

HOUSE BILL NO. 734

INTRODUCED BY THOMAS, J. BROWN, WILLIAMS, THAYER

IN THE HOUSE

FEBRUARY 15, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT.
FEBRUARY 16, 1989	FIRST READING.
FEBRUARY 18, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 20, 1989	PRINTING REPORT.
FEBRUARY 21, 1989	SECOND READING, DO PASS AS AMENDED.
FEBRUARY 22, 1989	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 94; NOES, 6.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 28, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
	FIRST READING.
MARCH 16, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 17, 1989	SECOND READING, CONCURRED IN.
MARCH 20, 1989	THIRD READING, CONCURRED IN. AYES, 46; NOES, 2.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 31, 1989	RECEIVED FROM SENATE.
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SECOND READING, AMENDMENTS NOT
CONCURRED IN.

APRIL 4, 1989

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 5, 1989

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 12, 1989

CONFERENCE COMMITTEE REPORTED.

APRIL 13, 1989

SECOND READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

APRIL 14, 1989

THIRD READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

IN THE SENATE

APRIL 14, 1989

CONFERENCE COMMITTEE
REPORT ADOPTED.

IN THE HOUSE

APRIL 21, 1989

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *House* BILL NO. *734*
 2 INTRODUCED BY *Thomas J. Brown*
 3 *J. Brown*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 5 INSURANCE AGENT LICENSING LAWS; DIRECTING THE CODE
 6 COMMISSIONER TO CHANGE ANY REFERENCE TO THE TERM "ENROLLMENT
 7 REPRESENTATIVE", "INSURANCE AGENT", OR "AGENT" TO "INSURANCE
 8 PRODUCER", TO CHANGE ANY REFERENCE TO THE TERM "SURPLUS
 9 LINES AGENT" OR "SURPLUS LINES INSURANCE AGENT" TO "SURPLUS
 10 LINES INSURANCE PRODUCER", AND TO CHANGE ANY REFERENCE TO
 11 THE TERM "TITLE AGENT" OR "TITLE INSURANCE AGENT" TO "TITLE
 12 INSURANCE PRODUCER" WHEREVER IT APPEARS IN THE MONTANA CODE
 13 ANNOTATED; PROHIBITING THE GRANT OR EXTENSION OF A
 14 CONTROLLED BUSINESS LICENSE; PROVIDING THAT MISAPPROPRIATION
 15 OF INSURANCE PREMIUMS OR RETURN PREMIUMS CONSTITUTES THEFT;
 16 ALLOWING THE COMMISSIONER TO REVOKE AN INSURANCE PRODUCER
 17 LICENSE FOR UP TO 5 YEARS; ALLOWING FOR THE AUTOMATIC
 18 SUSPENSION, REVOCATION, OR TERMINATION OF A NONRESIDENT
 19 INSURANCE PRODUCER LICENSE UPON SUSPENSION, REVOCATION, OR
 20 TERMINATION IN HIS STATE OF RESIDENCE; AMENDING SECTIONS
 21 33-1-402, 33-1-711, 33-2-303, 33-2-308, 33-2-309, 33-2-316,
 22 33-2-317, 33-2-708, 33-7-101, 33-8-213, 33-14-301, 33-17-101
 23 THROUGH 33-17-103, 33-17-201, 33-17-211 THROUGH 33-17-214,
 24 33-17-216, 33-17-217, 33-17-221, 33-17-301, 33-17-401,
 25 33-17-404 THROUGH 33-17-407, 33-17-411, 33-17-502 THROUGH

1 33-17-507, 33-17-511 THROUGH 33-17-513, 33-17-602 THROUGH
 2 33-17-604, 33-17-611, 33-17-613, 33-17-1001 THROUGH
 3 33-17-1004, 33-17-1101 THROUGH 33-17-1103, 33-17-1111
 4 THROUGH 33-17-1114, 33-18-401, 33-22-1703, 33-25-202,
 5 33-25-214, 33-25-301, 33-25-302, 33-25-401, AND 33-25-403,
 6 MCA; REPEALING SECTIONS 33-17-202, 33-17-204, 33-17-205,
 7 33-17-218, 33-17-231, 33-17-232, 33-17-402, 33-17-403,
 8 33-17-601, AND 33-17-1104, MCA; AND PROVIDING A DELAYED
 9 EFFECTIVE DATE."

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

12 NEW SECTION. **Section 1.** Name change -- short form
 13 amendment. Wherever it appears in 33-1-317, 33-1-403,
 14 33-1-711, 33-2-104, 33-2-120, 33-2-121, 33-2-302, 33-2-310,
 15 33-2-313, 33-2-315, 33-2-321, 33-2-701, 33-2-707, 33-2-709,
 16 33-2-723, 33-2-829, 33-2-1102, 33-2-1118, 33-2-1120,
 17 33-2-1306, 33-2-1310, 33-2-1322, 33-2-1331, 33-2-1333,
 18 33-2-1345 through 33-2-1347, 33-2-1353, 33-2-1362,
 19 33-2-1381, 33-3-206, 33-3-217, 33-4-103, 33-4-312, 33-4-511,
 20 33-5-104, 33-6-402, 33-6-403, 33-7-111, 33-7-519, 33-7-525,
 21 33-7-526, 33-8-118, 33-8-122, 33-8-204, 33-8-205, 33-8-211,
 22 33-8-221, 33-8-225 through 33-8-228, 33-10-106, 33-10-110,
 23 33-10-113, 33-10-207, 33-10-216, 33-11-104, 33-11-108,
 24 33-11-109, 33-11-123, 33-14-102, 33-14-201, 33-14-301,
 25 33-14-304, 33-14-307, 33-15-302, 33-15-1101, 33-15-1105,

1 33-16-106, 33-16-1011, 33-17-204 through 33-17-206,
 2 33-17-218, 33-17-231, 33-17-232, 33-17-401, 33-17-403,
 3 33-17-601, 33-18-205, 33-18-210 through 33-18-213,
 4 33-18-305, 33-18-501, 33-19-102 through 33-19-104, 33-19-201
 5 through 33-19-205, 33-19-301 through 33-19-306, 33-19-401,
 6 33-19-402, 33-19-404, 33-19-407 through 33-19-409,
 7 33-20-142, 33-20-212, 33-20-502, 33-20-1102, 33-22-122,
 8 33-22-204, 33-22-207, 33-22-208, 33-22-804, 33-22-805,
 9 33-22-813, 33-22-1515, 33-23-214 through 33-23-216,
 10 33-25-105, 33-25-106, 33-25-201, 33-25-202, 33-25-213,
 11 33-25-215, 33-25-216, 33-30-103, 33-30-105, 33-30-202,
 12 33-30-204, 33-30-305, 33-3-311 through 33-30-313, 33-31-102,
 13 33-31-211, 33-31-311, 33-31-401 or in law enacted by the
 14 51st legislature, the code commissioner is directed to
 15 change the term "enrollment representative", "enrollment
 16 representative's", "enrollment representatives", "enrollment
 17 representatives'", "insurance agent", "insurance agent's",
 18 "insurance agents", "insurance agents'", "agent", "agent's",
 19 "agents", or "agents'" to "insurance producer", "insurance
 20 producer's", "insurance producers", or "insurance
 21 producers'".

22 NEW SECTION. Section 2. Name change -- short form
 23 amendment. Wherever it appears in 33-1-711, 33-2-301 through
 24 33-2-303, 33-2-305 through 33-2-313, 33-2-321, 33-2-326,
 25 33-2-502, 33-2-706, 33-2-709, 33-8-225, 33-17-1104,

1 33-18-212 or in law enacted by the 51st legislature, the
 2 code commissioner is directed to change the term "surplus
 3 lines agent", "surplus lines agent's", "surplus lines
 4 agents", "surplus lines agents'", "surplus lines insurance
 5 agent", "surplus lines insurance agent's", "surplus lines
 6 insurance agents", or "surplus lines insurance agents'" to
 7 "surplus lines insurance producer", "surplus lines insurance
 8 producer's", "surplus lines insurance producers", or
 9 "surplus lines insurance producers'".

10 NEW SECTION. Section 3. Name change -- short form
 11 amendment. Wherever it appears in 33-2-851, 33-25-105,
 12 33-25-106, 33-25-201, 33-25-213, 33-25-216, 33-30-103 or in
 13 law enacted by the 51st legislature, the code commissioner
 14 is directed to change the term "title agent", "title
 15 agent's", "title agents", "title agents'", "title insurance
 16 agent", "title insurance agent's", "title insurance agents",
 17 or "title insurance agents'" to "title insurance producer",
 18 "title insurance producer's", "title insurance producers",
 19 or "title insurance producers'".

20 NEW SECTION. Section 4. Controlled business. (1) The
 21 commissioner may not grant or extend a license to a person
 22 if the license is being or will be used to write controlled
 23 business.

24 (2) The commissioner shall consider a license to have
 25 been, or intended to be, used for the purpose of writing

1 controlled business if, during any 12-month period, the
2 aggregate amount of premiums on controlled business would
3 exceed the aggregate amount of premiums on all other
4 insurance business of the applicant or licensee.

5 **Section 5.** Section 33-1-402, MCA, is amended to read:

6 "33-1-402. Examination of agents insurance producers,
7 managers, and promoters. For the purpose of ascertaining
8 compliance with this code, the commissioner may, as often as
9 he deems considers advisable, examine the accounts, records,
10 documents, and transactions pertaining to or affecting its
11 insurance affairs or proposed insurance affairs of:

12 (1) any an insurance agent producer, solicitor,
13 surplus lines agent insurance producer, general agent
14 insurance producer, or adjuster;

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

18 (3) any a person holding the shares of voting stock or
19 policyholder proxies of a domestic insurer, for the purpose
20 of controlling the management thereof of the domestic
21 insurer, as voting trustee or otherwise;

22 (4) any a person engaged in or proposing to be engaged
23 in or assisting in the promotion or formation of a domestic
24 insurer or insurance holding corporation or corporation to
25 finance a domestic insurer or the production of its

1 business."

2 **Section 6.** Section 33-1-711, MCA, is amended to read:

3 "33-1-711. Appeals from the commissioner. (1) An
4 appeal from the commissioner ~~shall~~ may be taken only from an
5 order on hearing or with respect to a matter as to which the
6 commissioner has refused a hearing. Any person who was a
7 party to ~~such the~~ the hearing or whose pecuniary interests are
8 directly and immediately affected by any ~~such~~ such order or
9 refusal and who is aggrieved ~~thereby by an order or~~ refusal
10 may, within 30 days after the order has been mailed or
11 delivered to the persons entitled to receive the same, the
12 commissioner's order denying rehearing or reargument has
13 been so mailed or delivered, or the commissioner's refusal
14 to grant a hearing, appeal from ~~such the~~ the order on hearing or
15 ~~such the~~ the refusal of a hearing. Any request for a stay of the
16 commissioner's order must be made within 60 days, to run
17 concurrently with the 30 days for appeal. The appeal ~~shall~~
18 must be taken to the district court of Lewis and Clark
19 County by filing written notice of appeal in ~~such the~~ the court
20 and by filing a copy of ~~such the~~ the notice with the
21 commissioner, except that in appeals from the suspension or
22 revocation of the certificate of authority of a domestic
23 insurer or of the license of an ~~agent, solicitor,~~ insurance
24 producer or surplus lines ~~agent insurance producer,~~ the
25 person taking the appeal may at his option, in lieu of the

1 district court of Lewis and Clark County, take the appeal to
2 the district court of the county of Montana in which the
3 insurer has its principal place of business or the licensee
4 resides.

5 (2) Upon filing of the notice of appeal therein, the
6 court ~~shall have~~ has full jurisdiction and shall determine
7 whether ~~such the~~ filing ~~shall operate~~ operates as a stay of
8 the order or action appealed from.

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

23 (4) Upon receipt of ~~such the~~ transcripts and evidence,
24 the court shall hear the matter de novo as soon as
25 reasonably possible thereafter. Upon the hearing of the

1 appeal, the court shall consider the evidence contained in
2 the transcript, exhibits, and documents ~~therein~~ filed by the
3 commissioner, together with ~~such~~ additional proper evidence
4 as may be offered by any party to the appeal.

5 (5) After hearing the appeal, the court may affirm,
6 modify, or reverse the order or action of the commissioner,
7 in whole or in part, or remand the action to the
8 commissioner for further proceedings in accordance with the
9 court's direction.

10 (6) Costs ~~shall~~ must be awarded as in civil actions.

11 (7) Appeal may be taken to the supreme court from the
12 judgment of the district court as in other civil cases to
13 which the state is a party. A stay of the effectiveness of
14 any ~~such~~ judgment may be made only by order of the supreme
15 court upon the giving of ~~such~~ security as that court ~~deems~~
16 considers proper.

17 (8) This section ~~shall~~ does not apply to appeals as to
18 matters covered by chapter 16."

19 **Section 7.** Section 33-2-303, MCA, is amended to read:

20 "33-2-303. Filing and endorsement of contract. Every
21 Each insurance contract, cover, note, or certificate of
22 insurance procured and delivered as surplus lines insurance
23 under this part ~~shall~~ must be filed with the commissioner
24 and endorsed as "issued in an unauthorized insurer under The
25 Surplus Lines Insurance Law, under agent surplus lines

insurance producer 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 producer shall properly fill in and sign the endorsement."

Section 8. 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 insurance producer shall promptly issue and deliver to the insured or the producing agent insurance producer 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 insurance producer. 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 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 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 agent insurance producer shall promptly issue and deliver to the insured a substitute cover note or certificate accurately showing the current status of the coverage and the insurers responsible thereunder under the coverage.

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

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

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

Section 9. Section 33-2-309, MCA, is amended to read:

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

between the insurer and the surplus lines agent insurance producer.

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

(3) Each unauthorized insurer assuming a surplus lines direct risk under The Surplus Lines Insurance Law is considered ~~thereby~~ to have subjected itself to the terms of this section."

Section 10. 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 organization of surplus lines insurance agents producers or others designed to assist ~~such--agents~~ surplus lines insurance producers to comply with such the law.

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

Section 11. Section 33-2-317, MCA, is amended to read:

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

(1) wet marine and transportation insurances;

(2) insurance on subjects located, resident residing, 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 engaged in interstate commerce; and

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

Section 12. Section 33-2-708, MCA, is amended to read:

"33-2-708. **Fees and licenses.** (1) The Except as provided in 33-17-212(2), 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 (1)(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 the~~ the 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 ..
..... 300.00

(iii) reinstatement of certificate of authority
..... 25.00

(iv) amendment of certificate of authority 50.00

(b) articles of incorporation:

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

(ii) filing amendment of articles of incorporation, domestic and foreign insurers, exclusive of fees required to

1 be paid to the secretary of state by a domestic corporation
 2 25.00
 3 (c) filing bylaws or amendment thereto to bylaws where
 4 required 10.00
 5 (d) filing annual statement of insurer, other than as
 6 part of application for original certificate of authority ..
 7 25.00
 8 (e) resident agent's insurance producer's license:
 9 (i) application for original license, including
 10 issuance of license, if issued ~~{life-and/or-disability}~~
 11 15.00
 12 (ii) ~~application--for--original--license,--including~~
 13 ~~issuance--of--license,--if--issued--{other--than-life-and/or~~
 14 ~~disability}~~-----15.00
 15 ~~{iii}-appointment-of-agent,-each-insurer-----10.00~~
 16 ~~{iv} annual renewal,-each-insurer of license .. 10.00~~
 1715.00
 18 ~~{v}{iii} temporary license 10.00 15.00~~
 19 ~~{vi}{iv} amendment of license (excluding additions~~
 20 ~~thereto to license) or reissuance of master license~~
 21 10.00 15.00
 22 (f) nonresident agent's insurance producer's license:
 23 (i) application for original license, including
 24 issuance of license, if issued ~~{life-and/or-disability}~~
 25 100.00

1 (ii) ~~application--for--original--license,--including~~
 2 ~~issuance-of-license,--if--issued--{other--than-life-and/or~~
 3 ~~disability}~~-----10.00
 4 ~~{iii}-appointment-of-agent,-each-insurer-----10.00~~
 5 ~~{iv} annual renewal,-each-insurer of license .. 10.00~~
 6100.00
 7 ~~{v}{iii} amendment of license (excluding additions~~
 8 ~~thereto to license) or reissuance of master license 10.00~~
 9 (g) ~~solicitor's license:~~
 10 ~~{i}-application--for--original--license,--including~~
 11 ~~issuance-of-license,--if--issued-----15.00~~
 12 ~~{ii}-annual-renewal-of-license-----15.00~~
 13 ~~{iii}-appointment-of-solicitor-----10.00~~
 14 ~~{h} examination for license as agent--or-solicitor~~
 15 ~~insurance producer, each examination 15.00~~
 16 ~~{i}{h} surplus lines agent insurance producer license:~~
 17 (i) application for original license and for issuance
 18 of license, if issued 50.00
 19 (ii) annual renewal of license 50.00
 20 ~~{j}{i} adjuster's license:~~
 21 (i) application for original license and for issuance
 22 of license, if issued 15.00
 23 (ii) annual renewal of license 15.00
 24 ~~{k}{j} insurance vending machine license, each~~
 25 machine, each year 10.00

1 ~~the~~(k) commissioner's certificate under seal (except
 2 when on certificates of authority or licenses) 10.00
 3 ~~the~~(l) copies of documents on file in the
 4 commissioner's office, per page50
 5 ~~the~~(m) policy forms:
 6 (i) filing each policy form 25.00
 7 (ii) filing each application, rider, endorsement,
 8 amendment, insert page, schedule of rates, and clarification
 9 of risks 10.00
 10 (iii) maximum charge if policy and all forms submitted
 11 at one time or resubmitted for approval within 180 days
 12 100.00
 13 (2) The commissioner shall promptly deposit with the
 14 state treasurer to the credit of the general fund of this
 15 state all fines and penalties, those amounts received
 16 pursuant to 33-2-311, 33-2-705, and 33-2-706, and any fees
 17 and examination and miscellaneous charges received pursuant
 18 to Title 33, chapter 11, part 1, that are collected by him
 19 pursuant to Title 33 and the rules adopted ~~thereunder~~ under
 20 Title 33.
 21 (3) All fees are considered fully earned when
 22 received. In the event of overpayment, only those amounts in
 23 excess of \$10 will be refunded.
 24 (4) All fees and examination and miscellaneous
 25 charges, except fines or penalties or those amounts received

1 pursuant to 33-2-311, 33-2-705, or 33-2-706, collected by
 2 the commissioner pursuant to Title 33 and the rules adopted
 3 thereunder under Title 33 must be deposited in the insurance
 4 regulatory trust account pursuant to 17-2-121 through
 5 17-2-123."

6 **Section 13.** Section 33-7-101, MCA, is amended to read:
 7 "33-7-101. **Scope of chapter -- provisions applicable.**
 8 (1) Except as ~~herein~~ provided in this section, societies
 9 ~~shall--be~~ are governed by this chapter and ~~shall--be~~ are
 10 exempt from all other provisions of the insurance laws of
 11 this state, not only in governmental relations with the
 12 state but for every other purpose. No law hereafter enacted
 13 ~~shall--apply~~ applies to ~~them~~ societies unless they ~~be~~ are
 14 expressly designated ~~therein~~ in the law.

15 (2) In addition to the provisions contained in this
 16 chapter, other chapters and provisions of this title ~~shall~~
 17 apply to fraternal benefit societies to the extent
 18 applicable and not in conflict with the express provisions
 19 of this chapter and the reasonable implications ~~thereof~~ of
 20 this chapter, as follows: parts 1, 2, 3, through 4, and 7 of
 21 chapter 1; 33-2-104; 33-2-107; 33-2-112; chapter 2, part 13;
 22 33-3-308; 33-15-502; chapter 17; chapter 18; chapter 20; and
 23 chapter 22."

24 **Section 14.** Section 33-8-213, MCA, is amended to read:
 25 "33-8-213. (Temporary) Exemption from agent insurance

1 producer appointment requirements. (1) For purposes of the
2 plan:

3 (a) an insurer that has entered into an agreement as
4 provided in 33-8-212 may accept applications for insurance
5 coverage from any agent insurance producer even though that
6 agent insurance producer has not been appointed by the
7 insurer; and

8 (b) an agent insurance producer may place business, as
9 to any type of insurance for which he is licensed at the
10 time, with any insurer participating in the plan even though
11 the agent insurance producer has not been appointed as an
12 agent insurance producer by that insurer.

13 ~~{2}--An--insurer--that--issues--insurance--coverage--upon--an~~
14 ~~application--submitted--by--an--agent--who--has--not--been--appointed~~
15 ~~by--the--insurer--shall--pay--the--agent--a--commission---in~~
16 ~~conformity--with--the--insurer's--filed--rates--rating--plans--or~~
17 ~~forms--for--the--kind--of--insurance--effected--~~

18 {3}{2} An agent insurance producer who countersigns a
19 policy, when a countersignature is required by 33-17-1111,
20 shall must be paid a countersignature commission as provided
21 in 33-17-1113. (Terminates July 1, 1989--sec. 22, Ch. 11,
22 Sp. L. March 1986.)"

23 **Section 15.** Section 33-17-101, MCA, is amended to
24 read:

25 "33-17-101. Scope of chapter. (1) The purpose of this

1 chapter is to govern the qualifications and procedures for
2 licensing insurance producers.

3 {2} This chapter ~~shall apply as~~ applies to all stock,
4 mutual, and reciprocal insurers and ~~as~~ to all kinds of
5 insurance and annuities."

6 **Section 16.** Section 33-17-102, MCA, is amended to
7 read:

8 "33-17-102. **Definitions.** As used in this title, the
9 following definitions apply:

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

17 (a) licensed attorney who is qualified to practice law
18 in this state; or

19 (b) salaried employee of an insurer or of a managing
20 general agent; or

21 {c} a licensed agent insurance producer who adjusts or
22 assists in adjustment of losses arising under policies
23 issued by the insurer.

24 ~~{2}--A--"public-adjuster"--is--an--adjuster--employed--by--and~~
25 ~~representing--the--interests--of--the--insured--The--commissioner~~

1 may-adopt-rules-providing-for--the--examination,--licensure,
2 bonding,--and-regulation-of-public-adjusters.

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

8 (2) "Adjuster license" means a document issued by the
9 commissioner that authorizes a person to act as an adjuster.

10 (3) (a) "Administrator" means a person who collects
11 charges or premiums from residents of this state in
12 connection with life, disability, property, or casualty
13 insurance or annuities or who adjusts or settles claims on
14 such coverage.

15 (b) The term does not mean:

16 (i) an employer on behalf of its employees or on
17 behalf of the employees of one or more subsidiaries of
18 affiliated corporations of the employer;

19 (ii) a union on behalf of its members;

20 (iii) (A) an insurer that is either authorized in this
21 state or acting as an insurer with respect to a policy
22 lawfully issued and delivered by it in and pursuant to the
23 laws of a state in which the insurer is authorized to
24 transact insurance; or

25 (B) a health service corporation as defined in

1 33-30-101;

2 (iv) a life, disability, property, or casualty
3 insurance producer who is licensed in this state and whose
4 activities are limited exclusively to the sale of insurance;

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

8 (vi) a trust established in conformity with 29 U.S.C.
9 186 or the trustees, agents, and employees of the trust;

10 (vii) a trust exempt from taxation under section 501(a)
11 of the Internal Revenue Code or the trustees and employees
12 of the trust;

13 (viii) a custodian acting pursuant to a custodian
14 account that meets the requirements of section 401(f) of the
15 Internal Revenue Code or the agents and employees of the
16 custodian;

17 (ix) a bank, credit union, or other financial
18 institution that is subject to supervision or examination by
19 federal or state banking authorities;

20 (x) a company that issues credit cards and that
21 advances for and collects premiums or charges from its
22 credit card holders who have authorized it to do so, if the
23 company does not adjust or settle claims; or

24 (xi) a person who adjusts or settles claims in the
25 normal course of his practice or employment as an attorney

1 and who does not collect charges or premiums in connection
2 with life or disability insurance or annuities.

3 (4) "Administrator license" means a document issued by
4 the commissioner that authorizes a person to act as an
5 administrator.

6 {4}(5) A--"consultant"--is "Consultant" means a person
7 who for a fee examines, appraises, reviews, or evaluates an
8 insurance policy, annuity, or pension contract, plan, or
9 program or who makes recommendations or gives advice on an
10 insurance policy, annuity, or pension contract, plan, or
11 program.

12 {5)--A--"solicitor"--is--an--individual--appointed--and
13 authorized---by---an---agent--to--solicit--applications--for
14 insurance;--other--than---life---insurance---or---disability
15 insurance;--as--a--representative--of--such--agent;--and--to--collect
16 premiums---thereon--when--expressly--so--authorized--by--the--agent;

17 {6)--A--"managing--general--agent"--is--an--individual;
18 partnership;--or--corporation--appointed--as--an--independent
19 contractor--by--one--or--more--insurers--for--the--principal--purpose
20 of--exercising--general--supervision--over--the--business--of--the
21 insurer--in--this--state;--including--the--authority--to--appoint
22 agents--for--such--insurers--and--to--terminate--such--appointments;

23 (6) "Consultant license" means a document issued by
24 the commissioner that authorizes a person to act as an
25 insurance consultant.

1 (7) "Controlled business" means insurance procured or
2 to be procured by or through a person upon the life, person,
3 property, or risks of himself, his spouse, his employer, or
4 his business.

5 (8) "Individual" means a private or natural person, as
6 distinguished from a partnership, corporation, or
7 association.

8 (9) "Insurance producer", except as provided in
9 33-17-103:

10 (a) means:

11 (i) a person who solicits, negotiates, effects,
12 procures, delivers, renews, continues, or binds:

13 (A) policies of insurance for risks residing, located,
14 or to be performed in this state; or

15 (B) membership contracts as defined in 33-30-101;

16 (ii) a managing general agent. For purposes of this
17 definition, a "managing general agent" is a person who, on
18 behalf of an insurer, exercises general supervision over the
19 business of the insurer in this state, including the
20 authority to contract with an insurance producer for the
21 insurer and terminate those contracts.

22 (b) does not mean a customer service representative.
23 For purposes of this definition, a "customer service
24 representative" means a salaried employee or an insurance
25 producer who assists and is responsible to the insurance

producer but who is not authorized to effect policies of insurance.

(10) "License" means a document issued by the commissioner that authorizes a person to act as an insurance producer for the kinds of insurance specified in the document. The license itself does not create actual, apparent, or inherent authority in the holder to represent or commit an insurer to a binding agreement.

(11) "Person" means an individual, partnership, corporation, association, or other legal entity.

(12) "Public adjuster" means an adjuster employed by and representing the interests of the insured."

Section 17. Section 33-17-103, MCA, is amended to read:

"33-17-103. Exceptions and exemptions from definition of agent, managing general agent, and solicitor insurance producer. The definitions definition of agent, managing general agent, and solicitor insurance producer contained in 33-17-102 shall does not be considered to include:

(1) individuals employed and used by agents for the performance of clerical, stenographic, and similar office duties. Incidental taking of an application for insurance from time to time in the office of the employing agent shall not constitute such an employee as an agent or solicitor if the employee's compensation is not contingent upon or

relating to the volume of such applications, insurance, or premiums;

(2) a supervising salaried officer, supervising salaried employee, or other person or entity controlled by an insurer and compensated strictly on a salary basis by the insurer, who solicits only with or in conjunction with duly licensed agents of the insurer;

(3) the attorney in fact of a reciprocal insurer or the salaried traveling representative of a reciprocal mutual insurer not compensated on a commission basis;

(4) a person who secures and forwards information for the purpose of an existing group insurance contract or for enrolling individuals under an existing group insurance contract or issuing certificates thereunder where no commission is paid for such services;

(1) a person who is a regularly salaried officer or employee of an insurer and who is engaged in the performance of usual and customary executive, administrative, or clerical duties and whose duties do not include the negotiation or solicitation of insurance;

(2) a person who is a salaried employee in the office of an insurance producer and who devotes his full time to clerical and administrative services, including the incidental taking of insurance applications and receipt of premiums in the office of his employer, if the employee does

1 not receive any commissions on the applications and his
 2 compensation is not varied by the volume of applications or
 3 premiums he takes or receives;

4 (3) a person who secures and furnishes information for
 5 the purpose of group life insurance, annuities, group or
 6 blanket accident and disability insurance or for the purpose
 7 of enrolling individuals under such plans, issuing
 8 certificates under such plans, or otherwise assisting in
 9 administering such plans, if no commission is paid for the
 10 service;

11 (4) an employer, his officers, or employees or the
 12 trustees of an employee trust plan, to the extent that the
 13 employer, officers, employees, or trustees are engaged in
 14 the administration of operation of a program of employee
 15 benefits for their own employees or the employees of their
 16 subsidiaries or affiliates if the program involves the use
 17 of insurance issued by an insurer and the employer,
 18 officers, employees, or trustees are not compensated in any
 19 manner, directly or indirectly, by the insurer issuing the
 20 contracts; or

21 (5) a person who is:

22 (a) an employee of an insurer or of an organization
 23 employed by an insurer, which insurer or organization is
 24 engaged in the inspection, rating, or classification of
 25 insurance risks or in the supervision of the training of

1 insurance producers; and

2 (b) not individually engaged in the solicitation or
 3 negotiation of insurance policies and contracts."

4 **Section 18.** Section 33-17-201, MCA, is amended to
 5 read:

6 "33-17-201. (Temporary) License required of agents,
 7 managing-general-agents-and-solicitors insurance producer
 8 -- forms. (1) No Except as provided in 33-17-103 and
 9 subsection (5) of this section, a person shall may not in
 10 this state act as or hold himself out to be an agent-or
 11 solicitor-as-to insurance producer for subjects of insurance
 12 located, resident residing, or to be performed in this state
 13 unless then licensed as such-agent-or-solicitor an insurance
 14 producer under this chapter.

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

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

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

~~as--to--life-or-disability-insurance-agents-and-in-33-8-213-~~

{5}(2) 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 a license.

{6}(3) Unless licensed as a life insurance agent producer as required by this section, ~~no a person shall may~~ not in this state solicit life insurance or annuities or procure applications therefor for life insurance or annuities 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~~ 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 the~~ the employer, subsidiaries, or affiliates under group insurance or similar insurance plans arranged by the employer or employers of ~~such the~~ the employees.

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

(5) A representative of a fraternal benefit society who solicits and negotiates insurance contracts is an insurance producer and is subject to the same licensing requirements as those for an insurance producer, except that a license is not required of:

(a) an officer, employee, or secretary of a fraternal benefit society or of a subordinate lodge or branch of a fraternal benefit society who devotes substantially all of his time to activities other than the solicitation or negotiation of insurance contracts and who receives no commission or other compensation directly dependent upon that number or amount of insurance contracts solicited or negotiated; or

(b) a representative of a fraternal benefit society who devotes or intends to devote less than 50% of his time to the solicitation and procurement of insurance contracts for the fraternal benefit society. A person who in the preceding calendar year has solicited and procured life insurance with a face amount in excess of \$50,000 or, in the case of any other kind or kinds of insurance that the fraternal benefit society may write, on more than 25 individuals and who has received or will receive a commission or other compensation for the insurance is presumed to be devoting or intending to devote 50% of his time to the solicitation or procurement of insurance

1 contracts for the fraternal benefit society. (Terminates
2 July 1, 1989--sec. 22, Ch. 11, Sp. L. March 1986.)

3 33-17-201. (Effective July 1, 1989) License required
4 of ~~agents, managing-general-agents, and-solicitors~~ insurance
5 producer -- forms. (1) No A person shall may not in this
6 state act as or hold himself out to be an ~~agent-or-solicitor~~
7 as-to insurance producer for subjects of insurance located,
8 resident residing, or to be performed in this state unless
9 then licensed as ~~such-agent-or-solicitor~~ an insurance
10 producer under this chapter.

11 ~~{2}--No-person-may-act-or-hold-himself-out-in-this~~
12 ~~state-to-be-a-managing-general-agent-unless-licensed-as-an~~
13 ~~insurance-agent-under-this-chapter-and-appointed-by-the~~
14 ~~insurers-represented.~~

15 ~~{3}--No-agent-or-solicitor-shall-solicit-or-take~~
16 ~~application-for,--procure,--or-place-for-others-any-kind-of~~
17 ~~insurance-as-to-which-he-is-not-then-licensed.~~

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

23 {5}{2} The commissioner may prescribe by rule and make
24 available the forms required in connection with application
25 for, issuance, continuation, or termination of ~~licenses-and~~

1 appointments a license.

2 ~~{6}{3}~~ Unless licensed as a life insurance agent
3 producer as required by this section, ~~no a person shall may~~
4 not in this state solicit life insurance or annuities or
5 procure applications ~~therefor~~ for life insurance or
6 annuities or engage or hold himself out as engaging in the
7 business of analyzing or abstracting life insurance policies
8 or annuities or of counseling or advising or giving
9 opinions, other than as a licensed attorney, relative to
10 ~~such~~ insurance or annuities for fee, commission, or other
11 compensation, other than as a salaried bona-fide full-time
12 employee ~~so~~ counseling and advising his employer relative to
13 the insurance interests of the employer and of the
14 subsidiaries or business affiliates of the employer or with
15 respect to the insurance interests of employees of ~~such the~~
16 employer, subsidiaries, or affiliates under group insurance
17 or similar insurance plans arranged by the employer or
18 employers of ~~such the~~ employees.

19 ~~{7}{4}~~ A person licensed to sell coverage only for the
20 all-risk federal crop insurance program shall receive a
21 license restricted to that purpose.

22 (5) A representative of a fraternal benefit society
23 who solicits and negotiates insurance contracts is an
24 insurance producer and is subject to the same licensing
25 requirements as those for an insurance producer, except that

1 a license is not required of:

2 (a) an officer, employee, or secretary of a fraternal
 3 benefit society or of a subordinate lodge or branch of a
 4 fraternal benefit society who devotes substantially all of
 5 his time to activities other than the solicitation or
 6 negotiation of insurance contracts and who receives no
 7 commission or other compensation directly dependent upon
 8 that number or amount of insurance contracts solicited or
 9 negotiated; or

10 (b) a representative of a fraternal benefit society
 11 who devotes or intends to devote less than 50% of his time
 12 to the solicitation and procurement of insurance contracts
 13 for the fraternal benefit society. A person who in the
 14 preceding calendar year has solicited and procured life
 15 insurance with a face amount in excess of \$50,000 or, in the
 16 case of any other kind or kinds of insurance that the
 17 fraternal benefit society may write, on more than 25
 18 individuals and who has received or will receive a
 19 commission or other compensation for the insurance is
 20 presumed to be devoting or intending to devote, 50% of his
 21 time to the solicitation or procurement of insurance
 22 contracts for the fraternal benefit society."

23 **Section 19.** Section 33-17-211, MCA, is amended to
 24 read:

25 "33-17-211. Application General qualifications --

1 application for license. (1)-Application--for--an--agent--or
 2 solicitor--license--must--be--made--to--the--commissioner--by--the
 3 applicant--and--be--signed--and--sworn--to--by--the--applicant--before
 4 a--notary--public;

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

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

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

22 (5)--if--the--applicant--for--an--agent--license--is--a
 23 partnership or corporation, the application shall--show--in
 24 addition,--the names of all members, officers, and directors
 25 and shall designate each individual who is to--exercise--the

1 powers--to--be--conferred--by--the--license--upon--the--partnership
2 or--corporation;--Each--such--individual--so--designated--shall
3 furnish--information--as--to--himself;--as--part--of--the
4 application;--as--though--for--an--individual--license;

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

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

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

1 agent--has--investigated--the--character--and--business--record--of
2 the--applicant--and--the--uses--to--be--made--of--the--license;--if
3 granted;--and--his--opinion;--based--on--such--investigation;--as--to
4 applicant's--trustworthiness--and--competence;

5 (9)--All--such--applications--must--be--accompanied--by--the
6 applicable--license--fee;--appointment--of--agent--fee--where
7 applicable;--and--examination--fee--where--an--examination--is
8 required--under--33-17-212;--all--in--the--respective--amounts
9 stated--in--33-2-700: (1) An individual applying for a
10 license shall apply on a form specified by the commissioner
11 and declare under penalty of refusal, suspension, or
12 revocation of the license that statements made in the
13 application are true, correct, and complete to the best of
14 the individual's knowledge and belief. Before approving the
15 application, the commissioner shall verify that the
16 individual:

17 (a) is 18 years of age or older;

18 (b) has not committed an act that is a ground for
19 refusal, suspension, or revocation set forth in 33-17-1001;

20 (c) has paid the license fees stated in 33-2-708;

21 (d) has successfully passed the examinations for each
22 kind of insurance for which the individual has applied;

23 (e) is a resident of this state or of another state
24 that grants similar privileges to residents of this state;

25 (f) is competent, trustworthy, and of good reputation;

(g) has experience or training or otherwise is qualified in the kind or kinds of insurance for which he applies to be licensed and is reasonably familiar with the provisions of this code which govern his operations as an insurance producer; and

(h) if applying for a license as to life or disability insurance:

(i) is not a funeral director, undertaker, or mortician operating in this or any other state;

(ii) is not an officer, employee, or representative of a funeral director, undertaker, or mortician operating in this or any other state; or

(iii) does not hold an interest in or benefit from a business of a funeral director, undertaker, or mortician operating in this or any other state.

(2) A person acting as an insurance producer shall obtain a license. A person shall apply for a license on a form specified by the commissioner. Before approving the application, the commissioner shall verify that:

(a) the person meets the requirements listed in subsection (1);

(b) the person has paid the licensing fees stated in 33-2-708 for each individual licensed in conjunction with the person's license. A licensed person shall promptly notify the commissioner of each change relating to an

individual listed in the license.

(c) the person has designated a licensed officer responsible for compliance by the person with the insurance laws and rules of this state;

(d) each member and employee of a partnership and each officer, director, stockholder, or employee of a corporation who is acting as an insurance producer in this state has obtained a license;

(e) (i) if the person is a partnership or corporation, the transaction of insurance business is within the purposes stated in the partnership agreement or the articles of incorporation; and

(ii) if the person is a corporation, the secretary of state has issued a certificate of incorporation under 35-1-203 or 35-2-203.

(3) The commissioner may license as a resident insurance producer an association of licensed Montana insurance producers, whether or not incorporated, formed and existing substantially for purposes other than insurance. The license must be used solely for the purpose of enabling the association to place, as a resident insurance producer, insurance of the properties, interests, and risks of the state of Montana and of other public agencies, bodies, and institutions and to receive the customary commission for the placement. The president and secretary of the association

1 shall apply for the license in the name of the association,
 2 and the commissioner shall issue the license to the
 3 association in its name alone. The fee for the license is
 4 the same as that required by 33-2-708 for the license of an
 5 insurance producer. The commissioner may, after a hearing
 6 with notice to the association, revoke the license if he
 7 finds that continuation of the license is not in the public
 8 interest or that a ground listed in 33-17-1001 exists.

9 (4) An insurance producer using an assumed business
 10 name shall register the name with the commissioner before
 11 using it."

12 **Section 20.** Section 33-17-212, MCA, is amended to
 13 read:

14 "33-17-212. Examination required -- exceptions --
 15 fees. {1}-After-completion-and-filing-of-the-application-for
 16 license--as-required-under-33-17-211,-the-commissioner-shall
 17 subject-each-applicant-for-license-as--agent--or--solicitor,
 18 unless--exempted-therefrom-under-subsection-(5)-below,-to-an
 19 examination-as-to-his-competence-to-act--as--such--agent--or
 20 solicitor.---The---commissioner---may---either---conduct---the
 21 examination-or-arrange-for-the-examination-to-be--conducted
 22 by--a--testing--service,-which-shall-recover-the-cost-of-the
 23 examination-from-the-applicant. (1) Except as provided in
 24 subsection (7), an individual applying for a license shall
 25 pass a written examination. The examination must test the

1 knowledge of the individual concerning each kind of
 2 insurance listed in subsection (6) for which application is
 3 made, the duties and responsibilities of an insurance
 4 producer, and the insurance laws and rules of this state.
 5 The examination must be developed and conducted under rules
 6 adopted by the commissioner.

7 (2) The commissioner may conduct the examination or
 8 make arrangements, including contracting with an outside
 9 testing service, for administering the examination and
 10 collecting the fees required by 33-2-708. The commissioner
 11 may arrange for the testing service to recover the cost of
 12 the examination from the applicant.

13 (3) Each individual applying for an examination shall
 14 remit the fees required by 33-2-708.

15 (4) An individual who fails to appear for the
 16 examination as scheduled or fails to pass the examination
 17 may reapply for an examination and shall remit all required
 18 fees and forms before being rescheduled for another
 19 examination.

20 {2}(5) If the applicant is a partnership or
 21 corporation, the--examination--shall--be--so--taken-by each
 22 individual who is to be named in the license as having
 23 authority to act for the applicant in its insurance
 24 transactions under the license shall take the examination.

25 {3}(6) Examination of an applicant for an-agent's a

1 license ~~shall~~ must cover all of the kinds of insurance for
2 which the applicant has applied to be licensed, as
3 constituted by any one or more of the following
4 classifications:

5 (a) life insurance;
6 (b) disability insurance;
7 (c) property insurance; for For the purposes of this
8 provision, "marine" property insurance ~~shall-be-deemed-to-be~~
9 included-in-"property" includes marine insurance.

10 (d) casualty insurance;
11 ~~{e}--vehicle-insurance;~~
12 ~~{f}{e}~~ surety insurance;
13 ~~{g}{f}~~ credit life and disability insurance;
14 ~~{h}{g}~~ title insurance.

15 ~~{4}--Examination-of-an-applicant-for-a-solicitor's~~
16 ~~license--shall--cover-all-the-kinds-of-insurance, other than~~
17 ~~life, as to which the appointing agent is licensed.~~

18 ~~{5}{7}~~ This section ~~shall~~ does not apply to, and no
19 such an examination ~~shall-be~~ is not required of:

20 (a) any an individual lawfully licensed as an agent or
21 solicitor insurance producer as to the kind or kinds of
22 insurance to be transacted as of or immediately prior to
23 January 1, 1961, and thereafter continuing to be so
24 licensed;

25 (b) any an applicant for license covering the same

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

10 (c) any an applicant for license as nonresident agent,
11 ~~subject--to--reciprocal-arrangements-as-provided-for-in-this~~
12 code insurance producer;

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

18 ~~{e}{d}~~ any an applicant for ~~an-agent's~~ a license to
19 sell all-risk federal crop insurance if the applicant
20 provides certification from an appropriate governmental
21 agency to the commissioner that he is qualified to sell ~~such~~
22 the insurance;

23 ~~{f}{e}~~ transportation ticket agents of common carriers
24 applying for license to solicit and sell only:

25 (i) accident insurance ticket policies; or

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

~~(g)(f)~~ agents' associations an association applying for license under ~~33-17-205~~ 33-17-211;

~~(h)(g)~~ a mechanical breakdown insurance agents producer.

(h) an individual who, within 60 days of cancellation of a license issued by the state of the individual's residence, files with the commissioner a current letter of clearance certifying that the individual has passed an examination and held an insurance license in good standing in the individual's state of licensure, except that the individual shall take an examination pertaining to this state's law and each kind of insurance for which the individual has applied for a license and which is not covered under the license held in the other state."

Section 21. Section 33-17-213, MCA, is amended to read:

"33-17-213. Conduct of examinations. (1) The commissioner shall make any examination required under 33-17-212 available to applicants with reasonable frequency and at places in this state reasonably accessible to the applicants.

~~(2)--All the kinds of insurance or classes thereof,--as~~

~~referred to in 33-17-212(3), which the applicant proposes to transact--under the license applied for--shall be included in the same examination;~~

~~(3)(2)~~ The commissioner shall assure that the examinations are conducted in a fair and impartial manner and without unfair discrimination as between individuals examined.

~~(4)(3)~~ The commissioner may require a reasonable waiting period before reexamination of an applicant who has failed to pass a previous examination covering the same kind or kinds of insurance.

~~(5)(4)~~ The examination of a title agent insurance producer, as defined in 33-25-105, must include but is not limited to questions pertaining to the search and examination of title to real property, insurance principles relating to title insurance, and the fiduciary duties and procedures of escrows, settlements, and closings of real estate transactions."

Section 22. Section 33-17-214, MCA, is amended to read:

"33-17-214. Issuance of license -- contents. (1) The commissioner shall promptly issue the a license ~~applied for to the a person qualified therefor in accordance--with--this chapter pursuant to 33-17-211 and 33-17-212. There is a license for life or--disability--insurance--and--a--separate~~

1 ~~license---for---kinds---of---insurance---other---than---life---or~~
2 ~~disability-~~

3 (2) The license ~~shall~~ must state the name and address
4 of the licensee, personal identification number, date of
5 ~~issue~~ issuance, general conditions relative to expiration or
6 termination, kind of insurance covered, and such other
7 information as the commissioner considers proper necessary.

8 (3) The license of a partnership, or corporation,
9 ~~shall~~ or association must also state the name of each
10 individual authorized to exercise the license powers.

11 ~~(4)---The---license---of---a---solicitor---shall---state---the---name~~
12 ~~and---address---of---the---agent---to---be---represented-~~

13 (4) Each license remains in effect, unless suspended
14 or revoked, as long as the fees required by 33-2-708 are
15 paid.

16 (5) An individual who allows his license to lapse may,
17 within 12 months from the due date of the unpaid annual fee,
18 apply for the same license without having to pass a written
19 examination if he pays a penalty in the amount of twice the
20 unpaid annual fee.

21 (6) A person shall inform the commissioner in writing
22 of a change of address within 30 days of the change."

23 **Section 23.** Section 33-17-216, MCA, is amended to
24 read:

25 "33-17-216. Temporary agent----~~licenses~~ insurance

1 producer license -- fee. (1) The commissioner may issue a
2 temporary license ~~as--agent~~ to or with respect to an
3 individual qualified ~~therefor~~ for the temporary license only
4 as to age, residence, and trustworthiness and without
5 requiring ~~such the~~ individual to take an examination, in the
6 following cases:

7 (a) to the surviving spouse or next of kin or to the
8 administrator or executor, or the employee of ~~such the~~
9 administrator or executor, of a licensed agent insurance
10 producer upon ~~such-agent's the insurance producer's~~ death;

11 (b) to the spouse, next of kin, employee, or legal
12 guardian of a licensed agent insurance producer disabled by
13 injury or physical or mental illness;

14 (c) to an employee of a firm partnership, or officer
15 or employee of a corporation, licensed as agent an insurance
16 producer, upon the death or disability of an individual
17 designated in the license to exercise the powers ~~thereof~~ of
18 an insurance producer;

19 (d) to the designee of a licensed agent insurance
20 producer entering upon active service in the armed forces of
21 the United States of America;

22 (e) in any other circumstance in which the
23 commissioner finds that the public interest will best be
24 served by issuing such a license.

25 (2) The temporary license ~~shall~~ must be issued upon

1 application filed with the commissioner in such the form and
 2 containing such the information as the commissioner may
 3 reasonably require and upon payment of the applicable fee as
 4 stated provided in 33-2-708.

5 (3) The temporary license ~~shall~~ must be for a period
 6 of not over 90 days, subject to extension by the
 7 commissioner in his discretion for an additional period of
 8 not more than 90 days, except that such a temporary license
 9 issued pursuant to subsection (1)(a) may be continued
 10 without payment of an additional fee until the executor or
 11 administrator disposes of the insurance business, but not to
 12 exceed a period of 15 months. A temporary license issued to
 13 the next of kin under such subsection (1)(a) may not be
 14 extended for an additional term after the appointment and
 15 qualification of ~~such-an~~ the administrator or executor.

16 (4) The fee paid for the temporary license may be
 17 applied upon the fee required for a permanent license issued
 18 to the licensee upon or prior to expiration of the temporary
 19 license and covering the same kinds of insurance."

20 **Section 24.** Section 33-17-217, MCA, is amended to
 21 read:

22 "**33-17-217. Limitations and rights under temporary**
 23 **license.** (1) The commissioner ~~shall~~ may not issue more than
 24 one temporary license, to or with respect to the same
 25 individual to be ~~so~~ licensed, within any 12-month period.

1 (2) The temporary license may cover the same kinds of
 2 insurance for which the ~~agent-thereby~~ insurance producer
 3 being replaced was licensed.

4 (3) As to a temporary ~~agent's~~ insurance producer's
 5 license issued on account of the death or disability of an
 6 ~~agent~~ insurance producer, the licensee may ~~so~~ represent all
 7 of the insurers last represented by such the deceased or
 8 disabled ~~agent-and-without-the-making-of-new-appointment--of~~
 9 ~~such--licensee--by-such-insurers~~ insurance producer, but the
 10 licensee ~~shall~~ may not be ~~appointed--as--to--any--additional~~
 11 ~~insurer--or~~ licensed for an additional kind of insurance
 12 under ~~such-a~~ the temporary license. ~~This-provision-shall-not~~
 13 ~~be-deemed-to-prohibit-termination-of-its-appointment-by--any~~
 14 ~~insurer.~~

15 (4) A temporary licensee ~~shall--have~~ has the same
 16 license powers and duties as under a permanent license."

17 **Section 25.** Section 33-17-221, MCA, is amended to
 18 read:

19 "**33-17-221. Licensing insurance vending machines as**
 20 **solicitors.** (1) A licensed resident ~~agent~~ insurance producer
 21 may solicit applications for and issue policies of personal
 22 travel accident insurance by means of mechanical vending
 23 machine machines supervised by him and placed at airports,
 24 railroad stations, bus stations, and similar places where
 25 transportation tickets are sold and of convenience to the

traveling public, if the commissioner finds that:

(a) the policy to be sold provides reasonable coverage and benefits, is reasonably suited for sale and issuance through a mechanical vending machines machine, and use of such a mechanical vending machine therefor to sell or issue a policy in a particular proposed location would be of material convenience to the public;

(b) the type of mechanical vending machine proposed to be used is reasonably suitable and practical for the purpose;

(c) reasonable means are provided for informing the prospective purchaser of any such policy of the coverage and restrictions of the policy; and

(d) reasonable means are provided for refund to the applicant or prospective applicant of money inserted in a defective machines mechanical vending machine and for which no insurance or a less amount than that paid for is actually received.

(2) As to each such mechanical vending machine to be so used to sell or issue a policy, the commissioner shall issue to the agent insurance producer a special mechanical vending machine license. The license shall must specify the name and address of the insurer and agent insurance producer, the name of the policy to be so sold or issued through the mechanical vending machine, the serial number of

the mechanical vending machine, and the place where the machine is--to--be--in--operation will operate. The license shall-be is subject to annual continuation, expiration, suspension, or revocation coincidentally with that of the agent insurance producer. The commissioner shall also revoke the license as-to-any of a mechanical vending machine as--to which if he finds that the conditions upon which the machine was licensed, as referred to in subsection (1), no longer exist. The license fee shall-be is as stated provided in 33-2-708 for each license year or part thereof of the year for each respective mechanical vending machine. Proof of the existence of a subsisting license shall must be displayed on or about each such mechanical vending machine in use in such the manner as that the commissioner may reasonably require."

Section 26. Section 33-17-301, MCA, is amended to read:

"33-17-301. Adjuster's Adjuster license -- qualifications -- catastrophe adjustments -- public adjuster. (1) No A person shall may not in this state act as or hold himself out to be an adjuster unless then licensed therefor as an adjuster under this chapter. Application A person shall apply for an adjuster license shall-be-made to the commissioner according to forms as--prescribed--and furnished--by-him the commissioner prescribes and furnishes. The commissioner shall issue the adjuster license as to

1 individuals qualified therefor to be licensed as an adjuster
 2 upon payment of the license fee stated provided in 33-2-708.

3 (2) To be licensed as an adjuster, the applicant must
 4 be-qualified-therefor-as-follows:

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

6 (b) must be a resident ~~in-and~~ of Montana or resident
 7 of another state which that will permit residents of Montana
 8 regularly to act as adjusters in such the other state;

9 (c) must be a full-time salaried employee of a
 10 licensed adjuster or a graduate of a recognized law school
 11 or must have had experience or special education or training
 12 as to the handling of loss claims under insurance contracts
 13 of sufficient duration and extent reasonably to make him
 14 competent to fulfill the responsibilities of an adjuster;

15 (d) must be trustworthy and of good character and
 16 reputation;

17 (e) must shall have and maintain in this state an
 18 office accessible to the public and keep therein in the
 19 office the usual and customary records pertaining to
 20 transactions under the license. This provision shall does
 21 not be-deemed-to prohibit maintenance of such the office in
 22 the home of the licensee.

23 (3) A firm partnership or corporation, whether or not
 24 organized under the laws of this state, may be licensed as
 25 an adjuster if each individual who is to exercise the

1 adjuster license powers is separately licensed or is named
 2 in the firm partnership or corporation adjuster license and
 3 is qualified as for an individual adjuster license as
 4 adjuster. An additional full license fee shall must be paid
 5 as-to for each individual in excess of one so named in the
 6 firm partnership or corporation adjuster license to exercise
 7 its powers.

8 (4) ~~No---such---adjuster's~~ An adjuster license or
 9 qualifications shall-be are not required as-to--any for an
 10 adjuster who is sent into this state by and on behalf of an
 11 insurer or adjusting firm partnership or corporation for the
 12 purpose of investigating or making adjustments of a
 13 particular loss under an insurance policy or for the
 14 adjustment of a series of losses resulting from a
 15 catastrophe common to all such losses.

16 (5) An adjuster license continues in force until
 17 expired, suspended, revoked, or terminated. The license is
 18 subject to annual payment to the commissioner of the renewal
 19 fee required by 33-2-708, accompanied by a written request
 20 for renewal.

21 (6) The commissioner may adopt rules providing for the
 22 examination, licensure, bonding, and regulation of public
 23 adjusters."

24 **Section 27.** Section 33-17-401, MCA, is amended to
 25 read:

1 "33-17-401. Nonresident agent insurance producer --
2 reciprocity. (1) A nonresident person may apply for a
3 license if:

4 (a) the person meets the requirements of 33-17-211(2);

5 (b) the person is licensed in the state of his
6 residence to act as insurance producer for the kind or kinds
7 of insurance for which he applies for licensing in this
8 state; and

9 (c) the person's state of residence issues a similar
10 license to a resident of this state for the same kind or
11 kinds of insurance for which the person is qualified in this
12 state.

13 (2) The commissioner may license a nonresident
14 individual without written examination if the insurance
15 department in the individual's state of residence certifies
16 that:

17 (a) the individual either has passed a written
18 examination for each kind of insurance applied for or was
19 licensed prior to the time a written examination was
20 required in the individual's state of residence; and

21 (b) is currently licensed and in good standing.

22 (3) The commissioner may issue only a nonresident
23 license to a person, partnership, or corporation otherwise
24 qualified under this code but not a resident of this state
25 and--only--if--pursuant--to--the--laws--of--the--state--of--his

1 residence--a--similar--privilege--is--extended--to--persons
2 resident-in-Montana.

3 (4) If, by the laws or rules of another state, a
4 limitation of rights and privileges, conditions precedent,
5 or any other requirements are imposed upon a resident of
6 this state who is a nonresident licensee of the other state
7 and the limitation, conditions, or requirements are in
8 addition to or in excess of those imposed on nonresident
9 persons under this chapter, the same limitation, conditions,
10 or requirements must be imposed upon the residents of the
11 other state.

12 (5) If a nonresident insurance producer's state of
13 residence suspends, revokes, or terminates his insurance
14 license in that state, his Montana nonresident license
15 automatically terminates and the nonresident insurance
16 producer shall notify the commissioner that his state of
17 residence has suspended, revoked, or terminated his
18 insurance license in that state."

19 **Section 28.** Section 33-17-404, MCA, is amended to
20 read:

21 "33-17-404. Countersigning coverage of residents.
22 Except as provided in 33-17-1111, a nonresident agent--shall
23 insurance producer may not sign or countersign policies
24 covering subjects of insurance residing, located, or to be
25 performed in Montana."

Section 29. Section 33-17-405, MCA, is amended to

read:

"33-17-405. Service of process -- commissioner as agent insurance producer. Application-for-and-acceptance-of a--license--as--a--nonresident--agent--shall--constitute irrevocable--appointment--of--the--commissioner--as--the attorney-in-fact-of--said--licensee--to--accept--service--of process--issued--in--Montana--in--any--action--or--proceeding against-the-licensee-arising-out-of-the-licensing-or-out--of transactions--under-the-license. All process shall be served in duplicate upon the commissioner together with--a--fee--of \$5.--The--commissioner--shall--then--promptly--forward--a--copy--of the--service--by--registered--or--certified--mail--to--the--licensee at--his--last--known--address.--Such--service--shall--constitute personal--service--upon--the--licensee. A nonresident person shall file with the commissioner the required forms appointing the commissioner and his successors in office as the nonresident person's agent upon whom process in a legal proceeding against the nonresident person may be served and shall agree that such process has the same legal force and validity as personal service of process upon the nonresident person. The commissioner shall, within 3 working days after receiving process, forward, at the nonresident person's address of record, a copy of the process by certified mail to the person for whom he has received the process."

Section 30. Section 33-17-406, MCA, is amended to

read:

"33-17-406. Nonresident agent insurance producer subject to insurance code. All A nonresident licensees-shall be insurance producer is subject to the provisions of the Montana Insurance Code as though a resident of this state, unless otherwise provided."

Section 31. Section 33-17-407, MCA, is amended to

read:

"33-17-407. Nonresident licensee insurance producer to pay taxes -- annual report required. (1) A nonresident licensee insurance producer is subject to personal income, business income, or corporate license taxes for all income earned on insurance policies issued to cover subjects or risks residing, located, or to be performed in Montana and written within the boundaries of this state.

(2) A nonresident licensee insurance producer shall make-a-written-report--to--the--commissioner file annually within--45--days--following--the--end--of--each--calendar--year--The report--must--contain--a--listing--of--all--business--written--on subjects--or--risks--located--or--performed--in--Montana--The report--must--be--in--a--form--prescribed--by--the--commissioner--and must--include--but--not--be--limited--to--a--listing--of--company, policy-number,--premium--earned,--and--commission--earned a Montana income tax return as required in Title 15."

1 **Section 32.** Section 33-17-411, MCA, is amended to
2 read:

3 "33-17-411. **Penalty.** A nonresident ~~licensee~~ insurance
4 producer who violates ~~any a~~ condition of his Montana license
5 or ~~any a~~ provision of this part is subject to a fine by the
6 commissioner of up to \$50,000 for each ~~such~~ violation and
7 may, at the discretion of the commissioner, have his Montana
8 nonresident license revoked or suspended for a period of up
9 to 5 years."

10 **Section 33.** Section 33-17-502, MCA, is amended to
11 read:

12 "33-17-502. **Prohibition on holding out as consultant**
13 **-- receiving fee.** (1) ~~Any A~~ person not licensed as an
14 insurance consultant in this state who identifies or holds
15 himself out to be an insurance consultant without having
16 been licensed as an insurance consultant under this part or
17 ~~any a~~ person who uses any other designation or title which
18 that is likely to mislead the public and holds himself out
19 in any manner as having particular insurance qualifications
20 other than those for which he may be otherwise licensed or
21 otherwise qualified is guilty of a misdemeanor and upon
22 conviction shall be fined \$1,500.

23 (2) ~~Any A~~ person not licensed as an insurance
24 consultant with respect to the relevant kinds of insurance
25 who receives ~~any a~~ fee for examining, appraising, reviewing,

1 or evaluating any insurance policy, annuity or pension
2 contract, plan, or program or who ~~shall--make~~ makes
3 recommendations or ~~give gives~~ advice with regard to any of
4 the above without first having been licensed by the
5 commissioner as an insurance consultant is guilty of a
6 misdemeanor and upon conviction shall be fined \$1,500.

7 (3) Nothing in this part applies to:

8 (a) licensed attorneys at law in this state acting in
9 their professional capacity;

10 (b) an actuary or a certified public accountant who
11 provides information, recommendations, advice, or services
12 in his professional capacity if neither he nor his employer
13 receives any compensation directly or indirectly on account
14 of any insurance, bond, annuity or pension contract that
15 results in whole or part from that information,
16 recommendation, advice, or services; or

17 (c) a ~~duly~~ licensed casualty insurance ~~agent~~ producer
18 who accepts a fee from an insured for placement through the
19 state compensation insurance fund as provided in 33-18-212."

20 **Section 34.** Section 33-17-503, MCA, is amended to
21 read:

22 "33-17-503. **Application -- fee -- expiration.** (1)
23 Before ~~an insurance consultant's~~ a consultant license is
24 issued or renewed, the prospective licensee shall:

25 (a) properly file in the office of the commissioner a

1 written application on forms the commissioner prescribes;
2 and

3 (b) pay a fee of \$50.

4 (2) ~~Every--consultant's~~ Each consultant license ~~shall~~
5 ~~expire expires~~ on May 31 next following the date of issue."

6 **Section 35.** Section 33-17-504, MCA, is amended to
7 read:

8 "33-17-504. Issuing license -- limitations. The
9 commissioner may issue ~~an---insurance--consultant's~~ a
10 consultant license to ~~any-natural-person an individual~~ who
11 has complied with the requirements of this chapter with
12 respect to either life insurance, meaning all of those kinds
13 of insurance authorized in 33-1-207, 33-1-208, 33-20-1001,
14 33-21-103, 33-22-501, and 33-22-601, or general insurance,
15 meaning all of those kinds of insurance authorized in
16 33-1-206, 33-1-207, 33-1-209 through 33-1-212, and 33-1-221
17 through 33-1-229, as specified in ~~such the~~ license."

18 **Section 36.** Section 33-17-505, MCA, is amended to
19 read:

20 "33-17-505. Qualification -- fee. (1) In order to
21 determine the competency of ~~every an~~ applicant for a
22 consultant license ~~as---an---insurance--consultant~~, the
23 commissioner shall require the applicant to pass an
24 examination.

25 (2) The fee for taking ~~such-an~~ the consultant license

1 examination ~~shall-be~~ is \$50. The commissioner shall deposit
2 all fees collected in the general fund. The fee for taking a
3 second or subsequent examination ~~shall may~~ be no more than
4 the cost of administering ~~such the~~ examination, not to
5 exceed \$50."

6 **Section 37.** Section 33-17-506, MCA, is amended to
7 read:

8 "33-17-506. Grounds for refusal to issue license. The
9 commissioner may refuse to issue ~~an-insurance-consultant's~~ a
10 consultant license if, in his judgment, the applicant is not
11 trustworthy and competent to act as a consultant, or has
12 given cause for revocation or suspension of a license, or
13 has failed to comply with any prerequisite for the issuance
14 of a license."

15 **Section 38.** Section 33-17-507, MCA, is amended to
16 read:

17 "33-17-507. Revocation. The commissioner may revoke or
18 suspend ~~any-insurance-consultant's~~ a consultant license for
19 a period he determines if, after notice and hearing as
20 specified in this chapter, he determines that the licensee:

21 (1) has violated any provision of or any obligation
22 imposed by the insurance law or has violated any law in the
23 course of his dealings as ~~a an insurance~~ consultant;

24 (2) has made a material misstatement in application
25 for a ~~consultant's~~ consultant license;

(3) has been guilty of fraudulent or dishonest practices; or

(4) has demonstrated his incompetency or untrustworthiness to act as an insurance consultant."

Section 39. Section 33-17-511, MCA, is amended to read:

"33-17-511. Consideration for services only on written memorandum. No A person licensed as an insurance consultant under this part may not receive any a fee for examining, appraising, reviewing, or evaluating any an insurance policy, bond, annuity or pension or profit-sharing contract, plan, or program or for making recommendations or giving advice with regard to any of the above unless the compensation is based upon a written memorandum signed by the party to be charged and specifying or clearly defining the amount or extent of the compensation. A An insurance consultant shall retain a copy of every memorandum or contract ~~shall be retained by the licensee~~ for not less than 3 years after those services have been fully performed."

Section 40. Section 33-17-512, MCA, is amended to read:

"33-17-512. Limitation on type of consideration. No A person licensed as an insurance consultant may not receive any compensation, direct or indirect, as a result of the sale of insurance or annuities to or the use of securities

or trusts in connection with pensions for any a person to whom any the licensee has performed any a related consulting service for which he has received a fee or contracted to receive a fee within the preceding 12 months."

Section 41. Section 33-17-513, MCA, is amended to read:

"33-17-513. Restrictions on insurers recommended by licensee. No A person licensed as an insurance consultant under this part may not recommend or encourage the purchase of insurance, annuities, or securities from any an authorized insurer in which he or any member of his immediate family holds an executive position or holds a substantial interest."

Section 42. Section 33-17-602, MCA, is amended to read:

"33-17-602. Written agreement required. (1) No A person may not act as an administrator without a written agreement between the person and the insurer. The written agreement ~~shall~~ must be retained as part of the official records of both the administrator and the insurer for the duration of the agreement and for 5 years thereafter. The written agreement ~~shall~~ must contain provisions which that include the requirements of 33-17-612 through 33-17-617 insofar as these requirements relate to the functions performed by the administrator.

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

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

Section 43. Section 33-17-603, MCA, is amended to read:

"33-17-603. Certificate of registration. (1) Except as provided in 33-17-604, no a person may not act as or hold himself out to be an administrator in this state unless he holds a certificate of registration as an administrator.

(2) An application for a certificate of registration must be accompanied by a fee of \$100. The commissioner ~~of insurance~~ shall issue the certificate unless he finds that the applicant is not competent, trustworthy, financially responsible, or of good personal and business reputation or that the applicant has had a previous application for an insurance a license denied for cause within 5 years.

(3) The certificate of registration is renewable annually on the date of issue. A request for renewal must be accompanied by a renewal fee of \$100.

(4) The certificate of registration may be suspended or revoked if, after notice and hearing, the commissioner finds that the administrator has violated any of the requirements of this part or that the administrator is not competent, trustworthy, financially responsible, or of good personal and business reputation.

(5) Unless the certification requirement is waived, ~~any-administrator~~ a person who acts as ~~such an administrator~~ without the a certificate of registration is subject to a fine of not less than \$500 or more than \$1,500."

Section 44. Section 33-17-604, MCA, is amended to read:

"33-17-604. Waiver of certification requirements. The commissioner ~~of--insurance~~ may waive the requirements of 33-17-603 for any person or class of persons. The factors taken into account in granting such a waiver ~~shall~~ include but are not limited to:

(1) whether the person acting as an administrator is primarily in a business other than that of administrator;

(2) whether the financial strength and history of the organization indicates stability in its continuity of doing business;

(3) whether the regular duties being performed as an administrator are such that the covered persons are not likely to be injured by a waiver of such the requirements."

1 **Section 45.** Section 33-17-611, MCA, is amended to
2 read:

3 "33-17-611. Maintenance of information. For the
4 duration of the agreement required by 33-17-602 and for 5
5 years thereafter, each administrator shall maintain at its
6 principal administrative office adequate books and records
7 of all transactions between the administrator, insurers, and
8 insured persons. These books and records shall must be
9 maintained in accordance with prudent standards of insurance
10 recordkeeping. The commissioner ~~of--insurance~~ shall have
11 access to these books and records for examination, audit, or
12 inspection. Any trade secrets contained in the books and
13 records, including but not limited to the identity and
14 addresses of policyholders and certificate holders, ~~shall-be~~
15 are confidential, except that the commissioner may use ~~such~~
16 the information in any proceedings instituted against the
17 administrator. The insurer retains the right to continuing
18 access to those books and records of the administrator
19 sufficient to permit the insurer to fulfill all of its
20 contractual obligations to insured persons, subject to any
21 restrictions in the written agreement between the insurer
22 and the administrator."

23 **Section 46.** Section 33-17-613, MCA, is amended to
24 read:

25 "33-17-613. Collection of charges and premiums. (1)

1 All insurance charges or premiums collected by an
2 administrator on behalf of or for an insurer ~~or-insurers~~ and
3 return premiums received from ~~such the~~ insurer ~~or-insurers~~
4 are held by the administrator in a fiduciary capacity.
5 These funds ~~shall~~ must be immediately remitted to the person
6 ~~or--persons~~ entitled thereto to them or ~~shall~~ must be
7 deposited promptly in a fiduciary bank account established
8 and maintained by the administrator. If deposited charges or
9 premiums were collected on behalf of or for more than one
10 insurer, the administrator shall require the bank in which
11 the fiduciary account is maintained to keep records clearly
12 recording the deposits in and withdrawals from ~~such the~~
13 account on behalf of or for each insurer. The administrator
14 shall promptly obtain and keep copies of all these records
15 and, upon request of an insurer, shall furnish the insurer
16 with copies of the records pertaining to deposits and
17 withdrawals on behalf of or for the insurer.

18 (2) The administrator ~~shall~~ may not pay ~~any a~~ claim by
19 withdrawals from the fiduciary account. Withdrawals from the
20 fiduciary account ~~shall~~ must be made, as provided in the
21 written agreement between the administrator and the insurer,
22 for:

23 (a) remittance to an insurer entitled thereto to the
24 remittance;

25 (b) deposit in an account maintained in the name of

1 such the insurer;

2 (c) transfer to and deposit in a claims paying
3 account, with claims to be paid as provided in 33-17-615;

4 (d) payment to a group policyholder for remittance to
5 the insurer entitled thereto to the payment;

6 (e) payment to the administrator of its commission,
7 fees, or charges; or

8 (f) remittance of return premiums to the person or
9 persons entitled thereto to the premium."

10 **Section 47.** Section 33-17-1001, MCA, is amended to
11 read:

12 "33-17-1001. Suspension, revocation, or refusal of
13 license. (1) Except as provided in 33-17-411, the
14 commissioner may suspend for not more than 12 months, or may
15 revoke or refuse to continue any, or may deny an application
16 for a license issued under this chapter or any surplus lines
17 agent insurance producer license if, after hearing held on
18 not less than 10 days' advance notice by certified mail of
19 such the hearing and of the charges against the licensee
20 given as provided in 33-1-314(3) to the licensee and to the
21 insurers--represented,--as to an agent, or to the appointing
22 agent, as to a solicitor, he finds that as to the licensee
23 any--one--or--more--of--the--following--causes--exist or applicant
24 has:

25 (a) for any cause engaged or is about to engage in an

1 act or practice for which issuance of the license could have
2 been refused had it then existed and been known to the
3 commissioner;

4 (b) for obtaining obtained or attempting attempted to
5 obtain any--such a license through misrepresentation or
6 fraud;

7 (c) for violation--of--or--noncompliance violated or
8 failed to comply with any-applicable a provision of this
9 code or for willful violation of any lawful has violated a
10 rule, subpoena, or order of the commissioner or of the
11 commissioner of any state;

12 (d) for--misappropriation--or--conversion improperly
13 withheld, misappropriated, or converted to his own use or
14 illegal withholding of moneys money or property belonging to
15 policyholders, insurers, beneficiaries, or others and
16 received in conduct of business under the license;

17 (e) conviction, by final judgment, been convicted of a
18 felony involving moral turpitude;

19 (f) if in the conduct of his affairs under the
20 license, the licensee--has used fraudulent, coercive, or
21 dishonest practices or has shown himself to be incompetent,
22 untrustworthy, financially irresponsible, or a source of
23 injury and loss to the public;

24 (g) made a materially untrue statement in the license
25 application;

1 (h) misrepresented the terms of an actual or proposed
2 insurance contract;

3 (i) been found guilty of an unfair trade practice or
4 fraud prohibited by Title 33, in chapter 18;

5 (j) had his license suspended or revoked in any other
6 state;

7 (k) forged another's name to an application for
8 insurance;

9 (l) cheated on an examination for a license; or

10 (m) knowingly accepted insurance business from a
11 person who is not licensed.

12 (2) The license of a partnership or corporation may be
13 suspended, revoked, or refused, ~~also for any of such causes~~
14 as relate to any or denied if a reason listed in subsection
15 (1) applies to an individual designated in the license to
16 exercise its powers.

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

21 **Section 48.** Section 33-17-1002, MCA, is amended to
22 read:

23 "33-17-1002. Procedure following suspension or
24 revocation. (1) Upon suspension or revocation of any such a
25 license, the commissioner shall forthwith immediately notify

1 the licensee thereof of the suspension or revocation either
2 in person or by mail addressed to the licensee at his
3 address last of record with the commissioner. Notice by mail
4 ~~shall be deemed~~ is effectuated when ~~so~~ the notice is mailed.
5 ~~The commissioner shall give like notice to the insurers~~
6 ~~represented by the agent, in the case of an agent's license,~~
7 ~~and to the agent by whom appointed, in the case of a~~
8 ~~solicitor's license.~~

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

12 ~~(3)(2)~~ The commissioner ~~shall~~ may not again issue a
13 license under this code to ~~or as to any~~ a person whose
14 license has been revoked until after expiration of 1 year
15 and thereafter not until such the person again qualifies
16 therefor for a license in accordance with ~~the applicable~~
17 ~~provisions of~~ this code. If the commissioner revokes a
18 person's license, the commissioner may refuse to issue a
19 license to the person for up to 5 years after the
20 revocation. A person whose license has been revoked twice
21 ~~shall~~ is not again be eligible for any license under this
22 code.

23 ~~(4)(3)~~ If the license of a partnership or corporation
24 is ~~so~~ suspended or revoked, no member of such the
25 partnership or officer or director of such the corporation

1 ~~shall~~ may be licensed or be designated in any a license to
 2 exercise the its powers thereof during the period of such
 3 the suspension or revocation unless the commissioner
 4 determines upon substantial evidence that ~~such~~ the member,
 5 officer, or director was not personally at fault and did not
 6 acquiesce in the matter on account of which the license was
 7 suspended or revoked."

8 **Section 49.** Section 33-17-1003, MCA, is amended to
 9 read:

10 "33-17-1003. Return of license. (1) All licenses
 11 issued under this chapter, although issued and delivered to
 12 the licensee ~~agent,--solicitor,~~ insurance producer or
 13 adjuster, ~~shall~~ are at all times be the property of the
 14 state of Montana. Upon any expiration, termination,
 15 suspension, or revocation of the license, the licensee or
 16 other person having possession or custody of the license
 17 shall forthwith immediately deliver it to the commissioner
 18 either by personal delivery or by mail.

19 (2) As to any license lost, stolen, or destroyed while
 20 in the possession of ~~any--such~~ a licensee or person, the
 21 commissioner may accept in lieu of return of the license the
 22 affidavit of the licensee or other person responsible for or
 23 involved in the safekeeping of ~~such~~ the license, concerning
 24 the facts of ~~such~~ the loss, theft, or destruction."

25 **Section 50.** Section 33-17-1004, MCA, is amended to

1 read:

2 "33-17-1004. Acting as insurance ~~agent,--solicitor,~~
 3 producer or adjuster without license -- penalty. Except as
 4 provided in 33-17-411, a person, ~~partnership,--association,~~
 5 or ~~corporation~~ who or ~~which~~, in this state, acts as an
 6 insurance ~~agent,--solicitor,~~ producer or adjuster without
 7 having authority to do so by virtue of a license issued and
 8 in force pursuant to ~~the--provisions--of~~ this chapter is
 9 guilty of a misdemeanor and upon conviction shall be fined
 10 \$500 or imprisoned in the county jail for 90 days, or both."

11 **Section 51.** Section 33-17-1101, MCA, is amended to
 12 read:

13 "33-17-1101. Place of business -- display of license
 14 -- records. (1) Every resident ~~agent~~ insurance producer
 15 shall have and maintain a place of business in this state
 16 accessible to the public. A nonresident ~~agent~~ insurance
 17 producer may maintain a place of business in this state. An
 18 ~~agent's~~ insurance producer's place of business must be ~~that~~
 19 ~~wherein~~ a place in which he principally conducts
 20 transactions under his license. The street address of ~~such~~
 21 the place shall must appear upon the license, ~~and the~~
 22 ~~licensee shall--promptly--notify--the--commissioner--of--any~~
 23 ~~change--in--his--street--or--mailing--address.~~ Nothing in this
 24 section prohibits maintenance of ~~such~~ the place of business
 25 in the licensee's place of residence.

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

(3) The agent insurance producer shall keep at his
 place of business complete records pertaining to
 transactions under his license ~~and--the--licenses--of--his~~
~~solicitors,~~ for a period of at least 3 years after
 completion of the respective transactions, except that a
 title agents insurance producer, as defined in 33-25-105,
 shall retain records as provided in 33-25-214 and
 33-25-216."

Section 52. Section 33-17-1102, MCA, is amended to
 read:

"33-17-1102. Reporting and accounting for premiums --
misappropriation. (1) All insurance premiums or return
 premiums received by an ~~agent--or--solicitor~~ insurance
producer must be held in a separate trust account. The
~~licensee insurance producer~~ shall at all times act in a
 fiduciary capacity, ~~and the agent-or-solicitor shall,~~ in the
 applicable regular course of business, account for and pay
the same insurance premiums or return premiums he receives
to the insured, insurer, or agent insurance producer

entitled thereto to them. Except for a title agent
insurance producer as defined in 33-25-105, an agent
insurance producer may deposit and commingle in the same
such separate deposit all such funds belonging to others so
 long as the amount of such the deposit ~~so~~ held for each
 respective ~~other~~ person is reasonably ascertainable from the
 records and accounts of the licensee.

(2) Any ~~agent--or--solicitor~~ insurance producer not
 lawfully entitled thereto to the funds may not divert or
 appropriate such the funds or any portion thereof of the
funds to his own use.

(3) An insurance producer who unlawfully diverts or
appropriates insurance premiums or return premiums to his
own use is, upon conviction, guilty of theft and is
punishable as provided by law."

Section 53. Section 33-17-1103, MCA, is amended to
 read:

"33-17-1103. Exchange-of-business---sharing Accepting
and paying commissions, fees, or consideration --
restriction. ~~{t}--An--agent--may,--under--rules--adopted--by--the~~
~~commissioner,--place--an--insurance--coverage--with--an--insurer--as~~
~~to--which--he--is--not--then--licensed--or--appointed--as--an--agent,~~
~~and--the--insurer--shall--accept--such--business,--only--when--placed~~
~~through--an--agent,--licensed--under--this--chapter--and--appointed~~
~~by--the--insurer,--Both--agents--involved--in--such--an--exchange--of~~

business--must--be--licensed--as--to--all--of--the--kinds--of
insurance--represented--by--the--coverage--so--placed:

{2}--The--agents--involved--in--a--lawful--exchange--of
business--under--subsection--(1)--above--may--divide--between--them
the--commission--or--compensation--payable--on--account--of--such
coverage: (1) An insurer or insurance producer may not pay,
directly or indirectly, a commission, service fee, brokerage
fee, or other valuable consideration to a person for
services as an insurance producer unless the person
performing the service holds a valid license with regard to
the kind or kinds of insurance for which the service was
rendered at the time the service was performed. A person not
properly licensed in accordance with this chapter at the
time he performs the service as an insurance producer may
not accept a commission, service fee, brokerage fee, or
other valuable consideration for the service. This section
does not prevent payment or receipt of renewal or other
deferred commissions to or by a person entitled to receive
the payment under this section.

{3}(2) No---agent--or--solicitor--shall An insurance
producer may not directly or indirectly share his
commissions or other compensation received or to be received
by him on account of a transaction under his license with
any person not also licensed under this chapter as to the
same kind or kinds of insurance involved in such the

transactions, except as provided in 33-17-1113. This
provision ~~shall~~ does not affect payment of the regular
salaries due employees of the licensee, or the distribution
in regular course of business of compensation and profits
among members or stockholders if the licensee is a firm
partnership or corporation, or use of funds for family or
personal purposes.

{4}{3} This section does not apply as to those
transactions with surplus lines ~~agents--which insurance
producers that~~ are lawful under 33-2-306 ~~or--as--to--life--or
disability--insurance--placed--as--provided--in--33-17-1104."~~

Section 54. Section 33-17-1111, MCA, is amended to
read:

"33-17-1111. Resident agent insurance producer
required -- reciprocity -- countersignature -- records. (1)
No An authorized insurer ~~shall~~ may not issue a policy
covering a subject of insurance resident residing, located,
or to be performed in Montana unless:

(a) the policy is written through a licensed agent,
resident insurance producer residing in Montana, ~~of the
insurer;~~

(b) the policy is written through a licensed
nonresident agent insurance producer and, if a
countersignature would be required by the resident state of
the nonresident agent insurance producer upon a Montana

1 resident agent insurance producer writing business in the
 2 resident state of such the nonresident agent insurance
 3 producer, the policy or countersignature endorsement
 4 attached thereto to the policy is countersigned by a Montana
 5 resident licensed agent insurance producer; or

6 (c) the policy is written through a licensed
 7 nonresident agent insurance producer who is a resident of a
 8 state that does not require countersignatures.

9 (2) ~~No--such~~ A countersignature ~~shall~~ may not be made
 10 in blank. The agent insurance producer may by express
 11 written authorization given in advance delegate to his
 12 salaried clerical employee the power to ~~so~~ countersign in
 13 the name of the ~~agent--such--contracts~~ insurance producer
 14 those policies or classes of ~~contracts--as--are~~ policies
 15 designated in such the authorization ~~so--long--as if~~ the
 16 initials of such the employee are written below the agent's
 17 insurance producer's name on such the countersignature, but
 18 the ~~agent--shall~~ insurance producer may not thereby delegate
 19 or have power to delegate to ~~any--other~~ a person the power or
 20 authority to bind an insurer with respect to ~~any~~ a risk not
 21 already bound by the agent insurance producer or other
 22 person having clear authority from the insurer ~~so~~ to bind.
 23 The ~~agent--shall--be~~ insurance producer is responsible for all
 24 of the acts of such the employee within the scope of the
 25 authority ~~so~~ delegated. The agent insurance producer shall

1 keep a record of ~~each--and~~ all coverages countersigned by him
 2 or by his authority.

3 (3) This section ~~shall~~ does not apply to:

4 (a) reinsurance;

5 (b) life insurance, disability insurance, or annuity
 6 contracts;

7 (c) insurance of the rolling stock, vessels, or
 8 aircraft of any common carrier in interstate or foreign
 9 commerce or of any vehicle principally garaged and used in
 10 another state or covering any liability or other risks
 11 incident to the ownership, maintenance, or operation ~~thereof~~
 12 of any common carrier or vehicle;

13 (d) insurance of property in course of transportation
 14 interstate or in foreign trade or any liability or risk
 15 incident ~~thereto to the~~ insurance;

16 (e) insurance of wet marine and transportation risks;

17 (f) countersignature to policies issued through agents
 18 insurance producers compensated only by salary or issued by
 19 insurers not using agents insurance producers in the general
 20 solicitation of business;

21 (g) bid bonds, as required under Title 18, chapter 1,
 22 part 2.

23 (4) Violation of this section ~~shall~~ does not
 24 invalidate ~~any--contract~~ a policy otherwise valid as between
 25 the insurer and the insured."

Section 55. Section 33-17-1112, MCA, is amended to read:

"33-17-1112. Salaried personnel not to countersign -- exception for emergencies. (1) With respect to policies subject to countersignature requirements under 33-17-1111, only a licensed ~~agent--of--the--insurer--resident~~ insurance producer residing in Montana, whose compensation as ~~such agent an insurance producer~~ is by commission computed as a percentage of the premium received on each ~~such~~ policy written, ~~shall have~~ has power to countersign as required by 33-17-1111.

(2) No A branch manager, state agent, special agent, general or any other like supervisory agent, or any other representative of the insurer, whose compensation ~~therefrom from the insurer~~ is in whole or in part by salary, ~~shall does not~~ have power to countersign ~~such~~ policies or countersignature endorsements ~~thereto to policies~~; except that in an emergency where it is necessary that an insurance policy be issued without delay and no resident ~~agent-of-the insurer insurance producer~~ having power to execute the policy is then reasonably available, then any other individual having authority ~~therefor~~ from the insurer may execute ~~such the~~ policy in the first instance in order to make a contract between the insurer and the obligee or the insured if ~~such the~~ policy is subsequently countersigned in

fact by ~~such~~ a resident agent insurance producer."

Section 56. Section 33-17-1113, MCA, is amended to read:

"33-17-1113. Policies originating outside state -- commission of resident agent insurance producer. (1) As to policies a policy or endorsements--~~thereto--which-are an endorsement to a policy that is~~ subject to countersignature requirements under 33-17-1111 contracted for or otherwise originating outside the boundaries of Montana, ~~there--shall be-payable-to-the-countersigning-agent--resident-in-Montana,~~ a commission ~~which--shall of~~ not be less than 5% of the premium charged and received but not ~~to-exceed more than~~ 50% of the commission paid by the insurer is payable to the countersigning insurance producer, so that a record within Montana will be kept of ~~such the~~ business and so that the state may better receive any tax required by law to be paid with respect to ~~such the~~ insurance. If, however, the originating ~~agent--or--broker insurance producer~~ or the insurer desires additional service to be rendered during the term of the policy, then the compensation for ~~such the~~ countersigning resident ~~agent--shall insurance producer must~~ be in ~~such an~~ additional amount as is fixed by mutual agreement of ~~such the~~ parties in interest.

(2) If pursuant to the laws of another state the countersigning ~~agents insurance producers~~ of that state

1 retain as commission or compensation with respect to
 2 business originated by Montana agents insurance producers
 3 more than 5% of the premium, then the Montana agents
 4 insurance producers who countersign policies representing
 5 business originated by ~~agents-or-brokers~~ insurance producers
 6 of ~~such the~~ other state shall charge and receive a
 7 commission in an amount not less than that ~~so~~ received by
 8 countersigning agents insurance producers of the other
 9 state."

10 **Section 57.** Section 33-17-1114, MCA, is amended to
 11 read:

12 "33-17-1114. Policies issued at home or branch
 13 offices. Nothing in 33-17-1111 through 33-17-1113 shall
 14 ~~prevent--any~~ prevents an insurer from issuing any a policy,
 15 as to which the ~~resident---agent---~~ or countersignature
 16 requirement of 33-17-1111 ~~is-applicable~~ applies, at its home
 17 or branch office, but ~~such-policies-shall~~ the policy must be
 18 subsequently countersigned, where otherwise required, by ~~its~~
 19 ~~agent--resident~~ an insurance producer residing in Montana.
 20 ~~The insurer's-licensed-agent--resident~~ insurance producer
 21 residing in Montana shall receive the commission on such the
 22 policy when the insurance premium is paid. This section does
 23 not apply as to life insurance."

24 **Section 58.** Section 33-18-401, MCA, is amended to
 25 read:

1 "33-18-401. False applications, ~~claims~~ application,
 2 claim, and proofs proof of loss -- penalty. ~~Any-solicitor,~~
 3 ~~agent~~ An insurance producer, examining physician, applicant,
 4 or other person who knowingly or willfully makes any a false
 5 or fraudulent statement or representation in or with
 6 reference to any an application for insurance or, for the
 7 purpose of obtaining any money or benefit, knowingly or
 8 willfully presents or causes to be presented a false or
 9 fraudulent claim or any proof in support of such a claim for
 10 the payment of the loss upon a contract of insurance or
 11 prepares, makes, or subscribes a false or fraudulent
 12 account, certificate, affidavit or proof of loss, or other
 13 document or writing, with intent that the same may be
 14 presented or used in support of such a claim, ~~shall--be~~ is
 15 guilty of a misdemeanor felony and upon conviction shall be
 16 ~~punished-by-a-fine-of-not-less-than-\$250-or~~ fined not more
 17 than \$1,000 \$5,000 or by imprisonment ~~in-the-county-jail-for~~
 18 ~~not--less-than-3-months-or~~ imprisoned not more than 6-months
 19 10 years, or both ~~such--fine--and--imprisonment--at--the~~
 20 ~~discretion-of-the-court."~~

21 **Section 59.** Section 33-25-202, MCA, is amended to
 22 read:

23 "33-25-202. Sharing of rate proceeds. Title insurers
 24 and agents insurance producers may share rate proceeds
 25 between or among themselves in any combination and may

1 ~~exchange--business--and-share~~ accept commissions as provided
 2 in 33-17-1103, unless the sharing of rate proceeds is an
 3 unlawful rebate or inducement under this title or is a
 4 payment of a forwarding fee or finders fee."

5 **Section 60.** Section 33-25-214, MCA, is amended to
 6 read:

7 "33-25-214. Underwriting standards -- record
 8 retention. (1) A title insurer may not issue a title
 9 insurance policy unless it, its title agent insurance
 10 producer, or an approved attorney has conducted a reasonable
 11 search and examination of the title and made a determination
 12 of insurability of title in accordance with sound
 13 underwriting practices. The title insurer or title agent
 14 must insurance producer shall preserve and retain in its
 15 files evidence of the examination of title and determination
 16 of insurability. The title insurer or title agent insurance
 17 producer may keep original evidence or may establish in the
 18 regular course of business a system of recording, copying,
 19 or reproducing evidence by any process that accurately and
 20 legibly reproduces, or forms a durable medium for
 21 reproducing, the contents of the original.

22 (2) Subsection (1) does not apply to:

23 (a) a title insurer assuming liability through a
 24 contract of reinsurance; or

25 (b) a title insurer acting as coinsurer if one of the

1 other coinsuring title insurers has complied with subsection
 2 (1).

3 (3) Except as allowed by rules adopted by the
 4 commissioner, no a title insurer or title agent insurance
 5 producer may not knowingly issue an owner's title insurance
 6 policy or commitment to insure unless all outstanding
 7 enforceable recorded liens or other interests against the
 8 property title to be insured are shown.

9 (4) An insurer issuing a policy in violation of this
 10 section is estopped, as a matter of law, to deny the
 11 validity of the policy as to any claim or demand of the
 12 insured arising thereunder under the policy."

13 **Section 61.** Section 33-25-301, MCA, is amended to
 14 read:

15 "33-25-301. Refusal, suspension, or revocation of
 16 title agent's insurance producer's license. (1) In addition
 17 to the causes provided in 33-17-1001, the commissioner may
 18 refuse to license a person as a title agent insurance
 19 producer or may suspend or revoke a title agent's insurance
 20 producer's license if, after a hearing held after notice as
 21 required in 33-17-1001, he finds that the license applicant
 22 or licensee has:

23 (a) made a material misstatement in an application for
 24 a title agent insurance producer license;

25 (b) commingled funds belonging to applicants, escrow

1 participants, or others;

2 (c) intentionally misrepresented the terms of a title
3 insurance policy to an applicant or policyholder or has
4 misrepresented material facts to, concealed material facts
5 from, or made false statements to a party to an escrow,
6 settlement, or closing transaction;

7 (d) in the conduct of his affairs under his title
8 agent's insurance producer's license, used coercive
9 practices or shown himself to be financially irresponsible;

10 (e) aided, abetted, or assisted another person in
11 violating the provisions of this title or a rule adopted by
12 the commissioner.

13 (2) The commissioner may impose any other appropriate
14 penalty provided for in this title.

15 (3) The commissioner may refuse, suspend, or revoke
16 the license of a ~~firm, corporation, or other business entity~~
17 person licensed as a title agent insurance producer for the
18 actions described in subsection (1) of any individual
19 designated in the license to exercise its powers."

20 **Section 62.** Section 33-25-302, MCA, is amended to
21 read:

22 "33-25-302. Disapproval of agency contracts. (1) The
23 commissioner may disapprove a title agency contract between
24 a title agent insurance producer and title insurer, upon
25 appropriate notice to the parties to the contract, if he

1 finds that the contract, together with all amendments and
2 related documents:

3 (a) does not provide for adequate monitoring of the
4 agent's insurance producer's financial transactions; or

5 (b) provides for inadequate, unreasonable, or
6 excessive amounts to be paid to or retained by the title
7 agent insurance producer. Factors the commissioner may
8 consider in this determination include but are not limited
9 to the agent's insurance producer's duties under the
10 contract and the general level of amounts paid to or
11 retained by other title agents insurance producers in the
12 state performing or assuming comparable duties.

13 (2) ~~No~~ A person may ~~not~~ act as a title agent insurance
14 producer under an agency contract that has been disapproved
15 by the commissioner."

16 **Section 63.** Section 33-25-401, MCA, is amended to
17 read:

18 "33-25-401. Prohibited practices -- referrals --
19 splitting charges -- exemptions. (1) Except as provided in
20 subsection (2), ~~no~~ a person may ~~not~~:

21 (a) give or accept a fee, rebate, or thing of value
22 pursuant to an agreement or understanding that title
23 insurance business will be referred to a title agent
24 insurance producer; or

25 (b) give or accept a portion, split, or percentage of

1 a charge made or received for title insurance business in
2 connection with a transaction involving real property in
3 this state, other than for services actually performed.

4 (2) (a) A person may pay a return on an investment,
5 based on a percentage of an ownership interest in a title
6 insurance agency, if:

7 (i) at or prior to the time of a referral, a
8 disclosure of the existence of the arrangement is made to
9 the person being referred and, in connection with the
10 referral, the person is provided a written estimate of the
11 charge or range of charges generally made by the title agent
12 insurance producer to which the person is referred; and

13 (ii) the person is not required to use a particular
14 agent insurance producer.

15 (b) The following arrangements are not a violation of
16 subsection (2)(a)(ii):

17 (i) an arrangement that requires a buyer, borrower, or
18 seller to pay for the services of an attorney, credit
19 reporting agency, or real estate appraiser chosen by a
20 lender to represent the lender's interest in a real estate
21 transaction; or

22 (ii) an arrangement by which an attorney or law firm
23 represents a client in a real estate transaction and issues
24 or arranges for the issuance of a policy of title insurance
25 in the transaction directly as agent insurance producer or

1 through a separate corporate title insurance agency that may
2 be established by that attorney or law firm and operated as
3 an adjunct to his or its law practice.

4 (c) Failure to disclose a controlled business
5 relationship is not a violation of subsection (2)(a)(i) if
6 the failure was not intentional and resulted from a bona
7 fide error, proven by a preponderance of the evidence.

8 (3) This section does not prohibit:

9 (a) the payment of a fee to an attorney for services
10 actually rendered or by a title agent insurance producer for
11 services actually performed in the issuance of a title
12 insurance policy; or

13 (b) payment of a bona fide salary, compensation, or
14 other payment for goods or facilities actually furnished or
15 for services actually performed."

16 **Section 64.** Section 33-25-403, MCA, is amended to
17 read:

18 "33-25-403. Prohibited practices -- producer and
19 associates -- prohibition of favored agent insurance
20 producer or insurer. No A producer or associate may not,
21 directly or indirectly, require as a condition, agreement,
22 or understanding of providing another person a loan, loan
23 extension, credit, sale, property, contract, lease, or
24 service that the other person obtain title insurance of any
25 kind from a particular title insurer or title agent

1 insurance producer. No A title insurer or title agent
 2 insurance producer may not knowingly participate in a plan
 3 or transaction prohibited by this section."

4 **Section 65.** Section 33-22-1703, MCA, is amended to
 5 read:

6 "33-22-1703. Definitions. As used in this part, the
 7 following definitions apply:

8 (1) "Emergency services" means services provided after
 9 suffering an accidental bodily injury or the sudden onset of
 10 a medical condition manifesting itself by acute symptoms of
 11 sufficient severity (including severe pain) that without
 12 immediate medical attention the subscriber or insured could
 13 reasonably expect that:

14 (a) his health would be in serious jeopardy;
 15 (b) his bodily functions would be seriously impaired;
 16 or

17 (c) a bodily organ or part would be seriously damaged.

18 (2) "Health benefit plan" means the health insurance
 19 policy or subscriber arrangement between the insured or
 20 subscriber and the health care insurer that defines the
 21 covered services and benefit levels available.

22 (3) "Health care insurer" means:

23 (a) an insurer that provides disability insurance as
 24 defined in 33-1-207;

25 (b) a health service corporation as defined in

1 33-30-101;

2 (c) a health maintenance organization as defined in
 3 33-31-102;

4 (d) a fraternal benefit society as defined in
 5 33-7-102;

6 (e) an administrator as defined in 33-17-601
 7 33-17-102; or

8 (f) any other entity regulated by the commissioner
 9 that provides health coverage.

10 (4) "Health care services" means health care services
 11 or products rendered or sold by a provider within the scope
 12 of the provider's license or legal authorization or services
 13 provided under Title 33, chapter 22, part 7.

14 (5) "Insured" means an individual entitled to
 15 reimbursement for expenses of health care services under a
 16 policy or subscriber contract issued or administered by an
 17 insurer.

18 (6) "Preferred provider" means a provider or group of
 19 providers who have contracted to provide specified health
 20 care services.

21 (7) "Preferred provider agreement" means a contract
 22 between or on behalf of a health care insurer and a
 23 preferred provider.

24 (8) "Provider" means an individual or entity licensed
 25 or legally authorized to provide health care services or

1 services covered within Title 33, chapter 22, part 7.

2 (9) "Subscriber" means a certificate holder or other
3 person on whose behalf the health care insurer is providing
4 or paying for health care coverage."

5 NEW SECTION. Section 66. Repealer. Section 33-17-202,
6 33-17-204, 33-17-205, 33-17-218, 33-17-231, 33-17-232,
7 33-17-402, 33-17-403, 33-17-601, and 33-17-1104, MCA, are
8 repealed.

9 NEW SECTION. Section 67. Extension of authority. Any
10 existing authority to make rules on the subject of the
11 provisions of [this act] is extended to the provisions of
12 [this act].

13 NEW SECTION. Section 68. Codification instruction.
14 [Section 4] is intended to be codified as an integral part
15 of Title 33, chapter 17, and the provisions of Title 33,
16 chapter 17, apply to [section 4].

17 NEW SECTION. Section 69. Saving clause. [This act]
18 does not affect rights and duties that matured, penalties
19 that were incurred, or proceedings that were begun before
20 [the effective date of this act].

21 NEW SECTION. Section 70. Severability. If a part of
22 [this act] is invalid, all valid parts that are severable
23 from the invalid part remain in effect. If a part of [this
24 act] is invalid in one or more of its applications, the part
25 remains in effect in all valid applications that are

1 severable from the invalid applications.

2 NEW SECTION. Section 71. Effective date. [This act]
3 is effective January 1, 1990.

-End-

APPROVED BY COMM. ON BUSINESS
AND ECONOMIC DEVELOPMENT

HOUSE BILL NO. 734

INTRODUCED BY THOMAS, J. BROWN, WILLIAMS, THAYER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE INSURANCE AGENT LICENSING LAWS; DIRECTING THE CODE COMMISSIONER TO CHANGE ANY REFERENCE TO THE TERM "ENROLLMENT REPRESENTATIVE", "INSURANCE AGENT", OR "AGENT" TO "INSURANCE PRODUCER", TO CHANGE ANY REFERENCE TO THE TERM "SURPLUS LINES AGENT" OR "SURPLUS LINES INSURANCE AGENT" TO "SURPLUS LINES INSURANCE PRODUCER", AND TO CHANGE ANY REFERENCE TO THE TERM "TITLE AGENT" OR "TITLE INSURANCE AGENT" TO "TITLE INSURANCE PRODUCER" WHEREVER IT APPEARS IN THE MONTANA CODE ANNOTATED; PROHIBITING THE GRANT OR EXTENSION OF A CONTROLLED BUSINESS LICENSE; PROVIDING THAT MISAPPROPRIATION OF INSURANCE PREMIUMS OR RETURN PREMIUMS CONSTITUTES THEFT; ALLOWING THE COMMISSIONER TO REVOKE AN INSURANCE PRODUCER LICENSE FOR UP TO 5 YEARS; ALLOWING FOR THE AUTOMATIC SUSPENSION, REVOCATION, OR TERMINATION OF A NONRESIDENT INSURANCE PRODUCER LICENSE UPON SUSPENSION, REVOCATION, OR TERMINATION IN HIS STATE OF RESIDENCE; AMENDING SECTIONS 33-1-402, 33-1-711, 33-2-303, 33-2-308, 33-2-309, 33-2-316, 33-2-317, 33-2-708, 33-7-101, 33-8-213, 33-14-301, 33-17-101 THROUGH 33-17-103, 33-17-201, 33-17-211 THROUGH 33-17-214, 33-17-216, 33-17-217, 33-17-221, 33-17-301, 33-17-401, 33-17-404 THROUGH 33-17-407, 33-17-411, 33-17-502 THROUGH

33-17-507, 33-17-511 THROUGH 33-17-513, 33-17-602 THROUGH 33-17-604, 33-17-611, 33-17-613, 33-17-1001 THROUGH 33-17-1004, 33-17-1101 THROUGH 33-17-1103, 33-17-1111 THROUGH 33-17-1114, 33-18-401, 33-22-1703, 33-25-202, 33-25-214, 33-25-301, 33-25-302, 33-25-401, AND 33-25-403, MCA; REPEALING SECTIONS 33-17-202, 33-17-204, 33-17-205, 33-17-218, 33-17-231, 33-17-232, 33-17-402, 33-17-403, 33-17-601, AND 33-17-1104, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

NEW SECTION. **Section 1.** Name change -- short form amendment. Wherever it appears in 33-1-317, 33-1-403, 33-1-711, 33-2-104, 33-2-120, 33-2-121, 33-2-302, 33-2-310, 33-2-313, 33-2-315, 33-2-321, 33-2-701, 33-2-707, 33-2-709, 33-2-723, 33-2-829, 33-2-1102, 33-2-1118, 33-2-1120, 33-2-1306, 33-2-1310, 33-2-1322, 33-2-1331, 33-2-1333, 33-2-1345 through 33-2-1347, 33-2-1353, 33-2-1362, 33-2-1381, 33-3-206, 33-3-217, 33-4-103, 33-4-312, 33-4-511, 33-5-104, 33-6-402, 33-6-403, 33-7-111, 33-7-519, 33-7-525, 33-7-526, 33-8-118, 33-8-122, 33-8-204, 33-8-205, 33-8-211, 33-8-221, 33-8-225 through 33-8-228, 33-10-106, 33-10-110, 33-10-113, 33-10-207, 33-10-216, 33-11-104, 33-11-108, 33-11-109, 33-11-123, 33-14-102, 33-14-201, 33-14-301, 33-14-304, 33-14-307, 33-15-302, 33-15-1101, 33-15-1105,

1 33-16-106, 33-16-1011, 33-17-204 through 33-17-206,
 2 33-17-218, 33-17-231, 33-17-232, 33-17-401, 33-17-403,
 3 33-17-601, 33-18-205, 33-18-210 through 33-18-213,
 4 33-18-305, 33-18-501, 33-19-102 through 33-19-104, 33-19-201
 5 through 33-19-205, 33-19-301 through 33-19-306, 33-19-401,
 6 33-19-402, 33-19-404, 33-19-407 through 33-19-409,
 7 33-20-142, 33-20-212, 33-20-502, 33-20-1102, 33-22-122,
 8 33-22-204, 33-22-207, 33-22-208, 33-22-804, 33-22-805,
 9 33-22-813, 33-22-1515, 33-23-214 through 33-23-216,
 10 33-25-105, 33-25-106, 33-25-201, 33-25-202, 33-25-213,
 11 33-25-215, 33-25-216, 33-30-103, 33-30-105, 33-30-202,
 12 33-30-204, 33-30-305, 33-3-311 through 33-30-313, 33-31-102,
 13 33-31-211, 33-31-311, 33-31-401 or in law enacted by the
 14 51st legislature, the code commissioner is directed to
 15 change the term "enrollment representative", "enrollment
 16 representative's", "enrollment representatives", "enrollment
 17 representatives'", "insurance agent", "insurance agent's",
 18 "insurance agents", "insurance agents'", "agent", "agent's",
 19 "agents", or "agents'" to "insurance producer", "insurance
 20 producer's", "insurance producers", or "insurance
 21 producers'".

22 NEW SECTION. Section 2. Name change -- short form
 23 amendment. Wherever it appears in 33-1-711, 33-2-301 through
 24 33-2-303, 33-2-305 through 33-2-313, 33-2-321, 33-2-326,
 25 33-2-502, 33-2-706, 33-2-709, 33-8-225, 33-17-1104,

1 33-18-212 or in law enacted by the 51st legislature, the
 2 code commissioner is directed to change the term "surplus
 3 lines agent", "surplus lines agent's", "surplus lines
 4 agents", "surplus lines agents'", "surplus lines insurance
 5 agent", "surplus lines insurance agent's", "surplus lines
 6 insurance agents", or "surplus lines insurance agents'" to
 7 "surplus lines insurance producer", "surplus lines insurance
 8 producer's", "surplus lines insurance producers", or
 9 "surplus lines insurance producers'".

10 NEW SECTION. Section 3. Name change -- short form
 11 amendment. Wherever it appears in 33-2-851, 33-25-105,
 12 33-25-106, 33-25-201, 33-25-213, 33-25-216, 33-30-103 or in
 13 law enacted by the 51st legislature, the code commissioner
 14 is directed to change the term "title agent", "title
 15 agent's", "title agents", "title agents'", "title insurance
 16 agent", "title insurance agent's", "title insurance agents",
 17 or "title insurance agents'" to "title insurance producer",
 18 "title insurance producer's", "title insurance producers",
 19 or "title insurance producers'".

20 NEW SECTION. Section 4. Controlled business. (1) The
 21 commissioner may not grant or extend a license to a person
 22 if the license is being or will be used to write controlled
 23 business.

24 (2) The commissioner shall consider a license to have
 25 been, or intended to be, used for the purpose of writing

1 controlled business if, during any 12-month period, the
2 aggregate amount of premiums on controlled business would
3 exceed the aggregate amount of premiums on all other
4 insurance business of the applicant or licensee.

5 **Section 5.** Section 33-1-402, MCA, is amended to read:

6 "33-1-402. Examination of agents insurance producers,
7 managers, and promoters. For the purpose of ascertaining
8 compliance with this code, the commissioner may, as often as
9 he ~~deems~~ considers advisable, examine the accounts, records,
10 documents, and transactions pertaining to or affecting its
11 insurance affairs or proposed insurance affairs of:

12 (1) any an insurance agent producer, solicitor,
13 surplus lines agent insurance producer, general agent
14 insurance producer, or adjuster;

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

18 (3) any a person holding the shares of voting stock or
19 policyholder proxies of a domestic insurer, for the purpose
20 of controlling the management ~~thereof~~ of the domestic
21 insurer, as voting trustee or otherwise;

22 (4) any a person engaged in or proposing to be engaged
23 in or assisting in the promotion or formation of a domestic
24 insurer or insurance holding corporation or corporation to
25 finance a domestic insurer or the production of its

1 business."

2 **Section 6.** Section 33-1-711, MCA, is amended to read:

3 "33-1-711. Appeals from the commissioner. (1) An
4 appeal from the commissioner ~~shall~~ may be taken only from an
5 order on hearing or with respect to a matter as to which the
6 commissioner has refused a hearing. Any person who was a
7 party to ~~such the~~ hearing or whose pecuniary interests are
8 directly and immediately affected by any ~~such~~ order or
9 refusal and who is aggrieved ~~thereby by an order or refusal~~
10 may, within 30 days after the order has been mailed or
11 delivered to the persons entitled to receive the same, the
12 commissioner's order denying rehearing or reargument has
13 been so mailed or delivered, or the commissioner's refusal
14 to grant a hearing, appeal from ~~such the~~ order on hearing or
15 ~~such the~~ refusal of a hearing. Any request for a stay of the
16 commissioner's order must be made within 60 days, to run
17 concurrently with the 30 days for appeal. The appeal ~~shall~~
18 must be taken to the district court of Lewis and Clark
19 County by filing written notice of appeal in ~~such the~~ court
20 and by filing a copy of ~~such the~~ notice with the
21 commissioner, except that in appeals from the suspension or
22 revocation of the certificate of authority of a domestic
23 insurer or of the license of an ~~agent, solicitor,~~ insurance
24 producer or surplus lines agent insurance producer, the
25 person taking the appeal may at his option, in lieu of the

1 district court of Lewis and Clark County, take the appeal to
2 the district court of the county of Montana in which the
3 insurer has its principal place of business or the licensee
4 resides.

5 (2) Upon filing of the notice of appeal ~~therein~~, the
6 court ~~shall have~~ has full jurisdiction and shall determine
7 whether ~~such the filing shall operate~~ operates as a stay of
8 the order or action appealed from.

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

23 (4) Upon receipt of ~~such the~~ transcripts and evidence,
24 the court shall hear the matter de novo as soon as
25 reasonably possible thereafter. Upon the hearing of the

1 appeal, the court shall consider the evidence contained in
2 the transcript, exhibits, and documents ~~therein~~ filed by the
3 commissioner, together with ~~such~~ additional proper evidence
4 as may be offered by any party to the appeal.

5 (5) After hearing the appeal, the court may affirm,
6 modify, or reverse the order or action of the commissioner,
7 in whole or in part, or remand the action to the
8 commissioner for further proceedings in accordance with the
9 court's direction.

10 (6) Costs ~~shall~~ must be awarded as in civil actions.

11 (7) Appeal may be taken to the supreme court from the
12 judgment of the district court as in other civil cases to
13 which the state is a party. A stay of the effectiveness of
14 any ~~such~~ judgment may be made only by order of the supreme
15 court upon the giving of ~~such~~ security as that court ~~deems~~
16 considers proper.

17 (8) This section ~~shall~~ does not apply to appeals as to
18 matters covered by chapter 16."

19 **Section 7.** Section 33-2-303, MCA, is amended to read:

20 "33-2-303. Filing and endorsement of contract. Every
21 Each insurance contract, cover, note, or certificate of
22 insurance procured and delivered as surplus lines insurance
23 under this part ~~shall~~ must be filed with the commissioner
24 and endorsed as "issued in an unauthorized insurer under The
25 Surplus Lines Insurance Law, under agent surplus lines

insurance producer 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 producer shall properly fill in and sign the endorsement."

Section 8. 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 insurance producer shall promptly issue and deliver to the insured or the producing agent insurance producer 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 insurance producer. 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 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 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 agent insurance producer shall promptly issue and deliver to the insured a substitute cover note or certificate accurately showing the current status of the coverage and the insurers responsible thereunder under the coverage.

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

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

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

9 **Section 9.** Section 33-2-309, MCA, is amended to read:

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

1 between the insurer and the surplus lines agent insurance
 2 producer.

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

9 (3) Each unauthorized insurer assuming a surplus lines
 10 direct risk under The Surplus Lines Insurance Law is
 11 considered ~~thereby~~ to have subjected itself to the terms of
 12 this section."

13 **Section 10.** Section 33-2-316, MCA, is amended to read:

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

17 (a) effectuation of The Surplus Lines Insurance Law;
 18 (b) establishment of procedures through which
 19 determination is to be made as to the eligibility of
 20 particular proposed coverages for placement with a surplus
 21 lines insurer or insurers; and

22 (c) establishment, procedures, and operations of any
 23 voluntary organization of surplus lines insurance agents
 24 producers or others designed to assist ~~such--agents~~ surplus
 25 lines insurance producers to comply with such the law.

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

Section 11. Section 33-2-317, MCA, is amended to read:

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

(1) wet marine and transportation insurances;

(2) insurance on subjects located, resident residing, 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 engaged in interstate commerce; and

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

Section 12. Section 33-2-708, MCA, is amended to read:

"33-2-708. **Fees and licenses.** (1) ~~The~~ Except as provided in 33-17-212(2), 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 (1)(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 the~~ the application and for issuance of an original certificate of authority, if issued:

(A) domestic insurers ~~\$-300-00~~ \$ 500.00

(B) foreign insurers ~~300-00~~ 500.00

(ii) annual continuation of certificate of authority ..
..... ~~300-00~~ 500.00

(iii) reinstatement of certificate of authority
..... 25.00

(iv) amendment of certificate of authority 50.00

(b) articles of incorporation:

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

(ii) filing amendment of articles of incorporation, domestic and foreign insurers, exclusive of fees required to

1 be paid to the secretary of state by a domestic corporation
 2 25.00
 3 (c) filing bylaws or amendment thereto to bylaws where
 4 required 10.00
 5 (d) filing annual statement of insurer, other than as
 6 part of application for original certificate of authority ..
 7 25.00
 8 (e) resident agent's insurance producer's license:
 9 (i) application for original license, including
 10 issuance of license, if issued ~~{life-and/or-disability}~~
 11 15.00
 12 (ii) ~~application--for--original--license,--including~~
 13 ~~issuance--of--license,--if--issued--{other--than--life-and/or~~
 14 ~~disability}~~-----15.00
 15 ~~{iii}-appointment-of-agent,--each-insurer-----10.00~~
 16 ~~{iv} annual renewal,--each-insurer of license .. 10.00~~
 1715.00
 18 ~~{v}{iii} temporary license 10.00 15.00~~
 19 ~~{vi}{iv} amendment of license (excluding additions~~
 20 ~~thereto to license) or reissuance of master license~~
 21 10.00 15.00
 22 (f) nonresident agent's insurance producer's license:
 23 (i) application for original license, including
 24 issuance of license, if issued ~~{life-and/or-disability}~~
 25 100.00

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

1 ~~(k)~~ commissioner's certificate under seal (except
 2 when on certificates of authority or licenses) 10.00
 3 ~~(m)~~ (l) copies of documents on file in the
 4 commissioner's office, per page50
 5 ~~(n)~~ (m) policy forms:
 6 (i) filing each policy form 25.00
 7 (ii) filing each application, rider, endorsement,
 8 amendment, insert page, schedule of rates, and clarification
 9 of risks 10.00
 10 (iii) maximum charge if policy and all forms submitted
 11 at one time or resubmitted for approval within 180 days
 12 100.00
 13 (2) The commissioner shall promptly deposit with the
 14 state treasurer to the credit of the general fund of this
 15 state all fines and penalties, those amounts received
 16 pursuant to 33-2-311, 33-2-705, and 33-2-706, and any fees
 17 and examination and miscellaneous charges received pursuant
 18 to Title 33, chapter 11, part 1, that are collected by him
 19 pursuant to Title 33 and the rules adopted ~~thereunder~~ under
 20 Title 33.
 21 (3) All fees are considered fully earned when
 22 received. In the event of overpayment, only those amounts in
 23 excess of \$10 will be refunded.
 24 (4) All fees and examination and miscellaneous
 25 charges, except fines or penalties or those amounts received

1 pursuant to 33-2-311, 33-2-705, or 33-2-706, collected by
 2 the commissioner pursuant to Title 33 and the rules adopted
 3 ~~thereunder~~ under Title 33 must be deposited in the insurance
 4 regulatory trust account pursuant to 17-2-121 through
 5 17-2-123."

6 **Section 13.** Section 33-7-101, MCA, is amended to read:
 7 "33-7-101. Scope of chapter -- provisions applicable.
 8 (1) Except as ~~herein~~ provided in this section, societies
 9 ~~shall--be~~ are governed by this chapter and ~~shall--be~~ are
 10 exempt from all other provisions of the insurance laws of
 11 this state, not only in governmental relations with the
 12 state but for every other purpose. No law hereafter enacted
 13 ~~shall--apply~~ applies to ~~them~~ societies unless they ~~be~~ are
 14 expressly designated ~~therein~~ in the law.
 15 (2) In addition to the provisions contained in this
 16 chapter, other chapters and provisions of this title ~~shall~~
 17 apply to fraternal benefit societies to the extent
 18 applicable and not in conflict with the express provisions
 19 of this chapter and the reasonable implications ~~thereof~~ of
 20 this chapter, as follows: parts 17-27-37 through 47 and 7 of
 21 chapter 1; 33-2-104; 33-2-107; 33-2-112; chapter 2, part 13;
 22 33-3-308; 33-15-502; chapter 17; chapter 18; chapter 20; and
 23 chapter 22."
 24 **Section 14.** Section 33-8-213, MCA, is amended to read:
 25 "33-8-213. (Temporary) Exemption from agent insurance

1 producer appointment requirements. (1) For purposes of the
2 plan:

3 (a) an insurer that has entered into an agreement as
4 provided in 33-8-212 may accept applications for insurance
5 coverage from any agent insurance producer even though that
6 agent insurance producer has not been appointed by the
7 insurer; and

8 (b) an agent insurance producer may place business, as
9 to any type of insurance for which he is licensed at the
10 time, with any insurer participating in the plan even though
11 the agent insurance producer has not been appointed as an
12 agent insurance producer by that insurer.

13 ~~{2}--An--insurer--that--issues--insurance--coverage--upon--an~~
14 ~~application--submitted--by--an--agent--who--has--not--been--appointed~~
15 ~~by--the--insurer--shall--pay--the--agent--a--commission---in~~
16 ~~conformity--with--the--insurer's--filed--rates--rating--plans--or~~
17 ~~forms--for--the--kind--of--insurance--effected--~~

18 {3}{2} An agent insurance producer who countersigns a
19 policy, when a countersignature is required by 33-17-1111,
20 shall must be paid a countersignature commission as provided
21 in 33-17-1113. (Terminates July 1, 1989--sec. 22, Ch. 11,
22 Sp. L. March 1986.)"

23 **Section 15.** Section 33-17-101, MCA, is amended to
24 read:

25 "33-17-101. Scope of chapter. (1) The purpose of this

1 chapter is to govern the qualifications and procedures for
2 licensing insurance producers.

3 (2) This chapter ~~shall apply as~~ applies to all stock,
4 mutual, and reciprocal insurers and ~~as~~ to all kinds of
5 insurance and annuities."

6 **Section 16.** Section 33-17-102, MCA, is amended to
7 read:

8 "33-17-102. Definitions. As used in this title, the
9 following definitions apply:

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

17 (a) licensed attorney who is qualified to practice law
18 in this state; or

19 (b) salaried employee of an insurer or of a managing
20 general agent; or

21 (c) a licensed agent insurance producer who adjusts or
22 assists in adjustment of losses arising under policies
23 issued by the insurer.

24 ~~{2}--A--"public-adjuster"--is--an--adjuster--employed--by--and~~
25 ~~representing--the--interests--of--the--insured--the--commissioner~~

1 may adopt rules providing for the examination, licensure,
2 bonding, and regulation of public adjusters.

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

8 (2) "Adjuster license" means a document issued by the
9 commissioner that authorizes a person to act as an adjuster.

10 (3) (a) "Administrator" means a person who collects
11 charges or premiums from residents of this state in
12 connection with life, disability, property, or casualty
13 insurance or annuities or who adjusts or settles claims on
14 such coverage.

15 (b) The term does not mean:

16 (i) an employer on behalf of its employees or on
17 behalf of the employees of one or more subsidiaries of
18 affiliated corporations of the employer;

19 (ii) a union on behalf of its members;

20 (iii) (A) an insurer that is either authorized in this
21 state or acting as an insurer with respect to a policy
22 lawfully issued and delivered by it in and pursuant to the
23 laws of a state in which the insurer is authorized to
24 transact insurance; or

25 (B) a health service corporation as defined in

1 33-30-101;

2 (iv) a life, disability, property, or casualty
3 insurance producer who is licensed in this state and whose
4 activities are limited exclusively to the sale of insurance;

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

8 (vi) a trust established in conformity with 29 U.S.C.
9 186 or the trustees, agents, and employees of the trust;

10 (vii) a trust exempt from taxation under section 501(a)
11 of the Internal Revenue Code or the trustees and employees
12 of the trust;

13 (viii) a custodian acting pursuant to a custodian
14 account that meets the requirements of section 401(f) of the
15 Internal Revenue Code or the agents and employees of the
16 custodian;

17 (ix) a bank, credit union, or other financial
18 institution that is subject to supervision or examination by
19 federal or state banking authorities;

20 (x) a company that issues credit cards and that
21 advances for and collects premiums or charges from its
22 credit card holders who have authorized it to do so, if the
23 company does not adjust or settle claims; or

24 (xi) a person who adjusts or settles claims in the
25 normal course of his practice or employment as an attorney

1 and who does not collect charges or premiums in connection
 2 with life or disability insurance or annuities.

3 (4) "Administrator license" means a document issued by
 4 the commissioner that authorizes a person to act as an
 5 administrator.

6 (4)(5) A--"consultant"--is "Consultant" means a person
 7 who for a fee examines, appraises, reviews, or evaluates an
 8 insurance policy, annuity, or pension contract, plan, or
 9 program or who makes recommendations or gives advice on an
 10 insurance policy, annuity, or pension contract, plan, or
 11 program.

12 (5)--A--"solicitor"--is--an--individual--appointed--and
 13 authorized--by--an--agent--to--solicit--applications--for
 14 insurance;--other--than--life--insurance--or--disability
 15 insurance;--as--a--representative--of--such--agent;--and--to--collect
 16 premiums--thereon--when--expressly--so--authorized--by--the--agent;--

17 (6)--A--"managing--general--agent"--is--an--individual,
 18 partnership;--or--corporation--appointed--as--an--independent
 19 contractor--by--one--or--more--insurers--for--the--principal--purpose
 20 of--exercising--general--supervision--over--the--business--of--the
 21 insurer--in--this--state;--including--the--authority--to--appoint
 22 agents--for--such--insurers--and--to--terminate--such--appointments;--

23 (6) "Consultant license" means a document issued by
 24 the commissioner that authorizes a person to act as an
 25 insurance consultant.

1 (7) "Controlled business" means insurance procured or
 2 to be procured by or through a person upon the life, person,
 3 property, or risks of himself, his spouse, his employer, or
 4 his business.

5 (8) "Individual" means a private or natural person, as
 6 distinguished from a partnership, corporation, or
 7 association.

8 (9) "Insurance producer", except as provided in
 9 33-17-103:

10 (a) means:

11 (i) a person who solicits, negotiates, effects,
 12 procures, delivers, renews, continues, or binds:

13 (A) policies of insurance for risks residing, located,
 14 or to be performed in this state; or

15 (B) membership contracts as defined in 33-30-101;

16 (ii) a managing general agent. For purposes of this
 17 definition, a "managing general agent" is a person who, on
 18 behalf of an insurer, exercises general supervision over the
 19 business of the insurer in this state, including the
 20 authority to contract with an insurance producer for the
 21 insurer and terminate those contracts.

22 (b) does not mean a customer service representative.
 23 For purposes of this definition, a "customer service
 24 representative" means a salaried employee or an insurance
 25 producer who assists and is responsible to the insurance

1 producer but--who--is--not--authorized--to--effect--policies--of
2 insurance.

3 (10) "License" means a document issued by the
4 commissioner that authorizes a person to act as an insurance
5 producer for the kinds of insurance specified in the
6 document. The license itself does not create actual,
7 apparent, or inherent authority in the holder to represent
8 or commit an insurer to a binding agreement.

9 (11) "Person" means an individual, partnership,
10 corporation, association, or other legal entity.

11 (12) "Public adjuster" means an adjuster employed by
12 and representing the interests of the insured."

13 **Section 17.** Section 33-17-103, MCA, is amended to
14 read:

15 "33-17-103. Exceptions and exemptions from definition
16 of agent, managing general agent, and solicitor insurance
17 producer. The definitions definition of agent, managing
18 general agent, and solicitor insurance producer contained in
19 33-17-102 shall does not be considered to include:

20 (1)--individuals employed and used by--agents--for--the
21 performance--of--clerical, stenographic, and similar office
22 duties--Incidental taking of an--application--for--insurance
23 from time to time in the office of the employing agent shall
24 not--constitute such an employee as an agent or solicitor if
25 the--employee's--compensation--is--not--contingent--upon--or

1 relating--to--the volume of such applications, insurance, or
2 premiums.

3 (2)--a--supervising---salaried---officer,---supervising
4 salaried--employee,--or other person or entity controlled by
5 an insurer and compensated strictly on a salary basis by the
6 insurer, who solicits only with or in conjunction with--duly
7 licensed agents of the insurer;

8 (3)--the--attorney in fact--of--a reciprocal insurer or
9 the salaried traveling representative--of--a--reciprocal--or
10 mutual insurer not compensated on a commission basis;

11 (4)--a--person who secures and forwards information for
12 the purpose of an existing group insurance contract--or--for
13 enrolling--individuals--under--an--existing--group insurance
14 contract--or--issuing--certificates--thereunder---where---no
15 commission is paid for such services.

16 (1) a person who is a regularly salaried officer or
17 employee of an insurer and who is engaged in the performance
18 of usual and customary executive, administrative, or
19 clerical duties and whose duties do not include the
20 negotiation or solicitation of insurance;

21 (2) a person who is a salaried employee in the office
22 of an insurance producer and who devotes his full time to
23 clerical and administrative services, including the
24 incidental taking of insurance applications and receipt of
25 premiums in the office of his employer, if the employee does

1 not receive any commissions on the applications and his
 2 compensation is not varied by the volume of applications or
 3 premiums he takes or receives;

4 (3) a person who secures and furnishes information for
 5 the purpose of group life insurance, annuities, group or
 6 blanket accident and disability insurance or for the purpose
 7 of enrolling individuals under such plans, issuing
 8 certificates under such plans, or otherwise assisting in
 9 administering such plans, if no commission is paid for the
 10 service;

11 (4) an employer, his officers, or employees or the
 12 trustees of an employee trust plan, to the extent that the
 13 employer, officers, employees, or trustees are engaged in
 14 the administration of operation of a program of employee
 15 benefits for their own employees or the employees of their
 16 subsidiaries or affiliates if the program involves the use
 17 of insurance issued by an insurer and the employer,
 18 officers, employees, or trustees are not compensated in any
 19 manner, directly or indirectly, by the insurer issuing the
 20 contracts; or

21 (5) a person who is:

22 (a) an employee of an insurer or of an organization
 23 employed by an insurer, which insurer or organization is
 24 engaged in the inspection, rating, or classification of
 25 insurance risks or in the supervision of the training of

1 insurance producers; and

2 (b) not individually engaged in the solicitation or
 3 negotiation of insurance policies and contracts."

4 **Section 18.** Section 33-17-201, MCA, is amended to
 5 read:

6 "33-17-201. (Temporary) License required of agents,
 7 ~~managing-general-agents,-and-solicitors~~ insurance producer
 8 ~~-- forms.~~ (1) No Except as provided in 33-17-103 and
 9 subsection (5) of this section, a person shall may not in
 10 this state act as or hold himself out to be an agent-or
 11 solicitor-as-to insurance producer for subjects of insurance
 12 located, resident residing, or to be performed in this state
 13 unless then licensed as such-agent-or-solicitor an insurance
 14 producer under this chapter.

15 ~~{2}--No-person-may-act-or--hold--himself--out--in--this~~
 16 ~~state--to--be-a-managing-general-agent-unless-licensed-as-an~~
 17 ~~insurance-agent-under-this--chapter--and--appointed--by--the~~
 18 ~~insurers-represented.~~

19 ~~{3}--No-agent--or--solicitor--shall--solicit--or--take~~
 20 ~~application-for,-procure,-or-place-for-others--any--kind-of~~
 21 ~~insurance-as-to-which-he-is-not-then-licensed.~~

22 ~~{4}--No-agent--shall--place--any--business,-other-than~~
 23 ~~coverage-of-his-own-risks,-with-any-insurer-as-to--which--he~~
 24 ~~does--not--then--hold--a-validated-appointment-or-license-as~~
 25 ~~agent-under-this-chapter,-except-as-provided--in--33-17-1104~~

~~as--to--life-or-disability-insurance-agents-and-in-33-8-213-~~

~~(5)(2)~~ 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 a license.

~~(6)(3)~~ Unless licensed as a life insurance agent producer as required by this section, ~~no a person shall may~~ not in this state solicit life insurance or annuities or procure applications ~~therefor~~ for life insurance or annuities 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 the~~ employer, subsidiaries, or affiliates under group insurance or similar insurance plans arranged by the employer or employers of ~~such the~~ employees.

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

(5) A representative of a fraternal benefit society who solicits and negotiates insurance contracts is an insurance producer and is subject to the same licensing requirements as those for an insurance producer, except that a license is not required of:

(a) an officer, employee, or secretary of a fraternal benefit society or of a subordinate lodge or branch of a fraternal benefit society who devotes substantially all of his time to activities other than the solicitation or negotiation of insurance contracts and who receives no commission or other compensation directly dependent upon that number or amount of insurance contracts solicited or negotiated; or

(b) a representative of a fraternal benefit society who devotes or intends to devote less than 50% of his time to the solicitation and procurement of insurance contracts for the fraternal benefit society. A person who in the preceding calendar year has solicited and procured life insurance with a face amount in excess of \$50,000 or, in the case of any other kind or kinds of insurance that the fraternal benefit society may write, on more than 25 individuals and who has received or will receive a commission or other compensation for the insurance is presumed to be devoting or intending to devote 50% of his time to the solicitation or procurement of insurance

contracts for the fraternal benefit society. (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 insurance producer -- forms. (1) No A person shall may not in this state act as or hold himself out to be an agent or solicitor as to insurance producer for subjects of insurance located, resident residing, or to be performed in this state unless then licensed as such agent or solicitor an insurance producer 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 33-17-1104 as to life or disability insurance agents.

(5)(2) 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 a license.

(6)(3) Unless licensed as a life insurance agent producer as required by this section, no a person shall may not in this state solicit life insurance or annuities or procure applications therefor for life insurance or annuities 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 the employer, subsidiaries, or affiliates under group insurance or similar insurance plans arranged by the employer or employers of such the employees.

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

(5) A representative of a fraternal benefit society who solicits and negotiates insurance contracts is an insurance producer and is subject to the same licensing requirements as those for an insurance producer, except that

1 a license is not required of:

2 (a) an officer, employee, or secretary of a fraternal
3 benefit society or of a subordinate lodge or branch of a
4 fraternal benefit society who devotes substantially all of
5 his time to activities other than the solicitation or
6 negotiation of insurance contracts and who receives no
7 commission or other compensation directly dependent upon
8 that number or amount of insurance contracts solicited or
9 negotiated; or

10 (b) a representative of a fraternal benefit society
11 who devotes or intends to devote less than 50% of his time
12 to the solicitation and procurement of insurance contracts
13 for the fraternal benefit society. A person who in the
14 preceding calendar year has solicited and procured life
15 insurance with a face amount in excess of \$50,000 or, in the
16 case of any other kind or kinds of insurance that the
17 fraternal benefit society may write, on more than 25
18 individuals and who has received or will receive a
19 commission or other compensation for the insurance is
20 presumed to be devoting or intending to devote, 50% of his
21 time to the solicitation or procurement of insurance
22 contracts for the fraternal benefit society."

23 **Section 19.** Section 33-17-211, MCA, is amended to
24 read:

25 "33-17-211. Application General qualifications --

1 application for license. (1) Application--for--an--agent--or
2 solicitor--license--must--be--made--to--the--commissioner--by--the
3 applicant--and--be--signed--and--sworn--to--by--the--applicant--before
4 a--notary--public;

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

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

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

22 (5) If--the--applicant--for--an--agent--license--is--a
23 partnership--or--corporation,--the--application--shall--show,--in
24 addition,--the--names--of--all--members,--officers,--and--directors
25 and--shall--designate--each--individual--who--is--to--exercise--the

1 powers--to--be--conferred--by--the--license--upon--the--partnership
2 or--corporation;--Each--such--individual--so--designated--shall
3 furnish--information--as--to--himself,--as--part--of--the
4 application,--as--though--for--an--individual--license.

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

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

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

1 agent--has--investigated--the--character--and--business--record--of
2 the--applicant--and--the--uses--to--be--made--of--the--license,--if
3 granted,--and--his--opinion,--based--on--such--investigation,--as--to
4 applicant's--trustworthiness--and--competence.

5 (9)--All--such--applications--must--be--accompanied--by--the
6 applicable--license--fee,--appointment--of--agent--fee--where
7 applicable,--and--examination--fee--where--an--examination--is
8 required--under--33-17-212,--all--in--the--respective--amounts
9 stated--in--33-2-708. (1) An individual applying for a
10 license shall apply on a form specified by the commissioner
11 and declare under penalty of refusal, suspension, or
12 revocation of the license that statements made in the
13 application are true, correct, and complete to the best of
14 the individual's knowledge and belief. Before approving the
15 application, the commissioner shall verify that the
16 individual:

- 17 (a) is 18 years of age or older;
- 18 (b) has not committed an act that is a ground for
- 19 refusal, suspension, or revocation set forth in 33-17-1001;
- 20 (c) has paid the license fees stated in 33-2-708;
- 21 (d) has successfully passed the examinations for each
- 22 kind of insurance for which the individual has applied;
- 23 (e) is a resident of this state or of another state
- 24 that grants similar privileges to residents of this state;
- 25 (f) is competent, trustworthy, and of good reputation;

1 (g) has experience or training or otherwise is
 2 qualified in the kind or kinds of insurance for which he
 3 applies to be licensed and is reasonably familiar with the
 4 provisions of this code which govern his operations as an
 5 insurance producer; and

6 (h) if applying for a license as to life or disability
 7 insurance:

8 (i) is not a funeral director, undertaker, or
 9 mortician operating in this or any other state;

10 (ii) is not an officer, employee, or representative of
 11 a funeral director, undertaker, or mortician operating in
 12 this or any other state; or

13 (iii) does not hold an interest in or benefit from a
 14 business of a funeral director, undertaker, or mortician
 15 operating in this or any other state.

16 (2) A person acting as an insurance producer shall
 17 obtain a license. A person shall apply for a license on a
 18 form specified by the commissioner. Before approving the
 19 application, the commissioner shall verify that:

20 (a) the person meets the requirements listed in
 21 subsection (1);

22 (b) the person has paid the licensing fees stated in
 23 33-2-708 for each individual licensed in conjunction with
 24 the person's license. A licensed person shall promptly
 25 notify the commissioner of each change relating to an

1 individual listed in the license.

2 (c) the person has designated a licensed officer
 3 responsible for compliance by the person with the insurance
 4 laws and rules of this state;

5 (d) each member and employee of a partnership and each
 6 officer, director, stockholder, or employee of a corporation
 7 who is acting as an insurance producer in this state has
 8 obtained a license;

9 (e) (i) if the person is a partnership or corporation,
 10 the transaction of insurance business is within the purposes
 11 stated in the partnership agreement or the articles of
 12 incorporation; and

13 (ii) if the person is a corporation, the secretary of
 14 state has issued a certificate of incorporation under
 15 35-1-203 or 35-2-203.

16 (3) The commissioner may license as a resident
 17 insurance producer an association of licensed Montana
 18 insurance producers, whether or not incorporated, formed and
 19 existing substantially for purposes other than insurance.
 20 The license must be used solely for the purpose of enabling
 21 the association to place, as a resident insurance producer,
 22 insurance of the properties, interests, and risks of the
 23 state of Montana and of other public agencies, bodies, and
 24 institutions and to receive the customary commission for the
 25 placement. The president and secretary of the association

1 shall apply for the license in the name of the association,
 2 and the commissioner shall issue the license to the
 3 association in its name alone. The fee for the license is
 4 the same as that required by 33-2-708 for the license of an
 5 insurance producer. The commissioner may, after a hearing
 6 with notice to the association, revoke the license if he
 7 finds that continuation of the license is not in the public
 8 interest or that a ground listed in 33-17-1001 exists.

9 (4) An insurance producer using an assumed business
 10 name shall register the name with the commissioner before
 11 using it."

12 **Section 20.** Section 33-17-212, MCA, is amended to
 13 read:

14 "33-17-212. Examination required -- exceptions --
 15 fees. {1} After completion and filing of the application for
 16 license as required under 33-17-211, the commissioner shall
 17 subject each applicant for license as agent or solicitor,
 18 unless exempted therefrom under subsection (5) below, to an
 19 examination as to his competence to act as such agent or
 20 solicitor. The commissioner may either conduct the
 21 examination or arrange for the examination to be conducted
 22 by a testing service, which shall recover the cost of the
 23 examination from the applicant. (1) Except as provided in
 24 subsection (7), an individual applying for a license shall
 25 pass a written examination. The examination must test the

1 knowledge of the individual concerning each kind of
 2 insurance listed in subsection (6) for which application is
 3 made, the duties and responsibilities of an insurance
 4 producer, and the insurance laws and rules of this state.
 5 The examination must be developed and conducted under rules
 6 adopted by the commissioner.

7 (2) The commissioner may conduct the examination or
 8 make arrangements, including contracting with an outside
 9 testing service, for administering the examination and
 10 collecting the fees required by 33-2-708. The commissioner
 11 may arrange for the testing service to recover the cost of
 12 the examination from the applicant.

13 (3) Each individual applying for an examination shall
 14 remit the fees required by 33-2-708.

15 (4) An individual who fails to appear for the
 16 examination as scheduled or fails to pass the examination
 17 may reapply for an examination and shall remit all required
 18 fees and forms before being rescheduled for another
 19 examination.

20 {2}{5} If the applicant is a partnership or
 21 corporation, the examination shall be so taken by each
 22 individual who is to be named in the license as having
 23 authority to act for the applicant in its insurance
 24 transactions under the license shall take the examination.

25 {3}{6} Examination of an applicant for an agent's a

1 license ~~shall~~ must cover all of the kinds of insurance for
2 which the applicant has applied to be licensed, as
3 constituted by any one or more of the following
4 classifications:

5 (a) life insurance;

6 (b) disability insurance;

7 (c) property insurance; ~~for~~ For the purposes of this
8 provision, "marine" property insurance ~~shall be deemed to be~~
9 ~~included in "property"~~ includes marine insurance;

10 (d) casualty insurance;

11 ~~(e) vehicle insurance;~~

12 ~~(f)(e)~~ surety insurance;

13 ~~(g)(f)~~ credit life and disability insurance;

14 ~~(h)(g)~~ title insurance.

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

18 ~~(5)(7)~~ This section ~~shall~~ does not apply to, and no
19 ~~such an examination shall be~~ is not required of:

20 (a) any an individual lawfully licensed as an agent or
21 solicitor insurance producer as to the kind or kinds of
22 insurance to be transacted as of or immediately prior to
23 January 1, 1961, and thereafter continuing to be ~~so~~
24 licensed;

25 (b) any an applicant for license covering the same

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

10 (c) any an applicant for license as nonresident agent;
11 ~~subject to reciprocal arrangements as provided for in this~~
12 code insurance producer;

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

18 ~~(e)(d)~~ any an applicant for an agent's a license to
19 sell all-risk federal crop insurance if the applicant
20 provides certification from an appropriate governmental
21 agency to the commissioner that he is qualified to sell such
22 the insurance;

23 ~~(f)(e)~~ transportation ticket agents of common carriers
24 applying for license to solicit and sell only:

25 (i) accident insurance ticket policies; or

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

~~(g)(f)~~ agents--associations an association applying for license under ~~33-17-205~~ 33-17-211;

~~(h)(g)~~ a mechanical breakdown insurance agents producer.

(h) an individual who, within 60 days of cancellation of a license issued by the state of the individual's residence, files with the commissioner a current letter of clearance certifying that the individual has passed an examination and held an insurance license in good standing in the individual's state of licensure, except that the individual shall take an examination pertaining to this state's law and each kind of insurance for which the individual has applied for a license and which is not covered under the license held in the other state."

Section 21. Section 33-17-213, MCA, is amended to read:

"33-17-213. Conduct of examinations. (1) The commissioner shall make any examination required under 33-17-212 available to applicants with reasonable frequency and at places in this state reasonably accessible to the applicants.

~~(2)--All the kinds of insurance or classes thereof,--as~~

~~referred to in 33-17-212(3), which the applicant proposes to transact--under the license applied for--shall be included in the same examination--~~

~~(3)(2)~~ The commissioner shall assure that the examinations are conducted in a fair and impartial manner and without unfair discrimination as between individuals examined.

~~(4)(3)~~ The commissioner may require a reasonable waiting period before reexamination of an applicant who has failed to pass a previous examination covering the same kind or kinds of insurance.

~~(5)(4)~~ The examination of a title agent insurance producer, as defined in 33-25-105, must include but is not limited to questions pertaining to the search and examination of title to real property, insurance principles relating to title insurance, and the fiduciary duties and procedures of escrows, settlements, and closings of real estate transactions."

Section 22. Section 33-17-214, MCA, is amended to read:

"33-17-214. Issuance of license -- contents. (1) The commissioner shall promptly issue the a license applied for to the a person qualified therefor in accordance with this chapter pursuant to 33-17-211 and 33-17-212. There is a license for life or disability insurance and a separate

1 ~~license---for---kinds---of---insurance---other---than---life---or~~
2 ~~disability;~~

3 (2) The license ~~shall~~ must state the name and address
4 of the licensee, personal identification number, date of
5 issue issuance, general conditions relative to expiration or
6 termination, kind of insurance covered, and such other
7 information as the commissioner considers proper necessary.

8 (3) The license of a partnership, or corporation,
9 ~~shall~~ or association must also state the name of each
10 individual authorized to exercise the license powers.

11 ~~(4)---The-license-of-a-solicitor-shall---state---the---name~~
12 ~~and-address-of-the-agent-to-be-represented.~~

13 (4) Each license remains in effect, unless suspended
14 or revoked, as long as the fees required by 33-2-708 are
15 paid.

16 (5) An individual who allows his license to lapse may,
17 within 12 months from the due date of the unpaid annual fee,
18 apply for the same license without having to pass a written
19 examination if he pays a penalty in the amount of twice the
20 unpaid annual fee.

21 (6) A person shall inform the commissioner in writing
22 of a change of address within 30 days of the change."

23 **Section 23.** Section 33-17-216, MCA, is amended to
24 read:

25 "33-17-216. Temporary agent----licenses insurance

1 producer license -- fee. (1) The commissioner may issue a
2 temporary license ~~as--agent~~ to or with respect to an
3 individual qualified ~~therefor~~ for the temporary license only
4 as to age, residence, and trustworthiness and without
5 requiring ~~such the~~ individual to take an examination, in the
6 following cases:

7 (a) to the surviving spouse or next of kin or to the
8 administrator or executor, or the employee of ~~such the~~
9 administrator or executor, of a licensed agent insurance
10 producer upon ~~such-agent's~~ the insurance producer's death;

11 (b) to the spouse, next of kin, employee, or legal
12 guardian of a licensed agent insurance producer disabled by
13 injury or physical or mental illness;

14 (c) to an employee of a firm partnership, or officer
15 or employee of a corporation, licensed as agent an insurance
16 producer, upon the death or disability of an individual
17 designated in the license to exercise the powers ~~thereof~~ of
18 an insurance producer;

19 (d) to the designee of a licensed agent insurance
20 producer entering upon active service in the armed forces of
21 the United States of America;

22 (e) in any other circumstance in which the
23 commissioner finds that the public interest will best be
24 served by issuing such a license.

25 (2) The temporary license ~~shall~~ must be issued upon

1 application filed with the commissioner in such the form and
 2 containing such the information as the commissioner may
 3 reasonably require and upon payment of the applicable fee as
 4 stated provided in 33-2-708.

5 (3) The temporary license ~~shall~~ must be for a period
 6 of not over 90 days, subject to extension by the
 7 commissioner in his discretion for an additional period of
 8 not more than 90 days, except that such a temporary license
 9 issued pursuant to subsection (1)(a) may be continued
 10 without payment of an additional fee until the executor or
 11 administrator disposes of the insurance business, but not to
 12 exceed a period of 15 months. A temporary license issued to
 13 the next of kin under such subsection (1)(a) may not be
 14 extended for an additional term after the appointment and
 15 qualification of ~~such-an~~ the administrator or executor.

16 (4) The fee paid for the temporary license may be
 17 applied upon the fee required for a permanent license issued
 18 to the licensee upon or prior to expiration of the temporary
 19 license and covering the same kinds of insurance."

20 **Section 24.** Section 33-17-217, MCA, is amended to
 21 read:

22 "33-17-217. Limitations and rights under temporary
 23 license. (1) The commissioner ~~shall~~ may not issue more than
 24 one temporary license, to or with respect to the same
 25 individual to be ~~so~~ licensed, within any 12-month period.

1 (2) The temporary license may cover the same kinds of
 2 insurance for which the ~~agent-thereby~~ insurance producer
 3 being replaced was licensed.

4 (3) As to a temporary ~~agent's~~ insurance producer's
 5 license issued on account of the death or disability of an
 6 agent insurance producer, the licensee may ~~so~~ represent all
 7 of the insurers last represented by such the deceased or
 8 disabled ~~agent-and-without-the-making-of-new-appointment--of~~
 9 ~~such--licensee--by-such-insurers~~ insurance producer, but the
 10 licensee ~~shall~~ may not be ~~appointed--as--to--any--additional~~
 11 ~~insurer--or~~ licensed for an additional kind of insurance
 12 under ~~such-a~~ the temporary license. ~~This-provision-shall not~~
 13 ~~be-deemed-to-prohibit-termination-of-its-appointment-by--any~~
 14 ~~insurer.~~

15 (4) A temporary licensee ~~shall--have~~ has the same
 16 license powers and duties as under a permanent license."

17 **Section 25.** Section 33-17-221, MCA, is amended to
 18 read:

19 "33-17-221. Licensing insurance vending machines as
 20 ~~solicitors.~~ (1) A licensed resident agent insurance producer
 21 may solicit applications for and issue policies of personal
 22 travel accident insurance by means of mechanical vending
 23 machine machines supervised by him and placed at airports,
 24 railroad stations, bus stations, and similar places where
 25 transportation tickets are sold and of convenience to the

1 traveling public, if the commissioner finds that:

2 (a) the policy to be sold provides reasonable coverage
3 and benefits, is reasonably suited for sale and issuance
4 through a mechanical vending machines machine, and use of
5 such a mechanical vending machine therefor to sell or issue
6 a policy in a particular proposed location would be of
7 material convenience to the public;

8 (b) the type of mechanical vending machine proposed to
9 be used is reasonably suitable and practical for the
10 purpose;

11 (c) reasonable means are provided for informing the
12 prospective purchaser of any such policy of the coverage and
13 restrictions of the policy; and

14 (d) reasonable means are provided for refund to the
15 applicant or prospective applicant of money inserted in a
16 defective ~~machines~~ mechanical vending machine and for which
17 no insurance or a less amount than that paid for is actually
18 received.

19 (2) As to each such mechanical vending machine to be
20 so used to sell or issue a policy, the commissioner shall
21 issue to the agent insurance producer a special mechanical
22 vending machine license. The license shall must specify the
23 name and address of the insurer and agent insurance
24 producer, the name of the policy to be so sold or issued
25 through the mechanical vending machine, the serial number of

1 the mechanical vending machine, and the place where the
2 machine ~~is--to--be--in--operation~~ will operate. The license
3 ~~shall-be~~ is subject to annual continuation, expiration,
4 suspension, or revocation coincidentally with that of the
5 agent insurance producer. The commissioner shall also revoke
6 the license ~~as-to-any of a mechanical vending machine as--to~~
7 which if he finds that the conditions upon which the machine
8 was licensed, as referred to in subsection (1), no longer
9 exist. The license fee ~~shall-be~~ is as stated provided in
10 33-2-708 for each license year or part ~~thereof of the year~~
11 for each respective mechanical vending machine. Proof of the
12 existence of a subsisting license ~~shall must~~ be displayed on
13 or about each such mechanical vending machine in use in such
14 the manner as that the commissioner may reasonably require."

15 **Section 26.** Section 33-17-301, MCA, is amended to
16 read:

17 "33-17-301. ~~Adjuster's~~ Adjuster license --
18 qualifications -- catastrophe adjustments -- public
19 adjuster. (1) ~~No A~~ person ~~shall may not~~ in this state act as
20 or hold himself out to be an adjuster unless ~~then~~ licensed
21 ~~therefor as an adjuster~~ under this chapter. Application A
22 person shall apply for an adjuster license ~~shall-be-made~~ to
23 the commissioner according to forms ~~as--prescribed--and~~
24 ~~furnished--by-him~~ the commissioner prescribes and furnishes.
25 The commissioner shall issue the adjuster license as to

1 individuals qualified therefor to be licensed as an adjuster
 2 upon payment of the license fee stated provided in 33-2-708.

3 (2) To be licensed as an adjuster, the applicant must
 4 ~~be-qualified-therefor-as-follows:~~

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

6 (b) must be a resident ~~in-and~~ of Montana or resident
 7 of another state which that will permit residents of Montana
 8 regularly to act as adjusters in such the other state;

9 (c) must be a full-time salaried employee of a
 10 licensed adjuster or a graduate of a recognized law school
 11 or ~~must~~ have had experience or special education or training
 12 as to the handling of loss claims under insurance contracts
 13 of sufficient duration and extent reasonably to make him
 14 competent to fulfill the responsibilities of an adjuster;

15 (d) must be trustworthy and of good character and
 16 reputation;

17 (e) ~~must~~ shall have and maintain in this state an
 18 office accessible to the public and keep ~~therein~~ in the
 19 office the usual and customary records pertaining to
 20 transactions under the license. This provision ~~shall~~ does
 21 ~~not be-deemed-to~~ prohibit maintenance of such the office in
 22 the home of the licensee.

23 (3) A firm partnership or corporation, whether or not
 24 organized under the laws of this state, may be licensed as
 25 an adjuster if each individual who is to exercise the

1 adjuster license powers is separately licensed or is named
 2 in the firm partnership or corporation adjuster license and
 3 is qualified as for an individual adjuster license as
 4 adjuster. An additional full license fee ~~shall~~ must be paid
 5 ~~as-to~~ for each individual in excess of one ~~so~~ named in the
 6 firm partnership or corporation adjuster license to exercise
 7 its powers.

8 (4) ~~No---such---adjuster's~~ An adjuster license or
 9 qualifications ~~shall-be~~ are not required ~~as-to--any~~ for an
 10 adjuster who is sent into this state by and on behalf of an
 11 insurer or adjusting firm partnership or corporation for the
 12 purpose of investigating or making adjustments of a
 13 particular loss under an insurance policy or for the
 14 adjustment of a series of losses resulting from a
 15 catastrophe common to all such losses.

16 (5) An adjuster license continues in force until
 17 expired, suspended, revoked, or terminated. The license is
 18 subject to annual payment to the commissioner of the renewal
 19 fee required by 33-2-708, accompanied by a written request
 20 for renewal.

21 (6) The commissioner may adopt rules providing for the
 22 examination, licensure, bonding, and regulation of public
 23 adjusters."

24 **Section 27.** Section 33-17-401, MCA, is amended to
 25 read:

1 "33-17-401. Nonresident agent insurance producer --
2 reciprocity. (1) A nonresident person may apply for a
3 license if:

4 (a) the person meets the requirements of 33-17-211(2);

5 (b) the person is licensed in the state of his
6 residence to act as insurance producer for the kind or kinds
7 of insurance for which he applies for licensing in this
8 state; and

9 (c) the person's state of residence issues a similar
10 license to a resident of this state for the same kind or
11 kinds of insurance for which the person is qualified in this
12 state.

13 (2) The commissioner may license a nonresident
14 individual without written examination if the insurance
15 department in the individual's state of residence certifies
16 that:

17 (a) the individual either has passed a written
18 examination for each kind of insurance applied for or was
19 licensed prior to the time a written examination was
20 required in the individual's state of residence; and

21 (b) is currently licensed and in good standing.

22 (3) The commissioner may issue only a nonresident
23 license to a person, partnership, or corporation otherwise
24 qualified under this code but not a resident of this state
25 and--only--if--pursuant--to--the--laws--of--the--state--of--his

1 residence--a--similar--privilege--is--extended--to--persons
2 resident-in-Montana.

3 (4) If, by the laws or rules of another state, a
4 limitation of rights and privileges, conditions precedent,
5 or any other requirements are imposed upon a resident of
6 this state who is a nonresident licensee of the other state
7 and the limitation, conditions, or requirements are in
8 addition to or in excess of those imposed on nonresident
9 persons under this chapter, the same limitation, conditions,
10 or requirements must be imposed upon the residents of the
11 other state.

12 (5) If a nonresident insurance producer's state of
13 residence suspends, revokes, or terminates his insurance
14 license in that state, his Montana nonresident license
15 automatically terminates and the nonresident insurance
16 producer shall notify the commissioner that his state of
17 residence has suspended, revoked, or terminated his
18 insurance license in that state."

19 **Section 28.** Section 33-17-404, MCA, is amended to
20 read:

21 "33-17-404. Countersigning coverage of residents.
22 Except as provided in 33-17-1111, a nonresident agent--~~shall~~
23 insurance producer may not sign or countersign policies
24 covering subjects of insurance residing, located, or to be
25 performed in Montana."

1 **Section 29.** Section 33-17-405, MCA, is amended to
2 read:

3 "33-17-405. Service of process -- commissioner as
4 agent insurance producer. Application-for-and-acceptance-of
5 a--license--as--a--nonresident--agent--shall--constitute
6 irrevocable--appointment--of--the--commissioner--as--the
7 attorney-in-fact-of--said--licensee--to--accept--service--of
8 process--issued--in--Montana--in--any--action--or--proceeding
9 against-the-licensee-arising-out-of-the-licensing-or-out-of
10 transactions--under-the-license--All-process-shall-be-served
11 in-duplicate-upon-the-commissioner-together-with--a--fee--of
12 \$5--The--commissioner-shall-then-promptly-forward-a-copy-of
13 the-service-by-registered-or-certified-mail-to-the--licensee
14 at--his--last--known-address--Such-service-shall-constitute
15 personal-service-upon-the--licensee. A nonresident person
16 shall file with the commissioner the required forms
17 appointing the commissioner and his successors in office as
18 the nonresident person's agent upon whom process in a legal
19 proceeding against the nonresident person may be served and
20 shall agree that such process has the same legal force and
21 validity as personal service of process upon the nonresident
22 person. The commissioner shall, within 3 working days after
23 receiving process, forward, at the nonresident person's
24 address of record, a copy of the process by certified mail
25 to the person for whom he has received the process."

1 **Section 30.** Section 33-17-406, MCA, is amended to
2 read:

3 "33-17-406. Nonresident agent insurance producer
4 subject to insurance code. All A nonresident licensees shall
5 be insurance producer is subject to the provisions of the
6 Montana Insurance Code as though a resident of this state,
7 unless otherwise provided."

8 **Section 31.** Section 33-17-407, MCA, is amended to
9 read:

10 "33-17-407. Nonresident licensee insurance producer to
11 pay taxes -- annual report required. (1) A nonresident
12 licensee insurance producer is subject to personal income,
13 business income, or corporate license taxes for all income
14 earned on insurance policies issued to cover subjects or
15 risks residing, located, or to be performed in Montana and
16 written within the boundaries of this state.

17 (2) A nonresident licensee insurance producer shall
18 make-a-written-report--to--the--commissioner file annually
19 within--45-days-following-the-end-of-each-calendar-year--The
20 report must contain a listing of--all--business--written--on
21 subjects--or--risks--located--or--performed--in-Montana--The
22 report must be in a form prescribed by the commissioner--and
23 must--include--but--not--be limited to a listing of company,
24 policy number, premium--earned, and--commission--earned a
25 Montana income tax return as required in Title 15."

1 **Section 32.** Section 33-17-411, MCA, is amended to
2 read:

3 "33-17-411. **Penalty.** A nonresident ~~licensee~~ insurance
4 producer who violates ~~any a~~ condition of his Montana license
5 or ~~any a~~ provision of this part is subject to a fine by the
6 commissioner of up to \$50,000 for each ~~such~~ violation and
7 may, at the discretion of the commissioner, have his Montana
8 nonresident license revoked or suspended for a period of up
9 to 5 years."

10 **Section 33.** Section 33-17-502, MCA, is amended to
11 read:

12 "33-17-502. **Prohibition on holding out as consultant**
13 **-- receiving fee.** (1) Any A person not licensed as an
14 insurance consultant in this state who identifies or holds
15 himself out to be an insurance consultant without having
16 been licensed as an insurance consultant under this part or
17 ~~any a~~ person who uses any other designation or title ~~which~~
18 ~~that~~ is likely to mislead the public and holds himself out
19 in any manner as having particular insurance qualifications
20 other than those for which he may be otherwise licensed or
21 otherwise qualified is guilty of a misdemeanor and upon
22 conviction shall be fined \$1,500.

23 (2) Any A person not licensed as an insurance
24 consultant with respect to the relevant kinds of insurance
25 who receives ~~any a~~ fee for examining, appraising, reviewing,

1 or evaluating any insurance policy, annuity or pension
2 contract, plan, or program or who ~~shall---make~~ makes
3 recommendations or ~~give~~ gives advice with regard to any of
4 the above without first having been licensed by the
5 commissioner as an insurance consultant is guilty of a
6 misdemeanor and upon conviction shall be fined \$1,500.

7 (3) Nothing in this part applies to:

8 (a) licensed attorneys at law in this state acting in
9 their professional capacity;

10 (b) an actuary or a certified public accountant who
11 provides information, recommendations, advice, or services
12 in his professional capacity if neither he nor his employer
13 receives any compensation directly or indirectly on account
14 of any insurance, bond, annuity or pension contract that
15 results in whole or part from that information,
16 recommendation, advice, or services; or

17 (c) a duty licensed casualty insurance ~~agent~~ producer
18 who accepts a fee from an insured for placement through the
19 state compensation insurance fund as provided in 33-18-212."

20 **Section 34.** Section 33-17-503, MCA, is amended to
21 read:

22 "33-17-503. **Application -- fee -- expiration.** (1)
23 Before ~~an insurance consultant's~~ a consultant license is
24 issued or renewed, the prospective licensee shall:

25 (a) properly file in the office of the commissioner a

1 written application on forms the commissioner prescribes;
2 and

3 (b) pay a fee of \$50.

4 (2) ~~Every--consultant's~~ Each consultant license shall
5 ~~expire~~ expires on May 31 next following the date of issue."

6 **Section 35.** Section 33-17-504, MCA, is amended to
7 read:

8 "33-17-504. Issuing license -- limitations. The
9 commissioner may issue ~~an--insurance--consultant's~~ a
10 consultant license to ~~any-natural-person~~ an individual who
11 has complied with the requirements of this chapter with
12 respect to either life insurance, meaning all of those kinds
13 of insurance authorized in 33-1-207, 33-1-208, 33-20-1001,
14 33-21-103, 33-22-501, and 33-22-601, or general insurance,
15 meaning all of those kinds of insurance authorized in
16 33-1-206, 33-1-207, 33-1-209 through 33-1-212, and 33-1-221
17 through 33-1-229, as specified in ~~such~~ the license."

18 **Section 36.** Section 33-17-505, MCA, is amended to
19 read:

20 "33-17-505. Qualification -- fee. (1) In order to
21 determine the competency of every an applicant for a
22 consultant license ~~as--an--insurance--consultant~~, the
23 commissioner shall require the applicant to pass an
24 examination.

25 (2) The fee for taking ~~such-an~~ the consultant license

1 examination ~~shall-be~~ is \$50. The commissioner shall deposit
2 all fees collected in the general fund. The fee for taking a
3 second or subsequent examination ~~shall~~ may be no more than
4 the cost of administering ~~such~~ the examination, not to
5 exceed \$50."

6 **Section 37.** Section 33-17-506, MCA, is amended to
7 read:

8 "33-17-506. Grounds for refusal to issue license. The
9 commissioner may refuse to issue ~~an--insurance--consultant's~~ a
10 consultant license if, in his judgment, the applicant is not
11 trustworthy and competent to act as a consultant, or has
12 given cause for revocation or suspension of a license, or
13 has failed to comply with any prerequisite for the issuance
14 of a license."

15 **Section 38.** Section 33-17-507, MCA, is amended to
16 read:

17 "33-17-507. Revocation. The commissioner may revoke or
18 suspend ~~any--insurance--consultant's~~ a consultant license for
19 a period he determines if, after notice and hearing as
20 specified in this chapter, he determines that the licensee:

21 (1) has violated any provision of or any obligation
22 imposed by the insurance law or has violated any law in the
23 course of his dealings as ~~a~~ an insurance consultant;

24 (2) has made a material misstatement in application
25 for a ~~consultant's~~ consultant license;

1 (3) has been guilty of fraudulent or dishonest
2 practices; or

3 (4) has demonstrated his incompetency or
4 untrustworthiness to act as an insurance consultant."

5 **Section 39.** Section 33-17-511, MCA, is amended to
6 read:

7 "33-17-511. Consideration for services only on written
8 memorandum. No A person licensed as an insurance consultant
9 under this part may not receive any a fee for examining,
10 appraising, reviewing, or evaluating any an insurance
11 policy, bond, annuity or pension or profit-sharing contract,
12 plan, or program or for making recommendations or giving
13 advice with regard to any of the above unless the
14 compensation is based upon a written memorandum signed by
15 the party to be charged and specifying or clearly defining
16 the amount or extent of the compensation. A An insurance
17 consultant shall retain a copy of every memorandum or
18 contract ~~shall be retained by the licensee~~ for not less than
19 3 years after those services have been fully performed."

20 **Section 40.** Section 33-17-512, MCA, is amended to
21 read:

22 "33-17-512. Limitation on type of consideration. No A
23 person licensed as an insurance consultant may not receive
24 any compensation, direct or indirect, as a result of the
25 sale of insurance or annuities to or the use of securities

1 or trusts in connection with pensions for any a person to
2 whom any the licensee has performed any a related consulting
3 service for which he has received a fee or contracted to
4 receive a fee within the preceding 12 months."

5 **Section 41.** Section 33-17-513, MCA, is amended to
6 read:

7 "33-17-513. Restrictions on insurers recommended by
8 licensee. No A person licensed as an insurance consultant
9 under this part may not recommend or encourage the purchase
10 of insurance, annuities, or securities from any an
11 authorized insurer in which he or any member of his
12 immediate family holds an executive position or holds a
13 substantial interest."

14 **Section 42.** Section 33-17-602, MCA, is amended to
15 read:

16 "33-17-602. Written agreement required. (1) No A
17 person may not act as an administrator without a written
18 agreement between the person and the insurer. The written
19 agreement ~~shall~~ must be retained as part of the official
20 records of both the administrator and the insurer for the
21 duration of the agreement and for 5 years thereafter. The
22 written agreement ~~shall~~ must contain provisions which that
23 include the requirements of 33-17-612 through 33-17-617
24 insofar as these requirements relate to the functions
25 performed by the administrator.

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

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

Section 43. Section 33-17-603, MCA, is amended to read:

"33-17-603. Certificate of registration. (1) Except as provided in 33-17-604, ~~no~~ a person may not act as or hold himself out to be an administrator in this state unless he holds a certificate of registration as an administrator.

(2) An application for a certificate of registration must be accompanied by a fee of \$100. The commissioner of ~~insurance~~ shall issue the certificate unless he finds that the applicant is not competent, trustworthy, financially responsible, or of good personal and business reputation or that the applicant has had a previous application for ~~an insurance~~ a license denied for cause within 5 years.

(3) The certificate of registration is renewable annually on the date of issue. A request for renewal must be accompanied by a renewal fee of \$100.

(4) The certificate of registration may be suspended or revoked if, after notice and hearing, the commissioner finds that the administrator has violated any of the requirements of this part or that the administrator is not competent, trustworthy, financially responsible, or of good personal and business reputation.

(5) Unless the certification requirement is waived, ~~any administrator~~ a person who acts as such an administrator without ~~the~~ a certificate of registration is subject to a fine of not less than \$500 or more than \$1,500."

Section 44. Section 33-17-604, MCA, is amended to read:

"33-17-604. Waiver of certification requirements. The commissioner ~~of--insurance~~ may waive the requirements of 33-17-603 for any person or class of persons. The factors taken into account in granting ~~such a~~ waiver shall include but are not limited to:

(1) whether the person acting as an administrator is primarily in a business other than that of administrator;

(2) whether the financial strength and history of the organization indicates stability in its continuity of doing business;

(3) whether the regular duties being performed as an administrator are such that the covered persons are not likely to be injured by a waiver of ~~such the~~ the requirements."

Section 45. Section 33-17-611, MCA, is amended to read:

"33-17-611. Maintenance of information. For the duration of the agreement required by 33-17-602 and for 5 years thereafter, each administrator shall maintain at its principal administrative office adequate books and records of all transactions between the administrator, insurers, and insured persons. These books and records ~~shall~~ must be maintained in accordance with prudent standards of insurance recordkeeping. The commissioner ~~of--insurance~~ shall have access to these books and records for examination, audit, or inspection. Any trade secrets contained in the books and records, including but not limited to the identity and addresses of policyholders and certificate holders, ~~shall-be~~ are confidential, except that the commissioner may use ~~such~~ the information in any proceedings instituted against the administrator. The insurer retains the right to continuing access to those books and records of the administrator sufficient to permit the insurer to fulfill all of its contractual obligations to insured persons, subject to any restrictions in the written agreement between the insurer and the administrator."

Section 46. Section 33-17-613, MCA, is amended to read:

"33-17-613. Collection of charges and premiums. (1)

All insurance charges or premiums collected by an administrator on behalf of or for an insurer ~~or-insurers~~ and return premiums received from ~~such the~~ insurer ~~or-insurers~~ are held by the administrator in a fiduciary capacity. These funds ~~shall~~ must be immediately remitted to the person ~~or--persons~~ entitled ~~thereto to them~~ or ~~shall~~ must be deposited promptly in a fiduciary bank account established and maintained by the administrator. If deposited charges or premiums were collected on behalf of or for more than one insurer, the administrator shall require the bank in which the fiduciary account is maintained to keep records clearly recording the deposits in and withdrawals from ~~such the~~ account on behalf of or for each insurer. The administrator shall promptly obtain and keep copies of all these records and, upon request of an insurer, shall furnish the insurer with copies of the records pertaining to deposits and withdrawals on behalf of or for the insurer.

(2) The administrator ~~shall~~ may not pay ~~any a~~ claim by withdrawals from the fiduciary account. Withdrawals from the fiduciary account ~~shall~~ must be made, as provided in the written agreement between the administrator and the insurer, for:

(a) remittance to an insurer entitled ~~thereto to the~~ remittance;

(b) deposit in an account maintained in the name of

1 such the insurer;

2 (c) transfer to and deposit in a claims paying
3 account, with claims to be paid as provided in 33-17-615;

4 (d) payment to a group policyholder for remittance to
5 the insurer entitled thereto to the payment;

6 (e) payment to the administrator of its commission,
7 fees, or charges; or

8 (f) remittance of return premiums to the person or
9 persons entitled thereto to the premium."

10 **Section 47.** Section 33-17-1001, MCA, is amended to
11 read:

12 "33-17-1001. Suspension, revocation, or refusal of
13 license. (1) Except as provided in 33-17-411, the
14 commissioner may suspend for not more than 12 months, or may
15 revoke or refuse to continue any, or may deny an application
16 for a license issued under this chapter or any surplus lines
17 agent insurance producer license if, after hearing held on
18 not less than 10 days' advance notice by certified mail of
19 such the hearing and of the charges against the licensee
20 given as provided in 33-1-314(3) to the licensee and-to--the
21 insurers--represented,--as-to-an-agent,--or-to-the-appointing
22 agent,--as-to-a-solicitor, he finds that as-to the licensee
23 any--one--or-more-of-the-following-causes-exist or applicant
24 has:

25 (a) for-any-cause engaged or is about to engage in an

1 act or practice for which issuance of the license could have
2 been refused had it then existed and been known to the
3 commissioner;

4 (b) for-obtaining obtained or attempting attempted to
5 obtain any--such a license through misrepresentation or
6 fraud;

7 (c) for-violation--of--or--noncompliance violated or
8 failed to comply with any-applicable a provision of this
9 code or for-willful-violation-of-any-lawful has violated a
10 rule, subpoena, or order of the commissioner or of the
11 commissioner of any state;

12 (d) for--misappropriation--or--conversion improperly
13 withheld, misappropriated, or converted to his own use or
14 illegal-withholding-of-moneys money or property belonging to
15 policyholders, insurers, beneficiaries, or others and
16 received in conduct of business under the license;

17 (e) conviction, by-final-judgment, been convicted of a
18 felony involving moral turpitude;

19 (f) if in the conduct of his affairs under the
20 license, the-licensee--has used fraudulent, coercive, or
21 dishonest practices or has shown himself to be incompetent,
22 untrustworthy, financially irresponsible, or a source of
23 injury and loss to the public;

24 (g) made a materially untrue statement in the license
25 application;

1 (h) misrepresented the terms of an actual or proposed
2 insurance contract;

3 (i) been found guilty of an unfair trade practice or
4 fraud prohibited by Title 33, in chapter 18;

5 (j) had his license suspended or revoked in any other
6 state;

7 (k) forged another's name to an application for
8 insurance;

9 (l) cheated on an examination for a license; or

10 (m) knowingly accepted insurance business from a
11 person who is not licensed.

12 (2) The license of a partnership or corporation may be
13 suspended, revoked, or refused, ~~also-for-any-of-such-causes~~
14 ~~as-relate-to-any~~ or denied if a reason listed in subsection
15 (1) applies to an individual designated in the license to
16 exercise its powers.

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

21 **Section 48.** Section 33-17-1002, MCA, is amended to
22 read:

23 "33-17-1002. Procedure following suspension or
24 revocation. (1) Upon suspension or revocation of any-such a
25 license, the commissioner shall forthwith immediately notify

1 the licensee thereof of the suspension or revocation either
2 in person or by mail addressed to the licensee at his
3 address last of record with the commissioner. Notice by mail
4 ~~shall-be-deemed is~~ is effectuated when so the notice is mailed.
5 ~~The-commissioner-shall-give-like-notice-to-the-insurers~~
6 ~~represented-by-the-agent,-in-the-case-of-an-agent's-license,~~
7 ~~and-to-the-agent-by-whom-appointed,-in-the-case-of-a~~
8 ~~solicitor's-license.~~

9 ~~{2}--Suspension-or-revocation-of-the-license-of-an~~
10 ~~agent--shall-automatically-revoke-or-suspend-the-licenses-of~~
11 ~~all-solicitors-appointed-by-him.~~

12 ~~{3}{2}~~ (2) The commissioner ~~shall~~ may not again issue a
13 license under this code to ~~or-as-to-any a~~ a person whose
14 license has been revoked until after expiration of 1 year
15 and thereafter not until ~~such the~~ the person again qualifies
16 ~~therefor for a license~~ in accordance with the-applicable
17 ~~provisions--of this code. If the commissioner revokes a~~
18 ~~person's license, the commissioner may refuse to issue a~~
19 ~~license to the person for up to 5 years after the~~
20 ~~revocation.~~ A person whose license has been revoked twice
21 ~~shall is~~ is not again be eligible for any license under this
22 code.

23 ~~{4}{3}~~ (3) If the license of a partnership or corporation
24 is ~~so~~ suspended or revoked, no member of such the
25 partnership or officer or director of such the corporation

1 ~~shall~~ may be licensed or be designated in any ~~a~~ license to
 2 exercise ~~the~~ its powers thereof during the period of ~~such~~
 3 ~~the~~ suspension or revocation unless the commissioner
 4 determines upon substantial evidence that ~~such~~ the member,
 5 officer, or director was not personally at fault and did not
 6 acquiesce in the matter on account of which the license was
 7 suspended or revoked."

8 **Section 49.** Section 33-17-1003, MCA, is amended to
 9 read:

10 "33-17-1003. Return of license. (1) All licenses
 11 issued under this chapter, although issued and delivered to
 12 the licensee ~~agent,--solicitor,~~ insurance producer or
 13 adjuster, ~~shall~~ are at all times be the property of the
 14 state of Montana. Upon any expiration, termination,
 15 suspension, or revocation of the license, the licensee or
 16 other person having possession or custody of the license
 17 shall ~~forthwith~~ immediately deliver it to the commissioner
 18 either by personal delivery or by mail.

19 (2) As to any license lost, stolen, or destroyed while
 20 in the possession of ~~any--such~~ a licensee or person, the
 21 commissioner may accept in lieu of return of the license the
 22 affidavit of the licensee or other person responsible for or
 23 involved in the safekeeping of ~~such~~ the license, concerning
 24 the facts of ~~such~~ the loss, theft, or destruction."

25 **Section 50.** Section 33-17-1004, MCA, is amended to

1 read:

2 "33-17-1004. Acting as insurance agent,--~~solicitor,~~
 3 producer or adjuster without license -- penalty. Except as
 4 provided in 33-17-411, a person,--~~partnership,--association,~~
 5 ~~or--~~ corporation who ~~or--which~~, in this state, acts as an
 6 insurance ~~agent,--solicitor,~~ producer or adjuster without
 7 having authority to do so by virtue of a license issued and
 8 in force pursuant to ~~the--provisions--of~~ this chapter is
 9 guilty of a misdemeanor and upon conviction shall be fined
 10 \$500 or imprisoned in the county jail for 90 days, or both."

11 **Section 51.** Section 33-17-1101, MCA, is amended to
 12 read:

13 "33-17-1101. Place of business -- display of license
 14 -- records. (1) Every resident agent insurance producer
 15 shall have and maintain a place of business in this state
 16 accessible to the public. A nonresident agent insurance
 17 producer may maintain a place of business in this state. An
 18 ~~agent's~~ insurance producer's place of business must be ~~that~~
 19 ~~wherein~~ a place in which he principally conducts
 20 transactions under his license. The street address of ~~such~~
 21 ~~the~~ place shall must appear upon the license, ~~and the~~
 22 ~~licensee shall--promptly--notify--the--commissioner--of--any~~
 23 ~~change--in--his--street--or--mailing--address.~~ Nothing in this
 24 section prohibits maintenance of ~~such~~ the place of business
 25 in the licensee's place of residence.

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

(3) The agent insurance producer shall keep at his place of business complete records pertaining to transactions under his license ~~and the licenses of his solicitors~~, for a period of at least 3 years after completion of the respective transactions, except that a title agents insurance producer, as defined in 33-25-105, shall retain records as provided in 33-25-214 and 33-25-216."

Section 52. Section 33-17-1102, MCA, is amended to read:

"33-17-1102. Reporting and accounting for premiums -- misappropriation. (1) All insurance premiums or return premiums received by an ~~agent or solicitor~~ insurance producer must be held in a separate trust account. The licensee insurance producer shall at all times act in a fiduciary capacity, ~~and the agent or solicitor shall,~~ in the applicable regular course of business, account for and pay the same insurance premiums or return premiums he receives to the insured, insurer, or agent insurance producer

entitled thereto to them. Except for a title agent insurance producer as defined in 33-25-105, an agent insurance producer may deposit and commingle in the same such separate deposit all such funds belonging to others so long as the amount of such the deposit ~~so~~ held for each respective ~~other~~ person is reasonably ascertainable from the records and accounts of the licensee.

(2) Any ~~agent or solicitor~~ insurance producer not lawfully entitled thereto to the funds may not divert or appropriate such the funds or any portion thereof of the funds to his own use.

(3) An insurance producer who unlawfully diverts or appropriates insurance premiums or return premiums to his own use is, upon conviction, guilty of theft and is punishable as provided by law."

Section 53. Section 33-17-1103, MCA, is amended to read:

"33-17-1103. Exchange of business --- sharing Accepting and paying commissions, fees, or consideration -- restriction. ~~(1) An agent may, under rules adopted by the commissioner, place an insurance coverage with an insurer as to which he is not then licensed or appointed as an agent, and the insurer shall accept such business, only when placed through an agent, licensed under this chapter and appointed by the insurer. Both agents involved in such an exchange of~~

1 business--must--be--licensed--as--to--all--of--the--kinds--of
2 insurance--represented--by--the--coverage--so--placed:

3 {2}--The--agents--involved--in--a--lawful--exchange--of
4 business--under--subsection--(1)--above--may--divide--between--them
5 the--commission--or--compensation--payable--on--account--of--such
6 coverage: (1) An insurer or insurance producer may not pay,
7 directly or indirectly, a commission, service fee, brokerage
8 fee, or other valuable consideration to a person for
9 services as an insurance producer unless the person
10 performing the service holds a valid license with regard to
11 the kind or kinds of insurance for which the service was
12 rendered at the time the service was performed. A person not
13 properly licensed in accordance with this chapter at the
14 time he performs the service as an insurance producer may
15 not accept a commission, service fee, brokerage fee, or
16 other valuable consideration for the service. This section
17 does not prevent payment or receipt of renewal or other
18 deferred commissions to or by a person entitled to receive
19 the payment under this section.

20 {3}{2} No---agent--or--solicitor--shall An insurance
21 producer may not directly or indirectly share his
22 commissions or other compensation received or to be received
23 by him on account of a transaction under his license with
24 any person not also licensed under this chapter as to the
25 same kind or kinds of insurance involved in such the

1 transactions, except as provided in 33-17-1113. This
2 provision shall does not affect payment of the regular
3 salaries due employees of the licensee, or the distribution
4 in regular course of business of compensation and profits
5 among members or stockholders if the licensee is a firm
6 partnership or corporation, or use of funds for family or
7 personal purposes.

8 {4}{3} This section does not apply as to those
9 transactions with surplus lines agents--which insurance
10 producers that are lawful under 33-2-306 or as--to--life--or
11 disability--insurance--placed--as--provided--in--33-17-1104."

12 Section 54. Section 33-17-1111, MCA, is amended to
13 read:

14 "33-17-1111. Resident agent insurance producer
15 required -- reciprocity -- countersignature -- records. (1)
16 No An authorized insurer shall may not issue a policy
17 covering a subject of insurance resident residing, located,
18 or to be performed in Montana unless:

19 (a) the policy is written through a licensed agent,
20 resident insurance producer residing in Montana, of the
21 insurer;

22 (b) the policy is written through a licensed
23 nonresident agent insurance producer and, if a
24 countersignature would be required by the resident state of
25 the nonresident agent insurance producer upon a Montana

1 resident agent insurance producer writing business in the
 2 resident state of such the nonresident agent insurance
 3 producer, the policy or countersignature endorsement
 4 attached ~~thereto~~ to the policy is countersigned by a Montana
 5 resident licensed agent insurance producer; or

6 (c) the policy is written through a licensed
 7 nonresident agent insurance producer who is a resident of a
 8 state that does not require countersignatures.

9 (2) ~~No--such~~ A countersignature ~~shall~~ may not be made
 10 in blank. The agent insurance producer may by express
 11 written authorization given in advance delegate to his
 12 salaried clerical employee the power to ~~so~~ countersign in
 13 the name of the ~~agent--such--contracts~~ insurance producer
 14 those policies or classes of ~~contracts--as--are~~ policies
 15 designated in such the authorization ~~so--long--as~~ if the
 16 initials of such the employee are written below the agent's
 17 insurance producer's name on such the countersignature, but
 18 the ~~agent--shall~~ insurance producer may not thereby delegate
 19 or have power to delegate to ~~any--other~~ a person the power or
 20 authority to bind an insurer with respect to ~~any~~ a risk not
 21 already bound by the agent insurance producer or other
 22 person having clear authority from the insurer ~~so~~ to bind.
 23 The ~~agent--shall--be~~ insurance producer is responsible for all
 24 of the acts of such the employee within the scope of the
 25 authority ~~so~~ delegated. The agent insurance producer shall

1 keep a record of ~~each--and~~ all coverages countersigned by him
 2 or by his authority.

3 (3) This section ~~shall~~ does not apply to:

4 (a) reinsurance;

5 (b) life insurance, disability insurance, or annuity
 6 contracts;

7 (c) insurance of the rolling stock, vessels, or
 8 aircraft of any common carrier in interstate or foreign
 9 commerce or of any vehicle principally garaged and used in
 10 another state or covering any liability or other risks
 11 incident to the ownership, maintenance, or operation ~~thereof~~
 12 of any common carrier or vehicle;

13 (d) insurance of property in course of transportation
 14 interstate or in foreign trade or any liability or risk
 15 incident ~~thereto to the insurance~~;

16 (e) insurance of wet marine and transportation risks;

17 (f) countersignature to policies issued through agents
 18 insurance producers compensated only by salary or issued by
 19 insurers not using agents insurance producers in the general
 20 solicitation of business;

21 (g) bid bonds, as required under Title 18, chapter 1,
 22 part 2.

23 (4) Violation of this section ~~shall~~ does not
 24 invalidate ~~any--contract~~ a policy otherwise valid as between
 25 the insurer and the insured."

Section 55. Section 33-17-1112, MCA, is amended to

read:

"33-17-1112. Salaried personnel not to countersign -- exception for emergencies. (1) With respect to policies subject to countersignature requirements under 33-17-1111, only a licensed ~~agent--of--the--insurer--resident~~ insurance producer residing in Montana, whose compensation as ~~such agent an insurance producer~~ is by commission computed as a percentage of the premium received on each ~~such~~ policy written, ~~shall have~~ has power to countersign as required by 33-17-1111.

(2) ~~No~~ A branch manager, state agent, special agent, general or any other like supervisory agent, or any other representative of the insurer, whose compensation ~~therefrom~~ from the insurer is in whole or in part by salary, ~~shall does not~~ have power to countersign ~~such~~ policies or countersignature endorsements ~~thereto~~ to policies; except that in an emergency where it is necessary that an insurance policy be issued without delay and no resident ~~agent-of-the insurer insurance producer~~ having power to execute the policy is then reasonably available, then any other individual having authority ~~therefor~~ from the insurer may execute ~~such the~~ policy in the first instance in order to make a contract between the insurer and the obligee or the insured if ~~such the~~ policy is subsequently countersigned in

fact by ~~such~~ a resident agent insurance producer."

Section 56. Section 33-17-1113, MCA, is amended to

read:

"33-17-1113. Policies originating outside state -- commission of resident agent insurance producer. (1) As to policies a policy or endorsements--~~thereto--which-are an endorsement to a policy that is~~ subject to countersignature requirements under 33-17-1111 contracted for or otherwise originating outside the boundaries of Montana, ~~there--shall be-payable-to-the-countersigning-agent, resident-in-Montana, a commission which--shall of~~ not be less than 5% of the premium charged and received but not ~~to-exceed more than~~ 50% of the commission paid by the insurer is payable to the countersigning insurance producer, so that a record within Montana will be kept of ~~such the~~ business and so that the state may better receive any tax required by law to be paid with respect to ~~such the~~ insurance. If, however, the originating ~~agent--or--broker insurance producer~~ or the insurer desires additional service to be rendered during the term of the policy, then the compensation for ~~such the~~ countersigning resident ~~agent--shall insurance producer must~~ be in ~~such an~~ additional amount as is fixed by mutual agreement of ~~such the~~ parties in interest.

(2) If pursuant to the laws of another state the countersigning ~~agents~~ insurance producers of that state

1 retain as commission or compensation with respect to
 2 business originated by Montana agents insurance producers
 3 more than 5% of the premium, then the Montana agents
 4 insurance producers who countersign policies representing
 5 business originated by ~~agents-or-brokers~~ insurance producers
 6 of ~~such~~ the other state shall charge and receive a
 7 commission in an amount not less than that ~~so~~ received by
 8 countersigning ~~agents~~ insurance producers of the other
 9 state."

10 **Section 57.** Section 33-17-1114, MCA, is amended to
 11 read:

12 "33-17-1114. Policies issued at home or branch
 13 offices. Nothing in 33-17-1111 through 33-17-1113 ~~shall~~
 14 ~~prevent--any~~ prevents an insurer from issuing any a policy,
 15 as to which the ~~resident---agent---or~~ countersignature
 16 requirement of 33-17-1111 ~~is-applicable~~ applies, at its home
 17 or branch office, but ~~such-policies-shall~~ the policy must be
 18 subsequently countersigned, where otherwise required, by ~~its~~
 19 ~~agent--resident~~ an insurance producer residing in Montana.
 20 The ~~insurer's-licensed--agent--resident~~ insurance producer
 21 residing in Montana shall receive the commission on such the
 22 policy when the insurance premium is paid. This section does
 23 not apply ~~as~~ to life insurance."

24 **Section 58.** Section 33-18-401, MCA, is amended to
 25 read:

1 "33-18-401. False applications,--claims application,
 2 claim, and proofs proof of loss -- penalty. ~~Any-solicitor,~~
 3 ~~agent~~ An insurance producer, examining physician, applicant,
 4 or other person who knowingly or willfully makes any a false
 5 or fraudulent statement or representation in or with
 6 reference to any an application for insurance or, for the
 7 purpose of obtaining any money or benefit, knowingly or
 8 willfully presents or causes to be presented a false or
 9 fraudulent claim or any proof in support of such a claim for
 10 the payment of the loss upon a contract of insurance or
 11 prepares, makes, or subscribes a false or fraudulent
 12 account, certificate, affidavit or proof of loss, or other
 13 document or writing, with intent that the same may be
 14 presented or used in support of such a claim, ~~shall--be~~ is
 15 guilty of a ~~misdemeanor~~ felony and upon conviction shall be
 16 ~~punished-by-a-fine-of-not-less-than-\$250-or~~ fined not more
 17 ~~than \$1,000~~ \$5,000 or ~~by-imprisonment-in-the-county-jail-for~~
 18 ~~not--less-than-3-months-or~~ imprisoned not more than ~~6-months~~
 19 10 years, or both ~~such--fine--and--imprisonment--at--the~~
 20 ~~discretion-of-the-court."~~

21 **Section 59.** Section 33-25-202, MCA, is amended to
 22 read:

23 "33-25-202. Sharing of rate proceeds. Title insurers
 24 and agents insurance producers may share rate proceeds
 25 between or among themselves in any combination and may

1 ~~exchange--business--and-share~~ accept commissions as provided
 2 in 33-17-1103, unless the sharing of rate proceeds is an
 3 unlawful rebate or inducement under this title or is a
 4 payment of a forwarding fee or finders fee."

5 **Section 60.** Section 33-25-214, MCA, is amended to
 6 read:

7 "33-25-214. Underwriting standards -- record
 8 retention. (1) A title insurer may not issue a title
 9 insurance policy unless it, its title agent insurance
 10 producer, or an approved attorney has conducted a reasonable
 11 search and examination of the title and made a determination
 12 of insurability of title in accordance with sound
 13 underwriting practices. The title insurer or title agent
 14 must insurance producer shall preserve and retain in its
 15 files evidence of the examination of title and determination
 16 of insurability. The title insurer or title agent insurance
 17 producer may keep original evidence or may establish in the
 18 regular course of business a system of recording, copying,
 19 or reproducing evidence by any process that accurately and
 20 legibly reproduces, or forms a durable medium for
 21 reproducing, the contents of the original.

22 (2) Subsection (1) does not apply to:

23 (a) a title insurer assuming liability through a
 24 contract of reinsurance; or

25 (b) a title insurer acting as coinsurer if one of the

1 other coinsuring title insurers has complied with subsection
 2 (1).

3 (3) Except as allowed by rules adopted by the
 4 commissioner, ~~no~~ a title insurer or title agent insurance
 5 producer may not knowingly issue an owner's title insurance
 6 policy or commitment to insure unless all outstanding
 7 enforceable recorded liens or other interests against the
 8 property title to be insured are shown.

9 (4) An insurer issuing a policy in violation of this
 10 section is estopped, as a matter of law, to deny the
 11 validity of the policy as to any claim or demand of the
 12 insured arising thereunder under the policy."

13 **Section 61.** Section 33-25-301, MCA, is amended to
 14 read:

15 "33-25-301. Refusal, suspension, or revocation of
 16 title agent's insurance producer's license. (1) In addition
 17 to the causes provided in 33-17-1001, the commissioner may
 18 refuse to license a person as a title agent insurance
 19 producer or may suspend or revoke a title agent's insurance
 20 producer's license if, after a hearing held after notice as
 21 required in 33-17-1001, he finds that the license applicant
 22 or licensee has:

23 (a) made a material misstatement in an application for
 24 a title agent insurance producer license;

25 (b) commingled funds belonging to applicants, escrow

1 participants, or others;

2 (c) intentionally misrepresented the terms of a title
3 insurance policy to an applicant or policyholder or has
4 misrepresented material facts to, concealed material facts
5 from, or made false statements to a party to an escrow,
6 settlement, or closing transaction;

7 (d) in the conduct of his affairs under his title
8 agent's insurance producer's license, used coercive
9 practices or shown himself to be financially irresponsible;

10 (e) aided, abetted, or assisted another person in
11 violating the provisions of this title or a rule adopted by
12 the commissioner.

13 (2) The commissioner may impose any other appropriate
14 penalty provided for in this title.

15 (3) The commissioner may refuse, suspend, or revoke
16 the license of a ~~firm, corporation, or other business entity~~
17 person licensed as a title agent insurance producer for the
18 actions described in subsection (1) of any individual
19 designated in the license to exercise its powers."

20 **Section 62.** Section 33-25-302, MCA, is amended to
21 read:

22 "33-25-302. Disapproval of agency contracts. (1) The
23 commissioner may disapprove a title agency contract between
24 a title agent insurance producer and title insurer, upon
25 appropriate notice to the parties to the contract, if he

1 finds that the contract, together with all amendments and
2 related documents:

3 (a) does not provide for adequate monitoring of the
4 agent's insurance producer's financial transactions; or

5 (b) provides for inadequate, unreasonable, or
6 excessive amounts to be paid to or retained by the title
7 agent insurance producer. Factors the commissioner may
8 consider in this determination include but are not limited
9 to the agent's insurance producer's duties under the
10 contract and the general level of amounts paid to or
11 retained by other title agents insurance producers in the
12 state performing or assuming comparable duties.

13 (2) ~~No~~ A person may not act as a title agent insurance
14 producer under an agency contract that has been disapproved
15 by the commissioner."

16 **Section 63.** Section 33-25-401, MCA, is amended to
17 read:

18 "33-25-401. Prohibited practices -- referrals --
19 splitting charges -- exemptions. (1) Except as provided in
20 subsection (2), ~~no~~ a person may not:

21 (a) give or accept a fee, rebate, or thing of value
22 pursuant to an agreement or understanding that title
23 insurance business will be referred to a title agent
24 insurance producer; or

25 (b) give or accept a portion, split, or percentage of

1 a charge made or received for title insurance business in
2 connection with a transaction involving real property in
3 this state, other than for services actually performed.

4 (2) (a) A person may pay a return on an investment,
5 based on a percentage of an ownership interest in a title
6 insurance agency, if:

7 (i) at or prior to the time of a referral, a
8 disclosure of the existence of the arrangement is made to
9 the person being referred and, in connection with the
10 referral, the person is provided a written estimate of the
11 charge or range of charges generally made by the title agent
12 insurance producer to which the person is referred; and

13 (ii) the person is not required to use a particular
14 agent insurance producer.

15 (b) The following arrangements are not a violation of
16 subsection (2)(a)(ii):

17 (i) an arrangement that requires a buyer, borrower, or
18 seller to pay for the services of an attorney, credit
19 reporting agency, or real estate appraiser chosen by a
20 lender to represent the lender's interest in a real estate
21 transaction; or

22 (ii) an arrangement by which an attorney or law firm
23 represents a client in a real estate transaction and issues
24 or arranges for the issuance of a policy of title insurance
25 in the transaction directly as agent insurance producer or

1 through a separate corporate title insurance agency that may
2 be established by that attorney or law firm and operated as
3 an adjunct to his or its law practice.

4 (c) Failure to disclose a controlled business
5 relationship is not a violation of subsection (2)(a)(i) if
6 the failure was not intentional and resulted from a bona
7 fide error, proven by a preponderance of the evidence.

8 (3) This section does not prohibit:

9 (a) the payment of a fee to an attorney for services
10 actually rendered or by a title agent insurance producer for
11 services actually performed in the issuance of a title
12 insurance policy; or

13 (b) payment of a bona fide salary, compensation, or
14 other payment for goods or facilities actually furnished or
15 for services actually performed."

16 **Section 64.** Section 33-25-403, MCA, is amended to
17 read:

18 "33-25-403. Prohibited practices -- producer and
19 associates -- prohibition of favored agent insurance
20 producer or insurer. No A producer or associate may not,
21 directly or indirectly, require as a condition, agreement,
22 or understanding of providing another person a loan, loan
23 extension, credit, sale, property, contract, lease, or
24 service that the other person obtain title insurance of any
25 kind from a particular title insurer or title agent

1 insurance producer. No A title insurer or title agent
 2 insurance producer may not knowingly participate in a plan
 3 or transaction prohibited by this section."

4 **Section 65.** Section 33-22-1703, MCA, is amended to
 5 read:

6 "33-22-1703. Definitions. As used in this part, the
 7 following definitions apply:

8 (1) "Emergency services" means services provided after
 9 suffering an accidental bodily injury or the sudden onset of
 10 a medical condition manifesting itself by acute symptoms of
 11 sufficient severity (including severe pain) that without
 12 immediate medical attention the subscriber or insured could
 13 reasonably expect that:

14 (a) his health would be in serious jeopardy;

15 (b) his bodily functions would be seriously impaired;
 16 or

17 (c) a bodily organ or part would be seriously damaged.

18 (2) "Health benefit plan" means the health insurance
 19 policy or subscriber arrangement between the insured or
 20 subscriber and the health care insurer that defines the
 21 covered services and benefit levels available.

22 (3) "Health care insurer" means:

23 (a) an insurer that provides disability insurance as
 24 defined in 33-1-207;

25 (b) a health service corporation as defined in

1 33-30-101;

2 (c) a health maintenance organization as defined in
 3 33-31-102;

4 (d) a fraternal benefit society as defined in
 5 33-7-102;

6 (e) an administrator as defined in ~~33-17-601~~
 7 33-17-102; or

8 (f) any other entity regulated by the commissioner
 9 that provides health coverage.

10 (4) "Health care services" means health care services
 11 or products rendered or sold by a provider within the scope
 12 of the provider's license or legal authorization or services
 13 provided under Title 33, chapter 22, part 7.

14 (5) "Insured" means an individual entitled to
 15 reimbursement for expenses of health care services under a
 16 policy or subscriber contract issued or administered by an
 17 insurer.

18 (6) "Preferred provider" means a provider or group of
 19 providers who have contracted to provide specified health
 20 care services.

21 (7) "Preferred provider agreement" means a contract
 22 between or on behalf of a health care insurer and a
 23 preferred provider.

24 (8) "Provider" means an individual or entity licensed
 25 or legally authorized to provide health care services or

1 services covered within Title 33, chapter 22, part 7.

2 (9) "Subscriber" means a certificate holder or other
3 person on whose behalf the health care insurer is providing
4 or paying for health care coverage."

5 NEW SECTION. Section 66. Repealer. Section 33-17-202,
6 33-17-204, 33-17-205, 33-17-218, 33-17-231, 33-17-232,
7 33-17-402, 33-17-403, 33-17-601, and 33-17-1104, MCA, are
8 repealed.

9 NEW SECTION. Section 67. Extension of authority. Any
10 existing authority to make rules on the subject of the
11 provisions of [this act] is extended to the provisions of
12 [this act].

13 NEW SECTION. Section 68. Codification instruction.
14 [Section 4] is intended to be codified as an integral part
15 of Title 33, chapter 17, and the provisions of Title 33,
16 chapter 17, apply to [section 4].

17 NEW SECTION. Section 69. Saving clause. [This act]
18 does not affect rights and duties that matured, penalties
19 that were incurred, or proceedings that were begun before
20 [the effective date of this act].

21 NEW SECTION. Section 70. Severability. If a part of
22 [this act] is invalid, all valid parts that are severable
23 from the invalid part remain in effect. If a part of [this
24 act] is invalid in one or more of its applications, the part
25 remains in effect in all valid applications that are

1 severable from the invalid applications.

2 NEW SECTION. Section 71. Effective date. [This act]
3 is effective January 1, 1990.

-End-

HOUSE BILL NO. 734

INTRODUCED BY THOMAS, J. BROWN, WILLIAMS, THAYER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE INSURANCE AGENT LICENSING LAWS; DIRECTING THE CODE COMMISSIONER TO CHANGE ANY REFERENCE TO THE TERM "ENROLLMENT REPRESENTATIVE", "INSURANCE AGENT", OR "AGENT" TO "INSURANCE PRODUCER", TO CHANGE ANY REFERENCE TO THE TERM "SURPLUS LINES AGENT" OR "SURPLUS LINES INSURANCE AGENT" TO "SURPLUS LINES INSURANCE PRODUCER", AND TO CHANGE ANY REFERENCE TO THE TERM "TITLE AGENT" OR "TITLE INSURANCE AGENT" TO "TITLE INSURANCE PRODUCER" WHEREVER IT APPEARS IN THE MONTANA CODE ANNOTATED; PROHIBITING THE GRANT OR EXTENSION OF A CONTROLLED BUSINESS LICENSE; PROVIDING THAT MISAPPROPRIATION OF INSURANCE PREMIUMS OR RETURN PREMIUMS CONSTITUTES THEFT; ALLOWING THE COMMISSIONER TO REVOKE AN INSURANCE PRODUCER LICENSE FOR UP TO 5 YEARS; ALLOWING FOR THE AUTOMATIC SUSPENSION, REVOCATION, OR TERMINATION OF A NONRESIDENT INSURANCE PRODUCER LICENSE UPON SUSPENSION, REVOCATION, OR TERMINATION IN HIS STATE OF RESIDENCE; AMENDING SECTIONS 33-1-402, 33-1-711, 33-2-303, 33-2-308, 33-2-309, 33-2-316, 33-2-317, 33-2-708, 33-7-101, 33-8-213, 33-14-301, 33-17-101 THROUGH 33-17-103, 33-17-201, 33-17-211 THROUGH 33-17-214, 33-17-216, 33-17-217, 33-17-221, 33-17-301, 33-17-401, 33-17-404 THROUGH 33-17-407, 33-17-411, 33-17-502 THROUGH

33-17-507, 33-17-511 THROUGH 33-17-513, 33-17-602 THROUGH 33-17-604, 33-17-611, 33-17-613, 33-17-1001 THROUGH 33-17-1004, 33-17-1101 THROUGH 33-17-1103, 33-17-1111 THROUGH 33-17-1114, 33-18-401, 33-22-1703, 33-25-202, 33-25-214, 33-25-301, 33-25-302, 33-25-401, AND 33-25-403, MCA; REPEALING SECTIONS 33-17-202, 33-17-204, 33-17-205, 33-17-218, ~~33-17-231, 33-17-232~~, 33-17-402, 33-17-403, AND 33-17-601, ~~AND 33-17-1104~~, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

NEW SECTION. **Section 1.** Name change -- short form amendment. Wherever it appears in 33-1-317, 33-1-403, 33-1-711, 33-2-104, 33-2-120, 33-2-121, 33-2-302, 33-2-310, 33-2-313, 33-2-315, 33-2-321, 33-2-701, 33-2-707, 33-2-709, 33-2-723, 33-2-829, 33-2-1102, 33-2-1118, 33-2-1120, 33-2-1306, 33-2-1310, 33-2-1322, 33-2-1331, 33-2-1333, 33-2-1345 through 33-2-1347, 33-2-1353, 33-2-1362, 33-2-1381, 33-3-206, 33-3-217, 33-4-103, 33-4-312, 33-4-511, 33-5-104, 33-6-402, 33-6-403, 33-7-111, 33-7-519, 33-7-525, 33-7-526, 33-8-118, 33-8-122, 33-8-204, 33-8-205, 33-8-211, 33-8-221, 33-8-225 through 33-8-228, 33-10-106, 33-10-110, 33-10-113, 33-10-207, 33-10-216, 33-11-104, 33-11-108, 33-11-109, 33-11-123, 33-14-102, 33-14-201, 33-14-301, 33-14-304, 33-14-307, 33-15-302, 33-15-1101, 33-15-1105,

1 33-16-106, 33-16-1011, 33-17-204 through 33-17-206,
 2 33-17-218, 33-17-231, 33-17-232, 33-17-401, 33-17-403,
 3 33-17-601, 33-18-205, 33-18-210 through 33-18-213,
 4 33-18-305, 33-18-501, 33-19-102 through 33-19-104, 33-19-201
 5 through 33-19-205, 33-19-301 through 33-19-306, 33-19-401,
 6 33-19-402, 33-19-404, 33-19-407 through 33-19-409,
 7 33-20-142, 33-20-212, 33-20-502, 33-20-1102, 33-22-122,
 8 33-22-204, 33-22-207, 33-22-208, 33-22-804, 33-22-805,
 9 33-22-813, 33-22-1515, 33-23-214 through 33-23-216,
 10 33-25-105, 33-25-106, 33-25-201, 33-25-202, 33-25-213,
 11 33-25-215, 33-25-216, 33-30-103, 33-30-105, 33-30-202,
 12 33-30-204, 33-30-305, 33-31-101 through 33-31-103, 33-31-102,
 13 33-31-211, 33-31-311, 33-31-401 or in law enacted by the
 14 51st legislature, the code commissioner is directed to
 15 change the term "enrollment representative", "enrollment
 16 representative's", "enrollment representatives", "enrollment
 17 representatives'", "insurance agent", "insurance agent's",
 18 "insurance agents", "insurance agents'", "agent", "agent's",
 19 "agents", or "agents'" to "insurance producer", "insurance
 20 producer's", "insurance producers", or "insurance
 21 producers'".

22 **NEW SECTION. Section 2. Name change -- short form**
 23 **amendment.** Wherever it appears in 33-1-711, 33-2-301 through
 24 33-2-303, 33-2-305 through 33-2-313, 33-2-321, 33-2-326,
 25 33-2-502, 33-2-706, 33-2-709, 33-8-225, 33-17-1104,

1 33-18-212 or in law enacted by the 51st legislature, the
 2 code commissioner is directed to change the term "surplus
 3 lines agent", "surplus lines agent's", "surplus lines
 4 agents", "surplus lines agents'", "surplus lines insurance
 5 agent", "surplus lines insurance agent's", "surplus lines
 6 insurance agents", or "surplus lines insurance agents'" to
 7 "surplus lines insurance producer", "surplus lines insurance
 8 producer's", "surplus lines insurance producers", or
 9 "surplus lines insurance producers'".

10 **NEW SECTION. Section 3. Name change -- short form**
 11 **amendment.** Wherever it appears in 33-2-851, 33-25-105,
 12 33-25-106, 33-25-201, 33-25-213, 33-25-216, 33-30-103 or in
 13 law enacted by the 51st legislature, the code commissioner
 14 is directed to change the term "title agent", "title
 15 agent's", "title agents", "title agents'", "title insurance
 16 agent", "title insurance agent's", "title insurance agents",
 17 or "title insurance agents'" to "title insurance producer",
 18 "title insurance producer's", "title insurance producers",
 19 or "title insurance producers'".

20 **NEW SECTION. Section 4. Controlled business.** (1) The
 21 commissioner may not grant or extend a license to a person
 22 if the license is being or will be used to write controlled
 23 business.

24 (2) The commissioner shall consider a license to have
 25 been, or intended to be, used for the purpose of writing

controlled business if, during any 12-month period, the aggregate amount of premiums on controlled business would exceed the aggregate amount of premiums on all other insurance business of the applicant or licensee.

Section 5. Section 33-1-402, MCA, is amended to read:

"33-1-402. Examination of agents insurance producers, managers, and promoters. For the purpose of ascertaining compliance with this code, the commissioner may, as often as he ~~deems~~ considers advisable, examine the accounts, records, documents, and transactions pertaining to or affecting its insurance affairs or proposed insurance affairs of:

(1) any an insurance agent producer, solicitor, surplus lines agent insurance producer, general agent insurance producer, or adjuster;

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

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

(4) any a person engaged in or proposing to be engaged in or assisting in the promotion or formation of a domestic insurer or insurance holding corporation or corporation to finance a domestic insurer or the production of its

business."

Section 6. Section 33-1-711, MCA, is amended to read:

"33-1-711. Appeals from the commissioner. (1) An appeal from the commissioner ~~shall~~ may be taken only from an order on hearing or with respect to a matter as to which the commissioner has refused a hearing. Any person who was a party to ~~such the~~ hearing or whose pecuniary interests are directly and immediately affected by any ~~such~~ order or refusal and who is aggrieved ~~thereby~~ by an order or refusal may, within 30 days after the order has been mailed or delivered to the persons entitled to receive the same, the commissioner's order denying rehearing or reargument has been so mailed or delivered, or the commissioner's refusal to grant a hearing, appeal from ~~such the~~ order on hearing or ~~such the~~ refusal of a hearing. Any request for a stay of the commissioner's order must be made within 60 days, to run concurrently with the 30 days for appeal. The appeal ~~shall~~ must be taken to the district court of Lewis and Clark County by filing written notice of appeal in ~~such the~~ court and by filing a copy of ~~such the~~ notice with the commissioner, except that in appeals from the suspension or revocation of the certificate of authority of a domestic insurer or of the license of an ~~agent-solicitor, insurance producer~~ or surplus lines agent insurance producer, the person taking the appeal may at his option, in lieu of the

1 district court of Lewis and Clark County, take the appeal to
2 the district court of the county of Montana in which the
3 insurer has its principal place of business or the licensee
4 resides.

5 (2) Upon filing of the notice of appeal ~~therein~~, the
6 court ~~shall have~~ has full jurisdiction and shall determine
7 whether ~~such the~~ filing ~~shall operate~~ operates as a stay of
8 the order or action appealed from.

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

23 (4) Upon receipt of ~~such the~~ transcripts and evidence,
24 the court shall hear the matter de novo as soon as
25 reasonably possible thereafter. Upon the hearing of the

1 appeal, the court shall consider the evidence contained in
2 the transcript, exhibits, and documents ~~therein~~ filed by the
3 commissioner, together with ~~such~~ additional proper evidence
4 as may be offered by any party to the appeal.

5 (5) After hearing the appeal, the court may affirm,
6 modify, or reverse the order or action of the commissioner,
7 in whole or in part, or remand the action to the
8 commissioner for further proceedings in accordance with the
9 court's direction.

10 (6) Costs ~~shall~~ must be awarded as in civil actions.

11 (7) Appeal may be taken to the supreme court from the
12 judgment of the district court as in other civil cases to
13 which the state is a party. A stay of the effectiveness of
14 any ~~such~~ judgment may be made only by order of the supreme
15 court upon the giving of ~~such~~ security as that court ~~deems~~
16 considers proper.

17 (8) This section ~~shall~~ does not apply to appeals as to
18 matters covered by chapter 16."

19 **Section 7.** Section 33-2-303, MCA, is amended to read:

20 "33-2-303. Filing and endorsement of contract. Every
21 Each insurance contract, cover, note, or certificate of
22 insurance procured and delivered as surplus lines insurance
23 under this part ~~shall~~ must be filed with the commissioner
24 and endorsed as "issued in an unauthorized insurer under The
25 Surplus Lines Insurance Law, under ~~agent~~ surplus lines

1 insurance producer license No." and "NOT covered by
2 the property and casualty guaranty fund of this state if the
3 unauthorized insurer becomes insolvent". The surplus lines
4 agent producer shall properly fill in and sign the
5 endorsement."

6 **Section 8.** Section 33-2-308, MCA, is amended to read:

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

22 (2) If after the issuance and delivery of any such
23 cover note or certificate there is any change as to the
24 identity of the insurers or the proportion of the direct
25 risk assumed by the insurer as stated in the original cover

1 note or certificate or in any other material respect as to
2 the insurance coverage evidenced by the cover note or
3 certificate, the agent insurance producer shall promptly
4 issue and deliver to the insured a substitute cover note or
5 certificate accurately showing the current status of the
6 coverage and the insurers responsible ~~thereunder~~ under the
7 coverage.

8 (3) If a policy issued by the insurer is not available
9 upon placement of the insurance and the agent insurance
10 producer has issued and delivered a cover note or
11 certificate as ~~hereinabove~~ provided in subsection (2), upon
12 request therefor by the insured, the agent insurance
13 producer shall as soon as reasonably possible procure from
14 the insurer its policy evidencing such the insurance and
15 deliver such the policy to the insured in replacement of the
16 cover note or certificate ~~theretofore~~ previously issued.

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

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

Section 9. Section 33-2-309, MCA, is amended to read:

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

between the insurer and the surplus lines agent insurance producer.

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

(3) Each unauthorized insurer assuming a surplus lines direct risk under The Surplus Lines Insurance Law is considered ~~thereby~~ to have subjected itself to the terms of this section."

Section 10. 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 organization of surplus lines insurance agents producers or others designed to assist ~~such--agents~~ surplus lines insurance producers to comply with such the law.

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

Section 11. Section 33-2-317, MCA, is amended to read:

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

(1) wet marine and transportation insurances;

(2) insurance on subjects located, ~~resident~~ residing, 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 engaged in interstate commerce; and

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

Section 12. Section 33-2-708, MCA, is amended to read:

"33-2-708. **Fees and licenses.** (1) ~~The~~ Except as provided in 33-17-212(2), 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 (1)(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 the~~ the application and for issuance of an original certificate of authority, if issued:

(A) domestic insurers ~~\$-300-00~~ \$ 500.00

(B) foreign insurers ~~300-00~~ 500.00

(ii) annual continuation of certificate of authority ..
..... ~~300-00~~ 500.00

(iii) reinstatement of certificate of authority
..... 25.00

(iv) amendment of certificate of authority 50.00

(b) articles of incorporation:

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

(ii) filing amendment of articles of incorporation, domestic and foreign insurers, exclusive of fees required to

1 be paid to the secretary of state by a domestic corporation
 2 25.00
 3 (c) filing bylaws or amendment thereto to bylaws where
 4 required 10.00
 5 (d) filing annual statement of insurer, other than as
 6 part of application for original certificate of authority ..
 7 25.00
 8 (e) resident ~~agent's~~ insurance producer's license:
 9 (i) application for original license, including
 10 issuance of license, if issued ~~{life-and/or-disability}~~
 11 15.00
 12 (ii) ~~application--for---original---license,---including~~
 13 ~~issuance--of--license,--if--issued--{other--than--life--and/or~~
 14 ~~disability}-----15.00~~
 15 ~~{iii}-appointment-of-agent, each-insurer-----10.00~~
 16 ~~{iv} annual renewal, each-insurer of license .. 10.00~~
 17 15.00
 18 ~~{v}{iii} temporary license 10.00 15.00~~
 19 ~~{v}{iv} amendment of license (excluding additions~~
 20 ~~thereto to license) or reissuance of master license~~
 21 10.00 15.00
 22 (f) nonresident ~~agent's~~ insurance producer's license:
 23 (i) application for original license, including
 24 issuance of license, if issued ~~{life-and/or-disability}~~
 25 100.00

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

1 ~~(i)~~(k) commissioner's certificate under seal (except
 2 when on certificates of authority or licenses) 10.00
 3 ~~(m)~~(l) copies of documents on file in the
 4 commissioner's office, per page50
 5 ~~(n)~~(m) policy forms:
 6 (i) filing each policy form 25.00
 7 (ii) filing each application, rider, endorsement,
 8 amendment, insert page, schedule of rates, and clarification
 9 of risks 10.00
 10 (iii) maximum charge if policy and all forms submitted
 11 at one time or resubmitted for approval within 180 days
 12 100.00
 13 (2) The commissioner shall promptly deposit with the
 14 state treasurer to the credit of the general fund of this
 15 state all fines and penalties, those amounts received
 16 pursuant to 33-2-311, 33-2-705, and 33-2-706, and any fees
 17 and examination and miscellaneous charges received pursuant
 18 to Title 33, chapter 11, part 1, that are collected by him
 19 pursuant to Title 33 and the rules adopted thereunder under
 20 Title 33.
 21 (3) All fees are considered fully earned when
 22 received. In the event of overpayment, only those amounts in
 23 excess of \$10 will be refunded.
 24 (4) All fees and examination and miscellaneous
 25 charges, except fines or penalties or those amounts received

1 pursuant to 33-2-311, 33-2-705, or 33-2-706, collected by
 2 the commissioner pursuant to Title 33 and the rules adopted
 3 thereunder under Title 33 must be deposited in the insurance
 4 regulatory trust account pursuant to 17-2-121 through
 5 17-2-123."

6 **Section 13.** Section 33-7-101, MCA, is amended to read:

7 "33-7-101. Scope of chapter -- provisions applicable.

8 (1) Except as herein provided in this section, societies
 9 ~~shall--be~~ are governed by this chapter and ~~shall--be~~ are
 10 exempt from all other provisions of the insurance laws of
 11 this state, not only in governmental relations with the
 12 state but for every other purpose. No law hereafter enacted
 13 ~~shall--apply~~ applies to them societies unless they ~~be~~ are
 14 expressly designated therein in the law.

15 (2) In addition to the provisions contained in this
 16 chapter, other chapters and provisions of this title ~~shall~~
 17 apply to fraternal benefit societies to the extent
 18 applicable and not in conflict with the express provisions
 19 of this chapter and the reasonable implications thereof of
 20 this chapter, as follows: parts 17-27-37 through 47 and 7 of
 21 chapter 1; 33-2-104; 33-2-107; 33-2-112; chapter 2, part 13;
 22 33-3-308; 33-15-502; chapter 17; chapter 18; chapter 20; and
 23 chapter 22."

24 **Section 14.** Section 33-8-213, MCA, is amended to read:

25 "33-8-213. (Temporary) Exemption from agent insurance

1 producer appointment requirements. (1) For purposes of the
2 plan:

3 (a) an insurer that has entered into an agreement as
4 provided in 33-8-212 may accept applications for insurance
5 coverage from any agent insurance producer even though that
6 agent insurance producer has not been appointed by the
7 insurer; and

8 (b) an agent insurance producer may place business, as
9 to any type of insurance for which he is licensed at the
10 time, with any insurer participating in the plan even though
11 the agent insurance producer has not been appointed as an
12 agent insurance producer by that insurer.

13 ~~{2}--An--insurer--that--issues--insurance--coverage--upon--an~~
14 ~~application--submitted--by--an--agent--who--has--not--been--appointed~~
15 ~~by--the--insurer--shall--pay--the--agent--a--commission---in~~
16 ~~conformity--with--the--insurer's--filed--rates,--rating--plans,--or~~
17 ~~forms--for--the--kind--of--insurance--effected.~~

18 (2) AN INSURER THAT ISSUES INSURANCE COVERAGE UPON AN
19 APPLICATION SUBMITTED BY AN INSURANCE PRODUCER WHO HAS NOT
20 BEEN APPOINTED BY THE INSURER SHALL PAY THE INSURANCE
21 PRODUCER A COMMISSION IN CONFORMITY WITH THE INSURER'S FILED
22 RATES, RATING PLANS, OR FORMS FOR THE KIND OF INSURANCE
23 EFFECTED.

24 ~~{3}{2}{3}~~ (3) An agent insurance producer who countersigns
25 a policy, when a countersignature is required by 33-17-1111,

1 ~~shall~~ must be paid a countersignature commission as provided
2 in 33-17-1113. (Terminates July 1, 1989--sec. 22, Ch. 11,
3 Sp. L. March 1986.)"

4 **Section 15.** Section 33-17-101, MCA, is amended to
5 read:

6 "33-17-101. Scope of chapter. {1} The purpose of this
7 chapter is to govern the qualifications and procedures for
8 licensing insurance producers.

9 {2} This chapter ~~shall apply as~~ applies to all stock,
10 mutual, and reciprocal insurers and ~~as~~ to all kinds of
11 insurance and annuities."

12 **Section 16.** Section 33-17-102, MCA, is amended to
13 read:

14 "33-17-102. Definitions. As used in this title, the
15 following definitions apply:

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

23 (a) licensed attorney who is qualified to practice law
24 in this state; or

25 (b) salaried employee of an insurer or of a managing

general agent; or

(c) a licensed agent insurance producer who adjusts or assists in adjustment of losses arising under policies issued by the insurer.

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

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

(2) "Adjuster license" means a document issued by the commissioner that authorizes a person to act as an adjuster.

(3) (a) "Administrator" means a person who collects charges or premiums from residents of this state in connection with life, disability, property, or casualty insurance or annuities or who adjusts or settles claims on such coverage.

(b) The term does not mean:

(i) an employer on behalf of its employees or on behalf of the employees of one or more subsidiaries of affiliated corporations of the employer;

(ii) a union on behalf of its members;

(iii) (A) an insurer that is either authorized in this state or acting as an insurer with respect to a policy lawfully issued and delivered by it in and pursuant to the laws of a state in which the insurer is authorized to transact insurance; or

(B) a health service corporation as defined in 33-30-101;

(iv) a life, disability, property, or casualty insurance producer who is licensed in this state and whose activities are limited exclusively to the sale of insurance;

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

(vi) a trust established in conformity with 29 U.S.C. 186 or the trustees, agents, and employees of the trust;

(vii) a trust exempt from taxation under section 501(a) of the Internal Revenue Code or the trustees and employees of the trust;

(viii) a custodian acting pursuant to a custodian account that meets the requirements of section 401(f) of the Internal Revenue Code or the agents and employees of the custodian;

(ix) a bank, credit union, or other financial institution that is subject to supervision or examination by federal or state banking authorities;

1 (x) a company that issues credit cards and that
 2 advances for and collects premiums or charges from its
 3 credit card holders who have authorized it to do so, if the
 4 company does not adjust or settle claims; or

5 (xi) a person who adjusts or settles claims in the
 6 normal course of his practice or employment as an attorney
 7 and who does not collect charges or premiums in connection
 8 with life or disability insurance or annuities.

9 (4) "Administrator license" means a document issued by
 10 the commissioner that authorizes a person to act as an
 11 administrator.

12 (4)(5) A--"consultant"--is "Consultant" means a person
 13 who for a fee examines, appraises, reviews, or evaluates an
 14 insurance policy, annuity, or pension contract, plan, or
 15 program or who makes recommendations or gives advice on an
 16 insurance policy, annuity, or pension contract, plan, or
 17 program.

18 (5)--A--"solicitor"--is--an--individual--appointed--and
 19 authorized---by---an---agent--to--solicit--applications--for
 20 insurance,--other--than--life--insurance--or--disability
 21 insurance,--as--a--representative--of--such--agent,--and--to--collect
 22 premiums--thereon--when--expressly--so--authorized--by--the--agent.

23 (6)--A--"managing-general-agent"--is--an--individual,
 24 partnership,--or--corporation--appointed--as--an--independent
 25 contractor--by--one--or--more--insurers--for--the--principal--purpose

1 of-exercising-general-supervision-over-the-business--of--the
 2 insurer--in--this--state,--including-the-authority-to-appoint
 3 agents-for-such-insurers-and-to-terminate-such-appointments.

4 (6) "Consultant license" means a document issued by
 5 the commissioner that authorizes a person to act as an
 6 insurance consultant.

7 (7) "Controlled business" means insurance procured or
 8 to be procured by or through a person upon the life, person,
 9 property, or risks of himself, his spouse, his employer, or
 10 his business.

11 (8) "Individual" means a private or natural person, as
 12 distinguished from a partnership, corporation, or
 13 association.

14 (9) "Insurance producer", except as provided in
 15 33-17-103:

16 (a) means:

17 (i) a person who solicits, negotiates, effects,
 18 procures, delivers, renews, continues, or binds:

19 (A) policies of insurance for risks residing, located,
 20 or to be performed in this state; or

21 (B) membership contracts as defined in 33-30-101;

22 (ii) a managing general agent. For purposes of this
 23 definition, a "managing general agent" is a person who, on
 24 behalf of an insurer, exercises general supervision over the
 25 business of the insurer in this state, including the

1 authority to contract with an insurance producer for the
2 insurer and terminate those contracts.

3 (b) does not mean a customer service representative.
4 For purposes of this definition, a "customer service
5 representative" means a salaried employee or an insurance
6 producer who assists and is responsible to the insurance
7 producer but--who--is--not--authorized-to-effect-policies-of
8 insurance.

9 (10) "License" means a document issued by the
10 commissioner that authorizes a person to act as an insurance
11 producer for the kinds of insurance specified in the
12 document. The license itself does not create actual,
13 apparent, or inherent authority in the holder to represent
14 or commit an insurer to a binding agreement.

15 (11) "Person" means an individual, partnership,
16 corporation, association, or other legal entity.

17 (12) "Public adjuster" means an adjuster employed by
18 and representing the interests of the insured."

19 **Section 17.** Section 33-17-103, MCA, is amended to
20 read:

21 "33-17-103. Exceptions and exemptions from definition
22 of agent, managing general agent, and solicitor insurance
23 producer. The definitions definition of agent, managing
24 general agent, and solicitor insurance producer contained in
25 33-17-102 shall does not be considered to include:

1 {1}--individuals employed and used by agents for the
2 performance--of--clerical,--stenographic, and similar office
3 duties,--incidental taking of an application for insurance
4 from time to time in the office of the employing agent shall
5 not--constitute such an employee as an agent or solicitor if
6 the employee's compensation is not contingent upon or
7 relating to the volume of such applications, insurance, or
8 premiums.

9 {2}--a supervising salaried officer, supervising
10 salaried employee, or other person or entity controlled by
11 an insurer and compensated strictly on a salary basis by the
12 insurer, who solicits only with or in conjunction with duty
13 licensed agents of the insurer;

14 {3}--the attorney in fact of a reciprocal insurer or
15 the salaried traveling representative of a reciprocal or
16 mutual insurer not compensated on a commission basis;

17 {4}--a person who secures and forwards information for
18 the purpose of an existing group insurance contract or for
19 enrolling individuals under an existing group insurance
20 contract or issuing certificates thereunder where no
21 commission is paid for such services.

22 (1) a person who is a regularly salaried officer or
23 employee of an insurer and who is engaged in the performance
24 of usual and customary executive, administrative, or
25 clerical duties and whose duties do not include the

negotiation or solicitation of insurance;

(2) a person who is a salaried employee in the office of an insurance producer and who devotes his full time to clerical and administrative services, including the incidental taking of insurance applications and receipt of premiums in the office of his employer, if the employee does not receive any commissions on the applications and his compensation is not varied by the volume of applications or premiums he takes or receives;

(3) a person who secures and furnishes information for the purpose of group life insurance, annuities, group or blanket accident and disability insurance or for the purpose of enrolling individuals under such plans, issuing certificates under such plans, or otherwise assisting in administering such plans, if no commission is paid for the service;

(4) an employer, his officers, or employees or the trustees of an employee trust plan, to the extent that the employer, officers, employees, or trustees are engaged in the administration of operation of a program of employee benefits for their own employees or the employees of their subsidiaries or affiliates if the program involves the use of insurance issued by an insurer and the employer, officers, employees, or trustees are not compensated in any manner, directly or indirectly, by the insurer issuing the

contracts; or

(5) a person who is:

(a) an employee of an insurer or of an organization employed by an insurer, which insurer or organization is engaged in the inspection, rating, or classification of insurance risks or in the supervision of the training of insurance producers; and

(b) not individually engaged in the solicitation or negotiation of insurance policies and contracts."

Section 18. Section 33-17-201, MCA, is amended to read:

"33-17-201. (Temporary) License required of agents, managing-general-agents, and solicitors insurance producer -- forms. (1) No Except as provided in 33-17-103 and subsection (5) of this section, a person shall may not in this state act as or hold himself out to be an agent or solicitor as to insurance producer for subjects of insurance located, resident residing, or to be performed in this state unless then licensed as such agent or solicitor an insurance producer 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 33-17-1104 as to life or disability insurance agents and in 33-8-213.~~

(2) NO INSURANCE PRODUCER 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 INSURANCE PRODUCER UNDER THIS CHAPTER, EXCEPT AS PROVIDED IN 33-17-1104 AS TO LIFE OR DISABILITY INSURANCE AGENTS AND IN 33-8-213.

~~(5)(2)(3) 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 a license.~~

~~(6)(3)(4) Unless licensed as a life insurance agent producer as required by this section, no a person shall may not in this state solicit life insurance or annuities or procure applications therefor for life insurance or annuities 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 the employer, subsidiaries, or affiliates under group insurance or similar insurance plans arranged by the employer or employers of such the employees.

~~(7)(4)(5) A person licensed to sell coverage only for the all-risk federal crop insurance program shall receive a license restricted to that purpose.~~

~~(5)(6) A representative of a fraternal benefit society who solicits and negotiates insurance contracts is an insurance producer and is subject to the same licensing requirements as those for an insurance producer, except that a license is not required of:~~

~~(a) an officer, employee, or secretary of a fraternal benefit society or of a subordinate lodge or branch of a fraternal benefit society who devotes substantially all of his time to activities other than the solicitation or negotiation of insurance contracts and who receives no commission or other compensation directly dependent upon that number or amount of insurance contracts solicited or negotiated; or~~

1 (b) a representative of a fraternal benefit society
 2 who devotes or intends to devote less than 50% of his time
 3 to the solicitation and procurement of insurance contracts
 4 for the fraternal benefit society. A person who in the
 5 preceding calendar year has solicited and procured life
 6 insurance with a face amount in excess of \$50,000 or, in the
 7 case of any other kind or kinds of insurance that the
 8 fraternal benefit society may write, on more than 25
 9 individuals and who has received or will receive a
 10 commission or other compensation for the insurance is
 11 presumed to be devoting or intending to devote 50% of his
 12 time to the solicitation or procurement of insurance
 13 contracts for the fraternal benefit society. (Terminates
 14 July 1, 1989--sec. 22, Ch. 11, Sp. L. March 1986.)

15 33-17-201. (Effective July 1, 1989) License required
 16 of agents, managing-general-agents, and solicitors insurance
 17 producer -- forms. (1) No A person shall may not in this
 18 state act as or hold himself out to be an agent-or-solicitor
 19 as-to insurance producer for subjects of insurance located,
 20 resident residing, or to be performed in this state unless
 21 then licensed as such-agent-or-solicitor an insurance
 22 producer under this chapter.

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

1 insurers-represented:

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

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

10 (2) NO INSURANCE PRODUCER SHALL PLACE ANY BUSINESS,
 11 OTHER THAN COVERAGE OF HIS OWN RISKS, WITH ANY INSURER AS TO
 12 WHICH HE DOES NOT THEN HOLD A VALIDATED APPOINTMENT OR
 13 LICENSE AS INSURANCE PRODUCER UNDER THIS CHAPTER, EXCEPT AS
 14 PROVIDED IN 33-17-1104 AS TO LIFE OR DISABILITY INSURANCE
 15 PRODUCERS.

16 (5)(2)(3) The commissioner may prescribe by rule and
 17 make available the forms required in connection with
 18 application for, issuance, continuation, or termination of
 19 licenses-and-appointments a license.

20 (6)(3)(4) Unless licensed as a life insurance agent
 21 producer as required by this section, no a person shall may
 22 not in this state solicit life insurance or annuities or
 23 procure applications therefor for life insurance or
 24 annuities or engage or hold himself out as engaging in the
 25 business of analyzing or abstracting life insurance policies

1 or annuities or of counseling or advising or giving
 2 opinions, other than as a licensed attorney, relative to
 3 such insurance or annuities for fee, commission, or other
 4 compensation, other than as a salaried bona-fide full-time
 5 employee so counseling and advising his employer relative to
 6 the insurance interests of the employer and of the
 7 subsidiaries or business affiliates of the employer or with
 8 respect to the insurance interests of employees of such the
 9 employer, subsidiaries, or affiliates under group insurance
 10 or similar insurance plans arranged by the employer or
 11 employers of such the employees.

12 ~~f7~~f4(5) A person licensed to sell coverage only for
 13 the all-risk federal crop insurance program shall receive a
 14 license restricted to that purpose.

15 ~~f5~~(6) A representative of a fraternal benefit society
 16 who solicits and negotiates insurance contracts is an
 17 insurance producer and is subject to the same licensing
 18 requirements as those for an insurance producer, except that
 19 a license is not required of:

20 (a) an officer, employee, or secretary of a fraternal
 21 benefit society or of a subordinate lodge or branch of a
 22 fraternal benefit society who devotes substantially all of
 23 his time to activities other than the solicitation or
 24 negotiation of insurance contracts and who receives no
 25 commission or other compensation directly dependent upon

1 that number or amount of insurance contracts solicited or
 2 negotiated; or

3 (b) a representative of a fraternal benefit society
 4 who devotes or intends to devote less than 50% of his time
 5 to the solicitation and procurement of insurance contracts
 6 for the fraternal benefit society. A person who in the
 7 preceding calendar year has solicited and procured life
 8 insurance with a face amount in excess of \$50,000 or, in the
 9 case of any other kind or kinds of insurance that the
 10 fraternal benefit society may write, on more than 25
 11 individuals and who has received or will receive a
 12 commission or other compensation for the insurance is
 13 presumed to be devoting or intending to devote, 50% of his
 14 time to the solicitation or procurement of insurance
 15 contracts for the fraternal benefit society."

16 Section 19. Section 33-17-211, MCA, is amended to
 17 read:

18 "33-17-211. Application General qualifications --
 19 application for license. ~~{1}~~--Application-for-an-agent-or
 20 solicitor-license-must-be-made-to-the--commissioner--by--the
 21 applicant-and-be-signed-and-sworn-to-by-the-applicant-before
 22 a-notary-public.

23 ~~{2}~~--The--commissioner--may--designate--the--forms--for
 24 application-for-license, which-must-require-full-answers--to
 25 such-questions--as-may-reasonably-be-necessary-to-determine

1 the--applicant's--identity,--residence,--personal--history,
2 business--record,--experience-and-training-in-insurance,--and
3 other-facts-as-required-by--the--commissioner--to--determine
4 whether--the--applicant--meets-the-applicable-qualifications
5 for-the-license-applied-for:

6 {3}--If-for-an-agent's-license,--the--application--must
7 state--the--kinds-of-insurance-proposed-to-be-transacted-and
8 be-accompanied-by-written-appointment-of--the--applicant--as
9 agent--by--an-authorized-insurer,--subject-to-issuance-of-the
10 license:

11 {4}--If-for-a-solicitor's-license,--the--application--must
12 be--accompanied--by--written--appointment--of--applicant--as
13 solicitor--by--a--licensed-agent,--subject-to-issuance-of-the
14 license:

15 {5}--If--the--applicant--for--an--agent--license--is--a
16 partnership--or--corporation,--the--application--shall--show,--in
17 addition,--the--names-of-all-members,--officers,--and--directors
18 and--shall--designate--each-individual--who-is-to-exercise-the
19 powers-to-be-conferred-by-the-license-upon--the--partnership
20 or--corporation;--Each--such-individual--so-designated--shall
21 furnish--information--as--to--himself,--as--part--of--the
22 application,--as-though-for-an-individual-license:

23 {6}--If--the--applicant--for--an--agent--license--is--an
24 agents'-association-pursuant-to-33-17-205,--the--application
25 must--show--the--names--and--residence--addresses--of--the

1 association's-officers-and-trustees:

2 {7}--If-for-license-as-either-agent-or--solicitor,--the
3 application--must--also--show--whether--applicant--was--ever
4 previously-licensed-to-transact-any--kind-of--insurance--in
5 this--state--or--elsewhere; whether-any-such-license-was-ever
6 refused,--suspended,--or--revoked; whether-any-insurer,--general
7 agent,--or--agent,--in-the-case--of--a--solicitor--application,
8 claims--applicant--to--be--indebted--to--it--and,--if-so,--the
9 details--thereof--and--the--defenses,--if-any,--of--the--applicant
10 thereto;--and--whether--applicant--ever--had--an--agency--contract
11 canceled--and--the--facts--thereof:

12 {8}--The-commissioner--shall--require--as--part--of--the
13 application--for--license--the--certificate-of-an-officer-or
14 representative-of-the-insurer-proposed-to-be-represented,--in
15 the-case-of-applicants-for--license--as--agent,--or--of--the
16 proposed--employing--agent,--in--the--case-of-applicants-for
17 license-as-solicitor,--as-to-whether-the-applicant--is--known
18 to--such--officer--or--representative; whether-the-insurer-or
19 agent-has-investigated-the-character-and-business-record--of
20 the--applicant--and--the--uses-to-be-made-of-the-license,--if
21 granted,--and--his-opinion,--based-on-such-investigation,--as-to
22 applicant's-trustworthiness-and-competence:

23 {9}--All-such-applications--must--be--accompanied--by--the
24 applicable--license--fee,--appointment--of--agent--fee--where
25 applicable,--and--examination--fee--where--an--examination--is

~~required--under--33-17-212,--all--in--the--respective--amounts~~
~~stated--in--33-2-708-~~ (1) An individual applying for a
license shall apply on a form specified by the commissioner
and declare under penalty of refusal, suspension, or
revocation of the license that statements made in the
application are true, correct, and complete to the best of
the individual's knowledge and belief. Before approving the
application, the commissioner shall verify that the
individual:

(a) is 18 years of age or older;

(b) has not committed an act that is a ground for
refusal, suspension, or revocation set forth in 33-17-1001;

(c) has paid the license fees stated in 33-2-708;

(d) has successfully passed the examinations for each
kind of insurance for which the individual has applied;

(e) is a resident of this state or of another state
that grants similar privileges to residents of this state;

(f) is competent, trustworthy, and of good reputation;

(g) has experience or training or otherwise is
qualified in the kind or kinds of insurance for which he
applies to be licensed and is reasonably familiar with the
provisions of this code which govern his operations as an
insurance producer; and

(h) if applying for a license as to life or disability
insurance:

(i) is not a funeral director, undertaker, or
mortician operating in this or any other state;

(ii) is not an officer, employee, or representative of
a funeral director, undertaker, or mortician operating in
this or any other state; or

(iii) does not hold an interest in or benefit from a
business of a funeral director, undertaker, or mortician
operating in this or any other state.

(2) A person acting as an insurance producer shall
obtain a license. A person shall apply for a license on a
form specified by the commissioner. Before approving the
application, the commissioner shall verify that:

(a) the person meets the requirements listed in
subsection (1);

(b) the person has paid the licensing fees stated in
33-2-708 for each individual licensed in conjunction with
the person's license. A licensed person shall promptly
notify the commissioner of each change relating to an
individual listed in the license.

(c) the person has designated a licensed officer
responsible for compliance by the person with the insurance
laws and rules of this state;

(d) each member and employee of a partnership and each
officer, director, stockholder, or employee of a corporation
who is acting as an insurance producer in this state has

1 obtained a license;

2 (e) (i) if the person is a partnership or corporation,
 3 the transaction of insurance business is within the purposes
 4 stated in the partnership agreement or the articles of
 5 incorporation; and

6 (ii) if the person is a corporation, the secretary of
 7 state has issued a certificate of incorporation under
 8 35-1-203 or 35-2-203.

9 (3) The commissioner may license as a resident
 10 insurance producer an association of licensed Montana
 11 insurance producers, whether or not incorporated, formed and
 12 existing substantially for purposes other than insurance.
 13 The license must be used solely for the purpose of enabling
 14 the association to place, as a resident insurance producer,
 15 insurance of the properties, interests, and risks of the
 16 state of Montana and of other public agencies, bodies, and
 17 institutions and to receive the customary commission for the
 18 placement. The president and secretary of the association
 19 shall apply for the license in the name of the association,
 20 and the commissioner shall issue the license to the
 21 association in its name alone. The fee for the license is
 22 the same as that required by 33-2-708 for the license of an
 23 insurance producer. The commissioner may, after a hearing
 24 with notice to the association, revoke the license if he
 25 finds that continuation of the license is not in the public

1 interest or that a ground listed in 33-17-1001 exists.

2 (4) An insurance producer using an assumed business
 3 name shall register the name with the commissioner before
 4 using it."

5 **Section 20.** Section 33-17-212, MCA, is amended to
 6 read:

7 "33-17-212. Examination required -- exceptions --
 8 fees. (1) After completion and filing of the application for
 9 license as required under 33-17-211, the commissioner shall
 10 subject each applicant for license as agent or solicitor,
 11 unless exempted therefrom under subsection (5) below, to an
 12 examination as to his competence to act as such agent or
 13 solicitor. The commissioner may either conduct the
 14 examination or arrange for the examination to be conducted
 15 by a testing service, which shall recover the cost of the
 16 examination from the applicant. (1) Except as provided in
 17 subsection (7), an individual applying for a license shall
 18 pass a written examination. The examination must test the
 19 knowledge of the individual concerning each kind of
 20 insurance listed in subsection (6) for which application is
 21 made, the duties and responsibilities of an insurance
 22 producer, and the insurance laws and rules of this state.
 23 The examination must be developed and conducted under rules
 24 adopted by the commissioner.

25 (2) The commissioner may conduct the examination or

1 make arrangements, including contracting with an outside
 2 testing service, for administering the examination and
 3 collecting the fees required by 33-2-708. The commissioner
 4 may arrange for the testing service to recover the cost of
 5 the examination from the applicant.

6 (3) Each individual applying for an examination shall
 7 remit the fees required by 33-2-708.

8 (4) An individual who fails to appear for the
 9 examination as scheduled or fails to pass the examination
 10 may reapply for an examination and shall remit all required
 11 fees and forms before being rescheduled for another
 12 examination.

13 ~~(2)(5)~~ If the applicant is a partnership or
 14 corporation, ~~the examination shall be so taken by~~ each
 15 individual who is to be named in the license as having
 16 authority to act for the applicant in its insurance
 17 transactions under the license shall take the examination.

18 ~~(3)(6)~~ Examination of an applicant for ~~an agent's~~ a
 19 license shall must cover all of the kinds of insurance for
 20 which the applicant has applied to be licensed, as
 21 constituted by any one or more of the following
 22 classifications:

- 23 (a) life insurance;
 24 (b) disability insurance;
 25 (c) property insurance. ~~for~~ For the purposes of this

1 provision, "marine" property insurance ~~shall be deemed to be~~
 2 ~~included in "property"~~ includes marine insurance.

- 3 (d) casualty insurance;
 4 ~~(e) vehicle insurance;~~
 5 ~~(f)(e)~~ surety insurance;
 6 ~~(g)(f)~~ credit life and disability insurance;
 7 ~~(h)(g)~~ title insurance.

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

11 ~~(5)(7)~~ This section shall does not apply to, and no
 12 ~~such an examination shall be~~ is not required of:

13 (a) ~~any an~~ individual lawfully licensed as an agent or
 14 solicitor insurance producer as to the kind or kinds of
 15 insurance to be transacted as of or immediately prior to
 16 January 1, 1961, and thereafter continuing to be ~~so~~
 17 licensed;

18 (b) ~~any an~~ applicant for license covering the same
 19 kind or kinds of insurance as to which the applicant was
 20 licensed in this state, other than under a temporary
 21 license, within the 12 months ~~next~~ immediately preceding the
 22 date of application unless ~~such previous license was the~~
 23 commissioner has suspended, revoked, or continuation thereof
 24 refused by the commissioner to continue the previous
 25 license, except that ~~the provisions of~~ this subsection

1 ~~f5}{b}~~--do (b) does not apply to a title agents insurance
2 producer, as defined in 33-25-105;

3 (c) any an applicant for license as nonresident agent,
4 ~~subject-to-reciprocal-arrangements-as-provided-for--in--this~~
5 ~~case~~ insurance producer;

6 ~~{d}~~--all-applicants-for-license-as-agent-for-an-insurer
7 ~~that--confines--its--business-in-this-state-substantially-to~~
8 ~~the-insuring--of--the--property--interests--and--risks--of~~
9 ~~farmers--it--exempted-from-examination-by-the-commissioner,~~
10 ~~in-his-discretion-upon-written-request-of-the-insurer;~~

11 ~~{e}~~(d) any an applicant for an agent's a license to
12 sell all-risk federal crop insurance if the applicant
13 provides certification from an appropriate governmental
14 agency to the commissioner that he is qualified to sell such
15 the insurance;

16 ~~{f}~~(e) transportation ticket agents of common carriers
17 applying for license to solicit and sell only:

18 (i) accident insurance ticket policies; or

19 (ii) insurance of personal effects while being carried
20 as baggage on such a common carrier, as incidental to their
21 duties as such transportation ticket agents;

22 ~~{g}~~(f) agents'--associations an association applying
23 for license under 33-17-205 33-17-211;

24 ~~{h}~~(g) a mechanical breakdown insurance agents
25 producer.

1 (h) an individual who, within 60 days of cancellation
2 of a license issued by the state of the individual's
3 residence, files with the commissioner a current letter of
4 clearance certifying that the individual has passed an
5 examination and held an insurance license in good standing
6 in the individual's state of licensure, except that the
7 individual shall take an examination pertaining to this
8 state's law and each kind of insurance for which the
9 individual has applied for a license and which is not
10 covered under the license held in the other state."

11 **Section 21.** Section 33-17-213, MCA, is amended to
12 read:

13 "33-17-213. Conduct of examinations. (1) The
14 commissioner shall make any examination required under
15 33-17-212 available to applicants with reasonable frequency
16 and at places in this state reasonably accessible to the
17 applicants.

18 ~~{2}~~--All--the-kinds-of-insurance-or-classes-thereof--as
19 ~~referred-to-in-33-17-212{3},--which-the-applicant-proposes-to~~
20 ~~transact-under-the-license-applied-for--shall-be-included--in~~
21 ~~the-same-examination--~~

22 ~~{3}~~(2) The commissioner shall assure that the
23 examinations are conducted in a fair and impartial manner
24 and without unfair discrimination as between individuals
25 examined.

1 ~~†4†~~(3) The commissioner may require a reasonable
2 waiting period before reexamination of an applicant who has
3 failed to pass a previous examination covering the same kind
4 or kinds of insurance.

5 ~~†5†~~(4) The examination of a title agent insurance
6 producer, as defined in 33-25-105, must include but is not
7 limited to questions pertaining to the search and
8 examination of title to real property, insurance principles
9 relating to title insurance, and the fiduciary duties and
10 procedures of escrows, settlements, and closings of real
11 estate transactions."

12 **Section 22.** Section 33-17-214, MCA, is amended to
13 read:

14 "33-17-214. Issuance of license -- contents. (1) The
15 commissioner shall promptly issue the a license ~~applied--for~~
16 ~~to the a person qualified-therefor-in-accordance-with-this~~
17 ~~chapter pursuant to 33-17-211 and 33-17-212. There--is--a~~
18 ~~license--for--life--or--disability--insurance-and-a-separate~~
19 ~~license--for--kinds--of--insurance--other---than---life---or~~
20 ~~disability-~~

21 (2) The license ~~shall~~ must state the name and address
22 of the licensee, personal identification number, date of
23 ~~issue~~ issuance, general conditions relative to expiration or
24 termination, kind of insurance covered, and such other
25 information as the commissioner considers proper necessary.

1 (3) The license of a partnership, or corporation,
2 ~~shall~~ or association must also state the name of each
3 individual authorized to exercise the license powers.

4 ~~†4†--The--license--of--a-solicitor-shall-state-the-name~~
5 ~~and-address-of-the-agent-to-be-represented-~~

6 (4) Each license remains in effect, unless suspended
7 or revoked, as long as the fees required by 33-2-708 are
8 paid.

9 (5) An individual who allows his license to lapse may,
10 within 12 months from the due date of the unpaid annual fee,
11 apply for the same license without having to pass a written
12 examination if he pays a penalty in the amount of twice the
13 unpaid annual fee.

14 (6) A person shall inform the commissioner in writing
15 of a change of address within 30 days of the change."

16 **Section 23.** Section 33-17-216, MCA, is amended to
17 read:

18 "33-17-216. Temporary agent---licenses insurance
19 producer license -- fee. (1) The commissioner may issue a
20 temporary license ~~as--agent~~ to or with respect to an
21 individual qualified ~~therefor~~ for the temporary license only
22 as to age, residence, and trustworthiness and without
23 requiring such the individual to take an examination, in the
24 following cases:

25 (a) to the surviving spouse or next of kin or to the

1 administrator or executor, or the employee of such the
 2 administrator or executor, of a licensed agent insurance
 3 producer upon ~~such-agent's~~ the insurance producer's death;

4 (b) to the spouse, next of kin, employee, or legal
 5 guardian of a licensed agent insurance producer disabled by
 6 injury or physical or mental illness;

7 (c) to an employee of a firm partnership, or officer
 8 or employee of a corporation, licensed as agent an insurance
 9 producer, upon the death or disability of an individual
 10 designated in the license to exercise the powers ~~thereof~~ of
 11 an insurance producer;

12 (d) to the designee of a licensed agent insurance
 13 producer entering upon active service in the armed forces of
 14 the United States of America;

15 (e) in any other circumstance in which the
 16 commissioner finds that the public interest will best be
 17 served by issuing such a license.

18 (2) The temporary license ~~shall~~ must be issued upon
 19 application filed with the commissioner in such the form and
 20 containing such the information as the commissioner may
 21 reasonably require and upon payment of the applicable fee as
 22 stated provided in 33-2-708.

23 (3) The temporary license ~~shall~~ must be for a period
 24 of not over 90 days, subject to extension by the
 25 commissioner in his discretion for an additional period of

1 not more than 90 days, except that ~~such a~~ temporary license
 2 issued pursuant to subsection (1)(a) may be continued
 3 without payment of an additional fee until the executor or
 4 administrator disposes of the insurance business, but not to
 5 exceed a period of 15 months. A temporary license issued to
 6 the next of kin under such subsection (1)(a) may not be
 7 extended for an additional term after the appointment and
 8 qualification of ~~such-an~~ the administrator or executor.

9 (4) The fee paid for the temporary license may be
 10 applied upon the fee required for a permanent license issued
 11 to the licensee upon or prior to expiration of the temporary
 12 license and covering the same kinds of insurance."

13 **Section 24.** Section 33-17-217, MCA, is amended to
 14 read:

15 "33-17-217. Limitations and rights under temporary
 16 license. (1) The commissioner ~~shall~~ may not issue more than
 17 one temporary license, to or with respect to the same
 18 individual to be ~~so~~ licensed, within any 12-month period.

19 (2) The temporary license may cover the same kinds of
 20 insurance for which the ~~agent--thereby~~ insurance producer
 21 being replaced was licensed.

22 (3) As to a temporary ~~agent's~~ insurance producer's
 23 license issued on account of the death or disability of an
 24 agent insurance producer, the licensee may ~~so~~ represent all
 25 of the insurers last represented by such the deceased or

1 disabled ~~agent-and-without-the-making-of-new-appointment-of~~
 2 ~~such-licensee-by-such-insurers~~ insurance producer, but the
 3 licensee ~~shall~~ may not be ~~appointed-as-to-any-additional~~
 4 ~~insurer-or~~ licensed for an additional kind of insurance
 5 under ~~such-a~~ the temporary license. ~~This-provision-shall-not~~
 6 ~~be--deemed-to-prohibit-termination-of-its-appointment-by-any~~
 7 ~~insurer.~~

8 (4) A temporary licensee ~~shall--have~~ has the same
 9 license powers and duties as under a permanent license."

10 **Section 25.** Section 33-17-221, MCA, is amended to
 11 read:

12 "33-17-221. Licensing insurance vending machines as
 13 ~~solicitors.~~ (1) A licensed resident ~~agent~~ insurance producer
 14 may solicit applications for and issue policies of personal
 15 travel accident insurance by means of mechanical vending
 16 ~~machine~~ machines supervised by him and placed at airports,
 17 railroad stations, bus stations, and similar places where
 18 transportation tickets are sold and of convenience to the
 19 traveling public, if the commissioner finds that:

20 (a) the policy to be sold provides reasonable coverage
 21 and benefits, is reasonably suited for sale and issuance
 22 through a mechanical vending machines machine, and use of
 23 such a mechanical vending machine therefor to sell or issue
 24 a policy in a particular proposed location would be of
 25 material convenience to the public;

1 (b) the type of mechanical vending machine proposed to
 2 be used is reasonably suitable and practical for the
 3 purpose;

4 (c) reasonable means are provided for informing the
 5 prospective purchaser of any such policy of the coverage and
 6 restrictions of the policy; and

7 (d) reasonable means are provided for refund to the
 8 applicant or prospective applicant of money inserted in a
 9 ~~defective machines~~ mechanical vending machine and for which
 10 no insurance or a less amount than that paid for is actually
 11 received.

12 (2) As to each such mechanical vending machine to be
 13 ~~so used to sell or issue a policy~~, the commissioner shall
 14 issue to the ~~agent~~ insurance producer a special mechanical
 15 vending machine license. The license ~~shall~~ must specify the
 16 name and address of the insurer and ~~agent~~ insurance
 17 producer, the name of the policy to be ~~so sold or issued~~
 18 through the mechanical vending machine, the serial number of
 19 the mechanical vending machine, and the place where the
 20 machine ~~is-to-be-in--operation will operate~~. The license
 21 ~~shall--be~~ is subject to annual continuation, expiration,
 22 suspension, or revocation coincidentally with that of the
 23 ~~agent insurance producer~~. The commissioner shall also revoke
 24 the license ~~as-to-any of a mechanical vending machine as-to~~
 25 which if he finds that the conditions upon which the machine

was licensed, as referred to in subsection (1), no longer exist. The license fee ~~shall be~~ is as stated provided in 33-2-708 for each license year or part thereof of the year for each respective mechanical vending machine. Proof of the existence of a subsisting license ~~shall~~ must be displayed on or about each such mechanical vending machine in use in such the manner as that the commissioner may reasonably require."

Section 26. Section 33-17-301, MCA, is amended to read:

"33-17-301. ~~Adjuster's~~ Adjuster license -- qualifications -- catastrophe adjustments -- public adjuster. (1) No A person ~~shall~~ may not in this state act as or hold himself out to be an adjuster unless then licensed therefor as an adjuster under this chapter. Application A person shall apply for an adjuster license shall be made to the commissioner according to forms ~~as prescribed and~~ furnished by him the commissioner prescribes and furnishes. The commissioner shall issue the adjuster license as to individuals qualified therefor to be licensed as an adjuster upon payment of the license fee stated provided in 33-2-708.

(2) To be licensed as an adjuster, the applicant must be qualified therefor as follows:

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

(b) must be a resident ~~in and~~ of Montana or resident of another state which that will permit residents of Montana

regularly to act as adjusters in such the other state;

(c) must be a full-time salaried employee of a licensed adjuster or a graduate of a recognized law school or ~~must~~ have had experience or special education or training as to the handling of loss claims under insurance contracts of sufficient duration and extent reasonably to make him competent to fulfill the responsibilities of an adjuster;

(d) must be trustworthy and of good character and reputation;

(e) ~~must~~ shall have and maintain in this state an office accessible to the public and keep therein in the office the usual and customary records pertaining to transactions under the license. This provision ~~shall~~ does not ~~be deemed to~~ prohibit maintenance of such the office in the nome of the licensee.

(3) A firm partnership or corporation, whether or not organized under the laws of this state, may be licensed as an adjuster if each individual who is to exercise the adjuster license powers is separately licensed or is named in the firm partnership or corporation adjuster license and is qualified as for an individual adjuster license as adjuster. An additional full license fee ~~shall~~ must be paid ~~as to~~ for each individual in excess of one ~~so~~ named in the firm partnership or corporation adjuster license to exercise its powers.

(4) ~~No--such--adjuster's~~ An adjuster license or qualifications shall--be are not required as-to-any for an adjuster who is sent into this state by and on behalf of an insurer or adjusting firm partnership or corporation for the purpose of investigating or making adjustments of a particular loss under an insurance policy or for the adjustment of a series of losses resulting from a catastrophe common to all such losses.

(5) An adjuster license continues in force until expired, suspended, revoked, or terminated. The license is subject to annual payment to the commissioner of the renewal fee required by 33-2-708, accompanied by a written request for renewal.

(6) The commissioner may adopt rules providing for the examination, licensure, bonding, and regulation of public adjusters."

Section 27. Section 33-17-401, MCA, is amended to read:

"33-17-401. Nonresident agent insurance producer -- reciprocity. (1) A nonresident person may apply for a license if:

(a) the person meets the requirements of 33-17-211(2);

(b) the person is licensed in the state of his residence to act as insurance producer for the kind or kinds of insurance for which he applies for licensing in this

state; and

(c) the person's state of residence issues a similar license to a resident of this state for the same kind or kinds of insurance for which the person is qualified in this state.

(2) The commissioner may license a nonresident individual without written examination if the insurance department in the individual's state of residence certifies that:

(a) the individual either has passed a written examination for each kind of insurance applied for or was licensed prior to the time a written examination was required in the individual's state of residence; and

(b) is currently licensed and in good standing.

(3) The commissioner may issue only a nonresident license to a person, partnership, or corporation otherwise qualified under this code but not a resident of this state and-only-if-pursuant--to--the--laws--of--the--state--of--his residence---a--similar--privilege--is--extended--to--persons resident-in-Montana.

(4) If, by the laws or rules of another state, a limitation of rights and privileges, conditions precedent, or any other requirements are imposed upon a resident of this state who is a nonresident licensee of the other state and the limitation, conditions, or requirements are in

addition to or in excess of those imposed on nonresident persons under this chapter, the same limitation, conditions, or requirements must be imposed upon the residents of the other state.

(5) If a nonresident insurance producer's state of residence suspends, revokes, or terminates his insurance license in that state, his Montana nonresident license automatically terminates and the nonresident insurance producer shall notify the commissioner that his state of residence has suspended, revoked, or terminated his insurance license in that state."

Section 28. Section 33-17-404, MCA, is amended to read:

"33-17-404. Countersigning coverage of residents. Except as provided in 33-17-1111, a nonresident agent shall insurance producer may not sign or countersign policies covering subjects of insurance residing, located, or to be performed in Montana."

Section 29. Section 33-17-405, MCA, is amended to read:

"33-17-405. Service of process -- commissioner as agent insurance producer. Application-for-and-acceptance-of a---license---as---a---nonresident---agent---shall---constitute irrevocable---appointment---of---the---commissioner---as---the attorney-in-fact---of---said---licensee---to---accept---service-of

process-issued--in--Montana--in--any--action--or--proceeding against--the--licensee--arising--out--of--the--licensing--or--out--of transactions--under--the--license--All--process--shall--be--served in--duplicate--upon--the--commissioner--together--with--a--fee--of \$5--The--commissioner--shall--then--promptly--forward--a--copy--of the--service--by--registered--or--certified--mail--to--the--licensee at--his--last--known--address--Such--service--shall--constitute personal--service--upon--the--licensee--A nonresident person shall file with the commissioner the required forms appointing the commissioner and his successors in office as the nonresident person's agent upon whom process in a legal proceeding against the nonresident person may be served and shall agree that such process has the same legal force and validity as personal service of process upon the nonresident person. The commissioner shall, within 3 working days after receiving process, forward, at the nonresident person's address of record, a copy of the process by certified mail to the person for whom he has received the process."

Section 30. Section 33-17-406, MCA, is amended to read:

"33-17-406. Nonresident agent insurance producer subject to insurance code. All A nonresident licensees shall be insurance producer is subject to the provisions of the Montana Insurance Code as though a resident of this state, unless otherwise provided."

Section 31. Section 33-17-407, MCA, is amended to read:

"33-17-407. Nonresident licensee insurance producer to pay taxes -- annual report required. (1) A nonresident licensee insurance producer is subject to personal income, business income, or corporate license taxes for all income earned on insurance policies issued to cover subjects or risks residing, located, or to be performed in Montana and written within the boundaries of this state.

(2) A nonresident licensee insurance producer shall ~~make--a--written--report--to--the--commissioner~~ file annually ~~within--45--days--following--the--end--of--each--calendar--year;--The~~ report--must--contain--a--listing--of--all--business--written--on ~~subjects--or--risks--located--or--performed--in--Montana;--The~~ report--must--be--in--a--form--prescribed--by--the--commissioner--and ~~must--include--but--not--be--limited--to--a--listing--of--company,~~ policy--number;--premium--earned;--and--commission--earned a Montana income tax return as required in Title 15."

Section 32. Section 33-17-411, MCA, is amended to read:

"33-17-411. Penalty. A nonresident licensee insurance producer who violates any a condition of his Montana license or any a provision of this part is subject to a fine by the commissioner of up to \$50,000 for each such violation and may, at the discretion of the commissioner, have his Montana

nonresident license revoked or suspended for a period of up to 5 years."

Section 33. Section 33-17-502, MCA, is amended to read:

"33-17-502. Prohibition on holding out as consultant -- receiving fee. (1) Any A person not licensed as an insurance consultant in this state who identifies or holds himself out to be an insurance consultant without having been licensed as an insurance consultant under this part or any a person who uses any other designation or title which that is likely to mislead the public and holds himself out in any manner as having particular insurance qualifications other than those for which he may be otherwise licensed or otherwise qualified is guilty of a misdemeanor and upon conviction shall be fined \$1,500.

(2) Any A person not licensed as an insurance consultant with respect to the relevant kinds of insurance who receives any a fee for examining, appraising, reviewing, or evaluating any insurance policy, annuity or pension contract, plan, or program or who ~~shall--make~~ makes recommendations or ~~give~~ gives advice with regard to any of the above without first having been licensed by the commissioner as an insurance consultant is guilty of a misdemeanor and upon conviction shall be fined \$1,500.

(3) Nothing in this part applies to:

1 (a) licensed attorneys at law in this state acting in
2 their professional capacity;

3 (b) an actuary or a certified public accountant who
4 provides information, recommendations, advice, or services
5 in his professional capacity if neither he nor his employer
6 receives any compensation directly or indirectly on account
7 of any insurance, bond, annuity or pension contract that
8 results in whole or part from that information,
9 recommendation, advice, or services; or

10 (c) a ~~duty~~ licensed casualty insurance agent producer
11 who accepts a fee from an insured for placement through the
12 state compensation insurance fund as provided in 33-18-212."

13 **Section 34.** Section 33-17-503, MCA, is amended to
14 read:

15 "33-17-503. Application -- fee -- expiration. (1)
16 Before ~~an---insurance---consultant's~~ a consultant license is
17 issued or renewed, the prospective licensee shall:

18 (a) properly file in the office of the commissioner a
19 written application on forms the commissioner prescribes;
20 and

21 (b) pay a fee of \$50.

22 (2) ~~Every-consultant's~~ Each consultant license ~~shall~~
23 ~~expire~~ expires on May 31 next following the date of issue."

24 **Section 35.** Section 33-17-504, MCA, is amended to
25 read:

1 "33-17-504. Issuing license -- limitations. The
2 commissioner may issue ~~an---insurance---consultant's~~ a
3 consultant license to ~~any-natural-person an individual~~ who
4 has complied with the requirements of this chapter with
5 respect to either life insurance, meaning all of those kinds
6 of insurance authorized in 33-1-207, 33-1-208, 33-20-1001,
7 33-21-103, 33-22-501, and 33-22-601, or general insurance,
8 meaning all of those kinds of insurance authorized in
9 33-1-206, 33-1-207, 33-1-209 through 33-1-212, and 33-1-221
10 through 33-1-229, as specified in such the license."

11 **Section 36.** Section 33-17-505, MCA, is amended to
12 read:

13 "33-17-505. Qualification -- fee. (1) In order to
14 determine the competency of ~~every~~ an applicant for a
15 consultant license ~~as---an---insurance---consultant,~~ the
16 commissioner shall require the applicant to pass an
17 examination.

18 (2) The fee for taking ~~such-an~~ the consultant license
19 examination ~~shall-be~~ is \$50. The commissioner shall deposit
20 all fees collected in the general fund. The fee for taking a
21 second or subsequent examination ~~shall~~ may be no more than
22 the cost of administering such the examination, not to
23 exceed \$50."

24 **Section 37.** Section 33-17-506, MCA, is amended to
25 read:

1 "33-17-506. Grounds for refusal to issue license. The
2 commissioner may refuse to issue ~~an insurance consultant's~~ a
3 consultant license if, in his judgment, the applicant is not
4 trustworthy and competent to act as a consultant, or has
5 given cause for revocation or suspension of a license, or
6 has failed to comply with any prerequisite for the issuance
7 of a license."

8 **Section 38.** Section 33-17-507, MCA, is amended to
9 read:

10 "33-17-507. Revocation. The commissioner may revoke or
11 suspend ~~any insurance consultant's~~ a consultant license for
12 a period he determines if, after notice and hearing as
13 specified in this chapter, he determines that the licensee:

14 (1) has violated any provision of or any obligation
15 imposed by the insurance law or has violated any law in the
16 course of his dealings as a an insurance consultant;

17 (2) has made a material misstatement in application
18 for a ~~consultant's~~ consultant license;

19 (3) has been guilty of fraudulent or dishonest
20 practices; or

21 (4) has demonstrated his incompetency or
22 untrustworthiness to act as an insurance consultant."

23 **Section 39.** Section 33-17-511, MCA, is amended to
24 read:

25 "33-17-511. Consideration for services only on written

1 memorandum. No A person licensed as an insurance consultant
2 under this part may not receive any a fee for examining,
3 appraising, reviewing, or evaluating any an insurance
4 policy, bond, annuity or pension or profit-sharing contract,
5 plan, or program or for making recommendations or giving
6 advice with regard to any of the above unless the
7 compensation is based upon a written memorandum signed by
8 the party to be charged and specifying or clearly defining
9 the amount or extent of the compensation. A An insurance
10 consultant shall retain a copy of every memorandum or
11 contract ~~shall be retained by the licensee~~ for not less than
12 3 years after those services have been fully performed."

13 **Section 40.** Section 33-17-512, MCA, is amended to
14 read:

15 "33-17-512. Limitation on type of consideration. No A
16 person licensed as an insurance consultant may not receive
17 any compensation, direct or indirect, as a result of the
18 sale of insurance or annuities to or the use of securities
19 or trusts in connection with pensions for any a person to
20 whom any the licensee has performed any a related consulting
21 service for which he has received a fee or contracted to
22 receive a fee within the preceding 12 months."

23 **Section 41.** Section 33-17-513, MCA, is amended to
24 read:

25 "33-17-513. Restrictions on insurers recommended by

1 licensee. No A person licensed as an insurance consultant
 2 under this part may not recommend or encourage the purchase
 3 of insurance, annuities, or securities from ~~any~~ an
 4 authorized insurer in which he or any member of his
 5 immediate family holds an executive position or holds a
 6 substantial interest."

7 **Section 42.** Section 33-17-602, MCA, is amended to
 8 read:

9 "33-17-602. Written agreement required. (1) No A
 10 person may not act as an administrator without a written
 11 agreement between the person and the insurer. The written
 12 agreement ~~shall~~ must be retained as part of the official
 13 records of both the administrator and the insurer for the
 14 duration of the agreement and for 5 years thereafter. The
 15 written agreement ~~shall~~ must contain provisions ~~which~~ that
 16 include the requirements of 33-17-612 through 33-17-617
 17 insofar as these requirements relate to the functions
 18 performed by the administrator.

19 (2) The agreement ~~shall~~ must contain a provision with
 20 respect to the underwriting or other standards pertaining to
 21 the business underwritten by ~~such~~ the insurer.

22 (3) Whenever a policy is issued to a trustee, a copy
 23 of the trust agreement and any amendments ~~thereto--shall~~ to
 24 it must be furnished to the insurer by the administrator and
 25 ~~shall~~ be retained as part of the official records of both

1 the administrator and the insurer for the duration of the
 2 policy and for 5 years thereafter."

3 **Section 43.** Section 33-17-603, MCA, is amended to
 4 read:

5 "33-17-603. Certificate of registration. (1) Except as
 6 provided in 33-17-604, no a person may not act as or hold
 7 himself out to be an administrator in this state unless he
 8 holds a certificate of registration as an administrator.

9 (2) An application for a certificate of registration
 10 must be accompanied by a fee of \$100. The commissioner ~~of~~
 11 ~~insurance~~ shall issue the certificate unless he finds that
 12 the applicant is not competent, trustworthy, financially
 13 responsible, or of good personal and business reputation or
 14 that the applicant has had a previous application for ~~an~~
 15 ~~insurance~~ a license denied for cause within 5 years.

16 (3) The certificate of registration is renewable
 17 annually on the date of issue. A request for renewal must be
 18 accompanied by a renewal fee of \$100.

19 (4) The certificate of registration may be suspended
 20 or revoked if, after notice and hearing, the commissioner
 21 finds that the administrator has violated any of the
 22 requirements of this part or that the administrator is not
 23 competent, trustworthy, financially responsible, or of good
 24 personal and business reputation.

25 (5) Unless the certification requirement is waived,

1 ~~any-administrator~~ a person who acts as ~~such an administrator~~
2 without the a certificate of registration is subject to a
3 fine of not less than \$500 or more than \$1,500."

4 **Section 44.** Section 33-17-604, MCA, is amended to
5 read:

6 "33-17-604. Waiver of certification requirements. The
7 commissioner ~~of--insurance~~ may waive the requirements of
8 33-17-603 for any person or class of persons. The factors
9 taken into account in granting such a waiver ~~shall~~ include
10 but are not limited to:

11 (1) whether the person acting as an administrator is
12 primarily in a business other than that of administrator;

13 (2) whether the financial strength and history of the
14 organization indicates stability in its continuity of doing
15 business;

16 (3) whether the regular duties being performed as an
17 administrator are such that the covered persons are not
18 likely to be injured by a waiver of such the requirements."

19 **Section 45.** Section 33-17-611, MCA, is amended to
20 read:

21 "33-17-611. Maintenance of information. For the
22 duration of the agreement required by 33-17-602 and for 5
23 years thereafter, each administrator shall maintain at its
24 principal administrative office adequate books and records
25 of all transactions between the administrator, insurers, and

1 insured persons. These books and records ~~shall~~ must be
2 maintained in accordance with prudent standards of insurance
3 recordkeeping. The commissioner ~~of--insurance~~ shall have
4 access to these books and records for examination, audit, or
5 inspection. Any trade secrets contained in the books and
6 records, including but not limited to the identity and
7 addresses of policyholders and certificate holders, ~~shall--be~~
8 are confidential, except that the commissioner may use such
9 the information in any proceedings instituted against the
10 administrator. The insurer retains the right to continuing
11 access to those books and records of the administrator
12 sufficient to permit the insurer to fulfill all of its
13 contractual obligations to insured persons, subject to any
14 restrictions in the written agreement between the insurer
15 and the administrator."

16 **Section 46.** Section 33-17-613, MCA, is amended to
17 read:

18 "33-17-613. Collection of charges and premiums. (1)
19 All insurance charges or premiums collected by an
20 administrator on behalf of or for an insurer ~~or--insurers~~ and
21 return premiums received from such the insurer ~~or--insurers~~
22 are held by the administrator in a fiduciary capacity.
23 These funds ~~shall~~ must be immediately remitted to the person
24 ~~or--persons~~ entitled thereto to them or ~~shall~~ must be
25 deposited promptly in a fiduciary bank account established

1 and maintained by the administrator. If deposited charges or
 2 premiums were collected on behalf of or for more than one
 3 insurer, the administrator shall require the bank in which
 4 the fiduciary account is maintained to keep records clearly
 5 recording the deposits in and withdrawals from ~~such the~~
 6 account on behalf of or for each insurer. The administrator
 7 shall promptly obtain and keep copies of all these records
 8 and, upon request of an insurer, shall furnish the insurer
 9 with copies of the records pertaining to deposits and
 10 withdrawals on behalf of or for the insurer.

11 (2) The administrator ~~shall~~ may not pay any a claim by
 12 withdrawals from the fiduciary account. Withdrawals from the
 13 fiduciary account ~~shall~~ must be made, as provided in the
 14 written agreement between the administrator and the insurer,
 15 for:

16 (a) remittance to an insurer entitled thereto to the
 17 remittance;

18 (b) deposit in an account maintained in the name of
 19 such the insurer;

20 (c) transfer to and deposit in a claims paying
 21 account, with claims to be paid as provided in 33-17-615;

22 (d) payment to a group policyholder for remittance to
 23 the insurer entitled thereto to the payment;

24 (e) payment to the administrator of its commission,
 25 fees, or charges; or

1 (f) remittance of return premiums to the person or
 2 persons entitled thereto to the premium."

3 **Section 47.** Section 33-17-1001, MCA, is amended to
 4 read:

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

18 (a) ~~for any cause engaged or is about to engage in an~~
 19 act or practice for which issuance of the license could have
 20 been refused had it then existed and been known to the
 21 commissioner;

22 (b) ~~for obtaining~~ obtained or attempting attempted to
 23 obtain ~~any such a~~ license through misrepresentation or
 24 fraud;

25 (c) ~~for violation of or noncompliance~~ violated or

1 ~~failed to comply with any applicable~~ a provision of this
 2 code or ~~for willful violation of any lawful~~ has violated a
 3 rule, subpoena, or order of the commissioner or of the
 4 commissioner of any state;

5 (d) ~~for misappropriation or conversion~~ improperly
 6 withheld, misappropriated, or converted to his own use or
 7 illegal withholding of moneys money or property belonging to
 8 policyholders, insurers, beneficiaries, or others and
 9 received in conduct of business under the license;

10 (e) ~~conviction by final judgment~~ been convicted of a
 11 felony involving moral turpitude;

12 (f) if in the conduct of his affairs under the
 13 license, ~~the licensee has~~ used fraudulent, coercive, or
 14 dishonest practices or has shown himself to be incompetent,
 15 untrustworthy, financially irresponsible, or a source of
 16 injury and loss to the public;

17 (g) made a materially untrue statement in the license
 18 application;

19 (h) misrepresented the terms of an actual or proposed
 20 insurance contract;

21 (i) been found guilty of an unfair trade practice or
 22 fraud prohibited by Title 33, in chapter 18;

23 (j) had his license suspended or revoked in any other
 24 state;

25 (k) forged another's name to an application for

1 insurance;

2 (l) cheated on an examination for a license; or

3 (m) knowingly accepted insurance business from a
 4 person who is not licensed.

5 (2) The license of a partnership or corporation may be
 6 suspended, revoked, or refused, ~~also for any of such causes~~
 7 ~~as relate to any~~ or denied if a reason listed in subsection
 8 (1) applies to an individual designated in the license to
 9 exercise its powers.

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

14 Section 48. Section 33-17-1002, MCA, is amended to
 15 read:

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

1 ~~solicitor's license.~~

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

5 ~~(3)(2)~~ The commissioner ~~shall~~ may not again issue a
 6 license under this code to ~~or--as--to--any~~ a person whose
 7 license has been revoked until after expiration of 1 year
 8 and thereafter not until ~~such~~ the person again qualifies
 9 ~~therefor for a license~~ in accordance with the applicable
 10 ~~provisions of this code. If the commissioner revokes a~~
 11 ~~person's license, the commissioner may refuse to issue a~~
 12 ~~license to the person for up to 5 years after the~~
 13 ~~revocation.~~ A person whose license has been revoked twice
 14 ~~shall~~ is not again be eligible for any license under this
 15 code.

16 ~~(4)(3)~~ If the license of a partnership or corporation
 17 is ~~so~~ suspended or revoked, no member of ~~such~~ the
 18 partnership or officer or director of ~~such~~ the corporation
 19 ~~shall may~~ be licensed or be designated in ~~any~~ a license to
 20 exercise the its powers thereof during the period of ~~such~~
 21 ~~the~~ suspension or revocation unless the commissioner
 22 determines upon substantial evidence that ~~such~~ the member,
 23 officer, or director was not personally at fault and did not
 24 acquiesce in the matter on account of which the license was
 25 suspended or revoked."

1 **Section 49.** Section 33-17-1003, MCA, is amended to
 2 read:

3 **"33-17-1003. Return of license.** (1) All licenses
 4 issued under this chapter, although issued and delivered to
 5 the licensee ~~agent,--solicitor, insurance producer or~~
 6 ~~adjuster,--shall~~ are at all times be the property of the
 7 state of Montana. Upon any expiration, termination,
 8 suspension, or revocation of the license, the licensee or
 9 other person having possession or custody of the license
 10 shall ~~forthwith~~ immediately deliver it to the commissioner
 11 either by personal delivery or by mail.

12 (2) As to any license lost, stolen, or destroyed while
 13 in the possession of ~~any-such~~ a licensee or person, the
 14 commissioner may accept in lieu of return of the license the
 15 affidavit of the licensee or other person responsible for or
 16 involved in the safekeeping of ~~such~~ the license, concerning
 17 the facts of ~~such~~ the loss, theft, or destruction."

18 **Section 50.** Section 33-17-1004, MCA, is amended to
 19 read:

20 **"33-17-1004. Acting as insurance agent,--solicitor,**
 21 ~~producer or adjuster without license -- penalty.~~ Except as
 22 provided in 33-17-411, a person,--partnership,--association,
 23 or corporation who or which, in this state, acts as an
 24 insurance agent,--solicitor, producer or adjuster without
 25 having authority to do so by virtue of a license issued and

in force pursuant to the--provisions--of this chapter is guilty of a misdemeanor and upon conviction shall be fined \$500 or imprisoned in the county jail for 90 days, or both."

Section 51. Section 33-17-1101, MCA, is amended to read:

"33-17-1101. Place of business -- display of license -- records. (1) Every resident agent insurance producer shall have and maintain a place of business in this state accessible to the public. A nonresident agent insurance producer may maintain a place of business in this state. An agent's insurance producer's place of business must be that wherein a place in which he principally conducts transactions under his license. The street address of such the place shall must appear upon the license,--and--the licensee--shall--promptly--notify--the--commissioner--of--any change-in-his-street-or-mailing--address. Nothing in this section prohibits maintenance of such the place of business in the licensee's place of residence.

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

(3) The agent insurance producer shall keep at his

place of business complete records pertaining to transactions under his license and--the--licenses-of-his solicitors, for a period of at least 3 years after completion of the respective transactions, except that a title agents insurance producer, as defined in 33-25-105, shall retain records as provided in 33-25-214 and 33-25-216."

Section 52. Section 33-17-1102, MCA, is amended to read:

"33-17-1102. Reporting and accounting for premiums -- misappropriation. (1) All insurance premiums or return premiums received by an agent--or--solicitor insurance producer must be held in a separate trust account. The licensee insurance producer shall at all times act in a fiduciary capacity, and the agent-or-solicitor shall, in the applicable regular course of business, account for and pay the same insurance premiums or return premiums he receives to the insured, insurer, or agent insurance producer entitled thereto to them. Except for a title agent insurance producer as defined in 33-25-105, an agent insurance producer may deposit and commingle in the same such separate deposit all such funds belonging to others so long as the amount of such the deposit so held for each respective other person is reasonably ascertainable from the records and accounts of the licensee.

(2) Any agent--or--solicitor insurance producer not lawfully entitled thereto to the funds may not divert or appropriate such the funds or any portion thereof of the funds to his own use.

(3) An insurance producer who unlawfully diverts or appropriates insurance premiums or return premiums to his own use is, upon conviction, guilty of theft and is punishable as provided by law."

Section 53. Section 33-17-1103, MCA, is amended to read:

"33-17-1103. ~~Exchange-of-business---sharing~~ Accepting and paying commissions, fees, or consideration -- restriction. (1)-An-agent-may, under rules--adopted--by--the commissioner,--place-an-insurance-coverage-with-an-insurer-as to--which--he-is-not-then-licensed-or-appointed-as-an-agent, and-the-insurer-shall-accept-such-business, only-when-placed through-an-agent,--licensed-under-this-chapter-and--appointed by--the-insurer. Both-agents-involved-in-such-an-exchange-of business-must--be--licensed--as--to--all--of--the--kinds--of insurance-represented-by-the-coverage-so-placed:

(2)--The-agents--involved--in--a--lawful--exchange--of business-under-subsection-(1)-above-may-divide-between--them the--commission--or--compensation-payable-on-account-of-such coverage: (1) An insurer or insurance producer may not pay, directly or indirectly, a commission, service fee, brokerage

fee, or other valuable consideration to a person for services as an insurance producer unless the person performing the service holds a valid license with regard to the kind or kinds of insurance for which the service was rendered at the time the service was performed. A person not properly licensed in accordance with this chapter at the time he performs the service as an insurance producer may not accept a commission, service fee, brokerage fee, or other valuable consideration for the service. This section does not prevent payment or receipt of renewal or other deferred commissions to or by a person entitled to receive the payment under this section.

(3)(2) No--agent--or--solicitor--shall An insurance producer may not directly or indirectly share his commissions or other compensation received or to be received by him on account of a transaction under his license with any person not also licensed under this chapter as to the same kind or kinds of insurance involved in such the transactions, except as provided in 33-17-1113. This provision shall does not affect payment of the regular salaries due employees of the licensee, or the distribution in regular course of business of compensation and profits among members or stockholders if the licensee is a firm partnership or corporation, or use of funds for family or personal purposes.

1 ~~{4}(3)~~ This section does not apply as to those
 2 transactions with surplus lines agents--which insurance
 3 producers that are lawful under 33-2-306 or as to life or
 4 disability insurance placed as provided in 33-17-1104 OR AS
 5 TO LIFE OR DISABILITY INSURANCE PLACED AS PROVIDED IN
 6 33-17-1104."

7 **Section 54.** Section 33-17-1111, MCA, is amended to
 8 read:

9 "33-17-1111. Resident agent insurance producer
 10 required -- reciprocity -- countersignature -- records. (1)
 11 No An authorized insurer shall may not issue a policy
 12 covering a subject of insurance resident residing, located,
 13 or to be performed in Montana unless:

14 (a) the policy is written through a licensed agent,
 15 resident insurance producer residing in Montana--of--the
 16 insurer;

17 (b) the policy is written through a licensed
 18 nonresident agent insurance producer and, if a
 19 countersignature would be required by the resident state of
 20 the nonresident agent insurance producer upon a Montana
 21 resident agent insurance producer writing business in the
 22 resident state of such the nonresident agent insurance
 23 producer, the policy or countersignature endorsement
 24 attached thereto to the policy is countersigned by a Montana
 25 resident licensed agent insurance producer; or

1 (c) the policy is written through a licensed
 2 nonresident agent insurance producer who is a resident of a
 3 state that does not require countersignatures.

4 (2) No such A countersignature shall may not be made
 5 in blank. The agent insurance producer may by express
 6 written authorization given in advance delegate to his
 7 salaried clerical employee the power to so countersign in
 8 the name of the agent--such--contracts insurance producer
 9 those policies or classes of contracts--as are policies
 10 designated in such the authorization so--long--as if the
 11 initials of such the employee are written below the agent's
 12 insurance producer's name on such the countersignature, but
 13 the agent--shall insurance producer may not thereby delegate
 14 or have power to delegate to any-other a person the power or
 15 authority to bind an insurer with respect to any a risk not
 16 already bound by the agent insurance producer or other
 17 person having clear authority from the insurer so to bind.
 18 The agent--shall-be insurance producer is responsible for all
 19 of the acts of such the employee within the scope of the
 20 authority so delegated. The agent insurance producer shall
 21 keep a record of each-and all coverages countersigned by him
 22 or by his authority.

23 (3) This section shall does not apply to:

24 (a) reinsurance;

25 (b) life insurance, disability insurance, or annuity

1 contracts;

2 (c) insurance of the rolling stock, vessels, or
3 aircraft of any common carrier in interstate or foreign
4 commerce or of any vehicle principally garaged and used in
5 another state or covering any liability or other risks
6 incident to the ownership, maintenance, or operation thereof
7 of any common carrier or vehicle;

8 (d) insurance of property in course of transportation
9 interstate or in foreign trade or any liability or risk
10 incident thereto to the insurance;

11 (e) insurance of wet marine and transportation risks;

12 (f) countersignature to policies issued through agents
13 insurance producers compensated only by salary or issued by
14 insurers not using agents insurance producers in the general
15 solicitation of business;

16 (g) bid bonds, as required under Title 18, chapter 1,
17 part 2.

18 (4) Violation of this section ~~shall~~ does not
19 invalidate any-contract a policy otherwise valid as between
20 the insurer and the insured."

21 **Section 55.** Section 33-17-1112, MCA, is amended to
22 read:

23 "33-17-1112. Salaried personnel not to countersign --
24 exception for emergencies. (1) With respect to policies
25 subject to countersignature requirements under 33-17-1111,

1 only a licensed ~~agent--of--the-insurer-resident~~ insurance
2 producer residing in Montana, whose compensation as such
3 agent an insurance producer is by commission computed as a
4 percentage of the premium received on each such policy
5 written, ~~shall-have~~ has power to countersign as required by
6 33-17-1111.

7 (2) No A branch manager, state agent, special agent,
8 general or any other like supervisory agent, or any other
9 representative of the insurer, whose compensation ~~therefrom~~
10 from the insurer is in whole or in part by salary, ~~shall~~
11 does not have power to countersign such policies or
12 countersignature endorsements ~~thereto to policies;~~ except
13 that in an emergency where it is necessary that an insurance
14 policy be issued without delay and no resident ~~agent-of--the~~
15 insurer insurance producer having power to execute the
16 policy is then reasonably available, then any other
17 individual having authority ~~therefor~~ from the insurer may
18 execute such the policy in the first instance in order to
19 make a contract between the insurer and the obligee or the
20 insured if such the policy is subsequently countersigned in
21 fact by such a resident agent insurance producer."

22 **Section 56.** Section 33-17-1113, MCA, is amended to
23 read:

24 "33-17-1113. Policies originating outside state --
25 commission of resident agent insurance producer. (1) As to

1 ~~policies a policy~~ or ~~endorsements--thereto--which--are~~ an
 2 endorsement to a policy that is subject to countersignature
 3 requirements under 33-17-1111 contracted for or otherwise
 4 originating outside the boundaries of Montana, ~~there-shall~~
 5 ~~be-payable-to-the-countersigning-agent, resident-in-Montana,~~
 6 a commission ~~which-shall of~~ not be less than 5% of the
 7 premium charged and received but not ~~to-exceed~~ more than 50%
 8 of the commission paid by the insurer is payable to the
 9 countersigning insurance producer, so that a record within
 10 Montana will be kept of ~~such the~~ business and so that the
 11 state may better receive any tax required by law to be paid
 12 with respect to ~~such the~~ insurance. If, however, the
 13 originating ~~agent--or--broker~~ insurance producer or the
 14 insurer desires additional service to be rendered during the
 15 term of the policy, then the compensation for ~~such the~~
 16 countersigning resident ~~agent-shall~~ insurance producer must
 17 be in ~~such an~~ additional amount as is fixed by mutual
 18 agreement of ~~such the~~ parties in interest.

19 (2) If pursuant to the laws of another state the
 20 countersigning ~~agents~~ insurance producers of that state
 21 retain as commission or compensation with respect to
 22 business originated by Montana ~~agents~~ insurance producers
 23 more than 5% of the premium, then ~~the~~ Montana ~~agents~~
 24 insurance producers who countersign policies representing
 25 business originated by ~~agents-or-brokers~~ insurance producers

1 of ~~such the~~ other state shall charge and receive a
 2 commission in an amount not less than that ~~so~~ received by
 3 countersigning ~~agents~~ insurance producers of the other
 4 state."

5 **Section 57.** Section 33-17-1114, MCA, is amended to
 6 read:

7 "33-17-1114. Policies issued at home or branch
 8 offices. Nothing in 33-17-1111 through 33-17-1113 ~~shall~~
 9 ~~prevent-any~~ prevents an insurer from issuing ~~any a~~ policy,
 10 as to which the resident--agent--or countersignature
 11 requirement of 33-17-1111 ~~is-applicable~~ applies, at its home
 12 or branch office, but ~~such-policies-shall~~ the policy must be
 13 subsequently countersigned, where otherwise required, by its
 14 ~~agent-resident~~ an insurance producer residing in Montana.
 15 The ~~insurer's--licensed--agent--resident~~ insurance producer
 16 residing in Montana shall receive the commission on ~~such the~~
 17 policy when the insurance premium is paid. This section does
 18 not apply ~~as to~~ life insurance."

19 **Section 58.** Section 33-18-401, MCA, is amended to
 20 read:

21 "33-18-401. False ~~applications,--claims~~ application,
 22 claim, and ~~proofs~~ proof of loss -- penalty. Any--~~solicitor,~~
 23 agent An insurance producer, examining physician, applicant,
 24 or other person who knowingly or willfully makes ~~any a~~ false
 25 or fraudulent statement or representation in or with

1 reference to any an application for insurance or, for the
 2 purpose of obtaining any money or benefit, knowingly or
 3 willfully presents or causes to be presented a false or
 4 fraudulent claim or any proof in support of such a claim for
 5 the payment of the loss upon a contract of insurance or
 6 prepares, makes, or subscribes a false or fraudulent
 7 account, certificate, affidavit or proof of loss, or other
 8 document or writing, with intent that the same may be
 9 presented or used in support of such a claim, ~~shall be is~~
 10 guilty of a misdemeanor felony and upon conviction shall be
 11 ~~punished--by--a-fine-of-not-less-than-\$250-or~~ fined not more
 12 ~~than \$1,000 \$5,000 or by-imprisonment-in-the-county-jail-for~~
 13 ~~not-less-than-3-months-or imprisoned not~~ more than 6--months
 14 10 years, or both ~~such--fine--and--imprisonment--at--the~~
 15 ~~discretion-of-the-court."~~

16 **Section 59.** Section 33-25-202, MCA, is amended to
 17 read:

18 "33-25-202. Sharing of rate proceeds. Title insurers
 19 and agents insurance producers may share rate proceeds
 20 between or among themselves in any combination and may
 21 ~~exchange-business-and-share~~ accept commissions as provided
 22 in 33-17-1103, unless the sharing of rate proceeds is an
 23 unlawful rebate or inducement under this title or is a
 24 payment of a forwarding fee or finders fee."

25 **Section 60.** Section 33-25-214, MCA, is amended to

1 read:

2 "33-25-214. Underwriting standards -- record
 3 retention. (1) A title insurer may not issue a title
 4 insurance policy unless it, its title agent insurance
 5 producer, or an approved attorney has conducted a reasonable
 6 search and examination of the title and made a determination
 7 of insurability of title in accordance with sound
 8 underwriting practices. The title insurer or title agent
 9 must insurance producer shall preserve and retain in its
 10 files evidence of the examination of title and determination
 11 of insurability. The title insurer or title agent insurance
 12 producer may keep original evidence or may establish in the
 13 regular course of business a system of recording, copying,
 14 or reproducing evidence by any process that accurately and
 15 legibly reproduces, or forms a durable medium for
 16 reproducing, the contents of the original.

17 (2) Subsection (1) does not apply to:

18 (a) a title insurer assuming liability through a
 19 contract of reinsurance; or

20 (b) a title insurer acting as coinsurer if one of the
 21 other coinsuring title insurers has complied with subsection
 22 (1).

23 (3) Except as allowed by rules adopted by the
 24 commissioner, no a title insurer or title agent insurance
 25 producer may not knowingly issue an owner's title insurance

1 policy or commitment to insure unless all outstanding
2 enforceable recorded liens or other interests against the
3 property title to be insured are shown.

4 (4) An insurer issuing a policy in violation of this
5 section is estopped, as a matter of law, to deny the
6 validity of the policy as to any claim or demand of the
7 insured arising thereunder under the policy."

8 **Section 61.** Section 33-25-301, MCA, is amended to
9 read:

10 "33-25-301. Refusal, suspension, or revocation of
11 title agent's insurance producer's license. (1) In addition
12 to the causes provided in 33-17-1001, the commissioner may
13 refuse to license a person as a title agent insurance
14 producer or may suspend or revoke a title agent's insurance
15 producer's license if, after a hearing held after notice as
16 required in 33-17-1001, he finds that the license applicant
17 or licensee has:

18 (a) made a material misstatement in an application for
19 a title agent insurance producer license;

20 (b) commingled funds belonging to applicants, escrow
21 participants, or others;

22 (c) intentionally misrepresented the terms of a title
23 insurance policy to an applicant or policyholder or has
24 misrepresented material facts to, concealed material facts
25 from, or made false statements to a party to an escrow,

1 settlement, or closing transaction;

2 (d) in the conduct of his affairs under his title
3 agent's insurance producer's license, used coercive
4 practices or shown himself to be financially irresponsible;

5 (e) aided, abetted, or assisted another person in
6 violating the provisions of this title or a rule adopted by
7 the commissioner.

8 (2) The commissioner may impose any other appropriate
9 penalty provided for in this title.

10 (3) The commissioner may refuse, suspend, or revoke
11 the license of a ~~firm, corporation, or other business entity~~
12 person licensed as a title agent insurance producer for the
13 actions described in subsection (1) of any individual
14 designated in the license to exercise its powers."

15 **Section 62.** Section 33-25-302, MCA, is amended to
16 read:

17 "33-25-302. Disapproval of agency contracts. (1) The
18 commissioner may disapprove a title agency contract between
19 a title agent insurance producer and title insurer, upon
20 appropriate notice to the parties to the contract, if he
21 finds that the contract, together with all amendments and
22 related documents:

23 (a) does not provide for adequate monitoring of the
24 agent's insurance producer's financial transactions; or

25 (b) provides for inadequate, unreasonable, or

excessive amounts to be paid to or retained by the title agent insurance producer. Factors the commissioner may consider in this determination include but are not limited to the agent's insurance producer's duties under the contract and the general level of amounts paid to or retained by other title agents insurance producers in the state performing or assuming comparable duties.

(2) No A person may not act as a title agent insurance producer under an agency contract that has been disapproved by the commissioner."

Section 63. Section 33-25-401, MCA, is amended to read:

"33-25-401. Prohibited practices -- referrals -- splitting charges -- exemptions. (1) Except as provided in subsection (2), no a person may not:

(a) give or accept a fee, rebate, or thing of value pursuant to an agreement or understanding that title insurance business will be referred to a title agent insurance producer; or

(b) give or accept a portion, split, or percentage of a charge made or received for title insurance business in connection with a transaction involving real property in this state, other than for services actually performed.

(2) (a) A person may pay a return on an investment, based on a percentage of an ownership interest in a title

insurance agency, if:

(i) at or prior to the time of a referral, a disclosure of the existence of the arrangement is made to the person being referred and, in connection with the referral, the person is provided a written estimate of the charge or range of charges generally made by the title agent insurance producer to which the person is referred; and

(ii) the person is not required to use a particular agent insurance producer.

(b) The following arrangements are not a violation of subsection (2)(a)(ii):

(i) an arrangement that requires a buyer, borrower, or seller to pay for the services of an attorney, credit reporting agency, or real estate appraiser chosen by a lender to represent the lender's interest in a real estate transaction; or

(ii) an arrangement by which an attorney or law firm represents a client in a real estate transaction and issues or arranges for the issuance of a policy of title insurance in the transaction directly as agent insurance producer or through a separate corporate title insurance agency that may be established by that attorney or law firm and operated as an adjunct to his or its law practice.

(c) Failure to disclose a controlled business relationship is not a violation of subsection (2)(a)(i) if

the failure was not intentional and resulted from a bona fide error, proven by a preponderance of the evidence.

(3) This section does not prohibit:

(a) the payment of a fee to an attorney for services actually rendered or by a title agent insurance producer for services actually performed in the issuance of a title insurance policy; or

(b) payment of a bona fide salary, compensation, or other payment for goods or facilities actually furnished or for services actually performed."

Section 64. Section 33-25-403, MCA, is amended to read:

"33-25-403. Prohibited practices -- producer and associates -- prohibition of favored agent insurance producer or insurer. No A producer or associate may not, directly or indirectly, require as a condition, agreement, or understanding of providing another person a loan, loan extension, credit, sale, property, contract, lease, or service that the other person obtain title insurance of any kind from a particular title insurer or title agent insurance producer. No A title insurer or title agent insurance producer may not knowingly participate in a plan or transaction prohibited by this section."

Section 65. Section 33-22-1703, MCA, is amended to read:

"33-22-1703. Definitions. As used in this part, the following definitions apply:

(1) "Emergency services" means services provided after suffering an accidental bodily injury or the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that without immediate medical attention the subscriber or insured could reasonably expect that:

(a) his health would be in serious jeopardy;

(b) his bodily functions would be seriously impaired;

or

(c) a bodily organ or part would be seriously damaged.

(2) "Health benefit plan" means the health insurance policy or subscriber arrangement between the insured or subscriber and the health care insurer that defines the covered services and benefit levels available.

(3) "Health care insurer" means:

(a) an insurer that provides disability insurance as defined in 33-1-207;

(b) a health service corporation as defined in 33-30-101;

(c) a health maintenance organization as defined in 33-31-102;

(d) a fraternal benefit society as defined in 33-7-102;

1 (e) an administrator as defined in 33-17-601
2 33-17-102; or

3 (f) any other entity regulated by the commissioner
4 that provides health coverage.

5 (4) "Health care services" means health care services
6 or products rendered or sold by a provider within the scope
7 of the provider's license or legal authorization or services
8 provided under Title 33, chapter 22, part 7.

9 (5) "Insured" means an individual entitled to
10 reimbursement for expenses of health care services under a
11 policy or subscriber contract issued or administered by an
12 insurer.

13 (6) "Preferred provider" means a provider or group of
14 providers who have contracted to provide specified health
15 care services.

16 (7) "Preferred provider agreement" means a contract
17 between or on behalf of a health care insurer and a
18 preferred provider.

19 (8) "Provider" means an individual or entity licensed
20 or legally authorized to provide health care services or
21 services covered within Title 33, chapter 22, part 7.

22 (9) "Subscriber" means a certificate holder or other
23 person on whose behalf the health care insurer is providing
24 or paying for health care coverage."

25 NEW SECTION. Section 66. Repealer. Section 33-17-202,

1 33-17-204, 33-17-205, 33-17-218, ~~33-17-231, ---33-17-232,~~
2 33-17-402, 33-17-403, AND 33-17-601, ~~and-33-17-1104,~~ MCA,
3 are repealed.

4 NEW SECTION. Section 67. Extension of authority. Any
5 existing authority to make rules on the subject of the
6 provisions of [this act] is extended to the provisions of
7 [this act].

8 NEW SECTION. Section 68. Codification instruction.
9 [Section 4] is intended to be codified as an integral part
10 of Title 33, chapter 17, and the provisions of Title 33,
11 chapter 17, apply to [section 4].

12 NEW SECTION. Section 69. Saving clause. [This act]
13 does not affect rights and duties that matured, penalties
14 that were incurred, or proceedings that were begun before
15 [the effective date of this act].

16 NEW SECTION. Section 70. Severability. If a part of
17 [this act] is invalid, all valid parts that are severable
18 from the invalid part remain in effect. If a part of [this
19 act] is invalid in one or more of its applications, the part
20 remains in effect in all valid applications that are
21 severable from the invalid applications.

22 NEW SECTION. Section 71. Effective date. [This act]
23 is effective January 1, 1990.

-End-

SENATE STANDING COMMITTEE REPORT

page 1 of 4
March 15, 1989

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration HB 734 (third reading copy -- blue), respectfully report that HB 734 be amended and as so amended be concurred in:

Sponsor: Thomas (Williams)

1. Title, line 20.
Following: "RESIDENCE;"
Insert: "PROVIDING FOR APPOINTMENT OF INSURANCE PRODUCERS;
PROVIDING FOR NOTIFICATION UPON TERMINATION OF AN APPOINTED
INSURANCE PRODUCER;"
2. Title, line 22.
Strike: "33-14-301,"
3. Title, Page 2, line 4.
Strike: "33-18-401,"
4. Title, Page 2, lines 7 and 8.
Following: "33-17-403," on line 7
Strike: "AND"
Following: "33-17-1104," on line 8
Insert: "AND 33-17-1104,"
5. Page 3, line 1.
Strike: "33-17-204 through"
6. Page 3, line 2.
Strike: "33-17-218," and "33-17-403,"
7. Page 3, line 3.
Strike: "33-17-601,"
8. Page 5, line 5.
Following: line 4
Insert: NEW SECTION. Section 5. Appointments of insurance producers by insurers. (1) An insurance producer may not claim to be a representative of or an authorized or appointed insurance producer of or use another term implying a contractual relationship with a particular insurer and may not accept applications for the insurer unless the insurance producer becomes an appointed insurance producer of that insurer pursuant to this section. The following are the appointing insurer's requirements for making appointment of a licensed insurance producer:

SENATE COMMITTEE ON BUSINESS AND INDUSTRY, HB 734
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(a) The insurer shall, no later than 15 days from the date the agency contract is executed or the first insurance application is submitted by a licensed insurance producer, whichever is earlier, file with the insurance department a written notice of appointment on a form prescribed by the insurance department.

(b) If there is no executed agency contract, the insurer shall mail to the licensed insurance producer, no later than 15 days from the date the first insurance application is submitted by him, a copy of the notice of appointment form filed with the insurance department. If the licensed insurance producer does not receive the acknowledgement of appointment from the insurer within 30 days from the date the first insurance application is submitted to the insurer, the insurance producer shall immediately discontinue acting as an insurance producer on behalf of that insurer until the acknowledgement is received or the agency contract is executed.

(2) Upon receipt of the notice of appointment, the insurance department shall verify within 5 working days that the licensed insurance producer is eligible for appointment. If the licensed insurance producer is determined to be ineligible for appointment, the insurance department shall notify the insurer within 5 days of the determination.

(3) An appointment is effective on the date of the executed contract and is perpetual until canceled by the insurer.

NEW SECTION. Section 6. Notification of appointment termination. (1) Upon the termination of an appointed insurance producer by an insurer, the insurer shall notify the insurance department within 30 days in the manner prescribed by the insurance department. If the reason of the termination is for any of the causes listed in [section 49 or 62], the insurer shall notify the insurance department of the reason and the insurer shall, upon request of the insurance department, provide information, documents, records, or other data pertaining to the termination that may be used by the insurance department in any action taken pursuant to Title 33, chapter 1, part 7.

(2) Any information, documents, records, or other data provided pursuant to this section is privileged and there is no liability on the part of nor may a cause of action of any nature arise against the insurance department, the insurance company, or an authorized representative of either so long as the privileged information is furnished in good faith."

Renumber: subsequent sections

continued

scrhb734.315

continued

SENATE
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9. Page 14, lines 13.
Strike: "\$ 500.00"
Insert: "\$ 600.00"
10. Page 14, lines 14 and 16.
Strike: "500.00"
Insert: "600.00"
11. Page 15, lines 8 through 21.
Strike: subsection (e) in its entirety
Renumber: subsequent subsections
12. Page 16, line 6.
Following: "100.00"
Strike: "50.00"
Insert: "40.00"
13. Page 19, lines 18 through 23.
Strike: subsection (2) in its entirety
Renumber: subsequent subsection
14. Page 25, line 5.
Strike: "or"
Insert: "of"
15. Page 29, lines 8 through 13.
Strike: subsection (2) in its entirety
Renumber: subsequent subsections
16. Page 30, line 24.
Strike: "that"
Insert: "the"
17. Page 32, lines 10 through 15.
Strike: subsection (2) in its entirety
Renumber: subsequent subsections
18. Page 34, line 1.
Strike: "that"
Insert: "the"
19. Page 45, line 14.
Following: "contents"
Insert: "-- lapse of license -- change of address"

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20. Page 69, line 4.
Following: "any"
Insert: "other"
21. Page 69, line 22.
Strike: "in"
22. Page 77, lines 4 through 6.
Following: "33-17-1104"
Strike: remainder of line 4 through "33-17-1104" on line 6
23. Page 82, line 19 through page 83, line 15.
Strike: section 58 in its entirety
Renumber: subsequent sections
24. Page 92, line 2.
Following: "33-17-403,"
Strike: "AND"
Following: "33-17-1104,"
Insert: "and 33-17-1104,"
25. Page 92, line 9.
Strike: "Section"
Insert: "Sections"
Following: "4"
Insert: "through 6"
Following: "4]"
Strike: "is"
Insert: "are"
26. Page 92, line 11.
Strike: "section"
Insert: "sections"
Following: "4"
Insert: "through 6"

AND AS AMENDED BE CONCURRED IN

Signed: 
Gene Thayer, Chairman

1 HOUSE BILL NO. 734
 2 INTRODUCED BY THOMAS, J. BROWN, WILLIAMS, THAYER
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 5 INSURANCE AGENT LICENSING LAWS; DIRECTING THE CODE
 6 COMMISSIONER TO CHANGE ANY REFERENCE TO THE TERM "ENROLLMENT
 7 REPRESENTATIVE", "INSURANCE AGENT", OR "AGENT" TO "INSURANCE
 8 PRODUCER", TO CHANGE ANY REFERENCE TO THE TERM "SURPLUS
 9 LINES AGENT" OR "SURPLUS LINES INSURANCE AGENT" TO "SURPLUS
 10 LINES INSURANCE PRODUCER", AND TO CHANGE ANY REFERENCE TO
 11 THE TERM "TITLE AGENT" OR "TITLE INSURANCE AGENT" TO "TITLE
 12 INSURANCE PRODUCER" WHEREVER IT APPEARS IN THE MONTANA CODE
 13 ANNOTATED; PROHIBITING THE GRANT OR EXTENSION OF A
 14 CONTROLLED BUSINESS LICENSE; PROVIDING THAT MISAPPROPRIATION
 15 OF INSURANCE PREMIUMS OR RETURN PREMIUMS CONSTITUTES THEFT;
 16 ALLOWING THE COMMISSIONER TO REVOKE AN INSURANCE PRODUCER
 17 LICENSE FOR UP TO 5 YEARS; ALLOWING FOR THE AUTOMATIC
 18 SUSPENSION, REVOCATION, OR TERMINATION OF A NONRESIDENT
 19 INSURANCE PRODUCER LICENSE UPON SUSPENSION, REVOCATION, OR
 20 TERMINATION IN HIS STATE OF RESIDENCE; PROVIDING FOR
 21 APPOINTMENT OF INSURANCE PRODUCERS; PROVIDING FOR
 22 NOTIFICATION UPON TERMINATION OF AN APPOINTED INSURANCE
 23 PRODUCER; AMENDING SECTIONS 33-1-402, 33-1-711, 33-2-303,
 24 33-2-308, 33-2-309, 33-2-316, 33-2-317, 33-2-708, 33-7-101,
 25 33-8-213, 33-14-301, 33-17-101 THROUGH 33-17-103, 33-17-201,

1 33-17-211 THROUGH 33-17-214, 33-17-216, 33-17-217,
 2 33-17-221, 33-17-301, 33-17-401, 33-17-404 THROUGH
 3 33-17-407, 33-17-411, 33-17-502 THROUGH 33-17-507, 33-17-511
 4 THROUGH 33-17-513, 33-17-602 THROUGH 33-17-604, 33-17-611,
 5 33-17-613, 33-17-1001 THROUGH 33-17-1004, 33-17-1101 THROUGH
 6 33-17-1103, 33-17-1111 THROUGH 33-17-1114, ~~33-18-401,~~
 7 33-22-1703, 33-25-202, 33-25-214, 33-25-301, 33-25-302,
 8 33-25-401, AND 33-25-403, MCA; REPEALING SECTIONS 33-17-202,
 9 33-17-204, 33-17-205, 33-17-218, ~~33-17-231, ---33-17-232,~~
 10 33-17-402, 33-17-403, AND 33-17-601, AND 33-17-1104, AND
 11 33-17-1104, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

14 NEW SECTION. Section 1. Name change -- short form
 15 amendment. Wherever it appears in 33-1-317, 33-1-403,
 16 33-1-711, 33-2-104, 33-2-120, 33-2-121, 33-2-302, 33-2-310,
 17 33-2-313, 33-2-315, 33-2-321, 33-2-701, 33-2-707, 33-2-709,
 18 33-2-723, 33-2-829, 33-2-1102, 33-2-1118, 33-2-1120,
 19 33-2-1306, 33-2-1310, 33-2-1322, 33-2-1331, 33-2-1333,
 20 33-2-1345 through 33-2-1347, 33-2-1353, 33-2-1362,
 21 33-2-1381, 33-3-206, 33-3-217, 33-4-103, 33-4-312, 33-4-511,
 22 33-5-104, 33-6-402, 33-6-403, 33-7-111, 33-7-519, 33-7-525,
 23 33-7-526, 33-8-118, 33-8-122, 33-8-204, 33-8-205, 33-8-211,
 24 33-8-221, 33-8-225 through 33-8-228, 33-10-106, 33-10-110,
 25 33-10-113, 33-10-207, 33-10-216, 33-11-104, 33-11-108,

1 33-11-109, 33-11-123, 33-14-102, 33-14-201, 33-14-301,
 2 33-14-304, 33-14-307, 33-15-302, 33-15-1101, 33-15-1105,
 3 33-16-106, 33-16-1011, ~~33-17-204~~---through 33-17-206,
 4 ~~33-17-210~~ 33-17-231, 33-17-232, 33-17-401, ~~33-17-403~~,
 5 ~~33-17-601~~ 33-18-205, 33-18-210 through 33-18-213,
 6 33-18-305, 33-18-501, 33-19-102 through 33-19-104, 33-19-201
 7 through 33-19-205, 33-19-301 through 33-19-306, 33-19-401,
 8 33-19-402, 33-19-404, 33-19-407 through 33-19-409,
 9 33-20-142, 33-20-212, 33-20-502, 33-20-1102, 33-22-122,
 10 33-22-204, 33-22-207, 33-22-208, 33-22-804, 33-22-805,
 11 33-22-813, 33-22-1515, 33-23-214 through 33-23-216,
 12 33-25-105, 33-25-106, 33-25-201, 33-25-202, 33-25-213,
 13 33-25-215, 33-25-216, 33-30-103, 33-30-105, 33-30-202,
 14 33-30-204, 33-30-305, 33-3-311 through 33-30-313, 33-31-102,
 15 33-31-211, 33-31-311, 33-31-401 or in law enacted by the
 16 51st legislature, the code commissioner is directed to
 17 change the term "enrollment representative", "enrollment
 18 representative's", "enrollment representatives", "enrollment
 19 representatives'", "insurance agent", "insurance agent's",
 20 "insurance agents", "insurance agents'", "agent", "agent's",
 21 "agents", or "agents'" to "insurance producer", "insurance
 22 producer's", "insurance producers", or "insurance
 23 producers'".

24 NEW SECTION. Section 2. Name change -- short form
 25 amendment. Wherever it appears in 33-1-711, 33-2-301 through

1 33-2-303, 33-2-305 through 33-2-313, 33-2-321, 33-2-326,
 2 33-2-502, 33-2-706, 33-2-709, 33-8-225, 33-17-1104,
 3 33-18-212 or in law enacted by the 51st legislature, the
 4 code commissioner is directed to change the term "surplus
 5 lines agent", "surplus lines agent's", "surplus lines
 6 agents", "surplus lines agents'", "surplus lines insurance
 7 agent", "surplus lines insurance agent's", "surplus lines
 8 insurance agents", or "surplus lines insurance agents'" to
 9 "surplus lines insurance producer", "surplus lines insurance
 10 producer's", "surplus lines insurance producers", or
 11 "surplus lines insurance producers'".

12 NEW SECTION. Section 3. Name change -- short form
 13 amendment. Wherever it appears in 33-2-851, 33-25-105,
 14 33-25-106, 33-25-201, 33-25-213, 33-25-216, 33-30-103 or in
 15 law enacted by the 51st legislature, the code commissioner
 16 is directed to change the term "title agent", "title
 17 agent's", "title agents", "title agents'", "title insurance
 18 agent", "title insurance agent's", "title insurance agents",
 19 or "title insurance agents'" to "title insurance producer",
 20 "title insurance producer's", "title insurance producers",
 21 or "title insurance producers'".

22 NEW SECTION. Section 4. Controlled business. (1) The
 23 commissioner may not grant or extend a license to a person
 24 if the license is being or will be used to write controlled
 25 business.

(2) The commissioner shall consider a license to have been, or intended to be, used for the purpose of writing controlled business if, during any 12-month period, the aggregate amount of premiums on controlled business would exceed the aggregate amount of premiums on all other insurance business of the applicant or licensee.

NEW SECTION. SECTION 5. APPOINTMENTS OF INSURANCE PRODUCERS BY INSURERS. (1) AN INSURANCE PRODUCER MAY NOT CLAIM TO BE A REPRESENTATIVE OF OR AN AUTHORIZED OR APPOINTED INSURANCE PRODUCER OF OR USE ANOTHER TERM IMPLYING A CONTRACTUAL RELATIONSHIP WITH A PARTICULAR INSURER AND MAY NOT ACCEPT APPLICATIONS FOR THE INSURER UNLESS THE INSURANCE PRODUCER BECOMES AN APPOINTED INSURANCE PRODUCER OF THAT INSURER PURSUANT TO THIS SECTION. THE FOLLOWING ARE THE APPOINTING INSURER'S REQUIREMENTS FOR MAKING APPOINTMENT OF A LICENSED INSURANCE PRODUCER:

(A) THE INSURER SHALL, NO LATER THAN 15 DAYS FROM THE DATE THE AGENCY CONTRACT IS EXECUTED OR THE FIRST INSURANCE APPLICATION IS SUBMITTED BY A LICENSED INSURANCE PRODUCER, WHICHEVER IS EARLIER, FILE WITH THE INSURANCE DEPARTMENT A WRITTEN NOTICE OF APPOINTMENT ON A FORM PRESCRIBED BY THE INSURANCE DEPARTMENT.

(B) IF THERE IS NO EXECUTED AGENCY CONTRACT, THE INSURER SHALL MAIL TO THE LICENSED INSURANCE PRODUCER, NO LATER THAN 15 DAYS FROM THE DATE THE FIRST INSURANCE

APPLICATION IS SUBMITTED BY HIM, A COPY OF THE NOTICE OF APPOINTMENT FORM FILED WITH THE INSURANCE DEPARTMENT. IF THE LICENSED INSURANCE PRODUCER DOES NOT RECEIVE THE ACKNOWLEDGEMENT OF APPOINTMENT FROM THE INSURER WITHIN 30 DAYS FROM THE DATE THE FIRST INSURANCE APPLICATION IS SUBMITTED TO THE INSURER, THE INSURANCE PRODUCER SHALL IMMEDIATELY DISCONTINUE ACTING AS AN INSURANCE PRODUCER ON BEHALF OF THAT INSURER UNTIL THE ACKNOWLEDGEMENT IS RECEIVED OR THE AGENCY CONTRACT IS EXECUTED.

(2) UPON RECEIPT OF THE NOTICE OF APPOINTMENT, THE INSURANCE DEPARTMENT SHALL VERIFY WITHIN 5 WORKING DAYS THAT THE LICENSED INSURANCE PRODUCER IS ELIGIBLE FOR APPOINTMENT. IF THE LICENSED INSURANCE PRODUCER IS DETERMINED TO BE INELIGIBLE FOR APPOINTMENT, THE INSURANCE DEPARTMENT SHALL NOTIFY THE INSURER WITHIN 5 DAYS OF THE DETERMINATION.

(3) AN APPOINTMENT IS EFFECTIVE ON THE DATE OF THE EXECUTED CONTRACT AND IS PERPETUAL UNTIL CANCELED BY THE INSURER.

NEW SECTION. SECTION 6. NOTIFICATION OF APPOINTMENT TERMINATION. (1) UPON THE TERMINATION OF AN APPOINTED INSURANCE PRODUCER BY AN INSURER, THE INSURER SHALL NOTIFY THE INSURANCE DEPARTMENT WITHIN 30 DAYS IN THE MANNER PRESCRIBED BY THE INSURANCE DEPARTMENT. IF THE REASON OF THE TERMINATION IS FOR ANY OF THE CAUSES LISTED IN [SECTION 49 OR 62], THE INSURER SHALL NOTIFY THE INSURANCE DEPARTMENT OF

1 THE REASON AND THE INSURER SHALL, UPON REQUEST OF THE
 2 INSURANCE DEPARTMENT, PROVIDE INFORMATION, DOCUMENTS,
 3 RECORDS, OR OTHER DATA PERTAINING TO THE TERMINATION THAT
 4 MAY BE USED BY THE INSURANCE DEPARTMENT IN ANY ACTION TAKEN
 5 PURSUANT TO TITLE 33, CHAPTER 1, PART 7.

6 (2) ANY INFORMATION, DOCUMENTS, RECORDS, OR OTHER DATA
 7 PROVIDED PURSUANT TO THIS SECTION IS PRIVILEGED AND THERE IS
 8 NO LIABILITY ON THE PART OF NOR MAY A CAUSE OF ACTION OF ANY
 9 NATURE ARISE AGAINST THE INSURANCE DEPARTMENT, THE INSURANCE
 10 COMPANY, OR AN AUTHORIZED REPRESENTATIVE OF EITHER SO LONG
 11 AS THE PRIVILEGED INFORMATION IS FURNISHED IN GOOD FAITH.

12 **Section 7.** Section 33-1-402, MCA, is amended to read:

13 **"33-1-402. Examination of agents insurance producers,**
 14 **managers, and promoters.** For the purpose of ascertaining
 15 compliance with this code, the commissioner may, as often as
 16 he ~~deems~~ considers advisable, examine the accounts, records,
 17 documents, and transactions pertaining to or affecting its
 18 insurance affairs or proposed insurance affairs of:

19 (1) any an insurance agent producer, solicitor,
 20 surplus lines agent insurance producer, general agent
 21 insurance producer, or adjuster;

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

25 (3) any a person holding the shares of voting stock or

1 policyholder proxies of a domestic insurer, for the purpose
 2 of controlling the management thereof of the domestic
 3 insurer, as voting trustee or otherwise;

4 (4) any a person engaged in or proposing to be engaged
 5 in or assisting in the promotion or formation of a domestic
 6 insurer or insurance holding corporation or corporation to
 7 finance a domestic insurer or the production of its
 8 business."

9 **Section 8.** Section 33-1-711, MCA, is amended to read:

10 **"33-1-711. Appeals from the commissioner.** (1) An
 11 appeal from the commissioner ~~shall~~ may be taken only from an
 12 order on hearing or with respect to a matter as to which the
 13 commissioner has refused a hearing. Any person who was a
 14 party to ~~such the~~ hearing or whose pecuniary interests are
 15 directly and immediately affected by any ~~such~~ order or
 16 refusal and who is aggrieved ~~thereby by an order or refusal~~
 17 may, within 30 days after the order has been mailed or
 18 delivered to the persons entitled to receive the same, the
 19 commissioner's order denying rehearing or reargument has
 20 been so mailed or delivered, or the commissioner's refusal
 21 to grant a hearing, appeal from such the order on hearing or
 22 such the refusal of a hearing. Any request for a stay of the
 23 commissioner's order must be made within 60 days, to run
 24 concurrently with the 30 days for appeal. The appeal shall
 25 must be taken to the district court of Lewis and Clark

1 County by filing written notice of appeal in ~~such the~~ court
 2 and by filing a copy of ~~such the~~ notice with the
 3 commissioner, except that in appeals from the suspension or
 4 revocation of the certificate of authority of a domestic
 5 insurer or of the license of an ~~agent-solicitor~~ insurance
 6 producer or surplus lines agent insurance producer, the
 7 person taking the appeal may at his option, in lieu of the
 8 district court of Lewis and Clark County, take the appeal to
 9 the district court of the county of Montana in which the
 10 insurer has its principal place of business or the licensee
 11 resides.

12 (2) Upon filing of the notice of appeal therein, the
 13 court ~~shall-have~~ has full jurisdiction and shall determine
 14 whether ~~such the~~ filing ~~shall-operate~~ operates as a stay of
 15 the order or action appealed from.

16 (3) Within 20 days after filing of the copy of the
 17 notice of appeal in his office, the commissioner shall make
 18 and return to the court in which the appeal is pending a
 19 copy of his order appealed from and a full and complete
 20 transcript, duly certified by the commissioner, of his
 21 record of the hearing upon which the order was issued,
 22 together with all exhibits and documentary evidence
 23 introduced ~~thereat~~ at the hearing. If the appeal is from an
 24 action of the commissioner with respect to which a hearing
 25 was refused, the commissioner shall, within ~~such the~~ 20-day

1 period, make and return to the court a full and complete
 2 transcript, duly certified by him, of all documents on file
 3 in his office directly relating to the matter as to which
 4 ~~such the~~ appeal is taken.

5 (4) Upon receipt of ~~such the~~ transcripts and evidence,
 6 the court shall hear the matter de novo as soon as
 7 reasonably possible thereafter. Upon the hearing of the
 8 appeal, the court shall consider the evidence contained in
 9 the transcript, exhibits, and documents ~~therein~~ filed by the
 10 commissioner, together with ~~such~~ additional proper evidence
 11 as may be offered by any party to the appeal.

12 (5) After hearing the appeal, the court may affirm,
 13 modify, or reverse the order or action of the commissioner,
 14 in whole or in part, or remand the action to the
 15 commissioner for further proceedings in accordance with the
 16 court's direction.

17 (6) Costs ~~shall~~ must be awarded as in civil actions.

18 (7) Appeal may be taken to the supreme court from the
 19 judgment of the district court as in other civil cases to
 20 which the state is a party. A stay of the effectiveness of
 21 any ~~such~~ judgment may be made only by order of the supreme
 22 court upon the giving of ~~such~~ security as that court ~~deems~~
 23 considers proper.

24 (8) This section ~~shall~~ does not apply to appeals as to
 25 matters covered by chapter 16."

Section 9. Section 33-2-303, MCA, is amended to read:

"33-2-303. Filing and endorsement of contract. Every

Each 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 and endorsed as "issued in an unauthorized insurer under The Surplus Lines Insurance Law, under agent surplus lines insurance producer 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 producer shall properly fill in and sign the endorsement."

Section 10. 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 insurance producer shall promptly issue and deliver to the insured or the producing agent insurance producer 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 insurance producer. 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 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 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 agent insurance producer shall promptly issue and deliver to the insured a substitute cover note or certificate accurately showing the current status of the coverage and the insurers responsible ~~thereunder~~ under the coverage.

(3) If a policy issued by the insurer is not available upon placement of the insurance and the agent insurance producer has issued and delivered a cover note or certificate as ~~hereinabove~~ provided in subsection (2), upon request therefor by the insured, the agent insurance producer shall as soon as reasonably possible procure from the insurer its policy evidencing such the insurance and deliver such the policy to the insured in replacement of the cover note or certificate ~~theretofore~~ previously issued.

(4) Any A surplus lines agent insurance producer who knowingly or negligently issues or delivers a false cover

1 note or certificate of insurance or fails promptly to notify
 2 the insured of any material change with respect to such the
 3 insurance by delivery to the insured of a substitute cover
 4 note or certificate as provided in subsection (2) ~~shall--be~~
 5 is guilty of a violation of this code and upon conviction
 6 ~~shall-be~~ is subject to the penalties provided by 33-1-104 or
 7 to any greater applicable penalty otherwise provided by law.

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

16 **Section 11.** Section 33-2-309, MCA, is amended to read:

17 "33-2-309. Liability of insurer as to losses and
 18 unearned premiums. (1) As to a surplus lines risk which that
 19 has been assumed by an unauthorized insurer pursuant to The
 20 Surplus Lines Insurance Law and if the premium thereon on
 21 the surplus lines risk has been received by the surplus
 22 lines agent insurance producer who placed such the
 23 insurance, in all questions thereafter arising under the
 24 coverage as between the insurer and the insured, the insurer
 25 ~~shall--be--deemed~~ is considered to have received the premium

1 due to it for such coverage. The insurer ~~shall-be~~ is liable
 2 to the insured as to losses covered by such the insurance
 3 and for unearned premiums which that may become payable to
 4 the insured upon cancellation of such the insurance, whether
 5 or not in fact the agent insurance producer is indebted to
 6 the insurer with respect to such the insurance or for any
 7 other cause. This provision ~~shall~~ does not affect rights as
 8 between the insurer and the surplus lines agent insurance
 9 producer.

10 (2) A payment of premium to a surplus lines agent
 11 insurance producer acting for a person other than himself in
 12 negotiating, continuing, or reviewing a policy of insurance
 13 under this part is considered to be payment to the insurer,
 14 notwithstanding any conditions or stipulations that may be
 15 inserted in the policy or contract.

16 (3) Each unauthorized insurer assuming a surplus lines
 17 direct risk under The Surplus Lines Insurance Law is
 18 considered ~~thereby~~ to have subjected itself to the terms of
 19 this section."

20 **Section 12.** Section 33-2-316, MCA, is amended to read:

21 "33-2-316. Rules. (1) The commissioner shall make or
 22 may approve and adopt reasonable rules, consistent with this
 23 part, for any or all of the following purposes:

- 24 (a) effectuation of The Surplus Lines Insurance Law;
- 25 (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 organization of surplus lines insurance agents producers or others designed to assist ~~such--agents~~ surplus lines insurance producers to comply with ~~such the~~ law.

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

Section 13. Section 33-2-317, MCA, is amended to read:

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

(1) wet marine and transportation insurances;

(2) insurance on subjects located, resident residing, 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 engaged in interstate commerce; and

(4) insurance of aircraft owned or operated by manufacturers of aircraft or aircraft operated in scheduled

interstate flight or cargo of ~~such the~~ aircraft or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance, or use of ~~such the~~ aircraft."

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

"33-2-708. **Fees and licenses.** (1) ~~The~~ Except as provided in 33-17-212(2), 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 (1)(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 the~~ application and for issuance of an original certificate of authority, if issued:

(A) domestic insurers ~~\$-300.00~~ \$-500.00 \$ 600.00

(B) foreign insurers ~~300.00~~ 500.00 600.00

(ii) annual continuation of certificate of authority ..
..... ~~300.00~~
500.00 600.00

(iii) reinstatement of certificate of authority

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

1 ~~(v) (iii) temporary license 10.00-15.00~~
 2 ~~(vi) (iv) amendment of license (excluding additions~~
 3 ~~thereto to license) or reissuance of master license 10.00-15.00~~
 4 ~~..... 10.00-15.00~~
 5 ~~(f) (E) nonresident agent's insurance producer's~~
 6 ~~license:~~
 7 (i) application for original license, including
 8 issuance of license, if issued (life and/or disability)
 9 100.00
 10 (ii) application for original license, including
 11 issuance of license, if issued (other than life and/or
 12 disability) 100.00
 13 (iii) appointment of agent, each insurer 10.00
 14 (iv) annual renewal, each insurer of license .. 10.00
 15 ~~100.00 50.00 40.00~~
 16 (v) (iii) amendment of license (excluding additions
 17 thereto to license) or reissuance of master license 10.00
 18 (g) (F) solicitor's license:
 19 (i) application for original license, including
 20 issuance of license, if issued 15.00
 21 (ii) annual renewal of license 15.00
 22 (iii) appointment of solicitor 10.00
 23 (h) examination for license as agent or solicitor
 24 insurance producer, each examination 15.00
 25 (i) (h) (G) surplus lines agent insurance producer

1 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 ~~†††††~~(H) 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 ~~†††††~~(I) insurance vending machine license, each

10 machine, each year 10.00

11 ~~†††††~~(J) commissioner's certificate under seal

12 (except when on certificates of authority or licenses)

13 10.00

14 ~~†††††~~(K) copies of documents on file in the

15 commissioner's office, per page50

16 ~~†††††~~(L) 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 (2) The commissioner shall promptly deposit with the

25 state treasurer to the credit of the general fund of this

1 state all fines and penalties, those amounts received

2 pursuant to 33-2-311, 33-2-705, and 33-2-706, and any fees

3 and examination and miscellaneous charges received pursuant

4 to Title 33, chapter 11, part 1, that are collected by him

5 pursuant to Title 33 and the rules adopted thereunder under

6 Title 33.

7 (3) All fees are considered fully earned when

8 received. In the event of overpayment, only those amounts in

9 excess of \$10 will be refunded.

10 (4) All fees and examination and miscellaneous

11 charges, except fines or penalties or those amounts received

12 pursuant to 33-2-311, 33-2-705, or 33-2-706, collected by

13 the commissioner pursuant to Title 33 and the rules adopted

14 thereunder under Title 33 must be deposited in the insurance

15 regulatory trust account pursuant to 17-2-121 through

16 17-2-123."

17 **Section 15.** Section 33-7-101, MCA, is amended to read:

18 "33-7-101. Scope of chapter -- provisions applicable.

19 (1) Except as herein provided in this section, societies

20 ~~shall-be~~ are governed by this chapter and ~~shall--be~~ are

21 exempt from all other provisions of the insurance laws of

22 this state, not only in governmental relations with the

23 state but for every other purpose. No law hereafter enacted

24 ~~shall-apply~~ applies to them societies unless they be are

25 expressly designated therein in the law.

(2) In addition to the provisions contained in this chapter, other chapters and provisions of this title shall apply to fraternal benefit societies to the extent applicable and not in conflict with the express provisions of this chapter and the reasonable implications thereof of this chapter, as follows: parts 1, 2, 3, through 4, and 7 of chapter 1; 33-2-104; 33-2-107; 33-2-112; chapter 2, part 13; 33-3-308; 33-15-502; chapter 17; chapter 18; chapter 20; and chapter 22."

Section 16. Section 33-8-213, MCA, is amended to read:

"33-8-213. (Temporary) Exemption from agent insurance producer appointment requirements. (1) For purposes of the plan:

(a) an insurer that has entered into an agreement as provided in 33-8-212 may accept applications for insurance coverage from any agent insurance producer even though that agent insurance producer has not been appointed by the insurer; and

(b) an agent insurance producer may place business, as to any type of insurance for which he is licensed at the time, with any insurer participating in the plan even though the agent insurance producer has not been appointed as an agent insurance producer by that insurer.

~~(2)--An insurer that issues insurance coverage upon an application submitted by an agent who has not been appointed~~

~~by the insurer shall pay the agent a commission in conformity with the insurer's filed rates, rating plans, or forms for the kind of insurance effected;~~

~~(2)--AN INSURER THAT ISSUES INSURANCE COVERAGE UPON AN APPLICATION SUBMITTED BY AN INSURANCE PRODUCER WHO HAS NOT BEEN APPOINTED BY THE INSURER SHALL PAY THE INSURANCE PRODUCER A COMMISSION IN CONFORMITY WITH THE INSURER'S FILED RATES, RATING PLANS, OR FORMS FOR THE KIND OF INSURANCE EFFECTED;~~

~~(3)(2)(3)~~ (2) An agent insurance producer who countersigns a policy, when a countersignature is required by 33-17-1111, shall must be paid a countersignature commission as provided in 33-17-1113. (Terminates July 1, 1989--sec. 22, Ch. 11, Sp. L. March 1986.)"

Section 17. Section 33-17-101, MCA, is amended to read:

"33-17-101. Scope of chapter. (1) The purpose of this chapter is to govern the qualifications and procedures for licensing insurance producers.

(2) This chapter shall apply as applies to all stock, mutual, and reciprocal insurers and as to all kinds of insurance and annuities."

Section 18. Section 33-17-102, MCA, is amended to read:

"33-17-102. Definitions. As used in this title, the

1 following definitions apply:

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

9 (a) licensed attorney who is qualified to practice law
10 in this state; or

11 (b) salaried employee of an insurer or of a managing
12 general agent; or

13 (c) a licensed agent insurance producer who adjusts or
14 assists in adjustment of losses arising under policies
15 issued by the insurer.

16 ~~{2}--A "public adjuster" is an adjuster employed by and~~
17 ~~representing--the interests of the insured. The commissioner~~
18 ~~may adopt rules providing for--the--examination,--licensure,~~
19 ~~bonding, and regulation of public adjusters.~~

20 ~~{3}--An "agent" is an individual, partnership, or~~
21 ~~corporation appointed by an insurer to solicit applications~~
22 ~~for--insurance or annuities or to negotiate insurance on its~~
23 ~~behalf and, if authorized, to do so by the insurer, to~~
24 ~~effectuate and countersign insurance contracts.~~

25 (2) "Adjuster license" means a document issued by the

1 commissioner that authorizes a person to act as an adjuster.

2 (3) (a) "Administrator" means a person who collects
3 charges or premiums from residents of this state in
4 connection with life, disability, property, or casualty
5 insurance or annuities or who adjusts or settles claims on
6 such coverage.

7 (b) The term does not mean:

8 (i) an employer on behalf of its employees or on
9 behalf of the employees of one or more subsidiaries of
10 affiliated corporations of the employer;

11 (ii) a union on behalf of its members;

12 (iii) (A) an insurer that is either authorized in this
13 state or acting as an insurer with respect to a policy
14 lawfully issued and delivered by it in and pursuant to the
15 laws of a state in which the insurer is authorized to
16 transact insurance; or

17 (B) a health service corporation as defined in
18 33-30-101;

19 (iv) a life, disability, property, or casualty
20 insurance producer who is licensed in this state and whose
21 activities are limited exclusively to the sale of insurance;

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

25 (vi) a trust established in conformity with 29 U.S.C.

186 or the trustees, agents, and employees of the trust;

(vii) a trust exempt from taxation under section 501(a) of the Internal Revenue Code or the trustees and employees of the trust;

(viii) a custodian acting pursuant to a custodian account that meets the requirements of section 401(f) of the Internal Revenue Code or the agents and employees of the custodian;

(ix) a bank, credit union, or other financial institution that is subject to supervision or examination by federal or state banking authorities;

(x) a company that issues credit cards and that advances for and collects premiums or charges from its credit card holders who have authorized it to do so, if the company does not adjust or settle claims; or

(xi) a person who adjusts or settles claims in the normal course of his practice or employment as an attorney and who does not collect charges or premiums in connection with life or disability insurance or annuities.

(4) "Administrator license" means a document issued by the commissioner that authorizes a person to act as an administrator.

(4)(5) A--"consultant"--is "Consultant" means a person who for a fee examines, appraises, reviews, or evaluates an insurance policy, annuity, or pension contract, plan, or

program or who makes recommendations or gives advice on an insurance policy, annuity, or pension contract, plan, or program.

(5)--A--"solicitor"--is--an--individual--appointed--and authorized--by--an--agent--to--solicit--applications--for insurance;--other--than--life--insurance--or--disability insurance;--as--a--representative--of--such--agent;--and--to--collect premiums--thereon--when--expressly--so--authorized--by--the--agent.

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

(6) "Consultant license" means a document issued by the commissioner that authorizes a person to act as an insurance consultant.

(7) "Controlled business" means insurance procured or to be procured by or through a person upon the life, person, property, or risks of himself, his spouse, his employer, or his business.

(8) "Individual" means a private or natural person, as distinguished from a partnership, corporation, or association.

(9) "Insurance producer", except as provided in

33-17-103:(a) means:

(i) a person who solicits, negotiates, effects, procures, delivers, renews, continues, or binds:

(A) policies of insurance for risks residing, located, or to be performed in this state; or

(B) membership contracts as defined in 33-30-101;

(ii) a managing general agent. For purposes of this definition, a "managing general agent" is a person who, on behalf of an insurer, exercises general supervision over the business of the insurer in this state, including the authority to contract with an insurance producer for the insurer and terminate those contracts.

(b) does not mean a customer service representative. For purposes of this definition, a "customer service representative" means a salaried employee or OF an insurance producer who assists and is responsible to the insurance producer but who is not authorized to effect policies of insurance.

(10) "License" means a document issued by the commissioner that authorizes a person to act as an insurance producer for the kinds of insurance specified in the document. The license itself does not create actual, apparent, or inherent authority in the holder to represent or commit an insurer to a binding agreement.

(11) "Person" means an individual, partnership, corporation, association, or other legal entity.

(12) "Public adjuster" means an adjuster employed by and representing the interests of the insured."

Section 19. Section 33-17-103, MCA, is amended to read:

"33-17-103. Exceptions and exemptions from definition of agent,--managing-general-agent,--and-solicitor insurance producer. The definitions definition of agent,--managing general-agent,--and-solicitor insurance producer contained in 33-17-102 shall does not be-considered-to include:

~~(1)--individuals--employed--and--used--by--agents--for--the performance-of-clerical,--stenographic,--and--similar--office duties,--incidental--taking--of--an--application--for--insurance from--time--to--time--in--the--office--of--the--employing--agent--shall not--constitute--such--an--employee--as--an--agent--or--solicitor--if the--employee's--compensation--is--not--contingent--upon--or relating--to--the--volume--of--such--applications,--insurance,--or premiums;~~

~~(2)--a---supervising---salaried---officer,--supervising salaried-employee,--or--other--person--or--entity--controlled--by an--insurer--and--compensated--strictly--on--a--salary--basis--by--the insurer,--who--solicits--only--with--or--in--conjunction--with--duly licensed--agents--of--the--insurer;~~

~~(3)--the--attorney-in-fact--of--a--reciprocal--insurer--or~~

the--salaried--traveling--representative--of--a--reciprocal--or
mutual--insurer--not--compensated--on--a--commission--basis;

(4)--a--person--who--secures--and--forwards--information--for
the--purpose--of--an--existing--group--insurance--contract--or--for
enrolling--individuals--under--an--existing--group--insurance
contract---or---issuing--certificates--thereunder--where--no
commission--is--paid--for--such--services;

(1) a person who is a regularly salaried officer or
employee of an insurer and who is engaged in the performance
of usual and customary executive, administrative, or
clerical duties and whose duties do not include the
negotiation or solicitation of insurance;

(2) a person who is a salaried employee in the office
of an insurance producer and who devotes his full time to
clerical and administrative services, including the
incidental taking of insurance applications and receipt of
premiums in the office of his employer, if the employee does
not receive any commissions on the applications and his
compensation is not varied by the volume of applications or
premiums he takes or receives;

(3) a person who secures and furnishes information for
the purpose of group life insurance, annuities, group or
blanket accident and disability insurance or for the purpose
of enrolling individuals under such plans, issuing
certificates under such plans, or otherwise assisting in

administering such plans, if no commission is paid for the
service;

(4) an employer, his officers, or employees or the
trustees of an employee trust plan, to the extent that the
employer, officers, employees, or trustees are engaged in
the administration of operation of a program of employee
benefits for their own employees or the employees of their
subsidiaries or affiliates if the program involves the use
of insurance issued by an insurer and the employer,
officers, employees, or trustees are not compensated in any
manner, directly or indirectly, by the insurer issuing the
contracts; or

(5) a person who is:

(a) an employee of an insurer or of an organization
employed by an insurer, which insurer or organization is
engaged in the inspection, rating, or classification of
insurance risks or in the supervision of the training of
insurance producers; and

(b) not individually engaged in the solicitation or
negotiation of insurance policies and contracts."

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

"33-17-201. (Temporary) License required of agents,
managing--general--agents--and--solicitors insurance producer
-- forms. (1) No Except as provided in 33-17-103 and

1 subsection (5) of this section, a person shall may not in
 2 this state act as or hold himself out to be an agent--or
 3 solicitor-as-to insurance producer for subjects of insurance
 4 located, resident residing, or to be performed in this state
 5 unless then licensed as such-agent-or-solicitor an insurance
 6 producer under this chapter.

7 ~~{2}--No--person--may--act--or--hold-himself-out-in-this~~
 8 ~~state-to-be-a-managing-general-agent-unless-licensed--as--an~~
 9 ~~insurance-agent-under--this--chapter--and-appointed-by-the~~
 10 ~~insurers-represented.~~

11 ~~{3}--No--agent--or--solicitor--shall--solicit--or--take~~
 12 ~~application--for,--procure,--or-place-for-others-any-kind-of~~
 13 ~~insurance-as-to-which-he-is-not-then-licensed.~~

14 ~~{4}--No-agent-shall-place-any-business,--other--than~~
 15 ~~coverage--of--his-own-risks,--with-any-insurer-as-to-which-he~~
 16 ~~does-not-then-hold-a-validated--appointment--or--license--as~~
 17 ~~agent--under--this-chapter,--except-as-provided-in-33-17-1104~~
 18 ~~as-to-life-or-disability-insurance-agents-and--in--33-8-213.~~

19 ~~{2}--NO--INSURANCE--PRODUCER--SHALL-PLACE-ANY-BUSINESS,~~
 20 ~~OTHER-THAN-coverage-OF-HIS-OWN-RISKS,--WITH-ANY-INSURER-AS-TO~~
 21 ~~WHICH-HE-DOES-NOT--THEN--HOLD--A--VALIDATED--APPOINTMENT--OR~~
 22 ~~LICENSE--AS-INSURANCE-PRODUCER-UNDER-THIS-CHAPTER,--EXCEPT-AS~~
 23 ~~PROVIDED-IN-33-17-1104-AS-TO-LIFE-OR--DISABILITY--INSURANCE~~
 24 ~~AGENTS-AND-IN-33-8-213.~~

25 ~~{5}{2}{3}{2}~~ The commissioner may prescribe by rule

1 and make available the forms required in connection with
 2 application for, issuance, continuation, or termination of
 3 licenses-and-appointments a license.

4 ~~{6}{3}{4}{3}~~ Unless licensed as a life insurance agent
 5 producer as required by this section, no a person shall may
 6 not in this state solicit life insurance or annuities or
 7 procure applications therefor for life insurance or
 8 annuities or engage or hold himself out as engaging in the
 9 business of analyzing or abstracting life insurance policies
 10 or annuities or of counseling or advising or giving
 11 opinions, other than as a licensed attorney, relative to
 12 such insurance or annuities for fee, commission, or other
 13 compensation, other than as a salaried bona-fide full-time
 14 employee so counseling and advising his employer relative to
 15 the insurance interests of the employer and of the
 16 subsidiaries or business affiliates of the employer or with
 17 respect to the insurance interests of employees of such the
 18 employer, subsidiaries, or affiliates under group insurance
 19 or similar insurance plans arranged by the employer or
 20 employers of such the employees.

21 ~~{7}{4}{5}{4}~~ A person licensed to sell coverage only
 22 for the all-risk federal crop insurance program shall
 23 receive a license restricted to that purpose.

24 ~~{5}{6}{5}~~ A representative of a fraternal benefit
 25 society who solicits and negotiates insurance contracts is

1 an insurance producer and is subject to the same licensing
 2 requirements as those for an insurance producer, except that
 3 a license is not required of:

4 (a) an officer, employee, or secretary of a fraternal
 5 benefit society or of a subordinate lodge or branch of a
 6 fraternal benefit society who devotes substantially all of
 7 his time to activities other than the solicitation or
 8 negotiation of insurance contracts and who receives no
 9 commission or other compensation directly dependent upon
 10 that THE number or amount of insurance contracts solicited
 11 or negotiated; or

12 (b) a representative of a fraternal benefit society
 13 who devotes or intends to devote less than 50% of his time
 14 to the solicitation and procurement of insurance contracts
 15 for the fraternal benefit society. A person who in the
 16 preceding calendar year has solicited and procured life
 17 insurance with a face amount in excess of \$50,000 or, in the
 18 case of any other kind or kinds of insurance that the
 19 fraternal benefit society may write, on more than 25
 20 individuals and who has received or will receive a
 21 commission or other compensation for the insurance is
 22 presumed to be devoting or intending to devote 50% of his
 23 time to the solicitation or procurement of insurance
 24 contracts for the fraternal benefit society. (Terminates
 25 July 1, 1989--sec. 22, Ch. 11, Sp. L. March 1986.)

1 33-17-201. (Effective July 1, 1989) License required
 2 of ~~agents, managing general agents, and solicitors~~ insurance
 3 producer -- forms. (1) No A person shall may not in this
 4 state act as or hold himself out to be an agent-or-solicitor
 5 as-to insurance producer for subjects of insurance located,
 6 resident residing, or to be performed in this state unless
 7 then licensed as such--agent--or--solicitor an insurance
 8 producer under this chapter.

9 {2}--No--person--may--act--or--hold--himself--out--in--this
 10 state--to--be--a--managing--general--agent--unless--licensed--as--an
 11 insurance--agent--under--this--chapter--and--appointed--by--the
 12 insurers--represented;

13 {3}--No--agent--or--solicitor--shall--solicit--or--take
 14 application--for--procure--or--place--for--others--any--kind--of
 15 insurance--as--to--which--he--is--not--then--licensed--

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

21 {2}--NO--INSURANCE--PRODUCER--SHALL--PLACE--ANY--BUSINESS,
 22 OTHER--THAN--COVERAGE--OF--HIS--OWN--RISKS--WITH--ANY--INSURER--AS--TO
 23 WHICH--HE--DOES--NOT--THEN--HOLD--A--VALIDATED--APPOINTMENT--OR
 24 LICENSE--AS--INSURANCE--PRODUCER--UNDER--THIS--CHAPTER--EXCEPT--AS
 25 PROVIDED--IN--33-17-1104--AS--TO--LIFE--OR--DISABILITY--INSURANCE

PRODUCERS:

~~(5)(2)(3)~~(2) 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~~ a license.

~~(6)(3)(4)~~(3) Unless licensed as a life insurance agent ~~producer~~ as required by this section, ~~no a person shall may~~ not in this state solicit life insurance or annuities or procure applications therefor for life insurance or annuities 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 the~~ employer, subsidiaries, or affiliates under group insurance or similar insurance plans arranged by the employer or employers of ~~such the~~ employees.

~~(7)(4)(5)~~(4) A person licensed to sell coverage only for the all-risk federal crop insurance program shall receive a license restricted to that purpose.

~~(5)(6)(5)~~ A representative of a fraternal benefit society who solicits and negotiates insurance contracts is an insurance producer and is subject to the same licensing requirements as those for an insurance producer, except that a license is not required of:

(a) an officer, employee, or secretary of a fraternal benefit society or of a subordinate lodge or branch of a fraternal benefit society who devotes substantially all of his time to activities other than the solicitation or negotiation of insurance contracts and who receives no commission or other compensation directly dependent upon ~~that~~ THE number or amount of insurance contracts solicited or negotiated; or

(b) a representative of a fraternal benefit society who devotes or intends to devote less than 50% of his time to the solicitation and procurement of insurance contracts for the fraternal benefit society. A person who in the preceding calendar year has solicited and procured life insurance with a face amount in excess of \$50,000 or, in the case of any other kind or kinds of insurance that the fraternal benefit society may write, on more than 25 individuals and who has received or will receive a commission or other compensation for the insurance is presumed to be devoting or intending to devote, 50% of his time to the solicitation or procurement of insurance

contracts for the fraternal benefit society."

Section 21. Section 33-17-211, MCA, is amended to read:

"33-17-211. Application General qualifications -- application for license. (1) Application for an agent or solicitor license must be made to the commissioner by the applicant and be signed and sworn to by the applicant before a notary public:

(2) The commissioner may designate the forms for application for license, which must require full answers to such questions as may reasonably be necessary to determine the applicant's identity, residence, personal history, business record, experience and training in insurance, and other facts as required by the commissioner to determine whether the applicant meets the applicable qualifications for the license applied for;

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

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

(5) If the applicant for an agent license is a partnership or corporation, the application shall show, in addition, the names of all members, officers, and directors and shall designate each individual who is to exercise the powers to be conferred by the license upon the partnership or corporation. Each such individual so designated shall furnish information as to himself, as part of the application, as though for an individual license;

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

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

(8) The commissioner shall require as part of the application for license the certificate of an officer or representative of the insurer proposed to be represented, in

the case of applicants for license as agent, or of the proposed employing agent, in the case of applicants for license as solicitor, as to whether the applicant is known to such officer or representative, whether the insurer or agent has investigated the character and business record of the applicant and the uses to be made of the license, if granted, and his opinion, based on such investigation, as to applicant's trustworthiness and competence.

(9) All such applications must be accompanied by the applicable license fee, appointment of agent fee where applicable, and examination fee where an examination is required under 33-17-212, all in the respective amounts stated in 33-2-708: (1) An individual applying for a license shall apply on a form specified by the commissioner and declare under penalty of refusal, suspension, or revocation of the license that statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall verify that the individual:

(a) is 18 years of age or older;

(b) has not committed an act that is a ground for refusal, suspension, or revocation set forth in 33-17-1001;

(c) has paid the license fees stated in 33-2-708;

(d) has successfully passed the examinations for each

kind of insurance for which the individual has applied;

(e) is a resident of this state or of another state that grants similar privileges to residents of this state;

(f) is competent, trustworthy, and of good reputation;

(g) has experience or training or otherwise is qualified in the kind or kinds of insurance for which he applies to be licensed and is reasonably familiar with the provisions of this code which govern his operations as an insurance producer; and

(h) if applying for a license as to life or disability insurance:

(i) is not a funeral director, undertaker, or mortician operating in this or any other state;

(ii) is not an officer, employee, or representative of a funeral director, undertaker, or mortician operating in this or any other state; or

(iii) does not hold an interest in or benefit from a business of a funeral director, undertaker, or mortician operating in this or any other state.

(2) A person acting as an insurance producer shall obtain a license. A person shall apply for a license on a form specified by the commissioner. Before approving the application, the commissioner shall verify that:

(a) the person meets the requirements listed in subsection (1);

(b) the person has paid the licensing fees stated in 33-2-708 for each individual licensed in conjunction with the person's license. A licensed person shall promptly notify the commissioner of each change relating to an individual listed in the license.

(c) the person has designated a licensed officer responsible for compliance by the person with the insurance laws and rules of this state;

(d) each member and employee of a partnership and each officer, director, stockholder, or employee of a corporation who is acting as an insurance producer in this state has obtained a license;

(e) (i) if the person is a partnership or corporation, the transaction of insurance business is within the purposes stated in the partnership agreement or the articles of incorporation; and

(ii) if the person is a corporation, the secretary of state has issued a certificate of incorporation under 35-1-203 or 35-2-203.

(3) The commissioner may license as a resident insurance producer an association of licensed Montana insurance producers, whether or not incorporated, formed and existing substantially for purposes other than insurance. The license must be used solely for the purpose of enabling the association to place, as a resident insurance producer,

insurance of the properties, interests, and risks of the state of Montana and of other public agencies, bodies, and institutions and to receive the customary commission for the placement. The president and secretary of the association shall apply for the license in the name of the association, and the commissioner shall issue the license to the association in its name alone. The fee for the license is the same as that required by 33-2-708 for the license of an insurance producer. The commissioner may, after a hearing with notice to the association, revoke the license if he finds that continuation of the license is not in the public interest or that a ground listed in 33-17-1001 exists.

(4) An insurance producer using an assumed business name shall register the name with the commissioner before using it."

Section 22. Section 33-17-212, MCA, is amended to read:

"33-17-212. Examination required -- exceptions -- fees. (1) After completion and filing of the application for license as required under 33-17-211, the commissioner shall subject each applicant for license as agent or solicitor, unless exempted therefrom under subsection (5) below, to an examination as to his competence to act as such agent or solicitor. The commissioner may either conduct the examination or arrange for the examination to be conducted

1 ~~by a testing service, which shall recover the cost of the~~
 2 ~~examination from the applicant.~~ (1) Except as provided in
 3 subsection (7), an individual applying for a license shall
 4 pass a written examination. The examination must test the
 5 knowledge of the individual concerning each kind of
 6 insurance listed in subsection (6) for which application is
 7 made, the duties and responsibilities of an insurance
 8 producer, and the insurance laws and rules of this state.
 9 The examination must be developed and conducted under rules
 10 adopted by the commissioner.

11 (2) The commissioner may conduct the examination or
 12 make arrangements, including contracting with an outside
 13 testing service, for administering the examination and
 14 collecting the fees required by 33-2-708. The commissioner
 15 may arrange for the testing service to recover the cost of
 16 the examination from the applicant.

17 (3) Each individual applying for an examination shall
 18 remit the fees required by 33-2-708.

19 (4) An individual who fails to appear for the
 20 examination as scheduled or fails to pass the examination
 21 may reapply for an examination and shall remit all required
 22 fees and forms before being rescheduled for another
 23 examination.

24 (2)(5) If the applicant is a partnership or
 25 corporation, the examination shall be so taken by each

1 individual who is to be named in the license as having
 2 authority to act for the applicant in its insurance
 3 transactions under the license shall take the examination.

4 (3)(6) Examination of an applicant for an agent's a
 5 license shall must cover all of the kinds of insurance for
 6 which the applicant has applied to be licensed, as
 7 constituted by any one or more of the following
 8 classifications:

9 (a) life insurance;

10 (b) disability insurance;

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

14 (d) casualty insurance;

15 (e) vehicle insurance;

16 (f) surety insurance;

17 (g) credit life and disability insurance;

18 (h) title insurance.

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

22 (5)(7) This section shall does not apply to, and no
 23 such an examination shall be is not required of:

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

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

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

14 (c) any an applicant for license as nonresident agent,
15 ~~subject-to-reciprocal-arrangements-as-provided-for--in--this~~
16 code insurance producer;

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

22 ~~(e)(d)~~ any an applicant for ~~an-agent's~~ a license to
23 sell all-risk federal crop insurance if the applicant
24 provides certification from an appropriate governmental
25 agency to the commissioner that he is qualified to sell such

1 the insurance;

2 ~~(f)(e)~~ transportation ticket agents of common carriers
3 applying for license to solicit and sell only:

4 (i) accident insurance ticket policies; or
5 (ii) insurance of personal effects while being carried
6 as baggage on such a common carrier, as incidental to their
7 duties as such transportation ticket agents;

8 ~~(g)(f)~~ agents--associations an association applying
9 for license under ~~33-17-205~~ 33-17-211;

10 ~~(h)(g)~~ a mechanical breakdown insurance agents
11 producer.

12 (h) an individual who, within 60 days of cancellation
13 of a license issued by the state of the individual's
14 residence, files with the commissioner a current letter of
15 clearance certifying that the individual has passed an
16 examination and held an insurance license in good standing
17 in the individual's state of licensure, except that the
18 individual shall take an examination pertaining to this
19 state's law and each kind of insurance for which the
20 individual has applied for a license and which is not
21 covered under the license held in the other state."

22 **Section 23.** Section 33-17-213, MCA, is amended to
23 read:

24 **"33-17-213. Conduct of examinations.** (1) The
25 commissioner shall make any examination required under

1 33-17-212 available to applicants with reasonable frequency
2 and at places in this state reasonably accessible to the
3 applicants.

4 ~~{2}--All--the-kinds-of-insurance-or-classes-thereof--as~~
5 ~~referred-to-in-33-17-212{3},-which-the-applicant-proposes-to~~
6 ~~transact-under-the-license-applied-for-shall-be-included--in~~
7 ~~the-same-examination:-~~

8 {3}{2} The commissioner shall assure that the
9 examinations are conducted in a fair and impartial manner
10 and without unfair discrimination as between individuals
11 examined.

12 {4}{3} The commissioner may require a reasonable
13 waiting period before reexamination of an applicant who has
14 failed to pass a previous examination covering the same kind
15 or kinds of insurance.

16 {5}{4} The examination of a title agent insurance
17 producer, as defined in 33-25-105, must include but is not
18 limited to questions pertaining to the search and
19 examination of title to real property, insurance principles
20 relating to title insurance, and the fiduciary duties and
21 procedures of escrows, settlements, and closings of real
22 estate transactions."

23 **Section 24.** Section 33-17-214, MCA, is amended to
24 read:

25 "33-17-214. Issuance of license -- contents -- LAPSE

1 OF LICENSE -- CHANGE OF ADDRESS. (1) The commissioner shall
2 promptly issue the a license applied-for to the a person
3 qualified-therefor-in-accordance-with-this-chapter pursuant
4 to 33-17-211 and 33-17-212. There-is-a-license-for-life-or
5 disability-insurance-and-a-separate--license--for--kinds--of
6 insurance-other-than-life-or-disability:-

7 (2) The license ~~shall~~ must state the name and address
8 of the licensee, personal identification number, date of
9 issue issuance, general conditions relative to expiration or
10 termination, kind of insurance covered, and such other
11 information as the commissioner considers proper necessary.

12 (3) The license of a partnership, or corporation,
13 ~~shall~~ or association must also state the name of each
14 individual authorized to exercise the license powers.

15 {4}--~~The--license--of--a-solicitor-shall-state-the-name~~
16 ~~and-address-of-the-agent-to-be-represented:-~~

17 (4) Each license remains in effect, unless suspended
18 or revoked, as long as the fees required by 33-2-708 are
19 paid.

20 (5) An individual who allows his license to lapse may,
21 within 12 months from the due date of the unpaid annual fee,
22 apply for the same license without having to pass a written
23 examination if he pays a penalty in the amount of twice the
24 unpaid annual fee.

25 (6) A person shall inform the commissioner in writing

1 of a change of address within 30 days of the change."

2 **Section 25.** Section 33-17-216, MCA, is amended to
3 read:

4 "33-17-216. Temporary agent---licenses insurance
5 producer license -- fee. (1) The commissioner may issue a
6 temporary license as--agent to or with respect to an
7 individual qualified therefor for the temporary license only
8 as to age, residence, and trustworthiness and without
9 requiring such the individual to take an examination, in the
10 following cases:

11 (a) to the surviving spouse or next of kin or to the
12 administrator or executor, or the employee of such the
13 administrator or executor, of a licensed agent insurance
14 producer upon such-agent's the insurance producer's death;

15 (b) to the spouse, next of kin, employee, or legal
16 guardian of a licensed agent insurance producer disabled by
17 injury or physical or mental illness;

18 (c) to an employee of a firm partnership, or officer
19 or employee of a corporation, licensed as agent an insurance
20 producer, upon the death or disability of an individual
21 designated in the license to exercise the powers thereof of
22 an insurance producer;

23 (d) to the designee of a licensed agent insurance
24 producer entering upon active service in the armed forces of
25 the United States of America;

1 (e) in any other circumstance in which the
2 commissioner finds that the public interest will best be
3 served by issuing such a license.

4 (2) The temporary license ~~shall~~ must be issued upon
5 application filed with the commissioner in such the form and
6 containing such the information as the commissioner may
7 reasonably require and upon payment of the applicable fee as
8 stated provided in 33-2-708.

9 (3) The temporary license ~~shall~~ must be for a period
10 of not over 90 days, subject to extension by the
11 commissioner in his discretion for an additional period of
12 not more than 90 days, except that such a temporary license
13 issued pursuant to subsection (1)(a) may be continued
14 without payment of an additional fee until the executor or
15 administrator disposes of the insurance business, but not to
16 exceed a period of 15 months. A temporary license issued to
17 the next of kin under such subsection (1)(a) may not be
18 extended for an additional term after the appointment and
19 qualification of such-an the administrator or executor.

20 (4) The fee paid for the temporary license may be
21 applied upon the fee required for a permanent license issued
22 to the licensee upon or prior to expiration of the temporary
23 license and covering the same kinds of insurance."

24 **Section 26.** Section 33-17-217, MCA, is amended to
25 read:

"33-17-217. Limitations and rights under temporary license. (1) The commissioner shall may not issue more than one temporary license, to or with respect to the same individual to be so licensed, within any 12-month period.

(2) The temporary license may cover the same kinds of insurance for which the ~~agent--thereby~~ insurance producer being replaced was licensed.

(3) As to a temporary ~~agent's~~ insurance producer's license issued on account of the death or disability of an ~~agent~~ insurance producer, the licensee may so represent all of the insurers last represented by ~~such the~~ deceased or disabled ~~agent-and-without-the-making-of-new-appointment-of~~ such-licensee-by-such-insurers insurance producer, but the licensee shall may not be ~~appointed-as-to-any-additional insurer-or licensed for an~~ additional kind of insurance under ~~such-a the~~ temporary license. ~~This-provision-shall-not be--deemed-to-prohibit-termination-of-its-appointment-by-any insurer-~~

(4) A temporary licensee ~~shall--have~~ has the same license powers and duties as under a permanent license."

Section 27. Section 33-17-221, MCA, is amended to read:

"33-17-221. Licensing insurance vending machines as solicitors. (1) A licensed resident ~~agent~~ insurance producer may solicit applications for and issue policies of personal

travel accident insurance by means of mechanical vending machine machines supervised by him and placed at airports, railroad stations, bus stations, and similar places where transportation tickets are sold and of convenience to the traveling public, if the commissioner finds that:

(a) the policy to be sold provides reasonable coverage and benefits, is reasonably suited for sale and issuance through a mechanical vending machines machine, and use of such a mechanical vending machine therefor to sell or issue a policy in a particular proposed location would be of material convenience to the public;

(b) the type of mechanical vending machine proposed to be used is reasonably suitable and practical for the purpose;

(c) reasonable means are provided for informing the prospective purchaser of any ~~such~~ policy of the coverage and restrictions of the policy; and

(d) reasonable means are provided for refund to the applicant or prospective applicant of money inserted in a defective machines mechanical vending machine and for which no insurance or a less amount than that paid for is actually received.

(2) As to each such mechanical vending machine to be ~~so used to sell or issue a policy~~, the commissioner shall issue to the ~~agent~~ insurance producer a special mechanical

1 vending machine license. The license ~~shall~~ must specify the
 2 name and address of the insurer and agent insurance
 3 producer, the name of the policy to be ~~so~~ sold or issued
 4 through the mechanical vending machine, the serial number of
 5 the mechanical vending machine, and the place where the
 6 machine ~~is-to-be-in--operation~~ will operate. The license
 7 ~~shall--be~~ is subject to annual continuation, expiration,
 8 suspension, or revocation coincidentally with that of the
 9 agent insurance producer. The commissioner shall also revoke
 10 the license ~~as-to-any of a mechanical vending machine as-to~~
 11 which if he finds that the conditions upon which the machine
 12 was licensed, as referred to in subsection (1), no longer
 13 exist. The license fee ~~shall-be~~ is as stated provided in
 14 33-2-708 for each license year or part thereof ~~of the year~~
 15 for each respective mechanical vending machine. Proof of the
 16 existence of a subsisting license ~~shall~~ must be displayed on
 17 or about each ~~such~~ mechanical vending machine in use in ~~such~~
 18 the manner as that the commissioner may reasonably require."

19 **Section 28.** Section 33-17-301, MCA, is amended to
 20 read:

21 "33-17-301. ~~Adjuster's~~ Adjuster license --
 22 ~~qualifications -- catastrophe adjustments -- public~~
 23 adjuster. (1) No ~~A~~ person ~~shall~~ may not in this state act as
 24 or hold himself out to be an adjuster unless ~~then~~ licensed
 25 therefor as an adjuster under this chapter. ~~Application A~~

1 person shall apply for an adjuster license ~~shall-be-made~~ to
 2 the commissioner according to forms ~~as--prescribed--and~~
 3 ~~furnished-by-him~~ the commissioner prescribes and furnishes.
 4 The commissioner shall issue the adjuster license as to
 5 individuals qualified therefor to be licensed as an adjuster
 6 upon payment of the license fee stated provided in 33-2-708.

7 (2) To be licensed as an adjuster, the applicant must
 8 ~~be-qualified-therefor-as-follows~~:

9 (a) must be an individual 18 years of age or more;
 10 (b) must be a resident ~~in-and~~ of Montana or resident
 11 of another state which that will permit residents of Montana
 12 regularly to act as adjusters in ~~such the~~ other state;

13 (c) must be a full-time salaried employee of a
 14 licensed adjuster or a graduate of a recognized law school
 15 or ~~must~~ have had experience or special education or training
 16 as to the handling of loss claims under insurance contracts
 17 of sufficient duration and extent reasonably to make him
 18 competent to fulfill the responsibilities of an adjuster;

19 (d) must be trustworthy and of good character and
 20 reputation;

21 (e) ~~must~~ shall have and maintain in this state an
 22 office accessible to the public and keep ~~therein~~ in the
 23 office the usual and customary records pertaining to
 24 transactions under the license. This provision ~~shall~~ does
 25 ~~not be-deemed-to~~ prohibit maintenance of ~~such the~~ office in

1 the home of the licensee.

2 (3) A firm partnership or corporation, whether or not
3 organized under the laws of this state, may be licensed as
4 an adjuster if each individual who is to exercise the
5 adjuster license powers is separately licensed or is named
6 in the firm partnership or corporation adjuster license and
7 is qualified ~~as~~ for an individual adjuster license ~~as~~
8 adjuster. An additional full license fee ~~shall~~ must be paid
9 ~~as--to~~ for each individual in excess of one ~~so~~ named in the
10 firm partnership or corporation adjuster license to exercise
11 its powers.

12 (4) ~~No--such--adjuster's~~ An adjuster license or
13 qualifications ~~shall--be~~ are not required ~~as-to-any~~ for an
14 adjuster who is sent into this state by and on behalf of an
15 insurer or adjusting firm partnership or corporation for the
16 purpose of investigating or making adjustments of a
17 particular loss under an insurance policy or for the
18 adjustment of a series of losses resulting from a
19 catastrophe common to all such losses.

20 (5) An adjuster license continues in force until
21 expired, suspended, revoked, or terminated. The license is
22 subject to annual payment to the commissioner of the renewal
23 fee required by 33-2-708, accompanied by a written request
24 for renewal.

25 (6) The commissioner may adopt rules providing for the

1 examination, licensure, bonding, and regulation of public
2 adjusters."

3 **Section 29.** Section 33-17-401, MCA, is amended to
4 read:

5 "33-17-401. Nonresident agent insurance producer --
6 reciprocity. (1) A nonresident person may apply for a
7 license if:

8 (a) the person meets the requirements of 33-17-211(2);

9 (b) the person is licensed in the state of his
10 residence to act as insurance producer for the kind or kinds
11 of insurance for which he applies for licensing in this
12 state; and

13 (c) the person's state of residence issues a similar
14 license to a resident of this state for the same kind or
15 kinds of insurance for which the person is qualified in this
16 state.

17 (2) The commissioner may license a nonresident
18 individual without written examination if the insurance
19 department in the individual's state of residence certifies
20 that:

21 (a) the individual either has passed a written
22 examination for each kind of insurance applied for or was
23 licensed prior to the time a written examination was
24 required in the individual's state of residence; and

25 (b) is currently licensed and in good standing.

(3) The commissioner may issue only a nonresident license to a person, partnership, or corporation otherwise qualified under this code but not a resident of this state and only if pursuant to the laws of the state of his residence a similar privilege is extended to persons resident in Montana.

(4) If, by the laws or rules of another state, a limitation of rights and privileges, conditions precedent, or any other requirements are imposed upon a resident of this state who is a nonresident licensee of the other state and the limitation, conditions, or requirements are in addition to or in excess of those imposed on nonresident persons under this chapter, the same limitation, conditions, or requirements must be imposed upon the residents of the other state.

(5) If a nonresident insurance producer's state of residence suspends, revokes, or terminates his insurance license in that state, his Montana nonresident license automatically terminates and the nonresident insurance producer shall notify the commissioner that his state of residence has suspended, revoked, or terminated his insurance license in that state."

Section 30. Section 33-17-404, MCA, is amended to read:

"33-17-404. Countersigning coverage of residents.

Except as provided in 33-17-1111, a nonresident agent shall insurance producer may not sign or countersign policies covering subjects of insurance residing, located, or to be performed in Montana."

Section 31. Section 33-17-405, MCA, is amended to read:

"33-17-405. Service of process -- commissioner as agent insurance producer. Application for and acceptance of a license as a nonresident agent shall constitute irrevocable appointment of the commissioner as the attorney in fact of said licensee to accept service of process issued in Montana in any action or proceeding against the licensee arising out of the licensing or out of transactions under the license. All process shall be served in duplicate upon the commissioner together with a fee of \$5. The commissioner shall then promptly forward a copy of the service by registered or certified mail to the licensee at his last known address. Such service shall constitute personal service upon the licensee. A nonresident person shall file with the commissioner the required forms appointing the commissioner and his successors in office as the nonresident person's agent upon whom process in a legal proceeding against the nonresident person may be served and shall agree that such process has the same legal force and validity as personal service of process upon the nonresident

1 person. The commissioner shall, within 3 working days after
 2 receiving process, forward, at the nonresident person's
 3 address of record, a copy of the process by certified mail
 4 to the person for whom he has received the process."

5 **Section 32.** Section 33-17-406, MCA, is amended to
 6 read:

7 **"33-17-406. Nonresident agent insurance producer**
 8 **subject to insurance code. All A nonresident licensees shall**
 9 **be insurance producer is subject to the provisions of the**
 10 **Montana Insurance Code as though a resident of this state,**
 11 **unless otherwise provided."**

12 **Section 33.** Section 33-17-407, MCA, is amended to
 13 read:

14 **"33-17-407. Nonresident licensee insurance producer to**
 15 **pay taxes -- annual report required. (1) A nonresident**
 16 **licensee insurance producer is subject to personal income,**
 17 **business income, or corporate license taxes for all income**
 18 **earned on insurance policies issued to cover subjects or**
 19 **risks residing, located, or to be performed in Montana and**
 20 **written within the boundaries of this state.**

21 **(2) A nonresident licensee insurance producer shall**
 22 **make--a--written--report--to--the-commissioner file annually**
 23 **within-45-days-following-the-end-of-each-calendar-year--The**
 24 **report--must--contain--a--listing-of-all-business-written-on**
 25 **subjects-or-risks--located--or--performed--in--Montana--The**

1 **report--must-be-in-a-form-prescribed-by-the-commissioner-and**
 2 **must-include-but-not-be-limited-to--a--listing--of--company,**
 3 **policy--number,--premium--earned,--and--commission--earned a**
 4 **Montana income tax return as required in Title 15."**

5 **Section 34.** Section 33-17-411, MCA, is amended to
 6 read:

7 **"33-17-411. Penalty. A nonresident licensee insurance**
 8 **producer who violates any a condition of his Montana license**
 9 **or any a provision of this part is subject to a fine by the**
 10 **commissioner of up to \$50,000 for each such violation and**
 11 **may, at the discretion of the commissioner, have his Montana**
 12 **nonresident license revoked or suspended for a period of up**
 13 **to 5 years."**

14 **Section 35.** Section 33-17-502, MCA, is amended to
 15 read:

16 **"33-17-502. Prohibition on holding out as consultant**
 17 **-- receiving fee. (1) Any A person not licensed as an**
 18 **insurance consultant in this state who identifies or holds**
 19 **himself out to be an insurance consultant without having**
 20 **been licensed as an insurance consultant under this part or**
 21 **any a person who uses any other designation or title which**
 22 **that is likely to mislead the public and holds himself out**
 23 **in any manner as having particular insurance qualifications**
 24 **other than those for which he may be otherwise licensed or**
 25 **otherwise qualified is guilty of a misdemeanor and upon**

1 conviction shall be fined \$1,500.

2 (2) Any A person not licensed as an insurance
3 consultant with respect to the relevant kinds of insurance
4 who receives any a fee for examining, appraising, reviewing,
5 or evaluating any insurance policy, annuity or pension
6 contract, plan, or program or who ~~shall--make~~ makes
7 recommendations or ~~give~~ gives advice with regard to any of
8 the above without first having been licensed by the
9 commissioner as an insurance consultant is guilty of a
10 misdemeanor and upon conviction shall be fined \$1,500.

11 (3) Nothing in this part applies to:

12 (a) licensed attorneys at law in this state acting in
13 their professional capacity;

14 (b) an actuary or a certified public accountant who
15 provides information, recommendations, advice, or services
16 in his professional capacity if neither he nor his employer
17 receives any compensation directly or indirectly on account
18 of any insurance, bond, annuity or pension contract that
19 results in whole or part from that information,
20 recommendation, advice, or services; or

21 (c) a ~~duty~~ licensed casualty insurance agent producer
22 who accepts a fee from an insured for placement through the
23 state compensation insurance fund as provided in 33-18-212."

24 **Section 36.** Section 33-17-503, MCA, is amended to
25 read:

1 "33-17-503. Application -- fee -- expiration. (1)
2 Before ~~an--insurance--consultant's~~ a consultant license is
3 issued or renewed, the prospective licensee shall:

4 (a) properly file in the office of the commissioner a
5 written application on forms the commissioner prescribes;
6 and

7 (b) pay a fee of \$50.

8 (2) ~~Every-consultant's~~ Each consultant license ~~shall~~
9 ~~expire~~ expires on May 31 next following the date of issue."

10 **Section 37.** Section 33-17-504, MCA, is amended to
11 read:

12 "33-17-504. Issuing license -- limitations. The
13 commissioner may issue ~~an--insurance--consultant's~~ a
14 consultant license to ~~any-natural-person~~ an individual who
15 has complied with the requirements of this chapter with
16 respect to either life insurance, meaning all of those kinds
17 of insurance authorized in 33-1-207, 33-1-208, 33-20-1001,
18 33-21-103, 33-22-501, and 33-22-601, or general insurance,
19 meaning all of those kinds of insurance authorized in
20 33-1-206, 33-1-207, 33-1-209 through 33-1-212, and 33-1-221
21 through 33-1-229, as specified in ~~such~~ the license."

22 **Section 38.** Section 33-17-505, MCA, is amended to
23 read:

24 "33-17-505. Qualification -- fee. (1) In order to
25 determine the competency of ~~every~~ an applicant for a

1 consultant license ~~as an insurance consultant~~, the
2 commissioner shall require the applicant to pass an
3 examination.

4 (2) The fee for taking ~~such an~~ the consultant license
5 examination ~~shall be~~ is \$50. The commissioner shall deposit
6 all fees collected in the general fund. The fee for taking a
7 second or subsequent examination ~~shall~~ may be no more than
8 the cost of administering ~~such~~ the examination, not to
9 exceed \$50."

10 **Section 39.** Section 33-17-506, MCA, is amended to
11 read:

12 "33-17-506. Grounds for refusal to issue license. The
13 commissioner may refuse to issue ~~an insurance consultant's a~~
14 consultant license if, in his judgment, the applicant is not
15 trustworthy and competent to act as a consultant, or has
16 given cause for revocation or suspension of a license, or
17 has failed to comply with any prerequisite for the issuance
18 of a license."

19 **Section 40.** Section 33-17-507, MCA, is amended to
20 read:

21 "33-17-507. Revocation. The commissioner may revoke or
22 suspend ~~any insurance consultant's a consultant~~ license for
23 a period he determines if, after notice and hearing as
24 specified in this chapter, he determines that the licensee:

25 (1) has violated any provision of or any obligation

1 imposed by the insurance law or has violated any law in the
2 course of his dealings as ~~a~~ an insurance consultant;

3 (2) has made a material misstatement in application
4 for a ~~consultant's~~ consultant license;

5 (3) has been guilty of fraudulent or dishonest
6 practices; or

7 (4) has demonstrated his incompetency or
8 untrustworthiness to act as an insurance consultant."

9 **Section 41.** Section 33-17-511, MCA, is amended to
10 read:

11 "33-17-511. Consideration for services only on written
12 memorandum. No A person licensed as an insurance consultant
13 under this part may not receive any a fee for examining,
14 appraising, reviewing, or evaluating any an insurance
15 policy, bond, annuity or pension or profit-sharing contract,
16 plan, or program or for making recommendations or giving
17 advice with regard to any of the above unless the
18 compensation is based upon a written memorandum signed by
19 the party to be charged and specifying or clearly defining
20 the amount or extent of the compensation. A An insurance
21 consultant shall retain a copy of every memorandum or
22 contract ~~shall be retained by the licensee~~ for not less than
23 3 years after those services have been fully performed."

24 **Section 42.** Section 33-17-512, MCA, is amended to
25 read:

"33-17-512. Limitation on type of consideration. No A person licensed as an insurance consultant may not receive any compensation, direct or indirect, as a result of the sale of insurance or annuities to or the use of securities or trusts in connection with pensions for any a person to whom any the licensee has performed any a related consulting service for which he has received a fee or contracted to receive a fee within the preceding 12 months."

Section 43. Section 33-17-513, MCA, is amended to read:

"33-17-513. Restrictions on insurers recommended by licensee. No A person licensed as an insurance consultant under this part may not recommend or encourage the purchase of insurance, annuities, or securities from any an authorized insurer in which he or any member of his immediate family holds an executive position or holds a substantial interest."

Section 44. Section 33-17-602, MCA, is amended to read:

"33-17-602. Written agreement required. (1) No A person may not act as an administrator without a written agreement between the person and the insurer. The written agreement ~~shall~~ must be retained as part of the official records of both the administrator and the insurer for the duration of the agreement and for 5 years thereafter. The

written agreement ~~shall~~ must contain provisions which that include the requirements of 33-17-612 through 33-17-617 insofar as these requirements relate to the functions performed by the administrator.

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

(3) Whenever a policy is issued to a trustee, a copy of the trust agreement and any amendments thereto--~~shall~~ to it must be furnished to the insurer by the administrator and ~~shall~~ be retained as part of the official records of both the administrator and the insurer for the duration of the policy and for 5 years thereafter."

Section 45. Section 33-17-603, MCA, is amended to read:

"33-17-603. Certificate of registration. (1) Except as provided in 33-17-604, no a person may not act as or hold himself out to be an administrator in this state unless he holds a certificate of registration as an administrator.

(2) An application for a certificate of registration must be accompanied by a fee of \$100. The commissioner of insurance shall issue the certificate unless he finds that the applicant is not competent, trustworthy, financially responsible, or of good personal and business reputation or that the applicant has had a previous application for an

1 insurance a license denied for cause within 5 years.

2 (3) The certificate of registration is renewable
3 annually on the date of issue. A request for renewal must be
4 accompanied by a renewal fee of \$100.

5 (4) The certificate of registration may be suspended
6 or revoked if, after notice and hearing, the commissioner
7 finds that the administrator has violated any of the
8 requirements of this part or that the administrator is not
9 competent, trustworthy, financially responsible, or of good
10 personal and business reputation.

11 (5) Unless the certification requirement is waived,
12 any administrator a person who acts as such an administrator
13 without the a certificate of registration is subject to a
14 fine of not less than \$500 or more than \$1,500."

15 **Section 46.** Section 33-17-604, MCA, is amended to
16 read:

17 "33-17-604. Waiver of certification requirements. The
18 commissioner of insurance may waive the requirements of
19 33-17-603 for any person or class of persons. The factors
20 taken into account in granting such a waiver shall include
21 but are not limited to:

22 (1) whether the person acting as an administrator is
23 primarily in a business other than that of administrator;

24 (2) whether the financial strength and history of the
25 organization indicates stability in its continuity of doing

1 business;

2 (3) whether the regular duties being performed as an
3 administrator are such that the covered persons are not
4 likely to be injured by a waiver of such the requirements."

5 **Section 47.** Section 33-17-611, MCA, is amended to
6 read:

7 "33-17-611. Maintenance of information. For the
8 duration of the agreement required by 33-17-602 and for 5
9 years thereafter, each administrator shall maintain at its
10 principal administrative office adequate books and records
11 of all transactions between the administrator, insurers, and
12 insured persons. These books and records shall must be
13 maintained in accordance with prudent standards of insurance
14 recordkeeping. The commissioner of insurance shall have
15 access to these books and records for examination, audit, or
16 inspection. Any trade secrets contained in the books and
17 records, including but not limited to the identity and
18 addresses of policyholders and certificate holders, shall be
19 are confidential, except that the commissioner may use such
20 the information in any proceedings instituted against the
21 administrator. The insurer retains the right to continuing
22 access to those books and records of the administrator
23 sufficient to permit the insurer to fulfill all of its
24 contractual obligations to insured persons, subject to any
25 restrictions in the written agreement between the insurer

1 and the administrator."

2 **Section 48.** Section 33-17-613, MCA, is amended to
3 read:

4 "33-17-613. Collection of charges and premiums. (1)
5 All insurance charges or premiums collected by an
6 administrator on behalf of or for an insurer ~~or--insurers~~ and
7 return premiums received from such the insurer ~~or--insurers~~
8 are held by the administrator in a fiduciary capacity.
9 These funds ~~shall~~ must be immediately remitted to the person
10 ~~or--persons~~ entitled thereto to them or ~~shall~~ must be
11 deposited promptly in a fiduciary bank account established
12 and maintained by the administrator. If deposited charges or
13 premiums were collected on behalf of or for more than one
14 insurer, the administrator shall require the bank in which
15 the fiduciary account is maintained to keep records clearly
16 recording the deposits in and withdrawals from such the
17 account on behalf of or for each insurer. The administrator
18 shall promptly obtain and keep copies of all these records
19 and, upon request of an insurer, shall furnish the insurer
20 with copies of the records pertaining to deposits and
21 withdrawals on behalf of or for the insurer.

22 (2) The administrator ~~shall~~ may not pay any a claim by
23 withdrawals from the fiduciary account. Withdrawals from the
24 fiduciary account ~~shall~~ must be made, as provided in the
25 written agreement between the administrator and the insurer,

1 for:

2 (a) remittance to an insurer entitled ~~thereto~~ to the
3 remittance;

4 (b) deposit in an account maintained in the name of
5 such the insurer;

6 (c) transfer to and deposit in a claims paying
7 account, with claims to be paid as provided in 33-17-615;

8 (d) payment to a group policyholder for remittance to
9 the insurer entitled ~~thereto~~ to the payment;

10 (e) payment to the administrator of its commission,
11 fees, or charges; or

12 (f) remittance of return premiums to the person ~~or~~
13 persons entitled ~~thereto~~ to the premium."

14 **Section 49.** Section 33-17-1001, MCA, is amended to
15 read:

16 "33-17-1001. Suspension, revocation, or refusal of
17 license. (1) Except as provided in 33-17-411, the
18 commissioner may suspend for not more than 12 months, ~~or~~ may
19 revoke or refuse to continue any, or may deny an application
20 for a license issued under this chapter or any surplus lines
21 agent insurance producer license if, after hearing held on
22 not less than 10 days' advance notice by certified mail of
23 such the hearing and of the charges against the licensee
24 given as provided in 33-1-314(3) to the licensee ~~and-to-the~~
25 ~~insurers-represented,--as-to-an-agent,--or-to--the--appointing~~

1 ~~agent;--as--to-a-solicitor,~~ he finds that ~~as-to~~ the licensee
2 ~~any-one-or-more-of-the-following-causes-exist~~ or applicant
3 has:

4 (a) ~~for--any-cause~~ engaged or is about to engage in an
5 act or practice for which issuance of the license could have
6 been refused had it then existed and been known to the
7 commissioner;

8 (b) ~~for--obtaining~~ obtained or attempting attempted to
9 obtain any--such a license through misrepresentation or
10 fraud;

11 (c) ~~for--violation--of--or--noncompliance~~ violated or
12 failed to comply with any-applicable a provision of this
13 code or ~~for-willful-violation-of-any-lawful~~ has violated a
14 rule, subpoena, or order of the commissioner or of the
15 commissioner of any OTHER state;

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

21 (e) ~~conviction;--by-final-judgment;~~ been convicted of a
22 felony involving-moral-turpitude;

23 (f) ~~if~~ in the conduct of his affairs under the
24 license, the--licensee--has used fraudulent, coercive, or
25 dishonest practices or has shown himself to be incompetent,

1 untrustworthy, financially irresponsible, or a source of
2 injury and loss to the public;

3 (g) made a materially untrue statement in the license
4 application;

5 (h) misrepresented the terms of an actual or proposed
6 insurance contract;

7 (i) been found guilty of an unfair trade practice or
8 fraud prohibited by Title 33, in chapter 18;

9 (j) had his license suspended or revoked in any other
10 state;

11 (k) forged another's name to an application for
12 insurance;

13 (l) cheated on an examination for a license; or

14 (m) knowingly accepted insurance business from a
15 person who is not licensed.

16 (2) The license of a partnership or corporation may be
17 suspended, revoked, or refused, ~~also-for-any-of-such--causes~~
18 ~~as--relate-to-any~~ or denied if a reason listed in subsection
19 (1) applies to an individual designated in the license to
20 exercise its powers.

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

25 **Section 50.** Section 33-17-1002, MCA, is amended to

1 read:

2 "33-17-1002. Procedure following suspension or
3 revocation. (1) Upon suspension or revocation of any-such a
4 license, the commissioner shall forthwith immediately notify
5 the licensee thereof of the suspension or revocation either
6 in person or by mail addressed to the licensee at his
7 address last of record with the commissioner. Notice by mail
8 ~~shall-be-deemed is~~ effectuated when so the notice is mailed.
9 ~~The--commissioner--shall--give--like--notice--to--the--insurers~~
10 ~~represented-by-the-agent,--in--the--case--of--an--agent's--license,~~
11 ~~and--to--the--agent--by--whom--appointed,--in--the--case--of--a~~
12 ~~solicitor's--license.~~

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

16 ~~(3)(2)~~ The commissioner shall may not again issue a
17 license under this code to ~~or--as--to--any~~ a person whose
18 license has been revoked until after expiration of 1 year
19 and thereafter not until such the person again qualifies
20 therefor for a license in accordance with ~~the-applicable~~
21 provisions-of this code. If the commissioner revokes a
22 person's license, the commissioner may refuse to issue a
23 license to the person for up to 5 years after the
24 revocation. A person whose license has been revoked twice
25 shall is not again be eligible for any license under this

1 code.

2 ~~(4)(3)~~ If the license of a partnership or corporation
3 is ~~so~~ suspended or revoked, no member of such the
4 partnership or officer or director of such the corporation
5 ~~shall~~ may be licensed or be designated in any a license to
6 exercise the its powers thereof during the period of such
7 the suspension or revocation unless the commissioner
8 determines upon substantial evidence that such the member,
9 officer, or director was not personally at fault and did not
10 acquiesce in the matter on account of which the license was
11 suspended or revoked."

12 **Section 51.** Section 33-17-1003, MCA, is amended to
13 read:

14 "33-17-1003. Return of license. (1) All licenses
15 issued under this chapter, although issued and delivered to
16 the licensee ~~agent,--solicitor,~~ insurance producer or
17 ~~adjuster,--shall~~ are at all times be the property of the
18 state of Montana. Upon any expiration, termination,
19 suspension, or revocation of the license, the licensee or
20 other person having possession or custody of the license
21 shall forthwith immediately deliver it to the commissioner
22 either by personal delivery or by mail.

23 (2) As to any license lost, stolen, or destroyed while
24 in the possession of any-such a licensee or person, the
25 commissioner may accept in lieu of return of the license the

1 affidavit of the licensee or other person responsible for or
2 involved in the safekeeping of such the license, concerning
3 the facts of such the loss, theft, or destruction."

4 **Section 52.** Section 33-17-1004, MCA, is amended to
5 read:

6 "33-17-1004. Acting as insurance agent~~y~~~~--solicitor~~,
7 producer or adjuster without license -- penalty. Except as
8 provided in 33-17-411, a person~~y~~~~--partnership~~~~--association~~,
9 or~~--corporation~~ who or~~--which~~, in this state, acts as an
10 insurance agent~~y~~~~--solicitor~~, producer or adjuster without
11 having authority to do so by virtue of a license issued and
12 in force pursuant to ~~the--provisions--of~~ this chapter is
13 guilty of a misdemeanor and upon conviction shall be fined
14 \$500 or imprisoned in the county jail for 90 days, or both."

15 **Section 53.** Section 33-17-1101, MCA, is amended to
16 read:

17 "33-17-1101. Place of business -- display of license
18 -- records. (1) Every resident agent insurance producer
19 shall have and maintain a place of business in this state
20 accessible to the public. A nonresident agent insurance
21 producer may maintain a place of business in this state. An
22 agent's insurance producer's place of business must be that
23 wherein a place in which he principally conducts
24 transactions under his license. The street address of such
25 the place shall must appear upon the license~~y~~~~--and--the~~

1 ~~licensee--shall--promptly--notify--the--commissioner--of-any~~
2 ~~change-in-his-street-or-mailing--address.~~ Nothing in this
3 section prohibits maintenance of such the place of business
4 in the licensee's place of residence.

5 (2) The license ~~of-the-licensee--and--the--license--of~~
6 ~~each--solicitor--appointed--by-and-representing-the-licensee~~
7 must be conspicuously displayed in such the place of
8 business at the street address shown on the license in a
9 part thereof of the place of business customarily open to
10 the public.

11 (3) The agent insurance producer shall keep at his
12 place of business complete records pertaining to
13 transactions under his license ~~and--the--licenses-of-his~~
14 ~~solicitors~~, for a period of at least 3 years after
15 completion of the respective transactions, except that a
16 title agents insurance producer, as defined in 33-25-105,
17 shall retain records as provided in 33-25-214 and
18 33-25-216."

19 **Section 54.** Section 33-17-1102, MCA, is amended to
20 read:

21 "33-17-1102. Reporting and accounting for premiums --
22 misappropriation. (1) All insurance premiums or return
23 premiums received by an agent~~--or--solicitor~~ insurance
24 producer must be held in a separate trust account. The
25 ~~licensee~~ insurance producer shall at all times act in a

1 fiduciary capacity, and the agent or solicitor shall, in the
 2 applicable regular course of business, account for and pay
 3 the same insurance premiums or return premiums he receives
 4 to the insured, insurer, or agent insurance producer
 5 entitled thereto to them. Except for a title agent
 6 insurance producer as defined in 33-25-105, an agent
 7 insurance producer may deposit and commingle in the same
 8 such separate deposit all such funds belonging to others so
 9 long as the amount of such the deposit so held for each
 10 respective other person is reasonably ascertainable from the
 11 records and accounts of the licensee.

12 (2) Any agent or solicitor insurance producer not
 13 lawfully entitled thereto to the funds may not divert or
 14 appropriate such the funds or any portion thereof of the
 15 funds to his own use.

16 (3) An insurance producer who unlawfully diverts or
 17 appropriates insurance premiums or return premiums to his
 18 own use is, upon conviction, guilty of theft and is
 19 punishable as provided by law."

20 **Section 55.** Section 33-17-1103, MCA, is amended to
 21 read:

22 "33-17-1103. Exchange-of-business---sharing Accepting
 23 and paying commissions, fees, or consideration --
 24 restriction. {1}-An-agent-may, under rules--adopted--by--the
 25 commissioner, place an insurance coverage with an insurer as

1 to--which--he-is-not-then-licensed-or-appointed-as-an-agent,
 2 and-the-insurer-shall-accept-such-business, only when placed
 3 through an agent, licensed under this chapter and appointed
 4 by--the-insurer. Both agents involved in such an exchange of
 5 business must be licensed as to all of the kinds of
 6 insurance represented by the coverage so placed.

7 {2}-The--agents--involved--in--a--lawful--exchange--of
 8 business under subsection {1} above may divide between them
 9 the--commission--or--compensation payable on account of such
 10 coverage. (1) An insurer or insurance producer may not pay,
 11 directly or indirectly, a commission, service fee, brokerage
 12 fee, or other valuable consideration to a person for
 13 services as an insurance producer unless the person
 14 performing the service holds a valid license with regard to
 15 the kind or kinds of insurance for which the service was
 16 rendered at the time the service was performed. A person not
 17 properly licensed in accordance with this chapter at the
 18 time he performs the service as an insurance producer may
 19 not accept a commission, service fee, brokerage fee, or
 20 other valuable consideration for the service. This section
 21 does not prevent payment or receipt of renewal or other
 22 deferred commissions to or by a person entitled to receive
 23 the payment under this section.

24 {3}{2} No--agent--or--solicitor--shall An insurance
 25 producer may not directly or indirectly share his

1 commissions or other compensation received or to be received
2 by him on account of a transaction under his license with
3 any person not also licensed under this chapter as to the
4 same kind or kinds of insurance involved in such the
5 transactions, except as provided in 33-17-1113. This
6 provision ~~shall~~ does not affect payment of the regular
7 salaries due employees of the licensee, or the distribution
8 in regular course of business of compensation and profits
9 among members or stockholders if the licensee is a firm
10 partnership or corporation, or use of funds for family or
11 personal purposes.

12 ~~†4†(3)~~ This section does not apply as to those
13 transactions with surplus lines agents--which insurance
14 producers that are lawful under 33-2-306 or as-to-life-or
15 ~~disability-insurance-placed-as-provided-in-33-17-1104 OR--AS~~
16 ~~TO--LIFE--OR--DISABILITY--INSURANCE--PLACED--AS--PROVIDED--IN~~
17 ~~33-17-1104."~~

18 **Section 56.** Section 33-17-1111, MCA, is amended to
19 read:

20 "33-17-1111. Resident agent insurance producer
21 required -- reciprocity -- countersignature -- records. (1)
22 No An authorized insurer ~~shall~~ may not issue a policy
23 covering a subject of insurance resident residing, located,
24 or to be performed in Montana unless:

25 (a) the policy is written through a licensed agent,

1 resident insurance producer residing in Montana--of--the
2 insurer;

3 (b) the policy is written through a licensed
4 nonresident agent insurance producer and, if a
5 countersignature would be required by the resident state of
6 the nonresident agent insurance producer upon a Montana
7 resident agent insurance producer writing business in the
8 resident state of such the nonresident agent insurance
9 producer, the policy or countersignature endorsement
10 attached thereto to the policy is countersigned by a Montana
11 resident licensed agent insurance producer; or

12 (c) the policy is written through a licensed
13 nonresident agent insurance producer who is a resident of a
14 state that does not require countersignatures.

15 (2) No-such A countersignature ~~shall~~ may not be made
16 in blank. The agent insurance producer may by express
17 written authorization given in advance delegate to his
18 salaried clerical employee the power to so countersign in
19 the name of the agent--such--contracts insurance producer
20 those policies or classes of contracts--as-are policies
21 designated in such the authorization so--long--as if the
22 initials of such the employee are written below the agent's
23 insurance producer's name on such the countersignature, but
24 the agent-~~shall~~ insurance producer may not thereby delegate
25 or have power to delegate to any-other a person the power or

1 authority to bind an insurer with respect to any a risk not
 2 already bound by the agent insurance producer or other
 3 person having clear authority from the insurer ~~so~~ to bind.
 4 The ~~agent-shall-be~~ insurance producer is responsible for all
 5 of the acts of such the employee within the scope of the
 6 authority ~~so~~ delegated. The agent insurance producer shall
 7 keep a record of ~~each-and~~ all coverages countersigned by him
 8 or by his authority.

9 (3) This section ~~shall~~ does not apply to:

10 (a) reinsurance;

11 (b) life insurance, disability insurance, or annuity
 12 contracts;

13 (c) insurance of the rolling stock, vessels, or
 14 aircraft of any common carrier in interstate or foreign
 15 commerce or of any vehicle principally garaged and used in
 16 another state or covering any liability or other risks
 17 incident to the ownership, maintenance, or operation thereof
 18 of any common carrier or vehicle;

19 (d) insurance of property in course of transportation
 20 interstate or in foreign trade or any liability or risk
 21 incident thereto to the insurance;

22 (e) insurance of wet marine and transportation risks;

23 (f) countersignature to policies issued through agents
 24 insurance producers compensated only by salary or issued by
 25 insurers not using agents insurance producers in the general

1 solicitation of business;

2 (g) bid bonds, as required under Title 18, chapter 1,
 3 part 2.

4 (4) Violation of this section ~~shall~~ does not
 5 invalidate ~~any-contract~~ a policy otherwise valid as between
 6 the insurer and the insured."

7 **Section 57.** Section 33-17-1112, MCA, is amended to
 8 read:

9 "33-17-1112. Salaried personnel not to countersign --
 10 exception for emergencies. (1) With respect to policies
 11 subject to countersignature requirements under 33-17-1111,
 12 only a licensed ~~agent-of-the-insurer-resident~~ insurance
 13 producer residing in Montana, whose compensation as such
 14 agent an insurance producer is by commission computed as a
 15 percentage of the premium received on each such policy
 16 written, ~~shall-have~~ has power to countersign as required by
 17 33-17-1111.

18 (2) No A branch manager, state agent, special agent,
 19 general or any other like supervisory agent, or any other
 20 representative of the insurer, whose compensation ~~therefrom~~
 21 from the insurer is in whole or in part by salary, ~~shall~~
 22 does not have power to countersign such policies or
 23 countersignature endorsements ~~thereto~~ to policies; except
 24 that in an emergency where it is necessary that an insurance
 25 policy be issued without delay and no resident ~~agent-of-the~~

1 insurer insurance producer having power to execute the
 2 policy is then reasonably available, then any other
 3 individual having authority therefor from the insurer may
 4 execute such the policy in the first instance in order to
 5 make a contract between the insurer and the obligee or the
 6 insured if such the policy is subsequently countersigned in
 7 fact by such a resident agent insurance producer."

8 **Section 58.** Section 33-17-1113, MCA, is amended to
 9 read:

10 "33-17-1113. Policies originating outside state --
 11 commission of resident agent insurance producer. (1) As to
 12 policies a policy or endorsements--thereto--which--are an
 13 endorsement to a policy that is subject to countersignature
 14 requirements under 33-17-1111 contracted for or otherwise
 15 originating outside the boundaries of Montana, there-shall
 16 be-payable-to-the-countersigning-agent,-resident-in-Montana,
 17 a commission which-shall of not be less than 5% of the
 18 premium charged and received but not to-exceed more than 50%
 19 of the commission paid by the insurer is payable to the
 20 countersigning insurance producer, so that a record within
 21 Montana will be kept of such the business and so that the
 22 state may better receive any tax required by law to be paid
 23 with respect to such the insurance. If, however, the
 24 originating agent--or--broker insurance producer or the
 25 insurer desires additional service to be rendered during the

1 term of the policy, then the compensation for such the
 2 countersigning resident agent-shall insurance producer must
 3 be in such an additional amount as is fixed by mutual
 4 agreement of such the parties in interest.

5 (2) If pursuant to the laws of another state the
 6 countersigning agents insurance producers of that state
 7 retain as commission or compensation with respect to
 8 business originated by Montana agents insurance producers
 9 more than 5% of the premium, then the Montana agents
 10 insurance producers who countersign policies representing
 11 business originated by agents-or-brokers insurance producers
 12 of such the other state shall charge and receive a
 13 commission in an amount not less than that so received by
 14 countersigning agents insurance producers of the other
 15 state."

16 **Section 59.** Section 33-17-1114, MCA, is amended to
 17 read:

18 "33-17-1114. Policies issued at home or branch
 19 offices. Nothing in 33-17-1111 through 33-17-1113 shall
 20 prevent-any prevents an insurer from issuing any a policy,
 21 as to which the resident--agent--or countersignature
 22 requirement of 33-17-1111 is-applicable applies, at its home
 23 or branch office, but such-policies-shall the policy must be
 24 subsequently countersigned, where otherwise required, by its
 25 agent-resident an insurance producer residing in Montana.

The insurer's--licensed--agent--resident insurance producer residing in Montana shall receive the commission on such the policy when the insurance premium is paid. This section does not apply as to life insurance."

Section 58.--Section--33-18-401,--MCA,--is--amended--to read:

"33-18-401.---Paise--applications,--claims--application, claim,--and--proofs--proof-of-loss---penalty,--Any--solicitor, agent--An insurance producer,--examining-physician,--applicant, or--other--person--who--knowingly--or--willfully--makes--any--a--false or---fraudulent--statement--or--representation--in--or--with reference--to--any--an--application--for--insurance--or,--for--the purpose--of--obtaining--any--money--or--benefit,--knowingly--or willfully--presents--or--causes--to--be--presented--a--false--or fraudulent--claim--or--any--proof--in--support--of--such--a--claim--for the--payment--of--the--loss--upon--a--contract--of--insurance--or prepares,--makes,--or--subscribes--a--false--or---fraudulent account,--certificate,--affidavit--or--proof--of--loss,--or--other document--or--writing,--with--intent--that--the--same--may--be presented--or--used--in--support--of--such--a--claim,--shall--be--is guilty--of--a--misdemeanor--felony--and--upon--conviction--shall--be punished--by--a--fine--of--not--less--than--\$250--or--fined--not--more than--\$1,000--\$5,000--or--by--imprisonment--in--the--county--jail--for not--less--than--3--months--or--imprisoned--not--more--than--6--months 10--years,--or--both--such--fine--and--imprisonment--at--the

discretion--of--the--court."

Section 60. Section 33-25-202, MCA, is amended to read:

"33-25-202. Sharing of rate proceeds. Title insurers and agents insurance producers may share rate proceeds between or among themselves in any combination and may exchange--business--and--share accept commissions as provided in 33-17-1103, unless the sharing of rate proceeds is an unlawful rebate or inducement under this title or is a payment of a forwarding fee or finders fee."

Section 61. Section 33-25-214, MCA, is amended to read:

"33-25-214. Underwriting standards -- record retention. (1) A title insurer may not issue a title insurance policy unless it, its title agent insurance producer, or an approved attorney has conducted a reasonable search and examination of the title and made a determination of insurability of title in accordance with sound underwriting practices. The title insurer or title agent must insurance producer shall preserve and retain in its files evidence of the examination of title and determination of insurability. The title insurer or title agent insurance producer may keep original evidence or may establish in the regular course of business a system of recording, copying, or reproducing evidence by any process that accurately and

1 legibly reproduces, or forms a durable medium for
2 reproducing, the contents of the original.

3 (2) Subsection (1) does not apply to:

4 (a) a title insurer assuming liability through a
5 contract of reinsurance; or

6 (b) a title insurer acting as coinsurer if one of the
7 other coinsuring title insurers has complied with subsection
8 (1).

9 (3) Except as allowed by rules adopted by the
10 commissioner, no a title insurer or title agent insurance
11 producer may not knowingly issue an owner's title insurance
12 policy or commitment to insure unless all outstanding
13 enforceable recorded liens or other interests against the
14 property title to be insured are shown.

15 (4) An insurer issuing a policy in violation of this
16 section is estopped, as a matter of law, to deny the
17 validity of the policy as to any claim or demand of the
18 insured arising thereunder under the policy."

19 **Section 62.** Section 33-25-301, MCA, is amended to
20 read:

21 "33-25-301. Refusal, suspension, or revocation of
22 title agent's insurance producer's license. (1) In addition
23 to the causes provided in 33-17-1001, the commissioner may
24 refuse to license a person as a title agent insurance
25 producer or may suspend or revoke a title agent's insurance

1 producer's license if, after a hearing held after notice as
2 required in 33-17-1001, he finds that the license applicant
3 or licensee has:

4 (a) made a material misstatement in an application for
5 a title agent insurance producer license;

6 (b) commingled funds belonging to applicants, escrow
7 participants, or others;

8 (c) intentionally misrepresented the terms of a title
9 insurance policy to an applicant or policyholder or has
10 misrepresented material facts to, concealed material facts
11 from, or made false statements to a party to an escrow,
12 settlement, or closing transaction;

13 (d) in the conduct of his affairs under his title
14 agent's insurance producer's license, used coercive
15 practices or shown himself to be financially irresponsible;

16 (e) aided, abetted, or assisted another person in
17 violating the provisions of this title or a rule adopted by
18 the commissioner.

19 (2) The commissioner may impose any other appropriate
20 penalty provided for in this title.

21 (3) The commissioner may refuse, suspend, or revoke
22 the license of a firm, corporation, or other business entity
23 person licensed as a title agent insurance producer for the
24 actions described in subsection (1) of any individual
25 designated in the license to exercise its powers."

1 **Section 63.** Section 33-25-302, MCA, is amended to
2 read:

3 **"33-25-302. Disapproval of agency contracts.** (1) The
4 commissioner may disapprove a title agency contract between
5 a title agent insurance producer and title insurer, upon
6 appropriate notice to the parties to the contract, if he
7 finds that the contract, together with all amendments and
8 related documents:

9 (a) does not provide for adequate monitoring of the
10 agent's insurance producer's financial transactions; or

11 (b) provides for inadequate, unreasonable, or
12 excessive amounts to be paid to or retained by the title
13 agent insurance producer. Factors the commissioner may
14 consider in this determination include but are not limited
15 to the agent's insurance producer's duties under the
16 contract and the general level of amounts paid to or
17 retained by other title agents insurance producers in the
18 state performing or assuming comparable duties.

19 (2) No A person may not act as a title agent insurance
20 producer under an agency contract that has been disapproved
21 by the commissioner."

22 **Section 64.** Section 33-25-401, MCA, is amended to
23 read:

24 **"33-25-401. Prohibited practices -- referrals --**
25 **splitting charges -- exemptions.** (1) Except as provided in

1 subsection (2), no a person may not:

2 (a) give or accept a fee, rebate, or thing of value
3 pursuant to an agreement or understanding that title
4 insurance business will be referred to a title agent
5 insurance producer; or

6 (b) give or accept a portion, split, or percentage of
7 a charge made or received for title insurance business in
8 connection with a transaction involving real property in
9 this state, other than for services actually performed.

10 (2) (a) A person may pay a return on an investment,
11 based on a percentage of an ownership interest in a title
12 insurance agency, if:

13 (i) at or prior to the time of a referral, a
14 disclosure of the existence of the arrangement is made to
15 the person being referred and, in connection with the
16 referral, the person is provided a written estimate of the
17 charge or range of charges generally made by the title agent
18 insurance producer to which the person is referred; and

19 (ii) the person is not required to use a particular
20 agent insurance producer.

21 (b) The following arrangements are not a violation of
22 subsection (2)(a)(ii):

23 (i) an arrangement that requires a buyer, borrower, or
24 seller to pay for the services of an attorney, credit
25 reporting agency, or real estate appraiser chosen by a

1 lender to represent the lender's interest in a real estate
2 transaction; or

3 (ii) an arrangement by which an attorney or law firm
4 represents a client in a real estate transaction and issues
5 or arranges for the issuance of a policy of title insurance
6 in the transaction directly as agent insurance producer or
7 through a separate corporate title insurance agency that may
8 be established by that attorney or law firm and operated as
9 an adjunct to his or its law practice.

10 (c) Failure to disclose a controlled business
11 relationship is not a violation of subsection (2)(a)(i) if
12 the failure was not intentional and resulted from a bona
13 fide error, proven by a preponderance of the evidence.

14 (3) This section does not prohibit:

15 (a) the payment of a fee to an attorney for services
16 actually rendered or by a title agent insurance producer for
17 services actually performed in the issuance of a title
18 insurance policy; or

19 (b) payment of a bona fide salary, compensation, or
20 other payment for goods or facilities actually furnished or
21 for services actually performed."

22 **Section 65.** Section 33-25-403, MCA, is amended to
23 read:

24 "33-25-403. Prohibited practices -- producer and
25 associates -- prohibition of favored agent insurance

1 producer or insurer. No A producer or associate may not,
2 directly or indirectly, require as a condition, agreement,
3 or understanding of providing another person a loan, loan
4 extension, credit, sale, property, contract, lease, or
5 service that the other person obtain title insurance of any
6 kind from a particular title insurer or title agent
7 insurance producer. No A title insurer or title agent
8 insurance producer may not knowingly participate in a plan
9 or transaction prohibited by this section."

10 **Section 66.** Section 33-22-1703, MCA, is amended to
11 read:

12 "33-22-1703. Definitions. As used in this part, the
13 following definitions apply:

14 (1) "Emergency services" means services provided after
15 suffering an accidental bodily injury or the sudden onset of
16 a medical condition manifesting itself by acute symptoms of
17 sufficient severity (including severe pain) that without
18 immediate medical attention the subscriber or insured could
19 reasonably expect that:

20 (a) his health would be in serious jeopardy;

21 (b) his bodily functions would be seriously impaired;

22 or

23 (c) a bodily organ or part would be seriously damaged.

24 (2) "Health benefit plan" means the health insurance
25 policy or subscriber arrangement between the insured or

1 subscriber and the health care insurer that defines the
2 covered services and benefit levels available.

3 (3) "Health care insurer" means:

4 (a) an insurer that provides disability insurance as
5 defined in 33-1-207;

6 (b) a health service corporation as defined in
7 33-30-101;

8 (c) a health maintenance organization as defined in
9 33-31-102;

10 (d) a fraternal benefit society as defined in
11 33-7-102;

12 (e) an administrator as defined in ~~33-17-601~~
13 33-17-102; or

14 (f) any other entity regulated by the commissioner
15 that provides health coverage.

16 (4) "Health care services" means health care services
17 or products rendered or sold by a provider within the scope
18 of the provider's license or legal authorization or services
19 provided under Title 33, chapter 22, part 7.

20 (5) "Insured" means an individual entitled to
21 reimbursement for expenses of health care services under a
22 policy or subscriber contract issued or administered by an
23 insurer.

24 (6) "Preferred provider" means a provider or group of
25 providers who have contracted to provide specified health

1 care services.

2 (7) "Preferred provider agreement" means a contract
3 between or on behalf of a health care insurer and a
4 preferred provider.

5 (8) "Provider" means an individual or entity licensed
6 or legally authorized to provide health care services or
7 services covered within Title 33, chapter 22, part 7.

8 (9) "Subscriber" means a certificate holder or other
9 person on whose behalf the health care insurer is providing
10 or paying for health care coverage."

11 NEW SECTION. Section 67. Repealer. Section 33-17-202,
12 33-17-204, 33-17-205, 33-17-218, ~~33-17-231, ---33-17-232,~~
13 33-17-402, 33-17-403, AND 33-17-601, ~~and-33-17-1104,~~ AND
14 33-17-1104, MCA, are repealed.

15 NEW SECTION. Section 68. Extension of authority. Any
16 existing authority to make rules on the subject of the
17 provisions of [this act] is extended to the provisions of
18 [this act].

19 NEW SECTION. Section 69. Codification instruction.
20 [Section SECTIONS 4 THROUGH 6] is ARE intended to be
21 codified as an integral part of Title 33, chapter 17, and
22 the provisions of Title 33, chapter 17, apply to [section
23 SECTIONS 4 THROUGH 6].

24 NEW SECTION. Section 70. Saving clause. [This act]
25 does not affect rights and duties that matured, penalties

1 that were incurred, or proceedings that were begun before
2 [the effective date of this act].

3 NEW SECTION. Section 71. Severability. If a part of
4 [this act] is invalid, all valid parts that are severable
5 from the invalid part remain in effect. If a part of [this
6 act] is invalid in one or more of its applications, the part
7 remains in effect in all valid applications that are
8 severable from the invalid applications.

9 NEW SECTION. Section 72. Effective date. [This act]
10 is effective January 1, 1990.

-End-

Page 1 of 2

Mr. Speaker:

We, the Conference Committee on House Bill 734 met and considered: House Bill 734 (third reading -- blue copy) and the amendments to House Bill 734 adopted by the Senate (pink sheet).

We recommend that House Bill 734 (reference copy -- salmon) be amended as follows:

1. Title, page 2, line 6.

Following: "~~33-18-401,~~"

Insert: "33-18-401,"

2. Page 18.

Following: line 4

Insert: "(e) insurance producer's license:

(i) application for original license, including issuance of license, if issued.....15.00
(ii) appointment of insurance producer, each insurer.10.00
(iii) temporary license.....15.00
(iv) amendment of license (excluding additions to license) or reissuance of master license.....15.00"

Renumber: subsequent subsections

3. Page 18.

Following: line 13

Insert: "appointment of insurance producer, each insurer..10.00"

4. Page 18, line 14.

Following: "~~(iv)~~"

Insert: "(iii)"

Renumber: subsequent subsection

5. Page 18, line 15.

Strike: "40.00"

Insert: "10.00"

6. Page 86.

Following: line 1

Insert: "Section 60. Section 33-18-401, MCA, is amended to read:

"33-18-401. False ~~applications, claims application, claim, and proofs proof~~ of loss -- criminal penalty. ~~Any solicitor, agent~~ (1) An insurance producer, examining physician, applicant, or other person who knowingly or willfully makes any a false or

or other person who knowingly or willfully makes any a false or fraudulent statement or representation in or with reference to any an application for insurance or, for the purpose of obtaining any money or benefit, knowingly or willfully presents or causes to be presented a false or fraudulent claim or any proof in support of such a claim for the payment of the loss upon a contract of insurance or prepares, makes, or subscribes a false or fraudulent account, certificate, affidavit or proof of loss, or other document or writing, with intent that the same may be presented or used in support of such a claim, shall be is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$250 or more than \$1,000 or by imprisonment in the county jail for not less than 3 months or more than 6 months or both such fine and imprisonment at the discretion of the court.

(2) An insurance producer, examining physician, applicant, or other person who, for the purpose of obtaining any money or benefit, knowingly or willfully presents or causes to be presented a false or fraudulent claim or any proof in support of such a claim for the payment of the loss upon a contract of insurance or prepares, makes, or subscribes a false or fraudulent account, certificate, affidavit or proof of loss, or other document or writing, with intent that the same may be presented or used in support of such a claim, is guilty of a crime under 45-6-301, and a county attorney may initiate criminal proceedings against him."

Renumber: subsequent sections

And that this Conference Committee Report be adopted.

For the House:

Rep. Dorothy Cody
Rep. Dorothy Cody, Chairman

Rep. Stella Jean Hansen
Rep. Stella Jean Hansen

Fred Thomas
Rep. Fred Thomas

For the Senate:

Sen. Gene Thayer
Sen. Gene Thayer, Chairman

Sen. Jerry Noble
Sen. Jerry Noble

Sen. Bob Williams
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Renumber: subsequent subsection

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Strike: "40.00"
Insert: "10.00"

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Following: line 1
Insert: "Section 60. Section 33-18-401, MCA, is amended to read:
"33-18-401. ~~False applications, claims application, claim, and proofs proof of loss -- criminal penalty. Any solicitor, agent~~ (1) An insurance producer, examining physician, applicant,

or other person who knowingly or willfully makes any a false or fraudulent statement or representation in or with reference to any an application for insurance or, for the purpose of obtaining any money or benefit, knowingly or willfully presents or causes to be presented a false or fraudulent claim or any proof in support of such a claim for the payment of the loss upon a contract of insurance or prepares, makes, or subscribes a false or fraudulent account, certificate, affidavit or proof of loss, or other document or writing, with intent that the same may be presented or used in support of such a claim, shall be is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$250 or more than \$1,000 or by imprisonment in the county jail for not less than 3 months or more than 6 months or both such fine and imprisonment at the discretion of the court.

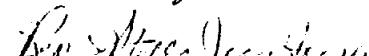
(2) An insurance producer, examining physician, applicant, or other person who, for the purpose of obtaining any money or benefit, knowingly or willfully presents or causes to be presented a false or fraudulent claim or any proof in support of such a claim for the payment of the loss upon a contract of insurance or prepares, makes, or subscribes a false or fraudulent account, certificate, affidavit or proof of loss, or other document or writing, with intent that the same may be presented or used in support of such a claim, is guilty of a crime under 45-6-301, and a county attorney may initiate criminal proceedings against him."

Renumber: subsequent sections

And that this Conference Committee Report be adopted.

For the House:

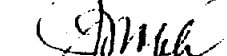

Rep. Dorothy Cody, Chairman

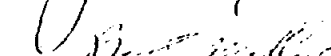

Rep. Stella Jean Hansen


Rep. Fred Thomas

For the Senate:


Sen. Gene Thayer, Chairman


Sen. Jerry Noble


Sen. Bob Williams

1 HOUSE BILL NO. 734
 2 INTRODUCED BY THOMAS, J. BROWN, WILLIAMS, THAYER
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 5 INSURANCE AGENT LICENSING LAWS; DIRECTING THE CODE
 6 COMMISSIONER TO CHANGE ANY REFERENCE TO THE TERM "ENROLLMENT
 7 REPRESENTATIVE", "INSURANCE AGENT", OR "AGENT" TO "INSURANCE
 8 PRODUCER", TO CHANGE ANY REFERENCE TO THE TERM "SURPLUS
 9 LINES AGENT" OR "SURPLUS LINES INSURANCE AGENT" TO "SURPLUS
 10 LINES INSURANCE PRODUCER", AND TO CHANGE ANY REFERENCE TO
 11 THE TERM "TITLE AGENT" OR "TITLE INSURANCE AGENT" TO "TITLE
 12 INSURANCE PRODUCER" WHEREVER IT APPEARS IN THE MONTANA CODE
 13 ANNOTATED; PROHIBITING THE GRANT OR EXTENSION OF A
 14 CONTROLLED BUSINESS LICENSE; PROVIDING THAT MISAPPROPRIATION
 15 OF INSURANCE PREMIUMS OR RETURN PREMIUMS CONSTITUTES THEFT;
 16 ALLOWING THE COMMISSIONER TO REVOKE AN INSURANCE PRODUCER
 17 LICENSE FOR UP TO 5 YEARS; ALLOWING FOR THE AUTOMATIC
 18 SUSPENSION, REVOCATION, OR TERMINATION OF A NONRESIDENT
 19 INSURANCE PRODUCER LICENSE UPON SUSPENSION, REVOCATION, OR
 20 TERMINATION IN HIS STATE OF RESIDENCE; PROVIDING FOR
 21 APPOINTMENT OF INSURANCE PRODUCERS; PROVIDING FOR
 22 NOTIFICATION UPON TERMINATION OF AN APPOINTED INSURANCE
 23 PRODUCER; AMENDING SECTIONS 33-1-402, 33-1-711, 33-2-303,
 24 33-2-308, 33-2-309, 33-2-316, 33-2-317, 33-2-708, 33-7-101,
 25 33-8-213, ~~33-14-381~~, 33-17-101 THROUGH 33-17-103, 33-17-201,

1 33-17-211 THROUGH 33-17-214, 33-17-216, 33-17-217,
 2 33-17-221, 33-17-301, 33-17-401, 33-17-404 THROUGH
 3 33-17-407, 33-17-411, 33-17-502 THROUGH 33-17-507, 33-17-511
 4 THROUGH 33-17-513, 33-17-602 THROUGH 33-17-604, 33-17-611,
 5 33-17-613, 33-17-1001 THROUGH 33-17-1004, 33-17-1101 THROUGH
 6 33-17-1103, 33-17-1111 THROUGH 33-17-1114, ~~33-18-401~~,
 7 33-18-401, 33-22-1703, 33-25-202, 33-25-214, 33-25-301,
 8 33-25-302, 33-25-401, AND 33-25-403, MCA; REPEALING SECTIONS
 9 33-17-202, 33-17-204, 33-17-205, 33-17-218, ~~33-17-231~~,
 10 ~~33-17-232~~, 33-17-402, 33-17-403, AND 33-17-601, AND
 11 ~~33-17-1104~~, AND 33-17-1104, MCA; AND PROVIDING A DELAYED
 12 EFFECTIVE DATE."
 13

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

15 NEW SECTION. Section 1. Name change -- short form
 16 amendment. Wherever it appears in 33-1-317, 33-1-403,
 17 33-1-711, 33-2-104, 33-2-120, 33-2-121, 33-2-302, 33-2-310,
 18 33-2-313, 33-2-315, 33-2-321, 33-2-701, 33-2-707, 33-2-709,
 19 33-2-723, 33-2-829, 33-2-1102, 33-2-1118, 33-2-1120,
 20 33-2-1306, 33-2-1310, 33-2-1322, 33-2-1331, 33-2-1333,
 21 33-2-1345 through 33-2-1347, 33-2-1353, 33-2-1362,
 22 33-2-1381, 33-3-206, 33-3-217, 33-4-103, 33-4-312, 33-4-511,
 23 33-5-104, 33-6-402, 33-6-403, 33-7-111, 33-7-519, 33-7-525,
 24 33-7-526, 33-8-118, 33-8-122, 33-8-204, 33-8-205, 33-8-211,
 25 33-8-221, 33-8-225 through 33-8-228, 33-10-106, 33-10-110,

1 33-10-113, 33-10-207, 33-10-216, 33-11-104, 33-11-108,
 2 33-11-109, 33-11-123, 33-14-102, 33-14-201, 33-14-301,
 3 33-14-304, 33-14-307, 33-15-302, 33-15-1101, 33-15-1105,
 4 33-16-106, 33-16-1011, ~~33-17-204~~---through 33-17-206,
 5 ~~33-17-218~~, 33-17-231, 33-17-232, 33-17-401, ~~33-17-403~~,
 6 ~~33-17-601~~, 33-18-205, 33-18-210 through 33-18-213,
 7 33-18-305, 33-18-501, 33-19-102 through 33-19-104, 33-19-201
 8 through 33-19-205, 33-19-301 through 33-19-306, 33-19-401,
 9 33-19-402, 33-19-404, 33-19-407 through 33-19-409,
 10 33-20-142, 33-20-212, 33-20-502, 33-20-1102, 33-22-122,
 11 33-22-204, 33-22-207, 33-22-208, 33-22-804, 33-22-805,
 12 33-22-813, 33-22-1515, 33-23-214 through 33-23-216,
 13 33-25-105, 33-25-106, 33-25-201, 33-25-202, 33-25-213,
 14 33-25-215, 33-25-216, 33-30-103, 33-30-105, 33-30-202,
 15 33-30-204, 33-30-305, 33-31-111 through 33-30-313, 33-31-102,
 16 33-31-211, 33-31-311, 33-31-401 or in law enacted by the
 17 51st legislature, the code commissioner is directed to
 18 change the term "enrollment representative", "enrollment
 19 representative's", "enrollment representatives", "enrollment
 20 representatives'", "insurance agent", "insurance agent's",
 21 "insurance agents", "insurance agents'", "agent", "agent's",
 22 "agents", or "agents'" to "insurance producer", "insurance
 23 producer's", "insurance producers", or "insurance
 24 producers'".

25 NEW SECTION. Section 2. Name change -- short form

1 amendment. Wherever it appears in 33-1-711, 33-2-301 through
 2 33-2-303, 33-2-305 through 33-2-313, 33-2-321, 33-2-326,
 3 33-2-502, 33-2-706, 33-2-709, 33-8-225, 33-17-1104,
 4 33-18-212 or in law enacted by the 51st legislature, the
 5 code commissioner is directed to change the term "surplus
 6 lines agent", "surplus lines agent's", "surplus lines
 7 agents", "surplus lines agents'", "surplus lines insurance
 8 agent", "surplus lines insurance agent's", "surplus lines
 9 insurance agents", or "surplus lines insurance agents'" to
 10 "surplus lines insurance producer", "surplus lines insurance
 11 producer's", "surplus lines insurance producers", or
 12 "surplus lines insurance producers'".

13 NEW SECTION. Section 3. Name change -- short form
 14 amendment. Wherever it appears in 33-2-851, 33-25-105,
 15 33-25-106, 33-25-201, 33-25-213, 33-25-216, 33-30-103 or in
 16 law enacted by the 51st legislature, the code commissioner
 17 is directed to change the term "title agent", "title
 18 agent's", "title agents", "title agents'", "title insurance
 19 agent", "title insurance agent's", "title insurance agents",
 20 or "title insurance agents'" to "title insurance producer",
 21 "title insurance producer's", "title insurance producers",
 22 or "title insurance producers'".

23 NEW SECTION. Section 4. Controlled business. (1) The
 24 commissioner may not grant or extend a license to a person
 25 if the license is being or will be used to write controlled

1 business.

2 (2) The commissioner shall consider a license to have
3 been, or intended to be, used for the purpose of writing
4 controlled business if, during any 12-month period, the
5 aggregate amount of premiums on controlled business would
6 exceed the aggregate amount of premiums on all other
7 insurance business of the applicant or licensee.

8 NEW SECTION. SECTION 5. APPOINTMENTS OF INSURANCE
9 PRODUCERS BY INSURERS. (1) AN INSURANCE PRODUCER MAY NOT
10 CLAIM TO BE A REPRESENTATIVE OF OR AN AUTHORIZED OR
11 APPOINTED INSURANCE PRODUCER OF OR USE ANOTHER TERM IMPLYING
12 A CONTRACTUAL RELATIONSHIP WITH A PARTICULAR INSURER AND MAY
13 NOT ACCEPT APPLICATIONS FOR THE INSURER UNLESS THE INSURANCE
14 PRODUCER BECOMES AN APPOINTED INSURANCE PRODUCER OF THAT
15 INSURER PURSUANT TO THIS SECTION. THE FOLLOWING ARE THE
16 APPOINTING INSURER'S REQUIREMENTS FOR MAKING APPOINTMENT OF
17 A LICENSED INSURANCE PRODUCER:

18 (A) THE INSURER SHALL, NO LATER THAN 15 DAYS FROM THE
19 DATE THE AGENCY CONTRACT IS EXECUTED OR THE FIRST INSURANCE
20 APPLICATION IS SUBMITTED BY A LICENSED INSURANCE PRODUCER,
21 WHICHEVER IS EARLIER, FILE WITH THE INSURANCE DEPARTMENT A
22 WRITTEN NOTICE OF APPOINTMENT ON A FORM PRESCRIBED BY THE
23 INSURANCE DEPARTMENT.

24 (B) IF THERE IS NO EXECUTED AGENCY CONTRACT, THE
25 INSURER SHALL MAIL TO THE LICENSED INSURANCE PRODUCER, NO

1 LATER THAN 15 DAYS FROM THE DATE THE FIRST INSURANCE
2 APPLICATION IS SUBMITTED BY HIM, A COPY OF THE NOTICE OF
3 APPOINTMENT FORM FILED WITH THE INSURANCE DEPARTMENT. IF THE
4 LICENSED INSURANCE PRODUCER DOES NOT RECEIVE THE
5 ACKNOWLEDGEMENT OF APPOINTMENT FROM THE INSURER WITHIN 30
6 DAYS FROM THE DATE THE FIRST INSURANCE APPLICATION IS
7 SUBMITTED TO THE INSURER, THE INSURANCE PRODUCER SHALL
8 IMMEDIATELY DISCONTINUE ACTING AS AN INSURANCE PRODUCER ON
9 BEHALF OF THAT INSURER UNTIL THE ACKNOWLEDGEMENT IS RECEIVED
10 OR THE AGENCY CONTRACT IS EXECUTED.

11 (2) UPON RECEIPT OF THE NOTICE OF APPOINTMENT, THE
12 INSURANCE DEPARTMENT SHALL VERIFY WITHIN 5 WORKING DAYS THAT
13 THE LICENSED INSURANCE PRODUCER IS ELIGIBLE FOR APPOINTMENT.
14 IF THE LICENSED INSURANCE PRODUCER IS DETERMINED TO BE
15 INELIGIBLE FOR APPOINTMENT, THE INSURANCE DEPARTMENT SHALL
16 NOTIFY THE INSURER WITHIN 5 DAYS OF THE DETERMINATION.

17 (3) AN APPOINTMENT IS EFFECTIVE ON THE DATE OF THE
18 EXECUTED CONTRACT AND IS PERPETUAL UNTIL CANCELED BY THE
19 INSURER.

20 NEW SECTION. SECTION 6. NOTIFICATION OF APPOINTMENT
21 TERMINATION. (1) UPON THE TERMINATION OF AN APPOINTED
22 INSURANCE PRODUCER BY AN INSURER, THE INSURER SHALL NOTIFY
23 THE INSURANCE DEPARTMENT WITHIN 30 DAYS IN THE MANNER
24 PRESCRIBED BY THE INSURANCE DEPARTMENT. IF THE REASON OF THE
25 TERMINATION IS FOR ANY OF THE CAUSES LISTED IN [SECTION 49

1 OR 62], THE INSURER SHALL NOTIFY THE INSURANCE DEPARTMENT OF
 2 THE REASON AND THE INSURER SHALL, UPON REQUEST OF THE
 3 INSURANCE DEPARTMENT, PROVIDE INFORMATION, DOCUMENTS,
 4 RECORDS, OR OTHER DATA PERTAINING TO THE TERMINATION THAT
 5 MAY BE USED BY THE INSURANCE DEPARTMENT IN ANY ACTION TAKEN
 6 PURSUANT TO TITLE 33, CHAPTER 1, PART 7.

7 (2) ANY INFORMATION, DOCUMENTS, RECORDS, OR OTHER DATA
 8 PROVIDED PURSUANT TO THIS SECTION IS PRIVILEGED AND THERE IS
 9 NO LIABILITY ON THE PART OF NOR MAY A CAUSE OF ACTION OF ANY
 10 NATURE ARISE AGAINST THE INSURANCE DEPARTMENT, THE INSURANCE
 11 COMPANY, OR AN AUTHORIZED REPRESENTATIVE OF EITHER SO LONG
 12 AS THE PRIVILEGED INFORMATION IS FURNISHED IN GOOD FAITH.

13 **Section 7.** Section 33-1-402, MCA, is amended to read:

14 **"33-1-402. Examination of agents insurance producers,**
 15 **managers, and promoters.** For the purpose of ascertaining
 16 compliance with this code, the commissioner may, as often as
 17 he ~~deems~~ considers advisable, examine the accounts, records,
 18 documents, and transactions pertaining to or affecting its
 19 insurance affairs or proposed insurance affairs of:

20 (1) any an insurance agent producer, solicitor,
 21 surplus lines agent insurance producer, general agent
 22 insurance producer, or adjuster;

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

1 (3) any a person holding the shares of voting stock or
 2 policyholder proxies of a domestic insurer, for the purpose
 3 of controlling the management thereof of the domestic
 4 insurer, as voting trustee or otherwise;

5 (4) any a person engaged in or proposing to be engaged
 6 in or assisting in the promotion or formation of a domestic
 7 insurer or insurance holding corporation or corporation to
 8 finance a domestic insurer or the production of its
 9 business."

10 **Section 8.** Section 33-1-711, MCA, is amended to read:

11 **"33-1-711. Appeals from the commissioner.** (1) An
 12 appeal from the commissioner ~~shall~~ may be taken only from an
 13 order on hearing or with respect to a matter as to which the
 14 commissioner has refused a hearing. Any person who was a
 15 party to such the hearing or whose pecuniary interests are
 16 directly and immediately affected by any such order or
 17 refusal and who is aggrieved ~~thereby~~ by an order or refusal
 18 may, within 30 days after the order has been mailed or
 19 delivered to the persons entitled to receive the same, the
 20 commissioner's order denying rehearing or reargument has
 21 been so mailed or delivered, or the commissioner's refusal
 22 to grant a hearing, appeal from such the order on hearing or
 23 such the refusal of a hearing. Any request for a stay of the
 24 commissioner's order must be made within 60 days, to run
 25 concurrently with the 30 days for appeal. The appeal ~~shall~~

1 must be taken to the district court of Lewis and Clark
 2 County by filing written notice of appeal in such the court
 3 and by filing a copy of such the notice with the
 4 commissioner, except that in appeals from the suspension or
 5 revocation of the certificate of authority of a domestic
 6 insurer or of the license of an ~~agent~~7-solicitor, insurance
 7 producer or surplus lines ~~agent~~ insurance producer, the
 8 person taking the appeal may at his option, in lieu of the
 9 district court of Lewis and Clark County, take the appeal to
 10 the district court of the county of Montana in which the
 11 insurer has its principal place of business or the licensee
 12 resides.

13 (2) Upon filing of the notice of appeal therein, the
 14 court ~~shall--have~~ has full jurisdiction and shall determine
 15 whether such the filing ~~shall--operate~~ operates as a stay of
 16 the order or action appealed from.

17 (3) Within 20 days after filing of the copy of the
 18 notice of appeal in his office, the commissioner shall make
 19 and return to the court in which the appeal is pending a
 20 copy of his order appealed from and a full and complete
 21 transcript, duly certified by the commissioner, of his
 22 record of the hearing upon which the order was issued,
 23 together with all exhibits and documentary evidence
 24 introduced ~~thereat~~ at the hearing. If the appeal is from an
 25 action of the commissioner with respect to which a hearing

1 was refused, the commissioner shall, within such the 20-day
 2 period, make and return to the court a full and complete
 3 transcript, duly certified by him, of all documents on file
 4 in his office directly relating to the matter as to which
 5 such the appeal is taken.

6 (4) Upon receipt of such the transcripts and evidence,
 7 the court shall hear the matter de novo as soon as
 8 reasonably possible thereafter. Upon the hearing of the
 9 appeal, the court shall consider the evidence contained in
 10 the transcript, exhibits, and documents ~~therein~~ filed by the
 11 commissioner, together with such additional proper evidence
 12 as may be offered by any party to the appeal.

13 (5) After hearing the appeal, the court may affirm,
 14 modify, or reverse the order or action of the commissioner,
 15 in whole or in part, or remand the action to the
 16 commissioner for further proceedings in accordance with the
 17 court's direction.

18 (6) Costs ~~shall~~ must be awarded as in civil actions.

19 (7) Appeal may be taken to the supreme court from the
 20 judgment of the district court as in other civil cases to
 21 which the state is a party. A stay of the effectiveness of
 22 any such judgment may be made only by order of the supreme
 23 court upon the giving of such security as that court ~~deems~~
 24 considers proper.

25 (8) This section ~~shall~~ does not apply to appeals as to

1 matters covered by chapter 16."

2 **Section 9.** Section 33-2-303, MCA, is amended to read:

3 "33-2-303. Filing and endorsement of contract. Every
4 Each insurance contract, cover, note, or certificate of
5 insurance procured and delivered as surplus lines insurance
6 under this part ~~shall~~ must be filed with the commissioner
7 and endorsed as "issued in an unauthorized insurer under The
8 Surplus Lines Insurance Law, under agent surplus lines
9 insurance producer license No." and "NOT covered by
10 the property and casualty guaranty fund of this state if the
11 unauthorized insurer becomes insolvent". The surplus lines
12 agent producer shall properly fill in and sign the
13 endorsement."

14 **Section 10.** Section 33-2-308, MCA, is amended to read:

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

1 and address of the insurer. If the direct risk is assumed by
2 more than one insurer, the cover note or certificate must
3 state the name and address and proportion of the entire
4 direct risk assumed by each such insurer.

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

16 (3) If a policy issued by the insurer is not available
17 upon placement of the insurance and the agent insurance
18 producer has issued and delivered a cover note or
19 certificate as hereinabove provided in subsection (2), upon
20 request therefor by the insured, the agent insurance
21 producer shall as soon as reasonably possible procure from
22 the insurer its policy evidencing such the insurance and
23 deliver such the policy to the insured in replacement of the
24 cover note or certificate theretofore previously issued.

25 (4) Any A surplus lines agent insurance producer who

1 knowingly or negligently issues or delivers a false cover
 2 note or certificate of insurance or fails promptly to notify
 3 the insured of any material change with respect to such the
 4 insurance by delivery to the insured of a substitute cover
 5 note or certificate as provided in subsection (2) ~~shall-be~~
 6 is guilty of a violation of this code and upon conviction
 7 ~~shall-be is~~ subject to the penalties provided by 33-1-104 or
 8 to any greater applicable penalty otherwise provided by law.

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

17 **Section 11.** Section 33-2-309, MCA, is amended to read:

18 "33-2-309. Liability of insurer as to losses and
 19 unearned premiums. (1) As to a surplus lines risk which that
 20 has been assumed by an unauthorized insurer pursuant to The
 21 Surplus Lines Insurance Law and if the premium thereon on
 22 the surplus lines risk has been received by the surplus
 23 lines agent insurance producer who placed such the
 24 insurance, in all questions thereafter arising under the
 25 coverage as between the insurer and the insured, the insurer

1 ~~shall-be-deemed is considered~~ to have received the premium
 2 due to it for such coverage. The insurer ~~shall-be is~~ liable
 3 to the insured as to losses covered by such the insurance
 4 and for unearned premiums which that may become payable to
 5 the insured upon cancellation of such the insurance, whether
 6 or not in fact the agent insurance producer is indebted to
 7 the insurer with respect to such the insurance or for any
 8 other cause. This provision ~~shall~~ does not affect rights as
 9 between the insurer and the surplus lines agent insurance
 10 producer.

11 (2) A payment of premium to a surplus lines agent
 12 insurance producer acting for a person other than himself in
 13 negotiating, continuing, or reviewing a policy of insurance
 14 under this part is considered to be payment to the insurer,
 15 notwithstanding any conditions or stipulations that may be
 16 inserted in the policy or contract.

17 (3) Each unauthorized insurer assuming a surplus lines
 18 direct risk under The Surplus Lines Insurance Law is
 19 considered ~~thereby~~ to have subjected itself to the terms of
 20 this section."

21 **Section 12.** Section 33-2-316, MCA, is amended to read:

22 "33-2-316. Rules. (1) The commissioner shall make or
 23 may approve and adopt reasonable rules, consistent with this
 24 part, for any or all of the following purposes:

25 (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 organization of surplus lines insurance agents producers or others designed to assist such-agents surplus lines insurance producers to comply with such the law.

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

Section 13. Section 33-2-317, MCA, is amended to read:

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

(1) wet marine and transportation insurances;

(2) insurance on subjects located, ~~resident~~ residing, 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 engaged in interstate commerce; and

(4) insurance of aircraft owned or operated by

manufacturers of aircraft or aircraft operated in scheduled interstate flight or cargo of such the aircraft or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance, or use of such the aircraft."

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

"33-2-708. **Fees and licenses.** (1) The Except as provided in 33-17-212(2), 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 (1)(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 the application and for issuance of an original certificate of authority, if issued:

(A) domestic insurers ~~\$-300-00~~ ~~\$-500-00~~ \$ 600.00

(B) foreign insurers ~~300-00~~ ~~500-00~~ 600.00

(ii) annual continuation of certificate of authority ..

..... ~~300-00~~

500-00 600.00

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

1 ~~-15.00~~
 2 ~~(v) (iii) temporary license 10.00 15.00~~
 3 ~~(vi) (iv) amendment of license (excluding additions~~
 4 ~~thereto to license) or reissuance of master license 10.00 15.00~~
 5 ~~..... 10.00 15.00~~
 6 (E) INSURANCE PRODUCER'S LICENSE:
 7 (I) APPLICATION FOR ORIGINAL LICENSE, INCLUDING
 8 ISSUANCE OF LICENSE, IF ISSUED 15.00
 9 (II) APPOINTMENT OF INSURANCE PRODUCER, EACH INSURER ..
 10 10.00
 11 (III) TEMPORARY LICENSE 15.00
 12 (IV) AMENDMENT OF LICENSE (EXCLUDING ADDITIONS TO
 13 LICENSE) OR REISSUANCE OF MASTER LICENSE 15.00
 14 ~~(f) (B) (F) nonresident agent's insurance producer's~~
 15 ~~license:~~
 16 (i) application for original license, including
 17 issuance of license, if issued (life and/or disability)
 18 100.00
 19 (ii) application for original license, including
 20 issuance of license, if issued (other than life and/or
 21 disability) 100.00
 22 (iii) appointment of agent, each insurer 10.00
 23 APPOINTMENT OF INSURANCE PRODUCER, EACH INSURER 10.00
 24 (IV) (III) annual renewal, each insurer of license
 25 10.00

1 ~~100-00~~ 50-00 ~~40-00~~ 10.00
2 (v)(i)(IV) amendment of license (excluding additions
3 thereto to license) or reissuance of master license 10.00
4 (g)(F)(G) solicitor's license:
5 (i) application for original license, including
6 issuance of license, if issued ----- 15.00
7 (ii) annual renewal of license ----- 15.00
8 (iii) appointment of solicitor ----- 10.00
9 (h) examination for license as agent or solicitor
10 insurance producer, each examination 15.00
11 (i)(h)(G)(H) surplus lines agent insurance producer
12 license:
13 (i) application for original license and for issuance
14 of license, if issued 50.00
15 (ii) annual renewal of license 50.00
16 (j)(i)(H)(I) adjuster's license:
17 (i) application for original license and for issuance
18 of license, if issued 15.00
19 (ii) annual renewal of license 15.00
20 (k)(j)(I)(J) insurance vending machine license, each
21 machine, each year 10.00
22 (l)(k)(J)(K) commissioner's certificate under seal
23 (except when on certificates of authority or licenses)
24 10.00
25 (m)(l)(K)(L) copies of documents on file in the

1 commissioner's office, per page50
2 (n)(m)(B)(M) policy forms:
3 (i) filing each policy form 25.00
4 (ii) filing each application, rider, endorsement,
5 amendment, insert page, schedule of rates, and clarification
6 of risks 10.00
7 (iii) maximum charge if policy and all forms submitted
8 at one time or resubmitted for approval within 180 days
9 100.00
10 (2) The commissioner shall promptly deposit with the
11 state treasurer to the credit of the general fund of this
12 state all fines and penalties, those amounts received
13 pursuant to 33-2-311, 33-2-705, and 33-2-706, and any fees
14 and examination and miscellaneous charges received pursuant
15 to Title 33, chapter 11, part 1, that are collected by him
16 pursuant to Title 33 and the rules adopted thereunder under
17 Title 33.
18 (3) All fees are considered fully earned when
19 received. In the event of overpayment, only those amounts in
20 excess of \$10 will be refunded.
21 (4) All fees and examination and miscellaneous
22 charges, except fines or penalties or those amounts received
23 pursuant to 33-2-311, 33-2-705, or 33-2-706, collected by
24 the commissioner pursuant to Title 33 and the rules adopted
25 thereunder under Title 33 must be deposited in the insurance

1 regulatory trust account pursuant to 17-2-121 through
2 17-2-123."

3 **Section 15.** Section 33-7-101, MCA, is amended to read:

4 "33-7-101. Scope of chapter -- provisions applicable.

5 (1) Except as herein provided in this section, societies
6 ~~shall--be~~ are governed by this chapter and ~~shall--be~~ are
7 exempt from all other provisions of the insurance laws of
8 this state, not only in governmental relations with the
9 state but for every other purpose. No law hereafter enacted
10 ~~shall--apply~~ applies to them societies unless they ~~be~~ are
11 expressly designated therein in the law.

12 (2) In addition to the provisions contained in this
13 chapter, other chapters and provisions of this title ~~shall~~
14 apply to fraternal benefit societies to the extent
15 applicable and not in conflict with the express provisions
16 of this chapter and the reasonable implications thereof of
17 this chapter, as follows: parts 17-2-37 through 47 and 7 of
18 chapter 1; 33-2-104; 33-2-107; 33-2-112; chapter 2, part 13;
19 33-3-308; 33-15-502; chapter 17; chapter 18; chapter 20; and
20 chapter 22."

21 **Section 16.** Section 33-8-213, MCA, is amended to read:

22 "33-8-213. (Temporary) Exemption from agent insurance
23 producer appointment requirements. (1) For purposes of the
24 plan:

25 (a) an insurer that has entered into an agreement as

1 provided in 33-8-212 may accept applications for insurance
2 coverage from any agent insurance producer even though that
3 agent insurance producer has not been appointed by the
4 insurer; and

5 (b) an agent insurance producer may place business, as
6 to any type of insurance for which he is licensed at the
7 time, with any insurer participating in the plan even though
8 the agent insurance producer has not been appointed as an
9 agent insurance producer by that insurer.

10 ~~(2)--An--insurer--that--issues--insurance--coverage--upon--an~~
11 ~~application--submitted--by--an--agent--who--has--not--been--appointed~~
12 ~~by--the--insurer--shall--pay--the--agent--a--commission--in~~
13 ~~conformity--with--the--insurer's--filed--rates,--rating--plans,--or~~
14 ~~forms--for--the--kind--of--insurance--effected.~~

15 ~~(2)--AN--INSURER--THAT--ISSUES--INSURANCE--COVERAGE--UPON--AN~~
16 ~~APPLICATION--SUBMITTED--BY--AN--INSURANCE--PRODUCER--WHO--HAS--NOT~~
17 ~~BEEN--APPOINTED--BY--THE--INSURER--SHALL--PAY--THE--INSURANCE~~
18 ~~PRODUCER--A--COMMISSION--IN--CONFORMITY--WITH--THE--INSURER'S--FILED~~
19 ~~RATES,--RATING--PLANS,--OR--FORMS--FOR--THE--KIND--OF--INSURANCE~~
20 ~~EFFECTED.~~

21 ~~(3){2}{3}~~(2) An agent insurance producer who
22 countersigns a policy, when a countersignature is required
23 by 33-17-1111, ~~shall~~ must be paid a countersignature
24 commission as provided in 33-17-1113. (Terminates July 1,
25 1989--sec. 22, Ch. 11, Sp. L. March 1986.)"

Section 17. Section 33-17-101, MCA, is amended to read:

"33-17-101. Scope of chapter. (1) The purpose of this chapter is to govern the qualifications and procedures for licensing insurance producers.

(2) This chapter shall apply as applies to all stock, mutual, and reciprocal insurers and as to all kinds of insurance and annuities."

Section 18. Section 33-17-102, MCA, is amended to read:

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

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

(a) licensed attorney who is qualified to practice law in this state; or

(b) salaried employee of an insurer or of a managing general agent; or

(c) a licensed agent insurance producer who adjusts or assists in adjustment of losses arising under policies

issued by the insurer.

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

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

(2) "Adjuster license" means a document issued by the commissioner that authorizes a person to act as an adjuster.

(3) (a) "Administrator" means a person who collects charges or premiums from residents of this state in connection with life, disability, property, or casualty insurance or annuities or who adjusts or settles claims on such coverage.

(b) The term does not mean:

(i) an employer on behalf of its employees or on behalf of the employees of one or more subsidiaries of affiliated corporations of the employer;

(ii) a union on behalf of its members;

(iii) (A) an insurer that is either authorized in this state or acting as an insurer with respect to a policy lawfully issued and delivered by it in and pursuant to the

1 laws of a state in which the insurer is authorized to
 2 transact insurance; or
 3 (B) a health service corporation as defined in
 4 33-30-101;
 5 (iv) a life, disability, property, or casualty
 6 insurance producer who is licensed in this state and whose
 7 activities are limited exclusively to the sale of insurance;
 8 (v) a creditor on behalf of its debtors with respect
 9 to insurance covering a debt between the creditor and its
 10 debtors;
 11 (vi) a trust established in conformity with 29 U.S.C.
 12 186 or the trustees, agents, and employees of the trust;
 13 (vii) a trust exempt from taxation under section 501(a)
 14 of the Internal Revenue Code or the trustees and employees
 15 of the trust;
 16 (viii) a custodian acting pursuant to a custodian
 17 account that meets the requirements of section 401(f) of the
 18 Internal Revenue Code or the agents and employees of the
 19 custodian;
 20 (ix) a bank, credit union, or other financial
 21 institution that is subject to supervision or examination by
 22 federal or state banking authorities;
 23 (x) a company that issues credit cards and that
 24 advances for and collects premiums or charges from its
 25 credit card holders who have authorized it to do so, if the

1 company does not adjust or settle claims; or
 2 (xi) a person who adjusts or settles claims in the
 3 normal course of his practice or employment as an attorney
 4 and who does not collect charges or premiums in connection
 5 with life or disability insurance or annuities.
 6 (4) "Administrator license" means a document issued by
 7 the commissioner that authorizes a person to act as an
 8 administrator.
 9 {4}(5) A-"consultant"--is "Consultant" means a person
 10 who for a fee examines, appraises, reviews, or evaluates an
 11 insurance policy, annuity, or pension contract, plan, or
 12 program or who makes recommendations or gives advice on an
 13 insurance policy, annuity, or pension contract, plan, or
 14 program.
 15 {5}--A--"solicitor"--is--an--individual--appointed--and
 16 authorized--by--an--agent--to---solicit---applications---for
 17 insurance,---other---than---life---insurance--or--disability
 18 insurance,--as-a-representative-of-such-agent,--and-to-collect
 19 premiums--thereon--when--expressly--so--authorized--by--the--agent.
 20 {6}--A--"managing--general--agent"--is--an--individual,
 21 partnership,--or--corporation--appointed--as--an--independent
 22 contractor--by--one--or--more--insurers--for--the--principal--purpose
 23 of--exercising--general--supervision--over--the--business--of--the
 24 insurer--in--this--state,--including--the--authority--to--appoint
 25 agents--for--such--insurers--and--to--terminate--such--appointments.

(6) "Consultant license" means a document issued by the commissioner that authorizes a person to act as an insurance consultant.

(7) "Controlled business" means insurance procured or to be procured by or through a person upon the life, person, property, or risks of himself, his spouse, his employer, or his business.

(8) "Individual" means a private or natural person, as distinguished from a partnership, corporation, or association.

(9) "Insurance producer", except as provided in 33-17-103:

(a) means:

(i) a person who solicits, negotiates, effects, procures, delivers, renews, continues, or binds:

(A) policies of insurance for risks residing, located, or to be performed in this state; or

(B) membership contracts as defined in 33-30-101;

(ii) a managing general agent. For purposes of this definition, a "managing general agent" is a person who, on behalf of an insurer, exercises general supervision over the business of the insurer in this state, including the authority to contract with an insurance producer for the insurer and terminate those contracts.

(b) does not mean a customer service representative.

For purposes of this definition, a "customer service representative" means a salaried employee or OF an insurance producer who assists and is responsible to the insurance producer but--who--is--not--authorized--to--effect--policies--of--insurance.

(10) "License" means a document issued by the commissioner that authorizes a person to act as an insurance producer for the kinds of insurance specified in the document. The license itself does not create actual, apparent, or inherent authority in the holder to represent or commit an insurer to a binding agreement.

(11) "Person" means an individual, partnership, corporation, association, or other legal entity.

(12) "Public adjuster" means an adjuster employed by and representing the interests of the insured."

Section 19. Section 33-17-103, MCA, is amended to read:

"33-17-103. Exceptions and exemptions from definition of agent--managing-general-agent--and--solicitor insurance producer. The definitions definition of agent--managing general-agent--and--solicitor insurance producer contained in 33-17-102 shall does not be-considered-to include:

(i)--individuals-employed-and-used-by--agents--for--the performance--of--clerical--stenographic--and--similar-office duties--incidental-taking-of-an--application--for--insurance

1 from-time-to-time-in-the-office-of-the-employing-agent-shall
 2 not--constitute-such-an-employee-as-an-agent-or-solicitor-if
 3 the--employee's--compensation--is--not--contingent--upon--or
 4 relating--to--the-volume-of-such-applications;-insurance;-or
 5 premiums;

6 (2)--a--supervising---salaried---officer;---supervising
 7 salaried--employee;--or-other-person-or-entity-controlled-by
 8 an-insurer-and-compensated-strictly-on-a-salary-basis-by-the
 9 insurer;-who-solicits-only-with-or-in-conjunction-with--duty
 10 licensed-agents-of-the-insurer;

11 (3)--the--attorney-in-fact--of--a-reciprocal-insurer-or
 12 the-salaried-traveling-representative--of--a--reciprocal--or
 13 mutual-insurer-not-compensated-on-a-commission-basis;

14 (4)--a--person-who-secures-and-forwards-information-for
 15 the-purpose-of-an-existing-group-insurance-contract--or--for
 16 enrolling--individuals--under--an--existing--group-insurance
 17 contract--or--issuing--certificates--thereunder---where---no
 18 commission-is-paid-for-such-services;

19 (1) a person who is a regularly salaried officer or
 20 employee of an insurer and who is engaged in the performance
 21 of usual and customary executive, administrative, or
 22 clerical duties and whose duties do not include the
 23 negotiation or solicitation of insurance;

24 (2) a person who is a salaried employee in the office
 25 of an insurance producer and who devotes his full time to

1 clerical and administrative services, including the
 2 incidental taking of insurance applications and receipt of
 3 premiums in the office of his employer, if the employee does
 4 not receive any commissions on the applications and his
 5 compensation is not varied by the volume of applications or
 6 premiums he takes or receives;

7 (3) a person who secures and furnishes information for
 8 the purpose of group life insurance, annuities, group or
 9 blanket accident and disability insurance or for the purpose
 10 of enrolling individuals under such plans, issuing
 11 certificates under such plans, or otherwise assisting in
 12 administering such plans, if no commission is paid for the
 13 service;

14 (4) an employer, his officers, or employees or the
 15 trustees of an employee trust plan, to the extent that the
 16 employer, officers, employees, or trustees are engaged in
 17 the administration of operation of a program of employee
 18 benefits for their own employees or the employees of their
 19 subsidiaries or affiliates if the program involves the use
 20 of insurance issued by an insurer and the employer,
 21 officers, employees, or trustees are not compensated in any
 22 manner, directly or indirectly, by the insurer issuing the
 23 contracts; or

24 (5) a person who is:

25 (a) an employee of an insurer or of an organization

1 employed by an insurer, which insurer or organization is
 2 engaged in the inspection, rating, or classification of
 3 insurance risks or in the supervision of the training of
 4 insurance producers; and

5 (b) not individually engaged in the solicitation or
 6 negotiation of insurance policies and contracts."

7 **Section 20.** Section 33-17-201, MCA, is amended to
 8 read:

9 "33-17-201. (Temporary) License required of agents,
 10 managing-general-agents, and solicitors insurance producer
 11 -- forms. (1) No Except as provided in 33-17-103 and
 12 subsection (5) of this section, a person shall may not in
 13 this state act as or hold himself out to be an agent or
 14 solicitor as to insurance producer for subjects of insurance
 15 located, resident residing, or to be performed in this state
 16 unless then licensed as such agent or solicitor an insurance
 17 producer under this chapter.

18 {2}--No person may act or hold himself out in this
 19 state to be a managing-general-agent unless licensed as an
 20 insurance agent under this chapter and appointed by the
 21 insurers represented;

22 {3}--No agent or solicitor shall solicit or take
 23 application for, procure, or place for others any kind of
 24 insurance as to which he is not then licensed;

25 {4}--No agent shall place any business, other than

1 coverage of his own risks, with any insurer as to which he
 2 does not then hold a validated appointment or license as
 3 agent under this chapter, except as provided in 33-17-1104
 4 as to life or disability insurance agents and in 33-8-213;
 5 {2}--NO INSURANCE PRODUCER SHALL PLACE ANY BUSINESS,
 6 OTHER THAN COVERAGE OF HIS OWN RISKS, WITH ANY INSURER AS TO
 7 WHICH HE DOES NOT THEN HOLD A VALIDATED APPOINTMENT OR
 8 LICENSE AS INSURANCE PRODUCER UNDER THIS CHAPTER, EXCEPT AS
 9 PROVIDED IN 33-17-1104 AS TO LIFE OR DISABILITY INSURANCE
 10 AGENTS AND IN 33-8-213;

11 {5}{2}{3}{2} The commissioner may prescribe by rule
 12 and make available the forms required in connection with
 13 application for, issuance, continuation, or termination of
 14 licenses and appointments a license.

15 {6}{3}{4}{3} Unless licensed as a life insurance agent
 16 producer as required by this section, no a person shall may
 17 not in this state solicit life insurance or annuities or
 18 procure applications therefor for life insurance or
 19 annuities or engage or hold himself out as engaging in the
 20 business of analyzing or abstracting life insurance policies
 21 or annuities or of counseling or advising or giving
 22 opinions, other than as a licensed attorney, relative to
 23 such insurance or annuities for fee, commission, or other
 24 compensation, other than as a salaried bona fide full-time
 25 employee so counseling and advising his employer relative to

1 the insurance interests of the employer and of the
2 subsidiaries or business affiliates of the employer or with
3 respect to the insurance interests of employees of such the
4 employer, subsidiaries, or affiliates under group insurance
5 or similar insurance plans arranged by the employer or
6 employers of such the employees.

7 ~~{7}{4}{5}{4}~~ A person licensed to sell coverage only
8 for the all-risk federal crop insurance program shall
9 receive a license restricted to that purpose.

10 ~~{5}{6}{5}~~ A representative of a fraternal benefit
11 society who solicits and negotiates insurance contracts is
12 an insurance producer and is subject to the same licensing
13 requirements as those for an insurance producer, except that
14 a license is not required of:

15 (a) an officer, employee, or secretary of a fraternal
16 benefit society or of a subordinate lodge or branch of a
17 fraternal benefit society who devotes substantially all of
18 his time to activities other than the solicitation or
19 negotiation of insurance contracts and who receives no
20 commission or other compensation directly dependent upon
21 that THE number or amount of insurance contracts solicited
22 or negotiated; or

23 (b) a representative of a fraternal benefit society
24 who devotes or intends to devote less than 50% of his time
25 to the solicitation and procurement of insurance contracts

1 for the fraternal benefit society. A person who in the
2 preceding calendar year has solicited and procured life
3 insurance with a face amount in excess of \$50,000 or, in the
4 case of any other kind or kinds of insurance that the
5 fraternal benefit society may write, on more than 25
6 individuals and who has received or will receive a
7 commission or other compensation for the insurance is
8 presumed to be devoting or intending to devote 50% of his
9 time to the solicitation or procurement of insurance
10 contracts for the fraternal benefit society. (Terminates
11 July 1, 1989--sec. 22, Ch. 11, Sp. L. March 1986.)

12 33-17-201. (Effective July 1, 1989) License required
13 of ~~agents, managing-general-agents, and solicitors~~ insurance
14 producer -- forms. (1) ~~No A person shall~~ may not in this
15 state act as or hold himself out to be an ~~agent or solicitor~~
16 ~~as--to~~ insurance producer for subjects of insurance located,
17 resident residing, or to be performed in this state unless
18 then licensed as ~~such--agent--or--solicitor~~ an insurance
19 producer under this chapter.

20 ~~{2}--No person may act or hold himself out in this~~
21 ~~state--to--be--a--managing-general-agent--unless--licensed--as--an~~
22 ~~insurance-agent-under-this--chapter--and--appointed--by--the~~
23 ~~insurers-represented-~~

24 ~~{3}--No agent or solicitor shall solicit or take~~
25 ~~application-for, procure, or place-for-others--any--kind--of~~

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

7 {2}--NO--INSURANCE--PRODUCER--SHALL-PLACE-ANY-BUSINESS,
 8 OTHER-THAN-coverage-of-his-own-risks, WITH-ANY-INSURER-AS-TO
 9 WHICH-HE-DOES-NOT--THEN--HOLD--A--VALIDATED--APPOINTMENT--OR
 10 LICENSE--AS-INSURANCE-PRODUCER-UNDER-THIS-CHAPTER, EXCEPT-AS
 11 PROVIDED-IN-33-17-1104-AS-TO-LIFE--OR--DISABILITY--INSURANCE
 12 PRODUCERS.

13 {5}{2}{3}{2} The commissioner may prescribe by rule
 14 and make available the forms required in connection with
 15 application for, issuance, continuation, or termination of
 16 licenses-and-appointments a license.

17 {6}{3}{4}{3} Unless licensed as a life insurance agent
 18 producer as required by this section, no a person shall may
 19 not in this state solicit life insurance or annuities or
 20 procure applications therefor for life insurance or
 21 annuities or engage or hold himself out as engaging in the
 22 business of analyzing or abstracting life insurance policies
 23 or annuities or of counseling or advising or giving
 24 opinions, other than as a licensed attorney, relative to
 25 such insurance or annuities for fee, commission, or other

1 compensation, other than as a salaried bona-fide full-time
 2 employee so counseling and advising his employer relative to
 3 the insurance interests of the employer and of the
 4 subsidiaries or business affiliates of the employer or with
 5 respect to the insurance interests of employees of such the
 6 employer, subsidiaries, or affiliates under group insurance
 7 or similar insurance plans arranged by the employer or
 8 employers of such the employees.

9 {7}{4}{5}{4} A person licensed to sell coverage only
 10 for the all-risk federal crop insurance program shall
 11 receive a license restricted to that purpose.

12 {5}{6}{5} A representative of a fraternal benefit
 13 society who solicits and negotiates insurance contracts is
 14 an insurance producer and is subject to the same licensing
 15 requirements as those for an insurance producer, except that
 16 a license is not required of:

17 (a) an officer, employee, or secretary of a fraternal
 18 benefit society or of a subordinate lodge or branch of a
 19 fraternal benefit society who devotes substantially all of
 20 his time to activities other than the solicitation or
 21 negotiation of insurance contracts and who receives no
 22 commission or other compensation directly dependent upon
 23 that THE number or amount of insurance contracts solicited
 24 or negotiated; or

25 (b) a representative of a fraternal benefit society

1 previously--licensed--to--transact--any-kind-of-insurance-in
 2 this-state-or-elsewhere; whether-any-such-license--was--ever
 3 refused;--suspended;--or--revoked;--whether-any-insurer;--general
 4 agent;--or--agent;--in--the-case-of-a-solicitor-application;
 5 claims-applicant-to-be--indebted--to--it--and;--if--so;--the
 6 details--thereof--and-the-defenses;--if-any;--of-the-applicant
 7 thereto;--and-whether-applicant-ever-had-an--agency--contract
 8 canceled-and-the-facts-thereof.

9 (8)--The--commissioner--shall--require--as--part-of-the
 10 application-for-license-the-certificate--of--an--officer--or
 11 representative-of-the-insurer-proposed-to-be-represented;--in
 12 the--case--of--applicants--for--license--as-agent;--or--of-the
 13 proposed-employing-agent;--in--the--case--of--applicants--for
 14 license--as--solicitor;--as-to-whether-the-applicant-is-known
 15 to-such-officer-or-representative;--whether--the--insurer--or
 16 agent--has-investigated-the-character-and-business-record-of
 17 the-applicant-and-the-uses-to-be-made--of--the--license;--if
 18 granted;--and-his-opinion;--based-on-such-investigation;--as-to
 19 applicant's-trustworthiness-and-competence.

20 (9)--All--such--applications-must-be-accompanied-by-the
 21 applicable-license--fee;--appointment--of--agent--fee--where
 22 applicable;--and--examination--fee--where--an-examination-is
 23 required-under-33-17-212;--all--in--the--respective--amounts
 24 stated--in--33-2-708: (1) An individual applying for a
 25 license shall apply on a form specified by the commissioner

1 and declare under penalty of refusal, suspension, or
 2 revocation of the license that statements made in the
 3 application are true, correct, and complete to the best of
 4 the individual's knowledge and belief. Before approving the
 5 application, the commissioner shall verify that the
 6 individual:

- 7 (a) is 18 years of age or older;
- 8 (b) has not committed an act that is a ground for
- 9 refusal, suspension, or revocation set forth in 33-17-1001;
- 10 (c) has paid the license fees stated in 33-2-708;
- 11 (d) has successfully passed the examinations for each
- 12 kind of insurance for which the individual has applied;
- 13 (e) is a resident of this state or of another state
- 14 that grants similar privileges to residents of this state;
- 15 (f) is competent, trustworthy, and of good reputation;
- 16 (g) has experience or training or otherwise is
- 17 qualified in the kind or kinds of insurance for which he
- 18 applies to be licensed and is reasonably familiar with the
- 19 provisions of this code which govern his operations as an
- 20 insurance producer; and
- 21 (h) if applying for a license as to life or disability
- 22 insurance:
- 23 (i) is not a funeral director, undertaker, or
- 24 mortician operating in this or any other state;
- 25 (ii) is not an officer, employee, or representative of

1 who devotes or intends to devote less than 50% of his time
 2 to the solicitation and procurement of insurance contracts
 3 for the fraternal benefit society. A person who in the
 4 preceding calendar year has solicited and procured life
 5 insurance with a face amount in excess of \$50,000 or, in the
 6 case of any other kind or kinds of insurance that the
 7 fraternal benefit society may write, on more than 25
 8 individuals and who has received or will receive a
 9 commission or other compensation for the insurance is
 10 presumed to be devoting or intending to devote, 50% of his
 11 time to the solicitation or procurement of insurance
 12 contracts for the fraternal benefit society."

13 **Section 21.** Section 33-17-211, MCA, is amended to
 14 read:

15 "33-17-211. Application General qualifications --
 16 application for license. (1)-Application--for--an--agent--or
 17 solicitor--license--must--be--made--to--the--commissioner--by--the
 18 applicant--and--be--signed--and--sworn--to--by--the--applicant--before
 19 a--notary--public--

20 (2)--The--commissioner--may--designate--the--forms--for
 21 application--for--license, which must require full answers to
 22 such questions as may reasonably be necessary--to--determine
 23 the--applicant's--identity,--residence,--personal--history,
 24 business--record,--experience--and--training--in--insurance,--and
 25 other--facts--as--required--by--the--commissioner--to--determine

1 whether the applicant meets the applicable qualifications
 2 for the license applied for.

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

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

12 (5)--If the applicant for an agent license is a
 13 partnership or corporation, the application shall--show,--in
 14 addition,--the names of all members, officers, and directors
 15 and shall designate each individual who is to--exercise--the
 16 powers--to--be--conferred by the license upon the partnership
 17 or corporation. Each such individual so designated shall
 18 furnish--information--as--to--himself,--as--part--of--the
 19 application, as though for an individual license.

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

24 (7)--If for license as either agent or solicitor, the
 25 application must also show whether applicant was ever

1 a funeral director, undertaker, or mortician operating in
 2 this or any other state; or

3 (iii) does not hold an interest in or benefit from a
 4 business of a funeral director, undertaker, or mortician
 5 operating in this or any other state.

6 (2) A person acting as an insurance producer shall
 7 obtain a license. A person shall apply for a license on a
 8 form specified by the commissioner. Before approving the
 9 application, the commissioner shall verify that:

10 (a) the person meets the requirements listed in
 11 subsection (1);

12 (b) the person has paid the licensing fees stated in
 13 33-2-708 for each individual licensed in conjunction with
 14 the person's license. A licensed person shall promptly
 15 notify the commissioner of each change relating to an
 16 individual listed in the license.

17 (c) the person has designated a licensed officer
 18 responsible for compliance by the person with the insurance
 19 laws and rules of this state;

20 (d) each member and employee of a partnership and each
 21 officer, director, stockholder, or employee of a corporation
 22 who is acting as an insurance producer in this state has
 23 obtained a license;

24 (e) (i) if the person is a partnership or corporation,
 25 the transaction of insurance business is within the purposes

1 stated in the partnership agreement or the articles of
 2 incorporation; and

3 (ii) if the person is a corporation, the secretary of
 4 state has issued a certificate of incorporation under
 5 35-1-203 or 35-2-203.

6 (3) The commissioner may license as a resident
 7 insurance producer an association of licensed Montana
 8 insurance producers, whether or not incorporated, formed and
 9 existing substantially for purposes other than insurance.
 10 The license must be used solely for the purpose of enabling
 11 the association to place, as a resident insurance producer,
 12 insurance of the properties, interests, and risks of the
 13 state of Montana and of other public agencies, bodies, and
 14 institutions and to receive the customary commission for the
 15 placement. The president and secretary of the association
 16 shall apply for the license in the name of the association,
 17 and the commissioner shall issue the license to the
 18 association in its name alone. The fee for the license is
 19 the same as that required by 33-2-708 for the license of an
 20 insurance producer. The commissioner may, after a hearing
 21 with notice to the association, revoke the license if he
 22 finds that continuation of the license is not in the public
 23 interest or that a ground listed in 33-17-1001 exists.

24 (4) An insurance producer using an assumed business
 25 name shall register the name with the commissioner before

using it."

Section 22. Section 33-17-212, MCA, is amended to read:

"33-17-212. Examination required -- exceptions -- fees. ~~{1}~~ After completion and filing of the application for license as required under 33-17-211, the commissioner shall subject each applicant for license as agent or solicitor, unless exempted therefrom under subsection (5) below, to an examination as to his competence to act as such agent or solicitor. The commissioner may either conduct the examination or arrange for the examination to be conducted by a testing service, which shall recover the cost of the examination from the applicant. (1) Except as provided in subsection (7), an individual applying for a license shall pass a written examination. The examination must test the knowledge of the individual concerning each kind of insurance listed in subsection (6) for which application is made, the duties and responsibilities of an insurance producer, and the insurance laws and rules of this state. The examination must be developed and conducted under rules adopted by the commissioner.

(2) The commissioner may conduct the examination or make arrangements, including contracting with an outside testing service, for administering the examination and collecting the fees required by 33-2-708. The commissioner

may arrange for the testing service to recover the cost of the examination from the applicant.

(3) Each individual applying for an examination shall remit the fees required by 33-2-708.

(4) An individual who fails to appear for the examination as scheduled or fails to pass the examination may reapply for an examination and shall remit all required fees and forms before being rescheduled for another examination.

~~{2}~~(5) If the applicant is a partnership or corporation, the examination shall be so taken by each individual who is to be named in the license as having authority to act for the applicant in its insurance transactions under the license shall take the examination.

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

(a) life insurance;

(b) disability insurance;

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

(d) casualty insurance;

1 ~~{e}~~--vehicle insurance;
 2 ~~{f}~~~~(e)~~ surety insurance;
 3 ~~{g}~~~~(f)~~ credit life and disability insurance;
 4 ~~{h}~~~~(g)~~ title insurance.
 5 ~~{4}~~--Examination of an applicant for a solicitor's
 6 license shall cover all the kinds of insurance, other than
 7 life, as to which the appointing agent is licensed.
 8 ~~{5}~~~~(7)~~ This section ~~shall~~ does not apply to, and no
 9 such an examination ~~shall be~~ is not required of:
 10 (a) any an individual lawfully licensed as an agent or
 11 solicitor insurance producer as to the kind or kinds of
 12 insurance to be transacted as of or immediately prior to
 13 January 1, 1961, and thereafter continuing to be so
 14 licensed;
 15 (b) any an applicant for license covering the same
 16 kind or kinds of insurance as to which the applicant was
 17 licensed in this state, other than under a temporary
 18 license, within the 12 months next immediately preceding the
 19 date of application unless such previous license was the
 20 commissioner has suspended, revoked, or continuation thereof
 21 refused by the commissioner to continue the previous
 22 license, except that the provisions of this subsection
 23 ~~{5}~~~~(b)~~ do (b) does not apply to a title agents insurance
 24 producer, as defined in 33-25-105;
 25 (c) any an applicant for license as nonresident agent;

1 ~~subject to reciprocal arrangements as provided for in this~~
 2 ~~code~~ insurance producer;
 3 ~~{d}~~--all applicants for license as agent for an insurer
 4 that confines its business in this state substantially to
 5 the insuring of the property, interests, and risks of
 6 farmers, if exempted from examination by the commissioner,
 7 in his discretion, upon written request of the insurer;
 8 ~~{e}~~~~(d)~~ any an applicant for an agent's a license to
 9 sell all-risk federal crop insurance if the applicant
 10 provides certification from an appropriate governmental
 11 agency to the commissioner that he is qualified to sell such
 12 the insurance;
 13 ~~{f}~~~~(e)~~ transportation ticket agents of common carriers
 14 applying for license to solicit and sell only:
 15 (i) accident insurance ticket policies; or
 16 (ii) insurance of personal effects while being carried
 17 as baggage on such a common carrier, as incidental to their
 18 duties as such transportation ticket agents;
 19 ~~{g}~~~~(f)~~ agents' associations an association applying
 20 for license under 33-17-205 33-17-211;
 21 ~~{h}~~~~(g)~~ a mechanical breakdown insurance agents
 22 producer.
 23 (h) an individual who, within 60 days of cancellation
 24 of a license issued by the state of the individual's
 25 residence, files with the commissioner a current letter of

clearance certifying that the individual has passed an examination and held an insurance license in good standing in the individual's state of licensure, except that the individual shall take an examination pertaining to this state's law and each kind of insurance for which the individual has applied for a license and which is not covered under the license held in the other state."

Section 23. Section 33-17-213, MCA, is amended to read:

"33-17-213. Conduct of examinations. (1) The commissioner shall make any examination required under 33-17-212 available to applicants with reasonable frequency and at places in this state reasonably accessible to the applicants.

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

~~(3)~~(2) The commissioner shall assure that the examinations are conducted in a fair and impartial manner and without unfair discrimination as between individuals examined.

~~(4)~~(3) The commissioner may require a reasonable waiting period before reexamination of an applicant who has failed to pass a previous examination covering the same kind

or kinds of insurance.

~~(5)~~(4) The examination of a title agent insurance producer, as defined in 33-25-105, must include but is not limited to questions pertaining to the search and examination of title to real property, insurance principles relating to title insurance, and the fiduciary duties and procedures of escrows, settlements, and closings of real estate transactions."

Section 24. Section 33-17-214, MCA, is amended to read:

"33-17-214. Issuance of license -- contents -- LAPSE OF LICENSE -- CHANGE OF ADDRESS. (1) The commissioner shall promptly issue the a license applied-for to the a person qualified--therefor-in-accordance-with-this-chapter pursuant to 33-17-211 and 33-17-212. There-is-a-license-for-life--or disability--insurance--and--a--separate-license-for-kinds-of insurance-other-than-life-or-disability--

(2) The license ~~shall~~ must state the name and address of the licensee, personal identification number, date of ~~issue~~ issuance, general conditions relative to expiration or termination, kind of insurance covered, and such other information as the commissioner considers proper necessary.

(3) The license of a partnership, or corporation, ~~shall~~ or association must also state the name of each individual authorized to exercise the license powers.

~~(4) The license of a solicitor shall state the name and address of the agent to be represented.~~

(4) Each license remains in effect, unless suspended or revoked, as long as the fees required by 33-2-708 are paid.

(5) An individual who allows his license to lapse may, within 12 months from the due date of the unpaid annual fee, apply for the same license without having to pass a written examination if he pays a penalty in the amount of twice the unpaid annual fee.

(6) A person shall inform the commissioner in writing of a change of address within 30 days of the change."

Section 25. Section 33-17-216, MCA, is amended to read:

"33-17-216. Temporary agent---licenses insurance producer license -- fee. (1) The commissioner may issue a temporary license as--agent to or with respect to an individual qualified therefor for the temporary license only as to age, residence, and trustworthiness and without requiring such the individual to take an examination, in the following cases:

(a) to the surviving spouse or next of kin or to the administrator or executor, or the employee of such the administrator or executor, of a licensed agent insurance producer upon ~~such agent's~~ the insurance producer's death;

(b) to the spouse, next of kin, employee, or legal guardian of a licensed agent insurance producer disabled by injury or physical or mental illness;

(c) to an employee of a firm partnership, or officer or employee of a corporation, licensed as agent an insurance producer, upon the death or disability of an individual designated in the license to exercise the powers thereof of an insurance producer;

(d) to the designee of a licensed agent insurance producer entering upon active service in the armed forces of the United States of America;

(e) in any other circumstance in which the commissioner finds that the public interest will best be served by issuing such a license.

(2) The temporary license ~~shall~~ must be issued upon application filed with the commissioner in such the form and containing such the information as the commissioner may reasonably require and upon payment of the applicable fee as stated provided in 33-2-708.

(3) The temporary license ~~shall~~ must be for a period of not over 90 days, subject to extension by the commissioner in his discretion for an additional period of not more than 90 days, except that such a temporary license issued pursuant to subsection (1)(a) may be continued without payment of an additional fee until the executor or

1 administrator disposes of the insurance business, but not to
 2 exceed a period of 15 months. A temporary license issued to
 3 the next of kin under such subsection (1)(a) may not be
 4 extended for an additional term after the appointment and
 5 qualification of ~~such-an~~ the administrator or executor.

6 (4) The fee paid for the temporary license may be
 7 applied upon the fee required for a permanent license issued
 8 to the licensee upon or prior to expiration of the temporary
 9 license and covering the same kinds of insurance."

10 **Section 26.** Section 33-17-217, MCA, is amended to
 11 read:

12 "33-17-217. Limitations and rights under temporary
 13 license. (1) The commissioner ~~shall~~ may not issue more than
 14 one temporary license, to or with respect to the same
 15 individual to be ~~so~~ licensed, within any 12-month period.

16 (2) The temporary license may cover the same kinds of
 17 insurance for which the ~~agent-thereby~~ insurance producer
 18 being replaced was licensed.

19 (3) As to a temporary ~~agent's~~ insurance producer's
 20 license issued on account of the death or disability of an
 21 ~~agent~~ insurance producer, the licensee may ~~so~~ represent all
 22 of the insurers last represented by ~~such~~ the deceased or
 23 disabled ~~agent-and-with-at-the-making-of-new-appointment--of~~
 24 ~~such--licensee--by-such-insurers~~ insurance producer, but the
 25 licensee ~~shall~~ may not be appointed--as--to--any--additional

1 ~~insurer--or~~ licensed for an additional kind of insurance
 2 under ~~such-a~~ the temporary license. ~~This-provision-shall-not~~
 3 ~~be-deemed-to-prohibit-termination-of-its-appointment-by-any~~
 4 ~~insurer.~~

5 (4) A temporary licensee ~~shall--have~~ has the same
 6 license powers and duties as under a permanent license."

7 **Section 27.** Section 33-17-221, MCA, is amended to
 8 read:

9 "33-17-221. Licensing insurance vending machines as
 10 ~~solicitors.~~ (1) A licensed resident ~~agent~~ insurance producer
 11 may solicit applications for and issue policies of personal
 12 travel accident insurance by means of mechanical vending
 13 ~~machine~~ machines supervised by him and placed at airports,
 14 railroad stations, bus stations, and similar places where
 15 transportation tickets are sold and of convenience to the
 16 traveling public, if the commissioner finds that:

17 (a) the policy to be sold provides reasonable coverage
 18 and benefits, is reasonably suited for sale and issuance
 19 through a mechanical vending machines machine, and use of
 20 ~~such a~~ mechanical vending machine therefor to sell or issue
 21 a policy in a particular proposed location would be of
 22 material convenience to the public;

23 (b) the type of mechanical vending machine proposed to
 24 be used is reasonably suitable and practical for the
 25 purpose;

(c) reasonable means are provided for informing the prospective purchaser of any such policy of the coverage and restrictions of the policy; and

(d) reasonable means are provided for refund to the applicant or prospective applicant of money inserted in a defective ~~machines~~ mechanical vending machine and for which no insurance or a less amount than that paid for is actually received.

(2) As to each such mechanical vending machine to be so used ~~to sell or issue a policy~~, the commissioner shall issue to the agent insurance producer a special mechanical vending machine license. The license ~~shall must~~ specify the name and address of the insurer and agent insurance producer, the name of the policy to be ~~so sold or issued~~ through the mechanical vending machine, the serial number of the mechanical vending machine, and the place where the machine ~~is--to--be--in--operation will operate~~. The license ~~shall-be is~~ subject to annual continuation, expiration, suspension, or revocation coincidentally with that of the agent insurance producer. The commissioner shall also revoke the license ~~as-to-any of a mechanical vending machine as--to~~ which if he finds that the conditions upon which the machine was licensed, as referred to in subsection (1), no longer exist. The license fee shall-be is as stated provided in 33-2-708 for each license year or part thereof of the year

for each respective mechanical vending machine. Proof of the existence of a subsisting license ~~shall must~~ be displayed on or about each such mechanical vending machine in use in such the manner as that the commissioner may reasonably require."

Section 28. Section 33-17-301, MCA, is amended to read:

"33-17-301. ~~Adjuster's~~ Adjuster license -- qualifications -- catastrophe adjustments -- public adjuster. (1) No A person shall may not in this state act as or hold himself out to be an adjuster unless ~~then~~ licensed therefor as an adjuster under this chapter. Application A person shall apply for an adjuster license shall-be-made to the commissioner according to forms as--prescribed--and furnished--by-him the commissioner prescribes and furnishes. The commissioner shall issue the adjuster license as to individuals qualified therefor to be licensed as an adjuster upon payment of the license fee stated provided in 33-2-708.

(2) To be licensed as an adjuster, the applicant ~~must be-qualified-therefor-as-follows:~~

- (a) must be an individual 18 years of age or more;
- (b) must be a resident ~~in-and~~ of Montana or resident of another state which that will permit residents of Montana regularly to act as adjusters in such the other state;
- (c) must be a full-time salaried employee of a licensed adjuster or a graduate of a recognized law school

1 or ~~must~~ have had experience or special education or training
 2 as to the handling of loss claims under insurance contracts
 3 of sufficient duration and extent reasonably to make him
 4 competent to fulfill the responsibilities of an adjuster;

5 (d) must be trustworthy and of good character and
 6 reputation;

7 (e) ~~must~~ shall have and maintain in this state an
 8 office accessible to the public and keep ~~therein~~ in the
 9 office the usual and customary records pertaining to
 10 transactions under the license. This provision ~~shall~~ does
 11 ~~not be deemed to~~ prohibit maintenance of ~~such~~ the office in
 12 the home of the licensee.

13 (3) A firm partnership or corporation, whether or not
 14 organized under the laws of this state, may be licensed as
 15 an adjuster if each individual who is to exercise the
 16 adjuster license powers is separately licensed or is named
 17 in the firm partnership or corporation adjuster license and
 18 is qualified ~~as~~ for an individual adjuster license ~~as~~
 19 adjuster. An additional full license fee ~~shall~~ must be paid
 20 ~~as to~~ for each individual in excess of one ~~so~~ named in the
 21 firm partnership or corporation adjuster license to exercise
 22 its powers.

23 (4) ~~No---such---adjuster's~~ An adjuster license or
 24 qualifications ~~shall be~~ are not required ~~as to~~ any for an
 25 adjuster who is sent into this state by and on behalf of an

1 insurer or adjusting firm partnership or corporation for the
 2 purpose of investigating or making adjustments of a
 3 particular loss under an insurance policy or for the
 4 adjustment of a series of losses resulting from a
 5 catastrophe common to all such losses.

6 (5) An adjuster license continues in force until
 7 expired, suspended, revoked, or terminated. The license is
 8 subject to annual payment to the commissioner of the renewal
 9 fee required by 33-2-708, accompanied by a written request
 10 for renewal.

11 (6) The commissioner may adopt rules providing for the
 12 examination, licensure, bonding, and regulation of public
 13 adjusters."

14 **Section 29.** Section 33-17-401, MCA, is amended to
 15 read:

16 "33-17-401. Nonresident agent insurance producer --
 17 reciprocity. (1) A nonresident person may apply for a
 18 license if:

19 (a) the person meets the requirements of 33-17-211(2);
 20 (b) the person is licensed in the state of his
 21 residence to act as insurance producer for the kind or kinds
 22 of insurance for which he applies for licensing in this
 23 state; and

24 (c) the person's state of residence issues a similar
 25 license to a resident of this state for the same kind or

kinds of insurance for which the person is qualified in this state.

(2) The commissioner may license a nonresident individual without written examination if the insurance department in the individual's state of residence certifies that:

(a) the individual either has passed a written examination for each kind of insurance applied for or was licensed prior to the time a written examination was required in the individual's state of residence; and

(b) is currently licensed and in good standing.

(3) The commissioner may issue only a nonresident license to a person, partnership, or corporation otherwise qualified under this code but not a resident of this state and--only--if--pursuant--to--the--laws--of--the--state--of--his--residence--a--similar--privilege--is--extended--to--persons resident-in-Montana.

(4) If, by the laws or rules of another state, a limitation of rights and privileges, conditions precedent, or any other requirements are imposed upon a resident of this state who is a nonresident licensee of the other state and the limitation, conditions, or requirements are in addition to or in excess of those imposed on nonresident persons under this chapter, the same limitation, conditions, or requirements must be imposed upon the residents of the

other state.

(5) If a nonresident insurance producer's state of residence suspends, revokes, or terminates his insurance license in that state, his Montana nonresident license automatically terminates and the nonresident insurance producer shall notify the commissioner that his state of residence has suspended, revoked, or terminated his insurance license in that state."

Section 30. Section 33-17-404, MCA, is amended to read:

"33-17-404. Countersigning coverage of residents. Except as provided in 33-17-1111, a nonresident agent--~~shall~~ insurance producer may not sign or countersign policies covering subjects of insurance residing, located, or to be performed in Montana."

Section 31. Section 33-17-405, MCA, is amended to read:

"33-17-405. Service of process -- commissioner as agent insurance producer. Application-for-and-acceptance-of a--license--as--a--nonresident--agent--~~shall~~--constitute irrevocable--appointment--of--the--commissioner--as--the attorney-in-fact-of--said--licensee--to--accept--service--of process--issued--in--Montana--in--any--action--or--proceeding against-the-licensee-arising-out-of-the-licensing-or-out--of transactions--under-the-license.-All-process-shall-be-served

1 in-duplicate-upon-the-commissioner-together-with--a--fee--of
 2 \$5.--The--commissioner-shall-then-promptly-forward-a-copy-of
 3 the-service-by-registered-or-certified-mail-to-the--licensee
 4 at--his--last--known-address.--Such-service-shall-constitute
 5 personal-service-upon-the--licensee. A nonresident person
 6 shall file with the commissioner the required forms
 7 appointing the commissioner and his successors in office as
 8 the nonresident person's agent upon whom process in a legal
 9 proceeding against the nonresident person may be served and
 10 shall agree that such process has the same legal force and
 11 validity as personal service of process upon the nonresident
 12 person. The commissioner shall, within 3 working days after
 13 receiving process, forward, at the nonresident person's
 14 address of record, a copy of the process by certified mail
 15 to the person for whom he has received the process."

16 **Section 32.** Section 33-17-406, MCA, is amended to
 17 read:

18 "33-17-406. Nonresident agent insurance producer
 19 subject to insurance code. All A nonresident licensees shall
 20 be insurance producer is subject to the provisions of the
 21 Montana Insurance Code as though a resident of this state,
 22 unless otherwise provided."

23 **Section 33.** Section 33-17-407, MCA, is amended to
 24 read:

25 "33-17-407. Nonresident licensee insurance producer to

1 pay taxes -- annual report required. (1) A nonresident
 2 licensee insurance producer is subject to personal income,
 3 business income, or corporate license taxes for all income
 4 earned on insurance policies issued to cover subjects or
 5 risks residing, located, or to be performed in Montana and
 6 written within the boundaries of this state.

7 (2) A nonresident licensee insurance producer shall
 8 make-a-written-report--to--the--commissioner file annually
 9 within--45-days-following-the-end-of-each-calendar-year.--The
 10 report-must-contain-a-listing-of--all--business--written--on
 11 subjects--or--risks--located--or--performed--in-Montana.--The
 12 report-must-be-in-a-form-prescribed-by-the-commissioner--and
 13 must--include--but--not--be-limited-to-a-listing-of-company,
 14 policy-number,--premium--earned,--and--commission--earned a
 15 Montana income tax return as required in Title 15."

16 **Section 34.** Section 33-17-411, MCA, is amended to
 17 read:

18 "33-17-411. Penalty. A nonresident licensee insurance
 19 producer who violates any a condition of his Montana license
 20 or any a provision of this part is subject to a fine by the
 21 commissioner of up to \$50,000 for each such violation and
 22 may, at the discretion of the commissioner, have his Montana
 23 nonresident license revoked or suspended for a period of up
 24 to 5 years."

25 **Section 35.** Section 33-17-502, MCA, is amended to

1 read:

2 "33-17-502. Prohibition on holding out as consultant
3 -- receiving fee. (1) Any A person not licensed as an
4 insurance consultant in this state who identifies or holds
5 himself out to be an insurance consultant without having
6 been licensed as an insurance consultant under this part or
7 any a person who uses any other designation or title which
8 that is likely to mislead the public and holds himself out
9 in any manner as having particular insurance qualifications
10 other than those for which he may be otherwise licensed or
11 otherwise qualified is guilty of a misdemeanor and upon
12 conviction shall be fined \$1,500.

13 (2) Any A person not licensed as an insurance
14 consultant with respect to the relevant kinds of insurance
15 who receives any a fee for examining, appraising, reviewing,
16 or evaluating any insurance policy, annuity or pension
17 contract, plan, or program or who ~~shall---~~make makes
18 recommendations or give gives advice with regard to any of
19 the above without first having been licensed by the
20 commissioner as an insurance consultant is guilty of a
21 misdemeanor and upon conviction shall be fined \$1,500.

22 (3) Nothing in this part applies to:

23 (a) licensed attorneys at law in this state acting in
24 their professional capacity;

25 (b) an actuary or a certified public accountant who

1 provides information, recommendations, advice, or services
2 in his professional capacity if neither he nor his employer
3 receives any compensation directly or indirectly on account
4 of any insurance, bond, annuity or pension contract that
5 results in whole or part from that information,
6 recommendation, advice, or services; or

7 (c) a duty licensed casualty insurance agent producer
8 who accepts a fee from an insured for placement through the
9 state compensation insurance fund as provided in 33-18-212."

10 **Section 36.** Section 33-17-503, MCA, is amended to
11 read:

12 "33-17-503. Application -- fee -- expiration. (1)
13 Before ~~an insurance consultant's~~ a consultant license is
14 issued or renewed, the prospective licensee shall:

15 (a) properly file in the office of the commissioner a
16 written application on forms the commissioner prescribes;
17 and

18 (b) pay a fee of \$50.

19 (2) ~~Every--consultant's~~ Each consultant license shall
20 expire expires on May 31 next following the date of issue."

21 **Section 37.** Section 33-17-504, MCA, is amended to
22 read:

23 "33-17-504. Issuing license -- limitations. The
24 commissioner may issue ~~an--insurance--consultant's~~ a
25 consultant license to ~~any natural person~~ an individual who

has complied with the requirements of this chapter with respect to either life insurance, meaning all of those kinds of insurance authorized in 33-1-207, 33-1-208, 33-20-1001, 33-21-103, 33-22-501, and 33-22-601, or general insurance, meaning all of those kinds of insurance authorized in 33-1-206, 33-1-207, 33-1-209 through 33-1-212, and 33-1-221 through 33-1-229, as specified in such the license."

Section 38. Section 33-17-505, MCA, is amended to read:

"33-17-505. Qualification -- fee. (1) In order to determine the competency of every an applicant for a consultant license ~~as---an---insurance---consultant~~, the commissioner shall require the applicant to pass an examination.

(2) The fee for taking ~~such-an~~ the consultant license examination ~~shall-be~~ is \$50. The commissioner shall deposit all fees collected in the general fund. The fee for taking a second or subsequent examination ~~shall may~~ be no more than the cost of administering such the examination, not to exceed \$50."

Section 39. Section 33-17-506, MCA, is amended to read:

"33-17-506. Grounds for refusal to issue license. The commissioner may refuse to issue ~~an-insurance-consultant's a~~ consultant license if, in his judgment, the applicant is not

trustworthy and competent to act as a consultant, or has given cause for revocation or suspension of a license, or has failed to comply with any prerequisite for the issuance of a license."

Section 40. Section 33-17-507, MCA, is amended to read:

"33-17-507. Revocation. The commissioner may revoke or suspend ~~any-insurance-consultant's a consultant~~ license for a period he determines if, after notice and hearing as specified in this chapter, he determines that the licensee:

(1) has violated any provision of or any obligation imposed by the insurance law or has violated any law in the course of his dealings as ~~a~~ an insurance consultant;

(2) has made a material misstatement in application for a ~~consultant's consultant~~ license;

(3) has been guilty of fraudulent or dishonest practices; or

(4) has demonstrated his incompetency or untrustworthiness to act as an insurance consultant."

Section 41. Section 33-17-511, MCA, is amended to read:

"33-17-511. Consideration for services only on written memorandum. No A person licensed as an insurance consultant under this part may not receive any a fee for examining, appraising, reviewing, or evaluating any an insurance

1 policy, bond, annuity or pension or profit-sharing contract,
 2 plan, or program or for making recommendations or giving
 3 advice with regard to any of the above unless the
 4 compensation is based upon a written memorandum signed by
 5 the party to be charged and specifying or clearly defining
 6 the amount or extent of the compensation. A An insurance
 7 consultant shall retain a copy of every memorandum or
 8 contract shall-be-retained-by-the-licensee for not less than
 9 3 years after those services have been fully performed."

10 **Section 42.** Section 33-17-512, MCA, is amended to
 11 read:

12 "33-17-512. Limitation on type of consideration. No A
 13 person licensed as an insurance consultant may not receive
 14 any compensation, direct or indirect, as a result of the
 15 sale of insurance or annuities to or the use of securities
 16 or trusts in connection with pensions for any a person to
 17 whom any the licensee has performed any a related consulting
 18 service for which he has received a fee or contracted to
 19 receive a fee within the preceding 12 months."

20 **Section 43.** Section 33-17-513, MCA, is amended to
 21 read:

22 "33-17-513. Restrictions on insurers recommended by
 23 licensee. No A person licensed as an insurance consultant
 24 under this part may not recommend or encourage the purchase
 25 of insurance, annuities, or securities from any an

1 authorized insurer in which he or any member of his
 2 immediate family holds an executive position or holds a
 3 substantial interest."

4 **Section 44.** Section 33-17-602, MCA, is amended to
 5 read:

6 "33-17-602. Written agreement required. (1) No A
 7 person may not act as an administrator without a written
 8 agreement between the person and the insurer. The written
 9 agreement shall must be retained as part of the official
 10 records of both the administrator and the insurer for the
 11 duration of the agreement and for 5 years thereafter. The
 12 written agreement shall must contain provisions which that
 13 include the requirements of 33-17-612 through 33-17-617
 14 insofar as these requirements relate to the functions
 15 performed by the administrator.

16 (2) The agreement shall must contain a provision with
 17 respect to the underwriting or other standards pertaining to
 18 the business underwritten by such the insurer.

19 (3) Whenever a policy is issued to a trustee, a copy
 20 of the trust agreement and any amendments thereto-shall to
 21 it must be furnished to the insurer by the administrator and
 22 shall be retained as part of the official records of both
 23 the administrator and the insurer for the duration of the
 24 policy and for 5 years thereafter."

25 **Section 45.** Section 33-17-603, MCA, is amended to

1 read:

2 "33-17-603. Certificate of registration. (1) Except as
3 provided in 33-17-604, ~~no~~ a person may not act as or hold
4 himself out to be an administrator in this state unless he
5 holds a certificate of registration as an administrator.

6 (2) An application for a certificate of registration
7 must be accompanied by a fee of \$100. The commissioner of
8 ~~insurance~~ shall issue the certificate unless he finds that
9 the applicant is not competent, trustworthy, financially
10 responsible, or of good personal and business reputation or
11 that the applicant has had a previous application for ~~an~~
12 ~~insurance~~ a license denied for cause within 5 years.

13 (3) The certificate of registration is renewable
14 annually on the date of issue. A request for renewal must be
15 accompanied by a renewal fee of \$100.

16 (4) The certificate of registration may be suspended
17 or revoked if, after notice and hearing, the commissioner
18 finds that the administrator has violated any of the
19 requirements of this part or that the administrator is not
20 competent, trustworthy, financially responsible, or of good
21 personal and business reputation.

22 (5) Unless the certification requirement is waived,
23 ~~any-administrator~~ a person who acts as such an administrator
24 ~~without the a~~ certificate of registration is subject to a
25 fine of not less than \$500 or more than \$1,500."

1 **Section 46.** Section 33-17-604, MCA, is amended to
2 read:

3 "33-17-604. Waiver of certification requirements. The
4 commissioner of--insurance may waive the requirements of
5 33-17-603 for any person or class of persons. The factors
6 taken into account in granting a waiver ~~shall~~ include
7 but are not limited to:

8 (1) whether the person acting as an administrator is
9 primarily in a business other than that of administrator;

10 (2) whether the financial strength and history of the
11 organization indicates stability in its continuity of doing
12 business;

13 (3) whether the regular duties being performed as an
14 administrator are such that the covered persons are not
15 likely to be injured by a waiver of such the requirements."

16 **Section 47.** Section 33-17-611, MCA, is amended to
17 read:

18 "33-17-611. Maintenance of information. For the
19 duration of the agreement required by 33-17-602 and for 5
20 years thereafter, each administrator shall maintain at its
21 principal administrative office adequate books and records
22 of all transactions between the administrator, insurers, and
23 insured persons. These books and records ~~shall~~ must be
24 maintained in accordance with prudent standards of insurance
25 recordkeeping. The commissioner of--insurance shall have

1 access to these books and records for examination, audit, or
 2 inspection. Any trade secrets contained in the books and
 3 records, including but not limited to the identity and
 4 addresses of policyholders and certificate holders, ~~shall be~~
 5 are confidential, except that the commissioner may use such
 6 the information in any proceedings instituted against the
 7 administrator. The insurer retains the right to continuing
 8 access to those books and records of the administrator
 9 sufficient to permit the insurer to fulfill all of its
 10 contractual obligations to insured persons, subject to any
 11 restrictions in the written agreement between the insurer
 12 and the administrator."

13 **Section 48.** Section 33-17-613, MCA, is amended to
 14 read:

15 "33-17-613. Collection of charges and premiums. (1)
 16 All insurance charges or premiums collected by an
 17 administrator on behalf of or for an insurer ~~or insurers~~ and
 18 return premiums received from such the insurer ~~or insurers~~
 19 are held by the administrator in a fiduciary capacity.
 20 These funds ~~shall must~~ be immediately remitted to the person
 21 ~~or persons~~ entitled thereto to them or ~~shall must~~ be
 22 deposited promptly in a fiduciary bank account established
 23 and maintained by the administrator. If deposited charges or
 24 premiums were collected on behalf of or for more than one
 25 insurer, the administrator shall require the bank in which

1 the fiduciary account is maintained to keep records clearly
 2 recording the deposits in and withdrawals from such the
 3 account on behalf of or for each insurer. The administrator
 4 shall promptly obtain and keep copies of all these records
 5 and, upon request of an insurer, shall furnish the insurer
 6 with copies of the records pertaining to deposits and
 7 withdrawals on behalf of or for the insurer.

8 (2) The administrator ~~shall may~~ not pay any a claim by
 9 withdrawals from the fiduciary account. Withdrawals from the
 10 fiduciary account ~~shall must~~ be made, as provided in the
 11 written agreement between the administrator and the insurer,
 12 for:

13 (a) remittance to an insurer entitled thereto to the
 14 remittance;

15 (b) deposit in an account maintained in the name of
 16 such the insurer;

17 (c) transfer to and deposit in a claims paying
 18 account, with claims to be paid as provided in 33-17-615;

19 (d) payment to a group policyholder for remittance to
 20 the insurer entitled thereto to the payment;

21 (e) payment to the administrator of its commission,
 22 fees, or charges; or

23 (f) remittance of return premiums to the person ~~or~~
 24 persons entitled thereto to the premium."

25 **Section 49.** Section 33-17-1001, MCA, is amended to

1 read:

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

15 (a) for-any-cause engaged or is about to engage in an
16 act or practice for which issuance of the license could have
17 been refused had it then existed and been known to the
18 commissioner;

19 (b) for-obtaining obtained or attempting attempted to
20 obtain any--such a license through misrepresentation or
21 fraud;

22 (c) for-violation--of--or--noncompliance violated or
23 failed to comply with any-applicable a provision of this
24 code or for-willful-violation-of-any-lawful has violated a
25 rule, subpoena, or order of the commissioner or of the

1 commissioner of any OTHER state;

2 (d) for--misappropriation--or--conversion improperly
3 withheld, misappropriated, or converted to his own use or
4 illegal-withholding-of-moneys money or property belonging to
5 policyholders, insurers, beneficiaries, or others and
6 received in conduct of business under the license;

7 (e) conviction--by-final-judgment, been convicted of a
8 felony involving-moral-turpitude;

9 (f) if in the conduct of his affairs under the
10 license, the-licensee--has used fraudulent, coercive, or
11 dishonest practices or has shown himself to be incompetent,
12 untrustworthy, financially irresponsible, or a source of
13 injury and loss to the public;

14 (g) made a materially untrue statement in the license
15 application;

16 (h) misrepresented the terms of an actual or proposed
17 insurance contract;

18 (i) been found guilty of an unfair trade practice or
19 fraud prohibited by Title 33, in chapter 18;

20 (j) had his license suspended or revoked in any other
21 state;

22 (k) forged another's name to an application for
23 insurance;

24 (l) cheated on an examination for a license; or

25 (m) knowingly accepted insurance business from a

1 person who is not licensed.

2 (2) The license of a partnership or corporation may be
3 suspended, revoked, or refused, ~~also-for-any-of-such-causes~~
4 ~~as-relate-to-any~~ or denied if a reason listed in subsection
5 (1) applies to an individual designated in the license to
6 exercise its powers.

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

11 **Section 50.** Section 33-17-1002, MCA, is amended to
12 read:

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

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

1 ~~all-solicitors-appointed-by-him.~~

2 ~~(3)(2)~~ The commissioner ~~shall~~ may not again issue a
3 license under this code to ~~or--as-to-any a~~ person whose
4 license has been revoked until after expiration of 1 year
5 and thereafter not until such the person again qualifies
6 ~~therefor for a license~~ in accordance with ~~the--applicable~~
7 ~~provisions--of~~ this code. If the commissioner revokes a
8 person's license, the commissioner may refuse to issue a
9 license to the person for up to 5 years after the
10 revocation. A person whose license has been revoked twice
11 ~~shall is~~ not again be eligible for any license under this
12 code.

13 ~~(4)(3)~~ If the license of a partnership or corporation
14 is ~~so~~ suspended or revoked, no member of ~~such the~~
15 partnership or officer or director of ~~such the~~ corporation
16 ~~shall may~~ be licensed or be designated in ~~any a~~ license to
17 exercise the its powers ~~thereof~~ during the period of ~~such~~
18 ~~the~~ suspension or revocation unless the commissioner
19 determines upon substantial evidence that ~~such the~~ member,
20 officer, or director was not personally at fault and did not
21 acquiesce in the matter on account of which the license was
22 suspended or revoked."

23 **Section 51.** Section 33-17-1003, MCA, is amended to
24 read:

25 "33-17-1003. Return of license. (1) All licenses

1 issued under this chapter, although issued and delivered to
 2 the licensee agent,--solicitor, insurance producer or
 3 adjuster,--shall are at all times be the property of the
 4 state of Montana. Upon any expiration, termination,
 5 suspension, or revocation of the license, the licensee or
 6 other person having possession or custody of the license
 7 shall forthwith immediately deliver it to the commissioner
 8 either by personal delivery or by mail.

9 (2) As to any license lost, stolen, or destroyed while
 10 in the possession of any--such a licensee or person, the
 11 commissioner may accept in lieu of return of the license the
 12 affidavit of the licensee or other person responsible for or
 13 involved in the safekeeping of such the license, concerning
 14 the facts of such the loss, theft, or destruction."

15 **Section 52.** Section 33-17-1004, MCA, is amended to
 16 read:

17 "33-17-1004. Acting as insurance agent,--solicitor,
 18 producer or adjuster without license -- penalty. Except as
 19 provided in 33-17-411, a person,--partnership,--association,
 20 or--corporation who or--which, in this state, acts as an
 21 insurance agent,--solicitor, producer or adjuster without
 22 having authority to do so by virtue of a license issued and
 23 in force pursuant to the--provisions--of this chapter is
 24 guilty of a misdemeanor and upon conviction shall be fined
 25 \$500 or imprisoned in the county jail for 90 days, or both."

1 **Section 53.** Section 33-17-1101, MCA, is amended to
 2 read:

3 "33-17-1101. Place of business -- display of license
 4 -- records. (1) Every resident agent insurance producer
 5 shall have and maintain a place of business in this state
 6 accessible to the public. A nonresident agent insurance
 7 producer may maintain a place of business in this state. An
 8 agent's insurance producer's place of business must be that
 9 wherein a place in which he principally conducts
 10 transactions under his license. The street address of such
 11 the place shall must appear upon the license,--and--the
 12 licensee--shall--promptly--notify--the--commissioner--of--any
 13 change--in--his--street--or--mailing--address. Nothing in this
 14 section prohibits maintenance of such the place of business
 15 in the licensee's place of residence.

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

22 (3) The agent insurance producer shall keep at his
 23 place of business complete records pertaining to
 24 transactions under his license and--the--licenses--of--his
 25 solicitors, for a period of at least 3 years after

1 completion of the respective transactions, except that a
 2 title agents insurance producer, as defined in 33-25-105,
 3 shall retain records as provided in 33-25-214 and
 4 33-25-216."

5 **Section 54.** Section 33-17-1102, MCA, is amended to
 6 read:

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

23 (2) Any agent--or--solicitor insurance producer not
 24 lawfully entitled thereto to the funds may not divert or
 25 appropriate such the funds or any portion thereof of the

1 funds to his own use.

2 (3) An insurance producer who unlawfully diverts or
 3 appropriates insurance premiums or return premiums to his
 4 own use is, upon conviction, guilty of theft and is
 5 punishable as provided by law."

6 **Section 55.** Section 33-17-1103, MCA, is amended to
 7 read:

8 "33-17-1103. Exchange-of-business---sharing Accepting
 9 and paying commissions, fees, or consideration --
 10 restriction. {1}--An-agent-may, under rules adopted by the
 11 commissioner, place an insurance coverage with an insurer as
 12 to which he is not then licensed or appointed as an agent,
 13 and the insurer shall accept such business, only when placed
 14 through an agent, licensed under this chapter and appointed
 15 by the insurer. Both agents involved in such an exchange of
 16 business must be licensed as to all of the kinds of
 17 insurance represented by the coverage so placed.

18 {2}--The agents involved in a lawful exchange of
 19 business under subsection {1} above may divide between them
 20 the commission or compensation payable on account of such
 21 coverage. (1) An insurer or insurance producer may not pay,
 22 directly or indirectly, a commission, service fee, brokerage
 23 fee, or other valuable consideration to a person for
 24 services as an insurance producer unless the person
 25 performing the service holds a valid license with regard to

1 the kind or kinds of insurance for which the service was
 2 rendered at the time the service was performed. A person not
 3 properly licensed in accordance with this chapter at the
 4 time he performs the service as an insurance producer may
 5 not accept a commission, service fee, brokerage fee, or
 6 other valuable consideration for the service. This section
 7 does not prevent payment or receipt of renewal or other
 8 deferred commissions to or by a person entitled to receive
 9 the payment under this section.

10 ~~†3†~~(2) ~~No---agent---or---solicitor---shall~~ An insurance
 11 producer may not directly or indirectly share his
 12 commissions or other compensation received or to be received
 13 by him on account of a transaction under his license with
 14 any person not also licensed under this chapter as to the
 15 same kind or kinds of insurance involved in such the
 16 transactions, except as provided in 33-17-1113. This
 17 provision ~~shall~~ does not affect payment of the regular
 18 salaries due employees of the licensee, or the distribution
 19 in regular course of business of compensation and profits
 20 among members or stockholders if the licensee is a firm
 21 partnership or corporation, or use of funds for family or
 22 personal purposes.

23 ~~†4†~~(3) This section does not apply as to those
 24 transactions with surplus lines ~~agents--which insurance~~
 25 producers that are lawful under 33-2-306 ~~or as to life or~~

1 ~~disability--insurance-placed-as-provided-in-33-17-1104 OR-AS~~
 2 ~~TO-LIFE--OR--DISABILITY--INSURANCE--PLACED--AS--PROVIDED--IN~~
 3 ~~33-17-1104."~~

4 **Section 56.** Section 33-17-1111, MCA, is amended to
 5 read:

6 "33-17-1111. Resident agent insurance producer
 7 required -- reciprocity -- countersignature -- records. (1)
 8 No ~~An~~ authorized insurer shall may not issue a policy
 9 covering a subject of insurance resident residing, located,
 10 or to be performed in Montana unless:

11 (a) the policy is written through a licensed agent,
 12 resident insurance producer residing in Montana, ~~of the~~
 13 insurer;

14 (b) the policy is written through a licensed
 15 nonresident agent insurance producer and, if a
 16 countersignature would be required by the resident state of
 17 the nonresident agent insurance producer upon a Montana
 18 resident agent insurance producer writing business in the
 19 resident state of such the nonresident agent insurance
 20 producer, the policy or countersignature endorsement
 21 attached thereto to the policy is countersigned by a Montana
 22 resident licensed agent insurance producer; or

23 (c) the policy is written through a licensed
 24 nonresident agent insurance producer who is a resident of a
 25 state that does not require countersignatures.

1 (2) ~~No--such~~ A countersignature ~~shall~~ may not be made
 2 in blank. The agent insurance producer may by express
 3 written authorization given in advance delegate to his
 4 salaried clerical employee the power to so countersign in
 5 the name of the ~~agent--such--contracts~~ insurance producer
 6 those policies or classes of ~~contracts--as--are~~ policies
 7 designated in ~~such the~~ authorization ~~so--long--as~~ if the
 8 initials of ~~such the~~ employee are written below the ~~agent's~~
 9 insurance producer's name on ~~such the~~ countersignature, but
 10 the ~~agent--shall--be~~ insurance producer is responsible for all
 11 of the acts of ~~such the~~ employee within the scope of the
 12 authority so delegated. The agent insurance producer shall
 13 keep a record of ~~each--and~~ all coverages countersigned by him
 14 or by his authority.

20 (3) This section ~~shall~~ does not apply to:

21 (a) reinsurance;

22 (b) life insurance, disability insurance, or annuity
 23 contracts;

24 (c) insurance of the rolling stock, vessels, or
 25 aircraft of any common carrier in interstate or foreign

1 commerce or of any vehicle principally garaged and used in
 2 another state or covering any liability or other risks
 3 incident to the ownership, maintenance, or operation ~~thereof~~
 4 of any common carrier or vehicle;

5 (d) insurance of property in course of transportation
 6 interstate or in foreign trade or any liability or risk
 7 incident ~~thereto to the~~ insurance;

8 (e) insurance of wet marine and transportation risks;

9 (f) countersignature to policies issued through ~~agents~~
 10 insurance producers compensated only by salary or issued by
 11 insurers not using ~~agents~~ insurance producers in the general
 12 solicitation of business;

13 (g) bid bonds, as required under Title 18, chapter 1,
 14 part 2.

15 (4) Violation of this section ~~shall~~ does not
 16 invalidate ~~any--contract~~ a policy otherwise valid as between
 17 the insurer and the insured."

18 **Section 57.** Section 33-17-1112, MCA, is amended to
 19 read:

20 "33-17-1112. Salaried personnel not to countersign --
 21 exception for emergencies. (1) With respect to policies
 22 subject to countersignature requirements under 33-17-1111,
 23 only a licensed ~~agent--of--the--insurer--resident~~ insurance
 24 producer residing in Montana, whose compensation as ~~such~~
 25 agent an insurance producer is by commission computed as a

1 percentage of the premium received on each such policy
2 written, ~~shall have~~ has power to countersign as required by
3 33-17-1111.

4 (2) No A branch manager, state agent, special agent,
5 general or any other like supervisory agent, or any other
6 representative of the insurer, whose compensation ~~therefrom~~
7 from the insurer is in whole or in part by salary, ~~shall~~
8 does not have power to countersign such policies or
9 countersignature endorsements thereto to policies; except
10 that in an emergency where it is necessary that an insurance
11 policy be issued without delay and no resident ~~agent-of-the~~
12 insurer insurance producer having power to execute the
13 policy is then reasonably available, then any other
14 individual having authority ~~therefor~~ from the insurer may
15 execute such the policy in the first instance in order to
16 make a contract between the insurer and the obligee or the
17 insured if such the policy is subsequently countersigned in
18 fact by such a resident agent insurance producer."

19 **Section 58.** Section 33-17-1113, MCA, is amended to
20 read:

21 "33-17-1113. Policies originating outside state --
22 commission of resident agent insurance producer. (1) As to
23 policies a policy or endorsements--~~thereto--which-are an~~
24 endorsement to a policy that is subject to countersignature
25 requirements under 33-17-1111 contracted for or otherwise

1 originating outside the boundaries of Montana, ~~there--shall~~
2 ~~be-payable-to-the-countersigning-agent--resident-in-Montana,~~
3 a commission ~~which--shall~~ of not be less than 5% of the
4 premium charged and received but not ~~to-exceed more than~~ 50%
5 of the commission paid by the insurer is payable to the
6 countersigning insurance producer, so that a record within
7 Montana will be kept of such the business and so that the
8 state may better receive any tax required by law to be paid
9 with respect to such the insurance. If, however, the
10 originating ~~agent--or--broker~~ insurance producer or the
11 insurer desires additional service to be rendered during the
12 term of the policy, then the compensation for such the
13 countersigning resident ~~agent-shall~~ insurance producer must
14 be in such an additional amount as is fixed by mutual
15 agreement of such the parties in interest.

16 (2) If pursuant to the laws of another state the
17 countersigning agents insurance producers of that state
18 retain as commission or compensation with respect to
19 business originated by Montana agents insurance producers
20 more than 5% of the premium, then the Montana agents
21 insurance producers who countersign policies representing
22 business originated by agents-or-brokers insurance producers
23 of such the other state shall charge and receive a
24 commission in an amount not less than that ~~so~~ received by
25 countersigning agents insurance producers of the other

~~account, certificate, affidavit or proof of loss, or other document or writing, with intent that the same may be presented or used in support of such a claim, shall be~~ is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$250 or more than \$1,000 or by imprisonment in the county jail for not less than 3 months or more than 6 months or both such fine and imprisonment at the discretion of the court.

(2) An insurance producer, examining physician, applicant, or other person who, for the purpose of obtaining any money or benefit, knowingly or willfully presents or causes to be presented a false or fraudulent claim or any proof in support of such a claim for the payment of the loss upon a contract of insurance or prepares, makes, or subscribes a false or fraudulent account, certificate, affidavit or proof of loss, or other document or writing, with intent that the same may be presented or used in support of such a claim, is guilty of a crime under 45-6-301, and a county attorney may initiate criminal proceedings against him."

Section 61. Section 33-25-202, MCA, is amended to read:

"33-25-202. Sharing of rate proceeds. Title insurers and agents insurance producers may share rate proceeds between or among themselves in any combination and may

~~exchange business and share~~ accept commissions as provided in 33-17-1103, unless the sharing of rate proceeds is an unlawful rebate or inducement under this title or is a payment of a forwarding fee or finders fee."

Section 62. Section 33-25-214, MCA, is amended to read:

"33-25-214. Underwriting standards -- record retention. (1) A title insurer may not issue a title insurance policy unless it, its title agent insurance producer, or an approved attorney has conducted a reasonable search and examination of the title and made a determination of insurability of title in accordance with sound underwriting practices. The title insurer or title agent must insurance producer shall preserve and retain in its files evidence of the examination of title and determination of insurability. The title insurer or title agent insurance producer may keep original evidence or may establish in the regular course of business a system of recording, copying, or reproducing evidence by any process that accurately and legibly reproduces, or forms a durable medium for reproducing, the contents of the original.

(2) Subsection (1) does not apply to:

(a) a title insurer assuming liability through a contract of reinsurance; or

(b) a title insurer acting as coinsurer if one of the

1 state."

2 **Section 59.** Section 33-17-1114, MCA, is amended to
3 read:

4 "33-17-1114. Policies issued at home or branch
5 offices. Nothing in 33-17-1111 through 33-17-1113 shall
6 prevent--any prevents an insurer from issuing any a policy,
7 as to which the resident---agent---or countersignature
8 requirement of 33-17-1111 is-applicable applies, at its home
9 or branch office, but such-policies-shall the policy must be
10 subsequently countersigned, where otherwise required, by its
11 agent--resident an insurance producer residing in Montana.
12 The insurer's-licensed--agent--resident insurance producer
13 residing in Montana shall receive the commission on such the
14 policy when the insurance premium is paid. This section does
15 not apply as to life insurance."

16 **Section 58.**--Section--33-18-401--MCA--is--amended--to
17 read:

18 "33-18-401--False--applications--claims--application,
19 claim--and--proofs--proof-of-loss---penalty--Any-solicitor,
20 agent--An-insurance-producer--examining-physician--applicant,
21 or-other-person-who-knowingly-or-willfully-makes-any-a-false
22 or--fraudulent--statement--or--representation--in--or--with
23 reference--to--any--an-application-for-insurance-or--for-the
24 purpose-of-obtaining-any--money--or--benefit--knowingly-or
25 willfully--presents--or--causes--to--be-presented-a-false-or

1 fraudulent-claim-or-any-proof-in-support-of-such-a-claim-for
2 the-payment-of-the-loss-upon--a--contract--of--insurance--or
3 prepares,---makes,--or--subscribes--a--false--or--fraudulent
4 account--certificate--affidavit-or-proof-of-loss,--or--other
5 document--or--writing,--with--intent--that--the--same-may-be
6 presented-or-used-in-support-of-such-a-claim,--shall--be--is
7 guilty--of-a-misdemeanor-felony-and-upon-conviction-shall-be
8 punished-by-a-fine-of-not-less-than-\$250-or-fined--not--more
9 than-\$1,000-\$5,000-or-by-imprisonment-in-the-county-jail-for
10 not--less-than-3-months-or-imprisoned-not-more-than-6-months
11 10--years,--or--both--such--fine--and--imprisonment--at--the
12 discretion-of-the-court."

13 **SECTION 60.** SECTION 33-18-401, MCA, IS AMENDED TO
14 READ:

15 "33-18-401. False applications--claims application,
16 claim, and proofs proof of loss -- criminal penalty. (1) Any
17 solicitor, agent An insurance producer, examining physician,
18 applicant, or other person who knowingly or willfully makes
19 any a false or fraudulent statement or representation in or
20 with reference to any an application for insurance or,--for
21 the-purpose-of-obtaining-any-money-or-benefit,--knowingly--or
22 willfully--presents--or--causes--to--be-presented-a-false-or
23 fraudulent-claim-or-any-proof-in-support-of-such-a-claim-for
24 the-payment-of-the-loss-upon--a--contract--of--insurance--or
25 prepares,---makes,--or--subscribes--a--false--or--fraudulent

1 other coinsuring title insurers has complied with subsection
2 (1).

3 (3) Except as allowed by rules adopted by the
4 commissioner, no a title insurer or title agent insurance
5 producer may not knowingly issue an owner's title insurance
6 policy or commitment to insure unless all outstanding
7 enforceable recorded liens or other interests against the
8 property title to be insured are shown.

9 (4) An insurer issuing a policy in violation of this
10 section is estopped, as a matter of law, to deny the
11 validity of the policy as to any claim or demand of the
12 insured arising thereunder under the policy."

13 **Section 63.** Section 33-25-301, MCA, is amended to
14 read:

15 "33-25-301. Refusal, suspension, or revocation of
16 title agent's insurance producer's license. (1) In addition
17 to the causes provided in 33-17-1001, the commissioner may
18 refuse to license a person as a title agent insurance
19 producer or may suspend or revoke a title agent's insurance
20 producer's license if, after a hearing held after notice as
21 required in 33-17-1001, he finds that the license applicant
22 or licensee has:

23 (a) made a material misstatement in an application for
24 a title agent insurance producer license;

25 (b) commingled funds belonging to applicants, escrow

1 participants, or others;

2 (c) intentionally misrepresented the terms of a title
3 insurance policy to an applicant or policyholder or has
4 misrepresented material facts to, concealed material facts
5 from, or made false statements to a party to an escrow,
6 settlement, or closing transaction;

7 (d) in the conduct of his affairs under his title
8 agent's insurance producer's license, used coercive
9 practices or shown himself to be financially irresponsible;

10 (e) aided, abetted, or assisted another person in
11 violating the provisions of this title or a rule adopted by
12 the commissioner.

13 (2) The commissioner may impose any other appropriate
14 penalty provided for in this title.

15 (3) The commissioner may refuse, suspend, or revoke
16 the license of a ~~firm, corporation, or other business entity~~
17 person licensed as a title agent insurance producer for the
18 actions described in subsection (1) of any individual
19 designated in the license to exercise its powers."

20 **Section 64.** Section 33-25-302, MCA, is amended to
21 read:

22 "33-25-302. Disapproval of agency contracts. (1) The
23 commissioner may disapprove a title agency contract between
24 a title agent insurance producer and title insurer, upon
25 appropriate notice to the parties to the contract, if he

1 finds that the contract, together with all amendments and
2 related documents:

3 (a) does not provide for adequate monitoring of the
4 agent's insurance producer's financial transactions; or

5 (b) provides for inadequate, unreasonable, or
6 excessive amounts to be paid to or retained by the title
7 agent insurance producer. Factors the commissioner may
8 consider in this determination include but are not limited
9 to the agent's insurance producer's duties under the
10 contract and the general level of amounts paid to or
11 retained by other title agents insurance producers in the
12 state performing or assuming comparable duties.

13 (2) No A person may not act as a title agent insurance
14 producer under an agency contract that has been disapproved
15 by the commissioner."

16 **Section 65.** Section 33-25-401, MCA, is amended to
17 read:

18 "33-25-401. Prohibited practices -- referrals --
19 splitting charges -- exemptions. (1) Except as provided in
20 subsection (2), no a person may not:

21 (a) give or accept a fee, rebate, or thing of value
22 pursuant to an agreement or understanding that title
23 insurance business will be referred to a title agent
24 insurance producer; or

25 (b) give or accept a portion, split, or percentage of

1 a charge made or received for title insurance business in
2 connection with a transaction involving real property in
3 this state, other than for services actually performed.

4 (2) (a) A person may pay a return on an investment,
5 based on a percentage of an ownership interest in a title
6 insurance agency, if:

7 (i) at or prior to the time of a referral, a
8 disclosure of the existence of the arrangement is made to
9 the person being referred and, in connection with the
10 referral, the person is provided a written estimate of the
11 charge or range of charges generally made by the title agent
12 insurance producer to which the person is referred; and

13 (ii) the person is not required to use a particular
14 agent insurance producer.

15 (b) The following arrangements are not a violation of
16 subsection (2)(a)(ii):

17 (i) an arrangement that requires a buyer, borrower, or
18 seller to pay for the services of an attorney, credit
19 reporting agency, or real estate appraiser chosen by a
20 lender to represent the lender's interest in a real estate
21 transaction; or

22 (ii) an arrangement by which an attorney or law firm
23 represents a client in a real estate transaction and issues
24 or arranges for the issuance of a policy of title insurance
25 in the transaction directly as agent insurance producer or

1 through a separate corporate title insurance agency that may
2 be established by that attorney or law firm and operated as
3 an adjunct to his or its law practice.

4 (c) Failure to disclose a controlled business
5 relationship is not a violation of subsection (2)(a)(i) if
6 the failure was not intentional and resulted from a bona
7 fide error, proven by a preponderance of the evidence.

8 (3) This section does not prohibit:

9 (a) the payment of a fee to an attorney for services
10 actually rendered or by a title agent insurance producer for
11 services actually performed in the issuance of a title
12 insurance policy; or

13 (b) payment of a bona fide salary, compensation, or
14 other payment for goods or facilities actually furnished or
15 for services actually performed."

16 **Section 66.** Section 33-25-403, MCA, is amended to
17 read:

18 "33-25-403. Prohibited practices -- producer and
19 associates -- prohibition of favored agent insurance
20 producer or insurer. No A producer or associate may not,
21 directly or indirectly, require as a condition, agreement,
22 or understanding of providing another person a loan, loan
23 extension, credit, sale, property, contract, lease, or
24 service that the other person obtain title insurance of any
25 kind from a particular title insurer or title agent

1 insurance producer. No A title insurer or title agent
2 insurance producer may not knowingly participate in a plan
3 or transaction prohibited by this section."

4 **Section 67.** Section 33-22-1703, MCA, is amended to
5 read:

6 "33-22-1703. Definitions. As used in this part, the
7 following definitions apply:

8 (1) "Emergency services" means services provided after
9 suffering an accidental bodily injury or the sudden onset of
10 a medical condition manifesting itself by acute symptoms of
11 sufficient severity (including severe pain) that without
12 immediate medical attention the subscriber or insured could
13 reasonably expect that:

14 (a) his health would be in serious jeopardy;
15 (b) his bodily functions would be seriously impaired;
16 or

17 (c) a bodily organ or part would be seriously damaged.

18 (2) "Health benefit plan" means the health insurance
19 policy or subscriber arrangement between the insured or
20 subscriber and the health care insurer that defines the
21 covered services and benefit levels available.

22 (3) "Health care insurer" means:

23 (a) an insurer that provides disability insurance as
24 defined in 33-1-207;

25 (b) a health service corporation as defined in

1 33-30-101;

2 (c) a health maintenance organization as defined in
3 33-31-102;

4 (d) a fraternal benefit society as defined in
5 33-7-102;

6 (e) an administrator as defined in 33-17-601
7 33-17-102; or

8 (f) any other entity regulated by the commissioner
9 that provides health coverage.

10 (4) "Health care services" means health care services
11 or products rendered or sold by a provider within the scope
12 of the provider's license or legal authorization or services
13 provided under Title 33, chapter 22, part 7.

14 (5) "Insured" means an individual entitled to
15 reimbursement for expenses of health care services under a
16 policy or subscriber contract issued or administered by an
17 insurer.

18 (6) "Preferred provider" means a provider or group of
19 providers who have contracted to provide specified health
20 care services.

21 (7) "Preferred provider agreement" means a contract
22 between or on behalf of a health care insurer and a
23 preferred provider.

24 (8) "Provider" means an individual or entity licensed
25 or legally authorized to provide health care services or

1 services covered within Title 33, chapter 22, part 7.

2 (9) "Subscriber" means a certificate holder or other
3 person on whose behalf the health care insurer is providing
4 or paying for health care coverage."

5 NEW SECTION. Section 68. Repealer. Section 33-17-202,
6 33-17-204, 33-17-205, 33-17-218, ~~33-17-231~~--33-17-232,
7 33-17-402, 33-17-403, AND 33-17-601, ~~and--33-17-1104~~, AND
8 33-17-1104, MCA, are repealed.

9 NEW SECTION. Section 69. Extension of authority. Any
10 existing authority to make rules on the subject of the
11 provisions of [this act] is extended to the provisions of
12 [this act].

13 NEW SECTION. Section 70. Codification instruction.
14 [Section SECTIONS 4 THROUGH 6] ~~is~~ ARE intended to be
15 codified as an integral part of Title 33, chapter 17, and
16 the provisions of Title 33, chapter 17, apply to [section
17 SECTIONS 4 THROUGH 6].

18 NEW SECTION. Section 71. Saving clause. [This act]
19 does not affect rights and duties that matured, penalties
20 that were incurred, or proceedings that were begun before
21 [the effective date of this act].

22 NEW SECTION. Section 72. Severability. If a part of
23 [this act] is invalid, all valid parts that are severable
24 from the invalid part remain in effect. If a part of [this
25 act] is invalid in one or more of its applications, the part

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1 remains in effect in all valid applications that are
2 severable from the invalid applications.

3 NEW SECTION. **Section 73.** Effective date. [This act]
4 is effective January 1, 1990.

-End-