

HOUSE BILL NO. 803
INTRODUCED BY CAMPBELL, THAYER
BY REQUEST OF THE STATE AUDITOR

IN THE HOUSE

FEBRUARY 17, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & LABOR.
FEBRUARY 19, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED. STATEMENT OF INTENT ADOPTED.
FEBRUARY 20, 1987	PRINTING REPORT.
FEBRUARY 21, 1987	SECOND READING, DO PASS. STATEMENT OF INTENT STRICKEN.
FEBRUARY 23, 1987	ENGROSSING REPORT.
FEBRUARY 24, 1987	THIRD READING, PASSED. AYES, 97; NOES, 2. TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 2, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
MARCH 13, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED. STATEMENT OF INTENT ADOPTED.
MARCH 18, 1987	SECOND READING, CONCURRED IN.
MARCH 20, 1987	THIRD READING, CONCURRED IN. AYES, 49; NOES, 0. RETURNED TO HOUSE WITH STATEMENT OF INTENT.

IN THE HOUSE

MARCH 25, 1987

RECEIVED FROM SENATE.

SECOND READING, STATEMENT OF
INTENT ADOPTED.

MARCH 26, 1987

THIRD READING, STATEMENT OF
INTENT ADOPTED.

SENT TO ENROLLING.

1 House BILL NO. 803
 2 INTRODUCED BY Campbell, J. D.
 3 BY REQUEST OF THE STATE AUDITOR

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 6 LAWS RELATING TO THE LICENSING AND REGULATION OF INSURANCE
 7 AGENTS, SOLICITORS, ADJUSTERS, CONSULTANTS, AND
 8 ADMINISTRATORS; AMENDING SECTIONS 33-17-102, 33-17-201,
 9 33-17-202, 33-17-204, 33-17-211 THROUGH 33-17-213,
 10 33-17-231, 33-17-401, 33-17-601, 33-17-602, 33-17-1001,
 11 33-17-1002, 33-17-1004, AND 33-17-1101 THROUGH 33-17-1104,
 12 MCA; REPEALING SECTIONS 33-17-203 AND 33-17-605, MCA; AND
 13 PROVIDING AN APPLICABILITY DATE."

14
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 16 Section 1. Section 33-17-102, MCA, is amended to read:
 17 "33-17-102. Definitions. As used in this title, the
 18 following definitions apply:

19 (1) ~~(a)~~ An "adjuster" is a person who, on behalf of
 20 the insurer, for compensation as an independent contractor
 21 or as the employee of such an independent contractor or for
 22 fee or commission investigates and negotiates settlement of
 23 claims arising under insurance contracts or otherwise acts
 24 on behalf of the insurer. The term does not include a:

25 ~~(b)~~(a) A licensed attorney ~~at-law~~ who is qualified to

1 practice law in this state; or
 2 (b) a salaried employee of an insurer or of a managing
 3 general agent, or a licensed agent who adjusts or assists in
 4 adjustment of losses arising under policies issued by the
 5 insurer ~~represented--by--such--agent-is-not-deemed-to-be-an~~
 6 ~~adjuster-for-the-purposes-of-this-chapter.~~

7 ~~(c)~~(2) A "public adjuster" is an adjuster employed by
 8 and representing the interests of the insured. The
 9 commissioner may adopt rules providing for the examination,
 10 licensure, bonding, and regulation of public adjusters.

11 ~~(2)~~(3) An "agent" is an individual, firm partnership,
 12 or corporation appointed by an insurer to solicit
 13 applications for insurance or annuities or to negotiate
 14 insurance on its behalf and, if authorized to do so by the
 15 insurer, to effectuate and countersign insurance contracts.

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

20 (4) A "consultant" is a person who for a fee examines,
 21 appraises, reviews, or evaluates an insurance policy,
 22 annuity, or pension contract, plan, or program or who makes
 23 recommendations or gives advice on an insurance policy,
 24 annuity, or pension contract, plan, or program.

25 ~~(4)~~(5) A "solicitor" is an individual appointed and



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1 authorized by an agent to solicit applications for
 2 insurance, other than life insurance or disability
 3 insurance, as a representative of such agent, and to collect
 4 premiums thereon when expressly so authorized by the agent.

5 ~~(5)~~(6) A "managing general agent" is an individual,
 6 ~~firm partnership~~, or corporation appointed as an independent
 7 contractor by one or more insurers for the principal purpose
 8 of exercising general supervision over the business of the
 9 insurer in this state, including the authority to appoint
 10 agents for such insurers and to terminate such
 11 appointments."

12 Section 2. Section 33-17-201, MCA, is amended to read:

13 "33-17-201. (Temporary) License required of agents,
 14 managing general agents, and solicitors -- forms. (1) No
 15 person shall in this state act as or hold himself out to be
 16 an agent or solicitor as to subjects of insurance located,
 17 resident, or to be performed in this state unless then
 18 licensed as such agent or solicitor under this chapter.

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

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

1 (4) No agent shall place any business, other than
 2 coverage of his own risks, with any insurer as to which he
 3 does not then hold an a validated appointment or license as
 4 agent under this chapter, except as provided in 33-17-1104
 5 as to life or disability insurance agents and in 33-8-213.

6 (5) The commissioner ~~shall~~ may prescribe ~~and--furnish~~
 7 ~~forms by rule and make available the forms~~ required in
 8 connection with application for, issuance, continuation, or
 9 termination of licenses and appointments.

10 (6) Unless licensed as a life insurance agent as
 11 required by this section, no person shall in this state
 12 solicit life insurance or annuities or procure applications
 13 therefor or engage or hold himself out as engaging in the
 14 business of analyzing or abstracting life insurance policies
 15 or annuities or of counseling or advising or giving
 16 opinions, other than as a licensed attorney ~~at-law~~, relative
 17 to such insurance or annuities for fee, commission, or other
 18 compensation, other than as a salaried bona fide full-time
 19 employee so counseling and advising his employer relative to
 20 the insurance interests of the employer and of the
 21 subsidiaries or business affiliates of the employer or with
 22 respect to the insurance interests of employees of such
 23 employer, subsidiaries, or affiliates under group insurance
 24 or similar insurance plans arranged by the employer or
 25 employers of such employees. (Terminates July 1, 1989--sec.

22, Ch. 11, Sp. L. March 1986.)

33-17-201. (Effective July 1, 1989) License required of agents, managing general agents, and solicitors -- forms.

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

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

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

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

(5) The commissioner ~~shall~~ may prescribe ~~and--furnish~~ forms by rule and make available the forms required in connection with application for, issuance, continuation, or termination of licenses and appointments.

(6) Unless licensed as a life insurance agent as required by this section, no person shall in this state

solicit life insurance or annuities or procure applications therefor or engage or hold himself out as engaging in the business of analyzing or abstracting life insurance policies or annuities or of counseling or advising or giving opinions, other than as a licensed attorney ~~at-law~~, relative to such insurance or annuities for fee, commission, or other compensation, other than as a salaried bona fide full-time employee so counseling and advising his employer relative to the insurance interests of the employer and of the subsidiaries or business affiliates of the employer or with respect to the insurance interests of employees of such employer, subsidiaries, or affiliates under group insurance or similar insurance plans arranged by the employer or employers of such employees."

Section 3. Section 33-17-202, MCA, is amended to read:

"33-17-202. General qualifications of ~~resident~~ agents and solicitors ~~other-than-life-insurance-agents~~. (1) For the protection of the people of this state the commissioner shall not issue, continue, or permit to exist any ~~resident~~ agent or solicitor license as to insurance ~~other-than-life or-disability~~, except in compliance with this chapter, or as to any individual not qualified therefor as follows:

(a) must be 18 years of age or more;

(b) must be a resident in and of this state or of another state if by reciprocal arrangements made by the

1 commissioner with the other state similar privileges therein
2 are granted to residents of this state;

3 (c) ~~if for a resident agent's license,~~ must have been
4 appointed as agent by an authorized insurer, subject to
5 issuance of the license;

6 (d) if for a solicitor's license, must have been
7 appointed as solicitor by a licensed resident agent, subject
8 to issuance of the license, and intend to make and make the
9 soliciting of insurance a principal vocation;

10 (e) must be competent, trustworthy, and of good
11 reputation;

12 (f) must have had experience or training or be
13 otherwise qualified in the kind or kinds of insurance as to
14 which he is to be licensed and be reasonably familiar with
15 the provisions of this code which govern his operations as
16 an insurance agent or solicitor;

17 (g) must pass ~~any~~ written an examination for the
18 license required under this chapter;

19 ~~{h}--must-intend-in-good-faith-to-act-as-and--must--act~~
20 ~~as--and--hold-himself-out-to-be-an-agent-or-solicitor-in-the~~
21 ~~active-solicitation-and-negotiation-of--insurance--with--the~~
22 ~~general--public--and--not--seek--or--use-the-license-for-the~~
23 ~~negotiation-or-effectuation-of-insurance-on-his-own-property~~
24 ~~or-interests-or-those-of-his-relatives-or-of--his--employer.~~
25 ~~if-during-any-calendar-year-more-than-35%-of-the-commissions~~

1 ~~earned-or-prospectively-to-be-earned-by-such-an-applicant-or~~
2 ~~licensee--have--been--or--probably--will--be--derived--from~~
3 ~~insurance-of-his-own-property-or-interests-and-those-of--his~~
4 ~~relatives-and-of-his-employer--the-license-will-be-deemed-to~~
5 ~~have--been-used-or-to-be-intended-to-be-used-in-violation-of~~
6 ~~this-subsection-(h);~~

7 (h) if for an agent's license as to life or disability
8 insurance, must not be a funeral director, undertaker, or
9 mortician operating in this or any other state or an
10 officer, employee, or representative thereof or hold an
11 interest in or benefit from such a business in this or any
12 other state.

13 (2) In determining the qualifications as to
14 competence, training, experience, and knowledge of the
15 provisions of this code governing his operations as a
16 ~~resident-insurance~~ an agent or solicitor, as provided for in
17 subsection (1) above, of applicant agents or solicitors
18 proposing to represent as such only insurers who confine
19 their business in this state substantially to the insuring
20 of the property, interests, and risks of farmers, the
21 commissioner shall relate such qualifications only to the
22 kinds of insurance policies which the applicant will handle
23 as such a licensee."

24 Section 4. Section 33-17-204, MCA, is amended to read:

25 "33-17-204. Licensing of organizations -- requisites.

1 (1) A partnership or corporation may engaged in this state
 2 in soliciting or negotiating insurance policies must be
 3 licensed as an insurance agent. Each member and employee of
 4 a partnership and each officer, director, stockholder, or
 5 employee of a corporation, personally engaged in this state
 6 on behalf of the corporation in soliciting or negotiating
 7 insurance policies, shall be registered licensed with the
 8 commissioner in conjunction with the partnership or
 9 corporation license and shall qualify as an individual. An
 10 ~~additional~~ A license fee shall be paid for each individual
 11 registered licensed in conjunction with the partnership or
 12 corporation license.

13 (2) A license shall not be issued to a partnership or
 14 corporation unless the transaction of business under the
 15 license is within the purposes stated in the partnership
 16 agreement or the articles of incorporation.

17 (3) The partnership or corporate licensee shall
 18 promptly notify the commissioner of each change relative to
 19 the individuals designated in the license.

20 (4) The commissioner may not issue a license to a
 21 partnership or corporation unless the secretary of state has
 22 issued a valid certificate to the partnership under
 23 35-12-601 or to the corporation under 35-1-203 or 35-2-203."

24 Section 5. Section 33-17-211, MCA, is amended to read:
 25 "33-17-211. Application for license. (1) Application

1 for an agent or solicitor license must be made to the
 2 commissioner by the applicant and be signed and sworn to by
 3 the applicant before a notary public ~~or other person~~
 4 ~~authorized by law to take acknowledgments of deeds.~~

5 (2) The commissioner must may designate ~~and prepare~~
 6 the forms for application for license, which must require
 7 full answers to such questions as may reasonably be
 8 necessary to determine the applicant's identity, residence,
 9 personal history, business record, experience and training
 10 in insurance, ~~purpose for which the license is to be used,~~
 11 and other facts as required by the commissioner to determine
 12 whether the applicant meets the applicable qualifications
 13 for the license applied for.

14 (3) If for an agent's license, the application must
 15 state the kinds of insurance proposed to be transacted and
 16 be accompanied by written appointment of the applicant as
 17 agent by an authorized insurer, subject to issuance of the
 18 license.

19 (4) If for a solicitor's license, the application must
 20 be accompanied by written appointment of applicant as
 21 solicitor by a licensed agent, subject to issuance of the
 22 license.

23 (5) If the applicant for an agent license is a firm
 24 partnership or corporation, the application shall show, in
 25 addition, the names of all members, officers, and directors

1 and shall designate each individual who is to exercise the
2 powers to be conferred by the license upon the firm
3 partnership or corporation. Each such individual so
4 designated shall furnish information as to himself, as part
5 of the application, as though for an individual license.

6 (6) If the applicant for an agent license is an
7 agents' association pursuant to 33-17-205, the application
8 must show the names and residence addresses of the
9 association's officers and trustees.

10 (7) If for license as either agent or solicitor, the
11 application must also show whether applicant was ever
12 previously licensed to transact any kind of insurance in
13 this state or elsewhere; whether any such license was ever
14 refused, suspended, or revoked; whether any insurer, general
15 agent, or agent, in the case of a solicitor application,
16 claims applicant to be indebted to it and, if so, the
17 details thereof and the defenses, if any, of the applicant
18 thereto; and whether applicant ever had an agency contract
19 canceled and the facts thereof.

20 (8) The commissioner shall require as part of the
21 application for license the certificate of an officer or
22 representative of the insurer proposed to be represented, in
23 the case of applicants for license as agent, or of the
24 proposed employing agent, in the case of applicants for
25 license as solicitor, as to whether the applicant is known

1 to such officer or representative, whether the insurer or
2 agent has investigated the character and business record of
3 the applicant and the uses to be made of the license, if
4 granted, and his opinion, based on such investigation, as to
5 applicant's trustworthiness and competence ~~and--whether--the~~
6 ~~applicant--will--use--the--license--principally--for--the--purpose~~
7 ~~of--insuring--the--applicant's--own--risks--or--interests--and--those~~
8 ~~of--the--applicant's--relatives--or--employer.~~

9 (9) All such applications must be accompanied by the
10 applicable license fee, appointment of agent fee where
11 applicable, and examination fee where required under
12 33-17-212, all in the respective amounts stated in
13 33-2-708."

14 Section 6. Section 33-17-212, MCA, is amended to read:

15 "33-17-212. Examination required. (1) After completion
16 and filing of the application for license as required under
17 33-17-211, the commissioner shall subject each applicant for
18 license as agent or solicitor, unless exempted therefrom
19 under subsection (5) below, to ~~a--personal--written~~ an
20 examination as to his competence to act as such agent or
21 solicitor. The commissioner may either conduct the
22 examination or arrange for the examination to be conducted
23 by a testing service, which shall recover the cost of the
24 examination from the applicant.

25 (2) If the applicant is a firm partnership or

1 corporation, the examination shall be so taken by each
2 individual who is to be named in the license as having
3 authority to act for the applicant in its insurance
4 transactions under the license.

5 (3) Examination of an applicant for an agent's license
6 shall cover all of the kinds of insurance for which the
7 applicant has applied to be licensed, as constituted by any
8 one or more of the following classifications:

- 9 (a) life insurance;
- 10 (b) disability insurance;
- 11 (c) property insurance; for the purposes of this
12 provision, "marine" insurance shall be deemed to be included
13 in "property" insurance;
- 14 (d) casualty insurance;
- 15 (e) vehicle insurance;
- 16 (f) surety insurance;
- 17 (g) credit life and disability insurance;
- 18 (h) title insurance.

19 (4) Examination of an applicant for a solicitor's
20 license shall cover all the kinds of insurance, other than
21 life, as to which the appointing agent is licensed.

22 (5) This section shall not apply to, and no such
23 examination shall be required of:

- 24 (a) any individual lawfully licensed as an agent or
25 solicitor as to the kind or kinds of insurance to be

1 transacted as of or immediately prior to January 1, 1961,
2 and thereafter continuing to be so licensed;

3 (b) any applicant for license covering the same kind
4 or kinds of insurance as to which the applicant was licensed
5 in this state, other than under a temporary license, within
6 the 12 months next preceding date of application unless such
7 previous license was suspended, revoked, or continuation
8 thereof refused by the commissioner, except that the
9 provisions of this subsection (5)(b) do not apply to title
10 agents, as defined in 33-25-105;

11 (c) any applicant for license as nonresident agent,
12 subject to reciprocal arrangements as provided for in this
13 code;

14 (d) all applicants for license as agent for an insurer
15 that confines its business in this state substantially to
16 the insuring of the property, interests, and risks of
17 farmers, if exempted from examination by the commissioner,
18 in his discretion, upon written request of the insurer;

19 (e) transportation ticket agents of common carriers
20 applying for license to solicit and sell only:

- 21 (i) accident insurance ticket policies; or
- 22 (ii) insurance of personal effects while being carried
23 as baggage on such common carrier, as incidental to their
24 duties as such transportation ticket agents;

25 (f) agents' associations applying for license under

1 33-17-205;

2 (g) mechanical breakdown insurance agents."

3 Section 7. Section 33-17-213, MCA, is amended to read:

4 "33-17-213. Conduct of examinations. (1) The
5 commissioner shall make any examination required under
6 33-17-212 available to applicants with reasonable frequency
7 and at ~~a place~~ places in this state reasonably accessible to
8 the applicants. ~~The commissioner shall make any such~~
9 ~~examination available at his offices at Helena, Montana, at~~
10 ~~times within his discretion but at least once a month.~~

11 (2) All the kinds of insurance or classes thereof, as
12 referred to in 33-17-212(3), which the applicant proposes to
13 transact under the license applied for shall be included in
14 the same examination.

15 (3) The commissioner shall ~~give, conduct, and grade~~
16 ~~all examinations~~ assure that the examinations are conducted
17 in a fair and impartial manner and without unfair
18 discrimination as between individuals examined.

19 (4) The commissioner may require a reasonable waiting
20 period before reexamination of an applicant who has failed
21 to pass a previous examination covering the same kind or
22 kinds of insurance.

23 (5) The examination of a title agent, as defined in
24 33-25-105, must include but is not limited to questions
25 pertaining to the search and examination of title to real

1 property, insurance principles relating to title insurance,
2 and the fiduciary duties and procedures of escrows,
3 settlements, and closings of real estate transactions."

4 Section 8. Section 33-17-231, MCA, is amended to read:

5 "33-17-231. Appointment of agents -- continuation and
6 termination. (1) Each insurer appointing an agent in this
7 state shall file with the commissioner the appointment,
8 specifying the kinds of insurance to be transacted by the
9 agent for the insurer, and pay the fee therefor as stated in
10 33-2-708. The term of the appointment is for 1 year and
11 runs from June 1 of each year through May 31 of the
12 succeeding year.

13 (2) Subject to annual continuation renewal by the
14 insurer ~~not later than May 31~~, each such appointment shall
15 remain in effect until the agent's license is revoked or
16 otherwise terminated unless written notice of earlier
17 termination of the appointment is filed with the
18 commissioner by the insurer ~~or agent~~.

19 (3) Annually, prior to May 1, each insurer shall file
20 with the commissioner an alphabetical list in duplicate of
21 the names and addresses of all its agents whose appointments
22 in this state are to remain in effect, accompanied by
23 payment of the annual renewal fee as provided in 33-2-708.
24 At the same time the insurer shall also file with the
25 commissioner a termination report of all agents whose

1 appointments in this state are not to remain in effect.

2 (4) Subject to the agent's contract rights, an insurer
3 may terminate an agency agent's appointment at any time. The
4 insurer shall promptly give written notice of such
5 termination to the commissioner and to the agent ~~where~~
6 ~~reasonably--possible~~. The commissioner may require of the
7 insurer reasonable proof that the insurer has given such
8 notice to the agent.

9 (5) As part of the notice of termination given the
10 commissioner, the insurer shall file with the commissioner a
11 statement of the facts relative to the termination and the
12 cause thereof. Any information or statement contained in the
13 notice of termination ~~shall-be-privileged-and~~ shall not be
14 admissible as evidence in any action or proceeding against
15 the insurer or any representative thereof by or in behalf of
16 any person affected by such termination."

17 Section 9. Section 33-17-401, MCA, is amended to read:

18 "33-17-401. Nonresident agent -- reciprocity. The
19 commissioner may ~~license--as--an--agent~~ issue only a
20 nonresident license to a person, partnership, or corporation
21 otherwise qualified under this code but not a resident of
22 this state and only if pursuant to the laws of the state of
23 his residence a similar privilege is extended to persons
24 resident in Montana."

25 Section 10. Section 33-17-601, MCA, is amended to

1 read:

2 "33-17-601. Administrator defined. As used in this
3 part, the term "administrator" means any person,
4 corporation, partnership, or association ~~who~~ that collects
5 charges or premiums from residents of this state in
6 connection with life or health insurance coverage or
7 annuities or property or casualty insurance coverage or ~~who~~
8 that adjusts or settles claims on such coverage, but does
9 not include:

10 (1) an employer on behalf of its employees or on
11 behalf of the employees of one or more subsidiary or
12 affiliated corporations of such employer;

13 (2) a union on behalf of its members;

14 (3) an insurance company which is either licensed in
15 this state or acting as an insurer with respect to a policy
16 lawfully issued and delivered by it in and pursuant to the
17 laws of a state in which the insurer was authorized to do an
18 insurance business or a health service corporation as
19 defined in 33-30-101;

20 (4) a life, or health, property, or casualty agent who
21 is licensed in this state and whose activities are limited
22 exclusively to the sale of insurance;

23 (5) a creditor on behalf of its debtors with respect
24 to insurance covering a debt between the creditor and its
25 debtors;

1 (6) a trust established in conformity with 29 U.S.C.
2 186, its trustees, or agents and employees acting
3 thereunder;

4 (7) a trust exempt from taxation under section 501(a)
5 of the Internal Revenue Code, its trustees, or employees
6 acting thereunder;

7 (8) a custodian acting pursuant to a custodian account
8 which meets the requirements of section 401(f) of the
9 Internal Revenue Code or its agents and employees;

10 (9) a bank, credit union, or other financial
11 institution which is subject to supervision or examination
12 by federal or state banking authorities;

13 (10) a credit card issuing company which advances for
14 and collects premiums or charges from its credit card
15 holders who have authorized it to do so, provided such
16 company does not adjust or settle claims; or

17 (11) a person who adjusts or settles claims in the
18 normal course of his practice or employment as an attorney
19 ~~at--law~~ and who does not collect charges or premiums in
20 connection with life or health insurance coverage or
21 annuities."

22 Section 11. Section 33-17-602, MCA, is amended to
23 read:

24 "33-17-602. Written agreement required. (1) No person
25 may act as an administrator without a written agreement

1 between the person and the insurer. The written agreement
2 shall be retained as part of the official records of both
3 the administrator and the insurer for the duration of the
4 agreement and for 5 years thereafter. The written agreement
5 shall contain provisions which include the requirements of
6 ~~33-17-605--and~~ 33-17-612 through 33-17-617 insofar as these
7 requirements relate to the functions performed by the
8 administrator.

9 (2) The agreement shall contain a provision with
10 respect to the underwriting or other standards pertaining to
11 the business underwritten by such insurer.

12 (3) Whenever a policy is issued to a trustee, a copy
13 of the trust agreement and any amendments thereto shall be
14 furnished to the insurer by the administrator and shall be
15 retained as part of the official records of both the
16 administrator and the insurer for the duration of the policy
17 and for 5 years thereafter."

18 Section 12. Section 33-17-1001, MCA, is amended to
19 read:

20 "33-17-1001. Suspension, revocation, or refusal of
21 license. (1) Except as provided in 33-17-411, the
22 commissioner may suspend for not more than 12 months or may
23 revoke or refuse to continue any license issued under this
24 chapter or any surplus ~~line~~ lines agent license if, after
25 hearing held on not less than ~~20~~ 10 days' advance notice by

1 registered--or certified mail of such hearing and of the
 2 charges against the licensee given as provided in
 3 33-1-314(3) to the licensee and to the insurers represented,
 4 as to an agent, or to the appointing agent, as to a
 5 solicitor, he finds that as to the licensee any one or more
 6 of the following causes exist:

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

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

12 (c) for violation of or noncompliance with any
 13 applicable provision of this code or for willful violation
 14 of any lawful rule or order of the commissioner;

15 (d) for misappropriation or conversion to his own use
 16 or illegal withholding of moneys or property belonging to
 17 policyholders, ~~or insurer--or~~ insurers, beneficiaries, or
 18 others and received in conduct of business under the
 19 license;

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

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

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

5 (3) The commissioner may suspend, revoke, or refuse to
 6 continue a license under subsection (1)(e) without
 7 conducting an investigation pursuant to 37-1-203 or making a
 8 written finding pursuant to 37-1-204."

9 Section 13. Section 33-17-1002, MCA, is amended to
 10 read:

11 "33-17-1002. Procedure following suspension or
 12 revocation. (1) Upon suspension or revocation of any such
 13 license, the commissioner shall forthwith notify the
 14 licensee thereof either in person or by mail addressed to
 15 the licensee at his address last of record with the
 16 commissioner. Notice by mail shall be deemed effectuated
 17 when so mailed. The commissioner shall give like notice to
 18 the insurers represented by the agent, in the case of an
 19 agent's license, and to the agent by whom appointed, in the
 20 case of a solicitor's license.

21 (2) Suspension or revocation of the license of an
 22 agent shall automatically revoke or suspend the licenses of
 23 all solicitors appointed by him.

24 (3) The commissioner shall not again issue a license
 25 under this code to or as to any person whose license has

1 been revoked until after expiration of 1 year and thereafter
 2 not until such person again qualifies therefor in accordance
 3 with the applicable provisions of this code. A person whose
 4 license has been revoked twice shall not again be eligible
 5 for any license under this code.

6 (4) If the license of a firm partnership or
 7 corporation is so suspended or revoked, no member of such
 8 firm partnership or officer or director of such corporation
 9 shall be licensed or be designated in any license to
 10 exercise the powers thereof during the period of such
 11 suspension or revocation unless the commissioner determines
 12 upon substantial evidence that such member, officer, or
 13 director was not personally at fault and did not acquiesce
 14 in the matter on account of which the license was suspended
 15 or revoked."

16 Section 14. Section 33-17-1004, MCA, is amended to
 17 read:

18 "33-17-1004. Acting as insurance agent, solicitor, or
 19 adjuster without license -- penalty. Except as provided in
 20 33-17-411, a person, firm partnership, association, or
 21 corporation who or which, in this state, acts as an
 22 insurance agent, solicitor, or adjuster without having
 23 authority to do so by virtue of a license issued and in
 24 force pursuant to the provisions of this chapter is guilty
 25 of a misdemeanor and upon conviction shall be fined \$500 or

1 imprisoned in the county jail for 90 days, or both."

2 Section 15. Section 33-17-1101, MCA, is amended to
 3 read:

4 "33-17-1101. Place of business -- display of license
 5 -- records. (1) Every resident agent shall have and maintain
 6 a place of business in this state accessible to the public.
 7 A nonresident agent may maintain a place of business in this
 8 state. Such An agent's place of business ~~shall~~ must be that
 9 wherein ~~the licensee~~ he principally conducts transactions
 10 under his license. The street address of such place shall
 11 appear upon the license, and the licensee shall promptly
 12 notify the commissioner of any change thereof in his street
 13 or mailing address. Nothing in this section prohibits
 14 maintenance of such place of business in the licensee's
 15 place of residence.

16 (2) The license of the licensee and the license of
 17 each solicitor appointed by and representing the licensee
 18 ~~shall~~ must be conspicuously displayed in such place of
 19 business at the street address shown on the license in a
 20 part thereof customarily open to the public.

21 (3) The agent shall keep at his place of business
 22 complete records pertaining to transactions under his
 23 license and the licenses of his solicitors, for a period of
 24 at least 3 years after completion of the respective
 25 transactions, except that title agents, as defined in

1 33-25-105, shall retain records as provided in 33-25-214 and
2 33-25-216."

3 Section 16. Section 33-17-1102, MCA, is amended to
4 read:

5 "33-17-1102. Reporting and accounting for premiums.

6 (1) All premiums or return premiums received by an agent or
7 solicitor ~~shall be trust funds so received by the~~ must be
8 held in a separate trust account. The licensee shall at all
9 times act in a fiduciary capacity, and the agent or
10 solicitor shall in the applicable regular course of business
11 account for and pay the same to the insured, insurer, or
12 agent entitled thereto. Except for a title agent as defined
13 in 33-25-105, ~~if the licensee establishes a separate deposit~~
14 ~~for funds so belonging to others in order to avoid a~~
15 ~~commingling of such fiduciary funds with his own funds,~~ he
16 an agent may deposit and commingle in the same such separate
17 deposit all such funds belonging to others so long as the
18 amount of such deposit so held for each respective other
19 person is reasonably ascertainable from the records and
20 accounts of the licensee.

21 (2) Any agent or solicitor who, not being lawfully
22 entitled thereto, ~~diverts~~ may not divert or appropriates
23 appropriate such funds or any portion thereof to his own use
24 ~~is, upon conviction, guilty of theft and shall be punished~~
25 ~~as provided by law.~~

1 Section 17. Section 33-17-1103, MCA, is amended to
2 read:

3 "33-17-1103. Exchange of business -- sharing
4 commissions. (1) An agent may, occasionally only under rules
5 adopted by the commissioner, place an insurance coverage
6 with an insurer as to which he is not then licensed or
7 appointed as an agent, and the insurer shall accept such
8 business, only when placed through an agent, licensed under
9 this chapter and appointed by the insurer. Both agents
10 involved in such an exchange of business must be licensed as
11 to all of the kinds of insurance represented by the coverage
12 so placed.

13 (2) The agents involved in a lawful exchange of
14 business under subsection (1) above may divide between them
15 the commission or compensation payable on account of such
16 coverage.

17 (3) No agent or solicitor shall directly or indirectly
18 share his commissions or other compensation received or to
19 be received by him on account of a transaction under his
20 license with any person not also licensed under this chapter
21 as to the same kind or kinds of insurance involved in such
22 transactions, except as provided in 33-17-1113. This
23 provision shall not affect payment of the regular salaries
24 due employees of the licensee or the distribution in regular
25 course of business of compensation and profits among members

1 or stockholders if the licensee is a firm or corporation or
2 use of funds for family or personal purposes.

3 (4) This section does not apply as to those
4 transactions with surplus lines agents which are lawful
5 under 33-2-306 or as to life or disability insurance placed
6 as provided in 33-17-1104."

7 Section 18. Section 33-17-1104, MCA, is amended to
8 read:

9 "33-17-1104. Life or disability agent authorized to
10 place excess or rejected business. A life or disability
11 insurance agent may, ~~from-time-to-time~~ under rules adopted
12 by the commissioner, place excess or rejected risks in any
13 other life or disability insurer authorized to transact
14 insurance in this state, with the knowledge and approval of
15 the insurer or insurers as to which the agent is so
16 licensed, and may receive a commission thereon without being
17 required to have a license as to such other insurer."

18 NEW SECTION. Section 19. Bond requirement -- waiver
19 for nonresident agent. (1) Prior to the issuance of an
20 insurance agent license, the applicant shall file with the
21 commissioner and thereafter, for as long as the license
22 remains in effect, shall keep in force a bond in favor of
23 this state in the amount of \$10,000 with authorized
24 corporate sureties approved by the commissioner. The
25 aggregate liability of the surety for claims on a bond may

1 not exceed the amount of the bond. The bond shall be
2 conditioned that the agent shall conduct business under the
3 license in accordance with this code. The bond may not
4 terminate unless the surety gives the licensee and the
5 commissioner at least 30 days' prior written notice. The
6 commissioner shall notify the surety, within 10 working
7 days, of termination of the license for which the bond was
8 in effect.

9 (2) The commissioner may not require a nonresident
10 insurance agent to file and keep a new bond if the
11 commissioner is satisfied that an existing bond covers the
12 nonresident insurance agent's business in this state.

13 NEW SECTION. Section 20. Repealer. Sections 33-17-203
14 and 33-17-605, MCA, are repealed.

15 NEW SECTION. Section 21. Extension of authority. Any
16 existing authority of the commissioner of insurance to make
17 rules on the subject of the provisions of this act is
18 extended to the provisions of this act.

19 NEW SECTION. Section 22. Codification instruction.
20 Section 19 is intended to be codified as an integral part of
21 Title 33, chapter 17, part 1, and the provisions of Title
22 33, chapter 17, part 1, apply to section 19.

23 NEW SECTION. Section 23. Applicability. Section 19
24 applies to agent licenses issued or renewed after May 31,
25 1988.

APPROVED BY COMM. ON
BUSINESS AND LABOR

1 STATEMENT OF INTENT

2 HOUSE BILL 803

3 House Business and Labor Committee

4

5 A statement of intent is required for this bill because
6 section 15 authorizes the commissioner of insurance of the
7 state of Montana (commissioner) to determine by rule the
8 instances in which an insurance agent may place insurance
9 coverage with an insurer as to which he is not then licensed
10 or appointed as an agent and because section 16 authorizes
11 the commissioner to determine the instances in which a life
12 or disability insurance agent may place excess or rejected
13 risks in an insurer that has not appointed him as agent. The
14 legislature intends that the rules that the commissioner
15 adopts to implement this bill be designed to protect Montana
16 life and disability insurance consumers.

17 The legislature further intends that the commissioner
18 adopt those rules in accordance with 33-1-313, which grants
19 the commissioner general rulemaking authority and which
20 permits the commissioner:

21 (1) to make only reasonable rules that do not extend,
22 modify, or conflict with any law of this state or with any
23 reasonable implication of those laws; and

24 (2) to make or amend those rules only after a hearing
25 of which notice has been given as required by 33-1-703.

HOUSE BILL NO. 803

INTRODUCED BY CAMPBELL, THAYER

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE LICENSING AND REGULATION OF INSURANCE AGENTS, SOLICITORS, ADJUSTERS, CONSULTANTS, AND ADMINISTRATORS; AMENDING SECTIONS 33-17-102, 33-17-201, 33-17-202, 33-17-204, 33-17-211 THROUGH 33-17-213, 33-17-231, 33-17-401, 33-17-601, 33-17-602, 33-17-1001, 33-17-1002, 33-17-1004, AND 33-17-1101 THROUGH 33-17-1104, MCA; REPEALING SECTIONS 33-17-203 AND 33-17-605, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

Section 1. Section 33-17-102, MCA, is amended to read:

"33-17-102. Definitions. As used in this title, the following definitions apply:

(1) (a) An "adjuster" is a person who, on behalf of the insurer, for compensation as an independent contractor or as the employee of such an independent contractor or for fee or commission investigates and negotiates settlement of claims arising under insurance contracts or otherwise acts on behalf of the insurer. The term does not include a:

(b)(a) A licensed attorney at law who is qualified to

practice law in this state; or

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

(c)(2) A "public adjuster" is an adjuster employed by and representing the interests of the insured. The commissioner may adopt rules providing for the examination, licensure, bonding, and regulation of public adjusters.

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

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

(4) A "consultant" is a person who for a fee examines, appraises, reviews, or evaluates an insurance policy, annuity, or pension contract, plan, or program or who makes recommendations or gives advice on an insurance policy, annuity, or pension contract, plan, or program.

(4)(5) A "solicitor" is an individual appointed and

1 authorized by an agent to solicit applications for
2 insurance, other than life insurance or disability
3 insurance, as a representative of such agent, and to collect
4 premiums thereon when expressly so authorized by the agent.

5 †5) (6) A "managing general agent" is an individual,
6 firm partnership, or corporation appointed as an independent
7 contractor by one or more insurers for the principal purpose
8 of exercising general supervision over the business of the
9 insurer in this state, including the authority to appoint
10 agents for such insurers and to terminate such
11 appointments."

12 Section 2. Section 33-17-201, MCA, is amended to read:

13 "33-17-201. (Temporary) License required of agents,
14 managing general agents, and solicitors -- forms. (1) No
15 person shall in this state act as or hold himself out to be
16 an agent or solicitor as to subjects of insurance located,
17 resident, or to be performed in this state unless then
18 licensed as such agent or solicitor under this chapter.

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

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

1 (4) No agent shall place any business, other than
2 coverage of his own risks, with any insurer as to which he
3 does not then hold on a validated appointment or license as
4 agent under this chapter, except as provided in 33-17-1104
5 as to life or disability insurance agents and in 33-8-213.

6 (5) The commissioner ~~shall~~ may prescribe ~~and--furnish~~
7 forms by rule and make available the forms required in
8 connection with application for, issuance, continuation, or
9 termination of licenses and appointments.

10 (6) Unless licensed as a life insurance agent as
11 required by this section, no person shall in this state
12 solicit life insurance or annuities or procure applications
13 therefor or engage or hold himself out as engaging in the
14 business of analyzing or abstracting life insurance policies
15 or annuities or of counseling or advising or giving
16 opinions, other than as a licensed attorney ~~at-law~~, relative
17 to such insurance or annuities for fee, commission, or other
18 compensation, other than as a salaried bona fide full-time
19 employee so counseling and advising his employer relative to
20 the insurance interests of the employer and of the
21 subsidiaries or business affiliates of the employer or with
22 respect to the insurance interests of employees of such
23 employer, subsidiaries, or affiliates under group insurance
24 or similar insurance plans arranged by the employer or
25 employers of such employees. (Terminates July 1, 1989--sec.

1 22, Ch. 11, Sp. L. March 1986.)

2 33-17-201. (Effective July 1, 1989) License required
3 of agents, managing general agents, and solicitors -- forms.

4 (1) No person shall in this state act as or hold himself out
5 to be an agent or solicitor as to subjects of insurance
6 located, resident, or to be performed in this state unless
7 then licensed as such agent or solicitor under this chapter.

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

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

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

20 (5) The commissioner ~~shall~~ may prescribe ~~and--~~ furnish
21 forms by rule and make available the forms required in
22 connection with application for, issuance, continuation, or
23 termination of licenses and appointments.

24 (6) Unless licensed as a life insurance agent as
25 required by this section, no person shall in this state

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

15 Section 3. Section 33-17-202, MCA, is amended to read:

16 "33-17-202. General qualifications of ~~resident~~ agents
17 and solicitors ~~other-than-life-insurance-agents~~. (1) For the
18 protection of the people of this state the commissioner
19 shall not issue, continue, or permit to exist any ~~resident~~
20 agent or solicitor license as to insurance ~~other-than-life~~
21 ~~or-disability~~, except in compliance with this chapter, or as
22 to any individual not qualified therefor as follows:

23 (a) must be 18 years of age or more;

24 (b) must be a resident in and of this state ~~or of~~
25 another state if by reciprocal arrangements made by the

1 commissioner with the other state similar privileges therein
 2 are granted to residents of this state;

3 (c) ~~if for a resident agent's license,~~ must have been
 4 appointed as agent by an authorized insurer, subject to
 5 issuance of the license;

6 (d) if for a solicitor's license, must have been
 7 appointed as solicitor by a licensed resident agent, subject
 8 to issuance of the license, and intend to make and make the
 9 soliciting of insurance a principal vocation;

10 (e) must be competent, trustworthy, and of good
 11 reputation;

12 (f) must have had experience or training or be
 13 otherwise qualified in the kind or kinds of insurance as to
 14 which he is to be licensed and be reasonably familiar with
 15 the provisions of this code which govern his operations as
 16 an insurance agent or solicitor;

17 (g) must pass ~~any~~ written an examination for the
 18 license required under this chapter;

19 ~~(h) must intend in good faith to act as and must act~~
 20 ~~as and hold himself out to be an agent or solicitor in the~~
 21 ~~active solicitation and negotiation of insurance with the~~
 22 ~~general public and not seek or use the license for the~~
 23 ~~negotiation or effectuation of insurance on his own property~~
 24 ~~or interests or those of his relatives or of his employer.~~
 25 ~~if during any calendar year more than 35% of the commissions~~

1 ~~earned or prospectively to be earned by such an applicant or~~
 2 ~~licensee have been or probably will be derived from~~
 3 ~~insurance of his own property or interests and those of his~~
 4 ~~relatives and of his employer, the license will be deemed to~~
 5 ~~have been used or to be intended to be used in violation of~~
 6 ~~this subsection (h);~~

7 (h) if for an agent's license as to life or disability
 8 insurance, must not be a funeral director, undertaker, or
 9 mortician operating in this or any other state or an
 10 officer, employee, or representative thereof or hold an
 11 interest in or benefit from such a business in this or any
 12 other state.

13 (2) In determining the qualifications as to
 14 competence, training, experience, and knowledge of the
 15 provisions of this code governing his operations as a
 16 ~~resident insurance~~ an agent or solicitor, as provided for in
 17 subsection (1) above, of applicant agents or solicitors
 18 proposing to represent as such only insurers who confine
 19 their business in this state substantially to the insuring
 20 of the property, interests, and risks of farmers, the
 21 commissioner shall relate such qualifications only to the
 22 kinds of insurance policies which the applicant will handle
 23 as such a licensee."

24 Section 4. Section 33-17-204, MCA, is amended to read:

25 "33-17-204. Licensing of organizations -- requisites.

1 (1) A partnership or corporation may engaged in this state
 2 in soliciting or negotiating insurance policies must be
 3 licensed as an insurance agent. Each member and employee of
 4 a partnership and each officer, director, stockholder, or
 5 employee of a corporation, personally engaged in this state
 6 on behalf of the corporation in soliciting or negotiating
 7 insurance policies, shall be ~~registered~~ licensed with the
 8 commissioner in conjunction with the partnership or
 9 corporation license and shall qualify as an individual. An
 10 ~~additional~~ A license fee shall be paid for each individual
 11 ~~registered~~ licensed in conjunction with the partnership or
 12 corporation license.

13 (2) A license shall not be issued to a partnership or
 14 corporation unless the transaction of business under the
 15 license is within the purposes stated in the partnership
 16 agreement or the articles of incorporation.

17 (3) The partnership or corporate licensee shall
 18 promptly notify the commissioner of each change relative to
 19 the individuals designated in the license.

20 (4) The commissioner may not issue a license to a
 21 partnership or corporation unless the secretary of state has
 22 issued a valid certificate to the partnership under
 23 35-12-601 or to the corporation under 35-1-203 or 35-2-203."

24 Section 5. Section 33-17-211, MCA, is amended to read:
 25 "33-17-211. Application for license. (1) Application

1 for an agent or solicitor license must be made to the
 2 commissioner by the applicant and be signed and sworn to by
 3 the applicant before a notary public ~~or--other--person~~
 4 ~~authorized-by-law-to-take-acknowledgments-of-deeds.~~

5 (2) The commissioner ~~must~~ may designate ~~and-prepare~~
 6 the forms for application for license, which must require
 7 full answers to such questions as may reasonably be
 8 necessary to determine the applicant's identity, residence,
 9 personal history, business record, experience and training
 10 in insurance, ~~purpose-for-which-the-license-is-to-be-used,~~
 11 and other facts as required by the commissioner to determine
 12 whether the applicant meets the applicable qualifications
 13 for the license applied for.

14 (3) If for an agent's license, the application must
 15 state the kinds of insurance proposed to be transacted and
 16 be accompanied by written appointment of the applicant as
 17 agent by an authorized insurer, subject to issuance of the
 18 license.

19 (4) If for a solicitor's license, the application must
 20 be accompanied by written appointment of applicant as
 21 solicitor by a licensed agent, subject to issuance of the
 22 license.

23 (5) If the applicant for an agent license is a firm
 24 partnership or corporation, the application shall show, in
 25 addition, the names of all members, officers, and directors

1 and shall designate each individual who is to exercise the
2 powers to be conferred by the license upon the ~~firm~~
3 partnership or corporation. Each such individual so
4 designated shall furnish information as to himself, as part
5 of the application, as though for an individual license.

6 (6) If the applicant for an agent license is an
7 agents' association pursuant to 33-17-205, the application
8 must show the names and residence addresses of the
9 association's officers and trustees.

10 (7) If for license as either agent or solicitor, the
11 application must also show whether applicant was ever
12 previously licensed to transact any kind of insurance in
13 this state or elsewhere; whether any such license was ever
14 refused, suspended, or revoked; whether any insurer, general
15 agent, or agent, in the case of a solicitor application,
16 claims applicant to be indebted to it and, if so, the
17 details thereof and the defenses, if any, of the applicant
18 thereto; and whether applicant ever had an agency contract
19 canceled and the facts thereof.

20 (8) The commissioner shall require as part of the
21 application for license the certificate of an officer or
22 representative of the insurer proposed to be represented, in
23 the case of applicants for license as agent, or of the
24 proposed employing agent, in the case of applicants for
25 license as solicitor, as to whether the applicant is known

1 to such officer or representative, whether the insurer or
2 agent has investigated the character and business record of
3 the applicant and the uses to be made of the license, if
4 granted, and his opinion, based on such investigation, as to
5 applicant's trustworthiness and competence ~~and--whether--the~~
6 ~~applicant--will--use--the--license--principally--for--the--purpose~~
7 ~~of--insuring--the--applicant's--own--risks--or--interests--and--those~~
8 ~~of--the--applicant's--relatives--or--employer.~~

9 (9) All such applications must be accompanied by the
10 applicable license fee, appointment of agent fee where
11 applicable, and examination fee where required under
12 33-17-212, all in the respective amounts stated in
13 33-2-708."

14 Section 6. Section 33-17-212, MCA, is amended to read:
15 "33-17-212. Examination required. (1) After completion
16 and filing of the application for license as required under
17 33-17-211, the commissioner shall subject each applicant for
18 license as agent or solicitor, unless exempted therefrom
19 under subsection (5) below, to ~~a--personal--written~~ an
20 examination as to his competence to act as such agent or
21 solicitor. The commissioner may either conduct the
22 examination or arrange for the examination to be conducted
23 by a testing service, which shall recover the cost of the
24 examination from the applicant.

25 (2) If the applicant is a firm partnership or

1 corporation, the examination shall be so taken by each
 2 individual who is to be named in the license as having
 3 authority to act for the applicant in its insurance
 4 transactions under the license.

5 (3) Examination of an applicant for an agent's license
 6 shall cover all of the kinds of insurance for which the
 7 applicant has applied to be licensed, as constituted by any
 8 one or more of the following classifications:

- 9 (a) life insurance;
- 10 (b) disability insurance;
- 11 (c) property insurance; for the purposes of this
 12 provision, "marine" insurance shall be deemed to be included
 13 in "property" insurance;
- 14 (d) casualty insurance;
- 15 (e) vehicle insurance;
- 16 (f) surety insurance;
- 17 (g) credit life and disability insurance;
- 18 (h) title insurance.

19 (4) Examination of an applicant for a solicitor's
 20 license shall cover all the kinds of insurance, other than
 21 life, as to which the appointing agent is licensed.

22 (5) This section shall not apply to, and no such
 23 examination shall be required of:

- 24 (a) any individual lawfully licensed as an agent or
 25 solicitor as to the kind or kinds of insurance to be

1 transacted as of or immediately prior to January 1, 1961,
 2 and thereafter continuing to be so licensed;

3 (b) any applicant for license covering the same kind
 4 or kinds of insurance as to which the applicant was licensed
 5 in this state, other than under a temporary license, within
 6 the 12 months next preceding date of application unless such
 7 previous license was suspended, revoked, or continuation
 8 thereof refused by the commissioner, except that the
 9 provisions of this subsection (5)(b) do not apply to title
 10 agents, as defined in 33-25-105;

11 (c) any applicant for license as nonresident agent,
 12 subject to reciprocal arrangements as provided for in this
 13 code;

14 (d) all applicants for license as agent for an insurer
 15 that confines its business in this state substantially to
 16 the insuring of the property, interests, and risks of
 17 farmers, if exempted from examination by the commissioner,
 18 in his discretion, upon written request of the insurer;

19 (e) transportation ticket agents of common carriers
 20 applying for license to solicit and sell only:

- 21 (i) accident insurance ticket policies; or
- 22 (ii) insurance of personal effects while being carried
 23 as baggage on such common carrier, as incidental to their
 24 duties as such transportation ticket agents;

25 (f) agents' associations applying for license under

1 33-17-205;

2 (g) mechanical breakdown insurance agents."

3 Section 7. Section 33-17-213, MCA, is amended to read:

4 "33-17-213. Conduct of examinations. (1) The
5 commissioner shall make any examination required under
6 33-17-212 available to applicants with reasonable frequency
7 and at ~~a place~~ places in this state reasonably accessible to
8 the applicants. ~~The commissioner shall make any such~~
9 ~~examination available at his offices at Helena, Montana, at~~
10 ~~times within his discretion but at least once a month.~~

11 (2) All the kinds of insurance or classes thereof, as
12 referred to in 33-17-212(3), which the applicant proposes to
13 transact under the license applied for shall be included in
14 the same examination.

15 (3) The commissioner shall ~~give, conduct, and grade~~
16 all examinations assure that the examinations are conducted
17 in a fair and impartial manner and without unfair
18 discrimination as between individuals examined.

19 (4) The commissioner may require a reasonable waiting
20 period before reexamination of an applicant who has failed
21 to pass a previous examination covering the same kind or
22 kinds of insurance.

23 (5) The examination of a title agent, as defined in
24 33-25-105, must include but is not limited to questions
25 pertaining to the search and examination of title to real

1 property, insurance principles relating to title insurance,
2 and the fiduciary duties and procedures of escrows,
3 settlements, and closings of real estate transactions."

4 Section 8. Section 33-17-231, MCA, is amended to read:

5 "33-17-231. Appointment of agents -- continuation and
6 termination. (1) Each insurer appointing an agent in this
7 state shall file with the commissioner the appointment,
8 specifying the kinds of insurance to be transacted by the
9 agent for the insurer, and pay the fee therefor as stated in
10 33-2-708. The term of the appointment is for 1 year and
11 runs from June 1 of each year through May 31 of the
12 succeeding year.

13 (2) Subject to annual continuation renewal by the
14 insurer ~~not later than May 31~~, each such appointment shall
15 remain in effect until the agent's license is revoked or
16 otherwise terminated unless written notice of earlier
17 termination of the appointment is filed with the
18 commissioner by the insurer ~~or agent~~.

19 (3) Annually, prior to May 1, each insurer shall file
20 with the commissioner an alphabetical list in duplicate of
21 the names and addresses of all its agents whose appointments
22 in this state are to remain in effect, accompanied by
23 payment of the annual renewal fee as provided in 33-2-708.
24 At the same time the insurer shall also file with the
25 commissioner a termination report of all agents whose

1 appointments in this state are not to remain in effect.

2 (4) Subject to the agent's contract rights, an insurer
3 may terminate an agency agent's appointment at any time. The
4 insurer shall promptly give written notice of such
5 termination to the commissioner and to the agent ~~where~~
6 ~~reasonably--possible~~. The commissioner may require of the
7 insurer reasonable proof that the insurer has given such
8 notice to the agent.

9 (5) As part of the notice of termination given the
10 commissioner, the insurer shall file with the commissioner a
11 statement of the facts relative to the termination and the
12 cause thereof. Any information or statement contained in the
13 notice of termination ~~shall be privileged and~~ shall not be
14 admissible as evidence in any action or proceeding against
15 the insurer or any representative thereof by or in behalf of
16 any person affected by such termination."

17 Section 9. Section 33-17-401, MCA, is amended to read:

18 "33-17-401. Nonresident agent -- reciprocity. The
19 commissioner may ~~license--as--an--agent~~ issue only a
20 nonresident license to a person, partnership, or corporation
21 otherwise qualified under this code but not a resident of
22 this state and only if pursuant to the laws of the state of
23 his residence a similar privilege is extended to persons
24 resident in Montana."

25 Section 10. Section 33-17-601, MCA, is amended to

1 read:

2 "33-17-601. Administrator defined. As used in this
3 part, the term "administrator" means any person,
4 corporation, partnership, or association who that collects
5 charges or premiums from residents of this state in
6 connection with life or health insurance coverage or
7 annuities or property or casualty insurance coverage or who
8 that adjusts or settles claims on such coverage, but does
9 not include:

10 (1) an employer on behalf of its employees or on
11 behalf of the employees of one or more subsidiary or
12 affiliated corporations of such employer;

13 (2) a union on behalf of its members;

14 (3) an insurance company which is either licensed in
15 this state or acting as an insurer with respect to a policy
16 lawfully issued and delivered by it in and pursuant to the
17 laws of a state in which the insurer was authorized to do an
18 insurance business or a health service corporation as
19 defined in 33-30-101;

20 (4) a life, or health, property, or casualty agent who
21 is licensed in this state and whose activities are limited
22 exclusively to the sale of insurance;

23 (5) a creditor on behalf of its debtors with respect
24 to insurance covering a debt between the creditor and its
25 debtors;

1 (6) a trust established in conformity with 29 U.S.C.
2 186, its trustees, or agents and employees acting
3 thereunder;

4 (7) a trust exempt from taxation under section 501(a)
5 of the Internal Revenue Code, its trustees, or employees
6 acting thereunder;

7 (8) a custodian acting pursuant to a custodian account
8 which meets the requirements of section 401(f) of the
9 Internal Revenue Code or its agents and employees;

10 (9) a bank, credit union, or other financial
11 institution which is subject to supervision or examination
12 by federal or state banking authorities;

13 (10) a credit card issuing company which advances for
14 and collects premiums or charges from its credit card
15 holders who have authorized it to do so, provided such
16 company does not adjust or settle claims; or

17 (11) a person who adjusts or settles claims in the
18 normal course of his practice or employment as an attorney
19 ~~at-law~~ and who does not collect charges or premiums in
20 connection with life or health insurance coverage or
21 annuities."

22 Section 11. Section 33-17-602, MCA, is amended to
23 read:

24 "33-17-602. Written agreement required. (1) No person
25 may act as an administrator without a written agreement

1 between the person and the insurer. The written agreement
2 shall be retained as part of the official records of both
3 the administrator and the insurer for the duration of the
4 agreement and for 5 years thereafter. The written agreement
5 shall contain provisions which include the requirements of
6 ~~33-17-605--and~~ 33-17-612 through 33-17-617 insofar as these
7 requirements relate to the functions performed by the
8 administrator.

9 (2) The agreement shall contain a provision with
10 respect to the underwriting or other standards pertaining to
11 the business underwritten by such insurer.

12 (3) Whenever a policy is issued to a trustee, a copy
13 of the trust agreement and any amendments thereto shall be
14 furnished to the insurer by the administrator and shall be
15 retained as part of the official records of both the
16 administrator and the insurer for the duration of the policy
17 and for 5 years thereafter."

18 Section 12. Section 33-17-1001, MCA, is amended to
19 read:

20 "33-17-1001. Suspension, revocation, or refusal of
21 license. (1) Except as provided in 33-17-411, the
22 commissioner may suspend for not more than 12 months or may
23 revoke or refuse to continue any license issued under this
24 chapter or any surplus ~~line~~ lines agent license if, after
25 hearing held on not less than ~~20~~ 10 days' advance notice by

1 ~~registered--or~~ certified mail of such hearing and of the
 2 charges against the licensee given as provided in
 3 33-1-314(3) to the licensee and to the insurers represented,
 4 as to an agent, or to the appointing agent, as to a
 5 solicitor, he finds that as to the licensee any one or more
 6 of the following causes exist:

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

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

12 (c) for violation of or noncompliance with any
 13 applicable provision of this code or for willful violation
 14 of any lawful rule or order of the commissioner;

15 (d) for misappropriation or conversion to his own use
 16 or illegal withholding of moneys or property belonging to
 17 policyholders, ~~or insurer--or~~ insurers, beneficiaries, or
 18 others and received in conduct of business under the
 19 license;

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

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

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

5 (3) The commissioner may suspend, revoke, or refuse to
 6 continue a license under subsection (1)(e) without
 7 conducting an investigation pursuant to 37-1-203 or making a
 8 written finding pursuant to 37-1-204."

9 Section 13. Section 33-17-1002, MCA, is amended to
 10 read:

11 "33-17-1002. Procedure following suspension or
 12 revocation. (1) Upon suspension or revocation of any such
 13 license, the commissioner shall forthwith notify the
 14 licensee thereof either in person or by mail addressed to
 15 the licensee at his address last of record with the
 16 commissioner. Notice by mail shall be deemed effectuated
 17 when so mailed. The commissioner shall give like notice to
 18 the insurers represented by the agent, in the case of an
 19 agent's license, and to the agent by whom appointed, in the
 20 case of a solicitor's license.

21 (2) Suspension or revocation of the license of an
 22 agent shall automatically revoke or suspend the licenses of
 23 all solicitors appointed by him.

24 (3) The commissioner shall not again issue a license
 25 under this code to or as to any person whose license has

1 been revoked until after expiration of 1 year and thereafter
 2 not until such person again qualifies therefor in accordance
 3 with the applicable provisions of this code. A person whose
 4 license has been revoked twice shall not again be eligible
 5 for any license under this code.

6 (4) If the license of a firm partnership or
 7 corporation is so suspended or revoked, no member of such
 8 firm partnership or officer or director of such corporation
 9 shall be licensed or be designated in any license to
 10 exercise the powers thereof during the period of such
 11 suspension or revocation unless the commissioner determines
 12 upon substantial evidence that such member, officer, or
 13 director was not personally at fault and did not acquiesce
 14 in the matter on account of which the license was suspended
 15 or revoked."

16 Section 14. Section 33-17-1004, MCA, is amended to
 17 read:

18 "33-17-1004. Acting as insurance agent, solicitor, or
 19 adjuster without license -- penalty. Except as provided in
 20 33-17-411, a person, firm partnership, association, or
 21 corporation who or which, in this state, acts as an
 22 insurance agent, solicitor, or adjuster without having
 23 authority to do so by virtue of a license issued and in
 24 force pursuant to the provisions of this chapter is guilty
 25 of a misdemeanor and upon conviction shall be fined \$500 or

1 imprisoned in the county jail for 90 days, or both."

2 Section 15. Section 33-17-1101, MCA, is amended to
 3 read:

4 "33-17-1101. Place of business -- display of license
 5 -- records. (1) Every resident agent shall have and maintain
 6 a place of business in this state accessible to the public.
 7 A nonresident agent may maintain a place of business in this
 8 state. Such An agent's place of business shall must be that
 9 wherein ~~the licensee~~ he principally conducts transactions
 10 under his license. The street address of such place shall
 11 appear upon the license, and the licensee shall promptly
 12 notify the commissioner of any change thereof in his street
 13 or mailing address. Nothing in this section prohibits
 14 maintenance of such place of business in the licensee's
 15 place of residence.

16 (2) The license of the licensee and the license of
 17 each solicitor appointed by and representing the licensee
 18 ~~shall~~ must be conspicuously displayed in such place of
 19 business at the street address shown on the license in a
 20 part thereof customarily open to the public.

21 (3) The agent shall keep at his place of business
 22 complete records pertaining to transactions under his
 23 license and the licenses of his solicitors, for a period of
 24 at least 3 years after completion of the respective
 25 transactions, except that title agents, as defined in

1 33-25-105, shall retain records as provided in 33-25-214 and
2 33-25-216."

3 Section 16. Section 33-17-1102, MCA, is amended to
4 read:

5 "33-17-1102. Reporting and accounting for premiums.
6 (1) All premiums or return premiums received by an agent or
7 solicitor ~~shall be trust funds so received by the~~ must be
8 held in a separate trust account. The licensee shall at all
9 times act in a fiduciary capacity, and the agent or
10 solicitor shall in the applicable regular course of business
11 account for and pay the same to the insured, insurer, or
12 agent entitled thereto. Except for a title agent as defined
13 in 33-25-105, ~~if the licensee establishes a separate deposit~~
14 ~~for funds so belonging to others in order to avoid a~~
15 ~~commingling of such fiduciary funds with his own funds, he~~
16 an agent may deposit and commingle in the same such separate
17 deposit all such funds belonging to others so long as the
18 amount of such deposit so held for each respective other
19 person is reasonably ascertainable from the records and
20 accounts of the licensee.

21 (2) Any agent or solicitor ~~who, not being~~ lawfully
22 entitled thereto, ~~diverts~~ may not divert or appropriates
23 appropriate such funds or any portion thereof to his own use
24 ~~is, upon conviction, guilty of theft and shall be punished~~
25 ~~as provided by law."~~

1 Section 17. Section 33-17-1103, MCA, is amended to
2 read:

3 "33-17-1103. Exchange of business -- sharing
4 commissions. (1) An agent may, ~~occasionally only~~ under rules
5 adopted by the commissioner, place an insurance coverage
6 with an insurer as to which he is not then licensed or
7 appointed as an agent, and the insurer shall accept such
8 business, only when placed through an agent, licensed under
9 this chapter and appointed by the insurer. Both agents
10 involved in such an exchange of business must be licensed as
11 to all of the kinds of insurance represented by the coverage
12 so placed.

13 (2) The agents involved in a lawful exchange of
14 business under subsection (1) above may divide between them
15 the commission or compensation payable on account of such
16 coverage.

17 (3) No agent or solicitor shall directly or indirectly
18 share his commissions or other compensation received or to
19 be received by him on account of a transaction under his
20 license with any person not also licensed under this chapter
21 as to the same kind or kinds of insurance involved in such
22 transactions, except as provided in 33-17-1113. This
23 provision shall not affect payment of the regular salaries
24 due employees of the licensee or the distribution in regular
25 course of business of compensation and profits among members

1 or stockholders if the licensee is a firm or corporation or
2 use of funds for family or personal purposes.

3 (4) This section does not apply as to those
4 transactions with surplus lines agents which are lawful
5 under 33-2-306 or as to life or disability insurance placed
6 as provided in 33-17-1104."

7 Section 18. Section 33-17-1104, MCA, is amended to
8 read:

9 "33-17-1104. Life or disability agent authorized to
10 place excess or rejected business. A life or disability
11 insurance agent may, from time to time under rules adopted
12 by the commissioner, place excess or rejected risks in any
13 other life or disability insurer authorized to transact
14 insurance in this state, with the knowledge and approval of
15 the insurer or insurers as to which the agent is so
16 licensed, and may receive a commission thereon without being
17 required to have a license as to such other insurer."

18 NEW SECTION. ~~Section 19. Bond requirement. Waiver~~
19 ~~for nonresident agent. (1) Prior to the issuance of an~~
20 ~~insurance agent license, the applicant shall file with the~~
21 ~~commissioner and thereafter, for as long as the license~~
22 ~~remains in effect, shall keep in force a bond in favor of~~
23 ~~this state in the amount of \$10,000 with authorized~~
24 ~~corporate sureties approved by the commissioner. The~~
25 ~~aggregate liability of the surety for claims on a bond may~~

1 ~~not exceed the amount of the bond. The bond shall be~~
2 ~~conditioned that the agent shall conduct business under the~~
3 ~~license in accordance with this code. The bond may not~~
4 ~~terminate unless the surety gives the licensee and the~~
5 ~~commissioner at least 30 days' prior written notice. The~~
6 ~~commissioner shall notify the surety, within 10 working~~
7 ~~days, of termination of the license for which the bond was~~
8 ~~in effect.~~

9 ~~(2) The commissioner may not require a nonresident~~
10 ~~insurance agent to file and keep a new bond if the~~
11 ~~commissioner is satisfied that an existing bond covers the~~
12 ~~nonresident insurance agent's business in this state.~~

13 NEW SECTION. Section 19. Repealer. Sections 33-17-203
14 and 33-17-605, MCA, are repealed.

15 NEW SECTION. Section 20. Extension of authority. Any
16 existing authority of the commissioner of insurance to make
17 rules on the subject of the provisions of this act is
18 extended to the provisions of this act.

19 NEW SECTION. ~~Section 22. Codification. Instruction.~~
20 ~~Section 19 is intended to be codified as an integral part of~~
21 ~~Title 33, chapter 17, part 1, and the provisions of Title~~
22 ~~33, chapter 17, part 1, apply to section 19.~~

23 NEW SECTION. ~~Section 23. Applicability. Section 19~~
24 ~~applies to agent licenses issued or renewed after May 31,~~
25 ~~1988.~~

-End-

1 STATEMENT OF INTENT

2 HOUSE BILL 803

3 House Business and Labor Committee
4

5 A statement of intent is required for this bill because
6 section 15 authorizes the commissioner of insurance of the
7 state of Montana (commissioner) to determine by rule the
8 instances in which an insurance agent may place insurance
9 coverage with an insurer as to which he is not then licensed
10 or appointed as an agent and because section 16 authorizes
11 the commissioner to determine the instances in which a life
12 or disability insurance agent may place excess or rejected
13 risks in an insurer that has not appointed him as agent. The
14 legislature intends that the rules that the commissioner
15 adopts to implement this bill be designed to protect Montana
16 life and disability insurance consumers.

17 The legislature further intends that the commissioner
18 adopt those rules in accordance with 33-1-313, which grants
19 the commissioner general rulemaking authority and which
20 permits the commissioner:

21 (1) to make only reasonable rules that do not extend,
22 modify, or conflict with any law of this state or with any
23 reasonable implication of those laws; and

24 (2) to make or amend those rules only after a hearing
25 of which notice has been given as required by 33-1-703.

HOUSE BILL NO. 803

INTRODUCED BY CAMPBELL, THAYER
BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE LICENSING AND REGULATION OF INSURANCE AGENTS, SOLICITORS, ADJUSTERS, CONSULTANTS, AND ADMINISTRATORS; AMENDING SECTIONS 33-17-102, 33-17-201, 33-17-202, 33-17-204, 33-17-211 THROUGH 33-17-213, 33-17-231, 33-17-401, 33-17-601, 33-17-602, 33-17-1001, 33-17-1002, 33-17-1004, AND 33-17-1101 THROUGH 33-17-1104, MCA; REPEALING SECTIONS 33-17-203 AND 33-17-605, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

Section 1. Section 33-17-102, MCA, is amended to read:

"33-17-102. Definitions. As used in this title, the following definitions apply:

(1) ~~(a)~~ An "adjuster" is a person who, on behalf of the insurer, for compensation as an independent contractor or as the employee of such an independent contractor or for fee or commission investigates and negotiates settlement of claims arising under insurance contracts or otherwise acts on behalf of the insurer. The term does not include a:

~~(b)(a)~~ A licensed attorney ~~at-law~~ who is qualified to

practice law in this state; or

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

~~(c)(2)~~ A "public adjuster" is an adjuster employed by and representing the interests of the insured. The commissioner may adopt rules providing for the examination, licensure, bonding, and regulation of public adjusters.

~~(2)(3)~~ An "agent" is an individual, ~~firm~~ partnership, or corporation appointed by an insurer to solicit applications for insurance or annuities or to negotiate insurance on its behalf and, if authorized to do so by the insurer, to effectuate and countersign insurance contracts.

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

(4) A "consultant" is a person who for a fee examines, appraises, reviews, or evaluates an insurance policy, annuity, or pension contract, plan, or program or who makes recommendations or gives advice on an insurance policy, annuity, or pension contract, plan, or program.

~~(4)(5)~~ A "solicitor" is an individual appointed and

1 authorized by an agent to solicit applications for
 2 insurance, other than life insurance or disability
 3 insurance, as a representative of such agent, and to collect
 4 premiums thereon when expressly so authorized by the agent.

5 †5†(6) A "managing general agent" is an individual,
 6 firm partnership, or corporation appointed as an independent
 7 contractor by one or more insurers for the principal purpose
 8 of exercising general supervision over the business of the
 9 insurer in this state, including the authority to appoint
 10 agents for such insurers and to terminate such
 11 appointments."

12 Section 2. Section 33-17-201, MCA, is amended to read:

13 "33-17-201. (Temporary) License required of agents,
 14 managing general agents, and solicitors -- forms. (1) No
 15 person shall in this state act as or hold himself out to be
 16 an agent or solicitor as to subjects of insurance located,
 17 resident, or to be performed in this state unless then
 18 licensed as such agent or solicitor under this chapter.

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

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

1 (4) No agent shall place any business, other than
 2 coverage of his own risks, with any insurer as to which he
 3 does not then hold an a validated appointment or license as
 4 agent under this chapter, except as provided in 33-17-1104
 5 as to life or disability insurance agents and in 33-8-213.

6 (5) The commissioner shall may prescribe and--furnish
 7 forms by rule and make available the forms required in
 8 connection with application for, issuance, continuation, or
 9 termination of licenses and appointments.

10 (6) Unless licensed as a life insurance agent as
 11 required by this section, no person shall in this state
 12 solicit life insurance or annuities or procure applications
 13 therefor or engage or hold himself out as engaging in the
 14 business of analyzing or abstracting life insurance policies
 15 or annuities or of counseling or advising or giving
 16 opinions, other than as a licensed attorney at-law, relative
 17 to such insurance or annuities for fee, commission, or other
 18 compensation, other than as a salaried bona fide full-time
 19 employee so counseling and advising his employer relative to
 20 the insurance interests of the employer and of the
 21 subsidiaries or business affiliates of the employer or with
 22 respect to the insurance interests of employees of such
 23 employer, subsidiaries, or affiliates under group insurance
 24 or similar insurance plans arranged by the employer or
 25 employers of such employees. (Terminates July 1, 1989--sec.

1 22, Ch. 11, Sp. L. March 1986.)

2 33-17-201. (Effective July 1, 1989) License required
3 of agents, managing general agents, and solicitors -- forms.

4 (1) No person shall in this state act as or hold himself out
5 to be an agent or solicitor as to subjects of insurance
6 located, resident, or to be performed in this state unless
7 then licensed as such agent or solicitor under this chapter.

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

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

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

20 (5) The commissioner ~~shall~~ may prescribe ~~and--furnish~~
21 forms by rule and make available the forms required in
22 connection with application for, issuance, continuation, or
23 termination of licenses and appointments.

24 (6) Unless licensed as a life insurance agent as
25 required by this section, no person shall in this state

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

15 Section 3. Section 33-17-202, MCA, is amended to read:

16 "33-17-202. General qualifications of ~~resident agents~~
17 ~~and solicitors other-than-life-insurance-agents~~. (1) For the
18 protection of the people of this state the commissioner
19 shall not issue, continue, or permit to exist any ~~resident~~
20 agent or solicitor license as to insurance ~~other-than-life~~
21 ~~or-disability~~, except in compliance with this chapter, or as
22 to any individual not qualified therefor as follows:

23 (a) must be 18 years of age or more;

24 (b) must be a resident in and of this state or of
25 another state if by reciprocal arrangements made by the

1 commissioner with the other state similar privileges therein
 2 are granted to residents of this state;

3 (c) ~~if for a resident agent's license,~~ must have been
 4 appointed as agent by an authorized insurer, subject to
 5 issuance of the license;

6 (d) if for a solicitor's license, must have been
 7 appointed as solicitor by a licensed resident agent, subject
 8 to issuance of the license, and intend to make and make the
 9 soliciting of insurance a principal vocation;

10 (e) must be competent, trustworthy, and of good
 11 reputation;

12 (f) must have had experience or training or be
 13 otherwise qualified in the kind or kinds of insurance as to
 14 which he is to be licensed and be reasonably familiar with
 15 the provisions of this code which govern his operations as
 16 an insurance agent or solicitor;

17 (g) must pass ~~any~~ written an examination for the
 18 license required under this chapter;

19 ~~(h) must intend in good faith to act as and must act~~
 20 ~~as and hold himself out to be an agent or solicitor in the~~
 21 ~~active solicitation and negotiation of insurance with the~~
 22 ~~general public and not seek or use the license for the~~
 23 ~~negotiation or effectuation of insurance on his own property~~
 24 ~~or interests or those of his relatives or of his employer.~~
 25 ~~if during any calendar year more than 35% of the commissions~~

1 ~~earned or prospectively to be earned by such an applicant or~~
 2 ~~licensee have been or probably will be derived from~~
 3 ~~insurance of his own property or interests and those of his~~
 4 ~~relatives and of his employer, the license will be deemed to~~
 5 ~~have been used or to be intended to be used in violation of~~
 6 ~~this subsection (h).~~

7 (h) if for an agent's license as to life or disability
 8 insurance, must not be a funeral director, undertaker, or
 9 mortician operating in this or any other state or an
 10 officer, employee, or representative thereof or hold an
 11 interest in or benefit from such a business in this or any
 12 other state.

13 (2) In determining the qualifications as to
 14 competence, training, experience, and knowledge of the
 15 provisions of this code governing his operations as a
 16 ~~resident insurance~~ an agent or solicitor, as provided for in
 17 subsection (1) above, of applicant agents or solicitors
 18 proposing to represent as such only insurers who confine
 19 their business in this state substantially to the insuring
 20 of the property, interests, and risks of farmers, the
 21 commissioner shall relate such qualifications only to the
 22 kinds of insurance policies which the applicant will handle
 23 as such a licensee."

24 Section 4. Section 33-17-204, MCA, is amended to read:
 25 "33-17-204. Licensing of organizations -- requisites.

1 (1) A partnership or corporation may engaged in this state
 2 in soliciting or negotiating insurance policies must be
 3 licensed as an insurance agent. Each member and employee of
 4 a partnership and each officer, director, stockholder, or
 5 employee of a corporation, personally engaged in this state
 6 on behalf of the corporation in soliciting or negotiating
 7 insurance policies, shall be registered licensed with the
 8 commissioner in conjunction with the partnership or
 9 corporation license and shall qualify as an individual. An
 10 additional A license fee shall be paid for each individual
 11 registered licensed in conjunction with the partnership or
 12 corporation license.

13 (2) A license shall not be issued to a partnership or
 14 corporation unless the transaction of business under the
 15 license is within the purposes stated in the partnership
 16 agreement or the articles of incorporation.

17 (3) The partnership or corporate licensee shall
 18 promptly notify the commissioner of each change relative to
 19 the individuals designated in the license.

20 (4) The commissioner may not issue a license to a
 21 partnership or corporation unless the secretary of state has
 22 issued a valid certificate to the partnership under
 23 35-12-601 or to the corporation under 35-1-203 or 35-2-203."

24 Section 5. Section 33-17-211, MCA, is amended to read:

25 "33-17-211. Application for license. (1) Application

1 for an agent or solicitor license must be made to the
 2 commissioner by the applicant and be signed and sworn to by
 3 the applicant before a notary public or ~~other person~~
 4 ~~authorized by law to take acknowledgments of deeds.~~

5 (2) The commissioner must may designate and ~~prepare~~
 6 the forms for application for license, which must require
 7 full answers to such questions as may reasonably be
 8 necessary to determine the applicant's identity, residence,
 9 personal history, business record, experience and training
 10 in insurance, ~~purpose for which the license is to be used,~~
 11 and other facts as required by the commissioner to determine
 12 whether the applicant meets the applicable qualifications
 13 for the license applied for.

14 (3) If for an agent's license, the application must
 15 state the kinds of insurance proposed to be transacted and
 16 be accompanied by written appointment of the applicant as
 17 agent by an authorized insurer, subject to issuance of the
 18 license.

19 (4) If for a solicitor's license, the application must
 20 be accompanied by written appointment of applicant as
 21 solicitor by a licensed agent, subject to issuance of the
 22 license.

23 (5) If the applicant for an agent license is a firm
 24 partnership or corporation, the application shall show, in
 25 addition, the names of all members, officers, and directors

1 and shall designate each individual who is to exercise the
2 powers to be conferred by the license upon the firm
3 partnership or corporation. Each such individual so
4 designated shall furnish information as to himself, as part
5 of the application, as though for an individual license.

6 (6) If the applicant for an agent license is an
7 agents' association pursuant to 33-17-205, the application
8 must show the names and residence addresses of the
9 association's officers and trustees.

10 (7) If for license as either agent or solicitor, the
11 application must also show whether applicant was ever
12 previously licensed to transact any kind of insurance in
13 this state or elsewhere; whether any such license was ever
14 refused, suspended, or revoked; whether any insurer, general
15 agent, or agent, in the case of a solicitor application,
16 claims applicant to be indebted to it and, if so, the
17 details thereof and the defenses, if any, of the applicant
18 thereto; and whether applicant ever had an agency contract
19 canceled and the facts thereof.

20 (8) The commissioner shall require as part of the
21 application for license the certificate of an officer or
22 representative of the insurer proposed to be represented, in
23 the case of applicants for license as agent, or of the
24 proposed employing agent, in the case of applicants for
25 license as solicitor, as to whether the applicant is known

1 to such officer or representative, whether the insurer or
2 agent has investigated the character and business record of
3 the applicant and the uses to be made of the license, if
4 granted, and his opinion, based on such investigation, as to
5 applicant's trustworthiness and competence ~~and--whether--the~~
6 ~~applicant--will--use--the--license--principally--for--the--purpose~~
7 ~~of--insuring--the--applicant's--own--risks--or--interests--and--those~~
8 ~~of--the--applicant's--relatives--or--employer.~~

9 (9) All such applications must be accompanied by the
10 applicable license fee, appointment of agent fee where
11 applicable, and examination fee where required under
12 33-17-212, all in the respective amounts stated in
13 33-2-708."

14 Section 6. Section 33-17-212, MCA, is amended to read:
15 "33-17-212. Examination required. (1) After completion
16 and filing of the application for license as required under
17 33-17-211, the commissioner shall subject each applicant for
18 license as agent or solicitor, unless exempted therefrom
19 under subsection (5) below, to ~~a--personal--written~~ an
20 examination as to his competence to act as such agent or
21 solicitor. The commissioner may either conduct the
22 examination or arrange for the examination to be conducted
23 by a testing service, which shall recover the cost of the
24 examination from the applicant.

25 (2) If the applicant is a firm partnership or

1 corporation, the examination shall be so taken by each
 2 individual who is to be named in the license as having
 3 authority to act for the applicant in its insurance
 4 transactions under the license.

5 (3) Examination of an applicant for an agent's license
 6 shall cover all of the kinds of insurance for which the
 7 applicant has applied to be licensed, as constituted by any
 8 one or more of the following classifications:

9 (a) life insurance;

10 (b) disability insurance;

11 (c) property insurance; for the purposes of this
 12 provision, "marine" insurance shall be deemed to be included
 13 in "property" insurance;

14 (d) casualty insurance;

15 (e) vehicle insurance;

16 (f) surety insurance;

17 (g) credit life and disability insurance;

18 (h) title insurance.

19 (4) Examination of an applicant for a solicitor's
 20 license shall cover all the kinds of insurance, other than
 21 life, as to which the appointing agent is licensed.

22 (5) This section shall not apply to, and no such
 23 examination shall be required of:

24 (a) any individual lawfully licensed as an agent or
 25 solicitor as to the kind or kinds of insurance to be

1 transacted as of or immediately prior to January 1, 1961,
 2 and thereafter continuing to be so licensed;

3 (b) any applicant for license covering the same kind
 4 or kinds of insurance as to which the applicant was licensed
 5 in this state, other than under a temporary license, within
 6 the 12 months next preceding date of application unless such
 7 previous license was suspended, revoked, or continuation
 8 thereof refused by the commissioner, except that the
 9 provisions of this subsection (5)(b) do not apply to title
 10 agents, as defined in 33-25-105;

11 (c) any applicant for license as nonresident agent,
 12 subject to reciprocal arrangements as provided for in this
 13 code;

14 (d) all applicants for license as agent for an insurer
 15 that confines its business in this state substantially to
 16 the insuring of the property, interests, and risks of
 17 farmers, if exempted from examination by the commissioner,
 18 in his discretion, upon written request of the insurer;

19 (e) transportation ticket agents of common carriers
 20 applying for license to solicit and sell only;

21 (i) accident insurance ticket policies; or

22 (ii) insurance of personal effects while being carried
 23 as baggage on such common carrier, as incidental to their
 24 duties as such transportation ticket agents;

25 (f) agents' associations applying for license under

1 33-17-205;
 2 (g) mechanical breakdown insurance agents."
 3 Section 7. Section 33-17-213, MCA, is amended to read:
 4 "33-17-213. Conduct of examinations. (1) The
 5 commissioner shall make any examination required under
 6 33-17-212 available to applicants with reasonable frequency
 7 and at ~~a place~~ places in this state reasonably accessible to
 8 the applicants. ~~The commissioner shall make any such~~
 9 ~~examination available at his offices at Helena, Montana, at~~
 10 ~~times within his discretion but at least once a month.~~
 11 (2) All the kinds of insurance or classes thereof, as
 12 referred to in 33-17-212(3), which the applicant proposes to
 13 transact under the license applied for shall be included in
 14 the same examination.
 15 (3) The commissioner shall ~~give, conduct, and grade~~
 16 ~~all examinations~~ assure that the examinations are conducted
 17 in a fair and impartial manner and without unfair
 18 discrimination as between individuals examined.
 19 (4) The commissioner may require a reasonable waiting
 20 period before reexamination of an applicant who has failed
 21 to pass a previous examination covering the same kind or
 22 kinds of insurance.
 23 (5) The examination of a title agent, as defined in
 24 33-25-105, must include but is not limited to questions
 25 pertaining to the search and examination of title to real

1 property, insurance principles relating to title insurance,
 2 and the fiduciary duties and procedures of escrows,
 3 settlements, and closings of real estate transactions."
 4 Section 8. Section 33-17-231, MCA, is amended to read:
 5 "33-17-231. Appointment of agents -- continuation and
 6 termination. (1) Each insurer appointing an agent in this
 7 state shall file with the commissioner the appointment,
 8 specifying the kinds of insurance to be transacted by the
 9 agent for the insurer, and pay the fee therefor as stated in
 10 33-2-708. The term of the appointment is for 1 year and
 11 runs from June of each year through May 31 of the
 12 succeeding year.
 13 (2) Subject to annual continuation renewal by the
 14 insurer ~~not later than May 31~~, each such appointment shall
 15 remain in effect until the agent's license is revoked or
 16 otherwise terminated unless written notice of earlier
 17 termination of the appointment is filed with the
 18 commissioner by the insurer ~~or agent~~.
 19 (3) Annually, prior to May 1, each insurer shall file
 20 with the commissioner an alphabetical list in duplicate of
 21 the names and addresses of all its agents whose appointments
 22 in this state are to remain in effect, accompanied by
 23 payment of the annual renewal fee as provided in 33-2-708.
 24 At the same time the insurer shall also file with the
 25 commissioner a termination report of all agents whose

1 appointments in this state are not to remain in effect.

2 (4) Subject to the agent's contract rights, an insurer
3 may terminate an agency agent's appointment at any time. The
4 insurer shall promptly give written notice of such
5 termination to the commissioner and to the agent ~~where~~
6 ~~reasonably--possible~~. The commissioner may require of the
7 insurer reasonable proof that the insurer has given such
8 notice to the agent.

9 (5) As part of the notice of termination given the
10 commissioner, the insurer shall file with the commissioner a
11 statement of the facts relative to the termination and the
12 cause thereof. Any information or statement contained in the
13 notice of termination ~~shall be privileged and~~ shall not be
14 admissible as evidence in any action or proceeding against
15 the insurer or any representative thereof by or in behalf of
16 any person affected by such termination."

17 Section 9. Section 33-17-401, MCA, is amended to read:

18 "33-17-401. Nonresident agent -- reciprocity. The
19 commissioner may ~~license--as--an--agent~~ issue only a
20 nonresident license to a person, partnership, or corporation
21 otherwise qualified under this code but not a resident of
22 this state and only if pursuant to the laws of the state of
23 his residence a similar privilege is extended to persons
24 resident in Montana."

25 Section 10. Section 33-17-601, MCA, is amended to

1 read:

2 "33-17-601. Administrator defined. As used in this
3 part, the term "administrator" means any person,
4 corporation, partnership, or association ~~who~~ that collects
5 charges or premiums from residents of this state in
6 connection with life or health insurance coverage or
7 annuities or property or casualty insurance coverage or ~~who~~
8 that adjusts or settles claims on such coverage, but does
9 not include:

10 (1) an employer on behalf of its employees or on
11 behalf of the employees of one or more subsidiary or
12 affiliated corporations of such employer;

13 (2) a union on behalf of its members;

14 (3) an insurance company which is either licensed in
15 this state or acting as an insurer with respect to a policy
16 lawfully issued and delivered by it in and pursuant to the
17 laws of a state in which the insurer was authorized to do an
18 insurance business or a health service corporation as
19 defined in 33-30-101;

20 (4) a life, or health, property, or casualty agent who
21 is licensed in this state and whose activities are limited
22 exclusively to the sale of insurance;

23 (5) a creditor on behalf of its debtors with respect
24 to insurance covering a debt between the creditor and its
25 debtors;

1 (6) a trust established in conformity with 29 U.S.C.
2 186, its trustees, or agents and employees acting
3 thereunder;

4 (7) a trust exempt from taxation under section 501(a)
5 of the Internal Revenue Code, its trustees, or employees
6 acting thereunder;

7 (8) a custodian acting pursuant to a custodian account
8 which meets the requirements of section 401(f) of the
9 Internal Revenue Code or its agents and employees;

10 (9) a bank, credit union, or other financial
11 institution which is subject to supervision or examination
12 by federal or state banking authorities;

13 (10) a credit card issuing company which advances for
14 and collects premiums or charges from its credit card
15 holders who have authorized it to do so, provided such
16 company does not adjust or settle claims; or

17 (11) a person who adjusts or settles claims in the
18 normal course of his practice or employment as an attorney
19 ~~at-law~~ and who does not collect charges or premiums in
20 connection with life or health insurance coverage or
21 annuities."

22 Section 11. Section 33-17-602, MCA, is amended to
23 read:

24 "33-17-602. Written agreement required. (1) No person
25 may act as an administrator without a written agreement

1 between the person and the insurer. The written agreement
2 shall be retained as part of the official records of both
3 the administrator and the insurer for the duration of the
4 agreement and for 5 years thereafter. The written agreement
5 shall contain provisions which include the requirements of
6 ~~33-17-605--and~~ 33-17-612 through 33-17-617 insofar as these
7 requirements relate to the functions performed by the
8 administrator.

9 (2) The agreement shall contain a provision with
10 respect to the underwriting or other standards pertaining to
11 the business underwritten by such insurer.

12 (3) Whenever a policy is issued to a trustee, a copy
13 of the trust agreement and any amendments thereto shall be
14 furnished to the insurer by the administrator and shall be
15 retained as part of the official records of both the
16 administrator and the insurer for the duration of the policy
17 and for 5 years thereafter."

18 Section 12. Section 33-17-1001, MCA, is amended to
19 read:

20 "33-17-1001. Suspension, revocation, or refusal of
21 license. (1) Except as provided in 33-17-411, the
22 commissioner may suspend for not more than 12 months or may
23 revoke or refuse to continue any license issued under this
24 chapter or any surplus ~~line~~ lines agent license if, after
25 hearing held on not less than ~~20~~ 10 days' advance notice by

1 registered--or certified mail of such hearing and of the
 2 charges against the licensee given as provided in
 3 33-1-314(3) to the licensee and to the insurers represented,
 4 as to an agent, or to the appointing agent, as to a
 5 solicitor, he finds that as to the licensee any one or more
 6 of the following causes exist:

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

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

12 (c) for violation of or noncompliance with any
 13 applicable provision of this code or for willful violation
 14 of any lawful rule or order of the commissioner;

15 (d) for misappropriation or conversion to his own use
 16 or illegal withholding of moneys or property belonging to
 17 policyholders, ~~or insurer--or~~ insurers, beneficiaries, or
 18 others and received in conduct of business under the
 19 license;

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

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

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

5 (3) The commissioner may suspend, revoke, or refuse to
 6 continue a license under subsection (1)(e) without
 7 conducting an investigation pursuant to 37-1-203 or making a
 8 written finding pursuant to 37-1-204."

9 Section 13. Section 33-17-1002, MCA, is amended to
 10 read:

11 "33-17-1002. Procedure following suspension or
 12 revocation. (1) Upon suspension or revocation of any such
 13 license, the commissioner shall forthwith notify the
 14 licensee thereof either in person or by mail addressed to
 15 the licensee at his address last of record with the
 16 commissioner. Notice by mail shall be deemed effectuated
 17 when so mailed. The commissioner shall give like notice to
 18 the insurers represented by the agent, in the case of an
 19 agent's license, and to the agent by whom appointed, in the
 20 case of a solicitor's license.

21 (2) Suspension or revocation of the license of an
 22 agent shall automatically revoke or suspend the licenses of
 23 all solicitors appointed by him.

24 (3) The commissioner shall not again issue a license
 25 under this code to or as to any person whose license has

1 been revoked until after expiration of 1 year and thereafter
 2 not until such person again qualifies therefor in accordance
 3 with the applicable provisions of this code. A person whose
 4 license has been revoked twice shall not again be eligible
 5 for any license under this code.

6 (4) If the license of a firm partnership or
 7 corporation is so suspended or revoked, no member of such
 8 firm partnership or officer or director of such corporation
 9 shall be licensed or be designated in any license to
 10 exercise the powers thereof during the period of such
 11 suspension or revocation unless the commissioner determines
 12 upon substantial evidence that such member, officer, or
 13 director was not personally at fault and did not acquiesce
 14 in the matter on account of which the license was suspended
 15 or revoked."

16 Section 14. Section 33-17-1004, MCA, is amended to
 17 read:

18 "33-17-1004. Acting as insurance agent, solicitor, or
 19 adjuster without license -- penalty. Except as provided in
 20 33-17-411, a person, firm partnership, association, or
 21 corporation who or which, in this state, acts as an
 22 insurance agent, solicitor, or adjuster without having
 23 authority to do so by virtue of a license issued and in
 24 force pursuant to the provisions of this chapter is guilty
 25 of a misdemeanor and upon conviction shall be fined \$500 or

1 imprisoned in the county jail for 90 days, or both."

2 Section 15. Section 33-17-1101, MCA, is amended to
 3 read:

4 "33-17-1101. Place of business -- display of license
 5 -- records. (1) Every resident agent shall have and maintain
 6 a place of business in this state accessible to the public.
 7 A nonresident agent may maintain a place of business in this
 8 state. Such An agent's place of business shall must be that
 9 wherein ~~the licensee~~ he principally conducts transactions
 10 under his license. The street address of such place shall
 11 appear upon the license, and the licensee shall promptly
 12 notify the commissioner of any change thereof in his street
 13 or mailing address. Nothing in this section prohibits
 14 maintenance of such place of business in the licensee's
 15 place of residence.

16 (2) The license of the licensee and the license of
 17 each solicitor appointed by and representing the licensee
 18 ~~shall~~ must be conspicuously displayed in such place of
 19 business at the street address shown on the license in a
 20 part thereof customarily open to the public.

21 (3) The agent shall keep at his place of business
 22 complete records pertaining to transactions under his
 23 license and the licenses of his solicitors, for a period of
 24 at least 3 years after completion of the respective
 25 transactions, except that title agents, as defined in

1 33-25-105, shall retain records as provided in 33-25-214 and
2 33-25-216."

3 Section 16. Section 33-17-1102, MCA, is amended to
4 read:

5 "33-17-1102. Reporting and accounting for premiums.

6 (1) All premiums or return premiums received by an agent or
7 solicitor ~~shall be trust funds so received by the~~ must be
8 held in a separate trust account. The licensee shall at all
9 times act in a fiduciary capacity, and the agent or
10 solicitor shall in the applicable regular course of business
11 account for and pay the same to the insured, insurer, or
12 agent entitled thereto. Except for a title agent as defined
13 in 33-25-105, ~~if the licensee establishes a separate deposit~~
14 ~~for funds so belonging to others in order to avoid a~~
15 ~~commingling of such fiduciary funds with his own funds, he~~
16 an agent may deposit and commingle in the same such separate
17 deposit all such funds belonging to others so long as the
18 amount of such deposit so held for each respective other
19 person is reasonably ascertainable from the records and
20 accounts of the licensee.

21 (2) Any agent or solicitor who, not being lawfully
22 entitled thereto, ~~diverts~~ may not divert or appropriates
23 appropriate such funds or any portion thereof to his own use
24 ~~is, upon conviction, guilty of theft and shall be punished~~
25 ~~as provided by law."~~

1 Section 17. Section 33-17-1103, MCA, is amended to
2 read:

3 "33-17-1103. Exchange of business -- sharing
4 commissions. (1) An agent may, ~~occasionally only~~ under rules
5 adopted by the commissioner, place an insurance coverage
6 with an insurer as to which he is not then licensed or
7 appointed as an agent, and the insurer shall accept such
8 business, only when placed through an agent, licensed under
9 this chapter and appointed by the insurer. Both agents
10 involved in such an exchange of business must be licensed as
11 to all of the kinds of insurance represented by the coverage
12 so placed.

13 (2) The agents involved in a lawful exchange of
14 business under subsection (1) above may divide between them
15 the commission or compensation payable on account of such
16 coverage.

17 (3) No agent or solicitor shall directly or indirectly
18 share his commissions or other compensation received or to
19 be received by him on account of a transaction under his
20 license with any person not also licensed under this chapter
21 as to the same kind or kinds of insurance involved in such
22 transactions, except as provided in 33-17-1113. This
23 provision shall not affect payment of the regular salaries
24 due employees of the licensee or the distribution in regular
25 course of business of compensation and profits among members

1 or stockholders if the licensee is a firm or corporation or
 2 use of funds for family or personal purposes.

3 (4) This section does not apply as to those
 4 transactions with surplus lines agents which are lawful
 5 under 33-2-306 or as to life or disability insurance placed
 6 as provided in 33-17-1104."

7 Section 18. Section 33-17-1104, MCA, is amended to
 8 read:

9 "33-17-1104. Life or disability agent authorized to
 10 place excess or rejected business. A life or disability
 11 insurance agent may, from time to time under rules adopted
 12 by the commissioner, place excess or rejected risks in any
 13 other life or disability insurer authorized to transact
 14 insurance in this state, with the knowledge and approval of
 15 the insurer or insurers as to which the agent is so
 16 licensed, and may receive a commission thereon without being
 17 required to have a license as to such other insurer."

18 NEW SECTION. Section 19. Bond requirement. Waiver
 19 for nonresident agent. (1) Prior to the issuance of an
 20 insurance agent license, the applicant shall file with the
 21 commissioner and thereafter, for as long as the license
 22 remains in effect, shall keep in force a bond in favor of
 23 this state in the amount of \$10,000 with authorized
 24 corporate sureties approved by the commissioner. The
 25 aggregate liability of the surety for claims on a bond may

1 not exceed the amount of the bond. The bond shall be
 2 conditioned that the agent shall conduct business under the
 3 license in accordance with this code. The bond may not
 4 terminate unless the surety gives the licensee and the
 5 commissioner at least 30 days prior written notice. The
 6 commissioner shall notify the surety, within 10 working
 7 days, of termination of the license for which the bond was
 8 in effect.

9 (2) The commissioner may not require a nonresident
 10 insurance agent to file and keep a new bond if the
 11 commissioner is satisfied that an existing bond covers the
 12 nonresident insurance agent's business in this state.

13 NEW SECTION. Section 19. Repealer. Sections 33-17-203
 14 and 33-17-605, MCA, are repealed.

15 NEW SECTION. Section 20. Extension of authority. Any
 16 existing authority of the commissioner of insurance to make
 17 rules on the subject of the provisions of this act is
 18 extended to the provisions of this act.

19 NEW SECTION. Section 22. Codification. Instruction.
 20 Section 19 is intended to be codified as an integral part of
 21 Title 33, chapter 17, part 1, and the provisions of Title
 22 33, chapter 17, part 1, apply to section 19.

23 NEW SECTION. Section 23. Applicability. Section 19
 24 applies to agent licenses issued or renewed after May 31,
 25 1980.

-End-

1 HOUSE BILL NO. 803
 2 INTRODUCED BY CAMPBELL, THAYER
 3 BY REQUEST OF THE STATE AUDITOR
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 6 LAWS RELATING TO THE LICENSING AND REGULATION OF INSURANCE
 7 AGENTS, SOLICITORS, ADJUSTERS, CONSULTANTS, AND
 8 ADMINISTRATORS; AMENDING SECTIONS 33-17-102, 33-17-201,
 9 33-17-202, 33-17-204, 33-17-211 THROUGH 33-17-213,
 10 33-17-231, 33-17-401, 33-17-601, 33-17-602, 33-17-1001,
 11 33-17-1002, 33-17-1004, AND 33-17-1101 THROUGH 33-17-1104,
 12 MCA; REPEALING SECTIONS 33-17-203 AND 33-17-605, MCA;--AND
 13 PROVIDING-AN-APPLICABILITY-DATE."
 14

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 16 Section 1. Section 33-17-102, MCA, is amended to read:
 17 "33-17-102. Definitions. As used in this title, the
 18 following definitions apply:

19 (1) ~~(a)~~ An "adjuster" is a person who, on behalf of
 20 the insurer, for compensation as an independent contractor
 21 or as the employee of such an independent contractor or for
 22 fee or commission investigates and negotiates settlement of
 23 claims arising under insurance contracts or otherwise acts
 24 on behalf of the insurer. The term does not include a:

25 ~~(b)~~(a) A licensed attorney at-law who is qualified to

THE ONLY CHANGE ON HB 803
 IS IN THE STATEMENT OF INTENT
 ATTACHED. PLEASE REFER TO SECOND
 READING (YELLOW) OR THIRD
 READING (BLUE) FOR COMPLETE TEXT.

REFERENCE BILL



STATEMENT OF INTENT

HOUSE BILL 803

House-Business-and-Labor-Committee

A-statement-of-intent-is-required-for-this-bill-because section-15-authorizes-the-commissioner-of-insurance-of-the state-of-Montana-(commissioner)-to-determine-by-rule-the instances-in-which-an-insurance-agent-may-place-insurance coverage-with-an-insurer-as-to-which-he-is-not-then-licensed or-appointed-as-an-agent-and-because-section-16-authorizes the-commissioner-to-determine-the-instances-in-which-a-life or-disability-insurance-agent-may-place-excess-or-rejected risks-in-an-insurer-that-has-not-appointed-him-as-agent-The legislature-intends-that-the-rules-that-the-commissioner adopts-to-implement-this-bill-be-designed-to-protect-Montana life-and-disability-insurance-consumers.

The-legislature-further-intends-that-the-commissioner adopt-those-rules-in-accordance-with-33-1-313-which-grants the-commissioner-general-rulemaking-authority-and-which permits-the-commissioner:

(1)-to-make-only-reasonable-rules-that-do-not-extend, modify,-or-conflict-with-any-law-of-this-state-or-with-any reasonable-implication-of-those-laws;and

(2)-to-make-or-amend-those-rules-only-after-a-hearing of-which-notice-has-been-given-as-required-by-33-1-703.

BUSINESS & INDUSTRY COMMITTEE

(1) A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL BECAUSE:

(A) SECTION 17 AUTHORIZES THE COMMISSIONER OF INSURANCE TO DETERMINE BY RULE THE INSTANCES IN WHICH A PROPERTY AND CASUALTY INSURANCE AGENT MAY PLACE INSURANCE COVERAGE WITH AN INSURER AS TO WHICH HE IS NOT THEN LICENSED OR APPOINTED AS AN AGENT;

(B) SECTION 18 AUTHORIZES THE COMMISSIONER TO DETERMINE THE INSTANCES IN WHICH A LIFE OR DISABILITY INSURANCE AGENT MAY PLACE EXCESS OR REJECTED RISKS IN AN INSURER WHO HAS NOT APPOINTED HIM AS AGENT; AND

(C) SECTION 2 AUTHORIZES THE COMMISSIONER TO PRESCRIBE BY RULE AND MAKE AVAILABLE THE FORMS REQUIRED IN CONNECTION WITH AN APPLICATION FOR AN INSURANCE AGENT LICENSE.

(2) THE LEGISLATURE INTENDS THAT THE RULES THAT THE COMMISSIONER ADOPTS TO IMPLEMENT THIS BILL BE DESIGNED TO PROTECT MONTANA INSURANCE CONSUMERS.

(3) THE LEGISLATURE FURTHER INTENDS THAT THE COMMISSIONER ADOPT THOSE RULES IN ACCORDANCE WITH 33-1-313, WHICH GRANTS THE COMMISSIONER GENERAL RULEMAKING AUTHORITY AND WHICH PERMITS THE COMMISSIONER:

(A) TO MAKE ONLY REASONABLE RULES THAT DO NOT EXTEND, MODIFY, OR CONFLICT WITH ANY LAW OF THIS STATE OR WITH ANY



HB 0803/si

1 REASONABLE IMPLICATION OF THOSE LAWS; AND
2 (B) TO MAKE OR AMEND THOSE RULES ONLY AFTER A HEARING
3 OF WHICH NOTICE HAS BEEN GIVEN AS REQUIRED BY 33-1-703.

March 10, 1987

SENATE

MR. PRESIDENT:

WE, YOUR COMMITTEE ON BUSINESS & INDUSTRY HAVING HAD
UNDER CONSIDERATION HOUSE BILL NO. 803, ATTACH THE
FOLLOWING STATEMENT OF INTENT:

STATEMENT OF INTENT

HB No. 803

(1) A statement of intent is required for this bill because:

(a) section 17 authorizes the commissioner of insurance to determine by rule the instances in which a property and casualty insurance agent may place insurance coverage with an insurer as to which he is not then licensed or appointed as an agent;

(b) section 18 authorizes the commissioner to determine the instances in which a life or disability insurance agent may place excess or rejected risks in an insurer who has not appointed him as agent; and

(c) section 2 authorizes the commissioner to prescribe by rule and make available the forms required in connection with an application for an insurance agent license.

(2) The legislature intends that the rules that the commissioner adopts to implement this bill be designed to protect Montana insurance consumers.

(3) The legislature further intends that the commissioner adopt those rules in accordance with 33-1-313, which grants the commissioner general rulemaking authority and which permits the commissioner:

(a) to make only reasonable rules that do not extend, modify, or conflict with any law of this state or with any reasonable implication of those laws; and

(b) to make or amend those rules only after a hearing of which notice has been given as required by 33-1-703.