

SENATE BILL NO. 240

INTRODUCED BY J. ELLSWORTH

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

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

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

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

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

21 **"33-15-403. Representations in applications -- ~~recovery~~ BENEFIT precluded and rescission allowed**
22 **if fraudulent or material.** (1) All statements and descriptions in any application for an insurance policy or annuity
23 contract or in negotiations for an insurance policy or annuity contract by or on behalf of the insured or annuitant
24 are considered representations and not warranties.

25 (2) Misrepresentations, omissions, concealment of facts, and incorrect statements ~~do not prevent a~~
26 ~~recovery~~ PRECLUDE A BENEFIT AND ALLOW RESCISSION under the policy or contract ~~unless and entitle the insurer~~
27 ~~to rescind the policy or contract upon return to the insured or annuitant of any premium paid if THE~~
28 REPRESENTATIONS ARE:

- 29 (a) THE REPRESENTATIONS ARE fraudulent;
30 (b) THE REPRESENTATIONS ARE material either to the acceptance of the risk or to the hazard assumed by

1 the insurer; or

2 (c) the insurer in good faith would either not have issued the policy or contract or would not have issued
3 a policy or contract in as large an amount or at the same premium or rate or would not have provided coverage
4 with respect to the hazard resulting in the loss if the true facts had been made known to the insurer as required
5 either by the application for the policy or contract or otherwise; AND

6 (D) THE QUESTIONS IN THE APPLICATION ARE SUFFICIENTLY SPECIFIC THAT A REASONABLE PERSON WOULD
7 UNDERSTAND THE REQUIREMENT TO PROVIDE THE PARTICULAR FACTS AND THAT THE APPLICANT'S RESPONSE WAS
8 MATERIAL TO THE INSURER'S DECISION TO PROVIDE COVERAGE OR TO DETERMINE THE PREMIUM OR RATE TO BE CHARGED
9 FOR THE COVERAGE.

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

13 ~~(3)(4)(3)~~ Subsection (2)(c) does not apply to nonrenewal or discontinuation of group health insurance
14 offered in connection with a group health plan in the small group market or large group market, as those terms
15 are defined in 33-22-140.

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

19 (4) IF THE PARTIES TO AN INSURANCE POLICY DISAGREE REGARDING THE PROPRIETY OF RESCISSION OF A POLICY
20 OR A CONTRACT UNDER THIS SECTION, THE DISTRICT COURTS OF THIS STATE HAVE JURISDICTION TO DETERMINE THE
21 RELATIVE RIGHTS OF THE PARTIES UNDER THE UNIFORM DECLARATORY JUDGMENTS ACT IN TITLE 27, CHAPTER 8.

22 (5) THIS SECTION MAY NOT BE CONSTRUED TO LIMIT OR IMPAIR THE POWERS AND AUTHORITY OF THE
23 COMMISSIONER UNDER THIS TITLE."

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

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