

1 HOUSE BILL NO. 836

2 INTRODUCED BY K. ZOLNIKOV

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE COMMISSIONER OF INSURANCE TO
5 ISSUE A REGULATORY SANDBOX WAIVER; ALLOWING THE COMMISSIONER TO GRANT A VARIANCE
6 OR WAIVER WITH RESPECT TO REQUIREMENTS OF THE INSURANCE CODE; PROVIDING FOR
7 APPLICATIONS TO THE COMMISSIONER; PROVIDING FOR CONSIDERATIONS IN GRANTING THE
8 WAIVER; PROVIDING LIMITS ON THE GRANT OF A WAIVER; PROVIDING FOR CONSUMER
9 DISCLOSURES; PROVIDING FOR TIME LIMITATIONS ON THE GRANT OF A WAIVER; PROVIDING FOR
10 FEES AND PENALTIES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 33-1-102, MCA;
11 AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE."

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

14

15 **NEW SECTION. Section 1. Regulatory sandbox waiver -- application -- considerations by the**
16 **commissioner -- limitations -- rulemaking.** (1) The commissioner may grant a variance or waiver with respect
17 to the requirements of an insurance law or rule if a property or casualty insurer, subject to that law or rule,
18 demonstrates to the satisfaction of the commissioner that:

19 (a) the application of the law or rule would prohibit the introduction of an innovative or more
20 efficient insurance product or service that the applicant intends to offer during the period the variance or waiver
21 is granted;

22 (b) the public policy goals of the law or rule may be achieved by other means;

23 (c) the waiver may not substantially increase any risk to consumers;

24 (d) the waiver may not cause a material negative impact to the insurer in matters including but not
25 limited to solvency; and

26 (e) the waiver is in the public interest.

27 (2) An application for a waiver must include the following information:

28 (a) the identity of the insurer applying for the waiver;

1 (b) the identity of the directors and executive officers of the insurer, any persons who are beneficial
2 owners of 10% or more of the voting securities of the insurer, and any individuals with power to direct the
3 management and policies of the insurer;

4 (c) a description of the product or service to be offered if the waiver is granted, including how the
5 product or service functions and the manner and terms on which it must be offered;

6 (d) a description of the potential benefits to consumers of the product or service;

7 (e) a description of the potential risks, including but not limited to financial risks, to consumers
8 posed by the product or service or approval of the proposed waiver and how the applicant proposes to mitigate
9 the risks;

10 (f) a statement that the insurer has a physical presence in the state and has a certificate of
11 authority issued by the commissioner to write insurance in the state;

12 (g) a filing fee of \$1,000 unless the submission is complex and lengthy, in which case the
13 commissioner may provide an estimate of the fee that is commensurate with regulatory costs for consideration
14 of the submission. The insurer may withdraw the submission after receiving the estimate.

15 (h) if applicable, a request to segregate and protect from disclosure any confidential trade secrets
16 in the application must be stated in the application with the confidential information specifically identified for the
17 commissioner; and

18 (i) any additional information required by the commissioner.

19 (3) (a) If approved by the commissioner, an innovation waiver must be granted for an initial period
20 of up to 3 years.

21 (b) Prior to the end of the waiver period, the commissioner may grant an extension for up to an
22 additional 3 years. An extension request must be made to the commissioner at least 45 days prior to the end of
23 the initial waiver period and must include the length of the extension period requested and specific reasons why
24 the extension is necessary. The commissioner shall grant or deny an extension request before the end of the
25 initial waiver period.

26 (4) A waiver must include any terms, conditions, or limitations considered appropriate by the
27 commissioner, including limits on the amount of premium that may be written in relation to the underlying
28 product or service and the number of consumers that may purchase or utilize the underlying product or service,

1 provided that a product or service subject to an innovation waiver may not be purchased or utilized by more
2 than 10,000 insureds. It is not an unlawful discriminatory practice by an insurer to refuse to provide a product or
3 service subject to an innovation waiver when there is a legitimate basis to refuse to provide a product or service
4 that is tied to the limitations or purpose supporting the waiver.

5 (5) A product or service offered pursuant to an innovation waiver must include the following written
6 disclosures to consumers in clear and conspicuous form:

7 (a) the name and contact information for the representative of the insurer providing the product or
8 service;

9 (b) that the product or service is authorized pursuant to an innovation waiver for a temporary
10 period of time and may be discontinued at the end of the waiver period, the date of which must be specified;

11 (c) contact information for the commissioner, including how a consumer may file a complaint with
12 the commissioner regarding the product or service; and

13 (d) any additional disclosures required by the commissioner.

14 (6) (a) The commissioner shall either grant or deny a waiver within 90 days of receipt of a
15 completed request.

16 (b) The commissioner's decision to grant, deny, or revoke a waiver is not subject to the hearings
17 and appeals provisions as provided in Title 33, chapter 1, part 7.

18 (7) The commissioner may not grant a waiver with respect to any of the following:

19 (a) any law, rule, or other provision that is not subject to the commissioner's jurisdiction;

20 (b) any law, rule, or other provision concerning the assets, deposits, investments, capital surplus,
21 or other solvency requirements applicable to insurers;

22 (c) the required participation in any assigned risk plan, residual market, or guaranty fund;

23 (d) the provisions of Title 33 related to insurers other than property or casualty insurers;

24 (e) any law or rule required to maintain accreditation by the national association of insurance
25 commissioners unless the law or rule permits variances or waivers and the effect of the waiver does not
26 eliminate accreditation;

27 (f) the application of any taxes or fees; and

28 (g) any other law or rule considered ineligible by the commissioner.

1 (8) A person who receives a waiver under this section may be required to possess or obtain one or
2 a combination of the following in an amount subject to the conditions and for the purposes as the commissioner
3 determines necessary for the protection of consumers:

- 4 (a) a contractual liability insurance policy;
- 5 (b) a surety bond issued by an authorized surety;
- 6 (c) securities of the type eligible for deposit by authorized insurers in this state;
- 7 (d) evidence that the insurer has established an account payable to the commissioner in a
8 federally insured financial institution in this state and has deposited money of the United States in an amount
9 equal to the amount required by this subsection (8) that is not available for withdrawal except by direct order of
10 the commissioner;

11 (e) a letter of credit issued by a qualified United States financial institution; or

12 (f) another form of security authorized by the commissioner.

13 (9) (a) If a waiver is granted pursuant to this section, the commissioner shall provide public notice
14 of the existence of the waiver by providing the following information:

- 15 (i) the specific statute or rule to which the waiver applies;
- 16 (ii) the name of the insurer who applied for and received the waiver;
- 17 (iii) the duration and other terms, conditions, or limitations of the waiver; and
- 18 (iv) any additional information considered appropriate by the commissioner.

19 (b) The notice requirement of this subsection (9) may be satisfied by publication on the
20 commissioner's website.

21 (10) (a) The commissioner may revoke a waiver if the insurer who obtains the waiver fails to comply
22 with any terms, conditions, or limitations established by the commissioner or the requirements of this section or
23 if the waiver is causing a consumer harm or causes material harm to the insurer's solvency.

24 (b) In addition to any other sanctions and penalties permitted by the law, the commissioner may
25 impose a fine of not more than \$1,000 on any insurer who obtains a waiver and fails to comply with the material
26 terms, conditions, or limitations established by the commissioner or the requirements of this section.

27 (11) The commissioner, by rule, may adopt procedures for submissions and granting, denying,
28 monitoring, and revoking petitions for a waiver pursuant to this section. The procedures must set forth

1 requirements for the ongoing monitoring, examination, and supervision of and reporting by each insurer granted
2 a waiver under this section and must permit the commissioner to attach reasonable conditions or limitations on
3 the conduct permitted pursuant to a waiver. The procedures must provide for an expedited application process
4 for a product or service that is substantially similar to one for which a waiver has previously been granted by the
5 commissioner.

6 (12) On expiration of an innovation waiver, the insurer who obtained the waiver shall cease all
7 activities that were permitted only as a result of the waiver and comply with all applicable laws and rules.

8 (13) The ability to grant a waiver under this section may not be interpreted to limit or otherwise
9 affect the authority of the commissioner to exercise discretion to waive or enforce requirements as permitted
10 under any other section of this title or any rules.

11 (14) A waiver may not be granted that extends beyond July 30, 2029.

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13 **Section 2.** Section 33-1-102, MCA, is amended to read:

14 **"33-1-102. Compliance required -- exceptions -- health service corporations -- health**
15 **maintenance organizations -- governmental insurance programs -- service contracts.** (1) A person may
16 not transact a business of insurance in Montana or a business relative to a subject resident, located, or to be
17 performed in Montana without complying with the applicable provisions of this code.

18 (2) The provisions of this code do not apply with respect to:

- 19 (a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;
20 (b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and
21 (c) fraternal benefit societies, except as stated in chapter 7.

22 (3) This code applies to health service corporations as prescribed in 33-30-102. The existence of
23 the corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

24 (4) This code does not apply to health maintenance organizations to the extent that the existence
25 and operations of those organizations are governed by chapter 31.

26 (5) This code does not apply to workers' compensation insurance programs provided for in Title
27 39, chapter 71, part 21, and related sections.

28 (6) The department of public health and human services may limit the amount, scope, and duration

1 of services for programs established under Title 53 that are provided under contract by entities subject to this
2 title. The department of public health and human services may establish more restrictive eligibility requirements
3 and fewer services than may be required by this title.

4 (7) This code does not apply to the state employee group insurance program established in Title 2,
5 chapter 18, part 8, or the Montana university system group benefits plans established in Title 20, chapter 25,
6 part 13.

7 (8) This code does not apply to insurance funded through the state self-insurance reserve fund
8 provided for in 2-9-202.

9 (9) (a) Except as otherwise provided in Title 33, chapters 22 and 28, this code does not apply to
10 any arrangement, plan, or interlocal agreement between political subdivisions of this state in which the political
11 subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention,
12 deductible, or self-insurance plan.

13 (b) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any
14 arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement,
15 plan, or program of a single political subdivision of this state in which the political subdivision provides to its
16 officers, elected officials, or employees disability insurance or life insurance through a self-funded program.

17 (10) (a) This code does not apply to the marketing of, sale of, offering for sale of, issuance of,
18 making of, proposal to make, and administration of a service contract.

19 (b) A "service contract" means a contract or agreement for a separately stated consideration for a
20 specific duration to perform the repair, replacement, or maintenance of property or to indemnify for the repair,
21 replacement, or maintenance of property if an operational or structural failure is due to a defect in materials or
22 manufacturing or to normal wear and tear, with or without an additional provision for incidental payment or
23 indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service.
24 A service contract may provide for the repair, replacement, or maintenance of property for damage resulting
25 from power surges or accidental damage from handling. A service contract does not include motor club service
26 as defined in 61-12-301.

27 (11) (a) Subject to 33-18-201 and 33-18-242, this code does not apply to insurance for ambulance
28 services sold by a county, city, or town or to insurance sold by a third party if the county, city, or town is liable

1 for the financial risk under the contract with the third party as provided in 7-34-103.

2 (b) If the financial risk for ambulance service insurance is with an entity other than the county, city,
3 or town, the entity is subject to the provisions of this code.

4 (12) This code does not apply to the self-insured student health plan established in Title 20, chapter
5 25, part 14.

6 (13) Except as provided in 33-2-2212, this code does not apply to private air ambulance services
7 that are in compliance with 50-6-320 and that solicit membership subscriptions, accept membership
8 applications, charge membership fees, and provide air ambulance services to subscription members and
9 designated members of their households.

10 (14) This code does not apply to guaranteed asset protection waivers that are governed by Title 30,
11 chapter 14, part 22.

12 (15) This code does not apply to direct patient care agreements established pursuant to 50-4-107.

13 (16) This code does not apply to a health care sharing ministry that meets the requirements of 50-4-
14 111.

15 (17) This code does not apply to a regulatory sandbox waiver, except as otherwise specified by the
16 commissioner or as provided in [section 1]."

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18 **NEW SECTION. Section 3. Codification instruction.** [Section 1] is intended to be codified as an
19 integral part of Title 33, and the provisions of Title 33 apply to [section 1].

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21 **NEW SECTION. Section 4. Severability.** If a part of [this act] is invalid, all valid parts that are
22 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
23 the part remains in effect in all valid applications that are severable from the invalid applications.

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25 **NEW SECTION. Section 5. — Effective date.** ~~[This act] is effective July 1, 2023.~~

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27 **NEW SECTION. Section 5. Termination.** [This act] terminates July 30, 2029.

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