



AN ACT REVISING LAWS PERTAINING TO INSURANCE OFFENSES; PROVIDING A STATUTE OF LIMITATIONS; CONSOLIDATING CRIMINAL PROVISIONS PERTAINING TO INSURANCE FRAUD; PROVIDING FOR ADMINISTRATIVE OR CIVIL INSURANCE FRAUD; AMENDING SECTIONS 33-1-707, 33-1-1202, 33-1-1205, 33-1-1211, 33-1-1302, 33-2-101, 33-2-104, 33-2-308, 33-2-1120, 33-2-1310, 33-3-304, 33-3-401, 33-3-424, 33-17-1004, 33-17-1102, 33-18-212, 33-22-2009, 33-23-401, AND 45-6-301, MCA; REPEALING SECTIONS 33-1-104, 33-18-401, 33-19-410, AND 33-20-1003, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

**Section 1. No limitation on prosecutions.** Nothing in [sections 1 through 12] limits the prosecution of any conduct defined as an offense in Title 45.

**Section 2. Application of criminal law and procedure.** Unless a rule or statute specifically states otherwise, the provisions of Titles 45 and 46 apply to the enforcement of the offenses provided for in [sections 1 through 12].

**Section 3. Statute of limitations.** (1) A prosecution for a felony stated in [sections 1 through 12] must be commenced within 5 years after it was committed.

(2) A prosecution for a misdemeanor stated in [sections 1 through 12] must be commenced within 3 years after it was committed.

(3) An offense is committed either when every element occurs or, when the offense is based upon a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the day after the offense is committed.

(4) A prosecution is commenced either when an indictment is found or an information or complaint is filed.

**Section 4. Criminal insurance fraud.** (1) A person commits the offense of insurance fraud when the person purposely or knowingly:

(a) for the purpose of obtaining any money or benefit, presents or causes to be presented to any person any written or oral statement, including computer-generated documents, containing false, incomplete, or misleading information concerning any fact or thing material to, as part of, or in support of a claim for payment or other benefit pursuant to an insurance policy;

(b) presents or causes to be presented to or by an insurer, as defined in 33-1-201, or to an insurance producer or administrator, as defined in 33-17-102, a materially false or altered application of insurance;

(c) as a health care provider as defined in 33-38-102, submits a false or altered bill or report of physical condition to an insurer; or

(d) presents or causes to be presented false, incomplete, or misleading insurance documents to any person.

(2) (a) A person convicted of criminal insurance fraud involving a benefit or benefits with a value not exceeding \$1,500 shall be fined not more than \$1,500 or be imprisoned in the county detention center for not more than 6 months, or both.

(b) A person convicted of the offense of insurance fraud involving a benefit or benefits with a value exceeding \$1,500 shall be fined an amount not to exceed \$50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

(c) A person convicted of the offense of insurance fraud involving a common scheme as defined in 45-2-101 shall be fined an amount not to exceed \$50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

**Section 5. Theft of viatical settlement proceeds.** (1) A person commits the offense of theft of viatical settlement proceeds when the person purposely or knowingly obtains or exerts unauthorized control over money, funds, premiums, credits, or other property of a viatical settlement provider, viatical settlement broker, insurer, insured, policy owner, or any other person engaged in the business of viatical settlements.

(2) For purposes of this section, "viatical settlement provider" and "viatical settlement broker" have the meanings provided in 33-20-1302.

(3) (a) A person convicted of theft of viatical settlement proceeds involving property with a value not exceeding \$1,500 shall be fined not more than \$1,500 or be imprisoned in the county detention center for not more than 6 months, or both.

(b) A person convicted of the offense of theft of viatical settlement proceeds involving property with a value exceeding \$1,500 shall be fined an amount not to exceed \$50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

(c) A person convicted of the offense of theft of viatical settlement proceeds involving a common scheme as defined in 45-2-101 shall be fined an amount not to exceed \$50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

**Section 6. Theft of medical care discount card fee.** (1) A person commits the offense of theft of medical care discount card fee when the person purposely or knowingly obtains or exerts unauthorized control over any amount of money paid by a user or consumer to a health care provider, a medical care discount card provider, or a medical care discount card supplier for a medical care discount card.

(2) For purposes of this section, "medical care discount card", "health care provider", and "medical care discount card provider" have the meanings provided in 33-38-102.

(3) (a) A person convicted of theft of medical care discount card fee involving a value not exceeding \$1,500 shall be fined not more than \$1,500 or be imprisoned in the county detention center for not more than 6 months, or both.

(b) A person convicted of the offense of theft of medical care discount card fee involving a value exceeding \$1,500 shall be fined an amount not to exceed \$50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

(c) A person convicted of the offense of theft of medical care discount card fee involving a common scheme as defined in 45-2-101 shall be fined an amount not to exceed \$50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

**Section 7. Theft of pharmacy discount card fee.** (1) A person commits the offense of theft of pharmacy discount card fee when the person purposely or knowingly obtains or exerts unauthorized control over any amount of money paid by a user or consumer to a prescription drug provider or a pharmacy discount card

supplier for a pharmacy discount card.

(2) For purposes of this section, "pharmacy discount card", "pharmacy discount card supplier", and "prescription drug provider" have the meanings provided in 33-38-102.

(3) (a) A person convicted of theft of pharmacy discount card fee involving a value not exceeding \$1,500 shall be fined not more than \$1,500 or be imprisoned in the county detention center for not more than 6 months, or both.

(b) A person convicted of the offense of theft of pharmacy discount card fee involving a value exceeding \$1,500 shall be fined an amount not to exceed \$50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

(c) A person convicted of the offense of theft of pharmacy discount card fee involving a common scheme as defined in 45-2-101 shall be fined an amount not to exceed \$50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

**Section 8. Theft of insurance premium.** (1) A person commits the offense of theft of insurance premium when the person purposely or knowingly exerts unauthorized control over money paid as insurance premium:

- (a) by failing to provide insurance premium received for a particular insurance policy to the insurer; or
- (b) knowing that insurance coverage will not be provided.

(2) For purposes of this section "insurance premium" has the same meaning as "premium" provided in 33-15-102.

(3) (a) A person convicted of theft of insurance premium involving a value not exceeding \$1,500 shall be fined not more than \$1,500 or be imprisoned in the county detention center for not more than 6 months, or both.

(b) A person convicted of the offense of theft of insurance premium involving a value exceeding \$1,500 shall be fined an amount not to exceed \$50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

(c) A person convicted of the offense of theft of insurance premium involving a common scheme as defined in 45-2-101 shall be fined an amount not to exceed \$50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

**Section 9. License offenses.** (1) A person commits the offense of conducting an insurance transaction without a license when the person purposely or knowingly solicits, negotiates, or sells insurance, as defined in 33-1-201, without first obtaining a license to conduct insurance transactions from the commissioner of insurance pursuant to Title 33.

(2) Except as provided in subsection (1), a person commits the offense of operating without a required license when the person purposely or knowingly engages in the acts of an insurance adjuster, insurance consultant, public adjuster, or temporary insurance producer, as those acts are set out in 33-17-102, 33-17-103, 33-17-216, and 33-17-1502, without first obtaining a license from the commissioner of insurance pursuant to Title 33.

(3) A corporation or other entity commits the offenses stated in this section when:

(a) a director, officer, servant, employee, or other person who is authorized to act on behalf of the entity commits the prohibited acts; or

(b) a manager or similarly empowered agent of the entity authorizes, requests, or commands the commission of the prohibited acts.

(4) A person convicted of a license offense shall be fined an amount not to exceed \$50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

**Section 10. Surplus lines insurance offenses.** (1) A person commits the offense of surplus lines offense if the person knowingly or negligently:

(a) issues or delivers a false policy or cover note or certification of insurance, as those documents are described in 33-2-308, related to the terms of a surplus lines insurance policy; or

(b) fails to notify an insured of a material change in the coverage described in 33-2-308 in writing within 30 days of any material change in the insurance coverage.

(2) A person convicted of a surplus lines insurance offense shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not less than 30 days or more than 90 days, or both.

**Section 11. Failure or refusal to cooperate with commissioner.** (1) A person commits the offense of failure or refusal to cooperate with the insurance commissioner when the person purposely or knowingly fails

or refuses to cooperate with the commissioner during a dissolution, liquidation, rehabilitation, sequestration, conservation, or receivership of any insurer or an investigation of such matters described in Title 33, chapter 2, part 13.

(2) A corporation or other entity commits the offense of failure or refusal to cooperate with the insurance commissioner when:

(a) a director, officer, servant, employee, or other person who is authorized to act on behalf of the entity purposely or knowingly fails or refuses to cooperate with the commissioner during a dissolution, liquidation, rehabilitation, sequestration, conservation, or receivership of any insurer or an investigation of such matters described in Title 33, chapter 2, part 13; or

(b) a manager or similarly empowered agent of the entity purposely or knowingly authorizes, requests, or commands the failure or refusal to cooperate with the commissioner during a dissolution, liquidation, rehabilitation, sequestration, conservation, or receivership of any insurer or an investigation of such matters described in Title 33, chapter 2, part 13.

(3) For purposes of this section, cooperation includes but is not limited to:

(a) responding in writing within 60 days to any written inquiry from the commissioner requesting a response;

(b) making available to the commissioner any information in the insurer's possession, custody or control, regardless of the form in which the information exists; or

(c) engaging in the necessary procedures related to dissolution, liquidation, rehabilitation, sequestration, conservation, or receivership of an insurer.

(4) A person or entity convicted of failure or refusal to cooperate with the insurance commissioner shall be fined an amount not to exceed \$10,000 or be imprisoned in a county detention facility for a term not to exceed 1 year, or both.

**Section 12. Records and assets offenses.** (1) A person commits the offense of unlawful removal or unlawful concealment of records or assets when, with the purpose to prevent the commissioner from fulfilling the duties set out in Title 33, the person purposely or knowingly removes from this state the records or assets required by 33-3-401 of a domestic insurer as defined in 33-1-201.

(2) A corporation or other entity commits the offense of unlawful removal or unlawful concealment of

records or assets when, with the purpose to prevent the commissioner from fulfilling the duties set out in Title 33:

(a) a director, officer, servant, employee, or other person who is authorized to act on behalf of the entity purposely or knowingly removes from this state or conceals the records or assets required by 33-3-401 of a domestic insurer as defined in 33-1-201; or

(b) a manager or similarly empowered agent of the entity purposely or knowingly authorizes, requests, or commands the removal from this state or concealment of the records or assets required by 33-3-401 of a domestic insurer as defined in 33-1-201.

(3) A person or entity convicted of the unlawful removal or unlawful concealment of records or assets shall be fined an amount not to exceed \$10,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both.

**Section 13.** Section 33-1-707, MCA, is amended to read:

**"33-1-707. Statute Administrative or civil action -- statute of limitations.** (1) Unless otherwise provided by law, the department shall commence an administrative or civil action for a violation of the insurance code within 2 years of the date of the violation or within 2 years after the department discovers the violation or, through the use of reasonable diligence, should have discovered the violation, whichever occurs later.

(2) Regardless of when the department discovers a violation or should have discovered a violation through the use of reasonable diligence, the department may not commence an administrative or civil action unless it is brought within 5 years of the date of the violation."

**Section 14.** Section 33-1-1202, MCA, is amended to read:

**"33-1-1202. Insurance Administrative or civil insurance fraud.** A person commits the act of administrative or civil insurance fraud when the person:

(1) for the purpose of obtaining any money or benefit, presents or causes to be presented to any insurer, purported insurer, producer, or administrator, as defined in 33-17-102, any written or oral statement, including computer-generated documents, containing false, incomplete, or misleading information concerning any fact or thing material to, as part of, or in support of a claim for payment or other benefit pursuant to an insurance policy;

(2) assists, abets, solicits, or conspires with another to prepare or make any written or oral statement containing false, incomplete, or misleading information concerning any fact that is intended to be presented to

any insurer or purported insurer or in connection with, material to, or in support of any claim for payment or other benefit pursuant to an insurance policy or contract;

(3) presents or causes to be presented to or by an insurer, purported insurer, producer, or administrator, as defined in 33-17-102, a materially false or altered application of insurance;

(4) accepts premium money knowing that coverage will not be provided;

(5) as a health care provider, submits a false or altered bill or report of physical condition to an insurer;

(6) offers or accepts a direct or indirect inducement to file a false statement of claim with the intent of deceiving an insurer; or

(7) presents or causes to be presented counterfeit insurance documents to any person."

**Section 15.** Section 33-1-1205, MCA, is amended to read:

**"33-1-1205. Duties of authorized insurers, adjusters, administrators, consultants, and producers -- notice exception.** (1) Each insurer, independent adjuster, independent administrator, independent consultant, and independent producer shall cooperate fully with the commissioner with respect to the provisions of this part.

(2) Except as provided in subsection (4), an insurer, an officer, or an employee of the insurer, an independent adjuster, an independent administrator, an independent consultant, or an independent producer who has reason to believe that an insurance fraud has been or is being committed shall provide notice of the alleged insurance fraud to the commissioner within 60 days. A producer of an insurer who has reason to believe that an insurance fraud has been or is being committed shall report the alleged fraud to the insurer within 60 days of discovery of the alleged insurance fraud. The insurer shall review the report. If the insurer determines that there is reasonable likelihood that fraud has occurred, the insurer shall forward the report to the commissioner within 30 days of receipt of the report.

(3) Notice to the commissioner by an insurer who has reason to believe that an insurance fraud has been committed in connection with an insurance claim, application, or policy tolls any applicable time period, for the commissioner, in any applicable insurance statute; or related insurance regulation, ~~or applicable sections of the criminal code~~ or any applicable provisions of [sections 1 through 12] and tolls any time period arising under 33-18-232 or 33-18-242 regarding unfair claims settlement practices.

(4) Notice of an alleged insurance fraud involving an insurance claim or application submitted to the state compensation insurance fund or a policy issued by the state compensation insurance fund must be made within



60 days to the fraud detection and prevention unit established pursuant to 39-71-211."

**Section 16.** Section 33-1-1211, MCA, is amended to read:

**"33-1-1211. Penalties Administrative or civil penalties.** (1) If, after a hearing conducted under 33-1-701, the commissioner determines that a person has committed administrative or civil insurance fraud, the commissioner may:

- (a) impose any penalty provided for in 33-1-317; or
- (b) require the person to pay the costs of the proceeding.

(2) ~~Any person who purposely or knowingly commits insurance fraud commits the offense of theft under 45-6-304.~~

~~—(3)~~ In addition to any other penalties, the commissioner shall require a person who commits administrative or civil insurance fraud to make restitution to the insurer or to any other person for all financial loss sustained as a result of the insurance fraud."

**Section 17.** Section 33-1-1302, MCA, is amended to read:

**"33-1-1302. Insurance, viatical settlement, medical care discount card, and pharmacy discount card administrative or civil fraud -- insurer.** (1) A person commits the act of insurance, viatical settlement, medical care discount card, or pharmacy discount card fraud when:

(a) in the course of offering or selling insurance, a medical care discount card, or a pharmacy discount card, the person misrepresents a material fact, known to the person to be untrue or made with reckless indifference as to whether it is true, with the intention of causing another person to rely upon the misrepresentation to that relying person's detriment; or

(b) with respect to a viatical settlement, the person violates the provisions of 33-1-1304.

(2) A person commits the act of insurance fraud or viatical settlement fraud by engaging in any transaction, act, practice, course of business, or course of dealing that involves a violation of insurable interest laws.

(3) The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose the penalties provided for in 33-1-317 for a violation of 33-1-1304 or this section. Failure to pay a fine under this section results in a lien upon the assets and property of the person as provided in 33-1-318(3).

(4) In addition to any penalty provided for in 33-1-317, the commissioner may require a person regulated under this title who commits insurance, viatical settlement, medical care discount card, or pharmacy discount card fraud to make full restitution to the victim for all financial losses sustained as a result of the fraud with interest of 10% a year from the date of the fraud plus any costs and reasonable attorney fees, less the amount of any income, refund, or other benefit received by the victim from the insurance, viatical settlement, medical care discount card, or pharmacy discount card.

(5) The commissioner may require a person who commits a violation of this part to make full restitution to any person who may have sustained any losses as a result of the fraud with interest of 10% a year from the date of the loss plus any costs and reasonable attorney fees.

(6) An insurer, insurance producer, or other person who sustained any losses and who was awarded restitution may bring suit to recover those sums, including any attorney fees, interest at 10% a year, and costs incurred in obtaining a judgment.

(7) Failure of a person to pay any amount ordered under this section constitutes a forfeiture of the right to do business in this state.

~~(8) A person who purposely or knowingly is involved in the misappropriation or theft of insurance premiums or proceeds, viatical settlement proceeds, a medical care discount card fee, or a pharmacy discount card fee commits the offense of theft and deceptive practices and is punishable as provided in 45-6-301 and 45-6-317, and the commissioner may refer evidence concerning the violation to the attorney general or other appropriate prosecuting attorney."~~

**Section 18.** Section 33-2-101, MCA, is amended to read:

**"33-2-101. Certificate of authority required—administrative and criminal penalties.** (1) Except as expressly otherwise provided in this code, a person acting as an insurer and an insurer transacting insurance in this state must have a subsisting certificate of authority issued by the commissioner.

(2) An insurer that has or maintains in Montana any office, representative, or facility for the solicitation or servicing of any kind of insurance in any other state must be authorized to transact the same kind of insurance in this state.

~~(3) A person who knowingly violates this section is guilty of a felony punishable as provided in 46-18-213 and in addition is subject to the civil penalty provided in 33-1-317."~~

**Section 19.** Section 33-2-104, MCA, is amended to read:

**"33-2-104. Representing or aiding unauthorized insurer prohibited.** (1) A person in this state may not directly or indirectly act as insurance producer for, or otherwise represent or aid on behalf of another, any insurer not authorized to transact insurance in this state in the solicitation, negotiation, or effectuation of insurance or of annuity contracts, inspection of risks, fixing of rates, investigation or adjustment of losses, collection of premiums, or any other transaction of insurance with respect to subjects of insurance resident, located or to be performed in this state.

(2) This section does not apply to:

- (a) acceptance of service of process by the commissioner under 33-1-613; or
- (b) surplus lines insurance and other transactions for which a certificate of authority is not required of an insurer as stated in 33-2-102.

~~(3) A person who knowingly violates this section is guilty of a felony punishable as provided in 46-18-213."~~

**Section 20.** Section 33-2-308, MCA, is amended to read:

**"33-2-308. Evidence of insurance -- changes -- penalty.** (1) Upon placing surplus lines insurance, the surplus lines insurance producer shall promptly issue or deliver to the insured or the producing insurance producer evidence of the insurance, consisting either of the policy as issued by the insurer or, if the policy is not then available, a cover note or certificate of insurance signed or countersigned by the insurance producer. The cover note or certificate must show the subject, coverage, conditions, and term of the insurance, the premium charged and taxes collected from the insured, and the name and address of the insurer. If a direct risk is assumed by more than one insurer, the cover note or certificate must state the name and address and proportion of the entire direct risk assumed by each insurer.

(2) If after the issuance and delivery of any cover note or certificate there is a change as to the identity of the insurers or the proportion of the direct risk assumed by the insurer as stated in the original cover note or certificate or in any other material respect as to the insurance coverage evidenced by the cover note or certificate, the surplus lines insurance producer shall promptly issue or deliver to the insured a substitute cover note or certificate accurately showing the current status of the coverage and the insurers responsible under the coverage.

(3) If a policy issued by the insurer is not available upon placement of the insurance and the surplus lines insurance producer has issued and delivered a cover note or certificate as provided in subsection (2), upon request by the insured, the surplus lines insurance producer shall as soon as reasonably possible procure from the insurer its policy evidencing the insurance and deliver the policy to the insured in replacement of the cover note or certificate previously issued.

~~(4) A surplus lines insurance producer who knowingly or negligently issues or delivers a false cover note or certificate of insurance or fails promptly to notify the insured of a material change with respect to the insurance by delivery to the insured of a substitute cover note or certificate as provided in subsection (2) is guilty of a violation of this code and upon conviction is subject to the penalties provided by 33-1-104 or to any greater applicable penalty otherwise provided by law.~~

~~————~~(5) A surplus lines insurance producer may not issue or deliver an evidence of insurance or purport to insure or represent that insurance will be or has been written by an eligible surplus lines insurer unless the surplus lines insurance producer has authority from the insurer to cause the risk to be insured or has received information from the insurer in the regular course of business that the insurance has been granted."

**Section 21.** Section 33-2-1120, MCA, is amended to read:

~~"33-2-1120. Criminal or civil proceedings--~~ **Registration, transaction, and reporting requirements -- administrative or civil penalties.** (1) An insurer failing without just cause to file a registration statement as required in 33-2-1111 shall, after notice and hearing, pay a penalty of \$100 for each day of delinquency. The maximum penalty under this subsection is \$25,000. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

(2) A director or an officer of an insurance holding company system who knowingly violates, participates in, or assents to a transaction or who knowingly permits an officer or insurance producer of the insurer to engage in a transaction or make an investment that has not been properly reported or submitted pursuant to 33-2-1111 or 33-2-1113 or that violates any other provision of Title 33, chapter 2, part 11, shall, after notice and hearing, pay, in the director's or officer's individual capacity, a fine of not more than \$5,000 for each violation. To determine the amount of the fine, the commissioner shall consider the appropriateness of the fine with respect to the gravity of the violation, the history of previous violations, and other matters that justice may require.

(3) If the commissioner determines that an insurer subject to Title 33, chapter 2, part 11, or a director, officer, employee, or insurance producer of the insurer has engaged in a transaction or entered into a contract that is subject to 33-2-1113 and that would not have been approved had approval been requested, the commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing, the commissioner may also order the insurer to void the contract and restore the status quo if that action is in the best interest of policyholders, creditors, or the public.

~~(4) Whenever the commissioner determines that an insurer or a director, officer, employee, or insurance producer of the insurer may have committed a willful violation of this part, the commissioner may cause criminal proceedings to be instituted by the district court for the county in which the principal office of the insurer is located or if the insurer does not have an office in the state, then by the district court for Lewis and Clark County against the insurer or the responsible director, officer, employee, or insurance producer of the insurer.~~

~~(5) Withholding of information required under 33-2-1104, if lack of that information prevents a full understanding of the enterprise risk to the insurer by affiliates or by the insurance holding company system, is a violation of 33-2-1104 and may serve as an independent basis for:~~

- (a) disapproving dividends or distributions; or
- (b) placing the insurer under supervision as provided in 33-2-1321.

~~(5) Any insurer that willfully violates this part may be fined not more than \$25,000.~~

~~(7) Any individual who willfully violates this part may be fined not more than \$5,000 or, if the willful violation involves the deliberate perpetration of a fraud upon the commissioner, imprisoned for not more than 2 years, or both."~~

**Section 22.** Section 33-2-1310, MCA, is amended to read:

**"33-2-1310. Cooperation of officers, owners, and employees.** (1) An officer, manager, director, trustee, owner, employee, or insurance producer of any insurer or any other persons with authority over or in charge of any segment of the insurer's affairs shall cooperate with the commissioner in any proceeding under this part or any investigation preliminary to the proceeding.

(2) (a) The term "person" as used in this section includes any person who exercises control directly or indirectly over activities of an insurer through any holding company or other affiliate of the insurer.

(b) "To cooperate" includes but is not limited to the following:

(i) replying promptly in writing to any inquiry from the commissioner requesting a reply; and  
(ii) making available to the commissioner any books, accounts, documents, or other records or information or property of or pertaining to the insurer and in the insurer's possession, custody, or control.

(3) A person may not obstruct or interfere with the commissioner in the conduct of any delinquency proceeding or any investigation preliminary or incidental to the proceeding.

(4) This section may not be construed to abridge otherwise existing legal rights, including the right to resist a petition for liquidation or other delinquency proceedings or other orders.

(5) Any person included within subsection (1) who fails to cooperate with the commissioner or any person who obstructs or interferes with the commissioner in the conduct of any delinquency proceeding or any investigation preliminary or incidental to the proceeding or who violates any order the commissioner issued validly under this part may:

~~— (a) be sentenced to pay a fine not exceeding \$10,000 or to undergo imprisonment for a term of not more than 1 year, or both; or~~

~~— (b) after a hearing, be subject to the imposition by the commissioner of a civil penalty not to exceed \$10,000 and to the revocation or suspension of any insurance licenses issued by the commissioner."~~

**Section 23.** Section 33-3-304, MCA, is amended to read:

**"33-3-304. Proxies -- corrupt practices -- penalty.** (1) Every proxy of a stockholder of an insurer, unless coupled with an interest, shall be revocable at will and this provision cannot be waived. The validity of every unrevoked proxy shall cease 11 months after the date of its execution unless some other definite period of validity is expressly provided therein, but in no event shall a proxy, unless coupled with an interest, be voted on after 3 years from the date of its execution.

(2) The revocation of a proxy shall not be effective until notice thereof has been given to the secretary of the insurer.

(3) No person shall buy or sell or barter a vote or proxy, relative to any meeting of stockholders or members of an insurer, or engage in any corrupt or dishonest practice in or relative to the conduct of any such meeting. ~~Violation of this section shall be punishable as provided in 33-1-104."~~

**Section 24.** Section 33-3-401, MCA, is amended to read:

**"33-3-401. Home office and records -- administrative or civil penalty for unlawful removal of records or assets.** (1) Each domestic insurer shall maintain its principal place of business and home office in this state and shall maintain at its principal place of business or home office complete records of its assets, transactions, and affairs in accordance with methods and systems customary or suitable to the kind or kinds of insurance that it transacts. Records of the insurer's operations and other financial records reasonably related to its insurance operations for the preceding 5 years must be maintained and be available to the commissioner or the commissioner's examiner.

(2) Each domestic insurer shall maintain its assets in this state, except for:

(a) real property and appurtenant personal property lawfully owned by the insurer and located outside this state; and

(b) property of the insurer that is customary, necessary, and convenient to enable and facilitate the operation of its branch offices and regional home offices located outside this state as referred to in subsection (4).

(3) Removal of all or a material part of the records or assets of a domestic insurer from this state except pursuant to a plan of merger or consolidation approved by the commissioner under this code or for reasonable purposes and periods of time as may be approved by the commissioner in writing in advance is prohibited. ~~Any person who removes or attempts to remove all or a material part of records or assets from the home office, other place of business, or safekeeping of the insurer in this state with the intent to remove the records or assets from this state or who conceals or attempts to conceal records or assets from the commissioner, in violation of this subsection, shall upon conviction be guilty of a felony punishable by a fine of not more than \$10,000 or by imprisonment in the penitentiary for not more than 5 years or by both a fine and imprisonment in the discretion of the court.~~ Upon any removal or attempted removal of records or assets or upon retention of records or assets or a material part of the records or assets outside this state beyond the period specified in the commissioner's consent under which the records were removed or upon concealment of or attempt to conceal records or assets in violation of this section, the commissioner may institute delinquency proceedings against the insurer pursuant to the provisions of chapter 2, part 13.

(4) This section does not prohibit or prevent an insurer from:

(a) establishing and maintaining branch offices or regional home offices in other states when necessary or convenient to the transaction of its business and keeping there the detailed records and assets customary and

necessary for the servicing of its insurance in force and affairs in the territory served by the out-of-state office, as long as the records and assets are made readily available at that office for examination by the commissioner when requested;

(b) having, depositing, or transmitting funds and assets of the insurer in or to jurisdictions outside of this state as reasonably and customarily required in the regular course of its business;

(c) making deposits under custodial arrangements as provided by 33-2-604(2).

(5) An insurer that fails to maintain records and make them available to the commissioner's staff is subject to the penalties and procedures in 33-1-317, 33-1-318, and 33-2-119."

**Section 25.** Section 33-3-424, MCA, is amended to read:

**"33-3-424. Illegal dividends -- administrative or civil penalty.** (1) Any director of a domestic stock or mutual insurer who votes for or concurs in declaration or payment of a dividend to stockholders or members other than as authorized under 33-3-422 or 33-3-423 shall upon conviction thereof be guilty of a misdemeanor and shall be jointly and severally liable, together with other such directors likewise voting for or concurring, for any loss thereby sustained by the insurer.

(2) Any stockholder receiving such an illegal dividend shall be liable in the amount thereof to the insurer.

(3) The commissioner may revoke or suspend the certificate of authority of an insurer which has declared or paid such an illegal dividend."

**Section 26.** Section 33-17-1004, MCA, is amended to read:

**"33-17-1004. Acting without license -- penalty.** (1) In addition to the requirements and penalties described in 33-17-201 and 33-17-411, a person who, in this state, acts without having authority to do so by virtue of a license issued and in force pursuant to this chapter is subject to the provisions of 33-1-317 and 33-1-318 and may be subject to conviction of a crime.

~~—————~~(2) A person convicted under this section shall, for a first conviction, be fined \$500 or imprisoned in the county jail for 90 days, or both. For a second conviction, the person shall be fined an amount not to exceed \$1,000 or incarcerated for a term not to exceed 1 year, or both. For a third or subsequent conviction, the person shall be fined an amount not to exceed \$5,000 or incarcerated for a term not to exceed 2 years, or both."



**Section 27.** Section 33-17-1102, MCA, is amended to read:

**"33-17-1102. Reporting and accounting for premiums -- misappropriation.** (1) All insurance premiums or return premiums received by an insurance producer must be held in a separate trust account. The insurance producer shall at all times act in a fiduciary capacity and shall, in the applicable regular course of business, account for and pay the insurance premiums or return premiums the insurance producer receives to the insured, insurer, or insurance producer entitled to them. Except for a title insurance producer as defined in 33-25-105, an insurance producer may deposit and commingle in the same separate deposit all funds belonging to others so long as the amount of the deposit held for each respective person is reasonably ascertainable from the records and accounts of the licensee.

(2) Any insurance producer not lawfully entitled to the funds may not divert or appropriate the funds or any portion of the funds to the insurance producer's own use.

~~(3) An insurance producer who purposely or knowingly diverts or misappropriates insurance premiums commits theft pursuant to 45-6-301."~~

**Section 28.** Section 33-18-212, MCA, is amended to read:

**"33-18-212. Illegal dealing in premiums -- improper charges for insurance.** (1) A person may not willfully collect any sum as a premium or charge for insurance that is not then provided or is not in due course to be provided, subject to acceptance of the risk by the insurer, by an insurance policy issued by an insurer as authorized by this code.

(2) A person may not willfully collect as a premium or charge for insurance any sum in excess of or less than the premium or charge applicable to the insurance and, as specified in the policy, in accordance with the applicable classifications and rates filed with or approved by the commissioner; or in cases in which classifications, premiums, or rates are not required by this code to be filed or approved, the premiums and charges may not be in excess of or less than those specified in the policy and as fixed by the insurer. This provision may not prohibit the charging and collection, by surplus lines insurance producers licensed under chapter 2, part 3, of the amount of applicable state and federal taxes in addition to the premium required by the insurer. This provision may not prohibit the charging and collection, by a life insurer, of amounts actually to be expended for medical examination of an applicant for life insurance or for reinstatement of a life insurance policy.

(3) This section does not prohibit the charging and collection of a flat fee by a surplus lines insurance

producer as specified in 33-2-320 for transaction of surplus lines insurance policies.

~~(4) Each violation of this section is punishable under 33-1-104."~~

**Section 29.** Section 33-22-2009, MCA, is amended to read:

**"33-22-2009. Penalties.** (1) The commissioner may, after providing an opportunity for a hearing pursuant to 33-1-701, impose the penalties provided for in 33-1-317 for a violation of this part. Failure to pay a fine under this section results in a lien upon the assets and property of that person in this state and may be recovered by suit by the commissioner and deposited in the special revenue account described in 53-6-1201.

(2) In addition to any penalty provided for in 33-1-317, the commissioner may require a person violating this part to make full restitution to the state, including interest of 10% a year from the date of loss, if a violation of this part caused a premium incentive payment or premium assistance payment to be paid or a tax credit to be issued to a person who was not entitled to it.

(3) A person who purposely or knowingly violates this part and receives a premium incentive payment or premium assistance payment or tax credit that the person is not entitled to commits the offense of ~~theft~~ criminal insurance fraud, which is punishable as provided in ~~45-6-304~~ [section 4].

(4) A person who purposely or knowingly violates this part and makes false statements, knowing those statements are not true, commits the offense of unsworn falsification to authorities, which is punishable as provided in 45-7-203.

(5) Any fines or restitution collected pursuant to this section must be deposited in the special revenue account in 53-6-1201 and dedicated to the payment of premium incentive payments and premium assistance payments or tax credits or funding new programs to assist eligible small employers with the cost of providing health insurance benefits."

**Section 30.** Section 33-23-401, MCA, is amended to read:

**"33-23-401. Written notice required for cancellation or nonrenewal of insurance policies on homes --penalty.** ~~(1)~~ An insurer may not cancel or refuse to renew any policy insuring private residences, including but not limited to fire, home owner, theft, or liability insurance on any home occupied by the insured as a domicile, without first giving to the insured 45 days' notice in writing, including in the notice a statement of the specific reason or reasons for canceling or not renewing the policy, except that a policy may be canceled for

nonpayment of premiums, in which case, the notice to the insured may not be less than 20 days.

~~(2) Violation of this section is punishable under 33-1-104."~~

**Section 31.** Section 45-6-301, MCA, is amended to read:

**"45-6-301. Theft.** (1) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when the person purposely or knowingly obtains by threat or deception control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(3) A person commits the offense of theft when the person purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(4) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over any part of any public assistance provided under Title 52 or 53 by a state or county agency, regardless of the original source of assistance, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) a fraudulent scheme or device.

(5) A person commits the offense of theft when the person purposely or knowingly obtains or exerts or helps another obtain or exert unauthorized control over any part of any benefits provided under Title 39, chapter 71, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) deception or other fraudulent action.

~~(6) (a) A person commits the offense of theft when the person purposely or knowingly commits insurance fraud as provided in 33-1-1202 or 33-1-1302;~~

~~\_\_\_\_\_ (b) purposely or knowingly diverts or misappropriates insurance premiums as provided in 33-17-1102;~~  
or

~~\_\_\_\_\_ (c) purposely or knowingly receives small business health insurance premium incentive payments or premium assistance payments or tax credits under Title 33, chapter 22, part 20, to which the person is not entitled.~~

~~(7)~~(6) A person commits the offense of theft of property by embezzlement when, with the purpose to deprive the owner of the property, the person:

(a) purposely or knowingly obtains or exerts unauthorized control over property of the person's employer or over property entrusted to the person; or

(b) purposely or knowingly obtains by deception control over property of the person's employer or over property entrusted to the person.

~~(8)~~(7) (a) Except as provided in subsection ~~(8)(b)~~ (7)(b), a person convicted of the offense of theft of property not exceeding \$1,500 in value shall be fined an amount not to exceed \$1,500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a second offense shall be fined \$1,500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined \$1,500 and be imprisoned in the county jail for a term of not less than 30 days or more than 6 months.

(b) (i) Except as provided in subsection ~~(8)(c)~~ (7)(c), a person convicted of the offense of theft of property exceeding \$1,500 in value or theft of any amount of anhydrous ammonia for the purpose of manufacturing dangerous drugs shall be fined an amount not to exceed \$50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

(ii) A person convicted of the theft of any commonly domesticated hoofed animal shall be fined an amount of not less than \$5,000 or more than \$50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both. If a prison term is deferred, the court shall order the offender to perform 416 hours of community service during a 1-year period, in the offender's county of residence. In addition to the fine and imprisonment, the offender's property is subject to criminal forfeiture pursuant to 45-6-328 and 45-6-329.

(c) A person convicted of the offense of theft of property exceeding \$10,000 in value by embezzlement shall be imprisoned in a state prison for a term of not less than 1 year or more than 10 years and may be fined an amount not to exceed \$50,000. The court may, in its discretion, place the person on probation with the requirement that restitution be made under terms set by the court. If the terms are not met, the required prison term may be ordered.

~~(9)(8)~~ Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property."

**Section 32. Repealer.** The following sections of the Montana Code Annotated are repealed:

- 33-1-104. General penalty.
- 33-18-401. False application, claim, and proof of loss -- criminal penalty.
- 33-19-410. Fraudulent electronic misrepresentation -- penalties -- exemption.
- 33-20-1003. Violations.

**Section 33. Codification instruction.** [Sections 1 through 12] are intended to be codified as an integral part of Title 33, chapter 1, and the provisions of Title 33, chapter 1, apply to [sections 1 through 12].

**Section 34. Effective date.** [This act] is effective on passage and approval.

**Section 35. Applicability.** [This act] applies to acts committed on or after [the effective date of this act].

- END -

I hereby certify that the within bill,  
SB 0167, originated in the Senate.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2017.

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Secretary of the Senate

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2017.

SENATE BILL NO. 167  
INTRODUCED BY C. VINCENT

AN ACT REVISING LAWS PERTAINING TO INSURANCE OFFENSES; PROVIDING A STATUTE OF LIMITATIONS; CONSOLIDATING CRIMINAL PROVISIONS PERTAINING TO INSURANCE FRAUD; PROVIDING FOR ADMINISTRATIVE OR CIVIL INSURANCE FRAUD; AMENDING SECTIONS 33-1-707, 33-1-1202, 33-1-1205, 33-1-1211, 33-1-1302, 33-2-101, 33-2-104, 33-2-308, 33-2-1120, 33-2-1310, 33-3-304, 33-3-401, 33-3-424, 33-17-1004, 33-17-1102, 33-18-212, 33-22-2009, 33-23-401, AND 45-6-301, MCA; REPEALING SECTIONS 33-1-104, 33-18-401, 33-19-410, AND 33-20-1003, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.