

Senate Bill 240

In The Senate

January 22, 1981	Introduced and referred to Committee on Judiciary.
February 21, 1981	Committee recommend bill do pass as amended.
February 23, 1981	Bill printed and placed on members' desks.
February 24, 1981	Second reading do pass as amended.
February 25, 1981	On motion rules suspended. Bill placed on calendar for third reading this day. Third reading passed.

In The House

March 2, 1981	Introduced and referred to Committee on Judiciary.
March 25, 1981	Committee recommend bill concurred as amended.
March 28, 1981	Second reading pass consideration.
March 30, 1981	Second reading concurred.

March 30, 1981

On motion rules suspended and bill allowed to be transmitted 71st legislative day. Motion adopted.

March 31, 1981

Third reading, concurred in as amended. Ayes, 96; Noes, 0.

IN THE SENATE

April 1, 1981

Returned from House with amendments.

April 3, 1981

Second reading, amendments not concurred in.

April 4, 1981

On motion taken from Committee on Bills and Journal and rereferred to Committee on Rules. Motion adopted.

April 9, 1981

On motion Free Conference Committee requested and appointed.

April 22, 1981

Free Conference Committee reported.

April 23, 1981

Second reading, Free Conference Committee report adopted.

Third reading, Free Conference Committee report adopted. Ayes, 47; Noes, 2. Transmitted to House.

IN THE HOUSE

April 23, 1981

Free Conference Committee report adopted.

IN THE SENATE

April 23, 1981

Returned from House. Sent to enrolling.

Reported correctly enrolled.

March 30, 1981

On motion rules suspended and bill allowed to be transmitted 71st legislative day. Motion adopted.

March 31, 1981

Third reading, concurred in as amended. Ayes, 96; Noes, 0.

IN THE SENATE

April 1, 1981

Returned from House with amendments.

April 3, 1981

Second reading, amendments not concurred in.

April 4, 1981

On motion taken from Committee on Bills and Journal and rereferred to Committee on Rules. Motion adopted.

April 9, 1981

On motion Free Conference Committee requested and appointed.

April 22, 1981

Free Conference Committee reported.

April 23, 1981

Second reading, Free Conference Committee report adopted.

Third reading, Free Conference Committee report adopted. Ayes, 47; Noes, 2. Transmitted to House.

IN THE HOUSE

April 23, 1981

Free Conference Committee report adopted.

IN THE SENATE

April 23, 1981

Returned from House. Sent to enrolling.

Reported correctly enrolled.

1 *Senate* BILL NO. 240
 2 INTRODUCED BY *Rayburn*
 3 BY REQUEST OF THE MONTANA DEPARTMENT OF INSURANCE

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH STANDARDS
 6 FOR THE COLLECTION, USE, AND DISCLOSURE OF INFORMATION
 7 GATHERED IN CONNECTION WITH INSURANCE TRANSACTIONS BY
 8 INSURANCE INSTITUTIONS, AGENTS, OR INSURANCE-SUPPORT
 9 ORGANIZATIONS; TO PROVIDE A PROCEDURE FOR ACCESS BY PRIVATE
 10 PERSONS TO INFORMATION GATHERED ABOUT THEM FOR THE PURPOSE
 11 OF VERIFYING OR DISPUTING ITS ACCURACY; TO LIMIT THE
 12 DISCLOSURE OF INFORMATION COLLECTED IN CONNECTION WITH
 13 INSURANCE TRANSACTIONS; TO GIVE THE COMMISSIONER OF
 14 INSURANCE THE POWER TO INVESTIGATE AND ISSUE CEASE AND
 15 DESIST ORDERS FOR VIOLATIONS OF THIS ACT; TO PROVIDE FOR
 16 EQUITABLE RELIEF IN THE DISTRICT COURT AND FOR A PENALTY;
 17 REPEALING SECTIONS 50-16-301 THROUGH 50-16-305 AND 50-16-311
 18 THROUGH 50-16-314, MCA."

19
 20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

21 Section 1. Short title. [This act] may be cited as the
 22 "Insurance Information and Privacy Protection Act".

23 Section 2. Purpose. The purpose of [this act] is to
 24 establish standards for the collection, use, and disclosure
 25 of information gathered in connection with insurance

1 transactions by insurance institutions, agents, or
 2 insurance-support organizations; to maintain a balance
 3 between the need for information by those conducting the
 4 business of insurance and the public's need for fairness in
 5 insurance information practices, including the need to
 6 minimize intrusiveness; to establish a regulatory mechanism
 7 to enable natural persons to ascertain what information is
 8 being or has been collected about them in connection with
 9 insurance transactions and to have access to such
 10 information for the purpose of verifying or disputing its
 11 accuracy; to limit the disclosure of information collected
 12 in connection with insurance transactions; and to enable
 13 insurance applicants and policyholders to obtain the reasons
 14 for any adverse underwriting decision.

15 Section 3. Scope of [act]. (1) The obligations imposed
 16 by [this act] apply to those insurance institutions, agents,
 17 or insurance-support organizations that, on or after [the
 18 effective date of this act]:

19 (a) in the case of life, health, or disability
 20 insurance:

21 (i) collect, receive, or maintain information in
 22 connection with insurance transactions that pertains to
 23 natural persons who are residents of this state; or

24 (ii) engage in insurance transactions with applicants,
 25 individuals, or policyholders who are residents of this

1 state; and

2 (b) in the case of property or casualty insurance:

3 (i) collect, receive, or maintain information in

4 connection with insurance transactions involving policies,

5 contracts, or certificates of insurance delivered, issued

6 for delivery, or renewed in this state; or

7 (ii) engage in insurance transactions involving

8 policies, contracts, or certificates of insurance delivered,

9 issued for delivery, or renewed in this state.

10 (2) The rights granted by [this act] extend to:

11 (a) in the case of life, health, or disability

12 insurance, the following persons who are residents of this

13 state:

14 (i) natural persons who are the subject of information

15 collected, received, or maintained in connection with

16 insurance transactions; and

17 (ii) applicants, individuals, or policyholders who

18 engage in or seek to engage in insurance transactions; and

19 (b) in the case of property or casualty insurance, the

20 following persons:

21 (i) natural persons who are the subject of information

22 collected, received, or maintained in connection with

23 insurance transactions involving policies, contracts, or

24 certificates of insurance delivered, issued for delivery, or

25 renewed in this state; and

1 (ii) applicants, individuals, or policyholders who

2 engage in or seek to engage in insurance transactions

3 involving policies, contracts, or certificates of insurance

4 delivered, issued for delivery, or renewed in this state.

5 (3) For the purposes of this section, a person is

6 considered a resident of this state if the person's last

7 known mailing address, as shown in the records of the

8 insurance institution, agent, or insurance-support

9 organization, is located in this state.

10 (4) [This act] does not apply to information collected

11 from the public records of a governmental authority and

12 maintained by an insurance institution or its

13 representatives for the purpose of insuring the title to

14 real property located in this state.

15 Section 4. Definitions. As used in [this act], the

16 following definitions apply:

17 (1) (a) "Adverse underwriting decision" means:

18 (i) any of the following actions with respect to

19 insurance transactions involving insurance coverage that are

20 individually underwritten:

21 (A) a declination of insurance coverage;

22 (B) a termination of insurance coverage;

23 (C) failure of an agent to apply for insurance coverage

24 with a specific insurance institution which the agent

25 represents and which is requested by an applicant;

1 (D) in the case of a property or casualty insurance
2 coverage:

3 (I) placement by an insurance institution or agent of a
4 risk with a residual market mechanism, an unauthorized
5 insurer, or an insurance institution which specializes in
6 substandard risks; or

7 (II) the charging of a higher rate on the basis of
8 information that differs from that which the applicant or
9 policyholder furnished;

10 (E) in the case of a life, health, or disability
11 insurance coverage, an offer to insure at higher than
12 standard rates.

13 (b) The following actions are not adverse underwriting
14 decisions but the insurance institution or agent responsible
15 for their occurrence shall nevertheless provide the
16 applicant or policyholder with the specific reason or
17 reasons for their occurrence:

18 (i) the termination of an individual policy form on a
19 class or statewide basis; or

20 (ii) a declination of insurance coverage solely because
21 such coverage is not available on a class or statewide
22 basis; or

23 (iii) the rescission of a policy.

24 (2) "Affiliate" or "affiliated" means a person that
25 directly or indirectly through one or more intermediaries

1 controls, is controlled by, or is under common control with
2 another person.

3 (3) "Agent" means an agent or enrollment representative
4 as defined in 33-17-102 and 33-30-311.

5 (4) "Applicant" means a person who seeks to contract
6 for insurance coverage other than a person seeking group
7 insurance that is not individually underwritten.

8 (5) "Consumer report" means any written, oral, or other
9 communication of information bearing on a natural person's
10 credit worthiness, credit standing, credit capacity,
11 character, general reputation, personal characteristics, or
12 mode of living which is used or expected to be used in
13 connection with an insurance transaction.

14 (6) "Consumer reporting agency" means any person who:

15 (a) regularly engages, in whole or in part, in the
16 practice of assembling or preparing consumer reports for a
17 monetary fee;

18 (b) obtains information primarily from sources other
19 than insurance institutions; and

20 (c) furnishes consumer reports to other persons.

21 (7) "Control", including the terms "controlled by" or
22 "under common control with", means the possession, direct or
23 indirect, of the power to direct or cause the direction of
24 the management and policies of a person, whether through the
25 ownership of voting securities, by contract other than a

1 commercial contract for goods or nonmanagement services, or
2 otherwise, unless the power is the result of an official
3 position with or corporate office held by the person.

4 (8) "Declination of insurance coverage" means a denial,
5 in whole or in part, by an insurance institution or agent of
6 requested insurance coverage.

7 (9) "Individual" means a natural person who:

8 (a) regarding property or casualty insurance, is a
9 past, present, or proposed named insured or
10 certificateholder;

11 (b) regarding life, health, or disability insurance, is
12 a past, present, or proposed principal insured or
13 certificateholder;

14 (c) is a past, present, or proposed policyowner;

15 (d) is a past or present applicant;

16 (e) is a past or present claimant; or

17 (f) derived, derives, or is proposed to derive
18 insurance coverage under an insurance policy or certificate
19 subject to [this act].

20 (10) "Institutional source" means a person or
21 governmental entity that provides information about an
22 individual to an agent, insurance institution, or
23 insurance-support organization, other than:

24 (a) an agent;

25 (b) the individual who is the subject of the

1 information; or

2 (c) a natural person acting in a personal capacity
3 rather than a business or professional capacity.

4 (11) "Insurance institution" means a corporation,
5 association, partnership, reciprocal exchange, interinsurer,
6 Lloyd's insurer, fraternal benefit society, or other person
7 engaged in the business of insurance, including health
8 maintenance organizations, and health service corporations
9 as defined in 33-30-101. "Insurance institution" does not
10 include agents or insurance-support organizations.

11 (12) (a) "Insurance-support organization" means a
12 person who regularly engages, in whole or in part, in the
13 practice of assembling or collecting information about
14 natural persons for the primary purpose of providing the
15 information to an insurance institution or agent for
16 insurance transactions, including:

17 (i) the furnishing of consumer reports or investigative
18 consumer reports to an insurance institution or agent for
19 use in connection with an insurance transaction; or

20 (ii) the collection of personal information from
21 insurance institutions, agents, or other insurance-support
22 organizations for the purpose of detecting or preventing
23 fraud, material misrepresentation, or material nondisclosure
24 in connection with insurance underwriting or insurance claim
25 activity.

1 (b) The following persons are not insurance-support
2 organizations for purposes of [this act]: agents, government
3 institutions, insurance institutions, medical care
4 institutions and medical professionals.

5 (13) "Insurance transaction" means a transaction
6 involving insurance primarily for personal, family, or
7 household needs, rather than business or professional needs,
8 that entails:

9 (a) the determination of an individual's eligibility
10 for an insurance coverage, benefit, or payment; or

11 (b) the servicing of an insurance application, policy,
12 contract, or certificate.

13 (14) "Investigative consumer report" means a consumer
14 report or portion thereof containing information about a
15 natural person's character, general reputation, personal
16 characteristics, or mode of living obtained through personal
17 interviews with the person's neighbors, friends, associates,
18 acquaintances, or others who may have knowledge concerning
19 such items of information.

20 (15) "Medical care institution" means a facility or
21 institution that is licensed to provide health care services
22 to natural persons, including but not limited to
23 health-maintenance organizations, home health agencies,
24 hospitals, medical clinics, public health agencies,
25 rehabilitation agencies, and skilled nursing facilities.

1 (16) "Medical professional" means a person licensed or
2 certified to provide health care services to natural
3 persons, including but not limited to a chiropractor,
4 clinical dietitian, clinical psychologist, dentist, nurse,
5 occupational therapist, optometrist, pharmacist, physical
6 therapist, physician, podiatrist, psychiatric social worker
7 or speech therapist.

8 (17) "Medical record information" means personal
9 information that:

10 (a) relates to an individual's physical or mental
11 condition, medical history, or medical treatment; and

12 (b) is obtained from a medical professional or medical
13 care institution, from the individual, or from the
14 individual's spouse, parent, or legal guardian.

15 (18) "Person" means a natural person, corporation,
16 association, partnership, or other legal entity.

17 (19) "Personal information" means any individually
18 identifiable information gathered in connection with an
19 insurance transaction from which judgments can be made about
20 an individual's character, habits, avocations, finances,
21 occupation, general reputation, credit, health, or any other
22 personal characteristics. Personal information includes an
23 individual's name and address and medical record information
24 but does not include privileged information.

25 (20) "Policyholder" means a person who:

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1 (a) in the case of individual property or casualty
2 insurance, is a present named insured;

3 (b) in the case of individual life, health, or
4 disability insurance, is a present policyowner; or

5 (c) in the case of group insurance that is individually
6 underwritten, is a present group certificateholder.

7 (21) "Pretext interview" means an interview during which
8 a person, in an attempt to obtain information about a
9 natural person, performs one or more of the following acts:

10 (a) pretends to be someone he is not;

11 (b) pretends to represent a person he is not in fact
12 representing;

13 (c) misrepresents the true purpose of the interview; or

14 (d) refuses to identify himself upon request.

15 (22) "Privileged information" means any individually
16 identifiable information that:

17 (a) relates to a claim for insurance benefits or a
18 civil or criminal proceeding involving an individual; and

19 (b) is collected in connection with or in reasonable
20 anticipation of a claim for insurance benefits or civil or
21 criminal proceeding involving an individual. Information
22 otherwise meeting the requirements of privileged information
23 under this subsection will be considered "personal
24 information" under [this act] if it is disclosed in
25 violation of [section 15].

1 (23) "Residual market mechanism" means an association,
2 organization, or other entity defined or described in
3 33-8-103 and 61-6-144.

4 (24) "Termination of insurance coverage" or "termination
5 of an insurance policy" means either a cancellation or
6 nonrenewal of an insurance policy, in whole or in part, for
7 any reason other than the failure to pay a premium as
8 required by the policy.

9 (25) "Unauthorized insurer" means an insurance
10 institution that has not been granted a certificate of
11 authority by the commissioner to transact the business of
12 insurance in this state.

13 Section 5. Pretext interviews prohibited -- exception.

14 (1) Except as provided in subsection (2), an insurance
15 institution, agent or insurance-support organization may not
16 use or authorize the use of pretext interviews to obtain
17 information in connection with an insurance transaction.

18 (2) A pretext interview may be undertaken to obtain
19 information from a person or institution that does not have
20 a generally or statutorily recognized privileged
21 relationship with the person about whom the information
22 relates for the purpose of investigating a claim when based
23 upon specific information available for review by the
24 commissioner that there is a reasonable basis for suspecting
25 criminal activity, fraud, material misrepresentation, or

1 material nondisclosure in connection with the claim.

2 Section 6. Notice of insurance information practices.

3 (1) An insurance institution or agent shall provide a notice

4 of information practices to all applicants or policyholders

5 in connection with insurance transactions as provided below:

6 (a) in the case of an application for insurance, a

7 notice shall be provided no later than:

8 (i) at the time of the delivery of the insurance policy

9 or certificate when personal information is collected only

10 from the applicant or from public records; or

11 (ii) at the time the collection of personal information

12 is initiated when personal information is collected from a

13 source other than the applicant or public records;

14 (b) in the case of a policy renewal, a notice shall be

15 provided no later than the policy renewal date, except that

16 no notice is required in connection with a policy renewal

17 if:

18 (i) personal information is collected only from the

19 policyholder or from public records; or

20 (ii) a notice meeting the requirements of this section

21 has been given within the previous 24 months; or

22 (c) in the case of a policy reinstatement or change in

23 insurance benefits, a notice shall be provided no later than

24 the time a request for a policy reinstatement or change in

25 insurance benefits is received by the insurance institution,

1 except that no notice is required if personal information is

2 collected only from the policyholder or from public records.

3 (2) The notice must be in writing and must state:

4 (a) whether personal information may be collected from

5 persons other than the individual or individuals proposed

6 for coverage;

7 (b) the types of personal information that may be

8 collected and the types of sources and investigative

9 techniques that may be used to collect such information;

10 (c) the types of disclosures identified in subsections

11 (3), (4), (5), (6), (7), (10), (12), (13), and (15) of

12 [section 15] and the circumstances under which such

13 disclosures may be made without prior authorization.

14 However, only those circumstances that occur with such

15 frequency as to indicate a general business practice must be

16 described.

17 (d) a description of the rights established under

18 [sections 10 and 11] and the manner in which those rights

19 may be exercised; and

20 (e) that information obtained from a report prepared by

21 an insurance-support organization may be retained by the

22 insurance-support organization and disclosed to other

23 persons.

24 (3) In lieu of the notice prescribed in subsection (2),

25 the insurance institution or agent may provide an

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1 abbreviated notice informing the applicant or policyholder
2 that:

3 (a) personal information may be collected from persons
4 other than the individual or individuals proposed for
5 coverage;

6 (b) such information as well as other personal or
7 privileged information subsequently collected by the
8 insurance institution or agent may in certain circumstances
9 be disclosed to third parties without authorization;

10 (c) a right of access and correction exists with
11 respect to all personal information collected; and

12 (d) the notice prescribed in subsection (2) must be
13 furnished to the applicant or policyholder upon request.

14 (4) The obligations imposed by this section upon an
15 insurance institution or agent may be satisfied by another
16 insurance institution or agent authorized to act on its
17 behalf.

18 Section 7. Marketing and research surveys. An insurance
19 institution or agent shall clearly specify the questions
20 that are designed to obtain information, from an individual
21 in connection with an insurance transaction, solely for
22 marketing or research purposes.

23 Section 8. Content and disclosure of authorization
24 forms. Notwithstanding any other provision of law of this
25 state, an insurance institution, agent, or insurance-support

1 organization may not utilize as its disclosure authorization
2 form in connection with insurance transactions a form or
3 statement that authorizes the disclosure of personal or
4 privileged information about an individual to the insurance
5 institution, agent, or insurance-support organization unless
6 the form or statement:

7 (1) is written in plain language;

8 (2) is dated;

9 (3) specifies the types of persons authorized to
10 disclose information about the individual;

11 (4) specifies the nature of the information authorized
12 to be disclosed;

13 (5) names the insurance institution or agent and
14 identifies by generic reference representatives of the
15 insurance institution to whom the individual is authorizing
16 information to be disclosed;

17 (6) specifies the purposes for which the information is
18 collected;

19 (7) specifies the length of time such authorization
20 remains valid, which may be no longer than:

21 (a) in the case of authorizations signed for the
22 purpose of collecting information in connection with an
23 application for an insurance policy, a policy reinstatement,
24 or a request for change in policy benefits:

25 (i) 30 months from the date the authorization is signed

1 if the application or request involves life, health, or
2 disability insurance;

3 (ii) one year from the date the authorization is signed
4 if the application or request involves property or casualty
5 insurance;

6 (b) in the case of authorizations signed for the
7 purpose of collecting information in connection with a claim
8 for benefits under an insurance policy:

9 (i) the term of coverage of the policy if the claim is
10 for a health insurance benefit;

11 (ii) the duration of the claim if the claim is not for
12 a health insurance benefit; and

13 (8) advises the individual or a person authorized to
14 act on behalf of the individual that the individual or the
15 individual's authorized representative is entitled to
16 receive a copy of the authorization form.

17 Section 9. Investigative consumer reports. (1) An
18 insurance institution, agent, or insurance-support
19 organization may not prepare or request an investigative
20 consumer report about an individual in connection with an
21 insurance transaction involving an application for
22 insurance, a policy renewal, a policy reinstatement, or a
23 change in insurance benefits unless the insurance
24 institution or agent informs the individual:

25 (a) that he may request to be interviewed in connection

1 with the preparation of the investigative consumer report;
2 and

3 (b) that upon a request pursuant to [section 10], he is
4 entitled to receive a copy of the investigative consumer
5 report.

6 (2) If an investigative consumer report is to be
7 prepared by an insurance institution or agent, the insurance
8 institution or agent shall institute reasonable procedures
9 to conduct a personal interview requested by an individual.

10 (3) If an investigative consumer report is to be
11 prepared by an insurance-support organization, the insurance
12 institution or agent desiring such report shall inform the
13 insurance-support organization whether a personal interview
14 has been requested by the individual. The insurance-support
15 organization shall institute reasonable procedures to
16 conduct such interview, if requested.

17 Section 10. Access to recorded personal information.

18 (1) If an individual, after proper identification, submits a
19 written request to an insurance institution, agent, or
20 insurance-support organization for access to recorded
21 personal information about the individual that is reasonably
22 described by the individual and reasonably locatable and
23 retrievable by the insurance institution, agent, or
24 insurance-support organization, the insurance institution,
25 agent, or insurance-support organization shall, within 30

1 business days from the date such request is received:

2 (a) inform the individual of the nature and substance
3 of the recorded personal information in writing, by
4 telephone, or by other oral communication, whichever the
5 insurance institution, agent, or insurance-support
6 organization prefers;

7 (b) permit the individual to see and copy, in person,
8 the recorded personal information pertaining to him or to
9 obtain a copy of the recorded personal information by mail,
10 whichever the individual prefers. If the recorded personal
11 information is in coded form an accurate translation in
12 plain language must be provided in writing.

13 (c) disclose to the individual the identity, if
14 recorded, of those persons to whom the insurance
15 institution, agent, or insurance-support organization has
16 disclosed the personal information within 2 years prior to
17 the request and if the identity is not recorded, the names
18 of those insurance institutions, agents, insurance-support
19 organizations, or other persons to whom such information is
20 normally disclosed; and

21 (d) provide the individual with a summary of the
22 procedures he may use to request correction, amendment, or
23 deletion of recorded personal information.

24 (2) Personal information provided pursuant to
25 subsection (1) must identify the source of the information

1 if such source is an institutional source.

2 (3) Medical record information supplied by a medical
3 care institution or medical professional and requested under
4 subsection (1), together with the identity of the medical
5 professional or medical care institution that provided the
6 information, shall be supplied either directly to the
7 individual or to a medical professional designated by the
8 individual and licensed to provide medical care with respect
9 to the condition to which the information relates, whichever
10 the insurance institution, agent, or insurance-support
11 organization prefers. If it elects to disclose the
12 information to a medical professional designated by the
13 individual, the insurance institution, agent, or
14 insurance-support organization shall notify the individual,
15 at the time of the disclosure, that it has provided the
16 information to the medical professional.

17 (4) Except for personal information provided under
18 [section 12], an insurance institution, agent, or
19 insurance-support organization may charge a reasonable fee
20 to cover the costs incurred in providing a copy of recorded
21 personal information to individuals.

22 (5) The obligations imposed by this section upon an
23 insurance institution or agent may be satisfied by another
24 insurance institution or agent authorized to act on its
25 behalf. With respect to the copying and disclosure of

1 recorded personal information pursuant to a request under
 2 subsection (1), an insurance institution, agent, or
 3 insurance-support organization may make arrangements with an
 4 insurance-support organization or a consumer reporting
 5 agency to copy and disclose recorded personal information on
 6 its behalf.

7 (6) The rights granted to individuals in this section
 8 extend to all natural persons to the extent information
 9 about them is collected and maintained by an insurance
 10 institution, agent, or insurance-support organization in
 11 connection with an insurance transaction. The rights granted
 12 to all natural persons by this subsection do not extend to
 13 information about them that relates to and is collected in
 14 connection with or in reasonable anticipation of a claim or
 15 civil or criminal proceeding involving them.

16 (7) For the purposes of this section, the term
 17 "insurance-support organization" does not include "consumer
 18 reporting agency" except to the extent this section imposes
 19 more stringent requirements on a consumer reporting agency
 20 than other state or federal law.

21 Section 11. Correction, amendment, or deletion of
 22 recorded personal information. (1) Within 30 business days
 23 from the date of receipt of a written request from an
 24 individual to correct, amend, or delete any recorded
 25 personal information in its possession about the individual,

1 an insurance institution, agent, or insurance-support
 2 organization shall either:

3 (a) correct, amend, or delete the portion of the
 4 recorded personal information in dispute; or

5 (b) notify the individual of:

6 (i) its refusal to make such correction, amendment, or
 7 deletion;

8 (ii) the reasons for the refusal; and

9 (iii) the individual's right to file a statement as
 10 provided in subsection (3).

11 (2) If the insurance institution, agent, or
 12 insurance-support organization corrects, amends, or deletes
 13 recorded personal information in accordance with subsection
 14 (1)(a), the insurance institution, agent, or
 15 insurance-support organization shall so notify the
 16 individual in writing and furnish the correction, amendment,
 17 or fact of deletion to:

18 (a) any person specifically designated by the
 19 individual who may have, within the preceding 2 years,
 20 received such recorded personal information;

21 (b) any insurance-support organization whose primary
 22 source of personal information is insurance institutions if
 23 the insurance-support organization has systematically
 24 received such recorded personal information from the
 25 insurance institution within the preceding 7 years, but the

1 correction, amendment, or fact of deletion need not be
2 furnished if the insurance-support organization no longer
3 maintains recorded personal information about the
4 individual; and

5 (c) any insurance-support organization that furnished
6 the personal information which has been corrected, amended,
7 or deleted.

8 (3) Whenever an individual disagrees with an insurance
9 institution's, agent's, or insurance-support organization's
10 refusal to correct, amend, or delete recorded personal
11 information, the individual may file with the insurance
12 institution, agent, or insurance-support organization:

13 (a) a concise statement setting forth what the
14 individual thinks is the correct, relevant, or fair
15 information; and

16 (b) a concise statement of the reasons why the
17 individual disagrees with the insurance institution's,
18 agent's, or insurance-support organization's refusal to
19 correct, amend, or delete recorded personal information.

20 (4) If an individual files either statement described
21 in subsection (3), the insurance institution, agent, or
22 insurance-support organization shall:

23 (a) file the statement with the disputed personal
24 information and provide a means by which anyone reviewing
25 the disputed personal information will be made aware of

1 individual's statement and have access to it;

2 (b) in any subsequent disclosure by the insurance
3 institution, agent, or insurance-support organization of the
4 recorded personal information that is the subject of
5 disagreement, clearly identify the matter in dispute and
6 provide the individual's statement along with the recorded
7 personal information being disclosed; and

8 (c) furnish the statement to the persons in the manner
9 specified in subsection (2).

10 (5) The rights granted individuals by this section
11 extend to all natural persons to the extent information
12 about them is collected and maintained by an insurance
13 institution, agent, or insurance-support organization in
14 connection with an insurance transaction. The rights granted
15 to natural persons by this subsection do not extend to
16 information about them that relates to and is collected in
17 connection with or in reasonable anticipation of a claim or
18 civil or criminal proceeding involving them.

19 (6) For the purposes of this section, the term
20 "insurance-support organization" does not include "consumer
21 reporting agency" to the extent this section imposes more
22 stringent requirements on a consumer reporting agency than
23 other state or federal law.

24 Section 12. Reasons for adverse underwriting decisions.

25 (1) If an adverse underwriting decision is made, the

1 insurance institution or agent responsible for the decision
2 shall:

3 (a) either provide the applicant, policyholder, or
4 individual proposed for coverage with the specific reason or
5 reasons for the adverse underwriting decision in writing or
6 advise such person that upon written request he may receive
7 the specific reason or reasons in writing; and

8 (b) provide the applicant, policyholder, or individual
9 proposed for coverage with a summary of the rights
10 established under subsection (2) and [sections 10 and 11].

11 (2) If a written request is received within 90 business
12 days from the date of the mailing of notice or other
13 communication of an adverse underwriting decision to an
14 applicant, policyholder, or individual proposed for
15 coverage, the insurance institution or agent shall within 21
16 business days from the date of receipt of the written
17 request furnish the person:

18 (a) the specific reason or reasons for the adverse
19 underwriting decision, in writing, if such information was
20 not initially furnished in writing pursuant to subsection
21 (1)(a);

22 (b) the specific items of personal and privileged
23 information that support those reasons; however:

24 (i) the insurance institution or agent is not required
25 to furnish specific items of privileged information if it

1 has a reasonable suspicion, based upon specific information
2 available for review by the commissioner, that the
3 applicant, policyholder, or individual proposed for coverage
4 has engaged in criminal activity, fraud, material
5 misrepresentation, or material nondisclosure; and

6 (ii) specific items of medical record information
7 supplied by a medical care institution or medical
8 professional shall be disclosed either directly to the
9 individual about whom the information relates or to a
10 medical professional designated by the individual and
11 licensed to provide medical care with respect to the
12 condition to which the information relates, whichever the
13 insurance institution or agent prefers; and

14 (c) the names and addresses of the institutional
15 sources that supplied the specific items of information
16 pursuant to subsection (2)(b), except that the identity of
17 any medical professional or medical care institution must be
18 disclosed either directly to the individual or to the
19 designated medical professional, whichever the insurance
20 institution or agent prefers.

21 (3) The obligations imposed by this section upon an
22 insurance institution or agent may be satisfied by another
23 insurance institution or agent authorized to act on its
24 behalf.

25 (4) When an adverse underwriting decision results

1 solely from an oral request or inquiry, the explanation of
 2 reasons and summary of rights required by subsection (1) may
 3 be given orally.

4 Section 13. Information concerning previous adverse
 5 underwriting decisions. An insurance institution, agent, or
 6 insurance-support organization may not seek information in
 7 connection with an insurance transaction concerning:

8 (1) any previous adverse underwriting decision
 9 experienced by an individual; or

10 (2) any previous insurance coverage obtained by an
 11 individual through a residual market mechanism unless the
 12 inquiry also requests the reasons for any previous adverse
 13 underwriting decision or the reasons why insurance coverage
 14 was previously obtained through a residual market mechanism.

15 Section 14. Previous adverse underwriting decisions. An
 16 insurance institution or agent may not base an adverse
 17 underwriting decision in whole or in part:

18 (1) on the fact of a previous adverse underwriting
 19 decision or on the fact that an individual previously
 20 obtained insurance coverage through a residual market
 21 mechanism, but an insurance institution or agent may base an
 22 adverse underwriting decision on further information
 23 obtained from an insurance institution or agent responsible
 24 for a previous adverse underwriting decision;

25 (2) on personal information received from an

1 insurance-support organization whose primary source of
 2 information is insurance institutions, but an insurance
 3 institution or agent may base an adverse underwriting
 4 decision on further personal information obtained as the
 5 result of information received from such insurance-support
 6 organization.

7 Section 15. Disclosure limitations and conditions. (1)
 8 Except as provided in this section, an insurance
 9 institution, agent, or insurance-support organization may
 10 not disclose any personal or privileged information about an
 11 individual collected or received in connection with an
 12 insurance transaction.

13 (2) Disclosure may be made with the written
 14 authorization of the individual but:

15 (a) if the authorization is submitted by another
 16 insurance institution, agent, or insurance-support
 17 organization, the authorization must meet the requirements
 18 of [section 9]; or

19 (b) if the authorization is submitted by a person
 20 other than an insurance institution, agent, or
 21 insurance-support organization, the authorization must be:

22 (i) dated;

23 (ii) signed by the individual; and

24 (iii) obtained 1 year or less prior to the date a
 25 disclosure is sought pursuant to this subsection.

1 (3) Disclosure may be made to a person other than an
2 insurance institution, agent, or insurance-support
3 organization, provided such disclosure is reasonably
4 necessary:

5 (a) to enable such person to perform a business,
6 professional, or insurance function for the disclosing
7 insurance institution, agent, or insurance-support
8 organization and such person agrees not to disclose the
9 information further without the individual's written
10 authorization unless the further disclosure:

11 (i) would otherwise be permitted by this section if
12 made by an insurance institution, agent, or
13 insurance-support organization; or

14 (ii) is reasonably necessary for such person to perform
15 its function for the disclosing insurance institution,
16 agent, or insurance-support organization; or

17 (b) to enable such person to provide information to the
18 disclosing insurance institution, agent, or
19 insurance-support organization for the purpose of:

20 (i) determining an individual's eligibility for an
21 insurance benefit or payment; or

22 (ii) detecting or preventing criminal activity, fraud,
23 material misrepresentation, or material nondisclosure in
24 connection with an insurance transaction.

25 (4) Disclosure may be made to an insurance institution,

1 agent, insurance-support organization, or self-insurer if
2 the information disclosed is limited to that which is
3 reasonably necessary:

4 (a) to detect or prevent criminal activity, fraud,
5 material misrepresentation, or material nondisclosure in
6 connection with insurance transactions; or

7 (b) for either the disclosing or receiving insurance
8 institution, agent, or insurance-support organization to
9 perform its function in connection with an insurance
10 transaction involving the individual.

11 (5) Disclosure may be made to a medical care
12 institution or medical professional of that information
13 reasonably necessary for the following purposes:

14 (a) verifying insurance coverage or benefits;

15 (b) informing an individual of a medical problem of
16 which the individual may not be aware; or

17 (c) conducting an operations or services audit.

18 (6) Disclosure may be made to an insurance regulatory
19 authority.

20 (7) Disclosure may be made to a law enforcement or
21 other government authority:

22 (a) to protect the interests of the insurance
23 institution, agent, or insurance-support organization in
24 preventing or prosecuting the perpetration of fraud upon it;
25 or

1 (b) if the insurance institution, agent, or
2 insurance-support organization reasonably believes that
3 illegal activities have been conducted by the individual.

4 (8) Disclosure may be made as otherwise permitted or
5 required by law.

6 (9) Disclosure may be made in response to a facially
7 valid administrative or judicial order, including a search
8 warrant or subpoena.

9 (10) Disclosure may be made for the purpose of
10 conducting actuarial or research studies, provided:

11 (a) no individual may be identified in any actuarial or
12 research report;

13 (b) materials allowing the individual to be identified
14 are returned or destroyed as soon as they are no longer
15 needed; and

16 (c) the actuarial or research organization agrees not
17 to disclose the information unless the disclosure would
18 otherwise be permitted by this section if made by an
19 insurance institution, agent, or insurance-support
20 organization.

21 (11) Disclosure may be made to a party or a
22 representative of a party to a proposed or consummated sale,
23 transfer, merger, or consolidation of all or part of the
24 business of the insurance institution, agent, or
25 insurance-support organization, if:

1 (a) prior to the consummation of the sale, transfer,
2 merger, or consolidation only such information is disclosed
3 as is reasonably necessary to enable the recipient to make
4 business decisions about the purchase, transfer, merger, or
5 consolidation; and

6 (b) the recipient agrees not to disclose the
7 information unless the disclosure would otherwise be
8 permitted by this section if made by an insurance
9 institution, agent, or insurance-support organization.

10 (12) Disclosure may be made to a person whose only use
11 of such information will be in connection with the marketing
12 of a product or service, if:

13 (a) no medical record information, privileged
14 information, or personal information relating to an
15 individual's character, personal habits, mode of living, or
16 general reputation is disclosed, and no classification
17 derived from such information is disclosed;

18 (b) the individual has been given an opportunity to
19 indicate that he does not want personal information
20 disclosed for marketing purposes and has given no indication
21 that he does not want the information disclosed; and

22 (c) the person receiving the information agrees not to
23 use it except in connection with the marketing of a product
24 or service.

25 (13) Disclosure may be made to an affiliate whose only

1 use of the information will be in connection with an audit
 2 of the insurance institution or agent or the marketing of
 3 an insurance product or service if the affiliate agrees not
 4 to disclose the information for any other purpose or to
 5 unaffiliated persons.

6 (14) Disclosure may be made by a consumer reporting
 7 agency to a person other than an insurance institution or
 8 agent.

9 (15) Disclosure may be made to a group policyholder for
 10 the purpose of reporting claims experience or conducting an
 11 audit of the insurance institution's or agent's operations
 12 or services if the information disclosed is reasonably
 13 necessary for the group policyholder to conduct the review
 14 or audit.

15 (16) Disclosure may be made to a professional peer
 16 review organization for the purpose of reviewing the service
 17 or conduct of a medical care institution or medical
 18 professional.

19 (17) Disclosure may be made to a governmental authority
 20 for the purpose of determining the individual's eligibility
 21 for health benefits for which the governmental authority may
 22 be liable.

23 (18) Disclosure may be made to a certificateholder or
 24 policyholder for the purpose of providing information
 25 regarding the status of an insurance transaction.

1 Section 16. Power of the commissioner. (1) The
 2 commissioner has the power to examine and investigate the
 3 affairs of every insurance institution or agent doing
 4 business in this state to determine whether the insurance
 5 institution or agent has been or is engaged in any conduct
 6 in violation of [this act].

7 (2) The commissioner has the power to examine and
 8 investigate the affairs of every insurance-support
 9 organization acting on behalf of an insurance institution or
 10 agent that either transacts business in this state or
 11 transacts business outside this state which has an effect on
 12 a person residing in this state in order to determine
 13 whether such insurance-support organization has been or is
 14 engaged in any conduct in violation of [this act].

15 Section 17. Hearings, witnesses, appearances,
 16 production of books, and service of process. (1) The
 17 commissioner shall hold a hearing whenever he has reason to
 18 believe that an insurance institution, agent, or
 19 insurance-support organization has been or is engaged in
 20 conduct in this state that violates [this act] or if the
 21 commissioner believes that an insurance-support organization
 22 has been or is engaged in conduct outside this state which
 23 has an effect on a person residing in this state and which
 24 violates [this act]. The commissioner shall issue and serve
 25 upon such insurance institution, agent, or insurance-support

1 organization a statement of charges and notice of hearing
 2 specifying a time and place for the hearing. The date for
 3 the hearing may not be less than 20 days after the date of
 4 service.

5 (2) At the hearing the insurance institution, agent, or
 6 insurance-support organization charged has the opportunity
 7 to answer the charges against it and present evidence on its
 8 behalf. Upon good cause shown, the commissioner may permit
 9 any adversely affected person, by counsel or in person, to
 10 intervene, appear, and be heard at the hearing.

11 (3) At a hearing conducted pursuant to this section,
 12 the commissioner may administer oaths, examine and
 13 cross-examine witnesses, and receive oral and documentary
 14 evidence. The commissioner has the power to subpoena
 15 witnesses, compel their attendance, and require the
 16 production of books, papers, records, correspondence, and
 17 other documents that are relevant to the hearing. A
 18 stenographic record of the hearing shall be made upon the
 19 request of any party or at the discretion of the
 20 commissioner. If no stenographic record is made and if
 21 judicial review is sought, the commissioner shall prepare a
 22 statement of the evidence for use on review. Hearings
 23 conducted under this section are governed by the same rules
 24 of evidence and procedure applicable to administrative
 25 proceedings conducted under Title 2, chapter 4.

1 (4) Statements of charges, notices, orders, and other
 2 processes of the commissioner under [this act] may be served
 3 by anyone duly authorized to act on behalf of the
 4 commissioner. Service of process may be completed in the
 5 manner provided by law for service of process in civil
 6 actions or by registered mail. A copy of the statement of
 7 charges, notice, order, or other process shall be provided
 8 to the person or persons whose rights under [this act] have
 9 been allegedly violated. A verified return setting forth the
 10 manner of service, or return postcard receipt in the case of
 11 registered mail, is sufficient proof of service.

12 Section 18. Service of process -- insurance-support
 13 organizations. For the purpose of [this act], an
 14 insurance-support organization transacting business outside
 15 this state that has an effect on a person residing in this
 16 state is considered to have appointed the commissioner to
 17 accept service of process on its behalf. The commissioner
 18 shall mail a copy of the notice by registered mail to the
 19 insurance-support organization at its last known principal
 20 place of business. The return postcard receipt for such
 21 mailing is sufficient proof that the same was properly
 22 mailed by the commissioner.

23 Section 19. Cease and desist orders and reports. (1)
 24 If, after a hearing pursuant to [section 17], the
 25 commissioner determines that the insurance institution,

1 agent, or insurance-support organization charged has engaged
 2 in conduct or practices in violation of [this act], the
 3 commissioner shall reduce his findings to writing and shall
 4 issue and cause to be served upon the insurance institution,
 5 agent, or insurance-support organization a copy of the
 6 findings and an order requiring the insurance institution,
 7 agent, or insurance-support organization to cease and desist
 8 from the conduct or practices constituting a violation of
 9 [this act].

10 (2) If, after a hearing pursuant to [section 17], the
 11 commissioner determines that the insurance institution,
 12 agent, or insurance-support organization charged has not
 13 engaged in conduct or practices in violation of [this act],
 14 the commissioner shall prepare a written report which sets
 15 forth findings of fact and conclusions of law. The report
 16 shall be served upon the insurance institution, agent, or
 17 insurance-support organization charged and upon the person
 18 or persons if any, whose rights under [this act] were
 19 allegedly violated.

20 (3) Until the expiration of the time allowed under
 21 [section 21] for filing a petition for review or until such
 22 a petition is filed, whichever occurs first, the
 23 commissioner may modify or set aside any order or report
 24 issued under this section. After the expiration of the time
 25 allowed under [section 21] for filing a petition for review

1 or if no such petition has been filed, the commissioner may,
 2 after notice and opportunity for hearing, alter, modify, or
 3 set aside, in whole or in part, any order or report issued
 4 under this section whenever conditions of fact or law
 5 warrant such action or if the public interest so requires.

6 Section 20. Penalties. (1) If a hearing pursuant to
 7 [section 17] results in the finding of a knowing violation
 8 of [this act], the commissioner may, in addition to the
 9 issuance of a cease and desist order as prescribed in
 10 [section 19], order payment of a penalty of not more than
 11 \$500 for each violation but not to exceed \$10,000 in the
 12 aggregate for multiple violations.

13 (2) Any person who violates a cease and desist order of
 14 the commissioner under [section 19] may, after notice and
 15 hearing and upon order of the commissioner, be subject to
 16 one or more of the following penalties, at the discretion of
 17 the commissioner:

18 (a) a fine of not more than \$10,000 for each violation;
 19 or

20 (b) a fine of not more than \$50,000 if the commissioner
 21 finds that violations have occurred with such frequency as
 22 to constitute a general business practice; and

23 (c) suspension or revocation of an insurance
 24 institution's or agent's license.

25 Section 21. Judicial review of orders and reports. (1)

1 Any person subject to an order of the commissioner under
 2 [section 19] or [section 20] or any person whose rights
 3 under [this act] were allegedly violated may obtain a review
 4 of any order or report of the commissioner by filing in the
 5 district court of Lewis and Clark County, within 30 days
 6 from the date of the service of such order or report, a
 7 written petition requesting that the order or report of the
 8 commissioner be set aside. A copy of the petition must at
 9 the same time be served upon the commissioner, who shall
 10 forthwith certify and file in the district court a
 11 transcript of the entire record of the proceeding giving
 12 rise to the order or report that is the subject of the
 13 petition. Upon the filing of the petition and transcript,
 14 the district court has jurisdiction to make and enter a
 15 decree modifying, affirming, or reversing any order or
 16 report of the commissioner, in whole or in part. The
 17 findings of the commissioner as to the facts supporting any
 18 order or report, if supported by clear and convincing
 19 evidence, are conclusive.

20 (2) To the extent an order or report of the
 21 commissioner is affirmed, the court shall issue its own
 22 order commanding obedience to the terms of the order or
 23 report of the commissioner. If any party affected by an
 24 order or report of the commissioner applies to the court for
 25 leave to produce additional evidence and shows to the

1 satisfaction of the court that such additional evidence is
 2 material and that there are reasonable grounds for the
 3 failure to produce such evidence in prior proceedings, the
 4 court may order such additional evidence to be taken before
 5 the commissioner in such manner and upon such terms and
 6 conditions as the court may consider proper. The
 7 commissioner may modify his findings of fact or make new
 8 findings by reason of the additional evidence so taken and
 9 shall file such modified or new findings along with any
 10 recommendation, if any, for the modification or revocation
 11 of a previous order or report. If supported by clear and
 12 convincing evidence, the modified or new findings shall be
 13 conclusive as to the matters contained therein.

14 (3) An order or report issued by the commissioner under
 15 [sections 19 or 20] is final:

16 (a) upon the expiration of the time allowed for the
 17 filing of a petition for review, if no such petition has
 18 been duly filed; except that the commissioner may modify or
 19 set aside an order or report to the extent provided in
 20 [section 19(3)]; or

21 (b) upon a final decision of the district court if the
 22 court directs that the order or report of the commissioner
 23 be affirmed or the petition for review dismissed.

24 (4) No order or report of the commissioner under [this
 25 act] or order of a court to enforce the same in any way

1 relieves or absolves any person affected by the order or
2 report from any liability under any other law of this state.

3 Section 22. Individual remedies. (1) If any insurance
4 institution, agent, or insurance-support organization fails
5 to comply with [sections 10, 11, or 12] with respect to the
6 rights granted under [those sections], any person whose
7 rights are violated may apply to the district court of this
8 state or any other court of competent jurisdiction for
9 appropriate equitable relief.

10 (2) An insurance institution, agent, or
11 insurance-support organization that discloses information in
12 violation of [section 15] is liable for damages sustained by
13 the individual to whom the information relates. However, an
14 individual is not entitled to a monetary award which exceeds
15 the actual damages sustained by the individual as a result
16 of a violation of [section 15].

17 (3) In any action brought pursuant to this section, the
18 court may award the cost of the action and reasonable
19 attorney's fees to the prevailing party.

20 (4) An action under this section must be brought within
21 2 years from the date the alleged violation is or should
22 have been discovered.

23 (5) Except as specifically provided in this section,
24 there is no remedy or recovery available to individuals, in
25 law or in equity, for occurrences constituting a violation

1 of any provision of [this act].

2 Section 23. Immunity. A cause of action or claim for
3 relief in the nature of defamation, invasion of privacy, or
4 negligence does not arise against any person for disclosing
5 personal or privileged information in accordance with [this
6 act], nor does such a cause of action or claim for relief
7 arise against any person for furnishing personal or
8 privileged information to an insurance institution, agent,
9 or insurance-support organization. However, this section
10 does not provide immunity for disclosing or furnishing false
11 information with malice or willful intent to injure any
12 person.

13 Section 24. Obtaining information under false
14 pretenses. Any person who knowingly and willfully obtains
15 information about an individual from an insurance
16 institution, agent, or insurance-support organization under
17 false pretenses shall be fined not more than \$10,000 or
18 imprisoned for not more than 1 year, or both.

19 Section 25. Codification instruction. This act is
20 intended to be codified as an integral part of Title 33, and
21 the provisions of Title 33 apply to this act.

22 Section 26. Severability. If a part of this act is
23 invalid, all valid parts that are severable from the invalid
24 part remain in effect. If a part of this act is invalid in
25 one or more of its applications, the part remains in effect

1 in all valid applications that are severable from the
2 invalid applications.

3 Section 27. Repealer. Sections 50-16-301 through
4 50-16-305 and 50-16-311 through 50-16-314, MCA, are
5 repealed.

6 Section 28. Effective date. (1) This act is effective
7 on July 1, 1982.

8 (2) The rights granted under [sections 10, 11, and 15]
9 are effective on July 1, 1982, regardless of the date of the
10 collection or receipt of the information that is the subject
11 of those sections.

-End-

Approved by Committee
on Judiciary

1 SENATE BILL NO. 240

2 INTRODUCED BY HAZELBAKER

3 BY REQUEST OF THE MONTANA DEPARTMENT OF INSURANCE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH STANDARDS
6 FOR THE COLLECTION, USE, AND DISCLOSURE OF INFORMATION
7 GATHERED IN CONNECTION WITH INSURANCE TRANSACTIONS BY
8 INSURANCE INSTITUTIONS, AGENTS, OR INSURANCE-SUPPORT
9 ORGANIZATIONS; TO PROVIDE A PROCEDURE FOR ACCESS BY PRIVATE
10 PERSONS TO INFORMATION GATHERED ABOUT THEM FOR THE PURPOSE
11 OF VERIFYING OR DISPUTING ITS ACCURACY; TO LIMIT THE
12 DISCLOSURE OF INFORMATION COLLECTED IN CONNECTION WITH
13 INSURANCE TRANSACTIONS; TO GIVE THE COMMISSIONER OF
14 INSURANCE THE POWER TO INVESTIGATE AND ISSUE CEASE AND
15 DESIST ORDERS FOR VIOLATIONS OF THIS ACT; TO PROVIDE FOR
16 EQUITABLE RELIEF IN THE DISTRICT COURT AND FOR A PENALTY;
17 ~~REPEALING SECTIONS 50-16-301 THROUGH 50-16-305 AND 50-16-311~~
18 ~~THROUGH 50-16-314, MCA."~~

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

21 Section 1. Short title. [This act] may be cited as the
22 "Insurance Information and Privacy Protection Act".

23 Section 2. Purpose. The purpose of [this act] is to
24 establish standards for the collection, use, and disclosure
25 of information gathered in connection with insurance

1 transactions by insurance institutions, agents, or
2 insurance-support organizations; to maintain a balance
3 between the need for information by those conducting the
4 business of insurance and the public's need for fairness in
5 insurance information practices, including the need to
6 minimize intrusiveness; to establish a regulatory mechanism
7 to enable natural persons to ascertain what information is
8 being or has been collected about them in connection with
9 insurance transactions and to have access to such
10 information for the purpose of verifying or disputing its
11 accuracy; to limit the disclosure of information collected
12 in connection with insurance transactions; and to enable
13 insurance applicants and policyholders to obtain the reasons
14 for any adverse underwriting decision.

15 Section 3. Scope of [act]. (1) The obligations imposed
16 by [this act] apply to those insurance institutions, agents,
17 or insurance-support organizations that, on or after [the
18 effective date of this act]:

19 (a) in the case of life, health, or disability
20 insurance:

21 (i) collect, receive, or maintain information in
22 connection with insurance transactions that pertains to
23 natural persons who are residents of this state; or

24 (ii) engage in insurance transactions with applicants,
25 individuals, or policyholders who are residents of this

1 state; and

2 (b) In the case of property or casualty insurance:

3 (i) collect, receive, or maintain information in
4 connection with insurance transactions involving policies,
5 contracts, or certificates of insurance delivered, issued
6 for delivery, or renewed in this state; or

7 (ii) engage in insurance transactions involving
8 policies, contracts, or certificates of insurance delivered,
9 issued for delivery, or renewed in this state.

10 (2) The rights granted by [this act] extend to:

11 (a) in the case of life, health, or disability
12 insurance, the following persons who are residents of this
13 state:

14 (i) natural persons who are the subject of information
15 collected, received, or maintained in connection with
16 insurance transactions; and

17 (ii) applicants, individuals, or policyholders who
18 engage in or seek to engage in insurance transactions; and

19 (b) in the case of property or casualty insurance, the
20 following persons:

21 (i) natural persons who are the subject of information
22 collected, received, or maintained in connection with
23 insurance transactions involving policies, contracts, or
24 certificates of insurance delivered, issued for delivery, or
25 renewed in this state; and

1 (ii) applicants, individuals, or policyholders who
2 engage in or seek to engage in insurance transactions
3 involving policies, contracts, or certificates of insurance
4 delivered, issued for delivery, or renewed in this state.

5 (3) For the purposes of this section, a person is
6 considered a resident of this state if the person's last
7 known mailing address, as shown in the records of the
8 insurance institution, agent, or insurance-support
9 organization, is located in this state.

10 (4) [This act] does not apply to information collected
11 from the public records of a governmental authority and
12 maintained by an insurance institution or its
13 representatives for the purpose of insuring the title to
14 real property located in this state.

15 Section 4. Definitions. As used in [this act], the
16 following definitions apply:

17 (1) (a) "Adverse underwriting decision" means:

18 (i) any of the following actions with respect to
19 insurance transactions involving insurance coverage that are
20 individually underwritten:

21 (A) a declination of insurance coverage;

22 (B) a termination of insurance coverage;

23 (C) failure of an agent to apply for insurance
24 coverage with a specific insurance institution which the
25 agent represents and which is requested by an applicant;

1 (D) in the case of a property or casualty insurance
2 coverage:

3 (I) placement by an insurance institution or agent of
4 a risk with a residual market mechanism, an unauthorized
5 insurer, or an insurance institution which specializes in
6 substandard risks; or

7 (II) the charging of a higher rate on the basis of
8 information that differs from that which the applicant or
9 policyholder furnished;

10 (E) in the case of a life, health, or disability
11 insurance coverage, an offer to insure at higher than
12 standard rates.

13 (b) The following actions are not adverse underwriting
14 decisions but the insurance institution or agent responsible
15 for their occurrence shall nevertheless provide the
16 applicant or policyholder with the specific reason or
17 reasons for their occurrence:

18 (i) the termination of an individual policy form on a
19 class or statewide basis; or

20 (ii) a declination of insurance coverage solely because
21 such coverage is not available on a class or statewide
22 basis; or

23 (iii) the rescission of a policy.

24 (2) "Affiliate" or "affiliated" means a person that
25 directly or indirectly through one or more intermediaries

1 controls; is controlled by; or is under common control with
2 another person.

3 (3) "Agent" means an agent or enrollment
4 representative as defined in 33-17-102 and 33-30-311.

5 (4) "Applicant" means a person who seeks to contract
6 for insurance coverage other than a person seeking group
7 insurance that is not individually underwritten.

8 (5) "Consumer report" means any written, oral, or
9 other communication of information bearing on a natural
10 person's credit worthiness, credit standing, credit
11 capacity, character, general reputation, personal
12 characteristics, or mode of living which is used or expected
13 to be used in connection with an insurance transaction.

14 (6) "Consumer reporting agency" means any person who:

15 (a) regularly engages, in whole or in part, in the
16 practice of assembling or preparing consumer reports for a
17 monetary fee;

18 (b) obtains information primarily from sources other
19 than insurance institutions; and

20 (c) furnishes consumer reports to other persons.

21 (7) "Control", including the terms "controlled by" or
22 "under common control with", means the possession, direct or
23 indirect, of the power to direct or cause the direction of
24 the management and policies of a person, whether through the
25 ownership of voting securities, by contract other than a

1 commercial contract for goods or nonmanagement services, or
2 otherwise, unless the power is the result of an official
3 position with or corporate office held by the person.

4 (8) "Declination of insurance coverage" means a
5 denial, in whole or in part, by an insurance institution or
6 agent of requested insurance coverage.

7 (9) "Individual" means a natural person who:

8 (a) regarding property or casualty insurance, is a
9 past, present, or proposed named insured or
10 certificateholder;

11 (b) regarding life, health, or disability insurance,
12 is a past, present, or proposed principal insured or
13 certificateholder;

14 (c) is a past, present, or proposed policyowner;

15 (d) is a past or present applicant;

16 (e) is a past or present claimant; or

17 (f) derived, derives, or is proposed to derive
18 insurance coverage under an insurance policy or certificate
19 subject to [this act].

20 (10) "Institutional source" means a person or
21 governmental entity that provides information about an
22 individual to an agent, insurance institution, or
23 insurance-support organization, other than:

24 (a) an agent;

25 (b) the individual who is the subject of the

1 information; or

2 (c) a natural person acting in a personal capacity
3 rather than a business or professional capacity.

4 (11) "Insurance institution" means a corporation,
5 association, partnership, reciprocal exchange, interinsurer,
6 Lloyd's insurer, fraternal benefit society, or other person
7 engaged in the business of insurance, including health
8 maintenance organizations, and health service corporations
9 as defined in 33-30-101. "Insurance institution" does not
10 include agents or insurance-support organizations.

11 (12) (a) "Insurance-support organization" means a
12 person who regularly engages, in whole or in part, in the
13 practice of assembling or collecting information about
14 natural persons for the primary purpose of providing the
15 information to an insurance institution or agent for
16 insurance transactions, including:

17 (i) the furnishing of consumer reports or
18 investigative consumer reports to an insurance institution
19 or agent for use in connection with an insurance
20 transaction; or

21 (ii) the collection of personal information from
22 insurance institutions, agents, or other insurance-support
23 organizations for the purpose of detecting or preventing
24 fraud, material misrepresentation, or material nondisclosure
25 in connection with insurance underwriting or insurance claim

1 activity.

2 (b) The following persons are not insurance-support
3 organizations for purposes of [this act]: agents, government
4 institutions, insurance institutions, medical care
5 institutions and medical professionals.

6 (13) "Insurance transaction" means a transaction
7 involving insurance primarily for personal, family, or
8 household needs, rather than business or professional needs,
9 that entails:

10 (a) the determination of an individual's eligibility
11 for an insurance coverage, benefit, or payment; or

12 (b) the servicing of an insurance application, policy,
13 contract, or certificate.

14 (14) "Investigative consumer report" means a consumer
15 report or portion thereof containing information about a
16 natural person's character, general reputation, personal
17 characteristics, or mode of living obtained through personal
18 interviews with the person's neighbors, friends, associates,
19 acquaintances, or others who may have knowledge concerning
20 such items of information.

21 (15) "Medical care institution" means a facility or
22 institution that is licensed to provide health care services
23 to natural persons, including but not limited to
24 health-maintenance organizations, home health agencies,
25 hospitals, medical clinics, public health agencies,

1 rehabilitation agencies, and skilled nursing facilities.

2 (16) "Medical professional" means a person licensed or
3 certified to provide health care services to natural
4 persons, including but not limited to a chiropractor,
5 clinical dietitian, clinical psychologist, dentist, nurse,
6 occupational therapist, optometrist, pharmacist, physical
7 therapist, physician, podiatrist, psychiatric social worker
8 or speech therapist.

9 (17) "Medical record information" means personal
10 information that:

11 (a) relates to an individual's physical or mental
12 condition, medical history, or medical treatment; and

13 (b) is obtained from a medical professional or medical
14 care institution, from the individual, or from the
15 individual's spouse, parent, or legal guardian.

16 (18) "Person" means a natural person, corporation,
17 association, partnership, or other legal entity.

18 (19) "Personal information" means any individually
19 identifiable information gathered in connection with an
20 insurance transaction from which judgments can be made about
21 an individual's character, habits, avocations, finances,
22 occupation, general reputation, credit, health, or any other
23 personal characteristics. Personal information includes an
24 individual's name and address and medical record information
25 but does not include privileged information.

1 (20) "Policyholder" means a person who:

2 (a) in the case of individual property or casualty

3 insurance, is a present named insured;

4 (b) in the case of individual life, health, or

5 disability insurance, is a present policyowner; or

6 (c) in the case of group insurance that is

7 individually underwritten, is a present group

8 certificateholder.

9 (21) "Pretext interview" means an interview during

10 which a person, in an attempt to obtain information about a

11 natural person, performs one or more of the following acts:

12 (a) pretends to be someone he is not;

13 (b) pretends to represent a person he is not in fact

14 representing;

15 (c) misrepresents the true purpose of the interview;

16 or

17 (d) refuses to identify himself upon request.

18 (22) "Privileged information" means any individually

19 identifiable information that:

20 (a) relates to a claim for insurance benefits or a

21 civil or criminal proceeding involving an individual; and

22 (b) is collected in connection with or in reasonable

23 anticipation of a claim for insurance benefits or civil or

24 criminal proceeding involving an individual. Information

25 otherwise meeting the requirements of privileged information

1 under this subsection will be considered "personal

2 information" under [this act] if it is disclosed in

3 violation of [section 15].

4 (23) "Residual market mechanism" means an association,

5 organization, or other entity defined or described in

6 33-8-103 and 61-6-144.

7 (24) "Termination of insurance coverage" or

8 "termination of an insurance policy" means either a

9 cancellation or nonrenewal of an insurance policy, in whole

10 or in part, for any reason other than the failure to pay a

11 premium as required by the policy.

12 (25) "Unauthorized insurer" means an insurance

13 institution that has not been granted a certificate of

14 authority by the commissioner to transact the business of

15 insurance in this state.

16 Section 5. Pretext interviews prohibited -- exception.

17 (1) Except as provided in subsection (2), an insurance

18 institution, agent or insurance-support organization may not

19 use or authorize the use of pretext interviews to obtain

20 information in connection with an insurance transaction.

21 (2) A pretext interview may be undertaken to obtain

22 information from a person or institution that does not have

23 a generally or statutorily recognized privileged

24 relationship with the person about whom the information

25 relates for the purpose of investigating a claim when based

1 upon specific information available for review by the
 2 commissioner that there is a reasonable basis for suspecting
 3 criminal activity, fraud, material misrepresentation, or
 4 material nondisclosure in connection with the claim.

5 Section 6. Notice of insurance information practices.

6 (1) An insurance institution or agent shall provide a notice
 7 of information practices to all applicants or policyholders
 8 in connection with insurance transactions as provided below:

9 (a) in the case of an application for insurance, a
 10 notice shall be provided no later than:

11 (i) at the time of the delivery of the insurance
 12 policy or certificate when personal information is collected
 13 only from the applicant or from public records; or

14 (ii) at the time the collection of personal information
 15 is initiated when personal information is collected from a
 16 source other than the applicant or public records;

17 (b) in the case of a policy renewal, a notice shall be
 18 provided no later than the policy renewal date, except that
 19 no notice is required in connection with a policy renewal
 20 if:

21 (i) personal information is collected only from the
 22 policyholder or from public records; or

23 (ii) a notice meeting the requirements of this section
 24 has been given within the previous 24 months; or

25 (c) in the case of a policy reinstatement or change in

1 insurance benefits, a notice shall be provided no later than
 2 the time a request for a policy reinstatement or change in
 3 insurance benefits is received by the insurance institution,
 4 except that no notice is required if personal information is
 5 collected only from the policyholder or from public records.

6 (2) The notice must be in writing and must state:

7 (a) whether personal information may be collected from
 8 persons other than the individual or individuals proposed
 9 for coverage;

10 (b) the types of personal information that may be
 11 collected and the types of sources and investigative
 12 techniques that may be used to collect such information;

13 (c) the types of disclosures identified in subsections
 14 (3), (4), (5), (6), (7), (10), (12), (13), and (15) of
 15 [section 15] and the circumstances under which such
 16 disclosures may be made without prior authorization.
 17 However, only those circumstances that occur with such
 18 frequency as to indicate a general business practice must be
 19 described.

20 (d) a description of the rights established under
 21 [sections 10 and 11] and the manner in which those rights
 22 may be exercised; and

23 (e) that information obtained from a report prepared
 24 by an insurance-support organization may be retained by the
 25 insurance-support organization and disclosed to other

1 persons.

2 (3) In lieu of the notice prescribed in subsection
3 (2), the insurance institution or agent may provide an
4 abbreviated notice informing the applicant or policyholder
5 that:

6 (a) personal information may be collected from persons
7 other than the individual or individuals proposed for
8 coverage;

9 (b) such information as well as other personal or
10 privileged information subsequently collected by the
11 insurance institution or agent may in certain circumstances
12 be disclosed to third parties without authorization;

13 (c) a right of access and correction exists with
14 respect to all personal information collected; and

15 (d) the notice prescribed in subsection (2) must be
16 furnished to the applicant or policyholder upon request.

17 (4) The obligations imposed by this section upon an
18 insurance institution or agent may be satisfied by another
19 insurance institution or agent authorized to act on its
20 behalf.

21 Section 7. Marketing and research surveys. An
22 insurance institution or agent shall clearly specify the
23 questions that are designed to obtain information from an
24 individual in connection with an insurance transaction
25 solely for marketing or research purposes.

1 Section 8. Content and disclosure of authorization
2 forms. Notwithstanding any other provision of law of this
3 state, an insurance institution, agent, or insurance-support
4 organization may not utilize as its disclosure authorization
5 form in connection with insurance transactions a form or
6 statement that authorizes the disclosure of personal or
7 privileged information about an individual to the insurance
8 institution, agent, or insurance-support organization unless
9 the form or statement:

10 (1) is written in plain language;

11 (2) is dated;

12 (3) specifies the types of persons authorized to
13 disclose information about the individual;

14 (4) specifies the nature of the information authorized
15 to be disclosed;

16 (5) names the insurance institution or agent and
17 identifies by generic reference representatives of the
18 insurance institution to whom the individual is authorizing
19 information to be disclosed;

20 (6) specifies the purposes for which the information
21 is collected;

22 (7) specifies the length of time such authorization
23 remains valid, which may be no longer than:

24 (a) in the case of authorizations signed for the
25 purpose of collecting information in connection with an

1 application for an insurance policy, a policy reinstatement,
2 or a request for change in policy benefits:

3 (i) 30 months from the date the authorization is
4 signed if the application or request involves life, health,
5 or disability insurance;

6 (ii) one year from the date the authorization is signed
7 if the application or request involves property or casualty
8 insurance;

9 (b) in the case of authorizations signed for the
10 purpose of collecting information in connection with a claim
11 for benefits under an insurance policy:

12 (i) the term of coverage of the policy if the claim is
13 for a health insurance benefit;

14 (ii) the duration of the claim if the claim is not for
15 a health insurance benefit; and

16 (8) advises the individual or a person authorized to
17 act on behalf of the individual that the individual or the
18 individual's authorized representative is entitled to
19 receive a copy of the authorization form.

20 Section 9. Investigative consumer reports. (1) An
21 insurance institution, agent, or insurance-support
22 organization may not prepare or request an investigative
23 consumer report about an individual in connection with an
24 insurance transaction involving an application for
25 insurance, a policy renewal, a policy reinstatement, or a

1 change in insurance benefits unless the insurance
2 institution or agent informs the individual:

3 (a) that he may request to be interviewed in
4 connection with the preparation of the investigative
5 consumer report; and

6 (b) that upon a request pursuant to [section 10], he
7 is entitled to receive a copy of the investigative consumer
8 report.

9 (2) If an investigative consumer report is to be
10 prepared by an insurance institution or agent, the insurance
11 institution or agent shall institute reasonable procedures
12 to conduct a personal interview requested by an individual.

13 (3) If an investigative consumer report is to be
14 prepared by an insurance-support organization, the insurance
15 institution or agent desiring such report shall inform the
16 insurance-support organization whether a personal interview
17 has been requested by the individual. The insurance-support
18 organization shall institute reasonable procedures to
19 conduct such interview, if requested.

20 Section 10. Access to recorded personal information.

21 (1) If an individual, after proper identification, submits a
22 written request to an insurance institution, agent, or
23 insurance-support organization for access to recorded
24 personal information about the individual that is reasonably
25 described by the individual and reasonably locatable and

1 retrievable by the insurance institution, agent, or
 2 insurance-support organization, the insurance institution,
 3 agent, or insurance-support organization shall, within 30
 4 business days from the date such request is received:

5 (a) inform the individual of the nature and substance
 6 of the recorded personal information in writing, by
 7 telephone, or by other oral communication, whichever the
 8 insurance institution, agent, or insurance-support
 9 organization prefers;

10 (b) permit the individual to see and copy, in person,
 11 the recorded personal information pertaining to him or to
 12 obtain a copy of the recorded personal information by mail,
 13 whichever the individual prefers. If the recorded personal
 14 information is in coded form an accurate translation in
 15 plain language must be provided in writing.

16 (c) disclose to the individual the identity, if
 17 recorded, of those persons to whom the insurance
 18 institution, agent, or insurance-support organization has
 19 disclosed the personal information within 2 years prior to
 20 the request and if the identity is not recorded, the names
 21 of those insurance institutions, agents, insurance-support
 22 organizations, or other persons to whom such information is
 23 normally disclosed; and

24 (d) provide the individual with a summary of the
 25 procedures he may use to request correction, amendment, or

1 deletion of recorded personal information.

2 (2) Personal information provided pursuant to
 3 subsection (1) must identify the source of the information
 4 if such source is an institutional source.

5 (3) Medical record information supplied by a medical
 6 care institution or medical professional and requested under
 7 subsection (1), together with the identity of the medical
 8 professional or medical care institution that provided the
 9 information, shall be supplied either directly to the
 10 individual or to a medical professional designated by the
 11 individual and licensed to provide medical care with respect
 12 to the condition to which the information relates, whichever
 13 the insurance institution, agent, or insurance-support
 14 organization prefers. If it elects to disclose the
 15 information to a medical professional designated by the
 16 individual, the insurance institution, agent, or
 17 insurance-support organization shall notify the individual,
 18 at the time of the disclosure, that it has provided the
 19 information to the medical professional.

20 (4) Except for personal information provided under
 21 [section 12], an insurance institution, agent, or
 22 insurance-support organization may charge a reasonable fee
 23 to cover the costs incurred in providing a copy of recorded
 24 personal information to individuals.

25 (5) The obligations imposed by this section upon an

1 insurance institution or agent may be satisfied by another
 2 insurance institution or agent authorized to act on its
 3 behalf. With respect to the copying and disclosure of
 4 recorded personal information pursuant to a request under
 5 subsection (1), an insurance institution, agent, or
 6 insurance-support organization may make arrangements with an
 7 insurance-support organization or a consumer reporting
 8 agency to copy and disclose recorded personal information on
 9 its behalf.

10 (6) The rights granted to individuals in this section
 11 extend to all natural persons to the extent information
 12 about them is collected and maintained by an insurance
 13 institution, agent, or insurance-support organization in
 14 connection with an insurance transaction. The rights granted
 15 to all natural persons by this subsection do not extend to
 16 information about them that relates to and is collected in
 17 connection with or in reasonable anticipation of a claim or
 18 civil or criminal proceeding involving them.

19 (7) For the purposes of this section, the term
 20 "insurance-support organization" does not include "consumer
 21 reporting agency" except to the extent this section imposes
 22 more stringent requirements on a consumer reporting agency
 23 than other state or federal law.

24 Section 11. Correction, amendment, or deletion of
 25 recorded personal information. (1) Within 30 business days

1 from the date of receipt of a written request from an
 2 individual to correct, amend, or delete any recorded
 3 personal information in its possession about the individual,
 4 an insurance institution, agent, or insurance-support
 5 organization shall either:

6 (a) correct, amend, or delete the portion of the
 7 recorded personal information in dispute; or

8 (b) notify the individual of:

9 (i) its refusal to make such correction, amendment, or
 10 deletion;

11 (ii) the reasons for the refusal; and

12 (iii) the individual's right to file a statement as
 13 provided in subsection (3).

14 (2) If the insurance institution, agent, or
 15 insurance-support organization corrects, amends, or deletes
 16 recorded personal information in accordance with subsection
 17 (1)(a), the insurance institution, agent, or
 18 insurance-support organization shall so notify the
 19 individual in writing and furnish the correction, amendment,
 20 or fact of deletion to:

21 (a) any person specifically designated by the
 22 individual who may have, within the preceding 2 years,
 23 received such recorded personal information;

24 (b) any insurance-support organization whose primary
 25 source of personal information is insurance institutions if

1 the insurance-support organization has systematically
 2 received such recorded personal information from the
 3 insurance institution within the preceding 7 years, but the
 4 correction, amendment, or fact of deletion need not be
 5 furnished if the insurance-support organization no longer
 6 maintains recorded personal information about the
 7 individual; and

8 (c) any insurance-support organization that furnished
 9 the personal information which has been corrected, amended,
 10 or deleted.

11 (3) Whenever an individual disagrees with an insurance
 12 institution's, agent's, or insurance-support organization's
 13 refusal to correct, amend, or delete recorded personal
 14 information, the individual may file with the insurance
 15 institution, agent, or insurance-support organization:

16 (a) a concise statement setting forth what the
 17 individual thinks is the correct, relevant, or fair
 18 information; and

19 (b) a concise statement of the reasons why the
 20 individual disagrees with the insurance institution's,
 21 agent's, or insurance-support organization's refusal to
 22 correct, amend, or delete recorded personal information.

23 (4) If an individual files either statement described
 24 in subsection (3), the insurance institution, agent, or
 25 insurance-support organization shall:

1 (a) file the statement with the disputed personal
 2 information and provide a means by which anyone reviewing
 3 the disputed personal information will be made aware of
 4 individual's statement and have access to it;

5 (b) in any subsequent disclosure by the insurance
 6 institution, agent, or insurance-support organization of the
 7 recorded personal information that is the subject of
 8 disagreement, clearly identify the matter in dispute and
 9 provide the individual's statement along with the recorded
 10 personal information being disclosed; and

11 (c) furnish the statement to the persons in the manner
 12 specified in subsection (2).

13 (5) The rights granted individuals by this section
 14 extend to all natural persons to the extent information
 15 about them is collected and maintained by an insurance
 16 institution, agent, or insurance-support organization in
 17 connection with an insurance transaction. The rights granted
 18 to natural persons by this subsection do not extend to
 19 information about them that relates to and is collected in
 20 connection with or in reasonable anticipation of a claim or
 21 civil or criminal proceeding involving them.

22 (6) For the purposes of this section, the term
 23 "insurance-support organization" does not include "consumer
 24 reporting agency" to the extent this section imposes more
 25 stringent requirements on a consumer reporting agency than

1 other state or federal law.

2 Section 12. Reasons for adverse underwriting
3 decisions. (1) If an adverse underwriting decision is made,
4 the insurance institution or agent responsible for the
5 decision shall:

6 (a) either provide the applicant, policyholder, or
7 individual proposed for coverage with the specific reason or
8 reasons for the adverse underwriting decision in writing or
9 advise such person that upon written request he may receive
10 the specific reason or reasons in writing; and

11 (b) provide the applicant, policyholder, or individual
12 proposed for coverage with a summary of the rights
13 established under subsection (2) and [sections 10 and 11].

14 (2) If a written request is received within 90
15 business days from the date of the mailing of notice or
16 other communication of an adverse underwriting decision to
17 an applicant, policyholder, or individual proposed for
18 coverage, the insurance institution or agent shall within 21
19 business days from the date of receipt of the written
20 request furnish the person:

21 (a) the specific reason or reasons for the adverse
22 underwriting decision, in writing, if such information was
23 not initially furnished in writing pursuant to subsection
24 (1)(a);

25 (b) the specific items of personal and privileged

1 information that support those reasons; however:

2 (i) the insurance institution or agent is not required
3 to furnish specific items of privileged information if it
4 has a reasonable suspicion, based upon specific information
5 available for review by the commissioner, that the
6 applicant, policyholder, or individual proposed for coverage
7 has engaged in criminal activity, fraud, material
8 misrepresentation, or material nondisclosure; and

9 (ii) specific items of medical record information
10 supplied by a medical care institution or medical
11 professional shall be disclosed either directly to the
12 individual about whom the information relates or to a
13 medical professional designated by the individual and
14 licensed to provide medical care with respect to the
15 condition to which the information relates, whichever the
16 insurance institution or agent prefers; and

17 (c) the names and addresses of the institutional
18 sources that supplied the specific items of information
19 pursuant to subsection (2)(b), except that the identity of
20 any medical professional or medical care institution must be
21 disclosed either directly to the individual or to the
22 designated medical professional, whichever the insurance
23 institution or agent prefers.

24 (3) The obligations imposed by this section upon an
25 insurance institution or agent may be satisfied by another

1 insurance institution or agent authorized to act on its
2 behalf.

3 (4) When an adverse underwriting decision results
4 solely from an oral request or inquiry, the explanation of
5 reasons and summary of rights required by subsection (1) may
6 be given orally.

7 Section 13. Information concerning previous adverse
8 underwriting decisions. An insurance institution, agent, or
9 insurance-support organization may not seek information in
10 connection with an insurance transaction concerning:

11 (1) any previous adverse underwriting decision
12 experienced by an individual; or

13 (2) any previous insurance coverage obtained by an
14 individual through a residual market mechanism unless the
15 inquiry also requests the reasons for any previous adverse
16 underwriting decision or the reasons why insurance coverage
17 was previously obtained through a residual market mechanism.

18 Section 14. Previous adverse underwriting decisions.
19 An insurance institution or agent may not base an adverse
20 underwriting decision in whole or in part:

21 (1) on the fact of a previous adverse underwriting
22 decision or on the fact that an individual previously
23 obtained insurance coverage through a residual market
24 mechanism, but an insurance institution or agent may base an
25 adverse underwriting decision on further information

1 obtained from an insurance institution or agent responsible
2 for a previous adverse underwriting decision;

3 (2) on personal information received from an
4 insurance-support organization whose primary source of
5 information is insurance institutions, but an insurance
6 institution or agent may base an adverse underwriting
7 decision on further personal information obtained as the
8 result of information received from such insurance-support
9 organization.

10 Section 15. Disclosure limitations and conditions. (1)
11 Except as provided in this section, an insurance
12 institution, agent, or insurance-support organization may
13 not disclose any personal or privileged information about an
14 individual collected or received in connection with an
15 insurance transaction.

16 (2) Disclosure may be made with the written
17 authorization of the individual but:

18 (a) if the authorization is submitted by another
19 insurance institution, agent, or insurance-support
20 organization, the authorization must meet the requirements
21 of [section 8]; or

22 (b) if the authorization is submitted by a person
23 other than an insurance institution, agent, or
24 insurance-support organization, the authorization must be:

25 (i) dated;

1 (ii) signed by the individual; and
 2 (iii) obtained 1 year or less prior to the date a
 3 disclosure is sought pursuant to this subsection.

4 (3) Disclosure may be made to a person other than an
 5 insurance institution, agent, or insurance-support
 6 organization, provided such disclosure is reasonably
 7 necessary:

8 (a) to enable such person to perform a business,
 9 professional, or insurance function for the disclosing
 10 insurance institution, agent, or insurance-support
 11 organization and such person agrees not to disclose the
 12 information further without the individual's written
 13 authorization unless the further disclosure:

14 (i) would otherwise be permitted by this section if
 15 made by an insurance institution, agent, or
 16 insurance-support organization; or

17 (ii) is reasonably necessary for such person to perform
 18 its function for the disclosing insurance institution,
 19 agent, or insurance-support organization; or

20 (b) to enable such person to provide information to
 21 the disclosing insurance institution, agent, or
 22 insurance-support organization for the purpose of:

23 (i) determining an individual's eligibility for an
 24 insurance benefit or payment; or

25 (ii) detecting or preventing criminal activity, fraud,

1 material misrepresentation, or material nondisclosure in
 2 connection with an insurance transaction.

3 (4) Disclosure may be made to an insurance
 4 institution, agent, insurance-support organization, or
 5 self-insurer if the information disclosed is limited to that
 6 which is reasonably necessary:

7 (a) to detect or prevent criminal activity, fraud,
 8 material misrepresentation, or material nondisclosure in
 9 connection with insurance transactions; or

10 (b) for either the disclosing or receiving insurance
 11 institution, agent, or insurance-support organization to
 12 perform its function in connection with an insurance
 13 transaction involving the individual.

14 (5) Disclosure may be made to a medical care
 15 institution or medical professional of that information
 16 reasonably necessary for the following purposes:

17 (a) verifying insurance coverage or benefits;

18 (b) informing an individual of a medical problem of
 19 which the individual may not be aware; or

20 (c) conducting an operations or services audit.

21 (6) Disclosure may be made to an insurance regulatory
 22 authority.

23 (7) Disclosure may be made to a law enforcement or
 24 other government authority:

25 (a) to protect the interests of the insurance

1 institution, agent, or insurance-support organization in
2 preventing or prosecuting the perpetration of fraud upon it;
3 or

4 (b) if the insurance institution, agent, or
5 insurance-support organization reasonably believes that
6 illegal activities have been conducted by the individual.

7 (8) Disclosure may be made as otherwise permitted or
8 required by law.

9 (9) Disclosure may be made in response to a facially
10 valid administrative or judicial order, including a search
11 warrant or subpoena.

12 (10) Disclosure may be made for the purpose of
13 conducting actuarial or research studies, provided:

14 (a) no individual may be identified in any actuarial
15 or research report;

16 (b) materials allowing the individual to be identified
17 are returned or destroyed as soon as they are no longer
18 needed; and

19 (c) the actuarial or research organization agrees not
20 to disclose the information unless the disclosure would
21 otherwise be permitted by this section if made by an
22 insurance institution, agent, or insurance-support
23 organization.

24 (11) Disclosure may be made to a party or a
25 representative of a party to a proposed or consummated sale,

1 transfer, merger, or consolidation of all or part of the
2 business of the insurance institution, agent, or
3 insurance-support organization, if:

4 (a) prior to the consummation of the sale, transfer,
5 merger, or consolidation only such information is disclosed
6 as is reasonably necessary to enable the recipient to make
7 business decisions about the purchase, transfer, merger, or
8 consolidation; and

9 (b) the recipient agrees not to disclose the
10 information unless the disclosure would otherwise be
11 permitted by this section if made by an insurance
12 institution, agent, or insurance-support organization.

13 (12) Disclosure may be made to a person whose only use
14 of such information will be in connection with the marketing
15 of a product or service, if:

16 (a) no medical record information, privileged
17 information, or personal information relating to an
18 individual's character, personal habits, mode of living, or
19 general reputation is disclosed, and no classification
20 derived from such information is disclosed;

21 (b) the individual has been given an opportunity to
22 indicate that he does not want personal information
23 disclosed for marketing purposes and has given no indication
24 that he does not want the information disclosed; and

25 (c) the person receiving the information agrees not to

1 use it except in connection with the marketing of a product
2 or service.

3 (13) Disclosure may be made to an affiliate whose only
4 use of the information will be in connection with an audit
5 of the insurance institution or agent or the marketing of
6 an insurance product or service if the affiliate agrees not
7 to disclose the information for any other purpose or to
8 unaffiliated persons.

9 (14) Disclosure may be made by a consumer reporting
10 agency to a person other than an insurance institution or
11 agent.

12 (15) Disclosure may be made to a group policyholder for
13 the purpose of reporting claims experience or conducting an
14 audit of the insurance institution's or agent's operations
15 or services if the information disclosed is reasonably
16 necessary for the group policyholder to conduct the review
17 or audit.

18 (16) Disclosure may be made to a professional peer
19 review organization for the purpose of reviewing the service
20 or conduct of a medical care institution or medical
21 professional.

22 (17) Disclosure may be made to a governmental authority
23 for the purpose of determining the individual's eligibility
24 for health benefits for which the governmental authority may
25 be liable.

1 (18) Disclosure may be made to a certificateholder or
2 policyholder for the purpose of providing information
3 regarding the status of an insurance transaction.

4 Section 16. Power of the commissioner. (1) The
5 commissioner has the power to examine and investigate the
6 affairs of every insurance institution or agent doing
7 business in this state to determine whether the insurance
8 institution or agent has been or is engaged in any conduct
9 in violation of [this act].

10 (2) The commissioner has the power to examine and
11 investigate the affairs of every insurance-support
12 organization acting on behalf of an insurance institution or
13 agent that either transacts business in this state or
14 transacts business outside this state which has an effect on
15 a person residing in this state in order to determine
16 whether such insurance-support organization has been or is
17 engaged in any conduct in violation of [this act].

18 Section 17. Hearings, ~~witnesses, appearances,~~
19 ~~production of books, and service of process.~~ (1) The
20 commissioner shall hold a hearing whenever he has reason to
21 believe that an insurance institution, agent, or
22 insurance-support organization has been or is engaged in
23 conduct in this state that violates [this act] or if the
24 commissioner believes that an insurance-support organization
25 has been or is engaged in conduct outside this state which

1 has an effect on a person residing in this state and which
 2 violates [this act]. ~~The commissioner shall issue and serve~~
 3 ~~upon such insurance institution, agency or insurance support~~
 4 ~~organization a statement of charges and notice of hearing~~
 5 ~~specifying a time and place for the hearing. The date for~~
 6 ~~the hearing may not be less than 28 days after the date of~~
 7 ~~service.~~

8 ~~{2} At the hearing the insurance institution, agency~~
 9 ~~or insurance support organization charged has the~~
 10 ~~opportunity to answer the charges against it and present~~
 11 ~~evidence on its behalf. Upon good cause shown, the~~
 12 ~~commissioner may permit any adversely affected person, by~~
 13 ~~counsel or in person, to intervene, appear, and be heard at~~
 14 ~~the hearing.~~

15 ~~{3} At a hearing conducted pursuant to this section,~~
 16 ~~the commissioner may administer oaths, examine and~~
 17 ~~cross-examine witnesses and receive oral and documentary~~
 18 ~~evidence. The commissioner has the power to subpoena~~
 19 ~~witnesses, compel their attendance, and require the~~
 20 ~~production of books, papers, records, correspondence and~~
 21 ~~other documents that are relevant to the hearing. A~~
 22 ~~stenographic record of the hearing shall be made upon the~~
 23 ~~request of any party or at the discretion of the~~
 24 ~~commissioner. If no stenographic record is made and if~~
 25 ~~judicial review is sought, the commissioner shall prepare a~~

1 ~~statement of the evidence for use on review.~~ Hearings
 2 conducted under this section are governed by the same rates
 3 of evidence and procedure applicable to administrative
 4 proceedings conducted under Title 2, chapter 4 AND TITLE 33,
 5 CHAPTER 1, PART 7.

6 ~~{4} Statements of charges, notices, orders, and other~~
 7 ~~processes of the commissioner under [this act] may be served~~
 8 ~~by anyone duly authorized to act on behalf of the~~
 9 ~~commissioner. Service of process may be completed in the~~
 10 ~~manner provided by law for service of process in civil~~
 11 ~~actions or by registered mail. A copy of the statement of~~
 12 ~~charges, notice, order, or other process shall be provided~~
 13 ~~to the person or persons whose rights under [this act] have~~
 14 ~~been allegedly violated. A verified return setting forth the~~
 15 ~~manner of service or return postcard receipt in the case of~~
 16 ~~registered mail is sufficient proof of service.~~

17 Section 18. Service of process -- insurance support
 18 organizations. For the purpose of [this act], an
 19 insurance support organization transacting business outside
 20 this state that has an effect on a person residing in this
 21 state is considered to have appointed the commissioner to
 22 accept service of process on its behalf. The commissioner
 23 shall mail a copy of the notice by registered mail to the
 24 insurance support organization at its last known principal
 25 place of business. The return postcard receipt for such

1 mailing is sufficient proof that the same was properly
2 mailed by the commissioner.

3 Section 19. Cease and desist orders and reports. (1)
4 If, after a hearing pursuant to [section 17], the
5 commissioner determines that the insurance institution,
6 agent, or insurance-support organization charged has engaged
7 in conduct or practices in violation of [this act], the
8 commissioner shall reduce his findings AND CONCLUSIONS to
9 writing and shall issue and cause IHEM to be served upon the
10 insurance institution, agent, or insurance-support
11 organization ~~a copy of the findings and an order requiring~~
12 ~~the insurance institution, agent, or insurance-support~~
13 ~~organization to cease and desist from the conduct or~~
14 ~~practices constituting a violation of [this act]~~ AS PROVIDED
15 BY LAW.

16 (2) If, after a hearing pursuant to [section 17], the
17 commissioner determines that the insurance institution,
18 agent, or insurance-support organization charged has not
19 engaged in conduct or practices in violation of [this act],
20 the commissioner shall prepare a written report which sets
21 forth findings of fact and conclusions of law. The report
22 shall be served upon the insurance institution, agent, or
23 insurance-support organization charged and upon the person
24 or persons if any, whose rights under [this act] were
25 allegedly violated, IN THE MANNER PROVIDED BY LAW FOR

1 SERVICE OF AGENCY ORDERS.

2 ~~(3) Until the expiration of the time allowed under~~
3 ~~[section 21] for filing a petition for review or until such~~
4 ~~a petition is filed, whichever occurs first, the~~
5 ~~commissioner may modify or set aside any order or report~~
6 ~~issued under this section. After the expiration of the time~~
7 ~~allowed under [section 21] for filing a petition for review~~
8 ~~or if no such petition has been filed, the commissioner may~~
9 ~~after notice and opportunity for hearing, alter, modify, or~~
10 ~~set aside, in whole or in part, any order or report issued~~
11 ~~under this section whenever conditions of fact or law~~
12 ~~warrant such action or if the public interest so requires.~~

13 Section 20. Penalties CIVIL PENALTIES. (1) If a hearing
14 pursuant to [section 17] results in the finding of a knowing
15 violation of [this act], the commissioner may, in addition
16 to the issuance of a cease and desist order as prescribed in
17 [section 19], order payment of a CIVIL penalty of not more
18 than \$500 for each violation but not to exceed \$10,000 in
19 the aggregate for multiple violations.

20 (2) Any person who violates a cease and desist order
21 of the commissioner under [section 19] may, after notice and
22 hearing and upon order of the commissioner, be subject to
23 one or more of the following penalties, at the discretion of
24 the commissioner:

25 (a) a fine CIVIL PENALTY of not more than \$10,000 for

1 each violation; or

2 (b) a fine CIVIL PENALTY of not more than \$50,000 if
3 the commissioner finds that violations have occurred with
4 such frequency as to constitute a general business practice;
5 and

6 (c) suspension or revocation of an insurance
7 institution's or agent's license.

8 Section 21. Judicial review of orders and reports. (1)

9 Any person subject to an order of the commissioner under
10 [section 19] or [section 20] or any person whose rights
11 under [this act] were allegedly violated may obtain a review
12 of any order or report of the commissioner by filing in the
13 district court of Lewis and Clark County within 30 days
14 from the date of the service of such order or report a
15 written petition requesting that the order or report of the
16 commissioner be set aside. A copy of the petition must at
17 the same time be served upon the commissioner, who shall
18 forthwith certify and file in the district court a
19 transcript of the entire record of the proceeding giving
20 rise to the order or report that is the subject of the
21 petition. Upon the filing of the petition and transcript,
22 the district court has jurisdiction to make and enter a
23 decree modifying, affirming, or reversing any order or
24 report of the commissioner, in whole or in part. The
25 findings of the commissioner as to the facts supporting any

1 order or report, if supported by clear and convincing
2 evidence, are conclusive.

3 (2) To the extent an order or report of the
4 commissioner is affirmed, the court shall issue its own
5 order commanding obedience to the terms of the order or
6 report of the commissioner if any party affected by an
7 order or report of the commissioner applies to the court for
8 leave to produce additional evidence and shows to the
9 satisfaction of the court that such additional evidence is
10 material and that there are reasonable grounds for the
11 failure to produce such evidence in prior proceedings, the
12 court may order such additional evidence to be taken before
13 the commissioner in such manner and upon such terms and
14 conditions as the court may consider proper. The
15 commissioner may modify his findings of fact or make new
16 findings by reason of the additional evidence so taken and
17 shall file such modified or new findings along with any
18 recommendations, if any, for the modification or revocation
19 of a previous order or report, if supported by clear and
20 convincing evidence, the modified or new findings shall be
21 conclusive as to the matters contained therein.

22 (3) An order or report issued by the commissioner
23 under [sections 19 or 20] is final.

24 (4) Upon the expiration of the time allowed for the
25 filing of a petition for review, if no such petition has

~~been duly filed; except that the commissioner may modify or set aside an order or report to the extent provided in [section 19(3)] or~~

~~(b) upon a final decision of the district court if the court directs that the order or report of the commissioner be affirmed or the petition for review dismissed.~~

~~(4) No order or report of the commissioner under [this act] or order of a court to enforce the same in any way relieves or absolves any person affected by the order or report from any liability under any other law of this state~~

AS PROVIDED BY 33-1-711.

Section 22. Individual remedies. (1) If any insurance institution, agent, or insurance-support organization fails to comply with [sections 10, 11, or 12] with respect to the rights granted under [those sections], any person whose rights are violated may apply to the district court of this state or any other court of competent jurisdiction for appropriate equitable relief.

(2) An insurance institution, agent, or insurance-support organization that discloses information in violation of [section 15] is liable for damages sustained by the individual to whom the information relates. However, an individual is not entitled to a monetary award which exceeds the actual damages sustained by the individual as a result of a violation of [section 15].

(3) In any action brought pursuant to this section, the court may award the cost of the action and reasonable attorney's fees to the prevailing party.

(4) An action under this section must be brought within 2 years from the date the alleged violation is or should have been discovered.

(5) Except as specifically provided in this section, there is no remedy or recovery available to individuals, in law or in equity, for occurrences constituting a violation of any provision of [this act].

Section 23. Immunity. A cause of action or claim for relief in the nature of defamation, invasion of privacy, or negligence does not arise against any person for disclosing personal or privileged information in accordance with [this act], nor does such a cause of action or claim for relief arise against any person for furnishing personal or privileged information to an insurance institution, agent, or insurance-support organization. However, this section does not provide immunity for disclosing or furnishing false information with malice or willful intent to injure any person.

Section 24. Obtaining information under false pretenses. Any person who knowingly and willfully obtains information about an individual from an insurance institution, agent, or insurance-support organization under

1 false pretenses shall be fined not more than \$10,000 or
2 imprisoned for not more than 1 year, or both.

3 Section 25. Codification instruction. This act is
4 intended to be codified as an integral part of Title 33, and
5 the provisions of Title 33 apply to this act.

6 Section 26. Severability. If a part of this act is
7 invalid, all valid parts that are severable from the invalid
8 part remain in effect. If a part of this act is invalid in
9 one or more of its applications, the part remains in effect
10 in all valid applications that are severable from the
11 invalid applications.

12 ~~Section 27. Repealer. Sections 50-16-301 through~~
13 ~~50-16-305 and 50-16-311 through 50-16-314, NCA, are~~
14 ~~repealed.~~

15 Section 27. Effective date. (1) This act is effective
16 on July 1, 1982.

17 (2) The rights granted under [sections 10, 11, and 15]
18 are effective on July 1, 1982, regardless of the date of the
19 collection or receipt of the information that is the subject
20 of those sections.

-End-

1 SENATE BILL NO. 240

2 INTRODUCED BY HAZELBAKER

3 BY REQUEST OF THE MONTANA DEPARTMENT OF INSURANCE

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH STANDARDS
 6 FOR THE COLLECTION, USE, AND DISCLOSURE OF INFORMATION
 7 GATHERED IN CONNECTION WITH INSURANCE TRANSACTIONS BY
 8 INSURANCE INSTITUTIONS, AGENTS, OR INSURANCE-SUPPORT
 9 ORGANIZATIONS; TO PROVIDE A PROCEDURE FOR ACCESS BY PRIVATE
 10 PERSONS TO INFORMATION GATHERED ABOUT THEM FOR THE PURPOSE
 11 OF VERIFYING OR DISPUTING ITS ACCURACY; TO LIMIT THE
 12 DISCLOSURE OF INFORMATION COLLECTED IN CONNECTION WITH
 13 INSURANCE TRANSACTIONS; TO GIVE THE COMMISSIONER OF
 14 INSURANCE THE POWER TO INVESTIGATE AND ISSUE CEASE AND
 15 DESIST ORDERS FOR VIOLATIONS OF THIS ACT; TO PROVIDE FOR
 16 EQUITABLE RELIEF IN THE DISTRICT COURT AND FOR A PENALTY;
 17 ~~REPEALING SECTIONS 50-16-301 THROUGH 50-16-305 AND 50-16-311~~
 18 ~~THROUGH 50-16-314, MCA."~~

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:21 Section 1. Short title. [This act] may be cited as the
22 "Insurance Information and Privacy Protection Act".23 Section 2. Purpose. The purpose of [this act] is to
24 establish standards for the collection, use, and disclosure
25 of information gathered in connection with insurance

1 transactions by insurance institutions, agents, or
 2 insurance-support organizations; to maintain a balance
 3 between the need for information by those conducting the
 4 business of insurance and the public's need for fairness in
 5 insurance information practices, including the need to
 6 minimize intrusiveness; to establish a regulatory mechanism
 7 to enable natural persons to ascertain what information is
 8 being or has been collected about them in connection with
 9 insurance transactions and to have access to such
 10 information for the purpose of verifying or disputing its
 11 accuracy; to limit the disclosure of information collected
 12 in connection with insurance transactions; and to enable
 13 insurance applicants and policyholders to obtain the reasons
 14 for any adverse underwriting decision.

15 Section 3. Scope of [act]. (i) The obligations imposed
16 by [this act] apply to those insurance institutions, agents,
17 or insurance-support organizations that, on or after [the
18 effective date of this act]:19 (a) in the case of life, health, or disability
20 insurance:21 (i) collect, receive, or maintain information in
22 connection with insurance transactions that pertains to
23 natural persons who are residents of this state; or24 (ii) engage in insurance transactions with applicants,
25 individuals, or policyholders who are residents of this

1 state; and

2 (b) in the case of property or casualty insurance:

3 (i) collect, receive, or maintain information in
4 connection with insurance transactions involving policies,
5 contracts, or certificates of insurance delivered, issued
6 for delivery, or renewed in this state; or

7 (ii) engage in insurance transactions involving
8 policies, contracts, or certificates of insurance delivered,
9 issued for delivery, or renewed in this state.

10 (2) The rights granted by [this act] extend to:

11 (a) in the case of life, health, or disability
12 insurance, the following persons who are residents of this
13 state:

14 (i) natural persons who are the subject of information
15 collected, received, or maintained in connection with
16 insurance transactions; and

17 (ii) applicants, individuals, or policyholders who
18 engage in or seek to engage in insurance transactions; and

19 (b) in the case of property or casualty insurance, the
20 following persons:

21 (i) natural persons who are the subject of information
22 collected, received, or maintained in connection with
23 insurance transactions involving policies, contracts, or
24 certificates of insurance delivered, issued for delivery, or
25 renewed in this state; and

1 (ii) applicants, individuals, or policyholders who
2 engage in or seek to engage in insurance transactions
3 involving policies, contracts, or certificates of insurance
4 delivered, issued for delivery, or renewed in this state.

5 (3) For the purposes of this section, a person is
6 considered a resident of this state if the person's last
7 known mailing address, as shown in the records of the
8 insurance institution, agent, or insurance-support
9 organization, is located in this state.

10 (4) [This act] does not apply to information collected
11 from the public records of a governmental authority and
12 maintained by an insurance institution or its
13 representatives for the purpose of insuring the title to
14 real property located in this state.

15 Section 4. Definitions. As used in [this act], the
16 following definitions apply:

17 (1) (a) "Adverse underwriting decision" means:

18 (i) any of the following actions with respect to
19 insurance transactions involving insurance coverage that are
20 individually underwritten:

21 (A) a declination of insurance coverage;

22 (B) a termination of insurance coverage;

23 (C) failure of an agent to apply for insurance
24 coverage with a specific insurance institution which the
25 agent represents and which is requested by an applicant;

1 (D) in the case of a property or casualty insurance
2 coverage;

3 (I) placement by an insurance institution or agent of
4 a risk with a residual market mechanism, an unauthorized
5 insurer, or an insurance institution which specializes in
6 substandard risks; or

7 (II) the charging of a higher rate on the basis of
8 information that differs from that which the applicant or
9 policyholder furnished;

10 (E) in the case of a life, health, or disability
11 insurance coverage, an offer to insure at higher than
12 standard rates.

13 (b) The following actions are not adverse underwriting
14 decisions but the insurance institution or agent responsible
15 for their occurrence shall nevertheless provide the
16 applicant or policyholder with the specific reason or
17 reasons for their occurrence:

18 (i) the termination of an individual policy form on a
19 class or statewide basis; or

20 (ii) a declination of insurance coverage solely because
21 such coverage is not available on a class or statewide
22 basis; or

23 (iii) the rescission of a policy.

24 (2) "Affiliate" or "affiliated" means a person that
25 directly or indirectly through one or more intermediaries

1 controls, is controlled by, or is under common control with
2 another person.

3 (3) "Agent" means an agent or enrollment
4 representative as defined in 33-17-102 and 33-30-311.

5 (4) "Applicant" means a person who seeks to contract
6 for insurance coverage other than a person seeking group
7 insurance that is not individually underwritten.

8 (5) "Consumer report" means any written, oral, or
9 other communication of information bearing on a natural
10 person's credit worthiness, credit standing, credit
11 capacity, character, general reputation, personal
12 characteristics, or mode of living which is used or expected
13 to be used in connection with an insurance transaction.

14 (6) "Consumer reporting agency" means any person who:

15 (a) regularly engages, in whole or in part, in the
16 practice of assembling or preparing consumer reports for a
17 monetary fee;

18 (b) obtains information primarily from sources other
19 than insurance institutions; and

20 (c) furnishes consumer reports to other persons.

21 (7) "Control", including the terms "controlled by" or
22 "under common control with", means the possession, direct or
23 indirect, of the power to direct or cause the direction of
24 the management and policies of a person, whether through the
25 ownership of voting securities, by contract other than a

1 commercial contract for goods or nonmanagement services, or
 2 otherwise, unless the power is the result of an official
 3 position with or corporate office held by the person.

4 (8) "Declination of insurance coverage" means a
 5 denial, in whole or in part, by an insurance institution or
 6 agent of requested insurance coverage.

7 (9) "Individual" means a natural person who:

8 (a) regarding property or casualty insurance, is a
 9 past, present, or proposed named insured or
 10 certificateholder;

11 (b) regarding life, health, or disability insurance,
 12 is a past, present, or proposed principal insured or
 13 certificateholder;

14 (c) is a past, present, or proposed policyowner;

15 (d) is a past or present applicant;

16 (e) is a past or present claimant; or

17 (f) derived, derives, or is proposed to derive
 18 insurance coverage under an insurance policy or certificate
 19 subject to [this act].

20 (10) "Institutional source" means a person or
 21 governmental entity that provides information about an
 22 individual to an agent, insurance institution, or
 23 insurance-support organization, other than:

24 (a) an agent;

25 (b) the individual who is the subject of the

1 information; or

2 (c) a natural person acting in a personal capacity
 3 rather than a business or professional capacity.

4 (11) "Insurance institution" means a corporation,
 5 association, partnership, reciprocal exchange, interinsurer,
 6 Lloyd's insurer, fraternal benefit society, or other person
 7 engaged in the business of insurance, including health
 8 maintenance organizations, and health service corporations
 9 as defined in 33-30-101. "Insurance institution" does not
 10 include agents or insurance-support organizations.

11 (12) (a) "Insurance-support organization" means a
 12 person who regularly engages, in whole or in part, in the
 13 practice of assembling or collecting information about
 14 natural persons for the primary purpose of providing the
 15 information to an insurance institution or agent for
 16 insurance transactions, including:

17 (i) the furnishing of consumer reports or
 18 investigative consumer reports to an insurance institution
 19 or agent for use in connection with an insurance
 20 transaction; or

21 (ii) the collection of personal information from
 22 insurance institutions, agents, or other insurance-support
 23 organizations for the purpose of detecting or preventing
 24 fraud, material misrepresentation, or material nondisclosure
 25 in connection with insurance underwriting or insurance claim

1 activity.

2 (b) The following persons are not insurance-support
3 organizations for purposes of [this act]: agents, government
4 institutions, insurance institutions, medical care
5 institutions and medical professionals.

6 (13) "Insurance transaction" means a transaction
7 involving insurance primarily for personal, family, or
8 household needs, rather than business or professional needs,
9 that entails:

10 (a) the determination of an individual's eligibility
11 for an insurance coverage, benefit, or payment; or

12 (b) the servicing of an insurance application, policy,
13 contract, or certificate.

14 (14) "Investigative consumer report" means a consumer
15 report or portion thereof containing information about a
16 natural person's character, general reputation, personal
17 characteristics, or mode of living obtained through personal
18 interviews with the person's neighbors, friends, associates,
19 acquaintances, or others who may have knowledge concerning
20 such items of information.

21 (15) "Medical care institution" means a facility or
22 institution that is licensed to provide health care services
23 to natural persons, including but not limited to
24 health-maintenance organizations, home health agencies,
25 hospitals, medical clinics, public health agencies,

1 rehabilitation agencies, and skilled nursing facilities.

2 (16) "Medical professional" means a person licensed or
3 certified to provide health care services to natural
4 persons, including but not limited to a chiropractor,
5 clinical dietitian, clinical psychologist, dentist, nurse,
6 occupational therapist, optometrist, pharmacist, physical
7 therapist, physician, podiatrist, psychiatric social worker
8 or speech therapist.

9 (17) "Medical record information" means personal
10 information that:

11 (a) relates to an individual's physical or mental
12 condition, medical history, or medical treatment; and

13 (b) is obtained from a medical professional or medical
14 care institution, from the individual, or from the
15 individual's spouse, parent, or legal guardian.

16 (18) "Person" means a natural person, corporation,
17 association, partnership, or other legal entity.

18 (19) "Personal information" means any individually
19 identifiable information gathered in connection with an
20 insurance transaction from which judgments can be made about
21 an individual's character, habits, avocations, finances,
22 occupation, general reputation, credit, health, or any other
23 personal characteristics. Personal information includes an
24 individual's name and address and medical record information
25 but does not include privileged information.

1 (20) "Policyholder" means a person who:
 2 (a) in the case of individual property or casualty
 3 insurance, is a present named insured;
 4 (b) in the case of individual life, health, or
 5 disability insurance, is a present policyowner; or
 6 (c) in the case of group insurance that is
 7 individually underwritten, is a present group
 8 certificateholder.

9 (21) "Pretext interview" means an interview during
 10 which a person, in an attempt to obtain information about a
 11 natural person, performs one or more of the following acts:
 12 (a) pretends to be someone he is not;
 13 (b) pretends to represent a person he is not in fact
 14 representing;
 15 (c) misrepresents the true purpose of the interview;
 16 or
 17 (d) refuses to identify himself upon request.

18 (22) "Privileged information" means any individually
 19 identifiable information that:
 20 (a) relates to a claim for insurance benefits or a
 21 civil or criminal proceeding involving an individual; and
 22 (b) is collected in connection with or in reasonable
 23 anticipation of a claim for insurance benefits or civil or
 24 criminal proceeding involving an individual. Information
 25 otherwise meeting the requirements of privileged information

1 under this subsection will be considered "personal
 2 information" under [this act] if it is disclosed in
 3 violation of [section 15].

4 (23) "Residual market mechanism" means an association,
 5 organization, or other entity defined or described in
 6 33-8-103 and 61-6-144.

7 (24) "Termination of insurance coverage" or
 8 "termination of an insurance policy" means either a
 9 cancellation or nonrenewal of an insurance policy, in whole
 10 or in part, for any reason other than the failure to pay a
 11 premium as required by the policy.

12 (25) "Unauthorized insurer" means an insurance
 13 institution that has not been granted a certificate of
 14 authority by the commissioner to transact the business of
 15 insurance in this state.

16 Section 5. Pretext interviews prohibited -- exception.
 17 (1) Except as provided in subsection (2), an insurance
 18 institution, agent or insurance-support organization may not
 19 use or authorize the use of pretext interviews to obtain
 20 information in connection with an insurance transaction.

21 (2) A pretext interview may be undertaken to obtain
 22 information from a person or institution that does not have
 23 a generally or statutorily recognized privileged
 24 relationship with the person about whom the information
 25 relates for the purpose of investigating a claim when based

1 upon specific information available for review by the
2 commissioner that there is a reasonable basis for suspecting
3 criminal activity, fraud, material misrepresentation, or
4 material nondisclosure in connection with the claim.

5 Section 6. Notice of insurance information practices.

6 (1) An insurance institution or agent shall provide a notice
7 of information practices to all applicants or policyholders
8 in connection with insurance transactions as provided below:

9 (a) in the case of an application for insurance, a
10 notice shall be provided no later than:

11 (i) at the time of the delivery of the insurance
12 policy or certificate when personal information is collected
13 only from the applicant or from public records; or

14 (ii) at the time the collection of personal information
15 is initiated when personal information is collected from a
16 source other than the applicant or public records;

17 (b) in the case of a policy renewal, a notice shall be
18 provided no later than the policy renewal date, except that
19 no notice is required in connection with a policy renewal
20 if:

21 (i) personal information is collected only from the
22 policyholder or from public records; or

23 (ii) a notice meeting the requirements of this section
24 has been given within the previous 24 months; or

25 (c) in the case of a policy reinstatement or change in

1 insurance benefits, a notice shall be provided no later than
2 the time a request for a policy reinstatement or change in
3 insurance benefits is received by the insurance institution,
4 except that no notice is required if personal information is
5 collected only from the policyholder or from public records.

6 (2) The notice must be in writing and must state:

7 (a) whether personal information may be collected from
8 persons other than the individual or individuals proposed
9 for coverage;

10 (b) the types of personal information that may be
11 collected and the types of sources and investigative
12 techniques that may be used to collect such information;

13 (c) the types of disclosures identified in subsections
14 (3), (4), (5), (6), (7), (10), (12), (13), and (15) of
15 [section 15] and the circumstances under which such
16 disclosures may be made without prior authorization.
17 However, only those circumstances that occur with such
18 frequency as to indicate a general business practice must be
19 described.

20 (d) a description of the rights established under
21 [sections 10 and 11] and the manner in which those rights
22 may be exercised; and

23 (e) that information obtained from a report prepared
24 by an insurance-support organization may be retained by the
25 insurance-support organization and disclosed to other

1 persons.

2 (3) In lieu of the notice prescribed in subsection
3 (2), the insurance institution or agent may provide an
4 abbreviated notice informing the applicant or policyholder
5 that:

6 (a) personal information may be collected from persons
7 other than the individual or individuals proposed for
8 coverage;

9 (b) such information as well as other personal or
10 privileged information subsequently collected by the
11 insurance institution or agent may in certain circumstances
12 be disclosed to third parties without authorization;

13 (c) a right of access and correction exists with
14 respect to all personal information collected; and

15 (d) the notice prescribed in subsection (2) must be
16 furnished to the applicant or policyholder upon request.

17 (4) The obligations imposed by this section upon an
18 insurance institution or agent may be satisfied by another
19 insurance institution or agent authorized to act on its
20 behalf.

21 Section 7. Marketing and research surveys. An
22 insurance institution or agent shall clearly specify the
23 questions that are designed to obtain information, from an
24 individual in connection with an insurance transaction,
25 solely for marketing or research purposes.

1 Section 8. Content and disclosure of authorization
2 forms. Notwithstanding any other provision of law of this
3 state, an insurance institution, agent, or insurance-support
4 organization may not utilize as its disclosure authorization
5 form in connection with insurance transactions a form or
6 statement that authorizes the disclosure of personal or
7 privileged information about an individual to the insurance
8 institution, agent, or insurance-support organization unless
9 the form or statement:

10 (1) is written in plain language;

11 (2) is dated;

12 (3) specifies the types of persons authorized to
13 disclose information about the individual;

14 (4) specifies the nature of the information authorized
15 to be disclosed;

16 (5) names the insurance institution or agent and
17 identifies by generic reference representatives of the
18 insurance institution to whom the individual is authorizing
19 information to be disclosed;

20 (6) specifies the purposes for which the information
21 is collected;

22 (7) specifies the length of time such authorization
23 remains valid, which may be no longer than:

24 (a) in the case of authorizations signed for the
25 purpose of collecting information in connection with an

1 application for an insurance policy, a policy reinstatement,
2 or a request for change in policy benefits:

3 (i) 30 months from the date the authorization is
4 signed if the application or request involves life, health,
5 or disability insurance;

6 (ii) one year from the date the authorization is signed
7 if the application or request involves property or casualty
8 insurance;

9 (b) in the case of authorizations signed for the
10 purpose of collecting information in connection with a claim
11 for benefits under an insurance policy:

12 (i) the term of coverage of the policy if the claim is
13 for a health insurance benefit;

14 (ii) the duration of the claim if the claim is not for
15 a health insurance benefit; and

16 (B) advises the individual or a person authorized to
17 act on behalf of the individual that the individual or the
18 individual's authorized representative is entitled to
19 receive a copy of the authorization form.

20 Section 9. Investigative consumer reports. (1) An
21 insurance institution, agent, or insurance-support
22 organization may not prepare or request an investigative
23 consumer report about an individual in connection with an
24 insurance transaction involving an application for
25 insurance, a policy renewal, a policy reinstatement, or a

1 change in insurance benefits unless the insurance
2 institution or agent informs the individual:

3 (a) that he may request to be interviewed in
4 connection with the preparation of the investigative
5 consumer report; and

6 (b) that upon a request pursuant to [section 10], he
7 is entitled to receive a copy of the investigative consumer
8 report.

9 (2) If an investigative consumer report is to be
10 prepared by an insurance institution or agent, the insurance
11 institution or agent shall institute reasonable procedures
12 to conduct a personal interview requested by an individual.

13 (3) If an investigative consumer report is to be
14 prepared by an insurance-support organization, the insurance
15 institution or agent desiring such report shall inform the
16 insurance-support organization whether a personal interview
17 has been requested by the individual. The insurance-support
18 organization shall institute reasonable procedures to
19 conduct such interview, if requested.

20 Section 10. Access to recorded personal information.
21 (1) If an individual, after proper identification, submits a
22 written request to an insurance institution, agent, or
23 insurance-support organization for access to recorded
24 personal information about the individual that is reasonably
25 described by the individual and reasonably locatable and

1 retrievable by the insurance institution, agent, or
 2 insurance-support organization, the insurance institution,
 3 agent, or insurance-support organization shall, within 30
 4 business days from the date such request is received:

5 (a) inform the individual of the nature and substance
 6 of the recorded personal information in writing, by
 7 telephone, or by other oral communication, whichever the
 8 insurance institution, agent, or insurance-support
 9 organization prefers;

10 (b) permit the individual to see and copy, in person,
 11 the recorded personal information pertaining to him or to
 12 obtain a copy of the recorded personal information by mail,
 13 whichever the individual prefers. If the recorded personal
 14 information is in coded form an accurate translation in
 15 plain language must be provided in writing.

16 (c) disclose to the individual the identity, if
 17 recorded, of those persons to whom the insurance
 18 institution, agent, or insurance-support organization has
 19 disclosed the personal information within 2 years prior to
 20 the request and if the identity is not recorded, the names
 21 of those insurance institutions, agents, insurance-support
 22 organizations, or other persons to whom such information is
 23 normally disclosed; and

24 (d) provide the individual with a summary of the
 25 procedures he may use to request correction, amendment, or

1 deletion of recorded personal information.

2 (2) Personal information provided pursuant to
 3 subsection (1) must identify the source of the information
 4 if such source is an institutional source.

5 (3) Medical record information supplied by a medical
 6 care institution or medical professional and requested under
 7 subsection (1), together with the identity of the medical
 8 professional or medical care institution that provided the
 9 information, shall be supplied either directly to the
 10 individual or to a medical professional designated by the
 11 individual and licensed to provide medical care with respect
 12 to the condition to which the information relates, whichever
 13 the insurance institution, agent, or insurance-support
 14 organization prefers. If it elects to disclose the
 15 information to a medical professional designated by the
 16 individual, the insurance institution, agent, or
 17 insurance-support organization shall notify the individual,
 18 at the time of the disclosure, that it has provided the
 19 information to the medical professional.

20 (4) Except for personal information provided under
 21 [section 12], an insurance institution, agent, or
 22 insurance-support organization may charge a reasonable fee
 23 to cover the costs incurred in providing a copy of recorded
 24 personal information to individuals.

25 (5) The obligations imposed by this section upon an

1 insurance institution or agent may be satisfied by another
 2 insurance institution or agent authorized to act on its
 3 behalf. With respect to the copying and disclosure of
 4 recorded personal information pursuant to a request under
 5 subsection (1), an insurance institution, agent, or
 6 insurance-support organization may make arrangements with an
 7 insurance-support organization or a consumer reporting
 8 agency to copy and disclose recorded personal information on
 9 its behalf.

10 (6) The rights granted to individuals in this section
 11 extend to all natural persons to the extent information
 12 about them is collected and maintained by an insurance
 13 institution, agent, or insurance-support organization in
 14 connection with an insurance transaction. The rights granted
 15 to all natural persons by this subsection do not extend to
 16 information about them that relates to and is collected in
 17 connection with or in reasonable anticipation of a claim or
 18 civil or criminal proceeding involving them.

19 (7) For the purposes of this section, the term
 20 "insurance-support organization" does not include "consumer
 21 reporting agency" ~~except to the extent this section imposes~~
 22 ~~more stringent requirements on a consumer reporting agency~~
 23 ~~than other state or federal law.~~

24 Section 11. Correction, amendment, or deletion of
 25 recorded personal information. (1) Within 30 business days

1 from the date of receipt of a written request from an
 2 individual to correct, amend, or delete any recorded
 3 personal information in its possession about the individual,
 4 an insurance institution, agent, or insurance-support
 5 organization shall either:

6 (a) correct, amend, or delete the portion of the
 7 recorded personal information in dispute; or

8 (b) notify the individual of:

9 (i) its refusal to make such correction, amendment, or
 10 deletion;

11 (ii) the reasons for the refusal; and

12 (iii) the individual's right to file a statement as
 13 provided in subsection (3).

14 (2) If the insurance institution, agent, or
 15 insurance-support organization corrects, amends, or deletes
 16 recorded personal information in accordance with subsection
 17 (1)(a), the insurance institution, agent, or
 18 insurance-support organization shall so notify the
 19 individual in writing and furnish the correction, amendment,
 20 or fact of deletion to:

21 (a) any person specifically designated by the
 22 individual who may have, within the preceding 2 years,
 23 received such recorded personal information;

24 (b) any insurance-support organization whose primary
 25 source of personal information is insurance institutions if

1 the insurance-support organization has systematically
 2 received such recorded personal information from the
 3 insurance institution within the preceding 7 years, but the
 4 correction, amendment, or fact of deletion need not be
 5 furnished if the insurance-support organization no longer
 6 maintains recorded personal information about the
 7 individual; and

8 (c) any insurance-support organization that furnished
 9 the personal information which has been corrected, amended,
 10 or deleted.

11 (3) Whenever an individual disagrees with an insurance
 12 institution's, agent's, or insurance-support organization's
 13 refusal to correct, amend, or delete recorded personal
 14 information, the individual may file with the insurance
 15 institution, agent, or insurance-support organization:

16 (a) a concise statement setting forth what the
 17 individual thinks is the correct, relevant, or fair
 18 information; and

19 (b) a concise statement of the reasons why the
 20 individual disagrees with the insurance institution's,
 21 agent's, or insurance-support organization's refusal to
 22 correct, amend, or delete recorded personal information.

23 (4) If an individual files either statement described
 24 in subsection (3), the insurance institution, agent, or
 25 insurance-support organization shall:

1 (a) file the statement with the disputed personal
 2 information and provide a means by which anyone reviewing
 3 the disputed personal information will be made aware of
 4 individual's statement and have access to it;

5 (b) in any subsequent disclosure by the insurance
 6 institution, agent, or insurance-support organization of the
 7 recorded personal information that is the subject of
 8 disagreement, clearly identify the matter in dispute and
 9 provide the individual's statement along with the recorded
 10 personal information being disclosed; and

11 (c) furnish the statement to the persons in the manner
 12 specified in subsection (2).

13 (5) The rights granted individuals by this section
 14 extend to all natural persons to the extent information
 15 about them is collected and maintained by an insurance
 16 institution, agent, or insurance-support organization in
 17 connection with an insurance transaction. The rights granted
 18 to natural persons by this subsection do not extend to
 19 information about them that relates to and is collected in
 20 connection with or in reasonable anticipation of a claim or
 21 civil or criminal proceeding involving them.

22 (6) For the purposes of this section, the term
 23 "insurance-support organization" does not include "consumer
 24 reporting-agency"--to-the-extent-this--section--imposes--more
 25 stringent--requirements--on-a-consumer-reporting-agency--than

1 ~~other-state-or-federal-law.~~

2 Section 12. Reasons for adverse underwriting
3 decisions. (1) If an adverse underwriting decision is made,
4 the insurance institution or agent responsible for the
5 decision shall:

6 (a) either provide the applicant, policyholder, or
7 individual proposed for coverage with the specific reason or
8 reasons for the adverse underwriting decision in writing or
9 advise such person that upon written request he may receive
10 the specific reason or reasons in writing; and

11 (b) provide the applicant, policyholder, or individual
12 proposed for coverage with a summary of the rights
13 established under subsection (2) and [sections 10 and 11].

14 (2) If a written request is received within 90
15 business days from the date of the mailing of notice or
16 other communication of an adverse underwriting decision to
17 an applicant, policyholder, or individual proposed for
18 coverage, the insurance institution or agent shall within 21
19 business days from the date of receipt of the written
20 request furnish the person:

21 (a) the specific reason or reasons for the adverse
22 underwriting decision, in writing, if such information was
23 not initially furnished in writing pursuant to subsection
24 (1)(a);

25 (b) the specific items of personal and privileged

1 information that support those reasons; however:

2 (i) the insurance institution or agent is not required
3 to furnish specific items of privileged information if it
4 has a reasonable suspicion, based upon specific information
5 available for review by the commissioner, that the
6 applicant, policyholder, or individual proposed for coverage
7 has engaged in criminal activity, fraud, material
8 misrepresentation, or material nondisclosure; and

9 (ii) specific items of medical record information
10 supplied by a medical care institution or medical
11 professional shall be disclosed either directly to the
12 individual about whom the information relates or to a
13 medical professional designated by the individual and
14 licensed to provide medical care with respect to the
15 condition to which the information relates, whichever the
16 insurance institution or agent prefers; and

17 (c) the names and addresses of the institutional
18 sources that supplied the specific items of information
19 pursuant to subsection (2)(b), except that the identity of
20 any medical professional or medical care institution must be
21 disclosed either directly to the individual or to the
22 designated medical professional, whichever the insurance
23 institution or agent prefers.

24 (3) The obligations imposed by this section upon an
25 insurance institution or agent may be satisfied by another

1 insurance institution or agent authorized to act on its
2 behalf.

3 (4) When an adverse underwriting decision results
4 solely from an oral request or inquiry, the explanation of
5 reasons and summary of rights required by subsection (1) may
6 be given orally.

7 Section 13. Information concerning previous adverse
8 underwriting decisions. An insurance institution, agent, or
9 insurance-support organization may not seek information in
10 connection with an insurance transaction concerning:

11 (1) any previous adverse underwriting decision
12 experienced by an individual; or

13 (2) any previous insurance coverage obtained by an
14 individual through a residual market mechanism unless the
15 inquiry also requests the reasons for any previous adverse
16 underwriting decision or the reasons why insurance coverage
17 was previously obtained through a residual market mechanism.

18 Section 14. Previous adverse underwriting decisions.
19 An insurance institution or agent may not base an adverse
20 underwriting decision in whole or in part:

21 (1) on the fact of a previous adverse underwriting
22 decision or on the fact that an individual previously
23 obtained insurance coverage through a residual market
24 mechanism, but an insurance institution or agent may base an
25 adverse underwriting decision on further information

1 obtained from an insurance institution or agent responsible
2 for a previous adverse underwriting decision;

3 (2) on personal information received from an
4 insurance-support organization whose primary source of
5 information is insurance institutions, but an insurance
6 institution or agent may base an adverse underwriting
7 decision on further personal information obtained as the
8 result of information received from such insurance-support
9 organization.

10 Section 15. Disclosure limitations and conditions. (1)
11 Except as provided in this section, an insurance
12 institution, agent, or insurance-support organization may
13 not disclose any personal or privileged information about an
14 individual collected or received in connection with an
15 insurance transaction.

16 (2) Disclosure may be made with the written
17 authorization of the individual but:

18 (a) if the authorization is submitted by another
19 insurance institution, agent, or insurance-support
20 organization, the authorization must meet the requirements
21 of [section 8]; or

22 (b) if the authorization is submitted by a person
23 other than an insurance institution, agent, or
24 insurance-support organization, the authorization must be:

25 (i) dated;

1 (ii) signed by the individual; and
 2 (iii) obtained 1 year or less prior to the date a
 3 disclosure is sought pursuant to this subsection.

4 (3) Disclosure may be made to a person other than an
 5 insurance institution, agent, or insurance-support
 6 organization, provided such disclosure is reasonably
 7 necessary:

8 (a) to enable such person to perform a business,
 9 professional, or insurance function for the disclosing
 10 insurance institution, agent, or insurance-support
 11 organization and such person agrees not to disclose the
 12 information further without the individual's written
 13 authorization unless the further disclosure:

14 (i) would otherwise be permitted by this section if
 15 made by an insurance institution, agent, or
 16 insurance-support organization; or

17 (ii) is reasonably necessary for such person to perform
 18 its function for the disclosing insurance institution,
 19 agent, or insurance-support organization; or

20 (b) to enable such person to provide information to
 21 the disclosing insurance institution, agent, or
 22 insurance-support organization for the purpose of:

23 (i) determining an individual's eligibility for an
 24 insurance benefit or payment; or

25 (ii) detecting or preventing criminal activity, fraud,

1 material misrepresentation, or material nondisclosure in
 2 connection with an insurance transaction.

3 (4) Disclosure may be made to an insurance
 4 institution, agent, insurance-support organization, or
 5 self-insurer if the information disclosed is limited to that
 6 which is reasonably necessary:

7 (a) to detect or prevent criminal activity, fraud,
 8 material misrepresentation, or material nondisclosure in
 9 connection with insurance transactions; or

10 (b) for either the disclosing or receiving insurance
 11 institution, agent, or insurance-support organization to
 12 perform its function in connection with an insurance
 13 transaction involving the individual.

14 (5) Disclosure may be made to a medical care
 15 institution or medical professional of that information
 16 reasonably necessary for the following purposes:

17 (a) verifying insurance coverage or benefits;

18 (b) informing an individual of a medical problem of
 19 which the individual may not be aware; or

20 (c) conducting an operations or services audit.

21 (6) Disclosure may be made to an insurance regulatory
 22 authority.

23 (7) Disclosure may be made to a law enforcement or
 24 other government authority:

25 (a) to protect the interests of the insurance

1 institution, agent, or insurance-support organization in
 2 preventing or prosecuting the perpetration of fraud upon it;
 3 or

4 (b) if the insurance institution, agent, or
 5 insurance-support organization reasonably believes that
 6 illegal activities have been conducted by the individual.

7 (8) Disclosure may be made as otherwise permitted or
 8 required by law.

9 (9) Disclosure may be made in response to a facially
 10 valid administrative or judicial order, including a search
 11 warrant or subpoena.

12 (10) Disclosure may be made for the purpose of
 13 conducting actuarial or research studies, provided:

14 (a) no individual may be identified in any actuarial
 15 or research report;

16 (b) materials allowing the individual to be identified
 17 are returned or destroyed as soon as they are no longer
 18 needed; and

19 (c) the actuarial or research organization agrees not
 20 to disclose the information unless the disclosure would
 21 otherwise be permitted by this section if made by an
 22 insurance institution, agent, or insurance-support
 23 organization.

24 (11) Disclosure may be made to a party or a
 25 representative of a party to a proposed or consummated sale,

1 transfer, merger, or consolidation of all or part of the
 2 business of the insurance institution, agent, or
 3 insurance-support organization, if:

4 (a) prior to the consummation of the sale, transfer,
 5 merger, or consolidation only such information is disclosed
 6 as is reasonably necessary to enable the recipient to make
 7 business decisions about the purchase, transfer, merger, or
 8 consolidation; and

9 (b) the recipient agrees not to disclose the
 10 information unless the disclosure would otherwise be
 11 permitted by this section if made by an insurance
 12 institution, agent, or insurance-support organization.

13 (12) Disclosure may be made to a person whose only use
 14 of such information will be in connection with the marketing
 15 of a product or service, if:

16 (a) no medical record information, privileged
 17 information, or personal information relating to an
 18 individual's character, personal habits, mode of living, or
 19 general reputation is disclosed, and no classification
 20 derived from such information is disclosed;

21 (b) the individual has been given an opportunity to
 22 indicate that he does not want personal information
 23 disclosed for marketing purposes and has given no indication
 24 that he does not want the information disclosed; and

25 (c) the person receiving the information agrees not to

1 use it except in connection with the marketing of a product
2 or service.

3 (13) Disclosure may be made to an affiliate whose only
4 use of the information will be in connection with an audit
5 of the insurance institution or agent or the marketing of
6 an insurance product or service if the affiliate agrees not
7 to disclose the information for any other purpose or to
8 unaffiliated persons.

9 (14) Disclosure may be made by a consumer reporting
10 agency to a person other than an insurance institution or
11 agent.

12 (15) Disclosure may be made to a group policyholder for
13 the purpose of reporting claims experience or conducting an
14 audit of the insurance institution's or agent's operations
15 or services if the information disclosed is reasonably
16 necessary for the group policyholder to conduct the review
17 or audit.

18 (16) Disclosure may be made to a professional peer
19 review organization for the purpose of reviewing the service
20 or conduct of a medical care institution or medical
21 professional.

22 (17) Disclosure may be made to a governmental authority
23 for the purpose of determining the individual's eligibility
24 for health benefits for which the governmental authority may
25 be liable.

1 (18) Disclosure may be made to a certificateholder or
2 policyholder for the purpose of providing information
3 regarding the status of an insurance transaction.

4 Section 16. Power of the commissioner. (1) The
5 commissioner has the power to examine and investigate the
6 affairs of every insurance institution or agent doing
7 business in this state to determine whether the insurance
8 institution or agent has been or is engaged in any conduct
9 in violation of [this act].

10 (2) The commissioner has the power to examine and
11 investigate the affairs of every insurance-support
12 organization acting on behalf of an insurance institution or
13 agent that either transacts business in this state or
14 transacts business outside this state which has an effect on
15 a person residing in this state in order to determine
16 whether such insurance-support organization has been or is
17 engaged in any conduct in violation of [this act].

18 Section 17. Hearings~~-----witnesses-----appearances~~
19 ~~production--of--books--and--service--of--process~~. (1) The
20 commissioner shall hold a hearing whenever he has reason to
21 believe that an insurance institution, agent, or
22 insurance-support organization has been or is engaged in
23 conduct in this state that violates [this act] or if the
24 commissioner believes that an insurance-support organization
25 has been or is engaged in conduct outside this state which

1 has an effect on a person residing in this state and which
 2 violates [this act]. ~~The commissioner shall issue and serve~~
 3 ~~upon such insurance institution, agent, or insurance support~~
 4 ~~organization a statement of charges and notice of hearing~~
 5 ~~specifying a time and place for the hearing. The date for~~
 6 ~~the hearing may not be less than 20 days after the date of~~
 7 ~~service.~~

8 ~~{2} At the hearing the insurance institution, agent,~~
 9 ~~or insurance support organization charged has the~~
 10 ~~opportunity to answer the charges against it and present~~
 11 ~~evidence on its behalf. Upon good cause shown, the~~
 12 ~~commissioner may permit any adversely affected person, by~~
 13 ~~counsel or in person, to intervene, appear, and be heard at~~
 14 ~~the hearing.~~

15 ~~{3} At a hearing conducted pursuant to this section,~~
 16 ~~the commissioner may administer oaths, examine and~~
 17 ~~cross-examine witnesses, and receive oral and documentary~~
 18 ~~evidence. The commissioner has the power to subpoena~~
 19 ~~witnesses, compel their attendance, and require the~~
 20 ~~production of books, papers, records, correspondence, and~~
 21 ~~other documents that are relevant to the hearing. A~~
 22 ~~stenographic record of the hearing shall be made upon the~~
 23 ~~request of any party or at the discretion of the~~
 24 ~~commissioner. If no stenographic record is made and if~~
 25 ~~judicial review is sought, the commissioner shall prepare a~~

1 ~~statement of the evidence for use on review.~~ Hearings
 2 conducted under this section are governed by the same rules
 3 of evidence and procedure applicable to administrative
 4 proceedings conducted under Title 2, chapter 4 AND TITLE 33,
 5 CHAPTER 1, PART 7.

6 ~~{4} Statements of charges, notices, orders, and other~~
 7 ~~processes of the commissioner under [this act] may be served~~
 8 ~~by anyone duly authorized to act on behalf of the~~
 9 ~~commissioner. Service of process may be completed in the~~
 10 ~~manner provided by law for service of process in civil~~
 11 ~~actions or by registered mail. A copy of the statement of~~
 12 ~~charges, notices, orders, or other process shall be provided~~
 13 ~~to the person or persons whose rights under [this act] have~~
 14 ~~been allegedly violated. A verified return setting forth the~~
 15 ~~manner of service or return postcard receipt in the case of~~
 16 ~~registered mail is sufficient proof of service.~~

17 Section 18. Service of process -- insurance support
 18 organizations. For the purpose of [this act], an
 19 insurance support organization transacting business outside
 20 this state that has an effect on a person residing in this
 21 state is considered to have appointed the commissioner to
 22 accept service of process on its behalf. The commissioner
 23 shall mail a copy of the notice by registered mail to the
 24 insurance support organization at its last known principal
 25 place of business. The return postcard receipt for such

1 mailing is sufficient proof that the same was properly
2 mailed by the commissioner.

3 Section 19. Cease and desist orders and reports. (1)
4 If, after a hearing pursuant to [section 17], the
5 commissioner determines that the insurance institution,
6 agent, or insurance-support organization charged has engaged
7 in conduct or practices in violation of [this act], the
8 commissioner shall reduce his findings AND CONCLUSIONS to
9 writing and shall issue and cause THEM to be served upon the
10 insurance institution, agent, or insurance-support
11 organization ~~a copy of the findings and an order requiring~~
12 ~~the insurance institution, agent, or insurance-support~~
13 ~~organization to cease and desist from the conduct or~~
14 ~~practices constituting a violation of [this act]~~ AS PROVIDED
15 BY LAW.

16 (2) If, after a hearing pursuant to [section 17], the
17 commissioner determines that the insurance institution,
18 agent, or insurance-support organization charged has not
19 engaged in conduct or practices in violation of [this act],
20 the commissioner shall prepare a written report which sets
21 forth findings of fact and conclusions of law. The report
22 shall be served upon the insurance institution, agent, or
23 insurance-support organization charged and upon the person
24 or persons if any, whose rights under [this act] were
25 allegedly violated, IN THE MANNER PROVIDED BY LAW FOR

1 SERVICE OF AGENCY ORDERS.

2 ~~(3) Until the expiration of the time allowed under~~
3 ~~[section 21] for filing a petition for review or until such~~
4 ~~a petition is filed, whichever occurs first, the~~
5 ~~commissioner may modify or set aside any order or report~~
6 ~~issued under this section. After the expiration of the time~~
7 ~~allowed under [section 21] for filing a petition for review~~
8 ~~or if no such petition has been filed, the commissioner may,~~
9 ~~after notice and opportunity for hearing, alter, modify, or~~
10 ~~set aside, in whole or in part, any order or report issued~~
11 ~~under this section whenever conditions of fact or law~~
12 ~~warrant such action or if the public interest so requires.~~

13 Section 20. Penalties CIVIL PENALTIES. (1) If a
14 hearing pursuant to [section 17] results in the finding of a
15 knowing violation of [this act], the commissioner may, in
16 addition to the issuance of a cease and desist order as
17 prescribed in [section 19], order payment of a CIVIL penalty
18 of not more than \$500 for each violation but not to exceed
19 \$10,000 in the aggregate for multiple violations.

20 (2) Any person who violates a cease and desist order
21 of the commissioner under [section 19] may, after notice and
22 hearing and upon order of the commissioner, be subject to
23 one or more of the following penalties, at the discretion of
24 the commissioner:

25 (a) a fine CIVIL PENALTY of not more than \$10,000 for

1 each violation; or

2 (b) a fine CIVIL PENALTY of not more than \$50,000 if
3 the commissioner finds that violations have occurred with
4 such frequency as to constitute a general business practice;
5 and

6 (c) suspension or revocation of an insurance
7 institution's or agent's license.

8 Section 21. Judicial review of orders and reports. (1)
9 Any person subject to an order of the commissioner under
10 [section 19] or [section 20] or any person whose rights
11 under [this act] were allegedly violated may obtain a review
12 of any order or report of the commissioner by filing in the
13 district court of Lewis and Clark County within 30 days
14 from the date of the service of such order or report a
15 written petition requesting that the order or report of the
16 commissioner be set aside. A copy of the petition must at
17 the same time be served upon the commissioner who shall
18 forthwith certify and file in the district court a
19 transcript of the entire record of the proceeding giving
20 rise to the order or report that is the subject of the
21 petition. Upon the filing of the petition and transcript
22 the district court has jurisdiction to make and enter a
23 decree modifying, affirming, or reversing any order or
24 report of the commissioner in whole or in part. The
25 findings of the commissioner as to the facts supporting any

1 order or report if supported by clear and convincing
2 evidence are conclusive.

3 (2) To the extent an order or report of the
4 commissioner is affirmed, the court shall issue its own
5 order commanding obedience to the terms of the order or
6 report of the commissioner, if any party affected by an
7 order or report of the commissioner applies to the court for
8 leave to produce additional evidence and shows to the
9 satisfaction of the court that such additional evidence is
10 material and that there are reasonable grounds for the
11 failure to produce such evidence in prior proceedings. The
12 court may order such additional evidence to be taken before
13 the commissioner in such manner and upon such terms and
14 conditions as the court may consider proper. The
15 commissioner may modify his findings of fact or make new
16 findings by reason of the additional evidence so taken and
17 shall file such modified or new findings along with any
18 recommendation, if any, for the modification or revocation
19 of a previous order or report if supported by clear and
20 convincing evidence. The modified or new findings shall be
21 conclusive as to the matters contained therein.

22 (3) An order or report issued by the commissioner
23 under [sections 19 or 20] is final.

24 (4) Upon the expiration of the time allowed for the
25 filing of a petition for review, if no such petition has

1 ~~been duly filed; except that the commissioner may modify or~~
 2 ~~set aside an order or report to the extent provided in~~
 3 ~~[section 19(3)] or~~

4 ~~(b) upon a final decision of the district court if the~~
 5 ~~court directs that the order or report of the commissioner~~
 6 ~~be affirmed or the petition for review dismissed;~~

7 ~~(4) No order or report of the commissioner under [this~~
 8 ~~act] or order of a court to enforce the same in any way~~
 9 ~~relieves or absolves any person affected by the order or~~
 10 ~~report from any liability under any other law of this state~~

11 AS PROVIDED BY 33-1-711.

12 Section 22. Individual remedies. (1) If any insurance
 13 institution, agent, or insurance-support organization fails
 14 to comply with [sections 10, 11, or 12] with respect to the
 15 rights granted under [those sections], any person whose
 16 rights are violated may apply to the district court of this
 17 state or any other court of competent jurisdiction for
 18 appropriate equitable relief.

19 (2) An insurance institution, agent, or
 20 insurance-support organization that discloses information in
 21 violation of [section 15] is liable for damages sustained by
 22 the individual to whom the information relates. However, an
 23 individual is not entitled to a monetary award which exceeds
 24 the actual damages sustained by the individual as a result
 25 of a violation of [section 15].

1 (3) In any action brought pursuant to this section,
 2 the court may award the cost of the action and reasonable
 3 attorney's fees to the prevailing party.

4 (4) An action under this section must be brought
 5 within 2 years from the date the alleged violation is or
 6 should have been discovered.

7 (5) Except as specifically provided in this section,
 8 there is no remedy or recovery available to individuals, in
 9 law or in equity, for occurrences constituting a violation
 10 of any provision of [this act].

11 Section 23. Immunity. A cause of action or claim for
 12 relief in the nature of defamation, invasion of privacy, or
 13 negligence does not arise against any person for disclosing
 14 personal or privileged information in accordance with [this
 15 act], nor does such a cause of action or claim for relief
 16 arise against any person for furnishing personal or
 17 privileged information to an insurance institution, agent,
 18 or insurance-support organization. However, this section
 19 does not provide immunity for disclosing or furnishing false
 20 information with malice or willful intent to injure any
 21 person.

22 Section 24. Obtaining information under false
 23 pretenses. Any person who knowingly and willfully obtains
 24 information about an individual from an insurance
 25 institution, agent, or insurance-support organization under

1 false pretenses shall be fined not more than \$10,000 or
2 imprisoned for not more than 1 year, or both.

3 Section 25. Codification instruction. This act is
4 intended to be codified as an integral part of Title 33, and
5 the provisions of Title 33 apply to this act.

6 Section 26. Severability. If a part of this act is
7 invalid, all valid parts that are severable from the invalid
8 part remain in effect. If a part of this act is invalid in
9 one or more of its applications, the part remains in effect
10 in all valid applications that are severable from the
11 invalid applications.

12 ~~Section 27. Repeater. Sections 50-16-301 through~~
13 ~~50-16-305 and 50-16-311 through 50-16-314, MCA, are~~
14 ~~repeated.~~

15 Section 27. Effective date. (1) This act is effective
16 on July 1, 1982.

17 (2) The rights granted under [sections 10, 11, and 15]
18 are effective on July 1, 1982, regardless of the date of the
19 collection or receipt of the information that is the subject
20 of those sections.

-End-

1 SENATE BILL NO. 240

2 INTRODUCED BY HAZELBAKER

3 BY REQUEST OF THE MONTANA DEPARTMENT OF INSURANCE

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH STANDARDS
 6 FOR THE COLLECTION, USE, AND DISCLOSURE OF INFORMATION
 7 GATHERED IN CONNECTION WITH INSURANCE TRANSACTIONS BY
 8 INSURANCE INSTITUTIONS, AGENTS, OR INSURANCE-SUPPORT
 9 ORGANIZATIONS; TO PROVIDE A PROCEDURE FOR ACCESS BY PRIVATE
 10 PERSONS TO INFORMATION GATHERED ABOUT THEM FOR THE PURPOSE
 11 OF VERIFYING OR DISPUTING ITS ACCURACY; TO LIMIT THE
 12 DISCLOSURE OF INFORMATION COLLECTED IN CONNECTION WITH
 13 INSURANCE TRANSACTIONS; TO GIVE THE COMMISSIONER OF
 14 INSURANCE THE POWER TO INVESTIGATE AND ISSUE CEASE AND
 15 DESIST ORDERS FOR VIOLATIONS OF THIS ACT; TO PROVIDE FOR
 16 EQUITABLE RELIEF IN THE DISTRICT COURT AND FOR A PENALTY;
 17 ~~REPEALING SECTIONS 50-16-301 THROUGH 50-16-305 AND 50-16-311~~
 18 ~~THROUGH 50-16-314, MCA."~~

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:21 Section 1. Short title. [This act] may be cited as the
22 "Insurance Information and Privacy Protection Act".23 Section 2. Purpose. The purpose of [this act] is to
24 establish standards for the collection, use, and disclosure
25 of information gathered in connection with insurance

1 transactions by insurance institutions, agents, or
 2 insurance-support organizations; to maintain a balance
 3 between the need for information by those conducting the
 4 business of insurance and the public's need for fairness in
 5 insurance information practices, including the need to
 6 minimize intrusiveness; to establish a regulatory mechanism
 7 to enable natural persons to ascertain what information is
 8 being or has been collected about them in connection with
 9 insurance transactions and to have access to such
 10 information for the purpose of verifying or disputing its
 11 accuracy; to limit the disclosure of information collected
 12 in connection with insurance transactions; and to enable
 13 insurance applicants and policyholders to obtain the reasons
 14 for any adverse underwriting decision.

15 Section 3. Scope of [act]. (1) The obligations imposed
16 by [this act] apply to those insurance institutions, agents,
17 or insurance-support organizations that, on or after [the
18 effective date of this act]:19 (a) in the case of life, health, or disability
20 insurance:21 (i) collect, receive, or maintain information in
22 connection with insurance transactions that pertains to
23 natural persons who are residents of this state; or24 (ii) engage in insurance transactions with applicants,
25 individuals, or policyholders who are residents of this

1 state; and

2 (b) in the case of property or casualty insurance:

3 (i) collect, receive, or maintain information in
4 connection with insurance transactions involving policies,
5 contracts, or certificates of insurance delivered, issued
6 for delivery, or renewed in this state; or

7 (ii) engage in insurance transactions involving
8 policies, contracts, or certificates of insurance delivered,
9 issued for delivery, or renewed in this state.

10 (2) The rights granted by [this act] extend to:

11 (a) in the case of life, health, or disability
12 insurance, the following persons who are residents of this
13 state:

14 (i) natural persons who are the subject of information
15 collected, received, or maintained in connection with
16 insurance transactions; and

17 (ii) applicants, individuals, or policyholders who
18 engage in or seek to engage in insurance transactions; and

19 (b) in the case of property or casualty insurance, the
20 following persons:

21 (i) natural persons who are the subject of information
22 collected, received, or maintained in connection with
23 insurance transactions involving policies, contracts, or
24 certificates of insurance delivered, issued for delivery, or
25 renewed in this state; and

1 (ii) applicants, individuals, or policyholders who
2 engage in or seek to engage in insurance transactions
3 involving policies, contracts, or certificates of insurance
4 delivered, issued for delivery, or renewed in this state.

5 (3) For the purposes of this section, a person is
6 considered a resident of this state if the person's last
7 known mailing address, as shown in the records of the
8 insurance institution, agent, or insurance-support
9 organization, is located in this state.

10 (4) [This act] does not apply to information collected
11 from the public records of a governmental authority and
12 maintained by an insurance institution or its
13 representatives for the purpose of insuring the title to
14 real property located in this state.

15 Section 4. Definitions. As used in [this act], the
16 following definitions apply:

17 (1) (a) "Adverse underwriting decision" means:

18 (i) any of the following actions with respect to
19 insurance transactions involving insurance coverage that are
20 individually underwritten:

21 (A) a declination of insurance coverage;

22 (B) a termination of insurance coverage;

23 (C) failure of an agent to apply for insurance
24 coverage with a specific insurance institution which the
25 agent represents and which is requested by an applicant;

1 (D) in the case of a property or casualty insurance
2 coverage:

3 (I) placement by an insurance institution or agent of
4 a risk with a residual market mechanism, an unauthorized
5 insurer, or an insurance institution which specializes in
6 substandard risks; or

7 (II) the charging of a higher rate on the basis of
8 information that differs from that which the applicant or
9 policyholder furnished;

10 (E) in the case of a life, health, or disability
11 insurance coverage, an offer to insure at higher than
12 standard rates.

13 (b) The following actions are not adverse underwriting
14 decisions but the insurance institution or agent responsible
15 for their occurrence shall nevertheless provide the
16 applicant or policyholder with the specific reason or
17 reasons for their occurrence:

18 (i) the termination of an individual policy form on a
19 class or statewide basis; or

20 (ii) a declination of insurance coverage solely because
21 such coverage is not available on a class or statewide
22 basis; or

23 (iii) the rescission of a policy.

24 (2) "Affiliate" or "affiliated" means a person that
25 directly or indirectly through one or more intermediaries

1 controls, is controlled by, or is under common control with
2 another person.

3 (3) "Agent" means an agent or enrollment
4 representative as defined in 33-17-102 and 33-30-311.

5 (4) "Applicant" means a person who seeks to contract
6 for insurance coverage other than a person seeking group
7 insurance that is not individually underwritten.

8 (5) "Consumer report" means any written, oral, or
9 other communication of information bearing on a natural
10 person's credit worthiness, credit standing, credit
11 capacity, character, general reputation, personal
12 characteristics, or mode of living which is used or expected
13 to be used in connection with an insurance transaction.

14 (6) "Consumer reporting agency" means any person who:

15 (a) regularly engages, in whole or in part, in the
16 practice of assembling or preparing consumer reports for a
17 monetary fee;

18 (b) obtains information primarily from sources other
19 than insurance institutions; and

20 (c) furnishes consumer reports to other persons.

21 (7) "Control", including the terms "controlled by" or
22 "under common control with", means the possession, direct or
23 indirect, of the power to direct or cause the direction of
24 the management and policies of a person, whether through the
25 ownership of voting securities, by contract other than a

1 commercial contract for goods or nonmanagement services, or
 2 otherwise, unless the power is the result of an official
 3 position with or corporate office held by the person.

4 (8) "Declination of insurance coverage" means a
 5 denial, in whole or in part, by an insurance institution or
 6 agent of requested insurance coverage.

7 (9) "Individual" means a natural person who:

8 (a) regarding property or casualty insurance, is a
 9 past, present, or proposed named insured or
 10 certificateholder;

11 (b) regarding life, health, or disability insurance,
 12 is a past, present, or proposed principal insured or
 13 certificateholder;

14 (c) is a past, present, or proposed policyowner;

15 (d) is a past or present applicant;

16 (e) is a past or present claimant; or

17 (f) derived, derives, or is proposed to derive
 18 insurance coverage under an insurance policy or certificate
 19 subject to [this act].

20 (10) "Institutional source" means a person or
 21 governmental entity that provides information about an
 22 individual to an agent, insurance institution, or
 23 insurance-support organization, other than:

24 (a) an agent;

25 (b) the individual who is the subject of the

1 information; or

2 (c) a natural person acting in a personal capacity
 3 rather than a business or professional capacity.

4 (11) "Insurance institution" means a corporation,
 5 association, partnership, reciprocal exchange, interinsurer,
 6 Lloyd's insurer, fraternal benefit society, or other person
 7 engaged in the business of insurance, including health
 8 maintenance organizations, and health service corporations
 9 as defined in 33-30-101. "Insurance institution" does not
 10 include agents or insurance-support organizations.

11 (12) (a) "Insurance-support organization" means a
 12 person who regularly engages, in whole or in part, in the
 13 practice of assembling or collecting information about
 14 natural persons for the primary purpose of providing the
 15 information to an insurance institution or agent for
 16 insurance transactions, including:

17 (i) the furnishing of consumer reports or
 18 investigative consumer reports to an insurance institution
 19 or agent for use in connection with an insurance
 20 transaction; or

21 (ii) the collection of personal information from
 22 insurance institutions, agents, or other insurance-support
 23 organizations for the purpose of detecting or preventing
 24 fraud, material misrepresentation, or material nondisclosure
 25 in connection with insurance underwriting or insurance claim

1 activity.

2 (b) The following persons are not insurance-support
3 organizations for purposes of [this act]: agents, government
4 institutions, insurance institutions, medical care
5 institutions and medical professionals.

6 (13) "Insurance transaction" means a transaction
7 involving insurance primarily for personal, family, or
8 household needs, rather than business or professional needs,
9 that entails:

10 (a) the determination of an individual's eligibility
11 for an insurance coverage, benefit, or payment; or

12 (b) the servicing of an insurance application, policy,
13 contract, or certificate.

14 (14) "Investigative consumer report" means a consumer
15 report or portion thereof containing information about a
16 natural person's character, general reputation, personal
17 characteristics, or mode of living obtained through personal
18 interviews with the person's neighbors, friends, associates,
19 acquaintances, or others who may have knowledge concerning
20 such items of information.

21 (15) "Medical care institution" means a facility or
22 institution that is licensed to provide health care services
23 to natural persons, including but not limited to
24 health-maintenance organizations, home health agencies,
25 hospitals, medical clinics, public health agencies,

1 rehabilitation agencies, and skilled nursing facilities.

2 (16) "Medical professional" means a person licensed or
3 certified to provide health care services to natural
4 persons, including but not limited to a chiropractor,
5 clinical dietitian, clinical psychologist, dentist, nurse,
6 occupational therapist, optometrist, pharmacist, physical
7 therapist, physician, podiatrist, psychiatric social worker
8 or speech therapist.

9 (17) "Medical record information" means personal
10 information that:

11 (a) relates to an individual's physical or mental
12 condition, medical history, or medical treatment; and

13 (b) is obtained from a medical professional or medical
14 care institution, from the individual, or from the
15 individual's spouse, parent, or legal guardian.

16 (18) "Person" means a natural person, corporation,
17 association, partnership, or other legal entity.

18 (19) "Personal information" means any individually
19 identifiable information gathered in connection with an
20 insurance transaction from which judgments can be made about
21 an individual's character, habits, avocations, finances,
22 occupation, general reputation, credit, health, or any other
23 personal characteristics. Personal information includes an
24 individual's name and address and medical record information
25 but does not include privileged information.

1 (20) "Policyholder" means a person who:

2 (a) in the case of individual property or casualty

3 insurance, is a present named insured;

4 (b) in the case of individual life, health, or

5 disability insurance, is a present policyowner; or

6 (c) in the case of group insurance that is

7 individually underwritten, is a present group

8 certificateholder.

9 (21) "Pretext interview" means an interview during

10 which a person, in an attempt to obtain information about a

11 natural person, performs one or more of the following acts:

12 (a) pretends to be someone he is not;

13 (b) pretends to represent a person he is not in fact

14 representing;

15 (c) misrepresents the true purpose of the interview;

16 or

17 (d) refuses to identify himself upon request.

18 (22) "Privileged information" means any individually

19 identifiable information that:

20 (a) relates to a claim for insurance benefits or a

21 civil or criminal proceeding involving an individual; and

22 (b) is collected in connection with or in reasonable

23 anticipation of a claim for insurance benefits or civil or

24 criminal proceeding involving an individual. Information

25 otherwise meeting the requirements of privileged information

1 under this subsection will be considered "personal

2 information" under [this act] if it is disclosed in

3 violation of [section 15].

4 (23) "Residual market mechanism" means an association,

5 organization, or other entity defined or described in

6 33-8-103 and 61-6-144.

7 (24) "Termination of insurance coverage" or

8 "termination of an insurance policy" means either a

9 cancellation or nonrenewal of an insurance policy, in whole

10 or in part, for any reason other than the failure to pay a

11 premium as required by the policy.

12 (25) "Unauthorized insurer" means an insurance

13 institution that has not been granted a certificate of

14 authority by the commissioner to transact the business of

15 insurance in this state.

16 Section 5. Pretext interviews prohibited -- exception.

17 (1) Except as provided in subsection (2), an insurance

18 institution, agent or insurance-support organization may not

19 use or authorize the use of pretext interviews to obtain

20 information in connection with an insurance transaction.

21 (2) A pretext interview may be undertaken to obtain

22 information from a person or institution that does not have

23 a generally or statutorily recognized privileged

24 relationship with the person about whom the information

25 relates for the purpose of investigating a claim when based

1 upon specific information available for review by the
2 commissioner that there is a reasonable basis for suspecting
3 criminal activity, fraud, material misrepresentation, or
4 material nondisclosure in connection with the claim.

5 Section 6. Notice of insurance information practices.

6 (1) An insurance institution or agent shall provide a notice
7 of information practices to all applicants or policyholders
8 in connection with insurance transactions as provided below:

9 (a) in the case of an application for insurance, a
10 notice shall be provided no later than:

11 (i) at the time of the delivery of the insurance
12 policy or certificate when personal information is collected
13 only from the applicant or from public records; or

14 (ii) at the time the collection of personal information
15 is initiated when personal information is collected from a
16 source other than the applicant or public records;

17 (b) in the case of a policy renewal, a notice shall be
18 provided no later than the policy renewal date, except that
19 no notice is required in connection with a policy renewal
20 if:

21 (i) personal information is collected only from the
22 policyholder or from public records; or

23 (ii) a notice meeting the requirements of this section
24 has been given within the previous 24 months; or

25 (c) in the case of a policy reinstatement or change in

1 insurance benefits, a notice shall be provided no later than
2 the time a request for a policy reinstatement or change in
3 insurance benefits is received by the insurance institution,
4 except that no notice is required if personal information is
5 collected only from the policyholder or from public records.

6 (2) The notice must be in writing and must state:

7 (a) whether personal information may be collected from
8 persons other than the individual or individuals proposed
9 for coverage;

10 (b) the types of personal information that may be
11 collected and the types of sources and investigative
12 techniques that may be used to collect such information;

13 (c) the types of disclosures identified in subsections
14 (3), (4), (5), (6), (7), (10), (12), (13), and (15) of
15 [section 15] and the circumstances under which such
16 disclosures may be made without prior authorization.
17 However, only those circumstances that occur with such
18 frequency as to indicate a general business practice must be
19 described.

20 (d) a description of the rights established under
21 [sections 10 and 11] and the manner in which those rights
22 may be exercised; and

23 (e) that information obtained from a report prepared
24 by an insurance-support organization may be retained by the
25 insurance-support organization and disclosed to other

1 persons.

2 (3) In lieu of the notice prescribed in subsection
3 (2), the insurance institution or agent may provide an
4 abbreviated notice informing the applicant or policyholder
5 that:

6 (a) personal information may be collected from persons
7 other than the individual or individuals proposed for
8 coverage;

9 (b) such information as well as other personal or
10 privileged information subsequently collected by the
11 insurance institution or agent may in certain circumstances
12 be disclosed to third parties without authorization;

13 (c) a right of access and correction exists with
14 respect to all personal information collected; and

15 (d) the notice prescribed in subsection (2) must be
16 furnished to the applicant or policyholder upon request.

17 (4) The obligations imposed by this section upon an
18 insurance institution or agent may be satisfied by another
19 insurance institution or agent authorized to act on its
20 behalf.

21 Section 7. Marketing and research surveys. An
22 insurance institution or agent shall clearly specify the
23 questions that are designed to obtain information from an
24 individual in connection with an insurance transaction,
25 solely for marketing or research purposes.

1 Section 8. Content and disclosure of authorization
2 forms. Notwithstanding any other provision of law of this
3 state, an insurance institution, agent, or insurance-support
4 organization may not utilize as its disclosure authorization
5 form in connection with insurance transactions a form or
6 statement that authorizes the disclosure of personal or
7 privileged information about an individual to the insurance
8 institution, agent, or insurance-support organization unless
9 the form or statement:

10 (1) is written in plain language;

11 (2) is dated;

12 (3) specifies the types of persons authorized to
13 disclose information about the individual;

14 (4) specifies the nature of the information authorized
15 to be disclosed;

16 (5) names the insurance institution or agent and
17 identifies by generic reference representatives of the
18 insurance institution to whom the individual is authorizing
19 information to be disclosed;

20 (6) specifies the purposes for which the information
21 is collected;

22 (7) specifies the length of time such authorization
23 remains valid, which may be no longer than:

24 (a) in the case of authorizations signed for the
25 purpose of collecting information in connection with an

1 application for an insurance policy, a policy reinstatement,
2 or a request for change in policy benefits:

3 (i) 30 months from the date the authorization is
4 signed if the application or request involves life, health,
5 or disability insurance;

6 (ii) one year from the date the authorization is signed
7 if the application or request involves property or casualty
8 insurance;

9 (b) in the case of authorizations signed for the
10 purpose of collecting information in connection with a claim
11 for benefits under an insurance policy:

12 (i) the term of coverage of the policy if the claim is
13 for a health insurance benefit;

14 (ii) the duration of the claim if the claim is not for
15 a health insurance benefit; and

16 (8) advises the individual or a person authorized to
17 act on behalf of the individual that the individual or the
18 individual's authorized representative is entitled to
19 receive a copy of the authorization form.

20 Section 9. Investigative consumer reports. (1) An
21 insurance institution, agent, or insurance-support
22 organization may not prepare or request an investigative
23 consumer report about an individual in connection with an
24 insurance transaction involving an application for
25 insurance, a policy renewal, a policy reinstatement, or a

1 change in insurance benefits unless the insurance
2 institution or agent informs the individual:

3 (a) that he may request to be interviewed in
4 connection with the preparation of the investigative
5 consumer report; and

6 (b) that upon a request pursuant to [section 10], he
7 is entitled to receive a copy of the investigative consumer
8 report.

9 (2) If an investigative consumer report is to be
10 prepared by an insurance institution or agent, the insurance
11 institution or agent shall institute reasonable procedures
12 to conduct a personal interview requested by an individual.

13 (3) If an investigative consumer report is to be
14 prepared by an insurance-support organization, the insurance
15 institution or agent desiring such report shall inform the
16 insurance-support organization whether a personal interview
17 has been requested by the individual. The insurance-support
18 organization shall institute reasonable procedures to
19 conduct such interview, if requested.

20 Section 10. Access to recorded personal information.

21 (1) If an individual, after proper identification, submits a
22 written request to an insurance institution, agent, or
23 insurance-support organization for access to recorded
24 personal information about the individual that is reasonably
25 described by the individual and reasonably locatable and

1 retrievable by the insurance institution, agent, or
 2 insurance-support organization, the insurance institution,
 3 agent, or insurance-support organization shall, within 30
 4 business days from the date such request is received:

5 (a) inform the individual of the nature and substance
 6 of the recorded personal information in writing, by
 7 telephone, or by other oral communication, whichever the
 8 insurance institution, agent, or insurance-support
 9 organization prefers;

10 (b) permit the individual to see and copy, in person,
 11 the recorded personal information pertaining to him or to
 12 obtain a copy of the recorded personal information by mail,
 13 whichever the individual prefers. If the recorded personal
 14 information is in coded form an accurate translation in
 15 plain language must be provided in writing.

16 (c) disclose to the individual the identity, if
 17 recorded, of those persons to whom the insurance
 18 institution, agent, or insurance-support organization has
 19 disclosed the personal information within 2 years prior to
 20 the request and if the identity is not recorded, the names
 21 of those insurance institutions, agents, insurance-support
 22 organizations, or other persons to whom such information is
 23 normally disclosed; and

24 (d) provide the individual with a summary of the
 25 procedures he may use to request correction, amendment, or

1 deletion of recorded personal information.

2 (2) Personal information provided pursuant to
 3 subsection (1) must identify the source of the information
 4 if such source is an institutional source.

5 (3) Medical record information supplied by a medical
 6 care institution or medical professional and requested under
 7 subsection (1), together with the identity of the medical
 8 professional or medical care institution that provided the
 9 information, shall be supplied either directly to the
 10 individual or to a medical professional designated by the
 11 individual and licensed to provide medical care with respect
 12 to the condition to which the information relates, whichever
 13 the insurance institution, agent, or insurance-support
 14 organization prefers. If it elects to disclose the
 15 information to a medical professional designated by the
 16 individual, the insurance institution, agent, or
 17 insurance-support organization shall notify the individual,
 18 at the time of the disclosure, that it has provided the
 19 information to the medical professional. THE MEDICAL
 20 PROFESSIONAL MAY REVIEW AND INTERPRET THE INFORMATION AND AT
 21 THE REQUEST OF THE AFFECTED INDIVIDUAL SHALL DISCLOSE ALL OF
 22 THE INFORMATION RECEIVED.

23 (4) Except for personal information provided under
 24 [section 12], an insurance institution, agent, or
 25 insurance-support organization may charge a reasonable fee

1 to cover the costs incurred in providing a copy of recorded
2 personal information to individuals.

3 (5) The obligations imposed by this section upon an
4 insurance institution or agent may be satisfied by another
5 insurance institution or agent authorized to act on its
6 behalf. With respect to the copying and disclosure of
7 recorded personal information pursuant to a request under
8 subsection (1), an insurance institution, agent, or
9 insurance-support organization may make arrangements with an
10 insurance-support organization or a consumer reporting
11 agency to copy and disclose recorded personal information on
12 its behalf.

13 (6) The rights granted to individuals in this section
14 extend to all natural persons to the extent information
15 about them is collected and maintained by an insurance
16 institution, agent, or insurance-support organization in
17 connection with an insurance transaction. The rights granted
18 to all natural persons by this subsection do not extend to
19 information about them that relates to and is collected in
20 connection with or in reasonable anticipation of a claim or
21 civil or criminal proceeding involving them.

22 (7) For the purposes of this section, the term
23 "insurance-support organization" does not include "consumer
24 reporting agency" ~~except-to-the-extent-this-section-imposes~~
25 ~~more-stringent-requirements-on-a-consumer--reporting-agency~~

1 ~~than-other-state-or-federal-law.~~

2 Section 11. Correction, amendment, or deletion of
3 recorded personal information. (1) Within 30 business days
4 from the date of receipt of a written request from an
5 individual to correct, amend, or delete any recorded
6 personal information in its possession about the individual,
7 an insurance institution, agent, or insurance-support
8 organization shall either:

9 (a) correct, amend, or delete the portion of the
10 recorded personal information in dispute; or

11 (b) notify the individual of:

12 (i) its refusal to make such correction, amendment, or
13 deletion;

14 (ii) the reasons for the refusal; and

15 (iii) the individual's right to file a statement as
16 provided in subsection (3).

17 (2) If the insurance institution, agent, or
18 insurance-support organization corrects, amends, or deletes
19 recorded personal information in accordance with subsection
20 (1)(a), the insurance institution, agent, or
21 insurance-support organization shall so notify the
22 individual in writing and furnish the correction, amendment,
23 or fact of deletion to:

24 (a) any person specifically designated by the
25 individual who may have, within the preceding 2 years,

1 received such recorded personal information;

2 (b) any insurance-support organization whose primary
3 source of personal information is insurance institutions if
4 the insurance-support organization has systematically
5 received such recorded personal information from the
6 insurance institution within the preceding 7 years, but the
7 correction, amendment, or fact of deletion need not be
8 furnished if the insurance-support organization no longer
9 maintains recorded personal information about the
10 individual; and

11 (c) any insurance-support organization that furnished
12 the personal information which has been corrected, amended,
13 or deleted.

14 (3) Whenever an individual disagrees with an insurance
15 institution's, agent's, or insurance-support organization's
16 refusal to correct, amend, or delete recorded personal
17 information, the individual may file with the insurance
18 institution, agent, or insurance-support organization:

19 (a) a concise statement setting forth what the
20 individual thinks is the correct, relevant, or fair
21 information; and

22 (b) a concise statement of the reasons why the
23 individual disagrees with the insurance institution's,
24 agent's, or insurance-support organization's refusal to
25 correct, amend, or delete recorded personal information.

1 (4) If an individual files either statement described
2 in subsection (3), the insurance institution, agent, or
3 insurance-support organization shall:

4 (a) file the statement with the disputed personal
5 information and provide a means by which anyone reviewing
6 the disputed personal information will be made aware of
7 individual's statement and have access to it;

8 (b) in any subsequent disclosure by the insurance
9 institution, agent, or insurance-support organization of the
10 recorded personal information that is the subject of
11 disagreement, clearly identify the matter in dispute and
12 provide the individual's statement along with the recorded
13 personal information being disclosed; and

14 (c) furnish the statement to the persons in the manner
15 specified in subsection (2).

16 (5) The rights granted individuals by this section
17 extend to all natural persons to the extent information
18 about them is collected and maintained by an insurance
19 institution, agent, or insurance-support organization in
20 connection with an insurance transaction. The rights granted
21 to natural persons by this subsection do not extend to
22 information about them that relates to and is collected in
23 connection with or in reasonable anticipation of a claim or
24 civil or criminal proceeding involving them.

25 (6) For the purposes of this section, the term

1 "insurance-support organization" does not include "consumer
 2 reporting--agency"--to--the--extent--this--section--imposes--more
 3 stringent--requirements--on--a--consumer--reporting--agency--than
 4 other--state--or--federal--law CONSUMER REPORTING AGENCY.

5 Section 12. Reasons for adverse underwriting
 6 decisions. (1) If an adverse underwriting decision is made,
 7 the insurance institution or agent responsible for the
 8 decision shall:

9 (a) either provide the applicant, policyholder, or
 10 individual proposed for coverage with the specific reason or
 11 reasons for the adverse underwriting decision in writing or
 12 advise such person that upon written request he may receive
 13 the specific reason or reasons in writing; and

14 (b) provide the applicant, policyholder, or individual
 15 proposed for coverage with a summary of the rights
 16 established under subsection (2) and [sections 10 and 11].

17 (2) If a written request is received within 90
 18 business days from the date of the mailing of notice or
 19 other communication of an adverse underwriting decision to
 20 an applicant, policyholder, or individual proposed for
 21 coverage, the insurance institution or agent shall within 21
 22 business days from the date of receipt of the written
 23 request furnish the person:

24 (a) the specific reason or reasons for the adverse
 25 underwriting decision, in writing, if such information was

1 not initially furnished in writing pursuant to subsection
 2 (1)(a);

3 (b) the specific items of personal and privileged
 4 information that support those reasons; however:

5 (i) the insurance institution or agent is not required
 6 to furnish specific items of privileged information if it
 7 has a reasonable suspicion, based upon specific information
 8 available for review by the commissioner, that the
 9 applicant, policyholder, or individual proposed for coverage
 10 has engaged in criminal activity, fraud, material
 11 misrepresentation, or material nondisclosure; and

12 (ii) specific items of medical record information
 13 supplied by a medical care institution or medical
 14 professional shall--be--disclosed--either--directly--to--the
 15 individual--about--whom--the--information--relates--or--to--a
 16 medical--professional--designated--by--the--individual--and
 17 licensed--to--provide--medical--care--with--respect--to--the
 18 condition--to--which--the--information--relates,--whichever--the
 19 insurance--institution--or--agent--prefers, TOGETHER WITH THE
 20 IDENTITY OF THE MEDICAL PROFESSIONAL OR MEDICAL CARE
 21 INSTITUTION THAT PROVIDED THE INFORMATION, SHALL BE
 22 DISCLOSED IN ACCORDANCE WITH SUBSECTION (3) OF [SECTION 10];

23 and

24 (c) the names and addresses of the institutional
 25 sources that supplied the specific items of information

1 pursuant to subsection (2)(b) ~~except that the identity of~~
 2 ~~any medical professional or medical care institution must be~~
 3 ~~disclosed either directly to the individual or to the~~
 4 ~~designated medical professional, whichever the insurance~~
 5 ~~institution or agent prefers.~~

6 (3) The obligations imposed by this section upon an
 7 insurance institution or agent may be satisfied by another
 8 insurance institution or agent authorized to act on its
 9 behalf.

10 (4) When an adverse underwriting decision results
 11 solely from an oral request or inquiry, the explanation of
 12 reasons and summary of rights required by subsection (1) may
 13 be given orally.

14 Section 13. Information concerning previous adverse
 15 underwriting decisions. An insurance institution, agent, or
 16 insurance-support organization may not seek information in
 17 connection with an insurance transaction concerning:

18 (1) any previous adverse underwriting decision
 19 experienced by an individual; or

20 (2) any previous insurance coverage obtained by an
 21 individual through a residual market mechanism unless the
 22 inquiry also requests the reasons for any previous adverse
 23 underwriting decision or the reasons why insurance coverage
 24 was previously obtained through a residual market mechanism.

25 Section 14. Previous adverse underwriting decisions.

1 An insurance institution or agent may not base an adverse
 2 underwriting decision in whole or in part:

3 (1) on the fact of a previous adverse underwriting
 4 decision or on the fact that an individual previously
 5 obtained insurance coverage through a residual market
 6 mechanism, but an insurance institution or agent may base an
 7 adverse underwriting decision on further information
 8 obtained from an insurance institution or agent responsible
 9 for a previous adverse underwriting decision;

10 (2) on personal information received from an
 11 insurance-support organization whose primary source of
 12 information is insurance institutions, but an insurance
 13 institution or agent may base an adverse underwriting
 14 decision on further personal information obtained as the
 15 result of information received from such insurance-support
 16 organization.

17 Section 15. Disclosure limitations and conditions. (1)
 18 Except as provided in this section, an insurance
 19 institution, agent, or insurance-support organization may
 20 not disclose any personal or privileged information about an
 21 individual collected or received in connection with an
 22 insurance transaction.

23 (2) Disclosure may be made with the written
 24 authorization of the individual but:

25 (a) if the authorization is submitted by another

1 insurance institution, agent, or insurance-support
2 organization, the authorization must meet the requirements
3 of [section 8]; or

4 (b) if the authorization is submitted by a person
5 other than an insurance institution, agent, or
6 insurance-support organization, the authorization must be:

- 7 (i) dated;
8 (ii) signed by the individual; and
9 (iii) obtained 1 year or less prior to the date a
10 disclosure is sought pursuant to this subsection.

11 (3) Disclosure may be made to a person other than an
12 insurance institution, agent, or insurance-support
13 organization, provided such disclosure is reasonably
14 necessary:

15 (a) to enable such person to perform a business,
16 professional, or insurance function for the disclosing
17 insurance institution, agent, or insurance-support
18 organization and such person agrees not to disclose the
19 information further without the individual's written
20 authorization unless the further disclosure:

21 (i) would otherwise be permitted by this section if
22 made by an insurance institution, agent, or
23 insurance-support organization; or

24 (ii) is reasonably necessary for such person to perform
25 its function for the disclosing insurance institution,

1 agent, or insurance-support organization; or

2 (b) to enable such person to provide information to
3 the disclosing insurance institution, agent, or
4 insurance-support organization for the purpose of:

- 5 (i) determining an individual's eligibility for an
6 insurance benefit or payment; or
7 (ii) detecting or preventing criminal activity, fraud,
8 material misrepresentation, or material nondisclosure in
9 connection with an insurance transaction.

10 (4) Disclosure may be made to an insurance
11 institution, agent, insurance-support organization, or
12 self-insurer if the information disclosed is limited to that
13 which is reasonably necessary:

14 (a) to detect or prevent criminal activity, fraud,
15 material misrepresentation, or material nondisclosure in
16 connection with insurance transactions; or

17 (b) for either the disclosing or receiving insurance
18 institution, agent, or insurance-support organization to
19 perform its function in connection with an insurance
20 transaction involving the individual.

21 (5) Disclosure may be made to a medical care
22 institution or medical professional of that information
23 reasonably necessary for the following purposes:

- 24 (a) verifying insurance coverage or benefits;
25 (b) informing an individual of a medical problem of

1 which the individual may not be aware; or

2 (c) conducting an operations or services audit.

3 (6) Disclosure may be made to an insurance regulatory
4 authority.

5 (7) Disclosure may be made to a law enforcement or
6 other government authority:

7 (a) to protect the interests of the insurance
8 institution, agent, or insurance-support organization in
9 preventing or prosecuting the perpetration of fraud upon it;
10 or

11 (b) if the insurance institution, agent, or
12 insurance-support organization reasonably believes that
13 illegal activities have been conducted by the individual.

14 (8) Disclosure may be made as otherwise permitted or
15 required by law.

16 (9) Disclosure may be made in response to a facially
17 valid administrative or judicial order, including a search
18 warrant or subpoena.

19 (10) Disclosure may be made for the purpose of
20 conducting actuarial or research studies, provided:

21 (a) no individual may be identified in any actuarial
22 or research report;

23 (b) materials allowing the individual to be identified
24 are returned or destroyed as soon as they are no longer
25 needed; and

1 (c) the actuarial or research organization agrees not
2 to disclose the information unless the disclosure would
3 otherwise be permitted by this section if made by an
4 insurance institution, agent, or insurance-support
5 organization.

6 (11) Disclosure may be made to a party or a
7 representative of a party to a proposed or consummated sale,
8 transfer, merger, or consolidation of all or part of the
9 business of the insurance institution, agent, or
10 insurance-support organization, if:

11 (a) prior to the consummation of the sale, transfer,
12 merger, or consolidation only such information is disclosed
13 as is reasonably necessary to enable the recipient to make
14 business decisions about the purchase, transfer, merger, or
15 consolidation; and

16 (b) the recipient agrees not to disclose the
17 information unless the disclosure would otherwise be
18 permitted by this section if made by an insurance
19 institution, agent, or insurance-support organization.

20 (12) Disclosure may be made to a person whose only use
21 of such information will be in connection with the marketing
22 of a product or service, if:

23 (a) no medical record information, privileged
24 information, or personal information relating to an
25 individual's character, personal habits, mode of living, or

1 general reputation is disclosed, and no classification
2 derived from such information is disclosed;

3 (b) the individual has been given an opportunity to
4 indicate that he does not want personal information
5 disclosed for marketing purposes and has given no indication
6 that he does not want the information disclosed; and

7 (c) the person receiving the information agrees not to
8 use it except in connection with the marketing of a product
9 or service.

10 (13) Disclosure may be made to an affiliate whose only
11 use of the information will be in connection with an audit
12 of the insurance institution or agent or the marketing of
13 an insurance product or service if the affiliate agrees not
14 to disclose the information for any other purpose or to
15 unaffiliated persons.

16 (14) Disclosure may be made by a consumer reporting
17 agency to a person other than an insurance institution or
18 agent.

19 (15) Disclosure may be made to a group policyholder for
20 the purpose of reporting claims experience or conducting an
21 audit of the insurance institution's or agent's operations
22 or services if the information disclosed is reasonably
23 necessary for the group policyholder to conduct the review
24 or audit.

25 (16) Disclosure may be made to a professional peer

1 review organization for the purpose of reviewing the service
2 or conduct of a medical care institution or medical
3 professional.

4 (17) Disclosure may be made to a governmental authority
5 for the purpose of determining the individual's eligibility
6 for health benefits for which the governmental authority may
7 be liable.

8 (18) Disclosure may be made to a certificateholder or
9 policyholder for the purpose of providing information
10 regarding the status of an insurance transaction.

11 Section 16. Power of the commissioner. (1) The
12 commissioner has the power to examine and investigate the
13 affairs of every insurance institution or agent doing
14 business in this state to determine whether the insurance
15 institution or agent has been or is engaged in any conduct
16 in violation of [this act].

17 (2) The commissioner has the power to examine and
18 investigate the affairs of every insurance-support
19 organization acting on behalf of an insurance institution or
20 agent that either transacts business in this state or
21 transacts business outside this state which has an effect on
22 a person residing in this state in order to determine
23 whether such insurance-support organization has been or is
24 engaged in any conduct in violation of [this act].

25 Section 17. Hearings-----witnesses-----appearances

1 production of books, and service of process. (1) The
 2 commissioner shall hold a hearing whenever he has reason to
 3 believe that an insurance institution, agent, or
 4 insurance support organization has been or is engaged in
 5 conduct in this state that violates [this act] or if the
 6 commissioner believes that an insurance support organization
 7 has been or is engaged in conduct outside this state which
 8 has an effect on a person residing in this state and which
 9 violates [this act]. ~~The commissioner shall issue and serve~~
 10 ~~upon such insurance institution, agent, or insurance support~~
 11 ~~organization a statement of charges and notice of hearing~~
 12 ~~specifying a time and place for the hearing. The date for~~
 13 ~~the hearing may not be less than 20 days after the date of~~
 14 ~~service.~~

15 (2) ~~At the hearing the insurance institution, agent,~~
 16 ~~or insurance support organization charged has the~~
 17 ~~opportunity to answer the charges against it and present~~
 18 ~~evidence on its behalf. Upon good cause shown, the~~
 19 ~~commissioner may permit any adversely affected person, by~~
 20 ~~counsel or in person, to intervene, appear, and be heard at~~
 21 ~~the hearing.~~

22 (3) ~~At a hearing conducted pursuant to this section,~~
 23 ~~the commissioner may administer oaths, examine and~~
 24 ~~cross-examine witnesses, and receive oral and documentary~~
 25 ~~evidence. The commissioner has the power to subpoena~~

1 witnesses, compel their attendance, and require the
 2 production of books, papers, records, correspondence, and
 3 other documents that are relevant to the hearings. A
 4 stenographic record of the hearing shall be made upon the
 5 request of any party or at the discretion of the
 6 commissioner. If no stenographic record is made and if
 7 judicial review is sought, the commissioner shall prepare a
 8 statement of the evidence for use on review. Hearings
 9 conducted under this section are governed by the same rules
 10 of evidence and procedure applicable to administrative
 11 proceedings conducted under Title 2, chapter 4 AND TITLE 33,
 12 CHAPTER 1, PART 7.

13 (4) ~~Statements of charges, notices, orders, and other~~
 14 ~~processes of the commissioner under [this act] may be served~~
 15 ~~by anyone duly authorized to act on behalf of the~~
 16 ~~commissioner. Service of process may be completed in the~~
 17 ~~manner provided by law for service of process in civil~~
 18 ~~actions or by registered mail. A copy of the statement of~~
 19 ~~charges, notices, orders, or other process shall be provided~~
 20 ~~to the person or persons whose rights under [this act] have~~
 21 ~~been allegedly violated. A verified return setting forth the~~
 22 ~~manner of service or return postcard receipt in the case of~~
 23 ~~registered mail is sufficient proof of service.~~

24 Section 18. Service of process -- insurance support
 25 organizations. For the purpose of [this act], an

1 insurance-support organization transacting business outside
 2 this state that has an effect on a person residing in this
 3 state is considered to have appointed the commissioner to
 4 accept service of process on its behalf. The commissioner
 5 shall mail a copy of the notice by registered mail to the
 6 insurance-support organization at its last known principal
 7 place of business. The return postcard receipt for such
 8 mailing is sufficient proof that the same was properly
 9 mailed by the commissioner.

10 Section 19. Cease and desist orders and reports. (1)
 11 If, after a hearing pursuant to [section 17], the
 12 commissioner determines that the insurance institution,
 13 agent, or insurance-support organization charged has engaged
 14 in conduct or practices in violation of [this act], the
 15 commissioner shall reduce his findings AND CONCLUSIONS to
 16 writing and shall issue and cause IHEM to be served upon the
 17 insurance institution, agent, or insurance-support
 18 organization ~~a copy of the findings and an order requiring~~
 19 ~~the insurance institution, agent, or insurance-support~~
 20 ~~organization to cease and desist from the conduct or~~
 21 ~~practices constituting a violation of [this act] AS PROVIDED~~
 22 BY LAW.

23 (2) If, after a hearing pursuant to [section 17], the
 24 commissioner determines that the insurance institution,
 25 agent, or insurance-support organization charged has not

1 engaged in conduct or practices in violation of [this act],
 2 the commissioner shall prepare a written report which sets
 3 forth findings of fact and conclusions of law. The report
 4 shall be served upon the insurance institution, agent, or
 5 insurance-support organization charged and upon the person
 6 or persons if any, whose rights under [this act] were
 7 allegedly violated, IN THE MANNER PROVIDED BY LAW FOR
 8 SERVICE OF AGENCY ORDERS.

9 ~~(3) Until the expiration of the time allowed under~~
 10 ~~[section 21] for filing a petition for review or until such~~
 11 ~~a petition is filed, whichever occurs first, the~~
 12 ~~commissioner may modify or set aside any order or report~~
 13 ~~issued under this section. After the expiration of the time~~
 14 ~~allowed under [section 21] for filing a petition for review~~
 15 ~~or if no such petition has been filed, the commissioner may~~
 16 ~~after notice and opportunity for hearing, alter, modify, or~~
 17 ~~set aside, in whole or in part, any order or report issued~~
 18 ~~under this section whenever conditions of fact or law~~
 19 ~~warrant such action or if the public interest so requires.~~

20 Section 20. Penalties CIVIL PENALTIES. (1) If a
 21 hearing pursuant to [section 17] results in the finding of a
 22 knowing violation of [this act], the commissioner may, in
 23 addition to the issuance of a cease and desist order as
 24 prescribed in [section 19], order payment of a CIVIL penalty
 25 of not more than \$500 for each violation but not to exceed

1 \$10,000 in the aggregate for multiple violations.

2 (2) Any person who violates a cease and desist order
3 of the commissioner under [section 19] may, after notice and
4 hearing and upon order of the commissioner, be subject to
5 one or more of the following penalties, at the discretion of
6 the commissioner:

7 (a) a fine CIVIL PENALTY of not more than \$10,000 for
8 each violation; or

9 (b) a fine CIVIL PENALTY of not more than \$50,000 if
10 the commissioner finds that violations have occurred with
11 such frequency as to constitute a general business practices;
12 and

13 (c) suspension or revocation of an insurance
14 institution's or agent's license.

15 Section 21. Judicial review of orders and reports. (1)
16 Any person subject to an order of the commissioner under
17 [section 19] or [section 20] or any person whose rights
18 under [this act] were allegedly violated may obtain a review
19 of any order or report of the commissioner by filing in the
20 district court of Lewis and Clark County within 30 days
21 from the date of the service of such order or report, a
22 written petition requesting that the order or report of the
23 commissioner be set aside. A copy of the petition must at
24 the same time be served upon the commissioner, who shall
25 forthwith certify and file in the district court a

1 transcript of the entire record of the proceeding giving
2 rise to the order or report that is the subject of the
3 petition. Upon the filing of the petition and transcript
4 the district court has jurisdiction to make and enter a
5 decree modifying, affirming, or reversing any order or
6 report of the commissioner in whole or in part. The
7 findings of the commissioner as to the facts supporting any
8 order or report, if supported by clear and convincing
9 evidence, are conclusive.

10 (2) To the extent an order or report of the
11 commissioner is affirmed, the court shall issue its own
12 order commanding obedience to the terms of the order or
13 report of the commissioner. If any party affected by an
14 order or report of the commissioner applies to the court for
15 leave to produce additional evidence and shows to the
16 satisfaction of the court that such additional evidence is
17 material and that there are reasonable grounds for the
18 failure to produce such evidence in prior proceedings, the
19 court may order such additional evidence to be taken before
20 the commissioner in such manner and upon such terms and
21 conditions as the court may consider proper. The
22 commissioner may modify his findings of fact or make new
23 findings by reason of the additional evidence so taken and
24 shall file such modified or new findings along with any
25 recommendation, if any, for the modification or revocation

1 ~~of a previous order or report, if supported by clear and~~
 2 ~~convincing evidence, the modified or new findings shall be~~
 3 ~~conclusive as to the matters contained therein.~~

4 ~~(3) An order or report issued by the commissioner~~
 5 ~~under [sections 19 or 20] is final.~~

6 ~~(a) Upon the expiration of the time allowed for the~~
 7 ~~filing of a petition for review, if no such petition has~~
 8 ~~been duly filed, except that the commissioner may modify or~~
 9 ~~set aside an order or report to the extent provided in~~
 10 ~~[section 19(3)] or~~

11 ~~(b) upon a final decision of the district court if the~~
 12 ~~court directs that the order or report of the commissioner~~
 13 ~~be affirmed or the petition for review dismissed.~~

14 ~~(4) No order or report of the commissioner under [this~~
 15 ~~act] or order of a court to enforce the same in any way~~
 16 ~~relieves or absolves any person affected by the order or~~
 17 ~~report from any liability under any other law of this state~~
 18 AS PROVIDED BY 33-1-711.

19 Section 22. Individual remedies. (1) If any insurance
 20 institution, agent, or insurance-support organization fails
 21 to comply with [sections 10, 11, or 12] with respect to the
 22 rights granted under [those sections], any person whose
 23 rights are violated may apply to the district court of this
 24 state or any other court of competent jurisdiction for
 25 appropriate equitable relief.

1 (2) An insurance institution, agent, or
 2 insurance-support organization that discloses information in
 3 violation of [section 15] is liable for damages sustained by
 4 the individual to whom the information relates. However, an
 5 individual is not entitled to a monetary award which exceeds
 6 the actual damages sustained by the individual as a result
 7 of a violation of [section 15].

8 (3) In any action brought pursuant to this section,
 9 the court may award the cost of the action and reasonable
 10 attorney's fees to the prevailing party.

11 (4) An action under this section must be brought
 12 within 2 years from the date the alleged violation is or
 13 should have been discovered.

14 (5) Except as specifically provided in this section,
 15 there is no remedy or recovery available to individuals, in
 16 law or in equity, for occurrences constituting a violation
 17 of any provision of [this act].

18 Section 23. Immunity. A cause of action or claim for
 19 relief in the nature of defamation, invasion of privacy, or
 20 negligence does not arise against any person for disclosing
 21 personal or privileged information in accordance with [this
 22 act], nor does such a cause of action or claim for relief
 23 arise against any person for furnishing personal or
 24 privileged information to an insurance institution, agent,
 25 or insurance-support organization. However, this section

1 does not provide immunity for disclosing or furnishing false
 2 information with malice or willful intent to injure any
 3 person.

4 Section 24. Obtaining information under false
 5 pretenses. Any person who knowingly and willfully obtains
 6 information about an individual from an insurance
 7 institution, agent, or insurance-support organization under
 8 false pretenses shall be fined not more than \$10,000 or
 9 imprisoned for not more than 1 year, or both.

10 Section 25. Codification instruction. This act is
 11 intended to be codified as an integral part of Title 33, and
 12 the provisions of Title 33 apply to this act.

13 Section 26. Severability. If a part of this act is
 14 invalid, all valid parts that are severable from the invalid
 15 part remain in effect. If a part of this act is invalid in
 16 one or more of its applications, the part remains in effect
 17 in all valid applications that are severable from the
 18 invalid applications.

19 ~~Section 27. Repealer. Sections 50-16-301 through~~
 20 ~~50-16-305 and 50-16-311 through 50-16-314, MCA, are~~
 21 ~~repealed.~~

22 Section 27. Effective date. (1) This act is effective
 23 on July 1, 1982.

24 (2) The rights granted under [sections 10, 11, and 15]
 25 are effective on July 1, 1982, regardless of the date of the

1 collection or receipt of the information that is the subject
 2 of those sections.

-End-

April 22, 1981

FREE CONFERENCE COMMITTEE
ON SENATE BILL NO. 240

(Report No. 1, April 21, 1981)

MR. PRESIDENT AND SPEAKER OF THE HOUSE:

We, your Free Conference Committee on Senate Bill No. 240, met April 21, 1981, and considered:

House Judiciary Committee Amendments to the third reading copy, dated March 24, 1981, and recommend as follows:

That the House recede from Committee amendment nos. 1, 3, and 4;

That the Senate accede to Committee amendment no. 2;

That Senate Bill No. 240 be further amended as specified in CLERICAL INSTRUCTION no. 1;

That the reference copy of Senate Bill No. 240 read as specified in the CLERICAL INSTRUCTIONS;


And, that the Free Conference Committee Report on Senate Bill No. 240 be adopted.

CLERICAL INSTRUCTIONS:


- 1. Page 20, lines 19 through 22.
Following: "professional."
Strike: all underlined language.
Insert: "The medical professional may review and interpret the information and at the request of the affected individual shall consult with the affected individual"
- 2. Page 26, lines 14 through 22.
Following: "professional"
Strike: all underlined language.
Insert: all stricken language.
- 3. Page 27, lines 1 through 5.
Following: "(2)(b)"
Insert: all stricken language.

FOR THE SENATE:

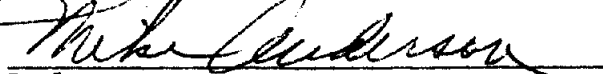
FOR THE HOUSE:




Hazelbaker, Chairman



Fabrega, Chairman



Anderson



Keedy

1 SENATE BILL NO. 240

2 INTRODUCED BY HAZELBAKER

3 BY REQUEST OF THE MONTANA DEPARTMENT OF INSURANCE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH STANDARDS
6 FOR THE COLLECTION, USE, AND DISCLOSURE OF INFORMATION
7 GATHERED IN CONNECTION WITH INSURANCE TRANSACTIONS BY
8 INSURANCE INSTITUTIONS, AGENTS, OR INSURANCE-SUPPORT
9 ORGANIZATIONS; TO PROVIDE A PROCEDURE FOR ACCESS BY PRIVATE
10 PERSONS TO INFORMATION GATHERED ABOUT THEM FOR THE PURPOSE
11 OF VERIFYING OR DISPUTING ITS ACCURACY; TO LIMIT THE
12 DISCLOSURE OF INFORMATION COLLECTED IN CONNECTION WITH
13 INSURANCE TRANSACTIONS; TO GIVE THE COMMISSIONER OF
14 INSURANCE THE POWER TO INVESTIGATE AND ISSUE CEASE AND
15 DESIST ORDERS FOR VIOLATIONS OF THIS ACT; TO PROVIDE FOR
16 EQUITABLE RELIEF IN THE DISTRICT COURT AND FOR A PENALTY;
17 ~~REPEALING SECTIONS 50-16-301 THROUGH 50-16-305 AND 50-16-311~~
18 ~~THROUGH 50-16-314, MCA."~~

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

21 Section 1. Short title. [This act] may be cited as the
22 "Insurance Information and Privacy Protection Act".

23 Section 2. Purpose. The purpose of [this act] is to
24 establish standards for the collection, use, and disclosure
25 of information gathered in connection with insurance

1 transactions by insurance institutions, agents, or
2 insurance-support organizations; to maintain a balance
3 between the need for information by those conducting the
4 business of insurance and the public's need for fairness in
5 insurance information practices, including the need to
6 minimize intrusiveness; to establish a regulatory mechanism
7 to enable natural persons to ascertain what information is
8 being or has been collected about them in connection with
9 insurance transactions and to have access to such
10 information for the purpose of verifying or disputing its
11 accuracy; to limit the disclosure of information collected
12 in connection with insurance transactions; and to enable
13 insurance applicants and policyholders to obtain the reasons
14 for any adverse underwriting decision.

15 Section 3. Scope of [act]. (1) The obligations imposed
16 by [this act] apply to those insurance institutions, agents,
17 or insurance-support organizations that, on or after [the
18 effective date of this act]:

19 (a) in the case of life, health, or disability
20 insurance:

21 (i) collect, receive, or maintain information in
22 connection with insurance transactions that pertains to
23 natural persons who are residents of this state; or

24 (ii) engage in insurance transactions with applicants,
25 individuals, or policyholders who are residents of this

1 state; and

2 (b) in the case of property or casualty insurance:

3 (i) collect, receive, or maintain information in
4 connection with insurance transactions involving policies,
5 contracts, or certificates of insurance delivered, issued
6 for delivery, or renewed in this state; or

7 (ii) engage in insurance transactions involving
8 policies, contracts, or certificates of insurance delivered,
9 issued for delivery, or renewed in this state.

10 (2) The rights granted by [this act] extend to:

11 (a) in the case of life, health, or disability
12 insurance, the following persons who are residents of this
13 state:

14 (i) natural persons who are the subject of information
15 collected, received, or maintained in connection with
16 insurance transactions; and

17 (ii) applicants, individuals, or policyholders who
18 engage in or seek to engage in insurance transactions; and

19 (b) in the case of property or casualty insurance, the
20 following persons:

21 (i) natural persons who are the subject of information
22 collected, received, or maintained in connection with
23 insurance transactions involving policies, contracts, or
24 certificates of insurance delivered, issued for delivery, or
25 renewed in this state; and

1 (ii) applicants, individuals, or policyholders who
2 engage in or seek to engage in insurance transactions
3 involving policies, contracts, or certificates of insurance
4 delivered, issued for delivery, or renewed in this state.

5 (3) For the purposes of this section, a person is
6 considered a resident of this state if the person's
7 last-known mailing address, as shown in the records of the
8 insurance institution, agent, or insurance-support
9 organization, is located in this state.

10 (4) [This act] does not apply to information collected
11 from the public records of a governmental authority and
12 maintained by an insurance institution or its
13 representatives for the purpose of insuring the title to
14 real property located in this state.

15 Section 4. Definitions. As used in [this act], the
16 following definitions apply:

17 (1) (a) "Adverse underwriting decision" means:

18 (i) any of the following actions with respect to
19 insurance transactions involving insurance coverage that are
20 individually underwritten:

21 (A) a declination of insurance coverage;

22 (B) a termination of insurance coverage;

23 (C) failure of an agent to apply for insurance
24 coverage with a specific insurance institution which the
25 agent represents and which is requested by an applicant;

1 (D) in the case of a property or casualty insurance
2 coverage;

3 (I) placement by an insurance institution or agent of
4 a risk with a residual market mechanism, an unauthorized
5 insurer, or an insurance institution which specializes in
6 substandard risks; or

7 (II) the charging of a higher rate on the basis of
8 information that differs from that which the applicant or
9 policyholder furnished;

10 (E) in the case of a life, health, or disability
11 insurance coverage, an offer to insure at higher than
12 standard rates.

13 (b) The following actions are not adverse underwriting
14 decisions but the insurance institution or agent responsible
15 for their occurrence shall nevertheless provide the
16 applicant or policyholder with the specific reason or
17 reasons for their occurrence:

18 (i) the termination of an individual policy form on a
19 class or statewide basis; or

20 (ii) a declination of insurance coverage solely because
21 such coverage is not available on a class or statewide
22 basis; or

23 (iii) the rescission of a policy.

24 (2) "Affiliate" or "affiliated" means a person that
25 directly or indirectly through one or more intermediaries

1 controls, is controlled by, or is under common control with
2 another person.

3 (3) "Agent" means an agent or enrollment
4 representative as defined in 33-17-102 and 33-30-311.

5 (4) "Applicant" means a person who seeks to contract
6 for insurance coverage other than a person seeking group
7 insurance that is not individually underwritten.

8 (5) "Consumer report" means any written, oral, or
9 other communication of information bearing on a natural
10 person's credit worthiness, credit standing, credit
11 capacity, character, general reputation, personal
12 characteristics, or mode of living which is used or expected
13 to be used in connection with an insurance transaction.

14 (6) "Consumer reporting agency" means any person who:

15 (a) regularly engages, in whole or in part, in the
16 practice of assembling or preparing consumer reports for a
17 monetary fee;

18 (b) obtains information primarily from sources other
19 than insurance institutions; and

20 (c) furnishes consumer reports to other persons.

21 (7) "Control", including the terms "controlled by" or
22 "under common control with", means the possession, direct or
23 indirect, of the power to direct or cause the direction of
24 the management and policies of a person, whether through the
25 ownership of voting securities, by contract other than a

1 commercial contract for goods or nonmanagement services, or
2 otherwise, unless the power is the result of an official
3 position with or corporate office held by the person.

4 (8) "Declination of insurance coverage" means a
5 denial, in whole or in part, by an insurance institution or
6 agent of requested insurance coverage.

7 (9) "Individual" means a natural person who:

8 (a) regarding property or casualty insurance, is a
9 past, present, or proposed named insured or certificate
10 holder;

11 (b) regarding life, health, or disability insurance,
12 is a past, present, or proposed principal insured or
13 certificate holder;

14 (c) is a past, present, or proposed policyowner;

15 (d) is a past or present applicant;

16 (e) is a past or present claimant; or

17 (f) derived, derives, or is proposed to derive
18 insurance coverage under an insurance policy or certificate
19 subject to [this act].

20 (10) "Institutional source" means a person or
21 governmental entity that provides information about an
22 individual to an agent, insurance institution, or
23 insurance-support organization, other than:

24 (a) an agent;

25 (b) the individual who is the subject of the

1 information; or

2 (c) a natural person acting in a personal capacity
3 rather than a business or professional capacity.

4 (11) "Insurance institution" means a corporation,
5 association, partnership, reciprocal exchange, interinsurer,
6 Lloyd's insurer, fraternal benefit society, or other person
7 engaged in the business of insurance, including health
8 maintenance organizations, and health service corporations
9 as defined in 33-30-101. "Insurance institution" does not
10 include agents or insurance-support organizations.

11 (12) (a) "Insurance-support organization" means a
12 person who regularly engages, in whole or in part, in the
13 practice of assembling or collecting information about
14 natural persons for the primary purpose of providing the
15 information to an insurance institution or agent for
16 insurance transactions, including:

17 (i) the furnishing of consumer reports or
18 investigative consumer reports to an insurance institution
19 or agent for use in connection with an insurance
20 transaction; or

21 (ii) the collection of personal information from
22 insurance institutions, agents, or other insurance-support
23 organizations for the purpose of detecting or preventing
24 fraud, material misrepresentation, or material nondisclosure
25 in connection with insurance underwriting or insurance claim

1 activity.

2 (b) The following persons are not insurance-support
3 organizations for purposes of [this act]: agents, government
4 institutions, insurance institutions, medical care
5 institutions, and medical professionals.

6 (13) "Insurance transaction" means a transaction
7 involving insurance primarily for personal, family, or
8 household needs, rather than business or professional needs,
9 that entails:

10 (a) the determination of an individual's eligibility
11 for an insurance coverage, benefit, or payment; or

12 (b) the servicing of an insurance application, policy,
13 contract, or certificate.

14 (14) "Investigative consumer report" means a consumer
15 report or portion thereof containing information about a
16 natural person's character, general reputation, personal
17 characteristics, or mode of living obtained through personal
18 interviews with the person's neighbors, friends, associates,
19 acquaintances, or others who may have knowledge concerning
20 such items of information.

21 (15) "Medical care institution" means a facility or
22 institution that is licensed to provide health care services
23 to natural persons, including but not limited to health
24 maintenance organizations, home health agencies, hospitals,
25 medical clinics, public health agencies, rehabilitation

1 agencies, and skilled nursing facilities.

2 (16) "Medical professional" means a person licensed or
3 certified to provide health care services to natural
4 persons, including but not limited to a chiropractor,
5 clinical dietitian, clinical psychologist, dentist, nurse,
6 occupational therapist, optometrist, pharmacist, physical
7 therapist, physician, podiatrist, psychiatric social worker,
8 or speech therapist.

9 (17) "Medical record information" means personal
10 information that:

11 (a) relates to an individual's physical or mental
12 condition, medical history, or medical treatment; and

13 (b) is obtained from a medical professional or medical
14 care institution, from the individual, or from the
15 individual's spouse, parent, or legal guardian.

16 (18) "Person" means a natural person, corporation,
17 association, partnership, or other legal entity.

18 (19) "Personal information" means any individually
19 identifiable information gathered in connection with an
20 insurance transaction from which judgments can be made about
21 an individual's character, habits, avocations, finances,
22 occupation, general reputation, credit, health, or any other
23 personal characteristics. Personal information includes an
24 individual's name and address and medical record information
25 but does not include privileged information.

1 (20) "Policyholder" means a person who:

2 (a) in the case of individual property or casualty
3 insurance, is a present named insured;

4 (b) in the case of individual life, health, or
5 disability insurance, is a present policyowner; or

6 (c) in the case of group insurance that is
7 individually underwritten, is a present group certificate
8 holder.

9 (21) "Pretext interview" means an interview during
10 which a person, in an attempt to obtain information about a
11 natural person, performs one or more of the following acts:

12 (a) pretends to be someone he is not;

13 (b) pretends to represent a person he is not in fact
14 representing;

15 (c) misrepresents the true purpose of the interview;
16 or

17 (d) refuses to identify himself upon request.

18 (22) "Privileged information" means any individually
19 identifiable information that:

20 (a) relates to a claim for insurance benefits or a
21 civil or criminal proceeding involving an individual; and

22 (b) is collected in connection with or in reasonable
23 anticipation of a claim for insurance benefits or civil or
24 criminal proceeding involving an individual. Information
25 otherwise meeting the requirements of privileged information

1 under this subsection will be considered "personal
2 information" under [this act] if it is disclosed in
3 violation of [section 15].

4 (23) "Residual market mechanism" means an association,
5 organization, or other entity defined or described in
6 33-8-103 and 61-6-144.

7 (24) "Termination of insurance coverage" or
8 "termination of an insurance policy" means either a
9 cancellation or nonrenewal of an insurance policy, in whole
10 or in part, for any reason other than the failure to pay a
11 premium as required by the policy.

12 (25) "Unauthorized insurer" means an insurance
13 institution that has not been granted a certificate of
14 authority by the commissioner to transact the business of
15 insurance in this state.

16 Section 5. Pretext interviews prohibited -- exception.
17 (1) Except as provided in subsection (2), an insurance
18 institution, agent, or insurance-support organization may
19 not use or authorize the use of pretext interviews to obtain
20 information in connection with an insurance transaction.

21 (2) A pretext interview may be undertaken to obtain
22 information from a person or institution that does not have
23 a generally or statutorily recognized privileged
24 relationship with the person about whom the information
25 relates for the purpose of investigating a claim when based

1 upon specific information available for review by the
 2 commissioner that there is a reasonable basis for suspecting
 3 criminal activity, fraud, material misrepresentation, or
 4 material nondisclosure in connection with the claim.

5 Section 6. Notice of insurance information practices.

6 (1) An insurance institution or agent shall provide a notice
 7 of information practices to all applicants or policyholders
 8 in connection with insurance transactions as provided below:

9 (a) In the case of an application for insurance, a
 10 notice shall be provided no later than:

11 (i) at the time of the delivery of the insurance
 12 policy or certificate when personal information is collected
 13 only from the applicant or from public records; or

14 (ii) at the time the collection of personal information
 15 is initiated when personal information is collected from a
 16 source other than the applicant or public records;

17 (b) In the case of a policy renewal, a notice shall be
 18 provided no later than the policy renewal date, except that
 19 no notice is required in connection with a policy renewal
 20 if:

21 (i) personal information is collected only from the
 22 policyholder or from public records; or

23 (ii) a notice meeting the requirements of this section
 24 has been given within the previous 24 months; or

25 (c) In the case of a policy reinstatement or change in

1 insurance benefits, a notice shall be provided no later than
 2 the time a request for a policy reinstatement or change in
 3 insurance benefits is received by the insurance institution,
 4 except that no notice is required if personal information is
 5 collected only from the policyholder or from public records.

6 (2) The notice must be in writing and must state:

7 (a) whether personal information may be collected from
 8 persons other than the individual or individuals proposed
 9 for coverage;

10 (b) the types of personal information that may be
 11 collected and the types of sources and investigative
 12 techniques that may be used to collect such information;

13 (c) the types of disclosures identified in subsections
 14 (3), (4), (5), (6), (7), (10), (12), (13), and (15) of
 15 [section 15] and the circumstances under which such
 16 disclosures may be made without prior authorization.
 17 However, only those circumstances that occur with such
 18 frequency as to indicate a general business practice must be
 19 described.

20 (d) a description of the rights established under
 21 [sections 10 and 11] and the manner in which those rights
 22 may be exercised; and

23 (e) that information obtained from a report prepared
 24 by an insurance-support organization may be retained by the
 25 insurance-support organization and disclosed to other

1 persons.

2 (3) In lieu of the notice prescribed in subsection
3 (2), the insurance institution or agent may provide an
4 abbreviated notice informing the applicant or policyholder
5 that:

6 (a) personal information may be collected from persons
7 other than the individual or individuals proposed for
8 coverage;

9 (b) such information as well as other personal or
10 privileged information subsequently collected by the
11 insurance institution or agent may in certain circumstances
12 be disclosed to third parties without authorization;

13 (c) a right of access and correction exists with
14 respect to all personal information collected; and

15 (d) the notice prescribed in subsection (2) must be
16 furnished to the applicant or policyholder upon request.

17 (4) The obligations imposed by this section upon an
18 insurance institution or agent may be satisfied by another
19 insurance institution or agent authorized to act on its
20 behalf.

21 Section 7. Marketing and research surveys. An
22 insurance institution or agent shall clearly specify the
23 questions that are designed to obtain information from an
24 individual in connection with an insurance transaction
25 solely for marketing or research purposes.

1 Section 8. Content and disclosure of authorization
2 forms. Notwithstanding any other provision of law of this
3 state, an insurance institution, agent, or insurance-support
4 organization may not utilize as its disclosure authorization
5 form in connection with insurance transactions a form or
6 statement that authorizes the disclosure of personal or
7 privileged information about an individual to the insurance
8 institution, agent, or insurance-support organization unless
9 the form or statement:

10 (1) is written in plain language;

11 (2) is dated;

12 (3) specifies the types of persons authorized to
13 disclose information about the individual;

14 (4) specifies the nature of the information authorized
15 to be disclosed;

16 (5) names the insurance institution or agent and
17 identifies by generic reference representatives of the
18 insurance institution to whom the individual is authorizing
19 information to be disclosed;

20 (6) specifies the purposes for which the information
21 is collected;

22 (7) specifies the length of time such authorization
23 remains valid, which may be no longer than:

24 (a) in the case of authorizations signed for the
25 purpose of collecting information in connection with an

1 application for an insurance policy, a policy reinstatement,
2 or a request for change in policy benefits:

3 (i) 30 months from the date the authorization is
4 signed if the application or request involves life, health,
5 or disability insurance;

6 (ii) 1 year from the date the authorization is signed
7 if the application or request involves property or casualty
8 insurance;

9 (b) in the case of authorizations signed for the
10 purpose of collecting information in connection with a claim
11 for benefits under an insurance policy:

12 (i) the term of coverage of the policy if the claim is
13 for a health insurance benefit;

14 (ii) the duration of the claim if the claim is not for
15 a health insurance benefit; and

16 (8) advises the individual or a person authorized to
17 act on behalf of the individual that the individual or the
18 individual's authorized representative is entitled to
19 receive a copy of the authorization form.

20 Section 9. Investigative consumer reports. (1) An
21 insurance institution, agent, or insurance-support
22 organization may not prepare or request an investigative
23 consumer report about an individual in connection with an
24 insurance transaction involving an application for
25 insurance, a policy renewal, a policy reinstatement, or a

1 change in insurance benefits unless the insurance
2 institution or agent informs the individual:

3 (a) that he may request to be interviewed in
4 connection with the preparation of the investigative
5 consumer report; and

6 (b) that upon a request pursuant to [section 10], he
7 is entitled to receive a copy of the investigative consumer
8 report.

9 (2) If an investigative consumer report is to be
10 prepared by an insurance institution or agent, the insurance
11 institution or agent shall institute reasonable procedures
12 to conduct a personal interview requested by an individual.

13 (3) If an investigative consumer report is to be
14 prepared by an insurance-support organization, the insurance
15 institution or agent desiring such report shall inform the
16 insurance-support organization whether a personal interview
17 has been requested by the individual. The insurance-support
18 organization shall institute reasonable procedures to
19 conduct such interview, if requested.

20 Section 10. Access to recorded personal information.

21 (1) If an individual, after proper identification, submits a
22 written request to an insurance institution, agent, or
23 insurance-support organization for access to recorded
24 personal information about the individual that is reasonably
25 described by the individual and reasonably locatable and

1 retrievable by the insurance institution, agent, or
 2 insurance-support organization, the insurance institution,
 3 agent, or insurance-support organization shall, within 30
 4 business days from the date such request is received:

5 (a) inform the individual of the nature and substance
 6 of the recorded personal information in writing, by
 7 telephone, or by other oral communication, whichever the
 8 insurance institution, agent, or insurance-support
 9 organization prefers;

10 (b) permit the individual to see and copy, in person,
 11 the recorded personal information pertaining to him or to
 12 obtain a copy of the recorded personal information by mail,
 13 whichever the individual prefers. If the recorded personal
 14 information is in coded form, an accurate translation in
 15 plain language must be provided in writing.

16 (c) disclose to the individual the identity, if
 17 recorded, of those persons to whom the insurance
 18 institution, agent, or insurance-support organization has
 19 disclosed the personal information within 2 years prior to
 20 the request and, if the identity is not recorded, the names
 21 of those insurance institutions, agents, insurance-support
 22 organizations, or other persons to whom such information is
 23 normally disclosed; and

24 (d) provide the individual with a summary of the
 25 procedures he may use to request correction, amendment, or

1 deletion of recorded personal information.

2 (2) Personal information provided pursuant to
 3 subsection (1) must identify the source of the information
 4 if such source is an institutional source.

5 (3) Medical record information supplied by a medical
 6 care institution or medical professional and requested under
 7 subsection (1), together with the identity of the medical
 8 professional or medical care institution that provided the
 9 information, shall be supplied either directly to the
 10 individual or to a medical professional designated by the
 11 individual and licensed to provide medical care with respect
 12 to the condition to which the information relates, whichever
 13 the insurance institution, agent, or insurance-support
 14 organization prefers. If it elects to disclose the
 15 information to a medical professional designated by the
 16 individual, the insurance institution, agent, or
 17 insurance-support organization shall notify the individual,
 18 at the time of the disclosure, that it has provided the
 19 information to the medical professional. ~~THE MEDICAL~~
 20 ~~PROFESSIONAL MAY REVIEW AND INTERPRET THE INFORMATION AND AT~~
 21 ~~THE REQUEST OF THE AFFECTED INDIVIDUAL SHALL DISCLOSE ALL OF~~
 22 ~~THE INFORMATION RECEIVED. THE MEDICAL PROFESSIONAL MAY~~
 23 ~~REVIEW AND INTERPRET THE INFORMATION AND AT THE REQUEST OF~~
 24 ~~THE AFFECTED INDIVIDUAL SHALL CONSULT WITH THE AFFECTED~~
 25 ~~INDIVIDUAL.~~

1 (4) Except for personal information provided under
2 [section 12], an insurance institution, agent, or
3 insurance-support organization may charge a reasonable fee
4 to cover the costs incurred in providing a copy of recorded
5 personal information to individuals.

6 (5) The obligations imposed by this section upon an
7 insurance institution or agent may be satisfied by another
8 insurance institution or agent authorized to act on its
9 behalf. With respect to the copying and disclosure of
10 recorded personal information pursuant to a request under
11 subsection (1), an insurance institution, agent, or
12 insurance-support organization may make arrangements with an
13 insurance-support organization or a consumer reporting
14 agency to copy and disclose recorded personal information on
15 its behalf.

16 (6) The rights granted to individuals in this section
17 extend to all natural persons to the extent information
18 about them is collected and maintained by an insurance
19 institution, agent, or insurance-support organization in
20 connection with an insurance transaction. The rights granted
21 to all natural persons by this subsection do not extend to
22 information about them that relates to and is collected in
23 connection with or in reasonable anticipation of a claim or
24 civil or criminal proceeding involving them.

25 (7) For the purposes of this section, the term

1 "insurance-support organization" does not include "consumer
2 reporting agency" ~~except-to-the-extent-this-section-imposes~~
3 ~~more-stringent-requirements-on-a-consumer--reporting-agency~~
4 ~~than-other-state-or-federal-law.~~

5 Section 11. Correction, amendment, or deletion of
6 recorded personal information. (1) Within 30 business days
7 from the date of receipt of a written request from an
8 individual to correct, amend, or delete any recorded
9 personal information in its possession about the individual,
10 an insurance institution, agent, or insurance-support
11 organization shall either:

12 (a) correct, amend, or delete the portion of the
13 recorded personal information in dispute; or

14 (b) notify the individual of:

15 (i) its refusal to make such correction, amendment, or
16 deletion;

17 (ii) the reasons for the refusal; and

18 (iii) the individual's right to file a statement as
19 provided in subsection (3).

20 (2) If the insurance institution, agent, or
21 insurance-support organization corrects, amends, or deletes
22 recorded personal information in accordance with subsection
23 (1)(a), the insurance institution, agent, or
24 insurance-support organization shall so notify the
25 individual in writing and furnish the correction, amendment,

1 or fact of deletion to:

2 (a) any person specifically designated by the
3 individual who may have, within the preceding 2 years,
4 received such recorded personal information;

5 (b) any insurance-support organization whose primary
6 source of personal information is insurance institutions if
7 the insurance-support organization has systematically
8 received such recorded personal information from the
9 insurance institution within the preceding 7 years, but the
10 correction, amendment, or fact of deletion need not be
11 furnished if the insurance-support organization no longer
12 maintains recorded personal information about the
13 individual; and

14 (c) any insurance-support organization that furnished
15 the personal information which has been corrected, amended,
16 or deleted.

17 (3) Whenever an individual disagrees with an insurance
18 institution's, agent's, or insurance-support organization's
19 refusal to correct, amend, or delete recorded personal
20 information, the individual may file with the insurance
21 institution, agent, or insurance-support organization:

22 (a) a concise statement setting forth what the
23 individual thinks is the correct, relevant, or fair
24 information; and

25 (b) a concise statement of the reasons why the

1 individual disagrees with the insurance institution's,
2 agent's, or insurance-support organization's refusal to
3 correct, amend, or delete recorded personal information.

4 (4) If an individual files either statement described
5 in subsection (3), the insurance institution, agent, or
6 insurance-support organization shall:

7 (a) file the statement with the disputed personal
8 information and provide a means by which anyone reviewing
9 the disputed personal information will be made aware of
10 individual's statement and have access to it;

11 (b) in any subsequent disclosure by the insurance
12 institution, agent, or insurance-support organization of the
13 recorded personal information that is the subject of
14 disagreement, clearly identify the matter in dispute and
15 provide the individual's statement along with the recorded
16 personal information being disclosed; and

17 (c) furnish the statement to the persons in the manner
18 specified in subsection (2).

19 (5) The rights granted individuals by this section
20 extend to all natural persons to the extent information
21 about them is collected and maintained by an insurance
22 institution, agent, or insurance-support organization in
23 connection with an insurance transaction. The rights granted
24 to natural persons by this subsection do not extend to
25 information about them that relates to and is collected in

1 connection with or in reasonable anticipation of a claim or
2 civil or criminal proceeding involving them.

3 (6) For the purposes of this section, the term
4 "insurance-support organization" does not include "consumer
5 reporting--agency"--to--the--extent--this--section--imposes--more
6 stringent--requirements--on--a--consumer--reporting--agency--than
7 other--state--or--federal--law CONSUMER REPORTING AGENCY.

8 Section 12. Reasons for adverse underwriting
9 decisions. (1) If an adverse underwriting decision is made,
10 the insurance institution or agent responsible for the
11 decision shall:

12 (a) either provide the applicant, policyholder, or
13 individual proposed for coverage with the specific reason or
14 reasons for the adverse underwriting decision in writing or
15 advise such person that upon written request he may receive
16 the specific reason or reasons in writing; and

17 (b) provide the applicant, policyholder, or individual
18 proposed for coverage with a summary of the rights
19 established under subsection (2) and [sections 10 and 11].

20 (2) If a written request is received within 90
21 business days from the date of the mailing of notice or
22 other communication of an adverse underwriting decision to
23 an applicant, policyholder, or individual proposed for
24 coverage, the insurance institution or agent shall within 21
25 business days from the date of receipt of the written

1 request furnish the person:

2 (a) the specific reason or reasons for the adverse
3 underwriting decision, in writing, if such information was
4 not initially furnished in writing pursuant to subsection
5 (1)(a);

6 (b) the specific items of personal and privileged
7 information that support those reasons; however:

8 (i) the insurance institution or agent is not required
9 to furnish specific items of privileged information if it
10 has a reasonable suspicion, based upon specific information
11 available for review by the commissioner, that the
12 applicant, policyholder, or individual proposed for coverage
13 has engaged in criminal activity, fraud, material
14 misrepresentation, or material nondisclosure; and

15 (ii) specific items of medical record information
16 supplied by a medical care institution or medical
17 professional shall--be--disclosed--either--directly--to--the
18 individual--about--whom--the--information--relates--or--to--a
19 medical--professional--designated--by--the--individual--and
20 licensed--to--provide--medical--care--with--respect--to--the
21 condition--to--which--the--information--relates,--whichever--the
22 insurance--institution--or--agent--prefers, TOGETHER WITH THE
23 IDENTIFY--BE--THE--MEDICAL--PROFESSIONAL--OR--MEDICAL--CARE
24 INSTITUTION--THAT--PROVIDED--THE--INFORMATION,--SHALL--BE
25 DISCLOSED--IN--ACCORDANCE--WITH--SUBSECTION--(3)--OF--SECTION--10]

1 SHALL BE DISCLOSED EITHER DIRECTLY TO THE INDIVIDUAL ABOUT
 2 WHOM THE INFORMATION RELATES OR TO A MEDICAL PROFESSIONAL
 3 DESIGNATED BY THE INDIVIDUAL AND LICENSED TO PROVIDE MEDICAL
 4 CARE WITH RESPECT TO THE CONDITION TO WHICH THE INFORMATION
 5 RELATES, WHICHEVER THE INSURANCE INSTITUTION OR AGENT
 6 PREFERS; and

7 (c) the names and addresses of the institutional
 8 sources that supplied the specific items of information
 9 pursuant to subsection (2)(b) ~~except that the identity of~~
 10 ~~any medical professional or medical care institution must be~~
 11 ~~disclosed either directly to the individual or to the~~
 12 ~~designated medical professional, whichever the insurance~~
 13 ~~institution or agent prefers, EXCEPT THAT THE IDENTITY OF~~
 14 ANY MEDICAL PROFESSIONAL OR MEDICAL CARE INSTITUTION MUST BE
 15 DISCLOSED EITHER DIRECTLY TO THE INDIVIDUAL OR TO THE
 16 DESIGNATED MEDICAL PROFESSIONAL, WHICHEVER THE INSURANCE
 17 INSTITUTION OR AGENT PREFERS.

18 (3) The obligations imposed by this section upon an
 19 insurance institution or agent may be satisfied by another
 20 insurance institution or agent authorized to act on its
 21 behalf.

22 (4) When an adverse underwriting decision results
 23 solely from an oral request or inquiry, the explanation of
 24 reasons and summary of rights required by subsection (1) may
 25 be given orally.

1 Section 13. Information concerning previous adverse
 2 underwriting decisions. An insurance institution, agent, or
 3 insurance-support organization may not seek information in
 4 connection with an insurance transaction concerning:

5 (1) any previous adverse underwriting decision
 6 experienced by an individual; or

7 (2) any previous insurance coverage obtained by an
 8 individual through a residual market mechanism unless the
 9 inquiry also requests the reasons for any previous adverse
 10 underwriting decision or the reasons why insurance coverage
 11 was previously obtained through a residual market mechanism.

12 Section 14. Previous adverse underwriting decisions.
 13 An insurance institution or agent may not base an adverse
 14 underwriting decision in whole or in part:

15 (1) on the fact of a previous adverse underwriting
 16 decision or on the fact that an individual previously
 17 obtained insurance coverage through a residual market
 18 mechanism, but an insurance institution or agent may base an
 19 adverse underwriting decision on further information
 20 obtained from an insurance institution or agent responsible
 21 for a previous adverse underwriting decision;

22 (2) on personal information received from an
 23 insurance-support organization whose primary source of
 24 information is insurance institutions, but an insurance
 25 institution or agent may base an adverse underwriting

1 decision on further personal information obtained as the
2 result of information received from such insurance-support
3 organization.

4 Section 15. Disclosure limitations and conditions. (1)
5 Except as provided in this section, an insurance
6 institution, agent, or insurance-support organization may
7 not disclose any personal or privileged information about an
8 individual collected or received in connection with an
9 insurance transaction.

10 (2) Disclosure may be made with the written
11 authorization of the individual but:

12 (a) if the authorization is submitted by another
13 insurance institution, agent, or insurance-support
14 organization, the authorization must meet the requirements
15 of [section 8]; or

16 (b) if the authorization is submitted by a person
17 other than an insurance institution, agent, or
18 insurance-support organization, the authorization must be:

19 (i) dated;

20 (ii) signed by the individual; and

21 (iii) obtained 1 year or less prior to the date a
22 disclosure is sought pursuant to this subsection.

23 (3) Disclosure may be made to a person other than an
24 insurance institution, agent, or insurance-support
25 organization, provided such disclosure is reasonably

1 necessary:

2 (a) to enable such person to perform a business,
3 professional, or insurance function for the disclosing
4 insurance institution, agent, or insurance-support
5 organization and such person agrees not to disclose the
6 information further without the individual's written
7 authorization unless the further disclosure:

8 (i) would otherwise be permitted by this section if
9 made by an insurance institution, agent, or
10 insurance-support organization; or

11 (ii) is reasonably necessary for such person to perform
12 its function for the disclosing insurance institution,
13 agent, or insurance-support organization; or

14 (b) to enable such person to provide information to
15 the disclosing insurance institution, agent, or
16 insurance-support organization for the purpose of:

17 (i) determining an individual's eligibility for an
18 insurance benefit or payment; or

19 (ii) detecting or preventing criminal activity, fraud,
20 material misrepresentation, or material nondisclosure in
21 connection with an insurance transaction.

22 (4) Disclosure may be made to an insurance
23 institution, agent, insurance-support organization, or
24 self-insurer if the information disclosed is limited to that
25 which is reasonably necessary:

1 (a) to detect or prevent criminal activity, fraud,
2 material misrepresentation, or material nondisclosure in
3 connection with insurance transactions; or

4 (b) for either the disclosing or receiving insurance
5 institution, agent, or insurance-support organization to
6 perform its function in connection with an insurance
7 transaction involving the individual.

8 (5) Disclosure may be made to a medical care
9 institution or medical professional of that information
10 reasonably necessary for the following purposes:

11 (a) verifying insurance coverage or benefits;

12 (b) informing an individual of a medical problem of
13 which the individual may not be aware; or

14 (c) conducting an operations or services audit.

15 (6) Disclosure may be made to an insurance regulatory
16 authority.

17 (7) Disclosure may be made to a law enforcement or
18 other government authority:

19 (a) to protect the interests of the insurance
20 institution, agent, or insurance-support organization in
21 preventing or prosecuting the perpetration of fraud upon it;
22 or

23 (b) if the insurance institution, agent, or
24 insurance-support organization reasonably believes that
25 illegal activities have been conducted by the individual.

1 (8) Disclosure may be made as otherwise permitted or
2 required by law.

3 (9) Disclosure may be made in response to a facially
4 valid administrative or judicial order, including a search
5 warrant or subpoena.

6 (10) Disclosure may be made for the purpose of
7 conducting actuarial or research studies, provided:

8 (a) no individual may be identified in any actuarial
9 or research report;

10 (b) materials allowing the individual to be identified
11 are returned or destroyed as soon as they are no longer
12 needed; and

13 (c) the actuarial or research organization agrees not
14 to disclose the information unless the disclosure would
15 otherwise be permitted by this section if made by an
16 insurance institution, agent, or insurance-support
17 organization.

18 (11) Disclosure may be made to a party or a
19 representative of a party to a proposed or consummated sale,
20 transfer, merger, or consolidation of all or part of the
21 business of the insurance institution, agent, or
22 insurance-support organization, if:

23 (a) prior to the consummation of the sale, transfer,
24 merger, or consolidation only such information is disclosed
25 as is reasonably necessary to enable the recipient to make

1 business decisions about the purchase, transfer, merger, or
2 consolidation; and

3 (b) the recipient agrees not to disclose the
4 information unless the disclosure would otherwise be
5 permitted by this section if made by an insurance
6 institution, agent, or insurance-support organization.

7 (12) Disclosure may be made to a person whose only use
8 of such information will be in connection with the marketing
9 of a product or service, if:

10 (a) no medical record information, privileged
11 information, or personal information relating to an
12 individual's character, personal habits, mode of living, or
13 general reputation is disclosed, and no classification
14 derived from such information is disclosed;

15 (b) the individual has been given an opportunity to
16 indicate that he does not want personal information
17 disclosed for marketing purposes and has given no indication
18 that he does not want the information disclosed; and

19 (c) the person receiving the information agrees not to
20 use it except in connection with the marketing of a product
21 or service.

22 (13) Disclosure may be made to an affiliate whose only
23 use of the information will be in connection with an audit
24 of the insurance institution or agent or the marketing of
25 an insurance product or service if the affiliate agrees not

1 to disclose the information for any other purpose or to
2 unaffiliated persons.

3 (14) Disclosure may be made by a consumer reporting
4 agency to a person other than an insurance institution or
5 agent.

6 (15) Disclosure may be made to a group policyholder for
7 the purpose of reporting claims experience or conducting an
8 audit of the insurance institution's or agent's operations
9 or services if the information disclosed is reasonably
10 necessary for the group policyholder to conduct the review
11 or audit.

12 (16) Disclosure may be made to a professional peer
13 review organization for the purpose of reviewing the service
14 or conduct of a medical care institution or medical
15 professional.

16 (17) Disclosure may be made to a governmental authority
17 for the purpose of determining the individual's eligibility
18 for health benefits for which the governmental authority may
19 be liable.

20 (18) Disclosure may be made to a certificate holder or
21 policyholder for the purpose of providing information
22 regarding the status of an insurance transaction.

23 Section 16. Power of the commissioner. (1) The
24 commissioner has the power to examine and investigate the
25 affairs of every insurance institution or agent doing

1 business in this state to determine whether the insurance
 2 institution or agent has been or is engaged in any conduct
 3 in violation of [this act].

4 (2) The commissioner has the power to examine and
 5 investigate the affairs of every insurance-support
 6 organization acting on behalf of an insurance institution or
 7 agent that either transacts business in this state or
 8 transacts business outside this state which has an effect on
 9 a person residing in this state in order to determine
 10 whether such insurance-support organization has been or is
 11 engaged in any conduct in violation of [this act].

12 Section 17. Hearings; witnesses; appearance; ~~production of books and service of process.~~ (1) The
 13 commissioner shall hold a hearing whenever he has reason to
 14 believe that an insurance institution, agent, or
 15 insurance-support organization has been or is engaged in
 16 conduct in this state that violates [this act] or if the
 17 commissioner believes that an insurance-support organization
 18 has been or is engaged in conduct outside this state which
 19 has an effect on a person residing in this state and which
 20 violates [this act]. ~~The commissioner shall issue and serve~~
 21 ~~upon such insurance institution, agent, or insurance-support~~
 22 ~~organization a statement of charges and notice of hearing~~
 23 ~~specifying a time and place for the hearing, the date for~~
 24 ~~the hearing may not be less than 20 days after the date of~~

1 service

2 (2) ~~At the hearing the insurance institution, agent,~~
 3 ~~or insurance-support organization charged has the~~
 4 ~~opportunity to answer the charges against it and present~~
 5 ~~evidence on its behalf. Upon good cause shown, the~~
 6 ~~commissioner may permit any adversely affected person, by~~
 7 ~~counsel or in person, to intervene, appear, and be heard at~~
 8 ~~the hearing.~~

9 (3) ~~At a hearing conducted pursuant to this section,~~
 10 ~~the commissioner may administer oaths, examine and~~
 11 ~~cross-examine witnesses, and receive oral and documentary~~
 12 ~~evidence. The commissioner has the power to subpoena~~
 13 ~~witnesses, compel their attendance, and require the~~
 14 ~~production of books, papers, records, correspondence, and~~
 15 ~~other documents that are relevant to the hearing. A~~
 16 ~~stenographic record of the hearing shall be made upon the~~
 17 ~~request of any party or at the discretion of the~~
 18 ~~commissioner. If no stenographic record is made and if~~
 19 ~~judicial review is sought, the commissioner shall prepare a~~
 20 ~~statement of the evidence for use on review. Hearings~~
 21 ~~conducted under this section are governed by the same rules~~
 22 ~~of evidence and procedure applicable to administrative~~
 23 ~~proceedings conducted under Title 2, chapter 4 AND TITLE 33,~~
 24 ~~CHAPTER 1, PART 7.~~

25 (4) ~~Statements of charges, notices, orders, and other~~

1 processes-of-the-commissioner-under-[this-act]-may-be-served
 2 by---anyone---duty--authorized--to--act--on--behalf--of--the
 3 commissioner--service-of-process-may--be--completed--in--the
 4 manner--provided--by--law--for--service--of-process-in-civil
 5 actions-or-by-registered-mail--A-copy-of--the--statement--of
 6 charges--notice--order--or--other-process-shall-be-provided
 7 to-the-person-or-persons-whose-rights-under-[this-act]-have
 8 been-allegedly-violated--A-verified-return-setting-forth-the
 9 manner-of-service-or-return-postcard-receipt-in-the-case-of
 10 registered-mail--is-sufficient-proof-of-service

11 Section 18. Service of process -- insurance-support
 12 organizations. For the purpose of [this act], an
 13 insurance-support organization transacting business outside
 14 this state that has an effect on a person residing in this
 15 state is considered to have appointed the commissioner to
 16 accept service of process on its behalf. The commissioner
 17 shall mail a copy of the notice by registered mail to the
 18 insurance-support organization at its last known principal
 19 place of business. The return postcard receipt for such
 20 mailing is sufficient proof that the same was properly
 21 mailed by the commissioner.

22 Section 19. Cease and desist orders and reports. (1)
 23 If, after a hearing pursuant to [section 17], the
 24 commissioner determines that the insurance institution,
 25 agent, or insurance-support organization charged has engaged

1 in conduct or practices in violation of [this act], the
 2 commissioner shall reduce his findings AND CONCLUSIONS to
 3 writing and shall issue and cause THEM to be served upon the
 4 insurance institution, agent, or insurance-support
 5 organization ~~a copy of the findings and an order requiring~~
 6 ~~the insurance institution, agent, or insurance-support~~
 7 ~~organization to cease and desist from the conduct or~~
 8 ~~practices constituting a violation of [this act]~~ AS PROVIDED
 9 BY LAW.

10 (2) If, after a hearing pursuant to [section 17], the
 11 commissioner determines that the insurance institution,
 12 agent, or insurance-support organization charged has not
 13 engaged in conduct or practices in violation of [this act],
 14 the commissioner shall prepare a written report which sets
 15 forth findings of fact and conclusions of law. The report
 16 shall be served upon the insurance institution, agent, or
 17 insurance-support organization charged and upon the person
 18 or persons if any, whose rights under [this act] were
 19 allegedly violated, IN THE MANNER PROVIDED BY LAW FOR
 20 SERVICE OF AGENCY ORDERS.

21 (3) ~~Until the expiration of the time allowed under~~
 22 ~~[section 21] for filing a petition for review or until such~~
 23 ~~a petition is filed, whichever occurs first, the~~
 24 ~~commissioner may modify or set aside any order or report~~
 25 ~~issued under this section. After the expiration of the time~~

1 allowed under [section 21] for filing a petition for review
 2 or if no such petition has been filed, the commissioner may
 3 after notice and opportunity for hearing, alter, modify, or
 4 set aside, in whole or in part, any order or report issued
 5 under this section whenever conditions of fact or law
 6 warrant such action or if the public interest so requires.

7 Section 20. Penalties CIVIL PENALTIES. (1) If a
 8 hearing pursuant to [section 17] results in the finding of a
 9 knowing violation of [this act], the commissioner may, in
 10 addition to the issuance of a cease and desist order as
 11 prescribed in [section 19], order payment of a CIVIL penalty
 12 of not more than \$500 for each violation but not to exceed
 13 \$10,000 in the aggregate for multiple violations.

14 (2) Any person who violates a cease and desist order
 15 of the commissioner under [section 19] may, after notice and
 16 hearing and upon order of the commissioner, be subject to
 17 one or more of the following penalties, at the discretion of
 18 the commissioner:

19 (a) a fine CIVIL PENALTY of not more than \$10,000 for
 20 each violation; or

21 (b) a fine, CIVIL PENALTY of not more than \$50,000 if
 22 the commissioner finds that violations have occurred with
 23 such frequency as to constitute a general business practice;
 24 and

25 (c) suspension or revocation of an insurance

1 institution's or agent's license.

2 Section 21. Judicial review of orders and reports. (1)
 3 Any person subject to an order of the commissioner under
 4 [section 19] or [section 20] or any person whose rights
 5 under [this act] were allegedly violated may obtain a review
 6 of any order or report of the commissioner by filing in the
 7 district court of Lewis and Clark County within 30 days
 8 from the date of the service of such order or report, a
 9 written petition requesting that the order or report of the
 10 commissioner be set aside. A copy of the petition must at
 11 the same time be served upon the commissioner who shall
 12 forthwith certify and file in the district court a
 13 transcript of the entire record of the proceeding giving
 14 rise to the order or report that is the subject of the
 15 petition. Upon the filing of the petition and transcript,
 16 the district court has jurisdiction to make and enter a
 17 decree modifying, affirming, or reversing any order or
 18 report of the commissioner in whole or in part. The
 19 findings of the commissioner as to the facts supporting any
 20 order or report if supported by clear and convincing
 21 evidence are conclusive.

22 (2) To the extent an order or report of the
 23 commissioner is affirmed, the court shall issue its own
 24 order commanding obedience to the terms of the order or
 25 report of the commissioner if any party affected by an

1 order or report of the commissioner applies to the court for
 2 leave to produce additional evidence and shows to the
 3 satisfaction of the court that such additional evidence is
 4 material and that there are reasonable grounds for the
 5 failure to produce such evidence in prior proceedings, the
 6 court may order such additional evidence to be taken before
 7 the commissioner in such manner and upon such terms and
 8 conditions as the court may consider proper. The
 9 commissioner may modify his findings of fact or make new
 10 findings by reason of the additional evidence so taken and
 11 shall file such modified or new findings along with any
 12 recommendations, if any, for the modification or revocation
 13 of a previous order or report. If supported by clear and
 14 convincing evidence, the modified or new findings shall be
 15 conclusive as to the matters contained therein.

16 (3) An order or report issued by the commissioner
 17 under [sections 19 or 20] is final.

18 (a) Upon the expiration of the time allowed for the
 19 filing of a petition for review, if no such petition has
 20 been duly filed, except that the commissioner may modify or
 21 set aside an order or report to the extent provided in
 22 [section 19(3)] or

23 (b) upon a final decision of the district court, if the
 24 court directs that the order or report of the commissioner
 25 be affirmed or the petition for review dismissed.

1 (4) No order or report of the commissioner under [this
 2 act] or order of a court to enforce the same in any way
 3 relieves or absolves any person affected by the order or
 4 report from any liability under any other law of this state
 5 AS PROVIDED BY 33-1-711.

6 Section 22. Individual remedies. (1) If any insurance
 7 institution, agent, or insurance-support organization fails
 8 to comply with [sections 10, 11, or 12] with respect to the
 9 rights granted under [those sections], any person whose
 10 rights are violated may apply to the district court of this
 11 state or any other court of competent jurisdiction for
 12 appropriate equitable relief.

13 (2) An insurance institution, agent, or
 14 insurance-support organization that discloses information in
 15 violation of [section 15] is liable for damages sustained by
 16 the individual to whom the information relates. However, an
 17 individual is not entitled to a monetary award which exceeds
 18 the actual damages sustained by the individual as a result
 19 of a violation of [section 15].

20 (3) In any action brought pursuant to this section,
 21 the court may award the cost of the action and reasonable
 22 attorney's fees to the prevailing party.

23 (4) An action under this section must be brought
 24 within 2 years from the date the alleged violation is or
 25 should have been discovered.

1 (5) Except as specifically provided in this section,
2 there is no remedy or recovery available to individuals, in
3 law or in equity, for occurrences constituting a violation
4 of any provision of [this act].

5 Section 23. Immunity. A cause of action or claim for
6 relief in the nature of defamation, invasion of privacy, or
7 negligence does not arise against any person for disclosing
8 personal or privileged information in accordance with [this
9 act], nor does such a cause of action or claim for relief
10 arise against any person for furnishing personal or
11 privileged information to an insurance institution, agent,
12 or insurance-support organization. However, this section
13 does not provide immunity for disclosing or furnishing false
14 information with malice or willful intent to injure any
15 person.

16 Section 24. Obtaining information under false
17 pretenses. Any person who knowingly and willfully obtains
18 information about an individual from an insurance
19 institution, agent, or insurance-support organization under
20 false pretenses shall be fined not more than \$10,000 or
21 imprisoned for not more than 1 year, or both.

22 Section 25. Codification instruction. This act is
23 intended to be codified as an integral part of Title 33, and
24 the provisions of Title 33 apply to this act.

25 Section 26. Severability. If a part of this act is

1 invalid, all valid parts that are severable from the invalid
2 part remain in effect. If a part of this act is invalid in
3 one or more of its applications, the part remains in effect
4 in all valid applications that are severable from the
5 invalid applications.

6 ~~Section 27. Repeater. Sections 50-16-301 through~~
7 ~~50-16-305 and 50-16-311 through 50-16-314. MEA are~~
8 ~~repeated.~~

9 Section 27. Effective date. (1) This act is effective
10 on July 1, 1982.

11 (2) The rights granted under [sections 10, 11, and 15]
12 are effective on July 1, 1982, regardless of the date of the
13 collection or receipt of the information that is the subject
14 of those sections.

-end-

March 24, 1981

House Judiciary Committee Senate Amendments to Senate Bill No. 240:

1. Page 20, line 19.

Following: "."

Insert: "The medical professional may review and interpret the information and at the request of the affected individual shall disclose all of the information received."

2. Page 25, line 1.

Following: "~~law~~"

Insert: "\"consumer reporting agency\""

3. Page 26, lines 11 through 16.

Following: "professional" on line 11

Strike: remainder of line 11 through "prefers" on line 16

Insert: ", together with the identity of the medical professional or medical care institution that provided the information, shall be disclosed in accordance with subsection (3) of [section 10["

4. Page 26, lines 19 through 23.

Following: "(2) (b)"

Strike: remainder of line 19 through "prefers" on line 23