

CHAPTER NO. 343.

SENATE BILL NO. 83

INTRODUCED BY DOVER, BLAYLOCK

BY REQUEST OF THE STATE COMMISSIONER OF INSURANCE

IN THE SENATE

January 10, 1979	Introduced and referred to Committee on Business and Industry.
January 30, 1979	Committee recommend bill do pass. Report adopted.
January 31, 1979	Printed and placed on members' desks.
February 1, 1979	Second reading, do pass.
February 2, 1979	Considered correctly engrossed.
February 3, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 5, 1979	Introduced and referred to Committee on Business and Industry.
March 9, 1979	Committee recommend bill be concurred in. Report adopted.
March 13, 1979	Second reading, concurred in.
March 15, 1979	Third reading, concurred in.

IN THE SENATE

March 16, 1979	Returned from second house. Concurred in. Sent to enrolling.
	Reported correctly enrolled.

*Senate Bill No. 83*  
INTRODUCED BY Don Blaylock  
BY REQUEST OF THE STATE COMMISSIONER OF INSURANCE

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE REGULATION AND REGISTRATION OF PERSONS WHO COLLECT CHARGES OR PREMIUMS OR ADJUST OR SETTLE CLAIMS ON LIFE OR HEALTH INSURANCE POLICIES OR ANNUITIES OF RESIDENTS OF MONTANA."

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

Section 1. Administrator defined. As used in [this act], the term "Administrator" means any person, corporation, partnership, or association who collects charges or premiums from residents of this state in connection with life or health insurance coverage or annuities or who adjusts or settles claims on such coverage but does not include:

(1) an employer on behalf of its employees or on behalf of the employees of one or more subsidiary or affiliated corporations of such employer;

(2) a union on behalf of its members;

(3) an insurance company which is either licensed in this state or acting as an insurer with respect to a policy lawfully issued and delivered by it in and pursuant to the laws of a state in which the insurer was authorized to do an

insurance business or health service corporation as defined in 33-30-101;

(4) a life or health agent who is licensed in this state and whose activities are limited exclusively to the sale of insurance;

(5) a creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;

(6) a trust established in conformity with 29 U.S.C. 186, its trustees, or agents and employees acting thereunder;

(7) a trust exempt from taxation under section 501(a) of the Internal Revenue Code, its trustees, or employees acting thereunder;

(8) a custodian acting pursuant to a custodian account which meets the requirements of section 401(f) of the Internal Revenue Code or its agents and employees;

(9) a bank, credit union, or other financial institution which is subject to supervision or examination by federal or state banking authorities;

(10) a credit card issuing company which advances for and collects premiums or charges from its credit card holders who have authorized it to do so, provided such company does not adjust or settle claims; or

(11) a person who adjusts or settles claims in the

1 normal course of his practice or employment as an attorney  
2 at law and who does not collect charges or premiums in  
3 connection with life or health insurance coverage or  
4 annuities.

5 Section 2. Written agreement required. (1) No person  
6 may act as an administrator without a written agreement  
7 between the person and the insurer. The written agreement  
8 shall be retained as part of the official records of both  
9 the administrator and the insurer for the duration of the  
10 agreement and for 5 years thereafter. The written agreement  
11 shall contain provisions which include the requirements of  
12 [sections 4 through 10] insofar as these requirements relate  
13 to the functions performed by the administrator.

14 (2) The agreement shall contain a provision with  
15 respect to the underwriting or other standards pertaining to  
16 the business underwritten by such insurer.

17 (3) Whenever a policy is issued to a trustee, a copy  
18 of the trust agreement and any amendments thereto shall be  
19 furnished to the insurer by the administrator and shall be  
20 retained as part of the official records of both the  
21 administrator and the insurer for the duration of the policy  
22 and for 5 years thereafter.

23 Section 3. Maintenance of information. For the  
24 duration of the agreement required by [section 2] and for 5  
25 years thereafter, each administrator shall maintain at its

1 principal administrative office adequate books and records  
2 of all transactions between the administrator, insurers, and  
3 insured persons. These books and records shall be  
4 maintained in accordance with prudent standards of insurance  
5 recordkeeping. The commissioner of insurance shall have  
6 access to these books and records for examination, audit, or  
7 inspection. Any trade secrets contained in the books and  
8 records, including but not limited to the identity and  
9 addresses of policyholders and certificate holders, shall be  
10 confidential, except that the commissioner may use such  
11 information in any proceedings instituted against the  
12 administrator. The insurer retains the right to continuing  
13 access to those books and records of the administrator  
14 sufficient to permit the insurer to fulfill all of its  
15 contractual obligations to insured persons, subject to any  
16 restrictions in the written agreement between the insurer  
17 and the administrator.

18 Section 4. Approval of advertising. An administrator  
19 may use only such advertising pertaining to the business  
20 underwritten by an insurer as is approved by the insurer in  
21 advance of its use.

22 Section 5. Collection of charges and premiums. (1) All  
23 insurance charges or premiums collected by an administrator  
24 on behalf of or for an insurer or insurers and return  
25 premiums received from such insurer or insurers are held by

1 the administrator in a fiduciary capacity. These funds  
 2 shall be immediately remitted to the person or persons  
 3 entitled thereto or shall be deposited promptly in a  
 4 fiduciary bank account established and maintained by the  
 5 administrator. If deposited charges or premiums were  
 6 collected on behalf of or for more than one insurer, the  
 7 administrator shall require the bank in which the fiduciary  
 8 account is maintained to keep records clearly recording the  
 9 deposits in and withdrawals from such account on behalf of  
 10 or for each insurer. The administrator shall promptly obtain  
 11 and keep copies of all these records and, upon request of an  
 12 insurer, shall furnish the insurer with copies of the  
 13 records pertaining to deposits and withdrawals on behalf of  
 14 or for the insurer.

15 (2) The administrator shall not pay any claim by  
 16 withdrawals from the fiduciary account. Withdrawals from the  
 17 fiduciary account shall be made, as provided in the written  
 18 agreement between the administrator and the insurer, for:

- 19 (a) remittance to an insurer entitled thereto;
- 20 (b) deposit in an account maintained in the name of  
 such insurer;
- 22 (c) transfer to and deposit in a claims paying  
 account, with claims to be paid as provided in [section 7];
- 24 (d) payment to a group policyholder for remittance to  
 the insurer entitled thereto;

1 (e) payment to the administrator of its commission,  
 2 fees, or charges; or  
 3 (f) remittance of return premiums to the person or  
 4 persons entitled thereto.

5 Section 6. Treatment of payments. Whenever an insurer  
 6 utilizes the services of an administrator under the terms of  
 7 a written contract as required in [section 2], the payment  
 8 to the administrator of any premiums or charges for  
 9 insurance by or on behalf of the insured is considered to be  
 10 received by the insurer and the payment of return premiums  
 11 or claims by the insurer to the administrator is not  
 12 considered payment to the insured or claimant until the  
 13 payments are received by the insured or claimant. This  
 14 section does not limit any right of the insurer against the  
 15 administrator resulting from the administrator's failure to  
 16 make payments to the insurer, insureds, or claimants.

17 Section 7. Payment of claims. All claims paid by the  
 18 administrator from funds collected on behalf of the insurer  
 19 shall be paid only on drafts of and as authorized by such  
 20 insurer.

21 Section 8. Delivery of documents. Any policies,  
 22 certificates, booklets, termination notices, or other  
 23 written communications delivered by the insurer to the  
 24 administrator for delivery to its policyholders shall be  
 25 delivered by the administrator promptly after receipt of

1 instructions from the insurer to do so.

2       Section 9. Claim adjustment and settlement. With  
3 respect to any policies where an administrator adjusts or  
4 settles claims, the compensation to the administrator with  
5 regard to the policies shall in no way be contingent on  
6 claim experience. This section does not prevent the  
7 compensation of an administrator from being based on  
8 premiums or charges collected or number of claims paid or  
9 processed.

10      Section 10. Bonding requirements. Every administrator  
11 shall be bonded. The amount of the bond shall be not less  
12 than 10% of the amount of total funds handled and not less  
13 than \$1,000, but need not be more than \$500,000 unless a  
14 larger amount has been agreed to between the insurer and the  
15 administrator. For fixing the amount of the bond, the amount  
16 of funds handled shall be determined by the total funds  
17 handled by the administrator during the preceding year or,  
18 if no funds were handled during the preceding year, the  
19 amount of funds reasonably estimated to be handled during  
20 the current calendar year by the administrator. The bond  
21 shall provide protection to the insurer or insurers against  
22 loss by reason of acts of fraud or dishonesty and may  
23 include individual bonds or schedule or blanket forms of  
24 bonds. Only one bond shall be required of the administrator  
25 for all insureds which utilize the services of the

1 administrator, unless provided otherwise in the written  
2 agreement between the insurer and the administrator.

3       Section 11. Insured persons to be notified of  
4 availability of administrator. Whenever the services of an  
5 administrator are utilized, the administrator shall provide  
6 a written notice, approved by the insurer, to insured  
7 individuals, advising them of the identity of and  
8 relationship between the administrator, the policyholder,  
9 and the insurer. Whenever an administrator collects funds,  
10 the administrator shall identify and state, separately in  
11 writing, to the person paying to the administrator any  
12 charge or premium for insurance coverage the amount of such  
13 charge or premium specified by the insurer for the insurance  
14 coverage.

15      Section 12. Certificate of registration. (1) Except as  
16 provided in [section 13], no person may act as or hold  
17 himself out to be an administrator in this state unless he  
18 holds a certificate of registration as an administrator.

19       (2) An application for a certificate of registration  
20 must be accompanied by a fee of \$100. The commissioner of  
21 insurance shall issue the certificate unless he finds that  
22 the applicant is not competent, trustworthy, financially  
23 responsible, or of good personal and business reputation or  
24 that the applicant has had a previous application for an  
25 insurance license denied for cause within 5 years.

1       (3) The certificate of registration is renewable  
2 annually on the date of issue. A request for renewal must be  
3 accompanied by a renewal fee of \$100.

4       (4) The certificate of registration may be suspended  
5 or revoked if, after notice and hearing, the commissioner  
6 finds that the administrator has violated any of the  
7 requirements of [sections 2 through 11] or that the  
8 administrator is not competent, trustworthy, financially  
9 responsible, or of good personal and business reputation.

10      (5) Unless the certification requirement is waived,  
11 any administrator who acts as such without the certificate  
12 of registration is subject to a fine of not less than \$500  
13 or more than \$1,500.

14      Section 13. Waiver of certification requirements. The  
15 commissioner of insurance may waive the requirements of  
16 [section 12] for any person or class of persons. The factors  
17 taken into account in granting such waiver shall include but  
18 are not limited to:

19       (1) whether the person acting as an administrator is  
20 primarily in a business other than that of administrator;

21       (2) whether the financial strength and history of the  
22 organization indicates stability in its continuity of doing  
23 business;

24       (3) whether the regular duties being performed as an  
25 administrator are such that the covered persons are not

1       likely to be injured by a waiver of such requirements.

-End-

56 32

STATE OF MONTANA

Request No. 490-79

FISCAL NOTE

Form BD-15

In compliance with a written request received March 19, 1979, there is hereby submitted a Fiscal Note for Senate Bill 83 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to provide for the regulation and registration of persons who collect charges or premiums or adjust or settle claims on life or health insurance policies or annuities of residents or Montana.

FISCAL IMPACT:

Minimal.

*Richard Z. Thompson*  
BUDGET DIRECTOR  
Office of Budget and Program Planning  
Date: 3/20/79

Approved by Committee  
on Business and Industry

1 *Senate* BILL NO. 13  
2 INTRODUCED BY Douglas Baylock  
3 BY REQUEST OF THE STATE COMMISSIONER OF INSURANCE

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE  
6 REGULATION AND REGISTRATION OF PERSONS WHO COLLECT CHARGES  
7 OR PREMIUMS OR ADJUST OR SETTLE CLAIMS ON LIFE OR HEALTH  
8 INSURANCE POLICIES OR ANNUITIES OF RESIDENTS OF MONTANA."

19. BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11       Section 1. Administrator defined. As used in [this  
12       act], the term "Administrator" means any person,  
13       corporation, partnership, or association who collects  
14       charges or premiums from residents of this state in  
15       connection with life or health insurance coverage or  
16       annuities or who adjusts or settles claims on such coverage  
17       but does not include:

18 (1) an employer on behalf of its employees or on  
19 behalf of the employees of one or more subsidiary or  
20 affiliated corporations of such employer;

21 (2) a union on behalf of its members;

22 (3) an insurance company which is either licensed in  
23 this state or acting as an insurer with respect to a policy  
24 lawfully issued and delivered by it in and pursuant to the  
25 laws of a state in which the insurer was authorized to do an

1 insurance business or health service corporation as defined  
2 in 33-30-101;

3 (4) a life or health agent who is licensed in this  
4 state and whose activities are limited exclusively to the  
5 sale of insurance;

6 (5) a creditor on behalf of its debtors with respect  
7 to insurance covering a debt between the creditor and its  
8 debtors;

9 (6) a trust established in conformity with 29 U.S.C.  
10 186, its trustees, or agents and employees acting  
11 thereunder;

12 (7) a trust exempt from taxation under section 501(a)  
13 of the Internal Revenue Code, its trustees, or employees  
14 acting thereunder;

15 (8) a custodian acting pursuant to a custodian account  
16 which meets the requirements of section 401(f) of the  
17 Internal Revenue Code or its agents and employees;

18 (9) a bank, credit union, or other financial  
19 institution which is subject to supervision or examination  
20 by federal or state banking authorities;

21 (10) a credit card issuing company which advances for  
22 and collects premiums or charges from its credit card  
23 holders who have authorized it to do so, provided such  
24 company does not adjust or settle claims; or

25 (11) a person who adjusts or settles claims in the

-2- SECOND READING

1 normal course of his practice or employment as an attorney  
2 at law and who does not collect charges or premiums in  
3 connection with life or health insurance coverage or  
4 annuities.

5 Section 2. Written agreement required. (1) No person  
6 may act as an administrator without a written agreement  
7 between the person and the insurer. The written agreement  
8 shall be retained as part of the official records of both  
9 the administrator and the insurer for the duration of the  
10 agreement and for 5 years thereafter. The written agreement  
11 shall contain provisions which include the requirements of  
12 [sections 4 through 10] insofar as these requirements relate  
13 to the functions performed by the administrator.

14 (2) The agreement shall contain a provision with  
15 respect to the underwriting or other standards pertaining to  
16 the business underwritten by such insurer.

17 (3) Whenever a policy is issued to a trustee, a copy  
18 of the trust agreement and any amendments thereto shall be  
19 furnished to the insurer by the administrator and shall be  
20 retained as part of the official records of both the  
21 administrator and the insurer for the duration of the policy  
22 and for 5 years thereafter.

23 Section 3. Maintenance of information. For the  
24 duration of the agreement required by [section 2] and for 5  
25 years thereafter, each administrator shall maintain at its

1 principal administrative office adequate books and records  
2 of all transactions between the administrator, insurers, and  
3 insured persons. These books and records shall be  
4 maintained in accordance with prudent standards of insurance  
5 recordkeeping. The commissioner of insurance shall have  
6 access to these books and records for examination, audit, or  
7 inspection. Any trade secrets contained in the books and  
8 records, including but not limited to the identity and  
9 addresses of policyholders and certificate holders, shall be  
10 confidential, except that the commissioner may use such  
11 information in any proceedings instituted against the  
12 administrator. The insurer retains the right to continuing  
13 access to those books and records of the administrator  
14 sufficient to permit the insurer to fulfill all of its  
15 contractual obligations to insured persons, subject to any  
16 restrictions in the written agreement between the insurer  
17 and the administrator.

18 Section 4. Approval of advertising. An administrator  
19 may use only such advertising pertaining to the business  
20 underwritten by an insurer as is approved by the insurer in  
21 advance of its use.

22 Section 5. Collection of charges and premiums. (1) All  
23 insurance charges or premiums collected by an administrator  
24 on behalf of or for an insurer or insurers and return  
25 premiums received from such insurer or insurers are held by

1 the administrator in a fiduciary capacity. These funds  
 2 shall be immediately remitted to the person or persons  
 3 entitled thereto or shall be deposited promptly in a  
 4 fiduciary bank account established and maintained by the  
 5 administrator. If deposited charges or premiums were  
 6 collected on behalf of or for more than one insurer, the  
 7 administrator shall require the bank in which the fiduciary  
 8 account is maintained to keep records clearly recording the  
 9 deposits in and withdrawals from such account on behalf of  
 10 or for each insurer. The administrator shall promptly obtain  
 11 and keep copies of all these records and, upon request of an  
 12 insurer, shall furnish the insurer with copies of the  
 13 records pertaining to deposits and withdrawals on behalf of  
 14 or for the insurer.

15 (2) The administrator shall not pay any claim by  
 16 withdrawals from the fiduciary account. Withdrawals from the  
 17 fiduciary account shall be made, as provided in the written  
 18 agreement between the administrator and the insurer, for:

- 19 (a) remittance to an insurer entitled thereto;
- 20 (b) deposit in an account maintained in the name of  
 such insurer;
- 22 (c) transfer to and deposit in a claims paying  
 accounts with claims to be paid as provided in [section 7];
- 24 (d) payment to a group policyholder for remittance to  
 the insurer entitled thereto;

1 (e) payment to the administrator of its commission,  
 2 fees, or charges; or  
 3 (f) remittance of return premiums to the person or  
 4 persons entitled thereto.

5 Section 6. Treatment of payments. Whenever an insurer  
 6 utilizes the services of an administrator under the terms of  
 7 a written contract as required in [section 2], the payment  
 8 to the administrator of any premiums or charges for  
 9 insurance by or on behalf of the insured is considered to be  
 10 received by the insurer and the payment of return premiums  
 11 or claims by the insurer to the administrator is not  
 12 considered payment to the insured or claimant until the  
 13 payments are received by the insured or claimant. This  
 14 section does not limit any right of the insurer against the  
 15 administrator resulting from the administrator's failure to  
 16 make payments to the insurer, insureds, or claimants.

17 Section 7. Payment of claims. All claims paid by the  
 18 administrator from funds collected on behalf of the insurer  
 19 shall be paid only on drafts of and as authorized by such  
 20 insurer.

21 Section 8. Delivery of documents. Any policies,  
 22 certificates, booklets, termination notices, or other  
 23 written communications delivered by the insurer to the  
 24 administrator for delivery to its policyholders shall be  
 25 delivered by the administrator promptly after receipt of

1 instructions from the insurer to do so.

2       Section 9. Claim adjustment and settlement. With  
3 respect to any policies where an administrator adjusts or  
4 settles claims, the compensation to the administrator with  
5 regard to the policies shall in no way be contingent on  
6 claim experience. This section does not prevent the  
7 compensation of an administrator from being based on  
8 premiums or charges collected or number of claims paid or  
9 processed.

10       Section 10. Bonding requirements. Every administrator  
11 shall be bonded. The amount of the bond shall be not less  
12 than 10% of the amount of total funds handled and not less  
13 than \$1,000, but need not be more than \$500,000 unless a  
14 larger amount has been agreed to between the insurer and the  
15 administrator. For fixing the amount of the bond, the amount  
16 of funds handled shall be determined by the total funds  
17 handled by the administrator during the preceding year or,  
18 if no funds were handled during the preceding year, the  
19 amount of funds reasonably estimated to be handled during  
20 the current calendar year by the administrator. The bond  
21 shall provide protection to the insurer or insurers against  
22 loss by reason of acts of fraud or dishonesty and may  
23 include individual bonds or schedule or blanket forms of  
24 bonds. Only one bond shall be required of the administrator  
25 for all insureds which utilize the services of the

1 administrator, unless provided otherwise in the written  
2 agreement between the insurer and the administrator.

3       Section 11. Insured persons to be notified of  
4 availability of administrator. Whenever the services of an  
5 administrator are utilized, the administrator shall provide  
6 a written notice, approved by the insurer, to insured  
7 individuals, advising them of the identity of and  
8 relationship between the administrator, the policyholder,  
9 and the insurer. Whenever an administrator collects funds,  
10 the administrator shall identify and state, separately in  
11 writing, to the person paying to the administrator any  
12 charge or premium for insurance coverage the amount of such  
13 charge or premium specified by the insurer for the insurance  
14 coverage.

15       Section 12. Certificate of registration. (1) Except as  
16 provided in [section 13], no person may act as or hold  
17 himself out to be an administrator in this state unless he  
18 holds a certificate of registration as an administrator.

19       (2) An application for a certificate of registration  
20 must be accompanied by a fee of \$100. The commissioner of  
21 insurance shall issue the certificate unless he finds that  
22 the applicant is not competent, trustworthy, financially  
23 responsible, or of good personal and business reputation or  
24 that the applicant has had a previous application for an  
25 insurance license denied for cause within 5 years.

1        (3) The certificate of registration is renewable  
2 annually on the date of issue. A request for renewal must be  
3 accompanied by a renewal fee of \$100.

4        (4) The certificate of registration may be suspended  
5 or revoked if, after notice and hearing, the commissioner  
6 finds that the administrator has violated any of the  
7 requirements of [sections 2 through 11] or that the  
8 administrator is not competent, trustworthy, financially  
9 responsible, or of good personal and business reputation.

10       (5) Unless the certification requirement is waived,  
11 any administrator who acts as such without the certificate  
12 of registration is subject to a fine of not less than \$500  
13 or more than \$1,500.

14       Section 13. Waiver of certification requirements. The  
15 commissioner of insurance may waive the requirements of  
16 [section 12] for any person or class of persons. The factors  
17 taken into account in granting such waiver shall include but  
18 are not limited to:

19       (1) whether the person acting as an administrator is  
20 primarily in a business other than that of administrator;

21       (2) whether the financial strength and history of the  
22 organization indicates stability in its continuity of doing  
23 business;

24       (3) whether the regular duties being performed as an  
25 administrator are such that the covered persons are not

1       likely to be injured by a waiver of such requirements.

-End-

SB 33

1 *Senate* BILL NO. 13  
2 INTRODUCED BY *Douglas Blaylock*

3 BY REQUEST OF THE STATE COMMISSIONER OF INSURANCE

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE  
6 REGULATION AND REGISTRATION OF PERSONS WHO COLLECT CHARGES  
7 OR PREMIUMS OR ADJUST OR SETTLE CLAIMS ON LIFE OR HEALTH  
8 INSURANCE POLICIES OR ANNUITIES OF RESIDENTS OF MONTANA."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11           Section 1. Administrator defined. As used in [this  
12       act], the term "administrator" means any person,  
13       corporation, partnership, or association who collects  
14       charges or premiums from residents of this state in  
15       connection with life or health insurance coverage or  
16       annuities or who adjusts or settles claims on such coverage  
17       but does not include:

18 (1) an employer on behalf of its employees or on  
19 behalf of the employees of one or more subsidiary or  
20 affiliated corporations of such employer;

21 (2) a union on behalf of its members;

22 (3) an insurance company which is either licensed in  
23 this state or acting as an insurer with respect to a policy  
24 lawfully issued and delivered by it in and pursuant to the  
25 laws of a state in which the insurer was authorized to do an

1       insurance business or health service corporation as defined  
2       in 33-30-101;

3               (4) a life or health agent who is licensed in this  
4       state and whose activities are limited exclusively to the  
5       sale of insurance;

6               (5) a creditor on behalf of its debtors with respect  
7       to insurance covering a debt between the creditor and its  
8       debtors;

9               (6) a trust established in conformity with 29 U.S.C.  
10      186, its trustees, or agents and employees acting  
11      thereunder;

12               (7) a trust exempt from taxation under section 501(a)  
13      of the Internal Revenue Code, its trustees, or employees  
14      acting thereunder;

15               (8) a custodian acting pursuant to a custodian account  
16      which meets the requirements of section 401(f) of the  
17      Internal Revenue Code or its agents and employees;

18               (9) a bank, credit union, or other financial  
19      institution which is subject to supervision or examination  
20      by federal or state banking authorities;

21               (10) a credit card issuing company which advances for  
22      and collects premiums or charges from its credit card  
23      holders who have authorized it to do so, provided such  
24      company does not adjust or settle claims; or

25               (11) a person who adjusts or settles claims in the

1 normal course of his practice or employment as an attorney  
2 at law and who does not collect charges or premiums in  
3 connection with life or health insurance coverage or  
4 annuities.

5 Section 2. Written agreement required. (1) No person  
6 may act as an administrator without a written agreement  
7 between the person and the insurer. The written agreement  
8 shall be retained as part of the official records of both  
9 the administrator and the insurer for the duration of the  
10 agreement and for 5 years thereafter. The written agreement  
11 shall contain provisions which include the requirements of  
12 [sections 4 through 10] insofar as these requirements relate  
13 to the functions performed by the administrator.

14 (2) The agreement shall contain a provision with  
15 respect to the underwriting or other standards pertaining to  
16 the business underwritten by such insurer.

17 (3) Whenever a policy is issued to a trustee, a copy  
18 of the trust agreement and any amendments thereto shall be  
19 furnished to the insurer by the administrator and shall be  
20 retained as part of the official records of both the  
21 administrator and the insurer for the duration of the policy  
22 and for 5 years thereafter.

23 Section 3. Maintenance of information. For the  
24 duration of the agreement required by [section 2] and for 5  
25 years thereafter, each administrator shall maintain at its

1 principal administrative office adequate books and records  
2 of all transactions between the administrator, insurers, and  
3 insured persons. These books and records shall be  
4 maintained in accordance with prudent standards of insurance  
5 recordkeeping. The commissioner of insurance shall have  
6 access to these books and records for examination, audit, or  
7 inspection. Any trade secrets contained in the books and  
8 records, including but not limited to the identity and  
9 addresses of policyholders and certificate holders, shall be  
10 confidential, except that the commissioner may use such  
11 information in any proceedings instituted against the  
12 administrator. The insurer retains the right to continuing  
13 access to those books and records of the administrator  
14 sufficient to permit the insurer to fulfill all of its  
15 contractual obligations to insured persons, subject to any  
16 restrictions in the written agreement between the insurer  
17 and the administrator.

18 Section 4. Approval of advertising. An administrator  
19 may use only such advertising pertaining to the business  
20 underwritten by an insurer as is approved by the insurer in  
21 advance of its use.

22 Section 5. Collection of charges and premiums. (1) All  
23 insurance charges or premiums collected by an administrator  
24 on behalf of or for an insurer or insurers and return  
25 premiums received from such insurer or insurers are held by

1 the administrator in a fiduciary capacity. These funds  
 2 shall be immediately remitted to the person or persons  
 3 entitled thereto or shall be deposited promptly in a  
 4 fiduciary bank account established and maintained by the  
 5 administrator. If deposited charges or premiums were  
 6 collected on behalf of or for more than one insurer, the  
 7 administrator shall require the bank in which the fiduciary  
 8 account is maintained to keep records clearly recording the  
 9 deposits in and withdrawals from such account on behalf of  
 10 or for each insurer. The administrator shall promptly obtain  
 11 and keep copies of all these records and, upon request of an  
 12 insurer, shall furnish the insurer with copies of the  
 13 records pertaining to deposits and withdrawals on behalf of  
 14 or for the insurer.

15 (2) The administrator shall not pay any claim by  
 16 withdrawals from the fiduciary account. Withdrawals from the  
 17 fiduciary account shall be made, as provided in the written  
 18 agreement between the administrator and the insurer, for:

- 19 (a) remittance to an insurer entitled thereto;
- 20 (b) deposit in an account maintained in the name of  
 21 such insurer;
- 22 (c) transfer to and deposit in a claims paying  
 23 account, with claims to be paid as provided in [section 7];
- 24 (d) payment to a group policyholder for remittance to  
 25 the insurer entitled thereto;

1 (e) payment to the administrator of its commission,  
 2 fees, or charges; or  
 3 (f) remittance of return premiums to the person or  
 4 persons entitled thereto.

5 Section 6. Treatment of payments. Whenever an insurer  
 6 utilizes the services of an administrator under the terms of  
 7 a written contract as required in [section 2], the payment  
 8 to the administrator of any premiums or charges for  
 9 insurance by or on behalf of the insured is considered to be  
 10 received by the insurer and the payment of return premiums  
 11 or claims by the insurer to the administrator is not  
 12 considered payment to the insured or claimant until the  
 13 payments are received by the insured or claimant. This  
 14 section does not limit any right of the insurer against the  
 15 administrator resulting from the administrator's failure to  
 16 make payments to the insurer, insureds, or claimants.

17 Section 7. Payment of claims. All claims paid by the  
 18 administrator from funds collected on behalf of the insurer  
 19 shall be paid only on drafts of and as authorized by such  
 20 insurer.

21 Section 8. Delivery of documents. Any policies,  
 22 certificates, booklets, termination notices, or other  
 23 written communications delivered by the insurer to the  
 24 administrator for delivery to its policyholders shall be  
 25 delivered by the administrator promptly after receipt of

1       instructions from the insurer to do so.

2       Section 9. Claim adjustment and settlement. With  
3       respect to any policies where an administrator adjusts or  
4       settles claims, the compensation to the administrator with  
5       regard to the policies shall in no way be contingent on  
6       claim experience. This section does not prevent the  
7       compensation of an administrator from being based on  
8       premiums or charges collected or number of claims paid or  
9       processed.

10       Section 10. Bonding requirements. Every administrator  
11       shall be bonded. The amount of the bond shall be not less  
12       than 10% of the amount of total funds handled and not less  
13       than \$1,000, but need not be more than \$500,000 unless a  
14       larger amount has been agreed to between the insurer and the  
15       administrator. For fixing the amount of the bond, the amount  
16       of funds handled shall be determined by the total funds  
17       handled by the administrator during the preceding year or,  
18       if no funds were handled during the preceding year, the  
19       amount of funds reasonably estimated to be handled during  
20       the current calendar year by the administrator. The bond  
21       shall provide protection to the insurer or insurers against  
22       loss by reason of acts of fraud or dishonesty and may  
23       include individual bonds or schedule or blanket forms of  
24       bonds. Only one bond shall be required of the administrator  
25       for all insureds which utilize the services of the

1       administrator, unless provided otherwise in the written  
2       agreement between the insurer and the administrator.

3       Section 11. Insured persons to be notified of  
4       availability of administrator. Whenever the services of an  
5       administrator are utilized, the administrator shall provide  
6       a written notice, approved by the insurer, to insured  
7       individuals, advising them of the identity of and  
8       relationship between the administrator, the policyholder,  
9       and the insurer. Whenever an administrator collects funds,  
10       the administrator shall identify and state, separately in  
11       writing, to the person paying to the administrator any  
12       charge or premium for insurance coverage the amount of such  
13       charge or premium specified by the insurer for the insurance  
14       coverage.

15       Section 12. Certificate of registration. (1) Except as  
16       provided in [section 13], no person may act as or hold  
17       himself out to be an administrator in this state unless he  
18       holds a certificate of registration as an administrator.

19       (2) An application for a certificate of registration  
20       must be accompanied by a fee of \$100. The commissioner of  
21       insurance shall issue the certificate unless he finds that  
22       the applicant is not competent, trustworthy, financially  
23       responsible, or of good personal and business reputation or  
24       that the applicant has had a previous application for an  
25       insurance license denied for cause within 5 years.

1        (3) The certificate of registration is renewable  
2 annually on the date of issue. A request for renewal must be  
3 accompanied by a renewal fee of \$100.

4        (4) The certificate of registration may be suspended  
5 or revoked if, after notice and hearing, the commissioner  
6 finds that the administrator has violated any of the  
7 requirements of [sections 2 through 11] or that the  
8 administrator is not competent, trustworthy, financially  
9 responsible, or of good personal and business reputation.

10       (5) Unless the certification requirement is waived,  
11 any administrator who acts as such without the certificate  
12 of registration is subject to a fine of not less than \$500  
13 or more than \$1,500.

14       Section 13. Waiver of certification requirements. The  
15 commissioner of insurance may waive the requirements of  
16 [section 12] for any person or class of persons. The factors  
17 taken into account in granting such waiver shall include but  
18 are not limited to:

19       (1) whether the person acting as an administrator is  
20 primarily in a business other than that of administrator;

21       (2) whether the financial strength and history of the  
22 organization indicates stability in its continuity of doing  
23 business;

24       (3) whether the regular duties being performed as an  
25 administrator are such that the covered persons are not

1       likely to be injured by a waiver of such requirements.

-End-

SB 83

SENATE BILL NO. 83

INTRODUCED BY DOVER, BLAYLOCK

BY REQUEST OF THE STATE COMMISSIONER OF INSURANCE

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE  
6 REGULATION AND REGISTRATION OF PERSONS WHO COLLECT CHARGES  
7 OR PREMIUMS OR ADJUST OR SETTLE CLAIMS ON LIFE OR HEALTH  
8 INSURANCE POLICIES OR ANNUITIES OF RESIDENTS OF MONTANA."

TO BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11           Section 1. Administrator defined. As used in [this  
12       act], the term "administrator" means any person,  
13       corporation, partnership, or association who collects  
14       charges or premiums from residents of this state in  
15       connection with life or health insurance coverage or  
16       annuities or who adjusts or settles claims on such coverage  
17       but does not include:

18 (1) an employer on behalf of its employees or on  
19 behalf of the employees of one or more subsidiary or  
20 affiliated corporations of such employer;

21 (2) a union on behalf of its members;

1 insurance business or health service corporation as defined  
2 in 33-30-101;

3                   (4) a life or health agent who is licensed in this  
4 state and whose activities are limited exclusively to the  
5 sale of insurance;

6 (5) a creditor on behalf of its debtors with respect  
7 to insurance covering a debt between the creditor and its  
8 debtors;

12 (7) a trust exempt from taxation under section 501(a)  
13 of the Internal Revenue Code, its trustees, or employees  
14 acting thereunder;

15 (8) a custodian acting pursuant to a custodian account  
16 which meets the requirements of section 401(f) of the  
17 Internal Revenue Code or its agents and employees;

18 (9) a bank, credit union, or other financial  
19 institution which is subject to supervision or examination  
20 by federal or state banking authorities;

25 (11) a person who adjusts or settles claims in the

1 normal course of his practice or employment as an attorney  
2 at law and who does not collect charges or premiums in  
3 connection with life or health insurance coverage or  
4 annuities.

5 Section 2. Written agreement required. (1) No person  
6 may act as an administrator without a written agreement  
7 between the person and the insurer. The written agreement  
8 shall be retained as part of the official records of both  
9 the administrator and the insurer for the duration of the  
10 agreement and for 5 years thereafter. The written agreement  
11 shall contain provisions which include the requirements of  
12 [sections 4 through 10] insofar as these requirements relate  
13 to the functions performed by the administrator.

14 (2) The agreement shall contain a provision with  
15 respect to the underwriting or other standards pertaining to  
16 the business underwritten by such insurer.

17 (3) Whenever a policy is issued to a trustee, a copy  
18 of the trust agreement and any amendments thereto shall be  
19 furnished to the insurer by the administrator and shall be  
20 retained as part of the official records of both the  
21 administrator and the insurer for the duration of the policy  
22 and for 5 years thereafter.

23 Section 3. Maintenance of information. For the  
24 duration of the agreement required by [section 2] and for 5  
25 years thereafter, each administrator shall maintain at its

1 principal administrative office adequate books and records  
2 of all transactions between the administrator, insurers, and  
3 insured persons. These books and records shall be  
4 maintained in accordance with prudent standards of insurance  
5 recordkeeping. The commissioner of insurance shall have  
6 access to these books and records for examination, audit, or  
7 inspection. Any trade secrets contained in the books and  
8 records, including but not limited to the identity and  
9 addresses of policyholders and certificate holders, shall be  
10 confidential, except that the commissioner may use such  
11 information in any proceedings instituted against the  
12 administrator. The insurer retains the right to continuing  
13 access to those books and records of the administrator  
14 sufficient to permit the insurer to fulfill all of its  
15 contractual obligations to insured persons, subject to any  
16 restrictions in the written agreement between the insurer  
17 and the administrator.

18 Section 4. Approval of advertising. An administrator  
19 may use only such advertising pertaining to the business  
20 underwritten by an insurer as is approved by the insurer in  
21 advance of its use.

22 Section 5. Collection of charges and premiums. (1) All  
23 insurance charges or premiums collected by an administrator  
24 on behalf of or for an insurer or insurers and return  
25 premiums received from such insurer or insurers are held by

1 the administrator in a fiduciary capacity. These funds  
2 shall be immediately remitted to the person or persons  
3 entitled thereto or shall be deposited promptly in a  
4 fiduciary bank account established and maintained by the  
5 administrator. If deposited charges or premiums were  
6 collected on behalf of or for more than one insurer, the  
7 administrator shall require the bank in which the fiduciary  
8 account is maintained to keep records clearly recording the  
9 deposits in and withdrawals from such account on behalf of  
10 or for each insurer. The administrator shall promptly obtain  
11 and keep copies of all these records and, upon request of an  
12 insurer, shall furnish the insurer with copies of the  
13 records pertaining to deposits and withdrawals on behalf of  
14 or for the insurer.

15 (2) The administrator shall not pay any claim by  
16 withdrawals from the fiduciary account. Withdrawals from the  
17 fiduciary account shall be made, as provided in the written  
18 agreement between the administrator and the insurer, for:

- 19 (a) remittance to an insurer entitled thereto;
- 20 (b) deposit in an account maintained in the name of  
such insurer;
- 21 (c) transfer to and deposit in a claims paying  
account, with claims to be paid as provided in [section 7];
- 22 (d) payment to a group policyholder for remittance to  
the insurer entitled thereto;

1 (e) payment to the administrator of its commission,  
2 fees, or charges; or  
3 (f) remittance of return premiums to the person or  
4 persons entitled thereto.

5 Section 6. Treatment of payments. Whenever an insurer  
6 utilizes the services of an administrator under the terms of  
7 a written contract as required in [section 2], the payment  
8 to the administrator of any premiums or charges for  
9 insurance by or on behalf of the insured is considered to be  
10 received by the insurer and the payment of return premiums  
11 or claims by the insurer to the administrator is not  
12 considered payment to the insured or claimant until the  
13 payments are received by the insured or claimant. This  
14 section does not limit any right of the insurer against the  
15 administrator resulting from the administrator's failure to  
16 make payments to the insurer, insureds, or claimants.

17 Section 7. Payment of claims. All claims paid by the  
18 administrator from funds collected on behalf of the insurer  
19 shall be paid only on drafts of and as authorized by such  
20 insurer.

21 Section 8. Delivery of documents. Any policies,  
22 certificates, booklets, termination notices, or other  
23 written communications delivered by the insurer to the  
24 administrator for delivery to its policyholders shall be  
25 delivered by the administrator promptly after receipt of

1 instructions from the insurer to do so.

2       Section 9. Claim adjustment and settlement. With  
3 respect to any policies where an administrator adjusts or  
4 settles claims, the compensation to the administrator with  
5 regard to the policies shall in no way be contingent on  
6 claim experience. This section does not prevent the  
7 compensation of an administrator from being based on  
8 premiums or charges collected or number of claims paid or  
9 processed.

10      Section 10. Bonding requirements. Every administrator  
11 shall be bonded. The amount of the bond shall be not less  
12 than 10% of the amount of total funds handled and not less  
13 than \$1,000, but need not be more than \$500,000 unless a  
14 larger amount has been agreed to between the insurer and the  
15 administrator. For fixing the amount of the bond, the amount  
16 of funds handled shall be determined by the total funds  
17 handled by the administrator during the preceding year or,  
18 if no funds were handled during the preceding year, the  
19 amount of funds reasonably estimated to be handled during  
20 the current calendar year by the administrator. The bond  
21 shall provide protection to the insurer or insurers against  
22 loss by reason of acts of fraud or dishonesty and may  
23 include individual bonds or schedule or blanket forms of  
24 bonds. Only one bond shall be required of the administrator  
25 for all insureds which utilize the services of the

1 administrators, unless provided otherwise in the written  
2 agreement between the insurer and the administrator.

3       Section 11. Insured persons to be notified of  
4 availability of administrator. Whenever the services of an  
5 administrator are utilized, the administrator shall provide  
6 a written notice, approved by the insurer, to insured  
7 individuals, advising them of the identity of and  
8 relationship between the administrator, the policyholder,  
9 and the insurer. Whenever an administrator collects funds,  
10 the administrator shall identify and state, separately in  
11 writing, to the person paying to the administrator any  
12 charge or premium for insurance coverage the amount of such  
13 charge or premium specified by the insurer for the insurance  
14 coverage.

15      Section 12. Certificate of registration. (1) Except as  
16 provided in [section 13], no person may act as or hold  
17 himself out to be an administrator in this state unless he  
18 holds a certificate of registration as an administrator.

19       (2) An application for a certificate of registration  
20 must be accompanied by a fee of \$100. The commissioner of  
21 insurance shall issue the certificate unless he finds that  
22 the applicant is not competent, trustworthy, financially  
23 responsible, or of good personal and business reputation or  
24 that the applicant has had a previous application for an  
25 insurance license denied for cause within 5 years.

1       (3) The certificate of registration is renewable  
2 annually on the date of issue. A request for renewal must be  
3 accompanied by a renewal fee of \$100.

4       (4) The certificate of registration may be suspended  
5 or revoked if, after notice and hearing, the commissioner  
6 finds that the administrator has violated any of the  
7 requirements of [sections 2 through 11] or that the  
8 administrator is not competent, trustworthy, financially  
9 responsible, or of good personal and business reputation.

10      (5) Unless the certification requirement is waived,  
11 any administrator who acts as such without the certificate  
12 of registration is subject to a fine of not less than \$500  
13 or more than \$1,500.

14      Section 13. Waiver of certification requirements. The  
15 commissioner of insurance may waive the requirements of  
16 [section 12] for any person or class of persons. The factors  
17 taken into account in granting such waiver shall include but  
18 are not limited to:

19       (1) whether the person acting as an administrator is  
20 primarily in a business other than that of administrator;

21       (2) whether the financial strength and history of the  
22 organization indicates stability in its continuity of doing  
23 business;

24       (3) whether the regular duties being performed as an  
25 administrator are such that the covered persons are not

1       likely to be injured by a waiver of such requirements.

-End-