

SENATE BILL NO. 240

INTRODUCED BY J. ELLSWORTH

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A BILL FOR AN ACT ENTITLED: "AN ACT RESTORING RESCISSION OF INSURANCE CONTRACTS IN THE EVENT OF FRAUD, MATERIAL MISREPRESENTATION, AND OTHER CIRCUMSTANCES; PROVIDING THAT RESCISSION MAY BE DETERMINED UNDER THE UNIFORM DECLARATORY JUDGMENTS ACT; AMENDING SECTION 33-15-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, the National Association of Insurance Commissioners estimates that insurance fraud costs over a hundred billion dollars per year and is financially damaging to not only insurance companies, but also to insurance consumers; and

WHEREAS, this act restores the right of rescission of insurance contracts in the event of fraud, material misrepresentation, and other circumstances, to combat the detrimental effect insurance fraud has on the economy and society as a whole.

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

**Section 1.** Section 33-15-403, MCA, is amended to read:

**"33-15-403. Representations in applications -- recovery precluded and rescission allowed if fraudulent or material.** (1) All statements and descriptions in any application for an insurance policy or annuity contract or in negotiations for an insurance policy or annuity contract by or on behalf of the insured or annuitant are considered representations and not warranties.

(2) Misrepresentations, omissions, concealment of facts, and incorrect statements ~~do not~~ prevent a recovery under the policy or contract unless and entitle the insurer to rescind the policy or contract upon return to the insured or annuitant of any premium paid if:

- (a) fraudulent;
- (b) material either to the acceptance of the risk or to the hazard assumed by the insurer; or
- (c) the insurer in good faith would either not have issued the policy or contract or would not have issued a policy or contract in as large an amount or at the same premium or rate or would not have provided coverage with respect to the hazard resulting in the loss if the true facts had been made known to the insurer as required

1 either by the application for the policy or contract or otherwise.

2 (3) If an insurer rescinds the policy or contract and returns to the insured or annuitant any premium paid  
3 for the policy or contract pursuant to subsection (2), the insured or annuitant shall have no benefits, rights, or  
4 privileges under the policy or contract and the policy or contract must be declared void.

5 ~~(3)~~(4) Subsection (2)(c) does not apply to nonrenewal or discontinuation of group health insurance  
6 offered in connection with a group health plan in the small group market or large group market, as those terms  
7 are defined in 33-22-140.

8 (5) If the parties to an insurance policy disagree regarding the propriety of rescission of a policy or  
9 contract under this section, the district courts of Montana shall have jurisdiction to determine the relative rights  
10 of the parties under the Uniform Declaratory Judgments Act, Title 27, chapter 8."

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

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