

HOUSE BILL NO. 710

INTRODUCED BY KITSELMAN, CRIPPEN,
FABREGA, METCALF, D. BROWN

IN THE HOUSE

February 10, 1983	Introduced and referred to Committee on Business and Industry.
February 16, 1983	Committee recommend bill do pass as amended. Report adopted. Statement of Intent attached.
February 17, 1983	Bill printed and placed on members' desks.
February 18, 1983	Second reading, do pass.
February 21, 1983	Considered correctly engrossed.
February 22, 1983	Third reading, passed. Transmitted to Senate.

IN THE SENATE

March 1, 1983	Introduced and referred to Committee on Business and Industry.
March 19, 1983	Committee recommend bill be concurred in. Report adopted.
March 23, 1983	Second reading, concurred in.
March 25, 1983	Third reading, concurred in. Ayes, 49; Noes, 0.

IN THE HOUSE

March 25, 1983

Returned to House.

March 26, 1983

Sent to enrolling.

Reported correctly enrolled.

1 *House* BILL NO. *710*
 2 INTRODUCED BY *Kitselman* *Carroll*
 3 *Medical* *Joe Brown*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 5 LAWS RELATING TO NONRESIDENT INSURANCE AGENTS AND POLICIES
 6 WRITTEN THROUGH SUCH AGENTS; PROVIDING FOR RECIPROCAL
 7 REQUIREMENTS FOR COUNTERSIGNATURE OF RESIDENT INSURANCE
 8 AGENTS ON POLICIES OF INSURANCE WRITTEN THROUGH NONRESIDENT
 9 AGENTS; REQUIRING THE FILING OF AN ANNUAL BUSINESS REPORT;
 10 IMPOSING CERTAIN MONTANA TAXES; AND PROVIDING PENALTIES FOR
 11 VIOLATIONS; AMENDING SECTIONS 33-17-404, 33-17-1001,
 12 33-17-1004, AND 33-17-1111, MCA."

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

15 Section 1. Section 33-17-404, MCA, is amended to read:

16 "33-17-404. Countersigning coverage of residents. *
 17 ~~Except as provided in 33-17-1111, a nonresident agent shall~~
 18 not sign or countersign policies covering subjects of
 19 insurance located or to be performed in Montana. ~~Except as~~
 20 ~~provided in 33-17-1111, these policies must be countersigned~~
 21 ~~by a licensed resident agent."~~

22 Section 2. Section 33-17-1111, MCA, is amended to
23 read:

24 "33-17-1111. Resident agent required ~~reciprocity~~
 25 ~~countersignature~~ -- records ~~exceptions~~. (1) No

1 authorized insurer shall issue a policy covering a subject
 2 of insurance resident, located, or to be performed in
 3 Montana unless:

4 (a) the policy is written through a licensed agent,
 5 resident in Montana, of the insurer; or

6 (b) the policy is written through a licensed
 7 nonresident agent and ~~if a countersignature would be~~
 8 ~~required by the resident state of the nonresident agent upon~~
 9 ~~a Montana resident agent writing business in the resident~~
 10 ~~state of such nonresident agent,~~ the policy or
 11 countersignature endorsement attached thereto is
 12 countersigned by a Montana resident licensed agent; or

13 (c) ~~the policy is written through a licensed~~
 14 ~~nonresident agent who is a resident of a state that does not~~
 15 ~~require countersignatures.~~

16 (2) No such countersignature shall be made in blank.
 17 The agent may by express written authorization given in
 18 advance delegate to his salaried clerical employee the power
 19 to so countersign in the name of the agent such contracts or
 20 classes of contracts as are designated in such authorization
 21 so long as the initials of such employee are written below
 22 the agent's name on such countersignature, but the agent
 23 shall not thereby delegate or have power to delegate to any
 24 other person the power or authority to bind an insurer with
 25 respect to any risk not already bound by the agent or other

1 person having clear authority from the insurer so to bind.
 2 The agent shall be responsible for all of the acts of such
 3 employee within the scope of the authority so delegated. The
 4 agent shall keep a record of each and all coverages
 5 countersigned by him or by his authority.

6 (3) This section shall not apply to:

7 (a) reinsurance;

8 (b) life insurance, disability insurance, or annuity
 9 contracts;

10 (c) insurance of the rolling stock, vessels, or
 11 aircraft of any common carrier in interstate or foreign
 12 commerce or of any vehicle principally garaged and used in
 13 another state or covering any liability or other risks
 14 incident to the ownership, maintenance, or operation
 15 thereof;

16 (d) insurance of property in course of transportation
 17 interstate or in foreign trade or any liability or risk
 18 incident thereto;

19 (e) insurance of wet marine and transportation risks;

20 (f) countersignature to policies issued through agents
 21 compensated only by salary or issued by insurers not using
 22 agents in the general solicitation of business;

23 (g) bid bonds, as required under Title 18, chapter 1,
 24 part 2.

25 (4) Violation of this section shall not invalidate any

1 contract otherwise valid as between the insurer and the
 2 insured."

3 NEW SECTION. Section 3. Nonresident licensee to pay
 4 taxes -- annual report required. (1) A nonresident
 5 licensee is subject to personal income, business income, or
 6 corporate license taxes for all income earned on insurance
 7 policies issued to cover subjects or risks located or to be
 8 performed in Montana.

9 (2) A nonresident licensee shall make a written report
 10 to the commissioner annually within 45 days following the
 11 end of each calendar year. The report must contain a listing
 12 of all business written on subjects or risks located or
 13 performed in Montana. The report must be in a form
 14 prescribed by the commissioner and must include but not be
 15 limited to a listing of company, policy number, premium
 16 earned, and commission earned.

17 NEW SECTION. Section 4. Premium tax imposed on policy
 18 issued through nonresident licensee. Any insurer who issues
 19 a policy on a subject or risk located or to be performed in
 20 Montana through a nonresident licensee shall pay a premium
 21 tax on such policy to the state of Montana, in an amount and
 22 in the manner provided in this part.

23 NEW SECTION. Section 5. Penalty. A nonresident
 24 licensee who violates any condition of his Montana license
 25 or any provision of this part is subject to a fine by the

1 commissioner of up to \$10,000 for each such violation and
 2 may, at the discretion of the commissioner, have his Montana
 3 nonresident license revoked or suspended for a period of up
 4 to 5 years.

5 Section 6. Section 33-17-1001, MCA, is amended to
 6 read:

7 "33-17-1001. Suspension, revocation, or refusal of
 8 license. (1) ~~The Except as provided in [section 5], the~~
 9 commissioner may suspend for not more than 12 months or may
 10 revoke or refuse to continue any license issued under this
 11 chapter or any surplus line agent license if, after hearing
 12 held on not less than 20 days' advance notice by registered
 13 or certified mail of such hearing and of the charges against
 14 the licensee given as provided in 33-1-314(3) to the
 15 licensee and to the insurers represented, as to an agent, or
 16 to the appointing agent, as to a solicitor, he finds that as
 17 to the licensee any one or more of the following causes
 18 exist:

19 (a) for any cause for which issuance of the license
 20 could have been refused had it then existed and been known
 21 to the commissioner;

22 (b) for obtaining or attempting to obtain any such
 23 license through misrepresentation or fraud;

24 (c) for violation of or noncompliance with any
 25 applicable provision of this code or for willful violation

1 of any lawful rule or order of the commissioner;

2 (d) for misappropriation or conversion to his own use
 3 or illegal withholding of moneys or property belonging to
 4 policyholders or insurer or beneficiaries or others and
 5 received in conduct of business under the license;

6 (e) conviction, by final judgment, of a felony
 7 involving moral turpitude;

8 (f) if in the conduct of his affairs under the license
 9 the licensee has used fraudulent or dishonest practices or
 10 has shown himself to be incompetent, untrustworthy, or a
 11 source of injury and loss to the public.

12 (2) The license of a firm or corporation may be
 13 suspended, revoked, or refused also for any of such causes
 14 as relate to any individual designated in the license to
 15 exercise its powers."

16 Section 7. Section 33-17-1004, MCA, is amended to
 17 read:

18 "33-17-1004. Acting as insurance agent, solicitor, or
 19 adjuster without license -- penalty. ~~Any Except as provided~~
 20 ~~in [section 5],~~ a person, firm, association, or corporation
 21 who or which, in this state, acts as an insurance agent,
 22 solicitor, or adjuster without having authority to do so by
 23 virtue of a license issued and in force pursuant to the
 24 provisions of this chapter is guilty of a misdemeanor and,
 25 upon conviction, shall be fined \$500 or imprisoned in the

1 county jail for 90 days or both.*

2 ~~NEW SECTION.~~ Section 8. Codification instruction. (1)
3 Sections 3 and 5 are intended to be codified as an integral
4 part of Title 33, chapter 17, part 4.

5 (2) Section 4 is intended to be codified as an
6 integral part of Title 33, chapter 2, part 7, and the
7 provisions of Title 33, chapter 2, part 7, apply to section
8 4.

-End-

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STATEMENT OF INTENT

HOUSE BILL 710

House Business and Industry Committee

A statement of intent is required for this bill because it authorizes the Insurance Commissioner to prescribe forms for reporting of business written by nonresident agents. The report must include the name of the company, the policy number, premium earned, and commission earned, and any other information as the Commissioner may direct.

SECOND READING

HR 710

Approved by Committee
on Business and Industry

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3 FABREGA, METCALF, D. BROWN
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19 not sign or countersign policies covering subjects of
20 insurance located or to be performed in Montana. ~~Except as~~
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22 ~~by a licensed resident agent."~~

23 Section 2. Section 33-17-1111, MCA, is amended to
24 read:

25 "33-17-1111. Resident agent required == reciprocity

1 -- countersignature -- records ---exceptions. (1) No
2 authorized insurer shall issue a policy covering a subject
3 of insurance resident, located, or to be performed in
4 Montana unless:

5 (a) the policy is written through a licensed agent,
6 resident in Montana, of the insurer; or

7 (b) the policy is written through a licensed
8 nonresident agent and, if a countersignature would be
9 required by the resident state of the nonresident agent upon
10 a Montana resident agent writing business in the resident
11 state of such nonresident agent, the policy or
12 countersignature endorsement attached thereto is
13 countersigned by a Montana resident licensed agent; or

14 (c) the policy is written through a licensed
15 nonresident agent who is a resident of a state that does not
16 require countersignatures.

17 (2) No such countersignature shall be made in blank.
18 The agent may by express written authorization given in
19 advance delegate to his salaried clerical employee the power
20 to so countersign in the name of the agent such contracts or
21 classes of contracts as are designated in such authorization
22 so long as the initials of such employee are written below
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24 shall not thereby delegate or have power to delegate to any
25 other person the power or authority to bind an insurer with

1 respect to any risk not already bound by the agent or other
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 3 The agent shall be responsible for all of the acts of such
 4 employee within the scope of the authority so delegated. The
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7 (3) This section shall not apply to:

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 10 contracts;

11 (c) insurance of the rolling stock, vessels, or
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 13 commerce or of any vehicle principally garaged and used in
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 15 incident to the ownership, maintenance, or operation
 16 thereof;

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 18 interstate or in foreign trade or any liability or risk
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 9 performed in Montana.

10 (2) A nonresident licensee shall make a written report
 11 to the commissioner annually within 45 days following the
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 14 performed in Montana. The report must be in a form
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 20 a policy on a subject or risk located or to be performed in
 21 Montana through a nonresident licensee shall pay a premium
 22 tax on such policy to the state of Montana, in an amount and
 23 in the manner provided in ~~this part 33-2-705.~~

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 25 licensee who violates any condition of his Montana license

1 or any provision of this part is subject to a fine by the
 2 commissioner of up to ~~\$10,000~~ \$50,000 for each such
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 14 or certified mail of such hearing and of the charges against
 15 the licensee given as provided in 33-1-314(3) to the
 16 licensee and to the insurers represented, as to an agent, or
 17 to the appointing agent, as to a solicitor, he finds that as
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 24 license through misrepresentation or fraud;

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 24 virtue of a license issued and in force pursuant to the
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2 county jail for 90 days or both."

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4 Sections 3 and 5 are intended to be codified as an integral
5 part of Title 33, chapter 17, part 4.

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2 HOUSE BILL 710

3 House Business and Industry Committee

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5 A statement of intent is required for this bill because

6 it authorizes the Insurance Commissioner to prescribe forms

7 for reporting of business written by nonresident agents. The

8 report must include the name of the company, the policy

9 number, premium earned, and commission earned, and any other

10 information as the Commissioner may direct.

THIRD READING

HB 710

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INTRODUCED BY KITSELMAN, CRIPPEN,

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-- countersignature -- records ~~---exceptions.~~ (1) No authorized insurer shall issue a policy covering a subject of insurance resident, located, or to be performed in Montana unless:

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(c) the policy is written through a licensed nonresident agent who is a resident of a state that does not require countersignatures.

(2) No such countersignature shall be made in blank. The agent may by express written authorization given in advance delegate to his salaried clerical employee the power to so countersign in the name of the agent such contracts or classes of contracts as are designated in such authorization so long as the initials of such employee are written below the agent's name on such countersignature, but the agent shall not thereby delegate or have power to delegate to any other person the power or authority to bind an insurer with

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REFERENCE BILL

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8 (a) reinsurance;

9 (b) life insurance, disability insurance, or annuity
 10 contracts;

11 (c) insurance of the rolling stock, vessels, or
 12 aircraft of any common carrier in interstate or foreign
 13 commerce or of any vehicle principally garaged and used in
 14 another state or covering any liability or other risks
 15 incident to the ownership, maintenance, or operation
 16 thereof;

17 (d) insurance of property in course of transportation
 18 interstate or in foreign trade or any liability or risk
 19 incident thereto;

20 (e) insurance of wet marine and transportation risks;

21 (f) countersignature to policies issued through agents
 22 compensated only by salary or issued by insurers not using
 23 agents in the general solicitation of business;

24 (g) bid bonds, as required under Title 18, chapter 1,
 25 part 2.

1 (4) Violation of this section shall not invalidate any
 2 contract otherwise valid as between the insurer and the
 3 insured."

4 ~~NEW_SECTION.~~ Section 3. Nonresident licensee to pay
 5 taxes -- annual report required. (1) A nonresident
 6 licensee is subject to personal income, business income, or
 7 corporate license taxes for all income earned on insurance
 8 policies issued to cover subjects or risks located or to be
 9 performed in Montana.

10 (2) A nonresident licensee shall make a written report
 11 to the commissioner annually within 45 days following the
 12 end of each calendar year. The report must contain a listing
 13 of all business written on subjects or risks located or
 14 performed in Montana. The report must be in a form
 15 prescribed by the commissioner and must include but not be
 16 limited to a listing of company, policy number, premium
 17 earned, and commission earned.

18 ~~NEW_SECTION.~~ Section 4. Premium tax imposed on policy
 19 issued through nonresident licensee. Any insurer who issues
 20 a policy on a subject or risk located or to be performed in
 21 Montana through a nonresident licensee shall pay a premium
 22 tax on such policy to the state of Montana, in an amount and
 23 in the manner provided in ~~this part 33-2-705.~~

24 ~~NEW_SECTION.~~ Section 5. Penalty. A nonresident
 25 licensee who violates any condition of his Montana license

1 or any provision of this part is subject to a fine by the
 2 commissioner of up to ~~\$10,000~~ \$50,000 for each such
 3 violation and may, at the discretion of the commissioner,
 4 have his Montana nonresident license revoked or suspended
 5 for a period of up to 5 years.

6 Section 6. Section 33-17-1001, MCA, is amended to
 7 read:

8 "33-17-1001. Suspension, revocation, or refusal of
 9 license. (1) ~~The Except as provided in [section 5], the~~
 10 commissioner may suspend for not more than 12 months or may
 11 revoke or refuse to continue any license issued under this
 12 chapter or any surplus line agent license if, after hearing
 13 held on not less than 20 days' advance notice by registered
 14 or certified mail of such hearing and of the charges against
 15 the licensee given as provided in 33-1-314(3) to the
 16 licensee and to the insurers represented, as to an agent, or
 17 to the appointing agent, as to a solicitor, he finds that as
 18 to the licensee any one or more of the following causes
 19 exist:

20 (a) for any cause for which issuance of the license
 21 could have been refused had it then existed and been known
 22 to the commissioner;

23 (b) for obtaining or attempting to obtain any such
 24 license through misrepresentation or fraud;

25 (c) for violation of or noncompliance with any

1 applicable provision of this code or for willful violation
 2 of any lawful rule or order of the commissioner;

3 (d) for misappropriation or conversion to his own use
 4 or illegal withholding of moneys or property belonging to
 5 policyholders or insurer or beneficiaries or others and
 6 received in conduct of business under the license;

7 (e) conviction, by final judgment, of a felony
 8 involving moral turpitude;

9 (f) if in the conduct of his affairs under the license
 10 the licensee has used fraudulent or dishonest practices or
 11 has shown himself to be incompetent, untrustworthy, or a
 12 source of injury and loss to the public.

13 (2) The license of a firm or corporation may be
 14 suspended, revoked, or refused also for any of such causes
 15 as relate to any individual designated in the license to
 16 exercise its powers."

17 Section 7. Section 33-17-1004, MCA, is amended to
 18 read:

19 "33-17-1004. Acting as insurance agent, solicitor, or
 20 adjuster without license -- penalty. ~~Any Except as provided~~
 21 ~~in [section 5], a~~ person, firm, association, or corporation
 22 who or which, in this state, acts as an insurance agent,
 23 solicitor, or adjuster without having authority to do so by
 24 virtue of a license issued and in force pursuant to the
 25 provisions of this chapter is guilty of a misdemeanor and,

1 upon conviction, shall be fined \$500 or imprisoned in the
2 county jail for 90 days or both."

3 **NEW SECTION.** Section 8. Codification instruction. (1)
4 Sections 3 and 5 are intended to be codified as an integral
5 part of Title 33, chapter 17, part 4.

6 (2) Section 4 is intended to be codified as an
7 integral part of Title 33, chapter 2, part 7, and the
8 provisions of Title 33, chapter 2, part 7, apply to section
9 4.

-End-