

## 1 HOUSE BILL NO. 78

2 INTRODUCED BY R. LYNCH

3 BY REQUEST OF THE STATE AUDITOR

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING PRIVACY, DISCLOSURE, AND OTHER CONSUMER  
6 PROTECTION REQUIREMENTS FOR MOTOR VEHICLE INSURANCE TELEMATICS AGREEMENTS;  
7 PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 33-18-210, MCA; AND PROVIDING AN  
8 IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

9

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

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12 NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 7], the following definitions  
13 apply:

14 (1) "Authorized representative" means a person who is the attorney-in-fact for an owner or has been  
15 appointed the administrator or personal representative of the estate of the owner.

16 (2) (a) "Owner" means an individual or entity:

17 (i) in whose name a motor vehicle is registered or titled;

18 (ii) who leases a motor vehicle for at least 3 months;

19 (iii) who is entitled to possession of a motor vehicle as the purchaser under a security agreement; or

20 (iv) who is the authorized representative of an owner under subsections (2)(a)(i) through (2)(a)(iii).

21 (b) The term does not include a lienholder under a security agreement.

22 (3) "Policyholder" means a person who is a present named insured in an individual property or casualty  
23 insurance policy.

24 (4) "Recorded data" means the data collected, stored, or transmitted by a recording device identifying  
25 performance or operation information about a motor vehicle, including:

26 (a) speed;

27 (b) direction;

28 (c) location; and

29 (d) internal controls and diagnostics, such as steering performance, brake performance, or computer  
30 diagnostics.

1 (5) "Recording device" means a device, mechanism, or system installed in or used in conjunction with  
2 a motor vehicle that collects, stores, or transmits recorded data. The term includes the following to the extent that  
3 they involve recorded data:

- 4 (a) event data recorders;
- 5 (b) sensing and diagnostic modules;
- 6 (c) electronic control modules;
- 7 (d) automatic crash notification systems;
- 8 (e) geographic information systems;
- 9 (f) cellular phones;
- 10 (g) personal digital assistants; and
- 11 (h) any other device that collects, stores, or transmits recorded data.

12 (6) "Telematics agreement" means a written agreement between a licensee and a policyholder of the  
13 licensee regarding use of a recording device in a motor vehicle to collect or store recorded data or transmit  
14 recorded data to the licensee or to a third party designated by the licensee.

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16 **NEW SECTION. Section 2. Telematics agreement disclosures.** (1) (a) To be effective, a telematics  
17 agreement must include a consent form.

18 (b) The consent form must be signed by the policyholder and, if the policyholder and owner of the insured  
19 motor vehicle are not the same person, by all owners of the insured motor vehicle or the authorized  
20 representative of the owners.

21 (2) A telematics agreement must disclose the following:

22 (a) if the licensee or a third party designated by the licensee provides the recording device, the  
23 categories of recorded data the recording device is capable of collecting, storing, or transmitting;

24 (b) the identification of any third parties that may collect, store, transmit, or receive the recorded data  
25 in relation to the terms of the telematics agreement;

26 (c) the categories of recorded data that may be collected, stored, or transmitted;

27 (d) the purposes for which the licensee or a third party may use the recorded data;

28 (e) the length of time the licensee or third party may collect, store, transmit, or otherwise retain the data;

29 and

30 (f) the terms of any discount on a premium associated with the telematics agreement.

1 (3) A telematics agreement and associated documents, including the consent form required under  
2 subsection (1), are part of an insurance policy as provided in 33-15-302 and are subject to all of the insurance  
3 policy and contract requirements of Title 33, including the filing requirements of 33-1-501.

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5 **NEW SECTION. Section 3. Licensee obligations for telematics agreement -- termination.** (1) A  
6 licensee may provide a discount to a policyholder for participating in a telematics agreement.

7 (2) A licensee may not cancel, refuse to issue, or refuse to renew a motor vehicle insurance policy  
8 because a policyholder or owner refuses to:

9 (a) enter into or consent to a telematics agreement; or

10 (b) provide access to recorded data from a recording device.

11 (3) Except as provided in subsections (1) and (4), a licensee may not reduce coverage, increase a  
12 premium, place in a less favorable rate tier, deny a claim, or reduce or refuse to provide a discount, incentive,  
13 or other benefit or advantage to a policyholder:

14 (a) if the policyholder or owner refuses to provide access to recorded data from a recording device or  
15 enter into or consent to a telematics agreement; or

16 (b) based on analysis of the recorded data collected in connection with the telematics agreement.

17 (4) A licensee may adjust the amount of a discount provided under subsection (1) to the extent that an  
18 analysis of the recorded data collected through the telematics agreement accurately represents policyholder  
19 driving habits.

20 (5) A licensee offering a telematics agreement shall offer all its policyholders under that policy type an  
21 equal opportunity to enter into a telematics agreement.

22 (6) A licensee may terminate a telematics agreement and any associated discount if a policyholder  
23 materially fails to comply with a term of the telematics agreement.

24 (7) A licensee shall terminate a telematics agreement and any associated discount upon the request of  
25 the policyholder or owner.

26 (8) A licensee may not require a policyholder or owner to consent to the release of recorded data as  
27 provided in [section 5] under a telematics agreement as a condition of:

28 (a) participation in or receipt of a discount under the telematics agreement except as provided in [section  
29 5(5)(c)]; or

30 (b) the defense, payment, or settlement of an obligation or a claim.

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2           **NEW SECTION. Section 4. Ownership of data.** (1) Subject to 33-19-306 and this section, recorded  
3 data collected, stored, or transmitted by a recording device under a telematics agreement:

4           (a) is personal information as defined in 33-19-104;

5           (b) may not be provided by a person, other than the policyholder and the owner named in the telematics  
6 agreement, to a third party not named in the telematics agreement; and

7           (c) may not be used by a licensee or third party named in the telematics agreement for uses other than  
8 those disclosed in the telematics agreement.

9           (2) Ownership of recorded data collected, stored, or transmitted by a recording device under a telematics  
10 agreement does not pass:

11           (a) to a licensee or to a third party named in the telematics agreement as a result of the participation of  
12 the policyholder, the owner, or the owner's authorized representative in the telematics agreement; or

13           (b) to a licensee, a third party named in the telematics agreement, or a lienholder if the licensee, the third  
14 party, or the lienholder succeeds in ownership to the motor vehicle, including following an accident or a claim,  
15 except to the extent a licensee or a third party already possesses data previously obtained pursuant to a valid  
16 telematics agreement.

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18           **NEW SECTION. Section 5. Release of recorded data.** (1) Subject to the provisions of this chapter,  
19 recorded data collected, stored, or transmitted under a telematics agreement and information derived from that  
20 recorded data may not be sold or otherwise released to a licensee or to a third party that was not a signatory to  
21 the telematics agreement.

22           (2) Recorded data collected, stored, or transmitted under a telematics agreement and information  
23 derived from that recorded data may be released to a licensee or to a third party that was not a signatory to the  
24 telematics agreement to the extent the telematics agreement specifically permits a release and the release is  
25 necessary to accomplish the purposes of the telematics agreement.

26           (3) (a) In addition to any release authorized by the telematics agreement, a policyholder may consent  
27 as provided in subsection (3)(b) to the release to a third party of recorded data or information derived from the  
28 recorded data.

29           (b) Consent under subsection (3)(a) must:

30           (i) satisfy the requirements of 33-19-206;

1 (ii) be signed by all owners of the insured motor vehicle or the owners' authorized representative if the  
2 policyholder and owner of the insured motor vehicle are not the same person; and

3 (iii) specify how long the third party may retain the data.

4 (4) Recorded data collected, stored, or transmitted under a telematics agreement and information  
5 derived from that recorded data may be released by the licensee or a third party without the consent of the  
6 policyholder or owner only under the following circumstances:

7 (a) pursuant to an order by a court of competent jurisdiction;

8 (b) to an emergency response provider for the purpose of determining the need for or facilitating an  
9 emergency response; or

10 (c) to a law enforcement agency in the course of an accident or criminal investigation if there exists  
11 probable cause to believe that the recorded data includes evidence relating to the cause of an accident or a  
12 violation of law.

13 (5) (a) Except as provided in subsection (4), in the case of an accident or a claim, a licensee previously  
14 authorized to collect, store, transmit, release, analyze, or use recorded data may not release, analyze, or use  
15 recorded data relating to the accident or claim without obtaining contemporaneous consent of the policyholder  
16 and, if the policyholder and owner of the insured motor vehicle are not the same person, of all owners of the  
17 insured motor vehicle or the owners' authorized representative.

18 (b) The requirements of subsection (3) apply to a consent given under this subsection (5).

19 (c) A licensee may require a policyholder or owner to consent to a release of recorded data under a  
20 telematics agreement only to the extent the release is required to implement the terms of the telematics  
21 agreement.

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23 **NEW SECTION. Section 6. Application -- exclusion.** (1) The provisions of [sections 1 through 7]  
24 apply to a telematics agreement entered into between a policyholder or owner and a licensee.

25 (2) The provisions of [sections 1 through 7] do not apply to a manufacturer of a motor vehicle or its  
26 subsidiary or affiliate who embeds a recording device in a motor vehicle as long as the manufacturer or its  
27 subsidiary or affiliate is not acting as a licensee.

28 (3) If a conflict arises between [sections 1 through 7] and any provision of this chapter, [sections 1  
29 through 7] prevail.

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1            NEW SECTION. Section 7. Rulemaking. The commissioner may adopt rules necessary to implement  
2 the provisions of [sections 1 through 7].

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4            **Section 8.** Section 33-18-210, MCA, is amended to read:

5            "**33-18-210. Unfair discrimination and rebates prohibited -- property, casualty, and surety**  
6 **insurances -- exception.** (1) A title, property, casualty, or surety insurer or an employee, representative, or  
7 insurance producer of an insurer may not, as an inducement to purchase insurance or after insurance has been  
8 effected, pay, allow, or give or offer to pay, allow, or give, directly or indirectly, a:

9            (a) rebate, discount, abatement, credit, or reduction of the premium named in the insurance policy;  
10            (b) special favor or advantage in the dividends or other benefits to accrue on the policy; or  
11            (c) valuable consideration or inducement not specified in the policy, except to the extent provided for in  
12 an applicable filing with the commissioner as provided by law.

13            (2) An insured named in a policy or an employee of the insured may not knowingly receive or accept,  
14 directly or indirectly, a:

15            (a) rebate, discount, abatement, credit, or reduction of premium;  
16            (b) special favor or advantage; or  
17            (c) valuable consideration or inducement.

18            (3) The prohibitions in subsections (1) and (2) do not apply to a discount provided for by a telematics  
19 agreement as provided in [sections 1 through 7] if the telematics agreement is on a form filed with the  
20 commissioner under 33-1-501.

21            ~~(3)~~(4) An insurer may not make or permit unfair discrimination in the premium or rates charged for  
22 insurance, in the dividends or other benefits payable on insurance, or in any other of the terms and conditions  
23 of the insurance either between insureds or property having like insuring or risk characteristics or between  
24 insureds because of race, color, creed, religion, or national origin.

25            ~~(4)~~(5) This section may not be construed as prohibiting the payment of commissions or other  
26 compensation to licensed insurance producers or as prohibiting an insurer from allowing or returning lawful  
27 dividends, savings, or unabsorbed premium deposits to its participating policyholders, members, or subscribers.

28            ~~(5)~~(6) An insurer may not make or permit unfair discrimination between individuals or risks of the same  
29 class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the  
30 amount of insurance coverage on a property or casualty risk because of the geographic location of the risk;

1 unless:

2 (a) the refusal, cancellation, or limitation is for a business purpose that is not a mere pretext for unfair  
3 discrimination; or

4 (b) the refusal, cancellation, or limitation is required by law or regulatory mandate.

5 ~~(6)~~(7) An insurer may not make or permit unfair discrimination between individuals or risks of the same  
6 class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the  
7 amount of insurance coverage on a residential property risk or on the personal property contained in the  
8 residential property, because of the age of the residential property, unless:

9 (a) the refusal, cancellation, or limitation is for a business purpose that is not a mere pretext for unfair  
10 discrimination; or

11 (b) the refusal, cancellation, or limitation is required by law or regulatory mandate.

12 ~~(7)~~(8) An insurer may not refuse to insure, refuse to continue to insure, or limit the amount of coverage  
13 available to an individual because of the sex or marital status of the individual. However, an insurer may take  
14 marital status into account for the purpose of defining persons eligible for dependents' benefits.

15 ~~(8)~~(9) An insurer may not terminate or modify coverage or refuse to issue or refuse to renew a property  
16 or casualty policy or contract of insurance solely because the applicant or insured or any employee of either is  
17 mentally or physically impaired. However, this subsection does not apply to accident and health insurance sold  
18 by a casualty insurer, and this subsection may not be interpreted to modify any other provision of law relating to  
19 the termination, modification, issuance, or renewal of any insurance policy or contract.

20 ~~(9)~~(10) (a) An insurer may not refuse to insure, refuse to continue to insure, charge higher rates, or limit  
21 the amount of coverage available to an individual under a private passenger automobile policy based solely on  
22 adverse information contained in an individual's driving record that is 3 years old or older. An insurer may provide  
23 discounts to an insured under a private passenger automobile policy based on favorable aspects of an insured's  
24 claims history that is 3 years old or older.

25 (b) An insurer may not use more than the most recent 5 years of loss experience that is available when  
26 determining whether to refuse to insure, refuse to continue to insure, charge higher rates, or limit the amount of  
27 coverage available under a commercial automobile policy. An insurer may provide discounts to an insured under  
28 a commercial automobile policy based on favorable aspects of an insured's claims history that is 5 years old or  
29 older.

30 (c) As used in subsection ~~(9)~~(10)(a), "private passenger automobile policy" means an automobile

1 insurance policy issued to individuals or families but does not include policies known as commercial automobile  
2 policies.

3 ~~(10)~~(11) An insurer may not charge points or surcharge a private passenger motor vehicle policy because  
4 of a claim submitted under the insured's policy if the insured was not at fault."

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6 **NEW SECTION. Section 9. Codification instruction.** [Sections 1 through 7] are intended to be codified  
7 as an integral part of Title 33, chapter 19, and the provisions of Title 33, chapter 19, apply to [sections 1 through  
8 7].

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10 **NEW SECTION. Section 10. Effective date.** [This act] is effective on passage and approval.

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12 **NEW SECTION. Section 11. Retroactive applicability.** [This act] applies retroactively, within the  
13 meaning of 1-2-109, to a telematics agreement entered into prior to [the effective date of this act] to the extent  
14 the contract provides a discount for a telematics agreement. The remaining provisions of [this act] are subject  
15 to renewal of the insurance policy.

16 - END -