

SENATE BILL NO. 149

INTRODUCED BY T. MCGILLVRAY

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE ESTABLISHMENT OF HEALTH CARE SHARING MINISTRIES; DEFINING "HEALTH CARE SHARING MINISTRY"; PROVIDING FOR DISCLAIMERS ON MATERIALS DISTRIBUTED BY HEALTH CARE SHARING MINISTRIES; EXEMPTING HEALTH CARE SHARING MINISTRIES FROM REGULATION AS INSURANCE; AND AMENDING SECTIONS 33-1-102 AND 33-1-201, MCA."

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

NEW SECTION. Section 1. Health care sharing ministry -- definition -- requirements --

penalties. (1) As used in this section, "health care sharing ministry" means a nonprofit organization:

(a) that is tax-exempt as described in section 501(c)(3) of the Internal Revenue Code and is exempt from taxation under section 501(a);

(b) whose members:

(i) share a common set of ethical or religious beliefs; and

(ii) share medical expenses among members in accordance with those beliefs without regard to the state in which a member resides or is employed and without being subject to regulation as insurance by the state in which the member resides;

(c) whose members retain membership even after developing a medical condition;

(d) that, or a predecessor of which, has been in existence at all times since December 31, 1999, and medical expenses of its members have been shared continuously and without interruption since at least December 31, 1999;

(e) that conducts an annual audit that is performed by an independent certified public accounting firm in accordance with generally accepted accounting principles and that is made available to the public on request; and

(f) that does not use a compensated or commissioned insurance producer, representative, or other

1 person to solicit or enroll members in this state. This subsection (1)(f) does not apply to:

2 (i) a salaried person employed by the health care sharing ministry who does not receive a form of
3 commission, compensation, or other valuable consideration based on the enrolling of new members; or

4 (ii) a new member referral program providing credit for existing members of the health care sharing
5 ministry if the program is limited to credit for no more than three new members annually.

6 (2) A health care sharing ministry shall provide a written disclaimer in 12-point font on or
7 accompanying all applications, marketing materials, or guideline materials distributed by or on behalf of the
8 health care sharing ministry that states:

9 "NOTICE: The health care sharing ministry facilitating the sharing of medical expenses is not an
10 insurance company and does not use insurance agents or pay commissions to insurance agents. The health
11 care sharing ministry's guidelines and plan of operation are not an insurance policy. Without health care
12 insurance, there is no guarantee that you, a fellow member, or any other person who is a party to the health
13 care sharing ministry agreement will be protected in the event of illness or emergency. Regardless of whether
14 you receive any payment for medical expenses or whether the health care sharing ministry terminates,
15 withdraws from the faith-based agreement, or continues to operate, you are always personally responsible for
16 the payment of your own medical bills. If your participation in the health care sharing ministry ends, state law
17 may subject you to a waiting period before you are able to apply for health insurance coverage."
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19 **Section 2.** Section 33-1-102, MCA, is amended to read:

20 **"33-1-102. Compliance required -- exceptions -- health service corporations -- health**
21 **maintenance organizations -- governmental insurance programs -- service contracts.** (1) A person may
22 not transact a business of insurance in Montana or a business relative to a subject resident, located, or to be
23 performed in Montana without complying with the applicable provisions of this code.

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

25 (a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

26 (b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

27 (c) fraternal benefit societies, except as stated in chapter 7.

28 (3) This code applies to health service corporations as prescribed in 33-30-102. The existence of the

1 corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

2 (4) This code does not apply to health maintenance organizations to the extent that the existence and
3 operations of those organizations are governed by chapter 31.

4 (5) This code does not apply to workers' compensation insurance programs provided for in Title 39,
5 chapter 71, part 21, and related sections.

6 (6) The department of public health and human services may limit the amount, scope, and duration of
7 services for programs established under Title 53 that are provided under contract by entities subject to this title.
8 The department of public health and human services may establish more restrictive eligibility requirements and
9 fewer services than may be required by this title.

10 (7) This code does not apply to the state employee group insurance program established in Title 2,
11 chapter 18, part 8, or the Montana university system group benefits plans established in Title 20, chapter 25,
12 part 13.

13 (8) This code does not apply to insurance funded through the state self-insurance reserve fund
14 provided for in 2-9-202.

15 (9) (a) Except as otherwise provided in Title 33, chapters 22 and 28, this code does not apply to any
16 arrangement, plan, or interlocal agreement between political subdivisions of this state in which the political
17 subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention,
18 deductible, or self-insurance plan.

19 (b) 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 or any arrangement, plan, or program
21 of a single political subdivision of this state in which the political subdivision provides to its officers, elected
22 officials, or employees disability insurance or life insurance through a self-funded program.

23 (10) (a) This code does not apply to the marketing of, sale of, offering for sale of, issuance of, making
24 of, proposal to make, and administration of a service contract.

25 (b) A "service contract" means a contract or agreement for a separately stated consideration for a
26 specific duration to perform the repair, replacement, or maintenance of property or to indemnify for the repair,
27 replacement, or maintenance of property if an operational or structural failure is due to a defect in materials or
28 manufacturing or to normal wear and tear, with or without an additional provision for incidental payment or

1 indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service.
2 A service contract may provide for the repair, replacement, or maintenance of property for damage resulting
3 from power surges or accidental damage from handling. A service contract does not include motor club service
4 as defined in 61-12-301.

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

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

10 (12) This code does not apply to the self-insured student health plan established in Title 20, chapter
11 25, part 14.

12 (13) Except as provided in 33-2-2212, this code does not apply to private air ambulance services that
13 are in compliance with 50-6-320 and that solicit membership subscriptions, accept membership applications,
14 charge membership fees, and provide air ambulance services to subscription members and designated
15 members of their households.

16 (14) This code does not apply to guaranteed asset protection waivers that are governed by Title 30,
17 chapter 14, part 22.

18 (15) This code does not apply to a health care sharing ministry that meets the requirements of
19 [section 1]."

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21 **Section 3.** Section 33-1-201, MCA, is amended to read:

22 **"33-1-201. Definitions -- insurance in general.** For the purposes of this code, the following
23 definitions apply unless the context requires otherwise:

24 (1) "Alien insurer" is an insurer formed under the laws of any country other than the United States or
25 its states, districts, territories, and commonwealths.

26 (2) "Authorized insurer" is an insurer duly authorized by a certificate of authority issued by the
27 commissioner to transact insurance in this state.

28 (3) "Domestic insurer" is an insurer incorporated under the laws of this state.

1 (4) "Foreign insurer" is an insurer formed under the laws of any jurisdiction other than this state.

2 Except when distinguished by context, the term includes an alien insurer.

3 (5) (a) "Insurance" is a contract through which one undertakes to indemnify another or pay or provide
4 a specified or determinable amount or benefit upon determinable contingencies.

5 (b) Insurance does not include:

6 (i) contracts for the installation, maintenance, and provision of inside telecommunications wiring to
7 residential or business premises; or

8 (ii) an arrangement with a health care sharing ministry that meets the requirements of [section 1].

9 (6) (a) "Insurer" includes every person engaged as indemnitor, surety, or contractor in the business of
10 entering into contracts of insurance. The term also includes a health service corporation in the provisions listed
11 in 33-30-102.

12 (b) The term does not include a health care sharing ministry that meets the requirements of [section
13 1].

14 (7) "Resident domestic insurer" is an insurer incorporated under the laws of this state and:

15 (a) if a mutual company, not less than one-half of the policyholders are individuals who are residents
16 of this state; or

17 (b) if a stock insurer, not less than one-half of the shares are owned by individuals who are residents
18 of this state and all of the directors and officers of the insurer are residents of this state.

19 (8) "State", when used in relation to jurisdiction, means a state, the District of Columbia, or a territory,
20 commonwealth, or possession of the United States.

21 (9) "Transact", with respect to insurance, means to:

22 (a) solicit;

23 (b) negotiate;

24 (c) sell or effectuate a contract of insurance; or

25 (d) transact matters subsequent to effectuation of the contract of insurance and arising out of it.

26 (10) "Unauthorized insurer" is an insurer not authorized by a certificate of authority issued by the
27 commissioner to transact insurance in this state."

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