

1 HOUSE BILL NO. 552

2 INTRODUCED BY S. BERGLEE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO PREPAID LEGAL INSURANCE;
5 REMOVING PREPAID LEGAL INSURANCE FROM THE PROVISIONS OF THE INSURANCE CODE;
6 REMOVING PREPAID LEGAL INSURANCE FROM LICENSURE AND CONTINUING EDUCATION
7 REQUIREMENTS; PLACING PREPAID LEGAL SERVICES UNDER THE CONSUMER PROTECTION ACT;
8 AMENDING SECTIONS 33-1-102, 33-1-206, 33-17-212, 33-17-504, AND 33-17-1203, MCA; REPEALING
9 SECTION 33-1-215, MCA; AND PROVIDING AN APPLICABILITY DATE."

10
11 WHEREAS, the legislature declares that prepaid legal services does not constitute insurance; and
12 WHEREAS, removing prepaid legal services from insurance code regulation would facilitate growth of
13 these services.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16
17 NEW SECTION. **Section 1. Prepaid legal services -- definitions -- prohibitions.** (1) A person may
18 sell prepaid legal services or prepaid legal insurance without licensure. The marketing, sale, offering for sale,
19 issuance, making, proposing to make, and administration of prepaid legal services or prepaid legal insurance by
20 persons are exempt from all provisions in Title 33, as provided in 33-1-102.

21 (2) "Prepaid legal services" or "prepaid legal insurance" has the same meaning as provided in 33-1-102.

22 (3) A person selling prepaid legal services or prepaid legal insurance who engages in unfair trade
23 practices or otherwise fails to comply with Title 30, chapter 14, is subject to the penalties provided under part 1
24 of this chapter.

25
26 **Section 2.** Section 33-1-102, MCA, is amended to read:

27 **"33-1-102. (Temporary) Compliance required -- exceptions -- health service corporations -- health**
28 **maintenance organizations -- governmental insurance programs -- service contracts.** (1) A person may not
29 transact a business of insurance in Montana or a business relative to a subject resident, located, or to be
30 performed in Montana without complying with the applicable provisions of this code.

- 1 (2) The provisions of this code do not apply with respect to:
- 2 (a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;
- 3 (b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and
- 4 (c) fraternal benefit societies, except as stated in chapter 7.
- 5 (3) This code applies to health service corporations as prescribed in 33-30-102. The existence of the
- 6 corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.
- 7 (4) Except as provided in Title 33, chapter 40, part 1, this code does not apply to health maintenance
- 8 organizations to the extent that the existence and operations of those organizations are governed by chapter 31.
- 9 (5) This code does not apply to workers' compensation insurance programs provided for in Title 39,
- 10 chapter 71, parts 21 and 23, and related sections.
- 11 (6) The department of public health and human services may limit the amount, scope, and duration of
- 12 services for programs established under Title 53 that are provided under contract by entities subject to this title.
- 13 The department of public health and human services may establish more restrictive eligibility requirements and
- 14 fewer services than may be required by this title.
- 15 (7) This code does not apply to the state employee group insurance program established in Title 2,
- 16 chapter 18, part 8, or the Montana university system group benefits plans established in Title 20, chapter 25, part
- 17 13.
- 18 (8) This code does not apply to insurance funded through the state self-insurance reserve fund provided
- 19 for in 2-9-202.
- 20 (9) (a) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement,
- 21 plan, or interlocal agreement between political subdivisions of this state in which the political subdivisions
- 22 undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or
- 23 self-insurance plan.
- 24 (b) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement,
- 25 plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program
- 26 of a single political subdivision of this state in which the political subdivision provides to its officers, elected
- 27 officials, or employees disability insurance or life insurance through a self-funded program.
- 28 (10) (a) This code does not apply to the marketing of, sale of, offering for sale of, issuance of, making
- 29 of, proposal to make, and administration of a service contract.
- 30 (b) A "service contract" means a contract or agreement for a separately stated consideration for a

1 specific duration to perform the repair, replacement, or maintenance of property or to indemnify for the repair,
2 replacement, or maintenance of property if an operational or structural failure is due to a defect in materials or
3 manufacturing or to normal wear and tear, with or without an additional provision for incidental payment or
4 indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service.
5 A service contract may provide for the repair, replacement, or maintenance of property for damage resulting from
6 power surges or accidental damage from handling. A service contract does not include motor club service as
7 defined in 61-12-301.

8 (11) (a) Subject to 33-18-201 and 33-18-242, this code does not apply to insurance for ambulance
9 services sold by a county, city, or town or to insurance sold by a third party if the county, city, or town is liable for
10 the financial risk under the contract with the third party as provided in 7-34-103.

11 (b) If the financial risk for ambulance service insurance is with an entity other than the county, city, or
12 town, the entity is subject to the provisions of this code.

13 (12) Except as provided in Title 33, chapter 40, part 1, this code does not apply to the self-insured student
14 health plan established in Title 20, chapter 25, part 14.

15 (13) This code does not apply to private air ambulance services that are in compliance with 50-6-320 and
16 that solicit membership subscriptions, accept membership applications, charge membership fees, and provide
17 air ambulance services to subscription members and designated members of their households.

18 (14) This code does not apply to guaranteed asset protection waivers that are governed by 30-14-151
19 through 30-14-157.

20 (15) (a) This code does not apply to prepaid legal services or prepaid legal insurance.

21 (b) "Prepaid legal services" or "prepaid legal insurance" means the assumption of a contractual obligation
22 that is to be spread, directly or indirectly, among a group of persons to provide specified legal services or
23 reimbursement for legal expenses in consideration of a specified payment for an interval of time, regardless of
24 whether the payment is made by the beneficiary or by a third person on behalf of the beneficiary. (Terminates
25 December 31, 2017--sec. 14, Ch. 363, L. 2013.)

26 **33-1-102. (Effective January 1, 2018) Compliance required -- exceptions -- health service**
27 **corporations -- health maintenance organizations -- governmental insurance programs -- service**
28 **contracts.** (1) A person may not transact a business of insurance in Montana or a business relative to a subject
29 resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

30 (2) The provisions of this code do not apply with respect to:

- 1 (a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;
2 (b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and
3 (c) fraternal benefit societies, except as stated in chapter 7.
- 4 (3) This code applies to health service corporations as prescribed in 33-30-102. The existence of the
5 corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.
- 6 (4) This code does not apply to health maintenance organizations to the extent that the existence and
7 operations of those organizations are governed by chapter 31.
- 8 (5) This code does not apply to workers' compensation insurance programs provided for in Title 39,
9 chapter 71, parts 21 and 23, and related sections.
- 10 (6) The department of public health and human services may limit the amount, scope, and duration of
11 services for programs established under Title 53 that are provided under contract by entities subject to this title.
12 The department of public health and human services may establish more restrictive eligibility requirements and
13 fewer services than may be required by this title.
- 14 (7) This code does not apply to the state employee group insurance program established in Title 2,
15 chapter 18, part 8, or the Montana university system group benefits plans established in Title 20, chapter 25, part
16 13.
- 17 (8) This code does not apply to insurance funded through the state self-insurance reserve fund provided
18 for in 2-9-202.
- 19 (9) (a) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement,
20 plan, or interlocal agreement between political subdivisions of this state in which the political subdivisions
21 undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or
22 self-insurance plan.
- 23 (b) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement,
24 plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program
25 of a single political subdivision of this state in which the political subdivision provides to its officers, elected
26 officials, or employees disability insurance or life insurance through a self-funded program.
- 27 (10) (a) This code does not apply to the marketing of, sale of, offering for sale of, issuance of, making
28 of, proposal to make, and administration of a service contract.
- 29 (b) A "service contract" means a contract or agreement for a separately stated consideration for a
30 specific duration to perform the repair, replacement, or maintenance of property or to indemnify for the repair,

1 replacement, or maintenance of property if an operational or structural failure is due to a defect in materials or
2 manufacturing or to normal wear and tear, with or without an additional provision for incidental payment or
3 indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service.
4 A service contract may provide for the repair, replacement, or maintenance of property for damage resulting from
5 power surges or accidental damage from handling. A service contract does not include motor club service as
6 defined in 61-12-301.

7 (11) (a) Subject to 33-18-201 and 33-18-242, this code does not apply to insurance for ambulance
8 services sold by a county, city, or town or to insurance sold by a third party if the county, city, or town is liable for
9 the financial risk under the contract with the third party as provided in 7-34-103.

10 (b) If the financial risk for ambulance service insurance is with an entity other than the county, city, or
11 town, the entity is subject to the provisions of this code.

12 (12) This code does not apply to the self-insured student health plan established in Title 20, chapter 25,
13 part 14.

14 (13) This code does not apply to private air ambulance services that are in compliance with 50-6-320 and
15 that solicit membership subscriptions, accept membership applications, charge membership fees, and provide
16 air ambulance services to subscription members and designated members of their households.

17 (14) This code does not apply to guaranteed asset protection waivers that are governed by 30-14-151
18 through 30-14-157.

19 (15) (a) This code does not apply to prepaid legal services or prepaid legal insurance.

20 (b) "Prepaid legal services" or "prepaid legal insurance" means the assumption of a contractual obligation
21 that is to be spread, directly or indirectly, among a group of persons to provide specified legal services or
22 reimbursement for legal expenses in consideration of a specified payment for an interval of time, regardless of
23 whether the payment is made by the beneficiary or by a third person on behalf of the beneficiary."

24

25 **Section 3.** Section 33-1-206, MCA, is amended to read:

26 **"33-1-206. Casualty insurance.** (1) Casualty insurance includes:

27 (a) vehicle insurance, which is insurance against loss of or damage to any land vehicle or aircraft or any
28 draft or riding animal or to property while contained in or on or being loaded or unloaded in or from a land vehicle,
29 aircraft, or animal from any hazard or cause and against any loss, liability, or expense resulting from or incidental
30 to ownership, maintenance, or use of any land vehicle, aircraft, or animal, together with insurance against

1 accidental death or accidental injury to individuals, including the named insured, while in, entering, alighting from,
2 adjusting, or repairing or when caused by being struck by a land vehicle, aircraft, or draft or riding animal, if the
3 insurance is issued as an incidental part of insurance on the land vehicle, aircraft, or draft or riding animal;

4 (b) liability insurance, which is insurance against legal liability for the death, injury, or disability of any
5 human being or for damage to property and the provision of medical, hospital, surgical, and disability benefits to
6 injured persons and funeral and death benefits to dependents, beneficiaries, or personal representatives of
7 persons killed, irrespective of legal liability of the insured, when issued as an incidental coverage with or
8 supplemental to liability insurance;

9 (c) workers' compensation and employer's liability, which is insurance of the obligations accepted by,
10 imposed upon, or assumed by employers under law for death, disablement, or injury of employees;

11 (d) (i) burglary and theft, which is insurance against loss or damage by burglary, theft, robbery, forgery,
12 fraud, deceptive practices, vandalism, criminal mischief, confiscation, or wrongful conversion, disposal, or
13 concealment or from any attempt at any of the foregoing, including supplemental coverage for medical, hospital,
14 surgical, and funeral expense incurred by the named insured or any other person as a result of bodily injury
15 during the commission of a burglary, robbery, or theft by another; and

16 (ii) insurance against loss of or damage to money, coins, bullion, securities, notes, drafts, acceptances,
17 or any other valuable papers and documents, resulting from any cause;

18 (e) personal property floater, which is insurance upon personal effects against loss or damage from any
19 cause under a personal property floater;

20 (f) glass, which is insurance against loss or damage to glass, including its lettering, ornamentation, and
21 fittings;

22 (g) boiler and machinery, which is insurance against any liability and loss or damage to property or
23 interest resulting from accident to or explosions of boilers, pipes, pressure containers, machinery, or apparatus
24 and from making inspection of and issuing certificates of inspection upon boilers, machinery, and apparatus of
25 any kind, whether or not insured;

26 (h) leakage and fire extinguishing equipment, which is insurance against loss or damage to any property
27 or interest caused by the breakage or leakage of sprinklers, hoses, pumps, and other fire extinguishing equipment
28 or apparatus, water pipes, or containers or by water entering through leaks or openings in buildings and insurance
29 against loss or damage to the sprinklers, hoses, pumps, and other fire extinguishing equipment or apparatus;

30 (i) credit, which is insurance against loss or damage resulting from failure of debtors to pay their

1 obligations to the insured;

2 (j) malpractice, which is insurance against legal liability of the insured and against loss, damage, or
3 expense incidental to a claim of liability, including medical, hospital, surgical, and funeral benefits to injured
4 persons, irrespective of legal liability of the insured, arising out of the death, injury, or disablement of any person
5 or arising out of damage to the economic interest of any person, as the result of negligence in rendering expert,
6 fiduciary, or professional service;

7 (k) elevator, which is insurance against loss of or damage to any property of the insured, resulting from
8 the ownership, maintenance, or use of elevators, except loss or damage by fire and from making inspection of
9 and issuing certificates of inspection upon elevators;

10 (l) livestock, which is insurance against loss or damage to livestock and for services of a veterinarian
11 for livestock;

12 (m) entertainments, which is insurance indemnifying the producer of any motion picture, television, radio,
13 theatrical, sport, spectacle, entertainment, or similar production, event, or exhibition against loss from interruption,
14 postponement, or cancellation because of death, accidental injury, or sickness of performers, participants,
15 directors, or other principals;

16 (n) mechanical breakdown pursuant to 33-1-214;

17 ~~(o) prepaid legal pursuant to 33-1-215;~~

18 ~~(p)(o)~~ involuntary unemployment pursuant to 33-1-216;

19 ~~(q)(p)~~ gap pursuant to 33-1-217;

20 ~~(r)(q)~~ miscellaneous, which is insurance against any other kind of loss, damage, or liability properly a
21 subject of insurance and not within any other kind of insurance as defined in this part, if the insurance is not
22 disapproved by the commissioner as being contrary to law or public policy.

23 (2) Provision of medical, hospital, surgical, and funeral benefits and of coverage against accidental death
24 or injury as incidental to and part of other insurance as stated under subsections (1)(a) (vehicle), (1)(b) (liability),
25 (1)(d) (burglary), and (1)(j) (malpractice) must for all purposes be considered to be the same kind of insurance
26 to which it is incidental and is not subject to provisions of this code applicable to life or disability insurances."
27

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

29 **"33-17-212. Examination required -- exceptions -- fees.** (1) Except as provided in subsection (6), an
30 individual applying for a license is required to pass a written examination. The examination must test the

1 knowledge of the individual concerning each kind of insurance listed in subsection (5) for which application is
2 made, the duties and responsibilities of an insurance producer, and the insurance laws and rules of this state.
3 The examination must be developed and conducted under rules adopted by the commissioner.

4 (2) ~~(a)~~ The commissioner may conduct the examination or make arrangements, including contracting
5 with an outside testing service, for administering the examination. The commissioner may arrange for the testing
6 service to recover the cost of the examination from the applicant.

7 ~~(b) The commissioner may not charge a fee for an applicant taking an examination pertaining to prepaid~~
8 ~~legal insurance. However, the commissioner may contract with an outside testing service for administering the~~
9 ~~examination, and the commissioner may arrange for the testing service to recover the cost of the examination~~
10 ~~from the applicant.~~

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

13 (4) Except as provided in subsection (6), if the applicant is a business entity, each individual who is to
14 be named in the license as having authority to act for the applicant in its insurance transactions under the license
15 must meet the qualifications provided for in this section.

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

- 18 (a) life insurance;
- 19 (b) disability insurance;
- 20 (c) property insurance, which for the purposes of this provision includes marine insurance;
- 21 (d) casualty insurance;
- 22 (e) surety insurance;
- 23 (f) limited lines credit insurance;
- 24 (g) title insurance;
- 25 ~~(h) prepaid legal insurance as provided for in 33-1-215.~~

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

- 27 (a) an individual lawfully licensed as an insurance producer as to the kind or kinds of insurance to be
28 transacted as of or immediately prior to January 1, 1961, and who continues to be licensed;
- 29 (b) an applicant for a license covering the same kind or kinds of insurance as to which the applicant was
30 licensed in this state, other than under a temporary license, within the 12 months immediately preceding the date

1 of application unless the commissioner has suspended, revoked, or terminated the previous license;

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

3 (d) a limited lines travel insurance producer and those registered under the limited lines travel insurance
4 producer's license pursuant to 33-17-1402;

5 (e) an association applying for a license under 33-17-211; or

6 (f) a casualty insurance producer for the purposes of a separate exam for prepaid legal insurance if the
7 casualty insurance producer sells prepaid legal insurance as of April 26, 2013, and continues to maintain a
8 license in good standing as a casualty insurance producer.

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

12 (b) The exemption in subsection (7)(a) is available only if the individual is currently licensed in the other
13 state or the individual's application is received within 90 days of the cancellation of the individual's previous
14 license and if the other state issues a certification that, at the time of the cancellation, the individual was in good
15 standing in that state or the state's database records, maintained by the national association of insurance
16 commissioners or any of the association's affiliates or subsidiaries that the association oversees, indicate that
17 the insurance producer is or was licensed in good standing for the lines of authority requested."
18

18

19 **Section 5.** Section 33-17-504, MCA, is amended to read:

20 **"33-17-504. Issuing license -- limitations.** The commissioner may issue a consultant license to an
21 individual who has complied with the requirements of this chapter with respect to either life insurance, meaning
22 all of those kinds of insurance authorized in 33-1-207, 33-1-208, 33-20-1001, 33-21-103, 33-22-501, and
23 33-22-601, or general insurance, meaning all of those kinds of insurance authorized in 33-1-206, 33-1-207,
24 33-1-209 through 33-1-212, 33-1-214 through, 33-1-216 through 33-1-219, and 33-1-221 through 33-1-229, as
25 specified in the license."
26

26

27 **Section 6.** Section 33-17-1203, MCA, is amended to read:

28 **"33-17-1203. Continuing education -- basic requirements -- exceptions.** (1) Unless exempt under
29 subsection (3):

30 (a) an individual licensed to act as an insurance producer, adjuster, or consultant other than an individual

1 licensed only for surety bail bonds or for limited lines credit insurance shall, during each 24-month period,
2 complete at least 24 credit hours of approved continuing education, including at least 3 hours of ethics credits
3 and at least 1 credit hour on changes in Montana insurance statutes and administrative rules;

4 (b) an individual licensed to act as an insurance producer only for surety bail bonds, ~~prepaid legal~~
5 ~~insurance~~, or limited lines credit insurance shall, during each biennium, complete 5 credit hours of approved
6 continuing education, including at least 1 credit hour on changes in Montana insurance statutes and
7 administrative rules and the remaining credit hours in the areas of insurance law, ethics, or topics specific to
8 surety bail bonds, ~~prepaid legal insurance~~, or limited lines credit insurance.

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

11 (3) The minimum continuing education requirements do not apply to:

12 (a) an individual holding a temporary license issued under 33-17-216; or

13 (b) an insurance producer, adjuster, or consultant otherwise exempted by the commissioner."
14

15 **NEW SECTION. Section 7. Repealer.** The following section of the Montana Code Annotated is
16 repealed:

17 33-1-215. Prepaid legal insurance.
18

19 **NEW SECTION. Section 8. Codification instruction.** [Section 1] is intended to be codified as an
20 integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply to [section 1].
21

22 **NEW SECTION. Section 9. Applicability.** [This act] applies to all persons engaged in the business of
23 prepaid legal insurance on or after [the effective date of this act].
24

- END -