

SENATE BILL NO. 330

INTRODUCED BY BECK, THOMAS, THAYER

IN THE SENATE

FEBRUARY 3, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
	FIRST READING.
FEBRUARY 11, 1989	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 13, 1989	PRINTING REPORT.
FEBRUARY 14, 1989	SECOND READING, DO PASS.
FEBRUARY 15, 1989	ENGROSSING REPORT.
FEBRUARY 16, 1989	THIRD READING, PASSED. AYES, 48; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 16, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT.
FEBRUARY 20, 1989	FIRST READING.
MARCH 3, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 6, 1989	SECOND READING, CONCURRED IN.
MARCH 7, 1989	THIRD READING, CONCURRED IN. AYES, 92; NOES, 4.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

MARCH 11, 1989	RECEIVED FROM HOUSE.
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SECOND READING, AMENDMENTS NOT  
CONCURRED IN.

MARCH 14, 1989

ON MOTION, CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

ON MOTION, CONFERENCE COMMITTEE  
DISSOLVED.

ON MOTION, FREE CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE SENATE

MARCH 30, 1989

SECOND READING, FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

APRIL 1, 1989

THIRD READING, FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 11, 1989

SECOND READING, FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

IN THE SENATE

APRIL 12, 1989

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 BILL NO. 330  
2 INTRODUCED BY Sen. Thomas J. Reynolds  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE  
5 LAWS RELATING TO THE INSURANCE INDUSTRY; AUTHORIZING THE  
6 COMMISSIONER OF INSURANCE TO SUSPEND OR REVOKE AN INSURER'S  
7 CERTIFICATE OF AUTHORITY FOR FAILURE TO EMPLOY ONLY LICENSED  
8 INSURANCE AGENTS OR FAILURE TO SUPERVISE ITS INSURANCE  
9 AGENTS; REQUIRING HOLDING COMPANY SYSTEMS TO REGISTER  
10 PROPERLY AND TO PROVIDE ACCURATE INFORMATION TO THE  
11 COMMISSIONER OF INSURANCE ABOUT THEIR AFFILIATED COMPANIES'  
12 TRANSACTIONS; MODIFYING THE LAWS ALLOWING CREDIT FOR  
13 REINSURANCE; AND AMENDING SECTIONS 33-2-119, 33-2-1103,  
14 33-2-1105, 33-2-1106, 33-2-1111, 33-2-1113, 33-2-1120, AND  
15 33-2-1205, MCA."

## STATEMENT OF INTENT

18 A statement of intent is required for this bill because  
19 [section 6(2)(a)(ii)(E)] authorizes the commissioner of  
20 insurance of the state of Montana to specify by rule a  
21 material transaction that adversely affects the interests of  
22 an insurer's policyholders and [section 8(9)] allows the  
23 commissioner to adopt rules implementing [sections 1 through  
24 8]. The legislature intends that the rules the commissioner  
25 adopts to implement this bill be designed principally to

1 protect Montana insurance consumers.

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

4 **Section 1.** Section 33-2-119, MCA, is amended to read:

5 "33-2-119. Suspension or revocation for violations and  
6 special grounds. (1) The commissioner may, in his  
7 discretion, suspend or revoke an insurer's certificate of  
8 authority if, after a hearing thereon, he finds that the  
9 insurer has:

10 (a) violated any lawful order of the commissioner or  
11 any provision of this code other than those for which  
12 suspension or revocation is mandatory;

13 (b) reinsured more than 90% of its risks resident,  
14 located, or to be performed in Montana, in another insurer.  
15 In considering suspension or revocation, the commissioner  
16 shall consider all relevant factors, including whether:

17 (i) after the reinsurance transaction all parties will  
18 be in compliance with Montana law; and

19 (ii) the transaction will substantially reduce  
20 protection and service to Montana policyholders;

21 (c) transacted insurance in this state through an  
22 insurance agent who is not licensed under Title 33, chapter  
23 17; or

24 (d) failed to supervise its insurance agents  
25 reasonably to assure their compliance with this code.

(2) The commissioner shall, after a hearing thereon, suspend or revoke an insurer's certificate of authority if he finds that the insurer:

(a) is in unsound condition or in such condition or using such methods or practices in the conduct of its business as to render its further transaction of insurance in Montana injurious or hazardous to its policyholders or to the public;

(b) has refused to be examined or to produce its accounts, records, and files for examination or if any of its officers have refused to give information with respect to its affairs, when required by the commissioner;

(c) has failed to pay any final judgment rendered against it in Montana within 30 days after the judgment became final;

(d) with such frequency as to indicate its general business practice in Montana, has without just cause refused to pay a proper ~~claims~~ claim arising under its policies, whether ~~any-such~~ the claim is in favor of an insured or is in favor of a third person with respect to the liability of an insured to ~~such~~ the third person, or without just cause compels ~~such~~ the insured or claimant to accept less than the amount due ~~them~~ him or to employ attorneys or to bring suit against the insurer or ~~such--an~~ insured to secure full payment or settlement of ~~such~~ the claims;

(e) is affiliated with and under the same general management or interlocking directorate or ownership as another insurer which transacts direct insurance in Montana without having a certificate of authority therefor, except as permitted as to a surplus lines insurer under part 3 of this chapter.

(3) The commissioner may, in his discretion and without advance notice or a hearing thereon, immediately suspend the certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings have been commenced in any state."

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

"33-2-1103. Additional investment authority -- exemption from other investment restrictions -- determination of qualification -- divestiture. (1) In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under this part, a domestic insurer may also:

(a) invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts which do not exceed the lesser of 5% 10% of ~~such~~ the insurer's assets or 50% of ~~such~~ the insurer's surplus as regards policyholders, provided that after ~~such~~ the investments the insurer's surplus as regards

1 policyholders will be reasonable in relation to the  
 2 insurer's outstanding liabilities and adequate to its  
 3 financial needs. In calculating the amount of such the  
 4 investments, there ~~shall~~ must be included total net ~~moneys~~  
 5 money or other consideration expended and obligations  
 6 assumed in the acquisition or formation of a subsidiary,  
 7 including all organizational expenses and contributions to  
 8 capital and surplus of ~~such the~~ subsidiary, whether or not  
 9 represented by the purchase of capital stock or issuance of  
 10 other securities, and all amounts expended in acquiring  
 11 additional common stock, preferred stock, debt obligations,  
 12 and other securities and all contributions to the capital or  
 13 surplus of a subsidiary subsequent to its acquisition or  
 14 formation.

15 (b) if the insurer's total liabilities, as calculated  
 16 for national association of insurance commissioners annual  
 17 statement purposes, are less than 10% of assets, invest any  
 18 amount in common stock, preferred stock, debt obligations,  
 19 and other securities of one or more subsidiaries, provided  
 20 that after such the investment the insurer's surplus as  
 21 regards policyholders, considering such the investment as if  
 22 it were a disallowed asset, will be reasonable in relation  
 23 to the insurer's outstanding liabilities and adequate to its  
 24 financial needs;

25 (c) invest any amount in common stock, preferred

1 stock, debt obligations, and other securities of one or more  
 2 subsidiaries, provided that each ~~such~~ subsidiary agrees to  
 3 limit its investments in any asset so that such the  
 4 investments will not cause the amount of the total  
 5 investment of the insurer to exceed any of the investment  
 6 limitations specified in this section. The total investment  
 7 of the insurer ~~shall~~ must include:

8 (i) any direct investment by the insurer in an asset;  
 9 (ii) the insurer's proportionate share of any  
 10 investment in an asset by any subsidiary of the insurer,  
 11 which ~~shall--be~~ is calculated by multiplying the amount of  
 12 the subsidiary's investment by the percentage of the  
 13 insurer's ownership of such subsidiary.

14 (d) with the approval of the commissioner, invest any  
 15 a greater amount in common stock, preferred stock, debt  
 16 obligations, or other securities of one or more  
 17 subsidiaries, provided that after such the investment, the  
 18 insurer's surplus as regards policyholders will be  
 19 reasonable in relation to the insurer's outstanding  
 20 liabilities and adequate to its financial needs.

21 ~~(e)--invest--any--amount--in--the--common--stock,--preferred~~  
 22 ~~stock,--debt--obligations,--or--other--securities--of--any~~  
 23 ~~subsidiary--exclusively--engaged--in--holding--title--to--or~~  
 24 ~~holding--title--to--and--managing--or--developing--real--or--personal~~  
 25 ~~property--if,--after--considering--as--a--disallowed--asset--so--much~~

of the investment as is represented by subsidiary assets which if held directly by the insurer would be considered as a disallowed asset, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs and if following such investment all voting securities of such subsidiary would be owned by the insurer.

(2) Investments in common stock, preferred stock, debt obligations, or other securities of subsidiaries made pursuant to subsection (1) hereof are not subject to any of the otherwise applicable restrictions or prohibitions contained in this part applicable to such investments of insurers.

(3) Whether any investment pursuant to subsection (1) meets the applicable requirements thereof is to be determined immediately after such the investment is made, taking into account the then outstanding principal balance on all previous investments in debt obligations and the value of all previous investments in equity securities as of the date they were made.

(4) If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within 3 years from the time of the cessation of control or within such further time as the commissioner may prescribe, unless at any time after such the investment

shall have been is made, such the investment shall have met meets the requirements for investment under any other section of this part and the insurer has notified the commissioner thereof."

**Section 3.** Section 33-2-1105, MCA, is amended to read:

"33-2-1105. Approval by commissioner -- hearings -- notice. (1) The commissioner shall approve any merger or other acquisition of control referred to in 33-2-1104(1) unless, after a public hearing thereon, he finds that:

(a) after the change of control the domestic insurer referred to in 33-2-1104(1) would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(b) the effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein;

(c) the financial condition of any acquiring party ~~is~~ such as might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders or the interests of any remaining securityholders who are unaffiliated with such the acquiring party;

(d) the terms of the offer, request, invitation, agreement, or acquisition referred to in 33-2-1104(1) are unfair and unreasonable to the securityholders of the

1 insurer;

2 (e) the plans or proposals which the acquiring party  
3 has to liquidate the insurer, sell its assets or consolidate  
4 or merge it with any person, or to make any other material  
5 change in its business or corporate structure or management  
6 are unfair and unreasonable to policyholders of the insurer  
7 and not in the public interest;

8 (f) the competence, experience, and integrity of those  
9 persons who would control the operation of the insurer are  
10 such that it would not be in the interest of policyholders  
11 of the insurer and of the public to permit the merger or  
12 other acquisition of control.

13 (2) The public hearing referred to in subsection (1)  
14 ~~shall~~ must be held within 30 days after the statement  
15 required by 33-2-1104(1) is filed, and at least 20 days  
16 notice thereof ~~shall~~ must be given by the commissioner to  
17 the person filing the statement. Not less than 7 days'  
18 notice of ~~such the~~ public hearing ~~shall~~ must be given by the  
19 person filing the statement to the insurer and to ~~such~~ other  
20 persons as may be designated by the commissioner. The  
21 insurer shall give ~~such~~ notice to its securityholders. The  
22 commissioner shall make a determination within 30 days after  
23 the conclusion of ~~such the~~ hearing. At ~~such the~~ hearing, the  
24 person filing the statement, the insurer, any person to whom  
25 notice of hearing was sent, and any other person whose

1 interests may be affected thereby ~~shall~~~~-have~~ has the right  
2 to present evidence, examine and cross-examine witnesses,  
3 and offer oral and written arguments and in connection  
4 therewith ~~shall--be~~ is entitled to conduct discovery  
5 proceedings in the same manner as is presently allowed in  
6 the district court of this state. All discovery proceedings  
7 ~~shall~~ must be concluded not later than 3 days prior to the  
8 commencement of the public hearing.

9 (3) All statements, amendments, or other material  
10 filed pursuant to subsections (1) through (4) of 33-2-1104  
11 and all notices of public hearings held pursuant to  
12 subsection (1) ~~shall~~ must be mailed by the insurer to its  
13 shareholders within 5 business days after the insurer has  
14 received ~~such the~~ statements, amendments, other material, or  
15 notices. The expenses of mailing ~~shall~~ must be borne by the  
16 person making the filing. As security for the payment of  
17 ~~such the~~ expenses, ~~such the~~ person shall file with the  
18 commissioner an acceptable bond or other deposit in an  
19 amount to be determined by the commissioner.

20 (4) The commissioner may retain at the acquiring  
21 party's expense any attorneys, actuaries, accountants, and  
22 other experts not otherwise a part of the commissioner's  
23 staff as may be reasonably necessary to assist the  
24 commissioner in reviewing the proposed acquisition of  
25 control."

**Section 4.** Section 33-2-1106, MCA, is amended to read:

**"33-2-1106. Exemptions -- violations -- jurisdiction.**

(1) The provisions of 33-2-1104, 33-2-1105, and this section ~~shall do~~ not apply to:

~~(a) any offers, requests, invitations, agreements, or acquisitions by the person referred to in subsection (1) of 33-2-1104 of any voting security referred to in subsection (1) of 33-2-1104 which immediately prior to the consummation of such offer, request, invitation, agreement, or acquisition, was not issued and outstanding;~~

~~(b) any an offer, request, invitation, agreement, or acquisition which the commissioner by order shall exempt therefrom as:~~

~~(i) (a) not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer; or~~

~~(i) (b) otherwise not comprehended within the purposes of 33-2-1104 and 33-2-1105.~~

(2) The following ~~shall be~~ are violations of 33-2-1104, 33-2-1105, and this section:

(a) the failure to file any statement, amendment, or other material required to be filed pursuant to subsections (1) through (4) of 33-2-1104;

(b) the effectuation or any attempt to effectuate an acquisition of control of or merger with a domestic insurer

unless the commissioner has given his approval thereto.

(3) The courts of this state are hereby vested with jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the commissioner under 33-2-1104 and over all actions involving such the person arising out of violations of 33-2-1104, 33-2-1105, and this section, and each such person ~~shall be deemed~~ is considered to have performed acts equivalent to and constituting an appointment by such a person of the commissioner to be his true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of violations of this section. Copies of all such lawful process ~~shall must~~ be served on the commissioner and transmitted by registered or certified mail by the commissioner to such the person at his last-known address."

**Section 5.** Section 33-2-1111, MCA, is amended to read:

**"33-2-1111. Registration of insurers -- requisites -- termination.** (1) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section. Any insurer which is



1 subject to registration under this section shall register  
 2 within 60 days after July 1, 1971, or 15 days after it  
 3 becomes subject to registration, whichever is later, unless  
 4 the commissioner for good cause shown extends the time for  
 5 registration, and then within such extended time. The  
 6 commissioner may require any authorized insurer which is a  
 7 member of a holding company system which is not subject to  
 8 registration under this section to furnish a copy of the  
 9 registration statement or other information filed by such  
 10 insurance company with the insurance regulatory authority of  
 11 domiciliary jurisdiction.

12 (2) Every insurer subject to registration shall file  
 13 with the commissioner, on or before April 30 each year, a  
 14 registration statement on a form provided by the  
 15 commissioner, which shall must contain current information  
 16 about:

17 (a) the capital structure, general financial  
 18 condition, ownership, and management of the insurer and any  
 19 person controlling the insurer;

20 (b) the identity of every member of the insurance  
 21 holding company system;

22 (c) the following agreements in force, relationships  
 23 subsisting, and transactions currently outstanding between  
 24 such insurer and its affiliates:

25 (i) loans, other investments, or purchases, sales, or

1 exchanges of securities of the affiliates by the insurer or  
 2 of the insurer by its affiliates;

3 (ii) purchases, sales, or exchanges of assets;

4 (iii) transactions not in the ordinary course of  
 5 business;

6 (iv) guaranties or undertakings for the benefit of an  
 7 affiliate which result in an actual contingent exposure of  
 8 the insurer's assets to liability, other than insurance  
 9 contracts entered into in the ordinary course of the  
 10 insurer's business;

11 (v) all management and service contracts and all  
 12 cost-sharing arrangements, other than cost allocation  
 13 arrangements based upon generally accepted accounting  
 14 principles;

15 (vi) reinsurance agreements covering all or  
 16 substantially all of one or more lines of insurance of the  
 17 ceding company;

18 (vii) dividends and other distributions to  
 19 shareholders; and

20 (viii) consolidated tax allocation agreements;

21 (d) any pledge of the insurer's stock, including stock  
 22 of a subsidiary or controlling affiliate for a loan made to  
 23 a member of the insurance holding company system;

24 ~~(d)~~(e) all matters concerning transactions between  
 25 registered insurers and any affiliates as may be included

from time to time in any registration forms adopted or approved by the commissioner.

(3) A registration statement must contain a summary outlining each item in the current registration statement that represents a change from the prior registration statement.

~~(3)~~(4) No information need be disclosed on the registration statement filed pursuant to subsection (2) if such information is not material for the purposes of this section. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments involving 1/2 of 1% or less of an insurer's admitted assets as of December 31 next preceding ~~shall~~ may not be deemed material for purposes of this section.

(5) A person within an insurance holding company system subject to registration shall provide complete and accurate information to an insurer if the information is reasonably necessary to enable the insurer to comply with Title 33, chapter 2, part 11.

~~(4)~~(6) Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the commissioner within 15 days after the end of the month in which it learns of each such

change or addition~~7~~. ~~provided7--however7--that-subject-to~~  
~~Except as provided in~~ 33-2-1114, each registered insurer shall ~~so~~ report all dividends and other distributions to shareholders within 2 business days following the declaration thereof.

~~(5)~~(7) The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

~~(6)~~(8) The commissioner may require or allow two or more affiliated insurers subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

~~(7)~~(9) The commissioner may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (1) and to file all information and material required to be filed under this section."

**Section 6.** Section 33-2-1113, MCA, is amended to read:

"33-2-1113. Transactions with affiliates -- standards.

(1) Material transactions by registered insurers with their affiliates ~~shall-be~~ are subject to the following standards:

(a) The terms ~~shall~~ must be fair and reasonable.

1 (b) Charges or fees for services performed must be  
2 reasonable.

3 (c) Expenses incurred and payments received must be  
4 allocated to the insurer in conformity with customary  
5 insurance accounting practices consistently applied.

6 ~~tb)~~(d) The books, accounts, and records of each party  
7 shall must be so maintained as to clearly and accurately  
8 disclose the precise nature and details of the transactions,  
9 including such accounting information as is necessary to  
10 support the reasonableness of the charges or fees to the  
11 respective parties.

12 ~~te)~~(e) The insurer's surplus as regards policyholders  
13 following any dividends or distributions to shareholder  
14 affiliates shall must be reasonable in relation to the  
15 insurer's outstanding liabilities and adequate to its  
16 financial needs.

17 (2) (a) The following transactions involving a  
18 domestic insurer and a person in its holding company system  
19 may not be entered into unless the insurer has notified the  
20 commissioner in writing of its intention to enter into a  
21 transaction and the commissioner has not disapproved it  
22 within at least 30 days prior to the transaction, or a  
23 shorter period as the commissioner may permit:

24 (i) sales, purchases, exchanges, loans or extensions  
25 of credit, guaranties, or investments if, as of the prior

1 December 31, the transactions are equal to or exceed:

2 (A) with respect to insurers other than life insurers,  
3 the lesser of 3% of the insurer's admitted assets or 25% of  
4 its surplus as regards policyholders; and

5 (B) with respect to life insurers, 3% of the insurer's  
6 admitted assets;

7 (ii) loans or extensions of credit to a person who is  
8 not an affiliate if the insurer makes the loans or  
9 extensions of credit with the agreement or understanding  
10 that the proceeds of the transactions, in whole or in  
11 substantial part, are to be used to make loans or extensions  
12 of credit to, to purchase assets of, or to make investments  
13 in an affiliate of the insurer making the loans or  
14 extensions of credit if such transactions, as of the prior  
15 December 31, are equal to or exceed:

16 (A) with respect to insurers other than life insurers,  
17 the lesser of 3% of the insurer's admitted assets or 25% of  
18 its surplus as regards policyholders;

19 (B) with respect to life insurers, 3% of the insurer's  
20 admitted assets;

21 (C) reinsurance agreements or modifications to  
22 reinsurance agreements in which the reinsurance premium or a  
23 change in the insurer's liabilities equals or exceeds 5% of  
24 the insurer's surplus as regards policyholders, as of the  
25 prior December 31, including those agreements that may

1 require as consideration the transfer of assets from an  
 2 insurer to a nonaffiliate, if an agreement or understanding  
 3 exists between the insurer and nonaffiliate that a portion  
 4 of the assets will be transferred to one or more affiliates  
 5 of the insurer;

6 (D) all management agreements, service contracts, and  
 7 cost-sharing arrangements; and

8 (E) any material transactions, specified by rule, that  
 9 the commissioner determines may adversely affect the  
 10 interests of the insurer's policyholders.

11 (b) Nothing in this subsection (2) is considered to  
 12 authorize or permit a transaction that, in the case of an  
 13 insurer that is not a member of the same holding company  
 14 system, would otherwise be contrary to law.

15 (3) A domestic insurer may not enter into a  
 16 transaction that is part of a plan or series of like  
 17 transactions with a person within the holding company system  
 18 if the purpose of those separate transactions is to avoid  
 19 the statutory threshold amount review. If the commissioner  
 20 determines that the separate transactions were entered into  
 21 over a 12-month period for the purpose of evading review, he  
 22 may exercise his authority under 33-2-1120.

23 (4) The commissioner, in reviewing a transaction  
 24 pursuant to subsection (2), shall consider whether the  
 25 transaction complies with the standards set forth in

1 subsection (1) and whether it may adversely affect the  
 2 interests of a policyholder.

3 (5) The commissioner must be notified within 30 days  
 4 of an investment by a domestic insurer in a corporation if  
 5 the total investment in the corporation by the insurance  
 6 holding company system exceeds 10% of the corporation's  
 7 voting securities.

8 +2+(6) For purposes of this section, in determining  
 9 whether an insurer's surplus as regards policyholders is  
 10 reasonable in relation to the insurer's outstanding  
 11 liabilities and adequate to its financial needs, the  
 12 following factors, among others, shall must be considered:

13 (a) the size of the insurer as measured by its assets,  
 14 capital and surplus, reserves, premium writings, insurance  
 15 in force, and other appropriate criteria;

16 (b) the extent to which the insurer's business is  
 17 diversified among the several lines of insurance;

18 (c) the number and size of risks insured in each line  
 19 of business;

20 (d) the extent of the geographical dispersion of the  
 21 insurer's insured risks;

22 (e) the nature and extent of the insurer's reinsurance  
 23 program;

24 (f) the quality, diversification, and liquidity of the  
 25 insurer's investment portfolio;

(g) the recent past and projected future trend in the size of the insurer's surplus as regards policyholders;

(h) the surplus as regards policyholders maintained by other comparable insurers;

(i) the adequacy of the insurer's reserves;

(j) the quality and liquidity of investments in subsidiaries made pursuant to 33-2-1104 through 33-2-1106. The commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his judgment such the investment so warrants."

**Section 7.** Section 33-2-1120, MCA, is amended to read:

"33-2-1120. Criminal or civil proceedings -- penalty penalties. (1) An insurer failing without just cause to file a registration statement as required in 33-2-1111 shall, after notice and hearing, pay a penalty of \$100 for each day of delinquency. The maximum penalty under this subsection is \$25,000. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

(2) A director or an officer of an insurance holding company system who knowingly violates, participates in, or assents to a transaction or who knowingly permits an officer or agent of the insurer to engage in a transaction or make

an investment that has not been properly reported or submitted pursuant to 33-2-1111 or 33-2-1113 or that violates any other provision of Title 33, chapter 2, part 11, shall, after notice and hearing, pay, in his individual capacity, a fine of not more than \$5,000 for each violation. To determine the amount of the fine, the commissioner shall consider the appropriateness of the fine with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(3) If the commissioner determines that an insurer subject to Title 33, chapter 2, part 11, or a director, officer, employee, or agent of the insurer has engaged in a transaction or entered into a contract that is subject to 33-2-1113 and that would not have been approved had approval been requested, the commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing, the commissioner may also order the insurer to void the contract and restore the status quo if such action is in the best interest of policyholders, creditors, or the public.

(4) Whenever it appears to the commissioner that any insurer or any director, officer, employee, or agent thereof has committed a willful violation of this part, the commissioner may cause criminal proceedings to be instituted by the district court for the county in which the principal

office of the insurer is located or if such insurer has no such office in the state, then by the district court for Lewis and Clark County against such insurer or the responsible director, officer, employee, or agent thereof.

†2†(5) Any insurer which willfully violates this part may be fined not more than \$5,000 \$25,000.

†3†(6) Any individual who willfully violates this part may be fined not more than \$500 \$5,000 or, if such willful violation involves the deliberate perpetration of a fraud upon the commissioner, imprisoned not more than 2 years or both."

**Section 8.** Section 33-2-1205, MCA, is amended to read:

"33-2-1205. Reinsurance -- limitations -- credit as asset. (1) An insurer may accept reinsurance only of such kinds of risks, and retain risk thereon within such limits, as it is otherwise authorized to insure.

(2) ~~An insurer may reinsure all or part of any particular risk with any~~ Credit for reinsurance is allowed a ceding insurer as either an asset or a deduction from liability on account of ceded reinsurance only if the reinsurance is ceded to a solvent insurer authorized to transact insurance in one or more states a state and having surplus to policyholders in an amount not less than the paid-in capital stock required of a domestic stock insurer transacting like kinds of insurance.

(3) ~~No credit shall be~~ Credit for reinsurance is allowed to an a ceding insurer, as an asset or as a deduction from liability, for reinsurance ceded to an alien insurer unless such alien insurer has surplus to policyholders in amount not less than the paid-in capital stock required of a domestic stock insurer transacting like kinds of insurance and is either authorized to transact insurance in at least one state of the United States or has an attorney-in-fact resident in the United States upon whom service of legal process may be made; only if:

(a) the reinsurance is ceded to an assuming insurer that maintains a trust fund in a United States bank or trust company for the payment of the valid claims of its United States policyholders and ceding insurers and their assigns and successors in interest. The assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the national association of insurance commissioners annual statement form by authorized insurers, to enable the commissioner to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust fund must consist of a trustee account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, must include a trustee surplus of not less than \$20 million. In the case of a group

1 of individual unincorporated underwriters, the trust must  
 2 consist of a trustee account representing the group's  
 3 liabilities attributable to business written in the United  
 4 States and, in addition, include a trustee surplus of not  
 5 less than \$100 million, and the group shall make available  
 6 to the commissioner an annual certification of the solvency  
 7 of each underwriter provided by the group's domiciliary  
 8 regulator and its independent public accountants.

9 (i) The trust fund must be established in a United  
 10 States bank or trust company that is a member of the federal  
 11 reserve system, in a form approved by the commissioner. The  
 12 trust instrument must provide that contested claims are  
 13 valid and enforceable upon the final order of a court of  
 14 competent jurisdiction in the United States. The trust fund  
 15 must vest legal title to its assets in the trustees of the  
 16 trust fund for its United States policyholders and ceding  
 17 insurers and their assigns and successors in interest. The  
 18 trust fund and the assuming insurer are subject to  
 19 examination as determined by the commissioner. The trust  
 20 fund described herein must remain in effect for as long as  
 21 the assuming insurer has outstanding obligations due under  
 22 the reinsurance agreements subject to the trust fund.

23 (ii) No later than February 28 of each year, the  
 24 trustees of the trust fund shall report to the commissioner  
 25 in writing, setting forth the balance of the trust fund and

1 listing the trust's investments at the preceding yearend,  
 2 and shall certify the date of termination of the trust fund,  
 3 if so planned, or certify that the trust fund will not  
 4 expire before the following December 31.

5 (b) the reinsurance is ceded to an assuming insurer  
 6 not meeting the requirements of subsection (2) but only with  
 7 respect to the insurance of risks located in jurisdictions  
 8 other than the United States where such reinsurance is  
 9 required by applicable law or rule of that jurisdiction.

10 (4) (a) If the assuming insurer is not authorized to  
 11 transact insurance in this state, the credit permitted by  
 12 subsections (2) or (3) is not allowed unless the assuming  
 13 insurer agrees in the reinsurance agreement:

14 (i) that, if the assuming insurer fails to perform its  
 15 obligations under the terms of the reinsurance agreement,  
 16 the assuming insurer, at the request of the ceding insurer  
 17 or its domiciliary liquidator or receiver, will:

18 (A) submit to the jurisdiction of a court of competent  
 19 jurisdiction in a state of the United States;

20 (B) comply with all requirements necessary to give the  
 21 court jurisdiction; and

22 (C) abide by the final decision of the court or of an  
 23 appellate court in the event of an appeal; and

24 (ii) to designate the commissioner or a designated  
 25 attorney as its attorney upon whom lawful process may be

1 served in an action, suit, or proceeding instituted by or on  
2 behalf of the ceding insurer.

3 (b) This provision is not intended to conflict with or  
4 override the obligation of the parties to a reinsurance  
5 agreement to arbitrate their disputes if the obligation is  
6 created in the agreement.

7 (5) A reduction from liability for the reinsurance  
8 ceded to an assuming insurer not meeting the requirements of  
9 subsection (2) must be allowed in an amount not exceeding  
10 the liabilities carried by the ceding insurer. The reduction  
11 must be in the amount of funds held by or on behalf of the  
12 ceding insurer, including funds held in trust for the ceding  
13 insurer under a reinsurance contract with the assuming  
14 insurer as security for the payment of obligations under the  
15 reinsurance contract, if the security is held in the United  
16 States subject to withdrawal solely by and under the  
17 exclusive control of the ceding insurer or, in the case of a  
18 trust, if the security is held in a United States bank or  
19 trust company that is a member of the federal reserve  
20 system. This security may be in the form of:

21 (a) cash;

22 (b) securities listed by the security valuation office  
23 of the national association of insurance commissioners and  
24 qualifying as admitted assets;

25 (c) clean, irrevocable, unconditional letters of

1 credit issued or confirmed in writing by a bank or trust  
2 company that is a member of the federal reserve system; or  
3 (d) any other form of security acceptable to the  
4 commissioner.

5 ~~{4}~~(6) Credit ~~shall~~ must be allowed as an asset or ~~as~~  
6 a deduction from liability to ~~any a~~ ceding insurer for  
7 reinsurance ceded to an assuming insurer qualified therefor  
8 under the foregoing provisions of this section, except that  
9 ~~no--such~~ credit ~~shall~~ may not be allowed unless the  
10 reinsurance is payable by the assuming insurer on the basis  
11 of the liability of the ceding insurer under the contracts  
12 reinsured without diminution because of the insolvency of  
13 the ceding insurer.

14 ~~{5}~~(7) Upon request of the commissioner, an insurer  
15 shall promptly inform the commissioner in writing of the  
16 cancellation or any other material change of any of its  
17 reinsurance treaties or arrangements.

18 ~~{6}~~(8) This section ~~shall~~ does not apply to wet marine  
19 and transportation insurance.

20 (9) The commissioner may adopt rules implementing the  
21 provisions of this part."

22 **NEW SECTION. Section 9. Extension of authority.** Any  
23 existing authority to make rules on the subject of the  
24 provisions of [this act] is extended to the provisions of  
25 [this act].



1        NEW SECTION.   **Section 10. Severability.**   If a part of  
2   [this act] is invalid, all valid parts that are severable  
3   from the invalid part remain in effect.   If a part of [this  
4   act] is invalid in one or more of its applications, the part  
5   remains in effect in all valid applications that are  
6   severable from the invalid applications.

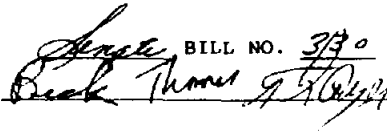
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Approved by committee  
on Business and Industry

BILL NO.

330

INTRODUCED BY



A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE INSURANCE INDUSTRY; AUTHORIZING THE COMMISSIONER OF INSURANCE TO SUSPEND OR REVOKE AN INSURER'S CERTIFICATE OF AUTHORITY FOR FAILURE TO EMPLOY ONLY LICENSED INSURANCE AGENTS OR FAILURE TO SUPERVISE ITS INSURANCE AGENTS; REQUIRING HOLDING COMPANY SYSTEMS TO REGISTER PROPERLY AND TO PROVIDE ACCURATE INFORMATION TO THE COMMISSIONER OF INSURANCE ABOUT THEIR AFFILIATED COMPANIES' TRANSACTIONS; MODIFYING THE LAWS ALLOWING CREDIT FOR REINSURANCE; AND AMENDING SECTIONS 33-2-119, 33-2-1103, 33-2-1105, 33-2-1106, 33-2-1111, 33-2-1113, 33-2-1120, AND 33-2-1205, MCA."

## STATEMENT OF INTENT

A statement of intent is required for this bill because [section 6(2)(a)(ii)(E)] authorizes the commissioner of insurance of the state of Montana to specify by rule a material transaction that adversely affects the interests of an insurer's policyholders and [section 8(9)] allows the commissioner to adopt rules implementing [sections 1 through 8]. The legislature intends that the rules the commissioner adopts to implement this bill be designed principally to

There are no changes on SB 330 and will not be reprinted. Please refer to Introduced (white) copy for complete text.

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BILL NO. 330

INTRODUCED BY

*Beck Thomas*

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE INSURANCE INDUSTRY; AUTHORIZING THE COMMISSIONER OF INSURANCE TO SUSPEND OR REVOKE AN INSURER'S CERTIFICATE OF AUTHORITY FOR FAILURE TO EMPLOY ONLY LICENSED INSURANCE AGENTS OR FAILURE TO SUPERVISE ITS INSURANCE AGENTS; REQUIRING HOLDING COMPANY SYSTEMS TO REGISTER PROPERLY AND TO PROVIDE ACCURATE INFORMATION TO THE COMMISSIONER OF INSURANCE ABOUT THEIR AFFILIATED COMPANIES' TRANSACTIONS; MODIFYING THE LAWS ALLOWING CREDIT FOR REINSURANCE; AND AMENDING SECTIONS 33-2-119, 33-2-1103, 33-2-1105, 33-2-1106, 33-2-1111, 33-2-1113, 33-2-1120, AND 33-2-1205, MCA."

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There is no change on SB 330 and will not be reprinted. Please refer to introduced (white) or second reading (yellow) for complete text.

THIRD READING

SB 330

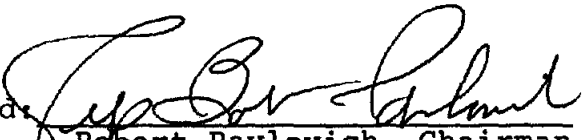
STANDING COMMITTEE REPORT

March 3, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that SENATE BILL 330 (blue reference copy), with statement of intent included, be concurred in as amended.

Signed:

  
Robert Pavlovich, Chairman

[REP. THOMAS WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Title, lines 5 through 9.  
Following: "INDUSTRY;" on line 5  
Strike: remainder of line 5 through "AGENTS;" on line 9
2. Title, line 13.  
Strike: "33-2-119,"
3. Page 2, line 4.  
Strike: section 1 in its entirety  
Renumber: subsequent sections

HOUSE

(BU)

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## SENATE BILL NO. 330

INTRODUCED BY BECK, THOMAS, THAYER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE INSURANCE INDUSTRY; AUTHORIZING THE COMMISSIONER OF INSURANCE TO SUSPEND OR REVOKE AN INSURER'S CERTIFICATE OF AUTHORITY FOR FAILURE TO EMPLOY ONLY LICENSED AGENTS; REQUIRING HOLDING COMPANY SYSTEMS TO REGISTER PROPERLY AND TO PROVIDE ACCURATE INFORMATION TO THE COMMISSIONER OF INSURANCE ABOUT THEIR AFFILIATED COMPANIES' TRANSACTIONS; MODIFYING THE LAWS ALLOWING CREDIT FOR REINSURANCE; AND AMENDING SECTIONS 33-2-119, 33-2-1103, 33-2-1105, 33-2-1106, 33-2-1111, 33-2-1113, 33-2-1120, AND 33-2-1205, MCA."

## STATEMENT OF INTENT

A statement of intent is required for this bill because [section 6(2)(a)(ii)(E)] authorizes the commissioner of insurance of the state of Montana to specify by rule a material transaction that adversely affects the interests of an insurer's policyholders and [section 8(9)] allows the commissioner to adopt rules implementing [sections 1 through 8]. The legislature intends that the rules the commissioner adopts to implement this bill be designed principally to

protect Montana insurance consumers.

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

~~Section 1. Section 33-2-119, MCA, is amended to read:~~

~~"33-2-119. Suspension or revocation for violations and special grounds. (1) The commissioner may, in his discretion, suspend or revoke an insurer's certificate of authority if, after a hearing thereon, he finds that the insurer has:~~

~~(a) violated any lawful order of the commissioner or any provision of this code other than those for which suspension or revocation is mandatory;~~

~~(b) reinsured more than 90% of its risks resident, located, or to be performed in Montana, in another insurer, in considering suspension or revocation, the commissioner shall consider all relevant factors, including whether:~~

~~(i) after the reinsurance transaction all parties will be in compliance with Montana law; and~~

~~(ii) the transaction will substantially reduce protection and service to Montana policyholders;~~

~~(c) transacted insurance in this state through an insurance agent who is not licensed under Title 33, chapter 17; or~~

~~(d) failed to supervise its insurance agents reasonably to assure their compliance with this code.~~

1 (2)--The commissioner shall, after a hearing thereon,  
2 suspend--or--revoke an insurer's certificate of authority if  
3 he finds that the insurer:

4 (a)--is in unsound condition or in such condition or  
5 using such methods or practices in the conduct of its  
6 business as to render its further transaction of insurance  
7 in Montana injurious or hazardous to its policyholders or to  
8 the public;

9 (b)--has refused to be examined or to produce its  
10 accounts, records, and files for examination or if any of  
11 its officers have refused to give information with respect  
12 to its affairs, when required by the commissioner;

13 (c)--has failed to pay any final judgment rendered  
14 against it in Montana within 30 days after the judgment  
15 became final;

16 (d)--with such frequency as to indicate its general  
17 business practice in Montana, has without just cause refused  
18 to pay a proper claims claim arising under its policies,  
19 whether any such the claim is in favor of an insured or is  
20 in favor of a third person with respect to the liability of  
21 an insured to such the third person, or without just cause  
22 compels such the insured or claimant to accept less than the  
23 amount due them him or to employ attorneys or to bring suit  
24 against the insurer or such an insured to secure full  
25 payment or settlement of such the claims;

1 (e)--is affiliated with and under the same general  
2 management or interlocking directorate or ownership as  
3 another insurer which transacts direct insurance in Montana  
4 without having a certificate of authority therefor, except  
5 as permitted as to a surplus lines insurer under part 3 of  
6 this chapter;

7 (3)--The commissioner may, in his discretion and  
8 without advance notice or a hearing thereon, immediately  
9 suspend the certificate of authority of any insurer as to  
10 which proceedings for receivership, conservatorship,  
11 rehabilitation, or other delinquency proceedings have been  
12 commenced in any state."

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

14 "33-2-1103. Additional investment authority --  
15 exemption from other investment restrictions --  
16 determination of qualification -- divestiture. (1) In  
17 addition to investments in common stock, preferred stock,  
18 debt obligations, and other securities permitted under this  
19 part, a domestic insurer may also:

20 (a) invest, in common stock, preferred stock, debt  
21 obligations, and other securities of one or more  
22 subsidiaries, amounts which do not exceed the lesser of 5%  
23 10% of such the insurer's assets or 50% of such the  
24 insurer's surplus as regards policyholders, provided that  
25 after such the investments the insurer's surplus as regards

1 policyholders will be reasonable in relation to the  
 2 insurer's outstanding liabilities and adequate to its  
 3 financial needs. In calculating the amount of such the  
 4 investments, there ~~shall~~ must be included total net ~~moneys~~  
 5 money or other consideration expended and obligations  
 6 assumed in the acquisition or formation of a subsidiary,  
 7 including all organizational expenses and contributions to  
 8 capital and surplus of such the subsidiary, whether or not  
 9 represented by the purchase of capital stock or issuance of  
 10 other securities, and all amounts expended in acquiring  
 11 additional common stock, preferred stock, debt obligations,  
 12 and other securities and all contributions to the capital or  
 13 surplus of a subsidiary subsequent to its acquisition or  
 14 formation.

15 (b) if the insurer's total liabilities, as calculated  
 16 for national association of insurance commissioners annual  
 17 statement purposes, are less than 10% of assets, invest any  
 18 amount in common stock, preferred stock, debt obligations,  
 19 and other securities of one or more subsidiaries, provided  
 20 that after such the investment the insurer's surplus as  
 21 regards policyholders, considering such the investment as if  
 22 it were a disallowed asset, will be reasonable in relation  
 23 to the insurer's outstanding liabilities and adequate to its  
 24 financial needs;

25 (c) invest any amount in common stock, preferred

1 stock, debt obligations, and other securities of one or more  
 2 subsidiaries, provided that each ~~such~~ subsidiary agrees to  
 3 limit its investments in any asset so that such the  
 4 investments will not cause the amount of the total  
 5 investment of the insurer to exceed any of the investment  
 6 limitations specified in this section. The total investment  
 7 of the insurer ~~shall~~ must include:

8 (i) any direct investment by the insurer in an asset;  
 9 (ii) the insurer's proportionate share of any  
 10 investment in an asset by any subsidiary of the insurer,  
 11 which ~~shall--be~~ is calculated by multiplying the amount of  
 12 the subsidiary's investment by the percentage of the  
 13 insurer's ownership of such subsidiary.

14 (d) with the approval of the commissioner, invest any  
 15 a greater amount in common stock, preferred stock, debt  
 16 obligations, or other securities of one or more  
 17 subsidiaries, provided that after such the investment, the  
 18 insurer's surplus as regards policyholders will be  
 19 reasonable in relation to the insurer's outstanding  
 20 liabilities and adequate to its financial needs;

21 ~~(e)--invest--any--amount--in--the--common--stock,--preferred~~  
 22 ~~stock,--debt--obligations,--or--other--securities---of---any~~  
 23 ~~subsidiary--exclusively--engaged--in--holding--title--to--or~~  
 24 ~~holding--title--to--and--managing--or--developing--real--or--personal~~  
 25 ~~property--if,--after--considering--as--a--disallowed--asset--so--much~~

1 of-the-investment-as-is--represented--by--subsidiary--assets  
 2 which-if-held-directly-by-the-insurer-would-be-considered-as  
 3 a---disallowed--asset,--the--insurer's--surplus--as--regards  
 4 policyholders--will--be--reasonable--in--relation---to---the  
 5 insurer's---outstanding--liabilities--and--adequate--to--its  
 6 financial-needs-and-if-following-such-investment-all-voting  
 7 securities-of-such-subsidiary-would-be-owned-by-the-insurer.

8 (2) Investments in common stock, preferred stock, debt  
 9 obligations, or other securities of subsidiaries made  
 10 pursuant to subsection (1) hereof are not subject to any of  
 11 the otherwise applicable restrictions or prohibitions  
 12 contained in this part applicable to such investments of  
 13 insurers.

14 (3) Whether any investment pursuant to subsection (1)  
 15 meets the applicable requirements thereof is to be  
 16 determined immediately after such the investment is made,  
 17 taking into account the then outstanding principal balance  
 18 on all previous investments in debt obligations and the  
 19 value of all previous investments in equity securities as of  
 20 the date they were made.

21 (4) If an insurer ceases to control a subsidiary, it  
 22 shall dispose of any investment therein made pursuant to  
 23 this section within 3 years from the time of the cessation  
 24 of control or within such further time as the commissioner  
 25 may prescribe, unless at any time after such the investment

1 ~~shall--have-been~~ is made, such the investment ~~shall-have-met~~  
 2 meets the requirements for investment under any other  
 3 section of this part and the insurer has notified the  
 4 commissioner thereof."

5 **Section 2.** Section 33-2-1105, MCA, is amended to read:

6 "33-2-1105. Approval by commissioner -- hearings --  
 7 notice. (1) The commissioner shall approve any merger or  
 8 other acquisition of control referred to in 33-2-1104(1)  
 9 unless, after a public hearing thereon, he finds that:

10 (a) after the change of control the domestic insurer  
 11 referred to in 33-2-1104(1) would not be able to satisfy the  
 12 requirements for the issuance of a license to write the line  
 13 or lines of insurance for which it is presently licensed;

14 (b) the effect of the merger or other acquisition of  
 15 control would be substantially to lessen competition in  
 16 insurance in this state or tend to create a monopoly  
 17 therein;

18 (c) the financial condition of any acquiring party ~~is~~  
 19 ~~such-as~~ might jeopardize the financial stability of the  
 20 insurer or prejudice the interest of its policyholders or  
 21 the interests of any remaining securityholders who are  
 22 unaffiliated with such the acquiring party;

23 (d) the terms of the offer, request, invitation,  
 24 agreement, or acquisition referred to in 33-2-1104(1) are  
 25 unfair and unreasonable to the securityholders of the



1 insurer;

2 (e) the plans or proposals which the acquiring party  
3 has to liquidate the insurer, sell its assets or consolidate  
4 or merge it with any person, or to make any other material  
5 change in its business or corporate structure or management  
6 are unfair and unreasonable to policyholders of the insurer  
7 and not in the public interest;

8 (f) the competence, experience, and integrity of those  
9 persons who would control the operation of the insurer are  
10 such that it would not be in the interest of policyholders  
11 of the insurer and of the public to permit the merger or  
12 other acquisition of control.

13 (2) The public hearing referred to in subsection (1)  
14 ~~shall~~ must be held within 30 days after the statement  
15 required by 33-2-1104(1) is filed, and at least 20 days  
16 notice thereof ~~shall~~ must be given by the commissioner to  
17 the person filing the statement. Not less than 7 days'  
18 notice of ~~such the~~ public hearing ~~shall~~ must be given by the  
19 person filing the statement to the insurer and to ~~such~~ other  
20 persons as may be designated by the commissioner. The  
21 insurer shall give ~~such~~ notice to its securityholders. The  
22 commissioner shall make a determination within 30 days after  
23 the conclusion of ~~such the~~ hearing. At ~~such the~~ hearing, the  
24 person filing the statement, the insurer, any person to whom  
25 notice of hearing was sent, and any other person whose

1 interests may be affected thereby ~~shall have~~ has the right  
2 to present evidence, examine and cross-examine witnesses,  
3 and offer oral and written arguments and in connection  
4 therewith ~~shall--be~~ is entitled to conduct discovery  
5 proceedings in the same manner as is presently allowed in  
6 the district court of this state. All discovery proceedings  
7 ~~shall~~ must be concluded not later than 3 days prior to the  
8 commencement of the public hearing.

9 (3) All statements, amendments, or other material  
10 filed pursuant to subsections (1) through (4) of 33-2-1104  
11 and all notices of public hearings held pursuant to  
12 subsection (1) ~~shall~~ must be mailed by the insurer to its  
13 shareholders within 5 business days after the insurer has  
14 received ~~such the~~ statements, amendments, other material, or  
15 notices. The expenses of mailing ~~shall~~ must be borne by the  
16 person making the filing. As security for the payment of  
17 ~~such the~~ expenses, ~~such the~~ person shall file with the  
18 commissioner an acceptable bond or other deposit in an  
19 amount to be determined by the commissioner.

20 (4) The commissioner may retain at the acquiring  
21 party's expense any attorneys, actuaries, accountants, and  
22 other experts not otherwise a part of the commissioner's  
23 staff as may be reasonably necessary to assist the  
24 commissioner in reviewing the proposed acquisition of  
25 control."

**Section 3.** Section 33-2-1106, MCA, is amended to read:

**"33-2-1106. Exemptions -- violations -- jurisdiction.**

(1) The provisions of 33-2-1104, 33-2-1105, and this section ~~shall do~~ not apply to:

~~(a) any offers, requests, invitations, agreements, or acquisitions by the person referred to in subsection (1) of 33-2-1104 of any voting security referred to in subsection (1) of 33-2-1104 which immediately prior to the consummation of such offer, request, invitation, agreement, or acquisition, was not issued and outstanding;~~

~~(b) any an offer, request, invitation, agreement, or acquisition which the commissioner by order shall exempt therefrom as:~~

~~(i)(a) not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer; or~~

~~(i)(b) otherwise not comprehended within the purposes of 33-2-1104 and 33-2-1105.~~

(2) The following ~~shall be~~ are violations of 33-2-1104, 33-2-1105, and this section:

(a) the failure to file any statement, amendment, or other material required to be filed pursuant to subsections (1) through (4) of 33-2-1104;

(b) the effectuation or any attempt to effectuate an acquisition of control of or merger with a domestic insurer

unless the commissioner has given his approval thereto.

(3) The courts of this state are hereby vested with jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the commissioner under 33-2-1104 and over all actions involving such the person arising out of violations of 33-2-1104, 33-2-1105, and this section, and each such person ~~shall be deemed~~ is considered to have performed acts equivalent to and constituting an appointment by such a person of the commissioner to be his true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of violations of this section. Copies of all such lawful process ~~shall must~~ be served on the commissioner and transmitted by registered or certified mail by the commissioner to such the person at his last-known address."

**Section 4.** Section 33-2-1111, MCA, is amended to read:

**"33-2-1111. Registration of insurers -- requisites -- termination.** (1) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section. Any insurer which is

1 subject to registration under this section shall register  
 2 within 60 days after July 1, 1971, or 15 days after it  
 3 becomes subject to registration, whichever is later, unless  
 4 the commissioner for good cause shown extends the time for  
 5 registration, and then within such extended time. The  
 6 commissioner may require any authorized insurer which is a  
 7 member of a holding company system which is not subject to  
 8 registration under this section to furnish a copy of the  
 9 registration statement or other information filed by such  
 10 insurance company with the insurance regulatory authority of  
 11 domiciliary jurisdiction.

12 (2) Every insurer subject to registration shall file  
 13 with the commissioner, on or before April 30 each year, a  
 14 registration statement on a form provided by the  
 15 commissioner, which shall must contain current information  
 16 about:

17 (a) the capital structure, general financial  
 18 condition, ownership, and management of the insurer and any  
 19 person controlling the insurer;

20 (b) the identity of every member of the insurance  
 21 holding company system;

22 (c) the following agreements in force, relationships  
 23 subsisting, and transactions currently outstanding between  
 24 such insurer and its affiliates:

25 (i) loans, other investments, or purchases, sales, or

1 exchanges of securities of the affiliates by the insurer or  
 2 of the insurer by its affiliates;

3 (ii) purchases, sales, or exchanges of assets;

4 (iii) transactions not in the ordinary course of  
 5 business;

6 (iv) guaranties or undertakings for the benefit of an  
 7 affiliate which result in an actual contingent exposure of  
 8 the insurer's assets to liability, other than insurance  
 9 contracts entered into in the ordinary course of the  
 10 insurer's business;

11 (v) all management and service contracts and all  
 12 cost-sharing arrangements, other than cost allocation  
 13 arrangements based upon generally accepted accounting  
 14 principles;

15 (vi) reinsurance agreements covering all or  
 16 substantially all of one or more lines of insurance of the  
 17 ceding company;

18 (vii) dividends and other distributions to  
 19 shareholders; and

20 (viii) consolidated tax allocation agreements;

21 (d) any pledge of the insurer's stock, including stock  
 22 of a subsidiary or controlling affiliate for a loan made to  
 23 a member of the insurance holding company system;

24 ~~(d)~~(e) all matters concerning transactions between  
 25 registered insurers and any affiliates as may be included

1 from time to time in any registration forms adopted or  
2 approved by the commissioner.

3 (3) A registration statement must contain a summary  
4 outlining each item in the current registration statement  
5 that represents a change from the prior registration  
6 statement.

7 (4) No information need be disclosed on the  
8 registration statement filed pursuant to subsection (2) if  
9 such information is not material for the purposes of this  
10 section. Unless the commissioner by rule or order provides  
11 otherwise, sales, purchases, exchanges, loans or extensions  
12 of credit, or investments involving 1/2 of 1% or less of an  
13 insurer's admitted assets as of December 31 next preceding  
14 ~~shall~~ may not be deemed material for purposes of this  
15 section.

16 (5) A person within an insurance holding company  
17 system subject to registration shall provide complete and  
18 accurate information to an insurer if the information is  
19 reasonably necessary to enable the insurer to comply with  
20 Title 33, chapter 2, part 11.

21 (6) Each registered insurer shall keep current the  
22 information required to be disclosed in its registration  
23 statement by reporting all material changes or additions on  
24 amendment forms provided by the commissioner within 15 days  
25 after the end of the month in which it learns of each such

1 change or addition, ~~provided, however, that subject to~~  
2 Except as provided in 33-2-1114, each registered insurer  
3 shall ~~so~~ report all dividends and other distributions to  
4 shareholders within 2 business days following the  
5 declaration thereof.

6 (7) The commissioner shall terminate the  
7 registration of any insurer which demonstrates that it no  
8 longer is a member of an insurance holding company system.

9 (8) The commissioner may require or allow two or  
10 more affiliated insurers subject to registration hereunder  
11 to file a consolidated registration statement or  
12 consolidated reports amending their consolidated  
13 registration statement or their individual registration  
14 statements.

15 (9) The commissioner may allow an insurer which is  
16 authorized to do business in this state and which is part of  
17 an insurance holding company system to register on behalf of  
18 any affiliated insurer which is required to register under  
19 subsection (1) and to file all information and material  
20 required to be filed under this section."

21 **Section 5.** Section 33-2-1113, MCA, is amended to read:

22 **"33-2-1113. Transactions with affiliates -- standards.**

23 (1) Material transactions by registered insurers with their  
24 affiliates ~~shall be~~ are subject to the following standards:

25 (a) The terms ~~shall~~ must be fair and reasonable.

1 (b) Charges or fees for services performed must be  
2 reasonable.

3 (c) Expenses incurred and payments received must be  
4 allocated to the insurer in conformity with customary  
5 insurance accounting practices consistently applied.

6 (d) The books, accounts, and records of each party  
7 shall must be so maintained as to clearly and accurately  
8 disclose the precise nature and details of the transactions,  
9 including such accounting information as is necessary to  
10 support the reasonableness of the charges or fees to the  
11 respective parties.

12 (e) The insurer's surplus as regards policyholders  
13 following any dividends or distributions to shareholder  
14 affiliates shall must be reasonable in relation to the  
15 insurer's outstanding liabilities and adequate to its  
16 financial needs.

17 (2) (a) The following transactions involving a  
18 domestic insurer and a person in its holding company system  
19 may not be entered into unless the insurer has notified the  
20 commissioner in writing of its intention to enter into a  
21 transaction and the commissioner has not disapproved it  
22 within at least 30 days prior to the transaction, or a  
23 shorter period as the commissioner may permit:

24 (i) sales, purchases, exchanges, loans or extensions  
25 of credit, guaranties, or investments if, as of the prior

1 December 31, the transactions are equal to or exceed:

2 (A) with respect to insurers other than life insurers,  
3 the lesser of 3% of the insurer's admitted assets or 25% of  
4 its surplus as regards policyholders; and

5 (B) with respect to life insurers, 3% of the insurer's  
6 admitted assets;

7 (ii) loans or extensions of credit to a person who is  
8 not an affiliate if the insurer makes the loans or  
9 extensions of credit with the agreement or understanding  
10 that the proceeds of the transactions, in whole or in  
11 substantial part, are to be used to make loans or extensions  
12 of credit to, to purchase assets of, or to make investments  
13 in an affiliate of the insurer making the loans or  
14 extensions of credit if such transactions, as of the prior  
15 December 31, are equal to or exceed:

16 (A) with respect to insurers other than life insurers,  
17 the lesser of 3% of the insurer's admitted assets or 25% of  
18 its surplus as regards policyholders;

19 (B) with respect to life insurers, 3% of the insurer's  
20 admitted assets;

21 (C) reinsurance agreements or modifications to  
22 reinsurance agreements in which the reinsurance premium or a  
23 change in the insurer's liabilities equals or exceeds 5% of  
24 the insurer's surplus as regards policyholders, as of the  
25 prior December 31, including those agreements that may

require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that a portion of the assets will be transferred to one or more affiliates of the insurer;

(D) all management agreements, service contracts, and cost-sharing arrangements; and

(E) any material transactions, specified by rule, that the commissioner determines may adversely affect the interests of the insurer's policyholders.

(b) Nothing in this subsection (2) is considered to authorize or permit a transaction that, in the case of an insurer that is not a member of the same holding company system, would otherwise be contrary to law.

(3) A domestic insurer may not enter into a transaction that is part of a plan or series of like transactions with a person within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount review. If the commissioner determines that the separate transactions were entered into over a 12-month period for the purpose of evading review, he may exercise his authority under 33-2-1120.

(4) The commissioner, in reviewing a transaction pursuant to subsection (2), shall consider whether the transaction complies with the standards set forth in

subsection (1) and whether it may adversely affect the interests of a policyholder.

(5) The commissioner must be notified within 30 days of an investment by a domestic insurer in a corporation if the total investment in the corporation by the insurance holding company system exceeds 10% of the corporation's voting securities.

(2)(6) For purposes of this section, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall must be considered:

(a) the size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;

(b) the extent to which the insurer's business is diversified among the several lines of insurance;

(c) the number and size of risks insured in each line of business;

(d) the extent of the geographical dispersion of the insurer's insured risks;

(e) the nature and extent of the insurer's reinsurance program;

(f) the quality, diversification, and liquidity of the insurer's investment portfolio;

(g) the recent past and projected future trend in the size of the insurer's surplus as regards policyholders;

(h) the surplus as regards policyholders maintained by other comparable insurers;

(i) the adequacy of the insurer's reserves;

(j) the quality and liquidity of investments in subsidiaries made pursuant to 33-2-1104 through 33-2-1106. The commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his judgment such the investment so warrants."

**Section 6.** Section 33-2-1120, MCA, is amended to read:

"33-2-1120. Criminal or civil proceedings -- penalty penalties. (1) An insurer failing without just cause to file a registration statement as required in 33-2-1111 shall, after notice and hearing, pay a penalty of \$100 for each day of delinquency. The maximum penalty under this subsection is \$25,000. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

(2) A director or an officer of an insurance holding company system who knowingly violates, participates in, or assents to a transaction or who knowingly permits an officer or agent of the insurer to engage in a transaction or make

an investment that has not been properly reported or submitted pursuant to 33-2-1111 or 33-2-1113 or that violates any other provision of Title 33, chapter 2, part 11, shall, after notice and hearing, pay, in his individual capacity, a fine of not more than \$5,000 for each violation. To determine the amount of the fine, the commissioner shall consider the appropriateness of the fine with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(3) If the commissioner determines that an insurer subject to Title 33, chapter 2, part 11, or a director, officer, employee, or agent of the insurer has engaged in a transaction or entered into a contract that is subject to 33-2-1113 and that would not have been approved had approval been requested, the commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing, the commissioner may also order the insurer to void the contract and restore the status quo if such action is in the best interest of policyholders, creditors, or the public.

(4) Whenever it appears to the commissioner that any insurer or any director, officer, employee, or agent thereof has committed a willful violation of this part, the commissioner may cause criminal proceedings to be instituted by the district court for the county in which the principal

office of the insurer is located or if such insurer has no such office in the state, then by the district court for Lewis and Clark County against such insurer or the responsible director, officer, employee, or agent thereof.

(2)(5) Any insurer which willfully violates this part may be fined not more than \$5,000 \$25,000.

(3)(6) Any individual who willfully violates this part may be fined not more than \$500 \$5,000 or, if such willful violation involves the deliberate perpetration of a fraud upon the commissioner, imprisoned not more than 2 years or both."

**Section 7.** Section 33-2-1205, MCA, is amended to read-

"33-2-1205. Reinsurance -- limitations -- credit as asset. (1) An insurer may accept reinsurance only of such kinds of risks, and retain risk thereon within such limits, as it is otherwise authorized to insure.

(2) ~~An insurer may reinsure all or part of any particular risk with any~~ Credit for reinsurance is allowed a ceding insurer as either an asset or a deduction from liability on account of ceded reinsurance only if the reinsurance is ceded to a solvent insurer authorized to transact insurance in one or more states a state and having surplus to policyholders in an amount not less than the paid-in capital stock required of a domestic stock insurer transacting like kinds of insurance.

(3) ~~No credit shall be~~ Credit for reinsurance is allowed to an a ceding insurer, as an asset or as a deduction from liability, for reinsurance ceded to an alien insurer unless such alien insurer has surplus to policyholders in amount not less than the paid-in capital stock required of a domestic stock insurer transacting like kinds of insurance and is either authorized to transact insurance in at least one state of the United States or has an attorney-in-fact resident in the United States upon whom service of legal process may be made; only if:

(a) the reinsurance is ceded to an assuming insurer that maintains a trust fund in a United States bank or trust company for the payment of the valid claims of its United States policyholders and ceding insurers and their assigns and successors in interest. The assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the national association of insurance commissioners annual statement form by authorized insurers, to enable the commissioner to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust fund must consist of a trustee account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, must include a trustee surplus of not less than \$20 million. In the case of a group



1 of individual unincorporated underwriters, the trust must  
 2 consist of a trustee account representing the group's  
 3 liabilities attributable to business written in the United  
 4 States and, in addition, include a trustee surplus of not  
 5 less than \$100 million, and the group shall make available  
 6 to the commissioner an annual certification of the solvency  
 7 of each underwriter provided by the group's domiciliary  
 8 regulator and its independent public accountants.

9 (i) The trust fund must be established in a United  
 10 States bank or trust company that is a member of the federal  
 11 reserve system, in a form approved by the commissioner. The  
 12 trust instrument must provide that contested claims are  
 13 valid and enforceable upon the final order of a court of  
 14 competent jurisdiction in the United States. The trust fund  
 15 must vest legal title to its assets in the trustees of the  
 16 trust fund for its United States policyholders and ceding  
 17 insurers and their assigns and successors in interest. The  
 18 trust fund and the assuming insurer are subject to  
 19 examination as determined by the commissioner. The trust  
 20 fund described herein must remain in effect for as long as  
 21 the assuming insurer has outstanding obligations due under  
 22 the reinsurance agreements subject to the trust fund.

23 (ii) No later than February 28 of each year, the  
 24 trustees of the trust fund shall report to the commissioner  
 25 in writing, setting forth the balance of the trust fund and

1 listing the trust's investments at the preceding yearend,  
 2 and shall certify the date of termination of the trust fund,  
 3 if so planned, or certify that the trust fund will not  
 4 expire before the following December 31.

5 (b) the reinsurance is ceded to an assuming insurer  
 6 not meeting the requirements of subsection (2) but only with  
 7 respect to the insurance of risks located in jurisdictions  
 8 other than the United States where such reinsurance is  
 9 required by applicable law or rule of that jurisdiction.

10 (4) (a) If the assuming insurer is not authorized to  
 11 transact insurance in this state, the credit permitted by  
 12 subsections (2) or (3) is not allowed unless the assuming  
 13 insurer agrees in the reinsurance agreement:

14 (i) that, if the assuming insurer fails to perform its  
 15 obligations under the terms of the reinsurance agreement,  
 16 the assuming insurer, at the request of the ceding insurer  
 17 or its domiciliary liquidator or receiver, will:

18 (A) submit to the jurisdiction of a court of competent  
 19 jurisdiction in a state of the United States;

20 (B) comply with all requirements necessary to give the  
 21 court jurisdiction; and

22 (C) abide by the final decision of the court or of an  
 23 appellate court in the event of an appeal; and

24 (ii) to designate the commissioner or a designated  
 25 attorney as its attorney upon whom lawful process may be

1 served in an action, suit, or proceeding instituted by or on  
2 behalf of the ceding insurer.

3 (b) This provision is not intended to conflict with or  
4 override the obligation of the parties to a reinsurance  
5 agreement to arbitrate their disputes if the obligation is  
6 created in the agreement.

7 (5) A reduction from liability for the reinsurance  
8 ceded to an assuming insurer not meeting the requirements of  
9 subsection (2) must be allowed in an amount not exceeding  
10 the liabilities carried by the ceding insurer. The reduction  
11 must be in the amount of funds held by or on behalf of the  
12 ceding insurer, including funds held in trust for the ceding  
13 insurer under a reinsurance contract with the assuming  
14 insurer as security for the payment of obligations under the  
15 reinsurance contract, if the security is held in the United  
16 States subject to withdrawal solely by and under the  
17 exclusive control of the ceding insurer or, in the case of a  
18 trust, if the security is held in a United States bank or  
19 trust company that is a member of the federal reserve  
20 system. This security may be in the form of:

21 (a) cash;

22 (b) securities listed by the security valuation office  
23 or the national association of insurance commissioners and  
24 qualifying as admitted assets;

25 (c) clean, irrevocable, unconditional letters of

1 credit issued or confirmed in writing by a bank or trust  
2 company that is a member of the federal reserve system; or  
3 (d) any other form of security acceptable to the  
4 commissioner.

5 ~~{4}~~(6) Credit ~~shall~~ must be allowed as an asset or ~~as~~  
6 a deduction from liability to ~~any~~ a ceding insurer for  
7 reinsurance ceded to an assuming insurer qualified therefor  
8 under the foregoing provisions of this section, except that  
9 ~~no--such~~ credit ~~shall~~ may not be allowed unless the  
10 reinsurance is payable by the assuming insurer on the basis  
11 of the liability of the ceding insurer under the contracts  
12 reinsured without diminution because of the insolvency of  
13 the ceding insurer.

14 ~~{5}~~(7) Upon request of the commissioner, an insurer  
15 shall promptly inform the commissioner in writing of the  
16 cancellation or any other material change of any of its  
17 reinsurance treaties or arrangements.

18 ~~{6}~~(8) This section ~~shall~~ does not apply to wet marine  
19 and transportation insurance.

20 (9) The commissioner may adopt rules implementing the  
21 provisions of this part."

22 NEW SECTION. Section 8. Extension of authority. Any  
23 existing authority to make rules on the subject of the  
24 provisions of [this act] is extended to the provisions of  
25 [this act].

1        NEW SECTION.   **Section 9. Severability.**   If a part of  
2   [this act] is invalid, all valid parts that are severable  
3   from the invalid part remain in effect.   If a part of [this  
4   act] is invalid in one or more of its applications, the part  
5   remains in effect in all valid applications that are  
6   severable from the invalid applications.

-End-

CONFERENCE COMMITTEE REPORT

Report No. 1  
page 1 of 2  
March 18, 1989

CONFERENCE COMMITTEE, SB 330  
page 2 of 2  
March 18, 1989

MR PRESIDENT AND MR. SPEAKER

We, your Free Conference Committee on SB 330 met and recommend that this Conference Committee report be adopted and that SB 330 (reference copy -- salmon) be amended as indicated in the INSTRUCTIONS.

FOR THE SENATE

*Tom Beck*  
Sen. Beck, Chairman  
*J. Noble*  
Sen. Noble  
*Paul Williams*  
Sen. Williams

FOR THE HOUSE

*Frederick J. Whalen*  
Rep. Whalen  
*Thomas S. Kilpatrick*  
Rep. Kilpatrick  
*Fred Thomas*  
Rep. Thomas

We Considered: The House Committee on Business and Economic Development amendments to SB 330 (third reading copy -- blue) dated March 3, 1989.

INSTRUCTIONS: Strike: The House Committee on Business and Economic Developments amendments Nos. 2 and 3 in their entirety.

Amend SB 330 (reference copy -- salmon) as follows:

1. Title, line 13.  
Following: "33-2-119,"  
Insert: "33-2-119,"

2. Page 4.  
Following: line 12  
Insert: "Section 1. Section 33-2-119, MCA, is amended to read:  
"33-2-119. Suspension or revocation for violations and special grounds. (1) The commissioner may, in his discretion, suspend or revoke an insurer's certificate of authority if, after a hearing thereon, he finds that the insurer has:  
(a) violated any lawful order of the commissioner or any provision of this code other than those for which suspension or revocation is mandatory;

continued

(b) reinsured more than 90% of its risks resident, located, or to be performed in Montana, in another insurer. In considering suspension or revocation, the commissioner shall consider all relevant factors, including whether:

(1) after the reinsurance transaction all parties will be in compliance with Montana law; and

(ii) the transaction will substantially reduce protection and service to Montana policyholders.

(2) The commissioner shall, after a hearing thereon, suspend or revoke an insurer's certificate of authority if he finds that the insurer:

(a) is in unsound condition or in such condition or using such methods or practices in the conduct of its business as to render its further transaction of insurance in Montana injurious or hazardous to its policyholders or to the public;

(b) has refused to be examined or to produce its accounts, records, and files for examination or if any of its officers have refused to give information with respect to its affairs, when required by the commissioner;

(c) has failed to pay any final judgment rendered against it in Montana within 30 days after the judgment became final;

(d) with such frequency as to indicate its general business practice in Montana, has without just cause refused to pay a proper claim arising under its policies, whether any such the claim is in favor of an insured or is in favor of a third person with respect to the liability of an insured to each the third person, or without just cause compels each the insured or claimant to accept less than the amount due then him or to employ attorneys or to bring suit against the insurer or each an insured to secure full payment or settlement of each the claims;

(e) is affiliated with and under the same general management or interlocking directorate or ownership as another insurer which transacts direct insurance in Montana without having a certificate of authority therefor, except as permitted as to a surplus lines insurer under part 3 of this chapter.

(3) The commissioner may, in his discretion and without advance notice or a hearing thereon, immediately suspend the certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings have been commenced in any state."

Renumber: subsequent sections

ADOPT  
REJECT

SB 330

## SENATE BILL NO. 330

INTRODUCED BY BECK, THOMAS, THAYER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE INSURANCE INDUSTRY; AUTHORIZING THE COMMISSIONER OF INSURANCE TO SUSPEND OR REVOKE AN INSURER'S CERTIFICATE OF AUTHORITY FOR FAILURE TO EMPLOY ONLY LICENSED INSURANCE AGENTS OR FAILURE TO SUPERVISE ITS INSURANCE AGENTS; REQUIRING HOLDING COMPANY SYSTEMS TO REGISTER PROPERLY AND TO PROVIDE ACCURATE INFORMATION TO THE COMMISSIONER OF INSURANCE ABOUT THEIR AFFILIATED COMPANIES' TRANSACTIONS; MODIFYING THE LAWS ALLOWING CREDIT FOR REINSURANCE; AND AMENDING SECTIONS 33-2-119, 33-2-119, 33-2-1103, 33-2-1105, 33-2-1106, 33-2-1111, 33-2-1113, 33-2-1120, AND 33-2-1205, MCA."

## STATEMENT OF INTENT

A statement of intent is required for this bill because [section 6(2)(a)(ii)(E)] authorizes the commissioner of insurance of the state of Montana to specify by rule a material transaction that adversely affects the interests of an insurer's policyholders and [section 8(9)] allows the commissioner to adopt rules implementing [sections 1 through 8]. The legislature intends that the rules the commissioner adopts to implement this bill be designed principally to

protect Montana insurance consumers.

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

**Section 1.** ~~Section 33-2-119, MCA, is amended to read:~~

~~"33-2-119. Suspension or revocation for violations and special grounds. (1) The commissioner may, in his discretion, suspend or revoke an insurer's certificate of authority if, after a hearing thereon, he finds that the insurer has:~~

~~(a) violated any lawful order of the commissioner or any provision of this code other than those for which suspension or revocation is mandatory;~~

~~(b) reinsured more than 90% of its risks resident, located, or to be performed in Montana, in another insurer; in considering suspension or revocation, the commissioner shall consider all relevant factors, including whether:~~

~~(i) after the reinsurance transaction all parties will be in compliance with Montana law; and~~

~~(ii) the transaction will substantially reduce protection and service to Montana policyholders;~~

~~(c) transacted insurance in this state through an insurance agent who is not licensed under Title 33, chapter 17; or~~

~~(d) failed to supervise its insurance agents reasonably to assure their compliance with this code.~~

1 {2}--The commissioner shall, after a hearing thereon,  
2 suspend or revoke an insurer's certificate of authority if  
3 he finds that the insurer:

4 (a)--is in unsound condition or in such condition or  
5 using such methods or practices in the conduct of its  
6 business as to render its further transaction of insurance  
7 in Montana injurious or hazardous to its policyholders or to  
8 the public;

9 (b)--has refused to be examined or to produce its  
10 accounts, records, and files for examination or if any of  
11 its officers have refused to give information with respect  
12 to its affairs, when required by the commissioner;

13 (c)--has failed to pay any final judgment rendered  
14 against it in Montana within 30 days after the judgment  
15 became final;

16 (d)--with such frequency as to indicate its general  
17 business practice in Montana, has without just cause refused  
18 to pay a proper claims claim arising under its policies,  
19 whether any such the claim is in favor of an insured or is  
20 in favor of a third person with respect to the liability of  
21 an insured to such the third person, or without just cause  
22 compels such the insured or claimant to accept less than the  
23 amount due them him or to employ attorneys or to bring suit  
24 against the insurer or such an insured to secure full  
25 payment or settlement of such the claims;

1 (e)--is affiliated with and under the same general  
2 management or interlocking directorate or ownership as  
3 another insurer which transacts direct insurance in Montana  
4 without having a certificate of authority therefor, except  
5 as permitted as to a surplus lines insurer under part 3 of  
6 this chapter;

7 (3)--The commissioner may, in his discretion and  
8 without advance notice or a hearing thereon, immediately  
9 suspend the certificate of authority of any insurer as to  
10 which proceedings for receivership, conservatorship,  
11 rehabilitation, or other delinquency proceedings have been  
12 commenced in any state."

13 **SECTION 1. SECTION 33-2-119, MCA, IS AMENDED TO READ:**

14 "33-2-119. Suspension or revocation for violations and  
15 special grounds. (1) The commissioner may, in his  
16 discretion, suspend or revoke an insurer's certificate of  
17 authority if, after a hearing thereon, he finds that the  
18 insurer has:

19 (a) violated any lawful order of the commissioner or  
20 any provision of this code other than those for which  
21 suspension or revocation is mandatory;

22 (b) reinsured more than 90% of its risks resident,  
23 located, or to be performed in Montana, in another insurer.  
24 In considering suspension or revocation, the commissioner  
25 shall consider all relevant factors, including whether:

(i) after the reinsurance transaction all parties will be in compliance with Montana law; and

(ii) the transaction will substantially reduce protection and service to Montana policyholders.

(2) The commissioner shall, after a hearing thereon, suspend or revoke an insurer's certificate of authority if he finds that the insurer:

(a) is in unsound condition or in such condition or using such methods or practices in the conduct of its business as to render its further transaction of insurance in Montana injurious or hazardous to its policyholders or to the public;

(b) has refused to be examined or to produce its accounts, records, and files for examination or if any of its officers have refused to give information with respect to its affairs, when required by the commissioner;

(c) has failed to pay any final judgment rendered against it in Montana within 30 days after the judgment became final;

(d) with such frequency as to indicate its general business practice in Montana, has without just cause refused to pay a proper ~~claims~~ claim arising under its policies, whether ~~any--such~~ the claim is in favor of an insured or is in favor of a third person with respect to the liability of an insured to ~~such~~ the third person, or without just cause

compels ~~such~~ the insured or claimant to accept less than the amount due ~~them~~ him or to employ attorneys or to bring suit against the insurer or ~~such--an~~ insured to secure full payment or settlement of ~~such~~ the claims;

(e) is affiliated with and under the same general management or interlocking directorate or ownership as another insurer which transacts direct insurance in Montana without having a certificate of authority therefor, except as permitted as to a surplus lines insurer under part 3 of this chapter.

(3) The commissioner may, in his discretion and without advance notice or a hearing thereon, immediately suspend the certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings have been commenced in any state."

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

"33-2-1103. Additional investment authority -- exemption from other investment restrictions -- determination of qualification -- divestiture. (1) In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under this part, a domestic insurer may also:

(a) invest, in common stock, preferred stock, debt obligations, and other securities of one or more

1 subsidiaries, amounts which do not exceed the lesser of 5%  
 2 10% of such the insurer's assets or 50% of such the  
 3 insurer's surplus as regards policyholders, provided that  
 4 after such the investments the insurer's surplus as regards  
 5 policyholders will be reasonable in relation to the  
 6 insurer's outstanding liabilities and adequate to its  
 7 financial needs. In calculating the amount of such the  
 8 investments, there ~~shall~~ must be included total net ~~moneys~~  
 9 money or other consideration expended and obligations  
 10 assumed in the acquisition or formation of a subsidiary,  
 11 including all organizational expenses and contributions to  
 12 capital and surplus of such the subsidiary, whether or not  
 13 represented by the purchase of capital stock or issuance of  
 14 other securities, and all amounts expended in acquiring  
 15 additional common stock, preferred stock, debt obligations,  
 16 and other securities and all contributions to the capital or  
 17 surplus of a subsidiary subsequent to its acquisition or  
 18 formation.

19 (b) if the insurer's total liabilities, as calculated  
 20 for national association of insurance commissioners annual  
 21 statement purposes, are less than 10% of assets, invest any  
 22 amount in common stock, preferred stock, debt obligations,  
 23 and other securities of one or more subsidiaries, provided  
 24 that after such the investment the insurer's surplus as  
 25 regards policyholders, considering such the investment as if

1 it were a disallowed asset, will be reasonable in relation  
 2 to the insurer's outstanding liabilities and adequate to its  
 3 financial needs;

4 (c) invest any amount in common stock, preferred  
 5 stock, debt obligations, and other securities of one or more  
 6 subsidiaries, provided that each such subsidiary agrees to  
 7 limit its investments in any asset so that such the  
 8 investments will not cause the amount of the total  
 9 investment of the insurer to exceed any of the investment  
 10 limitations specified in this section. The total investment  
 11 of the insurer ~~shall~~ must include:

12 (i) any direct investment by the insurer in an asset;  
 13 (ii) the insurer's proportionate share of any  
 14 investment in an asset by any subsidiary of the insurer,  
 15 which ~~shall be~~ is calculated by multiplying the amount of  
 16 the subsidiary's investment by the percentage of the  
 17 insurer's ownership of such subsidiary.

18 (d) with the approval of the commissioner, invest any  
 19 a greater amount in common stock, preferred stock, debt  
 20 obligations, or other securities of one or more  
 21 subsidiaries, provided that after such the investment, the  
 22 insurer's surplus as regards policyholders will be  
 23 reasonable in relation to the insurer's outstanding  
 24 liabilities and adequate to its financial needs;.

25 ~~(e) --invest any amount in the common stock, preferred~~



1 stock,---debt---obligations,--or--other--securities--of--any  
 2 subsidiary--exclusively--engaged--in--holding--title--to--or  
 3 holding--title--to--and--managing--or--developing--real--or--personal  
 4 property--if,--after--considering--as--a--disallowed--asset--so--much  
 5 of--the--investment--as--is--represented--by--subsidiary--assets  
 6 which--if--held--directly--by--the--insurer--would--be--considered--as  
 7 a--disallowed--asset,--the--insurer's--surplus--as--regards  
 8 policyholders---will---be--reasonable--in--relation--to--the  
 9 insurer's--outstanding--liabilities--and--adequate--to--its  
 10 financial--needs--and--if--following--such--investment--all--voting  
 11 securities--of--such--subsidiary--would--be--owned--by--the--insurer.

12 (2) Investments in common stock, preferred stock, debt  
 13 obligations, or other securities of subsidiaries made  
 14 pursuant to subsection (1) hereof are not subject to any of  
 15 the otherwise applicable restrictions or prohibitions  
 16 contained in this part applicable to such investments of  
 17 insurers.

18 (3) Whether any investment pursuant to subsection (1)  
 19 meets the applicable requirements thereof is to be  
 20 determined immediately after such the investment is made,  
 21 taking into account the then outstanding principal balance  
 22 on all previous investments in debt obligations and the  
 23 value of all previous investments in equity securities as of  
 24 the date they were made.

25 (4) If an insurer ceases to control a subsidiary, it

1 shall dispose of any investment therein made pursuant to  
 2 this section within 3 years from the time of the cessation  
 3 of control or within such further time as the commissioner  
 4 may prescribe, unless at any time after such the investment  
 5 ~~shall have been~~ is made, such the investment ~~shall have~~ met  
 6 meets the requirements for investment under any other  
 7 section of this part and the insurer has notified the  
 8 commissioner thereof."

9 **Section 3.** Section 33-2-1105, MCA, is amended to read:

10 "33-2-1105. Approval by commissioner -- hearings --  
 11 notice. (1) The commissioner shall approve any merger or  
 12 other acquisition of control referred to in 33-2-1104(1)  
 13 unless, after a public hearing thereon, he finds that:

14 (a) after the change of control the domestic insurer  
 15 referred to in 33-2-1104(1) would not be able to satisfy the  
 16 requirements for the issuance of a license to write the line  
 17 or lines of insurance for which it is presently licensed;

18 (b) the effect of the merger or other acquisition of  
 19 control would be substantially to lessen competition in  
 20 insurance in this state or tend to create a monopoly  
 21 therein;

22 (c) the financial condition of any acquiring party ~~is~~  
 23 ~~such--as~~ might jeopardize the financial stability of the  
 24 insurer or prejudice the interest of its policyholders or  
 25 the interests of any remaining securityholders who are

1 unaffiliated with such the acquiring party;

2 (d) the terms of the offer, request, invitation,  
3 agreement, or acquisition referred to in 33-2-1104(1) are  
4 unfair and unreasonable to the securityholders of the  
5 insurer;

6 (e) the plans or proposals which the acquiring party  
7 has to liquidate the insurer, sell its assets or consolidate  
8 or merge it with any person, or to make any other material  
9 change in its business or corporate structure or management  
10 are unfair and unreasonable to policyholders of the insurer  
11 and not in the public interest;

12 (f) the competence, experience, and integrity of those  
13 persons who would control the operation of the insurer are  
14 such that it would not be in the interest of policyholders  
15 of the insurer and of the public to permit the merger or  
16 other acquisition of control.

17 (2) The public hearing referred to in subsection (1)  
18 ~~shall~~ must be held within 30 days after the statement  
19 required by 33-2-1104(1) is filed, and at least 20 days  
20 notice thereof ~~shall~~ must be given by the commissioner to  
21 the person filing the statement. Not less than 7 days'  
22 notice of such the public hearing ~~shall~~ must be given by the  
23 person filing the statement to the insurer and to such other  
24 persons as may be designated by the commissioner. The  
25 insurer shall give such notice to its securityholders. The

1 commissioner shall make a determination within 30 days after  
2 the conclusion of such the hearing. At such the hearing, the  
3 person filing the statement, the insurer, any person to whom  
4 notice of hearing was sent, and any other person whose  
5 interests may be affected thereby ~~shall-have~~ has the right  
6 to present evidence, examine and cross-examine witnesses,  
7 and offer oral and written arguments and in connection  
8 therewith ~~shall---be~~ is entitled to conduct discovery  
9 proceedings in the same manner as is presently allowed in  
10 the district court of this state. All discovery proceedings  
11 ~~shall~~ must be concluded not later than 3 days prior to the  
12 commencement of the public hearing.

13 (3) All statements, amendments, or other material  
14 filed pursuant to subsections (1) through (4) of 33-2-1104  
15 and all notices of public hearings held pursuant to  
16 subsection (1) ~~shall~~ must be mailed by the insurer to its  
17 shareholders within 5 business days after the insurer has  
18 received such the statements, amendments, other material, or  
19 notices. The expenses of mailing ~~shall~~ must be borne by the  
20 person making the filing. As security for the payment of  
21 such the expenses, such the person shall file with the  
22 commissioner an acceptable bond or other deposit in an  
23 amount to be determined by the commissioner.

24 (4) The commissioner may retain at the acquiring  
25 party's expense any attorneys, actuaries, accountants, and

1 other experts not otherwise a part of the commissioner's  
 2 staff as may be reasonably necessary to assist the  
 3 commissioner in reviewing the proposed acquisition of  
 4 control."

5 **Section 4.** Section 33-2-1106, MCA, is amended to read:

6 **"33-2-1106. Exemptions -- violations -- jurisdiction.**

7 (1) The provisions of 33-2-1104, 33-2-1105, and this section  
 8 ~~shall~~ do not apply to:

9 ~~{a}--any offers, requests, invitations, agreements,--or~~  
 10 ~~acquisitions--by the person referred to in subsection {1} of~~  
 11 ~~33-2-1104 of any voting security referred to in subsection~~  
 12 ~~{1}--of--33-2-1104--which--immediately--prior--to--the~~  
 13 ~~consummation of such offer, request, invitation, agreement,~~  
 14 ~~or acquisition, was not issued and outstanding;~~

15 ~~{b}--any an~~ offer, request, invitation, agreement, or  
 16 acquisition which the commissioner by order shall exempt  
 17 therefrom as:

18 ~~{1}{a}~~ not having been made or entered into for the  
 19 purpose and not having the effect of changing or influencing  
 20 the control of a domestic insurer; or

21 ~~{1}{b}~~ otherwise not comprehended within the purposes  
 22 of 33-2-1104 and 33-2-1105.

23 (2) The following ~~shall--be~~ are violations of  
 24 33-2-1104, 33-2-1105, and this section:

25 (a) the failure to file any statement, amendment, or

1 other material required to be filed pursuant to subsections  
 2 (1) through (4) of 33-2-1104;

3 (b) the effectuation or any attempt to effectuate an  
 4 acquisition of control of or merger with a domestic insurer  
 5 unless the commissioner has given his approval thereto.

6 (3) The courts of this state are hereby vested with  
 7 jurisdiction over every person not resident, domiciled, or  
 8 authorized to do business in this state who files a  
 9 statement with the commissioner under 33-2-1104 and over all  
 10 actions involving ~~such the~~ person arising out of violations  
 11 of 33-2-1104, 33-2-1105, and this section, and each such  
 12 person ~~shall-be-deemed~~ is considered to have performed acts  
 13 equivalent to and constituting an appointment by such a  
 14 person of the commissioner to be his true and lawful  
 15 attorney upon whom may be served all lawful process in any  
 16 action, suit, or proceeding arising out of violations of  
 17 this section. Copies of all such lawful process ~~shall~~ must  
 18 be served on the commissioner and transmitted by registered  
 19 or certified mail by the commissioner to ~~such the~~ person at  
 20 his last-known address."

21 **Section 5.** Section 33-2-1111, MCA, is amended to read:

22 **"33-2-1111. Registration of insurers -- requisites --**  
 23 **termination.** (1) Every insurer which is authorized to do  
 24 business in this state and which is a member of an insurance  
 25 holding company system shall register with the commissioner,

1 except a foreign insurer subject to disclosure requirements  
 2 and standards adopted by statute or regulation in the  
 3 jurisdiction of its domicile which are substantially similar  
 4 to those contained in this section. Any insurer which is  
 5 subject to registration under this section shall register  
 6 within 60 days after July 1, 1971, or 15 days after it  
 7 becomes subject to registration, whichever is later, unless  
 8 the commissioner for good cause shown extends the time for  
 9 registration, and then within such extended time. The  
 10 commissioner may require any authorized insurer which is a  
 11 member of a holding company system which is not subject to  
 12 registration under this section to furnish a copy of the  
 13 registration statement or other information filed by such  
 14 insurance company with the insurance regulatory authority of  
 15 domiciliary jurisdiction.

16 (2) Every insurer subject to registration shall file  
 17 with the commissioner, on or before April 30 each year, a  
 18 registration statement on a form provided by the  
 19 commissioner, which shall must contain current information  
 20 about:

21 (a) the capital structure, general financial  
 22 condition, ownership, and management of the insurer and any  
 23 person controlling the insurer;

24 (b) the identity of every member of the insurance  
 25 holding company system;

1 (c) the following agreements in force, relationships  
 2 subsisting, and transactions currently outstanding between  
 3 such insurer and its affiliates:

4 (i) loans, other investments, or purchases, sales, or  
 5 exchanges of securities of the affiliates by the insurer or  
 6 of the insurer by its affiliates;

7 (ii) purchases, sales, or exchanges of assets;

8 (iii) transactions not in the ordinary course of  
 9 business;

10 (iv) guaranties or undertakings for the benefit of an  
 11 affiliate which result in an actual contingent exposure of  
 12 the insurer's assets to liability, other than insurance  
 13 contracts entered into in the ordinary course of the  
 14 insurer's business;

15 (v) all management and service contracts and all  
 16 cost-sharing arrangements, other than cost allocation  
 17 arrangements based upon generally accepted accounting  
 18 principles;

19 (vi) reinsurance agreements covering all or  
 20 substantially all of one or more lines of insurance of the  
 21 ceding company;

22 (vii) dividends and other distributions to  
 23 shareholders; and

24 (viii) consolidated tax allocation agreements;

25 (d) any pledge of the insurer's stock, including stock

1 of a subsidiary or controlling affiliate for a loan made to  
 2 a member of the insurance holding company system;

3 ~~(d)~~(e) all matters concerning transactions between  
 4 registered insurers and any affiliates as may be included  
 5 from time to time in any registration forms adopted or  
 6 approved by the commissioner.

7 (3) A registration statement must contain a summary  
 8 outlining each item in the current registration statement  
 9 that represents a change from the prior registration  
 10 statement.

11 ~~(3)~~(4) No information need be disclosed on the  
 12 registration statement filed pursuant to subsection (2) if  
 13 such information is not material for the purposes of this  
 14 section. Unless the commissioner by rule or order provides  
 15 otherwise, sales, purchases, exchanges, loans or extensions  
 16 of credit, or investments involving 1/2 of 1% or less of an  
 17 insurer's admitted assets as of December 31 next preceding  
 18 ~~shall~~ may not be deemed material for purposes of this  
 19 section.

20 (5) A person within an insurance holding company  
 21 system subject to registration shall provide complete and  
 22 accurate information to an insurer if the information is  
 23 reasonably necessary to enable the insurer to comply with  
 24 Title 33, chapter 2, part 11.

25 ~~(4)~~(6) Each registered insurer shall keep current the

1 information required to be disclosed in its registration  
 2 statement by reporting all material changes or additions on  
 3 amendment forms provided by the commissioner within 15 days  
 4 after the end of the month in which it learns of each such  
 5 change or addition; ~~provided,--however,--that--subject--to~~  
 6 Except as provided in 33-2-1114, each registered insurer  
 7 shall ~~so~~ report all dividends and other distributions to  
 8 shareholders within 2 business days following the  
 9 declaration thereof.

10 ~~(5)~~(7) The commissioner shall terminate the  
 11 registration of any insurer which demonstrates that it no  
 12 longer is a member of an insurance holding company system.

13 ~~(6)~~(8) The commissioner may require or allow two or  
 14 more affiliated insurers subject to registration hereunder  
 15 to file a consolidated registration statement or  
 16 consolidated reports amending their consolidated  
 17 registration statement or their individual registration  
 18 statements.

19 ~~(7)~~(9) The commissioner may allow an insurer which is  
 20 authorized to do business in this state and which is part of  
 21 an insurance holding company system to register on behalf of  
 22 any affiliated insurer which is required to register under  
 23 subsection (1) and to file all information and material  
 24 required to be filed under this section."

25 **Section 6.** Section 33-2-1113, MCA, is amended to read:

"33-2-1113. Transactions with affiliates -- standards.

(1) Material transactions by registered insurers with their affiliates ~~shall be~~ are subject to the following standards:

(a) The terms ~~shall~~ must be fair and reasonable.

(b) Charges or fees for services performed must be reasonable.

(c) Expenses incurred and payments received must be allocated to the insurer in conformity with customary insurance accounting practices consistently applied.

~~(b)(d)~~ (d) The books, accounts, and records of each party ~~shall~~ must be so maintained as to clearly and accurately disclose the precise nature and details of the transactions, including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties.

~~(c)(e)~~ (e) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates ~~shall~~ must be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) (a) The following transactions involving a domestic insurer and a person in its holding company system may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into a transaction and the commissioner has not disapproved it

within at least 30 days prior to the transaction, or a shorter period as the commissioner may permit:

(i) sales, purchases, exchanges, loans or extensions of credit, guaranties, or investments if, as of the prior December 31, the transactions are equal to or exceed:

(A) with respect to insurers other than life insurers, the lesser of 3% of the insurer's admitted assets or 25% of its surplus as regards policyholders; and

(B) with respect to life insurers, 3% of the insurer's admitted assets;

(ii) loans or extensions of credit to a person who is not an affiliate if the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in an affiliate of the insurer making the loans or extensions of credit if such transactions, as of the prior December 31, are equal to or exceed:

(A) with respect to insurers other than life insurers, the lesser of 3% of the insurer's admitted assets or 25% of its surplus as regards policyholders;

(B) with respect to life insurers, 3% of the insurer's admitted assets;

(C) reinsurance agreements or modifications to

1 reinsurance agreements in which the reinsurance premium or a  
 2 change in the insurer's liabilities equals or exceeds 5% of  
 3 the insurer's surplus as regards policyholders, as of the  
 4 prior December 31, including those agreements that may  
 5 require as consideration the transfer of assets from an  
 6 insurer to a nonaffiliate, if an agreement or understanding  
 7 exists between the insurer and nonaffiliate that a portion  
 8 of the assets will be transferred to one or more affiliates  
 9 of the insurer;

10 (D) all management agreements, service contracts, and  
 11 cost-sharing arrangements; and

12 (E) any material transactions, specified by rule, that  
 13 the commissioner determines may adversely affect the  
 14 interests of the insurer's policyholders.

15 (b) Nothing in this subsection (2) is considered to  
 16 authorize or permit a transaction that, in the case of an  
 17 insurer that is not a member of the same holding company  
 18 system, would otherwise be contrary to law.

19 (3) A domestic insurer may not enter into a  
 20 transaction that is part of a plan or series of like  
 21 transactions with a person within the holding company system  
 22 if the purpose of those separate transactions is to avoid  
 23 the statutory threshold amount review. If the commissioner  
 24 determines that the separate transactions were entered into  
 25 over a 12-month period for the purpose of evading review, he

1 may exercise his authority under 33-2-1120.

2 (4) The commissioner, in reviewing a transaction  
 3 pursuant to subsection (2), shall consider whether the  
 4 transaction complies with the standards set forth in  
 5 subsection (1) and whether it may adversely affect the  
 6 interests of a policyholder.

7 (5) The commissioner must be notified within 30 days  
 8 of an investment by a domestic insurer in a corporation if  
 9 the total investment in the corporation by the insurance  
 10 holding company system exceeds 10% of the corporation's  
 11 voting securities.

12 (2)(6) For purposes of this section, in determining  
 13 whether an insurer's surplus as regards policyholders is  
 14 reasonable in relation to the insurer's outstanding  
 15 liabilities and adequate to its financial needs, the  
 16 following factors, among others, shall must be considered:

17 (a) the size of the insurer as measured by its assets,  
 18 capital and surplus, reserves, premium writings, insurance  
 19 in force, and other appropriate criteria;

20 (b) the extent to which the insurer's business is  
 21 diversified among the several lines of insurance;

22 (c) the number and size of risks insured in each line  
 23 of business;

24 (d) the extent of the geographical dispersion of the  
 25 insurer's insured risks;

1 (e) the nature and extent of the insurer's reinsurance  
2 program;

3 (f) the quality, diversification, and liquidity of the  
4 insurer's investment portfolio;

5 (g) the recent past and projected future trend in the  
6 size of the insurer's surplus as regards policyholders;

7 (h) the surplus as regards policyholders maintained by  
8 other comparable insurers;

9 (i) the adequacy of the insurer's reserves;

10 (j) the quality and liquidity of investments in  
11 subsidiaries made pursuant to 33-2-1104 through 33-2-1106.  
12 The commissioner may treat any such investment as a  
13 disallowed asset for purposes of determining the adequacy of  
14 surplus as regards policyholders whenever in his judgment  
15 such the investment so warrants."

16 **Section 7.** Section 33-2-1120, MCA, is amended to read:

17 **"33-2-1120. Criminal or civil proceedings -- penalty**  
18 **penalties.** (1) An insurer failing without just cause to file  
19 a registration statement as required in 33-2-1111 shall,  
20 after notice and hearing, pay a penalty of \$100 for each day  
21 of delinquency. The maximum penalty under this subsection is  
22 \$25,000. The commissioner may reduce the penalty if the  
23 insurer demonstrates to the commissioner that the imposition  
24 of the penalty would constitute a financial hardship to the  
25 insurer.

1 (2) A director or an officer of an insurance holding  
2 company system who knowingly violates, participates in, or  
3 assents to a transaction or who knowingly permits an officer  
4 or agent of the insurer to engage in a transaction or make  
5 an investment that has not been properly reported or  
6 submitted pursuant to 33-2-1111 or 33-2-1113 or that  
7 violates any other provision of Title 33, chapter 2, part  
8 11, shall, after notice and hearing, pay, in his individual  
9 capacity, a fine of not more than \$5,000 for each violation.  
10 To determine the amount of the fine, the commissioner shall  
11 consider the appropriateness of the fine with respect to the  
12 gravity of the violation, the history of previous  
13 violations, and such other matters as justice may require.

14 (3) If the commissioner determines that an insurer  
15 subject to Title 33, chapter 2, part 11, or a director,  
16 officer, employee, or agent of the insurer has engaged in a  
17 transaction or entered into a contract that is subject to  
18 33-2-1113 and that would not have been approved had approval  
19 been requested, the commissioner may order the insurer to  
20 cease and desist immediately any further activity under that  
21 transaction or contract. After notice and hearing, the  
22 commissioner may also order the insurer to void the contract  
23 and restore the status quo if such action is in the best  
24 interest of policyholders, creditors, or the public.

25 (4) Whenever it appears to the commissioner that any



1 insurer or any director, officer, employee, or agent thereof  
 2 has committed a willful violation of this part, the  
 3 commissioner may cause criminal proceedings to be instituted  
 4 by the district court for the county in which the principal  
 5 office of the insurer is located or if such insurer has no  
 6 such office in the state, then by the district court for  
 7 Lewis and Clark County against such insurer or the  
 8 responsible director, officer, employee, or agent thereof.

9 {2}(5) Any insurer which willfully violates this part  
 10 may be fined not more than \$5,000 \$25,000.

11 {3}(6) Any individual who willfully violates this part  
 12 may be fined not more than \$500 \$5,000 or, if such willful  
 13 violation involves the deliberate perpetration of a fraud  
 14 upon the commissioner, imprisoned not more than 2 years or  
 15 both."

16 **Section 3.** Section 33-2-1205, MCA, is amended to read:

17 "33-2-1205. Reinsurance -- limitations -- credit as  
 18 asset. (1) An insurer may accept reinsurance only of such  
 19 kinds of risks, and retain risk thereon within such limits,  
 20 as it is otherwise authorized to insure.

21 (2) ~~An insurer may reinsure all or part of any~~  
 22 ~~particular risk with any~~ Credit for reinsurance is allowed a  
 23 ceding insurer as either an asset or a deduction from  
 24 liability on account of ceded reinsurance only if the  
 25 reinsurance is ceded to a solvent insurer authorized to

1 transact insurance in ~~one or more states~~ a state and having  
 2 surplus to policyholders in an amount not less than the  
 3 paid-in capital stock required of a domestic stock insurer  
 4 transacting like kinds of insurance.

5 (3) ~~No credit shall be~~ Credit for reinsurance is  
 6 allowed to an a ceding insurer, as an asset or as a  
 7 deduction from liability, for reinsurance ceded to an alien  
 8 insurer unless such alien insurer has surplus to  
 9 policyholders in amount not less than the paid-in capital  
 10 stock required of a domestic stock insurer transacting like  
 11 kinds of insurance and is either authorized to transact  
 12 insurance in at least one state of the United States or has  
 13 an attorney-in-fact resident in the United States upon whom  
 14 service of legal process may be made only if:

15 (a) the reinsurance is ceded to an assuming insurer  
 16 that maintains a trust fund in a United States bank or trust  
 17 company for the payment of the valid claims of its United  
 18 States policyholders and ceding insurers and their assigns  
 19 and successors in interest. The assuming insurer shall  
 20 report annually to the commissioner information  
 21 substantially the same as that required to be reported on  
 22 the national association of insurance commissioners annual  
 23 statement form by authorized insurers, to enable the  
 24 commissioner to determine the sufficiency of the trust fund.  
 25 In the case of a single assuming insurer, the trust fund

1 must consist of a trusteed account representing the assuming  
 2 insurer's liabilities attributable to business written in  
 3 the United States and, in addition, must include a trusteed  
 4 surplus of not less than \$20 million. In the case of a group  
 5 of individual unincorporated underwriters, the trust must  
 6 consist of a trusteed account representing the group's  
 7 liabilities attributable to business written in the United  
 8 States and, in addition, include a trusteed surplus of no-  
 9 less than \$100 million, and the group shall make available  
 10 to the commissioner an annual certification of the solvency  
 11 of each underwriter provided by the group's domiciliary  
 12 regulator and its independent public accountants.

13 (i) The trust fund must be established in a United  
 14 States bank or trust company that is a member of the federal  
 15 reserve system, in a form approved by the commissioner. The  
 16 trust instrument must provide that contested claims are  
 17 valid and enforceable upon the final order of a court of  
 18 competent jurisdiction in the United States. The trust fund  
 19 must vest legal title to its assets in the trustees of the  
 20 trust fund for its United States policyholders and ceding  
 21 insurers and their assigns and successors in interest. The  
 22 trust fund and the assuming insurer are subject to  
 23 examination as determined by the commissioner. The trust  
 24 fund described herein must remain in effect for as long as  
 25 the assuming insurer has outstanding obligations due under

1 the reinsurance agreements subject to the trust fund.

2 (ii) No later than February 28 of each year, the  
 3 trustees of the trust fund shall report to the commissioner  
 4 in writing, setting forth the balance of the trust fund and  
 5 listing the trust's investments at the preceding yearend,  
 6 and shall certify the date of termination of the trust fund,  
 7 if so planned, or certify that the trust fund will not  
 8 expire before the following December 31.

9 (b) the reinsurance is ceded to an assuming insurer  
 10 not meeting the requirements of subsection (2) but only with  
 11 respect to the insurance of risks located in jurisdictions  
 12 other than the United States where such reinsurance is  
 13 required by applicable law or rule of that jurisdiction.

14 (4) (a) If the assuming insurer is not authorized to  
 15 transact insurance in this state, the credit permitted by  
 16 subsections (2) or (3) is not allowed unless the assuming  
 17 insurer agrees in the reinsurance agreement:

18 (i) that, if the assuming insurer fails to perform its  
 19 obligations under the terms of the reinsurance agreement,  
 20 the assuming insurer, at the request of the ceding insurer  
 21 or its domiciliary liquidator or receiver, will:

22 (A) submit to the jurisdiction of a court of competent  
 23 jurisdiction in a state of the United States;

24 (B) comply with all requirements necessary to give the  
 25 court jurisdiction; and

1 (C) abide by the final decision of the court or of an  
 2 appellate court in the event of an appeal; and

3 (ii) to designate the commissioner or a designated  
 4 attorney as its attorney upon whom lawful process may be  
 5 served in an action, suit, or proceeding instituted by or on  
 6 behalf of the ceding insurer.

7 (b) This provision is not intended to conflict with or  
 8 override the obligation of the parties to a reinsurance  
 9 agreement to arbitrate their disputes if the obligation is  
 10 created in the agreement.

11 (5) A reduction from liability for the reinsurance  
 12 ceded to an assuming insurer not meeting the requirements of  
 13 subsection (2) must be allowed in an amount not exceeding  
 14 the liabilities carried by the ceding insurer. The reduction  
 15 must be in the amount of funds held by or on behalf of the  
 16 ceding insurer, including funds held in trust for the ceding  
 17 insurer under a reinsurance contract with the assuming  
 18 insurer as security for the payment of obligations under the  
 19 reinsurance contract, if the security is held in the United  
 20 States subject to withdrawal solely by and under the  
 21 exclusive control of the ceding insurer or, in the case of a  
 22 trust, if the security is held in a United States bank or  
 23 trust company that is a member of the federal reserve  
 24 system. This security may be in the form of:

25 (a) cash;

1 (b) securities listed by the security valuation office  
 2 of the national association of insurance commissioners and  
 3 qualifying as admitted assets;

4 (c) clean, irrevocable, unconditional letters of  
 5 credit issued or confirmed in writing by a bank or trust  
 6 company that is a member of the federal reserve system; or

7 (d) any other form of security acceptable to the  
 8 commissioner.

9 ~~†4†~~(6) Credit ~~shall~~ must be allowed as an asset or as  
 10 a deduction from liability to ~~any~~ a ceding insurer for  
 11 reinsurance ceded to an assuming insurer qualified therefor  
 12 under the foregoing provisions of this section, except that  
 13 ~~no---~~such credit ~~shall~~ may not be allowed unless the  
 14 reinsurance is payable by the assuming insurer on the basis  
 15 of the liability of the ceding insurer under the contracts  
 16 reinsured without diminution because of the insolvency of  
 17 the ceding insurer.

18 ~~†5†~~(7) Upon request of the commissioner, an insurer  
 19 shall promptly inform the commissioner in writing of the  
 20 cancellation or any other material change of any of its  
 21 reinsurance treaties or arrangements.

22 ~~†6†~~(8) This section ~~shall~~ does not apply to wet marine  
 23 and transportation insurance.

24 (9) The commissioner may adopt rules implementing the  
 25 provisions of this part."

1        NEW SECTION. Section 9. Extension of authority. Any  
2 existing authority to make rules on the subject of the  
3 provisions of [this act] is extended to the provisions of  
4 [this act].

5        NEW SECTION. Section 10. Severability. If a part of  
6 [this act] is invalid, all valid parts that are severable  
7 from the invalid part remain in effect. If a part of [this  
8 act] is invalid in one or more of its applications, the part  
9 remains in effect in all valid applications that are  
10 severable from the invalid applications.

-End-