

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING RESTITUTION AUTHORITY OF THE COMMISSIONER
5 OF INSURANCE; AND AMENDING SECTIONS 33-1-317, 33-1-318, AND 33-1-1302, MCA."

6
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

8
9 **Section 1.** Section 33-1-317, MCA, is amended to read:

10 **"33-1-317. Penalty and restitution imposed by commissioner.** (1) The commissioner may, after
11 having conducted giving reasonable notice and an opportunity for a hearing pursuant to 33-1-701, impose a
12 fine not to exceed the sum of \$25,000 per violation upon a person found to have violated a provision of this
13 code or regulation promulgated any rule or order issued by the commissioner, except that the fine imposed
14 upon insurance producers or adjusters may not exceed \$5,000 per violation. The fine is in addition to all other
15 penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state
16 of Montana and deposited into the general fund. Imposition of a fine under this section is an order from which
17 an appeal may be taken, pursuant to the provisions of 33-1-711. If a person fails to pay a fine referred to in this
18 subsection, the amount of the fine is a lien upon all of the assets and property of that person in this state and
19 may be recovered by suit by the commissioner and deposited into the general fund. Failure of the person to pay
20 a fine also constitutes a forfeiture of the right to do business in this state under this code.

21 (2) (a) The commissioner may, after giving reasonable notice and an opportunity for a hearing
22 pursuant to 33-1-701, require a person who commits a violation of this code or any rule or order issued by the
23 commissioner to make restitution, with interest, to a person who has sustained a financial loss resulting from
24 the violation.

25 (b) The interest rate must be calculated as of the date of the final order or upon final judgment if the
26 matter is appealed.

27 (c) Interest accrues at a rate commensurate with that specified in 25-9-205.

28 (3) (a) Restitution under this section is in addition to all other penalties imposed by the laws of this

1 state and may not preempt any other remedies, civil or otherwise, allowed by the laws of this state.

2 (b) Imposition of restitution under this section is an order from which an appeal may be taken,
 3 pursuant to the provisions of 33-1-711.

4 (c) This section may not be construed as creating a private right of action in addition to those existing
 5 under the laws of this state."

6

7 **Section 2.** Section 33-1-318, MCA, is amended to read:

8 **"33-1-318. Injunctions and other remedies.** (1) Whenever it appears to the commissioner that a
 9 person has engaged in or is about to engage in an act or practice constituting a violation of 33-1-501, 33-1-
 10 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
 11 chapter 25 of this title, part 1 of chapter 38 of this title, or any rule or order issued under this code, the
 12 commissioner may:

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

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

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

26 (2) If a hearing is held on a cease and desist order, both parties have 20 days from the date the
 27 hearing is concluded or from the date a transcript of the hearing is filed, if one is requested, to submit proposed
 28 findings of fact, conclusions of law, orders, and supporting briefs to the hearings examiner. The parties have an

1 additional 10 days within which to submit comments on the opposing party's proposed findings of fact,
 2 conclusions of law, orders, and briefs. A final order must be issued within 30 days of the submission of the
 3 comments.

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

14

15 **Section 3.** Section 33-1-1302, MCA, is amended to read:

16 **"33-1-1302. Insurance, viatical settlement, medical care discount card, and pharmacy discount**
 17 **card administrative or civil fraud -- insurer.** (1) A person commits the act of insurance, viatical settlement,
 18 medical care discount card, or pharmacy discount card fraud when:

19 (a) in the course of offering or selling insurance, a medical care discount card, or a pharmacy
 20 discount card, the person misrepresents a material fact, known to the person to be untrue or made with
 21 reckless indifference as to whether it is true, with the intention of causing another person to rely upon the
 22 misrepresentation to that relying person's detriment; or

23 (b) with respect to a viatical settlement, the person violates the provisions of 33-1-1304.

24 (2) A person commits the act of insurance fraud or viatical settlement fraud by engaging in any
 25 transaction, act, practice, course of business, or course of dealing that involves a violation of insurable interest
 26 laws.

27 (3) The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose the
 28 penalties provided for in 33-1-317 for a violation of 33-1-1304 or this section. Failure to pay a fine under this

1 section results in a lien upon the assets and property of the person as provided in ~~33-1-318(3)~~ 33-1-317.

2 (4) In addition to any penalty provided for in 33-1-317, the commissioner may require a person
3 regulated under this title who commits insurance, viatical settlement, medical care discount card, or pharmacy
4 discount card fraud to make full restitution to the victim for all financial losses sustained as a result of the fraud
5 with interest of 10% a year from the date of the fraud plus any costs and reasonable attorney fees, less the
6 amount of any income, refund, or other benefit received by the victim from the insurance, viatical settlement,
7 medical care discount card, or pharmacy discount card.

8 (5) The commissioner may require a person who commits a violation of this part to make full
9 restitution to any person who may have sustained any losses as a result of the fraud with interest from the date
10 of the loss plus any costs and reasonable attorney fees. The interest rate must be calculated as of the date of
11 the order pursuant to 25-9-205.

12 (6) An insurer, insurance producer, or other person who sustained any losses and who was awarded
13 restitution may bring suit to recover those sums, including any attorney fees, interest at the rate provided in 25-
14 9-205, and costs incurred in obtaining a judgment.

15 (7) Failure of a person to pay any amount ordered under this section constitutes a forfeiture of the
16 right to do business in this state."

17 - END -