

HOUSE BILL NO. 417

INTRODUCED BY W. PRICE

BY REQUEST OF THE STATE AUDITOR

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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO INSURANCE PRODUCERS; AUTHORIZING THE COMMISSIONER OF INSURANCE TO PARTICIPATE IN A NATIONAL CENTRALIZED PRODUCER LICENSE REGISTRY; PROVIDING ADDITIONAL DEFINITIONS; PROVIDING AN EXEMPTION FROM PRELICENSING EDUCATION AND EXAMINATION REQUIREMENTS FOR NONRESIDENT INSURANCE PRODUCERS UNDER CERTAIN CIRCUMSTANCES; ITEMIZING THE LINES OF AUTHORITY FOR WHICH AN INSURANCE PRODUCER MAY RECEIVE A LICENSE; AMENDING SECTIONS 33-17-101, 33-17-102, 33-17-212, 33-17-214, 33-17-401, AND 33-17-1203, MCA; AND PROVIDING EFFECTIVE DATES."

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

NEW SECTION. **Section 1. Centralized producer license registry -- rules.** (1) The commissioner may participate, in whole or in part, with the national association of insurance commissioners, or any affiliates or subsidiaries that the national association of insurance commissioners oversees, in a centralized producer license registry in which insurance producer licenses and appointments may be centrally or simultaneously effected for all states that participate in the registry and that require an insurance producer license.

(2) If the commissioner finds that participation in the centralized producer license registry is in the public interest, the commissioner may adopt by rule any uniform standards and procedures necessary to participate in the registry, including the central collection of all fees for licenses or appointments that are processed through the registry.

Section 2. Section 33-17-101, MCA, is amended to read:

"33-17-101. Scope of chapter. (1) The purpose of this chapter is to govern the qualifications and procedures for licensing insurance producers.

(2) ~~This~~ Except as provided in subsection (3), this chapter applies to all stock, mutual, and

1 reciprocal insurers and to all kinds of insurance and annuities.

2 (3) Except as provided in 33-17-401 and [section 8(2)], this chapter does not apply to surplus
3 lines producers."

4

5 **Section 3.** Section 33-17-102, MCA, is amended to read:

6 **"33-17-102. Definitions.** As used in this title, the following definitions apply:

7 (1) "Adjuster" means a person who, on behalf of the insurer, for compensation as an independent
8 contractor or as the employee of an independent contractor or for fee or commission investigates and
9 negotiates settlement of claims arising under insurance contracts or otherwise acts on behalf of the
10 insurer. The term does not include a:

11 (a) licensed attorney who is qualified to practice law in this state;

12 (b) salaried employee of an insurer or of a managing general agent;

13 (c) licensed insurance producer who adjusts or assists in adjustment of losses arising under
14 policies issued by the insurer; or

15 (d) licensed third-party administrator who adjusts or assists in adjustment of losses arising under
16 policies issued by the insurer.

17 (2) "Adjuster license" means a document issued by the commissioner that authorizes a person to
18 act as an adjuster.

19 (3) (a) "Administrator" means a person who collects charges or premiums from residents of this
20 state in connection with life, disability, property, or casualty insurance or annuities or who adjusts or
21 settles claims on these coverages.

22 (b) The term does not mean:

23 (i) an employer on behalf of its employees or on behalf of the employees of one or more
24 subsidiaries of affiliated corporations of the employer;

25 (ii) a union on behalf of its members;

26 (iii) (A) an insurer that is either authorized in this state or acting as an insurer with respect to a
27 policy lawfully issued and delivered by it in and pursuant to the laws of a state in which the insurer is
28 authorized to transact insurance; or

29 (B) a health service corporation as defined in 33-30-101;

30 (iv) a life, disability, property, or casualty insurance producer who is licensed in this state and

1 whose activities are limited exclusively to the sale of insurance;

2 (v) a creditor on behalf of its debtors with respect to insurance covering a debt between the
3 creditor and its debtors;

4 (vi) a trust established in conformity with 29 U.S.C. 186 or the trustees, agents, and employees
5 of the trust;

6 (vii) a trust exempt from taxation under section 501(a) of the Internal Revenue Code or the trustees
7 and employees of the trust;

8 (viii) a custodian acting pursuant to a custodian account that meets the requirements of section
9 401(f) of the Internal Revenue Code or the agents and employees of the custodian;

10 (ix) a bank, credit union, or other financial institution that is subject to supervision or examination
11 by federal or state banking authorities;

12 (x) a company that issues credit cards and that advances for and collects premiums or charges
13 from its credit card holders who have authorized it to do so, if the company does not adjust or settle
14 claims;

15 (xi) a person who adjusts or settles claims in the normal course of the person's practice or
16 employment as an attorney and who does not collect charges or premiums in connection with life or
17 disability insurance or annuities; or

18 (xii) a person appointed as a managing general agent in this state whose activities are limited
19 exclusively to those described in 33-2-1501(10) and Title 33, chapter 2, part 16.

20 (4) "Administrator license" means a document issued by the commissioner that authorizes a
21 person to act as an administrator.

22 (5) "Consultant" means a person who for a fee examines, appraises, reviews, or evaluates an
23 insurance policy, annuity, or pension contract, plan, or program or who makes recommendations or gives
24 advice on an insurance policy, annuity, or pension contract, plan, or program.

25 (6) "Consultant license" means a document issued by the commissioner that authorizes a person
26 to act as an insurance consultant.

27 (7) "Controlled business" means insurance procured or to be procured by or through a person upon
28 the life, person, property, or risks of the person or the person's spouse, employer, or business.

29 (8) "Individual" means a private or natural person, as distinguished from a partnership, corporation,
30 or association.

1 (9) "Insurance producer", except as provided in 33-17-103:

2 (a) means:

3 (i) a person who solicits, negotiates, effects, procures, delivers, renews, continues, or binds:

4 (A) policies of insurance for risks residing, located, or to be performed in this state; or

5 (B) membership contracts as defined in 33-30-101;

6 (ii) a managing general agent. For purposes of this chapter, the term "managing general agent" has
7 the same meaning as set forth in 33-2-1501.

8 (b) does not mean a customer service representative. For purposes of this definition, a "customer
9 service representative" means a salaried employee of an insurance producer who assists and is responsible
10 to the insurance producer.

11 (10) "License" means a document issued by the commissioner that authorizes a person to act as
12 an insurance producer for the kinds of insurance specified in the document. The license itself does not
13 create actual, apparent, or inherent authority in the holder to represent or commit an insurer to a binding
14 agreement.

15 (11) "Limited line credit insurance" includes credit life insurance, credit disability insurance, credit
16 property insurance, credit unemployment insurance, involuntary unemployment insurance, mortgage life
17 insurance, mortgage guaranty insurance, mortgage disability insurance, gap insurance, and any other form
18 of insurance offered in connection with an extension of credit that is limited to partially or wholly
19 extinguishing the credit obligation and that the commissioner determines should be designated as a form
20 of limited line credit insurance.

21 (12) "Limited line credit insurance producer" means a person who sells, solicits, or negotiates one
22 or more forms of limited line credit insurance coverage to individuals through a master, corporate, group,
23 or individual policy.

24 (13) "Limited lines insurance" means those lines of insurance defined in 33-1-211 through
25 33-1-217 and [sections 9 and 10] or any other line of insurance that the commissioner finds necessary
26 to recognize for the purposes of complying with 33-17-401(3).

27 (14) "Limited lines producer" means a person authorized by the commissioner to sell, solicit, or
28 negotiate limited lines insurance.

29 (15) "Lines of authority" means any kind of insurance as defined in Title 33.

30 ~~(14)~~(16) "Person" means an individual, partnership, corporation, association, or other legal entity.

1 ~~(12)~~(17) "Public adjuster" means an adjuster employed by and representing the interests of the
2 insured.

3 (18) "Uniform application" means the national association of insurance commissioners' uniform
4 application for resident and nonresident insurance producer licensing."

5

6 **Section 4.** Section 33-17-212, MCA, is amended to read:

7 **"33-17-212. Examination required -- exceptions -- fees.** (1) Except as provided in subsection (6),
8 an individual applying for a license is required to pass a written examination. The examination must test
9 the knowledge of the individual concerning each kind of insurance listed in subsection (5) for which
10 application is made, the duties and responsibilities of an insurance producer, and the insurance laws and
11 rules of this state. The examination must be developed and conducted under rules adopted by the
12 commissioner.

13 (2) The commissioner may conduct the examination or make arrangements, including contracting
14 with an outside testing service, for administering the examination. The commissioner may arrange for the
15 testing service to recover the cost of the examination from the applicant.

16 (3) An individual who fails to appear for the examination as scheduled or fails to pass the
17 examination may reapply for an examination and shall remit all forms before being rescheduled for another
18 examination.

19 (4) If the applicant is a partnership or corporation, each individual who is to be named in the
20 license as having authority to act for the applicant in its insurance transactions under the license shall meet
21 the qualifications as provided in this section.

22 (5) Examination of an applicant for a license must cover all of the kinds of insurance for which the
23 applicant has applied to be licensed, as constituted by any one or more of the following classifications:

24 (a) life insurance;

25 (b) disability insurance;

26 (c) property insurance. For the purposes of this provision, property insurance includes marine
27 insurance.

28 (d) casualty insurance;

29 (e) surety insurance;

30 (f) credit life and disability insurance;

1 (g) title insurance.

2 (6) This section does not apply to and an examination is not required of:

3 (a) an individual lawfully licensed as an insurance producer as to the kind or kinds of insurance
4 to be transacted as of or immediately prior to January 1, 1961, and who continues to be licensed;

5 (b) an applicant for a license covering the same kind or kinds of insurance as to which the
6 applicant was licensed in this state, other than under a temporary license, within the 12 months
7 immediately preceding the date of application unless the commissioner has suspended, revoked, or refused
8 to continue the previous license, except that this subsection (6)(b) does not apply to a title insurance
9 producer, as defined in 33-25-105;

10 (c) an applicant for a license as a nonresident insurance producer;

11 (d) an applicant for a license to sell all-risk federal crop insurance if the applicant provides
12 certification from an appropriate governmental agency to the commissioner that the applicant is qualified
13 to sell the insurance;

14 (e) transportation ticket agents of common carriers applying for a license to solicit and sell only:

15 (i) accident insurance ticket policies; or

16 (ii) insurance of personal effects while being carried as baggage on a common carrier, as incidental
17 to their duties as transportation ticket agents;

18 (f) an association applying for a license under 33-17-211;

19 (g) a mechanical breakdown insurance producer;

20 (h) a prepaid legal plans producer;

21 (i) a gap insurance producer;

22 (j) involuntary unemployment insurance producer; ~~or~~

23 (k) a credit property insurance, credit unemployment insurance, or mortgage guaranty insurance
24 producer; or

25 ~~(k)(l)~~ an individual who, within 60 days of cancellation of a license issued by the state of the
26 individual's residence, files with the commissioner a current letter of clearance certifying that the individual
27 has passed an examination and held an insurance license in good standing in the individual's state of
28 licensure, except that the individual shall take an examination pertaining to this state's law and each kind
29 of insurance for which the individual has applied for a license and that is not covered under the license held
30 in the other state.

1 (7) (a) Subject to the provisions of subsection (7)(b), an individual who applies for a nonresident
 2 insurance producer license in this state and who was previously licensed for the same lines of authority
 3 in another state may not be required to complete any prelicensing education or examination.

4 (b) The exemption in subsection (7)(a) is available only if the individual is currently licensed in the
 5 other state or the individual's application is received within 90 days of the cancellation of the individual's
 6 previous license and if the other state issues a certification that, at the time of the cancellation, the
 7 individual was in good standing in that state or the state's database records, maintained by the national
 8 association of insurance commissioners or any of the association's affiliates or subsidiaries that the
 9 association oversees, indicate that the insurance producer is or was licensed in good standing for the lines
 10 of authority requested."

11

12 **Section 5.** Section 33-17-214, MCA, is amended to read:

13 **"33-17-214. Issuance of license -- ~~contents~~ insurance producer lines of authority -- license data**
 14 **-- lapse of license -- change of address.** (1) ~~The commissioner shall promptly issue a license to a person~~
 15 ~~pursuant to 33-17-211 and 33-17-212.~~ A person who has met the requirements of 33-17-211 and
 16 33-17-212 must be issued a license, unless that person has been denied a license pursuant to
 17 33-17-1001.

18 (2) An insurance producer may receive a license qualifying the insurance producer in one or more
 19 of the following lines of authority:

20 (a) life insurance coverage on human lives, including benefits of endowment and annuities, and
 21 the coverage may include benefits in the event of death or dismemberment by accident and benefits for
 22 disability income;

23 (b) accident and health or sickness insurance coverage providing for sickness, bodily injury, or
 24 accidental death, and the coverage may provide benefits for disability income;

25 (c) property insurance coverage for the direct or consequential loss or damage to property of every
 26 kind;

27 (d) casualty insurance coverage against legal liability, including liability for death, injury, or
 28 disability or damage to real or personal property;

29 (e) variable life and variable annuity products insurance coverage provided under variable life
 30 insurance contracts and variable annuities;

1 (f) personal lines of property and casualty insurance coverage sold to individuals and families for
 2 primarily noncommercial purposes;

3 (g) limited line credit insurance; or

4 (h) any other line of insurance permitted under Title 33.

5 ~~(2)~~(3) The license must state the name and address of the licensee, personal identification number,
 6 date of issuance, general conditions relative to expiration or termination, kind of insurance covered, and
 7 other information as that the commissioner considers necessary.

8 ~~(3)~~(4) The license of a partnership, corporation, or association must also state the name of each
 9 individual authorized to exercise the license powers.

10 ~~(4)~~(5) Each license remains in effect, unless suspended or revoked.

11 ~~(5)~~(6) A person shall inform the commissioner in writing of a change of address within 30 days
 12 of the change."

13

14 **Section 6.** Section 33-17-401, MCA, is amended to read:

15 **"33-17-401. Nonresident insurance producer -- reciprocity license.** (1) A nonresident person,
 16 unless denied licensure pursuant to 33-17-1001, may apply for a license must be granted a license if:

17 ~~(a) the person meets the requirements of 33-17-211(2);~~

18 ~~——(b) the person is licensed in the state of his residence to act as insurance producer for the kind~~
 19 ~~or kinds of insurance for which he applies for licensing in this state; and~~

20 ~~——(c) the person's state of residence issues a similar license to a resident of this state for the same~~
 21 ~~kind or kinds of insurance for which the person is qualified in this state.~~

22 ~~——(2) The commissioner may license a nonresident individual without written examination if the~~
 23 ~~insurance department in the individual's state of residence certifies that:~~

24 ~~——(a) the individual either has passed a written examination for each kind of insurance applied for~~
 25 ~~or was licensed prior to the time a written examination was required in the individual's state of residence;~~

26 ~~and~~

27 ~~——(b) is currently licensed and in good standing.~~

28 ~~——(3) The commissioner may issue only a nonresident license to a person, partnership, or corporation~~
 29 ~~otherwise qualified under this code but not a resident of this state.~~

30 ~~——(4) If, by the laws or rules of another state, a limitation of rights and privileges, conditions~~

1 ~~precedent, or any other requirements are imposed upon a resident of this state who is a nonresident~~
 2 ~~licensee of the other state and the limitation, conditions, or requirements are in addition to or in excess~~
 3 ~~of those imposed on nonresident persons under this chapter, the same limitation, conditions, or~~
 4 ~~requirements must be imposed upon the residents of the other state.~~

5 the person is currently licensed as a resident and is in good standing in the person's home state;

6 (b) the person has submitted the proper request for licensure and has paid the fees required by
 7 33-2-708;

8 (c) the person has submitted or transmitted to the commissioner the application for licensure that
 9 the person submitted to the person's home state or a completed uniform application; and

10 (d) the person's home state awards nonresident insurance producer licenses to residents of this
 11 state on the same basis.

12 (2) A person licensed as a surplus lines producer in that person's home state must receive a
 13 nonresident surplus lines producer license upon meeting the requirements of subsection (1). Except for
 14 subsection (1), this section does not amend or supercede any provision of the surplus lines insurance law
 15 established in Title 33, chapter 2, part 3.

16 (3) A person licensed as a limited line credit insurance producer or other type of limited lines
 17 producer in that person's home state must receive a nonresident limited lines producer license upon
 18 meeting the requirements of subsection (1), granting the same scope of authority as granted under the
 19 license issued by the producer's home state. For the purposes of this subsection, limited lines insurance
 20 is any authority granted by a nonresident's home state that restricts the authority of the licensee to less
 21 than the total authority prescribed in the associated major lines pursuant to 33-17-214(2)(a) through (2)(e).

22 ~~(5)~~(4) If a nonresident insurance producer's state of residence suspends, revokes, or terminates
 23 ~~his~~ the insurance producer's insurance license in that state, ~~his~~ the insurance producer's Montana
 24 nonresident license automatically terminates, ~~and the~~ The nonresident insurance producer shall notify the
 25 commissioner that ~~his~~ the insurance producer's state of residence has suspended, revoked, or terminated
 26 ~~his~~ the insurance producer's insurance license in that state."

27

28 **Section 7.** Section 33-17-1203, MCA, is amended to read:

29 **"33-17-1203. Continuing education -- basic requirements -- exceptions.** (1) Unless exempt under
 30 subsection (4):

1 (a) a person licensed to act as an insurance producer for property, casualty, surety, or title
2 insurance or as a consultant for general insurance shall, during each calendar year, complete at least 10
3 credit hours of approved continuing education;

4 (b) a person licensed to act as an insurance producer for life or disability insurance or as a
5 consultant for life insurance shall, during each calendar year, complete at least 10 credit hours of approved
6 continuing education;

7 (c) a person holding multiple licenses shall, during each calendar year, complete at least 15 credit
8 hours of approved continuing education;

9 (d) a person licensed to act as an insurance producer only for credit life and disability insurance
10 shall, during each calendar year, complete 2 1/2 credit hours of approved continuing education in the areas
11 of insurance law, ethics, or credit life and disability insurance;

12 (e) a person licensed as an insurance producer or consultant shall, during each biennium, complete
13 at least 1 credit hour of approved continuing education on changes in Montana insurance statutes and
14 administrative rules.

15 (2) If a person licensed as an insurance producer or consultant completes more credit hours of
16 approved continuing education in a year than the minimum required in subsection (1), the excess credit
17 hours may be carried forward and applied to the continuing education requirements of the next year.

18 (3) The commissioner may, for good cause, grant an extension of time, not to exceed 1 year,
19 during which the requirements imposed by subsection (1) may be completed.

20 (4) The minimum continuing education requirements do not apply to:

21 (a) a person licensed to sell any kind of insurance for which an examination is not required under
22 33-17-212~~(7)(d) through (7)(k)~~ (6)(d) through (6)(l);

23 (b) a person holding a temporary license issued under 33-17-216;

24 ~~(c) a nonresident licensee who must meet continuing education requirements in the licensee's~~
25 ~~state of residence if that state grants substantially similar privileges to and has similar requirements for~~
26 ~~residents of this state;~~

27 ~~(d)(c)~~ a newly licensed insurance producer or consultant during the calendar year in which the
28 licensee first received a license;

29 ~~(e)(d)~~ a person who only executes surety bail bonds; or

30 ~~(f)(e)~~ an insurance producer or consultant otherwise exempted by the commissioner."

1

2 **NEW SECTION. Section 8. Reciprocity -- nonresident insurance producer licensing and continuing**
3 **education.** (1) The commissioner shall waive any requirements, except for the requirements of 33-17-401,
4 for a nonresident applicant for an insurance producer's license who has a valid license from the applicant's
5 home state if the applicant's home state awards nonresident licenses to residents of this state on the same
6 basis.

7 (2) A nonresident insurance producer's satisfaction of the insurance producer's home state's
8 continuing education requirements for licensed insurance producers constitutes satisfaction of this state's
9 continuing education requirements if the nonresident insurance producer's home state recognizes the
10 satisfactions of its continuing education requirements imposed upon insurance producers from this state
11 on the same basis.

12

13 **NEW SECTION. Section 9. Credit insurances -- definitions.** As used in this code, the following
14 definitions apply:

15 (1) "Credit disability insurance" means the same as defined in 33-21-103.

16 (2) "Credit life insurance" means the same as defined in 33-21-103.

17 (3) "Credit property insurance" means any policy, endorsement, rider, cover note, memorandum,
18 certificate, or other instrument or evidence of insurance covering perils to goods purchased through a
19 credit transaction or pledged as collateral for a credit transaction and that concerns a creditor's interest
20 in the purchased goods or pledged collateral either in whole or in part. Credit property insurance is a type
21 of property insurance as provided for in 33-1-210.

22 (4) "Credit unemployment insurance" means insurance on a debtor to provide indemnity for
23 payments or debt becoming due on a specific loan or other credit transaction while the debtor is
24 involuntarily unemployed as defined in the policy. Credit unemployment insurance is a type of involuntary
25 unemployment insurance as provided for in 33-1-216.

26 (5) "Debtor" means the same as defined in 33-21-103.

27

28 **NEW SECTION. Section 10. Mortgage insurances -- definitions.** (1) "Mortgage" or "mortgage
29 loan" is an indebtedness of more than 10 years duration that is secured by a real estate mortgage.

30 (2) "Mortgage disability insurance" is disability insurance designed to pay off all or a part of a

1 mortgage loan in the event of the insured's disability. Mortgage disability insurance is a type of credit
2 disability insurance.

3 (3) (a) "Mortgage guaranty insurance" is:

4 (i) insurance against financial loss by reason of nonpayment of principal, interest, or other sums
5 agreed to be paid under the terms of any note, bond, or other evidence of indebtedness secured by a
6 mortgage, deed of trust, or other instrument constituting a lien or charge on real estate if the improvement
7 of the real estate is a residential building, a condominium unit, or other building designed for occupancy
8 by not more than four families;

9 (ii) insurance against financial loss by reason of nonpayment of principal, interest, or other sums
10 agreed to be paid under the terms of any note, bond, or other evidence of indebtedness secured by a
11 mortgage, deed of trust, or other instrument constituting a lien or charge on real estate if the improvement
12 on the real estate is a building or buildings designed for occupancy by five or more families or is designed
13 to be occupied for industrial or commercial purposes; or

14 (iii) insurance against financial loss by reason of nonpayment of rent or other sums agreed to be
15 paid under the terms of a written lease for the possession, use, or occupancy of real estate if the
16 improvement of the real estate is a building or buildings designed to be occupied for industrial or
17 commercial purposes.

18 (b) Mortgage guaranty insurance is a type of casualty insurance as provided for in 33-1-206.

19 (4) "Mortgage life insurance" is life insurance designed to pay off all or a part of a mortgage loan
20 in the event of the insured's death. Mortgage life insurance is a type of credit life insurance as defined in
21 33-21-103.

22

23 **NEW SECTION. Section 11. Codification instruction.** (1) [Sections 1 and 8] are intended to be
24 codified as an integral part of Title 33, chapter 17, and the provisions of Title 33, chapter 17, apply to
25 [sections 1 and 8].

26 (2) [Sections 9 and 10] are intended to be codified as an integral part of Title 33, chapter 1, part
27 2, and the provisions of Title 33, chapter 1, part 2, apply to [sections 9 and 10].

28

29 **NEW SECTION. Section 12. Effective dates.** (1) Except as provided in subsection (2), [this act]
30 is effective October 1, 2001.

1 (2) [Section 6(3)] is effective November 1, 2002.

2 - END -