# 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.

٠

SECOND READING, STATEMENT OF INTENT ADOPTED.

MARCH 26, 1987 THIRD READING, STATEMENT OF INTENT ADOPTED.

SENT TO ENROLLING.

House BILL No. 803 INTRODUCED BY Compbell, Storage 1 2 BY REQUEST OF THE STATE AUDITOR 3 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE 5 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. 33-17-231, 33-17-401, 33-17-601, 33-17-602, 10 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 25 on behalf of the insurer. The term does not include a: (b)(a) A licensed attorney at-law who is qualified to

Montana Legislative Council

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 t2)(3) An "agent" is an individual, firm partnership, or corporation appointed by an insurer to solicit 12 applications for insurance or annuities or to negotiate 13 14 insurance on its behalf and, if authorized to do so by the insurer, to effectuate and countersign insurance contracts. 15 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, appraises, reviews, or evaluates an insurance policy, 21 22 annuity, or pension contract, plan, or program or who makes recommendations or gives advice on an insurance policy, 23 24 annuity, or pension contract, plan, or program.

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

INTRODUCED BILL H8-803

### LC 1096/01

authorized by an agent to solicit applications for 1 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 of exercising general supervision over the business of the 8 9 insurer in this state, including the authority to appoint 10 agents for such insurers and to terminate such 11 appointments."

Section 2. Section 33-17-201, MCA, is amended to read: "33-17-201. (Temporary) 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.

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.

LC 1096/01

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 agent under this chapter, except as provided in 33-17-1104 4 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 termination of licenses and appointments. 9

(6) Unless licensed as a life insurance agent as 10 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 opinions, other than as a licensed attorney at-law, relative 16 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 insurance interests of the employer and of the 20 the 21 subsidiaries or business affiliates of the employer or with respect to the insurance interests of employees of such 22 23 employer, subsidiaries, or affiliates under group insurance or similar insurance plans arranged by the employer or 24 employers of such employees. (Terminates July 1, 1989--sec. 25

-4-

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

33-17-201. (Effective July 1, 1989) License required 2 of agents, managing general agents, and solicitors -- forms. 3 (1) No person shall in this state act as or hold himself out 4 to be an agent or solicitor as to subjects of insurance 5 6 located, resident, or to be performed in this state unless 7 then licensed as such agent or solicitor under this chapter. (2) No person may act or hold himself out in this 8 9 state to be a managing general agent unless licensed as an insurance agent under this chapter and appointed by the 10 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.

(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 <u>a validated</u> appointment or license as
agent under this chapter, except as provided in 33-17-1104
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 as25 required by this section, no person shall in this state

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

Section 3. Section 33-17-202, MCA, is amended to read: 15 "33-17-202. General qualifications of resident agents 16 and solicitors other-than-life-insurance-agents. (1) For the 17 protection of the people of this state the commissioner 18 19 shall not issue, continue, or permit to exist any resident agent or solicitor license as to insurance other-than-life 20 or-disability, except in compliance with this chapter, or as 21 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

~5~

LC 1096/01

~ 6.

#### LC 1096/01

commissioner with the other state similar privileges therein 1 2 are granted to residents of this state; 3 (c) if-for-a-resident-agentis-license; must have been appointed as agent by an authorized insurer, subject to 4 5 issuance of the license; 6 (d) if for a solicitor's license, must have been appointed as solicitor by a licensed resident agent, subject 7 to issuance of the license, and intend to make and make the 8 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 otherwise qualified in the kind or kinds of insurance as to 13 14 which he is to be licensed and be reasonably familiar with the provisions of this code which govern his operations as 15 16 an insurance agent or solicitor: 17 (g) must pass any--written an examination for the 18 license required under this chapter; 19 th)--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 negotistion-or-effectuation-of-insurance-on-his-own-property or-interests-or-those-of-his-relatives-or-of--his--employer. 24

25 If-during-any-calendar-year-more-than-35%-of-the-commissions

LC 1096/01

1	earned-or-prospectively-to-be-earned-by-such-an-applicant-or
2	licenseehavebeenorprobablywillbederivedfrom
3	insurance-of-his-own-property-or-interests-and-those-ofhis
4	relatives-and-of-his-employer;-the-license-will-be-deemed-to
5	havebeen-used-or-to-be-intended-to-be-used-in-violation-of
6	this-subsection-th)-
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 gualifications as to 14 competence, training, experience, and knowledge of the provisions of this code governing his operations as a 15 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 commissioner shall relate such qualifications only to the 21 22 kinds of insurance policies which the applicant will handle 23 as such a licensee."

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

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

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.

(4) The commissioner may not issue a license to a
partnership or corporation unless the secretary of state has
issued a valid certificate to the partnership under
35-12-601 or to the corporation under 35-1-203 or 35-2-203."
Section 5. Section 33-17-211, MCA, is amended to read:
"33-17-211. Application for license. (1) Application

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

5 (2) The commissioner must may designate and-prepare the forms for application for license, which must require 6 full answers to such questions as may reasonably be 7 necessary to determine the applicant's identity, residence, 8 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 for the license applied for. 13

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.

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

#### LC 1096/01

and shall designate each individual who is to exercise the
 powers to be conferred by the license upon the firm
 partnership or corporation. Each such individual so
 designated shall furnish information as to himself, as part
 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 application must also show whether applicant was ever 11 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.

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

LC 1096/01

1 to such officer or representative, whether the insurer or agent has investigated the character and business record of 2 the applicant and the uses to be made of the license, if 3 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 of-the-applicant's-relatives-or-employer. В

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 under subsection (5) below, to a-personal--written an 19 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

corporation, the examination shall be so taken by each
 individual who is to be named in the license as having
 authority to act for the applicant in its insurance
 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:

(a) life insurance;

9

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.

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

(5) This section shall not apply to, and no suchexamination shall be required of:

24 (a) any individual lawfully licensed as an agent or25 solicitor as to the kind or kinds of insurance to be

-13-

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 in this state, other than under a temporary license, within 5 6 the 12 months next preceding date of application unless such 7 previous license was suspended, revoked, or continuation R 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;

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

19 (e) transportation ticket agents of common carriers20 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

-14-

# LC 1096/01

33-17-205;	1	property, insurance principles relating to title insurance,
(g) mechanical breakdown insurance agents."	2	and the fiduciary duties and procedures of escrows,
Section 7. Section 33-17-213, MCA, is amended to read:	3	settlements, and closings of real estate transactions."
"33-17-213. Conduct of examinations. (1) The	4	Section 8. Section 33-17-231, MCA, is amended to read:
commissioner shall make any examination required under	5	"33-17-231. Appointment of agents continuation and
33-17-212 available to applicants with reasonable frequency	6	termination. (1) Each insurer appointing an agent in this
and at a-place places in this state reasonably accessible to	7	state shall file with the commissioner the appointment,
the applicants. Thecommissionershaitmakeanysuch	8	specifying the kinds of insurance to be transacted by the
exemination-available-at-his-offices-at-Helenay-Montanayat	9	agent for the insurer, and pay the fee therefor as stated in
times-within-his-discretion-but-at-least-once-a-month-	10	33-2-708. The term of the appointment is for 1 year and
(2) All the kinds of insurance or classes thereof, as	11	runs from June 1 of each year through May 31 of the
referred to in 33-17-212(3), which the applicant proposes to	12	succeeding year.
transact under the license applied for shall be included in	13	(2) Subject to annual continuation renewal by the
the same examination.	14	insurer notinter-than-May-31, each such appointment shall
(3) The commissioner shall give;-conduct;-and-grade	15	remain in effect until the agent's license is revoked or
all-examinations assure that the examinations are conducted	16	otherwise terminated unless written notice of earlier
in a fair and impartial manner and without unfair	17	termination of the appointment is filed with the
discrimination as between individuals examined.	18	commissioner by the insurer or-agent.
(4) The commissioner may require a reasonable waiting	19	(3) Annually, prior to May 1, each insurer shall file
period before reexamination of an applicant who has failed	20	with the commissioner an alphabetical list in duplicate of
to pass a previous examination covering the same kind or	21	the names and addresses of all its agents whose appointments
kinds of insurance.	22	in this state are to remain in effect, accompanied by
(5) The examination of a title agent, as defined in	23	payment of the annual renewal fee as provided in 33-2-708.
33-25-105, must include but is not limited to questions	24	At the same time the insurer shall also file with the
pertaining to the search and examination of title to real	25	commissioner a termination report of all agents whose
	<ul> <li>(g) mechanical breakdown insurance agents."</li> <li>Section 7. Section 33-17-213, MCA, is amended to read: "33-17-213. Conduct of examinations. (1) The commissioner shall make any examination required under d3-17-212 available to applicants with reasonable frequency and at a-place places in this state reasonably accessible to the applicants. Thecommissionershallmakeanysuch examination-available-at-his-offices-at-Helenay-Montanayat times-within-his-discretion-but-at-least-once-a-month;</li> <li>(2) All the kinds of insurance or classes thereof, as referred to in 33-17-212(3), which the applicant proposes to transact under the license applied for shall be included in the same examination.</li> <li>(3) The commissioner shall give,-conducty-and-grade all-examinations assure that the examinations are conducted in a fair and impartial manner and without unfair discrimination as between individuals examined.</li> <li>(4) The commissioner may require a reasonable waiting period before reexamination of an applicant who has failed to pass a previous examination covering the same kind or kinds of insurance.</li> <li>(5) The examination of a title agent, as defined in 33-25-105, must include but is not limited to questions</li> </ul>	(9) mechanical breakdown insurance agents."2(9) mechanical breakdown insurance agents."2Section 7. Section 33-17-213, MCA, is amended to read:3"33-17-213. Conduct of examinations. (1) The4commissioner shall make any examination required under533-17-212 available to applicants with reasonable frequency6and at a-ptace places in this state reasonably accessible to7the applicants. Thecommissionershallmakeanysuch8examination-available-at-his-offices-at-Helenay-Montanayat9times-within-his-discretion-but-at-least-once-a-monthr10(2) All the kinds of insurance or classes thereof, as11referred to in 33-17-212(3), which the applicant proposes to12transact under the license applied for shall be included in13the same examination.14(4) The commissioner shall givey-conducty-and-grade16in a fair and impartial manner and without unfair17discrimination as between individuals examined.18(4) The commissioner may require a reasonable waiting19period before reexamination of an applicant who has failed20to pass a previous examination of a title agent, as defined in2333-25-105, must include but is not limited to questions24

-16-

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 <u>agent's</u> 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.

(5) As part of the notice of termination given the 9 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 notice of termination shall-be-privileged-and shall not be 13 admissible as evidence in any action or proceeding against 14 15 the insurer or any representative thereof by or in behalf of any person affected by such termination." 16

17 Section 9. Section 33-17-401, MCA, is amended to read: "33-17-401. Nonresident agent -- reciprocity. The 18 19 commissioner may license--as--agent issue only a nonresident license to a person, partnership, or corporation 20 otherwise qualified under this code but not a resident of 21 this state and only if pursuant to the laws of the state of 22 23 his residence a similar privilege is extended to persons resident in Montana." 24

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

### l read:

2 "33-17-601. Administrator defined. As used in this term "administrator" means any 3 part, the person. 4 corporation, partnership, or association who that collects charges or premiums from residents of this state in 5 with life or health insurance coverage or 6 connection 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 <u>a</u> 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;

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

-17-

-18-

### LC 1096/01

(6) a trust established in conformity with 29 U.S.C.
 186, its trustees, or agents and employees acting
 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 (B) 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

-19-

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

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

-20-

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

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 felony21 involving moral turpitude;

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

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

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

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

24 (3) The commissioner shall not again issue a license25 under this code to or as to any person whose license has

- 2.2 -

### LC 1096/01

been revoked until after expiration of 1 year and thereafter not until such person again qualifies therefor in accordance with the applicable provisions of this code. A person whose license has been revoked twice shall not again be eligible 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 exercise the powers thereof during the period of such 10 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 in the matter on account of which the license was suspended 14 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 corporation who or which, in this state, acts as an 21 22 insurance agent, solicitor, or adjuster without having authority to do so by virtue of a license issued and in 23 24 force pursuant to the provisions of this chapter is quilty 25 of a misdemeanor and upon conviction shall be fined \$500 or LC 1096/01

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

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

"33-17-1101. Place of business -- display of license 4 -- records. (1) Every resident agent shall have and maintain 5 a place of business in this state accessible to the public. 6 A nonresident agent may maintain a place of business in this 7 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 appear upon the license, and the licensee shall promptly 11 notify the commissioner of any change thereof in his street 12 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 <u>must</u> be conspicuously displayed in such place of
19 business <u>at the street address shown on the license</u> in a
20 part thereof customarily open to the public.

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

33-25-105, shall retain records as provided in 33-25-214 and
 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 times act in a fiduciary capacity, and the agent or 9 10 solicitor shall in the applicable regular course of business account for and pay the same to the insured, insurer, or 11 12 agent entitled thereto. Except for a title agent as defined in 33-25-105, if-the-licensee-establishes-a-separate-deposit 13 for--funds--so--belonging--to--others--in--order--to-avoid-a 14 commingling-of-such-fiduciary-funds-with-his-own--funds--he 15 an agent may deposit and commingle in the same such separate 16 deposit all such funds belonging to others so long as the 17 18 amount of such deposit so held for each respective other 19 person is reasonably ascertainable from the records and accounts of the licensee. 20

(2) Any agent or solicitor who7 not being lawfully
 entitled thereto7--diverts <u>may not divert</u> or appropriates
 <u>appropriate</u> such funds or any portion thereof to his own use
 ia7-upon-conviction7-guilty-of-theft-and-shall--be--punished
 as-provided-by-law."

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

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

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

LC 1096/01

or stockholders if the licensee is a firm or corporation or
 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 for nonresident agent. (1) Prior to the issuance of an 19 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

not exceed the amount of the bond. The bond shall be 1 conditioned that the agent shall conduct business under the 2 license in accordance with this code. The bond may not 3 4 terminate unless the surety gives the licensee and the commissioner at least 30 days' prior written notice. The 5 commissioner shall notify the surety, within 10 working 6 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 <u>NEW SECTION.</u> Section 20. Repealer. Sections 33-17-203
14 and 33-17-605, MCA, are repealed.

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

-End-

-27-

### 50th Legislature

1

2

3

4

### HB 0803/si

#### APPROVED BY COMM. ON BUSINESS AND LABOR

#### STATEMENT OF INTENT

#### HOUSE BILL 803

#### House Business and Labor Committee

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

(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

24 (2) to make or amend those rules only after a hearing25 of which notice has been given as required by 33-1-703.



SECOND READING

AGENTS.

33-17-202,

i.

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

#### HB 0803/02

#### HOUSE BILL NO. 803 1 INTRODUCED BY CAMPBELL, THAYER 2 BY REQUEST OF THE STATE AUDITOR 3 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE 5 LAWS RELATING TO THE LICENSING AND REGULATION OF INSURANCE 6 SOLICITORS. ADJUSTERS, CONSULTANTS. AND 7 ADMINISTRATORS; AMENDING SECTIONS 33-17-102, 33-17-201, 8 33-17-204. 33-17-211 THROUGH 33-17-213, 9 33-17-231, 33-17-401, 33-17-601, 33-17-602, 33-17-1001, 10 33-17-1002, 33-17-1004, AND 33-17-1101 THROUGH 33-17-1104. 11 MCA; REPEALING SECTIONS 33-17-203 AND 33-17-605, MCA+--AND 12 PROVIDING-AN-APPLICABILITY-DATE." 13 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 15 Section 1. Section 33-17-102, MCA, is amended to read: 16 "33-17-102. Definitions. As used in this title, the 17 following definitions apply: 18 (1) (a) An "adjuster" is a person who, on behalf of 19 insurance-and-annuities. the insurer, for compensation as an independent contractor 20 or as the employee of such an independent contractor or for 21

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



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

(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 22 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

-2-

HB 0803/02

authorized by an agent to solicit applications for 1 2 insurance. other than life insurance or disability 3 insurance, as a representative of such agent, and to collect premiums thereon when expressly so authorized by the agent. 4 5 +5+(6) A "managing general agent" is an individual, firm partnership, or corporation appointed as an independent б 7 contractor by one or more insurers for the principal purpose of exercising general supervision over the business of the 8 9 insurer in this state, including the authority to appoint 10 agents for such insurers and to terminate such 11 appointments."

Section 2. Section 33-17-201, MCA, is amended to read: "33-17-201. (Temporary) 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.

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.

-3-

HB 803

(4) No agent shall place any business, other than 1 coverage of his own risks, with any insurer as to which he 2 3 does not then hold an a validated appointment or license as agent under this chapter, except as provided in 33-17-1104 4 as to life or disability insurance agents and in 33-8-213. 5 (5) The commissioner shall may prescribe and--furnish 6 forms by rule and make available the forms required in 7 connection with application for, issuance, continuation, or 8 termination of licenses and appointments. g

(6) Unless licensed as a life insurance agent as 10 required by this section, no person shall in this state 11 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 or annuities or of counseling or advising or giving 15 opinions, other than as a licensed attorney at-law, relative 16 to such insurance or annuities for fee, commission, or other 17 compensation, other than as a salaried bona fide full-time 18 employee so counseling and advising his employer relative to 19 insurance interests of the employer and of the 20 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 employers of such employees. (Terminates July 1, 1989--sec. 25

-4-

HB 803

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

1

33-17-201. (Effective July 1, 1989) License required 2 З of agents, managing general agents, and solicitors -- forms. (1) No person shall in this state act as or hold himself out 4 5 to be an agent or solicitor as to subjects of insurance located, resident, or to be performed in this state unless 6 then licensed as such agent or solicitor under this chapter. 7 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 application for, procure, or place for others any kind of 13 insurance as to which he is not then licensed. 14

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

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

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

-5.

solicit life insurance or annuities or procure applications 1 therefor or engage or hold himself out as engaging in the 2 business of analyzing or abstracting life insurance policies 3 annuities or of counseling or advising or giving 4 or opinions, other than as a licensed attorney at-law, relative 5 to such insurance or annuities for fee, commission, or other 6 compensation, other than as a salaried bona fide full-time 7 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 respect to the insurance interests of employees of such 11 employer, subsidiaries, or affiliates under group insurance 12 or similar insurance plans arranged by the employer or 13 employers of such employees." 14 Section 3. Section 33-17-202, MCA, is amended to read:

15 "33-17-202. General gualifications of resident agents 16 17 and solicitors other-than-life-insurance-agents. (1) For the protection of the people of this state the commissioner 18 shall not issue, continue, or permit to exist any resident 19 agent or solicitor license as to insurance other-than-life 20 or-disability, except in compliance with this chapter, or as 21 to any individual not qualified therefor as follows: 22

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

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

-6-

HB 0803/02

-	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 <b>anywritten</b> <u>an</u> examination for the
18	license required under this chapter;
19	(h)must-intend-in-good-faith-to-act-as-andmustact
20	asandhold-himself-out-to-be-an-agent-or-solicitor-in-the
21	active-solicitation-and-negotiation-ofinsurancewiththe
22	generalpublicandnotseekoruse-the-license-for-the
23	negotiation-or-effectuation-of-insurance-on-his-own-property
24	or-interests-or-those-of-his-relatives-or-ofhisemployer-
25	If-during-any-calendar-year-more-than-35%-of-the-commissions
	7- HB 803
	/ AB 003

commissioner with the other state similar privileges therein

1

1	earned-or-prospectively-to-be-earned-by-such-an-applicant-or
2	licenseehavebeenorprobablywillbederivedfrom
3	insurance-of-his-own-property-or-interests-and-those-ofhis
4	relatives-and-of-his-employer7-the-license-will-be-deemed-to
5	havebeen-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 $m a$
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:

-8-

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

25

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

(2) A license shall not be issued to a partnership or
corporation unless the transaction of business under the
license is within the purposes stated in the partnership
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

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

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

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

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

-9-

HB 803

-10-

#### HB 0803/02

HB 803

and shall designate each individual who is to exercise the
 powers to be conferred by the license upon the firm
 partnership or corporation. Each such individual so
 designated shall furnish information as to himself, as part
 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 refused, suspended, or revoked; whether any insurer, general 14 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.

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

to such officer or representative, whether the insurer or 1 2 agent has investigated the character and business record of the applicant and the uses to be made of the license, if 3 granted, and his opinion, based on such investigation, as to 4 applicant's trustworthiness and competence and--whether--the 5 applicant--will--use-the-license-principally-for-the-purpose б 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 applicable, and examination fee where required under 11 12 33-17-212, all in the respective amounts stated in 33-2-708." 13 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 license as agent or solicitor, unless exempted therefrom 18 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 <u>examination from the applicant.</u>

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

-12- НВ 803

-11-

#### HB 0803/02

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

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

(5) This section shall not apply to, and no suchexamination shall be required of:

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

-13-

HB 803

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

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

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

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

19 (e) transportation ticket agents of common carriers20 applying for license to solicit and sell only:

(i) accident insurance ticket policies; or

21

22 (ii) insurance of personal effects while being carried

as baggage on such common carrier, as incidental to their
duties as such transportation ticket agents;

25 (f) agents' associations applying for license under

-14-

2 (g) mechanical breakdown insurance agents." Section 7. Section 33-17-213, MCA, is amended to read: 3 "33-17-213. Conduct of examinations. 4 (1) The commissioner shall make any examination required under 5 33-17-212 available to applicants with reasonable frequency 6 7 and at a-place places in this state reasonably accessible to applicants. The--commissioner--shall--make--any--such 8 the 9 examination-available-at-his-offices-at-Helenar-Montanar--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.

(3) The commissioner shall giver-conductr-and-grade
all-examinations assure that the examinations are conducted
in a fair and impartial manner and without unfair
discrimination as between individuals examined.

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

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

-15-

HB 803

25

property, insurance principles relating to title insurance, 1 the fiduciary duties and procedures of escrows, and 2 settlements, and closings of real estate transactions." 3 Section 8. Section 33-17-231. MCA, is amended to read: 4 "33-17-231. Appointment of agents -- continuation and 5 termination. (1) Each insurer appointing an agent in this 6 state shall file with the commissioner the appointment, 7 specifying the kinds of insurance to be transacted by the 8 agent for the insurer, and pay the fee therefor as stated in 9 33-2-708. The term of the appointment is for 1 year and 10 runs from June 1 of each year through May 31 of the 11 succeeding year. 12 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 otherwise terminated unless written notice of earlier 16 termination of the appointment is filed with the 17 18 commissioner by the insurer or-agent. (3) Annually, prior to May 1, each insurer shall file 19 with the commissioner an alphabetical list in duplicate of 20 the names and addresses of all its agents whose appointments 21 in this state are to remain in effect, accompanied by 22 payment of the annual renewal fee as provided in 33-2-708. 23 At the same time the insurer shall also file with the 24

~16-

commissioner a termination report of all agents whose

HB 803

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.

à (5) As part of the notice of termination given the commissioner, the insurer shall file with the commissioner a 10 statement of the facts relative to the termination and the 11 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 commissioner may <del>license--as--an--agent</del> issue only a 19 20 nonresident license to a person, partnership, or corporation otherwise qualified under this code but not a resident of 21 this state and only if pursuant to the laws of the state of 22 his residence a similar privilege is extended to persons 23 resident in Montana." 24

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

l read:

2 "33-17-601. Administrator defined. As used in this term "administrator" 3 part, the means anv person, corporation, partnership, or association who that collects 4 charges or premiums from residents of this state 5 in connection with life or health insurance coverage or б 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 <u>a</u> 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;

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

-18-

.

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

(10) a credit card issuing company which advances for
and collects premiums or charges from its credit card
holders who have authorized it to do so, provided such
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

-19-

HB 803

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

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

-20-

### HB 0803/02

HB 803

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

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;

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

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

-21-

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 the licensee at his address last of record with the 15 16 commissioner. Notice by mail shall be deemed effectuated when so mailed. The commissioner shall give like notice to 17 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.

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

24 (3) The commissioner shall not again issue a license25 under this code to or as to any person whose license has

-22-

to any person whose ficense

#### HB 0803/02

been revoked until after expiration of 1 year and thereafter 1 not until such person again qualifies therefor in accordance 2 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 firm partnership or officer or director of such corporation 8 shall be licensed or be designated in any license to 9 exercise the powers thereof during the period of such 10 11 suspension or revocation unless the commissioner determines upon substantial evidence that such member, officer, or 12 13 director was not personally at fault and did not acquiesce in the matter on account of which the license was suspended 14 or revoked." 15

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

18 "33-17-1004. Acting as insurance agent, solicitor. or adjuster without license -- penalty. Except as provided in 19 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 force pursuant to the provisions of this chapter is guilty 24 25 of a misdemeanor and upon conviction shall be fined \$500 or

-23-

HB 803

imprisoned in the county jail for 90 days, or both." 1 Section 15. Section 33-17-1101, MCA, is amended to 2

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 wherein the-licensee he principally conducts transactions 9 under his license. The street address of such place shall 10 11 appear upon the license, and the licensee shall promptly notify the commissioner of any change thereof in his street 12 or mailing address. Nothing in this section prohibits 13 14 maintenance of such place of business in the licensee's 15 place of residence.

(2) The license of the licensee and the license of 16 each solicitor appointed by and representing the licensee 17 18 shall must be conspicuously displayed in such place of business at the street address shown on the license in a 19 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

-24-

HB 803

HB 0803/02

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

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

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

(2) Any agent or solicitor wher not being lawfully
 entitled theretor--diverts may not divert or appropriates
 appropriate such funds or any portion thereof to his own use
 isr-upon-convictionr-guilty-of-theft-and-shall--be--punished
 as-provided-by-law."

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

"33-17-1103. Exchange of business sharing 3 ------4 commissions. (1) An agent may, occasionally-only under rules 5 adopted by the commissioner, place an insurance coverage with an insurer as to which he is not then licensed or 6 appointed as an agent, and the insurer shall accept such 7 business; only when placed through an agent, licensed under 8 9 this chapter and appointed by the insurer. Both agents involved in such an exchange of business must be licensed as 10 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 share his commissions or other compensation received or to 18 be received by him on account of a transaction under his 19 license with any person not also licensed under this chapter 20 as to the same kind or kinds of insurance involved in such 21 transactions, except as provided in 33-17-1113. This 22 23 provision shall not affect payment of the regular salaries due employees of the licensee or the distribution in regular 24 25 course of business of compensation and profits among members

-25-

HB 803

-26-

or stockholders if the licensee is a firm or corporation or
 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 place excess or rejected business. A life or disability 10 insurance agent may, from-time-to-time under rules adopted 11 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 licensed, and may receive a commission thereon without being 16 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 this---state--in--the--amount--of--\$10,000--with--authorized 23 24 corporate--sureties--approved--by--the---commissioner-----The 25 aggregate--liability--of-the-surety-for-claims-on-a-bond-may

-27-

HB 803

not-exceed-the--amount--of--the--bond:--The--bond--shall--be 1 2 conditioned--that-the-agent-shall-conduct-business-under-the license-in-accordance-with--this--code:--The--bond--may--not 3 terminate--unless--the--surety--gives--the--licensee-and-the 4 5 commissioner-at-least-30-days-prior--written--notice----The commissioner--shall--notify--the--surety--within-10-working 6 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 rules on the subject of the provisions of this act is 17 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 22 337-chapter-177-part-17-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-

-28-

•

# HB 0803/si

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-ofthe
7	stateofMontana{commissioner}to-determine-by-rule-the
8	instances-in-which-an-insurance-agentmayplaceinsurance
9	coverage-with-an-insurer-as-to-which-he-is-not-then-licensed
10	orappointedas-an-agent-and-because-section-16-authorizes
11	the-commissioner-to-determine-the-instances-in-which-alife
12	ordisabilityinsurance-agent-may-place-excess-or-rejected
13	risks-in-an-insurer-that-has-not-appointed-him-as-agentThe
14	legislature-intends-that-therulesthatthecommissioner
15	adopts-to-implement-this-bill-be-designed-to-protect-Montana
16	life-and-disability-insurance-consumers.
17	Thelegislaturefurther-intends-that-the-commissioner
18	adopt-those-rules-in-accordance-with-33-1-313y-whichgrants
19	thecommissionergeneralrulemakingauthorityand-which
20	permits-the-commissioner:
21	<pre>tlyto-make-only-reasonable-rules-that-do-notextendy</pre>
22	modify,orconflict-with-any-law-of-this-state-or-with-any
23	reasonable-implication-of-those-laws;-and
24	<pre>{2}to-make-or-amend-those-rules-only-after-ahearing</pre>

of-which-notice-has-been-given-as-required-by-33-1-7037 25

Montana Legislative Council

THIRD READING HB-803

#### 50th Legislature

.

HB 0803/02

1	HOUSE BILL NO. 803	1	practice law in this state; or
2	INTRODUCED BY CAMPBELL, THAYER	2	(b) a salaried employee of an insurer or of a managing
3	BY REQUEST OF THE STATE AUDITOR	3	general agent, or a licensed agent who adjusts or assists in
4		4	adjustment of losses arising under policies issued by the
5	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE	5	insurer representedbysuchagent-is-not-deemed-to-be-an
6	LAWS RELATING TO THE LICENSING AND REGULATION OF INSURANCE	6	adjuster-for-the-purposes-of-this-chapter.
7	AGENTS, SOLICITORS, ADJUSTERS, CONSULTANTS, AND	7	<del>(c)<u>(</u>2)</del> A "public adjuster" is an adjuster employed by
8	ADMINISTRATORS; AMENDING SECTIONS 33-17-102, 33-17-201,	8	and representing the interests of the insured. The
9	33-17-202, 33-17-204, 33-17-211 THROUGH 33-17-213,	9	commissioner may adopt rules providing for the examination,
10	33-17-231, 33-17-401, 33-17-601, 33-17-602, 33-17-1001,	10	licensure, bonding, and regulation of public adjusters.
11	33-17-1002, 33-17-1004, AND 33-17-1101 THROUGH 33-17-1104,	11	<del>(2)<u>(3)</u> An "agent" is an individual, firm partnership</del> ,
12	MCA; REPEALING SECTIONS 33-17-203 AND 33-17-605, MCA7AND	12	or corporation appointed by an insurer to solicit
13	PROVIDING-AN-APPLICABILITY-DATE."	13	applications for insurance or annuities or to negotiate
14		14	insurance on its behalf and, if authorized to do so by the
15	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	15	insurer, to effectuate and countersign insurance contracts.
16	Section 1. Section 33-17-102, MCA, is amended to read:	16	t3}"bife-insurance-agent"-includes-also-an-agent-of-a
17	"33-17-102. Definitions. As used in this title, the	17	life-insurer-who-is-or-proposes-to-belicensedastothe
18	following definitions apply:	18	sameinsurerfordisability-insurance-in-addition-to-life
19	(1) (a) An "adjuster" is a person who, on behalf of	19	insurance-and-annuities-
20	the insurer, for compensation as an independent contractor	20	(4) A "consultant" is a person who for a fee examines,
21	or as the employee of such an independent contractor or for	21	appraises, reviews, or evaluates an insurance policy,
22		22	annuity, or pension contract, plan, or program or who makes
23		23	recommendations or gives advice on an insurance policy,
24		24	annuity, or pension contract, plan, or program.
25		25	<pre>(4)(5) A "solicitor" is an individual appointed and</pre>



### HB 0803/02

HB 803

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 t5t(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."

Section 2. Section 33-17-201, MCA, is amended to read: "33-17-201. (Temporary) 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.

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.

-3-

(4) No agent shall place any business, other than 1 coverage of his own risks, with any insurer as to which he 2 does not then hold an a validated appointment or license as 3 agent under this chapter, except as provided in 33-17-1104 4 as to life or disability insurance agents and in 33-8-213. 5 (5) The commissioner shall may prescribe and--furnish 6 7 forms by rule and make available the forms required in connection with application for, issuance, continuation, or 8

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 therefor or engage or hold himself out as engaging in the 13 business of analyzing or abstracting life insurance policies 14 or annuities or of counseling or advising or giving 15 opinions, other than as a licensed attorney at-law, relative 16 to such insurance or annuities for fee, commission, or other 17 compensation, other than as a salaried bona fide full-time 18 employee so counseling and advising his employer relative to 19 insurance interests of the employer and of the 20 the 21 subsidiaries or business affiliates of the employer or with respect to the insurance interests of employees of such 22 23 employer, subsidiaries, or affiliates under group insurance or similar insurance plans arranged by the employer or 24 25 employers of such employees. (Terminates July 1, 1989--sec.

-4-

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

33-17-201. (Effective July 1, 1989) License required 2 of agents, managing general agents, and solicitors -- forms. 3 (1) No person shall in this state act as or hold himself out 4 to be an agent or solicitor as to subjects of insurance 5 located, resident, or to be performed in this state unless б then licensed as such agent or solicitor under this chapter. 7

(2) No person may act or hold himself out in this 3 state to be a managing general agent unless licensed as an 9 insurance agent under this chapter and appointed by the 10 insurers represented. 11

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

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

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

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

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 employer, subsidiaries, or affiliates under group insurance 12 13 or similar insurance plans arranged by the employer or 14 employers of such employees."

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

-5-

HB 803

-6-

HB 803

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 appointed as solicitor by a licensed resident agent, subject 7 to issuance of the license, and intend to make and make the 8 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 gualified in the kind or kinds of insurance as to 14 which he is to be licensed and be reasonably familiar with

are granted to residents of this state;

commissioner with the other state similar privileges therein

1

2

15

16 an insurance agent or solicitor;
17 (g) must pass any--written an examination for the

the provisions of this code which govern his operations as

18 license required under this chapter;

19(h)--must-intend-in-good-faith-to-act-as-and--must--act20.as--and--hold-himself-out-to-be-an-agent-or-solicitor-in-the21active-solicitation-and-negotiation-of--insurance--with--the22general--public--and--not--seck--or--use-the-license-for-the23negotiation-or-effectuation-of-insurance-on-his-own-property24or-interests-or-those-of-his-relatives-or-of--his--employer-25if-during-any-calendar-year-more-than-35%-of-the-commissions

-7-

1	earned-or-prospectively-to-be-earned-by-such-an-applicant-or
2	licenseehavebeenorprobablywillbederivedfrom
3	insurance-of-his-own-property-or-interests-and-those-ofhis
4	relatives-and-of-his-employer7-the-license-will-be-deemed-to
5	havebeen-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 amonded to read.

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

-8-

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

(2) A license shall not be issued to a partnership or
corporation unless the transaction of business under the
license is within the purposes stated in the partnership
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.

(4) The commissioner may not issue a license to a
partnership or corporation unless the secretary of state has
issued a valid certificate to the partnership under
35-12-601 or to the corporation under 35-1-203 or 35-2-203."
Section 5. Section 33-17-211, MCA, is amended to read:
"33-17-211. Application for license. (1) Application

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

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

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

-9-

HB 803

-10-

HB 803

HB 0803/02

and shall designate each individual who is to exercise the
 powers to be conferred by the license upon the firm
 <u>partnership</u> or corporation. Each such individual so
 designated shall furnish information as to himself, as part
 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.

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

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

-11-

HB 803

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 granted, and his opinion, based on such investigation, as to 4 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 and filing of the application for license as required under 16 33-17-211, the commissioner shall subject each applicant for 17 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 by a testing service, which shall recover the cost of the 23 24 examination from the applicant. 25 (2) If the applicant is a firm partnership or

-12-

HB 0803/02

corporation, the examination shall be so taken by each
 individual who is to be named in the license as having
 authority to act for the applicant in its insurance
 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:

(a) life insurance;

9

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.

(5) This section shall not apply to, and no suchexamination shall be required of:

24 (a) any individual lawfully licensed as an agent or25 solicitor as to the kind or kinds of insurance to be

transacted as of or immediately prior to January 1, 1961,
 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 in this state, other than under a temporary license, within 5 the 12 months next preceding date of application unless such 6 previous license was suspended, revoked, or continuation 7 thereof refused by the commissioner, except that the 8 provisions of this subsection (5)(b) do not apply to title 9 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;

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

19 (e) transportation ticket agents of common carriers20 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

-13-

HB 803

-14-

#### HB 0803/02

1 33-17	-205;
---------	-------

2 (g) mechanical breakdown insurance agents."

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

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.

(3) The commissioner shall give7-conduct7-and-grade
all-examinations assure that the examinations are conducted
in a fair and impartial manner and without unfair
discrimination as between individuals examined.

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

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

-15-

HB 803

property, insurance principles relating to title insurance,
 and the fiduciary duties and procedures of escrows,
 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, specifying the kinds of insurance to be transacted by the B 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 <u>renewal</u> 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.

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

-16-

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

Section 9. Section 33-17-401, MCA, is amended to read: 17 18 "33-17-401. Nonresident agent -- reciprocity. The commissioner may license--as--an--agent issue only a 19 nonresident license to a person, partnership, or corporation 20 otherwise qualified under this code but not a resident of 21 this state and only if pursuant to the laws of the state of 22 his residence a similar privilege is extended to persons 23 resident in Montana." 24

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

1 read:

"33-17-601. Administrator defined. As used in this 2 3 part, the term "administrator" means any person. corporation, partnership, or association who that collects 4 charges or premiums from residents of this state 5 in connection with life or health insurance coverage or 6 annuities or property or casualty insurance coverage or who 7 that adjusts or settles claims on such coverage, but does 8 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;

(3) an insurance company which is either licensed in
this state or acting as an insurer with respect to a policy
lawfully issued and delivered by it in and pursuant to the
laws of a state in which the insurer was authorized to do an
insurance business or <u>a</u> health service corporation as
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;

-17-

HB 803

-18-

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

(10) a credit card issuing company which advances for
and collects premiums or charges from its credit card
holders who have authorized it to do so, provided such
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

-19-

HB 803

1 between the person and the insurer. The written agreement shall be retained as part of the official records of both 2 3 the administrator and the insurer for the duration of the agreement and for 5 years thereafter. The written agreement 4 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 under ritten 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:

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

-20-

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

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;

(b) for obtaining or attempting to obtain any such
 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 felony21 involving moral turpitude;

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

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

to exercise its powers.

4

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

(2) Suspension or revocation of the license of an
agent shall automatically revoke or suspend the licenses of
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

-21-

HB 803

-22-

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

6 (4) If the license of a firm partnership or corporation is so suspended or revoked, no member of such 7 8 firm partnership or officer or director of such corporation shall be licensed or be designated in any license to 9 exercise the powers thereof during the period of such 10 11 suspension or revocation unless the commissioner determines upon substantial evidence that such member, officer, or 12 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 adjuster without license -- penalty. Except as provided in 19 20 33-17-411, a person, firm partnership, association, or corporation who or which, in this state, acts as an 21 insurance agent, solicitor, or adjuster without having 22 23 authority to do so by virtue of a license issued and in 24 force pursuant to the provisions of this chapter is guilty of a misdemeanor and upon conviction shall be fined \$500 or 25

-23-

HB 803

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 -- records. (1) Every resident agent shall have and maintain 5 б a place of business in this state accessible to the public. 7 A nonresident agent may maintain a place of business in this state. Such An agent's place of business shall must be that 8 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 maintenance of such place of business in the licensee's 14 place of residence. 15

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.

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

HB 0803/02

-24-

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

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

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

(2) Any agent or solicitor who7 not being lawfully
 entitled thereto7--diverts <u>may not divert</u> or appropriates
 <u>appropriate</u> such funds or any portion thereof to his own use
 is7-upon-conviction7-guilty-of-theft-and-shall--be--punished
 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 commissions. (1) An agent may, occasionally-only under rules 4 adopted by the commissioner, place an insurance coverage 5 with an insurer as to which he is not then licensed or б 7 appointed as an agent, and the insurer shall accept such business, only when placed through an agent, licensed under 8 this chapter and appointed by the insurer. Both agents 9 10 involved in such an exchange of business must be licensed as to all of the kinds of insurance represented by the coverage 11 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.

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

-25-

-26-

HB 803

1

2

3

4

5

6

7

8

9

10

11

12

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

З (4) This section does not apply as to those transactions with surplus lines agents which are lawful 4 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 licensed, and may receive a commission thereon without being 16 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 commissioner--and--thereafter;--for--as--long-as-the-license 21 22 remains-in-effecty-shall-keep-in-force-a-bond--in--favor--of 23 this---state--in--the--amount--of--\$107000--with--authorized 24 corporate--sureties--approved--by--the---commissioner----The 25 aggregate--liability--of-the-surety-for-claims-on-a-bond-may

-27-

not-exceed-the--amount--of--the--bond--The--bond--shall--be conditioned--that-the-agent-shall-conduct-business-under-the license-in-accordance-with--this--code:--The--bond--may--not terminate--unless--the--surety--gives--the--licensee-and-the commissioner-at-least-30-days1-prior--written--notice----The commissioner--shall--notify--the--surety7--within-l0-working daysy-of-termination-of-the-license-for-which-the--bond--was in-effect-+2)--The--commissioner--may--not--require-a-nonresident insurance--agent--to--file--and--keep--a--new--bond--if--the

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

nonresident-insurance-agent's-business-in-this-state-

commissioner--is--patisfied-that-an-existing-bond-covers-the

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-Section-19-is-intended-to-be-codified-as-an-integral-part-of 20 21 Title-33;-chapter-17;-part-1;-and-the--provisions--of--Title 337-chapter-177-part-17-apply-to-section-19-22 NEW-SECTION---Section-23---Applicability---Section--19 23

applies-to-agent-licenses-issued-or-renewed--after--May--317 24 1988. 25

-28-

HB 0803/02

-End-

## 50th Legislature

# HB 0803/02

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) <del>(a)</del> 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	<pre>(b)(a) A licensed attorney at-law who is qualified to</pre>



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

# REFERENCE BILL

HB 0803/si

Montana Legislative Council

1	STATEMENT OF INTENT	
2	HOUSE BILL 803	
3	House-Business-and-babor-Committee	
4		
5	A-statement-of-intent-is-required-for-this-bill-because	
6	section-15-authorizes-the-commissioner-of-insuranceofthe	
7	stateofMontana{commissioner}to-determine-by-rule-the	
8	instances-in-which-an-insurance-agentmayplaceinsurance	
9	coverage-with-an-insurer-as-to-which-he-is-not-then-licensed	
10	orappointedas-an-agent-and-because-section-16-authorizes	
11	the-commissioner-to-determine-the-instances-in-which-alife	
12	ordisabilityinsurance-agent-may-place-excess-or-rejected	
13	risks-in-an-insurer-that-has-not-appointed-him-as-agentThe	
14	legislature-intends-that-therulesthatthecommissioner	
15	adopts-to-implement-this-bill-be-designed-to-protect-Montana	
16	life-and-disability-insurance-consumers.	
17	Thelegislaturefurther-intends-that-the-commissioner	
18	adopt-those-rules-in-accordance-with-33-1-3137-whichgrants	
19	thecommissionergeneralrulemakingauthorityand-which	
20	permits-the-commissioner:	
21	(1)to-make-only-reasonable-rules-that-do-notextend;	
22	modifyorconflict-with-any-law-of-this-state-or-with-any	
23	reasonable-implication-of-those-laws;-and	
24	<pre>(2)to-make-or-amend-those-rules-only-after-ahearing</pre>	
25	of-which-notice-has-been-given-as-required-by-33-1-703-	

1	BUSINESS & INDUSTRY COMMITTEE
2	
3	(1) A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL
4	BECAUSE:
5	(A) SECTION 17 AUTHORIZES THE COMMISSIONER OF
6	INSURANCE TO DETERMINE BY RULE THE INSTANCES IN WHICH A
7	PROPERTY AND CASUALTY INSURANCE AGENT MAY PLACE INSURANCE
8	COVERAGE WITH AN INSURER AS TO WHICH HE IS NOT THEN LICENSED
9	OR APPOINTED AS AN AGENT;
10	(B) SECTION 18 AUTHORIZES THE COMMISSIONER TO
11	DETERMINE THE INSTANCES IN WHICH A LIFE OR DISABILITY
12	INSURANCE AGENT MAY PLACE EXCESS OR REJECTED RISKS IN AN
13	INSURER WHO HAS NOT APPOINTED HIM AS AGENT; AND
14	(C) SECTION 2 AUTHORIZES THE COMMISSIONER TO PRESCRIBE
15	BY RULE AND MAKE AVAILABLE THE FORMS REQUIRED IN CONNECTION
16	WITH AN APPLICATION FOR AN INSURANCE AGENT LICENSE.
17	(2) THE LEGISLATURE INTENDS THAT THE RULES THAT THE
18	COMMISSIONER ADOPTS TO IMPLEMENT THIS BILL BE DESIGNED TO
19	PROTECT MONTANA INSURANCE CONSUMERS.
20	(3) THE LEGISLATURE FURTHER INTENDS THAT THE
21	COMMISSIONER ADOPT THOSE RULES IN ACCORDANCE WITH 33-1-313,
22	WHICH GRANTS THE COMMISSIONER GENERAL RULEMAKING AUTHORITY
23	AND WHICH PERMITS THE COMMISSIONER:
24	(A) TO MAKE ONLY REASONABLE RULES THAT DO NOT EXTEND,
25	MODIFY, OR CONFLICT WITH ANY LAW OF THIS STATE OR WITH ANY

-2-

HB 0803/si

٠

- 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.

-3-

# 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.