

HOUSE BILL NO. 78

INTRODUCED BY R. LYNCH, ZOLNIKOV
BY REQUEST OF THE STATE AUDITOR

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

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

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 6], the following definitions apply:

(1) "Benefit" means any rebate, discount, abatement, credit, reduction of premium, or other advantage to the policyholder provided under the terms of a telematics agreement.

(2) "Policyholder" means a person who is a present named insured in a motor vehicle liability policy as defined in 33-23-204.

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

- (a) speed;
- (b) direction;
- (c) location; and
- (d) internal controls and diagnostics, such as steering performance, brake performance, or computer diagnostics.

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

- (a) event data recorders;

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

8 (5) "Telematics agreement" means a written agreement between an insurer and a policyholder of the
9 insurer regarding use of a recording device in a motor vehicle to collect or store recorded data or transmit
10 recorded data to the insurer or to a third party designated by the insurer.

11
12 **NEW SECTION. Section 2. Telematics agreement disclosures.** (1) A telematics agreement must
13 be signed by the policyholder.

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

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

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

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

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

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

22 and

23 (f) the terms of any benefit associated with the telematics agreement.

24
25 **NEW SECTION. Section 3. Insurer obligations for telematics agreement -- termination.** (1) An
26 insurer may provide a benefit to a policyholder for participating in a telematics agreement.

27 (2) Except as provided in subsection (4), an insurer may not cancel, refuse to issue, or refuse to renew
28 a motor vehicle insurance policy solely because a policyholder refuses to:

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

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

1 (3) An insurer:

2 (a) may not reduce coverage, increase a premium, place in a less favorable rate tier, or deny a claim
3 to a policyholder if the policyholder refuses to enter into or consent to a telematics agreement, except as provided
4 in subsection (4) or (7); and

5 (b) may not, based upon analysis of recorded data collected in connection with the telematics agreement,
6 reduce coverage, increase a premium, place in a less favorable rate tier, deny a claim, or reduce or refuse to
7 provide a benefit to a policyholder, except as provided in subsections (4), (5), and (7).

8 (4) Subsections (2) and (3) do not apply to a motor vehicle insurance policy:

9 (a) based upon the policyholder driving a minimum or maximum number of miles or driving within a
10 certain range of miles; and

11 (b) that requires a policyholder to use a recording device for purposes of determining mileage.

12 (5) An insurer may adjust the benefit provided under subsection (1) to the extent that an analysis of the
13 recorded data collected through the telematics agreement accurately represents the policyholder's driving habits.

14 (6) An insurer offering a telematics agreement shall offer all its policyholders under that policy type an
15 equal opportunity to enter into a telematics agreement except to the extent the recording device used under the
16 telematics agreement is not compatible with the motor vehicle of the policyholder.

17 (7) (a) An insurer may terminate a telematics agreement and any associated benefit if a policyholder
18 materially fails to comply with a term of the telematics agreement.

19 (b) Termination of a telematics agreement and any associated benefit under this subsection (7) does
20 not constitute a midterm premium increase as provided in 33-15-1108.

21 (8) An insurer shall terminate a telematics agreement and any associated benefit upon the request of
22 the policyholder.

23
24 **NEW SECTION. Section 4. Ownership of data.** Recorded data collected, stored, or transmitted by a
25 recording device under a telematics agreement:

26 (1) is personal information as defined in 33-19-104; and

27 (2) may not be used by an insurer or third party named in the telematics agreement for uses other than
28 those disclosed in the telematics agreement.

29
30 **NEW SECTION. Section 5. Application -- exclusion.** (1) The provisions of [sections 1 through 6] apply

1 to a telematics agreement entered into between a policyholder and an insurer.

2 (2) The provisions of [sections 1 through 6] do not apply to a manufacturer of a motor vehicle or supplier
3 of an aftermarket device or services or to its respective subsidiaries or affiliates that embed in or provide a
4 recording device for a motor vehicle as long as the manufacturer or supplier or the respective subsidiaries or
5 affiliates is not acting as an insurer.

6
7 **NEW SECTION. Section 6. Rulemaking.** The commissioner may adopt rules necessary to implement
8 the provisions of [sections 1 through 6].

9
10 **Section 7.** Section 33-18-210, MCA, is amended to read:

11 **"33-18-210. Unfair discrimination and rebates prohibited -- property, casualty, and surety**
12 **insurances -- exception.** (1) ~~A~~ Except as provided in subsections (3) and (10)(a), a title, property, casualty, or
13 surety insurer or an employee, representative, or insurance producer of an insurer may not, as an inducement
14 to purchase insurance or after insurance has been effected, pay, allow, or give or offer to pay, allow, or give,
15 directly or indirectly, a:

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

20 (2) ~~An~~ Except as provided in subsections (3) and (10)(a), an insured named in a policy or an employee
21 of the insured may not knowingly receive or accept, directly or indirectly, a:

22 (a) rebate, discount, abatement, credit, or reduction of premium;
23 (b) special favor or advantage; or
24 (c) valuable consideration or inducement.

25 (3) The prohibitions in subsections (1) and (2) do not apply to a benefit provided for by a telematics
26 agreement as provided in [sections 1 through 6].

27 ~~(3)(4)~~ (4) An insurer may not make or permit unfair discrimination in the premium or rates charged for
28 insurance, in the dividends or other benefits payable on insurance, or in any other of the terms and conditions
29 of the insurance either between insureds or property having like insuring or risk characteristics or between
30 insureds because of race, color, creed, religion, or national origin.

1 ~~(4)~~(5) This section may not be construed as prohibiting the payment of commissions or other
2 compensation to licensed insurance producers or as prohibiting an insurer from allowing or returning lawful
3 dividends, savings, or unabsorbed premium deposits to its participating policyholders, members, or subscribers.

4 ~~(5)~~(6) An insurer may not make or permit unfair discrimination between individuals or risks of the same
5 class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the
6 amount of insurance coverage on a property or casualty risk because of the geographic location of the risk,
7 unless:

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

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

11 ~~(6)~~(7) An insurer may not make or permit unfair discrimination between individuals or risks of the same
12 class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the
13 amount of insurance coverage on a residential property risk or on the personal property contained in the
14 residential property, because of the age of the residential property, unless:

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

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

18 ~~(7)~~(8) An insurer may not refuse to insure, refuse to continue to insure, or limit the amount of coverage
19 available to an individual because of the sex or marital status of the individual. However, an insurer may take
20 marital status into account for the purpose of defining persons eligible for dependents' benefits.

21 ~~(8)~~(9) An insurer may not terminate or modify coverage or refuse to issue or refuse to renew a property
22 or casualty policy or contract of insurance solely because the applicant or insured or any employee of either is
23 mentally or physically impaired. However, this subsection does not apply to accident and health insurance sold
24 by a casualty insurer, and this subsection may not be interpreted to modify any other provision of law relating to
25 the termination, modification, issuance, or renewal of any insurance policy or contract.

26 ~~(9)~~(10) (a) An insurer may not refuse to insure, refuse to continue to insure, charge higher rates, or limit
27 the amount of coverage available to an individual under a private passenger automobile policy based solely on
28 adverse information contained in an individual's driving record that is 3 years old or older. An insurer may provide
29 discounts to an insured under a private passenger automobile policy based on favorable aspects of an insured's
30 claims history that is 3 years old or older.

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

6 (c) As used in subsection ~~(9)(a)~~ (10)(a), "private passenger automobile policy" means an automobile
 7 insurance policy issued to individuals or families but does not include policies known as commercial automobile
 8 policies.

9 ~~(+0)(11)~~ An insurer may not charge points or surcharge a private passenger motor vehicle policy because
 10 of a claim submitted under the insured's policy if the insured was not at fault."

11
 12 **NEW SECTION. Section 8. Codification instruction.** [Sections 1 through 6] are intended to be codified
 13 as an integral part of Title 33, chapter 23, part 2, and the provisions of Title 33, chapter 23, part 2, apply to
 14 [sections 1 through 6].

15
 16 **NEW SECTION. Section 9. Applicability.** [This act] applies to telematics agreements entered into or
 17 renewed on or after January 1, 2016.

18 - END -