

HOUSE BILL 465

INTRODUCED BY HEMSTAD, GAGE

BY REQUEST OF THE MONTANA DEPARTMENT OF INSURANCE

IN THE HOUSE

January 24, 1983	Introduced and referred to Committee on Business and Industry.
February 4, 1983	Committee recommend bill do pass as amended. Report adopted.
February 5, 1983	Bill printed and placed on members' desks.
February 7, 1983	Second reading, do pass.
February 8, 1983	Considered correctly engrossed.
February 9, 1983	Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 10, 1983	Introduced and referred to Committee on Business and Industry.
March 21, 1983	Committee recommend bill be concurred in as amended. Report adopted. Statement of Intent attached.
March 23, 1983	Second reading, concurred in. Segregated.
March 24, 1983	Second reading, concurred in as amended.

March 28, 1983

Third reading, concurred in.
Ayes, 45; Noes, 2.

IN THE HOUSE

March 28, 1983

Returned to House with
amendments and Statement of
Intent.

April 1, 1983

Second reading, amendments
and Statement of Intent
concurred in.

April 4, 1983

Second reading, amendments
and Statement of Intent
concurred in.

Sent to enrolling.

Reported correctly enrolled.

FIRST READING

MISSING

STATE OF MONTANA

REQUEST NO. 296-83

FISCAL NOTE

Form BD-15

In compliance with a written request received February 1, 19 83, there is hereby submitted a Fiscal Note for House Bill 465 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:

House Bill 465 provides that inland marine insurance premiums are not to be taxed as wet or ocean marine at 3/4% but at 2 3/4% of premiums as it was prior to 1981.

ASSUMPTIONS:

- 1) Assume that premiums grew by 5+% per year.
- 2) Assume that actual earned premiums and net premiums written are substantially equal.

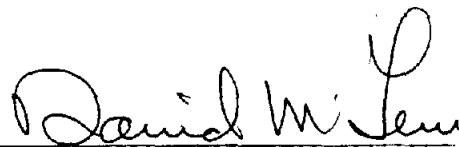
FISCAL IMPACT:

	<u>FY 84</u>	<u>FY 85</u>
General Fund		
Under Current Law	\$ 18,500,000	\$ 19,400,000
Under Proposed Law	<u>18,723,000</u>	<u>19,634,000</u>
Increase In Revenue	<u>\$ 223,000</u>	<u>\$ 234,000</u>

COMMENTS:

When the definition of marine insurance was passed by the 1981 legislature the premium tax Section 33-2-704(4), MCA was erroneously amended to include inland with wet marine.

FISCAL NOTE 10:V/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-4-83

Approved by Committee
on Business and Industry

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BY REQUEST OF THE MONTANA DEPARTMENT OF INSURANCE

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO INSURANCE; CHANGING FORM FILING REQUIREMENTS; CLARIFYING PROVISIONS RELATING TO REINSURANCE AGREEMENTS AND BULK REINSURANCE; PROVIDING THAT INLAND MARINE INSURANCE IS TAXED AT ~~3/4-OF-1~~ 2.3/4 PERCENT OF NET PREMIUMS WRITTEN; CLARIFYING THAT SELF-GOVERNING LOCAL GOVERNMENTS MAY NOT TAX OR LICENSE INSURERS OR AGENTS; DELETING THE REQUIREMENT FOR FILING SUPPORTING DATA ON RATE CHANGES BY INSURERS, RATING ORGANIZATIONS, AND ADVISORY ORGANIZATIONS; DEFINING A "MANAGING GENERAL AGENT" AND PROVIDING FOR LICENSURE; CLARIFYING WHEN INSURANCE INFORMATION MAY BE OBTAINED ABOUT AN INDIVIDUAL; CLARIFYING THE POLICY AMOUNT THAT MUST BE OFFERED ON TERMINATION OF A GROUP LIFE POLICY; AND PROVIDING THAT A POLICY CLAUSE ON CONFORMITY WITH STATE STATUTES BE MANDATORY; AMENDING SECTIONS 33-1-501, 33-2-119, 33-2-705, 33-2-707, 33-2-1206, 33-16-203, 33-17-102, 33-17-103, 33-17-201, 33-19-304, 33-20-1210, AND 33-22-229, MCA."

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

Section 1. Section 33-1-501, MCA, is amended to read:

"33-1-501. Filing and approval of forms. (1) No insurance policy or annuity contract form, application form, printed rider or endorsement form, or ~~form--of-renewal~~ certificate of insurance shall be delivered or issued for delivery in this state unless the form has been filed with and approved by the commissioner of this state and the state of domicile of the insurer, where so required. This provision shall not apply to surety bonds~~st--specially-rated~~ ~~inland-marine-risks~~ or policies, riders, endorsements, or forms of unique character designed for and used with relation to insurance upon a particular subject or which relate to the manner of distribution of benefits or to the reservation of rights and benefits under life or disability insurance policies and are used at the request of the individual policyholder, contract holder, or certificate holder. As to forms for use in property, marine (other than ocean marine and foreign trade coverages), casualty, and surety insurance coverages, the filing required by this subsection may be made by rating organizations on behalf of its members and subscribers, but this provision shall not be deemed to prohibit any such member or subscriber from filing any such forms on its own behalf.

(2) Every such filing shall be made not less than 60 days in advance of any such delivery. Approval of any such form by the commissioner shall constitute a waiver of any

unexpired portion of such waiting period. The commissioner may extend by not more than an additional 60 days the period within which he may so affirmatively approve or disapprove any such form by giving notice of such extension before expiration of the initial 60-day period. The commissioner may at any time, after notice and for cause shown, withdraw any such approval.

(3) Any order of the commissioner disapproving any such form or withdrawing a previous approval shall state the grounds therefor and the particulars thereof in such details as reasonably to inform the insurer thereof.

(4) The commissioner may, by order, exempt from the requirements of this section for so long as he deems proper any insurance document or form or type thereof as specified in such order to which, in his opinion, this section may not practicably be applied or the filing and approval of which are, in his opinion, not desirable or necessary for the protection of the public.

(5) This section shall apply also to any such form used by domestic insurers for delivery in a jurisdiction outside this state, if the insurance supervisory official of such jurisdiction informs the commissioner that such form is not subject to approval or disapproval by such official, and upon the commissioner's order requiring the form to be submitted to him for the purpose. The applicable same

standards shall apply to such forms as apply to forms for domestic use.

(b) This section and 33-1-502 shall not apply as to:

(a) reinsurance;

(b) policies or contracts not issued for delivery in this state or delivered in this state, except as provided in subsection (5);

(c) ocean marine and foreign trade insurances."

Section 2. Section 33-2-119, MCA, is amended to read:

"33-2-119. Suspension or revocation for violations and special grounds. (1) The commissioner may, in his discretion, suspend or revoke an insurer's certificate of authority if, after a hearing thereon, he finds that the insurer has:

(a) violated any lawful order of the commissioner or any provision of this code other than those for which suspension or revocation is mandatory;

~~(b) reinsured more than 90% of its risks, resident or to be performed in Montana, in another insurer. In considering suspension or revocation, the commissioner shall consider all relevant factors, including whether:~~

~~(i) after the reinsurance transaction all parties will be in compliance with Montana law; and~~

~~(ii) the transaction will substantially reduce protection and service to Montana policyholders.~~

1 (2) The commissioner shall, after a hearing thereon,
2 suspend or revoke an insurer's certificate of authority if
3 he finds that the insurer:

4 (a) is in unsound condition or in such condition or
5 using such methods or practices in the conduct of its
6 business as to render its further transaction of insurance
7 in Montana injurious or hazardous to its policyholders or to
8 the public;

9 (b) has refused to be examined or to produce its
10 accounts, records, and files for examination or if any of
11 its officers have refused to give information with respect
12 to its affairs, when required by the commissioner;

13 (c) has failed to pay any final judgment rendered
14 against it in Montana within 30 days after the judgment
15 became final;

16 (d) with such frequency as to indicate its general
17 business practice in Montana, has without just cause refused
18 to pay proper claims arising under its policies, whether any
19 such claim is in favor of an insured or is in favor of a
20 third person with respect to the liability of an insured to
21 such third person, or without just cause compels such
22 insured or claimant to accept less than the amount due them
23 or to employ attorneys or to bring suit against the insurer
24 or such an insured to secure full payment or settlement of
25 such claims;

1 (e) is affiliated with and under the same general
2 management or interlocking directorate or ownership as
3 another insurer which transacts direct insurance in Montana
4 without having a certificate of authority therefor, except
5 as permitted as to a surplus line insurer under part 3 of
6 this chapter.

7 ~~{f}--has--reinsured--all--its--risks--in--their--entirety--in~~
8 ~~another--insurer.~~

9 (3) The commissioner may, in his discretion and
10 without advance notice or a hearing thereon, immediately
11 suspend the certificate of authority of any insurer as to
12 which proceedings for receivership, conservatorship,
13 rehabilitation, or other delinquency proceedings have been
14 commenced in any state."

15 Section 3. Section 33-2-705, MCA, is amended to read:

16 "33-2-705. Report on premiums and other consideration
17 -- tax. (1) Each authorized insurer and each formerly
18 authorized insurer with respect to premiums so received
19 while an authorized insurer in this state shall file with
20 the commissioner, on or before March 1 each year, a report
21 (except as to wet marine and transportation insurance taxed
22 under subsection (4) below) in form as prescribed by the
23 commissioner showing total direct premium income, including
24 policy, membership, and other fees, premiums paid by
25 application of dividends, refunds, savings, savings coupons,

1 and similar returns or credits to payment of premiums for
 2 new or additional or extended or renewed insurance, charges
 3 for payment of premium in installments, and all other
 4 consideration for insurance from all kinds and classes of
 5 insurance whether designated as a premium or otherwise,
 6 received by it during the preceding calendar year on account
 7 of policies covering property, subjects, or risks located,
 8 resident, or to be performed in Montana, with proper
 9 proportionate allocation of premium as to such property,
 10 subjects, or risks in Montana insured under policies or
 11 contracts covering property, subjects, or risks located or
 12 resident in more than one state, after deducting from such
 13 total direct premium income applicable cancellations,
 14 returned premiums, the unabsorbed portion of any deposit
 15 premium, the amount of reduction in or refund of premiums
 16 allowed to industrial life policyholders for payment of
 17 premiums direct to an office of the insurer, all policy
 18 dividends, refunds, savings, savings coupons, and other
 19 similar returns paid or credited to policyholders with
 20 respect to such policies. As to title insurance, "premium"
 21 includes the total charge for such insurance. No deduction
 22 shall be made of the cash surrender values of policies.
 23 Considerations received on annuity contracts shall not be
 24 included in total direct premium income and shall not be
 25 subject to tax.

1 (2) Coincident with the filing of the tax report
 2 referred to in subsection (1) above, each such insurer shall
 3 pay to the commissioner a tax upon such net premiums. This
 4 tax may be computed in either of the following ways:

5 (a) (i) A domestic insurer may choose to compute its
 6 tax based on the percentage of its admitted assets invested
 7 in Montana securities according to the following schedule:

8 (A) $2\frac{3}{4}\%$ of net premiums if the insurer has 0% of
 9 its admitted assets invested in Montana securities;

10 (B) $2\frac{1}{4}\%$ of net premiums if the insurer has at least
 11 25% of its admitted assets invested in Montana securities;

12 (C) $1\frac{3}{4}\%$ of net premiums if the insurer has at least
 13 50% of its admitted assets invested in Montana securities;

14 (D) $1\frac{1}{4}\%$ of net premiums if the insurer has at least
 15 75% of its admitted assets invested in Montana securities;

16 and

17 (E) $3\frac{1}{4}\%$ of net premiums if the insurer has 100% of
 18 its admitted assets invested in Montana securities.

19 (ii) "Admitted assets" are those assets allowed in
 20 33-2-501.

21 (iii) An insurer choosing this method of computation
 22 must itemize its Montana securities on a detailed schedule
 23 attached to its annual tax report.

24 (b) (i) If the method provided for in subsection (a)
 25 is not used, the insurer shall compute its tax at the rate

1 of 2 3/4% of the net premiums.

2 (ii) An insurer choosing this method and having not
3 less than 50% of its paid-in capital stock invested in
4 Montana securities is allowed to deduct whatever tax it may
5 have already paid to the state of Montana and its political
6 subdivisions, during the same calendar year as to which
7 premium tax is being paid, from the amount otherwise due
8 under this section.

9 (3) For the purpose of subsection (2):

10 (a) "paid-in capital stock" as to a mutual or
11 reciprocal insurer shall be deemed to be an amount equal to
12 10% of the insurer's assets; and

13 (b) "Montana securities" shall be deemed to include
14 only general obligations of the state of Montana or of its
15 political subdivisions, mortgage loans secured by a first
16 lien upon real estate located in Montana, and real estate
17 located in Montana owned by the insurer, all if otherwise
18 lawful investments of the insurer under this code.

19 (4) (a) On or before March 1 of each year each insurer
20 shall file with the commissioner, on forms as prescribed and
21 furnished or accepted by him, a report of its gross
22 underwriting profit on wet marine~~y~~--intend--marine~~y~~ and
23 transportation insurance, authorized in 33-1-209 and
24 33-1-221--through-33-1-229, written in this state during the
25 calendar year next preceding and shall at the same time pay

1 to the commissioner a tax of 3/4 of 1% of such gross
2 underwriting profit.

3 (b) Such gross underwriting profit shall be
4 ascertained by deducting from the net premiums (i.e., gross
5 premiums less all return premiums and premiums for
6 reinsurance) on such wet marine and transportation insurance
7 contracts the net losses paid (i.e., gross losses paid less
8 salvage and recoveries on reinsurance ceded) during such
9 calendar year under such contracts. In the case of insurers
10 issuing participating contracts, such gross underwriting
11 profit shall not include for computation of the tax
12 prescribed by this subsection (4) the amounts refunded,
13 credited, or paid as participation dividends or savings by
14 such insurers to the holders of such contracts.

15 (5) That portion of the tax paid hereunder by an
16 insurer on account of premiums received for fire insurance
17 shall be separately specified in the report as required by
18 the commissioner, for apportionment as provided by law.
19 Where insurance against fire is included with insurance of
20 property against other perils at an undivided premium, the
21 insurer shall make such reasonable allocation from such
22 entire premium to the fire portion of the coverage as shall
23 be stated in such report and as may be approved or accepted
24 by the commissioner.

25 (6) With respect to authorized insurers the premium

1 tax provided by this section shall be payment in full and in
 2 lieu of all other demands for any and all state, county,
 3 city, district, municipal, and school taxes, licenses, fees,
 4 and excises of whatever kind or character, excepting only
 5 those prescribed by this code, taxes on real and tangible
 6 personal property located in this state, and taxes payable
 7 under 50-3-109.

8 (7) The commissioner may suspend or revoke the
 9 certificate of authority of any insurer which fails to pay
 10 its taxes as required under this section."

11 Section 4. Section 33-2-707, MCA, is amended to read:

12 "33-2-707. Preemption of taxing. The state of Montana
 13 hereby preempts the field of imposing excise, privilege,
 14 franchise, income, license, and similar taxes, licenses, and
 15 fees upon insurers and their general agents and agents as
 16 such and on the intangible property of insurers or such
 17 agents. No county, city, municipality, self-governing local
 18 government, district, school district, or other political
 19 subdivision or agency in Montana shall levy upon insurers,
 20 or upon their general agents and agents as such, any such
 21 tax, license, or fee additional to such as are levied by the
 22 legislature of Montana in this code."

23 Section 5. Section 33-2-1206, MCA, is amended to read:

24 "33-2-1206. Bulk reinsurance -- foreign or alien
 25 insurers. (1) A foreign or alien insurer may reinsure all or

1 substantially all of its insurance in force in Montana or a
 2 major class thereof with an agreement of bulk reinsurance,
 3 but no such agreement may become effective unless filed with
 4 the commissioner and approved by him in writing after--a
 5 hearing--thereon. The commissioner may in his discretion hold
 6 a hearing before approving or disapproving an agreement of
 7 bulk reinsurance. Factors to be considered on bulk
 8 reinsurance agreements include but are not limited to:

9 (a) whether the agreement would be inequitable to
 10 Montana policyholders;

11 (b) whether the agreement would substantially reduce
 12 security of Montana policyholders; and

13 (c) whether the agreement would substantially reduce
 14 the service to be rendered to Montana policyholders.

15 (2) The commissioner shall approve or disapprove the
 16 agreement within a reasonable time after such-a-hearing
 17 unless-he-finds--that--it--would--substantially--reduce--the
 18 protection--or--service--to--the--policyholders filing the
 19 proposed agreement or, when applicable, after a hearing.

20 (3) The commissioner may require a foreign or alien
 21 insurer to establish a trust account in this state, not to
 22 exceed the aggregate reserves of the policies contained in
 23 the bulk reinsurance agreement, prior to granting approval."

24 Section 6. Section 33-16-203, MCA, is amended to read:

25 "33-16-203. Rates filed. Every insurer, rating

1 organization, or advisory organization shall file with the
 2 commissioner all rates intended for use within this state
 3 ~~together with supporting data sufficient to substantiate~~
 4 ~~such filing.~~ The filing required by this subsection may be
 5 made by rating organizations on behalf of their members and
 6 subscribers; but this provision does not prohibit a member
 7 or subscriber from filing any such rates on its own behalf.
 8 Any deviations from a rating organization's rates by a
 9 member or subscriber must be filed with the commissioner and
 10 ~~must be accompanied by supporting data.~~

11 Section 7. Section 33-17-102, MCA, is amended to read:
 12 "33-17-102. Definitions. (1) (a) An "adjuster" is a
 13 person who, on behalf of the insurer, for compensation as an
 14 independent contractor or as the employee of such an
 15 independent contractor or for fee or commission investigates
 16 and negotiates settlement of claims arising under insurance
 17 ~~contracts or otherwise acts on behalf of the insurer.~~

18 (b) A licensed attorney at law who is qualified to
 19 practice law in this state, a salaried employee of an
 20 insurer or of a managing general agent, or a licensed agent
 21 who adjusts or assists in adjustment of losses arising under
 22 policies issued by the insurer represented by such agent is
 23 not deemed to be an adjuster for the purposes of this
 24 chapter.

25 (2) An "agent" is an individual, firm, or corporation

1 appointed by an insurer to solicit applications for
 2 insurance or annuities or to negotiate insurance on its
 3 behalf and, if authorized to do so by the insurer, to
 4 effectuate and countersign insurance contracts.

5 (3) "Life insurance agent" includes also an agent of a
 6 life insurer who is or proposes to be licensed as to the
 7 same insurer for disability insurance in addition to life
 8 insurance and annuities.

9 (4) A "solicitor" is an individual appointed and
 10 authorized by an agent to solicit applications for
 11 insurance, other than life insurance or disability
 12 insurance, as a representative of such agent, and to collect
 13 premiums thereon when expressly so authorized by the agent.

14 ~~(5) A "managing general agent" is an individual, firm,~~
 15 ~~or corporation appointed as an independent contractor by one~~
 16 ~~or more insurers for the principal purpose of exercising~~
 17 ~~general supervision over the business of the insurer in this~~
 18 ~~state, including the authority to appoint agents for such~~
 19 ~~insurers and to terminate such appointments."~~

20 Section 8. Section 33-17-103, MCA, is amended to read:

21 "33-17-103. Exceptions and exemptions from definition
 22 of agent, ~~managing general agent,~~ and solicitor. The
 23 definitions of agent, ~~managing general agent,~~ and solicitor
 24 contained in 33-17-102 shall not be deemed considered to
 25 include:

(1) individuals employed and used by agents for the performance of clerical, stenographic, and similar office duties. Incidental taking of an application for insurance from time to time in the office of the employing agent shall not constitute such an employee as an agent or solicitor if the employee's compensation is not contingent upon or relating to the volume of such applications, insurance, or premiums.

(2) ~~the supervising-general-agent or other supervising-officer or supervising-salaried employee of an insurer~~ a supervising salaried officer, supervising salaried employee, or other person or entity controlled by an insurer and compensated strictly on a salary basis by the insurer, who solicits only with or in conjunction with duly licensed agents of the insurer;

(3) the attorney-in-fact of a reciprocal insurer or the salaried traveling representative of a reciprocal or mutual insurer not compensated on a commission basis;

(4) a person who secures and forwards information for the purpose of an existing group insurance contract or for enrolling individuals under an existing group insurance contract or issuing certificates thereunder where no commission is paid for such services."

Section 9. Section 33-17-201, MCA, is amended to read:

"33-17-201. License required of agents, ~~managing~~

~~general agents,~~ and solicitors -- forms. (1) No person shall in this state act as or hold himself out to be an agent or solicitor, as to subjects of insurance located, resident, or to be performed in this state unless then licensed as such agent or solicitor under this chapter.

~~(2) No person may act or hold himself out in this state to be a managing general agent unless licensed as an insurance agent under this chapter and appointed by the insurers represented.~~

~~(2)(3)~~ No agent or solicitor shall solicit or take application for, procure, or place for others any kind of insurance as to which he is not then licensed.

~~(3)(4)~~ No agent shall place any business, other than coverage of his own risks, with any insurer as to which he does not then hold an appointment or license as agent under this chapter, except as provided in 33-17-1104 as to life or disability insurance agents.

~~(4)(5)~~ The commissioner shall prescribe and furnish forms required in connection with application for, issuance, continuation, or termination of licenses and appointments.

~~(5)(6)~~ Unless licensed as a life insurance agent as required by this section, no person shall in this state solicit life insurance or annuities or procure applications therefor or engage or hold himself out as engaging in the business of analyzing or abstracting life insurance policies

or annuities or of counseling or advising or giving opinions, other than as a licensed attorney at law, relative to such insurance or annuities for fee, commission, or other compensation, other than as a salaried bona fide full-time employee so counseling and advising his employer relative to the insurance interests of the employer and of the subsidiaries or business affiliates of the employer or with respect to the insurance interests of employees of such employer, subsidiaries, or affiliates under group insurance or similar insurance plans arranged by the employer or employers of such employees."

Section 10. Section 33-19-304, MCA, is amended to read:

"33-19-304. Information concerning previous adverse underwriting decisions. An insurance institution, agent, or insurance-support organization may not seek information in connection with an insurance transaction concerning:

(1) any previous adverse underwriting decision experienced by an individual ~~unless the inquiry also requests the reasons for any previous adverse underwriting decision;~~ or

(2) any previous insurance coverage obtained by an individual through a residual market mechanism unless the inquiry also requests ~~the reasons for any previous adverse underwriting decision or~~ the reasons why insurance coverage

was previously obtained through a residual market mechanism."

Section 11. Section 33-20-1210, MCA, is amended to read:

"33-20-1210. Conversion on termination of policy. The group life insurance policy shall contain a provision that if the group policy terminates or is amended so as to terminate the insurance of any class of insured persons, every person insured thereunder at the date of such termination whose insurance terminates and who has been so insured for at least 3 years prior to such termination date shall be entitled to have issued to him by the insurer an individual policy of life insurance, subject to the same conditions and limitations as are provided by 33-20-1209, except that the group policy may provide that the amount of such individual policy may not exceed the smaller of:

(1) the amount of the person's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which he is or becomes eligible under any group policy issued or reinstated by the same or another insurer within 31 days after such termination; and or

(2) \$10,000."

Section 12. Section 33-22-229, MCA, is amended to read:

1 "33-22-229. Conformity with state statutes. There may
2 must be a provision as follows:
3 "Conformity with State Statutes: Any provision of this
4 policy which on its effective date is in conflict with the
5 statutes of the state in which the insured resides on such
6 date is hereby amended to conform to the minimum
7 requirements of such statutes.""

-End-

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INTRODUCED BY HEMSTAD, GAGE

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(2) Every such filing shall be made not less than 60 days in advance of any such delivery. Approval of any such form by the commissioner shall constitute a waiver of any

unexpired portion of such waiting period. The commissioner may extend by not more than an additional 60 days the period within which he may so affirmatively approve or disapprove any such form by giving notice of such extension before expiration of the initial 60-day period. The commissioner may at any time, after notice and for cause shown, withdraw any such approval.

(3) Any order of the commissioner disapproving any such form or withdrawing a previous approval shall state the grounds therefor and the particulars thereof in such details as reasonably to inform the insurer thereof.

(4) The commissioner may, by order, exempt from the requirements of this section for so long as he deems proper any insurance document or form or type thereof as specified in such order to which, in his opinion, this section may not practicably be applied or the filing and approval of which are, in his opinion, not desirable or necessary for the protection of the public.

(5) This section shall apply also to any such form used by domestic insurers for delivery in a jurisdiction outside this state, if the Insurance supervisory official of such jurisdiction informs the commissioner that such form is not subject to approval or disapproval by such official, and upon the commissioner's order requiring the form to be submitted to him for the purpose. The applicable same

standards shall apply to such forms as apply to forms for domestic use.

(6) This section and 33-1-502 shall not apply as to:

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(b) ~~reinsured more than 90% of its risks, resident or to be performed in Montana, in another insurer. In considering suspension or revocation, the commissioner shall consider all relevant factors, including whether:~~

(i) ~~after the reinsurance transaction all parties will be in compliance with Montana law; and~~

(ii) ~~the transaction will substantially reduce protection and service to Montana policyholders.~~

(2) The commissioner shall, after a hearing thereon, suspend or revoke an insurer's certificate of authority if he finds that the insurer:

(a) is in unsound condition or in such condition or using such methods or practices in the conduct of its business as to render its further transaction of insurance in Montana injurious or hazardous to its policyholders or to the public;

(b) has refused to be examined or to produce its accounts, records, and files for examination or if any of its officers have refused to give information with respect to its affairs, when required by the commissioner;

(c) has failed to pay any final judgment rendered against it in Montana within 30 days after the judgment became final;

(d) with such frequency as to indicate its general business practice in Montana, has without just cause refused to pay proper claims arising under its policies, whether any such claim is in favor of an insured or is in favor of a third person with respect to the liability of an insured to such third person, or without just cause compels such insured or claimant to accept less than the amount due them or to employ attorneys or to bring suit against the insurer or such an insured to secure full payment or settlement of such claims;

(e) is affiliated with and under the same general management or interlocking directorate or ownership as another insurer which transacts direct insurance in Montana without having a certificate of authority therefor, except as permitted as to a surplus line insurer under part 3 of this chapter.

~~(f) has reinsured all its risks in their entirety in another insurer.~~

(3) The commissioner may, in his discretion and without advance notice or a hearing thereon, immediately suspend the certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings have been commenced in any state."

Section 3. Section 33-2-705, MCA, is amended to read:

"33-2-705. Report on premiums and other consideration -- tax. (1) Each authorized insurer and each formerly authorized insurer with respect to premiums so received while an authorized insurer in this state shall file with the commissioner, on or before March 1 each year, a report (except as to wet marine and transportation insurance taxed under subsection (4) below) in form as prescribed by the commissioner showing total direct premium income, including policy, membership, and other fees, premiums paid by application of dividends, refunds, savings, savings coupons,

1 and similar returns or credits to payment of premiums for
 2 new or additional or extended or renewed insurance, charges
 3 for payment of premium in installments, and all other
 4 consideration for insurance from all kinds and classes of
 5 insurance whether designated as a premium or otherwise,
 6 received by it during the preceding calendar year on account
 7 of policies covering property, subjects, or risks located,
 8 resident, or to be performed in Montana, with proper
 9 proportionate allocation of premium as to such property,
 10 subjects, or risks in Montana insured under policies or
 11 contracts covering property, subjects, or risks located or
 12 resident in more than one state, after deducting from such
 13 total direct premium income applicable cancellations,
 14 returned premiums, the unabsorbed portion of any deposit
 15 premium, the amount of reduction in or refund of premiums
 16 allowed to industrial life policyholders for payment of
 17 premiums direct to an office of the insurer, all policy
 18 dividends, refunds, savings, savings coupons, and other
 19 similar returns paid or credited to policyholders with
 20 respect to such policies. As to title insurance, "premium"
 21 includes the total charge for such insurance. No deduction
 22 shall be made of the cash surrender values of policies.
 23 Considerations received on annuity contracts shall not be
 24 included in total direct premium income and shall not be
 25 subject to tax.

1 (2) Coincident with the filing of the tax report
 2 referred to in subsection (1) above, each such insurer shall
 3 pay to the commissioner a tax upon such net premiums. This
 4 tax may be computed in either of the following ways:

5 (a) (i) A domestic insurer may choose to compute its
 6 tax based on the percentage of its admitted assets invested
 7 in Montana securities according to the following schedule:

8 (A) 2 3/4% of net premiums if the insurer has 0% of
 9 its admitted assets invested in Montana securities;

10 (B) 2 1/4% of net premiums if the insurer has at least
 11 25% of its admitted assets invested in Montana securities;

12 (C) 1 3/4% of net premiums if the insurer has at least
 13 50% of its admitted assets invested in Montana securities;

14 (D) 1 1/4% of net premiums if the insurer has at least
 15 75% of its admitted assets invested in Montana securities;
 16 and

17 (E) 3/4% of net premiums if the insurer has 100% of
 18 its admitted assets invested in Montana securities.

19 (ii) "Admitted assets" are those assets allowed in
 20 33-2-501.

21 (iii) An insurer choosing this method of computation
 22 must itemize its Montana securities on a detailed schedule
 23 attached to its annual tax report.

24 (b) (i) If the method provided for in subsection (a)
 25 is not used, the insurer shall compute its tax at the rate

1 of 2 3/4% of the net premiums.

2 (1) An insurer choosing this method and having not
3 less than 50% of its paid-in capital stock invested in
4 Montana securities is allowed to deduct whatever tax it may
5 have already paid to the state of Montana and its political
6 subdivisions, during the same calendar year as to which
7 premium tax is being paid, from the amount otherwise due
8 under this section.

9 (3) For the purpose of subsection (2):

10 (a) "paid-in capital stock" as to a mutual or
11 reciprocal insurer shall be deemed to be an amount equal to
12 10% of the insurer's assets; and

13 (b) "Montana securities" shall be deemed to include
14 only general obligations of the state of Montana or of its
15 political subdivisions, mortgage loans secured by a first
16 lien upon real estate located in Montana, and real estate
17 located in Montana owned by the insurer, all if otherwise
18 lawful investments of the insurer under this code.

19 (4) (a) On or before March 1 of each year each insurer
20 shall file with the commissioner, on forms as prescribed and
21 furnished or accepted by him, a report of its gross
22 underwriting profit on wet marine--~~intand--marine~~ and
23 transportation insurance, authorized in 33-1-209 and
24 ~~33-1-221--through-33-1-229~~, written in this state during the
25 calendar year next preceding and shall at the same time pay

1 to the commissioner a tax of 3/4 of 1% of such gross
2 underwriting profit.

3 (b) Such gross underwriting profit shall be
4 ascertained by deducting from the net premiums (i.e., gross
5 premiums less all return premiums and premiums for
6 reinsurance) on such wet marine and transportation insurance
7 contracts the net losses paid (i.e., gross losses paid less
8 salvage and recoveries on reinsurance ceded) during such
9 calendar year under such contracts. In the case of insurers
10 issuing participating contracts, such gross underwriting
11 profit shall not include for computation of the tax
12 prescribed by this subsection (4) the amounts refunded,
13 credited, or paid as participation dividends or savings by
14 such insurers to the holders of such contracts.

15 (5) That portion of the tax paid hereunder by an
16 insurer on account of premiums received for fire insurance
17 shall be separately specified in the report as required by
18 the commissioner, for apportionment as provided by law.
19 Where insurance against fire is included with insurance of
20 property against other perils at an undivided premium, the
21 insurer shall make such reasonable allocation from such
22 entire premium to the fire portion of the coverage as shall
23 be stated in such report and as may be approved or accepted
24 by the commissioner.

25 (6) With respect to authorized insurers the premium

tax provided by this section shall be payment in full and in lieu of all other demands for any and all state, county, city, district, municipal, and school taxes, licenses, fees, and excises of whatever kind or character, excepting only those prescribed by this code, taxes on real and tangible personal property located in this state, and taxes payable under 50-3-109.

(7) The commissioner may suspend or revoke the certificate of authority of any insurer which fails to pay its taxes as required under this section."

Section 4. Section 33-2-707, MCA, is amended to read:

"33-2-707. Preemption of taxing. The state of Montana hereby preempts the field of imposing excise, privilege, franchise, income, license, and similar taxes, licenses, and fees upon insurers and their general agents and agents as such and on the intangible property of insurers or such agents. No county, city, municipality, self-governing local governments, district, school district, or other political subdivision or agency in Montana shall levy upon insurers, or upon their general agents and agents as such, any such tax, license, or fee additional to such as are levied by the legislature of Montana in this code."

Section 5. Section 33-2-1206, MCA, is amended to read:

"33-2-1206. Bulk reinsurance -- foreign or alien insurers. (1) A foreign or alien insurer may reinsure all or

substantially all of its insurance in force in Montana or a major class thereof with an agreement of bulk reinsurance, but no such agreement may become effective unless filed with the commissioner and approved by him in writing after--a hearing thereon. ~~The commissioner may to his discretion hold a hearing before approving or disapproving an agreement of bulk reinsurance. Factors to be considered on bulk reinsurance agreements include but are not limited to:~~

(a) ~~whether the agreement would be inequitable to Montana policyholders;~~

(b) ~~whether the agreement would substantially reduce security of Montana policyholders; and~~

(c) ~~whether the agreement would substantially reduce the service to be rendered to Montana policyholders.~~

(2) The commissioner shall approve or disapprove the agreement within a reasonable time after such-a-hearing unless-he-finds--that--it--would--substantially--reduce--the protection--or--service--to--the--policyholders ~~filling the proposed agreement or, when applicable, after a hearing.~~

(3) The commissioner may require a foreign or alien insurer to establish a trust account in this state, not to exceed the aggregate reserves of the policies contained in the bulk reinsurance agreement, prior to granting approval."

Section 6. Section 33-16-203, MCA, is amended to read:

"33-16-203. Rates filed. Every insurer, rating

organization, or advisory organization shall file with the commissioner all rates intended for use within this state together-with-supporting--data--sufficient--to--substantiate such--fitting. The filing required by this subsection may be made by rating organizations on behalf of their members and subscribers; but this provision does not prohibit a member or subscriber from filing any such rates on its own behalf. Any deviations from a rating organization's rates by a member or subscriber must be filed with the commissioner and must-be-accompanied-by-supporting-data."

Section 7. Section 33-17-102, MCA, is amended to read:

"33-17-102. Definitions. (1) (a) An "adjuster" is a person who, on behalf of the insurer, for compensation as an independent contractor or as the employee of such an independent contractor or for fee or commission investigates and negotiates settlement of claims arising under insurance contracts or otherwise acts on behalf of the insurer.

(b) A licensed attorney at law who is qualified to practice law in this state, a salaried employee of an insurer or of a managing general agent, or a licensed agent who adjusts or assists in adjustment of losses arising under policies issued by the insurer represented by such agent is not deemed to be an adjuster for the purposes of this chapter.

(2) An "agent" is an individual, firm, or corporation

appointed by an insurer to solicit applications for insurance or annuities or to negotiate insurance on its behalf and, if authorized to do so by the insurer, to effectuate and countersign insurance contracts.

(3) "Life insurance agent" includes also an agent of a life insurer who is or proposes to be licensed as to the same insurer for disability insurance in addition to life insurance and annuities.

(4) A "solicitor" is an individual appointed and authorized by an agent to solicit applications for insurance, other than life insurance or disability insurance, as a representative of such agent, and to collect premiums thereon when expressly so authorized by the agent.

(5) A "managing general agent" is an individual, firm, or corporation appointed as an independent contractor by one or more insurers for the principal purpose of exercising general supervision over the business of the insurer in this state, including the authority to appoint agents for such insurers and to terminate such appointments."

Section 8. Section 33-17-103, MCA, is amended to read:

"33-17-103. Exceptions and exemptions from definition of agent, managing general agent, and solicitor. The definitions of agent, managing general agent, and solicitor contained in 33-17-102 shall not be deemed considered to include:

(1) individuals employed and used by agents for the performance of clerical, stenographic, and similar office duties. Incidental taking of an application for insurance from time to time in the office of the employing agent shall not constitute such an employee as an agent or solicitor if the employee's compensation is not contingent upon or relating to the volume of such applications, insurance, or premiums.

(2) ~~the supervising general agent, or special agent or other supervising officer or supervising salaried employee of an insurer a supervising salaried officer, supervising salaried employee, or other person or entity controlled by an insurer and compensated strictly on a salary basis by the insurer,~~ who solicits only with or in conjunction with duly licensed agents of the insurer;

(3) the attorney-in-fact of a reciprocal insurer or the salaried traveling representative of a reciprocal or mutual insurer not compensated on a commission basis;

(4) a person who secures and forwards information for the purpose of an existing group insurance contract or for enrolling individuals under an existing group insurance contract or issuing certificates thereunder where no commission is paid for such services."

Section 9. Section 33-17-201, MCA, is amended to read:

"33-17-201. License required of agents, managing

~~general agents,~~ and solicitors -- forms. (1) No person shall in this state act as or hold himself out to be an agent or solicitor, as to subjects of insurance located, resident, or to be performed in this state unless then licensed as such agent or solicitor under this chapter.

~~(2) No person may act or hold himself out in this state to be a managing general agent unless licensed as an insurance agent under this chapter and appointed by the insurers represented.~~

~~(3)~~(3) No agent or solicitor shall solicit or take application for, procure, or place for others any kind of insurance as to which he is not then licensed.

~~(4)~~(4) No agent shall place any business, other than coverage of his own risks, with any insurer as to which he does not then hold an appointment or license as agent under this chapter, except as provided in 33-17-1104 as to life or disability insurance agents.

~~(5)~~(5) The commissioner shall prescribe and furnish forms required in connection with application for, issuance, continuation, or termination of licenses and appointments.

~~(6)~~(6) Unless licensed as a life insurance agent as required by this section, no person shall in this state solicit life insurance or annuities or procure applications therefor or engage or hold himself out as engaging in the business of analyzing or abstracting life insurance policies

1 or annuities or of counseling or advising or giving
 2 opinions, other than as a licensed attorney at law, relative
 3 to such insurance or annuities for fee, commission, or other
 4 compensation, other than as a salaried bona fide full-time
 5 employee so counseling and advising his employer relative to
 6 the insurance interests of the employer and of the
 7 subsidiaries or business affiliates of the employer or with
 8 respect to the insurance interests of employees of such
 9 employer, subsidiaries, or affiliates under group insurance
 10 or similar insurance plans arranged by the employer or
 11 employers of such employees."

12 Section 10. Section 33-19-304, MCA, is amended to
 13 read:

14 "33-19-304. Information concerning previous adverse
 15 underwriting decisions. An insurance institution, agent, or
 16 insurance-support organization may not seek information in
 17 connection with an insurance transaction concerning:

18 (1) any previous adverse underwriting decision
 19 experienced by an individual ~~unless the inquiry also~~
 20 ~~requests the reasons for any previous adverse underwriting~~
 21 ~~decision;~~ or

22 (2) any previous insurance coverage obtained by an
 23 individual through a residual market mechanism unless the
 24 inquiry also ~~requests the reasons for any previous adverse~~
 25 ~~underwriting decision or~~ the reasons why insurance coverage

1 was previously obtained through a residual market
 2 mechanism."

3 Section 11. Section 33-20-1210, MCA, is amended to
 4 read:

5 "33-20-1210. Conversion on termination of policy. The
 6 group life insurance policy shall contain a provision that
 7 if the group policy terminates or is amended so as to
 8 terminate the insurance of any class of insured persons,
 9 every person insured thereunder at the date of such
 10 termination whose insurance terminates and who has been so
 11 insured for at least 3 years prior to such termination date
 12 shall be entitled to have issued to him by the insurer an
 13 individual policy of life insurance, subject to the same
 14 conditions and limitations as are provided by 33-20-1209,
 15 except that the group policy may provide that the amount of
 16 such individual policy may not exceed the smaller of:

17 (1) the amount of the person's life insurance
 18 protection ceasing because of the termination or amendment
 19 of the group policy, less the amount of any life insurance
 20 for which he is or becomes eligible under any group policy
 21 issued or reinstated by the same or another insurer within
 22 31 days after such termination; and or

23 (2) \$10,000."

24 Section 12. Section 33-22-229, MCA, is amended to
 25 read:

1 "33-22-229. Conformity with state statutes. There may
2 ~~must~~ be a provision as follows:
3 "Conformity with State Statutes: Any provision of this
4 policy which on its effective date is in conflict with the
5 statutes of the state in which the insured resides on such
6 date is hereby amended to conform to the minimum
7 requirements of such statutes.""

-End-

March 21, 1983

SENATE STANDING COMMITTEE REPORT
(Business & Industry)

That Statement of Intent be added to House Bill No. 465

A statement of intent is required for this bill because it delegates rulemaking authority to the insurance commissioner to adopt rules regarding public adjusters. It is the intent of the Legislature that rules adopted by the commissioner be aimed at protecting the consumer who chooses to use the services of a public adjuster. The rules should provide for an examination prior to licensing to ensure the competency of the adjuster. The rules may also provide regulation and bonding requirements to ensure that the consumer contracting with the public adjuster is protected in the event the public adjuster does not fulfill his contractual obligation to the consumer.

March 21, 1983

SENATE STANDING COMMITTEE REPORT
(Business & Industry)

That House Bill No. 465 be amended as follows:

1. Title, line 10.

Following: "WRITTEN;"

Strike: Remainder of line 10 through line 11 in its entirety.

2. Title, line 14.

Following: "ORGANIZATIONS;"

Insert: "DEFINING AND PROVIDING FOR THE REGULATION OF "PUBLIC
ADJUSTERS";"

3. Title, line 20.

Strike: "33-2-707,"

4. Page 2, line 4.

Following: line 3.

Insert: "form of renewal"

Strike: "of insurance"

5. Page 4, line 9.

Following: Line 8.

Insert: "(7) As to group insurance policies effectuated and
delivered outside this state, but covering persons resident
in this state, group certificates which are delivered or
issued for delivery in this state shall be filed with the
commissioner upon his request."

6. Page 11, lines 11 through 22.

Strike: Section 4 in its entirety.

Renumber: subsequent sections

7. Page 13, line 25.

Following: Line 24.

Insert: "(c) A "public adjuster" is an adjuster employed by
and representing the interests of the insured. The commissioner
may adopt rules providing for the examination, licensure, bonding
and regulation of public adjusters."

8. Page 17, line 21.

Following: "decision"

Insert: "and the individual is advised of the source of the
information"

9. Page 18, line 2.

Following: "mechanism"

Insert: "and the individual is advised of the source of
information"

March 24, 1983

COMMITTEE OF THE WHOLE AMENDMENT

That House Bill No. 465 be amended as follows:

1. Page 13, line 4.

Following: "~~filing~~"

Insert: ",together with supporting data sufficient
to substantiate such filing"

2. Page 13, line 10.

Following: "~~data~~"

Insert: "and must be accompanied by supporting data"

1 STATEMENT OF INTENT

2 HOUSE BILL 465

3

4 A statement of intent is required for this bill because
5 it delegates rulemaking authority to the insurance
6 commissioner to adopt rules regarding public adjusters. It
7 is the intent of the Legislature that rules adopted by the
8 commissioner be aimed at protecting the consumer who chooses
9 to use the services of a public adjuster. The rules should
10 provide for an examination prior to licensing to ensure the
11 competency of the adjuster. The rules may also provide
12 regulation and bonding requirements to ensure that the
13 consumer contracting with the public adjuster is protected
14 in the event the public adjuster does not fulfill his
15 contractual obligation to the consumer.

REFERENCE BILL

HB 465

HOUSE BILL NO. 465

INTRODUCED BY HEMSTAD, GAGE

BY REQUEST OF THE MONTANA DEPARTMENT OF INSURANCE

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO INSURANCE; CHANGING FORM FILING REQUIREMENTS; CLARIFYING PROVISIONS RELATING TO REINSURANCE AGREEMENTS AND BULK REINSURANCE; PROVIDING THAT INLAND MARINE INSURANCE IS TAXED AT ~~3/4-OF-~~ 2 3/4 PERCENT OF NET PREMIUMS WRITTEN; ~~CLARIFYING THAT SELF-GOVERNING LOCAL GOVERNMENTS MAY NOT TAX OR LICENSE INSURERS OR AGENTS;~~ DELETING THE REQUIREMENT FOR FILING SUPPORTING DATA ON RATE CHANGES BY INSURERS, RATING ORGANIZATIONS, AND ADVISORY ORGANIZATIONS; ~~DEFINING AND PROVIDING FOR THE REGULATION OF "PUBLIC ADJUSTERS";~~ DEFINING A "MANAGING GENERAL AGENT" AND PROVIDING FOR LICENSURE; CLARIFYING WHEN INSURANCE INFORMATION MAY BE OBTAINED ABOUT AN INDIVIDUAL; CLARIFYING THE POLICY AMOUNT THAT MUST BE OFFERED ON TERMINATION OF A GROUP LIFE POLICY; AND PROVIDING THAT A POLICY CLAUSE ON CONFORMITY WITH STATE STATUTES BE MANDATORY; AMENDING SECTIONS 33-1-501, 33-2-119, 33-2-705, ~~33-2-707,~~ 33-2-1206, ~~33-16-203,~~ 33-17-102, 33-17-103, 33-17-201, 33-19-304, 33-20-1210, AND 33-22-229, MCA."

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

Section 1. Section 33-1-501, MCA, is amended to read:

"33-1-501. Filing and approval of forms. (1) No insurance policy or annuity contract form, application form, printed rider or endorsement form, or ~~form of--renewal~~ ~~FORM~~ ~~OF RENEWAL~~ certificate ~~of insurance~~ shall be delivered or issued for delivery in this state unless the form has been filed with and approved by the commissioner of this state and the state of domicile of the insurer, where so required. This provision shall not apply to surety bonds~~st--spectatly~~ rated~~----intend---~~ marine~~---riskst~~ or policies, riders, endorsements, or forms of unique character designed for and used with relation to insurance upon a particular subject or which relate to the manner of distribution of benefits or to the reservation of rights and benefits under life or disability insurance policies and are used at the request of the individual policyholder, contract holder, or certificate holder. As to forms for use in property, marine (other than ocean marine and foreign trade coverages), casualty, and surety insurance coverages, the filing required by this subsection may be made by rating organizations on behalf of its members and subscribers, but this provision shall not be deemed to prohibit any such member or subscriber from filing any such forms on its own behalf.

(2) Every such filing shall be made not less than 60 days in advance of any such delivery. Approval of any such

1 form by the commissioner shall constitute a waiver of any
 2 unexpired portion of such waiting period. The commissioner
 3 may extend by not more than an additional 60 days the period
 4 within which he may so affirmatively approve or disapprove
 5 any such form by giving notice of such extension before
 6 expiration of the initial 60-day period. The commissioner
 7 may at any time, after notice and for cause shown, withdraw
 8 any such approval.

9 (3) Any order of the commissioner disapproving any
 10 such form or withdrawing a previous approval shall state the
 11 grounds therefor and the particulars thereof in such details
 12 as reasonably to inform the insurer thereof.

13 (4) The commissioner may, by order, exempt from the
 14 requirements of this section for so long as he deems proper
 15 any insurance document or form or type thereof as specified
 16 in such order to which, in his opinion, this section may not
 17 practicably be applied or the filing and approval of which
 18 are, in his opinion, not desirable or necessary for the
 19 protection of the public.

20 (5) This section shall apply also to any such form
 21 used by domestic insurers for delivery in a jurisdiction
 22 outside this state, if the insurance supervisory official of
 23 such jurisdiction informs the commissioner that such form is
 24 not subject to approval or disapproval by such official, and
 25 upon the commissioner's order requiring the form to be

1 submitted to him for the purpose. The applicable same
 2 standards shall apply to such forms as apply to forms for
 3 domestic use.

4 (b) This section and 33-1-502 shall not apply as to:

5 (a) reinsurance;

6 (b) policies or contracts not issued for delivery in
 7 this state or delivered in this state, except as provided in
 8 subsection (5);

9 (c) ocean marine and foreign trade insurances.

10 ~~(7) AS TO GROUP INSURANCE POLICIES EFFECTUATED AND~~
 11 ~~DELIVERED OUTSIDE THIS STATE BUT COVERING PERSONS RESIDENT~~
 12 ~~IN THIS STATE, GROUP CERTIFICATES WHICH ARE DELIVERED OR~~
 13 ~~ISSUED FOR DELIVERY IN THIS STATE SHALL BE FILED WITH THE~~
 14 ~~COMMISSIONER UPON HIS REQUEST.*~~

15 Section 2. Section 33-2-119, MCA, is amended to read:

16 "33-2-119. Suspension or revocation for violations and
 17 special grounds. (1) The commissioner may, in his
 18 discretion, suspend or revoke an insurer's certificate of
 19 authority if, after a hearing thereon, he finds that the
 20 insurer has:

21 (a) violated any lawful order of the commissioner or
 22 any provision of this code other than those for which
 23 suspension or revocation is mandatory;

24 (b) ~~reinsured more than 90% of its risks, resident or~~
 25 ~~to be performed in Montana, in another insurer, in~~

considering suspension or revocation, the commissioner shall
consider all relevant factors, including whether:

(i) after the reinsurance transaction all parties will
be in compliance with Montana law; and

(ii) the transaction will substantially reduce
protection and service to Montana policyholders.

(2) The commissioner shall, after a hearing thereon,
 suspend or revoke an insurer's certificate of authority if
 he finds that the insurer:

(a) is in unsound condition or in such condition or
 using such methods or practices in the conduct of its
 business as to render its further transaction of insurance
 in Montana injurious or hazardous to its policyholders or to
 the public;

(b) has refused to be examined or to produce its
 accounts, records, and files for examination or if any of
 its officers have refused to give information with respect
 to its affairs, when required by the commissioner;

(c) has failed to pay any final judgment rendered
 against it in Montana within 30 days after the judgment
 became final;

(d) with such frequency as to indicate its general
 business practice in Montana, has without just cause refused
 to pay proper claims arising under its policies, whether any
 such claim is in favor of an insured or is in favor of a

third person with respect to the liability of an insured to
 such third person, or without just cause compels such
 insured or claimant to accept less than the amount due them
 or to employ attorneys or to bring suit against the insurer
 or such an insured to secure full payment or settlement of
 such claims;

(e) is affiliated with and under the same general
 management or interlocking directorate or ownership as
 another insurer which transacts direct insurance in Montana
 without having a certificate of authority therefor, except
 as permitted as to a surplus line insurer under part 3 of
 this chapter;

~~(f) has reinsured all its risks in their entirety in~~
~~another insurer.~~

(3) The commissioner may, in his discretion and
 without advance notice or a hearing thereon, immediately
 suspend the certificate of authority of any insurer as to
 which proceedings for receivership, conservatorship,
 rehabilitation, or other delinquency proceedings have been
 commenced in any state."

Section 3. Section 33-2-705, MCA, is amended to read:

"33-2-705. Report on premiums and other consideration
 -- tax. (1) Each authorized insurer and each formerly
 authorized insurer with respect to premiums so received
 while an authorized insurer in this state shall file with

1 the commissioner, on or before March 1 each year, a report
 2 (except as to wet marine and transportation insurance taxed
 3 under subsection (4) below) in form as prescribed by the
 4 commissioner showing total direct premium income, including
 5 policy, membership, and other fees, premiums paid by
 6 application of dividends, refunds, savings, savings coupons,
 7 and similar returns or credits to payment of premiums for
 8 new or additional or extended or renewed insurance, charges
 9 for payment of premium in installments, and all other
 10 consideration for insurance from all kinds and classes of
 11 insurance whether designated as a premium or otherwise,
 12 received by it during the preceding calendar year on account
 13 of policies covering property, subjects, or risks located,
 14 resident, or to be performed in Montana, with proper
 15 proportionate allocation of premium as to such property,
 16 subjects, or risks in Montana insured under policies or
 17 contracts covering property, subjects, or risks located or
 18 resident in more than one state, after deducting from such
 19 total direct premium income applicable cancellations,
 20 returned premiums, the unabsorbed portion of any deposit
 21 premium, the amount of reduction in or refund of premiums
 22 allowed to industrial life policyholders for payment of
 23 premiums direct to an office of the insurer, all policy
 24 dividends, refunds, savings, savings coupons, and other
 25 similar returns paid or credited to policyholders with

1 respect to such policies. As to title insurance, "premium"
 2 includes the total charge for such insurance. No deduction
 3 shall be made of the cash surrender values of policies.
 4 Considerations received on annuity contracts shall not be
 5 included in total direct premium income and shall not be
 6 subject to tax.

7 (2) Coincident with the filing of the tax report
 8 referred to in subsection (1) above, each such insurer shall
 9 pay to the commissioner a tax upon such net premiums. This
 10 tax may be computed in either of the following ways:

11 (a) (i) A domestic insurer may choose to compute its
 12 tax based on the percentage of its admitted assets invested
 13 in Montana securities according to the following schedule:

14 (A) 2 3/4% of net premiums if the insurer has 0% of
 15 its admitted assets invested in Montana securities;

16 (B) 2 1/4% of net premiums if the insurer has at least
 17 25% of its admitted assets invested in Montana securities;

18 (C) 1 3/4% of net premiums if the insurer has at least
 19 50% of its admitted assets invested in Montana securities;

20 (D) 1 1/4% of net premiums if the insurer has at least
 21 75% of its admitted assets invested in Montana securities;

22 and

23 (E) 3/4% of net premiums if the insurer has 100% of
 24 its admitted assets invested in Montana securities.

25 (ii) "Admitted assets" are those assets allowed in

33-2-501.

(iii) An insurer choosing this method of computation must itemize its Montana securities on a detailed schedule attached to its annual tax report.

(b) (i) If the method provided for in subsection (a) is not used, the insurer shall compute its tax at the rate of $2\frac{3}{4}\%$ of the net premiums.

(ii) An insurer choosing this method and having not less than 50% of its paid-in capital stock invested in Montana securities is allowed to deduct whatever tax it may have already paid to the state of Montana and its political subdivisions, during the same calendar year as to which premium tax is being paid, from the amount otherwise due under this section.

(3) For the purpose of subsection (2):

(a) "paid-in capital stock" as to a mutual or reciprocal insurer shall be deemed to be an amount equal to 10% of the insurer's assets; and

(b) "Montana securities" shall be deemed to include only general obligations of the state of Montana or of its political subdivisions, mortgage loans secured by a first lien upon real estate located in Montana, and real estate located in Montana owned by the insurer, all if otherwise lawful investments of the insurer under this code.

(4) (a) On or before March 1 of each year each insurer

shall file with the commissioner, on forms as prescribed and furnished or accepted by him, a report of its gross underwriting profit on wet marine~~---intend---marine~~ and transportation insurance, authorized in 33-1-209 and ~~33-1-221-through-33-1-229~~, written in this state during the calendar year next preceding and shall at the same time pay to the commissioner a tax of $\frac{3}{4}$ of 1% of such gross underwriting profit.

(b) Such gross underwriting profit shall be ascertained by deducting from the net premiums (i.e., gross premiums less all return premiums and premiums for reinsurance) on such wet marine and transportation insurance contracts the net losses paid (i.e., gross losses paid less salvage and recoveries on reinsurance ceded) during such calendar year under such contracts. In the case of insurers issuing participating contracts, such gross underwriting profit shall not include for computation of the tax prescribed by this subsection (4) the amounts refunded, credited, or paid as participation dividends or savings by such insurers to the holders of such contracts.

(5) That portion of the tax paid hereunder by an insurer on account of premiums received for fire insurance shall be separately specified in the report as required by the commissioner, for apportionment as provided by law. Where insurance against fire is included with insurance of

1 property against other perils at an undivided premium, the
2 insurer shall make such reasonable allocation from such
3 entire premium to the fire portion of the coverage as shall
4 be stated in such report and as may be approved or accepted
5 by the commissioner.

6 (6) With respect to authorized insurers the premium
7 tax provided by this section shall be payment in full and in
8 lieu of all other demands for any and all state, county,
9 city, district, municipal, and school taxes, licenses, fees,
10 and excises of whatever kind or character, excepting only
11 those prescribed by this code, taxes on real and tangible
12 personal property located in this state, and taxes payable
13 under 50-3-109.

14 (7) The commissioner may suspend or revoke the
15 certificate of authority of any insurer which fails to pay
16 its taxes as required under this section."

17 ~~Section 4. Section 33-2-707, MCA, is amended to read:~~
18 ~~"33-2-707. Preemption of taxing. The state of Montana~~
19 ~~hereby preempts the field of imposing exercise privilege~~
20 ~~franchise income, license, and other taxes, licenses, and~~
21 ~~fees upon insurers and their general agents and agents as~~
22 ~~such and on the intangible property of insurers or such~~
23 ~~agents. No county, city, municipality, self-governing local~~
24 ~~government, district, school district, or other political~~
25 ~~subdivision or agency in Montana shall levy upon insurers~~

1 ~~or upon their general agents and agents as such, any such~~
2 ~~tax, license or fee additional to such as are levied by the~~
3 ~~legislature of Montana in this code."~~

4 Section 4. Section 33-2-1206, MCA, is amended to read:
5 "33-2-1206. Bulk reinsurance -- foreign or alien
6 insurers. (1) A foreign or alien insurer may reinsure all or
7 substantially all of its insurance in force in Montana or a
8 major class thereof with an agreement of bulk reinsurance,
9 but no such agreement may become effective unless filed with
10 the commissioner and approved by him in writing after a
11 hearing thereon. The commissioner may in his discretion hold
12 a hearing before approving or disapproving an agreement of
13 bulk reinsurance. Factors to be considered on bulk
14 reinsurance agreements include but are not limited to:

15 (a) whether the agreement would be inequitable to
16 Montana policyholders;
17 (b) whether the agreement would substantially reduce
18 security of Montana policyholders; and

19 (c) whether the agreement would substantially reduce
20 the service to be rendered to Montana policyholders.

21 (2) The commissioner shall approve or disapprove the
22 agreement within a reasonable time after such a hearing
23 unless he finds that it would substantially reduce the
24 protection or service to the policyholders filing the
25 proposed agreement or, when applicable, after a hearing.

(3) The commissioner may require a foreign or alien insurer to establish a trust account in this state, not to exceed the aggregate reserves of the policies contained in the bulk reinsurance agreement, prior to granting approval."

~~Section 5. Section 33-16-203, MCA, is amended to read:~~
~~"33-16-203. Rates. Every insurer, rating organization or advisory organization shall file with the commissioner of rates intended for use within this state, together with supporting data sufficient to substantiate such filing, together with supporting data sufficient to substantiate such filing. The filing required by this subsection may be made by rating organizations on behalf of their members and subscribers but this provision does not prohibit a member or subscriber from filing any such rates on its own behalf. Any deviations from a rating organization's rates by a member or subscriber must be filed with the commissioner and must be accompanied by supporting data and must be accompanied by supporting data."~~

Section 5. Section 33-17-102, MCA, is amended to read:

"33-17-102. Definitions. (1) (a) An "adjuster" is a person who, on behalf of the insurer, for compensation as an independent contractor or as the employee of such an independent contractor or for fee or commission investigates and negotiates settlement of claims arising under insurance contracts or otherwise acts on behalf of the insurer.

(b) A licensed attorney at law who is qualified to practice law in this state, a salaried employee of an insurer or of a managing general agent, or a licensed agent who adjusts or assists in adjustment of losses arising under policies issued by the insurer represented by such agent is not deemed to be an adjuster for the purposes of this chapter.

(c) A "PUBLIC ADJUSTER" IS AN ADJUSTER EMPLOYED BY AND REPRESENTING THE INTERESTS OF THE INSURED. THE COMMISSIONER MAY ADOPT RULES PROVIDING FOR THE EXAMINATION, LICENSURE, BONDING, AND REGULATION OF PUBLIC ADJUSTERS.

(2) An "agent" is an individual, firm, or corporation appointed by an insurer to solicit applications for insurance or annuities or to negotiate insurance on its behalf and, if authorized to do so by the insurer, to effectuate and countersign insurance contracts.

(3) "Life insurance agent" includes also an agent of a life insurer who is or proposes to be licensed as to the same insurer for disability insurance in addition to life insurance and annuities.

(4) A "solicitor" is an individual appointed and authorized by an agent to solicit applications for insurance, other than life insurance or disability insurance, as a representative of such agent, and to collect premiums thereon when expressly so authorized by the agent.

~~(5) A "managing general agent" is an individual, firm, or corporation appointed as an independent contractor by one or more insurers for the principal purpose of exercising general supervision over the business of the insurer in this state, including the authority to appoint agents for such insurers and to terminate such appointments."~~

Section 7. Section 33-17-103, MCA, is amended to read:

"33-17-103. Exceptions and exemptions from definition of agent, managing general agent, and solicitor. The definitions of agent, managing general agent, and solicitor contained in 33-17-102 shall not be deemed considered to include:

(1) individuals employed and used by agents for the performance of clerical, stenographic, and similar office duties. Incidental taking of an application for insurance from time to time in the office of the employing agent shall not constitute such an employee as an agent or solicitor if the employee's compensation is not contingent upon or relating to the volume of such applications, insurance, or premiums.

~~(2) the supervising general agent or special agent or other supervising officer or supervising salaried employee of an insurer a supervising salaried officer, supervising salaried employee, or other person or entity controlled by an insurer and compensated strictly on a~~

~~salary basis by the insurer, who solicits only with or in conjunction with duly licensed agents of the insurer;~~

(3) the attorney-in-fact of a reciprocal insurer or the salaried traveling representative of a reciprocal or mutual insurer not compensated on a commission basis;

(4) a person who secures and forwards information for the purpose of an existing group insurance contract or for enrolling individuals under an existing group insurance contract or issuing certificates thereunder where no commission is paid for such services."

Section 8. Section 33-17-201, MCA, is amended to read:

"33-17-201. License required of agents, managing general agents, and solicitors -- forms. (1) No person shall in this state act as or hold himself out to be an agent or solicitor, as to subjects of insurance located, resident, or to be performed in this state unless then licensed as such agent or solicitor under this chapter.

~~(2) No person may act or hold himself out in this state to be a managing general agent unless licensed as an insurance agent under this chapter and appointed by the insurers represented.~~

~~(2)(3)~~ (3) No agent or solicitor shall solicit or take application for, procure, or place for others any kind of insurance as to which he is not then licensed.

~~(3)(4)~~ (4) No agent shall place any business, other than

coverage of his own risks, with any insurer as to which he does not then hold an appointment or license as agent under this chapter, except as provided in 33-17-1104 as to life or disability insurance agents.

~~(4)(5)~~ The commissioner shall prescribe and furnish forms required in connection with application for, issuance, continuation, or termination of licenses and appointments.

~~(5)(6)~~ Unless licensed as a life insurance agent as required by this section, no person shall in this state solicit life insurance or annuities or procure applications therefor or engage or hold himself out as engaging in the business of analyzing or abstracting life insurance policies or annuities or of counseling or advising or giving opinions, other than as a licensed attorney at law, relative to such insurance or annuities for fee, commission, or other compensation, other than as a salaried bona fide full-time employee so counseling and advising his employer relative to the insurance interests of the employer and of the subsidiaries or business affiliates of the employer or with respect to the insurance interests of employees of such employer, subsidiaries, or affiliates under group insurance or similar insurance plans arranged by the employer or employers of such employees."

Section 9. Section 33-19-304, MCA, is amended to read:

"33-19-304. Information concerning previous adverse

underwriting decisions. An insurance institution, agent, or insurance-support organization may not seek information in connection with an insurance transaction concerning:

(1) any previous adverse underwriting decision experienced by an individual ~~unless the inquiry also requests the reasons for any previous adverse underwriting decision AND THE INDIVIDUAL IS ADVISED OF THE SOURCE OF THE INFORMATION;~~ or

(2) any previous insurance coverage obtained by an individual through a residual market mechanism unless the inquiry also requests ~~the reasons for any previous adverse underwriting decision or~~ the reasons why insurance coverage was previously obtained through a residual market mechanism ~~AND THE INDIVIDUAL IS ADVISED OF THE SOURCE OF INFORMATION."~~

Section 10. Section 33-20-1210, MCA, is amended to read:

"33-20-1210. Conversion on termination of policy. The group life insurance policy shall contain a provision that if the group policy terminates or is amended so as to terminate the insurance of any class of insured persons, every person insured thereunder at the date of such termination whose insurance terminates and who has been so insured for at least 3 years prior to such termination date shall be entitled to have issued to him by the insurer an individual policy of life insurance, subject to the same

1 conditions and limitations as are provided by 33-20-1209,
2 except that the group policy may provide that the amount of
3 such individual policy may not exceed the smaller of:

4 (1) the amount of the person's life insurance
5 protection ceasing because of the termination or amendment
6 of the group policy, less the amount of any life insurance
7 for which he is or becomes eligible under any group policy
8 issued or reinstated by the same or another insurer within
9 31 days after such termination; and OR

10 (2) \$10,000."

11 Section 11. Section 33-22-229, MCA, is amended to
12 read:

13 "33-22-229. Conformity with state statutes. There may
14 ~~must~~ be a provision as follows:

15 "Conformity with State Statutes: Any provision of this
16 policy which on its effective date is in conflict with the
17 statutes of the state in which the insured resides on such
18 date is hereby amended to conform to the minimum
19 requirements of such statutes.""

-End-