

## 1 HOUSE BILL NO. 75

2 INTRODUCED BY J. DOOLING

3 BY REQUEST OF THE STATE AUDITOR

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING TERMS FOR MARKET CONDUCT EXAMINATIONS  
6 AND FINANCIAL EXAMINATIONS BY THE INSURANCE COMMISSIONER; CLARIFYING EXAMINATION  
7 PAYMENT TERMS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 33-1-401, 33-1-413,  
8 33-18-1001, AND 33-30-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

11

12 NEW SECTION. **Section 1. Market conduct examination of insurers -- rulemaking.** (1) The  
13 commissioner shall carry out a market conduct examination by examining the affairs, transactions, accounts,  
14 records, and claims of each authorized insurer as often as the commissioner considers advisable.

15 (2) If a foreign or alien insurer licensed in this state is subject to the jurisdiction of another state or the  
16 federal government, the commissioner may accept a market conduct examination report prepared by the  
17 responsible jurisdiction if the examination was conducted using a methodology commonly accepted in the  
18 industry.

19 (3) In addition to the provisions of 33-1-402 and for the purposes of completing a market conduct  
20 examination of any company under this part, the commissioner may examine or investigate any person or the  
21 business of any person to the extent that the examination or investigation is, in the sole discretion of the  
22 commissioner, necessary or material to the examination of the company.

23 (4) In addition to the provisions of 33-1-408 and 33-1-409, the commissioner may promulgate rules to  
24 establish categories, procedures, and costs for market conduct examinations. The commissioner may also adopt  
25 by reference the market conduct examination manuals published by the national association of insurance  
26 commissioners.

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28 NEW SECTION. **Section 2. Definition.** Unless the context requires otherwise, a financial examination  
29 as provided for in 33-1-401 or a market conduct examination as provided for in [section 1] is included in the term  
30 "examine" or "examination" as used in Title 33.

1

2 **Section 3.** Section 33-1-401, MCA, is amended to read:

3 **"33-1-401. ~~Examination~~ Financial examination of insurers.** (1) The commissioner shall ~~examine the~~  
4 conduct a financial examination of the affairs, transactions, accounts, records, and assets of each authorized  
5 insurer as often as the commissioner considers advisable. The commissioner shall examine each authorized  
6 insurer not less frequently than every 5 years.

7 (2) The commissioner shall ~~in like manner examine~~ conduct a financial examination of each insurer  
8 applying for an initial certificate of authority to do business in this state.

9 (3) In lieu of ~~making an~~ conducting a financial examination under this part of any foreign or alien insurer  
10 licensed in this state, the commissioner may accept ~~an~~ a financial examination report on the company prepared  
11 by the insurance department for the company's state of domicile or port-of-entry state until January 1, 1994. After  
12 January 1, 1994, the reports may only be accepted if:

13 (a) the insurance department was at the time of the examination accredited under the national  
14 association of insurance commissioners' financial regulation standards and accreditation program; or

15 (b) the examination is performed under the supervision of an accredited state insurance department or  
16 with the participation of one or more examiners who are employed by ~~such~~ an accredited state insurance  
17 department and who, after a review of the examination workpapers and report, state under oath that the  
18 examination was performed in a manner consistent with the standards and procedures required by ~~their~~ the  
19 examiner's insurance department.

20 (4) For ~~purposes~~ the purpose of completing ~~an~~ a financial examination of ~~any~~ a company under this part,  
21 the commissioner may examine or investigate any person or the business of any person, ~~insofar as~~ to the extent  
22 that the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the  
23 financial examination of the company."  
24

25 **Section 4.** Section 33-1-413, MCA, is amended to read:

26 **"33-1-413. Examination expense -- lien.** (1) Upon presentation of a detailed account of charges and  
27 expenses by the commissioner or pursuant to the commissioner's written authorization, each person examined,  
28 other than examinations pursuant to 33-1-402, shall pay the actual ~~travel~~ and reasonable expenses, ~~a reasonable~~  
29 ~~living expense allowance,~~ including travel and a per diem if necessary, as compensation of examiners as  
30 necessarily incurred on account of the examination, all at reasonable rates as established or adopted by the

1 commissioner. An account may be presented periodically during the course of the examination or at the  
 2 termination of the examination as the commissioner considers proper. A person may not pay and an examiner  
 3 may not accept any additional emolument on account of an examination.

4 (2) The commissioner shall pay to the state treasurer to the credit of the state special revenue fund all  
 5 money received pursuant to subsection (1).

6 (3) If a person fails to pay the charges and expenses, ~~as~~ referred to in subsection (1), the charges and  
 7 expenses must be paid out of the funds of the commissioner in the same manner as other disbursements of the  
 8 funds. The amount paid is a first lien ~~upon~~ on all of the assets and property in this state of the person and may  
 9 be recovered by suit by the attorney general on behalf of the state ~~of Montana~~ and restored to the appropriate  
 10 fund."  
 11

12 **Section 5.** Section 33-18-1001, MCA, is amended to read:

13 **"33-18-1001. Complaint handling -- record.** (1) An insurer shall maintain a complete record of all of  
 14 the complaints ~~which it has~~ received since the date of its the insurer's last examination under 33-1-401 or [section  
 15 1]. This record ~~shall~~ must indicate the total number of complaints, their classification by line of insurance, the  
 16 nature of each complaint, the disposition of the complaints, and the time ~~it took~~ spent to process each complaint.

17 (2) For purposes of this section, "complaint" means any written communication primarily expressing a  
 18 grievance."  
 19

20 **Section 6.** Section 33-30-105, MCA, is amended to read:

21 **"33-30-105. Examination of health service corporation.** (1) If the commissioner believes a health  
 22 service corporation is unable or potentially unable to fulfill its contractual obligations to its members, the  
 23 commissioner may conduct an examination of ~~that~~ the health service corporation. The purpose of an examination  
 24 under this section is

25 ~~(2) In addition to the examination authorized in subsection (1), at least once every 4 years, the~~  
 26 ~~commissioner shall conduct an examination of each health service corporation to determine if the health service~~  
 27 ~~corporation is fulfilling its contractual obligations by the prompt satisfaction of claims at the highest monetary level~~  
 28 ~~consistent with reasonable dues or fees and that if the health service corporation's management exercises~~  
 29 ~~appropriate fiscal controls, operations, and personnel policies to ensure that efficient and economic administration~~  
 30 ~~restrains~~ restrain overhead costs for the benefit of its members.

1           ~~(3)~~(2) Each health service corporation examined and its officers, employees, and insurance producers  
2 shall produce and make available to the commissioner or the commissioner's ~~examiners~~ examiner the accounts,  
3 records, documents, files, information, assets, and matters in its possession or control relating to the subject of  
4 the examination.

5           ~~(4)~~(3) The commissioner or the commissioner's examiner shall make a verified report of the examination.

6           ~~(5)~~(4) The report must comprise only facts appearing from the books, papers, records, or documents  
7 of the corporation examined or ascertained from the testimony, under oath, of individuals concerning its affairs  
8 and conclusions and recommendations as warranted by those facts.

9           ~~(6)~~(5) The commissioner shall furnish a copy of the proposed report to the corporation examined not less  
10 than 20 days prior to its filing in the commissioner's office. If the corporation requests a hearing, in writing, within  
11 the 20-day period, the commissioner shall grant a hearing with respect to the report and may not file the report  
12 until after the hearing and after modifications, if any, that the commissioner considers proper.

13           ~~(7)~~(6) The health service corporation shall pay for each examination conducted pursuant to ~~subsections~~  
14 subsection (1) and (2) in accordance with 33-1-413."  
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16           NEW SECTION. Section 7. Codification instruction. [Sections 1 and 2] are intended to be codified  
17 as an integral part of Title 33, chapter 1, part 4, and the provisions of Title 33, chapter 1, part 4, apply to [sections  
18 1 and 2].  
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20           NEW SECTION. Section 8. Effective date. [This act] is effective on passage and approval.  
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