

1 HOUSE BILL NO. 297
 2 INTRODUCED BY Spring
 3 BY REQUEST OF THE INSURANCE COMMISSIONER

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 6 LAWS RELATING TO SURPLUS LINES INSURANCE; ELIMINATING THE
 7 PLACEMENT FEE; ALLOWING NONRESIDENT INSURANCE PRODUCERS TO
 8 BECOME SURPLUS LINES PRODUCERS; REQUIRING PURCHASING GROUPS
 9 TO IDENTIFY A LICENSED INSURANCE PRODUCER WHEN REGISTERING
 10 WITH THE DEPARTMENT OF INSURANCE; SUBJECTING SURPLUS LINES
 11 PRODUCERS TO PROVISIONS OF THE MONTANA INSURANCE CODE
 12 CONCERNING PREMIUM CHANGES AND CANCELLATION; AND AMENDING
 13 SECTIONS 33-2-305, 33-2-306, 33-11-108, AND 33-15-1102,
 14 MCA."

15
 16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 **Section 1.** Section 33-2-305, MCA, is amended to read:
 18 "33-2-305. Licensing of surplus lines insurance
 19 producer -- fee and bond. (1) A person may not procure a
 20 contract of surplus lines insurance with an unauthorized
 21 insurer unless he is licensed as a resident property,
 22 casualty, and surety insurance producer and possesses a
 23 current surplus lines insurance license issued by the
 24 commissioner.

25 (2) The commissioner shall issue a surplus lines

1 insurance license to any qualified holder of a current
 2 property, casualty, and surety insurance producer license
 3 only if the insurance producer has:

4 (a) remitted to the commissioner the annual fee
 5 prescribed by 33-2-708;

6 (b) submitted to the commissioner a completed license
 7 application on a form supplied by the commissioner;

8 (c) been licensed as a property, casualty, and surety
 9 insurance producer continuously for 5 years or more; and

10 (d) filed with the commissioner and thereafter for as
 11 long as the license remains in effect kept in force a bond
 12 in favor of the state of Montana in the amount of \$10,000,
 13 with authorized corporate sureties approved by the
 14 commissioner. The bond must be conditioned that the
 15 insurance producer will conduct business under the license
 16 in accordance with the provisions of The Surplus Lines
 17 Insurance Law and that he will promptly remit the taxes
 18 provided in 33-2-311. The bond may not be terminated unless
 19 the surety gives the surplus lines insurance producer, the
 20 producing insurance producer, and the commissioner at least
 21 30 days' prior written notice thereof.

22 (3) The license expires on April 1 after its date of
 23 issue. A surplus lines insurance producer shall renew the
 24 license on or before March 1 of each year upon payment of
 25 the annual renewal fee prescribed in 33-2-708. A surplus

1 lines insurance producer who fails to apply for a renewal of
2 the license on or before March 1 shall pay a fine of \$100
3 before the commissioner renews the license.

4 (4) A corporation is eligible to be licensed as a
5 surplus lines insurance producer if:

6 (a) the corporate license lists the individuals within
7 the corporation who have satisfied the requirements of this
8 part to become surplus lines insurance producers; and

9 (b) only those individuals listed on the corporate
10 license transact surplus lines insurance."

11 **Section 2.** Section 33-2-306, MCA, is amended to read:

12 "33-2-306. Surplus lines insurance producer's authority
13 under license -- acceptance of business from other insurance
14 producers ---placement--fee. (1) Under a surplus lines
15 insurance producer license the licensee may place surplus
16 lines insurance, in compliance with The Surplus Lines
17 Insurance Law, with a foreign or alien insurer not
18 authorized to transact insurance in this state and may act
19 as a surplus lines insurance producer in this state for the
20 insurer.

21 (2) The surplus lines insurance producer may accept
22 surplus lines insurance from a licensed insurance producer
23 of an authorized insurer or, if the commissioner agrees in
24 advance, through an individual, partnership, or corporation
25 that has not been appointed as an insurance producer in this

1 state and may compensate him therefor.

2 (3) A surplus lines insurance producer who places or
3 renews surplus lines insurance in accordance with subsection
4 (1) may collect:

5 ~~(a) an inspection fee for the actual costs of~~
6 ~~inspecting the risk to be covered; and~~

7 ~~(b) a placement--fee of 0.5% of the premium charged to~~
8 ~~cover the costs of issuing and servicing the policy. The fee~~
9 ~~may not be less than \$10 or more than \$100."~~

10 **Section 3.** Section 33-11-108, MCA, is amended to read:

11 "33-11-108. Notice and registration requirements of
12 purchasing groups. (1) A purchasing group that intends to do
13 business in this state shall furnish notice to the
14 commissioner that:

15 (a) identifies the state where the group is domiciled;

16 (b) specifies the lines and classifications of
17 liability insurance that the purchasing group intends to
18 purchase;

19 (c) identifies the insurer from which the purchasing
20 group intends to purchase its insurance and the domicile of
21 the insurer;

22 (d) identifies the insurance producer through which the
23 purchasing group intends to place its business;

24 ~~(d)(e)~~ identifies the principal place of business of
25 the purchasing group; and

1 (e)(f) provides information required by the
2 commissioner to verify that the purchasing group is
3 qualified under 33-11-102(6).

4 (2) The purchasing group shall register with and
5 designate the commissioner as its agent solely for the
6 purpose of receiving service of legal documents or process.
7 However, such requirements do not apply in the case of a
8 purchasing group:

9 (a) (i) that was domiciled before April 2, 1986, in any
10 state of the United States; and

11 (ii) that was domiciled on and after October 27, 1986,
12 in any state of the United States;

13 (b) (i) that, before October 27, 1986, purchased
14 insurance from an insurer licensed in any state; and

15 (ii) that, since October 27, 1986, purchased its
16 insurance from an insurer licensed in any state;

17 (c) that was a purchasing group under the requirements
18 of the federal Product Liability Risk Retention Act of 1981
19 (15 U.S.C. 3901 through 3904) before it was amended by P.L.
20 99-563, approved on October 27, 1986; and

21 (d) that does not purchase insurance that was not
22 authorized for purposes of an exemption under the federal
23 Product Liability Risk Retention Act of 1981, as in effect
24 before October 27, 1986."

25 **Section 4.** Section 33-15-1102, MCA, is amended to read:

1 "33-15-1102. Definitions. As used in this part, the
2 following definitions apply unless the context requires
3 otherwise:

4 (1) "Anniversary date" means the month and day that
5 rates, rating plans, and rating systems are initially
6 applied to a policy in effect. The term includes each annual
7 anniversary thereafter unless the insurer establishes a
8 different date by a filing with the commissioner.

9 (2) "Cancellation" means the decision by the insurer to
10 terminate an insurance policy prior to the expiration of its
11 term.

12 (3) "Classification" means an arrangement of insurance
13 risks into an underwriting or rating group according to a
14 classification system used by an insurer as a basis for
15 tabulating statistical experience and determining premium
16 rates.

17 (4) "Classification system" means a schedule of
18 classifications and a rule used by an insurer for
19 determining the classifications applicable to an insured.

20 (5) "Insurer" means an insurer authorized to transact
21 property or casualty insurance in this state or an
22 unauthorized insurer transacting surplus lines insurance in
23 this state.

24 (6) "Premium" means the contractual consideration
25 charged to an insured for insurance for a specified period

1 of time, regardless of the timing of actual charges.

2 (7) "Rate" means a monetary amount applied to the units
3 of exposure assigned to a classification and used by an
4 insurer to determine the premium for an insured.

5 (8) "Rating plan" means a rule used by an insurer to
6 calculate:

7 (a) the premium for an insured; and

8 (b) the parameter values used in such calculation after
9 application of classification premium rates to units of
10 exposure.

11 (9) "Renewal" means an agreement between an insurer and
12 an insured to extend or continue an existing insurance
13 policy for 90 days or more."

14 NEW SECTION. **Section 5. Severability.** If a part of
15 [this act] is invalid, all valid parts that are severable
16 from the invalid part remain in effect. If a part of [this
17 act] is invalid in one or more of its applications, the part
18 remains in effect in all valid applications that are
19 severable from the invalid applications.

-End-

APPROVED BY COMM. ON BUSINESS
AND ECONOMIC DEVELOPMENT

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9 TO IDENTIFY A BILENSED MONTANA-LICENSED INSURANCE PRODUCER
10 WHEN REGISTERING WITH THE DEPARTMENT OF INSURANCE;
11 SUBJECTING SURPLUS LINES PRODUCERS INSURERS TO PROVISIONS OF
12 THE MONTANA INSURANCE CODE CONCERNING PREMIUM CHANGES AND
13 CANCELLATION; AND AMENDING SECTIONS 33-2-305, 33-2-306,
14 33-11-108, AND 33-15-1102, MCA."
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16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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20 contract of surplus lines insurance with an unauthorized
21 insurer unless he is licensed as a resident property,
22 casualty, and surety insurance producer and possesses a
23 current surplus lines insurance license issued by the
24 commissioner.
25 (2) The commissioner shall issue a surplus lines

1 insurance license to any qualified holder of a current
2 property, casualty, and surety insurance producer license
3 only if the insurance producer has:
4 (a) remitted to the commissioner the annual fee
5 prescribed by 33-2-708;
6 (b) submitted to the commissioner a completed license
7 application on a form supplied by the commissioner;
8 (c) been licensed as a property, casualty, and surety
9 insurance producer continuously for 5 years or more; and
10 (d) filed with the commissioner and thereafter for as
11 long as the license remains in effect kept in force a bond
12 in favor of the state of Montana in the amount of \$10,000,
13 with authorized corporate sureties approved by the
14 commissioner. The bond must be conditioned that the
15 insurance producer will conduct business under the license
16 in accordance with the provisions of The Surplus Lines
17 Insurance Law and that he will promptly remit the taxes
18 provided in 33-2-311. The bond may not be terminated unless
19 the surety gives the surplus lines insurance producer, the
20 producing insurance producer, and the commissioner at least
21 30 days' prior written notice thereof.
22 (3) The license expires on April 1 after its date of
23 issue. A surplus lines insurance producer shall renew the
24 license on or before March 1 of each year upon payment of
25 the annual renewal fee prescribed in 33-2-708. A surplus

SECOND READING

1 lines insurance producer who fails to apply for a renewal of
 2 the license on or before March 1 shall pay a fine of \$100
 3 before the commissioner renews the license.

4 (4) A corporation is eligible to be licensed as a
 5 surplus lines insurance producer if:

6 (a) the corporate license lists the individuals within
 7 the corporation who have satisfied the requirements of this
 8 part to become surplus lines insurance producers; and

9 (b) only those individuals listed on the corporate
 10 license transact surplus lines insurance."

11 **Section 2.** Section 33-2-306, MCA, is amended to read:

12 **"33-2-306. Surplus lines insurance producer's authority**
 13 **under license -- acceptance of business from other insurance**
 14 **producers ----p'acement--fee.** (1) Under a surplus lines
 15 insurance producer license the licensee may place surplus
 16 lines insurance, in compliance with The Surplus Lines
 17 Insurance Law, with a foreign or alien insurer not
 18 authorized to transact insurance in this state and may act
 19 as a surplus lines insurance producer in this state for the
 20 insurer.

21 (2) The surplus lines insurance producer may accept
 22 surplus lines insurance from a licensed insurance producer
 23 of an authorized insurer or, if the commissioner agrees in
 24 advance, through an individual, partnership, or corporation
 25 that has not been appointed as an insurance producer in this

1 state and may compensate him therefor.

2 (3) A surplus lines insurance producer who places or
 3 renews surplus lines insurance in accordance with subsection
 4 (1) may collect:

5 (a) an inspection fee for the actual costs of
 6 inspecting the risk to be covered; and

7 (b) ~~a placement fee of 0.5% of the premium charged to~~
 8 ~~cover the costs of issuing and servicing the policy. The fee~~
 9 ~~may not be less than \$10 or more than \$100."~~

10 **Section 3.** Section 33-11-108, MCA, is amended to read:

11 **"33-11-108. Notice and registration requirements of**
 12 **purchasing groups.** (1) A purchasing group that intends to do
 13 business in this state shall furnish notice to the
 14 commissioner that:

15 (a) identifies the state where the group is domiciled;

16 (b) specifies the lines and classifications of
 17 liability insurance that the purchasing group intends to
 18 purchase;

19 (c) identifies the insurer from which the purchasing
 20 group intends to purchase its insurance and the domicile of
 21 the insurer;

22 (d) identifies the MONTANA-LICENSED insurance producer
 23 OR MONTANA-LICENSED SURPLUS INSURANCE LINES PRODUCER through
 24 which the purchasing group intends to place its business;

25 (e) identifies the principal place of business of

1 the purchasing group; and

2 ~~(e)~~(f) provides information required by the
3 commissioner to verify that the purchasing group is
4 qualified under 33-11-102(6).

5 (2) The purchasing group shall register with and
6 designate the commissioner as its agent solely for the
7 purpose of receiving service of legal documents or process.
8 However, such requirements do not apply in the case of a
9 purchasing group:

10 (a) (i) that was domiciled before April 2, 1986, in any
11 state of the United States; and

12 (ii) that was domiciled on and after October 27, 1986,
13 in any state of the United States;

14 (b) (i) that, before October 27, 1986, purchased
15 insurance from an insurer licensed in any state; and

16 (ii) that, since October 27, 1986, purchased its
17 insurance from an insurer licensed in any state;

18 (c) that was a purchasing group under the requirements
19 of the federal Product Liability Risk Retention Act of 1981
20 (15 U.S.C. 3901 through 3904) before it was amended by P.L.
21 99-563, approved on October 27, 1986; and

22 (d) that does not purchase insurance that was not
23 authorized for purposes of an exemption under the federal
24 Product Liability Risk Retention Act of 1981, as in effect
25 before October 27, 1986."

1 **Section 4.** Section 33-15-1102, MCA, is amended to read:

2 "33-15-1102. Definitions. As used in this part, the
3 following definitions apply unless the context requires
4 otherwise:

5 (1) "Anniversary date" means the month and day that
6 rates, rating plans, and rating systems are initially
7 applied to a policy in effect. The term includes each annual
8 anniversary thereafter unless the insurer establishes a
9 different date by a filing with the commissioner.

10 (2) "Cancellation" means the decision by the insurer to
11 terminate an insurance policy prior to the expiration of its
12 term.

13 (3) "Classification" means an arrangement of insurance
14 risks into an underwriting or rating group according to a
15 classification system used by an insurer as a basis for
16 tabulating statistical experience and determining premium
17 rates.

18 (4) "Classification system" means a schedule of
19 classifications and a rule used by an insurer for
20 determining the classifications applicable to an insured.

21 (5) "Insurer" means an insurer authorized to transact
22 property or casualty insurance in this state or an
23 unauthorized insurer transacting surplus lines insurance in
24 this state.

25 (6) "Premium" means the contractual consideration

1 charged to an insured for insurance for a specified period
2 of time, regardless of the timing of actual charges.

3 (7) "Rate" means a monetary amount applied to the units
4 of exposure assigned to a classification and used by an
5 insurer to determine the premium for an insured.

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7 calculate:

8 (a) the premium for an insured; and

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10 application of classification premium rates to units of
11 exposure.

12 (9) "Renewal" means an agreement between an insurer and
13 an insured to extend or continue an existing insurance
14 policy for 90 days or more."

15 NEW SECTION. Section 5. Severability. If a part of
16 [this act] is invalid, all valid parts that are severable
17 from the invalid part remain in effect. If a part of [this
18 act] is invalid in one or more of its applications, the part
19 remains in effect in all valid applications that are
20 severable from the invalid applications.

-End-

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 24 commissioner.

25 (2) The commissioner shall issue a surplus lines

1 insurance license to any qualified holder of a current
 2 property, casualty, and surety insurance producer license
 3 only if the insurance producer has:

4 (a) remitted to the commissioner the annual fee
 5 prescribed by 33-2-708;

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 7 application on a form supplied by the commissioner;

8 (c) been licensed as a property, casualty, and surety
 9 insurance producer continuously for 5 years or more; and

10 (d) filed with the commissioner and thereafter for as
 11 long as the license remains in effect kept in force a bond
 12 in favor of the state of Montana in the amount of \$10,000,
 13 with authorized corporate sureties approved by the
 14 commissioner. The bond must be conditioned that the
 15 insurance producer will conduct business under the license
 16 in accordance with the provisions of The Surplus Lines
 17 Insurance Law and that he will promptly remit the taxes
 18 provided in 33-2-311. The bond may not be terminated unless
 19 the surety gives the surplus lines insurance producer, the
 20 producing insurance producer, and the commissioner at least
 21 30 days' prior written notice thereof.

22 (3) The license expires on April 1 after its date of
 23 issue. A surplus lines insurance producer shall renew the
 24 license on or before March 1 of each year upon payment of
 25 the annual renewal fee prescribed in 33-2-708. A surplus

THIRD READING



1 lines insurance producer who fails to apply for a renewal of
 2 the license on or before March 1 shall pay a fine of \$100
 3 before the commissioner renews the license.

4 (4) A corporation is eligible to be licensed as a
 5 surplus lines insurance producer if:

6 (a) the corporate license lists the individuals within
 7 the corporation who have satisfied the requirements of this
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 17 Insurance Law, with a foreign or alien insurer not
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 22 surplus lines insurance from a licensed insurance producer
 23 of an authorized insurer or, if the commissioner agrees in
 24 advance, through an individual, partnership, or corporation
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2 (3) A surplus lines insurance producer who places or
 3 renews surplus lines insurance in accordance with subsection
 4 (1) may collect:

5 (a) an inspection fee for the actual costs of
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 8 ~~cover the costs of issuing and servicing the policy. The fee~~
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 13 business in this state shall furnish notice to the
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16 (b) specifies the lines and classifications of
 17 liability insurance that the purchasing group intends to
 18 purchase;

19 (c) identifies the insurer from which the purchasing
 20 group intends to purchase its insurance and the domicile of
 21 the insurer;

22 (d) identifies the MONTANA-LICENSED insurance producer
 23 OR MONTANA-LICENSED SURPLUS INSURANCE LINES PRODUCER through
 24 which the purchasing group intends to place its business;

25 (d)(e) identifies the principal place of business of

1 the purchasing group; and

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4 qualified under 33-11-102(6).

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17 Insurance Law, with a foreign or alien insurer not
18 authorized to transact insurance in this state and may act
19 as a surplus lines insurance producer in this state for the
20 insurer.

21 (2) The surplus lines insurance producer may accept
22 surplus lines insurance from a licensed insurance producer
23 of an authorized insurer or, if the commissioner agrees in
24 advance, through an individual, partnership, or corporation
25 that has not been appointed as an insurance producer in this

1 state and may compensate him therefor.

2 (3) A surplus lines insurance producer who places or
3 renews surplus lines insurance in accordance with subsection
4 (1) may collect:

5 (a) an inspection fee for the actual costs of
6 inspecting the risk to be covered; and

7 (b) ~~a placement fee of 0.5% of the premium charged to~~
8 ~~cover the costs of issuing and servicing the policy. The fee~~
9 ~~may not be less than \$10 or more than \$100."~~

10 **Section 3.** Section 33-11-108, MCA, is amended to read:

11 **"33-11-108. Notice and registration requirements of**
12 **purchasing groups.** (1) A purchasing group that intends to do
13 business in this state shall furnish notice to the
14 commissioner that:

15 (a) identifies the state where the group is domiciled;

16 (b) specifies the lines and classifications of
17 liability insurance that the purchasing group intends to
18 purchase;

19 (c) identifies the insurer from which the purchasing
20 group intends to purchase its insurance and the domicile of
21 the insurer;

22 (d) identifies the MONTANA-LICENSED insurance producer
23 OR MONTANA-LICENSED SURPLUS INSURANCE LINES PRODUCER through
24 which the purchasing group intends to place its business;

25 (d)(e) identifies the principal place of business of

1 the purchasing group; and

2 ~~(e)~~(f) provides information required by the
3 commissioner to verify that the purchasing group is
4 qualified under 33-11-102(6).

5 (2) The purchasing group shall register with and
6 designate the commissioner as its agent solely for the
7 purpose of receiving service of legal documents or process.
8 However, such requirements do not apply in the case of a
9 purchasing group:

10 (a) (i) that was domiciled before April 2, 1986, in any
11 state of the United States; and

12 (ii) that was domiciled on and after October 27, 1986,
13 in any state of the United States;

14 (b) (i) that, before October 27, 1986, purchased
15 insurance from an insurer licensed in any state; and

16 (ii) that, since October 27, 1986, purchased its
17 insurance from an insurer licensed in any state;

18 (c) that was a purchasing group under the requirements
19 of the federal Product Liability Risk Retention Act of 1981
20 (15 U.S.C. 3901 through 3904) before it was amended by P.L.
21 99-563, approved on October 27, 1986; and

22 (d) that does not purchase insurance that was not
23 authorized for purposes of an exemption under the federal
24 Product Liability Risk Retention Act of 1981, as in effect
25 before October 27, 1986."

1 **Section 4.** Section 33-15-1102, MCA, is amended to read:

2 "33-15-1102. Definitions. As used in this part, the
3 following definitions apply unless the context requires
4 otherwise:

5 (1) "Anniversary date" means the month and day that
6 rates, rating plans, and rating systems are initially
7 applied to a policy in effect. The term includes each annual
8 anniversary thereafter unless the insurer establishes a
9 different date by a filing with the commissioner.

10 (2) "Cancellation" means the decision by the insurer to
11 terminate an insurance policy prior to the expiration of its
12 term.

13 (3) "Classification" means an arrangement of insurance
14 risks into an underwriting or rating group according to a
15 classification system used by an insurer as a basis for
16 tabulating statistical experience and determining premium
17 rates.

18 (4) "Classification system" means a schedule of
19 classifications and a rule used by an insurer for
20 determining the classifications applicable to an insured.

21 (5) "Insurer" means an insurer authorized to transact
22 property or casualty insurance in this state or an
23 unauthorized insurer transacting surplus lines insurance in
24 this state.

25 (6) "Premium" means the contractual consideration

1 charged to an insured for insurance for a specified period
2 of time, regardless of the timing of actual charges.

3 (7) "Rate" means a monetary amount applied to the units
4 of exposure assigned to a classification and used by an
5 insurer to determine the premium for an insured.

6 (8) "Rating plan" means a rule used by an insurer to
7 calculate:

8 (a) the premium for an insured; and

9 (b) the parameter values used in such calculation after
10 application of classification premium rates to units of
11 exposure.

12 (9) "Renewal" means an agreement between an insurer and
13 an insured to extend or continue an existing insurance
14 policy for 90 days or more."

15 NEW SECTION. **Section 5. Severability.** If a part of
16 [this act] is invalid, all valid parts that are severable
17 from the invalid part remain in effect. If a part of [this
18 act] is invalid in one or more of its applications, the part
19 remains in effect in all valid applications that are
20 severable from the invalid applications.

-End-