

SENATE BILL NO. 537
INTRODUCED BY R. BROWN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO PREPAID LEGAL SERVICES; DEFINING "LEGAL SERVICE EXPENSE PLAN"; PROVIDING THAT LEGAL SERVICE EXPENSE PLANS ARE NOT SUBJECT TO THE INSURANCE CODE; AMENDING SECTIONS 33-1-102, 33-1-206, AND 33-17-504, MCA; REPEALING SECTION 33-1-215, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Legal service expense plans.** (1) For purposes of this section, "legal service expense plan" means a contract or agreement for a stated consideration, paid in advance or in installments, between a plan administrator and a member or group of members for referral to an attorney or for the receipt of professional legal services, advice, or representation.

(2) The legal services, advice, or representation referred to in subsection (1) must be provided by an attorney licensed under this chapter.

(3) The marketing, sale, and delivery of services, plan administration, and contracting for services under a legal service expense plan are exempt from the provisions of Title 33, and legal service expense plans may not be characterized as insurance when marketed in this state.

(4) Lawyer retainer agreements subject to and attorneys providing services pursuant to a legal service expense plan are subject to regulation under this chapter.

Section 2. Section 33-1-102, MCA, is amended to read:

"33-1-102. Compliance required -- exceptions -- health service corporations -- health maintenance organizations -- governmental insurance programs -- service contracts. (1) A person may not transact a business of insurance in Montana or a business relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) The provisions of this code do not apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of the corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) This code does not apply to health maintenance organizations or to managed care community networks, as defined in 53-6-702, to the extent that the existence and operations of those organizations are governed by chapter 31 or to the extent that the existence and operations of those networks are governed by Title 53, chapter 6, part 7. The department of public health and human services is responsible to protect the interests of consumers by providing complaint, appeal, and grievance procedures relating to managed care community networks and health maintenance organizations under contract to provide services under Title 53, chapter 6.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, parts 21 and 23, and related sections.

(6) The department of public health and human services may limit the amount, scope, and duration of services for programs established under Title 53 that are provided under contract by entities subject to this title. The department of public health and human services may establish more restrictive eligibility requirements and fewer services than may be required by this title.

(7) This code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8.

(8) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(9) (a) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state in which the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state in which the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program.

(10) (a) This code does not apply to the marketing of, sale of, offering for sale of, issuance of, making of, proposal to make, and administration of a service contract.

(b) A "service contract" means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property or to indemnify for the repair, replacement, or maintenance of property if an operational or structural failure is due to a defect in materials or

manufacturing or to normal wear and tear, with or without an additional provision for incidental payment or indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service. A service contract may provide for the repair, replacement, or maintenance of property for damage resulting from power surges or accidental damage from handling. A service contract does not include motor club service as defined in 61-12-301.

(11) (a) Subject to 33-18-201 and 33-18-242, this code does not apply to insurance for ambulance services sold by a county, city, or town or to insurance sold by a third party if the county, city, or town is liable for the financial risk under the contract with the third party as provided in 7-34-103.

(b) If the financial risk for ambulance service insurance is with an entity other than the county, city, or town, the entity is subject to the provisions of this code.

(12) This code does not apply to legal service expense plans provided for in [section 1]."

Section 3. Section 33-1-206, MCA, is amended to read:

"33-1-206. Casualty insurance. (1) Casualty insurance includes:

(a) vehicle insurance, which is insurance against loss of or damage to any land vehicle or aircraft or any draft or riding animal or to property while contained in or on or being loaded or unloaded in or from a land vehicle, aircraft, or animal from any hazard or cause and against any loss, liability, or expense resulting from or incidental to ownership, maintenance, or use of any land vehicle, aircraft, or animal, together with insurance against accidental death or accidental injury to individuals, including the named insured, while in, entering, alighting from, adjusting, or repairing or when caused by being struck by a land vehicle, aircraft, or draft or riding animal, if the insurance is issued as an incidental part of insurance on the land vehicle, aircraft, or draft or riding animal;

(b) liability insurance, which is insurance against legal liability for the death, injury, or disability of any human being or for damage to property and the provision of medical, hospital, surgical, and disability benefits to injured persons and funeral and death benefits to dependents, beneficiaries, or personal representatives of persons killed, irrespective of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance;

(c) workers' compensation and employer's liability, which is insurance of the obligations accepted by, imposed upon, or assumed by employers under law for death, disablement, or injury of employees;

(d) (i) burglary and theft, which is insurance against loss or damage by burglary, theft, robbery, forgery, fraud, deceptive practices, vandalism, criminal mischief, confiscation, or wrongful conversion, disposal, or concealment or from any attempt at any of the foregoing, including supplemental coverage for medical, hospital,

surgical, and funeral expense incurred by the named insured or any other person as a result of bodily injury during the commission of a burglary, robbery, or theft by another; and

(ii) insurance against loss of or damage to money, coins, bullion, securities, notes, drafts, acceptances, or any other valuable papers and documents, resulting from any cause;

(e) personal property floater, which is insurance upon personal effects against loss or damage from any cause under a personal property floater;

(f) glass, which is insurance against loss or damage to glass, including its lettering, ornamentation, and fittings;

(g) boiler and machinery, which is insurance against any liability and loss or damage to property or interest resulting from accident to or explosions of boilers, pipes, pressure containers, machinery, or apparatus and from making inspection of and issuing certificates of inspection upon boilers, machinery, and apparatus of any kind, whether or not insured;

(h) leakage and fire extinguishing equipment, which is insurance against loss or damage to any property or interest caused by the breakage or leakage of sprinklers, hoses, pumps, and other fire extinguishing equipment or apparatus, water pipes, or containers or by water entering through leaks or openings in buildings and insurance against loss or damage to the sprinklers, hoses, pumps, and other fire extinguishing equipment or apparatus;

(i) credit, which is insurance against loss or damage resulting from failure of debtors to pay their obligations to the insured;

(j) malpractice, which is insurance against legal liability of the insured and against loss, damage, or expense incidental to a claim of liability, including medical, hospital, surgical, and funeral benefits to injured persons, irrespective of legal liability of the insured, arising out of the death, injury, or disablement of any person or arising out of damage to the economic interest of any person, as the result of negligence in rendering expert, fiduciary, or professional service;

(k) elevator, which is insurance against loss of or damage to any property of the insured, resulting from the ownership, maintenance, or use of elevators, except loss or damage by fire and from making inspection of and issuing certificates of inspection upon elevators;

(l) livestock, which is insurance against loss or damage to livestock and for services of a veterinarian for livestock;

(m) entertainments, which is insurance indemnifying the producer of any motion picture, television, radio, theatrical, sport, spectacle, entertainment, or similar production, event, or exhibition against loss from interruption, postponement, or cancellation because of death, accidental injury, or sickness of performers, participants,

directors, or other principals;

(n) mechanical breakdown pursuant to 33-1-214;

~~(o) prepaid legal pursuant to 33-1-215;~~

~~(p)(o)~~ involuntary unemployment pursuant to 33-1-216;

~~(q)(p)~~ gap pursuant to 33-1-217;

~~(r)(q)~~ miscellaneous, which is insurance against any other kind of loss, damage, or liability properly a subject of insurance and not within any other kind of insurance as defined in this part, if the insurance is not disapproved by the commissioner as being contrary to law or public policy.

(2) Provision of medical, hospital, surgical, and funeral benefits and of coverage against accidental death or injury as incidental to and part of other insurance as stated under subsections (1)(a) (vehicle), (1)(b) (liability), (1)(d) (burglary), and (1)(j) (malpractice) must for all purposes be considered to be the same kind of insurance to which it is incidental and is not subject to provisions of this code applicable to life or disability insurances."

Section 4. Section 33-17-504, MCA, is amended to read:

"33-17-504. Issuing license -- limitations. The commissioner may issue a consultant license to an individual who has complied with the requirements of this chapter with respect to either life insurance, meaning all of those kinds of insurance authorized in 33-1-207, 33-1-208, 33-20-1001, 33-21-103, 33-22-501, and 33-22-601, or general insurance, meaning all of those kinds of insurance authorized in 33-1-206, 33-1-207, 33-1-209 through 33-1-212, 33-1-214, 33-1-216 through 33-1-219, and 33-1-221 through 33-1-229, as specified in the license."

NEW SECTION. **Section 5. Repealer.** Section 33-1-215, MCA, is repealed.

NEW SECTION. **Section 6. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 37, chapter 61, and the provisions of Title 37, chapter 61, apply to [section 1].

NEW SECTION. **Section 7. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 8. Applicability.** [Section 1] applies to legal service expense plans marketed, sold, contracted for, issued, or delivered on or after [the effective date of this act].

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