

SENATE BILL NO. 84

INTRODUCED BY M. MCNALLY

BY REQUEST OF THE STATE AUDITOR

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5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING INSURANCE LAWS RELATED TO CLAIMS HISTORY;
6 REVISING CLAIMS HISTORY INFORMATION THAT AN INSURER MAY CONSIDER IN TRANSACTING
7 RESIDENTIAL PROPERTY AND AUTOMOBILE INSURANCE POLICIES; LIMITING THE PERIOD FOR WHICH
8 ADVERSE CLAIMS HISTORY MAY BE USED IN ISSUING, RENEWING, OR RATING RESIDENTIAL
9 PROPERTY INSURANCE; ALLOWING A DISCOUNT BASED ON FAVORABLE ASPECTS OF THE INSURED'S
10 CLAIMS HISTORY; AMENDING SECTIONS 33-16-201 AND 33-18-210, MCA; AND PROVIDING AN
11 APPLICABILITY DATE."

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

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15 **Section 1.** Section 33-16-201, MCA, is amended to read:
16 **"33-16-201. Standards applicable to rates.** The following standards apply to the making and use of
17 rates pertaining to all classes of insurance to which the provisions of this chapter are applicable:
18 (1) (a) Rates may not be excessive or inadequate, and they may not be unfairly discriminatory.
19 (b) A rate may not be held to be excessive unless the rate is unreasonably high for the insurance
20 provided and a reasonable degree of competition does not exist in the area with respect to the classification to
21 which the rate is applicable.
22 (c) A rate may not be held to be inadequate unless the rate is unreasonably low for the insurance
23 provided and the continued use of the rate endangers the solvency of the insurer using the rate or unless the rate
24 is unreasonably low for the insurance provided and the use of the rate by the insurer has, or if continued will have,
25 the effect of destroying competition or creating a monopoly.
26 (2) (a) Consideration must be given, when applicable, to past and prospective loss experience within
27 and outside this state, to revenue and profits from reserves, to conflagration and catastrophe hazards, if any, to
28 a reasonable margin for underwriting profit and contingencies, to past and prospective expenses, both
29 countrywide and those specially applicable to this state, and to all other factors, including judgment factors,
30 considered relevant within and outside this state. In the case of fire insurance rates, consideration may be given

1 to the experience of the fire insurance business during the most recent 5-year period for which experience is
2 available.

3 (b) Consideration may also be given in the making and use of rates to dividends, savings, or unabsorbed
4 premium deposits allowed or returned by insurers to their policyholders, members, or subscribers.

5 (3) The systems of expense provisions included in the rates for use by any insurer or group of insurers
6 may differ from those of other insurers or groups of insurers to reflect the operating methods of the insurer or
7 group with respect to any kind of insurance or with respect to any subdivision or combination of insurance.

8 (4) (a) Risks may be grouped by classifications for the establishment of rates and minimum premiums.
9 Classification rates may be modified to produce rates for separate risks in accordance with rating plans that
10 establish standards for measuring variations in hazards or expense provisions, or both. The standards may
11 measure any difference among risks that have a probable effect ~~upon~~ on losses or expenses. Classifications or
12 modifications of classifications of risks may be established, based ~~upon~~ on size, expense, management,
13 individual experience, location or dispersion of hazard, or any other reasonable considerations.

14 (b) Special risk classifications may be established for private passenger automobile policies. Special risk
15 classifications for private passenger automobile insurance may be based ~~upon~~ on favorable aspects of an insured
16 individual's claims history ~~that is 3 years old or older~~. Special risk classifications for private passenger automobile
17 insurance may not be established based on adverse information contained in an insured individual's driving
18 record that is 3 years old or older.

19 (c) Special risk classifications may be established for commercial automobile policies. Special risk
20 classifications for commercial automobile policies may be based ~~upon~~ on favorable aspects of an insured's claims
21 history ~~that is 5 years old or older~~. Special risk classifications for commercial automobile policies established for
22 an insured's adverse loss experience may not use more than the most recent 5 years of claims history that is
23 available.

24 (d) Special risk classifications may be established for residential property insurance policies. Special risk
25 classifications for residential property insurance policies may be based on favorable aspects of an insured's
26 claims history. Special risk classifications for residential property insurance policies established for an insured's
27 adverse loss experience may not use more than the most recent 5 years of claims history that is available.

28 ~~(d)~~(e) Classifications and modifications apply to all risks under the same or substantially the same
29 circumstances or conditions.

30 ~~(e)~~(f) As used in subsection (4)(b), "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."

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4 **Section 2.** Section 33-18-210, MCA, is amended to read:

5 **"33-18-210. Unfair discrimination and rebates prohibited -- property, casualty, and surety**

6 **insurances.** (1) A title, property, casualty, or surety insurer or an employee, representative, or insurance
7 producer of an insurer may not, as an inducement to purchase insurance or after insurance has been effected,
8 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) An insurer may not make or permit unfair discrimination in the premium or rates charged for
19 insurance, in the dividends or other benefits payable on insurance, or in any other of the terms and conditions
20 of the insurance either between insureds or property having like insuring or risk characteristics or between
21 insureds because of race, color, creed, religion, or national origin.

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

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

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

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

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

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

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

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

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

17 (9) (a) An insurer may provide discounts to an insured under a residential property policy based on
18 favorable aspects of an insured's claims history. An insurer may not use more than the most recent 5 years of
19 adverse loss experience when determining whether to refuse to insure, refuse to continue to insure, charge higher
20 rates, or limit the amount of coverage available on a residential property policy.

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

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

1 ~~(c)~~(d) As used in subsection ~~(9)(a)~~ (9)(b), "private passenger automobile policy" means an automobile
2 insurance policy issued to individuals or families but does not include policies known as commercial automobile
3 policies.

4 (10) An insurer may not charge points or surcharge a private passenger motor vehicle policy because
5 of a claim submitted under the insured's policy if the insured was not at fault."
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7 NEW SECTION. **Section 3. Saving clause.** [This act] does not affect rights and duties that matured,
8 penalties that were incurred, or proceedings that were begun before [the effective date of this act].
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10 NEW SECTION. **Section 4. Applicability.** [This act] applies to all policies issued or renewed on or after
11 January 1, 2016.
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