



COMMISSIONER OF SECURITIES AND INSURANCE

James Brown
Commissioner

Office of the
Montana State Auditor

ADVISORY MEMORANDUM

To: ALL INTERESTED PERSONS

From: JAMES BROWN 
Commissioner of Securities and Insurance, Montana State Auditor

Date: 07/02/2025

Advisory Memorandum Regarding Insurer Compliance with Open Container and Marijuana Possession Laws

Purpose

This advisory memorandum's purpose is to notify insurers operating in Montana that they must comply with Mont. Code Ann. §§ 61-8-1026 and 61-8-1027. These laws prohibit insurers from holding against the insured (e.g., underwriting) or increasing premiums on an insured individual for certain open-container and marijuana possession violations. All insurers that consider the specified open-container or marijuana possession violations when determining rates, premiums, underwriting decisions, or coverage termination must submit the certification included with this advisory memorandum as part of a rate filing through NAIC SERFF no later than October 1, 2025.

Applicable Law

On January 1, 2022, §§ 61-8-1026 and 61-8-1027, M.C.A., came into effect. Pertinent to insurers, these laws state:

61-8-1026. Unlawful possession of open alcoholic beverage container in motor vehicle on highway. (1) Except as provided in subsection (2), a person commits the offense of unlawful possession of an open alcoholic beverage container in or on a motor vehicle if the person knowingly possesses an open alcoholic beverage container within the passenger area of a motor vehicle on a highway.

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(3)(a) A person convicted of the offense of unlawful possession of an open alcoholic beverage container in a motor vehicle shall be fined an amount not to exceed \$100.

(b) A violation of this section **is not a criminal offense** within the meaning of 3-1-317, 3-1-318, 45-2-101, 46-18-236, 61-8-104, and 61-8-711 and may not be recorded or charged against a driver's record, and **an insurance company may not hold a violation of this section against the insured or increase premiums because of the violation.** The surcharges provided for in 3-1-317, 3-1-318, and 46-18-236 may not be imposed for a violation of this section.

61-8-1027. Unlawful possession of marijuana, marijuana products, or marijuana paraphernalia in motor vehicle on highway. (1) Except as provided in subsection (2), a person commits the offense of unlawful possession of marijuana, marijuana products, or marijuana paraphernalia in a motor vehicle if the person knowingly possesses marijuana, marijuana products, or marijuana paraphernalia, as those terms are defined in 16-12-102, within the passenger area of a motor vehicle on a highway.

(3)(a) A person convicted of the offense of unlawful possession of marijuana, marijuana products, or marijuana paraphernalia in a motor vehicle shall be fined an amount not to exceed \$100.

(b) A violation of this section **is not a criminal offense** within the meaning of 3-1-317, 3-1-318, 45-2-101, 46-18-236, 61-8-104, or 61-8-711 and may not be recorded or charged against a driver's record, and **an insurance company may not hold a violation of this section against the insured or increase premiums because of the violation.** The surcharges provided for in 3-1-317, 3-1-318, and 46-18-236 may not be imposed for a violation of this section.

(Emphasis added).

Guidance

Some insurers may be non-compliant with the above statutes and are imposing unlawful overcharges and penalties on insured individuals as a result of open-container and marijuana possession violations. As such, CSI is advising insurers to immediately review and update their rates, rules, and underwriting as they pertain to §§ 61-8-1026 and 61-8-1027, M.C.A.

Insurance rates that are not compliant with §§ 61-8-1026 and 61-8-1027, M.C.A., are unlawful. Portions of premiums associated with non-compliant rates are considered overcharges. § 33-18-212, M.C.A. To rectify the improperly imposed overcharges, the insurer must issue a refund of such monies to affected parties with interest. § 27-1-202, M.C.A.

If an insurer discovers that it has been unlawfully penalizing an insured individual for a violation of §§ 61-8-1026(1) or 61-8-1027(1), M.C.A., the insurer must immediately cease doing so. Insurers must then submit updated rates and rules to CSI and issue a refund of the overcharged premium amounts, with interest, to the affected individual if it has not already done so. §§ 33-16-203, 27-1-211, M.C.A.

Affected parties have a right to interest accrued on such overcharges. § 27-1-211, M.C.A. When harm to affected parties is certain, the interest rate must be equal to the rate for bank prime loans published by the federal reserve system, plus 3%. §§ 27-1-211, 25-9-205, M.C.A. Additional information on interest rates pertaining to premium refunds may be found in CSI's [Advisory Memorandum Regarding Interest Rate on Premium Refunds in Consent Agreements](#).

Additionally, insurers must submit a certification to CSI that details legal compliance and any required premium refunds issued. § 33-2-705, M.C.A. Insurers that are not required to file rates pursuant to § 33-16-103 must still correct their rates and underwriting internally.

All insurers that use the noted open-container or marijuana possession violations to determine rates, premiums, underwriting, or terminate coverage must submit the certification attached to this advisory memorandum in a rate filing through NAIC SERFF by October 1, 2025. § 33-2-705, M.C.A. This certification requirement applies even if an insurer has already updated their rates and rules as they pertain to §§ 61-8-1026 and 61-8-1027, M.C.A.

In sum, if an insurer discovers unlawful penalization of an insured individual for violating §§ 61-8-1026(1) or 61-8-1027(1), M.C.A., it must:

1. Immediately cease the unlawful practice;
2. Submit updated rates and rules to CSI, unless exempt under 33-16-103, M.C.A.;
and
3. Issue a refund of overcharged premium amounts with interest to affected individuals, pursuant to §§ 33-16-203 and 27-1-211, M.C.A.
4. Fill out the attached certification form and submit it to CSI through SERFF by October 1, 2025.

It is of the utmost importance that insurers comply with Montana law. Insurers have a duty to rectify their errors and failure to do so may result in action by CSI.

Questions concerning rate and rule filings should be directed to CSI's Chief Actuary and Rate Bureau Chief, Mari Kindberg, at mkindberg@mt.gov.

This advisory memorandum 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.

This guidance is necessitated by policies enacted by the Montana Legislature. CSI is required to enforce this legislative requirement and for present purposes does not opine on such legislative judgments.



MONTANA CERTIFICATION REGARDING INSURER COMPLIANCE WITH OPEN-CONTAINER AND MARIJUANA POSSESSION LAWS

SERFF Filing Number: _____

1. The company hereby certifies that, effective on or after January 1, 2022, it does not utilize open-container (alcohol-in-vehicle) violations or marijuana possession-related violations that occurred while the insured or prospective policyholder was in a motor vehicle on a highway for underwriting or insurance policy rating purposes, except as permitted by Mont. Code Ann. §§ 61-8-1026 or 61-8-1027. Should the company determine that such violations have been considered, whether knowingly or unknowingly, the company agrees to issue refunds with interest to all impacted policyholders.

2.) The company affirms that, should refunds be required, it has reported or will report the total dollar amount refunded, including interest, and the total number of impacted policies to the Office of the Commissioner of Securities and Insurance (CSI) in this SERFF filing.

3.) a) ☐ The company represents that it has previously submitted updated rates and rules, under SERFF tracking number(s): _____, which explicitly exclude consideration of open-container and marijuana possession-related violations pertaining to motor vehicles present on a highway.

OR

b) ☐ Confirm the company's submission, as part of this filing, of updated rates and rules that explicitly exclude consideration of open-container and marijuana-related violations that occurred while the insured or prospective policyholder was in a motor vehicle on a highway.

[Signature page follows.]

CERTIFICATION

I hereby affirm under penalty of perjury that the above disclosures are accurate and complete. I understand that this certification does not alleviate compliance with any provision of Montana law.

_____ Authorized Representative's Printed Name	_____ Company Name
_____ Signature	_____ Date
_____ Title	_____ Email Address
_____ Mailing Address	
_____ City, State, Zip	_____ Phone Number

*Submit via SERFF | Deadline: **October 1, 2025***