



# COMMISSIONER OF SECURITIES AND INSURANCE

Troy Downing  
Commissioner

Office of the  
Montana State Auditor

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## ADVISORY MEMORANDUM

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To: ALL PROPERTY AND CASUALTY INSURERS  
AND ALL INTERESTED PERSONS

From: TROY DOWNING   
Commissioner of Securities and Insurance, Office of the Montana State Auditor

Date: April 14, 2022

### **Advisory Memorandum Regarding Interest Rate on Premium Refunds in Consent Agreements**

This advisory memorandum is intended to provide guidance to the insurance industry with regard to how the Office of the Montana State Auditor, Commissioner of Securities and Insurance (“CSI”) will assess the interest rate on premium refunds to policyholders from insurers that have overcharged premiums.

#### ***Background***

Insurers occasionally refund premiums to policyholders for a variety of reasons. Overcharging premiums is a violation of Montana law, because, in overcharging, the insurer is noncompliant with the filed rates.

#### ***Guidance***

Mont. Code Ann. § 33-16-203, requires every insurer to file with the Commissioner all rates intended for use in Montana. When an insurance company overcharges policyholders—whether

purposefully or inadvertently—they are not using filed rates, which violates Mont. Code Ann. § 33-16-203. One enforcement option for violating Mont. Code Ann. § 33-16-203, is to impose a penalty at \$25,000 per violation. Mont. Code Ann. § 33-1-317.

Insurance policies under which premiums are charged are contracts, and therefore, are governed by generally applicable contract law. Contract damages include the amount that will compensate the party aggrieved for all the detriment which was caused by a breach of contract. Mont. Code Ann. § 27-1-311. “Each person who is entitled to recover damages certain or capable of being made certain by calculation and the right to recover that is vested in the person upon a particular day is entitled to recover interest on the damages from that day except during the time that the time that the debtor is prevented by law or by the act of the creditor from paying the debt.” Mont. Code Ann. § 27-1-211. As of 2017, the interest rate charged for contract damages capable of being made certain is equal to the rate for bank prime loans published by the federal reserve system<sup>1</sup>, plus 3%. Mont. Code Ann. § 25-9-205, (2017).<sup>2</sup>

When an insurer charges a policyholder a premium not agreed to in the insurance contract, that insurer breaches the contract. CSI’s policy of charging of interest is consistent with statutes authorizing interest when damages are capable of being made certain. *See* Mont. Code Ann. § 27-1-211. Therefore, CSI will be charging an interest rate equal to the rate for bank prime loans published by the federal reserve system, plus 3% on premium refunds when an insurer overcharges a policy holder.

**This advisory memorandum is informational only and does not enlarge, delimit, or otherwise modify any requirements of applicable law or in any way limit the authority of CSI under applicable law. CSI encourages interested persons to consult with independent legal counsel for guidance on the application of law to any particular circumstances.**

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<sup>1</sup> See <https://www.federalreserve.gov/releases/h15/>

<sup>2</sup> Prior to 2017, that rate was 10%. Mont. Code Ann. § 25-9-205, (2015).