

HOUSE BILL 669

Introduced by Hanson, et al.

2/13	Introduced
2/13	Referred to Business & Economic Development
2/15	Fiscal Note Requested
2/17	Hearing
2/17	Tabled in Committee
2/21	Taken From Table by Committee
2/21	Committee Report--Bill Passed as Amended
2/21	Fiscal Note Received
2/21	2nd Reading Passed as Amended
2/22	3rd Reading Passed

Transmitted to Senate

2/28	Referred to Business & Industry
3/09	Fiscal Note Printed
3/13	Hearing
	Died in Committee

HOUSE BILL NO. 669

INTRODUCED BY M. Hanson

A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING LAWS REGULATING SELF-FUNDED HEALTH CARE PLANS; AMENDING SECTIONS 33-1-102 AND 33-2-708, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 21] authorizes the commissioner of insurance to make reasonable rules necessary for or as an aid to effectuate [sections 1 through 24] without extending, modifying, or conflicting with [sections 1 through 24] and their reasonable implications. The legislature intends that the rules that the commissioner adopts to implement this bill be designed principally to protect Montana insurance consumers, while making insurance more available in this state. The legislature further intends that the commissioner adopt the rules in accordance with 33-1-313, which grants the commissioner general rulemaking authority and permits the commissioner to:

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

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

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

NEW SECTION. **Section 1.** Short title. [Sections 1 through 24] may be cited as the "Self-Funded Health Care Plans Act".

NEW SECTION. **Section 2.** Purpose. The purposes of [sections 1 through 24] are to:

(1) recognize and provide reasonable public supervision of self-funded plans that provide health care service benefits to employees in connection with or as an alternative to insurance and other prepayment plans;

(2) provide standards for financial soundness of self-funded plans; and

(3) protect the interests of employees covered by a self-funded plan.

NEW SECTION. **Section 3.** Definitions. As used in [sections 1 through 24], the following definitions apply:

(1) "Administrator" means a person, other than the trustee, employed by the trustee to administer a self-funded plan.

(2) "Beneficiary" means an individual entitled, under a self-funded plan, to payment by a trust fund of a part of the cost of health care services provided to him.

1 (3) "Contribution" means the amount the employer or
2 employee pays or will pay into a trust fund.

3 (4) "Person" means an individual, corporation,
4 association, firm, syndicate, organization, or other entity.

5 (5) "Self-funded plan" means a plan:

6 (a) under which payment for a disability income
7 benefit which is not otherwise provided for under Title 39,
8 chapter 71, for medical, surgical, hospital, and other
9 services for prevention, diagnosis, or treatment of a
10 disease, injury, or bodily condition of an employee, is or
11 will be regularly provided for or promised from funds
12 created or maintained in whole or in part by contributions
13 or payments by the employer or by the employer and the
14 employees; and

15 (b) that is not otherwise covered by a disability
16 insurance policy, a membership contract as defined in
17 33-30-101, a health care services agreement as defined in
18 33-31-102, or a similar third-party prepayment plan.

19 (6) "Trust fund" means a trust fund that is
20 established under a self-funded plan for the receipt of
21 contributions by an employer and employees and for the
22 payment of health care service costs of a beneficiary.

23 (7) "Trustee" means the trustee, whether a single or
24 multiple trustee, of a trust fund.

25 NEW SECTION. **Section 4. Registration -- exemptions --**

1 **registered plan exempt from insurance code.** (1) Except as
2 provided in subsection (2), a self-funded plan may not
3 operate in this state except while registered with the
4 commissioner under [sections 1 through 24]. A self-funded
5 plan already in operation on [the effective date of this
6 act] shall register with the commissioner within 90 days
7 after [the effective date of this act].

8 (2) Registration is not required of:

9 (a) a self-funded plan established for the sole
10 purpose of funding the amount of a deductible clause
11 contained in an insurance contract issued by an insurer
12 authorized to transact disability insurance in this state
13 if:

14 (i) the deductible does not exceed an amount
15 applicable to each beneficiary of \$500 a year; and

16 (ii) the total of all obligations to all beneficiaries
17 insured under the self-funded plan arising out of the
18 application of the deductible does not exceed the aggregate
19 amount of \$50,000 a year;

20 (b) a self-funded plan established and maintained in
21 compliance with Title 39, chapter 71;

22 (c) a self-funded plan administered by or for the
23 federal government or an agency thereof;

24 (d) a self-funded plan that is primarily intended to
25 provide first-aid care and treatment at a dispensary of an

1 employer for injury or sickness of employees while engaged
2 in their employment;

3 (e) an employer's self-insured health plan that is
4 established and maintained solely for its members and their
5 immediate families if it has existed and operated for 15
6 years immediately preceding [the effective date of this
7 act]; or

8 (f) a self-insured health plan that is established,
9 maintained, and insured jointly by an employer and a labor
10 organization if it has existed and operated for 15 years
11 immediately preceding [the effective date of this act].

12 (3) A registered self-funded plan may not be
13 considered to be engaged in the business of insurance and is
14 not subject to the Montana insurance code except as
15 expressly provided in [sections 1 through 24].

16 (4) A person may not act as or hold himself out to be
17 an insurance agent as to a self-funded plan in this state
18 unless licensed under Title 33, chapter 17.

19 NEW SECTION. **Section 5. Qualifications** For
20 **registration.** (1) A self-funded plan may not be registered
21 under the provisions of [sections 1 through 24] unless it:

22 (a) requires all contributions to be paid in advance
23 and to be deposited in and disbursed from a trust fund
24 created and existing under an adequate written, irrevocable
25 trust agreement between the employer and the trustee;

1 (b) has or provides for a trustworthy and responsible
2 trustee and for competent administration of the trust fund
3 and the self-funded plan;

4 (c) requires that each employer contribute to the
5 trust fund and that employees who contribute to the trust
6 fund make the contribution by regular periodic payroll
7 deductions, except for contributions made by an employee
8 during his absence from employment for a period as the
9 self-funded plan may reasonably provide;

10 (d) requires the administrator or the trustee on
11 behalf of the trust fund to furnish each
12 employee-beneficiary of the self-funded plan a written
13 statement or schedule that adequately and clearly states:

14 (i) each benefit currently allowable under the
15 self-funded plan;

16 (ii) any applicable restrictions, limitations, or
17 exclusions; and

18 (iii) the procedure for filing a claim for benefits;
19 and

20 (e) has a trust fund that is actuarially sound.

21 (2) For purposes of subsection (1)(e), a trust fund is
22 actuarially sound if it has adequate assets and income under
23 reasonable estimates to pay all benefits promised to
24 beneficiaries by the self-funded plan. In determining
25 actuarial soundness, the commissioner shall consider:

(a) applicable stop-loss insurance provided to the self-funded plan by an insurer authorized to transact disability insurance in this state;

(b) contracts with health service corporations or health maintenance organizations authorized to transact business in this state that cover certain of the promised benefits;

(c) other applicable insurance guaranties; and

(d) self-funded plan factors or provisions for the prevention or reduction of adverse selection against the self-funded plan by those otherwise eligible to become beneficiaries.

NEW SECTION. Section 6. Application for registration.

(1) Application for registration of a self-funded plan must be made to the commissioner on forms he furnishes and designs to determine whether the self-funded plan is qualified for registration. At least one employer and one trustee shall sign and verify the application. If the employer or trustee is a corporation, an authorized corporate officer shall sign and verify the application.

(2) The application must be accompanied by:

(a) a copy of the trust agreement under which the trust fund is to exist and operate;

(b) a copy of the proposed written statement of benefits referred to in [section 5(1)(d)];

(c) a financial statement of the trust fund as of a date not more than 45 days before the date on which the application was filed if it is already in existence and operating on [the effective date of this act]. The statement must be certified by an independent accountant or by an accountant whose certification is acceptable to the commissioner.

(d) a written statement of reasonably projected income and disbursements of the trust fund for a 12-month period commencing within 30 days of the date of application and showing the amount reserved as of the end of the period for claims incurred but not yet paid or claims incurred but not yet reported;

(e) a copy of any study made of the proposed self-funded plan by a consultant for the information or guidance of the employer or employees; and

(f) any other relevant documentation and information as the commissioner may reasonably require.

NEW SECTION. Section 7. Grant or denial of registration. The commissioner shall act upon an application for registration of a self-funded plan within 180 days after its completion. He may make an investigation of the proposal as he considers advisable. If the commissioner finds that the application is complete and that the self-funded plan meets the qualifications stated in [section 5], he shall

1 issue and deliver a certificate of registration in
 2 appropriate form to the applicant. If he finds the
 3 application to be unsatisfactory in either respect, the
 4 commissioner shall refuse to register the self-funded plan
 5 and shall give written notice of the refusal to the
 6 applicant, stating the reasons for the refusal.

7 NEW SECTION. Section 8. Trust fund -- powers. The
 8 trust fund of a self-funded plan may:

- 9 (1) have and use an appropriate descriptive name;
- 10 (2) sue and be sued in its own name;
- 11 (3) contract in its own name. All written contracts
 12 must be signed by the trustee of the trust fund. If there is
 13 more than one trustee, a contract may be executed by one
 14 trustee if authorized by all trustees.
- 15 (4) borrow money and give security for the loan; and
- 16 (5) engage exclusively in transactions authorized or
 17 required by [sections 1 through 24] or reasonably incidental
 18 to authorized transactions.

19 NEW SECTION. Section 9. Trust fund liability. (1) A
 20 trust fund must pay all applicable benefits specified in the
 21 statement or schedule of benefits in effect at the time a
 22 claim arises.

23 (2) (a) Trust funds are fiduciary funds and may not be
 24 used for an obligation of an employer who participates in
 25 the self-funded plan and, except as provided in subsection

1 (2)(b), are not subject to garnishment or levy for the
 2 obligation of a beneficiary.

3 (b) If a trustee of a trust fund agrees in writing to
 4 pay a provider directly for health care services provided to
 5 a beneficiary, the provider or its assignee may levy against
 6 the trust fund.

7 NEW SECTION. Section 10. Investment of trust fund.

8 (1) A trustee may invest reserves and other trust funds
 9 available for investment only in:

- 10 (a) general obligations of:
 - 11 (i) the United States government;
 - 12 (ii) a state, district, commonwealth, or territory of
 13 the United States; or
 - 14 (iii) a municipality, county, or other political
 15 subdivision or agency of a state;
- 16 (b) obligations for which the payment of principal and
 17 interest is guaranteed by a government or governmental
 18 agency;
- 19 (c) corporate bonds and similar obligations meeting
 20 the requirements specified for investment of funds of
 21 insurers under 33-2-818;
- 22 (d) collateral loans for which the payment of
 23 principal and interest is adequately secured by securities
 24 in which the trust fund could lawfully invest directly; or
- 25 (e) deposits, savings accounts, and share accounts in

1 established banks and savings and loan associations located
2 in the United States. An investment in any one institution
3 may not exceed the amount covered by applicable deposit,
4 savings, and share account insurance.

5 (2) The trustee is expressly prohibited from investing
6 trust fund money in:

7 (a) a loan to or security of:
8 (i) an employer participating in the self-funded plan;
9 (ii) an officer, director, subsidiary, or affiliate of
10 a participating employer;

11 (b) the security of a person in which the trustee, the
12 administrator, or a consultant of the self-funded plan has a
13 direct or indirect material, pecuniary interest;

14 (c) real estate or loans on real estate;

15 (d) a personal loan, other than a collateral loan
16 referred to in subsection (1)(d) but subject to subsections
17 (2)(a) and (2)(b).

18 (3) The trustee shall make and hold each investment in
19 the name of the trust fund, and the interest and yield on
20 the investment must be payable to the account of the trust
21 fund.

22 (4) An investment may not be made unless authorized in
23 writing by the trustee and shown in the records of the trust
24 fund.

25 (5) A person who authorizes an investment of trust

1 fund money in violation of this section is liable for all
2 loss suffered by the trust fund on account of the
3 investment, in addition to other penalties for the
4 investment.

5 (6) An investment made in violation of this section
6 may not be considered an asset in a determination of the
7 financial condition of the trust fund.

8 NEW SECTION. **Section 11. Reserves.** (1) A self-funded
9 plan shall establish and maintain the following reserves:

10 (a) a reserve in an amount as certified by a member of
11 the American academy of actuaries as being necessary to pay
12 claims against the trust fund for benefits, including both
13 claims incurred but not yet paid and claims incurred but not
14 yet reported;

15 (b) a reserve for unearned contributions as computed
16 pro rata on the basis of the unexpired portion of the period
17 for which the contribution has been paid, if under the
18 self-funded plan periodic contributions of either the
19 employer or employees to the trust fund are payable less
20 frequently than monthly.

21 (2) In a determination of the financial condition of
22 the trust fund, the claims reserve and reserve for unearned
23 contributions shall be considered liabilities.

24 NEW SECTION. **Section 12. Records and accounts --**
25 **annual statement.** (1) The trustee of a self-funded plan

1 shall cause full and accurate records and accounts to be
2 entered and maintained covering all financial transactions
3 and affairs of the trust fund.

4 (2) Within 60 days after the end of the calendar year,
5 the trustee shall make an annual statement in writing
6 summarizing the financial transactions of the trust fund for
7 the calendar year and its financial condition at the end of
8 the year in accordance with [sections 1 through 24] and
9 generally accepted and applicable accounting principles.
10 The annual statement must be in the form and require
11 information as prescribed by the commissioner. The
12 financial information provided in the annual statement must
13 be certified by the accountant who prepared or audited the
14 information. The trustee shall promptly deliver a copy of
15 the annual statement to each employer participating in the
16 self-funded plan and keep a copy of the annual statement on
17 file in the business office of the self-funded plan where a
18 beneficiary may review it at all reasonable times for a
19 period of not less than 3 years.

20 NEW SECTION. Section 13. Taxes. (1) Each registered
21 self-funded plan and each formerly registered self-funded
22 plan, with respect to beneficiaries in this state while so
23 registered, shall at the time of filing of its annual
24 statement with the commissioner pay to the commissioner a
25 tax computed at the rate of 4 cents a month for each

1 beneficiary who is covered by the self-funded plan during
2 the calendar year of the annual statement while working or
3 residing in this state.

4 (2) The state of Montana preempts the field of
5 imposing excise, privilege, franchise, income, license, and
6 similar taxes, licenses, and fees upon self-funded plans and
7 on the intangible property of their trust funds. A county,
8 city, municipality, district, school district, or other
9 political subdivision or agency in this state may not levy
10 upon a self-funded plan or trust fund any tax, license, or
11 fee additional to those levied by the legislature in
12 [sections 1 through 24] and 33-2-708.

13 (3) The tax herein levied, together with the fees
14 provided for in [sections 1 through 24] and 33-2-708, are in
15 lieu of all income taxes and other excise taxes, licenses,
16 and fees payable to the state of Montana.

17 (4) The commissioner shall promptly remit all tax
18 payments received by him to the state treasurer for credit
19 to the general fund of the state.

20 NEW SECTION. Section 14. Examination of books,
21 records, and accounts. (1) The books, records, accounts, and
22 affairs of a self-funded plan are subject to examination by
23 the commissioner and by competent examiners he authorizes in
24 writing, at times or intervals as the commissioner considers
25 advisable. The purpose of the examination is to determine:

1 (a) compliance by the self-funded plan with applicable
2 laws;

3 (b) the financial condition and actuarial adequacy of
4 the trust fund;

5 (c) the treatment accorded beneficiaries; and

6 (d) other factors materially related to the management
7 and operation of the self-funded plan.

8 (2) The trustee shall make the books, records, and
9 accounts of the self-funded plan and trust fund available to
10 the commissioner or his authorized examiner and shall
11 otherwise facilitate the examination.

12 (3) The examiner shall conduct the examination
13 expeditiously, make a written report of the examination, and
14 deliver a copy of his report to the trustee and the
15 commissioner. The trustee shall recommend to the
16 commissioner any corrections or changes to the report within
17 2 weeks after receiving it. After making corrections or
18 changes, if any, the commissioner shall file the report in
19 his office as a document open to public inspection and
20 deliver to the trustee a copy of the report as corrected or
21 changed.

22 (4) The trust fund shall bear the costs of the
23 examination. Upon presentation of a detailed account of
24 charges and expenses by the commissioner or pursuant to his
25 written authorization, each self-funded plan that is

1 examined must pay actual travel expenses, reasonable living
2 expenses, and a per diem compensation to the examiners for
3 expenses incurred as a result of the examination. The
4 payments shall be at reasonable, customary rates established
5 by the commissioner. An account may be presented
6 periodically during the course of the examination or upon
7 termination of the examination as the commissioner considers
8 proper. A person may not pay and an examiner may not accept
9 any additional emolument on account of an examination. The
10 commissioner shall pay to the state treasurer to the credit
11 of the general fund all money received for an examination.
12 If a self-funded plan fails to pay the charges and expenses
13 of an examination, the charges and expenses must be paid out
14 of the funds of the commissioner in the same manner as other
15 disbursements of funds. The amount paid must be a first lien
16 upon all of the assets and property in this state of the
17 self-funded plan and may be recovered by suit by the
18 attorney general on behalf of the state of Montana and
19 restored to the appropriate fund.

20 NEW SECTION. **Section 15. Trustees -- administrators**
21 **-- bonding.** (1) An individual or a corporation may be a
22 trustee of a trust fund. An individual, partnership, or
23 corporation may be an administrator of a self-funded plan.

24 (2) An employer participating in a self-funded plan
25 may not be a trustee or administrator. An employee of an

1 employer may be a trustee or administrator of a self-funded
2 plan in which his employer participates.

3 (3) The trustee shall cause each individual who
4 handles receipts and disbursements for the trust fund to be
5 bonded at all times under a fidelity bond issued by a surety
6 insurer authorized to transact surety insurance in this
7 state. The bond must be in favor of the trust fund and for
8 an aggregate penalty amount that the commissioner considers
9 reasonably advisable in relation to the amount of the funds
10 involved, but not less than \$25,000. The bond must be
11 noncancellable except upon a minimum of 30 days' advance
12 notice in writing to the trustee and the commissioner. The
13 trust fund must bear the cost of the bond.

14 NEW SECTION. Section 16. Prohibited pecuniary
15 interests in plan management. (1) A trustee, administrator,
16 or other person having responsibility for the management of
17 a self-funded plan or the investment or other handling of a
18 trust fund may not:

19 (a) receive, directly or indirectly, or have a
20 pecuniary interest in a fee, commission, compensation, or
21 emolument arising out of a transaction to which the trust
22 fund is or will be a party, except for a salary or other
23 similar compensation regularly fixed and allowed for
24 services rendered to the self-funded plan;

25 (b) receive compensation as a consultant to the

1 self-funded plan while also:

2 (i) acting as a trustee or administrator; or
3 (ii) employed by a trustee or administrator; or
4 (c) have a direct or indirect material, pecuniary
5 interest in a loan or investment of the trust fund.

6 (2) A consultant to a self-funded plan or trust fund
7 may not directly or indirectly receive or have a pecuniary
8 interest in a commission or other compensation arising out
9 of a contract or transaction between the trust fund and an
10 insurer, health care service corporation, health maintenance
11 organization, or other provider of health care services,
12 drugs, or other health care needs and supplies.

13 (3) The commissioner may, after notice and hearing,
14 require removal of a trustee or prohibit the trustee from
15 employing or retaining or continuing to employ or retain a
16 person in the administration of the trust fund or
17 self-funded plan if he finds that continuation of the
18 trustee or the employment or retention involves a conflict
19 of interest not in the best interests of the self-funded
20 plan or adversely affecting interests of beneficiaries.

21 NEW SECTION. Section 17. Political contributions
22 prohibited. A trustee may not make or knowingly permit the
23 making, directly or indirectly, of a political contribution
24 by or from a trust fund.

25 NEW SECTION. Section 18. Recovery of depleted funds.

1 If, after notice and hearing, the commissioner finds that a
2 trust fund has been depleted by reason of a wrongful or
3 negligent act or omission of a trustee or any other person,
4 he shall transmit a copy of his findings to the attorney
5 general or the proper prosecuting attorney, who, for the
6 recovery of the amount of the depletion and for the benefit
7 of the trust fund, may:

8 (1) bring an action in the name of the people of this
9 state; or

10 (2) intervene in an action brought by or on behalf of
11 an employer or beneficiary.

12 **NEW SECTION. Section 19. Termination of registration.**

13 (1) The commissioner shall terminate the registration of a
14 self-funded plan:

15 (a) upon written request of the trustee; or

16 (b) if he finds, after an examination, that the trust
17 fund is insolvent.

18 (2) The commissioner may terminate the registration of
19 a self-funded plan:

20 (a) for violation of [sections 1 through 24];

21 (b) for failure of the trustee to file the annual
22 statement with the commissioner as required by [section 12]
23 and pay the tax at the same time as required by [section
24 13]; or

25 (c) if he finds, after an examination of the trust

1 fund and the self-funded plan, that:

2 (i) the self-funded plan no longer meets the
3 qualifications required by [section 5] and that the
4 deficiency will not be remedied within a reasonable time;

5 (ii) as a matter of frequent practice, the benefits
6 promised by the self-funded plan are not being fairly and
7 promptly paid;

8 (iii) the cost of administering the self-funded plan is
9 excessive in relation to the character and volume of service
10 being rendered in the administration; or

11 (iv) the trust fund has been subject to fraudulent or
12 dishonest practices on the part of the trustee, the
13 administrator, the consultant, a participating employer, or
14 a beneficiary.

15 (3) The commissioner shall terminate the registration
16 of a self-funded plan by his written order given to the
17 trustee of record and to each employer of record
18 participating in the self-funded plan. The order must state
19 the grounds upon which it is made and its effective date.
20 The order is subject to judicial review as provided in
21 33-1-711.

22 **NEW SECTION. Section 20. Liquidation of trust fund.**

23 (1) When the administration of a trust fund terminates, the
24 trustee shall liquidate the self-funded plan.

25 (2) The trustee shall liquidate the self-funded plan

1 under a written plan of liquidation filed with the
 2 commissioner, found by the commissioner to be fair and
 3 equitable to all persons having a pecuniary interest in the
 4 trust fund, and approved by him. The trustee shall dispose
 5 of any balance remaining after payment of or adequate
 6 provision for all claims and charges against the trust fund
 7 in the manner provided for in the plan of liquidation.
 8 Unless the plan of liquidation provides that a financially
 9 responsible person assumes liability for all unpaid claims
 10 and obligations of the trust fund, the existence of surplus
 11 funds for the liquidation may not be determined until 2
 12 years after the registration terminates.

13 (3) After the commissioner approves the plan of
 14 liquidation of an insolvent trust fund, the plan is binding
 15 upon all persons who have a pecuniary interest in the trust
 16 fund. Pending the effectuation of the plan of liquidation of
 17 an insolvent trust fund, the commissioner may impose
 18 prohibitions or restrictions upon disbursements or use of
 19 trust fund money that he considers advisable for the
 20 protection of all interested persons.

21 (4) The commissioner shall liquidate the trust fund
 22 under the applicable provisions of Title 33, chapter 2, part
 23 13. The trust fund is considered to be an insolvent domestic
 24 insurer if:

25 (a) the trust fund is insolvent and the trustee does

1 not file, within 60 days after the self-funded plan
 2 terminates, a written plan of liquidation of the trust fund
 3 that is satisfactory to the commissioner as being fair and
 4 equitable; or

5 (b) it is a solvent trust fund but it is not being
 6 liquidated according to the plan of liquidation that the
 7 commissioner has approved.

8 NEW SECTION. **Section 21.** Rules. The commissioner may
 9 make reasonable rules necessary to or as an aid to
 10 effectuate [sections 1 through 24].

11 NEW SECTION. **Section 22.** Other provisions applicable.
 12 The following chapters, parts, and provisions of this title
 13 apply to a self-funded plan to the extent applicable and not
 14 in conflict with [sections 1 through 24]: 33-2-708,
 15 33-2-818, and Title 33, chapters 1, 15, 17 through 19, and
 16 22. For purposes of 33-2-708, 33-2-818, and Title 33,
 17 chapters 1, 15, 17 through 19, and 22, a self-funded plan is
 18 considered to be an insurer.

19 NEW SECTION. **Section 23.** Penalties. (1) A person who
 20 willfully violates or causes or induces a violation of
 21 [sections 1 through 24] or a rule implementing a provision
 22 of [sections 1 through 24] is subject to a penalty as
 23 provided in subsection (4).

24 (2) A person who makes a false statement or
 25 representation of a material fact, knowing it to be false,

1 or who knowingly fails to disclose a material fact in an
2 application, examination, or statement required under
3 [sections 1 through 24] or a rule implementing [sections 1
4 through 24] is subject to a penalty as provided in
5 subsection (4).

6 (3) A person who makes a false entry in a book,
7 record, statement, or report required under [sections 1
8 through 24] with the intent to injure or defraud the trust
9 fund or a beneficiary thereunder or to deceive a person
10 authorized or entitled to examine the affairs of the
11 self-funded plan is subject to penalty as provided in
12 subsection (4).

13 (4) An offender, upon conviction for each violation,
14 act, or omission referred to in this section, unless a
15 greater penalty is provided for the violation under any
16 other applicable law, shall be fined not more than \$1,000 or
17 be imprisoned for a term not to exceed 1 year, or both.

18 NEW SECTION. Section 24. Coverage from moment of
19 birth -- complications of pregnancy. (1) Every self-funded
20 plan issued or amended on or after [the effective date of
21 this act] must contain a provision granting immediate
22 accident and sickness coverage, from and after the moment of
23 birth, to each newborn infant of an insured. A self-funded
24 plan may not be issued or amended in this state if it
25 contains a disclaimer, waiver, or other limitation of

1 coverage relative to the coverage or insurability of a
2 newborn infant of an insured from and after the moment of
3 birth.

4 (2) A self-funded plan that provides maternity
5 benefits continuously from conception may not be issued,
6 amended, delivered, or renewed in this state if it contains
7 an exclusion, reduction, or other limitation as to coverage,
8 deductibles, or coinsurance provisions as to involuntary
9 complications of pregnancy unless the provisions apply
10 generally to all benefits paid under the self-funded plan.
11 If a fixed amount is specified in a self-funded plan for
12 surgery, the fixed amount for surgical procedures involving
13 an involuntary complication of pregnancy must be
14 commensurate with other fixed amounts payable for procedures
15 of comparable difficulty and severity. If a fixed amount is
16 payable for maternity benefits, an involuntary complication
17 of pregnancy is considered to be an illness and entitled to
18 benefits otherwise provided by the self-funded plan. If the
19 self-funded plan contains a maternity deductible, the
20 maternity deductible applies only to expenses resulting from
21 normal delivery and cesarean section delivery; however,
22 expenses for cesarean section delivery in excess of the
23 deductible must be treated as expenses for any other illness
24 under the self-funded plan. For purposes of this subsection,
25 "involuntary complication of pregnancy" includes but is not

1 limited to puerperal infection, eclampsia, cesarean section
2 delivery, ectopic pregnancy, and toxemia.

3 (3) Subsection (2) applies to each self-funded plan in
4 this state except a self-funded plan made subject to an
5 applicable collective bargaining agreement in effect before
6 January 1, 1990.

7 (4) Each self-funded plan that provides maternity
8 benefits continuously from conception and that is issued,
9 amended, delivered, or renewed in this state on or after
10 January 1, 1990, is construed to comply with this section. A
11 provision in a self-funded plan that conflicts with this
12 section has no force or effect.

13 **Section 25.** Section 33-1-102, MCA, is amended to read:

14 "33-1-102. Compliance required -- exceptions -- health
15 service corporations -- health maintenance organizations --
16 governmental insurance programs. (1) No person shall
17 transact a business of insurance in Montana or relative to a
18 subject resident, located, or to be performed in Montana
19 without complying with the applicable provisions of this
20 code.

21 (2) No provision of this code shall apply with respect
22 to:

23 (a) domestic farm mutual insurers as identified in
24 chapter 4, except as stated in chapter 4;

25 (b) domestic benevolent associations as identified in

1 chapter 6, except as stated in chapter 6; and

2 (c) fraternal benefit societies, except as stated in
3 chapter 7.

4 (3) This code applies to health service corporations
5 as prescribed in 33-30-102. The existence of such
6 corporations is governed by Title 35, chapter 2, and related
7 sections of the Montana Code Annotated.

8 (4) This code does not apply to health maintenance
9 organizations to the extent that the existence and
10 operations of such organizations are authorized by chapter
11 31.

12 (5) This code does not apply to workers' compensation
13 insurance programs provided for in Title 39, chapter 71,
14 parts 21 and 23, and related sections.

15 (6) This code does not apply to the state employee
16 group insurance program established in Title 2, chapter 18,
17 part 8.

18 (7) This code does not apply to insurance funded
19 through the state self-insurance reserve fund provided for
20 in 2-9-202.

21 (8) ~~(a) This~~ Except as provided in [sections 1 through
22 24], this code does not apply to:

23 (a) any arrangement, plan, or interlocal agreement
24 between political subdivisions of this state whereby the
25 political subdivisions undertake to separately or jointly

indemnify one another by way of a pooling, joint retention,
deductible, or self-insurance plan; or

(b) ~~This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or~~ any arrangement, plan, or program of a single political subdivision of this state whereby the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program."

Section 26. Section 33-2-708, MCA, is amended to read:

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

(a) certificates of authority:

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

(A) domestic insurers \$ 300.00

(B) foreign insurers 300.00

(ii) annual continuation of certificate of authority ..

1	.....	300.00
2	(iii) reinstatement of certificate of authority	
3	.....	25.00
4	(iv) amendment of certificate of authority	50.00
5	(b) articles of incorporation:	
6	(i) filing original articles of incorporation of	
7	domestic insurer, exclusive of fees required to be paid by	
8	the corporation to the secretary of state	20.00
9	(ii) filing amendment of articles of incorporation,	
10	domestic and foreign insurers, exclusive of fees required to	
11	be paid to the secretary of state by a domestic corporation	
12	.....	25.00
13	(c) filing bylaws or amendment thereto where required	
14	.....	10.00
15	(d) filing annual statement of insurer, other than as	
16	part of application for original certificate of authority ..	
17	.....	25.00
18	(e) resident agent's license:	
19	(i) application for original license, including	
20	issuance of license, if issued (life and/or disability)	
21	.....	15.00
22	(ii) application for original license, including	
23	issuance of license, if issued (other than life and/or	
24	disability)	15.00
25	(iii) appointment of agent, each insurer	10.00

1	(iv) annual renewal, each insurer	10.00
2	(v) temporary license	10.00
3	(vi) amendment of license (excluding additions thereto)	
4	or reissuance of master license	10.00
5	(f) nonresident agent's license:	
6	(i) application for original license, including	
7	issuance of license, if issued (life and/or disability)	
8	.....	100.00
9	(ii) application for original license, including	
10	issuance of license, if issued (other than life and/or	
11	disability)	100.00
12	(iii) appointment of agent, each insurer	10.00
13	(iv) annual renewal, each insurer	10.00
14	(v) amendment of license (excluding additions thereto)	
15	or reissuance of master license	10.00
16	(g) solicitor's license:	
17	(i) application for original license, including	
18	issuance of license, if issued	15.00
19	(ii) annual renewal of license	15.00
20	(iii) appointment of solicitor	10.00
21	(h) examination for license as agent or solicitor,	
22	each examination	15.00
23	(i) surplus lines agent license:	
24	(i) application for original license and for issuance	
25	of license, if issued	50.00

1	(ii) annual renewal of license	50.00
2	(j) adjuster's license:	
3	(i) application for original license and for issuance	
4	of license, if issued	15.00
5	(ii) annual renewal of license	15.00
6	(k) insurance vending machine license, each machine,	
7	each year	10.00
8	(l) commissioner's certificate under seal (except when	
9	on certificates of authority or licenses)	10.00
10	(m) copies of documents on file in the commissioner's	
11	office, per page .....	.50
12	(n) policy forms:	
13	(i) filing each policy form	25.00
14	(ii) filing each application, rider, endorsement,	
15	amendment, insert page, schedule of rates, and clarification	
16	of risks	10.00
17	(iii) maximum charge if policy and all forms submitted	
18	at one time or resubmitted for approval within 180 days	
19	.....	100.00
20	<u>(o) self-funded plans:</u>	
21	<u>(i) filing application for registration</u>	<u>25.00</u>
22	<u>(ii) filing annual statement of trust fund</u>	<u>25.00</u>
23	(2) The commissioner shall promptly deposit with the	
24	state treasurer to the credit of the general fund of this	
25	state all fines and penalties, those amounts received	

1 pursuant to 33-2-311, 33-2-705, and 33-2-706, and any fees
2 and examination and miscellaneous charges received pursuant
3 to Title 33, chapter 11, part 1, that are collected by him
4 pursuant to Title 33 and the rules adopted thereunder.

5 (3) All fees are considered fully earned when
6 received. In the event of overpayment, only those amounts in
7 excess of \$10 will be refunded.

8 (4) All fees and examination and miscellaneous
9 charges, except fines or penalties or those amounts received
10 pursuant to 33-2-311, 33-2-705, or 33-2-706, collected by
11 the commissioner pursuant to Title 33 and the rules adopted
12 thereunder must be deposited in the insurance regulatory
13 trust account pursuant to 17-2-121 through 17-2-123."

14 NEW SECTION. Section 27. Extension of authority. Any
15 existing authority to make rules on the subject of the
16 provisions of [this act] is extended to the provisions of
17 [this act].

18 NEW SECTION. Section 28. Codification instruction.
19 [Sections 1 through 24] are intended to be codified as an
20 integral part of Title 33 and the provisions of Title 33
21 apply to [sections 1 through 24].

22 NEW SECTION. Section 29. Applicability. [Sections 1
23 through 24] apply to each self-funded plan and trust fund
24 operating in this state on [the effective date of this act].

25 NEW SECTION. Section 30. Effective date. [This act]

1 is effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB669, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act adopting laws regulating self-funded health care plans; amending Sections 33-1-102 and 33-2-708, MCA; and providing an immediate effective date and an applicability date.

ASSUMPTIONS:

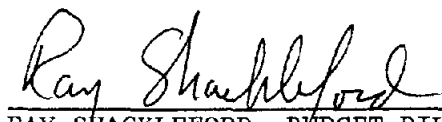
1. The state employee group insurance program is exempt per 33-1-102(6), MCA.

Commissioner of Higher Education

2. University self-funded plan is not exempt.
3. 11,000 beneficiaries.
4. The registration and annual filing fees apply.
5. The Commissioner of Insurance honors the "Single Audit Act" and accepts the Legislative Auditor's findings for CHE audits.
6. Legislative Auditor will not increase the audit costs, but merely send copies of CHE's audit to State Auditor's Office.

State Auditor's Office

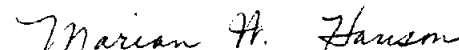
7. Provisions of this bill require rulemaking.
8. Review six applications in the first year - each application would require six hours at a grade 13 to complete.
9. Review two applications in subsequent years.
10. Annual statement review three hours per statement, six statements in the first year, eight statements in the second year.
11. Four cents per month per beneficiary - it is impossible to determine the number of beneficiaries. For the purposes of this fiscal note, assume 12,000 beneficiaries.
12. There is a \$25 per application fee and a \$25 per annual statement filing fee.



DATE

2/21/89

RAY SHACKLEFORD, BUDGET DIRECTOR
OFFICE OF BUDGET AND PROGRAM PLANNING



DATE

3/8/89

MARIAN W. HANSON, PRIMARY SPONSOR

Fiscal Note for HB669, as introduced

HB 669

Fiscal Note Request, HB669 as introduced

Form BD-15

Page 2

FISCAL IMPACT:

<u>Commissioner of Higher Education</u>	<u>Current Law</u>	<u>FY90 Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>FY91 Proposed Law</u>	<u>Difference</u>
<u>Expenditures:</u>						
Benefits and Claims \$	-0-	\$ 5,330	\$ 5,330	\$ -0-	\$ 5,330	\$ 5,330
Funding: Self-Fund Insurance						
State Auditor's Office						
<u>Revenue:</u>						
Insurance Regulatory						
Account-Fees \$	-0-	\$ 150	\$ 150	\$ -0-	\$ 200	\$ 200
General Fund-Taxes	-0-	5,760	5,760	-0-	5,760	5,760
<u>Expenditures:</u>						
Personal Services	-0-	700	700	-0-	275	275
Operating Expenses	-0-	350	350	-0-	-0-	-0-
TOTAL	\$ -0-	\$ 1,050	\$ 1,050	\$ -0-	\$ 275	\$ 275
<u>Net Effect:</u>	\$ -0-	(\$ 900)	(\$ 900)	\$ -0-	(\$ 75)	(\$ 75)

HB 669

APPROVED BY COMM. ON BUSINESS
AND ECONOMIC DEVELOPMENT

HOUSE BILL NO. 669

INTRODUCED BY HANSON, WEEDING

A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING LAWS
REGULATING SELF-FUNDED HEALTH CARE PLANS; AMENDING SECTIONS
33-1-102 AND 33-2-708, MCA; AND PROVIDING AN IMMEDIATE
EFFECTIVE DATE AND AN APPLICABILITY DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because
[section 21] authorizes the commissioner of insurance to
make reasonable rules necessary for or as an aid to
effectuate [sections 1 through 24 26] without extending,
modifying, or conflicting with [sections 1 through 24 26]
and their reasonable implications. The legislature intends
that the rules that the commissioner adopts to implement
this bill be designed principally to protect Montana
insurance consumers, while making insurance more available
in this state. The legislature further intends that the
commissioner adopt the rules in accordance with 33-1-313,
which grants the commissioner general rulemaking authority
and permits the commissioner to:

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

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

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

NEW SECTION. **Section 1. Short title.** [Sections 1
through 24 26] may be cited as the "Self-Funded Health Care
Plans Act".

NEW SECTION. **Section 2. Purpose.** The purposes of
[sections 1 through 24 26] are to:

(1) recognize and provide reasonable public
supervision of self-funded plans that provide health care
service benefits to employees in connection with or as an
alternative to insurance and other prepayment plans;

(2) provide standards for financial soundness of
self-funded plans; and

(3) protect the interests of employees covered by a
self-funded plan.

NEW SECTION. **Section 3. Definitions.** As used in
[sections 1 through 24 26], the following definitions apply:

(1) "Administrator" means a person, other than the
trustee, employed by the trustee to administer a self-funded
plan.

(2) "Beneficiary" means an individual entitled, under
a self-funded plan, to payment by a trust fund of a part of
the cost of health care services provided to him.

(3) "Contribution" means the amount the employer or employee pays or will pay into a trust fund.

(4) "Person" means an individual, corporation, association, firm, syndicate, organization, or other entity.

(5) "Self-funded plan" means a plan:

(a) under which payment for a disability income benefit which is not otherwise provided for under Title 39, chapter 71, for medical, surgical, hospital, and other services for prevention, diagnosis, or treatment of a disease, injury, or bodily condition of an employee, is or will be regularly provided for or promised from funds created or maintained in whole or in part by contributions or payments by the employer or by the employer and the employees; and

(b) that is not otherwise covered by a disability insurance policy, a membership contract as defined in 33-30-101, a health care services agreement as defined in 33-31-102, or a similar third-party prepayment plan.

(6) "Trust fund" means a trust fund that is established under a self-funded plan for the receipt of contributions by an employer and employees and for the payment of health care service costs of a beneficiary.

(7) "Trustee" means the trustee, whether a single or multiple trustee, of a trust fund.

NEW SECTION. Section 4. Registration -- exemptions --

registered plan exempt from insurance code. (1) Except as provided in subsection (2), a self-funded plan may not operate in this state except while registered with the commissioner under [sections 1 through ~~24~~ 26]. A self-funded plan already in operation on [the effective date of this act] shall register with the commissioner within 90 days after [the effective date of this act].

(2) Registration is not required of:

(a) a self-funded plan established for the sole purpose of funding the amount of a deductible clause contained in an insurance contract issued by an insurer authorized to transact disability insurance in this state if:

(i) the deductible does not exceed an amount applicable to each beneficiary of \$500 a year; and

(ii) the total of all obligations to all beneficiaries insured under the self-funded plan arising out of the application of the deductible does not exceed the aggregate amount of \$50,000 a year;

(b) a self-funded plan established and maintained in compliance with Title 39, chapter 71;

(c) a self-funded plan administered by or for the federal government or an agency thereof;

(d) a self-funded plan that is primarily intended to provide first-aid care and treatment at a dispensary of an

1 employer for injury or sickness of employees while engaged
2 in their employment;

3 (e) an employer's self-insured health plan that is
4 established and maintained solely for its members and their
5 immediate families if it has existed and operated for 15
6 years immediately preceding [the effective date of this
7 act]; or

8 (f) a self-insured health plan that is established,
9 maintained, and insured jointly by an employer and a labor
10 organization if it has existed and operated for 15 years
11 immediately preceding [the effective date of this act]; OR

12 (G) A SELF-REGULATED HEALTH PLAN THAT IS ESTABLISHED,
13 MAINTAINED, AND ADMINISTERED BY THE BOARD OF REGENTS.

14 (3) A registered self-funded plan may not be
15 considered to be engaged in the business of insurance and is
16 not subject to the Montana insurance code except as
17 expressly provided in [sections 1 through 24 26].

18 (4) A person may not act as or hold himself out to be
19 an insurance agent as to a self-funded plan in this state
20 unless licensed under Title 33, chapter 17.

21 NEW SECTION. Section 5. qualifications for
22 registration. (1) A self-funded plan may not be registered
23 under the provisions of [sections 1 through 24 26] unless
24 it:

25 (a) requires all contributions to be paid in advance

1 and to be deposited in and disbursed from a trust fund
2 created and existing under an adequate written, irrevocable
3 trust agreement between the employer and the trustee;

4 (b) has or provides for a trustworthy and responsible
5 trustee and for competent administration of the trust fund
6 and the self-funded plan;

7 (c) requires that each employer contribute to the
8 trust fund and that employees who contribute to the trust
9 fund make the contribution by regular periodic payroll
10 deductions, except for contributions made by an employee
11 during his absence from employment for a period as the
12 self-funded plan may reasonably provide;

13 (d) requires the administrator or the trustee on
14 behalf of the trust fund to furnish each
15 employee-beneficiary of the self-funded plan a written
16 statement or schedule that adequately and clearly states:

17 (i) each benefit currently allowable under the
18 self-funded plan;

19 (ii) any applicable restrictions, limitations, or
20 exclusions; and

21 (iii) the procedure for filing a claim for benefits;
22 and

23 (e) has a trust fund that is actuarially sound.

24 (2) For purposes of subsection (1)(e), a trust fund is
25 actuarially sound if it has adequate assets and income under

1 reasonable estimates to pay all benefits promised to
2 beneficiaries by the self-funded plan. In determining
3 actuarial soundness, the commissioner shall consider:

4 (a) applicable stop-loss insurance provided to the
5 self-funded plan by an insurer authorized to transact
6 disability insurance in this state;

7 (b) contracts with health service corporations or
8 health maintenance organizations authorized to transact
9 business in this state that cover certain of the promised
10 benefits;

11 (c) other applicable insurance guaranties; and

12 (d) self-funded plan factors or provisions for the
13 prevention or reduction of adverse selection against the
14 self-funded plan by those otherwise eligible to become
15 beneficiaries.

16 NEW SECTION. **Section 6.** Application for registration.

17 (1) Application for registration of a self-funded plan must
18 be made to the commissioner on forms he furnishes and
19 designs to determine whether the self-funded plan is
20 qualified for registration. At least one employer and one
21 trustee shall sign and verify the application. If the
22 employer or trustee is a corporation, an authorized
23 corporate officer shall sign and verify the application.

24 (2) The application must be accompanied by:

25 (a) a copy of the trust agreement under which the

1 trust fund is to exist and operate;

2 (b) a copy of the proposed written statement of
3 benefits referred to in [section 5(1)(d)];

4 (c) a financial statement of the trust fund as of a
5 date not more than 45 days before the date on which the
6 application was filed if it is already in existence and
7 operating on [the effective date of this act]. The statement
8 must be certified by an independent accountant or by an
9 accountant whose certification is acceptable to the
10 commissioner.

11 (d) a written statement of reasonably projected income
12 and disbursements of the trust fund for a 12-month period
13 commencing within ~~30~~ 45 days of the date of application and
14 showing the amount reserved as of the end of the period for
15 claims incurred but not yet paid or claims incurred but not
16 yet reported;

17 (e) a copy of any study made of the proposed
18 self-funded plan by a consultant for the information or
19 guidance of the employer or employees; and

20 (f) any other relevant documentation and information
21 as the commissioner may reasonably require.

22 NEW SECTION. **Section 7.** Grant or denial of
23 registration. The commissioner shall act upon an application
24 for registration of a self-funded plan within ~~180~~ 60 days
25 after ~~its completion~~ THE SUBMISSION OF THE COMPLETED

1 APPLICATION. He may make an investigation of the proposal as
 2 he considers advisable. If the commissioner finds that the
 3 application is complete and that the self-funded plan meets
 4 the qualifications stated in [section 5], he shall issue and
 5 deliver a certificate of registration in appropriate form to
 6 the applicant. If he finds the application to be
 7 unsatisfactory in either respect, the commissioner shall
 8 refuse to register the self-funded plan and shall give
 9 written notice of the refusal to the applicant, stating the
 10 reasons for the refusal.

11 NEW SECTION. Section 8. Trust fund -- powers. The
 12 trust fund of a self-funded plan may:
 13 (1) have and use an appropriate descriptive name;
 14 (2) sue and be sued in its own name;
 15 (3) contract in its own name. All written contracts
 16 must be signed by the trustee of the trust fund. If there is
 17 more than one trustee, a contract may be executed by one
 18 trustee if authorized by all trustees.
 19 (4) borrow money and give security for the loan; and
 20 (5) engage exclusively in transactions authorized or
 21 required by [sections 1 through 24 26] or reasonably
 22 incidental to authorized transactions.

23 NEW SECTION. Section 9. Trust fund liability. (1) A
 24 trust fund must pay all applicable benefits specified in the
 25 statement or schedule of benefits in effect at the time a

1 claim arises.

2 (2) (a) Trust funds are fiduciary funds and may not be
 3 used for an obligation of an employer who participates in
 4 the self-funded plan and, except as provided in subsection
 5 (2)(b), are not subject to garnishment or levy for the
 6 obligation of a beneficiary.

7 (b) If a trustee of a trust fund agrees in writing to
 8 pay a provider directly for health care services provided to
 9 a beneficiary, the provider or its assignee may levy against
 10 the trust fund.

11 NEW SECTION. Section 10. Investment of trust fund.
 12 (1) A trustee may invest reserves and other trust funds
 13 available for investment only in:
 14 (a) general obligations of:
 15 (i) the United States government;
 16 (ii) a state, district, commonwealth, or territory of
 17 the United States; or
 18 (iii) a municipality, county, or other political
 19 subdivision or agency of a state;
 20 (b) obligations for which the payment of principal and
 21 interest is guaranteed by a government or governmental
 22 agency;
 23 (c) corporate bonds and similar obligations meeting
 24 the requirements specified for investment of funds of
 25 insurers under 33-2-818;

1 (d) collateral loans for which the payment of
 2 principal and interest is adequately secured by securities
 3 in which the trust fund could lawfully invest directly; or
 4 (e) deposits, savings accounts, and share accounts in
 5 established banks and savings and loan associations located
 6 in the United States. An investment in any one institution
 7 may not exceed the amount covered by applicable deposit,
 8 savings, and share account insurance.

9 (2) The trustee is expressly prohibited from investing
 10 trust fund money in:

11 (a) a loan to or security of:

12 (i) an employer participating in the self-funded plan;
 13 (ii) an officer, director, subsidiary, or affiliate of
 14 a participating employer;

15 (b) the security of a person in which the trustee, the
 16 administrator, or a consultant of the self-funded plan has a
 17 direct or indirect material, pecuniary interest;

18 (c) real estate or loans on real estate;

19 (d) a personal loan, other than a collateral loan
 20 referred to in subsection (1)(d) but subject to subsections
 21 (2)(a) and (2)(b).

22 (3) The trustee shall make and hold each investment in
 23 the name of the trust fund, and the interest and yield on
 24 the investment must be payable to the account of the trust
 25 fund.

1 (4) An investment may not be made unless authorized in
 2 writing by the trustee and shown in the records of the trust
 3 fund.

4 (5) A person who authorizes an investment of trust
 5 fund money in violation of this section is liable for all
 6 loss suffered by the trust fund on account of the
 7 investment, in addition to other penalties for the
 8 investment.

9 (6) An investment made in violation of this section
 10 may not be considered an asset in a determination of the
 11 financial condition of the trust fund.

12 **NEW SECTION. Section 11. Reserves.** (1) A self-funded
 13 plan shall establish and maintain the following reserves:

14 (a) a reserve in an amount as certified ANNUALLY AFTER
 15 THE FIRST YEAR by a member of the American academy of
 16 actuaries as being necessary to pay claims against the trust
 17 fund for benefits, including both claims incurred but not
 18 yet paid and claims incurred but not yet reported;

19 (b) a reserve for unearned contributions as computed
 20 pro rata on the basis of the unexpired portion of the period
 21 for which the contribution has been paid, if under the
 22 self-funded plan periodic contributions of either the
 23 employer or employees to the trust fund are payable less
 24 frequently than monthly.

25 (2) In a determination of the financial condition of

the trust fund, the claims reserve and reserve for unearned contributions shall be considered liabilities.

NEW SECTION. Section 12. Records and accounts -- annual statement. (1) The trustee of a self-funded plan shall cause full and accurate records and accounts to be entered and maintained covering all financial transactions and affairs of the trust fund.

(2) Within 60 days after the end of the calendar FISCAL year, the trustee shall make an annual statement in writing summarizing the financial transactions of the trust fund for the calendar FISCAL year and its financial condition at the end of the year in accordance with [sections 1 through 24 26] and generally accepted and applicable accounting principles. The annual statement must be in the form and require information as prescribed by the commissioner. The financial information provided in the annual statement must be certified by the accountant who prepared or audited the information. The trustee shall promptly deliver a copy of the annual statement to each employer participating in the self-funded plan and keep a copy of the annual statement on file in the business office of the self-funded plan where a beneficiary may review it at all reasonable times for a period of not less than 3 years.

NEW SECTION. Section 13. Taxes FEES. ~~(1)---~~Each registered self-funded plan--and--each--formerly--registered

~~self-funded plan,--with--respect--to--beneficiaries--in--this state--while--so--registered,--shall--at--the--time--of--filing--of its--annual--statement--with--the--commissioner--pay--to--the commissioner--a--tax--computed--at--the--rate--of--4--cents--a--month for--each--beneficiary--who--is--covered--by--the--self-funded--plan during--the--calendar--year--of--the--annual--statement--while working--or--residing--in--this--state.~~

~~(2)(1)~~ The state of Montana preempts the field of imposing excise, privilege, franchise, income, license, and similar taxes, licenses, and fees upon self-funded plans and on the intangible property of their trust funds. A county, city, municipality, district, school district, or other political subdivision or agency in this state may not levy upon a self-funded plan or trust fund any tax, license, or fee additional to those levied by the legislature in [sections 1 through 24 26] and 33-2-708.

~~(3)(2)~~ The tax herein levied, together with the fees FEES provided for in [sections 1 through 24 26] and 33-2-708, are in lieu of all income taxes and other excise taxes, licenses, and fees payable to the state of Montana.

~~(4)(3)~~ The commissioner shall promptly remit all tax payments--received--by--him--to--the--state--treasurer--for--credit to--the--general--fund--of--the--state USE FEES GENERATED UNDER TITLE 33, CHAPTER 2, TO OFFSET EXPENSES INCURRED FOR THE REGULATION OF SELF-FUNDED PLANS.

1 NEW SECTION. **Section 14.** Examination of books,
 2 records, and accounts. (1) The books, records, accounts, and
 3 affairs of a self-funded plan are subject to examination by
 4 the commissioner and by competent examiners he authorizes in
 5 writing, at times or intervals as the commissioner considers
 6 advisable. The purpose of the examination is to determine:
 7 (a) compliance by the self-funded plan with applicable
 8 laws;
 9 (b) the financial condition and actuarial adequacy of
 10 the trust fund;
 11 (c) the treatment accorded beneficiaries; and
 12 (d) other factors materially related to the management
 13 and operation of the self-funded plan.
 14 (2) The trustee shall make the books, records, and
 15 accounts of the self-funded plan and trust fund available to
 16 the commissioner or his authorized examiner and shall
 17 otherwise facilitate the examination.
 18 (3) The examiner shall conduct the examination
 19 expeditiously, make a written report of the examination, and
 20 deliver a copy of his report to the trustee and the
 21 commissioner. The trustee shall recommend to the
 22 commissioner any corrections or changes to the report within
 23 2 weeks after receiving it. After making corrections or
 24 changes, if any, the commissioner shall file the report in
 25 his office as a document open to public inspection and

1 deliver to the trustee a copy of the report as corrected or
 2 changed.
 3 (4) The trust fund shall bear the costs of the
 4 examination. Upon presentation of a detailed account of
 5 charges and expenses by the commissioner or pursuant to his
 6 written authorization, each self-funded plan that is
 7 examined must pay actual travel expenses, reasonable living
 8 expenses, and a per diem compensation to the examiners for
 9 expenses incurred as a result of the examination. The
 10 payments shall be at reasonable, customary rates established
 11 by the commissioner. An account may be presented
 12 periodically during the course of the examination or upon
 13 termination of the examination as the commissioner considers
 14 proper. A person may not pay and an examiner may not accept
 15 any additional emolument on account of an examination. The
 16 commissioner shall pay to the state treasurer to the credit
 17 of the general fund all money received for an examination.
 18 If a self-funded plan fails to pay the charges and expenses
 19 of an examination, the charges and expenses must be paid out
 20 of the funds of the commissioner in the same manner as other
 21 disbursements of funds. The amount paid must be a first lien
 22 upon all of the assets and property in this state of the
 23 self-funded plan and may be recovered by suit by the
 24 attorney general on behalf of the state of Montana and
 25 restored to the appropriate fund.

NEW SECTION. Section 15. Trustees -- administrators

-- **bonding.** (1) An individual or a corporation may be a trustee of a trust fund. An individual, partnership, or corporation may be an administrator of a self-funded plan.

(2) An employer participating in a self-funded plan may not be a trustee or administrator. An employee of an employer may be a trustee or administrator of a self-funded plan in which his employer participates.

(3) The trustee shall cause each individual who handles receipts and disbursements for the trust fund to be bonded at all times under a fidelity bond issued by a surety insurer authorized to transact surety insurance in this state. The bond must be in favor PROTECT THE ASSETS of the trust fund and for an aggregate penalty amount that the commissioner considers reasonably advisable in relation to the amount of the funds involved, but not less than \$25,000. The bond must be noncancellable NONCANCELABLE except upon a minimum of 30 days' advance notice in writing ~~to the trustee and the commissioner. The trust fund must bear the cost of the bond.~~ A BLANKET BOND COVERING ONE TRUST BUT NOT MORE THAN ONE ADMINISTRATOR IS ACCEPTABLE.

NEW SECTION. Section 16. Prohibited pecuniary

interests in plan management. (1) A trustee, administrator, or other person having responsibility for the management of a self-funded plan or the investment or other handling of a

trust fund may not:

(a) receive, directly or indirectly, or have a pecuniary interest in a fee, commission, compensation, or emolument arising out of a transaction to which the trust fund is or will be a party, except for a salary or other similar compensation regularly fixed and allowed for services rendered to the self-funded plan;

(b) receive compensation as a consultant to the self-funded plan while also:

(i) acting as a trustee or administrator; or

(ii) employed by a trustee or administrator; or

(c) have a direct or indirect material, pecuniary interest in a loan or investment of the trust fund.

(2) A consultant to a self-funded plan or trust fund may not directly or indirectly receive or have a pecuniary interest in a commission or other compensation arising out of a contract or transaction between the trust fund and an insurer, health care service corporation, health maintenance organization, or other provider of health care services, drugs, or other health care needs and supplies.

(3) The commissioner may, after notice and hearing, require removal of a trustee or prohibit the trustee from employing or retaining or continuing to employ or retain a person in the administration of the trust fund or self-funded plan if he finds that continuation of the

trustee or the employment or retention involves a conflict of interest not in the best interests of the self-funded plan or adversely affecting interests of beneficiaries.

NEW SECTION. Section 17. Political contributions prohibited. A trustee may not make or knowingly permit the making, directly or indirectly, of a political contribution by or from a trust fund.

NEW SECTION. Section 18. Recovery of depleted funds. If, after notice and hearing, the commissioner finds that a trust fund has been depleted by reason of a wrongful or negligent act or omission of a trustee or any other person, he shall transmit a copy of his findings to the attorney general or the proper prosecuting attorney, who, for the recovery of the amount of the depletion and for the benefit of the trust fund, may:

- (1) bring an action in the name of the people of this state; or
- (2) intervene in an action brought by or on behalf of an employer or beneficiary.

NEW SECTION. Section 19. Termination of registration. (1) The commissioner shall terminate the registration of a self-funded plan:

- (a) upon written request of the trustee; or
- (b) if he finds, after an examination, that the trust fund is insolvent.

(2) The commissioner may terminate the registration of a self-funded plan:

- (a) for violation of [sections 1 through 24 26];
- (b) for failure of the trustee to file the annual statement with the commissioner as required by [section 12] and pay the ~~tax~~ FEE at the same time as required by [section 13]; or
- (c) if he finds, after an examination of the trust fund and the self-funded plan, that:
 - (i) the self-funded plan no longer meets the qualifications required by [section 5] and that the deficiency will not be remedied within a reasonable time;
 - (ii) as a matter of frequent practice, the benefits promised by the self-funded plan are not being fairly and promptly paid;
 - (iii) the cost of administering the self-funded plan is excessive in relation to the character and volume of service being rendered in the administration; or
 - (iv) the trust fund has been subject to fraudulent or dishonest practices on the part of the trustee, the administrator, the consultant, a participating employer, or a beneficiary.

(3) The commissioner shall terminate the registration of a self-funded plan by his written order given to the trustee of record and to each employer of record

1 participating in the self-funded plan. The order must state
 2 the grounds upon which it is made and its effective date.
 3 The order is subject to judicial review as provided in
 4 33-1-711.

5 NEW SECTION. **Section 20.** Liquidation of trust fund.

6 (1) When the administration of a trust fund terminates, the
 7 trustee shall liquidate the self-funded plan.

8 (2) The trustee shall liquidate the self-funded plan
 9 under a written plan of liquidation filed with the
 10 commissioner, found by the commissioner to be fair and
 11 equitable to all persons having a pecuniary interest in the
 12 trust fund, and approved by him. The trustee shall dispose
 13 of any balance remaining after payment of or adequate
 14 provision for all claims and charges against the trust fund
 15 in the manner provided for in the plan of liquidation.
 16 Unless the plan of liquidation provides that a financially
 17 responsible person assumes liability for all unpaid claims
 18 and obligations of the trust fund, the existence of surplus
 19 funds for the liquidation may not be determined until 2
 20 years after the registration terminates.

21 (3) After the commissioner approves the plan of
 22 liquidation of an insolvent trust fund, the plan is binding
 23 upon all persons who have a pecuniary interest in the trust
 24 fund. Pending the effectuation of the plan of liquidation of
 25 an insolvent trust fund, the commissioner may impose

1 prohibitions or restrictions upon disbursements or use of
 2 trust fund money that he considers advisable for the
 3 protection of all interested persons.

4 (4) The commissioner shall liquidate the trust fund
 5 under the applicable provisions of Title 33, chapter 2, part
 6 13. The trust fund is considered to be an insolvent domestic
 7 insurer if:

8 (a) the trust fund is insolvent and the trustee does
 9 not file, within 60 days after the self-funded plan
 10 terminates, a written plan of liquidation of the trust fund
 11 that is satisfactory to the commissioner as being fair and
 12 equitable; or

13 (b) it is a solvent trust fund but it is not being
 14 liquidated according to the plan of liquidation that the
 15 commissioner has approved.

16 NEW SECTION. **Section 21.** Rules. The commissioner may
 17 make reasonable rules necessary to or as an aid to
 18 effectuate [sections 1 through 24 26].

19 NEW SECTION. **Section 22.** Other provisions applicable.
 20 The following chapters, parts, and provisions of this title
 21 apply to a self-funded plan to the extent applicable and not
 22 in conflict with [sections 1 through 24 26]: 33-2-708,
 23 33-2-818, and Title 33, chapters 1, 15, 17 through 19, and
 24 22. For purposes of 33-2-708, 33-2-818, and Title 33,
 25 chapters 1, 15, 17 through 19, and 22, a self-funded plan is

1 considered to be an insurer.

2 **NEW SECTION. Section 23. Penalties.** (1) A person who
3 willfully violates or causes or induces a violation of
4 [sections 1 through 24 26] or a rule implementing a
5 provision of [sections 1 through 24 26] is subject to a
6 penalty as provided in subsection (4).

7 (2) A person who makes a false statement or
8 representation of a material fact, knowing it to be false,
9 or who knowingly fails to disclose a material fact in an
10 application, examination, or statement required under
11 [sections 1 through 24 26] or a rule implementing [sections
12 1 through 24 26] is subject to a penalty as provided in
13 subsection (4).

14 (3) A person who makes a false entry in a book,
15 record, statement, or report required under [sections 1
16 through 24 26] with the intent to injure or defraud the
17 trust fund or a beneficiary thereunder or to deceive a
18 person authorized or entitled to examine the affairs of the
19 self-funded plan is subject to penalty as provided in
20 subsection (4).

21 (4) An offender, upon conviction for each violation,
22 act, or omission referred to in this section, unless a
23 greater penalty is provided for the violation under any
24 other applicable law, shall be fined not more than \$1,000 or
25 be imprisoned for a term not to exceed 1 year, or both.

1 **NEW SECTION. Section 24. Coverage from moment of**
2 **birth -- complications of pregnancy.** (1) Every self-funded
3 plan issued or amended on or after [the effective date of
4 this act] must contain a provision granting immediate
5 accident and sickness coverage, from and after the moment of
6 birth, to each newborn infant of an insured. A self-funded
7 plan may not be issued or amended in this state if it
8 contains a disclaimer, waiver, or other limitation of
9 coverage relative to the coverage or insurability of a
10 newborn infant of an insured from and after the moment of
11 birth.

12 (2) A self-funded plan that provides maternity
13 benefits continuously from conception may not be issued,
14 amended, delivered, or renewed in this state if it contains
15 an exclusion, reduction, or other limitation as to coverage,
16 deductibles, or coinsurance provisions as to involuntary
17 complications of pregnancy unless the provisions apply
18 generally to all benefits paid under the self-funded plan.
19 If a fixed amount is specified in a self-funded plan for
20 surgery, the fixed amount for surgical procedures involving
21 an involuntary complication of pregnancy must be
22 commensurate with other fixed amounts payable for procedures
23 of comparable difficulty and severity. If a fixed amount is
24 payable for maternity benefits, an involuntary complication
25 of pregnancy is considered to be an illness and entitled to

1 benefits otherwise provided by the self-funded plan. If the
 2 self-funded plan contains a maternity deductible, the
 3 maternity deductible applies only to expenses resulting from
 4 normal delivery and cesarean section delivery; however,
 5 expenses for cesarean section delivery in excess of the
 6 deductible must be treated as expenses for any other illness
 7 under the self-funded plan. For purposes of this subsection,
 8 "involuntary complication of pregnancy" includes but is not
 9 limited to puerperal infection, eclampsia, cesarean section
 10 delivery, ectopic pregnancy, and toxemia.

11 (3) Subsection (2) applies to each self-funded plan in
 12 this state except a self-funded plan made subject to an
 13 applicable collective bargaining agreement in effect before
 14 January 1, 1990.

15 (4) Each self-funded plan that provides maternity
 16 benefits continuously from conception and that is issued,
 17 amended, delivered, or renewed in this state on or after
 18 January 1, 1990, is construed to comply with this section. A
 19 provision in a self-funded plan that conflicts with this
 20 section has no force or effect.

21 NEW SECTION. SECTION 25. CHOICE OF DENTAL PLAN
 22 PROVIDERS. A SELF-FUNDED PLAN ISSUED OR AMENDED ON OR AFTER
 23 [THE EFFECTIVE DATE OF THIS ACT] THAT COVERS A DENTAL CARE
 24 ASSISTANCE PLAN AND RESTRICTS THE COVERED PERSONS IN THE
 25 SELECTION OF THE PROVIDERS OF DENTAL SERVICES TO A SINGLE

1 PROVIDER OR GROUP OF PROVIDERS MUST OFFER AN ALTERNATIVE
 2 DENTAL CARE ASSISTANCE PLAN THAT PERMITS THE COVERED PERSONS
 3 TO OBTAIN DENTAL CARE SERVICES FROM ANY LICENSED DENTAL CARE
 4 PROVIDER OF THEIR CHOICE. THE PORTION OF THE PREMIUM PAID BY
 5 THE EMPLOYER FOR THE LIMITING PLAN MUST BE COMPARABLE TO BUT
 6 NOT GREATER THAN THE PORTION OF THE PREMIUM PAID BY THE
 7 EMPLOYER FOR THE ALTERNATIVE PLAN.

8 NEW SECTION. SECTION 26. USE OF BENEFIT TRUST FUNDS.
 9 ANY BENEFIT TRUST ESTABLISHED BY OR FOR A STATE POLITICAL
 10 SUBDIVISION OR POOL OF SUBDIVISIONS MUST BE USED EXCLUSIVELY
 11 TO PROVIDE BENEFITS TO TRUST BENEFICIARIES.

12 **Section 27.** Section 33-1-102, MCA, is amended to read:

13 "33-1-102. Compliance required -- exceptions -- health
 14 service corporations -- health maintenance organizations --
 15 governmental insurance programs. (1) No person shall
 16 transact a business of insurance in Montana or relative to a
 17 subject resident, located, or to be performed in Montana
 18 without complying with the applicable provisions of this
 19 code.

20 (2) No provision of this code shall apply with respect
 21 to:

22 (a) domestic farm mutual insurers as identified in
 23 chapter 4, except as stated in chapter 4;

24 (b) domestic benevolent associations as identified in
 25 chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of such corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) This code does not apply to health maintenance organizations to the extent that the existence and operations of such organizations are authorized by chapter 31.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, parts 21 and 23, and related sections.

(6) This code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8.

(7) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(8) ~~(a)-This~~ Except as provided in [sections 1 through 24 26], this code does not apply to:

[a] any arrangement, plan, or interlocal agreement between political subdivisions of this state whereby the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention,

deductible, or self-insurance plan; or

~~(b) This code does not apply to any arrangement, plan, or--interlocal--agreement--between-political-subdivisions-of this-state-or~~ any arrangement, plan, or program of a single political subdivision of this state whereby the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program.

(9) THIS CODE DOES NOT APPLY TO THE BOARD OF REGENTS' GROUP INSURANCE PROGRAM AUTHORIZED UNDER 2-18-702 FOR THE BENEFIT OF EMPLOYEES OF THE UNIVERSITY SYSTEM AND THEIR DEPENDENTS."

Section 28. Section 33-2-708, MCA, is amended to read:

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

(a) certificates of authority:

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

1 (A) domestic insurers \$ 300.00
 2 (B) foreign insurers 300.00
 3 (ii) annual continuation of certificate of authority ..
 4 300.00
 5 (iii) reinstatement of certificate of authority
 6 25.00
 7 (iv) amendment of certificate of authority 50.00
 8 (b) articles of incorporation:
 9 (i) filing original articles of incorporation of
 10 domestic insurer, exclusive of fees required to be paid by
 11 the corporation to the secretary of state 20.00
 12 (ii) filing amendment of articles of incorporation,
 13 domestic and foreign insurers, exclusive of fees required to
 14 be paid to the secretary of state by a domestic corporation
 15 25.00
 16 (c) filing bylaws or amendment thereto where required
 17 10.00
 18 (d) filing annual statement of insurer, other than as
 19 part of application for original certificate of authority ..
 20 25.00
 21 (e) resident agent's license:
 22 (i) application for original license, including
 23 issuance of license, if issued (life and/or disability)
 24 15.00
 25 (ii) application for original license, including

1 issuance of license, if issued (other than life and/or
 2 disability) 15.00
 3 (iii) appointment of agent, each insurer 10.00
 4 (iv) annual renewal, each insurer 10.00
 5 (v) temporary license 10.00
 6 (vi) amendment of license (excluding additions thereto)
 7 or reissuance of master license 10.00
 8 (f) nonresident agent's license:
 9 (i) application for original license, including
 10 issuance of license, if issued (life and/or disability)
 11 100.00
 12 (ii) application for original license, including
 13 issuance of license, if issued (other than life and/or
 14 disability) 100.00
 15 (iii) appointment of agent, each insurer 10.00
 16 (iv) annual renewal, each insurer 10.00
 17 (v) amendment of license (excluding additions thereto)
 18 or reissuance of master license 10.00
 19 (g) solicitor's license:
 20 (i) application for original license, including
 21 issuance of license, if issued 15.00
 22 (ii) annual renewal of license 15.00
 23 (iii) appointment of solicitor 10.00
 24 (h) examination for license as agent or solicitor,
 25 each examination 15.00

1 (i) surplus lines agent license:
 2 (i) application for original license and for issuance
 3 of license, if issued 50.00
 4 (ii) annual renewal of license 50.00
 5 (j) adjuster's license:
 6 (i) application for original license and for issuance
 7 of license, if issued 15.00
 8 (ii) annual renewal of license 15.00
 9 (k) insurance vending machine license, each machine,
 10 each year 10.00
 11 (l) commissioner's certificate under seal (except when
 12 on certificates of authority or licenses) 10.00
 13 (m) copies of documents on file in the commissioner's
 14 office, per page50
 15 (n) policy forms:
 16 (i) filing each policy form 25.00
 17 (ii) filing each application, rider, endorsement,
 18 amendment, insert page, schedule of rates, and clarification
 19 of risks 10.00
 20 (iii) maximum charge if policy and all forms submitted
 21 at one time or resubmitted for approval within 180 days
 22 100.00
 23 (o) self-funded plans:
 24 (i) filing application for registration 25.00
 25 (ii) filing annual statement of trust fund 25.00

1 (2) WHEN THE ANNUAL STATEMENT REFERRED TO IN
 2 SUBSECTION (1)(O)(II) IS FILED WITH THE COMMISSIONER, EACH
 3 REGISTERED SELF-FUNDED PLAN MUST PAY A FEE TO THE
 4 COMMISSIONER OF 14 CENTS A MONTH PER EMPLOYEE COVERED BY THE
 5 SELF-FUNDED PLAN DURING THE FISCAL YEAR OF THE ANNUAL
 6 STATEMENT.

7 †2†(3) The commissioner shall promptly deposit with
 8 the state treasurer to the credit of the general fund of
 9 this state all fines and penalties, those amounts received
 10 pursuant to 33-2-311, 33-2-705, and 33-2-706, and any fees
 11 and examination and miscellaneous charges received pursuant
 12 to Title 33, chapter 11, part 1, that are collected by him
 13 pursuant to Title 33 and the rules adopted thereunder.

14 †3†(4) All fees are considered fully earned when
 15 received. In the event of overpayment, only those amounts in
 16 excess of \$10 will be refunded.

17 †4†(5) All fees and examination and miscellaneous
 18 charges, except fines or penalties or those amounts received
 19 pursuant to 33-2-311, 33-2-705, or 33-2-706, collected by
 20 the commissioner pursuant to Title 33 and the rules adopted
 21 thereunder must be deposited in the insurance regulatory
 22 trust account pursuant to 17-2-121 through 17-2-123."

23 NEW SECTION. Section 29. Extension of authority. Any
 24 existing authority to make rules on the subject of the
 25 provisions of [this act] is extended to the provisions of

1 [this act].

2 NEW SECTION. **Section 30.** Codification instruction.

3 (1) [Sections 1 through ~~24~~ 25] are intended to be codified
4 as an integral part of Title 33 and the provisions of Title
5 33 apply to [sections 1 through ~~24~~ 25].

6 (2) [SECTION 26] IS INTENDED TO BE CODIFIED AS AN
7 INTEGRAL PART OF TITLE 39, CHAPTER 2, AND THE PROVISIONS OF
8 TITLE 39, CHAPTER 2, APPLY TO [SECTION 26].

9 NEW SECTION. **Section 31.** Applicability. [Sections 1
10 through ~~24~~ 26] apply to each self-funded plan and trust fund
11 operating in this state on [the effective date of this act].

12 NEW SECTION. **Section 32.** Effective date. [This act]
13 is effective on passage and approval.

-End-

HOUSE BILL NO. 669

INTRODUCED BY HANSON, WEEDING

A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING LAWS
REGULATING SELF-FUNDED HEALTH CARE PLANS; AMENDING SECTIONS
33-1-102 AND 33-2-708, MCA; AND PROVIDING AN IMMEDIATE
EFFECTIVE DATE AND; PROVIDING AN APPLICABILITY DATE; AND
PROVIDING A TERMINATION DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because
[section 21] authorizes the commissioner of insurance to
make reasonable rules necessary for or as an aid to
effectuate [sections 1 through 24 26] without extending,
modifying, or conflicting with [sections 1 through 24 26]
and their reasonable implications. The legislature intends
that the rules that the commissioner adopts to implement
this bill be designed principally to protect Montana
insurance consumers, while making insurance more available
in this state. The legislature further intends that the
commissioner adopt the rules in accordance with 33-1-313,
which grants the commissioner general rulemaking authority
and permits the commissioner to:

(1) make only reasonable rules that do not extend,
modify, or conflict with any law of this state or with any

reasonable implication of those laws; and

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

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

NEW SECTION. **Section 1. Short title.** [Sections 1
through 24 26] may be cited as the "Self-Funded Health Care
Plans Act".

NEW SECTION. **Section 2. Purpose.** The purposes of
[sections 1 through 24 26] are to:

(1) recognize and provide reasonable public
supervision of self-funded plans that provide health care
service benefits to employees in connection with or as an
alternative to insurance and other prepayment plans;

(2) provide standards for financial soundness of
self-funded plans; and

(3) protect the interests of employees covered by a
self-funded plan.

NEW SECTION. **Section 3. Definitions.** As used in
[sections 1 through 24 26], the following definitions apply:

(1) "Administrator" means a person, other than the
trustee, employed by the trustee to administer a self-funded
plan.

(2) "Beneficiary" means an individual entitled, under
a self-funded plan, to payment by a trust fund of a part of

the cost of health care services provided to him.

(3) "Contribution" means the amount the employer or employee pays or will pay into a trust fund.

(4) "Person" means an individual, corporation, association, firm, syndicate, organization, or other entity.

(5) "Self-funded plan" means a plan:

(a) under which payment for a disability income benefit which is not otherwise provided for under Title 39, chapter 71, for medical, surgical, hospital, and other services for prevention, diagnosis, or treatment of a disease, injury, or bodily condition of an employee, is or will be regularly provided for or promised from funds created or maintained in whole or in part by contributions or payments by the employer or by the employer and the employees; and

(b) that is not otherwise covered by a disability insurance policy, a membership contract as defined in 33-30-101, a health care services agreement as defined in 33-31-102, or a similar third-party prepayment plan.

(6) "Trust fund" means a trust fund that is established under a self-funded plan for the receipt of contributions by an employer and employees and for the payment of health care service costs of a beneficiary.

(7) "Trustee" means the trustee, whether a single or multiple trustee, of a trust fund.

NEW SECTION. Section 4. Registration -- exemptions --

registered plan exempt from insurance code. (1) Except as provided in subsection (2), a self-funded plan may not operate in this state except while registered with the commissioner under [sections 1 through ~~24~~ 26]. A self-funded plan already in operation on [the effective date of this act] shall register with the commissioner within 90 days after [the effective date of this act].

(2) Registration is not required of:

(a) a self-funded plan established for the sole purpose of funding the amount of a deductible clause contained in an insurance contract issued by an insurer authorized to transact disability insurance in this state if:

(i) the deductible does not exceed an amount applicable to each beneficiary of \$500 a year; and

(ii) the total of all obligations to all beneficiaries insured under the self-funded plan arising out of the application of the deductible does not exceed the aggregate amount of \$50,000 a year;

(b) a self-funded plan established and maintained in compliance with Title 39, chapter 71;

(c) a self-funded plan administered by or for the federal government or an agency thereof;

(d) a self-funded plan that is primarily intended to

1 provide first-aid care and treatment at a dispensary of an
2 employer for injury or sickness of employees while engaged
3 in their employment;

4 (e) an employer's self-insured health plan that is
5 established and maintained solely for its members and their
6 immediate families if it has existed and operated for 15
7 years immediately preceding [the effective date of this
8 act]; or

9 (f) a self-insured health plan that is established,
10 maintained, and insured jointly by an employer and a labor
11 organization if it has existed and operated for 15 years
12 immediately preceding [the effective date of this act]; OR

13 (G) A SELF-REGULATED HEALTH PLAN THAT IS ESTABLISHED,
14 MAINTAINED, AND ADMINISTERED BY THE BOARD OF REGENTS.

15 (3) A registered self-funded plan may not be
16 considered to be engaged in the business of insurance and is
17 not subject to the Montana insurance code except as
18 expressly provided in [sections 1 through 24 26].

19 (4) A person may not act as or hold himself out to be
20 an insurance agent as to a self-funded plan in this state
21 unless licensed under Title 33, chapter 17.

22 NEW SECTION. Section 5. Qualifications for
23 registration. (1) A self-funded plan may not be registered
24 under the provisions of [sections 1 through 24 26] unless
25 it:

1 (a) requires all contributions to be paid in advance
2 and to be deposited in and disbursed from a trust fund
3 created and existing under an adequate written, irrevocable
4 trust agreement between the employer and the trustee;

5 (b) has or provides for a trustworthy and responsible
6 trustee and for competent administration of the trust fund
7 and the self-funded plan;

8 (c) requires that each employer contribute to the
9 trust fund and that employees who contribute to the trust
10 fund make the contribution by regular periodic payroll
11 deductions, except for contributions made by an employee
12 during his absence from employment for a period as the
13 self-funded plan may reasonably provide;

14 (d) requires the administrator or the trustee on
15 behalf of the trust fund to furnish each
16 employee-beneficiary of the self-funded plan a written
17 statement or schedule that adequately and clearly states:

18 (i) each benefit currently allowable under the
19 self-funded plan;

20 (ii) any applicable restrictions, limitations, or
21 exclusions; and

22 (iii) the procedure for filing a claim for benefits;
23 and

24 (e) has a trust fund that is actuarially sound.

25 (2) For purposes of subsection (1)(e), a trust fund is

1 actuarially sound if it has adequate assets and income under
2 reasonable estimates to pay all benefits promised to
3 beneficiaries by the self-funded plan. In determining
4 actuarial soundness, the commissioner shall consider:

5 (a) applicable stop-loss insurance provided to the
6 self-funded plan by an insurer authorized to transact
7 disability insurance in this state;

8 (b) contracts with health service corporations or
9 health maintenance organizations authorized to transact
10 business in this state that cover certain of the promised
11 benefits;

12 (c) other applicable insurance guaranties; and

13 (d) self-funded plan factors or provisions for the
14 prevention or reduction of adverse selection against the
15 self-funded plan by those otherwise eligible to become
16 beneficiaries.

17 **NEW SECTION. Section 6. Application for registration.**

18 (1) Application for registration of a self-funded plan must
19 be made to the commissioner on forms he furnishes and
20 designs to determine whether the self-funded plan is
21 qualified for registration. At least one employer and one
22 trustee shall sign and verify the application. If the
23 employer or trustee is a corporation, an authorized
24 corporate officer shall sign and verify the application.

25 (2) The application must be accompanied by:

1 (a) a copy of the trust agreement under which the
2 trust fund is to exist and operate;

3 (b) a copy of the proposed written statement of
4 benefits referred to in [section 5(1)(d)];

5 (c) a financial statement of the trust fund as of a
6 date not more than 45 days before the date on which the
7 application was filed if it is already in existence and
8 operating on [the effective date of this act]. The statement
9 must be certified by an independent accountant or by an
10 accountant whose certification is acceptable to the
11 commissioner.

12 (d) a written statement of reasonably projected income
13 and disbursements of the trust fund for a 12-month period
14 commencing within 30 45 days of the date of application and
15 showing the amount reserved as of the end of the period for
16 claims incurred but not yet paid or claims incurred but not
17 yet reported;

18 (e) a copy of any study made of the proposed
19 self-funded plan by a consultant for the information or
20 guidance of the employer or employees; and

21 (f) any other relevant documentation and information
22 as the commissioner may reasonably require.

23 **NEW SECTION. Section 7. Grant or denial of**
24 **registration.** The commissioner shall act upon an application
25 for registration of a self-funded plan within ~~100~~ 60 days

1 after ~~its completion~~ THE SUBMISSION OF THE COMPLETED
 2 APPLICATION. He may make an investigation of the proposal as
 3 he considers advisable. If the commissioner finds that the
 4 application is complete and that the self-funded plan meets
 5 the qualifications stated in [section 5], he shall issue and
 6 deliver a certificate of registration in appropriate form to
 7 the applicant. If he finds the application to be
 8 unsatisfactory in either respect, the commissioner shall
 9 refuse to register the self-funded plan and shall give
 10 written notice of the refusal to the applicant, stating the
 11 reasons for the refusal.

12 NEW SECTION. Section 8. Trust fund -- powers. The
 13 trust fund of a self-funded plan may:

- 14 (1) have and use an appropriate descriptive name;
- 15 (2) sue and be sued in its own name;
- 16 (3) contract in its own name. All written contracts
 17 must be signed by the trustee of the trust fund. If there is
 18 more than one trustee, a contract may be executed by one
 19 trustee if authorized by all trustees.
- 20 (4) borrow money and give security for the loan; and
- 21 (5) engage exclusively in transactions authorized or
 22 required by [sections 1 through 24 26] or reasonably
 23 incidental to authorized transactions.

24 NEW SECTION. Section 9. Trust fund liability. (1) A
 25 trust fund must pay all applicable benefits specified in the

1 statement or schedule of benefits in effect at the time a
 2 claim arises.

3 (2) (a) Trust funds are fiduciary funds and may not be
 4 used for an obligation of an employer who participates in
 5 the self-funded plan and, except as provided in subsection
 6 (2)(b), are not subject to garnishment or levy for the
 7 obligation of a beneficiary.

8 (b) If a trustee of a trust fund agrees in writing to
 9 pay a provider directly for health care services provided to
 10 a beneficiary, the provider or its assignee may levy against
 11 the trust fund.

12 NEW SECTION. Section 10. Investment of trust fund.

13 (1) A trustee may invest reserves and other trust funds
 14 available for investment only in:

- 15 (a) general obligations of:
- 16 (i) the United States government;
- 17 (ii) a state, district, commonwealth, or territory of
 18 the United States; or
- 19 (iii) a municipality, county, or other political
 20 subdivision or agency of a state;
- 21 (b) obligations for which the payment of principal and
 22 interest is guaranteed by a government or governmental
 23 agency;
- 24 (c) corporate bonds and similar obligations meeting
 25 the requirements specified for investment of funds of

1 insurers under 33-2-818;

2 (d) collateral loans for which the payment of
3 principal and interest is adequately secured by securities
4 in which the trust fund could lawfully invest directly; or

5 (e) deposits, savings accounts, and share accounts in
6 established banks and savings and loan associations located
7 in the United States. An investment in any one institution
8 may not exceed the amount covered by applicable deposit,
9 savings, and share account insurance.

10 (2) The trustee is expressly prohibited from investing
11 trust fund money in:

12 (a) a loan to or security of:

13 (i) an employer participating in the self-funded plan;

14 (ii) an officer, director, subsidiary, or affiliate of
15 a participating employer;

16 (b) the security of a person in which the trustee, the
17 administrator, or a consultant of the self-funded plan has a
18 direct or indirect material, pecuniary interest;

19 (c) real estate or loans on real estate;

20 (d) a personal loan, other than a collateral loan
21 referred to in subsection (1)(d) but subject to subsections
22 (2)(a) and (2)(b).

23 (3) The trustee shall make and hold each investment in
24 the name of the trust fund, and the interest and yield on
25 the investment must be payable to the account of the trust

1 fund.

2 (4) An investment may not be made unless authorized in
3 writing by the trustee and shown in the records of the trust
4 fund.

5 (5) A person who authorizes an investment of trust
6 fund money in violation of this section is liable for all
7 loss suffered by the trust fund on account of the
8 investment, in addition to other penalties for the
9 investment.

10 (6) An investment made in violation of this section
11 may not be considered an asset in a determination of the
12 financial condition of the trust fund.

13 **NEW SECTION. Section 11. Reserves.** (1) A self-funded
14 plan shall establish and maintain the following reserves:

15 (a) a reserve in an amount as certified ANNUALLY AFTER
16 THE FIRST YEAR by a member of the American academy of
17 actuaries as being necessary to pay claims against the trust
18 fund for benefits, including both claims incurred but not
19 yet paid and claims incurred but not yet reported;

20 (b) a reserve for unearned contributions as computed
21 pro rata on the basis of the unexpired portion of the period
22 for which the contribution has been paid, if under the
23 self-funded plan periodic contributions of either the
24 employer or employees to the trust fund are payable less
25 frequently than monthly.

(2) In a determination of the financial condition of the trust fund, the claims reserve and reserve for unearned contributions shall be considered liabilities.

NEW SECTION. Section 12. Records and accounts --
annual statement. (1) The trustee of a self-funded plan shall cause full and accurate records and accounts to be entered and maintained covering all financial transactions and affairs of the trust fund.

(2) Within 60 days after the end of the ~~calendar~~ FISCAL year, the trustee shall make an annual statement in writing summarizing the financial transactions of the trust fund for the ~~calendar~~ FISCAL year and its financial condition at the end of the year in accordance with [sections 1 through 24 26] and generally accepted and applicable accounting principles. The annual statement must be in the form and require information as prescribed by the commissioner. The financial information provided in the annual statement must be certified by the accountant who prepared or audited the information. The trustee shall promptly deliver a copy of the annual statement to each employer participating in the self-funded plan and keep a copy of the annual statement on file in the business office of the self-funded plan where a beneficiary may review it at all reasonable times for a period of not less than 3 years.

NEW SECTION. Section 13. Taxes FEES. (1)---Each

~~registered--self-funded--plan--and--each--formerly--registered
self-funded-plan, with--respect--to--beneficiaries--in--this
state--while--so--registered, shall at the time of filing of
its annual--statement--with--the--commissioner--pay--to--the
commissioner--a--tax--computed--at--the--rate--of--4--cents--a--month
for--each--beneficiary--who--is--covered--by--the--self-funded--plan
during--the--calendar--year--of--the--annual--statement--while
working--or--residing--in--this--state.~~

(2)(1) The state of Montana preempts the field of imposing excise, privilege, franchise, income, license, and similar taxes, licenses, and fees upon self-funded plans and on the intangible property of their trust funds. A county, city, municipality, district, school district, or other political subdivision or agency in this state may not levy upon a self-funded plan or trust fund any tax, license, or fee additional to those levied by the legislature in [sections 1 through 24 26] and 33-2-708.

(3)(2) The--tax--herein--levied, together with the fees FEES provided for in [sections 1 through 24 26] and 33-2-708, are in lieu of all income taxes and other excise taxes, licenses, and fees payable to the state of Montana.

(4)(3) The commissioner shall promptly remit all tax payments received by him to the state treasurer for credit to the general fund of the state USE FEES GENERATED UNDER TITLE 33, CHAPTER 2, TO OFFSET EXPENSES INCURRED FOR THE

1 REGULATION OF SELF-FUNDED PLANS.

2 NEW SECTION. Section 14. Examination of books,
3 records, and accounts. (1) The books, records, accounts, and
4 affairs of a self-funded plan are subject to examination by
5 the commissioner and by competent examiners he authorizes in
6 writing, at times or intervals as the commissioner considers
7 advisable. The purpose of the examination is to determine:

8 (a) compliance by the self-funded plan with applicable
9 laws;

10 (b) the financial condition and actuarial adequacy of
11 the trust fund;

12 (c) the treatment accorded beneficiaries; and

13 (d) other factors materially related to the management
14 and operation of the self-funded plan.

15 (2) The trustee shall make the books, records, and
16 accounts of the self-funded plan and trust fund available to
17 the commissioner or his authorized examiner and shall
18 otherwise facilitate the examination.

19 (3) The examiner shall conduct the examination
20 expeditiously, make a written report of the examination, and
21 deliver a copy of his report to the trustee and the
22 commissioner. The trustee shall recommend to the
23 commissioner any corrections or changes to the report within
24 2 weeks after receiving it. After making corrections or
25 changes, if any, the commissioner shall file the report in

1 his office as a document open to public inspection and
2 deliver to the trustee a copy of the report as corrected or
3 changed.

4 (4) The trust fund shall bear the costs of the
5 examination. Upon presentation of a detailed account of
6 charges and expenses by the commissioner or pursuant to his
7 written authorization, each self-funded plan that is
8 examined must pay actual travel expenses, reasonable living
9 expenses, and a per diem compensation to the examiners for
10 expenses incurred as a result of the examination. The
11 payments shall be at reasonable, customary rates established
12 by the commissioner. An account may be presented
13 periodically during the course of the examination or upon
14 termination of the examination as the commissioner considers
15 proper. A person may not pay and an examiner may not accept
16 any additional emolument on account of an examination. The
17 commissioner shall pay to the state treasurer to the credit
18 of the general fund all money received for an examination.
19 If a self-funded plan fails to pay the charges and expenses
20 of an examination, the charges and expenses must be paid out
21 of the funds of the commissioner in the same manner as other
22 disbursements of funds. The amount paid must be a first lien
23 upon all of the assets and property in this state of the
24 self-funded plan and may be recovered by suit by the
25 attorney general on behalf of the state of Montana and

1 restored to the appropriate fund.

2 NEW SECTION. Section 15. Trustees -- administrators

3 -- bonding. (1) An individual or a corporation may be a
4 trustee of a trust fund. An individual, partnership, or
5 corporation may be an administrator of a self-funded plan.

6 (2) An employer participating in a self-funded plan
7 may not be a trustee or administrator. An employee of an
8 employer may be a trustee or administrator of a self-funded
9 plan in which his employer participates.

10 (3) The trustee shall cause each individual who
11 handles receipts and disbursements for the trust fund to be
12 bonded at all times under a fidelity bond issued by a surety
13 insurer authorized to transact surety insurance in this
14 state. The bond must be-in-favor PROTECT THE ASSETS of the
15 trust fund and for an aggregate penalty amount that the
16 commissioner considers reasonably advisable in relation to
17 the amount of the funds involved, but not less than \$25,000.
18 The bond must be ~~noncancellable~~ NONCANCELABLE except upon a
19 minimum of 30 days' advance notice in writing ~~to the trustee~~
20 ~~and the commissioner. The trust fund must bear the cost of~~
21 ~~the bond. A BLANKET BOND COVERING ONE TRUST BUT NOT MORE~~
22 THAN ONE ADMINISTRATOR IS ACCEPTABLE.

23 NEW SECTION. Section 16. Prohibited pecuniary
24 interests in plan management. (1) A trustee, administrator,
25 or other person having responsibility for the management of

1 a self-funded plan or the investment or other handling of a
2 trust fund may not:

3 (a) receive, directly or indirectly, or have a
4 pecuniary interest in a fee, commission, compensation, or
5 emolument arising out of a transaction to which the trust
6 fund is or will be a party, except for a salary or other
7 similar compensation regularly fixed and allowed for
8 services rendered to the self-funded plan;

9 (b) receive compensation as a consultant to the
10 self-funded plan while also:

11 (i) acting as a trustee or administrator; or
12 (ii) employed by a trustee or administrator; or
13 (c) have a direct or indirect material, pecuniary
14 interest in a loan or investment of the trust fund.

15 (2) A consultant to a self-funded plan or trust fund
16 may not directly or indirectly receive or have a pecuniary
17 interest in a commission or other compensation arising out
18 of a contract or transaction between the trust fund and an
19 insurer, health care service corporation, health maintenance
20 organization, or other provider of health care services,
21 drugs, or other health care needs and supplies.

22 (3) The commissioner may, after notice and hearing,
23 require removal of a trustee or prohibit the trustee from
24 employing or retaining or continuing to employ or retain a
25 person in the administration of the trust fund or

1 self-funded plan if he finds that continuation of the
2 trustee or the employment or retention involves a conflict
3 of interest not in the best interests of the self-funded
4 plan or adversely affecting interests of beneficiaries.

5 NEW SECTION. Section 17. Political contributions
6 prohibited. A trustee may not make or knowingly permit the
7 making, directly or indirectly, of a political contribution
8 by or from a trust fund.

9 NEW SECTION. Section 18. Recovery of depleted funds.
10 If, after notice and hearing, the commissioner finds that a
11 trust fund has been depleted by reason of a wrongful or
12 negligent act or omission of a trustee or any other person,
13 he shall transmit a copy of his findings to the attorney
14 general or the proper prosecuting attorney, who, for the
15 recovery of the amount of the depletion and for the benefit
16 of the trust fund, may:

17 (1) bring an action in the name of the people of this
18 state; or

19 (2) intervene in an action brought by or on behalf of
20 an employer or beneficiary.

21 NEW SECTION. Section 19. Termination of registration.

22 (1) The commissioner shall terminate the registration of a
23 self-funded plan:

24 (a) upon written request of the trustee; or

25 (b) if he finds, after an examination, that the trust

1 fund is insolvent.

2 (2) The commissioner may terminate the registration of
3 a self-funded plan:

4 (a) for violation of [sections 1 through 24 26];

5 (b) for failure of the trustee to file the annual
6 statement with the commissioner as required by [section 12]
7 and pay the tax FEE at the same time as required by [section
8 13]; or

9 (c) if he finds, after an examination of the trust
10 fund and the self-funded plan, that:

11 (i) the self-funded plan no longer meets the
12 qualifications required by [section 5] and that the
13 deficiency will not be remedied within a reasonable time;

14 (ii) as a matter of frequent practice, the benefits
15 promised by the self-funded plan are not being fairly and
16 promptly paid;

17 (iii) the cost of administering the self-funded plan is
18 excessive in relation to the character and volume of service
19 being rendered in the administration; or

20 (iv) the trust fund has been subject to fraudulent or
21 dishonest practices on the part of the trustee, the
22 administrator, the consultant, a participating employer, or
23 a beneficiary.

24 (3) The commissioner shall terminate the registration
25 of a self-funded plan by his written order given to the

1 trustee of record and to each employer of record
 2 participating in the self-funded plan. The order must state
 3 the grounds upon which it is made and its effective date.
 4 The order is subject to judicial review as provided in
 5 33-1-711.

6 **NEW SECTION. Section 20. Liquidation of trust fund.**

7 (1) When the administration of a trust fund terminates, the
 8 trustee shall liquidate the self-funded plan.

9 (2) The trustee shall liquidate the self-funded plan
 10 under a written plan of liquidation filed with the
 11 commissioner, found by the commissioner to be fair and
 12 equitable to all persons having a pecuniary interest in the
 13 trust fund, and approved by him. The trustee shall dispose
 14 of any balance remaining after payment of or adequate
 15 provision for all claims and charges against the trust fund
 16 in the manner provided for in the plan of liquidation.
 17 Unless the plan of liquidation provides that a financially
 18 responsible person assumes liability for all unpaid claims
 19 and obligations of the trust fund, the existence of surplus
 20 funds for the liquidation may not be determined until 2
 21 years after the registration terminates.

22 (3) After the commissioner approves the plan of
 23 liquidation of an insolvent trust fund, the plan is binding
 24 upon all persons who have a pecuniary interest in the trust
 25 fund. Pending the effectuation of the plan of liquidation of

1 an insolvent trust fund, the commissioner may impose
 2 prohibitions or restrictions upon disbursements or use of
 3 trust fund money that he considers advisable for the
 4 protection of all interested persons.

5 (4) The commissioner shall liquidate the trust fund
 6 under the applicable provisions of Title 33, chapter 2, part
 7 13. The trust fund is considered to be an insolvent domestic
 8 insurer if:

9 (a) the trust fund is insolvent and the trustee does
 10 not file, within 60 days after the self-funded plan
 11 terminates, a written plan of liquidation of the trust fund
 12 that is satisfactory to the commissioner as being fair and
 13 equitable; or

14 (b) it is a solvent trust fund but it is not being
 15 liquidated according to the plan of liquidation that the
 16 commissioner has approved.

17 **NEW SECTION. Section 21. Rules.** The commissioner may
 18 make reasonable rules necessary to or as an aid to
 19 effectuate [sections 1 through 24 26].

20 **NEW SECTION. Section 22. Other provisions applicable.**
 21 The following chapters, parts, and provisions of this title
 22 apply to a self-funded plan to the extent applicable and not
 23 in conflict with [sections 1 through 24 26]: 33-2-708,
 24 33-2-818, and Title 33, chapters 1, 15, 17 through 19, and
 25 22. For purposes of 33-2-708, 33-2-818, and Title 33,

1 chapters 1, 15, 17 through 19, and 22, a self-funded plan is
2 considered to be an insurer.

3 NEW SECTION. Section 23. Penalties. (1) A person who
4 willfully violates or causes or induces a violation of
5 [sections 1 through 24 26] or a rule implementing a
6 provision of [sections 1 through 24 26] is subject to a
7 penalty as provided in subsection (4).

8 (2) A person who makes a false statement or
9 representation of a material fact, knowing it to be false,
10 or who knowingly fails to disclose a material fact in an
11 application, examination, or statement required under
12 [sections 1 through 24 26] or a rule implementing [sections
13 1 through 24 26] is subject to a penalty as provided in
14 subsection (4).

15 (3) A person who makes a false entry in a book,
16 record, statement, or report required under [sections 1
17 through 24 26] with the intent to injure or defraud the
18 trust fund or a beneficiary thereunder or to deceive a
19 person authorized or entitled to examine the affairs of the
20 self-funded plan is subject to penalty as provided in
21 subsection (4).

22 (4) An offender, upon conviction for each violation,
23 act, or omission referred to in this section, unless a
24 greater penalty is provided for the violation under any
25 other applicable law, shall be fined not more than \$1,000 or

1 be imprisoned for a term not to exceed 1 year, or both.

2 NEW SECTION. Section 24. Coverage from moment of
3 birth -- complications of pregnancy. (1) Every self-funded
4 plan issued or amended on or after [the effective date of
5 this act] must contain a provision granting immediate
6 accident and sickness coverage, from and after the moment of
7 birth, to each newborn infant of an insured. A self-funded
8 plan may not be issued or amended in this state if it
9 contains a disclaimer, waiver, or other limitation of
10 coverage relative to the coverage or insurability of a
11 newborn infant of an insured from and after the moment of
12 birth.

13 (2) A self-funded plan that provides maternity
14 benefits continuously from conception may not be issued,
15 amended, delivered, or renewed in this state if it contains
16 an exclusion, reduction, or other limitation as to coverage,
17 deductibles, or coinsurance provisions as to involuntary
18 complications of pregnancy unless the provisions apply
19 generally to all benefits paid under the self-funded plan.
20 If a fixed amount is specified in a self-funded plan for
21 surgery, the fixed amount for surgical procedures involving
22 an involuntary complication of pregnancy must be
23 commensurate with other fixed amounts payable for procedures
24 of comparable difficulty and severity. If a fixed amount is
25 payable for maternity benefits, an involuntary complication

of pregnancy is considered to be an illness and entitled to benefits otherwise provided by the self-funded plan. If the self-funded plan contains a maternity deductible, the maternity deductible applies only to expenses resulting from normal delivery and cesarean section delivery; however, expenses for cesarean section delivery in excess of the deductible must be treated as expenses for any other illness under the self-funded plan. For purposes of this subsection, "involuntary complication of pregnancy" includes but is not limited to puerperal infection, eclampsia, cesarean section delivery, ectopic pregnancy, and toxemia.

(3) Subsection (2) applies to each self-funded plan in this state except a self-funded plan made subject to an applicable collective bargaining agreement in effect before January 1, 1990.

(4) Each self-funded plan that provides maternity benefits continuously from conception and that is issued, amended, delivered, or renewed in this state on or after January 1, 1990, is construed to comply with this section. A provision in a self-funded plan that conflicts with this section has no force or effect.

NEW SECTION. SECTION 25. CHOICE OF DENTAL PLAN PROVIDERS. A SELF-FUNDED PLAN ISSUED OR AMENDED ON OR AFTER [THE EFFECTIVE DATE OF THIS ACT] THAT COVERS A DENTAL CARE ASSISTANCE PLAN AND RESTRICTS THE COVERED PERSONS IN THE

SELECTION OF THE PROVIDERS OF DENTAL SERVICES TO A SINGLE PROVIDER OR GROUP OF PROVIDERS MUST OFFER AN ALTERNATIVE DENTAL CARE ASSISTANCE PLAN THAT PERMITS THE COVERED PERSONS TO OBTAIN DENTAL CARE SERVICES FROM ANY LICENSED DENTAL CARE PROVIDER OF THEIR CHOICE. THE PORTION OF THE PREMIUM PAID BY THE EMPLOYER FOR THE LIMITING PLAN MUST BE COMPARABLE TO BUT NOT GREATER THAN THE PORTION OF THE PREMIUM PAID BY THE EMPLOYER FOR THE ALTERNATIVE PLAN.

NEW SECTION. SECTION 26. USE OF BENEFIT TRUST FUNDS. ANY BENEFIT TRUST ESTABLISHED BY OR FOR A STATE POLITICAL SUBDIVISION OR POOL OF SUBDIVISIONS MUST BE USED EXCLUSIVELY TO PROVIDE BENEFITS TO TRUST BENEFICIARIES.

Section 27. Section 33-1-102, MCA, is amended to read:

"33-1-102. Compliance required -- exceptions -- health service corporations -- health maintenance organizations -- governmental insurance programs. (1) No person shall transact a business of insurance in Montana or relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) No provision of this code shall apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in

1 chapter 6, except as stated in chapter 6; and

2 (c) fraternal benefit societies, except as stated in
3 chapter 7.

4 (3) This code applies to health service corporations
5 as prescribed in 33-30-102. The existence of such
6 corporations is governed by Title 35, chapter 2, and related
7 sections of the Montana Code Annotated.

8 (4) This code does not apply to health maintenance
9 organizations to the extent that the existence and
10 operations of such organizations are authorized by chapter
11 31.

12 (5) This code does not apply to workers' compensation
13 insurance programs provided for in Title 39, chapter 71,
14 parts 21 and 23, and related sections.

15 (6) This code does not apply to the state employee
16 group insurance program established in Title 2, chapter 18,
17 part 8.

18 (7) This code does not apply to insurance funded
19 through the state self-insurance reserve fund provided for
20 in 2-9-202.

21 (8) ~~(a)-This~~ Except as provided in sections 1 through
22 24 26, this code does not apply to:

23 (a) any arrangement, plan, or interlocal agreement
24 between political subdivisions of this state whereby the
25 political subdivisions undertake to separately or jointly

1 indemnify one another by way of a pooling, joint retention,
2 deductible, or self-insurance plan; or

3 (b) ~~This code does not apply to any arrangement, plan,~~
4 ~~or interlocal agreement between political subdivisions of~~
5 ~~this state or~~ any arrangement, plan, or program of a single
6 political subdivision of this state whereby the political
7 subdivision provides to its officers, elected officials, or
8 employees disability insurance or life insurance through a
9 self-funded program.

10 (9) THIS CODE DOES NOT APPLY TO THE BOARD OF REGENTS'
11 GROUP INSURANCE PROGRAM AUTHORIZED UNDER 2-18-702 FOR THE
12 BENEFIT OF EMPLOYEES OF THE UNIVERSITY SYSTEM AND THEIR
13 DEPENDENTS."

14 **Section 28.** Section 33-2-708, MCA, is amended to read:

15 "33-2-708. Fees and licenses. (1) The commissioner
16 shall collect in advance and the persons so served shall so
17 pay to the commissioner the following fees and licenses:

18 (a) certificates of authority:

19 (i) for filing applications for original certificates
20 of authority, articles of incorporation (except original
21 articles of incorporation of domestic insurers as provided
22 in subsection (b) below) and other charter documents,
23 bylaws, financial statement, examination report, power of
24 attorney to the commissioner, and all other documents and
25 filings required in connection with such application and for

1 issuance of an original certificate of authority, if issued:
 2 (A) domestic insurers \$ 300.00
 3 (B) foreign insurers 300.00
 4 (ii) annual continuation of certificate of authority ..
 5 300.00
 6 (iii) reinstatement of certificate of authority
 7 25.00
 8 (iv) amendment of certificate of authority 50.00
 9 (b) articles of incorporation:
 10 (i) filing original articles of incorporation of
 11 domestic insurer, exclusive of fees required to be paid by
 12 the corporation to the secretary of state 20.00
 13 (ii) filing amendment of articles of incorporation,
 14 domestic and foreign insurers, exclusive of fees required to
 15 be paid to the secretary of state by a domestic corporation
 16 25.00
 17 (c) filing bylaws or amendment thereto where required
 18 10.00
 19 (d) filing annual statement of insurer, other than as
 20 part of application for original certificate of authority ..
 21 25.00
 22 (e) resident agent's license:
 23 (i) application for original license, including
 24 issuance of license, if issued (life and/or disability)
 25 15.00

1 (ii) application for original license, including
 2 issuance of license, if issued (other than life and/or
 3 disability) 15.00
 4 (iii) appointment of agent, each insurer 10.00
 5 (iv) annual renewal, each insurer 10.00
 6 (v) temporary license 10.00
 7 (vi) amendment of license (excluding additions thereto)
 8 or reissuance of master license 10.00
 9 (f) nonresident agent's license:
 10 (i) application for original license, including
 11 issuance of license, if issued (life and/or disability)
 12 100.00
 13 (ii) application for original license, including
 14 issuance of license, if issued (other than life and/or
 15 disability) 100.00
 16 (iii) appointment of agent, each insurer 10.00
 17 (iv) annual renewal, each insurer 10.00
 18 (v) amendment of license (excluding additions thereto)
 19 or reissuance of master license 10.00
 20 (g) solicitor's license:
 21 (i) application for original license, including
 22 issuance of license, if issued 15.00
 23 (ii) annual renewal of license 15.00
 24 (iii) appointment of solicitor 10.00
 25 (h) examination for license as agent or solicitor,

1 each examination 15.00
 2 (i) surplus lines agent license:
 3 (i) application for original license and for issuance
 4 of license, if issued 50.00
 5 (ii) annual renewal of license 50.00
 6 (j) adjuster's license:
 7 (i) application for original license and for issuance
 8 of license, if issued 15.00
 9 (ii) annual renewal of license 15.00
 10 (k) insurance vending machine license, each machine,
 11 each year 10.00
 12 (l) commissioner's certificate under seal (except when
 13 on certificates of authority or licenses) 10.00
 14 (m) copies of documents on file in the commissioner's
 15 office, per page50
 16 (n) policy forms:
 17 (i) filing each policy form 25.00
 18 (ii) filing each application, rider, endorsement,
 19 amendment, insert page, schedule of rates, and clarification
 20 of risks 10.00
 21 (iii) maximum charge if policy and all forms submitted
 22 at one time or resubmitted for approval within 180 days
 23 100.00
 24 (o) self-funded plans:
 25 (i) filing application for registration 25.00

1 (ii) filing annual statement of trust fund 25.00
 2 (2) WHEN THE ANNUAL STATEMENT REFERRED TO IN
 3 SUBSECTION (1)(O)(II) IS FILED WITH THE COMMISSIONER, EACH
 4 REGISTERED SELF-FUNDED PLAN MUST PAY A FEE TO THE
 5 COMMISSIONER OF 14 CENTS A MONTH PER EMPLOYEE COVERED BY THE
 6 SELF-FUNDED PLAN DURING THE FISCAL YEAR OF THE ANNUAL
 7 STATEMENT.

8 {2}{3} The commissioner shall promptly deposit with
 9 the state treasurer to the credit of the general fund of
 10 this state all fines and penalties, those amounts received
 11 pursuant to 33-2-311, 33-2-705, and 33-2-706, and any fees
 12 and examination and miscellaneous charges received pursuant
 13 to Title 33, chapter 11, part 1, that are collected by him
 14 pursuant to Title 33 and the rules adopted thereunder.

15 {3}{4} All fees are considered fully earned when
 16 received. In the event of overpayment, only those amounts in
 17 excess of \$10 will be refunded.

18 {4}{5} All fees and examination and miscellaneous
 19 charges, except fines or penalties or those amounts received
 20 pursuant to 33-2-311, 33-2-705, or 33-2-706, collected by
 21 the commissioner pursuant to Title 33 and the rules adopted
 22 thereunder must be deposited in the insurance regulatory
 23 trust account pursuant to 17-2-121 through 17-2-123."

24 NEW SECTION. Section 29. Extension of authority. Any
 25 existing authority to make rules on the subject of the

1 provisions of [this act] is extended to the provisions of
2 [this act].

3 NEW SECTION. Section 30. Codification instruction.

4 (1) [Sections 1 through 24 25] are intended to be codified
5 as an integral part of Title 33 and the provisions of Title
6 33 apply to [sections 1 through 24 25].

7 (2) [SECTION 26] IS INTENDED TO BE CODIFIED AS AN
8 INTEGRAL PART OF TITLE 39, CHAPTER 2, AND THE PROVISIONS OF
9 TITLE 39, CHAPTER 2, APPLY TO [SECTION 26].

10 NEW SECTION. Section 31. Applicability. [Sections 1
11 through 24 26] apply to each self-funded plan and trust fund
12 operating in this state on [the effective date of this act].

13 NEW SECTION. Section 32. Effective date. [This act]
14 is effective on passage and approval.

15 NEW SECTION. SECTION 33. TERMINATION DATE. [THIS ACT]
16 TERMINATES ON JUNE 30, 1991.

-End-