

1 HOUSE BILL NO. 615

2 INTRODUCED BY R. FITZGERALD, E. BUTTREY, C. KNUDSEN, K. SEEKINS-CROWE, M. BERTOGLIO

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE REQUIREMENTS FOR PROFESSIONAL
5 LIABILITY INSURANCE COVERAGE FOR REAL ESTATE BROKER AND SALESPERSON LICENSEES;
6 REVISING DEDUCTIBLE REQUIREMENTS; AMENDING SECTION 37-51-325, MCA; AND PROVIDING AN
7 IMMEDIATE EFFECTIVE DATE."

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

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11 **Section 1.** Section 37-51-325, MCA, is amended to read:12 **"37-51-325. Professional liability insurance required -- errors and omissions insurance**

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

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

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

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

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

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

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

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

27 (c) provide an automatic 60-day extended reporting period to report a claim if the policy is

28 cancelled or not renewed for any reason other than nonpayment of premium or a deductible; and

1 (d) offer an optional extended reporting of not less than 365 days to report a claim, as long as the
2 insured requests the extended reporting period and pays any additional premium for the extended reporting
3 period within 60 days after expiration or cancellation of the policy.

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

10 (b) The group policy must:

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

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

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

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

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

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

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

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

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

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

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

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

28 ~~(c) provide for a deductible not to exceed \$10,000 a claim to be paid by the firm with which a real~~

1 ~~estate broker or salesperson licensee is affiliated~~

2 (c) have a maximum deductible as follows:

3 (i) \$10,000 a claim; or

4 (ii) greater than \$10,000 a claim but not to exceed \$100,000 a claim, provided the firm has
5 obtained written approval from the board, based on rules adopted by the board, that the firm is financially able
6 to pay the difference between the amount of the deductible set forth in the firm's professional liability insurance
7 policy and \$10,000.

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

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

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

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

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

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

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

28 (f) "Proof of coverage" means a copy of the actual policy of insurance, a certificate of insurance,

1 or a binder of insurance.

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

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

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