

HOUSE BILL NO. 74

INTRODUCED BY S. VINTON

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO REMEDIES THAT MAY BE SOUGHT BY THE MONTANA STATE AUDITOR; REVISING LAWS RELATED TO INJUNCTIONS; ALLOWING RESTITUTION FOR INSURANCE CONSUMERS; AMENDING SECTION 33-1-318, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 33-1-318, MCA, is amended to read:

"33-1-318. Injunctions and other remedies. (1) Whenever it appears to the commissioner that a person has engaged in or is about to engage in an act or practice constituting a violation of ~~33-1-501, 33-1-1302, 33-14-201, chapters 2, 16 through 18, and 30 of this title, part 13 of chapter 20 of this title, part 4 of chapter 25 of this title, part 1 of chapter 38 of this title,~~ or any rule or order issued under this ~~code title~~, the commissioner may:

(a) issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing;

(b) issue a temporary cease and desist order that must remain in effect until 10 days after the hearing is held. If the commissioner issues a temporary cease and desist order, the respondent has 15 days from receipt of the order to make a written request for a hearing on the allegations contained in the order. The hearing must be held within 20 days of the commissioner's receipt of the hearing request unless the time is extended by agreement of the parties. If the respondent does not request a hearing within 15 days of receipt of the order and the commissioner does not order a hearing, the order becomes final.

(c) without the issuance of a cease and desist order, bring an action in a court of competent jurisdiction to enjoin the acts or practices and to enforce compliance with this ~~code title~~ or any rule or order issued under this ~~code title~~. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus must be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner may not be required to post a bond.



1 (2) If a hearing is held on a cease and desist order, both parties have 20 days from the date the hearing
 2 is concluded or from the date a transcript of the hearing is filed, if one is requested, to submit proposed findings
 3 of fact, conclusions of law, orders, and supporting briefs to the hearings examiner. The parties have an additional
 4 10 days within which to submit comments on the opposing party's proposed findings of fact, conclusions of law,
 5 orders, and briefs. A final order must be issued within 30 days of the submission of the comments.

6 (3) The commissioner may, after giving reasonable notice and an opportunity for a hearing ~~under this~~
 7 ~~section~~, impose a fine not to exceed \$5,000 for each violation upon a person found to have engaged in an act
 8 or practice constituting a violation of a provision of this ~~code~~ title or any rule or order issued under this ~~code~~ title.
 9 The fine is in addition to all other penalties imposed by the laws of this state and must be collected by the
 10 commissioner in the name of the state of Montana and deposited in the general fund. Imposition of a fine under
 11 this subsection is an order from which an appeal may be taken pursuant to 33-1-711. If a person fails to pay a
 12 fine referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of that person
 13 in this state and may be recovered by suit by the commissioner and deposited in the general fund. Failure of the
 14 person to pay a fine also constitutes a forfeiture of the right to do business in this state under this ~~code~~ title.

15 (4) (a) The commissioner may, after giving reasonable notice and an opportunity for a hearing, require
 16 a person who commits a violation of this title or any rule or order issued under this title to make restitution to a
 17 person who may have sustained a financial loss resulting from the violation, with interest from the date of the
 18 violation. The interest rate must be calculated as of the date of the order pursuant to 25-9-205. This restitution
 19 is in addition to all other fines or penalties imposed by the laws of this state.

20 (b) A person awarded restitution under this section may bring suit to recover the restitution, including
 21 attorney fees, interest at the same rate as provided in 25-9-205, and other costs incurred in obtaining a judgment.

22 (c) The commissioner may consider the failure of a person to pay an amount ordered under this section
 23 as forfeiture of the right to do business in this state."

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25 NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

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27 NEW SECTION. Section 3. Applicability. [This act] applies to all orders entered on or after [the
 28 effective date of this act], including orders relating to acts or practices that occurred before [the effective date of
 29 this act].

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