

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 Copper Thompson  
 3 Medcalf 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."  
 13

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

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

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

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

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

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

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

of any lawful rule or order of the commissioner;

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

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

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

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

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

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

1 count, 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-

1                   STATEMENT OF INTENT  
2                   HOUSE BILL 710  
3           House Business and Industry Committee  
4

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.

SECOND READING

HR 710

Approved by Committee  
on Business and Industry

## HOUSE BILL NO. 710

INTRODUCED BY KITSELMAN, CRIPPEN,

FABREGA, METCALF, D. BROWN

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO NONRESIDENT INSURANCE AGENTS AND POLICIES WRITTEN THROUGH SUCH AGENTS; PROVIDING FOR RECIPROCAL REQUIREMENTS FOR COUNTERSIGNATURE OF RESIDENT INSURANCE AGENTS ON POLICIES OF INSURANCE WRITTEN THROUGH NONRESIDENT AGENTS; REQUIRING THE FILING OF AN ANNUAL BUSINESS REPORT; IMPOSING CERTAIN MONTANA TAXES; AND PROVIDING PENALTIES FOR VIOLATIONS; AMENDING SECTIONS 33-17-404, 33-17-1001, 33-17-1004, AND 33-17-1111, MCA."

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

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

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

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

"33-17-1111. Resident agent required ~~--reciprocity~~

-- 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:

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

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

(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



1 respect to any risk not already bound by the agent or other  
 2 person having clear authority from the insurer so to bind.  
 3 The agent shall be responsible for all of the acts of such  
 4 employee within the scope of the authority so delegated. The  
 5 agent shall keep a record of each and all coverages  
 6 countersigned by him or by his authority.

7 (3) This section shall not apply to:

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."

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 18 read:

19 "33-17-1004. Acting as insurance agent, solicitor, or  
 20 adjuster without license -- penalty. ~~Any Except as provided~~  
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 22 who or which, in this state, acts as an insurance agent,  
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 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  
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-End-

1                   STATEMENT OF INTENT

2                   HOUSE BILL 710

3           House Business and Industry Committee

4

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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(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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1 STATEMENT OF INTENT

2 HOUSE BILL 710

3 House Business and Industry Committee

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REFERENCE BILL

HB 710

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FABREGA, METCALF, D. BROWN

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(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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7 (3) This section shall not apply to:

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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-