

SENATE BILL 380

Introduced by Rye

2/14	Introduced
2/14	First Reading
2/14	Referred to Business & Industry
2/14	Fiscal Note Requested
2/19	Fiscal Note Received
2/20	Fiscal Note Printed
2/21	Hearing
2/21	Committee Report--Bill Not Passed
2/21	Adverse Committee Report Adopted

1 *Senate* BILL NO. 380  
2 INTRODUCED BY *[Signature]*

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT  
5 EXAMINATION, FILING, AND LICENSING FEES COLLECTED BY THE  
6 INSURANCE DEPARTMENT BE USED SOLELY FOR OPERATION OF THE  
7 DEPARTMENT; ESTABLISHING AN INSURANCE REGULATORY ACCOUNT;  
8 AMENDING SECTIONS 17-2-121, 33-2-115, 33-2-117, 33-2-305,  
9 33-2-701, 33-2-708, 33-3-202, 33-3-203, 33-4-505, 33-17-211,  
10 33-17-212, 33-17-214, 33-17-216, 33-17-221, 33-17-231, AND  
11 33-17-301, MCA; AND PROVIDING AN EFFECTIVE DATE."

12  
13 STATEMENT OF INTENT

14 A statement of intent is required for this bill because  
15 it directs the commissioner of insurance to adopt fees for  
16 filing documents, issuing and renewing licenses, and  
17 reviewing education courses and for miscellaneous charges.  
18 Fees are to be reasonably related to operating costs of the  
19 insurance department. In establishing fees, the commissioner  
20 of insurance shall base the fee on the cost of the service  
21 being performed and the revenue necessary for the  
22 department's operations.

23  
24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

25 NEW SECTION. Section 1. Insurance regulatory account.

1 (1) There is created in the state treasury an insurance  
2 regulatory account within the state special revenue fund to  
3 which must be credited all fees, miscellaneous and  
4 examination charges, fines, and penalties collected by the  
5 insurance commissioner pursuant to Title 33 and the rules  
6 adopted under Title 33, but not those amounts received  
7 pursuant to 33-2-311, 33-2-705, or 33-2-706.

8 (2) The money received and deposited in the insurance  
9 regulatory account may be paid out of the treasury on  
10 appropriation, as provided in 17-8-101, and may be used only  
11 to defray the expenses of the commissioner and his staff in  
12 the discharge of their administrative and regulatory powers  
13 and duties as prescribed by law, subject to the applicable  
14 laws relating to the appropriation of state funds and to the  
15 deposit and expenditure of state money. Money received and  
16 deposited in the insurance regulatory account that exceeds  
17 the amount appropriated for the operation of the insurance  
18 department must be carried forward in the insurance  
19 regulatory account into the next fiscal year for costs of  
20 the operation of the insurance department. The commissioner  
21 is responsible for the proper expenditure of this money as  
22 provided by law.

23 (3) The commissioner shall annually estimate, as  
24 accurately as possible, the amount required to defray the  
25 expenses of the commissioner and his staff in the discharge

1 of their administrative and regulatory powers and duties.  
 2 If, at the end of the fiscal year, the commissioner  
 3 determines and finds that more funds have accumulated from  
 4 the current year's fees and miscellaneous and examination  
 5 charges than were estimated from the previous year and are  
 6 in excess of the expenses of the commissioner and his staff  
 7 in the discharge of their administrative and regulatory  
 8 powers and duties, the commissioner may by administrative  
 9 rule establish fees and miscellaneous and examination  
 10 charges commensurate with costs of the operation of the  
 11 insurance department.

12 **Section 2.** Section 17-2-121, MCA, is amended to read:

13 "17-2-121. Deposits by insurance commissioner. All  
 14 fees, miscellaneous and examination charges, fines, and  
 15 penalties, ~~and those amounts received pursuant to 33-2-3117~~  
 16 ~~33-2-705, or 33-2-706,~~ collected by the insurance  
 17 commissioner pursuant to Title 33 and the rules adopted  
 18 thereunder under Title 33 must be deposited in the general  
 19 fund insurance regulatory account."

20 **Section 3.** Section 33-2-115, MCA, is amended to read:

21 "33-2-115. Application for certificate of authority. To  
 22 apply for an original certificate of authority, an insurer  
 23 shall file with the commissioner its application therefor  
 24 accompanied by the applicable fees ~~as specified in~~ adopted  
 25 pursuant to 33-2-708, showing its name, location of its home

1 office or principal office in the United States, if an alien  
 2 insurer, kinds of insurance to be transacted, date of  
 3 organization or incorporation, form of organization, state  
 4 or country of domicile, and such additional information as  
 5 the commissioner may reasonably require, together with the  
 6 following documents, as applicable:

7 (1) if a foreign insurer, a copy of its corporate  
 8 charter or articles of incorporation, with all amendments  
 9 thereto, certified by the public officer with whom the  
 10 originals are on file in the state or country of domicile;

11 (2) if a mutual insurer, a copy of its bylaws as  
 12 amended, certified by its secretary or other officer having  
 13 custody thereof;

14 (3) if a reciprocal insurer, copies of the power of  
 15 attorney of its attorney-in-fact and of its subscribers'  
 16 agreement, if any, certified by its attorney-in-fact;

17 (4) a copy of its financial statement as of December 31  
 18 next preceding, sworn to by at least two executive officers  
 19 of the insurer or certified by the public insurance  
 20 supervisory official of the insurer's state of domicile or  
 21 of entry into the United States;

22 (5) a copy of report of last examination, if any, made  
 23 of the insurer, certified by the insurance supervisory  
 24 official of its state of domicile or of entry into the  
 25 United States;

1 (6) appointment of the commissioner pursuant to  
2 33-1-601, as its attorney to receive service of legal  
3 process;

4 (7) if a foreign or alien insurer, a certificate of the  
5 public official having supervision of insurance in its state  
6 or country of domicile or state of entry into the United  
7 States, showing that it is authorized to transact the kinds  
8 of insurance proposed to be transacted in this state;

9 (8) if an alien insurer, a copy of the appointment and  
10 authority of its United States manager, certified by its  
11 officer having custody of its records;

12 (9) if a foreign insurer, certificate as to deposit if  
13 to be tendered pursuant to 33-2-111;

14 (10) specimen copies of policies proposed to be offered  
15 in this state, together with premiums or premium rates  
16 applicable, or a declaration that such rates as applicable  
17 will be those promulgated by designated rating organizations  
18 authorized to file such rates in this state on behalf of the  
19 insurer."

20 **Section 4.** Section 33-2-117, MCA, is amended to read:

21 "33-2-117. Continuance, expiration, reinstatement, and  
22 amendment of certificate of authority. (1) Certificates of  
23 authority issued or renewed under this code shall continue  
24 in force as long as the insurer is entitled thereto under  
25 this code and until suspended or revoked or otherwise

1 terminated; subject, however, to continuance of the  
2 certificate by the insurer each year by payment prior to May  
3 15 of the continuation fee ~~provided-in~~ adopted pursuant to  
4 33-2-708.

5 (2) If not so continued by the insurer, its certificate  
6 of authority shall expire at midnight on May 31 next  
7 following such failure of the insurer so to continue it in  
8 force. The commissioner shall promptly notify the insurer of  
9 the occurrence of any such failure resulting in impending  
10 expiration of its certificate of authority.

11 (3) The commissioner may, in his discretion, reinstate  
12 a certificate of authority which the insurer has  
13 inadvertently permitted to expire, after the insurer has  
14 fully cured all its failures which resulted in such  
15 expiration and upon payment by the insurer of the fee for  
16 reinstatement in addition to the current continuation fee,  
17 ~~as--provided-in~~ adopted pursuant to 33-2-708. Otherwise, the  
18 insurer shall be granted another certificate of authority  
19 only after filing application therefor and meeting all other  
20 requirements as for an original certificate of authority in  
21 this state.

22 (4) The commissioner may amend a certificate of  
23 authority at any time to accord with changes in the  
24 insurer's charter of insuring powers."

25 **Section 5.** Section 33-2-305, MCA, is amended to read:

1       **"33-2-305. Licensing of surplus lines insurance**  
 2 **producer -- fee and bond.** (1) A person may not procure a  
 3 contract of surplus lines insurance with an unauthorized  
 4 insurer unless he is licensed as a resident property,  
 5 casualty, and surety insurance producer and possesses a  
 6 current surplus lines insurance license issued by the  
 7 commissioner.

8       (2) The commissioner shall issue a surplus lines  
 9 insurance license to any qualified holder of a current  
 10 property, casualty, and surety insurance producer license  
 11 only if the insurance producer has:

12       (a) remitted to the commissioner the annual fee  
 13 ~~prescribed-by~~ adopted pursuant to 33-2-708;

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

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

18       (d) filed with the commissioner and thereafter for as  
 19 long as the license remains in effect kept in force a bond  
 20 in favor of the state of Montana in the amount of \$10,000,  
 21 with authorized corporate sureties approved by the  
 22 commissioner. The bond must be conditioned that the  
 23 insurance producer will conduct business under the license  
 24 in accordance with the provisions of The Surplus Lines  
 25 Insurance Law and that he will promptly remit the taxes

1 provided in 33-2-311. The bond may not be terminated unless  
 2 the surety gives the surplus lines insurance producer, the  
 3 producing insurance producer, and the commissioner at least  
 4 30 days' prior written notice thereof.

5       (3) The license expires on April 1 after its date of  
 6 issue. A surplus lines insurance producer shall renew the  
 7 license on or before March 1 of each year upon payment of  
 8 the annual renewal fee ~~prescribed-in~~ adopted pursuant to  
 9 33-2-708. A surplus lines insurance producer who fails to  
 10 apply for a renewal of the license on or before March 1  
 11 shall pay a fine of \$100 before the commissioner renews the  
 12 license.

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

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

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

20       **Section 6.** Section 33-2-701, MCA, is amended to read:

21       **"33-2-701. Annual statement -- revocation or fine for**  
 22 **failure to file -- penalty for perjury.** (1) Each authorized  
 23 insurer shall annually on or before March 1 file with the  
 24 commissioner a full and true statement of its financial  
 25 condition, transactions, and affairs as of the December 31

1 preceding. The statement shall be in such general form and  
 2 context as is required or not disapproved by the  
 3 commissioner, as is in current use for similar reports to  
 4 states in general with respect to the type of insurer and  
 5 kinds of insurance to be reported upon, and as supplemented  
 6 for additional information required by the commissioner. The  
 7 statement shall be verified by the oath of the insurer's  
 8 president or vice-president and secretary or, if a  
 9 reciprocal insurer, by the oath of the attorney-in-fact or  
 10 its like officers if a corporation. The commissioner may, in  
 11 his discretion, waive any such verification under oath.

12 (2) The statement of an alien insurer shall relate only  
 13 to its transactions and affairs in the United States unless  
 14 the commissioner requires otherwise. If the commissioner  
 15 requires a statement as to an alien insurer's affairs  
 16 throughout the world, the insurer shall file such statement  
 17 with the commissioner as soon as reasonably possible. The  
 18 statement shall be verified by the insurer's United States  
 19 manager or other officer duly authorized.

20 (3) The commissioner may refuse to accept the fee for  
 21 continuance of the insurer's certificate of authority, as  
 22 provided in 33-2-117, or may in his discretion suspend or  
 23 revoke the certificate of authority of any insurer failing  
 24 to file its annual statement when due.

25 (4) Any director, officer or insurance producer, or

1 employee of any company who subscribes to, makes, or concurs  
 2 in making or publishing any annual statement or any other  
 3 statement required by law knowing the same to contain any  
 4 material statement which is false shall be punished by a  
 5 fine of not more than \$1,000.

6 (5) At time of filing, the insurer shall pay to the  
 7 commissioner the fee for filing its statement as prescribed  
 8 in adopted pursuant to 33-2-708.

9 (6) The commissioner may impose a fine not to exceed  
 10 \$100 a day for each day after March 1 that an insurer fails  
 11 to file the annual statement referred to in subsection (1).  
 12 Such fine may not exceed a maximum of \$1,000."

13 **Section 7.** Section 33-2-708, MCA, is amended to read:

14 "33-2-708. Fees and licenses. (1) Except as provided in  
 15 33-17-212(2), the commissioner shall adopt administrative  
 16 rules establishing and collect in advance and--the--persons  
 17 served--shall--pay--to--the--commissioner--the--following--fees--for--  
 18 {a)--certificates-of-authority--  
 19 {i)--for--filing--applications--for--original--certificates  
 20 of-authority--articles--of--incorporation--(except--original  
 21 articles--of--incorporation--of--domestic--insurers--as--provided  
 22 in--subsection--(i)(b)--and--other--charter--documents--bylaws--  
 23 financial--statement--examination-report--power-of-attorney  
 24 to--the--commissioner--and--all--other--documents--and--filings  
 25 required--in--connection--with--the--application--and--for--issuance

1 of-an-original-certificate-of-authority-if-issued:

2 (A)--domestic-insurers-----\$-600.00

3 (B)--foreign-insurers-----600.00

4 (ii)--annual--continuation--of--certificate--of--authority--

5 -----600.00

6 (iii)--reinstatement--of--certificate--of--authority--

7 -----25.00

8 (iv)--amendment--of--certificate--of--authority-----50.00

9 issuing licenses, conducting examinations, reviewing

10 applications for approval of prelicensing education courses,

11 and miscellaneous services.

12 (b)--articles-of-incorporation:

13 (i)--filing-original--articles--of--incorporation--of--a

14 domestic--insurer--exclusive-of-fees-required-to-be-paid-by

15 the-corporation-to-the-secretary-of-state-----20.00

16 (ii)--filing--amendment--of--articles--of--incorporation,

17 domestic-and-foreign-insurers--exclusive-of-fees-required-to

18 be-paid-to-the-secretary-of-state-by-a-domestic-corporation--

19 -----25.00

20 (c)--filing--bylaws--or--amendment--to--bylaws--where

21 required-----10.00

22 (d)--filing--annual--statement--of--insurer,--other--than--as

23 part-of-application-for-original-certificate--of--authority--

24 -----25.00

25 (e)--insurance-producer's-license:

1 (i)--application--for--original--license--including

2 issuance-of-license-if-issued-----15.00

3 (ii)--appointment--of--insurance--producer,--each-insurer--

4 -----10.00

5 (iii)--temporary-license-----15.00

6 (iv)--amendment--of--license--(excluding--additions--to

7 license)--or--reissuance--of--master-license-----15.00

8 (f)--nonresident-insurance-producer's-license:

9 (i)--application--for--original--license,--including

10 issuance-of-license-if-issued-----10.00

11 (ii)--appointment--of--insurance--producer,--each-insurer--

12 -----10.00

13 (iii)--annual-renewal-of-license-----10.00

14 (iv)--amendment--of--license--(excluding--additions--to

15 license)--or--reissuance--of--master-license-----10.00

16 (g)--examination-for-license-as-insurance-producer,--each

17 examination-----15.00

18 (h)--surplus-lines-insurance-producer-license:

19 (i)--application--for--original-license-and-for-issuance

20 of-license-if-issued-----50.00

21 (ii)--annual-renewal-of-license-----50.00

22 (i)--adjuster's-license:

23 (i)--application-for-original-license-and--for--issuance

24 of-license-if-issued-----15.00

25 (ii)--annual-renewal-of-license-----15.00

1       (j) ~~insurance vending machine license each machine,~~  
2 ~~each year~~-----10.00  
3       (k) ~~commissioner's certificate under seal (except when~~  
4 ~~on certificates of authority or licenses)~~-----10.00  
5       (l) ~~copies of documents on file in the commissioner's~~  
6 ~~office, per page~~-----50  
7       (m) ~~policy forms:~~  
8       (i) ~~filing each policy form~~-----25.00  
9       (ii) ~~filing each application, rider, endorsement,~~  
10 ~~amendment, insert page, schedule of rates, and clarification~~  
11 ~~of risks~~-----10.00  
12       (iii) ~~maximum charge if policy and all forms submitted~~  
13 ~~at one time or resubmitted for approval within 180 days~~  
14 -----100.00  
15       (n) ~~applications for approval of prelicensing education~~  
16 ~~courses:~~  
17       (i) ~~reviewing initial application~~-----150.00  
18       (ii) ~~periodic review~~-----50.00  
19       (2) The fees collected by the commissioner must be  
20 commensurate with costs of the operation of the insurance  
21 department. The commissioner shall maintain records to  
22 support the amount of fees and charges established under  
23 subsection (1).  
24       (2) ~~The commissioner shall promptly deposit with the~~  
25 ~~state treasurer to the credit of the general fund of this~~

1       state all fines and penalties, those amounts received  
2 pursuant to 33-2-311, 33-2-705, and 33-2-706, and any fees  
3 and examination and miscellaneous charges that are collected  
4 by him pursuant to Title 33 and the rules adopted under  
5 Title 33.  
6       (3) All fees are considered fully earned when received.  
7 In the event of overpayment, only those amounts in excess of  
8 \$10 will be refunded."  
9       **Section 8.** Section 33-3-202, MCA, is amended to read:  
10       "33-3-202. Articles of incorporation -- filing and  
11 approval. (1) The incorporators of a proposed domestic  
12 insurer shall deliver the quadruplicate originals of the  
13 articles of incorporation to the commissioner together with  
14 the filing fees therefor specified in adopted pursuant to  
15 33-2-708. The commissioner shall examine the proposed  
16 articles of incorporation. If the commissioner finds that  
17 the articles comply with this chapter and are not in  
18 conflict with the constitution and laws of the United States  
19 or of this state, he shall endorse his approval upon each  
20 set of the articles, except that if the commissioner finds  
21 that the proposed insurer would not be eligible for a  
22 certificate of authority under 33-2-112, he shall refuse to  
23 approve the articles of incorporation and shall return them  
24 to the proposed incorporators together with a written  
25 statement of the reasons for such refusal. If approved by



1 him, the commissioner shall then forward the articles of  
 2 incorporation, with his approval endorsed thereon, to the  
 3 incorporators. The incorporators shall forthwith file one  
 4 set of the articles of incorporation with the secretary of  
 5 state, one set with the commissioner, bearing the  
 6 certification of the secretary of state, and one set with  
 7 the county clerk of the county wherein is to be located the  
 8 corporation's principal place of business; and the remaining  
 9 set of articles shall be made a part of the corporation's  
 10 record.

11 (2) If the commissioner finds that the proposed  
 12 articles of incorporation do not comply with law, he shall  
 13 refuse to approve the same and shall return all sets of the  
 14 proposed articles of incorporation to the proposed  
 15 incorporators together with a written statement of the  
 16 reasons for his refusal to approve.

17 (3) The corporation shall have legal existence as such  
 18 upon the issuance of the certificate of incorporation by the  
 19 secretary of state and the completion of the filings  
 20 referred to in subsection (1) above, but it shall not  
 21 transact business as an insurer until it has qualified for  
 22 and received from the commissioner a certificate of  
 23 authority as provided in this code.

24 (4) A copy of the certificate of incorporation, duly  
 25 certified by the secretary of state, shall be admissible in

1 all the courts of this state as prima facie evidence of due  
 2 incorporation."

3 **Section 9.** Section 33-3-203, MCA, is amended to read:

4 **"33-3-203. Amendment of articles of incorporation --**  
 5 **grounds for disapproval.** (1) A domestic stock insurer may  
 6 amend its articles of incorporation for any lawful purpose  
 7 by written authorization of the holders of a majority of the  
 8 voting power of its outstanding capital stock or by  
 9 affirmative vote of such a majority voting at a lawful  
 10 meeting of stockholders of which the notice given to  
 11 stockholders included due notice of the proposal to amend.

12 (2) A domestic mutual insurer heretofore or hereafter  
 13 formed may amend its articles of incorporation for any  
 14 lawful purpose by affirmative vote of a majority of those of  
 15 its members present or represented by proxy at a lawful  
 16 meeting of its members of which the notice given members  
 17 included due notice of the proposal to amend.

18 (3) Upon adoption of such an amendment the insurer  
 19 shall make in quadruplicate under its corporate seal a  
 20 certificate (sometimes referred to as "articles of  
 21 amendment") setting forth such amendment and the date and  
 22 manner of the adoption thereof, which certificate shall be  
 23 executed by the insurer's president or vice-president and  
 24 secretary or assistant secretary and acknowledged by them  
 25 before an officer authorized by law to take acknowledgments

1 of deeds. The insurer shall deliver to the commissioner the  
 2 quadruplicate originals of the certificate, together with  
 3 the filing fee ~~specified therefor~~ in adopted pursuant to  
 4 33-2-708. If he finds that the certificate and amendments  
 5 comply with law, the commissioner shall endorse his approval  
 6 upon each of the quadruplicate originals and return them to  
 7 the insurer. The insurer shall forthwith file one set of  
 8 such endorsed articles of amendment with the secretary of  
 9 state, one set with the commissioner bearing the  
 10 certification of the secretary of state, one set with the  
 11 county clerk of the county in which is located the insurer's  
 12 principal place of business, and retain the remaining set in  
 13 the corporate records. The amendment shall be effective when  
 14 such filings have been completed.

15 (4) If the commissioner finds that the proposed  
 16 amendment or certificate does not comply with the law, he  
 17 shall not approve the same and shall return the  
 18 quadruplicate certificate of amendment to the insurer  
 19 together with his written statement of reasons for  
 20 nonapproval. The filing fee shall not be returnable.

21 (5) If an amendment of articles of incorporation would  
 22 reduce the authorized capital stock of a stock insurer below  
 23 the amount thereof then outstanding, the commissioner shall  
 24 not approve the amendment if he has reason to believe that  
 25 the interests of policyholders or creditors of the insurer

1 would be materially prejudiced by such reduction. If any  
 2 such reduction of capital stock is effectuated, the insurer  
 3 may require return of the original certificates of stock  
 4 held by each stockholder for exchange for new certificates  
 5 for such number of shares as such stockholder is then  
 6 entitled in the proportion that the reduced capital bears to  
 7 the amount of capital stock outstanding as of immediately  
 8 prior to the effective date of such reduction."

9 **Section 10.** Section 33-4-505, MCA, is amended to read:  
 10 **"33-4-505. Certificate of authority required --**  
 11 **issuance -- continuation -- fee.** (1) A farm mutual insurer  
 12 may not insure any risk in this state unless it then holds a  
 13 subsisting certificate of authority issued to it by the  
 14 commissioner.

15 (2) Upon application therefor the commissioner shall  
 16 issue such a certificate of authority to every insurer  
 17 qualified therefor under this chapter.

18 (3) Every such certificate of authority continues in  
 19 force as long as the farm mutual insurer is entitled thereto  
 20 under this chapter and until suspended, revoked, or  
 21 otherwise terminated; subject, however, to continuance of  
 22 the certificate by the farm mutual insurer each year by  
 23 payment before May 15 of the continuation fee ~~of \$10 if a~~  
 24 ~~county mutual insurer or \$25 if a state mutual insurer, to~~  
 25 ~~be deposited by the commissioner with the state treasurer to~~

1 ~~the-credit-of-the-state-general-fund, if adopted.~~

2 (4) If the farm mutual insurer does not continue its  
3 certificate of authority in accordance with subsection (3),  
4 its certificate of authority expires at midnight on May 31  
5 next following its failure to continue it in force. The  
6 commissioner shall promptly notify a farm mutual insurer  
7 that has not continued its certificate of authority of the  
8 impending expiration of its certificate of authority.

9 (5) A certificate of authority is subject to suspension  
10 or revocation by the commissioner for violation of or  
11 noncompliance with any provision of this chapter or referred  
12 to herein.

13 (6) The commissioner may in his discretion reinstate a  
14 certificate of authority that a farm mutual insurer has  
15 inadvertently permitted to expire, after the farm mutual  
16 insurer has fully cured all failures that resulted in the  
17 expiration and upon payment by the farm mutual insurer of  
18 the fee for reinstatement ~~as-provided-in~~ adopted pursuant to  
19 33-2-708 in addition to the current continuation fee as  
20 provided in subsection (3). If a certificate is not  
21 reinstated, the commissioner may grant a farm mutual insurer  
22 another certificate of authority only after the farm mutual  
23 insurer files an application for a certificate of authority  
24 and meets all other requirements for an original certificate  
25 of authority in this state.

1 (7) The commissioner may amend a certificate of  
2 authority at any time to accord with changes in the farm  
3 mutual insurer's charter of insuring powers."

4 **Section 11.** Section 33-17-211, MCA, is amended to read:

5 "33-17-211. **General qualifications -- application for**  
6 **license.** (1) An individual applying for a license shall  
7 apply on a form specified by the commissioner and declare  
8 under penalty of refusal, suspension, or revocation of the  
9 license that statements made in the application are true,  
10 correct, and complete to the best of the individual's  
11 knowledge and belief. Before approving the application, the  
12 commissioner shall verify that the individual:

13 (a) is 18 years of age or older;

14 (b) has not committed an act that is a ground for  
15 refusal, suspension, or revocation set forth in 33-17-1001;

16 (c) has paid the license fees ~~stated--in~~ adopted  
17 pursuant to 33-2-708;

18 (d) has successfully passed the examinations for each  
19 kind of insurance for which the individual has applied;

20 (e) is a resident of this state or of another state  
21 that grants similar privileges to residents of this state;

22 (f) is competent, trustworthy, and of good reputation;

23 (g) has experience or training or otherwise is  
24 qualified in the kind or kinds of insurance for which he  
25 applies to be licensed and is reasonably familiar with the

1 provisions of this code which govern his operations as an  
2 insurance producer; and

3 (h) if applying for a license as to life or disability  
4 insurance:

5 (i) is not a funeral director, undertaker, or mortician  
6 operating in this or any other state;

7 (ii) is not an officer, employee, or representative of a  
8 funeral director, undertaker, or mortician operating in this  
9 or any other state; or

10 (iii) does not hold an interest in or benefit from a  
11 business of a funeral director, undertaker, or mortician  
12 operating in this or any other state.

13 (2) A person acting as an insurance producer shall  
14 obtain a license. A person shall apply for a license on a  
15 form specified by the commissioner. Before approving the  
16 application, the commissioner shall verify that:

17 (a) the person meets the requirements listed in  
18 subsection (1);

19 (b) the person has paid the licensing fees ~~stated--in~~  
20 adopted pursuant to 33-2-708 for each individual licensed in  
21 conjunction with the person's license. A licensed person  
22 shall promptly notify the commissioner of each change  
23 relating to an individual listed in the license.

24 (c) the person has designated a licensed officer  
25 responsible for compliance by the person with the insurance

1 laws and rules of this state;

2 (d) each member and employee of a partnership and each  
3 officer, director, stockholder, or employee of a corporation  
4 who is acting as an insurance producer in this state has  
5 obtained a license;

6 (e) (i) if the person is a partnership or corporation,  
7 the transaction of insurance business is within the purposes  
8 stated in the partnership agreement or the articles of  
9 incorporation; and

10 (ii) if the person is a corporation, the secretary of  
11 state has issued a certificate of incorporation under  
12 35-1-203 or 35-2-203.

13 (3) The commissioner may license as a resident  
14 insurance producer an association of licensed Montana  
15 insurance producers, whether or not incorporated, formed and  
16 existing substantially for purposes other than insurance.  
17 The license must be used solely for the purpose of enabling  
18 the association to place, as a resident insurance producer,  
19 insurance of the properties, interests, and risks of the  
20 state of Montana and of other public agencies, bodies, and  
21 institutions and to receive the customary commission for the  
22 placement. The president and secretary of the association  
23 shall apply for the license in the name of the association,  
24 and the commissioner shall issue the license to the  
25 association in its name alone. The fee for the license is

1 the same as that ~~required-by~~ adopted pursuant to 33-2-708  
 2 for the license of an insurance producer. The commissioner  
 3 may, after a hearing with notice to the association, revoke  
 4 the license if he finds that continuation of the license is  
 5 not in the public interest or that a ground listed in  
 6 33-17-1001 exists.

7 (4) An insurance producer using an assumed business  
 8 name shall register the name with the commissioner before  
 9 using it."

10 **Section 12.** Section 33-17-212, MCA, is amended to read:

11 "**33-17-212. Examination required -- exceptions -- fees.**

12 (1) Except as provided in subsection (7), an individual  
 13 applying for a license shall pass a written examination. The  
 14 examination must test the knowledge of the individual  
 15 concerning each kind of insurance listed in subsection (6)  
 16 for which application is made, the duties and  
 17 responsibilities of an insurance producer, and the insurance  
 18 laws and rules of this state. The examination must be  
 19 developed and conducted under rules adopted by the  
 20 commissioner.

21 (2) The commissioner may conduct the examination or  
 22 make arrangements, including contracting with an outside  
 23 testing service, for administering the examination and  
 24 collecting the fees ~~required--by~~ adopted pursuant to  
 25 33-2-708. The commissioner may arrange for the testing

1 service to recover the cost of the examination from the  
 2 applicant.

3 (3) Each individual applying for an examination shall  
 4 remit the fees ~~required-by~~ adopted pursuant to 33-2-708.

5 (4) An individual who fails to appear for the  
 6 examination as scheduled or fails to pass the examination  
 7 may reapply for an examination and shall remit all required  
 8 fees and forms before being rescheduled for another  
 9 examination.

10 (5) If the applicant is a partnership or corporation,  
 11 each individual who is to be named in the license as having  
 12 authority to act for the applicant in its insurance  
 13 transactions under the license shall take the examination.

14 (6) Examination of an applicant for a license must  
 15 cover all of the kinds of insurance for which the applicant  
 16 has applied to be licensed, as constituted by any one or  
 17 more of the following classifications:

- 18 (a) life insurance;
- 19 (b) disability insurance;
- 20 (c) property insurance. For the purposes of this
- 21 provision, property insurance includes marine insurance.
- 22 (d) casualty insurance;
- 23 (e) surety insurance;
- 24 (f) credit life and disability insurance;
- 25 (g) title insurance.

1 (7) This section does not apply to and an examination  
2 is not required of:

3 (a) an individual lawfully licensed as an insurance  
4 producer as to the kind or kinds of insurance to be  
5 transacted as of or immediately prior to January 1, 1961,  
6 and thereafter continuing to be licensed;

7 (b) an applicant for license covering the same kind or  
8 kinds of insurance as to which the applicant was licensed in  
9 this state, other than under a temporary license, within the  
10 12 months immediately preceding the date of application  
11 unless the commissioner has suspended, revoked, or refused  
12 to continue the previous license, except that this  
13 subsection (b) does not apply to a title insurance producer,  
14 as defined in 33-25-105;

15 (c) an applicant for license as nonresident insurance  
16 producer;

17 (d) an applicant for a license to sell all-risk federal  
18 crop insurance if the applicant provides certification from  
19 an appropriate governmental agency to the commissioner that  
20 he is qualified to sell the insurance;

21 (e) transportation ticket agents of common carriers  
22 applying for license to solicit and sell only:

23 (i) accident insurance ticket policies; or

24 (ii) insurance of personal effects while being carried  
25 as baggage on a common carrier, as incidental to their

1 duties as transportation ticket agents;

2 (f) an association applying for license under  
3 33-17-211;

4 (g) a mechanical breakdown insurance producer;

5 (h) an individual who, within 60 days of cancellation  
6 of a license issued by the state of the individual's  
7 residence, files with the commissioner a current letter of  
8 clearance certifying that the individual has passed an  
9 examination and held an insurance license in good standing  
10 in the individual's state of licensure, except that the  
11 individual shall take an examination pertaining to this  
12 state's law and each kind of insurance for which the  
13 individual has applied for a license and which is not  
14 covered under the license held in the other state."

15 **Section 13.** Section 33-17-214, MCA, is amended to read:

16 "33-17-214. Issuance of license -- contents -- lapse of  
17 license -- change of address. (1) The commissioner shall  
18 promptly issue a license to a person pursuant to 33-17-211  
19 and 33-17-212.

20 (2) The license must state the name and address of the  
21 licensee, personal identification number, date of issuance,  
22 general conditions relative to expiration or termination,  
23 kind of insurance covered, and such other information as the  
24 commissioner considers necessary.

25 (3) The license of a partnership, corporation, or

1 association must also state the name of each individual  
2 authorized to exercise the license powers.

3 (4) Each license remains in effect, unless suspended or  
4 revoked, as long as the fees required-by adopted pursuant to  
5 33-2-708 are paid.

6 (5) An individual who allows his license to lapse may,  
7 within 12 months from the due date of the unpaid annual fee,  
8 apply for the same license without having to pass a written  
9 examination if he pays a penalty in the amount of twice the  
10 unpaid annual fee.

11 (6) A person shall inform the commissioner in writing  
12 of a change of address within 30 days of the change."

13 **Section 14.** Section 33-17-216, MCA, is amended to read:

14 "33-17-216. **Temporary insurance producer license --**  
15 **fee.** (1) The commissioner may issue a temporary license to  
16 or with respect to an individual qualified for the temporary  
17 license only as to age, residence, and trustworthiness and  
18 without requiring the individual to take an examination, in  
19 the following cases:

20 (a) to the surviving spouse or next of kin or to the  
21 administrator or executor, or the employee of the  
22 administrator or executor, of a licensed insurance producer  
23 upon the insurance producer's death;

24 (b) to the spouse, next of kin, employee, or legal  
25 guardian of a licensed insurance producer disabled by injury

1 or physical or mental illness;

2 (c) to an employee of a partnership, or officer or  
3 employee of a corporation, licensed as an insurance  
4 producer, upon the death or disability of an individual  
5 designated in the license to exercise the powers of an  
6 insurance producer;

7 (d) to the designee of a licensed insurance producer  
8 entering upon active service in the armed forces of the  
9 United States of America;

10 (e) in any other circumstance in which the commissioner  
11 finds that the public interest will best be served by  
12 issuing such a license.

13 (2) The temporary license must be issued upon  
14 application filed with the commissioner in the form and  
15 containing the information as the commissioner may  
16 reasonably require and upon payment of the applicable fee ~~as~~  
17 provided-in adopted pursuant to 33-2-708.

18 (3) The temporary license must be for a period of not  
19 over 90 days, subject to extension by the commissioner in  
20 his discretion for an additional period of not more than 90  
21 days, except that a temporary license issued pursuant to  
22 subsection (1)(a) may be continued without payment of an  
23 additional fee until the executor or administrator disposes  
24 of the insurance business, but not to exceed a period of 15  
25 months. A temporary license issued to the next of kin under

1 subsection (1)(a) may not be extended for an additional term  
2 after the appointment and qualification of the administrator  
3 or executor.

4 (4) The fee paid for the temporary license may be  
5 applied upon the fee required for a permanent license issued  
6 to the licensee upon or prior to expiration of the temporary  
7 license and covering the same kinds of insurance."

8 **Section 15.** Section 33-17-221, MCA, is amended to read:

9 "33-17-221. Licensing insurance vending machines. (1) A  
10 licensed resident insurance producer may solicit  
11 applications for and issue policies of personal travel  
12 accident insurance by means of mechanical vending machines  
13 supervised by him and placed at airports, railroad stations,  
14 bus stations, and similar places where transportation  
15 tickets are sold and of convenience to the traveling public,  
16 if the commissioner finds that:

17 (a) the policy to be sold provides reasonable coverage  
18 and benefits, is reasonably suited for sale and issuance  
19 through a mechanical vending machine, and use of a  
20 mechanical vending machine to sell or issue a policy in a  
21 particular proposed location would be of material  
22 convenience to the public;

23 (b) the type of mechanical vending machine proposed to  
24 be used is reasonably suitable and practical for the  
25 purpose;

1 (c) reasonable means are provided for informing the  
2 prospective purchaser of any policy of the coverage and  
3 restrictions of the policy; and

4 (d) reasonable means are provided for refund to the  
5 applicant or prospective applicant of money inserted in a  
6 defective mechanical vending machine and for which no  
7 insurance or a less amount than that paid for is actually  
8 received.

9 (2) As to each mechanical vending machine to be used to  
10 sell or issue a policy, the commissioner shall issue to the  
11 insurance producer a special mechanical vending machine  
12 license. The license must specify the name and address of  
13 the insurer and insurance producer, the name of the policy  
14 to be sold or issued through the mechanical vending machine,  
15 the serial number of the mechanical vending machine, and the  
16 place where the machine will operate. The license is subject  
17 to annual continuation, expiration, suspension, or  
18 revocation coincidentally with that of the insurance  
19 producer. The commissioner shall also revoke the license of  
20 a mechanical vending machine if he finds that the conditions  
21 upon which the machine was licensed, as referred to in  
22 subsection (1), no longer exist. The license fee is ~~as~~  
23 provided--in the fee adopted pursuant to 33-2-708 for each  
24 license year or part of the year for each respective  
25 mechanical vending machine. Proof of the existence of a



1 subsisting license must be displayed on or about each  
2 mechanical vending machine in use in the manner that the  
3 commissioner may reasonably require."

4 **Section 16.** Section 33-17-231, MCA, is amended to read:

5 "33-17-231. Appointment of insurance producers --  
6 continuation and termination. (1) Each insurer appointing an  
7 insurance producer in this state shall file with the  
8 commissioner the appointment, specifying the kinds of  
9 insurance to be transacted by the insurance producer for the  
10 insurer, and pay the fee therefor ~~as--stated--in~~ adopted  
11 pursuant to 33-2-708. The term of the appointment is for 1  
12 year and runs from June 1 of each year through May 31 of the  
13 succeeding year.

14 (2) Subject to annual renewal by the insurer, each such  
15 appointment shall remain in effect until the insurance  
16 producer's license is revoked or otherwise terminated unless  
17 written notice of earlier termination of the appointment is  
18 filed with the commissioner by the insurer.

19 (3) Annually, prior to May 1, each insurer shall file  
20 with the commissioner an alphabetical list in duplicate of  
21 the names and addresses of all its insurance producers whose  
22 appointments in this state are to remain in effect,  
23 accompanied by payment of the annual renewal fee ~~as-provided~~  
24 in adopted pursuant to 33-2-708. At the same time the  
25 insurer shall also file with the commissioner a termination

1 report of all insurance producers whose appointments in this  
2 state are not to remain in effect.

3 (4) Subject to the insurance producer's contract  
4 rights, an insurer may terminate an insurance producer's  
5 appointment at any time. The insurer shall promptly give  
6 written notice of such termination to the commissioner and  
7 to the insurance producer. The commissioner may require of  
8 the insurer reasonable proof that the insurer has given such  
9 notice to the insurance producer.

10 (5) As part of the notice of termination given the  
11 commissioner, the insurer shall file with the commissioner a  
12 statement of the facts relative to the termination and the  
13 cause thereof. Any information or statement contained in the  
14 notice of termination shall not be admissible as evidence in  
15 any action or proceeding against the insurer or any  
16 representative thereof by or in behalf of any person  
17 affected by such termination."

18 **Section 17.** Section 33-17-301, MCA, is amended to read:

19 "33-17-301. Adjuster license -- qualifications --  
20 catastrophe adjustments -- public adjuster. (1) A person may  
21 not in this state act as or hold himself out to be an  
22 adjuster unless licensed as an adjuster under this chapter.  
23 A person shall apply for an adjuster license to the  
24 commissioner according to forms the commissioner prescribes  
25 and furnishes. The commissioner shall issue the adjuster

1 license to individuals qualified to be licensed as an  
2 adjuster upon payment of the license fee ~~provided-in~~ adopted  
3 pursuant to 33-2-708.

4 (2) To be licensed as an adjuster, the applicant:

5 (a) must be an individual 18 years of age or more;

6 (b) must be a resident of Montana or resident of  
7 another state that will permit residents of Montana  
8 regularly to act as adjusters in the other state;

9 (c) must be a full-time salaried employee of a licensed  
10 adjuster or a graduate of a recognized law school or have  
11 had experience or special education or training as to the  
12 handling of loss claims under insurance contracts of  
13 sufficient duration and extent reasonably to make him  
14 competent to fulfill the responsibilities of an adjuster;

15 (d) must be trustworthy and of good character and  
16 reputation;

17 (e) shall have and maintain in this state an office  
18 accessible to the public and keep in the office the usual  
19 and customary records pertaining to transactions under the  
20 license. This provision does not prohibit maintenance of the  
21 office in the home of the licensee.

22 (3) A partnership or corporation, whether or not  
23 organized under the laws of this state, may be licensed as  
24 an adjuster if each individual who is to exercise the  
25 adjuster license powers is separately licensed or is named

1 in the partnership or corporation adjuster license and is  
2 qualified for an individual adjuster license. An additional  
3 full license fee must be paid for each individual in excess  
4 of one named in the partnership or corporation adjuster  
5 license to exercise its powers.

6 (4) An adjuster license or qualifications are not  
7 required for an adjuster who is sent into this state by and  
8 on behalf of an insurer or adjusting partnership or  
9 corporation for the purpose of investigating or making  
10 adjustments of a particular loss under an insurance policy  
11 or for the adjustment of a series of losses resulting from a  
12 catastrophe common to all losses.

13 (5) An adjuster license continues in force until  
14 expired, suspended, revoked, or terminated. The license is  
15 subject to annual payment to the commissioner of the renewal  
16 fee ~~required-by~~ adopted pursuant to 33-2-708, accompanied by  
17 a written request for renewal.

18 (6) The commissioner may adopt rules providing for the  
19 examination, licensure, bonding, and regulation of public  
20 adjusters."

21 NEW SECTION. **Section 18.** Appropriation for other  
22 purposes. Revenue from the insurance regulatory account may  
23 be appropriated for other purposes by a three-fifths vote of  
24 the members of each house of the legislature.

25 NEW SECTION. **Section 19.** Codification instruction.

1 [Sections 1 and 18] are intended to be codified as an  
2 integral part of Title 33, chapter 1, part 3, and the  
3 provisions of Title 33, chapter 1, part 3, apply to  
4 [sections 1 and 18].

5 NEW SECTION. **Section 20. Severability.** If a part of  
6 [this act] is invalid, all valid parts that are severable  
7 from the invalid part remain in effect. If a part of [this  
8 act] is invalid in one or more of its applications, the part  
9 remains in effect in all valid applications that are  
10 severable from the invalid applications.

11 NEW SECTION. **Section 21. Effective date.** [This act] is  
12 effective July 1, 1991.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0380, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

The bill provides that examination, filing, and licensing fees collected by the insurance department of the State Auditor's Office be used solely for operation of the insurance department; it also establishes an insurance regulatory account.


ASSUMPTIONS:

1. The fees and licenses identified in the bill and collectible by the Insurance Commissioner will amount to approximately \$1,355,600 per year during the 1993 biennium.
2. Total fees and licenses to be collected under this bill will not be materially different than those currently collected but will be subject to a different allocation.
3. Expenditures of the insurance program in the State Auditor's Office will be approximately equal to the fees collected due to annual fee adjustments required in the bill.
4. The bill does not appropriate specific amounts for operation of the insurance program but allows appropriations to be made from the new insurance regulatory account only to defray the expenses of the Insurance Commissioner and her staff.
5. The costs of promulgating and implementing administrative rules for fees and licenses will not exceed the executive budget recommendation for the insurance program.

FISCAL IMPACT:

Revenues:

	<u>FY 92</u>			<u>FY 93</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
General Fund (01)	1,355,600	0	(1,355,600)	1,355,600	0	(1,355,600)
Insurance Regulatory Acct (02)	0	1,355,600	1,355,600	0	1,355,600	1,355,600
Total	1,355,600	1,355,600	0	1,355,600	1,355,600	0
General Fund Impact			(1,355,600)			(1,355,600)

  
 \_\_\_\_\_  
 ROD SUNDSTED, BUDGET DIRECTOR                      DATE  
 Office of Budget and Program Planning

  
 \_\_\_\_\_  
 DAVID RYE, PRIMARY SPONSOR                      DATE

Fiscal Note for SB0380, as introduced

SB 380