



FILING INFORMATION NOTICE 2021-2

DATE: September 21, 2021

FROM: Karen Z. Schutter
IIPRC Executive Director

RE: **Filing Process for Product Filings that Include Montana to Address the Amendment of § 49-2-309, Montana Code Annotated**

Statutory References: Articles IV(3) and (6), X(2), and XVI(2) of the *Interstate Insurance Product Regulation Compact* as adopted by Compacting States.

Operating Procedure References: Section 103 of the *Operating Procedure for the Filing and Approval of Product Filings (“Product Filing Rule”)*.

Purpose: Filing Information Notices explain steps or clarifications in the Insurance Compact’s process for filing and review of product filings under the applicable Uniform Standards. This Filing Information Notice (“FIN”) only applies to product filings where Montana is an included Compacting State for purposes of use and approval. This FIN provides guidance for filers to document a change from unisex to sex-distinct in approved life insurance and annuity product filings approved for Montana. Effective January 1, 2022, FIN 2013-3 is repealed.

BACKGROUND:

In the 2021 legislative session, the Montana State Legislature enacted an amendment to § 49-2-309, Montana Code Annotated, which becomes effective on January 1, 2022, and changes the requirement that applied Montana’s constitutional equal protection requirement to insurance products and retirement plans. With respect to insurance products subject to Insurance Compact filing and review, a newly added subsection provides, “It is not a violation of the prohibition against sex or marital status discrimination in this section for a person to use accepted ratemaking methodologies based on sex or marital status in establishing insurance premium rates.”

The amendment becomes effective for insurance products issued on or after January 1, 2022. The amendment permits the use of sex-distinct premium rates.

This FIN outlines the process for filers wishing to update a filing previously approved for Montana or to add Montana to a new or approved filing to use ratemaking methodologies based on sex in establishing insurance premium rates in life insurance and annuity product filings for new business on or after January 1, 2022.

FILING PROCEDURES:

1. New and Pending Product Filing Submissions

- a. Filers may include Montana in new product filing submissions that reflect sex-distinct policies or contracts provided the SERFF filing documents that the product will be issued no earlier than January 1, 2022 for Montana.
 - i. The required statement about issuance of the product no earlier than January 1, 2022 should be included in the Filing Description.
 - ii. Montana may be added to pending filings, with the required statement about issuance of the product no earlier than January 1, 2022 in Montana being added to the Filing Description using the Post-Submission Update function.
- b. Montana does not have product filing fees. There is no Compact filing fee for adding a state to a filing.
- c. Filers may continue to use unisex endorsements in Montana and elsewhere in accordance with a prior approval for the unisex endorsement(s).

2. Updating Previously Approved Product Filing Submissions

The specific method of updating a previously approved product filing submission depends on the method used in the previously approved submission to reflect compliance with Montana's unisex requirement before the amendment to § 49-2-309, Montana Code Annotated, which becomes effective on January 1, 2022.

- a. **Compact-approved product filings that 1) already include Montana and 2) have a sex-distinct version approved** can provide documentation that the product will be issued on a sex-distinct basis in Montana by amending the previously approved filing to update the sex-distinct product for use in Montana.
 - i. The following guidance applies only to Compact filings that contain approved forms. Filings that were submitted to update supporting documentation from approved form filings, i.e., Supporting Documentation Update filings, do not need to be updated for purposes of this FIN 2021-2.
 - A. A request to reopen a Supporting Documentation Update filing for purposes of this FIN 2021-2 will not be allowed.

- ii. Filers should take the following steps:
 - A. Submit a Note to Reviewer requesting the previously approved filing be reopened for an amendment;
 - B. Once the filing is reopened, submit an amendment letter documenting:
 - I. The product will be issued on a sex-distinct basis in Montana no earlier than January 1, 2022, and
 - II. Provisions of the approved Actuarial Memorandum addressing unisex issues of the product should be disregarded for purposes of products issued in Montana beginning no earlier than January 1, 2022;

AND

- III. a. The use of a unisex endorsement, if any, to comply with Montana's former unisex requirement will be discontinued when the product is issued on a sex-distinct basis in Montana.
 - 1. The unisex endorsement shall be identified in the amendment letter by approved form number and SERFF Tracking Number;
 - 2. The filer may clarify that a unisex endorsement may continue to be used in Montana for employer-employee plans that are subject to the Norris decision and/or Title VII of the Civil Rights Act of 1964.
 - 3. **The filer shall not replace any approved item in the reopened filing.**

OR

- b. The use of variability, if any, to comply with Montana's former unisex requirement will be discontinued when the product is issued on a sex-distinct basis in Montana.
 - 1. The filer may, but is not required to, submit a **redlined** Statement of Variability (SOV) showing how variability of information will be administered when the product is issued on a sex-distinct basis in Montana. If provided, a redlined

SOV should be in a new, user-created row on the Supporting Documentation tab.

2. **The filer shall not submit a revised SOV for review under the Statement of Variability area of the Supporting Documentation tab.**
3. **The filer shall not replace any approved item in the reopened filing.**
4. The submission of a revised Statement of Variability or replacement of any approved item other than directed in this FIN 2021-2 may result in additional filing fees and/or rejection of the amendment letter.

OR

- c. The use of static form language such as “unless prohibited by state law” to comply with Montana’s former unisex requirement will no longer apply when the product is issued on a sex-distinct basis in Montana.
 1. Products using this method are already issued as approved in Montana. It is not necessary to revise forms approved for use on a sex-distinct basis to begin issuing the forms on a sex-distinct basis in Montana beginning January 1, 2022.
 2. **The filer shall not submit a revised form for review on the Form Schedule.**
 3. **The filer shall not replace any approved item in the reopened filing.**
 4. The submission of a revised form or replacement of any approved item other than directed in this FIN 2021-2 will result in additional filing fees and/or rejection of the amendment letter.
- C. Submit the applicable Compact filing fee for amendments to product filing submissions, defined in the Compact Filing Fee Schedule as “50% of current IC Filing Fee.” There is no state fee for the submission of an amendment letter.

- iii. An amendment submitted in accordance with this FIN 2021-2 may not contain any other update, revision or amendment to the previously approved product. Submission of an amendment to any part of the filing other than as directed in this FIN may result in rejection of the amendment and require re-filing of the previously approved form(s) for review, with new form number(s).
 - A. If there is any question about the scope of an amendment in accordance with this FIN 2021-2, please contact the Insurance Compact Office before requesting to reopen the previously approved filing.
- b. **Compact-approved forms that were submitted for use only in Montana**, such as separate unisex policies/contracts or unisex endorsements, shall not be withdrawn or otherwise addressed in a previously approved filing provided the filer uses one of the above methods to document how the product will be issued on a sex-distinct basis going forward.
 - i. Approved forms in a Montana-only filing cannot be withdrawn or amended even if the filer will no longer issue such forms in Montana., because it is important to maintain accurate information in SERFF reflecting the period in which a product was issued on a unisex basis in Montana.
 - ii. A request to reopen a filing containing only forms approved for use in Montana for purposes of this FIN 2021-2 will not be allowed.
- c. **Compact product filing submissions that 1) do not already include Montana and 2) are approved for sex-distinct issue** can have Montana included by following the existing procedure for adding a state to a Compact-approved filing.
 - i. Filers should take the following steps:
 - A. Refer to the [How to Add a State](#) instructions on the Insurer Resources page of the Compact website.
 - B. Regardless of whether the previously approved filing uses mix and match, submit a Note to Reviewer specifying that the product will be issued in Montana no earlier than January 1, 2022. The state may be added and Note to Reviewer submitted without reopening the filing.
 - C. If the previously included filing uses mix and match, the same Note to Reviewer may be used to document the “no earlier than” date and the information required under Step One on p. 2 of the How to Add a State instructions.
 - D. For a company that has not submitted an Annual Registration Filing, an Update-Only Registration fee is required before Montana may be added

to a closed, previously approved product filing submission. Refer to the [Compact Filing Fee Schedule](#).

3. Unisex or Sex-Distinct Submission Requirement in SERFF

- a. The Compact SERFF submission requirement for sex-distinct or unisex policies will be revised on January 1, 2022 to eliminate the requirements referencing Montana, as follows:

Sex Distinct or Unisex Policies Submission Requirement:

State whether the policy is sex-distinct or unisex. If sex-distinct, the company shall confirm that the policy will not be issued in any employer-employee plans that are subject to the Norris decision and/or Title VII of the Civil Rights Act of 1964. ~~If Montana is included in this filing or added to the filing after approval, please confirm that the company will issue the forms included in this filing to Montana residents on a unisex basis only, and will not issue to Montana residents on a sex-distinct basis.~~

- b. Filers may continue to use previously approved unisex endorsements in Montana for employer-employee plans that are subject to the Norris decision and/or Title VII of the Civil Rights Act of 1964 or otherwise.

4. Marital Status in § 49-2-309, Montana Code Annotated

The Compact filing framework under FIN 2013-3 was specific to gender, and Compact life insurance and annuity filings do not address rating factors based on marital status, so our recommendation that any change to the treatment of marital status in new or previously approved Compact life insurance or annuity product filing submissions should not be mentioned or addressed.

APPLICABLE IIPRC FORMS:

None

EFFECTIVE DATE:

September 21, 2021

CONTACT INFORMATION:

Questions regarding this Notice should be directed to:
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