

1 *Senate* BILL NO. *292*
 2 INTRODUCED BY *Hicks*
 3 BY REQUEST OF THE INSURANCE COMMISSIONER

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 6 LAWS ON UNFAIR INSURANCE CLAIM SETTLEMENT, FAVORED AGENT
 7 PRACTICES, AND ENFORCEMENT PROCEDURES AND PENALTIES;
 8 AMENDING SECTIONS 40-3501 AND 40-3514, R.C.M. 1947;
 9 REPEALING SECTION 40-3516, R.C.M. 1947."

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

12 Section 1. There is a new R.C.M. section numbered
 13 40-3502.1 that reads as follows:

14 40-3502.1. Unfair claim settlement practices. No
 15 person may, with such frequency as to indicate a general
 16 business practice, do any of the following:

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

19 (2) fail to acknowledge and act reasonably promptly
 20 upon communications with respect to claims arising under
 21 insurance policies;

22 (3) fail to adopt and implement reasonable standards
 23 for the prompt investigation of claims arising under
 24 insurance policies;

25 (4) refuse to pay claims without conducting a

1 reasonable investigation based upon all available
 2 information;

3 (5) fail to affirm or deny coverage of claims within a
 4 reasonable time after proof of loss statements have been
 5 completed;

6 (6) neglect to attempt in good faith to effectuate
 7 prompt, fair, and equitable settlements of claims in which
 8 liability has become reasonably clear;

9 (7) compel insureds to institute litigation to recover
 10 amounts due under an insurance policy by offering
 11 substantially less than the amounts ultimately recovered in
 12 actions brought by such insureds;

13 (8) attempt to settle a claim for less than the amount
 14 to which a reasonable man would have believed he was entitled
 15 by reference to written or printed advertising material
 16 accompanying or made part of an application;

17 (9) attempt to settle claims on the basis of an
 18 application which was altered without notice to or knowledge
 19 or consent of the insured;

20 (10) make claims payments to insureds or beneficiaries
 21 not accompanied by statements setting forth the coverage
 22 under which the payments are being made;

23 (11) make known to insureds or claimants a policy of
 24 appealing from arbitration awards in favor of insureds or
 25 claimants for the purpose of compelling them to accept

1 settlements or compromises less than the amount awarded in
2 arbitration;

3 (12) delay the investigation or payment of claims by
4 requiring an insured, claimant, or physician of either to
5 submit a preliminary claim report and then requiring the
6 subsequent submission of formal proof of loss forms, both of
7 which submissions contain substantially the same
8 information;

9 (13) fail to promptly settle claims, if liability has
10 become reasonably clear, under one portion of the insurance
11 policy coverage in order to influence settlements under
12 other portions of the insurance policy coverage; or

13 (14) fail to promptly provide a reasonable explanation
14 of the basis in the insurance policy in relation to the
15 facts or applicable law for denial of a claim or for the
16 offer of a compromise settlement.

17 Section 2. There is a new R.C.M. section numbered
18 40-3502.2 that reads as follows:

19 40-3502.2. Failure to maintain complaint handling
20 procedures. (1) An insurer shall maintain a complete record
21 of all the complaints which it has received since the date
22 of its last examination under 40-2713. This record shall
23 indicate the total number of complaints, their
24 classification by line of insurance, the nature of each
25 complaint, the disposition of the complaints, and the time

1 it took to process each complaint.

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

4 Section 3. There is a new R.C.M. section numbered
5 40-3502.3 that reads as follows:

6 40-3502.3. Power of the commissioner. The commissioner
7 may examine and investigate the affairs of every person
8 engaged in the business of insurance in this state in order
9 to determine whether such person has been or is engaged in
10 any unfair method of competition or in any unfair or
11 deceptive act or practice prohibited by this chapter.

12 Section 4. There is a new R.C.M. section numbered
13 40-3514.1 that reads as follows:

14 40-3514.1. Penalty for violation of cease and desist
15 orders. (1) Any person who violates a cease and desist order
16 issued pursuant to 40-3514 is subject to a civil penalty not
17 to exceed \$1,000. Each day of violation constitutes a
18 separate violation. The department may institute and
19 maintain in the name of the state any enforcement
20 proceedings hereunder. Upon request of the department, the
21 attorney general or the county attorney of the county in
22 which the violation occurred shall petition the district
23 court to impose, assess, and recover the civil penalty.

24 (2) An action under subsection (1) of this section is
25 not a bar to enforcement of this chapter or rules or orders

1 made under it by injunction or other appropriate remedies.

2 (3) Moneys collected hereunder shall be deposited in
3 the state general fund.

4 Section 5. There is a new R.C.M. section numbered
5 40-3516.1 that reads as follows:

6 40-3516.1. Favored agent or insurer — coercion of
7 debtors. (1) No person may require as a condition precedent
8 to the lending of money or extension of credit or any
9 renewal thereof that the person to whom such money or credit
10 is extended or whose obligation a creditor is to acquire or
11 finance negotiate any contract of insurance or renewal
12 thereof through a particular insurer or group of insurers or
13 agent or solicitor or group of agents or solicitors.

14 (2) No person who lends money or extends credit may:

15 (a) solicit insurance for the protection of real
16 property, after a person indicates interest in securing a
17 first-mortgage credit extension, until such person has
18 received a commitment in writing from the lender as to a
19 loan or credit extension;

20 (b) unreasonably reject a contract of insurance
21 furnished by the borrower for the protection of the property
22 securing the credit or lien. A rejection is not unreasonable
23 if it is based on reasonable standards, uniformly applied,
24 relating to the extent of coverage required and the
25 financial soundness and the services of an insurer. Such

1 standards may not discriminate against any particular type
2 of insurer or call for rejection of an insurance contract
3 because the contract contains coverage in addition to that
4 required by the credit transaction.

5 (c) require that any borrower, mortgagor, purchaser,
6 insurer, solicitor, or agent pay a separate charge in
7 connection with the handling of any contract of insurance
8 required as security for a loan on real estate or pay a
9 separate charge to substitute the insurance policy of one
10 insurer for that of another. This subsection (2)(c) does
11 not include the interest which may be charged on premium
12 loans or premium advancements in accordance with the terms
13 of the loan or credit document.

14 (d) use or disclose, without the prior written consent
15 of the borrower, mortgagor, or purchaser, information taken
16 at a time other than the making of the loan or extension of
17 credit relative to a contract of insurance which is required
18 by the credit transaction, for the purpose of replacing such
19 insurance;

20 (e) require any procedures or conditions of licensed
21 agents, solicitors, or insurers not customarily required of
22 those agents, solicitors, or insurers affiliated or in any
23 way connected with the person who lends money or extends
24 credit.

25 (3) Each person who lends money or extends credit and

1 who solicits insurance on real and personal property subject
 2 to subsection (2) of this section must explain to the
 3 borrower in writing that the insurance related to such
 4 credit extension may be purchased from an insurer or agent
 5 of the borrower's choice, subject only to the lender's right
 6 to reject a given insurer or agent as provided in subsection
 7 (2)(b). Compliance with disclosures as to insurance required
 8 by truth-in-lending laws or comparable state laws shall be
 9 compliance with this subsection.

10 (4) The commissioner may examine and investigate those
 11 insurance-related activities of any person which may be in
 12 violation of this section. Any affected person may submit to
 13 the commissioner a complaint or material pertinent to the
 14 enforcement of this section.

15 (5) Nothing herein prevents a person who lends money
 16 or extends credit from placing insurance on real or personal
 17 property in the event the mortgagor, borrower, or purchaser
 18 has failed to provide required insurance in accordance with
 19 the terms of the loan or credit document.

20 (6) Nothing contained in this section applies to
 21 credit life or credit accident and health insurance.

22 Section 6. Section 40-3501, R.C.M. 1947, is amended to
 23 read as follows:

24 "40-3501. Purposes of trade practices law. The purpose
 25 of ~~sections 40-3501 through 40-3515~~ this chapter is to

1 regulate trade practices in the business of insurance in
 2 accordance with the intent of Congress as expressed in the
 3 ~~Act of Congress of March 9, 1945 (Public Law 15, 79th~~
 4 ~~Congress (chs. 20, 50, 51, State at Large 33))~~ P.L. 79-15,
 5 which was approved March 9, 1945; by defining or providing
 6 for determination of all such practices in this state which
 7 constitute unfair methods of competition or unfair or
 8 deceptive acts or practices and by prohibiting the trade
 9 practices so defined or determined."

10 Section 7. Section 40-3514, R.C.M. 1947, is amended to
 11 read as follows:

12 "40-3514. Desist orders for prohibited practices.
 13 (1) If, after a hearing thereon of which notice of such
 14 hearing and of the charges against him were given such
 15 person, the commissioner finds that any person in this state
 16 has engaged or is engaging in any act or practice defined in
 17 or prohibited under this chapter, the commissioner shall
 18 order such person to desist from such acts or practices.

19 (2) Such desist order shall become final upon
 20 expiration of the time allowed for appeals from the
 21 commissioner's orders, if no such appeal is taken, or, in
 22 event of such an appeal, upon final decision of the court if
 23 the court affirms the commissioner's order or dismisses the
 24 appeal. An intervenor in such hearing shall have the right
 25 to appeal as provided in section 40-3515 (3).

1 (3) In event of such an appeal, to the extent that the
2 commissioner's order is affirmed the court shall issue its
3 own order commanding obedience to the terms of the
4 commissioner's order.

5 (4) No order of the commissioner pursuant to this
6 section or order of court to enforce it shall in any way
7 relieve or absolve any person affected by such order from
8 any other liability, penalty, or forfeiture under law.

9 ~~(5) Violation of any such desist order shall be deemed~~
10 ~~to be and shall be punishable as a violation of this code~~

11 (6)(5) This section shall not be deemed to affect or
12 prevent the imposition of any penalty provided by this code
13 or by other law for violation of any other provision of this
14 chapter, whether or not any such hearing is called or held
15 or such desist order issued."

16 Section 3. Repealer. Section 40-3516, R.C.M. 1947, is
17 repealed.

-End-

Approved by Committee
on Business and Industry

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- 21 insurance policies;
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- 24 insurance policies;
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- 1 reasonable investigation based upon all available
- 2 information;
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- 4 reasonable time after proof of loss statements have been
- 5 completed;
- 6 (6) neglect to attempt in good faith to effectuate
- 7 prompt, fair, and equitable settlements of claims in which
- 8 liability has become reasonably clear;
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- 10 amounts due under an insurance policy by offering
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- 14 to which a reasonable man would have believed he was entitled
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- 18 application which was altered without notice to or knowledge
- 19 or consent of the insured;
- 20 (10) make claims payments to insureds or beneficiaries
- 21 not accompanied by statements setting forth the coverage
- 22 under which the payments are being made;
- 23 (11) make known to insureds or claimants a policy of
- 24 appealing from arbitration awards in favor of insureds or
- 25 claimants for the purpose of compelling them to accept

1 settlements or compromises less than the amount awarded in
2 arbitration;

3 (12) delay the investigation or payment of claims by
4 requiring an insured, claimant, or physician of either to
5 submit a preliminary claim report and then requiring the
6 subsequent submission of formal proof of loss forms, both of
7 which submissions contain substantially the same
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12 other portions of the insurance policy coverage; or

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17 Section 2. There is a new R.C.M. section numbered
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20 procedures. (1) An insurer shall maintain a complete record
21 of all the complaints which it has received since the date
22 of its last examination under 40-2713. This record shall
23 indicate the total number of complaints, their
24 classification by line of insurance, the nature of each
25 complaint, the disposition of the complaints, and the time

1 it took to process each complaint.

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

4 Section 3. There is a new R.C.M. section numbered
5 40-3502.3 that reads as follows:

6 40-3502.3. Power of the commissioner. The commissioner
7 may examine and investigate the affairs of every person
8 engaged in the business of insurance in this state in order
9 to determine whether such person has been or is engaged in
10 any unfair method of competition or in any unfair or
11 deceptive act or practice prohibited by this chapter.

12 Section 4. There is a new R.C.M. section numbered
13 40-3514.1 that reads as follows:

14 40-3514.1. Penalty for violation of cease and desist
15 orders. (1) Any person who violates a cease and desist order
16 issued pursuant to 40-3514 is subject to a civil penalty not
17 to exceed \$1,000. Each day of violation constitutes a
18 separate violation. ~~THE TOTAL PENALTY MAY NOT EXCEED A~~
19 ~~\$10,000 AGGREGATE.~~ The department may institute and maintain
20 in the name of the state any enforcement proceedings
21 hereunder. Upon request of the department, the attorney
22 general or the county attorney of the county in which the
23 violation occurred shall petition the district court to
24 impose, assess, and recover the civil penalty.

25 (2) An action under subsection (1) of this section is

1 not a bar to enforcement of this chapter or rules or orders
2 made under it by injunction or other appropriate remedies.

3 (3) Moneys collected hereunder shall be deposited in
4 the state general fund.

5 Section 5. There is a new R.C.M. section numbered
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7 40-3516.1. Favored agent or insurer -- coercion of
8 debtors. (1) No person may require as a condition precedent
9 to the lending of money or extension of credit or any
10 renewal thereof that the person to whom such money or credit
11 is extended or whose obligation a creditor is to acquire or
12 finance negotiate any contract of insurance or renewal
13 thereof through a particular insurer or group of insurers or
14 agent or solicitor or group of agents or solicitors.

15 (2) No person who lends money or extends credit may:

16 (a) solicit insurance for the protection of real
17 property, after a person indicates interest in securing a
18 first-mortgage credit extension, until such person has
19 received a commitment in writing from the lender as to a
20 loan or credit extension;

21 (b) unreasonably reject a contract of insurance
22 furnished by the borrower for the protection of the property
23 securing the credit or lien. A rejection is not unreasonable
24 if it is based on reasonable standards, uniformly applied,
25 relating to the extent of coverage required and the

1 financial soundness and the services of an insurer. Such
2 standards may not discriminate against any particular type
3 of insurer or call for rejection of an insurance contract
4 because the contract contains coverage in addition to that
5 required by the credit transaction.

6 (c) require that any borrower, mortgagor, purchaser,
7 insurer, solicitor, or agent pay a separate charge in
8 connection with the handling of any contract of insurance
9 required as security for a loan on real estate or pay a
10 separate charge to substitute the insurance policy of one
11 insurer for that of another. This subsection (2)(c) does
12 not include the interest which may be charged on premium
13 loans or premium advancements in accordance with the terms
14 of the loan or credit document.

15 (d) use or disclose, without the prior written consent
16 of the borrower, mortgagor, or purchaser, information taken
17 at a time other than the making of the loan or extension of
18 credit relative to a contract of insurance which is required
19 by the credit transaction, for the purpose of replacing such
20 insurance;

21 (e) require any procedures or conditions of licensed
22 agents, solicitors, or insurers not customarily required of
23 those agents, solicitors, or insurers affiliated or in any
24 way connected with the person who lends money or extends
25 credit.

1 (3) Each person who lends money or extends credit and
 2 who solicits insurance on real and personal property subject
 3 to subsection (2) of this section must explain to the
 4 borrower in writing that the insurance related to such
 5 credit extension may be purchased from an insurer or agent
 6 of the borrower's choice, subject only to the lender's right
 7 to reject a given insurer or agent as provided in subsection
 8 (2)(b). Compliance with disclosures as to insurance required
 9 by truth-in-lending laws or comparable state laws shall be
 10 compliance with this subsection.

11 (4) The commissioner may examine and investigate those
 12 insurance-related activities of any person which may be in
 13 violation of this section. Any affected person may submit to
 14 the commissioner a complaint or material pertinent to the
 15 enforcement of this section.

16 (5) Nothing herein prevents a person who lends money
 17 or extends credit from placing insurance on real or personal
 18 property in the event the mortgagor, borrower, or purchaser
 19 has failed to provide required insurance in accordance with
 20 the terms of the loan or credit document.

21 (6) Nothing contained in this section applies to
 22 credit life or credit accident and health insurance.

23 Section 6. Section 40-3501, R.C.M. 1947, is amended to
 24 read as follows:

25 "40-3501. Purposes of trade practices law. The purpose

1 of ~~sections 40-3501 through 40-3515~~ this chapter is to
 2 regulate trade practices in the business of insurance in
 3 accordance with the intent of Congress as expressed in ~~the~~
 4 ~~Act of Congress of March 9, 1945 (Public Law 15-79th~~
 5 ~~Congress (chs. 20, 50-U.S. Stat. at Large-33)) P.L. 79-15,~~
 6 which was approved March 9, 1945, by defining or providing
 7 for determination of all such practices in this state which
 8 constitute unfair methods of competition or unfair or
 9 deceptive acts or practices and by prohibiting the trade
 10 practices so defined or determined."

11 Section 7. Section 40-3514, R.C.M. 1947, is amended to
 12 read as follows:

13 "40-3514. Desist orders for prohibited practices.
 14 (1) If, after a hearing thereon of which notice of such
 15 hearing and of the charges against him were given such
 16 person, the commissioner finds that any person in this state
 17 has engaged or is engaging in any act or practice defined in
 18 or prohibited under this chapter, the commissioner shall
 19 order such person to desist from such acts or practices.

20 (2) Such desist order shall become final upon
 21 expiration of the time allowed for appeals from the
 22 commissioner's orders, if no such appeal is taken, or, in
 23 event of such an appeal, upon final decision of the court if
 24 the court affirms the commissioner's order or dismisses the
 25 appeal. An intervenor in such hearing shall have the right

1 to appeal as provided in section 40-3515 (3).

2 (3) In event of such an appeal, to the extent that the
3 commissioner's order is affirmed the court shall issue its
4 own order commanding obedience to the terms of the
5 commissioner's order.

6 (4) No order of the commissioner pursuant to this
7 section or order of court to enforce it shall in any way
8 relieve or absolve any person affected by such order from
9 any other liability, penalty, or forfeiture under law.

10 ~~(5) Violation of any such desist order shall be deemed~~
11 ~~to be end shall be punishable as a violation of this code~~

12 ~~(6)~~(5) This section shall not be deemed to affect or
13 prevent the imposition of any penalty provided by this code
14 or by other law for violation of any other provision of this
15 chapter, whether or not any such hearing is called or held
16 or such desist order issued."

17 SECTION 8. SECTION 40-3512, R.C.M. 1947, IS AMENDED TO
18 READ AS FOLLOWS:

19 "40-3512. Unfair discrimination, rebates
20 prohibited--property, casualty, surety insurances. (1) No
21 title, property, casualty or surety insurer or any employee
22 or representative thereof, and no agent, or solicitor shall
23 pay, allow, or give, or offer to pay, allow or give,
24 directly or indirectly, as an inducement to insurance, or
25 after insurance has been effected, any rebate, discount,

1 abatement, credit or reduction of the premium named in the
2 policy of insurance, or any special favor or advantage in
3 the dividends or other benefits to accrue thereon, or any
4 valuable consideration or inducement whatever, not specified
5 in the policy, except to the extent provided for in an
6 applicable filing with the commissioner as provided by law.

7 (2) No insured named in a policy, nor any employee of
8 such insured shall knowingly receive or accept directly or
9 indirectly, any such rebate, discount, abatement, credit or
10 reduction of premium, or any such special favor or advantage
11 or valuable consideration or inducement.

12 (3) No such insurer shall make or permit any unfair
13 discrimination either between insureds or property having
14 like insuring or risk characteristics, or between insureds
15 because of race, color, creed, or national origin, in the
16 premium or rates charged for insurance, or in the dividends
17 or other benefits payable thereon, or in any other of the
18 terms and conditions of the insurance.

19 (4) Nothing in this section shall be construed as
20 prohibiting the payment of commissions or other compensation
21 to duly licensed agents, or solicitors, or as prohibiting
22 any insurer from allowing or returning to its participating
23 policyholders, members or subscribers, lawful dividends,
24 savings or unabsorbed premium deposits."

25 Section 9. Repealer. Section 40-3516, R.C.M. 1947, is

SF 0292/92

1 repealed.

-End-

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 24 appealing from arbitration awards in favor of insureds or
 25 claimants for the purpose of compelling them to accept

1 settlements or compromises less than the amount awarded in
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3 (12) delay the investigation or payment of claims by
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5 submit a preliminary claim report and then requiring the
6 subsequent submission of formal proof of loss forms, both of
7 which submissions contain substantially the same
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11 policy coverage in order to influence settlements under
12 other portions of the insurance policy coverage; or

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16 offer of a compromise settlement.

17 Section 2. There is a new R.C.M. section numbered
18 40-3502.2 that reads as follows:

19 40-3502.2. Failure to maintain complaint handling
20 procedures. (1) An insurer shall maintain a complete record
21 of all the complaints which it has received since the date
22 of its last examination under 40-2713. This record shall
23 indicate the total number of complaints, their
24 classification by line of insurance, the nature of each
25 complaint, the disposition of the complaints, and the time

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18 separate violation. THE TOTAL PENALTY MAY NOT EXCEED A
19 \$10,000 AGGREGATE. The department may institute and maintain
20 in the name of the state any enforcement proceedings
21 hereunder. Upon request of the department, the attorney
22 general or the county attorney of the county in which the
23 violation occurred shall petition the district court to
24 impose, assess, and recover the civil penalty.

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10 renewal thereof that the person to whom such money or credit
11 is extended or whose obligation a creditor is to acquire or
12 finance negotiate any contract of insurance or renewal
13 thereof through a particular insurer or group of insurers or
14 agent or solicitor or group of agents or solicitors.

15 (2) No person who lends money or extends credit may:

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18 first-mortgage credit extension, until such person has
19 received a commitment in writing from the lender as to a
20 loan or credit extension;

21 (b) unreasonably reject a contract of insurance
22 furnished by the borrower for the protection of the property
23 securing the credit or lien. A rejection is not unreasonable
24 if it is based on reasonable standards, uniformly applied,
25 relating to the extent of coverage required and the

1 financial soundness and the services of an insurer. Such
2 standards may not discriminate against any particular type
3 of insurer or call for rejection of an insurance contract
4 because the contract contains coverage in addition to that
5 required by the credit transaction.

6 (c) require that any borrower, mortgagor, purchaser,
7 insurer, solicitor, or agent pay a separate charge in
8 connection with the handling of any contract of insurance
9 required as security for a loan on real estate or pay a
10 separate charge to substitute the insurance policy of one
11 insurer for that of another. This subsection (2)(c) does
12 not include the interest which may be charged on premium
13 loans or premium advancements in accordance with the terms
14 of the loan or credit document.

15 (d) use or disclose, without the prior written consent
16 of the borrower, mortgagor, or purchaser, information taken
17 at a time other than the making of the loan or extension of
18 credit relative to a contract of insurance which is required
19 by the credit transaction, for the purpose of replacing such
20 insurance;

21 (e) require any procedures or conditions of licensed
22 agents, solicitors, or insurers not customarily required of
23 those agents, solicitors, or insurers affiliated or in any
24 way connected with the person who lends money or extends
25 credit.

1 (3) Each person who lends money or extends credit and
 2 who solicits insurance on real and personal property subject
 3 to subsection (2) of this section must explain to the
 4 borrower in writing that the insurance related to such
 5 credit extension may be purchased from an insurer or agent
 6 of the borrower's choice, subject only to the lender's right
 7 to reject a given insurer or agent as provided in subsection
 8 (2)(b). Compliance with disclosures as to insurance required
 9 by truth-in-lending laws or comparable state laws shall be
 10 compliance with this subsection.

11 (4) The commissioner may examine and investigate those
 12 insurance-related activities of any person which may be in
 13 violation of this section. Any affected person may submit to
 14 the commissioner a complaint or material pertinent to the
 15 enforcement of this section.

16 (5) Nothing herein prevents a person who lends money
 17 or extends credit from placing insurance on real or personal
 18 property in the event the mortgagor, borrower, or purchaser
 19 has failed to provide required insurance in accordance with
 20 the terms of the loan or credit document.

21 (6) Nothing contained in this section applies to
 22 credit life or credit accident and health insurance.

23 Section 6. Section 40-3501, R.C.M. 1947, is amended to
 24 read as follows:

25 "40-3501. Purposes of trade practices law. The purpose

1 of ~~sections 40-3501 through 40-3515~~ this chapter is to
 2 regulate trade practices in the business of insurance in
 3 accordance with the intent of Congress as expressed in the
 4 ~~Act of Congress of March 9, 1945 (Public Law 1579th~~
 5 ~~Congress (chs. 20, 50, 51, State at Large 33)) P.L. 79-15,~~
 6 which was approved March 9, 1945, by defining or providing
 7 for determination of all such practices in this state which
 8 constitute unfair methods of competition or unfair or
 9 deceptive acts or practices and by prohibiting the trade
 10 practices so defined or determined."

11 Section 7. Section 40-3514, R.C.M. 1947, is amended to
 12 read as follows:

13 "40-3514. Desist orders for prohibited practices.
 14 (1) If, after a hearing thereon of which notice of such
 15 hearing and of the charges against him were given such
 16 person, the commissioner finds that any person in this state
 17 has engaged or is engaging in any act or practice defined in
 18 or prohibited under this chapter, the commissioner shall
 19 order such person to desist from such acts or practices.

20 (2) Such desist order shall become final upon
 21 expiration of the time allowed for appeals from the
 22 commissioner's orders, if no such appeal is taken, or, in
 23 event of such an appeal, upon final decision of the court if
 24 the court affirms the commissioner's order or dismisses the
 25 appeal. An intervenor in such hearing shall have the right

1 to appeal as provided in section 40-3515 (3).

2 (3) In event of such an appeal, to the extent that the
3 commissioner's order is affirmed the court shall issue its
4 own order commanding obedience to the terms of the
5 commissioner's order.

6 (4) No order of the commissioner pursuant to this
7 section or order of court to enforce it shall in any way
8 relieve or absolve any person affected by such order from
9 any other liability, penalty, or forfeiture under law.

10 ~~(5) Violation of any such desist order shall be deemed~~
11 ~~to be and shall be punishable as a violation of this code.~~

12 ~~(6)(5)~~ This section shall not be deemed to affect or
13 prevent the imposition of any penalty provided by this code
14 or by other law for violation of any other provision of this
15 chapter, whether or not any such hearing is called or held
16 or such desist order issued."

17 SECTION 8. SECTION 40-3512, R.C.M. 1947, IS AMENDED TO
18 READ AS FOLLOWS:

19 "40-3512. Unfair discrimination, rebates
20 prohibited--property, casualty, surety insurances. (1) No
21 ~~title~~ property, casualty or surety insurer or any employee
22 or representative thereof, and no agent, or solicitor shall
23 pay, allow, or give, or offer to pay, allow or give,
24 directly or indirectly, as an inducement to insurance, or
25 after insurance has been effected, any rebate, discount,

1 abatement, credit or reduction of the premium named in the
2 policy of insurance, or any special favor or advantage in
3 the dividends or other benefits to accrue thereon, or any
4 valuable consideration or inducement whatever, not specified
5 in the policy, except to the extent provided for in an
6 applicable filing with the commissioner as provided by law.

7 (2) No insured named in a policy, nor any employee of
8 such insured shall knowingly receive or accept directly or
9 indirectly, any such rebate, discount, abatement, credit or
10 reduction of premium, or any such special favor or advantage
11 or valuable consideration or inducement.

12 (3) No such insurer shall make or permit any unfair
13 discrimination either between insureds or property having
14 like insuring or risk characteristics, or between insureds
15 because of race, color, creed, or national origin, in the
16 premium or rates charged for insurance, or in the dividends
17 or other benefits payable thereon, or in any other of the
18 terms and conditions of the insurance.

19 (4) Nothing in this section shall be construed as
20 prohibiting the payment of commissions or other compensation
21 to duly licensed agents, or solicitors, or as prohibiting
22 any insurer from allowing or returning to its participating
23 policyholders, members or subscribers, lawful dividends,
24 savings or unabsorbed premium deposits."

25 Section 9. Repealer. Section 40-3516, R.C.M. 1947, is

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1 repealed.

-End-

1 SENATE BILL NO. 292

2 INTRODUCED BY NELSON

3 BY REQUEST OF THE INSURANCE COMMISSIONER

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
6 LAWS ON UNFAIR INSURANCE CLAIM SETTLEMENT, FAVORED AGENT
7 PRACTICES, AND ENFORCEMENT PROCEDURES AND PENALTIES;
8 AMENDING SECTIONS 40-3501, ~~40-3512~~, AND 40-3514, R.C.M.
9 1947; REPEALING SECTION 40-3516, R.C.M. 1947."

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

12 Section 1. There is a new R.C.M. section numbered
13 40-3502.1 that reads as follows:

14 40-3502.1. Unfair claim settlement practices. No
15 person may, with such frequency as to indicate a general
16 business practice, do any of the following:

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

19 (2) fail to acknowledge and act reasonably promptly
20 upon communications with respect to claims arising under
21 insurance policies;

22 (3) fail to adopt and implement reasonable standards
23 for the prompt investigation of claims arising under
24 insurance policies;

25 (4) refuse to pay claims without conducting a

1 reasonable investigation based upon all available
2 information;

3 (5) fail to affirm or deny coverage of claims within a
4 reasonable time after proof of loss statements have been
5 completed;

6 (6) neglect to attempt in good faith to effectuate
7 prompt, fair, and equitable settlements of claims in which
8 liability has become reasonably clear;

9 (7) compel insureds to institute litigation to recover
10 amounts due under an insurance policy by offering
11 substantially less than the amounts ultimately recovered in
12 actions brought by such insureds;

13 (8) attempt to settle a claim for less than the amount
14 to which a reasonable man would have believed he was entitled
15 by reference to written or printed advertising material
16 accompanying or made part of an application;

17 (9) attempt to settle claims on the basis of an
18 application which was altered without notice to or knowledge
19 or consent of the insured;

20 (10) make claims payments to insureds or beneficiaries
21 not accompanied by statements setting forth the coverage
22 under which the payments are being made;

23 (11) make known to insureds or claimants a policy of
24 appealing from arbitration awards in favor of insureds or
25 claimants for the purpose of compelling them to accept

1 settlements or compromises less than the amount awarded in
2 arbitration;

3 (12) delay the investigation or payment of claims by
4 requiring an insured, claimant, or physician of either to
5 submit a preliminary claim report and then requiring the
6 subsequent submission of formal proof of loss forms, both of
7 which submissions contain substantially the same
8 information;

9 (13) fail to promptly settle claims, if liability has
10 become reasonably clear, under one portion of the insurance
11 policy coverage in order to influence settlements under
12 other portions of the insurance policy coverage; or

13 (14) fail to promptly provide a reasonable explanation
14 of the basis in the insurance policy in relation to the
15 facts or applicable law for denial of a claim or for the
16 offer of a compromise settlement.

17 Section 2. There is a new R.C.M. section numbered
18 40-3502.2 that reads as follows:

19 40-3502.2. Failure to maintain complaint handling
20 procedures. (1) An insurer shall maintain a complete record
21 of all the complaints which it has received since the date
22 of its last examination under 40-2713. This record shall
23 indicate the total number of complaints, their
24 classification by line of insurance, the nature of each
25 complaint, the disposition of the complaints, and the time

1 it took to process each complaint.

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

4 Section 3. There is a new R.C.M. section numbered
5 40-3502.3 that reads as follows:

6 40-3502.3. Power of the commissioner. The commissioner
7 may examine and investigate the affairs of every person
8 engaged in the business of insurance in this state in order
9 to determine whether such person has been or is engaged in
10 any unfair method of competition or in any unfair or
11 deceptive act or practice prohibited by this chapter.

12 Section 4. There is a new R.C.M. section numbered
13 40-3514.1 that reads as follows:

14 40-3514.1. Penalty for violation of cease and desist
15 orders. (1) Any person who violates a cease and desist order
16 issued pursuant to 40-3514 is subject to a civil penalty not
17 to exceed \$1,000. Each day of violation constitutes a
18 separate violation. THE TOTAL PENALTY MAY NOT EXCEED A
19 \$10,000 AGGREGATE. The department may institute and maintain
20 in the name of the state any enforcement proceedings
21 hereunder. Upon request of the department, the attorney
22 general or the county attorney of the county in which the
23 violation occurred shall petition the district court to
24 impose, assess, and recover the civil penalty.

25 (2) An action under subsection (1) of this section is

1 not a bar to enforcement of this chapter or rules or orders
2 made under it by injunction or other appropriate remedies.

3 (3) Moneys collected hereunder shall be deposited in
4 the state general fund.

5 Section 5. There is a new R.C.M. section numbered
6 40-3516.1 that reads as follows:

7 40-3516.1. Favored agent or insurer -- coercion of
8 debtors. (1) No person may require as a condition precedent
9 to the lending of money or extension of credit or any
10 renewal thereof that the person to whom such money or credit
11 is extended or whose obligation a creditor is to acquire or
12 finance negotiate any contract of insurance or renewal
13 thereof through a particular insurer or group of insurers or
14 agent or solicitor or group of agents or solicitors.

15 (2) No person who lends money or extends credit may:

16 (a) solicit insurance for the protection of real
17 property, after a person indicates interest in securing a
18 first-mortgage credit extension, until such person has
19 received a commitment in writing from the lender as to a
20 loan or credit extension;

21 (b) unreasonably reject a contract of insurance
22 furnished by the borrower for the protection of the property
23 securing the credit or lien. A rejection is not unreasonable
24 if it is based on reasonable standards, uniformly applied,
25 relating to the extent of coverage required and the

1 financial soundness and the services of an insurer. Such
2 standards may not discriminate against any particular type
3 of insurer or call for rejection of an insurance contract
4 because the contract contains coverage in addition to that
5 required by the credit transaction.

6 (c) require that any borrower, mortgagor, purchaser,
7 insurer, solicitor, or agent pay a separate charge in
8 connection with the handling of any contract of insurance
9 required as security for a loan on real estate or pay a
10 separate charge to substitute the insurance policy of one
11 insurer for that of another. This subsection (2)(c) does
12 not include the interest which may be charged on premium
13 loans or premium advancements in accordance with the terms
14 of the loan or credit document.

15 (d) use or disclose, without the prior written consent
16 of the borrower, mortgagor, or purchaser, information taken
17 at a time other than the making of the loan or extension of
18 credit relative to a contract of insurance which is required
19 by the credit transaction, for the purpose of replacing such
20 insurance;

21 (e) require any procedures or conditions of licensed
22 agents, solicitors, or insurers not customarily required of
23 those agents, solicitors, or insurers affiliated or in any
24 way connected with the person who lends money or extends
25 credit.

1 (3) Each person who lends money or extends credit and
 2 who solicits insurance on real and personal property subject
 3 to subsection (2) of this section must explain to the
 4 borrower in writing that the insurance related to such
 5 credit extension may be purchased from an insurer or agent
 6 of the borrower's choice, subject only to the lender's right
 7 to reject a given insurer or agent as provided in subsection
 8 (2)(b). Compliance with disclosures as to insurance required
 9 by truth-in-lending laws or comparable state laws shall be
 10 compliance with this subsection.

11 (4) The commissioner may examine and investigate those
 12 insurance-related activities of any person which may be in
 13 violation of this section. Any affected person may submit to
 14 the commissioner a complaint or material pertinent to the
 15 enforcement of this section.

16 (5) Nothing herein prevents a person who lends money
 17 or extends credit from placing insurance on real or personal
 18 property in the event the mortgagor, borrower, or purchaser
 19 has failed to provide required insurance in accordance with
 20 the terms of the loan or credit document.

21 (6) Nothing contained in this section applies to
 22 credit life or credit accident and health insurance.

23 Section 6. Section 40-3501, R.C.M. 1947, is amended to
 24 read as follows:

25 "40-3501. Purposes of trade practices law. The purpose

1 of ~~sections 40-3501 through 40-3515~~ this chapter is to
 2 regulate trade practices in the business of insurance in
 3 accordance with the intent of Congress as expressed in the
 4 ~~Act of Congress of March 9, 1945 (Public Law 1579th~~
 5 ~~Congress (chs. 20, 50-U.S. Stat. at Large 33))~~ P.L. 79-15,
 6 which was approved March 9, 1945, by defining, or providing
 7 for determination of, all such practices in this state which
 8 constitute unfair methods of competition or unfair or
 9 deceptive acts or practices and by prohibiting the trade
 10 practices so defined or determined."

11 Section 7. Section 40-3514, R.C.M. 1947, is amended to
 12 read as follows:

13 "40-3514. Desist orders for prohibited practices.

14 (1) If, after a hearing thereon of which notice of such
 15 hearing and of the charges against him were given such
 16 person, the commissioner finds that any person in this state
 17 has engaged or is engaging in any act or practice defined in
 18 or prohibited under this chapter, the commissioner shall
 19 order such person to desist from such acts or practices.

20 (2) Such desist order shall become final upon
 21 expiration of the time allowed for appeals from the
 22 commissioner's orders, if no such appeal is taken, or, in
 23 event of such an appeal, upon final decision of the court if
 24 the court affirms the commissioner's order or dismisses the
 25 appeal. An intervenor in such hearing shall have the right

1 to appeal as provided in section 40-3515 (3).

2 (3) In event of such an appeal, to the extent that the
3 commissioner's order is affirmed the court shall issue its
4 own order commanding obedience to the terms of the
5 commissioner's order.

6 (4) No order of the commissioner pursuant to this
7 section or order of court to enforce it shall in any way
8 relieve or absolve any person affected by such order from
9 any other liability, penalty, or forfeiture under law.

10 ~~(5) Violation of any such desist order shall be deemed~~
11 ~~to be and shall be punishable as a violation of this code.~~

12 ~~(6)(5)~~ This section shall not be deemed to affect or
13 prevent the imposition of any penalty provided by this code
14 or by other law for violation of any other provision of this
15 chapter, whether or not any such hearing is called or held
16 or such desist order issued."

17 SECTION 8. SECTION 40-3512, R.C.M. 1947, IS AMENDED TO
18 READ AS FOLLOWS:

19 "40-3512. Unfair discrimination, rebates
20 prohibited--property, casualty, surety insurances. (1) No
21 title, property, casualty or surety insurer or any employee
22 or representative thereof, and no agent, or solicitor shall
23 pay, allow, or give, or offer to pay, allow or give,
24 directly or indirectly, as an inducement to insurance, or
25 after insurance has been effected, any rebate, discount,

1 abatement, credit or reduction of the premium named in the
2 policy of insurance, or any special favor or advantage in
3 the dividends or other benefits to accrue thereon, or any
4 valuable consideration or inducement whatever, not specified
5 in the policy, except to the extent provided for in an
6 applicable filing with the commissioner as provided by law.

7 (2) No insured named in a policy, nor any employee of
8 such insured shall knowingly receive or accept directly or
9 indirectly, any such rebate, discount, abatement, credit or
10 reduction of premium, or any such special favor or advantage
11 or valuable consideration or inducement.

12 (3) No such insurer shall make or permit any unfair
13 discrimination either between insureds or property having
14 like insuring or risk characteristics, or between insureds
15 because of race, color, creed, or national origin, in the
16 premium or rates charged for insurance, or in the dividends
17 or other benefits payable thereon, or in any other of the
18 terms and conditions of the insurance.

19 (4) Nothing in this section shall be construed as
20 prohibiting the payment of commissions or other compensation
21 to duly licensed agents, or solicitors, or as prohibiting
22 any insurer from allowing or returning to its participating
23 policyholders, members or subscribers, lawful dividends,
24 savings or unabsorbed premium deposits."

25 Section 9. Repealer. Section 40-3516, R.C.M. 1947, is

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1 repealed.

-End-