

HOUSE BILL NO. 250

INTRODUCED BY BANGERTER, BERRY, BLASDEL, C. SMITH, SONJU

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR NAVIGATOR AND PRODUCER CERTIFICATION AND TRAINING RELATED TO HEALTH INSURANCE SOLD ON AN EXCHANGE; PROVIDING TRAINING REQUIREMENTS FOR OTHER PEOPLE WHO ASSIST THOSE SIGNING UP FOR THE EXCHANGE; PROVIDING NAVIGATOR QUALIFICATIONS AND DUTIES; SETTING NAVIGATOR CERTIFICATION FEES; ~~PROVIDING RULEMAKING AUTHORITY TO THE INSURANCE COMMISSIONER~~; AMENDING SECTIONS 33-2-708, 33-17-102, 33-17-220, AND 33-17-231, 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. (Temporary) 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 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;

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

1 revenue account provided for in 53-4-1115.

2 (c) All other fees collected by the commissioner pursuant to Title 33 and the rules adopted under Title
3 33 must be deposited in the state special revenue fund to the credit of the state auditor's office.

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

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

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

10 (i) nonresident insurance producer's license:

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

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

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

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

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

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

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

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

19 (iv) insurance adjuster's license:

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

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

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

23 (v) insurance consultant's license:

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

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

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

27 (vi) viatical settlement broker's license:

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

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

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

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

29 **NEW SECTION. Section 2. Navigator certification -- duties -- prohibitions.** (1) An individual or an

30 individual performing navigator duties on behalf of an organization serving as a navigator may not act in the

1 capacity of a navigator unless the individual has met all of the following requirements, as applicable:

2 (a) is at least 18 years of age;

3 (b) has completed and submitted the application form provided for in [section 3] and has declared, under
4 penalty of refusal, suspension, or revocation of the navigator's certification, that the statements made in the form
5 are true, correct, and complete to the best of the applicant's knowledge and belief;

6 (c) has completed a background examination as described in 33-17-220;

7 (d) has successfully completed the navigator certification and training requirements adopted by the
8 commissioner, as provided in [section 3]; and

9 (e) has paid all fees required by 33-2-708.

10 (2) A navigator's duties may include any of the following:

11 (a) conducting public education activities to raise awareness of the availability of qualified health plans;

12 (b) distributing fair and impartial general information concerning how to enroll in any qualified health plan
13 offered within the exchange and the availability of the premium tax credits under 26 U.S.C. 36B and the
14 cost-sharing reductions provided under 42 U.S.C. 18071;

15 (c) assisting consumers to understand how to enroll in a qualified health plan through an exchange or
16 appropriate public programs offering health care coverage, without suggesting that the consumer purchase any
17 particular plan; and

18 (d) referring consumers to the commissioner's office for assistance with complaints, appeals, grievances,
19 or general information about health insurance.

20 (3) A navigator may not do any of the following unless the navigator is otherwise licensed or authorized
21 to do so under this chapter:

22 (a) sell, solicit, or negotiate health insurance; or

23 (b) enroll an individual or an employee in a qualified health plan offered through an exchange.

24

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

26 **-- TRAINING FOR CERTIFIED APPLICATION COUNSELORS AND OTHERS.** (1) The commissioner shall:

27 (a) develop a navigator certification application form that requires an applicant to disclose potential
28 conflicts of interest and any other information the commissioner considers relevant;

29 (b) establish a navigator certification and training program for a prospective navigator and the navigator's
30 employees;

1 (c) approve courses and the number of hours required for the navigator certification and training
2 program;

3 (d) approve courses ~~and the number of hours~~ for continuing education COVERING 10 HOURS IN EVERY
4 24-MONTH PERIOD; and

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

7 (2) The commissioner may suspend, revoke, or refuse to issue or renew the navigator certification of
8 a person that has committed an act for which the grounds for denial, suspension, or revocation are described in
9 33-17-1001 regarding an insurance producer's license.

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

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

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

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

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

19 (d) an examination.

20 (5) THE COMMISSIONER MAY PRESCRIBE TRAINING FOR AN APPLICATION COUNSELOR PROVIDED FOR IN FEDERAL
21 RULE AND OTHER PERSONS WHO WHILE NOT PART OF THE NAVIGATOR PROGRAM ASSIST THOSE WHO SIGN UP FOR AN
22 EXCHANGE. THE COMMISSIONER MAY REQUIRE COMPLETION OF THE TRAINING BEFORE CERTIFICATION BY THE EXCHANGE.
23 THE TRAINING MUST BE DESIGNED FOR THOSE WHO ASSIST APPLICANTS SEEKING TO ENROLL IN COVERAGE THROUGH THE
24 EXCHANGE.

25
26 **NEW SECTION. Section 4. Producer exchange training -- continuing education -- certification for**
27 **exchange sales.** (1) A producer may not sell, solicit, or negotiate insurance through an exchange on or after
28 October 1, 2013, without first completing the initial producer exchange training and certification program provided
29 for in this section and subsequently completing continuing education in every 24-month period, as prescribed and
30 approved by the commissioner.

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

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

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

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

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

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

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

13

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

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

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

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

23

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

25 **"33-17-102. Definitions.** As used in this title, the following definitions apply:

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

29 (b) The term does not include a:

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

- 1 (ii) salaried employee of an insurer or of a managing general agent;
- 2 (iii) licensed insurance producer who adjusts or assists in adjustment of losses arising under policies
3 issued by the insurer;
- 4 (iv) licensed third-party administrator who adjusts or assists in adjustment of losses arising under policies
5 issued by the insurer; or
- 6 (v) claims examiner as defined in 39-71-116.
- 7 (2) "Adjuster license" means a document issued by the commissioner that authorizes a person to act
8 as an adjuster.
- 9 (3) (a) "Administrator" means a person who collects charges or premiums from residents of this state
10 in connection with life, disability, property, or casualty insurance or annuities or who adjusts or settles claims on
11 these coverages.
- 12 (b) The term does not include:
- 13 (i) an employer on behalf of its employees or on behalf of the employees of one or more subsidiaries of
14 affiliated corporations of the employer;
- 15 (ii) a union on behalf of its members;
- 16 (iii) (A) an insurer that is either authorized in this state or acting as an insurer with respect to a policy
17 lawfully issued and delivered by the insurer in and pursuant to the laws of a state in which the insurer is
18 authorized to transact insurance; or
- 19 (B) a health service corporation as defined in 33-30-101;
- 20 (iv) a life, disability, property, or casualty insurance producer who is licensed in this state and whose
21 activities are limited exclusively to the sale of insurance;
- 22 (v) a creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and
23 its debtors;
- 24 (vi) a trust established in conformity with 29 U.S.C. 186 or the trustees, agents, and employees of the
25 trust;
- 26 (vii) a trust exempt from taxation under section 501(a) of the Internal Revenue Code or the trustees and
27 employees of the trust;
- 28 (viii) a custodian acting pursuant to a custodian account that meets the requirements of section 401(f)
29 of the Internal Revenue Code or the agents and employees of the custodian;
- 30 (ix) a bank, credit union, or other financial institution that is subject to supervision or examination by

1 federal or state banking authorities;

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

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

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

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

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

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

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

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

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

21 ~~(8)~~(9) "Home state" means the District of Columbia or any state or territory of the United States in which
22 the insurance producer:

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

24 (b) is licensed as an insurance producer.

25 ~~(9)~~(10) "Individual" means a natural person.

26 ~~(10)~~(11) "Insurance producer", except as provided in 33-17-103, means a person required to be licensed
27 under the laws of this state to sell, solicit, or negotiate insurance.

28 ~~(11)~~(12) "Lapse" means the expiration of the license for failure to renew by the biennial renewal date.

29 ~~(12)~~(13) "License" means a document issued by the commissioner that authorizes a person to act as an
30 insurance producer for the lines of authority specified in the document. The license itself does not create actual,

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

2 ~~(13)~~(14) "Limited line credit insurance" includes credit life insurance, credit disability insurance, credit
3 property insurance, credit unemployment insurance, involuntary unemployment insurance, mortgage life
4 insurance, mortgage guaranty insurance, mortgage disability insurance, gap insurance, and any other form of
5 insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing the
6 credit obligation and that the commissioner determines should be designated as a form of limited line credit
7 insurance.

8 ~~(14)~~(15) "Limited line credit insurance producer" means a person who sells, solicits, or negotiates one
9 or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or
10 individual policy.

11 ~~(15)~~(16) "Limited lines insurance" means those lines of insurance that the commissioner finds necessary
12 to recognize for the purposes of complying with 33-17-401(3).

13 ~~(16)~~(17) "Limited lines producer" means a person authorized by the commissioner to sell, solicit, or
14 negotiate limited lines insurance.

15 ~~(17)~~(18) "Lines of authority" means any kind of insurance as defined in Title 33.

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

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

22 ~~(19)~~(21) "Person" means an individual or a business entity.

23 ~~(20)~~(22) "Public adjuster" means an adjuster employed by and representing the interests of the insured.

24 ~~(21)~~(23) "Sell" means to exchange a contract of insurance by any means, for money or the equivalent,
25 on behalf of an insurance company.

26 ~~(22)~~(24) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular
27 kind of insurance.

28 ~~(23)~~(25) "Suspend" means to bar the use of a person's license for a period of time.

29 ~~(24)~~(26) "Uniform application" means the national association of insurance commissioners' uniform
30 application for resident and nonresident insurance producer licensing.

1 ~~(25)~~(27) "Uniform business entity application" means the national association of insurance commissioners
2 uniform business entity application for resident and nonresident business entities."
3

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

5 **"33-17-220. Licensing background examination -- entity registry criteria.** (1) (a) Each applicant for
6 a producer's license or navigator certification shall obtain a complete background examination. The applicant or
7 insurer shall pay the cost of the background examination. The background examination report must provide
8 information to confirm:

9 (i) the applicant's:

10 (A) identity;

11 (B) current address;

12 (C) professional license certification; and

13 (D) military service; and

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

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

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

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

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

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

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

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

3

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

5 **"33-17-231. Appointment of insurance producers -- continuation and termination.** (1) Each insurer
 6 appointing an insurance producer in this state shall file with the commissioner the appointment, specifying the
 7 kinds of insurance to be transacted by the insurance producer for the insurer. The appointment may be
 8 electronically filed. The commissioner may adopt rules to implement electronic filing.

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

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

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

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

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

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

29

30 NEW SECTION. **Section 9. Notification to tribal governments.** The secretary of state shall send a

1 copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
2 Chippewa tribe.

3
4 NEW SECTION. **Section 10. Codification instruction.** [Sections 2 through 5] are intended to be
5 codified as an integral part of Title 33, chapter 17, and the provisions of Title 33, chapter 17, apply to [sections
6 2 through 5].

7
8 NEW SECTION. **Section 11. Effective date.** [This act] is effective July 1, 2013.

9 - END -