

HOUSE BILL NO. 727

INTRODUCED BY N. NICOL

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING INSURANCE LAWS RELATING TO COMPETITIVE MARKETS; INCLUDING WORKERS' COMPENSATION PLANS AMONG THOSE THAT MUST BE CONSIDERED BY THE STATE AUDITOR RELATING TO MARKET CONCENTRATION; INCLUDING PLAN NO. 3, THE STATE FUND, IN THE STATE AUDITOR'S CONSIDERATION OF A COMPETITIVE MARKET; AND AMENDING SECTION 33-16-1020, MCA."

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

Section 1. Section 33-16-1020, MCA, is amended to read:

"33-16-1020. Competitive market -- hearing. (1) Except as annually measured by the commissioner in subsection (4), A-a competitive market is presumed to exist unless the commissioner, after hearing, issues an order stating that a reasonable degree of competition does not exist in the market. The order may not expire later than 1 year after issuance.

(2) (a) In determining whether a reasonable degree of competition exists, the commissioner shall consider the following factors:

(a)(i) the number of insurers actively engaged in providing coverage;

(b)(ii) market shares and changes in market shares;

(c)(iii) ease of entry into the market;

(d)(iv) market concentration among plan No. 2 insurers and plan No. 3, the state fund, as measured by the Herfindahl-Hirschman index;

(e)(v) whether long-term profitability for insurers in the market is unreasonably high in relation to the risks being insured;

(f)(vi) whether long-term profitability for insurers in the market is reasonable in relation to industries of comparable business risks; and

(g)(vii) generally accepted and relevant tests relating to competitive market structure, market

1 performance, and market conduct.

2 (b) As used in subsection (2)(a)(i), the term "actively engaged" means a positive measurable effect
3 on the Herfindahl-Hirschman index as determined using the national association of insurance commissioners'
4 annual market share report pertaining to direct premiums earned.

5 (3) The workers' compensation insurance market may not be determined to be noncompetitive if
6 the market concentration of the 50 largest insurers writing or actively engaged in workers' compensation
7 insurance under plan No. 2 and plan No. 3, the state fund, satisfied the U.S. department of justice merger
8 guidelines for an unconcentrated market.

9 (4) (a) The commissioner shall annually measure market concentration among plan No. 2 and plan
10 No. 3, the state fund, using the Herfindahl-Hirschman index. If the Herfindahl-Hirschman index is over 1,800,
11 the market is presumed to not have a reasonable degree of competition. The commissioner shall hold a public
12 hearing to confirm that a competitive market does not exist in the state.

13 (b) If the commissioner finds that a competitive market does not exist after conducting a hearing
14 under subsection (4)(a), the commissioner shall order the following corrective measures to improve market
15 concentration:

16 (i) promote new insurers to the market;

17 (ii) limit large mergers of insurers;

18 (iii) promote consumer education relating to options for insurance; and

19 (iv) prohibit or limit by at least 50% the premium written by producer agencies to the monopoly
20 carrier until the market is of a reasonable competitive measure; and

21 (v) immediately implement regulations that actively promote competition and discourage practices
22 that contribute to market concentration.

23 (c) The list of corrective measures in subsection (4)(b) is not an exhaustive list of corrective
24 measures to improve market concentration. The commissioner may add other courses of action to the list.

25 (4)(5) The commissioner's determinations must be made on the basis of findings of fact and
26 conclusions of law. Upon the commissioner taking action as provided in subsection (4)(b), the commissioner
27 shall provide notice to all customers, insurers, and producers who participate in workers' compensation in the
28 state."

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