

1 \_\_\_\_\_ BILL NO. \_\_\_\_\_

2 INTRODUCED BY \_\_\_\_\_  
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CLAIMS HISTORY INFORMATION THAT AN  
5 INSURER MAY CONSIDER IN TRANSACTING AUTOMOBILE INSURANCE POLICIES; ALLOWING A  
6 DISCOUNT BASED ON FAVORABLE ASPECTS OF THE INSURED'S CLAIMS HISTORY; AND AMENDING  
7 SECTIONS 33-16-201 AND 33-18-210, MCA."

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

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11 **Section 1.** Section 33-16-201, MCA, is amended to read:

12 **"33-16-201. Standards applicable to rates.** The following standards apply to the making and use of  
13 rates pertaining to all classes of insurance to which the provisions of this chapter are applicable:

14 (1) (a) Rates may not be excessive or inadequate, and they may not be unfairly discriminatory.

15 (b) A rate may not be held to be excessive unless the rate is unreasonably high for the insurance  
16 provided and a reasonable degree of competition does not exist in the area with respect to the classification to  
17 which the rate is applicable.

18 (c) A rate may not be held to be inadequate unless the rate is unreasonably low for the insurance  
19 provided and the continued use of the rate endangers the solvency of the insurer using the rate or unless the  
20 rate is unreasonably low for the insurance provided and the use of the rate by the insurer has, or if continued  
21 will have, the effect of destroying competition or creating a monopoly.

22 (2) (a) Consideration must be given, when applicable, to past and prospective loss experience within  
23 and outside this state, to revenue and profits from reserves, to conflagration and catastrophe hazards, if any, to  
24 a reasonable margin for underwriting profit and contingencies, to past and prospective expenses, both  
25 countrywide and those specially applicable to this state, and to all other factors, including judgment factors,  
26 considered relevant within and outside this state. In the case of fire insurance rates, consideration may be given  
27 to the experience of the fire insurance business during the most recent 5-year period for which experience is  
28 available.

1 (b) Consideration may also be given in the making and use of rates to dividends, savings, or  
2 unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers.

3 (3) The systems of expense provisions included in the rates for use by any insurer or group of  
4 insurers may differ from those of other insurers or groups of insurers to reflect the operating methods of the  
5 insurer or group with respect to any kind of insurance or with respect to any subdivision or combination of  
6 insurance.

7 (4) (a) Risks may be grouped by classifications for the establishment of rates and minimum  
8 premiums. Classification rates may be modified to produce rates for separate risks in accordance with rating  
9 plans that establish standards for measuring variations in hazards or expense provisions, or both. The  
10 standards may measure any difference among risks that have a probable effect upon losses or expenses.  
11 Classifications or modifications of classifications of risks may be established, based ~~upon~~ on size, expense,  
12 management, individual experience, location or dispersion of hazard, or any other reasonable considerations.

13 (b) Special risk classifications may be established for private passenger automobile policies. Special  
14 risk classifications may be based ~~upon~~ on favorable aspects of an insured individual's claims history ~~that is 3~~  
15 ~~years old or older~~. Special risk classifications may not be established based on adverse information contained  
16 in an insured individual's driving record that is 3 years old or older.

17 (c) Special risk classifications may be established for commercial automobile policies. Special risk  
18 classifications for commercial automobile policies may be based ~~upon~~ on favorable aspects of an insured's  
19 claims history ~~that is 5 years old or older~~. Special risk classifications for commercial automobile policies may  
20 not be established based on adverse information contained in an insured's claims history or applicable driving  
21 records that is 5 years old or older for an insured's adverse loss experience may not use more than the most  
22 recent 5 years of claims history that is available.

23 (d) Classifications and modifications apply to all risks under the same or substantially the same  
24 circumstances or conditions.

25 (e) As used in subsection (4)(b), "private passenger automobile policy" means an automobile  
26 insurance policy issued to individuals or families but does not include policies known as commercial automobile  
27 policies."  
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1           **Section 2.** Section 33-18-210, MCA, is amended to read:

2           **"33-18-210. Unfair discrimination and rebates prohibited for title, property, casualty, or surety**  
3 **insurance -- exceptions -- limitations.** (1) Except as provided in subsections (3), (4), and (11)(a), a title,  
4 property, casualty, or surety insurer or an employee, representative, or insurance producer of an insurer may  
5 not, as an inducement to purchase insurance or after insurance has been effected, pay, allow, or give or offer to  
6 pay, allow, or give, directly or indirectly, a:

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

11           (2) Except as provided in subsections (3), (4), and (11)(a), an insured named in a policy or an  
12 employee of the insured may not knowingly receive or accept, directly or indirectly, a:

- 13           (a) rebate, discount, abatement, credit, or reduction of premium;
- 14           (b) special favor or advantage; or
- 15           (c) valuable consideration or inducement.

16           (3) The prohibitions in subsections (1) and (2) do not apply to a benefit provided for by a telematics  
17 agreement as provided in 33-23-221 through 33-23-226.

18           (4) The prohibitions under subsections (1) and (2) do not apply to an active, retired, or honorably  
19 separated member of the United States armed forces as described in 33-18-217(1)(a) or to a spouse, surviving  
20 spouse, dependent, or heir of a United States armed forces member as provided in 33-18-217.

21           (5) An insurer may not make or permit unfair discrimination in the premium or rates charged for  
22 insurance, in the dividends or other benefits payable on insurance, or in any other of the terms and conditions  
23 of the insurance either between insureds or property having like insuring or risk characteristics or between  
24 insureds because of race, color, creed, religion, or national origin.

25           (6) This section may not be construed as prohibiting the payment of commissions or other  
26 compensation to licensed insurance producers or as prohibiting an insurer from allowing or returning lawful  
27 dividends, savings, or unabsorbed premium deposits to its participating policyholders, members, or subscribers.

28           (7) An insurer may not make or permit unfair discrimination between individuals or risks of the same

1 class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the  
2 amount of insurance coverage on a property or casualty risk because of the geographic location of the risk,  
3 unless:

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

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

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

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

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

14 (9) An insurer may not refuse to insure, refuse to continue to insure, or limit the amount of coverage  
15 available to an individual because of the sex or marital status of the individual. However, an insurer may take  
16 marital status into account for the purpose of defining persons eligible for dependents' benefits.

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

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

27 (b) An insurer may not ~~use more than the most recent 5 years of loss experience that is available~~  
28 ~~when determining whether to~~ refuse to insure, refuse to continue to insure, charge higher rates, or limit the

1 amount of coverage available under a commercial automobile policy based solely on adverse information  
2 contained in the loss experience or applicable driving records that is 5 years old or older. An insurer may  
3 provide discounts to an insured under a commercial automobile policy based on favorable aspects of an  
4 insured's claims history ~~that is 5 years old or older.~~

5 (c) As used in subsection (11)(a), "private passenger automobile policy" means an automobile  
6 insurance policy issued to individuals or families but does not include policies known as commercial automobile  
7 policies.

8 (12) An insurer may not charge points or surcharge a private passenger motor vehicle policy because  
9 of a claim submitted under the insured's policy if the insured was not at fault.

10 (13) (a) An insurer that provides personal lines insurance for an insured may not consider the  
11 insured's inquiries or claims made to any insurer that did not result in a payment by any insurer in considering  
12 an application for, renewal of, or change in an insurance policy as defined in 33-15-102.

13 (b) This subsection (13) does not apply to an insurer's consideration of a claim that was the basis for  
14 a criminal or civil insurance fraud action by a state or regulatory enforcement entity.

15 (c) (i) For the purposes of this subsection (13), the term "personal lines insurance" means vehicle  
16 insurance under 33-1-206(1)(a) and property insurance under 33-1-210 that is sold by an insurer for personal,  
17 family, or household purposes.

18 (ii) The term does not include disability insurance or insurance for commercial, business, or  
19 professional services, products, or activities."

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21 NEW SECTION. Section 3. Saving clause. [This act] does not affect rights and duties that matured,  
22 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

23 - END -