

Unofficial Draft Copy

As of: July 1, 2014 (4:50pm)

LC3msf

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act transferring the investigative powers for the state compensation insurance fund from the department of justice to the department of insurance in the state auditor's office; amending sections 33-1-311, 33-1-1205, 39-71-206, 39-71-211, 39-71-316, 39-71-503, 44-2-115, and 45-5-223, MCA; and providing an effective date."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-1-311, MCA, is amended to read:

"33-1-311. General powers and duties. (1) The commissioner shall enforce the applicable provisions of the laws of this state and shall execute the duties imposed on the commissioner by the laws of this state.

(2) The commissioner has the powers and authority expressly conferred upon the commissioner by or reasonably implied from the provisions of the laws of this state.

(3) Except as otherwise provided in 33-39-101, the commissioner shall administer the department to ensure that the interests of insurance consumers are protected.

(4) The commissioner may conduct examinations and investigations of insurance matters, in addition to examinations and investigations expressly authorized, as the commissioner

Unofficial Draft Copy

As of: July 1, 2014 (4:50pm)

LC3msf

considers proper, to determine whether any person has violated any provision of the laws of this state or to secure information useful in the lawful administration of any provision. The cost of additional examinations and investigations must be borne by the state.

(5) The commissioner shall maintain as confidential any information or document received from:

(a) the national association of insurance commissioners; or

(b) another state agency, an insurance department from another state, a federal agency, the interstate insurance product regulation commission, or a foreign government that treats the same information or document as confidential. The commissioner may provide information or documents, including information or documents that are confidential, to another state agency, the national association of insurance commissioners, a state or federal law enforcement agency, a federal agency, the interstate insurance product regulation commission, a foreign government, or an insurance department in another state if the recipient agrees to maintain the confidentiality of the information or documents.

(6) (a) The department is a criminal justice agency as defined in 44-5-103, and employees designated by the department as insurance investigators have peace officer status with the powers of search and seizure, but not arrest, to investigate insurance fraud or any violations of this title, 45-6-301, or 45-7-501.

(7) The commissioner may adopt rules establishing the scope of investigative powers or duties of insurance investigators who

Unofficial Draft Copy

As of: July 1, 2014 (4:50pm)

LC3msf

are appointed as peace officers."

{ Internal References to 33-1-311:

33-1-409 x 33-1-1403 x 33-17-1204x 33-28-207x }

Section 2. Section 33-1-1205, MCA, is amended to read:

"33-1-1205. Duties of authorized insurers, adjusters, administrators, consultants, and producers -- ~~notice exception.~~

(1) Each insurer, independent adjuster, independent administrator, independent consultant, and independent producer shall cooperate fully with the commissioner with respect to the provisions of this part.

(2) ~~Except as provided in subsection (4), an An insurer, an officer, or an employee of the insurer, an independent adjuster, an independent administrator, an independent consultant, or an independent producer who has reason to believe that an insurance fraud has been or is being committed shall provide notice of the alleged insurance fraud to the commissioner within 60 days. A producer of an insurer who has reason to believe that an insurance fraud has been or is being committed shall report the alleged fraud to the insurer within 60 days of discovery of the alleged insurance fraud. The insurer shall review the report. If the insurer determines that there is reasonable likelihood that fraud has occurred, the insurer shall forward the report to the commissioner within 30 days of receipt of the report.~~

(3) Notice to the commissioner by an insurer who has reason to believe that an insurance fraud has been committed in connection with an insurance claim, application, or policy tolls

Unofficial Draft Copy

As of: July 1, 2014 (4:50pm)

LC3msf

any applicable time period, for the commissioner, in any applicable insurance statute, related insurance regulation, or applicable sections of the criminal code and tolls any time period arising under 33-18-232 or 33-18-242 regarding unfair claims settlement practices.

~~(4) Notice of an alleged insurance fraud involving an insurance claim or application submitted to the state compensation insurance fund or a policy issued by the state compensation insurance fund must be made within 60 days to the fraud detection and prevention unit established pursuant to 39-71-211."~~

{ *Internal References to 33-1-1205:*
33-1-1203 x 33-22-150x }

Section 3. Section 39-71-206, MCA, is amended to read:

"39-71-206. Legal advisers of department and state fund -- investigative and prosecution services. (1) The attorney general is the legal adviser of the department and the state fund and shall represent either entity in all proceedings if requested by the department or state fund. The department and state fund may employ other attorneys or legal advisers as they consider necessary.

~~(2) As provided in 2-15-2015, the attorney general shall provide investigative and prosecution services to the state fund with respect to violations of this chapter."~~

{ *Internal References to 39-71-206: None.* }

Unofficial Draft Copy

As of: July 1, 2014 (4:50pm)

LC3msf

Section 4. Section 39-71-211, MCA, is amended to read:

"39-71-211. Fraud detection and prevention unit -- expenditure accounting. (1) The state fund shall establish a fraud prevention and detection unit. The unit is responsible for developing detection and prevention procedures, providing detection services, and providing training in the prevention and detection of fraudulent conduct under this chapter that is subject to prosecution under Title 45. The unit shall refer all cases of suspected fraudulent conduct to the ~~workers' compensation fraud investigation and prosecution office established in 2-15-2015~~ insurance commissioner as provided in 33-1-1205.

(2) The state fund shall expend money to investigate fraud pursuant to this section and shall separately account for money expended."

{ *Internal References to 39-71-211:*
33-1-1205 a 45-5-223 a }

Section 5. Section 39-71-316, MCA, is amended to read:

"39-71-316. Filing true claim -- obtaining benefits through deception or other fraudulent means. (1) A person filing a claim under this chapter, by signing the claim, affirms the information filed is true and correct to the best of that person's knowledge.

(2) (a) A person who obtains or assists in obtaining benefits to which the person is not entitled or who obtains or assists another person in obtaining benefits to which the other person is not entitled under this chapter is guilty of theft and

Unofficial Draft Copy

As of: July 1, 2014 (4:50pm)

LC3msf

may be prosecuted under 45-6-301. A county attorney, the insurance commissioner, or the attorney general may initiate criminal proceedings against the person. This subsection includes but is not limited to a person who is receiving temporary total disability benefits, permanent total disability benefits, or rehabilitation benefits while working without the knowledge and concurrence of the insurer.

(b) As used in subsection (2)(a), "person" includes but is not limited to an employee, employer, insurer, or medical service provider.

(3) (a) The department may require a person convicted of theft under 45-6-301(5) to pay to the department an amount equal to 10 times the amount paid by an insurer on the false claim, provided that the amount does not exceed \$50,000. If upon demand of the department the person refuses to pay the fine, the department may petition the workers' compensation court to collect the money owed.

(b) The department shall:

(i) use the money collected pursuant to subsection (3)(a) to administer and enforce the provisions of this section; and

(ii) forward any surplus money to the ~~department of justice~~. ~~The forwarded money must be used~~ insurance commissioner for use exclusively for the ~~staffing and operation of the workers' compensation fraud investigation and prosecution office established in 2-15-2015~~ of workers' compensation fraud.

(c) This section does not limit an insurer's civil remedies to collect for money paid to a person convicted under

45-6-301(5).

(4) A person licensed under the provisions of Title 37 is subject to suspension, revocation, or denial of a license if the person knowingly claims or assists in the claiming of benefits in violation of the provisions of this chapter."

{ *Internal References to 39-71-316:*
39-71-201x }

Section 6. Section 39-71-503, MCA, is amended to read:

"39-71-503. Uninsured employers' fund -- purpose and administration of fund -- maintaining balance for administrative costs -- appropriation. (1) There is created an uninsured employers' fund in the state special revenue account to pay:

(a) to an injured employee of an uninsured employer the same benefits the employee would have received if the employer had been properly enrolled under compensation plan No. 1, 2, or 3, except as provided in subsection (3);

(b) the costs of investigating and prosecuting workers' compensation fraud ~~under 2-15-2015~~; and

(c) the expenses incurred by the department in administering the uninsured employers' fund.

(2) The department may refer to the ~~workers' compensation fraud office, established in 2-15-2015~~, for prosecution cases involving:

(a) false or fraudulent claims for benefits; and

(b) criminal violations of 45-7-501.

(3) (a) Except as provided in subsection (3)(b), surpluses

Unofficial Draft Copy

As of: July 1, 2014 (4:50pm)

LC3msf

and reserves may not be kept for the fund. The department shall make payments that it considers appropriate as funds become available ~~from time to time~~. The payment of weekly disability benefits takes precedence over the payment of medical benefits. Lump-sum payments of future projected benefits, including impairment awards, may not be made from the fund. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(b) The department shall maintain at least a 3-month balance based on projected budget costs for administration of the fund. The balance for administrative costs may be used by the department only in administering the fund.

(c) The maximum aggregate medical benefits expenditure that may be made from the fund may not exceed \$100,000 for any single claim regardless of whether the claim arises from an injury or an occupational disease.

(4) The amounts necessary for the payment of benefits from the fund are statutorily appropriated, as provided in 17-7-502, from the fund."

{ *Internal References to 39-71-503:*

17-7-502 x	39-9-401 x	39-71-201x	39-71-201 x
39-71-501 *x	39-71-510 x	39-71-517 *x	39-71-519 *x }

Section 7. Section 44-2-115, MCA, is amended to read:

"44-2-115. Powers and duties of agents. An agent appointed by the attorney general pursuant to this part is a peace officer and:

(1) shall provide investigative assistance to city, county,

Unofficial Draft Copy

As of: July 1, 2014 (4:50pm)

LC3msf

state, and federal law enforcement agencies at their request in accordance with rules adopted by the department of justice;

(2) shall have concurrent jurisdiction with local law enforcement agencies to investigate offenses involving dangerous drugs, as provided in Title 45, chapter 9, and violations that constitute organized criminal activity;

(3) shall investigate gambling activities in this state as provided in 23-5-113;

(4) shall investigate any apparent violations of penal statutes disclosed by an audit of a state agency by the legislative auditor;

~~(5) shall investigate apparent violations of penal statutes referred by the state workers' compensation insurance fund; and~~

~~(6)~~(5) shall assist whenever possible any law enforcement school held in the state for law enforcement officers when requested."

{*Internal References to 44-2-115: None.*}

Section 8. Section 45-5-223, MCA, is amended to read:

"45-5-223. Surreptitious visual observation or recordation -- place of residence -- public establishment -- exceptions. (1) A person commits the offense of surreptitious visual observation or recordation in a place of residence if a person purposely or knowingly hides, waits, or otherwise loiters in the vicinity of a private dwelling house, apartment, or other place of residence for the purpose of:

(a) watching, gazing at, or looking upon any occupant in

the residence in a surreptitious manner; or

(b) by means of an electronic or mechanical recording device, surreptitiously recording the visual image of any occupant in the residence.

(2) An owner, manager, or employee of a business or a landlord who knowingly surreptitiously records a visual image of a person in a restroom, washroom, shower, bedroom, fitting room, or other room used by a customer, guest, tenant, or member of the public to, with a reasonable expectation of privacy, change or try on clothes, bathe, perform intimate bodily functions, or appear nude or partially nude or in underclothes commits the offense of surreptitious visual recordation in a public establishment.

(3) Subsections (1) and (2) do not apply to a law enforcement officer, an agent or employee of an insurer, or a private investigator licensed pursuant to 37-60-301 or to any person engaged in fraud detection, prevention, or prosecution pursuant to ~~2-15-2015~~ or 39-71-211 while the officer, agent, employee, or private investigator is acting in the course and scope of employment for legitimate investigative purposes.

(4) (a) A person convicted of the offense of surreptitious visual observation or recordation in a place of residence shall be fined an amount not to exceed \$500 or be incarcerated in the county jail for a term not to exceed 6 months, or both. Upon a second conviction, a person shall be fined an amount not to exceed \$1,000 or be incarcerated for a term not to exceed 1 year, or both. Upon a third or subsequent conviction, a person shall be

Unofficial Draft Copy

As of: July 1, 2014 (4:50pm)

LC3msf

fined an amount not to exceed \$10,000 or be incarcerated for a term not to exceed 5 years, or both.

(b) A person convicted of the offense of surreptitious visual recordation in a public establishment shall be fined an amount not to exceed \$1,000 or incarcerated for a term not to exceed 6 months, or both, if the victim was an adult and shall be fined an amount not to exceed \$5,000 or incarcerated for a term not to exceed 2 years, or both, if the victim was a minor."

{*Internal References to 45-5-223: None.*}

NEW SECTION. **Section 9. {standard} Effective date.** [This act] is effective January 1, 2016.

- END -

{Name : Pat Murdo
Title : Legislative Research Analyst
Agency : Legislative Services Division
Phone : 444-3594
E-Mail : pmurdo@mt.gov}