

1 HOUSE BILL NO. 250

2 INTRODUCED BY L. BANGERTER

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR NAVIGATOR AND PRODUCER CERTIFICATION
5 AND TRAINING RELATED TO HEALTH INSURANCE SOLD ON AN EXCHANGE; PROVIDING NAVIGATOR
6 QUALIFICATIONS AND DUTIES; SETTING NAVIGATOR CERTIFICATION FEES; PROVIDING RULEMAKING
7 AUTHORITY TO THE INSURANCE COMMISSIONER; AMENDING SECTIONS 33-2-708, 33-17-102, 33-17-220,
8 AND 33-17-231, MCA; AND PROVIDING AN EFFECTIVE DATE."

9

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

11

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

13 **"33-2-708. (Temporary) Fees and licenses.** (1) (a) Except as provided in 33-17-212(2), the
14 commissioner shall collect a fee of \$1,900 from each insurer applying for or annually renewing a certificate of
15 authority to conduct the business of insurance in Montana.

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

17 (i) nonresident insurance producer's license:

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

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

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

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

22 (iii) surplus lines insurance producer's license:

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

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

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

26 (iv) insurance adjuster's license:

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

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

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

30 (v) insurance consultant's license:

- 1 (A) application for original license, including issuance of license, if issued, \$50;
- 2 (B) biennial renewal of license, \$100;
- 3 (C) lapsed license reinstatement fee, \$200;
- 4 (vi) viatical settlement broker's license:
- 5 (A) application for original license, including issuance of license, if issued, \$50;
- 6 (B) biennial renewal of license, \$100;
- 7 (C) lapsed license reinstatement fee, \$200;
- 8 (vii) resident and nonresident rental car entity producer's license:
- 9 (A) application for original license, including issuance of license, if issued, \$100;
- 10 (B) quarterly filing fee, \$25;
- 11 (viii) an original notification fee for a life insurance producer acting as a viatical settlement broker, in
- 12 accordance with 33-20-1303(2)(b), \$50;
- 13 (ix) navigator certification:
- 14 (A) application for original certification, including issuance of certificate if issued, \$100;
- 15 (B) biennial renewal of certification, \$50;
- 16 (C) lapsed certification reinstatement fee, \$100;
- 17 ~~(ix)(x)~~ 50 cents for each page for copies of documents on file in the commissioner's office.
- 18 (c) The commissioner may adopt rules to determine the date by which a nonresident insurance producer,
- 19 a surplus lines insurance producer, an insurance adjuster, or an insurance consultant is required to pay the fee
- 20 for the biennial renewal of a license.
- 21 (2) (a) The commissioner shall charge a fee of \$75 for each course or program submitted for review as
- 22 required by 33-17-1204 and 33-17-1205, but may not charge more than \$1,500 to a sponsoring organization
- 23 submitting courses or programs for review in any biennium.
- 24 (b) Insurers and associations composed of members of the insurance industry are exempt from the
- 25 charge in subsection (2)(a).
- 26 (3) (a) Except as provided in subsection (3)(b), the commissioner shall promptly deposit with the state
- 27 treasurer to the credit of the general fund all fines and penalties and those amounts received pursuant to
- 28 33-2-311, 33-2-705, 33-28-201, and 50-3-109.
- 29 (b) The commissioner shall deposit 16.67% of the money collected under 33-2-705 in the special
- 30 revenue account provided for in 53-4-1115.

1 (c) All other fees collected by the commissioner pursuant to Title 33 and the rules adopted under Title
2 33 must be deposited in the state special revenue fund to the credit of the state auditor's office.

3 (4) All fees are considered fully earned when received. In the event of overpayment, only those amounts
4 in excess of \$10 will be refunded. (Terminates June 30, 2013--sec. 35(2), Ch. 486, L. 2009.)

5 **33-2-708. (Effective July 1, 2013) Fees and licenses.** (1) (a) Except as provided in 33-17-212(2), the
6 commissioner shall collect a fee of \$1,900 from each insurer applying for or annually renewing a certificate of
7 authority to conduct the business of insurance in Montana.

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

9 (i) nonresident insurance producer's license:

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

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

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

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

14 (iii) surplus lines insurance producer's license:

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

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

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

18 (iv) insurance adjuster's license:

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

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

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

22 (v) insurance consultant's license:

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

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

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

26 (vi) viatical settlement broker's license:

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

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

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

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

- 1 (A) application for original license, including issuance of license, if issued, \$100;
- 2 (B) quarterly filing fee, \$25;
- 3 (viii) an original notification fee for a life insurance producer acting as a viatical settlement broker, in
4 accordance with 33-20-1303(2)(b), \$50;
- 5 (ix) navigator certification:
- 6 (A) application for original certification, including issuance of certificate if issued, \$100;
- 7 (B) biennial renewal of certification, \$50;
- 8 (C) lapsed certification reinstatement fee, \$100;
- 9 ~~(ix)(x)~~ 50 cents for each page for copies of documents on file in the commissioner's office.
- 10 (c) The commissioner may adopt rules to determine the date by which a nonresident insurance producer,
11 a surplus lines insurance producer, an insurance adjuster, or an insurance consultant is required to pay the fee
12 for the biennial renewal of a license.
- 13 (2) (a) The commissioner shall charge a fee of \$75 for each course or program submitted for review as
14 required by 33-17-1204 and 33-17-1205, but may not charge more than \$1,500 to a sponsoring organization
15 submitting courses or programs for review in any biennium.
- 16 (b) Insurers and associations composed of members of the insurance industry are exempt from the
17 charge in subsection (2)(a).
- 18 (3) (a) Except as provided in subsection (3)(b), the commissioner shall promptly deposit with the state
19 treasurer to the credit of the general fund all fines and penalties and those amounts received pursuant to
20 33-2-311, 33-2-705, 33-28-201, and 50-3-109.
- 21 (b) The commissioner shall deposit 33% of the money collected under 33-2-705 in the special revenue
22 account provided for in 53-4-1115.
- 23 (c) All other fees collected by the commissioner pursuant to Title 33 and the rules adopted under Title
24 33 must be deposited in the state special revenue fund to the credit of the state auditor's office.
- 25 (4) All fees are considered fully earned when received. In the event of overpayment, only those amounts
26 in excess of \$10 will be refunded."
- 27

28 **NEW SECTION. Section 2. Navigator certification -- duties -- prohibitions.** (1) An individual or an
29 individual performing navigator duties on behalf of an organization serving as a navigator may not act in the
30 capacity of a navigator unless the individual has met all of the following requirements, as applicable:

- 1 (a) is at least 18 years of age;
- 2 (b) has completed and submitted the application form provided for in [section 3] and has declared, under
3 penalty of refusal, suspension, or revocation of the navigator's certification, that the statements made in the form
4 are true, correct, and complete to the best of the applicant's knowledge and belief;
- 5 (c) has completed a background examination as described in 33-17-220;
- 6 (d) has successfully completed the navigator certification and training requirements adopted by the
7 commissioner, as provided in [section 3]; and
- 8 (e) has paid all fees required by 33-2-708.
- 9 (2) A navigator's duties may include any of the following:
- 10 (a) conducting public education activities to raise awareness of the availability of qualified health plans;
- 11 (b) distributing fair and impartial general information concerning how to enroll in any qualified health plan
12 offered within the exchange and the availability of the premium tax credits under 26 U.S.C. 36B and the
13 cost-sharing reductions provided under 42 U.S.C. 18071;
- 14 (c) assisting consumers to understand how to enroll in a qualified health plan through an exchange or
15 appropriate public programs offering health care coverage, without suggesting that the consumer purchase any
16 particular plan; and
- 17 (d) referring consumers to the commissioner's office for assistance with complaints, appeals, grievances,
18 or general information about health insurance.
- 19 (3) A navigator may not do any of the following unless the navigator is otherwise licensed or authorized
20 to do so under this chapter:
- 21 (a) sell, solicit, or negotiate health insurance; or
- 22 (b) enroll an individual or an employee in a qualified health plan offered through an exchange.

23

24 **NEW SECTION. Section 3. Commissioner's duties -- navigator certification and training program.**

- 25 (1) The commissioner shall:
- 26 (a) develop a navigator certification application form that requires an applicant to disclose potential
27 conflicts of interest and any other information the commissioner considers relevant;
- 28 (b) establish a navigator certification and training program for a prospective navigator and the navigator's
29 employees;
- 30 (c) approve courses and the number of hours required for the navigator certification and training

1 program;

2 (d) approve courses and the number of hours for continuing education; and

3 (e) certify an applicant qualified under [section 2(1)] upon the applicant's successful completion of the
4 navigator certification and training program approved by the commissioner.

5 (2) The commissioner may suspend, revoke, or refuse to issue or renew the navigator certification of
6 a person that has committed an act for which the grounds for denial, suspension, or revocation are described in
7 33-17-1001 regarding an insurance producer's license.

8 (3) The commissioner may not certify as a navigator an individual, organization, or business entity that
9 is receiving financial compensation, including monetary or in-kind compensation, gifts, or grants, from an insurer.
10 A navigator certification must be revoked if the navigator receives financial compensation as described in this
11 subsection from an insurer.

12 (4) The navigator certification and training program established in subsection (1) must include:

13 (a) a background examination as provided in 33-17-220;

14 (b) initial training on compliance with all applicable state and federal laws affecting major medical health
15 insurance, exchanges, and qualified health plans;

16 (c) continuing education as provided in subsection (1)(d); and

17 (d) an examination.

18

19 **NEW SECTION. Section 4. Producer exchange training -- continuing education -- certification for**
20 **exchange sales.** (1) A producer may not sell, solicit, or negotiate insurance through an exchange on or after
21 October 1, 2013, without first completing the initial producer exchange training and certification program provided
22 for in this section and subsequently completing continuing education in every 24-month period, as prescribed and
23 approved by the commissioner.

24 (2) The continuing education required under this section must be counted toward the total number of
25 hours required in 33-17-1203.

26 (3) The producer exchange training and certification program and the continuing education courses
27 required in this section must consist of topics related to health insurance offered within an exchange, including
28 but not limited to:

29 (a) the levels of coverage provided in an exchange;

30 (b) the eligibility requirements for individuals to purchase insurance through an exchange;

1 (c) the eligibility requirements for employers to make insurance available to their employees through a
2 small business health options program;

3 (d) the individual eligibility requirements for medicaid and the healthy Montana kids plan, as provided
4 in Title 53; and

5 (e) the use of enrollment forms used in an exchange.

6

7 **NEW SECTION. Section 5. Lists of certified producers and navigators.** (1) An exchange operating
8 in this state shall maintain a current list of both of the following:

9 (a) licensed insurance producers that have met all of the producer exchange training and certification
10 program requirements necessary to sell insurance through an exchange, as provided in [section 4]; and

11 (b) individuals or entities that have met all the requirements to be certified by the commissioner as
12 navigators.

13 (2) Upon request, the commissioner shall make available a list of insurance producers that are certified
14 to sell a health benefit plan through an exchange and are operating near the requester's address. The
15 commissioner shall also make available a list of certified navigators.

16

17 **Section 6.** Section 33-17-102, MCA, is amended to read:

18 **"33-17-102. Definitions.** As used in this title, the following definitions apply:

19 (1) (a) "Adjuster" means a person who, on behalf of the insurer, for compensation as an independent
20 contractor or as the employee of an independent contractor or for a fee or commission investigates and
21 negotiates the settlement of claims arising under insurance contracts or otherwise acts on behalf of the insurer.

22 (b) The term does not include a:

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

24 (ii) salaried employee of an insurer or of a managing general agent;

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

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

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

30 (2) "Adjuster license" means a document issued by the commissioner that authorizes a person to act

1 as an adjuster.

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

5 (b) The term does not include:

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

8 (ii) a union on behalf of its members;

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (b) The term does not include an individual.

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

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

12 (8) "Exchange" means a health benefit exchange established by the state of Montana or an exchange
13 established by the United States department of health and human services in accordance with 42 U.S.C. 18031.

14 ~~(8)~~(9) "Home state" means the District of Columbia or any state or territory of the United States in which
15 the insurance producer:

16 (a) maintains a principal place of residence or a principal place of business; and

17 (b) is licensed as an insurance producer.

18 ~~(9)~~(10) "Individual" means a natural person.

19 ~~(10)~~(11) "Insurance producer", except as provided in 33-17-103, means a person required to be licensed
20 under the laws of this state to sell, solicit, or negotiate insurance.

21 ~~(11)~~(12) "Lapse" means the expiration of the license for failure to renew by the biennial renewal date.

22 ~~(12)~~(13) "License" means a document issued by the commissioner that authorizes a person to act as an
23 insurance producer for the lines of authority specified in the document. The license itself does not create actual,
24 apparent, or inherent authority in the holder to represent or commit an insurer to a binding agreement.

25 ~~(13)~~(14) "Limited line credit insurance" includes credit life insurance, credit disability insurance, credit
26 property insurance, credit unemployment insurance, involuntary unemployment insurance, mortgage life
27 insurance, mortgage guaranty insurance, mortgage disability insurance, gap insurance, and any other form of
28 insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing the
29 credit obligation and that the commissioner determines should be designated as a form of limited line credit
30 insurance.

1 ~~(14)~~(15) "Limited line credit insurance producer" means a person who sells, solicits, or negotiates one
 2 or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or
 3 individual policy.

4 ~~(15)~~(16) "Limited lines insurance" means those lines of insurance that the commissioner finds necessary
 5 to recognize for the purposes of complying with 33-17-401(3).

6 ~~(16)~~(17) "Limited lines producer" means a person authorized by the commissioner to sell, solicit, or
 7 negotiate limited lines insurance.

8 ~~(17)~~(18) "Lines of authority" means any kind of insurance as defined in Title 33.

9 (19) "Navigator" means a person certified by the commissioner under [section 2] and selected to perform
 10 the activities and duties identified in 42 U.S.C. 18031, et seq.

11 ~~(18)~~(20) "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser
 12 or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms,
 13 or conditions of the contract if the person engaged in negotiation either sells insurance or obtains insurance from
 14 insurers for purchasers.

15 ~~(19)~~(21) "Person" means an individual or a business entity.

16 ~~(20)~~(22) "Public adjuster" means an adjuster employed by and representing the interests of the insured.

17 ~~(21)~~(23) "Sell" means to exchange a contract of insurance by any means, for money or the equivalent,
 18 on behalf of an insurance company.

19 ~~(22)~~(24) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular
 20 kind of insurance.

21 ~~(23)~~(25) "Suspend" means to bar the use of a person's license for a period of time.

22 ~~(24)~~(26) "Uniform application" means the national association of insurance commissioners' uniform
 23 application for resident and nonresident insurance producer licensing.

24 ~~(25)~~(27) "Uniform business entity application" means the national association of insurance commissioners
 25 uniform business entity application for resident and nonresident business entities."

26

27 **Section 7.** Section 33-17-220, MCA, is amended to read:

28 **"33-17-220. Licensing background examination -- entity registry criteria.** (1) (a) Each applicant for
 29 a producer's license or navigator certification shall obtain a complete background examination. The applicant or
 30 insurer shall pay the cost of the background examination. The background examination report must provide

1 information to confirm:

2 (i) the applicant's:

3 (A) identity;

4 (B) current address;

5 (C) professional license certification; and

6 (D) military service; and

7 (ii) (A) existing or ongoing criminal investigations and court records relating to the applicant; and

8 (B) regulatory agencies' disciplinary actions concerning the applicant.

9 (b) The background examination is confidential and may not be held as part of the licensee's or
10 navigator's public file.

11 (2) For the purpose of obtaining a state and a federal criminal records check pursuant to subsection (1),
12 the commissioner may require a person applying for a license or navigator certification to submit a full set of
13 fingerprints to the commissioner. The commissioner shall submit the fingerprints to the Montana department of
14 justice. The Montana department of justice may exchange this fingerprint data with the federal bureau of
15 investigation.

16 (3) The commissioner may require fingerprints to be collected and remitted in an electronic format to
17 facilitate periodic resubmission of fingerprints.

18 (4) The commissioner may contract for the collection, transmission, and retention of fingerprints and may
19 agree to a reasonable fee charged by a contractor for these services. If the commissioner contracts for services,
20 the fee for collecting, transmitting, and retaining of fingerprints must be paid directly to the contractor by the
21 applicant or insurer.

22 (5) The commissioner is authorized to receive criminal history record information in lieu of the Montana
23 department of justice relating to fingerprints submitted to the federal bureau of investigation.

24 (6) The commissioner may adopt rules to further implement this section, including but not limited to rules
25 on the length of time that a background examination is valid and rules for the electronic filing of fingerprints."
26

27 **Section 8.** Section 33-17-231, MCA, is amended to read:

28 **"33-17-231. Appointment of insurance producers -- continuation and termination.** (1) Each insurer
29 appointing an insurance producer in this state shall file with the commissioner the appointment, specifying the
30 kinds of insurance to be transacted by the insurance producer for the insurer. The appointment may be

1 electronically filed. The commissioner may adopt rules to implement electronic filing.

2 (2) Each appointment remains in effect until the insurance producer's license is revoked or otherwise
3 terminated unless written notice of earlier termination of the appointment is filed with the commissioner by the
4 insurer or the insurance producer. The written notice may be electronically filed. The commissioner may adopt
5 rules to implement electronic filing. Termination of the insurer's authority in Montana also terminates the
6 appointment.

7 (3) Subject to the insurance producer's contract rights, an insurer may terminate an insurance producer's
8 appointment at any time. The insurer shall promptly give written notice of the termination to the commissioner and
9 to the insurance producer. The commissioner may require reasonable proof that the insurer has given notice to
10 the insurance producer.

11 (4) As part of the notice of termination given the commissioner, the insurer shall file with the
12 commissioner a statement of the facts relative to the termination and the cause of termination. Any information
13 or statement contained in the notice of termination is not admissible as evidence in any action or proceeding
14 against the insurer or any representative of the insurer by or on behalf of any person affected by the termination.

15 (5) (a) An insurer that sells a qualified health plan in an exchange operating in this state shall appoint
16 any producer who is certified by the commissioner pursuant to [section 4] and follows the appointment application
17 process required by that insurer.

18 (b) To maintain the appointment, the producer shall maintain the producer's certification and license in
19 good standing.

20 (c) The insurer may not terminate the appointment of a certified exchange producer except for one or
21 more of the causes listed in 33-17-1001."

22
23 **NEW SECTION. Section 9. Notification to tribal governments.** The secretary of state shall send a
24 copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
25 Chippewa tribe.

26
27 **NEW SECTION. Section 10. Codification instruction.** [Sections 2 through 5] are intended to be
28 codified as an integral part of Title 33, chapter 17, and the provisions of Title 33, chapter 17, apply to [sections
29 2 through 5].

30

