

1 SENATE BILL NO. 113

2 INTRODUCED BY MCCARTHY

3 BY REQUEST OF THE STATE AUDITOR
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DEFINITION OF "INSURANCE-SUPPORT
6 ORGANIZATION"; ALLOWING THE COMMISSIONER OF INSURANCE TO REVIEW INFORMATION
7 COMPILED FOR USE IN AN INSURANCE TRANSACTION AND TO ORDER AN INSURANCE INSTITUTION,
8 INSURANCE PRODUCER, OR INSURANCE-SUPPORT ORGANIZATION TO CORRECT, AMEND, OR DELETE
9 INFORMATION THAT THE COMMISSIONER DETERMINES IS INAPPROPRIATE; REQUIRING THAT
10 PERSONAL INFORMATION USED FOR INSURANCE UNDERWRITING BE ACCURATE; AND AMENDING
11 SECTIONS 33-19-104, 33-19-302, AND 33-19-303, MCA."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
14

15 **Section 1.** Section 33-19-104, MCA, is amended to read:

16 **"33-19-104. Definitions.** As used in this chapter, the following definitions apply:

17 (1) (a) "Adverse underwriting decision" means any of the following actions with respect to
18 insurance transactions involving insurance coverage that are individually underwritten:

19 (i) a declination of insurance coverage;

20 (ii) a termination of insurance coverage;

21 (iii) failure of an insurance producer to apply for insurance coverage with a specific insurance
22 institution ~~which that~~ the insurance producer represents and ~~which that~~ is requested by an applicant;

23 (iv) in the case of a property or casualty insurance coverage:

24 (A) placement by an insurance institution or insurance producer of a risk with a residual market
25 mechanism, an unauthorized insurer, or an insurance institution ~~which that~~ specializes in substandard risks;

26 or

27 (B) the charging of a higher rate on the basis of information that differs from that which the
28 applicant or policyholder furnished;

29 (v) in the case of a life, health, or disability insurance coverage, an offer to insure at higher than
30 standard rates.

1 (b) The following actions are not adverse underwriting decisions, but the insurance institution or
 2 insurance producer responsible for their occurrence shall nevertheless provide the applicant or policyholder
 3 with the specific reason or reasons for their occurrence:

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

5 (ii) a declination of insurance coverage solely because ~~such~~ the coverage is not available on a class
 6 or statewide basis; or

7 (iii) the rescission of a policy.

8 (2) "Affiliate" or "affiliated" means a person ~~that~~ who directly or indirectly through one or more
 9 intermediaries controls, is controlled by, or is under common control with another person.

10 (3) "Applicant" means a person who seeks to contract for insurance coverage other than a person
 11 seeking group insurance that is not individually underwritten.

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

16 (5) "Consumer reporting agency" means any person who:

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

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

20 (c) furnishes consumer reports to other persons.

21 (6) "Control", including the terms "controlled by" or "under common control with", means the
 22 possession, direct or indirect, of the power to ~~direct or cause the direction~~ of the management and policies
 23 of a person, ~~whether~~ through the ownership of voting securities, by contract other than a commercial
 24 contract for goods or nonmanagement services, or otherwise, unless the power ~~is~~ the result of an official
 25 position with or corporate office held by the person.

26 (7) "Declination of insurance coverage" means a denial, in whole or in part, by an insurance
 27 institution or insurance producer of requested insurance coverage.

28 (8) "Individual" means a natural person who:

29 (a) regarding property or casualty insurance, is a past, present, or proposed named insured or
 30 certificate holder;

1 (b) regarding life, health, or disability insurance, is a past, present, or proposed principal insured
2 or certificate holder;

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

4 (d) is a past or present applicant;

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

6 (f) derived, derives, or is proposed to derive insurance coverage under an insurance policy or
7 certificate subject to this chapter.

8 (9) "Institutional source" means a person or governmental entity that provides information about
9 an individual to an insurance producer, insurance institution, or insurance-support organization, other than:

10 (a) an insurance producer;

11 (b) the individual who is the subject of the information; or

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

13 (10) "Insurance institution" means a corporation, association, partnership, reciprocal exchange,
14 interinsurer, Lloyd's insurer, fraternal benefit society, or other person engaged in the business of insurance,
15 including health maintenance organizations, and health service corporations as defined in 33-30-101.
16 "Insurance institution" does not include insurance producers or insurance-support organizations.

17 (11) "Insurance producer" means an insurance producer as defined in 33-17-102 and 33-30-311.

18 (12) (a) "Insurance-support organization" means a person who ~~regularly engages, in whole or in~~
19 ~~part, in the practice of assembling or collecting~~ assembles or collects information about natural persons for
20 the ~~primary~~ purpose of providing the information to an insurance institution or insurance producer for
21 insurance transactions, including:

22 (i) the furnishing of consumer reports or investigative consumer reports to an insurance institution
23 or insurance producer for use in connection with an insurance transaction; or

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

28 (b) The following persons are not insurance-support organizations for purposes of this chapter:
29 insurance producers, government institutions, ~~insurance institutions~~, medical care institutions, and medical
30 professionals.

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

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

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

6 (14) "Investigative consumer report" means a consumer report or portion ~~thereof~~ of a consumer
7 report containing information about a natural person's character, general reputation, personal
8 characteristics, or mode of living obtained through personal interviews with the person's neighbors, friends,
9 associates, acquaintances, or others who may have knowledge concerning ~~such items~~ this type of
10 information.

11 (15) "Medical care institution" means a facility or institution that is licensed to provide health care
12 services to natural persons, including but not limited to health maintenance organizations, home health
13 agencies, hospitals, medical clinics, public health agencies, rehabilitation agencies, and skilled nursing
14 facilities.

15 (16) "Medical professional" means a person who is licensed or certified to provide health care
16 services to natural persons, including but not limited to a chiropractor, clinical dietitian, clinical
17 psychologist, dentist, nurse, occupational therapist, optometrist, pharmacist, physical therapist, physician,
18 podiatrist, psychiatric social worker, or speech therapist.

19 (17) "Medical record information" means personal information that:

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

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

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

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

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

- 1 (a) in the case of individual property or casualty insurance, is a present named insured;
 2 (b) in the case of individual life, health, or disability insurance, is a present policyowner; or
 3 (c) in the case of group insurance that is individually underwritten, is a present group certificate
 4 holder.

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

- 7 (a) pretends to be someone ~~he~~ the person is not;
 8 (b) pretends to represent a person ~~he is not in fact representing~~ being represented;
 9 (c) misrepresents the true purpose of the interview; or
 10 (d) refuses to identify ~~himself~~ the person performing the interview upon request.

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

- 12 (a) relates to a ~~claim for insurance benefits or a~~ civil or criminal proceeding involving an individual;
 13 and

14 (b) is collected in connection with or in reasonable anticipation of a claim for insurance benefits
 15 or civil or criminal proceeding involving an individual. Information otherwise meeting the requirements of
 16 privileged information under this subsection will be considered "personal information" under this chapter
 17 if it is disclosed in violation of 33-19-306.

18 (23) "Residual market mechanism" means an association, organization, or other entity defined or
 19 described in 61-6-144.

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

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

26 **Section 2.** Section 33-19-302, MCA, is amended to read:

27 **"33-19-302. Correction, amendment, or deletion of recorded personal information.** (1) Within 30
 28 business days from the date of receipt of a written request from an individual to correct, amend, or delete
 29 any recorded personal information in its possession about the individual, an insurance institution, insurance
 30 producer, or insurance-support organization shall either:

- 1 (a) correct, amend, or delete the portion of the recorded personal information in dispute; or
- 2 (b) notify the individual of:
- 3 (i) its refusal to make ~~such~~ the correction, amendment, or deletion;
- 4 (ii) the reasons for the refusal; and
- 5 (iii) the individual's right to file a statement as provided in subsection (3).
- 6 (2) If the insurance institution, insurance producer, or insurance-support organization corrects,
- 7 amends, or deletes recorded personal information in accordance with subsection (1)(a), the insurance
- 8 institution, insurance producer, or insurance-support organization shall ~~se~~ notify the individual in writing
- 9 about the action that it has taken and furnish the correction, amendment, or fact of deletion to:
- 10 (a) any person specifically designated by the individual who may have, within the preceding 2
- 11 years, received ~~such~~ recorded personal information about the individual;
- 12 (b) any insurance-support organization whose primary source of personal information is insurance
- 13 institutions if the insurance-support organization has systematically received ~~such~~ recorded personal
- 14 information from the insurance institution within the preceding 7 years, but the correction, amendment, or
- 15 fact of deletion need not be furnished if the insurance-support organization no longer maintains recorded
- 16 personal information about the individual; and
- 17 (c) any insurance-support organization that furnished the personal information ~~which~~ that has been
- 18 corrected, amended, or deleted.
- 19 (3) Whenever an individual disagrees with an insurance institution's, insurance producer's, or
- 20 insurance-support organization's refusal to correct, amend, or delete recorded personal information, the
- 21 individual may file with the insurance institution, insurance producer, or insurance-support organization:
- 22 (a) a concise statement setting forth what the individual thinks is the correct, relevant, or fair
- 23 information; and
- 24 (b) a concise statement of the reasons why the individual disagrees with the insurance institution's,
- 25 insurance producer's, or insurance-support organization's refusal to correct, amend, or delete recorded
- 26 personal information.
- 27 (4) If an individual files either statement described in subsection (3), the insurance institution,
- 28 insurance producer, or insurance-support organization shall:
- 29 (a) file the statement with the disputed personal information and provide a means by which anyone
- 30 reviewing the disputed personal information will be made aware of the individual's statement and have

1 access to it;

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

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

7 (5) The commissioner may review a refusal by an insurance institution, insurance producer, or
8 insurance-support organization to correct, amend, or delete recorded personal information in order to
9 determine if the refusal is reasonable. The commissioner may order the insurance institution, insurance
10 producer, or insurance-support organization to correct, amend, or delete information that the commissioner
11 determines is inappropriate in an individual's recorded information file.

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

17 ~~(6)~~(7) For the purposes of this section, the term "insurance-support organization" does not include
18 a consumer reporting agency."

19

20 **Section 3.** Section 33-19-303, MCA, is amended to read:

21 **"33-19-303. Reasons for adverse underwriting decisions.** (1) If an adverse underwriting decision
22 is made, the insurance institution or insurance producer responsible for the decision shall:

23 (a) either provide the applicant, policyholder, or individual proposed for coverage with the specific
24 reason or reasons for the adverse underwriting decision in writing or advise ~~such~~ the person that upon
25 written request, ~~to~~ the person may receive the specific reason or reasons in writing; and

26 (b) provide the applicant, policyholder, or individual proposed for coverage with a summary of the
27 rights established under subsection (2) and 33-19-301 and 33-19-302.

28 (2) If a written request is received within 90 business days from the date of the mailing of notice
29 or other communication of an adverse underwriting decision to an applicant, policyholder, or individual
30 proposed for coverage, the insurance institution or insurance producer shall within 21 business days from

1 the date of receipt of the written request furnish the person:

2 (a) the specific reason or reasons for the adverse underwriting decision, in writing, if ~~such~~ the
3 information was not initially furnished in writing pursuant to subsection (1)(a);

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

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

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

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

18 (3) The obligations imposed by this section (3) upon an insurance institution or insurance producer may
19 be satisfied by another insurance institution or insurance producer that is authorized to act on its behalf.

20 (4) When an adverse underwriting decision results solely from an oral request or inquiry, the
21 explanation of reasons and summary of rights required by subsection (1) may be given orally but must be
22 made in writing at the request of the applicant, policyholder, or individual.

23 (5) An insurance institution or insurance producer responsible for an adverse underwriting decision
24 may not use information that the insurance institution or insurance producer has reason to believe is
25 erroneous."

26 -END-

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2 INTRODUCED BY MCCARTHY

3 BY REQUEST OF THE STATE AUDITOR

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5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DEFINITION OF "INSURANCE-SUPPORT
6 ORGANIZATION"; ALLOWING THE COMMISSIONER OF INSURANCE TO REVIEW INFORMATION
7 COMPILED FOR USE IN AN INSURANCE TRANSACTION AND TO ORDER AN INSURANCE INSTITUTION,
8 INSURANCE PRODUCER, OR INSURANCE-SUPPORT ORGANIZATION TO CORRECT, AMEND, OR DELETE
9 INFORMATION THAT THE COMMISSIONER DETERMINES IS ~~INAPPROPRIATE~~ ERRONEOUS; REQUIRING
10 THAT PERSONAL INFORMATION USED FOR INSURANCE UNDERWRITING BE ACCURATE; AND
11 AMENDING SECTIONS 33-19-104, 33-19-302, AND 33-19-303, MCA."

12

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

14

15 **Section 1.** Section 33-19-104, MCA, is amended to read:16 **"33-19-104. Definitions.** As used in this chapter, the following definitions apply:

17 (1) (a) "Adverse underwriting decision" means any of the following actions with respect to
18 insurance transactions involving insurance coverage that are individually underwritten:

19 (i) a declination of insurance coverage;

20 (ii) a termination of insurance coverage;

21 (iii) failure of an insurance producer to apply for insurance coverage with a specific insurance
22 institution ~~which~~ that the insurance producer represents and ~~which~~ that is requested by an applicant;

23 (iv) in the case of a property or casualty insurance coverage:

24 (A) placement by an insurance institution or insurance producer of a risk with a residual market
25 mechanism, an unauthorized insurer, or an insurance institution ~~which~~ that specializes in substandard risks;

26 or

27 (B) the charging of a higher rate on the basis of information that differs from that which the
28 applicant or policyholder furnished;

29 (v) in the case of a life, health, or disability insurance coverage, an offer to insure at higher than
30 standard rates.

SECOND READING

1 (b) The following actions are not adverse underwriting decisions, but the insurance institution or
2 insurance producer responsible for their occurrence shall nevertheless provide the applicant or policyholder
3 with the specific reason or reasons for their occurrence:

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

5 (ii) a declination of insurance coverage solely because ~~such~~ the coverage is not available on a class
6 or statewide basis; or

7 (iii) the rescission of a policy.

8 (2) "Affiliate" or "affiliated" means a person ~~that~~ who directly or indirectly through one or more
9 intermediaries controls, is controlled by, or is under common control with another person.

10 (3) "Applicant" means a person who seeks to contract for insurance coverage other than a person
11 seeking group insurance that is not individually underwritten.

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

16 (5) "Consumer reporting agency" means any person who:

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

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

20 (c) furnishes consumer reports to other persons.

21 (6) "Control", including the terms "controlled by" or "under common control with", means the
22 possession, direct or indirect, of the power to direct or cause the direction of the management and policies
23 of a person, whether through the ownership of voting securities, by contract other than a commercial
24 contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official
25 position with or corporate office held by the person.

26 (7) "Declination of insurance coverage" means a denial, in whole or in part, by an insurance
27 institution or insurance producer of requested insurance coverage.

28 (8) "Individual" means a natural person who:

29 (a) regarding property or casualty insurance, is a past, present, or proposed named insured or
30 certificate holder;

1 (b) regarding life, health, or disability insurance, is a past, present, or proposed principal insured
2 or certificate holder;

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

4 (d) is a past or present applicant;

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

6 (f) derived, derives, or is proposed to derive insurance coverage under an insurance policy or
7 certificate subject to this chapter.

8 (9) "Institutional source" means a person or governmental entity that provides information about
9 an individual to an insurance producer, insurance institution, or insurance-support organization, other than:

10 (a) an insurance producer;

11 (b) the individual who is the subject of the information; or

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

13 (10) "Insurance institution" means a corporation, association, partnership, reciprocal exchange,
14 interinsurer, Lloyd's insurer, fraternal benefit society, or other person engaged in the business of insurance,
15 including health maintenance organizations, and health service corporations as defined in 33-30-101.
16 "Insurance institution" does not include insurance producers or insurance-support organizations.

17 (11) "Insurance producer" means an insurance producer as defined in 33-17-102 and 33-30-311.

18 (12) (a) "Insurance-support organization" means a person who ~~regularly engages, in whole or in~~
19 ~~part, in the practice of assembling or collecting~~ assembles or collects information about natural persons for
20 the ~~primary~~ purpose of providing the information to an insurance institution or insurance producer for
21 insurance transactions, including:

22 (i) the furnishing of consumer reports or investigative consumer reports to an insurance institution
23 or insurance producer for use in connection with an insurance transaction; or

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

28 (b) The following persons are not insurance-support organizations for purposes of this chapter:
29 insurance producers, government institutions, ~~insurance institutions,~~ medical care institutions, and medical
30 professionals.

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

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

4 or

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

6 (14) "Investigative consumer report" means a consumer report or portion ~~thereof~~ of a consumer
7 report containing information about a natural person's character, general reputation, personal
8 characteristics, or mode of living obtained through personal interviews with the person's neighbors, friends,
9 associates, acquaintances, or others who may have knowledge concerning ~~such items~~ this type of
10 information.

11 (15) "Medical care institution" means a facility or institution that is licensed to provide health care
12 services to natural persons, including but not limited to health maintenance organizations, home health
13 agencies, hospitals, medical clinics, public health agencies, rehabilitation agencies, and skilled nursing
14 facilities.

15 (16) "Medical professional" means a person who is licensed or certified to provide health care
16 services to natural persons, including but not limited to a chiropractor, clinical dietitian, clinical
17 psychologist, dentist, nurse, occupational therapist, optometrist, pharmacist, physical therapist, physician,
18 podiatrist, psychiatric social worker, or speech therapist.

19 (17) "Medical record information" means personal information that:

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

21 and

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

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

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

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

- 1 (a) in the case of individual property or casualty insurance, is a present named insured;
 2 (b) in the case of individual life, health, or disability insurance, is a present policyowner; or
 3 (c) in the case of group insurance that is individually underwritten, is a present group certificate
 4 holder.

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

- 7 (a) pretends to be someone ~~he~~ the person is not;
 8 (b) pretends to represent a person ~~he is not in fact representing~~ being represented;
 9 (c) misrepresents the true purpose of the interview; or
 10 (d) refuses to identify ~~himself~~ the person performing the interview upon request.

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

- 12 (a) relates to a ~~claim for insurance benefits or a civil or criminal proceeding~~ involving an individual;
 13 and

14 (b) is collected in connection with or in reasonable anticipation of a claim for insurance benefits
 15 or civil or criminal proceeding involving an individual. Information otherwise meeting the requirements of
 16 privileged information under this subsection will be considered "personal information" under this chapter
 17 if it is disclosed in violation of 33-19-306.

18 (23) "Residual market mechanism" means an association, organization, or other entity defined or
 19 described in 61-6-144.

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

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

25

26 **Section 2.** Section 33-19-302, MCA, is amended to read:

27 **"33-19-302. Correction, amendment, or deletion of recorded personal information.** (1) Within 30
 28 business days from the date of receipt of a written request from an individual to correct, amend, or delete
 29 any recorded personal information in its possession about the individual, an insurance institution, insurance
 30 producer, or insurance-support organization shall either:

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

2 (b) notify the individual of:

3 (i) its refusal to make ~~such~~ the correction, amendment, or deletion;

4 (ii) the reasons for the refusal; and

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

6 (2) If the insurance institution, insurance producer, or insurance-support organization corrects,
7 amends, or deletes recorded personal information in accordance with subsection (1)(a), the insurance
8 institution, insurance producer, or insurance-support organization shall ~~se~~ notify the individual in writing
9 about the action that it has taken and furnish the correction, amendment, or fact of deletion to:

10 (a) any person specifically designated by the individual who may have, within the preceding 2
11 years, received ~~such~~ recorded personal information about the individual;

12 (b) any insurance-support organization whose primary source of personal information is insurance
13 institutions if the insurance-support organization has systematically received ~~such~~ recorded personal
14 information from the insurance institution within the preceding 7 years, but the correction, amendment, or
15 fact of deletion need not be furnished if the insurance-support organization no longer maintains recorded
16 personal information about the individual; and

17 (c) any insurance-support organization that furnished the personal information ~~which~~ that has been
18 corrected, amended, or deleted.

19 (3) Whenever an individual disagrees with an insurance institution's, insurance producer's, or
20 insurance-support organization's refusal to correct, amend, or delete recorded personal information, the
21 individual may file with the insurance institution, insurance producer, or insurance-support organization:

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

24 (b) a concise statement of the reasons why the individual disagrees with the insurance institution's,
25 insurance producer's, or insurance-support organization's refusal to correct, amend, or delete recorded
26 personal information.

27 (4) If an individual files either statement described in subsection (3), the insurance institution,
28 insurance producer, or insurance-support organization shall:

29 (a) file the statement with the disputed personal information and provide a means by which anyone
30 reviewing the disputed personal information will be made aware of the individual's statement and have

1 access to it;

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

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

7 (5) The commissioner may review a refusal by an insurance institution, insurance producer, or
8 insurance-support organization to correct, amend, or delete recorded personal information in order to
9 determine if the refusal is reasonable INFORMATION IS CORRECT. The commissioner may order the
10 insurance institution, insurance producer, or insurance-support organization to correct, amend, or delete
11 information that the commissioner determines is inappropriate ERRONEOUS in an individual's recorded
12 information file.

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

18 ~~(6)~~(7) For the purposes of this section, the term "insurance-support organization" does not include
19 a consumer reporting agency."

20

21 **Section 3.** Section 33-19-303, MCA, is amended to read:

22 **"33-19-303. Reasons for adverse underwriting decisions.** (1) If an adverse underwriting decision
23 is made, the insurance institution or insurance producer responsible for the decision shall:

24 (a) either provide the applicant, policyholder, or individual proposed for coverage with the specific
25 reason or reasons for the adverse underwriting decision in writing or advise ~~such~~ the person that upon
26 written request, ~~he~~ the person may receive the specific reason or reasons in writing; and

27 (b) provide the applicant, policyholder, or individual proposed for coverage with a summary of the
28 rights established under subsection (2) and 33-19-301 and 33-19-302.

29 (2) If a written request is received within 90 business days from the date of the mailing of notice
30 or other communication of an adverse underwriting decision to an applicant, policyholder, or individual

1 proposed for coverage, the insurance institution or insurance producer shall within 21 business days from
2 the date of receipt of the written request furnish the person:

3 (a) the specific reason or reasons for the adverse underwriting decision, in writing, if ~~such~~ the
4 information was not initially furnished in writing pursuant to subsection (1)(a);

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

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

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

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

19 (3) The obligations imposed by this section upon an insurance institution or insurance producer may
20 be satisfied by another insurance institution or insurance producer that is authorized to act on its behalf.

21 (4) When an adverse underwriting decision results solely from an oral request or inquiry, the
22 explanation of reasons and summary of rights required by subsection (1) may be given orally but must be
23 made in writing at the request of the applicant, policyholder, or individual.

24 ~~(5) An insurance institution or insurance producer responsible for an adverse underwriting decision~~
25 ~~may not use information that the insurance institution or insurance producer has reason to believe is~~
26 ~~erroneous."~~

27

-END-

1 SENATE BILL NO. 113

2 INTRODUCED BY MCCARTHY

3 BY REQUEST OF THE STATE AUDITOR

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DEFINITION OF "INSURANCE-SUPPORT
6 ORGANIZATION"; ALLOWING THE COMMISSIONER OF INSURANCE TO REVIEW INFORMATION
7 COMPILED FOR USE IN AN INSURANCE TRANSACTION AND TO ORDER AN INSURANCE INSTITUTION,
8 INSURANCE PRODUCER, OR INSURANCE-SUPPORT ORGANIZATION TO CORRECT, AMEND, OR DELETE
9 INFORMATION THAT THE COMMISSIONER DETERMINES IS ~~INAPPROPRIATE~~ ERRONEOUS; REQUIRING
10 THAT PERSONAL INFORMATION USED FOR INSURANCE UNDERWRITING BE ACCURATE; AND
11 AMENDING SECTIONS 33-19-104, 33-19-302, AND 33-19-303, MCA."

12

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

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE
REPRINTED. PLEASE REFER TO SECOND READING COPY
(YELLOW) FOR COMPLETE TEXT.**

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INTRODUCED BY MCCARTHY
BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DEFINITION OF "INSURANCE-SUPPORT ORGANIZATION"; ALLOWING THE COMMISSIONER OF INSURANCE TO REVIEW INFORMATION COMPILED FOR USE IN AN INSURANCE TRANSACTION AND TO ORDER AN INSURANCE INSTITUTION, INSURANCE PRODUCER, OR INSURANCE-SUPPORT ORGANIZATION TO CORRECT, AMEND, OR DELETE INFORMATION THAT THE COMMISSIONER DETERMINES IS ~~INAPPROPRIATE~~ ERRONEOUS; REQUIRING THAT PERSONAL INFORMATION USED FOR INSURANCE UNDERWRITING BE ACCURATE; AND AMENDING SECTIONS 33-19-104, 33-19-302, AND 33-19-303, MCA."

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9 INFORMATION THAT THE COMMISSIONER DETERMINES IS ~~INAPPROPRIATE~~ ERRONEOUS; REQUIRING
10 THAT PERSONAL INFORMATION USED FOR INSURANCE UNDERWRITING BE ACCURATE; AND
11 AMENDING SECTIONS 33-19-104, 33-19-302, AND 33-19-303, MCA."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14
15 **Section 1.** Section 33-19-104, MCA, is amended to read:

16 **"33-19-104. Definitions.** As used in this chapter, the following definitions apply:

17 (1) (a) "Adverse underwriting decision" means any of the following actions with respect to
18 insurance transactions involving insurance coverage that are individually underwritten:

19 (i) a declination of insurance coverage;

20 (ii) a termination of insurance coverage;

21 (iii) failure of an insurance producer to apply for insurance coverage with a specific insurance
22 institution ~~which that~~ the insurance producer represents and ~~which that~~ is requested by an applicant;

23 (iv) in the case of a property or casualty insurance coverage:

24 (A) placement by an insurance institution or insurance producer of a risk with a residual market
25 mechanism, an unauthorized insurer, or an insurance institution ~~which that~~ specializes in substandard risks;

26 or

27 (B) the charging of a higher rate on the basis of information that differs from that which the
28 applicant or policyholder furnished;

29 (v) in the case of a life, health, or disability insurance coverage, an offer to insure at higher than
30 standard rates.

1 (b) The following actions are not adverse underwriting decisions, but the insurance institution or
2 insurance producer responsible for their occurrence shall nevertheless provide the applicant or policyholder
3 with the specific reason or reasons for their occurrence:

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

5 (ii) a declination of insurance coverage solely because ~~such~~ the coverage is not available on a class
6 or statewide basis; or

7 (iii) the rescission of a policy.

8 (2) "Affiliate" or "affiliated" means a person ~~that~~ who directly or indirectly through one or more
9 intermediaries controls, is controlled by, or is under common control with another person.

10 (3) "Applicant" means a person who seeks to contract for insurance coverage other than a person
11 seeking group insurance that is not individually underwritten.

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

16 (5) "Consumer reporting agency" means any person who:

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

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

20 (c) furnishes consumer reports to other persons.

21 (6) "Control", including the terms "controlled by" or "under common control with", means the
22 possession, direct or indirect, of the power to direct or cause the direction of the management and policies
23 of a person, whether through the ownership of voting securities, by contract other than a commercial
24 contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official
25 position with or corporate office held by the person.

26 (7) "Declination of insurance coverage" means a denial, in whole or in part, by an insurance
27 institution or insurance producer of requested insurance coverage.

28 (8) "Individual" means a natural person who:

29 (a) regarding property or casualty insurance, is a past, present, or proposed named insured or
30 certificate holder;

1 (b) regarding life, health, or disability insurance, is a past, present, or proposed principal insured
2 or certificate holder;

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

4 (d) is a past or present applicant;

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

6 (f) derived, derives, or is proposed to derive insurance coverage under an insurance policy or
7 certificate subject to this chapter.

8 (9) "Institutional source" means a person or governmental entity that provides information about
9 an individual to an insurance producer, insurance institution, or insurance-support organization, other than:

10 (a) an insurance producer;

11 (b) the individual who is the subject of the information; or

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

13 (10) "Insurance institution" means a corporation, association, partnership, reciprocal exchange,
14 interinsurer, Lloyd's insurer, fraternal benefit society, or other person engaged in the business of insurance,
15 including health maintenance organizations, and health service corporations as defined in 33-30-101.
16 "Insurance institution" does not include insurance producers or insurance-support organizations.

17 (11) "Insurance producer" means an insurance producer as defined in 33-17-102 and 33-30-311.

18 (12) (a) "Insurance-support organization" means a person who ~~regularly engages, in whole or in~~
19 ~~part, in the practice of assembling or collecting~~ assembles or collects information about natural persons for
20 the ~~primary~~ purpose of providing the information to an insurance institution or insurance producer for
21 insurance transactions, including:

22 (i) the furnishing of consumer reports or investigative consumer reports to an insurance institution
23 or insurance producer for use in connection with an insurance transaction; or

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

28 (b) The following persons are not insurance-support organizations for purposes of this chapter:
29 insurance producers, government institutions, ~~insurance institutions~~, medical care institutions, and medical
30 professionals.

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

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

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

6 (14) "Investigative consumer report" means a consumer report or portion ~~thereof~~ of a consumer
7 report containing information about a natural person's character, general reputation, personal
8 characteristics, or mode of living obtained through personal interviews with the person's neighbors, friends,
9 associates, acquaintances, or others who may have knowledge concerning ~~such items~~ this type of
10 information.

11 (15) "Medical care institution" means a facility or institution that is licensed to provide health care
12 services to natural persons, including but not limited to health maintenance organizations, home health
13 agencies, hospitals, medical clinics, public health agencies, rehabilitation agencies, and skilled nursing
14 facilities.

15 (16) "Medical professional" means a person who is licensed or certified to provide health care
16 services to natural persons, including but not limited to a chiropractor, clinical dietitian, clinical
17 psychologist, dentist, nurse, occupational therapist, optometrist, pharmacist, physical therapist, physician,
18 podiatrist, psychiatric social worker, or speech therapist.

19 (17) "Medical record information" means personal information that:

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

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

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

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

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

- 1 (a) in the case of individual property or casualty insurance, is a present named insured;
 2 (b) in the case of individual life, health, or disability insurance, is a present policyowner; or
 3 (c) in the case of group insurance that is individually underwritten, is a present group certificate
 4 holder.

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

- 7 (a) pretends to be someone ~~he~~ the person is not;
 8 (b) pretends to represent a person ~~he is~~ not in fact ~~representing~~ being represented;
 9 (c) misrepresents the true purpose of the interview; or
 10 (d) refuses to identify ~~himself~~ the person performing the interview upon request.

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

- 12 (a) relates to a ~~claim for insurance benefits or a~~ civil or criminal proceeding involving an individual;

13 and

- 14 (b) is collected in connection with or in reasonable anticipation of a claim for insurance benefits
 15 or civil or criminal proceeding involving an individual. Information otherwise meeting the requirements of
 16 privileged information under this subsection will be considered "personal information" under this chapter
 17 if it is disclosed in violation of 33-19-306.

18 (23) "Residual market mechanism" means an association, organization, or other entity defined or
 19 described in 61-6-144.

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

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

25

26 **Section 2.** Section 33-19-302, MCA, is amended to read:

27 **"33-19-302. Correction, amendment, or deletion of recorded personal information.** (1) Within 30
 28 business days from the date of receipt of a written request from an individual to correct, amend, or delete
 29 any recorded personal information in its possession about the individual, an insurance institution, insurance
 30 producer, or insurance-support organization shall either:

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

2 (b) notify the individual of:

3 (i) its refusal to make ~~such~~ the correction, amendment, or deletion;

4 (ii) the reasons for the refusal; and

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

6 (2) If the insurance institution, insurance producer, or insurance-support organization corrects,
7 amends, or deletes recorded personal information in accordance with subsection (1)(a), the insurance
8 institution, insurance producer, or insurance-support organization shall ~~be~~ notify the individual in writing
9 about the action that it has taken and furnish the correction, amendment, or fact of deletion to:

10 (a) any person specifically designated by the individual who may have, within the preceding 2
11 years, received ~~such~~ recorded personal information about the individual;

12 (b) any insurance-support organization whose primary source of personal information is insurance
13 institutions if the insurance-support organization has systematically received ~~such~~ recorded personal
14 information from the insurance institution within the preceding 7 years, but the correction, amendment, or
15 fact of deletion need not be furnished if the insurance-support organization no longer maintains recorded
16 personal information about the individual; and

17 (c) any insurance-support organization that furnished the personal information ~~which~~ that has been
18 corrected, amended, or deleted.

19 (3) Whenever an individual disagrees with an insurance institution's, insurance producer's, or
20 insurance-support organization's refusal to correct, amend, or delete recorded personal information, the
21 individual may file with the insurance institution, insurance producer, or insurance-support organization:

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

24 (b) a concise statement of the reasons why the individual disagrees with the insurance institution's,
25 insurance producer's, or insurance-support organization's refusal to correct, amend, or delete recorded
26 personal information.

27 (4) If an individual files either statement described in subsection (3), the insurance institution,
28 insurance producer, or insurance-support organization shall:

29 (a) file the statement with the disputed personal information and provide a means by which anyone
30 reviewing the disputed personal information will be made aware of the individual's statement and have

1 access to it;

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

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

7 (5) The commissioner may review a refusal by an insurance institution, insurance producer, or
8 insurance-support organization to correct, amend, or delete recorded personal information in order to
9 determine if the ~~refusal is reasonable~~ INFORMATION IS CORRECT. The commissioner may order the
10 insurance institution, insurance producer, or insurance-support organization to correct, amend, or delete
11 information that the commissioner determines is ~~inappropriate~~ ERRONEOUS in an individual's recorded
12 information file.

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

18 ~~(6)~~(7) For the purposes of this section, the term "insurance-support organization" does not include
19 a consumer reporting agency."
20

21 **Section 3.** Section 33-19-303, MCA, is amended to read:

22 "33-19-303. **Reasons for adverse underwriting decisions.** (1) If an adverse underwriting decision
23 is made, the insurance institution or insurance producer responsible for the decision shall:

24 (a) either provide the applicant, policyholder, or individual proposed for coverage with the specific
25 reason or reasons for the adverse underwriting decision in writing or advise ~~each~~ the person that upon
26 written request, ~~he~~ the person may receive the specific reason or reasons in writing; and

27 (b) provide the applicant, policyholder, or individual proposed for coverage with a summary of the
28 rights established under subsection (2) and 33-19-301 and 33-19-302.

29 (2) If a written request is received within 90 business days from the date of the mailing of notice
30 or other communication of an adverse underwriting decision to an applicant, policyholder, or individual

1 proposed for coverage, the insurance institution or insurance producer shall within 21 business days from
2 the date of receipt of the written request furnish the person:

3 (a) the specific reason or reasons for the adverse underwriting decision, in writing, if ~~such~~ the
4 information was not initially furnished in writing pursuant to subsection (1)(a);

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

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

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

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

19 (3) The obligations imposed by this section upon an insurance institution or insurance producer may
20 be satisfied by another insurance institution or insurance producer that is authorized to act on its behalf.

21 (4) When an adverse underwriting decision results solely from an oral request or inquiry, the
22 explanation of reasons and summary of rights required by subsection (1) may be given orally but must be
23 made in writing at the request of the applicant, policyholder, or individual.

24 ~~(5) An insurance institution or insurance producer responsible for an adverse underwriting decision~~
25 ~~may not use information that the insurance institution or insurance producer has reason to believe is~~
26 ~~erroneous."~~

27 -END-