

SENATE BILL NO. 260

INTRODUCED BY D. SALOMON, E. BUTTREY

A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING CERTAIN INSURERS FROM UNFAIR CLAIMS SETTLEMENT PRACTICE REQUIREMENTS; EXEMPTING CAPTIVE INSURANCE ENTITIES EXCEPT FOR RISK RETENTION GROUPS; AND AMENDING SECTIONS 33-18-242 AND 33-28-207, MCA."

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

**Section 1.** Section 33-18-242, MCA, is amended to read:

**"33-18-242. Independent cause of action – burden of proof.** (1) An insured or a third-party claimant has an independent cause of action against an insurer for actual damages caused by the insurer's violation of subsection (1), (4), (5), (6), (9), or (13) of 33-18-201.

(2) In an action under this section, a plaintiff is not required to prove that the violations were of such frequency as to indicate a general business practice.

(3) An insured who has suffered damages as a result of the handling of an insurance claim may bring an action against the insurer for breach of the insurance contract, for fraud, or pursuant to this section, but not under any other theory or cause of action. An insured may not bring an action for bad faith in connection with the handling of an insurance claim.

(4) In an action under this section, the court or jury may award such damages as were proximately caused by the violation of subsection (1), (4), (5), (6), (9), or (13) of 33-18-201. Exemplary damages may also be assessed in accordance with 27-1-221.

(5) An insurer may not be held liable under this section if the insurer had a reasonable basis in law or in fact for contesting the claim or the amount of the claim, whichever is in issue.

(6) (a) An insured may file an action under this section, together with any other cause of action the insured has against the insurer. Actions may be bifurcated for trial where justice so requires.

(b) A third-party claimant may not file an action under this section until after the underlying claim has been settled or a judgment entered in favor of the claimant on the underlying claim.

- 1 (7) The period prescribed for commencement of an action under this section is:
- 2 (a) for an insured, within 2 years from the date of the violation of 33-18-201; and
- 3 (b) for a third-party claimant, within 1 year from the date of the settlement of or the entry of
- 4 judgment on the underlying claim.

5 (8) As used in this section, ~~an the term "insurer" includes~~ does not include a person, firm, or

6 corporation utilizing ~~self-insurance~~ a captive insurance company to pay claims made against ~~them~~ it, unless

7 that captive insurance group is a captive risk retention group."

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9 **Section 2.** Section 33-28-207, MCA, is amended to read:

10 **"33-28-207. Applicable laws.** (1) The following apply to captive insurance companies:

- 11 (a) the definitions of commissioner and department provided in 33-1-202, property insurance
- 12 provided in 33-1-210, casualty insurance provided in 33-1-206, life insurance provided in 33-1-208, health
- 13 insurance coverage and group health plans provided in 33-22-140, and disability income insurance provided in
- 14 33-1-235;
- 15 (b) the limitation provided in 33-2-705 on the imposition of other taxes;
- 16 (c) the provisions relating to supervision, rehabilitation, and liquidation of insurance companies as
- 17 provided for in Title 33, chapter 2, part 13;
- 18 (d) the provisions of 33-1-311, 33-1-604 through 33-1-606, 33-2-112, 33-3-431, 33-18-201, 33-18-
- 19 203, and 33-18-205, and 33-18-242;
- 20 (e) 33-18-242 only applies to captive risk retention group insurers;
- 21 ~~(e)(f)~~ the provisions relating to dissolution and liquidation in Title 33, chapter 3, part 6, except that a
- 22 pure captive insurance company may proceed with voluntary dissolution and liquidation after prior notice to and
- 23 approval of the commissioner without following the provisions of Title 33, chapter 3, part 6; and
- 24 ~~(f)(g)~~ the authority of the commissioner under 33-2-701(6) to impose a fine for failure to timely file an
- 25 annual statement, except that the annual statement requirements in 33-28-107 apply.
- 26 (2) This chapter may not be construed as exempting a captive insurance company, its parent, or
- 27 affiliated companies from compliance with the laws governing workers' compensation insurance.
- 28 (3) A captive insurance company or branch captive insurance company that writes health

1 insurance coverage or group health plans as defined in 33-22-140 shall comply with applicable state and  
2 federal laws.

3 (4) The following provisions apply to captive risk retention groups:

4 (a) those relating to actuarial opinions in Title 33, chapter 1, part 14;

5 (b) those relating to risk-based capital in Title 33, chapter 2, part 19; and

6 (c) those relating to insurance holding company systems in Title 33, chapter 2, part 11.

7 (5) Except as expressly provided in this chapter, the provisions of Title 33 do not apply to captive  
8 insurance companies."

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