

1 the other party of its selection.

2 The disinterested and competent shall inspect the vehicle that is the subject of the claim, appraise the
3 actual cash value and the amount of loss, make separate findings regarding the amount of loss for each
4 element of loss, and exchange their completed appraisals. The disinterested and competent experts must
5 complete the required review of the vehicle and exchange their written appraisal reports within 30 calendar
6 days of being selected.

7 If the disinterested and competent experts are unable to agree on the losses, the selected disinterested
8 and competent experts shall appoint an umpire and submit their differences to the umpire.

9 If the disinterested and competent experts do not appoint an umpire within 10 business days, either
10 disinterested and competent expert may request that a judge of a court of record, in the county where the
11 insured or claimant reside, select an umpire. Both disinterested and competent experts shall select one
12 umpire nominee from the other disinterested and competent expert's list, then the judge will decide between the
13 two umpires selected by the disinterested and competent experts.

14 The amount of loss must be determined either by agreement of the two disinterested and competent
15 experts or the umpire decision. An agreement by the disinterested and competent experts or the umpire is
16 binding."

17 (c) Each party is responsible for their appraisal expenses, and each party shall equally share the
18 cost of the umpire except as provided in section (2)(g).

19 (2) (a) When the insurance company and the insured or claimant fail to agree on the amount of a
20 repair or a total loss, the insured or claimant has the right to exercise the right to appraisal process.

21 (b) At the time the policyholder or claimant invokes appraisal, the insurer shall release the funds
22 the insurer previously identified as covering the amount of loss.

23 (c) The insurer's chosen disinterested and competent expert shall inspect the damaged motor
24 vehicle within 10 business days after the written demand is received. The time limitation set forth in this
25 subsection may be extended by mutual agreement between the policyholder or claimant and the insurer. The
26 disinterested and competent expert selected by the insurer may not be an employee of the insurer or the
27 insurer's affiliates.

28 (d) If the insurer's disinterested and competent expert fails to inspect the damaged motor vehicle

1 within the 10 business days, the insurer shall forfeit any right to inspect the damaged vehicle prior to repairs,
2 and appraisals or any negotiations shall be limited to labor time and the price of parts, and shall not, unless
3 objective evidence to the contrary is provided by the insurer, involve disputes as to the existence of damage or
4 the scope of repair.

5 (e) If the disinterested and competent experts agree, the decision shall be mutually binding. If the
6 two disinterested and competent experts fail to agree on the actual cash value or the amount of loss, the
7 disinterested and competent experts shall submit the name of three Montana licensed adjusters qualified in
8 auto damage appraisals. The disinterested and competent experts shall endeavor to agree on the selection of
9 one of the proposed candidates to act as umpire. The insurer may not submit the name of any adjuster
10 currently employed by the insurer or any of its affiliates to be considered for the position of umpire.

11 (f) If the two disinterested and competent experts are unable to agree upon an umpire within 10
12 business days, the disinterested and competent experts shall each select an umpire from a list provided by the
13 opposing disinterested competent expert and submit those two names to the court of record. From the two
14 names, the court shall select and umpire. The disinterested and competent experts shall then submit their
15 appraisal reports to the court appointed umpire. The umpire shall make a binding decision setting the amount of
16 the loss within 15 business days.

17 (g) The insurer shall reimburse the insured or claimant for appraisal and umpire costs if the final
18 appraisal decision is 7.5% or more than the amount of the insurer's last offer prior to the invocation of right to
19 appraisal.

20 (h) The insurer shall pay the agreed-upon amount of award within 10 business days of the final
21 appraisal settlement or decision. The amount must include any reimbursement for costs under subsection
22 (2)(g).

23 (3) (a) An appraisal under this section does not affect any applicable policy terms or provisions and an
24 appraisal award must be made in compliance with applicable policy terms and Montana law.

25 (b) At the time of the initial offer to settle a claim, an insurer shall notify policyholders or claimants
26 of the right to appraisal. The commissioner shall adopt rules regarding standard right to appraisal notification
27 language and format.

28 (c) Insurers shall submit data on appraisal use, outcomes, and dollar-value changes in claims so

1 the commissioner can provide the Legislature and the public with more transparency and insight into the
2 process. This requirement shall be completed once per year in a format outlined by the commissioner in rule.

3 (4) An insurer may only dispose of a total loss at an approved salvage yard pursuant to 75-10-511.
4 The insurer may not abandon the vehicle for any reason at a storage facility, tow yard, body shop, or any other
5 location where the vehicle may be located that is not in compliance with 75-10-511. An insurer's violation of 75-
6 10-511 is an unfair trade practice and subject to enforcement by the commissioner under Title 33, chapter 18
7 and this title.

8 (5) For purposes of this section, the following definitions apply:

9 (a) "Actual cash value" means the pre-loss fair market value of a motor vehicle immediately before
10 the occurrence of the loss, reflecting the price in an open and competitive retail market. Actual cash value must
11 consider the vehicle's condition, mileage, options, equipment, prior damage, market factors, and any other
12 objectively measurable elements that affect market value. Except as allowed in 27-1-306, actual cash value
13 does not mean 'book value' or a depreciated cost formula and must represent the actual replacement value as
14 of the date of loss.

15 (b) "Amount of Loss" refers solely to the valuation of the vehicle's physical damage and repair
16 related expenses arising from the loss including necessary storage, towing, teardown, and inspection costs.
17 This definition does not encompass diminished value, rental, loss of use, inconvenience damages, or any
18 consequential damage, all of which remain separate.

19 (c) "Disinterested and competent expert" means a Montana-licensed adjuster with demonstrated
20 experience in automobile damage and vehicle valuation, and has not received payment or compensation of any
21 type from the insurer or the consumer named in the claim for the previous 30 days.

22 (d) "Umpire" means a person selected by the disinterested and competent experts or if the
23 disinterested and competent experts cannot agree, by the judge in a court of record in the county where the
24 insured or claimant resides. An umpire is required to hold an active Montana adjuster license and must
25 demonstrate experience in automobile damage and vehicle valuations.

26

27 **Section 2.** Section 33-18-201, MCA, is amended to read:

28 **"33-18-201. Unfair claim settlement practices prohibited.** A person may not, with such frequency

1 as to indicate a general business practice, do any of the following:

2 (1) misrepresent pertinent facts or insurance policy provisions relating to coverages at issue;

3 (2) fail to acknowledge and act reasonably promptly upon communications with respect to claims

4 arising under insurance policies;

5 (3) fail to adopt and implement reasonable standards for the prompt investigation of claims arising

6 under insurance policies;

7 (4) refuse to pay claims without conducting a reasonable investigation based upon all available

8 information;

9 (5) fail to affirm or deny coverage of claims within a reasonable time after proof of loss statements

10 have been completed;

11 (6) neglect to attempt in good faith to effectuate prompt, fair, and equitable settlements of claims in

12 which liability has become reasonably clear;

13 (7) compel insureds to institute litigation to recover amounts due under an insurance policy by

14 offering substantially less than the amounts ultimately recovered in actions brought by the insureds;

15 (8) attempt to settle a claim for less than the amount to which a reasonable person would have

16 believed the person was entitled by reference to written or printed advertising material accompanying or made

17 part of an application;

18 (9) attempt to settle claims on the basis of an application that was altered without notice to or

19 knowledge or consent of the insured;

20 (10) make claims payments to insureds or beneficiaries not accompanied by statements setting

21 forth the coverage under which the payments are being made;

22 (11) make known to insureds or claimants a policy of appealing from arbitration awards in favor of

23 insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the

24 amount awarded in arbitration;

25 (12) delay the investigation or payment of claims by requiring an insured, claimant, or physician of

26 either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss

27 forms, both of which submissions contain substantially the same information;

28 (13) fail to promptly settle claims, if liability has become reasonably clear, under one portion of the

1 insurance policy coverage in order to influence settlements under other portions of the insurance policy
2 coverage; ~~or~~

3 (14) fail to promptly provide a reasonable explanation of the basis in the insurance policy in relation
4 to the facts or applicable law for denial of a claim or for the offer of a compromise settlement;
5 (15) fail to allow a party the right to appraisal or otherwise fail to comply with [section 1]; or
6 (16) fail to comply with 75-10-511."

7

8 **Section 3.** Section 33-18-242, MCA, is amended to read:

9 **"33-18-242. Independent cause of action -- burden of proof.** (1) An insured or a third-party
10 claimant has an independent cause of action against an insurer for actual damages caused by the insurer's
11 violation of 33-18-201(1), (4), (5), (6), (9), ~~or~~ (13), (15), or (16).

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

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

18 (4) A third-party claimant who has suffered damages as a result of the handling of an insurance
19 claim may bring an action against the insurer for fraud or pursuant to this section, but not under any other
20 theory or cause of action. A third-party claimant may not bring an action for bad faith in connection with the
21 handling of an insurance claim.

22 (5) In an action under this section, the court or jury may award such damages as were proximately
23 caused by the violation of 33-18-201(1), (4), (5), (6), (9), ~~or~~ (13), (15), or (16). Exemplary damages may also be
24 assessed in accordance with 27-1-221.

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

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

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

3 (8) The period prescribed for commencement of an action under this section is:

4 (a) for an insured, within 2 years from the date of the violation of 33-18-201; and

5 (b) for a third-party claimant, within 1 year from the date of the settlement of or the entry of
6 judgment on the underlying claim.

7 (9) As used in this section, the term "insurer" does not include a person, firm, or corporation
8 utilizing a captive insurance company to pay claims made against it, unless that captive insurance group is a
9 captive risk retention group."

10

11 NEW SECTION. Section 4. Codification instruction. [Section 1] is intended to be codified as an
12 integral part of Title 33, chapter 15, and the provisions of Title 33, chapter 15, apply to [section 1].

13

14 NEW SECTION. Section 5. Applicability. [This act] applies to automobile insurance policies issued
15 or renewed on or after January 1, 2028.

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