

HOUSE BILL NO. 587

INTRODUCED BY HARPER, ENDY
BY REQUEST OF THE STATE AUDITOR

IN THE HOUSE

FEBRUARY 10, 1993	INTRODUCED AND REFERRED TO SELECT COMMITTEE ON WORKERS' COMPENSATION. FIRST READING.
MARCH 11, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED. ON MOTION, REREFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
MARCH 12, 1993	PRINTING REPORT.
MARCH 20, 1993	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
MARCH 22, 1993	PRINTING REPORT.
MARCH 25, 1993	SECOND READING, DO PASS. ON MOTION, PLACED ON THIRD READING THIS DAY. THIRD READING, PASSED. AYES, 96; NOES, 2.
MARCH 26, 1993	ENGROSSING REPORT.
MARCH 25, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 25, 1993	INTRODUCED AND REFERRED TO SELECT COMMITTEE ON WORKERS' COMPENSATION. FIRST READING.
APRIL 6, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
APRIL 7, 1993	SECOND READING, CONCURRED IN.
APRIL 8, 1993	THIRD READING, CONCURRED IN. AYES, 38; NOES, 10.

RETURNED TO HOUSE.

IN THE HOUSE

APRIL 12, 1993

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 587
2 INTRODUCED BY Wayne Enck
3 BY REQUEST OF THE STATE AUDITOR
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING THE MEMBERSHIP
6 OF THE CLASSIFICATION AND RATING COMMITTEE FOR WORKERS'
7 COMPENSATION INSURANCE COVERAGE; GRANTING RULEMAKING
8 AUTHORITY TO THE COMMITTEE; ESTABLISHING INFORMAL HEARING
9 GUIDELINES NOT SUBJECT TO THE MONTANA ADMINISTRATIVE
10 PROCEDURE ACT; AMENDING SECTIONS 33-16-1011 AND 33-16-1012,
11 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
12

13 STATEMENT OF INTENT

14 A statement of intent is required because this bill
15 clarifies that the classification and rating committee has
16 the power to promulgate rules as may be necessary for the
17 conduct of the business of the committee. The classification
18 and rating committee is statutorily created, and as the
19 district court held in Cause No. BDV-91-1585, state of
20 Montana, first judicial district, entitled State
21 Compensation Mutual Insurance Fund v. R/E Developers, Inc.,
22 decided August 14, 1992, the classification and rating
23 committee is a state agency as defined by 2-3-102. In that
24 decision, the court held that the committee shall promulgate
25 and publish its procedural rules pursuant to the Montana

1 Administrative Procedure Act (MAPA). The committee, however,
2 has never been given either express rulemaking authority by
3 the legislature, nor has it promulgated any procedural rules
4 pursuant to MAPA.

5 In providing express rulemaking authority to the
6 classification and rating committee, it is the legislature's
7 intent that the business of the committee be conducted
8 pursuant to the requirements of the open meeting laws of the
9 state and that the public be given the opportunity to
10 participate as provided in Title 2, chapter 3, parts 1 and
11 2. At the same time, as a committee statutorily charged with
12 reviewing classifications and with hearings appeals of
13 classifications of affected insurers and insured employers,
14 the classification and rating committee has historically
15 held informal hearings of classification appeals. This has
16 resulted in an inexpensive and relatively expeditious
17 process for the presentation of grievances. It is the intent
18 of the legislature that this informal process be continued
19 and thus the hearings process itself is exempt from the
20 requirements of MAPA.
21

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

23 Section 1. Section 33-16-1011, MCA, is amended to read:

24 "33-16-1011. Classification and rating committee --
25 membership -- term. (1) There is a classification and rating

committee.

(2) The committee is composed of five voting members, consisting of:

(a) three two representatives of private insurance carriers writing workers' compensation insurance in Montana. The members must ~~reside in Montana and shall~~ be appointed by the Montana commissioner of insurance.

(b) one licensed independent insurance producer who resides in Montana, appointed by the Montana commissioner of insurance; and

(c) one representative of the state compensation mutual insurance fund who is an employee of the state fund and who is appointed by the executive director of the state fund; and

(d) one representative of employers who are insured by private insurance carriers and the state compensation mutual insurance fund, appointed by the commissioner of insurance.

(3) Each member shall hold office for a period of 3 years. Any An appointee who fills the vacancy of a member whose term has not expired shall fill only the remaining term and may be reappointed for a full term.

(4) Before appointments are to be made by the commissioner of insurance under subsections (2)(a), and (2)(b), and (2)(d) above, established private organizations representing insurance carriers, and independent insurance

producers, and employers may submit names of individuals they recommend for appointments. The commissioner of insurance shall give consideration to such the names submitted before appointments are made. However, the commissioner of insurance is not required to appoint any person from the names submitted.

(5) The committee shall must be staffed by the rating organization and be funded from the operations budget of the rating organization. Committee members may, if they request, be paid their actual and necessary travel expenses."

Section 2. Section 33-16-1012, MCA, is amended to read:

"33-16-1012. Functions and powers of classification and rating committee -- hearings -- rulemaking. (1) The classification and rating committee shall:

(1)(a) meet not less than semiannually to conduct its business;

(2) ~~make the final determination regarding the establishment of all manual rules and classification;~~

(3)(b) establish the advisory premium rates as provided for in 33-16-1005;

(4)(c) publish such material and pamphlets as it considers appropriate; and

(5)(d) act as a review committee concerning objections filed by employers in relation to classifications assigned to the employer by an insurer; ~~The committee may hire~~

1 ~~hearings--officers--to--conduct--hearings---regarding---such~~
 2 ~~objections--and-adopt-or-modify-the-findings-and-conclusions~~
 3 ~~of-the-hearings--officers---The--committee--shall--establish~~
 4 ~~procedures-for-hearing-such-objections;~~ and

5 (e) make rules as may be necessary for the conduct of
 6 any business that is subject to notice and hearings. The
 7 rules must be published and adopted as provided in Title 2,
 8 chapter 4, part 3, and must be published in the
 9 Administrative Rules of Montana as part of the rules
 10 promulgated by the commissioner of insurance.

11 (2) (a) A hearing conducted by the committee pursuant
 12 to subsection (1)(d) may be informal and is not subject to
 13 the provisions of Title 2, chapter 4. The committee may hire
 14 hearings officers to conduct informal hearings regarding
 15 objections and may adopt or modify the findings and
 16 conclusions of the hearings officers. The committee shall
 17 establish procedures for hearing objections.

18 (b) Either the affected insurer or the affected
 19 employer who is a party to the informal hearing and who
 20 disagrees with the determination of the committee has the
 21 right to file an action contesting a classification in
 22 district court. Venue for the action is in the first
 23 judicial district. Judicial review of the determination of
 24 the committee must be de novo.

25 (c) The classification determined by the committee must

1 be adopted by the court unless the classification is
 2 demonstrated to be clearly erroneous in view of the
 3 reliable, probative, and substantial evidence presented to
 4 the court.

5 (3) The committee is subject to the provisions of Title
 6 2, chapter 3, parts 1 and 2."

7 **NEW SECTION. Section 3.** **Effective date.** [This act] is
 8 effective upon passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0587, as introduced.

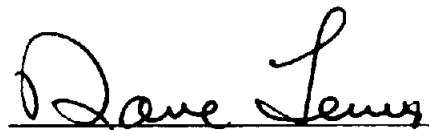
DESCRIPTION OF PROPOSED LEGISLATION: An act changing the membership of the classification and rating committee for workers' compensation insurance coverage; granting rulemaking authority to the committee; and establishing informal hearing guidelines not subject to the Montana Administrative Procedures Act.

ASSUMPTIONS:

1. Costs associated with the committee will continue to be paid by the rating organization. Payments made by the rating organization will continue to be made in the manner currently used.
2. The funding for the rating organization, the National Council on Compensation Insurance (NCCI), is generated by assessments on rating organization members.
3. The State Fund will continue to be a rating organization member and continue to pay its portion of the rating organization's assessment.
4. There will be an increase in the operating cost of the committee due to additional rulemaking hearings and for cost associated with implementing informal hearing guidelines.

FISCAL IMPACT:

There will be no fiscal impact on the operations of the State Auditor. The State Fund anticipates a minor increase in its assessment from the NCCI as a result of this bill; however, it is impossible to determine the amount of this increase.

 2-15-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 2/16/93
HAL HARPER, PRIMARY SPONSOR DATE

Fiscal Note for HB0587, as introduced

HB 587

*Approved by me
Seket Comm. Hec
on workers compensation*

53rd Legislature

HB 0587/02

HB 0587/02

APPROVED BY COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONS

HOUSE BILL NO. 587

INTRODUCED BY HARPER, ENDY

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING THE MEMBERSHIP
OF THE CLASSIFICATION AND RATING COMMITTEE FOR WORKERS'
COMPENSATION INSURANCE COVERAGE; GRANTING RULEMAKING
AUTHORITY TO THE COMMITTEE; ESTABLISHING INFORMAL HEARING
GUIDELINES--~~NOT~~--SUBJECT--TO PROCEDURES OF THE MONTANA
ADMINISTRATIVE PROCEDURE ACT; AMENDING SECTIONS 33-16-1011
AND 33-16-1012, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
DATE."

STATEMENT OF INTENT

A statement of intent is required because this bill
clarifies that the classification and rating committee has
the power to promulgate rules as may be necessary for the
conduct of the business of the committee. The classification
and rating committee is statutorily created, and as the
district court held in Cause No. BDV-91-1585, state of
Montana, first judicial district, entitled State
Compensation Mutual Insurance Fund v. R/E Developers, Inc.,
decided August 14, 1992, the classification and rating
committee is a state agency as defined by 2-3-102. In that
decision, the court held that the committee shall promulgate

and publish its procedural rules pursuant to the Montana
Administrative Procedure Act (MAPA). The committee, however,
has never been given either express rulemaking authority by
the legislature, nor has it promulgated any procedural rules
pursuant to MAPA.

In providing express rulemaking authority to the
classification and rating committee, it is the legislature's
intent that the business of the committee be conducted
pursuant to the requirements of the open meeting laws of the
state and that the public be given the opportunity to
participate as provided in Title 2, chapter 3, parts 1 and
2. At the same time, as a committee statutorily charged with
reviewing classifications and with hearings appeals of
classifications of affected insurers and insured employers,
the classification and rating committee has historically
held informal hearings of classification appeals. This has
resulted in an inexpensive and relatively expeditious
process for the presentation of grievances. It is the intent
of the legislature that this informal process be continued
and thus the hearings process itself is exempt from the
requirements of MAPA.

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

Section 1. Section 33-16-1011, MCA, is amended to read:
"33-16-1011. Classification and rating committee --



membership -- term. (1) There is a classification and rating committee.

(2) The committee is composed of five voting members, consisting of:

(a) three ~~two~~ representatives of private insurance carriers writing workers' compensation insurance in Montana. The members must ~~reside in Montana and shall~~ be appointed by the Montana commissioner of insurance.

(b) one licensed independent insurance producer who resides in Montana, appointed by the Montana commissioner of insurance; and

(c) one representative of the state compensation mutual insurance fund who is an employee of the state fund and who is appointed by the executive director of the state fund; and

(d) one representative of employers AN EMPLOYER who are IS insured by EITHER A private insurance carriers--and CARRIER OR the state compensation mutual insurance fund, appointed by the commissioner of insurance.

(3) Each member shall hold office for a period of 3 years. Any An appointee who fills the vacancy of a member whose term has not expired shall fill only the remaining term and may be reappointed for a full term.

(4) Before appointments are to be made by the commissioner of insurance under subsections (2)(a), and

(2)(b), and (2)(d) above, established private organizations representing insurance carriers, and independent insurance producers, and employers may submit names of individuals they recommend for appointments. The commissioner of insurance shall give consideration to such the names submitted before appointments are made. However, the commissioner of insurance is not required to appoint any person from the names submitted.

(5) The committee shall must be staffed by the rating organization and be funded from the operations budget of the rating organization. Committee members may, if they request, be paid their actual and necessary travel expenses.

(6) DOCUMENTS AND OTHER INFORMATION CONCERNING THE COMMITTEE'S ACTIONS MUST BE MADE AVAILABLE FOR PUBLIC REVIEW IN THE OFFICE OF THE COMMISSIONER OF INSURANCE."

Section 2. Section 33-16-1012, MCA, is amended to read:

"33-16-1012. Functions and powers of classification and rating committee -- hearings -- rulemaking. (1) The classification and rating committee shall:

(1)(a) meet not less than semiannually to conduct its business;

(2)--make---the---final---determination---regarding---the establishment-of-all-manual-rules-and-classification;

(B) MAKE THE FINAL DETERMINATION REGARDING THE ESTABLISHMENT OF ALL CLASSIFICATIONS;

1 ~~(3)(b)(C)~~ establish the advisory premium rates as
2 provided for in 33-16-1005;

3 ~~(4)(c)(D)~~ publish such material and pamphlets as it
4 considers appropriate; and

5 ~~(5)(d)(E)~~ act as a review committee concerning
6 objections filed by employers in relation to classifications
7 assigned to the employer by an insurer. ~~The committee may~~
8 ~~hire hearings officers to conduct hearings regarding such~~
9 ~~objections and adopt or modify the findings and conclusions~~
10 ~~of the hearings officers. The committee shall establish~~
11 ~~procedures for hearing such objections; and~~

12 ~~(e)(F)~~ make rules as may be necessary for the conduct
13 of any business that is subject to notice and hearings. The
14 rules must be published and adopted as provided in Title 2,
15 chapter 4, part 3, and must be published in the
16 Administrative Rules of Montana as part of the rules
17 promulgated by the commissioner of insurance.

18 (2) (a) A hearing conducted by the committee pursuant
19 to subsection ~~(1)(d) may be informal and is not subject to~~
20 ~~the provisions of Title 2, chapter 4. The committee may hire~~
21 ~~hearings officers to conduct informal hearings regarding~~
22 ~~objections and may adopt or modify the findings and~~
23 ~~conclusions of the hearings officers. The committee shall~~
24 ~~establish procedures for hearing objections.~~ (1)(E) MUST BE
25 AN INFORMAL PROCEEDING AS PROVIDED IN 2-4-604.

1 ~~(b) Either the affected insurer or the affected~~
2 ~~employer who is a party to the informal hearing and who~~
3 ~~disagrees with the determination of the committee has the~~
4 ~~right to file an action contesting a classification in~~
5 ~~district court. Venue for the action is in the first~~
6 ~~judicial district. Judicial review of the determination of~~
7 ~~the committee must be de novo.~~

8 ~~(c) The classification determined by the committee must~~
9 ~~be adopted by the court unless the classification is~~
10 ~~demonstrated to be clearly erroneous in view of the~~
11 ~~reliable, probative, and substantial evidence presented to~~
12 ~~the court.~~

13 (B) A PARTY AGGRIEVED BY A DECISION OF THE COMMITTEE
14 RENDERED AFTER A HEARING CONDUCTED PURSUANT TO SUBSECTION
15 (2)(A) MAY PETITION FOR JUDICIAL REVIEW OF THE DECISION
16 PURSUANT TO TITLE 2, CHAPTER 4, PART 7.

17 (3) The committee is subject to the provisions of Title
18 2, chapter 3, parts 1 and 2."

19 NEW SECTION. Section 3. Effective date. [This act] is
20 effective upon passage and approval.

-End-

1 HOUSE BILL NO. 587

2 INTRODUCED BY HARPER, ENDY

3 BY REQUEST OF THE STATE AUDITOR

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING THE MEMBERSHIP
6 OF THE CLASSIFICATION AND RATING COMMITTEE FOR WORKERS'
7 COMPENSATION INSURANCE COVERAGE; GRANTING RULEMAKING
8 AUTHORITY TO THE COMMITTEE; ESTABLISHING INFORMAL HEARING
9 GUIDELINES--NOT--SUBJECT--TO PROCEDURES OF THE MONTANA
10 ADMINISTRATIVE PROCEDURE ACT; AMENDING SECTIONS 33-16-1011
11 AND 33-16-1012, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
12 DATE."

14 STATEMENT OF INTENT

15 A statement of intent is required because this bill
16 clarifies that the classification and rating committee has
17 the power to promulgate rules as may be necessary for the
18 conduct of the business of the committee. The classification
19 and rating committee is statutorily created, and as the
20 district court held in Cause No. BDV-91-1585, state of
21 Montana, first judicial district, entitled State
22 Compensation Mutual Insurance Fund v. R/E Developers, Inc.,
23 decided August 14, 1992, the classification and rating
24 committee is a state agency as defined by 2-3-102. In that
25 decision, the court held that the committee shall promulgate

1 and publish its procedural rules pursuant to the Montana
2 Administrative Procedure Act (MAPA). The committee, however,
3 has never been given either express rulemaking authority by
4 the legislature, nor has it promulgated any procedural rules
5 pursuant to MAPA.

6 In providing express rulemaking authority to the
7 classification and rating committee, it is the legislature's
8 intent that the business of the committee be conducted
9 pursuant to the requirements of the open meeting laws of the
10 state and that the public be given the opportunity to
11 participate as provided in Title 2, chapter 3, parts 1 and
12 2. At the same time, as a committee statutorily charged with
13 reviewing classifications and with hearings appeals of
14 classifications of affected insurers and insured employers,
15 the classification and rating committee has historically
16 held informal hearings of classification appeals. This has
17 resulted in an inexpensive and relatively expeditious
18 process for the presentation of grievances. It is the intent
19 of the legislature that this informal process be continued
20 and thus the hearings process itself is exempt from the
21 requirements of MAPA.

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

24 Section 1. Section 33-16-1011, MCA, is amended to read:

25 "33-16-1011. Classification and rating committee --

1 membership -- term. (1) There is a classification and rating
2 committee.

3 (2) The committee is composed of five voting members,
4 consisting of:

5 (a) three two representatives of private insurance
6 carriers writing workers' compensation insurance in Montana.
7 The members must ~~reside in Montana and shall~~ be appointed by
8 the Montana commissioner of insurance.

9 (b) one licensed independent insurance producer who
10 resides in Montana, appointed by the Montana commissioner of
11 insurance; and

12 (c) one representative of the state compensation mutual
13 insurance fund who is an employee of the state fund and who
14 is appointed by the executive director of the state fund;
15 and

16 (d) one representative of employers AN EMPLOYER who are
17 IS insured by EITHER A private insurance carriers--and
18 CARRIER OR the state compensation mutual insurance fund,
19 appointed by the commissioner of insurance.

20 (3) Each member shall hold office for a period of 3
21 years. Any An appointee who fills the vacancy of a member
22 whose term has not expired shall fill only the remaining
23 term and may be reappointed for a full term.

24 (4) Before appointments are to be made by the
25 commissioner of insurance under subsections (2)(a), and

1 (2)(b), and (2)(d) above, established private organizations
2 representing insurance carriers, and independent insurance
3 producers, and employers may submit names of individuals
4 they recommend for appointments. The commissioner of
5 insurance shall give consideration to such the names
6 submitted before appointments are made. However, the
7 commissioner of insurance is not required to appoint any
8 person from the names submitted.

9 (5) The committee shall must be staffed by the rating
10 organization and be funded from the operations budget of the
11 rating organization. Committee members may, if they request,
12 be paid their actual and necessary travel expenses.

13 (6) DOCUMENTS AND OTHER INFORMATION CONCERNING THE
14 COMMITTEE'S ACTIONS MUST BE MADE AVAILABLE FOR PUBLIC REVIEW
15 IN THE OFFICE OF THE COMMISSIONER OF INSURANCE."

16 Section 2. Section 33-16-1012, MCA, is amended to read:

17 "33-16-1012. Functions and powers of classification and
18 rating committee -- hearings -- rulemaking. (1) The
19 classification and rating committee shall:

20 (1)(a) meet not less than semiannually to conduct its
21 business;

22 (2) ~~make the final determination regarding the~~
23 ~~establishment of all manual rules and classification;~~

24 (B) MAKE THE FINAL DETERMINATION REGARDING THE
25 ESTABLISHMENT OF ALL CLASSIFICATIONS;

1 ~~(3)(b)(C)~~ establish the advisory premium rates as
2 provided for in 33-16-1005;

3 ~~(4)(c)(D)~~ publish such material and pamphlets as it
4 considers appropriate; and

5 ~~(5)(d)(E)~~ act as a review committee concerning
6 objections filed by employers in relation to classifications
7 assigned to the employer by an insurer; ~~The committee may~~
8 ~~hire hearings officers to conduct hearings regarding such~~
9 ~~objections and adopt or modify the findings and conclusions~~
10 ~~of the hearings officers. The committee shall establish~~
11 ~~procedures for hearing such objections; and~~

12 ~~(e)(F)~~ make rules as may be necessary for the conduct
13 of any business that is subject to notice and hearings. The
14 rules must be published and adopted as provided in Title 2,
15 chapter 4, part 3, and must be published in the
16 Administrative Rules of Montana as part of the rules
17 promulgated by the commissioner of insurance.

18 (2) (a) A hearing conducted by the committee pursuant
19 to subsection ~~(1)(d) may be informal and is not subject to~~
20 ~~the provisions of Title 27 chapter 4. The committee may hire~~
21 ~~hearings officers to conduct informal hearings regarding~~
22 ~~objections and may adopt or modify the findings and~~
23 ~~conclusions of the hearings officers. The committee shall~~
24 ~~establish procedures for hearing objections.~~ (1)(E) MUST BE
25 AN INFORMAL PROCEEDING AS PROVIDED IN 2-4-604.

1 ~~(b) Either the affected insurer or the affected~~
2 ~~employer who is a party to the informal hearing and who~~
3 ~~disagrees with the determination of the committee has the~~
4 ~~right to file an action contesting a classification in~~
5 ~~district court. Venue for the action is in the first~~
6 ~~judicial district. Judicial review of the determination of~~
7 ~~the committee must be de novo.~~

8 ~~(c) The classification determined by the committee must~~
9 ~~be adopted by the court unless the classification is~~
10 ~~demonstrated to be clearly erroneous in view of the~~
11 ~~reliable, probative, and substantial evidence presented to~~
12 ~~the court.~~

13 (B) A PARTY AGGRIEVED BY A DECISION OF THE COMMITTEE
14 RENDERED AFTER A HEARING CONDUCTED PURSUANT TO SUBSECTION
15 (2)(A) MAY PETITION FOR JUDICIAL REVIEW OF THE DECISION
16 PURSUANT TO TITLE 2, CHAPTER 4, PART 7.

17 (3) The committee is subject to the provisions of Title
18 2, chapter 3, parts 1 and 2."

19 NEW SECTION. Section 3. Effective date. [This act] is
20 effective upon passage and approval.

-End-

HOUSE BILL NO. 587
INTRODUCED BY HARPER, ENDY
BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING THE MEMBERSHIP OF THE CLASSIFICATION AND RATING COMMITTEE FOR WORKERS' COMPENSATION INSURANCE COVERAGE; GRANTING RULEMAKING AUTHORITY TO THE COMMITTEE; ESTABLISHING INFORMAL HEARING GUIDELINES--NOT--SUBJECT--TO PROCEDURES OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT; AMENDING SECTIONS 33-16-1011 AND 33-16-1012, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required because this bill clarifies that the classification and rating committee has the power to promulgate rules as may be necessary for the conduct of the business of the committee. The classification and rating committee is statutorily created, and as the district court held in Cause No. BDV-91-1585, state of Montana, first judicial district, entitled State Compensation Mutual Insurance Fund v. R/E Developers, Inc., decided August 14, 1992, the classification and rating committee is a state agency as defined by 2-3-102. In that decision, the court held that the committee shall promulgate

and publish its procedural rules pursuant to the Montana Administrative Procedure Act (MAPA). The committee, however, has never been given either express rulemaking authority by the legislature, nor has it promulgated any procedural rules pursuant to MAPA.

In providing express rulemaking authority to the classification and rating committee, it is the legislature's intent that the business of the committee be conducted pursuant to the requirements of the open meeting laws of the state and that the public be given the opportunity to participate as provided in Title 2, chapter 3, parts 1 and 2. At the same time, as a committee statutorily charged with reviewing classifications and with hearings appeals of classifications of affected insurers and insured employers, the classification and rating committee has historically held informal hearings of classification appeals. This has resulted in an inexpensive and relatively expeditious process for the presentation of grievances. It is the intent of the legislature that this informal process be continued and thus the hearings process itself is exempt from the requirements of MAPA.

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

Section 1. Section 33-16-1011, MCA, is amended to read:

"33-16-1011. Classification and rating committee --

1 membership -- term. (1) There is a classification and rating
2 committee.

3 (2) The committee is composed of five voting members,
4 consisting of:

5 (a) three ~~two~~ representatives of private insurance
6 carriers writing workers' compensation insurance in Montana.
7 The members must ~~reside in Montana and shall~~ be appointed by
8 the Montana commissioner of insurance.

9 (b) one licensed independent insurance producer who
10 resides in Montana, appointed by the Montana commissioner of
11 insurance; and

12 (c) one representative of the state compensation mutual
13 insurance fund who is an employee of the state fund and who
14 is appointed by the executive director of the state fund;
15 and

16 (d) one representative of employers AN EMPLOYER who are
17 IS insured by EITHER A private insurance carriers--and
18 CARRIER OR the state compensation mutual insurance fund,
19 appointed by the commissioner of insurance.

20 (3) Each member shall hold office for a period of 3
21 years. Any An appointee who fills the vacancy of a member
22 whose term has not expired shall fill only the remaining
23 term and may be reappointed for a full term.

24 (4) Before appointments are to be made by the
25 commissioner of insurance under subsections (2)(a), and

1 (2)(b), and (2)(d) above, established private organizations
2 representing insurance carriers, and independent insurance
3 producers, and employers may submit names of individuals
4 they recommend for appointments. The commissioner of
5 insurance shall give consideration to such the names
6 submitted before appointments are made. However, the
7 commissioner of insurance is not required to appoint any
8 person from the names submitted.

9 (5) The committee ~~shall~~ must be staffed by the rating
10 organization and be funded from the operations budget of the
11 rating organization. Committee members may, if they request,
12 be paid their actual and necessary travel expenses.

13 (6) DOCUMENTS AND OTHER INFORMATION CONCERNING THE
14 COMMITTEE'S ACTIONS MUST BE MADE AVAILABLE FOR PUBLIC REVIEW
15 IN THE OFFICE OF THE COMMISSIONER OF INSURANCE."

16 **Section 2.** Section 33-16-1012, MCA, is amended to read:

17 "33-16-1012. Functions and powers of classification and
18 rating committee -- hearings -- rulemaking. (1) The
19 classification and rating committee shall:

20 ~~{1}(a)~~ meet not less than semiannually to conduct its
21 business;

22 ~~{2}--make---the---final---determination---regarding---the~~
23 ~~establishment-of-all-manual-rules-and-classification;~~

24 (B) MAKE THE FINAL DETERMINATION REGARDING THE
25 ESTABLISHMENT OF ALL CLASSIFICATIONS;

~~(3)(b)~~(C) establish the advisory premium rates as provided for in 33-16-1005;

~~(4)(c)~~(D) publish such material and pamphlets as it considers appropriate; and

~~(5)(d)~~(E) act as a review committee concerning objections filed by employers in relation to classifications assigned to the employer by an insurer; ~~The committee may hire hearings officers to conduct hearings regarding such objections and adopt or modify the findings and conclusions of the hearings officers. The committee shall establish procedures for hearing such objections;~~ and

~~(e)~~(F) make rules as may be necessary for the conduct of any business that is subject to notice and hearings. The rules must be published and adopted as provided in Title 2, chapter 4, part 3, and must be published in the Administrative Rules of Montana as part of the rules promulgated by the commissioner of insurance.

~~(2) (a) A hearing conducted by the committee pursuant to subsection (1)(d) may be informal and is not subject to the provisions of Title 2, chapter 4. The committee may hire hearings officers to conduct informal hearings regarding objections and may adopt or modify the findings and conclusions of the hearings officers. The committee shall establish procedures for hearing objections. (1)(E) MUST BE AN INFORMAL PROCEEDING AS PROVIDED IN 2-4-604.~~

~~(b) Either the affected insurer or the affected employer who is a party to the informal hearing and who disagrees with the determination of the committee has the right to file an action contesting a classification in district court. Venue for the action is in the first judicial district. Judicial review of the determination of the committee must be de novo.~~

~~(c) The classification determined by the committee must be adopted by the court unless the classification is demonstrated to be clearly erroneous in view of the reliable, probative, and substantial evidence presented to the court.~~

~~(B) A PARTY AGGRIEVED BY A DECISION OF THE COMMITTEE RENDERED AFTER A HEARING CONDUCTED PURSUANT TO SUBSECTION (2)(A) MAY PETITION FOR JUDICIAL REVIEW OF THE DECISION PURSUANT TO TITLE 2, CHAPTER 4, PART 7.~~

~~(3) The committee is subject to the provisions of Title 2, chapter 3, parts 1 and 2."~~

~~NEW SECTION. Section 3. Effective date. [This act] is effective upon passage and approval.~~

~~-End-~~