

SENATE BILL NO. 430

INTRODUCED BY CHRISTIAENS, WATERMAN, WILSON, KOEHNKE,
COCCHIARELLA, TUSS, T. NELSON, HARDING
BY REQUEST OF THE STATE AUDITOR

IN THE SENATE

MARCH 8, 1993 INTRODUCED AND REFERRED TO COMMITTEE
 ON BUSINESS & INDUSTRY.

 FIRST READING.

MARCH 27, 1993 COMMITTEE RECOMMEND BILL
 DO PASS. REPORT ADOPTED.

MARCH 29, 1993 PRINTING REPORT.

 SECOND READING, DO PASS.

MARCH 30, 1993 ENGROSSING REPORT.

 THIRD READING, PASSED.
 AYES, 45; NOES, 5.

 TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 31, 1993 INTRODUCED AND REFERRED TO COMMITTEE
 ON BUSINESS & ECONOMIC DEVELOPMENT.

 FIRST READING.

APRIL 8, 1993 COMMITTEE RECOMMEND BILL BE
 CONCURRED IN AS AMENDED. REPORT
 ADOPTED.

APRIL 12, 1993 SECOND READING, CONCURRED IN.

APRIL 13, 1993 THIRD READING, CONCURRED IN.
 AYES, 80; NOES, 17.

APRIL 14, 1993 RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 16, 1993 SECOND READING, AMENDMENTS
 CONCURRED IN.

APRIL 17, 1993

THIRD READING, AMENDMENTS
CONCURRED IN.

APRIL 21, 1993

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 Senate BILL NO. 430
 2 INTRODUCED BY Christiane Waterman Wilson
 3 Fachnik BY REQUEST OF THE STATE AUDITOR
 4 Brookhalla Miss Tom Nelson Harding
 5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
 6 LAWS RELATING TO INSURERS; PROVIDING REGULATION OF BUSINESS
 7 TRANSACTED WITH PRODUCER-CONTROLLED INSURERS; PROVIDING
 8 CREDIT FOR REINSURANCE; REGULATING MANAGING GENERAL AGENTS;
 9 PROVIDING FOR INTERSTATE EXCHANGE OF INSURER REGULATORY
 10 INFORMATION; REGULATING REINSURANCE INTERMEDIARIES; REVISING
 11 THE LAWS REGULATING INSURANCE HOLDING COMPANIES, LIFE AND
 12 HEALTH AND CASUALTY AND PROPERTY INSURANCE GUARANTY
 13 ASSOCIATIONS, INSURER FINANCIAL EXAMINATIONS, RISK RETENTION
 14 GROUPS, AND INSURER SUPERVISION, REHABILITATION, AND
 15 LIQUIDATION; PROVIDING FOR AN ANNUAL ACCREDITATION FEE;
 16 AMENDING SECTIONS 33-1-401, 33-2-501, 33-2-532, 33-2-533,
 17 33-2-701, 33-2-708, 33-2-1111, 33-2-1114, 33-2-1115,
 18 33-2-1201, 33-2-1331, 33-2-1342, 33-2-1346, 33-10-105,
 19 33-10-111, 33-10-114, 33-10-201, 33-10-202, 33-10-203,
 20 33-10-210, 33-10-217, 33-10-218, 33-10-224, 33-11-103,
 21 33-11-104, 33-11-105, 33-11-108, 33-11-109, AND 33-22-804,
 22 MCA; AND REPEALING SECTIONS 33-1-403, 33-1-412, 33-2-1205,
 23 AND 33-10-229, MCA."

24
25 STATEMENT OF INTENT



1 A statement of intent is required for this bill because
 2 the department of insurance is granted authority to adopt
 3 rules for the administration and enforcement of laws
 4 regulating reinsurance intermediaries, managing general
 5 agents, holding company systems, insurer financial audits,
 6 and examinations and standards for companies considered to
 7 be in hazardous financial condition.

8 The legislature contemplates that rules adopted by the
 9 department should, at a minimum, endeavor to create an
 10 insurer regulatory structure in Montana that is reasonable
 11 and effective, that substantially resembles the model
 12 regulatory structure developed by the national association
 13 of insurance commissioners, that is eligible for national
 14 accreditation to enable insurers domiciled in Montana to do
 15 business in this state and other states with a maximum of
 16 financial stability and a minimum of regulatory difficulty,
 17 and that encourages the startup and expansion of insurance
 18 companies domiciled in Montana.

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

21 NEW SECTION. Section 1. Definitions. As used in
22 [sections 1 through 27]:

23 (1) "Accredited state" means a state in which the
24 department of insurance or regulatory agency has qualified
25 as meeting the minimum financial regulatory standards

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1 promulgated and established from time to time by the
2 national association of insurance commissioners.

3 (2) "Actuary" means a person who is a member in good
4 standing of the American academy of actuaries.

5 (3) "Captive insurer" means:

6 (a) an insurer that is owned by another entity and
7 whose exclusive purpose is to insure risks of the parent
8 entity and its affiliates; or

9 (b) in the case of a group or association, an insurer
10 that is owned by the member insureds and whose exclusive
11 purpose is to insure risks to member insureds and their
12 affiliates.

13 (4) "Control" or "controlled" has the meaning defined
14 in 33-2-1101.

15 (5) "Controlled insurer" means an authorized insurer
16 that is controlled, directly or indirectly, by a producer.

17 (6) "Controlling person" means a person, firm,
18 association, or corporation that has the power to direct or
19 cause to be directed the management, control, or activities
20 of a reinsurance intermediary.

21 (7) "Controlling producer" means a producer who,
22 directly or indirectly, controls an insurer.

23 (8) (a) "Insurer" means any person, firm, association,
24 or corporation authorized, under Title 33, chapter 2, part
25 1, to transact insurance business in this state.

1 (b) The following are not insurers:

2 (i) risk retention groups as defined in:

3 (A) the Superfund Amendments and Reauthorization Act of
4 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986);

5 (B) the Liability Risk Retention Act of 1986, 15 U.S.C.
6 3901, et seq.; or

7 (C) Title 33, chapter 11, part 1;

8 (ii) residual market pools and joint underwriting
9 authorities or associations; or
10 (iii) captive insurers.

11 (9) "Licensed producer" means a producer or reinsurance
12 intermediary licensed pursuant to this title.

13 (10) (a) "Managing general agent" means a person who:

14 (i) manages all or part of the insurance business of an
15 insurer and acts as an agent for the insurer;

16 (ii) either separately or together with affiliates,
17 produces, directly or indirectly, and underwrites an amount
18 of gross written premiums equal to or more than 5% of the
19 policyholder surplus in any quarter or year; and

20 (iii) engages in one or more of the following activities
21 on the business produced:

22 (A) adjustment or payment of claims in excess of an
23 amount determined by the commissioner; or

24 (B) negotiation of reinsurance on behalf of the
25 insurer.

1 (b) Notwithstanding the provisions of subsection
2 (10)(a), the following persons are not considered managing
3 general agents:

4 (i) an employee of the insurer;

5 (ii) a manager of the United States branch of an alien
6 insurer;

7 (iii) an underwriting manager who, pursuant to contract,
8 manages all the insurance operations of the insurer, is
9 under common control with the insurer, is subject to Title
10 33, chapter 2, part 11, and whose compensation is not based
11 on the value of premiums written; or

12 (iv) the attorney-in-fact authorized by and acting for
13 the subscribers of a reciprocal insurer or an interinsurance
14 exchange under powers of attorney.

15 (11) "NAIC" means the national association of insurance
16 commissioners.

17 (12) "Producer" means an insurance producer or
18 reinsurance intermediary authorized or licensed pursuant to
19 this title.

20 (13) (a) "Qualified United States financial institution"
21 means a financial institution that:

22 (i) is organized or licensed under the laws of the
23 United States or any state;

24 (ii) is regulated, supervised, and examined by federal
25 or state authorities having regulatory authority over banks

1 and trust companies and that either:

2 (A) is determined by the commissioner to meet the
3 standards of financial condition and standing considered
4 necessary and appropriate to regulate the quality of
5 financial institutions whose letters of credit are
6 acceptable to the commissioner; or

7 (B) is eligible to act as a fiduciary of a trust or has
8 been granted authority to operate with fiduciary powers.

9 (b) For purposes of this definition, the commissioner
10 may by rule adopt standards of financial condition and
11 standing that may be developed from time to time by the
12 securities valuation office of the NAIC.

13 (14) "Reinsurance intermediary" means a reinsurance
14 intermediary-broker or a reinsurance intermediary-manager.

15 (15) "Reinsurance intermediary-broker" means a person,
16 other than an officer or employee of the ceding insurer, who
17 solicits, negotiates, or places reinsurance cessions or
18 retrocessions on behalf of a ceding insurer without the
19 authority or power to bind reinsurance on behalf of the
20 insurer.

21 (16) (a) "Reinsurance intermediary-manager" means a
22 person who:

23 (i) has authority to bind or who manages all or part of
24 the assumed reinsurance business of a reinsurer, including
25 the management of a separate division, department, or

1 underwriting office; and

2 (ii) acts as an agent for the reinsurer, whether known
3 as a reinsurance intermediary-manager, manager, or other
4 similar term.

5 (b) The following persons are not considered
6 reinsurance intermediary-managers with respect to the
7 reinsurer:

8 (i) an employee of the reinsurer;

9 (ii) a manager of the United States branch of an alien
10 reinsurer;

11 (iii) an underwriting manager who, pursuant to contract,
12 manages all of the reinsurance operations of the reinsurer,
13 is under common control with the reinsurer, is subject to
14 Title 33, chapter 2, part 11, and whose compensation is not
15 based on the volume of premiums written; or

16 (iv) a person who manages groups, associations, pools,
17 or organizations of insurers that engage in joint
18 underwriting or joint reinsurance and that are subject to
19 examination by the insurance commissioner of the state in
20 which the manager's principal business office is located.

21 (17) "Reinsurer" means a person, firm, association, or
22 corporation licensed in this state under this title as an
23 insurer with authority to assume reinsurance.

24 (18) "Underwrite" means the authority to accept or
25 reject risk on behalf of the insurer.

1 NEW SECTION. **Section 2. Filing requirements.** (1) Each
2 domestic, foreign, and alien insurer authorized to transact
3 insurance in this state shall, on or before March 1 of each
4 year, file with the NAIC a copy of its annual statement
5 convention form, along with any additional filings for the
6 preceding year as prescribed by the commissioner. The
7 information filed with the NAIC must be in the same format
8 and scope as that required by the commissioner and must
9 include the signed jurat page and the actuarial
10 certification. Amendments to the annual statement filing
11 that are subsequently filed with the commissioner must also
12 be filed with the NAIC.

13 (2) Foreign insurers domiciled in a state that has a
14 law substantially similar to this section are considered to
15 be in compliance with this section.

16 NEW SECTION. **Section 3. Immunity of NAIC.** In the
17 absence of actual malice, members of the NAIC; their
18 authorized committees, subcommittees, task forces,
19 delegates, and employees; and all others charged with the
20 responsibility of collecting and processing the information
21 developed from the filing of the annual statement convention
22 forms are considered to act under the authority of [sections
23 2 through 4]. They are not subject to civil liability for
24 libel, slander, or any other cause of action arising from
25 their collection, review, analysis, or dissemination of

1 information collected from the filings required by [sections
2 1 through 38].

3 NEW SECTION. **Section 4. Confidentiality.** All financial
4 analysis ratios and examination synopses concerning
5 insurance companies that are submitted to the department by
6 the NAIC insurance regulatory information systems are
7 confidential and may not be disclosed by the department.

8 NEW SECTION. **Section 5. Applicability of minimum**
9 **standards.** (1) The provisions of [section 6] apply if, in
10 any calendar year, the aggregate amount of gross written
11 premiums on business placed with a controlled insurer by a
12 controlling producer is equal to or greater than 5% of the
13 admitted assets of the controlled insurer, as reported in
14 the controlled insurer's quarterly statement filed as of
15 September 30 of the prior year.

16 (2) Notwithstanding the provisions of subsection (1),
17 the provisions of [section 6] do not apply if:

18 (a) the controlling producer:

19 (i) does not receive compensation based upon the amount
20 of premiums written in connection with the insurance and
21 places insurance only with:

22 (A) the controlled insurer; or

23 (B) the controlled insurer and a member or members of
24 the controlled insurer's holding company system or the
25 controlled insurer's parent, affiliate, or subsidiary; and

1 (ii) accepts insurance placements only from
2 nonaffiliated subproducers and not directly from insureds;
3 and

4 (b) except for insurance business written through a
5 residual market facility, the controlled insurer accepts
6 insurance business only from a controlling producer, a
7 producer controlled by the controlled insurer, or a producer
8 that is a subsidiary of the controlled insurer.

9 NEW SECTION. **Section 6. Minimum standards.** Unless
10 there is a written contract between a controlling producer
11 and a controlled insurer specifying the responsibilities of
12 each party, the controlled insurer may not accept business
13 from the controlling producer and the controlling producer
14 may not place business with the controlled insurer. The
15 contract must be approved by the board of directors of the
16 controlled insurer and must contain the following minimum
17 provisions:

18 (1) The controlled insurer may terminate the contract
19 for cause, upon written notice to the controlling producer.
20 The controlled insurer shall suspend the authority of the
21 controlling producer to write business during the pendency
22 of any dispute regarding the cause for the termination.

23 (2) The controlling producer shall render to the
24 controlled insurer accounts detailing all material
25 transactions, including information necessary to support all

1 commissions, charges, and other fees received by or owing to
2 the controlling producer.

3 (3) On at least a monthly basis, the controlling
4 producer shall remit to the controlled insurer all funds due
5 under the terms of the contract. The due date must be fixed
6 so that premiums or installments of premiums collected must
7 be remitted no later than 90 days after the effective date
8 of any policy placed with the controlled insurer under the
9 contract.

10 (4) In accordance with the provisions of this title,
11 all funds collected for the controlled insurer's account
12 must be held by the controlling producer in a fiduciary
13 capacity, in one or more appropriately identified bank
14 accounts in banks that are members of the federal reserve
15 system. However, funds of a controlling producer not
16 required to be licensed in this state must be maintained in
17 compliance with the requirements of the controlling
18 producer's domiciliary jurisdiction.

19 (5) The controlling producer shall maintain separately
20 identifiable records of business written for the controlled
21 insurer.

22 (6) The contract may not be assigned in whole or in
23 part by the controlling producer.

24 (7) The controlled insurer shall provide the
25 controlling producer with its underwriting standards, rules,

1 procedures, manuals setting forth the rates to be charged,
2 and the conditions for the acceptance or rejection of risks.
3 The controlling producer shall adhere to the standards,
4 rules, procedures, rates, and conditions. The standards,
5 rules, procedures, rates, and conditions must be the same as
6 those applicable to comparable business placed with the
7 controlled insurer by a producer other than the controlling
8 producer.

9 (8) The rates of the commissions, charges, and other
10 fees may not be greater than those applicable to comparable
11 business placed with the controlled insurer by producers
12 other than controlling producers. For purposes of subsection
13 (7) and this subsection, examples of "comparable business"
14 include the same lines of insurance, same kinds of
15 insurance, same kinds of risks, similar policy limits, and
16 similar quality of business.

17 (9) If the contract provides that on insurance business
18 placed with the controlled insurer, the controlling producer
19 is to be compensated contingent upon the controlled
20 insurer's profits on that business, then the compensation
21 may not be determined and paid until at least 5 years after
22 the premiums on liability insurance are earned and at least
23 1 year after the premiums are earned on any other insurance.
24 The commissions may not be paid until the adequacy of the
25 controlled insurer's reserves on remaining claims has been

1 independently verified pursuant to [section 8].

2 (10) The controlled insurer may establish a different
3 limit for each line or subline of business. The controlled
4 insurer shall notify the controlling producer when the
5 applicable limit is approached and may not accept business
6 from the controlling producer if the limit is reached. The
7 controlling producer may not place business with the
8 controlled insurer if it has been notified by the controlled
9 insurer that the limit has been reached.

10 (11) The controlling producer may negotiate but may not
11 bind reinsurance on behalf of the controlled insurer on
12 business that the controlling producer places with the
13 controlled insurer, except that the controlling producer may
14 bind facultative reinsurance contracts pursuant to
15 obligatory facultative agreements if the contract with the
16 controlled insurer contains underwriting guidelines. For
17 reinsurance assumed and ceded, the guidelines must include a
18 list of reinsurers with which the automatic agreements are
19 in effect, the coverages and amounts or percentages that may
20 be reinsured, and commission schedules.

21 NEW SECTION. Section 7. Audit committee. Each
22 controlled insurer shall have an audit committee of the
23 board of directors composed of independent directors. The
24 audit committee shall annually review the adequacy of the
25 controlled insurer's loss reserves and meet with management,

1 the controlled insurer's independent certified public
2 accountants, and an independent casualty actuary or other
3 independent loss reserve specialist acceptable to the
4 commissioner.

5 NEW SECTION. Section 8. Annual report by independent
6 actuary. In addition to any other required loss reserve
7 certification, the controlled insurer shall, on April 1 of
8 each year, file with the commissioner an opinion of an
9 independent casualty actuary or other independent loss
10 reserve specialist acceptable to the commissioner. The
11 opinion must report the loss ratios for each line of
12 business written and must attest to the adequacy of loss
13 reserves established for losses incurred and outstanding as
14 of the yearend, including losses incurred but not reported,
15 on business placed by the producer.

16 NEW SECTION. Section 9. Annual report to commissioner.
17 The controlled insurer shall annually report to the
18 commissioner:

- 19 (1) the amount of commissions paid to the producer;
20 (2) the percentage the amount represents of the net
21 premiums written; and
22 (3) comparable amounts and the percentage paid to
23 noncontrolling producers for placements of the same kinds of
24 insurance.

25 NEW SECTION. Section 10. Disclosure. (1) Except as

1 provided in subsection (2), the producer, prior to the
2 effective date of the policy, shall deliver written notice
3 to the prospective insured, disclosing the relationship
4 between the producer and the controlled insurer.

5 (2) If the business is placed through a subproducer who
6 is not a controlling producer, the controlling producer
7 shall retain in the controlling producer's records a signed
8 commitment from the subproducer that the subproducer is
9 aware of the relationship between the controlled insurer and
10 the producer and that the subproducer has notified or will
11 notify the insured.

12 NEW SECTION. Section 11. Penalties. (1) (a) If the
13 commissioner believes that a controlling producer or any
14 other person has not materially complied with [sections 5
15 through 10] or any regulation or order promulgated under
16 [sections 5 through 10], the commissioner, after notice and
17 opportunity to be heard, may order the controlling producer
18 to cease placing business with the controlled insurer.

19 (b) If it is found that because of the material
20 noncompliance with [sections 5 through 10], the controlled
21 insurer or any policyholder of the controlled insurer has
22 suffered any loss or damage, the commissioner may maintain a
23 civil action or intervene in an action brought by or on
24 behalf of the controlled insurer or policyholder for
25 recovery of compensatory damages for the benefit of the

1 controlled insurer or policyholder or other appropriate
2 relief.

3 (2) The receiver may maintain a civil action for
4 recovery of damages or other appropriate sanctions for the
5 benefit of the insurer if:

6 (a) an order for liquidation or rehabilitation of the
7 controlled insurer has been entered pursuant to Title 33,
8 chapter 2, part 13;

9 (b) the receiver appointed under that order believes
10 that the controlling producer or any other person has not
11 materially complied with [sections 5 through 10] or any
12 regulation or order promulgated under [sections 5 through
13 10]; and

14 (c) the controlled insurer suffered any loss or damage
15 from the noncompliance.

16 (3) This section does not affect the right of the
17 commissioner to impose any other penalties provided for in
18 this title.

19 (4) This section may not be construed to alter or
20 affect the rights of policyholders, claimants, creditors, or
21 other third parties.

22 NEW SECTION. Section 12. Compliance -- applicability.

23 (1) Controlled insurers and controlling producers who are
24 not in compliance with [section 6] on October 1, 1993, have
25 60 days to come into compliance and shall comply with

1 [section 10] in all policies written or renewed on or after
2 December 1, 1993.

3 (2) [Sections 5 through 10] apply to insurers that are
4 domiciled in this state or domiciled in a state that is not
5 an accredited state that has in effect a substantially
6 similar law.

7 (3) The provisions of Title 33, chapter 2, part 11, to
8 the extent they are not superseded by [sections 5 through
9 10], continue to apply to all entities within holding
10 company systems subject to [sections 5 through 10].

11 (4) An insurer may not continue to use the services of
12 a managing general agent after December 1, 1993, unless the
13 use complies with [sections 14 through 18].

14 (5) An insurer or reinsurer may not continue to use the
15 services of a reinsurance intermediary after December 1,
16 1993, unless the use complies with [sections 19 through 27].

17 **NEW SECTION. Section 13. Rulemaking authority.** (1) The
18 commissioner may adopt rules implementing the provisions of
19 [sections 1 through 38].

20 (2) The authority of the commissioner to adopt rules is
21 specifically extended, without limitation, to establish
22 standards for companies considered to be in hazardous
23 financial condition, to require annual audited financial
24 reports, to regulate life and health reinsurance agreements,
25 to provide for reports to the commissioner by holding

1 company systems, and to establish accounting practices and
2 procedures to be used by insurers in their annual
3 statements.

4 **NEW SECTION. Section 14. Licensure of managing general**
5 **agent.** (1) A person, firm, association, or corporation may
6 not act in the capacity of a managing general agent with
7 respect to risks located in this state for an insurer
8 licensed in this state unless the person is a licensed
9 producer in this state.

10 (2) A person, firm, association, or corporation may not
11 act in the capacity of a managing general agent representing
12 an insurer domiciled in this state with respect to risks
13 located outside this state unless the person is licensed as
14 a resident or nonresident producer in this state pursuant to
15 the provisions of [sections 14 through 18].

16 (3) The commissioner may require a bond in an amount
17 acceptable to the commissioner for the protection of the
18 insurer.

19 (4) The commissioner may require the managing general
20 agent to maintain a policy on errors and omissions.

21 **NEW SECTION. Section 15. Managing general agent --**
22 **required contract provisions.** A person acting in the
23 capacity of a managing general agent may not place business
24 with an insurer unless there is in force a written contract
25 between the parties that sets forth the responsibilities of

1 each party. Whenever both parties share responsibility for a
 2 particular function, the written contract must specify the
 3 division of responsibilities. The contract must provide at
 4 least the following:

5 (1) The insurer may terminate the contract for cause
 6 upon written notice to the managing general agent. The
 7 insurer may suspend the underwriting authority of the
 8 managing general agent during the pendency of any dispute
 9 regarding the cause for termination.

10 (2) The managing general agent shall render accounts to
 11 the insurer, detailing all transactions, and shall remit all
 12 funds due under the contract to the insurer on not less than
 13 a monthly basis.

14 (3) All funds collected for the account of an insurer
 15 must be held by the managing general agent in a fiduciary
 16 capacity in a bank that is a member of the federal reserve
 17 system. This account must be used for all payments on behalf
 18 of the insurer. The managing general agent may not retain
 19 more than 3 months' estimated claims payments and allocated
 20 loss adjustment expenses.

21 (4) Separate records of business written by the
 22 managing general agent must be maintained. The insurer has
 23 access to and may copy all accounts and records that are
 24 related to its business, in a form usable by the insurer.
 25 The commissioner has access to all books, bank accounts, and

1 records of the managing general agent in a form usable to
 2 the commissioner. The records must be retained pursuant to
 3 33-3-401.

4 (5) The contract may not be assigned in whole or in
 5 part by the managing general agent.

6 (6) The contract must contain appropriate underwriting
 7 guidelines, including:

8 (a) the maximum annual premium volume;

9 (b) the basis of the rates to be charged;

10 (c) the types of risks that may be written;

11 (d) maximum limits of liability;

12 (e) any applicable exclusions;

13 (f) the territorial limitations;

14 (g) policy cancellation provisions; and

15 (h) the maximum policy period.

16 (7) The insurer may cancel or decline to renew any
 17 policy of insurance, as provided by law.

18 (8) If the contract permits the managing general agent
 19 to settle claims on behalf of the insurer:

20 (a) all claims must be reported to the company in a
 21 timely manner;

22 (b) a copy of the claims file must be sent to the
 23 insurer at its request or as soon as it becomes known that
 24 the claim:

25 (i) has the potential to exceed an amount determined by

1 the commissioner or actually exceeds the limit set by the
2 company, whichever is less;

3 (ii) involves a coverage dispute;

4 (iii) may exceed the managing general agent's claims
5 settlement authority;

6 (iv) is open for more than 6 months; or

7 (v) is closed by payment of an amount set by the
8 commissioner or an amount set by the company, whichever is
9 less;

10 (c) all claims files are the joint property of the
11 insurer and managing general agent. However, upon an order
12 of liquidation of the insurer, the files become the sole
13 property of the insurer or its estate. The managing general
14 agent has reasonable access to and may copy the files on a
15 timely basis.

16 (d) any settlement authority granted to the managing
17 general agent may be terminated for cause upon the insurer's
18 written notice to the managing general agent or upon the
19 termination of the contract. The insurer may suspend the
20 settlement authority during the pendency of any dispute
21 regarding the cause for termination.

22 (9) When electronic claims files are in existence, the
23 contract must address the timely transmission of the data.

24 (10) If the contract provides for a sharing of interim
25 profits by the managing general agent and the managing

1 general agent has the authority to determine the amount of
2 the interim profits, whether by establishing loss reserves
3 or controlling claim payments or in any other manner,
4 interim profits may not be paid to the managing general
5 agent until:

6 (a) 1 year after they are earned for property insurance
7 business;

8 (b) 5 years after they are earned on casualty business;
9 and

10 (c) the profits have been verified.

11 (11) The managing general agent may not:

12 (a) bind reinsurance or retrocessions on behalf of the
13 insurer, except that the managing general agent may bind
14 facultative reinsurance contracts pursuant to obligatory
15 facultative agreements if the contract with the insurer
16 contains reinsurance underwriting guidelines, including for
17 reinsurance assumed and ceded:

18 (i) a list of reinsurers with which automatic
19 agreements are in effect;

20 (ii) the coverages and amounts or percentages that may
21 be reinsured; and

22 (iii) commission schedules;

23 (b) commit the insurer to participate in insurance or
24 reinsurance syndicates;

25 (c) appoint any producer without ensuring that the

1 producer is lawfully licensed to transact the type of
2 insurance for which the producer is appointed;

3 (d) without prior approval of the insurer, pay or
4 commit the insurer to pay a claim over a specified amount,
5 net of reinsurance, which may not exceed 1% of the insurer's
6 policyholder's surplus as of December 31 of the last
7 completed calendar year;

8 (e) collect any payment from a reinsurer or commit the
9 insurer to any claim settlement with a reinsurer without the
10 prior approval of the insurer. If prior approval is given, a
11 report must be promptly forwarded to the insurer.

12 (f) permit its subproducer to serve on the insurer's
13 board of directors;

14 (g) jointly employ an individual who is employed with
15 the insurer; or

16 (h) appoint a submanaging general agent.

17 **NEW SECTION. Section 16. Duties of insurers.** (1) The
18 insurer must have on file an independent financial
19 examination, in a form acceptable to the commissioner, of
20 each managing general agent with which it has done business.

21 (2) If a managing general agent establishes loss
22 reserves, the insurer shall annually obtain the opinion of
23 an actuary attesting to the adequacy of loss reserves
24 established for losses incurred and outstanding on business
25 produced by the managing general agent. This is in addition

1 to any other required loss reserve certification.

2 (3) At least semiannually, the insurer shall conduct an
3 onsite review of the underwriting and claims processing
4 operations of the managing general agent.

5 (4) Binding authority for all reinsurance contracts or
6 participation in insurance or reinsurance syndicates rests
7 with an officer of the insurer who is not affiliated with
8 the managing general agent.

9 (5) Within 30 days of entering into or termination of a
10 contract with a managing general agent, the insurer shall
11 provide the commissioner with written notification of the
12 appointment or termination. Notices of appointment of a
13 managing general agent must include a statement of duties
14 that the applicant is expected to perform on behalf of the
15 insurer, the lines of insurance for which the applicant is
16 to be authorized to act, and any other information the
17 commissioner may request.

18 (6) An insurer shall review its books and records each
19 quarter to determine if any producer has become a managing
20 general agent. If the insurer determines that a producer has
21 become a managing general agent, the insurer shall promptly
22 notify the producer and the commissioner of the
23 determination and the insurer and the producer shall comply
24 with [sections 14 through 18] within 30 days.

25 (7) An insurer may not appoint to its board of

1 directors an officer, director, employee, subproducer, or
 2 controlling shareholder of its managing general agent. This
 3 subsection does not apply to relationships governed by Title
 4 33, chapter 2, part 11, or [sections 5 through 10].

5 NEW SECTION. Section 17. Examination authority. The
 6 acts of the managing general agent are considered to be the
 7 acts of the insurer on whose behalf it is acting. A managing
 8 general agent may be examined as if it were the insurer.

9 NEW SECTION. Section 18. Penalties and liabilities.

10 (1) If, after a hearing conducted in accordance with Title
 11 33, chapter 1, part 7, the commissioner finds that a person
 12 has violated any provision of [sections 14 through 18], the
 13 commissioner may order:

14 (a) a penalty in an amount of \$5,000 for each separate
 15 violation;

16 (b) revocation or suspension of the producer's license;
 17 and

18 (c) the managing general agent to reimburse the
 19 insurer, the rehabilitator, or a liquidator of the insurer
 20 for any losses incurred by the insurer caused by a violation
 21 of [sections 14 through 18] committed by the managing
 22 general agent.

23 (2) An order of the commissioner pursuant to subsection
 24 (1) is subject to judicial review pursuant to 33-1-711.

25 (3) This section does not limit the power of the

1 commissioner to impose any other penalty provided in this
 2 title.

3 (4) [Sections 14 through 18] do not limit the rights of
 4 policyholders, claimants, or auditors.

5 NEW SECTION. Section 19. Licensure of reinsurance
 6 intermediaries. (1) A person, firm, association, or
 7 corporation may not act as a reinsurance intermediary-broker
 8 in this state if the reinsurance intermediary-broker
 9 maintains an office directly, as a member or employee of a
 10 firm or association, or as an officer, director, or employee
 11 of a corporation:

12 (a) in this state, unless the reinsurance
 13 intermediary-broker is a licensed producer in this state; or

14 (b) in another state, unless the reinsurance
 15 intermediary-broker is a licensed producer in this state or
 16 another state that has a law substantially similar to this
 17 law or unless the reinsurance intermediary-broker is
 18 licensed in this state as a nonresident reinsurance
 19 intermediary.

20 (2) A person, firm, association, or corporation may not
 21 act as a reinsurance intermediary-manager:

22 (a) for a reinsurer domiciled in this state, unless the
 23 reinsurance intermediary-manager is a licensed producer in
 24 this state;

25 (b) in this state, if the reinsurance

1 intermediary-manager maintains an office either directly or
 2 as a member or employee of a firm or association or as an
 3 officer, director, or employee of a corporation in this
 4 state, unless the reinsurance intermediary-manager is a
 5 licensed producer in this state; or

6 (c) in another state for a nondomestic insurer, unless
 7 the reinsurance intermediary-manager is a licensed producer
 8 in this state or another state that has a law substantially
 9 similar to this law or unless the person is licensed in this
 10 state as a nonresident insurance intermediary.

11 (3) Subject to subsection (2), the commissioner may
 12 require a reinsurance intermediary-manager to:

13 (a) file a bond in an amount from an insurer acceptable
 14 to the commissioner for the protection of the reinsurer; and

15 (b) maintain a policy on errors and omissions in an
 16 amount acceptable to the commissioner.

17 (4) (a) The commissioner may issue a reinsurance
 18 intermediary license to any person, firm, association, or
 19 corporation that has complied with the requirements of
 20 [sections 19 through 27]. A license issued to a firm or
 21 association authorizes all the members of the firm or
 22 association and any designated employees to act as
 23 reinsurance intermediaries under the license. All authorized
 24 persons must be named in the application and in any
 25 supplements to the application. A license issued to a

1 corporation must authorize all of the officers and any
 2 designated employees and directors to act as reinsurance
 3 intermediaries on behalf of the corporation. All authorized
 4 persons must be named in the application and in any
 5 supplements to the application.

6 (b) If the applicant for a reinsurance intermediary
 7 license is a nonresident, the applicant, as a condition
 8 precedent to receiving or holding a license, shall designate
 9 the commissioner as the agent for service of process in the
 10 manner provided for by this title for designation of service
 11 of process upon unauthorized insurers. The applicant shall
 12 also furnish the commissioner with the name and address of a
 13 resident of this state upon whom notices or orders of the
 14 commissioner or process affecting the nonresident
 15 reinsurance intermediary may be served. The licensee shall
 16 promptly notify the commissioner in writing of each change
 17 in its designated agent for service of process, and the
 18 change may not become effective until acknowledged by the
 19 commissioner.

20 (5) (a) The commissioner may refuse to issue a
 21 reinsurance intermediary license if, in the commissioner's
 22 judgment:

23 (i) the applicant, a person named on the application,
 24 or a member, principal, officer, or director of the
 25 applicant is not trustworthy;

1 (ii) a controlling person of the applicant is not
2 trustworthy to act as a reinsurance intermediary; or

3 (iii) any of the persons listed in subsection (5)(a)(i)
4 or (5)(a)(ii) has given cause for revocation or suspension
5 of the license or has failed to comply with any prerequisite
6 for the issuance of the license.

7 (b) Upon written request, the commissioner shall
8 furnish a summary of the basis for refusal to issue a
9 license. The document is privileged and is not subject to
10 public disclosure under Title 2, chapter 6, part 1.

11 (6) Licensed attorneys of this state, when acting in
12 their professional capacity, are exempt from this section.

13 NEW SECTION. Section 20. Required contract provisions
14 -- reinsurance intermediary-brokers. Transactions between a
15 reinsurance intermediary-broker and the insurer it
16 represents must be entered into pursuant to a written
17 authorization, specifying the responsibilities of each
18 party. The authorization must, at a minimum, contain the
19 following provisions:

20 (1) The insurer may terminate the reinsurance
21 intermediary-broker's authority at any time.

22 (2) The reinsurance intermediary-broker shall render to
23 the insurer accounts accurately detailing all material
24 transactions, including information necessary to support all
25 commissions, charges, and other fees received by or owing to

1 the reinsurance intermediary-broker. The reinsurance
2 intermediary-broker shall remit all funds due to the insurer
3 within 30 days of receipt.

4 (3) All funds collected for the insurer's account must
5 be held by the reinsurance intermediary-broker in a
6 fiduciary capacity in a bank that is a qualified United
7 States financial institution.

8 (4) The reinsurance intermediary-broker shall comply
9 with the requirements of [section 21].

10 (5) The reinsurance intermediary-broker shall comply
11 with the written standards established by the insurer for
12 the cession or retrocession of all risks.

13 (6) The reinsurance intermediary-broker shall disclose
14 to the insurer any relationship with any reinsurer to which
15 business will be ceded or retroceded.

16 NEW SECTION. Section 21. Books and records --
17 reinsurance intermediary-brokers. (1) For at least 10 years
18 after expiration of each contract of reinsurance transacted
19 by the reinsurance intermediary-broker, the reinsurance
20 intermediary-broker shall keep a complete record for each
21 transaction, showing:

22 (a) the type of contract, limits, underwriting
23 restrictions, classes or risks, and territory;

24 (b) the period of coverage, including the effective and
25 expiration dates, cancellation provisions, and notice

1 required for cancellation;

2 (c) the reporting and settlement requirements of
3 balances;

4 (d) the rate used to compute the reinsurance premium;

5 (e) the names and addresses of assuming reinsurers;

6 (f) the rates of all reinsurance commissions, including
7 the commissions on any retrocessions handled by the
8 reinsurance intermediary-broker;

9 (g) any related correspondence and memorandums;

10 (h) the proof of placement;

11 (i) the details regarding retrocessions handled by the
12 reinsurance intermediary-broker, including the identity of
13 the party making the retrocession and the percentage of each
14 contract assumed or ceded;

15 (j) the financial records, including but not limited to
16 premium and loss accounts; and

17 (k) when the reinsurance intermediary-broker procures a
18 reinsurance contract on behalf of a licensed ceding insurer:

19 (i) directly from any assuming reinsurer, written
20 evidence that the assuming reinsurer has agreed to assume
21 the risk; or

22 (ii) if placed through a representative of the assuming
23 reinsurer, other than an employee, written evidence that the
24 reinsurer has delegated binding authority to the
25 representative.

1 (2) The insurer has access to and may copy and audit
2 all accounts and records maintained by the reinsurance
3 intermediary-broker that are related to the insurer's
4 business, in a form usable by the insurer.

5 NEW SECTION. Section 22. Duties of insurers utilizing
6 the services of a reinsurance intermediary-broker. (1) An
7 insurer may not engage the services of any person, firm,
8 association, or corporation to act as a reinsurance
9 intermediary-broker on its behalf unless the person is
10 licensed as required by [section 19].

11 (2) An insurer may not employ an individual who is
12 employed by a reinsurance intermediary-broker with which it
13 transacts business unless the reinsurance
14 intermediary-broker is under common control with the insurer
15 and is subject to the provisions of Title 33, chapter 2,
16 part 11.

17 (3) The insurer shall annually obtain a copy of
18 statements of the financial condition of each reinsurance
19 intermediary-broker with which it transacts business.

20 NEW SECTION. Section 23. Required contract provisions
21 -- reinsurance intermediary-managers. Transactions between a
22 reinsurance intermediary-manager and the reinsurer it
23 represents in that capacity may only be entered into
24 pursuant to a written contract specifying the
25 responsibilities of each party. The contract must be

1 approved by the reinsurer's board of directors. At least 30
 2 days before the reinsurer assumes or cedes business through
 3 a producer, a true copy of the approved contract must be
 4 filed with the commissioner for approval. The contract must,
 5 at a minimum, include the following provisions:

6 (1) The reinsurer may terminate the contract for cause
 7 upon written notice to the reinsurance intermediary-manager.
 8 The reinsurer may immediately suspend the authority of the
 9 reinsurance intermediary-manager to assume or cede business
 10 during the pendency of any dispute regarding the cause for
 11 termination.

12 (2) The reinsurance intermediary-manager shall render
 13 accounts to the reinsurer accurately detailing all material
 14 transactions, including information necessary to support all
 15 commissions, charges, and other fees received by or owed to
 16 the reinsurance intermediary-manager, and shall remit all
 17 funds due under the contract to the reinsurer on not less
 18 than a monthly basis.

19 (3) All funds collected for the reinsurer's account
 20 will be held by the reinsurance intermediary-manager in a
 21 fiduciary capacity in a bank that is a qualified United
 22 States financial institution. The reinsurance
 23 intermediary-manager may not retain more than 3 months'
 24 estimated claims payments and allocated loss adjustment
 25 expenses. The reinsurance intermediary-manager shall

1 maintain a separate bank account for each reinsurer that it
 2 represents.

3 (4) For at least 10 years after expiration of each
 4 contract of reinsurance transacted by the reinsurance
 5 intermediary-manager, the reinsurance intermediary-manager
 6 shall keep a complete record for each transaction showing:

7 (a) the type of contract, limits, underwriting
 8 restrictions, classes or risks, and territory;

9 (b) the period of coverage, including effective and
 10 expiration dates, cancellation provisions, notice required
 11 for cancellation, and disposition of outstanding reserves on
 12 covered risks;

13 (c) the reporting and settlement requirements of
 14 balances;

15 (d) the rate used to compute the reinsurance premium;

16 (e) the names and addresses of reinsurers;

17 (f) the rates of all reinsurance commissions, including
 18 the commissions on any retrocessions handled by the
 19 reinsurance intermediary-manager;

20 (g) related correspondence and memorandums;

21 (h) proof of placement;

22 (i) details regarding retrocessions handled by the
 23 reinsurance intermediary-manager, as permitted by [section
 24 25], including the identity of persons making the
 25 retrocessions and the percentage of each contract assumed or

1 ceded;

2 (j) financial records, including but not limited to
3 premium and loss accounts; and

4 (k) when the reinsurance intermediary-manager places a
5 reinsurance contract on behalf of a ceding insurer:

6 (i) directly from any assuming reinsurer, written
7 evidence that the assuming reinsurer has agreed to assume
8 the risk; or

9 (ii) if placed through a representative of the assuming
10 reinsurer, other than an employee, written evidence that the
11 assuming reinsurer has delegated binding authority to the
12 representative.

13 (5) The reinsurer will have access to and the right to
14 copy all accounts and records maintained by the reinsurance
15 intermediary-manager related to its business in a form
16 usable by the reinsurer.

17 (6) The contract may not be assigned in whole or in
18 part by the reinsurance intermediary-manager.

19 (7) The reinsurance intermediary-manager shall comply
20 with the written underwriting and rating standards
21 established by the insurer for the acceptance, rejection, or
22 cession of all risks.

23 (8) The rates, terms, and purposes of commissions,
24 charges, and other fees that the reinsurance
25 intermediary-manager may levy against the reinsurer must be

1 set forth.

2 (9) If the contract permits the reinsurance
3 intermediary-manager to settle claims on behalf of the
4 reinsurer:

5 (a) all claims must be reported to the reinsurer in a
6 timely manner;

7 (b) a copy of the claim file must be sent to the
8 reinsurer at its request or as soon as it becomes known that
9 the claim:

10 (i) has the potential to exceed the lesser of an amount
11 determined by the commissioner or the limit set by the
12 reinsurer;

13 (ii) involves a coverage dispute;

14 (iii) may exceed the reinsurance intermediary-manager's
15 claims settlement authority;

16 (iv) is open for more than 6 months; or

17 (v) is closed by payment of the lesser of an amount set
18 by the commissioner or an amount set by the reinsurer;

19 (c) all claim files must be the joint property of the
20 reinsurer and the reinsurance intermediary-manager. However,
21 upon an order of liquidation of the reinsurer, the files
22 become the sole property of the reinsurer or its estate. The
23 reinsurance intermediary-manager must have reasonable access
24 to and the right to copy the files on a timely basis;

25 (d) any settlement authority granted to the reinsurance

1 intermediary-manager may be terminated for cause upon the
2 reinsurer's written notice to the reinsurance
3 intermediary-manager or upon the termination of the
4 contract. The reinsurer may suspend the settlement authority
5 during the pendency of the dispute regarding the cause of
6 termination.

7 (10) If the contract provides for a sharing of interim
8 profits by the reinsurance intermediary-manager, the interim
9 profits may not be paid until:

10 (a) 1 year after the end of each underwriting period
11 for property business;

12 (b) 5 years after the end of each underwriting period
13 for casualty business;

14 (c) a later period set by the commissioner for
15 specified lines of insurance; and

16 (d) the adequacy of reserves on remaining claims has
17 been verified pursuant to [section 25].

18 (11) The reinsurance intermediary-manager shall annually
19 provide the reinsurer with a statement of its financial
20 condition prepared by an independent certified accountant.

21 (12) The reinsurer shall, at least semiannually, conduct
22 an onsite review of the underwriting and claims processing
23 operations of the reinsurance intermediary-manager.

24 (13) The reinsurance intermediary-manager shall disclose
25 to the reinsurer any relationship it has with any insurer

1 prior to ceding or assuming any business with the insurer
2 pursuant to the contract.

3 (14) Within the scope of its actual or apparent
4 authority, the acts of the reinsurance intermediary-manager
5 are considered to be the acts of the reinsurer on whose
6 behalf it is acting.

7 NEW SECTION. **Section 24. Prohibited acts.** A
8 reinsurance intermediary-manager may not:

9 (1) bind retrocessions on behalf of the reinsurer,
10 except that the reinsurance intermediary-manager may bind
11 facultative retrocessions pursuant to obligatory facultative
12 agreements if the contract with the reinsurer contains
13 reinsurance underwriting guidelines for retrocessions. The
14 guidelines must include a list of reinsurers with which
15 automatic agreements are in effect and, for each reinsurer,
16 must include the coverages, amounts of percentages that may
17 be reinsured, and commission schedules.

18 (2) commit the reinsurer to participate in reinsurance
19 syndicates;

20 (3) appoint any producer without ensuring that the
21 producer is licensed to transact the type of reinsurance for
22 which the producer is appointed;

23 (4) without prior approval of the reinsurer, pay or
24 commit the reinsurer to pay a claim, net of retrocessions,
25 that exceeds the lesser of an amount specified by the

1 reinsurer or 1% of the reinsurer's policyholder's surplus as
2 of December 31 of the last complete calendar year;

3 (5) collect any payment from a party making a
4 retrocession, or commit the reinsurer to any claim
5 settlement with a party making a retrocession, without prior
6 approval of the reinsurer. If prior approval is given, a
7 report must be promptly forwarded to the reinsurer.

8 (6) jointly employ an individual who is employed by the
9 reinsurer unless the reinsurance intermediary-manager is
10 under common control with the reinsurer subject to Title 33,
11 chapter 2, part 11;

12 (7) appoint a subreinsurance intermediary-manager.

13 **NEW SECTION. Section 25. Duties of reinsurers using**
14 **services of reinsurance intermediary-manager.** (1) A
15 reinsurer may not engage the services of any person, firm,
16 association, or corporation as a reinsurance
17 intermediary-manager on its behalf unless the person is
18 licensed as required by [section 19].

19 (2) The reinsurer shall annually obtain a copy of
20 statements of the financial condition of each reinsurance
21 intermediary-manager that the reinsurer has engaged,
22 prepared by an independent certified accountant, in a form
23 acceptable to the commissioner.

24 (3) If a reinsurance intermediary-manager establishes
25 loss reserves, the reinsurer shall annually obtain the

1 opinion of an actuary attesting to the adequacy of loss
2 reserves established for losses incurred and outstanding on
3 business produced by the reinsurance intermediary-manager.
4 The opinion is in addition to any other required loss
5 reserve certification.

6 (4) Binding authority for all retrocessional contracts
7 or participation in reinsurance syndicates must rest with an
8 officer of the reinsurer who may not be affiliated with the
9 reinsurance intermediary-manager.

10 (5) Within 30 days of termination of a contract with a
11 reinsurance intermediary-manager, the reinsurer shall
12 provide written notification of the termination to the
13 commissioner.

14 (6) A reinsurer may not appoint to its board of
15 directors any officer, director, employee, controlling
16 shareholder, or subproducer of its reinsurance
17 intermediary-manager. This subsection does not apply to
18 relationships governed by Title 33, chapter 2, part 11, or,
19 if applicable, [sections 19 through 23].

20 **NEW SECTION. Section 26. Examination authority.** (1) A
21 reinsurance intermediary is subject to examination by the
22 commissioner. The commissioner must have access to all
23 books, bank accounts, and records of the reinsurance
24 intermediary in a form usable to the commissioner.

25 (2) A reinsurance intermediary-manager may be examined

1 as if it were the reinsurer.

2 **NEW SECTION. Section 27. Penalties and liabilities.**

3 (1) (a) A reinsurance intermediary, insurer, or reinsurer
4 found by the commissioner, after a hearing conducted in
5 accordance with Title 33, chapter 1, part 7, to be in
6 violation of any provision of [sections 19 through 26]:

7 (i) shall, for each separate violation, pay a penalty
8 in an amount not to exceed \$5,000; and

9 (ii) is subject to revocation or suspension of its
10 license.

11 (b) If a violation was committed by the reinsurance
12 intermediary, the reinsurance intermediary shall make
13 restitution to the insurer, reinsurer, rehabilitator, or
14 liquidator of the insurer or reinsurer for the net losses
15 incurred by the insurer or reinsurer attributable to the
16 violation.

17 (2) The order of the commissioner pursuant to
18 subsection (1) is subject to judicial review pursuant to
19 Title 33, chapter 1, part 7.

20 (3) This section does not limit the authority of the
21 commissioner to impose any other penalties provided in the
22 insurance law.

23 (4) [Sections 19 through 26] do not limit or restrict
24 the rights of policyholders, claimants, creditors, or other
25 third parties or confer any rights upon those persons.

1 **NEW SECTION. Section 28. Credit allowed domestic**
2 **ceding insurer.** (1) Credit for reinsurance is allowed to a
3 domestic ceding insurer as either an asset or a deduction
4 from liability on account of reinsurance ceded only when the
5 reinsurer meets the requirements of subsection (2), (3),
6 (4), (5), or (6). If the requirements of subsection (4) or
7 (5) are met, the requirements of subsection (7) must also be
8 met.

9 (2) Credit must be allowed when the reinsurance is
10 ceded to an assuming insurer that is licensed to transact
11 insurance or reinsurance in this state.

12 (3) Credit must be allowed when the reinsurance is
13 ceded to an assuming insurer that is accredited as a
14 reinsurer in this state. Credit may not be allowed a
15 domestic ceding insurer if the assuming insurer's
16 accreditation has been revoked by the commissioner after
17 notice and hearing. An accredited reinsurer is one that:

18 (a) files with the commissioner evidence of its
19 submission to this state's jurisdiction;

20 (b) submits to this state's authority to examine its
21 books and records;

22 (c) is licensed to transact insurance or reinsurance in
23 at least one state or, in the case of a United States branch
24 of an alien assuming insurer, is entered through and
25 licensed to transact insurance or reinsurance in at least

1 one state;

2 (d) files annually with the commissioner a copy of its
3 annual statement filed with the insurance department of its
4 state of domicile and a copy of its most recent audited
5 financial statement and either:

6 (i) maintains a surplus with regard to policyholders in
7 an amount that is not less than \$20 million and whose
8 accreditation has not been denied by the commissioner within
9 90 days of its submission; or

10 (ii) maintains a surplus with regard to policyholders in
11 an amount less than \$20 million and whose accreditation has
12 been approved by the commissioner.

13 (4) (a) Subject to subsection (4)(b), credit must be
14 allowed when:

15 (i) the reinsurance is ceded to an assuming insurer
16 that is domiciled and licensed in or, in the case of a
17 United States branch of an alien assuming insurer, is
18 entered through a state that employs standards regarding
19 credit for reinsurance substantially similar to those
20 applicable under this statute; and

21 (ii) the assuming insurer or the United States branch of
22 an alien assuming insurer:

23 (A) maintains a surplus with regard to policyholders in
24 an amount not less than \$20 million; and

25 (B) submits to the authority of this state to examine

1 its books and records.

2 (b) The requirement of subsection (4)(a)(i) does not
3 apply to reinsurance ceded and assumed pursuant to pooling
4 arrangements among insurers in the same holding company
5 system.

6 (5) (a) Credit must be allowed when the reinsurance is
7 ceded to an assuming insurer that maintains a trust fund in
8 a qualified United States financial institution for the
9 payment of the valid claims of its United States
10 policyholders and ceding insurers and their assigns and
11 successors in interest. The assuming insurer shall report
12 annually to the commissioner information substantially the
13 same as that required to be reported on the NAIC annual
14 statement form by licensed insurers to enable the
15 commissioner to determine the sufficiency of the trust fund.

16 (b) (i) In the case of a single assuming insurer, the
17 trust must consist of a trustee account representing the
18 assuming insurer's liabilities attributable to business
19 written in the United States, and in addition, the assuming
20 insurer shall maintain a surplus with the trustee of not
21 less than \$20 million.

22 (ii) In the case of a group of individual unincorporated
23 underwriters, the trust must consist of a trustee account
24 representing the group's liabilities attributable to
25 business written in the United States, and in addition, the

1 group shall maintain a surplus with the trustee of which
 2 \$100 million must held jointly for the benefit of United
 3 States ceding insurers of any member of the group. The group
 4 shall make available to the commissioner an annual
 5 certification of the solvency of each underwriter by the
 6 group's domiciliary regulator and its independent public
 7 accountants.

8 (iii) In the case of a group of incorporated insurers
 9 under common administration:

10 (A) the provisions of subsection (5)(b)(iii)(B) apply,
 11 to the group that:

12 (I) complies with the reporting requirements contained
 13 in subsection (5)(a);

14 (II) has continuously transacted an insurance business
 15 outside the United States for at least 3 years immediately
 16 prior to making application for accreditation;

17 (III) submits to this state's authority to examine its
 18 books and records and bears the expense of the examination;
 19 and

20 (IV) has aggregate policyholders' surplus of \$10
 21 billion;

22 (B) (I) the trust must be in an amount equal to the
 23 group's several liabilities attributable to business ceded
 24 by United States ceding insurers to any member of the group
 25 pursuant to reinsurance contracts issued in the name of the

1 group;

2 (II) the group shall maintain a joint surplus with a
 3 trustee of which \$100 million is held jointly for the
 4 benefit of United States ceding insurers of any member of
 5 the group as additional security for any liabilities; and

6 (III) each member of the group shall make available to
 7 the commissioner an annual certification of the member's
 8 solvency by the member's domiciliary regulator and its
 9 independent public accountant.

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

22 (d) No later than February 28 of each year, the
 23 trustees of the trust shall report to the commissioner in
 24 writing setting forth the balance of the trust and listing
 25 the trust's investments at the end of the preceding year.

1 The trustees shall certify the date of termination of the
2 trust, if planned, or certify that the trust may not expire
3 prior to the following December 31.

4 (6) Credit must be allowed when the reinsurance is
5 ceded to an assuming insurer that does not meet the
6 requirements of subsection (2), (3), (4), or (5) but only
7 with respect to the insurance of risks located in a
8 jurisdiction in which the reinsurance is required by
9 applicable law or regulation of that jurisdiction.

10 (7) (a) If the assuming insurer is not licensed or
11 accredited to transact insurance or reinsurance in this
12 state, the credit permitted by subsections (4) and (5) may
13 not be allowed unless the assuming insurer agrees in the
14 reinsurance agreements:

15 (i) that in the event of the failure of the assuming
16 insurer to perform its obligations under the terms of the
17 reinsurance agreement, the assuming insurer, at the request
18 of the ceding insurer, will:

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

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

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

25 (ii) to designate the commissioner or a designated

1 attorney as its attorney upon whom may be served any lawful
2 process in any action, suit, or proceeding instituted by or
3 on behalf of the ceding company.

4 (b) Subsection (7)(a)(i) is not intended to conflict
5 with or override the obligation of the parties to a
6 reinsurance agreement to arbitrate their disputes if an
7 obligation is created in the agreement.

8 **NEW SECTION. Section 29. Reduction of liability for**
9 **reinsurance ceded by domestic insurer to assuming insurer. A**
10 **reduction from liability for the reinsurance ceded by a**
11 **domestic insurer to an assuming insurer not meeting the**
12 **requirements of [section 28] must be allowed in an amount**
13 **not exceeding the liabilities carried by the ceding insurer.**
14 **The reduction must be in the amount of funds held by or on**
15 **behalf of the ceding insurer, including funds held in trust**
16 **for the ceding insurer:**

17 (1) under a reinsurance contract with the assuming
18 insurer as security for the payment of obligations under the
19 contract if the security is held in the United States
20 subject to withdrawal solely by and under the exclusive
21 control of the ceding insurer; or

22 (2) in the case of a trust, in a qualified United
23 States financial institution. This security may be in the
24 form of:

25 (a) cash;

1 (b) securities listed by the securities valuation
2 office of the NAIC and qualifying as admitted assets;

3 (c) clean, irrevocable, unconditional letters of credit
4 that are issued or confirmed by a qualified United States
5 financial institution no later than December 31 of the year
6 for which filing is being made and that are in the
7 possession of the ceding company on or before the filing
8 date of its annual statement. Letters of credit meeting
9 applicable standards of issuer acceptability as of the dates
10 of their issuance or confirmation must, notwithstanding the
11 issuing or confirming institution's subsequent failure to
12 meet applicable standards of issuer acceptability, continue
13 to be acceptable as security until their expiration,
14 extension, renewal, modification, or amendment, whichever
15 occurs first.

16 (d) any other form of security acceptable to the
17 commissioner.

18 **NEW SECTION. Section 30. Reinsurance agreements**
19 **affected.** [Sections 28 and 29] apply to all cessions after
20 October 1, 1993, under reinsurance agreements that have had
21 an inception, anniversary, or renewal date on or before
22 April 1, 1993.

23 **NEW SECTION. Section 31. Conduct of examinations --**
24 **records -- correction of accounts -- appraisals.** (1) Upon
25 determining that an examination should be conducted, the

1 commissioner or the commissioner's designee shall issue an
2 examination warrant appointing one or more examiners to
3 perform the examination and instructing them as to the scope
4 of the examination. In conducting the examination, the
5 examiner shall observe the guidelines and procedures set
6 forth in the examiners' handbook adopted by the NAIC. The
7 commissioner may also employ other guidelines or procedures
8 as the commissioner considers appropriate.

9 (2) Every company or person from whom information is
10 sought and its officers, directors, employees, and agents
11 shall provide to the examiners appointed under subsection
12 (1) timely, convenient, and free access at all reasonable
13 hours at its offices to all books, records, accounts,
14 papers, documents, and any or all computer or other
15 recordings relating to the property, assets, business, and
16 affairs of the company being examined. The officers,
17 directors, employees, and agents of the company or person
18 shall facilitate the examination and aid in the examination
19 so far as it is in their power to do so. The refusal of any
20 company, by its officers, directors, employees, or agents,
21 to submit to examination or to comply with any reasonable
22 written request of the examiners is grounds for suspension,
23 refusal, or nonrenewal of any license or authority held by
24 the company to engage in an insurance or other business
25 subject to the commissioner's jurisdiction. A proceeding for

1 suspension, revocation, or refusal of any license or
2 authority must be conducted pursuant to 33-1-318.

3 (3) The commissioner or any examiner has the power to
4 issue subpoenas, administer oaths, and examine under oath
5 any person concerning any matter pertinent to the
6 examination. Upon the failure or refusal of a person to obey
7 a subpoena, the commissioner may petition a court of
8 competent jurisdiction and, upon proper showing, the court
9 may enter an order compelling the witness to appear and
10 testify or to produce documentary evidence. Failure to obey
11 the court order is punishable as contempt of court.

12 (4) When making an examination under this part, the
13 commissioner may retain attorneys, appraisers, independent
14 actuaries, independent certified public accountants, or
15 other professionals and specialists as examiners. The cost
16 of retaining the personnel must be borne by the company that
17 is the subject of the examination.

18 (5) This part may not be construed to limit the
19 commissioner's authority to terminate or suspend any
20 examination in order to pursue other legal or regulatory
21 action pursuant to this title. Findings of fact and
22 conclusions made pursuant to an examination are prima facie
23 evidence in any legal or regulatory action.

24 (6) This part may not be construed to limit the
25 commissioner's authority to use and, if appropriate, to make

1 public any final or preliminary examination report, any
2 examiner or company workpapers or other documents, or any
3 other information discovered or developed during the course
4 of any examination in the furtherance of any legal or
5 regulatory action that the commissioner may consider
6 appropriate.

7 NEW SECTION. Section 32. Examination reports --
8 hearings -- confidentiality -- publication. (1) All
9 examination reports must be composed only of facts appearing
10 upon the books, records, or other documents of the company,
11 its agents, or other persons examined or as ascertained from
12 the testimony of its officers or agents or other persons
13 examined concerning its affairs. The report must contain the
14 conclusions and recommendations that the examiners find
15 reasonably warranted from the facts.

16 (2) No later than 60 days following completion of the
17 examination, the examiner in charge shall file with the
18 department a verified written report of examination under
19 oath. Upon receipt of the verified report, the department
20 shall transmit the report to the company examined, together
21 with a notice that gives the company examined a reasonable
22 opportunity, but not more than 30 days, to make a written
23 submission or rebuttal with respect to any matters contained
24 in the examination report.

25 (3) Within 30 days of the end of the period allowed for

1 the receipt of written submissions or rebuttals, the
 2 commissioner shall fully consider and review the report,
 3 together with any written submissions or rebuttals and any
 4 relevant portions of the examiner's workpapers and enter an
 5 order:

6 (a) adopting the examination report as filed or with
 7 modification or corrections. If the examination report
 8 reveals that the company is operating in violation of any
 9 law, regulation, or prior order of the commissioner, the
 10 commissioner may order the company to take any action the
 11 commissioner considers necessary and appropriate to cure the
 12 violation.

13 (b) rejecting the examination report with directions to
 14 the examiners to reopen the examination for purposes of
 15 obtaining additional data, documentation, information, or
 16 testimony and of refiling pursuant to subsection (2); or

17 (c) calling for an investigatory hearing with no less
 18 than 20 days' notice to the company for purposes of
 19 obtaining additional data, documentation, information, and
 20 testimony.

21 (4) (a) All orders entered pursuant to subsection
 22 (3)(a) must be accompanied by findings and conclusions
 23 resulting from the commissioner's consideration and review
 24 of the examination report, relevant examiner workpapers, and
 25 any written submissions or rebuttals. An order must be

1 considered a final administrative decision and may be
 2 appealed pursuant to Title 33, chapter 1, part 7, and must
 3 be served upon the company by certified mail, together with
 4 a copy of the adopted examination report. Within 30 days of
 5 the issuance of the adopted report, the company shall file
 6 affidavits executed by each of its directors stating under
 7 oath that they have received a copy of the adopted report
 8 and related orders.

9 (b) (i) A hearing conducted under subsection (3)(c) by
 10 the commissioner or an authorized representative must be
 11 conducted as a nonadversarial, confidential, investigatory
 12 proceeding as necessary for the resolution of any
 13 inconsistencies, discrepancies, or disputed issues apparent
 14 upon the face of the filed examination report or raised by
 15 or as a result of the commissioner's review of relevant
 16 workpapers or by the written submission or rebuttal of the
 17 company. Within 20 days of the conclusion of the hearing,
 18 the commissioner shall enter an order pursuant to subsection
 19 (3)(a).

20 (ii) The commissioner may not appoint an examiner as an
 21 authorized representative to conduct the hearing. The
 22 hearing must proceed expeditiously with discovery by the
 23 company limited to the examiner's workpapers that tend to
 24 substantiate any assertions set forth in any written
 25 submission or rebuttal. The commissioner or the

1 commissioner's representative may issue subpoenas for the
 2 attendance of any witnesses or the production of any
 3 documents considered relevant to the investigation, whether
 4 under the control of the department, the company, or other
 5 persons. The documents produced must be included in the
 6 record, and testimony taken by the commissioner or the
 7 commissioner's representative must be under oath and
 8 preserved for the record. This section does not require the
 9 department to disclose any information or records that would
 10 indicate or show the existence or content of any
 11 investigation or activity of a criminal justice agency.

12 (iii) The hearing must proceed with the commissioner or
 13 the commissioner's representative posing questions to the
 14 persons subpoenaed. The company and the department may
 15 present testimony relevant to the investigation.
 16 Cross-examination must be conducted only by the commissioner
 17 or the commissioner's representative. The company and the
 18 department must be permitted to make closing statements and
 19 may be represented by counsel of their choice.

20 (5) (a) Upon the adoption of the examination report
 21 under subsection (3)(a), the commissioner shall continue to
 22 hold the content of the examination report as private and
 23 confidential information for a period of 30 days except to
 24 the extent provided in subsection (2). After 30 days, the
 25 commissioner may open the report for public inspection as

1 long as a court of competent jurisdiction has not stayed its
 2 publication.

3 (b) This title does not prevent and may not be
 4 construed as prohibiting the commissioner from disclosing
 5 the content of an examination report or preliminary
 6 examination report, the results of an examination, or any
 7 matter relating to a report or results to the insurance
 8 department of this state or of any other state or country,
 9 to law enforcement officials of this state or of any other
 10 state, or to an agency of the federal government at any time
 11 as long as the agency or office receiving the report or
 12 matters relating to the report agrees in writing to hold it
 13 confidential and in a manner consistent with this part.

14 (c) If the commissioner determines that regulatory
 15 action is appropriate as a result of any examination, the
 16 commissioner may initiate any proceedings or actions as
 17 provided by law.

18 (6) All working papers, recorded information,
 19 documents, and copies produced by, obtained by, or disclosed
 20 to the commissioner or any other person in the course of an
 21 examination made under this part must be given confidential
 22 treatment, are not subject to subpoena, and may not be made
 23 public by the commissioner or any other person, except to
 24 the extent provided in subsection (5). Access may also be
 25 granted to the NAIC. The persons given access shall agree in

1 writing, prior to receiving the information, to treat the
2 information in the confidential manner required by this
3 section unless the prior written consent of the company to
4 which it pertains has been obtained.

5 NEW SECTION. Section 33. Conflict of interest. (1) An
6 examiner may not be appointed by the commissioner if the
7 examiner, either directly or indirectly, has a conflict of
8 interest with, is affiliated with the management of, or owns
9 a pecuniary interest in any person subject to examination
10 under this part. This section may not be construed to
11 automatically preclude an examiner from being:

12 (a) a policyholder or claimant under an insurance
13 policy;

14 (b) a grantor of a mortgage or similar instrument on
15 the examiner's residence to a regulated entity if done under
16 customary terms and in the ordinary course of business;

17 (c) an investment owner in shares of regulated
18 diversified investment companies; or

19 (d) a settlor or beneficiary of a blind trust into
20 which any otherwise impermissible holdings have been placed.

21 (2) Notwithstanding the requirements of this section,
22 the commissioner may retain from time to time, on an
23 individual basis, qualified actuaries, certified public
24 accountants, or other individuals who are independently
25 practicing their professions, even though the persons may

1 from time to time be similarly employed or retained by
2 persons subject to examination under this part.

3 NEW SECTION. Section 34. Taxation of purchasing group.
4 Premium taxes and taxes on premiums paid for coverage of
5 risks resident or located in this state by a purchasing
6 group or any members of the purchasing group must be:

7 (1) imposed at the same rate and subject to the same
8 interest, fines, and penalties as those applicable to
9 premium taxes and taxes on premiums paid to surplus lines
10 insurers and authorized insurers, pursuant to 33-2-311 and
11 33-2-705, respectively; and

12 (2) paid by the authorized or surplus lines insurers
13 and, if not paid by them, paid by the insurance producer for
14 the purchasing group and, if not paid by the insurance
15 producer, paid by the purchasing group and, if not paid by
16 the purchasing group, paid by each of its members.

17 NEW SECTION. Section 35. Condition on release from
18 delinquency proceedings. An insurer that is subject to any
19 delinquency proceeding, whether formal, informal,
20 administrative, or judicial, may not:

21 (1) be released from the proceeding, unless the
22 proceeding is converted to a judicial rehabilitation or
23 liquidation proceeding;

24 (2) be permitted to solicit or accept new business or
25 request or accept the restoration of any suspended or

1 revoked license or certificate of authority;

2 (3) be returned to the control of its shareholders or
3 private management; or

4 (4) have any of its assets returned to the control of
5 its shareholders or private management until all payments of
6 or on account of the insurer's contractual obligations by
7 all guaranty associations, along with all expenses of the
8 guaranty associations and interest on all payments and
9 expenses, have been repaid to the guaranty associations or a
10 plan of repayment by the insurer has been approved by the
11 guaranty association.

12 NEW SECTION. Section 36. Indemnification of
13 rehabilitator, liquidator, and employees -- persons covered.

14 (1) The persons entitled to protection under [sections 37
15 and 38] are:

16 (a) all rehabilitators and liquidators responsible for
17 the conduct of a delinquency proceeding under Title 33,
18 chapter 2, including present and former rehabilitators and
19 liquidators; and

20 (b) the employees of the rehabilitators and
21 liquidators, including all present and former special
22 deputies and assistant special deputies appointed by the
23 commissioner, and all persons whom the commissioner, special
24 deputies, or assistant special deputies have employed to
25 assist in a delinquency proceeding under Title 33, chapter

1 2.

2 (2) Attorneys, accountants, auditors, and other
3 professional persons or firms, who are retained by the
4 rehabilitator or liquidator as independent contractors, and
5 their employees are not considered employees of the
6 rehabilitator or liquidator for purposes of any cause of
7 action initiated by the rehabilitator or liquidator against
8 the independent contractor in the name of the rehabilitation
9 or liquidation estate.

10 NEW SECTION. Section 37. Indemnification of
11 rehabilitator, liquidator, and employees. (1) If any legal
12 action is commenced against the rehabilitator or liquidator
13 or any employee of the rehabilitator or liquidator, whether
14 against the rehabilitator, liquidator, or employee
15 personally or in an official capacity, alleging property
16 damage, property loss, personal injury, or other civil
17 liability caused by or resulting from any alleged act,
18 error, or omission of the rehabilitator, liquidator, or
19 employee arising out of or by reason of duties or
20 employment, the rehabilitator, liquidator, or employee is
21 indemnified from the assets of the insurer for all expenses,
22 attorney fees, judgments, settlements, decrees, surety bond
23 premiums, or amounts due and owing or paid in satisfaction
24 of or incurred in the defense of the legal action unless it
25 is determined upon a final adjudication on the merits that

1 the alleged act, error, or omission of the rehabilitator,
2 liquidator, or employee that gave rise to the claim did not
3 arise out of or by reason of the rehabilitator's,
4 liquidator's, or employee's duties or employment or was
5 caused by intentional or willful and wanton misconduct.

6 (2) Attorney fees and related expenses incurred in
7 defending a legal action for which indemnity is available
8 under this section must be paid from the assets of the
9 insurer, as the expenses are incurred and in advance of the
10 final disposition of the action, upon receipt of an
11 undertaking by or on behalf of the rehabilitator,
12 liquidator, or employee to repay the attorney fees and
13 expenses. If, upon a final adjudication on the merits, it is
14 determined that the rehabilitator, liquidator, or employee
15 is not entitled to indemnity under this section, the payment
16 must be made from the undertaking.

17 (3) An indemnification for expenses, attorney fees,
18 judgments, settlements, decrees, surety bond premiums, or
19 other amounts paid or to be paid from the insurer's assets
20 pursuant to this section are an administrative expense of
21 the insurer.

22 (4) If actual or threatened litigation against a
23 rehabilitator, liquidator, or employee for which indemnity
24 may be available under this section occurs, a reasonable
25 amount of funds that in the judgment of the commissioner may

1 be needed to provide indemnity must be segregated and
2 reserved from the assets of the insurer as security for the
3 payment of indemnity until all applicable statutes of
4 limitation have run, all actual or threatened actions
5 against the rehabilitator, liquidator, or employee have been
6 completely and finally resolved, and all obligations of the
7 insurer and the commissioner under this section have been
8 satisfied.

9 (5) In lieu of segregation and reservation of funds,
10 the commissioner may obtain a surety bond or make other
11 arrangements that will enable the commissioner to fully
12 secure the payment of all obligations under this section.

13 **NEW SECTION. Section 38. Settlement of actions against**
14 **rehabilitator, liquidator, and employees -- court approval**
15 **-- applicability.** (1) If any legal action against an
16 employee for which indemnity may be available under this
17 section is settled prior to final adjudication on the
18 merits, the insurer shall pay the settlement amount on
19 behalf of the employee or indemnify the employee for the
20 settlement amount unless the commissioner determines:

21 (a) that the claim did not arise out of or by reason of
22 the employee's duties or employment; or

23 (b) that the claim was caused by the intentional or
24 willful and wanton misconduct of the employee.

25 (2) In a legal action in which the rehabilitator or

1 liquidator is a defendant, that portion of any settlement
2 relating to the alleged act, error, or omission of the
3 rehabilitator or liquidator is subject to the approval of
4 the court before which the delinquency proceeding is
5 pending. The court may not approve that portion of the
6 settlement if it determines:

7 (a) that the claim did not arise out of or by reason of
8 the rehabilitator's or liquidator's duties or employment; or

9 (b) that the claim was caused by the intentional or
10 willful and wanton misconduct of the rehabilitator or
11 liquidator.

12 (3) This section may not be construed to deprive the
13 rehabilitator, liquidator, or employee of immunity,
14 indemnity, benefit of law, right, or defense available under
15 any provision of law, including, without limitation, the
16 provisions of Title 2, chapter 9.

17 (4) (a) A legal action does not lie against the
18 rehabilitator, liquidator, or employee based in whole or in
19 part on any alleged act, error, or omission that took place
20 prior to October 1, 1993, unless suit is filed and valid
21 service of process is obtained by October 1, 1994.

22 (b) Subsections (1) through (3) apply to any suit that
23 is pending on or filed after October 1, 1993, without regard
24 to when the alleged act, error, or omission took place.

25 **Section 39.** Section 33-1-401, MCA, is amended to read:

1 "33-1-401. Examination of insurers. (1) The
2 commissioner shall examine the affairs, transactions,
3 accounts, records, and assets of each authorized insurer as
4 often as he deems the commissioner considers advisable. He
5 The commissioner shall so examine each domestic authorized
6 insurer not less frequently than every 3 5 years.
7 ~~Examination of an alien insurer may be limited to its~~
8 ~~insurance transactions and affairs in the United States.~~
9 ~~Examination of a reciprocal insurer may also include~~
10 ~~examination of its attorney in fact insofar as the~~
11 ~~transactions of the attorney in fact relate to the insurer.~~

12 (2) The commissioner shall in like manner examine each
13 insurer applying for an initial certificate of authority to
14 do business in this state.

15 (3) In lieu of making his own an examination under this
16 part of any foreign or alien insurer licensed in this state,
17 the commissioner may, in his discretion, accept a full an
18 examination report of the last recent examination of a
19 foreign or alien insurer, certified to on the company
20 prepared by the insurance supervisory official department of
21 another for the company's state, territory, commonwealth, or
22 district of the United States domicile or port of entry
23 state until January 1, 1994. After January 1, 1994, the
24 reports may only be accepted if:

25 (a) the insurance department was at the time of the

1 examination accredited under the national association of
 2 insurance commissioners' financial regulation standards and
 3 accreditation program; or

4 (b) the examination is performed under the supervision
 5 of an accredited state insurance department or with the
 6 participation of one or more examiners who are employed by
 7 such an accredited state insurance department and who, after
 8 a review of the examination work papers and report, state
 9 under oath that the examination was performed in a manner
 10 consistent with the standards and procedures required by
 11 their insurance department.

12 (4) For purposes of completing an examination of any
 13 company under this part, the commissioner may examine or
 14 investigate any person or the business of any person, in so
 15 far as the examination or investigation is, in the sole
 16 discretion of the commissioner, necessary or material to the
 17 examination of the company."

18 **Section 40.** Section 33-2-501, MCA, is amended to read:

19 "33-2-501. **Assets allowed.** In any determination of the
 20 financial condition of an insurer, there ~~shall~~ must be
 21 allowed as assets only such assets as that are owned by the
 22 insurer and which that consist of:

23 (1) cash in the possession of the insurer or in transit
 24 under its control and including the true balance of any
 25 deposit in a solvent bank or trust company;

1 (2) investments, securities, properties, and loans
 2 acquired or held in accordance with this code and in
 3 connection therewith the following items:

4 (a) interest due or accrued on any bond or evidence of
 5 indebtedness which is not in default and which is not valued
 6 on a basis including accrued interest;

7 (b) declared and unpaid dividends on stock and shares
 8 unless such the amount has otherwise been allowed as an
 9 asset;

10 (c) interest due or accrued upon a collateral loan in
 11 an amount not to exceed 1 year's interest thereon on the
 12 loan;

13 (d) interest due or accrued on deposits in solvent
 14 banks and trust companies and interest due or accrued on
 15 other assets, if such the interest is in the judgment of the
 16 commissioner a collectible asset;

17 (e) interest due or accrued on a mortgage loan in an
 18 amount not exceeding in any event the amount, if any, of the
 19 excess of the value of the property less delinquent taxes
 20 thereon on the property over the unpaid principal. ~~In--no~~
 21 ~~event--shall--interest~~ Interest accrued for a period in excess
 22 of 18 months may not be allowed as an asset.

23 (f) rent due or accrued on real property if such the
 24 rent is not in arrears for more than 3 months and rent more
 25 than 3 months in arrears if the payment of such the rent be

1 is adequately secured by property held in the name of the
2 tenant and conveyed to the insurer as collateral;

3 (g) the unaccrued portion of taxes paid prior to the
4 due date on real property;

5 (3) premium notes, policy loans, and other policy
6 assets and liens on policies and certificates of life
7 insurance and annuity contracts and accrued interest
8 thereon, in an amount not exceeding the legal reserve and
9 other policy liabilities carried on each individual policy;

10 (4) the net amount of uncollected and deferred premiums
11 and annuity considerations in the case of a life insurer;

12 (5) premiums in the course of collection, other than
13 for life insurance, not more than 3 months past due, less
14 commissions payable thereon on the premiums. The foregoing
15 limitation ~~shall~~ in this subsection does not apply to
16 premiums payable directly or indirectly by the United States
17 government or by any of its instrumentalities.

18 (6) installment premiums other than life insurance
19 premiums to the extent of the unearned premium reserve
20 carried on the policy to which premiums apply;

21 (7) notes and like written obligations not past due,
22 taken for premiums other than life insurance premiums, on
23 policies permitted to be issued on such that basis, to the
24 extent of the unearned premium reserves carried thereon on
25 the policies;

1 (8) the full amount of reinsurance recoverable by a
2 ceding insurer from a solvent reinsurer and which
3 reinsurance is authorized under 33-2-1205 chapter 2, part
4 12;

5 (9) amounts receivable by an assuming insurer
6 representing funds withheld by a solvent ceding insurer
7 under a reinsurance treaty;

8 (10) deposits or equities recoverable from underwriting
9 associations, syndicates, and reinsurance funds or from any
10 suspended banking institution, to the extent deemed
11 considered by the commissioner available for the payment of
12 losses and claims and at values to be determined by him the
13 commissioner;

14 (11) electronic data processing equipment if the cost of
15 such the equipment is at least \$100,000, which cost ~~shall~~
16 must be amortized in full over a period of not to exceed 10
17 calendar years. However, with regard to life insurers, such
18 the equipment ~~shall~~ must be allowed as an asset if the cost
19 of such the equipment is at least \$25,000, which cost ~~shall~~
20 must be amortized in full over a period of not to exceed 5
21 calendar years, and the amount of such the asset allowed may
22 not exceed 1% of the total of the other allowable assets of
23 the insurer.

24 (12) all assets, whether or not consistent with the
25 provisions of this section, as may be allowed pursuant to

1 the annual statement form approved by the commissioner for
2 the kinds of insurance to be reported upon therein in the
3 annual statement;

4 (13) other assets, not inconsistent with the provisions
5 of this section, deemed considered by the commissioner to be
6 available for the payment of losses and claims, at values to
7 be determined by him the commissioner."

8 **Section 41.** Section 33-2-532, MCA, is amended to read:

9 "33-2-532. Valuation of bonds. (1) (a) All bonds or
10 other evidences of debt having a fixed term and rate of
11 interest held by an insurer may, if amply secured and not in
12 default as to principal or interest, be valued as follows:

13 (i) if purchased at par, at the par value;

14 (ii) if purchased above or below par, on the basis of
15 the purchase price adjusted ~~so-as~~ to bring the value to par
16 at maturity and ~~so-as~~ to yield in the meantime the effective
17 rate of interest at which the purchase was made, or, in lieu
18 of such this method, according to such an accepted method of
19 valuation as is approved by the commissioner by rule.

20 (b) Purchase price ~~shall-in-no-case~~ may not be taken at
21 a higher figure than the actual market value at the time of
22 purchase, plus actual brokerage, transfer, postage, or
23 express charges paid in the acquisition of such the
24 securities.

25 (c) Unless otherwise provided by valuation established

1 or approved by the commissioner, ~~no-such~~ a security ~~shall~~
2 may not be carried at above the call price for the entire
3 issue during any period within which the security may be so
4 called.

5 (2) The commissioner ~~shall-have~~ has full discretion in
6 determining the method of calculating values according to
7 the rules set forth in this section."

8 **Section 42.** Section 33-2-533, MCA, is amended to read:

9 "33-2-533. Valuation of other securities. (1)
10 Securities, other than those referred to in 33-2-532, held
11 by an insurer ~~shall~~ must be valued, in the discretion of the
12 commissioner, at their market value, at their appraised
13 value, or at prices determined by him the commissioner as
14 representing their fair market value as established by rule.

15 (2) Preferred or guaranteed stocks or shares while
16 paying full dividends may be carried at a fixed value in
17 lieu of market value, at the discretion of the commissioner
18 and in accordance with such the method of computation ~~as--he~~
19 that the commissioner may approve."

20 **Section 43.** Section 33-2-701, MCA, is amended to read:

21 "33-2-701. Annual statement -- revocation or fine for
22 failure to file -- penalty for perjury. (1) Each authorized
23 insurer shall annually on or before March 1 file with the
24 commissioner a full and true statement of its financial
25 condition, transactions, and affairs as of the December 31

1 preceding. The statement ~~shall~~ must be in ~~such~~ the general
 2 form and context as is required or not disapproved by the
 3 commissioner, as is in current use for similar reports to
 4 states in general with respect to the type of insurer and
 5 kinds of insurance to be reported upon, and as supplemented
 6 for additional information required by the commissioner. The
 7 statement ~~shall~~ must be verified by the oath of the
 8 insurer's president or vice-president and secretary or, if a
 9 reciprocal insurer, by the oath of the attorney-in-fact or
 10 its like officers if a corporation. The commissioner may ~~in~~
 11 ~~his-discretion,~~ waive any ~~such~~ the verification under oath.

12 (2) The statement of an alien insurer ~~shall~~ must relate
 13 only to its transactions and affairs in the United States
 14 unless the commissioner requires otherwise. If the
 15 commissioner requires a statement as to an alien insurer's
 16 affairs throughout the world, the insurer shall file ~~such~~
 17 the statement with the commissioner as soon as reasonably
 18 possible. The statement ~~shall~~ must be verified by the
 19 insurer's United States manager or other authorized officer
 20 duty-authorized.

21 (3) The commissioner may refuse to accept the fee for
 22 continuance of the insurer's certificate of authority, as
 23 provided in 33-2-117, or may ~~in-his-discretion~~ suspend or
 24 revoke the certificate of authority of any insurer failing
 25 to file its annual statement when due or within an extension

1 of time that the commissioner may grant.

2 (4) Any director, officer or insurance producer, or
 3 employee of any company who subscribes to, makes, or concurs
 4 in making or publishing any annual statement or any other
 5 statement required by law knowing the same to contain any
 6 material statement which is false shall be punished by a
 7 fine of not more than \$1,000.

8 (5) At time of filing, the insurer shall pay to the
 9 commissioner the fee for filing its statement as prescribed
 10 in 33-2-708.

11 (6) The commissioner may impose a fine not to exceed
 12 \$100 a day for each day after March 1 that an insurer fails
 13 to file the annual statement referred to in subsection (1).
 14 Such The fine may not exceed a maximum of \$1,000."

15 **Section 44.** Section 33-2-708, MCA, is amended to read:

16 "33-2-708. Fees and licenses. (1) Except as provided in
 17 33-17-212(2), the commissioner shall collect in advance and
 18 the persons served shall pay to the commissioner the
 19 following fees:

20 (a) certificates of authority:
 21 (i) for filing applications for original certificates
 22 of authority, articles of incorporation (except original
 23 articles of incorporation of domestic insurers as provided
 24 in subsection (1)(b)) and other charter documents, bylaws,
 25 financial statement, examination report, power of attorney

1 to the commissioner, and all other documents and filings
 2 required in connection with the application and for issuance
 3 of an original certificate of authority, if issued:

4 (A) domestic insurers \$ 600.00
 5 (B) foreign insurers 600.00

6 (ii) annual continuation of certificate of authority
 7 600.00
 8 (iii) reinstatement of certificate of authority
 9 25.00
 10 (iv) amendment of certificate of authority 50.00

11 (b) articles of incorporation:

12 (i) filing original articles of incorporation of a
 13 domestic insurer, exclusive of fees required to be paid by
 14 the corporation to the secretary of state 20.00
 15 (ii) filing amendment of articles of incorporation,
 16 domestic and foreign insurers, exclusive of fees required to
 17 be paid to the secretary of state by a domestic corporation
 18 25.00
 19 (c) filing bylaws or amendment to bylaws where
 20 required 10.00
 21 (d) filing annual statement of insurer, other than as
 22 part of application for original certificate of authority
 23 25.00
 24 (e) insurance producer's license:
 25 (i) application for original license, including

1 issuance of license, if issued 15.00
 2 (ii) appointment of insurance producer, each insurer
 3 10.00
 4 (iii) temporary license 15.00
 5 (iv) amendment of license (excluding additions to
 6 license) or reissuance of master license 15.00
 7 (f) nonresident insurance producer's license:
 8 (i) application for original license, including
 9 issuance of license, if issued 100.00
 10 (ii) appointment of insurance producer, each insurer
 11 10.00
 12 (iii) annual renewal of license 10.00
 13 (iv) amendment of license (excluding additions to
 14 license) or reissuance of master license 15.00
 15 (g) examination, if administered by the commissioner,
 16 for license as insurance producer, each examination
 17 15.00
 18 (h) surplus lines insurance producer license:
 19 (i) application for original license and for issuance
 20 of license, if issued 50.00
 21 (ii) annual renewal of license 50.00
 22 (i) adjuster's license:
 23 (i) application for original license and for issuance
 24 of license, if issued 15.00
 25 (ii) annual renewal of license 15.00

1 (j) insurance vending machine license, each machine,
 2 each year 10.00
 3 (k) commissioner's certificate under seal (except when
 4 on certificates of authority or licenses) 10.00
 5 (l) copies of documents on file in the commissioner's
 6 office, per page50
 7 (m) policy forms:
 8 (i) filing each policy form 25.00
 9 (ii) filing each application, rider, endorsement,
 10 amendment, insert page, schedule of rates, and clarification
 11 of risks 10.00
 12 (iii) maximum charge if policy and all forms submitted
 13 at one time or resubmitted for approval within 180 days
 14 100.00
 15 (n) applications for approval of preclicensing education
 16 courses:
 17 (i) reviewing initial application 150.00
 18 (ii) periodic review 50.00
 19 (2) The commissioner shall establish by rule an annual
 20 accreditation fee to be paid by each domestic and foreign
 21 insurer when it submits a fee for annual continuation of its
 22 certificate of authority.
 23 {2}(3) (a) The Except as provided in subsection (3)(b),
 24 the commissioner shall promptly deposit with the state
 25 treasurer to the credit of the general fund of this state

1 all fines and penalties, those amounts received pursuant to
 2 33-2-311, 33-2-705, and 33-2-706, and any fees and
 3 examination and miscellaneous charges that are collected by
 4 him the commissioner pursuant to Title 33 and the rules
 5 adopted under Title 33.
 6 (b) The accreditation fee required by subsection (2)
 7 must be turned over promptly to the state treasurer who
 8 shall deposit the money in the state special revenue fund to
 9 the credit of the commissioner's office. The accreditation
 10 fee funds must be used only to pay the expenses of the
 11 commissioner's office in discharging its administrative and
 12 regulatory duties, subject to the applicable laws relating
 13 to the appropriation of state funds and to the deposit and
 14 expenditure of money. The commissioner is responsible for
 15 the proper expenditure of the accreditation money.
 16 {3}(4) All fees are considered fully earned when
 17 received. In the event of overpayment, only those amounts in
 18 excess of \$10 will be refunded."
 19 **Section 45.** Section 33-2-1111, MCA, is amended to read:
 20 "33-2-1111. Registration of insurers -- requisites --
 21 termination. (1) Every insurer which is authorized to do
 22 business in this state and which is a member of an insurance
 23 holding company system shall register with the commissioner,
 24 except a foreign insurer subject to disclosure requirements
 25 and standards adopted by statute or regulation in the

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

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

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

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

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

1 (i) loans, other investments, or purchases, sales, or
 2 exchanges of securities of the affiliates by the insurer or
 3 of the insurer by its affiliates;

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

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

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

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

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

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

21 (viii) consolidated tax allocation agreements;

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

25 (e) all matters concerning transactions between

1 registered insurers and any affiliates as may be included
2 from time to time in any registration forms adopted or
3 approved by the commissioner.

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

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

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

22 (6) Each registered insurer shall keep current the
23 information required to be disclosed in its registration
24 statement by reporting all material changes or additions on
25 amendment forms provided by the commissioner within 15 days

1 after the end of the month in which it learns of each such
2 change or addition. ~~Except-as-provided-in-33-2-1114, each~~
3 ~~registered-insurer-shall-report-all-dividends-and-other~~
4 ~~distributions---to---shareholders---within---2---business---days~~
5 ~~following-the-declaration-thereof.~~

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

9 (8) The commissioner may require or allow two or more
10 affiliated insurers subject to registration hereunder under
11 this section to file a consolidated registration statement
12 or 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 46.** Section 33-2-1114, MCA, is amended to read:

22 "33-2-1114. Dividends and other distributions --
23 commissioner approval. (1) An insurer subject to
24 registration under 33-2-1111 and 33-2-1112 may not pay any
25 extraordinary dividend or make any other extraordinary

1 distribution to its shareholders until 30 days after the
 2 commissioner has received notice of the declaration thereof
 3 of the dividend or distribution and has not within such the
 4 period disapproved such the payment or the commissioner
 5 ~~shall--have~~ has approved such payment within such the 30-day
 6 period.

7 (2) For purposes of this section, an extraordinary
 8 dividend or distribution includes any dividend or
 9 distribution of cash or other property whose fair market
 10 value together with that of other dividends or distributions
 11 made within the preceding 12 months exceeds 10% of such the
 12 insurer's surplus as regards policyholders as of December 31
 13 next preceding, but ~~shall~~ may not include pro rata
 14 distributions of any class of the insurer's own securities.

15 (3) Notwithstanding any other provision of law, an
 16 insurer may declare an extraordinary dividend or
 17 distribution which is conditional upon the commissioner's
 18 approval thereof, and ~~such-a~~ the declaration ~~shall~~ may not
 19 confer ~~no~~ rights upon shareholders until the commissioner
 20 has approved the payment of such the dividend or
 21 distribution or the commissioner has not disapproved such
 22 the payment within the 30-day period referred to above in
 23 subsection (1).

24 (4) An insurer subject to subsection (1) may not pay
 25 any other dividend or make any other distribution to its

1 shareholders unless the insurer has notified the
 2 commissioner of the payment 15 days prior to the payment
 3 date. The notice must be kept confidential until the payment
 4 date of the dividend. The commissioner may order that a
 5 dividend not be paid if the commissioner finds that the
 6 insurer's surplus as regards policyholders, following the
 7 payment to shareholders, would be inadequate or could lead
 8 the insurer to a hazardous financial condition."

9 **Section 47.** Section 33-2-1115, MCA, is amended to read:

10 "33-2-1115. **Examination.** (1) ~~Subject-to-the-limitation~~
 11 ~~contained-in-this-section-and-in~~ In addition to the powers
 12 which the commissioner has under chapter 1, part 4, relating
 13 to the examination of insurers, the commissioner ~~shall~~ also
 14 ~~have~~ has the power to order any insurer registered under
 15 33-2-1111 to produce such the records, books, or other
 16 information papers in the possession of the insurer or its
 17 affiliates as ~~shall--be~~ are necessary to ascertain the
 18 financial condition or legality of conduct of such the
 19 insurer. ~~In--the--event--such~~ If the insurer fails to comply
 20 with such the order, the commissioner ~~shall--have--the--power~~
 21 ~~to~~ may examine such the affiliates to obtain such the
 22 information.

23 (2) ~~The-commissioner--shall--exercise--his--power--under~~
 24 ~~subsection--(1)--only--if--the--examination--of--the--insurer--is~~
 25 ~~inadequate--or--the--interests--of--the--policyholders--of--such~~

~~insurer may be adversely affected:~~

(3) The commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as ~~shall be~~ are reasonably necessary to assist in the conduct of the examination under subsection (1). Any persons so retained ~~shall be~~ are under the direction and control of the commissioner and shall act in a purely advisory capacity.

(4)(3) Each registered insurer producing for examination records, books, and papers pursuant to subsection (1) ~~shall be~~ is liable for and shall pay the expense of such the examination."

NEW SECTION. Section 48. Recovery of dividends. (1) If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under the order has a right to recover on behalf of the insurer:

(a) from any parent corporation or holding company or person or affiliate who otherwise controlled the insurer, the amount of distributions, other than distributions of shares of the same class of stock, paid by the insurer on its capital stock; or

(b) any payment in the form of a bonus, termination settlement, or extraordinary lump-sum salary adjustment made

by the insurer or its subsidiary to a director, officer, or employee, when the distribution or payment pursuant to subsection (1)(a) or this subsection is made at any time during the year preceding the petition for liquidation, conservation, or rehabilitation, as the case may be, subject to the limitations of subsections (2) through (4).

(2) A distribution is not recoverable if the parent or affiliate shows that when paid the distribution was lawful and reasonable and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(3) Any person who was a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate at the time that the distributions were paid is liable up to the amount of distributions or payments that the person received. Any person who otherwise controlled the insurer at the time that the distributions were declared is liable up to the amount of distributions the person would have received if the person had been paid immediately. If two or more persons are liable with respect to the same distributions, they are jointly and severally liable.

(4) The maximum amount recoverable under this section is the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual

1 obligations of the impaired or insolvent insurer and to
2 reimburse any guaranty funds.

3 (5) To the extent that any person liable under
4 subsection (3) is insolvent or otherwise fails to pay claims
5 due from it, its parent corporation or holding company or
6 person who otherwise controlled it at the time the
7 distribution was paid is jointly and severally liable for
8 any resulting deficiency in the amount recovered from the
9 parent corporation or holding company or person who
10 otherwise controlled it.

11 **Section 49.** Section 33-2-1201, MCA, is amended to read:

12 "33-2-1201. Limit of risk. (1) No An insurer ~~shall~~ may
13 not retain any risk on any one subject of insurance, whether
14 located or to be performed in this state or elsewhere, in an
15 amount exceeding 10% of its surplus to policyholders.

16 (2) A "subject of insurance" for the purposes of this
17 section, as to insurance against fire and hazards other than
18 windstorm, earthquake, or other catastrophe hazards,
19 includes all properties insured by the same insurer which
20 are customarily considered by underwriters to be subject to
21 loss or damage from the same fire or the same occurrence of
22 such the other hazard insured against.

23 (3) Reinsurance ceded as authorized by 33-2-~~1205~~-~~shall~~
24 this part must be deducted in determining risk retained. As
25 to surety risks, deduction ~~shall~~ must also be made of the

1 amount assumed by any established incorporated cosurety and
2 the value of any security deposited, pledged, or held
3 subject to the surety's consent and for the surety's
4 protection.

5 (4) As to alien insurers, this section ~~shall--relate~~
6 only relates to risks and surplus to policyholders of the
7 insurer's United States branch.

8 (5) "Surplus to policyholders" for the purposes of this
9 section, in addition to the insurer's capital and surplus,
10 ~~shall--be--deemed~~ is considered to include any voluntary
11 reserves which are not required pursuant to law and ~~shall--be~~
12 are determined from the last sworn statement of the insurer
13 on file with the commissioner or by the last report of
14 examination of the insurer, whichever is the more recent at
15 time of assumption of risk.

16 (6) This section ~~shall~~ does not apply to life or
17 disability insurance, title insurance, insurance of wet
18 marine and transportation risks, workers' compensation
19 insurance, employer's liability coverages, sprinklered
20 risks, or any policy or type of coverage as to which the
21 maximum possible loss to the insurer is not readily
22 ascertainable on issuance of the policy."

23 **Section 50.** Section 33-2-1331, MCA, is amended to read:

24 "33-2-1331. Grounds for rehabilitation. The
25 commissioner may apply by petition to a district court for

1 an order authorizing him the commissioner to rehabilitate a
 2 domestic insurer or an alien insurer domiciled in this state
 3 on any one or more of the following grounds:

4 (1) The insurer is in such condition that the further
 5 transaction of business would be financially hazardous to
 6 its policyholders, creditors, or the public.

7 (2) There is reasonable cause to believe that there has
 8 been embezzlement from the insurer, wrongful sequestration
 9 or diversion of the insurer's assets, forgery or fraud
 10 affecting the insurer, or other illegal conduct in, by, or
 11 with respect to the insurer that if established would
 12 endanger assets in an amount threatening the solvency of the
 13 insurer.

14 (3) The insurer has failed to remove any person who in
 15 fact has executive authority in the insurer, whether an
 16 officer, manager, general insurance producer, employee, or
 17 other person, if the person has been found after notice and
 18 hearing by the commissioner to be dishonest or untrustworthy
 19 in a way affecting the insurer's business.

20 (4) Control of the insurer, whether by stock ownership
 21 or otherwise and whether direct or indirect, is in a person
 22 found after notice and hearing to be untrustworthy.

23 (5) Any person who in fact has executive authority in
 24 the insurer, whether an officer, manager, general insurance
 25 producer, director or trustee, employee, or other person,

1 has refused to be examined under oath by the commissioner
 2 concerning its affairs, whether in this state or elsewhere,
 3 and after reasonable notice of the fact the insurer has
 4 failed promptly and effectively to terminate the employment
 5 and status of the person and his the person's influence on
 6 management.

7 (6) After demand by the commissioner under 33-1-403
 8 [section 31] or under this part, the insurer has failed to
 9 promptly make available for examination any of its own
 10 property, books, accounts, documents, or other records or
 11 those of any subsidiary or related company within the
 12 control of the insurer or those of any person having
 13 executive authority in the insurer so far as they pertain to
 14 the insurer.

15 (7) Without first obtaining the written consent of the
 16 commissioner, the insurer has transferred or attempted to
 17 transfer, in a manner contrary to chapter 2, part 11, or
 18 chapter 2, part 12, of Title 33, substantially its entire
 19 property or business or has entered into any transaction the
 20 effect of which is to merge, consolidate, or reinsure
 21 substantially its entire property or business in or with the
 22 property or business of any other person.

23 (8) The insurer or its property has been or is the
 24 subject of an application for the appointment of a receiver,
 25 trustee, custodian, conservator, or sequestrator or similar

1 fiduciary of the insurer or its property otherwise than as
 2 authorized under the insurance laws of this state, and such
 3 the appointment has been made or is imminent, and such the
 4 appointment might oust the courts of this state of
 5 jurisdiction or might prejudice orderly delinquency
 6 proceedings under this part.

7 (9) Within the previous 4 years the insurer has
 8 willfully violated its charter or articles of incorporation,
 9 its bylaws, any insurance law of this state, or any valid
 10 order of the commissioner under 33-2-1321.

11 (10) The insurer has failed to pay within 60 days after
 12 the due date any obligation to any state or any subdivision
 13 thereof of the state or any judgment entered in any state,
 14 if the court in which such the judgment was entered had
 15 jurisdiction over such the subject matter, except that such
 16 nonpayment ~~shall~~ may not be a ground until 60 days after any
 17 good faith effort by the insurer to contest the obligation
 18 has been terminated, whether it is before the commissioner
 19 or in the courts, or the insurer has systematically
 20 attempted to compromise or renegotiate previously agreed
 21 settlements with its creditors on the ground that it is
 22 financially unable to pay its obligations in full.

23 (11) The insurer has failed to file its annual report or
 24 other financial report required by statute within the time
 25 allowed by law and, after written demand by the

1 commissioner, has failed to give an adequate explanation
 2 immediately.

3 (12) The board of directors or the holders of a majority
 4 of the shares entitled to vote request or consent to
 5 rehabilitation under this part."

6 **Section 51.** Section 33-2-1342, MCA, is amended to read:

7 "33-2-1342. Liquidation orders. (1) An order to
 8 liquidate the business of a domestic insurer ~~shall~~ must
 9 appoint the commissioner and ~~his~~ the commissioner's
 10 successors in office liquidator and shall direct the
 11 liquidator ~~forthwith~~ to take possession of the assets of the
 12 insurer and to administer them under the general supervision
 13 of the court. The liquidator shall be vested by operation of
 14 law with the title to all of the property, contracts, and
 15 rights of action and all of the books and records of the
 16 insurer ordered liquidated, wherever located, as of the
 17 entry of the final order of liquidation. The filing or
 18 recording of the order with the clerk of the district court
 19 and the clerk and recorder of the county in which its
 20 principal office or place of business is located or, in the
 21 case of real estate, with the clerk and recorder of the
 22 county where the property is located shall impart the same
 23 notice as a deed, bill of sale, or other evidence of title
 24 duly filed or recorded with that clerk and recorder would
 25 have imparted.

1 (2) Upon issuance of the order, the rights and
 2 liabilities of any such insurer and of its creditors,
 3 policyholders, shareholders, members, and all other persons
 4 interested in its estate shall become fixed as of the date
 5 of entry of the order of liquidation, except as provided in
 6 33-2-1343 and 33-2-1366.

7 (3) An order to liquidate the business of an alien
 8 insurer domiciled in this state shall must be in the same
 9 terms and have the same legal effect as an order to
 10 liquidate a domestic insurer, except that the assets and the
 11 business in the United States shall ~~be~~ are the only assets
 12 and business included ~~therein~~ in the order.

13 (4) At the time of petitioning for an order of
 14 liquidation or at any time thereafter after petitioning, the
 15 commissioner, after making appropriate findings of an
 16 insurer's insolvency, may petition the court for a judicial
 17 declaration of such insolvency. After providing such notice
 18 and hearing as it considers proper, the court may make the
 19 declaration.

20 (5) Any order issued under this section shall must
 21 require accounting to the court by the liquidator.
 22 Accountings shall must be at such intervals as the court
 23 specifies in its order.

24 (6) (a) Within 5 days after the initiation of an appeal
 25 of an order of liquidation that has not been stayed, the

1 commissioner shall present for the court's approval a plan
 2 for the continued performance of the defendant company's
 3 policy claims obligations, including the duty to defend
 4 insureds under liability insurance policies, during the
 5 pendency of an appeal. The plan must provide for the
 6 continued performance and payment of policy claims
 7 obligations in the normal course of events, notwithstanding
 8 the grounds alleged in support of the order of liquidation,
 9 including the ground of insolvency. In the event that the
 10 defendant company's financial condition will not, in the
 11 judgment of the commissioner, support the full performance
 12 of all policy claims obligations during the appeal pendency
 13 period, the plan may prefer the claims of certain
 14 policyholders and claimants over creditors and interested
 15 parties, as well as other policyholders and claimants, as
 16 the commissioner finds to be fair and equitable, considering
 17 the relative circumstances of the policyholders and
 18 claimants. The court shall examine the plan submitted by the
 19 commissioner, and if it finds the plan to be in the best
 20 interests of the parties, the court shall approve the plan.
 21 An action does not lie against the commissioner or any of
 22 the commissioner's deputies, agents, clerks, assistants, or
 23 attorneys by any party based on preference in an appeal
 24 pendency plan approved by the court.

25 (b) The appeal pendency plan may not supersede or

1 affect the obligations of any insurance guaranty
2 association.

3 (c) A plan must provide for equitable adjustments to be
4 made by the liquidator to any distributions of assets to
5 guaranty associations, in the event that the liquidator pays
6 claims from assets of the estate, which would otherwise be
7 the obligations of any particular guaranty association but
8 for the appeal of the order of liquidation, so that all
9 guaranty associations equally benefit on a pro rata basis
10 from the assets of the estate. If an order of liquidation is
11 set aside upon any appeal, the company may not be released
12 from delinquency proceedings unless all funds advanced by
13 any guaranty association, including reasonable
14 administrative expenses that relate to obligations of the
15 company, have been repaid in full, together with interest at
16 the judgment rate of interest, or unless an arrangement for
17 repayment has been made with the consent of all applicable
18 guaranty associations."

19 **Section 52.** Section 33-2-1346, MCA, is amended to read:

20 "33-2-1346. Notice to creditors and others. (1) Unless
21 the court otherwise directs, the liquidator shall give or
22 cause to be given notice of the liquidation order as soon as
23 possible:

24 (a) by first-class mail and either by telegram or
25 telephone to the insurance commissioner of each jurisdiction

1 in which the insurer is doing business;

2 (b) by first-class mail to any guaranty association or
3 foreign guaranty association which is or may become
4 obligated as a result of the liquidation;

5 (c) by first-class mail to all insurance producers of
6 the insurer;

7 (d) by first-class mail to all persons known or
8 reasonably expected to have claims against the insurer,
9 including all policyholders, at their last-known address as
10 indicated by the records of the insurer; and

11 (e) by publication in a newspaper of general
12 circulation in the county in which the insurer has its
13 principal place of business and in such other locations as
14 that the liquidator considers appropriate.

15 (2) Notice to potential claimants under subsection (1)
16 ~~shall-require~~ requires claimants to file with the liquidator
17 their claims together with proper proofs thereof of the
18 claims under 33-2-1365, on or before a date the liquidator
19 ~~shall-specify~~ specifies in the notice. The liquidator need
20 not require persons claiming cash surrender values or other
21 investment values in life insurance and annuities to file a
22 claim. All claimants have a duty to keep the liquidator
23 informed of any changes of address.

24 (3) (a) Notice under subsection (1) to insurance
25 producers of the insurer and to potential claimants who are

1 policyholders must include, when applicable, notice that
 2 coverage by state guaranty associations may be available for
 3 all or part of policy benefits in accordance with applicable
 4 state guaranty laws.

5 (b) The liquidator shall promptly provide to the
 6 guaranty associations information concerning the identities
 7 and addresses of the policyholders and their policy
 8 coverages as is within the liquidator's possession or
 9 control and shall otherwise cooperate with guaranty
 10 associations to assist them in providing to the
 11 policyholders timely notice of the guaranty associations'
 12 coverage of policy benefits, including coverage of claims
 13 and continuation or termination of coverages.

14 ~~†3†~~(4) If notice is given in accordance with this
 15 section, the distribution of assets of the insurer under
 16 this part ~~shall--be~~ is conclusive with respect to all
 17 claimants, whether or not they received notice."

18 **Section 53.** Section 33-10-105, MCA, is amended to read:

19 "33-10-105. **General powers and duties.** (1) The
 20 association ~~shall~~:

21 (a) (i) is be obligated to the extent of the covered
 22 claims existing prior to the determination of insolvency and
 23 arising within 30 days after the determination of insolvency
 24 or before the policy expiration date if less than 30 days
 25 after the determination or before the insured replaces the

1 policy or causes its cancellation if he the insured does so
 2 within 30 days of the determination;

3 ~~(ii) but--such--obligation--shall--include~~ is obligated
 4 under subsection (1)(a)(i) only for that amount of each
 5 covered claim ~~which that~~ is in excess of \$100 and is less
 6 than \$300,000, except that:

7 (A) the association shall pay an amount not exceeding
 8 \$10,000 per policy for a covered claim for the return of
 9 unearned premium; and

10 (B) the association shall pay the full amount of any
 11 covered claim arising out of a workers' compensation
 12 policy; and

13 ~~(iii) In--no--event--shall--the--association--be~~ is not
 14 obligated to a policyholder or claimant in an amount in
 15 excess of the obligation of the insolvent insurer under the
 16 policy from which the claim arises;

17 (b) ~~be--deemed~~ is considered the insurer to the extent
 18 of its obligation on the covered claims and to ~~such that~~
 19 extent ~~shall--have~~ has all rights, duties, and obligations of
 20 the insolvent insurer as if the insurer had not become
 21 insolvent;

22 (c) shall investigate claims brought against the
 23 association and adjust, compromise, settle, and pay covered
 24 claims to the extent of the association's obligation and
 25 deny all other claims and may review settlements, releases,

1 and judgments to which the insolvent insurer or its insureds
2 were parties to determine the extent to which such the
3 settlements, releases, and judgments may be properly
4 contested;

5 (d) shall notify such persons as the commissioner
6 directs under 33-10-109(2)(a);

7 (e) shall handle claims through its employees or
8 through one or more insurers or other persons designated as
9 servicing facilities. Designation of a servicing facility is
10 subject to the approval of the commissioner, but such the
11 designation may be declined by a member insurer.

12 (f) shall reimburse each servicing facility for
13 obligations of the association paid by the facility and for
14 expenses incurred by the facility while handling claims on
15 behalf of the association and shall pay the other expenses
16 of the association authorized by this part.

17 (2) The association may:

18 (a) employ or retain such persons as are necessary to
19 handle claims and perform other duties of the association;

20 (b) borrow funds necessary to effect the purposes of
21 this part in accord with the plan of operation;

22 (c) sue or be sued;

23 (d) negotiate and become a party to such contracts as
24 are necessary to carry out the purpose of this part;

25 (e) perform such other acts as are necessary or proper

1 to effectuate the purpose of this part;

2 (f) refund to the member insurers in proportion to the
3 contribution of each member insurer to the association that
4 amount by which the assets of the association exceed the
5 liabilities, if, at the end of any calendar year, the board
6 of directors finds that the assets of the association exceed
7 the liabilities of the association as estimated by the board
8 of directors for the coming year."

9 **Section 54.** Section 33-10-111, MCA, is amended to read:

10 "33-10-111. Stay of proceedings -- reopening of default
11 judgments. (1) All proceedings in which the insolvent
12 insurer is a party or is obligated to defend a party in any
13 court in this state ~~shall~~ must be stayed for ~~60-days~~ 6
14 months from the date the insolvency is determined or an
15 ancillary proceeding is instituted in the state, whichever
16 is later, or must be stayed for any additional time as may
17 be determined by the court in order to permit proper defense
18 by the association of all pending causes of action.

19 (2) As to any covered claims arising from a judgment
20 under any decision, verdict, or finding based on the default
21 of the insolvent insurer or its failure to defend an
22 insured, the association either on its own behalf or on
23 behalf of such the insured may apply to have such the
24 judgment, order, decision, verdict, or finding set aside by
25 the same court or administrator that made such the judgment,

1 order, decision, verdict, or finding and ~~shall~~ must be
2 permitted to defend against ~~such~~ the claim on the merits."

3 **Section 55.** Section 33-10-114, MCA, is amended to read:

4 "33-10-114. Claims -- effect as to insured and
5 receiver. (1) Any person recovering under this part ~~shall be~~
6 deemed is considered to have assigned his the person's
7 rights under the policy to the association to the extent of
8 his the person's recovery from the association. Every
9 insured or claimant seeking the protection of this part
10 shall cooperate with the association to the same extent as
11 such that the person would have been required to cooperate
12 with the insolvent insurer. The association ~~shall~~ does not
13 have no a cause of action against the insured of the
14 insolvent insurer for any sums it has paid out except such
15 causes of action as that the insolvent insurer would have
16 had if such the sums had been paid by the insolvent insurer.
17 In the case of an insolvent insurer operating on a plan with
18 assessment liability, payments of claims of the association
19 ~~shall may~~ not operate to reduce the liability of ~~insured's~~
20 insureds to the receiver, liquidator, or statutory successor
21 for unpaid assessments.

22 (2) The association has the right to recover from the
23 following persons the amount of any "covered claim" paid on
24 behalf of the person pursuant to this part:

25 (a) any insured whose net worth, on December 31 of the

1 year preceding the date the insurer becomes an insolvent
2 insurer, exceeds \$50 million and whose liability obligations
3 to other persons are satisfied in whole or in part by
4 payments made under this part; and

5 (b) any person who is an affiliate of the insolvent
6 insurer and whose liability obligations to other persons are
7 satisfied in whole or in part by payments made under this
8 part.

9 ~~(2)(3)~~ (3) The receiver, liquidator, or statutory successor
10 of an insolvent insurer ~~shall be~~ is bound by settlements of
11 covered claims by the association or a similar organization
12 in another state. The court having jurisdiction shall grant
13 such the claims priority equal to that which the claimant
14 would have been entitled in the absence of this part against
15 the assets of the insolvent insurer. The expenses of the
16 association or similar organization in handling claims ~~shall~~
17 must be accorded the same priority as the liquidator's
18 expenses.

19 ~~(3)(4)~~ (4) The association shall periodically file with the
20 receiver or liquidator of the insolvent insurer statements
21 of the covered claims paid by the association and estimates
22 of anticipated claims on the association which shall
23 preserve the rights of the association against the assets of
24 the insolvent insurer."

25 **Section 56.** Section 33-10-201, MCA, is amended to read:

1 "33-10-201. Short title, purpose, scope, and
2 construction. (1) This part shall be known and may be cited
3 as the "Montana Life and Health Insurance Guaranty
4 Association Act".

5 (2) The purpose of this part is to protect
6 policyowners, insureds, beneficiaries, annuitants, payees,
7 and assignees of life insurance policies, health insurance
8 policies, annuity contracts, and supplemental contracts,
9 subject to certain limitations, against failure in the
10 performance of contractual obligations due to the impairment
11 of the insurer issuing such the policies or contracts.

12 (3) To provide this protection:

13 (a) an association of insurers is created to enable the
14 guaranty of payment of benefits and of continuation of
15 coverages;

16 (b) members of the association are subject to
17 assessment to provide funds to carry out the purpose of this
18 part; and

19 (c) the association is authorized to assist the
20 commissioner, in the prescribed manner, in the detection and
21 prevention of insurer impairments.

22 (4) This part ~~shall apply~~ applies to direct ~~life~~
23 ~~insurance policies, health insurance policies, annuity~~
24 ~~contracts, and contracts supplemental to life and health~~
25 ~~insurance policies and annuity contracts issued by persons~~

1 ~~authorized to transact insurance in this state at any time,~~
2 ~~nongroup life, health, annuity, and supplemental policies or~~
3 ~~contracts, to certificates under direct group policies and~~
4 ~~contracts, and to unallocated annuity contracts issued by~~
5 ~~member insurers, except as limited by this part. Annuity~~
6 ~~contracts and certificates under group annuity contracts~~
7 ~~include but are not limited to guaranteed investment~~
8 ~~contracts, deposit administration contracts, unallocated~~
9 ~~funding agreements, allocated funding agreements, structured~~
10 ~~settlement agreements, lottery contracts, and any immediate~~
11 ~~or deferred annuity contracts.~~

12 (5) This part ~~shall provide~~ provides coverage for
13 covered policies:

14 (a) to persons who are owners of or certificate holders
15 under ~~such~~ covered policies, and who:

16 (i) are residents; or

17 (ii) are not residents, but only under all of the
18 following conditions:

19 (A) the insurers that issued the policies are domiciled
20 in this state;

21 (B) the insurers have not held a license or certificate
22 of authority in the state in which the persons reside;

23 (C) the state has an association similar to the
24 association created under this part; and

25 (D) the persons are not eligible for coverage by that

1 association; and

2 (b) to persons who, regardless of where they reside,
3 except for nonresident certificate holders under group
4 policies or contracts, are the beneficiaries, assignees, or
5 payees of the persons covered under subsection (5)(a).

6 (6) This part ~~shall~~ may not apply to:

7 (a) any such policies or contracts or any part of such
8 the policies or contracts under which the risk is borne by
9 the policyholder;

10 (b) any such policy or contract or part thereof of the
11 policy or contract assumed by the impaired insurer under a
12 contract of reinsurance, other than reinsurance for which
13 assumption certificates have been issued;

14 (c) any portion of a policy or contract to the extent
15 that the rate of interest on which it is based:

16 (i) averaged over the period of 4 years prior to the
17 date on which the association becomes obligated with respect
18 to the policy or contract, exceeds a rate of interest
19 determined by subtracting 2 percentage points from Moody's
20 corporate bond yield average averaged for that same 4-year
21 period or for the lesser period if the policy or contract
22 was issued less than 4 years before the association became
23 obligated; and

24 (ii) on and after the date on which the association
25 becomes obligated with respect to the policy or contract,

1 exceeds the rate of interest determined by subtracting 3
2 percentage points from Moody's corporate bond yield average
3 as is most recently available;

4 (d) any plan or program of an employer, association, or
5 similar entity to provide life, health, or annuity benefits
6 to its employees or members to the extent that the plan or
7 program is self-funded or uninsured, including but not
8 limited to benefits payable by an employer, association, or
9 similar entity under:

10 (i) a multiple employer welfare arrangement, as defined
11 in section 514 of the Employee Retirement Income Security
12 Act of 1974, as amended;

13 (ii) a minimum premium group insurance plan;

14 (iii) a stop-loss group insurance plan; or

15 (iv) an administrative services only contract;

16 (e) any portion of a policy or contract to the extent
17 that it provides dividends or experience rating credits or
18 provides that any fees or allowances be paid to any person,
19 including the policy or contract holder, in connection with
20 the service to or administration of the policy or contract;

21 (f) any policy or contract issued in this state by a
22 member insurer at a time when it was not licensed or did not
23 have a certificate of authority to issue the policy or
24 contract in this state;

25 (g) any unallocated annuity contract issued to an

1 employee benefit plan that is protected under the federal
 2 pension benefit guaranty corporation; and

3 (h) any portion of any unallocated annuity contract
 4 that is not issued to or in connection with a specific
 5 employee, union, or association of natural persons benefit
 6 plan or a government lottery.

7 (7) This part shall must be liberally construed to
 8 effect the purpose under subsections (2) and (3), which
 9 shall constitute an aid and guide to interpretation.

10 (8) ~~Nothing--in--this~~ This part shall may not be
 11 construed to reduce the liability for unpaid assessments of
 12 the insureds of an impaired insurer operating under a plan
 13 with assessment liability."

14 **Section 57.** Section 33-10-202, MCA, is amended to read:

15 "33-10-202. Definitions. As used in this part, the
 16 following definitions apply:

17 (1) "Account" means any of the three accounts created
 18 under 33-10-203.

19 (2) "Association" means the Montana life and health
 20 insurance guaranty association created under 33-10-203.

21 (3) "Contractual obligation" means any obligation under
 22 covered policies.

23 (4) "Covered policy" means any policy or contract
 24 within the scope of this part under subsections (4) through
 25 (6) of 33-10-201.

1 (5) "Impaired insurer" means:

2 (a) an insurer which after July 1, 1974, becomes
 3 insolvent and is placed under a final order of liquidation,
 4 rehabilitation, or supervision by a court of competent
 5 jurisdiction; or

6 (b) an insurer ~~deemed~~ considered by the commissioner
 7 after July 1, 1974, to be unable or potentially unable to
 8 fulfill its contractual obligations.

9 (6) "Member insurer" means any person authorized to
 10 transact in this state any kind of insurance to which this
 11 part applies under subsections (4) and (6) of 33-10-201.

12 (7) "Person" means any individual, corporation,
 13 partnership, association, or voluntary organization.

14 (8) "Premiums" means direct gross insurance premiums
 15 and annuity considerations written on covered policies, less
 16 return premiums and considerations thereon on premiums and
 17 dividends paid or credited to policyholders on such the
 18 direct business. "Premiums" do not include premiums and
 19 considerations on contracts between insurers and reinsurers.
 20 As used in 33-10-227, "premiums" are those for the calendar
 21 year preceding the determination of impairment.

22 (9) "Resident" means any person who resides in this
 23 state at the time the impairment is determined and to whom
 24 contractual obligations are owed.

25 (10) "Unallocated annuity contract" means an annuity

1 contract or group annuity certificate that is not issued to
 2 and owned by an individual, except to the extent of annuity
 3 benefits guaranteed to an individual by the insurer under
 4 the contract or certificate."

5 **Section 58.** Section 33-10-203, MCA, is amended to read:

6 "33-10-203. Creation of the association -- accounts --
 7 supervision by commissioner. (1) There is created a
 8 nonprofit legal entity to be known as the Montana life and
 9 health insurance guaranty association. All member insurers
 10 shall be and remain members of the association as a
 11 condition of their authority to transact insurance in this
 12 state. The association shall perform its functions under the
 13 plan of operation established and approved under 33-10-216
 14 and shall exercise its powers through a board of directors
 15 established under 33-10-204.

16 (2) For purposes of administration and assessment, the
 17 association shall maintain ~~three~~ two accounts:

18 (a) the health insurance account; and

19 (b) the life insurance and annuity account that
 20 includes the following subaccounts ~~and~~

21 ~~(c) --the annuity account:~~

22 (i) the life insurance account;

23 (ii) the annuity account; and

24 (iii) the unallocated annuity account that must include
 25 unallocated annuity contracts qualified under section 403(b)

1 of the Internal Revenue Code.

2 (3) The association ~~shall come is~~ under the immediate
 3 supervision of the commissioner and ~~shall be is~~ subject to
 4 the applicable provisions of the insurance laws of this
 5 state. Meetings or records of the association may be opened
 6 to the public upon majority vote of the board of directors
 7 of the association."

8 **Section 59.** Section 33-10-210, MCA, is amended to read:

9 "33-10-210. Unfair trade practice -- notice to
 10 policyholders. (1) It ~~shall be is~~ a prohibited unfair trade
 11 practice for any person to make use in any manner of the
 12 protection afforded by this part in the sale of insurance.

13 (2) Within 180 days after October 1, 1993, the
 14 association shall prepare a summary document, complying with
 15 subsection (3) and describing the general purposes and
 16 current limitations of this part. The document must be
 17 submitted to the commissioner for approval. Sixty days after
 18 receiving approval, an insurer may not deliver a policy or
 19 contract described in 33-10-201(4) to a policy or contract
 20 holder unless the document is delivered to the policy or
 21 contract holder prior to or at the time of delivery of the
 22 policy or contract, unless subsection (4) applies. The
 23 document must be available upon request by a policyholder.
 24 The distribution, delivery, contents, or interpretation of
 25 this document does not mean that either the policy or the

1 contract or the holder of the policy or contract would be
 2 covered in the event of the impairment or insolvency of a
 3 member insurer. The description document must be revised by
 4 the association as amendments to this part may require.
 5 Failure to receive this document does not give the
 6 policyholder, contract holder, certificate holder, or
 7 insured any greater rights than those stated in this part.

8 (3) The document prepared under subsection (2) must
 9 contain a clear and conspicuous disclaimer on its face. The
 10 commissioner shall promulgate a rule establishing the form
 11 and content of the disclaimer. The disclaimer must:

12 (a) state the name and address of the life and health
 13 insurance guaranty association and insurance department;

14 (b) prominently warn the policy or contract holder that
 15 the life and health insurance guaranty association may not
 16 cover the policy or, if coverage is available, it will be
 17 subject to substantial limitations and exclusions and
 18 conditioned on continued residence in the state;

19 (c) state that the insurer and its insurance producers
 20 are prohibited by law from using the existence of the life
 21 and health insurance guaranty association for the purpose of
 22 sales, solicitation, or inducement to purchase any form of
 23 insurance;

24 (d) emphasize that the policy or contract holder should
 25 not rely on coverage under the life and health insurance

1 guaranty association when selecting an insurer;

2 (e) provide other information as directed by the
 3 commissioner.

4 (4) An insurer or insurance producer may not deliver a
 5 policy or contract described in 33-10-201(4) and excluded
 6 under 33-10-201(6)(a) from coverage under this part unless
 7 the insurer or insurance producer, prior to or at the time
 8 of delivery, gives the policy or contract holder a separate
 9 written notice that clearly and conspicuously discloses that
 10 the policy or contract is not covered by the life and health
 11 insurance guaranty association.

12 (5) The commissioner shall by rule specify the form and
 13 content of the notice required under subsection (4)."

14 **Section 60.** Section 33-10-217, MCA, is amended to read:

15 **"33-10-217. Prevention of insolvencies or impairments.**
 16 **(1) To aid in the detection and prevention of insurer**
 17 **insolvencies or impairments ~~the board of directors is given~~**
 18 **~~the following powers and duties,~~ the commissioner shall:**

19 **(a) (i) notify the commissioners of all the other**
 20 **states, the territories of the United States, and the**
 21 **District of Columbia when the commissioner takes any of the**
 22 **following actions against a member insurer:**

23 **(A) the revocation of a license;**

24 **(B) the suspension of a license; or**

25 **(C) the issuance of any formal order that the company**

1 restrict its premium writing, obtain additional
 2 contributions to surplus, withdraw from the state, reinsure
 3 all or any part of its business, or increase capital,
 4 surplus, or any other account for the security of
 5 policyholders or creditors;

6 (ii) mail the notice to all commissioners within 30 days
 7 following the action taken or the date on which the action
 8 occurs;

9 (b) report to the board of directors when the
 10 commissioner has taken any of the actions set forth in
 11 subsection (1)(a) or has received a report from any other
 12 commissioner indicating that an action has been taken in
 13 another state. The report to the board of directors must
 14 contain all significant details of the action taken or the
 15 report received from another commissioner.

16 (c) report to the board of directors when the
 17 commissioner has reasonable cause to believe from any
 18 examination, whether completed or in process, of any member
 19 company that the company may be an impaired or insolvent
 20 insurer; and

21 (d) furnish to the board of directors the national
 22 association of insurance commissioners' insurance regulatory
 23 information system (IRIS) ratios and listings of companies
 24 not included in the ratios developed by the national
 25 association of insurance commissioners. The board of

1 directors may use the information contained in the ratios
 2 and listings in carrying out its duties and responsibilities
 3 under this section. The report and the information contained
 4 in the ratios and listings must be kept confidential by the
 5 board of directors until the time it is made public by the
 6 commissioner or other lawful authority.

7 (2) The commissioner may seek the advice and
 8 recommendations of the board of directors concerning any
 9 matter affecting the commissioner's duties and
 10 responsibilities regarding the financial condition of member
 11 insurers and companies seeking admission to transact
 12 insurance business in this state.

13 {1}(3) The board of directors shall, upon majority
 14 vote, notify the commissioner of any information indicating
 15 any member insurer may be unable or potentially unable to
 16 fulfill its contractual obligations.

17 {2}(4) The board of directors may, upon majority vote,
 18 request that the commissioner order an examination of any
 19 member insurer which the board in good faith believes may be
 20 unable or potentially unable to fulfill its contractual
 21 obligations.

22 {3}(5) The board of directors may, upon majority vote,
 23 make reports and recommendations to the commissioner upon
 24 any matter germane to the solvency, liquidation,
 25 rehabilitation, or supervision of any member insurer. Such

1 The reports and recommendations ~~shall~~ are not be considered
2 public documents.

3 ~~4~~(6) The board of directors may, upon majority vote,
4 make recommendations to the commissioner for the detection
5 and prevention of insurer impairments.

6 ~~5~~(7) The board of directors shall, at the conclusion
7 of any insurer impairment in which the association carried
8 out its duties under this part or exercised any of its
9 powers under this part, prepare a report on the history and
10 causes of ~~such~~ the impairment, based on the information
11 available to the association, and submit ~~such~~ the report to
12 the commissioner. The board of directors shall cooperate
13 with the boards of directors of guaranty associations in
14 other states in preparing a report on the history and causes
15 of insolvency of a particular insurer and may adopt by
16 reference any report prepared by other associations."

17 **Section 61.** Section 33-10-218, MCA, is amended to read:
18 "33-10-218. **Examination by commissioner -- cost.** (1)
19 The commissioner may conduct the examination requested by
20 the board pursuant to 33-10-217~~2~~(4). The examination may
21 be conducted as a national association of insurance
22 commissioners examination or may be conducted by ~~such~~
23 persons as whom the commissioner designates. The cost of
24 ~~such~~ the examination ~~shall~~ must be paid by the association,
25 and the examination report ~~shall~~ must be treated as are

1 other examination reports.

2 (2) ~~In-no-event-shall-such~~ The examination report may
3 not be released to the board of directors of the association
4 prior to its release to the public, but this ~~shall~~ may not
5 excuse the commissioner from ~~his~~ the obligation to comply
6 with subsection (4). The commissioner shall notify the board
7 of directors when the examination is completed.

8 (3) The request for an examination ~~shall~~ must be kept
9 on file by the commissioner, but it ~~shall~~ may not be open to
10 public inspection prior to the release of the examination
11 report to the public and ~~shall~~ must be released at that time
12 only if the examination discloses that the examined insurer
13 is unable or potentially unable to meet its contractual
14 obligations.

15 (4) The commissioner shall report to the board of
16 directors when ~~he~~ the commissioner has reasonable cause to
17 believe that any member insurer examined at the request of
18 the board of directors may be unable or potentially unable
19 to fulfill its contractual obligations."

20 **Section 62.** Section 33-10-224, MCA, is amended to read:

21 "33-10-224. **Extent of liability.** The benefits for which
22 the association may become liable may not exceed the lesser
23 of:

24 (1) the contractual obligations of the impaired insurer
25 for which the association insurer becomes or may would have

1 become liable ~~shall be as great as but no greater than the~~
 2 ~~contractual obligations of the impaired insurer would have~~
 3 ~~been in the absence of an impairment unless such obligations~~
 4 ~~are reduced as permitted by 33-10-220(3), but the~~
 5 ~~association shall have no liability if it were not an~~
 6 impaired or insolvent insurer; or

7 (2) (a) with respect to any portion of a covered policy
 8 to the extent that the death benefit coverage on any one
 9 life, regardless of the number of policies or contracts:

10 (i) exceeds an aggregate of \$300,000 in life insurance
 11 death benefits, but not more than \$100,000 in net cash
 12 surrender and net cash withdrawal values for life insurance;

13 (ii) \$100,000 in health insurance benefits, including
 14 any net cash surrender and net cash withdrawal values;

15 (iii) \$100,000 in the present value of annuity benefits,
 16 including net cash surrender and net cash withdrawal values;

17 (b) with respect to each individual participating in a
 18 governmental retirement plan established under section 401,
 19 403(b), or 457 of the Internal Revenue Code and covered by
 20 an unallocated annuity contract or with respect to the
 21 beneficiaries of each individual, if deceased, in the
 22 aggregate, \$100,000 in present value annuity benefits,
 23 including net cash surrender and net cash withdrawal values.

24 However, the association is not liable to expend more than
 25 \$300,000 in the aggregate with respect to any one individual

1 under subsection (2)(a) and this subsection.

2 (c) with respect to any one contract holder covered by
 3 any unallocated annuity contract not included in subsection
 4 (2)(b), \$5 million in benefits, irrespective of the number
 5 of contracts held by that contract holder."

6 **Section 63.** Section 33-11-103, MCA, is amended to read:

7 **"33-11-103. Chartering -- licensing -- plan of**
 8 **operation. (1) A risk retention group seeking to be**
 9 **chartered in this state must be chartered and licensed to**
 10 **write only as a casualty insurer insurance pursuant to the**
 11 **insurance laws of this state and, except as provided in this**
 12 **part, must shall comply with all of the laws, rules,**
 13 **regulations, and requirements applicable to such the**
 14 **insurers chartered and authorized in this state, including**
 15 **33-11-104, to the extent such that the requirements are not**
 16 **a limitation on laws, rules, regulations, or requirements of**
 17 **this state. Before it may offer insurance in any state, the**
 18 **risk retention group shall also submit for approval to the**
 19 **commissioner a plan of operation or a feasibility study and**
 20 **revisions of such the plan or study if the group intends to**
 21 **offer any additional lines of liability insurance.**

22 (2) At the time of filing its application for charter,
 23 the risk retention group shall provide to the commissioner
 24 in summary form the following information:

25 (a) the identity of the initial members of the risk

1 retention group;

2 (b) the identity of those individuals who organized the
3 risk retention group or who will provide administrative
4 services or otherwise influence or control the activities of
5 the risk retention group;

6 (c) the amount and nature of initial capitalization;

7 (d) the coverages to be afforded; and

8 (e) the states in which the risk retention group
9 intends to operate.

10 (3) Upon receipt of the information required under
11 subsection (2), the commissioner shall forward the
12 information to the national association of insurance
13 commissioners. Providing this information to the national
14 association of insurance commissioners does not satisfy the
15 requirements of 33-11-104 or any other section of this
16 chapter.

17 (4) All risk retention groups chartered in this state
18 shall file with the department and the national association
19 of insurance commissioners an annual statement in a form
20 prescribed by the national association of insurance
21 commissioners and in diskette form, if required by the
22 commissioner, and completed in accordance with its
23 instructions and the national association of insurance
24 commissioners' accounting practices and procedures manual."

25 **Section 64.** Section 33-11-104, MCA, is amended to read:

1 "33-11-104. Risk retention groups not chartered in this
2 state. A risk retention group chartered in a state other
3 than this state and seeking to do business as a risk
4 retention group in this state must observe and abide by the
5 laws of this state as follows:

6 (1) Before offering insurance in this state, a risk
7 retention group shall submit to the commissioner:

8 (a) a statement identifying the state or states where
9 the risk retention group is chartered and authorized as a
10 casualty insurer, date of chartering, its principal place of
11 business, and such other information, including information
12 on its membership, as the commissioner requires to verify
13 that the risk retention group is qualified under
14 33-11-102(7);

15 (b) a copy of its plan of operation or a feasibility
16 study and revisions of such the plan or study submitted to
17 its state of domicile. However, this provision relating to
18 the submission of a plan of operation or a feasibility study
19 does not apply with respect to any line or classification of
20 liability insurance that was defined in the federal Product
21 Liability Risk Retention Act of 1981 (15 U.S.C. 3901 through
22 3904) before it was amended by P.L. 99-563, approved on
23 October 27, 1986, and that was offered before that date by a
24 risk retention group that had been chartered and operated
25 for not less than 3 years before that date; and

1 (c) a statement of registration that designates the
2 commissioner as its agent for the purpose of receiving
3 service of legal documents or process.

4 (2) A risk retention group doing business in this state
5 shall submit to the commissioner:

6 (a) a copy of the group's financial statement submitted
7 to its state of domicile, which must be certified by an
8 independent public accountant and contain a statement of
9 opinion on loss and loss adjustment expense reserves made by
10 a member of the American academy of actuaries or by a
11 qualified loss reserve specialist under criteria established
12 by the national association of insurance commissioners;

13 (b) a copy of each examination of the risk retention
14 group as certified by the insurance regulatory official of
15 the state in which the examination was conducted or public
16 official conducting the examination;

17 (c) upon request by the commissioner, a copy of any
18 audit performed with respect to the risk retention group;
19 and

20 (d) such information as may be required to verify the
21 group's continuing qualification as a risk retention group
22 under 33-11-102(7).

23 (3) (a) ~~All-premiums--paid--for--coverage--within--this~~
24 ~~state--to~~ Each risk retention groups-are-subject-to-taxation
25 at-the-same-rate-and-to-the-same group is liable for the

1 payment of premium taxes and taxes on premiums of direct
2 business for risks resident or located within this state and
3 shall report to the commissioner the net premiums written
4 for risks resident or located within this state. The risk
5 retention group is subject to taxation and any applicable
6 interest, fines, and penalties for nonpayment that apply to
7 foreign admitted insurers.

8 (b) To the extent that an insurance producer is used,
9 he the insurance producer shall report and-pay-the-taxes-for
10 the--premiums--for-risks-that-he-has to the commissioner the
11 premiums of direct business for risks resident or located
12 within this state that the licensees have placed with or on
13 behalf of a risk retention group not chartered in this
14 state.

15 (c) To the extent that an insurance producer is ~~not~~
16 ~~used or-fails-to-pay-the--tax,--each--risk--retention--group~~
17 ~~shall-pay--the--tax--for--risks--insured--within--the--state.~~
18 ~~Further, each-risk-retention-group-shall-report-all-premiums~~
19 ~~paid-to-it-for-risks-insured-within-the-state, the insurance~~
20 producer shall keep a complete and separate record of all
21 policies procured from each risk retention group. The record
22 is open to examination by the commissioner, as provided in
23 33-1-403. The records must, for each policy and each kind of
24 insurance provided under the policy, include the limit of
25 liability, the time period covered, the effective date, the

1 name of the risk retention group that issued the policy, the
 2 gross premium charged, and the amount of return premiums, if
 3 any.

4 (4) Each risk retention group, its insurance producers,
 5 and its representatives shall comply with Title 33, chapter
 6 18, part 2.

7 (5) Each risk retention group shall comply with the
 8 provisions of Title 33, chapter 18, part 2, regarding
 9 deceptive, false, or fraudulent acts or practices. However,
 10 if the commissioner seeks an injunction regarding such the
 11 risk retention group's conduct, the injunction must be
 12 obtained from a court of competent jurisdiction.

13 (6) Each risk retention group shall submit to an
 14 examination by the commissioner to determine its financial
 15 condition if the insurance regulatory official of the
 16 jurisdiction where the group is chartered has not initiated
 17 an examination or does not initiate an examination within 60
 18 days after a request by the commissioner. The examination
 19 must be coordinated to avoid unjustified repetition and be
 20 conducted in an expeditious manner in accordance with the
 21 national association of insurance commissioners examiners
 22 handbook.

23 (7) Each policy issued by a risk retention group must
 24 contain, in 10-point type on the front page and the
 25 declaration page, the following notice:

1 "NOTICE

2 This policy is issued by your risk retention group. Your
 3 risk retention group may not be subject to all of the
 4 insurance laws and regulations of your state. State
 5 insurance insolvency guaranty funds are not available for
 6 your risk retention group."

7 (8) The following acts by a risk retention group are
 8 prohibited:

9 (a) the solicitation or sale of insurance by a risk
 10 retention group to any person who is not eligible for
 11 membership in the group; and

12 (b) the solicitation or sale of insurance by or
 13 operation of a risk retention group that is in a hazardous
 14 financial condition or is financially impaired.

15 (9) A risk retention group is not allowed to do
 16 business in this state if an insurer is directly or
 17 indirectly a member or owner of the risk retention group,
 18 other than in the case of a risk retention group all of
 19 whose members are insurers.

20 (10) A risk retention group may not offer insurance
 21 policy coverage declared unlawful by the Montana supreme
 22 court.

23 (11) A risk retention group not chartered in this state
 24 and doing business in this state must comply with a lawful
 25 order issued in a voluntary dissolution proceeding or in a

1 delinquency proceeding commenced by the insurance regulatory
2 official of any state if there has been a finding of
3 financial impairment after an examination under subsection
4 (6)."

5 **Section 65.** Section 33-11-105, MCA, is amended to read:

6 "33-11-105. **Compulsory associations.** (1) A risk
7 retention group may not join or contribute financially to
8 any insurance insolvency guaranty fund or similar mechanism
9 in this state. In addition, a risk retention group or its
10 insureds may not receive any benefit from any such guaranty
11 fund for claims arising out of the operations of the risk
12 retention group.

13 (2) A risk retention group shall participate in this
14 state's joint underwriting associations, mandatory liability
15 pools, and similar mechanisms ~~as provided by Title 33,~~
16 ~~chapter 8 (now terminated).~~

17 (3) When a purchasing group obtains insurance covering
18 its members' risks from an insurer not authorized in this
19 state or from a risk retention group, the risks, wherever
20 resident or located, may not be covered by any insurance
21 guaranty fund or similar mechanism in this state.

22 (4) When a purchasing group obtains insurance covering
23 its members' risks from an authorized insurer, only risks
24 resident or located in this state may be covered by the
25 state guaranty fund, subject to Title 33, chapter 10, part

1 1."

2 **Section 66.** Section 33-11-108, MCA, is amended to read:

3 "33-11-108. **Notice and registration requirements of**
4 **purchasing groups.** (1) A purchasing group that intends to do
5 business in this state shall furnish notice to the
6 commissioner that:

7 (a) identifies the state where the group is domiciled
8 and all other states in which the group intends to do
9 business;

10 (b) specifies the lines and classifications of
11 liability insurance that the purchasing group intends to
12 purchase;

13 (c) identifies the insurer from which the purchasing
14 group intends to purchase its insurance and the domicile of
15 the insurer;

16 (d) identifies the Montana-licensed insurance producer
17 or Montana-licensed surplus insurance lines producer through
18 which the purchasing group intends to place its business;

19 (e) identifies the principal place of business of the
20 purchasing group; and

21 (f) provides information required by the commissioner
22 to verify that the purchasing group is qualified under
23 33-11-102(6).

24 (2) The purchasing group shall register with and
25 designate the commissioner as its agent solely for the

1 purpose of receiving service of legal documents or process.
 2 However, such the requirements do not apply in the case of a
 3 purchasing group:

4 (a) (i) that was domiciled before April 2, 1986, in any
 5 state of the United States; and

6 (ii) that was domiciled on and after October 27, 1986,
 7 in any state of the United States;

8 (b) (i) that, before October 27, 1986, purchased
 9 insurance from an insurer licensed in any state; and

10 (ii) that, since October 27, 1986, purchased its
 11 insurance from an insurer licensed in any state;

12 (c) that was a purchasing group under the requirements
 13 of the federal Product Liability Risk Retention Act of 1981
 14 (15 U.S.C. 3901 through 3904) before it was amended by P.L.
 15 99-563, approved on October 27, 1986; and

16 (d) that does not purchase insurance that was not
 17 authorized for purposes of an exemption under the federal
 18 Product Liability Risk Retention Act of 1981, as in effect
 19 before October 27, 1986."

20 **Section 67.** Section 33-11-109, MCA, is amended to read:

21 "33-11-109. **Restriction on insurance purchased by**
 22 **purchasing groups.** (1) A purchasing group may not purchase
 23 insurance from a risk retention group that is not chartered
 24 in a state or from an insurer not authorized in the state
 25 where the purchasing group is located, unless the purchase

1 is effected through a licensed insurance producer ~~or broker~~
 2 acting pursuant to the surplus lines laws and regulations of
 3 that state.

4 (2) For purposes of subsection (1), the state where a
 5 purchasing group is located is each state where a member of
 6 the purchasing group has a risk resident, located, or to be
 7 performed.

8 (3) A purchasing group that obtains liability insurance
 9 from an insurer not admitted in this state or from a risk
 10 retention group shall inform each of the members of the
 11 group who have a risk resident or located in this state that
 12 the risk is not protected by an insurance insolvency
 13 guaranty fund in this state and that the insurer or risk
 14 retention group may not be subject to all insurance laws and
 15 regulations of this state.

16 (4) A purchasing group may not purchase insurance that
 17 provides for a deductible or self-insured retention
 18 applicable to the group as a whole. Coverage may provide for
 19 a deductible or self-insured retention applicable to
 20 individual members.

21 (5) Purchases of insurance by purchasing groups are
 22 subject to the same standards regarding aggregate limits
 23 that are applicable to all purchases of group insurance."

24 **Section 68.** Section 33-22-804, MCA, is amended to read:

25 "33-22-804. **Corporate powers of association --**

1 examination of books. (1) Any association formed for the
 2 purposes of this part may hold title to property, may enter
 3 into contracts, and may limit the liability of its members
 4 to their respective pro rata shares of the liability of such
 5 ~~the~~ association. ~~Any-such~~ An association may sue and be sued
 6 in its associate name and for ~~such that~~ purpose only ~~shall~~
 7 must be treated as a domestic corporation. Service of
 8 process against ~~such the~~ association made upon a managing
 9 insurance producer, any member ~~thereof~~ of the association,
 10 or any insurance producer authorized by appointment to
 11 receive service of process ~~shall-have~~ has the same force and
 12 effect as if ~~such~~ service had been made upon all members of
 13 the association.

14 (2) ~~Such~~ The association's books and records ~~shall~~ must
 15 also be subject to examination under the provisions of
 16 33-1-315, 33-1-316, ~~and~~ 33-1-401, 33-1-402, 33-1-411,
 17 through 33-1-413, and [section 32], either separately or
 18 concurrently with examination of any of its member
 19 insurers."

20 NEW SECTION. Section 69. Repealer. Sections 33-1-403,
 21 33-1-412, 33-2-1205, and 33-10-229, MCA, are repealed.

22 NEW SECTION. Section 70. Codification instruction. (1)
 23 [Sections 1 through 27] are intended to be codified as an
 24 integral part of Title 33, and the provisions of Title 33
 25 apply to [sections 1 through 27].

1 (2) [Sections 28 through 30] are intended to be
 2 codified as an integral part of Title 33, chapter 2, part
 3 12, and the provisions of Title 33, chapter 2, part 12,
 4 apply to [sections 28 through 30].

5 (3) [Sections 31 through 33] are intended to be
 6 codified as an integral part of Title 33, chapter 1, part 4,
 7 and the provisions of Title 33, chapter 1, part 4, apply to
 8 [sections 31 through 33].

9 (4) [Section 34] is intended to be codified as an
 10 integral part of Title 33, chapter 11, and the provisions of
 11 Title 33, chapter 11, apply to [section 34].

12 (5) [Sections 35 through 38] are intended to be
 13 codified as an integral part of Title 33, chapter 2, part
 14 13, and the provisions of Title 33, chapter 2, part 13,
 15 apply to [sections 35 through 38].

16 (6) [Section 48] is intended to be codified as an
 17 integral part of Title 33, chapter 2, part 11, and the
 18 provisions of Title 33, chapter 2, part 11, apply to
 19 [section 48].

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0430, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: An act generally revising the laws relating to insurers; providing regulation of business transacted with producer-controlled insurers; providing credit for reinsurance; regulating managing general agents; providing for interstate exchange of insurer regulatory information; regulating reinsurance intermediaries; revising the laws regulating insurance holding companies, life and health and casualty and property insurance guaranty associations, insurer financial examinations, risk retention groups, and insurer supervision, rehabilitation, and liquidation; providing for an annual accreditation fee.

ASSUMPTIONS:

1. Montana will meet standards established as an "accredited state" by the National Association of Insurance Commissioners.
2. The Commissioner of Insurance (State Auditor) will adopt rules implementing provisions of the accreditation act.
3. The Commissioner of Insurance will establish procedures necessary for accreditation.
4. 6.00 FTE will be added to the Insurance Program to implement and manage the accreditation process. These include 1.00 actuary, 1.00 grade 18 senior examiner, 1.00 grade 15 examiner, 1.00 grade 10 rates and forms specialist, 1.00 grade 12 paralegal, and 1.00 grade 15 data processing specialist. FY94 also includes start-up equipment and office furniture purchases.
5. 1,400 individual insurers, both domestic and foreign, will continue to file for certificates of authority and pay the accreditation fee. Fees will be set at a rate necessary to cover expenses. With 1,400 insurers, a fee of \$200 annually will be necessary. There will be a general fund loan the first year, repaid in FY95.

FISCAL IMPACT: State Auditor's Office-Insurance Program-Accreditation Unit:

<u>Expenditures:</u>	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
FTE	0.00	6.00	6.00	0.00	6.00	6.00
Personal Services	0	229,972	229,972	0	229,972	229,972
Operating Expenses	0	39,080	39,080	0	39,080	39,080
Equipment	<u>0</u>	<u>18,400</u>	<u>18,400</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total	0	287,452	287,452	0	269,052	269,052
<u>Funding:</u>						
State Special Revenue	0	287,452	287,452	0	269,052	269,052
<u>Revenue:</u>						
State Special (accreditation fees)	0	280,000	280,000	0	280,000	280,000
Net Impact on state special revenue			(7,452)			10,948

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Continued support of the accreditation program will require ongoing expenses for the State Auditor's Office. These ongoing expenses are expected to be paid for by insurers through annual accreditation fees.

David Lewis 3-12-93
 DAVID LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

Chris Christiaens 3/1/93
 CHRIS CHRISTIAENS, PRIMARY SPONSOR DATE

APPROVED BY COMM. ON
BUSINESS & INDUSTRY

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Sondz BILL NO. **430**

INTRODUCED BY *Christiane Waterman Wilson*

Fuchs BY REQUEST OF THE STATE AUDITOR
Carroll *Tom Nelson Harding*

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
LAWS RELATING TO INSURERS; PROVIDING REGULATION OF BUSINESS
TRANSACTIONED WITH PRODUCER-CONTROLLED INSURERS; PROVIDING
CREDIT FOR REINSURANCE; REGULATING MANAGING GENERAL AGENTS;
PROVIDING FOR INTERSTATE EXCHANGE OF INSURER REGULATORY
INFORMATION; REGULATING REINSURANCE INTERMEDIARIES; REVISING
THE LAWS REGULATING INSURANCE HOLDING COMPANIES, LIFE AND
HEALTH AND CASUALTY AND PROPERTY INSURANCE GUARANTY
ASSOCIATIONS, INSURER FINANCIAL EXAMINATIONS, RISK RETENTION
GROUPS, AND INSURER SUPERVISION, REHABILITATION, AND
LIQUIDATION; PROVIDING FOR AN ANNUAL ACCREDITATION FEE;
AMENDING SECTIONS 33-1-401, 33-2-501, 33-2-532, 33-2-533,
33-2-701, 33-2-708, 33-2-1111, 33-2-1114, 33-2-1115,
33-2-1201, 33-2-1331, 33-2-1342, 33-2-1346, 33-10-105,
33-10-111, 33-10-114, 33-10-201, 33-10-202, 33-10-203,
33-10-210, 33-10-217, 33-10-218, 33-10-224, 33-11-103,
33-11-104, 33-11-105, 33-11-108, 33-11-109, AND 33-22-804,
MCA; AND REPEALING SECTIONS 33-1-403, 33-1-412, 33-2-1205,
AND 33-10-229, MCA."

STATEMENT OF INTENT

THERE ARE NO CHANGES ON THIS BILL
AND WILL NOT BE REPRINTED. PLEASE
REFER TO INTRODUCED (WHITE) BILL
FOR COMPLETE TEXT.



-2- SB 430
SECOND READING

~~Senate~~ BILL NO. 430

INTRODUCED BY Christiane Waterman Wilson

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO INSURERS; PROVIDING REGULATION OF BUSINESS TRANSACTED WITH PRODUCER-CONTROLLED INSURERS; PROVIDING CREDIT FOR REINSURANCE; REGULATING MANAGING GENERAL AGENTS; PROVIDING FOR INTERSTATE EXCHANGE OF INSURER REGULATORY INFORMATION; REGULATING REINSURANCE INTERMEDIARIES; REVISING THE LAWS REGULATING INSURANCE HOLDING COMPANIES, LIFE AND HEALTH AND CASUALTY AND PROPERTY INSURANCE GUARANTY ASSOCIATIONS, INSURER FINANCIAL EXAMINATIONS, RISK RETENTION GROUPS, AND INSURER SUPERVISION, REHABILITATION, AND LIQUIDATION; PROVIDING FOR AN ANNUAL ACCREDITATION FEE; AMENDING SECTIONS 33-1-401, 33-2-501, 33-2-532, 33-2-533, 33-2-701, 33-2-708, 33-2-1111, 33-2-1114, 33-2-1115, 33-2-1201, 33-2-1331, 33-2-1342, 33-2-1346, 33-10-105, 33-10-111, 33-10-114, 33-10-201, 33-10-202, 33-10-203, 33-10-210, 33-10-217, 33-10-218, 33-10-224, 33-11-103, 33-11-104, 33-11-105, 33-11-108, 33-11-109, AND 33-22-804, MCA; AND REPEALING SECTIONS 33-1-403, 33-1-412, 33-2-1205, AND 33-10-229, MCA."

STATEMENT OF INTENT

A statement of intent is required for this bill because the department of insurance is granted authority to adopt rules for the administration and enforcement of laws regulating reinsurance intermediaries, managing general agents, holding company systems, insurer financial audits, and examinations and standards for companies considered to be in hazardous financial condition.

The legislature contemplates that rules adopted by the department should, at a minimum, endeavor to create an insurer regulatory structure in Montana that is reasonable and effective, that substantially resembles the model regulatory structure developed by the national association of insurance commissioners, that is eligible for national accreditation to enable insurers domiciled in Montana to do business in this state and other states with a maximum of financial stability and a minimum of regulatory difficulty, and that encourages the startup and expansion of insurance

THERE ARE NO CHANGES ON THIS BILL AND WILL NOT BE REPRINTED. PLEASE REFER TO INTRODUCED BILL OR SECOND READING FOR COMPLETE TEXT.



HOUSE STANDING COMMITTEE REPORT

April 7, 1993
Page 2 of 4

April 7, 1993
Page 1 of 4

Mr. Speaker: We, the committee on Business and Economic Development report that Senate Bill 430 (third reading copy - blue) be concurred in as amended.

Signed: 
Steve Benedict, Chair

And, that such amendments read:

Carried by: Rep. Tom Nelson

Rep. Steve Benedict

1. Title, line 20.
Following: "33-10-224,"
Insert: "33-10-227, 33-10-230,"

2. Page 5, line 8.
Following: "all"
Insert: "or part of"

3. Page 5, line 10.
Following: "based"
Insert: "solely"

4. Page 71, line 6.
Following: "commissioner."
Insert: "The statement must be completed in accordance with the annual statement instructions and the accounting practices and procedures manual of the national association of insurance commissioners. The statement must be accompanied by an actuarial opinion attesting to the adequacy of the insurer's reserves."

5. Page 76, lines 11 and 12.
Strike: "its" on line 11
Insert: "the"
Following: "duties" on line 12
Insert: "that are required to meet the minimum financial regulatory standards established by the national association of insurance commissioners"

6. Page 103, line 6.
Strike: "may"
Insert: "does"

7. Page 127, line 20.
Following: line 19
Insert: "Section 69. Section 33-10-227, MCA, is amended to read:
"33-10-227. Assessments -- abatement -- basis for ratesetting. (1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such the times and for such the amounts as the board finds necessary. The board shall collect the assessments after 30 days' written notice to the member insurers before payment is due.

(2) There ~~shall be~~ are two classes of assessments, as follows:

(a) Class A assessments ~~shall~~ must be made for the purpose of meeting administrative costs and other general expenses not related to a particular impaired insurer.

(b) Class B assessments ~~shall~~ must be made to the extent necessary to carry out the powers and duties of the association under 33-10-219 and 33-10-220(1) with regard to an impaired insurer.

(3) (a) The amount of any Class A assessment for each account ~~shall~~ must be determined by the board. The amount of any Class B assessment ~~shall~~ must be divided among the accounts in the proportion that the premiums received by the impaired insurer on the policies covered by each account bear to the premiums received by ~~such the~~ insurer on all covered policies.

(b) Class B assessments against member insurers for each account ~~shall~~ must be in the proportion that the premiums received on business in this state by each assessed member insurer on policies covered by each account bear to ~~such the~~ premiums received on business in this state by all assessed member insurers.

(c) Assessments for funds to meet the requirements of the association with respect to an impaired insurer ~~shall~~ may not be made until necessary to implement the purposes of this part. Classification of assessments under subsection (2) and computation of assessments under this subsection ~~shall~~ must be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(4) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. The total of all assessments upon a member insurer for each account ~~shall~~ may not in any one calendar year exceed 2% of ~~such the~~

insurer's premiums in this state on the policies covered by the account.

(5) In the event an assessment against a member insurer is abated or deferred, in whole or in part, because of the limitations set forth in subsection (4), the amount by which such the assessment is abated or deferred shall must be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. If the maximum assessment, together with the other assets of the association in either account, does not provide in any one year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall must be assessed as soon thereafter as permitted by this part.

(6) If a 1% assessment for any subaccount of the life insurance account and the annuity account in any 1 year does not provide an amount sufficient to carry out the responsibilities of the association, then pursuant to subsection (3)(b), the board shall assess all subaccounts of the life insurance account and the annuity account for the necessary additional amount, subject to the maximum assessment stated in subsection (4).

~~(6)~~ (7) The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that amount, including assets accruing from net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses if impractical.

~~(7)~~ (8) It ~~shall be~~ is proper for any member insurer, in determining its premium rates and policyowner dividends as to any kind of insurance within the scope of this part, to consider the amount reasonably necessary to meet its assessment obligations under this part.

~~(8)~~ (9) The association shall issue to each insurer paying an assessment under this part a certificate of contribution, in a form prescribed by the commissioner, for the amount ~~so~~ paid. All outstanding certificates shall must be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in such that form and for such the amount, if any, and period of time as that the commissioner may approve.

Section 70. Section 33-10-230, MCA, is amended to read:

"33-10-230. Tax -- writeoffs of certificates of contribution. (1) Unless a longer period has been allowed by the commissioner, a member insurer shall at its option have the right

to show a certificate of contribution for a Class B assessment only as an asset in the form approved by the commissioner pursuant to 33-10-227~~(6)~~ (9), at percentages of the original face amount approved by the commissioner, for calendar years as follows:

- (a) 100% for calendar year of issuance;
- (b) 80% for the first calendar year after year of issuance;
- (c) 60% for second calendar year after year of issuance;
- (d) 40% for third calendar year after year of issuance;
- (e) 20% for fourth calendar year after year of issuance.

(2) The insurer may offset the amount written off by it in the calendar year under subsection (1) above against its premium tax liability to this state accrued with respect to business transacted in ~~such~~ the calendar year.

(3) Any sums acquired by refund, pursuant to 33-10-227~~(6)~~ (7), from the association which have therefore been written off by contributing insurers and offset against premium taxes as provided in subsection (2) above and are not then needed for purposes of this part shall must be paid by the association to the commissioner and by him deposited by the commissioner with the state treasurer for credit to the general fund of this state."

Renumber: subsequent sections.

-END-

1 SENATE BILL NO. 430

2 INTRODUCED BY CHRISTIAENS, WATERMAN, WILSON, KOEHNKE,

3 COCCHIARELLA, TUSS, T. NELSON, HARDING

4 BY REQUEST OF THE STATE AUDITOR

5

6 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE

7 LAWS RELATING TO INSURERS; PROVIDING REGULATION OF BUSINESS

8 TRANSACTIONED WITH PRODUCER-CONTROLLED INSURERS; PROVIDING

9 CREDIT FOR REINSURANCE; REGULATING MANAGING GENERAL AGENTS;

10 PROVIDING FOR INTERSTATE EXCHANGE OF INSURER REGULATORY

11 INFORMATION; REGULATING REINSURANCE INTERMEDIARIES; REVISING

12 THE LAWS REGULATING INSURANCE HOLDING COMPANIES, LIFE AND

13 HEALTH AND CASUALTY AND PROPERTY INSURANCE GUARANTY

14 ASSOCIATIONS, INSURER FINANCIAL EXAMINATIONS, RISK RETENTION

15 GROUPS, AND INSURER SUPERVISION, REHABILITATION, AND

16 LIQUIDATION; PROVIDING FOR AN ANNUAL ACCREDITATION FEE;

17 AMENDING SECTIONS 33-1-401, 33-2-501, 33-2-532, 33-2-533,

18 33-2-701, 33-2-70B, 33-2-1111, 33-2-1114, 33-2-1115,

19 33-2-1201, 33-2-1331, 33-2-1342, 33-2-1346, 33-10-105,

20 33-10-111, 33-10-114, 33-10-201, 33-10-202, 33-10-203,

21 33-10-210, 33-10-217, 33-10-218, 33-10-224, 33-10-227,

22 33-10-230, 33-11-103, 33-11-104, 33-11-105, 33-11-108,

23 33-11-109, AND 33-22-804, MCA; AND REPEALING SECTIONS

24 33-1-403, 33-1-412, 33-2-1205, AND 33-10-229, MCA."

25

1 STATEMENT OF INTENT

2 A statement of intent is required for this bill because

3 the department of insurance is granted authority to adopt

4 rules for the administration and enforcement of laws

5 regulating reinsurance intermediaries, managing general

6 agents, holding company systems, insurer financial audits,

7 and examinations and standards for companies considered to

8 be in hazardous financial condition.

9 The legislature contemplates that rules adopted by the

10 department should, at a minimum, endeavor to create an

11 insurer regulatory structure in Montana that is reasonable

12 and effective, that substantially resembles the model

13 regulatory structure developed by the national association

14 of insurance commissioners, that is eligible for national

15 accreditation to enable insurers domiciled in Montana to do

16 business in this state and other states with a maximum of

17 financial stability and a minimum of regulatory difficulty,

18 and that encourages the startup and expansion of insurance

19 companies domiciled in Montana.

20

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

22 NEW SECTION. Section 1. Definitions. As used in

23 [sections 1 through 27]:

24 (1) "Accredited state" means a state in which the

25 department of insurance or regulatory agency has qualified



1 as meeting the minimum financial regulatory standards
2 promulgated and established from time to time by the
3 national association of insurance commissioners.

4 (2) "Actuary" means a person who is a member in good
5 standing of the American academy of actuaries.

6 (3) "Captive insurer" means:

7 (a) an insurer that is owned by another entity and
8 whose exclusive purpose is to insure risks of the parent
9 entity and its affiliates; or

10 (b) in the case of a group or association, an insurer
11 that is owned by the member insureds and whose exclusive
12 purpose is to insure risks to member insureds and their
13 affiliates.

14 (4) "Control" or "controlled" has the meaning defined
15 in 33-2-1101.

16 (5) "Controlled insurer" means an authorized insurer
17 that is controlled, directly or indirectly, by a producer.

18 (6) "Controlling person" means a person, firm,
19 association, or corporation that has the power to direct or
20 cause to be directed the management, control, or activities
21 of a reinsurance intermediary.

22 (7) "Controlling producer" means a producer who,
23 directly or indirectly, controls an insurer.

24 (8) (a) "Insurer" means any person, firm, association,
25 or corporation authorized, under Title 33, chapter 2, part

1, to transact insurance business in this state.

2 (b) The following are not insurers:

3 (i) risk retention groups as defined in:

4 (A) the Superfund Amendments and Reauthorization Act of
5 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986);

6 (B) the Liability Risk Retention Act of 1986, 15 U.S.C.
7 3901, et seq.; or

8 (C) Title 33, chapter 11, part 1;

9 (ii) residual market pools and joint underwriting
10 authorities or associations; or

11 (iii) captive insurers.

12 (9) "Licensed producer" means a producer or reinsurance
13 intermediary licensed pursuant to this title.

14 (10) (a) "Managing general agent" means a person who:

15 (i) manages all or part of the insurance business of an
16 insurer and acts as an agent for the insurer;

17 (ii) either separately or together with affiliates,
18 produces, directly or indirectly, and underwrites an amount
19 of gross written premiums equal to or more than 5% of the
20 policyholder surplus in any quarter or year; and

21 (iii) engages in one or more of the following activities
22 on the business produced:

23 (A) adjustment or payment of claims in excess of an
24 amount determined by the commissioner; or

25 (B) negotiation of reinsurance on behalf of the

1 insurer.

2 (b) Notwithstanding the provisions of subsection
3 (10)(a), the following persons are not considered managing
4 general agents:

5 (i) an employee of the insurer;

6 (ii) a manager of the United States branch of an alien
7 insurer;

8 (iii) an underwriting manager who, pursuant to contract,
9 manages all OR PART OF the insurance operations of the
10 insurer, is under common control with the insurer, is
11 subject to Title 33, chapter 2, part 11, and whose
12 compensation is not based SOLELY on the value of premiums
13 written; or

14 (iv) the attorney-in-fact authorized by and acting for
15 the subscribers of a reciprocal insurer or an interinsurance
16 exchange under powers of attorney.

17 (11) "NAIC" means the national association of insurance
18 commissioners.

19 (12) "Producer" means an insurance producer or
20 reinsurance intermediary authorized or licensed pursuant to
21 this title.

22 (13) (a) "Qualified United States financial institution"
23 means a financial institution that:

24 (i) is organized or licensed under the laws of the
25 United States or any state;

1 (ii) is regulated, supervised, and examined by federal
2 or state authorities having regulatory authority over banks
3 and trust companies and that either:

4 (A) is determined by the commissioner to meet the
5 standards of financial condition and standing considered
6 necessary and appropriate to regulate the quality of
7 financial institutions whose letters of credit are
8 acceptable to the commissioner; or

9 (B) is eligible to act as a fiduciary of a trust or has
10 been granted authority to operate with fiduciary powers.

11 (b) For purposes of this definition, the commissioner
12 may by rule adopt standards of financial condition and
13 standing that may be developed from time to time by the
14 securities valuation office of the NAIC.

15 (14) "Reinsurance intermediary" means a reinsurance
16 intermediary-broker or a reinsurance intermediary-manager.

17 (15) "Reinsurance intermediary-broker" means a person,
18 other than an officer or employee of the ceding insurer, who
19 solicits, negotiates, or places reinsurance cessions or
20 retrocessions on behalf of a ceding insurer without the
21 authority or power to bind reinsurance on behalf of the
22 insurer.

23 (16) (a) "Reinsurance intermediary-manager" means a
24 person who:

25 (i) has authority to bind or who manages all or part of

1 the assumed reinsurance business of a reinsurer, including
 2 the management of a separate division, department, or
 3 underwriting office; and

4 (ii) acts as an agent for the reinsurer, whether known
 5 as a reinsurance intermediary-manager, manager, or other
 6 similar term.

7 (b) The following persons are not considered
 8 reinsurance intermediary-managers with respect to the
 9 reinsurer:

10 (i) an employee of the reinsurer;

11 (ii) a manager of the United States branch of an alien
 12 reinsurer;

13 (iii) an underwriting manager who, pursuant to contract,
 14 manages all of the reinsurance operations of the reinsurer,
 15 is under common control with the reinsurer, is subject to
 16 Title 33, chapter 2, part 11, and whose compensation is not
 17 based on the volume of premiums written; or

18 (iv) a person who manages groups, associations, pools,
 19 or organizations of insurers that engage in joint
 20 underwriting or joint reinsurance and that are subject to
 21 examination by the insurance commissioner of the state in
 22 which the manager's principal business office is located.

23 (17) "Reinsurer" means a person, firm, association, or
 24 corporation licensed in this state under this title as an
 25 insurer with authority to assume reinsurance.

1 (18) "Underwrite" means the authority to accept or
 2 reject risk on behalf of the insurer.

3 NEW SECTION. Section 2. Filing requirements. (1) Each
 4 domestic, foreign, and alien insurer authorized to transact
 5 insurance in this state shall, on or before March 1 of each
 6 year, file with the NAIC a copy of its annual statement
 7 convention form, along with any additional filings for the
 8 preceding year as prescribed by the commissioner. The
 9 information filed with the NAIC must be in the same format
 10 and scope as that required by the commissioner and must
 11 include the signed jurat page and the actuarial
 12 certification. Amendments to the annual statement filing
 13 that are subsequently filed with the commissioner must also
 14 be filed with the NAIC.

15 (2) Foreign insurers domiciled in a state that has a
 16 law substantially similar to this section are considered to
 17 be in compliance with this section.

18 NEW SECTION. Section 3. Immunity of NAIC. In the
 19 absence of actual malice, members of the NAIC; their
 20 authorized committees, subcommittees, task forces,
 21 delegates, and employees; and all others charged with the
 22 responsibility of collecting and processing the information
 23 developed from the filing of the annual statement convention
 24 forms are considered to act under the authority of [sections
 25 2 through 4]. They are not subject to civil liability for

1 libel, slander, or any other cause of action arising from
2 their collection, review, analysis, or dissemination of
3 information collected from the filings required by [sections
4 1 through 38].

5 NEW SECTION. Section 4. Confidentiality. All financial
6 analysis ratios and examination synopses concerning
7 insurance companies that are submitted to the department by
8 the NAIC insurance regulatory information systems are
9 confidential and may not be disclosed by the department.

10 NEW SECTION. Section 5. Applicability of minimum
11 standards. (1) The provisions of [section 6] apply if, in
12 any calendar year, the aggregate amount of gross written
13 premiums on business placed with a controlled insurer by a
14 controlling producer is equal to or greater than 5% of the
15 admitted assets of the controlled insurer, as reported in
16 the controlled insurer's quarterly statement filed as of
17 September 30 of the prior year.

18 (2) Notwithstanding the provisions of subsection (1),
19 the provisions of [section 6] do not apply if:

20 (a) the controlling producer:

21 (i) does not receive compensation based upon the amount
22 of premiums written in connection with the insurance and
23 places insurance only with:

24 (A) the controlled insurer; or

25 (B) the controlled insurer and a member or members of

1 the controlled insurer's holding company system or the
2 controlled insurer's parent, affiliate, or subsidiary; and
3 (ii) accepts insurance placements only from
4 nonaffiliated subproducers and not directly from insureds;
5 and

6 (b) except for insurance business written through a
7 residual market facility, the controlled insurer accepts
8 insurance business only from a controlling producer, a
9 producer controlled by the controlled insurer, or a producer
10 that is a subsidiary of the controlled insurer.

11 NEW SECTION. Section 6. Minimum standards. Unless
12 there is a written contract between a controlling producer
13 and a controlled insurer specifying the responsibilities of
14 each party, the controlled insurer may not accept business
15 from the controlling producer and the controlling producer
16 may not place business with the controlled insurer. The
17 contract must be approved by the board of directors of the
18 controlled insurer and must contain the following minimum
19 provisions:

20 (1) The controlled insurer may terminate the contract
21 for cause, upon written notice to the controlling producer.
22 The controlled insurer shall suspend the authority of the
23 controlling producer to write business during the pendency
24 of any dispute regarding the cause for the termination.

25 (2) The controlling producer shall render to the

1 controlled insurer accounts detailing all material
2 transactions, including information necessary to support all
3 commissions, charges, and other fees received by or owing to
4 the controlling producer.

5 (3) On at least a monthly basis, the controlling
6 producer shall remit to the controlled insurer all funds due
7 under the terms of the contract. The due date must be fixed
8 so that premiums or installments of premiums collected must
9 be remitted no later than 90 days after the effective date
10 of any policy placed with the controlled insurer under the
11 contract.

12 (4) In accordance with the provisions of this title,
13 all funds collected for the controlled insurer's account
14 must be held by the controlling producer in a fiduciary
15 capacity, in one or more appropriately identified bank
16 accounts in banks that are members of the federal reserve
17 system. However, funds of a controlling producer not
18 required to be licensed in this state must be maintained in
19 compliance with the requirements of the controlling
20 producer's domiciliary jurisdiction.

21 (5) The controlling producer shall maintain separately
22 identifiable records of business written for the controlled
23 insurer.

24 (6) The contract may not be assigned in whole or in
25 part by the controlling producer.

1 (7) The controlled insurer shall provide the
2 controlling producer with its underwriting standards, rules,
3 procedures, manuals setting forth the rates to be charged,
4 and the conditions for the acceptance or rejection of risks.
5 The controlling producer shall adhere to the standards,
6 rules, procedures, rates, and conditions. The standards,
7 rules, procedures, rates, and conditions must be the same as
8 those applicable to comparable business placed with the
9 controlled insurer by a producer other than the controlling
10 producer.

11 (8) The rates of the commissions, charges, and other
12 fees may not be greater than those applicable to comparable
13 business placed with the controlled insurer by producers
14 other than controlling producers. For purposes of subsection
15 (7) and this subsection, examples of "comparable business"
16 include the same lines of insurance, same kinds of
17 insurance, same kinds of risks, similar policy limits, and
18 similar quality of business.

19 (9) If the contract provides that on insurance business
20 placed with the controlled insurer, the controlling producer
21 is to be compensated contingent upon the controlled
22 insurer's profits on that business, then the compensation
23 may not be determined and paid until at least 5 years after
24 the premiums on liability insurance are earned and at least
25 1 year after the premiums are earned on any other insurance.

1 The commissions may not be paid until the adequacy of the
2 controlled insurer's reserves on remaining claims has been
3 independently verified pursuant to [section 8].

4 (10) The controlled insurer may establish a different
5 limit for each line or subline of business. The controlled
6 insurer shall notify the controlling producer when the
7 applicable limit is approached and may not accept business
8 from the controlling producer if the limit is reached. The
9 controlling producer may not place business with the
10 controlled insurer if it has been notified by the controlled
11 insurer that the limit has been reached.

12 (11) The controlling producer may negotiate but may not
13 bind reinsurance on behalf of the controlled insurer on
14 business that the controlling producer places with the
15 controlled insurer, except that the controlling producer may
16 bind facultative reinsurance contracts pursuant to
17 obligatory facultative agreements if the contract with the
18 controlled insurer contains underwriting guidelines. For
19 reinsurance assumed and ceded, the guidelines must include a
20 list of reinsurers with which the automatic agreements are
21 in effect, the coverages and amounts or percentages that may
22 be reinsured, and commission schedules.

23 NEW SECTION. Section 7. Audit committee. Each
24 controlled insurer shall have an audit committee of the
25 board of directors composed of independent directors. The

1 audit committee shall annually review the adequacy of the
2 controlled insurer's loss reserves and meet with management,
3 the controlled insurer's independent certified public
4 accountants, and an independent casualty actuary or other
5 independent loss reserve specialist acceptable to the
6 commissioner.

7 NEW SECTION. Section 8. Annual report by independent
8 actuary. In addition to any other required loss reserve
9 certification, the controlled insurer shall, on April 1 of
10 each year, file with the commissioner an opinion of an
11 independent casualty actuary or other independent loss
12 reserve specialist acceptable to the commissioner. The
13 opinion must report the loss ratios for each line of
14 business written and must attest to the adequacy of loss
15 reserves established for losses incurred and outstanding as
16 of the yearend, including losses incurred but not reported,
17 on business placed by the producer.

18 NEW SECTION. Section 9. Annual report to commissioner.
19 The controlled insurer shall annually report to the
20 commissioner:

- 21 (1) the amount of commissions paid to the producer;
- 22 (2) the percentage the amount represents of the net
23 premiums written; and
- 24 (3) comparable amounts and the percentage paid to
25 noncontrolling producers for placements of the same kinds of

1 insurance.

2 **NEW SECTION. Section 10. Disclosure.** (1) Except as
3 provided in subsection (2), the producer, prior to the
4 effective date of the policy, shall deliver written notice
5 to the prospective insured, disclosing the relationship
6 between the producer and the controlled insurer.

7 (2) If the business is placed through a subproducer who
8 is not a controlling producer, the controlling producer
9 shall retain in the controlling producer's records a signed
10 commitment from the subproducer that the subproducer is
11 aware of the relationship between the controlled insurer and
12 the producer and that the subproducer has notified or will
13 notify the insured.

14 **NEW SECTION. Section 11. Penalties.** (1) (a) If the
15 commissioner believes that a controlling producer or any
16 other person has not materially complied with [sections 5
17 through 10] or any regulation or order promulgated under
18 [sections 5 through 10], the commissioner, after notice and
19 opportunity to be heard, may order the controlling producer
20 to cease placing business with the controlled insurer.

21 (b) If it is found that because of the material
22 noncompliance with [sections 5 through 10], the controlled
23 insurer or any policyholder of the controlled insurer has
24 suffered any loss or damage, the commissioner may maintain a
25 civil action or intervene in an action brought by or on

1 behalf of the controlled insurer or policyholder for
2 recovery of compensatory damages for the benefit of the
3 controlled insurer or policyholder or other appropriate
4 relief.

5 (2) The receiver may maintain a civil action for
6 recovery of damages or other appropriate sanctions for the
7 benefit of the insurer if:

8 (a) an order for liquidation or rehabilitation of the
9 controlled insurer has been entered pursuant to Title 33,
10 chapter 2, part 13;

11 (b) the receiver appointed under that order believes
12 that the controlling producer or any other person has not
13 materially complied with [sections 5 through 10] or any
14 regulation or order promulgated under [sections 5 through
15 10]; and

16 (c) the controlled insurer suffered any loss or damage
17 from the noncompliance.

18 (3) This section does not affect the right of the
19 commissioner to impose any other penalties provided for in
20 this title.

21 (4) This section may not be construed to alter or
22 affect the rights of policyholders, claimants, creditors, or
23 other third parties.

24 **NEW SECTION. Section 12. Compliance -- applicability.**

25 (1) Controlled insurers and controlling producers who are

1 not in compliance with [section 6] on October 1, 1993, have
 2 60 days to come into compliance and shall comply with
 3 [section 10] in all policies written or renewed on or after
 4 December 1, 1993.

5 (2) [Sections 5 through 10] apply to insurers that are
 6 domiciled in this state or domiciled in a state that is not
 7 an accredited state that has in effect a substantially
 8 similar law.

9 (3) The provisions of Title 33, chapter 2, part 11, to
 10 the extent they are not superseded by [sections 5 through
 11 10], continue to apply to all entities within holding
 12 company systems subject to [sections 5 through 10].

13 (4) An insurer may not continue to use the services of
 14 a managing general agent after December 1, 1993, unless the
 15 use complies with [sections 14 through 18].

16 (5) An insurer or reinsurer may not continue to use the
 17 services of a reinsurance intermediary after December 1,
 18 1993, unless the use complies with [sections 19 through 27].

19 NEW SECTION. Section 13. Rulemaking authority. (1) The
 20 commissioner may adopt rules implementing the provisions of
 21 [sections 1 through 38].

22 (2) The authority of the commissioner to adopt rules is
 23 specifically extended, without limitation, to establish
 24 standards for companies considered to be in hazardous
 25 financial condition, to require annual audited financial

1 reports, to regulate life and health reinsurance agreements,
 2 to provide for reports to the commissioner by holding
 3 company systems, and to establish accounting practices and
 4 procedures to be used by insurers in their annual
 5 statements.

6 NEW SECTION. Section 14. Licensure of managing general
 7 agent. (1) A person, firm, association, or corporation may
 8 not act in the capacity of a managing general agent with
 9 respect to risks located in this state for an insurer
 10 licensed in this state unless the person is a licensed
 11 producer in this state.

12 (2) A person, firm, association, or corporation may not
 13 act in the capacity of a managing general agent representing
 14 an insurer domiciled in this state with respect to risks
 15 located outside this state unless the person is licensed as
 16 a resident or nonresident producer in this state pursuant to
 17 the provisions of [sections 14 through 18].

18 (3) The commissioner may require a bond in an amount
 19 acceptable to the commissioner for the protection of the
 20 insurer.

21 (4) The commissioner may require the managing general
 22 agent to maintain a policy on errors and omissions.

23 NEW SECTION. Section 15. Managing general agent --
 24 required contract provisions. A person acting in the
 25 capacity of a managing general agent may not place business

1 with an insurer unless there is in force a written contract
 2 between the parties that sets forth the responsibilities of
 3 each party. Whenever both parties share responsibility for a
 4 particular function, the written contract must specify the
 5 division of responsibilities. The contract must provide at
 6 least the following:

7 (1) The insurer may terminate the contract for cause
 8 upon written notice to the managing general agent. The
 9 insurer may suspend the underwriting authority of the
 10 managing general agent during the pendency of any dispute
 11 regarding the cause for termination.

12 (2) The managing general agent shall render accounts to
 13 the insurer, detailing all transactions, and shall remit all
 14 funds due under the contract to the insurer on not less than
 15 a monthly basis.

16 (3) All funds collected for the account of an insurer
 17 must be held by the managing general agent in a fiduciary
 18 capacity in a bank that is a member of the federal reserve
 19 system. This account must be used for all payments on behalf
 20 of the insurer. The managing general agent may not retain
 21 more than 3 months' estimated claims payments and allocated
 22 loss adjustment expenses.

23 (4) Separate records of business written by the
 24 managing general agent must be maintained. The insurer has
 25 access to and may copy all accounts and records that are

1 related to its business, in a form usable by the insurer.
 2 The commissioner has access to all books, bank accounts, and
 3 records of the managing general agent in a form usable to
 4 the commissioner. The records must be retained pursuant to
 5 33-3-401.

6 (5) The contract may not be assigned in whole or in
 7 part by the managing general agent.

8 (6) The contract must contain appropriate underwriting
 9 guidelines, including:

- 10 (a) the maximum annual premium volume;
- 11 (b) the basis of the rates to be charged;
- 12 (c) the types of risks that may be written;
- 13 (d) maximum limits of liability;
- 14 (e) any applicable exclusions;
- 15 (f) the territorial limitations;
- 16 (g) policy cancellation provisions; and
- 17 (h) the maximum policy period.

18 (7) The insurer may cancel or decline to renew any
 19 policy of insurance, as provided by law.

20 (8) If the contract permits the managing general agent
 21 to settle claims on behalf of the insurer:

22 (a) all claims must be reported to the company in a
 23 timely manner;

24 (b) a copy of the claims file must be sent to the
 25 insurer at its request or as soon as it becomes known that

1 the claim:

2 (i) has the potential to exceed an amount determined by
3 the commissioner or actually exceeds the limit set by the
4 company, whichever is less;

5 (ii) involves a coverage dispute;

6 (iii) may exceed the managing general agent's claims
7 settlement authority;

8 (iv) is open for more than 6 months; or

9 (v) is closed by payment of an amount set by the
10 commissioner or an amount set by the company, whichever is
11 less;

12 (c) all claims files are the joint property of the
13 insurer and managing general agent. However, upon an order
14 of liquidation of the insurer, the files become the sole
15 property of the insurer or its estate. The managing general
16 agent has reasonable access to and may copy the files on a
17 timely basis.

18 (d) any settlement authority granted to the managing
19 general agent may be terminated for cause upon the insurer's
20 written notice to the managing general agent or upon the
21 termination of the contract. The insurer may suspend the
22 settlement authority during the pendency of any dispute
23 regarding the cause for termination.

24 (9) When electronic claims files are in existence, the
25 contract must address the timely transmission of the data.

1 (10) If the contract provides for a sharing of interim
2 profits by the managing general agent and the managing
3 general agent has the authority to determine the amount of
4 the interim profits, whether by establishing loss reserves
5 or controlling claim payments or in any other manner,
6 interim profits may not be paid to the managing general
7 agent until:

8 (a) 1 year after they are earned for property insurance
9 business;

10 (b) 5 years after they are earned on casualty business;
11 and

12 (c) the profits have been verified.

13 (11) The managing general agent may not:

14 (a) bind reinsurance or retrocessions on behalf of the
15 insurer, except that the managing general agent may bind
16 facultative reinsurance contracts pursuant to obligatory
17 facultative agreements if the contract with the insurer
18 contains reinsurance underwriting guidelines, including for
19 reinsurance assumed and ceded:

20 (i) a list of reinsurers with which automatic
21 agreements are in effect;

22 (ii) the coverages and amounts or percentages that may
23 be reinsured; and

24 (iii) commission schedules;

25 (b) commit the insurer to participate in insurance or

1 reinsurance syndicates;

2 (c) appoint any producer without ensuring that the
3 producer is lawfully licensed to transact the type of
4 insurance for which the producer is appointed;

5 (d) without prior approval of the insurer, pay or
6 commit the insurer to pay a claim over a specified amount,
7 net of reinsurance, which may not exceed 1% of the insurer's
8 policyholder's surplus as of December 31 of the last
9 completed calendar year;

10 (e) collect any payment from a reinsurer or commit the
11 insurer to any claim settlement with a reinsurer without the
12 prior approval of the insurer. If prior approval is given, a
13 report must be promptly forwarded to the insurer.

14 (f) permit its subproducer to serve on the insurer's
15 board of directors;

16 (g) jointly employ an individual who is employed with
17 the insurer; or

18 (h) appoint a submanaging general agent.

19 **NEW SECTION. Section 16. Duties of insurers.** (1) The
20 insurer must have on file an independent financial
21 examination, in a form acceptable to the commissioner, of
22 each managing general agent with which it has done business.

23 (2) If a managing general agent establishes loss
24 reserves, the insurer shall annually obtain the opinion of
25 an actuary attesting to the adequacy of loss reserves

1 established for losses incurred and outstanding on business
2 produced by the managing general agent. This is in addition
3 to any other required loss reserve certification.

4 (3) At least semiannually, the insurer shall conduct an
5 onsite review of the underwriting and claims processing
6 operations of the managing general agent.

7 (4) Binding authority for all reinsurance contracts or
8 participation in insurance or reinsurance syndicates rests
9 with an officer of the insurer who is not affiliated with
10 the managing general agent.

11 (5) Within 30 days of entering into or termination of a
12 contract with a managing general agent, the insurer shall
13 provide the commissioner with written notification of the
14 appointment or termination. Notices of appointment of a
15 managing general agent must include a statement of duties
16 that the applicant is expected to perform on behalf of the
17 insurer, the lines of insurance for which the applicant is
18 to be authorized to act, and any other information the
19 commissioner may request.

20 (6) An insurer shall review its books and records each
21 quarter to determine if any producer has become a managing
22 general agent. If the insurer determines that a producer has
23 become a managing general agent, the insurer shall promptly
24 notify the producer and the commissioner of the
25 determination and the insurer and the producer shall comply

1 with [sections 14 through 18] within 30 days.

2 (7) An insurer may not appoint to its board of
3 directors an officer, director, employee, subproducer, or
4 controlling shareholder of its managing general agent. This
5 subsection does not apply to relationships governed by Title
6 33, chapter 2, part 11, or [sections 5 through 10].

7 NEW SECTION. Section 17. Examination authority. The
8 acts of the managing general agent are considered to be the
9 acts of the insurer on whose behalf it is acting. A managing
10 general agent may be examined as if it were the insurer.

11 NEW SECTION. Section 18. Penalties and liabilities.

12 (1) If, after a hearing conducted in accordance with Title
13 33, chapter 1, part 7, the commissioner finds that a person
14 has violated any provision of [sections 14 through 18], the
15 commissioner may order:

16 (a) a penalty in an amount of \$5,000 for each separate
17 violation;

18 (b) revocation or suspension of the producer's license;
19 and

20 (c) the managing general agent to reimburse the
21 insurer, the rehabilitator, or a liquidator of the insurer
22 for any losses incurred by the insurer caused by a violation
23 of [sections 14 through 18] committed by the managing
24 general agent.

25 (2) An order of the commissioner pursuant to subsection

1 (1) is subject to judicial review pursuant to 33-1-711.

2 (3) This section does not limit the power of the
3 commissioner to impose any other penalty provided in this
4 title.

5 (4) [Sections 14 through 18] do not limit the rights of
6 policyholders, claimants, or auditors.

7 NEW SECTION. Section 19. Licensure of reinsurance
8 intermediaries. (1) A person, firm, association, or
9 corporation may not act as a reinsurance intermediary-broker
10 in this state if the reinsurance intermediary-broker
11 maintains an office directly, as a member or employee of a
12 firm or association, or as an officer, director, or employee
13 of a corporation:

14 (a) in this state, unless the reinsurance
15 intermediary-broker is a licensed producer in this state; or

16 (b) in another state, unless the reinsurance
17 intermediary-broker is a licensed producer in this state or
18 another state that has a law substantially similar to this
19 law or unless the reinsurance intermediary-broker is
20 licensed in this state as a nonresident reinsurance
21 intermediary.

22 (2) A person, firm, association, or corporation may not
23 act as a reinsurance intermediary-manager:

24 (a) for a reinsurer domiciled in this state, unless the
25 reinsurance intermediary-manager is a licensed producer in

1 this state;

2 (b) in this state, if the reinsurance
3 intermediary-manager maintains an office either directly or
4 as a member or employee of a firm or association or as an
5 officer, director, or employee of a corporation in this
6 state, unless the reinsurance intermediary-manager is a
7 licensed producer in this state; or

8 (c) in another state for a nondomestic insurer, unless
9 the reinsurance intermediary-manager is a licensed producer
10 in this state or another state that has a law substantially
11 similar to this law or unless the person is licensed in this
12 state as a nonresident insurance intermediary.

13 (3) Subject to subsection (2), the commissioner may
14 require a reinsurance intermediary-manager to:

15 (a) file a bond in an amount from an insurer acceptable
16 to the commissioner for the protection of the reinsurer; and

17 (b) maintain a policy on errors and omissions in an
18 amount acceptable to the commissioner.

19 (4) (a) The commissioner may issue a reinsurance
20 intermediary license to any person, firm, association, or
21 corporation that has complied with the requirements of
22 [sections 19 through 27]. A license issued to a firm or
23 association authorizes all the members of the firm or
24 association and any designated employees to act as
25 reinsurance intermediaries under the license. All authorized

1 persons must be named in the application and in any
2 supplements to the application. A license issued to a
3 corporation must authorize all of the officers and any
4 designated employees and directors to act as reinsurance
5 intermediaries on behalf of the corporation. All authorized
6 persons must be named in the application and in any
7 supplements to the application.

8 (b) If the applicant for a reinsurance intermediary
9 license is a nonresident, the applicant, as a condition
10 precedent to receiving or holding a license, shall designate
11 the commissioner as the agent for service of process in the
12 manner provided for by this title for designation of service
13 of process upon unauthorized insurers. The applicant shall
14 also furnish the commissioner with the name and address of a
15 resident of this state upon whom notices or orders of the
16 commissioner or process affecting the nonresident
17 reinsurance intermediary may be served. The licensee shall
18 promptly notify the commissioner in writing of each change
19 in its designated agent for service of process, and the
20 change may not become effective until acknowledged by the
21 commissioner.

22 (5) (a) The commissioner may refuse to issue a
23 reinsurance intermediary license if, in the commissioner's
24 judgment:

25 (i) the applicant, a person named on the application,

1 or a member, principal, officer, or director of the
2 applicant is not trustworthy;

3 (ii) a controlling person of the applicant is not
4 trustworthy to act as a reinsurance intermediary; or

5 (iii) any of the persons listed in subsection (5)(a)(i)
6 or (5)(a)(ii) has given cause for revocation or suspension
7 of the license or has failed to comply with any prerequisite
8 for the issuance of the license.

9 (b) Upon written request, the commissioner shall
10 furnish a summary of the basis for refusal to issue a
11 license. The document is privileged and is not subject to
12 public disclosure under Title 2, chapter 6, part 1.

13 (6) Licensed attorneys of this state, when acting in
14 their professional capacity, are exempt from this section.

15 **NEW SECTION. Section 20. Required contract provisions**
16 **-- reinsurance intermediary-brokers.** Transactions between a
17 reinsurance intermediary-broker and the insurer it
18 represents must be entered into pursuant to a written
19 authorization, specifying the responsibilities of each
20 party. The authorization must, at a minimum, contain the
21 following provisions:

22 (1) The insurer may terminate the reinsurance
23 intermediary-broker's authority at any time.

24 (2) The reinsurance intermediary-broker shall render to
25 the insurer accounts accurately detailing all material

1 transactions, including information necessary to support all
2 commissions, charges, and other fees received by or owing to
3 the reinsurance intermediary-broker. The reinsurance
4 intermediary-broker shall remit all funds due to the insurer
5 within 30 days of receipt.

6 (3) All funds collected for the insurer's account must
7 be held by the reinsurance intermediary-broker in a
8 fiduciary capacity in a bank that is a qualified United
9 States financial institution.

10 (4) The reinsurance intermediary-broker shall comply
11 with the requirements of [section 21].

12 (5) The reinsurance intermediary-broker shall comply
13 with the written standards established by the insurer for
14 the cession or retrocession of all risks.

15 (6) The reinsurance intermediary-broker shall disclose
16 to the insurer any relationship with any reinsurer to which
17 business will be ceded or retroceded.

18 **NEW SECTION. Section 21. Books and records** --
19 **reinsurance intermediary-brokers.** (1) For at least 10 years
20 after expiration of each contract of reinsurance transacted
21 by the reinsurance intermediary-broker, the reinsurance
22 intermediary-broker shall keep a complete record for each
23 transaction, showing:

24 (a) the type of contract, limits, underwriting
25 restrictions, classes or risks, and territory;

1 (b) the period of coverage, including the effective and
2 expiration dates, cancellation provisions, and notice
3 required for cancellation;

4 (c) the reporting and settlement requirements of
5 balances;

6 (d) the rate used to compute the reinsurance premium;

7 (e) the names and addresses of assuming reinsurers;

8 (f) the rates of all reinsurance commissions, including
9 the commissions on any retrocessions handled by the
10 reinsurance intermediary-broker;

11 (g) any related correspondence and memorandums;

12 (h) the proof of placement;

13 (i) the details regarding retrocessions handled by the
14 reinsurance intermediary-broker, including the identity of
15 the party making the retrocession and the percentage of each
16 contract assumed or ceded;

17 (j) the financial records, including but not limited to
18 premium and loss accounts; and

19 (k) when the reinsurance intermediary-broker procures a
20 reinsurance contract on behalf of a licensed ceding insurer:

21 (i) directly from any assuming reinsurer, written
22 evidence that the assuming reinsurer has agreed to assume
23 the risk; or

24 (ii) if placed through a representative of the assuming
25 reinsurer, other than an employee, written evidence that the

1 reinsurer has delegated binding authority to the
2 representative.

3 (2) The insurer has access to and may copy and audit
4 all accounts and records maintained by the reinsurance
5 intermediary-broker that are related to the insurer's
6 business, in a form usable by the insurer.

7 NEW SECTION. Section 22. Duties of insurers utilizing
8 the services of a reinsurance intermediary-broker. (1) An
9 insurer may not engage the services of any person, firm,
10 association, or corporation to act as a reinsurance
11 intermediary-broker on its behalf unless the person is
12 licensed as required by [section 19].

13 (2) An insurer may not employ an individual who is
14 employed by a reinsurance intermediary-broker with which it
15 transacts business unless the reinsurance
16 intermediary-broker is under common control with the insurer
17 and is subject to the provisions of Title 33, chapter 2,
18 part 11.

19 (3) The insurer shall annually obtain a copy of
20 statements of the financial condition of each reinsurance
21 intermediary-broker with which it transacts business.

22 NEW SECTION. Section 23. Required contract provisions
23 -- reinsurance intermediary-managers. Transactions between a
24 reinsurance intermediary-manager and the reinsurer it
25 represents in that capacity may only be entered into

1 pursuant to a written contract specifying the
 2 responsibilities of each party. The contract must be
 3 approved by the reinsurer's board of directors. At least 30
 4 days before the reinsurer assumes or cedes business through
 5 a producer, a true copy of the approved contract must be
 6 filed with the commissioner for approval. The contract must,
 7 at a minimum, include the following provisions:

8 (1) The reinsurer may terminate the contract for cause
 9 upon written notice to the reinsurance intermediary-manager.
 10 The reinsurer may immediately suspend the authority of the
 11 reinsurance intermediary-manager to assume or cede business
 12 during the pendency of any dispute regarding the cause for
 13 termination.

14 (2) The reinsurance intermediary-manager shall render
 15 accounts to the reinsurer accurately detailing all material
 16 transactions, including information necessary to support all
 17 commissions, charges, and other fees received by or owed to
 18 the reinsurance intermediary-manager, and shall remit all
 19 funds due under the contract to the reinsurer on not less
 20 than a monthly basis.

21 (3) All funds collected for the reinsurer's account
 22 will be held by the reinsurance intermediary-manager in a
 23 fiduciary capacity in a bank that is a qualified United
 24 States financial institution. The reinsurance
 25 intermediary-manager may not retain more than 3 months'

1 estimated claims payments and allocated loss adjustment
 2 expenses. The reinsurance intermediary-manager shall
 3 maintain a separate bank account for each reinsurer that it
 4 represents.

5 (4) For at least 10 years after expiration of each
 6 contract of reinsurance transacted by the reinsurance
 7 intermediary-manager, the reinsurance intermediary-manager
 8 shall keep a complete record for each transaction showing:

9 (a) the type of contract, limits, underwriting
 10 restrictions, classes or risks, and territory;

11 (b) the period of coverage, including effective and
 12 expiration dates, cancellation provisions, notice required
 13 for cancellation, and disposition of outstanding reserves on
 14 covered risks;

15 (c) the reporting and settlement requirements of
 16 balances;

17 (d) the rate used to compute the reinsurance premium;

18 (e) the names and addresses of reinsurers;

19 (f) the rates of all reinsurance commissions, including
 20 the commissions on any retrocessions handled by the
 21 reinsurance intermediary-manager;

22 (g) related correspondence and memorandums;

23 (h) proof of placement;

24 (i) details regarding retrocessions handled by the
 25 reinsurance intermediary-manager, as permitted by [section

1 25], including the identity of persons making the
2 retrocessions and the percentage of each contract assumed or
3 ceded;

4 (j) financial records, including but not limited to
5 premium and loss accounts; and

6 (k) when the reinsurance intermediary-manager places a
7 reinsurance contract on behalf of a ceding insurer:

8 (i) directly from any assuming reinsurer, written
9 evidence that the assuming reinsurer has agreed to assume
10 the risk; or

11 (ii) if placed through a representative of the assuming
12 reinsurer, other than an employee, written evidence that the
13 assuming reinsurer has delegated binding authority to the
14 representative.

15 (5) The reinsurer will have access to and the right to
16 copy all accounts and records maintained by the reinsurance
17 intermediary-manager related to its business in a form
18 usable by the reinsurer.

19 (6) The contract may not be assigned in whole or in
20 part by the reinsurance intermediary-manager.

21 (7) The reinsurance intermediary-manager shall comply
22 with the written underwriting and rating standards
23 established by the insurer for the acceptance, rejection, or
24 cession of all risks.

25 (8) The rates, terms, and purposes of commissions,

1 charges, and other fees that the reinsurance
2 intermediary-manager may levy against the reinsurer must be
3 set forth.

4 (9) If the contract permits the reinsurance
5 intermediary-manager to settle claims on behalf of the
6 reinsurer:

7 (a) all claims must be reported to the reinsurer in a
8 timely manner;

9 (b) a copy of the claim file must be sent to the
10 reinsurer at its request or as soon as it becomes known that
11 the claim:

12 (i) has the potential to exceed the lesser of an amount
13 determined by the commissioner or the limit set by the
14 reinsurer;

15 (ii) involves a coverage dispute;

16 (iii) may exceed the reinsurance intermediary-manager's
17 claims settlement authority;

18 (iv) is open for more than 6 months; or

19 (v) is closed by payment of the lesser of an amount set
20 by the commissioner or an amount set by the reinsurer;

21 (c) all claim files must be the joint property of the
22 reinsurer and the reinsurance intermediary-manager. However,
23 upon an order of liquidation of the reinsurer, the files
24 become the sole property of the reinsurer or its estate. The
25 reinsurance intermediary-manager must have reasonable access

1 to and the right to copy the files on a timely basis;

2 (d) any settlement authority granted to the reinsurance
3 intermediary-manager may be terminated for cause upon the
4 reinsurer's written notice to the reinsurance
5 intermediary-manager or upon the termination of the
6 contract. The reinsurer may suspend the settlement authority
7 during the pendency of the dispute regarding the cause of
8 termination.

9 (10) If the contract provides for a sharing of interim
10 profits by the reinsurance intermediary-manager, the interim
11 profits may not be paid until:

12 (a) 1 year after the end of each underwriting period
13 for property business;

14 (b) 5 years after the end of each underwriting period
15 for casualty business;

16 (c) a later period set by the commissioner for
17 specified lines of insurance; and

18 (d) the adequacy of reserves on remaining claims has
19 been verified pursuant to [section 25].

20 (11) The reinsurance intermediary-manager shall annually
21 provide the reinsurer with a statement of its financial
22 condition prepared by an independent certified accountant.

23 (12) The reinsurer shall, at least semiannually, conduct
24 an onsite review of the underwriting and claims processing
25 operations of the reinsurance intermediary-manager.

1 (13) The reinsurance intermediary-manager shall disclose
2 to the reinsurer any relationship it has with any insurer
3 prior to ceding or assuming any business with the insurer
4 pursuant to the contract.

5 (14) Within the scope of its actual or apparent
6 authority, the acts of the reinsurance intermediary-manager
7 are considered to be the acts of the reinsurer on whose
8 behalf it is acting.

9 NEW SECTION. **Section 24. Prohibited acts.** A
10 reinsurance intermediary-manager may not:

11 (1) bind retrocessions on behalf of the reinsurer,
12 except that the reinsurance intermediary-manager may bind
13 facultative retrocessions pursuant to obligatory facultative
14 agreements if the contract with the reinsurer contains
15 reinsurance underwriting guidelines for retrocessions. The
16 guidelines must include a list of reinsurers with which
17 automatic agreements are in effect and, for each reinsurer,
18 must include the coverages, amounts of percentages that may
19 be reinsured, and commission schedules.

20 (2) commit the reinsurer to participate in reinsurance
21 syndicates;

22 (3) appoint any producer without ensuring that the
23 producer is licensed to transact the type of reinsurance for
24 which the producer is appointed;

25 (4) without prior approval of the reinsurer, pay or

1 commit the reinsurer to pay a claim, net of retrocessions,
2 that exceeds the lesser of an amount specified by the
3 reinsurer or 1% of the reinsurer's policyholder's surplus as
4 of December 31 of the last complete calendar year;

5 (5) collect any payment from a party making a
6 retrocession, or commit the reinsurer to any claim
7 settlement with a party making a retrocession, without prior
8 approval of the reinsurer. If prior approval is given, a
9 report must be promptly forwarded to the reinsurer.

10 (6) jointly employ an individual who is employed by the
11 reinsurer unless the reinsurance intermediary-manager is
12 under common control with the reinsurer subject to Title 33,
13 chapter 2, part 11;

14 (7) appoint a subreinsurance intermediary-manager.

15 **NEW SECTION. Section 25. Duties of reinsurers using**
16 **services of reinsurance intermediary-manager.** (1) A
17 reinsurer may not engage the services of any person, firm,
18 association, or corporation as a reinsurance
19 intermediary-manager on its behalf unless the person is
20 licensed as required by [section 19].

21 (2) The reinsurer shall annually obtain a copy of
22 statements of the financial condition of each reinsurance
23 intermediary-manager that the reinsurer has engaged,
24 prepared by an independent certified accountant, in a form
25 acceptable to the commissioner.

1 (3) If a reinsurance intermediary-manager establishes
2 loss reserves, the reinsurer shall annually obtain the
3 opinion of an actuary attesting to the adequacy of loss
4 reserves established for losses incurred and outstanding on
5 business produced by the reinsurance intermediary-manager.
6 The opinion is in addition to any other required loss
7 reserve certification.

8 (4) Binding authority for all retrocessional contracts
9 or participation in reinsurance syndicates must rest with an
10 officer of the reinsurer who may not be affiliated with the
11 reinsurance intermediary-manager.

12 (5) Within 30 days of termination of a contract with a
13 reinsurance intermediary-manager, the reinsurer shall
14 provide written notification of the termination to the
15 commissioner.

16 (6) A reinsurer may not appoint to its board of
17 directors any officer, director, employee, controlling
18 shareholder, or subproducer of its reinsurance
19 intermediary-manager. This subsection does not apply to
20 relationships governed by Title 33, chapter 2, part 11, or,
21 if applicable, [sections 19 through 23].

22 **NEW SECTION. Section 26. Examination authority.** (1) A
23 reinsurance intermediary is subject to examination by the
24 commissioner. The commissioner must have access to all
25 books, bank accounts, and records of the reinsurance

1 intermediary in a form usable to the commissioner.

2 (2) A reinsurance intermediary-manager may be examined
3 as if it were the reinsurer.

4 NEW SECTION. **Section 27.** Penalties and liabilities.

5 (1) (a) A reinsurance intermediary, insurer, or reinsurer
6 found by the commissioner, after a hearing conducted in
7 accordance with Title 33, chapter 1, part 7, to be in
8 violation of any provision of [sections 19 through 26]:

9 (i) shall, for each separate violation, pay a penalty
10 in an amount not to exceed \$5,000; and

11 (ii) is subject to revocation or suspension of its
12 license.

13 (b) If a violation was committed by the reinsurance
14 intermediary, the reinsurance intermediary shall make
15 restitution to the insurer, reinsurer, rehabilitator, or
16 liquidator of the insurer or reinsurer for the net losses
17 incurred by the insurer or reinsurer attributable to the
18 violation.

19 (2) The order of the commissioner pursuant to
20 subsection (1) is subject to judicial review pursuant to
21 Title 33, chapter 1, part 7.

22 (3) This section does not limit the authority of the
23 commissioner to impose any other penalties provided in the
24 insurance law.

25 (4) [Sections 19 through 26] do not limit or restrict

1 the rights of policyholders, claimants, creditors, or other
2 third parties or confer any rights upon those persons.

3 NEW SECTION. **Section 28.** Credit allowed domestic

4 ceding insurer. (1) Credit for reinsurance is allowed to a
5 domestic ceding insurer as either an asset or a deduction
6 from liability on account of reinsurance ceded only when the
7 reinsurer meets the requirements of subsection (2), (3),
8 (4), (5), or (6). If the requirements of subsection (4) or
9 (5) are met, the requirements of subsection (7) must also be
10 met.

11 (2) Credit must be allowed when the reinsurance is
12 ceded to an assuming insurer that is licensed to transact
13 insurance or reinsurance in this state.

14 (3) Credit must be allowed when the reinsurance is
15 ceded to an assuming insurer that is accredited as a
16 reinsurer in this state. Credit may not be allowed a
17 domestic ceding insurer if the assuming insurer's
18 accreditation has been revoked by the commissioner after
19 notice and hearing. An accredited reinsurer is one that:

20 (a) files with the commissioner evidence of its
21 submission to this state's jurisdiction;

22 (b) submits to this state's authority to examine its
23 books and records;

24 (c) is licensed to transact insurance or reinsurance in
25 at least one state or, in the case of a United States branch

1 of an alien assuming insurer, is entered through and
 2 licensed to transact insurance or reinsurance in at least
 3 one state;

4 (d) files annually with the commissioner a copy of its
 5 annual statement filed with the insurance department of its
 6 state of domicile and a copy of its most recent audited
 7 financial statement and either:

8 (i) maintains a surplus with regard to policyholders in
 9 an amount that is not less than \$20 million and whose
 10 accreditation has not been denied by the commissioner within
 11 90 days of its submission; or

12 (ii) maintains a surplus with regard to policyholders in
 13 an amount less than \$20 million and whose accreditation has
 14 been approved by the commissioner.

15 (4) (a) Subject to subsection (4)(b), credit must be
 16 allowed when:

17 (i) the reinsurance is ceded to an assuming insurer
 18 that is domiciled and licensed in or, in the case of a
 19 United States branch of an alien assuming insurer, is
 20 entered through a state that employs standards regarding
 21 credit for reinsurance substantially similar to those
 22 applicable under this statute; and

23 (ii) the assuming insurer or the United States branch of
 24 an alien assuming insurer:

25 (A) maintains a surplus with regard to policyholders in

1 an amount not less than \$20 million; and

2 (B) submits to the authority of this state to examine
 3 its books and records.

4 (b) The requirement of subsection (4)(a)(i) does not
 5 apply to reinsurance ceded and assumed pursuant to pooling
 6 arrangements among insurers in the same holding company
 7 system.

8 (5) (a) Credit must be allowed when the reinsurance is
 9 ceded to an assuming insurer that maintains a trust fund in
 10 a qualified United States financial institution for the
 11 payment of the valid claims of its United States
 12 policyholders and ceding insurers and their assigns and
 13 successors in interest. The assuming insurer shall report
 14 annually to the commissioner information substantially the
 15 same as that required to be reported on the NAIC annual
 16 statement form by licensed insurers to enable the
 17 commissioner to determine the sufficiency of the trust fund.

18 (b) (i) In the case of a single assuming insurer, the
 19 trust must consist of a trusteed account representing the
 20 assuming insurer's liabilities attributable to business
 21 written in the United States, and in addition, the assuming
 22 insurer shall maintain a surplus with the trustee of not
 23 less than \$20 million.

24 (ii) In the case of a group of individual unincorporated
 25 underwriters, the trust must consist of a trusteed account

1 representing the group's liabilities attributable to
 2 business written in the United States, and in addition, the
 3 group shall maintain a surplus with the trustee of which
 4 \$100 million must held jointly for the benefit of United
 5 States ceding insurers of any member of the group. The group
 6 shall make available to the commissioner an annual
 7 certification of the solvency of each underwriter by the
 8 group's domiciliary regulator and its independent public
 9 accountants.

10 (iii) In the case of a group of incorporated insurers
 11 under common administration:

12 (A) the provisions of subsection (5)(b)(iii)(B) apply,
 13 to the group that:

14 (I) complies with the reporting requirements contained
 15 in subsection (5)(a);

16 (II) has continuously transacted an insurance business
 17 outside the United States for at least 3 years immediately
 18 prior to making application for accreditation;

19 (III) submits to this state's authority to examine its
 20 books and records and bears the expense of the examination;
 21 and

22 (IV) has aggregate policyholders' surplus of \$10
 23 billion;

24 (B) (I) the trust must be in an amount equal to the
 25 group's several liabilities attributable to business ceded

1 by United States ceding insurers to any member of the group
 2 pursuant to reinsurance contracts issued in the name of the
 3 group;

4 (II) the group shall maintain a joint surplus with a
 5 trustee of which \$100 million is held jointly for the
 6 benefit of United States ceding insurers of any member of
 7 the group as additional security for any liabilities; and

8 (III) each member of the group shall make available to
 9 the commissioner an annual certification of the member's
 10 solvency by the member's domiciliary regulator and its
 11 independent public accountant.

12 (c) The trust must be established in a form approved by
 13 the commissioner. The trust instrument must provide that
 14 contested claims are valid and enforceable upon the final
 15 order of any court of competent jurisdiction in the United
 16 States. The trust must vest legal title to its assets in the
 17 trustees of the trust for its United States policyholders
 18 and ceding insurers and their assigns and successors in
 19 interest. The trust and the assuming insurer are subject to
 20 examination as determined by the commissioner. The trust
 21 described in this subsection (c) must remain in effect for
 22 as long as the assuming insurer has outstanding obligations
 23 due under the reinsurance agreements subject to the trust.

24 (d) No later than February 28 of each year, the
 25 trustees of the trust shall report to the commissioner in

1 writing setting forth the balance of the trust and listing
 2 the trust's investments at the end of the preceding year.
 3 The trustees shall certify the date of termination of the
 4 trust, if planned, or certify that the trust may not expire
 5 prior to the following December 31.

6 (6) Credit must be allowed when the reinsurance is
 7 ceded to an assuming insurer that does not meet the
 8 requirements of subsection (2), (3), (4), or (5) but only
 9 with respect to the insurance of risks located in a
 10 jurisdiction in which the reinsurance is required by
 11 applicable law or regulation of that jurisdiction.

12 (7) (a) If the assuming insurer is not licensed or
 13 accredited to transact insurance or reinsurance in this
 14 state, the credit permitted by subsections (4) and (5) may
 15 not be allowed unless the assuming insurer agrees in the
 16 reinsurance agreements:

17 (i) that in the event of the failure of the assuming
 18 insurer to perform its obligations under the terms of the
 19 reinsurance agreement, the assuming insurer, at the request
 20 of the ceding insurer, will:

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

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

25 (C) abide by the final decision of the court or of any

1 appellate court in the event of an appeal; and

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

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

10 **NEW SECTION. Section 29. Reduction of liability for**
 11 **reinsurance ceded by domestic insurer to assuming insurer.** A
 12 reduction from liability for the reinsurance ceded by a
 13 domestic insurer to an assuming insurer not meeting the
 14 requirements of [section 28] must be allowed in an amount
 15 not exceeding the liabilities carried by the ceding insurer.
 16 The reduction must be in the amount of funds held by or on
 17 behalf of the ceding insurer, including funds held in trust
 18 for the ceding insurer:

19 (1) under a reinsurance contract with the assuming
 20 insurer as security for the payment of obligations under the
 21 contract if the security is held in the United States
 22 subject to withdrawal solely by and under the exclusive
 23 control of the ceding insurer; or

24 (2) in the case of a trust, in a qualified United
 25 States financial institution. This security may be in the

1 form of:

2 (a) cash;

3 (b) securities listed by the securities valuation
4 office of the NAIC and qualifying as admitted assets;

5 (c) clean, irrevocable, unconditional letters of credit
6 that are issued or confirmed by a qualified United States
7 financial institution no later than December 31 of the year
8 for which filing is being made and that are in the
9 possession of the ceding company on or before the filing
10 date of its annual statement. Letters of credit meeting
11 applicable standards of issuer acceptability as of the dates
12 of their issuance or confirmation must, notwithstanding the
13 issuing or confirming institution's subsequent failure to
14 meet applicable standards of issuer acceptability, continue
15 to be acceptable as security until their expiration,
16 extension, renewal, modification, or amendment, whichever
17 occurs first.

18 (d) any other form of security acceptable to the
19 commissioner.

20 NEW SECTION. Section 30. Reinsurance agreements
21 affected. [Sections 28 and 29] apply to all cessions after
22 October 1, 1993, under reinsurance agreements that have had
23 an inception, anniversary, or renewal date on or before
24 April 1, 1993.

25 NEW SECTION. Section 31. Conduct of examinations --

1 records -- correction of accounts -- appraisals. (1) Upon
2 determining that an examination should be conducted, the
3 commissioner or the commissioner's designee shall issue an
4 examination warrant appointing one or more examiners to
5 perform the examination and instructing them as to the scope
6 of the examination. In conducting the examination, the
7 examiner shall observe the guidelines and procedures set
8 forth in the examiners' handbook adopted by the NAIC. The
9 commissioner may also employ other guidelines or procedures
10 as the commissioner considers appropriate.

11 (2) Every company or person from whom information is
12 sought and its officers, directors, employees, and agents
13 shall provide to the examiners appointed under subsection
14 (1) timely, convenient, and free access at all reasonable
15 hours at its offices to all books, records, accounts,
16 papers, documents, and any or all computer or other
17 recordings relating to the property, assets, business, and
18 affairs of the company being examined. The officers,
19 directors, employees, and agents of the company or person
20 shall facilitate the examination and aid in the examination
21 so far as it is in their power to do so. The refusal of any
22 company, by its officers, directors, employees, or agents,
23 to submit to examination or to comply with any reasonable
24 written request of the examiners is grounds for suspension,
25 refusal, or nonrenewal of any license or authority held by

1 the company to engage in an insurance or other business
 2 subject to the commissioner's jurisdiction. A proceeding for
 3 suspension, revocation, or refusal of any license or
 4 authority must be conducted pursuant to 33-1-318.

5 (3) The commissioner or any examiner has the power to
 6 issue subpoenas, administer oaths, and examine under oath
 7 any person concerning any matter pertinent to the
 8 examination. Upon the failure or refusal of a person to obey
 9 a subpoena, the commissioner may petition a court of
 10 competent jurisdiction and, upon proper showing, the court
 11 may enter an order compelling the witness to appear and
 12 testify or to produce documentary evidence. Failure to obey
 13 the court order is punishable as contempt of court.

14 (4) When making an examination under this part, the
 15 commissioner may retain attorneys, appraisers, independent
 16 actuaries, independent certified public accountants, or
 17 other professionals and specialists as examiners. The cost
 18 of retaining the personnel must be borne by the company that
 19 is the subject of the examination.

20 (5) This part may not be construed to limit the
 21 commissioner's authority to terminate or suspend any
 22 examination in order to pursue other legal or regulatory
 23 action pursuant to this title. Findings of fact and
 24 conclusions made pursuant to an examination are prima facie
 25 evidence in any legal or regulatory action.

1 (6) This part may not be construed to limit the
 2 commissioner's authority to use and, if appropriate, to make
 3 public any final or preliminary examination report, any
 4 examiner or company workpapers or other documents, or any
 5 other information discovered or developed during the course
 6 of any examination in the furtherance of any legal or
 7 regulatory action that the commissioner may consider
 8 appropriate.

9 NEW SECTION. **Section 32. Examination reports --**
 10 **hearings -- confidentiality -- publication.** (1) All
 11 examination reports must be composed only of facts appearing
 12 upon the books, records, or other documents of the company,
 13 its agents, or other persons examined or as ascertained from
 14 the testimony of its officers or agents or other persons
 15 examined concerning its affairs. The report must contain the
 16 conclusions and recommendations that the examiners find
 17 reasonably warranted from the facts.

18 (2) No later than 60 days following completion of the
 19 examination, the examiner in charge shall file with the
 20 department a verified written report of examination under
 21 oath. Upon receipt of the verified report, the department
 22 shall transmit the report to the company examined, together
 23 with a notice that gives the company examined a reasonable
 24 opportunity, but not more than 30 days, to make a written
 25 submission or rebuttal with respect to any matters contained

1 in the examination report.

2 (3) Within 30 days of the end of the period allowed for
3 the receipt of written submissions or rebuttals, the
4 commissioner shall fully consider and review the report,
5 together with any written submissions or rebuttals and any
6 relevant portions of the examiner's workpapers and enter an
7 order:

8 (a) adopting the examination report as filed or with
9 modification or corrections. If the examination report
10 reveals that the company is operating in violation of any
11 law, regulation, or prior order of the commissioner, the
12 commissioner may order the company to take any action the
13 commissioner considers necessary and appropriate to cure the
14 violation.

15 (b) rejecting the examination report with directions to
16 the examiners to reopen the examination for purposes of
17 obtaining additional data, documentation, information, or
18 testimony and of refiling pursuant to subsection (2); or

19 (c) calling for an investigatory hearing with no less
20 than 20 days' notice to the company for purposes of
21 obtaining additional data, documentation, information, and
22 testimony.

23 (4) (a) All orders entered pursuant to subsection
24 (3)(a) must be accompanied by findings and conclusions
25 resulting from the commissioner's consideration and review

1 of the examination report, relevant examiner workpapers, and
2 any written submissions or rebuttals. An order must be
3 considered a final administrative decision and may be
4 appealed pursuant to Title 33, chapter 1, part 7, and must
5 be served upon the company by certified mail, together with
6 a copy of the adopted examination report. Within 30 days of
7 the issuance of the adopted report, the company shall file
8 affidavits executed by each of its directors stating under
9 oath that they have received a copy of the adopted report
10 and related orders.

11 (b) (i) A hearing conducted under subsection (3)(c) by
12 the commissioner or an authorized representative must be
13 conducted as a nonadversarial, confidential, investigatory
14 proceeding as necessary for the resolution of any
15 inconsistencies, discrepancies, or disputed issues apparent
16 upon the face of the filed examination report or raised by
17 or as a result of the commissioner's review of relevant
18 workpapers or by the written submission or rebuttal of the
19 company. Within 20 days of the conclusion of the hearing,
20 the commissioner shall enter an order pursuant to subsection
21 (3)(a).

22 (ii) The commissioner may not appoint an examiner as an
23 authorized representative to conduct the hearing. The
24 hearing must proceed expeditiously with discovery by the
25 company limited to the examiner's workpapers that tend to

1 substantiate any assertions set forth in any written
 2 submission or rebuttal. The commissioner or the
 3 commissioner's representative may issue subpoenas for the
 4 attendance of any witnesses or the production of any
 5 documents considered relevant to the investigation, whether
 6 under the control of the department, the company, or other
 7 persons. The documents produced must be included in the
 8 record, and testimony taken by the commissioner or the
 9 commissioner's representative must be under oath and
 10 preserved for the record. This section does not require the
 11 department to disclose any information or records that would
 12 indicate or show the existence or content of any
 13 investigation or activity of a criminal justice agency.

14 (iii) The hearing must proceed with the commissioner or
 15 the commissioner's representative posing questions to the
 16 persons subpoenaed. The company and the department may
 17 present testimony relevant to the investigation.
 18 Cross-examination must be conducted only by the commissioner
 19 or the commissioner's representative. The company and the
 20 department must be permitted to make closing statements and
 21 may be represented by counsel of their choice.

22 (5) (a) Upon the adoption of the examination report
 23 under subsection (3)(a), the commissioner shall continue to
 24 hold the content of the examination report as private and
 25 confidential information for a period of 30 days except to

1 the extent provided in subsection (2). After 30 days, the
 2 commissioner may open the report for public inspection as
 3 long as a court of competent jurisdiction has not stayed its
 4 publication.

5 (b) This title does not prevent and may not be
 6 construed as prohibiting the commissioner from disclosing
 7 the content of an examination report or preliminary
 8 examination report, the results of an examination, or any
 9 matter relating to a report or results to the insurance
 10 department of this state or of any other state or country,
 11 to law enforcement officials of this state or of any other
 12 state, or to an agency of the federal government at any time
 13 as long as the agency or office receiving the report or
 14 matters relating to the report agrees in writing to hold it
 15 confidential and in a manner consistent with this part.

16 (c) If the commissioner determines that regulatory
 17 action is appropriate as a result of any examination, the
 18 commissioner may initiate any proceedings or actions as
 19 provided by law.

20 (6) All working papers, recorded information,
 21 documents, and copies produced by, obtained by, or disclosed
 22 to the commissioner or any other person in the course of an
 23 examination made under this part must be given confidential
 24 treatment, are not subject to subpoena, and may not be made
 25 public by the commissioner or any other person, except to

1 the extent provided in subsection (5). Access may also be
 2 granted to the NAIC. The persons given access shall agree in
 3 writing, prior to receiving the information, to treat the
 4 information in the confidential manner required by this
 5 section unless the prior written consent of the company to
 6 which it pertains has been obtained.

7 NEW SECTION. Section 33. Conflict of interest. (1) An
 8 examiner may not be appointed by the commissioner if the
 9 examiner, either directly or indirectly, has a conflict of
 10 interest with, is affiliated with the management of, or owns
 11 a pecuniary interest in any person subject to examination
 12 under this part. This section may not be construed to
 13 automatically preclude an examiner from being:

14 (a) a policyholder or claimant under an insurance
 15 policy;

16 (b) a grantor of a mortgage or similar instrument on
 17 the examiner's residence to a regulated entity if done under
 18 customary terms and in the ordinary course of business;

19 (c) an investment owner in shares of regulated
 20 diversified investment companies; or

21 (d) a settlor or beneficiary of a blind trust into
 22 which any otherwise impermissible holdings have been placed.

23 (2) Notwithstanding the requirements of this section,
 24 the commissioner may retain from time to time, on an
 25 individual basis, qualified actuaries, certified public

1 accountants, or other individuals who are independently
 2 practicing their professions, even though the persons may
 3 from time to time be similarly employed or retained by
 4 persons subject to examination under this part.

5 NEW SECTION. Section 34. Taxation of purchasing group.
 6 Premium taxes and taxes on premiums paid for coverage of
 7 risks resident or located in this state by a purchasing
 8 group or any members of the purchasing group must be:

9 (1) imposed at the same rate and subject to the same
 10 interest, fines, and penalties as those applicable to
 11 premium taxes and taxes on premiums paid to surplus lines
 12 insurers and authorized insurers, pursuant to 33-2-311 and
 13 33-2-705, respectively; and

14 (2) paid by the authorized or surplus lines insurers
 15 and, if not paid by them, paid by the insurance producer for
 16 the purchasing group and, if not paid by the insurance
 17 producer, paid by the purchasing group and, if not paid by
 18 the purchasing group, paid by each of its members.

19 NEW SECTION. Section 35. Condition on release from
 20 delinquency proceedings. An insurer that is subject to any
 21 delinquency proceeding, whether formal, informal,
 22 administrative, or judicial, may not:

23 (1) be released from the proceeding, unless the
 24 proceeding is converted to a judicial rehabilitation or
 25 liquidation proceeding;

1 (2) be permitted to solicit or accept new business or
2 request or accept the restoration of any suspended or
3 revoked license or certificate of authority;

4 (3) be returned to the control of its shareholders or
5 private management; or

6 (4) have any of its assets returned to the control of
7 its shareholders or private management until all payments of
8 or on account of the insurer's contractual obligations by
9 all guaranty associations, along with all expenses of the
10 guaranty associations and interest on all payments and
11 expenses, have been repaid to the guaranty associations or a
12 plan of repayment by the insurer has been approved by the
13 guaranty association.

14 NEW SECTION. Section 36. Indemnification of
15 rehabilitator, liquidator, and employees -- persons covered.

16 (1) The persons entitled to protection under [sections 37
17 and 38] are:

18 (a) all rehabilitators and liquidators responsible for
19 the conduct of a delinquency proceeding under Title 33,
20 chapter 2, including present and former rehabilitators and
21 liquidators; and

22 (b) the employees of the rehabilitators and
23 liquidators, including all present and former special
24 deputies and assistant special deputies appointed by the
25 commissioner, and all persons whom the commissioner, special

1 deputies, or assistant special deputies have employed to
2 assist in a delinquency proceeding under Title 33, chapter
3 2.

4 (2) Attorneys, accountants, auditors, and other
5 professional persons or firms, who are retained by the
6 rehabilitator or liquidator as independent contractors, and
7 their employees are not considered employees of the
8 rehabilitator or liquidator for purposes of any cause of
9 action initiated by the rehabilitator or liquidator against
10 the independent contractor in the name of the rehabilitation
11 or liquidation estate.

12 NEW SECTION. Section 37. Indemnification of
13 rehabilitator, liquidator, and employees. (1) If any legal
14 action is commenced against the rehabilitator or liquidator
15 or any employee of the rehabilitator or liquidator, whether
16 against the rehabilitator, liquidator, or employee
17 personally or in an official capacity, alleging property
18 damage, property loss, personal injury, or other civil
19 liability caused by or resulting from any alleged act,
20 error, or omission of the rehabilitator, liquidator, or
21 employee arising out of or by reason of duties or
22 employment, the rehabilitator, liquidator, or employee is
23 indemnified from the assets of the insurer for all expenses,
24 attorney fees, judgments, settlements, decrees, surety bond
25 premiums, or amounts due and owing or paid in satisfaction

1 of or incurred in the defense of the legal action unless it
 2 is determined upon a final adjudication on the merits that
 3 the alleged act, error, or omission of the rehabilitator,
 4 liquidator, or employee that gave rise to the claim did not
 5 arise out of or by reason of the rehabilitator's,
 6 liquidator's, or employee's duties or employment or was
 7 caused by intentional or willful and wanton misconduct.

8 (2) Attorney fees and related expenses incurred in
 9 defending a legal action for which indemnity is available
 10 under this section must be paid from the assets of the
 11 insurer, as the expenses are incurred and in advance of the
 12 final disposition of the action, upon receipt of an
 13 undertaking by or on behalf of the rehabilitator,
 14 liquidator, or employee to repay the attorney fees and
 15 expenses. If, upon a final adjudication on the merits, it is
 16 determined that the rehabilitator, liquidator, or employee
 17 is not entitled to indemnity under this section, the payment
 18 must be made from the undertaking.

19 (3) An indemnification for expenses, attorney fees,
 20 judgments, settlements, decrees, surety bond premiums, or
 21 other amounts paid or to be paid from the insurer's assets
 22 pursuant to this section are an administrative expense of
 23 the insurer.

24 (4) If actual or threatened litigation against a
 25 rehabilitator, liquidator, or employee for which indemnity

1 may be available under this section occurs, a reasonable
 2 amount of funds that in the judgment of the commissioner may
 3 be needed to provide indemnity must be segregated and
 4 reserved from the assets of the insurer as security for the
 5 payment of indemnity until all applicable statutes of
 6 limitation have run, all actual or threatened actions
 7 against the rehabilitator, liquidator, or employee have been
 8 completely and finally resolved, and all obligations of the
 9 insurer and the commissioner under this section have been
 10 satisfied.

11 (5) In lieu of segregation and reservation of funds,
 12 the commissioner may obtain a surety bond or make other
 13 arrangements that will enable the commissioner to fully
 14 secure the payment of all obligations under this section.

15 **NEW SECTION. Section 38. Settlement of actions against**
 16 **rehabilitator, liquidator, and employees -- court approval**
 17 **-- applicability.** (1) If any legal action against an
 18 employee for which indemnity may be available under this
 19 section is settled prior to final adjudication on the
 20 merits, the insurer shall pay the settlement amount on
 21 behalf of the employee or indemnify the employee for the
 22 settlement amount unless the commissioner determines:

23 (a) that the claim did not arise out of or by reason of
 24 the employee's duties or employment; or

25 (b) that the claim was caused by the intentional or

1 willful and wanton misconduct of the employee.

2 (2) In a legal action in which the rehabilitator or
3 liquidator is a defendant, that portion of any settlement
4 relating to the alleged act, error, or omission of the
5 rehabilitator or liquidator is subject to the approval of
6 the court before which the delinquency proceeding is
7 pending. The court may not approve that portion of the
8 settlement if it determines:

9 (a) that the claim did not arise out of or by reason of
10 the rehabilitator's or liquidator's duties or employment; or

11 (b) that the claim was caused by the intentional or
12 willful and wanton misconduct of the rehabilitator or
13 liquidator.

14 (3) This section may not be construed to deprive the
15 rehabilitator, liquidator, or employee of immunity,
16 indemnity, benefit of law, right, or defense available under
17 any provision of law, including, without limitation, the
18 provisions of Title 2, chapter 9.

19 (4) (a) A legal action does not lie against the
20 rehabilitator, liquidator, or employee based in whole or in
21 part on any alleged act, error, or omission that took place
22 prior to October 1, 1993, unless suit is filed and valid
23 service of process is obtained by October 1, 1994.

24 (b) Subsections (1) through (3) apply to any suit that
25 is pending on or filed after October 1, 1993, without regard

1 to when the alleged act, error, or omission took place.

2 **Section 39.** Section 33-1-401, MCA, is amended to read:

3 "33-1-401. Examination of insurers. (1) The
4 commissioner shall examine the affairs, transactions,
5 accounts, records, and assets of each authorized insurer as
6 often as he deems the commissioner considers advisable. He
7 The commissioner shall so examine each domestic authorized
8 insurer not less frequently than every 3 5 years.
9 ~~Examination of an alien insurer may be limited to its~~
10 ~~insurance transactions and affairs in the United States.~~
11 ~~Examination of a reciprocal insurer may also include~~
12 ~~examination of its attorney in fact insofar as the~~
13 ~~transactions of the attorney in fact relate to the insurer.~~

14 (2) The commissioner shall in like manner examine each
15 insurer applying for an initial certificate of authority to
16 do business in this state.

17 (3) In lieu of making his own an examination under this
18 part of any foreign or alien insurer licensed in this state,
19 ~~the commissioner may, in his discretion, accept a full an~~
20 ~~examination report of the last recent examination of a~~
21 ~~foreign or alien insurer, certified to on the company~~
22 ~~prepared by the insurance supervisory official department of~~
23 ~~another for the company's state, territory, commonwealth, or~~
24 ~~district of the United States domicile or port of entry~~
25 state until January 1, 1994. After January 1, 1994, the

1 reports may only be accepted if:

2 (a) the insurance department was at the time of the
3 examination accredited under the national association of
4 insurance commissioners' financial regulation standards and
5 accreditation program; or

6 (b) the examination is performed under the supervision
7 of an accredited state insurance department or with the
8 participation of one or more examiners who are employed by
9 such an accredited state insurance department and who, after
10 a review of the examination work papers and report, state
11 under oath that the examination was performed in a manner
12 consistent with the standards and procedures required by
13 their insurance department.

14 (4) For purposes of completing an examination of any
15 company under this part, the commissioner may examine or
16 investigate any person or the business of any person, in so
17 far as the examination or investigation is, in the sole
18 discretion of the commissioner, necessary or material to the
19 examination of the company."

20 **Section 40.** Section 33-2-501, MCA, is amended to read:

21 **"33-2-501. Assets allowed.** In any determination of the
22 financial condition of an insurer, there ~~shall~~ must be
23 allowed as assets only such assets as that are owned by the
24 insurer and which that consist of:

25 (1) cash in the possession of the insurer or in transit

1 under its control and including the true balance of any
2 deposit in a solvent bank or trust company;

3 (2) investments, securities, properties, and loans
4 acquired or held in accordance with this code and in
5 connection therewith the following items:

6 (a) interest due or accrued on any bond or evidence of
7 indebtedness which is not in default and which is not valued
8 on a basis including accrued interest;

9 (b) declared and unpaid dividends on stock and shares
10 unless such the amount has otherwise been allowed as an
11 asset;

12 (c) interest due or accrued upon a collateral loan in
13 an amount not to exceed 1 year's interest thereon on the
14 loan;

15 (d) interest due or accrued on deposits in solvent
16 banks and trust companies and interest due or accrued on
17 other assets, if such the interest is in the judgment of the
18 commissioner a collectible asset;

19 (e) interest due or accrued on a mortgage loan in an
20 amount not exceeding in any event the amount, if any, of the
21 excess of the value of the property less delinquent taxes
22 thereon on the property over the unpaid principal. ~~In no~~
23 ~~event shall interest~~ Interest accrued for a period in excess
24 of 18 months may not be allowed as an asset.

25 (f) rent due or accrued on real property if such the

1 rent is not in arrears for more than 3 months and rent more
2 than 3 months in arrears if the payment of such the rent be
3 is adequately secured by property held in the name of the
4 tenant and conveyed to the insurer as collateral;

5 (g) the unaccrued portion of taxes paid prior to the
6 due date on real property;

7 (3) premium notes, policy loans, and other policy
8 assets and liens on policies and certificates of life
9 insurance and annuity contracts and accrued interest
10 thereon, in an amount not exceeding the legal reserve and
11 other policy liabilities carried on each individual policy;

12 (4) the net amount of uncollected and deferred premiums
13 and annuity considerations in the case of a life insurer;

14 (5) premiums in the course of collection, other than
15 for life insurance, not more than 3 months past due, less
16 commissions payable thereon on the premiums. The foregoing
17 limitation shall in this subsection does not apply to
18 premiums payable directly or indirectly by the United States
19 government or by any of its instrumentalities.

20 (6) installment premiums other than life insurance
21 premiums to the extent of the unearned premium reserve
22 carried on the policy to which premiums apply;

23 (7) notes and like written obligations not past due,
24 taken for premiums other than life insurance premiums, on
25 policies permitted to be issued on such that basis, to the

1 extent of the unearned premium reserves carried thereon on
2 the policies;

3 (8) the full amount of reinsurance recoverable by a
4 ceding insurer from a solvent reinsurer and which
5 reinsurance is authorized under 33-2-1205 chapter 2, part
6 12;

7 (9) amounts receivable by an assuming insurer
8 representing funds withheld by a solvent ceding insurer
9 under a reinsurance treaty;

10 (10) deposits or equities recoverable from underwriting
11 associations, syndicates, and reinsurance funds or from any
12 suspended banking institution, to the extent deemed
13 considered by the commissioner available for the payment of
14 losses and claims and at values to be determined by him the
15 commissioner;

16 (11) electronic data processing equipment if the cost of
17 such the equipment is at least \$100,000, which cost shall
18 must be amortized in full over a period of not to exceed 10
19 calendar years. However, with regard to life insurers, such
20 the equipment shall must be allowed as an asset if the cost
21 of such the equipment is at least \$25,000, which cost shall
22 must be amortized in full over a period of not to exceed 5
23 calendar years, and the amount of such the asset allowed may
24 not exceed 1% of the total of the other allowable assets of
25 the insurer.

1 (12) all assets, whether or not consistent with the
 2 provisions of this section, as may be allowed pursuant to
 3 the annual statement form approved by the commissioner for
 4 the kinds of insurance to be reported upon therein in the
 5 annual statement;

6 (13) other assets, not inconsistent with the provisions
 7 of this section, ~~deemed~~ considered by the commissioner to be
 8 available for the payment of losses and claims, at values to
 9 be determined by ~~him~~ the commissioner."

10 **Section 41.** Section 33-2-532, MCA, is amended to read:

11 "33-2-532. Valuation of bonds. (1) (a) All bonds or
 12 other evidences of debt having a fixed term and rate of
 13 interest held by an insurer may, if amply secured and not in
 14 default as to principal or interest, be valued as follows:

- 15 (i) if purchased at par, at the par value;
 16 (ii) if purchased above or below par, on the basis of
 17 the purchase price adjusted ~~so-as~~ to bring the value to par
 18 at maturity and ~~so-as~~ to yield in the meantime the effective
 19 rate of interest at which the purchase was made, ~~or,~~ in lieu
 20 of ~~such~~ this method, according to ~~such~~ an accepted method of
 21 valuation as is approved by the commissioner by rule.

22 (b) Purchase price ~~shall-in-no-case~~ may not be taken at
 23 a higher figure than the actual market value at the time of
 24 purchase, plus actual brokerage, transfer, postage, or
 25 express charges paid in the acquisition of ~~such~~ the

1 securities.

2 (c) Unless otherwise provided by valuation established
 3 or approved by the commissioner, ~~no-such a~~ security shall
 4 may not be carried at above the call price for the entire
 5 issue during any period within which the security may be so
 6 called.

7 (2) The commissioner ~~shall-have~~ has full discretion in
 8 determining the method of calculating values according to
 9 the rules set forth in this section."

10 **Section 42.** Section 33-2-533, MCA, is amended to read:

11 "33-2-533. Valuation of other securities. (1)
 12 Securities, other than those referred to in 33-2-532, held
 13 by an insurer ~~shall~~ must be valued, in the discretion of the
 14 commissioner, at their market value, at their appraised
 15 value, or at prices determined by ~~him~~ the commissioner as
 16 representing their fair market value as established by rule.

17 (2) Preferred or guaranteed stocks or shares while
 18 paying full dividends may be carried at a fixed value in
 19 lieu of market value, at the discretion of the commissioner
 20 and in accordance with ~~such~~ the method of computation ~~as-he~~
 21 that the commissioner may approve."

22 **Section 43.** Section 33-2-701, MCA, is amended to read:

23 "33-2-701. Annual statement -- revocation or fine for
 24 failure to file -- penalty for perjury. (1) Each authorized
 25 insurer shall annually on or before March 1 file with the

1 commissioner a full and true statement of its financial
 2 condition, transactions, and affairs as of the December 31
 3 preceding. The statement shall must be in such the general
 4 form and context as is required or not disapproved by the
 5 commissioner, as is in current use for similar reports to
 6 states in general with respect to the type of insurer and
 7 kinds of insurance to be reported upon, and as supplemented
 8 for additional information required by the commissioner. THE
 9 STATEMENT MUST BE COMPLETED IN ACCORDANCE WITH THE ANNUAL
 10 STATEMENT INSTRUCTIONS AND THE ACCOUNTING PRACTICES AND
 11 PROCEDURES MANUAL OF THE NATIONAL ASSOCIATION OF INSURANCE
 12 COMMISSIONERS. THE STATEMENT MUST BE ACCOMPANIED BY AN
 13 ACTUARIAL OPINION ATTESTING TO THE ADEQUACY OF THE INSURER'S
 14 RESERVES. The statement shall must be verified by the oath
 15 of the insurer's president or vice-president and secretary
 16 or, if a reciprocal insurer, by the oath of the
 17 attorney-in-fact or its like officers if a corporation. The
 18 commissioner may ~~in his discretion~~ waive any ~~such~~ the
 19 verification under oath.

20 (2) The statement of an alien insurer shall must relate
 21 only to its transactions and affairs in the United States
 22 unless the commissioner requires otherwise. If the
 23 commissioner requires a statement as to an alien insurer's
 24 affairs throughout the world, the insurer shall file such
 25 the statement with the commissioner as soon as reasonably

1 possible. The statement shall must be verified by the
 2 insurer's United States manager or other authorized officer
 3 duty-authorized.

4 (3) The commissioner may refuse to accept the fee for
 5 continuance of the insurer's certificate of authority, as
 6 provided in 33-2-117, or may ~~in his discretion~~ suspend or
 7 revoke the certificate of authority of any insurer failing
 8 to file its annual statement when due or within an extension
 9 of time that the commissioner may grant.

10 (4) Any director, officer or insurance producer, or
 11 employee of any company who subscribes to, makes, or concurs
 12 in making or publishing any annual statement or any other
 13 statement required by law knowing the same to contain any
 14 material statement which is false shall be punished by a
 15 fine of not more than \$1,000.

16 (5) At time of filing, the insurer shall pay to the
 17 commissioner the fee for filing its statement as prescribed
 18 in 33-2-708.

19 (6) The commissioner may impose a fine not to exceed
 20 \$100 a day for each day after March 1 that an insurer fails
 21 to file the annual statement referred to in subsection (1).
 22 Such The fine may not exceed a maximum of \$1,000."

23 **Section 44.** Section 33-2-708, MCA, is amended to read:

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

1 the persons served shall pay to the commissioner the
2 following fees:

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

- 12 (A) domestic insurers \$ 600.00
- 13 (B) foreign insurers 600.00
- 14 (ii) annual continuation of certificate of authority
15 600.00
- 16 (iii) reinstatement of certificate of authority
17 25.00
- 18 (iv) amendment of certificate of authority 50.00

19 (b) articles of incorporation:
20 (i) filing original articles of incorporation of a
21 domestic insurer, exclusive of fees required to be paid by
22 the corporation to the secretary of state 20.00
23 (ii) filing amendment of articles of incorporation,
24 domestic and foreign insurers, exclusive of fees required to
25 be paid to the secretary of state by a domestic corporation

1 25.00
2 (c) filing bylaws or amendment to bylaws where
3 required 10.00
4 (d) filing annual statement of insurer, other than as
5 part of application for original certificate of authority
6 25.00
7 (e) insurance producer's license:
8 (i) application for original license, including
9 issuance of license, if issued 15.00
10 (ii) appointment of insurance producer, each insurer
11 10.00
12 (iii) temporary license 15.00
13 (iv) amendment of license (excluding additions to
14 license) or reissuance of master license 15.00
15 (f) nonresident insurance producer's license:
16 (i) application for original license, including
17 issuance of license, if issued 100.00
18 (ii) appointment of insurance producer, each insurer
19 10.00
20 (iii) annual renewal of license 10.00
21 (iv) amendment of license (excluding additions to
22 license) or reissuance of master license 15.00
23 (g) examination, if administered by the commissioner,
24 for license as insurance producer, each examination
25 15.00

1 (h) surplus lines insurance producer license:
2 (i) application for original license and for issuance
3 of license, if issued 50.00
4 (ii) annual renewal of license 50.00
5 (i) adjuster's license:
6 (i) application for original license and for issuance
7 of license, if issued 15.00
8 (ii) annual renewal of license 15.00
9 (j) insurance vending machine license, each machine,
10 each year 10.00
11 (k) commissioner's certificate under seal (except when
12 on certificates of authority or licenses) 10.00
13 (l) copies of documents on file in the commissioner's
14 office, per page50
15 (m) policy forms:
16 (i) filing each policy form 25.00
17 (ii) filing each application, rider, endorsement,
18 amendment, insert page, schedule of rates, and clarification
19 of risks 10.00
20 (iii) maximum charge if policy and all forms submitted
21 at one time or resubmitted for approval within 180 days
22 100.00
23 (n) applications for approval of prelicensing education
24 courses:
25 (i) reviewing initial application 150.00

1 (ii) periodic review 50.00
2 (2) The commissioner shall establish by rule an annual
3 accreditation fee to be paid by each domestic and foreign
4 insurer when it submits a fee for annual continuation of its
5 certificate of authority.
6 ~~(2)~~(3) (a) The Except as provided in subsection (3)(b),
7 the commissioner shall promptly deposit with the state
8 treasurer to the credit of the general fund of this state
9 all fines and penalties, those amounts received pursuant to
10 33-2-311, 33-2-705, and 33-2-706, and any fees and
11 examination and miscellaneous charges that are collected by
12 him the commissioner pursuant to Title 33 and the rules
13 adopted under Title 33.
14 (b) The accreditation fee required by subsection (2)
15 must be turned over promptly to the state treasurer who
16 shall deposit the money in the state special revenue fund to
17 the credit of the commissioner's office. The accreditation
18 fee funds must be used only to pay the expenses of the
19 commissioner's office in discharging its THE administrative
20 and regulatory duties THAT ARE REQUIRED TO MEET THE MINIMUM
21 FINANCIAL REGULATORY STANDARDS ESTABLISHED BY THE NATIONAL
22 ASSOCIATION OF INSURANCE COMMISSIONERS, subject to the
23 applicable laws relating to the appropriation of state funds
24 and to the deposit and expenditure of money. The
25 commissioner is responsible for the proper expenditure of

1 the accreditation money.

2 {3}(4) All fees are considered fully earned when
3 received. In the event of overpayment, only those amounts in
4 excess of \$10 will be refunded."

5 **Section 45.** Section 33-2-1111, MCA, is amended to read:

6 "33-2-1111. Registration of insurers -- requisites --
7 termination. (1) Every insurer which is authorized to do
8 business in this state and which is a member of an insurance
9 holding company system shall register with the commissioner,
10 except a foreign insurer subject to disclosure requirements
11 and standards adopted by statute or regulation in the
12 jurisdiction of its domicile which are substantially similar
13 to those contained in this section. Any insurer which is
14 subject to registration under this section shall register
15 within ~~60 days after July 17, 1971~~ or 15 days after it
16 becomes subject to registration, ~~whichever is later~~, unless
17 the commissioner for good cause shown extends the time for
18 registration, and then within such the extended time. The
19 commissioner may require any authorized insurer which is a
20 member of a holding company system which is not subject to
21 registration under this section to furnish a copy of the
22 registration statement or other information filed by such
23 the insurance company with the insurance regulatory
24 authority of domiciliary jurisdiction.

25 (2) Every insurer subject to registration shall file

1 with the commissioner, on or before April 30 each year, a
2 registration statement on a form provided by the
3 commissioner, which must contain current information about:

4 (a) the capital structure, general financial condition,
5 ownership, and management of the insurer and any person
6 controlling the insurer;

7 (b) the identity of every member of the insurance
8 holding company system;

9 (c) the following agreements in force, relationships
10 subsisting, and transactions currently outstanding between
11 such the insurer and its affiliates:

12 (i) loans, other investments, or purchases, sales, or
13 exchanges of securities of the affiliates by the insurer or
14 of the insurer by its affiliates;

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

16 (iii) transactions not in the ordinary course of
17 business;

18 (iv) guaranties or undertakings for the benefit of an
19 affiliate which result in an actual contingent exposure of
20 the insurer's assets to liability, other than insurance
21 contracts entered into in the ordinary course of the
22 insurer's business;

23 (v) all management and service contracts and all
24 cost-sharing arrangements, other than cost allocation
25 arrangements based upon generally accepted accounting

1 principles;

2 (vi) reinsurance agreements covering all or
3 substantially all of one or more lines of insurance of the
4 ceding company;

5 (vii) dividends and other distributions to shareholders;
6 and

7 (viii) consolidated tax allocation agreements;

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

11 (e) all matters concerning transactions between
12 registered insurers and any affiliates as may be included
13 from time to time in any registration forms adopted or
14 approved by the commissioner.

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

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

1 preceding may are not be deemed material for purposes of
2 this section.

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

8 (6) Each registered insurer shall keep current the
9 information required to be disclosed in its registration
10 statement by reporting all material changes or additions on
11 amendment forms provided by the commissioner within 15 days
12 after the end of the month in which it learns of each such
13 change or addition. ~~Except-as-provided-in-33-2-11147,~~ each
14 registered insurer shall report all dividends and other
15 distributions to shareholders within 2 business days
16 following the declaration thereof.

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

20 (8) The commissioner may require or allow two or more
21 affiliated insurers subject to registration hereunder under
22 this section to file a consolidated registration statement
23 or consolidated reports amending their consolidated
24 registration statement or their individual registration
25 statements.

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

7 **Section 46.** Section 33-2-1114, MCA, is amended to read:

8 "33-2-1114. Dividends and other distributions --
9 commissioner approval. (1) An insurer subject to
10 registration under 33-2-1111 and 33-2-1112 may not pay any
11 extraordinary dividend or make any other extraordinary
12 distribution to its shareholders until 30 days after the
13 commissioner has received notice of the declaration thereof
14 of the dividend or distribution and has not within such the
15 period disapproved such the payment or the commissioner
16 shall--have has approved such payment within such the 30-day
17 period.

18 (2) For purposes of this section, an extraordinary
19 dividend or distribution includes any dividend or
20 distribution of cash or other property whose fair market
21 value together with that of other dividends or distributions
22 made within the preceding 12 months exceeds 10% of such the
23 insurer's surplus as regards policyholders as of December 31
24 next preceding, but shall may not include pro rata
25 distributions of any class of the insurer's own securities.

1 (3) Notwithstanding any other provision of law, an
2 insurer may declare an extraordinary dividend or
3 distribution which is conditional upon the commissioner's
4 approval thereof, and such-a the declaration shall may not
5 confer no rights upon shareholders until the commissioner
6 has approved the payment of such the dividend or
7 distribution or the commissioner has not disapproved such
8 the payment within the 30-day period referred to above in
9 subsection (1).

10 (4) An insurer subject to subsection (1) may not pay
11 any other dividend or make any other distribution to its
12 shareholders unless the insurer has notified the
13 commissioner of the payment 15 days prior to the payment
14 date. The notice must be kept confidential until the payment
15 date of the dividend. The commissioner may order that a
16 dividend not be paid if the commissioner finds that the
17 insurer's surplus as regards policyholders, following the
18 payment to shareholders, would be inadequate or could lead
19 the insurer to a hazardous financial condition."

20 **Section 47.** Section 33-2-1115, MCA, is amended to read:

21 "~~33-2-1115. Examination. (1) Subject-to-the-limitation~~
22 ~~contained-in-this-section-and-in~~ In addition to the powers
23 which the commissioner has under chapter 1, part 4, relating
24 to the examination of insurers, the commissioner shall also
25 have has the power to order any insurer registered under

33-2-1111 to produce such the records, books, or other information papers in the possession of the insurer or its affiliates as ~~shall be~~ are necessary to ascertain the financial condition or legality of conduct of such the insurer. ~~in the event such~~ If the insurer fails to comply with such the order, the commissioner ~~shall have the power~~ to may examine such the affiliates to obtain such the information.

~~(2) The commissioner shall exercise his power under subsection (1) only if the examination of the insurer is inadequate or the interests of the policyholders of such insurer may be adversely affected.~~

~~(3)~~ The commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as ~~shall be~~ are reasonably necessary to assist in the conduct of the examination under subsection (1). Any persons so retained ~~shall be~~ are under the direction and control of the commissioner and shall act in a purely advisory capacity.

~~(4)~~ (3) Each registered insurer producing for examination records, books, and papers pursuant to subsection (1) ~~shall be~~ is liable for and shall pay the expense of such the examination."

NEW SECTION. Section 48. Recovery of dividends. (1) If

an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under the order has a right to recover on behalf of the insurer:

(a) from any parent corporation or holding company or person or affiliate who otherwise controlled the insurer, the amount of distributions, other than distributions of shares of the same class of stock, paid by the insurer on its capital stock; or

(b) any payment in the form of a bonus, termination settlement, or extraordinary lump-sum salary adjustment made by the insurer or its subsidiary to a director, officer, or employee, when the distribution or payment pursuant to subsection (1)(a) or this subsection is made at any time during the year preceding the petition for liquidation, conservation, or rehabilitation, as the case may be, subject to the limitations of subsections (2) through (4).

(2) A distribution is not recoverable if the parent or affiliate shows that when paid the distribution was lawful and reasonable and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(3) Any person who was a parent corporation or holding company or a person who otherwise controlled the insurer or

1 affiliate at the time that the distributions were paid is
 2 liable up to the amount of distributions or payments that
 3 the person received. Any person who otherwise controlled the
 4 insurer at the time that the distributions were declared is
 5 liable up to the amount of distributions the person would
 6 have received if the person had been paid immediately. If
 7 two or more persons are liable with respect to the same
 8 distributions, they are jointly and severally liable.

9 (4) The maximum amount recoverable under this section
 10 is the amount needed in excess of all other available assets
 11 of the impaired or insolvent insurer to pay the contractual
 12 obligations of the impaired or insolvent insurer and to
 13 reimburse any guaranty funds.

14 (5) To the extent that any person liable under
 15 subsection (3) is insolvent or otherwise fails to pay claims
 16 due from it, its parent corporation or holding company or
 17 person who otherwise controlled it at the time the
 18 distribution was paid is jointly and severally liable for
 19 any resulting deficiency in the amount recovered from the
 20 parent corporation or holding company or person who
 21 otherwise controlled it.

22 **Section 49.** Section 33-2-1201, MCA, is amended to read:

23 *33-2-1201. Limit of risk. (1) No An insurer ~~shall~~ may
 24 not retain any risk on any one subject of insurance, whether
 25 located or to be performed in this state or elsewhere, in an

1 amount exceeding 10% of its surplus to policyholders.

2 (2) A "subject of insurance" for the purposes of this
 3 section, as to insurance against fire and hazards other than
 4 windstorm, earthquake, or other catastrophe hazards,
 5 includes all properties insured by the same insurer which
 6 are customarily considered by underwriters to be subject to
 7 loss or damage from the same fire or the same occurrence of
 8 such the other hazard insured against.

9 (3) Reinsurance ceded as authorized by 33-2-1205-~~shall~~
 10 this part must be deducted in determining risk retained. As
 11 to surety risks, deduction ~~shall~~ must also be made of the
 12 amount assumed by any established incorporated cosurety and
 13 the value of any security deposited, pledged, or held
 14 subject to the surety's consent and for the surety's
 15 protection.

16 (4) As to alien insurers, this section ~~shall--relate~~
 17 only relates to risks and surplus to policyholders of the
 18 insurer's United States branch.

19 (5) "Surplus to policyholders" for the purposes of this
 20 section, in addition to the insurer's capital and surplus,
 21 ~~shall--be--deemed~~ is considered to include any voluntary
 22 reserves which are not required pursuant to law and ~~shall-be~~
 23 are determined from the last sworn statement of the insurer
 24 on file with the commissioner or by the last report of
 25 examination of the insurer, whichever is the more recent at

1 time of assumption of risk.

2 (6) This section shall does not apply to life or
3 disability insurance, title insurance, insurance of wet
4 marine and transportation risks, workers' compensation
5 insurance, employer's liability coverages, sprinklered
6 risks, or any policy or type of coverage as to which the
7 maximum possible loss to the insurer is not readily
8 ascertainable on issuance of the policy."

9 **Section 50.** Section 33-2-1331, MCA, is amended to read:

10 "33-2-1331. Grounds for rehabilitation. The
11 commissioner may apply by petition to a district court for
12 an order authorizing him the commissioner to rehabilitate a
13 domestic insurer or an alien insurer domiciled in this state
14 on any one or more of the following grounds:

15 (1) The insurer is in such condition that the further
16 transaction of business would be financially hazardous to
17 its policyholders, creditors, or the public.

18 (2) There is reasonable cause to believe that there has
19 been embezzlement from the insurer, wrongful sequestration
20 or diversion of the insurer's assets, forgery or fraud
21 affecting the insurer, or other illegal conduct in, by, or
22 with respect to the insurer that if established would
23 endanger assets in an amount threatening the solvency of the
24 insurer.

25 (3) The insurer has failed to remove any person who in

1 fact has executive authority in the insurer, whether an
2 officer, manager, general insurance producer, employee, or
3 other person, if the person has been found after notice and
4 hearing by the commissioner to be dishonest or untrustworthy
5 in a way affecting the insurer's business.

6 (4) Control of the insurer, whether by stock ownership
7 or otherwise and whether direct or indirect, is in a person
8 found after notice and hearing to be untrustworthy.

9 (5) Any person who in fact has executive authority in
10 the insurer, whether an officer, manager, general insurance
11 producer, director or trustee, employee, or other person,
12 has refused to be examined under oath by the commissioner
13 concerning its affairs, whether in this state or elsewhere,
14 and after reasonable notice of the fact the insurer has
15 failed promptly and effectively to terminate the employment
16 and status of the person and his the person's influence on
17 management.

18 (6) After demand by the commissioner under 33-1-403
19 [section 31] or under this part, the insurer has failed to
20 promptly make available for examination any of its own
21 property, books, accounts, documents, or other records or
22 those of any subsidiary or related company within the
23 control of the insurer or those of any person having
24 executive authority in the insurer so far as they pertain to
25 the insurer.

1 (7) Without first obtaining the written consent of the
 2 commissioner, the insurer has transferred or attempted to
 3 transfer, in a manner contrary to chapter 2, part 11, or
 4 chapter 2, part 12, of Title 33, substantially its entire
 5 property or business or has entered into any transaction the
 6 effect of which is to merge, consolidate, or reinsure
 7 substantially its entire property or business in or with the
 8 property or business of any other person.

9 (8) The insurer or its property has been or is the
 10 subject of an application for the appointment of a receiver,
 11 trustee, custodian, conservator, or sequestrator or similar
 12 fiduciary of the insurer or its property otherwise than as
 13 authorized under the insurance laws of this state, and ~~such~~
 14 the appointment has been made or is imminent, and ~~such~~ the
 15 appointment might oust the courts of this state of
 16 jurisdiction or might prejudice orderly delinquency
 17 proceedings under this part.

18 (9) Within the previous 4 years the insurer has
 19 willfully violated its charter or articles of incorporation,
 20 its bylaws, any insurance law of this state, or any valid
 21 order of the commissioner under 33-2-1321.

22 (10) The insurer has failed to pay within 60 days after
 23 the due date any obligation to any state or any subdivision
 24 thereof of the state or any judgment entered in any state,
 25 if the court in which ~~such~~ the judgment was entered had

1 jurisdiction over ~~such~~ the subject matter, except that ~~such~~
 2 nonpayment ~~shall~~ may not be a ground until 60 days after any
 3 good faith effort by the insurer to contest the obligation
 4 has been terminated, whether it is before the commissioner
 5 or in the courts, or the insurer has systematically
 6 attempted to compromise or renegotiate previously agreed
 7 settlements with its creditors on the ground that it is
 8 financially unable to pay its obligations in full.

9 (11) The insurer has failed to file its annual report or
 10 other financial report required by statute within the time
 11 allowed by law and, after written demand by the
 12 commissioner, has failed to give an adequate explanation
 13 immediately.

14 (12) The board of directors or the holders of a majority
 15 of the shares entitled to vote request or consent to
 16 rehabilitation under this part."

17 **Section 51.** Section 33-2-1342, MCA, is amended to read:

18 "33-2-1342. Liquidation orders. (1) An order to
 19 liquidate the business of a domestic insurer ~~shall~~ must
 20 appoint the commissioner and ~~his~~ the commissioner's
 21 successors in office liquidator and shall direct the
 22 liquidator ~~forthwith~~ to take possession of the assets of the
 23 insurer and to administer them under the general supervision
 24 of the court. The liquidator shall be vested by operation of
 25 law with the title to all of the property, contracts, and

1 rights of action and all of the books and records of the
 2 insurer ordered liquidated, wherever located, as of the
 3 entry of the final order of liquidation. The filing or
 4 recording of the order with the clerk of the district court
 5 and the clerk and recorder of the county in which its
 6 principal office or place of business is located or, in the
 7 case of real estate, with the clerk and recorder of the
 8 county where the property is located shall impart the same
 9 notice as a deed, bill of sale, or other evidence of title
 10 duly filed or recorded with that clerk and recorder would
 11 have imparted.

12 (2) Upon issuance of the order, the rights and
 13 liabilities of any such insurer and of its creditors,
 14 policyholders, shareholders, members, and all other persons
 15 interested in its estate shall become fixed as of the date
 16 of entry of the order of liquidation, except as provided in
 17 33-2-1343 and 33-2-1366.

18 (3) An order to liquidate the business of an alien
 19 insurer domiciled in this state shall must be in the same
 20 terms and have the same legal effect as an order to
 21 liquidate a domestic insurer, except that the assets and the
 22 business in the United States shall be are the only assets
 23 and business included therein in the order.

24 (4) At the time of petitioning for an order of
 25 liquidation or at any time thereafter after petitioning, the

1 commissioner, after making appropriate findings of an
 2 insurer's insolvency, may petition the court for a judicial
 3 declaration of such insolvency. After providing such notice
 4 and hearing as it considers proper, the court may make the
 5 declaration.

6 (5) Any order issued under this section shall must
 7 require accounting to the court by the liquidator.
 8 Accountings shall must be at such intervals as the court
 9 specifies in its order.

10 (6) (a) Within 5 days after the initiation of an appeal
 11 of an order of liquidation that has not been stayed, the
 12 commissioner shall present for the court's approval a plan
 13 for the continued performance of the defendant company's
 14 policy claims obligations, including the duty to defend
 15 insureds under liability insurance policies, during the
 16 pendency of an appeal. The plan must provide for the
 17 continued performance and payment of policy claims
 18 obligations in the normal course of events, notwithstanding
 19 the grounds alleged in support of the order of liquidation,
 20 including the ground of insolvency. In the event that the
 21 defendant company's financial condition will not, in the
 22 judgment of the commissioner, support the full performance
 23 of all policy claims obligations during the appeal pendency
 24 period, the plan may prefer the claims of certain
 25 policyholders and claimants over creditors and interested

1 parties, as well as other policyholders and claimants, as
 2 the commissioner finds to be fair and equitable, considering
 3 the relative circumstances of the policyholders and
 4 claimants. The court shall examine the plan submitted by the
 5 commissioner, and if it finds the plan to be in the best
 6 interests of the parties, the court shall approve the plan.
 7 An action does not lie against the commissioner or any of
 8 the commissioner's deputies, agents, clerks, assistants, or
 9 attorneys by any party based on preference in an appeal
 10 pendency plan approved by the court.

11 (b) The appeal pendency plan may not supersede or
 12 affect the obligations of any insurance guaranty
 13 association.

14 (c) A plan must provide for equitable adjustments to be
 15 made by the liquidator to any distributions of assets to
 16 guaranty associations, in the event that the liquidator pays
 17 claims from assets of the estate, which would otherwise be
 18 the obligations of any particular guaranty association but
 19 for the appeal of the order of liquidation, so that all
 20 guaranty associations equally benefit on a pro rata basis
 21 from the assets of the estate. If an order of liquidation is
 22 set aside upon any appeal, the company may not be released
 23 from delinquency proceedings unless all funds advanced by
 24 any guaranty association, including reasonable
 25 administrative expenses that relate to obligations of the

1 company, have been repaid in full, together with interest at
 2 the judgment rate of interest, or unless an arrangement for
 3 repayment has been made with the consent of all applicable
 4 guaranty associations."

5 **Section 52.** Section 33-2-1346, MCA, is amended to read:

6 **"33-2-1346. Notice to creditors and others.** (1) Unless
 7 the court otherwise directs, the liquidator shall give or
 8 cause to be given notice of the liquidation order as soon as
 9 possible:

10 (a) by first-class mail and either by telegram or
 11 telephone to the insurance commissioner of each jurisdiction
 12 in which the insurer is doing business;

13 (b) by first-class mail to any guaranty association or
 14 foreign guaranty association which is or may become
 15 obligated as a result of the liquidation;

16 (c) by first-class mail to all insurance producers of
 17 the insurer;

18 (d) by first-class mail to all persons known or
 19 reasonably expected to have claims against the insurer,
 20 including all policyholders, at their last-known address as
 21 indicated by the records of the insurer; and

22 (e) by publication in a newspaper of general
 23 circulation in the county in which the insurer has its
 24 principal place of business and in such other locations as
 25 that the liquidator considers appropriate.

(2) Notice to potential claimants under subsection (1) ~~shall require~~ requires claimants to file with the liquidator their claims together with proper proofs thereof of the claims under 33-2-1365, on or before a date the liquidator ~~shall specify~~ specifies in the notice. The liquidator need not require persons claiming cash surrender values or other investment values in life insurance and annuities to file a claim. All claimants have a duty to keep the liquidator informed of any changes of address.

(3) (a) Notice under subsection (1) to insurance producers of the insurer and to potential claimants who are policyholders must include, when applicable, notice that coverage by state guaranty associations may be available for all or part of policy benefits in accordance with applicable state guaranty laws.

(b) The liquidator shall promptly provide to the guaranty associations information concerning the identities and addresses of the policyholders and their policy coverages as is within the liquidator's possession or control and shall otherwise cooperate with guaranty associations to assist them in providing to the policyholders timely notice of the guaranty associations' coverage of policy benefits, including coverage of claims and continuation or termination of coverages.

~~(3)(4)~~ If notice is given in accordance with this

section, the distribution of assets of the insurer under this part ~~shall--be~~ is conclusive with respect to all claimants, whether or not they received notice."

Section 53. Section 33-10-105, MCA, is amended to read:

"33-10-105. General powers and duties. (1) The association ~~shall~~:

(a) ~~(i) is~~ is be obligated to the extent of the covered claims existing prior to the determination of insolvency and arising within 30 days after the determination of insolvency or before the policy expiration date if less than 30 days after the determination or before the insured replaces the policy or causes its cancellation if ~~he~~ the insured does so within 30 days of the determination;

~~(ii) but such--obligation--shall--include~~ is obligated under subsection (1)(a)(i) only for that amount of each covered claim ~~which that~~ is in excess of \$100 and is less than \$300,000, except that:

(A) the association shall pay an amount not exceeding \$10,000 per policy for a covered claim for the return of unearned premium; and

(B) the association shall pay the full amount of any covered claim arising out of a workers' compensation policy; and

~~(iii) in--no--event--shall--the--association--be~~ is not obligated to a policyholder or claimant in an amount in

1 excess of the obligation of the insolvent insurer under the
2 policy from which the claim arises;

3 (b) ~~be deemed is considered~~ the insurer to the extent
4 of its obligation on the covered claims and to ~~such that~~
5 extent ~~shall have~~ has all rights, duties, and obligations of
6 the insolvent insurer as if the insurer had not become
7 insolvent;

8 (c) shall investigate claims brought against the
9 association and adjust, compromise, settle, and pay covered
10 claims to the extent of the association's obligation and
11 deny all other claims and may review settlements, releases,
12 and judgments to which the insolvent insurer or its insureds
13 were parties to determine the extent to which ~~such the~~
14 settlements, releases, and judgments may be properly
15 contested;

16 (d) shall notify ~~such~~ persons as the commissioner
17 directs under 33-10-109(2)(a);

18 (e) shall handle claims through its employees or
19 through one or more insurers or other persons designated as
20 servicing facilities. Designation of a servicing facility is
21 subject to the approval of the commissioner, but ~~such the~~
22 designation may be declined by a member insurer.

23 (f) shall reimburse each servicing facility for
24 obligations of the association paid by the facility and for
25 expenses incurred by the facility while handling claims on

1 behalf of the association and shall pay the other expenses
2 of the association authorized by this part.

3 (2) The association may:

4 (a) employ or retain ~~such~~ persons as are necessary to
5 handle claims and perform other duties of the association;

6 (b) borrow funds necessary to effect the purposes of
7 this part in accord with the plan of operation;

8 (c) sue or be sued;

9 (d) negotiate and become a party to ~~such~~ contracts as
10 are necessary to carry out the purpose of this part;

11 (e) perform ~~such~~ other acts as are necessary or proper
12 to effectuate the purpose of this part;

13 (f) refund to the member insurers in proportion to the
14 contribution of each member insurer to the association that
15 amount by which the assets of the association exceed the
16 liabilities, if, at the end of any calendar year, the board
17 of directors finds that the assets of the association exceed
18 the liabilities of the association as estimated by the board
19 of directors for the coming year."

20 **Section 54.** Section 33-10-111, MCA, is amended to read:

21 "33-10-111. Stay of proceedings -- reopening of default
22 judgments. (1) All proceedings in which the insolvent
23 insurer is a party or is obligated to defend a party in any
24 court in this state ~~shall~~ must be stayed for ~~60-days~~ 6
25 months from the date the insolvency is determined or an

1 ancillary proceeding is instituted in the state, whichever
 2 is later, or must be stayed for any additional time as may
 3 be determined by the court in order to permit proper defense
 4 by the association of all pending causes of action.

5 (2) As to any covered claims arising from a judgment
 6 under any decision, verdict, or finding based on the default
 7 of the insolvent insurer or its failure to defend an
 8 insured, the association either on its own behalf or on
 9 behalf of such the insured may apply to have such the
 10 judgment, order, decision, verdict, or finding set aside by
 11 the same court or administrator that made such the judgment,
 12 order, decision, verdict, or finding and shall must be
 13 permitted to defend against such the claim on the merits."

14 **Section 55.** Section 33-10-114, MCA, is amended to read:

15 "33-10-114. Claims -- effect as to insured and
 16 receiver. (1) Any person recovering under this part ~~shall-be~~
 17 deemed is considered to have assigned his the person's
 18 rights under the policy to the association to the extent of
 19 his the person's recovery from the association. Every
 20 insured or claimant seeking the protection of this part
 21 shall cooperate with the association to the same extent as
 22 such that the person would have been required to cooperate
 23 with the insolvent insurer. The association ~~shall~~ does not
 24 have no a cause of action against the insured of the
 25 insolvent insurer for any sums it has paid out except such

1 causes of action as that the insolvent insurer would have
 2 had if ~~such the~~ the sums had been paid by the insolvent insurer.
 3 In the case of an insolvent insurer operating on a plan with
 4 assessment liability, payments of claims of the association
 5 ~~shall may~~ may not operate to reduce the liability of ~~insured's~~
 6 insureds to the receiver, liquidator, or statutory successor
 7 for unpaid assessments.

8 (2) The association has the right to recover from the
 9 following persons the amount of any "covered claim" paid on
 10 behalf of the person pursuant to this part:

11 (a) any insured whose net worth, on December 31 of the
 12 year preceding the date the insurer becomes an insolvent
 13 insurer, exceeds \$50 million and whose liability obligations
 14 to other persons are satisfied in whole or in part by
 15 payments made under this part; and

16 (b) any person who is an affiliate of the insolvent
 17 insurer and whose liability obligations to other persons are
 18 satisfied in whole or in part by payments made under this
 19 part.

20 (2)(3) The receiver, liquidator, or statutory successor
 21 of an insolvent insurer ~~shall-be~~ is bound by settlements of
 22 covered claims by the association or a similar organization
 23 in another state. The court having jurisdiction shall grant
 24 such the claims priority equal to that which the claimant
 25 would have been entitled in the absence of this part against

1 the assets of the insolvent insurer. The expenses of the
2 association or similar organization in handling claims shall
3 must be accorded the same priority as the liquidator's
4 expenses.

5 ~~(3)~~(4) The association shall periodically file with the
6 receiver or liquidator of the insolvent insurer statements
7 of the covered claims paid by the association and estimates
8 of anticipated claims on the association which shall
9 preserve the rights of the association against the assets of
10 the insolvent insurer."

11 **Section 56.** Section 33-10-201, MCA, is amended to read:
12 "33-10-201. Short title, purpose, scope, and
13 construction. (1) This part shall be known and may be cited
14 as the "Montana Life and Health Insurance Guaranty
15 Association Act".

16 (2) The purpose of this part is to protect
17 policyowners, insureds, beneficiaries, annuitants, payees,
18 and assignees of life insurance policies, health insurance
19 policies, annuity contracts, and supplemental contracts,
20 subject to certain limitations, against failure in the
21 performance of contractual obligations due to the impairment
22 of the insurer issuing such the policies or contracts.

23 (3) To provide this protection:

24 (a) an association of insurers is created to enable the
25 guaranty of payment of benefits and of continuation of

1 coverages;

2 (b) members of the association are subject to
3 assessment to provide funds to carry out the purpose of this
4 part; and

5 (c) the association is authorized to assist the
6 commissioner, in the prescribed manner, in the detection and
7 prevention of insurer impairments.

8 (4) This part ~~shall--apply~~ applies to direct life
9 ~~insurance--policies,--health--insurance--policies,--annuity~~
10 ~~contracts,--and--contracts--supplemental--to--life--and--health~~
11 ~~insurance--policies--and--annuity--contracts--issued--by--persons~~
12 ~~authorized--to--transact--insurance--in--this--state--at--any--time,~~
13 nongroup life, health, annuity, and supplemental policies or
14 contracts, to certificates under direct group policies and
15 contracts, and to unallocated annuity contracts issued by
16 member insurers, except as limited by this part. Annuity
17 contracts and certificates under group annuity contracts
18 include but are not limited to guaranteed investment
19 contracts, deposit administration contracts, unallocated
20 funding agreements, allocated funding agreements, structured
21 settlement agreements, lottery contracts, and any immediate
22 or deferred annuity contracts.

23 (5) This part ~~shall--provide~~ provides coverage for
24 covered policies:

25 (a) to persons who are owners of or certificate holders

1 under such covered policies, and who:

2 (i) are residents; or

3 (ii) are not residents, but only under all of the
4 following conditions:

5 (A) the insurers that issued the policies are domiciled
6 in this state;

7 (B) the insurers have not held a license or certificate
8 of authority in the state in which the persons reside;

9 (C) the state has an association similar to the
10 association created under this part; and

11 (D) the persons are not eligible for coverage by that
12 association; and

13 (b) to persons who, regardless of where they reside,
14 except for nonresident certificate holders under group
15 policies or contracts, are the beneficiaries, assignees, or
16 payees of the persons covered under subsection (5)(a).

17 (6) This part ~~shall~~ may DOES not apply to:

18 (a) any such policies or contracts or any part of such
19 the policies or contracts under which the risk is borne by
20 the policyholder;

21 (b) any such policy or contract or part thereof of the
22 policy or contract assumed by the impaired insurer under a
23 contract of reinsurance, other than reinsurance for which
24 assumption certificates have been issued;

25 (c) any portion of a policy or contract to the extent

1 that the rate of interest on which it is based:

2 (i) averaged over the period of 4 years prior to the
3 date on which the association becomes obligated with respect
4 to the policy or contract, exceeds a rate of interest
5 determined by subtracting 2 percentage points from Moody's
6 corporate bond yield average averaged for that same 4-year
7 period or for the lesser period if the policy or contract
8 was issued less than 4 years before the association became
9 obligated; and

10 (ii) on and after the date on which the association
11 becomes obligated with respect to the policy or contract,
12 exceeds the rate of interest determined by subtracting 3
13 percentage points from Moody's corporate bond yield average
14 as is most recently available;

15 (d) any plan or program of an employer, association, or
16 similar entity to provide life, health, or annuity benefits
17 to its employees or members to the extent that the plan or
18 program is self-funded or uninsured, including but not
19 limited to benefits payable by an employer, association, or
20 similar entity under:

21 (i) a multiple employer welfare arrangement, as defined
22 in section 514 of the Employee Retirement Income Security
23 Act of 1974, as amended;

24 (ii) a minimum premium group insurance plan;

25 (iii) a stop-loss group insurance plan; or

1 (iv) an administrative services only contract;

2 (e) any portion of a policy or contract to the extent
 3 that it provides dividends or experience rating credits or
 4 provides that any fees or allowances be paid to any person,
 5 including the policy or contract holder, in connection with
 6 the service to or administration of the policy or contract;

7 (f) any policy or contract issued in this state by a
 8 member insurer at a time when it was not licensed or did not
 9 have a certificate of authority to issue the policy or
 10 contract in this state;

11 (g) any unallocated annuity contract issued to an
 12 employee benefit plan that is protected under the federal
 13 pension benefit guaranty corporation; and

14 (h) any portion of any unallocated annuity contract
 15 that is not issued to or in connection with a specific
 16 employee, union, or association of natural persons benefit
 17 plan or a government lottery.

18 (7) This part ~~shall~~ must be liberally construed to
 19 effect the purpose under subsections (2) and (3), which
 20 ~~shall~~ constitute an aid and guide to interpretation.

21 (8) ~~Nothing--in--this~~ This part ~~shall~~ may not be
 22 construed to reduce the liability for unpaid assessments of
 23 the insureds of an impaired insurer operating under a plan
 24 with assessment liability."

25 **Section 57.** Section 33-10-202, MCA, is amended to read:

1 ***33-10-202. Definitions.** As used in this part, the
 2 following definitions apply:

3 (1) "Account" means any of the three accounts created
 4 under 33-10-203.

5 (2) "Association" means the Montana life and health
 6 insurance guaranty association created under 33-10-203.

7 (3) "Contractual obligation" means any obligation under
 8 covered policies.

9 (4) "Covered policy" means any policy or contract
 10 within the scope of this part under subsections (4) through
 11 (6) of 33-10-201.

12 (5) "Impaired insurer" means:

13 (a) an insurer which after July 1, 1974, becomes
 14 insolvent and is placed under a final order of liquidation,
 15 rehabilitation, or supervision by a court of competent
 16 jurisdiction; or

17 (b) an insurer ~~deemed~~ considered by the commissioner
 18 after July 1, 1974, to be unable or potentially unable to
 19 fulfill its contractual obligations.

20 (6) "Member insurer" means any person authorized to
 21 transact in this state any kind of insurance to which this
 22 part applies under subsections (4) and (6) of 33-10-201.

23 (7) "Person" means any individual, corporation,
 24 partnership, association, or voluntary organization.

25 (8) "Premiums" means direct gross insurance premiums

1 and annuity considerations written on covered policies, less
 2 return premiums and considerations thereon on premiums and
 3 dividends paid or credited to policyholders on such the
 4 direct business. "Premiums" do not include premiums and
 5 considerations on contracts between insurers and reinsurers.
 6 As used in 33-10-227, "premiums" are those for the calendar
 7 year preceding the determination of impairment.

8 (9) "Resident" means any person who resides in this
 9 state at the time the impairment is determined and to whom
 10 contractual obligations are owed.

11 (10) "Unallocated annuity contract" means an annuity
 12 contract or group annuity certificate that is not issued to
 13 and owned by an individual, except to the extent of annuity
 14 benefits guaranteed to an individual by the insurer under
 15 the contract or certificate."

16 **Section 58.** Section 33-10-203, MCA, is amended to read:

17 "33-10-203. Creation of the association -- accounts --
 18 supervision by commissioner. (1) There is created a
 19 nonprofit legal entity to be known as the Montana life and
 20 health insurance guaranty association. All member insurers
 21 shall be and remain members of the association as a
 22 condition of their authority to transact insurance in this
 23 state. The association shall perform its functions under the
 24 plan of operation established and approved under 33-10-216
 25 and shall exercise its powers through a board of directors

1 established under 33-10-204.

2 (2) For purposes of administration and assessment, the
 3 association shall maintain three two accounts:

4 (a) the health insurance account; and

5 (b) the life insurance and annuity account that
 6 includes the following subaccounts ;--and

7 (c)--the-annuity-account;

8 (i) the life insurance account;

9 (ii) the annuity account; and

10 (iii) the unallocated annuity account that must include
 11 unallocated annuity contracts qualified under section 403(b)
 12 of the Internal Revenue Code.

13 (3) The association ~~shall come~~ is under the immediate
 14 supervision of the commissioner and ~~shall be~~ is subject to
 15 the applicable provisions of the insurance laws of this
 16 state. Meetings or records of the association may be opened
 17 to the public upon majority vote of the board of directors
 18 of the association."

19 **Section 59.** Section 33-10-210, MCA, is amended to read:

20 "33-10-210. Unfair trade practice -- notice to
 21 policyholders. (1) It shall-be is a prohibited unfair trade
 22 practice for any person to make use in any manner of the
 23 protection afforded by this part in the sale of insurance.

24 (2) Within 180 days after October 1, 1993, the
 25 association shall prepare a summary document, complying with

1 subsection (3) and describing the general purposes and
 2 current limitations of this part. The document must be
 3 submitted to the commissioner for approval. Sixty days after
 4 receiving approval, an insurer may not deliver a policy or
 5 contract described in 33-10-201(4) to a policy or contract
 6 holder unless the document is delivered to the policy or
 7 contract holder prior to or at the time of delivery of the
 8 policy or contract, unless subsection (4) applies. The
 9 document must be available upon request by a policyholder.
 10 The distribution, delivery, contents, or interpretation of
 11 this document does not mean that either the policy or the
 12 contract or the holder of the policy or contract would be
 13 covered in the event of the impairment or insolvency of a
 14 member insurer. The description document must be revised by
 15 the association as amendments to this part may require.
 16 Failure to receive this document does not give the
 17 policyholder, contract holder, certificate holder, or
 18 insured any greater rights than those stated in this part.

19 (3) The document prepared under subsection (2) must
 20 contain a clear and conspicuous disclaimer on its face. The
 21 commissioner shall promulgate a rule establishing the form
 22 and content of the disclaimer. The disclaimer must:

23 (a) state the name and address of the life and health
 24 insurance guaranty association and insurance department;

25 (b) prominently warn the policy or contract holder that

1 the life and health insurance guaranty association may not
 2 cover the policy or, if coverage is available, it will be
 3 subject to substantial limitations and exclusions and
 4 conditioned on continued residence in the state;

5 (c) state that the insurer and its insurance producers
 6 are prohibited by law from using the existence of the life
 7 and health insurance guaranty association for the purpose of
 8 sales, solicitation, or inducement to purchase any form of
 9 insurance;

10 (d) emphasize that the policy or contract holder should
 11 not rely on coverage under the life and health insurance
 12 guaranty association when selecting an insurer;

13 (e) provide other information as directed by the
 14 commissioner.

15 (4) An insurer or insurance producer may not deliver a
 16 policy or contract described in 33-10-201(4) and excluded
 17 under 33-10-201(6)(a) from coverage under this part unless
 18 the insurer or insurance producer, prior to or at the time
 19 of delivery, gives the policy or contract holder a separate
 20 written notice that clearly and conspicuously discloses that
 21 the policy or contract is not covered by the life and health
 22 insurance guaranty association.

23 (5) The commissioner shall by rule specify the form and
 24 content of the notice required under subsection (4)."

25 **Section 60.** Section 33-10-217, MCA, is amended to read:

1 "33-10-217. Prevention of insolvencies or impairments.

2 (1) To aid in the detection and prevention of insurer
 3 insolvencies or impairments the board of directors is given
 4 the following powers and duties, the commissioner shall:

5 (a) (i) notify the commissioners of all the other
 6 states, the territories of the United States, and the
 7 District of Columbia when the commissioner takes any of the
 8 following actions against a member insurer:

9 (A) the revocation of a license;

10 (B) the suspension of a license; or

11 (C) the issuance of any formal order that the company
 12 restrict its premium writing, obtain additional
 13 contributions to surplus, withdraw from the state, reinsure
 14 all or any part of its business, or increase capital,
 15 surplus, or any other account for the security of
 16 policyholders or creditors;

17 (i) mail the notice to all commissioners within 30 days
 18 following the action taken or the date on which the action
 19 occurs;

20 (b) report to the board of directors when the
 21 commissioner has taken any of the actions set forth in
 22 subsection (1)(a) or has received a report from any other
 23 commissioner indicating that an action has been taken in
 24 another state. The report to the board of directors must
 25 contain all significant details of the action taken or the

1 report received from another commissioner.

2 (c) report to the board of directors when the
 3 commissioner has reasonable cause to believe from any
 4 examination, whether completed or in process, of any member
 5 company that the company may be an impaired or insolvent
 6 insurer; and

7 (d) furnish to the board of directors the national
 8 association of insurance commissioners' insurance regulatory
 9 information system (IRIS) ratios and listings of companies
 10 not included in the ratios developed by the national
 11 association of insurance commissioners. The board of
 12 directors may use the information contained in the ratios
 13 and listings in carrying out its duties and responsibilities
 14 under this section. The report and the information contained
 15 in the ratios and listings must be kept confidential by the
 16 board of directors until the time it is made public by the
 17 commissioner or other lawful authority.

18 (2) The commissioner may seek the advice and
 19 recommendations of the board of directors concerning any
 20 matter affecting the commissioner's duties and
 21 responsibilities regarding the financial condition of member
 22 insurers and companies seeking admission to transact
 23 insurance business in this state.

24 (3) The board of directors shall, upon majority
 25 vote, notify the commissioner of any information indicating

1 any member insurer may be unable or potentially unable to
2 fulfill its contractual obligations.

3 ~~(2)~~(4) The board of directors may, upon majority vote,
4 request that the commissioner order an examination of any
5 member insurer which the board in good faith believes may be
6 unable or potentially unable to fulfill its contractual
7 obligations.

8 ~~(3)~~(5) The board of directors may, upon majority vote,
9 make reports and recommendations to the commissioner upon
10 any matter germane to the solvency, liquidation,
11 rehabilitation, or supervision of any member insurer. Such
12 The reports and recommendations shall are not be considered
13 public documents.

14 ~~(4)~~(6) The board of directors may, upon majority vote,
15 make recommendations to the commissioner for the detection
16 and prevention of insurer impairments.

17 ~~(5)~~(7) The board of directors shall, at the conclusion
18 of any insurer impairment in which the association carried
19 out its duties under this part or exercised any of its
20 powers under this part, prepare a report on the history and
21 causes of such the impairment, based on the information
22 available to the association, and submit such the report to
23 the commissioner. The board of directors shall cooperate
24 with the boards of directors of guaranty associations in
25 other states in preparing a report on the history and causes

1 of insolvency of a particular insurer and may adopt by
2 reference any report prepared by other associations."

3 **Section 61.** Section 33-10-218, MCA, is amended to read:

4 "33-10-218. **Examination by commissioner -- cost.** (1)
5 The commissioner may conduct the examination requested by
6 the board pursuant to 33-10-217~~(2)~~(4). The examination may
7 be conducted as a national association of insurance
8 commissioners examination or may be conducted by such
9 persons as whom the commissioner designates. The cost of
10 such the examination shall must be paid by the association,
11 and the examination report shall must be treated as are
12 other examination reports.

13 (2) ~~in-no-event-shall-such~~ The examination report may
14 not be released to the board of directors of the association
15 prior to its release to the public, but this shall may not
16 excuse the commissioner from his the obligation to comply
17 with subsection (4). The commissioner shall notify the board
18 of directors when the examination is completed.

19 (3) The request for an examination shall must be kept
20 on file by the commissioner, but it shall may not be open to
21 public inspection prior to the release of the examination
22 report to the public and shall must be released at that time
23 only if the examination discloses that the examined insurer
24 is unable or potentially unable to meet its contractual
25 obligations.

(4) The commissioner shall report to the board of directors when he the commissioner has reasonable cause to believe that any member insurer examined at the request of the board of directors may be unable or potentially unable to fulfill its contractual obligations."

Section 62. Section 33-10-224, MCA, is amended to read:

"33-10-224. Extent of liability. The benefits for which the association may become liable may not exceed the lesser of:

(1) the contractual obligations of the impaired insurer for which the association insurer becomes or may would have become liable shall be as great as but no greater than the contractual obligations of the impaired insurer would have been in the absence of an impairment unless such obligations are reduced as permitted by 33-10-228(3), but the association shall have no liability if it were not an impaired or insolvent insurer; or

(2) (a) with respect to any portion of a covered policy to the extent that the death benefit coverage on any one life, regardless of the number of policies or contracts:

(i) exceeds an aggregate of \$300,000 in life insurance death benefits, but not more than \$100,000 in net cash surrender and net cash withdrawal values for life insurance;

(ii) \$100,000 in health insurance benefits, including any net cash surrender and net cash withdrawal values;

(iii) \$100,000 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values;

(b) with respect to each individual participating in a governmental retirement plan established under section 401, 403(b), or 457 of the Internal Revenue Code and covered by an unallocated annuity contract or with respect to the beneficiaries of each individual, if deceased, in the aggregate, \$100,000 in present value annuity benefits, including net cash surrender and net cash withdrawal values. However, the association is not liable to expend more than \$300,000 in the aggregate with respect to any one individual under subsection (2)(a) and this subsection.

(c) with respect to any one contract holder covered by any unallocated annuity contract not included in subsection (2)(b), \$5 million in benefits, irrespective of the number of contracts held by that contract holder."

Section 63. Section 33-11-103, MCA, is amended to read:

"33-11-103. Chartering -- licensing -- plan of operation. (1) A risk retention group seeking to be chartered in this state must be chartered and licensed to write only as a casualty insurer insurance pursuant to the insurance laws of this state and, except as provided in this part, must shall comply with all of the laws, rules, regulations, and requirements applicable to such the insurers chartered and authorized in this state, including

1 33-11-104, to the extent such that the requirements are not
 2 a limitation on laws, rules, regulations, or requirements of
 3 this state. Before it may offer insurance in any state, the
 4 risk retention group shall also submit for approval to the
 5 commissioner a plan of operation or a feasibility study and
 6 revisions of such the plan or study if the group intends to
 7 offer any additional lines of liability insurance.

8 (2) At the time of filing its application for charter,
 9 the risk retention group shall provide to the commissioner
 10 in summary form the following information:

11 (a) the identity of the initial members of the risk
 12 retention group;

13 (b) the identity of those individuals who organized the
 14 risk retention group or who will provide administrative
 15 services or otherwise influence or control the activities of
 16 the risk retention group;

17 (c) the amount and nature of initial capitalization;

18 (d) the coverages to be afforded; and

19 (e) the states in which the risk retention group
 20 intends to operate.

21 (3) Upon receipt of the information required under
 22 subsection (2), the commissioner shall forward the
 23 information to the national association of insurance
 24 commissioners. Providing this information to the national
 25 association of insurance commissioners does not satisfy the

1 requirements of 33-11-104 or any other section of this
 2 chapter.

3 (4) All risk retention groups chartered in this state
 4 shall file with the department and the national association
 5 of insurance commissioners an annual statement in a form
 6 prescribed by the national association of insurance
 7 commissioners and in diskette form, if required by the
 8 commissioner, and completed in accordance with its
 9 instructions and the national association of insurance
 10 commissioners' accounting practices and procedures manual."

11 **Section 64.** Section 33-11-104, MCA, is amended to read:

12 "33-11-104. Risk retention groups not chartered in this
 13 state. A risk retention group chartered in a state other
 14 than this state and seeking to do business as a risk
 15 retention group in this state must observe and abide by the
 16 laws of this state as follows:

17 (1) Before offering insurance in this state, a risk
 18 retention group shall submit to the commissioner:

19 (a) a statement identifying the state or states where
 20 the risk retention group is chartered and authorized as a
 21 casualty insurer, date of chartering, its principal place of
 22 business, and such other information, including information
 23 on its membership, as the commissioner requires to verify
 24 that the risk retention group is qualified under
 25 33-11-102(7);

1 (b) a copy of its plan of operation or a feasibility
 2 study and revisions of such the plan or study submitted to
 3 its state of domicile. However, this provision relating to
 4 the submission of a plan of operation or a feasibility study
 5 does not apply with respect to any line or classification of
 6 liability insurance that was defined in the federal Product
 7 Liability Risk Retention Act of 1981 (15 U.S.C. 3901 through
 8 3904) before it was amended by P.L. 99-563, approved on
 9 October 27, 1986, and that was offered before that date by a
 10 risk retention group that had been chartered and operated
 11 for not less than 3 years before that date; and

12 (c) a statement of registration that designates the
 13 commissioner as its agent for the purpose of receiving
 14 service of legal documents or process.

15 (2) A risk retention group doing business in this state
 16 shall submit to the commissioner:

17 (a) a copy of the group's financial statement submitted
 18 to its state of domicile, which must be certified by an
 19 independent public accountant and contain a statement of
 20 opinion on loss and loss adjustment expense reserves made by
 21 a member of the American academy of actuaries or by a
 22 qualified loss reserve specialist under criteria established
 23 by the national association of insurance commissioners;

24 (b) a copy of each examination of the risk retention
 25 group as certified by the insurance regulatory official of

1 the state in which the examination was conducted or public
 2 official conducting the examination;

3 (c) upon request by the commissioner, a copy of any
 4 audit performed with respect to the risk retention group;
 5 and

6 (d) such information as may be required to verify the
 7 group's continuing qualification as a risk retention group
 8 under 33-11-102(7).

9 (3) (a) ~~All-premiums--paid--for--coverage--within--this~~
 10 ~~state--to~~ Each risk retention groups-are-subject-to-taxation
 11 at-the-same-rate-and-to-the-same group is liable for the
 12 payment of premium taxes and taxes on premiums of direct
 13 business for risks resident or located within this state and
 14 shall report to the commissioner the net premiums written
 15 for risks resident or located within this state. The risk
 16 retention group is subject to taxation and any applicable
 17 interest, fines, and penalties for nonpayment that apply to
 18 foreign admitted insurers.

19 (b) To the extent that an insurance producer is used,
 20 he the insurance producer shall report and-pay-the-taxes-for
 21 the--premiums--for-risks-that-he-has to the commissioner the
 22 premiums of direct business for risks resident or located
 23 within this state that the licensees have placed with or on
 24 behalf of a risk retention group not chartered in this
 25 state.

1 (c) To the extent that an insurance producer is not
 2 ~~used or fails to pay the tax, each risk retention group~~
 3 ~~shall pay the tax for risks insured within the state.~~
 4 ~~Further, each risk retention group shall report all premiums~~
 5 ~~paid to it for risks insured within the state, the insurance~~
 6 producer shall keep a complete and separate record of all
 7 policies procured from each risk retention group. The record
 8 is open to examination by the commissioner, as provided in
 9 33-1-403. The records must, for each policy and each kind of
 10 insurance provided under the policy, include the limit of
 11 liability, the time period covered, the effective date, the
 12 name of the risk retention group that issued the policy, the
 13 gross premium charged, and the amount of return premiums, if
 14 any.

15 (4) Each risk retention group, its insurance producers,
 16 and its representatives shall comply with Title 33, chapter
 17 18, part 2.

18 (5) Each risk retention group shall comply with the
 19 provisions of Title 33, chapter 18, part 2, regarding
 20 deceptive, false, or fraudulent acts or practices. However,
 21 if the commissioner seeks an injunction regarding such the
 22 risk retention group's conduct, the injunction must be
 23 obtained from a court of competent jurisdiction.

24 (6) Each risk retention group shall submit to an
 25 examination by the commissioner to determine its financial

1 condition if the insurance regulatory official of the
 2 jurisdiction where the group is chartered has not initiated
 3 an examination or does not initiate an examination within 60
 4 days after a request by the commissioner. The examination
 5 must be coordinated to avoid unjustified repetition and be
 6 conducted in an expeditious manner in accordance with the
 7 national association of insurance commissioners examiners
 8 handbook.

9 (7) Each policy issued by a risk retention group must
 10 contain, in 10-point type on the front page and the
 11 declaration page, the following notice:

12 "NOTICE

13 This policy is issued by your risk retention group. Your
 14 risk retention group may not be subject to all of the
 15 insurance laws and regulations of your state. State
 16 insurance insolvency guaranty funds are not available for
 17 your risk retention group."

18 (8) The following acts by a risk retention group are
 19 prohibited:

20 (a) the solicitation or sale of insurance by a risk
 21 retention group to any person who is not eligible for
 22 membership in the group; and

23 (b) the solicitation or sale of insurance by or
 24 operation of a risk retention group that is in a hazardous
 25 financial condition or is financially impaired.

1 (9) A risk retention group is not allowed to do
2 business in this state if an insurer is directly or
3 indirectly a member or owner of the risk retention group,
4 other than in the case of a risk retention group all of
5 whose members are insurers.

6 (10) A risk retention group may not offer insurance
7 policy coverage declared unlawful by the Montana supreme
8 court.

9 (11) A risk retention group not chartered in this state
10 and doing business in this state must comply with a lawful
11 order issued in a voluntary dissolution proceeding or in a
12 delinquency proceeding commenced by the insurance regulatory
13 official of any state if there has been a finding of
14 financial impairment after an examination under subsection
15 (6)."

16 **Section 65.** Section 33-11-105, MCA, is amended to read:

17 *33-11-105. **Compulsory associations.** (1) A risk
18 retention group may not join or contribute financially to
19 any insurance insolvency guaranty fund or similar mechanism
20 in this state. In addition, a risk retention group or its
21 insureds may not receive any benefit from any such guaranty
22 fund for claims arising out of the operations of the risk
23 retention group.

24 (2) A risk retention group shall participate in this
25 state's joint underwriting associations, mandatory liability

1 pools, and similar mechanisms ~~as--provided--by--Title--33,~~
2 ~~chapter-8-(now-terminated).~~

3 (3) When a purchasing group obtains insurance covering
4 its members' risks from an insurer not authorized in this
5 state or from a risk retention group, the risks, wherever
6 resident or located, may not be covered by any insurance
7 guaranty fund or similar mechanism in this state.

8 (4) When a purchasing group obtains insurance covering
9 its members' risks from an authorized insurer, only risks
10 resident or located in this state may be covered by the
11 state guaranty fund, subject to Title 33, chapter 10, part
12 1."

13 **Section 66.** Section 33-11-108, MCA, is amended to read:

14 *33-11-108. **Notice and registration requirements of**
15 **purchasing groups.** (1) A purchasing group that intends to do
16 business in this state shall furnish notice to the
17 commissioner that:

18 (a) identifies the state where the group is domiciled
19 and all other states in which the group intends to do
20 business;

21 (b) specifies the lines and classifications of
22 liability insurance that the purchasing group intends to
23 purchase;

24 (c) identifies the insurer from which the purchasing
25 group intends to purchase its insurance and the domicile of

1 the insurer;

2 (d) identifies the Montana-licensed insurance producer
3 or Montana-licensed surplus insurance lines producer through
4 which the purchasing group intends to place its business;

5 (e) identifies the principal place of business of the
6 purchasing group; and

7 (f) provides information required by the commissioner
8 to verify that the purchasing group is qualified under
9 33-11-102(6).

10 (2) The purchasing group shall register with and
11 designate the commissioner as its agent solely for the
12 purpose of receiving service of legal documents or process.
13 However, such the requirements do not apply in the case of a
14 purchasing group:

15 (a) (i) that was domiciled before April 2, 1986, in any
16 state of the United States; and

17 (ii) that was domiciled on and after October 27, 1986,
18 in any state of the United States;

19 (b) (i) that, before October 27, 1986, purchased
20 insurance from an insurer licensed in any state; and

21 (ii) that, since October 27, 1986, purchased its
22 insurance from an insurer licensed in any state;

23 (c) that was a purchasing group under the requirements
24 of the federal Product Liability Risk Retention Act of 1981
25 (15 U.S.C. 3901 through 3904) before it was amended by P.L.

1 99-563, approved on October 27, 1986; and

2 (d) that does not purchase insurance that was not
3 authorized for purposes of an exemption under the federal
4 Product Liability Risk Retention Act of 1981, as in effect
5 before October 27, 1986."

6 **Section 67.** Section 33-11-109, MCA, is amended to read:

7 "33-11-109. **Restriction on insurance purchased by**
8 **purchasing groups.** (1) A purchasing group may not purchase
9 insurance from a risk retention group that is not chartered
10 in a state or from an insurer not authorized in the state
11 where the purchasing group is located, unless the purchase
12 is effected through a licensed insurance producer ~~or broker~~
13 acting pursuant to the surplus lines laws and regulations of
14 that state.

15 (2) For purposes of subsection (1), the state where a
16 purchasing group is located is each state where a member of
17 the purchasing group has a risk resident, located, or to be
18 performed.

19 (3) A purchasing group that obtains liability insurance
20 from an insurer not admitted in this state or from a risk
21 retention group shall inform each of the members of the
22 group who have a risk resident or located in this state that
23 the risk is not protected by an insurance insolvency
24 guaranty fund in this state and that the insurer or risk
25 retention group may not be subject to all insurance laws and

1 regulations of this state.

2 (4) A purchasing group may not purchase insurance that
 3 provides for a deductible or self-insured retention
 4 applicable to the group as a whole. Coverage may provide for
 5 a deductible or self-insured retention applicable to
 6 individual members.

7 (5) Purchases of insurance by purchasing groups are
 8 subject to the same standards regarding aggregate limits
 9 that are applicable to all purchases of group insurance."

10 **Section 68.** Section 33-22-804, MCA, is amended to read:

11 "33-22-804. Corporate powers of association --
 12 examination of books. (1) Any association formed for the
 13 purposes of this part may hold title to property, may enter
 14 into contracts, and may limit the liability of its members
 15 to their respective pro rata shares of the liability of such
 16 the association. Any-such An association may sue and be sued
 17 in its associate name and for such that purpose only ~~shall~~
 18 must be treated as a domestic corporation. Service of
 19 process against such the association made upon a managing
 20 insurance producer, any member thereof of the association,
 21 or any insurance producer authorized by appointment to
 22 receive service of process ~~shall-have~~ has the same force and
 23 effect as if such service had been made upon all members of
 24 the association.

25 (2) Such The association's books and records ~~shall~~ must

1 also be subject to examination under the provisions of
 2 33-1-315, 33-1-316, and 33-1-401, 33-1-402, 33-1-411,
 3 through 33-1-413, and [section 32], either separately or
 4 concurrently with examination of any of its member
 5 insurers."

6 **SECTION 69.** SECTION 33-10-227, MCA, IS AMENDED TO READ:

7 "33-10-227. Assessments -- abatement -- basis for
 8 ratesetting. (1) For the purpose of providing the funds
 9 necessary to carry out the powers and duties of the
 10 association, the board of directors shall assess the member
 11 insurers, separately for each account, at such the times and
 12 for such the amounts as the board finds necessary. The board
 13 shall collect the assessments after 30 days' written notice
 14 to the member insurers before payment is due.

15 (2) There ~~shall--be~~ are two classes of assessments, as
 16 follows:

17 (a) Class A assessments ~~shall~~ must be made for the
 18 purpose of meeting administrative costs and other general
 19 expenses not related to a particular impaired insurer.

20 (b) Class B assessments ~~shall~~ must be made to the
 21 extent necessary to carry out the powers and duties of the
 22 association under 33-10-219 and 33-10-220(1) with regard to
 23 an impaired insurer.

24 (3) (a) The amount of any Class A assessment for each
 25 account ~~shall~~ must be determined by the board. The amount of

1 any Class B assessment ~~shall~~ must be divided among the
 2 accounts in the proportion that the premiums received by the
 3 impaired insurer on the policies covered by each account
 4 bear to the premiums received by such the insurer on all
 5 covered policies.

6 (b) Class B assessments against member insurers for
 7 each account ~~shall~~ must be in the proportion that the
 8 premiums received on business in this state by each assessed
 9 member insurer on policies covered by each account bear to
 10 such the premiums received on business in this state by all
 11 assessed member insurers.

12 (c) Assessments for funds to meet the requirements of
 13 the association with respect to an impaired insurer ~~shall~~
 14 may not be made until necessary to implement the purposes of
 15 this part. Classification of assessments under subsection
 16 (2) and computation of assessments under this subsection
 17 ~~shall~~ must be made with a reasonable degree of accuracy,
 18 recognizing that exact determinations may not always be
 19 possible.

20 (4) The association may abate or defer, in whole or in
 21 part, the assessment of a member insurer if, in the opinion
 22 of the board, payment of the assessment would endanger the
 23 ability of the member insurer to fulfill its contractual
 24 obligations. The total of all assessments upon a member
 25 insurer for each account ~~shall~~ may not in any one calendar

1 year exceed 2% of such the insurer's premiums in this state
 2 on the policies covered by the account.

3 (5) In the event an assessment against a member insurer
 4 is abated or deferred, in whole or in part, because of the
 5 limitations set forth in subsection (4), the amount by which
 6 such the assessment is abated or deferred ~~shall~~ must be
 7 assessed against the other member insurers in a manner
 8 consistent with the basis for assessments set forth in this
 9 section. If the maximum assessment, together with the other
 10 assets of the association in either account, does not
 11 provide in any one year in either account an amount
 12 sufficient to carry out the responsibilities of the
 13 association, the necessary additional funds ~~shall~~ must be
 14 assessed as soon thereafter as permitted by this part.

15 (6) If a 1% assessment for any subaccount of the life
 16 insurance account and the annuity account in any 1 year does
 17 not provide an amount sufficient to carry out the
 18 responsibilities of the association, then pursuant to
 19 subsection (3)(b), the board shall assess all subaccounts of
 20 the life insurance account and the annuity account for the
 21 necessary additional amount, subject to the maximum
 22 assessment stated in subsection (4).

23 ~~(6)(7)~~ The board may, by an equitable method as
 24 established in the plan of operation, refund to member
 25 insurers, in proportion to the contribution of each insurer

1 to that account, the amount by which the assets of the
 2 account exceed the amount the board finds is necessary to
 3 carry out during the coming year the obligations of the
 4 association with regard to that amount, including assets
 5 accruing from net realized gains and income from
 6 investments. A reasonable amount may be retained in any
 7 account to provide funds for the continuing expenses of the
 8 association and for future losses if refunds are
 9 impractical.

10 ~~†7†~~(8) It ~~shall-be~~ is proper for any member insurer, in
 11 determining its premium rates and policyowner dividends as
 12 to any kind of insurance within the scope of this part, to
 13 consider the amount reasonably necessary to meet its
 14 assessment obligations under this part.

15 ~~†8†~~(9) The association shall issue to each insurer
 16 paying an assessment under this part a certificate of
 17 contribution, in a form prescribed by the commissioner, for
 18 the amount ~~so~~ paid. All outstanding certificates ~~shall~~ must
 19 be of equal dignity and priority without reference to
 20 amounts or dates of issue. A certificate of contribution may
 21 be shown by the insurer in its financial statement as an
 22 asset in such that form and for such the amount, if any, and
 23 period of time as that the commissioner may approve."

24 **SECTION 70. SECTION 33-10-230, MCA, IS AMENDED TO READ:**

25 "33-10-230. Tax -- writeoffs of certificates of

1 contribution. (1) Unless a longer period has been allowed by
 2 the commissioner, a member insurer shall at its option have
 3 the right to show a certificate of contribution for a Class
 4 B assessment only as an asset in the form approved by the
 5 commissioner pursuant to 33-10-227~~†8†~~(9), at percentages of
 6 the original face amount approved by the commissioner, for
 7 calendar years as follows:

- 8 (a) 100% for calendar year of issuance;
 9 (b) 80% for the first calendar year after year of
 10 issuance;
 11 (c) 60% for second calendar year after year of
 12 issuance;
 13 (d) 40% for third calendar year after year of issuance;
 14 (e) 20% for fourth calendar year after year of
 15 issuance.

16 (2) The insurer may offset the amount written off by it
 17 in the calendar year under subsection (1) above against its
 18 premium tax liability to this state accrued with respect to
 19 business transacted in such the calendar year.

20 (3) Any sums acquired by refund, pursuant to
 21 33-10-227~~†6†~~(7), from the association which have therefore
 22 been written off by contributing insurers and offset against
 23 premium taxes as provided in subsection (2) above and are
 24 not then needed for purposes of this part ~~shall~~ must be paid
 25 by the association to the commissioner and ~~by-him~~ deposited

1 by the commissioner with the state treasurer for credit to
2 the general fund of this state."

3 NEW SECTION. Section 71. Repealer. Sections 33-1-403,
4 33-1-412, 33-2-1205, and 33-10-229, MCA, are repealed.

5 NEW SECTION. Section 72. Codification instruction. (1)
6 [Sections 1 through 27] are intended to be codified as an
7 integral part of Title 33, and the provisions of Title 33
8 apply to [sections 1 through 27].

9 (2) [Sections 28 through 30] are intended to be
10 codified as an integral part of Title 33, chapter 2, part
11 12, and the provisions of Title 33, chapter 2, part 12,
12 apply to [sections 28 through 30].

13 (3) [Sections 31 through 33] are intended to be
14 codified as an integral part of Title 33, chapter 1, part 4,
15 and the provisions of Title 33, chapter 1, part 4, apply to
16 [sections 31 through 33].

17 (4) [Section 34] is intended to be codified as an
18 integral part of Title 33, chapter 11, and the provisions of
19 Title 33, chapter 11, apply to [section 34].

20 (5) [Sections 35 through 38] are intended to be
21 codified as an integral part of Title 33, chapter 2, part
22 13, and the provisions of Title 33, chapter 2, part 13,
23 apply to [sections 35 through 38].

24 (6) [Section 48] is intended to be codified as an
25 integral part of Title 33, chapter 2, part 11, and the

1 provisions of Title 33, chapter 2, part 11, apply to
2 [section 48].

-End-