2015 Legislative Session Highlights

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The Office of the Montana State Auditor, Commissioner of Securities and Insurance (CSI) played an active role in the 2015 legislative session by:
• drafting and promoting bills on regulatory topics impacting Montana consumers and the industry, and
• providing consultation and informational testimony on non-CSI insurance-related bills.

Today:
• Discuss significant laws passed by the 2015 Legislature, whether drafted by the CSI or another party, and
• Look ahead to bills the CSI may propose during the 2017 legislative session.
Legislation by the Numbers

2015 Overall Legislative Statistics
• 1187 bills introduced
• 539 bills passed
• 52 bills vetoed

2015 CSI Legislative Statistics
• 20 bills introduced
• 14 bills passed
• 1 bill vetoed
## Passed Legislation

### Bills drafted by or in coordination with the CSI

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### Non-CSI bills

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Background: NAIC

NAIC = National Association of Insurance Commissioners

Comprised of insurance commissioners from all 50 states, the District of Columbia, and U.S. territories

Drafts model uniform legislation for accreditation purposes
HB 119 adopts five NAIC model acts needed for Montana to retain regulatory accreditation.

**Accreditation** = The “stamp of approval” for a state regulatory entity.

Important to the industry as it ensures uniformity between states, i.e. so that states don’t apply differing or conflicting standards to insurers doing business in multiple states.
Accreditation Model Acts

1. Own Risk and Solvency Assessment Act
   • Ensures large insurance companies maintain an adequate risk management framework.

2. Standard Valuation Act
   • Describes how life insurers value policies for purposes of experience reporting and reserve requirements.

3. Insurance Holding Company System Regulatory Act
   • Amends current law to (1) require filing of enterprise risk reports and (2) add language to account for divestitures.
4. Model Risk Retention Act
   (1) Clarifies that risk retention groups (RRGs) are the only captive insurer subject to holding company statutes and (2) applies governance standards to RRGs.

5. Credit for Reinsurance Model Act
   (1) Provides that insurers may use credit for reinsurance and (2) defines what securities may be used in a reinsurance trust agreement.

HB 119 became effective on passage and approval.
HB 53 permits insurers to offer “military discounts” for property or casualty insurance.

- Exception to Montana’s anti-rebating/inducement statute, 33-18-210, MCA.

Who qualifies?

- Active, retired, or honorably separated member of the U.S. armed forces, including a reservist
- Spouse, surviving spouse, dependent, or heir of one of the above

*HB 53 became effective upon passage and approval.*
HB 94 authorizes issuance of a new coverage type - natural disaster multiperil insurance - in the surplus lines context.

**Natural disaster multiperil insurance:** Bundled flood, earthquake, and landside insurance.

**Inability to procure:** Surplus lines policy may be obtained only if the insurance cannot be obtained from authorized insurer.

- Natural disaster multiperil insurance **automatically** satisfies this requirement; no further proof needed.

**Why?** Developed as an affordable alternative to the National Flood Insurance Program in the face of recent, significant premium increases.

*HB 94 became effective upon passage and approval.*
HB 95 updates Montana’s adjuster licensing statutes to address the unique role of public adjusters in the marketplace.

Public Adjuster: An adjuster employed by and representing the interests of the insured. 33-17-102, MCA.

Clarifications: Insurance Code statutes amended to clarify that adjuster laws apply equally to public adjusters, including:
• Licensure requirements
• Examinations
• Continuing education

Public Adjuster Contracts: Public adjusters must enter into written contracts with the insured.
• Contracts must be filed with the CSI
• Required and prohibited contract terms
• Disclosure to insured of any public adjuster financial interest

Standards of Conduct: Public adjusters must conform to statutory standards of conduct consistent with their relationship with insured
• e.g. duty of loyalty, absence of conflict of interest

HB 95 was effective on passage and approval.
HB 118 permits insurers to deliver consumer insurance documents by **electronic means** ("e-delivery").

**Approved e-delivery methods:** (1) delivery to an email address; (2) posting on a network or website and notifying insured where to view posted document.

- Insured may not be penalized for not opting into electronic delivery.
- Insurer must deliver hard copy if it suspects non-delivery.

**Types of documents:** Any notice or document required in an insurance transaction.

**Conditions of use:**
- Opt-in: insured must **affirmatively consent** to e-delivery of documents.
- Insured may not be penalized for not opting into e-delivery.
- Consent can be effective beyond renewals, if provided for in initial consent document.
- Disclosures:
  - right to hard copy documents, including how to request
  - right to withdraw consent, including how to do so
  - types of documents to be delivered electronically
  - how to update contact information
  - hardware/software requirements for e-delivery, including any changes to those requirements
Withdrawal of Consent: Insured may withdraw consent to e-delivery at any time. Withdrawal is effective 15 days after the insurer receives the request.

Protection of Information: Insurer e-delivery processes must be reasonably calculated to:
- result in actual receipt of information
- protect confidentiality of personal information.

Electronic Insurance Card: Insureds may now satisfy Montana’s automobile proof of insurance requirements by using an electronic representation or equivalent of a documentary insurance card provided by the insurer.
- (e.g. smartphone insurance card)

*HB 118 becomes effective January 1, 2016.*
HB 78 imposes privacy, disclosure, and consumer protection on insurer telematics programs, also known as “black box” programs.

**Telematics Program**

Insured allows an insurer to obtain data relating to vehicle operation and driving habits by means of the vehicle computer or other device, typically in return for a discounted rate.

- Data = performance or operation information such as speed, direction, or location.
- Device (“black box”): can include event data recorders, vehicle sensors, plug-in devices provided by insurer, cell phones.

**In Montana**

Several insurers currently offer telematics programs to their insureds, and the CSI expects more in the future.
Telematics Agreement: Written agreement signed by policyholder. Must disclose:

• Types of data to be collected
• Purposes for which collected data may be used
• Who will collect/receive data (e.g. third-party vendor on insurer’s behalf)
• How long insurer will retain data
• Terms of benefit (e.g. discount) associated with agreement

Data Ownership

• Is “personal information” protected as confidential under 33-19-104, MCA.
• Insurer and third parties may only use information for purposes disclosed in agreement.
Benefit Terms
• Insurer may offer benefit (e.g. discount) for participating in program.
• Exception to Montana’s anti-rebating/inducement statute, 33-18-210, MCA.
• Insurer may adjust benefit based upon data analysis of policyholder driving habits.

Insurer Obligations
• Must offer program to all policyholders.
• May not penalize non-participating insureds (e.g. cancellation, non-renewal, rate increase, coverage reduction, etc.).
• Exceptions: mileage discounts, pay-as-you-drive programs
• May not use data for negative rating purposes.

Termination
• Insurer may terminate agreement (and associated benefit) if policyholder materially fails to comply with its terms.
• Insurer must terminate agreement upon request of policyholder.

HB 78 applies to telematics agreements entered into or renewed on or after January 1, 2016.
SB 83 adopts three NAIC model laws relating to the health insurance benefit determination review process. SB 83 modernizes archaic Montana law, which was federally preempted in significant part.

Utilization Review: Techniques used to evaluate the clinical necessity, appropriateness, efficacy or efficiency of health care services, procedures, or settings. 33-32-102, MCA.

Internal Appeal (aka “grievance”): A complaint submitted by an insured regarding:
- Availability, delivery, or quality of health care services;
- Claims payment, handling, or reimbursement;
- Matters pertaining to insured-insurer contractual relationship. 33-32-102, MCA.

(Typically, an appeal of an adverse benefit determination)

External Review: Procedure providing for review of adverse benefit determinations involving medical necessity or policy rescission.
- Review is provided by an accredited independent review organization.

SB 83 becomes effective on January 1, 2016.
Eliminates federal preemption
Insurers will now comply with Montana law, working with Montana regulators

Implements uniform review processes
Including uniform notice documents, insurer deadlines, review standards

Provides expedited reviews of emergent care adverse benefit determinations

Ensures impartiality of Independent Review Organizations (IROs)
Previously, insurers could select the IROs they used
Insurers may now only use CSI-approved IROs on a random or other impartial basis

Establishes recordkeeping requirements
Increases transparency and accountability
Insure Montana

- Small business health insurance pool
- Premium incentive and assistance payments, tax credits

**Funding:** Was set to run out in June 2015

SB99 would have modified Insure Montana by eliminating the health insurance pool but retaining premium incentive and assistance, tax credits.

- Passed Legislature; vetoed by governor.

**Current state of Insure Montana:**

- 2015 final budget extended Insure Montana funding for six months
Workplace Safety
SB 123 grants the Commissioner regulatory authority over the Montana State Fund, Montana’s largest workers’ compensation provider.

Generally subject to the workers’ compensation provisions of the Montana Insurance Code, 33-1-101 et seq., MCA.

However, a number of exceptions apply, consistent with State Fund’s role as the guaranteed market for workers’ compensation:

- Not subject to revocation/suspension proceedings
- Not a guaranty association participant
- Not subject to 2.75% premium tax found in 33-2-705, MCA
- Subject to higher risk-based capital (i.e. solvency) requirements
- Subject to excessiveness standards in ratemaking not applicable to other workers’ compensation insurers

Montana State Fund submitted its Transition Plan on July 31.

SB 123 is effective January 1, 2016.
Non-CSI Bills
HB 240 allows surplus lines insurance producers to assess a flat per-policy fee in connection with a sale of surplus lines insurance.

**Fees:** May not exceed:
- $50 for a personal lines policy
- $100 for a commercial lines policy

**Premium:** Additional fee is not considered “premium.”

**NOTE:** Applies only to surplus lines producers when transacting surplus lines insurance business.

*HB 240 became effective July 1, 2015.*
SB 396 Revise Transportation for Hire Laws ("Uber bill")

SB 396 provides a regulatory framework for the operation of transportation network carriers.

Transportation network carrier ("carrier"): An entity that uses a network or software application to connect passengers to carrier drivers.

- A decentralized, technology-enabled service providing an alternative to taxicabs.
- Driver, not carrier, owns vehicle. Unclear whether drivers are employees or independent contractors.
- e.g. Uber and Lyft.

Basics of bill

- Creates “Class E” motor carrier class subject to jurisdiction of Public Service Commission.
- Class E = transportation network carriers
- Record-keeping requirements
- Fare and disclosure requirements
- Mandatory automobile insurance requirements
New business model, unique insurance concerns.

For example:
• Should higher liability limits apply while the driver is working?
• Does the driver’s personal auto coverage apply while the driver is working?
• Who must purchase coverage – driver, or carrier?

Liability limits
• Bill establishes motor vehicle liability coverage requirements for Class E drivers
• Policy must recognize driver as a network carrier driver
• Limits differ depending upon driver’s working status:

Available, No Rider Onboard
• Death and bodily injury coverage: $50,000 per person/$100,000 per occurrence
• Property damage coverage: $25,000
• Uninsured motorist coverage: standard requirement per 33-23-201, MCA

Rider Onboard
• Death/bodily injury/property damage coverage: $1,000,000
• Uninsured motorist coverage: standard requirement per 33-23-201, MCA
Personal automobile policy

- Insurers may exclude coverage for losses incurred while the driver is “working” (logged into the network or carrying a passenger).
- Insurers have no duty to defend for these excluded losses.
- In other words, driver may need a separate policy or endorsement for work.

Who purchases coverage – driver or carrier?

- Coverage is driver’s obligation, but carrier may purchase on driver’s behalf.
- Carrier must provide secondary coverage for same amounts in event driver’s policy lapses or is insufficient.

SB 396 became effective July 1, 2015.
The CSI is identifying potential legislation to put forward in the 2017 Legislature. These include:

**Air Ambulances**
- Control exorbitant costs for air ambulance transport by out-of-network providers, increase consumer awareness of air ambulance coverage under health policies.

**Genetic Information Discrimination**
- Restrict insurers’ use of mandated genetic testing.

**Surprise Medical Bills**
- Require provider and insurer disclosures and increase patient control regarding medical treatment expenses and PPO network status of treating providers.

**Presumptive Disease**
- Adjust firefighters’ workers’ compensation burden of proof for certain diseases strongly correlated to job-related hazards but difficult to link causally under current workers’ compensation laws.
What questions do you have?