

HOUSE BILL NO. 706
INTRODUCED BY T. NELSON

IN THE HOUSE

FEBRUARY 14, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT.
FEBRUARY 15, 1989	FIRST READING.
FEBRUARY 18, 1989	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 20, 1989	PRINTING REPORT.
FEBRUARY 21, 1989	SECOND READING, DO PASS. ENGROSSING REPORT.
FEBRUARY 22, 1989	THIRD READING, PASSED. AYES, 99; NOES, 0. TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 28, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY. FIRST READING.
MARCH 8, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 9, 1989	SECOND READING, CONCURRED IN.
MARCH 11, 1989	THIRD READING, CONCURRED IN. AYES, 44; NOES, 0. RETURNED TO HOUSE.

MARCH 11, 1989

IN THE HOUSE

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *House* BILL NO. *706*
2 INTRODUCED BY *Sam Nelson*
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE LAWS
5 RELATING TO SURPLUS LINES INSURERS, AGENTS, AND INSURANCE;
6 PROVIDING FOR FUNDING A SURPLUS LINES ADVISORY ORGANIZATION
7 BY A STAMPING FEE; AMENDING SECTIONS 33-2-302, 33-2-303,
8 33-2-305, 33-2-306, 33-2-308 THROUGH 33-2-310, 33-2-312,
9 33-2-316, 33-2-317, 33-2-321, 33-17-201, AND 33-17-202, MCA;
10 AND PROVIDING AN APPLICABILITY DATE."
11

12 STATEMENT OF INTENT

13 A statement of intent is required for this bill because
14 the amendment to 33-2-321 grants rulemaking authority to the
15 insurance commissioner to set a stamping fee, not to exceed
16 1%, that may be collected by a surplus lines advisory
17 organization. It is intended that the insurance commissioner
18 set the stamping fee at an amount that will generate enough
19 income to pay the expenses incurred by the surplus lines
20 advisory organization. It is intended that the insurance
21 commissioner will by rule adjust the amount of the stamping
22 fee as surplus lines advisory organizations' needs change
23 and as the amount of transactions change.
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25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:



1 **Section 1.** Section 33-2-302, MCA, is amended to read:

2 "33-2-302. Conditions precedent to sale of surplus
3 lines insurance. Insurance may be procured through a
4 licensed surplus lines agent from an unauthorized insurer
5 if:

6 (1) the insurer is an eligible surplus lines insurer;
7 (2) the full amount or kind of insurance cannot be
8 obtained from authorized insurers. The full amount or kind
9 of insurance may be procured from an eligible surplus lines
10 insurer if the agent makes a diligent search among the
11 insurers who are authorized to transact and are actually
12 writing transacting the particular kind and class of
13 insurance in this state and cannot obtain the full amount or
14 kind of insurance from an authorized insurer.

15 (3) the insurance is not so procured for the purpose
16 of securing advantages either as to:

17 (a) a lower premium rate than would be accepted by an
18 authorized insurer; or
19 (b) terms of the insurance contract; and
20 (4) all other requirements of this part are met."

21 **Section 2.** Section 33-2-303, MCA, is amended to read:

22 "33-2-303. Filing and endorsement of contract. Every
23 insurance contract, cover, note, or certificate of insurance
24 procured and delivered as surplus lines insurance under this
25 part ~~shall~~ must be filed with the commissioner, or with the

surplus lines advisory organization formed pursuant to 33-2-321, and endorsed as "issued in an unauthorized insurer under The Surplus Lines Insurance Law, under surplus lines agent license No." and "NOT covered by the property and casualty guaranty fund of this state if the unauthorized insurer becomes insolvent". The surplus lines agent shall properly fill in and sign the endorsement."

Section 3. Section 33-2-305, MCA, is amended to read:

"33-2-305. Licensing of surplus lines agent -- fee and bond. (1) An-agent-licensed-by-this-state A person may not procure a contract of surplus lines insurance with an unauthorized insurer unless the-agent he is licensed as a resident property, casualty, and surety insurance agent and possesses a current surplus lines insurance license issued by the commissioner.

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

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

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

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

(d) filed with the commissioner and thereafter for as long as the license remains in effect kept in force a bond in favor of the state of Montana in the amount of \$10,000, with authorized corporate sureties approved by the commissioner. The bond must be conditioned that the insurance agent will conduct business under the license in accordance with the provisions of The Surplus Lines Insurance Law and that he will promptly remit the taxes provided by such law in 33-2-311. The bond may not be terminated unless the surety gives the surplus lines agent, the producing agent, and the commissioner at least 30 days' prior written notice thereof.

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

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

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

(b) only those individuals listed on the corporate

license transact surplus lines business insurance."

Section 4. Section 33-2-306, MCA, is amended to read:

"33-2-306. Agent's Surplus lines agent's authority under license -- acceptance of business from other insurance agents -- placement fee. (1) Under a surplus lines agent license the licensee may place surplus lines insurance, in compliance with The Surplus Lines Insurance Law, with any a foreign or alien insurer or---insurers not otherwise authorized to transact insurance in this state and as to such coverages to may act as a surplus lines agent in this state for such the insurer or-insurers.

(2) The surplus lines agent may accept surplus lines insurance from any-duty a licensed insurance agent of an authorized insurer [or, if the commissioner agrees in advance, through an individual, partnership, or corporation that has not been appointed as an insurance agent in this state] and may compensate him therefor.

(3) A surplus lines agent who places or renews surplus lines insurance in accordance with subsection (1) may collect:

(a) an inspection fee for the actual costs of inspecting the risk to be covered; and

(b) a placement fee of 0.5% of the premium charged to cover the costs of issuing and servicing the policy. The fee may not be less than \$10 or more than \$100."

Section 5. Section 33-2-308, MCA, is amended to read:

"33-2-308. Evidence of the insurance -- changes -- penalty. (1) Upon placing surplus lines insurance, the surplus lines agent shall promptly issue and or deliver to the insured or the producing agent evidence of the insurance, consisting either of the policy as issued by the insurer or, if such the policy is not then available, a cover note or certificate of insurance signed or countersigned by the agent. Such The cover note or certificate must show the subject, coverage, conditions, and term of the insurance, the premium charged and taxes collected from the insured, and the name and address of the insurer. If the a direct risk is assumed by more than one insurer, the cover note or certificate must state the name and address and proportion of the entire direct risk assumed by each such insurer.

(2) If after the issuance and delivery of any such cover note or certificate there is any a change as to the identity of the insurers or the proportion of the direct risk assumed by the insurer as stated in the original cover note or certificate or in any other material respect as to the insurance coverage evidenced by the cover note or certificate, the surplus lines agent shall promptly issue and or deliver to the insured a substitute cover note or certificate accurately showing the current status of the

1 coverage and the insurers responsible thereunder.

2 (3) If a policy issued by the insurer is not available
3 upon placement of the insurance and the surplus lines agent
4 has issued and delivered a cover note or certificate as
5 hereinabove provided, upon request therefor by the insured,
6 the surplus lines agent shall as soon as reasonably possible
7 procure from the insurer its policy evidencing such the
8 insurance and deliver such the policy to the insured in
9 replacement of the cover note or certificate theretofore
10 issued.

11 (4) Any A surplus lines agent who knowingly or
12 negligently issues or delivers a false cover note or
13 certificate of insurance or fails promptly to notify the
14 insured of any a material change with respect to such the
15 insurance by delivery to the insured of a substitute cover
16 note or certificate as provided in subsection (2) shall be
17 guilty of a violation of this code and upon conviction shall
18 be subject to the penalties provided by 33-1-104 or to any
19 greater applicable penalty otherwise provided by law.

20 (5) A surplus lines agent may not issue or deliver any
21 an evidence of insurance or purport to insure or represent
22 that insurance will be or has been written by any an
23 eligible surplus lines insurer unless he has authority from
24 the insurer to cause the risk to be insured or has received
25 information from the insurer in the regular course of

1 business that such the insurance has been granted."

2 **Section 6.** Section 33-2-309, MCA, is amended to read:

3 "33-2-309. **Liability of insurer as to losses and**
4 **unearned premiums.** (1) As to a surplus lines risk which has
5 been assumed by an unauthorized insurer pursuant to The
6 Surplus Lines Insurance Law and if the premium thereon has
7 been received by the surplus lines agent who placed such the
8 insurance, in all questions thereafter arising under the
9 coverage as between the insurer and the insured, the insurer
10 ~~shall-be-deemed~~ is considered to have received the premium
11 due to it for such the coverage. The insurer ~~shall-be~~ is
12 liable to the insured as to losses covered by such the
13 insurance and for unearned premiums which may become payable
14 to the insured upon cancellation of such the insurance,
15 whether or not in fact the surplus lines agent is indebted
16 to the insurer with respect to such the insurance or for any
17 other cause. This provision ~~shall~~ does not affect rights as
18 between the insurer and the surplus lines agent.

19 (2) A payment of premium to a surplus lines agent
20 acting for a person other than himself in negotiating,
21 continuing, or reviewing a policy of insurance under this
22 part is considered to be payment to the insurer,
23 notwithstanding any conditions or stipulations that may be
24 inserted in the policy or contract.

25 (3) Each unauthorized insurer assuming a surplus lines

1 direct risk under The Surplus Lines Insurance Law is
2 considered thereby to have subjected itself to the terms of
3 this section."

4 **Section 7.** Section 33-2-310, MCA, is amended to read:

5 "33-2-310. Records and annual statement -- affidavit.

6 (1) Each surplus lines agent shall keep a separate record
7 and account of all business transacted under his license,
8 including a copy of each daily report, if any, and or of
9 each policy, certificate of insurance, cover note, or other
10 evidence of insurance issued or delivered by him. The
11 records must be available for examination by the
12 commissioner at any reasonable time within 5 years after the
13 issuance of the surplus lines insurance to which it relates.

14 (2) Prior to April 1 of each year the surplus lines
15 agent shall file with the commissioner a statement for the
16 preceding calendar year preceding, showing:

17 (a) name and address of each insured for whom surplus
18 lines insurance was procured;

19 (b) name and home office address of each insurer
20 providing the surplus lines insurance;

21 (c) amount of each surplus lines insurance policy, the
22 premium rate, and the gross premium charged therefor for the
23 policy;

24 (d) date and term of the policy;

25 (e) amount of premium returned on each policy canceled

1 or not taken;

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

4 (g) identity of the producing agent; and

5 ~~(h) the application and any correspondence from the~~
6 ~~surplus lines insurer or its representative; and~~

7 ~~(i)~~ (h) such additional information as the commissioner
8 may reasonably require.

9 (3) Each producing agent shall execute and each
10 surplus lines agent shall file an affidavit, on a
11 standardized form furnished by the commissioner, as to the
12 diligent efforts to place the coverage with authorized
13 insurers and the results of such efforts. An affidavit filed
14 under this subsection is subject to public inspection unless
15 the commissioner determines that the public interest
16 requires otherwise. The producing agent shall state in the
17 affidavit that he has expressly advised the insured in
18 writing prior to placing the insurance that:

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

22 (b) in the event of the insolvency of the surplus
23 lines insurer, the property and casualty guaranty fund of
24 the state will not pay losses under the surplus lines
25 coverage."

Section 8. Section 33-2-312, MCA, is amended to read:

"33-2-312. Penalty for failure to file statement, or pay tax, or pay stamping fee. (1) Every A surplus lines agent who fails to make and file the annual statement as required under 33-2-310 or to pay the taxes as required under 33-2-311 is liable to a penalty of \$25 for each day of delinquency, commencing with April 1. The tax and penalty may be recovered in an action instituted by the commissioner in the name of the state in any court of competent jurisdiction, the attorney general representing him. The penalty when collected, unless collected by a justice's court, shall be paid to the state treasurer and placed to the credit of the general fund. The surplus lines agent license is also subject to revocation as provided in 33-2-313.

(2) If a surplus lines agent does not pay the stamping fee provided for in 33-2-321 before it is due, the commissioner or the surplus lines advisory organization formed pursuant to 33-2-321 may impose a penalty of .25% of the stamping fee due plus 1.5% a month from the time of delinquency until the stamping fee is paid."

Section 9. Section 33-2-316, MCA, is amended to read:

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

(a) effectuation of The Surplus Lines Insurance Law;

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

(c) establishment, procedures, and operations of ~~any voluntary the surplus lines advisory organization of surplus lines insurance agents~~ formed pursuant to 33-2-321 or others designed to assist ~~such agents~~ a surplus lines agent to comply with ~~such law~~ The Surplus Lines Insurance Law.

(2) Such The rules shall be adopted pursuant to subsection (1) are subject to the procedures and carry the penalty provided by 33-1-313."

Section 10. Section 33-2-317, MCA, is amended to read:

"33-2-317. Exemptions. ~~The provisions of this surplus lines insurance law controlling the placement of insurance with unauthorized insurers~~ Surplus Lines Insurance Law does not apply to reinsurance or to the following insurances kinds of insurance when so placed by a licensed insurance agent of this state:

(1) wet marine and transportation insurances;

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

(3) insurance on property or operations of railroads

1 engaged in interstate commerce; and

2 (4) insurance of aircraft owned or operated by
3 manufacturers of aircraft or aircraft operated in scheduled
4 interstate flight or cargo of such aircraft or against
5 liability, other than workers' compensation and employers'
6 liability, arising out of the ownership, maintenance, or use
7 of such aircraft."

8 **Section 11.** Section 33-2-321, MCA, is amended to read:

9 "33-2-321. Surplus lines advisory organizations --
10 examination by commissioner -- stamping fee. (1) A surplus
11 lines advisory organization of surplus lines agents may be
12 formed to:

13 (a) facilitate and encourage compliance by its members
14 with the laws of this state and the rules ~~and regulations~~ of
15 the commissioner relative to surplus lines insurance;

16 (b) provide means for the confidential examination of
17 all surplus lines insurance written by its members to
18 determine whether ~~such~~ the surplus lines insurance complies
19 with this part;

20 (c) communicate with organizations of authorized
21 insurers with respect to the proper use of the surplus lines
22 insurance market; and

23 (d) receive and disseminate to its members information
24 relative to surplus lines insurance.

25 (2) ~~Each~~ The surplus lines advisory organization shall

1 file with the commissioner:

2 (a) a copy of its constitution, its articles of
3 agreement or association, or its certificate of
4 incorporation;

5 (b) a copy of its bylaws, rules, and regulations
6 governing its activities;

7 (c) a current list of its members;

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

11 (e) an agreement that the commissioner may examine the
12 advisory organization under the provisions of subsection
13 (3).

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

and shall notify the surplus lines advisory organization that it may, within 20 days of receipt of the report, request a hearing on the report or on any facts or recommendations contained in it. If the commissioner finds the surplus lines advisory organization or any of its members to be in violation of this part, he may issue an order requiring the discontinuance of the violation.

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

(5) The surplus lines advisory organization may collect a stamping fee not to exceed 1% of the premium payable for surplus lines insurance transacted by its members in this state. The commissioner shall establish the stamping fee by rule. The surplus lines advisory organization shall use the stamping fees it collects to pay its expenses."

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

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

licensed as such agent or solicitor under this chapter.

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

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

(4) No agent shall place any business, other than coverage of his own risks, with any insurer as to which he does not then hold a validated appointment or license as agent under this chapter, except as provided in 33-2-306, in 33-17-1104 as to life or disability insurance agents, and or in 33-8-213.

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

(6) Unless licensed as a life insurance agent as required by this section, no person shall in this state solicit life insurance or annuities or procure applications therefor or engage or hold himself out as engaging in the business of analyzing or abstracting life insurance policies or annuities or of counseling or advising or giving opinions, other than as a licensed attorney, relative to

such insurance or annuities for fee, commission, or other compensation, other than as a salaried bona fide full-time employee so counseling and advising his employer relative to the insurance interests of the employer and of the subsidiaries or business affiliates of the employer or with respect to the insurance interests of employees of such employer, subsidiaries, or affiliates under group insurance or similar insurance plans arranged by the employer or employers of such employees.

(7) A person licensed to sell coverage only for the all-risk federal crop insurance program shall receive a license restricted to that purpose. (Terminates July 1, 1989--sec. 22, Ch. 11, Sp. L. March 1986.)

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

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

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

(3) No agent or solicitor shall solicit or take application for, procure, or place for others any kind of

insurance as to which he is not then licensed.

(4) No agent shall place any business, other than coverage of his own risks, with any insurer as to which he does not then hold a validated appointment or license as agent under this chapter, except as provided in 33-2-306 or in 33-17-1104 as to life or disability insurance agents.

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

(6) Unless licensed as a life insurance agent as required by this section, no person shall in this state solicit life insurance or annuities or procure applications therefor or engage or hold himself out as engaging in the business of analyzing or abstracting life insurance policies or annuities or of counseling or advising or giving opinions, other than as a licensed attorney, relative to such insurance or annuities for fee, commission, or other compensation, other than as a salaried bona fide full-time employee so counseling and advising his employer relative to the insurance interests of the employer and of the subsidiaries or business affiliates of the employer or with respect to the insurance interests of employees of such employer, subsidiaries, or affiliates under group insurance or similar insurance plans arranged by the employer or

employers of such employees.

(7) A person licensed to sell coverage only for the all-risk federal crop insurance program shall receive a license restricted to that purpose."

Section 13. Section 33-17-202, MCA, is amended to read:

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

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

(b) must be a resident in and of this state or of another state if by reciprocal arrangements made by the commissioner with the other state similar privileges therein are granted to residents of this state;

(c) except as provided in 33-2-306, must have been appointed as agent by an authorized insurer, subject to issuance of the license;

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

(e) must be competent, trustworthy, and of good

reputation;

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

(g) must pass an examination for the license required under this chapter;

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

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

NEW SECTION. **Section 14.** Extension of authority. Any

1 existing authority to make rules on the subject of the
2 provisions of [this act] is extended to the provisions of
3 [this act].

4 NEW SECTION. Section 15. Coordination instruction. If
5 Bill No. [LC 663] is passed and approved and if it
6 amends 33-17-201 and 33-17-202, then the amendments to
7 33-17-201 and 33-17-202 and the bracketed amendment to
8 33-2-306 in [this act] are void.

9 NEW SECTION. Section 16. Applicability. [Sections 1
10 through 13] apply to each policy of surplus lines insurance
11 transacted in this state after October 1, 1989.

-End-

APPROVED BY COMM. ON BUSINESS
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"33-2-303. Filing and endorsement of contract. Every insurance contract, cover, note, or certificate of insurance procured and delivered as surplus lines insurance under this part ~~shall~~ must be filed with the commissioner, or with the

1 surplus lines advisory organization formed pursuant to
 2 33-2-321, and endorsed as "issued in an unauthorized insurer
 3 under The Surplus Lines Insurance Law, under surplus lines
 4 agent license No." and "NOT covered by the property
 5 and casualty guaranty fund of this state if the unauthorized
 6 insurer becomes insolvent". The surplus lines agent shall
 7 properly fill in and sign the endorsement."

8 **Section 3.** Section 33-2-305, MCA, is amended to read:

9 "33-2-305. Licensing of surplus lines agent -- fee and
 10 bond. (1) ~~An agent licensed by this state~~ A person may not
 11 procure a contract of surplus lines insurance with an
 12 unauthorized insurer unless ~~the agent~~ he is licensed as a
 13 resident property, casualty, and surety insurance agent and
 14 possesses a current surplus lines insurance license issued
 15 by the commissioner.

16 (2) The commissioner shall issue a surplus lines
 17 insurance license to any qualified holder of a current
 18 property, casualty, and surety insurance agent license only
 19 if the insurance agent has:

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

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

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

1 (d) filed with the commissioner and thereafter for as
 2 long as the license remains in effect kept in force a bond
 3 in favor of the state of Montana in the amount of \$10,000,
 4 with authorized corporate sureties approved by the
 5 commissioner. The bond must be conditioned that the
 6 insurance agent will conduct business under the license in
 7 accordance with the provisions of The Surplus Lines
 8 Insurance Law and that he will promptly remit the taxes
 9 provided ~~by such law~~ in 33-2-311. The bond may not be
 10 terminated unless the surety gives the surplus lines agent,
 11 the producing agent, and the commissioner at least 30 days'
 12 prior written notice thereof.

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

20 (4) A corporation is eligible to be licensed as a
 21 resident surplus lines agent if:

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

25 (b) only those individuals listed on the corporate

1 license transact surplus lines business insurance."

2 **Section 4.** Section 33-2-306, MCA, is amended to read:

3 "33-2-306. Agent's Surplus lines agent's authority
4 under license -- acceptance of business from other insurance
5 agents -- placement fee. (1) Under a surplus lines agent
6 license the licensee may place surplus lines insurance, in
7 compliance with The Surplus Lines Insurance Law, with any a
8 foreign or alien insurer or---insurers not otherwise
9 authorized to transact insurance in this state and as-to
10 such-coverages-to may act as a surplus lines agent in this
11 state for such the insurer or-insurers.

12 (2) The surplus lines agent may accept surplus lines
13 insurance from any-duty a licensed insurance agent of an
14 authorized insurer [or, if the commissioner agrees in
15 advance, through an individual, partnership, or corporation
16 that has not been appointed as an insurance agent in this
17 state] and may compensate him therefor.

18 (3) A surplus lines agent who places or renews surplus
19 lines insurance in accordance with subsection (1) may
20 collect:

21 (a) an inspection fee for the actual costs of
22 inspecting the risk to be covered; and

23 (b) a placement fee of 0.5% of the premium charged to
24 cover the costs of issuing and servicing the policy. The
25 fee may not be less than \$10 or more than \$100."

1 **Section 5.** Section 33-2-308, MCA, is amended to read:

2 "33-2-308. Evidence of the insurance -- changes --
3 penalty. (1) Upon placing surplus lines insurance, the
4 surplus lines agent shall promptly issue and or deliver to
5 the insured or the producing agent evidence of the
6 insurance, consisting either of the policy as issued by the
7 insurer or, if such the policy is not then available, a
8 cover note or certificate of insurance signed or
9 countersigned by the agent. Such The cover note or
10 certificate must show the subject, coverage, conditions, and
11 term of the insurance, the premium charged and taxes
12 collected from the insured, and the name and address of the
13 insurer. If the a direct risk is assumed by more than one
14 insurer, the cover note or certificate must state the name
15 and address and proportion of the entire direct risk assumed
16 by each such insurer.

17 (2) If after the issuance and delivery of any such
18 cover note or certificate there is any a change as to the
19 identity of the insurers or the proportion of the direct
20 risk assumed by the insurer as stated in the original cover
21 note or certificate or in any other material respect as to
22 the insurance coverage evidenced by the cover note or
23 certificate, the surplus lines agent shall promptly issue
24 and or deliver to the insured a substitute cover note or
25 certificate accurately showing the current status of the

1 coverage and the insurers responsible thereunder.

2 (3) If a policy issued by the insurer is not available
3 upon placement of the insurance and the surplus lines agent
4 has issued and delivered a cover note or certificate as
5 hereinabove provided, upon request therefor by the insured,
6 the surplus lines agent shall as soon as reasonably possible
7 procure from the insurer its policy evidencing such the
8 insurance and deliver such the policy to the insured in
9 replacement of the cover note or certificate theretofore
10 issued.

11 (4) Any A surplus lines agent who knowingly or
12 negligently issues or delivers a false cover note or
13 certificate of insurance or fails promptly to notify the
14 insured of any a material change with respect to such the
15 insurance by delivery to the insured of a substitute cover
16 note or certificate as provided in subsection (2) shall be
17 guilty of a violation of this code and upon conviction shall
18 be subject to the penalties provided by 33-1-104 or to any
19 greater applicable penalty otherwise provided by law.

20 (5) A surplus lines agent may not issue or deliver any
21 an evidence of insurance or purport to insure or represent
22 that insurance will be or has been written by any an
23 eligible surplus lines insurer unless he has authority from
24 the insurer to cause the risk to be insured or has received
25 information from the insurer in the regular course of

1 business that such the insurance has been granted."

2 **Section 6.** Section 33-2-309, MCA, is amended to read:

3 "33-2-309. Liability of insurer as to losses and
4 unearned premiums. (1) As to a surplus lines risk which has
5 been assumed by an unauthorized insurer pursuant to The
6 Surplus Lines Insurance Law and if the premium thereon has
7 been received by the surplus lines agent who placed such the
8 insurance, in all questions thereafter arising under the
9 coverage as between the insurer and the insured, the insurer
10 ~~shall-be-deemed~~ is considered to have received the premium
11 due to it for such the coverage. The insurer ~~shall-be~~ is
12 liable to the insured as to losses covered by such the
13 insurance and for unearned premiums which may become payable
14 to the insured upon cancellation of such the insurance,
15 whether or not in fact the surplus lines agent is indebted
16 to the insurer with respect to such the insurance or for any
17 other cause. This provision ~~shall~~ does not affect rights as
18 between the insurer and the surplus lines agent.

19 (2) A payment of premium to a surplus lines agent
20 acting for a person other than himself in negotiating,
21 continuing, or reviewing a policy of insurance under this
22 part is considered to be payment to the insurer,
23 notwithstanding any conditions or stipulations that may be
24 inserted in the policy or contract.

25 (3) Each unauthorized insurer assuming a surplus lines

1 direct risk under The Surplus Lines Insurance Law is
2 considered thereby to have subjected itself to the terms of
3 this section."

4 **Section 7.** Section 33-2-310, MCA, is amended to read:

5 "33-2-310. Records and annual statement -- affidavit.

6 (1) Each surplus lines agent shall keep a separate record
7 and account of all business transacted under his license,
8 including a copy of each daily report, if any, and or of
9 each policy, certificate of insurance, cover note, or other
10 evidence of insurance issued or delivered by him. The
11 records must be available for examination by the
12 commissioner at any reasonable time within 5 years after the
13 issuance of the surplus lines insurance to which it relates.

14 (2) Prior to April 1 of each year the surplus lines
15 agent shall file with the commissioner a statement for the
16 preceding calendar year preceding, showing:

17 (a) name and address of each insured for whom surplus
18 lines insurance was procured;

19 (b) name and home office address of each insurer
20 providing the surplus lines insurance;

21 (c) amount of each surplus lines insurance policy, the
22 premium rate, and the gross premium charged therefor for the
23 policy;

24 (d) date and term of the policy;

25 (e) amount of premium returned on each policy canceled

1 or not taken;

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

4 (g) identity of the producing agent; and

5 ~~(h) the application and any correspondence from the~~
6 ~~surplus lines insurer or its representative; and~~

7 ~~(i)~~ (h) such additional information as the commissioner
8 may reasonably require.

9 (3) Each producing agent shall execute and each
10 surplus lines agent shall file an affidavit, on a
11 standardized form furnished by the commissioner, as to the
12 diligent efforts to place the coverage with authorized
13 insurers and the results of such efforts. An affidavit filed
14 under this subsection is subject to public inspection unless
15 the commissioner determines that the public interest
16 requires otherwise. The producing agent shall state in the
17 affidavit that he has expressly advised the insured ~~in~~
18 writing prior to placing the insurance that:

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

22 (b) in the event of the insolvency of the surplus
23 lines insurer, the property and casualty guaranty fund of
24 the state will not pay losses under the surplus lines
25 coverage."

Section 8. Section 33-2-312, MCA, is amended to read:

"33-2-312. Penalty for failure to file statement, or pay tax, or pay stamping fee. (1) Every A surplus lines agent who fails to make and file the annual statement as required under 33-2-310 or to pay the taxes as required under 33-2-311 is liable to a penalty of \$25 for each day of delinquency, commencing with April 1. The tax and penalty may be recovered in an action instituted by the commissioner in the name of the state in any court of competent jurisdiction, the attorney general representing him. The penalty when collected, unless collected by a justice's court, shall be paid to the state treasurer and placed to the credit of the general fund. The surplus lines agent license is also subject to revocation as provided in 33-2-313.

(2) If a surplus lines agent does not pay the stamping fee provided for in 33-2-321 before it is due, the commissioner or the surplus lines advisory organization formed pursuant to 33-2-321 may impose a penalty of 25% of the stamping fee due plus 1.5% a month from the time of delinquency until the stamping fee is paid."

Section 9. Section 33-2-316, MCA, is amended to read:

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

(a) effectuation of The Surplus Lines Insurance Law;

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

(c) establishment, procedures, and operations of ~~any voluntary the surplus lines advisory organization of surplus lines insurance agents formed pursuant to 33-2-321~~ or others designed to assist ~~such--agents~~ a surplus lines agent to comply with ~~such-law~~ The Surplus Lines Insurance Law.

(2) Such The rules shall--be adopted pursuant to subsection (1) are subject to the procedures and carry the penalty provided by 33-1-313."

Section 10. Section 33-2-317, MCA, is amended to read:

"33-2-317. Exemptions. ~~The provisions of this--surplus lines--insurance--law controlling the placement of insurance with unauthorized insurers~~ Surplus Lines Insurance Law does not apply to reinsurance or to the following insurances ~~kinds of insurance~~ when so placed by a licensed insurance agent of this state:

(1) wet marine and transportation insurances;

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

(3) insurance on property or operations of railroads

1 engaged in interstate commerce; and

2 (4) insurance of aircraft owned or operated by
3 manufacturers of aircraft or aircraft operated in scheduled
4 interstate flight or cargo of such aircraft or against
5 liability, other than workers' compensation and employers'
6 liability, arising out of the ownership, maintenance, or use
7 of such aircraft."

8 **Section 11.** Section 33-2-321, MCA, is amended to read:

9 "33-2-321. Surplus lines advisory organizations --
10 examination by commissioner -- stamping fee. (1) A surplus
11 lines advisory organization of surplus lines agents may be
12 formed to:

13 (a) facilitate and encourage compliance by its members
14 with the laws of this state and the rules ~~and regulations~~ of
15 the commissioner relative to surplus lines insurance;

16 (b) provide means for the confidential examination of
17 all surplus lines insurance written by its members to
18 determine whether ~~such the surplus lines~~ insurance complies
19 with this part;

20 (c) communicate with organizations of authorized
21 insurers with respect to the proper use of the surplus lines
22 insurance market; and

23 (d) receive and disseminate to its members information
24 relative to surplus lines insurance.

25 (2) Each The surplus lines advisory organization shall

1 file with the commissioner:

2 (a) a copy of its constitution, its articles of
3 agreement or association, or its certificate of
4 incorporation;

5 (b) a copy of its bylaws, rules, and regulations
6 governing its activities;

7 (c) a current list of its members;

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

11 (e) an agreement that the commissioner may examine the
12 advisory organization under the provisions of subsection
13 (3).

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

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

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

12 (5) The surplus lines advisory organization may
 13 collect a stamping fee not to exceed 1% of the premium
 14 payable for surplus lines insurance transacted by its
 15 members in this state. The commissioner shall establish the
 16 stamping fee by rule. The surplus lines advisory
 17 organization shall use the stamping fees it collects to pay
 18 its expenses."

19 **Section 12.** Section 33-17-201, MCA, is amended to
 20 read:

21 "33-17-201. (Temporary) License required of agents,
 22 managing general agents, and solicitors -- forms. (1) No
 23 person shall in this state act as or hold himself out to be
 24 an agent or solicitor as to subjects of insurance located,
 25 resident, or to be performed in this state unless then

1 licensed as such agent or solicitor under this chapter.

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

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

9 (4) No agent shall place any business, other than
 10 coverage of his own risks, with any insurer as to which he
 11 does not then hold a validated appointment or license as
 12 agent under this chapter, except as provided in 33-2-306, in
 13 33-17-1104 as to life or disability insurance agents, and or
 14 in 33-8-213.

15 (5) The commissioner may prescribe by rule and make
 16 available the forms required in connection with application
 17 for, issuance, continuation, or termination of licenses and
 18 appointments.

19 (6) Unless licensed as a life insurance agent as
 20 required by this section, no person shall in this state
 21 solicit life insurance or annuities or procure applications
 22 therefor or engage or hold himself out as engaging in the
 23 business of analyzing or abstracting life insurance policies
 24 or annuities or of counseling or advising or giving
 25 opinions, other than as a licensed attorney, relative to

such insurance or annuities for fee, commission, or other compensation, other than as a salaried bona fide full-time employee so counseling and advising his employer relative to the insurance interests of the employer and of the subsidiaries or business affiliates of the employer or with respect to the insurance interests of employees of such employer, subsidiaries, or affiliates under group insurance or similar insurance plans arranged by the employer or employers of such employees.

(7) A person licensed to sell coverage only for the all-risk federal crop insurance program shall receive a license restricted to that purpose. (Terminates July 1, 1989--sec. 22, Ch. 11, Sp. L. March 1986.)

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

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

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

(3) No agent or solicitor shall solicit or take application for, procure, or place for others any kind of

insurance as to which he is not then licensed.

(4) No agent shall place any business, other than coverage of his own risks, with any insurer as to which he does not then hold a validated appointment or license as agent under this chapter, except as provided in 33-2-306 or in 33-17-1104 as to life or disability insurance agents.

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

(6) Unless licensed as a life insurance agent as required by this section, no person shall in this state solicit life insurance or annuities or procure applications therefor or engage or hold himself out as engaging in the business of analyzing or abstracting life insurance policies or annuities or of counseling or advising or giving opinions, other than as a licensed attorney, relative to such insurance or annuities for fee, commission, or other compensation, other than as a salaried bona fide full-time employee so counseling and advising his employer relative to the insurance interests of the employer and of the subsidiaries or business affiliates of the employer or with respect to the insurance interests of employees of such employer, subsidiaries, or affiliates under group insurance or similar insurance plans arranged by the employer or

1 employers of such employees.

2 (7) A person licensed to sell coverage only for the
3 all-risk federal crop insurance program shall receive a
4 license restricted to that purpose."

5 **Section 13.** Section 33-17-202, MCA, is amended to
6 read:

7 "33-17-202. General qualifications of agents and
8 solicitors. (1) For the protection of the people of this
9 state the commissioner shall not issue, continue, or permit
10 to exist any agent or solicitor license as to insurance,
11 except in compliance with this chapter, or as to any
12 individual not qualified therefor as follows:

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

14 (b) must be a resident in and of this state or of
15 another state if by reciprocal arrangements made by the
16 commissioner with the other state similar privileges therein
17 are granted to residents of this state;

18 (c) except as provided in 33-2-306, must have been
19 appointed as agent by an authorized insurer, subject to
20 issuance of the license;

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

25 (e) must be competent, trustworthy, and of good

1 reputation;

2 (f) must have had experience or training or be
3 otherwise qualified in the kind or kinds of insurance as to
4 which he is to be licensed and be reasonably familiar with
5 the provisions of this code which govern his operations as
6 an insurance agent or solicitor;

7 (g) must pass an examination for the license required
8 under this chapter;

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

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

25 NEW SECTION. **Section 14.** Extension of authority. Any

1 existing authority to make rules on the subject of the
2 provisions of [this act] is extended to the provisions of
3 [this act].

4 NEW SECTION. **Section 15.** Coordination instruction. If
5 ___ Bill No. ___ [LC 663] is passed and approved and if it
6 amends 33-17-201 and 33-17-202, then the amendments to
7 33-17-201 and 33-17-202 and the bracketed amendment to
8 33-2-306 in [this act] are void.

9 NEW SECTION. **Section 16.** Applicability. [Sections 1
10 through 13] apply to each policy of surplus lines insurance
11 transacted in this state after October 1, 1989.

-End-