



# 2015 Legislative Session Highlights

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# Overview

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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<b>HB 119</b>	<u>Accreditation Standards</u>
<b>HB 95</b>	<u>Revise Public Adjuster Laws</u>
<b>HB 94</b>	<u>Surplus Lines Multiperil Insurance</u>
<b>HB 53</b>	<u>Property/Casualty Military Discounts</u>
<b>HB 118</b>	<u>Electronic Delivery of Insurance Documents</u>
<b>HB 78</b>	<u>Telematics Devices: Privacy and Rating</u>
<b>SB 83</b>	<u>Health Insurance Appeal and External Review Process</u>
<b>SB 99</b>	<u>Insure Montana (vetoed by governor)</u>
<b>SB 123</b>	<u>Montana State Fund Regulatory Authority</u>

## Non-CSI bills

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<b>HB 240</b>	<u>Surplus Lines Fees</u>
<b>SB 396</b>	<u>Revise Transportation for Hire Laws ("Uber bill")</u>



# CSI Bills



# Background: NAIC

**NAIC = National Association of Insurance Commissioners**

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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 Accreditation Standards

✓ 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.**



# HB 119 Accreditation Standards (cont'd)

## 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.



# HB 119 Accreditation Standards (cont'd)

## 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 Property/Casualty Military Discounts



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.

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## 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 Surplus Lines Multiperil Coverage



**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 Revise Public Adjuster Laws



**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 Electronic Delivery of Policy Documents



**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



# HB 118 Electronic Delivery of Policy Documents (cont'd.)

**Withdrawal of Consent Insured may withdraw consent to e-delivery at any time  
Withdrawal effective 15 days after insurer receives request**

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**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 Telematics (“Black Box”) Programs



**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.

- I.E., Progressive “Snapshot,” State Farm “Drive Safe and Save,” Allstate “Drivewise.”
- 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.



# HB 78 Telematics Programs (cont'd.)

**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

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## **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.



# HB 78 Telematics Programs (cont'd.)

## 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 Health Insurance Appeals and External Reviews



**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.*



# SB 83 Health Insurance Appeals and External Reviews (cont'd.)

## SB 83 HIGHLIGHTS

### **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



# SB99 Insure Montana

## 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
- Insure Montana ends December 31, 2015. Small businesses may seek coverage on the SHOP Exchange.



# Workplace Safety





# SB 123 Montana State Fund Regulatory Authority

✓ **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 Surplus Lines Fees



**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



# SB 396 Revise Transportation for Hire Laws (cont'd.)

## New business model, unique insurance concerns.

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### 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



# SB 396 Revise Transportation for Hire Laws (cont'd.)

## **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.*



# 2017: A Look Ahead

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?

