filing fee, \$25;

(viii) an original notification fee for a life insurance producer acting as a viatical settlement broker, in accordance with 33-20-1303(2)(b), \$50;

(ix) 50 cents for each page for copies of documents on file in the commissioner's office.

(c) The commissioner may adopt rules to determine the date by which a nonresident insurance producer, a surplus lines insurance producer, an insurance adjuster other than a provisional adjuster or a temporary adjuster, or an insurance consultant is required to pay the fee for the biennial renewal of a license.

(2) (a) The commissioner shall charge a fee of \$75 for each course or program submitted for review as required by 33-17-1204 and 33-17-1205, but may not charge more than \$1,500 to a sponsoring organization submitting courses or programs for review in any biennium.

(b) Insurers and associations composed of members of the insurance industry are exempt from the charge in subsection (2)(a).

(3) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund all fines and penalties and those amounts received pursuant to 33-2-311, 33-2-705, 33-28-201, and 50-3-109. All other fees collected by the commissioner pursuant to Title 33 and the rules adopted under Title 33 must be deposited in the state special revenue fund to the credit of the state auditor's office.

(4) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of \$10 will be refunded."

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

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

(1) (a) "Adjuster" means a person who, on behalf of the insurer, for compensation as an independent contractor or as the employee of an independent contractor or for a fee or commission investigates and negotiates the settlement of claims arising under insurance contracts or otherwise acts on behalf of the insurer. The term includes a provisional adjuster or a temporary adjuster unless otherwise specified.

(b) The term does not include a:

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

(ii) salaried employee of an insurer or of a managing general agent if the salaried employee or the managing general agent is a resident of this state;

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

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

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

(2) "Adjuster license" means a document issued by the commissioner that authorizes a person to act as an adjuster. A holder of an adjuster license must meet all the requirements in 33-17-301(2) or (3) unless otherwise specified.

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

(b) The term does not include:

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

(ii) a union on behalf of its members;

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

(B) a health service corporation as defined in 33-30-101;

(iv) a life, disability, property, or casualty insurance producer who is licensed in this state and whose activities are limited exclusively to the sale of insurance;

(v) a creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;

(vi) a trust established in conformity with 29 U.S.C. 186 or the trustees, agents, and employees of the trust;

(vii) a trust exempt from taxation under section 501(a) of the Internal Revenue Code or the trustees and employees of the trust;

(viii) a custodian acting pursuant to a custodian account that meets the requirements of section 401(f) of the Internal Revenue Code or the agents and employees of the custodian;

(ix) a bank, credit union, or other financial institution that is subject to supervision or examination by federal or state banking authorities;

(x) a company that issues credit cards and that advances for and collects premiums or charges from the company's credit card holders who have authorized the company to do so, if the company does not adjust or settle claims;

(xi) a person who adjusts or settles claims in the normal course of the person's practice or employment as an attorney and who does not collect charges or premiums in connection with life or disability insurance or annuities; or

(xii) a person appointed as a managing general agent in this state whose activities are limited exclusively to those described in 33-2-1501(10) and Title 33, chapter 2, part 16.

(4) "Administrator license" means a document issued by the commissioner that authorizes a person to act as an administrator.

(5) (a) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

(b) The term does not include an individual.

(6) "Consultant" means an individual who for a fee examines, appraises, reviews, evaluates, makes recommendations, or gives advice regarding an insurance policy, annuity, or pension contract, plan, or program.

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

(8) "Individual" means a natural person.

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

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

(11) "License" means a document issued by the commissioner that authorizes a person to act as an insurance producer for the lines of authority specified in the document. The license itself does not create actual,

apparent, or inherent authority in the holder to represent or commit an insurer to a binding agreement.

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

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

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

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

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

(17) "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract if the person engaged in negotiation either sells insurance or obtains insurance from insurers for purchasers.

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

(19) "Provisional adjuster" means an individual who is licensed under 33-17-301(4).

~~(19)~~(20) "Public adjuster" means an adjuster employed by and representing the interests of the insured.

~~(20)~~(21) "Sell" means to exchange a contract of insurance by any means, for money or the equivalent, on behalf of an insurance company.

~~(24)~~(22) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance.

~~(22)~~(23) "Suspend" means to bar the use of a person's license for a period of time.

(24) "Temporary adjuster" is an individual who receives from the commissioner a temporary adjuster license to assist in servicing catastrophic losses, as provided in 33-17-301(7).

~~(23)~~(25) "Uniform application" means the national association of insurance commissioners' uniform application for resident and nonresident insurance producer licensing.

~~(24)~~(26) "Uniform business entity application" means the national association of insurance commissioners

uniform business entity application for resident and nonresident business entities."

Section 3. Section 33-17-301, MCA, is amended to read:

"33-17-301. Adjuster license -- qualifications -- provisional and temporary licenses -- catastrophe adjustments -- public adjuster. (1) An individual may not act as or purport to be an adjuster in this state unless licensed as an adjuster under this chapter. An individual shall apply to the commissioner for an adjuster license, a provisional adjuster license, or a temporary adjuster license in a form approved by the commissioner. The commissioner shall issue the adjuster license, the provisional adjuster license, or the temporary adjuster license to individuals qualified to be licensed ~~as an adjuster~~ under this section.

(2) ~~To be licensed as~~ In order to qualify for an adjuster license, the applicant:

(a) must be an individual 18 years of age or more;

(b) must be a resident of Montana or resident of another state that ~~will permit~~ permits residents of Montana regularly to act as adjusters in the other state;

(c) shall pass an adjuster licensing examination as prescribed by the commissioner and pay the fee pursuant to 33-2-708;

(d) must be trustworthy and of good character and reputation; and

(e) must have and shall maintain in this state an office accessible to the public and shall keep in the office for not less than 5 years the usual and customary records pertaining to transactions under the adjuster license. This provision does not prohibit maintenance of the office in the home of the licensee.

(3) A partnership or corporation, whether or not organized under the laws of this state, may ~~be licensed~~ as receive an adjuster license if each individual who is to exercise the adjuster license powers is separately licensed or is named in the partnership or corporation adjuster license and is qualified for an individual adjuster license.

(4) The commissioner may issue a 1-year provisional adjuster license to a Montana resident who meets the requirements in (2)(a) and (2)(d) and who:

(a) is an adjuster trainee under a licensed adjuster;

(b) is the employee of a licensed adjuster; or

(c) can provide proof of having had training in the handling of loss claims under insurance contracts sufficient to fulfill the responsibilities of an adjuster.

(5) If an individual who has a provisional adjuster license provided under subsection (4) meets the requirements of subsection (2)(c) and establishes an office as provided in subsection (2)(e), the individual is

eligible to apply for an adjuster license.

(6) A provisional adjuster license may not be renewed more than once in a 2-year period.

(7) The commissioner may issue a 180-day temporary adjuster license to a person who meets the requirements of subsections (2)(a) and (2)(d) in order to assist in servicing catastrophic losses.

(4)(8) (a) An adjuster license or ~~qualifications~~ a temporary adjuster license ~~are not~~ is required for an adjuster who is sent into this state by and on behalf of an insurer or adjusting partnership or corporation ~~for the purpose of investigating or making~~ to investigate or make adjustments of a particular loss under an insurance policy or ~~for the adjustment of~~ to adjust a series of losses resulting from a catastrophe common to all losses.

(b) An adjuster license or a temporary adjuster license is required under subsection (8)(a) whether the adjuster is physically working in this state or working as an adjuster by electronic or other means on behalf of an insurer or adjusting partnership or corporation.

(5)(9) (a) An adjuster license continues in force until lapsed, suspended, revoked, or terminated. A provisional adjuster license or a temporary adjuster license may, for cause, be suspended, revoked, or terminated prior to its expiration date.

(b) ~~The~~ An adjuster license lapses if a licensee ~~shall~~ does not renew the license by the biennial renewal date and pay the appropriate fee or the license will lapse. The biennial fee is established pursuant to 33-2-708.

(6)(10) The commissioner may adopt rules:

(a) providing for the examination, licensure, bonding, and regulation of public adjusters; and

(b) providing for fees commensurate with costs for a provisional adjuster license or a temporary adjuster license issued under this section."

Section 4. Section 33-17-1001, MCA, is amended to read:

"33-17-1001. Suspension, revocation, or refusal of license. (1) The commissioner may suspend, revoke, refuse to renew, or refuse to issue an insurance producer's license, an adjuster license, a provisional adjuster license, a temporary adjuster license, or a consultant license, may levy a civil penalty in accordance with 33-1-317, or may choose any combination of actions when an insurance producer, adjuster holding any license under 33-17-301, consultant, or applicant for those licenses has:

(a) engaged or is about to engage in an act or practice for which issuance of the license could have been refused;

(b) obtained or attempted to obtain a license through misrepresentation or fraud, including but not limited to providing incorrect, misleading, incomplete, or materially untrue information in the license application or in the

continuing education affidavit;

(c) violated or failed to comply with a provision of this code or has violated a rule, subpoena, or order of the commissioner or of the commissioner of any other state;

(d) improperly withheld, misappropriated, or converted to the licensee's or applicant's own use money or property belonging to policyholders, insurers, beneficiaries, or others and received in conduct of business under the license;

(e) been convicted of a felony;

(f) in the conduct of the affairs under the license, used fraudulent, coercive, or dishonest practices or ~~the license or applicant~~ is incompetent, untrustworthy, financially irresponsible, or a source of injury and loss to the public;

(g) misrepresented the terms of an actual or proposed insurance contract or application for insurance;

(h) been found guilty of an unfair trade practice or fraud prohibited by Title 33, chapter 18;

(i) had a similar license suspended or revoked in any other state;

(j) forged another's name to an application for insurance or to any document related to an insurance transaction;

(k) cheated on an examination for a license; or

(l) knowingly accepted insurance business from a person who is not licensed.

(2) The license of a partnership or corporation may be suspended, revoked, refused, or denied if a reason listed in subsection (1) applies to an individual designated in the license to exercise its powers.

(3) The commissioner retains the authority to enforce the provisions of and impose any penalty or remedy authorized by the insurance code against any person who is under investigation for or charged with a violation of the insurance code even if the person's license or registration has been surrendered or has lapsed."

Section 5. Section 33-17-1202, MCA, is amended to read:

"33-17-1202. Purpose. (1) The purposes of this part are to:

~~(1)~~(a) protect insurance consumers and dedicated insurance producers, adjusters, and consultants by requiring continuing education for insurance producers, adjusters, and consultants;

~~(2)~~(b) better educate insurance producers, adjusters, and consultants about changes in insurance law, products, ethical conduct as an insurance producer, adjuster, or consultant, marketing, and management; and

~~(3)~~(c) provide standards for the qualification of instructors, courses, and materials.

(2) For the purposes of this section, "adjuster" means an individual licensed under 33-17-301(2)."

Section 6. Section 33-17-1203, MCA, is amended to read:

"33-17-1203. Continuing education -- basic requirements -- exceptions. (1) Unless exempt under subsection (3):

(a) an individual licensed to act as an insurance producer, adjuster, or consultant other than an individual licensed for limited lines credit insurance shall, during each 24-month period, complete at least 24 credit hours of approved continuing education;

(b) an individual licensed to act as an insurance producer only for limited lines credit insurance shall, during each biennium, complete 5 credit hours of approved continuing education in the areas of insurance law, ethics, or limited lines credit insurance;

(c) an individual licensed as an insurance producer, adjuster, or consultant shall, during each biennium, complete at least 1 credit hour of approved continuing education on changes in Montana insurance statutes and administrative rules.

(2) The commissioner may, for good cause, grant an extension of time, not to exceed 1 year, during which the requirements imposed by subsection (1) may be completed.

(3) The minimum continuing education requirements do not apply to:

(a) an individual holding a provisional adjuster license issued under 33-17-301(4), a temporary adjuster license issued under 33-17-301(7), or a temporary insurance producer license issued under 33-17-216; or

(b) an insurance producer, adjuster licensed under 33-17-301(2), or consultant otherwise exempted by the commissioner."

Section 7. Section 33-17-1205, MCA, is amended to read:

"33-17-1205. Compliance -- failure to comply -- rulemaking authority. (1) Each individual subject to the requirements of 33-17-1203 shall file biennially in a format supplied by the commissioner certification as to the approved courses, lectures, seminars, and instructional programs successfully completed by that individual during the preceding biennium.

(2) If an individual fails to comply with this section, the individual's license lapses. An individual with a lapsed license may not conduct insurance business under another person's license, including a business entity license affiliation.

(3) (a) In the continuing education affidavit, an insurance producer or adjuster shall report to the commissioner the final disposition of any administrative action or the final disposition of any criminal action taken against the insurance producer or adjuster in another jurisdiction or by another governmental agency in this state.

(b) As used in this subsection (3);

(i) "final disposition of any criminal action" means a plea agreement or sentence and judgment; and

(ii) "adjuster" means an individual licensed under 33-17-301(2).

(4) Each person providing approved courses, lectures, seminars, and instructional programs, including insurance company education programs, shall file annually with the commissioner an alphabetical list of the names and addresses of all individuals who have successfully completed an approved continuing education activity during the preceding calendar year.

(5) The commissioner may, following the process provided for in 33-1-314, withdraw approval of all courses, lectures, seminars, and instructional programs of any person that fails to comply with subsection (4). The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose a fine upon a person that has failed to comply with subsection (4). The fine may not exceed the penalty permitted by 33-1-317.

(6) The commissioner may adopt rules establishing the requirements for biennial filing and reporting of continuing education credits."

NEW SECTION. Section 8. Effective date. [This act] is effective July 1, 2007.

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