

IN THE HOUSE

APRIL 8, 1987

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 9, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1 House BILL NO. 771
 2 INTRODUCED BY [Signature]
 3 BY REQUEST OF THE STATE AUDITOR

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE LAWS
 6 RELATING TO THE AUTHORIZATION OF SURPLUS LINES INSURERS,
 7 AGENTS, AND INSURANCE; AMENDING SECTIONS 33-1-402, 33-1-614,
 8 33-1-711, 33-2-119, 33-2-301 THROUGH 33-2-317, 33-2-706,
 9 33-2-708, 33-17-1001, AND 33-18-212, MCA; AND PROVIDING AN
 10 IMMEDIATE EFFECTIVE DATE."

11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 33-2-301, MCA, is amended to read:
 14 "33-2-301. Short title -- purpose. (1) This part
 15 constitutes and may be referred to as "The Surplus ~~Line~~
 16 Lines Insurance Law".

17 (2) This part must be liberally construed and applied
 18 to:

19 (a) protect persons seeking insurance in this state;

20 (b) permit surplus lines insurance to be placed with
 21 reputable and financially sound unauthorized insurers and to
 22 be exported from this state pursuant to this part;

23 (c) establish a system of regulation that will permit
 24 orderly access to surplus lines insurance in this state and
 25 encourage authorized insurers to provide new and innovative

1 types of insurance to consumers in this state; and
 2 (d) protect revenues of this state."

3 NEW SECTION. Section 2. Definitions. As used in [this
 4 part], the following definitions apply:

5 (1) "Authorized insurer" means an insurer authorized
 6 pursuant to 33-2-101 to transact insurance in this state.

7 (2) "Eligible surplus lines insurer" means an
 8 unauthorized insurer with which a surplus lines agent may
 9 place surplus lines insurance under 33-2-307.

10 (3) "Export" means to place surplus lines insurance
 11 with an unauthorized insurer.

12 (4) "Kind of insurance" means one of the types of
 13 insurance required to be reported in the annual statement
 14 filed with the commissioner by an authorized insurer.

15 (5) "Producing agent" means the individual agent
 16 dealing directly with the person seeking insurance.

17 (6) "Surplus lines agent" means an individual,
 18 partnership, or corporation licensed under 33-2-305 to place
 19 surplus lines insurance (on risks resident, located, or to
 20 be performed in this state) with unauthorized insurers
 21 eligible to accept such insurance.

22 (7) "Surplus lines insurance" means any insurance (on
 23 risks resident, located, or to be performed in this state)
 24 permitted to be placed through a surplus lines agent with an
 25 unauthorized insurer eligible to accept the insurance. The



1 term does not include the kinds of insurance exempted under
2 [section 21].

3 (8) "Unauthorized insurer" means an insurer not
4 authorized pursuant to 33-2-101 to transact insurance in
5 this state. The term includes insurance exchanges authorized
6 under the laws of other states.

7 Section 3. Section 33-2-302, MCA, is amended to read:

8 "33-2-302. Conditions precedent to sale of surplus
9 ~~line lines~~ insurance ~~---agent's affidavit. (i) if certain~~
10 ~~insurance coverages cannot be procured from authorized~~
11 ~~insurers, such coverages, hereinafter designated "surplus~~
12 ~~lines", may be procured from unauthorized insurers subject~~
13 ~~to the following conditions:~~

14 (a) ~~The insurance must be procured through a licensed~~
15 ~~surplus line agent;~~

16 (b) ~~The full amount of insurance required must not be~~
17 ~~procurable, after diligent effort has been made to do so,~~
18 ~~from a majority of the insurers authorized to transact that~~
19 ~~kind and class of insurance in this state, and the amount of~~
20 ~~insurance placed in an unauthorized insurer shall be only~~
21 ~~the excess over the amount procurable from authorized~~
22 ~~insurers. Insurance may be procured through a licensed~~
23 ~~surplus lines agent from an unauthorized insurer if:~~

24 (1) the insurer is an eligible surplus lines insurer;

25 (2) the full amount or kind of insurance cannot be

1 obtained from authorized insurers. The full amount or kind
2 of insurance may be procured from an eligible surplus lines
3 insurer if the agent makes a diligent search among the
4 insurers who are authorized to transact and are actually
5 writing the particular kind and class of insurance in this
6 state and cannot obtain the full amount or kind of insurance
7 from an authorized insurer.

8 (c) (3) ~~The the~~ insurance ~~must is~~ not be so procured
9 for the purpose of securing advantages either as to:

10 (i) (a) a lower premium rate than would be accepted by
11 an authorized insurer; or

12 (ii) (b) terms of the insurance contract; and

13 (2) ~~At the time of procuring, effecting, and issuing~~
14 ~~any such insurance, the surplus line agent shall execute an~~
15 ~~affidavit, in form as prescribed or accepted by the~~
16 ~~commissioner, setting forth facts referred to in subsection~~
17 ~~(i) and file such affidavit with the commissioner.~~
18 ~~Affidavits filed under this subsection shall be subject to~~
19 ~~public inspection unless the commissioner determines that~~
20 ~~the public interest requires otherwise.~~

21 (4) all other requirements of this part are met."

22 Section 4. Section 33-2-303, MCA, is amended to read:

23 "33-2-303. Endorsement Filing and endorsement of
24 contract. Every insurance contract, cover, note, or
25 certificate of insurance procured and delivered as a surplus

1 ~~line--coverage~~ lines insurance under this law part shall be
 2 filed with the commissioner and endorsed as ~~having--been~~
 3 "issued in an unauthorized insurer under The Surplus ~~line~~
 4 Lines Insurance Law, under agent's agent license No."
 5 and "NOT covered by the property and casualty guaranty fund
 6 of this state if the unauthorized insurer becomes
 7 insolvent". The surplus ~~line~~ lines agent shall properly fill
 8 in and sign the endorsement."

9 Section 5. Section 33-2-304, MCA, is amended to read:
 10 "33-2-304. Surplus ~~line~~ lines insurance valid.
 11 Insurance contracts procured as "~~surplus line~~"-coverages
 12 lines insurance from unauthorized insurers in accordance
 13 with this law shall be fully valid and enforceable as to all
 14 parties and shall be given acceptance and recognition in all
 15 matters and respects to the same effect as like contracts
 16 issued by authorized insurers."

17 Section 6. Section 33-2-305, MCA, is amended to read:
 18 "33-2-305. Licensing of surplus ~~line~~ lines agent --
 19 fee and bond. ~~Any--person,--while--licensed--as--a--resident~~
 20 ~~insurance--agent-of-this-state-as-to-property,--casualty,--and~~
 21 ~~surety--insurances-and-who-is-deemed-by-the--commissioner--to~~
 22 ~~be--qualified--therefor--by--insurance--experience-and-to-be~~
 23 ~~trustworthy,--may-be-licensed-as--a--surplus--line--agent--as~~
 24 follows:

25 (1) ~~Application--to--the--commissioner--for--the--license~~

1 ~~shall-be-made-on-forms-furnished-by-the-commissioner;~~
 2 (2) ~~license-fee-in-the-amount-stated-in-33-2-708-shall~~
 3 ~~be-paid-to-the-commissioner.--The-license-shall-expire-on-the~~
 4 ~~April-1-next-after-its-date-of-issue.~~ (1) An agent licensed
 5 by this state may not procure a contract of surplus lines
 6 insurance with an unauthorized insurer unless the agent is
 7 licensed as a resident property, casualty, and surety
 8 insurance agent and possesses a current surplus lines
 9 insurance license issued by the commissioner.

10 (2) The commissioner shall issue a surplus lines
 11 license to any qualified holder of a current property,
 12 casualty, and surety insurance agent license only if the
 13 agent has:

14 (a) remitted to the commissioner the annual fee
 15 prescribed by 33-2-708;

16 (b) submitted to the commissioner a completed license
 17 application on a form supplied by the commissioner;

18 (c) been licensed as a property, casualty, and surety
 19 insurance agent continuously for 5 years or more; and

20 (3)(d) ~~Prior--to--issuance--of--license,--the-applicant~~
 21 ~~shall-file~~ filed with the commissioner and thereafter for as
 22 long as the license remains in effect he ~~shall-keep~~ kept in
 23 force a bond in favor of the state of Montana in the ~~penal~~
 24 sum amount of \$2,000 \$10,000, with authorized corporate
 25 sureties approved by the commissioner. The bond ~~shall~~ must

1 be conditioned that the agent will conduct business under
 2 the license in accordance with the provisions of The Surplus
 3 Bine Lines Insurance Law and that he will promptly remit the
 4 taxes provided by such law. The bond shall may not be
 5 terminated unless the surety gives the surplus lines agent,
 6 the producing agent, and the commissioner at least 30 days'
 7 prior written notice thereof ~~is filed with the commissioner.~~

8 (3) The license expires on April 1 after its date of
 9 issue. A surplus lines agent shall renew the license on or
 10 before March 1 of each year upon payment of the annual
 11 renewal fee prescribed in 33-2-708. A surplus lines agent
 12 who fails to apply for a renewal of the license on or before
 13 March 1 shall pay a fine of \$100 before the commissioner
 14 renews the license.

15 (4) A corporation is eligible to be a resident surplus
 16 lines agent if:

17 (a) the corporate license lists the individuals within
 18 the corporation who have satisfied the requirements of this
 19 part to become surplus lines agents; and

20 (b) only those individuals listed on the corporate
 21 license transact surplus lines business."

22 Section 7. Section 33-2-306, MCA, is amended to read:

23 "33-2-306. Agent's authority under license --
 24 acceptance of business from other agents -- placement fee.

25 (1) Under a surplus ~~line-agent's~~ lines agent license the

1 licensee ~~shall--have--the--right--to~~ may place surplus ~~line~~
 2 coverages lines insurance, in compliance with The Surplus
 3 Bine Lines Insurance Law, with any foreign or alien insurer
 4 or insurers not otherwise authorized to transact insurance
 5 in this state and as to such coverages to act as agent in
 6 this state for such insurer or insurers.

7 (2) The surplus ~~line~~ lines agent may accept surplus
 8 ~~line--business~~ lines insurance from any duly licensed agent
 9 of an authorized insurer and may compensate him therefor.

10 (3) A surplus lines agent who places or renews surplus
 11 lines insurance in accordance with subsection (1) may
 12 collect a placement fee of 0.5% of the premium charged to
 13 cover the costs of issuing and servicing the policy. The
 14 fee may not be less than \$10 or more than \$100."

15 Section 8. Section 33-2-307, MCA, is amended to read:

16 "33-2-307. ~~Surplus---lines---in---solvent---insurers-~~
 17 Requirements for eligible surplus lines insurers. A surplus
 18 line-agent shall not knowingly place surplus line--insurance
 19 with insurers unsound financially; The agent shall ascertain
 20 the--financial--condition--of--the--unauthorized--insurer--before
 21 placing insurance therewith; The agent shall so insure--only
 22 either:

23 (i) ~~--with--an--insurer--which--is--an--authorized--insurer--in~~
 24 at least one state of the United States--for--the--kind--of
 25 insurance--involved--and--which--meets--the--requirements--of

1 ~~33-2-109 and 33-2-110, as applicable, or~~

2 ~~(2) with an alien insurer, other than one qualified~~
 3 ~~under (1) above, which has an established and effective~~
 4 ~~trust fund of at least \$1 million within the United States~~
 5 ~~administered by a recognized financial institution and held~~
 6 ~~for the benefit of all its policyholders in the United~~
 7 ~~States or policyholders and creditors in the United States.~~

8 (1) A surplus lines agent may not place insurance with an
 9 unauthorized insurer unless, at the time of placement, the
 10 unauthorized insurer:

11 (a) has established satisfactory evidence of good
 12 reputation and financial integrity; and

13 (b) is qualified under one of the following
 14 subsections:

15 (i) the insurer maintains capital and surplus or its
 16 equivalent under the laws of its state of domicile, which
 17 equals the greater of:

18 (A) the minimum capital and surplus requirements of
 19 33-2-109 and 33-2-110; or

20 (B) \$2.5 million 1 year after [the effective date of
 21 this act] and \$3.5 million 3 years after [the effective date
 22 of this act]. After 3 year from [the effective date of this
 23 act], an insurer possessing less than \$4 million subcapital
 24 and surplus may satisfy the requirements of this subsection
 25 upon an affirmative finding of acceptability by the

1 commissioner. The commissioner's finding must be based upon
 2 such factors as quality of management, capital, and surplus
 3 of a parent company; company underwriting profit and
 4 investment income trends; and company record and reputation
 5 within the industry. The commissioner may not make an
 6 affirmative finding of acceptability when the surplus lines
 7 insurer's capital and surplus is less than \$3 million.

8 (ii) in the case of Lloyd's or another similar
 9 unincorporated group of alien individual insurers, the
 10 insurer maintains a trust fund of not less than \$50 million
 11 as security to the full amount thereof for all policyholders
 12 and creditors in the United States of each member of the
 13 group. The trust must comply with the terms and conditions
 14 established in subsection (1)(b)(iv) for alien insurers.

15 (iii) in the case of an insurance exchange created by
 16 the laws of individual states, the insurer maintains capital
 17 and surplus, or their substantial equivalent, of not less
 18 than \$15 million in the aggregate. For an insurance exchange
 19 that maintains funds for the protection of each insurance
 20 exchange policyholder, each individual syndicate shall
 21 maintain minimum capital and surplus, or their substantial
 22 equivalent, of not less than \$1.5 million. If the insurance
 23 exchange does not maintain funds for the protection of each
 24 insurance exchange policyholder, each individual syndicate
 25 shall meet the minimum capital and surplus requirements of

1 subsection (1)(b)(i).

2 (iv) in the case of an alien insurer, the insurer
 3 maintains in the United States an irrevocable trust fund in
 4 either a national bank or a member of the federal reserve
 5 system, in an amount not less than \$1.5 million, for the
 6 protection of all its policyholders in the United States and
 7 such trust fund consists of cash, securities, or letters of
 8 credit or of investments of substantially the same character
 9 and quality as those which are eligible investments for the
 10 capital and statutory reserves of insurers authorized to
 11 write like kinds of insurance in this state. Such trust
 12 fund, which must be included in any calculation of capital
 13 and surplus or its equivalent, must have an expiration date
 14 which at no time may be less than 5 years. In addition, the
 15 alien insurer must appear on the national association of
 16 insurance commissioners' Non-Admitted Insurers Quarterly
 17 Listing.

18 (c) has provided the commissioner a copy of its
 19 current annual statement, certified by the insurer no more
 20 than 6 months after the close of the period reported upon
 21 (or quarterly if considered necessary by the commissioner),
 22 and which is either:

23 (i) filed with and approved by the regulatory
 24 authority in the state of domicile of the unauthorized
 25 insurer; or

1 (ii) certified by an accounting or auditing firm
 2 licensed in the jurisdiction of the insurer's state of
 3 domicile.

4 (2) In the case of an insurance exchange, the
 5 statement required by subsection (1)(c) may be an aggregate
 6 combined statement of all underwriting syndicates operating
 7 during the period reported.

8 (3) In addition to meeting the requirements in
 9 subsection (1), an insurer is an eligible surplus lines
 10 insurer only if it appears on the most recent list of
 11 eligible surplus lines insurers published at least
 12 semiannually by the commissioner. This subsection does not
 13 require the commissioner to place or maintain the name of
 14 any unauthorized insurer on the list of eligible surplus
 15 lines insurers. No action may lie against the commissioner
 16 or an employee of the commissioner for anything said in
 17 issuing the list of eligible surplus lines insurers referred
 18 to in this subsection.

19 (4) As used in this section, the following definitions
 20 apply:

21 (a) "Capital", as used in the financial requirements
 22 of 33-2-307, means funds invested in for stocks or other
 23 evidences of ownership.

24 (b) "Surplus", as used in the financial requirements
 25 of 33-2-307, means funds over and above liabilities and

1 capital of the insurer for the protection of policyholders."

2 NEW SECTION. Section 9. Withdrawal of eligibility
3 from a surplus lines insurer. (1) The commissioner may
4 declare an eligible surplus lines insurer ineligible if at
5 any time the commissioner has reason to believe that it:

- 6 (a) is in unsound financial condition;
- 7 (b) is no longer eligible under 33-2-307;
- 8 (c) has willfully violated the laws of this state; or
- 9 (d) does not make reasonably prompt payment of just
10 losses and claims in this state or elsewhere.

11 (2) The commissioner shall promptly mail notice of all
12 such declarations to each surplus lines agent.

13 NEW SECTION. Section 10. Surplus lines advisory
14 organizations -- examination by commissioner. (1) A surplus
15 lines advisory organization of surplus lines agents may be
16 formed to:

- 17 (a) facilitate and encourage compliance by its members
18 with the laws of this state and the rules and regulations of
19 the commissioner relative to surplus lines insurance;
- 20 (b) provide means for the confidential examination of
21 all surplus lines insurance written by its members to
22 determine whether such insurance complies with this part;
- 23 (c) communicate with organizations of authorized
24 insurers with respect to the proper use of the surplus lines
25 market; and

1 (d) receive and disseminate to its members information
2 relative to surplus lines insurance.

3 (2) Each advisory organization shall file with the
4 commissioner:

- 5 (a) a copy of its constitution, its articles of
6 agreement or association, or its certificate of
7 incorporation;
- 8 (b) a copy of its bylaws, rules, and regulations
9 governing its activities;
- 10 (c) a current list of its members;
- 11 (d) the name and address of a resident of this state
12 upon whom notices or orders of the commissioner or processes
13 issued at his direction may be served; and
- 14 (e) an agreement that the commissioner may examine the
15 advisory organization under the provisions of subsection
16 (3).

17 (3) The commissioner may make or cause to be made an
18 examination of each advisory organization. The reasonable
19 cost of an examination shall be paid by the advisory
20 organization upon presentation to it by the commissioner of
21 a detailed account of such cost. The officers, managers,
22 agents, and employees of the advisory organization may be
23 examined at any time, under oath, and shall exhibit all
24 books, records, accounts, documents, or agreements governing
25 its method of operation. The commissioner shall furnish two

1 copies of the examination report to the examined advisory
 2 organization and shall notify the organization that it may,
 3 within 20 days of receipt of the report, request a hearing
 4 on the report or on any facts or recommendations contained
 5 in it. If the commissioner finds the advisory organization
 6 or any of its members to be in violation of this part, he
 7 may issue an order requiring the discontinuance of the
 8 violation.

9 (4) The commissioner may by order compel a surplus
 10 lines agent to join an advisory organization as a condition
 11 of continued licensure under this part.

12 Section 11. Section 33-2-308, MCA, is amended to read:

13 "33-2-308. Evidence of the insurance -- changes --
 14 penalty. (1) Upon placing a surplus ~~line--coverage~~ lines
 15 insurance, the surplus ~~line~~ lines agent shall promptly issue
 16 and deliver to the insured or the producing agent evidence
 17 of the insurance, consisting either of the policy as issued
 18 by the insurer or, if such policy is not then available, a
 19 cover note or certificate of insurance signed or
 20 countersigned by the agent. Such cover note or certificate
 21 ~~shall~~ must show the subject, coverage, conditions, and term
 22 of the insurance, the premium charged and taxes collected
 23 from the insured, and the name and address of the insurer.
 24 If the direct risk is assumed by more than one insurer, the
 25 cover note or certificate ~~shall~~ must state the name and

1 address and proportion of the entire direct risk assumed by
 2 each such insurer.

3 (2) If after the issuance and delivery of any such
 4 cover note or certificate there is any change as to the
 5 identity of the insurers or the proportion of the direct
 6 risk assumed by the insurer as stated in the original cover
 7 note or certificate or in any other material respect as to
 8 the insurance coverage evidenced by the cover note or
 9 certificate, the agent shall promptly issue and deliver to
 10 the insured a substitute cover note or certificate
 11 accurately showing the current status of the coverage and
 12 the insurers responsible thereunder.

13 (3) If a policy issued by the insurer is not available
 14 upon placement of the insurance and the agent has issued and
 15 delivered a cover note or certificate as hereinabove
 16 provided, upon request therefor by the insured, the agent
 17 shall as soon as reasonably possible procure from the
 18 insurer its policy evidencing such insurance and deliver
 19 such policy to the insured in replacement of the cover note
 20 or certificate theretofore issued.

21 (4) Any surplus ~~line~~ lines agent who knowingly or
 22 negligently issues or delivers a false cover note or
 23 certificate of insurance or fails promptly to notify the
 24 insured of any material change with respect to such
 25 insurance by delivery to the insured of a substitute cover

1 note or certificate as provided in subsection (2) shall be
 2 guilty of a violation of this code and upon conviction shall
 3 be subject to the penalties provided by 33-1-104 or to any
 4 greater applicable penalty otherwise provided by law.

5 (5) A surplus lines agent may not issue or deliver any
 6 evidence of insurance or purport to insure or represent that
 7 insurance will be or has been written by any eligible
 8 surplus lines insurer unless he has authority from the
 9 insurer to cause the risk to be insured or has received
 10 information from the insurer in the regular course of
 11 business that such insurance has been granted."

12 Section 12. Section 33-2-309, MCA, is amended to read:

13 "33-2-309. Liability of insurer as to losses and
 14 unearned premiums. (1) As to a surplus line lines risk which
 15 has been assumed by an unauthorized insurer pursuant to ~~this~~
 16 ~~surplus-lines-insurance-law~~ The Surplus Lines Insurance Law
 17 and if the premium thereon has been received by the surplus
 18 line lines agent who placed such insurance, in all questions
 19 thereafter arising under the coverage as between the insurer
 20 and the insured, the insurer shall be deemed to have
 21 received the premium due to it for such coverage. The
 22 insurer shall be liable to the insured as to losses covered
 23 by such insurance and for unearned premiums which may become
 24 payable to the insured upon cancellation of such insurance,
 25 whether or not in fact the agent is indebted to the insurer

1 with respect to such insurance or for any other cause. This
 2 provision shall not affect rights as between the insurer and
 3 the surplus line lines agent.

4 (2) A payment of premium to a surplus lines agent
 5 acting for a person other than himself in negotiating,
 6 continuing, or reviewing a policy of insurance under this
 7 part is considered to be payment to the insurer,
 8 notwithstanding any conditions or stipulations that may be
 9 inserted in the policy or contract.

10 ~~(2)(3)~~ (3) Each unauthorized insurer assuming a surplus
 11 lines direct risk under ~~this--surplus--line--insurance--law~~
 12 ~~shall---be---deemed~~ The Surplus Lines Insurance Law is
 13 considered thereby to have subjected itself to the terms of
 14 this section."

15 Section 13. Section 33-2-310, MCA, is amended to read:

16 "33-2-310. Records and annual statement -- affidavit.

17 (1) Each surplus line lines agent shall keep a separate
 18 record and account of all business transacted under his
 19 license, including a copy of each daily report, if any, and
 20 of each policy, certificate of insurance, cover note, or
 21 other evidence of insurance issued by him. The records ~~shall~~
 22 must be available for examination by the commissioner at any
 23 reasonable time within 5 years after the issuance of the
 24 coverage surplus lines insurance to which it relates.

25 (2) Prior to April 1 of each year the agent shall file

1 with the commissioner a statement for the calendar year
2 preceding, showing:

3 (a) name and address of each insured for whom surplus
4 ~~line~~ lines insurance was procured;

5 (b) name and home office address of each insurer
6 providing ~~such the~~ surplus lines insurance;

7 (c) amount of each ~~such--coverage~~ surplus lines
8 insurance policy, the premium rate, and the gross premium
9 charged therefor;

10 (d) date and term of the policy;

11 (e) amount of premium returned on each policy canceled
12 or not taken; and

13 (f) amount of tax and other sums to be collected from
14 the insured;

15 (g) identity of the producing agent;

16 (h) the application and any correspondence from the
17 surplus lines insurer or its representative; and

18 ~~†f)†(i)~~ such additional information as the commissioner
19 may reasonably require.

20 (3) Each producing agent shall execute and each
21 surplus lines agent shall file an affidavit, on a
22 standardized form furnished by the commissioner, as to the
23 diligent efforts to place the coverage with authorized
24 insurers and the results of such efforts. An affidavit filed
25 under this subsection is subject to public inspection unless

1 the commissioner determines that the public interest
2 requires otherwise. The producing agent shall state in the
3 affidavit that he has expressly advised the insured in
4 writing prior to placing the insurance that:

5 (a) the surplus lines insurer with whom the insurance
6 is placed is not authorized in this state and is not subject
7 to the same supervision as an authorized insurer; and

8 (b) in the event of the insolvency of the surplus
9 lines insurer, the property and casualty guaranty fund of
10 the state will not pay losses under the surplus lines
11 coverage."

12 Section 14. Section 33-2-311, MCA, is amended to read:

13 "33-2-311. Tax on surplus lines. There is imposed upon
14 premiums collected for surplus ~~line~~ lines insurance
15 transacted in this state a tax at the same rate and computed
16 in the same manner as provided in subsection (2)(b)(i) of
17 33-2-705 as to premiums of authorized insurers, except that
18 amounts collected from the insured specifically for
19 applicable state and federal taxes, and in excess of the
20 premium otherwise required, ~~shall--not--be--deemed~~ are not
21 considered to be part of the premium for the purposes of
22 such computation. Upon filing of the annual statement
23 referred to in 33-2-310(2), the surplus ~~line~~ lines agent
24 shall pay to the commissioner the amount of tax owing as to
25 surplus ~~line~~ lines insurance business transacted by him

1 during the preceding calendar year. If a surplus ~~line~~ lines
 2 insurance policy covers ~~risk~~ risks or exposures only
 3 partially in this state, the tax payable ~~shall~~ must be
 4 computed upon the proportion of the premium which is
 5 properly allocable to the risks or exposures located in this
 6 state."

7 Section 15. Section 33-2-312, MCA, is amended to read:
 8 "33-2-312. Penalty for failure to file statement or
 9 pay tax. Every surplus ~~line~~ lines agent who fails to make
 10 and file the annual statement as required under 33-2-310 or
 11 to pay the taxes as required under 33-2-311 ~~shall-be~~ is
 12 liable to a penalty of \$25 for each day of delinquency,
 13 commencing with April 1. The tax and penalty may be
 14 recovered in an action instituted by the commissioner in the
 15 name of the state in any court of competent jurisdiction,
 16 the attorney general representing him. The penalty when
 17 collected shall be paid to the state treasurer and placed to
 18 the credit of the general fund. The surplus ~~line--agent's~~
 19 lines agent license ~~shall~~ is also be subject to revocation
 20 as provided in 33-2-313."

21 Section 16. Section 33-2-313, MCA, is amended to read:
 22 "33-2-313. Revocation or suspension of ~~agent's~~ agent
 23 license. (1) The commissioner shall revoke or suspend any
 24 surplus ~~line~~ lines ~~agent's~~ agent license, together with his
 25 license as an insurance agent ~~or-solicitor~~:

1 (a) if the agent fails to file his annual statement or
 2 to remit the tax as required by law;
 3 (b) if the agent fails to keep the records or to allow
 4 the commissioner to examine his records, as required by law;
 5 (c) if the agent falsifies the affidavit required by
 6 33-2-302(2) 33-2-310(3); or
 7 (d) if the agent removes the resident surplus lines
 8 agent office from this state;
 9 (e) if the agent removes the resident surplus lines
 10 agent office accounts and records from this state during the
 11 period during which the accounts and records are required to
 12 be maintained under 33-2-310(1);
 13 (f) if the agent closes the resident surplus lines
 14 agent office for a period of more than 30 business days,
 15 unless the commissioner grants permission otherwise;
 16 (g) if the agent violates any provision of this part;
 17 or
 18 (d)(h) for any of the causes for which an insurance
 19 agent's license may be revoked.
 20 (2) The procedures provided by 33-17-1001 for the
 21 suspension or revocation of ~~agents'~~ agent licenses ~~shall-be~~
 22 applicable apply to suspension or revocation of a surplus
 23 ~~line-agent's~~ lines agent license.
 24 (3) No An agent whose license has been so revoked or
 25 suspended ~~shall~~ may not again be so licensed within 1 year

1 thereafter or until he pays all penalties and delinquent
2 taxes ~~owing-by-him-have-been-paid~~ that he owes."

3 Section 17. Section 33-2-314, MCA, is amended to read:

4 "33-2-314. Actions against insurer -- venue ---~~service~~
5 ~~of-process~~. Every unauthorized insurer issuing a surplus
6 ~~line-coverage lines insurance policy~~ under this ~~surplus-line~~
7 ~~insurance-law-shall-be-deemed~~ part is considered to be doing
8 business in this state as an unticensed unauthorized insurer
9 and may be sued in this state upon any cause of action
10 arising under any insurance contract so made by it. Such
11 suit ~~shall~~ must be brought in the district court of the
12 county wherein the plaintiff resides."

13 Section 18. Section 33-2-315, MCA, is amended to read:

14 "33-2-315. Commissioner appointed process agent --
15 service of process. (1) Every surplus ~~line lines~~ insurer
16 before ~~insuring-as-such~~ transacting surplus lines insurance
17 under this ~~law~~ part shall in writing appoint the
18 commissioner as its true and lawful attorney upon whom legal
19 process in any action or proceeding against it in this state
20 shall be served and in such writing shall agree that any
21 such process served upon such attorney shall be of the same
22 legal force and validity as if served in this state upon
23 such insurer and that such authority shall continue in force
24 so long as any liability remains outstanding against it in
25 this state. At the time of filing such appointment, the

1 insurer shall also file designation of the name and address
2 of the person to whom process against it served upon the
3 commissioner is to be forwarded. The insurer may change such
4 designation by a new filing.

5 (2) Service upon such an insurer ~~shall~~ must be made
6 upon the commissioner and in accordance with the procedures,
7 requirements, and results as provided under 33-1-603."

8 NEW SECTION. Section 19. Penalties. A surplus lines
9 agent who in this state represents or aids an unauthorized
10 insurer in violation of this part is guilty of a misdemeanor
11 and shall be fined not more than \$1,000 or be imprisoned in
12 the county jail for a term no longer than 6 months, or both.

13 Section 20. Section 33-2-316, MCA, is amended to read:

14 "33-2-316. Rules. (1) The commissioner shall make or
15 may approve and adopt reasonable rules, consistent with this
16 ~~surplus-line-insurance-law~~ part, for any or all of the
17 following purposes:

18 (a) effectuation of ~~such-law~~ The Surplus Lines
19 Insurance Law;

20 (b) establishment of procedures through which
21 determination is to be made as to the eligibility of
22 particular proposed coverages for placement with a surplus
23 ~~line lines~~ insurer or insurers; and

24 (c) establishment, procedures, and operations of any
25 voluntary organization of surplus ~~line lines~~ insurance

1 agents or others designed to assist such agents to comply
2 with such law.

3 (2) Such rules shall be subject to the procedures and
4 carry the penalty provided by 33-1-313."

5 Section 21. Section 33-2-317, MCA, is amended to read:

6 "33-2-317. Exemptions. The provisions of this surplus
7 ~~line lines~~ insurance law controlling the ~~placing~~ placement
8 of insurance with unauthorized insurers ~~shall does~~ not apply
9 to reinsurance or to the following insurances when so placed
10 by a licensed insurance ~~agents~~ agent of this state:

11 (1) wet marine and transportation insurances;

12 (2) insurance on subjects located, resident, or to be
13 performed wholly outside of this state or on vehicles or
14 aircraft owned and principally garaged outside this state;

15 (3) insurance on property or operations of railroads
16 engaged in interstate commerce; and

17 (4) insurance of aircraft owned or operated by
18 manufacturers of aircraft or aircraft operated in scheduled
19 interstate flight or cargo of such aircraft or against
20 liability, other than workers' compensation and employers'
21 liability, arising out of the ownership, maintenance, or use
22 of such aircraft."

23 Section 22. Section 33-1-402, MCA, is amended to read:

24 "33-1-402. Examination of agents, managers, and
25 promoters. For the purpose of ascertaining compliance with

1 this code, the commissioner may as often as he deems
2 advisable examine the accounts, records, documents, and
3 transactions pertaining to or affecting its insurance
4 affairs or proposed insurance affairs of:

5 (1) any insurance agent, solicitor, surplus ~~line lines~~
6 agent, general agent, or adjuster;

7 (2) any person having a contract under which he enjoys
8 in fact the exclusive or dominant right to manage or control
9 an insurer;

10 (3) any person holding the shares of voting stock or
11 policyholder proxies of a domestic insurer, for the purpose
12 of controlling the management thereof, as voting trustee or
13 otherwise;

14 (4) any person engaged in or proposing to be engaged
15 in or assisting in the promotion or formation of a domestic
16 insurer or insurance holding corporation or corporation to
17 finance a domestic insurer or the production of its
18 business."

19 Section 23. Section 33-1-614, MCA, is amended to read:

20 "33-1-614. Exemptions from service of process
21 provisions. Sections 33-1-611 through 33-1-613 shall not
22 apply to:

23 (1) surplus ~~line lines~~ insurance lawfully effectuated
24 under part 3, chapter 2;

25 (2) reinsurance; or

1 (3) any action or proceeding against an unauthorized
2 insurer arising out of:

3 (a) wet marine and transportation insurance;

4 (b) insurance on or with respect to subjects located,
5 resident, or to be performed wholly outside this state or on
6 or with respect to vehicles or aircraft owned and
7 principally garaged outside this state;

8 (c) insurance on property or operations of railroads
9 engaged in interstate commerce; or

10 (d) insurance on aircraft or cargo of such aircraft or
11 against liability, other than employer's liability, arising
12 out of the ownership, maintenance, or use of such aircraft,
13 where the policy or contract contains a provision
14 designating the commissioner as its attorney for the
15 acceptance of service of lawful process in any action or
16 proceeding instituted by or on behalf of an insured or
17 beneficiary arising out of any such policy or where the
18 insurer enters a general appearance in any such action."

19 Section 24. Section 33-1-711, MCA, is amended to read:

20 "33-1-711. Appeals from the commissioner. (1) An
21 appeal from the commissioner shall be taken only from an
22 order on hearing or with respect to a matter as to which the
23 commissioner has refused a hearing. Any person who was a
24 party to such hearing or whose pecuniary interests are
25 directly and immediately affected by any such order or

1 refusal and who is aggrieved thereby may, within 30 days
2 after the order has been mailed or delivered to the persons
3 entitled to receive the same, the commissioner's order
4 denying rehearing or reargument has been so mailed or
5 delivered, or the commissioner's refusal to grant a hearing,
6 appeal from such order on hearing or such refusal of a
7 hearing. The appeal shall be taken to the district court of
8 Lewis and Clark County by filing written notice of appeal in
9 such court and by filing a copy of such notice with the
10 commissioner, except that in appeals from the suspension or
11 revocation of the certificate of authority of a domestic
12 insurer or of the license of an agent, solicitor, or surplus
13 ~~line~~ lines agent, the person taking the appeal may at his
14 option, in lieu of the district court of Lewis and Clark
15 County, take the appeal to the district court of the county
16 of Montana in which the insurer has its principal place of
17 business or the licensee resides.

18 (2) Upon filing of the notice of appeal therein, the
19 court shall have full jurisdiction and shall determine
20 whether such filing shall operate as a stay of the order or
21 action appealed from, except that in the following instances
22 the filing of the notice of appeal shall automatically stay
23 the order appealed from pending the judgment of the district
24 court on the appeal:

25 (a) appeal from suspension or revocation of the

1 license of an agent, solicitor, or surplus ~~line~~ lines agent;

2 (b) appeal from suspension or revocation of the
3 certificate of authority of an insurer.

4 (3) Within 20 days after filing of the copy of the
5 notice of appeal in his office, the commissioner shall make
6 and return to the court in which the appeal is pending a
7 copy of his order appealed from and a full and complete
8 transcript, duly certified by the commissioner, of his
9 record of the hearing upon which the order was issued,
10 together with all exhibits and documentary evidence
11 introduced thereat. If the appeal is from an action of the
12 commissioner with respect to which a hearing was refused,
13 the commissioner shall within such 20-day period make and
14 return to the court a full and complete transcript, duly
15 certified by him, of all documents on file in his office
16 directly relating to the matter as to which such appeal is
17 taken.

18 (4) Upon receipt of such transcripts and evidence, the
19 court shall hear the matter de novo as soon as reasonably
20 possible thereafter. Upon the hearing of the appeal, the
21 court shall consider the evidence contained in the
22 transcript, exhibits, and documents therein filed by the
23 commissioner, together with such additional proper evidence
24 as may be offered by any party to the appeal.

25 (5) After hearing the appeal, the court may affirm,

1 modify, or reverse the order or action of the commissioner
2 in whole or in part or remand the action to the commissioner
3 for further proceedings in accordance with the court's
4 direction.

5 (6) Costs shall be awarded as in civil actions.

6 (7) Appeal may be taken to the supreme court from the
7 judgment of the district court as in other civil cases to
8 which the state is a party. A stay of the effectiveness of
9 any such judgment may be made only by order of the supreme
10 court upon the giving of such security as that court deems
11 proper.

12 (8) This section shall not apply to appeals as to
13 matters covered by chapter 16."

14 Section 25. Section 33-2-119, MCA, is amended to read:

15 "33-2-119. Suspension or revocation for violations and
16 special grounds. (1) The commissioner may, in his
17 discretion, suspend or revoke an insurer's certificate of
18 authority if, after a hearing thereon, he finds that the
19 insurer has:

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

23 (b) reinsured more than 90% of its risks, resident,
24 located, or to be performed in Montana, in another insurer.
25 In considering suspension or revocation, the commissioner

1 shall consider all relevant factors, including whether:

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

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

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

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

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

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

21 (d) with such frequency as to indicate its general
22 business practice in Montana, has without just cause refused
23 to pay proper claims arising under its policies, whether any
24 such claim is in favor of an insured or is in favor of a
25 third person with respect to the liability of an insured to

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

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

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

18 Section 26. Section 33-2-706, MCA, is amended to read:

19 "33-2-706. Report and tax of independently procured
20 coverages. (1) Every insured who in this state procures or
21 causes to be procured or continues or renews insurance in an
22 unauthorized foreign insurer or any self-insurer who in this
23 state so procures or continues excess loss, catastrophe, or
24 other insurance upon a subject of insurance resident,
25 located, or to be performed within this state, other than

1 insurance procured through a surplus line lines agent
 2 pursuant to The Surplus ~~Line~~ Lines Insurance Law or exempted
 3 from such law under 33-2-317, shall, within 30 days after
 4 the date such insurance was so procured, continued, or
 5 renewed, file a written report of the same with the
 6 commissioner on forms designated by the commissioner and
 7 furnished to such an insured upon request. The report shall
 8 show the name and address of the insured or insureds, name
 9 and address of the insurer, the subject of the insurance, a
 10 general description of the coverage, the amount of premium
 11 currently charged therefor, and such additional pertinent
 12 information as is reasonably requested by the commissioner.
 13 If any such insurance covers also a subject of insurance
 14 resident, located, or to be performed outside this state, a
 15 proper pro rata portion of the entire premium payable for
 16 all such insurance shall be allocated as to the subjects of
 17 insurance resident, located, or to be performed in this
 18 state, for the purposes of this section.

19 (2) Any insurance in an unauthorized insurer procured
 20 through negotiations or an application in whole or in part
 21 occurring or made within or from within this state or for
 22 which premiums in whole or in part are remitted directly or
 23 indirectly from within this state shall be deemed to be
 24 insurance procured or continued or renewed in this state
 25 within the intent of subsection (1) above.

1 (3) For the general support of the government of this
 2 state there is levied upon the obligation, chose in action,
 3 or right represented by the premium charged or payable for
 4 such insurance a tax at the rate of 2 3/4% of the gross
 5 amount of such premium. The insured shall withhold the
 6 amount of the tax from the amount of premium charged by and
 7 otherwise payable to the insurer for such insurance, and
 8 within 30 days after the insurance was so procured,
 9 continued, or renewed and coincidentally with the filing
 10 with the commissioner of the report provided for in
 11 subsection (1) above, the insured shall pay the amount of
 12 the tax to the state treasurer through the commissioner.

13 (4) If the insured fails to withhold from the premium
 14 the amount of tax herein levied, the insured shall be liable
 15 for the amount thereof and shall pay the same to the
 16 commissioner within the time stated in subsection (3) above.

17 (5) The tax imposed hereunder if delinquent shall bear
 18 interest at the rate of 6% per annum, compounded annually.

19 (6) The tax shall be collectable from the insured by
 20 civil action brought by the commissioner.

21 (7) This section does not abrogate or modify and shall
 22 not be construed or deemed to abrogate or modify any
 23 provision of 33-2-104 or 33-2-105 or any other provision of
 24 this code.

25 (8) This section does not apply as to life or

1 disability insurances."

2 Section 27. Section 33-2-708, MCA, is amended to read:

3 "33-2-708. Fees and licenses. (1) The commissioner
4 shall collect in advance and the persons so served shall so
5 pay to the commissioner the following fees and licenses:

6 (a) certificates of authority:

7 (i) for filing applications for original certificates
8 of authority, articles of incorporation (except original
9 articles of incorporation of domestic insurers as provided
10 in subsection (b) below) and other charter documents,
11 bylaws, financial statement, examination report, power of
12 attorney to the commissioner, and all other documents and
13 filings required in connection with such application and for
14 issuance of an original certificate of authority, if issued:

15 (A) domestic insurers \$ 30.00

16 (B) foreign insurers 300.00

17 (ii) annual continuation of certificate of authority ..
18 300.00

19 (iii) reinstatement of certificate of authority
20 25.00

21 (b) articles of incorporation:

22 (i) filing original articles of incorporation of
23 domestic insurer, exclusive of fees required to be paid by
24 the corporation to the secretary of state 20.00

25 (ii) filing amendment of articles of incorporation,

1 domestic and foreign insurers, exclusive of fees required to
2 be paid to the secretary of state by a domestic corporation
3 10.00

4 (c) filing bylaws or amendment thereto where required
5 5.00

6 (d) filing annual statement of insurer, other than as
7 part of application for original certificate of authority ..
8 25.00

9 (e) resident agent's license:

10 (i) application for original license, including
11 issuance of license, if issued (life and/or disability)
12 10.00

13 (ii) application for original license, including
14 issuance of license, if issued (other than life and/or
15 disability) 10.00

16 (iii) appointment of agent, each insurer 10.00

17 (iv) annual renewal, each insurer 10.00

18 (v) temporary license 10.00

19 (vi) amendment of license (excluding additions thereto)
20 or reissuance of master license 10.00

21 (f) nonresident agent's license:

22 (i) application for original license, including
23 issuance of license, if issued (life and/or disability)
24 100.00

25 (ii) application for original license, including

1 issuance of license, if issued (other than life and/or
2 disability) 100.00
3 (iii) appointment of agent, each insurer 10.00
4 (iv) annual renewal, each insurer 10.00
5 (v) amendment of license (excluding additions thereto)
6 or reissuance of master license 10.00
7 (g) solicitor's license:
8 (i) application for original license, including
9 issuance of license, if issued 5.00
10 (ii) annual renewal of license 5.00
11 (h) examination for license as agent or solicitor,
12 each examination 10.00
13 (i) surplus ~~line-agent's~~ lines agent license:
14 (i) application for original license and for issuance
15 of license, if issued 25.00
16 (ii) annual renewal of license 25.00
17 (j) adjuster's license:
18 (i) application for original license and for issuance
19 of license, if issued 10.00
20 (ii) annual renewal of license 10.00
21 (k) insurance vending machine license, each machine,
22 each year 10.00
23 (l) commissioner's certificate under seal (except when
24 on certificates of authority or licenses) 3.00
25 (m) copies of documents on file in the commissioner's

1 office, per page50
2 (n) policy forms:
3 (i) filing each policy form 25.00
4 (ii) filing each application, rider, endorsement,
5 amendment, insert page, schedule of rates, and clarification
6 of risks 10.00
7 (iii) maximum charge if policy and all forms submitted
8 at one time or resubmitted for approval within 180 days
9 50.00
10 (2) The commissioner shall promptly deposit with the
11 state treasurer to the credit of the general fund of this
12 state all fines and penalties and those amounts received
13 pursuant to 33-2-311, 33-2-705, and 33-2-706 collected by
14 him pursuant to Title 33 and the rules adopted thereunder.
15 (3) All fees are considered fully earned when
16 received. In the event of overpayment, only those amounts in
17 excess of \$10 will be refunded.
18 (4) All fees and examination and miscellaneous
19 charges, except fines or penalties or those amounts received
20 pursuant to 33-2-311, 33-2-705, or 33-2-706, collected by
21 the commissioner pursuant to Title 33 and the rules adopted
22 thereunder must be deposited in the insurance regulatory
23 trust account pursuant to 17-2-121 through 17-2-123."
24 Section 28. Section 33-17-1001, MCA, is amended to
25 read:

1 "33-17-1001. Suspension, revocation, or refusal of
 2 license. (1) Except as provided in 33-17-411, the
 3 commissioner may suspend for not more than 12 months or may
 4 revoke or refuse to continue any license issued under this
 5 chapter or any surplus ~~line~~ lines agent license if, after
 6 hearing held on not less than 20 days' advance notice by
 7 registered--or certified mail of such hearing and of the
 8 charges against the licensee given as provided in
 9 33-1-314(3) to the licensee and to the insurers represented,
 10 as to an agent, or to the appointing agent, as to a
 11 solicitor, he finds that as to the licensee any one or more
 12 of the following causes exist:

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

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

18 (c) for violation of or noncompliance with any
 19 applicable provision of this code or for willful violation
 20 of any lawful rule or order of the commissioner;

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

25 (e) conviction, by final judgment, of a felony

1 involving moral turpitude;

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

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

10 Section 29. Section 33-18-212, MCA, is amended to
 11 read:

12 "33-18-212. Illegal dealing in premiums -- improper
 13 charges for insurance. (1) No person shall willfully collect
 14 any sum as premium or charge for insurance, which insurance
 15 is not then provided or is not in due course to be provided
 16 (subject to acceptance of the risk by the insurer) by an
 17 insurance policy issued by an insurer as authorized by this
 18 code.

19 (2) No person shall willfully collect as premium or
 20 charge for insurance any sum in excess of or less than the
 21 premium or charge applicable to such insurance and, as
 22 specified in the policy, in accordance with the applicable
 23 classifications and rates as filed with and approved by the
 24 commissioner; or in cases where classifications, premiums,
 25 or rates are not required by this code to be so filed and

1 approved, such premiums and charges shall not be in excess
 2 of or less than those specified in the policy and as fixed
 3 by the insurer. This provision shall not be deemed to
 4 prohibit the charging and collection, by surplus ~~time~~ lines
 5 agents licensed under chapter 2, part 3, of the amount of
 6 applicable state and federal taxes in addition to the
 7 premium required by the insurer. It shall not be deemed to
 8 prohibit the charging and collection, by a life insurer, of
 9 amounts actually to be expended for medical examination of
 10 an applicant for life insurance or for reinstatement of a
 11 life insurance policy. The provision of this subsection does
 12 not prohibit the collection from an insured of a placement
 13 fee, not to exceed 7 1/2% of the annual premium, for a
 14 placement through the state compensation insurance fund by a
 15 duly licensed casualty insurance agent. This placement fee
 16 is not a premium as defined in 33-15-102.

17 (3) Each violation of this section shall be punishable
 18 under 33-1-104."

19 NEW SECTION. Section 30. Extension of authority. Any
 20 existing authority of the commissioner of insurance to make
 21 rules on the subject of the provisions of this act is
 22 extended to the provisions of this act.

23 NEW SECTION. Section 31. Codification instruction.
 24 Sections 2, 9, 10, and 19 are intended to be codified as an
 25 integral part of Title 33, chapter 2, part 3, and the

1 provisions of Title 33, chapter 2, part 3, apply to sections
 2 2, 9, 10, and 19.

3 NEW SECTION. Section 32. Saving clause. This act does
 4 not affect rights and duties that matured, penalties that
 5 were incurred, or proceedings that were begun before the
 6 effective date of this act.

7 NEW SECTION. Section 33. Severability. If a part of
 8 this act is invalid, all valid parts that are severable from
 9 the invalid part remain in effect. If a part of this act is
 10 invalid in one or more of its applications, the part remains
 11 in effect in all valid applications that are severable from
 12 the invalid applications.

13 NEW SECTION. Section 34. Effective date. This act is
 14 effective on passage and approval.

-End-

APPROVED BY COMM. ON BUSINESS AND LABOR

1 INTRODUCED BY House BILL NO. 771
2 McEwen
3 BY REQUEST OF THE STATE AUDITOR

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE LAWS
6 RELATING TO THE AUTHORIZATION OF SURPLUS LINES INSURERS,
7 AGENTS, AND INSURANCE; AMENDING SECTIONS 33-1-402, 33-1-614,
8 33-1-711, 33-2-119, 33-2-301 THROUGH 33-2-317, 33-2-706,
9 33-2-708, 33-17-1001, AND 33-18-212, MCA; AND PROVIDING AN
10 IMMEDIATE EFFECTIVE DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 33-2-301, MCA, is amended to read:
14 "33-2-301. Short title -- purpose. (1) This part
15 constitutes and may be referred to as "The Surplus Line
16 Lines Insurance Law".

17 (2) This part must be liberally construed and applied
18 to:

19 (a) protect persons seeking insurance in this state;

20 (b) permit surplus lines insurance to be placed with
21 reputable and financially sound unauthorized insurers and to
22 be exported from this state pursuant to this part;

23 (c) establish a system of regulation that will permit
24 orderly access to surplus lines insurance in this state and
25 encourage authorized insurers to provide new and innovative

1 types of insurance to consumers in this state; and
2 (d) protect revenues of this state."

3 NEW SECTION. Section 2. Definitions. As used in [this
4 part], the following definitions apply:

5 (1) "Authorized insurer" means an insurer authorized
6 pursuant to 33-2-101 to transact insurance in this state.

7 (2) "Eligible surplus lines insurer" means an
8 unauthorized insurer with which a surplus lines agent may
9 place surplus lines insurance under 33-2-307.

10 (3) "Export" means to place surplus lines insurance
11 with an unauthorized insurer.

12 (4) "Kind of insurance" means one of the types of
13 insurance required to be reported in the annual statement
14 filed with the commissioner by an authorized insurer.

15 (5) "Producing agent" means the individual agent
16 dealing directly with the person seeking insurance.

17 (6) "Surplus lines agent" means an individual,
18 partnership, or corporation licensed under 33-2-305 to place
19 surplus lines insurance (on risks resident, located, or to
20 be performed in this state) with unauthorized insurers
21 eligible to accept such insurance.

22 (7) "Surplus lines insurance" means any insurance (on
23 risks resident, located, or to be performed in this state)
24 permitted to be placed through a surplus lines agent with an
25 unauthorized insurer eligible to accept the insurance. The



1 term does not include the kinds of insurance exempted under
2 [section 21].

3 (8) "Unauthorized insurer" means an insurer not
4 authorized pursuant to 33-2-101 to transact insurance in
5 this state. The term includes insurance exchanges authorized
6 under the laws of other states.

7 Section 3. Section 33-2-302, MCA, is amended to read:

8 "33-2-302. Conditions precedent to sale of surplus
9 ~~line lines~~ insurance ~~---agent's affidavit. (i)-if-certain~~
10 ~~insurance--coverages--cannot--be--procured--from--authorized~~
11 ~~insurers,--such--coverages,--hereinafter-designated--"surplus~~
12 ~~lines",--may-be-procured-from-unauthorized--insurers--subject~~
13 ~~to-the-following-conditions:~~

14 ~~(a)--The--insurance--must--be--procured--through--a--licensed~~
15 ~~surplus-line-agent;~~

16 ~~(b)--The--full--amount--of--insurance--required--must--not--be~~
17 ~~procurable,--after--diligent--effort--has--been--made--to--do--so,~~
18 ~~from--a--majority--of--the--insurers--authorized--to--transact--that~~
19 ~~kind--and--class--of--insurance--in--this--state,--and--the--amount--of~~
20 ~~insurance--placed--in--an--unauthorized--insurer--shall--be--only~~
21 ~~the--excess--over--the--amount--procurable--from--authorized~~
22 ~~insurers. Insurance may be procured through a licensed~~
23 ~~surplus lines agent from an unauthorized insurer if:~~

24 ~~(1) the insurer is an eligible surplus lines insurer;~~

25 ~~(2) the full amount or kind of insurance cannot be~~

1 obtained from authorized insurers. The full amount or kind
2 of insurance may be procured from an eligible surplus lines
3 insurer if the agent makes a diligent search among the
4 insurers who are authorized to transact and are actually
5 writing the particular kind and class of insurance in this
6 state and cannot obtain the full amount or kind of insurance
7 from an authorized insurer.

8 ~~(c)(3) The the insurance must is not be so procured~~
9 ~~for the purpose of securing advantages either as to:~~

10 ~~(i)(a) a lower premium rate than would be accepted by~~
11 ~~an authorized insurer; or~~

12 ~~(ii)(b) terms of the insurance contract; and~~

13 ~~(2)--At--the--time--of--procuring,--effecting,--and--issuing~~
14 ~~any--such--insurance,--the--surplus--line--agent--shall--execute--an~~
15 ~~affidavit,--in--form--as--prescribed--or--accepted--by--the~~
16 ~~commissioner,--setting--forth--facts--referred--to--in--subsection~~
17 ~~(i)--and--file--such--affidavit--with--the--commissioner.~~
18 ~~Affidavits--filed--under--this--subsection--shall--be--subject--to~~
19 ~~public--inspection--unless--the--commissioner--determines--that~~
20 ~~the--public--interest--requires--otherwise.~~

21 ~~(4) all other requirements of this part are met."~~

22 Section 4. Section 33-2-303, MCA, is amended to read:

23 "33-2-303. Endorsement Filing and endorsement of
24 contract. Every insurance contract, cover, note, or
25 certificate of insurance procured and delivered as a surplus

1 ~~line--coverage~~ lines insurance under this law part shall be
 2 filed with the commissioner and endorsed as having--been
 3 "issued in an unauthorized insurer under The Surplus line
 4 Lines Insurance Law, under agent's agent license No."
 5 and "NOT covered by the property and casualty guaranty fund
 6 of this state if the unauthorized insurer becomes
 7 insolvent". The surplus ~~line~~ lines agent shall properly fill
 8 in and sign the endorsement."

9 Section 5. Section 33-2-304, MCA, is amended to read:
 10 "33-2-304. Surplus ~~line~~ lines insurance valid.
 11 Insurance contracts procured as "surplus line"-coverages
 12 lines insurance from unauthorized insurers in accordance
 13 with this law shall be fully valid and enforceable as to all
 14 parties and shall be given acceptance and recognition in all
 15 matters and respects to the same effect as like contracts
 16 issued by authorized insurers."

17 Section 6. Section 33-2-305, MCA, is amended to read:
 18 "33-2-305. Licensing of surplus ~~line~~ lines agent --
 19 fee and bond. Any--person,--while--licensed--as--a--resident
 20 insurance--agent--of--this--state--as--to--property,--casualty,--and
 21 surety--insurances--and--who--is--deemed--by--the--commissioner--to
 22 be--qualified--therefor--by--insurance--experience--and--to--be
 23 trustworthy,--may--be--licensed--as--a--surplus--line--agent--as
 24 follows:

25 ~~(1)~~ Application--to--the--commissioner--for--the--license

1 ~~shall--be--made--on--forms--furnished--by--the--commissioner,--~~

2 ~~(2)~~ license--fee--in--the--amount--stated--in--33-2-700--shall
 3 be--paid--to--the--commissioner.--The--license--shall--expire--on--the
 4 April--1--next--after--its--date--of--issue: (1) An agent licensed
 5 by this state may not procure a contract of surplus lines
 6 insurance with an unauthorized insurer unless the agent is
 7 licensed as a resident property, casualty, and surety
 8 insurance agent and possesses a current surplus lines
 9 insurance license issued by the commissioner.

10 ~~(2)~~ The commissioner shall issue a surplus lines
 11 license to any qualified holder of a current property,
 12 casualty, and surety insurance agent license only if the
 13 agent has:

14 (a) remitted to the commissioner the annual fee
 15 prescribed by 33-2-708;

16 (b) submitted to the commissioner a completed license
 17 application on a form supplied by the commissioner;

18 (c) been licensed as a property, casualty, and surety
 19 insurance agent continuously for 5 years or more; and

20 ~~(3)~~ (d) Prior--to--issuance--of--license,--the--applicant
 21 shall--file filed with the commissioner and thereafter for as
 22 long as the license remains in effect he shall keep kept in
 23 force a bond in favor of the state of Montana in the penal
 24 sum amount of \$2,000 \$10,000, with authorized corporate
 25 sureties approved by the commissioner. The bond shall must

1 be conditioned that the agent will conduct business under
 2 the license in accordance with the provisions of The Surplus
 3 ~~Line~~ Lines Insurance Law and that he will promptly remit the
 4 taxes provided by such law. The bond ~~shall~~ may not be
 5 terminated unless the surety gives the surplus lines agent,
 6 the producing agent, and the commissioner at least 30 days'
 7 prior written notice thereof ~~is filed with the commissioner.~~

8 (3) The license expires on April 1 after its date of
 9 issue. A surplus lines agent shall renew the license on or
 10 before March 1 of each year upon payment of the annual
 11 renewal fee prescribed in 33-2-708. A surplus lines agent
 12 who fails to apply for a renewal of the license on or before
 13 March 1 shall pay a fine of \$100 before the commissioner
 14 renews the license.

15 (4) A corporation is eligible to be a resident surplus
 16 lines agent if:

17 (a) the corporate license lists the individuals within
 18 the corporation who have satisfied the requirements of this
 19 part to become surplus lines agents; and

20 (b) only those individuals listed on the corporate
 21 license transact surplus lines business."

22 Section 7. Section 33-2-306, MCA, is amended to read:

23 "33-2-306. Agent's authority under license --
 24 acceptance of business from other agents -- placement fee.
 25 (1) Under a surplus ~~line-agent's~~ lines agent license the

1 licensee ~~shall have the right to~~ may place surplus ~~line~~
 2 coverages lines insurance, in compliance with The Surplus
 3 ~~Line~~ Lines Insurance Law, with any foreign or alien insurer
 4 or insurers not otherwise authorized to transact insurance
 5 in this state and as to such coverages to act as agent in
 6 this state for such insurer or insurers.

7 (2) The surplus ~~line~~ lines agent may accept surplus
 8 ~~line-business~~ lines insurance from any duly licensed agent
 9 of an authorized insurer and may compensate him therefor.

10 (3) A surplus lines agent who places or renews surplus
 11 lines insurance in accordance with subsection (1) may
 12 collect a placement fee of 0.5% of the premium charged to
 13 cover the costs of issuing and servicing the policy. The
 14 fee may not be less than \$10 or more than \$100."

15 Section 8. Section 33-2-307, MCA, is amended to read:

16 "33-2-307. ~~Surplus---lines---in---solvent---insurers.~~
 17 Requirements for eligible surplus lines insurers. A surplus
 18 line-agent shall not knowingly place surplus line--insurance
 19 with insurers unsound financially. The agent shall ascertain
 20 the--financial--condition-of-the-unauthorized-insurer-before
 21 placing insurance therewith. The agent shall so insure--only
 22 either:

23 (1)--with--an-insurer-which-is-an-authorized-insurer-in
 24 at-least-one-state-of-the-United--States--for--the--kind--of
 25 insurance--involved--and--which--meets--the--requirements-of

~~33-2-109 and 33-2-110, as applicable, or~~

~~(2) with an alien insurer, other than one qualified under (1) above, which has an established and effective trust fund of at least \$1 million within the United States administered by a recognized financial institution and held for the benefit of all its policyholders in the United States or policyholders and creditors in the United States.~~

(1) A surplus lines agent may not place insurance with an unauthorized insurer unless, at the time of placement, the unauthorized insurer:

(a) has established satisfactory evidence of good reputation and financial integrity; and

(b) is qualified under one of the following subsections:

(i) the insurer maintains capital and surplus or its equivalent under the laws of its state of domicile, which equals the greater of:

(A) the minimum capital and surplus requirements of 33-2-109 and 33-2-110; or

(B) \$2.5 million 1 year after [the effective date of this act] and \$3.5 million 3 years after [the effective date of this act]. After 3 year from [the effective date of this act], an insurer possessing less than \$4 million subcapital and surplus may satisfy the requirements of this subsection upon an affirmative finding of acceptability by the

commissioner. The commissioner's finding must be based upon such factors as quality of management, capital, and surplus of a parent company; company underwriting profit and investment income trends; and company record and reputation within the industry. The commissioner may not make an affirmative finding of acceptability when the surplus lines insurer's capital and surplus is less than \$3 million.

(ii) in the case of Lloyd's or another similar unincorporated group of alien individual insurers, the insurer maintains a trust fund of not less than \$50 million as security to the full amount thereof for all policyholders and creditors in the United States of each member of the group. The trust must comply with the terms and conditions established in subsection (1)(b)(iv) for alien insurers.

(iii) in the case of an insurance exchange created by the laws of individual states, the insurer maintains capital and surplus, or their substantial equivalent, of not less than \$15 million in the aggregate. For an insurance exchange that maintains funds for the protection of each insurance exchange policyholder, each individual syndicate shall maintain minimum capital and surplus, or their substantial equivalent, of not less than \$1.5 million. If the insurance exchange does not maintain funds for the protection of each insurance exchange policyholder, each individual syndicate shall meet the minimum capital and surplus requirements of

1 subsection (1)(b)(i).

2 (iv) in the case of an alien insurer, the insurer
 3 maintains in the United States an irrevocable trust fund in
 4 either a national bank or a member of the federal reserve
 5 system, in an amount not less than \$1.5 million, for the
 6 protection of all its policyholders in the United States and
 7 such trust fund consists of cash, securities, or letters of
 8 credit or of investments of substantially the same character
 9 and quality as those which are eligible investments for the
 10 capital and statutory reserves of insurers authorized to
 11 write like kinds of insurance in this state. Such trust
 12 fund, which must be included in any calculation of capital
 13 and surplus or its equivalent, must have an expiration date
 14 which at no time may be less than 5 years. In addition, the
 15 alien insurer must appear on the national association of
 16 insurance commissioners' Non-Admitted Insurers Quarterly
 17 Listing.

18 (c) has provided the commissioner a copy of its
 19 current annual statement, certified by the insurer no more
 20 than 6 months after the close of the period reported upon
 21 (or quarterly if considered necessary by the commissioner),
 22 and which is either:

23 (i) filed with and approved by the regulatory
 24 authority in the state of domicile of the unauthorized
 25 insurer; or

1 (ii) certified by an accounting or auditing firm
 2 licensed in the jurisdiction of the insurer's state of
 3 domicile.

4 (2) In the case of an insurance exchange, the
 5 statement required by subsection (1)(c) may be an aggregate
 6 combined statement of all underwriting syndicates operating
 7 during the period reported.

8 (3) In addition to meeting the requirements in
 9 subsection (1), an insurer is an eligible surplus lines
 10 insurer only if it appears on the most recent list of
 11 eligible surplus lines insurers published at least
 12 semiannually by the commissioner. This subsection does not
 13 require the commissioner to place or maintain the name of
 14 any unauthorized insurer on the list of eligible surplus
 15 lines insurers. No action may lie against the commissioner
 16 or an employee of the commissioner for anything said in
 17 issuing the list of eligible surplus lines insurers referred
 18 to in this subsection.

19 (4) As used in this section, the following definitions
 20 apply:

21 (a) "Capital", as used in the financial requirements
 22 of 33-2-307, means funds invested in for stocks or other
 23 evidences of ownership.

24 (b) "Surplus", as used in the financial requirements
 25 of 33-2-307, means funds over and above liabilities and

1 capital of the insurer for the protection of policyholders."

2 NEW SECTION. Section 9. Withdrawal of eligibility
3 from a surplus lines insurer. (1) The commissioner may
4 declare an eligible surplus lines insurer ineligible if at
5 any time the commissioner has reason to believe that it:

- 6 (a) is in unsound financial condition;
 - 7 (b) is no longer eligible under 33-2-307;
 - 8 (c) has willfully violated the laws of this state; or
 - 9 (d) does not make reasonably prompt payment of just
- 10 losses and claims in this state or elsewhere.

11 (2) The commissioner shall promptly mail notice of all
12 such declarations to each surplus lines agent.

13 NEW SECTION. Section 10. Surplus lines advisory
14 organizations -- examination by commissioner. (1) A surplus
15 lines advisory organization of surplus lines agents may be
16 formed to:

17 (a) facilitate and encourage compliance by its members
18 with the laws of this state and the rules and regulations of
19 the commissioner relative to surplus lines insurance;

20 (b) provide means for the confidential examination of
21 all surplus lines insurance written by its members to
22 determine whether such insurance complies with this part;

23 (c) communicate with organizations of authorized
24 insurers with respect to the proper use of the surplus lines
25 market; and

1 (d) receive and disseminate to its members information
2 relative to surplus lines insurance.

3 (2) Each advisory organization shall file with the
4 commissioner:

5 (a) a copy of its constitution, its articles of
6 agreement or association, or its certificate of
7 incorporation;

8 (b) a copy of its bylaws, rules, and regulations
9 governing its activities;

10 (c) a current list of its members;

11 (d) the name and address of a resident of this state
12 upon whom notices or orders of the commissioner or processes
13 issued at his direction may be served; and

14 (e) an agreement that the commissioner may examine the
15 advisory organization under the provisions of subsection
16 (3).

17 (3) The commissioner may make or cause to be made an
18 examination of each advisory organization. The reasonable
19 cost of an examination shall be paid by the advisory
20 organization upon presentation to it by the commissioner of
21 a detailed account of such cost. The officers, managers,
22 agents, and employees of the advisory organization may be
23 examined at any time, under oath, and shall exhibit all
24 books, records, accounts, documents, or agreements governing
25 its method of operation. The commissioner shall furnish two

1 copies of the examination report to the examined advisory
 2 organization and shall notify the organization that it may,
 3 within 20 days of receipt of the report, request a hearing
 4 on the report or on any facts or recommendations contained
 5 in it. If the commissioner finds the advisory organization
 6 or any of its members to be in violation of this part, he
 7 may issue an order requiring the discontinuance of the
 8 violation.

9 (4) The commissioner may by order compel a surplus
 10 lines agent to join an advisory organization as a condition
 11 of continued licensure under this part.

12 Section 11. Section 33-2-308, MCA, is amended to read:

13 "33-2-308. Evidence of the insurance -- changes --
 14 penalty. (1) Upon placing a surplus ~~line--coverage~~ lines
 15 insurance, the surplus ~~line~~ lines agent shall promptly issue
 16 and deliver to the insured or the producing agent evidence
 17 of the insurance, consisting either of the policy as issued
 18 by the insurer or, if such policy is not then available, a
 19 cover note or certificate of insurance signed or
 20 countersigned by the agent. Such cover note or certificate
 21 ~~shall~~ must show the subject, coverage, conditions, and term
 22 of the insurance, the premium charged and taxes collected
 23 from the insured, and the name and address of the insurer.
 24 If the direct risk is assumed by more than one insurer, the
 25 cover note or certificate ~~shall~~ must state the name and

1 address and proportion of the entire direct risk assumed by
 2 each such insurer.

3 (2) If after the issuance and delivery of any such
 4 cover note or certificate there is any change as to the
 5 identity of the insurers or the proportion of the direct
 6 risk assumed by the insurer as stated in the original cover
 7 note or certificate or in any other material respect as to
 8 the insurance coverage evidenced by the cover note or
 9 certificate, the agent shall promptly issue and deliver to
 10 the insured a substitute cover note or certificate
 11 accurately showing the current status of the coverage and
 12 the insurers responsible thereunder.

13 (3) If a policy issued by the insurer is not available
 14 upon placement of the insurance and the agent has issued and
 15 delivered a cover note or certificate as hereinabove
 16 provided, upon request therefor by the insured, the agent
 17 shall as soon as reasonably possible procure from the
 18 insurer its policy evidencing such insurance and deliver
 19 such policy to the insured in replacement of the cover note
 20 or certificate theretofore issued.

21 (4) Any surplus ~~line~~ lines agent who knowingly or
 22 negligently issues or delivers a false cover note or
 23 certificate of insurance or fails promptly to notify the
 24 insured of any material change with respect to such
 25 insurance by delivery to the insured of a substitute cover

1 note or certificate as provided in subsection (2) shall be
 2 guilty of a violation of this code and upon conviction shall
 3 be subject to the penalties provided by 33-1-104 or to any
 4 greater applicable penalty otherwise provided by law.

5 (5) A surplus lines agent may not issue or deliver any
 6 evidence of insurance or purport to insure or represent that
 7 insurance will be or has been written by any eligible
 8 surplus lines insurer unless he has authority from the
 9 insurer to cause the risk to be insured or has received
 10 information from the insurer in the regular course of
 11 business that such insurance has been granted."

12 Section 12. Section 33-2-309, MCA, is amended to read:

13 "33-2-309. Liability of insurer as to losses and
 14 unearned premiums. (1) As to a surplus ~~line~~ lines risk which
 15 has been assumed by an unauthorized insurer pursuant to ~~this~~
 16 ~~surplus-lines-insurance-law~~ The Surplus Lines Insurance Law
 17 and if the premium thereon has been received by the surplus
 18 ~~line~~ lines agent who placed such insurance, in all questions
 19 thereafter arising under the coverage as between the insurer
 20 and the insured, the insurer shall be deemed to have
 21 received the premium due to it for such coverage. The
 22 insurer shall be liable to the insured as to losses covered
 23 by such insurance and for unearned premiums which may become
 24 payable to the insured upon cancellation of such insurance,
 25 whether or not in fact the agent is indebted to the insurer

1 with respect to such insurance or for any other cause. This
 2 provision shall not affect rights as between the insurer and
 3 the surplus ~~line~~ lines agent.

4 (2) A payment of premium to a surplus lines agent
 5 acting for a person other than himself in negotiating,
 6 continuing, or reviewing a policy of insurance under this
 7 part is considered to be payment to the insurer,
 8 notwithstanding any conditions or stipulations that may be
 9 inserted in the policy or contract.

10 ~~(2)~~(3) Each unauthorized insurer assuming a surplus
 11 lines direct risk under ~~this--surplus--line--insurance--law~~
 12 ~~shall---be---deemed~~ The Surplus Lines Insurance Law is
 13 considered thereby to have subjected itself to the terms of
 14 this section."

15 Section 13. Section 33-2-310, MCA, is amended to read:

16 "33-2-310. Records and annual statement -- affidavit.

17 (1) Each surplus ~~line~~ lines agent shall keep a separate
 18 record and account of all business transacted under his
 19 license, including a copy of each daily report, if any, and
 20 of each policy, certificate of insurance, cover note, or
 21 other evidence of insurance issued by him. The records ~~shall~~
 22 must be available for examination by the commissioner at any
 23 reasonable time within 5 years after the issuance of the
 24 coverage surplus lines insurance to which it relates.

25 (2) Prior to April 1 of each year the agent shall file

1 with the commissioner a statement for the calendar year
2 preceding, showing:

3 (a) name and address of each insured for whom surplus
4 ~~line~~ lines insurance was procured;

5 (b) name and home office address of each insurer
6 providing ~~such the surplus lines~~ insurance;

7 (c) amount of each ~~such--coverage~~ surplus lines
8 insurance policy, the premium rate, and the gross premium
9 charged therefor;

10 (d) date and term of the policy;

11 (e) amount of premium returned on each policy canceled
12 or not taken; and

13 (f) amount of tax and other sums to be collected from
14 the insured;

15 (g) identity of the producing agent;

16 (h) the application and any correspondence from the
17 surplus lines insurer or its representative; and

18 ~~(f)(i)~~ (i) such additional information as the commissioner
19 may reasonably require.

20 (3) Each producing agent shall execute and each
21 surplus lines agent shall file an affidavit, on a
22 standardized form furnished by the commissioner, as to the
23 diligent efforts to place the coverage with authorized
24 insurers and the results of such efforts. An affidavit filed
25 under this subsection is subject to public inspection unless

1 the commissioner determines that the public interest
2 requires otherwise. The producing agent shall state in the
3 affidavit that he has expressly advised the insured in
4 writing prior to placing the insurance that:

5 (a) the surplus lines insurer with whom the insurance
6 is placed is not authorized in this state and is not subject
7 to the same supervision as an authorized insurer; and

8 (b) in the event of the insolvency of the surplus
9 lines insurer, the property and casualty guaranty fund of
10 the state will not pay losses under the surplus lines
11 coverage."

12 Section 14. Section 33-2-311, MCA, is amended to read:

13 "33-2-311. Tax on surplus lines. There is imposed upon
14 premiums collected for surplus ~~line~~ lines insurance
15 transacted in this state a tax at the same rate and computed
16 in the same manner as provided in subsection (2)(b)(i) of
17 33-2-705 as to premiums of authorized insurers, except that
18 amounts collected from the insured specifically for
19 applicable state and federal taxes, and in excess of the
20 premium otherwise required, ~~shall--not--be--deemed~~ are not
21 considered to be part of the premium for the purposes of
22 such computation. Upon filing of the annual statement
23 referred to in 33-2-310(2), the surplus ~~line~~ lines agent
24 shall pay to the commissioner the amount of tax owing as to
25 surplus ~~line~~ lines insurance business transacted by him

1 during the preceding calendar year. If a surplus ~~line~~ lines
 2 insurance policy covers ~~risk risks~~ or exposures only
 3 partially in this state, the tax payable ~~shall~~ must be
 4 computed upon the proportion of the premium which is
 5 properly allocable to the risks or exposures located in this
 6 state."

7 Section 15. Section 33-2-312, MCA, is amended to read:

8 "33-2-312. Penalty for failure to file statement or
 9 pay tax. Every surplus ~~line~~ lines agent who fails to make
 10 and file the annual statement as required under 33-2-310 or
 11 to pay the taxes as required under 33-2-311 ~~shall-be~~ is
 12 liable to a penalty of \$25 for each day of delinquency,
 13 commencing with April 1. The tax and penalty may be
 14 recovered in an action instituted by the commissioner in the
 15 name of the state in any court of competent jurisdiction,
 16 the attorney general representing him. The penalty when
 17 collected shall be paid to the state treasurer and placed to
 18 the credit of the general fund. The surplus ~~line--agent's~~
 19 lines agent license ~~shall~~ is also be subject to revocation
 20 as provided in 33-2-313."

21 Section 16. Section 33-2-313, MCA, is amended to read:

22 "33-2-313. Revocation or suspension of agent's agent
 23 license. (1) The commissioner shall revoke or suspend any
 24 surplus ~~line~~ lines agent's agent license, together with his
 25 license as an insurance agent ~~or-solicitor~~:

1 (a) if the agent fails to file his annual statement or
 2 to remit the tax as required by law;

3 (b) if the agent fails to keep the records or to allow
 4 the commissioner to examine his records, as required by law;

5 (c) if the agent falsifies the affidavit required by
 6 ~~33-2-302(2)~~ 33-2-310(3); or

7 (d) if the agent removes the resident surplus lines
 8 agent office from this state;

9 (e) if the agent removes the resident surplus lines
 10 agent office accounts and records from this state during the
 11 period during which the accounts and records are required to
 12 be maintained under 33-2-310(1);

13 (f) if the agent closes the resident surplus lines
 14 agent office for a period of more than 30 business days,
 15 unless the commissioner grants permission otherwise;

16 (g) if the agent violates any provision of this part;
 17 or

18 (d)(h) for any of the causes for which an insurance
 19 agent's license may be revoked.

20 (2) The procedures provided by 33-17-1001 for the
 21 suspension or revocation of agents' agent licenses ~~shall-be~~
 22 applicable apply to suspension or revocation of a surplus
 23 line-agent's lines agent license.

24 (3) ~~No~~ An agent whose license has been so revoked or
 25 suspended ~~shall~~ may not again be so licensed within 1 year

1 thereafter or until he pays all penalties and delinquent
2 taxes ~~owing-by-him-have-been-paid~~ that he owes."

3 Section 17. Section 33-2-314, MCA, is amended to read:

4 "33-2-314. Actions against insurer -- venue ---~~service~~
5 ~~of-process~~. Every unauthorized insurer issuing a surplus
6 ~~line-coverage lines insurance policy~~ under this ~~surplus-line~~
7 ~~insurance-law-shall-be-deemed~~ part is considered to be doing
8 business in this state as an ~~unticensed unauthorized~~ insurer
9 and may be sued in this state upon any cause of action
10 arising under any insurance contract so made by it. Such
11 suit ~~shall must~~ be brought in the district court of the
12 county wherein the plaintiff resides."

13 Section 18. Section 33-2-315, MCA, is amended to read:

14 "33-2-315. Commissioner appointed process agent --
15 service of process. (1) Every surplus ~~line lines~~ insurer
16 before ~~insuring-as-such~~ transacting surplus lines insurance
17 under this ~~law part~~ shall in writing appoint the
18 commissioner as its true and lawful attorney upon whom legal
19 process in any action or proceeding against it in this state
20 shall be served and in such writing shall agree that any
21 such process served upon such attorney shall be of the same
22 legal force and validity as if served in this state upon
23 such insurer and that such authority shall continue in force
24 so long as any liability remains outstanding against it in
25 this state. At the time of filing such appointment, the

1 insurer shall also file designation of the name and address
2 of the person to whom process against it served upon the
3 commissioner is to be forwarded. The insurer may change such
4 designation by a new filing.

5 (2) Service upon such an insurer ~~shall must~~ be made
6 upon the commissioner and in accordance with the procedures,
7 requirements, and results as provided under 33-1-603."

8 NEW SECTION. Section 19. Penalties. A surplus lines
9 agent who in this state represents or aids an unauthorized
10 insurer in violation of this part is guilty of a misdemeanor
11 and shall be fined not more than \$1,000 or be imprisoned in
12 the county jail for a term no longer than 6 months, or both.

13 Section 20. Section 33-2-316, MCA, is amended to read:

14 "33-2-316. Rules. (1) The commissioner shall make or
15 may approve and adopt reasonable rules, consistent with this
16 ~~surplus-line-insurance-law part~~, for any or all of the
17 following purposes:

18 (a) effectuation of ~~such-law~~ The Surplus Lines
19 Insurance Law;

20 (b) establishment of procedures through which
21 determination is to be made as to the eligibility of
22 particular proposed coverages for placement with a surplus
23 line lines insurer or insurers; and

24 (c) establishment, procedures, and operations of any
25 voluntary organization of surplus ~~line lines~~ insurance

1 agents or others designed to assist such agents to comply
2 with such law.

3 (2) Such rules shall be subject to the procedures and
4 carry the penalty provided by 33-1-313."

5 Section 21. Section 33-2-317, MCA, is amended to read:

6 "33-2-317. Exemptions. The provisions of this surplus
7 ~~line~~ lines insurance law controlling the ~~placing~~ placement
8 of insurance with unauthorized insurers ~~shall~~ does not apply
9 to reinsurance or to the following insurances when so placed
10 by a licensed insurance agents agent of this state:

11 (1) wet marine and transportation insurances;

12 (2) insurance on subjects located, resident, or to be
13 performed wholly outside of this state or on vehicles or
14 aircraft owned and principally garaged outside this state;

15 (3) insurance on property or operations of railroads
16 engaged in interstate commerce; and

17 (4) insurance of aircraft owned or operated by
18 manufacturers of aircraft or aircraft operated in scheduled
19 interstate flight or cargo of such aircraft or against
20 liability, other than workers' compensation and employers'
21 liability, arising out of the ownership, maintenance, or use
22 of such aircraft."

23 Section 22. Section 33-1-402, MCA, is amended to read:

24 "33-1-402. Examination of agents, managers, and
25 promoters. For the purpose of ascertaining compliance with

1 this code, the commissioner may as often as he deems
2 advisable examine the accounts, records, documents, and
3 transactions pertaining to or affecting its insurance
4 affairs or proposed insurance affairs of:

5 (1) any insurance agent, solicitor, surplus ~~line~~ lines
6 agent, general agent, or adjuster;

7 (2) any person having a contract under which he enjoys
8 in fact the exclusive or dominant right to manage or control
9 an insurer;

10 (3) any person holding the shares of voting stock or
11 policyholder proxies of a domestic insurer, for the purpose
12 of controlling the management thereof, as voting trustee or
13 otherwise;

14 (4) any person engaged in or proposing to be engaged
15 in or assisting in the promotion or formation of a domestic
16 insurer or insurance holding corporation or corporation to
17 finance a domestic insurer or the production of its
18 business."

19 Section 23. Section 33-1-614, MCA, is amended to read:

20 "33-1-614. Exemptions from service of process
21 provisions. Sections 33-1-611 through 33-1-613 shall not
22 apply to:

23 (1) surplus ~~line~~ lines insurance lawfully effectuated
24 under part 3, chapter 2;

25 (2) reinsurance; or

1 (3) any action or proceeding against an unauthorized
2 insurer arising out of:

3 (a) wet marine and transportation insurance;

4 (b) insurance on or with respect to subjects located,
5 resident, or to be performed wholly outside this state or on
6 or with respect to vehicles or aircraft owned and
7 principally garaged outside this state;

8 (c) insurance on property or operations of railroads
9 engaged in interstate commerce; or

10 (d) insurance on aircraft or cargo of such aircraft or
11 against liability, other than employer's liability, arising
12 out of the ownership, maintenance, or use of such aircraft,
13 where the policy or contract contains a provision
14 designating the commissioner as its attorney for the
15 acceptance of service of lawful process in any action or
16 proceeding instituted by or on behalf of an insured or
17 beneficiary arising out of any such policy or where the
18 insurer enters a general appearance in any such action."

19 Section 24. Section 33-1-711, MCA, is amended to read:

20 "33-1-711. Appeals from the commissioner. (1) An
21 appeal from the commissioner shall be taken only from an
22 order on hearing or with respect to a matter as to which the
23 commissioner has refused a hearing. Any person who was a
24 party to such hearing or whose pecuniary interests are
25 directly and immediately affected by any such order or

1 refusal and who is aggrieved thereby may, within 30 days
2 after the order has been mailed or delivered to the persons
3 entitled to receive the same, the commissioner's order
4 denying rehearing or reargument has been so mailed or
5 delivered, or the commissioner's refusal to grant a hearing,
6 appeal from such order on hearing or such refusal of a
7 hearing. The appeal shall be taken to the district court of
8 Lewis and Clark County by filing written notice of appeal in
9 such court and by filing a copy of such notice with the
10 commissioner, except that in appeals from the suspension or
11 revocation of the certificate of authority of a domestic
12 insurer or of the license of an agent, solicitor, or surplus
13 ~~line~~ lines agent, the person taking the appeal may at his
14 option, in lieu of the district court of Lewis and Clark
15 County, take the appeal to the district court of the county
16 of Montana in which the insurer has its principal place of
17 business or the licensee resides.

18 (2) Upon filing of the notice of appeal therein, the
19 court shall have full jurisdiction and shall determine
20 whether such filing shall operate as a stay of the order or
21 action appealed from, except that in the following instances
22 the filing of the notice of appeal shall automatically stay
23 the order appealed from pending the judgment of the district
24 court on the appeal:

25 (a) appeal from suspension or revocation of the

1 license of an agent, solicitor, or surplus ~~line~~ lines agent;

2 (b) appeal from suspension or revocation of the
3 certificate of authority of an insurer.

4 (3) Within 20 days after filing of the copy of the
5 notice of appeal in his office, the commissioner shall make
6 and return to the court in which the appeal is pending a
7 copy of his order appealed from and a full and complete
8 transcript, duly certified by the commissioner, of his
9 record of the hearing upon which the order was issued,
10 together with all exhibits and documentary evidence
11 introduced thereat. If the appeal is from an action of the
12 commissioner with respect to which a hearing was refused,
13 the commissioner shall within such 20-day period make and
14 return to the court a full and complete transcript, duly
15 certified by him, of all documents on file in his office
16 directly relating to the matter as to which such appeal is
17 taken.

18 (4) Upon receipt of such transcripts and evidence, the
19 court shall hear the matter de novo as soon as reasonably
20 possible thereafter. Upon the hearing of the appeal, the
21 court shall consider the evidence contained in the
22 transcript, exhibits, and documents therein filed by the
23 commissioner, together with such additional proper evidence
24 as may be offered by any party to the appeal.

25 (5) After hearing the appeal, the court may affirm,

1 modify, or reverse the order or action of the commissioner
2 in whole or in part or remand the action to the commissioner
3 for further proceedings in accordance with the court's
4 direction.

5 (6) Costs shall be awarded as in civil actions.

6 (7) Appeal may be taken to the supreme court from the
7 judgment of the district court as in other civil cases to
8 which the state is a party. A stay of the effectiveness of
9 any such judgment may be made only by order of the supreme
10 court upon the giving of such security as that court deems
11 proper.

12 (8) This section shall not apply to appeals as to
13 matters covered by chapter 16."

14 Section 25. Section 33-2-119, MCA, is amended to read:

15 "33-2-119. Suspension or revocation for violations and
16 special grounds. (1) The commissioner may, in his
17 discretion, suspend or revoke an insurer's certificate of
18 authority if, after a hearing thereon, he finds that the
19 insurer has:

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

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

25 In considering suspension or revocation, the commissioner

1 shall consider all relevant factors, including whether:

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

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

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

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

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

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

21 (d) with such frequency as to indicate its general
22 business practice in Montana, has without just cause refused
23 to pay proper claims arising under its policies, whether any
24 such claim is in favor of an insured or is in favor of a
25 third person with respect to the liability of an insured to

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

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

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

18 Section 26. Section 33-2-706, MCA, is amended to read:

19 "33-2-706. Report and tax of independently procured
20 coverages. (1) Every insured who in this state procures or
21 causes to be procured or continues or renews insurance in an
22 unauthorized foreign insurer or any self-insurer who in this
23 state so procures or continues excess loss, catastrophe, or
24 other insurance upon a subject of insurance resident,
25 located, or to be performed within this state, other than

1 insurance procured through a surplus ~~line~~ lines agent
 2 pursuant to The Surplus ~~line~~ Lines Insurance Law or exempted
 3 from such law under 33-2-317, shall, within 30 days after
 4 the date such insurance was so procured, continued, or
 5 renewed, file a written report of the same with the
 6 commissioner on forms designated by the commissioner and
 7 furnished to such an insured upon request. The report shall
 8 show the name and address of the insured or insureds, name
 9 and address of the insurer, the subject of the insurance, a
 10 general description of the coverage, the amount of premium
 11 currently charged therefor, and such additional pertinent
 12 information as is reasonably requested by the commissioner.
 13 If any such insurance covers also a subject of insurance
 14 resident, located, or to be performed outside this state, a
 15 proper pro rata portion of the entire premium payable for
 16 all such insurance shall be allocated as to the subjects of
 17 insurance resident, located, or to be performed in this
 18 state, for the purposes of this section.

19 (2) Any insurance in an unauthorized insurer procured
 20 through negotiations or an application in whole or in part
 21 occurring or made within or from within this state or for
 22 which premiums in whole or in part are remitted directly or
 23 indirectly from within this state shall be deemed to be
 24 insurance procured or continued or renewed in this state
 25 within the intent of subsection (1) above.

1 (3) For the general support of the government of this
 2 state there is levied upon the obligation, chose in action,
 3 or right represented by the premium charged or payable for
 4 such insurance a tax at the rate of 2 3/4% of the gross
 5 amount of such premium. The insured shall withhold the
 6 amount of the tax from the amount of premium charged by and
 7 otherwise payable to the insurer for such insurance, and
 8 within 30 days after the insurance was so procured,
 9 continued, or renewed and coincidentally with the filing
 10 with the commissioner of the report provided for in
 11 subsection (1) above, the insured shall pay the amount of
 12 the tax to the state treasurer through the commissioner.

13 (4) If the insured fails to withhold from the premium
 14 the amount of tax herein levied, the insured shall be liable
 15 for the amount thereof and shall pay the same to the
 16 commissioner within the time stated in subsection (3) above.

17 (5) The tax imposed hereunder if delinquent shall bear
 18 interest at the rate of 6% per annum, compounded annually.

19 (6) The tax shall be collectable from the insured by
 20 civil action brought by the commissioner.

21 (7) This section does not abrogate or modify and shall
 22 not be construed or deemed to abrogate or modify any
 23 provision of 33-2-104 or 33-2-105 or any other provision of
 24 this code.

25 (8) This section does not apply as to life or

1 disability insurances."

2 Section 27. Section 33-2-708, MCA, is amended to read:

3 "33-2-708. Fees and licenses. (1) The commissioner

4 shall collect in advance and the persons so served shall so

5 pay to the commissioner the following fees and licenses:

6 (a) certificates of authority:

7 (i) for filing applications for original certificates

8 of authority, articles of incorporation (except original

9 articles of incorporation of domestic insurers as provided

10 in subsection (b) below) and other charter documents,

11 bylaws, financial statement, examination report, power of

12 attorney to the commissioner, and all other documents and

13 filings required in connection with such application and for

14 issuance of an original certificate of authority, if issued:

15 (A) domestic insurers \$ 30.00

16 (B) foreign insurers 300.00

17 (ii) annual continuation of certificate of authority ..

18 300.00

19 (iii) reinstatement of certificate of authority

20 25.00

21 (b) articles of incorporation:

22 (i) filing original articles of incorporation of

23 domestic insurer, exclusive of fees required to be paid by

24 the corporation to the secretary of state 20.00

25 (ii) filing amendment of articles of incorporation,

1 domestic and foreign insurers, exclusive of fees required to

2 be paid to the secretary of state by a domestic corporation

3 10.00

4 (c) filing bylaws or amendment thereto where required

5 5.00

6 (d) filing annual statement of insurer, other than as

7 part of application for original certificate of authority ..

8 25.00

9 (e) resident agent's license:

10 (i) application for original license, including

11 issuance of license, if issued (life and/or disability)

12 10.00

13 (ii) application for original license, including

14 issuance of license, if issued (other than life and/or

15 disability) 10.00

16 (iii) appointment of agent, each insurer 10.00

17 (iv) annual renewal, each insurer 10.00

18 (v) temporary license 10.00

19 (vi) amendment of license (excluding additions thereto)

20 or reissuance of master license 10.00

21 (f) nonresident agent's license:

22 (i) application for original license, including

23 issuance of license, if issued (life and/or disability)

24 100.00

25 (ii) application for original license, including

1 issuance of license, if issued (other than life and/or
2 disability) 100.00
3 (iii) appointment of agent, each insurer 10.00
4 (iv) annual renewal, each insurer 10.00
5 (v) amendment of license (excluding additions thereto)
6 or reissuance of master license 10.00
7 (g) solicitor's license:
8 (i) application for original license, including
9 issuance of license, if issued 5.00
10 (ii) annual renewal of license 5.00
11 (h) examination for license as agent or solicitor,
12 each examination 10.00
13 (i) surplus ~~line-agent's~~ lines agent license:
14 (i) application for original license and for issuance
15 of license, if issued 25.00
16 (ii) annual renewal of license 25.00
17 (j) adjuster's license:
18 (i) application for original license and for issuance
19 of license, if issued 10.00
20 (ii) annual renewal of license 10.00
21 (k) insurance vending machine license, each machine,
22 each year 10.00
23 (l) commissioner's certificate under seal (except when
24 on certificates of authority or licenses) 3.00
25 (m) copies of documents on file in the commissioner's

1 office, per page50
2 (n) policy forms:
3 (i) filing each policy form 25.00
4 (ii) filing each application, rider, endorsement,
5 amendment, insert page, schedule of rates, and clarification
6 of risks 10.00
7 (iii) maximum charge if policy and all forms submitted
8 at one time or resubmitted for approval within 180 days
9 50.00
10 (2) The commissioner shall promptly deposit with the
11 state treasurer to the credit of the general fund of this
12 state all fines and penalties and those amounts received
13 pursuant to 33-2-311, 33-2-705, and 33-2-706 collected by
14 him pursuant to Title 33 and the rules adopted thereunder.
15 (3) All fees are considered fully earned when
16 received. In the event of overpayment, only those amounts in
17 excess of \$10 will be refunded.
18 (4) All fees and examination and miscellaneous
19 charges, except fines or penalties or those amounts received
20 pursuant to 33-2-311, 33-2-705, or 33-2-706, collected by
21 the commissioner pursuant to Title 33 and the rules adopted
22 thereunder must be deposited in the insurance regulatory
23 trust account pursuant to 17-2-121 through 17-2-123."
24 Section 28. Section 33-17-1001, MCA, is amended to
25 read:

1 "33-17-1001. Suspension, revocation, or refusal of
 2 license. (1) Except as provided in 33-17-411, the
 3 commissioner may suspend for not more than 12 months or may
 4 revoke or refuse to continue any license issued under this
 5 chapter or any surplus ~~line~~ lines agent license if, after
 6 hearing held on not less than 20 days' advance notice by
 7 registered--or certified mail of such hearing and of the
 8 charges against the licensee given as provided in
 9 33-1-314(3) to the licensee and to the insurers represented,
 10 as to an agent, or to the appointing agent, as to a
 11 solicitor, he finds that as to the licensee any one or more
 12 of the following causes exist:

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

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

18 (c) for violation of or noncompliance with any
 19 applicable provision of this code or for willful violation
 20 of any lawful rule or order of the commissioner;

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

25 (e) conviction, by final judgment, of a felony

1 involving moral turpitude;

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

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

10 Section 29. Section 33-18-212, MCA, is amended to
 11 read:

12 "33-18-212. Illegal dealing in premiums -- improper
 13 charges for insurance. (1) No person shall willfully collect
 14 any sum as premium or charge for insurance, which insurance
 15 is not then provided or is not in due course to be provided
 16 (subject to acceptance of the risk by the insurer) by an
 17 insurance policy issued by an insurer as authorized by this
 18 code.

19 (2) No person shall willfully collect as premium or
 20 charge for insurance any sum in excess of or less than the
 21 premium or charge applicable to such insurance and, as
 22 specified in the policy, in accordance with the applicable
 23 classifications and rates as filed with and approved by the
 24 commissioner; or in cases where classifications, premiums,
 25 or rates are not required by this code to be so filed and

1 approved, such premiums and charges shall not be in excess
 2 of or less than those specified in the policy and as fixed
 3 by the insurer. This provision shall not be deemed to
 4 prohibit the charging and collection, by surplus ~~line~~ lines
 5 agents licensed under chapter 2, part 3, of the amount of
 6 applicable state and federal taxes in addition to the
 7 premium required by the insurer. It shall not be deemed to
 8 prohibit the charging and collection, by a life insurer, of
 9 amounts actually to be expended for medical examination of
 10 an applicant for life insurance or for reinstatement of a
 11 life insurance policy. The provision of this subsection does
 12 not prohibit the collection from an insured of a placement
 13 fee, not to exceed 7 1/2% of the annual premium, for
 14 placement through the state compensation insurance fund by a
 15 duly licensed casualty insurance agent. This placement fee
 16 is not a premium as defined in 33-15-102.

17 (3) Each violation of this section shall be punishable
 18 under 33-1-104."

19 NEW SECTION. Section 30. Extension of authority. Any
 20 existing authority of the commissioner of insurance to make
 21 rules on the subject of the provisions of this act is
 22 extended to the provisions of this act.

23 NEW SECTION. Section 31. Codification instruction.
 24 Sections 2, 9, 10, and 19 are intended to be codified as an
 25 integral part of Title 33, chapter 2, part 3, and the

1 provisions of Title 33, chapter 2, part 3, apply to sections
 2 2, 9, 10, and 19.

3 NEW SECTION. Section 32. Saving clause. This act does
 4 not affect rights and duties that matured, penalties that
 5 were incurred, or proceedings that were begun before the
 6 effective date of this act.

7 NEW SECTION. Section 33. Severability. If a part of
 8 this act is invalid, all valid parts that are severable from
 9 the invalid part remain in effect. If a part of this act is
 10 invalid in one or more of its applications, the part remains
 11 in effect in all valid applications that are severable from
 12 the invalid applications.

13 NEW SECTION. Section 34. Effective date. This act is
 14 effective on passage and approval.

-End-

1 House BILL NO. 771
 2 INTRODUCED BY [Signature]
 3 BY REQUEST OF THE STATE AUDITOR

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE LAWS
 6 RELATING TO THE AUTHORIZATION OF SURPLUS LINES INSURERS,
 7 AGENTS, AND INSURANCE; AMENDING SECTIONS 33-1-402, 33-1-614,
 8 33-1-711, 33-2-119, 33-2-301 THROUGH 33-2-317, 33-2-706,
 9 33-2-708, 33-17-1001, AND 33-18-212, MCA; AND PROVIDING AN
 10 IMMEDIATE EFFECTIVE DATE."

11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 33-2-301, MCA, is amended to read:
 14 "33-2-301. Short title -- purpose. (1) This part
 15 constitutes and may be referred to as "The Surplus line
 16 Lines Insurance Law".

17 (2) This part must be liberally construed and applied
 18 to:

19 (a) protect persons seeking insurance in this state;
 20 (b) permit surplus lines insurance to be placed with
 21 reputable and financially sound unauthorized insurers and to
 22 be exported from this state pursuant to this part;

23 (c) establish a system of regulation that will permit
 24 orderly access to surplus lines insurance in this state and
 25 encourage authorized insurers to provide new and innovative

THERE ARE NO CHANGES IN HB 771 AND DUE TO LENGTH WILL NOT BE RE RUN. PLEASE REFER TO SECOND READING OR INTRODUCED COPY FOR COMPLETE TEXT.



THIRD READING

1 HOUSE BILL NO. 771
 2 INTRODUCED BY GLASER, THAYER
 3 BY REQUEST OF THE STATE AUDITOR
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE LAWS
 6 RELATING TO THE AUTHORIZATION OF SURPLUS LINES INSURERS,
 7 AGENTS, AND INSURANCE; AMENDING SECTIONS 33-1-402, 33-1-614,
 8 33-1-711, 33-2-119, 33-2-301 THROUGH 33-2-317, 33-2-706,
 9 33-2-708, 33-17-1001, AND 33-18-212, MCA; AND PROVIDING AN
 10 IMMEDIATE EFFECTIVE DATE."
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 16 Lines Insurance Law".

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 18 to:

- 19 (a) protect persons seeking insurance in this state;
- 20 (b) permit surplus lines insurance to be placed with
 21 reputable and financially sound unauthorized insurers and to
 22 be exported from this state pursuant to this part;
- 23 (c) establish a system of regulation that will permit
 24 orderly access to surplus lines insurance in this state and
 25 encourage authorized insurers to provide new and innovative

- 1 types of insurance to consumers in this state; and
- 2 (d) protect revenues of this state."
- 3 NEW SECTION. Section 2. Definitions. As used in [this
 4 part], the following definitions apply:
 5 (1) "Authorized insurer" means an insurer authorized
 6 pursuant to 33-2-101 to transact insurance in this state.
 7 (2) "Eligible surplus lines insurer" means an
 8 unauthorized insurer with which a surplus lines agent may
 9 place surplus lines insurance under 33-2-307.
 10 (3) "Export" means to place surplus lines insurance
 11 with an unauthorized insurer.
 12 (4) "Kind of insurance" means one of the types of
 13 insurance required to be reported in the annual statement
 14 filed with the commissioner by an authorized insurer.
 15 (5) "Producing agent" means the individual agent
 16 dealing directly with the person seeking insurance.
 17 (6) "Surplus lines agent" means an individual,
 18 partnership, or corporation licensed under 33-2-305 to place
 19 surplus lines insurance (on risks resident, located, or to
 20 be performed in this state) with unauthorized insurers
 21 eligible to accept such insurance.
 22 (7) "Surplus lines insurance" means any insurance (on
 23 risks resident, located, or to be performed in this state)
 24 permitted to be placed through a surplus lines agent with an
 25 unauthorized insurer eligible to accept the insurance. The



1 term does not include the kinds of insurance exempted under
2 [section 21].

3 (8) "Unauthorized insurer" means an insurer not
4 authorized pursuant to 33-2-101 to transact insurance in
5 this state. The term includes insurance exchanges authorized
6 under the laws of other states.

7 Section 3. Section 33-2-302, MCA, is amended to read:

8 "33-2-302. Conditions precedent to sale of surplus
9 line lines insurance ---agent's affidavit. ~~{i} if certain~~
10 ~~insurance coverages cannot be procured from authorized~~
11 ~~insurers; such coverages, hereinafter designated "surplus~~
12 ~~lines", may be procured from unauthorized insurers subject~~
13 ~~to the following conditions:~~

14 ~~{a} The insurance must be procured through a licensed~~
15 ~~surplus line agent;~~

16 ~~{b} The full amount of insurance required must not be~~
17 ~~procurable after diligent effort has been made to do so,~~
18 ~~from a majority of the insurers authorized to transact that~~
19 ~~kind and class of insurance in this state, and the amount of~~
20 ~~insurance placed in an unauthorized insurer shall be only~~
21 ~~the excess over the amount procurable from authorized~~
22 ~~insurers. Insurance may be procured through a licensed~~
23 ~~surplus lines agent from an unauthorized insurer if:~~

- 24 (1) the insurer is an eligible surplus lines insurer;
25 (2) the full amount or kind of insurance cannot be

1 obtained from authorized insurers. The full amount or kind
2 of insurance may be procured from an eligible surplus lines
3 insurer if the agent makes a diligent search among the
4 insurers who are authorized to transact and are actually
5 writing the particular kind and class of insurance in this
6 state and cannot obtain the full amount or kind of insurance
7 from an authorized insurer.

8 ~~{c}(3) The the insurance must is not be so procured~~
9 ~~for the purpose of securing advantages either as to:~~

10 ~~{i}(a) a lower premium rate than would be accepted by~~
11 ~~an authorized insurer; or~~

12 ~~{ii}(b) terms of the insurance contract; and~~

13 ~~{2} At the time of procuring, effecting, and issuing~~
14 ~~any such insurance, the surplus line agent shall execute an~~
15 ~~affidavit, in form as prescribed or accepted by the~~
16 ~~commissioner, setting forth facts referred to in subsection~~
17 ~~{i} and file such affidavit with the commissioner.~~
18 ~~Affidavits filed under this subsection shall be subject to~~
19 ~~public inspection unless the commissioner determines that~~
20 ~~the public interest requires otherwise.~~

21 (4) all other requirements of this part are met."

22 Section 4. Section 33-2-303, MCA, is amended to read:

23 "33-2-303. Endorsement Filing and endorsement of
24 contract. Every insurance contract, cover, note, or
25 certificate of insurance procured and delivered as a surplus

1 ~~line--coverage~~ lines insurance under this law part shall be
 2 filed with the commissioner and endorsed as ~~having--been~~
 3 "issued in an unauthorized insurer under The Surplus line
 4 Lines Insurance Law, under agent's agent license No."
 5 and "NOT covered by the property and casualty guaranty fund
 6 of this state if the unauthorized insurer becomes
 7 insolvent". The surplus ~~line~~ lines agent shall properly fill
 8 in and sign the endorsement."

9 Section 5. Section 33-2-304, MCA, is amended to read:

10 "33-2-304. Surplus ~~line~~ lines insurance valid.
 11 Insurance contracts procured as "surplus ~~line~~"-coverages
 12 lines insurance from unauthorized insurers in accordance
 13 with this law shall be fully valid and enforceable as to all
 14 parties and shall be given acceptance and recognition in all
 15 matters and respects to the same effect as like contracts
 16 issued by authorized insurers."

17 Section 6. Section 33-2-305, MCA, is amended to read:

18 "33-2-305. Licensing of surplus ~~line~~ lines agent --
 19 ~~fee and bond. Any person, while licensed as a resident~~
 20 ~~insurance agent of this state as to property, casualty, and~~
 21 ~~surety insurances and who is deemed by the commissioner to~~
 22 ~~be qualified therefor by insurance experience and to be~~
 23 ~~trustworthy, may be licensed as a surplus line agent as~~
 24 ~~follows:~~

25 ~~{1}--Application--to--the--commissioner--for--the--license~~

1 ~~shall be made on forms furnished by the commissioner;~~

2 ~~{2}--License fee in the amount stated in 33-2-708 shall~~
 3 ~~be paid to the commissioner. The license shall expire on the~~
 4 ~~April 1 next after its date of issue. (1) An agent licensed~~
 5 ~~by this state may not procure a contract of surplus lines~~
 6 ~~insurance with an unauthorized insurer unless the agent is~~
 7 ~~licensed as a resident property, casualty, and surety~~
 8 ~~insurance agent and possesses a current surplus lines~~
 9 ~~insurance license issued by the commissioner.~~

10 ~~(2) The commissioner shall issue a surplus lines~~
 11 ~~license to any qualified holder of a current property,~~
 12 ~~casualty, and surety insurance agent license only if the~~
 13 ~~agent has:~~

14 ~~(a) remitted to the commissioner the annual fee~~
 15 ~~prescribed by 33-2-708;~~

16 ~~(b) submitted to the commissioner a completed license~~
 17 ~~application on a form supplied by the commissioner;~~

18 ~~(c) been licensed as a property, casualty, and surety~~
 19 ~~insurance agent continuously for 5 years or more; and~~

20 ~~{3}(d) Prior to issuance of license, the applicant~~
 21 ~~shall file filed with the commissioner and thereafter for as~~
 22 ~~long as the license remains in effect he shall keep kept in~~
 23 ~~force a bond in favor of the state of Montana in the penal~~
 24 ~~sum amount of \$2,000 \$10,000, with authorized corporate~~
 25 ~~sureties approved by the commissioner. The bond shall must~~

1 be conditioned that the agent will conduct business under
 2 the license in accordance with the provisions of The Surplus
 3 ~~Line~~ Lines Insurance Law and that he will promptly remit the
 4 taxes provided by such law. The bond ~~shall~~ may not be
 5 terminated unless the surety gives the surplus lines agent,
 6 the producing agent, and the commissioner at least 30 days'
 7 prior written notice thereof ~~is filed with the commissioner.~~

8 (3) The license expires on April 1 after its date of
 9 issue. A surplus lines agent shall renew the license on or
 10 before March 1 of each year upon payment of the annual
 11 renewal fee prescribed in 33-2-708. A surplus lines agent
 12 who fails to apply for a renewal of the license on or before
 13 March 1 shall pay a fine of \$100 before the commissioner
 14 renews the license.

15 (4) A corporation is eligible to be a resident surplus
 16 lines agent if:

17 (a) the corporate license lists the individuals within
 18 the corporation who have satisfied the requirements of this
 19 part to become surplus lines agents; and

20 (b) only those individuals listed on the corporate
 21 license transact surplus lines business."

22 Section 7. Section 33-2-306, MCA, is amended to read:

23 "33-2-306. Agent's authority under license --
 24 acceptance of business from other agents -- placement fee.

25 (1) Under a surplus ~~line-agent's~~ lines agent license the

1 licensee ~~shall have the right to~~ may place surplus ~~line~~
 2 ~~coverages~~ lines insurance, in compliance with The Surplus
 3 ~~line~~ Lines Insurance Law, with any foreign or alien insurer
 4 or insurers not otherwise authorized to transact insurance
 5 in this state and as to such coverages to act as agent in
 6 this state for such insurer or insurers.

7 (2) The surplus ~~line~~ lines agent may accept surplus
 8 ~~line-business~~ lines insurance from any duly licensed agent
 9 of an authorized insurer and may compensate him therefor.

10 (3) A surplus lines agent who places or renews surplus
 11 lines insurance in accordance with subsection (1) may
 12 collect a placement fee of 0.5% of the premium charged to
 13 cover the costs of issuing and servicing the policy. The
 14 fee may not be less than \$10 or more than \$100."

15 Section 8. Section 33-2-307, MCA, is amended to read:

16 "33-2-307. ~~Surplus lines in solvent insurers.~~
 17 Requirements for eligible surplus lines insurers. A surplus
 18 line agent shall not knowingly place surplus line insurance
 19 with insurers unsound financially. The agent shall ascertain
 20 the financial condition of the unauthorized insurer before
 21 placing insurance therewith. The agent shall so insure only
 22 either:

23 (1) ~~with an insurer which is an authorized insurer in~~
 24 at least one state of the United States for the kind of
 25 insurance involved and which meets the requirements of

1 ~~33-2-109 and 33-2-110, as applicable, or~~
 2 ~~(2) with an alien insurer, other than one qualified~~
 3 ~~under (1) above, which has an established and effective~~
 4 ~~trust fund of at least \$1 million within the United States~~
 5 ~~administered by a recognized financial institution and held~~
 6 ~~for the benefit of all its policyholders in the United~~
 7 ~~States or policyholders and creditors in the United States.~~
 8 (1) A surplus lines agent may not place insurance with an
 9 unauthorized insurer unless, at the time of placement, the
 10 unauthorized insurer:
 11 (a) has established satisfactory evidence of good
 12 reputation and financial integrity; and
 13 (b) is qualified under one of the following
 14 subsections:
 15 (i) the insurer maintains capital and surplus or its
 16 equivalent under the laws of its state of domicile, which
 17 equals the greater of:
 18 (A) the minimum capital and surplus requirements of
 19 33-2-109 and 33-2-110; or
 20 (B) \$2.5 million 1 year after [the effective date of
 21 this act] and \$3.5 million 3 years after [the effective date
 22 of this act]. After 3 year YEARS from [the effective date of
 23 this act], an insurer possessing less than \$4 million
 24 subcapital and surplus may satisfy the requirements of this
 25 subsection upon an affirmative finding of acceptability by

1 the commissioner. The commissioner's finding must be based
 2 upon such factors as quality of management, capital, and
 3 surplus of a parent company; company underwriting profit and
 4 investment income trends; and company record and reputation
 5 within the industry. The commissioner may not make an
 6 affirmative finding of acceptability when the surplus lines
 7 insurer's capital and surplus is less than \$3 million.
 8 (ii) in the case of Lloyd's or another similar
 9 unincorporated group of alien individual insurers, the
 10 insurer maintains a trust fund of not less than \$50 million
 11 as security to the full amount thereof for all policyholders
 12 and creditors in the United States of each member of the
 13 group. The trust must comply with the terms and conditions
 14 established in subsection (1)(b)(iv) for alien insurers.
 15 (iii) in the case of an insurance exchange created by
 16 the laws of individual states, the insurer maintains capital
 17 and surplus, or their substantial equivalent, of not less
 18 than \$15 million in the aggregate. For an insurance exchange
 19 that maintains funds for the protection of each insurance
 20 exchange policyholder, each individual syndicate shall
 21 maintain minimum capital and surplus, or their substantial
 22 equivalent, of not less than \$1.5 million. If the insurance
 23 exchange does not maintain funds for the protection of each
 24 insurance exchange policyholder, each individual syndicate
 25 shall meet the minimum capital and surplus requirements of

1 subsection (1)(b)(i).
 2 (iv) in the case of an alien insurer, the insurer
 3 maintains in the United States an irrevocable trust fund in
 4 either a national bank or a member of the federal reserve
 5 system, in an amount not less than \$1.5 million, for the
 6 protection of all its policyholders in the United States and
 7 such trust fund consists of cash, securities, or letters of
 8 credit or of investments of substantially the same character
 9 and quality as those which are eligible investments for the
 10 capital and statutory reserves of insurers authorized to
 11 write like kinds of insurance in this state. Such trust
 12 fund, which must be included in any calculation of capital
 13 and surplus or its equivalent, must have an expiration date
 14 which at no time may be less than 5 years. In addition, the
 15 alien insurer must appear on the national association of
 16 insurance commissioners' Non-Admitted Insurers Quarterly
 17 Listing.
 18 (c) has provided the commissioner a copy of its
 19 current annual statement, certified by the insurer no more
 20 than 6 months after the close of the period reported upon
 21 (or quarterly if considered necessary by the commissioner),
 22 and which is either:
 23 (i) filed with and approved by the regulatory
 24 authority in the state of domicile of the unauthorized
 25 insurer; or

1 (ii) certified by an accounting or auditing firm
 2 licensed in the jurisdiction of the insurer's state of
 3 domicile.
 4 (2) In the case of an insurance exchange, the
 5 statement required by subsection (1)(c) may be an aggregate
 6 combined statement of all underwriting syndicates operating
 7 during the period reported.
 8 (3) In addition to meeting the requirements in
 9 subsection (1), an insurer is an eligible surplus lines
 10 insurer only if it appears on the most recent list of
 11 eligible surplus lines insurers published at least
 12 semiannually by the commissioner. This subsection does not
 13 require the commissioner to place or maintain the name of
 14 any unauthorized insurer on the list of eligible surplus
 15 lines insurers. No action may lie against the commissioner
 16 or an employee of the commissioner for anything said in
 17 issuing the list of eligible surplus lines insurers referred
 18 to in this subsection.
 19 (4) As used in this section, the following definitions
 20 apply:
 21 (a) "Capital", as used in the financial requirements
 22 of 33-2-307, means funds invested in for stocks or other
 23 evidences of ownership.
 24 (b) "Surplus", as used in the financial requirements
 25 of 33-2-307, means funds over and above liabilities and

1 capital of the insurer for the protection of policyholders."

2 NEW SECTION. Section 9. Withdrawal of eligibility
3 from a surplus lines insurer. (1) The commissioner may
4 declare an eligible surplus lines insurer ineligible if at
5 any time the commissioner has reason to believe that it:

- 6 (a) is in unsound financial condition;
- 7 (b) is no longer eligible under 33-2-307;
- 8 (c) has willfully violated the laws of this state; or
- 9 (d) does not make reasonably prompt payment of just
10 losses and claims in this state or elsewhere.

11 (2) The commissioner shall promptly mail notice of all
12 such declarations to each surplus lines agent.

13 NEW SECTION. Section 10. Surplus lines advisory
14 organizations -- examination by commissioner. (1) A surplus
15 lines advisory organization of surplus lines agents may be
16 formed to:

- 17 (a) facilitate and encourage compliance by its members
18 with the laws of this state and the rules and regulations of
19 the commissioner relative to surplus lines insurance;
- 20 (b) provide means for the confidential examination of
21 all surplus lines insurance written by its members to
22 determine whether such insurance complies with this part;
- 23 (c) communicate with organizations of authorized
24 insurers with respect to the proper use of the surplus lines
25 market; and

1 (d) receive and disseminate to its members information
2 relative to surplus lines insurance.

3 (2) Each advisory organization shall file with the
4 commissioner:

- 5 (a) a copy of its constitution, its articles of
6 agreement or association, or its certificate of
7 incorporation;
- 8 (b) a copy of its bylaws, rules, and regulations
9 governing its activities;
- 10 (c) a current list of its members;
- 11 (d) the name and address of a resident of this state
12 upon whom notices or orders of the commissioner or processes
13 issued at his direction may be served; and
- 14 (e) an agreement that the commissioner may examine the
15 advisory organization under the provisions of subsection
16 (3).

17 (3) The commissioner may make or cause to be made an
18 examination of each advisory organization. The reasonable
19 cost of an examination shall be paid by the advisory
20 organization upon presentation to it by the commissioner of
21 a detailed account of such cost. The officers, managers,
22 agents, and employees of the advisory organization may be
23 examined at any time, under oath, and shall exhibit all
24 books, records, accounts, documents, or agreements governing
25 its method of operation. The commissioner shall furnish two

1 copies of the examination report to the examined advisory
 2 organization and shall notify the organization that it may,
 3 within 20 days of receipt of the report, request a hearing
 4 on the report or on any facts or recommendations contained
 5 in it. If the commissioner finds the advisory organization
 6 or any of its members to be in violation of this part, he
 7 may issue an order requiring the discontinuance of the
 8 violation.

9 (4) The commissioner may by order compel a surplus
 10 lines agent to join an advisory organization as a condition
 11 of continued licensure under this part.

12 Section 11. Section 33-2-308, MCA, is amended to read:

13 "33-2-308. Evidence of the insurance -- changes --
 14 penalty. (1) Upon placing a surplus ~~line~~--coverage lines
 15 insurance, the surplus ~~line~~ lines agent shall promptly issue
 16 and deliver to the insured or the producing agent evidence
 17 of the insurance, consisting either of the policy as issued
 18 by the insurer or, if such policy is not then available, a
 19 cover note or certificate of insurance signed or
 20 countersigned by the agent. Such cover note or certificate
 21 ~~shall~~ must show the subject, coverage, conditions, and term
 22 of the insurance, the premium charged and taxes collected
 23 from the insured, and the name and address of the insurer.
 24 If the direct risk is assumed by more than one insurer, the
 25 cover note or certificate ~~shall~~ must state the name and

1 address and proportion of the entire direct risk assumed by
 2 each such insurer.

3 (2) If after the issuance and delivery of any such
 4 cover note or certificate there is any change as to the
 5 identity of the insurers or the proportion of the direct
 6 risk assumed by the insurer as stated in the original cover
 7 note or certificate or in any other material respect as to
 8 the insurance coverage evidenced by the cover note or
 9 certificate, the agent shall promptly issue and deliver to
 10 the insured a substitute cover note or certificate
 11 accurately showing the current status of the coverage and
 12 the insurers responsible thereunder.

13 (3) If a policy issued by the insurer is not available
 14 upon placement of the insurance and the agent has issued and
 15 delivered a cover note or certificate as hereinabove
 16 provided, upon request therefor by the insured, the agent
 17 shall as soon as reasonably possible procure from the
 18 insurer its policy evidencing such insurance and deliver
 19 such policy to the insured in replacement of the cover note
 20 or certificate theretofore issued.

21 (4) Any surplus ~~line~~ lines agent who knowingly or
 22 negligently issues or delivers a false cover note or
 23 certificate of insurance or fails promptly to notify the
 24 insured of any material change with respect to such
 25 insurance by delivery to the insured of a substitute cover

1 note or certificate as provided in subsection (2) shall be
 2 guilty of a violation of this code and upon conviction shall
 3 be subject to the penalties provided by 33-1-104 or to any
 4 greater applicable penalty otherwise provided by law.

5 (5) A surplus lines agent may not issue or deliver any
 6 evidence of insurance or purport to insure or represent that
 7 insurance will be or has been written by any eligible
 8 surplus lines insurer unless he has authority from the
 9 insurer to cause the risk to be insured or has received
 10 information from the insurer in the regular course of
 11 business that such insurance has been granted."

12 Section 12. Section 33-2-309, MCA, is amended to read:

13 "33-2-309. Liability of insurer as to losses and
 14 unearned premiums. (1) As to a surplus line lines risk which
 15 has been assumed by an unauthorized insurer pursuant to ~~this~~
 16 ~~surplus-lines-insurance-law~~ The Surplus Lines Insurance Law
 17 and if the premium thereon has been received by the surplus
 18 line lines agent who placed such insurance, in all questions
 19 thereafter arising under the coverage as between the insurer
 20 and the insured, the insurer shall be deemed to have
 21 received the premium due to it for such coverage. The
 22 insurer shall be liable to the insured as to losses covered
 23 by such insurance and for unearned premiums which may become
 24 payable to the insured upon cancellation of such insurance,
 25 whether or not in fact the agent is indebted to the insurer

1 with respect to such insurance or for any other cause. This
 2 provision shall not affect rights as between the insurer and
 3 the surplus line lines agent.

4 (2) A payment of premium to a surplus lines agent
 5 acting for a person other than himself in negotiating,
 6 continuing, or reviewing a policy of insurance under this
 7 part is considered to be payment to the insurer,
 8 notwithstanding any conditions or stipulations that may be
 9 inserted in the policy or contract.

10 ~~(2)(3)~~ Each unauthorized insurer assuming a surplus
 11 lines direct risk under ~~this--surplus--line--insurance--law~~
 12 ~~shall---be---deemed~~ The Surplus Lines Insurance Law is
 13 considered thereby to have subjected itself to the terms of
 14 this section."

15 Section 13. Section 33-2-310, MCA, is amended to read:

16 "33-2-310. Records and annual statement -- affidavit.

17 (1) Each surplus line lines agent shall keep a separate
 18 record and account of all business transacted under his
 19 license, including a copy of each daily report, if any, and
 20 of each policy, certificate of insurance, cover note, or
 21 other evidence of insurance issued by him. The records ~~shall~~
 22 must be available for examination by the commissioner at any
 23 reasonable time within 5 years after the issuance of the
 24 coverage surplus lines insurance to which it relates.

25 (2) Prior to April 1 of each year the agent shall file

1 with the commissioner a statement for the calendar year
2 preceding, showing:

3 (a) name and address of each insured for whom surplus
4 ~~line~~ lines insurance was procured;

5 (b) name and home office address of each insurer
6 providing such the surplus lines insurance;

7 (c) amount of each ~~such--coverage~~ surplus lines
8 insurance policy, the premium rate, and the gross premium
9 charged therefor;

10 (d) date and term of the policy;

11 (e) amount of premium returned on each policy canceled
12 or not taken; and

13 (f) amount of tax and other sums to be collected from
14 the insured;

15 (g) identity of the producing agent;

16 (h) the application and any correspondence from the
17 surplus lines insurer or its representative; and

18 ~~(f)}~~(i) such additional information as the commissioner
19 may reasonably require.

20 (3) Each producing agent shall execute and each
21 surplus lines agent shall file an affidavit, on a
22 standardized form furnished by the commissioner, as to the
23 diligent efforts to place the coverage with authorized
24 insurers and the results of such efforts. An affidavit filed
25 under this subsection is subject to public inspection unless

1 the commissioner determines that the public interest
2 requires otherwise. The producing agent shall state in the
3 affidavit that he has expressly advised the insured in
4 writing prior to placing the insurance that:

5 (a) the surplus lines insurer with whom the insurance
6 is placed is not authorized in this state and is not subject
7 to the same supervision as an authorized insurer; and

8 (b) in the event of the insolvency of the surplus
9 lines insurer, the property and casualty guaranty fund of
10 the state will not pay losses under the surplus lines
11 coverage."

12 Section 14. Section 33-2-311, MCA, is amended to read:

13 "33-2-311. Tax on surplus lines. There is imposed upon
14 premiums collected for surplus ~~line~~ lines insurance
15 transacted in this state a tax at the same rate and computed
16 in the same manner as provided in subsection (2)(b)(i) of
17 33-2-705 as to premiums of authorized insurers, except that
18 amounts collected from the insured specifically for
19 applicable state and federal taxes, and in excess of the
20 premium otherwise required, ~~shall--not--be--deemed~~ are not
21 considered to be part of the premium for the purposes of
22 such computation. Upon filing of the annual statement
23 referred to in 33-2-310(2), the surplus ~~line~~ lines agent
24 shall pay to the commissioner the amount of tax owing as to
25 surplus ~~line~~ lines insurance business transacted by him

1 during the preceding calendar year. If a surplus ~~line~~ lines
 2 insurance policy covers ~~risk~~ risks or exposures only
 3 partially in this state, the tax payable ~~shall~~ must be
 4 computed upon the proportion of the premium which is
 5 properly allocable to the risks or exposures located in this
 6 state."

7 Section 15. Section 33-2-312, MCA, is amended to read:
 8 "33-2-312. Penalty for failure to file statement or
 9 pay tax. Every surplus ~~line~~ lines agent who fails to make
 10 and file the annual statement as required under 33-2-310 or
 11 to pay the taxes as required under 33-2-311 ~~shall-be~~ is
 12 liable to a penalty of \$25 for each day of delinquency,
 13 commencing with April 1. The tax and penalty may be
 14 recovered in an action instituted by the commissioner in the
 15 name of the state in any court of competent jurisdiction,
 16 the attorney general representing him. The penalty when
 17 collected shall be paid to the state treasurer and placed to
 18 the credit of the general fund. The surplus ~~line--agent's~~
 19 lines agent license ~~shall~~ is also be subject to revocation
 20 as provided in 33-2-313."

21 Section 16. Section 33-2-313, MCA, is amended to read:
 22 "33-2-313. Revocation or suspension of ~~agent's~~ agent
 23 license. (1) The commissioner shall revoke or suspend any
 24 surplus ~~line~~ lines agent's agent license, together with his
 25 license as an insurance agent ~~or-solicitor~~:

1 (a) if the agent fails to file his annual statement or
 2 to remit the tax as required by law;
 3 (b) if the agent fails to keep the records or to allow
 4 the commissioner to examine his records, as required by law;
 5 (c) if the agent falsifies the affidavit required by
 6 ~~33-2-302(2)~~ 33-2-310(3); or
 7 (d) if the agent removes the resident surplus lines
 8 agent office from this state;
 9 (e) if the agent removes the resident surplus lines
 10 agent office accounts and records from this state during the
 11 period during which the accounts and records are required to
 12 be maintained under 33-2-310(1);
 13 (f) if the agent closes the resident surplus lines
 14 agent office for a period of more than 30 business days,
 15 unless the commissioner grants permission otherwise;
 16 (g) if the agent violates any provision of this part;
 17 or
 18 (d)(h) for any of the causes for which an insurance
 19 agent's license may be revoked.
 20 (2) The procedures provided by 33-17-1001 for the
 21 suspension or revocation of ~~agents'~~ agent licenses ~~shall-be~~
 22 applicable apply to suspension or revocation of a surplus
 23 ~~line-agent's~~ lines agent license.
 24 (3) No An agent whose license has been so revoked or
 25 suspended ~~shall~~ may not again be so licensed within 1 year

1 thereafter or until he pays all penalties and delinquent
 2 taxes ~~owing-by-him-have-been-paid~~ that he owes."

3 Section 17. Section 33-2-314, MCA, is amended to read:

4 "33-2-314. Actions against insurer -- venue ---~~service~~
 5 ~~of-process~~. Every unauthorized insurer issuing a surplus
 6 ~~line-coverage lines insurance policy~~ under this ~~surplus-line~~
 7 ~~insurance-law-shall-be-deemed~~ part is considered to be doing
 8 business in this state as an unlicensed unauthorized insurer
 9 and may be sued in this state upon any cause of action
 10 arising under any insurance contract so made by it. Such
 11 suit ~~shall~~ must be brought in the district court of the
 12 county wherein the plaintiff resides."

13 Section 18. Section 33-2-315, MCA, is amended to read:

14 "33-2-315. Commissioner appointed process agent --
 15 service of process. (1) Every surplus ~~line~~ lines insurer
 16 ~~before insuring-as-such transacting surplus lines insurance~~
 17 under this ~~law~~ part shall in writing appoint the
 18 commissioner as its true and lawful attorney upon whom legal
 19 process in any action or proceeding against it in this state
 20 shall be served and in such writing shall agree that any
 21 such process served upon such attorney shall be of the same
 22 legal force and validity as if served in this state upon
 23 such insurer and that such authority shall continue in force
 24 so long as any liability remains outstanding against it in
 25 this state. At the time of filing such appointment, the

1 insurer shall also file designation of the name and address
 2 of the person to whom process against it served upon the
 3 commissioner is to be forwarded. The insurer may change such
 4 designation by a new filing.

5 (2) Service upon such an insurer ~~shall~~ must be made
 6 upon the commissioner and in accordance with the procedures,
 7 requirements, and results as provided under 33-1-603."

8 NEW SECTION. Section 19. Penalties. A surplus lines
 9 agent who in this state represents or aids an unauthorized
 10 insurer in violation of this part is guilty of a misdemeanor
 11 and shall be fined not more than \$1,000 or be imprisoned in
 12 the county jail for a term no longer than 6 months, or both.

13 Section 20. Section 33-2-316, MCA, is amended to read:

14 "33-2-316. Rules. (1) The commissioner shall make or
 15 may approve and adopt reasonable rules, consistent with this
 16 ~~surplus-line-insurance-law~~ part, for any or all of the
 17 following purposes:

18 (a) effectuation of ~~such--law~~ The Surplus Lines
 19 Insurance Law;

20 (b) establishment of procedures through which
 21 determination is to be made as to the eligibility of
 22 particular proposed coverages for placement with a surplus
 23 ~~line~~ lines insurer or insurers; and

24 (c) establishment, procedures, and operations of any
 25 voluntary organization of surplus ~~line~~ lines insurance

1 agents or others designed to assist such agents to comply
2 with such law.

3 (2) Such rules shall be subject to the procedures and
4 carry the penalty provided by 33-1-313."

5 Section 21. Section 33-2-317, MCA, is amended to read:

6 "33-2-317. Exemptions. The provisions of this surplus
7 line lines insurance law controlling the placing placement
8 of insurance with unauthorized insurers ~~shall~~ does not apply
9 to reinsurance or to the following insurances when so placed
10 by a licensed insurance agents agent of this state:

11 (1) wet marine and transportation insurances;

12 (2) insurance on subjects located, resident, or to be
13 performed wholly outside of this state or on vehicles or
14 aircraft owned and principally garaged outside this state;

15 (3) insurance on property or operations of railroads
16 engaged in interstate commerce; and

17 (4) insurance of aircraft owned or operated by
18 manufacturers of aircraft or aircraft operated in scheduled
19 interstate flight or cargo of such aircraft or against
20 liability, other than workers' compensation and employers'
21 liability, arising out of the ownership, maintenance, or use
22 of such aircraft."

23 Section 22. Section 33-1-402, MCA, is amended to read:

24 "33-1-402. Examination of agents, managers, and
25 promoters. For the purpose of ascertaining compliance with

1 this code, the commissioner may as often as he deems
2 advisable examine the accounts, records, documents, and
3 transactions pertaining to or affecting its insurance
4 affairs or proposed insurance affairs of:

5 (1) any insurance agent, solicitor, surplus ~~line lines~~
6 agent, general agent, or adjuster;

7 (2) any person having a contract under which he enjoys
8 in fact the exclusive or dominant right to manage or control
9 an insurer;

10 (3) any person holding the shares of voting stock or
11 policyholder proxies of a domestic insurer, for the purpose
12 of controlling the management thereof, as voting trustee or
13 otherwise;

14 (4) any person engaged in or proposing to be engaged
15 in or assisting in the promotion or formation of a domestic
16 insurer or insurance holding corporation or corporation to
17 finance a domestic insurer or the production of its
18 business."

19 Section 23. Section 33-1-614, MCA, is amended to read:

20 "33-1-614. Exemptions from service of process
21 provisions. Sections 33-1-611 through 33-1-613 shall not
22 apply to:

23 (1) surplus ~~line lines~~ insurance lawfully effectuated
24 under part 3, chapter 2;

25 (2) reinsurance; or

1 (3) any action or proceeding against an unauthorized
2 insurer arising out of:

3 (a) wet marine and transportation insurance;

4 (b) insurance on or with respect to subjects located,
5 resident, or to be performed wholly outside this state or on
6 or with respect to vehicles or aircraft owned and
7 principally garaged outside this state;

8 (c) insurance on property or operations of railroads
9 engaged in interstate commerce; or

10 (d) insurance on aircraft or cargo of such aircraft or
11 against liability, other than employer's liability, arising
12 out of the ownership, maintenance, or use of such aircraft,
13 where the policy or contract contains a provision
14 designating the commissioner as its attorney for the
15 acceptance of service of lawful process in any action or
16 proceeding instituted by or on behalf of an insured or
17 beneficiary arising out of any such policy or where the
18 insurer enters a general appearance in any such action."

19 Section 24. Section 33-1-711, MCA, is amended to read:

20 "33-1-711. Appeals from the commissioner. (1) An
21 appeal from the commissioner shall be taken only from an
22 order on hearing or with respect to a matter as to which the
23 commissioner has refused a hearing. Any person who was a
24 party to such hearing or whose pecuniary interests are
25 directly and immediately affected by any such order or

1 refusal and who is aggrieved thereby may, within 30 days
2 after the order has been mailed or delivered to the persons
3 entitled to receive the same, the commissioner's order
4 denying rehearing or reargument has been so mailed or
5 delivered, or the commissioner's refusal to grant a hearing,
6 appeal from such order on hearing or such refusal of a
7 hearing. The appeal shall be taken to the district court of
8 Lewis and Clark County by filing written notice of appeal in
9 such court and by filing a copy of such notice with the
10 commissioner, except that in appeals from the suspension or
11 revocation of the certificate of authority of a domestic
12 insurer or of the license of an agent, solicitor, or surplus
13 ~~line~~ lines agent, the person taking the appeal may at his
14 option, in lieu of the district court of Lewis and Clark
15 County, take the appeal to the district court of the county
16 of Montana in which the insurer has its principal place of
17 business or the licensee resides.

18 (2) Upon filing of the notice of appeal therein, the
19 court shall have full jurisdiction and shall determine
20 whether such filing shall operate as a stay of the order or
21 action appealed from, except that in the following instances
22 the filing of the notice of appeal shall automatically stay
23 the order appealed from pending the judgment of the district
24 court on the appeal:

25 (a) appeal from suspension or revocation of the

1 license of an agent, solicitor, or surplus ~~line~~ lines agent;

2 (b) appeal from suspension or revocation of the
3 certificate of authority of an insurer.

4 (3) Within 20 days after filing of the copy of the
5 notice of appeal in his office, the commissioner shall make
6 and return to the court in which the appeal is pending a
7 copy of his order appealed from and a full and complete
8 transcript, duly certified by the commissioner, of his
9 record of the hearing upon which the order was issued,
10 together with all exhibits and documentary evidence
11 introduced thereat. If the appeal is from an action of the
12 commissioner with respect to which a hearing was refused,
13 the commissioner shall within such 20-day period make and
14 return to the court a full and complete transcript, duly
15 certified by him, of all documents on file in his office
16 directly relating to the matter as to which such appeal is
17 taken.

18 (4) Upon receipt of such transcripts and evidence, the
19 court shall hear the matter de novo as soon as reasonably
20 possible thereafter. Upon the hearing of the appeal, the
21 court shall consider the evidence contained in the
22 transcript, exhibits, and documents therein filed by the
23 commissioner, together with such additional proper evidence
24 as may be offered by any party to the appeal.

25 (5) After hearing the appeal, the court may affirm,

1 modify, or reverse the order or action of the commissioner
2 in whole or in part or remand the action to the commissioner
3 for further proceedings in accordance with the court's
4 direction.

5 (6) Costs shall be awarded as in civil actions.

6 (7) Appeal may be taken to the supreme court from the
7 judgment of the district court as in other civil cases to
8 which the state is a party. A stay of the effectiveness of
9 any such judgment may be made only by order of the supreme
10 court upon the giving of such security as that court deems
11 proper.

12 (8) This section shall not apply to appeals ~~as~~ to
13 matters covered by chapter 16."

14 Section 25. Section 33-2-119, MCA, is amended to read:

15 "33-2-119. Suspension or revocation for violations and
16 special grounds. (1) The commissioner may, in his
17 discretion, suspend or revoke an insurer's certificate of
18 authority if, after a hearing thereon, he finds that the
19 insurer has:

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

23 (b) reinsured more than 90% of its risks, resident,
24 located, or to be performed in Montana, in another insurer.
25 In considering suspension or revocation, the commissioner

1 shall consider all relevant factors, including whether:

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

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

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

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

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

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

21 (d) with such frequency as to indicate its general
22 business practice in Montana, has without just cause refused
23 to pay proper claims arising under its policies, whether any
24 such claim is in favor of an insured or is in favor of a
25 third person with respect to the liability of an insured to

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

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

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

18 Section 26. Section 33-2-706, MCA, is amended to read:

19 "33-2-706. Report and tax of independently procured
20 coverages. (1) Every insured who in this state procures or
21 causes to be procured or continues or renews insurance in an
22 unauthorized foreign insurer or any self-insurer who in this
23 state so procures or continues excess loss, catastrophe, or
24 other insurance upon a subject of insurance resident,
25 located, or to be performed within this state, other than

1 insurance procured through a surplus ~~line~~ lines agent
 2 pursuant to The Surplus ~~Line~~ Lines Insurance Law or exempted
 3 from such law under 33-2-317, shall, within 30 days after
 4 the date such insurance was so procured, continued, or
 5 renewed, file a written report of the same with the
 6 commissioner on forms designated by the commissioner and
 7 furnished to such an insured upon request. The report shall
 8 show the name and address of the insured or insureds, name
 9 and address of the insurer, the subject of the insurance, a
 10 general description of the coverage, the amount of premium
 11 currently charged therefor, and such additional pertinent
 12 information as is reasonably requested by the commissioner.
 13 If any such insurance covers also a subject of insurance
 14 resident, located, or to be performed outside this state, a
 15 proper pro rata portion of the entire premium payable for
 16 all such insurance shall be allocated as to the subjects of
 17 insurance resident, located, or to be performed in this
 18 state, for the purposes of this section.

19 (2) Any insurance in an unauthorized insurer procured
 20 through negotiations or an application in whole or in part
 21 occurring or made within or from within this state or for
 22 which premiums in whole or in part are remitted directly or
 23 indirectly from within this state shall be deemed to be
 24 insurance procured or continued or renewed in this state
 25 within the intent of subsection (1) above.

1 (3) For the general support of the government of this
 2 state there is levied upon the obligation, chose in action,
 3 or right represented by the premium charged or payable for
 4 such insurance a tax at the rate of 2 3/4% of the gross
 5 amount of such premium. The insured shall withhold the
 6 amount of the tax from the amount of premium charged by and
 7 otherwise payable to the insurer for such insurance, and
 8 within 30 days after the insurance was so procured,
 9 continued, or renewed and coincidentally with the filing
 10 with the commissioner of the report provided for in
 11 subsection (1) above, the insured shall pay the amount of
 12 the tax to the state treasurer through the commissioner.

13 (4) If the insured fails to withhold from the premium
 14 the amount of tax herein levied, the insured shall be liable
 15 for the amount thereof and shall pay the same to the
 16 commissioner within the time stated in subsection (3) above.

17 (5) The tax imposed hereunder if delinquent shall bear
 18 interest at the rate of 6% per annum, compounded annually.

19 (6) The tax shall be collectable from the insured by
 20 civil action brought by the commissioner.

21 (7) This section does not abrogate or modify and shall
 22 not be construed or deemed to abrogate or modify any
 23 provision of 33-2-104 or 33-2-105 or any other provision of
 24 this code.

25 (8) This section does not apply as to life or

1 disability insurances."

2 Section 27. Section 33-2-708, MCA, is amended to read:

3 "33-2-708. Fees and licenses. (1) The commissioner
4 shall collect in advance and the persons so served shall so
5 pay to the commissioner the following fees and licenses:

6 (a) certificates of authority:

7 (i) for filing applications for original certificates
8 of authority, articles of incorporation (except original
9 articles of incorporation of domestic insurers as provided
10 in subsection (b) below) and other charter documents,
11 bylaws, financial statement, examination report, power of
12 attorney to the commissioner, and all other documents and
13 filings required in connection with such application and for
14 issuance of an original certificate of authority, if issued:

15 (A) domestic insurers \$ 30.00

16 (B) foreign insurers 300.00

17 (ii) annual continuation of certificate of authority ..
18 300.00

19 (iii) reinstatement of certificate of authority
20 25.00

21 (b) articles of incorporation:

22 (i) filing original articles of incorporation of
23 domestic insurer, exclusive of fees required to be paid by
24 the corporation to the secretary of state 20.00

25 (ii) filing amendment of articles of incorporation,

1 domestic and foreign insurers, exclusive of fees required to
2 be paid to the secretary of state by a domestic corporation

3 10.00

4 (c) filing bylaws or amendment thereto where required
5 5.00

6 (d) filing annual statement of insurer, other than as
7 part of application for original certificate of authority ..
8 25.00

9 (e) resident agent's license:

10 (i) application for original license, including
11 issuance of license, if issued (life and/or disability)
12 10.00

13 (ii) application for original license, including
14 issuance of license, if issued (other than life and/or
15 disability) 10.00

16 (iii) appointment of agent, each insurer 10.00

17 (iv) annual renewal, each insurer 10.00

18 (v) temporary license 10.00

19 (vi) amendment of license (excluding additions thereto)
20 or reissuance of master license 10.00

21 (f) nonresident agent's license:

22 (i) application for original license, including
23 issuance of license, if issued (life and/or disability)
24 100.00

25 (ii) application for original license, including

1 issuance of license, if issued (other than life and/or
2 disability) 100.00
3 (iii) appointment of agent, each insurer 10.00
4 (iv) annual renewal, each insurer 10.00
5 (v) amendment of license (excluding additions thereto)
6 or reissuance of master license 10.00
7 (g) solicitor's license:
8 (i) application for original license, including
9 issuance of license, if issued 5.00
10 (ii) annual renewal of license 5.00
11 (h) examination for license as agent or solicitor,
12 each examination 10.00
13 (i) surplus ~~line-agent's~~ lines agent license:
14 (i) application for original license and for issuance
15 of license, if issued 25.00
16 (ii) annual renewal of license 25.00
17 (j) adjuster's license:
18 (i) application for original license and for issuance
19 of license, if issued 10.00
20 (ii) annual renewal of license 10.00
21 (k) insurance vending machine license, each machine,
22 each year 10.00
23 (l) commissioner's certificate under seal (except when
24 on certificates of authority or licenses) 3.00
25 (m) copies of documents on file in the commissioner's

1 office, per page50
2 (n) policy forms:
3 (i) filing each policy form 25.00
4 (ii) filing each application, rider, endorsement,
5 amendment, insert page, schedule of rates, and clarification
6 of risks 10.00
7 (iii) maximum charge if policy and all forms submitted
8 at one time or resubmitted for approval within 180 days
9 50.00
10 (2) The commissioner shall promptly deposit with the
11 state treasurer to the credit of the general fund of this
12 state all fines and penalties and those amounts received
13 pursuant to 33-2-311, 33-2-705, and 33-2-706 collected by
14 him pursuant to Title 33 and the rules adopted thereunder.
15 (3) All fees are considered fully earned when
16 received. In the event of overpayment, only those amounts in
17 excess of \$10 will be refunded.
18 (4) All fees and examination and miscellaneous
19 charges, except fines or penalties or those amounts received
20 pursuant to 33-2-311, 33-2-705, or 33-2-706, collected by
21 the commissioner pursuant to Title 33 and the rules adopted
22 thereunder must be deposited in the insurance regulatory
23 trust account pursuant to 17-2-121 through 17-2-123."
24 Section 28. Section 33-17-1001, MCA, is amended to
25 read:

1 "33-17-1001. Suspension, revocation, or refusal of
 2 license. (1) Except as provided in 33-17-411, the
 3 commissioner may suspend for not more than 12 months or may
 4 revoke or refuse to continue any license issued under this
 5 chapter or any surplus ~~line~~ lines agent license if, after
 6 hearing held on not less than 20 days' advance notice by
 7 registered--or certified mail of such hearing and of the
 8 charges against the licensee given as provided in
 9 33-1-314(3) to the licensee and to the insurers represented,
 10 as to an agent, or to the appointing agent, as to a
 11 solicitor, he finds that as to the licensee any one or more
 12 of the following causes exist:

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

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

18 (c) for violation of or noncompliance with any
 19 applicable provision of this code or for willful violation
 20 of any lawful rule or order of the commissioner;

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

25 (e) conviction, by final judgment, of a felony

1 involving moral turpitude;

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

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

10 Section 29. Section 33-18-212, MCA, is amended to
 11 read:

12 "33-18-212. Illegal dealing in premiums -- improper
 13 charges for insurance. (1) No person shall willfully collect
 14 any sum as premium or charge for insurance, which insurance
 15 is not then provided or is not in due course to be provided
 16 (subject to acceptance of the risk by the insurer) by an
 17 insurance policy issued by an insurer as authorized by this
 18 code.

19 (2) No person shall willfully collect as premium or
 20 charge for insurance any sum in excess of or less than the
 21 premium or charge applicable to such insurance and, as
 22 specified in the policy, in accordance with the applicable
 23 classifications and rates as filed with and approved by the
 24 commissioner; or in cases where classifications, premiums,
 25 or rates are not required by this code to be so filed and

1 approved, such premiums and charges shall not be in excess
 2 of or less than those specified in the policy and as fixed
 3 by the insurer. This provision shall not be deemed to
 4 prohibit the charging and collection, by surplus ~~line~~ lines
 5 agents licensed under chapter 2, part 3, of the amount of
 6 applicable state and federal taxes in addition to the
 7 premium required by the insurer. It shall not be deemed to
 8 prohibit the charging and collection, by a life insurer, of
 9 amounts actually to be expended for medical examination of
 10 an applicant for life insurance or for reinstatement of a
 11 life insurance policy. The provision of this subsection does
 12 not prohibit the collection from an insured of a placement
 13 fee, not to exceed 7 1/2% of the annual premium, for
 14 placement through the state compensation insurance fund by a
 15 duly licensed casualty insurance agent. This placement fee
 16 is not a premium as defined in 33-15-102.

17 (3) Each violation of this section shall be punishable
 18 under 33-1-104."

19 NEW SECTION. Section 30. Extension of authority. Any
 20 existing authority of the commissioner of insurance to make
 21 rules on the subject of the provisions of this act is
 22 extended to the provisions of this act.

23 NEW SECTION. Section 31. Codification instruction.
 24 Sections 2, 9, 10, and 19 are intended to be codified as an
 25 integral part of Title 33, chapter 2, part 3, and the

1 provisions of Title 33, chapter 2, part 3, apply to sections
 2 2, 9, 10, and 19.

3 NEW SECTION. Section 32. Saving clause. This act does
 4 not affect rights and duties that matured, penalties that
 5 were incurred, or proceedings that were begun before the
 6 effective date of this act.

7 NEW SECTION. Section 33. Severability. If a part of
 8 this act is invalid, all valid parts that are severable from
 9 the invalid part remain in effect. If a part of this act is
 10 invalid in one or more of its applications, the part remains
 11 in effect in all valid applications that are severable from
 12 the invalid applications.

13 NEW SECTION. Section 34. Effective date. This act is
 14 effective on passage and approval.

-End-

SENATE

MARCH 17, 19 87

MR. PRESIDENT

We, your committee on BUSINESS AND INDUSTRY

having had under consideration HOUSE BILL No. 771

THIRD reading copy (BLUE) color

GLASER (THAYER)

REVISE SURPLUS LINES INSURANCE LAWS

Respectfully report as follows: That HOUSE BILL No. 771

be amended as follows:

- 1. Page 9, line 22.
Strike: "year"
Insert: "years"

AND AS AMENDED,

BE CONCURRED IN

AK

XXXXXX

XXXXXXXXXX

SENATOR ALLEN C. KOLSTAD, Chairman.

3-17-87
4:05

COMMITTEE OF THE WHOLE AMENDMENT

3-23-87

SENATE

DATE

11:45

TIME

House Bill

No. 771

MR. CHAIRMAN: I MOVE TO AMEND _____

No. _____

reference

salmon

_____ reading copy (_____) as follows:

Color

1. Page 1, line 17.

Strike: "liberally construed and"

ADOPT

REJECT

Sen. Thayer
.....
Senator Thayer