

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 W. Miller
 3 J. H. Hayes
 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."
 10
 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 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

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.

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.

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

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

4 "33-2-317. Exemptions. The provisions of this--surplus
 5 ~~fines~~--~~insurance~~--~~law~~ The Surplus Lines Insurance Law
 6 controlling the placement of insurance with unauthorized
 7 insurers does do not apply to reinsurance or to the
 8 following insurances when so placed by a licensed insurance
 9 agent producer of this state:

10 (1) wet marine and transportation insurances;

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

15 (3) insurance on property or operations of railroads
 16 engaged in interstate commerce; and

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

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

24 "33-2-708. Fees and licenses. (1) The Except as
 25 provided in 33-17-212(2), the commissioner shall collect in

1 advance and the persons so served shall so pay to the
 2 commissioner the following fees and licenses:

3 (a) certificates of authority:

4 (i) for filing applications for original certificates
 5 of authority, articles of incorporation (except original
 6 articles of incorporation of domestic insurers as provided
 7 in subsection (1)(b) below) and other charter documents,
 8 bylaws, financial statement, examination report, power of
 9 attorney to the commissioner, and all other documents and
 10 filings required in connection with such the application and
 11 for issuance of an original certificate of authority, if
 12 issued:

13 (A) domestic insurers \$ 300.00

14 (B) foreign insurers 300.00

15 (ii) annual continuation of certificate of authority ..
 16 300.00

17 (iii) reinstatement of certificate of authority
 18 25.00

19 (iv) amendment of certificate of authority 50.00

20 (b) articles of incorporation:

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

24 (ii) filing amendment of articles of incorporation,
 25 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 <u>to bylaws</u> 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 <u>agent's insurance producer's</u> license:	
9	(i) application for original license, including	
10	issuance of license, if issued <u>life-and/or-disability</u>	
11	.....	15.00
12	(ii) application--for--original---license,---including	
13	issuance--of--license,--if--issued-- <u>other--than--life-and/or</u>	
14	<u>disability</u>)-----15.00	
15	(iii) appointment-of-agent,--each-insurer-----10.00	
16	(iv) annual renewal,--each-insurer <u>of license</u> ..	10.00
17	.....	15.00
18	(v) temporary license	10.00 <u>15.00</u>
19	(vi) amendment of license (excluding additions	
20	thereto <u>to license</u>) or reissuance of master license	
21	.....	10.00 <u>15.00</u>
22	(f) nonresident <u>agent's insurance producer's</u> license:	
23	(i) application for original license, including	
24	issuance of license, if issued <u>life-and/or-disability</u>	
25	.....	100.00

1	(ii) application--for--original---license,---including	
2	issuance-of-license,--if--issued-- <u>other--than--life--and/or</u>	
3	<u>disability</u>)-----100.00	
4	(iii) appointment-of-agent,--each-insurer-----10.00	
5	(iv) annual renewal,--each-insurer <u>of license</u> ..	10.00
6	.....	100.00
7	(v) amendment of license (excluding additions	
8	thereto <u>to license</u>) or reissuance of master license	10.00
9	(g) <u>solicitor's license</u> :	
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 <u>agent--or-solicitor</u>	
15	<u>insurance producer</u> , each examination	15.00
16	(v) surplus lines <u>agent insurance producer</u> 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	(vi) 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	(vii) <u>insurance vending machine license</u> , each	
25	machine, each year	10.00

1 t+{k} commissioner's certificate under seal (except
 2 when on certificates of authority or licenses) 10.00
 3 t+{l} copies of documents on file in the
 4 commissioner's office, per page50
 5 t+{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) "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 f1)--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 f2)--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--duty
 7 licensed-agents-of-the-insurer;

8 f3)--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 f4)--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) Ne 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

1 as--to--life-or-disability-insurance-agents-and-in-33-8-233-

2 ~~(5)~~(2) The commissioner may prescribe by rule and make
 3 available the forms required in connection with application
 4 for, issuance, continuation, or termination of ~~licenses-and~~
 5 ~~appointments a license.~~

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

23 ~~(7)~~(4) A person licensed to sell coverage only for the
 24 all-risk federal crop insurance program shall receive a
 25 license restricted to that purpose.

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

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

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

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

14 ~~(h) 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)~~ (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) 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) transportation ticket agents of common carriers
 24 applying for license to solicit and sell only:
 25 (i) accident insurance ticket policies; or~~

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

4 ~~t37(f)~~ agents+associations an association applying
 5 for license under 33-17-205 33-17-211;

6 ~~t37(g)~~ a mechanical breakdown insurance agents
 7 producer.

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

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

20 "33-17-213. Conduct of examinations. (1) The
 21 commissioner shall make any examination required under
 22 33-17-212 available to applicants with reasonable frequency
 23 and at places in this state reasonably accessible to the
 24 applicants.

25 ~~t27--All-the-kinds-of-insurance-or-classes-thereof,--as~~

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

4 ~~t37(2)~~ The commissioner shall assure that the
 5 examinations are conducted in a fair and impartial manner
 6 and without unfair discrimination as between individuals
 7 examined.

8 ~~t47(3)~~ The commissioner may require a reasonable
 9 waiting period before reexamination of an applicant who has
 10 failed to pass a previous examination covering the same kind
 11 or kinds of insurance.

12 ~~t57(4)~~ The examination of a title agent insurance
 13 producer, as defined in 33-25-105, must include but is not
 14 limited to questions pertaining to the search and
 15 examination of title to real property, insurance principles
 16 relating to title insurance, and the fiduciary duties and
 17 procedures of escrows, settlements, and closings of real
 18 estate transactions."

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

21 "33-17-214. Issuance of license -- contents. (1) The
 22 commissioner shall promptly issue the a license applied-for
 23 to the a person qualified-therefor-in-accordance--with--this
 24 chapter pursuant to 33-17-211 and 33-17-212. There-is-a
 25 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-folllows:

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--licensee--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 ~~du~~ly 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.

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

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

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

12 **"33-17-603. Certificate of registration.** (1) Except as
 13 provided in 33-17-604, ~~no~~ a person may not act as or hold
 14 himself out to be an administrator in this state unless he
 15 holds a certificate of registration as an administrator.

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

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

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

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

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

13 **"33-17-604. Waiver of certification requirements.** The
 14 commissioner ~~of~~-~~insurance~~ may waive the requirements of
 15 33-17-603 for any person or class of persons. The factors
 16 taken into account in granting ~~such~~ a waiver shall include
 17 but are not limited to:

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

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

23 (3) whether the regular duties being performed as an
 24 administrator are such that the covered persons are not
 25 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 ~~ef--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-money 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 t27--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 t37(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 t47(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.

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

7 (3) The agent insurance producer shall keep at his
 8 place of business complete records pertaining to
 9 transactions under his license ~~and--the--licenses--of--his~~
 10 ~~solicitors~~, for a period of at least 3 years after
 11 completion of the respective transactions, except that a
 12 title agents insurance producer, as defined in 33-25-105,
 13 shall retain records as provided in 33-25-214 and
 14 33-25-216."

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

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

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

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

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

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

18 "33-17-1103. Exchange-of-business---sharing Accepting
 19 and paying commissions, fees, or consideration --
 20 restriction. ~~tit--An--agent--may--under--rules--adopted--by--the~~
 21 ~~commissioner--place--an--insurance--coverage--with--an--insurer--as~~
 22 ~~to--which--he--is--not--then--licensed--or--appointed--as--an--agent,~~
 23 ~~and--the--insurer--shall--accept--such--business--only--when--placed~~
 24 ~~through--an--agent--licensed--under--this--chapter--and--appointed~~
 25 ~~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 t2}--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 t3} (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 t4} (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-t7-tt04."

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 not
 24 invalidate any--contract a policy otherwise valid as between
 25 the insurer and the insured."

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

3 "33-17-1112. Salaried personnel not to countersign --
 4 exception for emergencies. (1) With respect to policies
 5 subject to countersignature requirements under 33-17-1111,
 6 only a licensed agent--of--the--insurer--resident insurance
 7 producer residing in Montana, whose compensation as such
 8 agent an insurance producer is by commission computed as a
 9 percentage of the premium received on each such policy
 10 written, shall have has power to countersign as required by
 11 33-17-1111.

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

1 fact by such a resident agent insurance producer."

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

4 "33-17-1113. Policies originating outside state --
 5 commission of resident agent insurance producer. (1) As to
 6 policies a policy or endorsements--thereto--which--are an
 7 endorsement to a policy that is subject to countersignature
 8 requirements under 33-17-1111 contracted for or otherwise
 9 originating outside the boundaries of Montana, there--shall
 10 be--payable--to--the--countersigning--agent--resident--in--Montana--
 11 a commission which--shall of not be less than 5% of the
 12 premium charged and received but not to--exceed more than 50%
 13 of the commission paid by the insurer is payable to the
 14 countersigning insurance producer, so that a record within
 15 Montana will be kept of such the business and so that the
 16 state may better receive any tax required by law to be paid
 17 with respect to such the insurance. If, however, the
 18 originating agent--or--broker insurance producer or the
 19 insurer desires additional service to be rendered during the
 20 term of the policy, then the compensation for such the
 21 countersigning resident agent--shall insurance producer must
 22 be in such an additional amount as is fixed by mutual
 23 agreement of such the parties in interest.

24 (2) If pursuant to the laws of another state the
 25 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
insurance producer to which the person is referred; and

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

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

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

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

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."
10
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 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

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.

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.

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

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

4 "33-2-317. Exemptions. The provisions of this--surplus
 5 fines--insurance--law The Surplus Lines Insurance Law
 6 controlling the placement of insurance with unauthorized
 7 insurers does do not apply to reinsurance or to the
 8 following insurances when so placed by a licensed insurance
 9 agent producer of this state:

10 (1) wet marine and transportation insurances;

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

15 (3) insurance on property or operations of railroads
 16 engaged in interstate commerce; and

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

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

24 "33-2-708. Fees and licenses. (1) The Except as
 25 provided in 33-17-212(2), the commissioner shall collect in

1 advance and the persons so served shall so pay to the
 2 commissioner the following fees and licenses:

3 (a) certificates of authority:

4 (i) for filing applications for original certificates
 5 of authority, articles of incorporation (except original
 6 articles of incorporation of domestic insurers as provided
 7 in subsection (1)(b) below) and other charter documents,
 8 bylaws, financial statement, examination report, power of
 9 attorney to the commissioner, and all other documents and
 10 filings required in connection with such the application and
 11 for issuance of an original certificate of authority, if
 12 issued:

13 (A) domestic insurers \$-300.00 \$ 500.00

14 (B) foreign insurers 300.00 500.00

15 (ii) annual continuation of certificate of authority ..
 16 300.00 500.00

17 (iii) reinstatement of certificate of authority
 18 25.00

19 (iv) amendment of certificate of authority 50.00

20 (b) articles of incorporation:

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

24 (ii) filing amendment of articles of incorporation,
 25 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 <u>to bylaws</u> 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 <u>insurance producer's</u> license:	
9	(i) application for original license, including	
10	issuance of license, if issued <u>life-and/or-disability</u>	
11	.....	15.00
12	(ii) application--for--original--license,--including	
13	<u>issuance--of--license,--if--issued--to other--than--life--and/or</u>	
14	<u>disability</u>)-----15.00	
15	<u>(iii) appointment-of-agent,--each-insurer-----10.00</u>	
16	<u>(iv) annual renewal,--each-insurer <u>of license</u> ..</u> 10.00	
17	.....	<u>15.00</u>
18	<u>(v) temporary license</u> 10.00	<u>15.00</u>
19	<u>(vi) amendment of license (excluding additions</u>	
20	<u>thereto to license) or reissuance of master license</u>	
21	.....	<u>10.00</u>
22	(f) nonresident agent's <u>insurance producer's</u> license:	
23	(i) application for original license, including	
24	issuance of license, if issued <u>life-and/or-disability</u>	
25	.....	100.00

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

1 (f)(k) commissioner's certificate under seal (except
 2 when on certificates of authority or licenses) 10.00
 3 (f)(l) copies of documents on file in the
 4 commissioner's office, per page50
 5 (f)(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 17-2-37 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 f3t{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 ~~t37--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 (i)--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--duty
 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

1 as--to--life-or-disability-insurance-agents-and-in-33-8-213-
 2 ~~t5~~(2) The commissioner may prescribe by rule and make
 3 available the forms required in connection with application
 4 for, issuance, continuation, or termination of ~~licenses-and~~
 5 ~~appointments a license.~~

6 ~~t6~~(3) Unless licensed as a life insurance agent
 7 producer as required by this section, no a person shall may
 8 not in this state solicit life insurance or annuities or
 9 procure applications therefor for life insurance or
 10 annuities or engage or hold himself out as engaging in the
 11 business of analyzing or abstracting life insurance policies
 12 or annuities or of counseling or advising or giving
 13 opinions, other than as a licensed attorney, relative to
 14 such insurance or annuities for fee, commission, or other
 15 compensation, other than as a salaried bona-fide full-time
 16 employee ~~so~~ counseling and advising his employer relative to
 17 the insurance interests of the employer and of the
 18 subsidiaries or business affiliates of the employer or with
 19 respect to the insurance interests of employees of ~~such the~~
 20 employer, subsidiaries, or affiliates under group insurance
 21 or similar insurance plans arranged by the employer or
 22 employers of ~~such the~~ employees.

23 ~~t7~~(4) A person licensed to sell coverage only for the
 24 all-risk federal crop insurance program shall receive a
 25 license restricted to that purpose.

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

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

14 (b) a representative of a fraternal benefit society
 15 who devotes or intends to devote less than 50% of his time
 16 to the solicitation and procurement of insurance contracts
 17 for the fraternal benefit society. A person who in the
 18 preceding calendar year has solicited and procured life
 19 insurance with a face amount in excess of \$50,000 or, in the
 20 case of any other kind or kinds of insurance that the
 21 fraternal benefit society may write, on more than 25
 22 individuals and who has received or will receive a
 23 commission or other compensation for the insurance is
 24 presumed to be devoting or intending to devote 50% of his
 25 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 as 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 a 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 a 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 (5) If the applicant is a partnership or
 21 corporation, the examination shall be 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 (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) surety insurance;

13 (g) credit life and disability insurance;

14 (h) title insurance.

15 (i) 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 (j) 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) 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) 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) transportation ticket agents of common carriers
 24 applying for license to solicit and sell only:

25 (i) accident insurance ticket policies; or

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

6 th}(g) a mechanical breakdown insurance agents
7 producer.

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

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

20 "33-17-213. Conduct of examinations. (1) The
21 commissioner shall make any examination required under
22 33-17-212 available to applicants with reasonable frequency
23 and at places in this state reasonably accessible to the
24 applicants.

25 ~~t2}--All the kinds of insurance or classes thereof,--as~~

1 referred-to-in-33-17-212{3}, which the applicant proposes to
2 transact--under-the-license-applied-for-shall-be-included-in
3 the-same-examination.

4 **f3j(2)** The commissioner shall assure that the
5 examinations are conducted in a fair and impartial manner
6 and without unfair discrimination as between individuals
7 examined.

8 ~~t47(3)~~ The commissioner may require a reasonable
9 waiting period before reexamination of an applicant who has
10 failed to pass a previous examination covering the same kind
11 or kinds of insurance.

12 ~~§57(4)~~ The examination of a title agent insurance
13 producer, as defined in 33-25-105, must include but is not
14 limited to questions pertaining to the search and
15 examination of title to real property, insurance principles
16 relating to title insurance, and the fiduciary duties and
17 procedures of escrows, settlements, and closings of real
18 estate transactions."

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

21 "33-17-214. Issuance of license -- contents. (1) The
22 commissioner shall promptly issue the a license applied-for
23 to the a person qualified-therefor-in-accordance--with--this
24 chapter pursuant to 33-17-211 and 33-17-212. There is a
25 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 ~~soriteitors~~. (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-folows:~~

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--persuant--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-licensee. 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-contains-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 ~~du~~ty 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.

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

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

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

12 "33-17-603. Certificate of registration. (1) Except as
 13 provided in 33-17-604, ~~no~~ a person may not act as or hold
 14 himself out to be an administrator in this state unless he
 15 holds a certificate of registration as an administrator.

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

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

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

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

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

13 "33-17-604. Waiver of certification requirements. The
 14 commissioner ~~of~~~~insurance~~ may waive the requirements of
 15 33-17-603 for any person or class of persons. The factors
 16 taken into account in granting ~~such~~ a waiver ~~shall~~ include
 17 but are not limited to:

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

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

23 (3) whether the regular duties being performed as an
 24 administrator are such that the covered persons are not
 25 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 licensee~~--~~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.

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

7 (3) The agent insurance producer shall keep at his
 8 place of business complete records pertaining to
 9 transactions under his license and--the--licenses--of--his
 10 solicitors for a period of at least 3 years after
 11 completion of the respective transactions, except that a
 12 title agents insurance producer, as defined in 33-25-105,
 13 shall retain records as provided in 33-25-214 and
 14 33-25-216."

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

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

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

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

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

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

18 "33-17-1103. Exchange-of-business----sharing Accepting
 19 and paying commissions, fees, or consideration --
 20 restriction. ~~if~~--An--agent--may--under--rules--adopted--by--the
 21 commissioner;--place--an--insurance--coverage--with--an--insurer--as
 22 to--which--he--is--not--then--licensed--or--appointed--as--an--agent;
 23 and--the--insurer--shall--accept--such--business--only--when--placed
 24 through--an--agent--licensed--under--this--chapter--and--appointed
 25 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 ~~(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."

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

3 "33-17-1112. Salaried personnel not to countersign --
4 exception for emergencies. (1) With respect to policies
5 subject to countersignature requirements under 33-17-1111,
6 only a licensed agent--of--the--insurer--resident insurance
7 producer residing in Montana, whose compensation as such
8 agent an insurance producer is by commission computed as a
9 percentage of the premium received on each such policy
10 written, shall have has power to countersign as required by
11 33-17-1111.

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

1 fact by such a resident agent insurance producer."

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

4 "33-17-1113. Policies originating outside state --
5 commission of resident agent insurance producer. (1) As to
6 policies a policy or endorsements--thereto--which-are an
7 endorsement to a policy that is subject to countersignature
8 requirements under 33-17-1111 contracted for or otherwise
9 originating outside the boundaries of Montana, there--shall
10 be payable to the countersigning agent--resident-in-Montana,
11 a commission which--shall of not be less than 5% of the
12 premium charged and received but not to exceed more than 50%
13 of the commission paid by the insurer is payable to the
14 countersigning insurance producer, so that a record within
15 Montana will be kept of such the business and so that the
16 state may better receive any tax required by law to be paid
17 with respect to such the insurance. If, however, the
18 originating agent--or--broker insurance producer or the
19 insurer desires additional service to be rendered during the
20 term of the policy, then the compensation for such the
21 countersigning resident agent--shall insurance producer must
22 be in such an additional amount as is fixed by mutual
23 agreement of such the parties in interest.

24 (2) If pursuant to the laws of another state the
25 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-

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, AND
8 33-17-601, AND 33-17-1104, MCA; AND PROVIDING A DELAYED
9 EFFECTIVE DATE."
10
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 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 as a stay of the
8 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.

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.

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

3 **Section 11.** Section 33-2-317, MCA, is amended to read:
 4 "33-2-317. Exemptions. The provisions of this--surplus
 5 lines--insurance--law The Surplus Lines Insurance Law
 6 controlling the placement of insurance with unauthorized
 7 insurers does do not apply to reinsurance or to the
 8 following insurances when so placed by a licensed insurance
 9 agent producer of this state:

10 (1) wet marine and transportation insurances;

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

15 (3) insurance on property or operations of railroads
 16 engaged in interstate commerce; and

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

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

24 "33-2-708. Fees and licenses. (1) The Except as
 25 provided in 33-17-212(2), the commissioner shall collect in

1 advance and the persons so served shall so pay to the
 2 commissioner the following fees and licenses:

3 (a) certificates of authority:

4 (i) for filing applications for original certificates
 5 of authority, articles of incorporation (except original
 6 articles of incorporation of domestic insurers as provided
 7 in subsection (1)(b) below) and other charter documents,
 8 bylaws, financial statement, examination report, power of
 9 attorney to the commissioner, and all other documents and
 10 filings required in connection with such the application and
 11 for issuance of an original certificate of authority, if
 12 issued:

13 (A) domestic insurers \$-300.00 \$ 500.00

14 (B) foreign insurers 300.00 500.00

15 (ii) annual continuation of certificate of authority ..
 16 300.00 500.00

17 (iii) reinstatement of certificate of authority

18 25.00

19 (iv) amendment of certificate of authority 50.00

20 (b) articles of incorporation:

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

24 (ii) filing amendment of articles of incorporation,
 25 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--tother--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--tother--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 ~~(iv) examination for license as agent--or-solicitor~~
 15 insurance producer, each examination 15.00
 16 ~~(v)(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 ~~(v)(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 ~~(v)(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 ~~§~~(l) copies of documents on file in the
 4 commissioner's office, per page50
 5 ~~§~~(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 17-2-3, 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 (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) 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

1 general agent; or

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

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

9 (3)--An--"agent"--is--an--individual,--partnership,--or
10 corporation--appointed--by--an--insurer--to--settle--applications
11 for--insurance--or--annuities--or--to--negotiate--insurance--on--its
12 behalf--and--if--authorized--to--do--so--by--the--insurer,--to
13 effectuate--and--countersign--insurance--contracts.

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

16 (3) (a) "Administrator" means a person who collects
17 charges or premiums from residents of this state in
18 connection with life, disability, property, or casualty
19 insurance or annuities or who adjusts or settles claims on
20 such coverage.

21 (b) The term does not mean:

22 (i) an employer on behalf of its employees or on
23 behalf of the employees of one or more subsidiaries of
24 affiliated corporations of the employer;

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

1 (iii) (A) an insurer that is either authorized in this
2 state or acting as an insurer with respect to a policy
3 lawfully issued and delivered by it in and pursuant to the
4 laws of a state in which the insurer is authorized to
5 transact insurance; or

6 (B) a health service corporation as defined in
7 33-30-101;

8 (iv) a life, disability, property, or casualty
9 insurance producer who is licensed in this state and whose
10 activities are limited exclusively to the sale of insurance;
11 (v) a creditor on behalf of its debtors with respect
12 to insurance covering a debt between the creditor and its
13 debtors;

14 (vi) a trust established in conformity with 29 U.S.C.
15 186 or the trustees, agents, and employees of the trust;

16 (vii) a trust exempt from taxation under section 501(a)
17 of the Internal Revenue Code or the trustees and employees
18 of the trust;

19 (viii) a custodian acting pursuant to a custodian
20 account that meets the requirements of section 401(f) of the
21 Internal Revenue Code or the agents and employees of the
22 custodian;

23 (ix) a bank, credit union, or other financial
24 institution that is subject to supervision or examination by
25 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 t47(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 t5)--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 t6)--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

1 negotiation or solicitation of insurance;

2 (2) a person who is a salaried employee in the office
 3 of an insurance producer and who devotes his full time to
 4 clerical and administrative services, including the
 5 incidental taking of insurance applications and receipt of
 6 premiums in the office of his employer, if the employee does
 7 not receive any commissions on the applications and his
 8 compensation is not varied by the volume of applications or
 9 premiums he takes or receives;

10 (3) a person who secures and furnishes information for
 11 the purpose of group life insurance, annuities, group or
 12 blanket accident and disability insurance or for the purpose
 13 of enrolling individuals under such plans, issuing
 14 certificates under such plans, or otherwise assisting in
 15 administering such plans, if no commission is paid for the
 16 service;

17 (4) an employer, his officers, or employees or the
 18 trustees of an employee trust plan, to the extent that the
 19 employer, officers, employees, or trustees are engaged in
 20 the administration of operation of a program of employee
 21 benefits for their own employees or the employees of their
 22 subsidiaries or affiliates if the program involves the use
 23 of insurance issued by an insurer and the employer,
 24 officers, employees, or trustees are not compensated in any
 25 manner, directly or indirectly, by the insurer issuing the

1 contracts; or

2 (5) a person who is:

3 (a) an employee of an insurer or of an organization
 4 employed by an insurer, which insurer or organization is
 5 engaged in the inspection, rating, or classification of
 6 insurance risks or in the supervision of the training of
 7 insurance producers; and

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

10 **Section 18.** Section 33-17-201, MCA, is amended to
 11 read:

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

21 +2}--No-person-may-act-or--hold--himself--out--in--this
 22 state--to--be-a-managing-general-agent-unless-licensed-as-an
 23 insurance-agent-under-this--chapter--and--appointed--by--the
 24 insurers-represented:

25 +3}--No--agent--or--solicitor--shall--solicit--or--take

1 application-for,-procure,-or-place-for-others--any-kind--of
 2 insurance-as-to-which-he-is-not-then-licensed:

3 t4)--Ne--agent--shall--place--any--business--other--than
 4 coverage-of-his-own-risks,-with-any-insurer-as-to--which--he
 5 does--not--then--hold--a--validated--appointment--or--license--as
 6 agent-under-this-chapter,-except-as-provided--in--33-17-1104
 7 as--to--life--or--disability--insurance--agents--and--in--33-8-213-

8 (2) NO INSURANCE PRODUCER SHALL PLACE ANY BUSINESS,
 9 OTHER THAN COVERAGE OF HIS OWN RISKS, WITH ANY INSURER AS TO
 10 WHICH HE DOES NOT THEN HOLD A VALIDATED APPOINTMENT OR
 11 LICENSE AS INSURANCE PRODUCER UNDER THIS CHAPTER, EXCEPT AS
 12 PROVIDED IN 33-17-1104 AS TO LIFE OR DISABILITY INSURANCE
 13 AGENTS AND IN 33-8-213.

14 t5)t2)(3) The commissioner may prescribe by rule and
 15 make available the forms required in connection with
 16 application for, issuance, continuation, or termination of
 17 licenses-and-appointments a license.

18 t6)t3)(4) Unless licensed as a life insurance agent
 19 producer as required by this section, no a person shall may
 20 not in this state solicit life insurance or annuities or
 21 procure applications therefor for life insurance or
 22 annuities or engage or hold himself out as engaging in the
 23 business of analyzing or abstracting life insurance policies
 24 or annuities or of counseling or advising or giving
 25 opinions, other than as a licensed attorney, relative to

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

10 t7)t4)(5) A person licensed to sell coverage only for
 11 the all-risk federal crop insurance program shall receive a
 12 license restricted to that purpose.

13 t5)t6) A representative of a fraternal benefit society
 14 who solicits and negotiates insurance contracts is an
 15 insurance producer and is subject to the same licensing
 16 requirements as those for an insurance producer, except that
 17 a license is not required of:

18 (a) an officer, employee, or secretary of a fraternal
 19 benefit society or of a subordinate lodge or branch of a
 20 fraternal benefit society who devotes substantially all of
 21 his time to activities other than the solicitation or
 22 negotiation of insurance contracts and who receives no
 23 commission or other compensation directly dependent upon
 24 that number or amount of insurance contracts solicited or
 25 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}{f2}(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}{f3}(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~~ the
 9 employer, subsidiaries, or affiliates under group insurance
 10 or similar insurance plans arranged by the employer or
 11 employers of ~~such the~~ the employees.

12 ~~t7t4t5~~ 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 ~~t5t6~~ 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. t1t--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 ~~t2t--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-33-17-2057,--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--off--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

1 required--under--33-17-212,--all--in--the-respective-amounts
 2 stated--in--33-2-708. (1) An individual applying for a
 3 license shall apply on a form specified by the commissioner
 4 and declare under penalty of refusal, suspension, or
 5 revocation of the license that statements made in the
 6 application are true, correct, and complete to the best of
 7 the individual's knowledge and belief. Before approving the
 8 application, the commissioner shall verify that the
 9 individual:

10 (a) is 18 years of age or older;
 11 (b) has not committed an act that is a ground for
 12 refusal, suspension, or revocation set forth in 33-17-1001;
 13 (c) has paid the license fees stated in 33-2-708;
 14 (d) has successfully passed the examinations for each
 15 kind of insurance for which the individual has applied;
 16 (e) is a resident of this state or of another state
 17 that grants similar privileges to residents of this state;
 18 (f) is competent, trustworthy, and of good reputation;
 19 (g) has experience or training or otherwise is
 20 qualified in the kind or kinds of insurance for which he
 21 applies to be licensed and is reasonably familiar with the
 22 provisions of this code which govern his operations as an
 23 insurance producer; and
 24 (h) if applying for a license as to life or disability
 25 insurance:

1 (i) is not a funeral director, undertaker, or
 2 mortician operating in this or any other state;
 3 (ii) is not an officer, employee, or representative of
 4 a funeral director, undertaker, or mortician operating in
 5 this or any other state; or
 6 (iii) does not hold an interest in or benefit from a
 7 business of a funeral director, undertaker, or mortician
 8 operating in this or any other state.
 9 (2) A person acting as an insurance producer shall
 10 obtain a license. A person shall apply for a license on a
 11 form specified by the commissioner. Before approving the
 12 application, the commissioner shall verify that:
 13 (a) the person meets the requirements listed in
 14 subsection (1);
 15 (b) the person has paid the licensing fees stated in
 16 33-2-708 for each individual licensed in conjunction with
 17 the person's license. A licensed person shall promptly
 18 notify the commissioner of each change relating to an
 19 individual listed in the license.
 20 (c) the person has designated a licensed officer
 21 responsible for compliance by the person with the insurance
 22 laws and rules of this state;
 23 (d) each member and employee of a partnership and each
 24 officer, director, stockholder, or employee of a corporation
 25 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. After completion and fitting 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 (5) If the applicant is a partnership or
 14 corporation, the examination shall be 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 (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 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) surety insurance;~~
 6 ~~(g) credit life and disability insurance;~~
 7 ~~(h) 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) 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 ~~(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 code 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--its--discretion--upon--written--request--of--the--insurer;

11 ~~(e)~~ 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)~~ 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)~~ agents--associations an association applying
 23 for license under 33-17-205 33-17-211;

24 ~~(h)~~ 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 ~~t4)(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 ~~t5)(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 ~~t4)--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

1 was licensed, as referred to in subsection (1), no longer
 2 exist. The license fee ~~shall-be is as stated provided~~ in
 3 33-2-708 for each license year or part thereof of the year
 4 for each respective mechanical vending machine. Proof of the
 5 existence of a subsisting license ~~shall~~ must be displayed on
 6 or about each such mechanical vending machine in use in such
 7 the manner as that the commissioner may reasonably require."

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

10 "33-17-301. Adjuster's Adjuster license --
 11 qualifications -- catastrophe adjustments -- public
 12 adjuster. (1) No A person ~~shall~~ may not in this state act as
 13 or hold himself out to be an adjuster unless then licensed
 14 therefor as an adjuster under this chapter. Application A
 15 person shall apply for an adjuster license ~~shall-be-made~~ to
 16 the commissioner according to forms as--prescribed--and
 17 furnished-by-him the commissioner prescribes and furnishes.
 18 The commissioner shall issue the adjuster license as to
 19 individuals qualified therefor to be licensed as an adjuster
 20 upon payment of the license fee stated provided in 33-2-708.

21 (2) To be licensed as an adjuster, the applicant must
 22 be-qualified-therefor-as-folows:

23 (a) must be an individual 18 years of age or more;
 24 (b) must be a resident in-and of Montana or resident
 25 of another state which that will permit residents of Montana

1 regularly to act as adjusters in such the other state;
 2 (c) must be a full-time salaried employee of a
 3 licensed adjuster or a graduate of a recognized law school
 4 or must have had experience or special education or training
 5 as to the handling of loss claims under insurance contracts
 6 of sufficient duration and extent reasonably to make him
 7 competent to fulfill the responsibilities of an adjuster;
 8 (d) must be trustworthy and of good character and
 9 reputation;

10 (e) must shall have and maintain in this state an
 11 office accessible to the public and keep therein in the
 12 office the usual and customary records pertaining to
 13 transactions under the license. This provision shall does
 14 not be-deemed-to prohibit maintenance of such the office in
 15 the name of the licensee.

16 (3) A firm partnership or corporation, whether or not
 17 organized under the laws of this state, may be licensed as
 18 an adjuster if each individual who is to exercise the
 19 adjuster license powers is separately licensed or is named
 20 in the firm partnership or corporation adjuster license and
 21 is qualified as for an individual adjuster license as
 22 adjuster. An additional full license fee ~~shall~~ must be paid
 23 as--to for each individual in excess of one so named in the
 24 firm partnership or corporation adjuster license to exercise
 25 its powers.

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

9 (5) An adjuster license continues in force until
 10 expired, suspended, revoked, or terminated. The license is
 11 subject to annual payment to the commissioner of the renewal
 12 fee required by 33-2-708, accompanied by a written request
 13 for renewal.

14 (6) The commissioner may adopt rules providing for the
 15 examination, licensure, bonding, and regulation of public
 16 adjusters."

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

19 "33-17-401. Nonresident agent insurance producer --
 20 reciprocity. (1) A nonresident person may apply for a
 21 license if:

22 (a) the person meets the requirements of 33-17-211(2);
 23 (b) the person is licensed in the state of his
 24 residence to act as insurance producer for the kind or kinds
 25 of insurance for which he applies for licensing in this

1 state; and
 2 (c) the person's state of residence issues a similar
 3 license to a resident of this state for the same kind or
 4 kinds of insurance for which the person is qualified in this
 5 state.

6 (2) The commissioner may license a nonresident
 7 individual without written examination if the insurance
 8 department in the individual's state of residence certifies
 9 that:

10 (a) the individual either has passed a written
 11 examination for each kind of insurance applied for or was
 12 licensed prior to the time a written examination was
 13 required in the individual's state of residence; and

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

15 (3) The commissioner may issue only a nonresident
 16 license to a person, partnership, or corporation otherwise
 17 qualified under this code but not a resident of this state
 18 and-only-if-pursuant--to--the--laws--of--the--state--of--his
 19 residence--a--similar--privilege--is--extended--to--persons
 20 resident-in-Montana.

21 (4) If, by the laws or rules of another state, a
 22 limitation of rights and privileges, conditions precedent,
 23 or any other requirements are imposed upon a resident of
 24 this state who is a nonresident licensee of the other state
 25 and the limitation, conditions, or requirements are in

1 addition to or in excess of those imposed on nonresident
 2 persons under this chapter, the same limitation, conditions,
 3 or requirements must be imposed upon the residents of the
 4 other state.

5 (5) If a nonresident insurance producer's state of
 6 residence suspends, revokes, or terminates his insurance
 7 license in that state, his Montana nonresident license
 8 automatically terminates and the nonresident insurance
 9 producer shall notify the commissioner that his state of
 10 residence has suspended, revoked, or terminated his
 11 insurance license in that state."

12 **Section 28.** Section 33-17-404, MCA, is amended to
 13 read:

14 "33-17-404. Countersigning coverage of residents.
 15 Except as provided in 33-17-1111, a nonresident agent shall
 16 insurance producer may not sign or countersign policies
 17 covering subjects of insurance residing, located, or to be
 18 performed in Montana."

19 **Section 29.** Section 33-17-405, MCA, is amended to
 20 read:

21 "33-17-405. Service of process -- commissioner as
 22 agent insurance producer. Application-for-and-acceptance--of
 23 a--license--as--a--nonresident--agent--shall--constitute
 24 irrevocable--appointment--of--the--commissioner--as--the
 25 attorney-in-fact--of--said--licensee--to--accept--service--of

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

19 **Section 30.** Section 33-17-406, MCA, is amended to
 20 read:

21 "33-17-406. Nonresident agent insurance producer
 22 subject to insurance code. All A nonresident licensees shall
 23 be insurance producer is subject to the provisions of the
 24 Montana Insurance Code as though a resident of this state,
 25 unless otherwise provided."

1 **Section 31.** Section 33-17-407, MCA, is amended to
2 read:

3 "33-17-407. Nonresident licensee insurance producer to
4 pay taxes -- annual report required. (1) A nonresident
5 licensee insurance producer is subject to personal income,
6 business income, or corporate license taxes for all income
7 earned on insurance policies issued to cover subjects or
8 risks residing, located, or to be performed in Montana and
9 written within the boundaries of this state.

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

19 **Section 32.** Section 33-17-411, MCA, is amended to
20 read:

21 "33-17-411. Penalty. A nonresident licensee insurance
22 producer who violates any a condition of his Montana license
23 or any a provision of this part is subject to a fine by the
24 commissioner of up to \$50,000 for each such violation and
25 may, at the discretion of the commissioner, have his Montana

1 nonresident license revoked or suspended for a period of up
2 to 5 years."

3 **Section 33.** Section 33-17-502, MCA, is amended to
4 read:

5 "33-17-502. Prohibition on holding out as consultant
6 -- receiving fee. (1) Any A person not licensed as an
7 insurance consultant in this state who identifies or holds
8 himself out to be an insurance consultant without having
9 been licensed as an insurance consultant under this part or
10 any A person who uses any other designation or title which
11 that is likely to mislead the public and holds himself out
12 in any manner as having particular insurance qualifications
13 other than those for which he may be otherwise licensed or
14 otherwise qualified is guilty of a misdemeanor and upon
15 conviction shall be fined \$1,500.

16 (2) Any A person not licensed as an insurance
17 consultant with respect to the relevant kinds of insurance
18 who receives any a fee for examining, appraising, reviewing,
19 or evaluating any insurance policy, annuity or pension
20 contract, plan, or program or who shall--make makes
21 recommendations or give gives advice with regard to any of
22 the above without first having been licensed by the
23 commissioner as an insurance consultant is guilty of a
24 misdemeanor and upon conviction shall be fined \$1,500.

25 (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 ~~duy~~ 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 account
 6 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--off--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 (1) 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

1 in force pursuant to the--provisions--of this chapter is
 2 guilty of a misdemeanor and upon conviction shall be fined
 3 \$500 or imprisoned in the county jail for 90 days, or both."

4 **Section 51.** Section 33-17-1101, MCA, is amended to
 5 read:

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

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

25 (3) The agent insurance producer shall keep at his

1 place of business complete records pertaining to
 2 transactions under his license and--the--licenses--of--his
 3 solicitors, for a period of at least 3 years after
 4 completion of the respective transactions, except that a
 5 title agents insurance producer, as defined in 33-25-105,
 6 shall retain records as provided in 33-25-214 and
 7 33-25-216."

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

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

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

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

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

11 "33-17-1103. Exchange-of-business----sharing Accepting
 12 and paying commissions, fees, or consideration --
 13 restriction. (1) An agent may, under rules--adopted--by--the
 14 commissioner, place an insurance coverage with an insurer as
 15 to--which--he-is-not-then-licensed-or-appointed-as-an-agent,
 16 and the insurer shall accept such business, only when placed
 17 through an agent, licensed under this chapter and--appointed
 18 by--the insurer. Both agents involved in such an exchange-of
 19 business must--be--licensed--as--to--all--of--the--kinds--of
 20 insurance represented by the coverage so placed.

21 (2)--The--agents--involved--in--a--lawful--exchange--of
 22 business under subsection (1) above may divide between--them
 23 the--commission--or--compensation--payable--on--account--of--such
 24 coverage: (1) An insurer or insurance producer may not pay,
 25 directly or indirectly, a commission, service fee, brokerage

1 fee, or other valuable consideration to a person for
 2 services as an insurance producer unless the person
 3 performing the service holds a valid license with regard to
 4 the kind or kinds of insurance for which the service was
 5 rendered at the time the service was performed. A person not
 6 properly licensed in accordance with this chapter at the
 7 time he performs the service as an insurance producer may
 8 not accept a commission, service fee, brokerage fee, or
 9 other valuable consideration for the service. This section
 10 does not prevent payment or receipt of renewal or other
 11 deferred commissions to or by a person entitled to receive
 12 the payment under this section.

13 (3)(2) No--agent--or--solicitor--shall An insurance
 14 producer may not directly or indirectly share his
 15 commissions or other compensation received or to be received
 16 by him on account of a transaction under his license with
 17 any person not also licensed under this chapter as to the
 18 same kind or kinds of insurance involved in such the
 19 transactions, except as provided in 33-17-1113. This
 20 provision shall does not affect payment of the regular
 21 salaries due employees of the licensee, or the distribution
 22 in regular course of business of compensation and profits
 23 among members or stockholders if the licensee is a firm
 24 partnership or corporation, or use of funds for family or
 25 personal purposes.

1 ~~t4}(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--setfitter,
 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

1 excessive amounts to be paid to or retained by the title
 2 agent insurance producer. Factors the commissioner may
 3 consider in this determination include but are not limited
 4 to the agent's insurance producer's duties under the
 5 contract and the general level of amounts paid to or
 6 retained by other title agents insurance producers in the
 7 state performing or assuming comparable duties.

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

11 **Section 63.** Section 33-25-401, MCA, is amended to
 12 read:

13 "33-25-401. Prohibited practices -- referrals --
 14 splitting charges -- exemptions. (1) Except as provided in
 15 subsection (2), no a person may not:

16 (a) give or accept a fee, rebate, or thing of value
 17 pursuant to an agreement or understanding that title
 18 insurance business will be referred to a title agent
insurance producer; or

19 (b) give or accept a portion, split, or percentage of
 20 a charge made or received for title insurance business in
 21 connection with a transaction involving real property in
 22 this state, other than for services actually performed.

23 (2) (a) A person may pay a return on an investment,
 24 based on a percentage of an ownership interest in a title

1 insurance agency, if:

2 (i) at or prior to the time of a referral, a
 3 disclosure of the existence of the arrangement is made to
 4 the person being referred and, in connection with the
 5 referral, the person is provided a written estimate of the
 6 charge or range of charges generally made by the title agent
 7 insurance producer to which the person is referred; and
 8 (ii) the person is not required to use a particular
 9 agent insurance producer.

10 (b) The following arrangements are not a violation of
 11 subsection (2)(a)(ii):

12 (i) an arrangement that requires a buyer, borrower, or
 13 seller to pay for the services of an attorney, credit
 14 reporting agency, or real estate appraiser chosen by a
 15 lender to represent the lender's interest in a real estate
 16 transaction; or

17 (ii) an arrangement by which an attorney or law firm
 18 represents a client in a real estate transaction and issues
 19 or arranges for the issuance of a policy of title insurance
 20 in the transaction directly as agent insurance producer or
 21 through a separate corporate title insurance agency that may
 22 be established by that attorney or law firm and operated as
 23 an adjunct to his or its law practice.

24 (c) Failure to disclose a controlled business
 25 relationship is not a violation of subsection (2)(a)(i) if

1 the failure was not intentional and resulted from a bona
 2 fide error, proven by a preponderance of the evidence.

3 (3) This section does not prohibit:

4 (a) the payment of a fee to an attorney for services
 5 actually rendered or by a title agent insurance producer for
 6 services actually performed in the issuance of a title
 7 insurance policy; or

8 (b) payment of a bona fide salary, compensation, or
 9 other payment for goods or facilities actually furnished or
 10 for services actually performed."

11 **Section 64.** Section 33-25-403, MCA, is amended to
 12 read:

13 "33-25-403. Prohibited practices -- producer and
 14 associates -- prohibition of favored agent insurance
 15 producer or insurer. No A producer or associate may not,
 16 directly or indirectly, require as a condition, agreement,
 17 or understanding of providing another person a loan, loan
 18 extension, credit, sale, property, contract, lease, or
 19 service that the other person obtain title insurance of any
 20 kind from a particular title insurer or title agent
 21 insurance producer. No A title insurer or title agent
 22 insurance producer may not knowingly participate in a plan
 23 or transaction prohibited by this section."

24 **Section 65.** Section 33-22-1703, MCA, is amended to
 25 read:

1 "33-22-1703. Definitions. As used in this part, the
 2 following definitions apply:

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

9 (a) his health would be in serious jeopardy;
 10 (b) his bodily functions would be seriously impaired;
 11 or

12 (c) a bodily organ or part would be seriously damaged.
 13 (2) "Health benefit plan" means the health insurance
 14 policy or subscriber arrangement between the insured or
 15 subscriber and the health care insurer that defines the
 16 covered services and benefit levels available.

17 (3) "Health care insurer" means:
 18 (a) an insurer that provides disability insurance as
 19 defined in 33-1-207;
 20 (b) a health service corporation as defined in
 21 33-30-101;
 22 (c) a health maintenance organization as defined in
 23 33-31-102;
 24 (d) a fraternal benefit society as defined in
 25 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

page 2 of 4

(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

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continued

SENATE
HB 734

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: "400.00"
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"

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 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, 33-17-1115,
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, AND33-17-3104, 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.

1 (2) The commissioner shall consider a license to have
 2 been, or intended to be, used for the purpose of writing
 3 controlled business if, during any 12-month period, the
 4 aggregate amount of premiums on controlled business would
 5 exceed the aggregate amount of premiums on all other
 6 insurance business of the applicant or licensee.

7 NEW SECTION. SECTION 5. APPOINTMENTS OF INSURANCE
 8 PRODUCERS BY INSURERS. (1) AN INSURANCE PRODUCER MAY NOT
 9 CLAIM TO BE A REPRESENTATIVE OF OR AN AUTHORIZED OR
 10 APPOINTED INSURANCE PRODUCER OF OR USE ANOTHER TERM IMPLYING
 11 A CONTRACTUAL RELATIONSHIP WITH A PARTICULAR INSURER AND MAY
 12 NOT ACCEPT APPLICATIONS FOR THE INSURER UNLESS THE INSURANCE
 13 PRODUCER BECOMES AN APPOINTED INSURANCE PRODUCER OF THAT
 14 INSURER PURSUANT TO THIS SECTION. THE FOLLOWING ARE THE
 15 APPOINTING INSURER'S REQUIREMENTS FOR MAKING APPOINTMENT OF
 16 A LICENSED INSURANCE PRODUCER:

17 (A) THE INSURER SHALL, NO LATER THAN 15 DAYS FROM THE
 18 DATE THE AGENCY CONTRACT IS EXECUTED OR THE FIRST INSURANCE
 19 APPLICATION IS SUBMITTED BY A LICENSED INSURANCE PRODUCER,
 20 WHICHEVER IS EARLIER, FILE WITH THE INSURANCE DEPARTMENT A
 21 WRITTEN NOTICE OF APPOINTMENT ON A FORM PRESCRIBED BY THE
 22 INSURANCE DEPARTMENT.

23 (B) IF THERE IS NO EXECUTED AGENCY CONTRACT, THE
 24 INSURER SHALL MAIL TO THE LICENSED INSURANCE PRODUCER, NO
 25 LATER THAN 15 DAYS FROM THE DATE THE FIRST INSURANCE

1 APPLICATION IS SUBMITTED BY HIM, A COPY OF THE NOTICE OF
 2 APPOINTMENT FORM FILED WITH THE INSURANCE DEPARTMENT. IF THE
 3 LICENSED INSURANCE PRODUCER DOES NOT RECEIVE THE
 4 ACKNOWLEDGEMENT OF APPOINTMENT FROM THE INSURER WITHIN 30
 5 DAYS FROM THE DATE THE FIRST INSURANCE APPLICATION IS
 6 SUBMITTED TO THE INSURER, THE INSURANCE PRODUCER SHALL
 7 IMMEDIATELY DISCONTINUE ACTING AS AN INSURANCE PRODUCER ON
 8 BEHALF OF THAT INSURER UNTIL THE ACKNOWLEDGEMENT IS RECEIVED
 9 OR THE AGENCY CONTRACT IS EXECUTED.

10 (2) UPON RECEIPT OF THE NOTICE OF APPOINTMENT, THE
 11 INSURANCE DEPARTMENT SHALL VERIFY WITHIN 5 WORKING DAYS THAT
 12 THE LICENSED INSURANCE PRODUCER IS ELIGIBLE FOR APPOINTMENT.
 13 IF THE LICENSED INSURANCE PRODUCER IS DETERMINED TO BE
 14 INELIGIBLE FOR APPOINTMENT, THE INSURANCE DEPARTMENT SHALL
 15 NOTIFY THE INSURER WITHIN 5 DAYS OF THE DETERMINATION.

16 (3) AN APPOINTMENT IS EFFECTIVE ON THE DATE OF THE
 17 EXECUTED CONTRACT AND IS PERPETUAL UNTIL CANCELED BY THE
 18 INSURER.

19 NEW SECTION. SECTION 6. NOTIFICATION OF APPOINTMENT
 20 TERMINATION. (1) UPON THE TERMINATION OF AN APPOINTED
 21 INSURANCE PRODUCER BY AN INSURER, THE INSURER SHALL NOTIFY
 22 THE INSURANCE DEPARTMENT WITHIN 30 DAYS IN THE MANNER
 23 PRESCRIBED BY THE INSURANCE DEPARTMENT. IF THE REASON OF THE
 24 TERMINATION IS FOR ANY OF THE CAUSES LISTED IN [SECTION 49
 25 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
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 considered proper.

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

1 **Section 9.** Section 33-2-303, MCA, is amended to read:

2 "33-2-303. Filing and endorsement of contract. Every

3 Each insurance contract, cover, note, or certificate of

4 insurance procured and delivered as surplus lines insurance

5 under this part ~~shall~~ must be filed with the commissioner

6 and endorsed as "issued in an unauthorized insurer under The

7 Surplus Lines Insurance Law, under agent surplus lines

8 insurance producer license No." and "NOT covered by

9 the property and casualty guaranty fund of this state if the

10 unauthorized insurer becomes insolvent". The surplus lines

11 agent producer shall properly fill in and sign the

12 endorsement."

13 **Section 10.** Section 33-2-308, MCA, is amended to read:

14 "33-2-308. Evidence of the insurance -- changes --

15 penalty. (1) Upon placing surplus lines insurance, the

16 surplus lines agent insurance producer shall promptly issue

17 and deliver to the insured or the producing agent insurance

18 producer evidence of the insurance, consisting either of the

19 policy as issued by the insurer or, if ~~such~~ the policy is

20 not then available, a cover note or certificate of insurance

21 signed or countersigned by the agent insurance producer.

22 Such The cover note or certificate must show the subject,

23 coverage, conditions, and term of the insurance, the premium

24 charged and taxes collected from the insured, and the name

25 and address of the insurer. If the direct risk is assumed by

1 more than one insurer, the cover note or certificate must

2 state the name and address and proportion of the entire

3 direct risk assumed by each ~~such~~ insurer.

4 (2) If after the issuance and delivery of any such

5 cover note or certificate there is any change as to the

6 identity of the insurers or the proportion of the direct

7 risk assumed by the insurer as stated in the original cover

8 note or certificate or in any other material respect as to

9 the insurance coverage evidenced by the cover note or

10 certificate, the agent insurance producer shall promptly

11 issue and deliver to the insured a substitute cover note or

12 certificate accurately showing the current status of the

13 coverage and the insurers responsible thereunder under the

14 coverage.

15 (3) If a policy issued by the insurer is not available

16 upon placement of the insurance and the agent insurance

17 producer has issued and delivered a cover note or

18 certificate as hereinabove provided in subsection (2), upon

19 request therefor by the insured, the agent insurance

20 producer shall as soon as reasonably possible procure from

21 the insurer its policy evidencing ~~such~~ the insurance and

22 deliver ~~such~~ the policy to the insured in replacement of the

23 cover note or certificate theretofore previously issued.

24 (4) Any A surplus lines agent insurance producer who

25 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~~
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
 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
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
 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;
 25 (b) establishment of procedures through which

1 determination is to be made as to the eligibility of
 2 particular proposed coverages for placement with a surplus
 3 lines insurer or insurers; and

4 (c) establishment, procedures, and operations of any
 5 voluntary organization of surplus lines insurance agents
 6 producers or others designed to assist such--agents surplus
 7 lines insurance producers to comply with such the law.

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

10 **Section 13.** Section 33-2-317, MCA, is amended to read:

11 "33-2-317. **Exemptions.** The provisions of this--surplus
 12 lines---insurance---law The Surplus Lines Insurance Law
 13 controlling the placement of insurance with unauthorized
 14 insurers does do not apply to reinsurance or to the
 15 following insurances when so placed by a licensed insurance
 16 agent producer of this state:

17 (1) wet marine and transportation insurances;
 18 (2) insurance on subjects located, resident residing,
 19 or to be performed wholly outside of this state or on
 20 vehicles or aircraft owned and principally garaged outside
 21 this state;

22 (3) insurance on property or operations of railroads
 23 engaged in interstate commerce; and

24 (4) insurance of aircraft owned or operated by
 25 manufacturers of aircraft or aircraft operated in scheduled

1 interstate flight or cargo of such the aircraft or against
 2 liability, other than workers' compensation and employers'
 3 liability, arising out of the ownership, maintenance, or use
 4 of such the aircraft."

5 **Section 14.** Section 33-2-708, MCA, is amended to read:
 6 "33-2-708. Fees and licenses. (1) The Except as
 7 provided in 33-17-212(2), the commissioner shall collect in
 8 advance and the persons so served shall so pay to the
 9 commissioner the following fees and licenses:

10 (a) certificates of authority:
 11 (i) for filing applications for original certificates
 12 of authority, articles of incorporation (except original
 13 articles of incorporation of domestic insurers as provided
 14 in subsection (1)(b) below) and other charter documents,
 15 bylaws, financial statement, examination report, power of
 16 attorney to the commissioner, and all other documents and
 17 filings required in connection with such the application and
 18 for issuance of an original certificate of authority, if
 19 issued:

20 (A) domestic insurers \$-300.00 \$-500.00 \$ 600.00
 21 (B) foreign insurers 300.00 500.00 600.00
 22 (ii) annual continuation of certificate of authority ..
 23 300.00
 24 500.00 600.00
 25 (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 <u>thereto to bylaws</u> 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-- <u>insurance-producer's</u> --license:	
17	(i)--application--for--original--license,--including	
18	issuance-of-license,-if-issued-(<u>life-and/or-disability</u>)-----	
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-- <u>of license</u> -----10.00	
25	-----15.00	

1	(v) <u>(i)</u> --temporary--license-----10.00-----15.00	
2	(vi) <u>(ii)</u> --amendment--of--license--(excluding--additions	
3	<u>thereto--to--license</u> --or--reissuance--of--master--license-----	
4	-----10.00-----15.00	
5	(vii) <u>(E)</u> nonresident agent's <u>insurance producer's</u>	
6	license:	
7	(i) application for original license, including	
8	issuance of license, if issued (<u>life-and/or-disability</u>)	
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 <u>of license</u> .. 10.00	
15	<u>100.00 50.00 40.00</u>	
16	(v) <u>(iii)</u> amendment of license (excluding additions	
17	<u>thereto to license</u>) or reissuance of master license 10.00	
18	(vi) <u>(F)</u> 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	(v) examination for license as agent--or-solicitor	
24	<u>insurance producer</u> , each examination	15.00
25	(vi) <u>(G)</u> surplus lines agent <u>insurance producer</u>	

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.

1 (2) In addition to the provisions contained in this
 2 chapter, other chapters and provisions of this title shall
 3 apply to fraternal benefit societies to the extent
 4 applicable and not in conflict with the express provisions
 5 of this chapter and the reasonable implications thereof of
 6 this chapter, as follows: parts 1, 2, 3, through 4, and 7 of
 7 chapter 1; 33-2-104; 33-2-107; 33-2-112; chapter 2, part 13;
 8 33-3-308; 33-15-502; chapter 17; chapter 18; chapter 20; and
 9 chapter 22."

10 **Section 16.** Section 33-8-213, MCA, is amended to read:
 11 "33-8-213. (Temporary) Exemption from agent insurance
 12 producer appointment requirements. (1) For purposes of the
 13 plan:

14 (a) an insurer that has entered into an agreement as
 15 provided in 33-8-212 may accept applications for insurance
 16 coverage from any agent insurance producer even though that
 17 agent insurance producer has not been appointed by the
 18 insurer; and

19 (b) an agent insurance producer may place business, as
 20 to any type of insurance for which he is licensed at the
 21 time, with any insurer participating in the plan even though
 22 the agent insurance producer has not been appointed as an
 23 agent insurance producer by that insurer.

24 {2}--An-insurer-that-issues-insurance-coverage-upon--an
 25 application-submitted-by-an-agent-who-has-not-been-appointed

1 by---the---insurer---shall---pay--the--agent--a--commission--in
 2 conformity-with-the-insurer's-filed-rates,-rating-plans,-or
 3 forms-for-the-kind-of-insurance-effected:
 4 {2}--AN--INSURER--THAT--ISSUES--INSURANCE--COVERAGE--UPON--AN
 5 APPLICATION-SUBMITTED-BY-AN-INSURANCE-PRODUCER-WHO--HAS--NOT
 6 BEEN--APPOINTED--BY--THE--INSURER--SHALL--PAY--THE--INSURANCE
 7 PRODUCER-A-COMMISSION-IN-COMFORMITY-WITH-THE-INSURER'S-FILED
 8 RATES,-RATING-PLANS,-OR-FORMS--FOR--THE--KIND--OF--INSURANCE
 9 EXPECTED.

10 {3}{2}{3}{2}(2) An agent insurance producer who
 11 countersigns a policy, when a countersignature is required
 12 by 33-17-1111, shall must be paid a countersignature
 13 commission as provided in 33-17-1113. (Terminates July 1,
 14 1989--sec. 22, Ch. 11, Sp. L. March 1986.)"

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

17 "33-17-101. Scope of chapter. (1) The purpose of this
 18 chapter is to govern the qualifications and procedures for
 19 licensing insurance producers.

20 (2) This chapter shall-apply-as applies to all stock,
 21 mutual, and reciprocal insurers and as to all kinds of
 22 insurance and annuities."

23 **Section 18.** Section 33-17-102, MCA, is amended to
 24 read:

25 "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.

1 186 or the trustees, agents, and employees of the trust;
 2 (vii) a trust exempt from taxation under section 501(a)
 3 of the Internal Revenue Code or the trustees and employees
 4 of the trust;

5 (viii) a custodian acting pursuant to a custodian
 6 account that meets the requirements of section 401(f) of the
 7 Internal Revenue Code or the agents and employees of the
 8 custodian;

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

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

16 (xi) a person who adjusts or settles claims in the
 17 normal course of his practice or employment as an attorney
 18 and who does not collect charges or premiums in connection
 19 with life or disability insurance or annuities.

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

23 (4)(5) A--"consultant"--is "Consultant" means a person
 24 who for a fee examines, appraises, reviews, or evaluates an
 25 insurance policy, annuity, or pension contract, plan, or

1 program or who makes recommendations or gives advice on an
 2 insurance policy, annuity, or pension contract, plan, or
 3 program.

4 (5)--A--"solicitor"--is--an--individual--appointed--and
 5 authorized--by--an--agent--to--solicit--applications--for
 6 insurance,--other--than--life--insurance--or--disability
 7 insurance,--as--a--representative--of--such--agent,--and--to--collect
 8 premiums--thereon--when--expressly--so--authorized--by--the--agent.

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

15 (6) "Consultant license" means a document issued by
 16 the commissioner that authorizes a person to act as an
 17 insurance consultant.

18 (7) "Controlled business" means insurance procured or
 19 to be procured by or through a person upon the life, person,
 20 property, or risks of himself, his spouse, his employer, or
 21 his business.

22 (8) "Individual" means a private or natural person, as
 23 distinguished from a partnership, corporation, or
 24 association.

25 (9) "Insurance producer", except as provided in

1 33-17-103:2 (a) means:3 (i) a person who solicits, negotiates, effects,
4 procures, delivers, renews, continues, or binds:5 (A) policies of insurance for risks residing, located,
6 or to be performed in this state; or7 (B) membership contracts as defined in 33-30-101;8 (ii) a managing general agent. For purposes of this
9 definition, a "managing general agent" is a person who, on
10 behalf of an insurer, exercises general supervision over the
11 business of the insurer in this state, including the
12 authority to contract with an insurance producer for the
13 insurer and terminate those contracts.14 (b) does not mean a customer service representative.
15 For purposes of this definition, a "customer service
16 representative" means a salaried employee or OF an insurance
17 producer who assists and is responsible to the insurance
18 producer but who is not authorized to effect policies of
19 insurance.20 (10) "License" means a document issued by the
21 commissioner that authorizes a person to act as an insurance
22 producer for the kinds of insurance specified in the
23 document. The license itself does not create actual,
24 apparent, or inherent authority in the holder to represent
25 or commit an insurer to a binding agreement.1 (11) "Person" means an individual, partnership,
2 corporation, association, or other legal entity.3 (12) "Public adjuster" means an adjuster employed by
4 and representing the interests of the insured."5 **Section 19.** Section 33-17-103, MCA, is amended to
6 read:7 "33-17-103. Exceptions and exemptions from definition
8 of agent--managing--general--agent--and--solicitor insurance
9 producer. The definitions definition of agent--managing
10 general--agent--and--solicitor insurance producer contained in
11 33-17-102 shall does not be--considered--to include:12 (1)--individuals--employed--and--used--by--agents--for--the
13 performance--of--clerical--stenographic--and--similar--office
14 duties--Incidental--taking--of--an--application--for--insurance
15 from--time--to--time--in--the--office--of--the--employing--agent--shall
16 not--constitute--such--an--employee--as--an--agent--or--solicitor--if
17 the--employee's--compensation--is--not--contingent--upon--or
18 relating--to--the--volume--of--such--applications--insurance--or
19 premiums:20 (2)--a--supervising--salaried--officer--supervising
21 salaried--employee--or--other--person--or--entity--controlled--by
22 an--insurer--and--compensated--strictly--on--a--salary--basis--by--the
23 insurer--who--solicits--only--with--or--in--conjunction--with--duly
24 licensed--agents--of--the--insurer;25 (3)--the--attorney--in--fact--of--a--reciprocal--insurer--or

1 the--salaried--traveling--representative--of-a-reciprocal-or
 2 mutual-insurer-not-compensated-on-a-commission-basis;

3 t4}--a-person-who-secures-and-forwards-information--for
 4 the--purpose--of-an-existing-group-insurance-contract-or-for
 5 enrolling-individuals--under--an--existing--group--insurance
 6 contract---or---issuing--certificates--thereunder--where--no
 7 commission-is-paid-for-such-services:

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

13 (2) a person who is a salaried employee in the office
 14 of an insurance producer and who devotes his full time to
 15 clerical and administrative services, including the
 16 incidental taking of insurance applications and receipt of
 17 premiums in the office of his employer, if the employee does
 18 not receive any commissions on the applications and his
 19 compensation is not varied by the volume of applications or
 20 premiums he takes or receives;

21 (3) a person who secures and furnishes information for
 22 the purpose of group life insurance, annuities, group or
 23 blanket accident and disability insurance or for the purpose
 24 of enrolling individuals under such plans, issuing
 25 certificates under such plans, or otherwise assisting in

1 administering such plans, if no commission is paid for the
 2 service;

3 (4) an employer, his officers, or employees or the
 4 trustees of an employee trust plan, to the extent that the
 5 employer, officers, employees, or trustees are engaged in
 6 the administration of operation of a program of employee
 7 benefits for their own employees or the employees of their
 8 subsidiaries or affiliates if the program involves the use
 9 of insurance issued by an insurer and the employer,
 10 officers, employees, or trustees are not compensated in any
 11 manner, directly or indirectly, by the insurer issuing the
 12 contracts; or

13 (5) a person who is:
 14 (a) an employee of an insurer or of an organization
 15 employed by an insurer, which insurer or organization is
 16 engaged in the inspection, rating, or classification of
 17 insurance risks or in the supervision of the training of
 18 insurance producers; and

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

21 **Section 20.** Section 33-17-201, MCA, is amended to
 22 read:

23 "33-17-201. (Temporary) License required of agents,
 24 managing--general--agents--and--solicitors insurance producer
 25 -- 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 ~~t2}--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 ~~t3}--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 ~~t4}--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 ~~t2}--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--APPPOINTMENT--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 ~~t5}t2}t3}(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 ~~t6}t3}t4}(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 ~~t7}t4}t5}(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 ~~t5}t6}(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 (5)--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

1 PRODUCERS:

2 ~~t5t2t3t(2)~~ The commissioner may prescribe by rule
 3 and make available the forms required in connection with
 4 application for, issuance, continuation, or termination of
 5 ~~licenses-and-appointments~~ a license.

6 ~~t6t3t4t(3)~~ Unless licensed as a life insurance agent
 7 producer as required by this section, ~~no~~ a person ~~shall~~ may
 8 not in this state solicit life insurance or annuities or
 9 procure applications therefor for life insurance or
 10 annuities or engage or hold himself out as engaging in the
 11 business of analyzing or abstracting life insurance policies
 12 or annuities or of counseling or advising or giving
 13 opinions, other than as a licensed attorney, relative to
 14 such insurance or annuities for fee, commission, or other
 15 compensation, other than as a salaried bona-fide full-time
 16 employee ~~so~~ counseling and advising his employer relative to
 17 the insurance interests of the employer and of the
 18 subsidiaries or business affiliates of the employer or with
 19 respect to the insurance interests of employees of such the
 20 employer, subsidiaries, or affiliates under group insurance
 21 or similar insurance plans arranged by the employer or
 22 employers of such the employees.

23 ~~t7t4t5t(4)~~ A person licensed to sell coverage only
 24 for the all-risk federal crop insurance program shall
 25 receive a license restricted to that purpose.

1 ~~t5t6t(5)~~ A representative of a fraternal benefit
 2 society who solicits and negotiates insurance contracts is
 3 an insurance producer and is subject to the same licensing
 4 requirements as those for an insurance producer, except that
 5 a license is not required of:

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

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

1 contracts for the fraternal benefit society."

2 **Section 21.** Section 33-17-211, MCA, is amended to
3 read:

4 "33-17-211. Application General qualifications --
5 application for license. {1}--Application-for-an-agent-or
6 solicitor-license-must-be-made-to-the--commissioner--by--the
7 applicant-and-be-signed-and-sworn-to-by-the-applicant-before
8 a-notary-public.

9 {2}--The--commissioner--may--designate--the--forms--for
10 application-for-license, which must require full answers--to
11 such--questions--as--may--reasonably--be--necessary--to--determine
12 the--applicant's--identity,--residence,--personal--history,
13 business--record,--experience-and-training-in-insurance,--and
14 other-facts-as-required-by--the--commissioner--to--determine
15 whether--the--applicant--meets-the-applicable-qualifications
16 for-the-license-applied-for.

17 {3}--If-for-an-agent's-license,--the--application--must
18 state--the--kinds-of-insurance-proposed-to-be-transacted-and
19 be-accompanied-by-written-appointment-of--the--applicant--as
20 agent--by--an-authorized-insurer,--subject-to-issuance-of-the
21 license.

22 {4}--If-for-a-solicitor's-license,--the--application--must
23 be--accompanied--by--written--appointment--of--applicant--as
24 solicitor--by--a--licensed-agent,--subject-to-issuance-of-the
25 license.

1 {5}--If--the--applicant--for--an--agent--license--is--a
2 partnership--or--corporation,--the--application--shall--show,--in
3 addition,--the--names--of--all--members,--officers,--and--directors
4 and--shall--designate--each--individual--who--is--to--exercise--the
5 powers--to--be--conferred--by--the--license--upon--the--partnership
6 or--corporation.---Each--such--individual--so--designated--shall
7 furnish--information--as--to--himself,--as--part--of--the
8 application,--as--though--for--an--individual--license.

9 {6}--If--the--applicant--for--an--agent--license--is--an
10 agents'-association-pursuant-to-33-17-205,--the--application
11 must--show--the--names--and--residence--addresses--of--the
12 association's--officers-and-trustees.

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

23 {8}--The--commissioner--shall--require--as--part--of--the
24 application--for--license--the--certificate--of--an--officer--or
25 representative--of--the--insurer--proposed--to--be--represented,--in

1 the case of applicants for license as agent, or of the
 2 proposed employing agent, in the case of applicants for
 3 license as solicitor, as to whether the applicant is known
 4 to such officer or representative, whether the insurer or
 5 agent has investigated the character and business record of
 6 the applicant and the uses to be made of the license, if
 7 granted, and his opinion, based on such investigation, as to
 8 applicant's trustworthiness and competence.

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

21 (a) is 18 years of age or older;
 22 (b) has not committed an act that is a ground for
 23 refusal, suspension, or revocation set forth in 33-17-1001;
 24 (c) has paid the license fees stated in 33-2-708;
 25 (d) has successfully passed the examinations for each

1 kind of insurance for which the individual has applied;
 2 (e) is a resident of this state or of another state
 3 that grants similar privileges to residents of this state;
 4 (f) is competent, trustworthy, and of good reputation;
 5 (g) has experience or training or otherwise is
 6 qualified in the kind or kinds of insurance for which he
 7 applies to be licensed and is reasonably familiar with the
 8 provisions of this code which govern his operations as an
 9 insurance producer; and
 10 (h) if applying for a license as to life or disability
 11 insurance:
 12 (i) is not a funeral director, undertaker, or
 13 mortician operating in this or any other state;
 14 (ii) is not an officer, employee, or representative of
 15 a funeral director, undertaker, or mortician operating in
 16 this or any other state; or
 17 (iii) does not hold an interest in or benefit from a
 18 business of a funeral director, undertaker, or mortician
 19 operating in this or any other state.
 20 (2) A person acting as an insurance producer shall
 21 obtain a license. A person shall apply for a license on a
 22 form specified by the commissioner. Before approving the
 23 application, the commissioner shall verify that:
 24 (a) the person meets the requirements listed in
 25 subsection (1);

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

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

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

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

17 (ii) if the person is a corporation, the secretary of
 18 state has issued a certificate of incorporation under
 19 35-1-203 or 35-2-203.

20 (3) The commissioner may license as a resident
 21 insurance producer an association of licensed Montana
 22 insurance producers, whether or not incorporated, formed and
 23 existing substantially for purposes other than insurance.
 24 The license must be used solely for the purpose of enabling
 25 the association to place, as a resident insurance producer,

1 insurance of the properties, interests, and risks of the
 2 state of Montana and of other public agencies, bodies, and
 3 institutions and to receive the customary commission for the
 4 placement. The president and secretary of the association
 5 shall apply for the license in the name of the association,
 6 and the commissioner shall issue the license to the
 7 association in its name alone. The fee for the license is
 8 the same as that required by 33-2-708 for the license of an
 9 insurance producer. The commissioner may, after a hearing
 10 with notice to the association, revoke the license if he
 11 finds that continuation of the license is not in the public
 12 interest or that a ground listed in 33-17-1001 exists.

13 (4) An insurance producer using an assumed business
 14 name shall register the name with the commissioner before
 15 using it."

16 **Section 22.** Section 33-17-212, MCA, is amended to
 17 read:

18 "33-17-212. Examination required -- exceptions --
 19 fees. (1) After completion and filing of the application for
 20 license as required under 33-17-211, the commissioner shall
 21 subject each applicant for license as agent or solicitor,
 22 unless exempted therefrom under subsection (5) below, to an
 23 examination as to his competence to act as such agent or
 24 solicitor. The commissioner may either conduct the
 25 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
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~~~~6~~~~7~~~~8~~ (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 ~~td--at--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,~~
~~in--his--discretion,--upon--written--request--of--the--insurer;~~

22 ~~te~~(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 ~~tf~~(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 ~~tg~~(f) agents--associations an association applying
 9 for license under 33-17-205 33-17-211;
 10 ~~th~~(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:

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

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

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

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

21 **Section 27.** Section 33-17-221, MCA, is amended to
 22 read:

23 "33-17-221. Licensing insurance vending machines as
 24 ~~solicitors~~. (1) A licensed resident agent insurance producer
 25 may solicit applications for and issue policies of personal

1 travel accident insurance by means of mechanical vending
 2 machine machines supervised by him and placed at airports,
 3 railroad stations, bus stations, and similar places where
 4 transportation tickets are sold and of convenience to the
 5 traveling public, if the commissioner finds that:

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

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

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

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

23 (2) As to each such mechanical vending machine to be
 24 so used to sell or issue a policy, the commissioner shall
 25 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.

1 (3) The commissioner may issue only a nonresident
 2 license to a person, partnership, or corporation otherwise
 3 qualified under this code but not a resident of this state
 4 ~~and-only-if-pursuant--to--the--laws--of--the--state--of--his~~
 5 ~~residence--a--similar--privilege--is--extended--to--persons~~
 6 ~~resident-in-Montana.~~

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

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

23 **Section 30.** Section 33-17-404, MCA, is amended to
 24 read:

25 "33-17-404. Countersigning coverage of residents.

1 Except as provided in 33-17-1111, a nonresident ~~agent-shall~~
 2 ~~insurance producer may~~ not sign or countersign policies
 3 covering subjects of insurance ~~residing, located, or to be~~
 4 performed in Montana."

5 **Section 31.** Section 33-17-405, MCA, is amended to
 6 read:

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

1 "33-17-512. Limitation on type of consideration. No A
 2 person licensed as an insurance consultant may not receive
 3 any compensation, direct or indirect, as a result of the
 4 sale of insurance or annuities to or the use of securities
 5 or trusts in connection with pensions for any a person to
 6 whom any the licensee has performed any a related consulting
 7 service for which he has received a fee or contracted to
 8 receive a fee within the preceding 12 months."

9 **Section 43.** Section 33-17-513, MCA, is amended to
 10 read:

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

18 **Section 44.** Section 33-17-602, MCA, is amended to
 19 read:

20 "33-17-602. Written agreement required. (1) No A
 21 person may not act as an administrator without a written
 22 agreement between the person and the insurer. The written
 23 agreement shall must be retained as part of the official
 24 records of both the administrator and the insurer for the
 25 duration of the agreement and for 5 years thereafter. The

1 written agreement shall must contain provisions which that
 2 include the requirements of 33-17-612 through 33-17-617
 3 insofar as these requirements relate to the functions
 4 performed by the administrator.

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

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

14 **Section 45.** Section 33-17-603, MCA, is amended to
 15 read:

16 "33-17-603. Certificate of registration. (1) Except as
 17 provided in 33-17-604, no a person may not act as or hold
 18 himself out to be an administrator in this state unless he
 19 holds a certificate of registration as an administrator.

20 (2) An application for a certificate of registration
 21 must be accompanied by a fee of \$100. The commissioner of
 22 insurance shall issue the certificate unless he finds that
 23 the applicant is not competent, trustworthy, financially
 24 responsible, or of good personal and business reputation or
 25 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--morals--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,--solicitor,
 7 producer or adjuster without license -- penalty. Except as
 8 provided in 33-17-411, a person,--partnership,--association,
 9 or--corporation who or--which, in this state, acts as an
 10 insurance agent,--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,--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 is 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. ~~t3t~~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 ~~t3t~~The agents involved in a lawful exchange of
 8 business under subsection ~~t3t~~ 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 ~~t3t~~(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 ~~t473) 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--B&PE--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--ef--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~~ policy 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--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.

1 The insurer's--licensed--agent--resident insurance producer
 2 residing in Montana shall receive the commission on such the
 3 policy when the insurance premium is paid. This section does
 4 not apply as to life insurance."

5 **Section 58.**--Section--33-18-401,--MCA,--is--amended--to
 6 read:

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

1 discretion--of--the--court;"

2 **Section 60.** Section 33-25-202, MCA, is amended to
 3 read:

4 "33-25-202. Sharing of rate proceeds. Title insurers
 5 and agents insurance producers may share rate proceeds
 6 between or among themselves in any combination and may
 7 exchange--business--and--share accept commissions as provided
 8 in 33-17-1103, unless the sharing of rate proceeds is an
 9 unlawful rebate or inducement under this title or is a
 10 payment of a forwarding fee or finders fee."

11 **Section 61.** Section 33-25-214, MCA, is amended to
 12 read:

13 "33-25-214. Underwriting standards -- record
 14 retention. (1) A title insurer may not issue a title
 15 insurance policy unless it, its title agent insurance
 16 producer, or an approved attorney has conducted a reasonable
 17 search and examination of the title and made a determination
 18 of insurability of title in accordance with sound
 19 underwriting practices. The title insurer or title agent
 20 must insurance producer shall preserve and retain in its
 21 files evidence of the examination of title and determination
 22 of insurability. The title insurer or title agent insurance
 23 producer may keep original evidence or may establish in the
 24 regular course of business a system of recording, copying,
 25 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, ANB 33-17-601, and33-17-1104, 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-

Conference Committee
on HOUSE BILL 734
Report No. 1, April 11, 1989

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: "44v"

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

April 11, 1989
Page 2 of 2

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
Sen. Bob Williams

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HOUSE
HB 734

CORRECTED
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on HOUSE BILL 734
Report No. 1, April 11, 1989

April 11, 1989
Page 2 of 2

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(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.
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4. Page 18, line 14.
Following: "(iv)"
Insert: "(iii)"
Renumber: subsequent subsection

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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 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

Rep. Fred Thomas
Rep. Fred Thomas

For the Senate:

Sen. Gene Thayer
Sen. Gene Thayer, Chairman

Sen. Jerry Noble
Sen. Jerry Noble

Sen. Bob Williams
Sen. Bob Williams

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, 33-17-4017
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, 33-17-2317
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, 33-3-311 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-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;

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

5 (c) establishment, procedures, and operations of any
 6 voluntary organization of surplus lines insurance agents
 7 producers or others designed to assist such agents surplus
 8 lines insurance producers to comply with such the law.

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

11 **Section 13.** Section 33-2-317, MCA, is amended to read:
 12 "33-2-317. Exemptions. The provisions of this--surplus
 13 lines--insurance--law The Surplus Lines Insurance Law
 14 controlling the placement of insurance with unauthorized
 15 insurers does do not apply to reinsurance or to the
 16 following insurances when so placed by a licensed insurance
 17 agent producer of this state:

18 (1) wet marine and transportation insurances;
 19 (2) insurance on subjects located, resident residing,
 20 or to be performed wholly outside of this state or on
 21 vehicles or aircraft owned and principally garaged outside
 22 this state;
 23 (3) insurance on property or operations of railroads
 24 engaged in interstate commerce; and
 25 (4) insurance of aircraft owned or operated by

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

6 **Section 14.** Section 33-2-708, MCA, is amended to read:
 7 "33-2-708. Fees and licenses. (1) The Except as
 8 provided in 33-17-212(2), the commissioner shall collect in
 9 advance and the persons so served shall so pay to the
 10 commissioner the following fees and licenses:

11 (a) certificates of authority:
 12 (i) for filing applications for original certificates
 13 of authority, articles of incorporation (except original
 14 articles of incorporation of domestic insurers as provided
 15 in subsection (1)(b) below) and other charter documents,
 16 bylaws, financial statement, examination report, power of
 17 attorney to the commissioner, and all other documents, and
 18 filings required in connection with such the application and
 19 for issuance of an original certificate of authority, if
 20 issued:

21 (A) domestic insurers \$-300.00 \$-500.00 \$ 600.00
 22 (B) foreign insurers 300.00 500.00 600.00
 23 (ii) annual continuation of certificate of authority ..
 24 500.00 600.00
 25

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 ~~(f) application for original license, including
 19 issuance of license, if issued ~~(for life and/or disability)~~
 20 15.00~~
 21 ~~(f) application for original license, including
 22 issuance of license, if issued ~~(other than life and/or
 23 disability)~~ 15.00~~
 24 ~~(f) appointment of agent, each insurer 10.00~~
 25 ~~(f) annual renewal, each insurer of license 10.00~~

1 ~~15.00~~
 2 ~~(v) temporary license 10.00~~
 3 ~~(vi) amendment of license, excluding additions
 4 thereto to license, or reissuance of master license
 5 10.00~~
 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) nonresident agent's insurance producer's
 15 license:~~
 16 (i) application for original license, including
 17 issuance of license, if issued ~~(for 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) annual renewal, each insurer of license
 25 10.00~~

1 100.00 50.00 40.00 10.00
 2 ~~tv) (iii) (IV)~~ amendment of license (excluding additions
 3 thereto to license) or reissuance of master license 10.00
 4 ~~tg) (P) (G)~~ solicitor's license:
 5 ~~ti) --application-- for --original-- license, --including~~
 6 ~~issuance of license, if issued~~ 15.00
 7 ~~ti) annual renewal of license~~ 15.00
 8 ~~ti) --appointment of solicitor~~ 10.00
 9 ~~th) examination for license as agent-- or --solicitor~~
 10 insurance producer, each examination 15.00
 11 ~~ti) (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 ~~tg) (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 ~~tk) (j) (I) (J)~~ insurance vending machine license, each
 21 machine, each year 10.00
 22 ~~tk) (k) (J) (K)~~ commissioner's certificate under seal
 23 (except when on certificates of authority or licenses)
 24 10.00
 25 ~~tm) (k) (L)~~ copies of documents on file in the

1 commissioner's office, per page50
 2 ~~tm) (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 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 fixed rates, rating plans, or forms for the kind of insurance effected.~~

11 ~~(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 FIXED RATES, RATING PLANS, OR FORMS FOR THE KIND OF INSURANCE EFFECTED.~~

12 ~~(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.)~~

1 **Section 17.** Section 33-17-101, MCA, is amended to
2 read:

3 "33-17-101. Scope of chapter. (1) The purpose of this
4 chapter is to govern the qualifications and procedures for
5 licensing insurance producers.

6 (2) This chapter shall apply as applies to all stock,
7 mutual, and reciprocal insurers and as to all kinds of
8 insurance and annuities."

9 **Section 18.** Section 33-17-102, MCA, is amended to
10 read:

11 "33-17-102. Definitions. As used in this title, the
12 following definitions apply:

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

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

22 (b) salaried employee of an insurer or of a managing
23 general agent; or

24 (c) a licensed agent insurance producer who adjusts or
25 assists in adjustment of losses arising under policies

1 issued by the insurer.

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

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

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

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

18 (b) The term does not mean:

19 (i) an employer on behalf of its employees or on
20 behalf of the employees of one or more subsidiaries of
21 affiliated corporations of the employer;

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

23 (iii) (A) an insurer that is either authorized in this
24 state or acting as an insurer with respect to a policy
25 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.

1 (6) "Consultant license" means a document issued by
 2 the commissioner that authorizes a person to act as an
 3 insurance consultant.

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

8 (8) "Individual" means a private or natural person, as
 9 distinguished from a partnership, corporation, or
 10 association.

11 (9) "Insurance producer", except as provided in
 12 33-17-103:

13 (a) means:

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

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

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

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

25 (b) does not mean a customer service representative.

1 For purposes of this definition, a "customer service
 2 representative" means a ~~salaried employee or OF~~ insurance
 3 producer who assists and is responsible to the insurance
 4 producer ~~but--who--is--not--authorized--to--effect--policies--of~~
 5 insurance.

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

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

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

16 **Section 19.** Section 33-17-103, MCA, is amended to
 17 read:

18 "33-17-103. Exceptions and exemptions from definition
 19 of agent--managing-general-agent--and--solicitor insurance
 20 producer. The definitions definition of agent--managing
 21 general-agent--and--solicitor insurance producer contained in
 22 33-17-102 shall does not be-considered-to include:

23 tip--individuals-employed-and-used-by--agents--for--the
 24 performance--of--clerical--stenographic--and--similar--office
 25 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--duly
 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 t4)--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 t2)--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 t5t2t3t2(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 t6t3t4t3(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 t7t4t5t4(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 t5t6t5(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--records,--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 agents'--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

1 using it."

2 **Section 22.** Section 33-17-212, MCA, is amended to
3 read:

4 "33-17-212. Examination required -- exceptions --
5 fees. ~~(1)~~-After-completion-and-filing-of-the-application-for
6 license--as-required-under-33-17-211,-the-commissioner-shall
7 subject-each-applicant-for-license-as--agent--or--solicitor,
8 unless--exempted-therefrom-under-subsection-(5)-below,-to-an
9 examination-as-to-his-competence-to-act--as--such--agent--or
10 solicitor,---The---commissioner---may---either--conduct--the
11 examination-or-arrange-for-the-examination-to--be--conducted
12 by--a--testing--service,-which-shall-recover-the-cost-of-the
13 examination-from-the-applicant: (1) Except as provided in
14 subsection (7), an individual applying for a license shall
15 pass a written examination. The examination must test the
16 knowledge of the individual concerning each kind of
17 insurance listed in subsection (6) for which application is
18 made, the duties and responsibilities of an insurance
19 producer, and the insurance laws and rules of this state.
20 The examination must be developed and conducted under rules
21 adopted by the commissioner.

22 (2) The commissioner may conduct the examination or
23 make arrangements, including contracting with an outside
24 testing service, for administering the examination and
25 collecting the fees required by 33-2-708. The commissioner

1 may arrange for the testing service to recover the cost of
2 the examination from the applicant.

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

5 (4) An individual who fails to appear for the
6 examination as scheduled or fails to pass the examination
7 may reapply for an examination and shall remit all required
8 fees and forms before being rescheduled for another
9 examination.

10 ~~(5)~~ If the applicant is a partnership or
11 corporation, the--examination--shall--be--so--taken--by each
12 individual who is to be named in the license as having
13 authority to act for the applicant in its insurance
14 transactions under the license shall take the examination.

15 ~~(6)~~ Examination of an applicant for an agent's a
16 license shall must cover all of the kinds of insurance for
17 which the applicant has applied to be licensed, as
18 constituted by any one or more of the following
19 classifications:

20 (a) life insurance;
21 (b) disability insurance;
22 (c) property insurance, for For the purposes of this
23 provision, "marine" property insurance shall be deemed to be
24 included in "property" includes marine insurance;
25 (d) casualty insurance;

1 te)--vehicle-insurance;

2 ~~ff~~(e) surety insurance;

3 ~~tg~~(f) credit life and disability insurance;

4 ~~th~~(g) title insurance.

5 ~~t4~~--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 ~~t5~~(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 ~~t5t6t7~~ (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 ~~td~~--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 ~~td~~(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 ~~td~~(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 ~~td~~(f) agents--associations an association applying

20 for license under 33-17-205 33-17-211;

21 ~~td~~(g) a mechanical breakdown insurance agents

22 producer.

23 ~~td~~(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

1 clearance certifying that the individual has passed an
 2 examination and held an insurance license in good standing
 3 in the individual's state of licensure, except that the
 4 individual shall take an examination pertaining to this
 5 state's law and each kind of insurance for which the
 6 individual has applied for a license and which is not
 7 covered under the license held in the other state."

8 **Section 23.** Section 33-17-213, MCA, is amended to
 9 read:

10 "33-17-213. Conduct of examinations. (1) The
 11 commissioner shall make any examination required under
 12 33-17-212 available to applicants with reasonable frequency
 13 and at places in this state reasonably accessible to the
 14 applicants.

15 ~~t2}--All-the-kinds-of-insurance-or-classes-thereof,--as~~
 16 ~~referred-to-in-33-17-212t3},--which-the-applicant-proposes-to~~
 17 ~~transact--under-the-license-applied-for-shall-be-included-in~~
 18 ~~the-same-examination.~~

19 ~~t3}{2} The commissioner shall assure that the~~
 20 examinations are conducted in a fair and impartial manner
 21 and without unfair discrimination as between individuals
 22 examined.

23 ~~t4}{3} The commissioner may require a reasonable~~
 24 waiting period before reexamination of an applicant who has
 25 failed to pass a previous examination covering the same kind

1 or kinds of insurance.

2 ~~t5}{4} The examination of a title agent insurance~~
 3 ~~producer, as defined in 33-25-105, must include but is not~~
 4 ~~limited to questions pertaining to the search and~~
 5 ~~examination of title to real property, insurance principles~~
 6 ~~relating to title insurance, and the fiduciary duties and~~
 7 ~~procedures of escrows, settlements, and closings of real~~
 8 ~~estate transactions."~~

9 **Section 24.** Section 33-17-214, MCA, is amended to
 10 read:

11 "33-17-214. Issuance of license -- contents -- LAPSE

12 OF LICENSE -- CHANGE OF ADDRESS. (1) The commissioner shall
 13 promptly issue the a license applied-for to the a person
 14 qualified--therefor-in-accordance-with-this-chapter pursuant
 15 to 33-17-211 and 33-17-212. There-is-a-license-for-life--or
 16 disability--insurance--and--a--separate-license-for-kinds-of
 17 insurance-other-than-life-or-disability.

18 (2) The license shall must state the name and address
 19 of the licensee, personal identification number, date of
 20 issue issuance, general conditions relative to expiration or
 21 termination, kind of insurance covered, and such other
 22 information as the commissioner considers proper necessary.

23 (3) The license of a partnership, or corporation,
 24 shall or association must also state the name of each
 25 individual authorized to exercise the license powers.

1 t4}--The-license-of-a-solicitor-shall--state--the--name
 2 and-address-of-the-agent-to-be-represented.

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

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

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

13 **Section 25.** Section 33-17-216, MCA, is amended to
 14 read:

15 "33-17-216. Temporary agent---licenses insurance
 16 producer license -- fee. (1) The commissioner may issue a
 17 temporary license as--agent to or with respect to an
 18 individual qualified therefor for the temporary license only
 19 as to age, residence, and trustworthiness and without
 20 requiring such the individual to take an examination, in the
 21 following cases:

22 (a) to the surviving spouse or next of kin or to the
 23 administrator or executor, or the employee of such the
 24 administrator or executor, of a licensed agent insurance
 25 producer upon such-agent's the insurance producer's death;

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

4 (c) to an employee of a firm partnership, or officer
 5 or employee of a corporation, licensed as agent an insurance
 6 producer, upon the death or disability of an individual
 7 designated in the license to exercise the powers thereof of
 8 an insurance producer;

9 (d) to the designee of a licensed agent insurance
 10 producer entering upon active service in the armed forces of
 11 the United States of America;

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

15 (2) The temporary license shall must be issued upon
 16 application filed with the commissioner in such the form and
 17 containing such the information as the commissioner may
 18 reasonably require and upon payment of the applicable fee as
 19 stated provided in 33-2-708.

20 (3) The temporary license shall must be for a period
 21 of not over 90 days, subject to extension by the
 22 commissioner in his discretion for an additional period of
 23 not more than 90 days, except that such a temporary license
 24 issued pursuant to subsection (1)(a) may be continued
 25 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-without-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;

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

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

9 (2) As to each such mechanical vending machine to be
 10 so used to sell or issue a policy, the commissioner shall
 11 issue to the agent insurance producer a special mechanical
 12 vending machine license. The license shall must specify the
 13 name and address of the insurer and agent insurance
 14 producer, the name of the policy to be so sold or issued
 15 through the mechanical vending machine, the serial number of
 16 the mechanical vending machine, and the place where the
 17 machine is--to--be--in--operation will operate. The license
 18 shall be is subject to annual continuation, expiration,
 19 suspension, or revocation coincidentally with that of the
 20 agent insurance producer. The commissioner shall also revoke
 21 the license as--to--any of a mechanical vending machine as--to
 22 which if he finds that the conditions upon which the machine
 23 was licensed, as referred to in subsection (1), no longer
 24 exist. The license fee shall be is as stated provided in
 25 33-2-708 for each license year or part thereof of the year

1 for each respective mechanical vending machine. Proof of the
 2 existence of a subsisting license shall must be displayed on
 3 or about each such mechanical vending machine in use in such
 4 the manner as that the commissioner may reasonably require."

5 **Section 28.** Section 33-17-301, MCA, is amended to
 6 read:

7 "33-17-301. Adjuster's Adjuster license --
 8 qualifications -- catastrophe adjustments -- public
 9 adjuster. (1) No A person shall may not in this state act as
 10 or hold himself out to be an adjuster unless then licensed
 11 therefor as an adjuster under this chapter. Application A
 12 person shall apply for an adjuster license shall be made to
 13 the commissioner according to forms as--prescribed--and
 14 furnished--by--him the commissioner prescribes and furnishes.
 15 The commissioner shall issue the adjuster license as to
 16 individuals qualified therefor to be licensed as an adjuster
 17 upon payment of the license fee stated provided in 33-2-708.

18 (2) To be licensed as an adjuster, the applicant must
 19 be-qualified-therefor-as-folows:

20 (a) must be an individual 18 years of age or more;
 21 (b) must be a resident in--and of Montana or resident
 22 of another state which that will permit residents of Montana
 23 regularly to act as adjusters in such the other state;
 24 (c) must be a full-time salaried employee of a
 25 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

1 kinds of insurance for which the person is qualified in this
 2 state.

3 (2) The commissioner may license a nonresident
 4 individual without written examination if the insurance
 5 department in the individual's state of residence certifies
 6 that:

7 (a) the individual either has passed a written
 8 examination for each kind of insurance applied for or was
 9 licensed prior to the time a written examination was
 10 required in the individual's state of residence; and

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

12 (3) The commissioner may issue only a nonresident
 13 license to a person, partnership, or corporation otherwise
 14 qualified under this code but not a resident of this state
 15 and--only--if--pursuant--to--the--laws--of--the-state-of-his
 16 residence--a--similar--privilege--is--extended--to--persons
 17 resident-in-Montana.

18 (4) If, by the laws or rules of another state, a
 19 limitation of rights and privileges, conditions precedent,
 20 or any other requirements are imposed upon a resident of
 21 this state who is a nonresident licensee of the other state
 22 and the limitation, conditions, or requirements are in
 23 addition to or in excess of those imposed on nonresident
 24 persons under this chapter, the same limitation, conditions,
 25 or requirements must be imposed upon the residents of the

1 other state.

2 (5) If a nonresident insurance producer's state of
 3 residence suspends, revokes, or terminates his insurance
 4 license in that state, his Montana nonresident license
 5 automatically terminates and the nonresident insurance
 6 producer shall notify the commissioner that his state of
 7 residence has suspended, revoked, or terminated his
 8 insurance license in that state."

9 **Section 30.** Section 33-17-404, MCA, is amended to
 10 read:

11 "33-17-404. Countersigning coverage of residents.
 12 Except as provided in 33-17-1111, a nonresident agent--shall
 13 insurance producer may not sign or countersign policies
 14 covering subjects of insurance residing, located, or to be
 15 performed in Montana."

16 **Section 31.** Section 33-17-405, MCA, is amended to
 17 read:

18 "33-17-405. Service of process -- commissioner as
 19 agent insurance producer. Application-for-and-acceptance-of
 20 a--license--as--a--nonresident--agent--shall--constitute
 21 irrevocable--appointment--of--the--commissioner--as--the
 22 attorney-in-fact-of--said--licensee--to--accept--service--of
 23 process--issued--in--Montana--in--any--action--or--proceeding
 24 against--the--licensee--arising--out--of--the--licensing--or--out--of
 25 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. At~~t~~ A nonresident licensee~~s~~-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-natur-person an individual who

1 has complied with the requirements of this chapter with
 2 respect to either life insurance, meaning all of those kinds
 3 of insurance authorized in 33-1-207, 33-1-208, 33-20-1001,
 4 33-21-103, 33-22-501, and 33-22-601, or general insurance,
 5 meaning all of those kinds of insurance authorized in
 6 33-1-206, 33-1-207, 33-1-209 through 33-1-212, and 33-1-221
 7 through 33-1-229, as specified in such the license."

8 **Section 38.** Section 33-17-505, MCA, is amended to
 9 read:

10 "33-17-505. Qualification -- fee. (1) In order to
 11 determine the competency of every an applicant for a
 12 consultant license ~~as--an--insurance--consultant~~, the
 13 commissioner shall require the applicant to pass an
 14 examination.

15 (2) The fee for taking such--an the consultant license
 16 examination ~~shall--be~~ is \$50. The commissioner shall deposit
 17 all fees collected in the general fund. The fee for taking a
 18 second or subsequent examination ~~shall~~ may be no more than
 19 the cost of administering such the examination, not to
 20 exceed \$50."

21 **Section 39.** Section 33-17-506, MCA, is amended to
 22 read:

23 "33-17-506. Grounds for refusal to issue license. The
 24 commissioner may refuse to issue an--insurance--consultant's a
consultant license if, in his judgment, the applicant is not

1 trustworthy and competent to act as a consultant, or has
 2 given cause for revocation or suspension of a license, or
 3 has failed to comply with any prerequisite for the issuance
 4 of a license."

5 **Section 40.** Section 33-17-507, MCA, is amended to
 6 read:

7 "33-17-507. Revocation. The commissioner may revoke or
 8 suspend any--insurance--consultant's a consultant license for
 9 a period he determines if, after notice and hearing as
 10 specified in this chapter, he determines that the licensee:

11 (1) has violated any provision of or any obligation
 12 imposed by the insurance law or has violated any law in the
 13 course of his dealings as a an insurance consultant;

14 (2) has made a material misstatement in application
 15 for a consultant's consultant license;

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

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

20 **Section 41.** Section 33-17-511, MCA, is amended to
 21 read:

22 "33-17-511. Consideration for services only on written
 23 memorandum. No A person licensed as an insurance consultant
 24 under this part may not receive any a fee for examining,
 25 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 ~~such 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-applyable 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 be 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 ~~t3t(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 ~~t4t(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 PO--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 insurance producer may not thereby delegate
 11 or have power to delegate to any other a person the power or
 12 authority to bind an insurer with respect to any a risk not
 13 already bound by the agent insurance producer or other
 14 person having clear authority from the insurer so to bind.
 15 The agent--shall--be insurance producer is responsible for all
 16 of the acts of such the employee within the scope of the
 17 authority so delegated. The agent insurance producer shall
 18 keep a record of each and all coverages countersigned by him
 19 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 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
from the insurer is in whole or in part by salary, ~~shall~~
 8 does not have power to countersign such policies or
 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
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
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
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

1 account, certificate, affidavit or proof of loss, --or--other
 2 document--or--writing,--with--intent--that--the--same--may--be
 3 presented--or--used--in--support--of--such--a--claim,--shall--be is
 4 guilty of a misdemeanor and upon conviction shall be is
 5 punished by a fine of not less than \$250 or more than \$1,000
 6 or by imprisonment in the county jail for not less than 3
 7 months or more than 6 months or both such fine and
 8 imprisonment at the discretion of the court.

9 (2) An insurance producer, examining physician,
 10 applicant, or other person who, for the purpose of obtaining
 11 any money or benefit, knowingly or willfully presents or
 12 causes to be presented a false or fraudulent claim or any
 13 proof in support of such a claim for the payment of the loss
 14 upon a contract of insurance or prepares, makes, or
 15 subscribes a false or fraudulent account, certificate,
 16 affidavit or proof of loss, or other document or writing,
 17 with intent that the same may be presented or used in
 18 support of such a claim, is guilty of a crime under
 19 45-6-301, and a county attorney may initiate criminal
 20 proceedings against him."

21 **Section 61.** 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 62.** 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 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 -- criminal penalty. (1) Any
20 solicitor--agent An insurance producer, examining physician,
21 applicant, or other person who knowingly or willfully makes
22 any a false or fraudulent statement or representation in or
23 with reference to any an application for insurance or--for
24 the-purpose-of-obtaining-any-money-or-benefit,--knowingly--or
25 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

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 **to--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 title insurer or title agent insurance
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
producer or may suspend or revoke a title agent's insurance
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

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-