**** BILL NO. ****

INTRODUCED BY ****

BY REQUEST OF THE ****

A BILL FOR AN ACT ENTITLED: “AN ACT REQUIRING A RIGHT OF APPRAISAL IN AUTOMOBILE INSURANCE POLICIES; PROVIDING FOR REQUIRED POLICY LANGUAGE; ALLOWING PARTIES TO INVOKE THE RIGHT TO APPRAISAL; PROVIDING TIMEFRAMES FOR THE DISPUTE RESOLUTION PROCESS; PROVIDING FOR THE APPOINTMENT OF UMPIRES; PROVIDING FOR A PRIVATE RIGHT OF ACTION FOR FAILURE TO COMPLY AND ENFORCEMENT BY THE COMMISSIONER OF INSURANCE; AMENDING SECTIONS 33-18-201 AND 33-18-242, MCA; PROVIDING AN APPLICABILITY DATE.”

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

NEW SECTION. **Section 1. Right of appraisal – required language in policy – appointment of umpire -- definitions -- rulemaking.** (1) (a) An automobile insurance policy issued or delivered in the state must include a provision allowing the right to appraisal. The appraisal provision required by this section is intended to provide a type of dispute resolution process solely to determine the property loss when that amount is in dispute between the insurer, policyholder or claimant. This section applies only to automobile insurance policies delivered, issued for delivery, or renewed in this state by an authorized insurer, as defined in 33-1-201. Except for fraud, or material misrepresentation relevant to the appraisal, the amount of loss determined by the appraisal process under this section is binding as to the insurer, policyholder or claimant. The invocation of appraisal must be made within 180 days of the latter of a total loss acceptance offer, a total loss settlement offer, or completion of auto repairs.

(b) The appraisal provision required by this section must include the following language or corresponding language that the insurer certifies is at least as favorable to the insured:

"If . . . (the insurance company) . . . and the policyholder or claimant are unable to agree as to the amount of the property loss, either the insurer, policyholder or claimant may make a written demand for an appraisal, and within 10 business days each party shall select a neutral expert and notify the other party of its selection.

The neutral expert shall inspect the vehicle that is the subject of the claim, appraise the actual cash value and the amount of loss, make separate findings regarding the amount of loss for each element of loss, and exchange their completed appraisals. The neutral experts must complete the required review of the vehicle and exchange their written appraisal reports within 30 calendar days of being selected.

If the neutral experts are unable to agree on the losses, the selected neutral experts shall appoint an umpire and submit their differences to the umpire.

If the neutral experts do not appoint an umpire within 10 business days, either neutral expert may notify the commissioner and the commissioner shall randomly select a registered and competent umpire within 5 business days.

The amount of loss must be determined either by agreement of the two neutral experts or the umpire decision. An agreement by the neutral experts or the umpire is binding."

(c) Each party is responsible for their appraisal expenses, and each party shall equally share the cost of the umpire.

(2) (a) When the insurance company and the insurer, policyholder, or claimant fail to agree on the amount of a repair or a total loss, the insured or claimant has the right to exercise the right to appraisal process.

(b) At the time the policyholder or claimant invokes appraisal, the insurer shall release the funds the insurer previously identified as covering the amount of loss.

(c) The chosen neutral experts shall inspect the damaged motor vehicle within 10 business days after the written demand is received. The time limitation set forth in this subsection may be extended by mutual agreement between the insurer, policyholder or claimant. The neutral expert selected by the insurer may not be:

(i) an employee of the insurer or the insurer's affiliates; and

(ii) employed by the repair facility that will conduct any repair on the vehicle.

(d) If the neutral experts fail to inspect the damaged motor vehicle within the 10 business days, the neutral experts forfeit any right to inspect the damaged vehicle prior to repairs, and appraisals or any negotiations shall be limited to labor time and the price of parts, and shall not, unless objective evidence to the contrary is provided by the neutral expert, involve disputes as to the existence of damage or the scope of repair.

(e) (i) If the neutral experts agree, the decision shall be mutually binding.

(ii) If the two neutral experts fail to agree on the actual cash value or the amount of loss, the neutral experts may agree to appoint an umpire. The insurer may not submit the name of any adjuster currently

employed by the insurer or any of its affiliates to be considered for the position of umpire. The decision made by an umpire selected by the neutral experts is mutually binding.

(iii) If the two neutral experts are unable to agree upon an umpire within 10 business days, the neutral experts shall notify the commissioner. The commissioner shall randomly select a registered competent umpire within 5 business days. The umpire shall produce the appraisal within 15 days of selection. The neutral experts shall then submit their appraisal reports to the appointed umpire. The umpire shall make a binding decision setting the amount of the loss within 15 days.

(f) The insurer shall pay the agreed-upon amount of award within 10 business days of the final appraisal settlement or decision.

(3) (a) An appraisal under this section does not affect any applicable policy terms or provisions and an appraisal award must be made in compliance with applicable policy terms and Montana law.

(b) At the time of the initial offer to settle a claim, an insurer shall notify policyholders or claimants of the right to appraisal.

(c) Insurers shall submit data on appraisal use, outcomes, and dollar-value changes in claims so the commissioner can provide the legislature and the public with more transparency and insight into the process. This requirement shall be completed once per year in a format outlined by the commissioner in rule.

(4) An insurer may only dispose of a total loss at an approved salvage yard pursuant to 75-10-520. The insurer may not abandon the vehicle for any reason at a storage facility, tow yard, body shop, or any other location where the vehicle may be located that is not in compliance with 75-10-520. An insurer's violation of 75-10-520 is an unfair trade practice and subject to enforcement by the commissioner under Title 33, chapter 18 and this title.

(6) The commissioner may adopt rules relating to implementing standard right to appraisal notification language and format and the equitable rotation system for appointing umpires.

(5) For purposes of this section, the following definitions apply:

(a) “Actual cash value” means the pre-loss fair market value of a motor vehicle immediately before the occurrence of the loss, reflecting the price in an open and competitive retail market. Actual cash value must consider the vehicle’s condition, mileage, options, equipment, prior damage, market factors, and any other objectively measurable elements that affect market value. Except as allowed in 27-1-306, actual cash value does not mean 'book value' or a depreciated cost formula and must represent the actual replacement value as

of the date of loss.

(b) “Amount of Loss” refers solely to the valuation of the vehicle's physical damage and repair related expenses arising from the loss including necessary storage, towing, teardown, and original equipment manufacturer required repairs. Any losses due to rental expenses, loss-of-use damages, inconvenience damages, or other consequential damages or expenses would be separate from this section. Nothing in this section shall be construed to impair, limit, or otherwise affect an insured's or claimant's right to pursue recovery of such damages outside of the right to appraisal process.

(c) “Neutral expert” means a Montana-licensed adjuster with demonstrated experience in automobile damage and vehicle valuation, and has not received payment or compensation of any type from the insurer or the consumer named in the claim for the previous 30 days.

(d) "Umpire" means a person selected by the neutral experts or if the neutral experts cannot agree, by the commissioner. An umpire is required to hold an active Montana adjuster license and must demonstrate experience in automobile damage and vehicle valuations.

Section 2. Section 33-18-201, MCA, is amended to read:

"**33-18-201. Unfair claim settlement practices prohibited.** A person may not, with such frequency as to indicate a general business practice, do any of the following:

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

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

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

(4) refuse to pay claims without conducting a reasonable investigation based upon all available information;

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

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

(7) compel insureds to institute litigation to recover amounts due under an insurance policy by

offering substantially less than the amounts ultimately recovered in actions brought by the insureds;

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

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

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

(11) make known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

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

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

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

(15) fail to allow a party the right to appraisal or otherwise fail to comply with [section 1], including an insurer's failure to comply with 75-10-520."

Section 3. Section 33-18-242, MCA, is amended to read:

"**33-18-242. Independent cause of action -- burden of proof.** (1) An insured or a third-party claimant has an independent cause of action against an insurer for actual damages caused by the insurer's violation of 33-18-201(1), (4), (5), (6), (9), (13), or (15).

(2) In an action under this section, a plaintiff is not required to prove that the violations were of such frequency as to indicate a general business practice.

(3) An insured who has suffered damages as a result of the handling of an insurance claim may

bring an action against the insurer for breach of the insurance contract, for fraud, or pursuant to this section, but not under any other theory or cause of action. An insured may not bring an action for bad faith in connection with the handling of an insurance claim.

(4) A third-party claimant who has suffered damages as a result of the handling of an insurance claim may bring an action against the insurer for fraud or pursuant to this section, but not under any other theory or cause of action. A third-party claimant may not bring an action for bad faith in connection with the handling of an insurance claim.

(5) In an action under this section, the court or jury may award such damages as were proximately caused by the violation of 33-18-201(1), (4), (5), (6), (9), (13), or (15). Exemplary damages may also be assessed in accordance with 27-1-221.

(6) An insurer may not be held liable under this section if the insurer had a reasonable basis in law or in fact for contesting the claim or the amount of the claim, whichever is in issue.

(7) (a) An insured may file an action under this section, together with any other cause of action the insured has against the insurer. Actions may be bifurcated for trial where justice so requires.

(b) A third-party claimant may not file an action under this section until after the underlying claim has been settled or a judgment entered in favor of the claimant on the underlying claim.

(8) The period prescribed for commencement of an action under this section is:

(a) for an insured, within 2 years from the date of the violation of 33-18-201; and

(b) for a third-party claimant, within 1 year from the date of the settlement of or the entry of judgment on the underlying claim.

(9) As used in this section, the term "insurer" does not include a person, firm, or corporation utilizing a captive insurance company to pay claims made against it, unless that captive insurance group is a captive risk retention group."

NEW SECTION. **Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 33, chapter 15, and the provisions of Title 33, chapter 15, apply to [section 1].

NEW SECTION. **Section 5. Applicability.** [This act] applies to automobile insurance policies issued or renewed on or after January 1, 2028.

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