

SENATE BILL NO. 223

INTRODUCED BY S. FITZPATRICK

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A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING AN INSURER FROM RECOVERING COSTS FROM AN INSURED WHEN THE INSURER IS DETERMINED NOT TO OWE A DUTY TO DEFEND."

WHEREAS, in *Travelers Casualty and Surety Company v. Ribi Immunochem Research*, 2005 MT 50, 326 Mont. 174, 108 P.3d 469, the Montana Supreme Court held that an insurer may recover defense costs when the insurer did not have a duty to defend any of the asserted claims; and

WHEREAS, in subsequent cases, including *Horace Mann Insurance Co. v. Hanke*, 2013 MT 320, 372 Mont. 350, 312 P.3d 429, the Montana Supreme Court affirmed its decision to allow an insurer to recover defense costs when the insurer was determined to have no duty to defend an insured.

THEREFORE, this act prohibits insurers from recovering costs in an action for which the insurer has been found to not owe a duty to defend.

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

NEW SECTION. **Section 1. Insurer costs prohibited -- duty to defend.** An insurer may not recover costs of defending an insured against asserted claims if the insurer is subsequently determined not to owe a duty to defend the insured.

NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 25, chapter 10, part 1, and the provisions of Title 25, chapter 10, part 1, apply to [section 1].

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