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INTRODUCED BY Simon Benedict House BILL NO. 556  
BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING STATE INSURANCE LAWS; PROVIDING FOR THE DISCLOSURE OF MATERIAL TRANSACTIONS; CREATING A RISK-BASED CAPITAL FOR INSURERS ACT; AMENDING SECTIONS 2-6-109, 33-1-207, 33-1-208, 33-1-209, 33-1-311, 33-1-501, 33-2-117, 33-2-301, 33-2-302, 33-2-305, 33-2-307, 33-2-501, 33-2-521, 33-2-523, 33-2-525, 33-2-526, 33-2-528, 33-2-529, 33-2-531, 33-2-701, 33-2-705, 33-2-708, 33-2-803, 33-2-806, 33-2-820, 33-2-1111, 33-2-1201, 33-2-1216, 33-2-1217, 33-2-1218, 33-2-1510, 33-2-1605, 33-3-431, 33-4-202, 33-4-203, 33-5-401, 33-7-117, 33-10-201, 33-10-202, 33-11-102, 33-11-104, 33-11-108, 33-14-304, 33-15-301, 33-15-303, 33-16-202, 33-16-235, 33-17-102, 33-17-211, 33-17-405, 33-17-503, 33-17-603, 33-17-1001, 33-18-212, 33-18-301, 33-22-131, 33-22-132, 33-22-201, 33-22-202, 33-22-301, 33-22-303, 33-22-504, 33-22-508, 33-22-1120, 33-22-1803, 33-22-1819, 33-30-102, 33-30-107, 33-30-108, 33-30-202, 33-30-204, 33-30-311, 33-30-1001, AND 33-31-311, MCA; AND REPEALING SECTIONS 33-30-312 AND 33-30-313, MCA."

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

**Section 1.** Section 2-6-109, MCA, is amended to read:

**"2-6-109. Prohibition on distribution or sale of mailing lists -- exceptions -- penalty.** (1) Except as provided in subsections (3) through (7), in order to protect the privacy of those who deal with state and local government:

(a) ~~no~~ an agency may not distribute or sell for use as a mailing list any list of persons without first securing the permission of those on the list; and

(b) ~~no~~ a list of persons prepared by the agency may not be used as a mailing list except by the agency or another agency without first securing the permission of those on the list.

(2) As used in this section, "agency" means any board, bureau, commission, department, division, authority, or officer of the state or a local government.

(3) Except as provided in 30-9-403, this section does not prevent an individual from compiling a

1 mailing list by examination of original documents or applications which are otherwise open to public  
2 inspection.

3 (4) This section does not apply to the lists of registered electors and the new voter lists provided  
4 for in 13-2-115 and 13-38-103, to lists of the names of employees governed by Title 39, chapter 31, or  
5 to lists of persons holding driver's licenses provided for under 61-5-126.

6 (5) This section ~~shall~~ does not prevent an agency from providing a list to persons providing  
7 prelicensing or continuing educational courses subject to Title 20, chapter 30, or specifically exempted  
8 ~~therefrom~~ as provided in 20-30-102, or subject to Title 33, chapter 17.

9 (6) This section does not apply to the right of access either by Montana law enforcement agencies  
10 or, by purchase or otherwise, of public records dealing with motor vehicle registration.

11 (7) This section does not apply to a corporate information list developed by the secretary of state  
12 containing the name, address, registered agent, officers, and directors of business, nonprofit, religious,  
13 professional, and close corporations authorized to do business in this state.

14 (8) A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor."  
15

16 **Section 2.** Section 33-1-207, MCA, is amended to read:

17 "**33-1-207. Disability insurance.** (1) Disability insurance, including credit disability insurance, is  
18 insurance of human beings: (a) against bodily injury, disablement, or death by accident or accidental means  
19 or the ~~medical~~ expense ~~thereof~~ or indemnity involved; or

20 (b) against disablement or ~~medical~~ expense or indemnity resulting from sickness ~~and every~~  
21 insurance appertaining thereto.

22 (2) Transaction of disability insurance does not include workers' compensation insurance."  
23

24 **Section 3.** Section 33-1-208, MCA, is amended to read:

25 "**33-1-208. Life insurance.** Life insurance, including credit life insurance, is insurance on human  
26 lives. The transaction of life insurance includes ~~also~~ the granting of endowment benefits, additional benefits  
27 in event of death or dismemberment by accident or accidental means, additional benefits in event of the  
28 insured's disability, benefits that provide reimbursement or payment for long-term home health care or  
29 long-term care in a nursing home or other related institution, and optional modes of settlement of proceeds  
30 of life insurance. Transaction of life insurance does not include workers' compensation insurance."

1           **Section 4.** Section 33-1-209, MCA, is amended to read:

2           "**33-1-209. Marine protection and indemnity and wet marine insurance.** (1) ~~Marine insurance~~  
3 ~~includes marine protection and indemnity insurance, meaning insurance against, or against legal liability of~~  
4 ~~the insured for, loss, damage, or expense arising out of or incident to the ownership, operation, chartering,~~  
5 ~~maintenance, use, repair, or construction of any vessel, craft, or instrumentality in use in ocean or inland~~  
6 ~~waterways, including liability of the insured for personal injury, illness, or death or for loss of or damage~~  
7 ~~to the property of another person.~~ Marine and transportation insurance means insurance against loss of  
8 or damage to:

9           (a) vessels, craft, aircraft, vehicles, goods, freights, cargoes, merchandise, effects, disbursements,  
10 profits, money, securities, choses in action, evidences of debt, valuable papers, bottomry, respondentia,  
11 and any interest therein, with respect to risks and perils, including war risks, marine builder's risks, and  
12 personal property floater risks, of navigation and transportation or while being assembled, packed, crated,  
13 baled, compressed, or similarly prepared for shipment, while awaiting shipment, or during any delays,  
14 storage, transshipment, or reshipment;

15           (b) person or property in connection with marine, transit, or transportation insurance, including  
16 liability for loss or damage to either person or property incident to the construction, repair, operation,  
17 maintenance, or use of the subject matter of the insurance, but not including life insurance, surety bonds,  
18 or insurance against bodily injury arising out of the ownership, maintenance, or use of an automobile;

19           (c) jewels, jewelry, or precious metals, whether in the course of transportation or otherwise; and

20           (d) bridges; tunnels; and other instrumentalities of transportation and communication, excluding  
21 buildings and their furnishings, fixed contents, and supplies held in storage (unless fire, tornado, sprinkler  
22 leakage, hail, explosion, earthquake, riot, or civil commotion are the only hazards to be covered); piers;  
23 wharves; docks; slips; and other aids to navigation and transportation, including drydocks, marina railways,  
24 and dams and appurtenant facilities for the control of waterways.

25           (2) Marine protection and indemnity insurance means insurance against liability of the insured for  
26 loss, damage, or expense incident to ownership, operation, charter, maintenance, use, repair, or  
27 construction of any vessel, craft, or instrumentality for use in ocean or inland waterways. The term  
28 includes insurance against the liability of the insured for personal injury, illness, death, or loss or damage  
29 of the property of another person.

30           ~~(2)(3)~~ For the purposes of this code, wet marine and transportation insurance is that part of marine

1 insurance ~~which that~~ includes only:

2 (a) insurance upon vessels, crafts, and hulls and of interests ~~therein or with relation thereto in or~~  
3 relating to the vessels, crafts, and hulls;

4 (b) insurance of marine builders' risks, marine war risks, and contracts of marine protection and  
5 indemnity insurance;

6 (c) insurance of freights and disbursements pertaining to a subject of insurance ~~coming within~~  
7 subject to this subsection; and

8 (d) insurance of personal property and interests ~~therein~~ in the personal property, in the course of  
9 exportation from or importation into any country and in the course of transportation coastwise or on inland  
10 waters, including transportation by land, water, or air from point of origin to final destination, ~~in~~ with  
11 respect to, ~~appertaining to, or in connection with any and all~~ risks or perils of navigation, transit, or  
12 transportation or while being prepared for and or while awaiting shipment and or during any delays, storage,  
13 transshipment, or reshipment incident thereto to preparation or shipment."

14

15 **Section 5.** Section 33-1-311, MCA, is amended to read:

16 "**33-1-311. General powers and duties.** (1) The commissioner shall enforce the applicable  
17 provisions of ~~this code~~ the laws of this state and shall execute the duties imposed on the commissioner by  
18 ~~this code~~ the laws of this state.

19 (2) The commissioner ~~shall have~~ has the powers and authority expressly conferred upon the  
20 commissioner by or reasonably implied from the provisions of ~~this code~~ the laws of this state.

21 (3) The commissioner shall administer the department to ensure that the interests of insurance  
22 consumers are protected.

23 (4) The commissioner may conduct examinations and investigations of insurance matters, in  
24 addition to examinations and investigations expressly authorized, as the commissioner considers proper,  
25 to determine whether any person has violated any provision of ~~this code~~ the laws of this state or to secure  
26 information useful in the lawful administration of any provision. The cost of additional examinations and  
27 investigations must be borne by the state.

28 ~~(5) The commissioner has additional powers and duties as provided by other laws of this state.~~

29 ~~(6)~~(5) The department is a criminal justice agency as defined in 44-5-103."

30

1           **Section 6.** Section 33-1-501, MCA, is amended to read:

2           **"33-1-501. Filing and approval of forms.** (1) (a) An insurance policy or annuity contract form,  
 3 certificate, enrollment form, application form, printed rider or endorsement form, or form of renewal  
 4 certificate may not be delivered or issued for delivery in Montana unless the form has been filed with and  
 5 approved by the commissioner and, if required, the regulatory official of the state of domicile of the insurer,  
 6 ~~if required~~. This provision does not apply to surety bonds or policies, riders, endorsements, or forms of  
 7 unique character designed for and used with relation to insurance upon a particular subject or that relate  
 8 to the manner of distribution of benefits or to the reservation of rights and benefits under life or disability  
 9 insurance policies and are used at the request of the individual policyholder, contract holder, or certificate  
 10 holder. Forms for use in property, marine, ~~{other than ocean marine and foreign trade coverages}~~, casualty,  
 11 and surety insurance coverages may be filed by a rating organization on behalf of its members and  
 12 subscribers or by a member or subscriber on its own behalf.

13           (b) The approval of an insurance policy or annuity contract form, certificate, enrollment form,  
 14 application form, or other related insurance form by the state of domicile may be waived by the  
 15 commissioner if the commissioner considers the requirements of subsection (1)(a) unnecessary for the  
 16 protection of Montana insurance consumers. If the requirement is waived, an insurer shall notify the  
 17 commissioner in writing within 10 days of disapproval, denial, or withdrawal of approval of a form by the  
 18 state of domicile.

19           (2) The filing must be made not less than 60 days in advance of delivery. Approval of a form by  
 20 the commissioner constitutes a waiver of any unexpired portion of the waiting period. The commissioner  
 21 may extend by not more than an additional 60 days the period within which the commissioner may approve  
 22 or disapprove a form by giving notice of the extension before expiration of the initial 60-day period. The  
 23 commissioner may at any time, after notice and for cause shown, withdraw any approval.

24           (3) ~~An order of~~ Notice by the commissioner disapproving a form or withdrawing a previous approval  
 25 must state the grounds for disapproval or withdrawal in sufficient detail to inform the insurer.

26           (4) The commissioner may exempt from the requirements of this section, for so long as the  
 27 commissioner considers proper, an insurance document, form, or type of document or form ~~specified~~ to  
 28 which, in the commissioner's opinion, this section may not practicably be applied or the filing and approval  
 29 of which are, ~~in the commissioner's opinion,~~ not desirable or necessary for the protection of the public.

30           (5) This section applies to a form used by a domestic insurer for delivery in a jurisdiction outside

1 Montana if the insurance supervisory official of the jurisdiction informs the commissioner that the form is  
 2 not subject to approval or disapproval by the official and upon the commissioner's order requiring the form  
 3 to be submitted to the commissioner for the purpose. The same standards apply to these forms as apply  
 4 to forms for domestic use.

5 (6) This section and 33-1-502 do not apply to:

6 (a) reinsurance;

7 (b) policies or contracts not issued for delivery in Montana or delivered in Montana, except as  
 8 provided in subsection (5);

9 (c) ocean marine and foreign trade insurances.

10 (7) Except as provided in chapter 21, group certificates that are delivered or issued for delivery in  
 11 Montana for group insurance policies effectuated and delivered outside Montana but covering persons  
 12 resident in Montana must be filed with the commissioner upon request. The certificates must meet the  
 13 minimum provisions mandated by Montana if Montana law prevails over conflicting provisions of other state  
 14 law."

15

16 **Section 7.** Section 33-2-117, MCA, is amended to read:

17 "**33-2-117. Continuance, expiration, reinstatement, and amendment of certificate of authority.** (1)  
 18 Certificates of authority issued or renewed under this code ~~shall~~ must continue in force as long as the  
 19 insurer is entitled thereto under this code and until suspended or revoked or otherwise terminated, ~~subject,~~  
 20 ~~however,~~ A certificate is subject to continuance ~~of the certificate~~ by the insurer each year by payment prior  
 21 to ~~May 15~~ March 1 of the continuation fee provided in 33-2-708.

22 (2) If not ~~so~~ continued by the insurer, ~~its~~ the certificate of authority ~~shall expire~~ expires at midnight  
 23 on May 31 ~~next~~ following ~~such~~ failure of the insurer ~~so~~ to continue it in force. The commissioner shall  
 24 promptly notify the insurer of ~~the occurrence of any such failure resulting in impending~~ its failure to pay  
 25 the continuation fee that can result in the expiration of its certificate of authority.

26 (3) The commissioner may, ~~in his discretion,~~ reinstate a certificate of authority ~~which~~ that the  
 27 insurer has inadvertently permitted to expire, after the insurer ~~has fully cured all its~~ cures any failures ~~which~~  
 28 ~~resulted~~ resulting in ~~such~~ expiration and upon payment ~~by the insurer~~ of the fee for reinstatement in  
 29 addition to the current continuation fee, as provided in 33-2-708. Otherwise, the insurer ~~shall~~ may be  
 30 granted another certificate of authority only after filing an application ~~therefor~~ and meeting all other

1 requirements ~~as~~ for an original certificate of authority in this state.

2 (4) The commissioner may amend a certificate of authority at any time to accord with changes in  
3 the insurer's charter of insuring powers."

4

5 **Section 8.** Section 33-2-301, MCA, is amended to read:

6 **"33-2-301. Short title -- purpose -- definitions.** (1) This part constitutes and may be referred to as  
7 "The Surplus Lines Insurance Law".

8 (2) This part must be applied to:

9 (a) protect persons seeking insurance in this state;

10 (b) permit surplus lines insurance to be placed with reputable and financially sound unauthorized  
11 insurers and to be exported from this state pursuant to this part;

12 (c) establish a system of regulation that will permit orderly access to surplus lines insurance in this  
13 state and encourage authorized insurers to provide new and innovative types of insurance to consumers  
14 in this state; and

15 (d) protect revenues of this state.

16 (3) As used in this part, the following definitions apply:

17 (a) "Authorized insurer" means an insurer authorized pursuant to 33-2-101 to transact insurance  
18 in this state.

19 (b) "Eligible surplus lines insurer" means an unauthorized insurer with which a surplus lines  
20 insurance producer may place surplus lines insurance under 33-2-307.

21 (c) "Export" means to place surplus lines insurance with an unauthorized insurer.

22 ~~(d) "Kind of insurance" means one of the types of insurance required to be reported in the annual  
23 statement filed with the commissioner by an authorized insurer.~~

24 ~~(e)~~(d) "Producing insurance producer" means the individual insurance producer dealing directly with  
25 the person seeking insurance.

26 ~~(f)~~(e) "Surplus lines insurance" means any insurance ~~on risks resident, located, or to be performed~~  
27 ~~in this state~~ permitted to be placed through a surplus lines insurance producer with an unauthorized insurer  
28 eligible to accept the insurance. The term does not include the kinds of insurance exempted under  
29 33-2-317.

30 ~~(g)~~(f) "Surplus lines insurance producer" means an individual, partnership, or corporation licensed

1 under 33-2-305 to place surplus lines insurance ~~(on risks resident, located, or to be performed in this state)~~  
 2 with unauthorized insurers eligible to accept ~~such~~ the insurance.

3 ~~(h)~~(g) "Unauthorized insurer" means an insurer not authorized pursuant to 33-2-101 to transact  
 4 insurance in this state. The term includes insurance exchanges authorized under the laws of other states."  
 5

6 **Section 9.** Section 33-2-302, MCA, is amended to read:

7 "**33-2-302. Conditions precedent to sale of surplus lines insurance.** ~~Insurance may be procured~~  
 8 ~~through a licensed surplus lines insurance producer from~~ A producing insurance producer may request a  
 9 surplus lines insurance producer to place or a surplus lines insurance producer may place a contract of  
 10 insurance with an unauthorized insurer if:

11 (1) the insurer is an eligible surplus lines insurer;

12 (2) the line of insurance or the full amount of the line of insurance cannot be obtained from  
 13 authorized insurers;

14 (3) the producing insurance producer makes a diligent effort to place the business with a minimum  
 15 of three insurers authorized and actually transacting that line of business in this state. If fewer than three  
 16 insurers are authorized and actually transacting the line of business in this state, diligent effort must be met  
 17 by searching this lesser market.

18 (4) the insurance is not procured for the purpose of securing:

19 (a) a lower premium rate than would be accepted by an authorized insurer; or

20 (b) an advantage in terms of the insurance contract; ~~and~~

21 (5) in case of renewal, the line has not become available from an authorized insurer; and

22 ~~(6)~~(6) all other requirements of this part are met."  
 23

24 **Section 10.** Section 33-2-305, MCA, is amended to read:

25 "**33-2-305. Licensing of surplus lines insurance producer -- fee and bond.** (1) A person may not  
 26 ~~procure~~ place a contract of surplus lines insurance with an unauthorized insurer unless the person is  
 27 licensed as a property and casualty insurance producer and possesses a current surplus lines insurance  
 28 license issued by the commissioner.

29 (2) The commissioner shall issue a surplus lines insurance license to any qualified holder of a  
 30 current property and casualty insurance producer license only if the insurance producer has:



1 (a) remitted to the commissioner the annual fee prescribed by 33-2-708;

2 (b) submitted to the commissioner a completed license application on a form supplied by the  
3 commissioner;

4 (c) been licensed as a property and casualty insurance producer continuously for 5 years or more;  
5 and

6 (d) filed with the commissioner and, for as long as the license remains in effect, kept in force a  
7 bond in favor of the state of Montana in the amount of \$10,000, with authorized corporate sureties  
8 approved by the commissioner. The bond must be conditioned that the insurance producer will conduct  
9 business under the license in accordance with the provisions of The Surplus Lines Insurance Law and that  
10 the insurance producer will promptly remit the taxes provided in 33-2-311. The bond may not be terminated  
11 unless the surety gives the surplus lines insurance producer, the producing insurance producer, and the  
12 commissioner at least 30 days' prior written notice of termination.

13 (3) The license expires on April 1 after its date of issue. A surplus lines insurance producer shall  
14 renew the license on or before March 1 of each year upon payment of the annual renewal fee prescribed  
15 in 33-2-708. A surplus lines insurance producer who fails to apply for a renewal of the license on or before  
16 March 1 shall pay a fine of \$100 before the commissioner renews the license.

17 (4) A corporation is eligible to be licensed as a surplus lines insurance producer if:

18 (a) the corporate license lists the individuals within the corporation who have satisfied the  
19 requirements of this part to become surplus lines insurance producers; and

20 (b) only those individuals listed on the corporate license transact surplus lines insurance.

21 (5) This section may not be construed to require agents, producers, or brokers acting as  
22 intermediaries between a surplus lines insurance producer and an unauthorized insurer under this part to  
23 hold a valid Montana surplus lines insurance producer's license."

24

25 **Section 11.** Section 33-2-307, MCA, is amended to read:

26 **"33-2-307. Requirements for eligible surplus lines insurers.** (1) A surplus lines insurance producer  
27 may not place insurance with an unauthorized insurer unless, at the time of placement, the unauthorized  
28 insurer:

29 (a) has established satisfactory evidence of good reputation and financial integrity; and

30 (b) is qualified under one of the following subsections:

1 (i) the insurer maintains capital and surplus or its equivalent under the laws of its state of domicile,  
2 which equals the greater of:

3 (A) the minimum capital and surplus requirements of 33-2-109 and 33-2-110; or

4 (B) ~~3~~ 7 million. An insurer possessing less than ~~4~~ 6 million capital and surplus may satisfy the  
5 requirements of this subsection upon an affirmative finding of acceptability by the commissioner. The  
6 commissioner's finding must be based upon such factors as quality of management, capital, and surplus  
7 of a parent company; company underwriting profit and investment income trends; and company record and  
8 reputation within the industry. The commissioner may not make an affirmative finding of acceptability  
9 when the surplus lines insurer's capital and surplus is less than ~~3~~ 6 million.

10 (ii) in the case of Lloyd's or another similar ~~unincorporated~~ group of including incorporated and  
11 unincorporated alien individual insurers, the insurer maintains a trust fund of not less than \$50 million as  
12 security to the full amount of capital and surplus for all policyholders and creditors in the United States of  
13 each member of the group. The incorporated members of the group may not engage in any business other  
14 than underwriting as a member of the group and must be subject to the same level of solvency regulation  
15 and control by the groups of domiciliary regulators as are the unincorporated members. The trust must  
16 comply with the terms and conditions established in subsection (1)(b)(iv) for alien insurers.

17 (iii) in the case of an insurance exchange created by the laws of individual states, the insurer  
18 maintains capital and surplus, or their substantial equivalent, of not less than \$15 million in the aggregate.  
19 For an insurance exchange that maintains funds for the protection of each insurance exchange policyholder,  
20 each individual syndicate shall maintain minimum capital and surplus, or their substantial equivalent, of not  
21 less than \$1.5 million. If the insurance exchange does not maintain funds for the protection of each  
22 insurance exchange policyholder, each individual syndicate shall meet the minimum capital and surplus  
23 requirements of subsection (1)(b)(i).

24 (iv) in the case of an alien insurer, the insurer maintains in the United States an irrevocable trust  
25 fund in either a national bank or a member of the federal reserve system, in an amount not less than \$1.5  
26 million, for the protection of all its policyholders in the United States and the trust fund consists of cash,  
27 securities, or letters of credit or of investments of substantially the same character and quality as those  
28 which are eligible investments for the capital and statutory reserves of insurers authorized to write like kinds  
29 of insurance in this state. The trust fund, which must be included in any calculation of capital and surplus  
30 or its equivalent, must have an expiration date that may not at any time be less than 5 years. In addition,

1 the alien insurer must appear on the national association of insurance commissioners' Non-Admitted  
2 Insurers Quarterly Listing.

3 (c) has provided the commissioner a copy of its current annual statement, certified by the insurer  
4 no more than 6 months after the close of the period reported upon, {or quarterly if considered necessary  
5 by the commissioner}, and which is either:

6 (i) filed with and approved by the regulatory authority in the state of domicile of the unauthorized  
7 insurer; or

8 (ii) certified by an accounting or auditing firm licensed in the jurisdiction of the insurer's state of  
9 domicile.

10 (2) In the case of an insurance exchange, the statement required by subsection (1)(c) may be an  
11 aggregate combined statement of all underwriting syndicates operating during the period reported.

12 (3) In addition to meeting the requirements in subsection (1), an insurer is an eligible surplus lines  
13 insurer only if it appears on the most recent list of eligible surplus lines insurers published at least  
14 semiannually by the commissioner. This subsection does not require the commissioner to place or maintain  
15 the name of any unauthorized insurer on the list of eligible surplus lines insurers. An action may not lie  
16 against the commissioner or an employee of the commissioner for anything said in issuing the list of eligible  
17 surplus lines insurers referred to in this subsection.

18 (4) (a) The commissioner may declare an eligible surplus lines insurer ineligible if at any time the  
19 commissioner has reason to believe that it:

20 (i) is in unsound financial condition;

21 (ii) is no longer eligible under subsections (1) through (3);

22 (iii) has willfully violated the laws of this state; or

23 (iv) does not make reasonably prompt payment of just losses and claims in this state or elsewhere.

24 (b) The commissioner shall promptly mail notice of all declarations to each surplus lines insurance  
25 producer.

26 (5) As used in this section, the following definitions apply:

27 (a) "Capital", as used in the financial requirements of this section, means funds invested in for  
28 stocks or other evidences of ownership.

29 (b) "Surplus", as used in the financial requirements of this section, means funds over and above  
30 liabilities and capital of the insurer for the protection of policyholders."

1           **Section 12.** Section 33-2-501, MCA, is amended to read:

2           **"33-2-501. Assets allowed.** In any determination of the financial condition of an insurer, there  
3 must be allowed as assets only assets that are owned by the insurer and that consist of:

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

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

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

10           (b) declared and unpaid dividends on stock and shares unless the amount has otherwise been  
11 allowed as an asset;

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

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

16           (e) interest due or accrued on a mortgage loan in an amount not exceeding in any event the  
17 amount, if any, of the excess of the value of the property less delinquent taxes on the property over the  
18 unpaid principal. Interest accrued for a period in excess of 18 months may not be allowed as an asset.

19           (f) rent due or accrued on real property if the rent is not in arrears for more than 3 months and rent  
20 more than 3 months in arrears if the payment of the rent is adequately secured by property held in the  
21 name of the tenant and conveyed to the insurer as collateral;

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

23           (3) premium notes, policy loans, and other policy assets and liens on policies and certificates of  
24 life insurance and annuity contracts and accrued interest, in an amount not exceeding the legal reserve and  
25 other policy liabilities carried on each individual policy;

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

28           (5) premiums in the course of collection, other than for life insurance, not more than 3 months past  
29 due, less commissions payable on the premiums. The limitation in this subsection does not apply to  
30 premiums payable directly or indirectly by the United States government or by any of its instrumentalities.

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

3 (7) notes and like written obligations not past due, taken for premiums other than life insurance  
4 premiums, on policies permitted to be issued on that basis, to the extent of the unearned premium reserves  
5 carried on the policies;

6 (8) the full amount of reinsurance recoverable by a ceding insurer from a solvent reinsurer and  
7 which reinsurance is authorized under chapter 2, part 12;

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

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

13 (11) electronic data processing equipment if the cost of the equipment is ~~at least \$100,000, which~~  
14 ~~cost must be~~ amortized in full over a period of not to exceed ~~10~~ 8 calendar years. However, ~~with regard~~  
15 ~~to life insurers, the equipment must be allowed as an asset if the cost of the equipment is at least \$25,000,~~  
16 ~~which cost must be amortized in full over a period of not to exceed 5 calendar years, and the amount of~~  
17 the asset allowed may not exceed 1% of the total of the other allowable assets of the insurer.

18 (12) all assets, whether or not consistent with the provisions of this section, as may be allowed  
19 pursuant to the annual statement form approved by the commissioner for the kinds of insurance to be  
20 reported upon in the annual statement;

21 (13) other assets, not inconsistent with the provisions of this section, considered by the  
22 commissioner to be available for the payment of losses and claims, at values to be determined by the  
23 commissioner."

24  
25 **Section 13.** Section 33-2-521, MCA, is amended to read:

26 **"33-2-521. Standard valuation of reserve liabilities law -- life insurance.** (1) The commissioner  
27 shall annually value or cause to be valued the reserve liabilities (~~hereinafter called~~ reserves) for all  
28 outstanding life insurance policies and annuity and pure endowment contracts of every life insurer doing  
29 business in this state and may certify the amount of any ~~such~~ reserves, specifying the mortality table or  
30 tables, rate or rates of interest, and methods (net level premium method or other) used in the calculation

1 of ~~such~~ reserves. In calculating ~~such~~ the reserves, ~~he~~ the commissioner may use group methods and  
2 approximate averages for fractions of a year or otherwise. ~~In the case of an alien insurer, such valuation~~  
3 ~~shall be limited to its insurance transactions in the United States.~~

4 (2) ~~For the purpose of making such valuation, the commissioner may employ a competent actuary~~  
5 ~~who shall be paid by the insurer for which the service is rendered; but a domestic insurer may make such~~  
6 ~~valuation and it may be received by the commissioner upon satisfactory proof of its correctness.~~ In lieu of  
7 the valuation of the reserves ~~herein~~ required in this section of any foreign or alien insurer, the commissioner  
8 may accept any valuation made or caused to be made by the insurance supervisory official of any state or  
9 other jurisdiction when ~~such~~ the valuation complies with the minimum standard ~~herein~~ provided in this  
10 section and if the official of ~~such~~ the other state or jurisdiction accepts as sufficient and valid for all legal  
11 purposes the certificate of valuation of the commissioner when ~~such~~ the certificate states the valuation to  
12 have been made in a specified manner according to which the aggregate reserves would be at least as large  
13 as if they had been computed in the manner prescribed by the law of that state or jurisdiction.

14 (3) Any insurer ~~which at any time shall have~~ that has adopted any standard of valuation producing  
15 greater aggregate reserves than those calculated according to the minimum standard ~~herein~~ provided in this  
16 section may, with the approval of the commissioner, adopt any lower standard of valuation but not lower  
17 than the minimum ~~herein provided in this section.~~ For the purposes of this section, the holding of additional  
18 reserves previously determined by a qualified actuary to be necessary to render the opinion required in  
19 subsection (4) may not be considered to be the adoption of a higher standard of valuation.

20 (4) (a) Each life insurer doing business in this state shall annually submit the opinion of a qualified  
21 actuary as to whether the reserves and related actuarial items held in support of the policies and contracts  
22 specified by the commissioner by rule are computed appropriately, are based on assumptions that satisfy  
23 contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this  
24 state. The commissioner by rule shall define the specifics of this opinion and add any other items  
25 considered necessary to its scope.

26 (b) Each life insurer, except as exempted by or pursuant to regulation, shall also annually include  
27 in the opinion required by subsection (4)(a) an opinion of the same qualified actuary as to whether the  
28 reserves and related actuarial items held in support of the policies and contracts specified by the  
29 commissioner by rule, when considered in light of the assets held by the insurer with respect to the  
30 reserves and related actuarial items, including but not limited to the investment earnings on the assets and

1 the considerations anticipated to be received and retained under the policies and contracts, make adequate  
2 provision for the insurer's obligations under the policies and contracts, including but not limited to the  
3 benefits under and expenses associated with the policies and contracts.

4 (c) The commissioner may provide by rule for a transition period for establishing any higher  
5 reserves that the qualified actuary may consider necessary in order to render the opinion required by this  
6 subsection (4).

7 (d) Each opinion required by this subsection (4) must be governed by the following provisions:

8 (i) A memorandum, in form and substance acceptable to the commissioner as specified by rule,  
9 must be prepared to support each actuarial opinion.

10 (ii) If the insurer fails to provide a supporting memorandum at the request of the commissioner  
11 within a period specified by rule or if the commissioner determines that the supporting memorandum  
12 provided by the insurer fails to meet the standards prescribed by the rules or is otherwise unacceptable to  
13 the commissioner, the commissioner may engage a qualified actuary at the expense of the insurer to review  
14 the opinion and the basis for the opinion and to prepare any supporting memorandum as is required by the  
15 commissioner.

16 (iii) The opinion must be submitted with the annual statement reflecting the valuation of the reserve  
17 liabilities for each year ending on or after December 31, 1995.

18 (iv) The opinion must apply to all business in force, including individual and group health insurance  
19 plans, in form and substance acceptable to the commissioner as specified by rule.

20 (v) The opinion must be based on standards adopted from time to time by the actuarial standards  
21 board and on additional standards as the commissioner may prescribe by rule.

22 (vi) In the case of an opinion required to be submitted by a foreign or alien insurer, the  
23 commissioner may accept the opinion filed by that insurer with the insurance supervisory official of another  
24 state if the commissioner determines that the opinion reasonably meets the requirements applicable to a  
25 company domiciled in this state.

26 (vii) Except in cases of fraud or willful misconduct, the qualified actuary is not liable for damages  
27 to any person, other than the insurer and the commissioner, for any act, error, omission, decision, or  
28 conduct with respect to the actuary's opinion.

29 (viii) Disciplinary action by the commissioner against the insurer or the qualified actuary must be  
30 defined in rules by the commissioner.

1           (ix) Any memorandum in support of the opinion and any other material provided by the insurer to  
 2 the commissioner in connection with those items must be kept confidential by the commissioner, may not  
 3 be made public, and is subject to subpoena, other than for the purpose of defending an action seeking  
 4 damages from any person by reason of any action required by this subsection (4) or by rules promulgated  
 5 under this subsection (4). However, the memorandum or other material may otherwise be released by the  
 6 commissioner:

7           (A) with the written consent of the insurer; or

8           (B) to the American academy of actuaries upon request stating that the memorandum or other  
 9 material is required for the purpose of professional disciplinary proceedings and setting forth procedures  
 10 satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material.  
 11 Once any portion of the confidential memorandum is cited by the insurer in its marketing, is cited before  
 12 any governmental agency other than a state insurance department, or is released by the insurer to the news  
 13 media, all portions of the confidential memorandum are no longer confidential.

14           (5) For purposes of this section, "qualified actuary" means a member in good standing of the  
 15 American academy of actuaries who meets the requirements set forth in the academy's rules."

16  
 17           **Section 14.** Section 33-2-523, MCA, is amended to read:

18           **"33-2-523. Contracts on or after the operative date of 33-20-213 -- valuation.** (1) This section  
 19 ~~shall apply~~ applies to only those policies and contracts issued on or after the operative date of 33-20-213,  
 20 except as otherwise provided in 33-2-524 for group annuity and pure endowment contracts issued prior  
 21 to that date.

22           (2) Except as otherwise provided in 33-2-524, ~~and 33-2-525, and [section 76(2)],~~ the minimum  
 23 standard for the valuation of all ~~such~~ the policies and contracts issued prior to October 1, 1995, shall must  
 24 be the standard provided by the laws in effect prior to October 1, 1995. Except as otherwise provided in  
 25 33-2-524, 33-2-525, and [section 76(2)], the minimum standard for the valuation of all policies and  
 26 contracts must be the commissioner's reserve valuation methods defined in 33-2-525, ~~and 32-2-526(3),~~  
 27 and (4), and [section 76], 5% interest for group annuity and pure endowment contracts, and 3 1/2%  
 28 interest for all other ~~such~~ policies and contracts or, in the case of life insurance policies and contracts other  
 29 than annuity and pure endowment contracts issued on or after March 17, 1973, 4% interest for ~~such~~ all  
 30 other policies issued prior to July 1, 1979, 5 1/2% interest for single-premium life insurance policies, and



1 4 1/2% interest for ~~such~~ policies issued on or after July 1, 1979, and the following tables:

2 (a) for all ordinary policies of life insurance issued on the standard basis, excluding any disability  
3 and accidental death benefits in ~~such~~ the policies;

4 (i) the commissioner's 1941 standard ordinary mortality table;

5 ~~(ii)~~ for ~~such~~ policies issued prior to the operative date of 33-20-206, as amended, and the  
6 commissioner's 1958 standard ordinary mortality table for ~~such~~ policies issued on or after that operative  
7 date but prior to January 1, 1989, except that for any category of ~~such~~ the policies issued on female risks,  
8 modified net premiums and present values, referred to in 33-2-525 and 33-2-526, may be calculated, at  
9 the option of the insurer, with the approval of the commissioner, according to an age younger than the  
10 actual age of the insured; or

11 (ii) for ~~such~~ policies issued on or after January 1, 1989:

12 (A) the commissioner's 1980 standard ordinary mortality table;

13 (B) at the election of the company for any one or more specified plans of life insurance, the  
14 commissioner's 1980 standard ordinary mortality table with 10-year select mortality factors; or

15 (C) any ordinary mortality table adopted after 1980 by the national association of insurance  
16 commissioners that is approved by the commissioner by rule for use in determining the minimum standard  
17 of valuation for ~~such~~ policies;

18 (b) for all industrial life insurance policies issued on the standard basis, excluding any disability and  
19 accidental death benefits in ~~such~~ the policies, the 1941 standard industrial mortality table for ~~such~~ policies  
20 issued prior to the operative date of 33-20-207, ~~as amended~~, and, for ~~such~~ policies issued on or after that  
21 operative date, the commissioner's 1961 standard industrial mortality table or any industrial mortality table  
22 adopted after 1980 by the national association of insurance commissioners that is approved by the  
23 commissioner by rule for use in determining the minimum standard of valuation for ~~such~~ the policies;

24 (c) for individual annuity and pure endowment contracts, excluding any disability and accidental  
25 death benefits in ~~such~~ the policies, the 1937 standard annuity mortality table or, at the option of the  
26 insurer, the annuity mortality table for 1949, ultimate, or any modification of either of these tables approved  
27 by the commissioner;

28 (d) for group annuity and pure endowment contracts, excluding any disability and accidental death  
29 benefits in ~~such~~ the policies, the group annuity mortality table for 1951, any modification of ~~such~~ the table  
30 approved by the commissioner, or, at the option of the insurer, any of the tables or modifications of tables

1 specified for individual annuity and pure endowment contracts;

2 (e) (i) for total and permanent disability benefits in or supplementary to ordinary policies or  
3 contracts:

4 (A) for policies or contracts issued on or after January 1, 1966, the tables of period 2 disablement  
5 rates and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries, with  
6 due regard to the type of benefit, or any tables of disablement rates and termination rates adopted after  
7 1980 by the national association of insurance commissioners that are approved by the commissioner by  
8 rule for use in determining the minimum standard of valuation for ~~such~~ the policies;

9 (B) for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966,  
10 either ~~such~~ the tables or, at the option of the insurer, the class 3 disability table (1926); and

11 (C) for policies issued prior to January 1, 1961, the class 3 disability table (1926);

12 (ii) any ~~such~~ table ~~shall~~ must, for active lives, be combined with a mortality table permitted for  
13 calculating the reserves for life insurance policies;

14 (f) (i) for accidental death benefits in or supplementary to policies:

15 (A) for policies issued on or after January 1, 1966, the 1959 accidental death benefits table or any  
16 accidental death benefits table adopted after 1980 by the national association of insurance commissioners  
17 that is approved by the commissioner by rule for use in determining the minimum standard of valuation for  
18 ~~such~~ the policies;

19 (B) for policies issued on or after January 1, 1961, and prior to January 1, 1966, either such table  
20 or, at the option of the insurer, the intercompany double indemnity mortality table; and

21 (C) for policies issued prior to January 1, 1961, the intercompany double indemnity mortality table;

22 (ii) either table ~~shall~~ must be combined with a mortality table permitted for calculating the reserves  
23 for life insurance policies;

24 (g) for group life insurance, life insurance issued on the substandard basis, and other special  
25 benefits, ~~such~~ the tables as may be approved by the commissioner."

26

27 **Section 15.** Section 33-2-525, MCA, is amended to read:

28 "**33-2-525. Commissioner's reserve valuation method.** (1) Except as otherwise provided in  
29 subsection (4) of this section, and 33-2-526(3) and (4), and [section 76(2)], reserves according to the  
30 commissioner's reserve valuation method, for the life insurance and endowment benefits of policies

1 providing for a uniform amount of insurance and requiring the payment of uniform premiums, ~~shall~~ must  
 2 be the excess, if any, of the present value, at the date of valuation, of ~~such~~ future guaranteed benefits  
 3 provided for by ~~such~~ the policies, over the then present value of any future modified net premiums ~~therefor~~.  
 4 The modified net premiums for any ~~such~~ policy ~~shall~~ must be ~~such~~ the uniform percentage of the respective  
 5 contract premiums for ~~such~~ the benefits that the present value, at the date of issue of the policy, of all ~~such~~  
 6 modified net premiums ~~shall~~ must be equal to the sum of the then present value of ~~such~~ the benefits  
 7 provided for by the policy and the excess of (a) over (b), as follows:

8 (a) a net level annual premium equal to the present value, at the date of issue, of ~~such~~ benefits  
 9 provided for after the first policy year, divided by the present value, at the date of issue of an annuity of  
 10 one per annum payable on the first and each subsequent anniversary of ~~such~~ the policy on which a  
 11 premium falls due; ~~provided, however~~ However, that ~~such~~ the net level annual premium ~~shall~~ may not  
 12 exceed the net level annual premium on the 19-year premium whole life plan for insurance of the same  
 13 amount at an age 1 year higher than the age at issue of ~~such~~ the policy;

14 (b) a net 1-year term premium for ~~such~~ benefits provided for in the first policy year.

15 (2) (a) For ~~every~~ each life insurance policy issued on or after January 1, 1987, for which the  
 16 contract premium in the first policy year exceeds that of the second year, for which ~~no~~ a comparable  
 17 additional benefit is not provided in the first year for ~~such~~ the excess, and that provides an endowment  
 18 benefit, a cash surrender value, or a combination of both in an amount greater than ~~such~~ the excess  
 19 premium, the reserve according to the commissioner's reserve valuation method, as of any policy  
 20 anniversary occurring on or before the assumed ending date as the first policy anniversary on which the  
 21 sum of any endowment benefit and any cash surrender value then available is greater than ~~such~~ the excess  
 22 premium, is, except as otherwise provided in 33-2-526, the greater of the reserve as of ~~such~~ the policy  
 23 anniversary calculated as described in subsection (1) or the reserve as of ~~such~~ the policy anniversary  
 24 calculated as described in subsection (1) with the following exceptions:

25 (i) the value defined in subsection (1)(a) is reduced by 15% of the amount of ~~such~~ the excess  
 26 first-year premium;

27 (ii) all present values of benefits and premiums are determined without reference to premiums or  
 28 benefits provided for in the policy after the assumed ending date;

29 (iii) the policy is assumed to mature on ~~such~~ the assumed ending date as an endowment; and

30 (iv) the cash surrender value provided on ~~such~~ the assumed ending date is considered an

1 endowment benefit.

2 (b) In making the comparisons in subsection (2)(a), the mortality and interest bases stated in  
3 33-2-523 and 33-2-527 must be used.

4 (3) Reserves according to the commissioner's reserve valuation method for the following ~~shall~~ must  
5 be calculated by a method consistent with the principles of this section, except that any extra premiums  
6 charged because of impairments or special hazards ~~shall~~ must be disregarded in the determination of  
7 modified net premiums:

8 (a) life insurance policies providing for a varying amount of insurance or requiring the payment of  
9 varying premiums;

10 (b) group annuity and pure endowment contracts purchased under a retirement plan or plan of  
11 deferred compensation, established or maintained by an employer, ~~{including a partnership or sole~~  
12 ~~proprietorship}~~, or by an employee organization, or by both, other than a plan providing individual retirement  
13 accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as ~~now or~~  
14 ~~hereafter~~ amended;

15 (c) disability and accidental death benefits in all policies and contracts; and

16 (d) all other benefits, except life insurance and endowment benefits in life insurance policies and  
17 benefits provided by all other annuity and pure endowment contracts.

18 (4) (a) Subsection (4)(b) applies to any annuity and pure endowment contracts other than group  
19 annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation  
20 established or maintained by an employer, ~~{including a partnership or sole proprietorship}~~, or by an  
21 employee organization, or by both, other than a plan providing individual retirement accounts or individual  
22 retirement annuities under section 408 of the Internal Revenue Code, as ~~now or hereafter~~ amended.

23 (b) Reserves according to the commissioner's annuity reserve method for benefits under annuity  
24 or pure endowment contracts, excluding any disability and accidental death benefits in ~~such the~~ the contracts,  
25 ~~shall~~ must be the greatest of the respective excesses of the present values, at the date of valuation, of the  
26 future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by ~~such the~~ the contracts  
27 at the end of each respective contract year, over the present value, at the date of valuation, of any future  
28 valuation considerations derived from future gross considerations required by the terms of ~~such the~~ the contract  
29 that become payable prior to the end of ~~such the~~ the respective contract year. The future guaranteed benefits  
30 ~~shall~~ must be determined by using the mortality table, if any, and the interest rate or rates specified in ~~such~~

1 the contracts for determining guaranteed benefits. The valuation considerations are the portions of the  
 2 respective gross considerations applied under the terms of ~~such~~ the contracts to determine nonforfeiture  
 3 values."

4

5 **Section 16.** Section 33-2-526, MCA, is amended to read:

6 "**33-2-526. Limits -- options -- minimum reserves.** (1) ~~In no event shall an~~ An insurer's aggregate  
 7 reserves for all life insurance policies, excluding disability and accidental death benefits issued on or after  
 8 October 1, 1995, may not be less than the aggregate reserves calculated in accordance with the methods  
 9 set forth in 33-2-525, ~~and~~ subsection (3) of this section, [section 76(2)] and the mortality table or tables  
 10 and rate or rates of interest used in calculating nonforfeiture benefits for ~~such~~ the policies.

11 (2) Reserves for all policies and contracts issued prior to October 1, 1995, may be calculated, at  
 12 the option of the insurer, according to standards that produce greater aggregate reserves for those policies  
 13 and contracts than the minimum reserves required by the laws in effect immediately prior to October 1,  
 14 1995. Reserves for any category of policies, contracts, or benefits as established by the commissioner,  
 15 issued on or after October 1, 1995, may be calculated at the option of the insurer according to any  
 16 standards which produce greater aggregate reserves for ~~such~~ a category than those calculated according  
 17 to the minimum standard ~~herein~~ provided in this section, but the rate or rates of interest used for policies  
 18 and contracts, other than annuity and pure endowment contracts, ~~shall~~ may not be higher than the  
 19 corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for ~~therein~~  
 20 a category.

21 (3) If in any contract year the gross premium charged by any life insurer on any policy or contract  
 22 is less than the valuation net premium for the policy or contract calculated by the method used in  
 23 calculating the reserve ~~thereon~~ on the policy or contract but using the minimum valuation standards of  
 24 mortality and rate of interest, the minimum reserve required for ~~such~~ the policy or contract ~~shall~~ must be  
 25 the greater of either the reserve calculated according to the mortality table, rate of interest, and method  
 26 actually used for ~~such~~ the policy or contract or the reserve calculated by the method actually used for ~~such~~  
 27 the policy or contract but using the minimum standards of mortality and rate of interest and replacing the  
 28 valuation net premium by the actual gross premium in each contract year for which the valuation net  
 29 premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of  
 30 interest referred to in this section are those standards stated in 33-2-524 and 33-2-527.

(4) For every life insurance policy issued after December 30, 1986, for which the gross premium in the first policy year exceeds that of the second year, for which ~~no~~ a comparable additional benefit is not provided in the first year for ~~such an~~ excess, and that provides an endowment benefit, a cash surrender value, or a combination of both in an amount greater than ~~such the~~ excess premium, subsections (1) through (3) of this section must be applied as if the method actually used in calculating the reserve for ~~such~~ the policy were the method described in 33-2-525(1). The minimum reserve at each policy anniversary of ~~such a~~ the policy must be the greater of the minimum reserve calculated in accordance with 33-2-525 and the minimum reserve calculated in accordance with this section."

**Section 17.** Section 33-2-528, MCA, is amended to read:

**"33-2-528. Interest rate weighting factor.** (1) The weighting factors referred to in the formulas stated in 33-2-527 are as follows:

(a) (i) for life insurance:

Guarantee Duration in Years	Weighting Factors
10 or less	.50
More than 10 but not more than 20	.45
More than 20	.35

(ii) for life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values, or both, that are guaranteed in the original policy;

(b) .80 for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options;

(c) for other annuities and for guaranteed interest contracts, except as stated in subsection (1)(b), according to the guarantee duration established in ~~subsection (2)~~ subsections (1)(c)(i) through (1)(c)(iii) and the type of plan rules and definitions established in established in subsection subsections (2), (3), and (4):

(i) for annuities and guaranteed interest contracts valued on an issue year basis:

Guarantee Duration in Years	Weighting Factor for Plan Type
-----------------------------	-----------------------------------

1		A	B	C
2	5 or less	.80	.60	.50
3	More than 5 but not more than 10	.75	.60	.50
4	More than 10 but not more than 20	.65	.50	.45
5	More than 20	.45	.35	.35

6		Plan Type		
7	(ii)	A	B	C
8	for annuities and guaranteed interest contracts valued on a			
9	change-in-fund basis, the factors shown in subsection (1)(c)(i)			
10	increased by:	.15	.25	.05

11		Plan Type		
12	(iii)	A	B	C
13	for annuities and guaranteed interest contracts valued on			
14	an issue year basis, <del>other than those with no</del> <u>without</u> cash			
15	settlement options, that do not guarantee interest on			
16	considerations received more than 1 year after issue or purchase			
17	and for annuities and guaranteed interest contracts valued on a			
18	change-in-fund basis that do not guarantee interest rates on			
19	considerations received more than 12 months beyond the valuation			
20	date, the factors set forth in subsection (1)(c)(i) or derived in			
21	subsection (1)(c)(ii) increased by:	.05	.05	.05

22 (2) For other annuities with cash settlement options and guaranteed interest contracts with cash  
 23 settlement options, the guarantee duration is the number of years for which the contract guarantees interest  
 24 rates in excess of the calendar year statutory valuation interest rate for life insurance policies with  
 25 guarantee duration in excess of 20 years. For other annuities ~~with no~~ without cash settlement options and  
 26 for guaranteed interest contracts ~~with no~~ without cash settlement options, the guarantee duration is the  
 27 number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to  
 28 commence.

29 (3) Plan types used in subsection (1)(c) are:

30 (a) Plan Type A--No withdrawal is permitted or at any time policyholder may withdraw funds only:

- 1 (i) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds  
2 by the insurance company;
- 3 (ii) without ~~such an~~ adjustment but in installments over 5 years or more; or  
4 (iii) as an immediate life annuity.
- 5 (b) Plan Type B--(i) Before expiration of the interest rate guarantee, no withdrawal is permitted or  
6 a policyholder may withdraw funds only:
- 7 (A) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds  
8 by the insurance company;
- 9 (B) without ~~such an~~ adjustment but in installments over 5 years or more.
- 10 (ii) At the end of the interest rate guarantee, funds may be withdrawn without ~~such an~~ adjustment  
11 in a single sum or installments over less than 5 years.
- 12 (c) Plan Type C--A policyholder may withdraw funds before expiration of the interest rate guarantee  
13 in a single sum or installments over less than 5 years either:
- 14 (i) without adjustment to reflect changes in interest rates or asset values since receipt of the funds  
15 by the insurance company; or
- 16 (ii) subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.
- 17 (4) (a) An insurer may elect to value guaranteed interest contracts with cash settlement options  
18 and annuities with cash settlement options on either an issue year basis or on a change-in-fund basis.  
19 Guaranteed interest contracts ~~with no~~ without cash settlement options and other annuities ~~with no~~ without  
20 cash settlement options must be valued on an issue year basis.
- 21 (b) As used in subsection (4):
- 22 (i) issue year basis of valuation is a valuation basis under which the interest rate used to determine  
23 the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the  
24 calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed  
25 interest contract; and
- 26 (ii) change-in-fund basis of valuation is a valuation basis under which the interest rate used to  
27 determine the minimum valuation standard applicable to each change in the fund held under the annuity  
28 or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the  
29 fund."  
30



1           **Section 18.** Section 33-2-529, MCA, is amended to read:

2           **"33-2-529. Reference interest rate.** (1) The reference interest rate referred to in the formulas in  
3 33-2-527 is:

4           (a) for all life insurance, the lesser of the average over a period of 36 months and the average over  
5 a period of 12 months, ending on June 30 of the calendar year next preceding the year of issue, of  
6 ~~Moody's corporate bond yield average~~— monthly average ~~corporate~~ composite yield on seasoned corporate  
7 bonds;

8           (b) for single-premium immediate annuities and for annuity benefits involving life contingencies  
9 arising from other annuities with cash settlement options and guaranteed interest contracts with cash  
10 settlement options, the average over a period of 12 months, ending on June 30 of the calendar year of  
11 issue or purchase, of ~~Moody's corporate bond yield average~~— monthly average ~~corporate~~ composite yield  
12 on seasoned corporate bonds;

13           (c) for other annuities with cash settlement options and guaranteed interest contracts with cash  
14 settlement options valued on a year-of-issue basis, except as stated in subsection (1)(b), with guarantee  
15 duration in excess of 10 years, the lesser of the average over a period of 36 months and the average over  
16 a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of ~~Moody's corporate~~  
17 ~~bond yield average~~— monthly average ~~corporate~~ composite yield on seasoned corporate bonds;

18           (d) for other annuities with cash settlement options and guaranteed interest contracts with cash  
19 settlement options valued on a year-of-issue basis, except as stated in subsection (1)(b), with guarantee  
20 duration of 10 years or less, the average over a period of 12 months, ending on June 30 of the calendar  
21 year of issue or purchase, of ~~Moody's corporate bond yield average~~— monthly average ~~corporate~~  
22 composite yield on seasoned corporate bonds;

23           (e) for other annuities ~~with no~~ without cash settlement options and for guaranteed interest  
24 contracts ~~with no~~ without cash settlement options, the average over a period of 12 months, ending on June  
25 30 of the calendar year of issue or purchase, of ~~Moody's corporate bond yield average~~— monthly average  
26 ~~corporate~~ composite yield on seasoned corporate bonds; or

27           (f) for other annuities with cash settlement options and guaranteed interest contracts with cash  
28 settlement options valued on a change-in-fund basis, except as stated in subsection (1)(b), the average over  
29 a period of 12 months, ending on June 30 of the calendar year of the change in the fund, of ~~Moody's~~  
30 ~~corporate bond yield average~~— monthly average ~~corporate~~ composite yield on seasoned corporate bonds.

1 (2) If Moody's ~~corporate bond yield average~~ monthly average ~~corporate~~ composite yield on  
 2 seasoned corporate bonds is no longer published by Moody's investors service, inc., or if the national  
 3 association of insurance commissioners determines that Moody's ~~corporate bond yield average~~ monthly  
 4 average ~~corporate~~ composite yield on seasoned corporate bonds, as published by Moody's investors  
 5 service, inc., is no longer appropriate for the determination of the reference interest rate, then an alternative  
 6 method for determination of the reference interest rate adopted by the national association of insurance  
 7 commissioners and approved by rule promulgated by the commissioner may be substituted."

8  
 9 **Section 19.** Section 33-2-531, MCA, is amended to read:

10 "**33-2-531. Deposit of reserves -- domestic life insurers.** (1) Domestic life insurers shall deposit  
 11 and maintain on deposit, in securities and assets, with depositaries and subject to conditions as provided  
 12 for in part 6 of this chapter, an amount not less than the reserves on its outstanding life insurance policies  
 13 and annuity contracts, as valued under 33-2-521 through 33-2-526, minus policy loans.

14 (2) Annually on or before April 1, the insurer shall ~~se~~ deposit any additional ~~such~~ securities or  
 15 assets required under subsection (1) and related to the increase of ~~such~~ the reserves, minus policy loans,  
 16 during the calendar year next preceding, as determined from the insurer's annual statement as at December  
 17 31 of ~~such~~ the preceding year.

18 (3) A domestic stock life insurer may credit toward ~~such~~ the deposit the amount of any other  
 19 deposit of the insurer held under part 6 of this chapter for the protection of its policyholders or of its  
 20 policyholders and creditors.

21 (4) Deposits of the reserves of a domestic life insurer under this section ~~shall~~ must consist of  
 22 securities and assets acquired and valued in accordance with parts 5 and 8 of this chapter.

23 (5) Real estate mortgage loans, and chattel mortgage loans, ~~and policy loans~~ may be made a part  
 24 of the deposit by filing a verified statement of the loans with the commissioner, ~~which statement shall be~~,  
 25 The statement is subject to audit at all times by the commissioner. Nonnegotiable securities ~~where~~  
 26 deposited with the commissioner ~~shall~~ must be accompanied by transfer powers in due form. If the insurer  
 27 uses real estate acquired under 33-2-832 as a deposit, then a deed of trust, mortgage, or other instrument  
 28 sufficient to convey a security interest in ~~such~~ the real estate, in a form acceptable to the commissioner,  
 29 ~~shall~~ must be completed in due form and recorded prior to being deposited with the commissioner.

30 (6) If default occurs in the payment of interest or principal of any deposited security and ~~such~~ the

1 default continues for a period of 120 days, the commissioner may declare ~~such~~ the security no longer  
2 eligible for deposit under this section."

3

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

5 **"33-2-701. Annual statement -- revocation or fine for failure to file -- penalty for perjury.** (1) Each  
6 authorized insurer shall annually on or before March 1 file with the commissioner a full and true statement  
7 of its financial condition, transactions, and affairs as of the preceding December 31 ~~preceding~~. The  
8 statement must be in the general form and context as is required or not disapproved by the commissioner,  
9 as is in current use for similar reports to states in general with respect to the type of insurer and kinds of  
10 insurance to be reported upon, and as supplemented for additional information required by the  
11 commissioner. The statement must be completed in accordance with the annual statement instructions and  
12 the accounting practices and procedures manual of the national association of insurance commissioners.  
13 The statement must be accompanied by an actuarial opinion attesting to the adequacy of the insurer's  
14 reserves. The statement must be verified by the oath of the insurer's president or vice-president and  
15 secretary or, if a reciprocal insurer, by the oath of the attorney-in-fact or its like officers if a corporation.  
16 The commissioner may waive the verification under oath.

17 (2) (a) Each domestic insurer shall file electronic diskette versions of its annual and quarterly  
18 financial statements with the national association of insurance commissioners. The filing date for  
19 submission of the annual statement diskette is March 1. The filing dates for the quarterly statement  
20 diskettes are as follows:

21 (i) the first calendar quarter filing is due May 15;

22 (ii) the second calendar quarter filing is due August 15; and

23 (iii) the third calendar quarter filing is due November 15.

24 (b) The commissioner may exempt insurers that operate only in Montana from these filing  
25 requirements.

26 ~~(2)(3)~~ The statement of an alien insurer must relate only to its transactions and affairs in the United  
27 States unless the commissioner requires otherwise. If the commissioner requires a statement as to an alien  
28 insurer's affairs throughout the world, the insurer shall file the statement with the commissioner as soon  
29 as reasonably possible. The statement must be verified by the insurer's United States manager or other  
30 authorized officer.

1           ~~(3)~~(4) The commissioner may refuse to accept the fee for continuance of the insurer's certificate  
2 of authority, as provided in 33-2-117, or may suspend or revoke the certificate of authority of any insurer  
3 failing to file its annual statement when due or within an extension of time that the commissioner may  
4 grant.

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

9           ~~(5)~~(6) At time of filing, the insurer shall pay to the commissioner the fee for filing its statement as  
10 prescribed in 33-2-708.

11           ~~(6)~~(7) The commissioner may impose a fine not to exceed \$100 a day for each day after March  
12 1 that an insurer fails to file the annual statement referred to in subsection (1). The fine may not exceed  
13 a maximum of \$1,000."

14

15           **Section 21.** Section 33-2-705, MCA, is amended to read:

16           "**33-2-705. Report on premiums and other consideration -- tax.** (1) Each authorized insurer and  
17 each formerly authorized insurer with respect to premiums received while an authorized insurer in this state  
18 shall file with the commissioner, on or before March 1 each year, a report in a form prescribed by the  
19 commissioner showing total direct premium income, including policy, membership, and other fees,  
20 premiums paid by application of dividends, refunds, savings, savings coupons, and similar returns or credits  
21 to payment of premiums for new or additional or extended or renewed insurance, charges for payment of  
22 premium in installments, and all other consideration for insurance from all kinds and classes of insurance,  
23 whether designated as a premium or otherwise, received by a life insurer or written by an insurer other than  
24 a life insurer during the preceding calendar year on account of policies covering property, subjects, or risks  
25 located, resident, or to be performed in Montana, with proper proportionate allocation of premium as to  
26 property, subjects, or risks in Montana insured under policies or contracts covering property, subjects, or  
27 risks located or resident in more than one state, after deducting from the total direct premium income  
28 applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, the amount  
29 of reduction in or refund of premiums allowed to industrial life policyholders for payment of premiums direct  
30 to an office of the insurer, all policy dividends, refunds, savings, savings coupons, and other similar returns

1 paid or credited to policyholders with respect to the policies. As to title insurance, "premium" includes the  
 2 total charge for the insurance. A deduction may not be made of the cash surrender values of policies.  
 3 Considerations received on annuity contracts may not be included in total direct premium income and are  
 4 not subject to tax.

5 (2) Coincident with the filing of the tax report referred to in subsection (1), each insurer shall pay  
 6 to the commissioner a tax upon the net premiums computed at the rate of 2 3/4%.

7 (3) That portion of the tax paid under this section by an insurer on account of premiums received  
 8 for fire insurance must be separately specified in the report as required by the commissioner, for  
 9 apportionment as provided by law. When insurance against fire is included with insurance of property  
 10 against other perils at an undivided premium, the insurer shall make a reasonable allocation from the entire  
 11 premium to the fire portion of the coverage as must be stated in the report and as may be approved or  
 12 accepted by the commissioner.

13 (4) With respect to authorized insurers, the premium tax provided by this section must be payment  
 14 in full and in lieu of all other demands for any and all state, county, city, district, municipal, and school  
 15 taxes, licenses, fees, and excises of whatever kind or character, excepting only those prescribed by this  
 16 code, taxes on real and tangible personal property located in this state, and taxes payable under 50-3-109.

17 (5) The commissioner may suspend or revoke the certificate of authority of any insurer ~~which~~ that  
 18 fails to pay its taxes as required under this section.

19 (6) In addition to the penalty provided for in subsection (5), the commissioner may impose upon  
 20 an insurer who fails to pay the tax required under this section a fine of \$100 plus interest on the delinquent  
 21 amount at the annual interest rate ~~established in 31-1-107~~ of 12%.

22 (7) The commissioner may by rule provide a quarterly schedule for payment of portions of the  
 23 premium tax under this section during the year in which tax liability is accrued."  
 24

25 **Section 22.** Section 33-2-708, MCA, is amended to read:

26 **"33-2-708. Fees and licenses.** (1) Except as provided in 33-17-212(2), the commissioner shall  
 27 collect ~~in advance~~ and the persons served shall pay to the commissioner the following fees:

28 (a) certificates of authority:

29 (i) for filing applications for original certificates of authority, articles of incorporation, ~~except~~  
 30 original articles of incorporation of domestic insurers as provided in subsection (1)(b)~~),~~ and other charter

1 documents, bylaws, financial statement, examination report, power of attorney to the commissioner, and  
 2 all other documents and filings required in connection with the application and for issuance of an original  
 3 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 . . . . .	600.00
7	(iii) reinstatement of certificate of authority . . . . .	25.00
8	(iv) amendment of certificate of authority . . . . .	50.00
9	(b) articles of incorporation:	
10	(i) filing original articles of incorporation of a domestic insurer, exclusive of fees required to be paid	
11	by the corporation to the secretary of state . . . . .	20.00
12	(ii) filing amendment of articles of incorporation, domestic and foreign insurers, exclusive of fees	
13	required to be paid to the secretary of state by a domestic corporation . . . . .	25.00
14	(c) filing bylaws or amendment to bylaws when required . . . . .	10.00
15	(d) filing annual statement of insurer, other than as part of application for original certificate of	
16	authority . . . . .	25.00
17	(e) insurance producer's license:	
18	(i) application for original license, including issuance of license, if issued . . . . .	15.00
19	(ii) appointment of insurance producer, each insurer, electronically filed . . . . .	10.00
20	(iii) appointment of insurance producer, each insurer, nonelectronically filed . . . . .	15.00
21	(iv) temporary license . . . . .	15.00
22	(v) amendment of license, <del>{excluding additions to license}</del> , or reissuance of master license	15.00
23	(vi) termination of insurance producer, each insurer, electronically filed . . . . .	10.00
24	(vii) termination of insurance producer, each insurer, nonelectronically filed . . . . .	15.00
25	(f) nonresident insurance producer's license:	
26	(i) application for original license, including issuance of license, if issued . . . . .	100.00
27	(ii) appointment of insurance producer, each insurer, electronically filed . . . . .	10.00
28	(iii) appointment of insurance producer, each insurer, nonelectronically filed . . . . .	15.00
29	(iv) annual renewal of license . . . . .	10.00
30	(v) amendment of license, <del>{excluding additions to license}</del> , or reissuance of master license	15.00

1 (vi) termination of insurance producer, each insurer, electronically filed . . . . . 10.00

2 (vii) termination of insurance producer, each insurer, nonelectronically filed . . . . . 15.00

3 (g) examination, if administered by the commissioner, for license as insurance producer, each

4 examination . . . . . 15.00

5 (h) surplus lines insurance producer license:

6 (i) application for original license and for issuance of license, if issued . . . . . 50.00

7 (ii) annual renewal of license . . . . . 50.00

8 (i) adjuster’s license:

9 (i) application for original license and for issuance of license, if issued . . . . . 15.00

10 (ii) annual renewal of license . . . . . 15.00

11 (j) insurance vending machine license, each machine, each year . . . . . 10.00

12 (k) motor club representative’s license:

13 (i) application for original license and issuance of license, if issued . . . . . 15.00

14 (ii) annual renewal of license . . . . . 15.00

15 ~~(l)~~ commissioner’s certificate under seal, ~~except when on certificates of authority or~~

16 licenses} . . . . . 10.00

17 ~~(m)~~ copies of documents on file in the commissioner’s office, per page . . . . . .50

18 ~~(n)~~ policy forms:

19 (i) filing each policy form . . . . . 25.00

20 (ii) filing each application, certificate, enrollment form, rider, endorsement, amendment, insert page,

21 schedule of rates, and clarification of risks . . . . . 10.00

22 (iii) maximum charge if policy and all forms submitted at one time or resubmitted for approval within

23 180 days, provided that all additional forms relate to the same policy . . . . . 100.00

24 ~~(o)~~ applications for approval of preclicensing education courses:

25 (i) reviewing initial application . . . . . 150.00

26 (ii) periodic review . . . . . 50.00

27 (2) The commissioner shall establish by rule fees commensurate with costs for filing documents

28 and conducting the course reviews required by 33-17-1204 and 33-17-1205.

29 (3) The commissioner shall establish by rule an annual accreditation fee to be paid by each

30 domestic and foreign insurer when it submits a fee for annual continuation of its certificate of authority.

1 (4)(a) Except as provided in subsection (4)(b), the commissioner shall promptly deposit with the  
 2 state treasurer to the credit of the general fund of this state all fines and penalties, those amounts received  
 3 pursuant to 33-2-311, 33-2-705, and 33-2-706, and any fees and examination and miscellaneous charges  
 4 that are collected by the commissioner pursuant to Title 33 and the rules adopted under Title 33, except  
 5 that all fees for filing documents and conducting the course reviews required by 33-17-1204 and  
 6 33-17-1205 must be deposited in the state special revenue fund pursuant to 33-17-1207.

7 (b) The accreditation fee required by subsection (3) must be turned over promptly to the state  
 8 treasurer who shall deposit the money in the state special revenue fund to the credit of the commissioner's  
 9 office. The accreditation fee funds must be used only to pay the expenses of the commissioner's office in  
 10 discharging the administrative and regulatory duties that are required to meet the minimum financial  
 11 regulatory standards established by the national association of insurance commissioners, subject to the  
 12 applicable laws relating to the appropriation of state funds and to the deposit and expenditure of money.  
 13 The commissioner is responsible for the proper expenditure of the accreditation money.

14 (5) All fees are considered fully earned when received. In the event of overpayment, only those  
 15 amounts in excess of \$10 will be refunded."

16  
 17 **Section 23.** Section 33-2-803, MCA, is amended to read:

18 "**33-2-803. General qualifications of investments.** (1) ~~No A~~ security or investment, other than real  
 19 and personal property acquired under 33-2-832, ~~shall be~~ is not eligible for acquisition unless it is interest  
 20 bearing or interest accruing or dividend or income paying, if not then in default in any respect, and the  
 21 insurer is entitled to receive for its exclusive account and benefit the interest or income accruing ~~thereon~~  
 22 on the security or investment. However, up to 3% of a company's total assets may be invested in  
 23 nondividend-paying common stock as described in 33-2-820.

24 (2) ~~No A~~ security or investment ~~shall be~~ is not eligible for purchase at a price above its market  
 25 value.

26 (3) ~~No A~~ provision of this part ~~shall~~ may not prohibit the acquisition by an insurer of other or  
 27 additional securities or property if received as a dividend or as a lawful distribution of assets or under a  
 28 lawful and bona fide agreement of bulk reinsurance, merger, or consolidation. Any investment ~~so~~ acquired  
 29 ~~which that~~ is not otherwise eligible under this part ~~shall~~ must be disposed of pursuant to 33-2-842 if  
 30 personal property or securities or pursuant to 33-2-841 if real property."



1           **Section 24.** Section 33-2-806, MCA, is amended to read:

2           **"33-2-806. Diversification of investments.** An insurer shall invest in or hold as admitted assets  
3 categories of investments only within applicable limits as follows:

4           (1) An insurer ~~shall~~ may not, except with the consent of the commissioner, have at any one time  
5 any combination of investments in or loans upon the security of the obligations, property, or securities of  
6 any one person or insurer aggregating an amount exceeding 5% of the insurer's assets. This restriction ~~shall~~  
7 does not apply as to general obligations of the United States of America or of any state or include policy  
8 loans made under 33-2-825.

9           (2) An insurer ~~shall~~ may not invest in or hold at any one time more than 10% of the outstanding  
10 voting stock of any corporation, except with the consent of the commissioner given with respect to voting  
11 rights of preference stock during default of dividends. This provision does not apply as to stock of a  
12 wholly-owned subsidiary of the insurer or to controlling stock of an insurer acquired under 33-2-821.

13           (3) An insurer, other than title insurer, shall invest and maintain invested funds not less in amount  
14 than the minimum paid-in capital stock required under this code of a domestic stock insurer transacting like  
15 kinds of insurance, only in cash and the securities provided for under the following sections: 33-2-811(1),  
16 33-2-812, and 33-2-830.

17           (4) A life insurer shall also invest and keep invested its funds in an amount not less than the  
18 reserves under its life insurance policies and annuity contracts, other than variable annuities, in force in  
19 cash, ~~and/or the~~ in securities, in both cash and securities, or in investments provided for under 33-2-531.

20           (5) Except with the commissioner's consent, an insurer ~~shall~~ may not have invested at any one  
21 time more than 20% of its assets in the class of securities described in 33-2-818, exclusive of obligations  
22 of public utilities.

23           (6) An insurer may not invest and have invested at any one time in aggregate amount ~~not~~ more  
24 than ~~40%~~ 15% of its assets in all stocks under 33-2-820 and 33-2-821. Determination of the amount  
25 ~~which that~~ an insurer has invested in common stocks for the purposes of this provision shall must be based  
26 on the cost of ~~such~~ the stocks to the insurer. This provision ~~shall~~ does not apply as to stock of a controlled  
27 or subsidiary insurance corporation or other corporations under 33-2-821 and 33-2-822.

28           (7) Except with the commissioner's consent, an insurer may not have invested at any one time  
29 more than 5% of its assets in securities allowed under 33-2-824.

30           (8) Except with the commissioner's consent, an insurer ~~shall~~ may not have invested at any one

1 time more than 10% of its assets in the class of securities described in any one of the following sections:  
 2 33-2-814, 33-2-819, and 33-2-823.

3 (9) Limits as to investments in the category of real estate shall be as provided in 33-2-832. Other  
 4 specific limits shall apply as stated in the sections dealing with other respective kinds of investments."  
 5

6 **Section 25.** Section 33-2-820, MCA, is amended to read:

7 "**33-2-820. Common stocks.** An insurer may invest in nonassessable common stocks, other than  
 8 insurance stocks, of any solvent corporation existing under the laws of the United States of America or of  
 9 Canada or any state or province thereof ~~if cash or stock dividends have been earned and paid on its~~  
 10 ~~common stock in each of the 5 fiscal years preceding such acquisition and if, further, all prior obligations~~  
 11 ~~or preference stock of such corporation, if any, are eligible for investment under this part. If the issuing~~  
 12 ~~corporation has not been in legal existence for the whole of the 5 preceding fiscal years but was formed~~  
 13 ~~as a consolidation or merger of two or more businesses, the test of eligibility for investment of its common~~  
 14 ~~stock under this section shall be based upon consolidation pro forma statements of the predecessor or~~  
 15 ~~constituent institutions."~~

16

17 **Section 26.** Section 33-2-1111, MCA, is amended to read:

18 "**33-2-1111. Registration of insurers -- requisites -- termination.** (1) ~~Every~~ An insurer ~~which is~~  
 19 authorized to do business in this state ~~and which that~~ is a member of an insurance holding company system  
 20 shall register with the commissioner, except that a foreign insurer subject to disclosure requirements and  
 21 standards adopted by statute or regulation in the jurisdiction of its domicile ~~which that~~ are substantially  
 22 similar to those contained in this section is not required to register. Any insurer ~~which is~~ subject to  
 23 registration under this section shall register within 15 days after it ~~becomes~~ becoming subject to  
 24 registration, unless the commissioner for good cause ~~shown~~ extends the time for registration, ~~and then~~  
 25 ~~within the extended time~~. The commissioner may require any authorized insurer ~~which that~~ is a member  
 26 of a holding company system ~~which that~~ is not subject to registration under this section to furnish a copy  
 27 of the registration statement or other information filed by the insurance company with the insurance  
 28 regulatory authority ~~of domiciliary~~ in the jurisdiction where the company is domiciled.

29 (2) ~~Every~~ An insurer subject to registration shall file with the commissioner, on or before April 30  
 30 each year, a registration statement on a form provided by the commissioner, ~~which that~~ must contain

1 current information about:

2 (a) the capital structure, general financial condition, ownership, and management of the insurer and  
3 any person controlling the insurer;

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

5 (c) ~~the following agreements in force, existing relationships subsisting, and~~ transactions currently  
6 outstanding between the insurer and its affiliates, and the following agreements that are in force:

7 (i) loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the  
8 insurer or of the insurer by its affiliates;

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

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

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

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

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

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

19 (viii) consolidated tax allocation agreements;

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

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

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

26 (4) Information need not be disclosed on the registration statement filed pursuant to subsection  
27 (2) if the information is not material for the purposes of this section. Unless the commissioner by rule or  
28 order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments  
29 involving 1/2 of 1% or less of an insurer's admitted assets as of the prior December 31 ~~next preceding~~ are  
30 not material for purposes of this section.

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

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

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

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

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

16  
17 **Section 27.** Section 33-2-1201, MCA, is amended to read:

18 "**33-2-1201. Limit of risk.** (1) An insurer may not retain any risk on any one subject of insurance,  
19 whether located or to be performed in this state or elsewhere, in an amount exceeding 10% of its surplus  
20 to policyholders.

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

25 (3) Reinsurance ceded as authorized by this part must be deducted in determining risk retained.  
26 As to surety risks, deduction must also be made of the amount assumed by any established incorporated  
27 cosurety and the value of any security deposited, pledged, or held subject to the surety's consent and for  
28 the surety's protection.

29 (4) As to alien insurers, this section only relates to risks and surplus to policyholders of the  
30 insurer's United States branch.

1 (5) "Surplus to policyholders" for the purposes of this section, in addition to the insurer's capital  
2 and surplus, is considered to include any voluntary reserves which are not required pursuant to law and  
3 are determined from the last sworn statement of the insurer on file with the commissioner or by the last  
4 report of examination of the insurer, whichever is the more recent at time of assumption of risk.

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

9

10 **Section 28.** Section 33-2-1216, MCA, is amended to read:

11 **"33-2-1216. Credit allowed domestic ceding insurer.** (1) Credit for reinsurance is allowed to a  
12 domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only  
13 when the reinsurer meets the requirements of subsection (2), (3), (4), (5), or (6). If the requirements of  
14 subsection (4) or (5) are met, the requirements of subsection (7) must also be met.

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

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

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

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

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

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

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

30 (ii) maintains a surplus with regard to policyholders in an amount less than \$20 million and whose

1 accreditation has been approved by the commissioner.

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

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

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

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

8 (B) submits to the authority of this state to examine its books and records.

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

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

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

20 (ii) In the case of a group, ~~of~~ including incorporated and individual unincorporated underwriters,  
21 the trust must consist of a trustee account representing the group's liabilities attributable to business  
22 written in the United States, and in addition, the group shall maintain a surplus with the trustee of which  
23 \$100 million must be held jointly for the benefit of United States ceding insurers of any member of the  
24 group.

25 (iii) The incorporated members of the group, as group members, may not be engaged in a business  
26 other than underwriting as members of the group and are subject to the same level of solvency regulation  
27 and control by the insurance regulator as the unincorporated members. The group shall make available to  
28 the commissioner an annual certification of the solvency of each underwriter by the ~~group's domiciliary~~  
29 insurance regulator and the independent public accountants in the jurisdiction where the underwriter is  
30 domiciled and its independent public accountants.

- 1        ~~(iii)(iv)~~ In the case of a group of incorporated insurers under common administration:
- 2        (A) the provisions of subsection ~~(5)(b)(iii)(B)~~ (5)(b)(iv)(B) apply, to the group that:
- 3        (I) complies with the reporting requirements contained in subsection (5)(a);
- 4        (II) has continuously transacted an insurance business outside the United States for at least 3 years
- 5 immediately prior to making application for accreditation;
- 6        (III) submits to this state's authority to examine its books and records and bears the expense of the
- 7 examination; and
- 8        (IV) has aggregate policyholders' surplus of \$10 billion;
- 9        (B) (I) the trust must be in an amount equal to the group's several liabilities attributable to business
- 10 ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts
- 11 issued in the name of the group;
- 12        (II) the group shall maintain a joint surplus with a trustee of which \$100 million is held jointly for
- 13 the benefit of United States ceding insurers of any member of the group as additional security for any
- 14 liabilities; and
- 15        (III) each member of the group shall make available to the commissioner an annual certification of
- 16 the member's solvency by the ~~member's domiciliary regulator and its independent public accountant~~
- 17 insurance regulator and the independent public accountants in the jurisdiction where the underwriter is
- 18 domiciled.
- 19        (c) The trust must be established in a form approved by the commissioner. The trust instrument
- 20 must provide that contested claims are valid and enforceable upon the final order of any court of competent
- 21 jurisdiction in the United States. The trust must vest legal title to its assets in the trustees of the trust for
- 22 its United States policyholders and ceding insurers and their assigns and successors in interest. The trust
- 23 and the assuming insurer are subject to examination as determined by the commissioner. The trust
- 24 described in this subsection (c) must remain in effect for as long as the assuming insurer has outstanding
- 25 obligations due under the reinsurance agreements subject to the trust.
- 26        (d) No later than February 28 of each year, the trustees of the trust shall report to the
- 27 commissioner in writing setting forth the balance of the trust and listing the trust's investments at the end
- 28 of the preceding year. The trustees shall certify the date of termination of the trust, if planned, or certify
- 29 that the trust may not expire prior to the following December 31.
- 30        (6) Credit must be allowed when the reinsurance is ceded to an assuming insurer that does not

1 meet the requirements of subsection (2), (3), (4), or (5) but only with respect to the insurance of risks  
2 located in a jurisdiction in which the reinsurance is required by applicable law or regulation of that  
3 jurisdiction.

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

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

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

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

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

13 (ii) to designate the commissioner or a designated attorney as its attorney upon whom may be  
14 served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding  
15 company.

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

18

19 **Section 29.** Section 33-2-1217, MCA, is amended to read:

20 **"33-2-1217. Reduction of liability for reinsurance ceded by domestic insurer to assuming insurer**  
21 **-- definition.** A reduction from liability for the reinsurance ceded by a domestic insurer to an assuming  
22 insurer not meeting the requirements of 33-2-1216 must be allowed in an amount not exceeding the  
23 liabilities carried by the ceding insurer. The reduction must be in the amount of funds held by or on behalf  
24 of the ceding insurer, including funds held in trust for the ceding insurer:

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

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

30 (a) cash;



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

2 (c) clean, irrevocable, unconditional letters of credit that are issued or confirmed by a qualified

3 United States financial institution no later than December 31 of the year for which filing is being made and

4 that are in the possession of the ceding company on or before the filing date of its annual statement.

5 Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or

6 confirmation must, notwithstanding the issuing or confirming institution's subsequent failure to meet

7 applicable standards of issuer acceptability, continue to be acceptable as security until their expiration,

8 extension, renewal, modification, or amendment, whichever occurs first.

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

10 (3) For the purposes of subsection (2)(c), a "qualified United States financial institution" means an  
11 institution that:

12 (a) is organized or, in the case of a United States office of a foreign banking organization, licensed  
13 under the laws of the United States or any of its states;

14 (b) is regulated, supervised, and examined by United States federal or state authorities with  
15 regulatory authority over banks and trust companies; and

16 (c) has been determined by either the commissioner or the securities valuation office of the national  
17 association of insurance commissioners to meet the standards of financial condition and standing that are  
18 considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit  
19 will be acceptable to the commissioner.

20 (4) For the purposes of this part, except for subsection (2)(c), "qualified United States financial  
21 institution" means, with respect to institutions eligible to act as a fiduciary of a trust, an institution that:

22 (a) is organized or, in the case of a United States branch or agency office of a foreign banking  
23 corporation, licensed under the laws of the United States or any of its states and that has been granted  
24 authority to operate with fiduciary powers; and

25 (b) is regulated, supervised, and examined by federal or state authorities having regulatory authority  
26 over banks and trust companies.

27 (5) The commissioner may adopt rules implementing the provisions of 33-2-307, 33-2-708, and  
28 33-2-806."

29  
30 **Section 30.** Section 33-2-1218, MCA, is amended to read:

1           **"33-2-1218. Reinsurance agreements affected.** Sections 33-2-1216 and 33-2-1217 apply to all  
2      cessions after October 1, 1993, under reinsurance agreements that have had an inception, anniversary, or  
3      renewal date on or ~~before~~ after April 1, 1993."

4  
5           **Section 31.** Section 33-2-1510, MCA, is amended to read:

6           **"33-2-1510. Minimum standards.** Unless there is a written contract between a controlling producer  
7      and a controlled insurer specifying the responsibilities of each party, the controlled insurer may not accept  
8      business from the controlling producer and the controlling producer may not place business with the  
9      controlled insurer. The contract must be approved by the board of directors of the controlled insurer and  
10     must contain the following minimum provisions:

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

14           (2) The controlling producer shall render to the controlled insurer accounts detailing all material  
15     transactions, including information necessary to support all commissions, charges, and other fees received  
16     by or owing to the controlling producer.

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

21           (4) In accordance with the provisions of this title, all funds collected for the controlled insurer's  
22     account must be held by the controlling producer in a fiduciary capacity, in one or more appropriately  
23     identified bank accounts in banks that are members of the federal reserve system. However, funds of a  
24     controlling producer not required to be licensed in this state must be maintained in compliance with the  
25     requirements of the jurisdiction in which the controlling ~~producer's domiciliary jurisdiction~~ producer is  
26     domiciled.

27           (5) The controlling producer shall maintain separately identifiable records of business written for  
28     the controlled insurer.

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

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

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

5 (8) The rates and terms of the controlling producer's commissions, charges, or other fees and the  
6 purposes of those commissions, charges, or fees must be contained in the contract. The rates of the  
7 controlling producer's commissions, charges, and other fees may not be greater than those applicable to  
8 comparable business placed with the controlled insurer by producers other than controlling producers. For  
9 purposes of subsection (7) and this subsection, examples of "comparable business" include the same lines  
10 of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of  
11 business.

12 (9) If the contract provides that on insurance business placed with the controlled insurer, the  
13 controlling producer is to be compensated contingent upon the controlled insurer's profits on that business,  
14 then the compensation may not be determined and paid until at least 5 years after the premiums on liability  
15 insurance are earned and at least 1 year after the premiums are earned on any other insurance. The  
16 commissions may not be paid until the adequacy of the controlled insurer's reserves on remaining claims  
17 has been independently verified pursuant to 33-2-1512.

18 (10) The rates and terms of the controlling producer's commissions, charges, or other fees and  
19 the purposes of those commissions, charges, or fees must be contained in the contract. The controlled  
20 insurer may establish a different limit for each line or subline of business. The controlled insurer shall notify  
21 the controlling producer when the applicable limit is approached and may not accept business from the  
22 controlling producer if the limit is reached. The controlling producer may not place business with the  
23 controlled insurer if it has been notified by the controlled insurer that the limit has been reached.

24 (11) The controlling producer may negotiate but may not bind reinsurance on behalf of the  
25 controlled insurer on business that the controlling producer places with the controlled insurer, except that  
26 the controlling producer may bind facultative reinsurance contracts pursuant to obligatory facultative  
27 agreements if the contract with the controlled insurer contains underwriting guidelines. For reinsurance  
28 assumed and ceded, the guidelines must include a list of reinsurers with which the automatic agreements  
29 are in effect, the coverages and amounts or percentages that may be reinsured, and commission  
30 schedules."

1           **Section 32.** Section 33-2-1605, MCA, is amended to read:

2           **"33-2-1605. Penalties and liabilities.** (1) If, after a hearing conducted in accordance with Title 33,  
3 chapter 1, part 7, the commissioner finds that a person has violated any provision of this part, the  
4 commissioner may order:

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

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

7           (c) the managing general agent to reimburse the insurer, the rehabilitator, or a liquidator of the  
8 insurer for any losses incurred by the insurer caused by a violation of this part committed by the managing  
9 general agent.

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

12           (3) This section does not limit the power of the commissioner to impose any other penalty provided  
13 in this title.

14           (4) This part does not limit the rights of policyholders, claimants, or ~~auditors~~ creditors."

15  
16           **Section 33.** Section 33-3-431, MCA, is amended to read:

17           **"33-3-431. Borrowed surplus.** (1) A domestic stock or mutual insurer may borrow money to  
18 defray the expenses of its organization, to provide it with surplus funds, or for any purpose of its business,  
19 upon a written agreement that ~~such the~~ money is required to be repaid only out of the insurer's surplus in  
20 excess of that stipulated in ~~such the~~ agreement. The agreement may provide for interest at a rate ~~no~~ not  
21 greater than the rate established in 25-9-205, ~~which interest shall or shall not constitute a liability of the~~  
22 ~~insurer as to its funds other than such excess of surplus, as~~ and whether the interest constitutes a liability  
23 of the insurer must be stipulated in the agreement. ~~No~~ A commission or promotion expense ~~shall~~ may not  
24 be paid in connection with ~~any such~~ a loan of the type described in this section.

25           (2) Money ~~is~~ borrowed, together with the interest ~~thereon~~ if ~~so~~ stipulated in the agreement, ~~shall~~  
26 does not form a part of the insurer's legal liabilities except as to its surplus in excess of the amount ~~thereof~~  
27 stipulated in the agreement or ~~be~~ the basis of any setoff; ~~but~~ However, until the money or interest, or  
28 both, are repaid, financial statements filed or published by the insurer ~~shall~~ must show as a footnote ~~thereto~~  
29 the amount ~~thereof~~ then unpaid together with any interest ~~thereon~~ accrued but unpaid.

30           (3) ~~Any such~~ A loan of this type to a mutual or stock insurer ~~shall be~~ is subject to the

1 commissioner's approval. The insurer shall, in advance of the loan, file with the commissioner a statement  
 2 of the purpose of the loan and a copy of the proposed loan agreement. The loan and agreement ~~shall be~~  
 3 ~~deemed~~ are approved unless within 15 days after ~~date of such~~ filing the insurer is notified of the  
 4 commissioner's disapproval and ~~the reasons therefor~~ reasons for the disapproval. The commissioner shall  
 5 disapprove any proposed loan or agreement if ~~he~~ the commissioner finds the loan is unnecessary or  
 6 excessive for the purpose intended or that the terms of the loan agreement are not fair and equitable to the  
 7 parties, and to other similar lenders, if any, to the insurer, or that the information ~~so~~ filed by the insurer is  
 8 inadequate.

9 (4) ~~Any such~~ A loan to a mutual or stock insurer or a substantial portion ~~thereof~~ of the loan shall  
 10 must be repaid by the insurer when it is no longer reasonably necessary for the purpose originally intended.  
 11 ~~No repayment of such loan shall~~ Repayment of either principal or interest on the loan may not be made by  
 12 a mutual or stock insurer unless ~~in advance~~ approved in advance by the commissioner.

13 (5) This section ~~shall~~ does not apply to loans obtained by the insurer in the ordinary course of  
 14 business from banks and other financial institutions or to loans secured by pledge or mortgage of assets."  
 15

16 **Section 34.** Section 33-4-202, MCA, is amended to read:

17 "**33-4-202. Declaration of intention to incorporate -- articles of incorporation -- fee.** (1) The  
 18 individuals proposing to form a farm mutual insurer as referred to in 33-4-201 shall file with the  
 19 commissioner:

20 (a) a declaration of their intention to form ~~such a~~ the corporation, ~~which declaration shall be~~ signed  
 21 by at least 100 incorporators if a proposed state mutual insurer or by at least 25 incorporators if a proposed  
 22 county mutual insurer; and

23 (b) proposed articles of incorporation executed in ~~quadruplicate~~ triplicate by three or more of the  
 24 incorporators and acknowledged by each before a person authorized to take and verify acknowledgments  
 25 of conveyance of real property.

26 (2) The articles of incorporation ~~shall~~ must state:

27 (a) the name of the corporation. If a state mutual insurer, the words "farm mutual" must be a part  
 28 of the name; if a county mutual insurer, the name ~~shall~~ must contain the words "farm mutual" or "rural  
 29 mutual" together with the name of the county ~~wherein is to be located~~ in which its principal place of  
 30 business is to be located. The name ~~shall~~ may not be so similar to one already used by a corporation in

1 this state as to be misleading.

2 (b) if a county mutual insurer, the name of the county or counties in which the corporation is to  
3 transact insurance and the address where its principal business office will be located;

4 (c) if a state mutual insurer, the location of its principal business office, which ~~office~~ must be  
5 located in this state;

6 (d) the objects and purposes for which the corporation is formed;

7 (e) whether it intends to transact business on the cash premium plan or the assessment plan;

8 (f) the duration of its existence, which may be perpetual;

9 (g) the number of its directors, which ~~shall~~ may not be less than 5 or more than 11; ~~also, and~~ the  
10 names and addresses of the members of the initial board of directors appointed to manage the affairs of  
11 the corporation until the first annual meeting of the members and ~~until their~~ successors are elected and  
12 qualified;

13 (h) ~~such~~ other provisions, not inconsistent with law, ~~deemed~~ considered appropriate by the  
14 incorporators;

15 (i) the names, residences, and addresses of the incorporators and the value of ~~the~~ their property  
16 ~~desired to be~~ insured ~~owned by each~~ in the county or counties where the operations of the corporation are  
17 to be carried on.

18 (3) At the time of filing of the articles of incorporation as provided in subsection (1) ~~above~~, the  
19 incorporators shall pay to the commissioner a filing fee of \$10. The commissioner shall deposit ~~all such~~ the  
20 fees with the state treasurer to the credit of the general fund ~~of this state.~~"

21

22 **Section 35.** Section 33-4-203, MCA, is amended to read:

23 "**33-4-203. Approval of articles -- commencement of corporate existence.** (1) ~~Upon receipt of~~  
24 ~~proposed articles of incorporation, the commissioner shall forward the proposed articles of incorporation~~  
25 ~~to the attorney general for examination.~~ If the ~~attorney general~~ commissioner finds the proposed articles  
26 of incorporation to be in accordance with the provisions of this chapter and not in conflict with the  
27 constitution and laws of the United States of America or of this state, the ~~attorney general~~ commissioner  
28 shall make a certificate of the facts ~~and return it with the proposed articles to the commissioner.~~

29 (2) If the commissioner considers the name of the proposed corporation to be so similar to one  
30 already appropriated by another company or corporation as to be likely to mislead the public, the

1 commissioner shall reject the name applied for and shall notify the incorporators of the rejection.

2 (3) When the proposed articles of incorporation have been approved by the ~~attorney general~~  
3 commissioner, the commissioner shall ~~likewise~~ endorse the commissioner's approval upon each set of the  
4 articles and forward ~~four~~ three sets of articles to the incorporators. The incorporators shall file one of the  
5 sets of articles with the secretary of state, one set with the commissioner bearing the certification of the  
6 secretary of state, and one set with the county clerk of the county in which the principal place of business  
7 of the corporation is located and shall pay to the secretary of state and the county clerk the customary  
8 filing fees. The remaining set of articles must be made a part of the corporation's records.

9 (4) The corporation has legal existence upon the approval of the articles by the ~~attorney general~~  
10 ~~and the~~ commissioner and completion of the filings referred to in subsection (3), but it may not transact  
11 business as an insurer until it has fulfilled the requirements for and has obtained a certificate of authority  
12 as provided in 33-4-505."

13

14 **Section 36.** Section 33-5-401, MCA, is amended to read:

15 **"33-5-401. Surplus funds required.** (1) A domestic reciprocal insurer ~~hereunder formed~~ subject  
16 to this part, if it has otherwise complied with the applicable provisions of this code, may be authorized to  
17 transact insurance if it has and ~~thereafter~~ maintains surplus funds as follows:

18 (a) to transact property insurance, surplus funds of not less than \$400,000;

19 (b) to transact casualty insurance; ~~other than workers' compensation, surplus funds of not less~~  
20 ~~than \$400,000.~~

21 (i) including authority for workers' compensation insurance, surplus funds of not less than  
22 \$600,000; or

23 (ii) excluding authority for workers' compensation insurance, surplus funds of not less than  
24 \$400,000.

25 (2) In addition to surplus funds required to be maintained under subsection (1) ~~above~~, the insurer  
26 ~~shall~~ must have, when first ~~so~~ authorized, expendable surplus in the same amount as required of a like  
27 foreign reciprocal insurer under 33-2-110.

28 (3) A domestic reciprocal insurer may be authorized to transact additional kinds of insurance if it  
29 has otherwise complied with the provisions of this code ~~therefor~~ for the additional kinds of insurance and  
30 ~~possesses and so~~ maintains surplus funds in an amount equal to the minimum capital stock required of a

1 stock insurer for authority to transact a like combination of kinds of insurance."

2  
3 **Section 37.** Section 33-7-117, MCA, is amended to read:

4 **"33-7-117. Scope -- provisions applicable.** (1) Except as provided in subsection (2), societies are  
5 governed by this chapter and are exempt from all other provisions of the insurance laws of this state, not  
6 only in governmental relations with the state but for every other purpose. The provisions of a law enacted  
7 after January 1, 1992, do not apply to fraternal benefit societies unless expressly made applicable by the  
8 provisions of the law.

9 (2) In addition to the provisions of this chapter, the provisions of chapter 1, parts 1 through 4 and  
10 7; 33-2-104; 33-2-107; 33-2-112; chapter 2, part 13; 33-3-308; 33-15-502; ~~and~~ chapters 17, 18, 20, and  
11 22; and [sections 78 through 81] apply to fraternal benefit societies to the extent applicable and to the  
12 extent not in conflict with the provisions of this chapter and the reasonable implications of this chapter."  
13

14 **Section 38.** Section 33-10-201, MCA, is amended to read:

15 **"33-10-201. Short title, purpose, scope, and construction.** (1) This part ~~shall be known and~~ may  
16 be cited as the "Montana Life and Health Insurance Guaranty Association Act".

17 (2) The purpose of this part is to protect policyowners, insureds, beneficiaries, annuitants, payees,  
18 and assignees of life insurance policies, health insurance policies, annuity contracts, and supplemental  
19 contracts, subject to certain limitations, against failure in the performance of contractual obligations due  
20 to the impairment of the insurer issuing the policies or contracts.

21 (3) To provide this protection:

22 (a) an association of insurers is created to enable the guaranty of payment of benefits and of  
23 continuation of coverages;

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

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

28 (4) This part applies to direct, nongroup life, health, annuity, and supplemental policies or  
29 contracts, to certificates under direct group policies and contracts, and to unallocated annuity contracts  
30 issued by member insurers, except as limited by this part. Annuity contracts and certificates under group



1 annuity contracts include but are not limited to guaranteed investment contracts, deposit administration  
 2 contracts, unallocated funding agreements, allocated funding agreements, structured settlement  
 3 agreements, lottery contracts, and any immediate or deferred annuity contracts.

4 (5) This part provides coverage for ~~covered~~ policies and contracts specified in subsection (6):

5 (a) to persons who are owners of or certificate holders under covered policies or, in the case of  
 6 unallocated annuity contracts, to the persons who are contract holders and who if the persons:

7 (i) are residents; or

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

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

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

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

13 (D) the persons are not eligible for coverage by that association; and

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

17 (6) This part covers persons specified in subsection (5)(a) for direct, nongroup life, health, annuity,  
 18 and supplemental policies and contracts, for certificates under direct group policies and contracts, and for  
 19 unallocated annuity contracts issued by member insurers, except as limited by this part. Annuity contracts  
 20 and certificates under group annuity contracts include but are not limited to guaranteed investment  
 21 contracts, deposit administration contracts, allocated and unallocated funding agreements, structured  
 22 settlement agreements, lottery contracts, and immediate or deferred annuity contracts. This part does not  
 23 apply to:

24 (a) ~~any~~ policies or contracts or any part of the policies or contracts under which the risk is borne  
 25 by the policyholder;

26 (b) ~~any~~ a policy or contract or part of the policy or contract assumed by the impaired insurer under  
 27 a contract of reinsurance, other than reinsurance for which assumption certificates have been issued;

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

29 (i) averaged over the period of 4 years prior to the date on which the association becomes  
 30 obligated with respect to the policy or contract, exceeds a rate of interest determined by subtracting 2

1 percentage points from Moody's corporate bond yield average averaged for that same 4-year period or for  
2 the lesser period if the policy or contract was issued less than 4 years before the association became  
3 obligated; and

4 (ii) on and after the date on which the association becomes obligated with respect to the policy or  
5 contract, exceeds the rate of interest determined by subtracting 3 percentage points from Moody's  
6 corporate bond yield average as is most recently available;

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

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

12 (ii) a minimum premium group insurance plan;

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

14 (iv) an administrative services only contract;

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

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

20 (g) any unallocated annuity contract issued to an employee benefit plan that is protected under the  
21 federal pension benefit guaranty corporation; and

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

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

26 (8) This part may not be construed to reduce the liability for unpaid assessments of the insureds  
27 of an impaired insurer operating under a plan with assessment liability."

28  
29 **Section 39.** Section 33-10-202, MCA, is amended to read:

30 **"33-10-202. Definitions.** As used in this part, the following definitions apply:

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

2 (2) "Association" means the Montana life and health insurance guaranty association created under  
3 33-10-203.

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

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

7 (5) "Impaired insurer" means:

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

10 (b) an insurer considered by the commissioner after July 1, 1974, to be unable or potentially unable  
11 to fulfill its contractual obligations.

12 (6) (a) "Member insurer" means any ~~person authorized to transact in this state any kind of~~ insurer that is licensed or  
13 insurance to which this part applies under subsections (4) and (6) of 33-10-201 insurer that is licensed or  
14 that holds a certificate of authority to transact any kind of insurance in this state for which coverage is  
15 provided under 33-2-201 and includes any insurer whose license or certificate of authority may have been  
16 suspended, revoked, not renewed, or voluntarily withdrawn.

17 (b) The term does not include:

18 (i) a health service corporation;

19 (ii) a health maintenance organization;

20 (iii) a fraternal benefit society;

21 (iv) a mandatory state pooling plan;

22 (v) a mutual assessment company or any entity that operates on an assessment basis;

23 (vi) an insurance exchange; or

24 (vii) an entity similar to any of the entities listed in subsections (6)(b)(i) through (6)(b)(vi).

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

26 (8) "Premiums" means direct gross insurance premiums and annuity considerations written on  
27 covered policies, less return premiums and considerations on premiums and dividends paid or credited to  
28 policyholders on the direct business. "Premiums" do not include premiums and considerations on contracts  
29 between insurers and reinsurers. As used in 33-10-227, "premiums" are those for the calendar year  
30 preceding the determination of impairment.

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

3 (10) "Unallocated annuity contract" means an annuity contract or group annuity certificate that is  
4 not issued to and owned by an individual, except to the extent of annuity benefits guaranteed to an  
5 individual by the insurer under the contract or certificate."

6  
7 **Section 40.** Section 33-11-102, MCA, is amended to read:

8 "**33-11-102. Definitions.** As used in this part, the following definitions apply:

9 (1) "Completed operations liability" means:

10 (a) liability arising out of the installation, maintenance, or repair of any product at a site that is not  
11 owned or controlled by:

12 (i) a person who performs that work; or

13 (ii) a person who hires an independent contractor to perform that work; and

14 (b) liability for activities that are completed or abandoned before the date of the occurrence giving  
15 rise to the liability.

16 (2) "Domicile", for purposes of determining the state where a purchasing group is domiciled,  
17 means:

18 (a) for a corporation, the state where the purchasing group is incorporated; and

19 (b) for an unincorporated entity, the state of its principal place of business.

20 ~~(3)~~(3) "Hazardous financial condition" means that, based on its present or reasonably anticipated  
21 financial condition, a risk retention group, although not yet financially impaired or insolvent, is unlikely to  
22 be able to:

23 (a) meet obligations to policyholders with respect to known claims and reasonably anticipated  
24 claims; or

25 (b) pay other obligations in the normal course of business.

26 ~~(3)~~(4) "Insurance" means primary insurance, excess insurance, reinsurance, surplus line insurance,  
27 and any other arrangement for shifting and distributing risk that is determined to be insurance under the  
28 laws of this state.

29 ~~(4)~~(5) (a) "Liability" means legal liability for damages, including costs of defense, legal costs and  
30 fees, and other claims expenses, because of injuries to other persons, damage to their property, or other

1 damage or loss to other persons resulting from or arising out of:

2 (i) a business, whether profit or nonprofit, trade, product, service (including professional service),  
3 premises, or operation; or

4 (ii) an activity of any state or local government or an agency or political subdivision ~~thereof~~ of state  
5 or local government.

6 (b) The term does not include personal risk liability or an employer's liability with respect to its  
7 employees other than legal liability under the federal Employers' Liability Act, {45 U.S.C. 51 through 60}.  
8 As used in this subsection, "personal risk liability" means liability for damages because of injury to any  
9 person, damage to property, or other loss or damage resulting from personal, familial, or household  
10 responsibilities or activities rather than from responsibilities or activities referred to in subsection ~~(4)(a)~~  
11 (5)(a).

12 ~~(5)(6)~~ "Plan of operation or a feasibility study" means an analysis that presents the expected  
13 activities and results of a risk retention group, including at a minimum:

14 (a) the coverages, deductibles, coverage limits, rates, and rating classification systems for each  
15 line of insurance the group intends to offer;

16 (b) historical and expected loss experience of the proposed members and national experience of  
17 similar exposures to the extent this experience is reasonably available;

18 (c) pro forma financial statements and projections;

19 (d) appropriate opinions by a qualified independent casualty actuary, including a determination of  
20 minimum premium or participation levels required to commence operations and to prevent a hazardous  
21 financial condition;

22 (e) identification of management, underwriting procedures, managerial oversight methods, and  
23 investment policies; and

24 (f) other matters as may be prescribed by the commissioner for liability insurance companies  
25 authorized by the insurance laws of the state where the risk retention group is chartered.

26 ~~(6)(7)~~ "Purchasing group" means a group that:

27 (a) has as one of its purposes the purchase of liability insurance on a group basis;

28 (b) purchases liability insurance only for its group members and only to cover their similar or related  
29 liability exposure, as described in subsection ~~(6)(e)~~ (7)(c);

30 (c) is composed of members whose businesses or activities are similar or related with respect to

1 the liability to which members are exposed by virtue of any related, similar, or common business, trade,  
2 product, service, premises, or operation; and

3 (d) is domiciled in any state.

4 ~~(7)~~(8) "Risk retention group" means a corporation or other limited liability association formed under  
5 the laws of any state, Bermuda, or the Cayman Islands:

6 (a) whose primary activity consists of assuming and spreading all or any portion of the liability  
7 exposure of its group members;

8 (b) that is organized for the primary purpose of conducting the activity described under subsection  
9 ~~(7)(a)~~ (8)(a);

10 (c) (i) that is chartered and licensed as a liability insurance company and authorized to engage in  
11 the business of insurance under the laws of any state; or

12 (ii) that, before January 1, 1985, was chartered or licensed and authorized to engage in the  
13 business of insurance under the laws of Bermuda or the Cayman Islands and, before that date, had certified  
14 to the insurance regulatory official of at least one state that it satisfied the capitalization requirements of  
15 that state. However, ~~such~~ the group is considered to be a risk retention group only if it has been engaged  
16 in business continuously since January 1, 1985, and only for the purpose of continuing to provide  
17 insurance to cover product liability or completed operations liability.

18 ~~(A) For purposes of this subsection (7), "completed operations liability" means liability arising out~~  
19 ~~of the installation, maintenance, or repair of any product at a site which is not owned or controlled by a~~  
20 ~~person who performs that work or hires an independent contractor to perform that work and includes~~  
21 ~~liability for activities which are completed or abandoned before the date of the occurrence giving rise to the~~  
22 ~~liability.~~

23 ~~(B)~~ For purposes of this subsection ~~(7)~~ (8), "product liability" means liability for damages because  
24 of any personal injury, death, emotional harm, consequential economic damage, or property damage,  
25 ~~(including damages resulting from the loss of use of property),~~ arising out of the manufacture, design,  
26 importation, distribution, packaging, labeling, lease, or sale of a product but does not include the liability  
27 of any person for those damages if the product involved was in the possession of that person when the  
28 incident giving rise to the claim occurred.

29 (d) that does not exclude any person from membership in the group solely to provide to members  
30 of the group a competitive advantage over ~~such~~ the person;

1 (e) (i) that has as its members only persons who have an ownership interest in the group and that  
 2 has as its owners only persons who are members and who are provided insurance by the risk retention  
 3 group; or

4 (ii) that has as its sole member and sole owner an organization that is owned by persons who are  
 5 provided insurance by the risk retention group;

6 (f) whose members are engaged in businesses or activities that are similar or related with respect  
 7 to the liability to which the members are exposed by virtue of any related, similar, or common business,  
 8 trade, product, service, premises, or operation;

9 (g) whose activities do not include the provision of insurance other than:

10 (i) liability insurance for assuming and spreading all or any portion of the liability of its group  
 11 members; and

12 (ii) reinsurance with respect to the liability of any other risk retention group or member of ~~such the~~  
 13 other group that is engaged in businesses or activities so that ~~such the~~ group or member meets the  
 14 requirement described in subsection ~~(7)(f)~~ (8)(f) for membership in the risk retention group that provides  
 15 the reinsurance; and

16 (h) whose name includes the phrase "risk retention group".

17 ~~(8)(9)~~ "State" means any state of the United States or the District of Columbia."

18  
 19 **Section 41.** Section 33-11-104, MCA, is amended to read:

20 **"33-11-104. Risk retention groups not chartered in this state.** A risk retention group chartered in  
 21 a state other than this state and seeking to do business as a risk retention group in this state must observe  
 22 and abide by the laws of this state as follows:

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

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

28 (b) a copy of its plan of operation or a feasibility study and revisions of the plan or study submitted  
 29 to its state of domicile. However, this provision relating to the submission of a plan of operation or a  
 30 feasibility study does not apply with respect to any line or classification of liability insurance that was

1 defined in the federal Product Liability Risk Retention Act of 1981 (15 U.S.C. 3901 through 3904) before  
2 it was amended by P.L. 99-563, approved on October 27, 1986, and that was offered before that date by  
3 a risk retention group that had been chartered and operated for not less than 3 years before that date; and

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

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

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

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

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

15 (d) any information as may be required to verify the group's continuing qualification as a risk  
16 retention group under 33-11-102~~(7)~~(8).

17 (3) (a) Each risk retention group is liable for the payment of premium taxes and taxes on premiums  
18 of direct business for risks resident or located within this state and shall report to the commissioner the net  
19 premiums written for risks resident or located within this state. The risk retention group is subject to  
20 taxation and any applicable interest, fines, and penalties for nonpayment that apply to foreign admitted  
21 insurers.

22 (b) To the extent that an insurance producer is used, the insurance producer shall report to the  
23 commissioner the premiums of direct business for risks resident or located within this state that the  
24 licensees have placed with or on behalf of a risk retention group not chartered in this state.

25 (c) To the extent that an insurance producer is used, the insurance producer shall keep a complete  
26 and separate record of all policies procured from each risk retention group. The record is open to  
27 examination by the commissioner, as provided in 33-1-408. The records must, for each policy and each  
28 kind of insurance provided under the policy, include the limit of liability, the time period covered, the  
29 effective date, the name of the risk retention group that issued the policy, the gross premium charged, and  
30 the amount of return premiums, if any.



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

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

7 (6) Each risk retention group shall submit to an examination by the commissioner to determine its  
8 financial condition if the insurance regulatory official of the jurisdiction where the group is chartered has  
9 not initiated an examination or does not initiate an examination within 60 days after a request by the  
10 commissioner. The examination must be coordinated to avoid unjustified repetition and be conducted in an  
11 expeditious manner in accordance with the national association of insurance commissioners examiners  
12 handbook.

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

15 "NOTICE

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

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

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

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

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

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

29 (11) A risk retention group not chartered in this state and doing business in this state shall comply  
30 with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced

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

3 (12) Upon completion of registration requirements, the commissioner shall issue to the risk retention  
4 group a proper certificate of registration.

5 (13) A risk retention group that violates any provision of this chapter is subject to fines and  
6 penalties, including revocation of the right to do business in this state, applicable to licensed insurers  
7 generally."

8  
9 **Section 42.** Section 33-11-108, MCA, is amended to read:

10 **"33-11-108. Notice and registration requirements of purchasing groups.** (1) A purchasing group  
11 that intends to do business in this state shall furnish notice to the commissioner that:

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

14 (b) specifies the lines and classifications of liability insurance that the purchasing group intends to  
15 purchase;

16 (c) identifies the insurer from which the purchasing group intends to purchase its insurance and  
17 the domicile of ~~the~~ that insurer;

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

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

21 (f) provides information required by the commissioner to verify that the purchasing group is  
22 qualified under 33-11-102~~(6)~~(7); and

23 (g) identifies the person or persons controlling the activities of the group and includes biographical  
24 information on the person or persons.

25 (2) The purchasing group shall register with and designate the commissioner as its agent solely for  
26 the purpose of receiving service of legal documents or process. However, the requirements do not apply  
27 in the case of a purchasing group:

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

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

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

1 and

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

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

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

8 (3) Upon completion of registration requirements, the commissioner shall issue a proper certificate  
9 of registration to the purchasing group."

10

11 **Section 43.** Section 33-14-304, MCA, is amended to read:

12 **"33-14-304. Cancellation of insurance upon default.** (1) When a premium finance agreement  
13 contains a power of attorney or other authority enabling the insurance premium finance company to cancel  
14 any insurance contract listed in the agreement, the insurance contract or contracts may not be canceled  
15 by the premium finance company unless ~~such~~ the cancellation is effectuated in accordance with this  
16 section.

17 (2) ~~Not less than 10 days' written~~ Written notice must be mailed to the insured setting forth the  
18 intent of the insurance premium finance company to cancel the insurance contract unless the default is  
19 cured prior to the date stated in the notice. The written notice must be mailed at least 10 days prior to the  
20 date stated in the notice. The insurance producer ~~or broker~~ indicated on the premium finance agreement  
21 ~~shall~~ must also be mailed 10 days' notice of this action.

22 (3) Pursuant to the power of attorney or other authority referred to above, the insurance premium  
23 finance company may cancel on behalf of the insured by mailing to the insurer written notice stating when  
24 ~~thereafter~~ the cancellation ~~shall be~~ will become effective, and the insurance contract ~~shall~~ must be canceled  
25 as if ~~such~~ the notice of cancellation had been submitted by the insured ~~himself~~ but without requiring the  
26 return of the insurance contract. If the insurer or its insurance producer does not provide the insurance  
27 premium finance company with a specific mailing address for the purpose of receipt of the ~~above~~ notice,  
28 mailing by the insurance premium finance company to the insurer at the address that is on file ~~and of record~~  
29 with the commissioner is considered sufficient notice under this section. The insurance premium finance  
30 company shall also mail a notice of cancellation to the insured at ~~his~~ the insured's last-known address and

1 to the insurance producer ~~or broker~~ indicated on the premium finance agreement.

2 (4) All statutory, regulatory, and contractual restrictions providing that the insurance contract may  
3 not be canceled unless notice is given to a governmental agency, mortgagee, or other third party apply  
4 whenever cancellation is effected under the provisions of this section. The insurer shall give the prescribed  
5 notice in behalf of itself or the insured to any governmental agency, mortgagee, or other third party on or  
6 before the second business day after the day it receives the notice of cancellation from the premium finance  
7 company and shall determine the effective date of cancellation taking into consideration the number of  
8 days' notice required to complete the cancellation."

9

10 **Section 44.** Section 33-15-301, MCA, is amended to read:

11 "**33-15-301. Requiring standard provisions -- waiver.** (1) Insurance contracts ~~shall~~ must contain  
12 ~~such~~ the standard or uniform provisions ~~as are~~ and benefits required by the applicable provisions of this  
13 code pertaining to contracts of particular kinds of insurance. The commissioner may waive ~~the required use~~  
14 ~~of~~ a particular provision in a particular insurance policy form if:

15 (a) ~~he~~ the commissioner finds ~~such~~ the provision or benefit unnecessary for the protection of the  
16 insured and inconsistent with the purposes of the policy; and

17 (b) the policy is otherwise approved by ~~him~~ the commissioner.

18 (2) ~~No~~ A policy or certificate ~~shall~~ may not contain any provision or benefit inconsistent with or  
19 contradictory to any standard or uniform provision or benefit used or required to be used, but the  
20 commissioner may approve any substitute provision or benefit ~~which~~ that is, in ~~his~~ the commissioner's  
21 opinion, not less favorable in any particular to the insured or beneficiary than the provisions otherwise  
22 required.

23 (3) In lieu of the provisions required by this code for contracts for particular kinds of insurance,  
24 substantially similar provisions required by the law of the domicile of a foreign or alien insurer may be used  
25 when approved by the commissioner.

26 (4) ~~No~~ such A provision, if required to be contained in the policy, ~~can~~ may not be waived by  
27 agreement between the insurer and any other person."

28

29 **Section 45.** Section 33-15-303, MCA, is amended to read:

30 "**33-15-303. Contents of policies in general -- identification.** (1) ~~Every~~ Each policy ~~shall~~ must

1 specify:

2 (a) the names of the parties to the contract;

3 (b) the subject of the insurance;

4 (c) the risks insured against;

5 (d) the time when the insurance under the policy takes effect and the period during which the  
6 insurance is to continue;

7 (e) the premium;

8 (f) the conditions pertaining to the insurance.

9 (2) If under the policy the exact amount of premium is determinable only at stated intervals or  
10 termination of the contract, a statement of the basis and rates upon which the premium is to be determined  
11 and paid must be included.

12 (3) All policies and annuity contracts issued by insurers and the forms of policies and annuity  
13 contracts filed with the commissioner must have printed on the policy or annuity contract an appropriate  
14 designating letter or figure, combination of letters or figures, or terms identifying the respective forms of  
15 policies or contracts, ~~together with the year of adoption of the form.~~ Each form, including riders and  
16 endorsements, must be identified by a designating letter or figure placed in a lower, preferably left-hand,  
17 corner of the first page of the form. Whenever any change is made in any form, the designating letters,  
18 figures, or terms ~~and year of adoption~~ on the form must be correspondingly changed and the revision date  
19 must be noted next to the designating letters."

20

21 **Section 46.** Section 33-16-202, MCA, is amended to read:

22 **"33-16-202. Recording and reporting of loss and expense experience.** (1) The commissioner ~~shall~~  
23 may promulgate and may modify reasonable rules and statistical plans, reasonably adapted to each of the  
24 rating systems used, ~~and which shall~~ must thereafter be used by each insurer in the recording and reporting  
25 of its loss and countrywide expense experience, in order that the experience of all insurers may be made  
26 available at least annually in ~~such~~ form and detail as ~~may be~~ necessary to aid ~~him~~ the commissioner in  
27 determining whether rates comply with the applicable standards of this chapter. ~~Such~~ The rules and plans  
28 may also provide for the recording and reporting of expense experience items ~~which~~ that are specially  
29 applicable to this state and are not susceptible of determination by a prorating of countrywide expense  
30 experience.

1 (2) In promulgating ~~such~~ rules and plans, the commissioner shall give ~~due~~ consideration to the  
 2 rating systems in use in this state and, in order that ~~such~~ the rules and plans may be as uniform as is  
 3 practicable among the several states, to the rules and to the form of the plans used for ~~such~~ rating systems  
 4 in other states. ~~No~~ An insurer ~~shall~~ may not be required to record or report its loss experience on a  
 5 classification basis that is inconsistent with the rating system used by it.

6 (3) The commissioner may designate one or more rating organizations or other agencies to assist  
 7 ~~him~~ in gathering ~~such~~ and making compilations of loss and expense experience ~~and making compilations~~  
 8 ~~thereof~~, and ~~such~~ the compilations ~~shall~~ must be made available, subject to reasonable rules promulgated  
 9 by the commissioner, to insurers and rating organizations."

10  
 11 **Section 47.** Section 33-16-235, MCA, is amended to read:

12 "**33-16-235. Data reporting -- rules.** (1) An insurer that has transacted a line of insurance  
 13 designated as noncompetitive or volatile ~~shall~~ may report once a year to the commissioner, on forms  
 14 prescribed by the commissioner, information including:

- 15 (a) reported and estimated ultimate exposure, by year of exposure to loss;  
 16 (b) reported and estimated ultimate premiums, by year of exposure to loss;  
 17 (c) losses paid, by year incurred;  
 18 (d) loss adjustment expense paid, by year incurred;  
 19 (e) reported and ultimately incurred losses and loss adjustment expenses, by year incurred; and  
 20 (f) any other information required by the commissioner.

21 (2) An insurer transacting a line of insurance designated as noncompetitive or volatile shall provide  
 22 to the commissioner information concerning at least 5 years of experience, with information evaluated as  
 23 of the end of each calendar year. In addition to the latest reported information for each year, the insurer  
 24 shall document any adjustments, including but not limited to development factors and trend adjustments,  
 25 made to the reported data in projecting losses.

26 (3) The commissioner ~~shall~~ may adopt by rule reasonable development factors and trend  
 27 adjustments to be applied to the reported data."

28  
 29 **Section 48.** Section 33-17-102, MCA, is amended to read:

30 "**33-17-102. Definitions.** As used in this title, the following definitions apply:

1 (1) "Adjuster" means a person who, on behalf of the insurer, for compensation as an independent  
 2 contractor or as the employee of an independent contractor or for fee or commission investigates and  
 3 negotiates settlement of claims arising under insurance contracts or otherwise acts on behalf of the insurer.

4 The term does not include a:

5 (a) licensed attorney who is qualified to practice law in this state;

6 (b) salaried employee of an insurer or of a managing general agent; ~~or~~

7 (c) licensed insurance producer who adjusts or assists in adjustment of losses arising under policies  
 8 issued by the insurer; or

9 (d) licensed third-party administrator who adjusts or assists in adjustment of losses arising under  
 10 policies issued by the insurer.

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

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

16 (b) The term does not mean:

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

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

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

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

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

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

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

30 (vii) a trust exempt from taxation under section 501(a) of the Internal Revenue Code or the trustees

1 and employees of the trust;

2 (viii) a custodian acting pursuant to a custodian account that meets the requirements of section  
3 401(f) of the Internal Revenue Code or the agents and employees of the custodian;

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

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

8 or

9 (xi) a person who adjusts or settles claims in the normal course of ~~his~~ the person's practice or  
10 employment as an attorney and who does not collect charges or premiums in connection with life or  
11 disability insurance or annuities.

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

14 (5) "Consultant" means a person who for a fee examines, appraises, reviews, or evaluates an  
15 insurance policy, annuity, or pension contract, plan, or program or who makes recommendations or gives  
16 advice on an insurance policy, annuity, or pension contract, plan, or program.

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

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

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

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

25 (a) means:

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

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

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

29 (ii) a managing general agent. For purposes of this ~~definition, a chapter, the term~~ "managing general  
30 agent" ~~is a person who, on behalf of an insurer, exercises general supervision over the business of the~~



1 ~~insurer in this state or in any other state, including the authority to contract with an insurance producer for~~  
 2 ~~the insurer and terminate those contracts~~ has the same meaning as set forth in 33-2-1501.

3 (b) does not mean a customer service representative. For purposes of this definition, a "customer  
 4 service representative" means a salaried employee of an insurance producer who assists and is responsible  
 5 to the insurance producer.

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

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

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

13 **Section 49.** Section 33-17-211, MCA, is amended to read:

14 **"33-17-211. General qualifications -- application for license.** (1) An individual applying for a  
 15 license shall apply on a form specified by the commissioner and declare under penalty of refusal,  
 16 suspension, or revocation of the license that statements made in the application are true, correct, and  
 17 complete to the best of the individual's knowledge and belief. Before approving the application, the  
 18 commissioner shall verify that the individual:

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

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

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

23 (d) has successfully passed the examinations for each kind of insurance for which the individual  
 24 has applied within 12 months of application;

25 (e) is a resident of this state or of another state that grants similar privileges to residents of this  
 26 state, Licenses issued based upon Montana state residency terminate if the licensee relocates to another  
 27 state;

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

29 (g) has experience or training or otherwise is qualified in the kind or kinds of insurance for which  
 30 ~~he~~ the applicant applies to be licensed and is reasonably familiar with the provisions of this code which

1 govern ~~his~~ the applicant's operations as an insurance producer; and

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

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

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

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

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

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

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

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

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

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

21 (ii) if the person is a corporation, the secretary of state has issued a certificate of existence or  
22 authorization under 35-1-1312 or filed articles of incorporation under ~~35-2-214~~ 35-1-220.

23 (3) The commissioner may license as a resident insurance producer an association of licensed  
24 Montana insurance producers, whether or not incorporated, formed and existing substantially for purposes  
25 other than insurance. The license must be used solely for the purpose of enabling the association to place,  
26 as a resident insurance producer, insurance of the properties, interests, and risks of the state of Montana  
27 and of other public agencies, bodies, and institutions and to receive the customary commission for the  
28 placement. The president and secretary of the association shall apply for the license in the name of the  
29 association, and the commissioner shall issue the license to the association in its name alone. The fee for  
30 the license is the same as that required by 33-2-708 for the license of an insurance producer. The

1 commissioner may, after a hearing with notice to the association, revoke the license if ~~he~~ the commissioner  
 2 finds that continuation of the license is not in the public interest or that a ground listed in 33-17-1001  
 3 exists.

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

6

7 **Section 50.** Section 33-17-405, MCA, is amended to read:

8 "**33-17-405. Service of process -- commissioner as agent.** ~~A nonresident person shall file with the~~  
 9 ~~commissioner the required forms appointing the~~ The commissioner and his successors in office shall act  
 10 ~~as the~~ a nonresident person's agent upon whom process in a legal proceeding against the nonresident  
 11 ~~person may be served, and shall agree that such~~ Service of process on the commissioner process has  
 12 ~~the same legal force and validity as personal service of process upon the nonresident person. The~~  
 13 ~~commissioner shall, within 3 working days after receiving process, forward~~ by certified mail, at to the  
 14 ~~nonresident person's address of record, a copy of the process~~ by certified mail to the person for whom he  
 15 ~~has received the process."~~

16

17 **Section 51.** Section 33-17-503, MCA, is amended to read:

18 "**33-17-503. Application -- fee -- expiration.** (1) Before a consultant license is issued or renewed,  
 19 the prospective licensee shall:

20 (a) properly file in the office of the commissioner a written application on forms the commissioner  
 21 prescribes; and

22 (b) pay a fee of \$50, which the commissioner shall deposit with the state treasurer to be credited  
 23 to the state's general fund.

24 (2) Each consultant license ~~expires on May 31 next following the date of issue~~ must be renewed  
 25 each year by the consultant paying a continuation fee on or before May 31, and the license continues in  
 26 force unless suspended, revoked, or otherwise terminated."

27

28 **Section 52.** Section 33-17-603, MCA, is amended to read:

29 "**33-17-603. Certificate of registration.** (1) Except as provided in 33-17-604, a person may not  
 30 act as or ~~hold himself out to be~~ represent to the public that the person is an administrator in this state

1 unless ~~he~~ the person holds a certificate of registration as an administrator.

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

6 (3) ~~The A certificate of registration is renewable annually on July 1. A request for renewal must  
7 be accompanied by a renewal fee of \$100 must be renewed each year by the administrator paying a  
8 continuation fee of \$100 on or before July 1. Upon payment, the license continues in force unless  
9 suspended, revoked, or otherwise terminated. The commissioner shall deposit the fee with the state  
10 treasurer to be credited to the general fund.~~

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

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

17  
18 **Section 53.** Section 33-17-1001, MCA, is amended to read:

19 "**33-17-1001. Suspension, revocation, or refusal of license.** (1) Except as provided in 33-17-411,  
20 after a hearing, which must be held no less than 10 days after advance notice by certified mail, on charges  
21 given under 33-1-314(3), the commissioner may suspend for up to 5 years, revoke, refuse to continue, or  
22 deny a license issued under this chapter if the commissioner finds that the licensee or applicant has:

23 (a) engaged or is about to engage in an act or practice for which issuance of the license could have  
24 been refused;

25 (b) obtained or attempted to obtain a license through misrepresentation or fraud;

26 (c) violated or failed to comply with a provision of this code or has violated a rule, subpoena, or  
27 order of the commissioner or of the commissioner of any other state;

28 (d) improperly withheld, misappropriated, or converted to the licensee's or applicant's own use  
29 money or property belonging to policyholders, insurers, beneficiaries, or others and received in conduct of  
30 business under the license;

1 (e) been convicted of a felony;

2 (f) in the conduct of the affairs under the license, used fraudulent, coercive, or dishonest practices  
3 or the licensee or applicant is incompetent, untrustworthy, financially irresponsible, or a source of injury  
4 and loss to the public;

5 (g) made a materially untrue statement in the license application or in the continuing education  
6 affidavit;

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

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

9 (j) had a similar license suspended or revoked in any other state;

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

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

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

13 (2) The license of a partnership or corporation may be suspended, revoked, refused, or denied if  
14 a reason listed in subsection (1) applies to an individual designated in the license to exercise its powers or  
15 to a partner or officer in the partnership or corporation.

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

19

20 **Section 54.** Section 33-18-212, MCA, is amended to read:

21 **"33-18-212. Illegal dealing in premiums -- improper charges for insurance.** (1) A person may not  
22 willfully collect any sum as a premium or charge for insurance, ~~which insurance that~~ that is not then provided  
23 or is not in due course to be provided, ~~{subject to acceptance of the risk by the insurer}~~, by an insurance  
24 policy issued by an insurer as authorized by this code.

25 (2) A person may not willfully collect as a premium or charge for insurance any sum in excess of  
26 or less than the premium or charge applicable to ~~such~~ the insurance and, as specified in the policy, in  
27 accordance with the applicable classifications and rates ~~as~~ and or approved by the commissioner;  
28 or in cases ~~where~~ in which classifications, premiums, or rates are not required by this code to be ~~se~~  
29 and or approved, ~~such~~ the premiums and charges may not be in excess of or less than those specified in  
30 the policy and as fixed by the insurer. This provision may not ~~be deemed to~~ prohibit the charging and

1 collection, by surplus lines insurance producers licensed under chapter 2, part 3, of the amount of  
 2 applicable state and federal taxes in addition to the premium required by the insurer. ~~‡ This provision may~~  
 3 ~~not be considered to~~ prohibit the charging and collection, by a life insurer, of amounts actually to be  
 4 expended for medical examination of an applicant for life insurance or for reinstatement of a life insurance  
 5 policy.

6 (3) Each violation of this section is punishable under 33-1-104."  
 7

8 **Section 55.** Section 33-18-301, MCA, is amended to read:

9 **"33-18-301. Prohibited relations with mortuaries.** (1) ~~No~~ A life insurer and its officers, employees,  
 10 or representatives may not own, manage, supervise, operate, or maintain any mortuary, funeral, or  
 11 undertaking establishment or permit its officers, employees, or representatives to own, operate, maintain,  
 12 or be employed in any such business in Montana.

13 (2) ~~No~~ A life insurer may not contract or agree with any funeral director, mortuary, or undertaker  
 14 ~~to the effect that such~~ the funeral director, undertaker, or mortuary shall conduct the funeral or be named  
 15 beneficiary of any person insured by ~~such~~ the insurer. This subsection does not prohibit a life insurer from  
 16 making insurance, designated as funeral insurance, available.

17 (3) A funeral insurance policy and any solicitation material for the policy must clearly indicate that:

18 (a) the policy is a life insurance product;

19 (b) the applicant may designate the beneficiary, provided that there is an appropriate and insurable  
 20 interest;

21 (c) the beneficiary may use the proceeds for any purpose; and

22 (d) any attempt by the insurer or its representative to have the insured designate a specific  
 23 beneficiary, including but not limited to a funeral director, mortuary, or undertaker, constitutes a violation  
 24 of this section punishable as a misdemeanor pursuant to subsection (4).

25 ~~‡(4)~~ Each violation of this section constitutes a misdemeanor punishable by a fine of not more  
 26 than \$1,000 or by imprisonment for not more than 6 months or ~~by both such fine and imprisonment."~~

27  
 28 **Section 56.** Section 33-22-131, MCA, is amended to read:

29 **"33-22-131. Coverage for phenylketonuria treatment.** (1) Each group or individual medical  
 30 expense disability policy, certificate of insurance, and membership contract that is delivered, issued for

1 delivery, renewed, extended, or modified in this state must provide coverage for the treatment of  
2 phenylketonuria.

3 (2) For purposes of this section, "treatment" means licensed professional medical services under  
4 the supervision of a physician and a dietary formula product to achieve and maintain normalized blood levels  
5 of phenylalanine and adequate nutritional status.

6 (3) These services are subject to the terms of the applicable group or individual disability policy,  
7 certificate, or membership contract that establishes durational limits, dollar limits, deductibles, and  
8 copayment provisions as long as the terms are not less favorable than for physical illness generally.

9 (4) This section does not apply to disability income, hospital indemnity, medicare supplement,  
10 accident-only, vision, dental, or specified disease policies."

11

12 **Section 57.** Section 33-22-132, MCA, is amended to read:

13 **"33-22-132. Coverage for mammography examinations.** (1) Each group or individual medical  
14 expense, cancer, hospital indemnity, and blanket disability policy, certificate of insurance, and membership  
15 contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide  
16 minimum mammography examination coverage.

17 (2) For the purpose of this section, "minimum mammography examination" means:

18 (a) one baseline mammogram for a woman who is 35 years of age or older and under 40 years of  
19 age;

20 (b) a mammogram every 2 years for any woman who is 40 years of age or older and under 50  
21 years of age or more frequently if recommended by the woman's physician; and

22 (c) a mammogram each year for a woman who is 50 years of age or older.

23 (3) A minimum \$70 payment or the actual charge if the charge is less than \$70 must be made for  
24 each mammography examination performed before the application of the terms of the applicable group or  
25 individual disability policy, certificate of insurance, or membership contract that establish durational limits,  
26 deductibles, and copayment provisions as long as the terms are not less favorable than for physical illness  
27 generally.

28 (4) This section does not apply to disability income, hospital indemnity, medicare supplement,  
29 accident-only, vision, dental, or specified disease policies."

30

1           **Section 58.** Section 33-22-201, MCA, is amended to read:

2           "**33-22-201. Format and content.** A An individual policy of disability insurance may not be  
3 delivered or issued for delivery to any person in this state unless it otherwise complies with this code and  
4 complies with the following:

5           (1) The entire money and other considerations for the policy must be expressed in the policy.

6           (2) The time when the insurance takes effect and terminates must be expressed in the policy.

7           (3) The policy may insure only one person, except that a policy may insure, originally or by  
8 subsequent amendment, upon the application of an adult member of a family who is the policyholder, any  
9 two or more eligible members of that family, including husband, wife, dependent children or any children  
10 under a specified age that may not exceed ~~19~~ 25 years, and any other person dependent upon the  
11 policyholder.

12           (4) The style, arrangement, and overall appearance of the policy may not give undue prominence  
13 to any portion of the text, and every printed portion of the text of the policy and of any endorsements or  
14 attached papers must be plainly printed in lightfaced type of a style in general use, the size of which must  
15 be uniform and not less than 10 point with a lowercase, unspaced alphabet length not less than 120 point.

16           (5) The "text" must include all printed matter except the name and address of the insurer, name  
17 or title of the policy, the brief description, if any, and captions and subcaptions.

18           (6) The exceptions and reductions of indemnity must be set forth in the policy and, other than  
19 those contained in 33-22-204 through 33-22-215 and ~~33-22-217~~ 33-22-221 through 33-22-231, must be  
20 printed, at the insurer's option, either included with the benefit provision to which they apply or under an  
21 appropriate caption such as "Exceptions" or "Exceptions and Reductions", except that if an exception or  
22 reduction specifically applies only to a particular benefit of the policy, a statement of the exception or  
23 reduction must be included with the benefit provision to which it applies.

24           ~~(7) Each form, including riders and endorsements, must be identified by a form number in the lower~~  
25 ~~left hand corner of the first page of the form.~~

26           ~~(8)~~(7) The policy may not contain a provision purporting to make any portion of the charter, rules,  
27 constitution, or bylaws of the insurer a part of the policy unless the portion is set forth in full in the policy,  
28 except in the case of the incorporation of or reference to a statement of rates or classification of risks or  
29 short-rate table filed with the commissioner.

30           ~~(9) Each individual disability policy, except for a single premium nonrenewable policy, issued for~~



1 ~~delivery in this state on or after January 1, 1980, must contain a notice stating in substance that if the~~  
 2 ~~person to whom the policy is issued is not satisfied for any reason, the person is permitted to return the~~  
 3 ~~policy within 10 days of its delivery, or a longer period as the policy may provide, and to have refunded~~  
 4 ~~the amount of the premium paid. A policy returned pursuant to this subsection is void from the beginning."~~

5  
 6 **Section 59.** Section 33-22-202, MCA, is amended to read:

7 **"33-22-202. Required provisions -- captions -- omissions -- substitutions -- order.** (1) Except as  
 8 provided in subsection (2), each policy delivered or issued for delivery to any person in this state must  
 9 contain the provisions specified in 33-22-204 through 33-22-215, ~~in the words in which the~~ as those  
 10 provisions appear, except that the insurer may, at its option, substitute for one or more of the provisions  
 11 corresponding provisions of different wording approved by the commissioner ~~which are in each instance~~  
 12 and not less favorable in any respect to the insured or the beneficiary. Each provision must be preceded  
 13 ~~individually~~ by the applicable caption shown or, at the option of the insurer, by the appropriate individual  
 14 or group captions or subcaptions as the commissioner may approve.

15 (2) If any provision is in whole or in part inapplicable to or inconsistent with the coverage provided  
 16 by a particular form of policy, the insurer, with the approval of the commissioner, shall omit from the policy  
 17 any inapplicable provision or part of a provision and shall modify any inconsistent provision or part of a  
 18 provision in a manner as to make the provision as contained in the policy consistent with the coverage  
 19 provided by the policy.

20 (3) The provisions that are the subject of 33-22-204 through 33-22-215 and ~~33-22-217~~ 33-22-221  
 21 through 33-22-232 or any corresponding provisions which are used in accordance with the cited sections  
 22 must be printed in the consecutive order of the provisions in the sections or, at the option of the insurer,  
 23 any provision may appear as a unit in any part of the policy with other provisions to which it may be  
 24 logically related, provided that the resulting policy is not in whole or in part unintelligible, uncertain,  
 25 ambiguous, abstruse, or likely to mislead a person to whom the policy is offered, delivered, or issued."

26  
 27 **Section 60.** Section 33-22-301, MCA, is amended to read:

28 **"33-22-301. Coverage of newborn under disability policy.** (1) Each policy of disability insurance  
 29 or certificate issued ~~thereunder shall~~ must contain a provision granting immediate accident and sickness  
 30 coverage, from and after the moment of birth, to each newborn infant of any insured.

1           (2) The coverage for newborn infants must be the same as provided by the policy for the other  
2 covered persons; ~~provided, however~~ However, that for newborn infants there ~~shall be no~~ may not be  
3 waiting or elimination periods. A deductible or reduction in benefits applicable to the coverage for newborn  
4 infants is not permissible unless it conforms and is consistent with the deductible or reduction in benefits  
5 applicable to all other covered persons.

6           (3) ~~No~~ A policy or certificate of insurance may not be issued or amended in this state if it contains  
7 any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or  
8 insurability of newborn infants of an insured from and after the moment of birth.

9           (4) ~~If payment of a specific premium or subscription fee is required to provide coverage for a child,~~  
10 ~~the policy or contract may require that notification of birth of a newly born child and payment of the~~  
11 ~~required premium or fees must be furnished to the insurer or nonprofit service or indemnity corporation~~  
12 ~~within 31 days after the date of birth in order to have the coverage continue beyond such 31 day period.~~  
13 The policy or contract may require notification of the birth of a child and payment of a required premium  
14 or subscription fee to be furnished to the insurer or nonprofit or indemnity corporation within 31 days of  
15 the birth in order to have the coverage extend beyond 31 days."

16  
17           **Section 61.** Section 33-22-303, MCA, is amended to read:

18           **"33-22-303. Coverage for well-child care.** (1) Each medical expense policy of disability insurance  
19 or certificate issued under the policy that is delivered, issued for delivery, renewed, extended, or modified  
20 in this state by a disability insurer and that provides coverage for a family member of the insured or  
21 subscriber must provide coverage for well-child care for children from the moment of birth through 2 years  
22 of age. Benefits provided under this coverage are exempt from any deductible provision that may be in  
23 force in the policy or certificate issued under the policy.

24           (2) Coverage for well-child care under subsection (1) must include:

25           (a) a history, physical examination, developmental assessment, anticipatory guidance, and  
26 laboratory tests, according to the schedule of visits adopted under the early and periodic screening,  
27 diagnosis, and treatment services program provided for in 53-6-101; and

28           (b) routine immunizations according to the schedule for immunizations recommended by the  
29 immunization practices advisory committee of the U.S. department of health and human services.

30           (3) Minimum benefits may be limited to one visit payable to one provider for all of the services

1 provided at each visit cited in this section.

2 (4) This section does not apply to disability income, specified disease, medicare supplement, or  
3 hospital indemnity policies.

4 (5) For purposes of this section:

5 (a) "well-child care" means the services described in subsection (2) and delivered by a physician  
6 or a health care professional supervised by a physician; and

7 (b) "developmental assessment" and "anticipatory guidance" mean the services described in the  
8 Guidelines for Health Supervision II, published by the American academy of pediatrics.

9 (6) When a policy of disability insurance or a certificate issued under the policy provides coverage  
10 or benefits to a resident of this state, it is considered to be delivered in this state within the meaning of this  
11 section, whether the insurer that issued or delivered the policy or certificate is located inside or outside of  
12 this state."

13

14 **Section 62.** Section 33-22-504, MCA, is amended to read:

15 "**33-22-504. Newborn infant coverage.** (1) ~~No~~ A group disability policy or certificate of insurance  
16 ~~which, in addition to covering persons in the insured group, also covers members of such person's family~~  
17 delivered or issued for delivery in this state may not be issued or amended in this state if it contains any  
18 disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or  
19 insurability of newborn infants of persons covered under the policy from and after the moment of birth.

20 (2) ~~If the A policy or certificate issued thereunder, in addition to covering persons in the insured~~  
21 ~~group, also covers members of such person's family, it shall~~ subject to this section, must contain an  
22 ~~additional~~ a provision granting immediate accident and sickness coverage, from and after the moment of  
23 birth, to each newborn infant of any person covered under the policy.

24 (3) The coverage for newborn infants ~~shall~~ must be the same as provided by the policy for other  
25 covered persons; ~~provided, however~~ However, that for newborn infants there ~~shall~~ may not be ~~no~~ waiting  
26 or elimination periods. A deductible or reduction in benefits applicable to the coverage for newborn infants  
27 is not permissible unless it conforms and is consistent with the deductible or reduction in benefits applicable  
28 to all other covered persons.

29 (4) This section does not apply to medicare supplement policies issued by reason of age.

30 (5) When a group disability policy or certificate issued under the policy provides for coverage or

1 benefits for a resident of this state, the policy or certificate is considered delivered in this state within the  
2 meaning of this section regardless of whether the insurer issuing the policy or certificate is located in this  
3 state.

4 (6) The policy or certificate may require notification of the birth of a child and payment of a  
5 required premium or subscription fee to be furnished to the insurer or nonprofit or indemnity corporation  
6 within 31 days of the birth in order to have the coverage extend beyond 31 days."

7  
8 **Section 63.** Section 33-22-508, MCA, is amended to read:

9 **"33-22-508. Conversion on termination of eligibility.** (1) A group disability insurance policy or  
10 certificate of insurance delivered or issued for delivery or renewed after October 1, 1981, must contain a  
11 provision that if the insurance or any portion of it on a person, ~~his~~ or the person's dependents, or family  
12 members covered under the policy ceases because of termination of ~~his~~ the person's employment or ~~of his~~  
13 membership in the class or classes eligible for coverage under the policy or as a result of ~~his~~ the person's  
14 employer discontinuing ~~his~~ the employer discontinuing the group disability  
15 insurance policy and not providing for any other group disability insurance or plan and if the person had  
16 been insured for a period of 3 months and ~~he~~ is not insured under another major medical disability insurance  
17 policy or plan, ~~he~~ the person is entitled to have issued ~~to him~~ by the insurer, without evidence of  
18 insurability, group coverage or an individual policy ~~issued by the insurer~~ or, in the absence of an individual  
19 policy issued by the insurer, a group policy issued by the insurer, of hospital or medical service insurance  
20 on ~~himself~~ the person, his and the person's dependents, or family members if application for the individual  
21 policy is made and the first premium tendered to the insurer within 31 days after the termination of group  
22 coverage.

23 (2) The individual policy or group policy, at the option of the insured, may be on any form then  
24 customarily issued by the insurer to individual or group policyholders, with the exception of a policy the  
25 eligibility for which is determined by affiliation other than by employment with a common entity.

26 (3) The premium on the individual policy or group policy must be at the insurer's then customary  
27 rate applicable to the coverage of the individual or group policy."

28  
29 **Section 64.** Section 33-22-1120, MCA, is amended to read:

30 **"33-22-1120. Extraterritorial jurisdiction.** A group long-term care insurance policy or certificate

1 may not be delivered or issued for delivery to a resident of Montana under a group policy issued in another  
2 state ~~to a group described in 33-22-1107(3)(d)~~ unless it is approved by:

3 (1) the commissioner; ~~or~~ and

4 (2) the insurance regulatory official of a state that has statutory and regulatory long-term care  
5 insurance requirements substantially similar to those adopted in Montana."

6  
7 **Section 65.** Section 33-22-1803, MCA, is amended to read:

8 **"33-22-1803. Definitions.** As used in this part, the following definitions apply:

9 (1) "Actuarial certification" means a written statement by a member of the American academy of  
10 actuaries or other individual acceptable to the commissioner that a small employer carrier is in compliance  
11 with the provisions of 33-22-1809, based upon the person's examination, including a review of the  
12 appropriate records and of the actuarial assumptions and methods used by the small employer carrier in  
13 establishing premium rates for applicable health benefit plans.

14 (2) "Affiliate" or "affiliated" means any entity or person who directly or indirectly, through one or  
15 more intermediaries, controls, is controlled by, or is under common control with a specified entity or person.

16 (3) "Assessable carrier" means all individual carriers of disability insurance and all carriers of group  
17 disability insurance, excluding the state group benefits plan provided for in Title 2, chapter 18, part 8, the  
18 Montana university system health plan, and any self-funded disability insurance plan provided by a political  
19 subdivision of the state.

20 (4) "Base premium rate" means, for each class of business as to a rating period, the lowest  
21 premium rate charged or that could have been charged under the rating system for that class of business  
22 by the small employer carrier to small employers with similar case characteristics for health benefit plans  
23 with the same or similar coverage.

24 (5) "Basic health benefit plan" means a lower cost health benefit plan developed pursuant to  
25 33-22-1812.

26 (6) "Board" means the board of directors of the program established pursuant to 33-22-1818.

27 (7) "Carrier" means any person who provides a health benefit plan in this state subject to state  
28 insurance regulation. The term includes but is not limited to an insurance company, a fraternal benefit  
29 society, a health service corporation, a health maintenance organization, and, to the extent permitted by  
30 the Employee Retirement Income Security Act of 1974, a multiple-employer welfare arrangement. For

1 purposes of this part, companies that are affiliated companies or that are eligible to file a consolidated tax  
2 return must be treated as one carrier, except that the following may be considered as separate carriers:

3 (a) an insurance company or health service corporation that is an affiliate of a health maintenance  
4 organization located in this state;

5 (b) a health maintenance organization located in this state that is an affiliate of an insurance  
6 company or health service corporation; or

7 (c) a health maintenance organization that operates only one health maintenance organization in  
8 an established geographic service area of this state.

9 (8) "Case characteristics" means demographic or other objective characteristics of a small employer  
10 that are considered by the small employer carrier in the determination of premium rates for the small  
11 employer, provided that gender, claims experience, health status, and duration of coverage are not case  
12 characteristics for purposes of this part.

13 (9) "Class of business" means all or a separate grouping of small employers established pursuant  
14 to 33-22-1808.

15 (10) "Committee" means the health benefit plan committee created pursuant to 33-22-1812.

16 (11) "Dependent" means:

17 (a) a spouse or an unmarried child under 19 years of age;

18 (b) an unmarried child, under 23 years of age, who is a full-time student and who is financially  
19 dependent on the insured;

20 (c) a child of any age who is disabled and dependent upon the parent as provided in 33-22-506  
21 and 33-30-1003; or

22 (d) any other individual defined ~~to be~~ as a dependent in the health benefit plan covering the  
23 employee.

24 (12) "Eligible employee" means an employee who works on a full-time basis and who has a normal  
25 workweek of 30 hours or more. The term includes a sole proprietor, a partner of a partnership, and an  
26 independent contractor if the sole proprietor, partner, or independent contractor is included as an employee  
27 under a health benefit plan of a small employer. The term does not include an employee who works on a  
28 part-time, temporary, or substitute basis.

29 (13) "Established geographic service area" means a geographic area, as approved by the  
30 commissioner and based on the carrier's certificate of authority to transact insurance in this state, within

1 which the carrier is authorized to provide coverage.

2 (14) "Health benefit plan" means any hospital or medical policy or certificate providing for physical  
3 and mental health care issued by an insurance company, a fraternal benefit society, or a health service  
4 corporation or issued under a health maintenance organization subscriber contract. Health benefit plan does  
5 not include:

6 (a) accident-only, credit, dental, vision, specified disease, medicare supplement, long-term care,  
7 or disability income insurance;

8 (b) coverage issued as a supplement to liability insurance, workers' compensation insurance, or  
9 similar insurance; or

10 (c) automobile medical payment insurance.

11 (15) "Index rate" means, for each class of business for a rating period for small employers with  
12 similar case characteristics, the average of the applicable base premium rate and the corresponding highest  
13 premium rate.

14 (16) "Late enrollee" means an eligible employee or dependent who requests enrollment in a health  
15 benefit plan of a small employer following the initial enrollment period during which the individual was  
16 entitled to enroll under the terms of the health benefit plan, provided that the initial enrollment period was  
17 a period of at least 30 days. However, an eligible employee or dependent may not be considered a late  
18 enrollee if:

19 (a) the individual requests enrollment within 30 days after termination of the qualifying previous  
20 coverage and meets each of the following conditions:

21 (i) the individual was covered under qualifying previous coverage at the time of the initial  
22 enrollment; or

23 (ii) the individual lost coverage under qualifying previous coverage as a result of termination of  
24 employment or eligibility, the involuntary termination of the qualifying previous coverage, the death of a  
25 spouse, or divorce; ~~and~~

26 ~~(iii) the individual requests enrollment within 30 days after termination of the qualifying previous~~  
27 ~~coverage;~~

28 (b) the individual is employed by an employer that offers multiple health benefit plans and the  
29 individual elects a different plan during an open enrollment period; or

30 (c) a court has ordered that coverage be provided for a spouse, minor, or dependent child under

1 a covered employee's health benefit plan and a request for enrollment is made within 30 days after issuance  
2 of the court order.

3 (17) "New business premium rate" means, for each class of business for a rating period, the lowest  
4 premium rate charged or offered or that could have been charged or offered by the small employer carrier  
5 to small employers with similar case characteristics for newly issued health benefit plans with the same or  
6 similar coverage.

7 (18) "Plan of operation" means the operation of the program established pursuant to 33-22-1818.

8 (19) "Premium" means all money paid by a small employer and eligible employees as a condition  
9 of receiving coverage from a small employer carrier, including any fees or other contributions associated  
10 with the health benefit plan.

11 (20) "Program" means the Montana small employer health reinsurance program created by  
12 33-22-1818.

13 (21) "Qualifying previous coverage" means benefits or coverage provided under:

14 (a) medicare or medicaid;

15 (b) an employer-based health insurance or health benefit arrangement that provides benefits similar  
16 to or exceeding benefits provided under the basic health benefit plan; or

17 (c) an individual health insurance policy, including coverage issued by an insurance company, a  
18 fraternal benefit society, a health service corporation, or a health maintenance organization that provides  
19 benefits similar to or exceeding the benefits provided under the basic health benefit plan, provided that the  
20 policy has been in effect for a period of at least 1 year.

21 (22) "Rating period" means the calendar period for which premium rates established by a small  
22 employer carrier are assumed to be in effect.

23 (23) "Reinsuring carrier" means a small employer carrier participating in the reinsurance program  
24 pursuant to 33-22-1819.

25 (24) "Restricted network provision" means a provision of a health benefit plan that conditions the  
26 payment of benefits, in whole or in part, on the use of health care providers that have entered into a  
27 contractual arrangement with the carrier pursuant to Title 33, chapter 22, part 17, or Title 33, chapter 31,  
28 to provide health care services to covered individuals.

29 (25) "Small employer" means a person, firm, corporation, partnership, or association that is actively  
30 engaged in business and that, on at least 50% of its working days during the preceding calendar quarter,



1 employed at least 3 but not more than 25 eligible employees, the majority of whom were employed within  
2 this state or were residents of this state. In determining the number of eligible employees, companies are  
3 considered one employer if they:

4 (a) are affiliated companies;

5 (b) are eligible to file a combined tax return for purposes of state taxation; or

6 (c) are members of an association that:

7 (i) has been in existence for 1 year prior to January 1, 1994;

8 (ii) provides a health benefit plan to employees of its members as a group; and

9 (iii) does not deny coverage to any member of its association or any employee of its members who  
10 applies for coverage as part of a group.

11 (26) "Small employer carrier" means a carrier that offers health benefit plans that cover eligible  
12 employees of one or more small employers in this state.

13 (27) "Standard health benefit plan" means a health benefit plan developed pursuant to  
14 33-22-1812."

15

16 **Section 66.** Section 33-22-1819, MCA, is amended to read:

17 **"33-22-1819. Program plan of operation -- treatment of losses -- exemption from taxation. (1)**

18 Within 180 days after the appointment of the initial board, the board shall submit to the commissioner a  
19 plan of operation and may at any time submit amendments to the plan necessary or suitable to ensure the  
20 fair, reasonable, and equitable administration of the program. The commissioner may, after notice and  
21 hearing, approve the plan of operation if the commissioner determines it to be suitable to ensure the fair,  
22 reasonable, and equitable administration of the program and if the plan of operation provides for the sharing  
23 of program gains or losses on an equitable and proportionate basis in accordance with the provisions of this  
24 section. The plan of operation is effective upon written approval by the commissioner.

25 (2) If the board fails to submit a suitable plan of operation within 180 days after its appointment,  
26 the commissioner shall, after notice and hearing, promulgate and adopt a temporary plan of operation. The  
27 commissioner shall amend or rescind any temporary plan adopted under this subsection at the time a plan  
28 of operation is submitted by the board and approved by the commissioner.

29 (3) The plan of operation must:

30 (a) establish procedures for the handling and accounting of program assets and money and for an

1 annual fiscal reporting to the commissioner;

2 (b) establish procedures for selecting an administering carrier and setting forth the powers and  
3 duties of the administering carrier;

4 (c) establish procedures for reinsuring risks in accordance with the provisions of this section;

5 (d) establish procedures for collecting assessments from assessable carriers to fund claims incurred  
6 by the program;

7 (e) establish procedures for allocating a portion of premiums collected from reinsuring carriers to  
8 fund administrative expenses incurred or to be incurred by the program; and

9 (f) provide for any additional matters necessary for the implementation and administration of the  
10 program.

11 (4) The program has the general powers and authority granted under the laws of this state to  
12 insurance companies and health maintenance organizations licensed to transact business, except the power  
13 to issue health benefit plans directly to either groups or individuals. In addition, the program may:

14 (a) enter into contracts as are necessary or proper to carry out the provisions and purposes of this  
15 part, including the authority, with the approval of the commissioner, to enter into contracts with similar  
16 programs of other states for the joint performance of common functions or with persons or other  
17 organizations for the performance of administrative functions;

18 (b) sue or be sued, including taking any legal actions necessary or proper to recover any premiums  
19 and penalties for, on behalf of, or against the program or any reinsuring carriers;

20 (c) take any legal action necessary to avoid the payment of improper claims against the program;

21 (d) define the health benefit plans for which reinsurance will be provided and to issue reinsurance  
22 policies in accordance with the requirements of this part;

23 (e) establish conditions and procedures for reinsuring risks under the program;

24 (f) establish actuarial functions as appropriate for the operation of the program;

25 (g) appoint appropriate legal, actuarial, and other committees as necessary to provide technical  
26 assistance in operation of the program, policy and other contract design, and any other function within the  
27 authority of the program;

28 (h) to the extent permitted by federal law and in accordance with subsection (8)(c), make annual  
29 fiscal yearend assessments against assessable carriers and make interim assessments to fund claims  
30 incurred by the program; and

1 (i) borrow money to effect the purposes of the program. Any notes or other evidence of  
2 indebtedness of the program not in default are legal investments for carriers and may be carried as admitted  
3 assets.

4 (5) A reinsuring carrier may reinsure with the program as provided for in this subsection (5):

5 (a) With respect to a basic health benefit plan or a standard health benefit plan, the program shall  
6 reinsure the level of coverage provided and, with respect to other plans, the program shall reinsure up to  
7 the level of coverage provided in a basic or standard health benefit plan.

8 (b) A small employer carrier may reinsure an entire employer group within 60 days of the  
9 commencement of the group's coverage under a health benefit plan.

10 (c) A reinsuring carrier may reinsure an eligible employee or dependent within a period of 60 days  
11 following the commencement of coverage with the small employer. A newly eligible employee or dependent  
12 of the reinsured small employer may be reinsured within 60 days of the commencement of coverage.

13 (d) (i) The program may not reimburse a reinsuring carrier with respect to the claims of a reinsured  
14 employee or dependent until the carrier has incurred an initial level of claims for the employee or dependent  
15 of \$5,000 in a calendar year for benefits covered by the program. In addition, the reinsuring carrier is  
16 responsible for 20% of the next \$100,000 of benefit payments during a calendar year and the program  
17 shall reinsure the remainder. A reinsuring carrier's liability under this subsection (d)(i) may not exceed a  
18 maximum limit of \$25,000 in any calendar year with respect to any reinsured individual.

19 (ii) The board annually shall adjust the initial level of claims and maximum limit to be retained by  
20 the carrier to reflect increases in costs and utilization within the standard market for health benefit plans  
21 within the state. The adjustment may not be less than the annual change in the medical component of the  
22 consumer price index for all urban consumers of the United States department of labor, bureau of labor  
23 statistics, unless the board proposes and the commissioner approves a lower adjustment factor.

24 (e) A small employer carrier may terminate reinsurance with the program for one or more of the  
25 reinsured employees or dependents of a small employer on any anniversary of the health benefit plan.

26 (f) A small employer group health benefit plan in effect before January 1, 1994, may not be  
27 reinsured by the program until January 1, 1997, and then only if the board determines that sufficient  
28 funding sources are available.

29 (g) A reinsuring carrier shall apply all managed care and claims-handling techniques, including  
30 utilization review, individual case management, preferred provider provisions, and other managed care

1 provisions or methods of operation consistently with respect to reinsured and nonreinsured business.

2 (6) (a) As part of the plan of operation, the board shall establish a methodology for determining  
3 premium rates to be charged by the program for reinsuring small employers and individuals pursuant to this  
4 section. The methodology must include a system for classification of small employers that reflects the types  
5 of case characteristics commonly used by small employer carriers in the state. The methodology must  
6 provide for the development of base reinsurance premium rates that must be multiplied by the factors set  
7 forth in subsection (6)(b) to determine the premium rates for the program. The base reinsurance premium  
8 rates must be established by the board, subject to the approval of the commissioner, and must be set at  
9 levels that reasonably approximate gross premiums charged to small employers by small employer carriers  
10 for health benefit plans with benefits similar to the standard health benefit plan, adjusted to reflect retention  
11 levels required under this part.

12 (b) Premiums for the program are as follows:

13 (i) An entire small employer group may be reinsured for a rate that is one and one-half times the  
14 base reinsurance premium rate for the group established pursuant to this subsection (6).

15 (ii) An eligible employee or dependent may be reinsured for a rate that is five times the base  
16 reinsurance premium rate for the individual established pursuant to this subsection (6).

17 (c) The board periodically shall review the methodology established under subsection (6)(a),  
18 including the system of classification and any rating factors, to ensure that it reasonably reflects the claims  
19 experience of the program. The board may propose changes to the methodology that are subject to the  
20 approval of the commissioner.

21 (d) The board may consider adjustments to the premium rates charged by the program to reflect  
22 the use of effective cost containment and managed care arrangements.

23 (7) If a health benefit plan for a small employer is entirely or partially reinsured with the program,  
24 the premium charged to the small employer for any rating period for the coverage issued must meet the  
25 requirements relating to premium rates set forth in 33-22-1809.

26 (8) (a) Prior to March 1 of each year, the board shall determine and report to the commissioner the  
27 program net loss for the previous calendar year, including administrative expenses and incurred losses for  
28 the year, taking into account investment income and other appropriate gains and losses.

29 (b) To the extent permitted by federal law, each assessable carrier shall share in any net loss of  
30 the program for the year in an amount equal to the ratio of the total premiums earned in the previous

1 calendar year from health benefit plans delivered or issued for delivery by each assessable carrier divided  
2 by the total premiums earned in the previous calendar year from health benefit plans delivered or issued  
3 for delivery by all assessable carriers in the state.

4 (c) The board shall make an annual determination in accordance with this section of each  
5 assessable carrier's liability for its share of the net loss of the program and, except as otherwise provided  
6 by this section, make an annual fiscal yearend assessment against each assessable carrier to the extent of  
7 that liability. If approved by the commissioner, the board may also make interim assessments against  
8 assessable carriers to fund claims incurred by the program. Any interim assessment must be credited  
9 against the amount of any fiscal yearend assessment due or to be due from an assessable carrier. Payment  
10 of a fiscal yearend or interim assessment is due within 30 days of receipt by the assessable carrier of  
11 written notice of the assessment. An assessable carrier that ceases doing business within the state is liable  
12 for assessments until the end of the calendar year in which the assessable carrier ceased doing business.  
13 The board may determine not to assess an assessable carrier if the assessable carrier's liability determined  
14 in accordance with this section does not exceed \$10.

15 (9) The participation in the program as reinsuring carriers; the establishment of rates, forms, or  
16 procedures; or any other joint collective action required by this part may not be the basis of any legal  
17 action, criminal or civil liability, or penalty against the program or any of its reinsuring carriers, either jointly  
18 or separately.

19 (10) The board, as part of the plan of operation, shall develop standards setting forth the minimum  
20 levels of compensation to be paid to producers for the sale of basic and standard health benefit plans. In  
21 establishing the standards, the board shall take into consideration the need to ensure the broad availability  
22 of coverages, the objectives of the program, the time and effort expended in placing the coverage, the need  
23 to provide ongoing service to small employers, the levels of compensation currently used in the industry,  
24 and the overall costs of coverage to small employers selecting these plans.

25 (11) The program is exempt from taxation.

26 (12) On or before March 1 of each year, the commissioner shall evaluate the operation of the  
27 program and report to the governor and the legislature in writing the results of the evaluation. The report  
28 must include an estimate of future costs of the program, assessments necessary to pay those costs, the  
29 appropriateness of premiums charged by the program, the level of insurance retention under the program,  
30 the cost of coverage of small employers, and any recommendations for change to the plan of operation.

1       (13) All premiums and other money paid to the small employer carrier reinsurance program and all  
 2 property and securities acquired through the use of money and interest and dividends earned on money  
 3 belonging to the small employer carrier reinsurance program are solely the property of the program and  
 4 must be used exclusively for the operations and obligations of the program. Money collected by the  
 5 program is not subject to legislative appropriation."

6  
 7       **Section 67.** Section 33-30-102, MCA, is amended to read:

8       **"33-30-102. Application of this chapter -- construction of other related laws.** (1) All health service  
 9 corporations ~~heretofore or hereafter organized~~ are subject to the provisions of this chapter. In addition to  
 10 the provisions contained in this chapter, other chapters and provisions of this title apply to health service  
 11 corporations as follows: ~~33-17-212 33-17-101; through 33-17-214~~ Title 33, chapter 17, parts 2 and 10  
 12 through 12; and Title 33, chapters 1, 15, 18, 19, and 22, except 33-22-111; and [sections 78 through 81].

13       (2) A law of this state other than the provisions of this chapter applicable to health service  
 14 corporations ~~shall~~ must be construed in accordance with the fundamental nature of a health service  
 15 corporation, and in the event of a conflict ~~between that law and the provisions of this chapter, the latter~~  
 16 shall prevail."

17  
 18       **Section 68.** Section 33-30-107, MCA, is amended to read:

19       **"33-30-107. Annual statement.** (1) On or before March 1 of each year, Every each health service  
 20 corporation shall file an annual statement for the preceding year on a form containing substantially the same  
 21 information as that contained in form No. 13 N.A.I.C. with the commissioner of insurance. This annual  
 22 statement must be completed in accordance with the national association of insurance commissioners'  
 23 annual statement instructions.

24       (2) The health service corporation shall file a statement containing any other information concerning  
 25 its financial affairs that may be reasonably requested by the commissioner.

26       (3) (a) Each health service corporation shall file electronic diskette versions of its annual and  
 27 quarterly financial statements with the national association of insurance commissioners. The filing date for  
 28 submission of the annual statement diskette is March 1. The filing dates for the other three quarterly  
 29 statements are as follows:

30       (i) the first quarter statement is due May 15;

1 (ii) the second quarter statement is due August 15; and

2 (iii) the third quarter statement is due November 15.

3 (b) The commissioner may exempt health service corporations operating only in Montana from  
4 these filing requirements."

5

6 **Section 69.** Section 33-30-108, MCA, is amended to read:

7 **"33-30-108. License required.** (1) ~~No~~ A person may not act as a health service corporation and  
8 ~~no~~ a health service corporation may not conduct business in this state except as authorized by a license  
9 issued by the commissioner.

10 (2) ~~Such~~ A license may be issued by the commissioner only after the person has complied with the  
11 applicable provisions of this title.

12 (3) A health service corporation is entitled to a continuation of its license upon payment of the  
13 annual continuation fee specified in 33-30-204(1)(i) on or before March 1 of each year and upon continued  
14 compliance with the provisions of this title.

15 (4) A license issued or continued under this section may be revoked or suspended by the  
16 commissioner for violation of this title."

17

18 **Section 70.** Section 33-30-202, MCA, is amended to read:

19 **"33-30-202. Annual report by certified public accountant.** (1) All corporations subject to the  
20 provisions of this chapter shall ~~make and~~ file annually with the commissioner, on or before ~~March~~ June 1  
21 ~~of each year, a report under oath setting forth:~~ financial statement audited by a certified public accountant  
22 pursuant to rules promulgated by the commissioner.

23 ~~(1) the name of the corporation;~~

24 ~~(2) the address of its registered office in this state and the name of its registered agent at that~~  
25 ~~address;~~

26 ~~(3) the names and addresses of its directors and officers;~~

27 ~~(4) a brief statement of the character of the affairs which the corporation is actually conducting;~~

28 ~~(5) the amount of all dues or fees collected from members in the last fiscal year, the amounts~~  
29 ~~actually paid during that year for health services for the members or beneficiaries, and the amounts placed~~  
30 ~~in reserves;~~

1 ~~(6) a balance sheet and statement of income and expenditures for the most recent fiscal year of~~  
 2 ~~the corporation, prepared and verified by two officers of the corporation and certified by a certified public~~  
 3 ~~accountant;~~

4 ~~(7) a statement of any other facts or information concerning the financial affairs of the health~~  
 5 ~~service corporation which may be reasonably required by the commissioner.~~

6 (2) (a) The commissioner may establish rules governing the content and preparation of the report  
 7 required by subsection (1).

8 (b) The report must include:

9 (i) the corporation's financial statements for the most recent calendar year;

10 (ii) an opinion by the certified public accountant concerning the accuracy and fairness of the  
 11 corporation's representation of its financial statements; and

12 (iii) other information that the commissioner specifies by rule."

13  
 14 **Section 71.** Section 33-30-204, MCA, is amended to read:

15 **"33-30-204. Fees.** (1) Every health service corporation subject to the provisions of this chapter  
 16 shall pay the following fees to the commissioner for enforcement of the provisions of this chapter:

17 ~~(a) insurance producer's license:~~

18 ~~(i) application for original license and issuance of license ..... \$15~~

19 ~~(ii) annual renewal ..... \$15~~

20 ~~(iii) examination for license, for each examination ..... \$15~~

21 ~~(b)(a) filing any other statement or report ..... \$1~~

22 ~~(b)(b) for a certified copy of any document or other paper filed in the office of the commissioner,~~  
 23 ~~per page ..... \$.50~~

24 ~~(c) for the a certificate and for affixing the with affixed seal thereto ..... \$10~~

25 ~~(d) filing of a membership contract ..... \$25~~

26 ~~(e) filing of a membership contract package ..... \$100~~

27 ~~(f) filing annual report, other than as part of application for original license ..... \$25~~

28 ~~(g) issuance of health service corporation license ..... \$300~~

29 ~~(h) annual continuation of health service corporation license ..... \$300~~

30 (2) The commissioner shall promptly deposit with the state treasurer, to the credit of the general



1 fund, all fees and license fees received ~~by him~~ under this section."

2

3 **Section 72.** Section 33-30-311, MCA, is amended to read:

4 **"33-30-311. Insurance producer.** ~~(1)~~ A person who, for compensation, solicits membership in a  
5 prepayment health service plan offered by a corporation subject to the provisions of this chapter is an  
6 insurance producer of that corporation and is subject to the provisions of 33-2-708 and Title 33, chapter  
7 17.

8 ~~(2) The definitions of insurance producer as defined in this chapter do not include an individual:~~

9 ~~(a) employed and used by insurance producers for the performance of clerical, stenographic, and~~  
10 ~~similar office duties;~~

11 ~~(b) employed and used for incidental taking of an application for coverage from time to time in the~~  
12 ~~office of the employing insurance producer;~~

13 ~~(c) who secures and forwards information for the purpose of an existing group contractor for~~  
14 ~~enrolling individuals under an existing group contract."~~

15

16 **Section 73.** Section 33-30-1001, MCA, is amended to read:

17 **"33-30-1001. Newborn infants covered by insurance by health service corporation.** ~~No~~ A disability  
18 insurance plan or group disability insurance plan issued by a health service corporation may not be issued  
19 or amended in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the  
20 accident and sickness coverage or insurability of newborn infants of the persons insured from and after the  
21 moment of birth. Each ~~such~~ policy ~~shall~~ must contain a provision granting immediate accident and sickness  
22 coverage, from and after the moment of birth, to each newborn infant of any insured person. ~~If payment~~  
23 ~~of a specific premium or subscription fee is required to provide coverage for a child, the policy or contract~~  
24 ~~may require that notification of birth of a newly born child and payment of the required premium or fees~~  
25 ~~must be furnished to the insurer or nonprofit service or indemnity corporation within 31 days after the date~~  
26 ~~of birth in order to have the coverage continue beyond such 31 day period.~~ The policy or contract may  
27 require notification of the birth of a child and payment of a required premium or subscription fee to be  
28 furnished to the insurer or nonprofit or indemnity corporation within 31 days of the birth in order to have  
29 the coverage extend beyond 31 days."

30

1           **Section 74.** Section 33-31-311, MCA, is amended to read:

2           "**33-31-311. Insurance producer license required -- application, issuance, renewal, fees -- penalty.**

3           (1) ~~No~~ An individual, partnership, or corporation may not act as or ~~hold himself out~~ represent to the public  
4           to be an insurance producer of a health maintenance organization unless ~~he~~ the individual, partnership, or  
5           corporation is:

6           (a) licensed as a disability insurance producer by the commissioner pursuant to chapter 17, parts  
7           1, 2, and 4 of this title or licensed as an insurance producer under 33-30-311 ~~through 33-30-313~~; and

8           (b) appointed or authorized by the health maintenance organization to solicit health care service  
9           agreements on its behalf.

10          (2) Application, appointment and qualification for a health maintenance organization insurance  
11          producer license, fees applicable to and the issuance of a health maintenance organization insurance  
12          producer license, and renewal of a health maintenance organization insurance producer license must be in  
13          accordance with the provisions of chapter 17 that apply to a disability insurance producer.

14          (3) An individual, partnership, or corporation who holds a disability insurance producer license on  
15          October 1, 1987, need not requalify by an examination to be licensed as a health maintenance organization  
16          insurance producer.

17          (4) The commissioner may, in accordance with 33-1-313, 33-1-317, 33-17-411, and chapter 17,  
18          part 10, suspend, revoke, refuse to issue or renew a health maintenance organization insurance producer  
19          license, or impose a fine upon the licensee.

20          (5) The provisions of this section do not exempt a health maintenance organization from material  
21          transaction disclosure requirements under [sections 78 through 81]. A health maintenance organization  
22          must be considered an insurer for the purposes of [sections 78 through 81]."

23  
24          **NEW SECTION. Section 75. Notice of right to return policy.** Each life or disability insurance policy,  
25          except a single-premium nonrenewable disability policy, issued for delivery in this state or issued after  
26          January 1, 1996, must contain a notice stating in substance that if the person to whom the policy is issued  
27          is not satisfied for any reason, the person may return the policy within 10 days of its delivery or a longer  
28          period if provided by the policy and have refunded directly to the person the premium paid. A policy  
29          returned pursuant to this section is void from the beginning.

30

1            NEW SECTION. **Section 76. Reserve calculation -- indeterminate premium plans -- minimum**  
2 **standards for disability plans.** (1) In the case of a plan of life insurance that provides for future premium  
3 determination, the amounts of which are to be determined by the insurer based on then estimates of future  
4 experience, or in the case of a plan of life insurance or annuity that is of such a nature that the minimum  
5 reserves cannot be determined by the methods described in 33-2-525 and 33-2-526(3), the reserves that  
6 are held under the plan must:

7            (a) be appropriate in relation to the benefits and the pattern of premiums for that plan; and

8            (b) be computed by a method that is consistent with the principles of 33-2-521 through 33-2-529,  
9 as determined by rules promulgated by the commissioner.

10           (2) The commissioner shall promulgate a rule containing the minimum standards applicable to the  
11 valuation of disability plans.

12  
13           NEW SECTION. **Section 77. Dating of insurance applications -- antedating prohibited.** An  
14 application for issuance of an insurance policy may not be antedated by any person in order to obtain or  
15 provide coverage for losses or injuries incurred prior to the date of application.

16  
17           NEW SECTION. **Section 78. Short title.** [Sections 78 through 81] may be cited as the "Disclosure  
18 of Material Transactions Act".

19  
20           NEW SECTION. **Section 79. Report.** (1) An insurer domiciled in this state shall file a report with  
21 the commissioner disclosing material acquisitions and dispositions of assets or material nonrenewals,  
22 cancellations, or revisions of ceded reinsurance agreements unless the acquisitions and dispositions of  
23 assets or material nonrenewals, cancellations, or revisions have been submitted to the commissioner for  
24 review or approval or for information purposes pursuant to other provisions of the insurance code, laws,  
25 or regulations or other requirements.

26           (2) The report required in subsection (1) is due within 15 days after the end of the calendar month  
27 in which any of the transactions in subsection (1) occur.

28           (3) One complete copy of the report, including any exhibits or other attachments, must be filed  
29 with:

30           (a) the insurance department of the state in which the insurer is domiciled; and

1 (b) the national association of insurance commissioners.

2 (4) All reports obtained by or disclosed to the commissioner pursuant to [sections 78 through 81]  
3 must be treated confidentially, may not be subject to subpoena, and may not be made public by the  
4 commissioner, the national association of insurance commissioners, or any other person, except to  
5 insurance departments of other states, without the prior consent of the insurer to which it pertains unless  
6 the commissioner, after giving the insurer notice and an opportunity to be heard, determines that the  
7 interest of policyholders, shareholders, or the public will be served by publication, in which event the  
8 commissioner may publish all or any part of the report in the manner the commissioner chooses.

9

10 **NEW SECTION. Section 80. Acquisitions and dispositions of assets.** (1) Acquisitions or  
11 dispositions of assets that are not material are not required to be reported pursuant to [section 79] if the  
12 acquisitions or dispositions are not material. For purposes of [sections 78 through 81], a material  
13 acquisition or the aggregate of any series of related acquisitions during any 30-day period or a disposition  
14 or the aggregate of any series of related dispositions during any 30-day period is one that is nonrecurring  
15 and not in the ordinary course of business and involves more than 5% of the reporting insurer's total  
16 admitted assets as reported in its most recent statutory statement filed with the insurance department of  
17 the insurer's state of domicile.

18 (2) Asset acquisitions subject to [sections 78 through 81] include every purchase, lease, exchange,  
19 merger, consolidation, succession, or other acquisition, other than the construction or development of real  
20 property, by or for the reporting insurer or the acquisition of materials for this purpose.

21 (3) Asset dispositions subject to [sections 78 through 81] include each sale, lease, exchange,  
22 merger, consolidation, mortgage, hypothecation, assignment, whether for the benefit of creditors or  
23 otherwise, abandonment, destruction, or other disposition.

24 (4) The following information is required to be disclosed in any report of a material acquisition or  
25 disposition of assets:

26 (a) the date of the transaction;

27 (b) the manner of acquisition or disposition;

28 (c) the description of the assets involved;

29 (d) the nature and amount of the consideration given or received;

30 (e) the purpose or reason for the transaction;

- 1 (f) the manner by which the amount of consideration was determined;
- 2 (g) the gain or loss recognized or realized as a result of the transaction; and
- 3 (h) the names of the persons from whom the assets were acquired or to whom they were disposed.
- 4 (5) An insurer is required to report material acquisitions and dispositions on a nonconsolidated basis
- 5 unless the insurer is part of a consolidated group of insurers that uses a pooling arrangement or 100%
- 6 reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer
- 7 ceded substantially all of its direct and assumed business to the pool. An insurer cedes substantially all
- 8 of its direct and assumed business to a pool if the insurer has less than \$1 million total direct plus assumed
- 9 written premiums during a calendar year that are not subject to a pooling arrangement and the net income
- 10 of the business not subject to the pooling arrangement represents less than 5% of the insurer's capital and
- 11 surplus.

12

13 **NEW SECTION. Section 81. Nonrenewals, cancellations, or revisions of ceded reinsurance**

14 **agreements.** (1) A nonrenewal, cancellation, or revision of a ceded reinsurance agreement need not

15 be reported pursuant to [section 79] if the nonrenewal, cancellation, or revision is not material. For

16 purposes of [sections 78 through 81], a material nonrenewal, cancellation, or revision is one that

17 affects:

18 (a) property and casualty business, including disability business written by a property and

19 casualty insurer, so that:

20 (i) more than 50% of the insurer's total ceded written premium is affected; or

21 (ii) more than 50% of the insurer's total ceded indemnity and loss adjustment reserves are

22 affected;

23 (b) life, annuity, and disability business, so that more than 50% of the total reserve credit taken

24 for business ceded, on an annualized basis, as indicated in the insurer's most recent annual statement

25 is affected;

26 (c) either property and casualty or life, annuity, and disability business and causes either of the

27 following events that constitutes a material revision that must be reported:

28 (i) an authorized reinsurer representing more than 10% of a total cession is replaced by one

29 or more unauthorized reinsurers; or

30 (ii) previously established collateral requirements have been reduced or waived as respects one

1 or more unauthorized reinsurers representing collectively more than 10% of a total cession.

2 (2) However, a filing is not required if:

3 (a) with respect to property and casualty business, including disability business written by a  
4 property and casualty insurer, the insurer's total ceded written premium represents, on an annualized  
5 basis, less than 10% of its total written premium for direct and assumed business; or

6 (b) with respect to life, annuity, and disability business, the total reserve credit taken for  
7 business ceded represents, on an annualized basis, less than 10% of the statutory reserve requirement  
8 prior to any cession.

9 (3) The following information is required to be disclosed in any report of a material nonrenewal,  
10 cancellation, or revision of ceded reinsurance agreements:

11 (a) the effective date of the nonrenewal, cancellation, or revision;

12 (b) the description of the transaction with an identification of the initiator of the transaction;

13 (c) the purpose or reason for the transaction; and

14 (d) if applicable, the identity of the replacement reinsurers.

15 (4) Insurers are required to report all material nonrenewals, cancellations, or revisions of ceded  
16 reinsurance agreements on a nonconsolidated basis unless the insurer is part of a consolidated group  
17 of insurers that uses a pooling arrangement or 100% reinsurance agreement that affects the solvency  
18 and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed  
19 business to the pool. An insurer is considered to have ceded substantially all of its direct and assumed  
20 business to a pool if the insurer has less than \$1 million total direct plus assumed written premiums  
21 during a calendar year that are not subject to a pooling arrangement and the net income of the business  
22 not subject to the pooling arrangement represents less than 5% of the insurer's capital and surplus.

23

24 **NEW SECTION. Section 82. Short title.** [Sections 82 through 94] constitute and may be  
25 referred to as "The Risk-Based Capital For Insurers Act".

26

27 **NEW SECTION. Section 83. Definitions.** As used in [sections 82 through 94], the following  
28 definitions apply:

29 (1) "Adjusted RBC report" means an RBC report that has been adjusted by the commissioner  
30 in accordance with [section 84(5)].

1 (2) "Corrective order" means an order issued by the commissioner specifying corrective actions  
2 that the commissioner has determined are required.

3 (3) "Domestic insurer" means any insurance company domiciled in this state.

4 (4) "Foreign insurer" means any insurance company licensed to do business in this state under  
5 33-2-116 but not domiciled in this state.

6 (5) "Life or disability insurer" means:

7 (a) any insurance company licensed under 33-2-116 and engaged in the business of entering  
8 into contracts of disability insurance as described in 33-1-207 or life insurance as described in  
9 33-1-208; or

10 (b) a licensed property and casualty insurer writing only disability insurance.

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

12 (7) "Negative trend" means, with respect to a life or health insurer, a negative trend over a  
13 period of time, as determined in accordance with the trend test calculation included in the RBC  
14 instructions.

15 (8) (a) "Property and casualty insurer" means any insurance company licensed under 33-2-116  
16 and engaged in the business of entering into contracts of property insurance as described in 33-1-210  
17 or casualty insurance as described in 33-1-206.

18 (b) The term does not include monoline mortgage guaranty insurers, financial guaranty insurers,  
19 and title insurers.

20 (9) "RBC instructions" means the RBC report including risk-based capital instructions adopted  
21 by the NAIC, as the RBC instructions may be amended by the NAIC from time to time in accordance  
22 with the procedures adopted by the NAIC.

23 (10) "RBC level" means an insurer's authorized control level RBC, company action level RBC,  
24 mandatory control level RBC, or regulatory action level RBC, where:

25 (a) "authorized control level RBC" means the number determined under the risk-based capital  
26 formula in accordance with the RBC instructions;

27 (b) "company action level RBC" means, with respect to any insurer, the product of 2 and its  
28 authorized control level RBC;

29 (c) "mandatory control level RBC" means the product of 0.70 and the authorized control level  
30 RBC; and

1 (d) "regulatory action level RBC" means the product of 1.5 and its authorized control level RBC.

2 (11) "RBC plan" means a comprehensive financial plan containing the elements specified in  
3 [section 85(2)]. If the commissioner rejects the RBC plan and it is revised by the insurer, with or  
4 without the commissioner's recommendation, the plan must be called a revised RBC plan.

5 (12) "RBC report" means the report required in [section 84].

6 (13) "Total adjusted capital" means the sum of:

7 (a) an insurer's statutory capital and surplus; and

8 (b) other items, if any, as the RBC instructions may provide.

9

10 **NEW SECTION. Section 84. RBC reports.** (1) Each domestic insurer shall, on or before each  
11 March 1 filing date, prepare and submit to the commissioner a report of its RBC levels as of the end  
12 of the previous calendar year in a form and containing information as required by the RBC instructions.  
13 In addition, each domestic insurer shall file its RBC report:

14 (a) with the NAIC in accordance with the RBC instructions; and

15 (b) with the insurance commissioner in any state in which the insurer is authorized to do  
16 business if that insurance commissioner has notified the insurer of the request in writing, in which case  
17 the insurer shall file its RBC report not later than the later of:

18 (i) 15 days from the receipt of notice to file its RBC report with that state; or

19 (ii) the March 1 filing date.

20 (2) A life and disability insurer's RBC must be determined in accordance with the formula set  
21 forth in the RBC instructions. The formula must take into account and may adjust for the covariance  
22 between:

23 (a) the risk with respect to the insurer's assets;

24 (b) the risk of adverse insurance experience with respect to the insurer's liabilities and  
25 obligations;

26 (c) the interest rate risk with respect to the insurer's business; and

27 (d) all other business risks and other relevant risks as are set forth in the RBC instructions and  
28 determined in each case by applying the factors in the manner set forth in the RBC instructions.

29 (3) A property and casualty insurer's RBC must be determined in accordance with the formula  
30 set forth in the RBC instructions. The formula shall take into account and may adjust for the covariance



1 between:

2 (a) asset risk;

3 (b) credit risk;

4 (c) underwriting risk; and

5 (d) all other business risks and other relevant risks that are set forth in the RBC instructions  
6 and determined in each case by applying the factors in the manner set forth in the RBC instructions.

7 (4) An excess of capital over the amount produced by the risk-based capital requirements  
8 contained in [sections 82 through 94] and the formulas, schedules, and instructions referenced in  
9 [sections 87 through 94] is desirable in the business of insurance. Accordingly, insurers should seek  
10 to maintain capital above the RBC levels required by [sections 82 through 94]. Additional capital is  
11 used and useful in the insurance business and helps to secure an insurer against various risks inherent  
12 in or affecting the business of insurance and not accounted for or only partially measured by the  
13 risk-based capital requirements contained in [sections 82 through 94].

14 (5) If a domestic insurer files an RBC report that in the judgment of the commissioner is  
15 inaccurate, the commissioner shall adjust the RBC report to correct the inaccuracy and shall notify the  
16 insurer of the adjustment. The notice must contain a statement of the reason for the adjustment. An  
17 RBC report so adjusted is referred to as an adjusted RBC report.

18  
19 **NEW SECTION. Section 85. Company action level event.** (1) "Company action level event"  
20 means any of the following events:

21 (a) the filing of an RBC report by an insurer which indicates that:

22 (i) the insurer's total adjusted capital is greater than or equal to its regulatory action level RBC  
23 but less than its company action level RBC; or

24 (ii) for a life or disability insurer, the insurer has total adjusted capital that is greater than or  
25 equal to its company action level RBC but less than the product of its authorized control level RBC and  
26 2.5 and that has a negative trend;

27 (b) the notification by the commissioner to the insurer of an adjusted RBC report that indicates  
28 an event in subsection (1)(a) if the insurer does not challenge the adjusted RBC report under [section  
29 89] or if the commissioner has rejected the insurer's challenge.

30 (2) In the event of a company action level event, the insurer shall prepare and submit to the

1 commissioner an RBC plan that must:

2 (a) identify the conditions that contribute to the company action level event;

3 (b) contain proposals of corrective actions that the insurer intends to take and that would be  
4 expected to result in the elimination of the company action level event;

5 (c) provide projections of the insurer's financial results in the current year and at least the next  
6 4 years, both in the absence of proposed corrective actions and giving effect to the proposed corrective  
7 actions, including projections of statutory operating income, net income, capital, and surplus. The  
8 projections for both new and renewal business may include separate projections for each major line of  
9 business and separately identify each significant income, expense, and benefit component.

10 (d) identify the key assumptions impacting the insurer's projections and the sensitivity of the  
11 projections to the assumptions; and

12 (e) identify the quality of and problems associated with the insurer's business, including but  
13 not limited to its assets, anticipated business growth and associated surplus strain, extraordinary  
14 exposure to risk, mix of business, and use of reinsurance, if any, in each case.

15 (3) The RBC plan must be submitted:

16 (a) within 45 days of the company action level event; or

17 (b) if the insurer challenges an adjusted RBC report pursuant to [section 89], within 45 days  
18 after notification to the insurer that the commissioner has, after a hearing, rejected the insurer's  
19 challenge.

20 (4) Within 60 days after the submission by an insurer of an RBC plan to the commissioner, the  
21 commissioner shall notify the insurer as to whether the RBC plan may be implemented or is  
22 unsatisfactory in the judgment of the commissioner. If the commissioner determines that the RBC plan  
23 is unsatisfactory, the notification to the insurer must set forth the reasons for the determination and  
24 may set forth proposed revisions that will render the RBC plan satisfactory in the judgment of the  
25 commissioner. Upon notification from the commissioner, the insurer shall prepare a revised RBC plan,  
26 which may incorporate by reference any revisions proposed by the commissioner, and shall submit the  
27 revised RBC plan to the commissioner:

28 (a) within 45 days after the notification from the commissioner; or

29 (b) if the insurer challenges the notification from the commissioner under [section 89], within  
30 45 days after a notification to the insurer that the commissioner has, after a hearing, rejected the

1 insurer's challenge.

2 (5) In the event of a notification by the commissioner to an insurer that the insurer's RBC plan  
3 or revised RBC plan is unsatisfactory, the commissioner may at the commissioner's discretion, subject  
4 to the insurer's right to a hearing under [section 89], specify in the notification that the notification  
5 constitutes a regulatory action level event.

6 (6) Each domestic insurer that files an RBC plan or revised RBC plan with the commissioner  
7 shall file a copy of the RBC plan or revised RBC plan with the insurance commissioner in any state in  
8 which the insurer is authorized to do business if:

9 (a) the state has an RBC provision substantially similar to [section 90(1)]; and

10 (b) the insurance commissioner of that state has notified the insurer in writing of its request  
11 for the filing, in which case the insurer shall file a copy of the RBC plan or revised RBC plan in that state  
12 by the later of:

13 (i) 15 days after the receipt of notice to file a copy of its RBC plan or revised RBC plan with  
14 that state; or

15 (ii) the date on which the RBC plan or revised RBC plan is filed under [section 85(3) and (4)].

16

17 **NEW SECTION. Section 86. Regulatory action level event.** (1) "Regulatory action level event"  
18 means, with respect to any insurer, any of the following events:

19 (a) the filing of an RBC report by the insurer that indicates that the insurer's total adjusted  
20 capital is greater than or equal to its authorized control level RBC but less than its regulatory action level  
21 RBC;

22 (b) the notification by the commissioner to an insurer of an adjusted RBC report that indicates  
23 the event in subsection (1)(a) if the insurer does not challenge the adjusted RBC report under [section  
24 89] or the commissioner rejects the insurer's challenge;

25 (c) the failure of the insurer to file an RBC report by the filing date, unless the insurer has  
26 provided an explanation for the failure that is satisfactory to the commissioner and has cured the failure  
27 within 10 days after the filing date;

28 (d) the failure of the insurer to submit an RBC plan to the commissioner within the time period  
29 set forth in [section 85(3)];

30 (e) notification by the commissioner to the insurer that:

1 (i) the RBC plan or revised RBC plan submitted by the insurer is unsatisfactory in the judgment  
2 of the commissioner; and

3 (ii) the notification constitutes a regulatory action level event with respect to the insurer if the  
4 insurer has not challenged the determination under [section 89];

5 (f) if, pursuant to [section 89], the insurer challenges a determination by the commissioner, the  
6 notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the  
7 challenge;

8 (g) notification by the commissioner to the insurer that the insurer has failed to adhere to its  
9 RBC plan or revised RBC plan, but only if the failure has a substantial adverse effect on the ability of  
10 the insurer to eliminate the company action level event in accordance with its RBC plan or revised RBC  
11 plan and the commissioner has so stated in the notification and if the insurer has not challenged the  
12 determination under [section 89] or the commissioner has not rejected the insurer's challenge.

13 (2) In the event of a regulatory action level event, the commissioner shall:

14 (a) require the insurer to prepare and submit an RBC plan or, if applicable, a revised RBC plan;

15 (b) perform an examination or analysis as the commissioner considers necessary of the assets,  
16 liabilities, and operations of the insurer including a review of its RBC plan or revised RBC plan; and

17 (c) subsequent to the examination or analysis, issue a corrective order specifying corrective  
18 actions that the commissioner determines are required.

19 (3) In determining corrective actions, the commissioner may take into account factors  
20 considered relevant with respect to the insurer based upon the commissioner's examination or analysis  
21 of the assets, liabilities, and operations of the insurer, including but not limited to the results of any  
22 sensitivity tests undertaken pursuant to the RBC instructions. The RBC plan or revised RBC plan must  
23 be submitted:

24 (a) within 45 days after the occurrence of the regulatory action level event;

25 (b) if the insurer challenges an adjusted RBC report pursuant to [section 89] and the challenge  
26 is not frivolous in the judgment of the commissioner, within 45 days after the notification to the insurer  
27 that the commissioner has, after a hearing, rejected the insurer's challenge; or

28 (c) if the insurer challenges a revised RBC plan pursuant to [section 89] and the challenge is  
29 not frivolous in the judgment of the commissioner, within 45 days after the notification to the insurer  
30 that the commissioner has, after a hearing, rejected the insurer's challenge.

1           (4) The commissioner may retain actuaries and investment experts and other consultants that  
2 may be necessary in the judgment of the commissioner to review the insurer's RBC plan or revised RBC  
3 plan, to examine or analyze the assets, liabilities, and operations of the insurer, and to formulate the  
4 corrective order with respect to the insurer. The fees, costs, and expenses relating to consultants must  
5 be borne by the affected insurer or such other party as directed by the commissioner.

6

7           NEW SECTION. **Section 87. Authorized control level event.** (1) "Authorized control level  
8 event" means any of the following events:

9           (a) the filing of an RBC report by the insurer that indicates that the insurer's total adjusted  
10 capital is greater than or equal to its mandatory control level RBC but less than its authorized control  
11 level RBC;

12           (b) the notification by the commissioner to the insurer of an adjusted RBC report that indicates  
13 the event in subsection (1)(a) if the insurer does not challenge the adjusted RBC report under [section  
14 89] or the commissioner rejects the insurer's challenge;

15           (c) the failure of the insurer to respond, in a manner satisfactory to the commissioner, to a  
16 corrective order if the insurer has not challenged the corrective order under [section 89]; or

17           (d) if the insurer has challenged a corrective order under [section 89] and the commissioner  
18 has, after a hearing, rejected the challenge or modified the corrective order, the failure of the insurer  
19 to respond, in a manner satisfactory to the commissioner, to the corrective order subsequent to  
20 rejection or modification by the commissioner.

21           (2) In the event of an authorized control level event with respect to an insurer, the  
22 commissioner shall:

23           (a) take the actions required under [section 86] regarding an insurer with respect to which a  
24 regulatory action level event has occurred; or

25           (b) if the commissioner considers it to be in the best interests of the policyholders and creditors  
26 of the insurer and of the public, take the actions necessary to cause the insurer to be placed under  
27 regulatory control under Title 33, chapter 2, part 13. In the event that the commissioner places the  
28 insurer under regulatory control, the authorized control level event must be considered sufficient  
29 grounds for the commissioner to take action under Title 33, chapter 2, part 13, and the commissioner  
30 shall have the rights, powers, and duties with respect to the insurer as are set forth in Title 33, chapter

1 2, part 13. In the event that the commissioner takes an action under this subsection pursuant to an  
2 adjusted RBC report, the insurer is entitled to the protections afforded to insurers under the provisions  
3 of 33-2-1321 through 33-2-1323 pertaining to summary proceedings.

4  
5 **NEW SECTION. Section 88. Mandatory control level event.** (1) "Mandatory control level  
6 event" means any of the following events:

7 (a) the filing of an RBC report that indicates that the insurer's total adjusted capital is less than  
8 its mandatory control level RBC;

9 (b) notification by the commissioner to the insurer of an adjusted RBC report that indicates the  
10 event in subsection (1)(a) if the insurer does not challenge the adjusted RBC report under [section 89]  
11 or the commissioner rejects the insurer's challenge.

12 (2) In the event of a mandatory control level event:

13 (a) with respect to a life insurer, the commissioner shall take the actions that are necessary to  
14 place the insurer under regulatory control under Title 33, chapter 2, part 13. In that event, the  
15 mandatory control level event must be considered sufficient grounds for the commissioner to take  
16 action under Title 33, chapter 2, part 13, and the commissioner shall have the rights, powers, and  
17 duties with respect to the insurer as are set forth in Title 33, chapter 2, part 13. If the commissioner  
18 takes an action pursuant to an adjusted RBC report, the insurer is entitled to the protections of  
19 33-2-1321 through 33-2-1323 pertaining to summary proceedings. Notwithstanding any of the  
20 foregoing, the commissioner may forego action for up to 90 days after the mandatory control level  
21 event if the commissioner finds that there is a reasonable expectation that the mandatory control level  
22 event may be eliminated within the 90-day period.

23 (b) with respect to a property and casualty insurer, the commissioner shall take the actions  
24 necessary to place the insurer under regulatory control under Title 33, chapter 2, part 13, or, in the  
25 case of an insurer that is not writing business and that is running-off its existing business, may allow  
26 the insurer to continue its runoff under the supervision of the commissioner. In either event, the  
27 mandatory control level event must be considered sufficient grounds for the commissioner to take  
28 action under Title 33, chapter 2, part 13, and the commissioner shall have the rights, powers, and  
29 duties with respect to the insurer as are set forth in Title 33, chapter 2, part 13. If the commissioner  
30 takes an action pursuant to an adjusted RBC report, the insurer is entitled to the protections of

1 33-2-1321 through 33-2-1323 pertaining to summary proceedings. Notwithstanding any of the  
2 foregoing, the commissioner may forego action for up to 90 days after the mandatory control level  
3 event if the commissioner finds there is a reasonable expectation that the mandatory control level event  
4 may be eliminated within the 90-day period.

5  
6 **NEW SECTION. Section 89. Notification and hearing.** (1) An insurer has the right to a hearing  
7 before the department upon notification by the commissioner:

8 (a) of an adjusted RBC report or unsatisfactory RBC plan or revised RBC plan that constitutes  
9 a regulatory action level event with respect to the insurer;

10 (b) that the insurer has failed to adhere to its RBC plan or revised RBC plan and that the failure  
11 has a substantial adverse effect on the ability of the insurer to eliminate the company action level event  
12 with respect to the insurer in accordance with its RBC plan or revised RBC plan; or

13 (c) of a corrective order with respect to the insurer.

14 (2) The insurer shall notify the commissioner of its request for a hearing within 5 days after  
15 the notification by the commissioner under subsection (1). Upon receipt of the insurer's request for  
16 a hearing, the commissioner shall set a date for the hearing, which may not be less than 10 or more  
17 than 30 days after the date of the insurer's request.

18  
19 **NEW SECTION. Section 90. Confidentiality -- prohibition on announcements -- prohibition on**  
20 **use in ratemaking.** (1) With respect to a domestic insurer or a foreign insurer, all RBC reports, to the  
21 extent the information in the reports is not required to be set forth in a publicly available annual  
22 statement schedule, and all RBC plans, including the results or report of any examination or analysis  
23 of an insurer performed pursuant to [sections 82 through 94] and any corrective order issued by the  
24 commissioner pursuant to the examination or analysis, that are filed with the commissioner constitute  
25 information that might be damaging to the insurer if made available to its competitors and must be kept  
26 confidential by the commissioner. This information may not be made public and is not subject to  
27 subpoena other than by the commissioner and then only for the purpose of enforcement actions taken  
28 by the commissioner pursuant to [sections 82 through 94] or any other provision of the insurance laws  
29 of this state.

30 (2) It is the intent of the legislature that the comparison of an insurer's total adjusted capital

1 to any of its RBC levels is a regulatory tool that may indicate the need for possible corrective action  
2 with respect to the insurer and that it is not intended as a means to rank insurers generally. Except as  
3 otherwise required under the provisions of [sections 92 through 94], the making, publishing,  
4 disseminating, circulating, or placing before the public or causing, directly or indirectly to be made,  
5 published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other  
6 publication, in the form of a notice, circular, pamphlet, letter, or poster, over any radio or television  
7 station, or in any other way, an advertisement, announcement, or statement containing an assertion,  
8 representation, or statement with regard to the RBC levels of any insurer or of any component derived  
9 in the calculation that is by any insurer, producer, or other person engaged in any manner in the  
10 insurance business would be misleading and is prohibited. However, if any materially false statement  
11 with respect to the comparison regarding an insurer's total adjusted capital to its RBC levels or an  
12 inappropriate comparison of any other amount to the insurer's RBC levels is published in any written  
13 publication and the insurer is able to demonstrate to the commissioner, with substantial proof, the  
14 falsity of the statement or the inappropriateness, as the case may be, the insurer may publish an  
15 announcement in a written publication if the sole purpose of the announcement is to rebut the  
16 materially false statement.

17 (3) It is the further intent of the legislature that the RBC instructions, RBC reports, adjusted  
18 RBC reports, RBC plans, and revised RBC plans are intended solely for use by the commissioner in  
19 monitoring the solvency of insurers and the need for possible corrective action with respect to insurers  
20 and may not be used by the commissioner for ratemaking or considered or introduced as evidence in  
21 any rate proceeding or used by the commissioner to calculate or derive any elements of an appropriate  
22 premium level or rate of return for any line of insurance that an insurer or any affiliate is authorized to  
23 write.

24

25 **NEW SECTION. Section 91. Supplemental provisions -- rules -- exemption.** (1) The provisions  
26 of [sections 82 through 94] are supplemental to any other provisions of the laws of this state and do  
27 not preclude or limit any other powers or duties of the commissioner under the law, including but not  
28 limited to Title 33, chapter 2, part 13.

29 (2) The commissioner may adopt reasonable rules necessary for the implementation of [sections  
30 82 through 94].



1 (3) The commissioner may exempt from the application of [sections 82 through 94] any  
2 domestic property and casualty insurer that:

3 (a) writes direct business only in this state;

4 (b) writes direct annual premiums of \$2 million or less; and

5 (c) does not assume reinsurance in excess of 5% of direct premium written.

6  
7 **NEW SECTION. Section 92. Foreign insurers.** (1) A foreign insurer shall, upon the written  
8 request of the commissioner, submit to the commissioner an RBC report for the previous calendar year  
9 on the later of:

10 (a) the date that an RBC report would be required to be filed by a domestic insurer under  
11 [section 84]; or

12 (b) 15 days after the request is received by the foreign insurer.

13 (2) A foreign insurer shall, at the written request of the commissioner, promptly submit to the  
14 commissioner a copy of any RBC plan that is filed with the insurance commissioner of any other state.

15 (3) In the event of a company action level event, regulatory action level event, or authorized  
16 control level event, with respect to any foreign insurer as determined under the RBC statute applicable  
17 in the state of domicile of the insurer or, if an RBC statute is not in force in that state, under the  
18 provisions of [sections 82 through 94], if the insurance commissioner of the state of domicile of the  
19 foreign insurer fails to require the foreign insurer to file an RBC plan in the manner specified under that  
20 state's RBC statute or, if an RBC statute is not in force in that state, under [section 85], the  
21 commissioner may require the foreign insurer to file an RBC plan with the commissioner. In that event,  
22 the failure of the foreign insurer to file an RBC plan with the commissioner is grounds to order the  
23 insurer to cease and desist from writing new insurance business in this state.

24 (4) In the event of a mandatory control level event with respect to any foreign insurer, if a  
25 domiciliary receiver has not been appointed with respect to the foreign insurer under the rehabilitation  
26 and liquidation statute applicable in the state of domicile of the foreign insurer, the commissioner may  
27 make application to a district court of this state permitted under 33-2-1380 with respect to the  
28 liquidation of property of foreign insurers found in this state, and the occurrence of the mandatory  
29 control level event must be considered adequate grounds for the application.

30

1           **NEW SECTION. Section 93. Applicability for 1995.** (1) For RBC reports required to be filed  
2 by property and casualty insurers with respect to 1995, the following requirements apply in lieu of the  
3 provisions of [sections 85 through 88]:

4           (a) In the event of a company action level event with respect to a domestic insurer, the  
5 commissioner will not take regulatory action under [sections 82 through 94].

6           (b) In the event of a regulatory action level event under [section 86(1)(a), (1)(b), or (1)(c)], the  
7 commissioner shall take the actions required under [section 86(2)].

8           (c) In the event of a regulatory action level event under [section 86(1)(d), (1)(e), (1)(f), or  
9 (1)(g)] or an authorized control level event, the commissioner shall take the actions required under  
10 [section 86(2) and (3)] with respect to the insurer.

11           (4) In the event of a mandatory control level event with respect to an insurer, the commissioner  
12 shall take the actions required under [section 88].

13  
14           **NEW SECTION. Section 94. Notices.** All notices by the commissioner to an insurer that may  
15 result in regulatory action are effective on dispatch if transmitted by certified mail or, in the case of any  
16 other transmission, are effective on the insurer's receipt of the notice.

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18           **NEW SECTION. Section 95. Repealer.** Sections 33-30-312 and 33-30-313, MCA, are  
19 repealed.

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21           **NEW SECTION. Section 96. Codification instruction.** (1) [Section 75] is intended to be  
22 codified as an integral part of Title 33, chapter 15, and the provisions of Title 33, chapter 15, apply  
23 to [section 75].

24           (2) [Section 76] is intended to be codified as an integral part of Title 33, chapter 2, part 5, and  
25 the provisions of Title 33, chapter 2, part 5, apply to [section 76].

26           (3) [Section 77] is intended to be codified as an integral part of Title 33, chapter 15, part 4,  
27 and the provisions of Title 33, chapter 15, part 4, apply to [section 77].

28           (4) [Sections 78 through 81] are intended to be codified as an integral part of Title 33, chapter  
29 3, and the provisions of Title 33, chapter 3, apply to [sections 78 through 81].

30           (5) [Sections 82 through 94] are intended to be codified as an integral part of Title 33, chapter

1 2, and the provisions of Title 33, chapter 2, apply to [sections 82 through 94].

2

3 NEW SECTION. **Section 97. Severability.** If a part of [this act] is invalid, all valid parts that  
4 are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of  
5 its applications, the part remains in effect in all valid applications that are severable from the invalid  
6 applications.

7

-END-

APPROVED BY COMMITTEE  
ON BUSINESS AND LABOR

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House BILL NO. 556  
*Simon Benedict*

INTRODUCED BY

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING STATE INSURANCE LAWS; PROVIDING FOR THE DISCLOSURE OF MATERIAL TRANSACTIONS; CREATING A RISK-BASED CAPITAL FOR INSURERS ACT; AMENDING SECTIONS 2-6-109, 33-1-207, 33-1-208, 33-1-209, 33-1-311, 33-1-501, 33-2-117, 33-2-301, 33-2-302, 33-2-305, 33-2-307, 33-2-501, 33-2-521, 33-2-523, 33-2-525, 33-2-526, 33-2-528, 33-2-529, 33-2-531, 33-2-701, 33-2-705, 33-2-708, 33-2-803, 33-2-806, 33-2-820, 33-2-1111, 33-2-1201, 33-2-1216, 33-2-1217, 33-2-1218, 33-2-1510, 33-2-1605, 33-3-431, 33-4-202, 33-4-203, 33-5-401, 33-7-117, 33-10-201, 33-10-202, 33-11-102, 33-11-104, 33-11-108, 33-14-304, 33-15-301, 33-15-303, 33-16-202, 33-16-235, 33-17-102, 33-17-211, 33-17-405, 33-17-503, 33-17-603, 33-17-1001, 33-18-212, 33-18-301, 33-22-131, 33-22-132, 33-22-201, 33-22-202, 33-22-301, 33-22-303, 33-22-504, 33-22-508, 33-22-1120, 33-22-1803, 33-22-1819, 33-30-102, 33-30-107, 33-30-108, 33-30-202, 33-30-204, 33-30-311, 33-30-1001, AND 33-31-311, MCA; AND REPEALING SECTIONS 33-30-312 AND 33-30-313, MCA."

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

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



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INTRODUCED BY Simon Benedict House BILL NO. 556  
BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING STATE INSURANCE LAWS; PROVIDING FOR THE DISCLOSURE OF MATERIAL TRANSACTIONS; CREATING A RISK-BASED CAPITAL FOR INSURERS ACT; AMENDING SECTIONS 2-6-109, 33-1-207, 33-1-208, 33-1-209, 33-1-311, 33-1-501, 33-2-117, 33-2-301, 33-2-302, 33-2-305, 33-2-307, 33-2-501, 33-2-521, 33-2-523, 33-2-525, 33-2-526, 33-2-528, 33-2-529, 33-2-531, 33-2-701, 33-2-705, 33-2-708, 33-2-803, 33-2-806, 33-2-820, 33-2-1111, 33-2-1201, 33-2-1216, 33-2-1217, 33-2-1218, 33-2-1510, 33-2-1605, 33-3-431, 33-4-202, 33-4-203, 33-5-401, 33-7-117, 33-10-201, 33-10-202, 33-11-102, 33-11-104, 33-11-108, 33-14-304, 33-15-301, 33-15-303, 33-16-202, 33-16-235, 33-17-102, 33-17-211, 33-17-405, 33-17-503, 33-17-603, 33-17-1001, 33-18-212, 33-18-301, 33-22-131, 33-22-132, 33-22-201, 33-22-202, 33-22-301, 33-22-303, 33-22-504, 33-22-508, 33-22-1120, 33-22-1803, 33-22-1819, 33-30-102, 33-30-107, 33-30-108, 33-30-202, 33-30-204, 33-30-311, 33-30-1001, AND 33-31-311, MCA; AND REPEALING SECTIONS 33-30-312 AND 33-30-313, MCA."

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

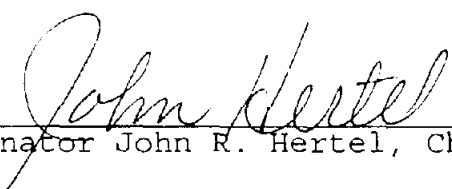
THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.

SENATE STANDING COMMITTEE REPORT

Page 1 of 6  
March 2, 1995

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration HB 556 (third reading copy -- blue), respectfully report that HB 556 be amended as follows and as so amended be concurred in.

Signed: 

Senator John R. Hertel, Chair

That such amendments read:

1. Title, line 10.

Following: "33-2-1218,"

Insert: "33-2-1394,"

2. Title, line 13.

Strike: "33-17-1001,"

3. Title, line 14.

Following: "33-22-1803,"

Insert: "33-22-1811,"

4. Title, line 15.

Strike: "33-31-311"

Insert: "33-31-111"

5. Title, line 15.

Following: "MCA;"

Strike: "AND"

6. Title, line 16.

Following: "MCA"

Insert: "; AND PROVIDING EFFECTIVE DATES"

7. Page 6, line 20.

Following: "payment"

Insert: "on or"

8. Page 8, line 13.

Following: "insurers"

Insert: "or, in the case of a renewal, the line of insurance has not become available from an authorized insurer"

9. Page 8, line 20.

Following: "and"

Insert: "and"



Amd. Coord.  
Sec. of Senate



Senator Carrying Bill

HB 556  
SENATE

491137SC.SRF

10. Page 8, line 21.

Strike: subsection (5) in its entirety

Renumber: subsequent subsection

11. Page 15, line 17.

Strike: "1995"

Insert: "1996"

12. Page 17, line 1.

Following: "~~such~~"

Insert: "all other"

13. Page 42, line 4.

Insert: "Section 31. Section 33-2-1394, MCA, is amended to read:

"33-2-1394. Settlement of actions against rehabilitator, liquidator, and employees -- court approval -- applicability. (1) If any legal action against an employee for which indemnity may be available under this section is settled prior to final adjudication on the merits, the insurer shall pay the settlement amount on behalf of the employee or indemnify the employee for the settlement amount unless the commissioner determines:

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

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

(2) In a legal action in which the rehabilitator or liquidator is a defendant, that portion of any settlement relating to the alleged act, error, or omission of the rehabilitator or liquidator is subject to the approval of the court before which the delinquency proceeding is pending. The court may not approve that portion of the settlement if it determines:

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

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

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

(4) (a) A Except as otherwise provided, a legal action by a third party does not lie against the rehabilitator, liquidator, or employee based in whole or in part on any alleged act, error, or omission that took place prior to October 1, 1993, unless suit is filed and valid service of process is obtained by October 1, 1994. A legal action that is pending on or filed after September 30, 1993, by a liquidator or a liquidation estate will lie

against a former special deputy liquidator or any employee, agent, or independent contractor retained by a special deputy liquidator without regard to when the alleged act, error, or omission occurred.

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

Renumber: subsequent sections

14. Page 43, lines 18 and 19.

Strike: "The" on line 18 through "fees" on line 19

Insert: "A limit on the controlling producer's writings in relation to the controlled insurer's surplus and total writings"

15. Page 68, line 18 through page 69, line 18.

Strike: section 53 in its entirety

Renumber: subsequent sections

16. Page 71, line 14.

Strike: "hospital indemnity,"

17. Page 88, line 27.

Strike: "report" through "license"

Insert: "statement"

18. Page 90, lines 1 through 22.

Strike: section 74 in its entirety

Insert: "**Section 74.** Section 33-31-111, MCA, is amended to read:

**"33-31-111. Statutory construction and relationship to other laws.** (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to any health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives may not be construed as a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter may not be considered to be practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) The provisions of this chapter do not exempt a health maintenance organization from the applicable certificate of need



requirements under Title 50, chapter 5, parts 1 and 3.

(5) The provisions of this section do not exempt a health maintenance organization from material transaction disclosure requirements under [sections 78 through 81]. A health maintenance organization must be considered an insurer for the purposes of [sections 78 through 81]."

19. Page 90, line 24.

Following: "Each"

Insert: "individual"

20. Page 106, line 17.

Insert: "**Section 95.** Section 33-22-1811, MCA, is amended to read:

**"33-22-1811. Availability of coverage -- required plans.**

(1) (a) As a condition of transacting business in this state with small employers, each small employer carrier shall offer to small employers at least two health benefit plans. One plan must be a basic health benefit plan, and one plan must be a standard health benefit plan.

(b) (i) A small employer carrier shall issue a basic health benefit plan or a standard health benefit plan to any eligible small employer that applies for either plan and agrees to make the required premium payments and to satisfy the other reasonable provisions of the health benefit plan not inconsistent with this part.

(ii) In the case of a small employer carrier that establishes more than one class of business pursuant to 33-22-1808, the small employer carrier shall maintain and offer to eligible small employers at least one basic health benefit plan and at least one standard health benefit plan in each established class of business. A small employer carrier may apply reasonable criteria in determining whether to accept a small employer into a class of business, provided that:

(A) the criteria are not intended to discourage or prevent acceptance of small employers applying for a basic or standard health benefit plan;

(B) the criteria are not related to the health status or claims experience of the small employers' employees;

(C) the criteria are applied consistently to all small employers that apply for coverage in that class of business; and

(D) the small employer carrier provides for the acceptance of all eligible small employers into one or more classes of business.

(iii) The provisions of subsection (1)(b)(ii) may not be applied to a class of business into which the small employer carrier is no longer enrolling new small businesses.

(c) The provisions of this section are effective 180 days

after the commissioner's approval of the basic health benefit plan and the standard health benefit plan developed pursuant to 33-22-1812, provided that if the program created pursuant to 33-22-1818 is not yet operative on that date, the provisions of this section are effective on the date that the program begins operation.

(2) (a) A small employer carrier shall, pursuant to 33-1-501, file the basic health benefit plans and the standard health benefit plans to be used by the small employer carrier.

(b) The commissioner may at any time, after providing notice and an opportunity for a hearing to the small employer carrier, disapprove the continued use by a small employer carrier of a basic or standard health benefit plan on the grounds that the plan does not meet the requirements of this part.

(3) Health benefit plans covering small employers must comply with the following provisions:

(a) A health benefit plan may not, because of a preexisting condition, deny, exclude, or limit benefits for a covered individual for losses incurred more than 12 months following the effective date of the individual's coverage. A health benefit plan may not define a preexisting condition more restrictively than 33-22-110, except that the condition may be excluded for a maximum of 12 months.

(b) A health benefit plan must waive any time period applicable to a preexisting condition exclusion or limitation period with respect to particular services for the period of time an individual was previously covered by qualifying previous coverage that provided benefits with respect to those services if the qualifying previous coverage was continuous to a date not ~~less~~ more than 30 days prior to the submission of an application for new coverage. This subsection (3)(b) does not preclude application of any waiting period applicable to all new enrollees under the health benefit plan.

(c) A health benefit plan may exclude coverage for late enrollees for 18 months or for an 18-month preexisting condition exclusion, provided that if both a period of exclusion from coverage and a preexisting condition exclusion are applicable to a late enrollee, the combined period may not exceed 18 months from the date the individual enrolls for coverage under the health benefit plan.

(d) (i) Requirements used by a small employer carrier in determining whether to provide coverage to a small employer, including requirements for minimum participation of eligible employees and minimum employer contributions, must be applied uniformly among all small employers that have the same number of eligible employees and that apply for coverage or receive coverage from the small employer carrier.

(ii) A small employer carrier may vary the application of

minimum participation requirements and minimum employer contribution requirements only by the size of the small employer group.

(e) (i) If a small employer carrier offers coverage to a small employer, the small employer carrier shall offer coverage to all of the eligible employees of a small employer and their dependents. A small employer carrier may not offer coverage only to certain individuals in a small employer group or only to part of the group, except in the case of late enrollees as provided in subsection (3)(c).

(ii) A small employer carrier may not modify a basic or standard health benefit plan with respect to a small employer or any eligible employee or dependent, through riders, endorsements, or otherwise, to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health benefit plan.

(4) (a) A small employer carrier may not be required to offer coverage or accept applications pursuant to subsection (1) in the case of the following:

(i) to a small employer when the small employer is not physically located in the carrier's established geographic service area;

(ii) to an employee when the employee does not work or reside within the carrier's established geographic service area; or

(iii) within an area where the small employer carrier reasonably anticipates and demonstrates to the satisfaction of the commissioner that it will not have the capacity within its established geographic service area to deliver service adequately to the members of a group because of its obligations to existing group policyholders and enrollees.

(b) A small employer carrier may not be required to provide coverage to small employers pursuant to subsection (1) for any period of time for which the commissioner determines that requiring the acceptance of small employers in accordance with the provisions of subsection (1) would place the small employer carrier in a financially impaired condition."

Renumber: subsequent sections

21. Page 107, line 7.

Insert: "NEW SECTION. **Section 99. Effective dates.** (1)

[Section 31 and this section] are effective on passage and approval.

(2) [Sections 1 through 30 and 32 through 98] are effective October 1, 1995."

-END-

SENATE COMMITTEE OF THE WHOLE AMENDMENT

March 8, 1995 1:09 pm

Mr. Chairman: I move to amend HB 556 (third reading copy -- blue).

ADOPT

REJECT

Signed: Jergeson  
Senator Jergeson

That such amendments read:

1. Title, line 7.

Following: "33-1-311,"

Insert: "33-1-413,"

2. Page 106, line 17.

Insert: "Section 96. Section 33-1-413, MCA, is amended to read:

"33-1-413. Examination expense -- lien. (1) Upon presentation of a detailed account of such charges and expenses by the commissioner or pursuant to ~~his~~ the commissioner's written authorization, each person ~~so~~ examined, other than ~~as to~~ examinations pursuant to 33-1-402, shall pay the actual travel expenses, a reasonable living expense allowance, and a per diem as compensation of examiners as necessarily incurred on account of the examination, all at reasonable rates ~~customary therefor~~ and as established or adopted by the commissioner. ~~Such an~~ An account may be ~~so~~ presented periodically during the course of the examination or at the termination of the examination as the commissioner ~~deems~~ considers proper. ~~No~~ A person ~~shall~~ may not pay and ~~no~~ an examiner ~~shall~~ may not accept any additional emolument on account of ~~any such~~ an examination.

(2) The commissioner shall pay to the state treasurer to the credit of the ~~general state special revenue~~ fund all ~~moneys~~ money received pursuant to subsection (1) ~~above~~.

(3) If ~~any such~~ a person fails to pay the charges and expenses, as referred to in subsection (1) ~~above~~, ~~they shall~~ the charges and expenses must be paid, out of the funds of the commissioner in the same manner as other disbursements of ~~such~~ the funds. The amount ~~so~~ paid ~~shall be~~ is a first lien upon all of the assets and property in this state of ~~such~~ the person and may be recovered by suit by the attorney general on behalf of the state of Montana and restored to the appropriate fund."

Renumber: subsequent sections

3. Page 6 of the Senate standing committee report amendment no.

21 is amended as follows:

Strike: "[Sections 1 through 30 and 32 through 98] are"

Insert: "Except as provided in subsection (1), [this act] is"

-END-

HB 556

SENATE

Amd. Coord.

HOUSE BILL NO. 556

INTRODUCED BY SIMON, BENEDICT

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING STATE INSURANCE LAWS; PROVIDING FOR THE DISCLOSURE OF MATERIAL TRANSACTIONS; CREATING A RISK-BASED CAPITAL FOR INSURERS ACT; AMENDING SECTIONS 2-6-109, 33-1-207, 33-1-208, 33-1-209, 33-1-311, 33-1-413, 33-1-501, 33-2-117, 33-2-301, 33-2-302, 33-2-305, 33-2-307, 33-2-501, 33-2-521, 33-2-523, 33-2-525, 33-2-526, 33-2-528, 33-2-529, 33-2-531, 33-2-701, 33-2-705, 33-2-708, 33-2-803, 33-2-806, 33-2-820, 33-2-1111, 33-2-1201, 33-2-1216, 33-2-1217, 33-2-1218, 33-2-1394, 33-2-1510, 33-2-1605, 33-3-431, 33-4-202, 33-4-203, 33-5-401, 33-7-117, 33-10-201, 33-10-202, 33-11-102, 33-11-104, 33-11-108, 33-14-304, 33-15-301, 33-15-303, 33-16-202, 33-16-235, 33-17-102, 33-17-211, 33-17-405, 33-17-503, 33-17-603, ~~33-17-1001~~, 33-18-212, 33-18-301, 33-22-131, 33-22-132, 33-22-201, 33-22-202, 33-22-301, 33-22-303, 33-22-504, 33-22-508, 33-22-1120, 33-22-1803, 33-22-1811, 33-22-1819, 33-30-102, 33-30-107, 33-30-108, 33-30-202, 33-30-204, 33-30-311, 33-30-1001, AND ~~33-31-311~~ 33-31-111, MCA; AND REPEALING SECTIONS 33-30-312 AND 33-30-313, MCA; AND PROVIDING EFFECTIVE DATES."

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

**Section 1.** Section 2-6-109, MCA, is amended to read:

**"2-6-109. Prohibition on distribution or sale of mailing lists -- exceptions -- penalty.** (1) Except as provided in subsections (3) through (7), in order to protect the privacy of those who deal with state and local government:

(a) ~~no~~ an agency may not distribute or sell for use as a mailing list any list of persons without first securing the permission of those on the list; and

(b) ~~no~~ a list of persons prepared by the agency may not be used as a mailing list except by the agency or another agency without first securing the permission of those on the list.

(2) As used in this section, "agency" means any board, bureau, commission, department, division, authority, or officer of the state or a local government.

1 (3) Except as provided in 30-9-403, this section does not prevent an individual from compiling a  
2 mailing list by examination of original documents or applications which are otherwise open to public  
3 inspection.

4 (4) This section does not apply to the lists of registered electors and the new voter lists provided  
5 for in 13-2-115 and 13-38-103, to lists of the names of employees governed by Title 39, chapter 31, or  
6 to lists of persons holding driver’s licenses provided for under 61-5-126.

7 (5) This section ~~shall~~ does not prevent an agency from providing a list to persons providing  
8 prelicensing or continuing educational courses subject to Title 20, chapter 30, or specifically exempted  
9 ~~therefrom~~ as provided in 20-30-102, or subject to Title 33, chapter 17.

10 (6) This section does not apply to the right of access either by Montana law enforcement agencies  
11 or, by purchase or otherwise, of public records dealing with motor vehicle registration.

12 (7) This section does not apply to a corporate information list developed by the secretary of state  
13 containing the name, address, registered agent, officers, and directors of business, nonprofit, religious,  
14 professional, and close corporations authorized to do business in this state.

15 (8) A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor.”  
16

17 **Section 2.** Section 33-1-207, MCA, is amended to read:

18 **"33-1-207. Disability insurance.** (1) Disability insurance, including credit disability insurance, is  
19 insurance of human beings: (a) against bodily injury, disablement, or death by accident or accidental means  
20 or the ~~medical~~ expense thereof or indemnity involved; or

21 (b) against disablement or ~~medical~~ expense or indemnity resulting from sickness and every  
22 insurance appertaining thereto.

23 (2) Transaction of disability insurance does not include workers’ compensation insurance."  
24

25 **Section 3.** Section 33-1-208, MCA, is amended to read:

26 **"33-1-208. Life insurance.** Life insurance, including credit life insurance, is insurance on human  
27 lives. The transaction of life insurance includes ~~also~~ the granting of endowment benefits, additional benefits  
28 in event of death or dismemberment by accident or accidental means, additional benefits in event of the  
29 insured’s disability, benefits that provide reimbursement or payment for long-term home health care or  
30 long-term care in a nursing home or other related institution, and optional modes of settlement of proceeds

1 of life insurance. Transaction of life insurance does not include workers' compensation insurance."

2  
3 **Section 4.** Section 33-1-209, MCA, is amended to read:

4 **"33-1-209. Marine protection and indemnity and wet marine insurance.** (1) ~~Marine insurance~~  
5 ~~includes marine protection and indemnity insurance, meaning insurance against, or against legal liability of~~  
6 ~~the insured for, loss, damage, or expense arising out of or incident to the ownership, operation, chartering,~~  
7 ~~maintenance, use, repair, or construction of any vessel, craft, or instrumentality in use in ocean or inland~~  
8 ~~waterways, including liability of the insured for personal injury, illness, or death or for loss of or damage~~  
9 ~~to the property of another person. Marine and transportation insurance means insurance against loss of~~  
10 ~~or damage to:~~

11 (a) vessels, craft, aircraft, vehicles, goods, freights, cargoes, merchandise, effects, disbursements,  
12 profits, money, securities, choses in action, evidences of debt, valuable papers, bottomry, respondentia,  
13 and any interest therein, with respect to risks and perils, including war risks, marine builder's risks, and  
14 personal property floater risks, of navigation and transportation or while being assembled, packed, crated,  
15 baled, compressed, or similarly prepared for shipment, while awaiting shipment, or during any delays,  
16 storage, transshipment, or reshipment;

17 (b) person or property in connection with marine, transit, or transportation insurance, including  
18 liability for loss or damage to either person or property incident to the construction, repair, operation,  
19 maintenance, or use of the subject matter of the insurance, but not including life insurance, surety bonds,  
20 or insurance against bodily injury arising out of the ownership, maintenance, or use of an automobile;

21 (c) jewels, jewelry, or precious metals, whether in the course of transportation or otherwise; and

22 (d) bridges; tunnels; and other instrumentalities of transportation and communication, excluding  
23 buildings and their furnishings, fixed contents, and supplies held in storage (unless fire, tornado, sprinkler  
24 leakage, hail, explosion, earthquake, riot, or civil commotion are the only hazards to be covered); piers;  
25 wharves; docks; slips; and other aids to navigation and transportation, including drydocks, marina railways,  
26 and dams and appurtenant facilities for the control of waterways.

27 (2) Marine protection and indemnity insurance means insurance against liability of the insured for  
28 loss, damage, or expense incident to ownership, operation, charter, maintenance, use, repair, or  
29 construction of any vessel, craft, or instrumentality for use in ocean or inland waterways. The term  
30 includes insurance against the liability of the insured for personal injury, illness, death, or loss or damage

1 of the property of another person.

2 ~~(2)(3)~~ For the purposes of this code, wet marine and transportation insurance is that part of marine  
3 insurance ~~which~~ that includes only:

4 (a) insurance upon vessels, crafts, and hulls and of interests ~~therein or with relation thereto~~ in or  
5 relating to the vessels, crafts, and hulls;

6 (b) insurance of marine builders' risks, marine war risks, and contracts of marine protection and  
7 indemnity insurance;

8 (c) insurance of freights and disbursements pertaining to a subject of insurance ~~coming within~~  
9 subject to this subsection; and

10 (d) insurance of personal property and interests ~~therein~~ in the personal property, in the course of  
11 exportation from or importation into any country and in the course of transportation coastwise or on inland  
12 waters, including transportation by land, water, or air from point of origin to final destination, ~~in~~ with  
13 respect to, ~~appertaining to, or in connection with any and all~~ risks or perils of navigation, transit, or  
14 transportation or while being prepared for ~~and or while~~ awaiting shipment ~~and or~~ during any delays, storage,  
15 transshipment, or reshipment incident ~~thereto~~ to preparation or shipment."

16  
17 **Section 5.** Section 33-1-311, MCA, is amended to read:

18 **"33-1-311. General powers and duties.** (1) The commissioner shall enforce the applicable  
19 provisions of ~~this code~~ the laws of this state and shall execute the duties imposed on the commissioner by  
20 ~~this code~~ the laws of this state.

21 (2) The commissioner ~~shall have~~ has the powers and authority expressly conferred upon the  
22 commissioner by or reasonably implied from the provisions of ~~this code~~ the laws of this state.

23 (3) The commissioner shall administer the department to ensure that the interests of insurance  
24 consumers are protected.

25 (4) The commissioner may conduct examinations and investigations of insurance matters, in  
26 addition to examinations and investigations expressly authorized, as the commissioner considers proper,  
27 to determine whether any person has violated any provision of ~~this code~~ the laws of this state or to secure  
28 information useful in the lawful administration of any provision. The cost of additional examinations and  
29 investigations must be borne by the state.

30 ~~(5) The commissioner has additional powers and duties as provided by other laws of this state.~~



1           ~~(6)~~(5) The department is a criminal justice agency as defined in 44-5-103."

2  
3           **Section 6.** Section 33-1-501, MCA, is amended to read:

4           "**33-1-501. Filing and approval of forms.** (1) (a) An insurance policy or annuity contract form,  
5 certificate, enrollment form, application form, printed rider or endorsement form, or form of renewal  
6 certificate may not be delivered or issued for delivery in Montana unless the form has been filed with and  
7 approved by the commissioner and, if required, the regulatory official of the state of domicile of the insurer,  
8 ~~if required~~. This provision does not apply to surety bonds or policies, riders, endorsements, or forms of  
9 unique character designed for and used with relation to insurance upon a particular subject or that relate  
10 to the manner of distribution of benefits or to the reservation of rights and benefits under life or disability  
11 insurance policies and are used at the request of the individual policyholder, contract holder, or certificate  
12 holder. Forms for use in property, marine, ~~{other than ocean marine and foreign trade coverages}~~, casualty,  
13 and surety insurance coverages may be filed by a rating organization on behalf of its members and  
14 subscribers or by a member or subscriber on its own behalf.

15           (b) The approval of an insurance policy or annuity contract form, certificate, enrollment form,  
16 application form, or other related insurance form by the state of domicile may be waived by the  
17 commissioner if the commissioner considers the requirements of subsection (1)(a) unnecessary for the  
18 protection of Montana insurance consumers. If the requirement is waived, an insurer shall notify the  
19 commissioner in writing within 10 days of disapproval, denial, or withdrawal of approval of a form by the  
20 state of domicile.

21           (2) The filing must be made not less than 60 days in advance of delivery. Approval of a form by  
22 the commissioner constitutes a waiver of any unexpired portion of the waiting period. The commissioner  
23 may extend by not more than an additional 60 days the period within which the commissioner may approve  
24 or disapprove a form by giving notice of the extension before expiration of the initial 60-day period. The  
25 commissioner may at any time, after notice and for cause shown, withdraw any approval.

26           (3) ~~An order of~~ Notice by the commissioner disapproving a form or withdrawing a previous approval  
27 must state the grounds for disapproval or withdrawal in sufficient detail to inform the insurer.

28           (4) The commissioner may exempt from the requirements of this section, for so long as the  
29 commissioner considers proper, an insurance document, form, or type of document or form ~~specified~~ to  
30 which, in the commissioner's opinion, this section may not practicably be applied or the filing and approval

1 of which are, ~~in the commissioner's opinion,~~ not desirable or necessary for the protection of the public.

2 (5) This section applies to a form used by a domestic insurer for delivery in a jurisdiction outside  
3 Montana if the insurance supervisory official of the jurisdiction informs the commissioner that the form is  
4 not subject to approval or disapproval by the official and upon the commissioner's order requiring the form  
5 to be submitted to the commissioner for the purpose. The same standards apply to these forms as apply  
6 to forms for domestic use.

7 (6) This section and 33-1-502 do not apply to:

8 (a) reinsurance;

9 (b) policies or contracts not issued for delivery in Montana or delivered in Montana, except as  
10 provided in subsection (5);

11 (c) ocean marine and foreign trade insurances.

12 (7) Except as provided in chapter 21, group certificates that are delivered or issued for delivery in  
13 Montana for group insurance policies effectuated and delivered outside Montana but covering persons  
14 resident in Montana must be filed with the commissioner upon request. The certificates must meet the  
15 minimum provisions mandated by Montana if Montana law prevails over conflicting provisions of other state  
16 law."

17  
18 **Section 7.** Section 33-2-117, MCA, is amended to read:

19 **"33-2-117. Continuance, expiration, reinstatement, and amendment of certificate of authority.** (1)

20 Certificates of authority issued or renewed under this code ~~shall~~ must continue in force as long as the  
21 insurer is entitled thereto under this code and until suspended or revoked or otherwise terminated, ~~subject,~~  
22 ~~however,~~ A certificate is subject to continuance ~~of the certificate~~ by the insurer each year by payment ON  
23 OR prior to ~~May 15~~ March 1 of the continuation fee provided in 33-2-708.

24 (2) If not ~~so~~ continued by the insurer, ~~its~~ the certificate of authority ~~shall expire~~ expires at midnight  
25 on May 31 ~~next~~ following ~~such~~ failure of the insurer ~~so~~ to continue it in force. The commissioner shall  
26 promptly notify the insurer of ~~the occurrence of any such failure resulting in impending~~ its failure to pay  
27 the continuation fee that can result in the expiration of its certificate of authority.

28 (3) The commissioner may, ~~in his discretion,~~ reinstate a certificate of authority ~~which~~ that the  
29 insurer has inadvertently permitted to expire, after the insurer ~~has fully cured all its~~ cures any failures ~~which~~  
30 ~~resulted~~ resulting in ~~such~~ expiration and upon payment ~~by the insurer~~ of the fee for reinstatement in

1 addition to the current continuation fee, as provided in 33-2-708. Otherwise, the insurer ~~shall~~ may be  
 2 granted another certificate of authority only after filing an application ~~therefor~~ and meeting all other  
 3 requirements ~~as~~ for an original certificate of authority in this state.

4 (4) The commissioner may amend a certificate of authority at any time to accord with changes in  
 5 the insurer's charter of insuring powers."

6  
 7 **Section 8.** Section 33-2-301, MCA, is amended to read:

8 **"33-2-301. Short title -- purpose -- definitions.** (1) This part constitutes and may be referred to as  
 9 "The Surplus Lines Insurance Law".

10 (2) This part must be applied to:

11 (a) protect persons seeking insurance in this state;

12 (b) permit surplus lines insurance to be placed with reputable and financially sound unauthorized  
 13 insurers and to be exported from this state pursuant to this part;

14 (c) establish a system of regulation that will permit orderly access to surplus lines insurance in this  
 15 state and encourage authorized insurers to provide new and innovative types of insurance to consumers  
 16 in this state; and

17 (d) protect revenues of this state.

18 (3) As used in this part, the following definitions apply:

19 (a) "Authorized insurer" means an insurer authorized pursuant to 33-2-101 to transact insurance  
 20 in this state.

21 (b) "Eligible surplus lines insurer" means an unauthorized insurer with which a surplus lines  
 22 insurance producer may place surplus lines insurance under 33-2-307.

23 (c) "Export" means to place surplus lines insurance with an unauthorized insurer.

24 ~~(d) "Kind of insurance" means one of the types of insurance required to be reported in the annual  
 25 statement filed with the commissioner by an authorized insurer.~~

26 ~~(e)(d)~~ "Producing insurance producer" means the individual insurance producer dealing directly with  
 27 the person seeking insurance.

28 ~~(f)(e)~~ "Surplus lines insurance" means any insurance ~~{on risks resident, located, or to be performed~~  
 29 in this state~~} permitted to be placed through a surplus lines insurance producer with an unauthorized insurer~~  
 30 eligible to accept the insurance. The term does not include the kinds of insurance exempted under

1 33-2-317.

2 ~~(g)~~(f) "Surplus lines insurance producer" means an individual, partnership, or corporation licensed  
3 under 33-2-305 to place surplus lines insurance ~~(on risks resident, located, or to be performed in this state)~~  
4 with unauthorized insurers eligible to accept ~~such~~ the insurance.

5 ~~(h)~~(g) "Unauthorized insurer" means an insurer not authorized pursuant to 33-2-101 to transact  
6 insurance in this state. The term includes insurance exchanges authorized under the laws of other states."  
7

8 **Section 9.** Section 33-2-302, MCA, is amended to read:

9 **"33-2-302. Conditions precedent to sale of surplus lines insurance.** ~~Insurance may be procured~~  
10 ~~through a licensed surplus lines insurance producer from~~ A producing insurance producer may request a  
11 surplus lines insurance producer to place or a surplus lines insurance producer may place a contract of  
12 insurance with an unauthorized insurer if:

- 13 (1) the insurer is an eligible surplus lines insurer;
- 14 (2) the line of insurance or the full amount of the line of insurance cannot be obtained from  
15 authorized insurers OR, IN THE CASE OF A RENEWAL, THE LINE OF INSURANCE HAS NOT BECOME  
16 AVAILABLE FROM AN AUTHORIZED INSURER;
- 17 (3) the producing insurance producer makes a diligent effort to place the business with a minimum  
18 of three insurers authorized and actually transacting that line of business in this state. If fewer than three  
19 insurers are authorized and actually transacting the line of business in this state, diligent effort must be met  
20 by searching this lesser market.
- 21 (4) the insurance is not procured for the purpose of securing:
  - 22 (a) a lower premium rate than would be accepted by an authorized insurer; or
  - 23 (b) an advantage in terms of the insurance contract; ~~and~~ AND
  - 24 ~~(5) in case of renewal, the line has not become available from an authorized insurer; and~~
  - 25 ~~(5)(6)(5)~~ all other requirements of this part are met."

26  
27 **Section 10.** Section 33-2-305, MCA, is amended to read:

28 **"33-2-305. Licensing of surplus lines insurance producer -- fee and bond.** (1) A person may not  
29 ~~procure~~ place a contract of surplus lines insurance with an unauthorized insurer unless the person is  
30 licensed as a property and casualty insurance producer and possesses a current surplus lines insurance

1 license issued by the commissioner.

2 (2) The commissioner shall issue a surplus lines insurance license to any qualified holder of a  
3 current property and casualty insurance producer license only if the insurance producer has:

4 (a) remitted to the commissioner the annual fee prescribed by 33-2-708;

5 (b) submitted to the commissioner a completed license application on a form supplied by the  
6 commissioner;

7 (c) been licensed as a property and casualty insurance producer continuously for 5 years or more;  
8 and

9 (d) filed with the commissioner and, for as long as the license remains in effect, kept in force a  
10 bond in favor of the state of Montana in the amount of \$10,000, with authorized corporate sureties  
11 approved by the commissioner. The bond must be conditioned that the insurance producer will conduct  
12 business under the license in accordance with the provisions of The Surplus Lines Insurance Law and that  
13 the insurance producer will promptly remit the taxes provided in 33-2-311. The bond may not be terminated  
14 unless the surety gives the surplus lines insurance producer, the producing insurance producer, and the  
15 commissioner at least 30 days' prior written notice of termination.

16 (3) The license expires on April 1 after its date of issue. A surplus lines insurance producer shall  
17 renew the license on or before March 1 of each year upon payment of the annual renewal fee prescribed  
18 in 33-2-708. A surplus lines insurance producer who fails to apply for a renewal of the license on or before  
19 March 1 shall pay a fine of \$100 before the commissioner renews the license.

20 (4) A corporation is eligible to be licensed as a surplus lines insurance producer if:

21 (a) the corporate license lists the individuals within the corporation who have satisfied the  
22 requirements of this part to become surplus lines insurance producers; and

23 (b) only those individuals listed on the corporate license transact surplus lines insurance.

24 (5) This section may not be construed to require agents, producers, or brokers acting as  
25 intermediaries between a surplus lines insurance producer and an unauthorized insurer under this part to  
26 hold a valid Montana surplus lines insurance producer's license."

27

28 **Section 11.** Section 33-2-307, MCA, is amended to read:

29 **"33-2-307. Requirements for eligible surplus lines insurers.** (1) A surplus lines insurance producer  
30 may not place insurance with an unauthorized insurer unless, at the time of placement, the unauthorized

1 insurer:

2 (a) has established satisfactory evidence of good reputation and financial integrity; and

3 (b) is qualified under one of the following subsections:

4 (i) the insurer maintains capital and surplus or its equivalent under the laws of its state of domicile,  
5 which equals the greater of:

6 (A) the minimum capital and surplus requirements of 33-2-109 and 33-2-110; or

7 (B) ~~\$3~~ \$7 million. An insurer possessing less than ~~\$4~~ \$6 million capital and surplus may satisfy the  
8 requirements of this subsection upon an affirmative finding of acceptability by the commissioner. The  
9 commissioner's finding must be based upon such factors as quality of management, capital, and surplus  
10 of a parent company; company underwriting profit and investment income trends; and company record and  
11 reputation within the industry. The commissioner may not make an affirmative finding of acceptability  
12 when the surplus lines insurer's capital and surplus is less than ~~\$3~~ \$6 million.

13 (ii) in the case of Lloyd's or another similar ~~unincorporated~~ group ~~of~~ including incorporated and  
14 unincorporated alien individual insurers, the insurer maintains a trust fund of not less than \$50 million as  
15 security to the full amount of capital and surplus for all policyholders and creditors in the United States of  
16 each member of the group. The incorporated members of the group may not engage in any business other  
17 than underwriting as a member of the group and must be subject to the same level of solvency regulation  
18 and control by the groups of domiciliary regulators as are the unincorporated members. The trust must  
19 comply with the terms and conditions established in subsection (1)(b)(iv) for alien insurers.

20 (iii) in the case of an insurance exchange created by the laws of individual states, the insurer  
21 maintains capital and surplus, or their substantial equivalent, of not less than \$15 million in the aggregate.  
22 For an insurance exchange that maintains funds for the protection of each insurance exchange policyholder,  
23 each individual syndicate shall maintain minimum capital and surplus, or their substantial equivalent, of not  
24 less than \$1.5 million. If the insurance exchange does not maintain funds for the protection of each  
25 insurance exchange policyholder, each individual syndicate shall meet the minimum capital and surplus  
26 requirements of subsection (1)(b)(i).

27 (iv) in the case of an alien insurer, the insurer maintains in the United States an irrevocable trust  
28 fund in either a national bank or a member of the federal reserve system, in an amount not less than \$1.5  
29 million, for the protection of all its policyholders in the United States and the trust fund consists of cash,  
30 securities, or letters of credit or of investments of substantially the same character and quality as those

1 which are eligible investments for the capital and statutory reserves of insurers authorized to write like kinds  
2 of insurance in this state. The trust fund, which must be included in any calculation of capital and surplus  
3 or its equivalent, must have an expiration date that may not at any time be less than 5 years. In addition,  
4 the alien insurer must appear on the national association of insurance commissioners' Non-Admitted  
5 Insurers Quarterly Listing.

6 (c) has provided the commissioner a copy of its current annual statement, certified by the insurer  
7 no more than 6 months after the close of the period reported upon, ~~for~~ quarterly if considered necessary  
8 by the commissioner, and which is either:

9 (i) filed with and approved by the regulatory authority in the state of domicile of the unauthorized  
10 insurer; or

11 (ii) certified by an accounting or auditing firm licensed in the jurisdiction of the insurer's state of  
12 domicile.

13 (2) In the case of an insurance exchange, the statement required by subsection (1)(c) may be an  
14 aggregate combined statement of all underwriting syndicates operating during the period reported.

15 (3) In addition to meeting the requirements in subsection (1), an insurer is an eligible surplus lines  
16 insurer only if it appears on the most recent list of eligible surplus lines insurers published at least  
17 semiannually by the commissioner. This subsection does not require the commissioner to place or maintain  
18 the name of any unauthorized insurer on the list of eligible surplus lines insurers. An action may not lie  
19 against the commissioner or an employee of the commissioner for anything said in issuing the list of eligible  
20 surplus lines insurers referred to in this subsection.

21 (4) (a) The commissioner may declare an eligible surplus lines insurer ineligible if at any time the  
22 commissioner has reason to believe that it:

23 (i) is in unsound financial condition;

24 (ii) is no longer eligible under subsections (1) through (3);

25 (iii) has willfully violated the laws of this state; or

26 (iv) does not make reasonably prompt payment of just losses and claims in this state or elsewhere.

27 (b) The commissioner shall promptly mail notice of all declarations to each surplus lines insurance  
28 producer.

29 (5) As used in this section, the following definitions apply:

30 (a) "Capital", as used in the financial requirements of this section, means funds invested in for

1 stocks or other evidences of ownership.

2 (b) "Surplus", as used in the financial requirements of this section, means funds over and above  
3 liabilities and capital of the insurer for the protection of policyholders."

4

5 **Section 12.** Section 33-2-501, MCA, is amended to read:

6 **"33-2-501. Assets allowed.** In any determination of the financial condition of an insurer, there  
7 must be allowed as assets only assets that are owned by the insurer and that consist of:

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

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

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

14 (b) declared and unpaid dividends on stock and shares unless the amount has otherwise been  
15 allowed as an asset;

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

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

20 (e) interest due or accrued on a mortgage loan in an amount not exceeding in any event the  
21 amount, if any, of the excess of the value of the property less delinquent taxes on the property over the  
22 unpaid principal. Interest accrued for a period in excess of 18 months may not be allowed as an asset.

23 (f) rent due or accrued on real property if the rent is not in arrears for more than 3 months and rent  
24 more than 3 months in arrears if the payment of the rent is adequately secured by property held in the  
25 name of the tenant and conveyed to the insurer as collateral;

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

27 (3) premium notes, policy loans, and other policy assets and liens on policies and certificates of  
28 life insurance and annuity contracts and accrued interest, in an amount not exceeding the legal reserve and  
29 other policy liabilities carried on each individual policy;

30 (4) the net amount of uncollected and deferred premiums and annuity considerations in the case



1 of a life insurer;

2 (5) premiums in the course of collection, other than for life insurance, not more than 3 months past  
3 due, less commissions payable on the premiums. The limitation in this subsection does not apply to  
4 premiums payable directly or indirectly by the United States government or by any of its instrumentalities.

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

7 (7) notes and like written obligations not past due, taken for premiums other than life insurance  
8 premiums, on policies permitted to be issued on that basis, to the extent of the unearned premium reserves  
9 carried on the policies;

10 (8) the full amount of reinsurance recoverable by a ceding insurer from a solvent reinsurer and  
11 which reinsurance is authorized under chapter 2, part 12;

12 (9) amounts receivable by an assuming insurer representing funds withheld by a solvent ceding  
13 insurer under a reinsurance treaty;

14 (10) deposits or equities recoverable from underwriting associations, syndicates, and reinsurance  
15 funds or from any suspended banking institution, to the extent considered by the commissioner available  
16 for the payment of losses and claims and at values to be determined by the commissioner;

17 (11) electronic data processing equipment if the cost of the equipment is ~~at least \$100,000, which~~  
18 ~~cost must be~~ amortized in full over a period of not to exceed ~~40~~ 8 calendar years. However, ~~with regard~~  
19 ~~to life insurers, the equipment must be allowed as an asset if the cost of the equipment is at least \$25,000,~~  
20 ~~which cost must be amortized in full over a period of not to exceed 5 calendar years,~~ and the amount of  
21 the asset allowed may not exceed 1% of the total of the other allowable assets of the insurer.

22 (12) all assets, whether or not consistent with the provisions of this section, as may be allowed  
23 pursuant to the annual statement form approved by the commissioner for the kinds of insurance to be  
24 reported upon in the annual statement;

25 (13) other assets, not inconsistent with the provisions of this section, considered by the  
26 commissioner to be available for the payment of losses and claims, at values to be determined by the  
27 commissioner."

28

29 **Section 13.** Section 33-2-521, MCA, is amended to read:

30 **"33-2-521. Standard valuation of reserve liabilities law -- life insurance.** (1) The commissioner

1 shall annually value or cause to be valued the reserve liabilities (~~hereinafter called~~ reserves) for all  
 2 outstanding life insurance policies and annuity and pure endowment contracts of every life insurer doing  
 3 business in this state and may certify the amount of any ~~such~~ reserves, specifying the mortality table or  
 4 tables, rate or rates of interest, and methods (net level premium method or other) used in the calculation  
 5 of ~~such~~ reserves. In calculating ~~such~~ the reserves, ~~he~~ the commissioner may use group methods and  
 6 approximate averages for fractions of a year or otherwise. ~~In the case of an alien insurer, such valuation~~  
 7 ~~shall be limited to its insurance transactions in the United States.~~

8 (2) ~~For the purpose of making such valuation, the commissioner may employ a competent actuary~~  
 9 ~~who shall be paid by the insurer for which the service is rendered; but a domestic insurer may make such~~  
 10 ~~valuation and it may be received by the commissioner upon satisfactory proof of its correctness.~~ In lieu of  
 11 the valuation of the reserves ~~herein~~ required in this section of any foreign or alien insurer, the commissioner  
 12 may accept any valuation made or caused to be made by the insurance supervisory official of any state or  
 13 other jurisdiction when ~~such~~ the valuation complies with the minimum standard ~~herein~~ provided in this  
 14 section and if the official of ~~such~~ the other state or jurisdiction accepts as sufficient and valid for all legal  
 15 purposes the certificate of valuation of the commissioner when ~~such~~ the certificate states the valuation to  
 16 have been made in a specified manner according to which the aggregate reserves would be at least as large  
 17 as if they had been computed in the manner prescribed by the law of that state or jurisdiction.

18 (3) Any insurer ~~which at any time shall have~~ that has adopted any standard of valuation producing  
 19 greater aggregate reserves than those calculated according to the minimum standard ~~herein~~ provided in this  
 20 section may, with the approval of the commissioner, adopt any lower standard of valuation but not lower  
 21 than the minimum ~~herein provided~~ in this section. For the purposes of this section, the holding of additional  
 22 reserves previously determined by a qualified actuary to be necessary to render the opinion required in  
 23 subsection (4) may not be considered to be the adoption of a higher standard of valuation.

24 (4) (a) Each life insurer doing business in this state shall annually submit the opinion of a qualified  
 25 actuary as to whether the reserves and related actuarial items held in support of the policies and contracts  
 26 specified by the commissioner by rule are computed appropriately, are based on assumptions that satisfy  
 27 contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this  
 28 state. The commissioner by rule shall define the specifics of this opinion and add any other items  
 29 considered necessary to its scope.

30 (b) Each life insurer, except as exempted by or pursuant to regulation, shall also annually include

1 in the opinion required by subsection (4)(a) an opinion of the same qualified actuary as to whether the  
2 reserves and related actuarial items held in support of the policies and contracts specified by the  
3 commissioner by rule, when considered in light of the assets held by the insurer with respect to the  
4 reserves and related actuarial items, including but not limited to the investment earnings on the assets and  
5 the considerations anticipated to be received and retained under the policies and contracts, make adequate  
6 provision for the insurer's obligations under the policies and contracts, including but not limited to the  
7 benefits under and expenses associated with the policies and contracts.

8 (c) The commissioner may provide by rule for a transition period for establishing any higher  
9 reserves that the qualified actuary may consider necessary in order to render the opinion required by this  
10 subsection (4).

11 (d) Each opinion required by this subsection (4) must be governed by the following provisions:

12 (i) A memorandum, in form and substance acceptable to the commissioner as specified by rule,  
13 must be prepared to support each actuarial opinion.

14 (ii) If the insurer fails to provide a supporting memorandum at the request of the commissioner  
15 within a period specified by rule or if the commissioner determines that the supporting memorandum  
16 provided by the insurer fails to meet the standards prescribed by the rules or is otherwise unacceptable to  
17 the commissioner, the commissioner may engage a qualified actuary at the expense of the insurer to review  
18 the opinion and the basis for the opinion and to prepare any supporting memorandum as is required by the  
19 commissioner.

20 (iii) The opinion must be submitted with the annual statement reflecting the valuation of the reserve  
21 liabilities for each year ending on or after December 31, ~~1995~~ 1996.

22 (iv) The opinion must apply to all business in force, including individual and group health insurance  
23 plans, in form and substance acceptable to the commissioner as specified by rule.

24 (v) The opinion must be based on standards adopted from time to time by the actuarial standards  
25 board and on additional standards as the commissioner may prescribe by rule.

26 (vi) In the case of an opinion required to be submitted by a foreign or alien insurer, the  
27 commissioner may accept the opinion filed by that insurer with the insurance supervisory official of another  
28 state if the commissioner determines that the opinion reasonably meets the requirements applicable to a  
29 company domiciled in this state.

30 (vii) Except in cases of fraud or willful misconduct, the qualified actuary is not liable for damages

1 to any person, other than the insurer and the commissioner, for any act, error, omission, decision, or  
 2 conduct with respect to the actuary's opinion.

3 (viii) Disciplinary action by the commissioner against the insurer or the qualified actuary must be  
 4 defined in rules by the commissioner.

5 (ix) Any memorandum in support of the opinion and any other material provided by the insurer to  
 6 the commissioner in connection with those items must be kept confidential by the commissioner, may not  
 7 be made public, and is subject to subpoena, other than for the purpose of defending an action seeking  
 8 damages from any person by reason of any action required by this subsection (4) or by rules promulgated  
 9 under this subsection (4). However, the memorandum or other material may otherwise be released by the  
 10 commissioner:

11 (A) with the written consent of the insurer; or

12 (B) to the American academy of actuaries upon request stating that the memorandum or other  
 13 material is required for the purpose of professional disciplinary proceedings and setting forth procedures  
 14 satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material.  
 15 Once any portion of the confidential memorandum is cited by the insurer in its marketing, is cited before  
 16 any governmental agency other than a state insurance department, or is released by the insurer to the news  
 17 media, all portions of the confidential memorandum are no longer confidential.

18 (5) For purposes of this section, "qualified actuary" means a member in good standing of the  
 19 American academy of actuaries who meets the requirements set forth in the academy's rules."

21 **Section 14.** Section 33-2-523, MCA, is amended to read:

22 **"33-2-523. Contracts on or after the operative date of 33-20-213 -- valuation.** (1) This section  
 23 ~~shall apply~~ applies to only those policies and contracts issued on or after the operative date of 33-20-213,  
 24 except as otherwise provided in 33-2-524 for group annuity and pure endowment contracts issued prior  
 25 to that date.

26 (2) Except as otherwise provided in 33-2-524, ~~and 33-2-525, and [section 76(2)],~~ the minimum  
 27 standard for the valuation of all ~~each~~ the policies and contracts issued prior to October 1, 1995, ~~shall~~ must  
 28 be the standard provided by the laws in effect prior to October 1, 1995. Except as otherwise provided in  
 29 33-2-524, 33-2-525, and [section 76(2)], the minimum standard for the valuation of all policies and  
 30 contracts must be the commissioner's reserve valuation methods defined in 33-2-525, and 32-2-526(3),

1 ~~and (4), and [section 76],~~ 5% interest for group annuity and pure endowment contracts, and 3 1/2%  
 2 interest for all other ~~such~~ policies and contracts or, in the case of life insurance policies and contracts other  
 3 than annuity and pure endowment contracts issued on or after March 17, 1973, 4% interest for ~~such~~ all  
 4 other policies issued prior to July 1, 1979, 5 1/2% interest for single-premium life insurance policies, and  
 5 4 1/2% interest for ~~such~~ ALL OTHER policies issued on or after July 1, 1979, and the following tables:

6 (a) for all ordinary policies of life insurance issued on the standard basis, excluding any disability  
 7 and accidental death benefits in ~~such~~ the policies;

8 (i) the commissioner's 1941 standard ordinary mortality table;

9 ~~(ii)~~ for ~~such~~ policies issued prior to the operative date of 33-20-206, as amended, and the  
 10 commissioner's 1958 standard ordinary mortality table for ~~such~~ policies issued on or after that operative  
 11 date but prior to January 1, 1989, except that for any category of ~~such~~ the policies issued on female risks,  
 12 modified net premiums and present values, referred to in 33-2-525 and 33-2-526, may be calculated, at  
 13 the option of the insurer, with the approval of the commissioner, according to an age younger than the  
 14 actual age of the insured; or

15 (ii) for ~~such~~ policies issued on or after January 1, 1989:

16 (A) the commissioner's 1980 standard ordinary mortality table;

17 (B) at the election of the company for any one or more specified plans of life insurance, the  
 18 commissioner's 1980 standard ordinary mortality table with 10-year select mortality factors; or

19 (C) any ordinary mortality table adopted after 1980 by the national association of insurance  
 20 commissioners that is approved by the commissioner by rule for use in determining the minimum standard  
 21 of valuation for ~~such~~ policies;

22 (b) for all industrial life insurance policies issued on the standard basis, excluding any disability and  
 23 accidental death benefits in ~~such~~ the policies, the 1941 standard industrial mortality table for ~~such~~ policies  
 24 issued prior to the operative date of 33-20-207, ~~as amended,~~ and, for ~~such~~ policies issued on or after that  
 25 operative date, the commissioner's 1961 standard industrial mortality table or any industrial mortality table  
 26 adopted after 1980 by the national association of insurance commissioners that is approved by the  
 27 commissioner by rule for use in determining the minimum standard of valuation for ~~such~~ the policies;

28 (c) for individual annuity and pure endowment contracts, excluding any disability and accidental  
 29 death benefits in ~~such~~ the policies, the 1937 standard annuity mortality table or, at the option of the  
 30 insurer, the annuity mortality table for 1949, ultimate, or any modification of either of these tables approved

1 by the commissioner;

2 (d) for group annuity and pure endowment contracts, excluding any disability and accidental death  
3 benefits in ~~such~~ the policies, the group annuity mortality table for 1951, any modification of ~~such~~ the table  
4 approved by the commissioner, or, at the option of the insurer, any of the tables or modifications of tables  
5 specified for individual annuity and pure endowment contracts;

6 (e) (i) for total and permanent disability benefits in or supplementary to ordinary policies or  
7 contracts:

8 (A) for policies or contracts issued on or after January 1, 1966, the tables of period 2 disablement  
9 rates and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries, with  
10 due regard to the type of benefit, or any tables of disablement rates and termination rates adopted after  
11 1980 by the national association of insurance commissioners that are approved by the commissioner by  
12 rule for use in determining the minimum standard of valuation for ~~such~~ the policies;

13 (B) for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966,  
14 either ~~such~~ the tables or, at the option of the insurer, the class 3 disability table (1926); and

15 (C) for policies issued prior to January 1, 1961, the class 3 disability table (1926);

16 (ii) any ~~such~~ table ~~shall~~ must, for active lives, be combined with a mortality table permitted for  
17 calculating the reserves for life insurance policies;

18 (f) (i) for accidental death benefits in or supplementary to policies:

19 (A) for policies issued on or after January 1, 1966, the 1959 accidental death benefits table or any  
20 accidental death benefits table adopted after 1980 by the national association of insurance commissioners  
21 that is approved by the commissioner by rule for use in determining the minimum standard of valuation for  
22 ~~such~~ the policies;

23 (B) for policies issued on or after January 1, 1961, and prior to January 1, 1966, either such table  
24 or, at the option of the insurer, the intercompany double indemnity mortality table; and

25 (C) for policies issued prior to January 1, 1961, the intercompany double indemnity mortality table;

26 (ii) either table ~~shall~~ must be combined with a mortality table permitted for calculating the reserves  
27 for life insurance policies;

28 (g) for group life insurance, life insurance issued on the substandard basis, and other special  
29 benefits, ~~such~~ the tables as may be approved by the commissioner."

30

1           **Section 15.** Section 33-2-525, MCA, is amended to read:

2           "**33-2-525. Commissioner's reserve valuation method.** (1) Except as otherwise provided in  
3 subsection (4) ~~of this section, and 33-2-526(3) and (4), and [section 76(2)]~~, reserves according to the  
4 commissioner's reserve valuation method, for the life insurance and endowment benefits of policies  
5 providing for a uniform amount of insurance and requiring the payment of uniform premiums, ~~shall~~ must  
6 be the excess, if any, of the present value, at the date of valuation, of ~~such~~ the future guaranteed benefits  
7 provided for by ~~such the~~ the policies, over the then present value of any future modified net premiums ~~therefor~~.  
8 The modified net premiums for any ~~such~~ the policy ~~shall~~ must be ~~such the~~ the uniform percentage of the respective  
9 contract premiums for ~~such the~~ the benefits that the present value, at the date of issue of the policy, of all ~~such~~  
10 modified net premiums ~~shall~~ must be equal to the sum of the then present value of ~~such the~~ the benefits  
11 provided for by the policy and the excess of (a) over (b), as follows:

12           (a) a net level annual premium equal to the present value, at the date of issue, of ~~such~~ the benefits  
13 provided for after the first policy year, divided by the present value, at the date of issue of an annuity of  
14 one per annum payable on the first and each subsequent anniversary of ~~such the~~ the policy on which a  
15 premium falls due; ~~provided, however~~ However, that ~~such the~~ the net level annual premium ~~shall~~ may not  
16 exceed the net level annual premium on the 19-year premium whole life plan for insurance of the same  
17 amount at an age 1 year higher than the age at issue of ~~such the~~ the policy;

18           (b) a net 1-year term premium for ~~such~~ the benefits provided for in the first policy year.

19           (2) (a) For ~~every~~ each life insurance policy issued on or after January 1, 1987, for which the  
20 contract premium in the first policy year exceeds that of the second year, for which ~~no~~ a comparable  
21 additional benefit is not provided in the first year for ~~such the~~ the excess, and that provides an endowment  
22 benefit, a cash surrender value, or a combination of both in an amount greater than ~~such the~~ the excess  
23 premium, the reserve according to the commissioner's reserve valuation method, as of any policy  
24 anniversary occurring on or before the assumed ending date as the first policy anniversary on which the  
25 sum of any endowment benefit and any cash surrender value then available is greater than ~~such the~~ the excess  
26 premium, is, except as otherwise provided in 33-2-526, the greater of the reserve as of ~~such the~~ the policy  
27 anniversary calculated as described in subsection (1) or the reserve as of ~~such the~~ the policy anniversary  
28 calculated as described in subsection (1) with the following exceptions:

29           (i) the value defined in subsection (1)(a) is reduced by 15% of the amount of ~~such the~~ the excess  
30 first-year premium;

1 (ii) all present values of benefits and premiums are determined without reference to premiums or  
2 benefits provided for in the policy after the assumed ending date;

3 (iii) the policy is assumed to mature on ~~such~~ the assumed ending date as an endowment; and

4 (iv) the cash surrender value provided on ~~such~~ the assumed ending date is considered an  
5 endowment benefit.

6 (b) In making the comparisons in subsection (2)(a), the mortality and interest bases stated in  
7 33-2-523 and 33-2-527 must be used.

8 (3) Reserves according to the commissioner's reserve valuation method for the following ~~shall~~ must  
9 be calculated by a method consistent with the principles of this section, except that any extra premiums  
10 charged because of impairments or special hazards ~~shall~~ must be disregarded in the determination of  
11 modified net premiums:

12 (a) life insurance policies providing for a varying amount of insurance or requiring the payment of  
13 varying premiums;

14 (b) group annuity and pure endowment contracts purchased under a retirement plan or plan of  
15 deferred compensation, established or maintained by an employer, ~~{including a partnership or sole~~  
16 ~~proprietorship}~~, or by an employee organization, or by both, other than a plan providing individual retirement  
17 accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as ~~now or~~  
18 ~~hereafter~~ amended;

19 (c) disability and accidental death benefits in all policies and contracts; and

20 (d) all other benefits, except life insurance and endowment benefits in life insurance policies and  
21 benefits provided by all other annuity and pure endowment contracts.

22 (4) (a) Subsection (4)(b) applies to any annuity and pure endowment contracts other than group  
23 annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation  
24 established or maintained by an employer, ~~{including a partnership or sole proprietorship}~~, or by an  
25 employee organization, or by both, other than a plan providing individual retirement accounts or individual  
26 retirement annuities under section 408 of the Internal Revenue Code, as ~~now or hereafter~~ amended.

27 (b) Reserves according to the commissioner's annuity reserve method for benefits under annuity  
28 or pure endowment contracts, excluding any disability and accidental death benefits in ~~such~~ the contracts,  
29 ~~shall~~ must be the greatest of the respective excesses of the present values, at the date of valuation, of the  
30 future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by ~~such~~ the contracts



1 at the end of each respective contract year, over the present value, at the date of valuation, of any future  
 2 valuation considerations derived from future gross considerations required by the terms of ~~such the~~ contract  
 3 that become payable prior to the end of ~~such the~~ respective contract year. The future guaranteed benefits  
 4 ~~shall~~ must be determined by using the mortality table, if any, and the interest rate or rates specified in ~~such~~  
 5 the contracts for determining guaranteed benefits. The valuation considerations are the portions of the  
 6 respective gross considerations applied under the terms of ~~such the~~ contracts to determine nonforfeiture  
 7 values."

8  
 9 **Section 16.** Section 33-2-526, MCA, is amended to read:

10 "**33-2-526. Limits -- options -- minimum reserves.** (1) ~~In no event shall an~~ An insurer's aggregate  
 11 reserves for all life insurance policies, excluding disability and accidental death benefits issued on or after  
 12 October 1, 1995, may not be less than the aggregate reserves calculated in accordance with the methods  
 13 set forth in 33-2-525, ~~and~~ subsection (3) of this section, [section 76(2)] and the mortality table or tables  
 14 and rate or rates of interest used in calculating nonforfeiture benefits for ~~such the~~ policies.

15 (2) Reserves for all policies and contracts issued prior to October 1, 1995, may be calculated, at  
 16 the option of the insurer, according to standards that produce greater aggregate reserves for those policies  
 17 and contracts than the minimum reserves required by the laws in effect immediately prior to October 1,  
 18 1995. Reserves for any category of policies, contracts, or benefits as established by the commissioner,  
 19 issued on or after October 1, 1995, may be calculated at the option of the insurer according to any  
 20 standards which produce greater aggregate reserves for ~~such a~~ category than those calculated according  
 21 to the minimum standard ~~herein~~ provided in this section, but the rate or rates of interest used for policies  
 22 and contracts, other than annuity and pure endowment contracts, ~~shall~~ may not be higher than the  
 23 corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for ~~therein~~  
 24 a category.

25 (3) If in any contract year the gross premium charged by any life insurer on any policy or contract  
 26 is less than the valuation net premium for the policy or contract calculated by the method used in  
 27 calculating the reserve ~~thereon~~ on the policy or contract but using the minimum valuation standards of  
 28 mortality and rate of interest, the minimum reserve required for ~~such the~~ policy or contract ~~shall~~ must be  
 29 the greater of either the reserve calculated according to the mortality table, rate of interest, and method  
 30 actually used for ~~such the~~ policy or contract or the reserve calculated by the method actually used for ~~such~~

1 the policy or contract but using the minimum standards of mortality and rate of interest and replacing the  
 2 valuation net premium by the actual gross premium in each contract year for which the valuation net  
 3 premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of  
 4 interest referred to in this section are those standards stated in 33-2-524 and 33-2-527.

5 (4) For every life insurance policy issued after December 30, 1986, for which the gross premium  
 6 in the first policy year exceeds that of the second year, for which ~~no~~ a comparable additional benefit is not  
 7 provided in the first year for ~~such~~ an excess, and that provides an endowment benefit, a cash surrender  
 8 value, or a combination of both in an amount greater than ~~such~~ the excess premium, subsections (1)  
 9 through (3) of this section must be applied as if the method actually used in calculating the reserve for ~~such~~  
 10 the policy were the method described in 33-2-525(1). The minimum reserve at each policy anniversary of  
 11 ~~such a~~ the policy must be the greater of the minimum reserve calculated in accordance with 33-2-525 and  
 12 the minimum reserve calculated in accordance with this section."  
 13

14 **Section 17.** Section 33-2-528, MCA, is amended to read:

15 **"33-2-528. Interest rate weighting factor.** (1) The weighting factors referred to in the formulas  
 16 stated in 33-2-527 are as follows:

17 (a) (i) for life insurance:

18 Guarantee Duration in Years	19 Weighting Factors
20 10 or less	.50
21 More than 10 but not more than 20	.45
22 More than 20	.35

23 (ii) for life insurance, the guarantee duration is the maximum number of years the life insurance can  
 24 remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance  
 25 with premium rates or nonforfeiture values, or both, that are guaranteed in the original policy;

26 (b) .80 for single premium immediate annuities and for annuity benefits involving life contingencies  
 27 arising from other annuities with cash settlement options and guaranteed interest contracts with cash  
 28 settlement options;

29 (c) for other annuities and for guaranteed interest contracts, except as stated in subsection (1)(b),  
 30 according to the guarantee duration established in ~~subsection (2)~~ subsections (1)(c)(i) through (1)(c)(iii) and

1 the ~~type of plan~~ rules and definitions established in established in ~~subsection~~ subsections (2), (3), and (4):

2 (i) for annuities and guaranteed interest contracts valued on an issue year basis:

3 Guarantee Duration in Years	4 Weighting Factor for Plan Type		
	5 A	6 B	7 C
8 5 or less	.80	.60	.50
9 More than 5 but not more than 10	.75	.60	.50
10 More than 10 but not more than 20	.65	.50	.45
11 More than 20	.45	.35	.35

12 (ii)

13 Plan Type		
14 A	15 B	16 C

17 for annuities and guaranteed interest contracts valued on a

18 change-in-fund basis, the factors shown in subsection (1)(c)(i)

19 increased by:

20 Plan Type		
21 A	22 B	23 C

24 (iii)

25 A	26 B	27 C
------	------	------

28 for annuities and guaranteed interest contracts valued on

29 an issue year basis, ~~other than those with no~~ without cash

30 settlement options, that do not guarantee interest on

considerations received more than 1 year after issue or purchase

and for annuities and guaranteed interest contracts valued on a

change-in-fund basis that do not guarantee interest rates on

considerations received more than 12 months beyond the valuation

date, the factors set forth in subsection (1)(c)(i) or derived in

subsection (1)(c)(ii) increased by:

.05	.05	.05
-----	-----	-----

(2) For other annuities with cash settlement options and guaranteed interest contracts with cash

settlement options, the guarantee duration is the number of years for which the contract guarantees interest

rates in excess of the calendar year statutory valuation interest rate for life insurance policies with

guarantee duration in excess of 20 years. For other annuities ~~with no~~ without cash settlement options and

for guaranteed interest contracts ~~with no~~ without cash settlement options, the guarantee duration is the

1 number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to  
2 commence.

3 (3) Plan types used in subsection (1)(c) are:

4 (a) Plan Type A--No withdrawal is permitted or at any time policyholder may withdraw funds only:

5 (i) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds  
6 by the insurance company;

7 (ii) without ~~such an~~ adjustment but in installments over 5 years or more; or

8 (iii) as an immediate life annuity.

9 (b) Plan Type B--(i) Before expiration of the interest rate guarantee, no withdrawal is permitted or  
10 a policyholder may withdraw funds only:

11 (A) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds  
12 by the insurance company;

13 (B) without ~~such an~~ adjustment but in installments over 5 years or more.

14 (ii) At the end of the interest rate guarantee, funds may be withdrawn without ~~such an~~ adjustment  
15 in a single sum or installments over less than 5 years.

16 (c) Plan Type C--A policyholder may withdraw funds before expiration of the interest rate guarantee  
17 in a single sum or installments over less than 5 years either:

18 (i) without adjustment to reflect changes in interest rates or asset values since receipt of the funds  
19 by the insurance company; or

20 (ii) subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

21 (4) (a) An insurer may elect to value guaranteed interest contracts with cash settlement options  
22 and annuities with cash settlement options on either an issue year basis or on a change-in-fund basis.  
23 Guaranteed interest contracts ~~with no~~ without cash settlement options and other annuities ~~with no~~ without  
24 cash settlement options must be valued on an issue year basis.

25 (b) As used in subsection (4):

26 (i) issue year basis of valuation is a valuation basis under which the interest rate used to determine  
27 the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the  
28 calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed  
29 interest contract; and

30 (ii) change-in-fund basis of valuation is a valuation basis under which the interest rate used to

1 determine the minimum valuation standard applicable to each change in the fund held under the annuity  
 2 or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the  
 3 fund."

4

5 **Section 18.** Section 33-2-529, MCA, is amended to read:

6 **"33-2-529. Reference interest rate.** (1) The reference interest rate referred to in the formulas in  
 7 33-2-527 is:

8 (a) for all life insurance, the lesser of the average over a period of 36 months and the average over  
 9 a period of 12 months, ending on June 30 of the calendar year next preceding the year of issue, of  
 10 Moody's ~~corporate bond yield average~~— monthly average ~~corporate~~ composite yield on seasoned corporate  
 11 bonds;

12 (b) for single-premium immediate annuities and for annuity benefits involving life contingencies  
 13 arising from other annuities with cash settlement options and guaranteed interest contracts with cash  
 14 settlement options, the average over a period of 12 months, ending on June 30 of the calendar year of  
 15 issue or purchase, of Moody's ~~corporate bond yield average~~— monthly average ~~corporate~~ composite yield  
 16 on seasoned corporate bonds;

17 (c) for other annuities with cash settlement options and guaranteed interest contracts with cash  
 18 settlement options valued on a year-of-issue basis, except as stated in subsection (1)(b), with guarantee  
 19 duration in excess of 10 years, the lesser of the average over a period of 36 months and the average over  
 20 a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of Moody's ~~corporate~~  
 21 ~~bond yield average~~— monthly average ~~corporate~~ composite yield on seasoned corporate bonds;

22 (d) for other annuities with cash settlement options and guaranteed interest contracts with cash  
 23 settlement options valued on a year-of-issue basis, except as stated in subsection (1)(b), with guarantee  
 24 duration of 10 years or less, the average over a period of 12 months, ending on June 30 of the calendar  
 25 year of issue or purchase, of Moody's ~~corporate bond yield average~~— monthly average ~~corporate~~  
 26 composite yield on seasoned corporate bonds;

27 (e) for other annuities ~~with no~~ without cash settlement options and for guaranteed interest  
 28 contracts ~~with no~~ without cash settlement options, the average over a period of 12 months, ending on June  
 29 30 of the calendar year of issue or purchase, of Moody's ~~corporate bond yield average~~— monthly average  
 30 ~~corporate~~ composite yield on seasoned corporate bonds; or

1 (f) for other annuities with cash settlement options and guaranteed interest contracts with cash  
 2 settlement options valued on a change-in-fund basis, except as stated in subsection (1)(b), the average over  
 3 a period of 12 months, ending on June 30 of the calendar year of the change in the fund, of Moody's  
 4 ~~corporate bond yield average~~ monthly average ~~corporate~~ composite yield on seasoned corporate bonds.

5 (2) If Moody's ~~corporate bond yield average~~ monthly average ~~corporate~~ composite yield on  
 6 seasoned corporate bonds is no longer published by Moody's investors service, inc., or if the national  
 7 association of insurance commissioners determines that Moody's ~~corporate bond yield average~~ monthly  
 8 average ~~corporate~~ composite yield on seasoned corporate bonds, as published by Moody's investors  
 9 service, inc., is no longer appropriate for the determination of the reference interest rate, then an alternative  
 10 method for determination of the reference interest rate adopted by the national association of insurance  
 11 commissioners and approved by rule promulgated by the commissioner may be substituted."  
 12

13 **Section 19.** Section 33-2-531, MCA, is amended to read:

14 "33-2-531. **Deposit of reserves -- domestic life insurers.** (1) Domestic life insurers shall deposit  
 15 and maintain on deposit, in securities and assets, with depositaries and subject to conditions as provided  
 16 for in part 6 of this chapter, an amount not less than the reserves on its outstanding life insurance policies  
 17 and annuity contracts, as valued under 33-2-521 through 33-2-526, minus policy loans.

18 (2) Annually on or before April 1, the insurer shall ~~so~~ deposit any additional ~~such~~ securities or  
 19 assets required under subsection (1) and related to the increase of ~~such~~ the reserves, minus policy loans,  
 20 during the calendar year next preceding, as determined from the insurer's annual statement as at December  
 21 31 of ~~such~~ the preceding year.

22 (3) A domestic stock life insurer may credit toward ~~such~~ the deposit the amount of any other  
 23 deposit of the insurer held under part 6 of this chapter for the protection of its policyholders or of its  
 24 policyholders and creditors.

25 (4) Deposits of the reserves of a domestic life insurer under this section ~~shall~~ must consist of  
 26 securities and assets acquired and valued in accordance with parts 5 and 8 of this chapter.

27 (5) Real estate mortgage loans, and chattel mortgage loans, ~~and policy loans~~ may be made a part  
 28 of the deposit by filing a verified statement of the loans with the commissioner, ~~which statement shall be~~  
 29 The statement is subject to audit at all times by the commissioner. Nonnegotiable securities ~~where~~  
 30 deposited with the commissioner ~~shall~~ must be accompanied by transfer powers in due form. If the insurer

1 uses real estate acquired under 33-2-832 as a deposit, then a deed of trust, mortgage, or other instrument  
 2 sufficient to convey a security interest in ~~such~~ the real estate, in a form acceptable to the commissioner,  
 3 ~~shall~~ must be completed in due form and recorded prior to being deposited with the commissioner.

4 (6) If default occurs in the payment of interest or principal of any deposited security and ~~such~~ the  
 5 default continues for a period of 120 days, the commissioner may declare ~~such~~ the security no longer  
 6 eligible for deposit under this section."

7  
 8 **Section 20.** Section 33-2-701, MCA, is amended to read:

9 **"33-2-701. Annual statement -- revocation or fine for failure to file -- penalty for perjury.** (1) Each  
 10 authorized insurer shall annually on or before March 1 file with the commissioner a full and true statement  
 11 of its financial condition, transactions, and affairs as of the preceding December 31 ~~preceding~~. The  
 12 statement must be in the general form and context as is required or not disapproved by the commissioner,  
 13 as is in current use for similar reports to states in general with respect to the type of insurer and kinds of  
 14 insurance to be reported upon, and as supplemented for additional information required by the  
 15 commissioner. The statement must be completed in accordance with the annual statement instructions and  
 16 the accounting practices and procedures manual of the national association of insurance commissioners.  
 17 The statement must be accompanied by an actuarial opinion attesting to the adequacy of the insurer's  
 18 reserves. The statement must be verified by the oath of the insurer's president or vice-president and  
 19 secretary or, if a reciprocal insurer, by the oath of the attorney-in-fact or its like officers if a corporation.  
 20 The commissioner may waive the verification under oath.

21 (2) (a) Each domestic insurer shall file electronic diskette versions of its annual and quarterly  
 22 financial statements with the national association of insurance commissioners. The filing date for  
 23 submission of the annual statement diskette is March 1. The filing dates for the quarterly statement  
 24 diskettes are as follows:

25 (i) the first calendar quarter filing is due May 15;

26 (ii) the second calendar quarter filing is due August 15; and

27 (iii) the third calendar quarter filing is due November 15.

28 (b) The commissioner may exempt insurers that operate only in Montana from these filing  
 29 requirements.

30 ~~(2)(3)~~ The statement of an alien insurer must relate only to its transactions and affairs in the United

1 States unless the commissioner requires otherwise. If the commissioner requires a statement as to an alien  
 2 insurer's affairs throughout the world, the insurer shall file the statement with the commissioner as soon  
 3 as reasonably possible. The statement must be verified by the insurer's United States manager or other  
 4 authorized officer.

5 ~~(3)~~(4) The commissioner may refuse to accept the fee for continuance of the insurer's certificate  
 6 of authority, as provided in 33-2-117, or may suspend or revoke the certificate of authority of any insurer  
 7 failing to file its annual statement when due or within an extension of time that the commissioner may  
 8 grant.

9 ~~(4)~~(5) Any director, officer or insurance producer, or employee of any company who subscribes  
 10 to, makes, or concurs in making or publishing any annual statement or any other statement required by law  
 11 knowing that the same to contain statement contains any material statement which is false shall be  
 12 punished by a fine of not more than \$1,000.

13 ~~(5)~~(6) At time of filing, the insurer shall pay to the commissioner the fee for filing its statement as  
 14 prescribed in 33-2-708.

15 ~~(6)~~(7) The commissioner may impose a fine not to exceed \$100 a day for each day after March  
 16 1 that an insurer fails to file the annual statement referred to in subsection (1). The fine may not exceed  
 17 a maximum of \$1,000."

18

19 **Section 21.** Section 33-2-705, MCA, is amended to read:

20 **"33-2-705. Report on premiums and other consideration -- tax.** (1) Each authorized insurer and  
 21 each formerly authorized insurer with respect to premiums received while an authorized insurer in this state  
 22 shall file with the commissioner, on or before March 1 each year, a report in a form prescribed by the  
 23 commissioner showing total direct premium income, including policy, membership, and other fees,  
 24 premiums paid by application of dividends, refunds, savings, savings coupons, and similar returns or credits  
 25 to payment of premiums for new or additional or extended or renewed insurance, charges for payment of  
 26 premium in installments, and all other consideration for insurance from all kinds and classes of insurance,  
 27 whether designated as a premium or otherwise, received by a life insurer or written by an insurer other than  
 28 a life insurer during the preceding calendar year on account of policies covering property, subjects, or risks  
 29 located, resident, or to be performed in Montana, with proper proportionate allocation of premium as to  
 30 property, subjects, or risks in Montana insured under policies or contracts covering property, subjects, or



1 risks located or resident in more than one state, after deducting from the total direct premium income  
 2 applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, the amount  
 3 of reduction in or refund of premiums allowed to industrial life policyholders for payment of premiums direct  
 4 to an office of the insurer, all policy dividends, refunds, savings, savings coupons, and other similar returns  
 5 paid or credited to policyholders with respect to the policies. As to title insurance, "premium" includes the  
 6 total charge for the insurance. A deduction may not be made of the cash surrender values of policies.  
 7 Considerations received on annuity contracts may not be included in total direct premium income and are  
 8 not subject to tax.

9 (2) Coincident with the filing of the tax report referred to in subsection (1), each insurer shall pay  
 10 to the commissioner a tax upon the net premiums computed at the rate of 2 3/4%.

11 (3) That portion of the tax paid under this section by an insurer on account of premiums received  
 12 for fire insurance must be separately specified in the report as required by the commissioner, for  
 13 apportionment as provided by law. When insurance against fire is included with insurance of property  
 14 against other perils at an undivided premium, the insurer shall make a reasonable allocation from the entire  
 15 premium to the fire portion of the coverage as must be stated in the report and as may be approved or  
 16 accepted by the commissioner.

17 (4) With respect to authorized insurers, the premium tax provided by this section must be payment  
 18 in full and in lieu of all other demands for any and all state, county, city, district, municipal, and school  
 19 taxes, licenses, fees, and excises of whatever kind or character, excepting only those prescribed by this  
 20 code, taxes on real and tangible personal property located in this state, and taxes payable under 50-3-109.

21 (5) The commissioner may suspend or revoke the certificate of authority of any insurer ~~which~~ that  
 22 fails to pay its taxes as required under this section.

23 (6) In addition to the penalty provided for in subsection (5), the commissioner may impose upon  
 24 an insurer who fails to pay the tax required under this section a fine of \$100 plus interest on the delinquent  
 25 amount at the annual interest rate ~~established in 31-1-107~~ of 12%.

26 (7) The commissioner may by rule provide a quarterly schedule for payment of portions of the  
 27 premium tax under this section during the year in which tax liability is accrued."

28  
 29 **Section 22.** Section 33-2-708, MCA, is amended to read:

30 **"33-2-708. Fees and licenses.** (1) Except as provided in 33-17-212(2), the commissioner shall

1 collect in advance and the persons served shall pay to the commissioner the following fees:

2 (a) certificates of authority:

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

8 (A) domestic insurers . . . . . \$ 600.00

9 (B) foreign insurers . . . . . 600.00

10 (ii) annual continuation of certificate of authority . . . . . 600.00

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

12 (iv) amendment of certificate of authority . . . . . 50.00

13 (b) articles of incorporation:

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

16 (ii) filing amendment of articles of incorporation, domestic and foreign insurers, exclusive of fees  
 17 required to be paid to the secretary of state by a domestic corporation . . . . . 25.00

18 (c) filing bylaws or amendment to bylaws when required . . . . . 10.00

19 (d) filing annual statement of insurer, other than as part of application for original certificate of  
 20 authority . . . . . 25.00

21 (e) insurance producer's license:

22 (i) application for original license, including issuance of license, if issued . . . . . 15.00

23 (ii) appointment of insurance producer, each insurer, electronically filed . . . . . 10.00

24 (iii) appointment of insurance producer, each insurer, nonelectronically filed . . . . . 15.00

25 (iv) temporary license . . . . . 15.00

26 (v) amendment of license, ~~excluding additions to license~~, or reissuance of master license 15.00

27 (vi) termination of insurance producer, each insurer, electronically filed . . . . . 10.00

28 (vii) termination of insurance producer, each insurer, nonelectronically filed . . . . . 15.00

29 (f) nonresident insurance producer's license:

30 (i) application for original license, including issuance of license, if issued . . . . . 100.00

1	(ii) appointment of insurance producer, each insurer, electronically filed . . . . .	10.00
2	(iii) appointment of insurance producer, each insurer, nonelectronically filed . . . . .	15.00
3	(iv) annual renewal of license . . . . .	10.00
4	(v) amendment of license, <del>{excluding additions to license}</del> , or reissuance of master license	15.00
5	(vi) termination of insurance producer, each insurer, electronically filed . . . . .	10.00
6	(vii) termination of insurance producer, each insurer, nonelectronically filed . . . . .	15.00
7	(g) examination, if administered by the commissioner, for license as insurance producer, each	
8	examination . . . . .	15.00
9	(h) surplus lines insurance producer license:	
10	(i) application for original license and for issuance of license, if issued . . . . .	50.00
11	(ii) annual renewal of license . . . . .	50.00
12	(i) adjuster's license:	
13	(i) application for original license and for issuance of license, if issued . . . . .	15.00
14	(ii) annual renewal of license . . . . .	15.00
15	(j) insurance vending machine license, each machine, each year . . . . .	10.00
16	<u>(k) motor club representative's license:</u>	
17	<u>(i) application for original license and issuance of license, if issued . . . . .</u>	<u>15.00</u>
18	<u>(ii) annual renewal of license . . . . .</u>	<u>15.00</u>
19	<del>{(l)}</del> commissioner's certificate under seal, <del>{except when on certificates of authority or</del>	
20	<del>licenses}</del> . . . . .	10.00
21	<del>{(m)}</del> copies of documents on file in the commissioner's office, per page . . . . .	.50
22	<del>{(n)}</del> policy forms:	
23	(i) filing each policy form . . . . .	25.00
24	(ii) filing each application, certificate, enrollment form, rider, endorsement, amendment, insert page,	
25	schedule of rates, and clarification of risks . . . . .	10.00
26	(iii) maximum charge if policy and all forms submitted at one time or resubmitted for approval within	
27	180 days, <u>provided that all additional forms relate to the same policy</u> . . . . .	100.00
28	<del>{(o)}</del> applications for approval of prelicensing education courses:	
29	(i) reviewing initial application . . . . .	150.00
30	(ii) periodic review . . . . .	50.00

1 (2) The commissioner shall establish by rule fees commensurate with costs for filing documents  
2 and conducting the course reviews required by 33-17-1204 and 33-17-1205.

3 (3) The commissioner shall establish by rule an annual accreditation fee to be paid by each  
4 domestic and foreign insurer when it submits a fee for annual continuation of its certificate of authority:

5 (4)(a) Except as provided in subsection (4)(b), the commissioner shall promptly deposit with the  
6 state treasurer to the credit of the general fund ~~of this state~~ all fines and penalties, those amounts received  
7 pursuant to 33-2-311, 33-2-705, and 33-2-706, and any fees and examination and miscellaneous charges  
8 that are collected by the commissioner pursuant to Title 33 and the rules adopted under Title 33, except  
9 that all fees for filing documents and conducting the course reviews required by 33-17-1204 and  
10 33-17-1205 must be deposited in the state special revenue fund pursuant to 33-17-1207.

11 (b) The accreditation fee required by subsection (3) must be turned over promptly to the state  
12 treasurer who shall deposit the money in the state special revenue fund to the credit of the commissioner's  
13 office. The accreditation fee funds must be used only to pay the expenses of the commissioner's office in  
14 discharging the administrative and regulatory duties that are required to meet the minimum financial  
15 regulatory standards established by the national association of insurance commissioners, subject to the  
16 applicable laws relating to the appropriation of state funds and to the deposit and expenditure of money.  
17 The commissioner is responsible for the proper expenditure of the accreditation money.

18 (5) All fees are considered fully earned when received. In the event of overpayment, only those  
19 amounts in excess of \$10 will be refunded."  
20

21 **Section 23.** Section 33-2-803, MCA, is amended to read:

22 "**33-2-803. General qualifications of investments.** (1) ~~No~~ A security or investment, other than real  
23 and personal property acquired under 33-2-832, ~~shall be~~ is not eligible for acquisition unless it is interest  
24 bearing or interest accruing or dividend or income paying, if not then in default in any respect, and the  
25 insurer is entitled to receive for its exclusive account and benefit the interest or income accruing ~~thereon~~  
26 on the security or investment. However, up to 3% of a company's total assets may be invested in  
27 nondividend-paying common stock as described in 33-2-820.

28 (2) ~~No~~ A security or investment ~~shall be~~ is not eligible for purchase at a price above its market  
29 value.

30 (3) ~~No~~ A provision of this part ~~shall~~ may not prohibit the acquisition by an insurer of other or

1 additional securities or property if received as a dividend or as a lawful distribution of assets or under a  
 2 lawful and bona fide agreement of bulk reinsurance, merger, or consolidation. Any investment ~~so~~ acquired  
 3 ~~which that~~ is not otherwise eligible under this part ~~shall~~ must be disposed of pursuant to 33-2-842 if  
 4 personal property or securities or pursuant to 33-2-841 if real property."

5  
 6 **Section 24.** Section 33-2-806, MCA, is amended to read:

7 "**33-2-806. Diversification of investments.** An insurer shall invest in or hold as admitted assets  
 8 categories of investments only within applicable limits as follows:

9 (1) An insurer ~~shall~~ may not, except with the consent of the commissioner, have at any one time  
 10 any combination of investments in or loans upon the security of the obligations, property, or securities of  
 11 any one person or insurer aggregating an amount exceeding 5% of the insurer's assets. This restriction ~~shall~~  
 12 does not apply as to general obligations of the United States of America or of any state or include policy  
 13 loans made under 33-2-825.

14 (2) An insurer ~~shall~~ may not invest in or hold at any one time more than 10% of the outstanding  
 15 voting stock of any corporation, except with the consent of the commissioner given with respect to voting  
 16 rights of preference stock during default of dividends. This provision does not apply as to stock of a  
 17 wholly-owned subsidiary of the insurer or to controlling stock of an insurer acquired under 33-2-821.

18 (3) An insurer, other than title insurer, shall invest and maintain invested funds not less in amount  
 19 than the minimum paid-in capital stock required under this code of a domestic stock insurer transacting like  
 20 kinds of insurance, only in cash and the securities provided for under the following sections: 33-2-811(1),  
 21 33-2-812, and 33-2-830.

22 (4) A life insurer shall also invest and keep invested its funds in an amount not less than the  
 23 reserves under its life insurance policies and annuity contracts, other than variable annuities, in force in  
 24 cash, ~~and/or the~~ in securities, in both cash and securities, or in investments provided for under 33-2-531.

25 (5) Except with the commissioner's consent, an insurer ~~shall~~ may not have invested at any one  
 26 time more than 20% of its assets in the class of securities described in 33-2-818, exclusive of obligations  
 27 of public utilities.

28 (6) An insurer may not invest and have invested at any one time in aggregate amount ~~not~~ more  
 29 than ~~40%~~ 15% of its assets in all stocks under 33-2-820 and 33-2-821. Determination of the amount  
 30 ~~which that~~ an insurer has invested in common stocks for the purposes of this provision ~~shall~~ must be based

1 on the cost of ~~such~~ the stocks to the insurer. This provision ~~shall~~ does not apply as to stock of a controlled  
2 or subsidiary insurance corporation or other corporations under 33-2-821 and 33-2-822.

3 (7) Except with the commissioner’s consent, an insurer may not have invested at any one time  
4 more than 5% of its assets in securities allowed under 33-2-824.

5 (8) Except with the commissioner’s consent, an insurer ~~shall~~ may not have invested at any one  
6 time more than 10% of its assets in the class of securities described in any one of the following sections:  
7 33-2-814, 33-2-819, and 33-2-823.

8 (9) Limits as to investments in the category of real estate shall be as provided in 33-2-832. Other  
9 specific limits ~~shall~~ apply as stated in the sections dealing with other respective kinds of investments."  
10

11 **Section 25.** Section 33-2-820, MCA, is amended to read:

12 **"33-2-820. Common stocks.** An insurer may invest in nonassessable common stocks, other than  
13 insurance stocks, of any solvent corporation existing under the laws of the United States of America or of  
14 Canada or any state or province ~~thereof if cash or stock dividends have been earned and paid on its~~  
15 ~~common stock in each of the 5 fiscal years preceding such acquisition and if, further, all prior obligations~~  
16 ~~or preference stock of such corporation, if any, are eligible for investment under this part. If the issuing~~  
17 ~~corporation has not been in legal existence for the whole of the 5 preceding fiscal years but was formed~~  
18 ~~as a consolidation or merger of two or more businesses, the test of eligibility for investment of its common~~  
19 ~~stock under this section shall be based upon consolidation pro forma statements of the predecessor or~~  
20 ~~constituent institutions."~~

21  
22 **Section 26.** Section 33-2-1111, MCA, is amended to read:

23 **"33-2-1111. Registration of insurers -- requisites -- termination.** (1) ~~Every~~ An insurer ~~which is~~  
24 authorized to do business in this state ~~and which~~ that is a member of an insurance holding company system  
25 shall register with the commissioner, except that a foreign insurer subject to disclosure requirements and  
26 standards adopted by statute or regulation in the jurisdiction of its domicile ~~which~~ that are substantially  
27 similar to those contained in this section is not required to register. Any insurer ~~which is~~ subject to  
28 registration under this section shall register within 15 days after ~~it becomes~~ becoming subject to  
29 registration, unless the commissioner for good cause ~~shown~~ extends the time for registration, ~~and then~~  
30 ~~within the extended time~~. The commissioner may require any authorized insurer ~~which~~ that is a member

1 of a holding company system ~~which~~ that is not subject to registration under this section to furnish a copy  
 2 of the registration statement or other information filed by the insurance company with the insurance  
 3 regulatory authority ~~of domiciliary~~ in the jurisdiction where the company is domiciled.

4 (2) ~~Every~~ An insurer subject to registration shall file with the commissioner, on or before April 30  
 5 each year, a registration statement on a form provided by the commissioner, ~~which~~ that must contain  
 6 current information about:

7 (a) the capital structure, general financial condition, ownership, and management of the insurer and  
 8 any person controlling the insurer;

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

10 (c) ~~the following agreements in force, existing relationships subsisting, and~~ transactions currently  
 11 outstanding between the insurer and its affiliates, and the following agreements that are in force:

12 (i) loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the  
 13 insurer or of the insurer by its affiliates;

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

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

16 (iv) guaranties or undertakings for the benefit of an affiliate ~~which~~ that result in an actual  
 17 contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the  
 18 ordinary course of the insurer's business;

19 (v) ~~all~~ management and service contracts and ~~all~~ cost-sharing arrangements, ~~other than cost~~  
 20 ~~allocation arrangements based upon generally accepted accounting principles;~~

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

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

24 (viii) consolidated tax allocation agreements;

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

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

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

1 (4) Information need not be disclosed on the registration statement filed pursuant to subsection  
2 (2) if the information is not material for the purposes of this section. Unless the commissioner by rule or  
3 order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments  
4 involving 1/2 of 1% or less of an insurer's admitted assets as of the prior December 31 ~~next preceding~~ are  
5 not material for purposes of this section.

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

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

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

14 (8) The commissioner may require or allow two or more affiliated insurers subject to registration  
15 under this section to file a consolidated registration statement or consolidated reports amending their  
16 consolidated registration statement or their individual registration statements.

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

21  
22 **Section 27.** Section 33-2-1201, MCA, is amended to read:

23 **"33-2-1201. Limit of risk.** (1) An insurer may not retain any risk on any one subject of insurance,  
24 whether located or to be performed in this state or elsewhere, in an amount exceeding 10% of its surplus  
25 to policyholders.

26 (2) A "subject of insurance" for the purposes of this section, as to insurance against fire and  
27 hazards other than windstorm, earthquake, or other catastrophe hazards, includes all properties insured by  
28 the same insurer which are customarily considered by underwriters to be subject to loss or damage from  
29 the same fire or the same occurrence of the other hazard insured against.

30 (3) Reinsurance ceded as authorized by this part must be deducted in determining risk retained.



1 As to surety risks, deduction must also be made of the amount assumed by any established incorporated  
2 cosurety and the value of any security deposited, pledged, or held subject to the surety's consent and for  
3 the surety's protection.

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

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

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

14

15 **Section 28.** Section 33-2-1216, MCA, is amended to read:

16 **"33-2-1216. Credit allowed domestic ceding insurer.** (1) Credit for reinsurance is allowed to a  
17 domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only  
18 when the reinsurer meets the requirements of subsection (2), (3), (4), (5), or (6). If the requirements of  
19 subsection (4) or (5) are met, the requirements of subsection (7) must also be met.

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

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

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

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

28 (c) is licensed to transact insurance or reinsurance in at least one state or, in the case of a United  
29 States branch of an alien assuming insurer, is entered through and licensed to transact insurance or  
30 reinsurance in at least one state;

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

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

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

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

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

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

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

13 (B) submits to the authority of this state to examine its books and records.

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

16 (5) (a) Credit must be allowed when the reinsurance is ceded to an assuming insurer that maintains  
17 a trust fund in a qualified United States financial institution for the payment of the valid claims of its United  
18 States policyholders and ceding insurers and their assigns and successors in interest. The assuming insurer  
19 shall report annually to the commissioner information substantially the same as that required to be reported  
20 on the NAIC annual statement form by licensed insurers to enable the commissioner to determine the  
21 sufficiency of the trust fund.

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

25 (ii) In the case of a group, ~~of~~ including incorporated and individual unincorporated underwriters,  
26 the trust must consist of a trustee account representing the group's liabilities attributable to business  
27 written in the United States, and in addition, the group shall maintain a surplus with the trustee of which  
28 \$100 million must be held jointly for the benefit of United States ceding insurers of any member of the  
29 group.

30 (iii) The incorporated members of the group, as group members, may not be engaged in a business

1 other than underwriting as members of the group and are subject to the same level of solvency regulation  
 2 and control by the insurance regulator as the unincorporated members. The group shall make available to  
 3 the commissioner an annual certification of the solvency of each underwriter by the ~~group's domiciliary~~  
 4 insurance regulator and the independent public accountants in the jurisdiction where the underwriter is  
 5 domiciled and its independent public accountants.

6 ~~(iii)~~(iv) In the case of a group of incorporated insurers under common administration:

7 (A) the provisions of subsection ~~(5)(b)(iii)(B)~~ (5)(b)(iv)(B) apply, to the group that:

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

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

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

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

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

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

20 (III) each member of the group shall make available to the commissioner an annual certification of  
 21 the member's solvency by the ~~member's domiciliary regulator and its independent public accountant~~  
 22 insurance regulator and the independent public accountants in the jurisdiction where the underwriter is  
 23 domiciled.

24 (c) The trust must be established in a form approved by the commissioner. The trust instrument  
 25 must provide that contested claims are valid and enforceable upon the final order of any court of competent  
 26 jurisdiction in the United States. The trust must vest legal title to its assets in the trustees of the trust for  
 27 its United States policyholders and ceding insurers and their assigns and successors in interest. The trust  
 28 and the assuming insurer are subject to examination as determined by the commissioner. The trust  
 29 described in this subsection (c) must remain in effect for as long as the assuming insurer has outstanding  
 30 obligations due under the reinsurance agreements subject to the trust.

1 (d) No later than February 28 of each year, the trustees of the trust shall report to the  
 2 commissioner in writing setting forth the balance of the trust and listing the trust's investments at the end  
 3 of the preceding year. The trustees shall certify the date of termination of the trust, if planned, or certify  
 4 that the trust may not expire prior to the following December 31.

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

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

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

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

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

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

18 (ii) to designate the commissioner or a designated attorney as its attorney upon whom may be  
 19 served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding  
 20 company.

21 (b) Subsection (7)(a)(i) is not intended to conflict with or override the obligation of the parties to  
 22 a reinsurance agreement to arbitrate their disputes if an obligation is created in the agreement."  
 23

24 **Section 29.** Section 33-2-1217, MCA, is amended to read:

25 **"33-2-1217. Reduction of liability for reinsurance ceded by domestic insurer to assuming insurer**  
 26 **-- definition.** A reduction from liability for the reinsurance ceded by a domestic insurer to an assuming  
 27 insurer not meeting the requirements of 33-2-1216 must be allowed in an amount not exceeding the  
 28 liabilities carried by the ceding insurer. The reduction must be in the amount of funds held by or on behalf  
 29 of the ceding insurer, including funds held in trust for the ceding insurer:

30 (1) under a reinsurance contract with the assuming insurer as security for the payment of

1 obligations under the contract if the security is held in the United States subject to withdrawal solely by  
 2 and under the exclusive control of the ceding insurer; or

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

5 (a) cash;

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

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

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

15 (3) For the purposes of subsection (2)(c), a "qualified United States financial institution" means an  
 16 institution that:

17 (a) is organized or, in the case of a United States office of a foreign banking organization, licensed  
 18 under the laws of the United States or any of its states;

19 (b) is regulated, supervised, and examined by United States federal or state authorities with  
 20 regulatory authority over banks and trust companies; and

21 (c) has been determined by either the commissioner or the securities valuation office of the national  
 22 association of insurance commissioners to meet the standards of financial condition and standing that are  
 23 considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit  
 24 will be acceptable to the commissioner.

25 (4) For the purposes of this part, except for subsection (2)(c), "qualified United States financial  
 26 institution" means, with respect to institutions eligible to act as a fiduciary of a trust, an institution that:

27 (a) is organized or, in the case of a United States branch or agency office of a foreign banking  
 28 corporation, licensed under the laws of the United States or any of its states and that has been granted  
 29 authority to operate with fiduciary powers; and

30 (b) is regulated, supervised, and examined by federal or state authorities having regulatory authority

1 over banks and trust companies.

2 (5) The commissioner may adopt rules implementing the provisions of 33-2-307, 33-2-708, and  
 3 33-2-806."

4  
 5 **Section 30.** Section 33-2-1218, MCA, is amended to read:

6 **"33-2-1218. Reinsurance agreements affected.** Sections 33-2-1216 and 33-2-1217 apply to all  
 7 cessions after October 1, 1993, under reinsurance agreements that have had an inception, anniversary, or  
 8 renewal date on or ~~before~~ after April 1, 1993."

9  
 10 **SECTION 31. SECTION 33-2-1394, MCA, IS AMENDED TO READ:**

11 **"33-2-1394. Settlement of actions against rehabilitator, liquidator, and employees -- court approval**  
 12 **-- applicability.** (1) If any legal action against an employee for which indemnity may be available under this  
 13 section is settled prior to final adjudication on the merits, the insurer shall pay the settlement amount on  
 14 behalf of the employee or indemnify the employee for the settlement amount unless the commissioner  
 15 determines:

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

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

18 (2) In a legal action in which the rehabilitator or liquidator is a defendant, that portion of any  
 19 settlement relating to the alleged act, error, or omission of the rehabilitator or liquidator is subject to the  
 20 approval of the court before which the delinquency proceeding is pending. The court may not approve that  
 21 portion of the settlement if it determines:

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

24 (b) that the claim was caused by the intentional or willful and wanton misconduct of the  
 25 rehabilitator or liquidator.

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

29 (4) (a) ~~A~~ Except as otherwise provided, a legal action by a third party does not lie against the  
 30 rehabilitator, liquidator, or employee based in whole or in part on any alleged act, error, or omission that

1 took place prior to October 1, 1993, unless suit is filed and valid service of process is obtained by October  
2 1, 1994. A legal action that is pending on or filed after September 30, 1993, by a liquidator or a liquidation  
3 estate will lie against a former special deputy liquidator or any employee, agent, or independent contractor  
4 retained by a special deputy liquidator without regard to when the alleged act, error, or omission occurred.

5 (b) Subsections (1) through (3) apply to any suit that is pending on or filed after October 1, 1993,  
6 without regard to when the alleged act, error, or omission took place."  
7

8 **Section 32.** Section 33-2-1510, MCA, is amended to read:

9 **"33-2-1510. Minimum standards.** Unless there is a written contract between a controlling producer  
10 and a controlled insurer specifying the responsibilities of each party, the controlled insurer may not accept  
11 business from the controlling producer and the controlling producer may not place business with the  
12 controlled insurer. The contract must be approved by the board of directors of the controlled insurer and  
13 must contain the following minimum provisions:

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

17 (2) The controlling producer shall render to the controlled insurer accounts detailing all material  
18 transactions, including information necessary to support all commissions, charges, and other fees received  
19 by or owing to the controlling producer.

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

24 (4) In accordance with the provisions of this title, all funds collected for the controlled insurer's  
25 account must be held by the controlling producer in a fiduciary capacity, in one or more appropriately  
26 identified bank accounts in banks that are members of the federal reserve system. However, funds of a  
27 controlling producer not required to be licensed in this state must be maintained in compliance with the  
28 requirements of the jurisdiction in which the controlling producer's domiciliary jurisdiction producer is  
29 domiciled.

30 (5) The controlling producer shall maintain separately identifiable records of business written for

1 the controlled insurer.

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

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

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

15 (9) If the contract provides that on insurance business placed with the controlled insurer, the  
16 controlling producer is to be compensated contingent upon the controlled insurer's profits on that business,  
17 then the compensation may not be determined and paid until at least 5 years after the premiums on liability  
18 insurance are earned and at least 1 year after the premiums are earned on any other insurance. The  
19 commissions may not be paid until the adequacy of the controlled insurer's reserves on remaining claims  
20 has been independently verified pursuant to 33-2-1512.

21 (10) ~~The rates and terms of the controlling producer's commissions, charges, or other fees and~~  
22 ~~the purposes of those commissions, charges, or fees~~ A LIMIT ON THE CONTROLLING PRODUCER'S  
23 WRITINGS IN RELATION TO THE CONTROLLED INSURER'S SURPLUS AND TOTAL WRITINGS must be  
24 contained in the contract. The controlled insurer may establish a different limit for each line or subline of  
25 business. The controlled insurer shall notify the controlling producer when the applicable limit is approached  
26 and may not accept business from the controlling producer if the limit is reached. The controlling producer  
27 may not place business with the controlled insurer if it has been notified by the controlled insurer that the  
28 limit has been reached.

29 (11) The controlling producer may negotiate but may not bind reinsurance on behalf of the  
30 controlled insurer on business that the controlling producer places with the controlled insurer, except that



1 the controlling producer may bind facultative reinsurance contracts pursuant to obligatory facultative  
 2 agreements if the contract with the controlled insurer contains underwriting guidelines. For reinsurance  
 3 assumed and ceded, the guidelines must include a list of reinsurers with which the automatic agreements  
 4 are in effect, the coverages and amounts or percentages that may be reinsured, and commission  
 5 schedules."

6

7 **Section 33.** Section 33-2-1605, MCA, is amended to read:

8 **"33-2-1605. Penalties and liabilities.** (1) If, after a hearing conducted in accordance with Title 33,  
 9 chapter 1, part 7, the commissioner finds that a person has violated any provision of this part, the  
 10 commissioner may order:

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

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

13 (c) the managing general agent to reimburse the insurer, the rehabilitator, or a liquidator of the  
 14 insurer for any losses incurred by the insurer caused by a violation of this part committed by the managing  
 15 general agent.

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

18 (3) This section does not limit the power of the commissioner to impose any other penalty provided  
 19 in this title.

20 (4) This part does not limit the rights of policyholders, claimants, or ~~auditors~~ creditors."

21

22 **Section 34.** Section 33-3-431, MCA, is amended to read:

23 **"33-3-431. Borrowed surplus.** (1) A domestic stock or mutual insurer may borrow money to  
 24 defray the expenses of its organization, to provide it with surplus funds, or for any purpose of its business,  
 25 upon a written agreement that ~~such~~ the money is required to be repaid only out of the insurer's surplus in  
 26 excess of that stipulated in ~~such~~ the agreement. The agreement may provide for interest at a rate ~~no~~ not  
 27 greater than the rate established in 25-9-205, ~~which interest shall or shall not constitute a liability of the~~  
 28 ~~insurer as to its funds other than such excess of surplus, as~~ and whether the interest constitutes a liability  
 29 of the insurer must be stipulated in the agreement. No A commission or promotion expense ~~shall~~ may not  
 30 be paid in connection with ~~any such~~ a loan of the type described in this section.

1           (2) Money ~~so~~ borrowed, together with the interest ~~thereon~~ if ~~so~~ stipulated in the agreement, shall  
 2 does not form a part of the insurer's legal liabilities except as to its surplus in excess of the amount ~~thereof~~  
 3 stipulated in the agreement or ~~be~~ the basis of any setoff; ~~but~~ However, until the money or interest, or  
 4 both, are repaid, financial statements filed or published by the insurer shall must show as a footnote ~~thereto~~  
 5 the amount ~~thereof~~ then unpaid together with any interest ~~thereon~~ accrued but unpaid.

6           (3) ~~Any such~~ A loan of this type to a mutual or stock insurer ~~shall be~~ is subject to the  
 7 commissioner's approval. The insurer shall, in advance of the loan, file with the commissioner a statement  
 8 of the purpose of the loan and a copy of the proposed loan agreement. The loan and agreement ~~shall be~~  
 9 ~~deemed~~ are approved unless within 15 days after ~~date of such~~ filing the insurer is notified of the  
 10 commissioner's disapproval and ~~the reasons therefor~~ reasons for the disapproval. The commissioner shall  
 11 disapprove any proposed loan or agreement if ~~he~~ the commissioner finds the loan is unnecessary or  
 12 excessive for the purpose intended or that the terms of the loan agreement are not fair and equitable to the  
 13 parties, and to other similar lenders, if any, to the insurer, or that the information ~~so~~ filed by the insurer is  
 14 inadequate.

15           (4) ~~Any such~~ A loan to a mutual or stock insurer or a substantial portion thereof of the loan shall  
 16 must be repaid by the insurer when it is no longer reasonably necessary for the purpose originally intended.  
 17 ~~No repayment of such loan shall~~ Repayment of either principal or interest on the loan may not be made by  
 18 a mutual or stock insurer unless ~~in advance~~ approved in advance by the commissioner.

19           (5) This section ~~shall~~ does not apply to loans obtained by the insurer in the ordinary course of  
 20 business from banks and other financial institutions or to loans secured by pledge or mortgage of assets."  
 21

22           **Section 35.** Section 33-4-202, MCA, is amended to read:

23           **"33-4-202. Declaration of intention to incorporate -- articles of incorporation -- fee.** (1) The  
 24 individuals proposing to form a farm mutual insurer as referred to in 33-4-201 shall file with the  
 25 commissioner:

26           (a) a declaration of their intention to form ~~such a~~ the corporation, ~~which declaration shall be~~ signed  
 27 by at least 100 incorporators if a proposed state mutual insurer or by at least 25 incorporators if a proposed  
 28 county mutual insurer; and

29           (b) proposed articles of incorporation executed in ~~quaduplicate~~ triplicate by three or more of the  
 30 incorporators and acknowledged by each before a person authorized to take and verify acknowledgments

1 of conveyance of real property.

2 (2) The articles of incorporation ~~shall~~ must state:

3 (a) the name of the corporation. If a state mutual insurer, the words "farm mutual" must be a part  
4 of the name; if a county mutual insurer, the name ~~shall~~ must contain the words "farm mutual" or "rural  
5 mutual" together with the name of the county ~~wherein is to be located~~ in which its principal place of  
6 business is to be located. The name ~~shall~~ may not be so similar to one already used by a corporation in  
7 this state as to be misleading.

8 (b) if a county mutual insurer, the name of the county or counties in which the corporation is to  
9 transact insurance and the address where its principal business office will be located;

10 (c) if a state mutual insurer, the location of its principal business office, which ~~office~~ must be  
11 located in this state;

12 (d) the objects and purposes for which the corporation is formed;

13 (e) whether it intends to transact business on the cash premium plan or the assessment plan;

14 (f) the duration of its existence, which may be perpetual;

15 (g) the number of its directors, which ~~shall~~ may not be less than 5 or more than 11; ~~also, and~~ the  
16 names and addresses of the members of the initial board of directors appointed to manage the affairs of  
17 the corporation until the first annual meeting of the members and ~~until their~~ successors are elected and  
18 qualified;

19 (h) ~~such~~ other provisions, not inconsistent with law, ~~deemed~~ considered appropriate by the  
20 incorporators;

21 (i) the names, residences, and addresses of the incorporators and the value of ~~the~~ their property  
22 desired to be insured ~~owned by each~~ in the county or counties where the operations of the corporation are  
23 to be carried on.

24 (3) At the time of filing of the articles of incorporation as provided in subsection (1) ~~above~~, the  
25 incorporators shall pay to the commissioner a filing fee of \$10. The commissioner shall deposit ~~all such~~ the  
26 fees with the state treasurer to the credit of the general fund ~~of this state.~~"

27

28 **Section 36.** Section 33-4-203, MCA, is amended to read:

29 **"33-4-203. Approval of articles -- commencement of corporate existence.** (1) ~~Upon receipt of~~  
30 ~~proposed articles of incorporation, the commissioner shall forward the proposed articles of incorporation~~

1 ~~to the attorney general for examination.~~ If the ~~attorney general~~ commissioner finds the proposed articles  
 2 of incorporation to be in accordance with the provisions of this chapter and not in conflict with the  
 3 constitution and laws of the United States of America or of this state, the ~~attorney general~~ commissioner  
 4 shall make a certificate of the facts ~~and return it with the proposed articles to the commissioner.~~

5 (2) If the commissioner considers the name of the proposed corporation to be so similar to one  
 6 already appropriated by another company or corporation as to be likely to mislead the public, the  
 7 commissioner shall reject the name applied for and shall notify the incorporators of the rejection.

8 (3) When the proposed articles of incorporation have been approved by the ~~attorney general~~  
 9 commissioner, the commissioner shall ~~likewise~~ endorse the commissioner's approval upon each set of the  
 10 articles and forward ~~four~~ three sets of articles to the incorporators. The incorporators shall file one of the  
 11 sets of articles with the secretary of state, one set with the commissioner bearing the certification of the  
 12 secretary of state, and one set with the county clerk of the county in which the principal place of business  
 13 of the corporation is located and shall pay to the secretary of state and the county clerk the customary  
 14 filing fees. The remaining set of articles must be made a part of the corporation's records.

15 (4) The corporation has legal existence upon the approval of the articles by the ~~attorney general~~  
 16 ~~and the~~ commissioner and completion of the filings referred to in subsection (3), but it may not transact  
 17 business as an insurer until it has fulfilled the requirements for and has obtained a certificate of authority  
 18 as provided in 33-4-505."

19  
 20 **Section 37.** Section 33-5-401, MCA, is amended to read:

21 "**33-5-401. Surplus funds required.** (1) A domestic reciprocal insurer ~~hereunder formed~~ subject  
 22 to this part, if it has otherwise complied with the applicable provisions of this code, may be authorized to  
 23 transact insurance if it has and ~~thereafter~~ maintains surplus funds as follows:

24 (a) to transact property insurance, surplus funds of not less than \$400,000;

25 (b) to transact casualty insurance; ~~other than workers' compensation, surplus funds of not less~~  
 26 ~~than \$400,000.~~

27 (i) including authority for workers' compensation insurance, surplus funds of not less than  
 28 \$600,000; or

29 (ii) excluding authority for workers' compensation insurance, surplus funds of not less than  
 30 \$400,000.

1 (2) In addition to surplus funds required to be maintained under subsection (1) ~~above~~, the insurer  
 2 ~~shall~~ must have, when first ~~so~~ authorized, expendable surplus in the same amount as required of a like  
 3 foreign reciprocal insurer under 33-2-110.

4 (3) A domestic reciprocal insurer may be authorized to transact additional kinds of insurance if it  
 5 has otherwise complied with the provisions of this code ~~therefor~~ for the additional kinds of insurance and  
 6 ~~possesses and so~~ maintains surplus funds in an amount equal to the minimum capital stock required of a  
 7 stock insurer for authority to transact a like combination of kinds of insurance."

8  
 9 **Section 38.** Section 33-7-117, MCA, is amended to read:

10 **"33-7-117. Scope -- provisions applicable.** (1) Except as provided in subsection (2), societies are  
 11 governed by this chapter and are exempt from all other provisions of the insurance laws of this state, not  
 12 only in governmental relations with the state but for every other purpose. The provisions of a law enacted  
 13 after January 1, 1992, do not apply to fraternal benefit societies unless expressly made applicable by the  
 14 provisions of the law.

15 (2) In addition to the provisions of this chapter, the provisions of chapter 1, parts 1 through 4 and  
 16 7; 33-2-104; 33-2-107; 33-2-112; chapter 2, part 13; 33-3-308; 33-15-502; ~~and~~ chapters 17, 18, 20, and  
 17 22; and [sections 78 through 81] apply to fraternal benefit societies to the extent applicable and to the  
 18 extent not in conflict with the provisions of this chapter and the reasonable implications of this chapter."

19  
 20 **Section 39.** Section 33-10-201, MCA, is amended to read:

21 **"33-10-201. Short title, purpose, scope, and construction.** (1) This part ~~shall be known and~~ may  
 22 be cited as the "Montana Life and Health Insurance Guaranty Association Act".

23 (2) The purpose of this part is to protect policyowners, insureds, beneficiaries, annuitants, payees,  
 24 and assignees of life insurance policies, health insurance policies, annuity contracts, and supplemental  
 25 contracts, subject to certain limitations, against failure in the performance of contractual obligations due  
 26 to the impairment of the insurer issuing the policies or contracts.

27 (3) To provide this protection:

28 (a) an association of insurers is created to enable the guaranty of payment of benefits and of  
 29 continuation of coverages;

30 (b) members of the association are subject to assessment to provide funds to carry out the purpose

1 of this part; and

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

4 (4) This part applies to direct, nongroup life, health, annuity, and supplemental policies or  
5 contracts, to certificates under direct group policies and contracts, and to unallocated annuity contracts  
6 issued by member insurers, except as limited by this part. Annuity contracts and certificates under group  
7 annuity contracts include but are not limited to guaranteed investment contracts, deposit administration  
8 contracts, unallocated funding agreements, allocated funding agreements, structured settlement  
9 agreements, lottery contracts, and any immediate or deferred annuity contracts.

10 (5) This part provides coverage for ~~covered~~ policies and contracts specified in subsection (6):

11 (a) to persons who are owners of or certificate holders under covered policies or, in the case of  
12 unallocated annuity contracts, to the persons who are contract holders and who if the persons:

13 (i) are residents; or

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

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

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

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

19 (D) the persons are not eligible for coverage by that association; and

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

23 (6) This part covers persons specified in subsection (5)(a) for direct, nongroup life, health, annuity,  
24 and supplemental policies and contracts, for certificates under direct group policies and contracts, and for  
25 unallocated annuity contracts issued by member insurers, except as limited by this part. Annuity contracts  
26 and certificates under group annuity contracts include but are not limited to guaranteed investment  
27 contracts, deposit administration contracts, allocated and unallocated funding agreements, structured  
28 settlement agreements, lottery contracts, and immediate or deferred annuity contracts. This part does not  
29 apply to:

30 (a) ~~any~~ policies or contracts or any part of the policies or contracts under which the risk is borne

1 by the policyholder;

2 (b) any a policy or contract or part of the policy or contract assumed by the impaired insurer under  
3 a contract of reinsurance, other than reinsurance for which assumption certificates have been issued;

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

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

10 (ii) on and after the date on which the association becomes obligated with respect to the policy or  
11 contract, exceeds the rate of interest determined by subtracting 3 percentage points from Moody's  
12 corporate bond yield average as is most recently available;

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

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

18 (ii) a minimum premium group insurance plan;

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

20 (iv) an administrative services only contract;

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

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

26 (g) any unallocated annuity contract issued to an employee benefit plan that is protected under the  
27 federal pension benefit guaranty corporation; and

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

30 (7) This part must be liberally construed to effect the purpose under subsections (2) and (3), which

1 constitute an aid and guide to interpretation.

2 (8) This part may not be construed to reduce the liability for unpaid assessments of the insureds  
3 of an impaired insurer operating under a plan with assessment liability."

4

5 **Section 40.** Section 33-10-202, MCA, is amended to read:

6 **"33-10-202. Definitions.** As used in this part, the following definitions apply:

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

8 (2) "Association" means the Montana life and health insurance guaranty association created under  
9 33-10-203.

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

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

13 (5) "Impaired insurer" means:

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

16 (b) an insurer considered by the commissioner after July 1, 1974, to be unable or potentially unable  
17 to fulfill its contractual obligations.

18 (6) (a) "Member insurer" means any ~~person authorized to transact in this state any kind of~~  
19 ~~insurance to which this part applies under subsections (4) and (6) of 33-10-201~~ insurer that is licensed or  
20 that holds a certificate of authority to transact any kind of insurance in this state for which coverage is  
21 provided under 33-2-201 and includes any insurer whose license or certificate of authority may have been  
22 suspended, revoked, not renewed, or voluntarily withdrawn.

23 (b) The term does not include:

24 (i) a health service corporation;

25 (ii) a health maintenance organization;

26 (iii) a fraternal benefit society;

27 (iv) a mandatory state pooling plan;

28 (v) a mutual assessment company or any entity that operates on an assessment basis;

29 (vi) an insurance exchange; or

30 (vii) an entity similar to any of the entities listed in subsections (6)(b)(i) through (6)(b)(vi).



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

2 (8) "Premiums" means direct gross insurance premiums and annuity considerations written on  
3 covered policies, less return premiums and considerations on premiums and dividends paid or credited to  
4 policyholders on the direct business. "Premiums" do not include premiums and considerations on contracts  
5 between insurers and reinsurers. As used in 33-10-227, "premiums" are those for the calendar year  
6 preceding the determination of impairment.

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

9 (10) "Unallocated annuity contract" means an annuity contract or group annuity certificate that is  
10 not issued to and owned by an individual, except to the extent of annuity benefits guaranteed to an  
11 individual by the insurer under the contract or certificate."

12

13 **Section 41.** Section 33-11-102, MCA, is amended to read:

14 **"33-11-102. Definitions.** As used in this part, the following definitions apply:

15 (1) "Completed operations liability" means:

16 (a) liability arising out of the installation, maintenance, or repair of any product at a site that is not  
17 owned or controlled by:

18 (i) a person who performs that work; or

19 (ii) a person who hires an independent contractor to perform that work; and

20 (b) liability for activities that are completed or abandoned before the date of the occurrence giving  
21 rise to the liability.

22 (2) "Domicile", for purposes of determining the state where a purchasing group is domiciled,  
23 means:

24 (a) for a corporation, the state where the purchasing group is incorporated; and

25 (b) for an unincorporated entity, the state of its principal place of business.

26 ~~(2)(3)~~ "Hazardous financial condition" means that, based on its present or reasonably anticipated  
27 financial condition, a risk retention group, although not yet financially impaired or insolvent, is unlikely to  
28 be able to:

29 (a) meet obligations to policyholders with respect to known claims and reasonably anticipated  
30 claims; or

1 (b) pay other obligations in the normal course of business.

2 ~~{3}~~{4} "Insurance" means primary insurance, excess insurance, reinsurance, surplus line insurance,  
3 and any other arrangement for shifting and distributing risk that is determined to be insurance under the  
4 laws of this state.

5 ~~{4}~~{5} (a) "Liability" means legal liability for damages, including costs of defense, legal costs and  
6 fees, and other claims expenses, because of injuries to other persons, damage to their property, or other  
7 damage or loss to other persons resulting from or arising out of:

8 (i) a business, whether profit or nonprofit, trade, product, service (including professional service),  
9 premises, or operation; or

10 (ii) an activity of any state or local government or an agency or political subdivision ~~thereof~~ of state  
11 or local government.

12 (b) The term does not include personal risk liability or an employer's liability with respect to its  
13 employees other than legal liability under the federal Employers' Liability Act, ~~{45 U.S.C. 51 through 60}~~.  
14 As used in this subsection, "personal risk liability" means liability for damages because of injury to any  
15 person, damage to property, or other loss or damage resulting from personal, familial, or household  
16 responsibilities or activities rather than from responsibilities or activities referred to in subsection ~~{4}~~{5}  
17 (a).

18 ~~{5}~~{6} "Plan of operation or a feasibility study" means an analysis that presents the expected  
19 activities and results of a risk retention group, including at a minimum:

20 (a) the coverages, deductibles, coverage limits, rates, and rating classification systems for each  
21 line of insurance the group intends to offer;

22 (b) historical and expected loss experience of the proposed members and national experience of  
23 similar exposures to the extent this experience is reasonably available;

24 (c) pro forma financial statements and projections;

25 (d) appropriate opinions by a qualified independent casualty actuary, including a determination of  
26 minimum premium or participation levels required to commence operations and to prevent a hazardous  
27 financial condition;

28 (e) identification of management, underwriting procedures, managerial oversight methods, and  
29 investment policies; and

30 (f) other matters as may be prescribed by the commissioner for liability insurance companies

1 authorized by the insurance laws of the state where the risk retention group is chartered.

2 ~~(6)~~(7) "Purchasing group" means a group that:

3 (a) has as one of its purposes the purchase of liability insurance on a group basis;

4 (b) purchases liability insurance only for its group members and only to cover their similar or related  
5 liability exposure, as described in subsection ~~(6)(e)~~ (7)(c);

6 (c) is composed of members whose businesses or activities are similar or related with respect to  
7 the liability to which members are exposed by virtue of any related, similar, or common business, trade,  
8 product, service, premises, or operation; and

9 (d) is domiciled in any state.

10 ~~(7)~~(8) "Risk retention group" means a corporation or other limited liability association formed under  
11 the laws of any state, Bermuda, or the Cayman Islands:

12 (a) whose primary activity consists of assuming and spreading all or any portion of the liability  
13 exposure of its group members;

14 (b) that is organized for the primary purpose of conducting the activity described under subsection  
15 ~~(7)(a)~~ (8)(a);

16 (c) (i) that is chartered and licensed as a liability insurance company and authorized to engage in  
17 the business of insurance under the laws of any state; or

18 (ii) that, before January 1, 1985, was chartered or licensed and authorized to engage in the  
19 business of insurance under the laws of Bermuda or the Cayman Islands and, before that date, had certified  
20 to the insurance regulatory official of at least one state that it satisfied the capitalization requirements of  
21 that state. However, ~~such~~ the group is considered to be a risk retention group only if it has been engaged  
22 in business continuously since January 1, 1985, and only for the purpose of continuing to provide  
23 insurance to cover product liability or completed operations liability.

24 ~~(A) For purposes of this subsection (7), "completed operations liability" means liability arising out~~  
25 ~~of the installation, maintenance, or repair of any product at a site which is not owned or controlled by a~~  
26 ~~person who performs that work or hires an independent contractor to perform that work and includes~~  
27 ~~liability for activities which are completed or abandoned before the date of the occurrence giving rise to the~~  
28 ~~liability.~~

29 ~~(B)~~ For purposes of this subsection ~~(7)~~ (8), "product liability" means liability for damages because  
30 of any personal injury, death, emotional harm, consequential economic damage, or property damage,

1 ~~including damages resulting from the loss of use of property~~, arising out of the manufacture, design,  
 2 importation, distribution, packaging, labeling, lease, or sale of a product but does not include the liability  
 3 of any person for those damages if the product involved was in the possession of that person when the  
 4 incident giving rise to the claim occurred.

5 (d) that does not exclude any person from membership in the group solely to provide to members  
 6 of the group a competitive advantage over ~~such~~ the person;

7 (e) (i) that has as its members only persons who have an ownership interest in the group and that  
 8 has as its owners only persons who are members and who are provided insurance by the risk retention  
 9 group; or

10 (ii) that has as its sole member and sole owner an organization that is owned by persons who are  
 11 provided insurance by the risk retention group;

12 (f) whose members are engaged in businesses or activities that are similar or related with respect  
 13 to the liability to which the members are exposed by virtue of any related, similar, or common business,  
 14 trade, product, service, premises, or operation;

15 (g) whose activities do not include the provision of insurance other than:

16 (i) liability insurance for assuming and spreading all or any portion of the liability of its group  
 17 members; and

18 (ii) reinsurance with respect to the liability of any other risk retention group or member of ~~such~~ the  
 19 other group that is engaged in businesses or activities so that ~~such~~ the group or member meets the  
 20 requirement described in subsection ~~(7)(f)~~ (8)(f) for membership in the risk retention group that provides  
 21 the reinsurance; and

22 (h) whose name includes the phrase "risk retention group".

23 ~~(8)(9)~~ "State" means any state of the United States or the District of Columbia."  
 24

25 **Section 42.** Section 33-11-104, MCA, is amended to read:

26 **"33-11-104. Risk retention groups not chartered in this state.** A risk retention group chartered in  
 27 a state other than this state and seeking to do business as a risk retention group in this state must observe  
 28 and abide by the laws of this state as follows:

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

30 (a) a statement identifying the state or states where the risk retention group is chartered and

1 authorized as a casualty insurer, date of chartering, its principal place of business, and other information,  
2 including information on its membership, as the commissioner requires to verify that the risk retention group  
3 is qualified under 33-11-102~~(7)~~(8);

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

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

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

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

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

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

21 (d) any information as may be required to verify the group's continuing qualification as a risk  
22 retention group under 33-11-102~~(7)~~(8).

23 (3) (a) Each risk retention group is liable for the payment of premium taxes and taxes on premiums  
24 of direct business for risks resident or located within this state and shall report to the commissioner the net  
25 premiums written for risks resident or located within this state. The risk retention group is subject to  
26 taxation and any applicable interest, fines, and penalties for nonpayment that apply to foreign admitted  
27 insurers.

28 (b) To the extent that an insurance producer is used, the insurance producer shall report to the  
29 commissioner the premiums of direct business for risks resident or located within this state that the  
30 licensees have placed with or on behalf of a risk retention group not chartered in this state.

1 (c) To the extent that an insurance producer is used, the insurance producer shall keep a complete  
2 and separate record of all policies procured from each risk retention group. The record is open to  
3 examination by the commissioner, as provided in 33-1-408. The records must, for each policy and each  
4 kind of insurance provided under the policy, include the limit of liability, the time period covered, the  
5 effective date, the name of the risk retention group that issued the policy, the gross premium charged, and  
6 the amount of return premiums, if any.

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

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

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

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

21 "NOTICE

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

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

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

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

30 (9) A risk retention group is not allowed to do business in this state if an insurer is directly or

1 indirectly a member or owner of the risk retention group, other than in the case of a risk retention group  
2 all of whose members are insurers.

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

5 (11) A risk retention group not chartered in this state and doing business in this state shall comply  
6 with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced  
7 by the insurance regulatory official of any state if there has been a finding of financial impairment after an  
8 examination under subsection (6).

9 (12) Upon completion of registration requirements, the commissioner shall issue to the risk retention  
10 group a proper certificate of registration.

11 (13) A risk retention group that violates any provision of this chapter is subject to fines and  
12 penalties, including revocation of the right to do business in this state, applicable to licensed insurers  
13 generally."

14

15 **Section 43.** Section 33-11-108, MCA, is amended to read:

16 **"33-11-108. Notice and registration requirements of purchasing groups.** (1) A purchasing group  
17 that intends to do business in this state shall furnish notice to the commissioner that:

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

20 (b) specifies the lines and classifications of liability insurance that the purchasing group intends to  
21 purchase;

22 (c) identifies the insurer from which the purchasing group intends to purchase its insurance and  
23 the domicile of ~~the~~ that insurer;

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

26 (e) identifies the principal place of business of the purchasing group; ~~and~~

27 (f) provides information required by the commissioner to verify that the purchasing group is  
28 qualified under 33-11-102~~(6)~~(7); ~~and~~

29 (g) identifies the person or persons controlling the activities of the group and includes biographical  
30 information on the person or persons.

1 (2) The purchasing group shall register with and designate the commissioner as its agent solely for  
 2 the purpose of receiving service of legal documents or process. However, the requirements do not apply  
 3 in the case of a purchasing group:

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

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

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

7 and

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

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

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

14 (3) Upon completion of registration requirements, the commissioner shall issue a proper certificate  
 15 of registration to the purchasing group."  
 16

17 **Section 44.** Section 33-14-304, MCA, is amended to read:

18 "**33-14-304. Cancellation of insurance upon default.** (1) When a premium finance agreement  
 19 contains a power of attorney or other authority enabling the insurance premium finance company to cancel  
 20 any insurance contract listed in the agreement, the insurance contract or contracts may not be canceled  
 21 by the premium finance company unless ~~such~~ the cancellation is effectuated in accordance with this  
 22 section.

23 (2) ~~Not less than 10 days' written~~ Written notice must be mailed to the insured setting forth the  
 24 intent of the insurance premium finance company to cancel the insurance contract unless the default is  
 25 cured prior to the date stated in the notice. The written notice must be mailed at least 10 days prior to the  
 26 date stated in the notice. The insurance producer ~~or broker~~ indicated on the premium finance agreement  
 27 ~~shall~~ must also be mailed 10 days' notice of this action.

28 (3) Pursuant to the power of attorney or other authority referred to above, the insurance premium  
 29 finance company may cancel on behalf of the insured by mailing to the insurer written notice stating when  
 30 ~~thereafter~~ the cancellation ~~shall be~~ will become effective, and the insurance contract ~~shall~~ must be canceled



1 as if ~~such~~ the notice of cancellation had been submitted by the insured ~~himself~~ but without requiring the  
 2 return of the insurance contract. If the insurer or its insurance producer does not provide the insurance  
 3 premium finance company with a specific mailing address for the purpose of receipt of the ~~above~~ notice,  
 4 mailing by the insurance premium finance company to the insurer at the address that is on file ~~and of record~~  
 5 with the commissioner is considered sufficient notice under this section. The insurance premium finance  
 6 company shall also mail a notice of cancellation to the insured at ~~his~~ the insured's last-known address and  
 7 to the insurance producer ~~or broker~~ indicated on the premium finance agreement.

8 (4) All statutory, regulatory, and contractual restrictions providing that the insurance contract may  
 9 not be canceled unless notice is given to a governmental agency, mortgagee, or other third party apply  
 10 whenever cancellation is effected under the provisions of this section. The insurer shall give the prescribed  
 11 notice in behalf of itself or the insured to any governmental agency, mortgagee, or other third party on or  
 12 before the second business day after the day it receives the notice of cancellation from the premium finance  
 13 company and shall determine the effective date of cancellation taking into consideration the number of  
 14 days' notice required to complete the cancellation."  
 15

16 **Section 45.** Section 33-15-301, MCA, is amended to read:

17 "**33-15-301. Requiring standard provisions -- waiver.** (1) Insurance contracts ~~shall~~ must contain  
 18 ~~such~~ the standard or uniform provisions ~~as are~~ and benefits required by the applicable provisions of this  
 19 code pertaining to contracts of particular kinds of insurance. The commissioner may waive ~~the required use~~  
 20 ~~of~~ a particular provision in a particular insurance policy form if:

21 (a) ~~he~~ the commissioner finds ~~such~~ the provision or benefit unnecessary for the protection of the  
 22 insured and inconsistent with the purposes of the policy; and

23 (b) the policy is otherwise approved by ~~him~~ the commissioner.

24 (2) ~~No~~ A policy or certificate ~~shall~~ may not contain any provision or benefit inconsistent with or  
 25 contradictory to any standard or uniform provision or benefit used or required to be used, but the  
 26 commissioner may approve any substitute provision or benefit ~~which~~ that is, in ~~his~~ the commissioner's  
 27 opinion, not less favorable in any particular to the insured or beneficiary than the provisions otherwise  
 28 required.

29 (3) In lieu of the provisions required by this code for contracts for particular kinds of insurance,  
 30 substantially similar provisions required by the law of the domicile of a foreign or alien insurer may be used

1 when approved by the commissioner.

2 (4) ~~No such~~ A provision, if required to be contained in the policy, ~~can~~ may not be waived by  
3 agreement between the insurer and any other person."

4  
5 **Section 46.** Section 33-15-303, MCA, is amended to read:

6 **"33-15-303. Contents of policies in general -- identification.** (1) ~~Every~~ Each policy ~~shall~~ must  
7 specify:

8 (a) the names of the parties to the contract;

9 (b) the subject of the insurance;

10 (c) the risks insured against;

11 (d) the time when the insurance under the policy takes effect and the period during which the  
12 insurance is to continue;

13 (e) the premium;

14 (f) the conditions pertaining to the insurance.

15 (2) If under the policy the exact amount of premium is determinable only at stated intervals or  
16 termination of the contract, a statement of the basis and rates upon which the premium is to be determined  
17 and paid must be included.

18 (3) All policies and annuity contracts issued by insurers and the forms of policies and annuity  
19 contracts filed with the commissioner must have printed on the policy or annuity contract an appropriate  
20 designating letter or figure, combination of letters or figures, or terms identifying the respective forms of  
21 policies or contracts, ~~together with the year of adoption of the form.~~ Each form, including riders and  
22 endorsements, must be identified by a designating letter or figure placed in a lower, preferably left-hand,  
23 corner of the first page of the form. Whenever any change is made in any form, the designating letters,  
24 figures, or terms ~~and year of adoption~~ on the form must be correspondingly changed and the revision date  
25 must be noted next to the designating letters."

26  
27 **Section 47.** Section 33-16-202, MCA, is amended to read:

28 **"33-16-202. Recording and reporting of loss and expense experience.** (1) The commissioner ~~shall~~  
29 may promulgate and may modify reasonable rules and statistical plans, reasonably adapted to each of the  
30 rating systems used, ~~and which shall~~ must thereafter be used by each insurer in the recording and reporting

1 of its loss and countrywide expense experience, in order that the experience of all insurers may be made  
 2 available at least annually in ~~such~~ form and detail as ~~may be~~ necessary to aid ~~him~~ the commissioner in  
 3 determining whether rates comply with the applicable standards of this chapter. ~~Such~~ The rules and plans  
 4 may also provide for the recording and reporting of expense experience items ~~which~~ that are specially  
 5 applicable to this state and are not susceptible of determination by a prorating of countrywide expense  
 6 experience.

7 (2) In promulgating ~~such~~ rules and plans, the commissioner shall give ~~due~~ consideration to the  
 8 rating systems in use in this state and, in order that ~~such~~ the rules and plans may be as uniform as is  
 9 practicable among the several states, to the rules and to the form of the plans used for ~~such~~  
 10 in other states. ~~No~~ An insurer ~~shall~~ may not be required to record or report its loss experience on a  
 11 classification basis that is inconsistent with the rating system used by it.

12 (3) The commissioner may designate one or more rating organizations or other agencies to assist  
 13 ~~him~~ in gathering ~~such~~ and making compilations of loss and expense experience and ~~making compilations~~  
 14 ~~thereof~~, and ~~such~~ the compilations ~~shall~~ must be made available, subject to reasonable rules promulgated  
 15 by the commissioner, to insurers and rating organizations."  
 16

17 **Section 48.** Section 33-16-235, MCA, is amended to read:

18 **"33-16-235. Data reporting -- rules.** (1) An insurer that has transacted a line of insurance  
 19 designated as noncompetitive or volatile ~~shall~~ may report once a year to the commissioner, on forms  
 20 prescribed by the commissioner, information including:

- 21 (a) reported and estimated ultimate exposure, by year of exposure to loss;
- 22 (b) reported and estimated ultimate premiums, by year of exposure to loss;
- 23 (c) losses paid, by year incurred;
- 24 (d) loss adjustment expense paid, by year incurred;
- 25 (e) reported and ultimately incurred losses and loss adjustment expenses, by year incurred; and
- 26 (f) any other information required by the commissioner.

27 (2) An insurer transacting a line of insurance designated as noncompetitive or volatile shall provide  
 28 to the commissioner information concerning at least 5 years of experience, with information evaluated as  
 29 of the end of each calendar year. In addition to the latest reported information for each year, the insurer  
 30 shall document any adjustments, including but not limited to development factors and trend adjustments,

1 made to the reported data in projecting losses.

2 (3) The commissioner ~~shall~~ may adopt by rule reasonable development factors and trend  
3 adjustments to be applied to the reported data."  
4

5 **Section 49.** Section 33-17-102, MCA, is amended to read:

6 **"33-17-102. Definitions.** As used in this title, the following definitions apply:

7 (1) "Adjuster" means a person who, on behalf of the insurer, for compensation as an independent  
8 contractor or as the employee of an independent contractor or for fee or commission investigates and  
9 negotiates settlement of claims arising under insurance contracts or otherwise acts on behalf of the insurer.

10 The term does not include a:

11 (a) licensed attorney who is qualified to practice law in this state;

12 (b) salaried employee of an insurer or of a managing general agent; ~~or~~

13 (c) licensed insurance producer who adjusts or assists in adjustment of losses arising under policies  
14 issued by the insurer; or

15 (d) licensed third-party administrator who adjusts or assists in adjustment of losses arising under  
16 policies issued by the insurer.

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

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

22 (b) The term does not mean:

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

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

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

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

30 (iv) a life, disability, property, or casualty insurance producer who is licensed in this state and

1 whose activities are limited exclusively to the sale of insurance;

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

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

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

8 (viii) a custodian acting pursuant to a custodian account that meets the requirements of section  
9 401(f) of the Internal Revenue Code or the agents and employees of the custodian;

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

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

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

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

20 (5) "Consultant" means a person who for a fee examines, appraises, reviews, or evaluates an  
21 insurance policy, annuity, or pension contract, plan, or program or who makes recommendations or gives  
22 advice on an insurance policy, annuity, or pension contract, plan, or program.

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

25 (7) "Controlled business" means insurance procured or to be procured by or through a person upon  
26 the life, person, property, or risks of ~~himself~~ the person, ~~his~~ or the person's spouse, ~~his~~ employer, or ~~his~~  
27 business.

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

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

1 (a) means:

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

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

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

5 (ii) a managing general agent. For purposes of this ~~definition, a chapter, the term~~ "managing general  
6 agent" ~~is a person who, on behalf of an insurer, exercises general supervision over the business of the~~  
7 ~~insurer in this state or in any other state, including the authority to contract with an insurance producer for~~  
8 ~~the insurer and terminate those contracts~~ has the same meaning as set forth in 33-2-1501.

9 (b) does not mean a customer service representative. For purposes of this definition, a "customer  
10 service representative" means a salaried employee of an insurance producer who assists and is responsible  
11 to the insurance producer.

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

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

17 (12) "Public adjuster" means an adjuster employed by and representing the interests of the insured."  
18

19 **Section 50.** Section 33-17-211, MCA, is amended to read:

20 **"33-17-211. General qualifications -- application for license.** (1) An individual applying for a  
21 license shall apply on a form specified by the commissioner and declare under penalty of refusal,  
22 suspension, or revocation of the license that statements made in the application are true, correct, and  
23 complete to the best of the individual's knowledge and belief. Before approving the application, the  
24 commissioner shall verify that the individual:

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

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

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

29 (d) has successfully passed the examinations for each kind of insurance for which the individual  
30 has applied within 12 months of application;

1 (e) is a resident of this state or of another state that grants similar privileges to residents of this  
2 state. Licenses issued based upon Montana state residency terminate if the licensee relocates to another  
3 state;

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

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

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

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

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

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

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

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

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

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

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

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

27 (ii) if the person is a corporation, the secretary of state has issued a certificate of existence or  
28 authorization under 35-1-1312 or filed articles of incorporation under ~~35-2-214~~ 35-1-220.

29 (3) The commissioner may license as a resident insurance producer an association of licensed  
30 Montana insurance producers, whether or not incorporated, formed and existing substantially for purposes

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

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

12  
 13 **Section 51.** Section 33-17-405, MCA, is amended to read:

14 "**33-17-405. Service of process -- commissioner as agent.** ~~A nonresident person shall file with the~~  
 15 ~~commissioner the required forms appointing the~~ The commissioner and his successors in office shall act  
 16 ~~as the~~ a nonresident person's agent upon whom process in a legal proceeding against the nonresident  
 17 ~~person may be served, and shall agree that such~~ Service of process on the commissioner process has  
 18 ~~the same legal force and validity as personal service of process upon the nonresident person. The~~  
 19 ~~commissioner shall, within 3 working days after receiving process, forward by certified mail, at to the~~  
 20 ~~nonresident person's address of record, a copy of the process by certified mail to the person for whom he~~  
 21 ~~has received the process."~~

22  
 23 **Section 52.** Section 33-17-503, MCA, is amended to read:

24 "**33-17-503. Application -- fee -- expiration.** (1) Before a consultant license is issued or renewed,  
 25 the prospective licensee shall:

26 (a) properly file in the office of the commissioner a written application on forms the commissioner  
 27 prescribes; and

28 (b) pay a fee of \$50, which the commissioner shall deposit with the state treasurer to be credited  
 29 to the state's general fund.

30 (2) Each consultant license ~~expires on May 31 next following the date of issue~~ must be renewed



1 each year by the consultant paying a continuation fee on or before May 31, and the license continues in  
 2 force unless suspended, revoked, or otherwise terminated."

3

4 **Section 53.** Section 33-17-603, MCA, is amended to read:

5 **"33-17-603. Certificate of registration.** (1) Except as provided in 33-17-604, a person may not  
 6 act as or ~~hold himself out to be~~ represent to the public that the person is an administrator in this state  
 7 unless ~~he~~ the person holds a certificate of registration as an administrator.

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

12 (3) ~~The A~~ certificate of registration is ~~renewable annually on July 1. A request for renewal must~~  
 13 ~~be accompanied by a renewal fee of \$100~~ must be renewed each year by the administrator paying a  
 14 continuation fee of \$100 on or before July 1. Upon payment, the license continues in force unless  
 15 suspended, revoked, or otherwise terminated. The commissioner shall deposit the fee with the state  
 16 treasurer to be credited to the general fund.

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

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

23

24 ~~**Section 53.** Section 33-17-1001, MCA, is amended to read:~~

25 ~~**"33-17-1001. Suspension, revocation, or refusal of license.** (1) Except as provided in 33-17-411,~~  
 26 ~~after a hearing, which must be held no less than 10 days after advance notice by certified mail, on charges~~  
 27 ~~given under 33-1-314(3), the commissioner may suspend for up to 5 years, revoke, refuse to continue, or~~  
 28 ~~deny a license issued under this chapter if the commissioner finds that the licensee or applicant has:~~

29 ~~(a) engaged or is about to engage in an act or practice for which issuance of the license could have~~  
 30 ~~been refused;~~

1 ~~(b) obtained or attempted to obtain a license through misrepresentation or fraud;~~

2 ~~(c) violated or failed to comply with a provision of this code or has violated a rule, subpoena, or~~  
 3 ~~order of the commissioner or of the commissioner of any other state;~~

4 ~~(d) improperly withheld, misappropriated, or converted to the licensee's or applicant's own use~~  
 5 ~~money or property belonging to policyholders, insurers, beneficiaries, or others and received in conduct of~~  
 6 ~~business under the license;~~

7 ~~(e) been convicted of a felony;~~

8 ~~(f) in the conduct of the affairs under the license, used fraudulent, coercive, or dishonest practices~~  
 9 ~~or the licensee or applicant is incompetent, untrustworthy, financially irresponsible, or a source of injury~~  
 10 ~~and loss to the public;~~

11 ~~(g) made a materially untrue statement in the license application or in the continuing education~~  
 12 ~~affidavit;~~

13 ~~(h) misrepresented the terms of an actual or proposed insurance contract;~~

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

15 ~~(j) had a similar license suspended or revoked in any other state;~~

16 ~~(k) forged another's name to an application for insurance;~~

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

18 ~~(m) knowingly accepted insurance business from a person who is not licensed.~~

19 ~~(2) The license of a partnership or corporation may be suspended, revoked, refused, or denied if~~  
 20 ~~a reason listed in subsection (1) applies to an individual designated in the license to exercise its powers or~~  
 21 ~~to a partner or officer in the partnership or corporation.~~

22 ~~(3) The commissioner may suspend, revoke, or refuse to continue a license under subsection (1)(e)~~  
 23 ~~without conducting an investigation pursuant to 37-1-203 or making a written finding pursuant to~~  
 24 ~~37-1-204."~~

25  
 26 **Section 54.** Section 33-18-212, MCA, is amended to read:

27 **"33-18-212. Illegal dealing in premiums -- improper charges for insurance.** (1) A person may not  
 28 willfully collect any sum as a premium or charge for insurance, ~~which insurance~~ that is not then provided  
 29 or is not in due course to be provided, ~~{subject to acceptance of the risk by the insurer},~~ by an insurance  
 30 policy issued by an insurer as authorized by this code.

1           (2) A person may not willfully collect as a premium or charge for insurance any sum in excess of  
 2 or less than the premium or charge applicable to ~~such~~ the insurance and, as specified in the policy, in  
 3 accordance with the applicable classifications and rates ~~as~~ filed with ~~and~~ or approved by the commissioner;  
 4 or in cases ~~where~~ in which classifications, premiums, or rates are not required by this code to be ~~se~~ filed  
 5 ~~and~~ or approved, ~~such~~ the premiums and charges may not be in excess of or less than those specified in  
 6 the policy and as fixed by the insurer. This provision may not ~~be deemed to~~ prohibit the charging and  
 7 collection, by surplus lines insurance producers licensed under chapter 2, part 3, of the amount of  
 8 applicable state and federal taxes in addition to the premium required by the insurer. ~~#~~ This provision may  
 9 not ~~be considered to~~ prohibit the charging and collection, by a life insurer, of amounts actually to be  
 10 expended for medical examination of an applicant for life insurance or for reinstatement of a life insurance  
 11 policy.

12           (3) Each violation of this section is punishable under 33-1-104."  
 13

14           **Section 55.** Section 33-18-301, MCA, is amended to read:

15           "**33-18-301. Prohibited relations with mortuaries.** (1) ~~No~~ A life insurer and its officers, employees,  
 16 or representatives may not own, manage, supervise, operate, or maintain any mortuary, funeral, or  
 17 undertaking establishment ~~or permit its officers, employees, or representatives to own, operate, maintain,~~  
 18 ~~or be employed in any such business~~ in Montana.

19           (2) ~~No~~ A life insurer may not contract or agree with any funeral director, mortuary, or undertaker  
 20 ~~to the effect that~~ such the funeral director, undertaker, or mortuary shall conduct the funeral or be named  
 21 beneficiary of any person insured by ~~such~~ the insurer. This subsection does not prohibit a life insurer from  
 22 making insurance, designated as funeral insurance, available.

23           (3) A funeral insurance policy and any solicitation material for the policy must clearly indicate that:

24           (a) the policy is a life insurance product;

25           (b) the applicant may designate the beneficiary, provided that there is an appropriate and insurable  
 26 interest;

27           (c) the beneficiary may use the proceeds for any purpose; and

28           (d) any attempt by the insurer or its representative to have the insured designate a specific  
 29 beneficiary, including but not limited to a funeral director, mortuary, or undertaker, constitutes a violation  
 30 of this section punishable as a misdemeanor pursuant to subsection (4).

1           ~~(3)~~(4) Each violation of this section constitutes a misdemeanor punishable by a fine of not more  
2 than \$1,000 or by imprisonment for not more than 6 months or ~~by both such fine and imprisonment.~~"

3  
4           **Section 56.** Section 33-22-131, MCA, is amended to read:

5           **"33-22-131. Coverage for phenylketonuria treatment.** (1) Each group or individual medical  
6 expense disability policy, certificate of insurance, and membership contract that is delivered, issued for  
7 delivery, renewed, extended, or modified in this state must provide coverage for the treatment of  
8 phenylketonuria.

9           (2) For purposes of this section, "treatment" means licensed professional medical services under  
10 the supervision of a physician and a dietary formula product to achieve and maintain normalized blood levels  
11 of phenylalanine and adequate nutritional status.

12           (3) These services are subject to the terms of the applicable group or individual disability policy,  
13 certificate, or membership contract that establishes durational limits, dollar limits, deductibles, and  
14 copayment provisions as long as the terms are not less favorable than for physical illness generally.

15           (4) This section does not apply to disability income, hospital indemnity, medicare supplement,  
16 accident-only, vision, dental, or specified disease policies."

17  
18           **Section 57.** Section 33-22-132, MCA, is amended to read:

19           **"33-22-132. Coverage for mammography examinations.** (1) Each group or individual medical  
20 expense, cancer, hospital indemnity, and blanket disability policy, certificate of insurance, and membership  
21 contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide  
22 minimum mammography examination coverage.

23           (2) For the purpose of this section, "minimum mammography examination" means:

24           (a) one baseline mammogram for a woman who is 35 years of age or older and under 40 years of  
25 age;

26           (b) a mammogram every 2 years for any woman who is 40 years of age or older and under 50  
27 years of age or more frequently if recommended by the woman's physician; and

28           (c) a mammogram each year for a woman who is 50 years of age or older.

29           (3) A minimum \$70 payment or the actual charge if the charge is less than \$70 must be made for  
30 each mammography examination performed before the application of the terms of the applicable group or

1 individual disability policy, certificate of insurance, or membership contract that establish durational limits,  
 2 deductibles, and copayment provisions as long as the terms are not less favorable than for physical illness  
 3 generally.

4 (4) This section does not apply to disability income, hospital indemnity, medicare supplement,  
 5 accident-only, vision, dental, or specified disease policies."

6  
 7 **Section 58.** Section 33-22-201, MCA, is amended to read:

8 **"33-22-201. Format and content.** A An individual policy of disability insurance may not be  
 9 delivered or issued for delivery to any person in this state unless it otherwise complies with this code and  
 10 complies with the following:

11 (1) The entire money and other considerations for the policy must be expressed in the policy.

12 (2) The time when the insurance takes effect and terminates must be expressed in the policy.

13 (3) The policy may insure only one person, except that a policy may insure, originally or by  
 14 subsequent amendment, upon the application of an adult member of a family who is the policyholder, any  
 15 two or more eligible members of that family, including husband, wife, dependent children or any children  
 16 under a specified age that may not exceed ~~40~~ 25 years, and any other person dependent upon the  
 17 policyholder.

18 (4) The style, arrangement, and overall appearance of the policy may not give undue prominence  
 19 to any portion of the text, and every printed portion of the text of the policy and of any endorsements or  
 20 attached papers must be plainly printed in lightfaced type of a style in general use, the size of which must  
 21 be uniform and not less than 10 point with a lowercase, unspaced alphabet length not less than 120 point.

22 (5) The "text" must include all printed matter except the name and address of the insurer, name  
 23 or title of the policy, the brief description, if any, and captions and subcaptions.

24 (6) The exceptions and reductions of indemnity must be set forth in the policy and, other than  
 25 those contained in 33-22-204 through 33-22-215 and ~~33-22-217~~ 33-22-221 through 33-22-231, must be  
 26 printed, at the insurer's option, either included with the benefit provision to which they apply or under an  
 27 appropriate caption such as "Exceptions" or "Exceptions and Reductions", except that if an exception or  
 28 reduction specifically applies only to a particular benefit of the policy, a statement of the exception or  
 29 reduction must be included with the benefit provision to which it applies.

30 ~~(7) Each form, including riders and endorsements, must be identified by a form number in the lower~~

1 left hand corner of the first page of the form.

2 ~~(8)(7)~~ The policy may not contain a provision purporting to make any portion of the charter, rules,  
3 constitution, or bylaws of the insurer a part of the policy unless the portion is set forth in full in the policy,  
4 except in the case of the incorporation of or reference to a statement of rates or classification of risks or  
5 short-rate table filed with the commissioner.

6 ~~(9) Each individual disability policy, except for a single premium nonrenewable policy, issued for~~  
7 ~~delivery in this state on or after January 1, 1980, must contain a notice stating in substance that if the~~  
8 ~~person to whom the policy is issued is not satisfied for any reason, the person is permitted to return the~~  
9 ~~policy within 10 days of its delivery, or a longer period as the policy may provide, and to have refunded~~  
10 ~~the amount of the premium paid. A policy returned pursuant to this subsection is void from the beginning."~~

11

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

13 **"33-22-202. Required provisions -- captions -- omissions -- substitutions -- order.** (1) Except as  
14 provided in subsection (2), each policy delivered or issued for delivery to any person in this state must  
15 contain the provisions specified in 33-22-204 through 33-22-215, ~~in the words in which the~~ as those  
16 provisions appear, except that the insurer may, at its option, substitute for one or more of the provisions  
17 corresponding provisions of different wording approved by the commissioner ~~which are in each instance~~  
18 and not less favorable in any respect to the insured or the beneficiary. Each provision must be preceded  
19 ~~individually~~ by the applicable caption shown or, at the option of the insurer, by the appropriate individual  
20 or group captions or subcaptions as the commissioner may approve.

21 (2) If any provision is in whole or in part inapplicable to or inconsistent with the coverage provided  
22 by a particular form of policy, the insurer, with the approval of the commissioner, shall omit from the policy  
23 any inapplicable provision or part of a provision and shall modify any inconsistent provision or part of a  
24 provision in a manner as to make the provision as contained in the policy consistent with the coverage  
25 provided by the policy.

26 (3) The provisions that are the subject of 33-22-204 through 33-22-215 and ~~33-22-217~~ 33-22-221  
27 through 33-22-232 or any corresponding provisions which are used in accordance with the cited sections  
28 must be printed in the consecutive order of the provisions in the sections or, at the option of the insurer,  
29 any provision may appear as a unit in any part of the policy with other provisions to which it may be  
30 logically related, provided that the resulting policy is not in whole or in part unintelligible, uncertain,

1 ambiguous, abstruse, or likely to mislead a person to whom the policy is offered, delivered, or issued.”

2

3 **Section 60.** Section 33-22-301, MCA, is amended to read:

4 **"33-22-301. Coverage of newborn under disability policy.** (1) Each policy of disability insurance  
5 or certificate issued ~~thereunder shall~~ must contain a provision granting immediate accident and sickness  
6 coverage, from and after the moment of birth, to each newborn infant of any insured.

7 (2) The coverage for newborn infants must be the same as provided by the policy for the other  
8 covered persons; ~~provided, however~~ However, that for newborn infants there ~~shall be no~~ may not be  
9 waiting or elimination periods. A deductible or reduction in benefits applicable to the coverage for newborn  
10 infants is not permissible unless it conforms and is consistent with the deductible or reduction in benefits  
11 applicable to all other covered persons.

12 (3) ~~No~~ A policy or certificate of insurance may not be issued or amended in this state if it contains  
13 any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or  
14 insurability of newborn infants of an insured from and after the moment of birth.

15 (4) ~~If payment of a specific premium or subscription fee is required to provide coverage for a child,~~  
16 ~~the policy or contract may require that notification of birth of a newly born child and payment of the~~  
17 ~~required premium or fees must be furnished to the insurer or nonprofit service or indemnity corporation~~  
18 ~~within 31 days after the date of birth in order to have the coverage continue beyond such 31 day period.~~  
19 The policy or contract may require notification of the birth of a child and payment of a required premium  
20 or subscription fee to be furnished to the insurer or nonprofit or indemnity corporation within 31 days of  
21 the birth in order to have the coverage extend beyond 31 days."

22

23 **Section 61.** Section 33-22-303, MCA, is amended to read:

24 **"33-22-303. Coverage for well-child care.** (1) Each medical expense policy of disability insurance  
25 or certificate issued under the policy that is delivered, issued for delivery, renewed, extended, or modified  
26 in this state by a disability insurer and that provides coverage for a family member of the insured or  
27 subscriber must provide coverage for well-child care for children from the moment of birth through 2 years  
28 of age. Benefits provided under this coverage are exempt from any deductible provision that may be in  
29 force in the policy or certificate issued under the policy.

30 (2) Coverage for well-child care under subsection (1) must include:

1 (a) a history, physical examination, developmental assessment, anticipatory guidance, and  
 2 laboratory tests, according to the schedule of visits adopted under the early and periodic screening,  
 3 diagnosis, and treatment services program provided for in 53-6-101; and

4 (b) routine immunizations according to the schedule for immunizations recommended by the  
 5 immunization practices advisory committee of the U.S. department of health and human services.

6 (3) Minimum benefits may be limited to one visit payable to one provider for all of the services  
 7 provided at each visit cited in this section.

8 (4) This section does not apply to disability income, specified disease, medicare supplement, or  
 9 hospital indemnity policies.

10 (5) For purposes of this section:

11 (a) "well-child care" means the services described in subsection (2) and delivered by a physician  
 12 or a health care professional supervised by a physician; and

13 (b) "developmental assessment" and "anticipatory guidance" mean the services described in the  
 14 Guidelines for Health Supervision II, published by the American academy of pediatrics.

15 (6) When a policy of disability insurance or a certificate issued under the policy provides coverage  
 16 or benefits to a resident of this state, it is considered to be delivered in this state within the meaning of this  
 17 section, whether the insurer that issued or delivered the policy or certificate is located inside or outside of  
 18 this state."

19  
 20 **Section 62.** Section 33-22-504, MCA, is amended to read:

21 **"33-22-504. Newborn infant coverage.** (1) ~~Ne A~~ group disability policy or certificate of insurance  
 22 ~~which, in addition to covering persons in the insured group, also covers members of such person's family~~  
 23 delivered or issued for delivery in this state may not be issued or amended in this state if it contains any  
 24 disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or  
 25 insurability of newborn infants of persons covered under the policy from and after the moment of birth.

26 (2) ~~If the A policy or certificate issued thereunder, in addition to covering persons in the insured~~  
 27 ~~group, also covers members of such person's family, it shall~~ subject to this section, must contain an  
 28 ~~additional~~ a provision granting immediate accident and sickness coverage, from and after the moment of  
 29 birth, to each newborn infant of any person covered under the policy.

30 (3) The coverage for newborn infants ~~shall~~ must be the same as provided by the policy for other



1 covered persons; ~~provided, however~~ However, that for newborn infants there ~~shall~~ may not be ~~no~~ waiting  
 2 or elimination periods. A deductible or reduction in benefits applicable to the coverage for newborn infants  
 3 is not permissible unless it conforms and is consistent with the deductible or reduction in benefits applicable  
 4 to all other covered persons.

5 (4) This section does not apply to medicare supplement policies issued by reason of age.

6 (5) When a group disability policy or certificate issued under the policy provides for coverage or  
 7 benefits for a resident of this state, the policy or certificate is considered delivered in this state within the  
 8 meaning of this section regardless of whether the insurer issuing the policy or certificate is located in this  
 9 state.

10 (6) The policy or certificate may require notification of the birth of a child and payment of a  
 11 required premium or subscription fee to be furnished to the insurer or nonprofit or indemnity corporation  
 12 within 31 days of the birth in order to have the coverage extend beyond 31 days."

13  
 14 **Section 63.** Section 33-22-508, MCA, is amended to read:

15 **"33-22-508. Conversion on termination of eligibility.** (1) A group disability insurance policy or  
 16 certificate of insurance delivered or issued for delivery or renewed after October 1, 1981, must contain a  
 17 provision that if the insurance or any portion of it on a person, ~~his~~ or the person's dependents, or family  
 18 members covered under the policy ceases because of termination of ~~his~~ the person's employment or ~~of his~~  
 19 membership in the class or classes eligible for coverage under the policy or as a result of ~~his~~ the person's  
 20 employer discontinuing ~~his~~ the business or as a result of ~~his~~ the employer discontinuing the group disability  
 21 insurance policy and not providing for any other group disability insurance or plan and if the person had  
 22 been insured for a period of 3 months and ~~he~~ is not insured under another major medical disability insurance  
 23 policy or plan, ~~he~~ the person is entitled to have issued ~~to him~~ by the insurer, without evidence of  
 24 insurability, group coverage or an individual policy ~~issued by the insurer~~ or, in the absence of an individual  
 25 policy issued by the insurer, a group policy issued by the insurer, of hospital or medical service insurance  
 26 on ~~himself~~ the person, his and the person's dependents, or family members if application for the individual  
 27 policy is made and the first premium tendered to the insurer within 31 days after the termination of group  
 28 coverage.

29 (2) The individual policy or group policy, at the option of the insured, may be on any form then  
 30 customarily issued by the insurer to individual or group policyholders, with the exception of a policy the

1 eligibility for which is determined by affiliation other than by employment with a common entity.

2 (3) The premium on the individual policy or group policy must be at the insurer's then customary  
3 rate applicable to the coverage of the individual or group policy."

4  
5 **Section 64.** Section 33-22-1120, MCA, is amended to read:

6 "**33-22-1120. Extraterritorial jurisdiction.** A group long-term care insurance policy or certificate  
7 may not be delivered or issued for delivery to a resident of Montana under a group policy issued in another  
8 state ~~to a group described in 33-22-1107(3)(d)~~ unless it is approved by:

9 (1) the commissioner; ~~or~~ and

10 (2) the insurance regulatory official of a state that has statutory and regulatory long-term care  
11 insurance requirements substantially similar to those adopted in Montana."

12  
13 **Section 65.** Section 33-22-1803, MCA, is amended to read:

14 "**33-22-1803. Definitions.** As used in this part, the following definitions apply:

15 (1) "Actuarial certification" means a written statement by a member of the American academy of  
16 actuaries or other individual acceptable to the commissioner that a small employer carrier is in compliance  
17 with the provisions of 33-22-1809, based upon the person's examination, including a review of the  
18 appropriate records and of the actuarial assumptions and methods used by the small employer carrier in  
19 establishing premium rates for applicable health benefit plans.

20 (2) "Affiliate" or "affiliated" means any entity or person who directly or indirectly, through one or  
21 more intermediaries, controls, is controlled by, or is under common control with a specified entity or person.

22 (3) "Assessable carrier" means all individual carriers of disability insurance and all carriers of group  
23 disability insurance, excluding the state group benefits plan provided for in Title 2, chapter 18, part 8, the  
24 Montana university system health plan, and any self-funded disability insurance plan provided by a political  
25 subdivision of the state.

26 (4) "Base premium rate" means, for each class of business as to a rating period, the lowest  
27 premium rate charged or that could have been charged under the rating system for that class of business  
28 by the small employer carrier to small employers with similar case characteristics for health benefit plans  
29 with the same or similar coverage.

30 (5) "Basic health benefit plan" means a lower cost health benefit plan developed pursuant to

1 33-22-1812.

2 (6) "Board" means the board of directors of the program established pursuant to 33-22-1818.

3 (7) "Carrier" means any person who provides a health benefit plan in this state subject to state  
4 insurance regulation. The term includes but is not limited to an insurance company, a fraternal benefit  
5 society, a health service corporation, a health maintenance organization, and, to the extent permitted by  
6 the Employee Retirement Income Security Act of 1974, a multiple-employer welfare arrangement. For  
7 purposes of this part, companies that are affiliated companies or that are eligible to file a consolidated tax  
8 return must be treated as one carrier, except that the following may be considered as separate carriers:

9 (a) an insurance company or health service corporation that is an affiliate of a health maintenance  
10 organization located in this state;

11 (b) a health maintenance organization located in this state that is an affiliate of an insurance  
12 company or health service corporation; or

13 (c) a health maintenance organization that operates only one health maintenance organization in  
14 an established geographic service area of this state.

15 (8) "Case characteristics" means demographic or other objective characteristics of a small employer  
16 that are considered by the small employer carrier in the determination of premium rates for the small  
17 employer, provided that gender, claims experience, health status, and duration of coverage are not case  
18 characteristics for purposes of this part.

19 (9) "Class of business" means all or a separate grouping of small employers established pursuant  
20 to 33-22-1808.

21 (10) "Committee" means the health benefit plan committee created pursuant to 33-22-1812.

22 (11) "Dependent" means:

23 (a) a spouse or an unmarried child under 19 years of age;

24 (b) an unmarried child, under 23 years of age, who is a full-time student and who is financially  
25 dependent on the insured;

26 (c) a child of any age who is disabled and dependent upon the parent as provided in 33-22-506  
27 and 33-30-1003; or

28 (d) any other individual defined ~~to be~~ as a dependent in the health benefit plan covering the  
29 employee.

30 (12) "Eligible employee" means an employee who works on a full-time basis and who has a normal

1 workweek of 30 hours or more. The term includes a sole proprietor, a partner of a partnership, and an  
 2 independent contractor if the sole proprietor, partner, or independent contractor is included as an employee  
 3 under a health benefit plan of a small employer. The term does not include an employee who works on a  
 4 part-time, temporary, or substitute basis.

5 (13) "Established geographic service area" means a geographic area, as approved by the  
 6 commissioner and based on the carrier's certificate of authority to transact insurance in this state, within  
 7 which the carrier is authorized to provide coverage.

8 (14) "Health benefit plan" means any hospital or medical policy or certificate providing for physical  
 9 and mental health care issued by an insurance company, a fraternal benefit society, or a health service  
 10 corporation or issued under a health maintenance organization subscriber contract. Health benefit plan does  
 11 not include:

12 (a) accident-only, credit, dental, vision, specified disease, medicare supplement, long-term care,  
 13 or disability income insurance;

14 (b) coverage issued as a supplement to liability insurance, workers' compensation insurance, or  
 15 similar insurance; or

16 (c) automobile medical payment insurance.

17 (15) "Index rate" means, for each class of business for a rating period for small employers with  
 18 similar case characteristics, the average of the applicable base premium rate and the corresponding highest  
 19 premium rate.

20 (16) "Late enrollee" means an eligible employee or dependent who requests enrollment in a health  
 21 benefit plan of a small employer following the initial enrollment period during which the individual was  
 22 entitled to enroll under the terms of the health benefit plan, provided that the initial enrollment period was  
 23 a period of at least 30 days. However, an eligible employee or dependent may not be considered a late  
 24 enrollee if:

25 (a) the individual requests enrollment within 30 days after termination of the qualifying previous  
 26 coverage and meets each of the following conditions:

27 (i) the individual was covered under qualifying previous coverage at the time of the initial  
 28 enrollment; or

29 (ii) the individual lost coverage under qualifying previous coverage as a result of termination of  
 30 employment or eligibility, the involuntary termination of the qualifying previous coverage, the death of a

1 spouse, or divorce; ~~and~~

2 ~~(iii) the individual requests enrollment within 30 days after termination of the qualifying previous~~  
3 ~~coverage;~~

4 (b) the individual is employed by an employer that offers multiple health benefit plans and the  
5 individual elects a different plan during an open enrollment period; or

6 (c) a court has ordered that coverage be provided for a spouse, minor, or dependent child under  
7 a covered employee's health benefit plan and a request for enrollment is made within 30 days after issuance  
8 of the court order.

9 (17) "New business premium rate" means, for each class of business for a rating period, the lowest  
10 premium rate charged or offered or that could have been charged or offered by the small employer carrier  
11 to small employers with similar case characteristics for newly issued health benefit plans with the same or  
12 similar coverage.

13 (18) "Plan of operation" means the operation of the program established pursuant to 33-22-1818.

14 (19) "Premium" means all money paid by a small employer and eligible employees as a condition  
15 of receiving coverage from a small employer carrier, including any fees or other contributions associated  
16 with the health benefit plan.

17 (20) "Program" means the Montana small employer health reinsurance program created by  
18 33-22-1818.

19 (21) "Qualifying previous coverage" means benefits or coverage provided under:

20 (a) medicare or medicaid;

21 (b) an employer-based health insurance or health benefit arrangement that provides benefits similar  
22 to or exceeding benefits provided under the basic health benefit plan; or

23 (c) an individual health insurance policy, including coverage issued by an insurance company, a  
24 fraternal benefit society, a health service corporation, or a health maintenance organization that provides  
25 benefits similar to or exceeding the benefits provided under the basic health benefit plan, provided that the  
26 policy has been in effect for a period of at least 1 year.

27 (22) "Rating period" means the calendar period for which premium rates established by a small  
28 employer carrier are assumed to be in effect.

29 (23) "Reinsuring carrier" means a small employer carrier participating in the reinsurance program  
30 pursuant to 33-22-1819.

1 (24) "Restricted network provision" means a provision of a health benefit plan that conditions the  
 2 payment of benefits, in whole or in part, on the use of health care providers that have entered into a  
 3 contractual arrangement with the carrier pursuant to Title 33, chapter 22, part 17, or Title 33, chapter 31,  
 4 to provide health care services to covered individuals.

5 (25) "Small employer" means a person, firm, corporation, partnership, or association that is actively  
 6 engaged in business and that, on at least 50% of its working days during the preceding calendar quarter,  
 7 employed at least 3 but not more than 25 eligible employees, the majority of whom were employed within  
 8 this state or were residents of this state. In determining the number of eligible employees, companies are  
 9 considered one employer if they:

10 (a) are affiliated companies;

11 (b) are eligible to file a combined tax return for purposes of state taxation; or

12 (c) are members of an association that:

13 (i) has been in existence for 1 year prior to January 1, 1994;

14 (ii) provides a health benefit plan to employees of its members as a group; and

15 (iii) does not deny coverage to any member of its association or any employee of its members who  
 16 applies for coverage as part of a group.

17 (26) "Small employer carrier" means a carrier that offers health benefit plans that cover eligible  
 18 employees of one or more small employers in this state.

19 (27) "Standard health benefit plan" means a health benefit plan developed pursuant to  
 20 33-22-1812."

21

22 **Section 66.** Section 33-22-1819, MCA, is amended to read:

23 **"33-22-1819. Program plan of operation -- treatment of losses -- exemption from taxation.** (1)  
 24 Within 180 days after the appointment of the initial board, the board shall submit to the commissioner a  
 25 plan of operation and may at any time submit amendments to the plan necessary or suitable to ensure the  
 26 fair, reasonable, and equitable administration of the program. The commissioner may, after notice and  
 27 hearing, approve the plan of operation if the commissioner determines it to be suitable to ensure the fair,  
 28 reasonable, and equitable administration of the program and if the plan of operation provides for the sharing  
 29 of program gains or losses on an equitable and proportionate basis in accordance with the provisions of this  
 30 section. The plan of operation is effective upon written approval by the commissioner.

1           (2) If the board fails to submit a suitable plan of operation within 180 days after its appointment,  
2 the commissioner shall, after notice and hearing, promulgate and adopt a temporary plan of operation. The  
3 commissioner shall amend or rescind any temporary plan adopted under this subsection at the time a plan  
4 of operation is submitted by the board and approved by the commissioner.

5           (3) The plan of operation must:

6           (a) establish procedures for the handling and accounting of program assets and money and for an  
7 annual fiscal reporting to the commissioner;

8           (b) establish procedures for selecting an administering carrier and setting forth the powers and  
9 duties of the administering carrier;

10          (c) establish procedures for reinsuring risks in accordance with the provisions of this section;

11          (d) establish procedures for collecting assessments from assessable carriers to fund claims incurred  
12 by the program;

13          (e) establish procedures for allocating a portion of premiums collected from reinsuring carriers to  
14 fund administrative expenses incurred or to be incurred by the program; and

15          (f) provide for any additional matters necessary for the implementation and administration of the  
16 program.

17          (4) The program has the general powers and authority granted under the laws of this state to  
18 insurance companies and health maintenance organizations licensed to transact business, except the power  
19 to issue health benefit plans directly to either groups or individuals. In addition, the program may:

20          (a) enter into contracts as are necessary or proper to carry out the provisions and purposes of this  
21 part, including the authority, with the approval of the commissioner, to enter into contracts with similar  
22 programs of other states for the joint performance of common functions or with persons or other  
23 organizations for the performance of administrative functions;

24          (b) sue or be sued, including taking any legal actions necessary or proper to recover any premiums  
25 and penalties for, on behalf of, or against the program or any reinsuring carriers;

26          (c) take any legal action necessary to avoid the payment of improper claims against the program;

27          (d) define the health benefit plans for which reinsurance will be provided and to issue reinsurance  
28 policies in accordance with the requirements of this part;

29          (e) establish conditions and procedures for reinsuring risks under the program;

30          (f) establish actuarial functions as appropriate for the operation of the program;

1 (g) appoint appropriate legal, actuarial, and other committees as necessary to provide technical  
2 assistance in operation of the program, policy and other contract design, and any other function within the  
3 authority of the program;

4 (h) to the extent permitted by federal law and in accordance with subsection (8)(c), make annual  
5 fiscal yearend assessments against assessable carriers and make interim assessments to fund claims  
6 incurred by the program; and

7 (i) borrow money to effect the purposes of the program. Any notes or other evidence of  
8 indebtedness of the program not in default are legal investments for carriers and may be carried as admitted  
9 assets.

10 (5) A reinsuring carrier may reinsure with the program as provided for in this subsection (5):

11 (a) With respect to a basic health benefit plan or a standard health benefit plan, the program shall  
12 reinsure the level of coverage provided and, with respect to other plans, the program shall reinsure up to  
13 the level of coverage provided in a basic or standard health benefit plan.

14 (b) A small employer carrier may reinsure an entire employer group within 60 days of the  
15 commencement of the group's coverage under a health benefit plan.

16 (c) A reinsuring carrier may reinsure an eligible employee or dependent within a period of 60 days  
17 following the commencement of coverage with the small employer. A newly eligible employee or dependent  
18 of the reinsured small employer may be reinsured within 60 days of the commencement of coverage.

19 (d) (i) The program may not reimburse a reinsuring carrier with respect to the claims of a reinsured  
20 employee or dependent until the carrier has incurred an initial level of claims for the employee or dependent  
21 of \$5,000 in a calendar year for benefits covered by the program. In addition, the reinsuring carrier is  
22 responsible for 20% of the next \$100,000 of benefit payments during a calendar year and the program  
23 shall reinsure the remainder. A reinsuring carrier's liability under this subsection (d)(i) may not exceed a  
24 maximum limit of \$25,000 in any calendar year with respect to any reinsured individual.

25 (ii) The board annually shall adjust the initial level of claims and maximum limit to be retained by  
26 the carrier to reflect increases in costs and utilization within the standard market for health benefit plans  
27 within the state. The adjustment may not be less than the annual change in the medical component of the  
28 consumer price index for all urban consumers of the United States department of labor, bureau of labor  
29 statistics, unless the board proposes and the commissioner approves a lower adjustment factor.

30 (e) A small employer carrier may terminate reinsurance with the program for one or more of the



1 reinsured employees or dependents of a small employer on any anniversary of the health benefit plan.

2 (f) A small employer group health benefit plan in effect before January 1, 1994, may not be  
3 reinsured by the program until January 1, 1997, and then only if the board determines that sufficient  
4 funding sources are available.

5 (g) A reinsuring carrier shall apply all managed care and claims-handling techniques, including  
6 utilization review, individual case management, preferred provider provisions, and other managed care  
7 provisions or methods of operation consistently with respect to reinsured and nonreinsured business.

8 (6) (a) As part of the plan of operation, the board shall establish a methodology for determining  
9 premium rates to be charged by the program for reinsuring small employers and individuals pursuant to this  
10 section. The methodology must include a system for classification of small employers that reflects the types  
11 of case characteristics commonly used by small employer carriers in the state. The methodology must  
12 provide for the development of base reinsurance premium rates that must be multiplied by the factors set  
13 forth in subsection (6)(b) to determine the premium rates for the program. The base reinsurance premium  
14 rates must be established by the board, subject to the approval of the commissioner, and must be set at  
15 levels that reasonably approximate gross premiums charged to small employers by small employer carriers  
16 for health benefit plans with benefits similar to the standard health benefit plan, adjusted to reflect retention  
17 levels required under this part.

18 (b) Premiums for the program are as follows:

19 (i) An entire small employer group may be reinsured for a rate that is one and one-half times the  
20 base reinsurance premium rate for the group established pursuant to this subsection (6).

21 (ii) An eligible employee or dependent may be reinsured for a rate that is five times the base  
22 reinsurance premium rate for the individual established pursuant to this subsection (6).

23 (c) The board periodically shall review the methodology established under subsection (6)(a),  
24 including the system of classification and any rating factors, to ensure that it reasonably reflects the claims  
25 experience of the program. The board may propose changes to the methodology that are subject to the  
26 approval of the commissioner.

27 (d) The board may consider adjustments to the premium rates charged by the program to reflect  
28 the use of effective cost containment and managed care arrangements.

29 (7) If a health benefit plan for a small employer is entirely or partially reinsured with the program,  
30 the premium charged to the small employer for any rating period for the coverage issued must meet the

1 requirements relating to premium rates set forth in 33-22-1809.

2 (8) (a) Prior to March 1 of each year, the board shall determine and report to the commissioner the  
3 program net loss for the previous calendar year, including administrative expenses and incurred losses for  
4 the year, taking into account investment income and other appropriate gains and losses.

5 (b) To the extent permitted by federal law, each assessable carrier shall share in any net loss of  
6 the program for the year in an amount equal to the ratio of the total premiums earned in the previous  
7 calendar year from health benefit plans delivered or issued for delivery by each assessable carrier divided  
8 by the total premiums earned in the previous calendar year from health benefit plans delivered or issued  
9 for delivery by all assessable carriers in the state.

10 (c) The board shall make an annual determination in accordance with this section of each  
11 assessable carrier’s liability for its share of the net loss of the program and, except as otherwise provided  
12 by this section, make an annual fiscal yearend assessment against each assessable carrier to the extent of  
13 that liability. If approved by the commissioner, the board may also make interim assessments against  
14 assessable carriers to fund claims incurred by the program. Any interim assessment must be credited  
15 against the amount of any fiscal yearend assessment due or to be due from an assessable carrier. Payment  
16 of a fiscal yearend or interim assessment is due within 30 days of receipt by the assessable carrier of  
17 written notice of the assessment. An assessable carrier that ceases doing business within the state is liable  
18 for assessments until the end of the calendar year in which the assessable carrier ceased doing business.  
19 The board may determine not to assess an assessable carrier if the assessable carrier’s liability determined  
20 in accordance with this section does not exceed \$10.

21 (9) The participation in the program as reinsuring carriers; the establishment of rates, forms, or  
22 procedures; or any other joint collective action required by this part may not be the basis of any legal  
23 action, criminal or civil liability, or penalty against the program or any of its reinsuring carriers, either jointly  
24 or separately.

25 (10) The board, as part of the plan of operation, shall develop standards setting forth the minimum  
26 levels of compensation to be paid to producers for the sale of basic and standard health benefit plans. In  
27 establishing the standards, the board shall take into consideration the need to ensure the broad availability  
28 of coverages, the objectives of the program, the time and effort expended in placing the coverage, the need  
29 to provide ongoing service to small employers, the levels of compensation currently used in the industry,  
30 and the overall costs of coverage to small employers selecting these plans.

1 (11) The program is exempt from taxation.

2 (12) On or before March 1 of each year, the commissioner shall evaluate the operation of the  
3 program and report to the governor and the legislature in writing the results of the evaluation. The report  
4 must include an estimate of future costs of the program, assessments necessary to pay those costs, the  
5 appropriateness of premiums charged by the program, the level of insurance retention under the program,  
6 the cost of coverage of small employers, and any recommendations for change to the plan of operation.

7 (13) All premiums and other money paid to the small employer carrier reinsurance program and all  
8 property and securities acquired through the use of money and interest and dividends earned on money  
9 belonging to the small employer carrier reinsurance program are solely the property of the program and  
10 must be used exclusively for the operations and obligations of the program. Money collected by the  
11 program is not subject to legislative appropriation."

12  
13 **Section 67.** Section 33-30-102, MCA, is amended to read:

14 **"33-30-102. Application of this chapter -- construction of other related laws.** (1) All health service  
15 corporations ~~heretofore or hereafter organized~~ are subject to the provisions of this chapter. In addition to  
16 the provisions contained in this chapter, other chapters and provisions of this title apply to health service  
17 corporations as follows: ~~33-17-212~~ 33-17-101; ~~through 33-17-214~~ Title 33, chapter 17, parts 2 and 10  
18 through 12; and Title 33, chapters 1, 15, 18, 19, and 22, except 33-22-111; and [sections 78 through 81].

19 (2) A law of this state other than the provisions of this chapter applicable to health service  
20 corporations ~~shall~~ must be construed in accordance with the fundamental nature of a health service  
21 corporation, and in the event of a conflict ~~between that law and the provisions of this chapter, the latter~~  
22 ~~shall~~ prevail."

23  
24 **Section 68.** Section 33-30-107, MCA, is amended to read:

25 **"33-30-107. Annual statement.** (1) On or before March 1 of each year, Every each health service  
26 corporation shall file an annual statement for the preceding year on a form containing substantially the same  
27 information as that contained in form No. 13 N.A.I.C. with the commissioner of insurance. This annual  
28 statement must be completed in accordance with the national association of insurance commissioners'  
29 annual statement instructions.

30 (2) The health service corporation shall file a statement containing any other information concerning

1 its financial affairs that may be reasonably requested by the commissioner.

2 (3) (a) Each health service corporation shall file electronic diskette versions of its annual and  
 3 quarterly financial statements with the national association of insurance commissioners. The filing date for  
 4 submission of the annual statement diskette is March 1. The filing dates for the other three quarterly  
 5 statements are as follows:

6 (i) the first quarter statement is due May 15;

7 (ii) the second quarter statement is due August 15; and

8 (iii) the third quarter statement is due November 15.

9 (b) The commissioner may exempt health service corporations operating only in Montana from  
 10 these filing requirements."

11  
 12 **Section 69.** Section 33-30-108, MCA, is amended to read:

13 **"33-30-108. License required.** (1) ~~No~~ A person may not act as a health service corporation and  
 14 ~~no~~ a health service corporation may not conduct business in this state except as authorized by a license  
 15 issued by the commissioner.

16 (2) ~~Such~~ A license may be issued by the commissioner only after the person has complied with the  
 17 applicable provisions of this title.

18 (3) A health service corporation is entitled to a continuation of its license upon payment of the  
 19 annual continuation fee specified in 33-30-204(1)(i) on or before March 1 of each year and upon continued  
 20 compliance with the provisions of this title.

21 (4) A license issued or continued under this section may be revoked or suspended by the  
 22 commissioner for violation of this title."

23  
 24 **Section 70.** Section 33-30-202, MCA, is amended to read:

25 **"33-30-202. Annual report by certified public accountant.** (1) All corporations subject to the  
 26 provisions of this chapter shall ~~make and~~ file annually with the commissioner, on or before ~~March~~ June 1  
 27 ~~of each year, a report under oath setting forth:~~ financial statement audited by a certified public accountant  
 28 pursuant to rules promulgated by the commissioner.

29 ~~(1) the name of the corporation;~~

30 ~~(2) the address of its registered office in this state and the name of its registered agent at that~~

1 address;

2 ~~(3) the names and addresses of its directors and officers;~~

3 ~~(4) a brief statement of the character of the affairs which the corporation is actually conducting;~~

4 ~~(5) the amount of all dues or fees collected from members in the last fiscal year, the amounts~~  
 5 ~~actually paid during that year for health services for the members or beneficiaries, and the amounts placed~~  
 6 ~~in reserves;~~

7 ~~(6) a balance sheet and statement of income and expenditures for the most recent fiscal year of~~  
 8 ~~the corporation, prepared and verified by two officers of the corporation and certified by a certified public~~  
 9 ~~accountant;~~

10 ~~(7) a statement of any other facts or information concerning the financial affairs of the health~~  
 11 ~~service corporation which may be reasonably required by the commissioner.~~

12 (2) (a) The commissioner may establish rules governing the content and preparation of the report  
 13 required by subsection (1).

14 (b) The report must include:

15 (i) the corporation's financial statements for the most recent calendar year;

16 (ii) an opinion by the certified public accountant concerning the accuracy and fairness of the  
 17 corporation's representation of its financial statements; and

18 (iii) other information that the commissioner specifies by rule."

19

20 **Section 71.** Section 33-30-204, MCA, is amended to read:

21 **"33-30-204. Fees.** (1) Every health service corporation subject to the provisions of this chapter  
 22 shall pay the following fees to the commissioner for enforcement of the provisions of this chapter:

23 ~~(a) insurance producer's license:~~

24 ~~(i) application for original license and issuance of license ..... \$15~~

25 ~~(ii) annual renewal ..... \$15~~

26 ~~(iii) examination for license, for each examination ..... \$15~~

27 ~~(b)(a) filing any other statement or report ..... \$1~~

28 ~~(b) for a certified copy of any document or other paper filed in the office of the commissioner,~~  
 29 ~~per page ..... \$.50~~

30 ~~(c) for the a certificate and for affixing the with affixed seal thereto ..... \$10~~

- 1        ~~(e)~~(d) filing of a membership contract ..... \$25
- 2        ~~(f)~~(e) filing of a membership contract package ..... \$100
- 3        ~~(g)~~(f) filing annual report, other than as part of application for original license STATEMENT ..... \$25
- 4        ~~(h)~~(g) issuance of health service corporation license ..... \$300
- 5        ~~(i)~~(h) annual continuation of health service corporation license ..... \$300
- 6        (2) The commissioner shall promptly deposit with the state treasurer, to the credit of the general
- 7 fund, all fees and license fees received ~~by him~~ under this section."

8  
9        **Section 72.** Section 33-30-311, MCA, is amended to read:

10        "**33-30-311. Insurance producer.** ~~(1)~~ A person who, for compensation, solicits membership in a  
11 prepayment health service plan offered by a corporation subject to the provisions of this chapter is an  
12 insurance producer of that corporation and is subject to the provisions of 33-2-708 and Title 33, chapter  
13 17.

- 14        ~~(2) The definitions of insurance producer as defined in this chapter do not include an individual:~~
- 15        ~~(a) employed and used by insurance producers for the performance of clerical, stenographic, and~~
- 16 ~~similar office duties;~~
- 17        ~~(b) employed and used for incidental taking of an application for coverage from time to time in the~~
- 18 ~~office of the employing insurance producer;~~
- 19        ~~(c) who secures and forwards information for the purpose of an existing group contractor for~~
- 20 ~~enrolling individuals under an existing group contract."~~

21  
22        **Section 73.** Section 33-30-1001, MCA, is amended to read:

23        "**33-30-1001. Newborn infants covered by insurance by health service corporation.** ~~No~~ A disability  
24 insurance plan or group disability insurance plan issued by a health service corporation may not be issued  
25 or amended in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the  
26 accident and sickness coverage or insurability of newborn infants of the persons insured from and after the  
27 moment of birth. Each ~~such~~ policy ~~shall~~ must contain a provision granting immediate accident and sickness  
28 coverage, from and after the moment of birth, to each newborn infant of any insured person. ~~If payment~~  
29 ~~of a specific premium or subscription fee is required to provide coverage for a child, the policy or contract~~  
30 ~~may require that notification of birth of a newly born child and payment of the required premium or fees~~

1 ~~must be furnished to the insurer or nonprofit service or indemnity corporation within 31 days after the date~~  
 2 ~~of birth in order to have the coverage continue beyond such 31 day period. The policy or contract may~~  
 3 ~~require notification of the birth of a child and payment of a required premium or subscription fee to be~~  
 4 ~~furnished to the insurer or nonprofit or indemnity corporation within 31 days of the birth in order to have~~  
 5 ~~the coverage extend beyond 31 days."~~

6  
 7 ~~Section 74. Section 33-31-311, MCA, is amended to read:~~

8 ~~"33-31-311. Insurance producer license required—application, issuance, renewal, fees—penalty.~~

9 ~~(1) No An individual, partnership, or corporation may not act as or hold himself out represent to the public~~  
 10 ~~to be an insurance producer of a health maintenance organization unless he the individual, partnership, or~~  
 11 ~~corporation is:~~

12 ~~(a) licensed as a disability insurance producer by the commissioner pursuant to chapter 17, parts~~  
 13 ~~1, 2, and 4 of this title or licensed as an insurance producer under 33-30-311 through 33-30-313; and~~

14 ~~(b) appointed or authorized by the health maintenance organization to solicit health care service~~  
 15 ~~agreements on its behalf,~~

16 ~~(2) Application, appointment and qualification for a health maintenance organization insurance~~  
 17 ~~producer license, fees applicable to and the issuance of a health maintenance organization insurance~~  
 18 ~~producer license, and renewal of a health maintenance organization insurance producer license must be in~~  
 19 ~~accordance with the provisions of chapter 17 that apply to a disability insurance producer.~~

20 ~~(3) An individual, partnership, or corporation who holds a disability insurance producer license on~~  
 21 ~~October 1, 1987, need not requalify by an examination to be licensed as a health maintenance organization~~  
 22 ~~insurance producer.~~

23 ~~(4) The commissioner may, in accordance with 33-1-313, 33-1-317, 33-17-411, and chapter 17,~~  
 24 ~~part 10, suspend, revoke, refuse to issue or renew a health maintenance organization insurance producer~~  
 25 ~~license, or impose a fine upon the licensee.~~

26 ~~(5) The provisions of this section do not exempt a health maintenance organization from material~~  
 27 ~~transaction disclosure requirements under [sections 78 through 81]. A health maintenance organization~~  
 28 ~~must be considered an insurer for the purposes of [sections 78 through 81]."~~

29  
 30 **SECTION 74. SECTION 33-31-111, MCA, IS AMENDED TO READ:**

1           **"33-31-111. Statutory construction and relationship to other laws.** (1) Except as otherwise  
 2 provided in this chapter, the insurance or health service corporation laws do not apply to any health  
 3 maintenance organization authorized to transact business under this chapter. This provision does not apply  
 4 to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service  
 5 corporation laws of this state except with respect to its health maintenance organization activities  
 6 authorized and regulated pursuant to this chapter.

7           (2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority  
 8 or its representatives may not be construed as a violation of any law relating to solicitation or advertising  
 9 by health professionals.

10          (3) A health maintenance organization authorized under this chapter may not be considered to be  
 11 practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

12          (4) The provisions of this chapter do not exempt a health maintenance organization from the  
 13 applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

14          (5) The provisions of this section do not exempt a health maintenance organization from material  
 15 transaction disclosure requirements under [sections 78 through 81]. A health maintenance organization  
 16 must be considered an insurer for the purposes of [sections 78 through 81]."  
 17

18          **NEW SECTION. Section 75. Notice of right to return policy.** Each INDIVIDUAL life or disability  
 19 insurance policy, except a single-premium nonrenewable disability policy, issued for delivery in this state  
 20 or issued after January 1, 1996, must contain a notice stating in substance that if the person to whom the  
 21 policy is issued is not satisfied for any reason, the person may return the policy within 10 days of its  
 22 delivery or a longer period if provided by the policy and have refunded directly to the person the premium  
 23 paid. A policy returned pursuant to this section is void from the beginning.  
 24

25          **NEW SECTION. Section 76. Reserve calculation -- indeterminate premium plans -- minimum**  
 26 **standards for disability plans.** (1) In the case of a plan of life insurance that provides for future premium  
 27 determination, the amounts of which are to be determined by the insurer based on then estimates of future  
 28 experience, or in the case of a plan of life insurance or annuity that is of such a nature that the minimum  
 29 reserves cannot be determined by the methods described in 33-2-525 and 33-2-526(3), the reserves that  
 30 are held under the plan must:



- 1 (a) be appropriate in relation to the benefits and the pattern of premiums for that plan; and  
2 (b) be computed by a method that is consistent with the principles of 33-2-521 through 33-2-529,  
3 as determined by rules promulgated by the commissioner.

4 (2) The commissioner shall promulgate a rule containing the minimum standards applicable to the  
5 valuation of disability plans.

6  
7 **NEW SECTION. Section 77. Dating of insurance applications -- antedating prohibited.** An  
8 application for issuance of an insurance policy may not be antedated by any person in order to obtain or  
9 provide coverage for losses or injuries incurred prior to the date of application.

10  
11 **NEW SECTION. Section 78. Short title.** [Sections 78 through 81] may be cited as the "Disclosure  
12 of Material Transactions Act".

13  
14 **NEW SECTION. Section 79. Report.** (1) An insurer domiciled in this state shall file a report with  
15 the commissioner disclosing material acquisitions and dispositions of assets or material nonrenewals,  
16 cancellations, or revisions of ceded reinsurance agreements unless the acquisitions and dispositions of  
17 assets or material nonrenewals, cancellations, or revisions have been submitted to the commissioner for  
18 review or approval or for information purposes pursuant to other provisions of the insurance code, laws,  
19 or regulations or other requirements.

20 (2) The report required in subsection (1) is due within 15 days after the end of the calendar month  
21 in which any of the transactions in subsection (1) occur.

22 (3) One complete copy of the report, including any exhibits or other attachments, must be filed  
23 with:

- 24 (a) the insurance department of the state in which the insurer is domiciled; and  
25 (b) the national association of insurance commissioners.

26 (4) All reports obtained by or disclosed to the commissioner pursuant to [sections 78 through 81]  
27 must be treated confidentially, may not be subject to subpoena, and may not be made public by the  
28 commissioner, the national association of insurance commissioners, or any other person, except to  
29 insurance departments of other states, without the prior consent of the insurer to which it pertains unless  
30 the commissioner, after giving the insurer notice and an opportunity to be heard, determines that the

1 interest of policyholders, shareholders, or the public will be served by publication, in which event the  
2 commissioner may publish all or any part of the report in the manner the commissioner chooses.

3  
4 **NEW SECTION. Section 80. Acquisitions and dispositions of assets.** (1) Acquisitions or  
5 dispositions of assets that are not material are not required to be reported pursuant to [section 79] if the  
6 acquisitions or dispositions are not material. For purposes of [sections 78 through 81], a material  
7 acquisition or the aggregate of any series of related acquisitions during any 30-day period or a disposition  
8 or the aggregate of any series of related dispositions during any 30-day period is one that is nonrecurring  
9 and not in the ordinary course of business and involves more than 5% of the reporting insurer's total  
10 admitted assets as reported in its most recent statutory statement filed with the insurance department of  
11 the insurer's state of domicile.

12 (2) Asset acquisitions subject to [sections 78 through 81] include every purchase, lease, exchange,  
13 merger, consolidation, succession, or other acquisition, other than the construction or development of real  
14 property, by or for the reporting insurer or the acquisition of materials for this purpose.

15 (3) Asset dispositions subject to [sections 78 through 81] include each sale, lease, exchange,  
16 merger, consolidation, mortgage, hypothecation, assignment, whether for the benefit of creditors or  
17 otherwise, abandonment, destruction, or other disposition.

18 (4) The following information is required to be disclosed in any report of a material acquisition or  
19 disposition of assets:

- 20 (a) the date of the transaction;
- 21 (b) the manner of acquisition or disposition;
- 22 (c) the description of the assets involved;
- 23 (d) the nature and amount of the consideration given or received;
- 24 (e) the purpose or reason for the transaction;
- 25 (f) the manner by which the amount of consideration was determined;
- 26 (g) the gain or loss recognized or realized as a result of the transaction; and
- 27 (h) the names of the persons from whom the assets were acquired or to whom they were disposed.

28 (5) An insurer is required to report material acquisitions and dispositions on a nonconsolidated basis  
29 unless the insurer is part of a consolidated group of insurers that uses a pooling arrangement or 100%  
30 reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer

1 ceded substantially all of its direct and assumed business to the pool. An insurer cedes substantially all  
2 of its direct and assumed business to a pool if the insurer has less than \$1 million total direct plus assumed  
3 written premiums during a calendar year that are not subject to a pooling arrangement and the net income  
4 of the business not subject to the pooling arrangement represents less than 5% of the insurer's capital and  
5 surplus.

6

7 **NEW SECTION. Section 81. Nonrenewals, cancellations, or revisions of ceded reinsurance**  
8 **agreements.** (1) A nonrenewal, cancellation, or revision of a ceded reinsurance agreement need not  
9 be reported pursuant to [section 79] if the nonrenewal, cancellation, or revision is not material. For  
10 purposes of [sections 78 through 81], a material nonrenewal, cancellation, or revision is one that  
11 affects:

12 (a) property and casualty business, including disability business written by a property and  
13 casualty insurer, so that:

14 (i) more than 50% of the insurer's total ceded written premium is affected; or

15 (ii) more than 50% of the insurer's total ceded indemnity and loss adjustment reserves are  
16 affected;

17 (b) life, annuity, and disability business, so that more than 50% of the total reserve credit taken  
18 for business ceded, on an annualized basis, as indicated in the insurer's most recent annual statement  
19 is affected;

20 (c) either property and casualty or life, annuity, and disability business and causes either of the  
21 following events that constitutes a material revision that must be reported:

22 (i) an authorized reinsurer representing more than 10% of a total cession is replaced by one  
23 or more unauthorized reinsurers; or

24 (ii) previously established collateral requirements have been reduced or waived as respects one  
25 or more unauthorized reinsurers representing collectively more than 10% of a total cession.

26 (2) However, a filing is not required if:

27 (a) with respect to property and casualty business, including disability business written by a  
28 property and casualty insurer, the insurer's total ceded written premium represents, on an annualized  
29 basis, less than 10% of its total written premium for direct and assumed business; or

30 (b) with respect to life, annuity, and disability business, the total reserve credit taken for

1 business ceded represents, on an annualized basis, less than 10% of the statutory reserve requirement  
2 prior to any cession.

3 (3) The following information is required to be disclosed in any report of a material nonrenewal,  
4 cancellation, or revision of ceded reinsurance agreements:

5 (a) the effective date of the nonrenewal, cancellation, or revision;

6 (b) the description of the transaction with an identification of the initiator of the transaction;

7 (c) the purpose or reason for the transaction; and

8 (d) if applicable, the identity of the replacement reinsurers.

9 (4) Insurers are required to report all material nonrenewals, cancellations, or revisions of ceded  
10 reinsurance agreements on a nonconsolidated basis unless the insurer is part of a consolidated group  
11 of insurers that uses a pooling arrangement or 100% reinsurance agreement that affects the solvency  
12 and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed  
13 business to the pool. An insurer is considered to have ceded substantially all of its direct and assumed  
14 business to a pool if the insurer has less than \$1 million total direct plus assumed written premiums  
15 during a calendar year that are not subject to a pooling arrangement and the net income of the business  
16 not subject to the pooling arrangement represents less than 5% of the insurer's capital and surplus.

17

18 **NEW SECTION. Section 82. Short title.** [Sections 82 through 94] constitute and may be  
19 referred to as "The Risk-Based Capital For Insurers Act".

20

21 **NEW SECTION. Section 83. Definitions.** As used in [sections 82 through 94], the following  
22 definitions apply:

23 (1) "Adjusted RBC report" means an RBC report that has been adjusted by the commissioner  
24 in accordance with [section 84(5)].

25 (2) "Corrective order" means an order issued by the commissioner specifying corrective actions  
26 that the commissioner has determined are required.

27 (3) "Domestic insurer" means any insurance company domiciled in this state.

28 (4) "Foreign insurer" means any insurance company licensed to do business in this state under  
29 33-2-116 but not domiciled in this state.

30 (5) "Life or disability insurer" means:

1 (a) any insurance company licensed under 33-2-116 and engaged in the business of entering  
2 into contracts of disability insurance as described in 33-1-207 or life insurance as described in  
3 33-1-208; or

4 (b) a licensed property and casualty insurer writing only disability insurance.

5 (6) "NAIC" means the national association of insurance commissioners.

6 (7) "Negative trend" means, with respect to a life or health insurer, a negative trend over a  
7 period of time, as determined in accordance with the trend test calculation included in the RBC  
8 instructions.

9 (8) (a) "Property and casualty insurer" means any insurance company licensed under 33-2-116  
10 and engaged in the business of entering into contracts of property insurance as described in 33-1-210  
11 or casualty insurance as described in 33-1-206.

12 (b) The term does not include monoline mortgage guaranty insurers, financial guaranty insurers,  
13 and title insurers.

14 (9) "RBC instructions" means the RBC report including risk-based capital instructions adopted  
15 by the NAIC, as the RBC instructions may be amended by the NAIC from time to time in accordance  
16 with the procedures adopted by the NAIC.

17 (10) "RBC level" means an insurer's authorized control level RBC, company action level RBC,  
18 mandatory control level RBC, or regulatory action level RBC, where:

19 (a) "authorized control level RBC" means the number determined under the risk-based capital  
20 formula in accordance with the RBC instructions;

21 (b) "company action level RBC" means, with respect to any insurer, the product of 2 and its  
22 authorized control level RBC;

23 (c) "mandatory control level RBC" means the product of 0.70 and the authorized control level  
24 RBC; and

25 (d) "regulatory action level RBC" means the product of 1.5 and its authorized control level RBC.

26 (11) "RBC plan" means a comprehensive financial plan containing the elements specified in  
27 [section 85(2)]. If the commissioner rejects the RBC plan and it is revised by the insurer, with or  
28 without the commissioner's recommendation, the plan must be called a revised RBC plan.

29 (12) "RBC report" means the report required in [section 84].

30 (13) "Total adjusted capital" means the sum of:

- 1 (a) an insurer's statutory capital and surplus; and  
2 (b) other items, if any, as the RBC instructions may provide.

3  
4 **NEW SECTION. Section 84. RBC reports.** (1) Each domestic insurer shall, on or before each  
5 March 1 filing date, prepare and submit to the commissioner a report of its RBC levels as of the end  
6 of the previous calendar year in a form and containing information as required by the RBC instructions.  
7 In addition, each domestic insurer shall file its RBC report:

- 8 (a) with the NAIC in accordance with the RBC instructions; and  
9 (b) with the insurance commissioner in any state in which the insurer is authorized to do  
10 business if that insurance commissioner has notified the insurer of the request in writing, in which case  
11 the insurer shall file its RBC report not later than the later of:

- 12 (i) 15 days from the receipt of notice to file its RBC report with that state; or  
13 (ii) the March 1 filing date.

14 (2) A life and disability insurer's RBC must be determined in accordance with the formula set  
15 forth in the RBC instructions. The formula must take into account and may adjust for the covariance  
16 between:

- 17 (a) the risk with respect to the insurer's assets;  
18 (b) the risk of adverse insurance experience with respect to the insurer's liabilities and  
19 obligations;  
20 (c) the interest rate risk with respect to the insurer's business; and  
21 (d) all other business risks and other relevant risks as are set forth in the RBC instructions and  
22 determined in each case by applying the factors in the manner set forth in the RBC instructions.

23 (3) A property and casualty insurer's RBC must be determined in accordance with the formula  
24 set forth in the RBC instructions. The formula shall take into account and may adjust for the covariance  
25 between:

- 26 (a) asset risk;  
27 (b) credit risk;  
28 (c) underwriting risk; and  
29 (d) all other business risks and other relevant risks that are set forth in the RBC instructions  
30 and determined in each case by applying the factors in the manner set forth in the RBC instructions.

1 (4) An excess of capital over the amount produced by the risk-based capital requirements  
2 contained in [sections 82 through 94] and the formulas, schedules, and instructions referenced in  
3 [sections 87 through 94] is desirable in the business of insurance. Accordingly, insurers should seek  
4 to maintain capital above the RBC levels required by [sections 82 through 94]. Additional capital is  
5 used and useful in the insurance business and helps to secure an insurer against various risks inherent  
6 in or affecting the business of insurance and not accounted for or only partially measured by the  
7 risk-based capital requirements contained in [sections 82 through 94].

8 (5) If a domestic insurer files an RBC report that in the judgment of the commissioner is  
9 inaccurate, the commissioner shall adjust the RBC report to correct the inaccuracy and shall notify the  
10 insurer of the adjustment. The notice must contain a statement of the reason for the adjustment. An  
11 RBC report so adjusted is referred to as an adjusted RBC report.

12

13 **NEW SECTION. Section 85. Company action level event.** (1) "Company action level event"  
14 means any of the following events:

15 (a) the filing of an RBC report by an insurer which indicates that:

16 (i) the insurer's total adjusted capital is greater than or equal to its regulatory action level RBC  
17 but less than its company action level RBC; or

18 (ii) for a life or disability insurer, the insurer has total adjusted capital that is greater than or  
19 equal to its company action level RBC but less than the product of its authorized control level RBC and  
20 2.5 and that has a negative trend;

21 (b) the notification by the commissioner to the insurer of an adjusted RBC report that indicates  
22 an event in subsection (1)(a) if the insurer does not challenge the adjusted RBC report under [section  
23 89] or if the commissioner has rejected the insurer's challenge.

24 (2) In the event of a company action level event, the insurer shall prepare and submit to the  
25 commissioner an RBC plan that must:

26 (a) identify the conditions that contribute to the company action level event;

27 (b) contain proposals of corrective actions that the insurer intends to take and that would be  
28 expected to result in the elimination of the company action level event;

29 (c) provide projections of the insurer's financial results in the current year and at least the next  
30 4 years, both in the absence of proposed corrective actions and giving effect to the proposed corrective

1 actions, including projections of statutory operating income, net income, capital, and surplus. The  
2 projections for both new and renewal business may include separate projections for each major line of  
3 business and separately identify each significant income, expense, and benefit component.

4 (d) identify the key assumptions impacting the insurer's projections and the sensitivity of the  
5 projections to the assumptions; and

6 (e) identify the quality of and problems associated with the insurer's business, including but  
7 not limited to its assets, anticipated business growth and associated surplus strain, extraordinary  
8 exposure to risk, mix of business, and use of reinsurance, if any, in each case.

9 (3) The RBC plan must be submitted:

10 (a) within 45 days of the company action level event; or

11 (b) if the insurer challenges an adjusted RBC report pursuant to [section 89], within 45 days  
12 after notification to the insurer that the commissioner has, after a hearing, rejected the insurer's  
13 challenge.

14 (4) Within 60 days after the submission by an insurer of an RBC plan to the commissioner, the  
15 commissioner shall notify the insurer as to whether the RBC plan may be implemented or is  
16 unsatisfactory in the judgment of the commissioner. If the commissioner determines that the RBC plan  
17 is unsatisfactory, the notification to the insurer must set forth the reasons for the determination and  
18 may set forth proposed revisions that will render the RBC plan satisfactory in the judgment of the  
19 commissioner. Upon notification from the commissioner, the insurer shall prepare a revised RBC plan,  
20 which may incorporate by reference any revisions proposed by the commissioner, and shall submit the  
21 revised RBC plan to the commissioner:

22 (a) within 45 days after the notification from the commissioner; or

23 (b) if the insurer challenges the notification from the commissioner under [section 89], within  
24 45 days after a notification to the insurer that the commissioner has, after a hearing, rejected the  
25 insurer's challenge.

26 (5) In the event of a notification by the commissioner to an insurer that the insurer's RBC plan  
27 or revised RBC plan is unsatisfactory, the commissioner may at the commissioner's discretion, subject  
28 to the insurer's right to a hearing under [section 89], specify in the notification that the notification  
29 constitutes a regulatory action level event.

30 (6) Each domestic insurer that files an RBC plan or revised RBC plan with the commissioner



1 shall file a copy of the RBC plan or revised RBC plan with the insurance commissioner in any state in  
2 which the insurer is authorized to do business if:

3 (a) the state has an RBC provision substantially similar to [section 90(1)]; and

4 (b) the insurance commissioner of that state has notified the insurer in writing of its request  
5 for the filing, in which case the insurer shall file a copy of the RBC plan or revised RBC plan in that state  
6 by the later of:

7 (i) 15 days after the receipt of notice to file a copy of its RBC plan or revised RBC plan with  
8 that state; or

9 (ii) the date on which the RBC plan or revised RBC plan is filed under [section 85(3) and (4)].

10

11 **NEW SECTION. Section 86. Regulatory action level event.** (1) "Regulatory action level event"  
12 means, with respect to any insurer, any of the following events:

13 (a) the filing of an RBC report by the insurer that indicates that the insurer's total adjusted  
14 capital is greater than or equal to its authorized control level RBC but less than its regulatory action level  
15 RBC;

16 (b) the notification by the commissioner to an insurer of an adjusted RBC report that indicates  
17 the event in subsection (1)(a) if the insurer does not challenge the adjusted RBC report under [section  
18 89] or the commissioner rejects the insurer's challenge;

19 (c) the failure of the insurer to file an RBC report by the filing date, unless the insurer has  
20 provided an explanation for the failure that is satisfactory to the commissioner and has cured the failure  
21 within 10 days after the filing date;

22 (d) the failure of the insurer to submit an RBC plan to the commissioner within the time period  
23 set forth in [section 85(3)];

24 (e) notification by the commissioner to the insurer that:

25 (i) the RBC plan or revised RBC plan submitted by the insurer is unsatisfactory in the judgment  
26 of the commissioner; and

27 (ii) the notification constitutes a regulatory action level event with respect to the insurer if the  
28 insurer has not challenged the determination under [section 89];

29 (f) if, pursuant to [section 89], the insurer challenges a determination by the commissioner, the  
30 notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the

1 challenge;

2 (g) notification by the commissioner to the insurer that the insurer has failed to adhere to its  
3 RBC plan or revised RBC plan, but only if the failure has a substantial adverse effect on the ability of  
4 the insurer to eliminate the company action level event in accordance with its RBC plan or revised RBC  
5 plan and the commissioner has so stated in the notification and if the insurer has not challenged the  
6 determination under [section 89] or the commissioner has not rejected the insurer's challenge.

7 (2) In the event of a regulatory action level event, the commissioner shall:

8 (a) require the insurer to prepare and submit an RBC plan or, if applicable, a revised RBC plan;

9 (b) perform an examination or analysis as the commissioner considers necessary of the assets,  
10 liabilities, and operations of the insurer including a review of its RBC plan or revised RBC plan; and

11 (c) subsequent to the examination or analysis, issue a corrective order specifying corrective  
12 actions that the commissioner determines are required.

13 (3) In determining corrective actions, the commissioner may take into account factors  
14 considered relevant with respect to the insurer based upon the commissioner's examination or analysis  
15 of the assets, liabilities, and operations of the insurer, including but not limited to the results of any  
16 sensitivity tests undertaken pursuant to the RBC instructions. The RBC plan or revised RBC plan must  
17 be submitted:

18 (a) within 45 days after the occurrence of the regulatory action level event;

19 (b) if the insurer challenges an adjusted RBC report pursuant to [section 89] and the challenge  
20 is not frivolous in the judgment of the commissioner, within 45 days after the notification to the insurer  
21 that the commissioner has, after a hearing, rejected the insurer's challenge; or

22 (c) if the insurer challenges a revised RBC plan pursuant to [section 89] and the challenge is  
23 not frivolous in the judgment of the commissioner, within 45 days after the notification to the insurer  
24 that the commissioner has, after a hearing, rejected the insurer's challenge.

25 (4) The commissioner may retain actuaries and investment experts and other consultants that  
26 may be necessary in the judgment of the commissioner to review the insurer's RBC plan or revised RBC  
27 plan, to examine or analyze the assets, liabilities, and operations of the insurer, and to formulate the  
28 corrective order with respect to the insurer. The fees, costs, and expenses relating to consultants must  
29 be borne by the affected insurer or such other party as directed by the commissioner.

30

1           **NEW SECTION. Section 87. Authorized control level event.** (1) "Authorized control level  
2 event" means any of the following events:

3           (a) the filing of an RBC report by the insurer that indicates that the insurer's total adjusted  
4 capital is greater than or equal to its mandatory control level RBC but less than its authorized control  
5 level RBC;

6           (b) the notification by the commissioner to the insurer of an adjusted RBC report that indicates  
7 the event in subsection (1)(a) if the insurer does not challenge the adjusted RBC report under [section  
8 89] or the commissioner rejects the insurer's challenge;

9           (c) the failure of the insurer to respond, in a manner satisfactory to the commissioner, to a  
10 corrective order if the insurer has not challenged the corrective order under [section 89]; or

11           (d) if the insurer has challenged a corrective order under [section 89] and the commissioner  
12 has, after a hearing, rejected the challenge or modified the corrective order, the failure of the insurer  
13 to respond, in a manner satisfactory to the commissioner, to the corrective order subsequent to  
14 rejection or modification by the commissioner.

15           (2) In the event of an authorized control level event with respect to an insurer, the  
16 commissioner shall:

17           (a) take the actions required under [section 86] regarding an insurer with respect to which a  
18 regulatory action level event has occurred; or

19           (b) if the commissioner considers it to be in the best interests of the policyholders and creditors  
20 of the insurer and of the public, take the actions necessary to cause the insurer to be placed under  
21 regulatory control under Title 33, chapter 2, part 13. In the event that the commissioner places the  
22 insurer under regulatory control, the authorized control level event must be considered sufficient  
23 grounds for the commissioner to take action under Title 33, chapter 2, part 13, and the commissioner  
24 shall have the rights, powers, and duties with respect to the insurer as are set forth in Title 33, chapter  
25 2, part 13. In the event that the commissioner takes an action under this subsection pursuant to an  
26 adjusted RBC report, the insurer is entitled to the protections afforded to insurers under the provisions  
27 of 33-2-1321 through 33-2-1323 pertaining to summary proceedings.

28

29           **NEW SECTION. Section 88. Mandatory control level event.** (1) "Mandatory control level  
30 event" means any of the following events:

1 (a) the filing of an RBC report that indicates that the insurer's total adjusted capital is less than  
2 its mandatory control level RBC;

3 (b) notification by the commissioner to the insurer of an adjusted RBC report that indicates the  
4 event in subsection (1)(a) if the insurer does not challenge the adjusted RBC report under [section 89]  
5 or the commissioner rejects the insurer's challenge.

6 (2) In the event of a mandatory control level event:

7 (a) with respect to a life insurer, the commissioner shall take the actions that are necessary to  
8 place the insurer under regulatory control under Title 33, chapter 2, part 13. In that event, the  
9 mandatory control level event must be considered sufficient grounds for the commissioner to take  
10 action under Title 33, chapter 2, part 13, and the commissioner shall have the rights, powers, and  
11 duties with respect to the insurer as are set forth in Title 33, chapter 2, part 13. If the commissioner  
12 takes an action pursuant to an adjusted RBC report, the insurer is entitled to the protections of  
13 33-2-1321 through 33-2-1323 pertaining to summary proceedings. Notwithstanding any of the  
14 foregoing, the commissioner may forego action for up to 90 days after the mandatory control level  
15 event if the commissioner finds that there is a reasonable expectation that the mandatory control level  
16 event may be eliminated within the 90-day period.

17 (b) with respect to a property and casualty insurer, the commissioner shall take the actions  
18 necessary to place the insurer under regulatory control under Title 33, chapter 2, part 13, or, in the  
19 case of an insurer that is not writing business and that is running-off its existing business, may allow  
20 the insurer to continue its runoff under the supervision of the commissioner. In either event, the  
21 mandatory control level event must be considered sufficient grounds for the commissioner to take  
22 action under Title 33, chapter 2, part 13, and the commissioner shall have the rights, powers, and  
23 duties with respect to the insurer as are set forth in Title 33, chapter 2, part 13. If the commissioner  
24 takes an action pursuant to an adjusted RBC report, the insurer is entitled to the protections of  
25 33-2-1321 through 33-2-1323 pertaining to summary proceedings. Notwithstanding any of the  
26 foregoing, the commissioner may forego action for up to 90 days after the mandatory control level  
27 event if the commissioner finds there is a reasonable expectation that the mandatory control level event  
28 may be eliminated within the 90-day period.

29  
30 **NEW SECTION. Section 89. Notification and hearing.** (1) An insurer has the right to a hearing

1 before the department upon notification by the commissioner:

2 (a) of an adjusted RBC report or unsatisfactory RBC plan or revised RBC plan that constitutes  
3 a regulatory action level event with respect to the insurer;

4 (b) that the insurer has failed to adhere to its RBC plan or revised RBC plan and that the failure  
5 has a substantial adverse effect on the ability of the insurer to eliminate the company action level event  
6 with respect to the insurer in accordance with its RBC plan or revised RBC plan; or

7 (c) of a corrective order with respect to the insurer.

8 (2) The insurer shall notify the commissioner of its request for a hearing within 5 days after  
9 the notification by the commissioner under subsection (1). Upon receipt of the insurer's request for  
10 a hearing, the commissioner shall set a date for the hearing, which may not be less than 10 or more  
11 than 30 days after the date of the insurer's request.

12

13 **NEW SECTION. Section 90. Confidentiality -- prohibition on announcements -- prohibition on**  
14 **use in ratemaking.** (1) With respect to a domestic insurer or a foreign insurer, all RBC reports, to the  
15 extent the information in the reports is not required to be set forth in a publicly available annual  
16 statement schedule, and all RBC plans, including the results or report of any examination or analysis  
17 of an insurer performed pursuant to [sections 82 through 94] and any corrective order issued by the  
18 commissioner pursuant to the examination or analysis, that are filed with the commissioner constitute  
19 information that might be damaging to the insurer if made available to its competitors and must be kept  
20 confidential by the commissioner. This information may not be made public and is not subject to  
21 subpoena other than by the commissioner and then only for the purpose of enforcement actions taken  
22 by the commissioner pursuant to [sections 82 through 94] or any other provision of the insurance laws  
23 of this state.

24 (2) It is the intent of the legislature that the comparison of an insurer's total adjusted capital  
25 to any of its RBC levels is a regulatory tool that may indicate the need for possible corrective action  
26 with respect to the insurer and that it is not intended as a means to rank insurers generally. Except as  
27 otherwise required under the provisions of [sections 92 through 94], the making, publishing,  
28 disseminating, circulating, or placing before the public or causing, directly or indirectly to be made,  
29 published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other  
30 publication, in the form of a notice, circular, pamphlet, letter, or poster, over any radio or television

1 station, or in any other way, an advertisement, announcement, or statement containing an assertion,  
2 representation, or statement with regard to the RBC levels of any insurer or of any component derived  
3 in the calculation that is by any insurer, producer, or other person engaged in any manner in the  
4 insurance business would be misleading and is prohibited. However, if any materially false statement  
5 with respect to the comparison regarding an insurer's total adjusted capital to its RBC levels or an  
6 inappropriate comparison of any other amount to the insurer's RBC levels is published in any written  
7 publication and the insurer is able to demonstrate to the commissioner, with substantial proof, the  
8 falsity of the statement or the inappropriateness, as the case may be, the insurer may publish an  
9 announcement in a written publication if the sole purpose of the announcement is to rebut the  
10 materially false statement.

11 (3) It is the further intent of the legislature that the RBC instructions, RBC reports, adjusted  
12 RBC reports, RBC plans, and revised RBC plans are intended solely for use by the commissioner in  
13 monitoring the solvency of insurers and the need for possible corrective action with respect to insurers  
14 and may not be used by the commissioner for ratemaking or considered or introduced as evidence in  
15 any rate proceeding or used by the commissioner to calculate or derive any elements of an appropriate  
16 premium level or rate of return for any line of insurance that an insurer or any affiliate is authorized to  
17 write.

18

19 **NEW SECTION. Section 91. Supplemental provisions -- rules -- exemption.** (1) The provisions  
20 of [sections 82 through 94] are supplemental to any other provisions of the laws of this state and do  
21 not preclude or limit any other powers or duties of the commissioner under the law, including but not  
22 limited to Title 33, chapter 2, part 13.

23 (2) The commissioner may adopt reasonable rules necessary for the implementation of [sections  
24 82 through 94].

25 (3) The commissioner may exempt from the application of [sections 82 through 94] any  
26 domestic property and casualty insurer that:

27 (a) writes direct business only in this state;

28 (b) writes direct annual premiums of \$2 million or less; and

29 (c) does not assume reinsurance in excess of 5% of direct premium written.

30

1           **NEW SECTION. Section 92. Foreign insurers.** (1) A foreign insurer shall, upon the written  
2 request of the commissioner, submit to the commissioner an RBC report for the previous calendar year  
3 on the later of:

4           (a) the date that an RBC report would be required to be filed by a domestic insurer under  
5 [section 84]; or

6           (b) 15 days after the request is received by the foreign insurer.

7           (2) A foreign insurer shall, at the written request of the commissioner, promptly submit to the  
8 commissioner a copy of any RBC plan that is filed with the insurance commissioner of any other state.

9           (3) In the event of a company action level event, regulatory action level event, or authorized  
10 control level event, with respect to any foreign insurer as determined under the RBC statute applicable  
11 in the state of domicile of the insurer or, if an RBC statute is not in force in that state, under the  
12 provisions of [sections 82 through 94], if the insurance commissioner of the state of domicile of the  
13 foreign insurer fails to require the foreign insurer to file an RBC plan in the manner specified under that  
14 state's RBC statute or, if an RBC statute is not in force in that state, under [section 85], the  
15 commissioner may require the foreign insurer to file an RBC plan with the commissioner. In that event,  
16 the failure of the foreign insurer to file an RBC plan with the commissioner is grounds to order the  
17 insurer to cease and desist from writing new insurance business in this state.

18           (4) In the event of a mandatory control level event with respect to any foreign insurer, if a  
19 domiciliary receiver has not been appointed with respect to the foreign insurer under the rehabilitation  
20 and liquidation statute applicable in the state of domicile of the foreign insurer, the commissioner may  
21 make application to a district court of this state permitted under 33-2-1380 with respect to the  
22 liquidation of property of foreign insurers found in this state, and the occurrence of the mandatory  
23 control level event must be considered adequate grounds for the application.

24  
25           **NEW SECTION. Section 93. Applicability for 1995.** (1) For RBC reports required to be filed  
26 by property and casualty insurers with respect to 1995, the following requirements apply in lieu of the  
27 provisions of [sections 85 through 88]:

28           (a) In the event of a company action level event with respect to a domestic insurer, the  
29 commissioner will not take regulatory action under [sections 82 through 94].

30           (b) In the event of a regulatory action level event under [section 86(1)(a), (1)(b), or (1)(c)], the

1 commissioner shall take the actions required under [section 86(2)].

2 (c) In the event of a regulatory action level event under [section 86(1)(d), (1)(e), (1)(f), or  
3 (1)(g)] or an authorized control level event, the commissioner shall take the actions required under  
4 [section 86(2) and (3)] with respect to the insurer.

5 (4) In the event of a mandatory control level event with respect to an insurer, the commissioner  
6 shall take the actions required under [section 88].

7

8 **NEW SECTION. Section 94. Notices.** All notices by the commissioner to an insurer that may  
9 result in regulatory action are effective on dispatch if transmitted by certified mail or, in the case of any  
10 other transmission, are effective on the insurer's receipt of the notice.

11

12 **SECTION 95. SECTION 33-22-1811, MCA, IS AMENDED TO READ:**

13 **"33-22-1811. Availability of coverage -- required plans.** (1) (a) As a condition of transacting  
14 business in this state with small employers, each small employer carrier shall offer to small employers  
15 at least two health benefit plans. One plan must be a basic health benefit plan, and one plan must be  
16 a standard health benefit plan.

17 (b) (i) A small employer carrier shall issue a basic health benefit plan or a standard health  
18 benefit plan to any eligible small employer that applies for either plan and agrees to make the required  
19 premium payments and to satisfy the other reasonable provisions of the health benefit plan not  
20 inconsistent with this part.

21 (ii) In the case of a small employer carrier that establishes more than one class of business  
22 pursuant to 33-22-1808, the small employer carrier shall maintain and offer to eligible small employers  
23 at least one basic health benefit plan and at least one standard health benefit plan in each established  
24 class of business. A small employer carrier may apply reasonable criteria in determining whether to  
25 accept a small employer into a class of business, provided that:

26 (A) the criteria are not intended to discourage or prevent acceptance of small employers  
27 applying for a basic or standard health benefit plan;

28 (B) the criteria are not related to the health status or claims experience of the small employers'  
29 employees;

30 (C) the criteria are applied consistently to all small employers that apply for coverage in that



1 commissioner shall take the actions required under [section 86(2)].

2 (c) In the event of a regulatory action level event under [section 86(1)(d), (1)(e), (1)(f), or  
3 (1)(g)] or an authorized control level event, the commissioner shall take the actions required under  
4 [section 86(2) and (3)] with respect to the insurer.

5 (2) In the event of a mandatory control level event with respect to an insurer, the commissioner  
6 shall take the actions required under [section 88].

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9 result in regulatory action are effective on dispatch if transmitted by certified mail or, in the case of any  
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17 (b) (i) A small employer carrier shall issue a basic health benefit plan or a standard health  
18 benefit plan to any eligible small employer that applies for either plan and agrees to make the required  
19 premium payments and to satisfy the other reasonable provisions of the health benefit plan not  
20 inconsistent with this part.

21 (ii) In the case of a small employer carrier that establishes more than one class of business  
22 pursuant to 33-22-1808, the small employer carrier shall maintain and offer to eligible small employers  
23 at least one basic health benefit plan and at least one standard health benefit plan in each established  
24 class of business. A small employer carrier may apply reasonable criteria in determining whether to  
25 accept a small employer into a class of business, provided that:

26 (A) the criteria are not intended to discourage or prevent acceptance of small employers  
27 applying for a basic or standard health benefit plan;

28 (B) the criteria are not related to the health status or claims experience of the small employers'  
29 employees;

30 (C) the criteria are applied consistently to all small employers that apply for coverage in that

1 class of business; and

2 (D) the small employer carrier provides for the acceptance of all eligible small employers into  
3 one or more classes of business.

4 (iii) The provisions of subsection (1)(b)(ii) may not be applied to a class of business into which  
5 the small employer carrier is no longer enrolling new small businesses.

6 (c) The provisions of this section are effective 180 days after the commissioner's approval of  
7 the basic health benefit plan and the standard health benefit plan developed pursuant to 33-22-1812,  
8 provided that if the program created pursuant to 33-22-1818 is not yet operative on that date, the  
9 provisions of this section are effective on the date that the program begins operation.

10 (2) (a) A small employer carrier shall, pursuant to 33-1-501, file the basic health benefit plans  
11 and the standard health benefit plans to be used by the small employer carrier.

12 (b) The commissioner may at any time, after providing notice and an opportunity for a hearing  
13 to the small employer carrier, disapprove the continued use by a small employer carrier of a basic or  
14 standard health benefit plan on the grounds that the plan does not meet the requirements of this part.

15 (3) Health benefit plans covering small employers must comply with the following provisions:

16 (a) A health benefit plan may not, because of a preexisting condition, deny, exclude, or limit  
17 benefits for a covered individual for losses incurred more than 12 months following the effective date  
18 of the individual's coverage. A health benefit plan may not define a preexisting condition more  
19 restrictively than 33-22-110, except that the condition may be excluded for a maximum of 12 months.

20 (b) A health benefit plan must waive any time period applicable to a preexisting condition  
21 exclusion or limitation period with respect to particular services for the period of time an individual was  
22 previously covered by qualifying previous coverage that provided benefits with respect to those services  
23 if the qualifying previous coverage was continuous to a date not ~~less~~ more than 30 days prior to the  
24 submission of an application for new coverage. This subsection (3)(b) does not preclude application of  
25 any waiting period applicable to all new enrollees under the health benefit plan.

26 (c) A health benefit plan may exclude coverage for late enrollees for 18 months or for an  
27 18-month preexisting condition exclusion, provided that if both a period of exclusion from coverage and  
28 a preexisting condition exclusion are applicable to a late enrollee, the combined period may not exceed  
29 18 months from the date the individual enrolls for coverage under the health benefit plan.

30 (d) (i) Requirements used by a small employer carrier in determining whether to provide

1 coverage to a small employer, including requirements for minimum participation of eligible employees  
2 and minimum employer contributions, must be applied uniformly among all small employers that have  
3 the same number of eligible employees and that apply for coverage or receive coverage from the small  
4 employer carrier.

5 (ii) A small employer carrier may vary the application of minimum participation requirements  
6 and minimum employer contribution requirements only by the size of the small employer group.

7 (e) (i) If a small employer carrier offers coverage to a small employer, the small employer carrier  
8 shall offer coverage to all of the eligible employees of a small employer and their dependents. A small  
9 employer carrier may not offer coverage only to certain individuals in a small employer group or only  
10 to part of the group, except in the case of late enrollees as provided in subsection (3)(c).

11 (ii) A small employer carrier may not modify a basic or standard health benefit plan with respect  
12 to a small employer or any eligible employee or dependent, through riders, endorsements, or otherwise,  
13 to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the  
14 health benefit plan.

15 (4) (a) A small employer carrier may not be required to offer coverage or accept applications  
16 pursuant to subsection (1) in the case of the following:

17 (i) to a small employer when the small employer is not physically located in the carrier's  
18 established geographic service area;

19 (ii) to an employee when the employee does not work or reside within the carrier's established  
20 geographic service area; or

21 (iii) within an area where the small employer carrier reasonably anticipates and demonstrates  
22 to the satisfaction of the commissioner that it will not have the capacity within its established  
23 geographic service area to deliver service adequately to the members of a group because of its  
24 obligations to existing group policyholders and enrollees.

25 (b) A small employer carrier may not be required to provide coverage to small employers  
26 pursuant to subsection (1) for any period of time for which the commissioner determines that requiring  
27 the acceptance of small employers in accordance with the provisions of subsection (1) would place the  
28 small employer carrier in a financially impaired condition."

29  
30 **SECTION 96. SECTION 33-1-413, MCA, IS AMENDED TO READ:**

1           **"33-1-413. Examination expense -- lien.** (1) Upon presentation of a detailed account of ~~such~~  
 2 charges and expenses by the commissioner or pursuant to ~~his~~ the commissioner's written authorization,  
 3 each person ~~se~~ examined, other than ~~as to~~ examinations pursuant to 33-1-402, shall pay the actual  
 4 travel expenses, a reasonable living expense allowance, and a per diem as compensation of examiners  
 5 as necessarily incurred on account of the examination, all at reasonable rates ~~customary therefor and~~  
 6 as established or adopted by the commissioner. ~~Such an~~ An account may be ~~se~~ presented periodically  
 7 during the course of the examination or at the termination of the examination as the commissioner  
 8 ~~deems~~ considers proper. ~~No~~ A person ~~shall~~ may not pay and ~~no~~ an examiner ~~shall~~ may not accept any  
 9 additional emolument on account of ~~any such~~ an examination.

10           (2) The commissioner shall pay to the state treasurer to the credit of the ~~general~~ state special  
 11 revenue fund all ~~moneys~~ money received pursuant to subsection (1) ~~above~~.

12           (3) If ~~any such~~ a person fails to pay the charges and expenses, as referred to in subsection (1)  
 13 ~~above, they shall~~ the charges and expenses must be paid out of the funds of the commissioner in the  
 14 same manner as other disbursements of ~~such~~ the funds. The amount ~~se~~ paid ~~shall be~~ is a first lien upon  
 15 all of the assets and property in this state of ~~such~~ the person and may be recovered by suit by the  
 16 attorney general on behalf of the state of Montana and restored to the appropriate fund."  
 17

18           NEW SECTION. Section 97. Repealer. Sections 33-30-312 and 33-30-313, MCA, are  
 19 repealed.  
 20

21           NEW SECTION. Section 98. Codification instruction. (1) [Section 75] is intended to be  
 22 codified as an integral part of Title 33, chapter 15, and the provisions of Title 33, chapter 15, apply  
 23 to [section 75].

24           (2) [Section 76] is intended to be codified as an integral part of Title 33, chapter 2, part 5, and  
 25 the provisions of Title 33, chapter 2, part 5, apply to [section 76].

26           (3) [Section 77] is intended to be codified as an integral part of Title 33, chapter 15, part 4,  
 27 and the provisions of Title 33, chapter 15, part 4, apply to [section 77].

28           (4) [Sections 78 through 81] are intended to be codified as an integral part of Title 33, chapter  
 29 3, and the provisions of Title 33, chapter 3, apply to [sections 78 through 81].

30           (5) [Sections 82 through 94] are intended to be codified as an integral part of Title 33, chapter

1 2, and the provisions of Title 33, chapter 2, apply to [sections 82 through 94].

2

3 NEW SECTION. Section 99. Severability. If a part of [this act] is invalid, all valid parts that  
4 are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of  
5 its applications, the part remains in effect in all valid applications that are severable from the invalid  
6 applications.

7

8 NEW SECTION. SECTION 100. EFFECTIVE DATES. (1) [SECTION 31 AND THIS SECTION]  
9 ARE EFFECTIVE ON PASSAGE AND APPROVAL.

10 (2) [SECTIONS 1 THROUGH 30 AND 32 THROUGH 98] ARE EXCEPT AS PROVIDED IN  
11 SUBSECTION (1), [THIS ACT] IS EFFECTIVE OCTOBER 1, 1995.

12

-END-