

HOUSE BILL NO. 16

INTRODUCED BY MILLER, THOFT, BRANDEWIE, ERNST, NELSON,
WALLIN, MENAHAN, JANET MOORE, NISBET, ZABROCKI, PECK,
M. WILLIAMS, O'CONNELL, HARRINGTON, ABRAMS, LORY, FRITZ,
QUILICI, J. BROWN, MILES, KEENAN, DARKO, KRUEGER,
DRISCOLL, KADAS, HANSEN, PISTORIA, CONNELLY, MANUEL,
COHEN, WINSLOW, PHILLIPS, COBB, PAVLOVICH, NEILL,
ASAY, GRADY, MCCORMICK, GARCIA, REAM, HAND,
KENNERLY, ADDY, HART, D. BROWN

BY REQUEST OF THE COMMISSIONER OF INSURANCE

IN THE HOUSE

March 26, 1986	Introduced and referred to Committee on Business and Labor.
March 27, 1986	On motion by Chief Sponsor, additional Representatives added as sponsors. Committee recommend bill do pass as amended. Report adopted. Statement of Intent attached. Bill printed and placed on members' desks.
March 28, 1986	Second reading, do pass as amended. Third reading, passed. Transmitted to Senate.

IN THE SENATE

March 28, 1986	Introduced and referred to Committee on Business and Industry.
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March 29, 1986

Committee recommend bill be
concurrent in as amended.
Report adopted.

Second reading, pass
consideration.

Second reading, concurred in
as amended.

Third reading, concurred in.
Ayes, 45; Noes, 4.

Returned to House with
amendments.

IN THE HOUSE

March 29, 1986

Received from Senate.

Second reading, amendments
concurrent in.

Third reading, amendments
concurrent in.

Sent to enrolling.

Reported correctly enrolled.

1 House BILL NO. 116
2 INTRODUCED BY R. Miller
3 BY REQUEST OF THE COMMISSIONER OF INSURANCE
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING AN
6 INSURANCE ASSISTANCE PLAN FOR COMMERCIAL LIABILITY
7 INSURANCE; PROVIDING AUTHORITY TO FORM A JOINT UNDERWRITING
8 ASSOCIATION FOR COMMERCIAL LIABILITY INSURANCE;
9 APPROPRIATING MONEY; REQUIRING A REPORT ON THE EFFECTIVENESS
10 OF THE PLAN TO THE 50TH LEGISLATURE; AMENDING SECTION
11 33-17-201, MCA; AND PROVIDING EFFECTIVE DATES AND
12 TERMINATION DATES."
13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
15 NEW SECTION. Section 1. Short title -- definition.
16 [Sections 1 through 16] may be cited as the "Montana
17 Insurance Assistance Plan". As used in [sections 1 through
18 16], "plan" means the "Montana Insurance Assistance Plan".
19 NEW SECTION. Section 2. Purpose. The purpose of
20 [sections 1 through 16] is to establish a temporary plan to
21 assist insurance consumers in this state in obtaining needed
22 commercial liability insurance when no quotation is
23 available from regular sources of insurance. The plan is
24 not constituted to act as an insurer capable of assuming
25 insurance risks.

1 NEW SECTION. Section 3. Limit on term of operation --
2 review of necessity -- dissolution. (1) The plan is
3 established as a temporary market assistance plan to
4 function only as long as its services are considered
5 necessary to relieve perceived insurance market problems in
6 this state.
7 (2) Six months after the plan becomes operational and
8 on each 6-month anniversary thereafter, the advisory
9 committee established under [section 4] shall review the
10 necessity for continuation of the plan.
11 (3) If, after review, the advisory committee finds
12 that a need exists for continued operation, it shall report
13 that finding to the commissioner.
14 (4) If, after review, the advisory committee finds
15 that there is no longer a need for continued operation of
16 the plan, it may recommend to the commissioner that he
17 dissolve the plan and discontinue its services. The advisory
18 committee's recommendation is advisory only, and the
19 commissioner is not required to follow the advisory
20 committee's recommendation.
21 (5) The plan may be dissolved only on the written
22 authorization of the commissioner.
23 NEW SECTION. Section 4. Plan structure -- committees.
24 The plan consists of three committees appointed by the
25 commissioner. The committees are:

(1) the advisory committee, which consists of one member from the insurance department, one member representing agents, and three members representing company underwriters;

(2) the agents committee, which consists of two members representing the independent insurance agents of Montana (IIAM), one member representing the professional insurance agents (PIA), one member representing the excess and surplus lines agents, and one member representing direct writer agents; and

(3) the underwriting committee, which consists of one member representing American insurance association (AIA), one member representing national association of independent insurers (NAII), one member representing alliance of American insurers (AAI), one member representing unaffiliated insurers, and one member representing excess and surplus lines underwriters.

NEW SECTION. Section 5. Apportionment agreements. (1) Insurers participating in the plan shall agree to equitably apportion, according to the provisions of [section 13(4)], insurance to be offered under the plan to eligible applicants who, although entitled to insurance from regular insurance markets, have been unable to procure such insurance through ordinary methods after a good faith effort.

(2) Apportionment agreements under subsection (1) must be approved by the commissioner.

NEW SECTION. Section 6. Exemption from agent appointment requirements. (1) For purposes of the plan:

(a) an insurer that has entered into an agreement as provided in [section 5] may accept applications for insurance coverage from any agent even though that agent has not been appointed by the insurer; and

(b) an agent may place business, as to any type of insurance for which he is licensed at the time, with any insurer participating in the plan even though the agent has not been appointed as an agent by that insurer.

(2) An insurer that issues insurance coverage upon an application submitted by an agent who has not been appointed by the insurer shall pay the agent a commission in conformity with the insurer's filed rates, rating plans, or forms for the kind of insurance effected.

(3) An agent who countersigns a policy, when a countersignature is required by 33-17-1111, shall be paid a countersignature commission as provided in 33-17-1113.

NEW SECTION. Section 7. Types of coverages -- exemptions. (1) The plan shall assist in the individual placement of the following coverages:

(a) liability insurance coverage for political subdivisions, defined in 2-9-101(5), excluding pollution

1 coverages;

2 (b) liability insurance coverage for day-care
3 facilities, defined in 53-4-501(2)(b), which satisfy the
4 requirements of 53-4-508 and 53-4-509, excluding damages
5 from sexual abuse;

6 (c) liquor liability insurance; and

7 (d) other commercial lines liability coverages if the
8 commissioner finds in writing, after consultation with the
9 plan's advisory committee, that there are severe
10 availability problems in the marketplace and that the plan
11 is likely to provide assistance with a reasonable
12 probability of success.

13 (2) Coverages that could be written through the
14 Montana automobile assigned risk plan, Montana workers'
15 compensation insurance plan, or Montana medical liability
16 joint underwriting association, if activated, may not be
17 issued under the plan.

18 NEW SECTION. Section 8. Eligibility for assistance --
19 application -- rules. (1) Any person constituting or having
20 an insurable risk that is resident, located, or to be
21 performed in this state is eligible for assistance in
22 procuring coverage under the plan on submission of:

- 23 (a) a fee set by a rule adopted by the commissioner;
- 24 (b) a properly executed application form; and
- 25 (c) documentation of the unavailability problem by an

1 insurance agent licensed in this state.

2 (2) The application fees must be paid in advance as
3 set forth in rules adopted by the commissioner.

4 (3) All properly executed applications must be sent to
5 the commissioner.

6 (4) Applications and supplemental forms, if
7 appropriate, must be completed in their entirety. Incomplete
8 applications may be returned.

9 NEW SECTION. Section 9. Insurer membership --
10 election not to participate. (1) The commissioner shall
11 develop a listing of participating insurers as provided in
12 subsection (2).

13 (2) The commissioner shall mail to each admitted
14 property and casualty insurer and eligible surplus lines
15 insurer a bulletin outlining the conditions of the plan and
16 advising that each is considered to be a voluntary
17 participant. An insurer may request permission not to
18 participate by providing to the commissioner reasons why its
19 participation should be waived.

20 NEW SECTION. Section 10. Advisory committee -- duties
21 and responsibilities. (1) The advisory committee, assisted
22 by the insurance department staff, is the principal
23 operations committee and shall receive the initial
24 application from applicants for insurance assistance who
25 have encountered an availability-related insurance problem.

1 An initial application ~~may not~~ be accepted from applicants
2 who currently have insurance coverage or have not yet been
3 rejected from markets to which they have applied.

4 (2) Information of the initial contact must be
5 maintained on a standard form that contains the following
6 information:

7 (a) name, address, telephone number, and other
8 applicant information;

9 (b) kind of coverage and limits needed;

10 (c) name, address, and telephone number of the current
11 or most recent insurance agent for the applicant;

12 (d) name and address of current or most recent
13 insurance company, information about and identity of the
14 underwriting office and persons involved, if known, and
15 reasons for cancellation or nonrenewal;

16 (e) names of other insurers contacted for coverage;

17 (f) summary of advisory committee actions; and

18 (g) other information as considered necessary to
19 document the applicant's availability problem.

20 (3) The advisory committee is authorized to give
21 direction to the plan and to the producers and underwriting
22 committees. The committee shall meet as needed and review
23 the activities of the agents and underwriting committees and
24 all other operations of the plan.

25 (4) The advisory committee shall review and authorize

1 all letters stating that the plan is unable to be of
2 assistance. The advisory committee may override all
3 decisions of the agents and underwriting committees and may
4 resubmit to the plan an application that has been denied by
5 either committee.

6 NEW SECTION. Section 11. Agents committee -- duties
7 and responsibilities. (1) The agents committee, assisted by
8 the insurance department staff, shall process properly
9 executed applications accompanied by appropriate
10 underwriting information.

11 (2) Each application must be reviewed to determine the
12 availability problem. Depending on the nature of the
13 problem, the committee may:

14 (a) resubmit the application to the present or most
15 recent insurer for reconsideration;

16 (b) check other sources of insurance of the submitting
17 agent;

18 (c) check all other known sources of insurance;

19 (d) check the excess and surplus lines markets; or

20 (e) negotiate extensions of coverage with the prior
21 insurer to allow time for additional exploration of markets
22 or accumulation of essential underwriting data.

23 (3) If the actions permitted in subsection (2) fail,
24 the chairman shall refer the application with appropriate
25 comments to the underwriting committee.

NEW SECTION. Section 12. Underwriting committee --

duties and responsibilities. (1) The underwriting committee may provide technical assistance on those lines of business for which member insurers have agreed to participate.

(2) The underwriting committee may consider and act only on applications referred to it by the agents committee.

(3) The underwriting committee shall establish a rotation system that permits a participating insurer to offer insurance coverage that it is qualified to write in this state to a qualified, eligible applicant, pursuant to [section 13].

(4) If the underwriting committee finds that it cannot assist an applicant, the chairman shall draft a letter to the insurance commissioner with an explanation. The letter shall be transmitted to the advisory committee for review.

NEW SECTION. Section 13. Issuance of insurance -- premiums. (1) A participating insurer may offer to write insurance under the plan on the same basis as it normally provides insurance in this state using its filed rates, rules, and forms.

(2) Each participating insurer may individually evaluate the risk represented by an applicant and develop a premium for a risk in accordance with its filed rating plans.

(3) An applicant shall pay in advance any premium for

risks accepted under the plan.

(4) On approval of the advisory committee, a participating insurer may develop "A" rates for risks that do not fall within the rules or rates filed by the insurer.

(5) Within 10 working days of receiving an application, a participating insurer shall indicate its willingness to offer or refusal to offer insurance on the application to the chairman of the underwriting committee. A reasonable extension may be granted by the chairman of the underwriting committee.

(6) A participating insurer must offer insurance on at least one out of every five applications received from the underwriting committee. The insurer shall notify the applicant's insurance agent of any quotations and of the administrative procedure to be followed if the applicant accepts coverage from the insurer at the price quoted.

(7) If insurance coverage obtained through the plan is canceled for nonpayment of premium, the applicant may not reapply to the plan for the same coverage for the same risk.

NEW SECTION. Section 14. Joint underwriting association -- rules. If, after a public hearing, the commissioner determines that a voluntary plan would, in his judgment, fail for any reason to provide essential insurance coverage, he may, by rule, establish a nonprofit unincorporated legal entity known as a joint underwriting

association. Each insurer authorized to write and engaged in writing within this state, on a direct premium basis, the kind of insurance covered by the association shall remain a member of the association as a condition of its authority to continue to transact that kind of insurance in this state.

NEW SECTION. Section 15. Immunity. There is no liability on the part of and no cause of action of any nature against any participating insurer or its agents or employees, members of the advisory committee, members of the producers committee, members of the underwriting committee, or the commissioner or his representatives for any action taken by them in the performance of their powers and duties under the plan.

NEW SECTION. Section 16. Rules -- penalty. (1) The commissioner may adopt reasonable rules consistent with the plan for any of the following purposes:

- (a) effectuation of the plan;
- (b) establishment of procedures through which determination is to be made as to the eligibility of particular proposed coverages for placement in the plan; or
- (c) establishment, procedures, and operations of the plan's agents and others designed to assist such agents to comply with the plan.

(2) Rules adopted pursuant to this section are subject to the procedures and carry the penalty provided by

33-1-313.

Section 17. 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) 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) 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 and in [section 6].

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

(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."

NEW SECTION. Section 18. Report to legislature. The commissioner shall report to the 50th legislature on the effectiveness of the plan in providing insurance coverage for risks resident, located, or to be performed in this state and on the necessity to continue the authority granted by section 14.

NEW SECTION. Section 19. Appropriation. There is appropriated to the State Auditor's Office from the insurance earmarked account \$5,375 for the fiscal year ending June 30, 1986, and \$11,700 for the fiscal year ending

June 30, 1987, for one staff position to assist in the plan.

NEW SECTION. Section 20. Codification instruction. Sections 1 through 16 are intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to sections 1 through 16.

NEW SECTION. Section 21. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 22. Effective dates -- termination. (1) Except for section 14, this act is effective on passage and approval. Section 14 is effective July 1, 1987.

(2) Sections 1 through 13, 15, and 16 terminate July 1, 1987. Section 14 terminates July 1, 1989.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB016, Version: as introduced.

Description of Proposed Legislation:

An act establishing an insurance assistance plan for commercial liability insurance; providing authority to form a joint underwriting association for commercial liability insurance; appropriating money; requiring a report on the effectiveness of the plan to the 50th Legislature; amending section 33-17-201, MCA; and providing effective dates and termination dates.

Assumptions:

- 1) One FTE grade 12 will be needed to assist the commissioner with the underwriting, agents and advisory committees.
- 2) Only personnel costs have been included in the FY86 appropriation.
- 3) Contracted services, operating costs, and personnel costs are included in FY87 costs.
- 4) The FTE and operating costs are necessary as long as the Montana Insurance Assistance Plan is in effect.

Fiscal Impact:Expenditures:

	<u>FY86</u> (3 months)	<u>FY87</u>
1 FTE Grade 12, Step 2		
Personal Services	\$ 5,325	\$21,298
Contracted Services		3,000
Supplies		1,000
Communications		2,000
Travel		4,000
Rent		500
TOTAL	<u>\$ 5,325</u>	<u>\$31,798</u>

Source of Funding -- Earmarked Insurance Funds

Revenue:

	<u>Existing Law</u>	<u>Proposed Law</u>
General Fund		
FY86	\$ 5,325	(\$ 5,325)
FY87	31,798	(31,798)

The earmarked insurance funds are a direct offset to the general fund.

David L. Hunter
BUDGET DIRECTOR

3/27/86
DATE

Office of Budget and Program Planning

Tom Miller
PRIMARY SPONSOR

3/27/86
DATE

Fiscal Note for HB016
as introduced

HR 11.

HB016
As Introduced
March 27, 1986
Page 2

Affect on County or Other Local Revenue or Expenditures:

None

Long Range Effects of Proposed Legislation:

As long as the insurance plan is in effect, operational and personnel costs described in FY87 will continue annually.

Technical or Mechanical Defects in Proposed Legislation or Conflicts With Existing Legislation:

N/A

APPROVED BY COMM. ON
BUSINESS AND LABOR

STATEMENT OF INTENT

House Business and Labor Committee

HOUSE BILL 16

A statement of intent is required for House Bill No. 16, creating the Montana insurance assistance plan (plan), because it gives rulemaking power to the commissioner of insurance (commissioner).

In section 8, the commissioner is authorized to adopt rules to set application fees. It is the intent of the legislature that the application fees be commensurate with the cost of reviewing the application.

In section 14, the commissioner is authorized to adopt rules to establish a nonprofit unincorporated legal entity known as a joint underwriting association. The commissioner may use the rulemaking authority provided in section 14 only if, after a public hearing, he determines that a voluntary plan would fail for any reason to provide essential insurance coverage. It is the intent of the legislature that, if insurance remains unavailable through the efforts of a voluntary plan, a joint underwriting association, comprised of insurers licensed to transact insurance in this state, be established.

In section 16, the commissioner is authorized to adopt reasonable rules to effectuate the plan, to establish

procedures through which determination is to be made as to the eligibility of particular proposed coverages for placement in the plan, and to establish procedures and operations by which agents and others designed to assist those agents may comply with the plan. It is the intent of the legislature that the commissioner adopt reasonable rules to implement a plan to assist in resolving market unavailability problems or to determine whether insurance coverage is unavailable through the regular sources of insurance to risks resident, located, or to be performed in this state.

HOUSE BILL NO. 16

INTRODUCED BY MILLER

BY REQUEST OF THE COMMISSIONER OF INSURANCE

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING AN
INSURANCE ASSISTANCE PLAN FOR COMMERCIAL LIABILITY
INSURANCE; PROVIDING AUTHORITY TO FORM A JOINT UNDERWRITING
ASSOCIATION FOR COMMERCIAL LIABILITY INSURANCE;
APPROPRIATING MONEY; REQUIRING A REPORT ON THE EFFECTIVENESS
OF THE PLAN TO THE 50TH LEGISLATURE; AMENDING SECTION
33-17-201, MCA; AND PROVIDING EFFECTIVE DATES AND A
TERMINATION DATES DATE."

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

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[Sections 1 through 16] may be cited as the "Montana
Insurance Assistance Plan". As used in [sections 1 through
16], "plan" means the "Montana Insurance Assistance Plan".

NEW SECTION. Section 2. Purpose. The purpose of
[sections 1 through 16] is to establish a temporary plan to
assist insurance consumers in this state in obtaining needed
commercial liability insurance when no quotation is
available from regular sources of insurance. The plan is
not constituted to act as an insurer capable of assuming
insurance risks.

NEW SECTION. Section 3. Limit on term of operation --
review of necessity -- dissolution. (1) The plan is
established as a temporary market assistance plan to
function only as long as its services are considered
necessary to relieve perceived insurance market problems in
this state.

(2) Six months after the plan becomes operational and
on each 6-month anniversary thereafter, the advisory
committee established under [section 4] shall review the
necessity for continuation of the plan.

(3) If, after review, the advisory committee finds
that a need exists for continued operation, it shall report
that finding to the commissioner.

(4) If, after review, the advisory committee finds
that there is no longer a need for continued operation of
the plan, it may recommend to the commissioner that he
dissolve the plan and discontinue its services. The advisory
committee's recommendation is advisory only, and the
commissioner is not required to follow the advisory
committee's recommendation.

(5) The plan may be dissolved only on the written
authorization of the commissioner.

NEW SECTION. Section 4. Plan structure -- committees.
The plan consists of three committees appointed by the
commissioner. The committees are:

1 (1) the advisory committee, which consists of one
2 member from the insurance department, one member
3 representing agents, and three members representing company
4 underwriters;

5 (2) the agents committee, which consists of two
6 members representing the independent insurance agents of
7 Montana (IIAM), one member representing the professional
8 insurance agents (PIA), one member representing the excess
9 and surplus lines agents, and one member representing direct
10 writer agents; and

11 (3) the underwriting committee, which consists of one
12 member representing American insurance association (AIA),
13 one member representing national association of independent
14 insurers (NAII), one member representing alliance of
15 American insurers (AAI), one member representing
16 unaffiliated insurers, and one member representing excess
17 and surplus lines underwriters.

18 NEW SECTION. Section 5. Apportionment agreements. (1)
19 Insurers participating in the plan shall agree to equitably
20 apportion, according to the provisions of [section 13{4}
21 13{6}], insurance to be offered under the plan to eligible
22 applicants who, although entitled to insurance from regular
23 insurance markets, have been unable to procure such
24 insurance through ordinary methods after a good faith
25 effort.

1 (2) Apportionment agreements under subsection (1) must
2 be approved by the commissioner.

3 NEW SECTION. Section 6. Exemption from agent
4 appointment requirements. (1) For purposes of the plan:

5 (a) an insurer that has entered into an agreement as
6 provided in [section 5] may accept applications for
7 insurance coverage from any agent even though that agent has
8 not been appointed by the insurer; and

9 (b) an agent may place business, as to any type of
10 insurance for which he is licensed at the time, with any
11 insurer participating in the plan even though the agent has
12 not been appointed as an agent by that insurer.

13 (2) An insurer that issues insurance coverage upon an
14 application submitted by an agent who has not been appointed
15 by the insurer shall pay the agent a commission in
16 conformity with the insurer's filed rates, rating plans, or
17 forms for the kind of insurance effected.

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23 placement of the following coverages:

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25 subdivisions, defined in 2-9-101(5), excluding pollution

1 coverages;

2 (b) liability insurance coverage for day-care
3 facilities, defined in 53-4-501(2)(b), which satisfy the
4 requirements of 53-4-508 and 53-4-509, excluding damages
5 from sexual abuse;

6 (c) liquor liability insurance; and

7 (d) other commercial lines liability coverages if the
8 commissioner finds in writing, after consultation with the
9 plan's advisory committee, that there are severe
10 availability problems in the marketplace and that the plan
11 is likely to provide assistance with a reasonable
12 probability of success.

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14 Montana automobile assigned risk plan, Montana workers'
15 compensation insurance plan, or Montana medical liability
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19 application -- rules. (1) Any person constituting or having
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21 performed in this state is eligible for assistance in
22 procuring coverage under the plan on submission of:

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25 (c) documentation of the unavailability problem by an

1 insurance agent licensed in this state.

2 (2) The application fees must be paid in advance as
3 set forth in rules adopted by the commissioner.

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7 appropriate, must be completed in their entirety. Incomplete
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11 develop a listing of participating insurers as provided in
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14 property and casualty insurer and eligible surplus lines
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21 and responsibilities. (1) The advisory committee, assisted
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23 operations committee and shall receive the initial
24 application from applicants for insurance assistance who
25 have encountered an availability-related insurance problem.

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2 who currently have insurance coverage or have not yet been
3 rejected from markets to which they have applied.

4 (2) Information of the initial contact must be
5 maintained on a standard form that contains the following
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7 (a) name, address, telephone number, and other
8 applicant information;

9 (b) kind of coverage and limits needed;

10 (c) name, address, and telephone number of the current
11 or most recent insurance agent for the applicant;

12 (d) name and address of current or most recent
13 insurance company, information about and identity of the
14 underwriting office and persons involved, if known, and
15 reasons for cancellation or nonrenewal;

16 (e) names of other insurers contacted for coverage;

17 (f) summary of advisory committee actions; and

18 (g) other information as considered necessary to
19 document the applicant's availability problem.

20 (3) The advisory committee is authorized to give
21 direction to the plan and to the producers and underwriting
22 committees. The committee shall meet as needed and review
23 the activities of the agents and underwriting committees and
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15 recent insurer for reconsideration;

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17 agent;

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 13 assist an applicant, the chairman shall draft a letter to
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 19 provides insurance in this state using its filed rates,
 20 rules, and forms.

21 (2) Each participating insurer may individually
 22 evaluate the risk represented by an applicant and develop a
 23 premium for a risk in accordance with its filed rating
 24 plans.

25 (3) An applicant shall pay in advance any premium for

1 risks accepted under the plan.

2 (4) On approval of the advisory committee, a
 3 participating insurer may develop "A" rates for risks that
 4 do not fall within the rules or rates filed by the insurer.

5 (5) Within 10 working days of receiving an
 6 application, a participating insurer shall indicate its
 7 willingness to offer or refusal to offer insurance on the
 8 application to the chairman of the underwriting committee. A
 9 reasonable extension may be granted by the chairman of the
 10 underwriting committee.

11 (6) A participating insurer ~~must offer insurance~~ IS
 12 EXPECTED TO QUOTE on at least one out of every five
 13 applications received from the underwriting committee. The
 14 insurer shall notify the applicant's insurance agent of any
 15 quotations and of the administrative procedure to be
 16 followed if the applicant accepts coverage from the insurer
 17 at the price quoted.

18 (7) If insurance coverage obtained through the plan is
 19 canceled for nonpayment of premium, the applicant may not
 20 reapply to the plan for the same coverage for the same risk.

21 NEW SECTION. Section 14. Joint underwriting
 22 association -- rules. If, after a public hearing, the
 23 commissioner determines that a voluntary plan would, in his
 24 judgment, fail for any reason to provide essential insurance
 25 coverage, he may, by rule, establish a nonprofit

1 unincorporated legal entity known as a joint underwriting
2 association. Each insurer authorized to write and engaged in
3 writing within this state, on a direct premium basis, the
4 kind of insurance covered by the association shall remain a
5 member of the association as a condition of its authority to
6 continue to transact that kind of insurance in this state.

7 NEW SECTION. Section 15. Immunity. There is no
8 liability on the part of and no cause of action of any
9 nature against any participating insurer or its agents or
10 employees, members of the advisory committee, members of the
11 producers AGENTS committee, members of the underwriting
12 committee, or the commissioner or his representatives for
13 any action taken by them in the performance of their powers
14 and duties under the plan.

15 NEW SECTION. Section 16. Rules -- penalty. (1) The
16 commissioner may adopt reasonable rules consistent with the
17 plan for any of the following purposes:

- 18 (a) effectuation of the plan;
- 19 (b) establishment of procedures through which
20 determination is to be made as to the eligibility of
21 particular proposed coverages for placement in the plan; or
- 22 (c) establishment, procedures, and operations of the
23 plan's agents and others designed to assist such agents to
24 comply with the plan.

25 (2) Rules adopted pursuant to this section are subject

1 to the procedures and carry the penalty provided by
2 33-1-313.

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

5 "33-17-201. License required of agents, managing
6 general agents, and solicitors -- forms. (1) No person shall
7 in this state act as or hold himself out to be an agent or
8 solicitor as to subjects of insurance located, resident, or
9 to be performed in this state unless then licensed as such
10 agent or solicitor under this chapter.

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

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

18 (4) No agent shall place any business, other than
19 coverage of his own risks, with any insurer as to which he
20 does not then hold an appointment or license as agent under
21 this chapter, except as provided in 33-17-1104 as to life or
22 disability insurance agents and in [section 6].

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

(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."

NEW SECTION. Section 18. Report to legislature. The commissioner shall report to the 50th legislature on the effectiveness of the plan in providing insurance coverage for risks resident, located, or to be performed in this state and on the necessity to continue the authority granted by section 14.

NEW SECTION. Section 19. Appropriation. There is appropriated to the State Auditor's Office from the insurance earmarked account \$5,325 for the fiscal year

ending June 30, 1986, and \$31,798 for the fiscal year ending June 30, 1987, for one staff position to assist in the plan.

NEW SECTION. Section 20. Codification instruction. Sections 1 through 16 are intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to sections 1 through 16.

NEW SECTION. Section 21. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 22. Effective dates -- termination. (1) Except for section 14, this act is effective on passage and approval. Section 14 is effective July 1, 1987.

(2) ~~Sections--1--through-13,-15,-and-16-terminate-July 1,-1987;-Section-14~~ THIS ACT terminates July 1, 1989.

-End-

STATEMENT OF INTENT

HOUSE BILL 16

House Business and Labor Committee

A statement of intent is required for House Bill No. 16, creating the Montana insurance assistance plan (plan), because it gives rulemaking power to the commissioner of insurance (commissioner).

In section 8, the commissioner is authorized to adopt rules to set application fees. It is the intent of the legislature that the application fees be commensurate with the cost of reviewing the application.

~~In section 14, the commissioner is authorized to adopt rules to establish a nonprofit unincorporated legal entity known as a joint underwriting association. The commissioner may use the rulemaking authority provided in section 14 only if, after a public hearing, he determines that a voluntary plan would fail for any reason to provide essential insurance coverage. It is the intent of the legislature that, if insurance remains unavailable through the efforts of a voluntary plan, a joint underwriting association, comprised of insurers licensed to transact insurance in this state, be established.~~

In section 16 15, the commissioner is authorized to adopt reasonable rules to effectuate the plan, to establish

procedures through which determination is to be made as to the eligibility of particular proposed coverages for placement in the plan, and to establish procedures and operations by which agents and others designed to assist those agents may comply with the plan. It is the intent of the legislature that the commissioner adopt reasonable rules to implement a plan to assist in resolving market unavailability problems or to determine whether insurance coverage is unavailable through the regular sources of insurance to risks resident, located, or to be performed in this state.

STATEMENT OF INTENT

HOUSE BILL 16

House Business and Labor Committee

A statement of intent is required for House Bill No. 16, creating the Montana insurance assistance plan (plan), because it gives rulemaking power to the commissioner of insurance (commissioner).

In section 8, the commissioner is authorized to adopt rules to set application fees. It is the intent of the legislature that the application fees be commensurate with the cost of reviewing the application.

~~In section 14, the commissioner is authorized to adopt rules to establish a nonprofit unincorporated legal entity known as a joint underwriting association. The commissioner may use the rulemaking authority provided in section 14 only if, after a public hearing, he determines that a voluntary plan would fail for any reason to provide essential insurance coverage. It is the intent of the legislature that, if insurance remains unavailable through the efforts of a voluntary plan, a joint underwriting association, comprised of insurers licensed to transact insurance in this state, be established.~~

IN SECTION 14, THE COMMISSIONER IS AUTHORIZED TO ADOPT RULES TO ESTABLISH A NONPROFIT UNINCORPORATED LEGAL ENTITY

KNOWN AS A JOINT UNDERWRITING ASSOCIATION. THE COMMISSIONER MAY USE THE RULEMAKING AUTHORITY PROVIDED IN SECTION 14 ONLY IF, AFTER A PUBLIC HEARING, HE DETERMINES THAT A VOLUNTARY PLAN WOULD FAIL FOR ANY REASON TO PROVIDE ESSENTIAL INSURANCE COVERAGE. IT IS THE INTENT OF THE LEGISLATURE THAT, IF INSURANCE REMAINS UNAVAILABLE THROUGH THE EFFORTS OF A VOLUNTARY PLAN, A JOINT UNDERWRITING ASSOCIATION, COMPRISED OF INSURERS LICENSED TO TRANSACT INSURANCE IN THIS STATE, BE ESTABLISHED.

In section ~~16~~ 15 ~~16~~, the commissioner is authorized to adopt reasonable rules to effectuate the plan, to establish procedures through which determination is to be made as to the eligibility of particular proposed coverages for placement in the plan, and to establish procedures and operations by which agents and others designed to assist those agents may comply with the plan. It is the intent of the legislature that the commissioner adopt reasonable rules to implement a plan to assist in resolving market unavailability problems or to determine whether insurance coverage is unavailable through the regular sources of insurance to risks resident, located, or to be performed in this state.

REFERENCE BILL
AS AMENDED **HB16**

HOUSE BILL NO. 16

INTRODUCED BY MILLER, THOFT, BRANDEWIE, ERNST, NELSON,
WALLIN, MENAHAN, JANET MOORE, NISBET, ZABROCKI, PECK,
M. WILLIAMS, O'CONNELL, HARRINGTON, ABRAMS, LORY, FRITZ,
QUILICI, J. BROWN, MILES, KEENAN, DARKO, KRUEGER,
DRISCOLL, KADAS, HANSEN, PISTORIA, CONNELLY, MANUEL,
COHEN, WINSLOW, PHILLIPS, COBB, PAVLOVICH, NEILL,
ASAY, GRADY, MCCORMICK, GARCIA, REAM, HAND,

KENNERLY, ADDY, HART, D. BROWN

BY REQUEST OF THE COMMISSIONER OF INSURANCE

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING AN
INSURANCE ASSISTANCE PLAN FOR COMMERCIAL LIABILITY
INSURANCE; PROVIDING AUTHORITY TO FORM A JOINT UNDERWRITING
ASSOCIATION FOR COMMERCIAL LIABILITY INSURANCE;
APPROPRIATING MONEY; REQUIRING A REPORT ON THE EFFECTIVENESS
OF THE PLAN TO THE 50TH LEGISLATURE; AMENDING SECTION
33-17-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATES
DATE AND A TERMINATION DATES DATE."

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

NEW SECTION. Section 1. Short title -- definition.
[Sections 1 through §6 15] may be cited as the "Montana
Insurance Assistance Plan". As used in [sections 1 through
§6 15], "plan" means the "Montana Insurance Assistance

Plan".

NEW SECTION. Section 2. Purpose. The purpose of
[sections 1 through §6 15] is to establish a temporary plan
to assist insurance consumers in this state in obtaining
needed commercial liability insurance when no quotation is
available from regular sources of insurance. The plan is
not constituted to act as an insurer capable of assuming
insurance risks.

NEW SECTION. Section 3. Limit on term of operation --
review of necessity -- dissolution. (1) The plan is
established as a temporary market assistance plan to
function only as long as its services are considered
necessary to relieve perceived insurance market problems in
this state.

(2) Six months after the plan becomes operational and
on each 6-month anniversary thereafter, the advisory
committee established under [section 4] shall review the
necessity for continuation of the plan.

(3) If, after review, the advisory committee finds
that a need exists for continued operation, it shall report
that finding to the commissioner.

(4) If, after review, the advisory committee finds
that there is no longer a need for continued operation of
the plan, it may recommend to the commissioner that he
dissolve the plan and discontinue its services. The advisory

1 committee's recommendation is advisory only, and the
2 commissioner is not required to follow the advisory
3 committee's recommendation.

4 (5) The plan may be dissolved only on the written
5 authorization of the commissioner.

6 NEW SECTION. Section 4. Plan structure -- committees.
7 The plan consists of three committees appointed by the
8 commissioner. The committees are:

9 (1) the advisory committee, which consists of one
10 member from the insurance department, one member
11 representing agents, and three members representing company
12 underwriters;

13 (2) the agents committee, which consists of two
14 members representing the independent insurance agents of
15 Montana (IIAM), one member representing the professional
16 insurance agents (PIA), one member representing the excess
17 and surplus lines agents, and one member representing direct
18 writer agents; and

19 (3) the underwriting committee, which consists of one
20 member representing American insurance association (AIA),
21 one member representing national association of independent
22 insurers (NAII), one member representing alliance of
23 American insurers (AAI), one member representing
24 unaffiliated insurers, and one member representing excess
25 and surplus lines underwriters.

1 NEW SECTION. Section 5. Apportionment agreements. (1)
2 Insurers participating in the plan shall agree to equitably
3 apportion, according to the provisions of [section ~~13(4)~~
4 ~~13(6)~~], insurance to be offered under the plan to eligible
5 applicants who, although entitled to insurance from regular
6 insurance markets, have been unable to procure such
7 insurance through ordinary methods after a good faith
8 effort.

9 (2) Apportionment agreements under subsection (1) must
10 be approved by the commissioner.

11 NEW SECTION. Section 6. Exemption from agent
12 appointment requirements. (1) For purposes of the plan:

13 (a) an insurer that has entered into an agreement as
14 provided in [section 5] may accept applications for
15 insurance coverage from any agent even though that agent has
16 not been appointed by the insurer; and

17 (b) an agent may place business, as to any type of
18 insurance for which he is licensed at the time, with any
19 insurer participating in the plan even though the agent has
20 not been appointed as an agent by that insurer.

21 (2) An insurer that issues insurance coverage upon an
22 application submitted by an agent who has not been appointed
23 by the insurer shall pay the agent a commission in
24 conformity with the insurer's filed rates, rating plans, or
25 forms for the kind of insurance effected.

(3) An agent who countersigns a policy, when a countersignature is required by 33-17-1111, shall be paid a countersignature commission as provided in 33-17-1113.

NEW SECTION. Section 7. Types of coverages -- exemptions. (1) The plan ~~shall~~ MAY assist in the individual placement of the following coverages:

(a) liability insurance coverage for political subdivisions, defined in 2-9-101(5), excluding pollution coverages;

(b) liability insurance coverage for day-care facilities, defined in 53-4-501(2)(b), which satisfy the requirements of 53-4-508 and 53-4-509, excluding damages from sexual abuse;

(c) liquor liability insurance; and

(d) other commercial lines liability coverages if the commissioner finds in writing, after consultation with the plan's advisory committee, that there are severe availability problems in the marketplace and that the plan is likely to provide assistance with a reasonable probability of success.

(2) Coverages that could be written through the Montana automobile assigned risk plan, Montana workers' compensation insurance plan, or Montana medical liability joint underwriting association, if activated, may not be issued under the plan.

NEW SECTION. Section 8. Eligibility for assistance -- application -- rules. (1) Any person constituting or having an insurable risk that is resident, located, or to be performed in this state is eligible for assistance in procuring coverage under the plan on submission of:

(a) a fee set by a rule adopted by the commissioner;

(b) a properly executed application form; and

(c) documentation of the unavailability problem by an insurance agent licensed in this state.

(2) The application fees must be paid in advance as set forth in rules adopted by the commissioner.

(3) All properly executed applications must be sent to the commissioner.

(4) Applications and supplemental forms, if appropriate, must be completed in their entirety. Incomplete applications may be returned.

NEW SECTION. Section 9. Insurer membership -- election not to participate. (1) The commissioner shall develop a listing of participating insurers as provided in subsection (2).

(2) The commissioner shall mail to each admitted property and casualty insurer and eligible surplus lines insurer a bulletin outlining the conditions of the plan and advising that each is considered to be a voluntary participant. An insurer may request permission not to

1 participate by providing to the commissioner reasons why its
2 participation should be waived.

3 NEW SECTION. Section 10. Advisory committee -- duties
4 and responsibilities. (1) The advisory committee, assisted
5 by the insurance department staff, is the principal
6 operations committee and shall receive the initial
7 application from applicants for insurance assistance who
8 have encountered an availability-related insurance problem.
9 An initial application may not be accepted from applicants
10 who currently have insurance coverage have not yet been
11 rejected from markets to which they have applied.

12 (2) Information of the initial contact must be
13 maintained on a standard form that contains the following
14 information:

15 (a) name, address, telephone number, and other
16 applicant information;

17 (b) kind of coverage and limits needed;

18 (c) name, address, and telephone number of the current
19 or most recent insurance agent for the applicant;

20 (d) name and address of current or most recent
21 insurance company, information about and identity of the
22 underwriting office and persons involved, if known, and
23 reasons for cancellation or nonrenewal;

24 (e) names of other insurers contacted for coverage;

25 (f) summary of advisory committee actions; and

1 (g) other information as considered necessary to
2 document the applicant's availability problem.

3 (3) The advisory committee is authorized to give
4 direction to the plan and to the producers and underwriting
5 committees. The committee shall meet as needed and review
6 the activities of the agents and underwriting committees and
7 all other operations of the plan.

8 (4) The advisory committee shall review and authorize
9 all letters stating that the plan is unable to be of
10 assistance. The advisory committee may override all
11 decisions of the agents and underwriting committees and may
12 resubmit to the plan an application that has been denied by
13 either committee.

14 NEW SECTION. Section 11. Agents committee -- duties
15 and responsibilities. (1) The agents committee, assisted by
16 the insurance department staff, shall process properly
17 executed applications accompanied by appropriate
18 underwriting information.

19 (2) Each application must be reviewed to determine the
20 availability problem. Depending on the nature of the
21 problem, the committee may:

22 (a) resubmit the application to the present or most
23 recent insurer for reconsideration;

24 (b) check other sources of insurance of the submitting
25 agent;

(c) check all other known sources of insurance;

(d) check the excess and surplus lines markets; or

(e) negotiate extensions of coverage with the prior insurer to allow time for additional exploration of markets or accumulation of essential underwriting data.

(3) If the actions permitted in subsection (2) fail, the chairman shall refer the application with appropriate comments to the underwriting committee.

NEW SECTION. Section 12. Underwriting committee -- duties and responsibilities. (1) The underwriting committee may provide technical assistance on those lines of business for which member insurers have agreed to participate.

(2) The underwriting committee may consider and act only on applications referred to it by the agents committee.

(3) The underwriting committee shall establish a rotation system that permits a participating insurer to offer insurance coverage that it is qualified to write in this state to a qualified, eligible applicant, pursuant to [section 13].

(4) If the underwriting committee finds that it cannot assist an applicant, the chairman shall draft a letter to the insurance commissioner with an explanation. The letter shall be transmitted to the advisory committee for review.

NEW SECTION. Section 13. Issuance of insurance -- premiums. (1) A participating insurer may offer to write

insurance under the plan on the same basis as it normally provides insurance in this state using its filed rates, rules, and forms.

(2) Each participating insurer may individually evaluate the risk represented by an applicant and develop a premium for a risk in accordance with its filed rating plans.

(3) An applicant shall pay in advance any premium for risks accepted under the plan.

(4) On approval of the advisory committee, a participating insurer may develop "A" rates for risks that do not fall within the rules or rates filed by the insurer.

(5) Within 10 working days of receiving an application, a participating insurer shall indicate its willingness to offer or refusal to offer insurance on the application to the chairman of the underwriting committee. A reasonable extension may be granted by the chairman of the underwriting committee.

(6) A participating insurer ~~must--offer--insurance~~ IS EXPECTED TO QUOTE on at least one out of every five applications received from the underwriting committee. The insurer shall notify the applicant's insurance agent of any quotations and of the administrative procedure to be followed if the applicant accepts coverage from the insurer at the price quoted.

(7) If insurance coverage obtained through the plan is canceled for nonpayment of premium, the applicant may not reapply to the plan for the same coverage for the same risk.

~~NEW SECTION. Section 14. Joint underwriting association rules. If, after a public hearing, the commissioner determines that a voluntary plan would, in his judgment, fail for any reason to provide essential insurance coverage, he may, by rule, establish a nonprofit unincorporated legal entity known as a joint underwriting association. Each insurer authorized to write and engaged in writing within this state, on a direct premium basis, the kind of insurance covered by the association shall remain a member of the association as a condition of its authority to continue to transact that kind of insurance in this state.~~

NEW SECTION. Section 14. Immunity. There is no liability on the part of and no cause of action of any nature against any participating insurer or its agents or employees, members of the advisory committee, members of the producers AGENTS committee, members of the underwriting committee, or the commissioner or his representatives for any action taken by them in the performance of their powers and duties under the plan.

NEW SECTION. Section 15. Rules -- penalty. (1) The commissioner may adopt reasonable rules consistent with the plan for any of the following purposes:

(a) effectuation of the plan;

(b) establishment of procedures through which determination is to be made as to the eligibility of particular proposed coverages for placement in the plan; or

(c) establishment, procedures, and operations of the plan's agents and others designed to assist such agents to comply with the plan.

(2) Rules adopted pursuant to this section are subject to the procedures and carry the penalty provided by 33-1-313.

Section 16. 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) 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) 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 and in [section 6].

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

(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."

NEW SECTION. Section 17. Report to legislature. The

commissioner shall report to the 50th legislature on the effectiveness of the plan in providing insurance coverage for risks resident, located, or to be performed in this state and on the necessity to continue the authority granted by section 14.

NEW SECTION. Section 18. Appropriation. There is appropriated to the State Auditor's Office from the insurance earmarked account \$5,325 for the fiscal year ending June 30, 1986, and \$31,798 for the fiscal year ending June 30, 1987, for one staff position to assist in the plan.

NEW SECTION. Section 19. Codification instruction. Sections 1 through ~~16~~ 15 are intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to sections 1 through ~~16~~ 15.

NEW SECTION. Section 20. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 21. Effective dates -- termination. (1) ~~Except for section 14, this~~ THIS act is effective on passage and approval. ~~Section 14 is effective July 1, 1987.~~

(2) ~~Sections 1 through 13, 15, and 16 terminate July~~

HB 0016/03

1 ~~17-1987~~-Section-14 THIS ACT terminates July 1, 1989.

-End-

HOUSE BILL NO. 16

INTRODUCED BY MILLER, THOFT, BRANDEWIE, ERNST, NELSON,
WALLIN, MENAHAN, JANET MOORE, NISBET, ZABROCKI, PECK,
M. WILLIAMS, O'CONNELL, HARRINGTON, ABRAMS, LORY, FRITZ,
QUILICI, J. BROWN, MILES, KEENAN, DARKO, KRUEGER,
DRISCOLL, KADAS, HANSEN, PISTORIA, CONNELLY, MANUEL,
COHEN, WINSLOW, PHILLIPS, COBB, PAVLOVICH, NEILL,
ASAY, GRADY, MCCORMICK, GARCIA, REAM, HAND,
KENNERLY, ADDY, HART, D. BROWN
BY REQUEST OF THE COMMISSIONER OF INSURANCE

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING AN
INSURANCE ASSISTANCE PLAN FOR COMMERCIAL LIABILITY
INSURANCE; ~~PROVIDING AUTHORITY TO FORM A JOINT UNDERWRITING~~
~~ASSOCIATION FOR COMMERCIAL LIABILITY INSURANCE; PROVIDING~~
AUTHORITY TO FORM A JOINT UNDERWRITING ASSOCIATION FOR
COMMERCIAL LIABILITY INSURANCE; APPROPRIATING MONEY;
REQUIRING A REPORT ON THE EFFECTIVENESS OF THE PLAN TO THE
50TH LEGISLATURE; AMENDING SECTION 33-17-201, MCA; AND
PROVIDING ~~AN IMMEDIATE~~ EFFECTIVE DATES DATE DATES AND A
TERMINATION DATES DATE."

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

NEW SECTION. Section 1. Short title -- definition.
[Section 1. This act may be cited as the "Montana

Insurance Assistance Plan". As used in [sections 1 through
16 15 16], "plan" means the "Montana Insurance Assistance
Plan".

NEW SECTION. Section 2. Purpose. The purpose of
[sections 1 through 16 15 16] is to establish a temporary
plan to assist insurance consumers in this state in
obtaining needed commercial liability insurance when no
quotation is available from regular sources of insurance.
The plan is not constituted to act as an insurer capable of
assuming insurance risks.

NEW SECTION. Section 3. Limit on term of operation --
review of necessity -- dissolution. (1) The plan is
established as a temporary market assistance plan to
function only as long as its services are considered
necessary to relieve perceived insurance market problems in
this state.

(2) Six months after the plan becomes operational and
on each 6-month anniversary thereafter, the advisory
committee established under [section 4] shall review the
necessity for continuation of the plan.

(3) If, after review, the advisory committee finds
that a need exists for continued operation, it shall report
that finding to the commissioner.

(4) If, after review, the advisory committee finds
that there is no longer a need for continued operation of

1 the plan, it may recommend to the commissioner that he
2 dissolve the plan and discontinue its services. The advisory
3 committee's recommendation is advisory only, and the
4 commissioner is not required to follow the advisory
5 committee's recommendation.

6 (5) The plan may be dissolved only on the written
7 authorization of the commissioner.

8 NEW SECTION. Section 4. Plan structure -- committees.
9 The plan consists of three committees appointed by the
10 commissioner. The committees are:

11 (1) the advisory committee, which consists of one
12 member from the insurance department, one member
13 representing agents, and three members representing company
14 underwriters;

15 (2) the agents committee, which consists of two
16 members representing the independent insurance agents of
17 Montana (IIAM), one member representing the professional
18 insurance agents (PIA), one member representing the excess
19 and surplus lines agents, and one member representing direct
20 writer agents; and

21 (3) the underwriting committee, which consists of one
22 member representing American insurance association (AIA),
23 one member representing national association of independent
24 insurers (NAII), one member representing alliance of
25 American insurers (AAI), one member representing

1 unaffiliated insurers, and one member representing excess
2 and surplus lines underwriters.

3 NEW SECTION. Section 5. Apportionment agreements. (1)
4 Insurers participating in the plan shall agree to equitably
5 apportion, according to the provisions of [section 13(4)
6 13(6)], insurance to be offered under the plan to eligible
7 applicants who, although entitled to insurance from regular
8 insurance markets, have been unable to procure such
9 insurance through ordinary methods after a good faith
10 effort.

11 (2) Apportionment agreements under subsection (1) must
12 be approved by the commissioner.

13 NEW SECTION. Section 6. Exemption from agent
14 appointment requirements. (1) For purposes of the plan:

15 (a) an insurer that has entered into an agreement as
16 provided in [section 5] may accept applications for
17 insurance coverage from any agent even though that agent has
18 not been appointed by the insurer; and

19 (b) an agent may place business, as to any type of
20 insurance for which he is licensed at the time, with any
21 insurer participating in the plan even though the agent has
22 not been appointed as an agent by that insurer.

23 (2) An insurer that issues insurance coverage upon an
24 application submitted by an agent who has not been appointed
25 by the insurer shall pay the agent a commission in

1 conformity with the insurer's filed rates, rating plans, or
2 forms for the kind of insurance effected.

3 (3) An agent who countersigns a policy, when a
4 countersignature is required by 33-17-1111, shall be paid a
5 countersignature commission as provided in 33-17-1113.

6 NEW SECTION. Section 7. Types of coverages --
7 exemptions. (1) The plan ~~shall~~ MAY assist in the individual
8 placement of the following coverages:

9 (a) liability insurance coverage for political
10 subdivisions, defined in 2-9-101(5), excluding pollution
11 coverages;

12 (b) liability insurance coverage for day-care
13 facilities, defined in 53-4-501(2)(b), which satisfy the
14 requirements of 53-4-508 and 53-4-509, excluding damages
15 from sexual abuse;

16 (c) liquor liability insurance; and

17 (d) other commercial lines liability coverages if the
18 commissioner finds in writing, after consultation with the
19 plan's advisory committee, that there are severe
20 availability problems in the marketplace and that the plan
21 is likely to provide assistance with a reasonable
22 probability of success.

23 (2) Coverages that could be written through the
24 Montana automobile assigned risk plan, Montana workers'
25 compensation insurance plan, or Montana medical liability

1 joint underwriting association, if activated, may not be
2 issued under the plan.

3 NEW SECTION. Section 8. Eligibility for assistance --
4 application -- rules. (1) Any person constituting or having
5 an insurable risk that is resident, located, or to be
6 performed in this state is eligible for assistance in
7 procuring coverage under the plan on submission of:

8 (a) a fee set by a rule adopted by the commissioner;

9 (b) a properly executed application form; and

10 (c) documentation of the unavailability problem by an
11 insurance agent licensed in this state.

12 (2) The application fees must be paid in advance as
13 set forth in rules adopted by the commissioner.

14 (3) All properly executed applications must be sent to
15 the commissioner.

16 (4) Applications and supplemental forms, if
17 appropriate, must be completed in their entirety. Incomplete
18 applications may be returned.

19 NEW SECTION. Section 9. Insurer membership --
20 election not to participate. (1) The commissioner shall
21 develop a listing of participating insurers as provided in
22 subsection (2).

23 (2) The commissioner shall mail to each admitted
24 property and casualty insurer and eligible surplus lines
25 insurer a bulletin outlining the conditions of the plan and

advising that each is considered to be a voluntary participant. An insurer may request permission not to participate by providing to the commissioner reasons why its participation should be waived.

NEW SECTION. Section 10. Advisory committee -- duties and responsibilities. (1) The advisory committee, assisted by the insurance department staff, is the principal operations committee and shall receive the initial application from applicants for insurance assistance who have encountered an availability-related insurance problem. An initial application may not be accepted from applicants who currently have insurance coverage or have not yet been rejected from markets to which they have applied.

(2) Information of the initial contact must be maintained on a standard form that contains the following information:

(a) name, address, telephone number, and other applicant information;

(b) kind of coverage and limits needed;

(c) name, address, and telephone number of the current or most recent insurance agent for the applicant;

(d) name and address of current or most recent insurance company, information about and identity of the underwriting office and persons involved, if known, and reasons for cancellation or nonrenewal;

(e) names of other insurers contacted for coverage;

(f) summary of advisory committee actions; and

(g) other information as considered necessary to document the applicant's availability problem.

(3) The advisory committee is authorized to give direction to the plan and to the producers and underwriting committees. The committee shall meet as needed and review the activities of the agents and underwriting committees and all other operations of the plan.

(4) The advisory committee shall review and authorize all letters stating that the plan is unable to be of assistance. The advisory committee may override all decisions of the agents and underwriting committees and may resubmit to the plan an application that has been denied by either committee.

NEW SECTION. Section 11. Agents committee -- duties and responsibilities. (1) The agents committee, assisted by the insurance department staff, shall process properly executed applications accompanied by appropriate underwriting information.

(2) Each application must be reviewed to determine the availability problem. Depending on the nature of the problem, the committee may:

(a) resubmit the application to the present or most recent insurer for reconsideration;

(b) check other sources of insurance of the submitting agent;

(c) check all other known sources of insurance;

(d) check the excess and surplus lines markets; or

(e) negotiate extensions of coverage with the prior insurer to allow time for additional exploration of markets or accumulation of essential underwriting data.

(3) If the actions permitted in subsection (2) fail, the chairman shall refer the application with appropriate comments to the underwriting committee.

NEW SECTION. Section 12. Underwriting committee -- duties and responsibilities. (1) The underwriting committee may provide technical assistance on those lines of business for which member insurers have agreed to participate.

(2) The underwriting committee may consider and act only on applications referred to it by the agents committee.

(3) The underwriting committee shall establish a rotation system that permits a participating insurer to offer insurance coverage that it is qualified to write in this state to a qualified, eligible applicant, pursuant to [section 13].

(4) If the underwriting committee finds that it cannot assist an applicant, the chairman shall draft a letter to the insurance commissioner with an explanation. The letter shall be transmitted to the advisory committee for review.

NEW SECTION. Section 13. Issuance of insurance -- premiums. (1) A participating insurer may offer to write insurance under the plan on the same basis as it normally provides insurance in this state using its filed rates, rules, and forms.

(2) Each participating insurer may individually evaluate the risk represented by an applicant and develop a premium for a risk in accordance with its filed rating plans.

(3) An applicant shall pay in advance any premium for risks accepted under the plan.

(4) On approval of the advisory committee, a participating insurer may develop "A" rates for risks that do not fall within the rules or rates filed by the insurer.

(5) Within 10 working days of receiving an application, a participating insurer shall indicate its willingness to offer or refusal to offer insurance on the application to the chairman of the underwriting committee. A reasonable extension may be granted by the chairman of the underwriting committee.

(6) A participating insurer ~~must offer insurance~~ IS EXPECTED TO QUOTE on at least one out of every five applications received from the underwriting committee. The insurer shall notify the applicant's insurance agent of any quotations and of the administrative procedure to be

1 followed if the applicant accepts coverage from the insurer
2 at the price quoted.

3 (7) If insurance coverage obtained through the plan is
4 canceled for nonpayment of premium, the applicant may not
5 reapply to the plan for the same coverage for the same risk.

6 ~~NEW SECTION. -- Section 14. -- Joint ----- underwriting~~
7 ~~association ----- rules. -- If, after a public hearing, the~~
8 ~~commissioner determines that a voluntary plan would, in his~~
9 ~~judgment, fail for any reason to provide essential insurance~~
10 ~~coverage, he may, by rule, establish a nonprofit~~
11 ~~unincorporated legal entity known as a joint underwriting~~
12 ~~association. Each insurer authorized to write and engaged in~~
13 ~~writing within this state, on a direct premium basis, the~~
14 ~~kind of insurance covered by the association shall remain a~~
15 ~~member of the association as a condition of its authority to~~
16 ~~continue to transact that kind of insurance in this state.~~

17 NEW SECTION. SECTION 14. JOINT UNDERWRITING
18 ASSOCIATION -- RULES. IF, AFTER A PUBLIC HEARING, THE
19 COMMISSIONER DETERMINES THAT A VOLUNTARY PLAN WOULD, IN HIS
20 JUDGMENT, FAIL FOR ANY REASON TO PROVIDE ESSENTIAL INSURANCE
21 COVERAGE, HE MAY, BY RULE, ESTABLISH A NONPROFIT
22 UNINCORPORATED LEGAL ENTITY KNOWN AS A JOINT UNDERWRITING
23 ASSOCIATION. EACH INSURER AUTHORIZED TO WRITE AND ENGAGED IN
24 WRITING WITHIN THIS STATE, ON A DIRECT PREMIUM BASIS, THE
25 KIND OF INSURANCE COVERED BY THE ASSOCIATION SHALL REMAIN A

1 MEMBER OF THE ASSOCIATION AS A CONDITION OF ITS AUTHORITY TO
2 CONTINUE TO TRANSACT THAT KIND OF INSURANCE IN THIS STATE.

3 NEW SECTION. Section 15. Immunity. There is no
4 liability on the part of and no cause of action of any
5 nature against any participating insurer or its agents or
6 employees, members of the advisory committee, members of the
7 producers AGENTS committee, members of the underwriting
8 committee, or the commissioner or his representatives for
9 any action taken by them in the performance of their powers
10 and duties under the plan.

11 NEW SECTION. Section 16. Rules -- penalty. (1) The
12 commissioner may adopt reasonable rules consistent with the
13 plan for any of the following purposes:

14 (a) effectuation of the plan;
15 (b) establishment of procedures through which
16 determination is to be made as to the eligibility of
17 particular proposed coverages for placement in the plan; or
18 (c) establishment, procedures, and operations of the
19 plan's agents and others designed to assist such agents to
20 comply with the plan.

21 (2) Rules adopted pursuant to this section are subject
22 to the procedures and carry the penalty provided by
23 33-1-313.

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

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

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

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

14 (4) No agent shall place any business, other than
15 coverage of his own risks, with any insurer as to which he
16 does not then hold an appointment or license as agent under
17 this chapter, except as provided in 33-17-1104 as to life or
18 disability insurance agents and in [section 6].

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

22 (6) Unless licensed as a life insurance agent as
23 required by this section, no person shall in this state
24 solicit life insurance or annuities or procure applications
25 therefor or engage or hold himself out as engaging in the

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

13 NEW SECTION. Section 18. Report to legislature. The
14 commissioner shall report to the 50th legislature on the
15 effectiveness of the plan in providing insurance coverage
16 for risks resident, located, or to be performed in this
17 state and on the necessity to continue the authority granted
18 by section 14.

19 NEW SECTION. Section 19. Appropriation. There is
20 appropriated to the State Auditor's Office from the
21 insurance earmarked account \$5,325 for the fiscal year
22 ending June 30, 1986, and \$31,798 for the fiscal year ending
23 June 30, 1987, for one staff position to assist in the plan.

24 NEW SECTION. Section 20. Codification instruction.
25 Sections 1 through ~~16~~ 15 ~~16~~ are intended to be codified as

1 an integral part of Title 33, and the provisions of Title 33
2 apply to sections 1 through ~~16~~ 15 16.

3 NEW SECTION. Section 21. Severability. If a part of
4 this act is invalid, all valid parts that are severable from
5 the invalid part remain in effect. If a part of this act is
6 invalid in one or more of its applications, the part remains
7 in effect in all valid applications that are severable from
8 the invalid applications.

9 NEW SECTION. Section 22. Effective dates --
10 termination. (1) ~~Except for section 14, this~~ THIS EXCEPT FOR
11 SECTION 14, THIS act is effective on passage and approval.
12 ~~Section 14 is effective July 1, 1987.~~ SECTION 14 IS
13 EFFECTIVE JULY 1, 1987.

14 (2) ~~Sections 1 through 13, 15, and 16 terminate July~~
15 ~~1, 1987.~~ Section 14 THIS ACT terminates July 1, 1989.

-End-

COMMITTEE OF THE WHOLE AMENDMENT

3/29/86

DATE

12:05

TIME

MR. CHAIRMAN: I MOVE TO AMEND House Bill

No. 16

third reading copy (blue) as follows:
Color

1. Page 14, line 22.

Following: "~~this~~"

Strike: "This"

Insert: "Except for section 14, this"

2. Page 14, line 24.

Following: "~~1987-~~"

Insert: "Section 14 is effective July 1, 1987."

HB16.3

KBT

ADOPT
REJECT

Keating
KEATING

March 29, 1986

MR. PRESIDENT

We, your committee on BUSINESS AND INDUSTRY

having had under consideration House Bill No. 16

third reading copy (blue)
color

Miller (Gage)

COMMERCIAL LIABILITY INSURANCE ASSISTANCE PLAN

Respectfully report as follows: That House Bill No. 16

be amended as follows:

1. Statement of Intent.
Page 1, lines 13 through 23.
Reinsert: stricken language.

2. Statement of Intent.
Page 1, line 24.
Following: "16"
Strike: "15"
Insert: "16"

3. Page 1, line 15.
Following: "INSURANCE,"
Insert: "PROVIDING AUTHORITY TO FORM A JOINT UNDERWRITING
ASSOCIATION FOR COMMERCIAL LIABILITY INSURANCE;"

4. Page 1, line 23.
Following: "16"
Strike "15"
Insert: "16"

5. Page 1, line 25.
Following: "16"
Strike: "15"
Insert: "16"

6. Page 2, line 3.
Following: "16"
Strike: "15"
Insert: "16"

~~XXXXXX~~
~~DO PASS~~~~XXXXXXXXXX~~

(continued)

Chairman.

March 29

1986

7. Page 11, lines 4 through 14.
Reinsert: New Section 14 in its entirety
Renumber: subsequent sections.

8. Page 14, line 12.
Following: "~~16~~"
Strike: "15"
Insert: "16"

9. Page 14, line 14.
Following: "~~16~~"
Strike: "15"
Insert: "16"

KBA

as amended
BE CONCURRED IN


SENATOR MIKE HALLIGAN, Chairman