

## 1 HOUSE BILL NO. 153

2 INTRODUCED BY R. FITZGERALD

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PROFESSIONAL LIABILITY INSURANCE  
5 REQUIREMENTS FOR REAL ESTATE LICENSEES; LIMITING SOME REQUIREMENTS TO REAL ESTATE  
6 BROKERS OR SALESPERSONS WITH ACTIVE LICENSES; AND AMENDING SECTION 37-51-325, MCA."

7

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

9

10 **Section 1.** Section 37-51-325, MCA, is amended to read:11 **"37-51-325. Professional liability insurance required -- errors and omissions insurance**

12 **coverage -- policy requirements.** (1) A real estate broker or salesperson ~~licensed with an active real estate~~  
13 license under this chapter must maintain continuous professional liability insurance coverage that meets the  
14 requirements of this section during the period of licensure. The insurance must cover the broker or salesperson  
15 for activities contemplated under Title 37, chapter 51, part 3, including errors and omissions by the real estate  
16 broker or salesperson.

17 (2) A real estate broker or salesperson ~~licensed with an active real estate license~~ under this chapter  
18 must be covered by professional liability insurance through a policy:

19 (a) issued to real estate broker or salesperson licensees provided on a group policy basis that is  
20 approved by the board;

21 (b) obtained by real estate broker or salesperson licensees independently; or

22 (c) issued to the firm with which a real estate broker or salesperson license is affiliated.

23 (3) All policies issued under this chapter must:

24 (a) be issued by an insurer licensed under Title 33 to provide professional liability insurance;

25 (b) offer prior acts coverage to an insured who maintains continuous past insurance coverage;

26 (c) provide an automatic 60-day extended reporting period to report a claim if the policy is canceled or  
27 not renewed for any reason other than nonpayment of premium or a deductible; and

28 (d) offer an optional extended reporting of not less than 365 days to report a claim, as long as the

1 insured requests the extended reporting period and pays any additional premium for the extended reporting  
2 period within 60 days after expiration or cancellation of the policy.

3 (4) (a) A professional liability insurance policy must be issued to the board and must cover a group of  
4 real estate brokers and salespersons licensed under Title 37, chapter 51, part 3, as named insureds. The board  
5 may request bids from insurers for the group policy and may use a limited solicitation under 18-4-305. The  
6 maximum contract period between the insurer and the board is seven consecutive policy terms, although the  
7 board may place the contract out for bid at the end of any policy period. A policy term is for a year. A real estate  
8 broker or salesperson licensee may not be denied coverage or be canceled by the group policy.

9 (b) The group policy must:

10 (i) have a minimum per-claim limit of \$100,000;

11 (ii) have a minimum annual aggregate limit of \$300,000;

12 (iii) have a deductible maximum of \$2,500 a claim for damages; and

13 (iv) provide coverage that is specific to the real estate broker or salesperson licensee regardless of  
14 changes in supervising broker.

15 (5) If the board is unable to obtain a professional liability insurance policy as described in subsection  
16 (4) on terms and conditions the board determines are commercially reasonable, the requirements of this section  
17 do not apply to the licensing period for which the policy is sought.

18 (6) A professional liability insurance policy may be independently issued to a real estate broker or  
19 salesperson licensee. The individual policy must:

20 (a) have a minimum per-claim limit of \$100,000;

21 (b) have a minimum annual aggregate limit of \$300,000; and

22 (c) have a deductible maximum of \$2,500 a claim for damages.

23 (7) A professional liability insurance policy issued to the firm with which a real estate broker or  
24 salesperson licensee is affiliated must:

25 (a) have a minimum per-claim limit of \$100,000;

26 (b) have a minimum annual aggregate limit of \$1 million; and

27 (c) provide for a deductible not to exceed \$10,000 a claim to be paid by the firm with which a real  
28 estate broker or salesperson licensee is affiliated.

1 (8) An applicant seeking to obtain ~~or renew~~ a real estate broker or salesperson license or renew an  
2 active real estate broker or salesperson license shall prove to the board compliance with the insurance  
3 requirements of this section. A real estate broker or salesperson licensee who fails to produce proof of  
4 coverage on request by the board or its designee is subject to administrative suspension or disciplinary action  
5 as determined by the board.

6 (9) For purposes of this section, the following definitions apply:

7 (a) "Aggregate limit" means a provision in an insurance contract limiting the maximum liability of an  
8 insurer for a series of losses in a given time period, such as a policy term.

9 (b) "Claims-made and reported policy" means an insurance policy written on a claims-made and  
10 reported basis, which provides coverage for claims first made against the insured and first reported to the  
11 insurer during the insured's policy period for acts, errors, or omissions that occur after the insured's retroactive  
12 date.

13 (c) "Extended reporting period" means a designated period of time after expiration or cancellation of a  
14 claims-made and reported policy during which a claim may be made and reported as if the claim had been  
15 made and reported during the policy period.

16 (d) "Per-claim limit" means the maximum limit payable, per licensee, for damages arising from the  
17 same or a related claim.

18 (e) "Prior acts coverage" means coverage under a policy for claims made against the insured and  
19 reported to the insurer that arise from acts, errors, or omissions in services rendered by an insured prior to  
20 inception of the current policy period.

21 (f) "Proof of coverage" means a copy of the actual policy of insurance, a certificate of insurance, or a  
22 binder of insurance.

23 (g) "Retroactive date" means a provision, found in many claims-made and reported policies, that the  
24 policy may not cover claims for injuries or damages that occurred before the retroactive date even if the claim is  
25 first made during the policy period."

26 - END -